



document has insisted that freedom of creativity should be respected as long as it does not hurt religious feelings or clash with the moral values of the society.

### Al-Azhar on New Paths

To conclude, Al-Azhar's document on basic freedoms represents a positive achievement in two important respects.

First, it ends a long tension between the 'ulama and Egyptian intellectuals, mainly under the rule of Mubarak. Egyptian intellectuals have often accused Al-Azhar of trying to control the cultural sphere, and to restrict freedom of thought and creativity. Since the Mubarak regime was brought down, Sheikh Ahmad al-Taib ended this tension by inviting Egyptian intellectuals to meet with religious scholars at Al-Azhar. These meetings gave birth to three important documents: Al-Azhar's document on the future of Egypt (June 2011), on the Arab revolutions (October 2011), and the one discussed here on the system of fundamental freedoms (January 2012). Al-Azhar is expected also to issue a new document soon on women's rights.

Second, the document represents an effort to redefine the relationship between the Islamic Shari'a and the set of basic freedoms adopted by international conventions. The discussions between the 'ulama and the intellectuals have pushed the debate from what Shari'a calls for, to what Shari'a might tolerate, and hence has opened a new path for both the religious scholars and the intellectuals to find a middle ground between Shari'a and Human Rights. More than an end in itself, this document should be perceived as a step toward a new path that tries to find common ground between Shari'a and its general objectives (Maqasid al-Shari'a) on the one hand, and Human Rights as defined in the international conventions on the other hand. While the document has been criticized by some secular voices who perceived it as a dangerous step, as it seeks to find religious legitimacy for internationally accepted freedoms, others have celebrated it as revolutionary step to bring together Shari'a and Human Rights. The document is neither a dangerous, nor a revolutionary step, but rather it forges a new path for both religious and secular figures to reconsider their old assumptions, and work on a new understanding of Shari'a and Human Rights.

Norah Niland

## Post-2014 Afghanistan: the Strategic Importance of Human Right

2014 is set to be a momentous year for Afghans. They are acutely aware that history is in the making whatever the outcome of various, mostly insipid, peace initiatives that are focused on securing a deal between the government and those who have taken up arms against it.

In 2014, Afghans will also be dealing and the implications of a faltering economy, another round of presidential elections, the drawdown of US and its allied forces and, most probably, a much-changed security situation.

*Norah Niland is a Research Associate at the Centre on Conflict, Development and Peace-building at the Graduate Institute of International and Development Studies in Geneva. She has worked with the United Nations promoting human rights in Afghanistan during the Taliban regime period and as the Director of the UNAMA (UN Assistance Mission to Afghanistan) human rights team from 2008-2010.*

Opinion on what the future holds, vary. However, there is broad consensus that 2014 is a game-changer of huge significance to regular citizens, to those who hold the levers of power, and to the many external actors who have tried to shape events in Afghanistan since the demise of

the Taliban regime at the end of 2001. This paper is an examination of the ramifications of ignoring the strategic significance of justice and respect for human rights in Afghanistan. It argues that any future peace, democra-





tization, development or other strategies that ignore the strategic importance of ending impunity and building a credible justice system are doomed to failure and will likely mirror the experience of pre-2014 Afghanistan.

### Duelling Perspectives

Perspectives on post-2014 Afghanistan include a narrative of 'cautious optimism', particularly within U.S., E.U., and U.N. policy circles that emphasizes the durability of the gains of recent years. Proponents of this perspective frequently point to the millions of children who are now in school, the expansion of the health care system, and security sector reform initiatives that have resulted in an expanded, if unsustainable, military and police capacity. This optimistic view is, unsurprisingly, shared by the Karzai administration and stands in sharp contrast with a range of catastrophic doomsday scenarios. These include a repetition of the factional fighting of the early 1990s that contributed to the rise of the Taliban movement. Growing warfare and insecurity that will likely intensify in the lead-up to presidential elections next year, coupled with unresolved regional issues, are major concerns. Afghans and others who are anxious about the future point to the abysmal reputation and self-serving record of government officials that is compounded by a discredited and dysfunctional state apparatus. The billions of dollars that have poured into Afghanistan in recent years have done more to aid and abet corruption than secure a foothold for responsible governance, the rule of law, and a modicum of justice.

Widespread impunity, lawlessness and criminality are resented, feared, and detrimental to the safety and wellbeing of the majority of Afghans. The wholesale abuse of power has eroded confidence in the democratization process. It has also undermined the work of human rights and other actors engaged in building a foundation for justice that is widely seen as the essential bedrock of a stable and peaceful Afghanistan.

### Bonn was wrong; the costs of marginalizing human rights

Much of the analysis on the likely implications of 2014 for Afghanistan constitutes a re-visiting of the alleged successes or failures of the strategies employed to give effect to the December 2001 Bonn Agreement that established the blue-print for a post-Taliban Afgha-

nistan. This Agreement was concluded after a hurried nine-day period. It was shaped by the outcome of a US-led bombing campaign geared to regime change. This involved the resurrection of the warlords that had been a key factor in the emergence of the Taliban movement in the mid-1990s. The Bonn Agreement was a power-sharing deal among former mujahedin commanders, many of whom had notorious records, but nonetheless benefited enormously from US military, political and financial support. The exclusion of large segments of the Pashtun community as well as civil society and human rights actors in the formulation of the Bonn Agreement was contrary to the wishes of the vast majority of Afghans.

From the onset of the US B-52 campaign in October 2001, just a few weeks after Al Qaeda's 9/11 attacks in America, Afghans from different walks of life expressed the need for a break with the policies of the past that had led to the destruction of their country and the death, displacement and deprivation of millions. Most Afghans wanted a new political culture based on the rule of law. They wanted an inclusive, stable and democratic state that would promote and uphold respect for the human rights of all. However, in the weeks leading up to the Bonn Conference that adopted the roadmap for Afghanistan's post-Taliban-regime transition, the very people who had created the chaos that was largely responsible for bringing the Taliban to power were resuscitated and helped to regain control of their former fiefdoms. These included many notorious and well-known warlords. Some of them were responsible for acts that could be classified as war crimes.

With a few isolated exceptions, Afghans who were at the receiving end of discrimination and abuse were excluded from the Bonn meeting. A survey by the Afghanistan Independent Human Rights Commission (AIHRC) found that 90% of Afghans did not want warlords to hold public office; 76% wanted them tried as war criminals. However, US priorities, policies, perspectives, and personalities were the chief drivers of Afghanistan's transition programme that was supported by Washington's EU partners. US concerns and the perverse logic of the Global War on Terror (GWOT) took precedence over the safety and wellbeing of Afghans. The nature of the Bonn Agreement and the processes established for its implementation entrenched the power of the warlord allies of the US. This meant that those in favour of an inclusive, just and democratic Afghanistan were under-





mined, marginalized and disadvantaged from the onset of the state-building exercise.

The Bonn process effectively denied the political space that was needed to strengthen support for core human rights and democratic values including dignity, non-discrimination, inclusiveness, accountability and respect for the lives of others. The Bonn juggernaut – a series of events and processes that served primarily to strengthen the stranglehold of those with a long record of abusing power and the rights of their compatriots – sustained a narrative that democracy was taking hold. It was also used to justify the presence of foreign troops.

The Bonn state-building process failed to provide a framework for a durable peace. It was not designed to roll back the injustices that had crippled Afghanistan. It ignored the need for accountability for war crimes. It returned to power many individuals who had earned the enmity of Afghans and was oblivious to atrocities and patterns of abuse that were deadly as well as inimical to a fair, democratic and just society.

The Bonn project that was rolled out under the auspices of the United Nations glorified a *jihadi* culture that was antagonistic to Afghans opposed to warlordism, unaccountable governance, and predatory power structures. Lawbreakers have become the official lawmakers and have continued to enjoy the support of the US and its allies. Known warlords were key actors in the adoption of legislation, including an Amnesty law, that absolved *jihadists* of all responsibility for atrocities and enables them to intimidate and silence Afghans who push for some form of accountability. When this legislation came to light in 2010, EU states and the US effectively gave it their tacit approval when they chose to not challenge nor condemn it.

### Systemic and Strategic Failures

A long list of human rights violations that mar the lives of millions of most Afghans cannot be divorced from the political system that is an outcome of the Bonn process. Human rights violations include ingrained discrimination, limited or erratic access to food and health care, lack of due process and freedom of expression, torture and unlawful detention. Abuses that are an affront to human dignity are also part of a system of governance whereby authorities, in and outside the official state apparatus, use their power to advance agendas that are harmful to the wellbeing and safety of Afghan citizens. Many of the

country's systemic human rights problems can be traced to the Bonn Agreement and the processes generated for its implementation. The ability of Afghans to confront and remedy their country's poor human rights record has also been undermined by the failed strategies and double standards of the US-led intervention that, nowadays, is widely resented.

Systemic problems that are antagonistic to human rights include a political system that rewards abusive power-holders whether in or outside government. The parliament is dominated by warlords thanks to an electoral system that has worked to the advantage of those with cash, influence and an ability to intimidate opponents. Private security companies that mushroomed to maintain a supply chain for NATO and other troops have shown little interest in operating in line with the law and are rarely held to account. Funded by US and other taxpayers, they are known to have bought-off insurgents to secure unhindered passage and have profited greatly from a \$2 billion industry. They have thrived on lawlessness and insecurity while simultaneously being a significant factor in the disorder that puts the lives of others in danger.

Systemic failures can be traced to the way in which the US and its allies have disregarded international law while simultaneously claiming to support improved rule of law in Afghanistan. Issues with immediate and long term ramifications for efforts to secure respect for human rights include the blatant disregard by the government's backers for due process particularly in relation to rendition – the apprehension and extrajudicial transfer of individuals from one state to another – torture and unlawful detention in Guantánamo, Bagram and other facilities throughout Afghanistan. A US government report (April 2013) found that only 8% of those held in Guantánamo could be identified as Al Qaeda fighters. The lack of rigorous accountability for events that have contributed to the staggering human cost of the war, particularly in terms of civilian casualties, unlawful detention and offensive night-raids, have fed perceptions that the promotion of human rights standards is a tool to advance the interests of powerful states. Such perceptions have undermined the credibility of civil society and other actors engaged in initiatives to counter impunity and egregious human rights violations.

Afghans from all walks of life can point to instances of double-standards or a major gap between rhetoric and reality on issues of justice and human rights. A botched





nighttime raid in Gardez in southeast Afghanistan in early 2010, for example, resulted in the death of three women, two of them pregnant, as well as two government officials, a police officer and a prosecutor. Initially the dead were described as insurgents but after protests a US military investigation concurred that the dead were civilians. US authorities apologized for the raid that was conducted on the basis of erroneous information. Such apologies are rare as is the organization of impartial, public scrutiny and accountability for similar incidents that are widely seen as examples of contempt for the rule of law and for the lives of Afghans.

Notions that a dysfunctional electoral system, largely crafted by outsiders, and a pattern of flawed elections were acceptable or 'good enough for Afghans' are deeply resented. Such notions are also harmful to the efforts of those Afghans who have worked for a democratic and accountable state dedicated to safeguarding the human rights of all its citizens. Afghans, other than those who benefit from the mayhem and inequities that are integral to the post-Bonn state system, remain concerned that the US persists in its support for powerful individuals with long records of human rights violations. One such example is that of Asadullah Khalid, a longtime US ally and close friend of the President, Mr. Karzai. Khalid, a former governor of Ghazni and Kandahar provinces, has allegedly been responsible for assassinations, torture, drug trafficking, running private prisons and using his influence to assist Karzai in the flawed 2009 presidential elections. He was made chief of the National Directorate of Security, the country's spy agency, in September 2012 over the objections of human rights activists. President Obama visited Khalid in Washington at the end of 2012 when the Afghan spy chief entered the US for medical treatment subsequent to a suicide attack in Kabul that left him seriously injured.

Abusive power systems that profited from US political and financial largesse are but one of the problems Afghans will inherit as NATO exits the country and 'Afghanization' takes hold. This is the process whereby the US hands over responsibility for particular tasks such as security to Afghan authorities. The initiation and arming of local militia, known as Afghan Local Police (ALP) is but one example of a contentious, counter-productive and expedient measure to facilitate the exit strategy of the US and its allies. A brainchild of US General Petraeus who piloted the use of militia in

Iraq, the ALP in Afghanistan is seen as another example of militarizing the Afghan countryside at great cost to human rights including in terms of extrajudicial killings, rapes, and extortion.

The country's judicial system is corrupt, weak and compromised as is policing and the management of prisons. The low capacity of such institutions is a major problem in a country where injustice is rampant and shapes the perspective of Afghans at the receiving end of *zalem* or cruel behaviour. Deeply entrenched prejudices and discrimination against females are compounded when victims seek help from the police and the courts; frequently, they are further victimized and held responsible for so-called 'honour' crimes and 'running away from home'. Land seizures, unlawful evictions, arbitrary detention, and selective poppy eradication are not unusual. Political marginalization and manipulation of tribal differences contributes to instability and the dynamics of armed conflict. Presidential pardons have been dispensed for convicted rapists and drug traffickers.

Injustices in Afghanistan are closely linked to powerlessness and poverty that undermine the ability of many Afghans to carve out a dignified life. There have been some improvements in the health and nutritional status of Afghans in recent years but the country remains at the bottom of the league in Asia for under-five mortality rates. Data on women shows that Afghanistan has the second highest maternal mortality rate in the world. Approximately one third of Afghans are malnourished. Some nine million people, more than a third of the population, struggle to survive below the poverty line. In other words, they are largely unable to meet their basic minimum needs, an issue that should be a human rights as well as a political priority. Analysis of vulnerability in Afghanistan shows that it has a strong gender dimension linked to discrimination that relegates females to an inferior status in society and in the home.

High levels of vulnerability and marginalization also means that a huge proportion of Afghans have limited resilience to shocks whether these are associated with the shrinking economy, armed conflict, extreme weather events and disasters linked to floods, drought, or earthquakes. The longevity of multiple strands of the crisis in Afghanistan has seen the humanitarian situation deteriorate and the number of displaced increase in recent times. This, in turn, means that more lives are on the line and mortality rates are set to increase if concerted mea-





sures are not taken to address the underlying structural problem of exclusion, discrimination, corruption, poor governance, and armed violence.

### **Afghanization: post-2014 Strategies**

A fundamental lesson that needs to be acknowledged and applied in the run-up to 2014 and beyond is the strategic importance of addressing the absence of justice and related human rights violations in Afghanistan. Persistent structural injustices, and the absence of judicial and political remedies, represent a threat to the fragile gains that have been achieved in recent times. Such profound problems will also likely thwart any future peace initiatives and will undermine the realization of overdue social justice objectives.

The long years of war and political turmoil in Afghanistan have added to the complexity of the problems that need to be addressed on an urgent basis to safeguard against the continued loss of life and to allow for dignified and safe living conditions. It may well be that the departure of NATO will open opportunities for peace-loving Afghans to bring armed conflict and structural violence to an end. It is of great significance that Afghans have an innate sense of justice and a strong sense of dignity and self-worth. When this is coupled with a rising tide of young people who aspire to a peaceful future and are assertive in challenging the harmful policies of the past, there are grounds for optimism. Afghanistan's human rights defenders led the challenge in 2010 to a blanket

amnesty law that effectively green-lighted impunity. Numerous civil society actors throughout the country are engaged in an uphill but impressive campaign to roll back deeply engrained discrimination that marginalizes women, girls and minority groups.

The majority of Afghans want a just peace and means of reconciliation that reflects what this implies, namely a process that is geared to ending armed violence, structural inequalities and the abuse of power. Building a state system that is inclusive and fair is critical to healing the wounds of a brutalized and fractured society. Building a political framework that is conducive to securing respect for human rights requires an acknowledgement that the absence of justice is a strategic issue that cannot be sidelined for the short-term expedient goals that have undermined a durable and democratic transition since 2001. Initiatives to bring about positive transformative change in Afghanistan will have greater possibility of success than before when a culture of impunity lacks the support of powerful external and internal actors. Afghanistan is facing troubled and uncertain times but meaningful support for the human rights aspirations of Afghans will greatly facilitate a transformation that is in the best interests of the Afghan people. In the same vein, continued support for abusive and predatory power structures will condemn the people of Afghanistan and its neighbours to continued violence, death and deprivation whatever the content of the changes that make the headlines next year.

**Jamila Afghani**

## **To Be a frontline Soldier**

I do understand the journey I have started for social justice is a long way ahead, my success so far has depended on my people's and my colleagues' support. Throughout the journey I have learned that it's crucial to design projects based on the need of the community. The very first project we started was a library for women "Nazo Annah Library". My friends and I brought

the books we had together in a room where other women could benefit from them. But women were not coming to our library, only youths were coming in. Hence, I thought it's good to encourage the youths to pass our message to their families. Therefore, we had a policy if one male library member introduced five female members then there would be some presents, and we gave