

Peace, Reconciliation and Justice in Afghanistan
Action Plan
of the Government of the Islamic Republic of Afghanistan
6-7 June, 2005^[1]

Introduction

Afghanistan is taking important steps towards building a stable, lawful and democratic state. At the same time, it is facing with the legacy of egregious human rights violations committed in the context of more than two decades of armed conflict and which has cast a dark shadow over the peaceful and just co-existence of the people. In his report on rule of law and transitional justice in conflict and post-conflict societies, the UN Secretary-General has stressed that justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives. To build sustainable peace and stability, deal with past abuses, reconcile victims, perpetrators and other stakeholders, and to move from a divided past into a shared future is a difficult task in almost any post-conflict situation where institutions tend to be weak, there are few resources, unstable security and a war-affected population. In order to transition into a peaceful life and to strengthen national reconciliation in Afghanistan, the past should be dealt with in a bold and just way that avoids revenge. We should explore ways to build co-existence amongst the citizens of this country based on the principles of tolerance, forgiveness and the requirements of a social order premised on law and order.

The Government of Afghanistan took the first important step towards facing this task when it established, in accordance with the provisions of the Constitution, the Afghan Independent Human Rights Commission (AIHRC) in June 2002. Based on the decree of the President of the Islamic Republic of Afghanistan, the AIHRC is mandated to undertake national consultations and propose a national strategy for transitional justice and for addressing the abuses of the past. The AIHRC's report A Call for Justice, based on consultations with more than 6000 Afghans, was accepted by President Karzai in January 2005.

The President thereupon requested his advisors to consider the findings and recommendations in A Call for Justice report and develop an action plan to implement a national strategy for peace, reconciliation and justice in collaboration with AIHRC and the United Nations Assistance Mission in Afghanistan (UNAMA).

In the United Nations Security Council Resolution 1589 and the statements of the UN Office of the High Commissioner for Human Rights and the UN Commission on Human Rights in April 2005 on the situation of human rights in Afghanistan and the importance of the transitional justice process, the efforts of the Government of Afghanistan to ensure human rights and to implement transitional justice have been welcomed.

The President's office, AIHRC and UNAMA have drafted the Action Plan for discussion at the Peace, Reconciliation and Justice Conference in the Hague on 6-7 June 2005. The terms peace, reconciliation and justice are often raised about the relatively new field of "transitional justice".^[2] "Transitional justice" is a notion with multiple dimensions that is closely linked with concepts such as rule of law, security sector reform, judicial sector reform and governance reform. At the international level and discussions about basic violations of legal norms during the war, the term transitional justice is used to indicate a full range of processes and mechanisms associated with a society's attempts to address past abuses, ensure accountability, serve justice and achieve reconciliation. These may include a combination of both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all), individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals.

"Transitional justice" is often misunderstood as addressing questions of criminal responsibility only. As a first step, transitional justice strategy aims to realise peace and national reconciliation, to restore co-existence and co-operation, to heal the wounds and pains of the victims and to re-integrate the citizens into a peaceful life in the society. Reparations, healing of the physical and psychological suffering and re-integration in the community of citizens, whose social relationships have been damaged, are all attempts that go beyond concepts such as court, prison and revenge and run counter to them. Efforts to promote the culture of forgiveness, affection, brotherhood and sisterhood and to strengthen the solidarity between the countrys today and tomorrow generations, constitute the principal foundation of the present Action Plan. The positive experience of countries that have passed bloody crises, show that the transitional justice strategy should balance a variety of goals including truth-seeking, victim recovery, re-integration of the deceived and perpetrators in the society, reparations, the preservation of peace and stability, the strengthening of democracy and the rule of law and the administration of justice.

The Action Plan of the Islamic Republic of Afghanistan, considering the realities of the country and relying on the religious values and the need to maintain stability and security, attempts to incorporate all these facets within four key areas (symbolic measures, institutional reform, truth-seeking and documentation and reconciliation). These four areas are not alternative options, but are mutually reinforcing elements. The importance of "reconciliation" (key action 4) is particularly recognised because durable peace requires social re-integration and reconciliation in this country. Measures should be taken to make possible the return and re-integration of all hostile groups in the society and lead to the reduction of tensions,

warmongering and bloodshed in the country. This peace and justice perspective can not mean to excuse genocide, war crimes, crimes against humanity and other gross violations of human rights. On the contrary, bold action against these crimes is itself a universally accepted moral principle.

Further, the Government of Afghanistan, with reference to the constitutional organs of Afghanistan such as the Parliament of the country, is committed to establish accountability institutions and to take the necessary accountability measures in accordance with the nationally and internationally accepted norms on war crimes, crimes against humanity and obvious violation of human rights. The commission of such crimes does not fall into the scope of amnesty on the basis of the principles of the sacred religion of Islam and internationally accepted standards.

It is recognised that on one hand, criminal justice will not satisfy all the needs and expectations of victims and on the other hand, cannot help restore the culture of forgiveness, reconciliation and co-existence on its own. Therefore, the Action Plan includes key acts 1, 2 and 3 to meet the needs of the victims.

Acknowledging the suffering of the victims, accepting the fact that innocent humans have been oppressed in the country, recording the past events in a historical and comprehensive way, reparations, promoting national reconciliation, removing human rights violators from official positions and restore the trust of people and victims in state, are the minimums to be addressed.

The Action Plan acknowledges that any mechanism for building peace and justice must be carried out with the active and meaningful participation of all national stakeholders, including justice authorities, civil society, professional associations, mujahideen, traditional and religious groups, victims, ex-combatants and (non-criminal) elements of former regimes. Special attention must be given to ensuring the active participation of women in the process. There must be assurances that no one will be subjected to unlawful or unfair punishment and that the rights of all participants will be respected. Some of the suggested actions in key-areas are therefore limited to proposals for further consultation or exploration by the appropriate stakeholders, such as the idea of the establishment of a truth-seeking mechanism or reconciliation committees.

The Action Plan also acknowledges the challenges of coordinating the proposed actions with other programmes in the field of building of institutions based on the determination and participation of the people. But, as the UN Secretary-General has noted, justice and peace are not contradictory forces. Rather, properly and simultaneously pursued, they promote and sustain one another. The question is therefore not whether justice and accountability are to be

pursued, but when and how. Careful sequencing of these processes is thus vital. The Action Plan's suggested timelines for the actions endeavour to achieve this.

The Government of Afghanistan acknowledges that many cases of human rights violation have been committed during the previous four years in Afghanistan. Relying on the principles enshrined in the Constitution and the commitments of the Government towards the people of Afghanistan, it should be reminded that human rights violations during these four years will be seriously dealt with. Violations in these four years should be evaluated in the framework of international human rights standards and the law of the country.

Purpose

This Action Plan sets forth proposals for the initial steps towards implementing a national strategy for transitional justice in Afghanistan, based on the state commitments, Constitutional standards and the AIHRC research. The overall aim of the strategy is to enhance peace and stability in Afghanistan through a process that will achieve reconciliation and justice.

Vision

The promotion of peace, reconciliation, justice and rule of law in Afghanistan, and the establishment of a culture of accountability and respect for human rights.

Timeline

However, realisation of social justice takes more time, the timeline for achieving the actions proposed in this Action Plan is three years.

Summary

The proposals focus on four key fields of activity: 1) acknowledgement of the suffering of the Afghan people; 2) ensuring credible and accountable state institutions and purging human rights violators and criminals from the state institutions; 3) truth-seeking and documentation; 4) promotion of reconciliation and improvement of national unity.

Key action 1: Acknowledgement of the suffering of the Afghan people

Objective By acknowledging the suffering of the Afghan people,^[3] facilitate the healing of the nation and the building of a peaceful Afghanistan.

Activities

- a) The assignment of a National Remembrance Day, the day of victims of human rights violations and war crimes in Afghanistan, for instance 4th Jan (14 Jadi) - the day that Afghanistans new Constitution was approved as a national day to commemorate the victims of war crimes and human rights violations in Afghanistan. The day would be announced during a brief ceremony for recognition and respect of the victims of the conflicts at the Loya Jirga tent, in the presence of war disabled, families of martyrs and victims, civil society groups, community elders, religious leaders, academics and womens groups.
- Lead: President Karzai
 - Suggested partners: civil society, community leaders, religious leaders, etc.
 - Timeframe: Before the end of 2005; possible dates for the announcement: November 2005; or end 2005, following the establishment of the National Assembly and shortly before the National Day.
- b) The establishment of national memorial sites. Proposed location for the main memorial: near the National Assembly building in Kabul. Architects and artists from around the world will be requested to submit designs for such memorials. Roads and squares in Kabul, Herat and other cities can be named 24 Hut, 3 Hut or other similar days.
- Lead: Presidents Office, Municipalities, National Assembly Secretariat
 - Suggested partners: Faculty of Fine Arts, Faculty of Architecture, international architects and artists, civil society, Ministry of Housing and Urban Development, Ministry of Culture and Information and other institutions that are ready to help
 - Timeframe: the call for designs will be made during the announcement of the national day for victims of the conflict, the announcement of the winning design will be made within five months, the ceremony for laying the foundation stone will take place no later than mid 2006.
- c) Establishment of a national museum commemorating the victims and designed to educate younger generations by presenting the history and symbols of three decades of war, including pictures and names of victims, photographs and films of the war, destructions, executions and etc.
- Lead: Ministry of Culture and Information, Ministry of Education and Afghan Independent Human Rights Commission

- Suggested partners: Kabul Museum, international museums, International Centre for Transitional Justice, civil society, representatives of donor countries
- Timeframe: identification of location by January 2006; preparatory work to start in 2006, inauguration in 2008

Key Action 2. Ensuring credible and accountable state institutions

Objective To increase the confidence of the Afghan people in their state institutions, through effective reform and the use of transparent and fair appointment and vetting procedures.

Activities

- a) Strengthening of the role, capacity and current attempts of the Civil Service Commission through:
 1. the adoption of enabling and empowering legislation
 - Lead: Ministry of Justice, Presidents Office legal advisers
 - Suggested partners: in consultation with UN
 - Timeframe: no later than December 2005
 2. Considering the human rights records of civil servants, integrity, loyalty to law and etc. in the appointment process
 - Lead: Civil Service Commission
 - Suggested partners: UN, AIHRC, international actors
 - Timeframe: immediate
 3. reform, training and technical assistance of the Civil Service Commission
 - Lead: UN
 - Suggested partners: Afghan Government, international organisations, donors
 - Timeframe: start of project at the end of 2005

- b) Establishment of an Advisory Panel for Appointments to advise the President on senior political appointments which are outside the scope of the Civil Service Commission.
- Lead: Presidents Office
 - Suggested partners: Ministry of Interior, AIHRC and UN
 - Timeframe: formulation of necessary rules and appointment of panel members no later than December 2005
- c) Development of an inclusive strategy for the general reform of the justice sector (judges, prosecutors, police, corrections and defence counsel), so as to ensure the establishment of a fair and effective justice system and to prevent patterns of human rights abuses of the past from being repeated.
- Lead: Presidents Office
 - Suggested partners: Ministry of Justice, Supreme Court, Italy, UN, other donors
 - Timeframe: submission of the plan to the President no later than March 2006.

Key Action 3. Truth-seeking and documentation

Objective Through truth-seeking and documentation, evaluate the facts of the conflicts and injustices happened in the past, establish accountability and put an end to the continued state of impunity through acknowledging the oppression and expressing the belief in justice^[4], while supporting reconciliation and recognising that there are multiple truths.

Activities

- a) Initiate a consultative process seeking views on truth-seeking mechanisms from civil society, academia, community leaders, religious leaders etc. to formulate recommendations for a truth-seeking mechanism in Afghanistan, giving special consideration to the participation of women in the consultation and how to deal with gender-based violence and other crimes against women
- Lead: AIHRC
 - Suggested partners: civil society, academia, womens organisations, Ministry of Womens Affairs, mass media, etc.

- Timeframe: consultations to start in the autumn of 2005, recommendations to be presented to the President by June 2006.
- b) In support of this process a conference on truth-seeking in other countries and the lessons learnt will be organised. (The conference shall also address reconciliation - see below, key-action 4).
- Lead: Office of the High Commissioner for Human Rights
 - Suggested partners: AIHRC, UN, Kabul University, civil society, experts
 - Timeframe: Autumn 2005.
- c) Draft legislation on the recommended truth-seeking mechanism to be presented to the National Assembly.
- Lead: Presidents legal advisors, Ministry of Justice
 - Suggested partners: AIHRC, UN, experts
 - Timeframe: submit draft legislation to the National Assembly by end 2006.
- d) Funding, establishment and staff training of the recommended truth-seeking structure.
- Lead: Presidents Office.
 - Suggested partners: AIHRC, UN, civil society groups, donors
 - Timeframe: January 2007 until July 2007
- e) Increase and accelerate efforts to document past human rights abuses during the conflict in Afghanistan, including on gender-based violence, to complement and enrich the existing work.
- Actors: Office of the High Commissioner for Human Rights, AIHRC, national and international human rights organisations and civil society groups
 - Suggested partners: donors
 - Timeframe: ongoing
- f) Identify a location for the establishment of a documentation centre on the conflict in Afghanistan, bringing together existing collections and books, and regulate legal framework.
- Lead: Ministry of Information and Culture, Presidents Office
 - Suggested partners: Kabul University, universities and researchers, donors
 - Timeframe: February 2006

Key Action 4. Promotion of reconciliation and national unity

Objective to explore ways to promote reconciliation, strengthen national unity and to enhance solidarity and trust among people^[5].

Activities

- a) Initiate a public debate on national reconciliation in Afghanistan in order to promote awareness on the need to reconciliation, the need to a culture of tolerance and the need to accountability and the promotion of the culture of forgiveness and avoiding revenge and violence.
 - Lead: AIHRC, Ministry of Information and Culture
 - Suggested partners: civil society, academia, media, education institutions, religious and community leaders, womens groups
 - Timeframe: ongoing

- b) In support of this process a conference on reconciliation, drawing from experiences in other countries and lessons learnt will be organised. (The conference shall also address the issue of truth-seeking - see above, key-action 3c).
 - Lead: Office of the High Commissioner for Human Rights
 - Suggested partners: AIHRC, UN, Kabul University, civil society
 - Timeframe: Autumn 2005

- c) Support conflict resolution initiatives and explore the establishment of reconciliation committees within existing structures, such as the Provincial and District Councils, and through pilot projects with possible methods (reconciliation gatherings, mediation, dispute resolution, reparation, etc.).
 - Lead: AIHRC
 - Suggested partners: Provincial and District Councils, civil society groups, academia, religious leaders.
 - Timeframe: present an expert paper at the Conference on Truth Seeking in Autumn 2005 on the idea of reconciliation committees.

d) Seek possibilities to incorporate peace and reconciliation messages in the education curriculum and also training on the rights of citizens and human rights and avoiding violence by the military, police and civil service. Prevent the use of educational and training materials containing discriminatory, partisan or violent messages. Involve teachers and students in the victim acknowledgement and truth seeking processes.

- Lead: Ministry of Education, Ministry of Interior, Ministry of Defence
- Suggested partners: universities, teachers associations, students groups, experts, donors, AIHRC, UN, Civil Service Commission
- Timeframe: immediate and ongoing

e) Encourage the return and re-integration into society of all Afghans, through a range of programmes such as the Disarmament, Demobilisation and Reintegration programme (DDR), Disarmament of Illegal Armed Groups (DIAG) and the Strengthening Peace Programme, and ensure the equal treatment of all Afghans in terms of reconciliation and justice.

- Lead: National Security Council
- Timeframe: immediate

In the case of systematic violation of human rights, war crimes and crimes against humanity, criminal justice can be established based on the legal norms. Considering the realities of the country, the findings of the AIHRC through the National Consultation and bitter experience of human rights violation, the Government of Afghanistan will submit a scheme to the Parliament in this regard so that it can make the necessary decisions and end the state of impunity in Afghanistan.

In making such a decision, attention should be paid to this reality that considering 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.

Key Action 5. Establishment of effective and reasonable accountability mechanisms

Objective: In order to end impunity in Afghanistan and ensure that there will be no amnesty for war crimes, crimes against humanity and other gross human rights violations, the conditions for fair and effective justice procedures are established in accordance with the principles of the sacred religion of Islam, international law and transitional justice.

Activities

a) A Task-force will be established on the presidential decree. The Taskforce has the duty to provide recommendations to the President for a legal, procedural and institutional framework necessary for Afghanistan's implementation of its international legal obligations, and gives priority to removing continued threats to peace and stability in Afghanistan.

Lead: Presidents Office

- The President to appoint a five-member Task Force, including one member nominated by UNAMA and one member nominated by AIHRC.
- Timeframe: Task force to be established by December 2005, Task Force recommendations to be presented to the President no later than end 2007

b) Considering the lofty values of the sacred religion of Islam and in accordance with internationally recognised standards; the perpetrators war crimes, crimes against humanity and other serious human rights violations will not be ignored.

- Lead: President Office
- Timeframe: clarification on non-amnesty as soon as possible

c) Capacity building: appropriate measures should be taken to implement the objectives contained in this Action Plan.

- Lead: Ministry of Justice
- Suggested partners: Office of the High Commissioner for Human Rights, UN, international expert organisations, Italy and other donors.
- Timeframe: immediately and continuing.

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¹¹ This Action Plan was drafted by the Government of Afghanistan in co-operation with the Afghan Independent Human Rights Commission and the United Nations Assistance Mission in Afghanistan. It was presented and agreed upon at the Hague Conference on Peace, Reconciliation and Justice in Afghanistan on 6-7 June 2005 in the Hague, the Netherlands. This version of the Action Plan incorporates comments reviewed and accepted during the conference by the Afghan delegation, the AIHRC and other participants. Participants included Minister Dr. Abdullah of Foreign Affairs and Minister Dr. Dadfar of Refugees of Afghanistan, as well as Dutch Minister of Foreign Affairs Dr. Bot, Special Representative of SGUN Arnault, as well as the senior advisors to President Karzai of Afghanistan, Dr. Spanta and Dr. Azimi, Dr Kamavi a representative of the Afghan Supreme Court, the Chairperson of the Afghan Independent Human Rights Commission Dr. Samar and Commissioner Nadery, representatives of the UNHCHR, EU Special Representative Vendrell, and representatives of the European Commission, the Governments of Canada , Finland, France, Germany, Italy, the Netherlands, Sweden, UK and US, as well as experts from the International Centre on Transitional Justice and the Afghanistan Justice Project.

^[2] The concept of transitional justice in recent years has been raised about the developments in conflict countries. The intent of transitional justice is to deal with injustices and obvious violations of the nationally and internationally agreed norms and standards that conflict parties have committed during a war. The term entered into the UN terminology with the report of the Secretary-General to the Security Council on "The rule of law and transitional justice in conflict and post-conflict societies" in 3 August 2004.

^[3] Nearly 70% of all the people spoken to during AIHRCs consultation said they have personally suffered loss or injury due to crimes inflicted on them in the course of the war. A Call for Justice, http://www.aihrc.org.af/rep_Eng_29_01_05.htm.

^[4] The concept of a truth commission was found to be virtually unknown in the context of Afghanistan, nevertheless, the overall support for truth-seeking was high: 95% of the respondents in the AIHRC national consultation considered it important to establish the truth of war-time violations. Source: A Call for Justice http://www.aihrc.org.af/rep_Eng_29_01_05.htm

^[5] In the National Consultation on Transitional Justice conducted by AIHRC most people stated that the people are reconciled at the community level but there is a need for political reconciliation among the political leaders, which would in itself help national unity and promotion of trust among different ethnicities in Afghanistan. Provincial and district assemblies would be the most suitable venue to achieve this goal in Afghanistan.