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Fighting Impunity
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Transitional Justice in the Context of Ongoing Conflict: the Case of Afghanistan

The Transitional Justice Process and Its Challenges

On August 20, 2009, Afghans went to the polls for the third time since the U.S.-led military intervention in 2001. Accountability and justice were underlying themes in the election, as made clear by many of the issues that attracted public attention. They included President Hamid Karzai's decision to choose commanders with known records of human rights violations as his running mates, discussions about negotiations with the Taliban, and the encouraging signs that the U.S. government will investigate a mass grave in northern Afghanistan.

There is a strong demand for justice in Afghan society. This was persuasively shown in the Afghanistan Independent Human Rights Commission's (AIHRC) national consultations about human rights and war crimes in Afghanistan. The AIHRC report "A Call for Justice" (2004) found that 70 percent of those consulted perceived that either they or their family members had suffered violations. The report also found widespread support for accountability and for the removal of perpetrators from power. But "calls for justice" remain weak compared with the persuasive culture of impunity that has institutionalized itself over the last eight years.

No peace process was initiated after the U.S.-led military intervention that ousted the unrecognized Taliban regime. Instead, a sort of victors' justice ensued; the Taliban's opponents, many with questionable human rights records, found their way back to power. Some attention was given to human rights in the early phases of the state-building process, including through the establishment of AIHRC and the adoption of a constitution that formally recognized the importance of human rights. But many of the important post-conflict reconstruction processes—including disarmament efforts, elections, and security and rule-of-law reform—failed to uphold minimum levels of accountability. Indeed, they contributed to the culture of impunity.

Action Plan, but also Amnesty

One significant success in promoting transitional justice was the government's adoption of the Action Plan for Peace, Justice, and Reconciliation in December 2005. The plan, based on the recommendations of AIHRC's "A Call for Justice" report, outlined a program focused on acknowledgement of the suffering of victims, documentation and truth-seeking, institutional reform, and criminal accountability.

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About the Author

Dr. Sari Kouvo is a Finnish citizen residing in Belgium, spending half her time in Afghanistan. Sari is currently heading ICTJ's Afghanistan Program and she is co-directing the recently established Afghanistan Analysts Network. Prior to joining ICTJ, she was Human Rights and Rule of Law Advisor to the European Union Special Representative for Afghanistan. She also served as Researcher on Afghanistan at Amnesty International and a researcher and lecturer within the Department of Law at Gothenburg University. She was recently appointed as Honorary Research Fellow at Kent Law School and she is a member of the European Union's Civilian Response Teams for Multifunctional Crisis Management. She has been a visiting fellow at the NATO Defense College (Italy), the Institute for Human Rights at Abo Academy University (Finland), and the Center for International and Public Law at Australian National University.

The president's cabinet hotly debated the action plan's focus on criminal accountability. Later, Parliament adopted a bill that, with few exceptions, provided blanket amnesty for all those involved in the Afghan conflict.

The drafting of the amnesty bill was engineered by some of the former commanders known to have committed human rights abuses and who felt threatened by the sudden focus on accountability. Although adopted by the Parliament, the bill was never formally recognized as law. It nevertheless has had enormous political significance, serving as a clear signal of some commanders' and human rights violators' continuing power.

The deteriorating security situation—due to the reinvigorated Taliban insurgency and the public's declining support for both the government and work by the international community—has further marginalized human rights issues in general and transitional justice in particular. Security problems have also further entrenched ethnic differences in Afghan society, thereby reinforcing the power of factional commanders with links to certain regions or ethnic groups. Afghan civil society is fragile, and individual organizations are often dependent on the capacities of one or two people. But civil society organizations have come to engage more clearly on transitional justice through demanding accountability, focusing on documentation, and mobilizing victims.

ICTJ in Afghanistan

ICTJ has worked in Afghanistan since 2003. Early on, its engagement focused on capacity-building of Afghan civil society organizations and supporting the process that led to the adoption of the Action Plan for Peace, Justice, and Reconciliation. The nascent transitional justice process, however, could not effectively combat the culture of impunity; as violence grew the space for human rights and justice work has diminished.

The challenge for ICTJ and its local partners is to make best use of that limited space, to further expand knowledge of violations committed during the different phases of the conflict, and to advocate and force changes in the Afghan government policies and in the international community's policies vis-à-vis Afghanistan.

ICTJ focuses on:

- **Advocating for justice-sensitive policies.** The international community has an important role to play in Afghanistan, because it can either promote or undermine the accountability agenda. ICTJ considers it important to reach U.S. and European audiences with the clear messages that we receive from our Afghan partners about the importance of justice for sustainable peace.
- **Supporting ongoing documentation initiatives.** Documentation is the backbone of human rights work; in situations of ongoing conflict, documentation is often the only activity that can be done well. In a three-decade-long conflict, documentation is an especially crucial guarantee against the gradual loss of first-hand sources.
- **Mentoring and facilitating for Afghan civil society organizations.** ICTJ works with civil society organizations to help them further develop their work. A particular focus is memorialization and arts-based transitional justice work.

Conclusion

An Afghan poet has summarized the situation in Afghanistan: “We live in the streets of the dead and die in the street of life.” He captures the tragedy of a country that has faced decades of war and where every person has experienced loss, ranging from lost opportunities for education to displacement and death.

It also captures the impossibility of overcoming conflict. While Afghans are certainly tired of war, finding paths towards sustainable peace has not been easy. Many Afghans hunger for better governance, rule of law, and justice, but they also are losing hope that their government and the international community will provide them.

The elections—and especially the post-election period—do again provide opportunities for the Afghan government and its international partners to develop support for policies that promote accountability and justice.

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The International Center for Transitional Justice assists countries pursuing accountability for past mass atrocity or human rights abuse. ICTJ works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved. To learn more, visit www.ictj.org

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