

Afghanistan Research and Evaluation Unit  
Case Study Series

EDITED

**LEGACIES OF CONFLICT**  
Healing Complexes and Moving  
Forwards in Kabul Province



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## 1. Introduction

This case study is part of the “Legacies of Conflict: Justice, Reconciliation and Ways Forward” research project, which aims to deepen understanding of the impact of past and present war crimes and human rights violations on Afghan communities and of what community members want in terms of “justice,” “peace” and “reconciliation.” This research by the Afghanistan Research and Evaluation Unit (AREU) began at the end of 2009 and was conducted in Kabul, Bamiyan and Ghazni Provinces. This study focuses on qualitative data collected from one urban district in Kabul City, Afshar, and one rural community in Shakardara District between December 2009 and May 2010. The research is funded by the Royal Norwegian Embassy in Kabul and was developed in cooperation with the International Centre for Transitional Justice (ICTJ).

The study provinces and districts were chosen to reflect some ethnic diversity and to encompass as far as possible the different phases and intensities of conflict that the people suffered in a particular place. Security considerations as well as physical and social access were also taken into consideration. Kabul Province was selected as an area of mixed *qawms* (a form of solidarity group that is flexible in scope; defined by tribe, clan, ethnicity, locality or other characteristics as determined by the group) that experienced suffering under the communist regime; the worst excesses of the civil war; conflict between different local commanders; and violations under the Taliban. The succeeding two sections in this introductory chapter explain the overall research focus and the conceptualisation of specific research themes. These are uniform in all the provincial case studies and will be followed in synthesising the findings across all the locations.

### 1.1 Overall research focus and issues explored

Despite the scale and length of conflict in Afghanistan, the country’s victims have never experienced systematic justice. Since the signing of the Bonn Agreement in 2001 there has been limited action by the Afghan government and its international partners to address the culture of impunity in Afghanistan and alleged perpetrators of some of the worst human rights abuses have retained positions of power. However, interest and engagement in promoting transitional justice by Afghan civil society and the media is growing and becoming increasingly diversified. This project is inspired by these ongoing efforts to promote transitional justice in Afghanistan. It seeks to contribute to the fragile process by developing qualitative,<sup>1</sup> in-depth knowledge about the impact of conflict and what justice in the wake of war crimes and human rights violations means to Afghans in local communities.

Previous AREU research demonstrated that transitional justice in Afghanistan is often misunderstood and conflated to mean addressing questions of criminal responsibility only.<sup>2</sup> By adopting an open-ended and responsive approach, this research aims to allow Afghans themselves to describe what they mean by “justice,” “reconciliation” and “peace” in

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1 Qualitative research aims to gather a holistic understanding of complex realities and processes. The possibility of objectivity is questioned and instead the aim is to understand differing and often competing subjectivities in terms of very different accounts of “facts,” different meanings and different perceptions, see Linda Mayoux, “Quantitative, Qualitative or Participatory? Which Method, for What and When?” in *Doing Development Research*, edited by Vandana Desai and Robert B. Potter (London: Sage Publications, 2006).

2 This finding is based on research by the author, see Emily Winterbotham, “The State of Transitional Justice in Afghanistan: Actors, Approaches and Challenges” (Kabul: AREU, 2010).



Afghanistan, and create the space for previously unexplored ideas, including perhaps locally-based initiatives, for achieving this. This includes exploring transitional justice mechanisms in an Afghan context, taking into account the role an Islamic framework and community-based justice mechanisms<sup>3</sup> may play in these. As Fletcher and Weinstein assert, little attention has often been paid to the role of the rule of law in different cultures and how popular expectations of justice may differ.<sup>4</sup> AREU's research hopes to go some way toward addressing this dearth of information.

AREU's research is intended to complement previous and ongoing research efforts by other organisations. The research collected in-depth information from a number of individuals within a select number of communities about the legacies of conflict, ultimately to build a picture of what different communities desire in terms of justice, peace and reconciliation. Research for "A Call for Justice" and "Casting Shadows" was conducted in 2004.<sup>5</sup> Since then the situation has changed and it is meaningful to again ask what these terms mean in Afghanistan, nearly ten years after the overthrow of the Taliban and in an environment of escalating conflict and reigning impunity. In doing so, the research aims to identify strategies and mechanisms that could allow communities to move forward. The project aims to ensure that policymakers are aware and informed of the desires and demands of different communities in Afghanistan in relation to transitional justice, reconciliation and peace. Specifically, it hopes to inform them of the most appropriate accountability and reconciliation processes to address crimes committed during the conflict periods. As such, it aims to contribute to processes that ensure that those who have been most affected by Afghanistan's conflicts are the key actors in future accountability and reconciliation activities.

Four major themes and accompanying questions have structured this study:

- ***Experience of conflict:*** how have people and the communities in which they live experienced the different phases of conflict and its accompanying violations? How do these experiences effect perceptions of Afghanistan's wars?
- ***Dealing with the legacy of conflict:*** how have people coped with the violations suffered and what processes do they perceive would help address the legacies of war?
- ***Addressing victims' suffering and dealing with the perpetrators of war crimes:*** what does the demand for justice for war crimes mean at the local level? What are the most appropriate mechanisms of recourse and resolve to deal with the perpetrators of war crimes and to satisfy victims' demands?

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3 "Community-based dispute resolution refers to the processes used for resolving disputes within the community in which the dispute has taken place"; see Deborah Smith with Shelly Manalan, "Community-Based Dispute Resolution Processes in Bamiyan Province" (Kabul: AREU, 2009), 1.

4 Laurel E. Fletcher and Harvey M. Weinstein, "Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation," *Human Rights Quarterly* 24 (2002): 573-639

5 The Afghanistan Independent Human Rights Commission's (AIHRC) consultations about Afghan perceptions of war crimes and gross human rights violations were published in *A Call for Justice: National Consultation on Past Human Rights Violations in Afghanistan* (Kabul: AIHRC, 2005), 4. The report can be downloaded at [http://www.aihrc.org.af/rep\\_Eng\\_29\\_01\\_05.htm](http://www.aihrc.org.af/rep_Eng_29_01_05.htm) (accessed 25 January 2009). It was primarily quantitative in nature with a survey being conducted with 4,151 respondents. Two hundred focus group discussions were also conducted, although much of the data was presented in a quantitative manner in the report, and it did not provide detailed information about how past (and present) violations impact on Afghan lives today. The Afghanistan Justice Project (AJP)'s "Casting Shadows: War Crimes and Crimes Against Humanity: 1978-2001" is largely a documentation exercise, although it does provide policy recommendations. AIHRC's more recent conflict mapping exercise is also essentially a documentation project, collecting factual evidence rather than investigating perceptions and desires as this project aims to do.



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

## 1.2 Conceptualising transitional justice: Justice, forgiveness, peace and reconciliation

The concept of “transitional justice” is central to this project. Transitional justice is an umbrella term used to describe measures associated with a society’s attempts to come to terms with a legacy of large-scale abuses, so as to ensure accountability, serve justice, reconcile former enemies and achieve peace. The practical experience of the United Nations in countries from Cambodia to El Salvador reinforced the clear message that transitions would lack sustainability if they were not founded upon accountability and the rule of law, and would lack legitimacy if they were not grounded in justice.<sup>6</sup> The creation by the UN of ad hoc war crimes tribunals, the establishment of an international criminal court, and the disposition of the judiciaries of some countries to act extraterritorially by applying universal jurisdiction reflect a growing international consensus that individual human rights be upheld and that genocide, war crimes and crimes against humanity do not go unpunished.

One of the most recognisable approaches to dealing with the complex legacy of wartime atrocity has been criminal trials. One of the central normative arguments for trials in the contemporary period of criminal justice is that punishment can play a role in highlighting society’s transition to a democratic, law abiding state, and underlining the difference from the previous regime.<sup>7</sup> As Kritz explains, a public forum revealing the horrors of individual crimes can demonstrate that individuals will from then on be held accountable.<sup>8</sup> Criminal trials are also claimed to play a role in truth-seeking by creating historical records, reconciliation processes and in satisfying victims’ demands for retribution and accountability.

Much has been written in opposition to the purported effects of this legalist approach. As Bass writes, legalists can be criticised for setting a mass of “lofty objectives” for war tribunals.<sup>9</sup> Instead, Hamber argues that dealing with the past needs to be approached as creatively as possible, including as many voices as possible.<sup>10</sup> Fletcher and Weinstein support this and advocate the adoption of an ecological model that is designed to focus on multiple levels of society and adopt a myriad of processes of social repair of which criminal trials form one component. This requires a variety of interventions: state-level criminal trials, commissions of historical record (truth commissions), individual or family psycho-social support, and community-based responses.<sup>11</sup>

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6 Rama Mani, “Ending Impunity and Building Justice in Afghanistan” (Kabul: AREU, 2003) and Neil Kritz, “Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights,” in *Law and Contemporary Problems* 59, no. 127 (1996): 127.

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

8 Kritz, “Coming to Terms with Atrocities.”

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

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

11 Fletcher and Weinstein, “Violence and Social Repair.”



To effectively deal with the legacy of a violent past it is necessary to deconstruct what “justice” means to people in the aftermath of mass violations. Exploring what people mean by justice, and what processes are involved, is a central component of this project. Criminal justice is just one interpretation of what justice can mean in the aftermath of conflict.<sup>12</sup> Justice can mean having a job and an income, returning home, testifying in a trial, revenge, receiving an apology or learning the truth about missing relatives and receiving bodies for a proper burial.

In countries, such as Afghanistan, which have been torn apart by civil conflict, the pursuit of justice is often linked with healing processes that enable a country to deal with the legacy of the past to move forward. Hence the demand at communal and political levels is often not for “justice” but for as much justice as possible or as much justice as is constructive. Keen suggests there are dangers in a rigid policy of punishing abuses. He argues it is doubtful whether South Africa’s security services would have accepted the end of apartheid without the prospect of some kind of amnesty.<sup>13</sup> This raises questions such as how much justice is needed and what type of justice is required to secure peace while upholding international law. In post-conflict environments, particularly those of a civil nature, there is often a limit to the extent of criminal justice that can be pursued when the aim is oriented toward the larger goal of healing relationships.

This reading brings us to the question of what exactly peace is. At one level, Keen says this question can be quickly dispensed with: “war is violent and peace is, well, peaceful; in other words, peace is the antithesis of war.”<sup>14</sup> However, Keen goes on to challenge this juxtaposing of “peace” and “war.” Instead, he argues that if wars, particularly more recent civil conflicts, can involve elements of cooperation and collusion, of limiting violence, and of the consolidation of various kinds of order, then it is also important to note that peace can be quite violent. Galtung explains the presence of violence in peace in his conceptualisation of negative and positive peace. In this interpretation negative peace is the “absence of personal violence” whereas positive peace encompasses the “absence of structural violence.”<sup>15</sup> Structural violence according to Galtung includes processes of exploitation and marginalisation, indeed anything that limits human well-being to levels below what is possible.<sup>16</sup> He consequently suggests that genuine, long-lasting peace entails more than an end of violence and conflict.

If genuine peace is to be achieved in the aftermath of civil conflict, one must inevitably turn to the concept of “reconciliation.” The idea of reconciliation in post-conflict societies has gained particular resonance in academic, humanitarian and political circles, but the concept is controversial, being conceived in a moral, quasi-religious way, involving individual acts of confession and forgiveness. Critics also highlight that this type of behaviour is rare in post-conflict situations and there is something inherently patronising in the idea that international actors should seek to promote it.<sup>17</sup>

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12 Laurel E. Fletcher and Harvey M. Weinstein, “A World Unto Itself? The Application of international justice in the former Yugoslavia,” in *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, eds. Eric Stover and Harvey M. Weinstein (Cambridge: Cambridge University Press, 2004), 4.

13 David Keen, “War and Peace: What’s the Difference?” in *Managing Armed Conflicts in the 21st Century*, edited by A. Adebajo, C. L. Sriram, F. Cass (2001), 1-22.

14 Keen, “War and Peace: What’s the Difference?”

15 Johann Galtung, “Violence and Peace Research,” *Journal of Peace Research* 7, no. 3 (1969).

16 Galtung, “Violence and Peace Research.”

17 Observation based on author’s interviews conducted in Bosnia-Herzegovina for MSc dissertation: “Can International Criminal Trials Pave the Way towards Reconciliation in the Aftermath of ‘New Wars’?: Coming to terms with the past in Bosnia-Herzegovina” (London: London School of Economic and Political Science, 2006).



It is also acknowledged that this term is fraught with ambiguity.<sup>18</sup> In its broadest terms, reconciliation involves: developing a shared vision of an interdependent and fair society that values different opinions and political beliefs; acknowledging and dealing with the past through providing the mechanisms for justice, healing, restitution and reparation; building positive relationships; significant cultural and attitudinal change; and substantial social, economic and political change. It is both an outcome and a process and requires, in the best circumstances, a cognitive change—in beliefs, ideology and emotions.<sup>19</sup>

John Paul Lederach describes reconciliation as the shared space interdependently occupied by four social energies: “Truth, Mercy, Justice, and Peace.”<sup>20</sup> Rigby reiterates the importance of these components, stressing the importance of healing and closure of the trauma for both victims and perpetrators. He notes that “imperfect reconciliation occurs when the new political leaders can settle for an imperfect process lowering their aim for achieving social harmony but victims are expected to forfeit their claim to restitution.”<sup>21</sup> In this view, pitting justice and peace against each other as alternatives is, as Volf terms it, “cheap reconciliation.” He argues that to pursue cheap reconciliation means to give up on the struggle for freedom, to renounce the pursuit of justice, to put up with oppression.<sup>22</sup> He concludes that “Far from standing in contrast to justice, for such a notion of reconciliation justice is an integral element.”<sup>23</sup>

In the context of this work, a narrower understanding of reconciliation should be explained, known as “political reconciliation.” This involves processes through which an inclusive platform is created for politics for formerly hostile parties, particularly political institutions and actors. As Sajjad argued, in the context of Afghanistan, the term “reconciliation” when articulated and applied by policymakers follows more the parameters of political reconciliation, given that it alludes to political negotiations between antagonistic parties, rather than involving communities for the processes of healing, truth-telling and transformation of relationships between previously antagonistic parties.<sup>24</sup>

Also relevant is the concept of reintegration, which is often used interchangeably in Afghanistan with reconciliation. (Most people interviewed largely used the term “reconciliation” rather than distinguishing between this and reintegration.) However, Sajjad’s research for AREU on reintegration and reconciliation in Afghanistan challenged the assumption that they are mutually reinforcing and that success in one will automatically lead to success in other.<sup>25</sup> Reintegration is the last stage of the applied strategy of Disarmament, Demobilisation and Reintegration (DDR) and describes the

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

19 Bar Siman Tov, “Israel-Egypt Peace: Stable Peace?” in *Stable Peace Among Nations*, edited by A. M. Kacowicz, Y. Bar Siman Tov, O. Elgstrom, and M. Jerneck (Boulder, USA: Rowman Publishers, 2000), 220-238.

20 John Paul Lederach, “Building Peace and Reconciliation,” in *Turbulent Peace: The Challenges of Managing International Conflict*.

21 See Andrew Rigby, *Justice and Reconciliation: After the Violence* (Boulder, USA: Lynne Rienner Publishers, 2001).

22 Miroslav Volf, “Forgiveness, Reconciliation, and Justice: A Theological Contribution to a More Peaceful Social Environment,” *Millennium: Journal of International Studies* 29:3 (2000): 867-877. Though it must also be acknowledged that Volf’s conception of reconciliation is derived from a theological perspective, many of his arguments hold relevance to the author’s reading of reconciliation.

23 Volf, “Forgiveness, Reconciliation, and Justice.”

24 Tazreena Sajjad, “Peace at All Costs: Reconciliation and Reintegration in Afghanistan” (Kabul: AREU, 2010).

25 Sajjad, *Peace at All Costs*.



process by which ex-combatants gain civilian status and sustainable employment. Reintegration is essentially a social and economic process with an open timeframe, primarily taking place in communities at the local level.<sup>26</sup> In reality, Sajjad<sup>27</sup> argues that reintegration alone cannot fully prevent a return to conflict, ensure the good faith of the parties involved, and be a substitute for other peace enforcement mechanisms, such as strengthening the rule of law, security sector reform, or effective implementation of the conditions of a peace agreement, that are critical for a successful transition.

The terms “justice,” “peace” and “reconciliation” were used constantly throughout this project by the people interviewed. This section has briefly reflected on what these terms mean in an academic sense, and the rest of the paper aims to demonstrate what they mean to people in the study communities. If we are to understand how to best to approach these processes it is vital to explore the meaning they hold at the community-level.

Finally, while transitional justice theory formed the theoretical backdrop to the research, one of the aims of this research is to locate the transitional justice framework in the specific Afghan context. As discussed, the term “transitional justice” is often imbued with certain connotations and in Afghanistan is often misunderstood and conflated to mean addressing questions of criminal responsibility only, which can prompt suspicion. Moreover, relying too heavily on transitional justice as a framework of reference implied that the research was oriented from a certain standpoint from the beginning.

Consequently, to avoid confusion about the aims and intentions of the project, the team preferred to view the project simply as exploring the legacies of conflict and legitimate ways to “heal *oqda*,” which can be translated as “complexes” and is used in this case to indicate hatred, hostility or obsessive feelings stemming from conflict, to “*dell-i-shan ra yak kuna*” (make a heart whole), or “*dard dell-i-shan ra aram kuna*” (calm a heart’s pain). In this context, the concepts of having *oqda* or *dard-i-dell* (pain in one’s heart) and the notion of needing to “calm” or “whole” hearts were adopted because these were the terms used by respondents to refer to the unresolved pains and issues that they retained as a result of conflict.

It should be recognised that the notion of a complex has a basis in Western psychology based largely on Jung’s personality theory. According to Jung, complexes are building blocks of the psyche and the source of all human emotions. They are apparently due to a person’s lived experiences so are individual and unique, part of the personal consciousness. Consequently, they are thought to operate “relatively autonomously, and interfere with the intentions of the will, disturbing the memory and conscious performance.”<sup>28</sup> In his opinion, complexes are not negative in themselves but their effects often are. This is a similar interpretation to the one adopted by Afghans who clearly perceived their complexes as possessing these negative effects. Rather than arguing for the ending of complexes, they typically described that they needed to be healed. Essentially, a key building block in people’s psyche had been kicked out of kilter and needed restoring to its original condition.

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26 Sajjad, *Peace at all Costs*, referencing Nicole Ball, “Disarmament, Demobilization and Reintegration: Mapping Issues, Dilemmas and Guiding Principles” (The Hague: Center for International Policy, Netherlands Institute of International Relations, August 2006).

27 Sajjad, *Peace at all Costs*, referencing Nicole Ball, “Disarmament, Demobilization and Reintegration.”

28 “Jung, Carl” (New World Encyclopedia, last edited 29 August 2008), [http://www.newworldencyclopedia.org/entry/Carl\\_Jung?oldid=794738](http://www.newworldencyclopedia.org/entry/Carl_Jung?oldid=794738) (accessed 26 May 2011).

This desire to adopt the terminology closest to those used by respondents was also reflected in word selection. The author tries to avoid the use of the terms “war criminal” or “war crimes” in the paper; these terms are imbued with legal connotations under international law, which was not a recognisable point of reference for most of the people interviewed.<sup>29</sup>

### 1.3 Structure of the case study

Section 2 provides an overview of the methodology used for both the collection and analyses of the data, ethical considerations and details regarding the selection of the research sites, including an overview of their social, economic and geographical contexts. This provides an important background to the rest of the report, explaining why the research team was able to access and understand certain phenomena. A research challenges section is also included to explain some of the limitations the data might have given the highly sensitive nature of the project. Section 3 discusses experiences of wartime suffering in each community and the perceptions of the different phases of the conflicts in these areas. Section 4 explores how people have coped with the legacy of these conflicts and how they feel these should be addressed to heal victims’ suffering. Section 5 examines desires and demands in relation to dealing with the perpetrators of human rights violations during war. Section 6 explores more widely how to achieve peace and reconciliation in Afghanistan. The conclusion then reviews the answers to the research questions raised in Section 1.

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<sup>29</sup> What constitutes a war criminal or war crime in international law is clearly outlined. However, some people identified as perpetrators of crimes relevant to respondents in this research may not fall under this legal classification. Therefore, the decision was taken to refer in more general terms to “violators of crimes,” “perpetrators of crimes during the war,” etc.



## 7. Conclusion

This was the first case study written in a series of three exploring these issues in different parts of Afghanistan. The conflicts have affected and are continuing to affect different parts of the country in a variety of ways and each community and the individuals within it have their own stories and experiences to tell. These varied histories result in a wide variety of perceptions and opinions about how to deal with the past and the overall research has demonstrated that there is no one way to deal with either the legacies of wartime violations or those held responsible for these. Vastly different opinions about how to achieve justice in the aftermath of conflict were collected within this one province—between the different communities and between the different groups within these. Moreover, the project deals with perceptions and opinions, which produce fluctuating and contradictory data rather than fixed information. Moulding these perceptions into presentable frameworks is therefore difficult. While the challenges of analysing and drawing reliable conclusions from this type of data have been discussed throughout this paper, it is possible at this stage to reflect on the original research questions and identify some key lessons that will be further developed as the data from each province is analysed:

### *Experience of conflict*

- How an individual experienced each phase of the conflicts was largely determined by where they were living at a specific period in time. Perceptions of conflict were largely based on the community's experience rather than those of the individual. However, ethnicity and sex was demonstrated to play a smaller role in determining how different groups perceived different regimes.
- The identification of those most responsible for the conflicts and their violations were generally based on community perceptions. Across both communities, however, people held the leaders of the country responsible for their wartime suffering and identified ordinary people as forming the bulk of the country's victims, playing down any suggestions of antagonistic ethnic divisions between people.
- During all conflict phases, competition for power was consequently perceived to play a major role in triggering and prolonging the violence.

### *Dealing with the legacies of conflict*

- The impact of past conflicts was felt to be the cause of considerable ongoing emotional suffering in all groups, but was most frequently observed in women. Ability to deal with the past was complicated and hindered by ongoing violence in the country and, in particular, in Kabul City.
- As individuals, people who had suffered the death or disappearance of a loved one or those who had witnessed shocking scenes of violence were the most likely to discuss their inability to deal with the past.
- As a community, the specific experience of the attack on Afshar appears to have caused the greatest impact and residents of Afshar have found it harder to deal with this experience than those in the community in Shakardara. A key reason for this was the visibility of those held responsible for civil war violence in Afshar as opposed to the absence of communist and Taliban perpetrators of violations in the rural community.