



AFGHANISTAN

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Introduction

1. Throughout the past seven years of the state-building process in Afghanistan, justice has been sacrificed for political expediency and peace for short-term stability. Although the inclusion of an amnesty clause was avoided in the stabilization and state-building agreement signed in December 2001, the Afghan government has shown little political will to promote transitional justice. Today a cross-border insurgency, drug-related organized crime, and a culture of impunity contribute to a highly volatile situation. The inability to provide security, the inclusion of individuals with known records of criminal activity and human rights abuses in the government, and allegations of widespread corruption are all undermining the legitimacy of the Afghan government. The international community, including the United Nations and the North Atlantic Treaty Organization, has been criticized for lack of coherent strategies to ensure the basic conditions of security and political stability needed to achieve justice and human rights.

2. During 2008 political, development, and military actors have tried to strengthen the Afghan government and coordinate the international community's efforts in Afghanistan. The NATO Bucharest Summit (March 2008) ensured the adoption of a coherent approach by the International Security Assistance Force (ISAF), and the Paris Conference (July 2008) aimed to assess progress made in implementation of the agreement between the Afghan government and its international partners, the Afghanistan Compact (2006). It called for increased accountability of the Afghan government and coordination among international actors. The results of these high-level policy efforts have not yet materialized.

3. The current challenge in Afghanistan is to focus on core human rights and justice as part of a state-building and stabilization process, boosting the commitment of all stakeholders to the well-being of the Afghan nation and people. This effort demands due acknowledgment of how the culture of impunity for war crimes and gross human rights violations contributes to empowering Afghan warlords and drug lords (within or outside the government) and to shrinking the space for freedom of expression.

Substantive Concerns

4. Stabilizing Afghanistan to ensure lasting peace is becoming an increasingly distant goal. Although parts of the country can be defined as post-conflict, large parts of southern and southeastern Afghanistan face continuing violence. Justice, in the sense of countering impunity and seeking redress for victims, has been consistently marginalized throughout the state-building process. With the increasingly volatile security situation, justice is almost entirely excluded from the policy-making agenda. The Afghan government and its international partners seem to accept that many government officials are alleged perpetrators of war crimes and have known links to armed groups and the drug trade.

5. Afghanistan's nascent efforts to come to terms with the past remain centralized. Too little has been done by the Afghan government and by the governmental and non-governmental organizations supporting it to promote awareness and engage broader sectors of Afghan society, including community leaders and civil society at the regional level. The inclusion of former commanders in the government and the failure to vet parliamentary candidates have resulted in many individuals with questionable human rights records entering the Afghan political elite. These developments have had a considerable effect on the political climate in Afghanistan. For example, shortly after President Hamed Karzai's public launch of the Government Action Plan for Peace, Reconciliation, and Justice (also called the transitional justice action plan) in December 2006, a handful of parliamentarians—former paramilitary commanders—managed to mobilize support within Parliament and passed a resolution that with a few exceptions amounted to amnesty for all those who have been involved in the Afghan conflict over the past 25 years. The reasoning used to mobilize support for this law was that it would enable the country to move toward reconciliation. However, the law, which continues in force, also served as a reminder by some of the paramilitary commanders that they remain powerful.

6. The challenging security situation is compounded by a lack of substantive progress in security-sector and rule-of-law reform. The Afghan National Police (ANP) and justice sector institutions are considered corrupt and enjoy limited public confidence. Although reform initiatives have been directed toward both the security forces and the justice sector, the focus has been on capacity-building and infrastructure rather than on coming to terms with the culture of corruption and impunity that undermines security and justice institutions. Declining faith in the Afghan government and the international effort, coupled with unabated poverty, provides a fertile breeding ground for insurgents and organized crime.

7. Insecurity and the ensuing vulnerability of members of organized civil society and the media are exacting a toll on free expression and dissent. Several human rights activists have been forced to curtail their activities due to harassment and threats. Journalists and media outlets face increasingly hostile working conditions, with unclear media regulations leaving the press exposed to haphazard and arbitrary treatment by the government. Civil society activists complain of a growing climate of fear and intimidation that is likely to worsen over the next year.

8. The various strains on the Afghan government and the fragile security situation pose serious obstacles for the country's presidential and provincial council elections in 2009 and the parliamentary elections in 2010. The results of the country's first parliamentary elections in 2005 revealed the beginning of public disenchantment with the new government; the elections restored

to power many deeply problematic individuals. Operational difficulties with the newly launched voter registration process, as well as the impact of continuing violence in many regions on voting, should be closely monitored by the Independent Electoral Commission and relevant UN agencies.

9. Threats from the insurgency should be expected, but additional problematic policies are associated with the elections. Some consider government officials to be using government offices for electioneering. In addition, with support from major international stakeholders, including the US, UK and Canada, the Afghan government has instituted a “Social Outreach Program” that seeks to organize and fund informal militia groups to defend and stabilize areas that are without international military support. This initiative, ostensibly launched to assist with stabilization of the country to allow for peaceful elections, risks becoming a repeat of past mistakes and undermines the little progress made to date on disarmament and the buildup of Afghan security institutions. Given the ethnic divides in Afghan society, privatizing security through further arming local militias will inevitably lead to distrust and fragmentation of the authority of the central government in the longer term.

Achievements and Best Practices

10. In 2004 the Afghan Independent Human Rights Commission (AIHRC) conducted national consultations to identify how Afghans wanted past human rights violations to be addressed. Through its central and regional offices the AIHRC documented the views of more than 6,000 Afghans from 32 of 34 provinces and from refugee populations in Iran and Pakistan. Its report, *A Call for Justice*, was published in January 2005. The consultation showed that ordinary people perceive that impunity is entrenched in Afghanistan, and perpetrators have attained positions of power despite their continued involvement in violations. The report suggests a need to break with the past and recommends a way forward, including an integrated approach to build trust in Afghanistan's institutions and recognize victims' needs and wishes. The consultation showed strong public support for holding criminals accountable for past crimes through prosecution. Removing war criminals from positions of power was highlighted as the next-best option. The Government Action Plan for Peace, Reconciliation, and Justice was drafted on the basis of the recommendations included in the *Call for Justice* report.

11. Achievements have been few in recent years, especially in addressing legacies of past crimes and promoting justice. In the run-up to the adoption of the Action Plan for Peace, Justice, and Reconciliation, the Afghan government and the international community seemed to demonstrate some willingness to promote a transitional justice process in Afghanistan. The public launch of the Action Plan by President Hamed Karzai on Human Rights Day 2006 and his reemphasis on acknowledging the suffering of victims on Human Rights Day 2007 were symbolic markers of the importance of recognizing the past.

12. Attempts to document violations have gone forward. In support of the AIHRC's consultation process, the Office of the High Commissioner for Human Rights and the Human Rights Unit of the UN Assistance Mission for Afghanistan (UNAMA) undertook mapping of gross human rights violations and war crimes in Afghanistan from 1978 to 2001, based on existing UN documents and other documentation from outside Afghanistan. The report, which has not been published, was given to President Hamed Karzai and the AIHRC as a resource for future Afghan

documentation. The Afghanistan Justice Project (AJP) and the AIHRC have both undertaken further documentation efforts in Afghanistan—the AIHRC in the form of a conflict mapping exercise.

13. Interest and engagement in promoting transitional justice by civil society organizations, networks, and media are continuously growing and becoming increasingly diversified. However, unlike in many other transitional contexts, the capacity of individual organizations to address transitional justice remains weak. So far only a few organizations have sought to develop expertise on specific issues such as victims' mobilization, documentation, awareness-raising, and training. Most civil society initiatives remain centered in Kabul, and outreach to the regions has been limited. The lack of development of civil society may result partly from the security situation, but also from the lack of tradition of civil society organizations in Afghan society.

Recommendations from a Transitional Justice Perspective

14. Successes in Afghanistan are not obvious, and no easy solutions exist for the country's woes. Insecurity, lack of meaningful governance, and the absence of the rule of law are the consequences of prioritizing expediency above sustainability. The crisis faced by the Afghan government and its international partners is becoming increasingly acute. The Afghan government will need to take decisive action to promote political stability. Stability can be promoted by enhancing public support for the government through increased focus on accountability and anti-corruption. This can be done by promoting reconciliation between the different warring parties in Afghan society. The international actors supporting the Afghan government must ensure that their actions are coordinated and contribute to overall efforts in Afghanistan.

15. Although transitional justice may not be a solution to the many challenges in Afghanistan, it is short-sighted to hope that political legitimacy and institutional integrity can be established without addressing the legacies of the past or coming to terms with the illegitimate power structures established during decades of war. Addressing the legacies of past and ongoing violations and promoting justice should be at the heart of policies and practices to promote security, rule of law, and good governance in Afghanistan.

16. To promote recognition of the suffering of victims and encourage public debate about war crimes and human rights violations, documentation of the history of conflict and abuses is of the utmost importance. The government and its international partners should support ongoing documentation efforts by the AIHRC. It further encourages OHCHR to consider updating and publishing its unpublished mapping exercise on human rights violations in Afghanistan between 1978 and 2001.

17. Despite the difficulty of engaging with government actors on the question of transitional justice, it is necessary to revive dialogue on the government's obligations to address the legacy of the past. Many individuals and civil society organizations have expressed support for an official process to commemorate the victims of the conflict. After the discovery of a mass grave in Badakhshan in 2007, President Hamed Karzai publicly promised to erect a memorial at the site, but this has yet to materialize. Opportunities to memorialize the victims of Afghanistan's ongoing

conflict may represent possibilities for civil society engagement with the government and should be pursued throughout the country.

18. Reparation plans for past or present war crimes in Afghanistan are defined and applied in an inconsistent manner. For example, the Afghan government, the Coalition force, and NATO troop-contributing nations have different reparation schemes for destroyed property and civilian casualties. The AIHRC recently asked that the Afghan Supreme Court provide an opinion on adequate reparations for destruction of property and loss of civilian life in the conflict. The Afghan government should insist that international military forces adhere to the ruling of the Supreme Court.

19. More conscientious controls should be put in place by the government and the troop contributing nations to protect civilians from both insurgent and international military fire. The NATO and its troop contributing nations should thoroughly investigate all claims of wrongful deaths and civilian casualties resulting from its military operations. All internationals involved in Afghanistan should also strongly reconsider their support for the Social Outreach Program unless strong oversight of its funding and operations is instituted.