

Stabilizing Afghanistan: Legitimacy and Accountability in Governance

ICTJ Afghanistan
January 2010

President Obama’s long-awaited plan to increase the number of US troops in Afghanistan is meant to include a number of benchmarks aimed at stabilizing Afghanistan as part of an overall strategy to defeat or contain Taliban/al-Qaeda extremists. Bringing an end to the insurgency and addressing its regional roots are crucial parts of a successful peace process, but cannot prevail unless coupled with a strategy to address the governance deficit in Afghanistan.

Investment in Justice

The stability of a state rests on the strength of its most fundamental institutions. There has been no serious investment in Afghanistan’s institutions—with the exception of the Afghan army—since the overthrow of the Taliban in 2001. The most important institutions are those necessary for providing citizens with security and justice: the police force and the judicial system. Yet these two are recognized as the most corrupt and the least effective by the Afghan people. Moreover, reform of the police and judiciary has been treated as separate, even though a police force cannot perform its job in the absence of well-functioning and accountable legal institutions. The reported popularity of Taliban-style “swift justice” in some parts of the country underscores the urgent need for a more responsive and trustworthy judicial system.

The reasons for popular disillusionment are obvious: police who prey on citizens through arbitrary arrest, extortion, routine mistreatment and torture; corrupt judges and prosecutors in pay of racketeers; appointed officials who serve the interests of drug lords not the people. A culture of impunity, not the rule of law, thrives under these conditions, and represents a security risk as great as that posed by the Taliban. Indeed, the two are linked: a weak state that has lost the trust of its people is fertile ground for insurgency. Making the shift to a culture of accountability will require a much more comprehensive approach if the government is to become answerable not just to international donors but to Afghan society and to the rule of law.

TABLE OF CONTENTS

Investment in Justice	1
Implementing the Action Plan On Peace, Reconciliation and Justice	1
Support for Democratic Processes and Dealing with Illegal Armed Groups	2
Recommendations	3

Implementing the Action Plan for Peace, Reconciliation and Justice

The five point Action Plan for Peace, Reconciliation and Justice (henceforth the Action Plan) was developed by the Afghan Independent Human Rights Commission (AIHRC) and supported by the United Nations and the Commission’s international partners. The Action Plan was approved by President Karzai’s cabinet in December 2005 and remains a relevant framework for building accountable institutions, recognizing the suffering of the Afghan people and promoting justice for past human rights violations and war crimes. It encompasses the mutually reinforcing elements of institutional reform, accountability, reintegration and justice as key components of good governance and stability. As such, the measures included in the Action Plan would go far to

Stabilizing Afghanistan:
Legitimacy and Accountability in
Governance

ICTJ in Afghanistan

- Cooperation and partnerships with international and Afghan organizations working for justice
- Policy efforts at international and national levels for a justice centered peace process
- Support AIHRC's national consultations and documentation efforts
- Technical assistance, including with the drafting of the Action Plan on Peace, Reconciliation and Justice
- Technical assistance to Afghan civil society groups, including exchange visits, fellowships, workshops and individual mentoring
- Support to victims' groups, including through theater initiatives

rebuilding public trust and at the same time provide a blueprint for further steps that may be needed in establishing benchmarks for reconciliation with former Taliban.

These sequenced steps include:

1. Acknowledging and memorializing the suffering of the Afghan people;
2. Building credible and accountable state institutions through reform of the appointments process, establishment of a civil service commission and reform of the judiciary;
3. Documentation and truth-seeking mechanism that support accountability and reconciliation;
4. Supporting the reintegration of former combatants;
5. Establishing appropriate judicial and other accountability mechanisms for those responsible for past war crimes.

The Action Plan was incorporated into the Afghanistan Compact and the Afghanistan National Development Strategy. Some efforts have been made to implement measures outlined in the document: the President has publicly launched the Action Plan; internationally-supported efforts to vet police chiefs have included human rights criteria so too has the Panel for Senior Political Appointments, the body which advises on appointments of deputy ministers, governors and police chiefs; the AIHRC has undertaken documentation initiatives; and there has been some, albeit limited, focus on acknowledgement of the suffering of victims (including memorials and museums). However, the core of the Action Plan focused on promoting justice for past human rights violations and war crimes and ensuring that Afghan institutions are transparent and strong enough to resist corruption and further violations against the Afghan people remains unimplemented. Recommendations for senior appointments go unheeded, and many current militia leaders who have not disarmed including those against whom there is evidence of war crimes, continue to hold high positions.

Promoting sustainable peace and regaining the trust of the Afghan people will require a new focus on fostering legitimacy in the Afghan state. Recognition of the suffering of citizens during all phases of the over-three decade old conflict and promoting justice for past and present human rights violations and war crimes must be an intrinsic part of any strategy for confidence rebuilding in the government and state.

Support for Democratic Processes and Dealing with Illegal Armed Groups

The state-building effort has also suffered from a tendency to focus on outcomes rather than processes, particularly with respect to elections. This has impeded efforts to address corrupt practices that lead to fraud. A fair vote depends on a fair process, but the Afghan institutions responsible for managing electoral processes have been compromised and require a serious overhaul in the short time remaining for parliamentary elections later this year if we are to avoid a repeat of the fraud perpetrated during the presidential elections.

Other reforms in the electoral process are also needed, including enforcing existing law on the vetting of candidates with links to illegal armed groups. The vetting process used during the parliamentary elections of 2005 to exclude candidates with links to illegal armed groups was undermined by poor information, inadequate resources and—most importantly—a dearth of political will. The election of many MPs with links to armed groups eroded public faith in the electoral process.

Policymakers have long identified illegal armed groups as the greatest risk to Afghanistan's stability. Previous efforts to disband and disarm such groups have been under-resourced and

Stabilizing Afghanistan: Legitimacy and Accountability in Governance

Acknowledgements

ICTJ gratefully acknowledges the Royal Netherlands Embassy Kabul for its support, which made this publication and the related research possible.

ineffective. Recent strategies, including aspects of the legalization of private security companies and the establishment of the Afghan Public Protection Force, run counter to the commitments made on disarmament. Since Soviet times, the Afghan government has funded irregular militias to combat insurgent forces; international forces are struggling today with the legacy of those failed policies. If the government is to retain a monopoly on the use of force, all newly recruited armed groups (tribal militias) should be incorporated into the regular Afghan armed forces and held to stringent standards of accountability.

Recommendations

- Include implementation of the Action Plan for Peace, Reconciliation and Justice as one of the benchmarks the Afghan government should meet, and reference this in the final documents of the London conference
- Call on the Afghan government to take immediate steps to fulfill its obligation under the Action Plan, specifically in:
 - Acknowledging and memorializing the suffering of the Afghan people
 - Building credible and accountable state institutions through reform of the judiciary, police and civil service appointments process in part by developing long-term strategies to curb abuse—notably torture, arbitrary arrest and interference in court cases—and promoting transparency and accountability in government institutions
 - Supporting the establishment of documentation and truth-seeking mechanisms
 - Supporting the reintegration of former combatants
 - Establishing appropriate judicial mechanisms to hold accountable those responsible for past and current human rights violations and war crimes
- Reform Afghanistan’s electoral institutions, in particular the Independent Election Commission (IEC), and undertake other necessary steps to limit fraud in the parliamentary elections and foster broad participation in national elections
- Redouble efforts to carry out comprehensive disarmament, including the vital demobilization of illegal militias and incorporation of any newly recruited armed groups (tribal militias) into the regular Afghan armed forces