

Accommodating a Culture of Justice

Transitional Justice in Afghanistan

Human rights lawyer **Tom Perriello** argues that the success of Afghanistan's Transitional Justice Plan hinges on stronger international backing

Compassion for sharp-fanged wolves equals viciousness to defenseless sheep. —Afghan Proverb

Every war-torn country making the transition to peace faces the challenge of addressing past atrocities in order to build a more secure future, part of a process that has come to be known as transitional justice. In Afghanistan, this process is particularly complex, given the historical record, present political landscape, and paralleled percentage of war crimes victims.

Most Afghans agree that improving security is the country's top priority. Opinions differ, however, on how to achieve that goal. The debate over addressing past crimes has become the latest battleground between two opposing strategies for securing Afghanistan: accommodation and accountability.

The accommodationists are concerned at a disruption of the status quo if war criminals from past regimes are held to account. Those in favor of accountability, on the other hand, strongly believe that a culture of impunity is the greatest threat to stability.

In two national surveys on the issue, a substantial majority of Afghans have spoken with surprising clarity. Their message: We want justice and we want it now.

At the National Conference on Truth Seeking and Reconciliation, held in Kabul in December, more than 200 Afghans from across the country clearly echoed that sentiment. The conference's concluding statement held, "There is a need for reconciliation on multiple levels. However, reconciliation should not be at the expense of justice.... The removal of human rights violators from government is regarded as a prerequisite to improving security conditions."

Any country emerging from a period of conflict presents a unique set of circumstances. Therefore, there is no universal recipe for transitional justice, but rather a list of possible ingredients, such as truth commissions, reconciliation, war crimes tribunals, expulsion of war criminals from public office, and victim reparations.

Many countries have adopted some combination of these

measures in response to violent histories. While strategies vary, two components of transitional justice remain constant. First, the past cannot be ignored. Forgiveness may be the way forward for some countries, but simply forgetting is an invitation to a repeat of history. Second, successful models must be culturally appropriate and attuned to the public interest.

Heeding this lesson, the Government of Afghanistan has invested heavily in public consultation. In March 2002, President Karzai mandated the Afghan Independent Human Rights Commission (AIHRC) to consult Afghans about how to address past crimes. The Commission conducted a massive survey of more than 4100 Afghans, and focus groups with about 1500 more.

Published in January 2005, AIHRC's *A Call for Justice* report included the following findings:

- 68 per cent of Afghans say they or a member of their immediate family have been victims of war crimes.
- 94 per cent of Afghans support establishing justice for past crimes.
- 76 per cent of Afghans believe bringing war criminals to justice soon will increase stability. Only 8 per cent thought it would weaken stability.
- While there is strong support for truth seeking (95 per cent) and reconciliation (90 per cent), Afghans are three times more likely to place a greater priority on criminal justice.

In my personal experience working on justice and security issues in a number of post-conflict countries, I have never seen such overwhelming support for war crimes prosecutions and vetting of public officials based on past abuses. Afghans explained that justice is one of the highest values within Afghan culture and Islamic tradition.

Based on its findings, AIHRC presented the President with the "Peace, Reconciliation, and Justice Action Plan," a comprehensive transitional justice package. The initiative provides a road map for addressing the atrocities of the past in a way that promotes security and the rule of law.



National Conference on Truth Seeking and Reconciliation, Kabul, December 2005



To investigate how best to implement the Action Plan, UNAMA, AIHRC, the Office of the High Commissioner for Human Rights, Global Rights, and the International Centre for Transitional Justice joined forces to conduct a national consultation with opinion leaders from all 34 provinces. During November 2005, the team met with more than 2,000 clerics, imams, elders, women leaders, recently elected officials, academics, journalists, youth leaders, and former commanders, as well as, for lack of a better term, people on the street. We also met with senior government officials and diplomats.

The team's findings strongly reinforced the *Call for Justice* survey and even suggested increased support for justice in the wake of widespread disappointment with the Parliamentary elections. A strong majority believe accountability for past crimes is essential to peace and to Islamic principles of justice. Most Afghans described the parliamentary elections—both the process and results—as a setback to security, justice, and governance. In fact, when asked who they would want to see face a war crimes tribunal, almost everyone named individuals who now sit in Parliament or senior government posts. People see corrupt elements as gaining power by force, fear, and fraud—primary evidence, in their view, of how accommodation is destabilizing the country.

Many government officials, along with a minority of mullahs and elders, express a different view. Although supportive of certain reconciliation processes, they tend to see accountability as a threat to the delicate balance of interests now in place. Most former commanders and “warlords” with whom we spoke strongly opposed “focusing on the past,” although surprisingly a number of them expressed support for accountability and vetting.

Just prior to the conference, the Government of Afghanistan took a definitive step toward meeting the people's demand for justice. President Hamid Karzai and his Cabinet unanimously passed the Action Plan, after nearly a year of tireless effort by the AIHRC, UNAMA's Human Rights unit, and a few key ministries and embassies. The five-part plan is short on details and firm commitments, but it includes the strongest statement yet against impunity: “[C]onsidering the clear Koranic verses and the international law, no amnesty should be provided for war crimes, crimes against humanity and other gross violations of human rights.”

Throughout the consultations and the conference, most people expressed concern that the government and international community are losing Afghanistan by continually strengthening the warlords at the expense of the people. When asked if the alleged war criminals would create instability if indicted, most

Afghans described them as paper tigers whose power derived from international support and now drugs, but not from the people. The accommodationists, meanwhile, consider these individuals entirely capable of destabilizing the country.

Transitional justice carries high stakes for the country and many of its most powerful individuals. Thus far, the government and international officials have demanded consensus for any action on transitional justice. Soon, however, they will have to choose because two mutually exclusive positions. At every stage, one group will oppose any process that threatens the status quo, while the other will oppose any process that validates it.

The international community, to date, has oscillated. They strongly supported passage of the Action Plan, but for the past several years they have largely promoted an accommodationist strategy. Recent developments—an exploding drug trade, an increasingly sophisticated insurgency, and dissatisfaction with the process and results of parliamentary elections—have bolstered the case for accountability. While the Action Plan is a major step forward, it will only produce results if backed strenuously and consistently by the international community.

Should the government and the international community become more active in supporting a policy of aggressive accountability? The two national surveys indicate that Afghans hope the answer will be yes. But while some compare the risk of instability created by a war crimes tribunal versus a low-risk status quo, most Afghans see a different choice. For them, the small risk of disruptions from trials and vetting pales next to the large, growing risk of perpetrators using drug profits to coerce and corrupt formal and traditional authorities.

With its broad public support, an aggressive pro-justice policy could present the government and the international community with a chance to correct what many Afghans perceive as a costly strategy. Regardless, the seeming impossibility of consensus means that the government and international community may finally have to decide how seriously they believe that justice, in the end, promotes peace.

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