

PEACEBUILDING IN AFGHANISTAN

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PEACEBUILDING IN AFGHANISTAN

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Tackling conflict and providing security in Afghanistan requires a greater effort to deal with local disputes that frequently flare into violence and lead to wider problems. Although these attract less attention than the threat from the resurgent Taliban, they are important as they produce an environment of insecurity which destroys all quality of life for ordinary civilians and undermines the legitimacy of the Afghan Transitional Administration in Kabul. Local commanders often exploit these disputes to consolidate their positions, further weakening the authority of the central government.

The disputes are of three main kinds: first, over land and water, two of the most important and scarce resources; secondly, ethnic, and often closely linked to land and water but also to the struggle between political parties; and finally family-based, frequently revolving around women.

Contested claims over land often go back generations. The picture has been complicated by decades of poorly considered land reform and development programs, the flight of so many people during the war and the fact that successive waves of political parties and combatants have seized both private and state property to claim as their own. Examples abound across the country where land has changed hands repeatedly. Few people have clear legal title, and the court system is ill equipped to mediate disputes or the police to enforce judgments.

Conflicts over water – a commodity in even shorter supply than land – have been exacerbated by the breakdown in local structures that mediated disputes or managed irrigation systems. Environmental damage has often reduced supplies or enhanced the flood risk while drought and the use of deep bore wells have drastically lowered the water table in some places.

Ethnic polarisation has increased over the last 25 years, particularly in areas like Hazarajat where successive power shifts have displaced Hazaras and Pashtuns alike. But despite the long history of violent conflict and the wide rifts in the country, Afghans have a strong sense of national identity, and many dispute that ethnicity is important. However, it clearly is a factor in both national and local divisions that those who oppose peace exploit. Long-standing discrimination and inequalities have prepared the ground for many of these problems but they are also being deliberately fanned by commanders, particularly in the north where conflicting ethnic groups have been relocated over the years on contested land.

Family disputes often spill over beyond the immediate group and can involve large numbers of people. Most centre on the position of women and the issue of marriage, which is still mostly an arranged affair. Punishments for those who elope or refuse marriages can be harsh, and feuds between families often endure for generations. War has worsened the violence involved in these disputes, including sexual attacks on men and women.

All these disputes are entwined with the wider problems of conflict, which make their resolution more difficult. Despite some progress, official structures such as police forces and the judiciary are still frequently factionalised and corrupt and are not trusted by most Afghans. Traditional structures such as councils of elders (known as *shuras* or *jirgas*) do still function in some areas. However, they often reflect a very narrow, traditional view of authority that will, for example, trade a woman's rights to resolve a dispute. Many young people, particularly those who have been refugees abroad, are reluctant to submit to the authority of councils

on which they have no voice. Other councils have been essentially creations of aid groups and the UN. While some have legitimacy and are relatively representative, others are simply fronts to channel money to communities.

This is a difficult environment in which to come up with ways to resolve local disputes, and the situation is exacerbated, of course, by the very insecurity that plagues so much of the country beyond Kabul. There are familiar, though unfortunately not yet applied recipes to cope with the latter aspect, most notably expansion to other parts of the country of the international security presence that ISAF and now NATO have provided the capital. Other parts of the solution are no less apparent but will take more time to show results. Thus, enhancing the effectiveness of the police and judiciary is vital but takes a generation, even with sustained assistance. Local dispute resolution mechanisms, therefore, will remain important for many but they need to be developed within a framework that reduces the risk of enhancing the authority of people responsible for much of the conflict or trampling on the rights of citizens.

Specifically, reconciliation initiatives need active promotion at three inter-dependent levels. There must be sustained international engagement – something to which the sponsors of the Bonn Agreement committed themselves – particularly during the run-up to elections. At the same time, the Afghan central government needs to pursue security sector reform and the disarmament, demobilisation and reintegration of fighters into society (DR), which can improve the overall security situation, restore the rule of law, and build confidence in processes of political and social reconciliation. This in turn should create the conditions in which local level measures that will remain the only means for solving many problems can be effective.

RECOMMENDATIONS

To the Afghan Transitional Administration:

Immediate Action

1. Ensure that the disarmament/ demobilisation/ reintegration (DR), process, a key prerequisite to reconciliation at all levels, does not remain hostage to factional politics and continued blockage of agreed reforms.

2. Prioritise security sector reform, with particular emphasis on accelerated training and recruitment of a de-factionalised, national, professionally-trained police force that is responsible for law and order.
3. Establish and sustain reasonable levels of pay for members of that police force as well as of the national army and justice system, without which serious corruption is unavoidable.
4. Give political and operational support to local initiatives, and recognising the impossibility of doing everything, initially concentrate on enforcement of national authority in those areas where security is most problematic, including:
 - (a) President Hamid Karzai should remove governors, police chiefs and other senior government officials who pursue factional, rather than central government, interests and/or who are corrupt;
 - (b) the government, with international help, should arrange for the rapid deployment of contingents of trained police to support of local processes if required; and
 - (c) local commanders who do not comply with agreements should be withdrawn to Kabul.

Medium term Action

5. As part of judicial reform, introduce reforms of the legal system that take into account the prevalence of conflict, including issues of land rights, family feuds and ethnic violence, and provide the judiciary with appropriate training to address these.
6. Encourage local processes to resolve conflict, recognising that many issues of communal conflict cannot be successfully dealt with by a winner-loser approach but rather need negotiation and compromise.
7. Produce guidelines as part of judicial reform for setting up proper investigation and adjudication bodies that include where appropriate membership from government, communities, other interest groups and independent actors such as the UN, and develop systems for formal endorsement of their decisions.

8. Lay down clear guidelines for local traditional justice mechanisms (*shura/jirga*) to ensure that their judgements are compatible with the rule of law and human rights standards, establish a few pilot *shura/jirga* and human rights units alongside courts in several districts to formalise the link between the formal and traditional justice systems and make justice more accessible, cost-effective and efficient, and evaluate and extend these as appropriate.

To the International Community:

9. Key international actors, particularly the United States, Russia, India, Pakistan and Iran, should ensure that their actions and resources bolster reconciliation processes at both the national and local level and end support for faction leaders which actively undermines such processes.

10. UNAMA should:

- (a) analyse opportunities for local reconciliation in different areas of the country, as part of a wider political strategy;
- (b) monitor and commission independent evaluations of the effectiveness of local inter-agency initiatives, such as the Security Council of the North, in order to ensure that lessons are learned from this experience and systematically applied in other parts of the country, where required; and
- (c) make more funds available for the evaluation of NGO initiatives.

11. Donor countries need to recognise long-term funding will continue to be required both for specific reconciliation-oriented programs and for broader programs of social development work with communities, even though it is not easy to measure outcomes in this area.

12. Further support should be given to NGO training of peace educators and development of peace education materials, and to NGO work in making traditional systems more inclusive and democratic.

13. The importance of education in any long term process of reconciliation should be recognised through additional support for the development of an effective and realistic national education strategy

Kabul/Brussels, 29 September 2003

PEACEBUILDING IN AFGHANISTAN

I. INTRODUCTION

The Bonn Agreement, signed on 5 December 2001, brought Afghanistan a chance for peace. It defined the responsibilities of the parties and set out a timetable and processes for national political reconciliation that can, and should have, also framed local procedures. The need was specifically acknowledged within the terms of reference of the Afghan Independent Human Rights Commission, established pursuant to the Bonn Agreement. However, the failure so far to secure the peace adequately, as evidenced by continued instability in some parts of the country and deteriorating conditions in others, has deeply disquieted many Afghans and stands in the way of any meaningful reconciliation.

Many warlords have only a narrow support base. Certainly a considerable majority of Afghans want to see the end of their rule. But they derive their power and authority in part from lower level conflicts and perceptions of injustice and inequality. They exploit local disputes and longstanding grievances to enhance their positions. In the absence of effective state structures, many turn to them to deal with land, water, family and ethnic disputes.

Real progress in solving communal conflicts requires there also to be progress in solving the military and political conflicts with which they are deeply entwined. The international community has a central responsibility for this since it promised at Bonn to introduce a broad based and democratic government at the same time as it was producing a change of regime through a military strategy part of which handed power to faction leaders.

This report examines the nature of conflicts that take place at a sub-district level, for example in villages, valleys, between tribal groups or within an urban district. These are often part of struggles going on at the provincial, regional or national level as well. The report is based on interviews conducted mostly in Kabul, Mazar-i Sharif, Pul-i Khumri and Kunduz and was informed by knowledge within the ICG team of the whole country developed over many years. However, it cannot claim to be a geographically or historically complete examination of local disputes. In particular, disputes in urban areas often take place over other issues such as housing ownership, electricity, crime, or trade.

The focus is on three types of dispute:

- over land and water, two of the most important resources in Afghanistan;
- between ethnic groups (often closely linked to land or water); and
- over family matters that spill over into wider conflict; as women are often seen as repositories of family honour, issues of marriage, inheritance and property can be immensely important.

Reconciliation¹ has, at some level, been central to the entire turbulent process of state-building in Afghanistan and has been employed through history by those seeking to bring the country out of periods of conflict. The efforts of Amir Amanullah Khan, President Daud Khan and President Mohammad Najibullah² illustrate the manner in

¹ By which is meant the process of reaching a settlement broadly accepted by all parties to the dispute

² Amir Amanullah ruled from 1919 to 1929, Daud governed as president from 1973 to 1979 and Najibullah

which leaders have sought to present political and ethnic unity as a goal. This was particularly marked during the early 1990s, as the communist government attempted to counter efforts by some mujahidin opposition parties to exploit ethnic and social differences. The attempt failed, partly because it was viewed by many not as a genuine national reconciliation process, but rather as a strategy for cooption into structures associated with the ruling party. It also suffered from a lack of support from the international community, which has often simply pursued its own agendas with little concern for the impact on Afghanistan.

Given this history, it is perhaps not surprising that many Afghans view public commitments by central or regional authorities to promote reconciliation with some degree of scepticism. The lessons of past failures, as well as instances where Afghans have successfully built reconciliation at a community level, need to be recognised and acted upon if the country is to emerge from its present partial and uncertain peace into something more deep rooted and lasting.

from 1986 to 1992. For more background on their respective rules, see ICG Asia Report No. 62, *Afghanistan: the Problem of Pashtun Alienation*, 5 August 2003; ICG Asia Report No. 56, *Afghanistan's Flawed Constitutional Process*, 12 June 2003; and ICG Asia Report No. 48, *Afghanistan: Women and Reconstruction*, 14 March 2003.

II. TYPOLOGY OF CONFLICTS

A. LAND AND WATER

1. Land Disputes

Of all the resource-related conflicts, those over land are the most prevalent.³ Multiple and contested claims to land stem from history, as well as inheritance. Population growth and the return of large numbers of refugees have added to the problems. Resolving such disputes is complicated by the fact that different legal systems operate simultaneously – customary law, *shari'a* and state law – and by significant omissions in the latter with regard to both urban and rural land issues. There are few title deeds, but customary, religious and state laws have all generated various forms of documentation. An individual name often conceals shared ownership, for example among family members (brother, wife, son, daughter) who may have different levels of rights.

In rural Afghanistan complex social relationships determine rights to land, and ownership and usage patterns can vary substantially from valley to valley. Many different forms of land rights exist, including:

- ❑ private ownership;
- ❑ state ownership;
- ❑ public ownership at the level of the nation;
- ❑ shared or common ownership at household, clan and community levels;
- ❑ usage rights as tenants, sharecroppers, and mortgagers; and
- ❑ access rights (permanent or seasonal) for pasture or collection, such as of fuel or the harvests of wild trees (pistachios, for example).

Because people often have multiple relationships to land – perhaps owning a small plot, having another that is mortgaged, and sharecropping on yet another – the nature of land relations is usually very complex and often inadequately understood by

³ For a more detailed treatment of land issues, see Liz Alden Wily, “Land Rights in Crisis: Restoring Tenure Security in Afghanistan and Land and the Constitution”, Afghanistan Research and Evaluation Unit, Kabul 2003.

outsiders. Land disputes evolve over time and without due process can become part of the fuel that fans conflict, particularly where grievances are exploited for political/military ends.

There is also much dispute as to how far “un-owned” lands are actually un-owned, and as to what is national public property and what local ‘common’ property. Grazing lands distributed at various time by the state were often considered by villagers to belong to them and not the state’s to distribute.⁴ Customarily owned rangeland has sometimes been irrigated, turned into government land and then disposed of to private ownership. For example, the 30,000 hectare estate of Nada Jalalabad was once customarily owned by pastoralists, was appropriated by the government, and is now held by the para-statal Nangarhar Agricultural Development Authority and earmarked for return to private ownership.

One of the main lines of conflict is between nomads (*kuchis*) and settled villagers, who often claim rights to the same pasture. Lands on the edges of villages and towns are frequently the most contested. Issues of land degradation also arise, with short-term cultivation of fragile pasture often leaving the land so degraded after a few years that it is suitable for neither use.

The land situation is perhaps at its most complex in the north, where some informants identified it as the single most pressing issue:

Land is *the* issue in the north. Every commander that comes starts giving out land to his people with legal documents. There are multiple claims to land and many of these disputes involve big commanders. If they just involve ordinary people they can be solved at a local level, usually in the form of compromise, but these are only the small disputes. Often land is controlled by

commanders who have no wish to let go, then they threaten, they kill.⁵

The origins of many current conflicts lie in the fault-lines left from successive phases of state building. The person most responsible for the consolidation of the modern Afghan state was Amir Abdur Rahman Khan (1881-1901). He dealt with the resistance he met from rival Pashtun tribes by moving them to the non-Pashtun areas of the north and north-west and then co-opted them by giving them the task of ruling over the local inhabitants. This laid the foundations for many present day land disputes there, which centre principally on the Pashtun enclaves. Resistance from the Hazara tribes of the central mountains was more brutally dealt with: they were conquered with the support of Pashtun tribes, who in return were given much of Hazarajat’s best valley land, along with grazing rights to the mountains. The Hazaras became the under-class of society. Many were forced to seek work in neighbouring countries or to migrate to the cities where they became the labourers.

This situation essentially prevailed until the Soviet invasion. Hazarajat, a remote mountain area of little strategic value, then became semi- autonomous. The conflict that spread throughout the countryside stopped the Pashtun nomads from following their normal migratory routes, and with no government forces to worry about, the Hazaras reclaimed their rights to both hill and valley, often expropriating Pashtun property. Increasing poverty led to the ploughing of many hillsides that had previously only been used as grazing land.

The first part of the twentieth century, following Amir Abdur Rahman’s reign, saw a larger role of clerics, which laid the foundation for another aspect of the conflict over land rights. Continuing disputes in the north were all ultimately resolved in the interest of the state and led to further lands being taken from their original owners and granted to Pashtuns. The reign of Amanullah, in the decade after World War I, brought some redress of the injustice against Hazaras, with Pashtun access to grazing redefined as seasonal and territorially limited. With his exile, however, Pashtun *kuchis* re-asserted their rights.

⁴ The concept of government land was not defined in the 1923, 1931 or 1964 Constitutions, and is still unclear. The 1965 Land Survey and Statistics Law did not include either forests or pastures as government property. Government land was to include only land specifically registered to the government and wasteland not registered to anyone else. Daud’s 1977 constitution added forests to the definition of government land but still excluded pastures, which were added to the 1987 Constitution. This meant that irrespective of common, or even registered private, ownership these entered the public domain. These claims were later abandoned, especially in the 1992 Constitution.

⁵ ICG interview, Mazar-i Sharif, August 2003.

Although “modernisation” was intended, at least in part, to reduce poverty, it often resulted in deepening inequities and laid the ground for continuing conflict over land and resources. The settlement policies associated with large dam and irrigation projects initiated after World War II led to major displacements. The largest of these schemes was the Helmand and Arghandab Valley Authority, a multi-purpose dam and integrated development undertaking funded by the U.S. Some 1,800 square miles of river valley were removed from local control and placed under commissions in Kabul⁶. The question of who actually owned this land was kept in abeyance, and no system of titles was instituted.

The project was designed, among other things, to develop a class of smallholder farmers, which it was believed would help stabilise Afghanistan. It was planned to settle 18,000 to 20,000 families, mainly Pashtun nomads, on fifteen-acre farms. However, despite inducements, the *kuchis* showed little interest. The project also ran into major difficulties with salinity and water-logging, as well as problems over plot size and location, all of which contributed to the failure of the settlements. Many Pashtuns were then transferred north, increasing tensions and causing further displacement of existing inhabitants.

By the 1950s a further round of dam projects was underway, again with external funding. This time the focus was more on providing land to the poor and to landless peasants. In the early 1960s a classic land registration and entitlement program was launched with the aim of mapping all land and issuing ownership certificates. Survey work was begun in 1966, but though by 1977 about 45 per cent of all owners had been surveyed, the work was never completed.⁷

More than 100 years of power struggles have set the contours of present day disputes. While the broad picture is the consolidation of the central state, each area has its own particular history in which land was taken from some as the price of being on the losing side and given to others as the reward for winning.

⁶ For a more detailed analysis of this scheme see Nick Cullather, “Damming Afghanistan: Modernisation in a Buffer State”, *The Journal of American History* (2002), pp. 512-537.

⁷ Wily, “Land Rights in Crisis”, op. cit.

Speaking of Mazar, one interviewee said:

The Uzbeks controlled the land, and they allocated it to Uzbek people, even the parks; the Hazara people, when they had control, they did the same; and then the Pashtuns, with the Taliban; and now it is the Tajiks.

One example, near Kunduz, gives an idea of the complexity. Originally the land in question was cultivated by ethnic Turkmens, who left at the time of the Soviet invasion in 1979. Local Uzbeks (originally displaced from neighbouring Takhar) then moved into the houses, cultivated the land and paid taxes on it. When the Taliban came, the Uzbeks moved. Now both Uzbeks and Turkmens are back, and both want the land and houses.

The Uzbeks approached the governor – himself Uzbek – with their documents, and he ruled in their favour. The Turkmens then went to court for a ruling that it was pastureland that should be used by them. The authorities created an investigative commission headed by the local National Security Services chief and without civilians. It ruled that the Uzbeks should leave by March 2003. The UN obtained a stay of execution, on the basis that people should not be evicted until they had somewhere to go. The Turkmens then tried to force the Uzbeks out and some moved to nearby villages, whereupon the Uzbeks took the dispute to the Supreme Court in Kabul. Some Uzbek commanders have threatened to fight if the decision goes against them.⁸

Rights within a household, especially in rural areas, can also lead to conflict that has the potential to spill over into the community as the different parties gather people to their side.

These rights may be exercised by a single head of household, adult sons may “borrow” land until they receive it formally in inheritance, or brothers may farm – and in effect own – land jointly. Women generally have lesser rights, and they have problems claiming those rights when land has been appropriated by a commander.⁹ *Shari’a* has provisions for widows and daughters to inherit land but customary law often allows this only as an exception. Widows are more likely to own land than daughters, who when they marry generally

⁸ ICG interview with UNHCR staff, Kunduz, August 2003.

⁹ ICG interviews in Kabul and Mazar-i Sharif, August 2003.

surrender their rights to brothers in order to keep the land in the family.

Urban land disputes add another dimension. Land and property that was expropriated from either exiles or residents in the course of reforms was initially nationalised and in many cases allocated for use by government institutions. After 1992, when the assets of these institutions became spoils of war, such property was occupied or even sold by commanders or their followers. Given the continued absence of the legal owners, it was customary to falsify property deeds in order to lend legitimacy to this widespread profiteering, which continues to this day.

Forests and brushwood are other natural resources that are a source of conflict. Much forestland used to belong to the government and was subject to strict controls but over the years of war this system has broken down. The felling and illegal export of hardwood is a lucrative industry controlled by big players and is outside the scope of this paper, but on a community level serious conflicts have been created by disputes over access to cut the bushes on local hillsides. The extent to which this has become a problem can be gauged from the fact that in some areas people can walk for four or five hours to find wood for fuel.

There are also issues of access to the wild harvest of the forest, such as of pistachios. Systems of control have sometimes survived extraordinarily well: there are many villages where no one will touch the pistachio harvest until the appointed day lest severe disputes arise. The present displacement of ethnic Gujars in Kunduz, however, originated in a dispute with Tajik commanders who had moved them out of the Farkhar district of neighbouring Takhar province because they were allegedly destroying the pistachio trees.¹⁰

¹⁰ As so often, however, the nature of the conflict has changed over the years. In the most recent violence against Gujars, their homes in Bagh-e Shirkat were destroyed and two children and a woman killed, because they were said to support the Taliban. UNHCR tried unsuccessfully to mediate a return to Takhar province the commanders were against it, and in Farkhar, a district in Takhar, the local Tajik community is hostile to those Gujars who still live there.

2. Water Resources

Water is an even scarcer resource than land in Afghanistan and is similarly governed by complex social relations. The landowners in a community often provide water, or the means to obtain water, to the rural poor and receive services in return.

Traditionally the distribution of water in rural areas has been controlled by a *mirab*, an individual selected by villagers to manage the resource. This became a government-recognised post under the Najibullah administration, and the practice has often withstood the years of conflict:

But if a conflict is about a share of resources, such as water, it is more solvable traditionally; the *mirab* is often a good solver of conflicts.¹¹

There have, however, been additional strains on water resources in recent years. A drought has lowered the water table in almost all parts of the country, and this has been exacerbated by excessive sinking of boreholes. Pumps brought in to lift water to higher lands often deprived those downstream, while water taken for agriculture often deprived villagers reliant on shallow wells of their only source for drinking water. Generally the drought has increased inequality, as the wealthy have met their water needs often at the expense of the poor.

New land has frequently been developed on the basis of the Ottoman tradition of *usmani* title, derived from the cultivation of virgin land. Many such schemes have been beneficial but the exploitation of water through pumping or irrigation also has the potential to create conflict by unsettling long established patterns of usage and depriving others of their supply. This is increasingly so as population growth and new patterns of consumption put more pressure on water supplies.

In the past, large schemes to increase the flow to an area have sometimes been accompanied by radical changes in land rights, such as the U.S.-funded Helmand Arghandab irrigation scheme; other schemes, such as the extensive Chinese-built Parwan irrigation project, have increased the coverage of irrigation water significantly, while leaving landholding patterns largely untouched.

Alongside the problems of too little water are the problems of too much. Loss of vegetation cover has

¹¹ ICG interview, Kabul, 2003.

led to increased flooding, river erosion, and landslides. Ill-thought out schemes to combat erosion have sometimes exacerbated conflict, with protection walls saving land on one river bank only to cause even worse erosion on the other.

Water can not only be a source of conflict in itself but also the means by which other conflicts are pursued, for example depriving someone downstream of water because of a land dispute. This was noted as a particular problem among Pashtun communities in the Kunduz area. The destruction in 2000 by the Taliban administration of a series of powerful pumps that had allegedly been installed by Iranian farmers in the bed of the Helmand River, on the frontier between Iran and Afghanistan – one factor in the countries nearly going to war – illustrates how water can provoke conflict in a volatile political environment.¹²

3. Land Reform and Expropriation

The first attempt at land reform in Afghanistan was modest. The Daud government's Land Reform Law of 1975 allowed for generous ceilings on landholdings, above which the state would buy the rest for redistribution. In reality, however, little private land was purchased and redistributed. Lands that were redistributed were largely government property opened up by irrigation projects that were made possible by significant external investment from the U.S., the Soviet Union and China. Priority was given to those living in densely populated areas and to the landless, and most schemes were run as cooperatives and collective-style farms.

Much more radical land reform was promulgated by the Communist regime that came to power in 1978. In an attempt to dismantle the old feudal relationships, it sharply reduced land-ownership ceilings, cancelled all loans and mortgages of more than five years standing (on the basis that by then the mortgagor's entitlement to one fifth of crops produced would have covered the loan), and abolished the land-use rights of those who had taken the mortgage.

Those who conceived this seem to have understood little of the system they were trying to change, and their reforms were both badly formulated and poorly implemented, often making the lives of

peasants worse. Most landowners provided seed, and sometimes draft animals, and without any alternative way of getting these, people who had been given redistributed land found themselves unable to farm it. The problem was exacerbated by abolishing debts to landlords and moneylenders without providing an alternative form of credit so that peasants could not obtain loans. In some parts of the country, farmers simply refused to accept the redistribution, believing it illegal and knowing that they needed their relationship with their leaders. Furthermore, water, not land, was the major constraint on agriculture, but the reforms made no provision for irrigation.

In addition, as large landholdings were relatively rare, there was not enough land to redistribute. The redistribution itself was badly handled; in one case landless people in eastern Afghanistan received plots in Helmand, in the south-west, only to find when they arrived that there were no tents or houses, no water or tools, and considerable local hostility. After a few months they returned home. The Russians tried to redress the worst effects of the land reform legislation, but their presence precipitated war, and from the early 1980s people fled the rural areas, especially in the east. Land ownership tended to revert slowly to pre-reform patterns, though with some new landlords to replace those who had left.

With warlordism the norm, expropriation became commonplace. Formal processes of land registration were often ignored, and traditional agreements collapsed. Poor families unable to pay the bribes needed to keep parties or militias at bay bore the brunt. Together with government property, urban land came to be seen as yet another of the spoils of the *jihad* from which commanders felt entitled to profit. One physical consequence of urban conflict was the effective cleansing of neighbourhoods of ethnic groups perceived as potentially disloyal to those in control. This was achieved by threats or actual force and resulted in the division of previously mixed urban communities to conform to a map of ethnic or political allegiances alien to many urban families.¹³

In rural areas increasing amounts of pastureland were ploughed, either by people desperate for food or by greedy commanders who simply wanted more. As controls ceased to exist, forest and

¹² ICG interviews, Kabul, August 2003

¹³ ICG interviews, Kabul, August 2003.

woodland were plundered, either commercially or simply for fuel.

As the war progressed ideology became largely rhetorical, and ethnic and tribal alliances were used to pursue power. Old foes, such as the Uzbek militia that until 1992 had supported Najibullah against the Islamist opposition, allied with hard-line Pashtuns such as Gulbuddin Hekmatyar. In earlier conflicts even actions that led to injustice and local or regional ethnic tension, such as the movement of Pashtuns to the north and centre, maintained the overall stability of the state; now, crucially, with no one force strong enough to take control, they contributed to its disintegration.¹⁴

As the Taliban extended their control, they brought a measure of order to some areas. In the face of a new form of rule of law, commanders in Kabul and elsewhere were forced to abandon any booty they could not carry. Other areas, however, became the new frontline. The Taliban, in alliance with General Abdulrashid Dostum's former commander, Malik Pahlawan, attacked Mazar in the spring of 1997 and briefly took it before being forced out. Thereafter, the area entered a period of great insecurity and tension. Dostum was driven out of the city, and though he later returned, he never regained his former control. With each round of fighting there were massacres of civilians and of captured fighters, and as with the fighting in Kabul no one side had a monopoly on atrocity. Fear increased ethnic tensions, and many fled Mazar, including those who had gone there earlier to escape from Taliban-Kabul. As elsewhere, their flight usually resulted in loss of homes. Victorious commanders from all sides regularly distributed both state and private properties as rewards.

The Taliban moved on to take Hazarajat. Other than in Bamiyan and Yakawlang there was little fighting. Those two districts, however, suffered from repeated attacks and counter attacks as the Taliban and Hizb-i Wahdat struggled for control, in the course of which atrocities were again perpetrated against civilians. Once Hazarajat was brought under Taliban administration, Pashtuns from the south and east used the opportunity to try and recover their grazing lands in Hazarajat, and local Pashtuns acted similarly in the north.

In the urban areas, the predatory activities of *jihadi* commanders was largely checked by the Taliban, who also attempted to reclaim government assets as part of their efforts to establish the authority of the state, characterised as an "Islamic emirate".¹⁵ The manner in which elements within the Taliban asserted their Pashtun identity, however, did little to reduce ethnic tensions between communities who had earlier suffered at the hands of the *jihadi* parties.

With the demise of the Taliban, factional politics returned to dominate many parts of Afghanistan. In the south, east and north, groups jockeyed for power, leading to inherently unstable situations.

What characterises the situation in the north are ongoing factional tensions, local but which periodically and repeatedly erupt into conflict. The five factions¹⁶ use the north to extend their political base, each will ally and re-ally... for political expediency. There are huge amounts of weapons. The central government is weak, and its reach does not extend up here. Administrators at a district or provincial level are either too weak to ensure security or ally with their factional backers. Problems are made worse by the fact that commanders do not follow their own lines of command but beat to their own drum.¹⁷

As always, a change in the balance of power was used as a chance to settle scores. Groups who fled at various stages of fighting over the last quarter century returned to reclaim their lands, often leading to multiple claims to the same area. The Coalition intervention had led to an exodus of Pashtuns from the north as United Front (Northern Alliance) troops and unaffiliated armed groups targeted Pashtun communities, both to take advantage of their sudden vulnerability but also to avenge the dispossession of Hazaras, Tajiks, and Uzbeks under the Taliban. Many displaced Pashtuns still do not feel safe to return.¹⁸

¹⁴ See Barnett Rubin, *Afghanistan: From Buffer State to Failed State* (New Haven, 1995).

¹⁵ ICG interviews, Kabul August 2003.

¹⁶ The five principal armed factions in northern Afghanistan are the mainly Uzbek *Junbish-i Milli-yi Islami*, the mainly Tajik *Jamiat-i Islami*, the Hazara *Hizb-i Wahdat* (Akbari and Khalili factions), and the Qizilbash-led *Harakat-i Islami*.

¹⁷ ICG interview, Mazar-i Sharif, August 2003.

¹⁸ ICG interviews, UNHCR officials, Kabul and Mazar-i Sharif, August 2003.

In the cities, the pattern of land grabbing by victorious groups has resumed, as elements within the Transitional Administration profiteer from selling “unused” government land, in Kabul and elsewhere.¹⁹ At the same time, many exiled Afghans have returned to cash in on high rents and high prices, which have forced many ordinary people from homes they inhabited through the war.

Miloon Kothari, the Special Rapporteur of the UN Commission for Human Rights on the Right to Adequate Housing, issued a statement on 14 September 2003 accusing key officials of the Transitional Administration of being directly or indirectly involved in the illegal occupation of private homes. The statement came after a dozen houses that had been occupied by ordinary Afghans for over twenty years in the Shirpoor neighborhood of Kabul were bulldozed and the land reallocated to top government officials. The Afghan Independent Human Rights Commission (AIHRC) shortly afterwards issued a report making similar claims of the involvement of senior government officials in property grabbing. The statements by Kothari and the AIHRC were followed by the removal of Bashir Salangi as municipal police chief, and the appointment by President Karzai of an independent commission comprised of representatives of different ministries and two NGO members to investigate the claims.²⁰

The massive increase in opium production is now an additional source of conflict because of the vast profits it brings. For example, commanders in the north have been occupying both government land and private land in order to grow poppy, while in parts of Hazarajat commanders are fighting over control of villages in order to tax the crop.²¹ Commanders are becoming increasingly independent from central or factional control because of the rising drug revenues they can use to fund their activities and weapons purchases.²²

B. ETHNIC CONFLICT

The rise of ethnic conflict is inextricably tied up with factional conflict. Indeed, many people say it is only the factions that are the problem and that ordinary people have no difficulty living together. To some extent this analysis is supported by the fact that in a number of areas a change in the political landscape has, over time, led to a decrease in conflict without the use of specific processes of reconciliation. This was mentioned in relation to hostility towards Pashtuns in Kunduz²³ and also in Hazarajat, where the strong tensions reported in the 1990s between Hazaras and Sayyids²⁴ are now said to be much reduced²⁵.

Others, however, see ethnic differences as the biggest source of present day conflict:

Right now this is the major source of conflict, if you sit in a meeting, people talk to you but they do not trust you. In the past, if I spoke in Dari in a Pashtun area there never used to be a reaction, but now there is.²⁶

Though in parts of the north some people have gone as far as to conceal their ethnic identity,²⁷ many Afghans have resisted ethnic labelling. There are countless stories from the civil war in Kabul of people who risked their lives to support neighbours of different ethnic groups.

These various views are perhaps alternative reflections of reality, a patchwork that is different depending on people and place. In fact, tensions are not uniform, and what is possible by way of solutions may vary. Prior to the 1978 Saur Revolution,²⁸ ethnicity was infrequently the cause of violent conflict, and disputes were as likely to be within ethnic groups as between them. There was, however, substantial inequality and discrimination, which laid the base for future problems:

¹⁹ ICG interviews, Kabul, August 2003.

²⁰ See “Karzai ‘to Stop Officials’ Land Grab”, BBC News, 12 September 2003; “UN U-turn on Afghan Land Grab”, BBC News, 14 September 2003; and Paul Anderson, “Kabul’s Security Chief Sacked”, BBC News, 17 September 2003.

²¹ ICG interviews in Hazarajat, June 2003. See the forthcoming Afghanistan Country Profile by Oxfam.

²² ICG interview, UN official, Kabul, September 2003.

²³ ICG interviews with UNHCR, August 2003.

²⁴ Sayyids are reputed descendants of the Prophet Muhammad and form an endogamous caste within Hazara society.

²⁵ ICG interviews with Oxfam, 2003

²⁶ ICG interview, Kabul, August 2003

²⁷ ICG interview with Afghan Independent Human Rights Commission (AIHRC), Mazar 2003.

²⁸ The Saur Revolution was a coup by communist army officers that deposed President Daud in favour of a Revolutionary Council headed by Nur Mohammad Taraki.

The problem started with the fighting, though you can see the roots of it in earlier inequalities. I remember in my childhood, we always had Uzbek and Hazara people in the house as servants; they could only find the labouring jobs. Pashtuns and Tajiks could compete [with each other], but the others were always below, and the Hazaras were the lowest, they could never get jobs in the police force or in government employment. It was the irresponsibility of the authorities; and once Afghanistan turned to war, that was the opportunity for people to use it and make themselves different, and to create threats for others. In 1992/1993 there were too many killings of Hazaras by Pashtuns and Pashtuns by Hazaras, and Tajiks the same.²⁹

With the social and political changes brought about by the Soviet occupation and the opposition that it generated, ethnicity became a more open issue. Instrumental in this was the formation of the resistance parties, for although few were mono-ethnic, their geographic bases meant that each was inevitably dominated by a particular group, and this was to become more pronounced as the conflict wore on. The influence of Iran and Pakistan also increased conflict within ethnic groups and between Sunni and Shia, with more extremist views coming to the fore. Hazarajat, which by the early 1980s was semi-autonomous, went through intense internal conflict as the *Shura-yi Itfaq*, led mainly by Sayyids, wrested leadership from the traditional power holders only in turn to be fought by rival mujahidin groups backed by Iran, who then became politically dominant.³⁰

With the fall of the Najibullah government in 1992, Afghanistan began to fragment. Some parts such as Kandahar and many rural areas were controlled by a patchwork of different commanders. Others, such as Herat under Ismael Khan and the northern area under the ethnic Uzbek General Dostum, came under the control of a single powerful commander and remained relatively prosperous and free of major conflict, though there was scant attention to such things as human rights. Kabul descended into warfare, and a new wave of refugees left the country. The struggle took on an increased ethnic dimension as

Hazaras battled with the largely Pashtun forces of the Saudi-backed fundamentalist Abd al-Rabb al-Rasul Sayyaf, and Hizb-i-Islami leader Gulbuddin Hekmatyar clashed with Jamiat commander Ahmed Shah Massoud³¹. All parties committed human rights abuses, and once atrocities began, ethnic polarisation increased. As ordinary people were forced to take up arms, the distinction between military and civilian became harder to maintain.

The war increased the levels of ethnic tension in ways that cannot be separated from political developments. In a 1999 study, interviewees spoke of how relations between Tajik and Hazara were good, "except when there is fighting between Jamiat-i Islami forces of Ahmad Shah Massoud and Hazara Hizb-i Wahdat".³² In the north an interviewee said:

These commanders used ethnicity to stay in power longer....The faction leaders tried to have mother tongue schools, without professional teachers, and the children became, you could say illiterate because they could read neither Dari nor Pashtu.³³

Ethnic tensions increased as a result of the general insecurity even where there was no fighting, and ethnicity became an easy point of focus in resource wars. A Pashtun woman to whose grandfather former King Zahir Shah gave uncultivated land in Kapisa, near the entrance to the Panjshir Valley northeast of Kabul, and whose family now lives in the capital, described the interaction:

The people of Kapisa do not take us as one of them. When the conflict came, the people started going back to [identifying with] ethnic groups, and it became difficult for us. Families adopted different political views, and even within families there were differences.

Now we are trying to go back; there are some people who really like us and want us back and others who do not want us. For it to work, it would require the family to think more logically, and we do not even agree

²⁹ ICG interview, Kabul, August 2003

³⁰ For a detailed account of land and ethnicity in Hazarajat see S.A. Mousavi, *The Hazaras of Afghanistan: An Historical, Cultural, Economic and Political Study* (Surrey, 1998).

³¹ For a more detailed account of this struggle see Rubin, *Afghanistan*, op. cit., p. 272.

³² The reference was to ethnic Tajik forces led by Ahmed Shah Massoud, the United Front (Northern Alliance) commander killed on 9 September 2001, and the forces of Hizb-i Wahdat, a Hazara armed political party.

³³ ICG Interview. Mazar-i Sharif. August 2003.

among ourselves. The local people do not have a lot to say; if the commander were not there we would find ways to build understanding, but it would mean being there not just visiting.³⁴

The negative role of the local media in increasing ethnic conflict was noted by many of those interviewed in Mazar-i Sharif, who pleaded for a media that was independent and free of ethnic bias.

C. FAMILY DISPUTES

Family disputes easily spill over and involve the wider community, whether between or within ethnic groups. Whole valleys or urban neighbourhoods can become embroiled in conflict because of a dispute between two families.

Marriage is still mostly a question of relationships between families rather than individuals. Few are free simply to marry whom they please, though the degree of choice can vary from marriage even against wishes, to an joint agreement between individual and family. Women in particular are seen as the repository of family honour and have even less space than men to follow their own wishes. Those who become widows are often expected to marry their deceased husband's brother, which may provide for her and her children but often does not accord with her wishes. When an individual transgresses the norms, either by refusing to marry the designated person or by committing adultery, serious conflict can follow. Disputes over marriage and sexual relations can travel through generations and become the most intractable to solve.³⁵ It is these conflicts more than any other that communities seek to keep out of the formal system. Yet so-called traditional justice can be deeply abusive of women's rights, as the following example from the north shows:

A woman was engaged, her husband died, and his family wanted her to be married to another son of the family. She did not want this, so she escaped with another man to Peshawar, and they got married there. When she was five months pregnant, she came back to Shiberghan, and the family of the man she was engaged to asked the *shura* to decree that she should be stoned. They were claiming she was their

daughter-in-law. And the leader of the *shura* sent a document saying she should be stoned. Then her family went to the governor, and it took many hours of dialogue to convince the *shura* leader that she should not be punished.³⁶

The price to be paid for the resolution of such conflicts is high – in terms of both the monetary compensation involved and the woman's rights, which are often sacrificed to get a family/community level solution. At their most extreme, such disputes can often involve killings. Once they have reached this level, they are not, according to all interviewees, easily solvable by the elders, and certainly not by official, governmental, processes.

In the Panjshir a young woman, liking a boy, escaped to his house. The woman's family went to his house [and said] you have to give us a daughter, if not we will kill someone, even if it is after many years.³⁷

Recently in Kunduz, where my husband's family come from, a husband died, and the wife was still beautiful and had a young son, and the brother in law wanted her to be his wife. But she did not want to, and the son did not want his mother to marry his uncle. There was no agreement. So the uncle came and killed the woman and her son.³⁸

Parties have often been known to use the formal system not to seek a solution but to inflict punishment on the other side. A number of women are wrongly imprisoned for these reasons³⁹.

The years of war deepened the problems because people behaved in ways they would not have in the past, and sexual violence against both males and females was used as a tool of war:

Traditional values have gone; once when women were captured they were still treated with respect, as mothers or sisters, now women are raped and killed.⁴⁰

³⁴ ICG Interview, Kabul, August 2003

³⁵ ICG interviews, Kabul, August 2003.

³⁶ ICG interview with (AIHRC) Kabul, August 2003.

³⁷ ICG interview, Kabul, August 2003.

³⁸ Ibid.

³⁹ Amnesty International, "Afghanistan: Establishing the Rule of Law", 14 August 2003.

⁴⁰ ICG interview, Kabul, August 2003.

III. WHAT'S BEING DONE

A. JUDICIARY AND GOVERNANCE

Many people believe that local conflicts should be resolved by the government through its formal systems, and speak of a time when this was so. Yet, much of Afghanistan's government administration and its formal justice system broke down over the war years. The task of restoring it is immense and will not be accomplished quickly.⁴¹ Salaries for government officials at all levels declined so much as to make corruption almost an inevitable part of the system, and connections to factional power became a key determinant of who got jobs. Many qualified lawyers and judges left the country, and the number of law students declined significantly. Judges were often appointed after consultation with regional commanders and were severely limited in their ability to deliver justice. The police force became largely linked to the factions.

People have no trust in government offices here. They are not reliable, so people don't refer to them, don't want them to get involved in solving problems. The police, prosecution, courts – these leaders are claiming to be the representatives of the nation, but they cannot be; they belong to the factions.⁴²

Even when good initiatives are taken, such as the move to set up human rights units within the provincial police forces, they cannot work effectively, because “we have no materials, no car, no phone. How can we go to villages and tell people their rights?”⁴³

If the formal justice system is to have a role in the resolution of conflict, all parts of it need to function, including the courts. This is currently far from the case. The Security Commission for the North (see below) noted as a success that in August 2003, for the first time in many years, police in Sholgara had been able to make arrests without interference from commanders⁴⁴ but without a functioning justice

system, arrests are of limited value. As a member of the police in Mazar commented: “we give them up (to the prosecutor) and two days later we see them on the streets again”.⁴⁵

Examples abound. While this report was being researched, the person accused of aiding the recent kidnapping of a prominent trader in Mazar was released without a trial despite the presence of numerous witnesses,⁴⁶ and a sub-commander from Badakhshan who brutally murdered a teacher by dragging him behind a vehicle was set free from Kabul, to where he had been remanded.⁴⁷ The climate of impunity is undermining any possibility of confidence in the justice system and breeding new grievances.

Corruption happens at all levels:

I go to the court, my dress is clean, I am wearing gold, everyone comes. “What can we do for you”? This is a place for bribes. The whole system needs to be changed.⁴⁸

Even those who believe in the formal route say it cannot succeed until this changes. Change, however, will not come unless people are paid a living wage. As a senior police official put it:

I have four children, they are all at school, each child needs at least 1000 Afghanis (U.S.\$20.83) a month. Tell me, how can I not be corrupt? We cannot live on 1500 Afghanis (U.S.\$31.25) a month, it is not possible.⁴⁹

In the past when government officials were involved in resolving conflict, the first steps were to try for a negotiated solution. Police, for example, recount mediating local disputes and only resorting to court when this failed. People speak of how prior to the Soviet invasion and the breakdown of government, disputes would often go to the local landlord (*malik*, *arbab* or *beg*), and those that could not be solved at this level would go to the government representative at the district or sub-district level. It seems that formal mediation,

⁴¹ See ICG Asia Report No. 45, *Afghanistan: Judicial Reform and Transitional Justice*, 28 January 2003.

⁴² ICG interview, Mazar-i Sharif, August 2003.

⁴³ ICG interview, head of Balkh Police Human Rights Unit, Mazar-i Sharif, August 2003.

⁴⁴ ICG interview Mazar 2003

⁴⁵ ICG interview, Mazar, 2003.

⁴⁶ ICG interview, Mazar-i Sharif, August 2003.

⁴⁷ ICG interviews, Faizabad, June 2003 and with AIHRC, Kabul, September 2003.

⁴⁸ ICG interview, Kabul, August 2003.

⁴⁹ ICG interview with police officer, Mazar-i Sharif, August 2003.

through the law department (*hoquq*) of the Ministry of Justice, operated at a provincial level and also in larger or more established districts and dealt with family matters, land and debt.⁵⁰

In addition to the normal structures of governance, specific initiatives were from time to time established by Afghanistan's various governments. In the late 1980s, Najibullah set up a national reconciliation program, which provided a framework for the incorporation of local mujahidin groups. The resolution of the Revolutionary Council on 3 January 1987 provided for commissions of national reconciliation throughout the country at the levels of villages, sub-districts, districts, and provinces. These commissions failed to function, however, as they were opposed by the mujahidin groups, who frequently executed anyone nominated to them.

The Transitional Administration has so far failed to develop a clear policy for tackling local conflict, despite the possibilities for reconciliation contained within the Bonn Agreement; nor has it created the political space in which it might be addressed. On the contentious issue of land, attention seems to have been focussed on the need to release land for private foreign investment, while the regulatory frameworks in which this might be possible, and in which multiple and complex disputes might be addressed, are in tatters. A special court has been created under the Supreme Court to hear property disputes but this seems mainly a response to those seeking to recover valuable urban properties, especially in Kabul, and deals largely with individual cases.⁵¹ Disputes through the courts can take a very long time, and many people have been working for years to get their property back.

A special Commission for the Development of Kabul, under the chairmanship of Vice President Karim Khalili, continues to arbitrate disputes about urban property or development in the capital. The commission has the authority to enforce decisions on recalcitrant ministries and facilitates the resolution of private disputes, but only in a reactive manner. Further, its credibility has been affected because it has failed to confront some of the more

brazen instances of land-grabbing by officials within the Transitional Administration.⁵²

In the provinces, a number of departments have seen it as part of their work to mediate disputes. In Baghlan, for example, the provincial Department of Women's Affairs has successfully mediated inheritance disputes. However, these initiatives do not as yet seem to be part of any overall strategy.

Many people interviewed for this report expressed immense frustration with the failure of central government to take decisive action. In the words of a general who is now a senior police official:

There is a need to consult less and act more. If he [Karzai] doesn't act now, then when? How long do we wait? Should everything be stopped because of two commanders fighting? Is Karzai afraid? If he does not act now when there is support from the UN community, when can we do something? With the people he should be patient, but with the commanders very strong. The commanders have taken the people hostage, they use them to create *shuras*, to go to Kabul and plead the case of a commander Karzai wants to change.⁵³

A. TRADITIONAL INSTITUTIONS

In the absence of functioning formal systems, many people have turned to traditional mechanisms – the *shura* and *jirga*⁵⁴ – to solve problems. These can exist at provincial, district, tribal or village level, although not all areas have village level institutions. Their form and history differ from place to place. Traditionally they were gatherings called as and when needed, rather than fixed membership groups. The extent to which communal conflict was resolved through these mechanisms or through the governmental system

⁵² ICG interview, Kabul, 2003.

⁵³ ICG interview, Mazar, 2003.

⁵⁴ The *jirga* is the traditional Pashtun council of elders; the *shura* is the equivalent Dari term. Historically, both words have been used in Afghanistan to refer to gatherings convened for resolving tribal disputes and deciding on other important issues, but the use of the term *shura* tends to imply adherence to *shari'a*, rather than tribal customary law. See Barnett Rubin, *The Fragmentation of Afghanistan: State Formation and Collapse in the International System* (Lahore, 1996), pp. 42, 229.

⁵⁰ Wily, "Land Rights in Crisis", op. cit.

⁵¹ Ibid.

varied throughout the country. In urban areas NGO and UN activity has encouraged equivalent structures at the *gozar* (urban district) level, of which the best known are the UN Habitat-supported Community Fora.

The extent to which *jirgas* or *shuras* were ever collective bodies is open to debate. Many *shuras* seem in their present form largely a creation of the post-Communist order, when NGOs and the UN needed local structures through which they could work. In some cases they became genuine community organisations, while in others they were merely structures to enable commanders and landlords to access resources. Even where all adult men (and sometimes a few women) attend, there can be a great difference between attendance and participation. An interviewee whose home was in the Jalalabad area spoke of how:

...in the past it was said that there were *shura*, but they were very weak or not existing. It was the *khan* or the *malik* who influenced people's lives, who made decisions. The *shura* were just there to say they were practising democracy, they would say they had discussed with the *shura*.⁵⁵

Generally those *shura* that operate at village or urban district level have more chance of being free of interference by commanders than those at higher levels. Provincial level *shura* are often councils of commanders, and even when a civilian *shura* exists it can be entirely under factional influence. Describing a provincial level *shura* in the east, an interviewee said:

This *shura* is not elected. It is there to keep in power key individuals, and to receive funds from the government. It is not for the people. And the governor is very happy: his brother is leading the *shura*. This is misusing *shura* against the people.⁵⁶

In the north, *shuras* at the provincial and district levels were often seen as totally under factional control and no more than a device for legitimating the decisions of commanders. Local level *shuras*, at either a *gozar* or village level, were perceived as more democratic, and some, it was said, were very good. However, their power was generally seen as

limited. If the dispute was at the local level and did not threaten factional interests, they could solve it, but if it were bigger any decision had to be ratified by the commander, who simply rejected what did not suit his interests.

The effectiveness of local conflict resolution mechanisms is seen to be linked to the strength and cohesion of the community. Where the community is strong, local conflicts can be successfully resolved by village meetings; elsewhere commanders become involved. Informants for a study on Hazarajat⁵⁷ spoke of disputes that were "not too serious" being solved by village elders sitting together, and of how this worked best in remote areas where the power of political parties was not too strong; if disputes were more serious then the parties were said to interfere as they wished to avoid any resurgence of the old leadership. Some informants divided disputes into three types: land disputes, which if not too serious could be solved by village elders; disputes concerning women, which could be solved by a committee of religious and village elders; and political disputes, which were usually solved at a high level and whose solution was usually superficial and short-lived. Similar points were made by interviewees in the north.

In Pashtun areas, particularly in the southeast, the *jirga* can often have virtually total jurisdiction, resolving even the most serious crimes and leaving nothing outside its jurisdiction. One interviewee described it thus:

Mullahs, elders, even in some communities women participated, and they solved all conflicts and never allowed them to leak out; very few were referred to the government. Youths would go, but to sit and listen and learn; they would never talk. From more than a thousand years back this was the tradition.⁵⁸

Ideally, the process of mediation and reconciliation involves seeking forgiveness or pardon and the obligatory acceptance of a truce offer. It is against the tribal code of behaviour to reject such an offer. Judgements are made in the framework of customary laws and local traditions and values, and village people often prefer *jirgas/shuras* to formal

⁵⁵ ICG interview, Kabul, August 2003.

⁵⁶ Ibid.

⁵⁷ C. Johnson, Hazarajat baseline survey, UNOCHA, Islamabad, 2001.

⁵⁸ ICG interview, Kabul, August 2003.

justice institutions because they are conducted by respected elders with established social status and a reputation for piety and fairness. Also, unlike state courts, *jirgas/shuras* settle disputes without long delays and financial costs, and they are accessible to the illiterate – the overwhelming majority of Afghans, who are unable to make applications to court, read or understand the laws, or do the paperwork.⁵⁹ However, women rarely have any say in the decisions of these bodies, and their rights are frequently sacrificed to reach a solution for the family or community.

A father could give his daughter age ten; and that could be the punishment, that a daughter aged ten had to go and marry a man 60 years old.⁶⁰

Such practices as the giving of girls in marriage as part of dispute resolution conflict with state law and violate human rights. Traditional systems, however, are generally a blend of Islamic understanding and practice, and older tribal customs and Islam can sometimes be a progressive influence on tribal practices. Speaking of how conflicts were traditionally resolved, elders in Zabul explained that while settlement had once often involved an exchange of girls, this was no longer allowed because it was against *shari'a*.⁶¹

The war affected traditional structures but to differing degrees; in some places they appear to have survived largely intact, in others they have been destroyed by the displacement and killing of old leaderships and their replacement by new leaders the people do not trust.

When the Communists entered Afghanistan, the first thing they did to harm Afghanistan was they replaced traditional leaders with artificial leaders. The old leaders were jailed, killed, or forced to flee. But the people never obeyed the new leaders. The Islamists did the same – they replaced the old leaders with

ones who were without education, without values.⁶²

But as one informant said: "Everything has changed but not 100 percent is lost. The trust is no longer there but there are things that still have value that you can work with".

The gun culture has also broken down respect for traditional authority and undermined the practice of negotiation:

Before income was brought in by the father, but with the new system young people with guns brought bread home, they had the power.⁶³ It is the power of the gun, people can be more irresponsible: the commander is with me. Elders who could previously solve a conflict now cannot because the person has the commander behind him.⁶⁴

Especially in the north, where factional power is at its strongest, all but the most minor disputes were found to be linked to factional politics, either from their beginning or because commanders became involved part way through. Over and over people spoke of how even when local level solutions were reached, they had to be ratified by commanders, and that if they did not meet with their approval they had no chance:

Where big commanders are involved in land disputes you cannot solve anything.⁶⁵ Mediation goes on until one commander arms one side, then the other has to arm.⁶⁶

B. NGO AND UN INITIATIVES

From the mid-1990s, and partly due to the lack of any political framework for resolving Afghanistan's problems, a number of actors turned to local reconciliation possibilities. Much of this was good, common sense development, getting people from different groups to work together as a means of promoting dialogue between them. UN Habitat, for example, had joint Hazara-Tajik teams undertaking

⁵⁹ For a more detailed description, see Ali Wardak, "Jirga and Traditional Conflict Resolution in Afghanistan", in John Strawson (ed.), *Law after Ground Zero* (London, 2002).

⁶⁰ ICG interview, Mazar-i Sharif, August 2003.

⁶¹ Interviews in Zabul, September 2002, for study, "Afghanistan's Political and Constitutional Transition", C. Johnson, W. Maley, A. Thier, A. Wardak, ODI, London, 2003.

⁶² ICG interview with official of Afghan NGO, Afghan Development Association, Kabul, August 2003.

⁶³ ICG interview Kabul, August 2003.

⁶⁴ ICG interview Kabul, August 2003.

⁶⁵ ICG interview, Mazar-i Sharif, August 2003.

⁶⁶ ICG interview, Mazar-i Sharif, August 2003.

projects in Kabul in the mid-1990s in an attempt to reduce ethnic tension.⁶⁷ Some NGOs, however, sought to combine experience from other countries with their understanding of their own society to produce a specific focus on reconciliation.

The local NGO, Afghan Development Association (ADA), for example, sees conflict resolution as at the core of what it does, and individual development projects as conflict prevention tools. As a result, it has invested significant resources in training staff in conflict resolution skills. When it started in Uruzgan province in 1992 it was, in its words, “chaos; everyone was attacking the other, there was conflict between Hazara and Pashtun, Pashtun and Pashtun, Hazara and Hazara”. In a similar vein, its report cites the example of Baburanu Village, 30 km north of Kandahar city:

When these people began to return to their village, they realised it was not the same place as before the war. The village *jirga* had disappeared. Other community services, such as the joint supervision of irrigation systems, the mechanism to solve problems among inhabitants, and village representation were lacking. Since families had affiliated with different parties, living in harmony and unity had become a thing of the past.⁶⁸

So it decided that the way to tackle the problem was to get people to work together on practical projects:

People have to sit together, pray together, eat together, Finally they became familiar with each other, they laughed, joked, “you are all our brothers”, and they made a joint *shura*.⁶⁹

Oxfam has worked similarly in Hazarajat. In the late 1990s, when relations between Hazaras and Sayyids had become strained, an Oxfam employee described how the agency sought to combat inter-communal tensions:

...by doing projects where there are poor Hazaras and poor Sayyids and where both contribute to the project and come close, and

the problem is solved because both work together. They think “so we have equal rights on this project, maybe also in other things”. And in Band-i Amir we worked in a village of all poor Sayyids. They were thinking Oxfam didn’t work with Sayyid, but this year when we did a program they realised this is wrong: X is Hazara and Y is Hazara but they went to a Sayyid village and did a project.⁷⁰

Sometimes the trajectory towards conflict can be halted and a situation stabilised even if reconciliation is not achieved. While this falls short of the ideal, it stops deterioration and makes a more permanent solution easier in the future. An example was the return of *kuchis* to Panjao in May 1999. Oxfam and the World Food Programme (WFP) were doing emergency food distribution. The Oxfam manager was a Pashtun from Logar, the person in charge on the WFP side was a Pashtun from Kandahar.⁷¹ By chance the (international) country representative arrived several hours after the well armed *kuchis*. The community was in panic and poised for flight, fearing retribution for twenty years of land use the *kuchis* considered theirs. The team believed that carrying on as planned would help stabilise the situation. They negotiated with the *kuchis*, and after several difficult hours reached agreement that the distribution would not be interfered with, the safety of staff would be assured, and the community would not be attacked. The *kuchis* held to this until some six weeks later a Taliban delegation from Kabul negotiated their withdrawal.

For Shuhada, another Afghan NGO, the core of reconciliation work is education. Dr Sima Samar, its founder and now Chair of the Afghan Independent Human Rights Commission, explained how it worked in Jaghori, a Hazara district surrounded by Pashtun areas that used to be very tense:

In Jaghori the schools really changed the whole attitude of the area. In 1989/1990 when we started, everyone was holding a gun, was part of the political parties. And the

⁶⁷ ICG interview, Kabul, August 2003.

⁶⁸ Afghan Development Association (ADA), “Strengthening Peace in Afghanistan Through Sustainable Human Development”, Kabul, 1996.

⁶⁹ Ibid.

⁷⁰ C. Johnson. op cit.

⁷¹ Oxfam made a deliberate decision at the suggestion of its Hazara staff that in the potentially tense situation in Hazarajat a Pashtun program manager was needed as an interlocutor between the largely Hazara staff and the Taliban authorities.

educated ones, they left the party and joined the school to teach. And the young people started coming to the school not joining the parties. In schools we speak about equality. Only through education can we really bring about work on reconciliation. We need opportunities, alternatives to the gun. And we need to talk to the people, through schools, through mosques, through clinics and health projects. You can see, in areas where there is no education people are much more violent.⁷²

Similar sentiments were echoed frequently in the north.

The Afghan NGO Cooperation for Peace And Unity (CPAU) was set up specifically to work on issues of reconciliation. Its approach has been to think of doable things, to focus on what can be achieved rather than talking about impossibilities: “The people always see the big picture, and because they don’t find any place for them to influence they get disappointed”.

Rather than waiting for an incident to happen and then trying to think about how to prevent escalation, it has tried to be proactive, to reduce the likelihood of conflict occurring in the first place. In a study of how Jaghori managed both to avoid a conflict with the Taliban it knew it could not win and retain the values it believed most important, including access of girls to primary and secondary education, it identified this ability to be proactive, to act before the conflict actually started as one of the most important criteria for success.⁷³

CPAU believes in building the capacity of the community – to empower, to transfer skills and knowledge, to help the traditional *shura* and *jirga* be practical. They also work to get the community to accept that the life of a person, and especially a woman, should not be sacrificed to bring families together. Aware of how unrepresentative local structures can be, they have tried to inject

ideas into the community as to who would be the representative.

In the past it would always be landlords, *khans*, commanders, no one would dare challenge them. For example, in Herat, there was an *arbab* and he was interested in leading the big *shura*, and we suggested that before choosing someone, they write down a list of criteria for what qualities such a person should have, and it grew to be a big list. And then we asked, “Who meets these criteria”? It turned out to be someone, a teacher, whom no one had thought of before, and even the *arbab* agreed.⁷⁴

Sometimes the organisation met with resistance from traditional leaders who thought they had nothing to learn, as in a workshop in Herat:

We were running a workshop on mediation, and this mullah, he was very against it; he thought that they had been doing this for many years, and there was nothing to learn. So, Suleman said to him, ‘No, we have come to learn from you, to sit at your feet and learn from all your experience, so that we might teach other people better. Then he agreed. Five days into the workshop he was saying, “if only I had known these things before”’.⁷⁵

NGO work on reconciliation and peacebuilding has not fundamentally altered since 11 September 2001, though some new players have come on to the scene, and existing actors have taken the opportunity to extend some of their activities. NGOs continue to see a role for themselves but they also recognise their limitations and the need for an overall strategy that seeks to involve people at all levels:

NGOs cannot do it, at most they can do 20 per cent, the rest must be from the government. And the mullah should preach about the benefits of peace, and the media, and schools – it should be a subject on the curriculum.⁷⁶

⁷² ICG interview with Dr. Sima Samar, Kabul, August 2003.

⁷³ Mohammad Suleman and Sue Williams, “Strategies and Structures in Preventing Conflict and Resisting Pressure: a study of the Jaghori District Afghanistan”, Steps Towards Conflict Prevention Project, The Collaborative for Development Action. www.cdainc.com.

⁷⁴ ICG interview with Fahim Hakim, founder of Cooperation for Peace and Unity (CPAU), Kabul, August 2003.

⁷⁵ Ibid.

⁷⁶ ICG interview with Afghan Development Association, Kabul, August 2003.

There is a concern that in all the attention being paid to physical reconstruction, the need for social reconstruction is being neglected. As CPAU noted, political peace is very important, but true peace cannot be produced by that alone in a country where almost a quarter century of war has bred a culture of violence, which leaves children throwing stones pretending they are hand grenades or drawing pictures of rockets and kalashnikovs. Yet NGOs find it increasingly difficult to get funding not just for specific peacebuilding work but also for the long-term development that can support democratic and inclusive community structures. The current emphasis is very much on short term deliverables, and work that is hard to measure is also hard to fund. Yet the study of Jaghori clearly showed that key factors in the prevention of conflict were trusted patterns of leadership, structures already in place, existing skills and shared values.⁷⁷ A few communities are fortunate to have these by dint of their culture and history; for others it will require long term, skilled work.

C. INTER-AGENCY INITIATIVES

Two key inter-agency initiatives were started in 2002 in relation to the situation in the north: the Security Commission for the North, and the Return Commission and its associated Working Group.

1. Security Commission for the North

Faced with continuing high tension and lack of any real initiative from the Transitional Administration to resolve the problems, the UN Mission (UNAMA) in May 2002 came up with the idea of establishing a Security Commission for the North which would have representatives from all factions - police, intelligence, UNAMA itself and (once it was established in early 2003) the Mazar office of the Afghan Independent Human Rights Commission. The aim was to get factional leaders to be responsible for solving disputes and to police the behaviour of their own commanders.⁷⁸

The Commission has met at least weekly since its inception - and sometimes more often - to discuss concerns and to arbitrate disputes in conjunction with local elders and key local government

officials. All arbitration delegations are multi-factional. UNAMA's role is one of facilitation, and all the non-UNAMA people interviewed believed that without it, the Commission would collapse.

It is good, it has some benefit for the people, but only when there is participation from UNAMA and the PRT (Coalition Provincial Reconstruction Team); without this it would not last for five days! People will not trust it.⁷⁹

Since its formation, the Commission has arbitrated some 50 to 60 disputes. It has also negotiated the removal of illegal check-posts. Observing that some places were repeat trouble spots, it began to negotiate local disarmament in high-tension areas. It recognises it can never achieve complete disarmament but hopes to at least improve security. Its highest profile success was negotiating an end to fighting in Maimana city earlier in 2003, a success attributed in part to the fact that a new governor had been appointed who was non-factional and respected by the population. In addition, the Ministry of the Interior replaced the head of police and for a brief time sent a contingent of trained police from Kabul to support the process. The Security Commission's work is now supported by the Mazar-based PRT, which patrols regularly, monitors agreements and builds the capacity of the local police.⁸⁰ Opinions vary as to the Security Commission's success:

This is useful, it has helped resolved disputes; maybe not 100 per cent, but they have done some useful work. When we go to the districts we open the door for people, they come to us and complain, they cannot go to the governor or the police locally because they are factional.⁸¹

This bottom up approach is not useful. In Sholgara I don't believe they have managed 30 per cent. Think of this room, and outside is all guns; is it possible to disarm this room? Maybe it has some usefulness, it avoids some killing, but it is not a process for peace.⁸²

⁷⁷ Suleman and Williams, "Strategies and Structures", op. cit.

⁷⁸ ICG interviews with UNAMA staff, Mazar-i Sharif, August 2003.

⁷⁹ ICG interview, Mazar-i Sharif, August 2003.

⁸⁰ ICG interview with PRT team leader, Mazar-i Sharif, August 2003.

⁸¹ ICG interview, Mazar-i Sharif, August 2003.

⁸² ICG interview, Mazar, August 2003.

Some in the PRT and UNAMA believe that it is possible to collapse factional power from the bottom up:

We will eat away at their support base, say to the local people, “you don’t have to have these guys”, and before they know it, it will collapse from underneath.⁸³

Others, particularly the Afghans interviewed, strongly disagreed, along the lines of: “if you want to kill a tree you do not cut off the branches, you dig up the roots”.

People point to the fact that where the central government has taken an initiative - for example, through key appointments by the Minister of Interior - it has had an impact. One noted:

Every commander in Mazar is afraid because they saw two commanders arrested and they say, “if we do something wrong they will arrest us”.⁸⁴

Despite this, however, there seems to be little coordination between the Security Commission and the central government, and as a result opportunities for greater impact are being lost.

Although it is too early to pass judgement on the Security Commission, some tentative lessons seem to be emerging:

- local initiatives to reduce conflict are more likely to work when there is a respected and non-factional governor to work with;
- in areas where the problem is multi-factional, it is likely a solution will not be found unless it involves all parties;
- in the current situation, which is characterised by lack of trust, an independent party may be needed to facilitate the process (some Afghan communities have for generations brought in elders from neighbouring areas when a dispute could not be solved locally);
- support from the centre (for example, through appointment of non-factional senior officials and the deployment of additional, trained

police) at key times can make a big difference; and

- there needs to be ongoing support for any solution through the monitoring of agreements by an independent party and systematic building of the local parties’ capacities, such as the police force, which means not just training, but also working with people on a day-to-day basis.

It is also too soon to assess how far the Mazar PRT will be able to augment the work of the Security Commission, including whether its military presence can make a significant difference to the level at which the Security Commission can intervene. There is cautious optimism from Afghans:

They [the PRT] are not bad; even though they are small, they are travelling, but it is not enough to bring stability – they need more.⁸⁵

Fundamental issues remain to be resolved, however, about the core PRT objectives and the international political support that might be needed to achieve them. PRT officials in Mazar were clear that theirs was not an enforcement mission, that “there is no point taking responsibility for security as you always have to hand it over at some point and it develops into a relationship that is adversarial”.⁸⁶ They believed that what they could do was support Afghan initiatives for peace by providing an independent monitoring capacity that could help build trust in a situation where currently neither side has any confidence in the intentions of the other, and by helping to build the capacity of non-factional security forces.

This focus on security fits with what many have argued *should* be the key PRT objective, but unless central government takes a much clearer lead in resolving issues in the north, it will have little success in expanding its legitimacy. Moreover, other initiatives such as police training will pose problems unless the question of police pay is also resolved.

⁸³ ICG interview with UNAMA staff, Mazar-i Sharif, August 2003.

⁸⁴ ICG interview, Mazar-i Sharif, August 2003.

⁸⁵ ICG interview, Mazar-i Sharif, August 2003.

⁸⁶ ICG interview with PRT team leader, Mazar-i Sharif, August 2003.

2. Return Commission for the North

This commission was set up in response to the fact that although some 700,000 refugees and internally displaced persons (IDPs) had returned to the north, less than half this number had returned to the provinces of Sar-i Pul, Jawzjan, Balkh, Faryab and Samanghan, and the majority of one particular group, the Pashtuns from Faryab and Jawzjan, remained away in the belief that conditions were not safe for return.⁸⁷ Following discussions with the Ministry of Refugees and Repatriation, the northern authorities, UNAMA, the office of the UN High Commissioner for Refugees (UNHCR) and the AIHRC, the Return Commission was established with the aim of facilitating the "voluntary, safe, dignified and sustainable return of Afghans to these northern provinces".

Most of the actual work of the Commission has been undertaken by its Working Group (WGRC), which has representation from the national (MoRR) and regional authorities (representatives of Junbish, Jamiat and Hizb-i Wahdat), the AIHRC, the displaced community, UNAMA and UNHCR. It has toured the country facilitating honest discussion with displaced people from the north about their concerns. Its considerable achievement has been to keep all the parties talking about the problem; what it has not been able to do as yet is to make it safe for people to return to all parts of the north. In part this is due to the fact that factional leaders lack proper control of their commanders, particularly in the district of Almar, where conditions are so bad that UNHCR has been advising against return. As with the Security Commission, this local initiative is valuable, but it has limitations on what it can achieve unless backed by strong central government action.

IV. CONCLUSION: WHAT NEEDS TO BE DONE

"Everyone has realised that fighting has no value, they do not want to hear the voice of the gun any more".⁸⁸

Perhaps the strongest argument for the resolution of conflict is that Afghans are truly tired of fighting. The conviction with which this point was made over and over again to ICG can and should be harnessed, but given the nature of factional power in Afghanistan, it is unlikely that it can bring peace on its own.

The removal of factional power is a prerequisite for reconciliation in many places, and the call for the central government to take strong action comes from all quarters. Nevertheless, security is getting worse, not better; there has been little tangible improvement in the justice system; and Afghans at all levels remain concerned that there has been little progress on disarmament, demobilisation and reintegration of fighters (DR), or the formation of a national army.

However, if it is clear that national level action is urgently needed, it is also clear that this is a necessary but not sufficient condition. The end of factional power will mean that some conflicts disappear. A clear legal framework and a justice system that is not corrupt and is staffed by qualified personnel will enable solutions for others. But the long years of war have given rise to complex layers of wrongs. People remember events and the historical background differently. In some situations it will never be possible to establish one truth on which everyone can agree. Similarly with land issues: there can be multiple claims to a single property. While some will be revealed to be based only on straightforward, illegal expropriation, many will be backed by their own form of validity, customary agreement or legal paperwork. An adversarial winner and loser approach in such situations would only store up more conflict for the future. As one observer put it, "If we go to documents we cannot reach a conclusion".⁸⁹

⁸⁷ Terms of Reference of Return Commission.

⁸⁸ ICG interview, Mazar-i Sharif, August 2003.

⁸⁹ ICG interview, Kabul, August 2003.

If there is to be any lasting solution to many conflicts, as opposed to temporary fixes that will be challenged as soon as the power balance again shifts, some form of reconciliation will be essential, and this will have to be built from the bottom up:

If the international community wants to bring about real change, if the government wants to be a real government, then they need to see values at the grassroots level, to work with the people. People are so tired, [but] they have lots of will.⁹⁰

Community based reconciliation will have to be part of any strategy to move towards a more peaceful future in Afghanistan, not as a replacement for formal legal processes but in acknowledgement of the fact that formal processes alone will not be able to solve the many and complex problems facing the country. Reconciliation should include support to local dispute-settlement mechanisms to negotiate competing interests that cannot all be met.

Three potential levels of action can be identified: national (headed by the Transitional Administration); regional or provincial (perhaps using multi-agency structures); and district or sub-district. At a sub-district level, and in some cases at district level, it will be important to work through traditional structures. Whatever their failings they are often all there is. At village level, these local structures are still seen as the main form of conflict resolution, and it is clear that it will be a long time before there is a formal justice system that is independent, free of corruption, accessible to all and staffed by a qualified judiciary. Given the problems of commander control of *shuras*, however, and the history in some areas of control by wealthy landlords, care needs to be taken in working with non-formal structures. They should not be seen as a substitute for a reformed official justice system, and appropriate oversight must be applied where possible.

At the regional level and below, there needs to be a clear analysis of what is possible and where. Afghanistan is a very diverse country, with many different local histories and levels of factional control.

Care must also be taken not to push projects and funding through a local *shura/jirga* too quickly. In the

past, structures that were established simply in order to receive funds have often been little more than fronts for local commanders or other vested interests, and have collapsed as soon as the money for the project ended. Time is needed to work with local people to make structures democratic and accountable. Democracy “fronts” can strengthen elite control, as they have in the past, and it would be naïve to assume that the problem will be solved simply by having an election. As one Afghan told ICG:

We would like the traditional structures to be revived, but in an advanced way. There should be open elections for [the] *jirga*, but overnight we cannot get it. It will take two years; if we do it now they will elect warlords because they are scared.⁹¹

There is likewise a need to consider how the formal and traditional systems should relate to each other, when one is based on notions of compromise and negotiation (and ultimately a solution for the community but not necessarily for the individual) and the other is based on a more adversarial approach and the notion of individual justice.

Finally, it should be recognised that reconciliation cannot be separated from broader issues of development, from individuals believing they have a stake in a future that does not involve fighting. Education is crucial.

Initiatives aimed at reconciliation must be actively promoted at three interdependent levels:

- ❑ international: the parties to the Bonn Agreement are accountable for the commitments they made in that document and must remain engaged with the process of political reconciliation, particularly in the run-up to elections;
- ❑ central government: initiatives such as security sector reform and disarmament/demobilisation/reintegration (DR) have the potential to improve the overall security situation, bring about a return to the rule of law, and build confidence in political and social reconciliation; and
- ❑ local: improved security and the rule of law will not do away with the need for local initiatives, which will remain the only vehicle

⁹⁰ ICG interview, Kabul, August 2003.

⁹¹ ICG interview, Kabul, August 2003.

for solving many problems, but rather will create the environment in which those initiatives can function effectively.⁹²

Specifically, and as an urgent matter, the Afghan Transitional Administration needs to see to it that the disarmament, demobilisation and reintegration into society of fighters – a key prerequisite to reconciliation at all levels – is not kept hostage to factional politics and the continued blockage of agreed reforms. Likewise, security sector reform to produce a defactionalised, national and professional police force responsible for law and order should be emphasised. Without a living wage, however, it will be impossible to have systems that are not corrupt. The effectiveness of such a police force, therefore, as well as of the national army and justice system, hinges on establishing and sustaining reasonable pay levels.

Another immediate priority is to provide political and operational support to local initiatives. Since not everything can be done at once, this should initially concentrate on the extension of national authority in areas where security is most problematic. Experience suggests that this should involve the removal of governors, police chiefs and other senior officials who disregard central government instruction and/or are known to be dishonest. It will be important to make arrangements for rapid deployment of trained police to support local processes as well as agreements with international forces to monitor the implementation of agreements and to arbitrate where necessary.

Over the medium term, the Transitional Authority must ensure that the judiciary is prepared to deal with the prevalence of communal conflict, including over land rights, family feuds and ethnic violence. It should encourage local processes as well, recognising that many issues of communal

conflict should be handled by methods of negotiation and compromise rather than a win-lose approach. Guidelines will be needed as part of judicial reform to establish proper investigation and adjudication bodies that include members from government, communities, other interest groups and independent actors such as the UN.

Similarly, clear guidelines should be laid down for local traditional justice mechanisms (*shura/jirga*) so that their judgements comport with the rule of law and human rights standards. A small number of pilot *jirga/shura* and human rights units might be set up alongside the court in a number of districts to link the formal and traditional justice systems and make justice more accessible, cost-effective and efficient. These should then be evaluated and the experience more widely applied as appropriate.

Key members of the international community such as the U.S. India, Pakistan, Iran and Russia need to make certain that their actions and resources bolster reconciliation at the national and local level alike. The direct support to militia leaders that actively undermines reconciliation processes needs to stop.

UN bodies should continue to act, where appropriate, as independent facilitators of mediation processes, and UNAMA, working with the appropriate Afghan authorities, needs to provide leadership in analysing opportunities for local reconciliation in different areas of the country. At the same time, it should monitor and commission independent evaluations of local inter-agency initiatives, such as the Security Commission for the North, so that lessons are learned from them and then applied systematically around the country, where required. Funds should also be made available to evaluate NGO initiatives.

An independently facilitated inter-agency seminar could usefully be held in Afghanistan to share experience of work in reconciliation and peacebuilding from both inside and outside the country and to set up a network so that people can learn from the experience of others.

Donor countries need to recognise, however, that there is no quick fix for building reconciliation. Long-term funding is needed both for specific programs and for broader social development work with communities. The fact that such work does not have easily measurable outcomes should not be allowed to mitigate against its funding, nor to stop

⁹² Donors have taken some steps toward facilitating community-based peacebuilding projects. USAID's Office of Transition Initiatives (OTI), for example, supports workshops run by the Sanayee Development Foundation (SDF) and aimed at religious and community leaders in areas considered to have a high conflict potential, including Ghazni, Mazar-i Sharif, Jawzjan, and Badakshan. See http://www.usaid.gov/our_work/cross-cutting_programs/transition_initiatives/country/afghan/rpt0703.html. Other NGOs, however, report great difficulty securing donor support specifically for grassroots dispute resolution initiatives.

a rigorous approach being taken towards its evaluation. Part of this support should be for NGO training of peace educators and development of peace education materials, and for NGO work in making traditional systems more inclusive and democratic. Finally, donors should acknowledge the importance of education in any long term process of reconciliation by providing additional external support for development of an effective and realistic education strategy.

Afghanistan is very far from stable, and there remains a considerable possibility that widespread conflict will return. While most of the international focus is on power machinations in Kabul, local conflicts and the uses that commanders make of them to sustain their own positions present key risks. Many of these conflicts could be contained, but this requires more attention for them, a greater international security presence around the country, and more flexible aid schemes that can deliver not just material benefits but also political progress.

Kabul/Brussels, 29 September 2003

