

In 2004, the Afghanistan Independent Human Rights Commission (AIHRC) conducted a nation-wide survey on transitional justice. The ensuing report, titled “A Call for Justice”, found that Afghans wanted a holistic transitional justice approach with accountability, truth-telling, reparations and guarantees of non-recurrence. Since its inception, the Afghanistan Research and Evaluation Unit (AREU) has addressed local justice and reconciliation, and its last report, published in 2012, surveyed five provinces’ perceptions of how best to deal with Afghanistan’s painful past. In 2015, AREU, in partnership with the Liaison Office, returned to the field and gathered data on transitional justice, the national peace process, and district-level experiences with the Afghanistan Peace and Reintegration Program (APRP).

The transitional justice study covered three districts in each of the study sites of Kabul, Nangarhar, Bamyan, Baghlan and Uruzgan provinces. The research involved 158 male and female focus group discussion (FGD) participants in 32 FGDs, seven key informant interviews, and 77 in-depth interviews conducted throughout the study areas. The various represented ethnicities, such as Pashtoon, Tajik, Hazara, as well as the gender perspective of the male and female participants were taken into consideration in their selection. The selection of the study sites was based on the previous AREU paper, “Healing the Legacies of Conflict in Afghanistan”; the study sites were also involved in the Afghanistan Peace and Reintegration Program.

Despite not being overly familiar with the technical term “transitional justice,” respondents across all five provinces keenly felt the need to address past human rights abuses. Most preferred an historical approach that covered atrocities dating back to the People’s Democratic Party of Afghanistan (PDPA) regime. There was also a clear preference for the criminal justice system as a means of addressing past abuses. At the same time, respondents acknowledged that the current government lacked both the willingness and ability to redress past abuses. Similarly, though respondents recognised the government as the main interlocutor vis-à-vis the national peace process, they remained sceptical of both governmental and Taliban actors’ ability to negotiate an end to the conflict. Further, on the APRP, most respondents were not aware of the programme, and not a single one had been consulted by the provincial peace councils or was aware of any local grievance mechanism.

Perceptions on Transitional Justice

Across all five provinces, the majority of respondents claimed that they did not know the term “transitional justice”. However, most respondents acknowledged that the term refers to “dealing with the past,” and that it involves providing justice for past human rights abuses. This result was not surprising given that transitional justice is of relatively recent origin.

Respondents suggested that the failure to address past abuses fostered a culture of impunity, with some further explaining that it also contributed to intergenerational cycles of violence and revenge. A few respondents also linked the failure to address the past to a lack of accountability within government institutions. In particular, many respondents noted that perpetrators accused of committing egregious human rights abuses continued to hold senior government positions, and in some cases preside over on-going violence.

Respondents in all five provinces clearly preferred using the criminal justice process to redress past abuses. A few respondents recommended distinct mechanisms, including documentation of past and on-going crimes; establishing a special judicial mechanism according to sharia law; and referring the situation in Afghanistan to the International Criminal Court. One respondent suggested that there should be a special investigative commission or a provincial court staffed and led by credible individuals who have detailed knowledge of local abuses.

An overwhelming majority of respondents agreed that the government should opt for a historical approach to justice and that abuses that took place under the PDPA regime, as well as the mujahedeen era, the Taliban era to post-2001, and present abuses should be addressed. In Bamyan, the Taliban-era crimes were particularly highlighted. In contrast, in Uruzgan, there was a fear that efforts to address past abuses might escalate violence. Thus, respondents advocated that the focus should be on addressing on-going abuses with a view to preventing future violence.

There was a clear sense across all five provinces that the current government is both unwilling and unable to implement transitional justice. Some respondents noted that the National Unity government itself is extra-constitutional and has little capacity to implement its policies. A related concern among the majority of respondents was that the government would be unwilling to embark on a transitional justice project, as it would likely mean that it would have to scrutinise the past conduct of its members. In Uruzgan, respondents cautioned that efforts to pursue transitional justice could worsen the current security situation and potentially lead to communal clashes, an escalation of the current conflict, or even secession of parts of the country.

Perceptions of the Peace Process

Across all five provinces, there were low expectations from Afghanistan's nascent peace process. In particular, respondents had little confidence that either side could negotiate an end to the conflict. The government was viewed as weak and corrupt. Some respondents also pointed out that there should be unity within the executive branch before the government proceeds to negotiate with non-state groups. Many respondents also suggested that there is little government motivation to end the conflict since alleged perpetrators within its ranks benefit from the continuation of violence.

On the opposite side, there was significant scepticism vis-à-vis Taliban actors, with many respondents questioning the legitimacy of the government's negotiating partners. Many viewed the Taliban as acting at the behest of Pakistani authorities and doubted whether an agreement could be reached without their explicit approval. Respondents saw little role for external assistance or involvement in Afghanistan's peace process; for example, several questioned why the negotiations were not held locally. Despite the disapproval of foreign peace process involvement, respondents envisaged a US role in pressuring Pakistan.

Respondents had varied responses as to what they would be willing to sacrifice to end to hostilities. Most acknowledged the Taliban's military strength and its significant village-level support. As a consequence, most were willing to negotiate with the Taliban; indeed, provided there could be a guarantee of a lasting peace, many were willing to go as far as to allow the Taliban to occupy government positions. At the same time, there were dissenters who disdained such a proposition. For example, one respondent noted that since criminals are already part of the government, would it make a difference if the Taliban were to join their ranks? Further, another respondent questioned whether allowing Taliban government positions implied that similar concessions have to be made to members of Daesh.

However, respondents across all five provinces were clear that there are definite limitations to any compromises. For example, many respondents disapproved of any efforts to curtail the gains made over the last 14 years. Respondents explicitly stated that achievements such as the Constitution, and gains made in the areas of women's rights, education and relations with foreign countries should not be compromised.

Respondents further felt there was an important role for local leaders, including both religious elders as well as tribal leaders, in the national peace process. All provinces except for Bamyan evinced a high degree of confidence in community dispute resolution (CDR). In Bamyan, respondents were sceptical of both the formal and informal dispute resolution system. In areas where there was confidence in CDR, such as Nangarhar and Baghlan, respondents indicated that it could resolve many of the underlying local issues that fuel the insurgency. Many respondents further expressed that local leaders could play a major role in raising awareness and building support for the peace process.

Perceptions of the Afghanistan Peace and Reintegration Programme

One of the challenges of conducting field research was that many respondents were unaware of the APRP process. This was surprising given that districts were chosen based on APRP data that identified them as being part of the programme. Even when respondents claimed not to know about APRP, many went on to claim that they had little faith in such initiatives. None of the respondents interviewed in the study had come into contact with the provincial peace councils. Further, even in areas where individuals were aware of the APRP process, they could not recall an instance where a local grievance mechanism was established.

In particular, individuals that were aware of the APRP had some complaints against the officials charged with implementing the programme, including that they do little more than “sit in their provincial offices.” Some went so far as to claim that officials were profiting from the process. Related to this was the belief that individuals who were not “real insurgents” were participating in the programme for financial gain. In Nangarhar, one individual impugned the credibility of his local peace council since a former jihadi commander was a member.

In Baghlan, two people demonstrated detailed knowledge of APRP’s work. Both individuals referred to instances where Taliban commanders had been reintegrated, along with some their soldiers. However, both individuals claimed that the local community was not consulted, and no local grievance mechanism was established. The commanders who were reintegrated were well known locally for committing grave abuses, yet members of the community felt there was little to no space for them to air their disapproval. This was particularly the case as the commanders continued to remain influential with access to weapons and money. One of the respondents, a tribal elder, complained that he should have been among those that were consulted, yet he did not learn of the decision to reintegrate the commander until after the process had been completed.

Conclusion

Nearly a decade after the “Call for Justice” report was published, Afghans continue to echo the demands contained in the original report. Despite not being aware of transitional justice, across all five provinces, respondents expressed a clear desire to deal with the past. In particular, most respondents could personally recall or had anecdotal knowledge of, a broader catalogue of violations that had impacted them personally, their family or their broader community. Further, respondents expressed that the failure to address past abuses continues to shape the present conflict. Thus, it was not surprising that respondents wished to see a negotiated end to the conflict. Respondents were also willing to make significant concessions to the Taliban, including allowing them to hold positions in government, to the extent that they could guarantee peace.

This was a point of departure from AREU’s research findings in 2011, as respondents in 2015 were far more willing to negotiate with the Taliban. However, it must be noted that the most common grievance articulated by respondents was that perpetrators continue to occupy positions of power, which, over the years, had fostered a culture of impunity. In this regard, the government must be mindful that any efforts to share power with non-state armed groups do not allow perpetrators to assume official positions.

Across all five provinces, there was a general acknowledgment that there is little political willingness or institutional capacity to deliver on transitional justice policies. Thus, members of civil society must be conscious of laying the groundwork for a future transitional justice process. In particular, there is significant scope for efforts to raise awareness and establish local-level initiatives that document past and on-going abuses.

Additionally, there was little confidence in the national peace process. Respondents acknowledged the government as a legitimate interlocutor while remaining sceptical of its ability to deliver a negotiated end to the conflict. Thus, the peace process must include significant public outreach efforts to build confidence in the negotiations.

The findings related to APRP largely echo earlier internal and external assessments made of the programme. It is unclear if it will continue in the near future. However, if it is to be continued, then significant efforts must be made to restore trust in it.

Recommendations

- Members of civil society, as well as the AIHRC, could play a critical role in raising awareness of the broader set of measures available under transitional justice, including truth-telling, reparations and guarantees of non-recurrence and emphasising that these are not mutually exclusive options.
- The Afghan government should implement a vetting programme designed to both remove known perpetrators from positions of power, as well as to prevent new ones from occupying official positions in the future. In particular, the legal framework relating to senior public sector appointments, as well as qualifying criteria for electoral candidates, should be revisited.
- Members of civil society should consider local initiatives to document past and on-going human rights abuses, conduct community level truth-telling exercises and support local memorialisation efforts.
- Members of civil society should explore the role of local leaders in raising awareness of transitional justice and, in particular, provide a cultural and religious context of relevant policy measures, such as truth telling, criminal accountability and reparations.
- Members of civil society should conduct further research into the views of minorities within provinces to better understand their views and expectations on transitional justice.
- Members of civil society should develop a justice agenda for Afghanistan's national peace process.



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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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