Healing the Legacies of Conflict in Afghanistan

Community Voices on Justice, Peace and Reconciliation

January 2012

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AREU

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About the Author

Emily Winterbotham has researched transitional justice, human rights violations and wider justice issues in Afghanistan for the past three years. She joined AREU in February 2009 where she managed the Legacies of Conflict research project. During this time she has also worked closely with Afghan civil society organisations and is currently involved in assisting several organisations with their implementation of projects focused on human rights and justice in Afghanistan. She previously conducted research on transitional justice in Bosnia-Herzegovina and has an MSc in Global Politics from the London School of Economics.

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 through conducting high-quality, policy-relevant research and actively disseminating the results, and to promote a culture of research and learning. To achieve its mission AREU engages with policymakers, 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 working in Afghanistan and has a board of directors with representation from donors, the United Nations and other multilateral agencies, and non-governmental organisations. AREU currently receives core funds from the governments of Denmark, Norway, Sweden and SwitzerAREU receives core funds from the governments of Denmark, Finland, Norway, Sweden and Switzerland. Specific projects in 2011 have been funded by the European Commission (EC), the International Development Research Centre (IDRC), the Humanitarian Aid Department of the European Commission (ECHO), the UK Department for International Development (DFID), and UN Women.

Acknowledgements

Above all, the author wishes to thank the communities in Ghazni City and Qarabagh in Ghazni, Afshar and Shakardara in Kabul, and Sayed Abad and Dara-i-Ali in Bamiyan, who gave up their time to talk to the research team. Without their cooperation and insight this research would not have been possible and the author hopes that the paper does justice to the desires and demands they articulated.

Special thanks go to the research team responsible for conducting this research and for contributing to the analysis of the data, Fauzia Rahimi, Amin Sheikhzadeh, Zaman Sultani, Akbar Ludin, Jamila Wafa, Shukria Azadmanesh and Farkhloqa Amini. The author wishes to thank them for their dedication and patience throughout the project. Thanks also to the Organization for Sustainable Development Research (OSDR), the partner organisation that enabled AREU to conduct research in Ghazni Province. The author wishes to express great appreciation to OSDR's research team in conducting fieldwork in frequently challenging and insecure circumstances and for contributing toward some preliminary analysis.

The author would also like to thank Dallas Mazoori and Sari Kouvo for their advice on producing this synthesis and for their guidance throughout the project, the peer reviewers for their extensive and helpful comments, Chona Echavez for her supervision, and Oliver Lough for additional help. The author is particularly grateful to Jay Lamey in particular, who provided extensive advice and support throughout the project; final thanks go to Deborah Smith for establishing the project in conjunction with the International Centre for Transitional Justice.

Emily Winterbotham
December 2011

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Glossary

All terms are in Dari unless otherwise stated

Aasht-i-Milli	National Reconciliation
buzkashi	a rough Afghan horseback sport with similarities to polo, which places a high premium on individual prowess
dard dell-i-shan ra aram kona	to calm a heart's pain, stemming the desire for revenge; providing closure
dell-i-shan ra yak kona	to make hearts cool and stem the desire for revenge; providing closure
huqooq-ul-ibad	Islamic law under which the rights of God's servants ("the victims") take precedence in cases of forgiveness for serious crimes
islah	the pursuit of peace and social cohesion through a process of negotiation and reconciliation
jirga (Pashto)	the terms "*jirga*" and "*shura*" are sometimes used interchangeably but a *jirga* is traditionally a Pashtun tribal mechanism. It is a large gathering, typically of elders, that occurs on an ad hoc basis in response to a specific issue. It is the term most commonly used to refer to an Afghan gathering aimed at consultation with communities
qimat khoon	blood price; the appropriate compensation that should be provided if someone is killed, including punishment or financial and material compensation. Known more formally as khoon baha
malik	village head
Pashtunwali	Pashtun behavioural code and non-state legal system
oqda (Dari); kina (Pashto)	used to indicate hatred, hostility or obsessive feelings stemming from conflict; a psychological complex
qawm	a solidarity group. The term is flexible in scope and can be defined by tribe, clan, ethnicity, locality or other characteristics as determined by the group
qawm parasti	favouring one's own *qawm*
sanad	letter of guarantee
shura	while the terms "*jirga*" and "*shura*" are sometimes used interchangeably, *shuras* have more persistent membership and ongoing governance roles rather than being for ad hoc problem solving
tawba	encompasses the full range of repentance, which involves an individual willingly admitting their complicity, repenting for their crimes and promising they will not repeat their behaviour
teega (Pashto)	literally "stone," but is used to describes a process to put a halt to a conflict between disputants for a set period of time and is used as a mechanism to enforce future good behaviour
wakil	representative in a legal proceeding or other negotiation

Acronyms

APPRJ	Action Plan for Peace, Reconciliation and Justice
ACSFo	Afghan Civil Society Forum-organization
AFSO	Afghanistan Forensic Science Organisation
AIHRC	Afghanistan Independent Human Rights Commission
ANA	Afghan National Army
ANDS	Afghanistan National Development Strategy
ANP	Afghan National Police
APRP	Afghanistan Peace and Reintegration Programme
CSOs	civil society organisations
CDCs	Community Development Councils
CPAU	Cooperation for Peace and Unity
FGD	focus group discussion
ICRC	International Committee of the Red Cross
ICC	International Criminal Court
ICTJ	International Center for Transitional Justice
ISAF	International Security Assistance Force
NCPJ	National Consultative Peace Jirga
NPP	National Priority Program
NGOs	non-governmental organisations
PDPA	People's Democratic Party of Afghanistan
PTRO	Peace Training and Research Organization
PHR	Physicians for Human Rights
SPA	Strategic Partnership Agreement
PTS	Strengthening the Peace Program/Program Takhim-e Sol
TLO	The Liaison Office
TJCG	Transitional Justice Coordination Group
UNAMA	United Nations Assistance Mission in Afghanistan
UNHCR	United Nations Refugee Agency
WHO	World Health Organisation

Executive Summary

Ten years after the overthrow of the Taliban, Afghanistan is an environment of escalating conflict and prevailing impunity. In this context, the narrative of the Afghan government and its international partners has increasingly focused on ending the violence through negotiating with insurgent leaders and reintegrating their fighters into Afghan society. In their attempt to secure peace, policymakers have largely failed to include justice as a component of reconciliation and reintegration processes. This has continued the predominant approach since 2001 (and before) with the need for immediate stability outweighing the need for wartime accountability. The fact that the Afghan government and its international partners have failed to implement a comprehensive programme to provide justice or compensation for past and present wartime crimes has inhibited people's ability to deal with the legacies of conflict. Subsequently, the majority of people participating in AREU's research said they were struggling to cope emotionally, psychologically and practically, and the desire for some form of "closure" remains strong.

In September 2009, AREU launched a research project to examine the effects of conflict and explore what "justice," "peace" and "reconciliation" in the wake of wartime violations mean to Afghans in local communities. Extensive field research took place from September 2009 to January 2011 in Kabul, Bamiyan and Ghazni provinces. This was accompanied by desk-based study, key informant interviews and the author's observations during meetings, conferences and discussions in Kabul. The primary research objectives were:

- To better understand the legacies and impact of conflict and the failure to address wartime violations and crimes on Afghan communities.

- To collect information about the desires and demands of different communities in Afghanistan in relation to transitional justice, reconciliation and peace in order to bring the voices of the Afghan people back into policymaking discussions.

- To identify strategies and mechanisms to address crimes committed during the conflicts that could allow communities to move forward, allowing the space for previously unimagined ideas and locating transitional justice mechanisms in the specific Afghan and Islamic context.

Key Findings and Recommendations

While peace was the key demand among all Afghans interviewed, justice remains a priority for most people. The research demonstrated that processes of justice, peace and reconciliation were interdependent and overlapping. Ultimately, the success of any one of these processes rested on the fulfilment of the others. However, it also revealed that people were usually pragmatic and willing to compromise in the interests of peace.

A number of key conclusions can be drawn from the research:

1. Securing peace in Afghanistan is considered the key priority with all policies and processes ultimately assessed against the impact on this goal.

2. People's views are locally informed through their individual and shared experiences of conflict. How Afghans want the past to be addressed is context-specific and consequently may change over time.

3. Criminal justice mechanisms and criminal accountability are the most supported and most significant means of justice, but are widely recognised as not currently feasible given the Afghan context.

4. There is no genuine desire to forgive the perpetrators of wartime crimes and people are unable to forget their past suffering. Instead, they argue they can make the political decision to "forget" the past for now because of the context.

5. Punitive measures in the form of vetting or lustration are, however, required to build government legitimacy and respect for the rule of law and develop the conditions for peace.

6. Peace and justice are not competing concepts. Instead, justice in Afghanistan is often viewed widely to include more than retributive justice and is largely framed in terms of "healing." Restorative and reparative forms of justice can go some way toward fulfiling victims' demands while assisting key goals of peacebuilding and reconciliation.

7. Achieving genuine and durable peace in Afghanistan rests on the fulfilment of security, legitimate government, justice, and reconciliation.

8. To uphold justice and build peace and reconciliation in Afghanistan requires a combination of approaches operating at multiple levels to ensure they are genuinely representative and consultative.

Criminal justice is currently not feasible but government reform is necessary

Criminal trials were the most supported and most desired means of justice for wartime violations, but were widely recognised as not currently feasible due to impunity, insecurity and poor governance. This did not, however, mean that people were able to forgive the perpetrators of wartime crimes or that they could forget their past suffering. Instead, they stated they could make the political decision to "forget" the past for now because of the challenges the current context presents. Nevertheless, since people's demands were contextually defined and can change over time, the vast majority would be unlikely to forgo their right to seek accountability for wartime crimes in the long term, once security has been restored. Thus, it is essential to ensure that peace processes do not preclude the option of future accountability.

Impunity, the absence of a functioning state justice system and pervasive corruption were factors seen to be destroying the legitimacy of the Afghan government and, in insecure areas such as Ghazni Province, were factors fuelling the insurgency. Consequently, there was a strong demand to reform the government now and restrict the power of the worst human rights violators inside and outside government through vetting or lustration processes and to appoint honest, able and legitimate officials. Many people interviewed felt that if the composition of the government did not change and criminals were not "discharged from their posts," then "war and other problems will never end in the country."

The Afghan government, with support from its international partners, should:

- Ensure peace processes do not breach international standards or preclude the possibility of holding wartime actors to account in the future. Grievance resolution within the Afghanistan Peace and Reintegration Programme (APRP) should be defined procedurally and conceptually so that serious human rights abuses and crimes against international humanitarian law are not ignored.

- International donors and the United Nations should remind the Afghan government of its commitments to international law[1] and to the Action Plan for Peace Reconciliation and Justice (APPRJ).

- Uphold commitments in the National Priority Programme (NPP) on Human Rights and Civic Responsibilities, particularly the commitment to work with the Afghanistan Independent Human Rights Commission (AIHRC) and the United Nations Assistance Mission in Afghanistan (UNAMA) to revise the timeline and implementation plan for the APPRJ.

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1   Afghanistan has ratified and is bound by the Geneva Conventions of 1949 (and its additional protocols of 1977), the Genocide Convention of 1948 and the Convention on Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 1968; Convention on the Elimination of All Forms of Discrimination Against Women of 1979; International Covenant on Civil and Political Rights of 1976; Convention on Elimination of All Forms of Racial Discrimination of 1966; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 and the Convention on the Rights of the Child of 1989. Afghanistan is also a signatory to the Rome Statute and falls under the jurisdiction of the International Criminal Court.

- Supportive donors should channel the bulk of their funding through the NPP on Human Rights and Civil Responsibilities.

- Strengthen internal oversight/accountability mechanisms within institutions in order to remove individuals who commit gross violations while in office. Strengthen existing vetting processes, such as the Presidential Special Advisory Board for Senior Appointments, and improve their veracity during elections to ensure that perpetrators do not gain positions of power.

- Ensure vetting components of the APRP are implemented so that high-level Taliban members guilty of war crimes and crimes against humanity are not offered positions of authority. An agreement between the Afghan government and the International Security Assistance Force (ISAF) on the definition of "political reconciliation" and further clarification on what crimes can or cannot be amnestied are required.

- Given the emphasis on *huqooq-ul-ibad* in cases of serious crimes, consider a national consultation or referendum to collect opinions on the notion of amnesty in Afghanistan.

- Vastly improve access to and the functionality of the formal justice system.

- If Afghanistan's domestic justice mechanisms continue to prove unwilling or unable to genuinely investigate and prosecute the main perpetrators of war crimes, the International Criminal Court (ICC) should open an official investigation to explore any crimes committed since 2003.

International and Afghan civil society should:

- Act as a watchdog in terms of current violations of human rights.

- Monitor any peace processes and support advocacy initiatives to ensure justice forms a key component of all discussions and that there is no amnesty for crimes against humanity and international war crimes.

- Support awareness-raising initiatives that provide information about human rights and international law to ordinary people and influential community members, particularly in remote and isolated areas.

Processes to acknowledge victims' suffering and uphold their rights are significant

While policymakers in Afghanistan have often pitched peace and justice as alternatives to each other, research respondents clearly linked these processes. As stated, justice in Afghanistan is often viewed widely. The most basic interpretation of what justice meant to people at the community level was a legitimate and representative government that would uphold their rights and would "care" about ordinary people, while building security and the respect for the rule of law in the country. Investigations into the suffering of ordinary people in Afghanistan, official commemoration of their wartime experiences, some form of financial compensation for material losses, and demonstrations of regret for the damage the conflicts have inflicted on innocent people could potentially serve a measure of justice and provide closure while also fostering an environment more conducive to peace. However, there are drawbacks to each process and respondents expressed concerns about their consequences for security.

The Afghan government, with support from its international partners, should:

- Support the release of the Afghanistan Independent Human Rights Commission (AIHRC)'s conflict mapping report and ensure the security of all staff associated with the project. Work with AIHRC to ensure that the report is disseminated in the most sensitive manner possible, which requires the participation of a wide-range of actors, particularly at the community level.

- The United Nations Refugee Agency (UNHCR)'s 2005 mapping project[2] should be officially released.

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2   UNHCR's mapping exercise was handed to President Karzai simultaneously with AIHRC's "A Call for Justice" with the specific intent of it laying the ground for further documentation. However, UNHCR ultimately decided not to publish it.

- The United Nations should launch an independent investigation that builds on UNHRC's report, AIHRC's conflict mapping and civil society documentation while drawing on experience from other contexts to support future truth-seeking mechanisms.

- Re-examine the role of education in building a unified history in Afghanistan and promote the significance of learning from the past, rather than ignoring it.

- Publically mark Victims' Day each year and commemorate the country's incidental victims.

- Ensure that existing reparation policies are functioning properly.

- Given the significance that admissions of guilt hold to many people as a key tenet of Sharia, a minimum criteria for the reintegration of low-level Taliban fighters should be admissions of guilt for crimes committed.

- Symbolic and public apologies made by the government on behalf of previous regimes could mark a break from the past.

International and Afghan civil society should:

- Encourage the creation of memorials in the name of Afghanistan's incidental victims and focus on examples of how different ethnic groups have assisted each other during conflict.

- Coordinate recording and documentation processes better to avoid potentially retraumatising victims and work on violations across a wider spectrum, including current violations. Consider expanding AREU's research into a greater number of provinces to encompass more voices and larger geographical reach.

- Continue building and providing advocacy training to networks of victims' associations and providing opportunities for victims across Afghanistan to interact and share information to assist them to advocate for their demands.

Achieving peace in Afghanistan

Although the majority of people involved in AREU's research were sceptical about the prospect of peace, the general demand was that the government work toward ending the conflict and establishing an enduring peace. This clearly encompassed more than merely the end of overt conflict in the country and included justice, a legitimate government that prioritised the concerns of ordinary people, and reconciliation among all Afghans.

While peacebuilding was largely felt to be the responsibility of the government and to operate from the top down, the research revealed that durable peace would not be secured by merely reaching a political settlement at the high level while reintegrating low-level Taliban fighters. Instead, many people emphasised the need to reinforce a broader Afghan identity, which involved a wide range of processes to restore harmony at all levels of society. This includes acknowledging and dealing with the past through providing the mechanisms for justice, healing, restitution and reparation; building positive relationships; significant changes in culture and attitudes; and substantial social, economic and political change. This highlighted the need for a long-term vision in terms of fostering peace and reconciliation in Afghanistan, to allow processes to grow naturally over time rather than being imposed at the political level.

It was widely demanded that peacebuilding processes should be genuinely Afghan, resting on existing mechanisms such as the *jirga* system, with little or no international involvement. Peace processes were widely felt to have failed to date because they were not truly representative of the desires of the Afghan people and had not included legitimate actors. The Taliban were widely perceived as the biggest obstacle to peace. There was support for reintegrating Taliban fighters at the community level, but greater reluctance to see Taliban leaders back in positions of power. However, there was some flexibility among some groups (in Kabul and Ghazni provinces), as long as people known to be guilty of gross atrocities were prevented from participating in government.

Ultimately, when a legitimate government is in place and in charge, with international forces largely withdrawn, it was felt that the conditions necessary for genuine negotiations will be in place.

The Afghan government should:

- View high-level political processes and community-based reconciliation initiative as interdependent. Existing local initiatives should not be ignored, but it should also not necessarily be expected that they can be multiplied.

- Remain sensitive to the wide definition of reconciliation provided by research respondents. While there was a willingness to reintegrate low-level insurgents, the success of reintegration rests on them being tied to serious trust-building initiatives, and to the underlying causes to conflict being addressed.

- Ensure peace negotiators are neutral, honest, respectful, influential, and knowledgeable about peace processes and negotiations, and that they don't have blood on their hands.

- The High Peace Council should actively work with civil society organisations (CSOs), religious structures, the media, women's groups and cultural institutions to ensure processes are inclusive, messages of peace are disseminated and accurate information about the APRP is provided to people.

- Ensure that the community rehabilitation aspects of the APRP are fully implemented and that they benefit all groups in the community, not only fighters.

- Incorporate local actors to ensure that local peace and reintegration committees outlined in the APRP are fully functioning, genuinely representative and transparent, and that communities are empowered to decide who and when they can forgive.

- Consider a nationwide policy aimed at addressing local wartime tensions through a community-level process of apologies and forgiveness as one way to address the issue of local wartime perpetrators and allow victims themselves the power to forgive (or not) certain crimes.

- Genuinely include women's groups at the policy level in the dialogue on reconciliation and perceive women as target groups in peace and reintegration projects. The government should ensure that women's rights, including their constitutional rights and hard-won freedoms, are protected.

- Not preclude the possibility of future prosecutions of individuals guilty of war crimes and crimes against humanity, as they are obliged to do under international law.

International military forces should:

- Continue the handover of responsibility from international to Afghan security forces, albeit at a sensible and manageable pace, to increase and demonstrate the independence of the Afghan government.

International donors should:

- Monitor the peace process and uphold commitments to international human rights and women's rights.

International civil society should:

- Encourage the development of links and networks among Afghan civil society. Provide increased knowledge and training about the rights and roles of CSOs so they can become significant and acknowledged actors in peace processes.

- Work with Afghan CSOs to ensure the Afghan government includes religious leaders and community elders in peace processes to spread positive messages of peace, unity and reconciliation in their

communities. They should be provided with proper information so they can communicate high-level developments at the local level.

Afghan civil society, including women's groups, should:

- Work together to ensure voices are heard and rights are protected in issues of justice and peace.

- Take a proactive role to remind those leading the peace process of its commitments under international law and the desires of Afghan communities, including victims of war crimes

- Insist on being actively brought into local reintegration, vetting and grievance resolution processes and development projects.

This paper reveals the depth of legacies of conflict in Afghanistan and the many challenges facing the search for peace. However, it also shows that Afghans are willing to compromise for the sake of peace. Leaders on all sides of the conflict must follow suit. This does not mean peace at any cost. It means placing Afghan desires at the centre of the negotiating table and working genuinely toward them. A peaceful and united country may be difficult to achieve, but it is not too much to ask.

1. Introduction to the Research

Ten years after the overthrow of the Taliban, Afghanistan is an environment of escalating conflict and prevailing impunity. In this context, the narrative of the Afghan government and its international partners has increasingly focused on ending the current violence through negotiating with insurgent leaders and reintegrating their fighters into Afghan society. This approach was coupled with an increase in military operations designed to force the enemy to the table. However, the killing of Professor Burhanaddin Rabbani in September 2011, who had been tasked with leading the High Peace Council responsible for implementing current peace efforts, dealt a severe blow to the process. Commitment to the approach was reaffirmed at a Traditional Loya Jirga in November but it has clearly not yet yielded the desired results, and options and approaches are currently being reassessed. This makes this an opportune time to bring more Afghan voices into the discussion. It is not enough to just consult Afghan and international actors who hold positions of power.

Peace and reconciliation requires much more than bringing an end to fighting. While peace is the priority, the past needs to be protected, justice needs to be upheld and the rights of the Afghan people need to be acknowledged and implemented. There is a need to consider the effects of wartime legacies on Afghan communities, what people want a peaceful state to look like, and how it could be achieved. With this goal, the Afghanistan Research and Evaluation Unit, in cooperation with the International Centre for Transitional Justice (ICTJ) and funded by the Royal Norwegian Embassy in Kabul, launched a research project on "Legacies of Conflict: Justice, Reconciliation and Ways Forward." Extensive field research took place over approximately 18 months from September 2009 to January 2011 in Kabul, Bamiyan and Ghazni provinces. This synthesis paper presents findings from that research.

An earlier AREU report demonstrated that transitional justice in Afghanistan is often misunderstood and conflated to mean addressing questions of criminal responsibility only.[3] By adopting an open-ended and responsive approach, this research aims to allow Afghans themselves to describe what they mean by "justice," "reconciliation" and "peace" in Afghanistan, and create the space for previously unexplored ideas—perhaps including locally-based initiatives—for achieving this. This includes exploring transitional justice mechanisms in an Afghan context, taking into account the role an Islamic framework and community-based justice mechanisms may play in these. Often, little attention is paid to the role of the rule of law in different cultures and how popular expectations of justice may differ.[4] AREU's research hopes to go some way toward addressing this dearth of information.

The research is intended to complement previous and ongoing efforts by other organisations. These include the Independent Human Rights Commission (AIHRC)'s "A Call for Justice" and the Afghanistan Justice Project's "Casting Shadows," both conducted in 2004.[5] Since then, interest and engagement in promoting transitional justice by Afghan civil society and the media has grown and is becoming increasingly diversified. AREU has sought to contribute to the fragile process by developing qualitative,[6]

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3   See Emily Winterbotham, "The State of Transitional Justice in Afghanistan: Actors, Approaches and Challenges" (Kabul: AREU, 2010).

4   Laurel E. Fletcher and Harvey M. Weinstein, "Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation," *Human Rights Quarterly* 24, no. 3 (2002): 573-639.

5   AIHRC's consultations about Afghan perceptions of war crimes and gross human rights violations were published in "A Call for Justice: National Consultation on Past Human Rights Violations in Afghanistan" (Kabul: AIHRC, 2005). The report can be downloaded at www.aihrc.org.af/rep_Eng_29_01_05.htm (accessed 25 January 2009). It was primarily quantitative in nature with a survey being conducted with 4,151 respondents. Two hundred focus group discussions were also conducted, although much of the data was presented in a quantitative manner in the report, and it did not provide detailed information about the impact past (and present) violations have on Afghan lives today. The Afghanistan Justice Project (AJP)'s "Casting Shadows: War Crimes and Crimes Against Humanity: 1978-2001" (Kabul: AJP, 2005), www.afghanistanjusticeproject.org/warcrimesandcrimesagainsthumanity19782001.pdf (accessed 23 August 2011) is largely a documentation exercise, although it does provide policy recommendations. AIHRC's more recent conflict mapping exercise is also a documentation project, collecting factual evidence rather than investigating perceptions and desires as this project aims to do.

6   Qualitative research aims to gather a holistic understanding of complex realities and processes. The possibility of objectivity is questioned and instead the aim is to understand differing and often competing subjectivities in terms of very

in-depth knowledge about the impact of conflict and what justice in the wake of wartime violations means to Afghans in local communities. In doing so, the research aims to identify strategies and mechanisms that could allow communities to move forward.

Four major themes and accompanying questions have structured this study:

- *Experience of conflict*: How have individuals and communities experienced the different conflicts and their accompanying violations? How do these experiences affect perceptions of conflicts in Afghanistan?

- *Dealing with the legacy of conflict*: How have people coped with the violations suffered and what processes do they perceive would help address the legacies of war?

- *Addressing victims' suffering and dealing with the perpetrators of war crimes*: What does the demand for justice for war crimes mean at the local level? What are the most appropriate mechanisms of recourse and resolve to deal with the perpetrators of war crimes and to satisfy victims' demands?

- *Ways forward*: How can Afghanistan achieve peace and reconciliation and move forward? How can different demands for justice and recompense be reconciled with demands for peace and reconciliation?

This paper is divided into six main sections. The remainder of Section 1 provides the theoretical background to the project, provides an overview of the methodology and methods used in both the collection and analysis of the data, discusses ethical considerations and details of the selection of the research sites, and highlights any limitations. Section 2 describes the context in relation to transitional justice processes and includes a brief discussion of transitional justice and reconciliation policies. Section 3 summarises the perceptions of the different conflicts among respondents and who people identified as perpetrators, and concludes with an assessment of the ongoing impact of war on the research communities. Section 4 examines desires and demands in relation to possible different approaches to heal victims' suffering and address perpetrators' wartime crimes, highlighting the strengths and weaknesses of these in the eyes of people interviewed. Section 5 more specifically outlines ideas about how to achieve peace and reconciliation in Afghanistan, including differing perceptions of how to deal with the Taliban and other anti-government forces. Section 6 then outlines the key conclusions and sets forward some recommendations about potential "ways forward" in Afghanistan.

1.1 Conceptualising transitional justice: Justice, forgiveness, peace and reconciliation

The concept of "transitional justice" is central to this project. Transitional justice is an umbrella term used to describe measures associated with a society's attempts to come to terms with a legacy of large-scale abuses to ensure accountability, serve justice, reconcile former enemies and achieve peace. International interventions in countries from Cambodia to El Salvador reinforced the clear message that transitions would lack sustainability if they were not founded upon accountability and the rule of law, and would lack legitimacy if they were not grounded in justice.[7] The creation by the United Nations (UN) of ad hoc war crimes tribunals, the establishment of an international criminal court, and the disposition of the judiciaries of some countries to act extraterritorially by applying universal jurisdiction all reflect a growing international consensus that individual human

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different accounts of "facts," different meanings and different perceptions. See Linda Mayoux, "Quantitative, Qualitative or Participatory? Which Method, for What and When?" in *Doing Development Research*, eds. Vandana Desai and Robert B. Potter (London: Sage Publications, 2006).

7   The United Nations has provided a framework for this in Report of the Secretary General, "The Rule of Law and Transitional Justice in Post-Conflict Societies," 24 August 2004, available for download at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement (accessed 27 November 2011). See also Rama Mani, "Ending Impunity and Building Justice in Afghanistan" (Kabul: AREU, 2003); and Neil Kritz, "Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights," *Law and Contemporary Problems* 59, no. 127 (1996): 127.

rights be upheld and that genocide, war crimes and crimes against humanity do not go unpunished. Article 2 of the International Covenant on Civil and Political Rights, in fact, outlines that states are obliged to prosecute certain crimes.[8] At the same time, there is an increasing recognition among international actors, particularly the UN, that prosecutions, though important, can be complemented by a variety of processes including criminal tribunals, truth commissions, vetting and reparations.[9]

One of the central normative arguments for trials in the contemporary period of criminal justice is that punishment can play a role in highlighting a society's transition to a democratic, law abiding state, and underlining the difference from the previous regime.[10] A public forum revealing the horrors of individual crimes can demonstrate that individuals will be held accountable in future.[11] There is also the argument that criminal trials play a role in truth-seeking by creating historical records, reconciliation processes and in satisfying victims' demands for retribution and accountability.

Much has been written in opposition to the purported effects of this legalist approach. Prosecutions can often raise expectations and create "lofty objectives" for war tribunals.[12] Instead, dealing with the past needs to be approached as creatively as possible, including as many voices as possible,[13] focusing on multiple levels of society and adopting multiple processes of social repair. This requires a variety of interventions: state-level criminal trials, commissions of historical record (truth commissions), individual or family psychosocial support, and community-based responses.[14]

In contrast to the legalist approach, the creation of South Africa's Truth and Reconciliation Commission saw the reconciliation model gain resonance with practitioners. Consequently, the therapeutic moral order became another dominant framework within which states attempt to deal with a legacy of violent conflict. The basis of this model is the need to heal victims and the nation as a whole, which often negated the retributive model on the grounds that it discouraged warring parties to come to the negotiating table, thus threatening a return to violence.[15] Notably, over 66 amnesty laws came into being in between 2001 and 2005.[16]

However, the enactment of the Rome Statute in 2002 and its growing international acceptance[17] has gradually changed many of the assumptions of earlier peace-versus-justice debates, at least for State Parties. Although there are frequently tensions between negotiators and prosecutors, if

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8   International Covenant on Civil and Political Rights, Article 2 (3): "Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted."

9   This was outlined in the Report of the Secretary General, "The Rule of Law and Transitional Justice in Post-Conflict Societies."

10   Neil Kritz, "The Rule of the Law in the Post Conflict Phase: Building a Stable Peace," in *Turbulent Peace: The Challenges of Managing International Conflict,* eds. Chester Crocker, Fen Hampson and Pamela Aall (Washington: United States Institute of Peace, 2001).

11   Kritz, "Coming to Terms with Atrocities."

12   Gary John Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton: Princeton University Press, 2000), 284.

13   Brandon Hamber, "How Should We Remember? Issues to Consider When Establishing Commissions and Structures for Dealing with the Past," paper presented at *Dealing with the Past: Reconciliation Processes and Peace-Building* (Belfast, Northern Ireland: 1998).

14   Fletcher and Weinstein, "Violence and Social Repair."

15   Claire Moon, "Healing Past Violence: Traumatic Assumptions and Therapeutic Interventions in War and Reconciliation," *Journal of Human Rights* 8, no. 1 (2009): 71-91.

16   Louise Mallinder, "Can Amnesties and International Justice be Reconciled?" *The International Journal of Transitional Justice* 1, no. 2 (2007): 208-230, in Moon, "Healing Past Violence."

17   As of June 2011, 114 countries are members of the court.

one seeks to obtain sustainable peace then peace and justice are mutually reinforcing. The Statute has lent significant momentum to the trend against amnesties although this is not always universally followed.[18]

To effectively deal with the legacy of a violent past it is necessary to deconstruct what "justice" means to people in the aftermath of mass violations. The key task for this project was to investigate how Afghanistan's victims frame the issue and what are their underlying goals and demands. Exploring what people mean by justice, and what processes are involved, is a central component. In context, criminal justice is just one of many possible interpretations;[19] justice can mean having a job and an income, returning home, testifying in a trial, revenge, receiving an apology or learning the truth about missing relatives and receiving bodies for a proper burial.[20]

In countries that have been torn apart by civil conflict, such as Afghanistan, the pursuit of justice is often linked with healing processes. Hence the demand at communal and political levels is often not just for "justice" but for as much justice as is possible or as much justice as is constructive.[21] This raises questions such as how much justice is needed and what type of justice is required to secure peace while upholding international law and preventing future abuses. In post-conflict environments, particularly in the case of civil wars, there is often a limit to how far criminal justice can be pursued when the aim is oriented toward the larger goal of healing relationships. This is not to ignore that in some cases[22] healing is contingent upon first achieving criminal justice,[23] nor the significance of applying constraints to prevent the same perpetrators from continuing to commit abuses.

This reading brings us to the question of what exactly peace is. At one level, this question can be quickly dispensed with: "war is violent and peace is, well, peaceful; in other words, peace is the antithesis of war."[24] However, this juxtaposing of "peace" and "war" can be challenged. Instead, if wars—particularly more recent civil conflicts—can involve elements of cooperation and collusion, of limiting violence, and of the consolidation of various kinds of order, then it is also important to note that peace can be quite violent. Instead, it is perhaps more valid to conceptualise peace in terms of negative and positive peace. In this interpretation, negative peace is the "absence of personal violence" whereas positive peace encompasses the "absence of structural violence."[25] Structural violence includes processes of exploitation and marginalisation and anything that limits human well-being to levels below what is possible.[26] Consequently, enduring peace entails more than an end of violence and conflict.

If genuine peace is to be achieved in the aftermath of civil conflict, one must inevitably turn to the concept of "reconciliation." As previously stated, the idea of reconciliation as a model in post-conflict societies has gained particular resonance in academic, humanitarian and political circles. However, the concept is controversial, since it can be conceived in a moral, quasi-

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18   David Tolbert and Marieke Wierda, "ICTJ Briefing: The Rome Statute Review Conference," Kampala, June 2010, http://ictj.org/sites/default/files/ICTJ-RSRC-Global-Peace-Briefing-2010-English.pdf (accessed 9 July 2011).

19   Laurel E. Fletcher and Harvey M. Weinstein, "A World unto Itself? The Application of International Justice in the Former Yugoslavia," in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein (Cambridge: Cambridge University Press, 2004), 4.

20   "Nuremberg Declaration on Peace and Justice: Definitions," 19 June 2008, www.peace-justice-conference.info/download/Nuremberg%20Declaration%20A-62-885%20eng.pdf (accessed 9 July 2011).

21   David Keen, "War and Peace: What's the Difference?" in *Managing Armed Conflicts in the 21st Century,* eds. A. Adebajo, C. L. Sriram and F. Cass, 1-22 (London: Routlege, 2001).

22   Moon bases this on the work of Chris Gilligan, "Traumatised by Peace? A Critique of Five Assumptions in the Theory and Practice of Conflict-Related Trauma Policy in Northern Ireland," *Policy and Politics* 34, no. 2 (2006), in Moon, "Healing Past Violence."

23   Moon, "Healing Past Violence."

24   Keen, "War and Peace: What's the Difference?"

25   Johann Galtung, "Violence, Peace, and Peace Research," *Journal of Peace Research* 7, no. 3 (1969).

26   Galtung, "Violence, Peace, and Peace Research."

religious way, involving individual acts of confession and forgiveness, and for the prioritising of therapeutic moral order over the punitive. Critics highlight that this type of behaviour is rare in post-conflict situations and there is something inherently patronising in the idea that international actors should seek to promote it.[27]

It is also acknowledged that this term is fraught with ambiguity.[28] In its broadest terms, reconciliation involves: developing a shared vision of an interdependent and fair society that values different opinions and political beliefs; acknowledging and dealing with the past through providing the mechanisms for justice, healing, restitution and reparation; building positive relationships; significant changes in culture and attitudes; and substantial social, economic and political change. It is both an outcome and a process and requires, in the best circumstances, a cognitive change—in beliefs, ideology and emotions.[29] This includes the four separate components of truth, mercy, justice and peace that work to assist healing and provide closure for both victims and perpetrators.[30] In this view, pitting justice and peace against each other as alternatives is "cheap reconciliation."[31] Far from standing in contrast to justice, justice is an integral element for such a notion of reconciliation.[32]

In the context of this work, a narrower understanding of reconciliation should be explained, known as "political reconciliation." This involves processes through which an inclusive political platform is created for formerly hostile parties, particularly political institutions and actors. In the context of Afghanistan, when articulated and applied by policymakers the term "reconciliation" follows more the parameters of political reconciliation; it alludes to political negotiations between antagonistic parties, rather than involving community-level processes.[33]

Also relevant is the concept of reintegration, which is often used interchangeably in Afghanistan with reconciliation. Research conducted by AREU on reintegration and reconciliation in Afghanistan challenged the assumption that they are mutually reinforcing and that success in one will automatically lead to success in other.[34] Reintegration is the last stage of the Disarmament, Demobilisation and Reintegration process. Whereas disarmament entails the physical removal of the means of combat from ex-belligerents (weapons, ammunition, etc.) and demobilisation entails the disbanding of armed groups, reintegration describes the process by which ex-combatants gain civilian status and sustainable employment. Reintegration is essentially a social and economic process with an open timeframe, primarily taking place in communities at the local level and describes how ex-combatants gain civilian status and sustainable employment.[35] In reality, reintegration alone cannot fully prevent a return to conflict, ensure the good faith of the parties involved and be a substitute for other peace enforcement mechanisms, such as strengthening the rule of law, security sector reform, or effective implementation of the conditions of a peace agreement. [36]

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27   Observation based on author's interviews conducted in Bosnia-Herzegovina for MSc dissertation: "Can International Criminal Trials Pave the Way towards Reconciliation in the Aftermath of 'New Wars'?: Coming to terms with the past in Bosnia-Herzegovina," thesis at the London School of Economic and Political Science, September 2006.

28   See the works of John Paul Lederach, Jean Bethke Elshtain, Andrew Rigby, Joseph Montville and Johan Galtung, among others.

29   Bar Siman Tov, "Israel-Egypt Peace: Stable Peace?" in *Stable Peace Among Nations*, eds. A. M. Kacowicz, Y. Bar-Siman-Tov, O. Elgstrom, and M. Jerneck, 220-38 (Boulder, CO: Rowman Publishers, 2000).

30   See John Paul Lederach, "Building Peace and Reconciliation," in *Turbulent Peace: The Challenges of Managing International Conflict,* and Andrew Rigby, *Justice and Reconciliation: After the Violence* (Boulder, CO: Lynne Rienner Publishers, 2001).

31   Miroslav Volf, "Forgiveness, Reconciliation, and Justice: A Theological Contribution to a More Peaceful Social Environment," *Millennium: Journal of International Studies* 29, no. 3 (2000): 867-877. Though it must also be acknowledged that Volf's conception of reconciliation is derived from a theological perspective, many of his arguments hold relevance to the author's reading of reconciliation.

32   Volf, "Forgiveness, Reconciliation, and Justice."

33   Tazreena Sajjad, "Peace at All Costs? Reconciliation and Reintegration in Afghanistan" (Kabul: AREU, 2010).

34   Sajjad, "Peace at All Costs?"

35   Sajjad, "Peace at all Costs?" referencing Nicole Ball, "Disarmament, Demobilization and Reintegration: Mapping Issues, Dilemmas and Guiding Principles" (The Hague: Centre for International Policy, Netherlands Institute of International Relations, 2006), www.reliefweb.int/rw/lib.nsf/db900sid/HVAN-6UFKQR/$file/cling-ddr-aug2006.pdf?openelement (accessed 23 August 2011).

36   Sajjad, "Peace at all Costs?" referencing Nicole Ball, "Disarmament, Demobilization and Reintegration."

While transitional justice theory formed the theoretical backdrop to the research, one of the aims was to locate transitional justice in the specific Afghan context. The terms "justice," "peace" and "reconciliation" were used regularly throughout this project by the people interviewed. This section has reflected on what these terms entail in an academic sense, and the rest of the paper aims to demonstrate what they mean to people in the research communities. If we are to understand how to best to approach these processes it is vital to explore the meaning they hold at the community level.

To avoid confusion about the aims of the project, the research team preferred to view and explain the project simply as exploring the legacies of conflict and legitimate ways to heal victims' desires for revenge—"*oqda*" (Dari) or "*kina*" (Pashto)—which can be translated as "complexes" and is used in this case to indicate hatred, hostility or obsessive feelings stemming from conflict, and to "*dell-i-shan ra yakh kona*" (to make people's hearts cool) or "*dard dell-i-shan ra aram kona*" (to calm their heart's pain; provide closure). These concepts of "having *oqda*/*kina*" or "having *dard-i-dell*" (pain in one's heart) and the notion of needing to "calm" or "cool" people's hearts were adopted because these were the terms used by respondents to refer to their unresolved pains and issues. In all cases, these terms convey a sense of "closure."

It should be recognised that the notion of a "complex" is also a concept in Western psychology, based largely on Jung's theory of the personal unconscious. According to this, complexes are emotionally charged contents around a highly emotional nucleus based on an experience that at the given time was incompatible with the person. They are formed due to a person's life experiences so are individual and unique, part of the personal unconscious. Complexes often operate autonomously and interfere with the intentions of the will, disturbing the memory and conscious performance. In Jung's opinion, complexes are not negative in themselves but their effects can be.[37] This is a similar interpretation to the one adopted by Afghans, who argued that complexes needed to be healed.

This desire to adopt the terminologies closest to those used by respondents was also reflected in word selection. The author tries to avoid the use of the terms "war criminal" or "war crimes" in the paper; these terms are imbued with legal connotations under international law, which was not a point of reference for most of the people interviewed.[38] Instead, more general terms are used, such as "wartime violators" or "perpetrators of crimes during the war," etc. Moreover, it should be noted that the term "victim" is used throughout this report to refer to people who had suffered in a variety of ways during Afghanistan's wars. In fact, it was widely observed that people felt that conflict had affected most civilians and consequently all were victims.

1.2   Research methodology

The primary objective of this research was to better understand the impact of conflict and the failure to address wartime violations and crimes on Afghan communities. The project aimed to collect information about the desires and demands of different communities in Afghanistan in relation to transitional justice, reconciliation and peace in order to bring the voices of the Afghan people back into policymaking discussions, particularly those concerning reintegration, reconciliation and peacebuilding in Afghanistan. Specifically, it hopes to inform policymakers of the most appropriate accountability and reconciliation processes to address crimes committed during the conflicts. As such, it aims to contribute to processes that ensure that those who have been most affected by Afghanistan's conflicts are the key actors in future accountability and reconciliation activities.

While the main research focus was on qualitative field research, this paper also draws on key informant interviews conducted between October 2009 and March 2010 and in July and December 2011, as well as occasionally at other times. These were supplemented by desk research and the author's observations during meetings, conferences and discussions in Kabul concerning transitional justice.

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37   C. G. Jung, *Psychiatric Studies. The Collected Works of C. G. Jung Vol. 1*, ed. Michael Fordham (London: Routledge, 1967).

38   What constitutes a war criminal or war crime in international law is clearly outlined. However, some people identified as perpetrators of crimes relevant to respondents in this research may not fall under this legal classification. Therefore, the decision was taken to refer in more general terms to "violators" or "perpetrators of crimes during the war," etc.

Research methods and site selection

In social-scientific terms, the units of analysis for this study are the individuals, the groups they identify with (in terms of sex, age and ethnicity) and the communities, districts and provinces they inhabit. The paper broadly draws the similarities and differences between these different units.

The study provinces and districts were chosen to reflect a degree of ethnic diversity and to encompass as far as possible the different phases and intensities of the conflicts. Security issues as well as physical and social access were also taken into consideration.

Kabul Province was selected as an area of mixed ethnicities, which experienced fighting between the communists and mujahiddin, the worst excesses of the civil war, conflict between different local commanders, and violations under the Taliban. Bamiyan Province was selected as an area of relative ethnic homogeneity, which experienced some of the worst atrocities of the Taliban regime. The original aim was to conduct research in Kandahar to fulfil AREU's primary intention to study a largely Pashtun, southern province with ongoing conflict. However, due to Kandahar's deteriorating and unpredictable security context, Ghazni Province was selected instead—an area of mixed ethnicities but with a substantial Pashtun population and the scene of ongoing conflict. This choice was made not only to protect the research teams but also the communities in which research might take place.

In each province an urban and rural site was selected to meet the above criteria. This created an opportunity to compare a range of different communities' perspectives in different contexts. It was more likely that the communities in the rural areas had experienced conflict as a group and as such may have witnessed similar events, even if they were experienced and are remembered in different ways. In urban areas by contrast, patterns of migration mean that different people may have moved in from different areas at different times, and thus they were likely to have had more varying experiences of conflict. Moreover, some sites were ethnically homogenous while others were ethnically mixed (see Table 1), enabling comparisons to be drawn between these communities. Table 1 depicts the fieldwork timeline, the provinces and communities selected, and the primary reasons for selecting each.

The research aimed to explore people's perceptions and desires and allow them to define the most important issues for them, which called for a primarily qualitative methodology. Specific qualitative tools used in this research included semi-structured individual interviews, focus groups discussions (FGDs), oral histories and informal conversations. Individual interviews allowed people to feel comfortable about speaking, while focus group discussions (FGDs) helped explore communities' perspectives of the past conflicts and, particularly, their ideas about addressing issues of justice, peace and reconciliation in relation to specific wartime experiences. The research team conducted a pilot study in an urban area in Kabul to develop and refine the research tools before fieldwork started.

Respondents and FGD participants were selected based on the following sampling criteria:

1. Age: This was designed to gain the knowledge and opinions of different generations who have experienced the conflict in varying ways. In the sampling, younger respondents included those aged between 18 and 29; middle-aged included respondents between 30 and 48; and older aged from 49 upwards. The oldest respondent was around 75 years old.

2. Ethnicity: Respondents were selected to reflect, as far as possible, the composition of the area. Overall, Pashtuns, Hazaras, Tajiks, Qizilbash and Sayed groups were interviewed.

3. Sex: As far as possible men and women were equally represented. In Ghazni, it was intentional that fewer women be interviewed in the rural area due to the foreseen difficulties in accessing women in the conservative community.

4. Experience of conflict: The sampling criteria included respondents who had been directly affected by conflict and had stories to tell but also included people less affected who might have different views about how to move forwards.

Table 1: Field research sites

Dates	Province	Districts	Communities	Reason for Selection
First phase: December 2009-July 2010 Second phase: January 2011	Kabul	Kabul City	Afshar	• Urban site of mixed ethnicities, predominantly: Hazara, Tajik, Qizilbash • Scale of atrocities experienced during civil war • Large number of returnees and new migrants
		Shakardara District	Tajik village in Shakardara (one hour drive from Kabul City)	• Rural site composed of Tajiks • Extent of suffering during the communist and Taliban periods • Presence in the past and present of factional and commander tensions
March-October 2010	Ghazni	Ghazni City	Urban site in Ghazni City	• Urban site of mixed ethnicities, predominantly: Pashtun, Hazara, Tajiks • Scale of suffering during the communist and Taliban eras • Large number of returnees and new migrants • Security conducive
		Qarabagh District	Pashtun village in southwest of Qarabagh District	• Homogenous Pashtun area • Ongoing conflict between government and coalition forces and insurgents • Security permitting as far as possible
June -November 2010	Bamiyan	Bamiyan City	Sayed Abad	• Urban site of predominantly Hazara residents, though Tajik households still present in Bamiyan City • Experienced suffering during every phase of the conflict (excluding current), particularly during the Taliban regime • Easily accessible
		Yakowlang District (3 hours drive from Bamiyan City)	Community in Dara-i-Ali valley (One hour drive from Nayak, the district capital)	• Extent of suffering of this community and wider Dara-i-Ali during the Taliban era • No research previously conducted in community and receptive to aims of research • Hazara community, but Sayed households exist in wider Dara-i-Ali valley • Community of numerous households in close proximity, facilitating research

All the respondents underwent two rounds of semi-structured interviews. The first round focused on the stories of individuals and their experiences of different phases of conflict. Based on the first round of interviews, second round interview guides were drawn-up. Their main focus was to obtain knowledge and understanding about what processes and mechanisms could help individuals deal with the past violations they had experienced. Specifically, this included how perpetrators of violations should be dealt with. Two rounds of FGDs were also held. Across all sites and groups, this research is based on a total of 321 interviews and 70 FGDs.

Interviews were conducted by a gender, age and ethnically-balanced research team (Pashtun, Hazara and Tajik). Two international senior researchers were responsible for overall management of the research. Given the sensitive nature of the research, building trust and overcoming confidentiality concerns was vital, as was maintaining an open environment. In this regard, the interviewer was the same ethnicity as the interviewee wherever possible. In the rural area of Ghazni, only Pashtun researchers operated for security reasons. Interviews were conducted in Dari or Pashto and recorded in written notes.

Determining the reliability of data was managed by triangulating data collected from different sources and by asking researchers to record their own observations and reactions to interviews in daily field notes. Interview and FGD transcripts were coded using ATLAS.ti qualitative analysis software to help extract themes and sub-themes across the data as a whole.

Ethical considerations

The research consistently adhered to the principle of "do no harm." Before beginning work in each community, permission was sought from the municipality and district head of police, who were requested to provide introduction to district officials as well as to each community's representatives. As many members of the community as possible were invited to the introductory meeting so the team could explain the objectives of the study and manage expectations. Respondents and participants were also assured of their anonymity and the confidentiality of their answers. Informed verbal consent was sought before conducting any in-depth interview or FGD.

While districts or broad geographic areas are identified in this report, the specific urban communities or rural villages are not usually named. This is done to protect the confidentiality of the respondents. However, in certain cases the decision has been taken to identify specific communities or areas. This is largely restricted to sites where in providing the historical context, the identity of the location is likely be revealed. This was done after considering the circumstances and concluding that the information will not compromise the security of the communities in these cases. However, to make for a simpler reading, throughout the rest of the report the different urban and rural sites will largely be referred to as Kabul City, rural Kabul; Bamiyan City, rural Bamiyan; and Ghazni City, rural Ghazni.

Confidentiality has also been maintained throughout this report by omitting specific personal details of respondents and pseudonyms are used. Despite security concerns, it was also decided that easily identifiable figures, including alleged perpetrators, would be included when named by respondents. It was reasoned that these people are easily identifiable and providing them with pseudonyms would be largely redundant. It should, however, be recognised that it was interviewees who named any individuals mentioned in this report and their inclusion does not represent the view of AREU or the author or indicate criminal responsibility.

Limitations

Several potential research limitations are worth noting and are briefly discussed here. The principle areas that posed challenges were security, sensitivity of the research subject, and ensuring research quality.

Overall, the research team faced minimal security concerns in Kabul and Bamiyan provinces. However, despite Ghazni Province being deemed as a viable research province, serious security

concerns affected the research conducted in this area. Firstly, because AREU has no presence in Ghazni Province the research was conducted in collaboration with the Organization for Sustainable Development Research (OSDR).[39] AREU provided extensive training and monitoring to OSDR and they used the same research methods and guides as AREU research teams. However, using a partner organisation meant it was more difficult to verify information and follow-up during the analysis phase.

Moreover, Ghazni's overall security deteriorated during the research, especially during the 2010 parliamentary elections, which prompted several delays in the schedule. Conducting research in the rural site in Qarabagh District presented the greatest challenge due to the heavy Taliban presence in the area, who have established checkpoints, and the outbursts of violence between the Taliban and coalition forces. Moreover, some of the residents of the rural area support the Taliban, including having male relatives who are part of the insurgency. This presented a challenge given that the research included questions about Taliban violations. The selection of Pashtun male and female researchers who were familiar with the rural village helped to ensure that research could proceed.

The sensitive subject of the research was the biggest challenge to confront. Firstly, researchers noted that respondents were reluctant to admit the existence of prevailing tensions between people within a community or between ethnicities and insisted relations were good, even when there was evidence to the contrary. Secondly, issues such as rape, forced marriage and sexual assault were also difficult to explore. Culturally, rape is a highly sensitive issue for women and girls in all parts of Afghanistan and stories of rape were often based on hearsay. In some cases, people who spoke in more general terms might have had more direct knowledge or experiences, but were reluctant to disclose it.

The challenge was to build enough trust to enable people to talk about such sensitive issues. This was particularly true of the rural areas in Kabul and Ghazni provinces. In Shakardara District in Kabul, the presence of a local commander sometimes obstructed research. A number of people appeared unwilling to talk to the researchers because of his presence and at times it was observed that respondents asked for his permission before being interviewed. In rural Qarabagh in Ghazni, some respondents, particularly older ones, hesitated when talking about past and current issues, largely because of the Taliban presence. In both areas it was vital to ensure that respondents were aware that AREU's research is confidential.

Addressing these challenges, the team tried to be as clear as possible on the objectives and goals of the research. Throughout the course of the research, the team maintained a constant presence in the area to maintain relations and build that trust. The team received psychosocial trauma training in order to help them monitor respondent reactions and to guide interviews in the most sensitive manner. This included temporarily suspending interviews where necessary. Moreover, the research team found that sharing their experiences of conflict assisted building rapport during the research. In this respect, holding informal discussions in both communities prior to starting the research was also beneficial.

Interviewing women in the rural site in Ghazni Province also proved a particular challenge due to the conservative nature of this community. Consequently, fewer interviews were held, particularly with younger women. Women in this area were also reluctant to disclose much information and data was sometimes slightly lacking in some areas. This was also noted in the rural site in Bamiyan and with women more generally, who occasionally felt unable to answer questions because they had not experienced this type of activity previously, and considered themselves ill educated. Building trust was consequently key to encouraging these women to speak.

While extensive efforts have been made to triangulate the information in respondents' stories, it should be noted that this was not a documentation project and at times some of the stories could not be verified. Where this data is used, the uncertainty surrounding its veracity is acknowledged. It should be emphasised that since the project deals with perceptions and opinions, it has produced fluctuating data rather than fixed information, in many cases reflecting the thinking of respondents as they grapple with the challenges they face.

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39   The organisation was selected because of its research background, its knowledge of and previous work in the province, and its consequent ability to recruit a research team from the area.

2. The Research Context

This section addresses the environment that exists in Afghanistan in relation to transitional justice, looking at the political and institutional context and civil society activities. It is designed to set the backdrop for the rest of the paper, including forming the basis for some of the recommendations.

2.1   Political and institutional context

This section begins by outlining national-level policies and processes in the post-Taliban period implemented by the Afghan government and AIHRC, backed by its international partners that are relevant to transitional justice. This policymaking environment has been clearly outlined in other AREU papers and what is presented here summarises that information.[40]

While the 2001 Bonn Agreement marked the beginning of what many hoped would be a transition from Taliban rule and ongoing conflict to peace, it left out all attempts to include references to dealing with war crimes and human rights violations.[41] The final agreement also left out many standard parts of UN mediated peace agreements, including commitments to disarmament or demobilisation.[42]

Consequently, the Bonn Conference allowed alleged perpetrators of wartime violations to re-establish power in government and across the country while ultimately ignoring either the underlying cause or consequences of the war on millions of Afghan victims. Meanwhile, if the Bonn Agreement missed the chance to pursue justice for wartime crimes, it also ignored the opportunity for reconciliation and reintegration by excluding the Taliban from the table.

This left unresolved social, political and economic factors and failed to resolve the competing demands for justice, peace and reconciliation. This has resulted in the enactment of a confusing array of policies. This section first looks at developments and setbacks in relation to transitional justice. It then addresses the parallel process of reconciliation, which has mostly been pursued independently and is largely an obstacle to transitional justice in Afghanistan.

Transitional justice processes at the political and institutional level

The only openings for transitional justice in the Bonn Agreement were that it avoided an amnesty provision and created a national human rights body (AIHRC). It also bound the country to international legal obligations on human rights.[43] Since its creation in 2002, AIHRC has largely directed the transitional justice process. In 2004, the organisation launched nationwide consultations into demands for justice and one year later released "A Call for Justice." This remains an important document stating the wide demand for "justice" in Afghan society and the scale of human rights abuses throughout the country.[44] The recommendations it made were included in the four-year, 2005 National Action Plan for Peace, Reconciliation and Justice in Afghanistan[45] (APPRJ), which pushed transitional justice onto

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40   See Winterbotham, "The State of Transitional Justice in Afghanistan," and Tazreena Sajjad, "Peace at All Costs?"

41   An attempt by UN drafters to include a paragraph stating that the interim administration should decree no amnesty for war crimes or crimes against humanity was ignored. See Barnett Rubin, "Transitional Justice and Human Rights in Afghanistan," *International Affairs* 79, no. 3 (2003): 572.

42   Rubin, "Transitional Justice and Human Rights in Afghanistan," 572.

43   Afghanistan has ratified and is bound by the Geneva Conventions of 1949 (and its additional protocols of 1977), the Genocide Convention of 1948 and the Convention on Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 1968; the Convention on the Elimination of All Forms of Discrimination Against Women of 1979; the International Covenant on Civil and Political Rights of 1976; the Convention on Elimination of All Forms of Racial Discrimination of 1966; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984; and the Convention on the Rights of the Child of 1989.

44   Nearly 70 percent of those interviewed during the nationwide consultations conducted by AIHRC said they or their immediate families had been direct victims of serious human rights violations during war. See AIHRC, *A Call for Justice*, 4.

45   *The Action Plan for Peace, Reconciliation and Justice* (Kabul: GoA, 2005).

Box 1: Timeline of national-level processes that impacted transitional justice and reconciliation

Dec 2001: Bonn Conference.

2002: AIHRC established by presidential decree.

2003: Afghanistan ratifies the Rome Statute and consequently falls under the jurisdiction of the ICC.

2004: Low-level commander Abdullah Shah was found guilty of killing more than 20 people during the civil war period and sentenced to death.

2005: AIHRC releases results of national consultation "A Call for Justice." UNHCR simultaneously hands a copy of their mapping exercise to President Karzai and AIHRC with the specific intent that it can lay the ground for further documentation.

2005: Asadullah Sarwary, the head of the Afghan intelligence service for one year during the People's Democratic Party of Afghanistan regime under Nur Mohammad Taraki, sentenced to death by Afghanistan's Primary Court of National and International Security.

July 2005: Zardad Faryadi Sarwar, a former Hizb-i-Islami commander, sentenced to 20 years in prison in the United Kingdom for conducting a campaign of torture and hostage-taking in Afghanistan between 1992 and 1996.

Oct 2005: The Netherlands sentences two Afghan asylum seekers who had held senior positions in the secret police in the 1980s for torture.

2005: Afghan-led Strengthening the Peace Programme (PTS) established, designed to conciliate rank and file insurgents.

December 2005: Action Plan for Peace Reconciliation and Justice (APPRJ) accepted by Afghan cabinet.

2006: Afghanistan Compact includes the APPRJ as a benchmark.

Dec 2006: President Karzai launches the APPRJ to coincide with International Human Rights Day and observes the day as Afghanistan's Victims' Day.

Jan 2007: Wolesi Jirga followed by the Meshrano Jirga passes a National Stability and Reconciliation Resolution.

Jan 2007: Presidential Special Advisory Board for Senior Appointments created—one of the benchmarks of the APPRJ.

2008: The APPRJ included as part of the Afghanistan National Development Strategy (ANDS).

May 2009: Transitional Justice debated as part of Afghanistan's Universal Periodic Review by the UN Human Rights Council.

Sept 2009: Chief Prosecutor Luis Moreno-Ocampo of the ICC announces that war crimes investigators were in the early stages of an enquiry into events in Afghanistan since the US-led invasion in 2001.

Dec 2009: The National Reconciliation, General Amnesty and National Stability Law is enacted after appearing in the Official Gazette (no. 965).

Jan 2010: At the London Conference President Karzai announces "effective, inclusive, transparent and sustainable national Afghanistan Peace and Reintegration Program."

June 2010: National Consultative Peace Jirga (NCPJ) held to discuss and finalise the APRP.

June 2010: United Nations Security Council splits Resolution 1267 relating to the blacklist drawn up by the al-Qaeda and Taliban Sanctions Committee into 1988 and 1989, to henceforth be known as the "Al-Qaeda Sanctions List" and include only names of those individuals, groups, undertakings and entities associated with Al-Qaeda.

July 2010: The Kabul Conference includes commitment to revisit and implement the APPRJ under programme 6 of the National Priority Program for Human Rights and Civic Responsibilities. It also outlines the responsibility of civil society and AIHRC to begin the implementation of the NPP and undertake human rights, legal awareness and civic education programmes targeting communities across Afghanistan to foster a more informed public and civil society, and to increase government accountability.

Oct 2010: High Peace Council to negotiate for peace with the Taliban inaugurated.

Sept 2011: Following secret negotiations, reports indicate that the Taliban may be permitted to open an "embassy" in Doha, Qatar, although there was no official confirmation of this.

Sept 2011: Burhanaddin Rabbani, former president and head of the High Peace Council, is killed by an assassin posing as a Taliban negotiator.

Oct 2011: 2,500 former fighters reported to have joined the APRP.

Oct 2011: President Karzai says he is suspending efforts to negotiate with the Taliban, and says he will attempt to talk directly with Pakistan.

Nov 2011: Traditional Loya Jirga held in Kabul including 2,030 delegates to discuss the strategic partnership agreement with the United States and "peace talks." Resolutions from the *jirga* included a reiteration of the commitment to implement the APRP and the recommendations from the National Consultative Peace Jirga. It also recommended revising the composition and structure of the High Peace Council.

the political agenda of the time. The Action Plan laid out five key activities including: symbolic measures, institutional reform, truth-seeking, reconciliation, and accountability measures. It also categorically rejected amnesty, stating that neither Islam nor international law provides amnesty for crimes, including crimes against humanity. While hotly debated, the Action Plan was accepted by the Cabinet and publically launched by President Karzai in 2006. It was also widely supported by the international donor community, particularly the UN, the EU, the Netherlands and Canada, and was subsequently included in the 2006 Afghanistan Compact[46] and the 2008 Afghanistan National Development Strategy (ANDS).[47] While the deadline for achieving its activities expired in March 2009, the government's commitment, in conjunction with AIHRC and UNAMA, to revisit and implement the Action Plan was reaffirmed at the Kabul Conference and was included as a benchmark of the National Priority Programme for Human Rights and Civic Responsibilities.[48] The Joint Coordination and Monitoring Board (JCMB)[49] has subsequently approved the NPP and the implementation budget for programme six, including that for the Action Plan.[50]

To date, the Action Plan has largely not been implemented aside from the creation of the Presidential Special Advisory Board for Senior Appointments (2007), a National War Victims' Day (2006) and the completion of a mandated conflict-mapping project by AIHRC. The Presidential Board vets candidates for the central government, the judiciary, provincial governors, chiefs of police, district administrators and provincial heads of security on the grounds of involvement with past crimes and human rights abuses.[51] However, while strengthening the panel was included as a benchmark of the Kabul Conference and it is currently operational, its robustness is yet to be proven. Meanwhile, President Karzai marked Victims' Day in 2006 and 2007 but it has since been ignored by the government. The widespread lack of awareness of this day in Afghanistan suggests it has failed to become a meaningful event in Afghan lives. This stands in stark contrast to the government's memorialisation of the mujahiddin through public holidays—Celebration of the Islamic Revolution in Afghanistan and The Great Ahmad Shah Masooud Day—and memorials, such as Massoud Circle in central Kabul and the Mazari memorial in West Kabul.

AIHRC has continued to support transitional justice and, in accordance with its mandate, to investigate and document human rights violations. Its most recent project has mapped human rights violations in Afghanistan from 1978 to 2001, in each province. Consequently, it stresses the extent and commonality of victims' experiences throughout the country and the scope of perpetration of these crimes. This research has the potential to make a real difference given the demand for information about past conflicts and the significance of truth-seeking and truth-telling processes in Afghanistan (see Section 4.2). The findings of this project are relevant to all forms of criminal, reparative and restorative justice. Moreover, a conflict overview can assist prosecutors as mapping is a common tool prior to investigations. However, to date this report has not been published.

Despite some developments, state governance in Afghanistan struggles to function effectively in the face of limited human resources and infrastructure and there has been a lack of a substantive process in security sector and rule of law reform. The Afghan National Police (ANP) and formal justice sector institutions are considered corrupt by the general public, enjoy limited public confidence

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46   *The Afghanistan Compact* (The London Conference on Afghanistan, 2006), www.fco.gov.uk/resources/en/pdf/3036656/afghanistan-compact (accessed 22 December 2011).

47   Government of the Islamic Republic of Afghanistan, *Afghanistan National Development Strategy* [ANDS], (Kabul: GoA, 2008).

48   Kabul International Conference on Afghanistan, 20 July 2010, Communiqué, "Afghanistan National Development Strategy prioritization and implementation plan, mid-2010-mid-2013" (Kabul: Ministry of Finance, Department of policy, 2010).

49   The Afghan government and the international community agreed to establish the Joint Coordination and Monitoring Board (JCMB) for overall strategic coordination of the implementation of the Afghanistan Compact and the interim Afghanistan National Development Strategy (I-ANDS) after their endorsement at the 2006 London Conference and the ensuing Security Council Resolution No. 1659.

50   International expert, pers. comm., 26 November 2011.

51   See Winterbotham, "The State of Transitional Justice in Afghanistan," 14.

and lack professional and human capacity, as the research revealed (see Section 4.1).[52] The total failure of the state during the civil war of the 1990s weakened the existence of a formal "system" of laws and institutions to uphold them. Meanwhile, the informal system sought to fill the void, adding Sharia courts and commanders' *shuras* (councils)[53] to the more traditional *shuras* of village elders or "whitebeards."[54] Today, only a small number of judges possess formal legal training, meaning that law is applied unevenly, with most relying on their personal understanding of Sharia rather than the law, and there are insufficient legal training programmes available to rectify the problem.[55] Partly as a result, research suggests some 80-90 percent of both criminal and civil disputes are currently resolved outside the formal system[56] either through community-based dispute resolution processes (CBDR) or by the Taliban.

Given that the current justice system is widely perceived as incapable of handling ordinary crimes, it is widely accepted by policymakers (and people AREU interviewed, see Section 4) that it would struggle to cope with specialised cases relating to war crimes.[57] Despite this, some judicial mechanisms have been tried in Afghanistan. The trials of Abdullah Shah and Asadullah Sarwary are seen as a parody of war crimes trials and were widely criticised for violating basic standards of due process.[58] However, applications of universal jurisdiction by third countries were more positive developments. The trials of the former Hizb-i-Islami commander, Zardad Faryadi Sarwar, in the United Kingdom[59] and the ongoing prosecutions and investigations in the Netherlands of people accused of war crimes[60] are significant. Although knowledge about them is sometimes weak, the prosecutions of Afghans abroad send a powerful signal to others in hiding, or in power, that justice may catch up with them. News that a known war criminal was to be held to account in the UK was received positively inside Afghanistan. It also prompted many Afghans to suggest others (including still inside the country) who ought to face similar charges.[61]

The ICC creates an opportunity for redress for the victims of conflict if the national state is unwilling or unable to do so appropriately.[62] Renewed interest in the potential role of the ICC in Afghanistan was sparked by the announcement in September 2009 by the Chief Prosecutor, Luis Moreno-Ocampo, that war crimes investigators were in the early stages of an enquiry into "massive attacks, collateral damage exceeding what is considered proper and torture" committed in Afghanistan since the US-led

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52   ICTJ, "Afghanistan: Submission to the Universal Periodic Review of the UN Human Rights Council Fifth Session" (ICTJ: 3 November 2008). AREU's work on community-based dispute resolution also found evidence of corruption in relation to district-level justice officials, in particular see Deborah Smith, "Community-Based Dispute Resolution Processes in Nangarhar Province" (Kabul: AREU, 2009). Research conducted as part of the Legacies of Conflict project confirms this assessment.

53   While the terms "*jirga*" and "*shura*" are sometimes used interchangeably, *shuras* have more persistent membership and ongoing governance roles rather than being for ad hoc problem solving.

54   Thomas Barfield, Nojumi Neamat and J. Alexander Thier, "The Clash of Two Goods: State and Non-State Dispute Resolution in Afghanistan" (Washington, DC: United States Institute of Peace, 2006), http://www.usip.org/files/file/clash_two_goods.pdf (accessed 11 December 2010).

55   Barfield et al, "The Clash of Two Goods."

56   Barfield et al, "The Clash of Two Goods," quoting "Afghanistan in 2006: A Survey of the Afghan People" (Kabul: The Asia Foundation, 2006), finding that only 16 percent of Afghans would go to a government court to resolve their disputes.

57   See Winterbotham, Section 4.1 on Judicial Accountability in "The State of Transitional Justice in Afghanistan." This perception was also widely voiced by respondents participating in the Legacies of Conflict research.

58   For more information, see Sippi Azarbaijanni Moghaddam, "On Living with Negative Peace and a Half-Built State: Gender and Human Rights," *International Peacekeeping* 14, no. 1 (2007): 133-4.

59   Sandra Laville, "UK Court Convicts Afghan Warlord," *The Guardian,* 19 July 2005, www.guardian.co.uk/uk/2005/jul/19/afghanistan.world (accessed 22 December 2011).

60   Liesbeth Zegveld, "Dutch Cases on Torture Committed in Afghanistan: The Relevance of the Distinction between Internal and International Armed Conflict," *Journal of International Criminal Justice*, No. 4 (2006): 1.

61   Patricia Gossman, "Truth, Justice and Stability in Afghanistan," in Naomi Roht-Arriaza (ed.), *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice,* 22-3 (Cambridge: Cambridge University Press, 2006).

62   Juan E. Mendez, "National Reconciliation, Transitional Justice, and the International Criminal Court," *Ethics and International Affairs* 15, no. 1 (2001): 39-43. The Rome Statute creating the ICC is dated from 17 July 1998. Sixty countries were needed to ratify the statute before it entered into force in 2002.

invasion in 2001. This opened the possibility of prosecutions by the international court.[63] However, the ICC only has prospective jurisdiction starting on the date in which the treaty enters into effect. This means that crimes committed before 2003 are not within its jurisdiction. Placing emphasis on crimes committed after 2003 would consequently ignore some of the worst perpetrators of human rights abuses. Moreover, there appears to be little political will on behalf of domestic and international governments and Afghanistan's justice sector to support the ICC, which also appears to have little desire to launch a full investigation in the country.[64]

Complicating the prospect of criminal justice processes is the National Reconciliation, General Amnesty and National Stability Law (the "Amnesty Law").[65] While the Action Plan rejected amnesty, it failed to serve as a safeguard against the passing of this law by Afghanistan's National Assembly in 2007. This had enormous political significance, serving as a clear signal of the continuing power of alleged human rights violators, a message that became even clearer when the law was enacted through publication in the *Official Gazette* in December 2009. In passing the law, the Afghan Government effectively granted amnesty to all parties currently or previously involved in Afghanistan's wars.[66] The law does uphold the right of people to bring charges against individuals in court (which is unlikely given victim/perpetrator power dynamics) but, in the absence of a complaint by a victim, Afghan authorities are prohibited from prosecuting accused war criminals. This allows the government to deflect its responsibility for investigating and prosecuting perpetrators.

This contravenes Afghanistan's international legal obligations to pursue accountability for serious human rights abuses as well as people's own perceptions of their rights guaranteed under Islam and by God. At the time of its drafting, Afghanistan's highest body of Islamic mullahs criticised the legislation, stating that under Islamic law only the victims of crimes, not the state, can forgive the perpetrators.[67] Moreover, its publication in the *Official Gazette* prompted considerable opposition from international and Afghan civil society. The timely publication of the law in the month leading up to the announcement of the national "Peace and Reintegration Programme"[68] prompted some human rights activists to suggest that it was designed to incentivise the Taliban to reconcile, despite the claim by Karzai's spokesman, Waheed Omar, that there was "no link."[69]

Reconciliation programmes

While efforts to end conflict in Afghanistan have varied over the years, a notable trend has been national actors initiating political arrangements between adversarial parties for the cessation of hostilities. The most well-known initiatives are the late-communist era *Aasht-i-Milli* (National Reconciliation), when President Najibullah's government encouraged opposition groups to lay down weapons and attempted to co-opt them into the existing political structure, and the Program Takhim-e Solh (PTS) or the "strengthening peace" initiative,[70] which aimed at conciliating rank and file insurgents. Karzai formally introduced the PTS in February 2004. The effort was overseen by an Independent National

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63   James Reinl, "ICC Investigates War Crimes in Afghanistan," *United Nations Press* (New York: 10 September 2009).

64   See Winterbotham, "The State of Transitional Justice in Afghanistan," 19-21.

65   Islamic Republic of Afghanistan, Ministry of Justice, *Official Gazette*, Issue No. 965 (Kabul: GoA, December 2008). This granted amnesty to "all the political wings and hostile parties who had been in conflict before the formation of the interim administration" and "those armed people who are against the Government of Afghanistan, after the passing of this law, if they cease their objections, join the national reconciliation process, and respect the constitutional law and other regulations of Islamic Republic of Afghanistan." The official Dari version is available on the Ministry of Justice website: www.moj.gov.af.

66   For a further discussion on the amnesty law, see Winterbotham, Section 4.2, "An Action Plan for transitional justice and the backlash," in "The State of Transitional Justice in Afghanistan," and for a legal analysis of the law in the international context see ICTJ and AIHRC, "Discussion Paper on the Legality of Amnesties" (Kabul: AIHRC, 2010) www.aihrc.org.af/media/files/Reports/Thematic%20reports/Amnesties_paper_23_Feb_2010.pdf (accessed 8 December 2011).

67   Winterbotham, "The State of Transitional Justice in Afghanistan," 8.

68   2010 London Conference communiqué, http://afghanistan.hmg.gov.uk/en/conference/communique (accessed 5 January 2012).

69   Jon Boone, "Afghanistan Quietly Brings into Force Taliban Amnesty Law," *The Guardian,* 11 February 2010, www.guardian.co.uk/world/2010/feb/11/taliban-amnesty-law-enacted (accessed 28 November 2011).

70   For more information see Ashley J. Tellis, "Reconciling with the Taliban" (Washington, DC: Carnegie Endowment for International Peace, 2009).

Commission for Peace and Reconciliation led by a Karzai ally, Sebghatullah al-Mojaddedi, and claimed early success, convincing over 2,000 insurgents to lay down arms. However, the weaknesses of the effort, which included the inability to appropriately validate insurgent credentials, the absence of effective monitoring in the aftermath of formal reconciliation and the loss of credibility in the Afghan leadership, led the UK, US and Netherlands to abandon financial support for the initiative. The latest initiative is the APRP, which is an Afghan-led programme supported by the international community aiming to achieve durable peace.[71]

The APRP, legitimised at the government-run National Consultative Peace Jirga of 2010 (NCPJ), focuses on reintegrating combatants and solving community-level grievances. It involves a three step process: social outreach, confidence-building and negotiations; activities to deliver demobilisation; and activities to consolidate peace and support community recovery. APRP states that it is "not a framework for pardoning all crimes and providing blanket amnesty. Grievance resolution and *afwa* [amnesty] will be sought in accordance with the laws and Constitution of Afghanistan."[72] However, it makes only scarce reference to Afghanistan's obligations under international law, introducing but not defining the concept of "political amnesty" while seeming to presume that grievances can be solved at the community level, and will only address grievances that "are creating armed resistance and violence and those linked to dissatisfaction with governance. It cannot tackle all long-term grievances in Afghanistan."[73] Civil society organisations (CSOs) and human rights actors, both national and international, are wary of the extent of amnesty provisions within the APRP, given the history of impunity in Afghanistan and the implications of the amnesty law. AREU research showed that these actors drew a link between the loss of momentum on transitional justice, the current direction of reconciliation, the appearance of the amnesty law and the current strategy.[74]

Moreover, some international policymakers and civil society representatives have expressed concerns that the various components of the APRP are not being properly implemented.[75] Activities focusing on social outreach and confidence building have appeared limited and there is very little public awareness of the processes of the APRP. Provincial programme infrastructure and guidelines for governors have meant little outreach at local level.[76] Vetting procedures are loosely defined and are largely implemented without consultation with the communities where combatants intend to return with little or no attention paid to grievance resolution processes. Nor has a detailed amnesty policy been finalised, with Western and Afghan officials reluctant to tackle this politically sensitive issue. As of May 2011, no finalised standard operating procedure appeared to exist and the International Security Assistance Force (ISAF) was still developing the Reintegration Tracking and Monitoring Database.[77] There is a very real danger that the APRP could allow Taliban perpetrators of war crimes and other criminals posing as Taliban fighters back into communities with no attempt to hold them to account and little concern for the impact on respect for the rule of law. The impact of this may have already been seen as "vetted and reintegrated" former combatants are alleged to have participated in the attack on the UNAMA offices in Mazar-i-Sharif in April 2011.[78] Finally, very little has been on offer thus far in terms of employment and community rehabilitation. In theory, options include vocational and literacy training, religious mentoring, or enrollment in Afghanistan's security forces, or in a public works or agriculture conservation corps, but in reality former fighters have been offered few civilian jobs.

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71   For further information about previous reconciliation and peacebuilding initiatives, see Sajjad, "Peace At All Costs?" 5.

72   Islamic Republic of Afghanistan, National Security Council D&R Commission, *Afghanistan Peace and Reintegration Programme* (Kabul: July 2010).

73   Islamic Republic of Afghanistan, *Afghanistan Peace and Reintegration Programme*.

74   Sajjad, "Peace at All Costs?"

75   Interviews conducted July 2011 with several international policymakers.

76   Deedee Derksen, "Impact or Illusion? Reintegration under the Afghanistan Peace and Reintegration Program" (Washington, DC: USIP, September 2011).

77   Deedee Derksen, "Impact or Illusion?"

78   Representative, international organisation, pers., comm., 29 November 2011.

The High Peace Council established by the president to oversee the implementation of the APRP also prompted opposition from civil society, as many of its key members are alleged to have committed war crimes and human rights violations, and have highly dubious records in terms of peacemaking.[79] The APRP paved the way for the vote by the United Nations Security Council to adjust Resolution 1267 into 1988 and 1989.[80] This de-linked the Taliban and Al Qaeda, which allowed certain Taliban members to be taken off the blacklist along with certain members of the High Peace Council itself.

Despite President Karzai's public commitment to suspend talks with the Taliban following the assassination of Professor Rabbani, the Traditional Loya Jirga[81]—held in November 2011 to gain public backing for the signing of the Strategic Partnership Agreement (SPA) with the United States and for discussions about peace with the Taliban—reiterated a commitment to the APRP. The *jirga*, attended by 2,030 delegates, also reflected recognition by Afghan stakeholders present that the composition of the High Peace Council needed revising. Resolutions following the *jirga* included reappointing High Peace Council members and reviewing its structure and size. Despite reiterated support for the APRP, the process thus far has clearly not yielded the desired results.

Despite the link between justice, reconciliation and peace, the tendency in Afghanistan during Karzai's regime has been to pursue these processes independently of each other. The launch of the Action Plan *and* PTS and the recent efforts for reconciliation display these contradictions. While the Action Plan was intended to cover the 1978-2001 period, by its nature it was a forward-looking process and reconciliation was one of its central objectives. However, the two policies were designed in isolation from each other.[82] The APRP is a continuation of this trend since it largely ignores transitional justice and the Action Plan. In many ways this is a continuation of the pattern of previous UN peace deals brokered between Afghan mujahiddin groups in Pakistan and the government of Dr Najibullah in 1989 after the withdrawal of Soviet forces and between 1994 and 1996 involving the newly emerged Taliban in Kandahar. Both these UN-supported initiatives ignored people's demands and needs and failed to establish measures for accountability and justice.[83]

The failure to implement a comprehensive process of transitional justice and address issues of impunity has shaped how Afghanistan looks today. Some people suggest that impunity combined with a lack of trust in the formal justice system is in fact fuelling the insurgency.[84] Ruttig argues that when the US-led coalition allowed the warlords and commanders—whose atrocities had made the Taliban a viable alternative in the eyes of many Afghans in the mid-1990s—to return to power, the insurgency as a whole grew in strength every year from 2002 onwards.[85] This was widely recognised by all people participating in the AREU research, who directly linked the failure to hold those identified as guilty

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79   See the civil society statement of the One-Day Reconciliation and Justice Conference held in Kabul in November 2010: Transitional Justice Coordination Group – Afghanistan, "The Statement of the One-Day Conference on Justice and Reconciliation" (21 January 2011), http://tjcgafghanistan.wordpress.com/2011/01/21/the-statement-of-the-one-day-conference-on-justice-and-reconciliation/ (accessed 26 September 2011) and Sari Kouvo and Dallas Mazoori, "Reconciliation, Justice and Mobilization of War Victims in Afghanistan," *The International Journal of Transitional Justice* 5, no. 3 (2011): 1-12.

80   Comments made by international policymakers during a roundtable discussion in Kabul, July 2011. For more information on the adjustment of the resolution see, the United Nations, "The Al Qaeda Sanctions Committee," www.un.org/sc/committees/1267/ (accessed 8 December 2011).

81   Its naming as a "Traditional" Loya Jirga is itself oblique. In a Constitutional Loya Jirga representatives are elected and can make decisions while in this case participants were picked and appointed by the government in a consultation mechanism "with the people." For further discussion see Thomas Ruttig, "Innovative Jirga-ism 2 or: The rule of bending the law," Afghanistan Analysts Network, 16 November 2011, http://aan-afghanistan.com/index.asp?id=2279 (accessed 10 December 2011).

82   Bator Beg and Ali Payam, "Charting a Course for a Sustainable Peace: Linking Transitional Justice and Reconciliation in Afghanistan" (Afghanistan Watch: Kabul, 2010).

83   For further discussion see Horia Mosadiq, "Reconciliation in Afghanistan: Can the UN right some wrongs?" Afghanistan Analysts Network, 31 October 2010. http://aan-afghanistan.com/index.asp?id=1279 (accessed 22 December 2011).

84   See Frank Ledwidge, "Justice and Counter-insurgency in Afghanistan: A Missing Link," *RUSI Journal* 154, no. 1 (Feb 2009): 7; and ICTJ, "Afghanistan: Submission to the Universal Periodic Review of the UN Human Rights Council Fifth Session"; and The Liaison Office, "Three Years Later: A Socio-Political Assessment of Uruzgan Province 2006-2009" (Kabul: TLO, 18 September 2009).

85   Thomas Ruttig, "The Other Side: Dimensions of the Afghan Insurgency: Causes, Actors and Approaches to 'Talks'" (Kabul: Afghanistan Analysts Network, July 2009).

of wartime violations to account with their own inability to deal with wartime legacies as well as negatively impacting on the wider development of peace and security in Afghanistan.

2.2 Social context and civil society activities

Conflict in Afghanistan has, in reality, been several conflicts, each with multiple phases and actors.[86] This has had a fundamental impact on the bonds that exist between people. At various phases, the population was divided into ideological, factional, religious and ethnic groups, often pitted against one another in the role of victim or perpetrator. While it is critical to understand that Afghanistan's conflicts were largely not the result of ethnic competition, it is also important to recognise that the instrumentalisation of ethnic identity that resulted from them has proved highly effective in mobilising support and resources.

The decades of conflict in Afghanistan have politicised ethnicity, forcing many Afghans to seek refuge with their respective groups and isolating them from other communities. Heightened insecurity often reinforces narrower forms of identity along tribal, ethnic and kinship lines.[87] At the same time, however, the experience of thirty years of war and displacement has simultaneously disrupted old identities, changed assumptions about the traditional and the modern, and helped to reinforce the idea of an Afghan national identity among many people.[88]

Interest and engagement in promoting transitional justice by Afghan NGOs and the media is growing and becoming increasingly diversified. Given the marginalisation of transitional justice at the political level, a key aim of some international actors is to build the capacity of Afghan NGOs so they can push a transitional justice agenda themselves.[89] However, civil society is viewed broadly in Afghanistan to include traditional or tribal structures such as *jirgas* and *maliks* (heads of villages), religious leaders and structures such as the *Shura-i-Ulema*, along with trade unions, universities, media, women's groups, youth groups, NGOs, Community Development Councils (CDCs) and other sectors.[90] While certain organisations may work specifically on transitional justice, other social structures are equally as important in building peace and reconciliation in Afghanistan and have, at times, also been involved in ensuring accountability for wartime violations (discussed in Section 4 and 5). Afghanistan nevertheless remains an ethnically and socially divided society, which weakens the voices of the country's victims. The country requires a strong, coordinated and engaged civil society that can speak for all Afghanistan's victims and can bring people together in order to make practical policy recommendations and effectively advocate the government for change.

Several Afghan NGOs work to raise awareness about transitional justice, document past human rights violations, and to ensure the conflicts and victims' suffering are not forgotten. Victims' support networks build communities of interest, a travelling theatre elicits reflection on the legacy of impunity, and victims have related their personal stories and testimonials, which have appeared in some newspapers and been aired on radio programmes.[91] Moreover, since the government now ignores Victims' Day and public promises by President Karzai to establish a memorial at the site of a mass grave in Badakhshan in 2007 never materialised, the responsibility of commemorating victims has fallen largely on Afghan civil society, led or supported by AIHRC. On Victims' Day in 2008, a

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86   Scott Worden and Rachel Ray Steele, "Telling the Story: Lessons for Afghanistan from the Cambodian Experience" (Washington, DC: USIP, 2008), www.usip.org/resources/telling-story-documentation-lessons-afghanistan-cambodian-experience (accessed 23 August 2011).

87   Marika Theros and Mary Kaldor, "Building Afghan Peace from the Ground Up" (New York and Washington, DC: The Century Foundation, 2011).

88   Theros and Kaldor, "Building Afghan Peace from the Ground Up."

89   See Winterbotham, section on "Afghan Civil Society" in "The State of Transitional Justice in Afghanistan," and Kouvo and Mazoori, "Reconciliation, Justice and Mobilization of War Victims in Afghanistan."

90   Kaldor and Theros, "Building Afghan Peace from the Ground Up."

91   See Winterbotham, "The State of Transitional Justice in Afghanistan," 17.

monument was erected in Badakhshan to mark the communist grave there.[92] The following year, AIHRC inaugurated the country's first war museum in Badakhshan. The museum commemorates the deaths of tens of thousands of people and includes displays of remnants from war—torn pieces of cloth, mangled shoes, handcuffs, prayer beads—and hundreds of photos and names of victims. The land for the museum was donated by the community and victims were involved in the process. In 2010, civil society began an annual "Victims' week" of programmes around 10 December, including a victims' memorial service at Pul-i-Charkhi prison.

Ongoing efforts by international actors in supporting processes documenting past war crimes and human rights abuses and identifying and preserving mass graves are part of policies that confront the past. An accurate accounting of past crimes makes it embarrassing and difficult for official actors to deny them, applies pressure to remove perpetrators from power, and raises awareness toward preventing future abuse.[93] The Physicians for Human Rights (PHR) are helping build domestic capacity among the government and non-governmental actors[94] to register, position, secure and investigate graves, and to stop, where possible, the destruction of evidence documenting past abuses. In 2011, with the support of PHR, the Afghanistan Forensic Science Organisation (AFSO) was formed from government and non-governmental representatives who have received training to work on mass graves and promote forensic science in Afghanistan. The United States Institute of Peace is working to compile existing documentation into a single war crimes database and to train organisations in documenting war crimes.[95]

Image 1: Participants in the 2010 Victims' Day memorial service (by Mònica Bernabé)

Since the establishment of the Transitional Justice Coordination Group (TJCG) in February 2009 with the backing of AIHRC, UNAMA, ICTJ and the Open Society Institute (OSI), the group has evolved into a loose network of about 25 national and international civil society organisations committed to transitional justice. This has helped to strengthen the individual voices of organisations, facilitate information sharing, and coordinate transitional justice activity. As a result, Afghan NGOs have grown

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92   Ahmad Sardad, "Afghanistan War Museum Displays Past Horror," *Agence France-Presse*, 9 December 2009.

93   "Final Report on Civil Society," Transitional Justice and Documentation Workshop, Kabul, 17-19 February. The workshop was organised by AIHRC and supported by ICTJ, the Open Society Institute (OSI) and USIP.

94   Participants in PHR's training included the Ministry of Interior Criminal Investigation Department (CID), Forensic Medicine Department, Afghan National Police Academy (ANPA) Instructors, Archaeology Department, AIHRC and civil society organisations.

95   For more on this, see Winterbotham, "The State of Transitional Justice in Afghanistan," 26.

Image 2: Theatre performance in Kabul exploring transitional justice themes (by Jay Lamey)

increasingly confident and strategic, using media and key events as a platform to raise transitional justice issues.[96] The TJCG held a "Victims' Jirga" in Kabul in May 2010, for the first time bringing together over 100 victims from all periods of the conflicts and from across Afghanistan. It was also the first time victims articulated a common position expressed in a final statement and to the media.[97] This was followed in March 2011 by a two-day National Victims' Conference including representatives from government, civil society and victims' and martyrs' organisations from all the regions of Afghanistan.[98] These events assist developing an understanding and empathy about the past in order to create a shared understanding and trust, which is vital to reconciliation in Afghanistan.

Despite these efforts, civil society's capacity to address issues of transitional justice and to influence policymakers remains relatively weak. Only a few organisations have sought to develop expertise on specific issues like victims' mobilisation, documentation, awareness-raising and training.[99] Furthermore, internal divisions and lack of coordination often weakens the effectiveness of civil society, specifically the TJCG. Moreover, Afghan CSOs have historically focused less on reconciliation, viewing it as a political process that has no relevance to them.[100] Even when they attempt to participate, they fall victim to the hostile political environment—the basis for the holding of the Victims' Jirga was due to the limited number of spaces granted to women, civil society and war victims at the 2010 Peace Jirga. Moreover, due to the prevailing ethnic and social divisions, Kouvo and Mazari argue that "Processes, whether government or civil society-led, are often undermined by internal tensions and 'hijacked' or perceived to be 'hijacked' by one interest group." They therefore conclude that the establishment of a national victims' network that can have an impact on the policies of the Afghan government or its international partners is by no means guaranteed.[101]

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96   For example, see statements made at the 2010 London Conference. They prepared a united statement of suggestions and demands to the Afghan government and the international community. In 2010, the TJCG prepared a statement in opposition to the Amnesty Law, see http://tjcgafghanistan.wordpress.com/2010/03/01/tjcg-statement-on-the-amnesty-law/ (accessed 25 December 2011).

97   For the final statement of the Victims' Jirga, see, Transitional Justice Coordination Group-Afghanistan, "The Victims' Jirga" (9 May 2010), http://tjcgafghanistan.wordpress.com/2010/05/09/the-victims-jirga/ (accessed 26 September 2011).

98   Kouvo and Mazoori, "Reconciliation, Justice and Mobilization of War Victims in Afghanistan."

99   ICTJ, "Submission to the Universal Periodic Review."

100   Bator Beg and Ali Payam, "Charting a Course for a Sustainable Peace: Linking Transitional Justice and Reconciliation in Afghanistan" (Kabul: Afghanistan Watch, 2010).

101   Kouvo and Mazoori, "Reconciliation, Justice and Mobilization of War Victims in Afghanistan."

The TJCG has been reluctant or unable to engage in a constructive, long-term dialogue with either the government or, to a limited extent, the international community to push for specific measures to improve accountability within reconciliation efforts. However, CSO networks and CSOs do participate in this area, for example the "Afghan Civil Society Forum–organization" (ACSFo), Cooperation for Peace and Unity (CPAU), the Peace Training and Research Organization (PTRO), The Liaison Office (TLO) and the Sanayee Development Organisation, as well as local, tribal and other councils. Activities have included building the capacity of community institutions, especially *shuras* and *jirgas*, to resolve disputes through mediation, negotiation and conflict resolution; supporting civil society involvement in peace and development; and promoting peace education.

3. Afghanistan's Conflicts: Experiences, Perceptions and Perpetrators

People's wartime experiences inform their desires and demands for the future. Therefore, before examining different mechanisms to move forwards, it is necessary to look backwards and outline perceptions regarding the different conflicts and the perpetrators of wartime atrocities. This chapter outlines how the different conflicts affected respondents in the research sites, presenting some key findings regarding how perceptions about conflict are developed. It then explores the issue of who were identified to be perpetrators and responsible for the different conflicts in Afghanistan and concludes by exploring their lingering impacts on people's emotional and psychological health. Where relevant, the chapter also compares and contrasts how different groups in each community experienced and perceived the different periods of conflict. This is done to bring a more nuanced understanding of the conflicts and informs the following chapters of this paper.

3.1 Experiences and perceptions of conflict

Afghanistan has experienced over three decades of conflict since the communist revolution in 1978. The conflicts can be divided into four major phases: the communist revolution and People's Democratic Party of Afghanistan (PDPA) government (1978-9) and the resultant Soviet invasion and rule of Afghanistan (1979-89); the fall of the Najibullah government and the civil war period (1989-96); the Taliban regime (1996-2001); and the post-Taliban period (2001-present). This breakdown of the conflicts was found to be in keeping with how respondents perceived the different phases of war.[102] Table 2 (see below) reflects the general suffering and violations they experienced during each conflict, identifies certain groups that were targeted and the groups who were perceived to be perpetrators or bear responsibility for a conflict, outlines some perceived positive impacts of the different regimes, and acts as a reference point for the rest of the chapter. For more detail on each province see the Legacies of Conflict case studies and for detailed information about specific violations, see "Wartime Suffering: Patterns of Violations in Kabul."[103]

As demonstrated in Table 2, the different research sites often had varying experiences of conflict, including within the same province. Subsequently, where a respondent was living affected their perception of a conflict and whom they identified to be perpetrators. Broadly speaking, the communities in rural Kabul, Bamiyan City, rural Ghazni and, to a slightly lesser degree, Ghazni City felt they had suffered significantly under the communist regime and identified this as the "worst" or one of the worst conflicts. The civil war conflict impacted most on the community Kabul City and to a far lesser extent in Ghazni and Bamiyan cities. The Taliban regime was widely perceived as by far the worst conflict by communities in Bamiyan and in Ghazni City, with some violations mentioned by people in Kabul City. Respondents in research sites in Kabul and Bamiyan largely did not identify the current period as "war," while people in Ghazni City reported high-levels of violence but still drew a distinction between this era and past conflicts. In contrast, the community in rural Ghazni identified the current violence as equal to or worse than the communist period.

Perceptions of the communist era

The communist era was marked by aerial bombardments and reciprocal rocket attacks launched by both the Soviet-backed communist government and the mujahiddin resistance on certain areas, particularly in rural Ghazni, rural Kabul, Bamiyan City and, to a lesser extent, Ghazni City. The intensity of conflict was largely determined by the fact that while the government was more easily able to control Kabul City, and, to a lesser extent, Ghazni City, it experienced considerable resistance in the rural areas of these provinces, which formed major frontlines to the conflict. This prompted

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102   It should be acknowledged that while these were the periods most frequently identified by respondents, they were also externally imposed by the research team.

103   All published by AREU in 2011 and available at www.areu.org.af.

retaliation from government and Soviet forces. In contrast, in Bamiyan both communities provided similar support to the resistance but only the urban site witnessed regular direct fighting and aerial bombardments. It became a base for the mujahiddin to launch attacks against the Soviet forces garrisoned around Bamiyan airstrip. The remoteness of the rural community meant it was largely isolated from direct violence and communist forces never entered the community.

The majority of people interviewed in the most affected research sites all experienced the loss of a family member at this time. Indiscriminate air and rocket attacks were particularly resented since they killed and injured innocent civilians, including women and children, caused widespread damage to property and livestock and forced people to migrate to escape the violence. However, the groups most directly targeted were men of fighting age believed to be participating in resistance and religious leaders. Respondents in these communities widely described the round up and execution of groups of men or their subsequent disappearance. In research sites in rural Ghazni and Bamiyan City, people spoke of mass grave sites believed to date from this era. Communist policies were also resented, including forced military conscription and the appearance of un-Islamic practices, particularly gambling and the consumption of alcohol, and the abolition of bride price.

While older people often proudly reported actively fighting or providing support to the resistance (less so in Kabul City), several older men expressed some reluctance at having to take up arms, blaming community expectation. Small numbers of people interviewed in the urban sites had worked for the communist government. People in these areas sometimes reported that the mujahiddin were responsible for deaths and disappearances in retaliation for supporting the government.

Afshar in Kabul City was not a centre of resistance to communist rule and was generally reported to be calm during this time. The area, in fact, significantly benefited from communist expansions of the state bureaucracy and provision of services. Therefore, respondents, particularly returnees, spoke in positive or at least neutral terms about communist rule. This positive perception of the communist era among many Afsharis was reflected in how a number of younger people in the area discussed that period. For example, one young man said: "Our elders told us about that time and they compliment it. They say there were lots of facilities at that time, freedom, education, employment, and there was no bribery."

Perceptions of the civil war

After the fall of the Najibullah government in 1992, the various mujahiddin factions who had formed the resistance during the communist era took power. However, their government soon fragmented, paving the way for widespread civil war across the country. Kabul City, which had been spared the excesses of the communist regime, was at the centre of this violence. Mujahiddin factions fighting for control of the capital employed tactics that included rocket attacks, killings, kidnappings and looting. Mujahiddin leaders politicised macro-level ethnic identities to garner support for the new phase of fighting, in many cases transforming what had been highly nuanced regional and ethnic solidarity groups into presumed markers of political affiliation.[104] In the process, Kabul City was carved into separate enclaves. Practically all those interviewed in Afshar voiced their anger that the conflict was transformed during the civil war into one fought along ethnic and religious lines. As one younger Tajik woman said, "They were fighting with each other about whether he is Hazara, he is Pashtun and he is Tajik...Each *qawm*[105] was afraid of one another."

It was perhaps the events in Afshar on 10-11 February 1993 that lingers most strongly in people's minds, when militant forces belonging to Ittihad-i-Islami and Jamiat-i-Islami captured the area and razed it to the ground. Until Afshar was captured it was under the control of the predominantly Shiite and Hazara Hizb-i-Wahdat party. Hizb-i-Wahdat's strategic position atop Afshar Mountain,

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104   This was particularly effective among the Hazaras, who had been mobilising on the basis of their marginal social identity since at least the 1950s; see Giles Dorronsoro, "Kabul at War (1992-1996): State, Ethnicity and Social Classes," *South Asia Multidisciplinary Academic Journal* (2007): 33.

105   A form of solidarity group that is flexible in scope; defined by tribe, clan, ethnicity, locality or other characteristics as determined by the group.

Table 2: Experiences of Afghanistan's conflicts by research site

Province	Research site	Regime/period	Violations/suffering	Positive impacts	Group(s) most affected	Key groups of perpetrators
KABUL	Kabul City (Afshar)	Communist		Education; provision of services		Communist government and Soviets
		Civil war	Rocket attacks; ethnic and factional conflict; Afshar massacre; death; disappearance; injury; sexual violations		General: All residents of Afshar in rocket attacks. Specific: During Afshar massacre Hazara inhabitants targetted	Civil war factional leaders (widely identified); Older respondents identified USA, Iran and Pakistan
		Taliban	Discrimination against women; ethnic discrimination; forced marriage; harsh justice; poor economic conditions	Security; decreased robbery; decrease in un-Islamic practices	Women; former mujahiddin; Hazara community	Taliban leaders
		Current		Security largely restored		Taliban; Pakistan; Iran, USA
	Rural Kabul (Shakardara District)	Communist	Aerial bombardments; rocket attacks; death; injury; disappearance; torture and imprisonment; forced conscription		General: All community inhabitants in rocket attacks and aerial bombardments. Specific: Mujahiddin fighters or men suspected of being mujahiddin	Communist government: Khalqis and Parchami; Soviet forces
		Civil war		Period of calm		Women identified mujahiddin factional leaders; older respondents identified USA, Iran and Pakistan
		Taliban	Harsh justice; setting fire to houses; poor economic conditions; high taxation; being forced to fight; discrimination against women; ethnic favouritism of Pashtuns; forced marriage	Decrease in un-Islamic practices; security; decreased robbery	Former mujahiddin; people believed to own weapons; members of the resistance	Taliban leaders
		Current		Security largely restored		Taliban; Pakistan; Iran; USA

GHAZNI

Location	Period		Perceptions	Victims/Targets	Perpetrators
Ghazni City	Communist	Aerial bombardments; deaths; disappearance; imprisonment; torture; compulsory military service		General: All community inhabitants in rocket attacks and aerial bombardments. Specific: Mujahiddin fighters or men suspected of being mujahiddin	Communist government, specifically Noor Mohammad Taraki and Khalqis; mujahiddin; Soviet forces
	Civil war	Economic conflict; land grabbing; financial extraction			Leaders of mujahiddin factions
	Taliban	Arrest; murder; torture; disappearance; dictatorial style; harsh justice; gender discrimination; lack of education; forced marriage; ethnic bias; poor economic conditions; high taxation	Older respondents: reduction in crimes, particularly robbery; decrease in un-Islamic practices; decrease in corruption	Hazara community; people who had worked for communist regime; former mujahiddin; women	Taliban leaders
	Current	Suicide attacks; air raids; night raids; death; disappearance; injury	"Normal" life resumed; increased freedom for women; greater access to employment, education, development	Government or NGO workers targeted by the Taliban; men suspected of being Taliban by the government and ISAF; women attending school by the Taliban	Government of Afghanistan; international military forces; Taliban; Pakistan; Iran
Rural Ghazni (Qarabagh District)	Communist	Aerial bombardments; rocket attacks; deaths; disappearance; imprisonment; torture; forced conscription		General: All community inhabitants in rocket attacks and aerial bombardments. Specific: Mujahiddin fighters or men suspected of being mujahiddin	Communist government, specifically Noor Mohammad Taraki and Khalqis; mujahiddin; Soviet forces
	Civil war	Land grabbing			
	Taliban	Poor economic conditions; women complained about discrimination against women	Security; implementation of Islamic law and justice; decrease in corruption	Women	
	Current	High casualties; aerial bombardments; insurgent attacks; disappearance; night raids; overall presence of international community; un-Islamic practices		Men suspected of being Taliban; people associated with the government in the past or present or having links with international community	International military forces; Pakistan; Iran

BAMIYAN

Location	Period	Impact / Events		Groups targeted / affected	Actors
Bamiyan City (Sayed Abad)	Communist	Aerial bombardments; arrest; torture; imprisonment; death; disappearance; looting; property destruction		Men known/believed to be fighting with the mujahiddin; Men working for the communist government	Communist government: Khalqis and Parchami; Soviet forces
	Civil war	Limited violence between mujahiddin factions; ethnic tensions		Hazaras or Tajiks depending on which faction had control	Mujahiddin leaders; Pakistan; Iran
	Taliban	Death; disappearance; imprisonment; mass killing of ethnic and religious minorities; ethnic and religious discrimination; deliberate destruction of homes and livelihoods; forced to fight; high taxation		Generally: Hazara and Shiite communities. Initially: Men affiliated with Hizb-i-Wahdat or men of fighting age	Taliban leaders, specifically Osama Bin Laden and Mullah Omar; Tajik residents of research site
	Current	Complaints about lack of development and neglect of Bamiyan	Security restored		Pakistan; Iran; international military forces; Taliban
Rural Bamiyan (Yakowlang District, community in Dara-i-Ali)	Communist	One significant aerial bombardment; limited death and injuries; damage to houses and crops; disappearance or death through fighting for mujahiddin		Men who left area to fight for mujahiddin	Communist government: Khalqis and Parchami; Soviet forces
	Civil war	Largely unaffected	Normal life resumed, purchase goods cheaply		Mujahiddin faction leaders; Pakistan; Iran
	Taliban	Death; disappearance; imprisonment; ethnic and religious discrimination; physical abuse; deliberate destruction of homes and livelihoods; poor economic conditions; high taxation		Generally: Hazara and Shiite communities, largely only men. Initially: Men affiliated with Hizb-i-Wahdat or men of fighting age	Taliban leaders, specifically Osama Bin Laden and Mullah Omar
	Current	Complaints about lack of development and neglect of Bamiyan	Security restored		Pakistan; Iran; international military forces; Taliban

its commission of violence against non-Hazaras, and its unwillingness to cooperate with the Sunni-dominated interim government together made Afshar the target of the attack. Predominantly Pashtun and Tajik troops singled out Hazara residents for atrocities during the assault, resulting in the death, disappearance, rape[106] and injury of innocent civilians. Inhabitants from other ethnicities seemed to have been treated more leniently. An older Tajik respondent was allowed to leave with his belongings, as were his Tajik or Pashtun neighbours. "All the others were looted," he said. Many of these ethnic divisions endure today since many of the people interviewed were survivors of civil war violence fuelled by a discourse of ethnic hatred. Consequently, although respondents often played down the existence of ethnic tensions in their community, they also admitted that war had disrupted previously good ethnic relations.

Neither Ghazni, Bamiyan nor rural Kabul experienced the same levels of fighting or violence as Kabul City. In contrast, in these areas it was generally reported that the conflict remained between the leaders of the factions and that ordinary people were largely unaffected. When outbreaks of violence did occur they predominantly affected the urban sites, as different mujahiddin factions fought for control of the cities. Similarly to Kabul City, people in these areas criticised the fact that while different ethnic groups had been largely united in their resistance during the communist period, the civil war inflamed ethnic tensions. Consequently, in certain areas the extent of suffering ordinary people faced was often dependent on their ethnicity and the mujahiddin faction in control of their area.

Reflecting this is the direct impact events in Afshar had on ethnic relations in Bamiyan City. In Bamiyan City, Hazara communities largely supported the Shiite Harakat-i-Islami or Hizb-i-Wahdat parties, while Tajiks followed the predominantly Tajik Shura-i-Nazar/Jamiat factions. These ethnic divisions were intensified by the fall-out from the fighting in Kabul. The defeated Hizb-i-Wahdat forces arrived from Kabul accompanied by fleeing Hazara inhabitants bringing with them stories of the massacre of Hazaras at the hands of Shura-i-Nazar in Afshar. A number of older male and female respondents who lived in the community in Bamiyan City during this time recalled how this prompted people to take revenge against the Tajik communities in this site and in Bamiyan City more generally, by looting or burning their properties. Later, when Shura-i-Nazar forces took control of the research community, respondents reported similar behaviour from Tajik residents in response. These reciprocal cycles of ethnic violence continued into the Taliban era when members of the Tajik community collaborated with the Taliban in revenge. These divisions between Tajiks and Hazaras in Bamiyan City continue in the present day. A substantial proportion of the Tajik community in this research site left the area when the Taliban regime collapsed and have largely not returned, allegedly due to the fear of retaliation by the Hazara community.[107]

Perceptions of the Taliban regime

The gross excesses and lawlessness of the civil war prompted a group of mullahs, who later became known as the "Taliban," into action. Initially limited to a small group in the Kandahar area, the Taliban rapidly evolved into a much larger movement. The Taliban's near-complete conquest of the country had profound effects. At the beginning, they persistently pursued and clamped down on former members of mujahiddin. New waves of migration started and large scale human rights violations, such as arrests, harassment, massacres and forced expulsions—particularly against minorities—took place. People, especially women and girls, were deprived of their rights to education, freedom of movement and employment. Across the country, girls' schools were closed, women lost their jobs, and they could not move around without a male relative.

However, the impact of this was felt with varying intensities in each research province, with Bamiyan appearing to suffer the worst excesses of their rule. Bamiyan also launched strong resistance to the

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106   It should be noted that while knowledge of rape was widely reported, no one personally knew anyone who was raped or said that they had been, as was discussed in the challenges section.

107   The research team intended to return to Bamiyan to conduct limited interviews with Tajiks or Sayeds, but ultimately this was not possible. Consequently, views of ethnic relations are entirely from the perspective of Hazara communities in the province.

Taliban, led by Hizb-i-Wahdat, which was largely in control when the Taliban entered the province in 1998. The two sides clashed as Hizb-i-Wahdat and its supporters resisted the incursion. As the Taliban sought to consolidate their position, they began to round up men in both research sites—both bases of support for the party—to find out whether they were part of Hizb-i-Wahdat or not.

This was similar to the approach adopted by the Soviet/communist forces, but it is clear that the Taliban subsequently moved from fighting an armed enemy to more random targetting of the general population. The targetting of unarmed civilians and the Taliban's willingness to use brutal force contributed to the sense in both communities that this was the worst phase of the conflict. Respondents often argued that Soviet and communist forces generally did not target ordinary civilians. For example, a middle-aged Hazara man from Bamiyan City said, "If the Russians saw people who had weapons, they would arrest them, but not people who didn't have weapons. But the Taliban killed innocent people." Ghazni City also suffered some of the worst excesses of the Taliban rule and people generally supported this view.

One explanation for the extensive violations committed in Bamiyan Province lies in the resistance to Taliban control. Many respondents described how this angered the Taliban and so they started to kill ordinary civilians in retaliation or because they identified the population as generally supporting Hizb-i-Wahdat. However, a second and more strongly voiced interpretation for the extent of violence inflicted on Bamiyan Province lies in the identification of the Taliban as largely Pashtun and Sunni. This led to a widespread perception that the predominantly Hazara and Shiite province was targeted because of the ethnicity and Shiite faith of its people while other groups were left alone. In fact, people widely expressed the view that "The Taliban believed that Shiites weren't Muslims but infidels."[108] This was believed to be a major reason for the atrocities the Taliban committed in the province. In fact, over half of the older male and female respondents in both communities believed the Taliban's overall aim was to eliminate the Hazara population or drive them from Afghanistan. They pointed to the deliberate and sometimes random murder of innocent civilians and the practice of burning people's houses, businesses and land as policies designed to force Hazaras out of Bamiyan. These claims of random killings should be tempered by the acknowledgement by the majority of respondents that the Taliban did not systematically target women and children in Bamiyan.

Respondents in the ethnically-mixed research communities in Kabul City and Ghazni City largely supported these interpretations of events in Bamiyan Province and argued that Hazara communities in their areas faced greater abuse and repression at the time. People in Ghazni City widely reported that the Taliban killed more Hazaras than people from other ethnic groups and employed other discriminatory tactics. For example, an older Hazara man remembered, "Hazara people were forced to obtain government permission to carry food and other essential things. The Taliban arrested anyone caught carrying food to Hazara areas and often tortured and imprisoned them." Consequently, Hazara respondents in all three provinces were often more critical of the Taliban than other periods. Some prevailing tensions between Pashtun and Hazara communities continue today. A middle-aged Hazara woman from Ghazni City said:

> I don't trust my neighbours anymore because when we were in Mazar-i-Sharif our Pashtun neighbours reported to the Taliban that the owner of this house was rich and the Taliban came and looted our property and used our house.

In contrast, although Tajik respondents in rural Kabul argued that this was a period of suffering, Taliban violations were largely reported to specifically target former mujahiddin, people they believed possessed weapons or people they believed (wrongly or rightly) had links to the resistance. Violence was not reported as indiscriminate.

However, aside from Pashtun respondents, people in all research sites described certain discrimination of other groups to the benefit of Pashtuns. For example, the Tajik community in rural Kabul attacked the Taliban regime due to the perception that Pashtuns, inside Shakardara District and from other parts of Afghanistan, received greater access to resources. Another complaint frequently voiced in

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108   As said by a younger man from rural Bamiyan.

Ghazni City was that the Taliban would only employ Pashtuns in positions of authority. People also generally identified other innocent groups who were at greater risk during this time, including women and people who had worked for the communist government or actively participated in a mujahiddin party.

This picture is in stark contrast to the one painted in the Pashtun village in rural Ghazni where only limited complaints (also shared by people in all research sites) were collected, including: the ineffectiveness of the Taliban government;[109] the tough economic conditions, particularly the high cost and scarcity of goods and the lack of jobs; discrimination against women; and the lack of advancement in the country, particularly in terms of education. However, the community was generally supportive of Taliban rule. This is partially explained by its Pashtun composition, but also by the fact that its conservative nature meant the community was less likely to object to policies regarding women or the harsh implementation of Sharia law. However, it should also be noted that a few respondents who did criticise the Taliban era were reluctant to expand on these opinions. It is possible that perceptions of the Taliban are not so positive in the area but their current presence made people less comfortable to discuss them negatively. A middle-aged male respondent said, "That period [Taliban] was bad, but I can't say more about this time and please don't ask me anymore about it."

It is clear from the research that regular public executions, lashings and stonings took place in stadiums or in parks in Kabul and Ghazni provinces, as did other forms of publicly shaming criminals, such as painting their faces black. This shocked the majority of younger male and female respondents interviewed, particularly in Ghazni City. However, older residents in Kabul and Ghazni were more prone to approve of these measures and identify them as responsible for improved security and a decrease in robbery and general crimes. As an older Pashtun woman from the rural site in Kabul explained, "Justice existed during the Islamic [Taliban] government because they implemented Islamic law. For example, the Taliban chopped off the hands of robbers and because of that no one committed crimes during that time." In doing so, people drew favourable comparisons between this and the lawlessness, corruption and collapse of the justice system experienced during the civil war period and particularly in the current era. These men and women also praised the decrease in corruption and un-Islamic practices, such as gambling and drinking alcohol.

Female respondents, largely middle-aged and younger ones, in Kabul and Ghazni provinces complained about the discrimination they faced during this time. Key reasons why women in Ghazni City identified the Taliban as the worst period they had experienced were the prevention of their access to education and the limiting of their freedom of movement. This was even a source of complaint for a few middle-aged women in the research site in conservative rural Ghazni. It should, however, be noted that this was in contrast to the views of most women of all ages in this community who were supportive of the conservative nature of Taliban rule. Moreover, in Kabul City several older women appeared more willing to accept restrictions as an acceptable trade-off in comparison to the insecurity they had faced during the civil war. This exchange captures this sentiment:

> *Mahgul (older Tajik woman): I don't have bad memories from the Taliban time. It was a good time. They didn't do anything bad to people; they only didn't let women go out. People had to wear chadaris [shawls covering the entire body] and there were no schools for girls, but there wasn't any robbery. All the people were calm.*
>
> *Daughter-in-law: But they were beating people with whips.*
>
> *Mahgul: At least there was no firing and rockets.*

Another policy resented by men in both Kabul and Bamiyan was forcing people to pay to avoid being sent to fight on the frontlines. For example, in Bamiyan the Taliban forced people of all

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109   Because they "spent all their time in the mosques," according to one older man from the village.

ethnic groups to fight for them against the United Front (Northern Alliance) resistance[110] and sometimes against Hazaras in Bamiyan. If a family did not have a man to offer or could not afford the 5,000,000 to 8,000,000 Afs (around US$1,000-1,700 in the late 1990s) waiver, the Taliban would force them to leave the area.

Overall, the harsh treatment and conditions of the Taliban regime largely prompted greater criticism than the communist time among people in all research sites except for rural Ghazni. Taliban violations were also more keenly felt because the Taliban were perceived as basing their entire movement on their Islamic identity, even as they committed crimes against other Muslims. An older Tajik man from rural Kabul explained this reasoning: "We don't have any complaints about the Russians because they were the enemy of our religion, but the Taliban are Muslims and we are Muslims also."

Perceptions of the current period

Violence has escalated across Afghanistan since 2006. However, most respondents in Kabul[111] and Bamiyan provinces pointed to improvements in their communities and a clear distinction was drawn between this period and the previous three eras. However, complaints about the lack of development awarded to their respective communities, corruption, and lack of governance, including the failure to implement justice, were common.

In contrast, Ghazni Province is facing some of the worst violence in the current period. Given the presence of the Taliban and allied government and international forces in the province, this era is marked by outbursts of violence, aerial bombardments, suicide attacks, and cases of kidnap, disappearance and death. Frequently, the main casualties are innocent civilians. In fact, the majority of respondents in Ghazni reported the death of a family member or friend during the current period in operations launched by Afghan and international forces, in insurgent suicide attacks, through fighting for the Taliban or the Afghan National Army (ANA), or in retaliation for working for the government.

A few male and female respondents interviewed in Ghazni City had migrated to the city to escape the Taliban because they faced the threat of death for working for the government or an NGO. A couple of people in the rural community similarly explained that their relatives had been forced to leave the area. An older female Pashtun FGD participant explained, "There were people who worked with the government of Najibullah; now they can't live here and people who work in the current government can't live here because if the Taliban arrest them they will cut off their heads." Similarly, in Ghazni City people informed researchers that they could not return to their communities because, as a younger Tajik man explained, "If we return to our area the Taliban will kill my father or tell him not to work with the government."

Women in Ghazni City pointed to their increased freedom of movement, greater access to employment, improved communication facilities—mobile phones, computers, etc.—and advances in education. However, they were also the group most concerned in Ghazni about the current and future role of the Taliban, given that it continues to employ tactics of intimidation to deter women from attending school or work. A younger Pashtun woman described one such incident:

> In 2006 I was attending an English course. After a few days, one of our classmates did not come to class. Her family found her body after several days and when we went to her funeral they said that the Taliban had kidnapped her, beaten her and killed her. After that, my mother didn't let me to go to the course and when we went to school my mother was very worried about us.

Despite these violations in Ghazni City, the general perception was that the rural areas of the province were experiencing the worst of the violence. While the government has maintained control over Ghazni City, people stated that they had largely lost control over the districts and rural areas in the province, a situation that was getting worse over time. The overwhelming majority of respondents

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110   Ahmad Shah Massoud and Abdul Rashid Dostum created the United Front (Northern Alliance) against the Taliban in 1996.

111   It should be noted that research was conducted in Kabul Province in 2009 and early 2010. Since then, insecurity in Kabul Province has rapidly increased, particularly in 2011, and perceptions could have shifted somewhat.

in the rural area stressed that they felt attacked by all sides of the conflict—from the Taliban on the one hand and the government and international military on the other. Consequently, the majority identified this period as the worst they had experienced.

Taliban tactics of fear and intimidation, suicide attacks and laying of bombs were widely reported in both communities. Intimidation tactics were effective in rural Ghazni, where not a single person said they were willing to participate in the 2010 parliamentary election because this could result in the Taliban cutting off their finger or worse. On the other hand, people in both areas, but particularly in the rural site, resented coalition forces' bombing and killing of innocent civilians. However, the policy that provoked the most hostility was the use of night raids to search for insurgents, which people regarded as illegitimate, unnecessary and responsible for considerable fear and suffering. The rural site, where the majority of inhabitants actively or passively support the Taliban, has frequently been subjected to these. Elderly male respondents directly compared this search policy unfavourably with the communist era. For instance, one older Pashtun man said:

> In the Russian period, they didn't search my house. I am not a criminal, kidnapper, a member of Al Qaeda, or a Talib, but they searched my house three times. They had no proof and they searched my house without any reason.

3.2   Who are perceived as perpetrators and responsible for conflict?

People interviewed identified two broad groups as to blame for triggering and prolonging Afghanistan's conflicts, bearing ultimate responsibility for some of the worst violations and crimes committed: foreign powers—largely Pakistan, Iran and the United States—and Afghanistan's leaders—the communist government, the mujahiddin, the Taliban and the current Afghan government. These are broad categorisations and respondents did not apportion blame equally to all the groups. This section explores how people perceived the culpability of these different groups.

Overall, by identifying Afghanistan's elites, leaders, different Afghan governments and foreign powers as "perpetrators," respondents in all research sites largely absolved "ordinary" people from direct blame for any conflict. While foreign powers and leaders fought for influence, territory and power, ordinary people—those with little money, power or position—were victimised and remained poor. It was also widely perceived that the various leaders during the different conflicts had gained support from ordinary people by capitalising on their illiteracy and personal loyalty, and had manipulated ethnic tensions. As a result, older male respondents who had proudly reported participating in the *jihad* against the Soviets, or members of combatants' families, did not see themselves or their relatives as perpetrators.

This also indicates the emphasis that respondents placed on *which* conflict they had fought. As Giustozzi argues, many Afghans view *jihad* as meaning a "just war" against a widely perceived threat, be it from an oppressive government or a foreign army.[112] This helped these respondents to emphasise the "just" nature of their war and to largely turn a blind eye to any violations that had been committed at this time. This analysis is also relevant to the vast majority of people from the rural site in Ghazni who view the Taliban—both followers and leaders—as waging a worthy war against invading forces (discussed further below). Meanwhile, no respondent in any of the research sites reported playing a role in the civil war and older male respondents who had participated in the resistance insisted they laid down arms at this time. For example, in the community in rural Kabul, older male respondents explained that they had stopped allying themselves with the mujahiddin because they were disappointed with them when they saw the destruction they were unleashing on the city.

Despite people identifying leaders as perpetrators, it is clear that ordinary people and "followers" at times took advantage of the conflict to commit violations. In the research site in Bamiyan City, a

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112   Antonio Giustozzi, "The Missing Ingredient: Non Ideological Insurgency and State Collapse in Western Afghanistan, 1979-1992" (London: Crisis States Research Centre, 2007).

number of Tajiks reportedly sided with the Taliban when they arrived.[113] This urban community widely accused Tajiks of identifying leaders and those who possessed weapons to the Taliban, revealing people's hiding places, looting houses, and in a few cases committing physical violations themselves. This was perceived as essential to Taliban success in the conflict since they had no prior knowledge of the area. Many—especially older respondents—felt that the Tajik community had used this period to take revenge for violations they had suffered at the hands of the Hazara community, especially Hizb-i-Wahdat, during the civil war. Consequently, a number of largely older female respondents from this community felt that the Tajik community in Bamiyan City was as responsible for violations as the Taliban were.

Likewise, respondents in rural Kabul complained bitterly about the widespread looting of their properties in the communist and Taliban eras and widely reported that "people of the area did this." Occasionally, people in all research sites identified a member of their community as responsible for the murder or disappearance of a relative during the conflicts. These types of experiences meant that small groups of people, particularly women, identified followers to be as culpable as the leaders, which impacted on their identification of who should be punished (discussed further in Section 4.1).

However, this should be tempered by significant examples of inter-ethnic cooperation and collaboration throughout the different phases of the conflicts. This reflected that the politicisation of ethnic divides could not always defeat existing relations based on communal loyalty. In particular, the experience of Tajiks or Pashtuns helping their Hazara neighbours to escape mujahiddin foot soldiers in the midst of civil war chaos left a lasting impact on Hazara survivors in Afshar, Kabul City. Moreover, in Bamiyan City a couple of men discussed assisting their Tajik neighbours and protecting their crops and property from looters when Hizb-i-Wahdat defeated Shura-i-Nazar during the civil war. This also happened in reverse when the Hazara population fled the area during the Taliban period. These positive examples of how community relations at times superseded ethnic identity are worth preserving:

> There were Pashtun people living around our home...Those Pashtun people saved Hazara people. Every night about 20 to 30 people escaped from the area and all went to their own region. This way these Pashtun people saved hundreds of people.
>
> — Hussain, younger Hazara male, Kabul City

> There was a Tajik woman who called my mother her sister. She kindly fed our sheep and goats when we fled from our homes. When I had left I thought nothing would be left alive by the Taliban. When we returned home it was not destroyed or burnt.
>
> — Delawar, younger Hazara male, Bamiyan City

Respondents identified different groups of leaders as playing a role in Afghanistan's conflicts and their accompanying violations, namely: the communist government who allowed the invasion of the Soviet forces, leaders of mujahiddin factions who fought for power during the civil war and created an environment of insecurity, the Taliban, and the current government. While many respondents across all research sites largely allocated blame to *all* leaders, regardless of which regime they participated in, at times people allocated varying blame to certain groups. It is important to unpick these divisions among people since they reflect the challenge of dealing with wartime violators in an environment where certain individuals or groups are simultaneously perceived as heroes and perpetrators.

The communist government was widely identified to be responsible for triggering Afghanistan's conflicts and for committing some of the worst violations. The research site in Kabul City was the only community that rarely reflected on the specific culpability of the communists since, as previously discussed, Kabul City escaped the worst excesses of the communist regime and, in fact, benefitted from their government. However, they clearly grouped the communists together with their general identification of leaders as responsible for the conflicts.

The leaders of the mujahiddin factions were widely blamed for their failure to unite once the communist government collapsed, leading to the subsequent descent into a civil war in Afghanistan.

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113   It is worth noting again that the research team did not interview any Tajik households in Bamiyan City.

The majority of people in all provinces perceived that the factional war was launched in the interests of the mujahiddin and people widely blamed them for manipulating divisions between people and ultimately creating the conditions that allowed the Taliban to emerge and seize power. A middle-aged female Tajik respondent from Ghazni City captured people's disillusionment with these leaders when she said: "If they had all been in one party, the people of Afghanistan wouldn't have seen the past pains and problems. The mujahiddin committed unlawful actions and they destroyed Afghanistan."

The strongest identification of mujahiddin leaders as perpetrators came from respondents in Afshar. This is not surprising given the impact of the civil war on Kabul City and the visibility of many mujahiddin leaders in central government and parliament. People from Afshar freely named individuals they held most to account, outlined their role during the civil war and stated their current position in Afghanistan. Perceptions of the culpability of mujahiddin leaders and commanders were more complex in rural Kabul and in the research sites in Ghazni and Bamiyan. While the majority blamed the mujahiddin for the civil war, a minority of men and women, particularly older ones, were reluctant to criticise the mujahiddin or ultimately blamed foreign powers, particularly Pakistan and Iran, for their crimes.

One reason for this lack of criticism is the respect that a significant number of respondents—particularly those who had experienced some of the worst excesses of the communist regime or who had actively participated in the resistance—held for the mujahiddin for trying to protect people during the Soviet time. Typical responses were that the mujahiddin were the "saviours" of Afghanistan. This opinion was most strongly voiced among older members of the rural communities in Ghazni and Kabul who clearly felt that any criticism demonstrated disrespect for the "holy war" the mujahiddin had fought against the Soviet forces. A minority of respondents in Bamiyan agreed with this view and additionally highlighted the role certain mujahiddin had played in protecting their communities from the Taliban. For example, an older woman from the rural site argued that "If [current second vice president Karim] Khalili was not here then the Taliban would have come here easily and would have taken people from their houses and killed them all."

While identification of the mujahiddin as perpetrators largely stemmed from their participation in the civil war only, a small number of people in all research sites outlined crimes committed by this group during the communist and current periods. As previously discussed, some respondents, largely in the urban sites in Ghazni and Bamiyan, who had worked for the Soviet-backed government reported threats, intimidation and even murder in retaliation. Some mujahiddin leaders, in government or in other positions of authority, were perceived to continue to commit violations in the current period, to undertake illegal activities or to employ corruption. A Sayed man from Kabul City provided one example: "Even now, a man who works for Sayyaf is in this area and has taken people's land by force."

The Taliban was the third major group of perpetrators. Respondents in most research sites generally pointed to crimes committed by the Taliban in the past and their ongoing violations in the present, including Pashtuns from Ghazni City. The notable exception was the community in rural Ghazni, which appeared supportive of the Taliban and clearly had members in its ranks. The strongest identification of the Taliban as perpetrators came, unsurprisingly, from Bamiyan Province. Respondents in both research sites identified Mullah Omar and Osama Bin Laden as the worst perpetrators. People in Kabul Province and Ghazni City did not tend to single out specific Taliban and merely stated that all Taliban leaders were guilty.

Bamiyan respondents reported differences in how they were treated by Pakistani, Arab and Chechen Taliban compared to the Afghan Taliban. As an older Hazara man from the rural site explained, "Foreign Talibs were worse than Afghans. The foreigners immediately ordered our execution but Afghan Talibs had some mercy in their hearts." A number of respondents in both areas felt that local Taliban members were largely not involved in any murderous activities and even protected local communities, for example by warning them of the approach of Taliban forces.

Finally, the current government was identified to be responsible for failing to end the conflict. This was largely blamed on the fact that it was perceived as corrupt and had failed to implement rule of law,

which were identified as key reasons behind the growing Taliban insurgency. "Because the people hate the government they then join the Taliban," said one female Pashtun respondent. This perception was strongest among people in Ghazni Province where almost all respondents declared that the current government was illegitimate. People in both research sites blamed the government for their inability to maintain security and to defend civilians, either from the Taliban or from international forces. In these areas, people felt that the Afghan government was essentially a "puppet" of the international community. Compounding their perceptions of weakness was their knowledge that the government had acceded the running of a large portion of the country, particularly rural areas, to the Taliban. A middle-aged female Pashtun FGD participant from Ghazni City explained, "We don't want two different governments like now, where one of them rules the cities and the other rules the villages."

It should be noted that the individuals who were singled out as most responsible for prolonging the conflicts were largely those identified to have been leaders of the mujahiddin and who are now part of the government. Moreover, the Afghan government as an entity was not generally identified as a body of perpetrators. Instead, the government was blamed for failing to prevent or end conflict and specific individuals within it were singled out for certain crimes committed at various points.

International responsibility for conflict

There was a clear divide between the provinces over the weight of responsibility for Afghanistan's conflicts allocated to foreign powers. The majority of people in Ghazni primarily blamed foreign forces and external powers for Afghanistan's past and present conflicts. This was despite acknowledging the weakness of the current Afghan government and the links between government illegitimacy and the strengthening Taliban insurgency, and describing violations committed by different Afghan groups during the conflicts. In the minds of these respondents, foreign powers were directly responsible for not only Afghanistan's internal conflicts, but were the main "perpetrators" of crimes and were ultimately blamed for atrocities committed by Afghans. In contrast, while a minority of largely older respondents in Kabul and Bamiyan provinces singled out external forces for interfering in Afghanistan's internal affairs, the majority still identified Afghan leaders as the main perpetrators and as primarily culpable.

Those who reflected on the responsibility of foreign powers typically blamed the international community for every phase of the conflict, stemming from the communist coup in 1978 and consequent Soviet invasion in 1979. The underlying perception, particularly among older respondents, was that foreign powers did not want peace in Afghanistan and that they manipulated and divided the Afghan people using money as part of their own power politics and to achieve their strategic aims. Many people believed that Afghanistan's geographic location meant that conflict in the country formed part of a wider battle for power in the region between a number of countries, such as Pakistan, Iran, India and the United States. As an older woman from rural Ghazni explained, "Afghanistan has a strategic location as it is a bridge between the North and South of Asia so all countries, whether they are in the East or West, want to control Afghanistan. They therefore continue to fight for their own benefits."

This understanding can be appreciated to some degree. Older respondents were more sensitive to external involvement in Afghanistan's conflicts, having lived through the cold war era when a proxy war was fought between the Soviet Union, propping up and controlling the Afghan government, and the United States, funding and supporting the mujahiddin resistance. Moreover, a number of older people in all areas blamed the invasion of Soviet forces for triggering the civil conflict and for "causing many problems in the country which the international community cannot solve."[114] During the civil war period, it is also true that foreign powers funded the different mujahiddin factions; for example, Iran funded Harakat and Hizb-i-Wahdat while Pakistan was the primary financer of Hizb-i-Islami. Many of these civil war alliances remain today and continue to divide the various factions and the people of Afghanistan.

Greater numbers of respondents in all areas, particularly men, blamed international troops for escalating and prolonging the current conflict. In some cases, people—largely from Ghazni and rural

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114   As one older man from rural Ghazni put it.

Kabul—argued that international military forces were ultimately responsible for the current violence since their mere presence incited Taliban attacks. One younger male respondent from rural Ghazni also argued that the presence of "infidels" was the reason Pakistan and Iran wanted to "destroy our country. When the foreigners leave our country, Pakistan and Iran will not interfere." Exacerbating this perception in Ghazni Province was the widespread resentment of tactics the international forces employed there. As part of the counter-insurgency strategy of summer 2009, new directives appeared to result in some reduction in civilian casualties caused by airstrikes in 2009 and 2010. However, significant civilian deaths from air attacks continued while the use of controversial night raids rose with an increase in troops,[115] and the new policies may have been too little too late. Despite UN statistics reporting that insurgents were responsible for 76 percent of civilian casualties in the first half of 2010, compared to 12 percent by international forces,[116] the AREU research in Ghazni supports the conclusions formed by the Open Society Foundation[117] that many Afghans hold international forces more to blame for civilian casualties.

Meanwhile, the failure by international troops to weaken the current insurgency—despite the perceived advantages in military technology and the ease with which they initially dispatched the Taliban in 2001—has encouraged widespread conspiracy theories and prompted the belief among a vocal minority in all provinces that the international community, in particular the United States, does not actually want to defeat the Taliban. Previous research found that many Afghans believe that they are pawns in yet another "great game"[118] and this was reflected in AREU's findings. Instead, some people, particularly from the older generation, expressed the belief that foreign countries waging war in Afghanistan were fighting not only for geopolitical reasons but were gaining financially through corruption and exploitation of the country's wealth—in particular its mines. Fewer, but a still significant number, particularly of men in Bamiyan and Ghazni, perceived collusion between the international forces, particularly American troops, and the Taliban. For example, a younger male respondent from rural Ghazni stated that American forces were supplying weapons and ammunition, including suicide vests, to the Taliban. This group therefore believed that international forces were funding and providing materials to the government on the one hand and the Taliban on the other because "If the US implements the rule of law they then won't have any role here."[119] This group frequently voiced the opinion that the Unites States must be behind each explosion because Muslim people normally constituted the casualties, not American soldiers. While the veracity of these claims can be challenged, it is the perception of these links that could prove most dangerous to government and international legitimacy.

It should be re-emphasised that these views were not shared by all and even those who expressed concern about the role of foreign forces in Afghanistan and those who blamed foreign powers for inciting divisions still held Afghan leaders as primarily culpable. Even in Ghazni, at least a third of women of all ages interviewed in the city spoke positively about the international community and emphasised that they did want to bring reconstruction, development and peace to Afghanistan and were dying in the process. Regardless, this negative narrative is significant and clearly has implications for the current allied military effort.

3.3 Lingering effects of war: Mental, emotional and psychological suffering

The previous sections have outlined some of the heavy costs war has inflicted on all the research communities and it was clear that the vast majority of people were still grappling emotionally with

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115   For more information on civilian casualties, see Human Rights Watch, "Afghanistan: Investigate Any Undisclosed Civilian Casualties," 26 July 2010, www.hrw.org/news/2010/07/26/afghanistan-investigate-any-newly-disclosed-civilian-casualty-incidents (accessed 5 January 2012).

116   United Nations, "Afghan civilian deaths rise, insurgents responsible for most casualties," 14 July 2011, www.un.org/apps/news/story.asp?NewsID=39036 (accessed 22 September 2011).

117   See Erica Gaston and Jonathan Horowitz, "The Trust Deficit: The Impact of Local Perceptions on Policy in Afghanistan" (Kabul: Open Society Foundation, 2010); Kaldor and Theros, "Building Afghan Peace from the Ground Up."

118   Theros and Kaldor, "Building Afghan Peace from the Ground Up."

119   As said by a middle middle-aged woman from Bamiyan City.

the legacies of the conflicts. This was particularly obvious among respondents who were struggling to deal with the death or disappearance of a loved one or were haunted by shocking scenes of violence. Psychological suffering was perhaps more evident in older people who had experienced several phases of conflict and was more widely discussed by female respondents. Other factors identified as prolonging or triggering emotional and psychological pain were the ongoing violence and the visibility or presence of perpetrators. These experiences continued to affect their emotional and mental health and their ability to cope with everyday life. Even if people generally stated that life had improved (excluding rural Ghazni), a common sentiment was that an underlying suffering or fear was always present, as an older man in rural Bamiyan eloquently explained:

> I can say that the after-effects of the conflicts exist in our body as a disease does and some of these effects still remain in our hearts. When a violation affects the heart, a person is dead just like a withered flower. Since the time Karzai has become king, everything has gone well, but this withering has not left our hearts.

People in all research sites discussed suffering from a range of psychological or emotional problems. Common ailments that were often listed were feelings of nervousness, fear and panic. While no psychiatrist was involved in the research, these appear to be common anxiety symptoms or post-traumatic stress syndrome.[120] In a few serious cases people reported that their relatives had been driven to what they classified as "madness," largely as a result of a severe wartime experience. For example, in one case an older man from the rural area in Ghazni described how his brother was "mentally sick" following torture—involving beating and electric shocks—that the Soviets had inflicted on him.

A significant proportion of respondents, particularly women, drew links between mental suffering and physical illness, such as high blood pressure, heart problems, headaches and even cancer. This awareness of the significant impact conflicts have on their emotional and physical well-being is significant. As the World Health Organisation (WHO) argues, "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."[121] Well-being in the Afghan context can be defined as an individual's ability to cope with the normal stresses of life, and to work productively and fruitfully while making a contribution to her or his community. A number of people argued that they struggled to cope with their daily lives as a result of their wartime experiences.

Many people in all three provinces had experienced the disappearance of a relative or friend during each conflict. Uncertainty over the fate of a loved one was found to be an obstacle in coming to terms with the past. In contrast to the stark finality of death, grieving processes are often delayed in cases of disappearance because without bodies and funerals relatives are often unable to accept the reality of their loss. People also discussed the solace that grave sites provided, which were absent when people had disappeared. Respondents who had experienced this loss frequently appeared reluctant to accept that their relatives were likely dead and were living in limbo waiting for their return.

Cases of disappearance leave many unanswered questions in the minds of loved ones that need to be resolved to assist healing processes. Even respondents who were prepared to accept that their relatives had died wanted answers to difficult questions, such as how they died, did they suffer, and who was responsible. A younger female respondent from rural Kabul captured the pain of this group:

> The families of people who have disappeared are always sad. They are still waiting for their relatives to return. They are wondering what happened to them because they don't know and they think, "If they are dead, how did they die?" My mother always says, "I don't know how they killed my brother—was he killed with a knife, was he shot or maybe something worse..." It has a bad effect on the family. We have bad memories about his disappearance and we cannot forget it.

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120   While these findings were discussed with a psycho-social counselor, no medical professional was involved in the diagnosis and instead the text concentrates on what people themselves defined.

121   World Health Organisation, "Mental Health: A State of Well-being," October 2009, www.who.int/features/factfiles/mental_health/en/ (accessed 25 July 2011).

According to the vast majority of those affected by disappearance, unanswered fears and concerns can be worse than brutal truths.

Ongoing violence was shown to perpetuate and compound people's feelings of insecurity in all three provinces. Although fear was often triggered by a recent attack, the impact was exacerbated by people's past experiences of violence. This was true even in Bamiyan, which is generally considered the safest province in Afghanistan, because as one younger man succinctly put it: "If there is war, the heart's complexes are not reduced." In Kabul and Bamiyan, current violence served as a reminder both of ongoing insecurity and of past conflicts and provoked fears that Afghanistan, and in particular their areas, would once again be consumed by fighting. Security was strongly linked in all communities with people's ability to deal with the past. While in Ghazni the present dangers affected people's ability to move forward, in Bamiyan and Kabul reports of violence in other parts of the country and occasionally in Kabul City triggered memories of past atrocities and served as a reminder of the possibility of future violence. It should be noted that people in Ghazni Province, in particular in the rural site, less frequently linked their experience during past conflicts with their ability to cope currently, given that they are feeling genuine danger in the current period, which was of greater concern. In fact, as one older respondent pointed out, "People have forgotten abuses that happened in the past because the situation now is worse than the past."

Moreover, in some cases people's ongoing suffering was compounded by the visibility of alleged perpetrators. This was particularly true of people in the Kabul City site, who often considered how their ability to cope and deal with the past was hindered by the public presence of alleged perpetrators of the Afshar attack in public positions. The victims of Afshar are forced to see those they believe guilty of human rights violations in government, in the community, or on the television. Respondents described how they experienced fresh pain whenever they saw those they held responsible for their losses. An elderly Qizilbash respondent, whose sister's entire family was killed in rocket attacks during the civil war, described how seeing certain individuals speak in public made him feel like "I am being shot by bullets."

The majority of people interviewed said that the passing of time had little impact on their ability to forget or deal with the past. In fact, the notion of the impact of time on healing past violations was perhaps less relevant for people interviewed given current security concerns. People generally considered that their ability to cope hinged on an improvement in their lives as well as better security conditions in the country as a whole. Instead, people widely reflected on the positive role that religion played in their ability to cope with their experiences, as reflected by an older Hazara mullah from Kabul City:

> All the people living in this area are Muslim. So, I think that maybe their religion is the reason they cope with their problems. According to Islam if you have patience and tolerance, you will be rewarded by God.

Despite this, the failure to address past and present experiences of Afghanistan's war victims has clearly affected people's "well-being." Questions about how best to address their suffering in order to heal pain, address complexes and encourage "closure" elicited a number of different responses. These are presented in the next section.

4. Different Models to Address Afghanistan's Past and Present Conflicts

To date, there have been no concerted efforts to deal with this complex legacy of wartime atrocities. At best, this has meant that wartime events have been largely ignored in Afghanistan. At worst, revisionist historical interpretations promoted by the perpetrators of crimes have dominated at the political level.[122] In this environment, the experiences and suffering of ordinary people, who make up the bulk of Afghanistan's victims, have been largely ignored. This chapter addresses how victims want their suffering to be addressed. As outlined in the theoretical analysis, justice in the aftermath of conflict can mean a variety of things. Addressing criminal responsibility is one interpretation, but there are a number of other processes that can provide resolve for victims.

The table below outlines the different mechanisms people discussed during the course of this research to achieve justice, assist healing processes and essentially come to terms with the legacy of the violations that they have faced and are continuing to suffer from.[123] As previously outlined, each community and the respondents within them have experienced conflict in different ways. These histories result in a wide variety of perceptions and opinions about how to deal with these experiences and the overall research has demonstrated that there is no one way to deal with either the legacies of wartime violations or those held responsible for them. While the table is divided into a variety of options, for a clear reading the analysis is grouped into three models on which the structure of this chapter is based: the retributive approach, restorative and reparative options, and the decision to forgive or merely forget the past. As the table reflects, this does not mean that these were perceived as mutually exclusive models. Instead, people often desired a range of processes to address the past and move forward.

Since the project deals with perceptions and opinions, it has produced fluctuating data rather than fixed information. Rather than discounting these fluctuating opinions as unreliable testimony, the fact that such changes occur is significant in itself. On one level, it reflects the fact that people have had little previous opportunity to reflect on these issues, contributing toward uncertainty about how to answer questions. Variable responses are thus sometimes the result of a respondent developing their own opinions throughout the course of the discussions. On the other hand, it is sometimes possible to identify why an individual may have been prompted to change his or her mind. In some cases, respondents advocated varying approaches for different crimes or certain perpetrators. In others, consideration of the current environment in Afghanistan could cause people to change their mind as they grapple with the challenges they face. One of the main objectives of this project has been to explore people's demands for justice and locate these within the specific Afghan context. The project aimed not only to present idealistic desires but encouraged people to reflect on the realities of the current environment in Afghanistan.

4.1 Retributive model

The demand for retribution was strong across all research sites. People widely argued that perpetrators of gross human rights violations should face punishment. While respondents suggested a number of different punitive measures, this paper concentrates on the mechanisms that received the most attention and only includes those in accordance with domestic and international law: criminal trials, including state-led prosecutions (administering capital punishment or imprisonment)[124] and

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122   Worden and Steele, "Telling the Story: Lessons for Afghanistan from the Cambodian Experience."

123   It should be noted that these suggestions about ways forward include options presented by AREU to initiate discussion as well as those put forward by respondents. The research methods allowed for respondents to themselves frame the discussion—typically, people were asked how they wanted a certain crime or experience they had faced to be dealt with followed by further probing by the research team.

124   For the sake of space, perceptions on capital punishment versus imprisonment are not included in this paper. Instead, see the Legacies of Conflict case studies for more information, at www.areu.org.af.

Table 3: Mechanisms identified to assist healing processes and deal with past crimes and perpetrators, by province and degree of support

Way to move forward	Kabul Province	Bamiyan Province	Ghazni Province
(Punitive approach) **Domestic criminal prosecutions**	**Some support** **Yes:** Afshar most in support of accountability; women of all ages in Shakardara more in support	**Widespread support** **Yes:** demand in both communities	**Widespread support** **Yes:** Both communities largely supported
	No: Shakardara more divided; men least in favour		
(Punitive approach) **International criminal prosecutions**	**Some support** **Yes:** Widespread support in Afshar; some support from women of all ages in Shakardara	**Limited support** **Yes:** Some support largely among men and women of all ages attending FGDs in both communities	**Limited support** **Yes:** Some support among men and women of all ages attending FGDs in both communities
	No: Men and some women of all ages in Shakardara largely suspicious of international justice	**No:** Majority preferred domestic mechanisms and suspicious of international justice	**No:** Majority preferred domestic mechanisms and suspicious of international justice
(Punitive approach) **Perpetrators contribute toward compensation**	**Some support** **Yes:** Support from both communities; in particular Shakardara see as an alternative to criminal prosecutions	**Some support** **Yes:** Men in in both areas most supportive	**Some support** **Yes:** Support from both communities; older women in FGDs in rural Ghazni particularly
	No: Afshar less likely to see as alternative to criminal prosecutions; particularly men of all ages	**No:** No respondent saw this as an alternative to criminal prosecutions, but as an addition to	**No:** Not as an alternative to other measures but in addition to
(Restorative approach) **Investigations**	**Strong support** **Yes:** Strong demand among people in Afshar and Shakardara, particularly whose relatives had disappeared and particularly older women in both communities	**Widespread support** **Yes:** majority of respondents in both communities in favour, particularly families of disappeared; strongest among older female respondents, especially in Sayed Abad	**Some support, but divided** **Yes:** Women in Ghazni City; men in Qarabagh district; many men in Ghazni City supported, but more ambiguous
	No: Small number of men, particularly younger generation, in both communities said it was dangerous to stir up memories of past		**No:** Younger men in Ghazni City rejected; women in Qarabagh more uncertain

(Restorative approach) Recording and documentation	**Some support, but divided** **Yes:** Afshar more supportive; Older men and women in Shakardara supportive	**Some support, but divided** **Yes:** Both communities equally split between for and against; Sayed Abad: women of all ages and middle-aged and older men in favour; Dara-i Ali: younger respondents	**Some support, but divided** **Yes:** Majority of women in Ghazni City; nearly half the men of all ages in Ghazni City; over half the men of all ages in Qarabagh District
	No: Younger male generation in Shakardara more ambiguous and expressed security concerns	**No:** Younger men in Sayed Abad; older respondents in Dara-i-Ali more concerned	**No:** Women in Qarabagh reflected little on this or raised concerns; male and female respondents of all ages in FGDs raised concerns; futile
(Reparative approach) Compensation	**Widespread support** **Yes:** Most widely supported approach in both communities	**Widespread support** Strongly supported in both communities	**Strong support** **Yes:** Strongly supported in both communities; women most in favour
	No: A couple of people rejected		**No:** A few men in both research sites of all ages sometimes more negative
(Reparative approach) Memorialisation	**Some support** **Yes:** Afshar supportive as a community, but still divided; younger women in Shakardara supportive	**Weak support** **Yes:** Older men in Dara-i-Ali	**Widespread support** **Yes:** Support in both communities, particularly Ghazni City; particularly women of all ages
	No: Significant number of respondents in Afshar and men in Shakardara opposed; older generation in both areas less in favour	**No:** No strong demand for memorialisation in either community	**No:** Only one middle-aged Pashtun man from Ghazni City objected
(Forgive and forget approach) Forgiveness	**Weak support** **Yes:** A few men of all ages in Shakardara; a couple of older men in Afshar	**Largely rejected** **Yes:** Only a couple of older men in each community supported	**Widely rejected** **Yes:** A couple of male and female Pashtuns in Ghazni City
	No: Women in both areas, particularly older female respondents in Afshar rejected	**No:** Most people, strongly rejected by women from Dara-i-Ali	**No:** Vast majority

	Strong support	Widespread support	Some support
(Forgive and Forget approach) Forget; political decsion to give up right to seek redress	**Yes:** Far greater numbers in both comunities in favour of forgetting; Afshar younger men and women; Shakardara female respondents changed mind frequently	**Yes:** Many respondents in both sites changed their mind	**Yes:** Many Ghazni City respondents, particularly male respondents of all ages; small numbers of men and women of all ages in Qarabagh
	No: Older people in Afshar continued to advocate retribution	**No:** Older and middle-aged women most reluctant to forget	**No:** Many people still desired punishment; majority of rural site
	Some support	Limited support	Some support
(Forgive and Forget approach) Apologies and forgiveness/forgetting	**Yes:** Significant numbers in both communities argued apologies and regret assisted forgiveness, but particularly in Shakardara	**Yes:** Small number of largely older male respondents in both communities	**Yes:** Nearly half the respondents in Ghazni City mostly agreed; several women of all ages in Qarabagh
	No: Afshar community less likely to believe perpetrators would apologise; Hazara female respondents wouldn't forgive anyway	**No:** More people questioned value of process, particularly women of all ages and younger men from Sayed Abad; more people perceived as insufficient	**No:** Overall, would still need to be pursued in conjunction with other processes; rural site of Qarabagh largely rejected

international trials; removing individuals from power; and punishing perpetrators through financial or material means. It is possible to broadly compare the provinces, although there was of course variation and fluctuation within communities. Respondents in Bamiyan and Ghazni widely rejected forgiving those guilty of wartime violations and came out strongly in favour of retributive actions. In Kabul Province, the urban community was most in favour of holding people to account. The rural site was more divided over how to deal with the perpetrators of wartime violations, especially between the men and women interviewed. Male respondents were the least in favour while a majority of women supported punishment.

Arguments for retributive justice

Justice, Islam and customary practice

Islam formed the theoretical basis for many of the arguments in support of accountability for wartime crimes. It should also be noted that the interpretations presented here are not the author's but those outlined by people in the communities. In Afghanistan, where large sections of the population remain illiterate, understandings of Islam are often built through oral narratives. Islamic law was widely perceived to require accountability for serious crimes and outline specific punishments for crimes such as murder, rape and theft. Serious violations of human rights consequently had to be addressed under Islamic law.

However, people often drew clear distinctions between crimes that they felt they could forgive, or at least ignore, and those that required retributive action. Given the unique situation post-conflict environments present, most (if not all) people interviewed were willing to give up their rights to see

the punishment of crimes involving material or financial losses, such as looting. As a younger male respondent from urban Bamiyan said: "The ones whose family members have been martyred, they cannot forget this. They may forget if those who killed them are prosecuted, but other families who have faced fewer injustices and violations may easily be able to forget these crimes."

While it was widely felt that while God would punish perpetrators on doomsday, both God and the Prophet Mohammad also allowed for punishment of serious crimes in this world, if possible. Punishment was often conceived as a process of "taking back" or "upholding" victims' rights to stem the desire for revenge. If criminals were not punished people frequently stated that victims' rights would be "trampled on" and God would be unsatisfied. This was particularly important in cases of murder. In Bamiyan Province, people widely described this as ensuring that victims', martyrs' and innocent people's *qimat khoon* ("blood price") was met.[125]

Among Pashtun respondents, this belief in an Islamic right to punishment was strengthened by the behavioural code of *Pashtunwali*, and the majority interviewed in the rural community in Ghazni acknowledged the right to seek personal justice for wrongs committed against them. In fact, this right and expectation of retaliation lies at the heart of *Pashtunwali* as a non-state legal system: kill one of our people and we will kill one of yours; hit me and I will hit you back.[126] Homicide generates the strongest demand for personal blood revenge. There is the obvious desire to punish the person who committed the act by the victim's family, but it also involves questions of honour and personal responsibility.[127] Typically, people described this type of revenge-taking as "cleaning of blood by blood." Not seeking blood retaliation personally can be deemed a sign of moral weakness, even cowardice, of not just of the individual who was wronged but their whole kin group. As one older woman from rural Ghazni explained, "This is a custom: when a person does not take his revenge other people will jeer at him." At least a quarter of both male and female respondents in this community said they would take personal revenge if the opportunity presented itself.

In contrast, respondents from other ethnic groups generally warned of the danger of revenge triggering cycles of blood feuds. This group instead argued that "blood cannot be washed with blood" and also pointed to the security implications of personal revenge. Instead, they felt that the government should "take revenge" for poor and oppressed people and punish the criminals. Respondents in rural Ghazni also generally accepted that the government could implement justice, which could stem their desire for revenge.

Justice for victims and their families

It was widely believed that the scale of crimes and the number of victims in Afghanistan were too great to go unpunished and that allowing the perpetrators of gross crimes to walk free without any form of reckoning was morally repugnant. Many people believed that punitive measure could serve the combined goal of punishing the guilty and providing vindication for the victims. People also frequently linked punishment with their ability to heal from their wartime experiences and essentially find "closure." As a younger female Tajik respondent in Ghazni City explained, "Punishment causes us to become calm and our heart will find patience." In rural Ghazni, only a few male and female respondents directly linked punishment and healing but people generally said that they would be "satisfied" if punitive measures were implemented.

In a large number of cases, men and women in all areas desired retribution that would cause the perpetrators physical or emotional pain, because healing or satisfaction was believed to be found

125   AREU work on community-based dispute resolution points to the frequency of demands for blood price. See Case 7 in the appendix of Deborah Smith with Shelly Manalan, "Community-Based Dispute Resolution Processes in Bamiyan Province" (Kabul: AREU, 2009). That report described blood price as the amount of compensation that should be paid if someone was killed, but this research found that other types of compensation were deemed suitable, including punishment.

126   Thomas Barfield, "Informal Dispute Resolution and the Formal Legal System in Contemporary Northern Afghanistan" (Washington, DC: USIP, 2006). While the community may recognise that acts such as theft, homicide or rape are wrong, it does not take collective responsibility for judging or punishing people who commit such acts. This is a right reserved to the victims. However, the *Pashtunwali*, local tradition and public opinion do play a large role in structuring how, on whom, and where one may take revenge legitimately. It also lays out mechanisms for resolving such disputes through mediation or arbitration.

127   Barfield, "Informal Dispute Resolution and the Formal Legal System."

in forcing perpetrators to "know how it feels when people from their family are killed. They should know our feelings of pain and sadness," as said an older Qizilbash woman from Kabul City.

The vast majority of people who supported the retributive model identified the formal court system as the most appropriate forum to prove guilt and to deliver judgment. Court processes were widely perceived as fulfilling restorative and healing goals and contributing toward truth-seeking processes through two technologies of truth, the "testimonial" and "confessional."[128] The power of testimonial truth turns on the spectacle of victims' suffering, communicating not just the forensic details of a violation but the personal pain resulting from the act. There was clearly a demand among many people to inform the relevant authorities of what they had suffered and an obvious willingness to speak about their pain. Of greater significance, however, was that perpetrators confess their crimes. On a practical level, given the complex and lengthy nature of Afghanistan's conflicts, some people felt that confessions might provide information about past events. In a more emotional sense, there was also a demand to try to understand *why* people had committed crimes and force demonstrations of regret. An older male Pashtun respondent from rural Ghazni captured some of these general ideas:

> They must tell people about what type and how many crimes they committed and why they had the right to kill innocent people. They must explain why they killed innocent people and why they brought war to our country.

In many cases, people in all provinces emphasised that the healing impact would be greater if they were able to actually witness people's punishment and confessions. Consequently, many people demanded that trials be held publically. Removing perceived violators from visible positions of authority, whether in government or at the community-level, would also reportedly assist healing. This was strongly emphasised in Ghazni and Kabul. Removing people from power was less of a concern for people in Bamiyan because the issue has largely been solved, since the key perpetrators, the Taliban, are no longer there or visible.

Placing perpetrators at the centre of compensation processes (which are discussed in Section 4.2) was another punitive mechanism identified by respondents that could provide a form of justice. Significant numbers of people, particularly women and men in Bamiyan, demanded that perpetrators return wartime spoils and their wealth be redistributed or invested in development (this measure was promoted particularly by men in Bamiyan). This was based on the belief that perpetrators had gained in wealth, position or power through their involvement in conflict and continued to gain through engaging in corruption, including diverting and misusing massive amounts of international aid, but had failed to care for the ordinary people who had supported them. Forcing perpetrators to contribute to compensation processes was perceived as a form of justice for victims because it served the three-fold purpose of repairing the damage of the war, correcting some of the wrongs that had been committed against people, and was a form of punishment. However, this approach received less attention from respondents than criminal prosecutions and removing people from positions of power.

Upholding the rule of law and promoting government legitimacy

Security concerns were paramount in the minds of all respondents. Many people drew positive links between justice, security and upholding the rule of law. However, particularly in Bamiyan and Kabul, many were also torn between this and the fear that punishing perpetrators could exacerbate insecurity in the country. These opinions were largely not reconciled and it should be recognised that views on the security implications of pursuing criminal punishment for wartime violations fluctuated.

Most people argued that a retributive approach should be adopted for the leaders of the conflict only and not for their followers or ordinary people. Perhaps the most helpful categorisation was

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128   Claire Moon, *Narrating Political Reconciliation: South Africa's Truth and Reconciliation Commission* (Maryland: Lexington Books, 2008). Moon argues that these truth technologies are usually associated with National Reconciliation that is based on a therapeutic moral order and is typically based on amnesty and truth commission mechanisms rather than retributive processes. However, many respondents perceived that criminal prosecutions were also equipped to deal with these goals. It should be noted that Rigby highlights that on a specific procedural level trials have certain limitations since a courtroom's focus lies on prosecution or defence and all evidence and facts are channelled for this purpose These courtroom truths may therefore hold little relevance for the victims themselves. See Rigby, *Justice and Reconciliation*.

described by a Hazara *wakil* (representative in a legal proceeding or other negotiation) from Kabul City, who explained that violators should be divided into three categories: leaders, "commanders"[129] and ordinary militants. In his view, the first category should be prosecuted because the leaders were perceived as responsible for organising and triggering the conflicts. In the second category, certain commanders should also be prosecuted because they implemented the views of leaders and gave orders to ordinary people. The ordinary militants should, however, be absolved of guilt because they were merely following orders. Consequently, the emphasis should be on punishing those who were *most* responsible for wartime crimes, thereby granting absolution to a far greater number of followers, collaborators and bystanders.

It was widely believed that the lack of basic education, illiteracy and poor economic conditions made many Afghans simple targets for the propaganda of the leaders of the conflicts—whether the unifying discourse of religious *jihad* in the past and present or the divisive rhetoric of ethnic politics. Even though a significant proportion of people in Bamiyan City and rural Kabul frequently identified perpetrators from their areas as responsible for a number of violations against them, they did not tend to perceive them as requiring formal punishment. Not only were some of their crimes classified as less serious—looting, informing, burning houses—but the fact that they tended to be followers or collaborators rather than leaders meant that most respondents did not perceive them as meriting punitive measures. Moreover, in Ghazni, people widely emphasised that "small" or "little" Taliban joined the movement in the past and present in need of money or because of fear and ignorance and were consequently largely absolved.

Additionally, there was less demand for the state to hold "small" perpetrators to account given Afghanistan's multi-dimensional justice system and overlapping power structures. Consequently, people in each research site reflected on the role of *jirgas* or *shuras* in dealing with less serious crimes. In less serious cases, some evidence was collected in Bamiyan Province and rural Kabul that the communities had already dealt with some individuals who had committed wartime violations through marginalisation or, in some cases, ostracism. Customary law in Afghanistan allows for this type of community punishment, which is a serious form of "social death."[130]

It was largely recognised that punishing followers would have little impact on the development of the rule of law in the country. Instead, it was often felt that administering justice against those most responsible for wartime violations would serve as a lesson to criminals, their supporters and to ordinary people that this type of behaviour would not go unpunished, which would make them less likely to repeat their crimes. This was perceived as essential in building respect for the rule of law. An older female respondent in rural Bamiyan explained: "When the top leaders see their punishment then it will ease the pain of the people. It will also be a good lesson for smaller commanders to learn not to commit crimes against humanity."

Respondents widely argued that leaders, whether in government or outside, also needed to be punished because they continued to abuse their positions in the present. They identified men allegedly guilty of past crimes who are currently involved in the opium and arms trade, land grabbing and kidnapping. On a practical level, holding these people to account would ensure they were removed from society and would be prevented from committing further abuses.

Replacing those in positions of authority with credible, honest and educated people was also seen as beneficial for the nation. Many people interviewed, particularly in Ghazni Province, felt that if the composition of the government did not change and criminals were not "discharged from their posts," then "war and other problems will never end in the country."[131] Furthermore, people in Bamiyan and Hazara respondents in Ghazni singled out the government's failure to prosecute the Taliban in the past and present as enabling them to regroup and continue to wage war and commit abuses. Men

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129   "Commander" is a general term for a military leader in Afghanistan, and commanders can be perceived in a positive or negative manner, depending on the circumstances.

130   Barfield et al, "State and Non State Dispute Resolution in Afghanistan."

131   As a younger Hazara man from Ghazni City said.

in particular pointed to the failure of initiatives such as the PTS, which they said had enabled the Taliban to gain financially and, subsequently, security had deteriorated.

For the overall majority of people interviewed the government possessed the appropriate jurisdiction to administer justice for crimes of this nature. In the case of serious crimes, it was widely agreed that state authority is essential with punishment dealt out in agreement with Islamic or Sharia law.[132] Meanwhile, state courts' evidence-based judgments and documentation were widely felt to be essential in prosecuting crimes of this nature. In particular, documentation processes in the formal system were seen to be more durable, more readily enforced and more likely to prevent future conflict.[133] Equally significant, it was widely felt that a "good" or "honest" government should protect victims by punishing perpetrators and, more generally, upholding the rule of law. Government legitimacy was consequently often predicated on its ability to implement formal criminal proceedings against alleged criminals.

This belief was despite widespread acknowledgement of the weakness and limitations of the state justice system and the current lack of government legitimacy. However, as Beyer argues, the role of the state is more determined by the perspectives of its citizens on what it should fulfil rather than what it does in reality.[134] Moreover, conversations about government jurisdiction often appeared heavily informed by respondents' experiences of extended displacement abroad within different models of state functionality. Increasing interaction with the outside world has increased awareness and expectation of the responsibility of the government in Afghanistan.[135] Thus, collectively, urban returnees and rural migrants brought with them a host of new demands and expectations regarding the state and their places within it.[136]

Another argument frequently employed in favour of retributive measures was that formal punishment was needed to mitigate victims' desires to seek vengeance, which could trigger cycles of violence. There was consequently a widespread desire that a formal judicial process be led by the government, which would mitigate the desire of people to take personal revenge. The argument that revenge presents a genuine threat to Afghanistan's general security can be challenged since victim/perpetrator power dynamics in Afghanistan largely prevent wide-scale vengeance. However, this concern is legitimised by the acknowledgement of a considerable proportion of respondents that they would take revenge against their violators if they had the chance and power. Further credence is found in reports that revenge killings have occurred in several research sites in retaliation for people's role during the conflicts. For example, respondents in rural Kabul widely reported that members of the community had murdered a man from the area in revenge for his collaboration with the Taliban.

International justice

Given the general awareness of the unwillingness or inability of the Afghan government and state institutions to punish criminals through any of the mechanisms outlined, a small proportion of respondents in all research sites envisaged a role for the international community. International jurisdiction was not perceived to supersede that of the government but in the absence of government action it could fill this vacuum. While the vast majority of people interviewed wanted perpetrators punished according to Afghan and Islamic law, some respondents had grown tired of waiting for this to happen.

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132   AREU's research on community-based dispute resolution found that Afghanistan's justice system is based on a multi-layered approach. People tend to delineate dispute type and the corresponding appropriate resolution fora by describing them as "big" or "small."

133   This perception was also observed in AREU's research on community-based dispute resolution, which found that respondents derive confidence from the belief that when their dispute outcomes and legal entitlements are registered with the government they are unalterable, no matter what might occur politically. Rebecca Gang, "Community-Based Dispute Resolution Processes in Kabul Province" (Kabul: AREU, 2011).

134   J. Beyer, *Imagining the State in Rural Kyrgyzstan: How Perceptions of the State Create Customary Law in the Kyrgyz Aksakal Courts* (Halle/Saale, Germany: Max Planke Institute for Social Anthropology, 2007).

135   Kaldor and Theros, "Building Afghan Peace from the Ground Up."

136   This observation is discussed in more detail in Gang, "Community-Based Dispute Resolution Processes in Kabul Province."

The strongest support for an international punitive approach was recorded among respondents in Afshar in Kabul City. Its location within Kabul City and its civil-war experience has prompted the involvement of national and international NGOs interested in human rights issues. The community is therefore highly mobilised and respondents possessed greater knowledge about transitional justice and international law than in the other research sites. Consequently, people in Afshar specifically identified the ICC as responsible for administering justice though they were unaware of the temporal jurisdiction of this court. In contrast, the most significant support for an international approach in all other research sites came from people attending FGDs. This stems perhaps from the research methods employed, given that the FGD guide outlined international judicial mechanisms in other countries. This could have prompted people with little or no knowledge of international justice or the ICC to reflect more positively on the potential role of the international community in this area.

Some of those in support argued that international courts were, firstly, better placed to administer judgements since international judicial processes were viewed as less subject to bribery or corruption. Consequently, one suggestion made largely by men in Ghazni City was that international tribunals should prosecute "big people" and "major leaders" while Afghan courts put on trial smaller criminals. This was largely in recognition of leaders' ability to bribe their way out of punishment in the domestic judicial system. The international community was also perceived to possess the necessary power to capture and prosecute Afghanistan's major wartime criminals. Some people, particularly in Afshar and women in rural Bamiyan, felt that international tribunals held abroad could better serve security interests in Afghanistan since, as one older Hazara woman from Bamiyan remarked, "We can't punish criminals because it will create another cycle of hatred...It is better that the international tribunals do this work."

However, even those respondents who supported international action largely preferred that international actors first should put pressure on the government to live up to its responsibility to punish people guilty of gross crimes. Then, people considered that the international community should provide a supportive role to the government in implementing criminal justice processes by maintaining security or through technical expertise. This was identified to be in accordance with the humanitarian mandate and agenda of different organisations and actors in Afghanistan and the role of the international community in other countries.

Problems with the retributive approach

Despite the strong arguments and different approaches outlined above, the research revealed some major challenges in implementing a punitive model in Afghanistan:

1. Lack of legitimate justice systems (domestic and international) to address questions of criminal responsibility

2. Lack of political will to address issues of accountability in relation to wartime violations

3. Absence of a secure environment in which to implement any form of justice against wartime violators

4. Challenges Afghanistan's wars pose to identifying and proving guilt

These obstacles were generally discussed and reflected on by the majority of people interviewed. Where relevant, distinctions between different groups of respondents are drawn out in the analysis. While the first challenge is relevant to formal court proceedings only, the following three were identified to pose difficulties to all punitive measures. Moreover, the lack of political will and the absence of a secure environment were also widely perceived to present obstacles to any model designed to address past and present crimes (as is outlined in the ensuing sections of this chapter).

Weakness or lack of legitimacy of justice systems

Respondents generally recognised the limitations of the state justice system. People often remarked that while judicial structures existed in theory, in practice neither Sharia law nor the laws of the state

were properly enforced and both were open to corruption and bribery. Consequently, state justice structures barely functioned, were hard to access and were unable to handle even "small" or "easy" cases. As such, it was widely discredited across all research sites in the eyes of men and women. As an older Pashtun man from Ghazni City stated, "I think the Ministry of Justice exists in name only and they can't implement their laws and there is no justice in the present regime."

Partly due to the ineffectiveness and inability to access the formal legal system, nearly half the respondents interviewed in Ghazni Province stated that the Taliban were responsible for solving disputes in many areas of their province. In rural Ghazni it was widely acknowledged that they largely rely on the Taliban to solve their problems. It should also be noted that this was also out of a lack of choice and a small number of (largely younger) respondents indicated they had to allow the Taliban to administer justice or face repercussions.

People frequently singled out several specific problems with the formal justice system. Complaints generally focused on its proneness to corruption and the length of time taken to resolve even minor issues, since judicial processes were thought to be administered by incompetent, unqualified or dishonest people. Given this situation, people either felt unable to access the formal justice system or felt disadvantaged if a case did reach the court.[137] In Ghazni, people often directly compared this with the speedy resolution of cases by the Taliban. A middle-aged Tajik FGD participant from the city stated, "The Taliban solves people's problems in four days because they use Islamic law." Since the current state justice system was incapable of handling ordinary crimes, it was seen as highly unlikely to be able to handle specialised transitional justice cases. Many male respondents, in particular, argued that it would be impossible to pursue justice processes that would be accepted by the majority of the population. A middle-aged Hazara man from Kabul City explained, "If, for example, Hazara people say that we have been oppressed, nobody will accept it because there is no just regime and there is no strong court to prove it."

If domestic courts prove unable (or unwilling) to address human rights violations, the ICC can create the opportunity for redress. However, several major problems exist in Afghanistan with the ICC specifically and international jurisdiction generally. Specifically, the ICC only has prospective jurisdiction starting on the date in which the treaty enters into effect. Investigation and potential prosecution by the ICC would necessarily ignore the two and a half decades of conflicts and abuses committed before the signing of the Rome Statute in 2003. Given the fact that only respondents in rural Ghazni identified this period as a period of particular suffering, in comparison to the previous conflicts, it is unlikely that focusing on crimes committed after this time would satisfy victims' demands for justice and could affect the court's legitimacy in Afghanistan.

Moreover, despite some limited support from people in Kabul City and participants of FGDs, many more people who had little prior knowledge of international justice expressed suspicion and even opposition to international involvement, considering that only the Afghan government possessed the necessary jurisdiction in this area. It was largely believed that it was better if Afghans themselves solve their own problems according to Afghan and Islamic law. "How can an infidel court and judge prosecute Muslims?" asked an older Hazara man in Bamiyan City. "It is forbidden in Islam." Older respondents, particularly men in Ghazni Province, were also more likely to point out that international law disbarred capital punishment, which was often desired by these people.

Another widely voiced fear was that if trials took place internationally victims would be denied the potentially cathartic benefit of witnessing the punishment of those who had committed crimes against them. Even those who saw the benefits of international justice also acknowledged that holding trials outside Afghanistan could limit the impact of retributive punishment. A younger female FGD participant in rural Kabul explained:

> *The government should punish them in front of people. If they take them out of Afghanistan to the international court, then people will not see what has happened to them. The people have to see them punished in order to calm their hearts.*

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137   For more information about the perceived inadequacies of the formal justice system, see AREU's Community-Based Dispute Resolution case study series.

Moreover, the power and ability of local justice systems to deal with serious wartime crimes was widely questioned. In fact, it was widely stated that people guilty of serious wartime violations should be handed over to the formal authorities. The role for whitebeards and local authority figures was largely reduced to communicating government decisions regarding punishment policies or as sources of consultation about the most appropriate retributive mechanisms. Moreover, despite limited evidence that communities had dealt with some individuals, this should be tempered by the widespread acknowledgement in all research sites of impunity at the community level, which had not been resolved by these local mechanisms. One middle-aged Pashtun man from rural Ghazni explained: "Those people who live side by side with commanders don't have the power to say or do anything to them, because people are not united and they can't put commanders on trial." Ultimately, the strength of these local systems was identified to lie more in processes involving forgiveness, peace and reconciliation, discussed later in this chapter and in Section 5.

Lack of political will

Respondents widely believed that there was currently no political will on the part of the government to investigate crimes committed during Afghanistan's conflicts or to implement punitive processes. Meanwhile, the unequal power dynamic between victims and perpetrators in Afghanistan was perceived to exacerbate this situation. Accordingly, people widely argued that victims lacked the power to successfully demand action in this area. Impunity at the political level was held directly responsible for the government's unwillingness to address wartime violations. Respondents in all research sites emphasised that while regimes might have changed, those who held power had not. An older female Pashtun FGD participant from rural Ghazni said:

> Some people first worked with the Russians and after that with the mujahiddin. Then they were with the Taliban and some of them are now in Karzai's government. In each government, they took money, committed crimes and they obtained big positions for themselves.

Moreover, there was little faith in the potential of this system to change as long as people were able to marshal support or bribe or intimidate their way into positions of power, particularly during elections. "We see some people have collected votes using money," said Karim, a young man in rural Bamiyan. "How can we be hopeful that the parliament will bring change in society?"[138] To the vast majority of interviewees it seemed unfeasible that government figures would implement a punitive approach that could work against them.

Weak international support for a punitive approach exacerbates the lack of domestic political will, compounding impunity. The limited knowledge among the vast majority interviewed of the role international justice could play in Afghanistan was significant, reflecting the lack of attention paid to this area by Afghanistan's international partners. The ICC has no presence in Afghanistan and the dissemination of information about universal jurisdiction processes in other countries has been negligible. Consequently, many respondents had low expectations that the international community would act in this area—either to pressure the Afghan government or to implement international judicial mechanisms.

Moreover, this was compounded by the widespread impression that when international forces committed violations they were seldom investigated or held to account. A younger Hazara man from Ghazni City provided an example:

> When the Taliban attacked a centre, the police reacted and then the international forces bombed the centre and murdered all the police who were there. Then international forces left, but the government still hasn't investigated that event, which happened in 2009.

This reflects the failure of international governments with a military presence in Afghanistan to fully investigate events when civilians are harmed or, if they do, to fully publicise and disseminate these

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138   This emphasis on elections was particularly pronounced in Bamiyan and Ghazni because research was conducted around the time of the 2010 parliamentary election. For more on the damage done to government legitimacy by the election process, see Noah Coburn and Anna Larson, "Undermining Representative Governance: Afghanistan's 2010 Parliamentary Election and Its Alienating Impact" (Kabul: AREU, 2011).

processes and their outcomes to the people of Afghanistan, despite operational guidelines to do so.[139] While the US and other foreign forces fighting in Afghanistan have tightened regulations in recent years to try to prevent civilian casualties, recognising them as a strategic problem, they have done little to tighten up a chaotic system of justice and support for the families of victims. The lack of support is systemic, long-standing and undermines the impact of billions of dollars spent on aid and years of military rules aimed at reducing civilian deaths, experts say.[140]

People generally believed that this stemmed from the fact that international actors did not care enough about ordinary Afghans' desires and that their attention was focused on defeating the insurgency. However, several men in rural Ghazni actually blamed the international community for impunity in Afghanistan. A middle-aged Pashtun man explained that, "The international community won't put people in prison because they are all friends and American forces promised them a lot when they wanted to occupy Afghanistan, for example high posts."[141]

International will for a punitive approach is further complicated by the fact that many countries currently have a military presence in Afghanistan. The ICC can investigate and prosecute crimes committed by foreign forces and the Chief Prosecutor specifically mentioned that enquiries could lead to arrest warrants for both the Taliban *and* members of coalition forces.[142] However, the ICC is sometimes accused of a neo-colonial approach that results in investigations that suit major powers and it is uncertain if it would undertake investigations in Afghanistan in face of likely opposition from influential states.[143] As discussed, foreign actors were regarded as at least partially responsible for Afghanistan's past and present conflicts by some people in all communities. While most people did not identify foreigners as requiring judicial punishment, largely preferring that external influence be removed from Afghanistan, a small but vocal minority of people, mainly from rural Ghazni, argued that anyone who committed serious crimes should be held to account. These respondents blamed international actors for exacerbating human rights abuses and the culture of crime in the country. A process that ignored concrete evidence of violations by international actors could weaken the legitimacy of international justice and could incite resentment and hostility among some Afghans.

A number of respondents, particularly in Ghazni and Bamiyan, acknowledged the weakness of the Afghan population itself to challenge the government in this area. The absence of a strong civil society to represent the needs of the people was seen as critical in this regard. While respondents recognised the role of civil society to defend people in theory, people in both provinces acknowledged its weakness in relation to the Afghan government. As a middle-aged Hazara man from Bamiyan City said:

> There is no strong organisation to put pressure on the government. Civil society does not have enough money and does not have enough power...If people demonstrate for two days they cannot continue for any longer.

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139   For more information see Human Rights Watch, "Afghanistan: Investigate any Undisclosed Civilian Casualties," 26 July 2010, www.hrw.org/news/2010/07/26/afghanistan-investigate-any-newly-disclosed-civilian-casualty-incidents (accessed 28 November 2011). For information regarding the lack of coverage of British violations in Afghanistan see Rob Evans and Richard Norton-Taylor, "UK Forces' Attacks on Afghan Civilians Investigated by Military Police," *The Guardian*, 4 October 2011, www.guardian.co.uk/uk/2011/oct/04/uk-forces-afghan-civilians-deaths (accessed 28 November 2011). This investigation revealed that while the Royal Military Police had launched 99 investigations into attacks on Afghan civilians between January 2005 and March 2011, military prosecutors would not reveal how many of these had resulted in prosecutions, either through a court martial or at an internal hearing before their commanding officers. In fact, *The Guardian* revealed that defence sources privately stated there had been no prosecutions of soldiers over the alleged attacks on Afghan civilians, as the incidents can be blamed on the inherent confusion of war.

140   Emma Graham-Harrison, "Exclusive: U.S. Soldier Faces Trial for Afghan Civilian Murder," *Reuters*, 23 February 2011, www.reuters.com/article/2011/02/23/us-afghanistan-civilian-idUSTRE71M1C420110223 (accessed 28 November 2011).

141   This refers to the promises made largely to members of the Northern Alliance in securing their support to defeat the Taliban.

142   Reinl, "ICC Investigates War Crimes in Afghanistan."

143   Reinl, "ICC Investigates War Crimes in Afghanistan," and Winterbotham, Section 4.1 on "Judicial Accountability" in "The State of Transitional Justice," 19-21.

Civil society was identified to particularly struggle in insecure areas where the Taliban ruled, while older Pashtun women in rural Ghazni believed that the effectiveness of civil society was perhaps weakened by the conservative nature of Afghanistan's society. Women in this community emphasised their inability to advocate for change because, as on older woman explained:

> We women can't launch demonstrations or protests against the government as women in other countries have done because we don't have the permission from our community and our houses to do anything in the community. Thus, we can't compare the women of Afghanistan with the women of other countries...

At all levels, respondents identified the deeply entrenched set of power dynamics that continues to plague the country as one of the major challenges yet to be confronted. Respondents emphasised that those who had abused their power in the past were protected by the fact that they currently held the strings of government in their hands, could still garner support by politicising ethnic or *qawm* identities or indulging in corruption and intimidation, or still had control over arms. Ultimately, victims felt that they possessed insufficient power to ensure their rights were upheld.

Absence of a secure environment

One of the major considerations involved in discussions about how to deal with perpetrators of serious wartime atrocities was the impact on security. While many people in both areas saw a positive correlation between justice and security in Afghanistan, some also feared that implementing legal or punitive processes against perpetrators could have the reverse effect. This reflects the complexity of implementing retributive transitional justice mechanisms in an environment of insecurity. AIHRC found in "A Call for Justice" that while 76.4 percent of respondents felt that bringing war criminals to justice would increase stability and bring security, only ten percent felt it would decrease as a result. AIHRC conducted this research in 2004 in an environment of relative stability. Since then, security has deteriorated and while people widely acknowledged that formal punishment might help ease victims' pain, build respect for the rule of law or limit desires to take revenge, they also feared it could increase hatred and animosity in the country. Moreover, in an environment where the rule of law is not established and security not guaranteed, there was a fear that witnesses and alleged criminals would be subject to intimidation, threats or might even be killed.

As discussed, those believed to be guilty of gross violations continued to retain power, influence and arms and military force and would resist any attempt to hold them to account. People discussed the ability of big leaders to rally people behind them. Consequently, there was the fear that their followers would react violently to punitive measures against their leaders and that "anarchy would increase, even more than at the time of *jihad*."[144] Of particular concern to younger men and women in Ghazni City was that the mere threat of criminal trials or punitive measures could encourage the Taliban to continue fighting against the government and could incite other people to join them.

Challenges Afghanistan's wars pose to identifying and proving guilt

While the categorisation of those requiring punishment into leaders guilty of serious crimes may sound simple, the situation in reality is more complex. As discussed, the war in Afghanistan has in fact been a series of conflicts made up of several different phases, involving large numbers of people. This presents a considerable challenge to identifying and proving which leaders were guilty of crimes. The need for evidence-based judgements was perceived as key to punitive processes and, in the event that the guilt of a criminal could not be proven, they should not be punished.

In certain areas where the communists and the Taliban were identified to have committed the greatest violations, but were largely regarded as outsiders to the community, people found it hard to identify specific individuals who should be punished. For example, in Kabul, while people identified perceived perpetrators from the civil war with ease, they did not specifically name communist or Taliban perpetrators aside from the very top leaders and some well-known local collaborators (who by their

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144   As said a middle-aged man from rural Bamiyan.

definition of "collaborator" did not require punishment). This does not mean that respondents who suffered under communist or Taliban rule did not view them as any less culpable. Instead, it is more a reflection of that they were no longer present or visible in the community. In terms of the communist regime, the main perpetrators of crimes were often identified to be the Soviets, who had since left the country. Afghan communist leaders had, in some cases, also fled once the regime collapsed. As one young Tajik woman from rural Kabul argued, "The government cannot do anything because those people have mostly run away from Afghanistan." Despite the extent of Taliban violations committed in Bamiyan Province, people there were uncertain about who was specifically responsible.

Moreover, definitions of *which* leaders were most guilty of wartime violations and should be punished were not always shared by the different communities or even by all groups within the same community. The research found that even the identification of an individual or group as perpetrators did not always translate into a demand for their punishment. While a small proportion of people outlined serious crimes committed by the mujahiddin during resistance against the Soviets, people in all three provinces perceived this as a legitimate war and there was no overwhelming desire for people to face punishment for crimes committed in that era.

Across all research sites, people drew a clear line in determining punishment between mujahiddin figures who fought for Afghanistan and its people during the resistance and those who used conflict during the civil war to profit for themselves and were responsible for some of the worst violations and ongoing insecurity. An older Pashtun respondent from the rural site in Ghazni explained this reasoning: "Well, we know that there are mujahiddin who removed Russian forces from Afghanistan but after that there were those who started the war. The government must put them on trial and must ask them why they started the war with each other." However, there was far less demand in rural Kabul and in Bamiyan Province, which did not experience similar violence, to hold mujahiddin leaders to account for their role in the civil war.

Differences in opinion were most clearly illustrated by perceptions regarding the Taliban. While respondents in Bamiyan, Kabul (though to a lesser extent in Kabul City) and Ghazni City all generally agreed that the Taliban should face punishment (even if they were unable to identify the individuals), most respondents in the rural Ghazni site did not think that the Taliban should be punished. In fact, all middle-aged and older male respondents, apart from one, specifically said that the Taliban should not face retributive measures because they were fighting a legitimate war for which the ends justified the means. "The Taliban fights for Islam and they don't want to harm our people, but sometimes infidels force them to harm our people," said one respondent there. In the absence of a comprehensive truth-seeking process to determine culpability and guilt that is accepted by the vast majority of Afghans, these differences of opinion about who are and were perpetrators presents a real challenge to any legal process.

Lengthy conflicts and cases of mass atrocity typically involve vast numbers of people, and it is usually unfeasible to hold all those implicated to account. While respondents generally agreed that it was impractical and not constructive to prosecute all those involved, merely punishing the leaders of the conflicts would not always provide sufficient justice for certain people. A small minority of respondents—particularly middle-aged and older women in all research sites—argued that ordinary or "little" people who had committed cruel acts deserved to be punished. "Crime is crime," said a middle-aged Tajik woman from rural Kabul. "Anyone who committed a crime, whether he is a leader or common person, has to be punished." One possible reason why some people wanted everyone who was guilty of crimes to face punishment is that the person they deemed responsible for a violation or crime against them personally would be absolved under a position-based categorisation. This was certainly the case for one woman whose husband was killed by local people, and also for some women in Bamiyan City who felt that members of the local Tajik population deserved punishment.

4.2   The restorative and reparative model

Acknowledging the serious obstacle the current environment presents to implementing punitive measures, the research also explored alternative mechanisms that could assist healing processes

and might face fewer challenges. This section focuses on two alternative conceptions of justice: restorative and reparative. While these two concepts are divided into separate parts, there is considerable overlap between them and it is hard to conceive how one could be implemented without the other. Each section first addresses the benefits of the approach and then outlines the challenges to its implementation, as perceived by respondents and the author.

The restorative model

Restorative processes are designed to uncover the truth about past events. Establishing a full, official accounting of the past is increasingly seen as an important element to a successful democratic transition. An accurate record of past crimes can make it embarrassing and difficult for official actors to deny them, apply pressure to remove perpetrators from power, and raise awareness toward preventing future abuse.[145] However, in Afghanistan no official enquiry into either specific violations or the general consequences of Afghanistan's wars has been published to date.[146] Consequently, wartime actors have sought to fill this vacuum by promoting self-serving visions of the past.[147] Most notably, the amnesty law glorified mujahiddin achievements during *jihad* against the Soviets, which as discussed also led to numerous atrocities.[148] Others, including some who have occupied high-level positions in the Afghan government, deny any direct responsibility for past war crimes despite evidence to the contrary.[149]

Consequently, a key demand frequently voiced by many respondents in all areas was that wartime events and the impact of conflict on their communities be investigated to build an accurate picture of the different phases of conflict. Not only did people believe they had the right to know the truth, but they wanted this information to be recorded, disseminated and acknowledged, in order to contribute toward goals such as reconciliation and social reconstruction.

Questions about these processes nevertheless elicited varying responses from the research sites and from the different groups within them. While an overall majority supported investigations and documentation of the past, a substantial proportion expressed concern about the implications of these processes, especially recording mechanisms. The community most in favour of both investigations and documentation was Afshar in Kabul City. This was perhaps largely due to people's better understanding of the goals of these processes, due to prior experience, and the widespread desire for their area's specific experience of suffering to be acknowledged. The majority of people in Ghazni Province were in favour, though men in Ghazni City expressed fluctuating views and women in rural Ghazni were less able to express opinions about these mechanisms. In contrast, while both Bamiyan communities were happy for the past to be investigated, questions about documentation divided each site. Overall, people were prone to change their mind, reflecting the difficulties involved in deciding how to address the past and the challenges involved in analysing this kind of research.

Benefits of truth-seeking and documentation

A large part of people's support for truth-seeking processes was based on a desire for recognition of their suffering. There was a real demand for victims' voices to be heard and for many this could itself represent a form of justice. In particular, people wanted the government to demonstrate its concern

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145   Final report on civil society, "Transitional Justice and Documentation Workshop."

146   AIHRC's Conflict Mapping Project can be considered an official documentation process, as part of the Action Plan for Peace, Reconciliation and Justice. It has not been released at the time of writing.

147   Worden and Steele, "Telling the Story: Lessons for Afghanistan from the Cambodian Experience."

148   The preamble to the Amnesty Law states: "jihad, resistance and the rightful struggles of our people to defend the religion and country is the splendid achievement in the history of the country and are considered our distinguished national glories."

149   General Rashid Dostum has previously said the deaths of Taliban prisoners buried at Dasht-i-Leili were unintentional. See By Rich Oppel, "Afghan Warlord Denies Links to '01 Killings," *The New York Times*, 17 July 2009, www.nytimes.com/2009/07/18/world/asia/18dostum.html (accessed 26 October 2011). Physicians for Human Rights has repeatedly called on the US government to investigate this event and allegations that Dostum tampered with evidence at the grave site; see http://afghanistan.phrblog.org/.

by exploring what had happened in their communities. At times, people merely wanted someone to care enough to ask what had happened to ordinary people over the past 30 years, such as an older Tajik woman from Kabul City who said: "We have experienced a war and now we are looking for a way for the government to think about its people."

Many respondents, particularly older women in all areas, consequently expressed gratitude to AREU's researchers and reflected on the cathartic benefits that sharing their experiences had provided. "I feel more relaxed and my shoulders have become less tense. When you talk to us we become happy and thank you for coming," said an older female respondent from Bamiyan City. She concluded, "It is really difficult to remember the war but it is good to talk about it and empty our hearts." In fact, people who were generally more receptive to discussing their suffering and losses were frequently those who had experienced the greatest pain. Younger people in the urban site in Bamiyan and in both areas in Kabul were at times less supportive of recording processes. This is perhaps explained by the fact that they had not always experienced the same length or extent of suffering as people who had lived through several decades of conflict.

People also based their demands for truth-seeking and recording processes on a belief that they had a personal "right to know" about past events. For some, a comprehensive picture of the conflicts was required, particularly the total number of war dead, how many people had disappeared, and accurate information about what had happened in these cases. However, for many more respondents their desires for investigation into wartime events were driven by personal motivations. For example, people wanted to know who was responsible for the deaths of their relatives or how they had died. In these cases, providing truth was perceived as a form of justice that could provide closure.

The strongest demand for investigations consequently came from those whose family members had disappeared. Respondents argued that unsolved cases of disappearance worsened people's complexes and their ability to find closure. Cases of disappearance also present practical implications for women since it is difficult to remarry without proof of death, which often leaves them financially vulnerable. For example, a respondent in Ghazni City explained how her mother had prevented her from remarrying despite the disappearance of her foreign Talib husband a decade ago.

Given the widespread knowledge of unidentified graves sites across Afghanistan, the research included questions about how to address these.[150] Actual knowledge of exhumation processes and forensic analysis is very basic in Afghanistan; only a few respondents voiced prior knowledge of the potential of these types of processes. Many people therefore initially expressed doubt that there was much point in uncovering grave sites after so many years. However, once the possibilities of forensic analysis were presented,[151] most people were supportive of exhuming mass graves and identifying the bodies in them. People widely explained that they had the right to know not only if their relatives were dead, but how they died, when and who killed them. Once bodies were identified, the general desire was that they be returned to their relatives for reburial, providing family members with a grave site at which to mourn, which was perceived as playing a role in healing processes. An older Pashtun male FGD participant from Ghazni City summed up this widespread perception: "When a person wants to gain solace he goes to the grave site, but when their family member doesn't have a grave, I think they can't find solace and it is very hard."

To demonstrate their concern, many people felt that the government should launch a full enquiry into wartime events in each specific community. Respondents generally believed this should happen in two ways: firstly, the government should create independent offices and commissions and send impartial researchers to enquire about each community's experiences, and secondly, it should question people who were implicated in the conflicts to reveal the truth about past violations and their role in the wars. Investigations needed to be impartial to ensure that documentation efforts produced unbiased

150   For more detailed information about ways to deal with mass graves discussed in each province, see the Legacies of Conflict case studies at www.areu.org.af.

151   The research team was careful not to build expectations over what exhumations and forensic analysis could achieve but explained that new technology made it possible to exhume gravesites and in some cases identify the bodies in them.

results. Consequently, the government was identified to play more of a supportive role because people raised concerns that if the government was directly involved it might end up recording history in favour of certain players.

This reflects the significance of the role of AIHRC in Afghanistan, whose conflict mapping project was established to fulfil the above demand. However, while a small number of people interviewed in Kabul City and in Bamiyan City delegated a specific role for AIHRC in investigating the crimes of the past, generally people were unaware AIHRC's role in this area, which fuelled the demand that new organisations be created to investigate the past and more funding be allocated for this type of work.

People also discussed the role of the media in broadcasting inquiries about people who had disappeared. People in Ghazni specifically identified Azadi Radio while those in Bamiyan singled out Radio Ashna for their programmes broadcasting the names of people who had disappeared and providing numbers for people to call with information. In Kabul and Bamiyan, the international community and international civil society was also seen to have the necessary power, financial resources and specialist expertise to assist. For example, a few male respondents in Bamiyan discussed the role of the United Nations and the expertise of organisations like the International Committee of the Red Cross (ICRC) in cases of disappearance.

Respondents supported AREU's research because it was identified as being able to "raise the voices of the oppressed" so that people's voices "reach high positions," as articulated by a middle-aged female Tajik respondent in rural Kabul. Underlying this was the hope that communicating their experiences would translate into action at the policy level. For example, the general demand was that the government should launch a full-scale investigation into the extent of damages caused by the conflicts and then provide the appropriate compensation based on people's individual needs. Consequently, respondents identified an intrinsic link between fact-finding processes and reparative policies.

Perhaps of greater significance was the hope that registering people's suffering and uncovering Afghanistan's mass graves would help build historical knowledge and facilitate Afghanistan's ability, particularly at the political level, to learn from the past. A middle-aged Tajik man from rural Kabul said, "Those things that have happened in the community can never be hidden and need looking into because this is part of history and we must never trample on history." Instead, preserving history was widely felt to ensure that the next generation and people globally would learn about their experiences and the dangers of conflict, which could foster the development of peace. A middle-aged Hazara respondent said this would ensure that, "The mistakes of the previous governments and the people will be made clear for the next generation so that they may not commit the same mistakes."

Disseminating information about the suffering experienced in different parts of the country was also perceived as a vital part of creating a unified history, which would assist in the creation of a stronger Afghan national identity. To ensure information was widely disseminated and credible, books and the media were the most popular methods of recording the past. A young Tajik man from rural Kabul explained, "If I just tell my war memories to my son, for example, he may not accept them, but when they are in books, he will accept them whenever he reads the books." A middle-aged female Hazara respondent stated, "The government must broadcast past pains and sorrows using television and other media so that people remember these problems and then they will support peace and never allow someone to cause war in our country again."

Finally, there was a widespread hope among many respondents in all research communities, particularly men from communities that had provided strong support to the resistance during the communist era, that investigation and recording processes would lead to the identification and recording of those who were guilty. There was a clear demand to draw a line between people who fought *jihad* and those who used conflict in order to enrich themselves or commit violations. Recording processes could therefore highlight the primary responsibility of certain individuals and distinguish between them and a larger circle of bystanders and collaborators. This fits with the overall perception of the clear divide between perpetrators and victims outlined in Section 3.

A couple of men in Kabul City and Bamiyan reflected on the benefits of this in relation to ethnic relations in Afghanistan. These men claimed that identifying specific individuals could help demonstrate that certain people and not entire *qawms* or ethnic groups were responsible for crimes during the war. One man from Kabul City said, "When you register such incidents it does not mean that people would say 'this *qawm* was bad,' they will instead say 'this person was bad.'" Documentation in this sense was identified to help prevent people from blaming entire groups and assist trust-building and reconciliation in Afghanistan.

Registering an individual's guilt and publicising their crimes was perceived by some respondents to be a form of punishment in itself. Even if perpetrators never faced legal retribution, some respondents felt that proper investigation processes that recorded their names in books or in media programmes would identify these people as criminals, ensuring that their crimes would not be forgotten and that future generations would learn about the atrocities they had committed. In particular, women in all research sites identified this as a way of providing justice for the victims of atrocities that would ensure that "victims' sorrows will decrease and their hearts will become cool," as said a younger female respondent from Bamiyan.

Many more people, particularly men in Ghazni and both men and women in Bamiyan, supported documentation processes as the basis for criminal prosecutions, which was their ultimate desire. Respondents in these areas frequently applied the word "testimony" when describing victims' participation in documentation processes. This reflects the strong association between recording wartime stories and building legal evidence against criminals. A middle-aged Pashtun from Ghazni City was one man who intrinsically linked documentation and criminal justice processes, arguing that:

> We must register crimes committed during the wars and we must use these documents to put people on trial. In the future, when we want to put the perpetrators on trial, they will deny that they committed actions in the past and so their crimes must be registered.

Many men in Ghazni Province also strongly linked the exhumation of mass graves with identifying perpetrators. Fulfilling "the right to know" was not sufficient in the eyes of this group, who wanted exhumation and forensic analysis processes to form the basis of criminal prosecutions.

Challenges to implementing restorative processes

While the majority of people supported restorative processes, a minority of people in all research sites reflected on the potential challenges and risks involved in this process in the current environment. This group largely consisted of the younger generation in Kabul Province, particularly from the rural site, men in Ghazni City, younger men in Bamiyan City and older men and women from the rural community in the province. Again, this highlights that it is difficult to draw broad conclusions regarding which groups or even which provinces are in favour of certain approaches and instead people's opinions must be seen as variable.

As outlined above, investigative and documentation processes were frequently linked with criminal prosecutions. Consequently, respondents expressed concerns that recording processes amounted to "giving evidence" against each other. In the absence of a government or justice system willing or able to prosecute people, some men from Ghazni City and a number of respondents from both communities in Kabul argued that recording the past could be dangerous for the individuals involved and could increase hatred between perpetrators and victims. On the one hand, if trials were not implemented victims would not be protected and perpetrators who had been accused of crimes, but not punished, would be free to take their revenge against those who had provided information against them. Many people were aware of the personal risks involved with people telling their stories in an environment of insecurity. For example, there was an obvious fear among some, particularly women in Bamiyan and in rural Ghazni, that the researchers were reporting to either the Taliban or allied international forces.

On the other hand, information about past crimes and its widespread dissemination would demonstrate the extent of crimes committed but victims would subsequently not be able to benefit

from retributive responses, which could increase their pain and demands for retribution. Consequently, this group felt that recording and documentation processes should wait until Afghanistan was secure and could implement judicial processes. Similarly, the lack of faith in the justice system led others to question the use of recording processes. One older woman from rural Ghazni argued, "In my mind recording doesn't have any benefit in Afghanistan because now everyone has information about past criminals but there is no one who is able to arrest them." In this light, younger men, particularly from Bamiyan City and rural Kabul, argued instead that past events should be forgotten because recording them would bring no benefit. Moreover, while many respondents reflected on the cathartic and practical benefits of AREU's research, a small minority were concerned that questions regarding past and present conflicts could "refresh" or "reopen" wounds. In all research communities, there were one or two men and women who chose to not be interviewed or refused to be interviewed for a second time, feeling that the questions had awakened memories that they were not comfortable revisiting. The desire to leave the past behind occasionally translated into hostility to AREU's research, as expressed by a middle-aged Tajik man from Afshar:

> I protest. All your questions refer to the past events and they are negative but I believe that we should think about the future. We should all try to keep Afghanistan away from the bad events of the past. Why are you are asking negative questions about the past and reminding us about all the bad memories?

In some cases, people felt that investigating and disseminating information about the conflicts would not only refresh people's pains but could reignite their hatred. One younger male Pashtun FGD participant from Ghazni City feared that this would lead to revenge killings, expressing the concerns of the discussion he was attending: "Mentioning past wars increases hostility between people. It causes people to remember their past pains and sorrows and they will perhaps decide to take revenge." There were fears among men and women in Bamiyan that this could provoke conflict between entire *qawms* or ethnic groups now or in the future. One younger male FGD participant in Bamiyan City even explained how when he had read a book about the mistreatment of Hazaras, he was so upset he would have "skinned the head" of the first Pashtun he saw. He therefore questioned whether it was possible for people to read about such events without triggering emotions of hatred and revenge.

A further concern about recording processes is based on the author's own reading of the data and concerns the question of *what* truth needs to be presented. As discussed, many people in each research site, particularly those in Ghazni, Bamiyan and in rural Kabul, were proud of the mujahiddin's history of defeating the Soviets. Consequently, there was a demand, especially among men, that recording processes be used to preserve these achievements. At the same time, this focus on glorifying mujahiddin figures could be obstructive to the ability to come to terms with the past among those who identified certain mujahiddin as perpetrators, such as respondents from Afshar in Kabul City. Moreover, a few individuals in Ghazni Province desired that recording processes be used to deflect responsibility for the conflicts from Afghans onto external and foreign forces. "The crimes of the past must be registered," a younger Pashtun woman from the urban site argued, so that people would know that all crimes "can be blamed on foreign forces...It must be obvious to people that Afghans are not cruel and Afghans are good people." This type of partial truth-seeking process would do little to assist victims' healing processes or address underlying reasons for conflict and would consequently work against peacebuilding processes.

Finally, while the government was in theory identified as the legitimate actor to implement these processes, most respondents were realistic about whether the government could or would do so. They highlighted that the government had demonstrated little willingness to address past crimes or investigate present violations committed by international forces and the Taliban. They attributed this lack of activity to the presence of human rights violators in government who were only concerned with lining their pockets and shoring up their positions, which required ignoring the legacies of the conflicts.

Consequently, a significant proportion of people in all research sites also envisaged a role for the international community. The support for this also stemmed from a belief that the international community was, in fact, in a stronger position to investigate and document human rights violations.

Those supporting a role for the international community emphasised its moral responsibility to assist Afghanistan's victims. As one younger man from rural Ghazni put it, "The international community must help the Afghan government because they say they are serving human rights and so they must show this." Several men in all areas specifically singled out organisations such as the UN and Human Rights Watch as possessing key roles in investigating infringements of human rights given their expertise in this area.

However, a minority of elderly respondents in Ghazni Province objected to any help from the international community given the general hostility to all foreigners. Moreover, across all research sites, even those who wanted the international community to take the lead in this area had weak expectations of whether they would actually do so. They reflected on the failure of any international organisation to address past crimes to date and drew comparisons between international action in other countries and their role in Afghanistan. As one younger man attending a Pashtun FGD in Ghazni City stated, "Human Rights Watch has the right all over the world to deal with the legacy of past crimes but they don't fulfil that in our country." There was consequently widespread despondency with both the government and international community who it was felt repeatedly made promises they failed to uphold.

Reparative policies

International law[152] recognises that a reparatory approach is an important way of acknowledging the collective societal responsibility that is owed to victims. Reparations can take many forms to compensate for harm and to rehabilitate the mind, body and status. These can include measures such property restitutions, monetary payments, education vouchers, memorials, apologies, or even the return of a loved one's body for burial.[153] While it may be impossible to fully repair the damage done to victims or make individual assessments of the harm suffered by each, a reparations programme can provide solutions to some of the problems derived from the harm suffered. There is growing consensus in international law that the state is obligated to provide compensation to victims of egregious human rights abuses perpetrated by the government and if the regime which committed the acts in question does not provide compensation, the obligation carries over to the successor government. Sierra Leone's Truth and Reconciliation Commission (TRC), in its final report, recognised that reparations are a primary tool for rebuilding national trust and encouraging reconciliation.[154] This section concentrates on two broad compensation policies that received the most attention from respondents—symbolic reparation in the form of memorialisation and financial or material compensation.

Memorialisation processes are typically designed to recall and demonstrate respect for things that have happened in the past. They are intended to assist healing processes, demonstrate a commitment that these events should never happen again and act as an official acknowledgement of victims' pain. The strongest support for an official memorialisation process came from Ghazni Province, where the majority of people interviewed favoured this approach. In contrast, this received lukewarm support in both communities in Bamiyan. In Kabul, questions about the relevance and appropriateness of memorialisation processes in Afghanistan elicited diverse responses. The community in Kabul City was perhaps more supportive of commemorative activities, although a significant minority had concerns about the potential impact of these processes. Women in rural Kabul were also largely in favour of memorialisation, but men expressed more opposition.

Memorialisation of the past conflicts in Afghanistan has largely focused on glorifying leaders. While respondents expressed widespread knowledge of memorials in the names of mujahiddin—listing public

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152   The right to reparation in the form of restitution, compensation, rehabilitation and satisfaction and guarantees of non-repetition were set forth in the United Nations General Assembly, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," Resolution 60/147 of 16 December 2005.

153   Ruth Teitel, *Transitional Justice* (Oxford, New York: Oxford University Press, 2000), 137.

154   Mohamad Suma and Cristián Correa, "Report and Proposals for the Implementation of Reparations in Sierra Leone" (ICTJ: December 2009).

holidays such as the Celebration of the Islamic Revolution in Afghanistan and the Great Ahmad Shah Massoud Day, and memorials such as Massoud Circle in Kabul—no one was aware of the Victims' Day in Afghanistan. Consequently, respondents often said that if memorials were to be created or memorial days to be established they should be "in the name of innocent martyrs," as a young Tajik woman in Kabul City stated, and not only "for popular and big people."

The overwhelming view of those supporting an official memorialisation process was that the presence of a designated place to pray or a remembrance day for victims would allow people space to remember, reflect and pray for the martyrs of the conflicts, which could assist healing processes. Other suggested ways of symbolically acknowledging victims suffering and paying them respect were to rename squares and streets in the names of ordinary victims or erect minarets or sculptures near previous sites of atrocity and genocide, former torture centres and, in particular, mass grave sites. Some of these commemorative activities are already taking place in the research sites. In Bamiyan, in the rural community two grave sites known to contain the bodies of Taliban victims are marked and tended by people of the area and a board listing the names of those who were killed by the Taliban marks the entrance to the valley. In the Bamiyan City site respondents described an annual ceremony marking the death of their martyrs. Meanwhile, the Kabul City research community holds an annual ceremony to mark the events of February 1993.
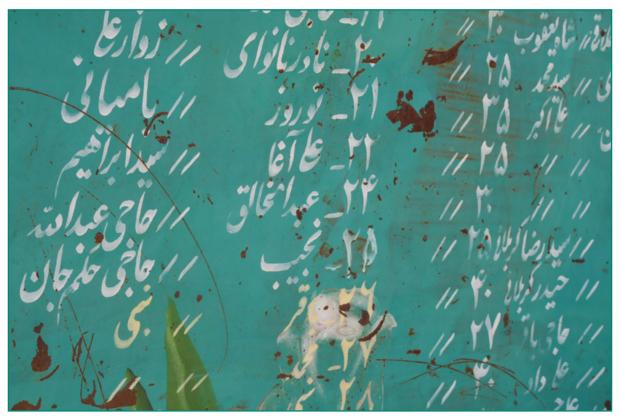

Image 3: Board listing names of victims of Taliban atrocities in Yakowlang District, Bamiyan Province (by Jay Lamey)

The desire for memorials frequently stemmed from the perception that they would act as permanent markers of respect to victims, ensuring that younger generations did not forget the losses or sacrifices of their parents' or grandparents' generations. An older male respondent from rural Bamiyan explained, "A minaret can be like a monument, it becomes like a shrine. And it can remain forever so the next generation is reminded of the past." Memorialisation efforts were supported as mechanisms of preserving history. This was particularly significant in Ghazni Province, where many young men and women desired that memorialisation assist learning processes. For example, people spoke frequently about the need to make shrines and name-boards at the sites of mass graves, which one younger Tajik male respondent from Ghazni city explained would be "a historic thing for the future."

Other suggestions in Ghazni to support learning processes included the creation of a photo gallery, broadcasting films about the conflicts on TV on annual memorial days, and the preservation of houses destroyed during the war as a reminder of what had happened in the past (made by a younger man from the rural site). From these measures, one younger Tajik woman from Ghazni said "people will learn about the importance of peace and security…so that past abuses are not repeated."[155]

Given the overwhelming demand for development in Afghanistan, another popular suggestion among women in all research sites was that schools, hospitals, clinics and roads be built in the name of Afghanistan's victims. This would ensure that the names of victims and martyrs were forever immortalised while serving the practical purpose of enabling children to study. Moreover, it was perceived by these women that this would be a source of pride for the families of martyrs. In addition to the establishment of schools, a few women suggested that factories should be created in the names of those who had died and that these could provide jobs for the families of martyrs, serving both a symbolic and practical purpose and reflecting the link between symbolic and financial reparations.

Challenges to memorialisation

While the vast majority of people desired that memorialisation processes commemorate Afghanistan's ordinary victims, members of the communities in Ghazni and rural Kabul also supported the remembrance of mujahiddin figures perceived as heroes for their resistance to the Soviets. However, for many middle-aged and older men and women in the community in Kabul City the whole concept of memorialisation had been tainted by the commemoration of people who they believed to be war criminals. As a result, a middle-aged Tajik man from the area reflected, they felt that "Buildings, monuments and museums are now meaningless for the current society in Afghanistan." This contrast in opinions surrounding existing memorialisation efforts in Afghanistan shows the challenges such initiatives face when there is no widely accepted version of history.

Consequently, memorialisation in Afghanistan is mired in political problems. Without a comprehensive examination of the causes and consequences of the conflict, various groups may contest the symbolism of different memorial plans. If a monument highlights communist-era atrocities, Taliban victims may take offence. If it hails the mujahiddin, victimised ethnic minorities may protest.[156] Considering the tensions and sensitivities that could surround commemoration and memorialisation, one suggestion made was that streets or squares be named after cultural figures, such as famous poets.

A tiny number of people also expressed concerns in relation to security of visibly reminding people about difficult memories. One middle-aged Pashtun man in Ghazni City said, "In my view each kind of visible remembrance causes people to remember past memories and then people's pains are refreshed." Several people, largely middle-aged and older male respondents in Bamiyan and Kabul, agreed with this view and argued that registering the past visually could not only reopen wounds, but could, for example, "create complexes and cause conflicts in the future between the different *qawms*."[157]

As noted above, memorialisation efforts also gained more support from people in all research sites when they were framed as contributing to wider development efforts. Consequently, at least a quarter of older respondents in Bamiyan and Kabul provinces objected to the allocation of funds to such initiatives when Afghanistan has higher priorities. In an environment where people are unemployed and lack many of basic requirements of life—food, clean water, schools and clinics—the relevance of memorials was raised. This sentiment was particularly pronounced in Bamiyan Province where the overriding feeling was that although addressing the past is important, there are currently more pressing priorities, such as employment and schooling. For example, one older male FGD participant from the city criticised annual remembrance ceremonies for martyrs and the disabled, feeling the money might be better spent on practical help for their families. The majority of people in both

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155   As said by a younger Tajik woman from Ghazni City.

156   Worden and Steele, "Telling the Story: Lessons for Afghanistan from the Cambodian Experience."

157   As voiced by a middle-aged Hazara man from Kabul City.

communities claimed that memorials would have little impact on improving the lives of Afghanistan's survivors and consequently would not assist people's healing processes. It could be argued that costly efforts at creating memorials for remembrance alone could be negatively received by many people struggling to feed their families and obtain jobs.

Finally, as with all policies designed to address the legacies of Afghanistan's conflicts, there is little indication of political will for memorial efforts. Evidence of this is the widespread lack of awareness of the national Victims' Day among people interviewed, reflecting the lack of political attention that has been devoted to it. Moreover, several respondents interviewed in Kabul City complained about the absence of government figures at the annual ceremony they hold to mark the victims of the Afshar massacre, although they have regularly been invited.

Financial reparations

While it may be impossible to fully repair the damage done to victims or make assessments of the harm suffered by individuals, a reparations programme can still offer certain solutions. The idea that the people of Afghanistan should be materially or financially compensated for the wide-scale damage caused by war was strongly supported by people in all research sites. There was a widespread perception that if people's living conditions were improved and assistance was provided to help them manage the material aspects of their losses then they would be able to handle their wartime grief better. Compensation was identified to have several impacts of varying significance for different groups interviewed: firstly, people felt it would help repair the physical and material damages caused by war; secondly, it could assist healing processes; finally, in some cases, it was presented as an alternative to a retributive approach.

All research communities emphasised the practical benefits of financial and material reparation when houses had been destroyed; main wage earners had been killed, disabled or disappeared; or people had been orphaned. A variety of types of compensation were proposed, including: monetary payouts; assistance with rebuilding houses, schools and clinics; provision of jobs; housing and education for orphans; and assistance for disabled people, who in many cases are unable to work or marry. It should be emphasised that there was also a general desire that assistance should not only repair past losses, but support welfare and future development to ensure living standards did not deteriorate.

A significant proportion of respondents emphasised the healing benefits of financial reparations. Common statements heard among this group were that compensation could help people become calm, deal with their sorrows and provide closure, or, as one respondent from rural Bamiyan said, "ease pain and be a salve for the people."[158] Men, particularly in Ghazni Province, though supportive of financial reparations were more likely to question the long-lasing benefits of compensation for people whose relatives had died or disappeared. Those who did reflect on the emotional benefits tended to perceive that healing was derived through public recognition of their suffering, if implemented by the government, rather than the compensation itself.

Finally, a limited number of people from Kabul Province, particularly men and women in the rural area, argued that financial reparations could be an alternative to retributive or punitive measures since it was seen as the best chance of achieving some recourse and resolve. A significant proportion of older people in the rural area argued that if it was impossible to find or prosecute people, they were willing to consider a reparatory approach as the best case scenario. As a middle-aged female Tajik FGD participant said: "The Russians have gone from here, where we can find them to punish them? This compensation can help people to deal with their sorrows."

Challenges to financial reparation

It is important to acknowledge that financial or material reparation was generally perceived as sufficient to provide compensation for economic loss, destroyed houses or looted property. Respondents frequently stressed that it was a far greater challenge to compensate people for the

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158   A middle-aged FGD participant from rural Bamiyan.

death or disappearance of a loved one. In fact, people largely rejected that financial payment for the death or disappearance of a relative had any impact on people's pain. Common statements heard were that these losses were "irreparable" and "could not be redressed" because people who had died "could not be brought back." An older Qizilbash woman from Kabul City said, "Nothing can bring me my daughter. If someone gave the entire world to me it wouldn't be compensation for my daughter and my brother-in-law...To get wealth is easy but to get your loved one back is impossible." A small number of men and women actually spoke out against administering compensation in cases of death or disappearance. One in rural Ghazni argued that this almost amounted to "selling victims." A young man attending an FGD in rural Kabul agreed with this view, saying compensation would amount to "buying the blood of martyrs" and would not provide healing.

It should also be acknowledged that Afghanistan does currently have reparation and compensation policies in the case of disability or death as a result of war for both military and civilian casualties, administered by the Ministry of Labour, Social Affairs, Martyrs and Disabled and individual troop-contributing foreign nations. However, these are largely defined and applied in an inconsistent manner and do not amount to a comprehensive reparation programme.[159] Knowledge of the weaknesses and shortcomings of the current system of reparation has led to a resentment of this approach among a few individuals in the research sites in Ghazni and weakened expectations that the government and international community would implement a comprehensive financial compensation programme to address past economic and material losses. People in Bamiyan and in Afshar in Kabul City frequently argued that their communities had been discriminated against in comparison to government attention in other parts of the country, particularly seen to favour insecure areas. People in these sites explained how they had made repeated requests for government assistance but that these had been met with silence.

Ultimately, however, since compensation was not perceived as sufficient in cases of death or disappearance, the majority of respondents indicated that it could not be an alternative to a retributive approach. No respondent in Bamiyan or Ghazni felt financial measures, though of practical benefit, were sufficient to address the pain caused by these more serious losses. Instead, some further punitive measure was still required.

4.3   The forgive or forget approach

The need for Afghans to forgive or at least forget past crimes is essentially the current model advocated by the Afghan government and its key international partners. Amnesty for parties involved in the country's past and present wars was legalised with the passing of the amnesty law, while the most recent peace and reintegration initiative pays scant reference to holding people to account. While this model is largely accepted by national and international policymakers, knowledge of the APRP and the amnesty law was scarce in each research site. Community perceptions about appropriate peacebuilding approaches are addressed in Chapter 5, while this section presents people's opinions about their ability or willingness to forgive or at least forget the past without seeing any measure of accountability. Consequently, it provides insight into how people feel about the current approach in Afghanistan that should be included in any discussions about how to move forward.

The research suggests that an approach whereby the government forgives or amnesties people's crimes is widely contested. Even if some victims were willing to forget the past and personally forgive perpetrators, it did not mean that people felt that the government could forgive these crimes for them. Even though the vast majority of people interviewed were aware that impunity prevailed in Afghanistan and that perpetrators' crimes were effectively ignored by the government, they largely contested legalising this approach. Instead, it was widely considered that in the case of serious crimes the government did not have the "right" to forgive the blood of people. Respondents based this claim on their understanding of Islamic law, which (according to them) outlines that in serious crimes *huqooq-ul-ibad* or the "rights of God's servants" (the individual) take precedence. As a middle-

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159   For more information, see ICTJ, "Submission to the Universal Periodic Review," and Winterbotham, "The State of Transitional Justice in Afghanistan," 27.

aged Pashtun male respondent from Ghazni City said, "Even Allah never pardons the right of another person." Or as an older male from Bamiyan City succinctly worded it, "Even God cannot forgive the right of his slave."

Consequently, collecting opinions about the notion of amnesty is an interesting reflection on the law itself. The general rejection of the government's right to forgive by the majority of people interviewed seems to cast doubt on the legitimacy of the law itself. In fact, discussions about the amnesty law triggered disbelief among the majority of respondents that the government would deprive people of their rights in this way without even consulting the victims of conflict. An older female respondent from Bamiyan City said, "I don't think the government would forgive everyone without asking people first because those who lost their family members, they won't forgive." However, this did not mean that people interviewed rejected this model entirely, but instead it was argued that the victims themselves should be granted the power to decide.

The ensuing analysis makes a clear distinction between the willingness to "forgive" and the need to "forget." "Forgiveness" entails a genuine willingness to forgive wartime perpetrators and the perception that this is the most desirable approach. In contrast, the inclination to "forget" is viewed more as a political decision to give up the right to hold criminals to account, often influenced by the contextual challenges that exist in Afghanistan. However, it should be recognised that respondents used these words interchangeably and it has been up to the author to determine their categorisation. This section first presents arguments in favour of forgiveness, explores what conditions prompted people to argue they could or should forget wartime crimes, identifies certain conditions and processes that could build support for this approach, and then addresses the challenges related to a model based on forgiveness or forgetting.
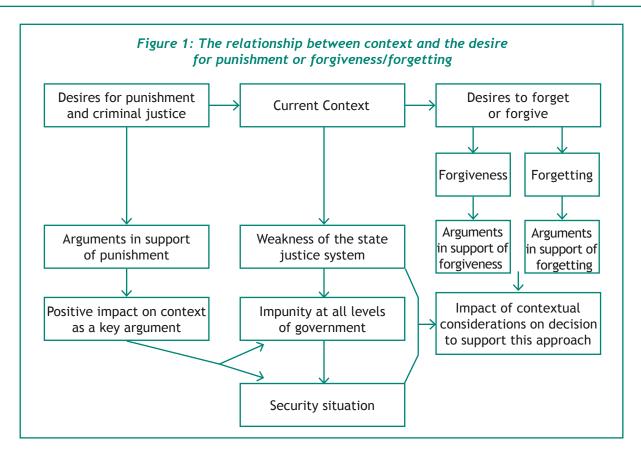
As always, opinions are not fixed and significant numbers of respondents frequently changed their mind or expressed opposing viewpoints. However, some general conclusions are drawn out in the analysis. Firstly, only a small minority of people in any research site had any genuine desire to "forgive" without seeing any form of justice. In fact, the notion that people can forgive gross violations of human rights without any access to recourse or resolve is idealistic and unrealistic. However, many more people in all research sites pragmatically argued that they would forget based on an acknowledgement of the contextual challenges that prevail in Afghanistan. Typically, changes in mind went in one direction, from advocating punishment to demonstrating a willingness to forget (see Figure 1).

Willingness to forgive

The rural community in Kabul was the most willing to forgive and, as a group, men in Kabul and Bamiyan provinces most frequently extolled the merits of forgiveness. In contrast, only a few people in Ghazni Province, mostly middle-aged male Pashtun respondents from Ghazni City, discussed wanting to forgive and those that did were largely reflecting on the merits of individual forgiveness, which did not preclude government-led justice processes. Overall, women were the least likely to express the belief that they could forgive. Arguments for forgiveness tended to be based on two broad understandings: the first was that forgiveness would serve the interests of peace, reconciliation and development in Afghanistan and the second applied largely to the individual benefit of personally forgiving perpetrators.

Although the first argument is similar in a sense to the emphasis on "forgetting" for the sake of security considerations, it is distinct since it takes the form of a more positive choice. In this view, what's past is past, crimes cannot be undone and those who have been killed cannot be brought back to life. Since many people were simultaneously both victims and perpetrators and are all ultimately Afghans, forgiveness was thus seen as the best way for the country to achieve peace and reconciliation. In this view, forgiveness bore the potential to induce change in perpetrators, teaching them the merits of good behaviour and shaming them about their past actions.

While respondents widely acknowledged that Islamic law outlined the right to pursue justice, small numbers of men from rural Kabul and Bamiyan argued that God would be happy if fellow Muslims were forgiven instead of punished. These men suggested that Islam supported forgiveness between Muslims as well as the right to retribution. Arguing this, a younger man from rural Bamiyan stated that there

Figure 1: The relationship between context and the desire for punishment or forgiveness/forgetting

was a "*Hadith* [saying or action ascribed to the Prophet Muhammad] from the Prophet that says if a Muslim is angry with another Muslim, it should not continue for more than three days, otherwise they will have deserted Islam."

The second argument applied to the merits of individual forgiveness, viewing the ability to forgive one's enemy, even in the absence of punishment, as part of the healing process. An older man from rural Bamiyan stated, "We will ignore their sins because the joy you can get from forgiveness you will never get from revenge." However, it should be noted that these arguments were largely based on the personal benefits involved in not taking revenge and in forgiveness, which do not necessarily preclude a government-led justice process.

Moreover, even those who advocated the need for individuals and the government to forgive did not generally envisage violators escaping punishment altogether. Instead, they emphasised that they could forgive in this lifetime because God would punish in the afterlife, a belief shared by all people interviewed. The distinction is that those who supported a retributive approach wanted people to be punished by God and by the state (or international community) while those in favour of forgiveness were willing to give up this right to state justice, safe in the knowledge that God would administer punishment. Only a handful of individuals perceived God to be a better source of jurisdiction in providing justice and punishment for these crimes because, as one respondent put it, "Allah is the king of the world."[160] Far greater numbers of people wanted to see punishment by God and by the state. For the majority, God's punishment was only sufficient in the absence of any other alternative.

Several additional underlying arguments for forgiveness are suggested by the author based on a reading of the data. Firstly, research suggests that involvement in past conflicts (and possibly therefore in some of the accompanying violations) provides an explanation for the higher levels of support for forgiveness expressed by male respondents in comparison to other groups. It is possible that men were more likely to argue that they should forgive if they personally feared the implications

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160   A middle-aged Pashtun respondent from Ghazni City.

of Afghanistan adopting punitive measures. Moreover, in rural Kabul there was evidence of fear in the community of some powerful commanders that the research team observed, and it is possible that male respondents, who had perhaps fought alongside these figures, would shy away from discussions surrounding punishment.

Secondly, women were perhaps less likely to forgive due to their specific suffering during conflict. Research in each community demonstrated that men were more often targeted by each regime as potential sources of resistance (outlined in Section 3). Consequently, many more female respondents had directly experienced the loss of a male relative during the past 30 years in comparison to the men interviewed. Thirdly, those most willing to forgive were also those who had been exposed to less serious crimes. A younger woman from rural Kabul clearly voiced this opinion: "Some people who have suffered a lot, they are saying the guilty people should be punished, and some who have not suffered, they don't say they should be punished." While this conclusion does not always hold true, it is worth bearing in mind when considering why people wanted to forgive or to punish.

Ability to forget

> *People will never forgive them unless they are forced to because of the conditions.*
>
> — Guljan, older Pashtun female, Ghazni City

> *The conditions caused us to accept forgiveness. If those conditions were not created, forgiveness would not be accepted.*
>
> — Qambar, older Hazara male, Bamiyan City

These quotes from respondents from two different provinces, of different ethnicities and of different sexes encapsulate the feelings of the majority of people in all research sites. Consequently, while many people strongly supported punitive measures, in many cases reflecting on the challenges that existed caused people to argue they could forget, as demonstrated in Figure 1.

Overall, people in Ghazni Province were most fixed, particularly those in the rural site, and continued to argue for accountability. However, a small majority of people in Ghazni City, particularly men, did change their mind during interviews or discussions and said that they would be able forget past crimes committed against them. In Bamiyan, the vast majority of respondents showed this trend. In Kabul, opinions were mixed in the rural and urban areas. In all cases, the reasoning was similar: people made the political decision to give up their right to pursue justice based on an assessment that in the current environment expectations of achieving criminal justice or punishment were unrealistic and possibly dangerous for security.

Afghanistan's culture of impunity was singled out as the key reason why past and present crimes had not been addressed previously or by the current government. This had perpetuated unequal power dynamics in Afghanistan between victims and perpetrators and between ordinary people and leaders, while the weakness or absence of a functioning civil society had further exacerbated this situation. The resultant lack of government and international will to tackle wartime issues meant that people argued that they should forget wartime crimes and prompted the typical response that "we shall leave them to God." A middle-aged male FGD participant from rural Ghazni argued:

> *In Afghanistan, it is impossible to have prosecutions because our government doesn't want to put them on trial. Criminals are in the high positions of the government and criminals never want to put themselves on trial. We must forget the past war.*

Given that the state justice system was perceived to be incapable of handling these types of cases safely, people in Bamiyan and Kabul in particular acknowledged that while it was difficult to forget, the risk to national security was perhaps too great to contemplate criminal justice. They argued that they were prepared to forget the past and sacrifice individual rights and entitlements for the sake of compromise, harmony and development in the country. A younger Hazara female respondent from Afshar reflected this, saying, "At first I didn't want the perpetrators to be forgiven, but for the peace and calmness of my country, if they are forgiven it will be good."

Many of those in Ghazni who argued they could forget because of security considerations—largely people the city—would support this approach *only* if it could guarantee security. They were often still torn between their desire to see punishment and fears that this would add to insecurity in the country. However, more relevant to respondents in Ghazni was the impact of the weakness of the formal justice system and impunity, which encouraged them to forget. This is in contrast to the primacy awarded to security concerns by respondents in Kabul and, particularly, Bamiyan.

Security considerations were less of a concern to people in Ghazni compared to other research provinces, perhaps because the situation is already insecure and thus people were more concerned with changing the status quo, which they identified as contributing toward insecurity. As an older Pashtun woman from the urban site said, "Where is the security? We know that the government can't ensure security. Thus, by punishing the murderers, people will become happy." In direct contrast, maintaining security in Bamiyan was the key concern for all those interviewed, and since the province was currently secure, there was very little desire among the communities to disturb this fragile peace, despite the extent of violations committed in the province.

As discussed, the complex nature of Afghanistan's wars was also perceived to present a challenge to identifying and proving who were guilty of crimes during the conflicts. In this context, given the weight placed on evidence-based judgements, it was perceived as better to forget the past and leave it for God to punish them. This tendency to state that they could not identify specific perpetrators guilty of crimes against them was most pronounced in rural Kabul and in Bamiyan Province. The fact that these communities are not confronted on a daily basis by those they hold most culpable could make it easier for them to conceive that they could "forget" past crimes. In contrast, in Kabul City and in Ghazni Province, perpetrators were frequently more visible and present in these areas, and this fuelled demands for punitive measures.

Building support for forgiveness in Afghanistan

Given the unlikely prospect that punitive measures will be implemented in Afghanistan, measures that could assist healing processes and enable people to forgive or forget the crimes committed against them are significant. Firstly, as discussed, it was widely argued that the victims themselves should be granted the power to decide whether to forgive or not. People's willingness to forgive could be increased if victims were empowered to make this decision through, for example, a national-level referendum or through consultation in *jirgas* and *shuras*. People accepted that that it was difficult for the government to consult with all victims on the issue of amnesty, but felt it should at least consult with whitebeards as representatives of the community. A younger Pashtun male FGD participant from Ghazni City argued that if amnesties happened without "considering people's views, that is an injustice and that will increase victims' pains instead of decreasing them."

Secondly, the role of repentance and regret, largely demonstrated through apologies, was seen as a central component. The role of apologies held the most significance to respondents in research sites in Kabul and a number of respondents who had previously argued strongly in favour of retribution said they could support forgiveness if perpetrators apologised. For example, a young Qizilbash respondent from Afshar argued, "It will be good if they are forgiven. People's hearts will become whole and calm if they come and apologise to the people. But if they don't apologise to people first, I won't forgive them." Apologies were a key component of building peace and in enabling forgiveness in the research site in Ghazni City, but generally of little significance in the rural community. Men in the rural Bamiyan community appeared most willing to forgive if these conditions could be met, while women in the area were resistant to forgiveness under any circumstances. In contrast, a small proportion of men and women in the urban site claimed they were potentially able to forgive.

People in favour argued that apologies might persuade more Afghans to forgive perpetrators since this could be a form of "solace" for people, which might stem desires for revenge. In this sense, genuine apologies could be sufficient compensation for their losses and were perceived as presenting an alternative to retributive justice. Apologies were perceived as possessing three distinct processes: confession, repentance and demonstration of change. In Kabul, people typically linked the process of

tawba ("repentance") to apologies. *Tawba* encompasses the full range of repentance, which involves an individual willingly admitting their complicity, repenting for their crimes and promising that they will not repeat this behaviour. In a sense, a willingness to undertake *tawba* reflects that a person has changed and is therefore worthy of forgiveness. An older man from the rural site in Kabul explained, "If in your village or in my village or anywhere in our country, the violators voluntarily enter your house and apologise and make genuine *tawba*, we should forgive them, it is our culture."

Firstly, perpetrators' confessions could contribute toward wider demands for truth-seeking and healing processes. In the case of South Africa's Truth and Reconciliation Commission, confessions were believed to play a crucial part in victim healing because they allowed a fuller picture of an event to emerge, relieving a victim of distress caused by previous official denials by, for example, revealing the location of human remains and allowing families to bury and honour their relatives.[161]

Secondly, acts of apology and forgiveness were generally perceived as ways to heal relationships between victim and perpetrator, helping rebuild the fragile bonds between different groups in the country. As a younger female respondent from rural Kabul argued, "by forgiving, hatred will be removed from people's heart, and they will feel relaxed." Many people, even those who maintained their support for holding criminals to account, therefore supported the view that apologies would assist reconciliation and peacebuilding processes.

Thirdly, without a demonstration that the criminal had changed, the notion of repentance was largely devoid of any meaning. It was largely felt that apologies should be accompanied by a concrete commitment to peace demonstrated by swearing public oaths, laying down arms and accepting Afghanistan's laws. For example, an older Hazara man from rural Bamiyan even said that he would forgive Mullah Omar if he accepted the law of Afghanistan and gave up his weapons, "even if he killed my brother." Consequently, the significance of apologies was strongly linked to a belief that it would improve security. It was therefore argued that if people committed future violations the full force of the law should be administered against them.

Whereas the state, or in certain cases the international community, was seen to bear the primary responsibility for administering justice for wartime crimes, people largely perceived a greater role for community-level processes in implementing an approach based on forgiveness. In this context, processes of forgiveness were widely seen as rooted in the Islamic notion of *islah*—the pursuit of peace and social cohesion through a process of negotiation and reconciliation. These are often the goals in community-based dispute resolution and in discussions about how processes of forgiveness should be organised in practice, many respondents consequently rested heavily on existing practices. Respondents largely perceived that whitebeards, *maliks*, *wakils* or mullahs, as respected figures in the community, possessed the legitimate moral and practical authority to act in this area. Community elders were seen not only to have the access to people but to represent their views. If perpetrators wanted to ask for forgiveness or apologise to their victims, they should first approach the elders of the community to ensure mediation was implemented in the best interests of that specific community. Meanwhile, local *shuras* or *jirgas* were identified as appropriate forums for this process. A middle-aged Tajik man from Kabul City supported this approach because "We people know how to solve our problems; the courts may prosecute the issues on the surface but if they are solved by the people it will be better."

However, some people also envisaged that a national-level approach could be conducive. A few respondents from Kabul Province suggested using the media to broadcast perpetrators' requests for forgiveness across Afghanistan. An older Qizilbash male respondent from Kabul City said, "The leaders and commanders should formally apologise on the TV to people, and then we the people will forgive them." People in Bamiyan also believed that the impact of apologies would be greater if people swore public oaths.

Moreover, given the demand that perpetrators demonstrate commitments to peace and to Afghanistan's constitution, people also envisaged a role for the government. In one sense, people

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161   Moon, *Narrating Political Reconciliation.*

felt that the government had the power to force a policy of apologies. A younger Hazara male from Ghazni City suggested that the country should "make a law to make criminals apologise to people." In another sense, the government was also perceived as possessing the necessary authority to ensure that those who had repented did not commit crimes in the future. Several younger respondents in Kabul stipulated that the government should take official promises and commitments from perpetrators in the form of a *sanad* (letter of guarantee), essentially putting them on bail, and if they committed future crimes the government should administer appropriate punishment. Another option was put forward by men in rural Kabul who described the potential of a process known as *teega*.[162] According to this process, if a disputant continues to commit crimes, he or she will face ostracism from the *qawm*. These respondents suggested that this could be adapted to deal with serious crimes committed during war, with the government performing the role of the elders in guaranteeing that the commitment was upheld and determining and administering punishment if it were broken.

Examples of previous attempts to resolve wartime tensions were outlined in rural Kabul and in both research sites in Bamiyan. In rural Kabul, a younger female Tajik respondent provided a clear example of a community mechanism used to resolve tensions and animosity created by a wartime experience:

> During the Taliban time a person reported another person to the Taliban. The Taliban beat him and tortured him badly. When he was released and found out who reported him, he hated that person. Then all the important and elder people of the area came together and made him [the person who reported] apologise and made them perform ashti [reconciliation] so as to not have any more enmity in the future.

There was evidence that further demonstrations of regret by local perpetrators had already taken place in rural Kabul and rural Bamiyan. It was generally reported in rural Kabul that those responsible for wartime crimes were now ashamed and regretted their past actions. Some of these perpetrators had apologised for their crimes, which had been largely accepted by these community. In rural Bamiyan an older Hazara man explained that "relations are good" because "Sayed elders came to us after the war and said to us, 'the Taliban did massacres and we regret this.' So we ignored their oppression and now we are living as we lived before." He added that if they had not apologised in this way, "maybe we would fight them." Another specific example widely discussed in rural Kabul concerned a former general under the communist regime who had publically apologised in the mosque for his role in violations committed during that era. One eyewitness described this event:

> A few years ago, we were holding funeral prayers for my mother, and he came to the mosque and apologised to the people. He said: "If I cut down your trees and I ate your fruit or did any other things I apologise to all of you. I hope that you all forgive me." Then people forgave him.

Moreover, as previously mentioned, a process of inclusion or exclusion had been occasionally applied against certain perpetrators here. Since these communities had to some extent addressed wartime crimes of local people, this may explain the lesser demand for punitive measures and more willingness to forgive or forget.

The research consequently revealed that communities that had addressed some of the legacies of conflicts themselves or had allowed processes of apologies and forgiveness to emerge naturally over time were more likely to argue they could forgive or forget past crimes.

Challenges to the forgive and forget model

Despite the pragmatic advantages of people forgiving perpetrators or forgetting their crimes, especially after a confession, it should be acknowledged that this type of behaviour is rare in post-conflict situations. Similarly, the research also showed that this approach faces considerable challenges in Afghanistan, which are outlined here.

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162   The literal translation of *teega* is "stone," but it describes a process to put a halt to a conflict between disputants for a set period of time and is used as a mechanism to enforce future good behaviour. For more information see Smith, "Community-Based Dispute Resolution Processes in Nangarhar Province."

It should be recognised that some who supported forgiveness processes were merely prepared to accept apologies as compensation for their suffering in the absence of anything else. For some, apologies were perceived as a bare minimum rather than a substitute for other forms of justice. To many more people, particularly respondents in research sites in rural Ghazni and in Bamiyan and to some women in all communities, the notion of forgiveness in cases of serious crimes under any circumstances was abhorrent. An older woman from rural Ghazni said, "Those who killed a lot of people or harmed many innocent people for no reason should not be forgiven, even if they apologise. I think that if a person has killed a lot of people their apology is meaningless." Even if perpetrators demonstrated appropriate remorse, these people argued they would still not be able to forgive them because, as a middle-aged woman from Kabul City argued, "Will people's loved ones come back to life by their apologising?" In their minds, apologies could not right past wrongs and would not compensate them for what they had lost. A reconciliation model involving amnesties and individual acts of confession, apology and forgiveness may have less value for these people.

Moreover, even people who argued that apologies and repentance were significant widely perceived that they should still be pursued in conjunction with other processes aimed at dealing with the past, including criminal prosecutions. Apologies by themselves were largely felt to be insufficient compensation and blanket amnesty was rejected by the majority of people. For example, while men in rural Bamiyan placed apologies strongly at the centre of forgiveness processes, a significant proportion of them still wanted crimes to be investigated, compensation paid and perpetrators prosecuted before they could be forgiven.

This view was supported strongly by people in Ghazni, who argued that apologies should still be pursued in conjunction with criminal prosecutions. Only when crimes had been determined and revealed and perpetrators punished would apologies hold any significance to this group. Moreover, courts were identified as appropriate forums for confessions and promises of repentance to take place. A middle-aged Hazara male FGD participant from Ghazni City summed up these feelings:

> The government must put them on trial first and their crimes must be determined. Then the government must punish them according to their crimes, and if the criminals apologise and confess their crimes then we must forgive them.

Additionally, while many people in Bamiyan and Ghazni argued that they could forget now, a frequent suggestion was that Afghanistan should wait until security is achieved and a legitimate and "impartial" government in place, and then justice should be pursued.

In the meantime, given that respondents widely identified people who had committed crimes in the past as responsible for ongoing violations, there was little expectation that perpetrators actually wanted to change, making it difficult to forget let alone forgive their crimes. Placing apologies at the centre of people's ability to forgive was problematic since people in all research sites expressed widespread doubts about whether criminals would actually ever apologise and ask for forgiveness. There was a general feeling that perpetrators were not sorry for their crimes and, even if they were, they would be unlikely to admit their crimes for fear of the consequences. An older Qizilbash woman in Kabul City succinctly worded this: "They will never show that they are sorry...they deny everything. They go about very proudly and acting like they didn't do anything." Participants at an FGD with younger Hazara men in Ghazni City discussed how even during the 2010 Peace Jirga the Taliban launched rockets at the venue. This indicated little willingness to apologise for their crimes and renounce violence.

It would also be challenging to implement a forgiveness process considering the aforementioned problems with distinguishing perpetrators. As a younger man from Bamiyan City pointed out, "All thirty-five million people are connected with each other and are involved in violations, so who should apologise to whom?" Concepts of *islah* and forgiveness in Afghanistan largely focus on maintaining peace and social cohesion at the community level. This approach could be one way of addressing the issue of local wartime perpetrators and resolving cycles of violations in a specific community or area, for example between the Tajik and Hazara communities in Bamiyan City. However, these processes and concepts might lose some of their value and meaning when applied nationally. Significantly, the value of these processes is derived from both the perpetrator and the victim being present, as was

illustrated by the example of the former communist commander apologising for his crimes in rural Kabul. When key perpetrators are no longer in the area or even in the country, it is hard to envisage how this process would occur.

Ultimately, since only a minority of people interviewed felt they could genuinely forgive, it is doubtful that this approach is sufficient to achieve long-lasting peace. Importantly, in exploring desires for punishment and retribution alongside forgiveness and reconciliation, it has become apparent through the research that both these approaches are relevant if the long-term goal is peace in Afghanistan. This chapter has explored a range of processes that could help fulfil competing demands for retribution, reconciliation and peace. The next chapter uses these as a basis to explore how to achieve peace and reconciliation in Afghanistan.

5. Peace and Reconciliation in Afghanistan

The overwhelming majority of people in all research sites stated that they did not currently feel "at peace." Achieving durable security and long-lasting calm for all of the country was therefore one of the most basic demands shared by all respondents. While in Ghazni people most frequently linked this with ongoing violence in their province and presented a narrow interpretation of peace as the attainment of security, in Kabul and Bamiyan provinces people generally argued that security had largely been reached in their areas, but that they still did not feel they had achieved peace. Instead, they felt that peace in Afghanistan rested on the fulfilment of certain key conditions: security, legitimate government, justice and reconciliation. Even in Ghazni, while immediate responses to questions about peace concentrated on the lack of security, on further expansion peace also clearly encompassed these components. Moreover, reconciliation was identified as a component of both justice and peace. Consequently, processes of justice, peace and reconciliation were seen as intrinsically linked, overlapping and mutually beneficial.

Afghanistan has experienced decades of conflict, which has fractured the bonds between different groups, *qawms* and ethnicities in the country. Moreover, there is a clear lack of trust between the population and Afghanistan's leaders. This social context influences prospects for peace and reconciliation. Having addressed the concept of justice for Afghanistan's conflicts, this chapter explores how people felt peace and reconciliation could be developed at the community level between Afghan people and what is required at the high level to reconcile the different parties to Afghanistan's conflicts. Finally, it explores people's perceptions of what a legitimate Afghan government looks like.

5.1   Community-level peacebuilding and reconciliation processes

A significant number of respondents in all research sites played down discussions of divisions between the ethnicities and between people in their communities. They often insisted that existing ethnic and religious tensions were now being actively erased and pointed to the joint celebrations and ceremonies held between the different groups, friendships with people from other ethnic groups and cases of inter-ethnic marriage. Despite these positive examples, it is it is clear from the analysis that wartime tensions still exist in Afghanistan. This is understandable given some of the patterns of violations that have occurred, such as those outlined in Section 3. In all research sites, evidence of wartime power structures and factional and ethnic divisions and alliances remain.

Therefore, while experiences of migration and greater understanding of the dangers of war might have assisted the creation of an Afghan identity, people still widely felt that this needed strengthening in order to take precedence over ethnic and *qawm* identities. While the primary need for reconciliation was overwhelmingly felt to be between the country's leaders, which will be addressed in Section 5.2, there was strong support for building reconciliation at the community-level, underpinned by an understanding that security in the country depended on the success of these processes. This was partially due to a sense that misconceptions about different groups were at least somewhat responsible for the conflicts. One Tajik woman from rural Kabul captured this general view: "We can reach unity when people don't think they are from different *qawms*. They all should think they are Afghans and Muslims and brothers of each other. Then we can have unity and peace." Reconciling people was also seen as playing a fundamental role in helping people deal with the legacies of the past. These sentiments are reflected by the words of an older Hazara man from rural Bamiyan who argued, "If all people are unified and the divisions between Hazara, Tajik and Pashtuns decrease, the government will grow calm and the past events will be somehow forgotten."

This did not mean that past events should merely be forgotten. Instead, people widely argued that processes designed to tackle preconceived notions, particularly those propagated by leaders and foreign powers, about other ethnic groups or about past events was vital in creating trust and promoting reconciliation in Afghanistan. Only by addressing the tensions and building understanding between different groups would people be able to start to trust other ethnic groups and see themselves as

all Afghan. Many respondents felt that educating Afghans about Afghanistan's past conflicts would help create a shared identity and assist reconciliation and durable peace in the country. While some concerns existed that discussing and recording the past could reignite tensions, when asked to reflect on processes of reconciliation and peace-building, respondents emphasised the need for accurate information about past events in order to tackle misconceptions and to demonstrate that all Afghans had suffered. A younger Tajik woman from Ghazni City explained:

> Cultural development and increasing people's knowledge about the conflicts and Afghanistan and maintaining justice in the community are key. If the government works in this area then revenge will end in our country and the people can trust the government. This will ensure peace and security in Afghanistan.

The demand for accurate information was consequently linked with demands for truth-seeking and documentation. Demands for truth-seeking and documentation processes in this sense were aimed at the goals of reconciliation rather than retribution and overall there was little demand for "ordinary" people to face punishment. Underlying this was a demand that these processes develop awareness about the negative impact of wars and encourage learning from past mistakes.

In all research sites, it was widely agreed that messages of reconciliation and unity were best delivered through community elders, heads of *jirgas* and *shuras,* and mullahs. These people were felt to possess the necessary moral authority and respect to bring people together to resolve lingering tensions and to facilitate cultural learning and sharing processes. It was argued that mullahs should use mosques as a platform to "show people the right path" and to explain to them that they are all "brothers" and should help each other. People perceived that a community approach would help heal relationships and would work to build peace from the bottom up. A younger Qizilbash FGD participant in Kabul City captured this idea:

> I think the elders of the qawms in the area should collect people and they should all sit together so they can resolve this issue and remove people's oqda. We all belong to Afghanistan and we should all know each other better. We respect our elders. We all are brothers. We should know this.

An older Qizilbash *wakil* from the same community felt that work was needed to resolve religious tensions in the community, where it was reported that there are some issues between the Sunni and Shia communities. He explained: "A commission should be created combining Shia and Sunni and different ethnicities. By holding these kinds of religious meetings negative propaganda will be decreased."

This emphasis was also based on knowledge of the role that community elders had played in some research sites in addressing internal tensions to some degree. For example, Section 4 outlined the role elders had played in ensuring reconciliation in rural Kabul between a Taliban collaborator and his victim and revealed that, in some cases, the community had permanently ostracised people from the area. In these cases, empowering people to decide who should be included or excluded from the community was shown to assist the resolution of wartime tensions and the development of peace in a certain area. Another example was provided by a middle-aged Hazara man from Ghazni City, who described how their local *shura*, called *Takhim-i-Solh* (Consolidate Peace), and described by him as a "humanity *shura*," acted to solve problems between people in the area, including those that stemmed from the different conflicts. In his words:

> This shura has solved many problems between people, especially legal problems, stemming from the conflicts. There was war in the country during the past three decades and thus reconciliation and unity between the people of Afghanistan is an essential thing...This shura was formed in 1383 [2004] and we started work nearly six years ago and have had good results from it.

It should be noted that younger men in both the urban and rural sites in Bamiyan and younger Hazara women in Afshar questioned the involvement of religious figures. They raised concerns that rather than being a unifying force, some mullahs actually fostered religious discrimination and divisions by acting in their own private interests or those of political leaders and party factions. As a younger Hazara man in urban Bamiyan explained:

There are two types of mullahs with two different perspectives: A number of them want people to be unified; they are real mullahs, they act according to Islamic teaching. But a great number of them do not want this; they want disunity and anarchy.

This group also questioned whether the actions of mullahs and elders would be sufficient to solve the differences between Afghanistan's ethnic groups. Since this was a problem related to the whole country it was questioned whether these people would be able to resolve differences outside of their area or between ethnicities. One younger male from rural Bamiyan summed up these concerns:

Mullahs can be effective in the community and solve the problems of a family, but they cannot solve the problems among ethnicities. Because every ethnicity has their own elders and leaders, and those elders and leaders of ethnicities have hostility among them already. For example, Sayyaf and Mohaqiq have hostility and hatred between them and this creates difficulties for mullahs.

Instead, these younger men were most likely to expound the merits of education, feeling that this had the potential to bring change over time, a view supported by people in all research sites. Tackling illiteracy through education was important since many people identified that this had left people open to manipulation at various stages. As a younger Hazara man from Ghazni City put it, "The big reason for our problems is illiteracy. People destroyed their own country and murdered their brothers because they are foolish and puppets of foreign countries." A couple of younger Hazara women in Ghazni City also criticised the current education system for inflaming tensions, since the teachers and heads of the schools propagated their own messages of hatred and disunity between the ethnic groups. Men, particularly in Kabul Province, argued that education should teach people about their religious and political rights in relation to the Afghan constitution, which could help reduce "*qawm parasti*" (favouring one's own qawm). Education in schools and universities could help people to understand the similarities between one another and assist trust-building processes. Moreover, some emphasised that this impact would reach beyond the walls of academic buildings because when students "understand the reality then they can go and help their people in their villages and cities," as said a younger Hazara FGD participant from Kabul City.

Respondents, particularly in Ghazni, argued that if people were educated and had jobs they would be less likely to take up arms and fight against one another, basing their arguments on their understanding about why people in their communities had joined the Taliban. Moreover, in Kabul Province many people discussed how empowering ordinary people was one way of challenging the dominance of commanders and the current status quo in the country. A younger Hazara FGD participant from Kabul City captured these ideas:

The government should provide job opportunities for people and create the opportunity for education...There should be a strong, country-wide policy. The people should understand that they should stand on their own and not behind the commanders.

Given the demand for wide dissemination of wartime information and the high levels of illiteracy in Afghanistan, many people, particularly in urban sites in Ghazni and Kabul, pointed to the role of the media. People perceived that the media was capable of disseminating messages of peace and demonstrating the dangers of war through a variety of programmes, as discussed in Section 4.2.

Finally, men in particular argued that another way to support learning and trust-building processes between communities was to increase the opportunities for personal interaction between Afghans through meetings, travel and inter-ethnic or inter-*qawm* marriage (this latter idea was not discussed by women, perhaps reflecting their lack of agency in this area). In some cases, increased opportunities to interact with people of different ethnicities in Afghanistan had helped the development of positive relations. Meanwhile, experiences of migration had apparently broadened people's horizons and witnessing how people behaved in different countries had had a positive impact on people's behaviour toward fellow Afghans. A middle-aged Tajik woman from Ghazni City explained, "There was a good impact when people migrated to foreign countries because they learnt about how to make their lives better...now all of our people are Afghan, not Pashtuns, Tajiks or Hazaras."

One younger man at an FGD in rural Bamiyan described meeting people from other parts of Afghanistan at university and the positive relationships that developed between them. This was particularly significant in the communities in this province, which consists of an overwhelming Hazara majority and thus has less frequent chances for interaction with other ethnic groups. Many respondents in Bamiyan also remarked that watching the multi-ethnic AREU research team work together was a positive experience for their communities, while the opportunity to get to know AREU's Pashtun researcher helped dispel some negative impressions of Pashtuns that had been created by the Taliban.

Ultimately, the significance of all these processes in the eyes of respondents was that they were perceived as encouraging the development of Afghan national identity or gradually overcoming prevailing wartime tensions and factional or ethnic divides. These are all long-term processes, reflecting the understanding of respondents that if reconciliation is to create the conditions for long-lasting peace it needs to be inclusive and allow trust and harmony to be created naturally between Afghanistan's different groups. This does not mean simply forgetting past events, but instead requires a proactive approach to break down negative stereotypes and combat self-serving visions of the past promoted by Afghanistan's leaders.

However, while these are worthwhile endeavours, it is important to recognise that in a hostile political environment some of these initiatives, no matter how well designed, are more likely to fail or trigger further insecurity. For community-level processes to succeed, people generally felt that political leaders and institutions needed to be involved.

5.2 National-level peacebuilding and reconciliation processes

As discussed, Afghanistan's wars were generally perceived as triggered and prolonged by the country's leaders or foreign powers and the vast majority of people interviewed felt that "ordinary" Afghans played a minimal role in fuelling conflict. Consequently, while fostering reconciliation from the ground up was seen as a key component of creating peace in Afghanistan, peacebuilding was largely felt to work from the top down. In fact, it was widely argued that until Afghanistan's political and ideological leaders reconciled there would be no suitable conditions in which reconciliation on the ground could take place. All communities emphasised that if the various leaders—whether inside or outside government—stopped employing divisive policies, learnt to trust each other and were reconciled, their followers in Afghanistan would do the same. One middle-aged female FGD participant from rural Kabul argued this general understanding: "These big people created all the conflicts between people. They have to sit together and solve them."

Currently, the primary peacebuilding programme in Afghanistan is organised through the APRP, led by the High Peace Council, which is comprised of state and non-state actors. AREU's research was conducted either before the announcement of the APRP (Kabul) or while it was still relatively unknown (Bamiyan and Ghazni) and the research was not designed to elicit responses on the programme itself. However, much of the information respondents provided regarding peace and reconciliation is relevant to current discussions at the policymaking level. This section hopes to provide a more nuanced understanding about legitimate peace and reconciliation processes in Afghanistan. It looks first at which actors were identified to be responsible for leading peace processes. It then addresses which groups should be included in peace negotiations and explores any prior conditions to their involvement.

Who has the legitimate authority to lead peace and reconciliation processes?

The overwhelming sentiment expressed by the vast majority of respondents was that peace processes should be genuinely Afghan. The key demand was for all of Afghanistan's leaders to sit together to resolve tensions and issues and make peace. As a result, the majority of people felt that the government was primarily responsible for leading peace talks, particularly with the Taliban. In this sense, people felt that the government should act as a focal point for gathering all the relevant actors together. Reflecting this, one older Tajik woman from rural Kabul argued, "Only the government can

make all the *qawms* one. They have to call all the elders and *maliks* of different places and sit with them to talk and finish the hatred in their hearts." In this sense, it is in accordance with the blueprint document of the APRP.

It was largely felt that international actors, particularly those with foreign troops in Afghanistan, should not play a role in negotiating for peace. Rather than the international community imposing solutions from outside, peace was considered to be an internal affair for which relevant and appropriate mechanisms already existed. An older Hazara man from Kabul City explained this understanding:

> *If the world community considers its responsibility and avoids interfering into our affairs everything will be ok. We ourselves have our jirga, we have the Meshrano Jirga [Council of Elders; upper house of Afghanistan's parliament]; we can solve our problems through these.*

Moreover, respondents in all areas felt that the lack of trust between the international community and the Taliban prevented them from being able to act as mediators for peace. There was a fear that international involvement could block any will on the part of the Taliban to negotiate. In fact, it was widely perceived that the Taliban would not contemplate peace while international forces remained in Afghanistan. Consequently, in order to allow the government to legitimately negotiate for peace, many respondents in Ghazni and to a lesser extent in Bamiyan and Kabul saw the departure of foreign troops as a vital stage in the peacebuilding process. Significantly, the widespread perception, particularly in Ghazni, was that the government would only regain legitimacy to negotiate for peace if it was independent, consequently requiring international forces to leave.

ISAF appeared to have also delegitimised its ability to lead processes given that many respondents highlighted that the conflict had escalated despite its lengthy involvement in Afghanistan. Many older respondents in each research site pointed out that when the international troops had first arrived, peace was largely secured and the Taliban and Al-Qaeda had disappeared from the country. However, they felt that the international forces, particular the United States, had allowed the reappearance of these groups while also contributing toward deaths and the violation of human rights of Afghan civilians. One older Qizilbash man from Kabul City summed up this view: "The government thinks that people are ignorant and no one knows anything, but people know that Americans are the reason for the insecure situation."

The widespread conspiracy theories outlined in Section 3.2 that the international community did not want to defeat the Taliban and instead were colluding with them also contributed toward perceptions that international actors were not legitimate negotiators. Men in Bamiyan and people generally in Ghazni felt that if they wanted to end the conflict they "can do it in a month" but instead they were profiting from the conflict. Compounding this was the belief in rural Ghazni that international troops or "infidels" were against Islam and several older respondents felt that they were in fact waging a war on Islam rather than against the Taliban. Respondents believed that those negotiating for peace should be Muslims or at least supporters of Islam.

Additionally, respondents in the rural site of Ghazni as well as Pashtun men in the city strongly linked the departure of foreign troops with their ability to deal with legacies of the conflicts and feel "at peace." The presence of foreign forces served as a continual reminder of previous conflicts and prior experience of foreign occupation. A middle-aged Pashtun man from rural Ghazni explained this feeling: "When foreigners are in our country people can't forget their bad memories, so they must leave our country. At that time we will have peace and calm."

However, not everybody felt that the government should be trusted to lead peace negotiations since it was not an impartial arbiter, suffered from endemic corruption and lacked legitimacy among the people. In fact, several respondents in all research sites questioned a leading role for the government given that they were unsure of its intentions and pointed to possible links between the government and the Taliban. They found evidence for this accusation in the failure of the government to end the Taliban insurgency, their inability to punish and prosecute those who had committed crimes and even, in Bamiyan, resolve local conflicts between Kuchi and Hazara communities.[163]

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163   The Kuchis are a largely Pashtun nomadic people who settle in different parts of Afghanistan during different seasons.

Therefore, some respondents did envisage a role for the international community, particularly the UN. According to this group—largely younger female respondents in Kabul and Bamiyan provinces and in Ghazni City and a significant proportion of Hazara men in Ghazni City—international actors had both the necessary power and the responsibility to help Afghanistan due to their involvement in the country. They considered that if the international community told elders and leaders to meet and resolve their issues, people would do so out of respect or fear. Moreover, the international community was seen to possess the necessary military power to ensure that talks between different groups did not disintegrate into violence. This was perceived to be particularly significant in organising negotiations between the government and the Taliban.

In fact, these younger women were concerned about the implications for security of the departure of international troops, fearing the resumption of power by the Taliban. As one younger female Pashtun respondent in Ghazni City said, "If the international troops leave, maybe the war will start again and the schools will close again. Also, women won't be able to work or go to school if the Taliban come back in power." A middle-aged Tajik woman from rural Kabul concluded, "If there are no foreigners, the situation will get worse."

Respondents also widely debated the role of Pakistan in Afghanistan's peace process. In Ghazni, many men argued that the Taliban would only negotiate with the government if Pakistan allowed them to. However, despite recognition of the power of Pakistan over the Taliban, many more respondents in all areas desired that all foreign "interference" be removed from Afghanistan in order to achieve peace. Many men, in particular, argued that Pakistan, Iran and, in some cases, Saudi Arabia needed to stay out of Afghanistan's internal affairs. These countries were singled out as responsible for arming the Taliban and for causing divisions between the different ethnicities. A man from rural Bamiyan summed up the feelings of these men:

> Afghanistan now is like a field for buzkashi [a rough Afghan horseback sport with similarities to polo, which places a high premium on individual prowess] for the world and everybody plays a role here. If Iran, Pakistan and Saudi Arabia do not interfere in Afghanistan's affairs there will be security. Now you see that the Taliban has weapons, no doubt they receive the weapons from countries outside Afghanistan. Until the hands of foreigners are cut there will be no security.

Consequently, despite concerns about the legitimacy and power of the Afghan government it was still widely perceived as primarily responsible, particularly in leading talks with the Taliban. To ensure that processes were legitimate, in order to create an environment in which reconciliation could occur at the top and at community levels, and to foster the trust that is so clearly required, peace processes had to be inclusive and integrative. Consequently, the establishment of a national-level *jirga* that included representatives from all groups was widely supported in both communities. It was widely perceived that peace processes should represent all Afghans, including the Taliban, and that the *jirga* system provided the appropriate forum to achieve this. People felt that this would enable elders, leaders (particularly from the religious community) and *maliks* to come together, speak honestly, build trust and address ongoing hatred between Afghanistan's different groups.

Including representatives of all groups would also ensure that ordinary people's desires and demands were included in discussions and would assist victims' healing processes. An older Pashtun man from the rural site in Ghazni explained this idea: "The best way is if an agreement is reached at a *jirga* where all representatives of the people participate. This would be a form of justice and it will help to heal the pain of people who are victims." Topics for discussion at a *jirga* included collecting opinions about how to deal with the perpetrators of wartime crimes, especially in terms of forgiving or forgetting past crimes. To build genuine peace, the voices of the Afghan people had to be included. As a middle-aged Tajik woman from Ghazni City put it, "If real forgiveness happens in the country that is a lot better. If the government doesn't listen to the voices of people about forgiveness they won't build proper peace in the country."

Hazaras interviewed had the perception that the Kuchis have adopted a more political angle to their migration patterns. There was the widespread belief that they have been receiving Taliban support in choosing to migrate to Hazara areas and grazing their livestock on their land. Clashes in 2010 between the Kuchis and Hazaras, largely in Behsud and Daymerdad of Wardak Province, caused concern among Hazara populations in Bamiyan.

While the High Peace Council was only discussed occasionally due to the timing of the research, several respondents in Bamiyan and Ghazni rejected the legitimacy of the current High Peace Council to lead peace negotiations since it was not felt to represent the views of all Afghans, particularly its victims. This did not mean that the High Peace Council itself was not supported as a framework for negotiations—only that many members were not legitimate. For example, an older man from Bamiyan city made this complaint, arguing, "In the peace commission there should be people who have experienced pain." A frequently expressed belief was that previous peace processes had failed largely because peace processes were not genuinely representative. The June 2010 Peace Jirga was widely criticised by male respondents in Bamiyan and in Ghazni, who said that not only was it not representative of the Afghan people but that violence had surrounded the event. A middle-aged Pashtun man from rural Ghazni described it as a "show" that resulted in "no action" while an older Tajik man from Ghazni City argued that such *jirgas* were "a waste of time" because "the government didn't invite the real representatives of Ghazni's people to the [Peace] Jirga. Our governor sent some people who are from one family and his special people to accept the government's ideas."

The failure of past initiatives, including Najibullah's *Aasht-i-Milli* (National Reconciliation) and PTS, to reconcile people and bring peace to Afghanistan made it difficult for many people to perceive how any current or future peace process would have a better chance of success. Exacerbating this despondency was the widespread acknowledgement that the international forces were unlikely to leave in the immediate future (although the deadlines for the departure of international troops over the next few years are now becoming clearer). One older Tajik man from Ghazni City summed up the challenge this posed to peace talks.

> If the Taliban agrees to sit with the government, the government must accept their conditions and their first condition is that the international forces must leave the country—and we know that this condition is impossible right now.

Consequently, the majority of respondents questioned the prospect of reaching peace with the Taliban in the current environment. As a result, many of those interviewed were sceptical about the success of top-down reconciliation and peace building, despite acknowledging that this was the only way to achieve peace.

Who should be included or excluded from peace processes?

As shown, respondents widely desired that Afghanistan's peace processes be as integrative and consultative as possible. People widely perceived that resolving ongoing conflict and ensuring long-term peace from the top-down required the involvement of all Afghanistan's leaders. On the one hand, the Taliban and other insurgent leaders such as Gulbuddin Hekmatyar presented the most serious obstacles to peace and ending their insurgency was the only way to bring security. On the other, the lack of trust among those in power was felt to be a stumbling block for general reconciliation in Afghanistan. Respondents widely perceived that if the leaders did not trust each other, the people could not trust the leaders, which created a pervasive environment of mistrust in the country. Once trust was created at the high level, it was felt that the effects of this would spread through society. This feeling was well worded by a middle-aged Tajik woman from rural Kabul:

> The president says one thing, then the ministers and MPs reject it. All of them are rejecting each other's ideas. So, how can people trust them? The big people, leaders and elders should trust each other and try to build trust among people. Then people should follow them.

It was widely acknowledged that it was difficult for the government to deliver people's economic, social and justice-based demands as long as its attention was focused on combating the insurgency instead of delivering people's rights. Consequently, the need for negotiation with the Taliban and Hekmatyar was widely recognised by the vast majority of respondents. It should be noted that Hekmatyar was not always specifically mentioned, but when he was, he was perceived as distinct from the Taliban. While many respondents, apart from those in rural Ghazni, recognised that insurgents had committed many atrocities, they emphasised that they were tired after so many decades of war and argued that the government had no choice but to negotiate. In fact, reconciliation with the Taliban was largely seen as the *only* way to ensure peace in Afghanistan.

Consequently, there was a desire to see genuine talks between the armed opposition and the Afghan government. The biggest obstacle to conducive and productive talks with the Taliban was generally perceived to be mistrust between the warring parties. A key confidence-building measure described by respondents therefore was a desire to find out substantive details about Taliban desires and demands. This included collecting detailed information about how they viewed the government and governance, as well as what conditions they placed on ending their fight. Interestingly, this demand was despite most respondents reflecting a clear awareness of Taliban views and goals. The intended aim of these talks was therefore to open up channels of communication and serve the goals of trust and relationship building between the government and the insurgency, rather than merely information gathering. Through these processes the implied hope of many was to transform the identity of the Taliban from "the enemy" to viewing them as Afghans and part of Afghanistan; especially since, as a number of male respondents, particularly from rural Kabul and Ghazni, emphasised, the Taliban *are* Afghan. Frequent statements heard in these areas were along the lines of, "They are from this land so we should make peace with them." A number of largely older women in Bamiyan also framed discussions with the Taliban in terms of fulfiling wider demands for truth-seeking. As an older female respondent in rural Bamiyan put it, "It would be good if the government negotiates with them and asks them why they were responsible for such cruelty and why they killed people."

However, certain groups rejected this process completely. In Ghazni, a substantial proportion of women from all ethnic groups and Hazara men rejected negotiations and the idea of reconciliation with the Taliban. A smaller proportion of women in both communities in Bamiyan and a few Tajik and Hazara women in Afshar also expressed opposition to negotiations. This is understandable given the specific discrimination both women and Hazaras faced while the Taliban were in power.

These groups were therefore concerned that negotiations could threaten their personal security. For example, a younger Pashtun female respondent from Ghazni City, who had been forced to marry a foreign Talib during the Taliban era, rejected all forms of negotiation because she was so scared of them. She was haunted by "their bad faces in my dreams and if I see them in reality, I will die." Men, on the other hand, tended to more frequently emphasise that the Taliban were not willing to build peace in Afghanistan and feared any negotiations would serve their interests and not those of the country.

In addition, it should be acknowledged that a number of female respondents from both areas in Kabul suggested that warlords or mujahiddin leaders should not be allowed to sit with elders to discuss peace. Those to be excluded were, similarly to the Taliban, singled out as having committed gross violations during the conflicts. Through these acts they had delegitimised themselves and so should not be allowed to be involved in processes involving respected community figures. Moreover, if they were involved it was feared that they would disrupt and derail the process. An older Tajik woman from Afshar explained this attitude:

> The leaders who are criminals and committed crimes, they shouldn't sit. If they come among the elders, the elders won't be able to think clearly. There should be people who are knowledgeable and educated.

Consequently, it is clear that despite desiring an inclusive process, a number of respondents imposed certain conditions on peace negotiations. Firstly, there was the widespread demand that all those participating in peace talks indicate their willingness to renounce violence and to change. This was particularly significant in relation to the Taliban. Many respondents, particularly women from Bamiyan, smaller numbers from Kabul and Hazara respondents in Ghazni City, said that negotiations should only occur if the Taliban demonstrated commitments to Afghanistan by renouncing violence and laying down arms, swearing oaths, accepting the Afghan constitution and its laws, and supporting reconstruction efforts. As a middle-aged Hazara man from Ghazni City put it, "The Taliban who are not ready to accept the constitution and women's and human rights must be sent to court, but as for those people who are ready to accept the constitution and human rights, we must get on with them and treat them as fellow Afghans." This is actually in accordance with the APRP, which states, "The peace and reintegration program is available to all members of

the armed opposition and their communities, who are willing to renounce violence and terrorism and to live within the laws of Afghanistan, and return home to join in building a new Afghanistan."[164]

While apologies held varying significance for people (see Section 4.3), a significant number of Hazara women interviewed in Ghazni City and in Bamiyan claimed that the Taliban had to demonstrate regret for past actions in order for them to support negotiations. Consequently, a further condition was that perpetrators publically apologise, which could encourage people's willingness to negotiate and reconcile with insurgents. In relation to the Taliban, a middle-aged woman from rural Bamiyan argued, "If they want to come and admit their crimes, feel guilty, give their weapons to the government and apologise, it would be very good." Given the lack of trust of people involved in the government, another suggestion was that certain leaders in government should also ask for forgiveness for their role in the conflict, prior to being included in peace processes. Paying back wartime spoils or contributing toward compensation processes, as discussed in Section 4.1, could also reflect an individual's willingness to change.

The final condition voiced by some men and women in the urban site in Ghazni, particularly by Hazaras, and among men in the rural community in Bamiyan was that justice still needed to form a component of peace negotiations. Consequently, this group argued that there were some members of the Taliban or certain members of the mujahiddin or former warlords who could not be reconciled with because they had committed such heinous atrocities, and thus should be excluded from talks. It should be noted that the APRP specifically states that it is not a framework for general amnesty and that forgiveness should be sought in accordance with the constitution of Afghanistan, which should preclude the reconciliation of people guilty of war crimes.

When discussions turned to peace processes, many respondents in all research sites felt that the prosecution of these individuals should be a requirement. Even in Bamiyan, while the vast majority interviewed argued they could "forget" wartime crimes for fear of stoking insecurity, many also argued that formal punishments were ultimately necessary to maintain the country's stability in the long run. Significantly, when specific questions were asked about how to achieve peace and what people themselves would do if they were in power, a significant proportion of respondents in both communities were in favour of implementing retributive justice first, and then working toward peace and reconciliation. An older female respondent from rural Bamiyan supported this approach, saying, "If I was in power, I would hang the Taliban. Then I would bring all the different ethnicities together and make them united. I would make peace between them." However, reflecting the challenge Afghanistan's environment presents, some respondents, largely men, argued against this view, recognising that, in practice, prosecutions could prove an obstacle for negotiations and reconciliation processes. As a middle-aged male FGD participant in Bamiyan put it, "If, for example, Mullah Omar is arrested and prosecuted while he has been invited for negotiation, no one else will accept to come for negotiations."

In fact, it was widely recognised that the Taliban was unlikely to accept any of these conditions. Respondents in all areas argued that the key insurgent goal was the resumption of power and the ability to recraft the state. This acknowledgement translated into a general pessimism that successful negotiations with the Taliban would take place. A middle-aged Hazara man from Kabul City summed up this general feeling:

> The important condition of the government is that the opposition should accept the constitution, but they want to change the constitution...They have lots of conditions and demands so I don't think they will be ready to sit for negotiation.

5.3   What does legitimate government look like?

One of the most pressing demands was for a legitimate government that would implement justice and think in the best interests of the Afghan people in order to build long-lasting peace in the

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164   Islamic Republic of Afghanistan, National Security Council, *D&R Commission, Afghanistan Peace and Reintegration Program* (Kabul: Afghanistan, July 2010).

country. Respondents generally defined legitimate government as one that was accountable, would tackle corruption and impunity, implement the rule of law and foster development. Ultimately, the government needed to ensure that justice was upheld through a variety of processes, including implementing reparative policies, particularly financial compensation, and investigating the legacies of violations and potentially prosecuting the guilty. Underlying this was a key demand for a government that "cared about the people." A middle-aged Pashtun respondent in Ghazni City reflected this view: "Just one thing can help us to deal with these memories and feel at peace and that is a powerful and lawful government to take power in the country, remove the role of criminals and help the poor and innocent people of Afghanistan." Attainment of this was intrinsically linked with people's ability to deal with their wartime experiences. As a middle-aged respondent from Bamiyan City explained, "If people have a good life and the government cares about the people, this could be justice for those who were victimised, who suffered bad days and have pain in their hearts."

The majority of people interviewed in all research sites emphasised that implementing distributive justice and improving people's lives financially and materially would help people to deal with their wartime experiences and would create the conditions for peace. As discussed in Section 3.2, people widely identified poverty, unemployment, illiteracy and resultant "ignorance" as factors fuelling the conflict. People also emphasised how hard it was to deal with wartime abuses when they were still suffering financially. As a younger woman from Bamiyan City succinctly put it, "When people are not hungry, they will not think too much about their past." An older FGD participant from rural Kabul explained the benefits of employment: "If people have good jobs they will become busy. If they are jobless, they remember past sorrows." Common demands heard were for more or better access to jobs, schools, medical facilities and other resources, such as electricity.

Many respondents emphasised the gulf that existed between this ideal of a legitimate government and the actual situation. As one older man from Bamiyan City put it with reference to the parliament, "Instead of throwing bottles at each other, they should be our representatives. They should be able to talk logically with each other. What can we learn from them?" Consequently, there was a demand for an honest, credible and able government that could set an example to the rest of the country. The vast majority of people interviewed across all research sites referred to the widespread corruption at all levels of government as a key criticism and perceived that opposition to the government was fuelling the insurgency. Many respondents in all research communities, particularly men, therefore felt that a vital component of building peace was to reform government, removing individuals from power who were guilty of wartime crimes. "If I was in power, in order to achieve peace I would appoint honest and capable people in high positions and would discharge incapable and criminal people from government," said an older Tajik man from Ghazni City.

Government reform was perceived to include tackling and investigating corruption, and appointing honest and capable officials who worked for the good of the whole country and not just their own ethnic group. Ensuring that all ethnic groups were equally represented in positions of power was perceived as vital to guarantee unity, remove ethnic tensions and create the environment in which reconciliation might take place. Summing up this view, a Hazara woman from Kabul City explained how she would approach this if she were president: "I wouldn't think only about my *qawm*. I would try to build trust between people; when they trust me, they would trust each other."

Tensions on the ground between different ethnic groups were reportedly exacerbated by perceptions of discrimination in the current political makeup of Afghanistan. Men from Ghazni City argued that if someone was appointed to a government position, they then appointed people from their own *qawm* or ethnic group to work for them. A number of respondents in Kabul City, particularly older Tajik women, perceived that Tajiks had been discriminated against in favour of the Pashtun population. An older woman captured this resentment:

> *Karzai's party is one part of the problem because he is a Pashtun and so he has placed Pashtuns in the key positions in the government. In the Ministries of Defence, Interior and Education he has placed Pashtuns in the key positions. We have got other people who have experience from different qawms but Karzai does not give them work in the government. People have been put in these positions because they know each other and are from one qawm.*

Having strongly argued for government reform to remove criminals from power as part of the peacebuilding process, the vast majority of respondents had little desire to allow new perpetrators positions of responsibility in Afghanistan. Consequently, most respondents argued against allowing the Taliban back into power. While most people acknowledged the need to talk and bring an end to the conflict, allowing the Taliban back into power was frequently rejected by most people in Bamiyan and Ghazni City and many people in both research sites in Kabul. Women from all areas and members of the Hazara ethnicity were the most vocal in their opposition to this scenario.

The major concern was that allowing the Taliban back into power would trigger further violence and insecurity. Vivid memories of the Taliban's violent behaviour existed and people feared a repeat of these experiences. The extent of violations committed during the Taliban's regime and their current policy of suicide attacks and roadside bombs made the prospect of giving them positions of power morally objectionable to many respondents. Consequently, while there was a willingness to reconcile with low-level Taliban and reintegrate them back into communities, there was resistance to allowing those deemed responsible for conflict back into power. Moreover, male respondents in Ghazni City generally pointed out that the Taliban had proven largely ineffective at running a government. As one older Hazara man put it, "The Taliban actually returned Afghanistan to the state of the country in the 18th century."

In contrast to the opinions of this group, a minority of respondents were in favour of providing positions to the Taliban. At least a third of male and female respondents from the rural area of Ghazni described legitimate government in terms of the establishment of an Islamic government, generally perceived as one led by the Taliban. In their mind, the above goals could only be achieved if led by a truly Islamic government. A middle-aged female respondent explained this view: "If a good and Islamic government takes power and the Taliban come back and implement Islamic law in the country, all the people of Afghanistan will live in a peaceful environment." They felt the Taliban deserved respect for continuing to fight a "holy war against infidels." One younger woman said: "The Taliban is fighting a holy war for Islam and so the government must join or bring into government those who are fighting with the enemies of our religion and country." In fact, these respondents also argued that the names of all members of the Taliban should be removed from UN blacklists and they should not face the threat of arrest.

However, other people, largely from rural Kabul, argued that the Taliban would not come to the negotiating table unless they were promised positions of authority and granted immunity from prosecution. Consequently, they were more concerned about appeasing the Taliban in the interests of reaching peace and calm. A younger Tajik man from this site argued that this was necessary because, "if they are punished or investigated, the country will go toward anarchy; again another war will break out." These respondents stated that while they did not want the Taliban to be given positions of power, in practice it was essential to bring peace. "The government is compelled to give them a position, there isn't any other way. We don't want them to come, but we are tired of war—by fighting nothing will be solved," said an older Tajik woman from rural Kabul. It is interesting that this community, which suffered under Taliban rule, was willing to contemplate allowing them back into positions of authority, whereas others were not. Several factors may contribute to this. Firstly, Taliban violence in the community was not seen as indiscriminate or ethnically motivated (it generally targeted mujahiddin commanders and other armed groups). Secondly, the similarity between the research sites in rural Kabul and rural Ghazni perhaps rests on the conservative nature of these communities. There were fewer concerns regarding the impact on women of integrating the Taliban in government, for example.

Overall, respondents expressed doubt that all parties to Afghanistan's conflicts would ever be genuinely reconciled, given the widespread acknowledgment of intractable issues on which neither side was likely to find an agreement, the lack of trust among people in power and in the government itself, the interference of foreign powers and the failure of previous peace processes. Instead, many emphasised the perpetuating nature of Afghanistan's conflicts. Reflecting this despondency, an elderly Hazara woman from Kabul City said, "Even if they negotiate 100 times, it is not possible to bring peace." However, for the sake of Afghanistan and its people, it is vital

that attempts continue toward a just and enduring end to conflict in the country. With this in mind, the concluding section of this paper presents key findings and discusses potential ways forward.

6. Key Conclusions and Recommendations

Following extensive research in specific areas, this study aimed to draw together observations and evidence about the impact of Afghanistan's conflicts on Afghan communities and the individuals within them and their consequent desires and demands in terms of "justice," "peace" and "reconciliation." This chapter aims to contribute toward discussions at the policymaking level by providing a more nuanced understanding about what these terms mean in the Afghan context through presenting key conclusions from the research, along with related policy issues and recommendations.

While peace was the key demand among all Afghans interviewed, justice remains a priority for most people. The fact that the Afghan government and its international partners have not implemented a comprehensive programme to provide justice or compensation for past and present wartime crimes has inhibited people's ability to deal with legacies of conflict and the majority participating in AREU's research said they were struggling to cope emotionally, psychologically and practically. Thus, the desire for some form of "closure" remains strong.

The research demonstrated that processes of justice, peace and reconciliation were interdependent and overlapping. Ultimately, the success of any one of these rested on the fulfilment of the others. However, it also revealed that people were frequently pragmatic and willing to compromise in the interests of peace. Most people perceived that it would be sufficient if the government, with the support of international donors and international and Afghan civil society, attempted to fulfil some of these processes to a certain degree, as is outlined below.

6.1   Key conclusions

Each community and the respondents within them have experienced conflict in different ways. The frequency and ease with which all communities identified the "worst" period or "worst" conflict demonstrates that people view Afghanistan's wars in distinct phases. How an individual personally experienced and perceived each conflict was largely determined by where they were living at a specific period in time, including currently, with ethnicity, sex and the degree of social conservatism of an area or a respondent playing an influencing role. These varied histories and the differing current contexts of each area result in a wide variety of opinions about how to deal with these experiences and overall the research demonstrated that there is no one way to deal with either the legacies of wartime violations or those held responsible for them.

A number of key conclusions can be drawn from the research:

1. Securing peace in Afghanistan is considered the key priority with all policies and processes ultimately assessed against the impact on this goal.

2. People's views are locally informed through their individual and shared experiences of conflict. How Afghans want the past to be addressed is context-specific and consequently may change over time.

3. Criminal justice mechanisms and criminal accountability are the most supported and most significant means of justice, but are widely recognised as not currently feasible given the Afghan context.

4. There is no genuine desire to forgive the perpetrators of wartime crimes and people are unable to forget their past suffering. Instead, they argue they can make the political decision to "forget" the past for now because of the context.

5. Punitive measures in the form of vetting or lustration are, however, required to build government legitimacy and respect for the rule of law and develop the conditions for peace.

6. Peace and justice are not competing concepts. Instead, justice in Afghanistan is often viewed

widely to include more than retributive justice and is largely framed in terms of "healing." Restorative and reparative forms of justice can go some way toward fulfiling victims' demands while assisting key goals of peacebuilding and reconciliation.

7. Achieving genuine and durable peace in Afghanistan rests on the fulfilment of security, legitimate government, justice, and reconciliation.

8. To uphold justice and build peace and reconciliation in Afghanistan requires a combination of approaches operating at multiple levels to ensure they are genuinely representative and consultative.

6.2 Fulfiling demands for justice while upholding peace

Criminal justice

The research demonstrated that demands for "punitive" or "retributive" justice were strong across all research sites. People conceptualised this form of justice as entailing the punishment of those who were guilty to cause them physical or emotional pain, which would provide vindication for victims, uphold their rights, build respect for the rule of law and fulfil the demands of Islam, ultimately in order to provide "closure."

The key desire was for the Afghan government to ensure accountability through criminal trials to punish those *most* responsible for Afghanistan's conflicts and their accompanying violations—generally identified as the "leaders." Holding leaders to account was perceived to assist the development of the rule of law in the country by demonstrating to their followers and the general population that crimes would no longer go unpunished. This also suggests that people were conscious of how much justice—in terms of the proportion of people designated to be criminally punished—was beneficial for building security in Afghanistan.

The overriding demand was for domestic trials. Overall, people rejected a role for international justice mechanisms due to the perception that the Afghan government possessed the legitimate jurisdiction in this area and should hold trials according to Islamic law and on Afghan soil to assist healing processes. Those respondents who supported international action largely preferred that international actors first should put pressure on the government to live up to its responsibility to punish people guilty of gross crimes and provide technical expertise in accordance with its humanitarian mandate. There was also little understanding among most Afghans interviewed of their rights under international law, compounded by the perception that international actors were never held to account for crimes they committed in Afghanistan, which contributed toward the belief that there was little international will to prosecute either Afghans or foreigners. While investigations and trials are conducted by the international military, these are limited and were largely unknown at the community level.[165] Nevertheless, the research revealed that when communities possessed information about the potential of international justice, this increased support for international judicial mechanisms. It should also be noted that although the key demand among most people was for the investigation and prosecution of Afghans, a process that ignored concrete evidence of violations by international actors could weaken the legitimacy of international justice and could incite resentment and hostility among people in Afghanistan.

Despite these desires, most people pragmatically argued that it was not currently possible to consider prosecuting people for their part in the conflicts. The domestic justice system was widely identified as incapable and illegitimate, while impunity was perceived as an insurmountable obstacle. This caused widespread despondency. People expressed legitimate security concerns and said that they could give up their right to seek criminal justice for now since it was not realistic and potentially dangerous. However, given the general opposition to amnesty without prior consultation with the

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165   For example, there was little attempt to communicate the military's efforts to hold Sergeant Miller to account to those with most at stake, or help the family deal with their economic problems. For more information see Graham-Harrison, "Exclusive: U.S. Soldier Faces Trial for Afghan Civilian Murder."

victims of conflict and the fact that people's demands were contextually defined and thus can change over time, the vast majority would be unlikely to forgo their right to seek accountability for wartime crimes in the long-term, once security had been established.

Alternative punitive measures: Lustration and vetting

Despite acknowledging the contextual challenges, demands for punitive measures remained strong, particularly in insecure areas or in research sites where alleged wartime perpetrators held visible positions, persisted in abusing their power and, in some cases, continued to commit violations or were engaged in illegal activities or corruption. Entrenched impunity, the absence of a functioning state justice system and pervasive corruption were factors seen to be destroying the legitimacy of the Afghan government and, in insecure areas such as Ghazni, were fuelling the insurgency.

The research thus revealed the need for the Afghan government to address the trust deficit between itself and the majority of the population by tackling the perception that it is illegitimate, uncaring and incapable of administering justice and upholding security in the country. Many people argued that until the composition of the government was changed it would not be able to build respect for the rule of law or legitimately negotiate for peace. Government reform to tackle and investigate corruption and appoint honest, able and legitimate officials was therefore a priority to ensure sustainable peace and tackle the consequences of past impunity for the current system. Consequently, despite the security implications, processes to remove or preclude certain individuals or groups from power were widely supported as mechanisms to uphold justice and secure peace.

This was strongly emphasised in relation to the reintegration of high-level Taliban into formal power and it was widely argued (apart from in rural Ghazni) that the Taliban should not be able to regain positions of authority in Afghanistan. At bare minimum, the legitimacy of any high-level negotiations with the Taliban will depend on the transparency of vetting processes to ensure that those most guilty of wartime crimes do not regain positions of power.

Given the emphasis that many people placed on evidence-based judgments, policies to remove people or preclude them from positions of power are still likely to require some sort of trial or evidence-based process. An accurate record of past crimes can make it embarrassing and difficult for official actors and their supporters to deny them. This is particularly important in Afghanistan, where key individuals in government are still able to rally support and have control over arms. Given the demand that documentation processes be impartial and legitimate, there was support for the role of international actors in this. This also reflects the significance of AIHRC's conflict mapping report, which could help combat self-seeking versions of the past propagated by conflict leaders and apply pressure to the government to remove those guilty of war crimes and crimes against humanity in the past. At the same time, this also reveals the importance in monitoring and documenting current abuses to remove and preclude people who continue to commit violations.

Policy recommendations for addressing the trust deficit in Afghanistan, building government legitimacy and upholding international law

The Afghan government should:

Criminal accountability and international law:

- Ensure peace processes do not breach international standards or preclude the possibility of holding wartime actors to account in the future. Grievance resolution within the APRP should be defined procedurally and conceptually so that serious human rights abuses and crimes against international humanitarian law are not ignored.

- Uphold commitments in the NPP on Human Rights and Civic Responsibilities, including to work with AIHRC and UNAMA to revise the timeline and implementation plan for the APPRJ.

- Engage constructively with the UN Human Rights Council and in processes that help move toward ensuring international standards of human rights are protected in Afghanistan.

- Vastly improve access to and the functionality of the formal justice system.

- The Afghan National Security Forces must ensure that systems are in place so that incidents causing civilian harm are properly documented and followed up with credible and transparent investigations.

Rule of law and vetting:

- Consider implementing a process of removing several of the most culpable individuals from official posts. At the very least, strengthen internal oversight/accountability mechanisms within institutions in order to remove individuals who commit gross violations while in office.

- Support the release of AIHRC's conflict mapping project as the basis of any vetting process to remove past perpetrators and ensure the security of staff involved in the project.

- Establish an official, independent body to document ongoing human rights violations in order to identify and remove present violators.

- Strengthen existing vetting processes, such as the Presidential Special Advisory Board for Senior Appointments, and improve their veracity during elections to ensure that perpetrators do not gain positions of power. The 2014 target for completing the "transition" to Afghan security leadership coincides with another round of presidential and parliamentary elections. These must be supported as effectively as possible, with electoral reform and institutional strengthening efforts starting now, not just when the polls begin to loom.

- Ensure peace processes don't allow human rights violators back into power: Vetting components of the APRP need to be implemented to fulfil commitments to allow amnesty only in accordance with the laws and constitution of Afghanistan, to ensure that high-level Taliban members guilty of war crimes and crimes against humanity are not offered positions of authority. An agreement between the Afghan government and ISAF on the definition of "political reconciliation" is required as is further clarification on what crimes can or cannot be amnestied.

- Given the emphasis on *huqooq-ul-ibad* in cases of serious crimes, consider a national consultation or referendum to collect opinions on the notion of amnesty in Afghanistan.

The international diplomatic community and international civil society should:

- Support the Afghan government in the above tasks.

- International donors and the UN should remind the Afghan government of its commitments to international law and to the APPRJ.

- International actors should ensure that criminal justice option remains open in Afghanistan and monitor the peace process to ensure that it does not breach international standards and there is no amnesty of war crimes, crimes against humanity and gross violations of human rights.

- The UN should push the government to address wider issues of accountability while seriously investigating and documenting international crimes committed by the Taliban and other groups in Afghanistan since 2001. Organisations such as Human Rights Watch could also play a supporting role.

- Urge the release of AIHRC's conflict mapping report.

- The ICC should continue to monitor events in Afghanistan, which may pressure the Afghan government to confront present crimes against international law. If domestic justice mechanisms continue to prove unwilling or unable to genuinely investigate and prosecute the main perpetrators of these crimes, the ICC should open an official investigation into crimes committed since 2003.

- Troop contributing nations should be accountable to the families of victims who have been harmed in their operations and ensure they do everything they can to dignify their losses— communicate, investigate, make amends and hold perpetrators to account. International military systems must ensure that systems are in place so that incidents causing civilian harm

and misconduct by international troops are properly documented and followed up with credible and transparent investigations. They should increase public awareness in Afghanistan about past and present enquiries into civilian casualties to tackle the negative perceptions of international military forces and to demonstrate that the international community does not allow impunity for serious crimes.

- International civil society should work with Afghan CSOs to support awareness-raising initiatives that provide information about human rights and international law to ordinary people and influential community members, particularly in remote and isolated areas.

Afghan civil society should:

- Implement awareness-raising initiatives to provide information about human rights and international law to ordinary people and influential community members, particularly in remote and isolated areas. They should collect and disseminate information about the trials of Afghans that have been conducted abroad, which could provide hope to victims that some countries are willing to hold to account perpetrators of serious wartime violations.

- Act as a watchdog in terms of current violations of human rights.

- Advocate for the protection of civilians to ensure that all parties to the conflict adhere to international humanitarian law.

- Monitor any peace processes and support advocacy initiatives to ensure justice forms a key component of all discussions and that there is no amnesty for crimes against humanity and international war crimes.

6.3   Beyond retributive justice: Healing and peace

Although punitive justice is an important component of transitional justice processes, it is necessarily limited to certain key individuals. Moreover, as revealed in this paper, people frequently place heavy expectations on the potential impact of criminal prosecutions in truth-seeking and healing processes. In reality, retributive processes have only a small chance of fulfiling these wider goals. Justice for wartime experiences in the Afghan context includes a range of different aspects, including punitive, reparative and restorative processes, which have varying degrees of significance to people. Consequently, it is unlikely that a punitive model on its own, even if feasible, would be sufficient. Given the unlikelihood that such measures will be implemented in the near future, investigations into the suffering of ordinary people in Afghanistan, official commemoration of their wartime experiences, some form of financial compensation for material losses, and demonstrations of regret for the damage the conflicts have inflicted on innocent people could go a significant way toward providing closure.

Although some people feared these measures could undermine fragile stability, they could potentially serve a measure of justice while also fostering an environment more conducive to peace. While policymakers in Afghanistan have often pitched peace and justice as alternatives to each other, respondents clearly linked these processes. The challenge for policymakers is therefore to deliver as much justice as is constructive to assist peace. The findings in this paper do not demonstrate that peace should be put before justice; it argues that you can reach peace and not preclude justice.

Underlying demands for justice, the most basic interpretation of what "justice" meant to people at the community level was a legitimate and representative government that would uphold their rights and would "care" about ordinary people, while building security and respect for the rule of law in the country. Perceptions of rights were based not only on people's understanding of their rights in terms of Islamic law, but also the rights they possessed as citizens of Afghanistan and as victims of conflict. The significance of various justice mechanisms were largely framed in terms of their potential impact on an individual's healing processes as opposed to the strict implementation of legal justice. Ultimately, government acknowledgement of suffering was often more significant to respondents than the actual process itself.

Policies gained most support when they were seen to fulfil the goals of peace and reconciliation by strengthening an Afghan national identity to take precedence over ethnic and *qawm* identities, due to a belief that misconceptions about different groups were at least partially responsible for the conflicts. For some, an accurate and impartial record of past crimes could help build a unified history and assist reconciliation by individualising guilt and strengthening a national identity. Preserving history was widely felt to ensure that the next generation and people globally would learn about their experiences and raise awareness toward preventing future abuses. Moreover, the fact that certain individuals or groups were sometimes simultaneously perceived as heroes and perpetrators suggests the need to have an accurate documentation of the past. Appropriate mechanisms for the dissemination of information about the conflicts to promote peace and national unity ranged from academic institutions and media programmes to more traditional forms of communication, such as at mosques or *jirgas* and *shuras,* which would increase acceptance of history among the population and mitigate some of the negative impacts in terms of reigniting tensions between groups.

Meanwhile, fulfiling demands to know what had happened to relatives who had died or disappeared was widely perceived to assist victims' healing processes and foster government legitimacy. It was also often argued that an accurate accounting of the material and financial impacts of conflict on Afghan communities was required to contribute toward action at the policy level in terms of compensation policies. Repairing some of the economic damage caused by Afghanistan's conflicts would greatly improve government legitimacy while improving people's financial situation and could reduce their need to take up arms, given the perception that unemployment, poverty and corruption are partially fuelling the conflict. Forcing perpetrators to repay their wartime spoils or redistributing their wealth was put forward as one way to ensure some form of punitive recompense and assist victims in Afghanistan. However, this would likely trigger resistance and is perhaps more a long-term aspiration. Moreover, it must be acknowledged that in an environment where so many people can claim to be victims, a comprehensive reparation policy would be an enormous and expensive task for any government. Meanwhile, current reparation policies were widely perceived as insufficient. Additionally, financial reparations were only perceived as sufficient to address material losses and not to compensate the death or disappearance of a relative.

Symbolic reparations—memorialisation or apologies—to commemorate and acknowledge victims' suffering could therefore potentially reach large numbers of people, build understanding about the commonality of suffering, break down misconceptions of other groups and assist learning processes. Memorialisation in Afghanistan can, however, be controversial given that it has been tainted by the emphasis on commemorating the leaders of Afghanistan's conflicts. This prompted the demand that memorialisation activities should commemorate the country's incidental victims and be designed to preserve history and assist the development of a national identity. Focusing on new heroes could represent one way forward in an environment where there is no nationally accepted, objective picture of the war. Nationally accepted figures could act as symbols to unify around, emphasising the similarities between people rather than the differences. Memorialisation also gained more support if it contributed toward development aims and was not perceived as diverting funds from more pressing demands. Costly initiatives would likely provoke resistance from many Afghans.

Symbolic apologies for past crimes by perpetrators inside and outside government and even generally by the government could also assist healing processes. When conducted at the community level, this was demonstrated to assist a community's ability to forgive, as was seen in rural Bamiyan and rural Kabul. However, it is uncertain how relevant apologies are in cases of serious and extensive crimes, given that significant numbers of people in all research sites, particularly women, argued that even if apologies were forthcoming, they would reject them. Moreover, it is uncertain how far this approach could build forgiveness when applied nationally.

Ultimately, a significant number of respondents also linked these processes with their expectations of and as a basis for criminal trials. Recording crimes was frequently seen as providing the basis for criminal prosecutions while admissions of guilt could revive calls for punishment. Since financial compensation was not perceived to be sufficient in cases of death or disappearance, the majority of respondents indicated that it could not be an alternative to a retributive approach. It is uncertain

whether restorative or reparative approaches would consequently meet the demands for retribution that were voiced by so many respondents and, as argued above, some form of punitive measure will still ultimately be necessary.

Policy recommendations for alternatives to punitive measures and creating peace and reconciliation in Afghanistan

The Afghan government should:

- Consider implementing one or more restorative or reparative form of justice in order to satisfy some of the most basic demands of victims.

- At a bare minimum, support or at least not hinder the efforts of Afghan and international organisations working on investigating and documenting the past, preserving history or promoting memorialisation processes.

Truth-seeking and documentation:

- Work with AIHRC to ensure that information about past crimes in the conflict mapping report is presented in the most sensitive manner possible to avoid reigniting or enflaming tensions between different groups. This requires the participation of a wide range of actors, particularly community structures, to ensure that this report is accepted and that expectations about what it can achieve are moderated.

- Disseminate existing information about the past through education. Schools and universities could act as unifying forces to build national identity and tackle the legacies of conflict. The Afghan government should re-examine the role of education in building a unified history and promote the significance of learning from the past, rather than ignoring it.

- Investigate mass graves. Further efforts to fulfil victims' right to know the truth also need to be considered, particularly in relation to cases of disappearance. The government should support PHR and fund AFSO in their efforts to provide Afghans with the expertise to protect, preserve and investigate mass graves.

Support memorialisation:

- Support and create national museums and memorials focusing on wartime suffering after the release of a comprehensive truth-seeking process to ensure that this assists learning processes and remains sensitive to the potential of reigniting wartime tensions.

- Publically mark Victims' Day every year and focus on Afghanistan's incidental victims.

Financial compensation, reparations and rehabilitation:

- Ensure that existing reparation policies are functioning properly—currently, reparation schemes employed by the Afghan government and the various ISAF troop-contributing countries are being applied inconsistently. The Supreme Court should provide an opinion on adequate reparations and the Afghan government should insist that international military forces adhere to it.[166]

- Ensure mechanisms to substantiate evidence of war-related casualties for pensions for the disabled and survivors of martyrs are robust.[167]

- Launch comprehensive investigations into wartime financial accumulation as a basis for forcing people to return wartime spoils.

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166 The author is reiterating a previous recommendation made by ICTJ in "Submission to the Universal Periodic Review," 5.

167 World Bank, "Afghanistan Public Sector Pension Scheme: From Crisis Management to Comprehensive Reform Strategy" (Report No. 44408-AF, Human Development Unit, South Asia Region, 2008).

Apologies:

- Given the significance that admissions of guilt hold to many people as a key tenet of Sharia, a minimum criteria for the reintegration of low-level Taliban fighters should be admissions of guilt for crimes committed.

- Symbolic and public apologies made by the government on behalf of previous regimes could mark a break from the past and be conducted in accordance with a national consultation about amnesty to grant victims the right to decide to forgive.

International donors:

- Could frame development projects around the demand that memorialisation contributes to development—schools, clinics, hospitals being built should be in the name of victims in a particular area.

- Bonn II (December 2012) outlined that the NPPs will now be the framework through which post-transition priorities will be accommodated. Relevant donors should therefore focus funding on the NPP for Human Rights and Civic Responsibilities.

- Build on existing documentation: UNHCR's unpublished mapping exercise of 2005 should be officially released[168] so it can be constructively used in documentation by civil society groups and to avoid duplicating what has already been done.

- The UN should launch an independent investigation that builds on UNHRC's report, AIHRC's conflict mapping and civil society documentation while drawing on experience from other contexts to support future truth-seeking mechanisms.

International and Afghan civil society:

- Afghan CSOs should increasingly coordinate and establish networks that mobilise victims and ordinary people across the country. Initiatives such as the TJCG victims' conferences should be supported by international civil society.

Memorialisation:

- Memorials should be created in the name of Afghanistan's incidental victims and could focus on examples of how different ethnic groups have assisted each other during conflict or identify positive national symbols to commemorate around.

- Should ensure memorialisation is sensitive to the more pressing demands for survival and development. Designing memorialisation to assist learning processes could help fulfil demands for commemoration and development.

- Afghan media should work with relevant CSOs to produce and broadcast films about Afghanistan's conflicts, timing the release with Victims' Day.

Coordinate existing documentation efforts:

- Aside from AIHRC, a number of Afghan and international organisations are working to document wartime violations. Documentation efforts remain largely uncoordinated despite efforts by international organisations such as USIP to coordinate activity. To ensure recording processes are conducted sensitively, are not duplicated—forcing communities to relive their experiences multiple times and potentially retraumatising witnesses—and serve the goal of reconciliation, groups should coordinate their efforts better and work on violations across a wider spectrum, including current violations.

- The UN and Human Rights Watch among others should document current violations.

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168   UNHCR's mapping exercise was handed to President Karzai simultaneously with AIHRC's "A Call for Justice" with the specific intent of it laying the ground for further documentation. However, UNHCR ultimately decided not to publish it.

- Should consider expanding AREU's research into a greater number of provinces to encompass more voices and a larger geographical reach.

- For mass graves, international civil society should support the work of PHR in continuing to provide expertise to Afghan actors and fund AFSO as an independent Afghan organisation working on mass graves.

6.4 Reflections on ongoing peace efforts

Although the majority of people involved in AREU's research were sceptical about the prospect of peace and the success of any peace process, the general demand was that the government work toward ending the conflict and establishing an enduring peace. Through exploring desires for punishment and retribution alongside demands for reconciliation, it became apparent that a combination of approaches is relevant if the long-term goal is peace in Afghanistan. Peace clearly encompassed more than merely the end of overt conflict in the country and also included justice, a legitimate government that prioritised the concerns of ordinary people, and reconciliation among all Afghans. These various components were perceived to be mutually beneficial and overlapping and, essentially, one could not be achieved without the other.

Achieving peace and reconciliation in Afghanistan was perceived to require processes operating at multiple levels and fulfiling a number of goals. While peacebuilding was largely felt to be the responsibility of the government and operate from the top down, the research revealed that durable peace would not be secured by merely reaching a political settlement at the high level while reintegrating low-level Taliban fighters. The inherent difficulty of luring committed fighters away from the insurgency when its leaders have not entered negotiations and while underlying grievances are unaddressed was also highlighted.

Peace was widely perceived to require genuine reconciliation, conceptualised as a broad process of coming together and building trust, unity and respect among Afghanistan's different groups in order to break down misconceptions and ensure collaboration, cooperation and compromise. Many people emphasised the need to reinforce a broader Afghan identity, which has already been strengthened by wartime migration from and back to the "homeland." This did not mean simply forgetting the past. Instead, it involved a wide range of processes to restore harmony at all levels of society, including acknowledging and dealing with the past through providing mechanisms for justice, healing, restitution and reparation; building positive relationships; significant changes in culture and attitudes; and substantial social, economic and political change. In particular, the younger generation argued this required tackling illiteracy in the country due to the perception that in addition to poor economic conditions, the lack of basic education made many Afghans simple targets for the propaganda of the leaders of the conflicts.

Despite some groups feeling that international support was required in peacebuilding processes (particularly younger urban women who were anxious to preserve the gains made in the protection of women's rights since the fall of the Taliban), overall, legitimate peacebuilding processes were felt to be genuinely Afghan. This does not rule out a supportive role for an impartial organisation such as the UN to monitor the progress of peace processes. It should be emphasised that the current peace strategy on paper is in accordance with this desire and the Afghan government bears responsibility for the APRP's different components, with international support in the implementation phase only.

Building trust between the government and insurgents was also perceived as key, given the presence of intractable issues, the most immediate being the insurgents' refusal to negotiate while international forces remain in the country. Many respondents blamed the presence of international military forces for prolonging the conflict and they were looked upon with deep suspicion, even in areas where their activities are minimal. Some questioned how effective peace talks could possibly take place under these conditions. When a legitimate government is in place and in charge, with international forces largely withdrawn, the conditions necessary for genuine negotiations—as identified by research respondents and reflected in statements by the insurgent leadership—will be in place.

The research revealed that communities that had addressed some legacies of conflict themselves or had allowed processes of apologies and forgiveness to emerge naturally over time were more likely to support forgiveness or state they were willing to forget past crimes. This reveals that empowering a community to decide who and when they forgive holds significance for the development of peace. Taking this control away from communities and forcing policies on them could create divisions within a community and foster hostility to the government. This holds considerable implications for reintegrating Taliban fighters and reveals the need for a community-based approach and long-term vision in terms of fostering peace.

Overall, there was a widespread perception that the views of the vast majority of the population have been excluded from dialogues surrounding peace. People therefore widely demanded peace processes that were genuinely inclusive, transparent and consultative, resting on existing mechanisms such as the *jirga* system, which provides a cultural template for negotiation and compromise. Respondents felt that including the voices of Afghan people would increase the likelihood of success of peace processes, widely blaming the failure of previous attempts on the fact that they were not truly representative and independent.[169] Instead, it was generally felt that a wide range of groups should be involved in peace discussions, including community representatives, religious leaders and civil society organisations. The High Peace Council was sometimes rejected as not legitimately reflecting the views of the majority of the population.

The Taliban were perceived as presenting the most serious obstacle to peace, but the vast majority of respondents accepted the need for a negotiated settlement. The clear distinction found in the research between "leaders" and "followers" and the belief that in most cases followers did not deserve punishment provides some support to low-level reintegration. Afghans across the country are likely to be supportive of junior fighters rejoining their communities, as long as they are empowered to make this decision. Respondents in rural Ghazni argued that a Taliban government would fulfil its demands for justice and legitimate government. Communities like it are potentially highly supportive of a settlement that provides a share of power to the insurgency, because they believe that if Taliban individuals and ideas are integrated into the government, it will become more legitimate.

Aside from rural Ghazni, other communities rejected this notion of power-sharing with the Taliban. However, given respondent demands for peace and their acknowledgement that the Taliban was unlikely to come to the negotiating table without some form of incentive, there was some flexibility among many people as long as those known to be guilty of gross atrocities do not participate in government. Outside rural Ghazni, respondent conditions for negotiating and reconciling with the Taliban included the demonstration of a willingness to change through laying down arms and making commitments to peace and the Afghan constitution, accompanied perhaps by symbolic admissions of guilt through apologies and requests for forgiveness by Taliban leaders and their followers.

Policy recommendations for promoting a legitimate, inclusive and dynamic peace process

The Afghan government should:

- Adopt an inclusive approach to building peace in Afghanistan. High-level political processes and community-based reconciliation initiatives should be seen as interdependent. Existing local initiatives should not be ignored, but it should also not be expected that they can necessarily be multiplied.

- Remain sensitive to the wide definition of reconciliation provided by research respondents. While there was a willingness to reintegrate low-level insurgents, the success of reintegration rests on them being tied to serious trust-building initiatives, and to the underlying causes of conflict being addressed.

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169   Afghan People's Dialogue on Peace, "Laying the Foundations for an Inclusive Peace Process," December 2011, www.aihrc. org.af/media/files/People%27s%20Dialogue%20FINAL%20report.pdf (accessed 8 December), found that people felt they had not been adequately informed or involved in initiatives aimed at securing peace, that civil society had been given little space to contribute to the peace process and that certain groups, particularly women and youth, were almost entirely excluded from the process.

- Not preclude the possibility of future prosecutions of individuals guilty of war crimes and crimes against humanity, as they are obliged to do under international law.

- Ensure peace negotiators are neutral, honest, respectful, influential, knowledgeable about peace processes and negotiations, and do not have blood on their hands. Discussions following the Traditional Loya Jirga in November 2011 about reviewing the structure of the High Peace Council present an opportunity to increase the credibility of the council by including legitimate community representatives, particularly elders, religious leaders, civil society activists and women's groups representatives.

- Support nascent peacebuilding processes and activities conducted by civil society, such as CPAU, PTRO and TLO.

- The High Peace Council should actively work with CSOs, religious structures, the media and cultural institutions to ensure processes are inclusive, messages of peace are disseminated, and accurate information about the APRP is provided to people in Afghan communities.

- Genuinely include women's groups at the policy level in the dialogue on reconciliation and perceive women as target groups in peace and reintegration projects. The government should ensure that their rights, including their constitutional rights and hard-won freedoms, are protected.

Reintegration of low-level Taliban:

- Ensure that the community rehabilitation aspects of the APRP are fully implemented and that they benefit all groups in the community, not only fighters. It should facilitate the social inclusion of reintegrees, especially by increasing civilian job opportunities for former fighters.[170]

- Consider a nationwide policy aimed at addressing local wartime tensions through a community-level process of apologies and forgiveness as one way to address the issue of local wartime perpetrators and resolve cycles of violations in a specific community or area. However, the option needs to remain that communities may not be ready to forgive all crimes.

- Not limit grievance resolution processes in the APRP to the specific communities where individual combatants will be returning, particularly as many did not commit crimes or create grievances in their own communities but elsewhere. Care needs to be taken to ensure that the process of reconciliation and resolving grievances does not end up creating new or enflaming old grievances with other communities by accepting back an individual known to have committed violations elsewhere.

- Incorporate local actors to ensure that the local peace and reintegration committees outlined in the APRP are fully functioning, genuinely representative and transparent, and that communities are empowered to decide who and when they can forgive. There is a need to include people with local influence, some independence and the ability to sell decisions to the people and to represent their local interests.

International military forces and international donors should:

Ensure peace processes are genuinely Afghan:

- International actors should clearly demonstrate that Afghan leaders are able to control security in the country and are in a strong position to negotiate for peace by continuing to hand over security responsibility to Afghan security forces, albeit at a sensible and manageable pace.

- International efforts should concentrate on rehabilitating, training and equipping Afghan military forces, while strengthening democratic and transparent institutions all over the country.

- International donors should monitor the progress of any peace negotiations and force the Afghan government to uphold its commitments to international law. The international community

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170   See Derksen, "Impact or Illusion?" This report argued that to date few fighters had been offered the promised civilian jobs.

should make guarantees of human rights and women's meaningful participation at all levels a precondition for funding peace, reconciliation, reintegration and transition processes and programmes. Based on its mandate, the UN is perhaps best placed to fulfil this role and ensure that international legal commitments are upheld.

- International donors should continue supporting development initiatives that address poverty in Afghanistan and tackle the widespread illiteracy in the country.

- Restrict and prevent the interference of external foreign powers, particularly Pakistan, Iran and Saudi Arabia, in Afghanistan's internal affairs.

International civil society should:

Strengthen Afghan civil society:

- Organisations representing victims' rights need stronger voices in order to contribute more concretely to the dialogue on peace and reconciliation in Afghanistan and ensure that their demands for justice are included in discussions.

- International donors and international civil society organisations should encourage the development of links and networks and provide increased training on advocacy so Afghan civil society can become an acknowledged and listened to actor in Afghanistan. For example, initiatives such as the People's Dialogue[171] and the TJCG bringing together victims' groups across Afghanistan should continue to enable the collection of opinions from Afghan communities and the dissemination of information about peace and reconciliation processes.

- International CSOs should work with Afghan CSOs to ensure the government integrates religious leaders and community elders into peace processes to spread positive messages of peace, unity and reconciliation in their communities and providing them with proper information so they can communicate high-level developments at the local level.

Afghan civil society, including women's groups and the media, should:

Actively participate in peace discussions:

- Take a proactive role in the debate to remind those leading the peace process of its obligations under international law and the desires of Afghan communities, including victims of war crimes.

- Women's groups and organisations focused on transitional justice should work together to ensure voices are heard and rights are protected in issues of justice and peace.

- The media should disseminate messages of unity and peace, including films about the past conflicts to build understanding about the wars.

- Insist on being actively brought into local reintegration, vetting and grievance resolution processes and development projects.

This paper reveals the depth of legacies of conflict in Afghanistan and the many challenges facing the search for peace. However, it also shows that Afghans are willing to compromise for the sake of peace. Leaders on all sides of the conflict must follow suit. This does not mean peace at any cost. It means placing Afghan desires at the centre of the negotiating table and working genuinely toward them. A peaceful and united country may be difficult to achieve, but it is not too much to ask.

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171   This is a network guided by a steering committee of Afghan CSOs, supported by the Human Rights Unit of UNAMA.

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