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Path to peace, justice in Afghanistan

Healing the wounds of the civil war requires both reconciliation and accountability.

By J Alexander Thier and Scott Worden

WASHINGTON

Like every country facing the aftermath of civil war, Afghanistan is struggling to balance the need for peace and stability with demands for justice and accountability. Last Saturday, the lower house of the country's parliament passed a bill that encourages all factions, including the Taliban, to join in a process of national reconciliation. In return, these groups and individuals would be immune from prosecution for atrocities committed before joining the process.

Although President Hamid Karzai successfully negotiated a crucial amendment to protect the rights of victims of war crimes, the new amnesty law still favors the powerful warlords who sponsored the bill. Unless the government takes responsibility for standing up to the perpetrators of past atrocities, true national reconciliation may be impossible to achieve.

The amnesty issue arose last month when Afghanistan's parliament passed a hastily drafted "Charter on National Reconciliation" that aimed to provide a "comprehensive solution" for "consolidating peace and stability." These goals are worthy, but healing and unity were not the only motives behind the legislation. The bill was also a self-serving attempt by many of the country's top warlords-cum-politicians to escape prosecution for the horrific catalog of crimes – mass executions, torture, rape – that they perpetrated against other Afghans for nearly three decades.

It's a positive sign for Afghanistan's young democracy that the initial bill provoked an outcry. Despite a rally in the national stadium by the still-armed political leaders behind the measure, civil-society leaders and

human rights groups protested that parts of the bill were unconstitutional and against international law. Then the usually conservative National Council of Islamic Clerics declared the bill un-Islamic because only victims have the right to forgive their tormentors under *sharia* law. Western diplomats also pressed Mr. Karzai to find a solution that promoted stability and respected international law.

After intensive negotiations, Karzai achieved a legislative compromise that acknowledges the sacrifice made by mujahideen fighters against Soviet occupation, while calling for a process that will rebuild trust in Afghanistan's divided society. The legislation invites all groups involved in the past three decades of war to lay down arms and rejoin society. This includes communists, Islamists, and royalists who fought a series of civil wars over the past 25 years, and the Taliban and other forces that are still fighting the government today. An unconstitutional prohibition on criticizing the jihad and its leaders has also been struck from the bill.

The most controversial and confusing aspect of the bill remains its amnesty provisions. On one hand, the revised bill offers general amnesty from prosecution to all former combatants who agree to abide by the Constitution and laws of Afghanistan. However, a crucial clause restricts this reprieve, stating that the amnesty "shall not affect individuals' ... criminal or civil claims against persons with respect to individual crimes."

Read broadly, this provision could mean that amnesty does not really protect any individual from answering for his crimes – so long as a victim is brave enough to bring a claim. But in Afghanistan, where many of those responsible for past crimes retain weapons and power, it is unlikely that a victim would press a claim without active support from the state. And in fact international law requires the Afghan government to investigate and prosecute war crimes.

The best way to ensure that the new bill becomes a force for reconciliation is to implement it within the framework of the Action Plan for Transitional Justice, enacted by Karzai last December. The plan sets up several mechanisms to foster forgiveness and accountability, such as a commission to vet high-level government officials and a program to build national monuments of remembrance for victims. But crucially, the plan states, "[T]here will [not be] amnesty for war crimes, crimes against

humanity and other gross human rights violations."

These are momentous decisions for Afghanistan's future in an unstable time. International experience has shown that amnesty has not worked to promote reconciliation where potentially guilty parties have simply tried to evade accountability. The original bill referred to the process of truth and reconciliation in South Africa as a model for Afghanistan, but they drew the wrong lesson. In South Africa, amnesty wasn't for everyone; it was granted only to those who publicly admitted their crimes and asked forgiveness. The threat of prosecution remained for those who did not cooperate.

In Afghanistan, lack of accountability continues to erode support for the government and creates fertile ground for the insurgency. Karzai must seize this opportunity to cement his leadership by transforming a self-serving attempt by warlords to avoid justice into a measure that truly sets a course for reconciliation and peace.

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