

## ARTICLE

# Peace versus Justice: A False Dichotomy? Mapping Tensions and Complementarities between Conflict Resolution and Human Rights Advocacy in Afghanistan

Katharina Merkel

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## Abstract

In the aftermath of a conflict, peace and justice are often seen to be in direct tension. Demands for justice and legal accountability can be an obstacle to peace, since peace accords may involve compromises with war criminals and human rights perpetrators. The peace versus justice debate therefore translates into a conceptual struggle between conflict resolution and human rights advocacy. In Afghanistan, peace and conflict are often seen as inherently conflicting. Justice, it is often argued, must wait until security has been established. Rather than punishing the perpetrators of past war crimes, the Karzai government has accommodated some of the most notorious warlords, by appointing them to some government positions. While it was long thought that this would have a stabilizing effect, this paper argues that the policy of relying on Afghanistan's warlords-cum-politicians has failed to bring lasting security, peace and stability to the country. This paper presents a brief foray into the field of peace and transitional justice in a fragmented 21<sup>st</sup> century Afghanistan.

## Keywords

transitional justice, human rights, conflict resolution, conflictology, criminology, Afghanistan, peacebuilding

## PREFACE

History has shown that human beings have a strong desire to categorize everything. People tend to see things in extremes, good or bad, success or failure, or black and white, a cognitive behavior from which the term “black and white thinking” has evolved. When former US President Bush warned that you are “either with us or with the terrorists”, he delivered one of the best examples of black and white thinking – or of a false dichotomy. His statement does not withstand scrutiny, it is inherently flawed. As a matter of fact, there are many other choices available; one can be neither with the Bush administration nor with the terrorists, yet the false dichotomy extinguishes all other opportunities. A false dichotomy is a simplifier and those who fall to its claim will fail to consider a wide range of options and will not be able to see the various nuances of the color gray.

## THE PEACE VERSUS JUSTICE DEBATE

“Peace versus justice” is an age-old conceptual struggle, based on the proposition of looking at people from the perspective of security, peace and stability, or looking at people from the perspective of human rights, justice and accountability. In the context of post-conflict peacebuilding, the debate mainly refers to the dilemma of transitional justice and has largely translated into a heated discussion about protecting the perpetrators or protecting victims. While in peace times, peace and justice are mutually reinforcing, their relationship is ambiguous and complex in the aftermath of a conflict. Demands for justice and legal accountability can be an obstacle to peace, since peace accords may involve compromises with serious human rights



perpetrators and war criminals. Human rights concerns therefore play a complex role and have a complicated relationship to both peace negotiations and peacebuilding processes (Sriram et al., 2010). This relationship may involve a clash between accountability and impunity, between the re-assertation of extant power relations and the creation of new power configurations, and many similar contradictions (Zartman et al., 2005). The dilemma of peace versus justice is clearly a genuine one, and at the crux of the debate we find the question of how we can obtain both simultaneously and, if not, which goal should be prioritized. In (post-) conflict situations an over-emphasis on human rights concerns is often challenged as partisan or idealistic (Bell, 2003). The realist school argues that pragmatic peace requires compromise, also on human rights, and that the search for “perfect peace” might threaten more viable solutions. While trying to achieve a negotiated peace accord with minimum loss of life, conflict resolvers may therefore fail to give sufficient weight to the human rights component of a peace agreement, whereas human rights advocates might be ill-equipped to understand the pressure to bring about an immediate end to loss of life when negotiating peace (Bell, 2003). Based on different underlying assumptions, human rights advocates and conflict resolvers may prioritize different and at times competing goals. “While human rights advocates prioritize accountability, public reckoning, national human rights institutions, and the needs of victims, and will be wary of any outcome that involves negotiation with or amnesty for human rights abuses, conflict resolvers prioritize reaching the settlement that can bring an end to violent conflict and will be prepared to negotiate with and even consider amnesty for human rights abusers. They may thus be willing to sacrifice some human rights concerns” (Sriram et al., 2010). According to Barbara Frey, former executive director of the Minnesota Advocates for Human Rights, “human rights people and conflict resolution people do not speak the same language. They come from different backgrounds and there is a lot of suspicion between them. Human rights people are judgemental and tend to come from a legal background, whereas conflict resolution people are more interested in stopping hot conflict and are willing to rub hands with bad actors” (Lutz et al, 2003).

However, human rights advocacy and conflict resolution can also be perceived as interdisciplinary perspectives with as many commonalities as controversies. Bell (2003), for instance, points out that the UN charter itself opens with the objective of avoiding war and then immediately references the concept of human rights. This fact underlines the unspoken hypothesis that human rights and peace are inexorably linked. “With peace agreements being aimed at reducing violent conflict in one sense, the entirety of the agreement is concerned with human rights through ending the violence which took life and injured limb, and which

went hand in hand with a panoply of human rights abuses” (Bell, 2003). Both conflict resolution and human rights advocacy seek to reduce human suffering. In the short-run, both try to prevent the recurrence of violence (Lutz et al., 2003.). “Conflict resolvers are concerned with creating a sustainable, long-term peace and with reducing the risk of return to conflict. They thus have an interest in the rule of law, democratic governance, and ultimately also human rights protection” (Sriram et al., 2010). Human rights advocacy can also make an important practical contribution to conflict resolution. Some scholars for instance highlight that the punishment of perpetrators serves the “societal goals of re-enforcing acceptable norms, removing potential threats to a new regime and deterring future abuses” (Fletcher et al., 2002). They also suggest that people will only moderate their actions if they believe they are held accountable for their violations. The protection of human rights may thus be an important component of rule of law strategies, which is undoubtedly essential for restoring peace (Bell, 2003).

## AFGHANISTAN: NEITHER PEACE NOR JUSTICE

In the eastern outskirts of Kabul, there is evidence of the gruesome fate met by thousands of Afghans during the decades of conflict. In 1992, just after President Najibullah handed over power to the transitional government, mass graves were discovered around the notorious Pul-e-Charkhi prison. In the midst of the civil war however, these graves were simply closed again. Without a state structure in place, no investigation could be undertaken or justice sought. Throughout Afghanistan, discoveries of mass graves have continued ever since. Thousands of civilians became victims of mass executions, disappearances, lootings, torture, mass rape, indiscriminate detentions and other gross human rights violations. While the end of the civil war closed the most tragic chapter of Afghan history, the horrors of the past are still existent and there is a strong desire among the Afghan population to deal not only with future oriented questions but also with the difficult legacy of the past. However, since the Bonn Peace Accord was signed in Petersberg, in 2001, little has been done to address the contentious question of transitional justice. One of the few steps taken was that the Bonn agreement provided for the establishment of an Afghan Independent Human Rights Commission (Nadery, 2007). The Human Rights Commission was established in June 2002 with a mandate to record past human rights abuses and to propose a national strategy for transitional justice (Nadery, 2005). In 2004, the commission engaged in a first effort to systematically record the views of ordinary Afghans on issues related to justice, human rights and security. The report “A Call



for Justice” is the outcome of such consultation and is, so to speak, an interesting piece of evidence in the debate on transitional justice in Afghanistan. What is absolutely clear in the report is how important justice is to the ordinary Afghans. Contrary to the beliefs of many policymakers, an overwhelming 79.1% of the Afghan population felt that by bringing war criminals to justice, security would be substantially improved.

“It is a fact that by putting the criminals on trial peace and stability will be established.” – A woman from Kandahar.

“Justice is very important, but security and justice are inter-related.” – A woman from Laghman.

“Fundamental and positive change will come to the country when criminals are put on trial.” – A man from Bamiyan.

One year after the study was released, the Afghan government drafted “the Action Plan for Peace, Reconciliation and Justice”. The draft also committed to removing human rights violators from official positions (AIHCR, 2005). However, little has been done to live up to these commitments. Quite the reverse, the 2007 attempt of some parliamentarians to grant themselves immunity through a controversial amnesty bill once more underlined Kabul’s unwillingness to confront impunity and warlord structures (Mojumdar, 2010). The “Charter for Compromise and National Reconciliation” proposed legal immunity from prosecution to all opponents who lay down their arms and join in a process of national reconciliation. The draft law further prescribed that all Human Rights Watch reporting should be rejected. HRW’s press release on the launch of the national reconciliation strategy became a controversy as the report, quiet correctly, portrayed the resolution as an attempt by war crime suspects in the parliament to grant themselves immunity. Human Rights Watch further recommended that the Afghan authorities should hold accountable a number of parliamentarians accused of major human rights abuses. However, the legislators behind the amnesty bill simply declared Human Rights Watch’s reports to be based on “malicious intentions” (Semple, 2009). Fortunately – a subtle sign of hope for the young democracy – the attempt by many of the country’s top warlords-cum-politicians to escape accountability provoked an outcry, not only among civil-society leaders but also among Afghanistan’s highest body of Islamic clerics who argued that, “under Shari law, the perpetrators of war crimes can only gain forgiveness from the victims and not from parliament” (Price, 2007). Following the controversy over the bill, several passages were re-drafted. The draft now allows victims to seek justice and to bring cases against those al-

leged to have committed war crimes but it still prevents the state from prosecuting perpetrators of war crimes in the absence of an active “complaint” by a victim (Semple, 2009). However, the lack of security and rule of law make it almost impossible for individuals to pursue criminal cases against powerful warlords (Mojumdar, 2010). As a consequence, most crimes have been left unchecked. Rather than sending a strong signal those human rights abuses would no longer be tolerated, the Karzai government assigned various well-known war criminals to a series of key government positions. Unsurprisingly, Karzai’s inauguration ceremony for his second term in office was marred by controversy, in light of the fraud-marred polls which preceded the swearing in and also in light of some of the political deals that were made in order to bolster Karzai’s position. In a compelling speech, Karzai expressed his commitment to strengthen the security sector and to ensure lasting stability. His inaugural speech further went on to address the protection of human rights and his commitment to end Afghanistan’s “culture of impunity” (Karzai, 2009). After the speech, Karzai went on to swear in his First Vice President, Muhammad Qasim Fahim, formerly known as “Marshall Fahim”. The running-mate of Karzai, a controversial former warlord, had previously served as defense minister and vice president during the interim and during the 2004 administration. Brad Adams, director of the Asia Division of Human Rights Watch, considers Fahim to be, “one of the most notorious warlords in the country with blood of many Afghans on his hands from the civil war” (Reuters, 2009). Fahim is only one of the controversial figures representing the Islamic nation, other examples abound. Most prominent in the group of accused warlords-cum-politicians are Mohammad Qasim Fahim, Abdul Rabb al Rasul Sayyaf, Burhanuddin Rabbani, Ismail Khan, Abdul Rashid Dostum, and Karim Khalili (HRW, 2005).

“Today, the same war criminals are ruling the people and have the affairs of the state in their hands.” – A man from Zarbul.

“The faces of the perpetrators of those crimes are known to everyone. They are still in power.” – A man from Kandahar.

Failure to provide justice has not only eroded the legitimacy of the Afghan government but also continues to remain a major obstacle to establishing the rule of law. “Powerful individuals are increasingly able to flout the law because of their weapons, their family connections, or their money. It is safe to say that in all of the most important areas of law enforcement in Afghanistan – from corruption to narcotics trafficking, land grabbing, and a host of violent crimes – almost no powerful leader has



ultimately been brought to justice” (Worden, 2009). Ordinary Afghans are being harassed by local strongmen on a daily basis and it is impossible for them to know who they could turn to for help. In some parts of the country the Taliban is still running court trials today. These trials are often trusted more than the formal justice system, which is mostly viewed as corrupt, expensive and elitist. People may turn to the insurgents due to state failures to protect them from atrocities. While the accommodation of warlords was supposed to have a moderating and stabilizing effect, the developments since the Bonn agreement raise some fundamental questions. Can stability be achieved without achieving the monopoly on violence? What does the future of a nation look like if former war criminals hold key positions in the government? Can a democracy be based on the pillars of warlordism and government corruption?

## CONCLUSION

While doing research for this study, it happened that I thought of a different peace versus justice dilemma. A different manifestation of the same conundrum already presented itself right on the aforesaid September 11. After the capricious events of 9/11 which ultimately led to the invasion of Afghanistan, the world powers – with backing from the United Nations – opted for justice and gave up peace by waging the war against terror. The very assumption behind such a decision was not that justice per se was considered a

more important goal than peace. The assumption was that justice, in terms of punishing the perpetrators, was inevitable to ensure long-term sustainable peace. Punishing the perpetrators was necessary, so that history would not be repeated. After 9/11, the US urged for a quick intervention, arguing that the longer the terrorists enjoyed their safe haven in Afghanistan, the stronger their power base would grow. This is also true for the notorious warlords inside the Afghan government. The longer they remain in power, the longer they are granted immunity, the stronger they will become. Why has the paradigm that guided our decision prior to the invasion of Afghanistan changed so fundamentally afterwards?

In Afghanistan, peace must not only be made between the government and the Taliban, but most importantly between the Afghan government and her people. Government support will be the ultimate peace agreement for Afghanistan. However, support for the young Afghan government cannot be attained, as long as the government is widely perceived as corrupt, paternalistic, unfair and incapable of meeting the justice and security needs of the population. Kabul and the international community have failed to give sufficient weight to justice and human rights’ concerns and this might not least be due to the entrenched views of policymakers failing to go beyond black-and-white term thinking. However, what we are witnessing in Afghanistan today cannot be explained and much less be solved with simplicity. ■

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### ■ About the author

**Katharina Merkel**  
[kathaMerkel@gmx.de](mailto:kathaMerkel@gmx.de)

Development Worker and Conflict Analyst, Katharina Merkel, graduated with a Master's in Conflictology from the Universitat Oberta de Catalunya in 2011. Since her graduate studies, she has been living and working in Afghanistan, for almost 4 years. She consulted a variety of organizations, among them the World Bank-funded Afghanistan Rural Enterprise Development Program and the German-government funded GIZ Sustainable Economic Development Program in Kabul and Northern Afghanistan. Katharina has diverse research interests and has published a number of articles on the Afghan conflict. At present, Katharina is studying Persian language and literature at Teheran University in Iran.



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