



Transitional Justice and DDR: The Case of Afghanistan

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This research project examines the relationship between disarmament, demobilization and reintegration (DDR) programs and transitional justice measures. It explores the manifold ways in which DDR programs may contribute to, or hinder, the achievement of justice-related aims. The project seeks not only to learn how DDR programs to date have connected (or failed to connect) with transitional justice measures but to begin to articulate how future programs ought to link with transitional justice aims. The project is managed by Ana Patel, Deputy Director of the Policymakers and Civil Society Unit at the ICTJ. For more, visit www.ictj.org/en/research/projects/ddr/index.html.

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Introduction

The transition in Afghanistan from the wars of the past to the weak government and intensifying conflict of the present has shaped the way disarmament and transitional justice have been perceived and the extent to which these seemingly complementary objectives have been accepted. While disarmament has had widespread support among the majority of Afghans and all of Afghanistan's major donors, a number of factors have affected the pace of its implementation. The way anti-Taliban forces within the country came to power in 2001 and the continuing relationship between U.S. forces on the ground and the Afghan militias working with them in the ongoing conflict with a resurgent Taliban has slowed progress on disarmament. Although disarmament, demobilization and reintegration (DDR) has made more progress than transitional justice, both faced delays due to decisions made early on by international actors not to commit enough foreign forces to the conflict. Rather, international actors, who saw the principal threat to security as the Taliban and al-Qaeda, opted to rely on former militia commanders and faction leaders to act as a bulwark against Taliban insurgent forces to guarantee stability.

In the first few years of the transition, U.S. and UN policy sought to minimize the additional threat to security originating from the militia forces themselves with a minimal investment in an international force and in security sector reform (SSR). The approach involved accommodating commanders and factional leaders in the emerging government administration and power structure. Thus, by the end of 2002, commanders who not only had long records of human rights abuses and war crimes accusations but who were also involved in drug trafficking and other crimes had entrenched themselves in new positions of power. Questions of past war crimes were suppressed or deferred, and the disarmament process proceeded selectively in order to avoid confrontation with the most powerful players.

Throughout the state-building process in Afghanistan, the UN adopted a "light footprint" approach that in theory would strengthen the capacity of the new Afghan administration by discouraging reliance on external support. This in turn was meant to ensure greater buy-in for the reform process from Afghan leaders. In reality, the light footprint has meant that vital reforms have lagged for lack

of capacity and clear leadership. In addition, with the compartmentalization of key reform efforts—disarmament, police reform, judicial reform, human rights—cooperation among donor and Afghan officials has been inadequate, undermining the creation of accountable institutions.

The main objective of DDR was to reduce the power of commanders at the middle level by depriving them of a ready supply of soldiers who could be mobilized and deployed at will. Although the DDR program succeeded in the handover of heavy weaponry from militias (this was partly due to the engagement of NATO and U.S. forces in the country, a presence that precluded the resumption of major conflict between rival factions), the program left small arms largely untouched.

The demobilization and reintegration parts of the program achieved mixed results. Commanders from the major anti-Taliban forces—the Afghan Militia Forces (AMF)—were the target of DDR. Some members were incorporated into the new Afghan National Army (ANA) (the majority from a single faction); other senior commanders were granted government or police positions, from which some have maintained illegal militias. The reintegration of other militia members into civilian society has suffered from poor vocational counseling within the program and insufficient analysis of local economic conditions for establishing alternative livelihoods in small business, livestock or farming.

Militias that fell outside the main anti-Taliban forces were not subject to DDR. These “illegal armed groups” (IAGs) have come under a later program, Disbandment of Illegal Armed Groups (DIAG), which, as of late 2006, had made little progress and was in the process of being completely overhauled. In the lead-up to the 2005 National Assembly elections, there was general recognition that the IAGs represented more of a threat to security than most of the AMF. Electoral vetting on the part of the DIAG theoretically should have minimized the threat from these groups by disqualifying candidates who failed to disband their militias. However, only a handful of candidates were actually disqualified, and the most powerful candidates known to have private militias were not touched, discrediting the enterprise.

Post-2001 Afghanistan has not been a truly postconflict period; the U.S. and NATO forces continue to battle Taliban and al-Qaeda insurgents. The DDR process had no jurisdiction over members of militias employed by U.S.-led coalition forces. The Taliban insurgency has intensified in recent years, increasing insecurity for Afghans, particularly in the south of the country, and further undermining the authority of the central government. Fear of a resurgent Taliban has worked against DDR, with even the government calling for a rearming of local militias to defend against Taliban attacks.

The challenge of pursuing a transitional justice process is linked to the problem of promoting human rights more generally in the country. In post-2001 Afghanistan, major international actors steering the state-building process saw the pursuit of transitional justice as potentially destabilizing, and spurned robust interventions on human rights for the same reason. As a result, building support within the Afghan government and among international donors for a transitional justice process has

been slow. In addition, a number of powerful faction leaders and commanders who returned to power after the defeat of the Taliban have attempted to discredit transitional justice initiatives by claiming that all such initiatives are aimed at maligning the *mujahidin*—those combatants who liberated Afghanistan from the Soviets and the Taliban.

A landmark survey of public opinion among Afghans conducted in 2004 revealed overwhelming support for ending the cycle of impunity.¹ The report of that study included recommendations that became the foundation for the government's Action Plan on Peace, Reconciliation, and Justice. After nearly a year's delay, the plan was adopted by the cabinet in December 2005. It was formally launched on December 10, 2006. However, little of the plan has been implemented, although a number of activities, including a conference on truth-seeking; limited capacity-building with respect to forensic work, including a forensic site assessment; and a fair amount of documentation to map major incidents of the war, have taken place. A weak civil society and the lack of strong public pressure, combined with an atmosphere of intimidation and general insecurity, have undermined efforts to carry out intensive fact-finding investigations or establish formal truth-seeking mechanisms. The failure thus far of judicial reform has also stymied prospects of criminal prosecutions; even ordinary criminal trials lack legal safeguards, leaving the high-profile war crimes cases even less likely to enjoy due process. There have been several successful prosecutions abroad, but these have had only a minor impact on the processes inside Afghanistan.

The compartmentalized approach taken to DDR and transitional justice has meant that there have been no efforts to link the two objectives. The reintegration of former combatants has not included any vetting on human rights grounds, with the result that former fighters responsible for past abuses or war crimes have been reappointed to other security posts. DDR has not been linked to other institutional reforms, which, as of 2006, were lagging far behind schedule. The only explicit link took place before the 2005 National Assembly elections, when electoral vetting on disarmament grounds raised hopes that many armed militia leaders—and many war criminals—would be disqualified. However, the political will to confront major faction leaders and commanders was lacking and virtually all seriously armed candidates went untouched. A number of these were elected to the National Assembly. Two war crimes trials have been held in Afghanistan; both seriously violated international norms of due process and there has been little effort to link the deficiencies of these trials to the broader judicial reform effort. International trials of Afghan war criminals abroad have sparked passing interest, but have not been seen as models for how such trials might be conducted in Afghanistan. In addition, progress on vital institutional reforms has been slow, impeding efforts to create a competent and professional police force, civil service and judiciary, all three of which are vital to successful disarmament, transitional justice and, ultimately, security. The failure to integrate these aspects of the state-building effort now risks dooming the entire reconstruction effort and peace process in Afghanistan to failure.

Background to the Conflict

The war in Afghanistan has been ongoing since 1978. The conflict can be divided into four phases: (1) the period between 1978 and 1992, comprising the coup by the Marxist-Leninist People's Democratic Party of Afghanistan (PDPA) and Soviet occupation and withdrawal; (2) the period from 1992 to 1996, which includes the fall of the communist government and civil war among largely ethnically based factions; (3) the ascendancy of the Taliban in 1996; and (4) the U.S. intervention in 2001, bringing with it the post-2001 transitional government. Discussions about transitional justice measures generally focus on human rights crimes committed before December 2001. During the war, all parties to the conflict committed war crimes, serious human rights violations and/or crimes against humanity.

The armed conflict began with the communist revolution of April 27, 1978, although its origins lie in events of the decade preceding the coup. In the late 1960s, then king Zahir Shah promulgated a number of reforms, including laws that for the first time permitted political groups to organize, although they could not participate in elections. The PDPA formed in 1965, and split into two factions—Khalq (masses) and Parcham (flag)—in 1967. A number of Islamist parties also formed around this time. In 1973, the king was ousted by his cousin Daoud, who established himself as head of the renamed Democratic Republic of Afghanistan. The two factions of the PDPA temporarily united to overthrow Daoud in 1978, igniting a civil war.

In the twenty months that followed, Afghans experienced repression and brutality on a massive scale. The new PDPA regime attempted to eliminate any political or social opposition by imprisoning and then executing tens of thousands of people.² Those targeted included village elders, religious leaders, schoolteachers, members of religious and ethnic minorities, royalists, Maoists and members of the newly formed Islamist parties. Within a few months of the coup, the Khalqis had purged the government of most Parchamis. Many were imprisoned and executed; some senior figures were exiled.³ Popular resistance grew into a major military uprising, with mutinies decimating the army. Hundreds of thousands of refugees fled to Iran and Pakistan, where guerrilla forces established bases and conduits for foreign military assistance. With the situation spiraling out of control, the Soviet Union invaded on December 24, 1979.

The Soviet occupation marked the second phase of the conflict. After installing a new president, the Soviets set about rebuilding the army and intelligence apparatus to crush the resistance. Torture became more sophisticated and systematic, while in the countryside bombing campaigns continued to swell the tide of refugees. Hundreds of thousands of civilians were killed in the bombings, and irrigation systems, orchards and farmland were destroyed. The United States and its allies stepped up military assistance to the *mujahidin* (resistance), with most of it delivered through Pakistan. Increasing military costs and strained international relations led to the exit of Soviet forces from Afghanistan in February 1989. On November 28, 1989, the Supreme Soviet adopted an amnesty

excluding the possibility of prosecutions of any of its forces for deliberate or indiscriminate attacks against Afghan civilians.⁴

The government of Soviet-backed President Najibullah⁵ remained in power and controlled Afghan cities for three years after the last Soviet troops withdrew, though as the cash flow from the former Soviet Union dwindled, its control diminished. By then, the mujahidin were fighting among themselves even as the UN attempted to broker a power-sharing arrangement to succeed the Najibullah government. But before any agreement could be reached, mujahidin and militias formerly allied with the government overran Kabul in April 1992.

For the next four years mujahidin factions fought among themselves for control of the country; and this marked the next phase of the war. The fighting was particularly severe in Kabul. All of the competing factions had distinct ethnic bases, and they targeted civilians for reprisals or extortion on the basis of ethnicity. The fighting was marked by artillery battles inside civilian residential areas, mortar and rocket attacks in predominantly civilian areas, hostage taking and mass rape. Outside Kabul, rival commanders carved up the country. There was no functioning central government; commanders answering to no other authority preyed on civilians.

It was in reaction to this lawlessness that the Taliban emerged in late 1994. They gained local support in their ethnic Pashtun areas because they brought desperately needed security. Their early military successes won them the support of Pakistan as well as that of some Saudi sponsors, who provided them considerable financial and military aid. That support enabled the Taliban to take control of most of the country, including Kabul, in less than two years, and most of the north two years after that. During this time, the Taliban imposed their harsh and idiosyncratic version of Islamic law, which took its toll on Afghan women and minorities. Starting in 1997, the Taliban were hosts for Osama bin Laden, and because of this they came under international sanctions for using the country as a base for international terrorism. Despite the sanctions, Pakistan continued to pour in weaponry, advisers and student “volunteers” to help the Taliban take more and more of the country. Following the events of September 11, 2001, U.S. forces in a coalition with twenty-one nations allied with Afghan anti-Taliban forces, and succeeded in ousting the Taliban from power in November 2001.⁶

The Post-2001 Conflict Situation

While the U.S. intervention following the attacks of September 11, 2001, drove the Taliban from power, a U.S. force of approximately 23,000 troops still continues to hunt for, and battle with, Taliban and al-Qaeda insurgents, particularly in the south and east of the country.⁷ The coalition forces operate with freedom of action; their primary objective is to defeat the Taliban and al-Qaeda and only secondarily to provide security within Afghanistan. U.S. forces have often taken a unilateral approach based on their overriding priority of fighting al-Qaeda and the Taliban—an objective that

has drawn them to seek allies on the ground without regard to their human rights records. In the immediate aftermath of the Taliban's defeat, the coalition armed and funded Afghan commanders to act as a bulwark against any return of the Taliban and al-Qaeda. Some of these commanders used the coalition's support and arms to consolidate their control over territory and criminal enterprises—particularly opium production. Some also engaged in, or continued to engage in, abuses against the local civilian population, including human trafficking, forced evictions and extortion. The growing power of these commanders has represented one of the most serious threats to security for most Afghans.⁸

After 2001, Afghan militia forces allied with the coalition were supposed to withdraw from areas occupied by the International Security Assistance Force (ISAF); they did not, but further entrenched themselves to gain political influence and to carry out various criminal activities, including drug trafficking. The ISAF was initially deployed in 2002, to assist the Afghan government in “extending and exercising its authority and influence across the country, creating the conditions for stabilization and reconstruction,”⁹ though it was hampered from the beginning by a restricted mandate that confined it to Kabul. While Afghan officials, as well as many donor nations and other international actors, called for an expansion of ISAF, the United States continued to oppose ISAF expansion until late 2003. ISAF was hampered by its relationship with the U.S.-led antiterrorism coalition, and countries were slow to commit additional troops.

UN Security Council Resolution 1510, signed on October 13, 2003, opened the way for an expansion of ISAF. NATO took over command and coordination of ISAF in August 2003. In mid-2006, ISAF under NATO took over responsibility for security in the insurgency-riven south of the country, paving the way for a withdrawal of some 2,500 U.S. forces and an increase in its own troop strength from approximately 9,000 to 18,000 forces. In early October, NATO announced the expansion of ISAF into the east of the country, with up to 12,000 U.S. troops coming under NATO control. Another 8,000 U.S. troops in the east were to remain under the U.S.-led coalition, which had been commanding the area. The presence of these foreign military forces was essential for Afghanistan to meet the goals of the 2001 Bonn Agreement: to draft and ratify a new constitution; hold presidential and parliamentary elections; and gradually implement reforms to build an army, police force and other essential institutions. The benchmarks of the Bonn Agreement have been met, but the Afghan government has yet to tackle some of the most important aspects of institution building and has far to go to establish its own legitimacy.

However, seven years after the U.S. intervention, U.S. and allied coalition forces are fighting an insurgency that has gained strength and threatens to completely undermine the authority of the central government. In the years since their defeat, the Taliban have regained strength. Increasingly, heavy fighting has taken place throughout the south and east of the country. Insurgents have increasingly used suicide bombs in their attacks. The death toll from such attacks in 2006 was at least 300, three times the number from all previous years since January 2002 combined. Another 300 Afghans died in suicide attacks in 2007; the number of attacks jumped from about 100 to nearly 140 that year. By April 2008, nearly 200 people had been killed in suicide attacks. Both

official and unofficial sources in Pakistan were again believed to be providing the Taliban with needed financial and military support, as well as with sanctuary in areas of Pakistan's southwestern border with Afghanistan. Many areas in the rest of the country remained insecure and under the sway of local commanders and their militias.

The Bonn Agreement and the “Light Footprint”

Afghanistan's transition has not been from conflict to a negotiated peace settlement, but from conflict to a precarious power-sharing arrangement. In December 2001, the German government hosted a conference bringing together the major military factions that had allied themselves with the U.S.-led coalition in ousting the Taliban, along with other prominent Afghan political groups. The Bonn conference was held under the auspices of the UN, with the United States playing a key role to ensure that the outcome suited its interests in its continuing efforts against the Taliban and al-Qaeda. What came out of the negotiations was an agreement among the forces that had fought the Taliban that allotted most of the more important ministries to leaders from a single military faction, the Tajik Shura-i Nazar (Council of the North), based in the Panjshir Valley in northeastern Afghanistan.¹⁰ Most important for disarmament was the fact that this faction controlled the defense and interior ministries. Elsewhere in the country, other powerful factions asserted their control over regional power centers. Among the most powerful ministers were several prominent faction leaders suspected of numerous war crimes.

The Bonn Agreement established Afghanistan's interim government and set out a timetable for the political processes that would follow, including the establishment of a six-month interim administration, the holding of a *loya jirga* (Grand Council)¹¹ to select the subsequent eighteen-month transitional administration, a Constitutional Loya Jirga to ratify a new constitution, and presidential and parliamentary elections. All of these benchmarks have been met, though the fact that former mujahidin leaders and commanders dominated virtually every stage has hurt the credibility of the so-called Bonn process.

The Emergency Loya Jirga, held in June 2002, established Afghanistan's transitional government until presidential elections were held in October 2004. In December 2003, the Constitutional Loya Jirga was held. Though the document it eventually ratified was widely hailed as the most democratic (and protective of human rights) of any in the nation's history, the consultation and drafting process was heavily influenced by former faction leaders. In October 2004, presidential elections were held and President Karzai was elected; the poll was viewed as largely free and fair and took place without major incident. There was a far lower voter turnout for the National Assembly elections held in September 2005, which also took place without any major security problems but which were flawed in the eyes of many voters by the failure to disqualify a large number of candidates known to be commanders with illegal armed militias.

Throughout this process, the UN adopted a “light footprint” approach with the aim of strengthening the capacity of the Afghan administration, encouraging greater buy-in from Afghan leaders, and discouraging reliance on external support. In practice, a light footprint in a country devastated by a quarter century of war has meant that vital reforms have lagged for lack of capacity and clear leadership. This has been particularly evident in relation to security, where “the concept of a ‘light footprint’ . . . unfortunately ended up more accurately reflecting the very modest resources—particularly for security—donor countries actually contributed.”¹² As many observers have noted, the price Afghans are paying for the international community’s light footprint in the security sector is high.¹³

In developing a strategy for reconstruction, Afghanistan’s key donors divided up sectoral reforms on the basis of a “lead donor.” For example, Germany was the lead donor on rebuilding the Afghan police, the United States on military reform, the U.K. on counter-narcotics, Japan on disarmament and Italy on justice. The strategy foundered, particularly in the key areas of security and judicial reform. Limited by individual donors’ willingness and capacity to provide resources and leadership, and by a lack of coordination among donors and the relevant ministries, too little has been done too late:

Difficulties in coordination occur at all levels. Some donors have displayed limited leadership in both the design of their programs and their attempts to solicit and shape the involvement of other states. All five SSR pillars have fallen far behind their original schedules. This diagnosis, however, understates the scope of the problem. In critical and sweeping respects, SSR is fundamentally broken.¹⁴

A number of nongovernmental organizations (NGOs) and international donors¹⁵ called for a more integrated approach in the area of rule of law that would link police training with reform of the criminal justice system, and human rights training with accountability benchmarks to assess improvements in police behavior in the field. There is evidence of greater coordination among key donors in this area. At the same time, however, there was growing awareness within the donor community that the window of opportunity to implement reforms had narrowed, as President Karzai’s government appeared increasingly hostile to foreign pressure.

Many other reforms essential to a functioning, legitimate state have also lagged. Security remains the most important concern for the majority of Afghans. Illegal militia forces with links to criminal activities and with a vast quantity of small weapons at their disposal represent a source of fear for many Afghans. An increasing number of Afghans have reason to fear the growing strength of the Taliban insurgents, who move fairly freely in much of the southern provinces.

The Disarmament, Demobilization and Reintegration (DDR) Process

The Combatants Post-Bonn

As of December 2001, most former fighters in Afghanistan remained armed and organized in faction-based or unofficial militias around the country. Many of the larger faction-based militias had comprised the fighting forces of the United Front, also known as the Northern Alliance (NA), that had fought the Taliban, and before that, the Soviet Union and its Afghan allies. Included in this group are the Northern Alliance faction from the Panjshir Valley known as Shura-i Nazar, whose leaders now control key ministries in the government. Veterans of the Soviet war are known as mujahidin—those who fought the *jihad* (struggle). The Bonn Agreement was essentially a power-sharing agreement among these armed forces; it provides a very general legal basis for disarmament. It states:

Upon the official transfer of power, all mujahidin, Afghan armed forces and armed groups in the country shall come under the command and control of the Interim Authority, and be reorganized according to the requirements of the new Afghan security and armed forces.¹⁶

The Bonn Agreement did not make reference to the Taliban; as an enemy force they were not eligible for DDR. After Bonn, the faction-based forces, principally of the NA, were formally recognized and designated as the Afghan Militia Forces (AMF), and placed under the authority of the Ministry of Defense. These militias were the first targets of DDR.

This formulation left out a number of other armed groups that were designated “illegal armed groups” (IAGs). These vary by size, affiliation, locality and motive for being armed, from those that are permanently constituted and engage in criminal and/or insurgent activities, to others who are occasionally constituted and primarily defensive.¹⁷ These groups were not recognized as part of the AMF either because they operated outside the command structures of the dominant NA factions or because of political and territorial rivalries with other factions. In addition, some armed groups designated as AMF who were demobilized privately retained core members and sufficient weaponry to continue to function as illegal groups. In addition, some commanders who had formally demobilized also retained control of their former forces through their positions as governors, chiefs of police and other local official positions. All of these are considered to be IAGs.

Among both the AMF and the IAGs are militias that have been responsible for war crimes and other abuses in the past, including in the post-2001 period. Many have been (and continue to be) involved in illegal activities, including the narcotics trade. Indeed, many IAGs loyal to powerful political figures and government officials function as protection forces for the officials’ criminal enterprises. Both AMF and IAGs have been recognized as a source of insecurity in the areas in which they

operate. While disarmament was seen as an overriding priority for the new government and its international donors, progress has been slowed by resistance from powerful political actors. The political strength of many of the militias, their protection and patronage by political interests within the government, and the international community's fear of their perceived ability to destabilize vulnerable areas contribute to the slowed pace of disarmament.

Disarmament at the Bonn Negotiations

Disarmament in Afghanistan has been a political process, part of an ongoing campaign by donors to gain the support or at least the acquiescence of Afghan leaders and commanders for the state-building enterprise in Afghanistan.¹⁸ During the negotiations in Bonn there was concern that pursuing disarmament could drive some factions from the table. Resistance was fueled by mistrust and rivalries among the NA factions represented there, and skepticism about the impartiality of any internationally driven process. In addition, negotiators had to convince both the Afghan and the U.S. participants of the necessity of demobilizing all of the militias before any effective training to create a national army could begin.¹⁹ One plan put forward by Shura-i Nazar negotiators called for all AMF to be reorganized into a national army with commanders being appointed as officers. The United States and UN sought to build a new army from scratch, with only limited recruitment from the AMF. Donors supported only the latter plan.²⁰ In the end, a substantial number of AMF were nonetheless incorporated into the Afghan National Army (ANA) with their command structure and arms intact.²¹

There were other problems as well: in traditional Afghan culture, demobilization of fighters could be interpreted as shameful, and thus any DDR package had to include not only economic incentives but alternative livelihoods that would be seen as equally honorable. While the problem of "honor" was a legitimate concern, it is complicated by the fact that some political leaders have played up the issue to discredit those who support a disarmament program, accusing them of being disrespectful to the mujahidin. In fact, the disarmament issue was a potential deal breaker at Bonn. After some participants criticized language in the Bonn Agreement draft as insulting the honor of the mujahidin, the paragraph was changed. Drafters eliminated the word "disarmament" and the text instead stated that all armed groups would come under the authority of the interim administration and would be integrated into the armed forces, which would be "reorganized according to the country's needs." The last phrase was formulated in a way that allowed it to be interpreted as a basis for disarmament.²²

Participants at the conference voiced the same objection to a proposal to prohibit any amnesties for war crimes. A number of political leaders tried to bolster their position by spreading the word that the entire agreement was designed to allow foreign forces to disarm the mujahidin and then put them on trial. Many of the faction leaders who resisted the agreement did so out of fear they would lose much of their power, but they also feared the reactions of their own men. A serious obstacle to disarmament has been the fact that senior commanders often do not have control over their own

men, and for that reason, fear them. Even within a particular faction, loyalty to a leader is not guaranteed, and few of the faction leaders present wanted to return home to tell their soldiers they were to be disarmed. Eventually, the United States and UN persuaded enough of the leaders by using the incentive of honored positions in the new government, a carrot that seemed sufficient to persuade most of the participants to sign the agreement. In the case of one particularly intractable political leader, the United States finally used a demonstration of force—firing a missile in the direction of his home base—to gain his cooperation.²³ While the agreement has been criticized for accommodating the very leaders responsible for inter-factional fighting of the early 1990s, negotiators claim there was no other way to get any agreement at all.

Reforming the Ministry of Defense

The disarmament program did not become operational until nearly two years after the fall of the Taliban. The principal reason for the delay was resistance within the Ministry of Defense (MOD) in undertaking its own internal reforms and relinquishing control of security matters to the UNDP-managed Afghanistan's New Beginnings Programme (ANBP). Because the interim administration was dominated by faction leaders who had opposed the Taliban but were rivals for power, there was resistance even within the government for commanders to disarm their own militias.

In April 2003, the ANBP was announced with a three-year, \$41 million budget. However, the program did not actually get under way until October 2003, when a pilot program was launched in the province of Kunduz. The program was meant to end as of June 2006. The target figure for demobilization through the ANBP was 100,000 officers and soldiers—a number that represented a compromise between the numbers claimed by the defense ministry (250,000) and those estimated by the UN Assistance Mission in Afghanistan (UNAMA) as being closer to the actual figure (45,000).²⁴

The main objective of the program was to reduce the power of commanders at the middle level by depriving them of soldiers who could be mobilized and deployed at will. In principle, by reintegrating fighting men into civilian life, these commanders could no longer count on a ready supply of soldiers to protect their interests and would therefore have to cede control to civilian authorities. However, the Ministry of Defense's "heavy footprint" on the process meant that its own forces (principally fighters from Tajik and Shura-i Nazar) initially assumed a role in the effort to identify and verify candidates for disarmament, giving rise to concern among other factions that the demobilization effort was politically motivated and would be used to target the ministry's rivals.²⁵ This concern was partially defused after the program had been under way for two years, as it included fighters and commanders from all the factions. According to coalition officials interviewed by the International Crisis Group, the establishment in late 2003 of regional recruitment centers, and an agreed percentage calculation for ethnically based recruitment, was meant to reduce the chance of direct interference by senior defense ministry officials.²⁶ Nevertheless, despite supervision by the eight Regional Verification Committees (RVCs), local commanders had nearly full say in identifying ex-combatants to be demobilized and reintegrated.²⁷

As a result, the process was “skewed in favour of the interests of high and middle-rank militia commanders,”²⁸ who manipulated the lists and used their powerful positions to press their own forces to demobilize while they appropriated any cash compensation. For example, fighters from the Shura-i Nazar faction of the Northern Alliance accounted for the majority of demobilized ex-combatants from the north and Kabul, and 88 percent of the demobilized ex-combatants that the Ministry of Defense recruited into the ANA were from Kabul, most from Shura-i Nazar.²⁹ The ministry screened candidates at the recruitment center in Kabul for training, and granted priority to those of the Shura-i Nazar faction.³⁰ Thus, of the demobilized ex-combatants who made it into the ANA—and only a small percentage were permitted to do so—the majority were from the Ministry of Defense’s own cadre, Shura-i Nazar.

Other Obstacles to DDR

The first obstacle that DDR programs encountered was how to get top commanders to comply. Almost from the beginning, the program adopted an approach that “compensated” commanders with government posts for relinquishing their military operations. Although most commanders lacked any qualifications for such government jobs, these commanders have demanded guarantees for their own futures in the form of government positions of sufficient prestige and power to compensate for the loss of their command. In Baghlan and Takhar, for example, commanders proposed that the Ministry of Defense appoint all their senior officers to comparable government positions prior to their decommissioning, as a confidence-building measure.³¹ Neither the Afghan government nor its international donors have been willing to attempt to disarm powerful commanders by force, arguing that to do so could unite former mujahidin against the government and make the rest of the reconstruction effort impossible. The incentive strategy remains highly controversial among donors, with many arguing that while the approach “bought” the support of some powerful figures who could have undermined the peace process, it ultimately entrenched the very people responsible for rampant lawlessness in the first place. How to deal with recalcitrant commanders continues to present a quandary for Afghanistan’s future.

Outside of the limited ANA recruitment, many Panjshiri commanders were reluctant to demobilize, because, as their leaders claim, Tajiks have been marginalized in the new Karzai administration.³² In late 2004, former mujahidin blocked the roads in Panjshir to halt the scheduled handover of heavy weaponry. Echoing the rhetoric of Bonn, *Payam-i Mujahid*, the organ of the Jamiat-i Islami party of former president Rabbani, claimed that the United States and UN were planning to use human rights and narcotics charges to prevent mujahidin from running as candidates for parliament after disarming them so they could not resist.³³ At the same time, Uzbek leaders in the northeast resisted disarming on the grounds that the administration and ANA were biased in favor of the Tajiks.³⁴ DDR has yet to make significant inroads among the Tajik and Panjshiri units in the Shura-i Nazar strongholds in the northeast of the country,³⁵ and there is continued resistance to disarmament among commanders throughout the country.

Many commanders have also argued—not without reason—that in the absence of a credible, robust police force, their presence is needed to guarantee security. At the same time, former AMF members, along with some groups operating outside the AMF, have been incorporated into border patrols and highway police. Beholden to local commanders, some of whom may have positions in the provincial or district government, these police units are not seen as impartial forces. Still others may partially disarm, keeping a cache of weapons and loyal fighters in the wings. Most militias operated on an “on-call” basis anyway, with men returning to village life while being available for duty if the need arose.

Further difficulties delayed progress elsewhere, notably in the northwest, where mistrust between Jamiat and Junbish militias meant that neither was willing to disarm. In mid-2003, fighting broke out between these two rival forces near the city of Mazar-i Sharif even as British forces were being deployed in the area to oversee demobilization, among other things. In mid-2006, fighting again broke out between a commander linked to Junbish and a local rival loyal to the Hizb-i Azadi party in Faryab province. As both Junbish and Hizb-i Azadi had been required to disarm before they could register as political parties, the incident prompted the interior ministry to call for their deregistration. In turn, party officials denied any links to the combatants.³⁶ The incident illustrates the way in which political tensions and territorial squabbles among former combatants reduce the appeal of any incentive for disarming. Many former combatants do not feel secure enough to disarm willingly.

Neither the DDR process nor other military reform measures has had jurisdiction over militia forces employed by U.S. coalition forces.³⁷ These were the same forces that have benefited from cash and arms supplies from the United States since late 2001. In addition, some commanders have balked at disarming on grounds of security, citing the Taliban resurgence and the government’s overtures aimed at persuading rank-and-file Taliban to return. For those who fought the Taliban, such appeals to reconciliation are seen as threatening. Afghanistan is edging closer to full-blown conflict yet again. Unable to provide security against incursions by Taliban forces in southern parts of the country, the government is reported to be considering employing local militias—the very ones it has been trying to disarm—to protect villages that its army and police cannot protect. The insurgency has already brought more weapons into the country and these, along with those who wield them, do not fall under DDR.

How Much DD and How Much R?

The first phase of this initiative targeted combatants belonging to semiformal military units (AMF) existing outside the Afghan National Army, and ended in July 2005. The ANBP has been a voluntary process of disarmament, demobilization and reintegration, which, according to the program Web site, proceeded as follows:³⁸

- The Ministry of Defense provided ANBP with a list of names of AMF military personnel who had volunteered to undergo the DDR process.
- The proposed volunteers were then verified by ANBP's Regional Verification Committees (RVC) and confirmed by the Mobile Disarmament Unit (MDU) under the observation of the International Observer Group (IOG). Teams of seventy officers and soldiers assigned and trained by the Ministry of Defense were responsible for compiling data on the militia units and personnel in each district to be covered by the DDR program.
- After the preliminary verification process was completed, MDU staff confirmed that the individuals conformed to the RVC-verified list, and that their weapons were eligible for the demobilization process.³⁹
- The ex-combatant was then handed back his weapon and informed of the date that he should appear at the Regional Office for Demobilization. A temporary day pass was provided to facilitate entry into the Regional Office. Under the auspices of his own commanders, the ex-combatant attended the disbandment parade and was awarded a medal and a certificate.
- Upon completion of the parade, all weapons were collected by MDU staff and returned to the MDU location, where bar codes were scanned and the information was recorded in the ANBP database. Additionally, all weapons were engraved to identify when and where the weapon entered the DDR program. The information was sent to the respective Regional Office and Kabul Central Office via satellite link. All weapons were stored and secured within the MDU until they were ready for transport back to a central weapons storage facility in Kabul.
- The day after disarmament, the ex-combatant arrived at the demobilization cell located within the confines of the Regional Office, where a briefing on demobilization and reintegration was presented, including landmine risk education.
- The former combatant was asked to take an oath in front of witnesses to follow a Code of Conduct as a good civilian.
- A caseworker collected data from the ex-combatant. Fingerprints and photos were taken electronically for physical identification. Questions about his demographic background and skill set, preferences and aspirations were registered. At the end of this process, an ANBP identification card was issued.
- A caseworker conducted individual reintegration consultations, including counseling and further explanation of reintegration choices. The ex-combatant was informed of the return date to the Regional Office for the reintegration process.
- Upon successful completion of the above process, the ex-combatant received a compensation/severance package, which consisted of a shalwar kamis (traditional clothing) and a food package (provided by the World Food Programme).
- In the first regions where the program was implemented, Kunduz and Gardez, the ex-combatants began the reintegration process approximately two weeks after demobilization. The reintegration process included career counseling, a review of the different "life options" for which the program could provide training.⁴⁰ After the experience in Kunduz, the

demobilization and reintegration functions were merged so that ex-combatants only had to come to the ANBP offices once.

- Additionally in Kunduz and Gardez, a payment of \$100 cash was handed out to ex-combatants at demobilization and then another \$100 when the ex-combatant returned to the ANBP office to begin the reintegration process. The provision of cash payments was discontinued when it was found that commanders were extorting funds from foot soldiers. The policy was then changed so that the value of the initial cash payments would be instead invested into the various reintegration packages, resulting in higher stipends for vocational training, higher-value agricultural packages, etc. . . .⁴¹

Reintegration options for ex-combatants included agricultural packages, such as packages of seeds, tools and fertilizer or a beekeeping kit; vocational training and job placement, for example, in carpentry and masonry; business training courses; de-mining training; short-term wage labor positions, teacher training and the possibility to join the ANA or ANP. Literacy classes that introduced the Dari or Pashto alphabet and developed reading comprehension skills were offered as a complement to these other options. The ANBP also created a reintegration program specific for commanders. The Commander Incentive Programme (CIP) aimed at developing reintegration programs, mainly business management training, which included trips abroad, for commanders at the regiment level and above and was designed to help them to maintain minimum income levels. CIP has supported the reintegration of 320 commanders and 150 Ministry of Defense generals as of July 2006.⁴²

Despite the delayed start, the ANBP began to deliver some results in 2004. The presidential elections of October 2004 created greater momentum for demobilization, particularly in the north. The Political Parties Law, which prohibits the registration of any party linked to an armed militia, provided an incentive for groups to comply with DDR—even if some managed to register despite the fact they had not fully complied. There was no similar criterion on human rights, and a number of leaders whose parties have been registered as political parties have been accused of grave human rights violations and war crimes. As of early 2005, the ANBP had decommissioned or reduced a number of the officially recognized militias, and collected much of the heavy weaponry.⁴³ As of May 2006, the ANBP stated that it had successfully decommissioned some 60,000 former combatants.

The ANBP and the UNDP also developed some programs aimed at “ex-combatant communities,” including the female relatives of ex-combatants. As of September 2006, 24,536 women related to an ex-combatant community had received or were scheduled to receive education and income-generation opportunities in development projects. For example, on September 25, 2006, 61 women trainees from ex-combatant communities graduated from a teacher-training program in Kabul. In total, 335 women were targeted countrywide for a five-month training to become primary teachers. The ANBP also signed a Letter of Intent with the World Food Programme (WFP) to facilitate the inclusion of 4,455 women from ex-combatant communities in WFP-related projects from 2006 to 2010.

There have also been problems with the reintegration process. For many ex-combatants trying to restart a life in agriculture or venture into business, the ANBP was ill prepared to conduct appropriate vocational counseling based on sound information about the local economy. In many cases, vocational training has been inadequate, resources insufficient to provide the ex-combatants with sustainable livelihoods and “ex-combatants . . . [were] not provided with the necessary tools to face up to their reintegration in an economy that had little to offer and was dominated by new systems of patronage.”⁴⁴ For example, ex-combatants who obtained reintegration grants to purchase livestock found themselves fighting over scarce grazing lands with preexisting sheepherding communities or other resettled ex-combatants. Ex-combatants who were provided help to plant wheat or other crops, without prior understanding of the availability of irrigation, switched to the more resilient poppy when their crops failed.⁴⁵ Other vocational training programs have been both more flexible and responsive to the local economy. However, even these have difficulty providing employment opportunities that can compete with the poppy harvest.⁴⁶ “Success” in such programs is often determined by the numbers of ex-combatants who do not return to fighting, rather than the numbers who genuinely reintegrate into the economy. Those who fail, or who barely survive the transition, represent a particularly vulnerable pool of potential recruits for fighting should the need arise.

Illegal Armed Groups

One of the main criticisms of the DDR program was that militia forces that fell outside the AMF were not part of DDR processes. While there was intimidation and violence by some of these non-AMF former commanders and their forces before the presidential elections in October 2004, the threat of violence was much higher for the 2005 National Assembly elections and its field of some 6,000 candidates. There was also widespread public support for disarmament of these unofficial groups. In a poll undertaken in 2004, some 88 percent of those surveyed called for the central government to end the “rule of the gun.”⁴⁷

In 2005, the ANBP launched a subsequent phase, the Disbandment of Illegal Armed Militias (DIAG), to disarm and disband these groups. The DIAG scheme was focused on the some 1,800 irregular armed groups that surround various strongmen, who often terrorized and extorted the local population based on their strength of arms. These groups were generally recognized as more dangerous to the civilian population than most of the AMF groups. Related legislation prohibiting the unlicensed possession of weapons was approved in June 2005.⁴⁸

The DIAG program was launched on emergency footing to achieve some results before the September 2005 elections. The official agencies behind DIAG—the UN and ANBP, various Afghan government ministries, including defense, interior and the intelligence agencies, and the international forces of the coalition and ISAF—sought to use the elections as an incentive to press prospective candidates to voluntarily disarm and disband their militias. The law prohibited persons “who practically command or are members of unofficial military forces or armed groups”⁴⁹ from

standing as candidates for the elections. A candidate shown to have links to illegal armed groups was supposed to be disqualified. Determining command responsibility was a controversial issue in assessing compliance with the law. The program may have achieved a handover of weaponry, but the most powerful candidates known to have private militias were not touched, discrediting the enterprise (see below). The DIAG program was originally intended to run through 2007 with a budget of US\$20 million,⁵⁰ but the program continued through 2008.

The DIAG works through the district, provincial and national levels with such activities as mobilizing community support through public information campaigns; enforcing the legal framework for the operation of private security companies; establishing and enforcing firearm registration; and building the institutional capacity of the Ministry of Interior. The program is organized in three stages. The first stage was for voluntary disbandment. The second stage was for negotiated disbandment, a process that will involve the use of local and national power holders to compel IAGs to comply. Finally, enforced compliance—which could include arrests—was envisioned as the third stage, which involves both Afghan and international forces, including antinarcotics units.⁵¹ One of the first objectives of the second phase of the DIAG program was to identify the groups to be disbanded, which range from fairly well-armed groups with an established structure that may be involved in a combination of criminal and insurgent activities, to other groups that may be haphazardly armed and operate strictly on an as-needed basis, usually defensively. Unlike the first phase of DIAG, the program did not focus on weapons collection but instead treated the armed groups as a kind of mafia network, and worked toward dismantling their criminal enterprises.

The third phase officially began in February 2008. According to the DIAG Web site, since the inception of the program more than 1,050 individuals belonging to various armed groups have been arrested or forcefully disarmed and more than 5,700 weapons have been confiscated or collected and handed over to the Afghan Security Forces. A further 14,000 weapons were confiscated or taken out of the control of armed groups by the ANA, ANP, ISAF and coalition forces.⁵²

Reintegrating Former Taliban

There have been efforts both within the Afghan government and the donor community to pursue a reconciliation program aimed at rank-and-file Taliban who have not been involved in either renewed fighting or serious human rights abuses in the past. To this end, on March 16, 2005, President Karzai appointed Sighbatullah Mujaddedi, the former chair of the Emergency Loya Jirga and former president of the Islamic State of Afghanistan in 1992, as head of a Peace and Reconciliation Commission. President Karzai rejected the term “national reconciliation” because of its tainted reputation as a term used by former president Najibullah to co-opt mujahidin commanders, and instead uses the term “strengthening peace.” The commission functions to seek a “piecemeal peace agreement with Taliban rank and file rather than a comprehensive agreement with the leadership.”⁵³

The commission has not been endorsed by the cabinet, however, because many former Northern Alliance leaders oppose any reconciliation with the Taliban.⁵⁴

At a press conference on May 9, 2005, in Kabul, Mujaddedi announced that participation in the reconciliation process was open to all Afghans, including the head of the Taliban, Mullah Omar, and head of the Hizb-i Islami faction, Gulbuddin Hikmatyar, if they renounced arms. Both men are on the United States' wanted list. Mujaddedi's remarks provoked considerable controversy, and on May 11, he revised his statement to say that it was up to the Afghan nation to pardon or punish Mullah Omar and Hikmatyar. According to press reports, senior Taliban leaders rejected the offer as well. For its part, the U.S. military stated that its position was "that those guilty of serious crimes must be responsible for their actions."⁵⁵

In 2005, the U.S.-led coalition established its own parallel program, named the "allegiance program." Working with provincial officials, the United States began processing former Taliban fighters after they took an oath of allegiance to the Afghan government. The former fighters were given identification cards to guarantee their safety. Some diplomats familiar with both initiatives observed that there is a need for greater security guarantees if the program is to attract former Taliban in any numbers, given the fear many feel of being downed by their erstwhile opponents.⁵⁶

Child Soldiers

According to a 2003 survey by UNICEF and its partners, there are an estimated 8,000 former child soldiers in Afghanistan, many of whom had left their militias and taken up life on the street. UNICEF has worked with local demobilization and reintegration committees to decommission children still with military units. The children are meant to enter education and training programs to learn vocational skills, such as carpentry, welding and tailoring. Children also attend classes for basic literacy, mathematics, nutrition and health, and recreational activities. According to UNICEF, in 2003, a total of 6,000 at-risk children, including former child soldiers, participated in such reintegration programs in Afghanistan. In 2004, another 5,000 former child soldiers and other vulnerable children became involved with these reintegration programs.⁵⁷

Progress on Transitional Justice

Transitional justice was largely a taboo subject during the first several years after the establishment of the interim and transitional administrations. Senior UN and U.S. officials argued that it was far too early to initiate any reckoning with the past, and that to do so could destabilize the fragile peace process that depended on the cooperation of the same factional leaders who would be among the subjects of any inquiry into war crimes. International actors were reluctant to confront any of the militia leaders on the grounds that stability required the participation—or appeasement—of all powerful factions, and that there was a genuine risk of civil war if these leaders were not granted

positions of power. Thus, the entrenchment of many of these commanders was not inevitable, but a consequence in large part of the Pentagon's policy of supporting those whom they have seen as a useful bulwark against penetration by al-Qaeda.

The participants at the Bonn conference did discuss the issue of war crimes in the context of a proposed prohibition against an amnesty. During the closed sessions at Bonn, a heated discussion took place over the idea. The original draft of the agreement—written by the UN—stated that the interim administration could not decree an amnesty for war crimes or crimes against humanity. This paragraph nearly caused the talks to break down after a number of powerful faction leaders told their supporters that the paragraph was aimed at discrediting all Afghans who took up arms, and that foreigners would use the agreement to disarm them. Principal among those making this argument was Abdul Rasul Sayyaf, a former professor of Islamic law at Kabul University and the powerful leader of the Islamist Ittihad-i Islami (Islamic Union), a party that had amassed enormous support from Saudi sources and brought many Arab fighters to join the jihad against the Soviet occupation of Afghanistan in the 1980s. It is also a party allegedly responsible for massacres and other war crimes. UN Special Representative Lakhdar Brahimi argued forcefully in favor of keeping the paragraph prohibiting an amnesty, but in the end, the paragraph was removed, leaving open the possibility for an amnesty.⁵⁸ In March 2007, the National Assembly passed a bill on national reconciliation that included a provision to grant immunity from prosecution for actions, including war crimes.

The Bonn Agreement called for an Afghan human rights commission, mandated to promote human rights and investigate human rights violations. The agreement also gave the UN “the right to investigate human rights violations and, where necessary, recommend corrective action.” Transitional justice falls within the human rights mandate of UNAMA, and it has provided support to the Afghanistan Independent Human Rights Commission (AIHRC) on its human rights programs, including transitional justice, while also maintaining human rights monitoring staff in various parts of the country. In March 2002, the UN Office of the High Commissioner for Human Rights held a series of workshops on human rights issues in Kabul. At the workshop on transitional justice, Afghans voiced strong support for finding ways to address the need for truth, reconciliation and justice. At the inauguration of the workshops, President Karzai endorsed the idea of a truth commission, although he subsequently disavowed support for the idea and instead demonstrated great reluctance to promote a transitional justice program.

The AIHRC was formally established by presidential decree on June 6, 2002, and was “charged with developing a national plan of action for human rights in Afghanistan, and with human rights monitoring, investigation of violations of human rights, development and implementation of a national programme of human rights education, undertaking of national human rights consultations, and development of domestic human rights institutions, in accordance with the terms of the Bonn Agreement, applicable international human rights norms, standards, and conventions, and the provisions of this decree and annex.”⁵⁹ Transitional justice was understood as falling within the definition of human rights investigations. While the AIHRC deserves credit for keeping a focus

on human rights issues and justice in an often hostile environment, it has been troubled by internal management problems and criticism about failing to adequately represent the country's ethnic diversity in its own staff.

The establishment of the AIHRC and the March 2002 workshops contrasted sharply with other developments at the time. In the immediate aftermath of Bonn, the Special Representative of the Secretary-General (SRSG)'s office actively opposed efforts to draw international attention to human rights concerns, or focus on the crimes of the past. This resistance stemmed from a fear of "rocking the boat," and a conviction that the situation was too fragile and the possibility of a return to war too great to risk confronting divisive issues like human rights. The problems associated with pursuing transitional justice were linked to the challenge of promoting human rights generally in post-2001 Afghanistan. Fear of antagonizing powerful warlords and upsetting a delicate balance of power meant that human rights was underemphasized and devalued. The United States also had great influence over policy at this time, and was unwilling to confront its own allies in the field, or allow greater scrutiny of its own practices. In March 2003, a proposal for a UN commission of inquiry on Afghanistan was dropped because of U.S. opposition.

Two months after the establishment of the AIHRC, the Emergency Loya Jirga was held to select a transitional administration to govern before elections in 2004. The loya jirga took place in June 2002 and ratified the next phase of administration—the Afghan Transitional Administration (ATA). The rules governing the selection of delegates for the loya jirga stipulated that persons against whom there were credible allegations of war crimes or other abuses were not eligible. The rule was rarely enforced, in part because some of the UN staff responsible for making decisions found the grounds for exclusion too vague, and in part because of pressure within UNAMA not to challenge some powerful commanders.⁶⁰ More important, contrary to the rules governing the selection of delegates, a number of political delegates were added at the last minute, among them commanders accused of war crimes. Delegates complained that the very presence of these commanders was intimidating. In any case, little choice was left to the delegates, as all the important decisions had already been made in backroom deals involving the UN, the United States and Shura-i Nazar.⁶¹

Controversy over the legacy of past abuses again reared its head during the Constitutional Loya Jirga in December 2003. After Abdul Rasul Sayyaf, a former mujahidin leader, had maneuvered to ensure that a mujahidin leader headed all the important working committees, one young delegate criticized the arrangement, calling the faction leaders who were present "criminals" and accusing them of destroying the country.⁶² Amid protests against the remarks from many of the delegates, Sayyaf tried to have the delegate ousted from the proceedings. Since then, the delegate has had the protection of the UN in her home district. Shortly after the conclusion of the Constitutional Loya Jirga, Kabul Television broadcast footage of a speech Sayyaf made in 1993, during the height of the civil war. In that year, Sayyaf's forces were playing a major part in the massacre of ethnic Hazaras and the destruction of the areas in which they lived in west Kabul. The video clip showed him boasting: "We have destroyed much of Kabul, but there are still some buildings left. We will destroy these too, to make way for the City of God."⁶³

The Afghan constitution makes no reference to transitional justice as such, other than granting official status to the AIHRC (its powers to be determined by the legislature), and imposing the following restriction on candidates for presidential office and for the national legislature: Article 85 (Chapter 5, Article 5) of the constitution specifies that candidates “should not have been convicted by a court for committing a crime against humanity, a crime, or sentenced to deprivation of his/her civic rights.”⁶⁴ Requiring “conviction” as the standard for exclusion negated prospects for vetting on these grounds, as there is no competent criminal justice system to conduct trials of this kind in Afghanistan.

The AIHRC’s first initiative on transitional justice was to conduct a nationwide survey of public attitudes toward dealing with past abuses. The International Center for Transitional Justice (ICTJ) worked with the commission to develop a detailed proposal for a public consultation to help determine a transitional justice policy for Afghanistan, and train those carrying out the survey. By October 2004, more than 4,000 Afghans had completed the survey, and 200 focus group discussions involving another 2,000 participants had been conducted. ICTJ again assisted with analysis of the results and production of the AIHRC’s consultation report, *A Call for Justice*.

The exercise alone was a significant achievement in a country completely lacking in any of the modern technological tools for assessing public opinion. Thirty-two of Afghanistan’s thirty-four provinces were visited by the teams who conducted the survey. Refugee communities were surveyed separately.⁶⁵ The results show that up to 70 percent of Afghans see themselves as victims of serious human rights abuses during the war, and that most believe that similar crimes continue in the present. The report highlights a public perception that impunity is entrenched in Afghanistan and that perpetrators are rewarded with positions of power. The report also reflects a popular demand for breaking the cycle of impunity. The report’s recommendations included: vetting for official appointments, provision for further documentation of war crimes, appropriate measures for truth-telling, the establishment of a special investigations unit or prosecutor’s office to begin investigating past war crimes and symbolic steps to commemorate the victims.

A month after the Constitutional Loya Jirga, the Afghan Independent Human Rights Commission held a press conference to release *A Call for Justice*. The plan was to release the AIHRC report together with a 300-page report prepared by the Office of the UN High Commissioner for Human Rights mapping major incidents of war crimes and serious human rights violations committed by all parties to the conflict in the course of the war; however, in the weeks before the scheduled release of the UN report, UNAMA pressed the High Commissioner, Louise Arbour,⁶⁶ not to make the mapping report public. UNAMA officials argued that a public release would endanger UN staff⁶⁷ and complicate negotiations surrounding the planned demobilization of several powerful militias, including the Tenth Division loyal to Sayyaf. They also argued that as a “shaming exercise,” the report raised expectations that neither the UN nor the Afghan government could meet: namely, that something would be done about the individuals named in the report.

In March 2005, at the Human Rights Commission in Geneva, U.S. pressure succeeded in terminating the mandate of the Independent Expert on Human Rights in Afghanistan, who was at the time Cherif Bassiouni, a professor of law who also served as chairman of the UN Security Council's Commission to Investigate War Crimes in the Former Yugoslavia. The United States argued that because of the progress toward democracy in Afghanistan, the country did not need an independent expert. Bassiouni commented that "without a UN Independent Expert, the Afghan Independent Human Rights Commission as well as civil society in that country will not have that external support to advance human rights."⁶⁸

In the year following the release of the AIHRC report, the AIHRC and representatives of the Karzai government, together with staff from the UNAMA human rights office, developed a plan of action on transitional justice that laid out a number of steps toward truth-finding, memorializing victims, establishing vetting procedures and other measures. After months of delay, the Action Plan on Peace, Reconciliation and Justice in Afghanistan was adopted by the cabinet on December 12, 2005. Shortly afterward, the UN held a conference on "Peace, Justice and Reconciliation" to discuss the practical implications of carrying out and financing the process. The plan included five areas for key action: symbolic measures, institutional reform, truth-seeking and documentation, reconciliation, and accountability, to take place over a three-year time frame ending in 2008. By mid-2008, there had been little progress on any of these. There was considerable cooperation among a Core Group comprising key donor countries and NGOs to provide input into the transitional justice action plan. That effort has continued in a number of areas related to transitional justice, notably vetting government appointments, and police and judicial reform. Core Group membership originally including the EU, the AIHRC, UNAMA and the Netherlands has since grown to include Canada, Germany and other Afghan civil society groups. The group works to keep transitional justice issues on the governmental and international agenda (a goal that has become more difficult with increased attention focused on the rising insurgency), and coordinate actions among members.

At a conference in London January 31 to February 1, 2006, Afghanistan's major donors, plus President Karzai, UN Secretary-General Kofi Annan, and British Prime Minister Tony Blair, issued the Afghanistan Compact, an agreement that set forth both the international community's commitment to Afghanistan and Afghanistan's commitment to state-building and reform over the next five years. Some elements of the Action Plan on Peace, Reconciliation and Justice were included in the Afghanistan Compact, including the requirement that the government establish an independent board for senior appointments to vet candidates for the necessary qualifications, and ensure that they do not have links to armed groups and have not been involved in drug trafficking, corruption or past human rights violations. On December 10, 2006, President Karzai launched the Action Plan and dedicated December 10 as the National Day of Remembrance, paying tribute to those killed in successive wars and civil strife.

The Interrelationship between DDR and Transitional Justice

Peace over justice has been the watchword of the nation-building process in Afghanistan. From the outset, DDR was unlinked from transitional justice out of concern that efforts to promote transitional justice or seek any kind of accountability could prompt key players from among the Afghan factions to abandon not only DDR but the entire peace-building process as well. Following the fall of the Taliban, the overriding concern was to avoid a return to the civil war conditions that prevailed before the Taliban and that involved virtually all of the same militia forces. For many involved in the negotiations that culminated in the Bonn Agreement, transitional justice was at best a very distant objective, and more likely one that would not be attempted at all. Even key international players sympathetic to the notion that some reckoning with the past was inevitable recognized no necessary connection between the continuing security deficit in the country and past abuses. In the view of senior officials at the UN, proper “sequencing” required that DDR precede transitional justice in order to create the security that would make other reforms possible.⁶⁹ The links between transitional justice and these reforms were not seen as compelling enough to override anxiety about rocking the boat.

Transitional Justice and Institutional Reforms

The first major component of reforms related to DDR was aimed at the defense ministry. Although some international donors and Afghan human rights officials raised concerns about the past abuses and possible war crimes for which the first defense minister, Mohammad Qasim Fahim, was believed responsible, the principal concern was that Fahim, with vast weapons depots and thousands of men at his disposal, could mount a serious challenge to the authority of the central government. The key elements of the defense ministry reforms were aimed at reducing Fahim’s power within the ministry by requiring greater ethnic diversity in the staff and reducing the control exerted by Fahim’s faction, Shura-i Nazar. With the International Security Assistance Force operating within a restricted mandate and unable to project its authority beyond Kabul, however, the Ministry of Defense still exercised considerable influence over the initial negotiations on the DDR framework. At that time, the minister of defense controlled a large number of militia forces, many of which he had incorporated into the ministry. From the outset, the MOD balked at internal reforms. Japan, which has been the lead and largest donor on disarmament in Afghanistan, insisted on the reforms before releasing funds for the disarmament package.

The reforms announced on September 20, 2003, however, did little to alter the balance of power within the ministry. Fahim remained minister, and Bismillah Khan, the former deputy minister from Shura-i Nazar, left that post to become chief of staff.⁷⁰ Later in 2004, Fahim was dropped as defense minister and was not offered a vice-presidential slot on Karzai’s ticket in the national presidential elections. International security forces were put on high alert in case Fahim reacted with a show of force, but instead he joined an opposition party headed by another Shura-i Nazar member. Despite these shifts, it was clear that much more needed to be done within both the defense and

interior ministries.

Reform of the judiciary has been a priority in the post-Bonn political process, but there has been little appreciable progress. Italy was designated as the lead country on reform of the judiciary, but that effort has lagged far behind all of the reconstruction processes. As one analyst has noted, “The Afghan judiciary is in a deep crisis of public confidence. During the public consultations over the constitution, people frequently cited judicial corruption as a concern.”⁷¹ Police reform has also made little progress, as it is rife with corruption. The capacity within the police force to carry out credible investigations without resorting to torture and other abuses is extremely limited. There is no accountability within the police or intelligence agencies, so the culture of abuse remains entrenched. Under these circumstances, the prospect for competent prosecutions of war crimes or crimes against humanity remains dim for the foreseeable future.

There has been increased international attention to the lagging reform of the police force, particularly since 2005. The upsurge in fighting between the Taliban and NATO forces injected new urgency into the creation of a competent police force. In addition, there was increased awareness within the donor community—including the United States—that the failure to address problems of corruption and abuse within the security sector and criminal justice institutions had discredited the government, fueled popular discontent and undermined the fight against the Taliban. However, some donors also expressed concern that the increased pressure of the insurgency might skew the emphasis to increased numbers of police rather than competence and accountability.

Transitional Justice and Criminal Prosecutions

As of mid-2008, Afghanistan had no national legislation on war crimes and crimes against humanity. There was great reluctance on the part of many Afghan government officials, the UN, donors and others involved in the discussion of transitional justice to press for traction on the issue before other aspects of judicial reform had made more progress. The Action Plan called for devising a “strategy describing the institutions and procedures for the prosecution of war crimes, crimes against humanity and gross human rights violations that meets international standards and gives priority to prosecuting those perpetrators who pose a continuing threat to peace and stability in Afghanistan.”⁷² The Action Plan also called for establishing “a Special Investigative Office, on the basis of the prosecution strategy, that will prepare the ground for future prosecutions in Afghanistan and can function as a counterpart for institutions undertaking prosecutions in other countries.”⁷³

In a step taken completely outside the discussions of transitional justice, the Afghan government initiated proceedings against Asadullah Sarwary in late 2005. Sarwary was the head of intelligence from 1978 to 1979, whose secret police (KhAD) was responsible for the summary executions and disappearances of countless Afghans in the early years of the war. The trial did not conform to international standards and was in fact seriously flawed. Sarwary had no defense counsel, and the court lacked procedural guidelines to rule on the admission of witnesses. Although statements were

made during the trial about Sarwary's culpability for mass killings, in fact the charges against him were more properly defined as treason—waging war against the state. He was sentenced to death. However, in early 2007, the appeal court reviewed the primary court proceedings and reached the provisional conclusion that the arguments and evidence presented were not strong enough to support the verdict. The appeal court formally requested the primary court to supply any supplementary arguments and evidence it may have so that it could give an appeal decision. If that appeal decision does indeed go against the primary court, the appeal court could order the file to be returned to the attorney general for retrial.

The Sarwary case presented difficulties for Afghan and international actors working on human rights issues and the problem of transitional justice. Sarwary is one of the major war crimes suspects of Afghanistan's war; for this reason, Afghan officials and human rights activists who were rightly concerned about the deficiencies of the trial were reluctant to be very vocal in calling for the trial to be suspended until the deficiencies could be addressed—a prospect likely to take many years.

An earlier trial that dealt with war crimes charges took place under even more dubious circumstances. Abdullah Shah, a man who could have revealed atrocities committed by one of Karzai's closest advisers, was convicted of several murders after a summary trial in late 2003. Shah was widely known to be a commander in the early 1990s under Abdul Rasul Sayyaf, the leader of a militia against whom there is compelling evidence of involvement in mass rape and disappearances. After Shah was originally sentenced to twenty years in prison, the case went to the Supreme Court, and the chief justice stated before the trial was over that Shah should be executed. Shah had no defense counsel and witnesses were not subject to cross-examination. Shah was executed in secret in April 2004.

In recent years, countries that took in Afghan asylum seekers in the early 1990s have begun to look more closely at the war records of those who had held positions as senior military or political figures. In July 2003, Britain arrested Faryadi Sarwari Zardad, a former Hizb-i Islami commander who had been running a pizza franchise in London after obtaining asylum in Britain under a false name. Commander Zardad, as he was known in Afghanistan, was charged with crimes of torture and hostage taking. His trial in June and July 2005 resulted in a conviction and sentence of twenty years' imprisonment. In November and December 2004, the government of the Netherlands formally indicted two Afghans who had held senior positions within the KhAD in the 1980s. Both were convicted of torture in October 2005. On January 29, 2007, the Appeal Court in The Hague upheld the convictions. A third case in the Netherlands involving a KhAD officer ended in acquittal and was, as of early 2008, on appeal.

Fact-Finding and Truth-Seeking and the Absence of Victims' Groups

In surveys and both formal and informal discussions of transitional justice, few Afghans distinguish between truth-seeking and fact-finding, and tend to express interest only in the latter as a means of

justice (generally understood as criminal prosecutions). There is little understanding of the role a truth-seeking process could play in contributing to increased accountability. Afghan civil society is fragile and not well established; few people have any experience with or much knowledge about truth-seeking experiences in other countries. Similarly, there has been little demand for reparations as such. In the cases of some individuals and communities, there have been complaints about material losses and demands for compensation, but these generally stem from recent incidents. One of the many difficulties encountered in trying to build capacity for forensic investigations into the country's many mass grave sites is that there are few victims' groups as such in Afghanistan, and therefore, little pressure from families to identify remains and clarify the circumstances of death and disappearance of so many. The reason for the lack of solidarity among groups of victims, survivors and families is not clear, but may be related to the many changes of power in the conflict. In 2007, a few victims' organizations had formed and carried out demonstrations, some in response to the discovery of mass grave sites around the country. The groups remained vulnerable; one reported that Afghanistan's intelligence agency, the NSD, had attempted to obtain contact information for the victims and relatives.

The Action Plan calls for additional documentation on past human rights abuses and ultimately the establishment of a documentation center “to bring together existing collections and libraries.”⁷⁴ In 2006, the AIHRC embarked on a new mapping exercise, in consultation with the NGO No Peace without Justice, to detail major incidents of the twenty-three-year war. The Afghanistan Justice Project, an independent NGO, continued its work documenting incidents from all periods of the war. The DDR and DIAG processes have produced important documentation on the various militias, their command and control structure and possibly evidence of abuse. There has been no formal process for sharing that information with those involved with transitional justice, however.

Transitional Justice and Vetting

Long delays in DDR and the absence of focus on small arms and less formal militias meant that by the 2005 elections, many in the Afghan government as well as major international actors (including the coalition forces and ISAF) feared that these militias could pose a serious threat to the elections. Spurred by concern expressed by much of the Afghan public and international community that commanders of armed groups could undermine the electoral process, election organizers instituted a vetting system to screen candidates for links to illegal armed groups and other violations of the Election Law and Afghanistan's constitution. It was also felt by many—both within the international community and among Afghans—that individuals responsible for commanding illegal armed groups, or engaging in criminal behavior and human rights abuses, should not be permitted to hold public office.

Because the Afghan constitution stipulated that only those “convicted” of a crime against humanity or other crime could be prohibited from running for election, there were no restrictions of candidates' participation based on their human rights records or involvement in other criminal

activity. The decision to base disqualification on compliance with disarming and disbanding IAGs, however, was taken with the understanding that success in this area had some bearing on human rights protection. It was well known that many such groups were also involved in criminal activities, such as narcotics trafficking and human rights abuses, and it was hoped that by using disarmament as the criterion, at least two birds might be killed with the same stone. There was also widespread public expectation that past violators would be excluded, an expectation that was impossible to meet under the law and procedures adopted.

The above strategy made use of prospective candidacy as a carrot to press individuals to voluntarily disarm and disband their militias. The strategy had its critics, a number of whom objected to the use of the vetting process as a disarmament tool rather than as a means to ensure that the slate of candidates did not have histories of human rights abuse or criminal activity. Other objections were raised about the fact that the program offered a “second chance” to candidates to disarm after first being notified. This aspect of the process led to a questionable verification process, with some candidates permitted to stand for election on only the promise of future compliance. In addition, the entire process was compressed into a very short time frame. Many observers stressed that adequate investigation of complaints required far more time and resources than were available for the elections. In addition, adequate civic education—about the National Assembly, about the elections, about the vetting process—was essential to making the entire exercise credible.

The fact that the law was not enforced against many known and serious violators remains the main criticism of the process. Even its critics anticipated that a far greater number of candidates would be excluded for noncompliance with disarmament than actually occurred. Using the disarmament criterion selectively against only smaller or weaker candidates, while bigger offenders against whom there was sufficient evidence were not excluded, undermined the credibility of the entire process. The effort also contributed to unrealistic public expectations that it would be possible to disqualify many candidates known to maintain illegal militias. When that did not happen, public disillusionment with the process was inevitable, and the presence of many notorious commanders and political figures on the ballots were cited as one possible reason for low voter turnout.

Establishing vetting procedures for presidential appointments does not involve the same due process concerns as is the case with electoral vetting. The Afghan constitution guarantees a right to run for public office, but there is no comparable right to be appointed to a government job. International standards on vetting criteria stress that these should refer to individual conduct, rather than membership in a group, and that vetting procedures should include basic safeguards to ensure that the system is not misused to exclude political rivals or silence critics. As noted above, the Afghanistan Compact requires the Afghan government to establish formal vetting procedures by establishing an independent board for senior appointments. This board is meant to vet potential appointees for qualifications, and screen them for possible involvement in drug trafficking, corruption, illegal armed groups and past human rights abuses and war crimes. As of late 2006, President Karzai was unwilling to cede authority to such a board, even in an advisory capacity, and the process stalled. At the same time, the president continued to defy protests from Afghan human rights critics and

international donors over his appointments of known criminals and war criminals to senior positions in government and the police force.

Screening government appointments on human rights grounds has been a casualty of the compromise struck to gain compliance with DDR. Although human rights activists as well as some members of the diplomatic community in Kabul frequently point out the link between past abuse and current criminal activity, too often demobilization of militias with bad human rights records has meant in practice their absorption into police or other security forces: for example, the protracted negotiations by international forces and donors to secure the demobilization of the Tenth Division, a militia force loyal to Abdul Rasul Sayyaf. Although the Tenth Division had a particularly bad track record on human rights issues in the past, of more immediate concern in its demobilization were its suspected links to organized crime. The need for DDR of the Tenth Division was based on the assessment that it constituted a current threat to stability. The Tenth Division therefore represents a good example of the phenomenon in Afghanistan that past abusers have continued to represent a risk to peace and security. As part of the deal that was eventually hammered out for the Tenth Division, a number of its senior commanders—including known war criminals responsible for massacres in the civil war period of the early 1990s—were given posts in the security sector, one as head of Kabul’s Central Corps and others in the police force. One was eventually named governor of Ghazni. Militia leaders have frequently managed to subvert DDR with the tacit support of the central government and/or the U.S.-led coalition by getting themselves reassigned to civilian posts, particularly as governors and police chiefs.⁷⁵ As the International Crisis Group has noted:

Governors with records of human rights abuses and involvement in drugs are on a merry-go-round of presidential appointments: when locals in one area object to an official, he is simply moved to the next province. In many regions police commanders with no professional training run what are, in effect, private militias. That such positions of power have been awarded to the very people who fed the civil war has been a major source of public disillusionment with the transition process.⁷⁶

The Amnesty Law

In a serious setback to efforts to end impunity, in March 2007 the National Assembly passed a bill on national reconciliation that included a provision to grant immunity from prosecution for actions, including war crimes, committed during the country’s long wars. It provides for immunity from prosecution for “all political parties and belligerent sides who were in conflict in one way or the other before the establishment of the Interim Administration.” The legislation was passed by the Lower and Upper House, and sent to the president, who amended it and sent it back to the Lower House. The Lower House voted on it, but as of this writing, President Karzai has not signed the legislation and its legal status remains unclear. The bill as it stands leaves open the possibility for victims to initiate prosecutions.

Conclusion

At every critical juncture, from the Bonn Agreement that established the interim administration and set the timetable for achieving other major benchmarks to the holding of presidential and parliamentary elections, those steering the state-building process in Afghanistan have undervalued and de-emphasized transitional justice. The rationale for doing so was twofold: first, that in the immediate aftermath of the Taliban's defeat, preventing a return to civil war necessitated a policy of inclusion, according to which faction leaders, "war lords" and other commanders were awarded positions in the interim and transitional administrations regardless of their past records; and second, that pursuing transitional justice when other institutions were still fragile and tensions between former combatants still high could provoke a return to armed combat. While civil war among the anti-Taliban forces has so far been averted, Afghanistan's transition has been from conflict to a precarious power-sharing arrangement among these factions that has delivered little security to the majority of the nation's inhabitants. But was there a viable alternative? Many among both Afghans and international donors working in Afghanistan believe there was, but the cost of doing so would have been greater than international donors, the United States in particular, wanted to pay.

In the last few years, much has been written about the policy failures that have contributed to the lack of progress in reconstruction and security in Afghanistan, and the return of the Taliban as a potent actor. The reasons include the failure to tackle opium production, the lack of a clear strategy to deal with continued support for the Taliban and al-Qaeda from within Pakistan's military and intelligence establishments, the minimal investment in security that necessitated a reliance on existing militia forces, and the long-delayed expansion and limited mandate of an international peacekeeping force that, again, left militia forces in control of local security. Many of those committed to nation-building in Afghanistan understood that genuine stability should rest on security for Afghans in the country. But the failure on the part of the international community to provide enough resources, principally funds and international peacekeeping forces, made it impossible to provide security: "Nation-building lite," its critics have called it.⁷⁷

How security has been defined is critical to understanding the failures of the past five years. After September 11, 2001, the United States and many of its allies defined security in Afghanistan only in terms of the Taliban and al-Qaeda: the objective was to ensure that the country would not pose a threat to the outside world again. That objective defined the allies they chose. Among those allies—the anti-Taliban forces—were many who had contributed greatly to the destruction of Afghanistan in the years before the Taliban came to power, and to some extent, after. International negotiators at Bonn were keenly aware of the dangers posed by the country's many armed fighters, the potential for renewed hostilities and ethnic polarization, and utter lack of institutions capable of carrying out the many needed functions of a state. Faced with building a new state in the aftermath of the Taliban's defeat, and wary of the costs and potential pitfalls of involving themselves too deeply in nation-building, the United States and UN again relied on the leaders of these allied forces to form a government. But in doing so, they further complicated—and possibly fatally undermined—any

hope of dealing with Afghanistan's most pressing problems: disarming fighters, providing genuine security to the people and building institutions governed by the rule of law.

Disarming the country's many armed factions is widely recognized as integral to the process of nation-building in Afghanistan. The effort has required substantial investment and support from international actors. It is linked—or should be—to other security sector reform processes necessary for building a professional police force and criminal justice system. In Afghanistan that link has too often been disregarded. Transitional justice—often perceived in terms of investigations and prosecutions only—should have been, but was not, a component of this process. The disarmament effort was conducted separately from other security sector reform initiatives, and separately from efforts to pursue transitional justice. The failure on the part of the international community to adopt a more integrated approach to institutional reform thus stymied efforts to build a competent police force, reform government ministries, disarm criminalized militia forces and establish a functioning judicial system.

At its core, transitional justice is about setting standards for the appropriate use of state power. It is about good governance and the rule of law. Programs designed to promote development, reform the judiciary, empower local police or promote alternative livelihoods are doomed to fail when corrupt officials from governors to police chiefs profit from illegal land grabs, compel local farmers to plant poppies, use their private militias to engage in extortion, and intimidate or execute opponents with impunity. In constructing peace in a society that has yet to move beyond conflict, institutional reform and transitional justice should not be treated as separate objectives, the latter to be sequenced in after the former has been achieved. Instead, the principles of transitional justice should inform security sector, judicial and political reforms to create effective, accountable institutions.

The recent history of the Afghanistan wars makes clear that there is a strong correlation between past abuses and the current abuse of power. Efforts to bury or ignore the abuses of the past have aggravated the very security risks and institutional weaknesses cited as reasons for avoiding addressing the past. In Afghanistan, those who have benefited most from the failure to hold war criminals to account include many powerful figures with links to criminal or extremist networks (or both). Among their ranks are political leaders who dominate the security and intelligence machinery, profit hugely from increased poppy production, suppress legitimate voices of dissent in the provinces, or incite attacks on foreign aid workers. The power they wield means they pose a genuine threat to every effort aimed at preventing Afghanistan from sliding back into chaos.

¹ Human Rights Research and Advocacy Consortium (HRRAC), *Take the Guns Away: Afghan Voices on Security and Elections* (Kabul: HRRAC, 2004).

² Aryeh Neier, “What Should Be Done about the Guilty?” *New York Review of Books*, February 1, 1990. The government of President Najibullah in Afghanistan acknowledged that the Afghan secret police, the KhAD (which the Soviet Union had created), killed 11,000 political prisoners in the twenty months before the Soviet invasion. Most experts see this figure as a fraction of the number killed during this period.

³ The division between the two was based largely on personal animosities rather than ideological differences.

⁴ Neier, “What Should Be Done about the Guilty?”

⁵ Barnett R. Rubin, *The Fragmentation of Afghanistan: State Formation and Collapse in the International System* (Lahore, Pakistan: Vanguard Books Pvt. Ltd., 1996, with the permission of Yale University Press), 166–75. Najibullah undertook a number of measures during this time designed to distance his government from the previous one under Soviet occupation. He renamed the PDPA the Watan (Homeland) Party and called it an Islamic party, claimed Islam as the state religion, abandoned the PDPA’s reform policies and promoted “national reconciliation.”

⁶ United States Central Command, “Coalition,” www.centcom.mil/en/countries/aor/afghanistan. The coalition has deployed more than 16,000 troops to the U.S. Central Command’s region of responsibility. In Afghanistan, coalition partners are contributing approximately 8,000 troops to Operation Enduring Freedom and to ISAF in Kabul, pom.peacebuild.ca/Afghanistancomposition.shtml.

⁷ Barnett R. Rubin, *Afghanistan’s Uncertain Transition from Turmoil to Normalcy* (New York: Council on Foreign Relations), 21. On some occasions, U.S. forces have used air power as a warning to compel factional forces to stop fighting and to resume negotiations. According to Barnett Rubin, coalition forces have occasionally taken such actions, by briefly firing on a group that refused to disarm or buzzing the house of a leading warlord with fighter aircraft. These incidents always ended peacefully soon after, as these groups are opportunistic rather than ideological in motivation. This happened during the Bonn negotiations when former president Rabbani was threatening to walk out of the talks.

⁸ *Ibid.*, 5–6.

⁹ NATO Topics: International Security Assistance Force, “Helping to Bring Security, Stability and Foster Development in Afghanistan,” NATO, www.nato.int/issues/isaf/index.html.

¹⁰ Ahmed Rashid, *Taliban* (New Haven: Yale University Press, 2001), 61. Although the armed groups that opposed the Taliban had collectively named themselves the United Islamic and National Front for the Salvation of Afghanistan, or United Front, for short, they represented an uneasy alliance, split largely along the ethnic divisions of the country, with a long history of fighting one another, and united only in their opposition to the Taliban. Throughout the war, Afghanistan’s armed factions have jumped between alliances, working for or against one another according to the shifting political winds. The United Front formed in June 1997 to oppose the Taliban. It included the dominant forces of an earlier entity known as the Northern Alliance and is more popularly known by that name.

¹¹ Rubin, *Fragmentation*, 42. A *jirga*, or “circle,” is a council, usually consisting of adult males of a tribe. “Since at least the 1920s, the Afghan state has defined an institutionalized, partly nontribal body, the Loya Jirga (Great Council), as the highest representative body of the Afghan state.” An Emergency Loya Jirga could be convened to address national emergencies.

¹² Michael Bhatia, Kevin Lanigan, and Philip Wilkinson, “Minimal Investments, Minimal Results: The Failure of Security Policy in Afghanistan,” AREU Briefing Paper (Kabul: Afghanistan Research and Evaluation Unity, 2004), 2.

¹³ *Ibid.*

¹⁴ *Ibid.*, 15.

- ¹⁵ Ibid. See also other reports by AREU; and Laurel Miller and Robert Perito, *Establishing Rule of Law in Afghanistan* (Washington, D.C.: United States Institute of Peace, 2004).
- ¹⁶ Bonn Agreement, art. 5, sec. 1, www.un.org/News/dh/latest/afghan/afghan-agree.htm. The Bonn Agreement was signed December 5, 2001.
- ¹⁷ Interviews with UN staff familiar with the DIAG process, January 2006.
- ¹⁸ Simonetta Rossi and Antonio Giustozzi, “Disarmament, Demobilisation and Reintegration of Ex-combatants (DDR) in Afghanistan: Constraints and Limited Capabilities,” Working Paper No. 2 (London: Crisis States Research Centre, 2006), 3–4.
- ¹⁹ E-mail correspondence with a participant in the negotiations, February 2006. The U.S. representatives wanted to build a new professional army from scratch; many of their Afghan counterparts wanted to incorporate the NA forces into a new national army.
- ²⁰ Rossi and Giustozzi, “Disarmament, Demobilisation and Reintegration,” 3–4.
- ²¹ Jake Sherman, “Disarming Afghanistan’s warlords,” *Praxis XX* (2005): 6.
- ²² Ibid.
- ²³ Ibid. The leader of the Jamiat-i Islami, Burhanuddin Rabbani, was not given a position in the interim administration.
- ²⁴ Crisis Group Asia, “Afghanistan: Getting Disarmament Back on Track,” Asia Briefing No. 35 (Brussels: International Crisis Group, 2005), 3.
- ²⁵ International Crisis Group, *Disarmament and Reintegration in Afghanistan*, Asia Report No. 65 (Brussels: International Crisis Group, 2003), i.
- ²⁶ Crisis Group Asia, “Afghanistan: Getting Disarmament Back on Track,” 4.
- ²⁷ Rossi and Giustozzi, “Disarmament, Demobilisation and Reintegration,” 4.
- ²⁸ Ibid., 5. See also Sherman, “Disarming Afghanistan’s Warlords,” 6.
- ²⁹ Rossi and Giustozzi, “Disarmament, Demobilisation and Reintegration,” 7. The authors cite ANBP statistics.
- ³⁰ Crisis Group Asia, “Afghanistan: Getting Disarmament Back on Track,” 4.
- ³¹ Sherman, “Disarming Afghanistan’s Warlords,” 9.
- ³² Crisis Group Asia, “Afghanistan: Getting Disarmament Back on Track,” 6.
- ³³ E-mail communication with political analyst, February 2006.
- ³⁴ Sherman, “Disarming Afghanistan’s Warlords,” 7.
- ³⁵ Crisis Group Asia, “Afghanistan: Getting Disarmament Back on Track,” 1.
- ³⁶ Analysts well acquainted with the politics of the region claim the combatants were in fact party loyalists.
- ³⁷ Bhatia, Lanigan, and Wilkinson, “Minimal Investments, Minimal Results,” 16.
- ³⁸ Afghanistan’s New Beginnings Programme, “Disarmament,” United Nations Development Programme, www.undpanbp.org/programactivities/disarmament.htm; “Demobilisation,” www.undpanbp.org/programactivities/demobilization.htm; and “Reintegration,” www.undpanbp.org/programactivities/reintegration.htm.
- ³⁹ Ibid., “Disarmament.” Once the ex-combatant and his weapon were verified successfully, a bar-code sticker would be attached to the weapon and two copies of the bar code would be made (one for the RVC’s list and the other for the temporary day pass).
- ⁴⁰ Ibid., “Reintegration.”
- ⁴¹ E-mail with ANBP staff member, April 2008.
- ⁴² UN DDR Resource Centre, Country Programme: Afghanistan, www.unddr.org/countryprogrammes.php?c=121.
- ⁴³ Crisis Group Asia, “Afghanistan: Getting Disarmament Back on Track,” 6. Some analysts observe that success for such programs is too often measured in terms of weapons collected and not genuine reintegration. See Rossi and Giustozzi, “Disarmament, Demobilisation and Reintegration.”
- ⁴⁴ Rossi and Giustozzi, “Disarmament, Demobilisation and Reintegration,” 10.
- ⁴⁵ Ibid., 14.

⁴⁶ Ibid., 16.

⁴⁷ HRRAC, *Take the Guns Away*, 7.

⁴⁸ The Law on Fire Weapons, Ammunition & Explosive Materials, published in the *Official Gazette* on June 21, 2005, and draft legislation of the Regulation on Private Security Organizations (Spring 2006).

⁴⁹ Electoral Law of Afghanistan, chap. 6, pt. 1, art. 20, unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN018178.pdf.

⁵⁰ Frequently Asked Questions on DIAG, www.diag.gov.af/Frequently%20questions.html.

⁵¹ Interview with political analyst involved in DIAG, January 2006.

⁵² Frequently Asked Questions on DIAG, www.diag.gov.af/Frequently%20questions.html.

⁵³ Barnett R. Rubin, Humayun Hamidzada, and Abby Stoddard, *Afghanistan 2005 and Beyond: Prospects for Improved Stability Reference Document* (The Hague: Netherlands Institute for International Relations, Clingendael Conflict Research Unit, 2005), 47.

⁵⁴ Ibid.

⁵⁵ BBC News, “Taliban Leader ‘Rejects Amnesty,’ ” May 10, 2005, news.bbc.co.uk/2/hi/south_asia/4533051.stm.

⁵⁶ Carlotta Gall, “Taliban Trek Rocky Road Back to Afghanistan,” *New York Times*, March 20, 2005.

⁵⁷ Junko Mitani, “Afghanistan’s Former Child Soldiers Are Eager to Embrace Future,” UNICEF Afghanistan, www.unicef.org/infobycountry/afghanistan_23051.html.

⁵⁸ E-mail interview with a participant in the negotiations, February 2006.

⁵⁹ Decree of the Presidency of the Interim Administration of Afghanistan on the Establishment of an Afghan Independent Human Rights Commission, www.aihrc.org.af/decreeofp.htm.

⁶⁰ Some UNAMA staff responsible for overseeing the process in the districts managed to exclude some would-be delegates on these grounds, even without support from senior UNAMA officials.

⁶¹ J. Alexander Their, “The Politics of Peace-building: Year One: From Bonn to Kabul,” in *Nation-Building Unraveled: Aid, Peace and Justice in Afghanistan*, ed. Antonio Donini, Norah Niland, and Karen Wermester (Bloomfield, CT: Kumarian Press, 2004), 55–56.

⁶² Defense Committee for Malalai Joya, “Defend Malalai Joya!” www.malalaijoya.com/index1024.htm.

⁶³ The video clip was aired at a time when Sayyaf’s allies in the courts were trying to censor Kabul Television and prevent it from broadcasting programs featuring female singers. As of mid-2004, they had not succeeded, and Kabul Television had not suffered any repercussions for its broadcast.

⁶⁴ The Constitution of Afghanistan, chap. 5, www.afghan-web.com/politics/current_constitution.html#chapterfive.

⁶⁵ Afghan Independent Human Rights Commission, *A Call for Justice: A National Consultation on Past Human Rights Violations in Afghanistan* (Kabul: AIHRC, 2005).

⁶⁶ Louise Arbour was chief prosecutor for tribunals into the genocide in Rwanda and human rights abuses in Yugoslavia in the 1990s.

⁶⁷ In November 2004, three expatriate UN staff members were kidnapped and held for three weeks in Kabul. A massive manhunt led to the arrest of scores of suspects, many of them former members of the Hizb-i Islami faction, an armed group whose leader, Gulbuddin Hikmatyar, is opposed to both the current Afghan administration and the presence of American and other foreign troops. The government appeared eager to pin the blame for the kidnappings on him. One suspect died as a result of beatings in custody. Further investigations pointed to the involvement of forces loyal to Sayyaf and former defense minister Fahim. All three UN staff members were released—left in a car in Kabul, unharmed. UN staff members and others involved in investigating the incident read it as a warning. Interviews with UN staff members and other diplomats, January–February 2005.

⁶⁸ Cherif Bassiouni, UN Independent Expert on Human Rights in Afghanistan, e-mail communication made available to this author, April 2005.

⁶⁹ Interviews with UN officials, including Deputy Special Representative Jean Arnault, over a period of time in 2003–2004.

⁷⁰ International Crisis Group, *Disarmament and Reintegration in Afghanistan*, 6.

⁷¹ Rubin, Hamidzada, and Stoddard, *Afghanistan 2005 and Beyond*, 41.

⁷² Peace, Reconciliation and Justice in Afghanistan Action Plan of the Government of the Islamic Republic of Afghanistan, www.unama-afg.org/news/Afghan%20Government/06dec10-government-action-plan-eng.pdf.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Crisis Group Asia, “Afghanistan: Getting Disarmament Back on Track,” 6.

⁷⁶ Gareth Evans, “World Must Help Afghanistan Through Its Risky Pause,” *Financial Times*, January 29, 2006.

⁷⁷ Michael Ignatieff, “Nation-Building Lite,” *New York Times Magazine*, July 28, 2002.