

Afghanistan: The Past as a Prologue

Leveraging the Coming Transition to Break the Cycle of Abuse in Afghanistan

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Summary

1. The legacy of past war crimes and human rights abuses is an issue of great concern for many Afghans. This desire for justice is well-documented¹ but has so far largely gone unaddressed.
2. The government of Afghanistan could enhance both its own legitimacy, and that of the related political processes, by engaging in transitional justice measures and promoting the reform of state institutions.
3. ICTJ urges the government of Afghanistan to renew its commitment to the 2006 Action Plan for Peace, Justice and Reconciliation, and to publicly accept the Afghanistan Independent Human Rights Commission's Conflict Mapping Report.
4. ICTJ calls on Afghanistan's international partners to support transitional justice measures as a necessary component of stability, particularly with respect to a negotiated settlement to the conflict with the Taliban.

Stability and the Transition

The Enduring Strategic Partnership Agreement between the U.S. and Afghanistan signed in May underlines both the ongoing security problems and the common desire for peace in the West's strategy to stabilize Afghanistan. The intent of the agreement is to assure the Afghan government—and the Taliban—that the U.S. will continue to be engaged in the country after the planned 2014 troop draw down. The agreement also makes commitments to human rights and democratic development. Whether these commitments will be honored with action will be a crucial test of the willingness of the U.S. and its NATO allies to safeguard their abiding interest: ensuring Afghanistan does not revert to chaos after Western troops withdraw.

It is generally understood that the war in Afghanistan cannot be won through military action alone. What has been lacking is strategic thinking about how to establish genuine security, with or without a Western military presence in the country, through a realistic long-term strategy to establish the rule of law, good governance, and transitional justice measures.

TABLE OF CONTENTS

Summary	1
Stability and Transition	1
Documentation and Justice	2
Recommendations	4

¹ For example, see AIHRC, *A Call for Justice: A National Consultation on Past Human Rights Violations in Afghanistan* (Kabul: AIHRC, 2004); Fatima Ayub, Antonella Deledda, and Patricia Gossman, *Vetting Lessons for the 2009-10 Elections in Afghanistan* (New York: ICTJ, 2009); Transitional Justice Coordination Group, "Victims' Jirga: National Reconciliation Is Not Possible Without Justice," news release, May 9, 2010, <http://tjcgafghanistan.wordpress.com/2010/05/09/the-victims-jirga/>; and Emily Winterbotham, *Healing the Legacies of Conflict in Afghanistan: Community Voices on Justice, Peace and Reconciliation* (Kabul: Afghanistan Research and Evaluation Unit, 2012), <http://www.areu.org.af/ResearchProjectDetails.aspx?contentid=2&ParentId=2&ResearchProjectId=27&Lang=en-US>

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About the Author

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In the past nine years of NATO's involvement in developing Afghan security and governance institutions, the bulk of its resources have gone into fighting the Taliban, neglecting many issues that are essential for long-term stability. These include providing Afghans, who have suffered through more than three decades of conflict, with a measure of closure by developing measures to address and account for the crimes of the past, and reforming institutions to establish and ensure good governance practices.

Many in Afghanistan remain concerned about where the “talks about talks” with the Taliban are heading; there have been setbacks over the past few months and no breakthroughs yet. More important is the fact that no one in either Washington or Kabul has yet articulated what a deal with the Taliban would look like in practice, particularly with respect to crimes committed by all the factions through the course of the war. Most Afghans support a negotiated end to the conflict. What is needed is a meaningful national reconciliation effort, based on fact and addressing genuine institutional reform.

For the past decade, the Karzai government has resisted efforts to incorporate transitional justice measures into its efforts to establish a stable post-conflict state. There is clear evidence that the failure to implement serious police and judicial reform, or promote accountability throughout government institutions, has critically undermined the administration's legitimacy. International reports published in the past few months have confirmed the pervasive nature of abuse, particularly arbitrary arrest and torture.² These follow long-established patterns, and undermine efforts to establish accountable government institutions that adhere to the rule of law.

Documentation and Justice

In 2006, the Afghanistan Independent Human Rights Commission (AIHRC) launched a concerted effort to document violations of international humanitarian law that took place in Afghanistan through each stage of the war between the time of the Saur Revolution in 1978 to the fall of the Taliban in 2001. Researchers traveled throughout the country over a five-year period interviewing approximately 8000 Afghans about their experiences in the conflict. An inquiry of this size, scope, and scale had never been attempted, and the information collected is the most comprehensive documentation of this period in Afghanistan to date. The AIHRC Conflict Mapping Report is almost 1000 pages long, and will be available in English, Dari, and Pashto; but has not yet been made public.

Although there is a widely held perception in Afghanistan that what happened during the war is well understood, this is not true. Nobody has had a clear understanding of what happened across the entire country, and no document can fully describe what the Afghans have lived through. But it is by documenting the patterns of a conflict over a generation that we can devise policies to prevent the recurrence of atrocities and abuse in the future.

Although the Conflict Mapping Report has not yet been made public, ICTJ believes it is both important for those trying to promote a peaceful transition in Afghanistan, and a right of all Afghan citizens, to know the true contours of the past conflict.

Other attempts have been made over the past decade to record the phases of the war from 1978 to the end of 2001. The United Nations documented the conflict in a 2005 report that relied on material previously published in the media and by international human rights organizations; it was not based on first-hand testimony. The UN never published its report, and most Afghans remain unaware of its existence.³ Others reports have used smaller samples of first hand testimony.⁴

² See United Nations Assistance Mission in Afghanistan and United Nations Office of the High Commission for Human Rights, *Treatment of Conflict-Related Detainees in Afghan Custody* (Kabul: UNAMA / OHCHR, 2011) and Andrea Prascow, senior counter terrorism counsel at Human Rights Watch, “Afghan Torture No Secret,” *National Post* (May 4, 2010).

³ The report is available at <http://www.flagrancy.net/salvage/UNMappingReportAfghanistan.pdf>

⁴ Most notably the Afghanistan Justice Project's *Casting Shadows: War Crimes and Crimes Against Humanity 1978-2001* (Kabul: AJP, 2005), available at: <http://afghanistanjusticeproject.org/warcrimesandcrimesagainsthumanity19782001.pdf>

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The Past as a Prologue**

Afghanistan's international partners should urge the Karzai administration to publicly accept the AIHRC report, and support the Afghan government to initiate a more inclusive national reconciliation effort, based on fact, and addressing genuine institutional reform.

All of these reports confirm that Afghans have suffered through years of violence as a result of both foreign interference and internal conflict. The continuous conflict in the country can be attributed to numerous causes, which are now inextricably intertwined with political, religious, ethnic, and communal identities. Every Afghan has been affected by this history: no one has escaped the loss of loved ones or from harm to themselves or their livelihoods. Even the most comprehensive of reports can represent only a fraction of the crimes that killed and maimed more than one million people, drove millions more from their homes, and laid waste to their farmlands and cities.

What follows is a brief summary of the main patterns of violations that have been documented in previous reports describing the different phases of the war:

April 1978 to December 1979, the Democratic Republic of Afghanistan: arrests, disappearances and summary executions numbering in the tens of thousands, carried out primarily by the Afghanistan intelligence agency, first known as AGSA (Department for Safeguarding the Interests of Afghanistan) and later as KAM (Workers' Intelligence Department); the Kerala massacre in 1979; the bombardment of Herat in March 1979; and widespread torture.

December 1979-1988, Democratic Republic of Afghanistan, following the Soviet invasion and occupation: arrests, detention and torture; indiscriminate bombardments and reprisals against civilians in the countryside; summary executions of prisoners by mujahedeen forces.

March 1989-April 1992, Najibullah government after the Soviet withdrawal: continuing bombardments; abuses by government-backed militias; attacks on Afghan civilians in Pakistan; torture in mujahedeen prisons.

1992-1996, Islamic State of Afghanistan: the bombardment and rocketing of Kabul from 1992 to 1995; The Afshar massacre; and torture, rape, and summary executions by all parties to the conflict.

September 1996-November 2001, Islamic Emirate of Afghanistan: the massacres in Mazar-i Sharif in 1997 and 1998; massacres in central Afghanistan from 1999 to 2001; burnings and deliberate destruction in Shamali and Bamiyan provinces; massacre of prisoners in November 2001.

Everyone—Afghan leaders, civil society, and ordinary citizens, as well as international donors and policymakers—need to recognize that understanding the duration and complexity of the conflict, and its legacy, is important to address many of the issues that fuel the country's ongoing instability. As the last ten years of continuous military actions indicate, Afghanistan will not emerge from conflict without coming to terms with its history. Peace, stability, and justice are not separate objectives, they are inextricably connected.

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Recommendations

Accounting for the past is an issue of great concern to many Afghans. Transitional justice should be part of a comprehensive strategy to ensure that Afghanistan does not repeat the crimes committed over 33 years of conflict. The government of Afghanistan should accept the publication of the AIHRC Conflict Mapping Report, and promote the reform of state institutions. These steps would enhance the legitimacy of both the political process and the government.

Afghans across a broad political, ideological, and social spectrum have expressed strong support for several important steps. These include:

Government of Afghanistan

1. Publicly accept the AIHRC Conflict Mapping Report and ensure it is distributed broadly;
2. Ensure the integrity of the AIHRC by appointing commissioners with proven records of defending human rights;
3. Renew its commitment to the Action Plan for Peace, Justice, and Reconciliation, particularly truth-seeking and documentation, and the use of transparent and fair appointment and vetting procedures;
4. Expand the process (established under the Afghanistan Peace and Reconciliation Program and overseen by the High Peace Council) to reintegrate former combatants by allowing individuals and communities to identify concerns about specific cases;
5. Publicly acknowledge the crimes that occurred during the different phases of the war, as part of a national reconciliation effort;
6. Establish documentation, investigation, and other truth-seeking measures at the local, regional, and/or national to address past abuses and war crimes;
7. Implement vetting procedures to determine how to exclude persons from political office who have been responsible for war crimes and crimes against humanity;
8. Enact legislation criminalizing war crimes, crimes against humanity, and genocide at the domestic level, to implement Afghanistan’s obligations under the Rome Statute of the International Criminal Court; and
9. Remove the blanket amnesty provisions of the National Stability and Reconciliation Law in order to bring the legislation into accordance with international law.

Afghanistan International Partners

1. Welcome the completion of the Conflict Mapping process, and urge President Karzai to publicly accept the Conflict Mapping Report so that it may be given the widest possible distribution through all levels of the Afghan government, civil society, international community, and media;
2. Raise concerns with the Karzai government about the continuing importance of a strong and independent human right commission, and urge that future commissioners have strong human rights credentials;
3. Recognize that the Conflict Mapping Report represents a critical first step in a process of truth-seeking and documentation; and encourage and support the efforts of more civil society organizations in Afghanistan to document the conflict, and add to the historical record; and
4. Urge the Karzai administration to expand the process (established under the Afghanistan Peace and Reconciliation Program and overseen by the High Peace Council) to reintegrate former combatants, and allow for more input and representation from civil society and NGO groups.