

Justice Undone

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Many Afghans want war criminals to go on trial, but justice is still far off.

Justice seems a distant prospect in a country now dominated by security problems and lawlessness. But as work progresses on Afghanistan's new constitution and other legal mechanisms, the issue of addressing war crimes is one that won't go away.

The new constitution is supposed to be ready in time for a Loya Jirga, or national assembly, in October. Commissions are looking at judicial reform and human rights, while international donors are retraining the police. All this is intended to lay the way for the establishment of a working legal system that could one day protect human rights – but that depends on whether security is improved across the country, regional leaders are reined in, and central government is transformed into a more effective institution.

With all those elements in place, it would become possible for Afghanistan to tackle the contentious issue of war crimes for the first time. It is not just a matter of dealing with the past – militarised factions are continuing to commit human rights abuses, a year and a half after the political process was set in train.

But right now Afghanistan lacks the institutions that would let it confront past and present abuses. And pointing the finger at just one of the many culprits could destabilise what little stability now exists.

Belquis Ahmadi, Afghanistan Programme Coordinator for the Washington-based International Human Rights Law Group, IHRLG, thinks it's important to tackle human rights abuses with great care – but to do so nonetheless.

“As an Afghan, as a human rights activist and as a member of the law group, we believe in justice. It is critical if Afghan reconstruction is to take place,” she told IWPR.

But, she said, “There is a need for caution in approaching it. It's a very sensitive issue.”

Ahmadi's law group has been involved in discussions on legal development in the capital Kabul, feeding in information on the range of models that Afghans could copy. After that, she said, "It's up to them what they want to do".

In February, Afghanistan signed up to the International Criminal Court, ICC, which means that war crimes committed from this year could one day be tried at a tribunal abroad. The move was hailed by groups such as Human Rights Watch, which said, “The message to Afghanistan's warlords is clear. The international community, through the ICC, is watching you, and will bring you to justice if you commit atrocities.”

Justice minister Abdul Rahim Karimi told IWPR that endorsing the ICC agreement “is a good act, in order that further crimes can be prevented”.

Activating the ICC mechanism is a distant prospect, though. Functioning legal and political institutions would need to be in place to identify and send suspects to the tribunal. The court will not act retrospectively, so it can only try crimes committed from this year onward. There is the added problem

that the major external player, the United States is not supportive of the ICC.

Despite these caveats, some still see the ICC as a potentially useful tool. Huma Alizoi, deputy chief judge in the Kabul province criminal court, said, "Although the new law doesn't apply to the past, past crimes can be used as evidence in cases brought to court. My view is that the ICC should interrogate and prosecute those people who have committed crimes in the past and are currently ruling in this government."

Many Afghans want to see justice done with respect not only to present and future abuses, but to the countless murders and other war crimes committed by previous regimes and warlords. For a quarter of a century the Soviet army and a succession of local militias culminating in the Taliban have killed and maimed countless thousands of civilians. Since central government has been involved in the violence, the idea that war criminals could be put on trial has until now been laughable.

"Afghan membership of the ICC is a good and important step. I'm appreciative of it - but what about former criminals who will not be brought to that court?" asked Anwar ul-Haq Ahadi, who runs the national bank.

"The Afghan people are likely to have another demand - whether a crime was committed yesterday, or a hundred years ago, a criminal is a criminal and must be brought to court.

"Justice must be meted out wherever it is due. In particular, those who are responsible for mass graves, who cut people's hands and legs off, or who committed any other human rights violation, must be brought to court as a sign that justice is being done. Otherwise the crimes will be repeated."

The major domestic and international institutions dealing with the issue have so far avoided taking such an aggressive stance. The national human rights commission set up last year has shied away from tackling war crimes head on. Its reluctance comes not least from the fact that the lives of its members would be in danger if they challenged military commanders who are still powerful. The issue will nevertheless come onto its agenda as it defines the parameters of what it can - and cannot - do more clearly.

The international community is leaving it up to the Afghans to decide what to do about what's called "transitional justice", in part because of the sense that stability is more important in the short term. The United Nations Mission for Afghanistan, UNAMA, has limited resources to devote to looking at past war crimes. The UN's investigation of mass grave sites across northern Afghanistan underlines the complexity of the issue - the graves seem to date from a number of periods in recent history, implying that different factions may have been responsible.

Despite the difficulties of untangling who was responsible for what over the years, many Afghans want retribution at least for some high-profile commanders who are still around. The trouble is, some of these men are still powerful.

The case of a lower-level guerrilla commanders who was convicted by an Afghan court last year gave many people an opportunity to voice their demands for justice. Abdullah Shah had pursued a particularly brutal career, killing civilians on a whim. However, it is noteworthy that he was initially arrested not for war crimes but for assaulting his wife. And criticisms of the way his court case was conducted show how difficult it will be to ensure fair trials even in cases where guilt is apparently clear.

Yet people want trials to take place, even if it means indicting serving officials.

"I am in fact afraid to name the criminals, but they should be brought to trial, especially for crimes which

happened earlier, during wartime,” said a senior official in the ministry for labour and social affairs, who refused to give his name. “Unfortunately, some of the warlords who committed various crimes now hold posts in government.”

Many experts think that if such crimes are tried it should be inside Afghanistan. But at least some officials are keen that this should happen, even if it is impossible in the short term.

“The Afghan government should form special courts for crimes and in the first instance it should try people inside the country,” IWPR was told by Mohammad Farid Hamidi, a member of the human rights commission.

Another idea that has been floated is that of a truth and reconciliation commission where retribution is not the aim, such as in South Africa.

Leading human rights advocate Ahmad Nader Naderi thinks that such a commission is worth considering. He says it would “reinforce national reconciliation, so that the criminals are able to give voice to their problems, and maybe forgive each other”.

“However, the crimes should not be forgotten at any cost,” said Naderi, who spoke to IWPR in May while still working for IHRLG. He has since joined the human rights commission.

President Hamed Karzai floated the idea of a truth commission in March 2002, but there are few signs that the idea has been taken up. IHRLG's Ahmadi says there has been no wide-scale discussion of the issue, “The public need to be involved.”

Other analysts say that – given the absence of law and order, the continuing atmosphere of violence and intimidation, the fragility of government, the presence of possible war crimes suspects in senior positions, and the early stages of the ambitious disarmament process – the subject should be left alone for the moment. Even if reasonably fair trials could be held, in the current climate blame would tend to be apportioned politically, favouring the victor. In Afghanistan that would only exacerbate regional and political divisions.

Barnett Rubin, a US academic who is one of the foremost authorities on the Afghanistan, suggests that Afghans need to be helped rather than pushed to find appropriate ways of dealing with the past. In a speech in London in February this year, he supported the idea of documenting the abuses committed since 1978, as a first step. And there could be an amnesty for ordinary soldiers not implicated in war crimes, as a way of assuring them that they can disarm because they are not going to be prosecuted. The subsequent process of applying justice would need to be “comprehensive and fair”, he argued.

“It may be unfortunate if abusers retain their position, but a process of accountability that is not focused primarily on retribution may have positive effects,” Rubin concluded.

Some Afghans do not want any compromise in the search for justice.

“People who are in the current government and who committed major crimes should be tried, even if they committed them before the (ICC) agreement was signed,” said Abdul Ghafar Irfani, the director of criminal investigations for the attorney general.

“I take the view that the law cannot be enforced through negotiations or reconciliation. If the government wants to strengthen its authority, it should find a way for the victims to take criminals to court.”

Human rights abuses have been so commonplace that it often seems harder to find someone who does not have a story to tell about what he or she has experienced or seen over the last quarter of a century.

“The Taleban shot a woman dead in front of me, even though she was wearing a veil,” Kabul high-school student Lateefa told IWPR.

“Those kinds of people must be brought to justice.”

Faridoon, a Kabul taxi driver, related how he was seized by Hizb-e Wahdat, one of the rival militias which fought over Kabul between 1992 and 1996, before the Taleban took over.

“They forced us to dig out basements. One day we went to one of their basements and we saw hands and legs that had been cut off. I got very sick, and after they let me go I was hospitalised for a month. I still detest eating food, especially meat,” he said.

Atrocities committed by the Soviet military back in the 1980s remain fresh in the mind of Yusuf, a villager from Changram in the Panjsher valley. Panjsher saw some of the most intense fighting as Soviet troops supporting the Afghan communist government tried to root out the famous commander Ahmad Shah Massoud. Civilians who got in their way could expect little mercy.

“We lost everything when the Russians invaded the country,” recounted Yusuf.

“They killed three of my young brothers. Three of my small sisters and two (more) of my small brothers were at home when our home was set ablaze – they all died there. My father died from a heart attack and my mother became paralysed and dumb from grief, and eventually she too died. With a surviving sister, I went to live with our uncle.

“They (the communist regime) called my uncle a conspirator, so one night they took him out of his house and killed him. His children were only small when he died.”

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