



Challenges to Peace and Justice in Afghanistan

Since 2005 security has deteriorated markedly in Afghanistan. The Taliban insurgency, largely drug-related crime and a culture of impunity are contributing to a highly volatile situation. What seemed in 2001 to be a relatively easy stabilization operation after the U.S.-led invasion has become one of the world's most complex peace- and state-building operations.

BACKGROUND

The overthrow of the Taliban in 2001 seemed to promise Afghans a chance to examine the legacies of decades of conflict. Although the power-sharing agreement negotiated in December 2001 did not establish a formal transitional justice process, Afghan and international actors showed some interest in developing mechanisms for addressing legacies of past abuses during the first years of the state-building process. Since then, the increasing power of alleged wrongdoers and growing security problems have dampened efforts to promote justice for past and present human rights violations.

TRANSITIONAL JUSTICE IN AFGHANISTAN

In 2004 research by the Afghanistan Independent Human Rights Commission (AIHRC) found that Afghans want past human rights violations to be addressed. Afghans told the AIHRC that impunity was entrenched in their society and complained that perpetrators had attained positions of power despite continuing involvement in violations. The AIHRC's research showed strong support for criminal accountability for war crimes. Removing war criminals from positions of power (through vetting) was identified as the next best option.

On the basis of the AIHRC's findings, a committee established by President Hamid Karzai drafted the Action Plan for Peace, Reconciliation and Justice. It focused on five broad areas: commemoration of the suffering of victims, institutional reform and vetting, truth-seeking, reconciliation and criminal accountability. President Karzai endorsed the plan in late 2005, but members of his cabinet criticized the focus on criminal accountability. Almost four years later, none of the five action points has been fully implemented.

Some progress has been made in documenting human rights violations. The UN Office of the High Commissioner for Human Rights (OHCHR) has mapped gross human rights violations and war crimes in Afghanistan that occurred between 1978 and 2001, relying on existing documentation. Although the OHCHR's report has not been published, the UN shared the findings with the AIHRC and President Karzai. The Afghanistan Justice Project and the AIHRC have also done extensive documentation work.

Since 2001 the government has tried to conduct several vetting programs. These included vetting candidates for the parliamentary elections, provincial chiefs of police and senior political appointments. The electoral law also demands a vetting process in the upcoming presidential and provincial council elections.

ICTJ IN AFGHANISTAN

- Cooperation and partnerships with international and Afghan organizations working for justice
- Policy efforts at international and national levels for a justice-centered peace process
- Support for the AIHRC's national consultations and documentation efforts
- Technical assistance, including with the drafting of the Action Plan for Peace, Reconciliation and Justice
- Technical assistance to Afghan civil society groups, including exchange visits, fellowships, workshops and individual mentoring
- Support to victims' groups, including through theater initiatives

Lack of political will and the absence of a functioning justice system have thwarted attempts to promote criminal justice for past—or present—war crimes. However, courts have convicted at least two people of crimes committed during the conflict in Afghanistan. In both cases human rights organizations raised concerns about the lack of due process and gross miscarriages of justice in the proceedings.

JUSTICE AND THE RE-EMERGENCE OF CONFLICT

Given the worsening security situation and the increasing power of alleged perpetrators of war crimes in the government and parliament, the government-centered transitional justice initiatives have come to a standstill. Every justice issue is also compounded by inadequate disarmament measures, uneven security system reform and a rise in opium cultivation and trafficking.

Insecurity is the public's paramount concern. From late 2005 security continued to deteriorate rapidly in the south and southeast. The Taliban regained strength with support from Pakistan, regrouped, and increased attacks against the Afghan government and international agencies in Afghanistan. Declining faith in the Afghan government and the international effort, coupled with poverty, has provided an ample breeding ground for resentment and recruits for both the insurgency and organized crime.

Warlords' active roles in the government have serious consequences for truth-seeking and accountability. For example, after the launch of the action plan, some former commanders in parliament mobilized support for self-amnesty. In March 2007 the Afghan parliament passed legislation that, with few exceptions, granted amnesty to all those involved in the Afghan conflicts. Officially, the measure was intended to promote national reconciliation, but it strengthened a culture of impunity.

Civil society networks are increasingly engaged in promoting transitional justice. But the capacity of individual organizations to address legacies of past crimes remains weak; so far only a few organizations have sought to develop expertise on specific issues, such as victims' mobilization, documentation, awareness raising or training. Most civil society initiatives remain centered in Kabul, and too little has been done to promote awareness and engage broader sectors of Afghan society.

Afghanistan is scheduled to have presidential elections in 2009. To ensure at least minimal order before the voting, the Afghan government and the international community are supporting negotiations with members of the Taliban. Given that many members of the government are unwilling to be held accountable for their past, negotiations with the insurgency are unlikely to entail any such conditions.

The AIHRC's research showed that the Afghan public considered peace and justice to be tightly linked. But past developments in Afghanistan have made both peace and justice increasingly distant goals. There are no easy solutions in sight. Any solutions will depend on Afghanistan's government and the international community developing a coherent vision for sustainable peace. That vision should include demanding accountability from the government and its international partners, and ensuring protection of basic freedoms to allow Afghans to freely determine how they wish to address the past and change the future.

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