



Combining various transitional justice approaches in peace building after contemporary conflict, the case of Afghanistan

Nooranwar Farooqi

Assistant Professor, Department of Judgement and prosecution, Faculty of Law and Political Science, Paktia University, Paktia, Gardiz, Afghanistan

Abstract

Post-conflict justice includes information on six forms of addressing wrongdoings: trials, truth commissions, reparations, amnesties, purges and exiles. But none of the mentioned has been executed in Afghanistan. Transitional justice is very effective in Post-conflict peace-building processes of countries. The sustainable justice is only possible if justice is served. The initiative of peace first justice latter may not result in the sustainable peace of Afghanistan. There was action plan for transitional justice in Afghanistan, but it was mostly symbolic.

Keywords: Combining, Transitional, approaches, building, contemporary

Introduction

Background

The characteristics of contemporary conflict are more combined than ever. After 9/11 conflicts become more complex, taking source from ideology, environmental degradation and war for natural resources. If we see ethnical roots of conflict and natural resources-based conflicts in African continent, we can imagine how deep the issues are. On the other hand Middle East, Central Asia and South Asia are observing civil war and terrorism. However, during the cold war era conflicts were more interstate, as Porto notes: "The majorities of war-centered studies were conducted as strategic issues' studies such as balances of power, nuclear deterrence, alliances and arms races. After the Cold War, during the brick of Soviet of Union and there after the conflict became more intrastate and regional. The newly emerged states were facing structural collapse; civil wars and conflicts among ethnic groups were amounting" (Porto, 2002, pp. 2-4) ^[1]. Recently the refugee's crisis, war on terror, war on drug dealers, ethnic cleansing, globalization and economic-crisis are giving new shape to conflict. Even the conflict in Asia can threaten the security of Europe, which means the current intrastate conflicts are not restricted to state's borders, but it can pose threat to region and to world as a whole. In addition, Weak states, weak economies and so many others factors are the main causes of contemporary conflicts. Those newly established states are always at the edge of collapse and always vulnerable for dozens of conflicts. Therefore, the definition of contemporary conflict is quite complex, because the conflicts before the collapse of Soviet Union were based on zone and battlefield of combat. But today the conflicts are moving fast enough from one country to another, e.g. non-state armed groups always take responsibility of insurgent acts from unknown places.

In Afghanistan Taliban have Shadow Government, which administer all of the country's institutions, providing legal and political services to the people of Afghanistan. In addition, there is huge conflict among modernists and

religious traditionalists. There is conflict between Sunni and Shi'a, and within Sunni sect there are different categories, which issue rulings against each other. Furthermore, the ethnic groups have been in conflict since decades. There are differences inside the same ethnic group. Therefore, all these conflicts and disagreements resulted in the division of Afghan society that easily stops the development process. Here, I want to discuss that all these conflicts' sources are embodied in the civil war, which put Afghanistan against Afghan. Millions killed and left their country as refugees. The question is who was responsible? Those seven party leaders and their close allies or someone else. Un documented findings and eyewitnesses show party leaders (warlords or commanders) were engaged in mass human abuses. And now they are considered the main cause for insecurity, peace and development. They are exempted from judicial inquiries, because they were not trailed from the mass human abuses.

What really Transitional Justice is and how approached in Afghanistan?

Transitional justice has gradually extended its meaning. It covers the establishment of tribunals, lustration of state's administration, reparations, political and societal initiatives devoted to fact-finding, reconciliation and culture of remembrance (Fischer, 2011, p.407) ^[2]. Post-conflict justice includes information on six forms of addressing wrongdoings: trials, truth commissions, reparations, amnesties, purges and exiles (Binningsbø, Loyle, Gates & Elster, 2012, p. 734) ^[3]. Based on these various types of transitional justices, I want to extend each of them to Afghanistan's conflict aftermath. Still none of the war criminals has been trialed, exiled and paid reparation for the victims. According to Afghanistan Justice Organization (AJO) (2013), Afghanistan has initiated three reconciliation initiatives; Afghanistan New Beginnings Program and Program Tahkim-e-Solha were the earlier, but failed. Than Afghanistan Peace and Reintegration Program were started, this program is also not as much effective as expected (p.4).

Because all of these approaches are top-down, these do not cohere with local contexts and understanding. According to some experts it has further exacerbated tensions and increased the likelihood of a return to conflict.

The efforts of Afghan government and problems to achieve transitional justice

Since the Bonn Agreement in 2001, no efforts have been made by the Government of Afghanistan to implement transitional justice. The alleged perpetrators of the human rights abuses have been given high positions and impunity. The Government and international actors argued that it could disrupt the peace further. The same happened at Emergency Loya Jirga in 2002 (Winterbotham, 2010, pp.4, 6) ^[5]. However, throughout the time span, Afghan government has struggled for the transitional justice. Even there is a high share of human rights abusers in the government. According to Nadery (2007) ^[4], in 2002, Afghan president Hamid Karzai, civil society members and religious elders gathered at the first national human rights workshop, which resulted in the Afghan Human Rights Commission (hereinafter, the Commission) to propose a policy for transitional justice (p. 3). In 2005, the Commission launched a survey interviewing 5000 people across the country that showed people are highly enthusiastic of bringing war criminals to trials (Nadery, 2007, p.4) ^[4]. The action plan for transitional justice had symbolic measures, institutional reforms, truth seeking, reconciliation, and accountability measures. But the plan was destroyed when Parliament of Afghanistan passed law-granting amnesty for all criminals in 2007 (Winterbotham, 2010, p.6) ^[5].

The documentation of truth and facts

Those who seek to document past crime face significant risks, including deaths, serious abuse or torture, kidnaping and it is potentially dangerous, and the need for documentation became apparent during the run-up of 2005 parliamentary election. Afghanistan Independent Human Rights Commission (AIHRC) reported abuses, its completion & publication were scheduled in 2012, but President Karzai refused its completion and publication (Gossman, 2013, pp.3-5) ^[8]. Because, those past crimes abusers have high share and strong positions in that government, the President was unable to take any action without their consultation. International and national human rights activists are researching not going to fields because of the high security alert, they just document based on the data already available. Last years, some activists tried to document all those atrocities in the curriculum of school's history books, but Afghan Parliament's members refused in absolute majority.

The warlords, as a major challenge for stable Afghanistan Warlords might forego peace negotiation because they fear severe punishment (Binningsbø, Loyle, Gates & Elster, 2012, p. 731) ^[3]. The special representative of the United Nations Secretary General Lakhdar Brahimi planned a long-term strategy for peace-building by political sustainability, he proposed to neglect bringing Warlords to trial (Nadery, 2007, p.2) ^[4]. According to Uesugi (2009) ^[6], Afghans are willing to bring warlords to trials, therefore, if we want a sustainable peace we need to take peoples' consideration into account, which could promote peoples' trust on state (p.15). Furthermore, according to Wardak (2004), because

of the internal crisis of Warlordism, people lost their property and beloved. Most of these people are currently revenging and involved in destructive activities (p.5). After the disintegration disarmament and reintegration process, still many Warlord have influence on regional commanders to get profits of opium. And then they share the profit of opium earning with terrorists organizations (Ishizuka, 2007, pp. 4, 5). Each of the warlords has private militia, every kind of abuse and crime they want, they can commit. Because, they call themselves heroes of the war against Soviet Union. They ask for special treatment in the allocation of resources.

Conclusion

To date, the only activity that has been implemented is the creation of Victim's Day. But celebration of this day does not have any plurality; there is a huge disrespect because only celebrating Victim's Day cannot cure people wounds. However, according to Gossman (2013) ^[8], regarding the awareness of human rights past abuses, the War Crimes Research Office and the Pence Law Library of American University launched an online accessible data base of the 1978's crimes, where people can share even sensitive documents. This online database is good for accountability and future information (p.7.). Furthermore, Article 7 of the Afghan Constitution abides by all the international human rights treaties. And Article 6 obliged the state to create a society based on social justice and protection of human rights.

Based on the interviews conducted, majority of the people want those war criminals to be brought before the competent courts. But due to weak state and high share of the Warlords it is impossible. According to my point of view it is impossible to bring them to the table, because of the bad security situation. But it is possible to apologize and compensate.

Finally, bottom up approach is important to explore local alternatives to liberal peace building. Bottom up approach can cohere with the understandings of those stuck in the conflict; otherwise the situation may turn more intense and complicated. The truth finding commission can work only when there is no intervention.

References

1. Porto JG. Contemporary conflict analysis in perspective. Lind, J., K. Sturman. Scarcity and Surfeit. The ecology of Africa's conflicts. Pretoria: Institute for Security Studies, 2002, 1-49.
2. Fischer M. Transitional justice and reconciliation: Theory and practice. Advancing Conflict Transformation. The Bergh of Handbook, 2011, 2.
3. Binningsbø H, Loyle C, Gates S, Elster J. Armed conflict and post-conflict justice, 1946-2006: A dataset. Journal of Peace Research. 2012; 49(5):731-740. Retrieved from <http://www.jstor.org/stable/41721636>
4. Nadery AN. Peace or justice? Transitional justice in Afghanistan. International Journal of Transitional Justice. 2007; 1(1):173-179.
5. Winterbotham Emily. The State of Transitional Justice in Afghanistan: Actors, Approaches and Challenges. Kabul: Afghanistan Research and Evaluation Unit, 2010.
6. Uesugi Y. (Ed.). Toward Bringing Stability in Afghanistan: A Review of the Peace building Strategy.

- Institute for Peace Science, Hiroshima University, 2009.
7. Ishizuka K. Security Issues facing Peace-building in Afghanistan: "Is a light-footprint approach a panacea?". 共栄大学研究論集, 2008; 6:133-153.
 8. Gossman PA. Documentation and Transitional Justice in Afghanistan. United States Institute of Peace, Special Report, 2013; (337):6.
 9. Afghanistan Justice Organization (AJO), Policy Note. Transitional Justice in Afghanistan: "we should not repeat old issues", 2013. Retrieved from <http://www.gppac.net/documents/130492842/0/GPPAC+AJO+Policy+Note+Transitional+Justice+In+Afghanistan+final.pdf/300e8c02-6e10-445a-9e19-8bfe91fbd7c5>
 10. Afghan const. Art 6, 7.