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A Plan without Action

The Afghan Government's Action Plan for Peace, Justice and Reconciliation

To date, the favoured strategy of both the Afghan government and the international community for addressing legacies of past and present human rights violations and war crimes in Afghanistan has been to sweep them under the carpet. The adoption of the Action Plan for Peace, Justice and Reconciliation by the Afghan government is the exception confirming the rule: For a brief moment in 2005, the Afghan government, reluctantly and with some major caveats, and the international community, minus some of the heavy-weight players, lined themselves up in support of an action plan focusing on documentation, truth-seeking, vetting and accountability for war crimes. This moment, however, passed quickly.

In January 2005, the Afghanistan Independent Human Rights Commission (AIHRC) published the results of its national consultations about how Afghans wanted to deal with past abuses and the perpetrators of human rights violations and war crimes.¹ The report titled, 'A Call for Justice', showed that 70 per cent of Afghans perceived that they themselves or members of their families had been victims of human rights violations or war crimes. It also showed that Afghans viewed reconciliation as a key element of peace, but that for them it meant neither forgiving nor forgetting:

Afghans wanted the perpetrators to be brought to justice or at least be removed from power. The AIHRC report was supposed to be launched together with the 'mapping report', a documentation of human rights violations and war crimes in Afghanistan prepared by the office of the UN High Commissioner for Human Rights (UNHCHR) covering the period 1978 to 2001. However, already months before the release of the two reports, worried cables were sent between diplomatic missions in Kabul and their headquarters questioning whether this sudden focus on how Afghans wanted to deal with the past would anger the warlords-turned-democrats-and-allies and maybe further destabilise Afghanistan. At the last moment, with reference to the security of its staff, the UN decided not to release its mapping report.² The high commissioner, who had travelled to Kabul for the release of the AIHRC's and her office's report, ended up participating in the AIHRC's launch of its report and handing over a copy of her report to the AIHRC as a basis for its future documentation work. In doing that she publicly made a new and fragile national institution the owner of a document that the world's leading

¹ 'A Call for Justice: A National Consultation on Past Human Rights Violations in Afghanistan', Kabul, Afghanistan Independent Human Rights Commission (AIHRC), available at http://www.aihrc.org.af/rep_Eng_29_01_05.htm (accessed on 6 September 2011).

² For further discussion, see www.aan-afghanistan.org/index.asp?id=1217 (accessed on 6 September 2011). At some point a link to the UNHCHR mapping report was, presumably by mistake, posted on the UNAMA web site, from where it was added to sites of different human rights organizations. The leaked version is as a result now available on the Internet, although the report has never been officially released.

inter-governmental organisation had not dare to release. This tendency – to pass on the responsibility of taking risks to organisations that enjoy far less protection if they do so – has become one of the few constants of the transitional justice process in Afghanistan.

The AIHRC report received a considerable amount of national and international attention. Building on this momentum, the AIHRC together with select allies – including the focal point for transitional justice in the president's office, the Human Rights Unit of the UN Assistance Mission in Afghanistan (UNAMA), the European Union, and the Dutch and Canadian embassies – decided to draft an action plan to be adopted by the government and that would render operational the recommendations from 'A Call for Justice'. A draft of this action plan was discussed at a conference hosted by the Netherlands' government on 6–7 June 2005. The action plan's focus on symbolic measures, including its public launch, the establishment of a national day for victims of war crimes, documentation, truth-seeking and institutional reform were well received – or they at least did not result in much debate internationally or within the Afghan government. However, the reference in the preamble to criminal accountability for war crimes and the action point calling for the establishment of a commission to make recommendations to the president on how to move forward on the international obligation to prosecute serious war crimes was extensively debated in the cabinet before the final adoption of the action plan. In fact, the final version of the document was amended at the last moment to ensure presidential buy-in, asking only that the commission advise the president on 'issues relating to accountability for war crimes'.

The final cabinet approval of the action plan came only in December 2005, just in time for a UNHCHR-hosted national conference on truth-seeking and reconciliation in Afghanistan (13–15 December 2005). This conference again confirmed that Afghans viewed reconciliation and justice as intimately linked. In his closing statement at the conference, Christopher Alexander, the deputy special representative of the secretary-general for Afghanistan, emphasised the importance of implementing the action plan and stated that 'our actions have to have credibility. They have to produce results. . . . We need to work so that those who know. . . that they are living next to a mass grave do not have to live with the nightmare that some of those responsible still hold positions of responsibility'.³

³ UNAMA press statement, Kabul, 15 December 2005.

The adoption of the action plan in late 2005 also coincided with the preparation for a conference in London (held in January 2006) at which the Afghanistan Compact, a renewed agreement between the Afghan government and its international partners, was adopted. Lobbying from the 'patrons' of the action plan ensured that its implementation became a benchmark in the Afghanistan Compact. One of the action points of the plan, the establishment of an advisory commission that was to advise the president about his senior political appointments, was singled out and included as a separate benchmark in the Afghanistan Compact. By chance, this was the first benchmark of the Afghanistan Compact that was to be implemented (and it almost became the first *not* to have been implemented by the time the first review of the Afghanistan Compact took place a year later). With some hurrying, an advisory panel was established shortly before the first progress review, 30–31 January 2007, but it never became the political force it was intended to be. Only a few of the other action points of the action plan have been implemented:

- A national day has been established commemorating victims of war crimes; it is now celebrated annually on International Human Rights Day on 10 December;
- The AIHRC has undertaken a major documentation exercise currently awaiting publication;
- And President Karzai did publicly launch the action plan, in December 2006, about a year after it was adopted by the cabinet.

The launch of the action plan deserves additional attention, as it was one of those 'Afghan moments' when a step forward actually resulted in a marathon backwards. In support of the launch of the action plan, Human Rights Watch (HRW) had re-launched its 'Blood-stained hands' report documenting human rights violations and war crimes during the 1990s civil war, together with a press release that listed the names of individuals whose crimes were documented in the 'Blood-stained hands' report and who now held public positions in Afghanistan.⁴ By chance, the launch of both documents coincided with the hanging of Saddam Hussein in Iraq. This worried some parliamentarians with 'blood-stained hands': Maybe international justice had teeth after all. The reaction was immediate: An ad hoc parliamentary commission was established that drafted a self-

⁴ 'Blood-Stained Hands: Past Atrocities in Kabul and Afghanistan's Legacy of Impunity', New York, Human Rights Watch 2005.

amnesty bill, early versions of which provided blanket amnesty for all those involved in the three decades of Afghan conflict. The amnesty bill was slightly amended before it was signed by the president's office; its status then remained unclear for a while, until it was published in the *Official Gazette* in December 2008. However, even before it came into force, the amnesty bill was a reminder of the power of the alleged perpetrators of war crimes and the disempowerment of their many victims. Blanket amnesty laws of the type adopted by the Afghan Parliament are no longer considered compatible under international law, but given that Afghanistan does not have a functioning justice system there are currently no formal – and reliable – ways of challenging the law.

In order to push its implementation along, the time span for the implementation of the action plan was kept short; it should have been implemented within four years. There has been some debate as to whether the four-year period started when the cabinet approved it in 2005 or when the president publicly launched it in 2006, but what is clear is that it had expired by the time of the Kabul

Conference in June 2010. The Afghanistan National Development Strategy (ANDS) priority plan adopted at the Kabul Conference did, however, call for the re-adoption of the action plan. According to a priority plan timeframe, the action plan should be re-adopted within 12 months and implemented within three years. At the time of writing, 15 months had passed since the Kabul Conference, and no action plan had been re-adopted.

The adoption of the Afghanistan government's five-year Peace and Reintegration Program (APRP) has, however, resulted in some discussions about the terms of reintegration and reconciliation: Can all the crimes of combatants be forgiven when they are reintegrated? Where should the line be drawn, and how does this line relate to Afghanistan's obligations under international law, on the one hand, and the Afghan amnesty law, on the other hand? And maybe more importantly, when moving towards high-level peace talks, can these really be done without any attention to accountability? Can there be peace without justice in Afghanistan this time, although it has failed the previous times?

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ABOUT THIS CHAPTER

This chapter is part of a larger volume called *Snapshots of an Intervention: The Unlearned Lessons of Afghanistan's Decade of Assistance (2001–2011)*, edited by Martine van Bijlert and Sari Kouvo. The volume is a collection of 26 short case studies by analysts and practitioners, each with long histories in the country, who were closely involved in the programmes they describe. The contributions present rare and detailed insights into the complexity of the intervention and, in many cases, the widely shared failure to learn necessary lessons and to adapt to realities as they were encountered.

The chapters and full document can be found on the AAN website (www.aan-afghanistan.org) under publications.

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