

Afghanistan Research and Evaluation Unit

Event Proceedings

“When Will Transitional Justice in Afghanistan Become a Part of the Transitional Decade?”

A Roundtable Discussion

AREU

May 4, 2016



14 YEARS
OF HIGH-QUALITY
RESEARCH

The Afghanistan Research and Evaluation Unit (AREU) in partnership with The Liaison Office (TLO), undertook the study to identify the possibilities (if any) of linking the current peace process and transitional justice activities based on the perceptions and expectations of communities.

It is funded by the Security and Rule of Law- Applied Research Fund (SRoL-ARF) by Netherlands Organization for Scientific Research. As the call for a holistic approach to addressing the past injustices in the country went unanswered, and the conflict continued with new cycles of injustice and grievances, the Afghan government has to ask itself now in light of the current peace negotiations how to end this cycle of impunity to achieve sustainable peace.

The expected outcome of this intervention is a more inclusive peace process that increases the legitimacy of the government and enhances the trust and social cohesion between the various communities and between the state and its citizens. The Consortium of AREU and TLO will contribute to this goal through the provision of the evidence-based research on the community perceptions and expectation of transitional justice, to inform practitioners and research organizations, and policymakers on how the future peace process can take transitional justice aspects on board.

AREU as a research organisation and TLO, a practitioner organisation, brought together the needed expertise to bridge the gap between research on transitional justice and its usage in peace building activities.

INTRODUCTION:

Dr. Chona Echavez from AREU welcomed the participants and suggested that the renewed exercise in understanding the perceptions of Transitional Justice comes after AREU's previous efforts on the same in 2012 by Emily Winterbotham. The current study has been extremely helpful and essential in understanding people's perceptions of Transitional Justice in Afghanistan as well as their expectations from the peace process. To avoid any further delay in the discussions, she invited Aruni Jayakody to introduce the study and to lay down the findings regarding the study.



Aruni Jayakody, a co - author of the current study then introduced the topic and the background to the study. Transitional Justice as a topic has been spoken of widely in Afghanistan since 2001. The Bonn Agreement made no mention of it. However, subsequently, both the UN and domestic actors have made a number of efforts to assist a transitional justice process in Afghanistan. For example, the Office of the High Commissioner for Human Rights began a study documenting human rights abuses in Afghanistan, based on publicly available records. Additionally, the Afghanistan Independent Human Rights Commission (AIHRC) in Afghanistan has also undertaken two separate studies - the first one being “A Call for Justice” and the other one as a Conflict Mapping Study that has not been made public due to political interference from the Presidential Office in 2012.

FINDINGS FROM THE STUDY:

With the aforesaid introduction to transitional justice and its general relevance and discussion in Afghanistan, Aruni Jayakody provided the details of the current study undertaken. Aruni mentioned that she is a co-author of the study, with the other author being Michaela Marakova, who is no longer a part of AREU but had worked on the project initially and has contributed in writing the paper and data analysis.

The current study is undertaken to assess if the perceptions of Transitional Justice (TJ) are still as relevant when the “call for justice” exercise was undertaken by the AIHRC. The participants and informants of the study were chosen from five different provinces in order to encompass the views of national minorities. Three major questions were asked:

1. How does one understand the concept of TJ, and how does one view such process?
2. What are the perceptions surrounding the peace process, and what are the corresponding expectations?
3. Afghanistan Peace and Reintegration Programme (APRP): What is the awareness among the people, and what are the results of the processes and methods of the combatants being reintegrated into communities?

It was widely noted that the failure to hold individuals responsible for past human rights abuses has fostered a sense of impunity. This sense of impunity is responsible for corruption and weak governance. Most often the people are unable to accept that it is just for past perpetrators of human rights violations are still holding positions of power. However, no one was reluctant to talk about the past. On many occasions, people were ready to forgive what happened in the past for practical reasons for the fear that demands for justice could cause an escalation of violence or clash within communities. There was a clear consensus among all participants that the current

government was neither willing nor able to deal with addressing the atrocities of past. On the period from which the grievances must be redressed, there was an emphasis on ensuring that the atrocities of the past - covering all regimes must be undertaken. In Uruzgan province, however, there was a relative emphasis on bringing to justice the current atrocities to avoid future injustices. In Bamyan province, there was a clear emphasis on the Taliban era. What has been interesting to note is that almost all participants across all five provinces spoke of atrocities committed by non-state actors. Very little or no mention was made of human rights violations committed by state actors and international actors. This scenario could have also been due to the possibility that the research questionnaire was more designed to gather information about the atrocities committed by the non-state actors as opposed to state actors and international forces.

Regarding the responses, all participants have unanimously emphasized that the perpetrators of past injustices are all currently in the position of power. Overall there is a very low expectation from the peace process. The majority of the respondents claimed that the current Government is extremely corrupt and weak and incapable of initiating any TJ process in the country. Many have remarked that when the perpetrators are in positions of power, there is no hope that any justice can be upheld against themselves. There was also a unanimous observation that the peace process with the Taliban cannot be successful in so far as Pakistan continues to meddle in the affairs of Afghanistan. All participants hoped that the international actors, specifically, the United States alone can ensure that Pakistan can behave fairly at the peace negotiations and the US must do so. If a lasting peace can be guaranteed - people across all five provinces unanimously agree to compromise on demands for justice. However, the non-negotiable aspects of the peace deal would be that the gains made regarding women's rights cannot be compromised. Additionally, the Taliban must respect all provisions of the Constitution and assure that the Rule of Law will be upheld even when the Taliban become a part of mainstream politics and governance.

Regarding the use of community dispute resolution (CDRs) as an effective TJ mechanism, there is a majority of the participants of the study who suggest that there should be space for tribal leaders to play an effective role in the larger peace process. This observation is true for all provinces, except for Bamyan. Thus, there is a high level of confidence in informal justice processes as opposed to formal justice mechanisms in at least four of the five provinces.

On the APRP process -there was a general level of skepticism across all the five provinces regarding the implementation and effectiveness of the programme. The underlying distrust was in the fact that it was unknown or unclear as to whether real combatants go through the APRP process to be reintegrated into the community or if the motivation was only the financial rewards guaranteed under the programme. Other reasons for disbelief included whether the persons who were being reintegrated were actual combatants or persons living in other provinces and currently displaced, hence, claiming to be combatants for financial gains or if the reintegrees were the extended family and community members of the local administration being named and processed through the APRP to claim the financial benefits. Overall, there was extensive distrust and disbelief in the transparency, accountability and implementation of the APRP process. One local leader (the exact name of the province could not be recalled), clearly suggested that the ex-Taliban combatants had been reintegrated in his village - without him or any of the locals being approached before such process was finalised. Many of the participants provided anecdotal evidence to suggest that the ex-Taliban combatants being reintegrated continued to maintain power through weapons and financial control - including drug control, and many of the local population feel disempowered.

In conclusion, it was elaborated that the desires and conclusions from 'A call for Justice' remain relevant even today. In fact, there is the reason to believe that people are anxious that their desires expressed 13 years ago, calling for justice of past human rights abuses, have to date not been acted upon seriously by the Government. There is grave resentment that perpetrators

of past abuses have continued to hold positions of power, and in fact, this is the most obvious grievance that people of all five provinces have highlighted. In light of this, it is pertinent that the civil society in Afghanistan strengthens its position and finds a way to hold the Government accountable for the past injustices. The lack of a unified and targeted effort by the civil society has meant that there has been no pressure on the Government to take the issues of TJ seriously. Additionally, all participants as well as the authors of the report opine that while the political instability within the Government remains, the civil society in the meanwhile can resort to documenting the past human rights abuses. This initiative would ensure that when the right time comes to initiating TJ processes, there are several documentations of cases that are already available to effectively complement the TJ process.

With this conclusion, it was decided that further discussions would be in the form of Q & A sessions after a short tea break of 10 minutes.

DISCUSSIONS:

A first question to open the session was about the 'amnesty bill' of 2008 - if any data was collected regarding the same during field research. Aruni responded to this explaining that the questionnaire did address the question of amnesties in a general way. Only one individual from Bamiyan explicitly referred to the Amnesty Law - he expressly demanded that such laws be overturned.

Ehsaan Qaane from Afghan Analysts Network then posed the specific question as to why the five specific provinces were selected for this research. In response, Lenny Linke from AAN and formerly from TLO, who was also a part of the team that designed the project suggested that the main intention was to have a geographic coverage regarding the perspectives with an overlap of the provinces where APRP was implemented. Additionally, security conditions played a pertinent role, for instance. Kunduz was to be included at first as a province, but after it had fallen into the control of the Taliban - the same was replaced with Uruzgan. It was also suggested that to capture a widespread section of the population; more districts were also sought to be included within each province. However, due to budgetary constraints, the number of districts within each province was also reduced. Mr. Amiri from TLO, who led the field research teams suggested that initially, as a replacement for Kunduz, Helmand was also suggested. However, the same had to change to Uruzgan when security in Helmand also deteriorated and additionally no APRP programme was found to have been implemented in Helmand after having consulted with the High Peace Council (HPC) office.

The next set of questions was posed by the representatives of the HPC. They requested some basic information regarding the methodology and how the participants were identified and selected for the field research. Mr. Amiri from TLO responding to this question suggested that in all provinces multiple sets of participants were chosen. It was decided that persons from all walks of the society in the local areas would be included - a teacher, NGO/ aid worker, village elders, victims, former combatants, doctors, women, and students were all interviewed. In some provinces such as Uruzgan, it was found to be difficult to find doctors in all districts so in lieu of doctors an additional teacher or social worker has been interviewed.

The representatives from the HPC further raised queries regarding the participants of the APRP questions. Were the researchers able to work to villages with provincial peace councils (PPC) and/ or did they directly speak to the reintegrees. Mr. Amiri from TLO responded to this query and suggested that there was a specific questionnaire for APRP and there were interviews conducted directly with PPC as well as reintegrees from villages. So yes, the right forms of participants were interviewed for the questions on APRP.

The next question was from a student who is currently interning at the Afghanistan Independent Human Rights Council (AIHRC) in Kabul. She suggested that many people in Afghanistan any form of TJ process as merely criminal justice processes. She requested if through the current study, any additional information could be gathered as to whether people in local communities see TJ as just criminal justice procedures, or if they do see other forms of TJ mechanisms as equally relevant. Responding to this query, Aruni suggested that TJ is a very technical and relatively new concept. Most people hear the word ‘justice’ alone and think that it constitutes some form of criminal justice only, and this is a common phenomenon across the world and not just in Afghanistan alone. The current research was designed in a way that there was an element of providing more information and understanding to the people regarding the concept of TJ and its various mechanisms. It is certainly relevant to note here that much work on TJ needs to be undertaken in Afghanistan concerning spreading information regarding the normative framework, as well as the conceptual ideas surrounding TJ and how the same can be adapted to the cultural contexts within Afghanistan. In fact, just to give an example, the ideas of truth commissions (TCs) originated in Latin America. It is based on the Christian idea that to absolve your self from sins you must confess and tell the truth about your conduct. Adopting a similar religious / cultural context for the implementation of any TCs in Afghanistan will provide such mechanisms with more legitimacy. The same approach is being used in Sri Lanka - members of civil society are starting to think about how to provide a religious and cultural context to transitional justice principles.

Naqib Khupwak from USIP suggested that the ideas of truth commissions is very relevant in Afghanistan since it finds a basis in the religious philosophy of Islam as well and thus more research needed to be undertaken to find out how TJ mechanisms can be undertaken through the support of religious leaders and elderly who are most often revered in society as the upholders of moral justice and religious knowledge.

A representative from the UNAMA - Rule of Law: then raised a query regarding the fact that people in Afghanistan have no faith in the formal criminal justice mechanism i.e. the judiciary but still suggest that criminal justice is the only means of redressing the past abuses and human rights violations. She wanted to know if anyone in the room had any ideas of how this dichotomy could be addressed. Responding to this observation Aruni suggested that indeed the data from the study supported the view that there was little confidence in the formal justice processes. All over the world, transitional justice is implemented in the context of weak state institutions. There were a handful of respondents that suggested there is a role for the international community to play in facilitating transitional justice. Thus, even if not the United States, it is important for the United Nations to take a stand here and look into the process. Additionally, it was emphasized that to create a more accountable government, strict vetting of political candidates must be undertaken.

Ahmad Shuja from Human Rights Watch (HRW) in Afghanistan, was the next to raise a query regarding the role of Islam and religious leaders as noted by the participants - was there any desire from among the participants to include religious leaders or the role of Islam to implement the TJ mechanisms? Aruni responded to this point and suggested that there were a few views suggesting the importance of religious leaders. In particular, respondents identified religious leaders as individuals with considerable trust within the community. Thus, they could play an important role in building support for, and potentially leading a transitional justice mechanism. There was also one respondent who suggested that a special judicial mechanism should be established according to Sharia law to provide justice for past abuses.

Mr. Amiri from TLO added that the most often used term by the participants was that ‘influential persons’ in the communities and societies must be used to implement the TJ processes. An example was that when there is a dispute within the community - influential members of the

community are requested to resolve the dispute in order that the same can be implemented and respected within the community. Same is the demand for the TJ mechanisms. Who can be influential is a matter of decision within each community - since influence in local areas is to be understood within local power dynamics.

The representative from HPC, Mr. Hamidi, raised a pertinent question regarding the quality control, and checking and verification of data and if the same was undertaken and to what extent and through what procedures? Aruni responded to the said question suggesting that the final paper would be subject to peer review. But regarding the respondent interviews - the same is only verified internally between AREU and TLO through multiple researchers and analysts within both institutions.

The representative from UNAMA - Rule of Law suggested that since Afghanistan is a signatory to the Rome statute and with the appointment of the new AGO, UNAMA has been advocating the creation of a human rights unit within the AGO to prosecute human rights violations and international crimes. So this could be a new forum to provide criminal justice for past abuses. Aruni responding to this comment suggested that it is extremely encouraging to hear about this new initiative. Such small steps could lay an important foundation for implementing TJ in Afghanistan. Another instance that can be quoted here is the "Conflict Mapping Study" that has not been released as yet. When Pres. Ghani was questioned as to why the mapping study has not been released by his government - even though it was Pres. Karzai's government that had originally prevented the release of the report, Pres. Ghani suggested that the decision lay with the head of AIHRC. But ever since that statement no civil society has ever questioned the head of AIHRC as to why she has not released the said report.

In response to this comment, Ahmad Shuja from HRW suggested that at all times the Government has maintained that it is not the right time to release the "Conflict Mapping Study" since it is an extremely sensitive report that can test the tensility of the existing political structures in Afghanistan. So what would be the ways in which this argument can be overcome? Aruni, in response to this comment suggested that that will always be the position of every Government - not just in Afghanistan but all over the world. Governments are rarely willing to take steps towards accountability. And that is exactly the reason why the civil society must engage with the Government ensure accountability from the Government.

Ehsaan Qaane from AAN suggested that TJ can happen in two ways - officially through a government sanctioned plan, or the leadership and positive role of the civil society. Is it not the role of the civil society to document and write the report and the responsibility of the Government to accept it and release it? In response to this comment, Aruni suggested that everyone had to push their thoughts back here for a moment and understand that when one is faced with a Government, who has little capacity and willingness to respond to the demands for transitional justice, then the onus is on the civil society to ensure that they lay a very strong groundwork for recording and documenting past human rights abuses. Even when there is no space within the domestic system, you could potentially use that evidence and information to pursue justice internationally - for example through universal jurisdiction. Or, when the domestic circumstances change - civil society will be armed with information and evidence to shape TJ policies and mechanisms.

Naqib Khupwak from USIP suggested that it is not evident that people at grassroots levels have always wanted TJ mechanisms to be implemented. But the larger question is who will implement it? 60 - 70% of the Government is constituted by the perpetrators of the past crimes - and they will certainly not hold themselves accountable. This trend is set to continue and realistically speaking the Government will never be in a position to agree to accept responsibility and ensure accountability for past human rights violations in Afghanistan. Another challenge here is that usually TJ is implemented in post-conflict societies when perpetrators of crimes have

been overthrown, or violence has ceased. But Afghanistan is still a conflict country. Thus any implementation of TJ processes is also a challenge. Also, it is important to know, especially in a case of Afghanistan, from which period should TJ be implemented, during PDPA, Mujahedeen, Taliban for instance?

Responding to this comment Aruni, suggested that except in Bamyan - all participants felt that the regime of the PDPA, Mujahedeen as well as the Taliban were all equally bad and must be looked into for addressing the past injustices. In Bamyan, since they suffered the most under the Taliban regime, participants suggested that the Taliban period must especially be addressed for any TJ mechanism. In response to the earlier comment, Aruni suggested that it was correct that Afghanistan is not yet a post-conflict society - it is very much in conflict. That is exactly the reason why civil society organizations must continue to work in the background and build and document instances of all abuses, present and past, so that when the time for implementing TJ arrives, the past injustices cannot be rejected or the opportunity for accountability is not lost due to absence of well-documented evidence.

Following this comment, a suggestion was made from Peyton Cooke from USIP. He suggested that it was important to understand the generational ideas and interpretations of responses to the desire to implement TJ processes in Afghanistan and enquired if such a differential age and gender trends analysis was made within the current study?

Ehsan Qaane from AAN then followed up with a comment on local perspectives arising from local experiences. Different parts of Afghanistan have experiences conflict and human rights violations in different forms in the past four decades. So it is extremely important to note that defining the contours of the TJ process in Afghanistan as well as identifying the need to tailor local mechanisms for local perspectives is very important. Thus, it is an imperative to define what TJ in Afghanistan is, and how it can be implemented in all regions after tailoring it to suit local dynamics.

This was also quickly followed up by another comment from the representative of UNAMA suggesting that the ICC's jurisdiction over Afghanistan can only date back to atrocities committed after 2003, which essentially means that only the Taliban or the current Government forces can be prosecuted. She requested Aruni to comment on how that might affect the demands for justice from people who have suffered atrocities from the PDPA, Mujahedeen and the previous Taliban regimes in Afghanistan.

Aruni first responding to Ehsan's comment suggested that it is true that local perspectives are extremely valuable, and it is necessary to incorporate them into any TJ processes. The implementation of TJ processes with local perspectives and local inputs ensures that any transitional justice process reflects the demands and preferences of those most directly affected. In fact, in the current study, people have expressed that they are willing to accept just an apology too - even that would go a long way to addressing the past injustices. Regarding the comment on ICC, Aruni suggested that civil society should be questioning why the ICC's preliminary investigation into Afghanistan has taken more than seven years? It is important that members of civil society continue to demand accountability for events such as the attack on the MSF hospital in Kunduz.

Suparva from AREU in responding to Peyton's query about generational and gender analysis suggested that the same was in fact undertaken, and it can be clearly seen as a result of the age, gender, and diversity (AGD) analysis that many of the older generations have actually expressed their exhaustion and utter lack of faith or any form of justice being provided to them. Many of the elderly tribal and village leaders, in fact, suggest that they are willing to forget everything and leave this world peacefully if at least their children can find a better future and can find a



life of dignity and respect. Younger generations on the other hand demand justice - especially educated younger youth populations suggest that it is important that the Government must first be made accountable by removing those with past criminal records from positions of power and instead more educated, and deserving youth must be included in the government. They insist that the youth must be allowed to build a responsible and transparent government. Younger women also show strength

and demand for justice and mandatorily demand that more women must be allowed to be a part of the government as well as the fact that gains made in women's rights, particularly, their right to education and right to employment cannot be taken away by anyone. The expectation of which regime must be targeted for TJ implementation - as suggested by Aruni, does depend on which province one is looking at, like for example., Bamyán has an overwhelming demand for TJ mechanism to redress the crimes of the Taliban, Nangarhar goes back to the Mujahedeen period and so on.

Lenny from AAN, then requested Aruni to share any ideas from the study which shows a preference for the people regarding which is the most favored TJ mechanism that people would like to see implemented. Aruni said that most respondents desired to see criminal justice - this is probably because most people associated TJ with the word justice. Most were similarly not aware of specific TJ mechanisms. In addition, she noted that most people can often only articulate their grievances. Not many can provide specific policy options.

Ehsaan Qaane from AAN, then requested a few moment to clarify the ICC in Afghanistan issue that has been consistently criticized by all. He began by suggesting that there is a lot of misleading information regarding the ICC that has been circulating in Afghanistan. ICC has in fact released a preliminary report on the Afghanistan war crimes committed both by Afghanistan state actors as well as international forces from 2003 onwards. However, it is barred by jurisdiction to look into the crime prior to 2003, and the same is unfortunate. ICC has the mandate to come to Afghanistan to look into the crimes committed since 2003 onwards, since no national prosecutions for the same have been undertaken. However, the Government of Afghanistan has been refusing the visa for any entry of ICC officials into Afghanistan. It was only in January of 2016, that the Government of Afghanistan set up a committee to advise the President on the ICC and its impact on Afghanistan. The committee is said to constitute various members from MoFA, MoJ, MoI, MoD, NDS, Supreme Court, AGO, among others and is required to look into the matter. However, the problem even then is that this committee does not have the basic information and knowledge of how the ICC's jurisdiction works and can be implemented in Afghanistan.

CONCLUSION:

Mr. Massoud from TLO then concluded the roundtable discussion and thanked all participants for their time and effort to participate in the event. He suggested that the current study had been limited by time and resources, nevertheless showed that people on the ground have not forgotten past injustices, and they have continued to remain interested in rectifying wrongdoings committed in the past. Additionally, it is clear that term TJ is still a much nuanced concept and people in local administrations and village level authorities must still be educated about the same. People in villages and rural areas often see justice as a means for seeking revenge for crimes committed against them. This perception must be changed at the earliest for the larger benefit of the country. The term 'cooling of the hearts' here is exceptionally important since one may not find peace even if they seek revenge. It is also important to note that the youth have already started playing a role in Afghanistan's political circles by holding positions at the local

levels and junior positions of the Government in Kabul. As the new generation continues to rise into positions of authority, it is important that the civil society engages with them from early on and catch them young to ensure their support for a TJ processes in future. Additionally, it is also important that the civil society can continuously engage with the HPC to further strengthen the role and outreach of the HPC. Some more research would be required about international TJ perspectives from countries that have implemented them in the past and how their efforts can be replicated in the Afghan context.

The current study has been undertaken to assess if the perceptions of Transitional Justice (TJ) as still as relevant when the “call for justice” exercise was undertaken by the AIHRC. The participants and informants of the study were chosen from five different provinces in order to encompass the views of national minorities. Three major questions were asked:

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