

# **MAKING PEACE WITH THE TALIBAN, AT WHAT COST?**

## **Seven keys to a just peace for the people of Afghanistan**

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security

**FIDH-Armanshahr Foundation/OPEN ASIA position paper  
before the Bonn conference on 5 December 2011**

**The Afghan people live in a general climate of fear and uncertainty, ten years after the launch of the US-led international intervention** to remove the Taliban from power and put an end to terrorist networks in Afghanistan. While many are disillusioned by the meagre progress of economic development and social welfare in the country, other major challenges are yet to be adequately addressed, especially in building democratic, just and rights-respecting institutions. The security situation is steadily deteriorating and daily acts of terror and intimidation against civilians in different regions have alarmed the Afghan people, whose memories of systematic and generalised human rights violations, atrocities and oppression under the Taliban regime remain vivid. Despite these hardships, Afghans have nevertheless consistently and unswervingly expressed their faith in progressive change and democratisation, as well as a strong desire for justice, and for the end to all-pervasive impunity.

**As the Bonn conference on 5 December 2011 approaches**, a fair, sustained and transparent re-engagement of the international community *vis-à-vis* the Afghan people is crucial. Safeguarding and consolidating important institutional and democratic achievements in Afghanistan since 2001 is essential to ensure that the country does not slip back into a situation of prevalent mass human rights violations, as is already the case in certain parts of Taliban-controlled Afghanistan; however it is equally necessary to fulfil the international community's original purpose in investing resources in the country. For the Bonn conference to be successful, it must embody a strong commitment from the Afghan State and the international community to fully endorse justice and human rights as core, non-negotiable principles in all institutional and strategic arrangements.

**This paper highlights seven key criteria that must be met for sustainable peace in Afghanistan to be possible.** The idea of reconciliation at any cost prevails in Afghanistan, as demonstrated by the Loya Jirga convened on 16 November 2011 in Kabul. This approach has consistently proven unsuccessful, with dire consequences: it not only obliterates truth-seeking instances, but obviates justice, promotes continued impunity and leads to further human rights violations. It does not lay the foundations for sustainable peace. Recent experience shows that reconciliation before truth seeking and justice only rehabilitates those responsible for grave human rights violations. International actors should face their responsibilities and obligations, and assist the Afghan people in openly confronting past and present violations. Reconciliation cannot occur in a vacuum: the constraints imposed by Afghanistan's constitution, its national legislation and its international obligations, should preclude negotiating with entities – such as the Taliban – who are accused of grave human rights violations and drastically oppose human rights.

## **Key 1: Do not endorse a return of Taliban to power at the Bonn conference**

Peace and justice in Afghanistan cannot be achieved if the reconciliation process is limited to a talk show between an internationally supported government rapidly losing its popular backing, and the Taliban who intend to impose their own terms on negotiations and their repressive ideology on the Afghan society. Short sighted solutions and quick-fixes will once again create a safe haven for fundamentalist activities in the heart of Asia; this would have damaging and alarming consequences on human rights for the Afghan population. To believe that it is possible to broker with the Taliban whilst guaranteeing protection of the most basic human rights is deluded. To actually attempt to do so exhibits irresponsibility. As highlighted below<sup>1</sup>, the Taliban have systematically engaged in crime and human rights violations, particularly of women's rights. To claim that the Taliban have popular backing makes a mockery of Afghanistan's democratic institutions as well as of the consistent and genuine expressions of popular will against the Taliban over the years, notably during four elections. The Taliban clearly cannot be considered as an organized and legitimate political group capable of administering political responsibilities, ensuring the general welfare of the population and reinforcing democratic institutions.

### **Recommendation:**

- The Government of Afghanistan, its regional allies, the United Nations and democratic countries represented at the Bonn conference must not allow the Taliban impose their terms nor their repressive ideology on the final agreement that will emerge from the conference. Basic human

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1. See annex «Who are the Taliban? ».

rights are non-negotiable. The Taliban must immediately cease hostilities. They should only be accepted as interlocutors if they fully respect, and comply with, the constitution, existing laws, and Afghanistan's international obligations; this is something they do not and will never do.

## **KEY 2: Strengthen democratic institutions, in particular the justice system, and enforce a true separation of powers**

- Durable peace and sustainable justice in Afghanistan requires a vigorous support of its democratic institutions, its elected bodies, and a proper and functioning separation of powers. The executive has been allowed to dominate the legislature and the judiciary for too long, at a heavy cost to the healthy functioning of the Afghan State apparatus. The justice system lacks resources, manpower and training, and is consistently subject to political interference at every level. In particular, a comprehensive review of the mandate of the Supreme Court and the Attorney General's Office is crucial to severing the judiciary's close ties to the executive. The deterioration of the formal justice system has not only fueled the insurgency and weakened all other institutions, but also paradoxically affected the informal justice system, which does not abide by human rights or constitutional norms; it has also fallen prey to political games of coercion as well as new, ultra-conservative interpretations of Islamic Law, with no guarantee for basic rights, least of all women's rights. Sustained commitment to establish a genuine rule of law throughout the country is necessary. All rights enshrined in the Afghan constitution and the international treaties to which Afghanistan is party must be enforced through law-making and the development of the security and the justice sectors. Widespread election fraud should not be tolerated in the future.

### **Recommendations:**

- The progressive withdrawal of international troops must take place along with the demonstration of a serious commitment of the international community to support the strengthening of democratic institutions all over the country (including the justice system) and capacity-building within the national security forces. The Afghan Independent National Human Rights Commission (AIHRC) and other human rights organisations must receive appropriate support, and their independence must be guaranteed. The recommendations made by the United Nations Commissioner for Human Rights in her 2011 annual report to support and strengthen institutional capacity in the country through the United Nations Assistance Mission in Afghanistan, must be implemented.
- The Afghan government, in collaboration with and under the supervision of the international community, must fight the endemic corruption that prevents democratically-elected institutions from functioning adequately. Independent monitors should be mandated by the international community to reinforce vetting processes and prevent election fraud in the future.

## **KEY 3: Protect women's rights in law and in practice**

Justice in Afghanistan means eradicating all laws and practices that discriminate against women. This means putting an end to stoning, lashing, forced and child marriage, acid attacks, exchange of girls and women as a means of conflict resolution, so-called "honour" killings and other forms of physical and psychological abuse. It means fighting impunity for violence against women and ensuring the security of women and girls, as well as their full access to independent justice across the whole territory. Full compliance with international human rights obligations, including under the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)<sup>2</sup> and the effective implementation of the article 22 of the Afghan Constitution is vital. The rights of women cannot be guaranteed in a void: their protection is intrinsically linked to securing a democratic State and strong and fully functioning institutions.

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2. Ratified by Afghanistan in 2003.

### Recommendations:

- The international community must ensure the strong representation of women at all stages of any peace negotiations. Women should also be represented in the implementation of negotiated agreements in line with UN Security Council Resolution 1325. The government of Afghanistan must adopt a National Action Plan to implement Resolution 1325, nominate women to key government posts and ensure their full representation in political and other decision-making bodies.
- The government of Afghanistan must immediately repeal all discriminatory laws against women. This includes repealing the Shiite Personal Law, the law on marriage, discriminatory provisions within the Criminal Code, property laws and discriminatory customary laws. Steps should be taken, with the support of the international community, to end recourse to parallel customary informal courts and to ensure that women have full access to an effective formal system. The government must adopt laws to protect women from discrimination at all levels and strengthen, jointly with the Supreme Court and the Office of the Attorney General, the implementation of the Elimination of Violence against Women Act as the government's main tool to end harmful practices. It must use all possible means, in collaboration with the international community, to improve women's access to basic social services such as primary healthcare and education throughout the country.

## KEY 4: Establish transitional justice mechanisms and fight impunity

Justice means establishing transitional justice mechanisms (possibly inspired by successful international experiences) to put an end to the impunity that has now undermined Afghan society for several decades. All those responsible for grave human rights violations should be investigated and prosecuted. Many of these persons currently hold positions that allow them to commit further violations; vetting and accountability mechanisms in elections processes and government institutions should therefore be strengthened. Victims should be provided with redress. These requirements are key elements in the future success of a strong democratic Afghanistan. Victims' rights to truth, justice and reparation should be respected and properly implemented. The role of the International Criminal Court (ICC), the Statute of which was ratified by Afghanistan in 2003, is paramount in this respect. The Office of the Prosecutor has been analysing the situation in Afghanistan for the last five years: the ICC should without further delay decide whether to open a proper investigation, and apply the principle of complementarity.

### Recommendations:

- The United Nations should seriously investigate and document international crimes committed by the Taliban and other groups in Afghanistan, and propose and implement a solid framework for the establishment of transitional justice mechanisms. Such mechanisms include truth commissions, redress for victims and memorial centres, to complement essential criminal justice mechanisms.
- The International Criminal Court (ICC) should also be vocal on the state of the Office of the Prosecutor's preliminary analysis of the Afghan situation. It should open an investigation into international crimes committed in the country since 2003, should national justice mechanisms continue to demonstrate their inability and unwillingness to genuinely investigate and prosecute the main perpetrators of these crimes. The ICC would thereby respond to victims' desperate need for redress and thus contribute to breaking the vicious circle of impunity.
- The Government of Afghanistan and its international supporters should renew their pact with the Afghan population by allowing transitional justice mechanisms to become an issue of public debate and competence. The government should act on a victim-oriented Action Plan for Peace and Reconciliation, as originally drafted in 2005. The Public Amnesty and National Stability Law should be revoked as it clearly violates the Constitutional provisions and the Government's international treaty obligations.

## **KEY 5: Fully perform human rights obligations under the protection mandate of the international community**

The international community should perform a complete overhaul of its strategy in Afghanistan. It should endorse, through the United Nations system, a strong and ambitious mandate to protect and promote human rights in the whole country. In cases of concrete threats against human rights defenders and Afghan citizens, full protection, including a right to asylum, should be provided. The ISAF mandate, which was defined in 2001 under very special circumstances, needs to be brought to an end by 2014. Civilian deaths, targeted killings and inhumane practices such as torture and illegal detention under the responsibility of ISAF forces or international troops need to be urgently brought to an end, and perpetrators systematically brought to justice. The same forces must immediately strengthen their accountability and improve access to justice and redress for civilians who suffer harm.

### **Recommendations:**

- International military forces and Afghan National Security Forces, as recommended by the United Nations High Commissioner for Human Rights in her 2011 annual report, must ensure that systems are in place so that incidents causing civilian harm and misconduct of international troops are properly documented and followed up with credible and transparent investigations. All those affected must be offered appropriate redress (including guarantees of non-repetition and compensation, apologies, investigations, tangible gestures of recognition). Compensation should be provided promptly, uniformly and systematically to all civilian victims of conflict-related casualties and human rights violations.
- The international community, through the United Nations system, should immediately implement the responsibility to protect, as recommended by the Secretary General's report A/63/677 of 2009. It should therefore assist the Afghan government to exercise that responsibility and build its protection capacities. Should the Afghan government manifest an inability or unwillingness to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, the international community should be prepared to take collective action in a "timely and decisive manner" through the Security Council and in accordance with the United Nations Charter.

## **KEY 6: Respect the economic, social and cultural rights of Afghan people, and foster a sustainable model of development**

Justice means building a sustainable model of development for Afghanistan, in line with the social, economic and cultural rights of all Afghans in their diversity. Economic development must be fair and lead to adequate redistribution. The international community's commitment to supporting Afghanistan's immediate and long-term development and providing humanitarian assistance, as necessary, must conform with internationally recognized human rights principles.

### **Recommendation:**

- Donor countries should ensure that development assistance exclusively addresses needs as defined in consultation with Afghan civil society, including women, instead of being subordinate to security and military objectives which do not systematically serve the population; all structures linking civilian to military assistance should be dismantled as soon as possible during the transition process.

## **KEY 7: Respect human rights while promoting regional security and fighting international terrorism**

Respect for human rights must be at the core of any cooperation agreement between the Government of Afghanistan, neighbouring countries and the international community to promote regional security and fight international terrorism.

### **Recommendations:**

- Relevant UN Security Council Committees, international organizations and expert groups, including the Committee established pursuant to UN Security Council Resolution 1267 (1999), the Counter Terrorism Committee (CTC), the United Nations Office of Drugs and Crime, the Counter-Terrorism Executive Directorate (CTED) must set up appropriate institutions and implement, in a transparent way, efficient mechanisms to guarantee the full respect for human rights while fostering regional security and coordinating the fight against international terrorism among all concerned actors.
- In regard with the UN Security Council latest resolution on international terrorism and the threat it poses to Afghanistan<sup>3</sup>, the Security Council must guarantee that the UN sanctions list of Taliban and other individuals, groups and undertakings associated with them gets regularly updated. Should any doubt persist about the intentions and behaviour of designated Taliban, the Security Council should not hastily lift, in the name of reconciliation, some individuals from the list, as expressed in the same resolution.

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3. SS/RES/1988 of 17 June 2011.

# Annex: Who are the Taliban?

For the past few years, the number of civilians killed by Taliban insurgents in Afghanistan has been exponential. In 2010, 75% of the 2777 civilian casualties were reportedly victims of the Taliban. During the first semester of 2011, 1167 civilians were killed by Taliban forces. Moreover, there is growing evidence that most human rights violations and restrictions on fundamental freedoms imposed under the Taliban regime before 2001 have been revived in regions where the Taliban are present. Recourse to intimidation and threat against the population is being used by the Taliban who, for the past few years, have targeted schools with bomb attacks, and attacked female pupils with acid. On 16 August, 2010, the Taliban restored public executions by stoning, stoning a young couple who had eloped to escape family pressures. There are numerous similar cases of brutality and summary execution. On 11 November, 2011, a group of armed men stoned and shot dead a woman and her daughter in Ghazni province, just 300 meters from the governor's office in Ghazni city, a territory prioritised for transfer to Afghan security control. The mother was accused of "moral deviation and adultery". The Taliban also control major roads and are taxing people in many of the regions where they are present. People working for government institutions have been targeted, killed and imprisoned by the Taliban, who deny the government's legitimacy. Some district officials have been beheaded. The Taliban have banned mobile phones, video cameras and music apart from Taliban radio stations which play hypnotic chants.

Under the Taliban regime (1996-2001), physical force was used as punishment. One particularly harsh dimension of the Taliban's rule was their implementation of justice according to extreme interpretations of Islamic, Sharia and tribal law. Regular public executions, lashing and stoning took place at stadiums or in specific parks during the regime. The hands and feet of thieves were regularly hanged from trees for several days. Women were particularly singled out, especially if they behaved or dressed inappropriately; the *burqa* was compulsory dress and wearing shoes with heels was banned. Across the country, girls' schools were closed and women, including widows with no family income, were banned from having jobs. House windows were painted black so that no one could look through them and see women.

The Taliban regime was also characterized by the extreme restriction of basic freedoms and imposed codes of conduct. The Taliban ordered all people with non-Islamic names to change them to Islamic names; men were not permitted to shave or trim their beards (beards had to be grown long enough to protrude from a fist clasped at the point of the chin); all people had to attend prayers in mosques five times daily on penalty of arrest and punishment. Anyone who converted from Islam to any other religion was executed. Non-Muslim minorities and the Shia had to wear a distinct badge or stitch a yellow cloth onto their dress to be differentiated from the majority Sunni population. Kite flying, the keeping of birds or other activities considered to be non Islamic were banned; violators were imprisoned.

The Taliban also targeted specific ethnic groups and religious minorities. The Hazara and the Shia, but also Tajiks and Uzbeks, faced particular abuse and repression. Many communities believe the Taliban's overall aim was to eliminate the Hazara population and drive them out of Afghanistan. The Taliban even used tricks to capture and kill Hazaras. The Taliban thought the Hazara to be Buddhist - allegedly because of the presence of Buddha statues in Bamiyan. Hazaras were viewed as infidels - populations had to pay an infidelity tax if they were not Sunni - and the Taliban considered that killing Hazaras was part of waging jihad. In July 1998, the Taliban executed approximately 2000 Hazara civilians in the city of Mazar-e-Sharif, going door to door for 6 days, looking for male and executing Hazara men. Thousands of prisoners were transported in metal transport truck containers where many suffocated or died of heat stroke. The highest and most prolonged levels of Hazara migration to neighbouring countries took place during the Taliban era, reflecting the severity of the situation at this time.

As demonstrated by the destruction of Buddha statues in Bamiyan in March 2001, the Taliban denied the legitimacy of art, painting, music, poetry, and the heritage of generations. They burnt films and videotapes in public places, banning television broadcasts, erasing pictures of individuals, and burning photographed manuscripts in Kabul Museum. In 1997, during their surge against books including those of the Kabul University library, the Taliban incinerated 55,000 archival volumes and manuscripts from the library of Hakim Nasser Khosrow in Pul-e Khumri in Baghlan province. Anyone who carried objectionable literature was executed.

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of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest,

## ABOUT FIDH

- FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

- A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

- A universal movement

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Imprimerie de la FIDH - Dépôt légal décembre 2011 - FIDH ISSN en cours -  
Fichier informatique conforme à la loi du 6 janvier 1978 (Déclaration N°330 675)

Director of the publication: Souhayr Belhassen  
Editor: Antoine Bernard  
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