

TRANSITIONAL JUSTICE IN AFGHANISTAN; END OR NEW BEGINNING?

An Analysis on the Implications of Transitional Justice on Afghanistan's
Passage towards Stability

20 February 2007



"My son was killed during the factional war and now I am the head of the family feeding my daughter in law and her three children. I am working for their survival and live in a room which we do not pay any rent. I want the government to prosecute the killers of my son" Nabi, 62 years old fruit seller, January 2007, Kabul.

During the five years not only nothing took place but also some of the people who are accused of crimes, were protected and put at high places in

the government. Some of these people are even now persecuting people. This issue has caused some people to develop complexes and join the opposition; the attack on commander Khano in Helmand cost the lives of 23 other people is one of these instances.

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This writing is a continuum and complement to the one written under the title of “Only Shedding Tears is not Enough,” published on December, 2006. In the previous paper, the “Action Plan,” of the “Transitional Justice” (TJ) and the reactions to it were discussed and some challenges that are on the way of their implementation were briefly examined. In this paper, effort is made to examine two questions that are important in regard to TJ. What are the implications of transitional justice on the present security situation? What institutions are involved in the transitional justice and what views, visions and practical approaches they bear about the process?

1. The implications of transitional justice program on the security situation.

Mr. Karzai’s spokesman says in a statement: “Some of the Jehadi leaders have played a positive role in obtaining peace, reconstruction of the system and strengthening of national foundations during the past five years. Such reports [Press Statement of December 11, 2006 by Human Rights Watch (HRW)] would not help in providing security and stability in Afghanistan and the strengthening of national unity in the country. And this view of HRW which considers itself the supporter of justice is a violation of justice.¹” Also, Payam-e-Mujahed Weekly, the official publication of Jamiat-e-Islami, an Afghan Mujahedin group writes in its editorial: “There will be secret contacts between Mujahedin and resistance leaders with the opposition circles”². The publication writes in another article “The undisputed consequence of [the HRW report] would be differences, more dependence on foreigners and the delay of cooperation and unity of the people of Afghanistan.”³ Musharakat-e-Milli, the official publication of Hizb-e Wahdat of vice president Karim Khalili writes: “The foreign spies would not be satisfied to anything less than the defaming, slandering of Jihad in Afghanistan and the distortion of one of the brightest chapters of the history of this country and this has caused the Mujahedin to gradually lose patience and stand against the overt and covert conspiracies of internal and foreign sources as the situation calls for.”⁴

Contrary to the above views which consider the transitional justice as harmful, there are those who believe that the TJ program would help improving and strengthening security. Among them, Dr. Seema Samar, Chairperson of Afghan Independence Human Rights Commission (AIHRC) says: “In some suicide attacks, the oppositions are using those who have suffered and the justice has not been applied to them. For example, the attack that was carried out on commander Khano in Helmand cost the lives of 23 other people. Some people for the reason of taking revenge are joining the opposition.”⁵ Nader Naderi who is in charge of TJ in AIHRC also says: “We should not antagonize millions of people for the satisfaction of one person. Without any doubt the sphere of one person’s relations and protection in proportion to millions of people is a lot limited and cannot challenge the security.” He also adds: “The implementation of the action plan of the TJ is effective in reforming the state administration and helps in improving the security situation and if the program is implemented, the people will trust the state more.”⁶

A foreigner diplomat in Afghanistan says: "The international community says we cannot be hopeful about the future of democracy in Afghanistan with criminals and in their absence at present condition work is difficult too". Without any doubt the security issue in Afghanistan is the most important and the hottest issue of discussion in the

process of state building and creation of stability in the country. It can be acknowledged that success of every other program can only be achieved in presence of security in the country. In 2006, the security situation deteriorated more compared to the last four years, increasing the concerns about the security and putting it on the top of security issue and at the top of every other issue in Afghanistan. In addition to the direct consequences, it has created other problems for the process of state building in Afghanistan. Many other programs such as administrative reform, fighting corruption, countering narcotics, tackling the infrastructural problems of economy, education, and social works also were dropped out of attention because of insecurity. The TJ program is one of the issues that the state started work on two years ago and due to dire security situation, it was omitted from the list of priorities.

It would have been necessary for the government and its international stakeholders in addition to occasional and short term solutions to insecurities, also to have formed their strategic and long term programs for the long term stability in the country and to have addressed the security issue from different angles. However, so far such a thing has not taken place and the solution to the security issue is sought only through fighting against the opposition. The correlation and mutual effects of other phenomena with the security are not analyzed and discussed. For example, in case a minister, a governor or some high-ranking officials' presence has not been in the advantage of the government and this person has been involved in crimes such as drug trafficking, promotion of corruption, the government for fear of security deterioration and because of fear of his defection to the opposition, has supported their presence in the government and has not dared to remove them. The government has not carefully looked at their presence in the government that will breed popular discontentment; that they would use the name and government resources for their militia force and the entrenchment of their local power; that they would result in increase in the organized crime and drug trafficking; and that the government institutions under them will remain weak; and these are all reasons for increasing escalations in security sector.

The main objective of TJ is transition from conflict to peace and rendering support for the processes that ultimately lead to stable rule of law and democratic governance. On the other hand, great and numerous crimes that have taken place in the last three decades in Afghanistan and their victims reach millions of people; can be effective elements on the security issue. The analysis and study of security strategy in the dearth of justice in general and TJ in particular is incomplete and that the strategy itself will not gain public trust and confidence. A close look and review at the security policies and strategies prove that marginalizing the implementation of transitional justice program had direct stake in the escalating security situation. For the following reasons, one can draw this conclusion that the implementation of TJ will not only affect the security the security situation negatively, but that it will be one of the most important and effective elements in strengthening security:

A- Peoples' Support for Transitional Justice

The result of consultations of AIHRC, with around 6,000 people about the prosecution of the perpetrators of past crimes, shows that 76.4% of the people think that prosecution of the criminals would increase security; 90% of the people say that the perpetrators of

the human rights violations should be removed from their governmental posts; and 86.8% of the people are in favor of enforcement of justice⁷.

Since the victims of the human rights crimes in this country amount to millions of people from the security point of view, addressing their demands is a necessary issue and without any doubt, dissatisfaction of such a large number of people also causes greater insecurity. Also firing the accused from the government and replacing them with better professional people, would increase the confidence and improve the operational capacity of the government. The absence of people and their support of the government that deprives it of its power and legitimacy are detrimental. Such government in absence of the people's support will gradually weaken and in the face of little problems will disintegrate.

Since 1978 (1357), there have been numerous crimes committed in Afghanistan. There has been no redressing and restitution of the grievances of the victims and no justice has been carried out. After the fall of the Taliban and establishment of a government with the help of the international community and the people of Afghanistan, there were expectations of prosecuting the crimes that were committed against the people. However, during the five years not only nothing took place but also some of the people who are accused of crimes, were protected and put at high places in the government. Some of these people are even now persecuting people. This issue has caused some people to develop complexes and join the opposition; the attack on commander Khano is one of these instances⁸.

B- The Perpetrators Lack Professional Capacity

A great deal of the present weaknesses and difficulties of the government are related to the presence of unprofessional, defiant, bullies and undemocratic elements. Most of these people are accused of crimes or are supported by those who are accused of crimes. The presence of such people in the government increase in corruption; the slowness of reconstruction; embezzlement of the government resources; lack of law enforcement; reintroduction of bigotry, fanaticism, discrimination and oppression becomes the source of pessimism and hatred of the government by the people. On the other hand, putting professional and law abiding people will be effective in removing the gap created between the government and people, increase the government support among people and will help greatly the security situation.

A journalist says: "As part of my job I made appointments with two ministers to meet them. At 2:30 P.M., we went to see the first minister, one of those that are named human rights violators. The appointment was made a day earlier. As we reached his office, we were told that he is resting in the next room, and we had to wait for one hour and a half for him to wake up. During the same day, we had another appointment at 4:30 P.M. with another minister. This minister is an educated professional and has a lot of managerial experience. When we entered his office, he was ready for us. There were lots of documents on his disk, his computer was on and his printer working. There was a white board with markers beside his disk. Later, we discussed the two ministers among ourselves-one asleep during the official working hours and the other working at off hours."⁹

Most of the people who are accused of human rights violations are accustomed to bypassing the law. During their rule, the law was whatever and however they interpreted. The gun, war and violence were the hallmarks of their personality. Whatever they had yesterday and they have today are the result of the power of the gun that even today they are benefiting from it one way or the other and are blackmailing Mr. Karzai by it.

C- The Defeat of Extremist Ideologies

After the 1978 coup d'etat, many of the politico-military parties were nourishing themselves by the extremist leftist ideologies of the Marxist-Leninist type and the Islamists from the extremist Ikhwan-ul-Muslimin (Muslim Brotherhood). The leftist parties were promising the freedom and victory of the proletariat and the leaders of the Islamic groups were talking of the redemption in the life hereafter. These ideologies each grew to an unbelievable height and brought some achievements at least to their vanguards. After the Mujahedin victory and the start of the factional wars and the killing of thousands of innocent people, the beliefs and devotions were changed to hatred of the leaders of Mujahedin. Today, these beliefs and views of the extremist convictions have lost their audiences and supporters. They no longer have the effectiveness they once enjoyed. At present condition, there is no reason for Jihad and no hope of the revival of the proletariat system. Those leaders who used Jihad to get rich and famous and used Jihad to attract people of their own interest, do not have the same means today. Most of these leaders have lost their popularity and legitimacy even in the villages that they used to consider their domains. The demonstrations against Abdul Rasul Sayyaf and the subsequent loss of lives of the people of Paghman are a clear indication of the situation. While Paghman was for more than a decade the religious and military headquarters of Mr. Sayyaf, today this place has become very limiting and there are a lot of security problems for him. This fact is evident from the number of checkpoints and guards any newcomer to Sayyaf's residence while approaching his abode. The same hold true for a lot of other Mujahedin and communist leaders who claim to have the support of the people.

With the tainted ideological aspect of the accused, there is no means left to them to draw support from the people as the years of Jihad and communist rule. If the accused want to stand in opposition to the state, this time, the people will not be with them and they would be on their own.

The strongest proof that former Mujahedin leaders give of the support of the people in post Taliban era is their presence in parliament. It should be mentioned in this respect too that there were lots of undemocratic means at these people's disposal that brought about their considerable presence in the parliament. Among these elements were their strong presence in the government posts, use of power, forgery and foreign finances. A lady says: "I was responsible for one of the polling stations in Kabul during the parliamentary and local council elections. Two days before the voting, I received an uninvited guest at my house. She represented a candidate who was a famous former Mujahedin commander and a present member of parliament. He offered me two US thousand dollars in bribe for favoring his candidate which I refused.¹⁰" Those who observed the parliamentary elections know tens of similar cases. Another and perhaps more serious case was the

silence and neglect which UNAMA and JEMB accorded to thousands of complaints by the voters and some of their candidates in their constituencies. Some candidates and their representatives used the “Carrot and Stick” method to bribe or silence their opponents. They even went to local mosques and intimidated people to vote for them. The UNAMA and the government simply ignored the complaints of those who dared to express their views of the facts that the people knew all along is only natural that the parliament is dominated by warlords and human rights violators. The alternative was ignored, neglected and in some cases rejected. The international community and the government both gave the green light to these people. Therefore, the presence of some of the members of Jehadi parties in parliament does not mean the support of the people.

D – Decrease in non-Taliban Insecurity

During the five years of post Taliban era except the last year, most of the insecurity and the organized crimes which are not related to the Taliban, are related to former Jehadi parties. The fightings in Dai-Kundi in 2001 and 2002; fightings in Mazar-e-Sharif during the same period; the fighting in Herat which last year flared up occasionally and cost the lives of some citizens; and the fighting in Badakhshan and Takhar are cases that the warring factions relating to one or the other side of the militia –former Jehadi groups are involved. These are the groups whose leaders are accused of war crimes by the human rights groups.

After the DDR process and the start of DIAG, although the insecurity decreased a bit, it did not disappear completely. Some of the former commanders who are working as the governors of some provinces are being accused of fomenting tribal, religious and regional differences. Ata Mohammad Noor, the governor of Balkh, is said to be one of these governors.

Therefore, the implementation of TJ that would bring the perpetrators of the insecurity, to court is a big step in providing security.

E- The Reduction of Impetus in Countering the Opposition

The opposition among many reasons and justifications that present in favor of the war against the government in Afghanistan and the international peacekeeping forces in the country, is the presence in the government of those who from their point of view are accused of crimes and civil war. This was the real reason that at the start of the Taliban campaign made them miraculously successful in capturing most of the regions in Afghanistan. After their fall, the Taliban announced that they would not support a government that is at the hands of those who before the coming of foreigners to Afghanistan had only 15% of the land under their control.

From the ideological point of view when the opposition sees that the government is prosecuting the criminals and values justice, a lot of them lose the motivation for war as they call it Jihad. Those who because of lack of implementation of justice and their suffering at the hands of the government associates have sided with the opposition would especially leave the opposition. On the other hand, the leaders of the opposition of the

government who have used religious sentiments to point of suicide attacks, with the implementation of TJ will lose the effect of their politico-ideological ploys.

F- Enforcement of the Law

Aside from dictatorships, security cannot be achieved in any other lawless society. In absence of law, there would be anarchism and anarchism is a breeding ground for insecurity.

The accused themselves or those whom they support have always violated the law with force and the government has backed off from confronting them. The government has repeatedly shown its weakness in applying the law on these people. The lack of prosecution of Seddiq Chakari, a high ranking member of Jamiat Islami party for his insult of judges; the land grab in Sherpoor and not paying of their prices to the government; lack of the enforcement of the decisions of the prosecutor general in Herat and Mazar; the escape of Jaihoon- relative of Marshal Fahim, the killer of a student on the university campus from justice are examples of this reality.

Escaping from the law and the use of force in confronting it are common occurrences today. Many of those who bypass the law are in a way accused of crimes or are supported by those who are accused themselves.

Therefore, the enforcement of TJ is part of the legal responsibilities of the government in Afghanistan. Enforcement of TJ as part of the law will help in improving the security and causes the reduction of bypassing the law.

1- The Institutions Involved in TJ

A- The Victims and the People

As with areas of TJ, there has also been less work carried out taking in polls and gathering views and consultations with the victims. The greatest work in this respect is carried out by AIHRC which was published under the title of “ The Voice of People for Justice.” In the report, there have been consultations with about 6,000 people from different parts of the country including Afghan refugees in Pakistan and Iran about TJ. According to the report, 86.8% of people want the enforcement of justice and 20.2% of the people want justice through reconciliation; 49.1% want justice through the prosecution of the criminals; and 84.8% of the people want enforcement of justice carried out through restitution of the victims¹¹.

The crimes carried out in the last several decades have been heavy and widespread. The number of victims have been huge, more than a million. More than 100,000 people were killed during the civil war between 1992-96 in Kabul alone. So far, no source has attended to the needs of the victims. The accused are still very powerful, using legal or illegal covers. They are still involved in perpetration of the crimes in some regions.

As the recommendation of AIHRC shows, the absolute majority of the people and the victims want justice, but they differ on the way it should be carried out. Some people want the accused to be taken to court; some others see reconciliation as the implementation of justice; and still others want restitution and compensation. But ignoring and neglecting the suffering of the victims cannot be acceptable under any circumstances and conditions. If we assume that the victims should not have any views and are apathetic about the implementation of justice, which they are not, then this should not relieve the government of its responsibilities to look into the past crimes. The government responsibility would require that it should not ignore the past human rights crimes, should not sacrifice the suffering of the people to its political and occasional expediencies.

Mohammad Nabi is a 62 year old man who has a fruit selling cart and is busy selling fruits from morning to late night with his 14 year old grandson. He says: “My son was killed during the factional war and now I am the head of the family feeding my daughter in law and her three children. I am working for their survival and live in a room which we do not pay any rent. I want the government to prosecute the killers of my son”¹²

B-The Accused

The accused that are to be prosecuted basically include the leaders of the communist regime, the Mujahedin and the Taliban. Since the leaders of Mujahedin have considerable presence in president Karzai’s government and the Afghan parliament, the pressure is more on them than the other two groups. And their reactive attitude in proportion to the other two groups who do not have a strong presence in the government is much more serious. They try to stop or derail the TJ through various means.

The latest reaction that this group of the accused has shown was the approval of the “Peace and Reconciliation Bill” in the lower house of parliament. In this bill, it is stipulated that all those who are accused of the crimes of the past decades including Mulla Omar and Hekmatyar should not be prosecuted and the respect of the Mujahedin should be kept, they should be appreciated and the press and media are bound to follow the bill.

The plan of this bill was laid out after the start of TJ Action Plan and the publications of the HRW statement both of which caused serious and coordinated reactions of the Mujahedin. One of the people who was present in the meeting of the Mujahedin leaders says: “I was present as a representative of one of the accused at a meeting which was held in reaction to the HRW report that was convened in Mr. Kaseem Fahim’s house in Kart-e-Parwan. In the meeting after some hot discussions, it was decided that a huge demonstration should be planned against the HRW report. However, when they went to see Karzai, he told them that it is winter now and they should not carry out a demonstration because it may not be commensurate to their prestige. When the weather improves, they should organize a million people march that would show their degree of popularity and grandeur. Also it was decided that at the start of the working session of the parliament, a bill be prepared and presented for approval. All the Mujahedin leaders would support in coordination so that it would be adopted. This plan was also coordinated with the speaker of parliament, Mr. Qanooni.”¹³

Some of the parliament members which are not related to one of the accused groups vehemently opposed this bill and some even walked out of the chamber in protest. UNAMA also expressed its opposition to the bill and considered forgiveness of the past crimes only as the authority of the victims. Other human rights organizations and victims of the past crimes showed their dismay, calling the decision beyond the responsibility of the parliament and interference in the rights of victims.

One of the survivors of Afshar massacre who lost his father in that tragedy says: "My father was murdered and his murderers are alive today. Is it within the authority of parliament to forgive my father's murderers while I want the prosecution of the perpetrators of the crime? None of the international human rights laws, the Islamic law and the constitution of the country supports this action of the parliament."¹⁴

Karim Rahimi, president Karzai's spokesman in a press conference on February 5, 2007 said "forgiveness of the accused is the authority of victims and the approved bill of the parliament is given to legal experts for study to find out that it would not be contradictory to the constitution of the country". Article seven of the constitution explains: "The state respects the UN Charter, the international treaties, the international conventions that Afghanistan is part of the universal human right convention." The bill has not yet been approved by the senate or the president. On the other hand, the international community, the human rights organizations and the victims have opposed the bill calling it an illegal act by the parliament. It appears that this bill will be neutralized before it goes through the proceedings for becoming the law.

Promotion of bypassing the law is a serious obstacle in the state building and democratization processes in Afghanistan. The country is in a state where insecurity and circumvention of the law are its basic problems and under such circumstances approval of the bill of exemption and immunity and strengthening the culture of impunity will bring about anarchy and a recurrence of the wide spread crimes of the past.

Without doubt, the accused of the past crimes that the Mujahedin leaders are at their center, are in direct confrontation with the TJ. They give this program a religious and political color and with the use of various sources of pressure on the president and of the considerable presence in parliament, they try to stop TJ program and defeat it. Opposition and confrontation of the accused with implementation of justice are natural because if they believed in justice and human rights norms, they would have never committed the crimes that they are accused of. And now unless there is pressure on them, they will never surrender to any kind of trial or prosecution.

As was pointed at the section on justice and security at the beginning of this writing, although, the accused have started occasional cooperation which most probably will not last long and have shown some reactions to the TJ program, if the international community support the victims and the people of Afghanistan and want committed action from the Afghan government, the accused will have no choice but to surrender to justice. Besides, as was explained in the section on justice and security the very excitement and the extreme fear of the accused from justice show their isolation from the people and their weakness. From the recognition of their situation among people, they are very scared of the enforcement of justice and of addressing the demands of the people. No doubt the defeat of this hasty and illogical bill of the accused will deteriorate their

position among the people and would result in their more isolation and their rejection by the people.

C-The Afghan Government

The report “The Voice of People for Justice” shows the people answer to the question that if the war criminals are to be prosecuted, who can do that? 19.9% of people responded that only the government and 49.5% said that the government and the international community can play an important role.

The government has launched some activities in line with the TJ. The most important of which is the “action plan” of TJ, its approval by the cabinet and its official launch by president Karzai on December 10, 2006 to coincide with the International Human Rights Convention celebration.

According to the schedule that is envisaged in the action plan, some parts of it should have been implemented in 2005 and 2006, but this did not take place and at the end of 2006 its start was announced. Nader Naderi, explained the delay in the start of the program thus: “There were concerns that there would be reactions.¹⁵” One of the items of the action plan was the removal of the criminals from government posts and during two years that there is talk about the TJ, not only nothing has been done but that the presence of the accused has become stronger. With the passage of time the accused are gaining more power and protection from the government.

With regard to the requests from the victims and since attending to these issues is a direct responsibility of the government, the inconsistent and small steps that it has carried out so far are not sufficient. There are reasons for this neglect and insufficient work, but some stand out as following:

- Politicization of the Program:

There can be two reasons for the politicization of the process of TJ: One is that Mr. Karzai does not view the TJ as a responsibility that he should look from a sympathetic view to the suffering of the victims in commitment to providing justice, but also as a political tool for keeping the voices of victims and human rights organizations silent. On occasions, he also uses it to put pressure on his political rivals. The publication “Payam-e-Mujahed” Writes: “On 19th Qaws (December 10,2006) that the human rights ceremony was to be held, Mr. Karzai was not ready to take part and speak there. Karzai had asked his first deputy to take part on his behalf. It was only through the insistence of Dr. Seema Samar that he agreed to take part.¹⁶” The second reason is that individuals and groups other than the government also use and take advantage of TJ for suppression of those that they consider as political rivals.

The politicization of TJ reduces the possibility of its enforcement and distorts its real meaning. TJ has never been an important issue by itself for the Afghan government. Whatever the government has done so far in this respect has not been because of concern or belief in the victims’ sufferings and the prosecution of the criminals, but rather to use it as a political tool and for political purposes.

- Doubts Surrounding the International Community's Support:

The other issue that can affect the decision making of Mr. Karzai and the government in Afghanistan is the way the international community supports this program. President Karzai has always tried to avoid any actions that would be in confrontation with politico-military forces of the past. He has avoided this confrontation with great care and one of the main reasons that Mr. Karzai is speaking about it is his lack of confidence and belief in decisive support of the international community of his programs. One of the international TJ activists said: “[Mr.] Karzai gets anybody close to him that he is afraid of. And when he is told not to do that, he says if I don’t do this, there will be a problem that he may not cooperate with me. Karzai is not confident that the international community would support the TJ and he looks at this with skepticism.¹⁷”

- Mr. Karzai's Dual Policy:

The Payam-e-Mujahed publication writes: “The president in his private talks and telephone contacts with Mujahedin leaders is denouncing this program [TJ].¹⁸” This duality in policy and the lack of a transparent policy have caused a working gap. The victims, the people and the human rights institutions expect the government to act while the government itself does nothing. The government has based its policies on deceit and killing of time. With some ceremonial activity, it wants to prolong the waiting time for the victims so that they think the government is busy implementing the program, and with cleverness avoids activities that would cause discomfort among those who in the president’s belief “have played roles in strengthening peace, national unity and stability in Afghanistan.”

The Afghan government rejects others’ reports and is not interested in preparing reports or fact finding activity and this way neglects and ignores the rights of the victims. The government’s dual policy, on the one hand, turns the hopes and expectations of the victims into complexes and the other hand; it encourages and emboldens the accused more.

The publication of a list of the accused perpetrators of human rights violations on December 17, 2006 by HRW was not a new thing. The report “Blood Stained Hands” that was the result of a two year study was published in July of 2005. The report is a 133 page document which contained interviews with more than 150 eye witnesses, survivors and government authorities and had the same list¹⁹. Also there were other reports that were issued earlier by the same organization which had some of the same names that are mentioned in the latest list. Among them is the report “Killing You is a Very Easy Thing for us.” was about Herat and was published in July of 2003 by the same organization²⁰. The reactions shown to these reports by the accused were not coordinated and collective, but some reactions were reflected in some publications belonging to them that were not that serious. The most important one was a meeting held on February 21, 2005 by three of the former Mujahedin leaders—Burhanuddin Rabbani, Abdur Rab Rassoul Sayyaf and Mohammad Akbari to protest the AIHRC. But this year 400 people including most of those who were involved in serious human rights violations gathered in Intercontinental

Hotel ballroom. They agreed on a four point resolution. Article four of the resolution says: “Extensive gathering should be held in Kabul and the provinces.”²¹ Also Mr. Rabbani in an interview warns Mr. Karzai thus: “ The president as the guardian of law should seriously take a stand against this statement (the statement of HRW), otherwise, the atmosphere of low confidence will further”²²

If Mr. Karzai does not change his policy about TJ, there is a fear of the reversal of the situation. Instead of prosecution of the accused, some of the victims and human rights activists would be tortured or persecuted by the accused. This action possibly will be carried out under the pretext of the law or be carried out illegally or militia style. The accused have considerable influence over the government and Mr. Karzai and a lot of the security establishments are at their disposal.

Mr. Rabbani says: “Individuals from this group (HRW) and their nest of spies that has produced this report should be tried. Some local and foreign individuals have been involved in the report preparation.”²³ Also Musharakat-e-Milli, the official publication of Hezb-e-Wahat of Mr. Khalili writes: “The real objective of these conspiracies is the apparent hostility to religious and Jehadi values that are carried by some local spies and foreign ill-intentioned foreign circles”²⁴. Or as Mr. Sayyaf said: “They (pointing to Dr. Seema Samar) should be prosecuted, not us.”²⁵

D- National Civil Society organizations

The most important national organizations that are at present active in TJ, is AIHRC and the most important work that it has done so far in the way of TJ is the consultations with about 6,000 people and cooperation in preparing the action plan for the TJ. Consultations with 6,000 which resulted in a report “The Voice of People for Justice” were carried out exclusively by this commission. This commission is now a member of the Coordination Group for TJ and since three month has started documentation of the war crimes from 1978²⁶.

Aside from AIHRC, no other Afghan organ has done a considerable work in this regard. Since AIHRC is the only independent organization that has done some work in TJ and since people who are accused of crimes are powerful people with influence on the government the scope of the commission activity is limited and if there were no fear and concern about the accused, this commission could have done more important and distinguished work. Although Mr. Naderi believes that the documentation that is going on will not be censored²⁷, the report "The Voice of People for Justice" and some other conservative performances of the commission shows that due the security threats that exist against it, the commission will not be able to publish the result of its investigations, unless some fundamental changes takes place in the policies in government. In the report “The Voice of People for Justice” only general Dostum was named and later the commission said that it has made a mistake.

The Afghan independent media aside from reflecting the reaction and publishing the news have had no important role in TJ. However, the accused related press has worked with coordination and seriousness in distorting and condemning the TJ program. Without doubt, the civil society organizations and national free press during the last five years has

been effective in the democratization process but about the TJ program and reflection of the past crimes has practiced a policy of silence and self censorship. The dependence of some of the CSOs and media to the accused, the dual policy of the government; lack of security guarantees for the journalists and the fledgling and new organizations in Afghanistan are the main reasons for their lack of interest in supporting the TJ.

E-The International Community

The implementation of TJ depends more on the government, people and the civil society organizations in Afghanistan. Since the implementation of TJ in Afghanistan is a responsibility of the Afghan government and the Afghans, the government should necessarily be in the center of all supportive activities of TJ and the policy and the framework of the activities and their performance should also be part of the government duties. The activities of the international community so far have been affected by the policies and views of the government. When all the achievements of the government during the last five years involving TJ have been confined only to the approval of an action plan, even that two years behind its designated schedule, we cannot doubt, expect, anything more or better from the international community.

To understand better the position and performance of the international community, their engagements are divided into two categories, government and non- government:

- UN and International Human Rights Organizations

The most significant activities that these entities have carried out are several reports by HRW the most important of which is "Blood Stained Hands" published in July 2005. The report includes most of the crimes carried out between April 1992 and March 1993. Also several other reports are issued that are complementary to this report.

The report of "Afghan Justice Project" that was published in 168 pages on July 17, 2005, is another important work that is prepared by a foundation called "Afghan Justice Project." The two reports by HRW and AJP are the most important documents about the past crimes and are published without censorship. HRW in addition to collecting documents and evidences about the past crimes has also worked on practical guidelines for the government in Afghanistan and the international community and on different occasions has given its views and criticism to the Afghan government.

The UN also has prepared a report which documents the human rights crimes after 1978. According to the Guardian newspaper, this report was to be published much earlier including once in 2005 which did not happen. The publication of the report was postponed because some of the names mentioned in it are working in close cooperation and/or are aides to president Karzai²⁸. *Ken Silverstein* in an article in Harper's Magazine under the title "*The Unpublished UN Document: 'War Criminals Not the Vanguard of Freedom' are holding High position in Afghanistan.*" He writes "*The Guardian* obtained a copy of the report, but to my knowledge no other media outlet has done so, and suppression by the UN has received virtually no attention on this side of the Atlantic. I recently secured [a copy of the report](#) (296-page PDF), and it's easy to see why publishing

it could lead to embarrassment. It identifies current and former cabinet ministers, members of parliament, and highly-placed members of the Afghan National Army as having played leading roles in past atrocities. (The report details vile atrocities committed by pro-Soviet and Taliban leaders as well.)²⁹ Those who have read the report say that the reason for its non-publication is Afghanistan's volatile security situations at present. There is also another reason and that the report is a collection of information and reports that the UN has gathered during the previous years and some of the information is not authentic or authoritative enough so that the UN, with the sensitivity that exists now, would take the responsibility for its verosity.

But with the importance that the program of TJ may have for the democratization process and the state building in Afghanistan and the crime and injustices that have taken place in the last few decades, only cooperation among the international organizations are insufficient in documenting and implementing justice programs. Even though, the security concerns facing human rights researchers and the lack of interest on the part of the Afghan government are the reasons cited for the less interest expressed and little work done so far, but this justification alone is not sufficient and convincing.

There have been very limited and little activities in line with consultations with people and professionals that the international organizations were involved too. As an example, one can point to a three day conference (January 13-16) "Reconciliation and truth seeking" that was held in Kabul. Also there have been small consultative meetings held by UNAMA in some provinces, although their results have not been announced to the people. It is also possible that these meetings were held for UNAMA's own internal uses decision makings rather than public uses. Some of these organizations took part in a conference. "The Hague Conference on Peace and Justice in Afghanistan." that was held between June 5-8, 2006 in The Hague. However, UNAMA has been one of the central supporters of the transitional justice program and has had significant role in coordinating the efforts, drafting, approving and inaugurating the Action Plan. UNAMA has recently taken on more rigorous stance with regards to transitional justice whose statement in reaction to National Reconciliation Manifest passed by Afghan parliament was promising.

In another section where more cooperation was expected from these organizations was their technical and financial cooperation with the activists of the TJ in Afghanistan but in these two fields too there have not been special cooperation forthcoming. So far there have not been any noteworthy technical or financial cooperation from any donor or international organization with any Afghan organization or activist working in TJ. If we study the billions of dollars in international aid, we see little things which have not received an amount or a workshop or training, no matter how symbolic were held for them. However, we find few cases where a small amount for a brief training that has been held in the name of TJ or for remembering millions of victims of the crimes against humanity in Afghanistan.

- Foreign Governments

Cooperation and assistance from friendly countries that have stakes in the reconstruction of the Afghanistan are far fewer than those that are so far carried out by the NGOs. This shortcoming and lack of interest of these countries probably have

different reasons, but the most important one can be the momentary policies and lack of long term commitment in the state building process in Afghanistan. Ineffective and inefficient spending of billions of dollars of foreign aid of these countries and lack of attentions to basic infrastructure is a good case in point. Also the challenges that the US and its allies faced in Iraq forced the long term and basic program in Afghanistan to back burner and less important place. It looks as if instead of working on long term program in Afghanistan and Iraq they are thinking of creating passing stability in these countries so that they can justify their military presence and fighting. At the same time in bringing fragile stability in these countries, would give them reasons for withdrawal without appearing defeated.

Some countries do not agree with these policies and stability and long term program in Afghanistan are very important to them and at least on diplomatic and ceremonial meetings, show their support of the transitional justice or are unhappy and express concern over the sorrowful situation of TJ in Afghanistan. Probably these countries do not want to antagonize the international allies and some close circles of Afghan government or probably have doubts about the effect of their activities in absence of decisive stand by the Afghan side so they do not want to work more on TJ in Afghanistan.

The EU special representative's office and the Netherland's Embassy in Afghanistan have active support roles for transitional justice program. They are members of TJ core group and played significant role in convening a "Truth Seeking and National Reconciliation" Conference in Kabul in 2005 as well they played similar role in holding the "Hague Conference, and in many other projects.

Conclusion

The security situation escalated in 2006 and the increasing security concerns still remain un-abated in face of predicted large scale Taliban's spring offensive. The neglect and marginalization of transitional justice can further exacerbate the security situation and its implementation which may entail the removal of some of the former predatory leaders who are still in important positions of power, would re-instill hope in public confidence

Afghan government with striking deals with individuals accused of past and ongoing human rights abuses and crimes, may establish fragile security in short-term. However, long-lasting security and stability can not be achieved and the democratization process in the country that began after the Bonn Agreement will not materialize unless the government institutions and its agencies especially in the provinces are cleared of the presence of grave human rights abusers and perpetrators and the still bleeding wounds of millions of victims are healed.

If the transitional justice is rigorously implemented and the past abusers are investigated, the perpetrators' courage will wither to stand against the public demand and confront the wills of the international community.

The implementation of transitional justice and the fair trial of the perpetrators in a post-conflict environment are the central features for establishing permanent security. Unless justice is enforced, there will not stable security as the public can not trust a government

and in the presence of human rights abusers in the government, speaking about peace, democracy and a stable Afghanistan, more or less, resembles a day-dreaming.

The partners organizations in TJ program that the Afghan government is at their center have no regard for the TJ program and the government treats the TJ with a dual policy with the impression that it can have the support amid the presence of the abusers and while at the same time can have the backing of the victims.

The Afghan nongovernmental organizations have no effective role either. Nor has the international community a single strategy about the TH program. Each of them treats the TJ program in accordance with their day-to-day political interests and priorities.

Five years ago there were better prospects for the implementations of TJ but with negligence and with the passage of each year, the prospect got more limited. With the continuation of present condition, the people and the victims in particular are disappointed from the implementation of justice and in this way the gap that exists between the government and the people are increasingly being widened.

If implementation of TJ program is barred, the Afghan government will be unable to develop and stabilize and it will continue to remain as corrupt and shaky as ever.

It appears that a special and independent commission made up of local and international members is needed to implement TJ program. The commission should be devolved with required authority and political will and be equipped with necessary financial resources.

The commission should prioritize the conduct of a comprehensive public-awareness-raising campaign to explain the objectives and implication of transitional justices to the victims, neutral populations and the perpetrators. It has to be articulated that the prime objective of transitional justice is to restore and strengthen perpetual peace and insulate the state against its possible sliding back into disorder and chaos.

The Afghan institutions and civil society should be encouraged to take active part in the enforcement of this program. In such a way, the implementation of transitional justice program will take on a national character and may infuse a sense of national responsibility among the people and will highlight the vitality of the process in establishing far-reaching peace for the people of Afghanistan.

¹ Rahimi, Karim's press conference, December, 2006

² Païam Mujahid Weekly, 42nd issue, January 4, 2007

³ Ibid

⁴ Musharekat Melle Weekly, 193rd issue, December, 2006

⁵ Bahar Weekly, issue 120th, December 24, 2006

⁶ Interview, January, 2007

⁷ AIHRC, Voice of the people for justice, 29/01/2005

⁸ Interview with a person from Helmand Province, January 21, 2007

⁹ Interview, December 18, 2006

¹⁰ Interview, January 9, 2007

¹¹ AIHRC, Voice of the people for justice, 29/01/2005

¹² Interview, January 8, 2007

¹³ Interview, January 28, 2007

¹⁴ Interview, February 4, 2007

¹⁵ Interview, January 11, 2007

¹⁶ Païam Mujahid, 40th issue, December 21, 2006

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- ¹⁷ Interview, January 20, 2007
- ¹⁸ Paiam Mujahid, 40th issue, December 21, 2006
- ¹⁹ <http://hrw.org/reports/2005/afghanistan0605/>
- ²⁰ <http://www.hrw.org/reports/2003/afghanistan0703/>
- ²¹ Paiam Mujahid, 41st issue, December 28, 2006
- ²² Bahar Weekly, issue 120th, December 24, 2006
- ²³ Ibid
- ²⁴ Musharikat Melle, 193rd issue, December 2006
- ²⁵ Only shedding tears is not enough, December 23, 2006, an article from this author
- ²⁶ Interview, January 11, 2007
- ²⁷ Ibid
- ²⁸ [Http://www.guardian.co.uk/Afghanistan/story/10,,1795546,00.html](http://www.guardian.co.uk/Afghanistan/story/0,,1795546,00.html)
- ²⁹ Suppressed UN Document: war criminals—not “freedom fighters”—hold some top posts in Afghanistan