

## Research Brief

# Transitional Justice and DDR: The Case of Afghanistan

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In Afghanistan's nation-building process, security has been prioritized over justice. This strategy has shaped the way programs for disarmament, demobilization, and reintegration (DDR) of former combatants and transitional justice are perceived, and accepted by the Afghan population and the international community. Ongoing insecurity and the reliance of the international community on former militia commanders undermine DDR and obstruct transitional justice initiatives. Slow progress on crucial institutional reforms impedes efforts to create a competent and professional police force, a functioning civil service, and an accountable judiciary—all of which are vital to successful disarmament, transitional justice, and security.

## Background

Following the events of September 11, 2001, U.S. forces, along with a coalition of nations and Afghan anti-Taliban forces, succeeded in ousting the Taliban regime from power. However, eight years later, the coalition continues to fight an intensifying insurgency, which has added to insecurity for Afghans and further undermined the authority of the central government. UN attempts at state-building have lagged in both capacity and clear leadership, producing inadequate and unaccountable institutions.

## DDR

DDR did not become operational in Afghanistan until 2003, two years after the fall of the Taliban. At its inception, the UNDP administered the Afghan New Beginnings Programme (ANBP) for a three-year period with a mandate to target 100,000 officers and soldiers for DDR. 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. The first phase of ANBP was a voluntary process that targeted combatants from the semi-formal military units of the Afghan Militia Forces (AMF). The disarmament process involved an honorary parade where soldiers relinquished their weapons and attended a demobilization workshop.

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**Research Project**

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**Transitional Justice and DDR**

This 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.

Combatants received a compensation package including a *shalwar kamis* (traditional clothing) and a food parcel.

The next step of the process was reintegration, in which some ex-combatants received a vocational training package while others were given an opportunity to join Afghanistan's army or police. This process did not include any vetting on human rights grounds, which resulted in former fighters responsible for past abuses or war crimes being reappointed to security posts. Senior commanders from the major anti-Taliban forces—the AMF—were targeted to go through the DDR program. To ensure their compliance, the program adopted an approach that “compensated” these potential spoilers with government posts in exchange for relinquishing their military operations.

By 2006, the ANBP had successfully decommissioned 62,326 former combatants, reduced a number of the officially recognized militias, and succeeded in collecting most of their heavy weaponry. In addition, 11,000 children participated in a reintegration program that provided basic education and vocational training. Women also became eligible for assistance as 24,536 female relatives of former combatants received education and income opportunities through ANBP programming. These results cost international donors over US\$100 million, more than twice the initial budget.

In the lead-up to the 2005 National Assembly elections, there was general recognition that the “illegal armed groups” (IAGs) represented more of a threat to security than most of the AMFs. As a result, these IAGs received attention under a later phase of the DDR process called Disbandment of Illegal Armed Groups (DIAG). In its first phase from 2005–2007, DIAG had a budget of US\$20 million, and it targeted 1,800 irregular armed groups with electoral vetting. In this process, candidates who failed to voluntarily disband their militias should have been disqualified from standing for political office. Only a handful of candidates were actually disqualified, however, and the most powerful candidates known to have private militias were not touched.

Overall, DDR has achieved mixed results. The strategy of placing potential spoilers in government posts remains highly controversial, with many arguing that it ultimately entrenched the people responsible for rampant lawlessness in the new regime. The attempts to reintegrate militia members into civilian society suffered from poor vocational counseling within the program and insufficient analysis of local economic conditions. Although the DDR program succeeded in the handover of heavy weaponry from militias, this was largely 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. Currently, the more likely threat to a fragile stability is posed by the proliferation of small arms. Thus far, the DDR process has left this concern largely untouched.

DDR has widespread support among Afghans and from donor countries, but faces serious obstacles. The U.S.-led coalition has armed and funded Afghan commanders to act as a bulwark against any return of the Taliban and al-Qaeda. The DDR process

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had no power over those members of militias who are employed by coalition forces. Moreover, 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. 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.

## Transitional Justice

The Afghan Independent Human Rights Commission (AIHRC) reports that after over a quarter century of conflict, the violence inflicted on the people of Afghanistan has been significant: millions were killed and disabled, thousands jailed and tortured, an estimated seven million displaced, and countless raped. These numbers do not even include the physical and cultural destruction left by the war. International actors steering the state-building process after the 2001 invasion of Afghanistan, however, saw the pursuit of accountability for human rights crimes as potentially destabilizing.

By the end of 2002, commanders implicated in human rights abuse and war crimes had entrenched themselves in new positions of power. Questions about accountability for the past have been suppressed or deferred, and the disarmament process proceeded selectively in order to avoid confrontation with the most powerful players. Moreover, 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 programs are aimed at maligning the mujahideen—those combatants who liberated Afghanistan from the Soviets and the Taliban.

### Prosecutions

Within the country, even ordinary criminal trials lack legal safeguards, leaving the high-profile war crimes cases unlikely to observe due process. Indeed, the two war crimes trials that have been held in Afghanistan both violated international norms. There have been few efforts to link the deficiencies of these trials to broader efforts of judicial reform. International trials of Afghan war criminals abroad have sparked passing interest; however, these cases have not been seen as models for how such trials might be conducted in Afghanistan.

### Truth-Telling and Reparations

The report of an AIHRC study included recommendations that became the foundation for the government's Action Plan on Peace, Reconciliation, and Justice that comprised: (1) a commitment to mark the remembrance of victims of past abuses; (2) vetting of government officials; (3) truth seeking; (4) reconciliation; and (5) establishment of a Task Force to make recommendations on further accountability measures. The plan was adopted in December 2005; yet, little of the plan has actually been implemented. Overall, a weak civil society and a lack of strong public pressure, combined with an

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### About the Author

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atmosphere of intimidation and general insecurity, have undermined efforts to carry out more intensive fact-finding investigations, establish formal truth-seeking mechanisms, and make progress on the issue of reparation.

### **Institutional Reform**

Institutional reforms have been slow in Afghanistan, impeding efforts to create a competent and professional police force, a civil service, and a judiciary. Without these state institutions, there cannot be successful disarmament, transitional justice, and, ultimately, security. The failure to integrate these aspects of state-building risks a breakdown of the entire reconstruction effort and peace process in Afghanistan.

### **Conclusion**

At every critical juncture, those steering the state-building process in Afghanistan have de-emphasized transitional justice. The rationale for doing so was twofold: first, that in the aftermath of the Taliban's defeat, preventing a return to civil war necessitated a policy of inclusion in which faction leaders and other commanders were awarded positions regardless of their past records; and second, that pursuing transitional justice when other institutions were still fragile could provoke a return to armed combat. While civil war among the anti-Taliban forces has so far been averted, Afghanistan is still rife with conflict and there is little security for the majority of the nation's inhabitants.

Disarming the country's armed factions is widely recognized as integral to the process of nation building. It should be linked to other security sector reform (SSR) 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—was not even a component of this process. The disarmament effort was conducted separately from other SSR initiatives, and from efforts to pursue transitional justice. The failure on the part of the international community to adopt an integrated approach to institutional reform has stymied efforts to build a competent police force, reform government ministries, disarm militia forces, and establish a functioning judicial system.

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