
Transitional Justice in Afghanistan:

“We should not repeat old issues”?

Policy Note



October 2013

Executive Summary

In 2001, Afghans embarked on a long and difficult process of political, economic and security transition, marking the end of two decades of oppression and destitution and the beginning of the peace-building mission. Afghans welcomed the transitional government and its international partners in the hopes that they would be able to bring an end to the violence. However, by 2005 it became evident that many of Afghanistan's challenges and sources of instability were left unaddressed and as such violence continued to remain in its various forms. One of the sources for this was the unaddressed question of past crimes and human rights violations and the role alleged war criminals were able to carve for themselves in the new Afghan government. While the state initially attempted to pursue mechanisms for transitional justice such efforts were quickly deprioritized in the face of growing security threats, weak governance, and mixed international support. Thus there has been no accountability for past crimes in Afghanistan as of yet. But local NGOs, human rights activists, and international NGO's continue to press the government and the international community to recognize the importance of transitional justice as the only way to mitigate the culture of impunity and prevent future human rights abuses and violations from occurring in Afghanistan. Nonetheless, while the space to address war crimes may have been optimal in the early phases of the international intervention, the issue of transitional justice continues to remain alive in the minds of the Afghan people.

This Policy Note is an attempt to understand the history and status of transitional justice in Afghanistan as well as provide recommendations for its implementation in order to heal wounds and prevent impunity. The Policy Note is authored by Afghanistan Justice Organization (AJO), a member of GPPAC's South Asia network, in collaboration with the GPPAC Global Secretariat in The Hague.

This document intends to contribute towards a broader collaborative research project between GPPAC and The Hague Institute for Global Justice. The project aims to provide policy recommendations on transitional justice strategies to achieve both sustainable peace and accountability for gross human rights violations, as well as to provide policy relevant recommendations for the International Criminal Court (ICC) on conflict sensitive approaches to outreach and prosecutorial strategy.

Introduction

Afghanistan has endured over three decades of conflict, devastating its polity and infrastructure while leaving deep emotional and physical scars on its people. The fact that the recent uncovering of Afghan death-lists from the communist period by Dutch investigators¹ has led to an emotional response from the Afghan population reflects that these matters have not been put to rest. Therefore, addressing past crimes such as “disappearances, torture, mass executions, “ethnic prosecution”² and responding to victims’ rights is essential for establishing sustainable peace in Afghanistan. In 2001, after the international intervention and consequent deployment of reconstruction efforts there have been some attempts at pursuing a process of transitional justice to address peoples’ grievances. But these efforts have remained inconsistent on part of the Government of Afghanistan (GoA) and its international partners. As a result, the culture of impunity in Afghanistan has not been addressed.

Afghanistan is currently in the midst of marking the end of its transitional process which begun in 2001 and is getting ready to enter the decade of transformation but can Afghanistan achieve genuine and sustainable peace without addressing past human rights violations and abuses?

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What is the status of Transitional Justice in Afghanistan?

In December of 2001, the UN mediated Bonn Agreement between former warring

factions, excluding the Taliban, was signed marking the end of the Taliban regime and the beginning of Afghanistan’s journey on the path to democratization. The Bonn Agreement made three significant contributions to the notion of transitional justice in Afghanistan. Firstly, it avoided including any amnesty provision; secondly, it called for the creation of an independent Human Rights Commission; and thirdly, it bound the GoA to international legal obligations on human rights. However, by incorporating alleged war criminals as signatories to the Agreement the Bonn process also led to the establishment of a precarious foundation for the future of transitional justice. This is reflected in the lack of references to addressing past crimes and human rights abuses in the Agreement. Overall, this reflected the priorities of the international community at that time which had sequenced security above security sector reform and the strengthening of the rule of law.

On 9th March 2002, a first ever Human Rights Workshop was held in Kabul bringing representatives of civil society organizations, elders, and the government to develop a mechanism to help address the trajectory of war crimes and human rights violations that took place in Afghanistan prior to 2001. On 6th June 2002, the Afghanistan Independent Human Rights Commission (AIHRC) was established following a decree by Hamid Karzai, then Chairman of the Interim Administration, and pursuant to the Bonn Agreement. AIHRC was mandated specifically to consider the issue of transitional justice. The first task of the AIHRC was to “undertake national consultations and propose a national strategy for transitional justice.”³

In 2005, the AIHRC published their first report documenting past crimes titled A Call for Justice Report, which was, and remains, a key document reflecting local perceptions on the past two decades of conflict in Afghanistan listing its consequences and perpetrators. The report showed that the majority of the 5,000 respondents consulted

had experienced some form of human rights violations and identified themselves or one of their family members as victims.⁴ Moreover, almost half of those interviewed felt that some sort of trials should be held in the immediate future and interestingly a majority of the respondents also rejected the possibility of amnesty.⁵ In January 2005, upon the request of the GoA, the AIHRC took the findings and recommendations of the Call for Justice Report and created a national Action Plan for Peace, Reconciliation and Justice in Afghanistan (herein referred to as the Action Plan).

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The Action Plan was adopted by the Cabinet in December of 2005 and launched on 10 December 2006 by President Karzai. The Action Plan forced transitional justice onto the political landscape and was also included as one of the benchmarks for both the 2006 Afghanistan Compact and the 2008 Afghanistan National Development Strategy. The Action Plan laid out five comprehensive activities aimed to not only address issues of past crimes, but also to instill a culture of respect for human rights and accountability. However, the Action Plan was not able to meet the majority of its activities, and in March 2009 it expired despite requests from the AIHRC to extend its timeline. The only activities that the Action Plan was able to meet were met included the establishment of the Presidential Special Advisory Board for Senior Appointments and the creation of a Victims Day. The inadequate implementation of the Action Plan's

activities was due to a severe lack of political will and became to reflect nothing more than just a symbolic gesture.

However what sealed the faith of the Action Plan was the passing of the National Reconciliation, General Amnesty and National Stability Law (known as the Amnesty Law). In 2007, the Lower House [Wolesi Jirga] and the Upper House [Meshrano Jirga] of Parliament passed the Amnesty Law granting “general amnesty”⁶ to “all political factions and hostile parties who were involved in one way or another in hostilities before the establishment of the Interim Administration”⁷ before 2001. This law also extends to those groups, such as the Taliban who are currently in opposition to the government. However, general amnesty is only granted once parties adhere to “the Constitution and other enforced laws.”⁸ Additionally, the only provision of the bill that makes reference to judicial prosecution of war crimes is the provision that recognized the individual rights of war victims to seek justice and bring complaints against those alleged to have committed war crimes.⁹ However, though in principle this can be considered an effective mechanism, in practice it is unlikely to help victims, as many of the alleged war criminals currently make up the government.

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Initially, the Amnesty Law was shrouded in ambiguity and most people were not even aware of its existence until it entered the Official Gazette two years later in 2009. Upon its appearance in the Official Gazette several local and international CSOs including the UN called on the government to revoke it.¹⁰ The key concern with the Amnesty Law was its apparent contradiction to the Afghan Constitution, the GoA commitments in the Justice Action Plan and to its international legal obligations including its responsibilities to the ICC and Rome Statute, which Afghanistan ratified in February 2003. But by 2009, President Karzai began to show great reluctance to addressing the issue of transitional justice and on one such instance during the presidential elections in 2009, when he was criticized about the presence of war criminals in his government, he asserted, “we should not repeat old issues.”¹¹

How has Transitional Justice been approached in Afghanistan?

Responses to mass atrocities and human rights abuses are becoming increasingly integral to any peace-building mission led by national governments, bilateral donors, regional organizations and international institutions. Perhaps more important has been the treatment of rule of law efforts and mechanisms of transitional justice, as interwoven and central to any post-conflict peace-building process. The peace-building mission in Afghanistan has often linked the attainment of social justice with transitional justice and later with reconciliation amongst belligerent parties.

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As a result, the trajectory of transitional justice in Afghanistan has been largely oriented around non-judicial rather than traditional judicial processes. Since 2001, the GoA has launched three separate reconciliation initiatives, and while the earlier two have proven unsuccessful, the future of the current Afghanistan Peace and Reintegration Program (APRP) is yet to be determined. But unlike earlier efforts, the ongoing reconciliation efforts with the insurgency have been supplemented by the Amnesty Law, which has provided blanket amnesty for all members of the insurgency while failing to incorporate mechanisms for victims seeking justice.

Prelude to current reconciliation (APRP) efforts and its results?

The Afghan government has initiated several programs over the course of the last decade to provide the anti-government elements that make up the current insurgency with incentives and opportunities to reintegrate in mainstream society. The earliest example of such a program was the Afghanistan New Beginnings Program (ANBP), created in 2003 to help the government implement its Disarmament, Demobilization, and Reintegration (DDR). This was followed by the Program Takhim-e Sohl (PTS) or ‘Strengthening Through Peace Programs’, created in 2005, which provided insurgents with the means to reconcile with the government. However, both programs not only proved unsuccessful but also further entrenched roadblocks for the process of transitional justice.

The ANBP was intended to implement the Disarmament, Demobilization and Reintegration (DDR) of the Afghan Militia Forces (AMF). However, gradually the DDR mandate began to evolve, including activities such as the Disbandment of Illegal Armed Groups (DIAG) and Anti-Personnel Mines and Ammunition Stockpile Destruction Project. DDR targeted combatants from the semi-formal military

units of the AMF, which meant members of former mujahedeen groups or anti-Taliban forces and not members of the insurgency. In 2004, under Presidential decree 50, all those who were remnants of the AMF and those who were not, were declared illegal. Thus, as per this decree the GoA committed itself to ensuring that any individual leading or consulting with these groups would “in accordance with the law of the county, [...] face the severest of punishment.”¹²

Since the insurgency had never been part of the AMF this decree was pointed at them. Combatants who did reintegrate under DIAG were given compensation, vocational training packages and an opportunity to join the Afghanistan National Army or police. DDR did not “include any vetting on human rights grounds, which resulted in former fighters responsible for past abuses or war crimes being reappointed to security posts.”¹³ Moreover, to ensure the compliance of these combatants, their senior commanders were given posts within the government “as an exchange for relinquishing their military operations.”¹⁴ Thus, DDR “entrenched the people responsible for rampant lawlessness in the new regime.”¹⁵

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The Program Takhim-e Sohl (PTS) or ‘Strengthening Through Peace Programs’ led by Sibghatullah Mujaddedi was launched at a time when the Taliban resurgence was at its peak. Thus recognizing the alarming growth of the insurgency and the threat it posed, the government decided to reach out and reconcile with them. Thus, the goal of PTS became to provide a means for these combatants to reconcile with the government in exchange for their safety from military action. By 2007, PTS claimed to have purportedly reintegrated some 4,000 former combatants. Nonetheless, this program too failed, as it was not able to

maintain its momentum, it suffered from weak leadership and lacked international support.

Both DDR and PTS have, in principle, been linked to security sector reform (SSR) processes such as the re-establishment of rule of law and promoting good governance. However, in practice these links has too often been disregarded which has left programs such as DDR and PTS operating independently from other SSR initiatives including those that pursue transitional justice. Moreover, transitional justice in terms of judicial procedures has not even been considered in these programs.

APRP and its outcomes?

In June 2010 the GoA held a National Consultative Peace Jirga (NCPJ) bringing together over 1,600 delegates to debate and discuss a new plan of reconciliation with the insurgency. Prior to the Peace Jirga, the plan was presented at the London Conference in January of 2010, where it garnered widespread international support. The result of the Jirga was a plan that laid out the first steps in a formal peace process that commenced in October 2010 following the creation of High Peace Council, which was responsible for overseeing the reintegration and reconciliation efforts. The Jirga also led to the redesign of reintegration efforts in the form of the Afghan Peace and Reintegration Programme (APRP).

The peace process has been taking place on two levels. Reconciliation is described as the strategic pillar of APRP, and takes place between the Taliban leaders and commanders, the government and the international community. On the other hand, reintegration is described as the tactical pillar with low-level disarmament efforts taking place with foot-soldiers, who are being enticed with job programs and other economic incentives. APRP has three phases and they include; Social Outreach and Grievance Resolution, Demobilization, and Consolidation of Peace and Community Recovery. Each phase applies to former

combatant regardless of the category of APRP they fall in.

The Amnesty Law is seen to provide the legislative framework for APRP’s activities. Under Article 3, section 2, of the Amnesty Law it stipulates that “Those individuals and groups who are still in opposition to the Islamic Republic of Afghanistan and cease enmity after the enforcement of this resolution and join the process of national reconciliation, and respect the Constitution and other laws and abide them shall enjoy the benefits of this resolution.”¹⁶ The implementation of the Amnesty Law through APRP has been a cause of great anxiety, particularly with respect to the reconciliation of top-level Taliban leaders and commanders.

Since its inception, APRP has been marred by suspicion and criticism. The reconciliation pillar in particular has proven unsuccessful in enticing the top-level Taliban to agree to peace talks. However, while the reintegration pillar has been relatively more successful, having reintegrated over 5,000 foot-soldiers to date, it is fraught with bureaucratic and capacity issues which have rendered it unsustainable.

APRP and issues of Transitional Justice?

Similar to reconciliation programs that preceded APRP, combatants reintegrated or reconciled are not vetted for human rights abuses. Moreover, with the Amnesty Law supplementing APRP issues of past war crimes has also become a non-issue. Hence, a diverse set of concerns have emanated from CSOs concerning APRP. Firstly, the APRP grievance resolution process only allows for the resolution of grievances that are giving way to the insurgency. As such this process addresses insurgent grievances while having no means for the victims of prior crimes to seek redress. Second, the framework of the Amnesty Law falls short of providing an end date for granting amnesty to those actively engaged in conflict with the state. Lastly,

while APRP offers all insurgents a means to renounce violence and attain amnesty it has

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no mechanism for the victims of these crimes to seek justice.

APRP is geared towards meeting the needs of current combatants so as to ensure their reintegration into mainstream society and politics. As such, issues of transitional justice have taken a backseat to matters of internal security. Key members of the international community have been silently watching these developments unfold, having also remained neutral on issues of accountability and war crimes. Generally, many believe that “If transitional justice is seen as an obstacle to peace with the Taliban, the majority of the international community is unlikely to push for accountability of war crimes, regardless of the consequences for genuine, long-lasting

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peace.”¹⁷ The lack of attention on issues of transitional justice by the GoA and its key international partners have not only been unable to address past abuses but have

also done little in ensuring the public that future crimes will be prevented.

What has been the role of Civil Society in transitional justice?

The lack of government initiative in the process of transitional justice has caused the AIHRC, various other CSOs and private media networks to mobilize interest, engagement and promotion of transitional justice. The AIHRC has been one of the key supporters of the Justice Action Plan and the only national body to take significant steps in documenting past crimes. It has also taken the responsibility for commemorating victims of war crimes when the government was unable to do so.

In 2007, upon the discovery of a mass grave in Badakhshan province the AIHRC erected a monument in the province to commemorate the victims. The following year, AIHRC established the country’s first ever war museum in Badakhshan in honor of the victims of past war crimes. In 2009 the AIHRC, United Nations Assistance Mission to Afghanistan (UNAMA) and International Centre for Transitional Justice (ICTJ) created the ‘Afghanistan Transitional Coordination Group (TJCG) which brought together over twenty CSOs and international organizations who collectively work to promote transitional justice activities.

In May 2010, the TJCG organized ‘The Victims Jirga’¹⁸ a first ever-national gathering of civilian war victims where more than a hundred victims from all regions of Afghanistan gathered to remember the victims of past crimes. During the Jirga, participants demanded for trials to be held for war criminals, “A war criminal is a war criminal regardless of ethnicity or religion. They all have to be brought to court,” said one victim of Taliban era abuses in Kabul.¹⁹ This event was repeated the following year so as to ensure that the war victims’ movement was not forgotten in the midst of the security and political transition processes underway.

Some CSOs have adopted innovative and dynamic means to provide war victims a platform to share their grievances and experiences. The Foundation of Solidarity For Justice (FSFJ) is one such example. FSFJ created the first victims network using shuras²⁰ and online-social networks to facilitate victim-to-victim dialogue and communication.²¹ Afghanistan Human Rights and Democracy Organization (AHRDO) is another, which has employed new techniques that use arts and culture-based approaches to address issues of past crimes while exploring issues of human rights and transitional justice.

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Civil society in Afghanistan has become increasingly vocal on the issue of transitional justice and has started using media and other platforms to raise these concerns. However, despite the efforts of civil society several challenges that hinder CSOs’ abilities to influence policymakers on these issues remain. These include issues of weak capacity, lack of expertise, inadequate media mobilization, restricted reach of CSOs outside of city centers, and most importantly lack of coordination among CSOs, and between local and international organizations.²² Despite doubts as to the impact CSOs have on the fragile transitional justice process, one thing for certain is that through their efforts the idea of transitional justice has been kept alive in Afghanistan.

What has been the Role of the International Criminal Court and Transitional Justice in Afghanistan?

On 17 July 1998, 120 States adopted the Rome Statute giving legal basis for the establishment of the International Criminal Court (ICC). On July 1, 2002, the Rome Statute became effective. The ICC's mandate is to prosecute perpetrators of the most serious crimes, enumerated in the Rome Statute, to end impunity. Afghanistan became a member and acceded to the ICC jurisdiction on February 10, 2003, for crimes committed on Afghan territory from May 1, 2003 onwards.

After the attacks of September 11, 2001, the United Nations Security Council (UNSC) recognized the use of force to combat both the Taliban regime and Al-Qaida, thus, authorizing through resolution 1386 and subsequent resolutions the deployment of International Security Assistance Force (ISAF) to Afghanistan. Subsequently, the government of Afghanistan signed bi-lateral and multi-lateral agreements with ISAF member states including the United States specifying military operation conduct including criminal jurisdiction over member states' service personnel. Since the international intervention and most recently with a more robust and strengthened Afghan National Security Force (ANSF), both ISAF and ANSF are engaged in combat operations against armed groups, specifically the Taliban, the Hezb-e-Islami (Gulbuddin Hekmatyar) and the Haqqani network.

UNAMA reported over 13,000 civilians' deaths from January 2007 to June 2012 due to conflict. Further, UNAMA reports that of the total number of deaths the anti-government groups were responsible for 8,616 civilian deaths, while government groups (referring to ISAF and ANSF) were responsible for 3,055 civilians' deaths. There were also some deaths that were unaccountable.

As of June 1, 2013, the Office of the Prosecutor (OTP) received 92 reports under Article 15 of the Rome Statute of alleged crimes committed in Afghanistan between June 1, 2006 and September 30, 2012. As a result, in 2007, the OTP announced its intention to conduct a preliminary examination of the situation in Afghanistan. The OTP published two inconclusive reports (December 2011 and November 2012) acknowledging the difficulties, among other things, of collecting information sufficient to form a legal basis for the alleged crimes in furtherance of criminal jurisdiction. However, the OTP claims that it continues to maintain communication with the Afghan government, UN officials, civil society and concerned parties to reach a final determination on the issues in the near future.

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Thusfar, the ICC or the OTP has not formally charged anyone party for the alleged crimes including killings, suicide bombings, improvised explosive devices, targeted killings, torture, and aerial bombardments being reported in Afghanistan.

Has the International Criminal Court been Effective?

One of the major impediments to peace in Afghanistan is the unresolved issue of transitional justice and the continued violations of human rights with impunity. However, the ICC's involvement in the Afghan situation at this juncture is both ineffective and counter-productive. The ICC can only entertain and bring to justice mass atrocities of those perpetrators committed in Afghanistan after May 2003. At the behest of the government of Afghanistan this time period can be extended to July 2002, but not the two decades prior. This extended

time period is therefore still not sufficient to fully heal the wounds or bring peace as it partly covers crimes that may have been committed by the ISAF, ANSF and the opposition groups: mainly the Taliban, Haqqani network and Hekmatyar. But simply exonerates all those who committed such crimes in the two decades prior to 2003, amongst them people who are not only entrenched in the current government but continue to commit crimes with impunity.

The international community along the United States, NATO allies, and the United Nations must work with the Afghan people to align Afghan domestic laws, specifically the Amnesty Law, with the Rome Statue to charge those who continue to commit serious crimes with impunity

The Afghanistan Amnesty Law further protects those from prosecution by the ICC. Any ICC investigation and potential prosecution of anyone at this time will not achieve the intended goal of preventing impunity or result in peace. However, any attempt of potential prosecution, especially of ISAF or ANSF, will further complicate the issues of the ISAF mandate, the legal obligations, and the fight against terrorism.

The inherent dichotomy between ICC prosecution and the current peace and reconciliation program underway in Afghanistan creates yet another problem for the ICC to be effective. The most important aspect at this point of the Afghan situation is to ensure that transitional justice is successfully pursued. In order to achieve this goal, it is necessary to support,

strengthen, and empower the Afghan justice system, specifically law enforcement and judiciary. This support will mean making fundamental changes in the political will of the Afghan government, strengthening an independent judiciary, and raising public awareness.

The international community along the United States, NATO allies, and the United Nations must work with the Afghan people to align Afghan domestic laws, specifically the Amnesty Law, with the Rome Statue to charge those who continue to commit serious crimes with impunity. Domestically, non-governmental organizations, civil society and activists must become a catalyst for demanding justice, by exerting pressure on the Afghan government to prosecute those who have committed atrocities.

Conclusion

Contrary to what the GoA suggests, the issue of transitional justice is not an old or forgotten issue in Afghanistan. It remains a constant demand of the Afghan people, as memories of past crimes and abuses remain raw in their hearts. In order to soften the memories, the Afghan government, CSO's, and members of the international community must assume grounded and context sensitive approaches to dealing with past crimes. Thus far approaches to transitional justice in Afghanistan have resulted in bringing to the fore a central tension in the application of transitional justice, the “peace versus justice” debate. In Afghanistan the debate is currently favoring the peace-side; in order to correct this and provide a means forward we must first understand the factors that give rise to this paradox.

The key factors that led the GoA and its international allies to seek security over justice can be summed up as: trade-offs both in terms of the sequencing of priorities and the incorporation of spoilers, inadequate bottom-up efforts to facilitate top-down approaches, and a light international foot-print when ground realities called for a heavy-foot print.

I. Trade-offs in Peace-building Contexts

One of the most sensitive issues that confront post-conflict peace-building contexts is the issue of “trade-offs”²³, and Afghanistan has not been exempted from this experience. Both official and unofficial compromises have been made with powerful local elites in exchange for their cooperation in the security, political and development sectors. This has involved the inclusion of warring factions in power sharing arrangements such as the Bonn Agreement, allowing alleged war criminals to hold positions with the executive and legislative branches of the government, and offering impunity for past human rights abuses.

II. Top-down Approaches to Peace-building

Also confronting the Afghan context has been the tension between top-down approaches to peace-building and calls for a more bottom-up approach. The GoA resorted to top-down approaches that tried to problem-solve instead of transform the sources of the conflict. This approach used existing individuals and structures to help achieve security and stability instead of using more bottom-up approaches to cultivate “moderate peace leaders.”²⁴ Thus, in the backdrop of the ongoing conflict with the insurgency, the GoA focused more on facilitating accommodation between the various parties to the conflict instead of addressing the sources of the conflict itself. As such, top down approaches simply perpetuated an unjust “negative peace”²⁵ rather than aspiring to attain a “positive peace.”²⁶

III. The Light versus Heavy International Footprint Debate

The international community, often described as a single homogenous entity, is in reality a very diverse group of governments, multilateral and nongovernmental organizations each with their separate policies. The harsh realities of the Afghan conflict have brought to surface the differences amongst the international community in the last decade of the peace-building and counter-insurgency efforts. Many of the countries involved in Afghanistan are also signatories to the ICC, which means at least in theory that they would have the will to “prevent impunity for genocide war crimes and cries against humanity.”²⁷ However, the international community was never on the same page and this consequently affected the sequencing of priorities, objectives and practices, not to mention the military strategy. Overall, the dilemma concerning transitional justice emerges because calls for justice often create tensions and exacerbate the existing conflict which in return undermines the peace-

building process. However, there are several appropriate approaches to addressing past abuses that are not necessarily unfeasible or inappropriate to the context. Thus, contemporary approaches to transitional justice take on various forms, that may not seem to be about justice for past crimes at the outset, but which are fundamentals of any peace-building process and are thus essential to transitional justice. With this in mind, this policy brief provides the following recommendations that aim to sustain the pursuit of transitional justice and to establish a foundation for its effective implementation when the Afghan polity and its people are ready to address past crimes.

Recommendations

In Afghanistan, the notion of war crimes and war criminals has varied during different phases of conflict and amongst different ethnic groups, something that holds particularly true for the Civil War period. The concept of war crimes and war criminals thus becomes problematic in these contexts. Therefore approaches to transitional justice in Afghanistan must first examine two things: Is there space for, and is it the right time to pursue transitional justice in Afghanistan? And, can Afghanistan achieve sustainable peace and move forward without addressing past crimes and human rights abuses?

In pursuit of healing wounds and preventing impunity, and in the current Afghan situation, key actors namely the GoA, international community and CSO’s must take the following steps to ensure this.

1. Government of Afghanistan

- a. The GoA should take concrete steps to marking an official victims’ day and creating national memorial sites to acknowledge and commemorate the victims of war crimes.
- b. The GoA should provide support and cooperate with Physicians for Human Rights (PHR) and the ‘Afghan Forensic Science Organization (AFSO) in identifying, protecting and securing mass graves in Afghanistan.
- c. The GoA needs to allow the AIHRC to publish its Conflict Mapping Report as a first step in acknowledging the issue of missing persons and identifying its scope in Afghanistan.. .
- d. The GoA needs to enforce existing legislation to protect and preserve mass grave sites and protect them from destruction until all forensic evidence has been collected.
- e. The GoA must ensure the full implementation of Article 153 of the Constitution, which states that “Judges, Attorneys, Officers of the Armed Forces, Police and officials of the National Security shall not become members of political parties during their term of office” this is critical for implementing any aspect of transitional justice as it will ensure that the judiciary, Army and Police forces remains neutral and unbiased to deal with issues of past crimes for when the country is ready to address them.

2. Civil Society Organizations

- a. CSO’s should engage and bring the GoA back into the dialogue process on transitional justice instead of isolating the government and other relevant institutions.

- b. CSO's should extend the debate on transitional justice from the cities to rural Afghanistan in an effort to mobilize the support of rural populations by incorporating their voices and preferences.
- c. CSO's must focus more on engaging the media on issues of transitional justice to help put pressure on the GoA, to strengthen their voice and extend their reach to across the country, region and international community.

3. International Community

- a. The international community should work with, or pressurize, the Afghan government to repeal the Amnesty law, support and strengthen the Afghan law enforcement and judiciary to prosecute those accused of mass atrocities.
- b. The international community has acknowledged the negative consequences of leaving victim's grievances and issues of past crimes unaddressed, and thus has the responsibility to exercise pressure on the GoA to uphold and implement its commitments to the various international human rights treaties the GoA has ratified.
- c. The international community should continue to support and build the capacity of local and international organizations working to identify, document, collect and preserve evidence and mass grave sites.
- d. The international community should build the capacity and provide support for local CSO's to ensure that local organizations are able to keep the issue of transitional justice alive in Afghanistan.

Endnotes

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⁷ Ibid.

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⁹ Ibid.

¹⁰ IRIN. 14 April 2010. *Afghanistan: Justice Action Plan Heading for Oblivion*. <http://www.irinnews.org/printreport.aspx?reportid=88807>

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¹² See website for more details. *Afghanistan’s New Beginning Programme. Introduction to DIAG*. http://www.anbp.af.undp.org/homepage/index.php?option=com_content&view=article&id=13&Itemid=34

¹³ International Center for Transitional Justice. 2009. *Transitional Justice and DDR: The Case of Afghanistan*, Research Brief. Pg. 2.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ National Reconciliation, General Amnesty and National Stability Law. <http://dkiafghanistan.um.dk/da/~media/dkiafghanistan/Documents/Other/National%20Reconciliation%20and%20Amnesty%20Law.ashx>

¹⁷ Winterbotham, E. 2010, *The State of Transitional Justice in Afghanistan Actors, Approaches and Challenges*. Discussion Paper, Afghanistan Research and Evaluation Unit, pg. 17.

¹⁸ See website for TJCG, <http://tjcgafghanistan.wordpress.com>.

¹⁹ *Afghanistan Watch*. *Victims’ Jirga for Justice, National Reconciliation is not Possible Without Justice*. 10 May 2010.

²⁰ A shura is a village council comprised of a group of elders and they currently exists at the provincial, district and village levels.

²¹ See website for FSFJ, <http://www.solidarityforjustice.org.af/who-we-are.php>.

²² Winterbotham, E. 2010, *The State of Transitional Justice in Afghanistan Actors, Approaches and Challenges*. Discussion Paper, Afghanistan Research and Evaluation Unit, pg. 18.

²³ Newman, E., (2009) “Liberal” peace-building debates. In: Newman, E., Paris, R. and Richmond, O. (eds). *New Perspectives on Liberal Peace-building*. Japan: United Nations University Press. Pg. 32.

²⁴ Ibid. Pg.37.

²⁵ Ibid. Pg. 38.

²⁶ Ibid.

²⁷ Winterbotham, E. 2010, *The State of Transitional Justice in Afghanistan Actors, Approaches and Challenges*. Discussion Paper, Afghanistan Research and Evaluation Unit, pg. 14.

List of abbreviations

AFSO	Afghan Forensic Science Organization
AHRDO	Afghanistan Human Rights and Democracy Organization
AIHRC	Afghanistan Independent Human Rights Commission
AJO	Afghanistan Justice Organization
AMF	Afghan Militia Forces
ANBP	Afghanistan New Beginnings Program
ANSF	Afghan National Security Force
APRP	Afghanistan Peace and Reintegration Program
CSO	Civil Society Organisation
DDR	Disarmament, Demobilization and Reintegration
DIAG	Disbandment of Illegal Armed Groups
FSFJ	Foundation of Solidarity For Justice
GPPAC	Global Partnership for the Prevention of Armed Conflict
GoA	Government of Afghanistan
ICC	International Criminal Court
ICTJ	International Centre for Transitional Justice
ISAF	International Security Assistance Force
NCPJ	National Consultative Peace Jirga
NGO	Non-Governmental Organisation
OTP	Office of The Prosecutor
PHR	Physicians for Human Rights
PTS	Program Takhim-e Sohl (Strengthening through Peace Programs)
SSR	Security Sector Reform
TJCG	Afghanistan Transitional Justice Coordination Group
UN	United Nations
UNAMA	United Nations Assistance Mission to Afghanistan
UNSC	United Nations Security Council

Transitional Justice in Afghanistan: “We should not repeat old issues”?

Policy Note



Afghanistan Justice
Organization

Afghanistan Justice Organization is an Afghan-led, non-profit, and non-partisan organization inspired by Afghanistan's youth—the next generation of Afghans responsible for Afghanistan's continued social and economic development. AJO seeks to empower youth to take ownership of their country and make a difference in the lives of others through legal awareness, application of the law, and freedom of choice.

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The Global Partnership for the Prevention of Armed Conflict is a global member led network of civil society organisations who actively work on conflict prevention and peacebuilding. The network consists of fifteen regional networks of local organisations with their own priorities, character and agenda. These regional networks are represented in an International Steering Group, which jointly determines our global priorities and actions for our conflict prevention and peacebuilding work. GPPAC's mission is to promote a global shift in peacebuilding from solely reacting to conflict to preventing conflicts from turning violent. GPPAC does this through multi-actor collaboration and local ownership of strategies for peace and security. Together, GPPAC aims to achieve greater national, regional and global synergy in the field of conflict prevention and peacebuilding, and to strengthen the role of local members in the regions affected by conflict.

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