

Human rights, security and Afghanistan's peace process

The justice–stability nexus

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ABSTRACT

What are the human rights priorities for a peace settlement for Afghanistan, and what are the prospects for negotiating these effectively?

Three deeply contested issues are critical to negotiating human rights in a future peace settlement.

1. Demilitarisation: agreeing terms to demilitarise armed groups, including establishing an oversight body and securing international backing for sanctions against violators. Demobilisation provisions in the 2001 Bonn Agreement were weak. Subsequent initiatives to integrate former fighters into formal security institutions have been decidedly patchy and many militias continue to play a role in violent conflict today.
2. Women's rights: addressing concerns over the potential negative impact of a settlement on

women's rights. Post-2001 gains for women's participation have been hard won and remain fragile. Gender-based fears over negative consequences of concessions made in a peace deal, such as through revision of the constitution and other legal safeguards, have been exacerbated by the lack of women in the Kabul Process.

3. Transitional justice: addressing the legacy of massive human rights violations and war crimes is key to avoid the persistence of abuses. Recent history does not augur well, such as the 2008 blanket amnesty for war crimes. While negotiating progress on transitional justice will not be easy, Afghanistan today shows the costs of failure. Acknowledging the truth about past atrocities may offer a viable entry point for meaningful progress for reconciliation.

Most peace accords include measures that reflect basic human rights principles: to reform or restructure security institutions; to enact legislative and policy changes to address inequities that fuel conflict; and to acknowledge past abuses. But while some agreements have included explicit human rights language, such as commitments in Northern Ireland's Good Friday Agreement to address discrimination and provide for more equitable representation, few have called for specific measures to implement human rights reforms in their final texts.

How could human rights feature in negotiations toward a settlement among the relevant parties to the conflict in Afghanistan? Three contested areas are critical: disarming militias and reform of the security forces; women's rights; and the role of truth and accountability in addressing past war crimes and human rights abuses.

Negotiating rights in Afghanistan

Afghanistan has been at war for 40 years. During this time every party to the conflict has been responsible for a range of human rights abuses and violations of the laws of war. Many Afghans, including refugees and the larger Afghan diaspora, consider themselves victims of a conflict that has consumed generations. While Afghanistan has seen a number of efforts to negotiate peace, human rights concerns, including addressing grievances that have motivated fighters to take up arms, have not played much of a role in any of them.

The talks that culminated in the 1988 Geneva Accords, the agreement under which the Soviet Union withdrew from Afghanistan, did not mention human rights except to affirm the right of Afghan refugees to return. There was no effort to reform security institutions and no provision to account for war crimes by any party to the conflict. Through the 1990s, international efforts to bring warring Afghan factions to the table amounted to little, while foreign support for the belligerents by Afghanistan's neighbours and other powers continued.

The purpose of the December 2001 Bonn Conference, organised under UN auspices, was to broker a power-sharing arrangement among the major Afghan anti-Taliban armed factions, principally those known as the Northern Alliance, and determine the composition of an interim government, a roadmap for drafting a new constitution, and a timetable for holding elections.

The Bonn Agreement said little on human rights. Despite widespread condemnation of the Taliban for their treatment of women, the agreement said only that women should be represented in government and participate in planned political processes. In the absence of explicit demands by any

political group at the conference with respect to past crimes, there was no impetus to pursue transitional justice. In closed sessions, former *mujahidin* leaders vehemently rejected a proposal to prohibit an amnesty for serious war crimes. Barnett Rubin noted in 2003 that during closed sessions negotiators had discussed such a proposal, but it caused a serious rift when some faction leaders suggested that the motive behind it was to dishonour and disarm the *mujahidin*.

Nor did the Bonn Agreement address the question of how to demobilise various militias, or vet them for any future role in the security forces. In the end, the agreement included only some very basic requirements on human rights, including establishing a national human rights monitoring body and pledging that the government would abide by the provisions of international human rights instruments to which Afghanistan was a party.

It was not a surprise that the Bonn negotiations failed to address contentious issues surrounding rights, disarmament and accountability. The Afghan factions represented there were concerned with the allocation of power. They had no interest in pursuing questions that could undermine that power and cost them the support of their men. There was no Afghan civil society at the talks to push for such measures and no international presence to enforce them.

The US sought an agreement among the main anti-Taliban groups that would allow it to continue the fight against al-Qaeda and the Taliban, and the UN and other international participants feared pursuing issues that could spark confrontation among the Afghan factions. The Taliban were not present at Bonn, and were not party to the bargain on which the post-2001 Afghan state was built. Thus, many of the conflict dynamics that had characterised the war for years prior to Bonn have since continued to undermine efforts toward peacemaking. If serious negotiations were to get under way, they would need to address these contested issues, including the legacy of the post-2001 transition and the security structure it created.

Demilitarising militias

Disarmament, demobilisation and reintegration (DDR) of former combatants is crucial for post-conflict stability and human rights protection. But representatives at the Bonn Conference were reluctant to press for this, fearing that pursuing disarmament could drive some Afghan factions from the table. The Bonn Agreement's provisions on disarmament were weak, calling only for the reintegration of the *mujahidin* into the new Afghan security forces. Article V.1 states that 'all *mujahidin*, Afghan armed forces and armed groups in the country shall come under the command and control of the Interim Authority, and be



Afghan women take part in a protest against violence towards women outside the Ministry of Women Affairs in Kabul in February, 2014.
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reorganized according to the requirements of the new Afghan security and armed forces'. Annex III calls for 'the United Nations and the international community ... to assist in the reintegration of the *mujahidin*'.

While incorporating former combatants into a country's security institutions can make DDR palatable to former commanders, if done selectively or without concern for human rights it can also undermine efforts to establish the rule of law. The International Crisis Group in 2010 described how in Afghanistan DDR did not formally get under way until well after the Ministry of Defence had already incorporated many of the militias allied with the Tajik Panjshiri Shura-e Nazar faction into the new Afghan National Army – and with them, their patronage networks.

There was no political will to carry out vetting of personnel on human rights grounds because those in positions of power had strong ties to those who would need to be vetted. Moreover, the US-led coalition was already arming and paying commanders from various militias to fight al-Qaeda and Taliban forces; many of these militias continue to play a role in the conflict today. As the dominant anti-Taliban elites competed for power and access to the vast influx of resources from the international reconstruction effort, the failure to build security institutions that were not tied to faction-based patronage systems fuelled corruption and fed grievances among groups who felt excluded from the new order.

Since 2001, accommodation of potential spoilers has remained the preferred approach to dealing with regional strongmen and other powerful figures. Years of talks concluded with a 2016 peace deal between Hezb-i Islami and the government. Interviews I undertook in 2017

revealed that all the group's commanders anticipated positions in the security forces or government, as had happened to Northern Alliance forces after 2001. But if there is a settlement with the Taliban, its leaders will not consent to having fighters either demobilised or absorbed into existing governmental security institutions. Instead, as Osman and Gopal described in 2016, they want a reconfiguring of the post-2001 political framework, which will prompt fierce resistance from those who have benefited most from it.

While Afghan government officials aligned with President Ashraf Ghani, along with most donors, welcomed the Hezb-i Islami deal as a positive step toward peace, some Afghan civil society groups raised concerns that accountability was not part of the negotiations. Protesters denounced the deal and the past crimes of Hezb-i Islami leader Gulbuddin Hekmatyar, though mostly on social media as many feared street protests could have sparked retaliation from Hekmatyar's supporters.

In Afghanistan, as in other conflicts, security and human rights are not separate but interdependent. Any future negotiation with the Taliban will need to address the same problem that the negotiators at Bonn ultimately evaded: what to do about the thousands of armed fighters loyal to powerful political figures, many of whom have known only war, and fear that they will lose out in any settlement? Interviews I undertook in Kunduz in 2015 support research findings of how fighters frequently cite the sacrifices they or their families have made, and abuses suffered by rival forces, as motives for continuing to fight. DDR alone, even if carried out impartially, cannot address this; it is possible that some kind of transitional justice process focused on truth and reparations could go some way toward doing so.

Given the failures of the post-Bonn attempt at DDR, it is also clear that any agreement needs to spell out the terms for demobilisation and identify a body acceptable to all parties to oversee it and prevent the capture of state security institutions by any one group. The post-2001 practice of accommodating potential spoilers imposed no sanctions for those who violated even the minimal constraints envisaged at Bonn, such as the prohibition against maintaining illegal militias. Any future agreement would require sufficient international backing to support sanctions, both political and economic, for those who violate its terms.

Women's rights

Armed conflict exacerbates gender inequalities. Before the war began in 1978, gender-based discrimination was deeply entrenched in Afghanistan's socially conservative culture. While women in urban areas had made some gains in legal status, education and employment, rural women were largely unaffected by these changes. Subsequently, decades of war and displacement have reversed even this limited progress, while further setbacks ensued under the Taliban. Since 2001, Afghan women have recouped some lost ground and now play an active role in government and civil society, although gender-based discrimination and violence remains pervasive.

As prospects for peace talks have fluctuated in recent years, many activists have focused on the impact that a peace agreement between the Afghan government and the Taliban might have for women's rights, particularly given that the gains made for women since 2001 are fragile and already at risk. Enshrining women's rights in the new Afghan state after 2001 was not a given even after the ousting of the Taliban government, however, as the process around the drafting of the 2004 constitution illustrated. As the International Crisis Group reported in 2013, an early draft made no mention of gender equality, the chair of the Constitutional *Loya Jirga* (Grand Assembly) having publicly advised female members that under God, they were not equal citizens. Afghan human rights activist Masuda Sultan has described how, under pressure from international advisers who linked continued financial support for the government on a constitutional provision guaranteeing equal rights for women, the drafting committee amended Article 22 on the equal rights of citizens to include the phrase 'whether man or woman'.

The same conservative forces have re-emerged during parliamentary debates over legislation on women's rights, including the Elimination of Violence Against Women law. As detailed by the Afghan Analysts Network in 2017, this law has yet to be passed by the parliament, despite having previously been approved through a presidential decree by

President Karzai in 2009. Some lawmakers have argued for repeal of the law, calling for elimination of the minimum marriage age for girls, abolition of shelters and ending criminal penalties for rape. Protecting women's rights remains an uphill battle in Afghanistan, even without a deal with the Taliban.

But the on-again-off-again attempts at talks with the Taliban have intensified fears among Afghan activists that women stand to lose even more ground if a deal were to include revising the constitution or scaling back other laws and programmes protecting women's rights. Women have been all but absent from many meetings held under the government's official peace programme, the Kabul Process, while a long-promised plan by the Afghan government to implement UN Security Council Resolution 1325, which calls for women's equal participation in issues surrounding peace and security, has yet to materialise, adding to those fears.

Huge gaps remain. While Taliban representatives have reportedly signalled support for education for boys and girls at all levels, if segregated by gender, the content of the curriculum remains a contested area. In practice some local-level Taliban commanders have blocked girls from studying – as have some ostensibly pro-government militias, as reported by Afghan Analysts Network in 2013. Taliban interlocutors have also indicated an evolving stance on women's employment, but one that does not permit women to hold the highest political or judicial offices. These limitations should prove an obstacle to any serious negotiations.

More worryingly, Taliban spokesmen who have participated in unofficial talks openly acknowledge that they may not speak for their commanders on the ground, and that the Taliban political leadership could abandon even this limited flexibility on women's rights in order to get buy-in from the rank and file. This could prove an insurmountable obstacle unless simultaneous efforts to address the grievances that have driven many to fight complement the negotiations. But as happened during the 2003-04 constitutional debate, protecting women's rights in any peace process will require a commitment by the participants not to weaken existing constitutional guarantees for women's rights, including on the part of any international guarantors. In recent years international actors in Afghanistan have not consistently defended women's rights.

Transitional justice

Transitional justice refers to a range of responses to massive human rights violations and war crimes, including recognising suffering and loss through truth-seeking,

holding perpetrators accountable through retributive and restorative justice measures, and reforming justice institutions. The goal is to avoid a return to conflict and the abuses of the past. To be successful, the impetus for transitional justice must come from the victims of human rights violations. Initiating a transitional justice process solely from the outside, without commitment from those in the country who have suffered, is unlikely to succeed. In Afghanistan, transitional justice in any form, including truth-seeking as well as any other form of accountability, has been a casualty of both the stability-first approach taken since 2001, and of the fragmented society.

The Bonn Agreement mandated the Afghanistan Independent Human Rights Commission (AIHRC) to investigate human rights violations, past and present. Working in an environment in which many of those responsible for past abuses were in power, the commission has proceeded cautiously. In 2005 it published a report noting that most people surveyed considered themselves 'direct victims' of human rights violations during the war. As a next step, in consultation with the UN, the rights commission developed an action plan outlining a series of steps, from documentation through judicial reform. President Karzai signed the plan in December 2006. In response, the Afghan parliament passed a blanket amnesty for 'all political factions and hostile parties' involved in the war before December 2001, as well as those still in opposition, including the Taliban, so long as they joined the reconciliation process and respected the constitution. The amnesty became law in December 2008, amended to permit individual claims as stipulated in Islamic law, according to which only victims and relatives can absolve an individual.

The next blow occurred in December 2011 when President Karzai dismissed three prominent AIHRC commissioners who had spearheaded a massive documentation effort to map the major human rights violations of the war between 1978 and 2001. The contents of the Conflict Mapping Report worried powerful former Northern Alliance figures in Kabul. It has never been published. Political leaders, both Afghan and foreign, have cited the danger of instability as a reason not to publish it. Despite the threat of a possible investigation by the International Criminal Court, the Afghan government has not prosecuted serious offenders, from prominent strongmen, to generals and other powerful figures.

Divisions within Afghan society have further complicated progress. There is little common ground between those who have suffered losses from insurgent attacks and those who have experienced abuses by government forces or their allies. Moreover, many Afghans, frustrated with

deteriorating security and economic hardship, are drawn to the ethnic politics that defined the war in the past, and defend leaders from their own group even when they are accused of abuses. The Ghani government's deal with Hezb-i Islami, a Pashtun faction, exacerbated ethnic tensions that had surfaced prominently during the 2014 presidential election, now marked by demands for greater power from regional strongmen who assert that they are defending ethnic minority rights. Competing narratives are a common feature of civil conflicts, particularly those in which the fault-lines divide ethnic identity groups, and further stymie attempts to seek justice.

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Conclusion: acknowledgement and truth

There will never be a way to definitively remedy the profound social upheaval brought about by many years of war in Afghanistan. While a peace settlement should prohibit any amnesties for grave international crimes, it is also clear that after 40 years of war, the cycles of violence and retribution run too deep to be resolved solely through traditional justice systems. However, in various studies carried out by Afghan and international organisations surveying Afghan views on the conflict, one common theme emerges as a minimum requirement for a functioning polity: the need for acknowledgement and truth about what has happened. In interviews I have done with victims of both insurgent bombings and coalition airstrikes, the (predominantly poor) survivors have told me they want acknowledgement by those who had caused their suffering, and they want material help, something reparations could potentially help address.

The experience of those who worked on the unpublished AIHRC Conflict Mapping Report provides further evidence of the importance of acknowledgment, and a way to make Afghans aware of a shared history beyond what their own community, tribe or ethnic group has suffered. As researchers gathered testimony about incidents spanning nearly 25 years, some discovered for the first time that their compatriots in other districts and provinces had suffered the same atrocities as their own families had.

The research was revelatory for everyone involved, and underscored the critical significance of getting beyond an 'us-versus-them' approach to understanding Afghanistan's post-1978 history.

Nor should rights and stabilisation be seen as contradictory. To paraphrase the seminal work on Argentina by Juan Mendez, the former UN special rapporteur, a society's effort to pursue accountability for past crimes deserves support. While there may be necessary limitations on the scope of prosecutions, there should be no such limits on the search for truth. The very process of seeking the truth can have a powerful stabilising effect; by preserving a collective memory of what has happened, a people can forge a new awareness of the value of human rights.