

The Need for Justice in Peace Building

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Early in a morning of October 2005 a large number of community elders along with the cleric of the Sra-y-Qala village gathered after a morning prayer in the northern part of the village. Everybody looked very nervous. Ghafar, the oldest among them, raised his hand and called for a prayer to the souls of those more than 500 unknown bodies buried in the mass grave at Sharan district of Paktika province of Afghanistan during the civil war in 1989. He called for justice to be done in order to return the dignity of those who were buried there with respect to their humanity.

In today's Afghanistan you can find thousands of mass grave sites, and hundreds of thousands of people who tell you the story of what has happened to their family members, or those who have not seen their beloved ones since the time they were arrested by the regime and disappeared.

The conflict in Afghanistan has had three phases. The first phase started with a top-down blood-stained revolution in 1978 which was followed by foreign occupation by former Soviet Union in December 1979. It facilitated a decade and half of ruling of two factions (Khalq and Parcham) of an authoritarian pro-Russian People's Democratic Party of Afghanistan. Most of the disappearances, mass killings and forced migrants of ordinary civilians and political opponents happened during this period of conflict.

The second phase started with the collapse of the Soviet backed regime of Najibullah and the formation of the Mujahedeen government where most of the military factions who were fighting against the Soviet troops and pro-Russian regime took power and started to fight with each other. In this chaotic period another series of human rights violations sparked around the country.

The third phase begun with the emergence of the Taliban and their control over Afghanistan from 1994 to 2001. Although every single Afghan citizen suffered seriously from the Taliban,

the primary victims of them were women as well as ethnic and religious minorities such as the Hazaras.

More than a million people lost their lives, more than one million people became disabled, thousands were put in jails and tortured for their political beliefs. Almost all cities of the country were destroyed, the agriculture fields were burned. More than seven million people were forced to leave their villages and towns and took refuge in Iran, Pakistan and other parts of the world during three decades of war.

It was only after the Bonn Peace Agreement in December 2001 that the path was paved for the Afghans to put an end to the three decades of ongoing conflict in this diverse and multi-cultural country. “The nature of this conflict was an international armed conflict as well as an internal conflict” that left behind a legacy of the most brutal violations and human rights abuses in the history of the country. The legacy of past abuses is visible psychologically and physically in all aspects of the Afghan society.

While the conflict has ended officially with the establishment of the interim government in December 2001 (although not today), the question of justice and dealing with the past atrocities remains unanswered. The Bonn Peace Agreement, unlike other peace agreements carried out by the UN, did not address the issue of transitional justice and no mechanism was foreseen for dealing with human rights abuses of the past. One of the main reasons was that the parties who were discussing the peace agreement were involved, during the course of the conflict, in serious human rights abuses, and the peace talks were not between the winner and loser of a conflict, but rather between different loser groups who took back control of some parts of Afghanistan after the US lead coalition attacks on Afghanistan against the Taliban.

The voice of the victims and people like Ghafar who were demanding justice echoed neither with the Afghan new authorities nor with the international community. It was even discouraged by the international community saying “First peace, then justice”. Although in 2005 the UN Secretary General Kofi Annan, in his report to the Security Council on transitional justice and rule of law in a post-conflict country, said: Justice and peace

are not contradictory forces. Properly pursued, they rather promote and sustain one another.

A narrow window of opportunity to look at the past was opened when participants of the first national human rights workshop, where president Karzai and a large number of civil society and religious leaders participated, talked about justice for human rights abuses committed in the past, in order to build sustainable peace for the future of Afghanistan. It is very clear that one of the main ingredients of peace in any country is justice. In March 2002, the high demand for justice was demonstrated during a three-day national human rights workshop which resulted in the establishment of the Afghanistan Independent Human Rights Commission (AIHRC).

AIHRC was mandated through a presidential decree on June 6, 2002, to “undertake a national consultation and propose a national strategy for transitional justice and addressing the abuses of the past.” In this regard, the Commission conducted a nationwide consultation to seek people’s views on how they wanted the past human right abuses to be dealt with.

As a result a report was compiled and submitted to the President on January 29, 2005 with the strong support and important presence by the UN High Commissioner for Human Rights Louise Arbour. President Karzai committed himself publicly to the implementation of its recommendations.

In general, the following conclusions have come up from the public consultation:

- Almost 70% of the people we spoke to identified themselves as direct victims of serious violations of human rights that occurred during the conflict in Afghanistan. There is a strong sense that crimes have been perpetrated continuously for 23 years of war and have not stopped even today.
- People lack confidence and trust in the government and, to some extent, in the international community for having failed to do anything about the human rights violations, and provide justice to the victims.
- It is apparent that impunity is entrenched in the political system, by rewarding perpetrators with positions of power

even though they continue to commit violations of human rights.

- There is an urgent need to make a break with the past in order to build confidence and trust between the people and the government. It has become very clear during the past seven years in Afghanistan, that if the government lacks the confidence and support of the public, it will be very difficult to survive by putting pressure on the people, or to keep the stability and security only by military interventions.

On the other hand:

- People have a good understanding of and a strong desire for justice for both past and current crimes. People do not necessarily mean justice to be only criminal trials of the perpetrators. They also want proper reconciliation, vetting and different other ways to achieve justice with accountability.
- Although seven years were lost, it is not too late for the government and the international community to take steps to address the crisis of trust. Most Afghans still look at the government and international community as the main bodies that could provide justice and accountability.
- Any efforts by the government against well-known perpetrators will have large benefits in restoring trust and winning confidence for Afghanistan's leaders. There is a strong concern, particularly among ordinary people, about the current abuses and how to end the culture of impunity.

More particularly, through the survey the people of Afghanistan have recommended that:

1. The people of Afghanistan want an approach to justice that builds trust in Afghanistan's institutions and recognizes the needs and desires of the victims.
2. A transitional justice policy must be respectful of Islamic principles, culture and the on-the-ground reality in Afghanistan – a mechanism from another country can not be copied.

3. The public supports the removal of accused war criminals from positions of power. But it must not simply be a change to another evil, or the war criminal to be placed in another province and position. Vetting can be the first step toward accountability and justice in the country

4. The public is aware of the challenges that exist in today's Afghanistan, for the implementation of criminal justice including:

The absence of security and lack of law enforcement which has resulted in a climate of fear;

The limited reach of the government and the control of the local powers;

Problems with the judiciary, including corruption, lack of impartiality, and lack of training;

There are some positive steps taken by the government like appointing new people to the Supreme Court and a new attorney general. But this is not enough – the judiciary system in the country must be impartial and clean as it is the guardian of the constitution, justice and rule of law

5. There is an urgent need to recognize the suffering of the many victims of the war. People want attention to be paid to the needs of particular categories of victims whose suffering is severe, such as the war wounded, women, disabled and orphans.

6. Finally, there is a strong desire for criminal justice. Criminal justice is seen as a tool to remove current abusers from powerful positions in society. At the same time, a transitional justice programme in Afghanistan consisting only of vetting, without a criminal justice component, is not likely to be satisfactory.

Any approach to criminal justice should be developed in Afghanistan and led by Afghans, but supported by the international community

The strategy that has been developed based on the consultation recommends the following steps:

The president is urged to publicly commit to redressing the crimes of the past through a long-term and integrated strategy, including vetting, truth-seeking, criminal justice and reparations. The president stated this commitment when the report was submitted to him on January 29, 2005.

AIHRC also urged the president to design and implement a series of symbolic acts that could serve to acknowledge victims. The suggested acts include building memorials, designating public squares, and instituting days of remembrance. These actions are not costly, but hold much symbolic value. December 10 has already been announced as a national memorial day for the victims of violation of human rights.

A large majority of the people who were interviewed during the national consultation strongly demanded removal of persons with bad human rights records. AIHRC recommended vetting in four areas:

- Political appointments, such as cabinet posts and governors, must be reversed if the persons appointed are associated with past or current human rights violations.
- Civil service appointments need to take place within a structure that meets due process concerns. An advisory panel is appointed, but although it is functional, some people are still appointed directly to the provinces or various positions.
- Elected officials, such as members of the Parliament, shall accord with certain ethical and human rights standards, which does not happen now, unfortunately. Some persons, who were disqualified from election by the Election Complaint Commission, were given posts as high officials by the president and even the Independent Directorate for Local Governance (IDLG).
- AIHRC also recommended that institutional reforms must be carried out not only within the civil service, but also in the justice sector, especially the judiciary and police systems. (The reform of the police positions in last few years is not satisfactory). We have urged the president to take necessary steps and measures to reform and empower the impartiality of

the Civil Service Commission. Its mandate must also be extended with legislation.

The demand for criminal justice among people is strong. At the same time, the obstacles are considerable. AIHRC has proposed the establishment of a special prosecutor's office in the coming two years, which is already passed. It has also recommended the establishment of a special chamber or tribunal to deal with the past human rights abusers within five years from the establishment of the special prosecutor's office. As per the people's request, we recommend that the chamber be composed of national and international expertise, especially from Islamic countries.

The action plan for peace, justice and reconciliation was adopted by the cabinet in December 2005 and was publicly launched on December 10, 2006. This date was called the national memorial day for the victims of past human rights violation in Afghanistan.

Soon after the public launch of the action plan for peace justice and reconciliation, the parliament started to pass an amnesty bill which granted full amnesty to all the people involved in the conflict from 1978 till today. Although the president has assured that he will not sign this impunity bill, the recent action by the court shows that bill is enacted. (Asadullah Sarwari, who is known as the butcher of people in Kabul, was convicted to 19 years of imprisonment, whereas Kambakhsh, a young journalist student, was convicted to 20 years of imprisonment for an act that is not defined as a crime in the law). This action shows that the amnesty/impunity bill is already accepted by all parties of the state.

AIHRC urges civil society groups to take an active role in establishing victim support centres and raise awareness on issues related to transitional justice in Afghanistan. Yet there is a great need to empower and support the civil society. Civil society should not take this issue as a short term project, it has to take it as its responsibility.

It is worth mentioning that the people we spoke with throughout the national consultation believed that there is no need for reconciliation between ethnic groups, but there is an urgent need

of political reconciliation with accountability in the country. People stated that they would clearly like to forgive, but it is very difficult to forget the pain and suffering of the wound without any acknowledgement by the people who have committed those crimes.

The main demand of the public four years ago was an end to impunity, while it was found out after the consultation that there is a strong link between justice, ending impunity and peace. Since then, in the last four years, people again ask us “Can there be peace and stability in Afghanistan without justice?” A sharp decline of the security and a high drop in people’s confidence to the government is a clear empirical evidence of what people were seeking in the seven years since Bonn. Their demand was simple and realistic “End impunity and remove the bad guys from their office”, a wish that never has been considered by the government of Afghanistan and its international partners.

In societies recovering from violent conflict – although Afghanistan is still in conflict – the question of how to deal with human rights crimes in the past are acute, especially when the past involves memories of victimisation, death and a destruction so widespread that a high percentage of the population is affected. Immediately after the violence, political leaders and others often seem to prefer social amnesia as they try to move on and promote stability. With this kind of approach, in the case of Afghanistan it has led to lack of trust and support between the public and the government. Promoting public amnesia does not help societies to overcome the problem. Problems should be addressed to identify the causes, if we really want to get rid of them or solve them.

Of course re-establishment of security, constitutional reform, elections and transformation of judicial and political institutions are important, but breaking with the past and dealing with the transitional justice usually help a country to construct and build the future.

Provision of justice and efforts to heal the wounds of the past are helping societies to overcome challenges related to justice and become more democratic. It also promotes people’s confidence in

the rule of law, resistance to the culture of impunity, and greater trust in public institutions, particularly state institutions.

In the current situation of Afghanistan, where the violence still continues and civilians are being killed by anti-government elements, government and NATO forces, the people hear that negotiations are going on with the anti-government elements (AGE). Having these negotiations without transparency and clear conditions for crimes that have already been committed, the people is losing their hopes and trust on Afghan authorities in particular and on the international community in general. Does the public, who will be directly affected by these negotiations, have the right to know what others are planning for their future? Who is responsible for the pain of a mother who has lost her loved one who, due to the poverty that was shadowing their heads, tried to go to a neighbouring country to find a job and send money back to feed them, but got his head is cut off on the way?

This is all because some want to be in power and others want to find an exit strategy from Afghanistan.

Access to justice is one of the basic human rights, and an important ingredient of good governance, which, unfortunately no one has paid much attention to in the past seven years.

The transitional justice recommendations and proposed mechanisms are not the desire of AIHRC, they are the voice of the people of Afghanistan, who are direct victims of the human rights violations. Their voice has to be heard and their long lasting suffering has to be addressed and stopped.

I hope that we can identify ways and means to address the injustices for the past and present crimes in Afghanistan and heal the wounds and suffering of the mothers who are still waiting to see their loved ones.

I have come to talk about peace building from a country where, out of 365 days, one day – September 21 – was planned to be an international peace day to celebrate cease-fire. But unfortunately, even on that peace day violence broke out. So we still have long way to go, and we hope that we will not be alone in this path.