



# Transitional Justice: Views from the Ground on How Afghanistan Fares

Chona R Echavez

Leah Wilfreda RE Pilongo

Aruni Jayakody

Ahmad Saboor Hamza Noorzai

Michaela Markova

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## About the Authors

**Chona R. Echavez** is the Deputy Director for Research and at the same time the Interim Director at the Afghanistan Research and Evaluation Unit (AREU). She has served as a consultant to various international organisations and as an Asia Fellow in Cambodia at the Centre for Peace and Conflict Studies, during which time she researched healing, dreams, aspirations, and concepts of peace among Cambodian youth. She also worked as Senior Research Associate at the Research Institute of Mindanao Culture where she managed a research portfolio that included population, health, peace, and livelihood programmes with gender as a cross-cutting issue. She has a Ph.D. in Demography from the Australian National University in Canberra.

**Leah Wilfreda RE Pilongo** is currently the Researcher and Donor Coordinator at AREU. Before her current post, she served as Research Dean of the University of Bohol, Philippines. She is a holder of a Certificate of Special Education. She combines her background in psychology with that of an educator and researcher. Her research involvement covers areas such as youth and risky behaviour, peace and conflict transformation, migration, and formulation of modules and session plans for communication as well as governance among youth.

**Aruni Jayakody** is a lawyer and independent consultant who is currently pursuing a Ph.D. in International Human Rights Law and Policy at the Fletcher School of Law and Diplomacy, Tufts University. She was a former Governance Programmes Officer at AREU, where she managed the Afghan Constitutional Analysis and Dialogues. She has previously worked on transitional justice issues in Colombo, Sri Lanka.

**Ahmad Saboor Hamza Noorzai** is currently a Project Coordinator and Research Officer at AREU. He started as a Research Assistant and was later promoted to Research Officer. He obtained his Bachelor's degree in political science from University of Delhi, India, and his Master's degree in International Relations from University of Bedfordshire, United Kingdom. Since joining AREU, he has worked in different research projects such as: 1) Stakeholder and Policy Mapping of both Agriculture and Nutrition Stakeholders and Policies in Afghanistan; 2) Employment Generation and Skills Development in Fragile Situations; 3) Case Studies of Gender Norms, Agency and Innovation in a Wheat-Based Livelihood System; and 4) Gender-Based Violence among Internally Displaced Boys and Girls in Kabul.

**Michaela Markova** is currently an Associate Political Affairs Officer in the Security Council Affairs Division, Department of Political Affairs at the United Nations in New York. In her capacity as Research and Donor Coordinator, she was one of the key persons at AREU who conceptualised this study. Before joining AREU, she has worked in the humanitarian and development field. She has also served as Desk Officer at the Ministry of Foreign Affairs of the Slovak Republic. She completed her Mag.Phil. in Political Science at the University of Vienna and Université Catholique de Louvain.

## About the Afghanistan Research and Evaluation Unit

The Afghanistan Research and Evaluation Unit (AREU) is an independent research institute based in Kabul. AREU's mission is to inform and influence policy and practice by conducting high-quality, policy-relevant research and actively disseminating the results, and by promoting a culture of research and learning. To achieve its mission AREU engages with policy makers, civil society, researchers and students to promote their use of AREU's research and its library, to strengthen their research capacity, and to create opportunities for analysis, reflection and debate.

AREU was established in 2002 by the assistance community in Afghanistan and has a Board of Directors comprised of representatives of donor organisations, the United Nations and other multilateral agencies, and non-governmental organisations.

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## Foreword

Afghanistan has been a country in conflict for the last four decades. Gross violations of human rights, war crimes, and crimes against humanity committed by all warring factions and parties to the conflict have left behind too many civilians as victims, who are now eagerly seeking justice and proper redress for their continued sufferings. The scars of war have been a normal feature of life in Afghanistan.



Transitional justice has always been advised, on the one hand, as a healing mechanism for past crimes, and on the other, as a vital instrument to search for truth, reparation, redress, and guarantees of non-repetition and to provide an effective means to end impunity and maintain justice in post-conflict situations.

To support the cause of transitional justice, governments are required to demonstrate strong political will and actions that could facilitate the acknowledgment of victims' suffering of human rights violations in the past. However, they must also have in place a professional and capable judiciary with due knowledge on the issue. One aspect of dealing with transitional justice is to address organised and systematic crimes of the past through proper investigation and documentation. This is evidently beyond the capacities and capabilities of community-based truth-seeking initiatives and informal justice approaches.

In Afghanistan, citizens, and particularly the victims of war crimes and their family members, could play a crucial role in the truth-seeking process and the documentation of crimes that they have witnessed or experienced. The "Conflict Mapping" report, which was developed based on broad national consultation with diverse categories of people, could be a reliable source for a truth-seeking initiative to heal the wounds and mend the scars, but it is yet to be published due to the security and political situation in the country. Still, it is an incorrect perception that justice should overshadow peace efforts, as the experience of Afghanistan proves the contrary—it is a living example that there is no peace without justice.

Afghans have long been concerned about whether there will be an end to their continued sufferings. How can the government address their grievances and provide them with access to justice and make the perpetrators accountable for their crimes? Moreover, can people share in a peaceful future, living in a violence-free environment where the rule of law dominates?

It is evident that there are no easy answers to these frequently asked questions, but there are various approaches and mechanisms to mitigate people's worries and enhance their flickering hopes for a bright future. Transitional justice would indeed function as a healing instrument to address the legacy of the violent past and to provide an effective means of therapy for traumatised war victims. Among others, there should be strong political will from the government; enhanced awareness-raising initiatives on transitional justice at various levels; a reformed, professional, and independent judiciary; and the required support to independent human rights institutions for truth-seeking and documentation through the active involvement of the local population. The recent experience in Mindanao, Philippines, is a good example of following peace and reconciliation at both formal and informal levels through the establishment of transitional justice and reconciliation commission, which links informal community-based conflict resolution to formal efforts taken by the government.

The recent action on transitional justice in Cambodia, Bangladesh, and Argentina provides much hope that justice will not be forgotten by people, but it requires continued advocacy by human rights defenders in civil society and victims as well as a brave stand by political leadership.

I very much hope that this paper will pave the way for a better and broader understanding of transitional justice and offer practical ways for its implementation in Afghanistan, which direly needs peace, justice, and reconciliation.



Dr. Sima Samar  
Chairperson, Afghanistan Independent Human Rights Commission

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## Acronyms

AIHRC	Afghanistan Independent Human Rights Commission
ALP	Afghan Local Police
APRP	Afghanistan Peace and Reintegration Programme
CDR	Community Dispute Resolution
FGD	Focus Group Discussion
HPC	High Peace Council
IDI	In-depth Interview
KII	Key Informant Interview
PPC	Provincial Peace Committee
PPRC	Provincial Peace and Reintegration Committee
UN	United Nations
UNDP	United Nations Development Programme

# Executive Summary

## Introduction

Transitional justice is defined as the “range of processes and mechanisms associated with society’s attempts to come to terms with the legacy of large-scale abuses to ensure accountability, serve justice, and achieve reconciliation.”<sup>1</sup> The concept of transitional justice renews the trust between the population and the state, trust that is built as the prerequisite to both economic and social development. The main objective of this paper is to identify the possibilities (if any) of linking the current peace-building agenda with transitional justice policies. In particular, the study seeks the views of Afghans on their preferred transitional justice policies, and whether these policies should be a precursor or linked to the peace process. Further, the research specifically seeks the views on whether (if any) type of compromises should be made in the current context. In particular, it asks across five provinces whether accountability for past human rights abuses remains a priority.

## Methodology

A mixture of qualitative research methods was used, including assessing the perceptions and expectations of the study sites regarding transitional justice mechanisms and the issues of the five provinces included in the study. An extensive desk review was conducted before the collection of primary data. The data were based on extensive field research with focus group discussions (FGDs) and two rounds of in-depth interviews (IDIs) with the aid of semi-structured interview guides. The selection criteria of the five provinces were based on the following considerations: how conflict affects each province, factors such as levels of sympathy for armed groups, and confidence in the national reconciliation process. With the abovementioned criteria, the following sites were selected: Kabul, Bamyan, Nangarhar, Uruzgan, and Baghlan.

## Findings

The majority of the FGD participants, of both sexes and in all provinces, recognised that transitional justice is an idea related to addressing the past, although none of the participants had a detailed understanding of the term “transitional justice.” The FGD participants across all provinces expressed a clear understanding that the abuses of the past continue to affect the present and shape the future, and that impunity for past atrocities was fuelling new cycles of violence. A small number of FGD participants across all five provinces noted that the failure to address the past and provide justice for earlier atrocities had broader implications related to poor governance in the current context. The informants attributed the deteriorating security situation, ongoing violence, and continued corruption to the failure to hold individuals accountable for their illegal behaviour in the past. Across all provinces, there was an agreement among the majority of female and male FGD participants that the past should be addressed.

Regarding the range of grievances, some participants recalled the human rights abuses suffered directly by them or by one of their family members. This issue was particularly common in Uruzgan, where the majority of participants revealed that they had directly experienced a human rights violation. Across all provinces, the majority of male and female participants provided anecdotal evidence of past abuses that had occurred in their area. Bamyan participants were unanimous that the Taliban’s oppression marked a very dark era. A few participants in Bamyan also mentioned well-known atrocities like the Yakawlang massacre, believing that justice must be sought for such events. In Nangarhar, several informants referred to the need to include Daesh in any transitional justice process. Informants in Baghlan also identified widespread gender-based violence against women, girls, and young boys perpetrated by the People’s Democratic Party of Afghanistan and the Mujahideen.

<sup>1</sup> United Nations (UN) Security Council, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies” (Report of the Secretary-General, S/2004/616, 23 August 2004), Retrieved from: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2004/616](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2004/616) (Accessed Last: 17 June 2016), para. 8.

A small number of participants in Baghlan and Nangarhar explicitly stated that they would be willing to accept a form of amnesty against perpetrators. Numerous female informants specified that even if historical crimes are not prioritised, current crimes should be investigated and prosecuted. Several informants from Baghlan and Bamyan suggested that a special investigative commission or special court should be established at the provincial level. Some informants from Bamyan suggested that the government should immediately commence documenting both the past and current injustices. The court should prioritise perpetrators who are currently not in positions of power, as the cases of powerholders will take longer to address.

Participants acknowledged both structural constraints and technical challenges to providing accountability. On the macro level, the majority of participants felt that the current government has neither the capacity nor the willingness to provide transitional justice. The majority were aware that there is little to no political will to address abuses committed by powerful individuals, especially those currently serving in the government.

It was also suggested that the government should enlist the support of religious leaders in the provinces to raise awareness about past abuses and develop ways to implement transitional justice measures. Their backing of a transitional justice process is likely to garner broader support from the public.

In terms of informal versus formal dispute resolution, some participants demonstrated a high degree of confidence in informal community dispute resolution (CDR) mechanisms, in the form of the gathering of *Ulema* (scholars) or *Jirga*, as many local-level disputes are already resolved in this manner. Additionally, CDR mechanisms were viewed as less expensive and, therefore, cost-effective. However, in Bamyan, there was a deviation from the general preference for CDR mechanisms.

The majority of participants felt that the negotiation process should be Afghan-led without interference from neighbouring or powerful states such as the United States, Iran, and Saudi Arabia. However, some also presented the role of international communities in facilitating, negotiating, and mediating the peace process.

Views differed greatly as to whether women should participate in the peace process. There was lukewarm support for female participation in the peace process in Uruzgan and Nangarhar, while support was strong in Kabul, Bamyan, and Baghlan.

If there is a guarantee of sustainable and long-lasting peace, most participants across all four provinces would be willing to make significant compromises. In Uruzgan, there was strong support for allowing the Taliban to join the government. According to the accounts of the participants in Uruzgan, the Taliban forces are strong, so the government will not be able to gain victory. Additionally, the Taliban has considerable support in the community, and in Uruzgan, they are even viewed as “Afghans.” They are seen as deserving to be part of the government.

In contrast, participants in Kabul appeared to be divided as to whether the Taliban should be part of a future Afghan government. Participants from Kabul indicated that before joining the government, the Taliban should, at a minimum, apologise for their crimes, agree to respect women, and not undermine the development gains made over the past 14 years.

In Nangarhar, a majority of participants claimed that “concessions” are acceptable for the sake of peace. The general sentiment is that conflict has come at an enormous personal cost and that most Afghans would be willing to make sacrifices to achieve peace. However, there was a competing view as to whether concessions should be made only when peace and the general rule of law are guaranteed. Some participants specifically stated that any concessions should be made once peace and the rule of law are restored.

The majority of participants expressed concern that the gains made over the past 14 years should not be negated during the peace process. Further, they stated that the gains made in foreign relations should not be undermined.

The majority of participants were aware of the Afghanistan Peace and Reintegration Programme (APRP), except for respondents in Kabul where most had not heard of the programme. However, the majority of women in Nangarhar and Bamyan had only gained knowledge of the APRP through media like radio and television. In Bamyan, the majority of female participants mentioned examples of the APRP process implemented in certain districts where the beneficiaries had joined the government. However, they had no greater knowledge about the programme, voicing their view that the APRP is a useless endeavour. In several districts where the second round of IDIs was conducted, there was a strong perception that the APRP is a corrupt process, which often reintegrates civilians for the financial gain of the Provincial Peace and Reintegration Committee. The government stakeholders acknowledged the problems with the implementation of the APRP. However, overall, they claimed that a weak process was better than no process.

## Conclusions

An overwhelming majority of participants still remember the past human rights abuses from various regimes and have a direct experience of them. All participants similarly wished to see the perpetrators of past abuses brought to justice through a criminal justice process. Across all five provinces, the participants had little confidence in the government's ability to lead the peace process. However, the government is still perceived as the main interlocutor in the negotiations and the leader in modernisation and development. Many understood the challenges of negotiating with the Taliban and were willing to make compromises. In three provinces—Kabul, Baghlan, and Bamyan—the participants felt that women should play a role in the peace process, as their participation could ensure that their rights are not undermined during the negotiations. Further, given that participants across all five provinces were categorical in their rejection of the alleged perpetrators continuing to occupy official positions of power, it is imperative that the government ensure that any power-sharing efforts do not allow alleged perpetrators to assume official positions. Most participants had only a vague understanding of the APRP despite the fact that it should have been implemented in our research districts based on the information provided by the High Peace Council and United Nations Development Programme. Nevertheless, the overwhelming majority of participants claimed that it had not been implemented in their area and that they have never heard of or come into contact with the provincial offices of the APRP.

## Recommendations

### To government

- Initiate a review of the process of making senior appointments to the public service and ensure that robust guidelines are in place to disqualify individuals who have been associated with past human rights abuses.
- Initiate a review of the electoral laws to ensure that individuals implicated in serious human rights abuses go through a rigorous selection process.
- Establish a vetting programme to ensure that individuals implicated in serious human rights abuses are neither recruited nor promoted in the armed forces and public service.
- Incorporate international crimes into Afghanistan's domestic law in line with the country's obligations under the Rome Statute.
- Allocate resources to and empower the Attorney General's Office to investigate and prosecute serious human rights abuses and international crimes.
- Implement a comprehensive outreach strategy that intends to raise awareness and build confidence in the national peace process.
- Implement a comprehensive outreach strategy to raise awareness about the APRP.
- Ensure rigorous oversight of the implementation of the APRP, including community-level consultations and the establishment of local grievance mechanisms.

### **To civil society**

- Raise awareness about transitional justice concepts, including related experiences. Whenever possible, develop cultural and religious contexts for transitional justice concepts.
- Enlist the support of local leaders, including tribal elders in raising awareness about transitional justice.
- Initiate rigorous documentation efforts to prosecution, including the use of universal jurisdiction.
- Initiate local-level truth-telling and memorialisation efforts.

### **To the international community**

- Prioritise funding for transitional justice activities within both government and civil society.
- Include transitional justice-related benchmarks in Afghanistan's development agenda. Examples include the incorporation of international crimes and the strengthening of the Attorney General's Office.

# 1. Introduction

Transitional justice has been defined as the “full range of processes and mechanisms associated with society’s attempts to come to terms with the legacy of large-scale abuses to ensure accountability, serve justice, and achieve reconciliation.”<sup>2</sup> Specific policies relevant to a transitional justice strategy include prosecutions, truth-seeking, reparations, and guarantees of non-recurrence. The international community no longer views justice, peace, and democracy as mutually exclusive goals, but rather as mutually reinforcing imperatives.<sup>3</sup>

The definition of transitional justice provided by the Secretary General’s Report of the United Nations on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies as “the full range of processes and mechanisms associated with society’s attempts to come to terms with a legacy of large-scale past abuses.”<sup>4</sup> To expound further on the connection between transitional justice and development, it is essential to define development. The United Nations Development Programme (UNDP) provides a concrete definition of development as “A process of enlarging people’s choices. The most critical ones are to lead a long and healthy life, to be educated, and to enjoy a decent standard of living. Additional choices include political freedom, guaranteed human rights and self-respect.”<sup>5</sup>

In this regard, there is a common denominator between development and transitional justice that promotes the enhancement of relations and structures to improve societal well-being. It considers the perspective that transitional justice looks backward at previous abuses of human rights and simultaneously moves forward to create a more stable society. Hence, development looks towards the future.<sup>6</sup>

It covers several measures directed to restore the respect for human rights as the basis for democracy. The concept of transitional justice renews the trust between the population and the state, trust that is built as the prerequisite to both economic and social development. Several issues are addressed in this manner to support development and include several ways in which transitional justice can be seen to support development through individual or collective reparation, such as reinstatement of property, reintegration of victims and perpetrators in society, and vetting actors in the justice sector.<sup>7</sup>

Humanity’s search for truth and justice are nothing new. The term was expanded in various ways to encourage countries to deal with atrocities against human rights during the phase of transition. Such a quest can be traced back to the downfall of the Soviet Union and post-Cold War era in the 1980s. Transitional justice mechanisms are increasingly employed among the countries who suffered from internal armed conflicts with the aim of achieving sustainable peace through a combination of retributive and restorative approaches.<sup>8</sup> The application of such mechanisms seeks to “contribute to emancipatory peacebuilding by addressing and redressing grievances of civil and political rights, in tandem with those rights that speak to the socio-economic and structural roots of the conflict.”<sup>9</sup> Reconciliation is one of the important factors in building sustainable

2 United Nations (UN) Security Council, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies” (Report of the Secretary-General, S/2004/616, 23 August 2004), Retrieved from: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2004/616](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2004/616) (Accessed Last: 17 June 2016), para. 8.

3 UN Security Council, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,” p.1.

4 UN Security Council, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,” para. 8.

5 UN Security Council, “The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,” para. 8.

6 Roger Duthie, *Towards a Development-Sensitive Approach to Transitional Justice*, UNDP Human Development Report, 2008, p.293. Retrieved from: <https://goo.gl/O2OYUB> (Accessed last: 25 July 2016).

7 Helena Sancho, *Using Transitional Justice to Promote Development*, SIDA, April 2014, p.3. Retrieved from: <https://goo.gl/owFVld> (Accessed last: 21 July 2016).

8 Kristiana Eleftheria Papi, *The Role of Transitional Justice Processes in Building Peace in Latin America*, 23 January 2015, Retrieved from: <https://goo.gl/HGniJw> (Accessed last: 18 July 2016).

9 Roddy Brett and Lina Malagon, *Overcoming the Original Sin of the ‘Original Condition’: How Reparations May Contribute to Emancipatory Peace building*, Human Rights Review, Vol 14, No.3, 2013, p. 260. Retrieved from: <https://goo.gl/5Zb7l8> (Accessed last: 22 July 2016)



peace. It can be defined as a profound process of dialogue between conflicting parties, leading to the recognition of the “other” and the respect for each other’s differences, interests, and values.<sup>10</sup>

The problem of transitional justice distinctively arises within the context of transition, a shift in or within political orders, or the period between two regimes.<sup>11</sup> After the Second World War, on the international scene, there was a shift towards the criminal prosecution of perpetrators at the International Military Tribunals of Nuremberg and Tokyo. More recent developments in the mid-1990s include the establishment of the International Criminal Tribunals for the Former Yugoslavia and Rwanda. The International Criminal Court (ICC), which is considered as a permanent international criminal court, seems to be an essential landmark and definite achievement of this evolution. Yet, currently, various “hybrid” courts with both national and international involvement may be observable, including the Special Court for Sierra Leone (2002), the Extraordinary Chambers in the Court of Cambodia (2003), and the Special Panels for Serious Crimes in the District Court of Dili (East Timor) (2000).<sup>12</sup>

Regarding transitional justice in the context of Afghanistan, several key conceptual questions arise. First, what is a transition for transitional justice? Moreover, has Afghanistan been through one? Transitional justice was first used as a policy prescription in the aftermath of the 2002 US-led invasion. However, despite the fall of the Taliban and two presidential elections, a number of individuals responsible for perpetrating systemic human rights abuses continue to be in power. Moreover, since 2005, the violence has escalated, and 2015 was marked as the year with one of the highest number of civilian casualties.<sup>13</sup> Thus, a question arises in the context of the ongoing conflict and with many of the former perpetrators occupying key positions of power: is there even space for transitional justice in Afghanistan?

Commentators have pointed out that Afghanistan’s transition is unique from many other types of transitions experienced elsewhere in the world. First, Afghanistan’s transition was brought about through an international intervention.<sup>14</sup> Second, international actors have played a critical role in influencing the development of transitional justice policies. Afghanistan is not alone in this type of transition. Iraq and Libya are two similar examples. The 2004 invasion of Iraq brought about the end of Saddam Hussein’s regime, and international actors led the efforts to bring accountability for Saddam-era human rights abuses. Similarly, the 2011 intervention in Libya brought about the end of the Gaddafi regime. At the same time, the UN Security Council referred the situation in Libya to the ICC in Resolution 1970, and simultaneously, the Human Rights Council authorised a commission of inquiry to investigate abuses during the transition.<sup>15</sup>

In the early years of Afghanistan’s reconstruction, significant progress was made in terms of advancing transitional justice as a relevant normative framework within the domestic policy agenda. However, little progress was made in operationalising or implementing transitional justice. Early in President Karzai’s administration, Afghan policymakers made important progress towards addressing the country’s past abuses. The Afghanistan Independent Human Rights Commission (AIHRC) conducted a nationwide survey to garner the public’s views on transitional justice. The subsequent report, entitled “A Call for Justice: A National Consultation on Past Human Rights Violations in Afghanistan,” revealed that Afghans demanded a holistic approach to transitional justice. The report, which was handed over to

10 Charles O. Lerche III, *Truth Commissions and National Reconciliation: Some Reflections on Theory and Practice*, Peace and Conflict Studies, Vol 7, no. 1, 2000, p.2. Retrieved from: <https://goo.gl/BFd2so> (12 July 2016).

11 Ruti G. Teitel, *Transitional Justice*, Oxford: Oxford University Press, 2002, Retrieved from: <https://goo.gl/ZswjeR> (Accessed Last: 22 July 2016).

12 Christina Binder, “Introduction to the Concept of Transitional Justice,” in *Transitional Justice: Experiences from Africa and the Western Balkans*, ed. Walter Feichtinger, Gerald Hainzl and Predrag Jureković (Vienna: Landesverteidigungsakademie (LVAk)/Institut für Friedenssicherung und Konfliktmanagement (IFK), 2013), 11.

13 UNAMA, *Afghanistan: Annual Report 2015 Protection of Civilians in Armed Conflict*, 14 February 2016, Retrieved from: <https://goo.gl/vf3ooy> (Accessed last: 3 August 2016).

14 Ahmad Nader Nadery, *In the Aftermath of International Intervention: A New Era for Transitional Justice?* The International Journal of Transitional Justice, Vol 5, 2011, p. 171. Retrieved from: <http://ijtj.oxfordjournals.org/content/5/2/171.extract> (Accessed last: 12 June 2016).

15 International Criminal Court (ICC), “Situation in Libya Referred to the ICC by the United Nations Security Council” February 2011, Retrieved from: <https://www.icc-cpi.int/libya> (Accessed last: 4 August 2016).



President Hamed Karzai in the presence of Ms. Louise Arbour, High Commissioner for human rights in 2004, also noted the desire among Afghans to see all five pillars: 1) Acknowledging the people's pain and grievances, e.g., commemorations and construction of monuments, etc.; 2) Vetting mechanisms for the government offices in order to have a responsible and responsive government (removal of warlords and human rights abusers from Government positions); 3- Truth seeking and documentation of war crimes and gross violation of human rights during years of conflict; 4) Promotion of reconciliation and national unity through non-judiciary approaches, and; 5) Practical justice-seeking mechanisms to effectively put an end to impunity and culture of impunity.<sup>16</sup> By some accounts, transitional justice has regressed. Notably, in 2008, the government enacted an Amnesty Law barring prosecution of historical human rights abuses. Subsequent transitional justice efforts have mostly focused on institution building as well as disarming, demobilising, and rehabilitating former non-state combatants. In particular, transitional justice policy prescriptions have taken a backseat to a larger peacebuilding agenda that focuses on a negotiated end to the ongoing conflict.

However, as this call for transitional justice went unanswered, and the conflict continued with new cycles of injustice and grievances, the Afghan government must now ask itself in light of the current peace negotiations how to end this cycle of impunity and achieve sustainable peace. While the need for a transitional justice mechanism in the peace process is recognised, the appropriate mechanism and approaches to deal with grievances of the past that are adapted to the specificities of the Afghan context are poorly understood. This evidence-based policy initiative seeks to build upon other research and peacebuilding initiatives to better understand the perspective of the communities and their preferred approaches, both culturally and religiously, to facilitate their incorporation into the new peace process. It will additionally draw upon the lessons learned from the initiatives already undertaken or now underway to contribute to the larger peace movement.

One of these initiatives is the Afghanistan Peace and Reintegration Programme (APRP). APRP is a flagship programme of the Afghan government's peacebuilding strategy that aims to "promote peace through a political approach" and "encourage combatant foot soldiers and commanders, who previously sided with armed opposition and extremist groups, to renounce violence and terrorism, to live within the laws of Afghanistan, and to join a constructive process of reintegration and peace."<sup>17</sup> One of the specific goals of the APRP was to reintegrate combatants associated with the armed opposition and extremist groups at the subnational level. The APRP is led by the High Peace Council (HPC), which oversees the national reconciliation process with the Taliban and other armed opposition groups. At the subnational level, the provincial governors appoint the Provincial Peace Committees (PPCs) comprising 25-30 members and including at least two women. PPCs are tasked with conducting political and social outreach and demobilising and reintegrating combatants. They reach out to combatants, communities, and local political elites, build confidence around the process and negotiate grievances between victims and combatants. However, as shown in the "Afghan People's Dialogue on Peace" survey, many Afghans object to the ongoing APRP, claiming that it has failed to address their grievances and left impunity untouched.<sup>18</sup> This issues paper, therefore, tries to understand better the perceptions of communities on justice within the APRP to be able to draw lessons for the future peace process.

The main objective of this paper is to identify the possibilities (if any) of linking the current peacebuilding agenda with transitional justice policies. It seeks the views of Afghans on their preferred transitional justice policies, and whether these policies should be a precursor or linked to a peace process. Further, it specifically seeks their views on whether (if any) type of compromises should be made in the current context. In particular, questions were asked across five provinces whether accountability for past human rights abuses remains a priority, and if so, then who should take the lead in providing

16 Afghanistan Independent Human Right Commission (AIHRC), *A Call for Justice: A National Consultation on Past Human Rights Violations in Afghanistan*, Kabul, 2004, p.41. Retrieved from: <http://www.refworld.org/pdfid/47fdfad50.pdf> (Accessed last: 15 June 2016).

17 National Security Council, D&R Commission, *Afghanistan Peace and Reintegration Programme (APRP)*, Program document, Kabul 2010, Retrieved from: <https://goo.gl/H2kXjh> (Accessed last: 15 June 2016).

18 UNAMA, *Afghan People's Dialogue on Peace: Building the Foundations for an Inclusive Peace Process. Local Road Maps for Peace*, AIHRC, Kabul 2014, p. iv. Retrieved from: <https://goo.gl/yaUYO1> (Accessed last: 19 June 2016).

justice, and what type of processes—formal or informal—should be used. Further, it asks whether other non-judicial forms of accountability such as truth-telling, apologies, and memorialisation are preferred. Additionally, the paper seeks to provide an analysis of how these preferences could be incorporated into the domestic policy agenda.

As Winterbotham explains in her research, there is a considerable desire among the Afghan population to punish criminals while taking into account the on-the-ground realities.<sup>19</sup> In 2013, Gossman and Kuovo stated that certain compromises might have to be made to accommodate political elites in the interest of short-term stability.<sup>20</sup> However, Afghanistan's past demonstrates only too well that a failure to acknowledge the truth about past abuses and build accountable institutions headed by qualified individuals of integrity only serves to fuel new cycles of violence and add to the growing number of civilian casualties. Answering the question as to how Afghans view transitional justice, especially the type of compromises that they are willing to make in the current context, is a central question underlying this paper. This should be at the centre of the discussions about the current peace negotiations.

Already in 2005, an AIHRC report entitled “A Call for Justice” identified the recurring cycles of violence and the subsequent lack of accountability as major hurdles to sustainable peace in Afghanistan.<sup>21</sup> Similarly, the Afghanistan Justice Project concluded that the patterns of violence since the Communist era continued after 2001,<sup>22</sup> although, as Gossman states, limited efforts were made to link pre-2001 to post-2001 abuses in order to identify such patterns.<sup>23</sup> A 2015 Human Rights Watch report identified key individuals in positions of power who continue to commit crimes.<sup>24</sup> However, as Gossman and Kuovo argue, the international community and Afghan government have chosen short-term political and security objectives over human rights by accommodating warlords and ex-jihadi commanders. Without strong state institutions that can bring about behavioural change and disarm ex-jihadi commanders and warlords, recurring cycles of violence and impunity are the norm.<sup>25</sup> Human rights violations such as extra-judicial killings, violence against women, parallel justice executions, and abductions as reported by the United Nations Assistance Mission in Afghanistan Human Rights Unit during the Taliban occupation of Kunduz city in September and October 2015 suggest that grave human rights violations are also being committed by armed opposition groups.<sup>26</sup>

Despite the clear evidence of the cycles of violence continuing until the present day and impunity leaving the perpetrators of past and current injustices in military or political power, the debate on transitional justice stopped when the Amnesty Law was enacted in 2008. The new APRP was established in 2010 to provide political amnesty to Afghan Taliban fighters who were willing to hand over arms and join the peace process. However, as Winterbotham highlighted, APRP appears to ignore justice, and as such, fails to acknowledge the dangerous legacy of impunity in Afghanistan.<sup>27</sup> One of the objectives of this paper is thus to find out the impact of APRP on lasting peace in Afghanistan five years after its implementation.

19 Emily Winterbotham, *Healing the Legacies of Conflict in Afghanistan: Community Voices on Justice, Peace and Reconciliation*, AREU, Kabul, January 2012, pp. 1, 31. Retrieved from: <https://goo.gl/9fAegp> (Accessed last: 17 June 2016).

20 Patricia Gossman and Sari Kuovo, *Tell Us How it Ends*, Afghanistan Analyst Network, Kabul, June 2013, p.3. Retrieved from: <https://goo.gl/XVfXmx> (Accessed last: 21 July 2016)

21 Afghanistan Independent Human Right Commission (AIHRC), *A Call for Justice: A National Consultation on Past Human Rights Violations in Afghanistan*, Kabul, 2004, p.41

22 The Afghanistan Justice Project (AJP),  *Casting Shadows: War Crimes and Crime against Humanity: 1978-2001*, Kabul 2005, p.5. Retrieved from: <https://goo.gl/xHEU5k> (Accessed last: 7 July 2016).

23 Patricia Gossman, *Documentation and Transitional Justice in Afghanistan*, USIP, Kabul, September 2013, p.6. Retrieved from: <https://www.usip.org/sites/default/files/SR337.pdf> (Accessed last: 4 August 2016).

24 Human Rights Watch, *Today We Shall All Die: Afghanistan's Strongmen and the Legacies of Impunity*, Kabul, 2015, Retrieved from: <https://goo.gl/E3hZHt> (Accessed last: 27 July 2016).

25 Patricia Gossman and Sari Kuovo, *Tell Us How it Ends*, Afghanistan Analyst Network, Kabul, June 2013, p.3.

26 “Afghanistan Human Rights and Protection of Civilians in the Armed Conflict” (Kabul: United Nations Assistance Mission in Afghanistan and United Nations High Commissioner for Human Rights, 2015), 13-14.

27 Emily Winterbotham, *Healing the Legacies of Conflict in Afghanistan: Community Voices on Justice, Peace and Reconciliation*, AREU, Kabul, January 2012, pp. 1, 31.

This research focused on the issue of addressing past and current injustices, which are still among the most pressing concerns of the Afghan population to achieve sustainable peace. While the “Afghan People’s Dialogue on Peace” report published with 22 Afghan non-governmental organisations in 2014 identified weak rule of law and impunity for human rights violations as the main drivers of armed conflict,<sup>28</sup> the study instead focused on determining whether addressing past or current human rights violations is a prerequisite for the current peace talks with the Taliban to lead to sustainable peace. The study also examined the types of justice (punitive, restorative, or reparative) and perpetrators that should be punished in order to establish long-lasting peace in Afghanistan.

The trust and legitimacy of the government are very much dependent on how public office holders deal with the cycles of violence and continuing impunity in Afghanistan. AIHRC’s report entitled “Call for Justice” identifies a significant lack of trust in the government and, to a certain extent, the international community for failing to stop the recurring violence and bringing perpetrators to justice. It argues that “the perceived impunity is entrenched in the political system, by rewarding perpetrators with positions of power even though they continue to commit violations.”<sup>29</sup> Indeed, the report advocates the removal of all war criminals from positions of power.<sup>30</sup> The Afghanistan Justice Project report reaches the same conclusions, stating that unless the risk of retribution from war criminals who retain positions of military power and political influence are addressed,<sup>31</sup> the meaningful transitional justice strategy cannot be developed.<sup>32</sup> Winterbotham identifies two main mechanisms—vetting and lustration—that are required to build government trust.<sup>33</sup> In this report, it is explained that focusing on the Taliban alone in the current peace negotiations will most probably not bring lasting peace to Afghanistan.

28 UNAMA, *Afghan People’s Dialogue on Peace: Building the Foundations for an Inclusive Peace Process. Local Road Maps for Peace*, AIHRC, Kabul 2014, p.3.

29 Christina Binder, “Introduction to the Concept of Transitional Justice,” in *Transitional Justice: Experiences from Africa and the Western Balkans*, p. 25.

30 UNAMA, *Afghan People’s Dialogue on Peace: Building the Foundations for an Inclusive Peace Process. Local Road Maps for Peace*, AIHRC, Kabul 2014, p.42.

31 Constraints in this respect include the lack of documentary evidence, difficulties in locating many witnesses, and the atrophy of public institutions.

32 The Afghanistan Justice Project (AJP), *Castling Shadows: War Crimes and Crime against Humanity: 1978-2001*, Kabul 2005, p.7.

33 Emily Winterbotham, *Healing the Legacies of Conflict in Afghanistan: Community Voices on Justice, Peace and Reconciliation*, AREU, Kabul, January 2012, pp. 1, 31. Retrieved from: <https://goo.gl/9fAegp> (Accessed last: 17 June 2016).

## 2. Methodology

### 2.1 Field data collection method

In the course of this research, a mixture of qualitative research methods were used, including assessing the perceptions and expectations of the study sites regarding transitional justice mechanisms and the specific issues of the five provinces included in the study. An extensive desk review was made before the collection of primary data. The data were based on extensive field research with focus group discussions (FGDs) and two rounds of in-depth interviews (IDIs) with the aid of semi-structured interview guides.

### 2.2 Site selection

The selection of study sites was originally patterned on AREU's paper entitled "Healing the Legacies of Conflict in Afghanistan,"<sup>34</sup> although APRP beneficiaries were also taken into consideration (Annex 1). The selection criteria for the five provinces was based on the following considerations: how conflict affects each province, factors such as levels of sympathy for armed groups, and confidence in the national reconciliation process.

### 2.3 Study sites

#### Kabul

Kabul, as the capital and seat of power for governments in Afghanistan, has been the site of frequent conflicts. In 1978, the city experienced a bloody coup, and from 1979 to 2001, it was torn by a series of conflicts due to the Soviet invasion and occupation, civil war, and Taliban rule. Although Kabul was not significantly affected by the Taliban regime, the far-reaching impact of the latter included the city in the violations of human rights. It bore the brunt of the inability to exercise the rights to education and freedom of expression as well as violations against women and children among others.<sup>35</sup>

Kabul is a most urbanised province<sup>36</sup> with the highest population in Afghanistan (4.2 million).<sup>37</sup> As claimed by the NRVA study 2011-2012, Kabul is considered a magnet for migrants both internal and international. Out of the 4.2 million, those who were born abroad comprised 360 thousand and an approximation of 45% coming from various places in the country. The immigrant population comprised those who came from Pakistan (67%) and Iran (32%).<sup>38</sup> while Kabul, in comparison to the other provinces, disproportionately absorbs households stemming from the displacement.<sup>39</sup> Regarding education and employment opportunities in Kabul, the male literacy rate is 68.1%, the second highest in Afghanistan after Wardak, while the female literacy rate is 34.7%, the highest in the country.<sup>40</sup>

34 Emily Winterbotham, *Healing the Legacies of Conflict in Afghanistan: Community Voices on Justice, Peace and Reconciliation*, AREU, Kabul, January 2012, pp. 1, 31. Retrieved from: <https://goo.gl/9fAegp> (Accessed last: 17 June 2016).

35 Chris Snow, Christian Dennys and Idarees Zaman, *Conflict Analysis: Farza and Kalakan Districts, Kabul Province*, CAPAU, Kabul, March 2009, Retrieved from: <https://goo.gl/egYbpW> (Accessed last: 19 July 2016).

36 Central Statistics Organization (CSO), *National Risk and Vulnerability Assessment 2011-12: Afghanistan Living Condition Survey*, Kabul, 2014, p.10. Retrieved from: <https://goo.gl/0M64ZU> (Accessed last: 17 July 2016).

37 Central Statistics Organization (CSO), *National Risk and Vulnerability Assessment 2011-12: Afghanistan Living Condition Survey*, Kabul, 2014, p.192.

38 Out of the total population of Kabul, 360,000 inhabitants were born overseas and 1.9 million elsewhere in Afghanistan; "National Risk and Vulnerability Assessment 2011-12," xvii.

39 Central Statistics Organization (CSO), *National Risk and Vulnerability Assessment 2011-12: Afghanistan Living Condition Survey*, Kabul, 2014, p.27.

40 Central Statistics Organization (CSO), *National Risk and Vulnerability Assessment 2011-12: Afghanistan Living Condition Survey*, Kabul, 2014, p.204.

## Bamyan

Bamyan was selected as a study site, because it was least affected during the era of conflict.<sup>41</sup> Bamyan is home to a majority Hazara population who were targeted and discriminated under Taliban rule. Until 2015, the Taliban had relatively little to no presence in Bamyan as compared to other provinces.<sup>42</sup> However, since the withdrawal of foreign troops at the end of 2014, Bamyan has faced an increasingly active Taliban in adjacent provinces as well as in Bamyan itself.<sup>43</sup> In parallel, Bamyan has among the lowest levels of sympathy for armed groups. The province also shows less confidence in national reconciliation efforts compared to the rest of Afghanistan.<sup>44</sup> The province is one of the most progressive in Afghanistan, with the nation's first female governor. In a national survey conducted in 2015, a large majority of Bamyan's population believed that it was acceptable for women to work outside the home.<sup>45</sup>

## Uruzgan

Uruzgan is one of nine provinces that faced the most security challenges during 2010-12.<sup>46</sup> Uruzgan is located in the central region of Afghanistan and is connected both culturally and tribally to Kandahar. The population of Uruzgan is 352,000 inhabitants,<sup>47</sup> with minimal immigration as only approximately 2,000 people originate from the outside of the province<sup>48</sup>. Uruzgan's literacy rate is much lower than Kabul's—8.5% male and 2.4% female literacy rates compared with 68.1% and 34.7% in Kabul.<sup>49</sup>

## Nangarhar

Nangarhar has a large Pashtoon population with few significant minority groups.<sup>50</sup> The province shares strong links with Pakistan. Afghans residing in Nangarhar continue to travel to Pakistan for work, business, health care, as well as to visit family. Until recently, the US military had a strong presence in the province with a focus on tackling opium cultivation.

Over the past year, Nangarhar has experienced a sharp decline in security. The Taliban and Daesh are currently battling over territory in Nangarhar's southern districts that border Pakistan.<sup>51</sup> Faced with the insurgency, the Afghan National Army has largely retreated. In the Taliban-controlled areas, the government continues to provide health and education services, while the Taliban control security.<sup>52</sup> The increased fighting has also resulted in the rise of other non-state armed

41 Sayed Masood Sadat, Christina Satkowski, Renard Sexton, Shamin Sarabi, Sandy Feinzig, Shahim Kabuli, Charlotte Maxwell-Jones and Zachery Warren, *Afghanistan in 2015: A Survey of the Afghan People*, The Asia Foundation, Kabul 2015, p.25. Retrieved from: <https://goo.gl/qkOg2i> (Accessed last: 26 July 2016).

42 Sayed Masood Sadat, Christina Satkowski, Renard Sexton, Shamin Sarabi, Sandy Feinzig, Shahim Kabuli, Charlotte Maxwell-Jones and Zachery Warren, *Afghanistan in 2015: A Survey of the Afghan People*, The Asia Foundation, Kabul 2015, p.35.

43 James Bennett, "Afghanistan's Ski Industry Faces Resurgent Taliban," ABC News, 19 April 2016, Retrieved from: <https://goo.gl/5Qdxy1> (Accessed last: 27 July 2016).

44 Sayed Masood Sadat, Christina Satkowski, Renard Sexton, Shamin Sarabi, Sandy Feinzig, Shahim Kabuli, Charlotte Maxwell-Jones and Zachery Warren, *Afghanistan in 2015: A Survey of the Afghan People*, The Asia Foundation, Kabul 2015, p.50.

45 Sayed Masood Sadat, Christina Satkowski, Renard Sexton, Shamin Sarabi, Sandy Feinzig, Shahim Kabuli, Charlotte Maxwell-Jones and Zachery Warren, *Afghanistan in 2015: A Survey of the Afghan People*, The Asia Foundation, Kabul 2015, p.64.

46 Central Statistics Organization (CSO), *National Risk and Vulnerability Assessment 2011-12: Afghanistan Living Condition Survey*, Kabul, 2014, p.5.

47 Central Statistics Organization (CSO), *National Risk and Vulnerability Assessment 2011-12: Afghanistan Living Condition Survey*, Kabul, 2014, p.194.

48 Central Statistics Organization (CSO), *National Risk and Vulnerability Assessment 2011-12: Afghanistan Living Condition Survey*, Kabul, 2014, p.197.

49 Central Statistics Organization (CSO), *National Risk and Vulnerability Assessment 2011-12: Afghanistan Living Condition Survey*, Kabul, 2014, p.204.

50 Ashley Jackson, *Politics and Governance in Afghanistan: The Case of Nangarhar Province*, AREU, Kabul, June 2014, Retrieved from: <https://goo.gl/BcwWHe> (Accessed last: 20 June 2016).

51 David Mansfield, *The Devil is in the Details: Nangarhar's Continued Decline into Insurgency, Violence and Widespread Drug Production*, AREU, Kabul, February 2016, pp. 2,4, 7. Retrieved from: <https://goo.gl/71Gau4> (Accessed last: 23 June 2016).

52 David Mansfield, *The Devil is in the Details: Nangarhar's Continued Decline into Insurgency, Violence and Widespread Drug Production*, AREU, Kabul, February 2016, p.15.



actors that are closely associated with the provincial elites. Other non-state armed groups such as Islamic Emirate, Mahaz Taliban, and Tora Bora Front, and militia of other former Jihadi leaders have also established their presence in the southern districts of Nangarhar.<sup>53</sup>

### Baghlan

Located in the northeast of Afghanistan, Baghlan is home to a large Tajik population followed by smaller Pashtoon, Hazara, and Uzbek communities. Baghlan is the most ethnically diverse of the five provinces included in this study. In an annual national survey conducted in 2014, Baghlan had a relatively higher level of confidence in national reconciliation efforts between the government and armed opposition groups. Similarly, Baghlan ranked as one of the provinces with the least amount of sympathy for armed opposition groups.<sup>54</sup> More than 75% of Baghlan residents support women working outside of the home.<sup>55</sup> However, since the withdrawal of foreign troops, Baghlan and its districts have come under increasing attack by the Taliban.

## 2.4 Qualitative Method

Qualitative data were gathered through key informant interviews (KIIs), focus group discussions (FGDs), and in-depth interviews (IDIs).

A total of 32 FGDs with 131 participants (Annex 2) were conducted in two rounds in the five provinces. Seven KIIs were held: three in Kabul, one in Baghlan, one in Bamyan, one in Uruzgan, and one in Nangarhar (Annex 3). Following the conclusions of the fieldwork, provincial analyses were developed to capture the specificities of each province. The research team attempted to strike a gender balance among the participants; however, in Uruzgan and Baghlan, due to the security situation and cultural reasons, the team was not able to interview any female participants. A total of 77 IDIs were conducted at the five study sites with 54 men and 23 women (Annex 4). The gender imbalance is thus due to security and cultural issues that prevented the research team from interviewing women. The interviews were conducted with the majority of some ethnic groups in the study sites. Therefore, there is a need to continue this research in order to take into account the views of minority populations in each province.

It is important to note that the research team experienced major difficulties in finding the communities where locals were aware of APRP's activities, despite the fact that the districts were chosen based on the implementation of APRP, as identified by the HPC and UNDP. Therefore, for the second round of interviews, the team moved to different districts to collect the necessary data.

53 David Mansfield, *The Devil is in the Details: Nangarhar's Continued Decline into Insurgency, Violence and Widespread Drug Production*, AREU, Kabul, February 2016, p.4.

54 Sayed Masood Sadat, Christina Satkowski, Renard Sexton, Shamin Sarabi, Sandy Feinzig, Shahim Kabuli, Charlotte Maxwell-Jones and Zachery Warren, *Afghanistan in 2015: A Survey of the Afghan People*, The Asia Foundation, Kabul 2015, p.50.

55 Sayed Masood Sadat, Christina Satkowski, Renard Sexton, Shamin Sarabi, Sandy Feinzig, Shahim Kabuli, Charlotte Maxwell-Jones and Zachery Warren, *Afghanistan in 2015: A Survey of the Afghan People*, The Asia Foundation, Kabul 2015, p.64.

### 3. Results and Discussion

The findings generated from the five research provinces were thematised according to the following areas: perceptions of transitional justice that includes awareness of ‘transitional justice,’ temporal mandate of the transitional justice process, transitional justice policy recommendations, informal versus formal dispute resolution; perceptions and roles of the peace process and scope for compromises that covers perceptions of the government and of the Taliban, roles of women and local leaders, and scope for compromises; and the perceptions of the Afghanistan Peace and Reintegration Programme (APRP) which involves views of government stakeholders.

#### 3.1 Perceptions of transitional justice

##### 3.1.1 Awareness of “transitional justice.”

Across all provinces and both sexes, none of the participants had a detailed understanding of the term “transitional justice.” This is not surprising given that transitional justice is a technical term of recent origin. The majority of the FGD participants, of both sexes and in all provinces, recognised that transitional justice is an idea related to addressing the past. In fact, such claims were validated among most informants when they suggested that the concept deals with past human rights abuses or criminal acts. A small number of informants in Nangarhar suggested that it refers to taking revenge for past abuses.<sup>56</sup> A few informants attributed broader meanings to the term as well. For example, some in Nangarhar suggested that establishing the rule of law is an important aspect of transitional justice.<sup>57</sup> In Kabul, several female FGD participants associated the term with justice and equality.<sup>58</sup>

Across all provinces, FGD participants expressed clear understanding that the abuses of the past continue to affect the present and shape the future. Furthermore, participants in all provinces explained that impunity for past atrocities was fuelling new cycles of violence. One informant in Nangarhar noted that as past abuses have not been addressed, “people do not fear committing atrocities. Therefore, atrocities are increasing day by day.”<sup>59</sup>

Another common concern among FGD participants and IDI informants was that perpetrators of past abuses continue to occupy positions of power and fuel new cycles of violence. One informant in Nangarhar lamented that the presence of warlords and other strongmen at the village and local level coupled with unemployment result in a situation whereby “many youths work for warlords for money.”<sup>60</sup> Another informant in Nangarhar noted that the failure to address past grievances meant that individuals continue to take justice into their own hands, which inevitably leads to further conflict.<sup>61</sup> Concrete implementation strategies should, therefore, be developed by the Afghan government to address the issues raised by participants. This was confirmed in a study conducted by the United States Institute of Peace, which reported that the rule of law provides the best way to provide accountability and works best when national, international, or hybrid courts exist to put perpetrators on trial. However, as numerous potential defendants were implicated in past abuses in Afghanistan, it is beyond the financial, human, and political resources of the state to prosecute a high number of defendants. Typically, only a small number of perpetrators can be put on trial. There is a great need for political will to pave the way for prosecution. Yet this is nearly impossible when there is power sharing between perpetrators and their political allies. The validation of the government’s willingness to act against past abuses will only be feasible with successful prosecutions.<sup>62</sup>

56 Male, 50, Pashtoon, Kama, Nangarhar (IDI 8); Male, 42, Pashtoon, Kama, Nangarhar (IDI 10); Male, 56, Pashtoon, Nahiya4, Nangarhar (IDI 15); Male, 40, Pashtoon, Nahiya4, Nangarhar (IDI 7).

57 Male, 40, Pashtoon, Nahiya4, Nangarhar (IDI 7); Male, 62, Pashtoon, Behsud, Nangarhar, (IDI 4).

58 Female, 50, Tajik, Kabul City, Kabul (R 1, FGD 1); Female, 52, Tajik, Kabul City, Kabul (R 2, FGD 1); Female, 40, Tajik, Kabul City, Kabul (R 3, FGD 1).

59 Male, 67, Pashtoon, Behsud, Nangarhar (IDI 2).

60 Male, 59, Pashtoon, Behsud, Nangarhar (IDI 9).

61 Male, 50, Pashtoon, Kama, Nangarhar (IDI 8); Male, 42, Pashtoon, Kama, Nangarhar (IDI 10).

62 United States Institute of Peace (USIP), *Transitional Justice: Information Handbook*, Washington DC, September 2008, p.2. Retrieved from: <https://goo.gl/8X10lu> (Accessed last: 29 July 2016).

It was also observed that the failure to address decades of violence had allowed a multitude of actors to take up arms, making the current conflict more ambiguous and complex. In the past, it was easier to distinguish between strongmen and their loyalists; for example, during the Jihadi period, commanders and their soldiers were easily distinguishable. However, in the current context, as one informant in Baghlan explained, with the rise of the Taliban and Daesh, it is no longer clear “who is big and who is small.”<sup>63</sup>

A small number of FGD participants across all five provinces noted that the failure to address the past and provide justice for earlier atrocities had broader implications related to poor governance in the current context. FGD participants in all provinces noted that the lack of justice for past abuses had fostered a culture of impunity. A few IDI informants noted that the failure to address the past had weakened confidence in the current government and undermined democracy and the rule of law in Afghanistan.<sup>64</sup> In Nangarhar and Baghlan, informants noted that the failure to address past grievances had caused some individuals to support the Taliban and Daesh.<sup>65</sup> One informant in Nangarhar went as far as to say that “even in our village, people are praying for the return of the Taliban, because they are fed up with these powerholders.”<sup>66</sup> These informants attributed the deteriorating security situation, ongoing violence, and continued corruption to the failure to hold individuals accountable for their illegal behaviour in the past.<sup>67</sup>

Across all provinces, there was an agreement among the majority of female and male FGD participants that the past should be addressed. One female informant claimed that ignoring transitional justice has both positive and negative effects: if implemented at a higher level, it could lead to a civil war; at the local level, it could have positive results.<sup>68</sup> There were strong dissenting views in Bamyan and Uruzgan that addressing the past may not be the best decision. In Bamyan, despite the broad consensus that the past should be addressed, a minority of FGD participants were highly sensitive to the potential backlash that the transitional justice process could ignite. For example, one informant explained that the failure to address the past had caused anguish among victims, but that it had also avoided major communal clashes. These findings run parallel with the views expressed by Snyder and Vinjamuri that subjecting people who had committed atrocities to trial could provoke a violent backlash when the criminals were still in power. The process may thus be ineffective, because it may undermine human rights even further. The greater the extent of the perpetrators’ power, the more likely the victims are to face a backlash. A more powerful military group is thus needed to pursue the criminal parties in order to lessen the vulnerability of such impending danger.<sup>69</sup>

In Uruzgan, one of the reasons cited by the respondents for not wanting to address past human rights abuses is because the Taliban is perceived as being in a strong position of power, and as a result, they will not allow human rights abuses to be addressed as they do not think that they have committed any crimes. According to some respondents, the Taliban does not believe that the killing of “infidels” is a crime, and they perceive those who work for the government or internationally funded organisations such as public servants and military personnel to be the infidels as well. Additionally, respondents argued that “criminals” still take part in the government, and if they are brought to justice, the government will only create more enemies. As the government is weak at the moment, this will only lead to further instability. In addition, some respondents suggested a compromise, notably that injustice should be addressed later when the government is stronger.

63 Male, 52, Pashtoon, Baghlan-Markazi, Baghlan (IDI 2).

64 Male, 40, Pashtoon, Nahiya4, Nangarhar (IDI 3); Female, 27, Pashtoon, Nahiya4, Nangarhar (IDI 5).

65 Females, 40-50, Pashtoon, Behsud, Nangarhar (IDI 6); Male, 58, Tajik, Behsud, Nangarhar (IDI 1).

66 Female, 22, Pashtoon, Kama, Nangarhar (IDI 6).

67 Female, 52, Pashtoon, Nahiya4, Nangarhar (IDI 19); Male, 59, Pashtoon, Kama, Nangarhar (IDI 17); Male, 56, Pashtoon, Nahiya4, Nangarhar (IDI 15).

68 Female, 21, Hazara, Bamyan City, Bamyan (IDI 6).

69 Jack Snyder and Leslie Vinjamuri, *Trials and Errors: Principle and Pragmatism in Strategies of International Justice*, Vol 28, No. 3, 2004, p.18. Retrieved from: <https://goo.gl/iuEiOT> (Accessed last: 28 July 2016).



### 3.1.2 Temporal mandate of the transitional justice process

When speaking about the temporal mandate of the transitional justice process—that is, how far back the process should go—FGD participants across all provinces were clear that there should be a wide-ranging historical approach. In fact, the majority of male and female participants, in all provinces, suggested that any approach should go back as far as the regime of Daud Khan and cover abuses under the Communist era, Mujahideen era as well as the Taliban and post-2001 violence. A slight divergence could be observed in Uruzgan, where the emphasis lay on first addressing current injustices, with a view to prevent future violence.

Regarding the range of grievances, some participants recalled the human rights abuses suffered directly by them or by one of their family members. This was particularly common in Uruzgan, where the majority of participants revealed that they had directly experienced a human rights violation. Across all provinces, the majority of male and female participants provided anecdotal evidence of past abuses that had occurred in their area. The level of detail and range of experiences indicate the great potential for members of civil society to initiate efforts to collate and preserve these oral histories. Provided that they follow appropriate safeguards, such efforts could amount to important truth-telling and memorialisation at the local level.

Although many participants claimed to be aware of abuses suffered in other parts of Afghanistan, most emphasised the violence that had taken place in their local area. For example, in Bamyan, participants were unanimous that “oppression during the Taliban time was very heavy” and that the “Taliban era was a very dark era.”<sup>70</sup> FGD participants repeated the view that “such atrocities are not forgettable and forgivable.”<sup>71</sup> A few participants in Bamyan also mentioned well-known atrocities like the Yakawlang massacre, believing that justice must be sought for such events. Some specifically referred to the targeted killing of Hazaras and other minorities. Similarly, both the minority and majority ethnic groups in Baghlan referred to abuses perpetrated against minorities under previous regimes.

In Nangarhar, several informants mentioned the need to include Daesh in any transitional justice process.<sup>72</sup> Informants in Baghlan also identified widespread gender-based violence against women, girls, and young boys perpetrated by the People’s Democratic Party of Afghanistan and the Mujahideen.<sup>73</sup> These informants recalled indiscriminate killings by the Taliban, mass graves under the Communist regime, and extrajudicial killings under the Karzai regime.

In Uruzgan, the most insecure province at the time of the field research, participants most frequently referred to the current violence. Some respondents in Uruzgan, unlike those in Bamyan, downplayed the necessity of including Taliban-era abuses in a transitional justice process. According to these informants, there were relatively fewer human rights abuses in the Taliban era. In contrast, the real abuses started after 2001 when the international community and the Afghan government began fighting with the Taliban. One FGD participant in Uruzgan suggested that the government should prioritise current abuses and then go backwards in time to address historical abuses.<sup>74</sup>

When speaking about past violence, violence perpetrated by non-state actors was emphasised. Thus, there was little discussion of the abuses committed by the Afghan and international security forces. During our internal debriefing, it became clear that the nature of the questionnaire tended to direct the respondents to abuses perpetrated by non-state actors. Moreover, the field researchers noted that respondents might have been inhibited by security concerns when discussing abuses by government security actors. As a result, only a very small minority of respondents raised concerns about abuses committed by government forces. For example, one informant in Baghlan said that “we are more afraid of the government officials

70 Female, 30, Hazara, Shibar, Bamyan (R 7, FGD 5).

71 Male, 20, Hazara, Shibar, Bamyan (R 4, FGD 3).

72 Male, 40, Pashtoon, Nahiyah 4, Nangarhar (IDI 17); Female, 40-50, Pashtoon, Behsud, Nangarhar (IDI 6); Male, 50, Pashtoon, Kama, Nangarhar (IDI 8); Male, 38, Hazara, Doshi, Baghlan (IDI 6).

73 Male, 38, Hazara, Doshi, Baghlan (IDI 6).

74 Male, 60, Pashtoon, Deh Rawud, Uruzgan (FGD 1).

and local police than the Taliban.”<sup>75</sup> In Uruzgan, a few FGD participants noted that civilians died at the hands of the international forces.

### 3.1.3 Transitional justice policy recommendations

The FGD participants from all five provinces had insightful suggestions as to how to address the past. Most participants regarded some form of criminal justice as an appropriate measure of transitional justice. The majority dismissed the idea of granting amnesty to perpetrators, including the Taliban. However, as discussed in the next section, respondents were willing to make significant compromises, including foregoing prosecutions, if such concessions could guarantee long-term, sustainable peace. As one respondent in Baghlan explained, “people are just worried about saving their lives right now, and if you tell them to choose between future peace and transitional justice with the Taliban, they will choose peace.”<sup>76</sup> In particular, the majority of respondents in Uruzgan held the view that a criminal justice process should be delayed until the security situation improves.

Some participants expressed the sentiment that if the government were able to provide justice and restore the rule of law, then confidence in the government would increase. However, a similar number of respondents, across all provinces, noted that access to employment, education, and economic development, as well as low levels of corruption would likewise enhance perceptions of the government. These priorities were not viewed as mutually exclusive. Instead, the responses reflected a desire to see greater government presence and service delivery in local areas.

A few participants elaborated the concept of criminal justice, suggesting that such a process should include investigations and prosecutions. Several respondents in Baghlan, Nangarhar, and Bamyan recommended some level of international involvement in the accountability process. Only two informants, one from Bamyan and one from Baghlan, explicitly cited the UN as having a potentially constructive role to play in a domestic transitional justice process.<sup>77</sup> Several participants in Baghlan and Nangarhar recommended that any judicial accountability mechanism should follow Sharia law.

When discussing the possibility of providing criminal justice, there was little to no discussion around the current amnesty law in place. Only one informant in Bamyan explicitly criticised the amnesty law enacted during the Karzai regime and suggested that it has led to continuing impunity in the country.<sup>78</sup> A small number of participants in Baghlan and Nangarhar explicitly stated that they would be willing to accept a form of amnesty against perpetrators. A number of female informants specified that even if historical crimes are not prioritised, current crimes should be investigated and prosecuted. One female informant distinguished between two types of crimes: “generalised crimes,” which could be subject to amnesties, and “specific crimes” such as forced marriages; in the latter case, a victim or their family would need to be consulted before being granted amnesty.

Several informants from Baghlan and Bamyan suggested that a special investigative commission or special court should be established at the provincial level.<sup>79</sup> Some informants from Bamyan stated that the government should immediately commence documenting both past and current injustices. One informant from Baghlan said that the court should be staffed with individuals who respect the province and have a sound knowledge of the types of violations that have occurred.<sup>80</sup> The court should prioritise perpetrators who are currently not in positions of power, as the cases of powerholders will take longer to address. Several informants from Baghlan also specifically mentioned the ICC as a venue for justice, noting that Afghanistan is a party to the Rome Statute.<sup>81</sup> Numerous respondents advocated the death penalty or other violent means of dealing with perpetrators.<sup>82</sup>

75 Male, 41, Pashtoon, Baghlan-Markazi, Baghlan (IDI 3).

76 Male, 55, Tajik, Poli Khumri, Baghlan (IDI 2).

77 Male, 37, Hazara, Doshi, Baghlan (IDI 4).

78 Male, 50, Hazara, Yakawlang, Bamyan (IDI 2).

79 Male, 48, Tajik, Baghlan-Markazi, Baghlan (IDI 1); Male, 52, Pashtoon, Baghlan-Markazi, Baghlan (IDI 2); Male, 41, Pashtoon, Baghlan-Markazi, Baghlan (IDI 3).

80 Male, 41, Pashtoon, Baghlan-Markazi, Baghlan (IDI 3).

81 Male, 37, Pashtoon, Poli Khumri, Baghlan (IDI 8).

82 Male, 38, Hazara, Doshi, Baghlan (IDI 5).

Participants acknowledged both structural constraints and technical challenges to providing accountability. On the macro level, the majority of participants felt that the current government has neither the capacity nor the willingness to provide transitional justice. As one informant from Bamyan explained, “the current government does not have the power to ensure security in the country, so how can they ensure justice for past crimes!”<sup>83</sup> As explained above, others were fearful that punishing perpetrators might destabilise the current conflict even further. Participants also acknowledged the challenges of prosecuting perpetrators, especially “powerful criminals.” The majority were aware that there is little to no political will to address abuses committed by powerful individuals, especially those currently serving in the government. As one informant from Nangarhar explained, “it is not in the current government’s interest to bring past injustices to justice (because the government authorities will end up behind bars).”<sup>84</sup>

A few participants acknowledged the technical constraints relating to the accountability process. For example, one participant explained that it would be difficult for witnesses to come forward to testify at a criminal trial, as anyone who testifies against a powerful individual would be vulnerable to reprisals.<sup>85</sup> Another informant from Bamyan noted that it is important to have procedures in place to prevent victims from being re-traumatised.

Additionally, several participants in Baghlan noted the importance of disarming both armed groups and loyalists of strongmen who carry weapons. An overwhelming majority stressed the need for a vetting process to remove individuals associated with serious human rights abuses from serving in official government positions. One informant from Baghlan explained that “one of the things that annoys everyone is that most of the people who committed human rights violations and crimes against humanity now hold most of the high-ranking positions in the government.”<sup>86</sup> Correspondingly, across all provinces, there was a strong desire to see the “right people” appointed to the “right jobs” in government.

Views were divided as to whether apologies were appropriate. One informant in Baghlan recalled an explosion that had killed eight civilians in a wedding procession, including the bride and the groom.<sup>87</sup> Several male informants in Baghlan said that they would accept and forgive the human rights violators of the previous regime provided that they sought forgiveness and assured that such atrocities would not recur. One informant stated,

*Yes, I do agree that amnesty for the past crimes of the Taliban will help the peace process, and I do not have any kind of issue with forgiving them. However, if they are forgiven and still continue their aggressive acts similar to what they did before, then they do not deserve peace.*<sup>88</sup>

An FGD participant in Kabul was optimistic that the peace talks would be successful, but only if both sides had an advocacy for peace. In his view, forgiving is best, because revenge is inappropriate. He further stated,

*If we kill 10 people from them, they will kill 100 from us. Therefore, we have to support the peace talks and forgive all of their atrocities. They should not be punished but allowed to live their normal lives, yet only if they promise to stop fighting with the government and killing people.*<sup>89</sup>

In Nangarhar, an informant stated that the community elders had convinced the affected families to forgive the perpetrators; in his view, bringing past injustices to justice cannot lead to peace. Indeed, people now sitting in the government were previous perpetrators, and no one punished them. A general amnesty is thus needed in order to move forward.<sup>90</sup> Findings in the field of

83 Male, 38, Hazara, Yakawlang, Bamyan (IDI 3).

84 Male, 62, Pashtoon, Behsud, Nangarhar (IDI 4).

85 Male, 23, Hazara, Shibar, Bamyan (R 1, FGD 1).

86 Male, 41 Pashtoon, Baghlan-Markazi Baghlan (IDI 2).

87 Male, 41, Pashtoon, Baghlan-Markazi, Baghlan (IDI 2).

88 Male, 38, Hazara, Doshi, Baghlan (IDI 3).

89 Male, 24, Tajik, Kabul City, Kabul (R 2, FGD 1).

90 Male, 58, Tajik, Behsud, Nangarhar (IDI 1)

psychology likewise indicate that the process of forgiving perpetrators is essential, both to an individual and collective effort, when aspiring to reconciliation. Some scholars also suggest that transitional justice mechanisms as truth commissions successfully lead to positive outcomes in terms of forgiveness and positive relationships between groups.<sup>91</sup>

Contrasting views were echoed in all study sites. With bitter pragmatism, one informant explained that “it will be hard for me to forget what they did to me, my family, and my relatives, but right now we are left with no choice.”<sup>92</sup> By contrast, some participants stressed that for certain types of crimes, there could be no apologies, only punishment. For example, crimes like rape should be punished, while in the case of crimes such as the expropriation of property, the property should be returned followed by an apology. Male FGD participants in Baghlan believed that if the government is fair in punishing criminals without discrimination, peace is perhaps attainable. A clear judicial promulgation with a proper system to deal with criminals without bias is therefore required. One FGD participant further highlighted that “the people who have power or contacts in the government are forgiven and acquitted by the court, while the people who are from other tribes or those who are weak are punished.”<sup>93</sup> He noted that peace is elusive with this kind of approach. In Nangarhar, an informant said that those who violated basic human rights in Afghanistan should not be forgiven by the government or anyone else. The government should clean up those who are currently working as high officials and allow the justice system to function effectively and efficiently. However, first, the corruption in the judicial system should be cleared up to allow fairness and transparency to overrule in the courts of law.<sup>94</sup> The same unforgiving view was shared by a Kabul informant that apologies would not work because killings and acts of cruelty on innocent people require punishment.<sup>95</sup> These findings are in line with a study on the South African Truth and Reconciliation Commission, which concluded that in general, transitional justice was not effective in promoting intergroup forgiveness, because of the lack of perpetrators’ responsibility and survivors’ role in deciding whether perpetrators deserved to be forgiven or be given amnesty.<sup>96</sup>

However, the FGDs in Bamyán were highly pessimistic about forgiving the perpetrators of crimes. Some participants in this province argued that the perpetrators would not want to apologise and that the local people would not accept such apologies. However, the IDIs held optimistic views about forgiving and forgetting the atrocities of previous regimes. An informant said that people were tired of war and that they wanted peace to reign; as a result, they were willing to pay a high price to attain this by forgiving the past and not taking the perpetrators to court.<sup>97</sup>

It was also suggested that the government should enlist the support of religious leaders to raise awareness about past abuses and develop ways to implement transitional justice measures. Given the high levels of support for religious leaders in the provinces, their backing of a transitional justice process is likely to garner broader support from the public.

Participants provided an array of responses on how to improve the legitimacy of the government. These included fighting corruption and addressing past injustices; for an informant, “the fact that there has been no case registered against persons who have been part of the injustices reduces people’s faith in the government.”<sup>98</sup> However, a few other informants provided contrasting views, arguing that the government should “forget the past” and focus on bringing peace and security. A common theme among several respondents, all of whom were Hazara, was that the government should end discrimination against citizens. As an informant explained, if the government did not distinguish people based on their ethnicity and religion, and who are the majorities and

91 Daniel J. Christie, *The Encyclopedia of Peace Psychology*, Vol. 1, Wiley-Blackwell, 2012, p.1131. Retrieved from: <https://goo.gl/Q46lwl> (Accessed last: 24 July 2016).

92 Male, 38, Hazara, Doshi, Baghlan (IDI 3)

93 Male, 21, Hazara, Doshi, Baghlan (R 4, FGD 1).

94 Male, 67, Pashtoon, Behsud, Nangarhar (IDI 2).

95 Male, 29, Pashtoon, Kabul City, Kabul (IDI 2).

96 Daniel J. Christie, *The Encyclopedia of Peace Psychology*, Vol. 1, Wiley-Blackwell, 2012, p.1131

97 Male, 38, Hazara, Bamyán City, Bamyán (IDI 5).

98 Male, 55, Hazara, Bamyán District, Bamyán (IDI 1).

the minorities, it would gain greater trust and confidence among the people.<sup>99</sup> In particular, ending the discrimination based on language, and thus ethnicity would contribute substantially to resolving the conflict.

### 3.1.4 Informal versus formal dispute resolution

Some participants suggested that informal justice mechanisms or processes should be used in the form of the gathering of Ulema (scholars) or Jirga, for example. Some participants demonstrated a high degree of confidence in informal community dispute resolution (CDR) mechanisms. In fact, at all study sites, most claimed that many local-level disputes are resolved in this manner. CDR mechanisms are preferred over formal mechanisms, as the overseeing elders were deemed to be more trustworthy than the government officials who administer the formal dispute resolution processes, as the latter were viewed as corrupt and more likely to take bribes. For example, one respondent explained that “we solve society disputes through the Jirga...we do not want to take any disputes to the government, because there is corruption in the government.”<sup>100</sup> Furthermore, CDR mechanisms were viewed as more likely to provide a timely resolution and not prolong a dispute. Additionally, CDR mechanisms were viewed as less expensive and, therefore, cost-effective.

However, in Bamyan, there was a deviation from the general preference for CDR mechanisms. Despite a clear preference for criminal justice, respondents had largely negative views of both the informal and formal justice sector. Most respondents stated that CDR mechanisms are frequently used, as formal justice mechanisms are corrupt and require users to pay bribes to government officials. As one respondent explained, “since the government has not been able to solve problems, it is good for the community to do it themselves.”<sup>101</sup> However, informants were also quick to point out the flaws of the CDR mechanisms. One informant claimed that these mechanisms are not effective as the decisions are not enforceable, and thus one party could refuse the decision. Another added that “we cannot trust the local elders, as they are not consistent and do not make decisions based on any specific law but rather according to influence.”<sup>102</sup> An overwhelming majority of participants felt that informal dispute resolution methods are not appropriate means of implementing transitional justice. In fact, some were emphatic, stating that “methods that do not involve the court system are not effective and [are not] acceptable.”

At the same time, respondents in Bamyan were categorical in their dismissal of formal dispute resolution mechanisms, arguing that “the Afghan [judicial] system is only used to oppress people under the name of law. There is no justice inside the government.”<sup>103</sup> Another expressed concern over the existing criminal justice system and cautioned that any process must ensure that innocent people are not re-victimised. Many felt that there was an important role for the international community to play in leading and administering a transitional justice process.

## 3.2 Perceptions and roles of the peace process and scope for compromises

All male participants in Nangarhar and the majority of male participants in Uruzgan and Baghlan stated that they were aware of the negotiations being conducted between the government of Afghanistan and the Taliban; most male and female participants in Kabul were aware of the current negotiations. The majority of participants across all five provinces further claimed that they received their information from the news media and were not aware of the details of the current state of negotiations. Mirroring the findings of the 2015 Afghan National Survey, across all provinces, there was little confidence that the government could deliver a negotiated end to the conflict. There was a lack of confidence in the capacity of the government and the willingness of the Taliban to engage in a meaningful peace process. Views varied as to

99 Male, 65, Hazara, Shibar, Bamyan (IDI 19).

100 Male, 56, Pashtoon, Nahiya, Nangarhar (IDI 7).

101 Male, 62, Hazara, Bamyan City, Bamyan (IDI 3).

102 Male, 50, Hazara, Shibar, Bamyan (IDI2).

103 Male, 29, Hazara, Bamyan City, Bamyan (R 6, FGD 6).



the preferred level of international involvement. Most participants felt that international involvement should be limited; however, some believed that the United States had a role to play in pressuring Pakistan to support the peace process. Furthermore, across all provinces, there was a sense that if a true, lasting, and sustainable peace could be achieved, then significant compromises could be made, including allowing the Taliban to form part of the government. However, there were also limits regarding the extent of such compromises. In particular, the majority of participants felt that the gains made over the last 14 years, especially in terms of women's rights, developmental achievements, and relations with foreign countries, should not be undermined during the negotiations.

### 3.2.1 Perceptions of the government

The majority of informants across all provinces distrusted the government and its capacity to lead the peace process. A slight deviation was evident in Nangarhar, where the majority of participants expressed their reservations about the peace process, but suggested that the process was still important. In contrast to the other provinces, where most participants were sceptical about the peace process, in Nangarhar, a minority believed that it was likely to fail. These views are in line with previous findings, such as "A Survey of the Afghan People" by Sadat et al., which concluded that southwestern Afghanistan is more likely to have a positive view about reconciliation efforts compared to other regions.<sup>104</sup> Nevertheless, the majority of participants, across all provinces, identified the government as the main interlocutor in the negotiations with the Taliban. Moreover, none of the participants considered the possibility of a military defeat of the Taliban, thus implicitly acknowledging that negotiations were one of the few means to move forward.

The reasons for the lack of confidence in the government varied. High levels of corruption, general insecurity, and the presence of alleged perpetrators in the government ranks were among the most commonly cited reasons for the low levels of confidence in government actors. One informant in Bamyan said that "I have no trust in the government, because even for the smallest issues, people have to pay bribes."<sup>105</sup> Similarly, another participant in Nangarhar thus explained:

*I do not believe even 1% that the peace process will achieve peace, because they have made fools of us for years and it is done just to waste our national capital. I do not see anything for our country in the peace process. The first condition is that a trusted person should be selected to lead the peace process...*<sup>106</sup>

In Uruzgan, participants referred to corruption and the presence of alleged criminals in the HPC as factors undermining the government's capacity to conduct negotiations. One participant from Uruzgan lamented that "I do not see this negotiation as an honest negotiation. I want to negotiate, but people in the government, especially the high-profile people, do not want peace in this country."<sup>107</sup> Participants in Nangarhar and Uruzgan alleged that corrupt government officials made financial gains from the continuation of the conflict.

Some participants in Nangarhar pointed to the discord inside the executive branch as well as the extra-constitutional nature of the National Unity Government. Some participants suggested that unity should first be achieved within the government to instill confidence in it. One participant suggested that the government's weaknesses undermined its capacity to protect the rights of Afghans during the negotiations. Some also expressed concern as to the quality of the individuals who represent the Afghan government during negotiations. As one participant in Kabul explained, "there are several other reasons that make me believe that the current peace negotiations will not be successful, namely that the peace process and its proponents are not honest to the people of Afghanistan. They always lie."<sup>108</sup>

104 Sayed Masood Sadat, Christina Satkowski, Renard Sexton, Shamin Sarabi, Sandy Feinzig, Shahim Kabuli, Charlotte Maxwell-Jones and Zachery Warren, *Afghanistan in 2015: A Survey of the Afghan People*, The Asia Foundation, Kabul 2015, p.48.

105 Male, 38, Hazara, Bamyan City, Bamyan (IDI 15).

106 Male, 54, Pashtoon, Nahiya4, Nangarhar(R 1, FGD).

107 Male, 33, Pashtoon, Chora, Uruzgan (R 1, FGD).

108 Male, 53, Pashtoon, Bagرامي, Kabul (R 4, FGD).

Most participants said that since the government has not been able to deliver on other basic promises such as corruption and unemployment, it lacks the capacity to act decisively during the peace process. Some noted that issues such as poverty and unemployment are the underlying causes that motivate Afghans to join the Taliban and Daesh. It is, therefore, essential that these challenges also be addressed.

### 3.2.2 Perceptions of the Taliban

Participants were similarly sceptical about the Taliban's willingness to negotiate an end to the conflict. Some respondents questioned whether the government was in fact speaking to the "real" Taliban,<sup>109</sup> suggesting that the representatives taking part in the negotiations do not have the right to make high-level decisions. According to some accounts, this might be because the Taliban is not interested in negotiations, as it is currently going through a major fragmentation among its own ranks, and as a result, it is no longer clear who represents it. Some participants in Nangarhar suggested that Pakistani state actors have direct control over the Taliban, and so the government should directly negotiate with the Pakistani actors.

Participants recommended for a greater involvement of communities in the negotiation process. In the view of the participants, communities can serve as a bridge between the Taliban and the government. Given that the Taliban come from the communities themselves, they are best placed to persuade them to join the peace process. Participants acknowledged that the recent successes of the Taliban are partly due to the increased support received from local communities. In particular, community elders should play an active role, and the government should ensure greater transparency by providing more detailed information to the Afghan people as to the state of the negotiations. A few participants in Kabul suggested that the government should conduct a public survey and include the views of the Afghan people in the negotiations.

### 3.2.3 Role of the international community

Across all provinces, the majority of participants were sceptical about the role of the international community in the negotiations. In particular, an overwhelming majority said that there will not be any progress in the negotiations until Pakistan engages in a sincere manner. One participant from Nangarhar expressed his distrust of Pakistan as follows:

*People will not trust the Afghan and Taliban peace negotiations [until] Pakistan...prove[s]... that they are honest about the peace process, and [when we] see Pakistan's honesty in action, then we will believe that the peace process is an authentic process.<sup>110</sup>*

The majority of participants felt that the negotiation process should be Afghan-led, without interference from neighbouring or powerful states such as the United States, Iran, and Saudi Arabia. According to some accounts, the United States is perceived as not wanting peace because of the alleged financial advantages gained from the war.<sup>111</sup> Pakistan is similarly seen as supporting the Taliban in order to create instability within Afghanistan.

Despite this apparent desire to see an Afghan-led peace process and limit foreign involvement, most participants believed that the international community has an important role to play. In particular, a majority of participants felt that the United States must pressurise Pakistan to support the negotiations. Some participants in Kabul suggested that the United States should further exercise its influence to prevent other countries such as Saudi Arabia, the United Arab Emirates, and Iran from similarly interfering in the domestic affairs of Afghanistan. FGD participants in Kabul and Nangarhar suggested that "negotiations with Pakistan would be more effective than negotiations with the Taliban, because if Pakistan accepts the peace process, the Taliban will also agree and concede to the decision of Pakistan."<sup>112</sup> One FGD participant from Nangarhar claimed that "joining the peace process is not up to the Taliban; it is up to Pakistan and other countries if they want to bring peace to Afghanistan. Then, there will be no need for

109 Male, 54, Pashtoon, Shakardara, Kabul (R 1, FGD).

110 Male 2, 40, Pashtoon, Kama, Nangarhar (R 2, FGD).

111 Female 2, 38, Tajik, Kabul City, Kabul (R 3, FGD).

112 Male, 53, Pashtoon, Bagrami, Kabul (R 4, FGD 1).

a peace process.”<sup>113</sup> Instead of engaging with the Taliban, Pakistan should be directly included in the process. Most participants who expressed this view reasoned that such a direct engagement with Pakistan was essential, as the Taliban is closely aligned with Pakistani institutions and acts under their direction. Some participants suggested that a third-party mediator from another Muslim country should play the role of facilitator. In Bamyan, a few participants suggested that the UN should play a role in the negotiations.

Views differed as to the role of foreign troops in Afghanistan. In Uruzgan, there was a view that the complete withdrawal of foreign troops would increase the legitimacy of the negotiations, whereas in Baghlan, Nangarhar, and Bamyan, respondents were more pragmatic in their assessments of the role of international forces in Afghanistan. Participants viewed the presence of foreign troops as bolstering the Afghan government’s efforts to combat the insurgency. One respondent in Nangarhar explained that “the withdrawal of foreign forces will make it easy for the Taliban and Daesh (ISIS) to defeat our government.” Similarly, another respondent from Bamyan said that their presence was helping the security situation: “the withdrawal of foreign troops is not good in the current situation.”<sup>114</sup>

### 3.2.4 Role of women

Views differed greatly as to whether women should participate in the peace process. There was lukewarm support for female participation in the peace process in Uruzgan and Nangarhar, while support was strong in Kabul, Bamyan, and Baghlan. Participants felt that there had been many gains related to women’s rights in relation to education and employment, for example. Respondents believed that women should be part of the peace process as they also represent the community, and some even viewed it as a matter of fairness. For example, one informant in Bamyan stated that “women represent 50% of society, so they should be involved in the peace talks,”<sup>115</sup> while another explained that “women have been the victims of past injustices more than men.”<sup>116</sup> Several informants believed that if women were part of the peace process, then they would be better able to protect their rights. One informant explained that “it is necessary that women should be included in the peace process, because if it does not include women, their rights could be sacrificed.”<sup>117</sup>

### 3.2.5 Role of local leaders

Nevertheless, there are numerous actions that the government can take to increase its legitimacy. Mirroring the findings of the Afghan People’s Dialogue on Peace in 2014, the informants from Uruzgan recommended that the role of the community should be increased,<sup>118</sup> namely to convince the Taliban to join the peace process, support conflict resolution, and increase peace awareness. Further, in Baghlan and Nangarhar, informants recommended that local leaders be used to raise awareness and build confidence in the peace process.

There were varied views as to the role that CDR mechanisms can play in facilitating the peace process. On the one hand, the participants acknowledged the weakness of CDR mechanisms and the limitations of using a “local mechanism.” Several suggested that issues relating to national peace must be resolved by the national government. In particular, some pointed out that since Afghanistan is a traditional society, local elders could play an important role in any peace process. Similarly, they pointed out that locals have a keen understanding of local conflict dynamics and are in a position to encourage individuals to join or support the peace process. On the other hand, other respondents highlighted both the local and foreign elements of the conflict. In this regard, foreign issues must be discussed at the national level. However, local-level issues could be addressed using CDR mechanisms. For example, a CDR mechanism could

113 Male, 50, Pashtoon, Behsud, Nangarhar (R 2, FGD 1).

114 Female, 21, Hazara, Bamyan City, Bamyan (IDI 16).

115 Male, 27, Hazara, Yakawlang, Bamyan (IDI 13).

116 Female, 27, Hazara, Yakawlang Bamyan (IDI 14).

117 Female, 21, Hazara, Bamyan City, Bamyan (IDI 16).

118 UNAMA, *Afghan People’s Dialogue on Peace: Building the Foundations for an Inclusive Peace Process. Local Road Maps for Peace*, AIHRC, Kabul 2014, p. vii.



potentially be used to discuss issues with the local Taliban, but not the foreign Taliban. More broadly, communities could play a role in preventing people from joining insurgent groups.

### 3.2.6 Scope for compromises

Across the five provinces, there were varied views as to the nature of compromises that could be made to negotiate an end to the conflict. A strong sentiment that emerged across all provinces was that if there is a guarantee of sustainable and long-lasting peace, most participants would be willing to make significant compromises. In Uruzgan, there was strong support for allowing the Taliban to join the government. According to the accounts of the participants in Uruzgan, the Taliban forces are strong; therefore, the government will not be able to gain victory. Additionally, the Taliban has considerable support in the community, and in Uruzgan, they are even viewed as “Afghans.” They are seen as deserving to be part of the government.

In contrast, participants in Kabul appeared to be divided as to whether the Taliban should be part of a future Afghan government. Participants from Kabul indicated that before joining the government, the Taliban should, at a minimum, apologise for their crimes, agree to respect women, and not undermine the development gains made over the past 14 years.

In Nangarhar, a majority of participants claimed that “concessions” are acceptable for the sake of peace. The general sentiment is that the conflict has come at an enormous personal cost, and most Afghans would be willing to make sacrifices to achieve peace. One informant explained his views as follows: “Everyday our children, brothers, and relatives are being killed...Our wives become widows and our children orphans...Everyone wants peace. People are tired of wars and want it to end at any cost.”<sup>119</sup>

Despite agreeing that the Taliban could become part of the government, some informants also emphasised that “all past criminals should be excluded” from a future government.<sup>120</sup> Further actors such as “Jihadi commanders, warlords, and other powerbrokers should not be part of a transitional justice process, because they are not genuine in this regard.”<sup>121</sup> Further, it was suggested that the inclusion of the Taliban in the government should be followed by the restoration of the rule of law, elimination of corruption, and reduction in unemployment. Additionally, a necessary pre-condition for many informants was that the Taliban should sever all ties with Pakistan.

However, there was a competing view that concessions should be made if peace and the general rule of law can be guaranteed. Some participants specifically stated that any concessions should only be made once peace and the rule of law are restored. This raises an important consideration given that government actors have also been accused of committing human rights abuses.

The majority of participants expressed concern that the gains made over the past 14 years should not be negated during the peace process. In particular, most male and female participants stated that any concessions relating to the Constitution or women’s rights would not be acceptable. Some participants expressly stated that any peace deal must require the Taliban to abide by the Constitution. In Bamyan, participants were careful to note that the gains made over the last 14 years relating to the protection of minorities, the Constitution, and other laws should not be comprised. As stated by the majority of participants, due to the influence of the international community over the Afghan government, it enabled women to exercise their rights. If the influence of the international community over the Afghan government declines, then the said women’s rights will also deteriorate. Further, they stated that the gains made in foreign relations should not be undermined.

119 Male, 58, Tajik, Behsud, Nangarhar (IDI 1).

120 Male, 55, Hazara, Bamyan, Bamyan (IDI 1).

121 Male, 38, Hazara, Bamyan, Bamyan (IDI 5); Male, 38, Hazara, Yakawlang, Bamyan (IDI 10).

### 3.3 Perceptions of the Afghanistan Peace and Reintegration Programme (APRP)

The majority of participants were aware of the APRP, except for respondents in Kabul where most had not heard of the programme. This perception is not surprising, as many of the districts had been chosen as APRP beneficiaries based on information provided by the UNDP and HPC. However, in the four provinces, participants claimed that it had not been fully implemented. For instance, in Baghlan Province, only in Puli Khumri where the majority of FGD participants were aware of the APRP, while it did not surface in the communities in Uruzgan and Nangarhar. In Bamyan, the majority of participants had heard of the APRP, claiming that it was implemented in some districts like Shibar.

Most male participants in the four provinces, namely Nangarhar, Bamyan, Uruzgan, and Baghlan, were aware of the APRP. However, most women in Nangarhar and Bamyan had only gained knowledge of the APRP through media like radio and television. In Bamyan, the majority of female participants mentioned examples of the APRP implemented in certain districts where the beneficiaries had joined the government. However, they had no greater knowledge about the programme, voicing their view that the APRP is a useless endeavour. One participant said that “some anti-government forces gave a few old weapons to the government, and only after taking credit from the government and they did return to the Taliban.”<sup>122</sup> Most female participants in Nangarhar Province had heard about the APRP through the media. However, the majority of participants noted that they did not see any concrete examples of this programme being implemented in their communities.

In several districts where a second round of IDIs was conducted, there was a strong perception that the APRP is a corrupt process, which often reintegrates civilians for the financial gain of the Provincial Peace and Reintegration Committee (PPRC). In fact, some informants from Uruzgan, Baghlan, and Nangarhar provided anecdotes of instances where civilians had been reintegrated for financial gain. Across all provinces, only a handful of tribal elders had been consulted or informed before the reintegration of combatants. However, one tribal elder lamented that the process was implemented in complete secrecy and that he was not consulted or informed about the reintegration process. Two elders in Uruzgan explained that the secretive process was important in order to ensure that the reintegrated combatants do not subsequently become targeted by the Taliban. Some tribal elders claimed that despite the lack of community consultation and grievance mechanisms, the local population did not find it difficult to accept former combatants back into the community. However, none of the ordinary members of the community who were interviewed for this study confirmed this view. In some instances, participants recounted that former combatants, once reintegrated, joined the Afghan Local Police (ALP), thus leading to increased targeting of the ALP by the Taliban.

Additionally, the team conducted KIIs with government stakeholders to gain an insight into the successes and failures of the APRP from the perspective of those who implement the programme. The government stakeholders acknowledged the problems with the implementation of the APRP. However, overall, they claimed that a weak process was better than no process at all.

During the second round of interviews, informants from Kabul’s fourth district—Surobi District—were aware of the APRP and were even willing to accept reintegrees into their community. However, they also highlighted the security issues related to such reintegrees, as the Taliban returned to kill them, thus displacing the reintegrees in their communities.<sup>123</sup>

All second-round IDI informants from Surobi District of Kabul highlighted the security concerns related to the reintegrees as targets of the Taliban. Further, informants in Kabul highlighted that there were no consultations or notifications before reintegrating combatants into local communities. In particular, informants noted that they were not aware of a single instance where a local justice mechanism had been established to deal with any abuses committed by a combatant. For example, one informant stated as follows:

<sup>122</sup> Female, 20, Hazara, Shibar, Bamyan (R 4, FGD).

<sup>123</sup> Male, 45, Pashtoon, Surobi, Kabul (IDI 3).

*Everything happened in secret. I figured out when I heard from one of my villagers who mentioned the names of the villagers whom I knew were Taliban joining the peace process. I was shocked that they could do this, because I knew the Taliban were in the area and had spies and could easily target these people.*<sup>124</sup>

This process creates a dangerous praxis within the APRP, as it provides blanket amnesty in which the alleged criminals are forced onto the communities without their consent and without a mechanism to resolve potential grievances. In Surobi District, however, the research team did not come across such a case, and according to informants' accounts, the acceptance of reintegrees did not pose a problem, as the Taliban is accepted in the communities of their district. Additionally, because it is a Taliban-controlled area, government officials cannot visit these areas. Women are not involved in the APRP according to the informants despite the fact that at least two women are included in the PPC.

The majority of participants in Nangarhar had heard about the APRP, but they did not know whether it was implemented in their districts. Some, however, expressly denied the implementation of the APRP in their district. The most detailed responses were given in the IDIs, as people explained how the APRP allows former Taliban combatants to be reintegrated into the community. One statement that summarises this finding is the following:

*Yes, I have heard about this peace process designed for the reintegration of the Taliban. Yes, the peace process is implemented in our province. It is not in the centre of the city because there are no Taliban there, but in Shinwar, Khogyani, and Chaparhar districts, for example, the APRP is implemented.*<sup>125</sup>

It was observed that the informant who is knowledgeable of the APRP provincial implementation does not have actual contact with the PPC. An informant also shared that the APRP participants originally resided in districts where the APRP was not implemented. They participated in the APRP in the informant's district (Behsud) and now are currently integrated with the locals in that district.<sup>126</sup> According to the information provided by the HPC, the APRP was also extended to those participants' districts, namely, Behsud, Kama, Khewa, and Jalalabad (Nahiya 4).

In Nangarhar, informants claimed that the process was unjust and corrupt and not administered properly by qualified individuals.<sup>127</sup> One FGD participant narrated his personal experience as follows: "my cousin was asked to bring ten people, and they were all paid, but only one was Taliban."<sup>128</sup> Participants suggested that the other reason for the failure of the APRP in Nangarhar was because "the employees of the peace process only sat in their offices," and as a result, there was no way for them to verify the identity of people introduced to the APRP through the community elder.<sup>129</sup> Another participant expressed his clear scepticism as follows:

*If this process were beneficial for bringing the opposition together, then there would be changes in the opposition, and they would become weak; but day by day they are becoming more powerful while peace process is still continuing. Now you have to ask if this process has influenced the armed groups positively or negatively.*<sup>130</sup>

In the second round of interviews conducted in Nangarhar with questions specifically relating to the APRP, several districts with evidence of APRP implementation were identified, notably Achin, Dara-e-Pech, and Kott districts. All four informants in this round noted that the APRP was implemented in their community, although three claimed that the reintegration process was not genuine. One thus suggested that:

124 Male, 35, Pashtoon, Surobi, Kabul (IDI 1).

125 Male, 56, Pashtoon, Jalalabad City, Nangarhar, (IDI 4).

126 Male, 58, Tajik, Behsud, Nangarhar (IDI 8).

127 Male, 56, Pashtoon, Jalalabad City, Nangarhar (IDI 15).

128 Male, 54, Pashtoon, Jalalabad City, Nangarhar (R 1, FGD).

129 Male, 56, Pashtoon, Jalalabad City, Nangarhar (IDI 14).

130 Male, 56, Pashtoon, Jalalabad City, Nangarhar (IDI 15).

*[The APRP] was implemented through the officials of the Peace Council for achieving their aims, but it was not implemented for the reintegrees of the Taliban. Those who were integrated were from our village and were local criminals and drug addicts, but they were not the Taliban.*<sup>131</sup>

Similar accounts were narrated by two other participants whereby one participant's brother in Dara-e-Pech District had proposed to the local Peace Council eight people who successfully participated in the APRP. However, only one of them was a former member of the Taliban, while the remainder were local villagers.<sup>132</sup> A second participant from Achin District suggested that there were 27 people who "joined the APRP, and they joined the government in the name of Taliban. However, they were ordinary people from our village. I do not know what the government gives them when they join the APRP."<sup>133</sup> Additionally, all participants stated that the PPC did not contact them or involve the communities in the reintegration or post-reintegration process. Thus, all participants concluded that the APRP was not implemented fairly or with transparency.

In Uruzgan Province, all FGD participants said that they had heard about the APRP, but that it had not been implemented in their communities in the districts of Chora, DehRawud, and Tirinkot. However, during the IDIs, a few participants knew of the APRP taking place in all three districts,<sup>134</sup> being aware of the reintegration process but not the term "APRP" itself.<sup>135</sup> Only one participant suggested that the APRP was undertaken in "secrecy" to avoid the identification and subsequent targeting of the reintegrees by the Taliban.<sup>136</sup> Two participants also provided a concrete example of a former Taliban commander participating in the APRP in Khas Uruzgan.<sup>137</sup>

The participants with knowledge of the reintegration efforts did not view APRP positively, primarily because of the underlying distrust surrounding the process. In particular, one informant argued that the Taliban cannot be bought<sup>138</sup> and that if criminals from the Taliban are allowed to join the government, then the country would have a government of "only criminals."<sup>139</sup> One participant categorically suggested that the reintegrees usually join the ALP, which subsequently creates problems for the communities when the ALP is attacked by the Taliban in retaliation.<sup>140</sup> The same participant—a tribal elder—stated that there was no grievance redress mechanism available to communities and that neither he nor any of the communities were contacted by the PPRC regarding the implementation of the APRP.<sup>141</sup> He highlights the following as the most pertinent lesson from the APRP:

*Most of the people who at the core of this process fake most of the reintegration...Come with a real programme where one can engage with the actual Taliban in serious dialogue and work...The leadership of this APRP should be people who can travel and meet these Taliban fighters. Almost every process started by the government so far has been under the influence of the former Mujahideen and the close friends of Karzai. This has to be stopped.*<sup>142</sup>

Another participant categorically suggested that the "APRP should be dissolved."<sup>143</sup>

In the second round of IDIs conducted in Uruzgan with questions specifically on the APRP, three tribal elders from Tirinkot District were interviewed. All three had knowledge of the APRP and suggested that quite a number of ex-Taliban combatants had been reintegrated into their

131 Male, 53, Ashkhial, Achin, Nangarhar (IDI 1).

132 Male, 48, Safi (Pashtoon), Dara-e-Pach, Nangarhar (IDI 2).

133 Male, 50, KhogaKhail (Pashtoon), Achin, Nangarhar (IDI 3).

134 Male, 45, Pashtoon, Chora, Uruzgan (IDI 1); Male, 50, Pashtoon, Chora, Uruzgan (IDI 2); Male, 55, Pashtoon, Tirinkot, Uruzgan (IDI 7).

135 Male, 45, Pashtoon, DehRawud, Uruzgan (IDI 4); Male, 70, Pashtoon, DehRawud, Uruzgan (IDI 5).

136 Male, 55, Pashtoon, Tirinkot, Uruzgan (IDI 7).

137 Male, 45, Pashtoon, Chora, Uruzgan (IDI 1); Male, 50, Pashtoon, Chora, Uruzgan (IDI 2).

138 Male, 45, Pashtoon, DehRawud, Uruzgan (IDI 4); Male, 70, Pashtoon, DehRawud, Uruzgan (IDI 5).

139 Male, 50, Pashtoon, Chora, Uruzgan (IDI 2).

140 Male, 50, Pashtoon, Chora, Uruzgan (IDI).

141 Male, 50, Pashtoon, Chora, Uruzgan (IDI).

142 Male, 50, Pashtoon, Chora, Uruzgan (IDI).

143 Male, 55, Pashtoon, Tirinkot, Uruzgan (IDI 7).

communities. They unanimously suggested that people in their communities accepted the reintegrees. No individual or family has had a specific problem with the reintegrees, because the aggrieved persons do not know who in the Taliban may have killed their family members, as the Taliban do not identify themselves during an assault.<sup>144</sup> Two of the three participants were approached by the PPRC and consulted before any reintegration.<sup>145</sup>

In Bamyan Province, most IDI participants showed some awareness about the APRP through the media and hearsay; no one could provide a concrete example from their personal experience. No one had any information about the perpetrators brought to justice before their reintegration nor had any knowledge of any reintegrees within their communities. Only one participant made reference to the PPRC, but was not aware of any grievance redressal mechanism to express complaints against a specific case of reintegration.<sup>146</sup> The same findings also hold true for the FGDs in Bamyan. Many of the participants suggested that bringing true peace with the Taliban is important and will be accepted by people, but they remained doubtful as to whether the APRP was the right forum for bringing lasting peace. One participant explains it as: “This programme is useless. I heard that the government itself sold a district to the Taliban. This is a kind of trick. I mean, those who join the government trick us...ALP is also not effective, as they would either be killed...or join the Taliban.”<sup>147</sup>

In the second round of interviews in Bamyan, specifically on the APRP, a village elder was interviewed from Waras District. He mentioned nine people being reintegrated into his community, including a former Taliban commander who had since returned to the Taliban. He further stated that the community members had no difficulty in accepting the reintegrees and that the PPRC had undertaken a few consultations with the elders.<sup>148</sup> He fully agreed with the APRP, as he felt that it brought about the conditions of peace; he also clarified that 15% of the PPRC was composed of women.

In Baghlan Province, more than half of the IDI participants said that they had some knowledge of the APRP. Some of those with knowledge of the programme expressed their concerns. A 58-year-old tribal leader from Markaz District of Baghlan shared his sentiments regarding the lapses in the APRP:

*No, I was never contacted by the PPRC, although I am a tribal leader and I should be aware of everything that is going in my area. But I was not contacted and I know that others were not contacted as well to share their views and concerns about them...No consultation ever took place in our entire community. As I said, whenever those 19 or 20 people joined the APRP, we, as local people, were unaware of their participation. We only found out from the media.*

One described an incident of corruption wherein the person responsible for the programme had reintegrated local civilians for his own personal financial gain.<sup>149</sup> Two other participants objected to the programme, since false promises of jobs and financial security were made to lure ex-combatants.<sup>150</sup> Almost all participants suggested that they had never been contacted by the PPRC for any reason. Two of the 12 FGD participants were aware of the APRP and PPRC in Puli Khumri District.<sup>151</sup> One participant thus said:

*Yes, I do know about the APRP. The chief of this process is Esmatullah and the deputy is Haji Mohammad Khan. They are corrupt people, because they only reintegrate people who are their relatives or who give them a huge amount of money.<sup>152</sup>*

144 11, Male, 35, Pashtoon, Tirinkot, Uruzgan (IDI 1); Male, 40, Pashtoon, Tirinkot, Uruzgan (IDI 2); Male, 48, Pashtoon, Tirinkot, Uruzgan (IDI 3).

145 Male, 35, Pashtoon, Tirinkot, Uruzgan (IDI 1); Male, 40, Pashtoon, Tirinkot, Uruzgan (IDI 2).

146 Male, 62, Hazara, Bamyan, Bamyan (IDI 3).

147 Female, 20, Hazara, Bamyan (R 2, FGD).

148 Male, 45, Hazara, Waras, Bamyan (IDI 1).

149 Male, 48, Tajik, Markaz, Baghlan (IDI 1).

150 Male, 41, Pashtoon, Markaz, Baghlan (IDI 3); Male, 38, Hazara, Zargha, Baghlan (IDI 5).

151 Male, 30, Tajik, Puli Khumri, Baghlan (R 1, FGD 3); Male, 41, Hazara, Puli Khumri, Baghlan (R 2, FGD 3).

152 Male, 41, Hazara, Puli Khumri, Baghlan (R 2, FGD 3).



Two informants from Baghlan stated that the reintegration process was implemented in their area. Both said that up to 19-20 combatants had joined the reintegration process in each of their local areas. In both instances, a high-profile Taliban commander along with several other lower-ranking Taliban members had joined the APRP. Both informants had some complaints relating to the reintegration process, claiming that the community was neither consulted nor informed by the PPRC. In their view, the committee conducts work in a secret manner, communicating only with the insurgent groups. One of the informants explained that they might not be reaching out to “insecure areas.”

A tribal elder from Baghlan stated that “I should be the first person to know about it...but I only learn about it through the media.”<sup>153</sup> Such informant claimed that the commanders that were chosen to join the reintegration process were well-known in the area for committing abuses and were disliked by the community in the overall. The respondents felt that the reintegrees were not brought to justice for the crimes committed in the past. One informant stated that “the government forgave them...We do not accept these [people] back into our community.”<sup>154</sup> Similarly, they both claimed that they did not know who to approach to express their disapproval, and both were fearful of the consequences of voicing their criticisms. One respondent explained that they feared reprisals as “[the reintegrees] are powerful, they have money and weapons.”

In the second round of IDIs in Baghlan Province that were focused on the APRP, both participants had a good knowledge and understanding of the programme. Both suggested that about 19-20 former combatants had been reintegrated through the APRP in Chapedarya, Kook Chenar, and other areas of Baghlan. However, the participants unequivocally declared that the APRP was unfair, since the communities were never consulted, and the reintegrees were unilaterally imposed.<sup>155</sup> Both made the following propositions for the important lessons learned from the failures of APRP:

- Establish regional offices in districts so that people can contact them whenever they choose;
- Establish a complaints commission to share concerns about the process;
- Develop a consultation process with local people before the reintegration of a person;
- Involve tribal elders in this process.

### 3.3.1 View of government stakeholders

Seven KIIs were conducted in the five provinces to interview key personalities in the government involved in the APRP. Three key informants were interviewed in Bamyan. Regarding the success of the APRP, the first made the following assessment: “Not successful. If it were successful, the war would be over in Afghanistan. However, APRP is still needed, because it is better to have a weak peace process than war.”<sup>156</sup> For the second key informant, “we cannot say we did 100%, but it is overall successful.”<sup>157</sup> The third from Bamyan said that “In many cases, the APRP has done its job well. If we did not have APRP in Bamyan, we would face many problems now.”<sup>158</sup> The three key informants identified the following specific challenges:

- External influence: Because some anti-government elements are supported by foreign countries (e.g., Pakistan, Saudi Arabia), the HPC does not have the necessary power to counter this foreign power-play.
- Ethnic aspects: Most of the Taliban, Haqqani group, and so forth are Pashtoons, so when the HPC acts against them, it is perceived as genocide against the Pashtoons (e.g., Dostum fighting in Faryab). Thus, the HPC is limited in its ability to refer potential reintegrees with a criminal record to the formal justice system out of fear of accusations of bias/ethnic discrimination.

153 Male, 53, Pashtoon, Hachin, Nangarhar (IDI-2<sup>nd</sup> Round).

154 Male, 38, Hazara, Doshi, Baghlan (IDI 1).

155 Male, 48, Tajik, Markaz, Baghlan (IDI 1); Male, 58, Pashtoon, Markaz, Baghlan (IDI 2).

156 Male, Bamyan (KII 1).

157 Male, Bamyan (KII 2).

158 Male, Bamyan (KII 3).

- Territorial limits: Bamyan citizens join Baghlan and Sar-e-Pul anti-government elements to conduct attacks on Bamyan territory. Although the Baghlan or Sar-e-Pul Taliban wishes to join the APRP in Bamyan, they are not allowed to.
- Outreach issues: A lack of awareness and campaigning about the APRP.
- Lack of inclusivity: Youths and females do not have a strong presence in the leadership.
- Management of expectations: People expect that the HPC will solve the issues with Pakistan and other external powers, but this issue falls within the domain of the government.
- Lack of staff and budget.
- Miscommunication and lack of coordination between neighbouring provinces: Baghlan groups come to Bamyan to join the peace process, because they might be criminals and so do not want to go to Baghlan for the peace process.

One key informant from Kabul suggested that the APRP was a success, as three projects were implemented, two of which were successful with 99 reintegrees mainly in Surobi District.<sup>159</sup> He suggested that there were “No problems with the Afghan Taliban but rather with the foreign Taliban; they don’t allow potential reintegrees to join the peace process.”<sup>160</sup>

The key informant from Nangarhar boasted about some of great successes of the APRP. He suggested that they “have been able to reintegrate around 800 ex-combatants to the peace process and the government.”<sup>161</sup> Furthermore, “30 out of those 800 people were powerful Taliban commanders...They have not only joined the peace process, but they are also cooperating with us in the reintegration of other Taliban into the peace process.”<sup>162</sup> He identified the key challenges as the following: general insecurity that prevents public awareness and outreach, and the intervention of foreign countries as a major obstacle for the success of peace talks.

The key informant from Uruzgan also suggested a high success rate for the APRP in the province with around 200-300 reintegrees in the province.<sup>163</sup> Specific challenges include the low financial support of the APRP as well as the inclusion of persons who have committed crimes into the APRP, without any specific punitive measure undertaken before their reintegration.

159 Male, Bamyan (KII 4).

160 Male, Bamyan (KII 4).

161 Male, Nangarhar (KII 5).

162 Male, Nangarhar (KII 5).

163 Male, Uruzgan (KII 6).

## 4. Conclusions

### 4.1 Perceptions of transitional justice

An overwhelming majority of participants still remember the past human rights abuses from various regimes and/or have a direct experience of human rights abuses. All participants similarly wished to see the perpetrators of past abuses brought to justice through a criminal justice process. In all five provinces, participants discussed how a failure to address the past had fostered a culture of impunity. They attributed the ongoing violence, the rise of a multitude of armed actors, corruption, and a lack of accountable government to Afghanistan's failure to address its past.

In all of the provinces except Uruzgan, participants wished for any transitional justice efforts to go back several decades to address abuses that took place under the Communist regime, Mujahideen regime, and Taliban rule. In Uruzgan, one of the provinces worst affected by the recent rise in the insurgency, participants stressed that attention must focus on addressing present abuses and, in particular, preventing future violence. Regarding the manner in which to address past abuses, participants overwhelmingly favoured an approach based on criminal justice. However, some participants also raised the importance of apologies and compensation as measures that could also be used to address past abuses.

However, all participants were highly cognisant of the challenges of dealing with the past, in particular in providing criminal justice. Across all five provinces, individuals complained that the National Unity Government was weak and lacked the political will to implement transitional justice. Some feared that the efforts to implement transitional justice could result in communal clashes, a civil war, or even the secession of parts of the country.

In particular, the most consistent grievance relating to past abuses as well as the current government was that the alleged perpetrators continue to hold official positions of power. Across all five provinces, participants demanded that these alleged perpetrators be removed from office and, ideally, be brought to justice. Similarly, those who have armed militias should be disarmed and prosecuted for their crimes.

Looking to the future, it is imperative that the government consider a vetting programme designed to both remove current perpetrators from positions of power and prevent alleged perpetrators from occupying positions of power in the future. In this regard, the current legal framework relating to senior public sector appointments as well as the qualifying criteria for electoral candidates could be revisited.

Except for Bamyan, participants in all other provinces reflected a high degree of confidence in CDR mechanisms. For example, in Nangarhar and Baghlan, participants indicated that resolving local-level disputes through CDR mechanisms could resolve many of the underlying local-level issues that fuel the insurgency. The Ministry of Justice is currently examining a Draft Law on Conciliation, which seeks to link the informal and formal dispute resolution mechanisms. Depending on the final version of the law, it could be used to resolve local-level disputes. Additionally, across all five provinces, participants saw the significant role to be played by local elites such as religious and tribal leaders in raising awareness about the peace process. If taken into consideration that the Community Dispute Resolution operates based on a law, then it is no longer community-based, as it would be a government institution at the sub-national level. However, no one can ignore community based mechanisms to address local disputes, but it should be clear that none of such community based institutions can take over the role of local and official courts. There should be clear line between efforts for mitigation of conflict and violence and authorities for punishment and sanctions.



## 4.2 Perceptions and roles of the peace process and scope for compromises

Across all five provinces, the participants had little confidence in the government's ability to lead the peace process. However, the government is still perceived as the main interlocutor in the negotiations and the leader in modernisation and development. The participants proposed some measures that could increase the legitimacy of the government, including removing alleged criminals from the government and bringing them to justice. There were mixed views as to the role of the international community. In Uruzgan and Kabul, there was scepticism about the role of international partners in a peace process. However, across all five provinces, participants felt that the international community has an important role to play in putting pressure on Pakistan to persuade the Taliban to accept the peace process and in pushing the Afghan government not to compromise the gains of the past years. Participants also suggested that local communities can play a greater role, as the Taliban's successes at the district level are partly due to the support received from local communities.

Many understood the challenges of negotiating with the Taliban and were willing to make compromises. The participants were aware of the military strength of the Taliban and were keen to mitigate or end the enormous personal suffering that they have endured because of the continuing insurgency. However, before doing so, they felt that there should be some guarantee as to the end of violence and lasting peace. In agreeing that they were willing to make compromises, participants across all five provinces were careful to note that they were not willing to negotiate the gains made over the last 14 years. In particular, the gains made in terms of women's rights, human rights, education, and the Afghan Constitution were specifically mentioned. In three provinces—Kabul, Baghlan, and Bamyān—the participants felt that women have a role to play in the peace process, as their participation could ensure that their rights are not undermined during the negotiations.

Further, given that participants across all five provinces were categorical in their rejection of the alleged perpetrators continuing to occupy official positions of power, it is imperative that the government ensure that any power-sharing efforts do not allow the alleged perpetrators to assume official positions. In this regard, the recently negotiated peace deal in Colombia could be instructive, as former combatants were offered varying degrees of incentives for cooperating with the formal justice system in exchange for their participation in a democratic political system.

## 4.3 Perceptions of justice in APRP

Most participants had only a vague understanding of the APRP despite the fact that it should have been implemented in our research districts based on the information provided by the HPC and UNDP. The overwhelming majority of participants claimed that it was not implemented in their area, and that they have never heard of or come into contact with the provincial offices of the APRP. Those who knew of the APRP had negative views about it, mainly because they believe that the Taliban cannot be "bought," and that the government does not have access to the real Taliban. Similarly, several participants provided anecdotal evidence that various actors are taking part in the reintegration process for financial gain.

The issue of political amnesty is critical. As political amnesty was never properly defined, this has created the possibility for individuals other than the Taliban—for example, various criminal groups—to join the APRP. Although the APRP was never supposed to serve as a blanket amnesty programme, when somebody committed a personal crime such as murder, the APRP nevertheless accepted the person despite the existence of a vetting mechanism. As the APRP is a government programme, the fact that alleged criminals can join the process seriously decreases the legitimacy of the government in the eyes of the participants and increases the feelings of impunity even further. In Baghlan Province, where several participants were aware of individuals who had gone through the reintegration process, the former expressed their strong disapproval of the government accepting Taliban combatants and leaders who were accused of committing abuses in their local community.

An informal grievance mechanism was meant to be developed within the APRP, while consultations with the community before reintegration rarely occur, thus creating a dangerous praxis of forcing ex-combatants onto the communities without giving them the possibility to express their disapproval. Although the former Taliban combatants are usually well accepted in the communities (because they originate from them), in the case where a potential reintegree has committed a personal crime, as mentioned above, this can create further grievances in the community.

When comparing the findings of Winterbotham's previous research for AREU in 2012,<sup>164</sup> many similarities exist with the current study, clearly suggesting that Afghans are not ready to forget past human rights abuses. Nevertheless, although criminal justice is still the most desirable mechanism for addressing past injustices, securing peace was and still is the key priority for the Afghan people. In this respect, people were ready to trade off peace for justice in 2012 and they are ready to do so again today. However, as mentioned in this paper, this time, the government has to provide "real" peace, otherwise it risks losing the trust of its people evermore. Already in 2012, Winterbotham argued that unless the alleged perpetrators of human rights abuses are removed from office, the government cannot gain people's trust. The lack of trust in the configuration of the HPC continues to be an issue among the Afghan people, and despite the fact that the Loya Jirga was discussing the review of the HPC structure as early as November 2011, no considerable changes have since taken place. To sum up, looking at the longitudinal aspect, the perceptions of the Afghan people have not changed considerably, suggesting that the transitional justice mechanism will eventually have to be implemented if sustainable peace is to be achieved in Afghanistan. However, one major difference exists between the former AREU study and the present one. Winterbotham found that the majority of people rejected the notion of power-sharing with the Taliban. In 2015, people are now much more willing to accept the Taliban in the government, seeing negotiations as the only way forward.

## 4.4 Recommendations

### 4.4.1 To government

- Initiate a review of the process of making senior appointments to the public service and ensure that robust guidelines are in place to disqualify individuals who have been associated with past human rights abuses;
- Initiate a review of the electoral laws to ensure that individuals implicated in serious human rights abuses go through a rigorous selection process;
- Establish a vetting programme to ensure that individuals implicated in serious human rights abuses are neither recruited nor promoted in the armed forces and public service.
- Incorporate international crimes into Afghanistan's domestic law in line with the country's obligations under the Rome Statute;
- Engage in an active collaboration with the Office of the Prosecutor of the International Criminal Court to ensure the efficient progress of the ongoing preliminary investigation into Afghanistan;<sup>165</sup>
- Allocate resources to and empower the Attorney General's Office to investigate and prosecute serious human rights abuses and international crimes;
- Implement a comprehensive outreach strategy with a view to raise awareness and build confidence in the national peace process;
- Implement a comprehensive outreach strategy with a view to raise awareness about the APRP; and,
- Ensure rigorous oversight of the implementation of the APRP, including community-level consultations and the establishment of local grievance mechanisms.

<sup>164</sup> Emily Winterbotham, *Healing the Legacies of Conflict in Afghanistan: Community Voices on Justice, Peace and Reconciliation*, AREU, Kabul, January 2012, pp. 1, 31. Retrieved from: <https://goo.gl/9fAegp> (Accessed last: 17 June 2016).

<sup>165</sup> This will be an effective instrument to end impunity and initiate investigation in war crimes and crimes against humanity occurred since 2003 up until now.

#### **4.4.2 To civil society**

- Raise awareness about transitional justice concepts, including comparative experiences. Whenever possible, develop cultural and religious contexts for transitional justice concepts;
- Enlist the support of local leaders, including tribal elders in raising awareness about transitional justice;
- Initiate rigorous documentation efforts with a view to prosecution, including the use of universal jurisdiction; and,
- Initiate local-level truth-telling and memorialisation efforts.

#### **4.4.3 To the international community**

- Prioritise funding for transitional justice activities within both government and civil society;
- Include transitional justice-related benchmarks in Afghanistan's development agenda, examples include the incorporation of international crimes and the strengthening of the Attorney General's Office.

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## Annex

### Annex 1: Study sites<sup>166</sup>

Province	Districts	Previously researched by AREU from the perspective of transitional justice	Implementation of APRP (new aspect of this study compared to AREU's previous research on transitional justice)	Pre-2001 atrocities (Soviet invasion, Mujahideen era, Taliban regime)	Post-2001 atrocities after US intervention (new aspect)
Baghlan	Puli Khumri, Baghlani Jaded, Doshi		X	X	X
Uruzgan	Tirinkot, Chora, DehRawud		X		X
Bamyan	Bamyan City, Yakowlang, Shiber	X		X	
Kabul	Kabul City, Shakardara District, Bagrami	X		X	X
Nangarhar	Jalalabad city (Nahiya 4), Behsud, Kama		X		X

<sup>166</sup> Chosen based on geographical location (centre, north, south, and east). Originally, Helmand and Kunduz were selected, but the security situation made this impossible (Taliban offensive on Kunduz, etc.).

## Annex 2: Distribution of focus group discussion (FGD) participants according to study site, sex, and ethnicity

Province	District	Number of FGDs	Male FGD participants	Female FGD participants	Ethnicity
Kabul	Bagrami	4	7	7	Pashtoon, Tajik
	Kabul	5	8	8	Pashtoon, Tajik
	Shakardara	2	8	5	Pashtoon, Tajik, Hazara
Nangarhar	Behsud	3	8	4	Pashtoon
	Nahiya 4	3	4	8	Pashtoon
Baghlan	Doshi	2	4	0	Hazara/Ismailia, Tajik, Pashtoon
	Puli Khumri	1	4	0	Hazara/Ismailia, Tajik, Pashtoon
Bamyan	Yakawlang	3	11	5	Hazara
	Bamyan	3	12	4	Hazara, Tajik
	Shiber	3	5	7	Hazara
Uruzgan	Chora	1	4	0	Pashtoon
	DehRawud	1	4	0	Pashtoon
	Tirinkot	1	4	0	Pashtoon
<b>TOTAL</b>		32	83	48	131

## Annex 3: Distribution of the key informant interviews according to study site

Study sites					Total
Uruzgan	Kabul	Bamyan	Baglan	Nangarhar	
1	1	3	1	1	7

## Annex 4: Distribution of in-depth interviews according to study site

Sex	Study sites					Total
	Uruzgan	Kabul	Bamyan	Baghlan	Nangarhar	
Male	9	13	12	9	11	54
Female	0	10	2	0	11	23
<b>Overall total</b>						<b>77</b>

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**Afghanistan Research and Evaluation Unit**

Hs. 144, 3rd street on the left from Charahi Haji Yacoub toward Charahi Shaheed, First block on the right Shahr-i-Naw Kabul, Afghanistan

Phone: +93 (0) 799 608 548

Email: [areu@areu.org.af](mailto:areu@areu.org.af)

Website: [www.areu.org.af](http://www.areu.org.af)

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