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Summary

- In Afghanistan, the social upheaval resulting from thirty-five years of war has created widely differing narratives of the conflict as various communities and political factions have reconstructed events through the lens of their experiences.

- Extensive dislocation of large segments of the population and poor communication throughout the war years meant that Afghans often had no way of knowing what was happening in different parts of the country.

- Although the war had several phases, earlier transitions—such as the collapse of the Najibullah government in 1992—failed to provide an opportunity for investigations into past human rights abuses because the conflict was ongoing. As a consequence, documentation remains thin. Conditions have made it difficult for human rights groups to function; additionally, many records have been either lost or destroyed.

- Since 2001, a number of initiatives were launched to investigate and document war crimes and human rights abuses. The relative openness of this period provided increased opportunities to document ongoing abuses occurring in the context of the Taliban insurgency and counterinsurgency effort.

- The most ambitious components of transitional justice, as envisioned by Afghan organizations and their international partners, however, appear to be indefinitely stalled given the failure of electoral vetting and the silencing of an Afghanistan Independent Human Rights Commission report that would have mapped all abuses in the three decades of conflict.

- No single report or archive can provide a definitive truth about the past. Such an archive, however, can serve, however imperfectly, as vital evidence in the effort to understand the complex array of factors that have played a part in conflict.

- Better documentation and access to other narratives could provide a counterweight to narrow or politically motivated interpretations of past events that could seed future conflict.

War Narratives in Afghanistan

In Afghanistan, the social upheaval resulting from thirty-five years of war has created very different narratives of the conflict among different people and communities. The 1978 coup by the People's Democratic Party of Afghanistan (PDPA) carved deep rifts in both rural and urban society. The earliest years of the war decimated the traditional leadership, tribal and religious, and replaced it with the political-military leadership of the mujahideen and militia factions. After the eventual withdrawal of the Soviet Union and the collapse of the PDPA regime, the political leadership of the resistance claimed power as its privilege.[1] Since then, that narrative—of the mujahideen as saviors of the homeland and of Islam—has been used consistently by the leaders of these factions to bolster their claim as rightful leaders.

The mujahideen-as-saviors motif is the counterpart to accounts of these warlords being responsible for the mayhem that ensued after 1992, when rival factions that had fought the Soviet Union turned their guns on each other and on the civilians of Kabul and other cities. The first to voice this particular argument was the Taliban, whose storied rise to power in 1994 cast them as the defenders of the citizens of Kandahar against the predations of commanders. The Taliban condemned the post-1992 conflict as a power struggle among corrupt commanders. The divide also reflected ethnic and regional identities, the Pashtun Taliban and its southern Afghan leadership aligning itself against an opposition largely made up of non-Pashtuns of the north and center of the country. In the nearly twenty years since the Taliban first appeared on the scene, these divisions remain: The Taliban of 2013 castigate the current regime in Kabul in largely the same terms their predecessors did, and the old warlords of the anti-Soviet struggle who gained a second life after 2001 exploit the myth of their heroic past to validate their current hold on power.

Despite greater acceptance of a common version of part of the history of the war—the events between 1978 and 1989—Afghanistan's various communities and political factions dispute even portions of that period as they reconstruct events through the lens of their own experience. For much of the war, poor communication and extensive dislocation of large segments of the population prevented much understanding of what was happening outside the immediate area or network.

In April 1978, the Marxist-Leninist PDPA seized power and imposed radical reform measures, igniting local uprisings that were put down with brutal force. Tens of thousands were executed or forcibly disappeared, and thousands more fled as refugees. The Soviet invasion of December 1979 accelerated the displacement—massive aerial bombardments drove hundreds of thousands of refugees into Pakistan and Iran. After the Soviets withdrew in 1989, the Najibullah government endured until April 1992. For the next four years, former mujahideen and militia forces fought each other in Kabul and other cities, creating new waves of internally displaced persons as residents tried to escape the fighting. The war entered a new phase when the Taliban emerged in 1994, taking Kabul in 1996 and most of the country by late 2001. Since then, a resurgent Taliban continues to battle Afghan and international forces.

Each of these phases of the war was characterized by specific patterns of abuse. When researchers with the Afghanistan Independent Human Rights Commission first began analyzing testimonies from war survivors gathered from across the country, they found the experience revelatory: Many of those interviewed had no idea at the time what was happening elsewhere in the country.

Hostile relations among rival mujahideen loyalists also colored the history of the resistance to the Soviet occupation. Typically, groups see their leaders as victors, saviors, and martyrs. At the very least, they see them as necessary evils to defend the community against rival warlords. Clashes among rival factions added another dimension to the perpetrator-victim cycle.

The history of the war after the Soviet withdrawal is bitterly contested, many of the disputes occurring on ethnic lines as communities fell victim to factional fighting in Kabul and across the country.

The actual documented record is thin, particularly for the first part of the war—from the 1978 coup until the Soviet withdrawal. Unlike later periods, few principals who held positions of power in that time remained in Afghanistan. If war had ended with the Soviet withdrawal, it might have been possible in the immediate aftermath to investigate and document the atrocities that took place. But immediately after the Soviet withdrawal, a new phase of conflict began, redefining the battle lines and adding new layers to the catalogue of war crimes, and the possibility of investigating violations during the Soviet and pre-Soviet era receded. From 1989 until 2001, the war became primarily an internal one, though a number of outside states played crucial roles in aiding and arming the various fighting sides. The protagonists of this stage remain players in Afghanistan's ongoing power struggle. Although the United States and its allies came in on one side of the battle, that phase is ending as well. What will be left after the next transition? Many of the same actors, who have been at war with each other for three decades, continue to vie for power. Few of them have any interest in digging up the past.

Documenting the Past

Although interest may be scant among Afghanistan's power holders to investigate past atrocities, Afghans generally recognize that documenting the human rights violations of the past is one element of preserving their history and that understanding what happened is critical both to the long-term rebuilding of their country and to prospects for genuine reconciliation. The situation has been similar in other countries that have had to grapple with the legacy of prolonged conflict. How to recreate a historical record that draws on the experiences of as broad a spectrum of the population as possible is one challenge. Even more daunting is how to report truthfully about crimes committed by people who remain in political power and are likely to use that power to prevent such documentation or stop it from seeing the light of day. Those who seek to document past crimes face significant risks, including death, serious abuse or torture, kidnapping, and other threats. Few other subjects in Afghanistan are as potentially dangerous.

Documentation and Transitional Justice

The importance of documentation as a critical element in human rights work and transitional justice (TJ) is generally established. As the Documentation Affinity Group (DAG) pointed out in its landmark report, *Documenting Truth*, however, this was not always the case. The Nuremberg Trials is one of the most important instances of the use of documentary evidence in a criminal war crimes trial. When Robert Jackson, the chief U.S. prosecutor at Nuremberg, argued for including documentary evidence in the case against Nazi officials charged with crimes against humanity, his view was controversial; others involved in the trials had argued that oral testimony alone from survivors and witnesses of the Holocaust should be sufficient to bring Nazis to justice.[2] Jackson's view won out, and in the end, the prosecution amassed a "mountain of documentary evidence ... which included 250 tons of documents and 3,000 frames of microfilm" in its case against the Nazis.[3]

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Jackson was determined to compile a record that would not leave that, or any other future generation, with the slightest doubt. "We must establish incredible events by credible evidence," he said.... [T]he prosecutors built what Jackson called "a drab case," which did not "appeal to the press" or the public, but it was an irrefutable case.... The prosecutors brought to Nuremberg 100,000 captured German documents; they examined millions of feet of captured moving picture film; they produced 25,000 captured still photographs, "together with Hitler's personal photographer who took most of them."[4]

Since then, of course, human rights activists around the world have relied on all kinds of documents—in addition to oral testimony—to establish patterns of violations and crimes against humanity.

Some of the most notable examples include the Archivo Histórico de la Policía Nacional de Guatemala, which includes approximately eighty million documents.[5] These documents chronicle the activities of Guatemala's National Police during thirty-six years of internal armed conflict.[6] Other archives at the University of Texas include holdings documenting atrocities in other countries, including Burma, Rwanda, and others.[7]

Documentary evidence is at the heart not only of legal cases against perpetrators of human rights abuse, but also of victims' efforts to create an accurate historical record and thereby establish the truth about the repressive past. Documentary evidence is required to determine who will be recipients of reparations in post-authoritarian or post-conflict contexts.

The DAG outlines the various kinds of documents valuable to human rights work. These include audio and video recordings; letters written from jails; court documents; tapes; pamphlets, posters, and leaflets; professional records; photos and descriptions of grave sites and forensic reports; medical records; physical materials, such as clothing or weapons; and the written or taped oral testimony of those who have experienced violations or have been witnesses to it.[8]

This kind of documentation is vital to every component of a transitional justice process, from establishing truth-seeking mechanisms and vetting procedures to constructing memorials and museums to identifying who may be eligible for reparations. Even if none of these measures is feasible at the time, preserving good documentation is vital if any are to be used at a later date. Finally, establishing a sound written record may prevent future efforts to rewrite the past to deny or conceal events. If done well, documentation can preserve a people's history and contribute to conflict resolution and prevention.

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Civil society may come to consensus on the need for documentation, but Afghan groups have never taken up the issue with the kind of urgency found in other countries struggling to implement transitional justice mechanisms, such as Cambodia. Some Afghan media have assumed a role similar to media elsewhere as watchdogs on government, but they are the exception. Other civil society groups have little appetite for conducting field research and documentation of human rights violations, past or present. Before 2001, international human rights organizations had produced almost all the reporting on human rights violations through the course of the war. During the Soviet occupation, the interfactional fighting that followed, and the Taliban rule, Afghan human rights groups could not operate openly, and those who did try to document violations had little means to publicize this information.

Post-2001 Documentation Efforts

Seeming at first to herald a new era of openness, the Bonn Agreement included a provision for the establishment of a human rights commission, and the Afghan Interim Authority duly inaugurated the Afghanistan Independent Human Rights Commission (AIHRC) in March 2002.

The AIHRC mandate included the responsibility to carry out "human rights monitoring, investigation of violations of human rights, and development of domestic human rights institutions." In January 2005, the commission published a survey indicating that most Afghans wanted justice for the crimes of the past. The survey report, *A Call for Justice*, was the first such undertaking to poll Afghans from across the country about whether and how to pursue justice. It did not, however, outline specific measures or provide detailed documentation of alleged war crimes. The UN Office of the High Commissioner for Human Rights produced a lengthy report on past human rights violations, using only published sources, but later decided not to publish it.[9]

The need for good documentation became apparent during the run-up to the 2005 parliamentary elections. The Afghan constitution provides that anyone convicted of a crime against humanity is ineligible to run for any public office. This legal bar, however, is set extremely high, and no one has ever faced charges for such crimes. It also provides no mechanism for vetting candidates. Thus there were no judicial grounds for vetting candidates on allegations of human rights abuse.

Instead, Afghanistan's election organizers instituted a vetting system to screen potential candidates for links to illegal armed groups and for other violations of the electoral law and the Afghan constitution. The most significant provision is in article 15 (3), which established that people "who practically command or are members of unofficial military forces or armed groups" cannot run for office. This reflected concerns in the Afghan public and the international community about a number of potential candidates known to have committed serious human rights abuses, remained in charge of illegal militias, and continued to engage in violence. At the same time, the provision signaled that candidates who abandoned warlordism for politics need not fear that their past crimes would affect their ability to run for office.

The vetting process was based on data collected through the Disbandment of Illegal Armed Groups, a project of the United Nations disarmament effort, the Afghanistan New Beginnings Program. After candidates were nominated, Afghans could challenge their eligibility by submitting statements to the Electoral Complaints Commission (ECC), the agency charged with investigating eligibility claims. During the months it was in operation, the ECC was flooded with complaints, a large number of which alleged human rights violations and war crimes by candidates rather than the more narrowly defined charge of association with an illegal armed group.

Although more than one thousand candidates were identified with links to such groups, few were disqualified. At the same time, the ECC received hundreds of complaints from citizens alleging that candidates had been responsible for a wide range of abuses, some going back many years. No mechanism was then or is today in place to address the complaints.

The limitations of the vetting experiment and the absence of any mechanism to investigate complaints have prompted human rights advocates in Afghanistan to pursue ways to augment and improve documentation efforts.

The most ambitious effort was the AIHRC's Conflict Mapping project, launched in 2005, a mammoth report detailing abuses by all parties to the conflict—the PDPA, Soviet forces, mujahideen, and militia—through each phase of the war. In effect, it resembled a written report of a truth commission in content and scope and had the potential to have a significant impact on discussions about reconciliation with the Taliban. The English version was scheduled for completion in mid-2012 and both the Dari and the Pashto versions for late 2012. In December 2011, however, President Karzai took action against the commissioner overseeing the report, Nader Nadery, who had also been an outspoken critic of electoral fraud in Karzai's bid for reelection in 2009. Karzai did not renew Nadery's term at the AIHRC, leaving the fate of the report unclear.

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Given the failure of electoral vetting and the silencing of the mapping report, the most ambitious components envisioned for TJ in the early Bonn years appear to be indefinitely stalled, if not dead.[10]

Juan Mendez has observed that truth-telling mechanisms can be important instruments in the search for accountability, but he cautions that certain minimal conditions must be met for these mechanisms to be effective. For truth telling to contribute to peace, a consensus must be reached that something needs to be done to achieve reconciliation and justice. "At the outset … there has to be some initial acceptance that there are facts that require investigation, disclosure, and reckoning. If a society is not ready to face those facts, a truth-telling mechanism will not work."[11]

In Afghanistan, no such consensus has been reached. In the aftermath of the parliamentary elections, the AIHRC, UN Assistance Mission in Afghanistan's Human Rights Office, and international donors promoted an Action Plan on Peace, Justice, and Reconciliation that outlined sequential steps aimed at achieving a measure of accountability through memorialization, appointments vetting, and documentation. The plan was endorsed on December 10, 2006, but never implemented. Within a few months, the parliament had introduced a bill to provide amnesty to everyone who had taken part in the war since its beginning. Although the action plan was never officially rescinded, passage of the amnesty law undercut many of the plan's stated objectives. Documentation remained a key area where work could continue as an important counterweight to the amnesty law's intent to ignore the past.

In this period, a number of human rights groups committed to publicizing human rights issues emerged. Some groups represented victims of particular incidents of the war; others sought new ways to publicize survivors' stories through journal articles or participatory theater projects in communities across Afghanistan. Such efforts provided some new impetus to keeping transitional justice on the table but did not lead to any substantial documentation by Afghan groups. International human rights groups continued to produce the majority of reports on human rights in Afghanistan, and the AIHRC produced the most by any Afghan organization. Afghan human rights groups have been reluctant to conduct field research into recent instances of abuse, instead focusing on documenting atrocities from earlier periods of the war or adding to information about major instances of massive abuse or war crimes. Little effort has been made to link documentation of pre-2001 abuses with post-2001 abuses or to identify patterns of abuse that have continued. As a result, the documentation effort has often appeared marginal to the larger statebuilding effort.

As the country moves toward the 2014 presidential election and formal withdrawal of international forces, Afghans are understandably anxious about their future and whether the past cycles of violence will return. Those involved in past TJ efforts are concerned about whether any TJ work will continue after 2014 and whether they will be given the chance to play a greater role in national reconciliation.

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Need for Archival Activism

In the absence of consensus about how to move toward accountability for the past, it is not clear that Afghans will be able to make progress pursuing the objectives of transitional justice in this new transitional period. To many Afghans, the imminent withdrawal of foreign forces brings with it the threat of a return to the civil war years of the 1990s. The war may not be mentioned in Afghan textbooks, but every Afghan grows up knowing his or her community's suffering during the war—though not necessarily the common experience of suffering known to all Afghans.

One of the objectives of the AIHRC's Conflict Mapping Report was to create a shared narrative of the war and to make Afghans aware of the commonalities of the war experience they all lived through, on the assumption that meaningful reconciliation could not take place without it. Unfortunately, in the eleven years since the Bonn Agreement came into force, no opportunity has arisen for Afghans to discuss the war in a way not tinged with fear that such discussions would be seen as a challenge to the authority of the warlords.

To raise the standard of information available for transitional justice initiatives and provide greater access to such information, in 2008, the War Crimes Research Office (WCRO) and the Pence Law Library of American University launched a project to build a fully searchable and publicly accessible database of documents regarding the atrocities perpetrated in Afghanistan since the war began in 1978. The archive's holdings include many of the reports by established international human rights organizations, UN human rights reports, and reports by Afghan organizations. The archive also includes some unpublished testimonies, including those of the Afghanistan Justice Project, which are encrypted and secured but not yet accessible to the public. Through these encrypted testimonies, the database also functions as a secure repository outside Afghanistan for data that may be too sensitive to publish—either in Afghanistan or elsewhere—at present.

The goal of the Afghanistan Documentation Project is to incorporate and code all relevant documents in the database so that they are searchable by any number of criteria. The incidents include all common categories of war crimes and serious human rights violations. Incidents are searchable by location, date, description, and names or positions of perpetrators, victims, and other relevant actors. This will allow human rights activists, civil society groups, transitional justice advocates, lawyers, policy analysts, and scholars—whether in Afghanistan or elsewhere—access to information that would be vital in any number of initiatives aimed at addressing impunity, including vetting for civil service appointments or elections, prosecutions, memorials, and reparations. The Web-based interface means that this information could be available for the first time to the Afghan public, which has had little opportunity until now to read about or share its history.

As talk among militia leaders again turns to rearming, the Internet-based database provides a way for Afghans to retain focus on the need to understand how the conflict has evolved, to carry on discussions about the possibilities for accountability, and to identify ways to prevent the emergence of such abuses and conflict in the future.

Ongoing documentation work and its preservation in a publicly accessible database are one of the few antidotes to a dangerous historical revisionism that would ignore the crimes or suffering of some at the expense of others. Afghanistan may be far from bringing alleged perpetrators to trial, but by ensuring that all known relevant information is preserved in a secure database, the evidence will be available for criminal proceedings when the opportunity arises. In the meantime, access to the database will help promote accountability and greater understanding of the conflict. Access to this kind of information may demonstrate that the crimes and suffering have not been forgotten. By encouraging respect and recognition for the suffering of all sides, it may contribute to ending Afghanistan's relentless cycles of war.

Recommendations

For much of Afghanistan's recent past, the country has been at war. The full account of that war—why and how it began, the foreign alliances that fueled it, the military and diplomatic efforts that expanded it, the ethnic fault lines it exacerbated, and the many efforts to end it—cannot be written without some painful reconstruction of the violence that took place.

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As the country's government changed hands through coup, invasion, or conflict over the past thirty-five years, written records were lost or destroyed. As noted here, the effort to reconstitute that record through investigations of past events and interviews with survivors has been fraught with controversy.

This is not to say that any single report or archive can provide the definitive truth about the past. Such an archive must serve, however imperfectly, as our most vital evidence in the effort to understand the complex array of factors that have played a part in the conflict. It is not that there is currently no conversation about the causes and consequences of the war; there are hundreds of them as each community understands what has happened to it in isolation from the experience of the country as a whole. Better documentation and access to other narratives will not invalidate personal or community-specific grievances but could provide a counterweight to narrow interpretations of past events.

The AIHRC's Conflict Mapping Report is the first effort by an official Afghan government entity to document past violations for the stated purpose of publicizing the findings and initiating a national dialogue about truth and reconciliation. The report is also the first of its kind to document the events of the war from 1978 to 2001 as they affected all the regions of the country; the report reflects the shared experiences of Afghans across the country in each phase of the war. As such, it is an invaluable resource for Afghans, as well as non-Afghans, to understand the multilayered dimensions of the conflict. The failure to publish the report is a setback not only to the AIHRC but also to the efforts by other civil society groups to advocate for accountability for current and past human rights violations. As the 2014 transition approaches, many Afghans fear that the space for these groups to operate will close further. It is critical that the international community support the release of the AIHRC Conflict Mapping Report to initiate a dialogue about the legacy of the war.

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Other efforts for more research and documentation by Afghans and Afghan institutions into all aspects of the conflict, including human rights issues, also deserve support. An informed electorate is critical to any democracy, and many of Afghanistan's nascent civil society organizations are engaged in vital research into a range of political and economic issues and are employing creative ways to bring vital information to local communities.

Afghan human rights organizations have long found it difficult to gain access to material published in the past by international organizations. Database research tools allow activists and researchers to search existing documentation for patterns or specific data and NGOs to share their work more widely. At the same time, human rights organizations compiling their research need a secure way to keep safe any information that might endanger witnesses. For these reasons, the Afghanistan Documentation Project, which has both a public and confidential component, is a vital tool for ongoing documentation work.

In addition, it is important for Afghans to gain access to other archives outside their country that hold important information about Afghanistan's recent past. This effort can be facilitated through grants, student exchanges, and other educational programs. The past shapes the present as well as the future. To understand how and why the war began and continued for so long, we have to try to understand how it happened from the various perspectives of people who were there at the time. It is fortunate that many of the witnesses to these events are still alive. Through their accounts and other evidence from the past, we can begin to comprehend the complex relationships, motivations, alliances, and interests that led to and perpetuated war. Only by grasping that history can we understand how to foster peace.

Notes

1. The PDPA transformed itself into the Watan party in 1990, but its essential structure remained the same.

2. Louis Bickford, Patricia Karam, Hassan Mneimneh, and Patrick Pierce, "Documenting Truth," (New York: International Center for Transitional Justice, 2009), http://patfinucanecentre.org/truth/ICTJ_Truth09.pdf.

3. Stephen Breyer, "Keynote Address for the 1996 Days of Remembrance," April 16, 1996, Crimes Against Humanity, Nuremberg, 1946, and "Nuremberg Trial Timeline," Robert H. Jackson Center Research Archive, http://roberthjackson.org/the-man/nuremberg-trial/nuremberg-trial-timeline.

4. Ibid.

5. Approximately twelve million of these have been digitized. At the University of Texas at Austin, the UT Libraries' Human Rights Documentation Initiative (HRDI) was established to preserve fragile and vulnerable records of human rights movements in a number of countries. See www.lib.utexas.edu/hrdi. Columbia University's Center for Human Rights Documentation and Research includes a searchable collection of archived copies of human rights websites created by nongovernmental organizations, national human rights institutions, tribunals, and individuals. Collecting began in 2008 and has been ongoing for active websites. See http://hrwa.cul.columbia.edu.

6. Center for Research Libraries, "Focus on Global Resources: Human Rights Documentation," www.crl.edu/focus/winter-2012.

7. Ibid.

8. Bickford, Karam, Mneimneh, and Pierce, "Documenting Truth."

9. This author was coauthor of the UN Mapping Report.

10. Matthew Rosenberg, "Outspoken Afghan Rights Official Ousted," *New York Times,* December 22, 2011, www.nytimes.com/2011/12/23/world/asia/afghan-rights-activist-nadery-ousted-from-panel.html.

11. Juan Mendez, "The Human Right to Truth: Lessons Learned from Latin American Experiences with Truth Telling," in *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*, edited by Tristan Anne Borer (Notre Dame, IN: University of Notre Dame Press, 2006), p. 142.

Of Related Interest

- *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* by Tricia D. Olsen, Leigh A. Payne, and Andrew G. Reiter (USIP Press, 2010)
- *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* edited by Hugo van der Merwe, Victoria Baxter, and Audrey R. Chapman (USIP Press, 2009)
- *The Diversity of Truth Commissions and Commissions of Inquiry* by Evelyne Schmid (Peace Brief, January 2012)
- *Informal Justice and the International Community in Afghanistan* by Noah Coburn (Peaceworks, April 2013)
- *NGOs and Nonstate Armed Actors* by Claudia Hofmann and Ulrich Schneckener (Special Report, July 2011)
- *Afghan Perspectives on Achieving Durable Peace* by Hamish Nixon (Peace Brief, June 2011)
- *Analyzing Post-Conflict Justice and Islamic Law* by Scott Worden, Shani Ross, Whitney Parker, and Sahar Azar (Peace Brief, March 2011)
- Truth Commission Digital Collection, www.usip.org