

# A CALL FOR JUSTICE

A National Consultation on past Human Rights Violations in Afghanistan



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## INTRODUCTION

Afghanistan is a country struggling towards the establishment of democratic institutions, peace and stability, and is taking the first steps to building a foundation for a stable democratic state.

In the interim, it must cope with a legacy of violation and abuse by repressive authorities, armed groups and individuals, and has been confronted with severe human rights abuse, violence, injustice, the physical destruction of most of the country, and the destruction of social and cultural values resulting from a quarter century of conflict. Mass bombardment of villages, arbitrary detention, summary execution of prisoners, torture, rape of women and children, looting of public and civilian property, forced disappearance of civilians and massacres have created an atmosphere that has cast a dark shadow on the psychology of the whole nation.

More than a million people lost their lives and almost the same number became disabled in the course of the war, as a result of anti-personnel landmines, indiscriminate bombing and rocket attacks by the former Soviet Union and the regime backed by them, and attacks by armed militia groups, including the Mujahideen and Taliban. Thousands of people were put in jail for their political beliefs and tortured. Thousands of children lost their family members and their fathers. Afghanistan's streets are now full of orphaned children who must beg to survive. Almost all of the country's major cities were destroyed. Agriculture was destroyed when the fields were burnt. More than seven million people were forced to leave their villages and towns and take refuge in Iran and Pakistan. The miseries of this period of conflict cannot be described in words. One can only feel the pain by listening to the cries of widows, orphans and other victims around the country.

In the course of this conflict, Afghanistan was transformed from a stable, calm and peaceful country, which was taking firm steps toward development, into an unstable society where state institutions have collapsed and where social structure have been severely damaged. Afghanistan became a country in which the core values of unity, love and respect for human dignity were replaced by a culture of violence and intolerance. Afghanistan is now a place where mass graves at Pul-i-Charkhi prison hold the bodies of thousands of political activists and Mujahiddeen who lost their lives as a result of summary execution by the Soviet-backed regime from 1978 to 1992. This country became the scene of the mass killing of civilians in Kabul, mass destruction of cities, anarchy, rule of the gun, looting, and where rape of women and children which occurred all over the country during factional fighting of Mujahiddeen leaders between 1992 and 1996. The massacres of Yakawlang and Mazar and the horrible violations against the human dignity of the people, especially of women, by the Taliban from 1996 to 2001 still disturb the soul of this nation.

The nature of this conflict was a blend of international and internal armed conflict: a typical proxy war. However, a distinct commonality in different periods of the conflict was disrespect for the rule of law and justice. As a result, the country faced a state of almost absolute impunity for human rights violations. This study shows that many believe that this impunity continues unabated.

These atrocities are not described further in this report, but we refer readers to recent important initiatives that have been carried out to document these violations. We refer to the report of the Office of the High Commissioner on Human Rights, which provides an overview of

the violations over the years as described in internationally available documentation. This report provides an important basis on which further efforts to systematize documentation should be built. Another very significant study will be produced by the Afghan Justice Project, which recently published a preliminary version of a forthcoming report, based on first-hand research and investigations into particular atrocities. Other important documentation initiatives on crimes that occurred during the war and on who is responsible have been carried out by NGOs such as Human Rights Watch, Amnesty International and others.

To date, this past has not been confronted. This report seeks to explore whether the people of Afghanistan want this to be addressed, and if so, how. The study left open the possibility of responses, which would indicate that confronting human rights violations is not a priority. However, the vast majority of people we spoke to have a deeply eroded trust in public authorities due to the absence of justice and protection of their rights, and they desire deeply that their suffering be recognized. This report makes recommendations on how this should be done.

## OUR MANDATE

The Afghan Independent Human Rights Commission, established under Art. 6 of the Bonn Agreement, was mandated specifically to consider the issue of transitional justice at the first National Human Rights Workshop in the country organized by the Office of the High Commissioner on Human Rights on 9<sup>th</sup> March 2002.<sup>1</sup> At this historic event, representatives of civil society, elders and the government repeatedly emphasized the need to develop mechanisms to address Afghanistan's past. Hamid Karzai, then Chairman of the Interim

Administration of Afghanistan, in his opening remarks to the workshop said that:

*[A]nother important matter to consider is the question of human rights violations in the past. I cannot say whether the current interim administration has the full authority to address this issue, but it is my hope that the Loya Jirga government will have the authority to establish a truth seeking mechanism and ensure that the people will have justice... Mass graves were found where hundreds have been buried, houses were burnt and there were so many cruel acts.*

In conclusion to the workshop, the Afghanistan Independent Human Rights Commission AIHRC was given a mandate, through a decree signed by the Chairman to “undertake national consultations and propose a national strategy for transitional justice and for addressing the abuses of the past.” This report forms the outcome of that national consultation.

Chairman Hamid Karzai's statement represents the desire of all Afghans for justice. The recommendations appended to the conclusion of this report are closely tied to the results of the consultation, as the AIHRC believes that no mechanism it could suggest will truly bring justice and start to heal to the pain and suffering of the people unless it is based on the will and desires of the people.

## THE CONSULTATION PROCESS AND ITS BENEFITS

This report is based on a widespread consultation, comprised of (1) the application of a survey, designed to capture quantitative data and test for preferences to 4151 respondents; and (2) the convening of over 200 focus group discussions with over 2000 participants, designed to capture qualitative data and test for perceptions. The consultation took eight months and covered 32 of Afghanistan's 34 provinces as well as refugee populations in Iran and Pakistan. Although the Commission used social science methodology, this is not meant to be a scientific study, but rather a realistic reflection of

<sup>1</sup> Mary Robinson, then UN High Commissioner for Human Rights, attended the one day workshop. The participants of the workshop included human rights activist, Civil Society Groups, community elders, Mullahs, religious leaders, members of Emergency Loya Jirga Commission and academics from Kabul University.

the outcome of this consultation. Further information on the methodology, such as the selection process of interviewees and data analysis can be found in the annex-I on methodology.

The consultation was conducted in a very difficult security situation. On one occasion, our researchers were trapped in the middle of fighting between the governor and head of an army corps in Ghor province in 27 July 2004. While our researchers were on their way to Jaghori district of Ghazni they fell in to an ambush and their car was shot at and hit. Despite these security issues, the population was very interested in and supportive of the process.

In each focus group discussion people were overwhelmingly willing to discuss these issues. There seemed to be a sense of gratitude at the concept of being consulted at all. A man in Salang district of Parwan became quite emotional while responding to the survey questions, saying: "Now I feel that I am a part of this society, nobody ever asked our view on such important decisions." A man in Kandahar said: "So far, no-one has asked us: what do you, victims, want? Do you desire revenge? Do you want housing? Food?" In one of the village focus groups (in Doman), participants said they considered the consultation an extraordinary opportunity for the people of Afghanistan, mentioning that no one since King Amanullah Khan consulted the people on a national level.

The quotes above show that the national consultation itself has already reaped rewards.

We hope that the government and the international community will build on this to

enable the vast majority of Afghans to regain their trust in public institutions. We hope that this report can give a profile to the perspectives and views of the Afghans who took part in this national consultation, and serve as a constructive contribution to the huge challenges for stability, security and justice in Afghanistan. We also hope that it helps to heal the pain of our nation during the last three decades of conflict, and that it will help to bring rule of law and to end the culture of impunity that some perpetrators are still enjoying in our country Afghanistan.

## **ACKNOWLEDGEMENTS**

The AIHRC thanks all those people who took part in this consultation for sharing their views and pain with us, in spite of a very difficult security situation. The Commission would also like to thank all its staff and researchers from its regional and head offices for their commitment, courage, patience and hard work. This survey would not have been possible had they not willingly accepted the risk of carrying it out.

The process of consultation was led and supervised by Nader Nadery, the Commissioner responsible for Transitional Justice at the AIHRC.

The questionnaire and guidelines for focus group discussions were developed by 16 of the AIHRC staff from its field offices, with the assistance of ICTJ (International Center for Transitional Justice).

The data base and computerized data analysis were patiently developed by Nader Kohzad of AIHRC, in conjunction with the operational Information Unit of UNHCR Kabul.

## Chapter 1

# AFGHANISTAN'S LEGACY OF HUMAN RIGHTS ABUSE

### INTRODUCTION

The devastation inflicted on Afghanistan by 23 years of intensive conflict has resulted in the destruction of entire towns and cities, much of the country's infrastructure, and its political and social life. The extent and nature of the violations that occurred in Afghanistan's war are documented elsewhere. Although we have not attempted to compile a record of the violations suffered by persons with whom we came in contact, we do seek to reflect their perceptions of the conflict, its consequences and perpetrators.

Chapter 1

The participants in the focus group discussions of our study were asked a series of open-ended questions on how they viewed human rights, their sense of whether their rights had been violated, and what they consider as justice. Respondents to the survey were asked a number of targeted questions about transitional justice policy which are featured in later chapters of this report, but the Commission thinks that it is important first to reflect what Afghans perceive to be human rights and justice in their own words.

(Throughout this report, respondents to the survey are referred to as "respondents", whereas participants in the focus group discussions are referred to as "participants.")

### PERCEPTIONS OF HUMAN RIGHTS, VICTIMIZATION, ORIGINS OF THE CONFLICT, & PERPETRATORS

#### a. *Perceptions of human rights*

Participants displayed a strong sense of human rights as rights granted by God to allow people to live in society in freedom, under circumstances of equality. Focus group participants identified the following as fundamental rights: the right to live and the right to its necessary components of food, shelter, clothing, and basic health care; Islamic rights; the right to security and justice; and the right to an occupation and employment; freedom of thought and speech; ethnic, religious and gender equality; political rights such as the right to participate in free and fair elections; and the right to education.<sup>2</sup>

Afghans in general consider such rights to be granted and protected by Islam:

***"Human rights means the establishment of a true Islamic adalat." Participant.***

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<sup>2</sup> In the analysis of 50 focus groups, these were the rights that were mentioned most frequently by participants.

***“God-given rights, within the framework of Islamic laws, are inherently based on equality and mutual respect.” Student from Nangarhar University.***

A number of participants focused on dignity and equality as essential to human rights.

***“Human rights means rights for minorities, women and children.” Man from Ghazni.***

***“Human rights means respect for the human dignity of every individual.” Man from Logar.***

A number of people spoke about the violation of the rights of an individual as harmful to the collective, in accordance with the Afghan proverb: *“If one part of the body is hurt, the whole body aches.”* Other participants stressed the importance of social and economic rights.

***“Human rights means truly serving the people: it means literacy and it means strengthening people’s economic situation by providing job opportunities.” Woman from Jalalabad.***

***“Human rights are the right to education, women’s rights, the rights of the public, the rights of the state in the society and the rights of the society on the government.” Man from Paktia.***

Although people had a strong sense of their rights, they also felt betrayed by those in power, who were called upon to protect these rights.<sup>3</sup> Many expressed the desire to be able to protect themselves from arbitrary abuses by those in power, or spoke of a loss of control:

***“In Afghanistan, no one really has knowledge of human rights. No one has control over his life, his property, or his honor”. - Woman from Kandahar.***

***“What is human rights? You are asking about a non-existent concept.” - Man from Herat.***

#### ***b. Scale of atrocities in Afghanistan***

***“Anyone who came to power carried out all sorts of injustices. Killings, lootings, confiscation of people’s properties, sexual violations, bombardment of civilian homes, destruction of agricultural land and orchards, and finally, forced migrations have all taken place.” Man from Helmand.***

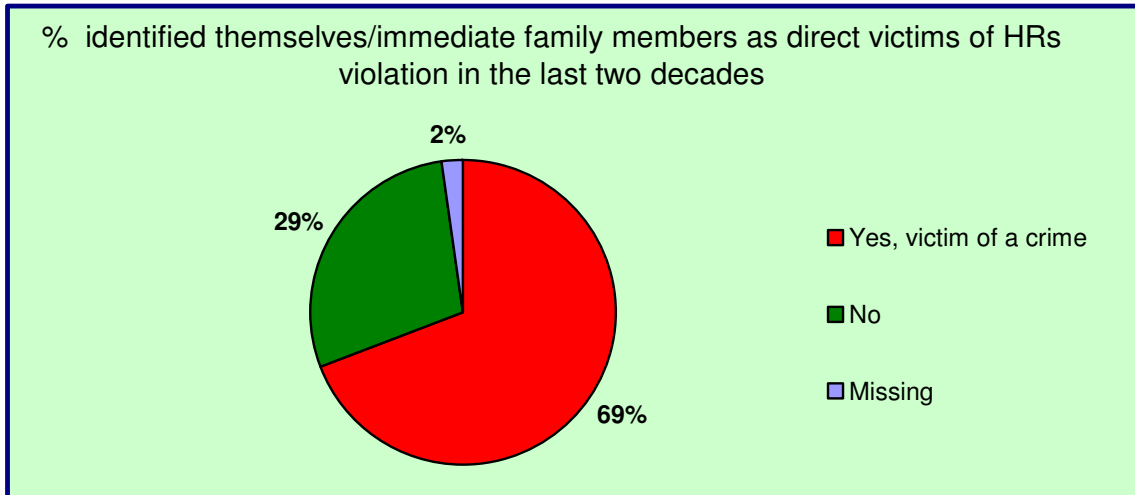
***“People were damaged physically and mentally. Physical damages include loss of family members, property and the right to education. Mental damage was more severe because that destroyed our souls, our psyche. For example, as a result of sexual violations, many have lost their sanity.” Woman from Parwan.***

The atrocities that were committed in Afghanistan are of an enormous scale, and the sense of victimization among the people we spoke to is widespread and profound. Almost everyone had been touched by violence in some way. When we asked 4151 respondents as part of the survey whether they had been personally affected by violations during the conflict, 69% identified themselves or their immediate families as direct victims of a serious human rights violation during the 23-year period.<sup>4</sup> Out of over 2000 focus group participants, over 500 referred to killings among their relatives. Almost 400 had experienced torture or detention either themselves or in their immediate family. These are staggering statistics, in comparison to any other conflict in the world.

3 Although some complained about the absence of protections, others confused the concept of human rights with the entities that are supposed to enforce them. “Human rights is an independent institution that protects people’s political rights and assures them of democracy and freedom.” – Woman from Bamiyan.

4 We are quoting these numbers not to be a reflection of the violations that may have actually occurred, but rather to indicate the degree to which the respondents of the survey and participants of the focus group discussions indicated to us their sense of victimization during the conflict. Some provinces, including Kabul, Kunar, Farah, Laghman and Parwan, as well as Afghan refugees in Iran, had rates considerably higher (by at least 15%) than the national average. Three provinces, Bamiyan, Helmand and Zabul, indicated much lower figures than the national average in terms of respondents who had either experienced a conflict-related crime themselves (15% and 29% for Helmand and Zabul) or in their family (29%, 45% and 54% respectively).





Many focus group participants were victims of or witnesses of extreme cruelty:

*“In the period of the Russians, as a result of one aerial bombardment, 18 people were smashed under the rubble of a house. One of them was a mother who was breastfeeding her baby.” Woman from Istalif.*

*“I witnessed many killings in my region over the past 25 years. People’s houses were destroyed, their land was confiscated, young men were killed, people’s wives were forced to marry men of power, their children were sexually violated, their belongings were looted, they were tortured and imprisoned, mass murders took place, people were buried alive, and many just disappeared.” Man from Ghor.*

*“During the nights when my daughters were asleep, I would stay awake guarding them to make sure no one would come to harm them.” Woman from Kabul.*

*“Forty of us were kept in a container. They were hammering nails on us. Each person’s share was one hand full of 2-inches-long nails. 37 of us died of severe wounds.” Man from Bagram.*

*“In Badakhshan a commander took someone’s wife by force.” Woman from Badakhshan.*

*“Two members of my family were hanged during the times of Amin and Karmal [Afghan presidents during the communist rule]. We never received their bodies.” Man from Kabul.*

*“My father was weak. My sister was nine years old when, during the Taliban rule, some people attacked our house and took my sister by force. It has been four years since that incident and my parents have not seen their daughter since.” Woman from Bamiyan.*

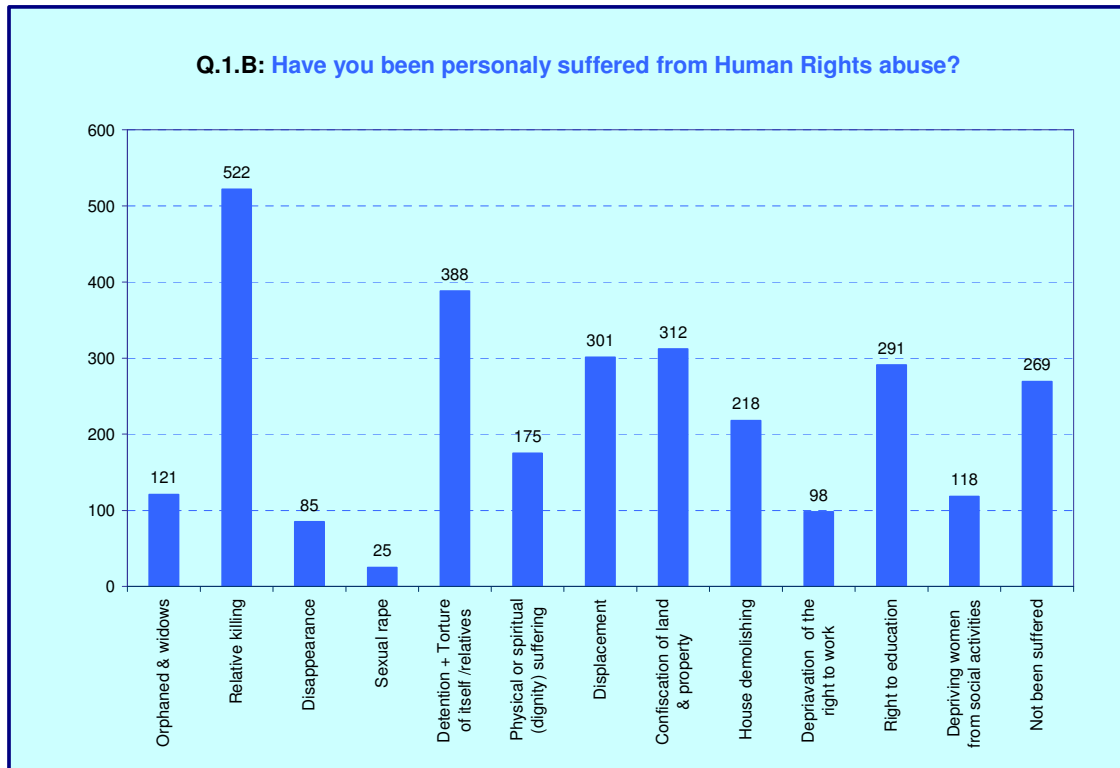
*“The Taliban buried women alive, stoned them to death and hanged them.” Woman from Jawzjan.*

Other participants referred to violations of their social and economic rights that have resulted from the near-total destruction of the country, and particularly the lost opportunities resulting from a quarter of a century of war.

*“During the wars we were forced to migrate. We could not continue our education in exile. Now, instead of studying at university, we are taking literacy courses.” Woman from Laghman.*

*“Our biggest tragedy is that our children learnt the logic of war.” Man from Badakhshan.*

The human rights abuses referred to by participants of the focus groups are reflected in the following chart. The numbers on the left indicate the number of times that a particular violation was mentioned by a focus group participant.



There was no sense among participants that the period since the Bonn Agreement had brought a reprieve in the violations, and numerous participants indicated that they had been subject to recent violations:

*“A commander took my land by force and has now built a house on it.” Man from Bagram.*

*“Our right to freedom of speech was taken from us first during the Communists, but today also, we cannot talk.” Woman from Herat.<sup>5</sup>*

The 23 years of Afghanistan’s conflict are commonly divided into three periods: the period of the Soviet invasion and Communist rule (1978 – 1992); the period of the rule of the Mujahideen (1992 – 1996); and the era of the Taliban (1996- 2001). (A fourth period from the fall of the Taliban until now may be termed as the post-Bonn Agreement period; although the survey did not ask about this, many participants in the focus group referred to new violations that have occurred during this time).<sup>6</sup>

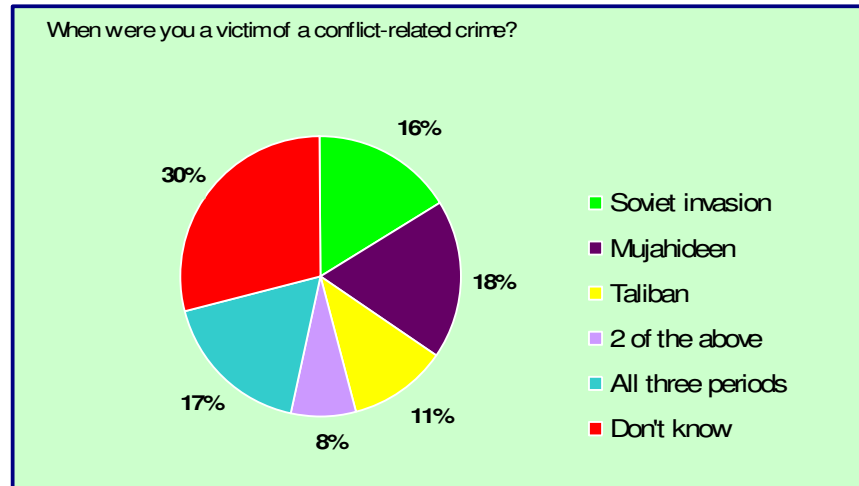
Respondents to the survey were also asked about when they had experienced a violation during the wars. In response, no period stood out as the worst. There was some variation, in that more men than women recalled crimes in the Soviet-Communist period, whereas more women recalled crimes during the Mujahideen period.<sup>7</sup> Male and female respondents reported the same percentage of violations during the Taliban period (lower than the other two periods). It is significant that almost

<sup>5</sup> The focus group in Herat took place before Ishmael Khan was removed as governor in September 2004.

<sup>6</sup> In the survey, respondents were not specifically asked about this period, although complaints of violations during this period came up in the focus group discussions.

<sup>7</sup> Seventeen percent of male respondents reported violations during the Soviet/ Communist period in comparison to only 9% of females. However, a greater number of female than male respondents reported experiencing conflict-related violence during the Mujahideen period, with 21% of females indicating they had experienced violations, compared to 16% of male respondents. A male focus group participant from Kunduz said that: “It is because of these Mujahideen that many of our sisters drowned themselves in rivers and threw themselves from rooftops. Their honour was played with. Now the same Mujahideen are in top government positions and have nominated themselves for the elections too.” In a rare admission a female focus group participant from Kabul admitted that “The Junbish militia forces captured three of us girls, then seven of them raped us.”

30% of those who had experienced conflict-related violence were not able to identify the period in which the violation occurred. This leads AIHRC to conclude that conflict in Afghanistan has been experienced by many of the victims as a long and seamless period of uninterrupted violations, irrespective of who was actually in power at the time.



There was a sense that each regime change brought renewed violations. An example can be given from a focus group discussion in Parwan, where four participants in turn spoke about what happened to their fathers. One participant told the story of his father's illegal incarceration during the Communist period. A local commander beat the father of another participant during the Mujahideen government. The third participant's father was beaten to death by the Taliban. The father of a fourth participant was arrested by the Coalition Forces and taken to Bagram Airbase, with no visiting rights for the family. Although the perpetrators had changed, all of these participants had suffered similar human rights abuses.

**c. Causes of the conflict and perceived perpetrators**

It is generally perceived that violations were committed by those in power, and that power has been arbitrarily used and grossly abused against ordinary citizens. "Governments are primarily responsible because they prepared the conditions for human rights violations," said one participant. One woman from Wardak observes that "we are contemptuous of all those who were in power." Some focus group participants mentioned that state authorities used locals to carry out their abuses, and that these too bear responsibility.<sup>8</sup>

Almost two thirds (63%) of the respondents felt that the conflict in Afghanistan was not primarily ethnic in nature, but that ethnicity was manipulated and used by commanders (and external powers, including Iran and Pakistan).<sup>9</sup> Other factors identified by focus groups as having contributed to the

8 For instance, during the Communist period, the much-feared security agency Khad deployed a wide network of spies down to the village level.

9 Twenty-one percent identified the war as a conflict in which ethnicity itself played a role. A higher number of female respondents (30%) felt that ethnicity had a role to play in the conflict than male respondents (20%). There were some different responses with regard to province as well. In eight provinces (Kabul, Kunar, Badghis, Farah, Zabul, Nimroz, Parwan and Ghazni) as well as with Afghans residing in Iran, there were a significantly higher percentage of respondents (at least 25% higher than the national average of 63%) who felt that the role of ethnicity in the war was one that was manipulated by commanders. In Balkh, Jawzjan and Wardak provinces, a considerably higher percentage of respondents (at least double the national average) indicated that the conflict was partly due to ethnicity. In Helmand and Kandahar provinces, respondents by approximately four times higher than the national average determined that ethnicity had no role to play in the conflict. However, a man from Daykundi province related that "In the time of the Taliban a number of us Hazaras who were traveling to Trinkot [Uruzgan province] were captured and imprisoned. During the day we were used as forced laborers and at night they would return us to our prison cell. They would beat and torture us. They would make us stand facing each other and would order us to slap each other on the face. If we did it gently, the Taliban would begin slapping us. They also made fun of us by placing leaves from trees in

conflict were manipulation of the concept of Holy War or Jihad, and the lack of basic education and illiteracy among many Afghans, which was exploited by domestic as well as foreign powers.

Perpetrators identified from the Soviet/ Communist era include those involved in the Khalq and Parcham parties, members of the security agency Khad, and members of the Soviet army. Many also spoke in detail of particular cruelties inflicted by the Taliban. Many of the faction leaders from the Mujahideen era were also identified as responsible for human rights abuses.<sup>10</sup> Participants also stressed that these same leaders (1) are widely and publicly known to be human rights violators and (2) continue in power today.

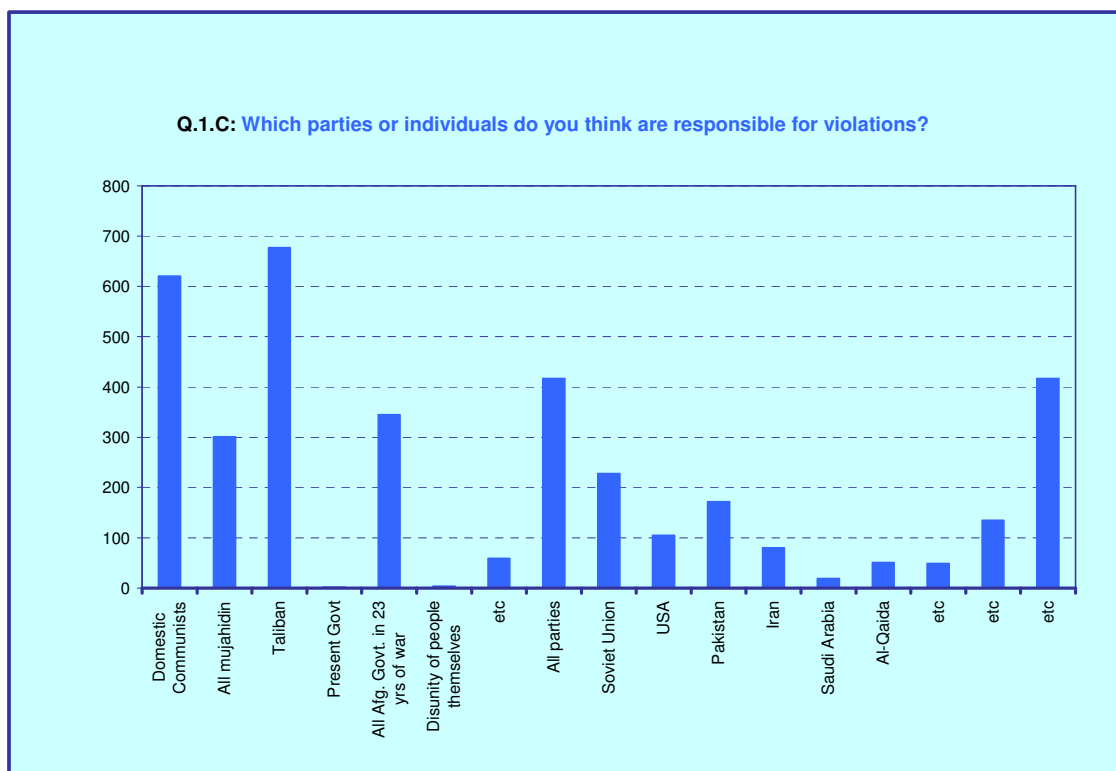
*“Violations against humanity continue to occur in Afghanistan. Right now we are witness to private prisons. Criminals are still in positions of power.” Man from Jalalabad.*

*“Today, the same war criminals are ruling the people and have the affairs of the state in their hands.” Man from Zarbul.*

*“There are many criminals who are still living here or elsewhere. The state has not yet held them accountable. Even now, Karzai’s government protects them.” Woman from Herat.*

*“In Shibirghan, as we speak, people are illegally imprisoned. There is no difference between now and the past.” Man from Logar.*

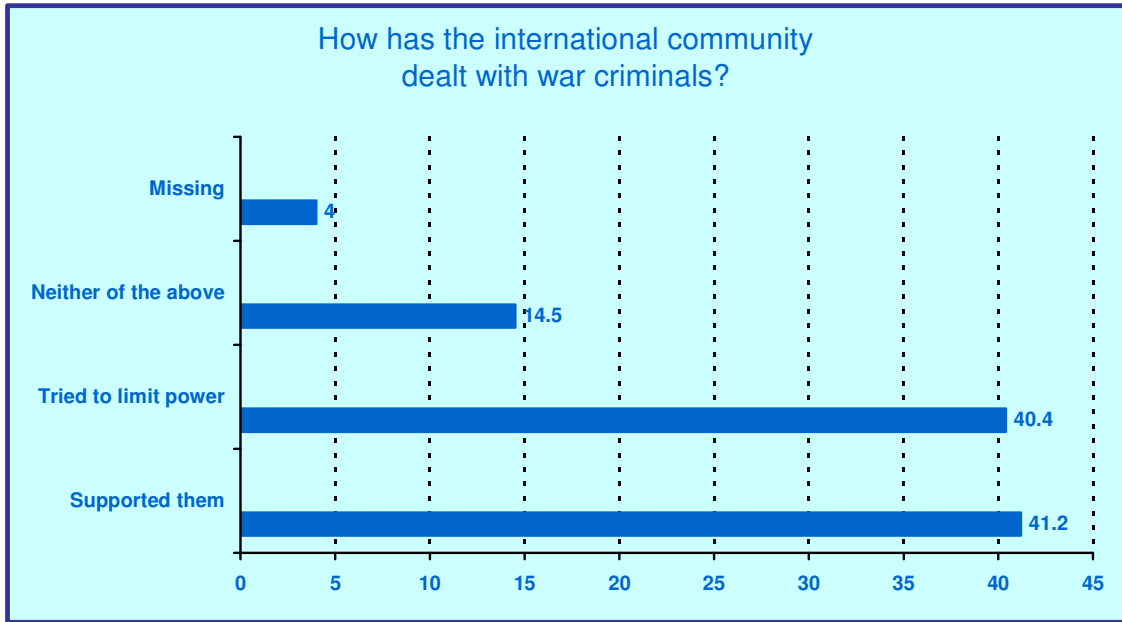
An overview of the focus group views of those considered responsible is reflected in the following chart:



our mouths and taking us by both ears and moving our heads left and right. They were then laughing at us. Without any charges, without due process, just for the crime of being Hazaras we were put in that predicament.” A Pashtun man from Paktia also named ethnic discrimination against minorities as one of the violations of human rights that occurred during the years of conflict. “Some were killed just because they were Hazara, Tajik or Uzbek.”

10 One man from Daykundi participating in a focus group explained that: “When the Communist government collapsed, the state collapsed all together. When Burhanuddin Rabbani came to power, he only empowered his own ethnic group, i.e. the Tajiks, without giving any consideration to other ethnicities. So, commanders opposed him and civil war started. It was during that internal conflict that commanders and warlordism came to being. The commanders too, thought that governing is only theirs. This is how injustice and abuses began.”

Some focus group participants faulted the government for not taking conclusive action against these perpetrators. Many participants were also critical of the role of the international community and the lack of clarity in the policy of the international community in this regard. Some participants were of the opinion that if the international community had seriously addressed injustice, security would be assured today. Opinion was evenly split on whether the international community had supported known war criminals politically, militarily and financially, or whether it had tried to limit their power.



Chapter 1

There was also a strong sense of the culpability of external powers, both amongst the respondents to the focus groups and survey. In the survey, mention of Pakistan was the most frequent, followed by the USSR, the United States, and Iran, but a majority of the respondents (53.7 %) said that all of these are responsible.<sup>11</sup> The focus group participants also included Al-Qaida and foreign mercenaries among the perpetrators. The majority of respondents to the survey (60%) viewed the war as both a civil war and a war imposed by other countries.

“The causes of all our miseries were foreign powers. Had they not given arms to unsavory characters such abuses would not have taken place. Countries like the Soviet Union, the United States, Pakistan and Iran are responsible.” Man from Daykundi.

“First the Russians paved the road for human rights violations and then the Americans followed. Afghanistan thus became the target for Communism and Imperialism. It is still being hounded.” Woman from Parwan.

## PERCEPTIONS OF JUSTICE, & WHETHER & HOW TO ADDRESS THE PAST

### a. What constitutes justice?

Participants of the focus group discussions were asked to define their understandings of justice and their expectations for achieving it. Participants provided a range of explanations, which suggest that

11 A slightly higher percentage of female respondents felt that Afghanistan's war was an internal civil conflict than male respondents (9% to 4%). The reverse is true for Afghanistan's war being an imported one: a slightly higher percentage of male respondents felt that Afghanistan's conflict was one imported by other countries than female respondents (31% to 25%). In Kunduz, Helmand, Laghman, Saripul and with Afghans residing in Pakistan, the majority of respondents felt that the conflict was mostly a war imported by other countries. In Badghis, Nimroz, Zabul and Parwan, as well as with Afghan refugees residing in Iran, a significantly higher percentage of respondents than the 60% national average felt that the conflict was both a civil war and an imported one. It is interesting to note these provincial variations as it gives some indication of the different regional experiences of the war.

for many Afghans, justice is a rich notion that goes beyond holding perpetrators accountable in a court. Although some of these concepts will be explored in more detail in chapters 2-4, this chapter reflects some of the general impressions.

Afghans believe justice to be a general medium through which to improve specific aspects of their life. Justice for many also meant the upholding of basic human rights, including the freedom of expression, the freedom to participate in elections and the elimination of discrimination on the basis race, language and gender. Many also associated justice with the promotion of economic equality.

The concept of justice for some extended to the promotion of prosperity, the development of unity, friendship and a common spirit of purpose amongst all Afghans. In the words of one participant, who recited an old Afghan saying:

***“Whatever you want for yourself, want it for others.”***

Further mechanisms for redressing injustice that were mentioned include: promotion of prosperity and equality; economic support and reconstruction, promotion of education and elimination of illiteracy. Some focus group participants said *“if there were work, we would work until midnight.”*

However, there was also a strong association between the notions of justice and transitional justice. This is an overview of some of the views expressed.

*Rule of law.* Many Afghans strongly associated justice with the rule of law. The establishment of a healthy and professional administration of justice was seen as a priority. Equal application of the laws to all was viewed as an essential element of justice in the new Afghanistan. Weakness of the government is seen as encouraging the people to break the law.

***A man from Daykundi explained:***

***“Genuine implementation of the law and having law-abiding citizens will guarantee justice.”***

*Fair administration of justice.* Participants wished to have confidence in the system of justice. They argued that such confidence would be generated if the administration of justice were able to prevent injustice. A focus group participant expressed his frustration at the lack of will to confront criminals and the warlords:

***“No one has had the courage to take action to bring them to justice. No one can defend us against them.”***

*Vetting.* Some suggested that justice would be promoted by the removal of warlords and human rights offenders from public office.

*Islamic justice.* The resort to traditional or religious methods of dealing with human rights violations was proposed. For some this simply meant leaving the violations to “Allah and the Day of Judgment”. The injustices would be punished by God.

*Criminal justice.* For many participants a central pillar of justice was accountability for perpetrators who had killed and abused innocent people, caused disabilities and destroyed property during the years of conflict. Participants in one focus group said: *“accountability is important because it will create a positive morale for victims of such violations and in the future people will be able to freely defend their rights.”*

*Investigation of corruption.* Participants also advocated for the investigation of those people that built palaces with public funds, purchased luxury vehicles and traveled abroad at the expense of the people.

*Establishment of independent means of investigation.* Some participants suggested an investigating commission to uncover the truth and that its findings be ratified before an assembly of the people.

**One participant stated:**

***“Recording war crimes is good so the future generations of Afghanistan can distinguish between the war criminals and those who were loyal to Islam and their country.”***

In terms of other institutions capable of investigating human rights abuses of the past, the Afghanistan Independent Human Rights Commission (AIHRC) and the United Nations (UN) were seen as organizations that could conduct a fair and accurate investigation into the injustices suffered by the Afghan people.

*Measures to address external actors.* Many believed that not only individuals need to be held to account but also countries that interfered with Afghanistan's internal politics. Participants took the view that such countries must be held responsible for their actions.

*A preventive national program.* Some participants recommended that the best approach to remedying injustices of the past would be to institute a national program to prevent injustice from occurring again. This would include activities to promote social justice and the combating of corruption and nepotism. It would involve the elimination of all forms of discrimination on the basis of race, tribe, nationality and religion.

*Clear leadership.* There was a distinct desire that government and the public service not be filled with persons responsible for human rights atrocities. In particular it was felt that Afghanistan needed “virtuous leaders”. As explained by a woman from Kandahar:

Chapter 1

***“We need the kind of leadership that can gain people's respect. We do have good people in Afghanistan, but unfortunately, these gunlords do not let good people work; they disrupt security and stir racial and tribal prejudices.”***

*Assistance to victims.* A commonly expressed view was that much needs to be done to assist the victims of injustice in Afghanistan. Participants wanted people who had suffered particular harm, including widows and refugees, to be provided with material assistance. Another mechanism put forward was that the victims' families should be given an opportunity to petition the courts for compensation from the perpetrators.

*Forgetting the past.* A few participants suggested that it would be impossible to address all the injustices that occurred in the past. They suggested that if Afghans wanted a tranquil and secure life, it would be best to simply forget the past and focus on preventing the future occurrence of crimes. Some participants recommended an amnesty for the sake of peace and reconciliation, otherwise “one out of four” would have to be prosecuted and this would “destroy the country”.

## B Ranking justice against other priorities

*“Our immediate concerns are security, disarmament, and electricity, missing family members, justice, and rule of law, food and jobs.” Man from Herat.*

*“In the first place security is our immediate concern, then, electricity, food and drinking water. Landmines too, are a great concern.” Man from Ghazni.*

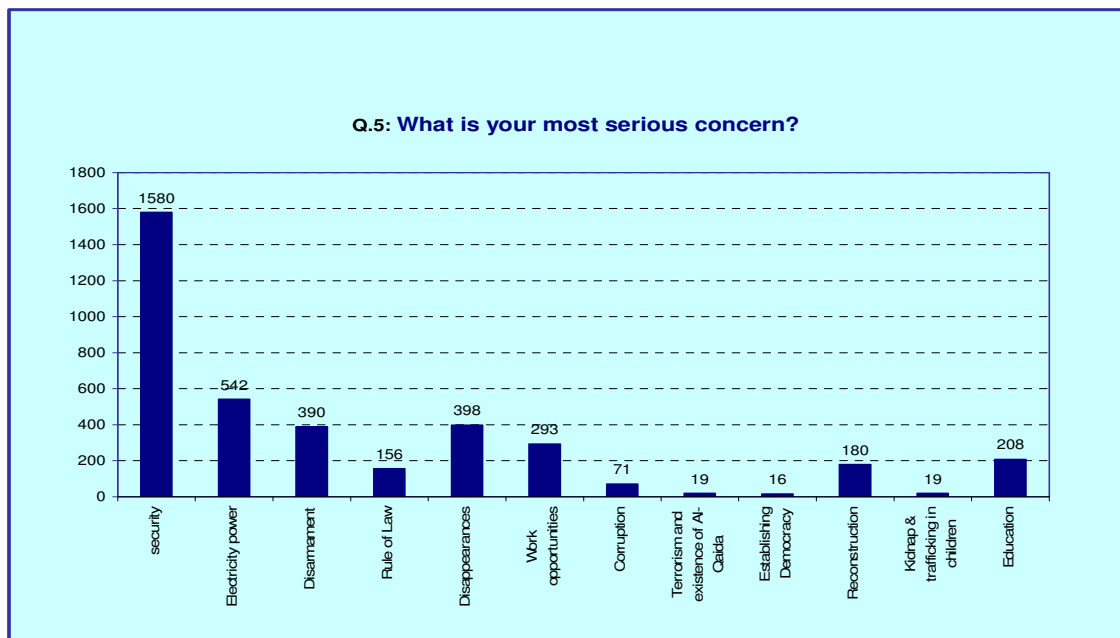
*“Our immediate concerns are security, justice, water, food, electricity and shelter, in the order of importance.” Man from Balkh.*

*“Our primary concern is lack of educational centers, lack of strong administration at district level, especially in border areas, and then, we are also concerned about lack of job opportunities, electricity, roads, water distribution system and health clinics.” Man from Paktia.*

The participants in the focus groups were also asked to set out the immediate concerns facing them. Most participants stated that the lack of security was the most urgent concern. Half of all issues listed were security related, including for instance the proliferation of firearms, the large number of landmines and the unrestrained criminal conduct of warlords. These concerns even superseded the need to trace missing family members. While some participants saw justice as part and parcel of effective security others explained that justice is a secondary concern, because without proper security, justice can never be established. A man from Badakhshan believed that the first step should be a serious implementation of a disarmament program.

*“Until a general disarmament has taken place, the environment will not be conducive for the judicial process.”*

Other immediate concerns included the failure by the government to supply sufficient electrical power, shortage of housing, lack of food and drinkable water, unemployment, and poor educational and health facilities. Concern was expressed at the lack of respect and dignity accorded by American soldiers to the Afghan people. Participants complained that they were often the victims of arbitrary arrest. Lack of reconciliation between the factions was also listed as an immediate concern for some participants.

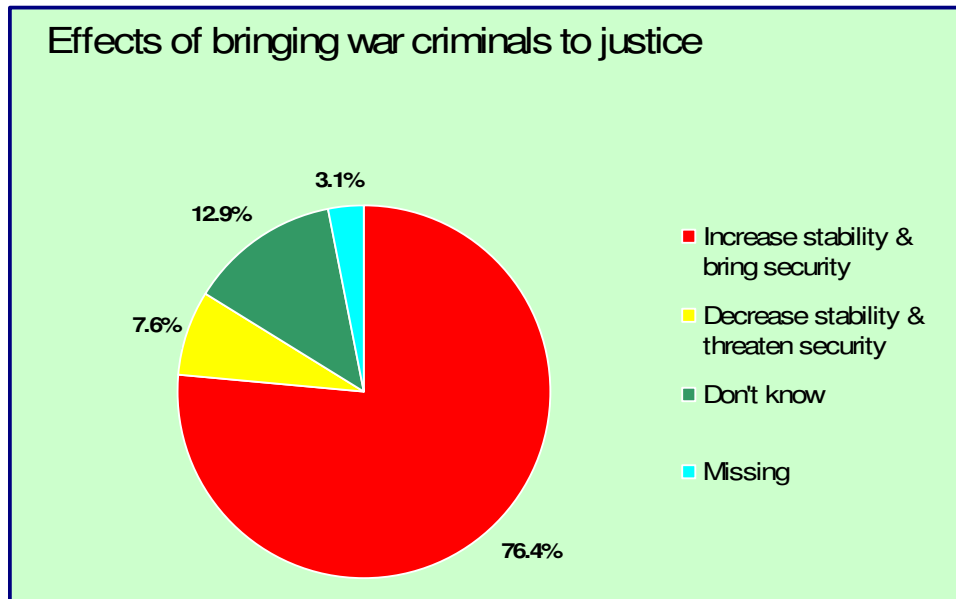




*“Justice is very important, but security and justice are inter-related.” Woman from Laghman.*

Although most people were primarily concerned with justice, many participants saw a link between security and justice. A full three quarters of all respondents (76%) indicated they thought that bringing war criminals to justice in the near future would increase the security in Afghanistan, while only 8% felt it would decrease security (13% said they did not know).<sup>12</sup> These statistics may be seen as rather surprising. However, perception is that war criminals are a source of instability, and that measures that seek to deal with them will enhance security.

## CONCLUSION



Chapter 1

Afghanistan's war lasted almost a quarter of a century. Many Afghans whom we consulted perceive the different conflict periods as a single lengthy and unabated conflict, where power changed hands but where the people were subjected to ongoing brutal and systematic human rights violations. Even now, in the period after the Bonn Agreement and with the war officially at an end, these violations have not ceased. The post-war period has not brought the security and tranquility for which people yearn. Many persons who committed gross human rights violations remain in power today. This has provoked a profound disappointment in Afghans together with an almost total breakdown of trust in authority and public institutions.

In respect of what constitutes justice, those canvassed in these consultations demonstrated a rich understanding of justice, comprised of many elements. Likewise, they proposed varied mechanisms to bring about justice. Justice was listed amongst many other priorities in the post-conflict context. Some of these concerns were regarded as particularly urgent, such as security and the provision of other basic needs for example electricity, health care, education and jobs. At the same time, many respondents considered achieving justice as important, and felt that action on justice must be taken soon to end the sense of despair and to consolidate the peace.

<sup>12</sup> Eighty percent of male respondents agreed with this, while 69% of female respondents felt this to be true.

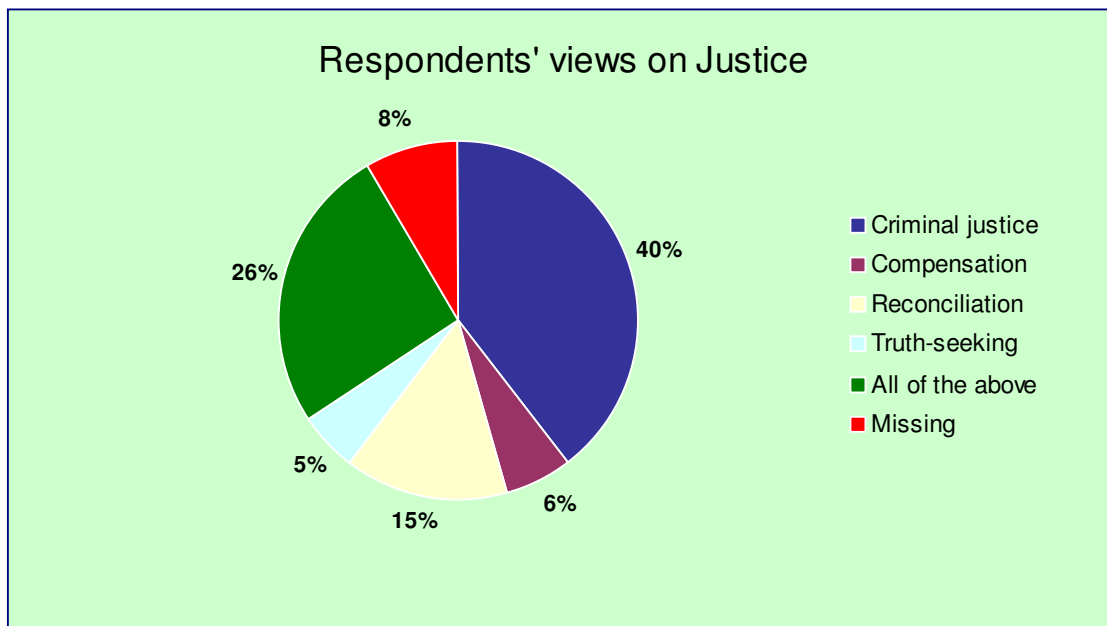
## Chapter 2

# TRANSITIONAL JUSTICE -THE ROLE OF CRIMINAL JUSTICE

The following three chapters seek to reflect the views expressed by survey respondents and focus group participants on what they expect from the implementation of a transitional justice strategy. As indicated above, when asked about transitional justice, generally participants conceived justice as comprised of different components. These are reflected in the following chapters as (1) criminal justice; (2) non-judicial mechanisms, including various ways of documenting the truth, removing known abusers from positions of power, providing reparations to victims; and (3) instituting various forward looking measures of prevention, reconciliation, reforms, and confidence and unity-building measures.

### **a. *The centrality of criminal justice to perceptions of justice***

Although participants in general took a holistic view of justice, the survey results indicate that almost 40% of all respondents understand justice primarily as criminal justice before the courts. Some of this preference may stem from a lack of familiarity with other mechanisms, but it is clear that for many, a transitional justice strategy without a criminal justice component is likely to be viewed as unsatisfactory.



The same is apparent from the focus group discussions. Many participants considered criminal trials for violations as a necessity, and gave the following reasons:

Criminal justice is a means of restoring trust in public institutions

***“The Afghan state must take immediate and serious measures to put war criminals through judicial process, otherwise, the people will stop having confidence in the state.” Man from Herat.***

***“A fundamental and positive change will come to the country when criminals are put on trial.” Man from Bamiyan.***

Criminal justice prevents future violations

***“Being compassionate towards wolves with sharp teeth is tantamount to being unjust to defenseless sheep.” Man from Kabul, quoting Afghan proverb.***

***“It is very important that violators of human rights are made accountable. They should also be introduced to people through the media so it will be a lesson for all.” Woman from Laghman.***

Criminal justice restores the dignity of victims

***“Material compensation will not satisfy the victims. You can only heal the wounds of war by putting the criminals through judicial process.” Man from Kunduz.***

***“Taking criminals to trial is a type of psychological help for the victims.” Man from Takhar.***

Criminal justice is a means to avoid revenge killings. A large percentage of respondents (87%) expressed the view that if there was no accountability, there may be revenge killings.<sup>13</sup>

***“Place the violators of human rights in our hands and we will fill their skins with hay.” Woman from Nangarhar.***

Criminal justice brings reconciliation. Eighty-five percent of all respondents felt that a judicial process would help reconciliation while only 11% thought that it would not.<sup>14</sup>

Some also expressed the opposing view that criminal justice should not be pursued, for the sake of reconciliation.

***“Animosities must be washed off. If we take one another to court, another vicious cycle will begin. So, we must forget all that happened, whether it was warlordism or commanders or whatever abuses,” said a man from Parwan.***

***Afghan proverb: “The pleasure that is in forgiving is not in taking revenge.”***

***However, this was countered by other focus group participants:***

***“We, the victims, will never forgive or reconcile with criminals. We desire to see their trial and punishment.” Man from Ghor.***

Moreover, some of the participants considered that pursuing criminal justice may be futile in the current context, or that the problem of impunity may be too large in magnitude to confront it adequately.

13 Although this question was asked in the context of criminal justice, it may well be that another transitional justice mechanism would also contribute to diminishing the quest for revenge.

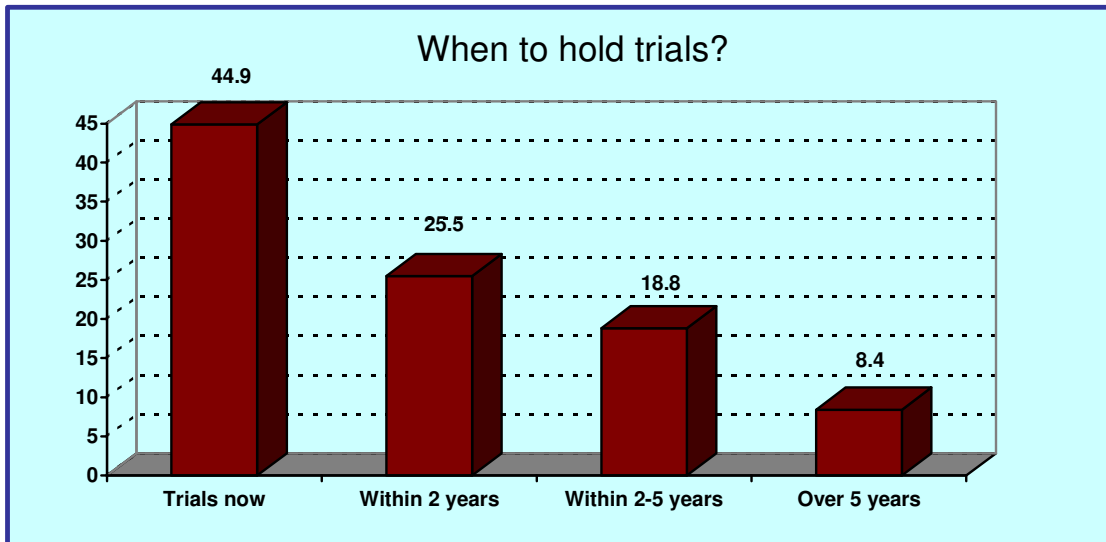
14 In the provinces of Helmand, Uruzgan and Paktika, significant minorities did not feel that a judicial process would help reconciliation.

*“It is impossible to compensate for the past injustices because the magnitude indicator on the chart for human rights abuses in Afghanistan passed all limits. Therefore, to ensure an unruffled future we should forget the past and concentrate on preventing future occurrence of abuses.” Man from Bamiyan.*

*“Of course we wish to see criminals on trial, but if it is all talk and no action, then nothing matters.” Man from Herat.*

At least part of the strong desire for criminal justice seems to stem from a desire to see the punishment of warlords who are affecting people’s lives today. In a focus group in Dehsabz, one participant spoke of individuals who committed crimes in the past and who now continue their bad deeds in a new appearance, and said that “those chameleons” should be punished.

Most respondents did not want to wait long for criminal justice. In fact, 44.9% of respondents indicated that they would like to see trials now, as opposed to within 2 years (25.5 %), 2-5 years (18.8%), or over five years (8.4%).<sup>15</sup> In seven of the 32 provinces surveyed (Badakhshan, Takhar, Kunduz, Faryab, Helmand, Saripul and Paktika), respondents preferred to wait more than five years before war criminals would be brought to justice in numbers considerably higher.



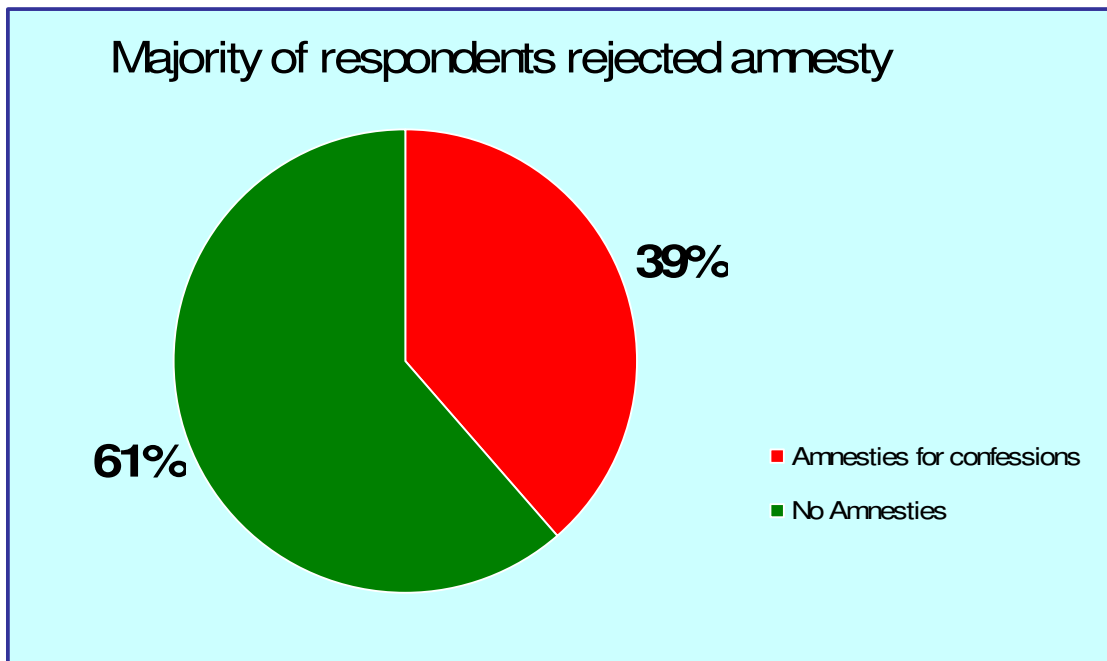
*“It is a fact that by putting the criminals on trial peace and stability will be established,” Woman from Kandahar.*

**b. Regional variation on support for criminal justice**

Criminal justice was the area of our study which indicated the most interesting regional variation. For instance, three of the four provinces of the southern region (Kandahar, Zabul and Uruzgan) as well as the provinces of Paktika and Ghazni and Afghan refugees residing in Iran, showed a higher preference for punishment as the preferred means of justice than the national average. Equally, three of the four provinces of the northeast region (Badakhshan, Takhar and Baghlan), three of the four provinces of the western region (Badghis, Farah and Nimroz), as well as the province of Laghman indicated a lower interest in punishment as the preferred means of justice than the national average.

<sup>15</sup> There was also a strong gender variation with 81% of all female respondents supporting trials to be held in the near future (within two years at the latest).

A similar interesting regional variation displayed itself in terms of amnesty. Respondents were not asked whether they would accept unconditional amnesties or pardons of war criminals, which were a prior feature of Afghan history.<sup>16</sup> However, they were asked if they would support amnesties or pardons for anyone who confessed their crimes before an institution created for transitional justice. Although the majority of respondents rejected such a notion (60.5 %) a significant number (38.1%) said they would accept it. This may be due to Islamic notions of forgiveness which are strong in Afghan culture, or the fact that Afghans generally differentiate between their own right to seek justice and God's justice, which cannot be avoided.



Significantly, two thirds of the northeastern region of the country supports an amnesty. No other region in the country indicated such a high degree of support for amnesty, although it was also generally supported in the northern provinces.<sup>17</sup>

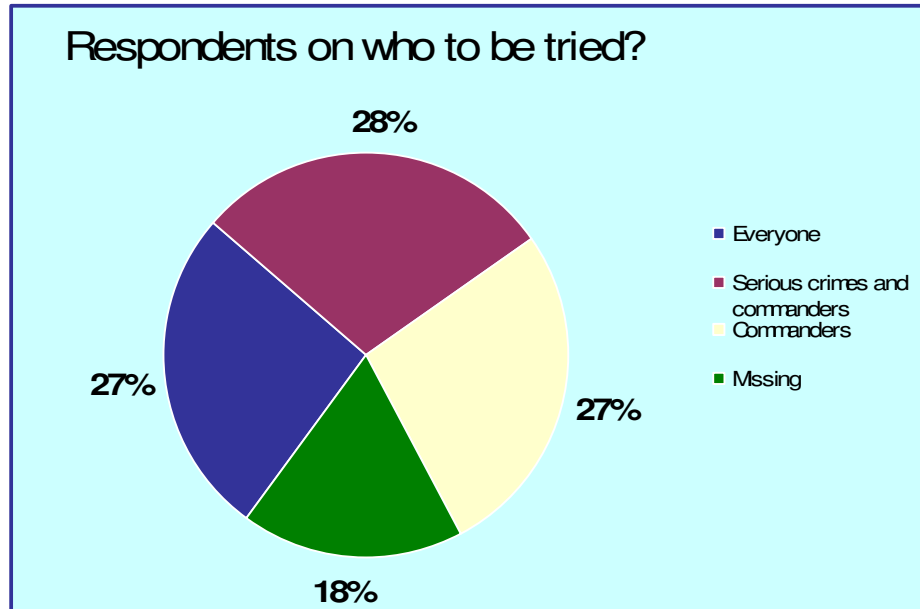
Some linked pardons to a willingness to reform:

*“Reformed criminals should be pardoned.” Man from Kipasa.*

**c. Who should be prosecuted**

On the other hand, respondents to the survey were not of the view that all those responsible for human rights violations should be tried. In fact, a majority of respondent were of the view that trials could be restricted either to those who had committed serious violations and their commanders, or commanders only.

<sup>16</sup> For instance, the Mujahideen benefited from a blanket amnesty after the fall of Najibullah's government, in 1992.  
<sup>17</sup> The highest support for amnesties came from Badakhshan, Takhar and Kunduz, but they were also supported in Baghlan, Samangan, Jawzjan, Saripul and Faryab. A higher than average support was also expressed in Wardak, Nimroz and Laghman, and among Afghan refugees residing in Pakistan.



Some participants in the focus groups expanded on what they would consider as an acceptable prosecutorial strategy:

*“Past injustices can be compensated in two different ways: First, material damages should be compensated by returning belongings that were looted and property that was confiscated or destroyed. Second, those who have committed violations against people’s honor and life should be put on trial, in accordance with Human Rights standards.” Man from Bamiyan.*

*“War crimes have different categories. Heavy crimes must be punished, while petty crimes should be compensated by expression of sympathy and caring for the victims.” Man from Nangarhar.*

Other participants pointed to the importance of recognizing the various forms of participation in a crime:

*“All those involved in the crime are guilty of it, whether they have actually executed the crime, have given advise, or have issued the orders, they all come in the same category, and must all be put on trial.” Man from Zabul.*

There was also some appetite for investigating issues of corruption and other property crimes.

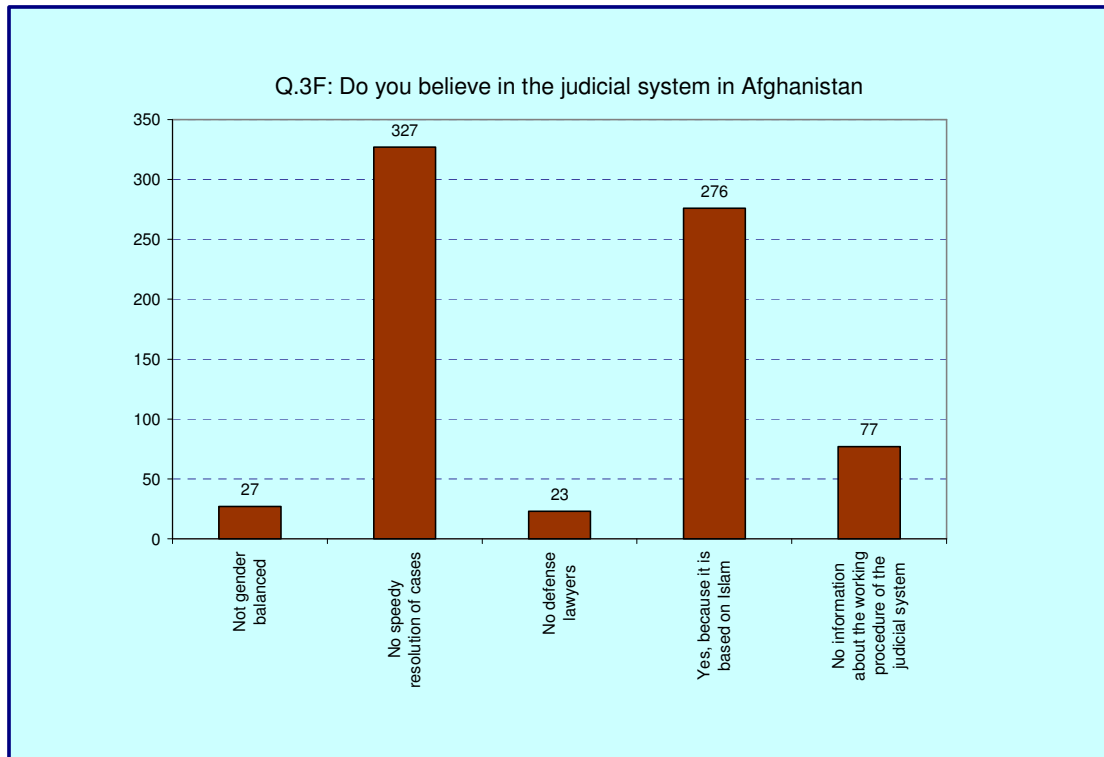
It may be deduced from the above that, since Afghans accept that not everyone should be prosecuted, they may well be favorably disposed to amnesties for non-serious crimes or for those other than commanders, particularly if they confess.

#### **d. Level of confidence in the domestic legal system**

The question of whether Afghans trust their legal system presented some complex responses. The majority of survey respondents (57.8%) indicated that they did not, but at the same time a fairly high percentage (38.6%) indicated that they do (with 3.5% of answers missing).<sup>18</sup> The essence of this split seems to be that respondents acknowledge that there are significant difficulties with the current legal

<sup>18</sup> There are also some interesting regional differences. In six of the provinces, including four of the five provinces of the northern region, (Samangan, Balkh, Jawzjan and Faryab), plus Ghor and Bamiyan, a majority of the respondents indicated they had the confidence in Afghanistan’s legal system to bring about accountability, several by large majorities. For example, in both Samangan and Balkh the figures indicating confidence in their legal system were more than double than the respondents who had no confidence in their legal system. The respondents from Kandahar were exactly evenly split between a positive and a negative response to the question.

system, such as those indicated in the chart below, but at the same time there are also acknowledged difficulties in resorting to another legal system.

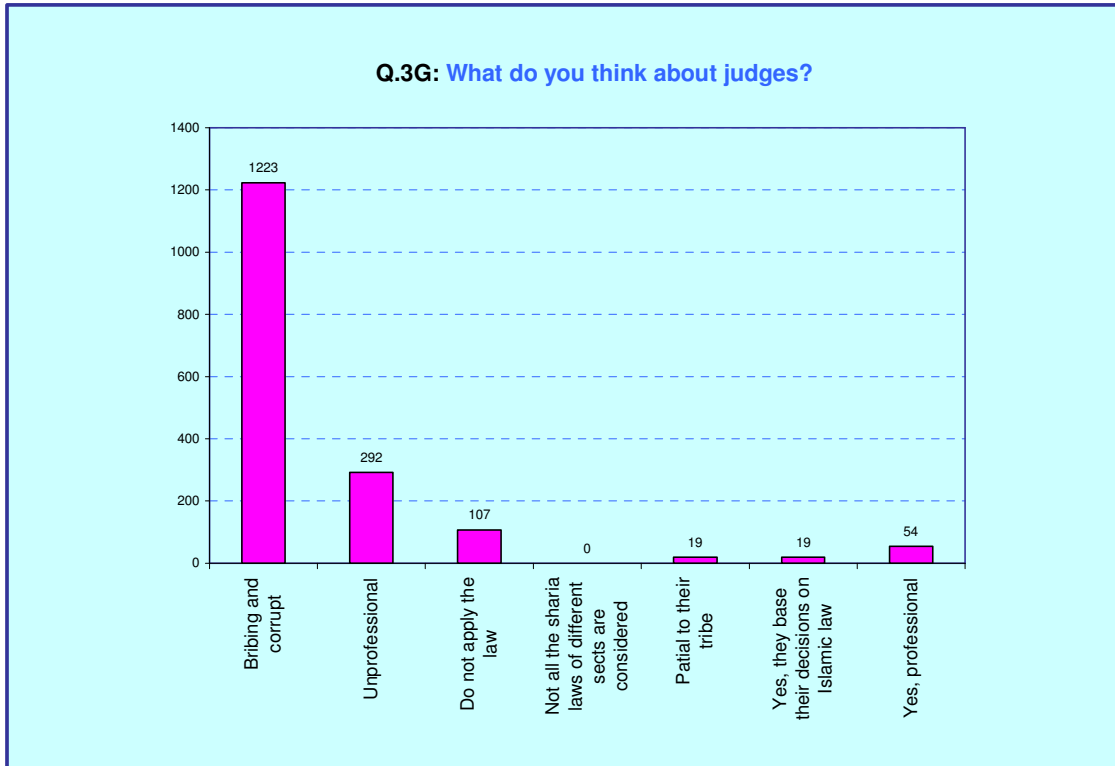


***“We have confidence in the Afghan judicial system because it is a multi-phased system, but it is not implemented correctly.” Man from Ghor.***

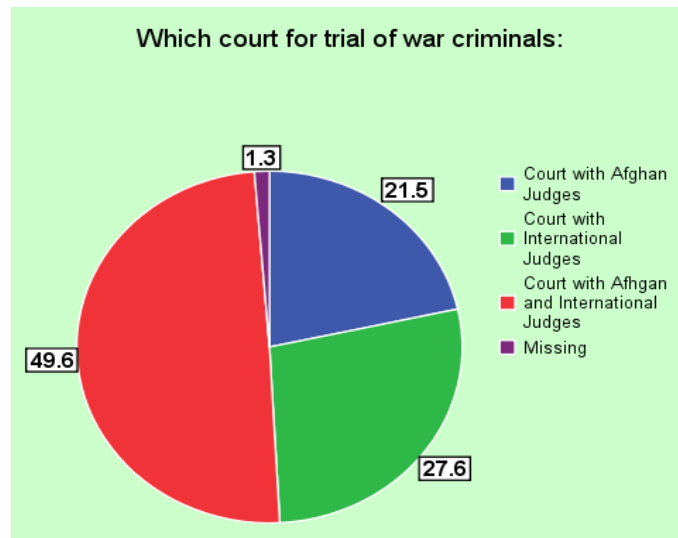
The focus group discussions shed further light on some of the issues that cause a lack of confidence in the domestic system.

There seems to be a particular crisis of confidence in the judiciary, with participants claiming that it is corrupt, highly politicized and “run under the influence of powerful people”. Some of the lack of trust seems to stem from a lack of exposure to the formal legal system, which is due to the limitations on the reach of the legal system in the provinces. As commented by focus group participants in Nuristan: *“We have not yet seen a judge in the two districts of this province. We have only heard that there is a Supreme Court in Kabul.”*<sup>19</sup> Most practicing lawyers were seen as “businessmen who did not care about rights”.<sup>20</sup>

19 Confidence in the domestic legal system in Nuristan was nevertheless high.  
 20 Some of the specific problems identified included corruption, interference with the judicial process, lack of reach of the formal justice system, and lack of education among the judges: “The criminal gets charged and arrested, and then the case disappears either because of bribery or because the criminal has connections.” Man from Ghazni. “Currently, a system of ‘pay money, receive the merchandise’ is in place.” Man from Baghlan. Some participants complained that judges were putting money donated by the international community into their own pockets. In a Kabul focus group, a number of participants spoke of personal experiences of having to pay bribes to judges to resolve disputes. A number of participants made the point that in local areas, commanders themselves may appoint judges. “Until such time that the gun, instead of the law, rules the country, nothing can be expected from those in the judicial profession,” Woman from Nangarhar. “We trust the judicial system, but not the judges because they are corrupt and do not have judicial knowledge.” Man from Herat. “We have no confidence in the judges because they take bribes and because there are very few educated judges among them. The few poor souls who do have some legal education, worship money.” Man from Ghor. In a focus group with only female participants in Kandahar, participants complained that the judges never favour women in their verdicts.



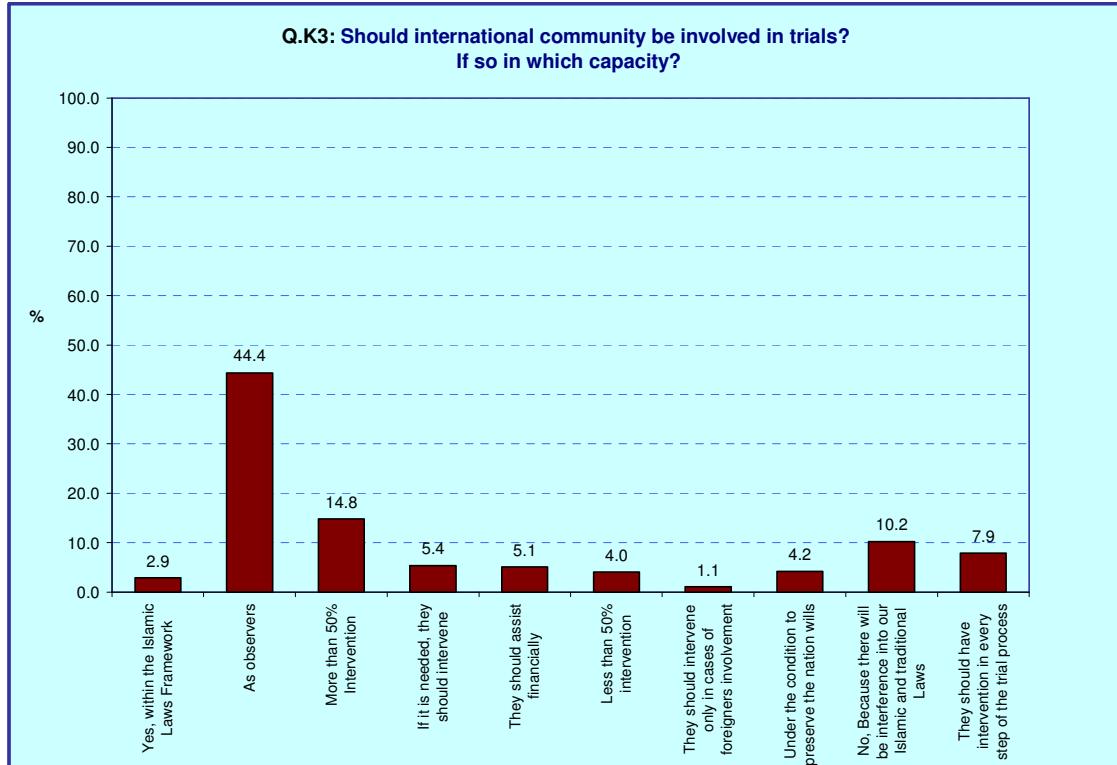
As a result, there is support for composing a court with a mixture of international and Afghan judges (49.6%) as the most trusted option for fair trials of war criminals, whereas 21.5 percent were in favour of a court with Afghan judges and 27.6 in favour of a fully international court.<sup>21</sup> (A slight preference was expressed for other Islamic countries to provide judges, but not those who had anything to do with the conflict such as Pakistan, Iran, or Saudi Arabia).



21 With regard to regional variation, the provinces of both the northern and northeastern regions (Samangan, Balkh, Jawzjan, Faryab, Badghis, Badakhshan, Takhar, Baghlan and Kunduz) had less trust in a court with international judges, with an average of approximately 15% across both regions, although both regions indicated strong support for a court with both Afghan and international judges. The provinces of Nimroz, Bamiyan and Saripul strongly supported a court with both Afghan and international judges, with 95% in the case of Nimroz. Slightly more female than male respondents trusted a court with both Afghan and international judges (55% to 47%), while slightly more male than female respondents most trusted a court with only international judges to hold a fair trial for war criminals (30% to 23%).



However, when discussing this further in the focus group discussions, there was further nuance in the role that internationals should play in such trials, with a high number of participants envisaging a role for internationals as observers or in other supporting roles. The United Nations was often spoken of in this capacity.<sup>22</sup> Some were not sure if there should be an international role at all.<sup>23</sup>



*“Afghanistan is still marred by conflict, therefore, for sound judgment we need foreign observers, otherwise relations and affiliations will dictate the outcome. The United Nations has not been very effective so far, but still, it is the best choice at hand.” Man from Samangan.*

*“They should assist the state of Afghanistan in bringing war criminals to justice, not only by providing guidance, but also, in the process of arresting and putting them on trial the international military forces should have a role. This is because these criminals are powerful people and the central government does not have the ability to bring them to justice.” Man from Helmand.*

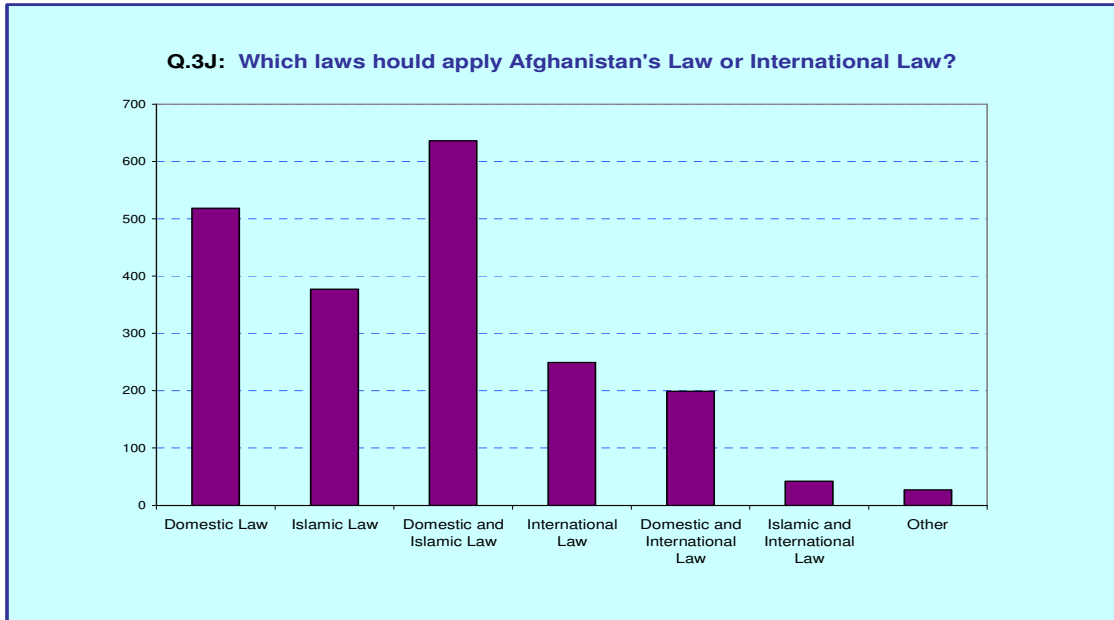
This seems to stem from the fact that a high number of focus group participants desire to see domestic law or Islamic law, or a combination of both applied in these trials. A fair number of focus group participants also indicated that there should be a role for international law, particularly if it is better able to cover the crimes than Afghan law.<sup>24</sup> In general, though, participants did not have a lot of

22 Most focus group participants were positive about the UN and felt it to be impartial, but not all. There was some mistrust of the UN in focus groups in Dehsabz, where participants said that it is too heavily influenced by America as can be seen in Iraq and Israel/ Palestine. Other complaints included ineffectiveness.

23 A man from Kandahar stated that “the people of Afghanistan lost confidence in the international community because as guarantors of the Bonn Agreement, they did nothing to implement the article on the demilitarization of Kabul.” Another man, from Bamiyan, stated “during the regimes of the Communists and the Mujahideen we saw that Afghanistan does not have foreign friends. If it had, we would not have ended up with so much suffering.” A focus group in Gardez was of the view that the international community should have no role: this may reflect their recent negative experiences with Coalition forces.

24 “In my opinion, judicial process should be carried out under Islamic and Afghan laws. If international law is used, International Human Rights will not allow capital punishment for killers,” said one man from Bamiyan. A small number of participants had heard about ICTY and ICTR, and seemed to base their information on the sentencing practices of those tribunals. Another man from Helmand said that “I have heard on the radio that the international community

knowledge about international law and its application: only about 123 focus group participants said they had some information on the International Criminal Tribunals for Rwanda or the former Yugoslavia, whereas 309 said they had very little knowledge and 1624 said that they had none. However, a number of participants favored Islamic law and punishment because they considered international law potentially too lenient. (The participants in one focus group based this on claiming to have heard in the news that the Yugoslav Tribunal had only sentenced the former President to 8 years).<sup>25</sup>



Respondents to the survey were also largely in favor of trials being held inside rather than outside Afghanistan (79.5%) for a wide variety of reasons.<sup>26</sup>

***“Criminals must be tried inside Afghanistan so people can see and follow the process with their own eyes, and can bring lawsuits against them.” Man from Herat.***

***“Trials should be held in Afghanistan so we can go and appear as witnesses.” Woman from Kabul.***

***“Since the crimes took place inside Afghanistan, the trials should also be held inside the country.” Man from Ghazni.***

The opposing view was also expressed, albeit by a minority:

***“Under present conditions it is impossible to have fair judicial process inside the country. The criminals still have power. They have strong connections within and with international politics. Therefore, it is better to send them to the international court.” Participants from Helmand.***

<sup>25</sup> intervened in the case of war criminals in the former Yugoslavia by arresting the war criminals and putting them on trial. This gives me hope that the same might be done in the case of the Afghan war criminals.”  
<sup>26</sup> Although in the first instance it may have seemed that they would have been referring to the Milosevic case, in reality it may be that they are referring to another case which has already been concluded, such as the Plavsic trial.  
 Ten percent believed trials could be held in another Muslim country, whereas 4.8% believed that trials could be held in any other country. Some gave very practical reasons for trials to be held in Afghanistan, such as transportation costs if the trials were going to be held elsewhere.

## CONCLUSIONS

The desire for criminal justice is strong, possibly outweighing the other transitional justice options outlined in this study. One of the prime motivating factors may be that criminal trials will have the effect of removing perpetrators that continue to wield power over them, but participants gave multiple reasons for the benefits of criminal trials. The research also indicates that Afghans would be open to a targeted prosecutorial strategy which seeks to concentrate on serious violations and the commanders who committed them, or on commanders who were responsible for planning, ordering, or carrying out serious crimes.

Interesting are the regional variations in views of criminal justice, which show that respondents of the southern provinces (Kandahar, Zabul and Uruzgan) were most keen to see criminal justice, whereas respondents from the northern provinces were particularly open to some form of amnesty.

Further guidance to policy makers is found in the preference for trials on Afghan soil, conducted mostly pursuant to domestic law, although there is interest in the participation of internationals either as judges or in an observer capacity, due to a high level of skepticism about the local judiciary.

## Chapter 3

# TRANSITIONAL JUSTICE – NON-JUDICIAL MECHANISMS

### INTRODUCTION

Respondents in the survey were clear that they conceived justice as going beyond criminal justice, and each of the non-judicial mechanisms laid out below, namely vetting, truth-seeking, and reparations, attracted a support-level of 90% or above. In the focus groups, participants went into considerable detail on their wishes in respect of these non-judicial options.

### VETTING

#### a. Overall perception of importance of vetting

*“The faces of the perpetrators of those crimes are known to everyone. They are still in power.” Man from Kandahar.*

*“Today, the same war criminals are ruling the people and have the affairs of the state in their hands.” Man from Zabul*

*“Power should be taken away from the commanders.” Man from Ghazni*

Many people who participated in our study forcefully made the point that human rights violations continue in Afghanistan today and that abusers remain in power. The vast majority of respondents who participated in the survey wished to see those who committed human rights abuses removed from their posts. Ninety percent of respondents indicated a desire to see the removal of perpetrators from their posts.

The results of the survey were reflected in the sentiments expressed in the focus groups. Most participants wished to see the exclusion of human rights abusers from public office in order to prevent the reoccurrence of injustice. In particular they wanted to prevent perpetrators from gaining political power in the future.

*“The process of accountability can only start when all these criminals are dismissed from key government positions.” Woman from Kandahar*

A participant from the Saighan District in Bamiyan Province stated that the way to promote unity and trust among Afghans was to “disqualify and dismiss leaders and chieftains who provoked nationalism and nepotism during the period of revolution”.

Many of the demands for the removal of human rights abusers from their posts came from participants in regions where there were ongoing criminal activities by warlords and others.

Participants from Ghor province set out how commanders and warlords manipulate local officials for their own ends:

*“In our district, there is no ‘judge’. Judges are appointed by local commanders and they are not literate and have no authority and are just puppets. Therefore, we don’t trust them. In the entire province, government offices are present just for the name. In reality over there all the commanders are in charge of governmental offices and central government is just telling lies to us. We don’t believe them.”*

A man from Ghazni said:

*“When jobs are filled by qualified and professional people, well-reputed people are appointed at the top government positions, and the government is a true servant of the people, justice will be secured.”*

## TRUTH-SEEKING

### b. Overall perception of importance of truth-seeking

*“Past abuses must be recorded so others learn a lesson,” Man from Herat.*

*“All that has happened to the people of Afghanistan, during all periods, must not be forgotten. All of it must be recorded so the abuses will not be repeated.” Man from Helmand.*

Chapter 3

In terms of truth-seeking options, it is important to note that the concept of a truth commission is virtually unknown in the context of Afghanistan.<sup>27</sup> While the concept of truth seeking was explained to respondents in the survey, it was not possible to fully convey the workings and benefits of a truth commission in these circumstances. Nevertheless, the overall support for truth-seeking was high, and 95% were of the view that it is important to establish the truth of war-time violations, whereas only 3% indicated that they are not.<sup>28</sup>

There was however some ambiguity with regard to what such a process might entail, with many participants of the focus group dwelling on the merits of a historical record, but not on how it should be compiled. When asked what could be done to stop injustices from being committed again, a participant from Badakhshan explained that “history is a great teacher”. A participant from Ghazni said that the way to prevent injustice is to “increase knowledge and understanding”. All focus groups wished to see the establishment of a record of what happened to them in order to “prevent the repetition of similar mistakes”.<sup>29</sup> In the words of one participant “[t]he future should know what happened to us so that they will respect human rights.”

A Daykundi participant believed that a record of the truth was important for the future leaders of Afghanistan:

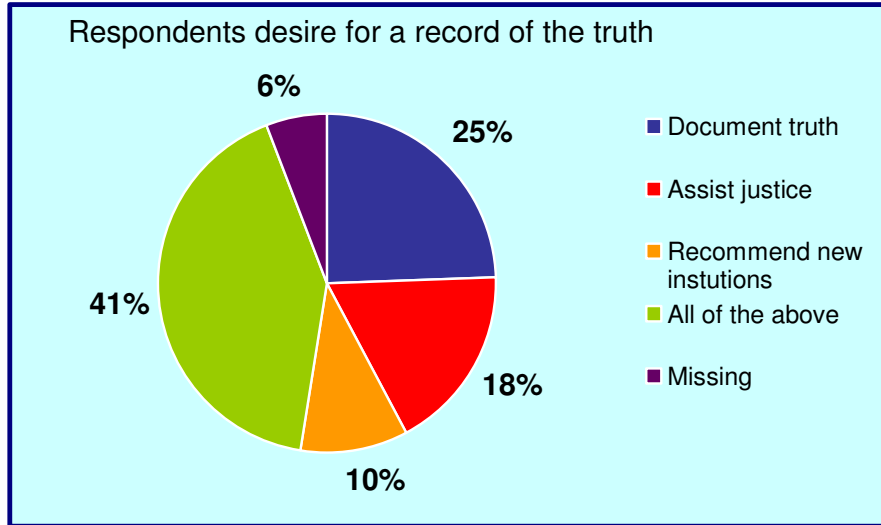
27 Ninety three percent of focus group participants said that they had never heard about truth commissions. Only 0.1% had “complete information” on truth commissions while five percent had “relative awareness. This may explain why truth-seeking scored low against other options, although the southern region demonstrated a strong preference for this method of justice, with respondents from three of the four southern provinces, Helmand, Kandahar and Zabul indicating by more than double the national average their support for the publication of the truth for obtaining justice.

28 There were no major regional differences in response to this question, with one notable exception: almost half of the respondents of Bamiyan province (43%) stated they were not in favour of a report that would document all past human rights violations.

29 Ninety three percent focus group participants believed that human rights abuses should be remembered and recorded. Seventy percent of the reasons offered by participants related to prevention of the repetition of such crimes.

***“They should be recorded so that future statesmen learn a lesson and will not commit the same crimes and have their names blackened in history.”***

Sixty five percent of the respondents stated that one of the aims of such a document or report should be to disclose the truth about the Afghan conflict.<sup>30</sup> The desire for a record of the truth was strong among focus group participants.



The desire for truth was emphasized by a woman from Panjshir:

***“Our pains cannot be ignored. Our anguish cries out to be told. War crimes must be recorded.”***

Significantly, 60% of the respondents saw the recording of human rights violations as a means of bringing about justice.<sup>31</sup> Several participants in the focus groups said that perpetrators must be held accountable for their past actions.<sup>32</sup> Participants from Khost Province believed that a record setting out the truth would expose *“what their leaders did and help to know who the perpetrators are, and to prevent the perpetrators from gaining power in the future.”* Some felt that this should be accompanied by an admission of guilt:

***“Past injustices will be compensated when they admit that they have martyred all those people for no good reason.”*** Man from Herat.

Some 52% of respondents believed that a report recording the truth would be useful for recommending the creation of new institutions.<sup>33</sup> The creation of new Afghan institutions that are independent, impartial and that support peace and democracy can help to prevent repetition of

30 Forty one percent of respondents stated that the primary aim of such a document or report should be to disclose the truth, bring about justice and to recommend new institutions for Afghanistan. An additional 25% specifically identified disclosure of the truth as the exclusive aim of such a report. According to a participant from Kabul the past cannot be forgotten: “The memories are in people’s hearts. People suffered considerable hardships to build homes for themselves and the demolition of their homes cannot be forgotten. People were threatened to do things otherwise they would be killed. People were forced to starve and hide in basements. People would hold the Quran and pray at night for freedom. Such people cannot forget the past.”

31 Forty two percent of respondents stated that the purpose of the report should be to disclose the truth, bring about justice and recommend new institutions. An additional 18% said that the exclusive aim of the report should be to bring about justice.

32 Fourteen percent of the reasons put forward by focus group participants to explain their desire for a record of the truth dealt with a need to identify those responsible for perpetrating crimes.

33 Forty two percent of respondents stated that the purpose of the report should be to disclose the truth, bring about justice and recommend new institutions. An additional 10% said that the primary aim of the report should be to recommend new institutions.

conflict. A participant from Khost Province suggested that recording the truth would assist in promoting “a spirit of fraternity” amongst Afghans.

Some participants expressed concern about the possible consequences of telling the truth. A woman from Wardak, fearful of the repercussions of telling the truth said:

*“I am scared. I cannot tell the truth right now because I will be immediately hanged.”*

A woman from Mazar suggested that: “the recording of the violations must be done confidentially”. A participant from Paktika had reservations about truth-seeking taking place soon in the near future:

*“Past abuses should not be recorded now because there is neither an impartial government, nor unbiased people to do it.”*

A few participants were concerned that recalling the past would open up old wounds.

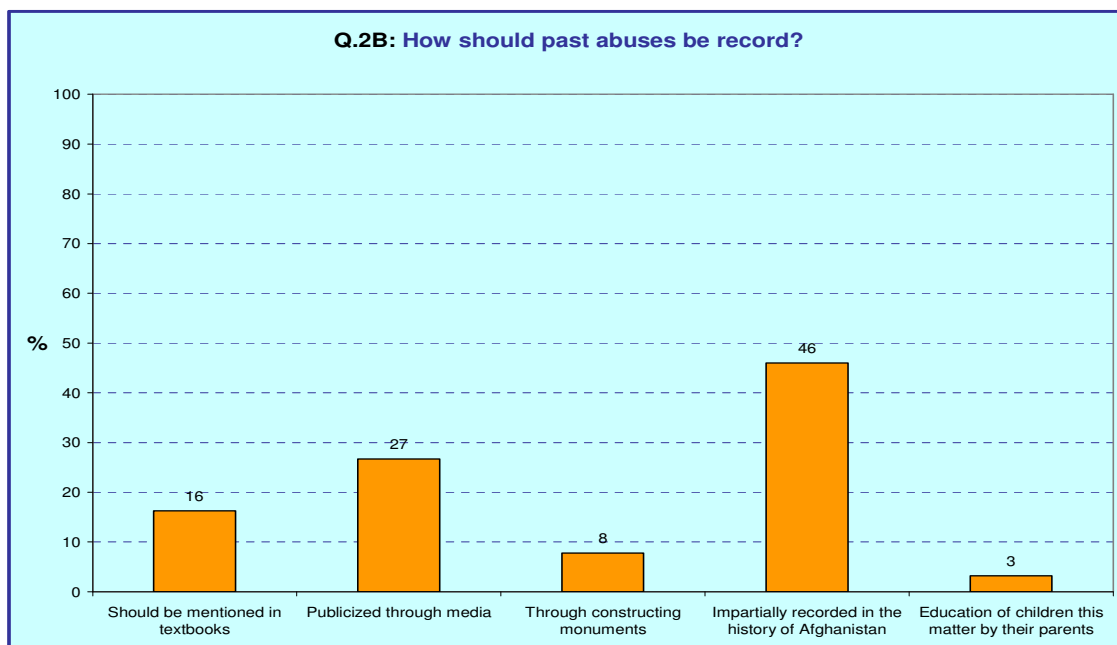
*“Past events should not be recorded. Learning lessons won’t work. Painful memories will be revived and hatred will increase.” Man from Kunduz.*

A woman from Kabul wanted Afghans to “stop looking back and just forget the past crimes”. Participants in a discussion group in Paktika province were against recording the truth because:

*“Islam teaches forgiveness, and for the sake of development of our country, we should not be reminded of the past.”*

**c. Suggestions for truth-telling pursuits**

Several focus group participants suggested that the record of the truth should be incorporated into history books in order that Afghanistan can learn the lessons from its past, and to let the world know what occurred. Participants from Bamiyan Province said that a record of the truth of the Afghan conflict should be made available free of charge to the public and should be kept in all libraries. Kabul participants said the past should be remembered through its recounting in books, newspapers, cassettes, news agencies, mass media, and by educating children. Ghazni and Kunar participants echoed these proposals and added that films and videos should be produced and shown to the people of Afghanistan. All these materials should be kept in the National Archive and the record of the conflict should become part of school and university curricula.



***“Recording and preserving these documents must be done by people and organizations that are independent and impartial, so the integrity of the accounts are kept intact,” Man from Daykundi.***

***“A ‘Truth Recording’ commission should be established.” Man from Herat.***

***“It should be disseminated through radio and television, and in mosques.” Man from Ghazni.***

***“Historians must record past violations in the country’s national history, and it should be preserved in the national archives.” Man from Ghazni.***

***“For the illiterate in the society, these abuses should be arranged in the form of stories and anecdotes so they can be transmitted orally.” Woman from Bamiyan.***

***“The subject should become part of school curriculum and be taught to all students.” Man from Daykundi.***

When asked who should play a role in an institution that may engage in truth-seeking, most respondents expressed a preference for the government (23.4%) or the international community (21.8%) to play such a role. Intellectuals and social groups received 14.3% of support, whereas local elders only received (4.1%) support, and religious leaders 2.6%, only slightly higher than women, who received 1.3% support to play a role.<sup>34</sup> About 21.1% believed that all of these play a role in justice. What is significant is that most people still put their trust in the government or the international community, rather than in other institutions. This sentiment was mirrored in the results of the survey response to what may constitute a useful process for reconciliation, up to 40% of respondents chose a truth and reconciliation commission over other options which included social justice for victims (27.8%) and local *shuras* or *jirgas* (26.1%).<sup>35</sup>

## **REPARATIONS**

***“A wound does not heal without ointment.” Man from Baghlan.***

***“We should attain knowledge, and through education reach mountain peaks.” Woman from Ghazni.***

***“Our house in Kabul was confiscated when we became immigrants. Now we have no place to live in. The state should provide housing for people like us.” Man from Ghazni.***

***“Schools and kindergartens should be established for the children of the victims.” Woman from Bamiyan.***

34 There were several gender differences of note in response to the question. In keeping with the responses to other similar questions, slightly more male respondents were in favor of the international community playing the most important role in an institution established for the purpose of bringing about justice. Male respondents were also slightly more in favor of local elders and religious leaders playing a significant role.

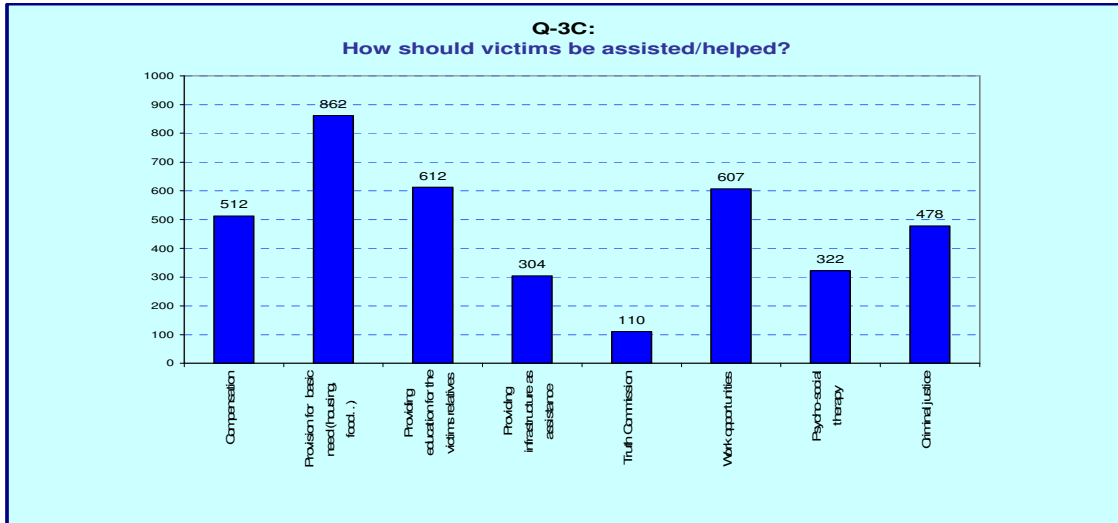
35 More women than men were supportive of a truth and reconciliation commission to achieve reconciliation with female respondents indicating 50% support (ten percent more than the national average) and male respondents giving 38% support to such a process, while slightly more male than female respondents felt that local *shuras* would be a useful process for reconciliation (28% to 22%). With regard to regional variations, in the provinces of Kunar, Parwan, Ghazni, Laghman and Kapisa, and with Afghan refugees residing in Iran, the majority of respondents chose social justice in terms of useful processes for reconciliation, sometimes by significant percentages. In the provinces of Baghlan, Paktika and Wardak, the majority of respondents identified local *shuras* as an effective process for reconciliation.



**a. Overall perception of importance of reparations**

Eighty eight percent of respondents in the survey indicated that reparations should be awarded to victims of past crimes.<sup>36</sup> Nine percent of respondents did not agree with the granting of support to victims. The extent of the suffering endured by Afghans was well expressed by a participant from Kandahar who stated that:

*“All the people of Afghanistan were the victims of atrocities and there is no family that has not experienced a death or disability.”*



Participants from Gardez recommended a particular focus on widows, orphans, refugees and war wounded. A man from Logar proposed that:

*“The state must provide livelihood for the children of the martyrs until they grow up and become self-sufficient.”*

A man from Balk expressed similar sentiments:

*“Material and moral assistance should be given to the orphans and the disabled; job opportunities should be created for the survivors.”*

Bamiyan Province participants suggested that the survivors of human rights violations should be provided with land, homes, and economic support. They recommended that victims and families of deceased should be given an opportunity to petition the courts in order to be compensated for both physical and material losses by the perpetrators. In this way the perpetrator will be called to give an account of his actions. The participants explained that this will alleviate the malice or grudges of the victims who lost a father, brother or a member of their family.

Participants in the Hazrat-e-Sultan district said that the victims should be identified and then supplied with financial and “spiritual” assistance. A participant from Mehtarlam Baba City felt that “moral aid” should be given to victims. Enquiring about suffering, “*dil jo’i*,” and expressing sympathy, “*hamdardi*,” were often mentioned as the minimum gesture that the victims expected from the authorities. A woman from Kandahar complained:

<sup>36</sup> When asked how many people preferred reparations to other justice mechanisms, only about one-fifth answered positively, however almost half of the Afghan respondents in Iran (46%) favoured compensation as the best method for achieving justice and respondents from the provinces of Kandahar, Zabol and Bamiyan indicated their support for compensation at more than double the national average. In three provinces (Jawzjan, Faryab and Helmand) and with Afghan refugees living in Pakistan, there were significantly higher percentages of those who thought that there should not be reparations for crimes committed.

*“They killed my husband and my brother, but no governmental official has yet extended regret or sympathy to me.”*

*“To begin with, taking an interest and inquiring about the miseries of the victims & survivors of the martyrs will create confidence in the government, as no authority has paid any attention to them as of yet,” Man from Bamiyan.*

*“Victims must be attended to and their complaints must be listened to.” Man from Daykundi.*

Some participants preferred community reparations. Participants from Shanbal Village in the Shibar District of Bamiyan, suggested the building of roads in areas where people suffered human rights violations. They also suggested the building of orphanages. A few participants made reference to symbolic reparations through the building of monuments “in remembrance of the victims”. Participants also recommended a formal structure be established to assist war victims together with the providing of specific legal protections:

*“A special foundation for war victims should be established, and the country’s statesmen as well as businessmen should help, instead of being indifferent to the problems of the victims.” Man from Bamiyan.*

#### **b. Who should contribute to reparations**

Several participants believed that financial contributions for a reparations programme should come from the Government, the United Nations and the international community. Many participants also expressed views that external actors responsible for fuelling the conflict in Afghanistan should contribute, and that projects enabling the reconstruction and development of Afghanistan should be sponsored by these countries as a matter of moral imperative.

## **CONCLUSIONS**

A number of important conclusions can be drawn from the consultations on non-judicial mechanisms. Vetting is overwhelmingly supported by the Afghan public. There was urgency attached to the need to remove known human rights abusers from office. Participants believed that the onus rested on the government and the international community to initiate vetting and institutional reform programs.

Respondents and participants were generally in favor of a process whereby the war periods would be documented in the form of a historical record. Enthusiasm for a truth commission was higher among respondents in the survey who were given more information about this option, than among participants in the focus groups, who knew very little about it. It is not clear from the focus group discussion as to whether people are in favor of a process that seeks to compile history from an objective but detached perspective, or whether they themselves would wish to participate in giving statements as part of the truth-telling process.

The support for reparations is also high. Although many had identified themselves as victims, when speaking about reparations participants focused on the neediest members of society (those who are disabled, who have lost relatives or heads of house-holds, etc.) Participants were distinctly selfless in their perspective. Rather than viewing reparations as an opportunity to ask for compensation, there was a prevailing view among participants of a more charitable notion of reparations that should be given to the community or spent on the greater social good. There was also a strong sense that the international community had an obligation in this regard.

## Chapter 4

# FORWARD-LOOKING MEASURES INCLUDING REFORM, RECONCILIATION, & PREVENTION

### INTRODUCTION

The consultation also gathered numerous views on what policies would take Afghanistan forward.

### ROLE OF INSTITUTIONAL REFORM

*“Violation and protection of human rights directly depends on the state. All those who have held the reins of the state have violated human rights.” Woman from Kandahar.*

It is apparent from the responses of many participants in the focus group discussions that institutional reform is a necessary ingredient for Afghanistan’s recovery. The organs of state are held in very low regard by many Afghans. Much discussion centered on the establishment of a representative government, which is accountable and responsible, with impartial institutions. A man from Ghazni emphasized that:

*“Past injustices will be remedied when corruption is eradicated from government offices, and when citizens receive better treatment from the government.”*

Participants also wanted to see the promotion of professionalism in the public sector and the elimination of nepotism and favoritism. A participant from Kunar explained:

*“When the right people are employed for the right jobs, differences and mistrust will be removed.”*

“Three things will guarantee justice in the future: a representative government, disarmament and implementation of a merit-based principle in the state administration.” Woman from Baghlan.

*“Top government positions should be filled by individuals who uphold justice and are competent.” Man from Kunduz.*

The security sectors were also identified as state institutions requiring reform:

*“Strengthening the national army and cooperating with the central government will bring national unity, which in turn will guaranty stability and lasting peace.” Man from Helmand*

*“Commanders and the rule of commanders should be replaced by a regular national army.” Man from Ghazni*

The strong desire for professionalism in the civil service, as expressed by many respondents in the survey and by participants in the focus groups, was indicative of the urgent need for institutional reform. This was highlighted by a man from Bamiyan:

***“The administrative system must be reformed and nonprofessional and unqualified persons must be dismissed.”***

The views of participants with regard to the judicial system that have already been discussed and reveal a considerable lack of confidence. A participant from Nimrooz stated that:

***“After the establishment of an elected government by the will of the people of Afghanistan, institutions that protect the rights of victims should be established.”***

A man from Bamiyan suggested an innovative way to bring fairness to governance in the districts:

“With local leaders governing in their own areas injustice cannot be prevented. So, top officials in each province or district should not be from that place. For example, a Kandahari should be appointed governor of Bamiyan and vis-à-vis. Then, they can tend to the affairs of the people in an impartial way.”

Pointing to the value of law in the society, a man from Nuristan stated:

***“The Constitution, which is a pact between the people and the state, must be implemented.”***

## **ROLE OF RECONCILIATION**

### ***a. The Need for Reconciliation***

The majority of focus group participants believed that there was a need for reconciliation among the people of Afghanistan. Seventy nine percent agreed that there was a need for reconciliation, while nine percent felt that there was no need.

***“There is an urgent need for national reconciliation because ethnic difference are still dividing this nation.” Man from Ghazni***

***“Reconciliation must happen so that hatred is wiped out of the people’s hearts.” Man from Badghis.***

The Kabul focus group felt that it was “imperative to reconcile people because of the grudges that exist in people’s hearts.” Another Dehsabz participant explained that reconciliation is necessary because “there are differences among the people because spiritual leaders of one Tanzim consider the opposing side infidels.”

A Hazara woman from Balkh, recalling the abuses that her people suffered at the hands of the Taliban, urged the need for clarity of what happened in the conflict if there is to be reconciliation among Afghans. She stated:

***“The people of Afghanistan have been through many wars, some of them were racial/tribal wars. The Taliban in the name of being Pashtuns were killing others. Now our people think that all the Pashtuns are killers and oppressors, whereas foreigners were the real instigators of those atrocities. They were the ones who, in the name of this and that, were causing conflict between the Afghans. We must overcome those complexes. People must reconcile.”***

A participant in the Saighan District of Bamiyan Province emphasized that attention should be focused on the leaders (a view that was shared by a number of others):

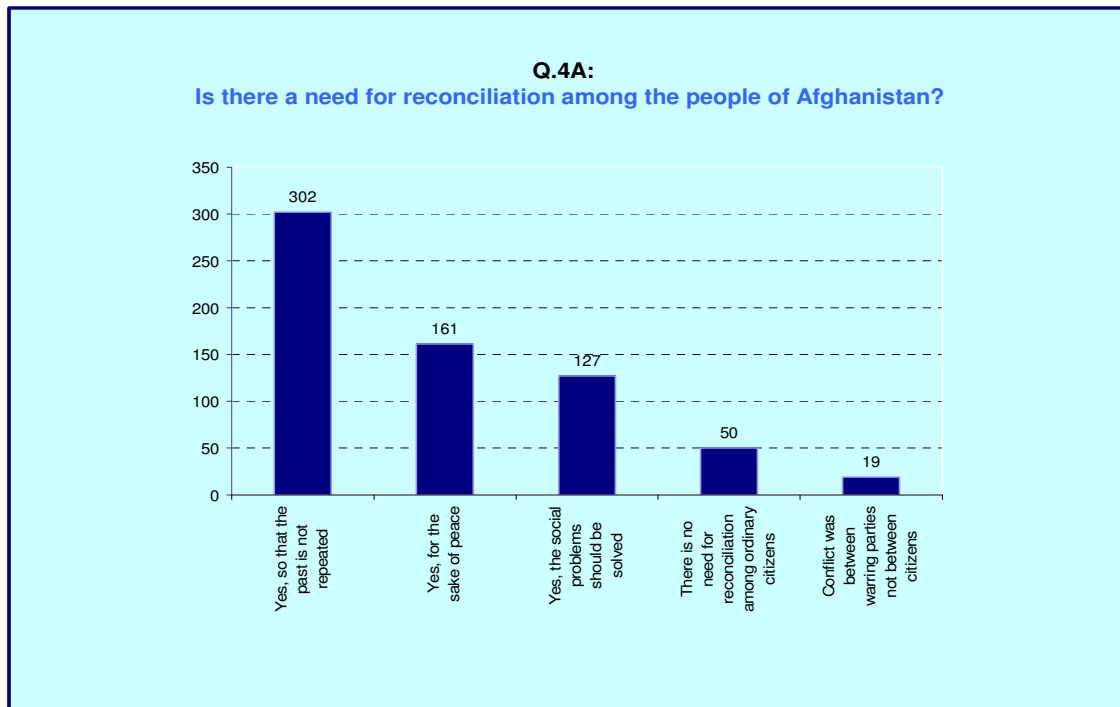
***“All the tribes and ethnicities are united, but the leaders and authorities need to be united and reconciled.”***

Many participants identified the warlords and the role played by them as the main obstacles to achieving reconciliation in Afghanistan, blaming them for having exacerbated differences which did not previously exist. A woman from Badghis maintained:

*“It is incumbent upon the people of Afghanistan to reconcile because enmity was never among the tribes. It was the commanders who brought frictions.”*

*“Whether they are Khalqis, Parchamis, Talibs or Shura-e Nizar, in the end, they are all Muslims and Afghans. Only when those in positions of power reconcile their differences, discord will disappear at the level of the masses.” Man from Helmand.*

Those who felt that there was no need to reconcile explained that ordinary citizens were already reconciled. A participant in Dehsabz stated that there is already “50% reconciliation among the people.”



Many spoke of the need for national and local gatherings to advance reconciliation.<sup>37</sup> A Kunduz woman said:

*“Of course, ill feelings have emerged, so, to reach a nationwide reconciliation, forums must be created to facilitate dialogue among the people.”*

*“Perhaps through some sort of a national gathering or religious gathering we can have brotherly discussions and solve those problems that are based on ethnic differences.” Man from Helmand.*

Dehsabz participants suggested several ways to advance reconciliation:

*“Spiritual leaders can solve this problem in the mosques.”*

<sup>37</sup> A man from Kunar suggested that “For the purpose of reaching national reconciliation, the people of Afghanistan should convene jirgas in which representatives from all tribes put an end to their differences by way of negotiation and understanding. It is also necessary that everyone disregard their personal benefits and cooperate in the reconstruction of their war-ravaged country.”

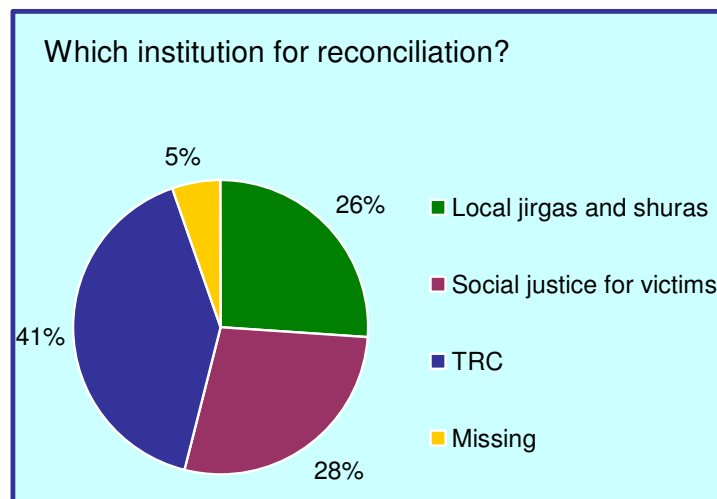
*“Schools and teachers can work on this issue; an impetus should be created in which ideas become unified and young people can become involved.”*

*“There should be offices everywhere to establish brotherhood.”*

Some participants believed that because of the role external actors played in Afghanistan, they too should play a role in the reconciliation process:

*“Whenever internal and external enemies of this nation stop interfering, Afghans will be able to reconcile.” Man from Herat.*

A number of participants wished to honor the victims and display appreciation for what they have suffered and in so doing heal some of the wounds of the past human rights violations. A man from Jalalabad said that *“monuments should be built in remembrance of the victims”*. The chart to the right reflects the responses of participants when asked what institutions would be most useful to reconciliation.



**b. Confidence and unity-building measures**

The urgent need for national unity and confidence building is underscored by the bitter sentiments expressed by a man from Herat:

*“We don’t trust anyone. The reason is known: everyone has done us wrong. We have become a nation of oppressors. We have no confidence in the state institutions either. Frankly, we don’t even trust ourselves anymore. God have mercy on this nation.”*

Many participants raised the relationship between the people and the state as central to the building of confidence and unity in Afghanistan.

*“National unity will be possible when trust between the people and the state is established.” Woman from Kunduz.*

*“When there is honesty in talk and behavior between the people and the state, trust and finally, unity will be secured.” Man from Bamiyan.*

Some participants highlighted the need to promote equality and eliminate discrimination from Afghan society as necessary for nation building.

*“First, the leaders must come to their senses. Awareness on the part of the leadership of the country, followed by public awareness of right and wrong, will lead to the eradication of discriminations. That could remedy past injustices.” Man from Daykundi.*

*“When linguistic, tribal and ethnic frictions disappear, trust and unity will return to the people.” Man from Ghazni.*

*“If the rights of all ethnic and tribal groups, in all facets of social, economic and political life are considered equally and proportionate to their populations, national unity will be guaranteed,” Man from Bamiyan.*

Participants of the focus groups put forward a wide range of suggestions on how to achieve national unity. Many considered disarmament as a prerequisite for reaching national unity as suggested a man from Ghazni:

*“A nationwide disarmament will guarantee trust and unity.”*

Participants from Mun Darak District believed that disarmament should be sped up and that criminals and perpetrators of abuse who are leaders of tribes should be removed from public office.

Participants from Badakhshan suggested the development of a text book on “the value of unity”, produced by the Ministry of Education, for use in the Afghan education system. This focus group also proposed the establishment of dormitories for provincial schools so that students from other parts of Afghanistan could attend with “the hope that these students will establish bilateral and friendly relations with each other.”

*“The power holders, especially the Ministry of Information and Culture must design programs for our children to teach them that if the previous generation did bad things, they should do good; they should be constructive.” Woman from Parwan.*

Khost Province participants emphasized the importance of reconstruction efforts in building confidence and securing unity.

*“We will be able to create trust and solidarity among the people when there are no arms around, and when people become aware that the terms ‘me’ and ‘you’, ‘North’ and ‘South’ are simply wrong.” Woman from Herat.*

Kabul focus group participants highlighted the need for the government to carry out consultations with illiterate men and women when making new policies. It was suggested that an institution such as the Loya Jirga should invite all ethnicities to come together for consultations and discussions. Participants from Kabul also said that much needs to be done to eliminate differences between the rich and poor.

Participants from Shibar District in Bamiyan cautioned that job opportunities should be made available for all ethnicities so that the whole country could “share in the country’s reconstruction process”. Ghazni participants urged that the elimination of illiteracy was needed to build confidence amongst people.

On the question of leadership the participants had firm ideas on the qualities of leadership required in Afghanistan.

*“We will witness unity when we have an impartial head of state. He should be the protector of national and public interest, not busy making money for himself.” Participant from Ghor.*

*“The future president of the republic should be a doctor of the society having the knowledge of how to cure the wounds of this nation.” Man from Kabul.*

A woman from Parwan province called on the media to take the lead in promoting national unity:

***“To create national unity and trust among the people, it is the duty of the media to disseminate messages of unity and tell our children that a person from Laghman is your brother.”***

Many called for attention to be paid to improving education and to raising public awareness of rights and duties.

***“The root cause of all our miseries is lack of knowledge and illiteracy.” Woman from Badakhshan.***

## **CONCLUSION**

The consultations on forward looking measures reveal that Afghans, who experienced years of trauma, horrific violence and political and social oppression, have clear ideas of measures that can be taken to improve their lives. There is an expectation that public institutions will be transformed in order to make a meaningful change to the daily lives of people through protecting the people from abuse and providing effective services. In particular, it is anticipated that those institutions that have a direct impact on the fundamental human rights of Afghans, such as the judiciary, prosecutor, police and army will be reformed in the near future.

While there was considerable support amongst respondents and participants for a program of reconciliation, many felt that the efforts should be focused on the leaders and commanders who have not reconciled and who caused the conflict in the first place. Many suggestions were put forward to advance the cause of reconciliation including the use of traditional and religious structures.

Afghans expressed a particular desire to participate in nation building activities. They expected the leaders of the country to take the initiative by acting with integrity and compassion. Many saw eliminating discrimination and prejudice between peoples as the starting point for building confidence and national unity. They recommended that the starting point should be to raise knowledge and the education levels of people and to combat illiteracy. The state, civil society and the media were seen as the important role players in nation building strategies.



## Chapter 5

# ANALYSIS & RECOMMENDATIONS

### INTRODUCTION

The Commission recalls its mandate to “undertake national consultations and propose a national strategy for transitional justice and for addressing the abuses of the past.” In this regard, we wish to (1) summarize some of the general conclusions we draw from the national consultation; (2) offer brief reflections on the domestic and international contexts in which we act; and (3) put forward recommendations for a transitional justice strategy which we urge the government and other partners to implement.

#### *a. Summary of general conclusions arising from the public consultation*

In general, we draw the following conclusions from the public consultation, which will inform our recommendations below.

- Most people we spoke to consider themselves as direct victims of serious violations of human rights that have occurred during the conflict;
- There is a strong perceived sense that crimes have been perpetrated continuously for 23 years and have not stopped even today;
- There is a profound lack of trust in government, holders of public office, and to some extent in the international community, as having failed to do anything about this;
- It is perceived that impunity is entrenched in the political system, by rewarding perpetrators with positions of power even though they continue to commit violations;
- There is an urgent need to create a break with the past.

On the other hand:

- There is a rich understanding of and strong desire for justice among the people for both past and current crimes
- It is not too late for the government and the international community to take steps to address the crisis of trust, and most people still look mainly to the government and the international community as the main providers of justice
- Any efforts from the government against known perpetrators will pay large dividends in restoring trust and winning confidence in Afghanistan’s leaders
- There is a particularly strong concern among the people about current abuses and how to stop or prevent these
- More particularly, the people of Afghanistan through this survey have recommended that:

- The people of Afghanistan want an approach to justice that encompasses a combination of measures, which seeks to build trust in Afghanistan's institutions and that recognizes the needs and desires of victims;
- A transitional justice policy must be respectful of Islamic traditions and Afghanistan's pre-existing measures;
- At the same time, transitional justice strategy should be cognizant of the challenges that exist in Afghanistan today, including:
  - the absence of security, resulting in a climate of fear;
  - the limited reach of the government and the local control of the warlords;
  - problems with the judiciary, including lack of partiality, corruption, and lack of training;
- A transitional justice policy should include measures in relation to external actors, as many people hold them partly responsible for bringing conflict to Afghanistan;
- There is strong public support for removing war criminals from positions of power;
- There is a strong desire for criminal justice, but it may be perceived mainly as a tool to remove current abusers from powerful positions in society;
- At the same time, a transitional justice program 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, led by Afghans but supported by internationals;
- Many people spoke of the importance of documenting the truth of what has happened in Afghanistan, through a process yet to be determined;
- 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, disabled, and dependants of deceased.

***b Transitional justice in the current domestic political context***

In order to make recommendations that are feasible, it is necessary to consider the current political context insofar as it may be relevant to the implementation of a transitional justice strategy. Afghanistan's transition came about as the result of the US military intervention against the Taliban following the attacks of September 11, 2001 on the United States. The resulting political framework that was negotiated at Bonn encompassed Northern Alliance factions and supporters of the former King and technocrats, all under the leadership of President Hamid Karzai. The emphasis of the political process, supported by the United Nations Assistance Mission in Afghanistan (UNAMA), has been on inclusiveness.

Much progress has been made in the political process in Afghanistan. An Emergency Loya Jirga was convened in June 2002. A Constitutional Loya Jirga was held in December 2003 to ratify a new constitution which was drafted pursuant to a consultative process, and remarkably peaceful and historic presidential elections were held in Oct. 2004. Parliamentary elections are currently scheduled for April 2005. These steps all demonstrate that Afghanistan is moving steadily forward from a transitional government with limited legitimacy, to a fully elected and permanent government. The importance of this process, and the delicate issues involved in keeping it moving forward while maintaining Afghanistan's precarious stability, should not be underestimated, and the important role of the UN in this process should be acknowledged.

However, any attempts at building mechanisms of accountability into the political process since Bonn have been distinctly unsuccessful. The Bonn Agreement affirms accountability as a principle but

contains no reference to any mechanisms, as unlike other recent peace agreements.<sup>38</sup> An amnesty clause tabled by the Northern Alliance was successfully avoided, but likewise an attempt by the United Nations to include a clause prohibiting the government from granting amnesty for war crimes and crimes against humanity was deleted.

Efforts since Bonn to exclude alleged perpetrators from (non-elected) roles of political representation based on their human rights records have suffered many set-backs. The first of such instances occurred at the Emergency Loya Jirga. A regulation on eligibility for the Emergency Loya Jirga specified that anyone who was known to have committed war crimes, crimes against humanity, or known to be involved in drug trafficking was not eligible to be a delegate, and candidates had to sign an affidavit to confirm that they had no such record. This, combined with a complaints mechanism, should have succeeded in excluding known abusers from the process, but this was undermined at the end of the process when fifty persons were appointed as delegates, a number of whom were known abusers.

The Constitutional Loya Jirga required the election of delegates but warlords secured their electoral support through intimidation. Again, a clause was tabled by some participants for immunity from prosecution, but this was strongly opposed by certain delegates who wanted an article to the contrary. The Constitution, like the Bonn Agreement, is silent on accountability for war crimes.

Finally, under the Election Law, political parties with a military wing and/or with human rights abuses should not have been able to register, a mechanism that effectively should have excluded some political candidates was not enforced by the Ministry of Justice. Similarly, heads of party were allowed to stand as independent candidates although the parties themselves were prevented from registering if they had a military wing.

Transitional justice and the political process have therefore proceeded on separate tracks since the Bonn Agreement, but it is no longer viable for the political process to proceed independently from any accountability considerations. This approach will undermine true peace and security. In response to the views expressed in our public consultation about the urgency of moving accountability forward, accountability should acquire a more prominent role in the election process and in the decision to appoint people to public office. As stated in a recent report of the Secretary-General on transitional justice and the rule of law:

***“Justice and peace are not contradictory forces. Rather, properly pursued, they promote and sustain one another. The question, then, can never be whether to pursue justice and accountability”***<sup>39</sup>

The period after the parliamentary elections may be seen as a hopeful new era for Afghanistan, where it is possible to make certain changes. The consultation suggests that there is still a level of faith in the government and the international community and that most people still look to both to provide solutions in the realm of long-term justice and stability.

Many of the numerous people that we interviewed have a strong sense of the cost attached to abandoning accountability. The strategy we lay out below attempts to meet the real challenges facing Afghanistan, while simultaneously respecting the wishes of the Afghan people that accountability should be advanced. In formulating our recommendations, we have taken into account the very real challenges to Afghanistan’s stability and issues of threats to security and witnesses. We do not believe that careful and strategic action on issues of accountability will undermine the consolidation of peace in Afghanistan. Instead, we are of the view that a total lack of accountability, and an approach

38 Recent peace agreements in Africa, including Sierra Leone, Liberia, DRC, and Burundi all make explicit references to various mechanisms, including truth and reconciliation commissions.

39 Report of the Secretary-General, The rule of law and transitional justice in conflict and post-conflict societies, 3 Aug. 2004, UN Doc. S/2004/616, at para. 21. (Hereafter: “the Secretary-General’s report”).

that allows anyone into positions in power, without an examination of their tendencies to commit atrocities, is a threat to Afghanistan's long-term potential to create a peaceful and stable environment for its citizens.

### **c. *The international context***

Also relevant to Afghanistan is the current international context in terms of transitional justice. Two particular international trends are significant:

- 1 The last decade has seen numerous instances of countries around the world seeking to address their past in a variety of ways, a number of which may inform and provide inspiration to policy-making in Afghanistan.
- 2 There is a recent focus on transitional justice and the rule of law at the level of the United Nations, which has resulted in a Report of the Secretary-General on the subject.

The recent report of the Secretary-General on transitional justice and the rule of law lays out some of the important lessons that have come from developments across the world. First of all, the Secretary-General affirms important principles in this field, for instance (a) the need for national bodies to take the lead in assessing national needs and capabilities; and (b) the need for public consultation to guide policy-makers in this area (specifically citing Afghanistan as a positive example); (c) the need to support domestic reform constituencies rather than impose foreign solutions; (d) the need to embrace integrated and complementary strategies, that respect the rights and dignity of victims. In terms of justice, the Report specifically gives preference to criminal trials that take place inside the country where the crimes occurred, rather than the ad hoc international tribunal model used for the former Yugoslavia and Rwanda. It also points to the important role that the ICC will play in providing a permanent mainstay against impunity. Finally, the report pledges UN support to processes of truth-seeking, vetting, and reparations.

We hope that the effect of the UN focus on this is that there may be more resources and political will available at the international level for transitional justice. This may lead the UN to develop a more consistent approach to assisting countries in dealing with a legacy of human rights abuse.<sup>40</sup>

The Commission welcomes these developments at the level of the UN, since many elements of the strategy proposed below would greatly benefit from UN support and assistance.

## **RECOMMENDATION**

In this section, AIHRC wishes to put forward a number of recommendations on the implementation of a transitional justice strategy. Although most of these pertain to the government, we also wish to comment on steps that can be taken by the United Nations, the international community, civil society, and indeed ourselves, in working towards justice for the people of Afghanistan.

To the government of Afghanistan, we wish to make a series of recommendations that should be implemented in the short term. These are measures of urgency that will bring a limited measure of accountability and regain the trust of the people. However, we urge the government to commit to an integrated strategy, some elements of which will have to be further defined in the future, but without which the strategy will be incomplete.

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40 Currently such consistency is missing: a proposal for an international Commission of Inquiry for Afghanistan, to compile information on grave human rights violations of the past, proposed by Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions, Asma Jahangir, dated 3 Feb. 2003 (UN Doc E/CN.4/2003/3/Add.4) was not adopted at the Human Rights Commission, whereas a commission to investigate whether genocide has occurred in Sudan was recently formed for Darfur.

## TO THE GOVERNMENT OF AFGHANISTAN

### 1 *A political commitment to justice*

In this post-election period, Afghanistan stands at a crossroad. Our leader, President Hamid Karzai, has been elected as the national leader with a clear majority of support from all segments of Afghanistan's population. He has the support of the Afghan people and we urge him to make use of his position of strength and wide public and international credibility in the implementation of this strategy. The Commission wishes to call on him to articulate a political commitment to justice.

Throughout recent history, a number of world leaders have taken significant steps in recognizing what needed to be done to rebuild their nation after a history of human rights abuse. This is what some of the world leaders have said in such historic circumstances:

*“This is for all South Africans an unforgettable occasion. It is a realisation of their hopes and dreams that we have cherished for decades. We are starting a new era of hope, of reconciliation, of nation-building.” Nelson Mandela of South Africa, when casting his vote in the 1994 elections.*

Other inspirational examples in recent leaders have been President Vicente Fox of Mexico and King Mohammed VI of Morocco. Our consultation has shown that people in Afghanistan are yearning for similar initiatives from Afghanistan's leaders:

*“To begin with, taking an interest and inquiring about the miseries of the victims and survivors of the martyrs will create confidence in the government, as no authority has paid any attention to them as of yet.” Man from Bamiyan*

As mentioned, nearly 70% of all the people we spoke to during our consultation have personally suffered loss or injury due to crimes inflicted on them in the course of the war. Afghanistan's post-election era presents a unique opportunity for President Karzai to acknowledge this suffering on the road to building a new nation in Afghanistan. We urge President Karzai and his advisors to:

1. Design and implement a series of symbolic acts that could serve to acknowledge victims. This may include the building of memorials or designating of public squares, days of remembrance or other such acts which are not costly, but which may hold much symbolic value. In the past, such efforts have been made to honor and acknowledge the contribution of the Mujahideen to building the nation of Afghanistan. Now these should be matched with an acknowledgement of the suffering of the majority of the population during the decades of war. Such acts will assist in bringing reconciliation and national unity.
2. Commit publicly to redressing the crimes of the past through a long-term and integrated strategy, encompassing vetting, criminal justice, truth-seeking, and reparations. We urge President Karzai to reassure the people of Afghanistan of his intentions to implement the transitional justice strategy put forward here, which is devised on the basis of priorities identified by the people. Some aspects of this strategy, on truth-seeking and reparations will be defined in more detail later. However, we urge President Karzai to commit to the timely implementation of the entire strategy.

To local leaders:

3. We urge leaders on the local level to adopt similar measures that recognize the suffering of victims, and to express support to the national strategy for transitional justice. We ask mullahs and other religious leaders to encourage and facilitate reconciliation and unity on the local level.

## **Vetting**

The results of the consultations indicate that the Afghan people urgently want human rights abusers occupying powerful positions in society to be removed from such posts. The appointment of human rights violators to senior positions is seen as an endorsement of their criminal behavior. Many see the truth seeking process as a means to expose such individuals and the criminal justice process as a way to remove them. Since these processes are unlikely to be initiated in the near future there is a need to institute a vetting program in the short term.

Institutions that retain human rights abusers are unlikely to be trusted by the public. Vetting measures, even if only limited and targeted in nature, will go a long way towards addressing the crisis of trust that prevails.

Vetting is a technical process and the ideas laid out below are meant to provide a framework for an approach in this area, but one that may need to be adapted in practice. The Commission notes that this is an area in which the United Nations has valuable experience. Beyond the framework laid out below, we urge the government to draw on the experience of the United Nations and other partners in developing its approach to vetting.

### ***a. Vetting as distinguished from Institutional Reform***

Institutions that abused human rights and pursued the partisan interests of a few must become institutions that uphold human rights, prevent abuses, and impartially serve the people. As institutions act through their employees, personnel reform ought to be a central pillar of institutional reform. Vetting is an important component of personnel reform. Vetting is the process employed to assess the suitability of individuals for particular posts. It is also the mechanism used to assess the integrity of persons currently holding positions in order to determine their suitability for continued service.

Removing human rights abusers will not necessarily transform public institutions into institutions that function fairly and efficiently. This is because public organizations may be plagued by many other shortcomings. The employees of a public institution may, for example, lack qualifications and skills, and the personnel as a whole may fail to represent the population it is meant to serve, or it may have an inefficient organizational structure. Procedures to establish vetting programs ought to be established throughout the public sector. However, the Commission recognizes that this is a complex and long term process (one that should however be undertaken). In the shorter term we recommend a program that will vet current key post holders and candidates for important positions on the basis of their human rights records.

### ***b. Proposed Short-term Vetting Program***

Vetting in the current context of Afghanistan has several dimensions, reflecting the types of positions in which human rights abusers may be found:

- 1 Political appointments, such as cabinet posts and governorships, may be reversible without due process concerns.
- 2 Civil service appointments, both appointments and removals need to take place within a structure that is cognizant of due process concerns.
- 3 Elected officials, such as members of the National Assembly, are expected to accord with certain ethical and human rights standards.
- 4 Institution Reform

## **I. Political appointments (includes Cabinet, certain governors, etc.)**

It is the example set by the political leadership that sets the tone for the entire public administration and indeed for people at large. The self-seeking machinations of ruling factions over many years in Afghanistan have set the very worst of examples. In the view of the Commission this cycle has not been broken. Trust in government has to be earned by government and in particular by its political leadership. In the view of the Commission, the starting point is to ensure that those who have demonstrated a callous disregard for human life and the rights of others should not be permitted to assume positions of political leadership.

Article 72 of the Afghanistan Constitution<sup>41</sup> (the Constitution) prevents the appointment of a person as a Minister in the Government if he or she has been convicted of a crime against humanity, any criminal acts, or a deprivation of civil rights by a court. Afghanistan has recently emerged from years of conflict and no convictions for war crimes have been possible. It is however common knowledge that many faction-leaders in the conflict have engaged in such crimes. For this reason, this clause, which repeats itself throughout the Constitution, must be given a purposive interpretation or else it would become virtually irrelevant. Since the *purpose* of Article 72 of the Constitution is to prevent the appointment of those responsible for crimes against humanity, the President is constitutionally enjoined to do everything possible to achieve this objective.

The Commission urges the President to consider the human rights records of candidates before making political appointments. In particular, the President should take into account the recent reports on human rights that have made out comprehensive cases against persons perceived to be responsible for human rights violations. The AIHRC accepts the credibility of these reports and urges the President to use these as a threshold. Accordingly, we urge the President not to select candidates who are known to have committed human rights abuses. We also recommend that the President remove from political office all persons implicated in these reports.

All political appointees should be required to sign an integrity pledge in which they publicly declare in writing and under oath that they have not committed any human rights violations or acts of corruption. They should further undertake not to engage in such actions in the future. Where it has been demonstrated that a political appointee has breached any aspect of his or her declaration, the President should not hesitate to dismiss such person.

### **Time line: Immediate**

## **II. Civil service appointments.**

Public positions have often been abused in the context of Afghanistan. Afghanistan needs a culture of ethics and service to prevail in the civil service. Public servants who act in a way that is inconsistent with their office, or expose themselves to conflicts between their official responsibilities and private interests are not fit for public service. Those in senior positions are expected to comply with a much higher ethical standard.

Civil servants who have committed human rights violations cannot be expected to act in the public interest. They are wholly unsuited to a career in the civil service. The Commission recommends that in the short term the following system be implemented with regard to appointments to all senior posts in the civil service:

- a. When new appointments at a certain level of seniority are being considered, the Civil Service Commission (CSC)<sup>42</sup> must consult with the AIHRC on whether the candidate is suitable from a human rights perspective or not.

41 Constitution of the Islamic Republic of Afghanistan adopted by Grand Council on 4 January 2004.

42 The official name of the Commission is the Independent Administrative Reform and Civil Service Commission. It was established by Presidential decree in June 2002.

- b. All individuals who are appointed should be required to subscribe to a pledge of integrity, in which they declare under oath in a written document that they have not committed human rights abuses or acts of corruption, nor will they do so in the future.
- c. If, subsequent to their appointment, information comes to light which indicates that senior officials made untruthful pledges and/ or if they have committed abuses since making the pledge, such information should be submitted by any interested party to the Civil Service Commission which must be required to investigate a possible breach of the pledge.<sup>43</sup>
- d. The Civil Service Commission should have the discretion to dismiss frivolous or mischievous complaints. Where the CSC proceeds with an investigation it should supply the official in question with a written copy of the allegations. The impugned official should have the right to reply in writing.
- e. The CSC should seek and consider the representations of relevant and interested organizations and individuals.
- f. It should be within the discretion of the Commission whether to hold a hearing or whether to deal with the complaint on the papers. Clear breaches of the pledge, such as those cases where there has been a subsequent conviction or a finding made by a commission of inquiry, should be dealt with on the papers.
- g. A finding by the CSC that the pledge has been breached should result in the dismissal of the official. Where the past transgression is considered by the Commission to be minor in nature, and where the official in question has demonstrated committed public service, it should be empowered to issue other sanctions such as a period of work without pay.

In order to carry out such tasks, the capacity of the CSC should be strengthened. During the transformation period of the CSC, technical assistance should be sought as necessary. The CSC should establish a committee to consider alleged breaches of integrity pledges. Consideration should be given to international assistance to the Commission to assist with its general transformation.

The AIHRC recommends to the president to assign a three member panel comprised of a CSC, AIHRC and UNAMA representatives. The task of the panel should be to review and make a final judgment of the accusation in the case of breach of integrity pledge

As a first step the AIHRC recommends that a consultant be appointed to assist the CSC in designing and managing its shorter and longer term vetting programs. It urges the United Nations to lend its expertise to this process.

**Time line: Immediate**

### **III. Elected officials**

According to Article 85 of the Constitution a person who is nominated or appointed as a member of the National Assembly must not have been convicted by a court for committing a crime against humanity, a crime, or sentenced of deprivation of his civil rights. Article 86 of the Constitution requires the Independent Electoral Commission to review the credentials of members of the National Assembly. The purpose behind Articles 85 and 86 is to ensure that those who are elected to public office are individuals of the highest ethical and moral standards. The aim of the Constitution is to ensure that criminals and individuals who have engaged in war crimes and human rights violations should not become part of the nation's law making institutions.

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<sup>43</sup> The CSC is already mandated with the tasks of creating a Civil Service Legal Framework and ensuring fair and appropriate recruitment procedures and personnel management policies.



The Electoral Commission should require all candidates to publicly subscribe to integrity pledges in which each candidate declares in writing and under oath that he or she is compliant with Article 85 of the Constitution. The pledge should also require candidates to undertake that they will not engage in civil rights abuses or acts of corruption in the future. Candidates should also pledge not to engage in any acts of electoral intimidation or fraud.

A particular onus rests with the Electoral Commission, and other institutions supporting democracy such as the National Assembly and the AIHRC, to ensure that breaches of the integrity pledges are exposed and followed up. A special disciplinary committee of the National Assembly should be established to investigate alleged breaches of the integrity pledges. A breach of the pledge should result in an expulsion from the National Assembly.

Civil society has an important role to play in monitoring the work of such state institutions and identifying possible breaches of integrity pledges. The media has an important informative role to play through making available accurate information on potential public office holders. The public must be informed on areas of potential conflict of interests in public office and election manifestoes. If this is done responsibly the media can help to build a culture of accountability.

**Time line: Immediate**

#### **IV. Institutional reform**

As mentioned, vetting is no substitute for more comprehensive institutional reform, which is desperately needed on several levels in Afghanistan. Transitional justice initiatives which are not complemented by overall institutional reforms and improvements will contribute to further cynicism and lack of trust, and will ultimately hinder the transition into a peaceful era. The main objective of institutional reform must be to establish fair and efficient public institutions that can be trusted by citizens to deliver services, and protect human rights and the rule of law.

Competent personnel of integrity will not be able to function professionally and effectively if these are not supported by adequate institutional frameworks, procedures, and resources. Other institutional reform measures may include the creation of civilian oversight mechanisms and civil complaint procedures; the reform or establishment of legal frameworks and internal procedures; the development or revision of a professional code of ethics; introducing transparency into government; changing symbols that are associated with the old order; and the provision of adequate salaries, equipment and infrastructure.<sup>44</sup> The introduction of good governance practices is essential to any institutional reform process. Successful governance and the combating of corruption is largely dependent on strong and committed public leadership; the availability of information; and collective action on the part of civil society.

The Commission also notes that progress in the area of rule of law has been hampered in Afghanistan for many reasons, and approaches taken may have deterred rather than encouraged fresh initiatives, in part due to the lack of coordination between various actors<sup>45</sup> Moreover, the fact that different nations are in charge of different types of security sector reform may make it more difficult for the government to press for a comprehensive reform plan which reaches across all sectors.

The AIHRC urges the government to pay attention to the views of the people as expressed in this report and to consolidate its efforts in this area. The Commission notes that the United Nations has particular expertise in issues of rule of law and security sector reform. The Commission urges those

44 See the guidelines produced by the International Center for Transitional Justice (ICTJ) in collaboration with the United Nations Development Program (UNDP).

45 The United States Institute of Peace, *Establishing the Rule of Law in Afghanistan* (March 2004) The Center for Humanitarian Dialogue, *Assistance to Justice and the Rule of Law in Afghanistan: A Strategic Analysis* (Feb. 2004). UNAMA has also recently contracted an expert consultant on rule of law.

actors involved in security sector reform to consult with the United Nations in the design and implementation of security sector reform.

**Time-line: Immediate to long term**

## **2 Criminal justice**

The demand for criminal justice among Afghans we spoke to is particularly strong. At the same time, the obstacles are considerable (and more acute than in regard to other elements of this proposed strategy.) Criminal justice will be perceived as a threat by perpetrators, who may in return seek to threaten stability or the criminal process. We do not underestimate these challenges.

Currently there is no adequate domestic capacity in Afghanistan either at the prosecutorial or judicial level to carry out complex investigations. There may be individual judges and lawyers who are skilled, honest, and hardworking, but there are many systemic problems. Capacity on issues such as witness protection and provision of adequate defense counsel is also lacking. There may also be various legal obstacles such as the erosion of evidence over time. Finally, prosecutions generally face problems of political will, since they may be perceived as divisive and potentially risky. At the same time, prosecutions are essential to reversing the cycle of impunity.

Although respondents were not asked, it may be reasonable to expect that there would be a level of fear about giving testimony against known perpetrators. Respondents may have perceived the criminal process mainly as a means to remove certain perpetrators from their current positions, without thinking through all the implications of criminal trials. Many see criminal justice as a vehicle through which current offenders can be confronted.

Although Afghanistan lacks domestic capacity, there is currently a number of significant international initiatives in relation to Afghanistan that deserve support. In this regard, the Commission commends the government for its ratification of the Statute of the International Criminal Court. AIHRC urges the government to finalize implementing legislation that allows for cooperation with the Court.

The International Criminal Court will have jurisdiction over any cases that rise to the jurisdictional threshold of crimes in the Statute, namely war crimes, crimes against humanity, and genocide. Systematic and serious violations of human rights will fall within their purview. The ICC will be able to try those crimes if, under its complementarity regime, Afghanistan is deemed “unwilling or genuinely unable” to try them, or if Afghanistan chooses to refer a situation to the Court. The AIHRC urges the Afghan government to take steps so as not to be considered as unable to try such crimes. The Commission also welcomes the interpretation that the Prosecutor of the ICC gives to the principle of complementarity, where it may even be envisaged that there would cooperation between the ICC and an Afghan domestic initiative.<sup>46</sup>

Other international initiatives include the trial of Faryadi Sarwar Zardad that is currently proceeding in the High Court in London, England. Zardad is accused of conspiracy to commit torture and take hostages between 1992 and 1996 when he was a commander in the Sarobi district of Kabul. The Attorney-General of the United Kingdom, Lord Goldsmith, is personally prosecuting this case. This development, the first such trial in relation to Afghanistan, is very significant, an other significant development in this regard is the arrest of Hassam ullah Hassam the former head of Military Intelligence (Khad-e-Nizami) in Netherlands in November 2004 and the Commission urges prosecutors of other countries to consider similar initiatives under universal jurisdiction laws.

On the other hand, AIHRC notes the results of the consultation on the preference arising from the consultation for trials to be held in Afghanistan, under domestic or Islamic law, with the involvement of

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<sup>46</sup> The Commission notes the views of the Prosecutor as expressed in the informal paper on The principle of complementarity in practice, found on its website at <http://www.icc-cpi.int/library/organs/otp/complementarity.pdf>. The Commission notes in particular the section on “Partnership and dialogue with States.”

Afghan and international judges, and with internationals involved in roles such as observers and other forms of support. (AIHRC takes the view that any such trial would have to comply with international due process standards, unlike the Abdullah Shah trial conducted by the Public Security Court.<sup>47</sup>)

The Commission therefore considers it urgent that, in response to the wishes of the people, a domestic capacity should be developed within Afghanistan to try such crimes. Also, this does not have to wait until domestic criminal capacity is improved across the entire country. We note that developments in the area of rule of law since the Bonn Agreement have been slow and problematic, and have been fully documented elsewhere. The road to complete recovery for Afghanistan's justice system will realistically be long.

For these reasons, the AIHRC recommends to the government the establishment, within two years, of a permanent specialized investigative capacity within the criminal justice system called a "Special Prosecutor's Office." This Office could be modeled on similar offices elsewhere, such as the Special Prosecutor's Office in Mexico. The government should seek international advice and assistance from similar experiences in the establishment of such an office. Also, the AIHRC urges other governments, the United Nations, and the ICC to consider lending technical assistance or seconding staff to such an office.

The mandate of such an office would be to investigate and prosecute mass atrocities and systematic violations of human rights such as crimes against humanity or war crimes (current and past). It should also investigate and prosecute those who threaten the stability of Afghanistan in "national priority cases." In this regard, we note that the consultation shows that Afghans do not expect everyone to be prosecuted for past or current crimes. Their expectations are more realistic than that. The Afghan public has indicated through this survey that it would be satisfied with a prosecutorial strategy that focuses on either serious crimes or on those who bear the greatest responsibility for them. It will only be possible to try a limited number of cases. For other perpetrators, various schemes of amnesty, reintegration, and reconciliation may be appropriate, and there is international precedent for that. Afghans have also indicated that they consider that demonstration of genuine reformed behavior should be taken into consideration and may constitute a reason for pardon.

In terms of design, it is important that this Special Prosecutor's Office should have adequate capacity to deal with the unique aspects of investigating systematic. These are not ordinary crimes. There will often be several layers between those who carried out the crimes and those who gave the orders or otherwise made the plans for these crimes to be committed. The challenge is in exposing the links between the two in court. Ordinary crimes may require extensive crime scene investigation. Systematic atrocities such as war crimes and crimes against humanity on the other hand require a capacity to carry out analysis. This capacity should not be comprised solely of lawyers and investigators, but should also encompass historical, political and military analysts. These will be used to analyze and expose the structures that allowed these crimes to occur.

It will also be particularly important to include a capacity in the Special Prosecutor's Office that is dedicated to interacting with victims. The views of victims on who is responsible for the crimes should assist in forming a prosecutorial strategy. Victims are also crucial to the process as witnesses, but should be made to feel as more than mere instruments of evidence. The process should aim to assist in restoring their dignity. Crimes against women and children will need to be treated with a particular sensitivity.

The Commission also recommends that within a two-year period of the establishment of a Special Prosecutor's Office, a specialized Chamber should be established to hear cases of war crimes and crimes against humanity committed during the conflict. The Afghan government should approach the

<sup>47</sup> This trial is described in the report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, of 3 Feb. 2003 (UN Doc. E/CN.4/2003/3/Add/4) at paras. 47-56.

United Nations for an Agreement to establish such a Chamber. It should be comprised of both Afghan and international judges. Unlike the Special Prosecutors Office, which should become a permanent legal fixture that has powers to bring cases either before the ordinary courts or the Chamber, the specialized Chamber should have a limited mandate and lifespan.<sup>48</sup> The War Crimes Chamber of the State Court in Bosnia may serve as a useful model. The Court's jurisdiction and procedure should be regulated by its own Statute and Rules.

A capacity for defence lawyers will also need to be developed and attached to the Chamber. Both the Special Prosecutor's Office and the Chamber also need a capacity for outreach and public information. Internationals should be woven into the structure of the Chamber, in clearly defined capacities, including in posts that may pose particular security risks for Afghans to occupy.

AIHRC also recommends that there be a process to review the law in relation to the possibility of bringing civil suits against perpetrators for compensation by victims. Legal assistance centers should be established across the country to give victims the concrete help they would need to pursue such strategies. Also, the body established by the government to resolve property disputes should be strengthened, to deal with the pattern of illegal confiscations of land over recent years.

The AIHRC realizes the challenges that will be involved in pursuing this course. At the same time, it considers such an initiative essential to prevent such violations in the future. All of this will take time to accomplish. The AIHRC therefore urges the government to start making preparations with the view to the establishment and full functioning of a Special Prosecutors Office two years from now.

Timeline: Commencement immediate, with establishment of a Special Prosecutor's Office in 2 years and the establishment of a War Crimes Chamber in 3 years.

## **IMPLEMENTATION**

Apart from the measures laid out above, the Commission urges the government to:

- 1 Devote a specialized capacity to transitional justice within the President's Office, that coordinates the various aspects of the implementation of the strategy;
- 2 Issue a report on a six-monthly basis on the progress made in the implementation of a transitional justice strategy.
- 3 Incorporate consultation in its policy-making in this area.

## **RECOMMENDATIONS TO THE UN AND INTERNATIONAL COMMUNITY**

With regard to the strategy laid out above, the Commission urges the United Nations and the diplomatic community to:

- 1 Hold the government accountable on the implementation of a strategy;
- 2 Give support, both politically and financially, to the implementation of the strategy;
- 3 Exert political pressure that will lead to the non-appointment or removal of known human rights abusers;
- 4 Give technical assistance and expertise to vetting and to the Civil Service Commission;
- 5 Pursue institutional reform in a more coherent manner;

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48 The Commission realizes that if the United Nations is involved, the death penalty will not be able to be applied, but considers that the technical and political challenges of proceeding without United Nations support would be great. There may have to be a targeted education campaign if the death penalty were not applied, as people are likely to demand it.

- 6 Draw on the experience of the United Nations in vetting and institutional reform;
- 7 Give technical assistance to the development of a domestic capacity to investigate and prosecute these crimes;
- 8 Devote specialized capacities to the field of transitional justice, according to the Secretary-General's report;
- 9 Ask for regular progress reports from the government in the implementation of these strategies.

## RECOMMENDATIONS TO CIVIL SOCIETY

Furthermore, the AIHRC urges civil society (local and international) to:

- 1 Document and bring information on human rights abuses to the attention of the government, AIHRC, the international community;
- 2 Advocate for and provide any support possible to the implementation of the strategy.

### *Future Development of Additional Elements Strategy*

The AIHRC is mindful of the need to propose an integrated strategy, which pays attention both to the accountability of perpetrators and the needs of victims. At the same time we recognize that some elements of this strategy require further work to devise and tailor it to the Afghan situation. This work is needed particularly in (1) documentation; (2) determining a mechanism for truth-seeking; and (3) determining an approach to reparations; (4) building the capacity of civil society and other actors.

- 1 **Documentation.** Any transitional justice mechanism that is to be implemented in the future will have to be built on a solid basis of documentation of human rights violations. Even though there have been some very important and credible initiatives in this regard over the last year, there is an urgent need to add to what has generally been a paucity of information on what has happened in Afghanistan.

It will be important to build on the existing initiatives on documentation (OHCHR mapping report, the work of the Afghan Justice Project, Human Rights Watch), which make an important start for all such efforts. Beyond human rights documentation, there is a need to do more targeted and in-country investigation into particular questions, including mapping patterns of violations, mapping of chains of command, and building cases and incident records on perpetrators and victims. Information on these issues should be systematized so that it is available to any future transitional justice mechanisms.

The Commission urges the United Nations to consider extending its activities in this regard. The Commission also proposes close coordination between all actors active in this area.

- 2 **A mechanism for truth-seeking.** As summarized in Chapter 3, support for a truth-seeking initiative is high among Afghans. This may be seen as surprising, considering the lack of familiarity with the concept of a truth commission. Participants in the focus group discussions demonstrated remarkable insights into the benefits that such a truth-seeking exercise could bring, without the benefit of any exposure. Respondents in the survey also seemed persuaded of its possible benefits.

Many participants spoke of the need for a historical record, but often referred to the compilation of such a record in rather sterile terms, for instance as a "history book" or for the purpose of teaching in schools. They did not speak about how they themselves might relate to such a process, and whether they would be willing to give a statement. The consultations

reveal that some people may be willing to talk in a confidential setting. However, other participants appeared keen to voice what they had suffered, at times all speaking out at once on what they had experienced. Even highly sensitive violations such as rape were brought up. This may indicate that people are willing to participate in a process of statement taking and possibly even in public hearing. But focus group participants also spoke of fear of identifying perpetrators. It may be anticipated that many would be fearful of participating in public hearings in particular regions.

Truth commissions elsewhere have taken a variety of forms. Whereas recent truth commissions have usually conducted public hearings (Sierra Leone, East Timor, Ghana, South Africa, and soon Morocco), truth commissions prior to South Africa typically conducted their investigations in private, and took statements behind closed doors (Chile, Argentina, El Salvador, Guatemala). All truth commissions have issued reports with findings that often examine the root causes of conflict. Some have named perpetrators whereas others have not. Only one commission to date, South Africa, had the power to grant individualized amnesties. In order to determine the needs and desires of the public beyond their general view that truth-seeking would be helpful, their views should be further explored.

We need more information in order to determine what may be an appropriate approach to this for Afghanistan. Afghanistan needs to find its own approach to this. If a national initiative such as a truth commission were ultimately to be pursued, the consultation will assist in informing its structure, composition, and mandate.

**Reparations.** The Commission has been encouraged and impressed by the generous spirit of the Afghan people in their views on reparations described above. Many people have stressed reparations as a priority. However, a reparations program needs to be built on more documentation than exists today. In other countries, such a process has often been linked to a truth commission. The AIHRC does not believe that all work on reparations should be delayed. Fact-finding on the situation of victims can already begin, with a view to mapping some of the communities or groups that have suffered the most. The Commission itself proposes to issue a thematic report on reparations. This report will include recommendations on the potential role of international actors in this regard.

4. **Support for civil society activity on transitional justice.** The Commission also points to the importance of allowing civil society and the media political space to function and to build their capacity. It is striking that unlike other countries, Afghanistan has not seen the formation of victim organizations around issues of human rights abuse, such as disappearances. This is an indication of the very restrictive environment that has prevailed in Afghanistan to date. The Commission commends the very valuable contributions made by civil society organizations and individual activists country-wide. The Commission commends current initiatives that seek to support and bolster civil society. The strengthening of civil society throughout Afghanistan will be essential to the successful implementation of any transitional justice strategy.

## Annex I

### METHODOLOGY

#### *Design and preparations*

This study was designed after a series of preliminary consultation with civil society groups around the country that took place during June 2003 to October 2003. This was followed with two detailed training sessions for the researchers of Transitional Justice Unit of the AIHRC. The first of these was conducted in-house, whereas the second was a session of 10 days that took place on November 2003, with the technical support of International Center for Transitional Justice. The second session focused not only on the substance of transitional justice but also on techniques for the national consultation.

We decided on a two-prong approach of qualitative and quantitative methodology for the consultation. Whereas the qualitative methodology enabled us to test for preferences and priorities through the application of a survey, the qualitative methodology would give the rich level of detail, which is particularly useful to policymakers in these issues. This detail was captured in the focus group discussions.

Two months (November and December 2003) were spent raising the profile of the national consultation. The consultation was then officially launched through a press conference and followed by a pilot project in eight provinces.<sup>49</sup> The pilot project led to minor adaptations of the survey and focus group questions before the full consultation was embarked upon.

In order to allow for a representative sample for our consultation, we develop a national plan for interviews and focus groups discussions. First, a national plan was developed at the head offices of AIHRC, in close consultation with field researchers of the Transitional Justice Unit. Each regional office then developed a time plan and drew a map of when and where the team would conduct the consultation at the provincial and district levels.

A margin of population used was based on the data collected and used for the convening of the Emergency Loya Jirga in June 2002, and the Constitutional Loya Jirga in Dec. 2003, on the population of Afghanistan.<sup>50</sup> This was supplemented by plans to interview refugee populations in Iran and Pakistan. Using this methodology, we estimated that we would need to apply around 2000 surveys and conduct 50 focus group discussions for a representative sample of the population of Afghanistan. However, in reality we went far beyond this, since the exercise was not conceived of merely as an opinion poll or a product of social science research, but as a national consultation.

In total, we applied the survey to 4151 people in one-on-one interviews. Over 2000 participants participated in over 200 focus groups around the country. The demographic data on these is included in the respective Annexes. Our consultation took us to 32 of Afghanistan's 34 provinces (two new provinces having been declared only recently). We also interviewed around 400 Afghan refugees in Pesahwar and Quetta, and about 300 refugees in Mashad and Tehran. The national consultation took almost eight months to complete, and was conducted from January 2004 to August 2004.

#### *Selection of respondents and participants*

Random selection of participants was applied for the application of the survey, where the researchers had no role in selecting the respondents and the location of interview, but where respondents were selected through a random-walk method. In other words, researchers would walk around and select

<sup>49</sup> The pilot project was conducted in Kabul, Mazar, Ningrahar, Herat, Bamiyan, Gardez, Badakhshan and Kandahar.

<sup>50</sup> The margin for the interview by questionnaire was set 0.02 percentage of the 1,600,000 population confirmed for the ELJ and CLJ.

participants who they thought would meet the criteria of random selection. Interviews were held on the streets, and in order to create balance, a door-to-door approach was used as well.

A snow-ball selection technique was used for participants in the focus group discussions. In advance of the focus group discussion, the researchers asked their demographic information, and informed of the time and date of the meeting. It was also determined that their participation would be of a voluntary nature, and participants were asked to introduce researchers to other persons that would meet the criteria. The participants of the focus groups were generally enlisted a day or few prior to the meeting day<sup>51</sup>. In most cases there were separate focus group discussions for male and female participants.

Most of the focus groups held in areas where the AIHRC did not have its own offices were held in Mosques or schools. Some of the village focus groups discussions were held at the homes of one of the participants. Three focus groups were held in Growara and Manders, for Hindu religious minorities. The focus groups discussions lasted for a minimum of one hour and a maximum of two and half hours. As a security precaution, participants were asked to select a nick name or a number as an identifier to be used during the focus group discussion, but in their enthusiasm, participants frequently forgot to use these.

### ***The researchers & format of focus group discussions***

Around 17 researchers, eight of whom were women, applied the surveys and facilitated the focus group discussions. In facilitating the focus groups, they were supported by up to ten assistants and minute-takers. All of the facilitators and assistants were given training on how to conduct a focus group discussion by asking questions without suggesting answers. Each focus group discussion started with a brief introduction of AIHRC, the purpose of the national consultation, methodology of the focus group itself, and the securing of an agreement of participants to record the discussion on tape. However, in almost 40% of the focus groups participants requested for the discussions not to be recorded as they did not feel comfortable with this. In such circumstances, researchers stopped the recording and instructed the minute takers to take verbatim notes, in as far as possible. Even where a tape recording was made, facilitators often were made to promise that after the taking of a transcript they would delete the discussions from the tapes. There was a great deal of nervousness among the people about the possibility of being traced from the tapes.

The minutes were examined immediately afterwards, and if there were doubts about the accuracy, a second focus group was conducted. This happened in 10 focus groups conducted in Kandahar, Urozgan, and Helmand. In the second focus group, discussions were tape-recorded and a new record created.

To ensure that we were following a proper methodology, the Afghan Independent Human Rights Commission asked the International Center for Transitional Justice to conduct on field office assessment and evaluation of the researchers. A consultant from ICTJ was able to conduct this assessment in three field offices in March 2004.

### ***Data analysis***

#### ***Quantitative Analysis***

All questions of the survey were codified in order to feed into a database. An access database was designed by the data management office of the AIHRC, to help the data entry process. The data was entered in to the access database by a team of five. A regular process of checking was put in place. Software called SPSS, designed for quantitative analysis, was used to analyze the data entered. The

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<sup>51</sup> Participants in Kabul were recruited even a week prior for the focus groups discussion.



survey responses were also analyzed to detect regional and gender variation. Where respondents had given no answer or indicated more than one answer, these were marked as “missing”.

### ***Qualitative Analysis***

Another access database was designed by the data management office, to be used in the analysis of the focus group discussions. Fifty focus group discussion records were randomly selected from different provinces and reviewed carefully by a team of researchers. This team classified the responses that had been repeated many times in the focus groups. This data was extracted and coded, thus developing a coding system. This system was used to enter all the remaining focus groups (a total of 211) into the database. This gave us the charts reproduced in [Annex xx](#).

To compliment our computerized data analysis with a “human touch,” we read each and every focus group record and took hand-written notes, underlining common points, as well as identifying specific trends and patterns that were visible based on regional, provincial or gender differences. We also extracted direct quotations, which we have placed throughout the report.

This study is the largest of its kind to have been conducted in Afghanistan. It was the first experience of the AIHRC so there will be shortcomings, but we believe that these shortcomings have not effected the overall accuracy of the outcome or the value of the information to policy-makers.

## Annex II

### COMMUNITY FOCUS GROUP DISCUSSIONS

#### *Introduction*

#### *Consent form*

My name is \_\_\_\_\_. I am working for the AIHRC. We are collecting information here in \_\_\_\_\_. We would like to learn more about people's opinions regarding past human right violations in Afghanistan and what you think would be the best way to deal with these violations. The information collected will help us understand what our people believe is important and will be used to help influence decisions about how to respond to human rights abuses that occurred in the past. By participating in this study, we believe that you will contribute to a free and safe Afghanistan.

#### *Confidentiality and consent:*

"I would like to ask you to participate in a group discussion. The discussion will take about 1 to 2 hours. A researcher named \_\_\_\_\_ will be asking questions. Another researcher named \_\_\_\_\_ will be taking notes. You will be part of a group of eight to ten people. There are not obliged to respond to every question.

The researcher will keep your responses confidential. You do not need to use your real name in the group meeting. Please do not discuss the conversation or the names of participants with anyone outside the group. Your name will not be written down anywhere nor there be any way to identify you. Only researchers involved in this study will view the discussion notes which will be stored under lock and key at AIHRC Kabul. ( We also are asking your permission to tape record this discussion. Only the researchers will have access to these tapes and they will be destroyed once they are transcribed. No names or identifying information will be recorded.)

While we see no foreseeable risks to you from participating in this research, we are aware that our country has suffered a great deal and that many have strong opinions about what has happened.

However, we are a human rights organization and are not a part of government or military. If you have any doubts about this, please feel free not to participate. There is no direct benefit to you, however we hope that the research will benefit Afghanistan by helping us understand what people want in order to help the country move forward.

You will not receive money if you join this study. Your participation is voluntary. You may refuse to answer any question and you may choose to leave the group discussion at anytime. Refusing to participate will not affect you or your family in any way.

**Do you have any questions for me?**

You may ask questions about this study at any time. If you have any questions about your rights or your treatment as a participant in this project, after we leave the facility, please ask \_\_\_\_\_ or you may contact Nader Nadery, a member of AIHRC at

Nader Nadery  
Member AIHRC, Karta-e- Say, Pule Sorkh, Tell: 0093 20 2500677  
E-mail: [Nadery@aihrc.org.af](mailto:Nadery@aihrc.org.af)

**Demographic characteristics**

Focus Group Name: \_\_\_\_\_

Focus Group Number: \_\_\_\_\_

Date \_\_\_\_\_

Province \_\_\_\_\_

District \_\_\_\_\_

Village \_\_\_\_\_

Location \_\_\_\_\_

**Before the group discussion, I would like to ask a few questions.**

Q101. How old are you?

Date of Birth (mm/ dd/ yyyy) / /

Q102. What is your current marital statue?

1 = single      2= married or staying with partner      3= divorced/ widowed

Q103. What level did you reach in school?

1= none

Q104. What is your occupation?

Q105. Gender

1= Male 2= Female

Q106. Ethnic ID

1. Pashtoon 2. Hazara 3. Uzbek, 4. Tajek, 5. Baluch, 6. Pashaai, 7. Turkman, 8.other

**Outline****1 . Focus Group Implementation**

Last 90-120 Minutes

6-10 respondents

Facilities deeper understanding of perception , attitudes , opinions , and knowledge .

One moderator and one note taker

**2. Recruitment**

Will have two researchers assist in recruiting participants using the following method:

Face to Face: Can use a random – walk route to interview people using a per-prepared questionnaire.

In each randomly selected household- ask if the person is agreed to attend the meeting, then fill the

demographic form, offer a letter or verbally describe the project. If they agree to participate, arrange a meeting. If one Household declines, move to neighbor.

Snowball or chain sampling: Start with one key information who identify one person that fits the selection criteria. This identified person is then asked to participate and to recommend another person who fits the selection criteria. This process repeats until 10 persons are recruited per group for the study.

#### **4. Location of Focus Group**

Please make sure the location is comfortable and provide privacy for participants. If it is not within walking distance from the participants workplace or home, help them arrange transportation.

#### **5. Recording and other Preparation**

Before each session make sure you have done the following:

Make sure that the tape recorder is working .

Make sure there is enough blank tape.

Batteries in Tape Recorder is sufficient.

Moderator has two pens and notepad.

Note taker has at least two pens and notepad.

Consent Form .

Focus Group Guide.

#### **6. Incentives**

Purchase drinks and cookies (meals if close to LUNCHTIME) for participants.

#### **7. Discussion Guidelines**

Every Focus group follows the same format using identical questions e.g.

Introduce facilitator and AIHRC.

Introduce the purpose of national consultation.

Explain the basic principles of focus group.

Explain the rationales for recording and permissions. Guarantees of confidentiality and anonymity.

#### ***“Internal” objectives of survey-incorporating some suggested revisions***

Based on the view that the most effective and viable transitional measures for a society are those which have been developed in consultation with the population, and which are understood and have legitimacy in the eyes of the population, the objectives of the survey are:

1. To understand how the population perceive their experience from 1979 to 2001.
2. To assess how the population perceive and frame the human rights violations that occurred.

3. To determine whether the perception and framing of human rights violations among the population is differentiated by ethnic group.
4. To determine whether there is a desire to deal with the legacy of these violations among the population as a whole, and among constituent subgroups.
5. To understand how the population and its groups understand justice and what their expectations are for achieving it.
6. To gauge the attitudes of the population and its groups about how best to deal with the legacy of human rights violations in Afghan, AND to measure attitudes to the various options proposed to deal with the human rights violations in Afghanistan.
7. To assess the attitudes of the population and its groups to the involvement of the international community in assisting in developing a response to the legacy of human rights violations.
8. To understand what the population and its group's regards as the desired final outcome of any transitional justice measures.
9. To identify institutions, entities and or persons who are viewed by the Afghan population and its groups as legitimate and trustworthy for the purposes of implementing transitional justice processes.
10. If there is consensus or clearly identifiable view as to the need to respond to the legacy of violations, to gauge the extent to which there is sufficient information.

### ***Guideline for Discussion***

First of all I would like to introduce myself. My name is \_\_\_\_\_. Currently I work as a researcher for AIHRC. The AIHRC is collecting people's opinions regarding past human right violence in Afghanistan and what you think would be the best way to deal with these violations. The information collected will help us understand what the people believed is important and will be used to help influence decisions about how to respond to the human rights abuses that occurred in the past.

In contacts with our colleague you had a chance to receive a detailed explanation of this research. However, I like to remind you of some key points.

You were selected on the basis of certain criteria that are important for this research. Additionally, it was very important for us that this group is as mixed as possible in regards to gender, age, level of education, and ethnicity etc.

You have to be aware that the goal of this consultation is not to test your knowledge. There are no right and wrong answers. More precisely, every honest answer is the right one. We are here to listen to another and to discuss.

Discussion will be conducted in such a way that I will be asking questions to which you need to answer. Please feel free to get involved in discussion whenever you want. You should not be waiting for my sign to do that. At the same time, please be polite. Respect the right of others to express their opinions by listening to others as they speak. When someone is expressing his/hers opinion do nothing interrupt. Allow others to participate in discussion. Other important rule is that you must openly tell us what you think. It is better nothing to say anything than to say something in what you do not really believe.

We guarantee to protect your anonymity. We do not need to know your identity. Equally, we will nothing ask you to name anyone during discussion.

During the entire research process, information from this discussion will be available only to members on this consultation research team. However, you must know that this discussion is being recorded. That is being done because I cannot talk to you and at the same time take notes of what you say and I want to make sure that we listen and understand everything you tell us.

Is all this clear? Do you have any questions/ Now there is only one more thing we have to do. We must introduce ourselves. I would like to ask each one of you to tell us your pseudo name, nothing you real names of family name, but just names you want me to use for you during discussion. Also, please share with us some basic information on yourself such as information about your age, your marital status, your current profession, etc.

NOW WE WILL START WITH DISCUSSION.

### ***Focus group key & probe questions***

1. In your opinion what are human rights?
  - Probe 1a: what kinds of human rights violations have occurred in Afghanistan during the period of conflict.
  - Probe 1a: Have you Personally been affected by human rights violations?
  - Probe 1b: What institutions or person(s) do you identify as responsible for the event(s) you just described? violations?
2. Do you think the population of Afghanistan should remember and preserve the record of what has happened to them?
  - Probe 2a: Why or why not?

(If these events should be preserved) How should the population of Afghanistan remember and preserve the record of what has happened of what has happened to them?

3. How would you like to see the injustice remedied?
  - Probe 3a: For you, what constitutes justice?
  - Probe 3b: How important is it to you that persons responsible for injustice are held accountable for their actions?
  - Probe 3c: What should be done to help the victims of injustice in Afghanistan?
  - Probe 3c: Are there individuals and organizations in Afghanistan who you believe could conduct a fair and accurate inquiry into the injustices suffered by people in Afghanistan?
  - Probe 3d: What about outside Afghanistan?
  - Probe 3e: Do you have confidence in the Afghanistan judicial system?
  - Probe 3d: What about the judges?
  - Probe 3f: And lawyers?
  - Probe 3h: If there are trials for those who are accused of committing human right violations, where should these trials be held?
  - Probe 3i: Under which laws? Afghanistan Laws? International Laws?
  - Probe 3j: Should the international community be involved in any ways in these trial processes? If yes, how and what capacity?

4. What can be done to stop these injustices from being committed again?
  - Probe 4a: Is there a need for reconciliation between people in Afghanistan?
  - Probe 4a: What measures would help to forge unity and trust among the people of Afghanistan?
  - Probe 4b: Have you heard of the International Criminal Court or the International Criminal Tribunals Yugoslavia and Rwanda?
  - Probe 4c: Have you heard of a Truth Commission?
5. What are your immediate concerns?(For example Security, food, electricity, finding missing family members. Etc.)
  - Probe 5a: What about justice? Is that an immediate concern?

## Annex III

### QUESTIONNAIRE

#### *Introduction*

Hello, my name is \_\_\_\_\_. I am an officer with the Afghan Independent Human Rights Commission. The Commission was established by the Interim Administration of Afghanistan through a Presidential Decree but it is independent of the Afghanistan Transitional Administration. It is a non-partisan, non-political body. Our job is to monitor and promote human rights in Afghanistan. The Commission also has a mandate to ask Afghans what should be done about human rights violations and abuses that were committed in the past, during the conflict from 1978 - 2001. For example whether such violations should be investigated and trials of the people who committed them.

The Commission has no policy on this subject right now. Our task is to ask Afghans from all over the country what they think should be done, and then issue a public report which will be available to the government, the people of Afghanistan, and the international community. I may have my own personal views, but it is my job here to be very impartial and simply record your views. I hope you will feel that this is an important process for you to be involved in. You will not receive any money for participating, and there may be no direct benefit to you, but your views will help determine the policies of the government, and this will help Afghanistan to build a better future.

#### *Confidentiality, Comfort, & Consent*

I want to assure you that I will not be taking your name down on my forms, and that all the views you express here are completely confidential and anonymous. You see, the form I have to record your views has no space for a name. (Show the form) Nor will we keep any records of who you are, or provide any way to identify you.

All I will do is record your gender and approximate age for statistical purposes.

Do you agree to participate in this consultation? Do you have any questions for me?

#### *Instructions*

I will ask you 19 questions, and ask you to answer either yes or no or provide you with a series of options. Sometimes you may not feel that any of the options provided is the answer you would ideally like to give. In this case, please choose the best answer among the options offered.

#### *Truth Seeking*

1. Do you think it is important to establish the truth of what happened, in terms of human rights violations committed in Afghanistan during the war?  
Yes/No
2. Who should play the most important role(s) in an institution established for this purpose?
  - a) The National Government
  - b) The International Community



- c) Local Elders
  - d) Intellectuals and Social Groups
  - e) Religious Figures
  - f) Women
  - g) All of them
3. What does justice mean to you?
- a) Punishment of those responsible by a court.
  - b) Compensation for victims of human rights violations.
  - c) Reconciliation of divided communities.
  - d) Publication of the truth about the past.
  - e) All of the above.
4. Would you support amnesties or pardons for anyone who confessed their crimes before an institution created for transitional justice?
- Yes/No

### ***Judicial Remedies***

5. Do you want to see justice for crimes committed during the war? Yes/No
- If you want to see justice, how important is it to you?
- a) Very Important
  - b) Important
  - c) Only somewhat important
6. Whom do you think should face criminal trials for crimes committed during the war?
- a) everyone who committed a crime
  - b) those who committed serious crimes and their commanders
  - c) only commanders who were responsible for planning, ordering or carrying out serious crimes
  - d) no-one
7. Do you think there should be reparations for crimes committed? Yes/No
8. If war criminals are brought to justice, who do you think should play the most important role?
- a) The National Government
  - b) The International Community
  - c) Both the National Government and the International Community
  - d) Local Leaders
  - e) None of these
9. If trials for war criminals are held, where should they be held?
- a) Inside Afghanistan
  - b) Outside Afghanistan, in a Muslim country.

- c) Outside Afghanistan, in any country
10. When should war criminals be brought to justice in Afghanistan?
    - a) Now
    - b) Within two years.
    - c) 2-5years).
    - d) More than 5 years.
  11. Which would you trust the most to hold a fair trial for war criminals?
    - a) A court with Afghan judges
    - b) A court with international judges
    - c) A court with both international and Afghan judges
  12. Do you have confidence in Afghanistan's legal system to be able to bring about accountability for past human rights violations?  
Yes/No
  13. Will justice for crimes committed during the conflict help to bring about security and development in Afghanistan?  
Yes/No
  14. Do you think that bringing war criminals to justice in the near future would
    - a) increase the stability of the peace and bring security to Afghanistan
    - b) decrease the stability of the peace and threaten security in Afghanistan
    - c) not sure
  15. Do you think that human rights abusers should be removed from their posts or positions?  
Yes/No
  16. If there is no process of accountability, will people seek revenge? Yes/No
  17. Do you think a judicial process will help reconciliation? Yes/No
  18. What other process are useful for reconciliation?  
  
Please rate the following options 1-5 (1 = most useful; 5 = least useful).
    - a) Local shuras/jirgas.
    - b) Social justice for victims.
    - c) Truth and Reconciliation Commission.

***Personal***

19. Have you been a victim of a conflict-related crime? Yes/No
20. Has anyone in your family been a victim? Yes/No

21. When did this happen?  
1978- 1991  
1991-1996  
1996-2001
22. Was Afghanistan's war mostly
- A civil war among internal factions
  - A war imported by other countries
  - Both equally
23. 24) Was Afghanistan s war mostly
- A civil war among internal factions
  - A war imported by other countries
  - Both equally
24. 25) Which country or countries do you hold responsible for crimes committed during the war? (You may choose more than one)
- Iran
  - Pakistan
  - Russia
  - U.S.
  - All of them
25. How do you feel the international community, since the fall of the Taliban, has dealt with Afghans who committed crimes against humanity?
- Supported them politically, militarily and financially
  - Has tried as much as possible to limit their power and influence
  - Neither of the above
26. What role did ethnicity play in Afghanistan's war?
- Part of Afghanistan's conflict was between ethnic groups
  - Ethnicity is manipulated by commanders but there is no real ethnic conflict in Afghanistan.
27. Should a report be written documenting all the past human rights violations?  
Yes/No.
- If yes, what are the main purposes of the report?
- Disclose the truth.
  - Bring about justice.
  - Recommend new institutions and policies so that similar violations will never occur again.
  - All of the above.

## Annex IV

### DEMOGRAPHIC AND SURVEY DATA

#### *National survey chart*

Province	Total Population	Margin for interview
1. Badakhshan	375,000	82 persons
2. Badghis	225,000	44
3. Baghlan	650,000	140
4. Balkh	850,000	177
5. Bamyān	350,000	165
6. Farah	200,000	35
7. Faryab	600,000	101
8. Ghazni	700,000	135
9. Ghor	425,000	161
10. Halmand	650,000	118
11. Hirat	1075,000	190
12. Jawzjan	350,000	113
13. Kabul	2525,000	412
14. Kandahar	800,000	190
15. Kapisa	325,000	68
16. Konar	100,000	22
17. Konduz	775,000	147
18. Laghman	350,000	75
19. Logar	75,000	15
20. Nangarhar	950,000	190
21. Nimroz	100,000	20
22. Paktika	175,000	37
23. Paktia	150,000	29
24. Parwan	575,000	140
25. Samangan	250,000	90
26. Saripul	425,000	90
27. Takhar	600,000	122
28. Urozgan	575,000	151
29. Maidan Wardak	350,000	69
30. Zabul	150,000	28
32 Khust		64
Pakistan (refugees)		399
Iran (Refugees)		330
Missing		2
<b>Total:</b>		<b>4151</b>

*Focus Group chart*

Province	Male	Female	Total	%
Badakhshan	68	19	87	3.77%
Badghis	11	12	23	1.00%
Baghlan	96	62	158	6.85%
Balkh	81	36	117	5.07%
Bamyan	72	36	108	4.68%
Farah	10	32	42	1.82%
Faryab	57	19	76	3.29%
Ghazni	41	24	65	2.82%
Ghor	95	2	97	4.20%
Hilmand	42	0	42	1.82%
Hirat	145	54	199	8.62%
Jawzjan	50	23	73	3.16%
Kabul	59	51	110	4.77%
Kandahar	17	16	33	1.43%
Kapisa	10	10	20	0.87%
Khost	40	10	50	2.17%
Kunar	10	10	20	0.87%
Kunduz	101	38	139	6.02%
Laghman	51	23	74	3.21%
Logar	13	0	13	0.56%
Nangarhar	134	39	173	7.50%
Nuristan	25	0	25	1.08%
Paktika	28	0	28	1.21%
Paktya	24	8	32	1.39%
Panjsher	19	20	39	1.69%
Parwan	35	37	72	3.12%
Samangan	55	27	82	3.55%
Sari Pul	31	23	54	2.34%
Takhar	90	33	123	5.33%
Uruzgan	8	0	8	0.35%
Wardak	20	19	39	1.69%
Zabul	69	18	87	3.77%
<b>Total</b>	<b>1607</b>	<b>701</b>	<b>2308</b>	<b>100.00%</b>
%	<b>69.63%</b>	<b>30.37%</b>	<b>100.00%</b>	

## Annex V

### SURVEY & FOCUS GROUP CHARTS

#### 1. Justice Means

	Justice Means Punishment by Court		Justice Means Compensation of		Justice Means Reconciliation		Justice Means Publication of Truth		Total
	Yes	Not Chosen	Yes	Not Chosen	Yes	Not Chosen	Yes	Not Chosen	
<b>Male</b>	1373	1264	403	2234	544	2093	228	2409	2637
<b>% Males</b>	52.1%	47.9%	15.3%	84.7%	20.6%	79.4%	8.6%	91.4%	100.0%
<b>Female</b>	465	649	188	926	244	870	81	1033	1114
<b>% Females</b>	41.7%	58.3	16.9%	83.1%	21.9%	78.1%	7.3%	92.7%	100.0%
<b>Total</b>	2037	2114	630	3521	837	3314	353	3798	4151
<b>% total</b>	49.1%	50.9%	15.2%	84.8%	20.2%	79.8%	8.5%	91.5%	100.0%

#### 2. Who can play a good role in a mechanism for Transitional Justice?

	National government play role in justice		International community play role in justice		Local Elders Play Role in Justice.		Intellectuals and Social Groups Play Role in Justice	
	Yes	Not Chosen	Yes	Not chosen	Yes	Not Chosen	Yes	Not chosen
<b>Male</b>	791	1846	893	1744	199	2438	587	2050
<b>% within SEX</b>	30.0%	70.0%	33.9%	66.1%	7.5%	92.5%	22.3%	77.7%
<b>Female</b>	342	772	293	821	56	1058	242	872
<b>% within SEX</b>	30.7%	69.3%	26.3%	73.7%	5.0%	95.0%	21.7%	78.3%
<b>Total</b>	1267	2884	1299	2852	287	3864	873	3278
<b>% within SEX</b>	30.5%	69.5%	31.3%	68.7%	6.9%	93.1 %	21.0%	79.0%

### 3. If you want justice how important Justice is to you?

	If you want justice how important to you*						Total
	Missing	Very Important	Important	A little important	Not important	Missing	
<b>Male</b>	32	1953	526	66	31	29	2637
<b>% within SEX</b>	1.2%	74.1%	19.9%	2.5%	1.2%	1.1%	100.0%
<b>Female</b>	11	849	211	25	10	8	1114
<b>% within SEX</b>	1.0%	76.2%	18.9%	2.2%	.9%	0.7%	100.0%
<b>Total</b>	50	3149	767	98	42	45	4151
<b>% within SEX</b>	1.2%	75.9%	18.5%	2.4%	1.0%	1.1%	100.0%

### 4. Who can play the most Important Role if War Criminals Brought to Justice?

	National Government	International Community	National Government & International Community	Local Leaders	National Government & Local Leaders	All of the above	None of the above	Total
<b>Male</b>	477	442	1416	46	103	95	18	2637
<b>% within sex</b>	18.1%	16.8%	53.7%	1.7%	3.9%	3.6%	.7%	100.0%
<b>Female</b>	248	125	521	31	113	71	0	1114
<b>% within Sex</b>	22.3%	11.2%	46.8%	2.8%	10.1%	6.4%	.0%	100.0%
<b>Total</b>	824	633	2053	88	222	261	20	4151
<b>% within SEX</b>	19.9%	15.2%	49.5%	2.1%	5.3%	6.3%	5%	100.0%

### 5. Effects of Bringing War Criminals to Justice on peace?

	Effects of Bringing War Criminals to Justice		
	Increase stability and bring security	Decrease stability and threaten security	Total
<b>Male</b>	2099	175	2637
<b>% within SEX</b>	79.6%	6.6%	100.0%
<b>Female</b>	765	108	1114
<b>% within SEX</b>	68.7%	9.7%	100.0%
<b>Total</b>	3170	315	4151
<b>Total % within SEX</b>	76.4%	7.6%	100.0%

## 6. Where trials should be held?

	Where should trials be held				Total
	Inside Afghanistan	Outside of Afghanistan Muslim Country	Outside Afghanistan Any Country	Missing	
<b>Male</b>	2077	280	233	47	2637
<b>% within SEX</b>	78.8%	10.6%	8.8%	1.8%	100.0%
<b>Female</b>	901	134	67	12	1114
<b>% within SEX</b>	89%	12.0%	6.0%	1.1%	100.0%
<b>Total</b>	3299	451	325	76	4151
<b>% within SEX</b>	79.5%	10.9%	7.8%	1.8%	100.0%

## 7. When should war criminals be brought to justice?

	When should war criminals be brought to justice					Total
	Now	Within 2 Years-	Within 2-5 Years	More than 5 Years	Missing	
<b>Male</b>	1066	688	541	267	75	2637
<b>% within SEX</b>	40.4%	26.1%	20.5%	10.1%	2.8%	100.0%
<b>Female</b>	641	259	152	50	12	1114
<b>% within SEX</b>	57.5%	23.2%	13.6%	4.5%	1.1%	100.0%
<b>Total</b>	1865	1058	781	350	97	4151
<b>% within SEX</b>	44.9%	25.5%	18.8%	8.4%	2.3%	100.0%

## 8. Trust to hold trials in:

	Trust to hold trials				Total
	Court with Afghan Judges	Court with International Judges	Court with Afghan and International Judge	Missing	
<b>Male</b>	575	797	1236	29	2637
<b>% within SEX</b>	21.8%	30.2%	46.9%	1.1%	100.0%
<b>Female</b>	238	252	616	8	1114
<b>% within SEX</b>	21.4%	22.6%	55.3%	.7%	100.0%
<b>Total</b>	894	1146	2059	52	4151
<b>% within SEX</b>	21.5%	27.6%	49.6%	1.3%	100.0%



### 9. Remove Human Rights abusers from posts?

	Remove HR abusers from posts			Total
	Yes	No	Missing	
<b>Male</b>	2401	139	97	2637
<b>% within SEX</b>	91.1%	5.3%	3.7%	100.0%
<b>Female</b>	1008	76	30	1114
<b>% within SEX</b>	90.5%	6.8%	2.7%	100.0%
<b>Total</b>	3749	238	164	4151
<b>% within SEX</b>	90.3%	5.7%	4.0%	100.0%

### 10. Have you been a victim of conflict-related crime?

	Have you been a victim of conflict-related crime?			Total
	Yes	No	Missing	
<b>Male</b>	1801	769	67	2637
<b>% within SEX</b>	68.3%	29.2%	2.5%	100.0%
<b>Female</b>	765	329	20	1114
<b>% within SEX</b>	68.7%	29.5%	1.8%	100.0%
<b>Total</b>	2869	1187	95	4151
<b>% within SEX</b>	69.1%	28.6%	2.3%	100.0%

### 11. Cause of Afghanistan' conflict?

	Cause of Afghanistan				Total
	Internal Civil War	Imported War	Both	Missing	
<b>Male</b>	114	812	1619	92	2637
<b>% within SEX</b>	4.3%	30.8%	61.4%	3.5%	100.0%
<b>Female</b>	100	283	694	37	1114
<b>% within SEX</b>	9.0%	25.4%	62.3%	3.3%	100.0%
<b>Total</b>	228	1282	2491	150	4151
<b>% within SEX</b>	5.5%	30.9%	60.0%	3.6%	100.0%

**12. Which country or countries are responsible?**

	Iran	Pakistan	Russia	USA	Other	Missing	Total
<b>Male</b>	16	336	171	55	1	22	2637
<b>% within SEX</b>	.6%	12.7%	6.5%	2.1%	.0%	.8%	100.0%
<b>Female</b>	8	156	127	26	1	11	1114
<b>% within SEX</b>	.7%	14.0%	11.4%	2.3%	.1%	1.0%	100.0%
<b>Total</b>	30	550	325	88	2	37	4151
<b>% within SEX</b>	.7%	13.2%	7.8%	2.1%	.0%	.9%	100.0%

**13. How international community dealt with war criminals in last two years?**

	How international community dealt with war criminals				Total
	Supported politically and militarily & financially	Tried to limit their power	Neither of the above	Missing	
<b>Male</b>	1185	1011	328	113	2637
<b>% within SEX</b>	44.9%	38.3%	12.4%	4.3%	100.0%
<b>Female</b>	390	521	176	27	1114
<b>% within SEX</b>	35.0%	46.8%	15.8%	2.4%	100.0%
<b>Total</b>	1709	1675	603	164	4151
<b>% within SEX</b>	41.2%	40.4%	14.5%	4.0%	100.0%

**14. Purpose of report?**

	Disclose the truth	Bring About Justice	Recommend new institutions	All of the above	Disclose Truth & Bring About Justice	Bring About Justice & Recommend New Institutions	Missing	Total
<b>Male</b>	652	469	275	1050	5	2	139	2592
<b>% within SEX</b>	25.2%	18.1%	10.6%	40.5%	.2%	.1%	5.4%	100.0%
<b>Female</b>	281	188	99	473	3	2	57	1103
<b>% within SEX</b>	25.5%	17.0%	9.0%	42.9%	.3%	.2%	5.2%	100.0%
<b>Total</b>	1009	722	420	1708	8	4	214	4086
<b>% within SEX</b>	24.7%	17.7%	10.3%	41.8%	.2%	.1%	5.2%	100.0%

**15. Without accountability people will seek revenge?**

	Without accountability people will seek revenge				Total
	Yes	No	Maybe	Missing	
<b>Male</b>	2248	283	3	69	2603
<b>% within SEX</b>	86.4%	10.9%	.1%	2.7%	100.0%
<b>Female</b>	990	110	1	6	1107
<b>% within SEX</b>	89.4%	9.9%	.1%	.5%	100.0%
<b>Total</b>	3600	411	5	93	4109
<b>% within SEX</b>	87.6%	10.0%	.1%	2.3%	100.0%