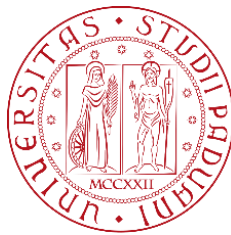


UNIVERSITÀ DEGLI STUDI DI PADOVA

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in Human Rights and Multi-level Governance**



**THE ROLE OF TRADITIONAL NORMS IN BUILDING
SUSTAINABLE PEACE IN POST-CONFLICT SOCIETIES.
THE CASE OF AFGHANISTAN**

Supervisor: Prof. SARA PENNICINO

Candidate: BEHNAZ JAHED

Matriculation No.: 2058872

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Abstract

The stability and well-being of societies depend heavily on the attainment and maintenance of national peace. International documents are very important in assisting and directing nations toward peace. Nations can refer to these documents as useful instruments in the pursuit of peace. Through the implementation of these documents, countries can reap the benefits of their significance and direction, ultimately aiding in the achievement of peace.

Reference to international documents is essential, however not sufficient to create and maintain a long-term peace environment. Besides the inputs offered by the reference to internationally recognized human rights, it is paramount to make to most of some positive aspects of traditional practices that local populations understand and can consider as their own.

For instance, community get-togethers can be extremely important for settling disputes and promoting peace. Thanks to these traditional practices, people feel there are part of the decision-making process, develop a sense of ownership about the adopted strategies and will most likely actively engage in the process of promoting peace. These bottom-up approaches are one concrete way to acknowledge each and every citizen's importance as a member of society, and as a critical element in peacebuilding initiatives.

As a good example of such practices, one could mention two Afghanistan's long-lasting traditions: Shura and Jirga. These are vents in which community elders and members meet to collectively resolve disputes, work this way toward a peaceful resolution of conflicts. It would be therefore crucial to involve the Afghan people in peace negotiations in order to guarantee their active involvement and to emphasize their significance as stakeholders in the process of establishing peace. Nonetheless, it is imperative that the reference to traditional practices is done within the human rights framework, so as to grant – for instance – women's inclusion. Reference to positive aspects of local traditions should not impede a critical analysis of possible discriminating elements of such traditions.

The best strategy to promote sustainable peace in post-conflict societies is to combine reference to internationally agreed upon human rights documents with appreciation and use of positive aspects of local traditions. Making the most of local practices (such as get-togethers in Afghanistan) is crucial to promote inclusivity and to develop in the local population a sense of ownership towards building peace. Empowering community and individuals, recognizing their significance as active participants in the decision-making and peace-building process, is indeed instrumental to the very success of peace initiatives. Acknowledging the importance of local traditions and practices, however, does not mean acritically accepting every aspect of them. Hence, the importance of the reference to human rights documents, that grant the right of meaningful engagement from *all* community members, including women, in the effort to establish a lasting and inclusive peace.

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To all the people of Afghanistan, this thesis is dedicated to you. May it serve as a humble contribution towards achieving justice, progress, and sustainable peace in our beloved nation.

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AIHRC	Afghanistan Independence Human Rights Commission
ASDGs	Afghanistan Sustainable Development Goals
CEDAW	The Convention on the Elimination of All Forms of Discrimination Against Women
CSOs	Civil Society Organizations
DPA	Department of Political Affairs
HCNR	The High Council for National Reconciliation
ICC	The International Criminal Court
ICJ	The International Court of Justice
IDPs	Internally Displaced People
IHL	International Humanitarian Law
NAP	National Action Plan
NAPWA	National Action Plan for the Women of Afghanistan
NGOs	Non-Governmental Organizations
OHCHR	Office of the High Commissioner for Human Rights
UDHR	The Universal Declaration of Human Rights
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UNSCR	United Nation Security Council Resolution
WPS Index	The global Women, Peace, and Security Index

INTRODUCTION

The construction of a durable peace in a society that has experienced conflict is a difficult and multifaceted task. The success or failure of peacebuilding initiatives is influenced by a variety of factors, and among these, the significance of tradition has drawn growing attention. Tradition shapes a society's values, norms, and practices because it is deeply rooted in its cultural, social, and historical textile. Comprehending the dynamic between customs and enduring peace is imperative in formulating efficacious approaches that address the distinct obstacles encountered by societies emerging from conflict.

With an emphasis on the situation in Afghanistan, this thesis seeks to explore the significance of tradition in long-lasting peace. Afghanistan's society, institutions, and people are deeply wounded as a result of decades of conflict. It is critical to consider how tradition affects peacebuilding efforts and long-term stability prospects as the nation works to rebuild and transition to a peaceful future.

This thesis aims to clarify the intricate dynamics at work in Afghanistan by examining the relationship between tradition and long-term peace. It will look at the ways that institutions, customs, and beliefs affect peacebuilding initiatives in both positive and negative ways. Furthermore, the thesis will look into how conventional methods of social structure, governance, and conflict resolution affect the post-conflict environment as well as the chances of rapprochement and society change.

Additionally, the gendered aspects of tradition and peacebuilding in Afghanistan will be explored in this study. The process of promoting peace and the inclusion and empowerment of women in societies that have experienced conflict can be greatly influenced by gender roles, views of women's rights, and conventional gender norms. Designing interventions and policies that advance gender equality and guarantee the active involvement of all members of society in the establishment of lasting peace requires an understanding of these dynamics.

This thesis adds to the body of information already available on the function of tradition in post-conflict societies by looking at the example of Afghanistan. It provides insights into the opportunities and difficulties posed by tradition, offering insightful lessons that can guide peacebuilding efforts in Afghanistan and other contexts facing comparable dynamics. The ultimate goal of this research is to support the advancement of more complex and culturally aware methods of long-term peacebuilding, which will promote enduring stability and well-being in societies that have experienced conflict.

1. How has tradition, with a particular focus on Afghanistan, been impacted by international peace documents like the United Nations Charter and Universal Declaration of Human Rights in order to promote sustainable peace in post-conflict societies?
2. What are the principal customs, institutions, and beliefs that influence peacebuilding efforts in Afghanistan in the aftermath of conflict, and how do they help or impede the establishment of a lasting peace?

3. How do gender roles, views on women's rights, and conventional gender norms affect women's participation and empowerment in peacebuilding efforts in Afghanistan following conflict?
4. How do informal justice systems interact with traditional conflict resolution mechanisms like the Jirga and Shura, and what role do they play in building or undermining Afghanistan's long-term peace?
5. To what degree have NGOs and civil society groups been successful in post-conflict, Afghanistan in promoting women's rights, women's participation in peacebuilding, and gender equality by utilizing traditional structures and practices?
6. How does transitional justice interact with conventional methods of resolving disputes and what part does it play in Afghanistan's process of reconciliation and long-term peace?
7. How have customs, institutions, and values shaped the peace process in Afghanistan, and what effect has this had on the likelihood of enduring peace and stability?
8. How can international organizations and non-governmental organizations (NGOs) effectively engage with and leverage traditional structures and practices to promote long-term peace in Afghanistan's post-conflict context?
9. What lessons can be drawn from experiences of integrating tradition and modernity in Afghanistan?
10. What are the challenges and opportunities associated with incorporating traditional conflict resolution mechanisms into the formal justice and reconciliation processes in Afghanistan?
11. What are the challenges and opportunities associated with incorporating traditional conflict resolution mechanisms into the formal justice and reconciliation processes in Afghanistan?

These questions serve as a starting point for investigating the complex relationship between tradition and long-term peace in post-conflict Afghanistan. They invite a thorough investigation into the dynamics, challenges, and opportunities associated with the role of tradition in peacebuilding, shedding light on potential strategies and interventions for fostering long-term peace in the aftermath of conflict.

Literature Review:

The methodology employed in this thesis is based on a comprehensive literature review. The study examines the function of tradition in fostering long-lasting peace and resolving conflicts by drawing on a broad range of academic publications, including books, reports, academic journals, and personal experiences. Based on Report of UNAMA and OHCHR 2010 about tradition and human rights, harmful practices grounded in tradition and sometimes attributed to religion, lead to pain, suffering, humiliation and the marginalization of millions of Afghan women and girls, violating the most basic human

rights of half the population. Practices that include forced and child marriage, exchange of girls to settle disputes, exchange marriages, and killing in the name of “honour,” constitute harmful traditional practices¹. Such practices originate in entrenched discriminatory views and beliefs about the role and position of women and girls in society. In Afghanistan, harmful traditional practices have been further reinforced by widespread poverty and insecurity that Afghans have experienced for more than 30 years.

As outlined in this report, however, most harmful traditional practices are without basis in religious principles or in some cases actually contradict religious teachings. Culture and tradition, sometimes viewed and used as a refuge during violent conflict can be persuasive arguments for perpetuating practices that harm women, but these should be distinguished from religious precepts. UNAMA HR’s findings as well as studies by other organizations⁵ reveal that harmful traditional practices are often reinforced by religious misconception, community and family perceptions of the role of women, judicial and police officials who fail to enforce the law and informal justice mechanisms that compromise women’s individual rights to a collective solution.

Hasht-E-Subh newspaper wrote about the Traditional Nature of Afghan Society and analyzed it that extremist and fundamentalist groups, aiming to impede the progress and advancement of Afghan society, frequently put forth the misguided argument that this nation is rooted in tradition. Through this line of reasoning, they attempt to rationalize regressive and isolating policies such as the closure of girls’ schools and other measures against women. This flawed argument, much like various other erroneous and harmful clichés, when propagated without critical examination, serves as a foundation for discrimination and escalating atrocities. This argument’s deficiencies span multiple facets.

Even if the society were ostensibly steeped in tradition, it remains imperative to break free from traditionalism that opposes education, modern learning, art, progress, and national advancement. If archaic and detrimental traditions confine a society to the vestiges of the Middle Ages, a concerted effort against these traditions becomes indispensable. Destructive and ruinous customs must be extirpated, their influence eradicated. Traditionalism is not a commendable virtue but rather a historical regression that should be recognized as an affliction rather than an asset. It is paramount to identify and expose fallacious arguments and wrest control from manipulative politicians.

In addition, the report of the United States Institute of Peace’s (USIP) is written.

- Afghanistan’s legal system has drawn on a mix of customary tribal law, primarily derived from the Pashtun community’s code of Pashtunwali and Islamic legal traditions valued for their universal and unifying characteristics.

- Despite popular conceptions that Islamic law holds a supreme legal status, field surveys indicate that in practice, its provisions are often disregarded in favor of customary law intended to maintain community consensus. This consensus is often not between equals but is shaped by the relative authority of the persons resolving the dispute.
- A particular concerning outcome is the marginalization of Afghan women, despite Islamic legal precepts that enshrine them with individual rights, particularly in matters of family, inheritance, and marriage law that are not extended under Pashtunwali.
- A significant number of survey respondents voiced concerns about the credibility of Islamic religious scholars (ulama) participating in resolving disputes at the informal level, citing poor levels of training in Islamic legal precepts and concerns over their neutrality.
- Despite this finding, informal justice actors nonetheless expressed openness to overturning prevailing customary law and signaled their willingness to take a more Islamic legal approach to resolving disputes if they were educated by the particulars of Islamic law, especially as it pertained to women and understanding gender-related norms.
- Ultimately, religious leaders are in a unique position of wielding a supreme measure of authority on issues related to law and morality and can potentially play a role in pushing for legal reforms.

Finally, the customary law of Afghanistan a Report by the International Legal Foundation:

According to this report, every nation and every geographical region in Afghanistan has its own customary laws and they follow and apply them in family and even criminal cases. Unfortunately, these customary laws of every nation and region are not considered justice in some cases. It still prevents people from complying with official government laws.

- transitional justice in post conflict societies

transitional justice helps the international society to develop, but sometimes due to different political, social, and cultural reasons this process faces challenges, or is not being implemented. Apparently, if the criminals are still in power, even after the transitional period, the governments are not able to prosecute them and impunity overcomes the situations. This is the time where different factions of the society, such as warlords, military parties and specific social groups still hold the power and get stronger than the current legitimate power. Such situations could be handled through.

various forms of reforms in the country. Therefore, during transition, stakeholders need to keep in mind to study the society from different aspects.

Civil society organizations, Afghanistan independent human rights commission, international actors such as The International Center for Transitional Justice (ICTJ), the International Criminal Court (ICC), the International Red Cross and Red Crescent (ICRC) and government of Afghanistan started to put their efforts to implement the adopted laws and they also were major players of supporting victims financially and legally.

Emergence of impunity as a culture in Afghanistan was very challengeable because there is no authority to ask for the accountability of the groups, who committed the crimes. Impunity caused insecurity in Afghanistan as, all warlords and insurgents, who were armed, challenged the security, and safeguarded them from Disarmament, impunity caused violation of the human rights to be strengthening, if justice calls the perpetrators, they will stop cooperating with the regimes and this fear even caused them to get stronger; It undermined security reform and the rule of law. Every perpetrator in Afghanistan has had gun and received financial support from different foreign sources.

Peace building.

The United States' attempts to sustain a formal peace process between the Taliban and the former Afghan government grew defunct when the insurgent movement marched on Kabul. But even after the collapse of the Islamic Republic and the re-establishment of the Islamic Emirate, peacebuilding efforts remain critical in Afghanistan.

The country has entered an unpredictable new phase in the decades-long, elusive effort to achieve peace and stability. The Taliban's takeover ended the war associated with their insurgency, but the country's underlying drivers of conflict remain unresolved. The Taliban's nascent government has marginalized ethnic and political groups outside of its own core membership, excluded women from politics and increasingly from the public sphere, alienated the country's largest foreign donors, committed war atrocities and continues to harbor international terrorist groups. Violent resistance has percolated across the country, with ousted former military leaders, ethnic militia commanders and extremist groups like the local branch of the Islamic State all keen to contest the Taliban's authority.

Chapter I. INTERNATIONAL DOCUMENTS FOR SUSTAINABLE PEACE

There are several international documents and frameworks that promote sustainable peace and guide peacebuilding efforts worldwide. These documents provide guidelines, principles, and norms aimed at preventing conflicts, resolving disputes, and establishing peaceful and inclusive societies.

Promoting and preserving international peace is a major goal of the United Nations Charter, the UN's founding document. The Charter functions as a framework for guidance that urges countries to respect human rights and give priority to peaceful means of resolving disputes. The importance of diplomatic negotiations, dialogue, and peaceful means of resolving international disputes is emphasized in the Charter. It encourages nations to prevent themselves from using force or looking for any aggressive course of action that could exacerbate tensions or spark hostilities. The goal of the Charter is to prevent war from breaking out and to advance international stability by encouraging peaceful means of resolving disputes.

Another essential component of the UN Charter is respect for human rights. It acknowledges the intrinsic value and dignity of every person, despite their gender, ethnicity, nationality, or any other characteristic. The Charter places a strong emphasis on the obligation of states to defend and preserve human rights in order to promote equality, justice, and peace. The United Nations Charter promotes international dispute resolution among states in an atmosphere of mutual respect and cooperation. It creates the notion of collective security, according to which states work together to counter threats to global peace and security. In order to resolve disputes respectfully, this collaboration entails participating in nonviolent negotiations, mediation, and arbitration. In order to encourage peaceful communication and collaboration among states, the Charter also supports the notion of international cooperation and the creation of international organizations like the United Nations. It emphasizes the value of international cooperation, in which nations cooperate to address global issues and advance peace and security.¹

In this first chapter I consider some key international documents relevant to sustainable peace initiatives.

1.1. The United Nation charter (1945)

The United Nations Charter, a monumental document adopted in 1945, stands as the cornerstone of the United Nations (UN), setting forth its principles, objectives, and operational framework. Constructed with meticulous care, the Charter encompasses a

¹ Charter of the United Nations, as amended (1945) ATS 1.
<https://www.austlii.edu.au/au/other/dfat/treaties/1945/1.html>.

diverse array of topics, such as human rights, sustainable development, and global collaboration. However, it is in the realm of peace that the Charter truly shines, dedicating considerable attention to the promotion and preservation of international peace and security. Now, let's examine some of the main clauses found in the UN Charter that support the organization's mission to promote world peace and harmony.

1. Preamble: The preamble of the Charter expresses the determination of the nations to save future generations from the scourge of war and to establish conditions under which justice and respect for international obligations can be maintained.
2. Article 1: The purposes of the United Nations, as stated in Article 1, include maintaining international peace and security, developing friendly relations among nations, and promoting social progress and better standards of living.
3. Article 2: One of the fundamental principles outlined in the Charter is the peaceful settlement of disputes. Article 2(3) stipulates that all UN members shall "settle their international disputes by peaceful means" and "refrain from the threat or use of force against the territorial integrity or political independence of any state." This principle serves as a bedrock for peaceful coexistence and encourages nations to resolve their differences through diplomatic negotiations, mediation, arbitration, or other peaceful mechanisms.
4. In addition, preventive diplomacy and nonviolent conflict resolution are emphasized in the Charter. In Article 33, it is encouraged for parties to a dispute to attempt peaceful resolution through negotiation, mediation, or other means before using force. It emphasizes the value of communication and the search for peaceful resolutions in order to stop conflicts from getting worse and to deal with their underlying causes.

A solid basis for promoting world peace is provided by the United Nations Charter, a seminal work in the field of international relations. The Charter offers a comprehensive road map for achieving a more peaceful and harmonious world through its provisions on peaceful dispute resolution, collective security measures, preventive diplomacy, cooperation with regional organizations, and the links of peace, development, and human rights. The international community can work toward a future where peace is paramount, disputes are settled through negotiation, and the welfare of all peoples is protected by respecting and putting into practice the values contained in the Charter.²

1.1.1. Chapter VII: Action with respect to threats to the peace, breaches of the peace and acts of aggression, articles 39-51

The question is whether the United Nations, when creating the concept of a collective security system, placed significant effort into Chapter VII of the UN Charter in order to

² "United Nations Maintain international peace and security", United Nations. (1945)
<https://www.un.org/en/our-work/maintain-international-peace-and-security>.

accomplish their vision of a safer world. It is unmistakable that the Security Council was vested with the same broad competences as any other organ of the UN as a result of this, and its empowerment with the responsibility to restore and maintain peace and security by using all necessary available means allowed it to have the "last say" in many conflicts and situations.

For the purpose of preserving world peace and security, Chapter VII of the United Nations Charter, which is headed "Action with respect to threats to the peace, breaches of the peace, and acts of aggression," is crucial. The United Nations Security Council's options for responding to situations that endanger the world's stability are described in this chapter.

Chapter VII addresses the Security Council's options in the event of a threat to international peace and security and the main goal is to discourage conflict and encourage amicable settlements. It includes provisions for sanctions, arms embargoes, and, in extreme situations, military action as enforcement tools.

Chapter VII's significance stems from its capacity to permit the international community to take collective action in response to circumstances that threaten peace and security. The Charter seeks to protect vulnerable populations, stop the conflict from getting worse and advance global stability by giving the Security Council the power to act.

In addition, Chapter VII emphasizes the value of multilateralism and international cooperation in tackling global issues. It highlights the idea of collective security, in which participating nations cooperate to counter threats and violations of international law. This cooperative method guarantees that choices about the application of force or other actions are made jointly and in compliance with international law.

The United Nations Charter's Chapter VII discusses the actions that the UN Security Council can take in response to threats to international peace and security. This chapter, which consists of three articles (39, 41, and 42), is critical to maintaining peace and stability.

Article 39. The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 39 of Chapter VII empowers the Security Council to investigate any threat to the peace, breach of the peace, or act of aggression. It acknowledges the Council's responsibility to detect situations that threaten international security and serves as the foundation for subsequent measures under this chapter. This article emphasizes the Council's role as the key international body in charge of maintaining peace and its obligation to confront such threats.

Article 41. The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 41 specifies non-military actions that the Security Council may use in response to threats or breaches of peace. Economic sanctions, diplomatic attempts, arms embargoes, and diplomatic relations severance are among the methods considered. Article 41 underlines the importance of non-coercive conflict resolution and encourages the international community to use its collective influence to counter threats to peace.

Article 42 of Chapter VII Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations. * This article empowers the Security Council to use military force to maintain or restore international peace and security. This article recognizes that in some instances, peaceful efforts may be insufficient, and the Council may approve the use of force.

When it comes to the Security Council's response to threats against global peace and security, Chapter VII provides a crucial foundation. It emphasizes the need for nonviolent means of resolution, while acknowledging that the Council bears the obligation of identifying and dealing with such threats. Chapter VII seeks to ensure that the Council can respond to various situations and use the most appropriate means to maintain international peace and security by offering a range of choices, from non-military measures to military action.

It is crucial to remember that using armed force under Article 42 is restricted and only meant as a final resort after all other options have been exhausted peacefully. The chapter represents the UN's commitment to resolving conflicts peacefully whenever possible, and it emphasizes the importance of international cooperation and collective action in dealing with threats to peace.

Article 51. Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

In the case of an armed attack, Article 51 of the United Nations Charter recognizes the inherent right to individual or collective self-defense. It reads:

"Nothing in the present Charter shall be construed to limit a Member of the United Nations' inherent right to individual or collective self-defense if an armed attack occurs against a Member of the United Nations until the Security Council has taken the necessary measures to maintain international peace and security."

Measures taken by Members in exercising their right to self-defense shall be immediately reported to the Security Council and shall have no bearing on the Security Council's authority and responsibility under the present Charter to take any step it deems necessary to maintain or restore international peace and security."

Article 51 is examined in two ways: the recognition of the right to self-defense and the constraints imposed on it.

1: Article 51 affirms the inherent right of individual member states as well as collective organizations of nations to defend themselves in the event of an armed attack. This Article recognizes governments' natural right to defend themselves and their citizens from invasion. It upholds the notion of sovereignty and states' right to employ force in the event of an armed attack.

2: Limitations and Reporting Obligations: While Article 51 recognizes the right to self-defense, it also limits its use. It states that self-defense must be used in response to an armed attack and must end once the Security Council takes action to protect international peace and security. This paragraph highlights the Security Council's principal role in resolving threats to peace and encourages governments to use peaceful means before seeking the Council's action. States exercising self-defense must quickly notify their actions to the Security Council.

The goal of Article 51 is to find a balance between the right to self-defense and the United Nations' collective security framework. It recognizes the legitimate need for self-defense while respecting the Security Council's power and obligation to maintain international peace and security. It increases transparency and facilitates the Council's oversight of self-defense measures by requiring governments to report their actions.³

1.1.2. Promotion of international cooperation

It is commonly acknowledged that fostering international collaboration for peace is essential to both global governance and conflict resolution. The following citations emphasize the value of global cooperation in promoting peace:

³ Ibid,2

- 1.1.2.1 United Nations Charter: The fundamental document of the organization, the United Nations Charter, places a strong emphasis on the necessity of international collaboration for preserving peace. It requires states to "promote social progress and better standards of life in larger freedom" (Article 1) and "practice tolerance and live together in peace with one another as good neighbors" (Preamble). The fundamental significance of international cooperation in preventing conflicts and resolving disagreements peacefully is emphasized by the principles and provisions of the Charter, particularly those included in Chapters I, VI, and VII.
- 1.1.2.2 Resolutions of the UN General Assembly: The UN General Assembly frequently adopts resolutions emphasizing the development of global cooperation for peace. In order to achieve peace, justice, and sustainable development, for instance, the resolution A/RES/70/1, "Transforming our World: The 2030 Agenda for Sustainable Development," highlights the necessity of international cooperation. Resolutions on humanitarian aid, human rights, and disarmament also emphasize how crucial international cooperation is to solving world problems and promoting peace. So, the General Assembly is the United Nations' main deliberative, policymaking, and representative entity. The General Assembly, through regular meetings, provides a forum for Member States to convey their views to the full membership and reach consensus on challenging problems. It offers proposals via General Assembly resolutions. Decisions on critical issues, such as peace and security, new member admission, and budgetary considerations, require a two-thirds majority, but minor issues are decided by a simple majority.⁴
- 1.1.2.3 Resolutions Adopted by the UN Security Council: The UN Security Council publishes resolutions emphasizing the need of international collaboration in preserving peace and security. Resolutions frequently ask for regional and global collaboration in order to resolve disputes, promote peace initiatives, and carry out peace accords. Resolutions 1325 on Women, Peace, and Security and 2250 on Youth, Peace, and Security are two instances of this. The former stresses the significance of gender equality and women's involvement in peace processes, while the latter underlines the value of involving youth in peacebuilding initiatives. Also, The Security Council is in responsible for evaluating whether a threat to peace or an act of aggression exists. It encourages the parties to a dispute to settle it peacefully and suggests techniques of adjustment or terms of settlement. The Security Council holds the authority to take enforcement measures under Chapter VII of the UN Charter in order to maintain or restore international peace and security. Economic sanctions to international military action are examples of such actions. The UN Security Council also creates UN Peacekeeping Operations and Special Political Missions.⁵

⁴ "United Nations Documents", United Nations. <https://www.un.org/en/our-work/documents>.

⁵ Ibid,2

1.1.2.4 Peace Treaties and Agreements: A plethora of peace treaties and agreements show the effectiveness of international collaboration in settling disputes and establishing long-lasting peace. The Oslo Accords, which enabled talks between Israel and Palestine, and the Good Friday Agreement, which ended the war in Northern Ireland, are two examples. These agreements emphasize how important it is for parties to a conflict to work together with other international actors with the goal to help bring about peace.

1.1.3. The declaration on the right of peoples to peace (1984)

It was adopted by the United Nations General Assembly on December 12, 1984. The declaration was a significant milestone in recognizing the importance of peace as a fundamental right and the collective responsibility to promote and achieve peace at all levels, from the individual to the international community.

1.1.3.1 Peoples' Right to Peace: The proclamation acknowledges that peace is a fundamental right of all individuals and all peoples. It highlights that peacekeeping is a collective responsibility that necessitates the participation and contribution of all nations and individuals. The right to peace has political, economic, social, and cultural components, and it asks for the abolition of all forms of aggression and violence.

1.1.3.2 Peacebuilding is emphasized in the declaration as a method for preventing conflicts, resolving disagreements, and addressing the core causes of violence. It emphasizes the importance of sustainable development, social fairness, human rights respect, and the promotion of democracy and tolerance as vital components of peacebuilding initiatives. To build long-term peace, the declaration invites states to participate in discussion, negotiation, and reconciliation.

1.1.3.3 Nonviolence and Disarmament: The declaration emphasizes the importance of disarmament and the promotion of nonviolence as important components of peace. It advocates for reduced military spending and reallocation of resources to peaceful purposes such as development, education, and social welfare. The declaration also encourages the international community to avoid using force and to settle issues peacefully.

1.1.3.4 internationally Responsibility: The declaration acknowledges the worldwide community's responsibility to promote and maintain peace, which includes nations, international organizations, and individuals. It emphasizes the value of international collaboration, solidarity, and mutual respect amongst nations. The declaration urges the observance of international law, particularly the principles of the United Nations Charter, as well as the peaceful resolution of problems.

The Declaration on the Right of the Peoples to Peace reminds us of the importance of peace as a fundamental human right and our shared responsibility to promote and maintain it. It emphasizes the importance of collaboration, negotiation, and nonviolence in resolving disputes and creating a more peaceful society. The declaration continues to lead efforts at the national and international levels toward peacebuilding, conflict prevention, and the achievement of human rights and social justice.⁶

1.1.4. Declaration on the right to peace (2016)

The 2016 Declaration on the Right to Peace reaffirms individuals' and peoples' right to peace and highlights the necessity of promoting peace and preventing conflicts at all levels. It acknowledges the necessity for comprehensive approaches to peace that address the core causes of conflicts, such as societal inequities, inequality, and breaches of human rights. The declaration calls on governments and the international community to foster a culture of peace, dialogue, and nonviolence.

Following long-standing efforts since 1970 to declare peace as a human right, the UN General Assembly (UNGA) adopted the Declaration on the Right to Peace in 2016.⁷ Both international peace and intra-state peace are recognized as human rights with individual and collective elements in the 2016 Declaration. The Declaration, which strives to avert violent conflict and build a culture of peace, is one of many UN programs aimed at sustaining peace. According to identical UN Security Council (UNSC) and United Nations General Assembly (UNGA) resolutions from 2016, sustaining peace entails UN involvement in all stages of conflict, including pre-conflict contexts, and addressing the root causes of armed conflict through 'political, developmental, and human rights initiatives and mechanisms' that consider 'the needs of all segments of society.'⁷

As the Declaration is not legally obligatory in and of itself, it is necessary to identify the relevant actions that UN entities should adopt, as required in Article 3 of the Declaration, to enable the full realization of the right to intra-state peace or to elicit long-term positive peace. This builds on Sengupta's argument on the right to development that rights do not have to become enforceable to be relevant, provided that they can be implemented through well-designed policies and frameworks to realize that right⁸. It believes that resolving the core causes of armed conflict is necessary for long-term peace and distinguishes itself from mere stability or the absence of armed conflict (negative peace), which may rely on coercion or repression without respect for just peace conditions. However, conceptualizes sustainable positive peace as the presence of horizontal

⁶ *Declaration on the Right of people to Peace*, (1984), General Assembly resolution 39/11, united nations human rights office of the high commissioner

⁷ *UNGA and UNSC Resolution, Review of the United Nations Peacebuilding Architecture*, (2016), Report of the Advisory Group of Experts, that the twin resolutions draw on, particularly for comprehensive peacebuilding also in pre-conflict contexts.

⁸ Sengupta, (2002) 'On the Theory and Practice of the Right to Development' *24/4 Human Rights Quarterly* 837 at 856–7, 861.

equalities among collectivises, building on the vast majority of the literature's consensus that collective grievances (a sense of social injustice) caused by horizontal inequalities across identity groups are the primary drivers of intra-state armed conflict.

The HRC Advisory Committee modified the title so that it changed the focus of its 2012 Draft Declaration from peoples' right to peace to human right to peace in order to protect both the individual and collective elements of the right, thereby adding an individual dimension. As a result, the 2016 Declaration broadens the range of actors designated as right holders and hence beneficiaries of the right to peace. This is reflected in the text of Article 1, which says that everyone has the right to enjoy peace, referring to individuals as right-holders independently. As such, it goes beyond the 1984 UNGA Declaration and subsequent UN resolutions that exclusively identify peoples, i.e. humans collectively, as the bearers of rights.⁹

Based on the UN Charter and international and regional human rights agreements, the Declaration proposes a right to both international and intra-state peace. The Declaration strengthens States' pre-existing commitments under the UN Charter to sustain international peace by including individuals as right-holders and beneficiaries of peace. These obligations include prohibiting 'the threat or use of force against' both (1) 'the territorial integrity [and] political independence' of other States and (2) intra-state peace of other States by 'organizing, instigating, assisting, or participating in acts of civil strife or terrorist acts.'¹⁰ Individuals' and states' rights to international peace would be violated in circumstances of non-defensive uses of force, such as wars of aggression. Given that the prohibition of aggression is an erga omnes obligation owed to all States, aggression and the resulting international armed conflicts—would undermine international peace owed to all individuals rather than just victims and other States engaged in armed conflicts. The content of a state's and an individual's right to international peace is essentially the same, according to UN Charter principles. Although the 2016 Declaration does not immediately extend to individuals States' pre-existing commitments for non-use of force⁵³ due to States, these obligations may be further entrenched as a result of the wider beneficiaries of the right to international peace.¹¹

1.2. The universal declaration of human rights (1948)

The Universal Declaration of Human Rights (UDHR) is a United Nations General Assembly-adopted international document that enshrines all human beings' rights and freedoms. It was adopted as Resolution 217 by the General Assembly during its third

⁹ *Declaration on the Right of people to Peace*, (1984), General Assembly resolution 39/11, united nations human rights office of the high commissioner , <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-peoples-peace>)

¹⁰ Refworld - UNHCR's Global Law and Policy Database. (2024, February 11). *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*. Refworld. <https://www.refworld.org/legal/resolution/unga/1970/en/19494>

¹¹ Lanovoy. (2017) 'The Use of Force by Non-State Actors and the Limits of Attribution of Conduct', *European Journal of International Law* 563, pp. 567

session on December 10, 1948, at the Palais de Chaillot in Paris, France after being drafted by a UN committee chaired by Eleanor Roosevelt. At the time, 48 of the 58 members of the United Nations voted in favor, none opposed, eight abstained, and two did not vote.¹²The Declaration of Human Rights is a cornerstone text in the history of human and civil rights. It consists of 30 articles that explain an individual's "basic rights and fundamental freedoms" and proclaim their universal character as inherent, inalienable, and applicable to all human beings.¹³The Universal Declaration of Human Rights (UDHR) commits nations to recognize all humans as "born free and equal in dignity and rights" regardless of "nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status."¹⁴

The Declaration is regarded as a seminal text because of its universalist language, which makes no reference to a specific culture, political system, or religion. It was the first step in the formation of the International Bill of Human Rights, which was finished in 1966 and entered into force in 1976, and it directly inspired the establishment of international human rights legislation. Although the UDHR's contents are not legally enforceable, they have been developed and integrated into succeeding international treaties, regional human rights instruments, and national constitutions and legal codes.¹⁵

For governments, organizations, and individuals, the UDHR acts as a moral compass, directing their actions and policies in the direction of preserving equality and human dignity. It offers a framework for accountability and invites states to uphold, defend, and respect the rights of their people. The UDHR's transformative potential is what makes it so important. It has played a significant role in fostering equality, advancing social progress, and battling discrimination. It has given people the confidence to assert their rights and given marginalized groups a forum to call for justice and inclusion.

While there are no explicit articles in the Universal Declaration of Human Rights (UDHR) dedicated only to peace, several paragraphs indirectly support and help to the attainment of peace. Here are some UDHR articles that are closely related to peace:

1.2.1. Fundamental human rights and freedoms

- Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. This article is about the recognition of equal rights and dignity for

¹² International Bill of Human Rights, (2015), "United Nations bibliographic information system", Universal Declaration of Human Rights : resolution / adopted by the General Assembly

¹³ *Human rights law*. (13 August 2020. Retrieved 20 August 2020). United Nations. <https://web.archive.org/web/20200813084117/https://www.un.org/en/sections/universal-declaration/human-rights-law/index.html>

¹⁴ *Universal Declaration of Human Rights*, 1948, Art. 2

¹⁵ Amnesty International. (2023, December 11). *Universal Declaration of Human Rights - Amnesty International*. <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/>

all individuals is a basic foundation for promoting peaceful coexistence and harmony among people.

- Article 3. Everyone has the right to life, liberty, and security of person. Right to Life, Liberty, and Security - It is critical for society to protect individuals' lives and provide their security.
- Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Freedom from Torture and Cruel, Inhuman, or Degrading Treatment or Punishment - Prohibiting torture and cruel treatment is essential in preventing conflict and creating peace.
- Article 9. No one shall be subjected to arbitrary arrest, detention, or exile. Freedom from Arrest, Detention, or Exile - Protecting persons against arbitrary arrest and detention helps to sustain the rule of law, which is necessary for maintaining peace and order.
- Article 18. Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance. So Individual Freedom of Thought, Conscience, and Religion - Respecting people's freedom of thought, conscience, and religion fosters tolerance, understanding, and peaceful coexistence among people of different beliefs.
- Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. The freedom to express one's thoughts, ideas, and information is crucial for open discourse, the sharing of ideas, and the peaceful resolution of challenges.
- Article 20.
 - 1) Everyone has the right to freedom of peaceful assembly and association.
 - 2) No one may be compelled to belong to an association.The right to peaceful assembly and association allows individuals to come together, engage in peaceful protests, and address complaints collectively, providing nonviolent pathways for expressing disagreement and resolving conflicts.
- Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. This article acknowledges the significance of an international order that protects human rights and develops peace and social fairness.

While these articles do not specifically address peace, they lay the groundwork for peaceful cohabitation, conflict prevention, and the advancement of human rights. The

UDHR as a whole serve as a guiding framework for building societies based on peace, justice, and human rights respect.¹⁶

1.2.2. Linkages between human rights and peace:

The issue of integrating human rights and peacebuilding has been on the academic, policy, and practitioner agendas for a long time, having first emerged in the 1990s. In recent years, it has acquired additional impetus as a result of recognition in numerous policy statements that human rights, peace, and development have no separation, and that practical initiatives should capitalize on such connections. In practice, there is some blurring of the boundaries between these realms. However, past experiences show that effectively connecting human rights and peacebuilding is frequently easier said than done, in part because efforts in the two areas can both complement and contradict one another.

They have rarely been clearly explored in relation to the interaction of human rights and peacebuilding to date. Human rights violations and violent conflict have a close relationship, as does human rights and peacebuilding.¹⁷

Over time recognition has grown that ‘justice, peace and democracy are not mutually exclusive objectives but rather mutually reinforcing imperatives. Rights norms have become an important component of the global policy framework for considering and addressing violent conflict as awareness has grown that human rights matter in the generation, manifestation, and evolution of such conflict. Other contributing factors have included increased concern with the protection of civilians and, generally, the rise of human rights as ‘the dominant normative or moral discourse of global politics. Many declarations and reports exist nowadays that stress the importance of linking peacebuilding and human rights, a call that has gained further impetus with three reviews undertaken by the United Nations (UN) in 2015, focusing on peace operations, peacebuilding architecture, and implementation of Security Council Resolution 1325 (2000) on women, peace, and security. The 2030 Agenda for Sustainable Development also explicitly relates processes to build peace and efforts to enhance justice. Goal 16 entails the promotion of just, peaceful, and inclusive societies, provision of access to all, and development of effective, accountable, and inclusive institutions at all levels.¹⁸

Beyond policy frameworks, the gap between the domains of human rights and peacebuilding has reduced in practice. This is attributable, among other things, to broader

¹⁶ United Nations (no date d) *Universal Declaration of Human Rights* | United Nations. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

¹⁷ Parlevliet, M. (2017) ‘Human Rights and Peacebuilding: Complementary and Contradictory, Complex and Contingent’, *Journal of Human Rights Practice*, Volume 9, Issue 3, November 2017, Pages 333–357, <https://doi.org/10.1093/jhuman/hux032>

¹⁸ Wikipedia contributors. (2023, February 3). *2004 United Nations Security Council election*. Wikipedia. https://en.wikipedia.org/wiki/2004_United_Nations_Security_Council_election

understanding of what it means to advance human rights and facilitate long-term peace, as well as to increased objectives and diversification of methods in the two sectors. At the grassroots and top levels, there is some blurring of the distinctions between human rights and peace efforts: In terms of the latter, the UN Security Council, for example, has increasingly acknowledged human rights as critical to its analysis and action on international peace and security, after considering the topic mostly taboo for several decades. The UN High Commissioner for Human Rights is now a regular UN Security Council interlocutor, and the majority of the Council's approved or formed missions have meaningful human rights tasks and capacities.¹⁹ Meanwhile, the CEDAW Committee, the treaty body associated with the Convention on the Elimination of All Forms of Discrimination Against Women, has begun to monitor peace processes to ensure that they are gender inclusive and pay adequate attention to realizing women's rights.²⁰ During its annual high-level panel on human rights mainstreaming in February 2017, the United Nations Human Rights Council expressly addressed the nexus between human rights and peacebuilding for the first time.²¹

Initiatives in civil society match such developments at the global institutional level. Various NGOs now combine human rights and peacebuilding in some way. Strategies range from a mostly rhetorical approach to more substantive engagements, including partnerships between human rights and peacebuilding NGOs, or organizations taking parallel action on distinct human rights and peacebuilding 'tracks'. In partnerships, organizations may refer cases or disputes to one another for legal aid or mediation and/or engage in reciprocal training to enhance mediation and negotiation skills and understanding of rights instruments, as happened between South Africa's Centre for Conflict Resolution and Lawyers for Human Rights in the early 2000s. The Nepali Informal Sector Service Centre and the Colombian Center for Research and Popular Education illustrate a parallel action approach: within these organizations, one unit undertook human rights monitoring and reporting during the war while another engaged in dialogue initiatives to address grievances, prevent violence and facilitate relationship-building at local level. Civil society actors may also try to integrate human rights and peacebuilding concerns and methods into one coherent program, for example by using a human rights issue—such as children's access to health care—to bring contending sides together.²² Also, in Afghanistan has two main categories of registered, non-governmental, not-for-profit organizations with legal entity status:

1. Non-governmental organizations (NGOs), which number 3001, including 2753 local and 248 international NGOs (as of August 2022); and

¹⁹ securitycouncilreport.org, (2016). Human Rights and the Security Council—An Evolving Role.

²⁰ UN CEDAW Committee (2013); Swaine and O'Rourke (2015)

²¹ UN Office of the High Commissioner for Human Rights (OHCHR), (2017).

²² Ibid,18

2. Associations, which number 4544 (as of August 2022).

Since the fall of the Islamic Republic of Afghanistan in 2021, most local and international NGOs engaged in public policy, human rights, media, women's rights, and children's rights have ceased operations, and their management personnel have left the country. ([1] An assessment prepared by Counterpart International, Inc. concluded that, as was the case before the recent legal reforms, two additional, broad categories of civil society organizations exist in Afghanistan.²³

The two main sources of international law are treaty law and customary international law, although they differ in terms of their origins, formation, and binding character.

1.3. War crimes

While the concept of war crimes emerged during the late 19th and early 20th centuries with the codification of international humanitarian law, also referred to as the law of armed conflict, even though the prohibition of specific behaviours in the conduct of armed conflict dates back many centuries. The main goal of the Hague Conventions, which were ratified in 1899 and 1907, is to forbid warring parties from using specific weapons and tactics. After then, a number of additional treaties have been ratified in this area.

In contrast, the protection of those who choose not to participate in hostilities is the main goal of the Geneva Convention of 1864 and its successors, including the two Additional Protocols of 1977 and the four Geneva Conventions of 1949. Many, but not all, of the violations of its standards are classified as war crimes under both Geneva and Hague laws. Nonetheless, there isn't a single piece of international law that describes every war crime. Treaties pertaining to international criminal law, international humanitarian law, and international customary law, all contain lists of war crimes.

All UN members have ratified the 1949 Geneva Conventions, but other international humanitarian law treaties and the Additional Protocols have not yet attained the same level of acceptance. Nevertheless, whether or not States have ratified the treaties themselves, many of the regulations found in these agreements have been deemed to be a part of customary law and, as such, are binding on all States (and other parties to the conflict). Furthermore, numerous principles of customary international law are applicable in both international and non-international armed conflicts, thereby broadening the protection provided in non-international armed conflicts, which are only governed by Additional Protocol II and Common Article 3 of the four Geneva Conventions.²⁴

²³ *Nonprofit law in Afghanistan* (2023), <https://cof.org/country-notes/nonprofit-law-afghanistan>

²⁴ United Nations (no date c) *United Nations Office on Genocide Prevention and the Responsibility to Protect*, <https://www.un.org/en/genocideprevention/war-crimes.shtml>

1.3.1. Rome Statute

The International Criminal Court (ICC) was founded by the Rome Statute of the International Criminal Court. It was approved on July 17, 1998, during a diplomatic gathering in Rome, Italy, and it became operative on July 1, 2002. 124 states are party to the statute as of November 2023. It establishes the structure, authority, and function of the court, among other things.

Genocide, crimes against humanity, war crimes, and crimes of aggression are the four main international crimes recognized by the Rome Statute. "Shall not be subject to any statute of limitations" refers to those crimes. The Rome Statute restricts the ICC's authority to investigate and bring charges for the four main international crimes to circumstances in which states are "unable" or "unwilling" to handle things on their own. The court's jurisdiction is a complement to that of domestic courts. Crimes committed by citizens of a state party or on state party territory are the only situations in which the court has jurisdiction. ICC may have jurisdiction over crimes if the United Nations Security Council authorizes it, which is an exception to this rule.²⁵

The Rome Statute of 2002, also known as the "Statute," established the International Criminal Court ("ICC") with the goals of bringing an end to impunity and prosecuting the most serious crimes of global concern. As the first international criminal law document to recognize various forms of sexual violence, including forced prostitution, rape, sexual slavery, and sterilization, to be distinct war crimes, the Rome Statute holds great significance. This legal tool is also unique in that it establishes crimes against humanity or war crimes based on gender as the foundation for offenses committed during armed conflicts. The Statute specifically grants the ICC jurisdiction over crimes based on gender if those crimes constitute to acts of genocide. Crimes like rape in this instance may qualify as genocide since they play a significant role in the harm done to the targeted populations. In addition, the Prosecutor is required to apply and interpret the Statute in accordance with universally acknowledged human rights, such as gender equality and the rights of women. The necessity of appointing judges with legal knowledge of violence against women or children should be taken into consideration by the States Parties.²⁶

1.3.2. Rome statute of the international criminal court

Article 1 – The Court

An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons

²⁵ Wikipedia contributors (2024a) *Rome Statute*. https://en.wikipedia.org/wiki/Rome_Statute

²⁶ *Rome Statute of the International Criminal Court* (2002), justice/resource/rome_statute_of_the_international_criminal_court, https://www.law.cornell.edu/women-and-justice/resource/rome_statute_of_the_international_criminal_court

for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

Article 2 – Relationship of the Court with the United Nations

The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.

Article 3 – Seat of the Court

1. The seat of the Court shall be established at The Hague in the Netherlands ("the host State").
2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.
3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

Article 4 – Legal status and powers of the Court

1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.
 2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.
- Part 2. jurisdiction, admissibility, and applicable law

Article 5 – Crimes within the jurisdiction of the Court

The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide
- (b) Crimes against humanity
- (c) War crimes
- (d) The crime of aggression.

Article 6 – Genocide

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group
- (b) Causing serious bodily or mental harm to members of the group

- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
- (d) Imposing measures intended to prevent births within the group
- (e) Forcibly transferring children of the group to another group.

Article 7 – Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder
- (b) Extermination
- (c) Enslavement
- (d) Deportation or forcible transfer of population
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law
- (f) Torture
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court
- (i) Enforced disappearance of persons
- (j) The crime of apartheid
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

- (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - (i) Willful killing.
 - (ii) Torture or inhuman treatment, including biological experiments
 - (iii) Willfully causing great suffering, or serious injury to body or health
 - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly
 - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power

- (vi) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial
- (vii) Unlawful deportation or transfer or unlawful confinement
- (viii) Taking of hostages.
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
 - (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities
 - (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives
 - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict
 - (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.
 - (v) Attacking or bombarding, by whatever means, towns, villages, dwellings, or buildings which are undefended, and which are not military objectives.
 - (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion.
 - (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury.
 - (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory.
 - (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not military objectives.
 - (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons.
 - (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army
 - (xii) Declaring that no quarter will be given
 - (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war

- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war
- (xvi) Pillaging a town or place, even when taken by assault
- (xvii) Employing poison or poisoned weapons
- (xviii) Employing asphyxiating, poisonous, or other gases, and all analogous liquids, materials or devices
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions
- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment.
- (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions
- (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas, or military forces immune from military operations
- (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law
- (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions
- (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.²⁷

Crime of aggression

1. For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation, or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity, and scale, constitutes a manifest violation of the Charter of the United Nations.

2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another

²⁷ . Refworld - UNHCR’s Global Law and Policy Database (2024) *Rome Statute of the International Criminal Court (last amended 2010)*, <https://www.refworld.org/docid/3ac6b3a84.html>

State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

- (a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof
- (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State
- (c) The blockade of the ports or coasts of a State by the armed forces of another State
- (d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State
- (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement
- (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State
- (g) The sending by or on behalf of a State of armed bands, groups, irregulars, or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.²⁸

1.4. Customary international law

The law of armed conflict draws heavily from our historical customs, traditions, and experiences with warfare. An illustrative instance is the longstanding prohibition on the use of poison as a method of warfare, which can be traced back to ancient times. For instance, military forces on opposing sides would issue orders to refrain from poisoning wells, recognizing that both they and the civilian population may require access to clean water in the future. Over time, these customs, traditions, and experiences have evolved into legally binding principles known as "hard law," encompassing customary international law and treaty law. Customary international law arises from the consistent and general practice observed by states out of a sense of legal obligation.

Customary international law originated from states' consistent and general practices, which are adhered to out of a sense of legal obligation (*opinio juris*). It develops over time because of states' widespread and regular practice, and all states are required to abide by it whether or not they have given their express consent. The collective understanding and acceptance of legal norms by the international community is reflected in customary

²⁸ International Criminal Court, (1998). *Rome Statute of the International Criminal Court*, <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

international law. It is predicated on accepted state policy and the idea that specific behaviors or ideologies are mandated by law. The principles of diplomatic immunity and the outlawing of torture are a few instances of customary international law.²⁹

as opposed to obligations derived from formal written conventions and treaties, customary international law refers to obligations arising from accepted international practices. States that follow a general and consistent practice out of a sense of legal obligation give rise to customary international law. A couple of instances of customary international laws are the non-refoulement doctrine and the immunity granted to visiting heads of state.

UN member state disputes are resolved by the International Court of Justice (ICJ), which serves as the organization's principal court. International customs and general national practices are recognized as one of the sources of customary international law by the ICJ under Chapter II, Article 38 (The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (1) international conventions, whether general or, establishing rules expressly recognized by the contesting states.

(2) international custom, as evidence of a general practice accepted as law.

(3) the general principles of law recognized by civilized nations.

(4) subject to the provisions of Article 59, judicial decisions, and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.) of its Statute.³⁰

1.5. International humanitarian law

One important body of regulations designed to lessen the catastrophic effects of both internal and external armed conflicts is known as international humanitarian law, or IHL. Even though its main goals are to control armed conflict and protect civilians during wartime, IHL is important outside of the battlefield. Rather, it has grown to be a useful framework that guides peace negotiations, peacemaking, and peacebuilding initiatives, among other phases of the peace process. Respecting IHL can be crucial in lowering mistrust between the parties and highlighting how important it is to bring about an enduring peace. Parties to the negotiation process show that they are committed to maintaining the rights of combatants who have laid down their weapons, protecting civilians, and respecting human dignity by abiding by the principles of IHL. Considering IHL can help create an environment of confidence and trust that can lead to productive debates and the search for solutions that work for both parties. However, recent peacemaking and peacebuilding practice has consistently relied on IHL to frame peace efforts, mainly in non-international arm conflicts. (Ce'sar Rojas-Orozco Ce'sar Rojas-

²⁹ International Committee of the Red Cross, 2002. The law of armed conflict, Geneva, Switzerland.

³⁰ *customary international law*, https://www.law.cornell.edu/wex/customary_international_law

Orozco is a Legal Officer at the Special Jurisdiction for Peace, Colombia. He holds a PhD from the Graduate Institute of International and Development Studies in Geneva.)³¹

Here are some key points of IHL that relate to peace:

1.5.1. Geneva conventions (1949)

The Geneva Conventions and their Additional Protocols are important international agreements that contain the fundamental guidelines intended to reduce the cruelty and inhumanity of war. These conventions serve to protect and defend people who are not actively participating in hostilities, such as civilians, emergency responders, and humanitarian aid workers, as well as people who are unable to continue fighting, such as wounded, ill, and shipwrecked military personnel, as well as prisoners of war.³²

The Geneva Conventions are a set of four treaties and three in addition protocols that define international legal norms for humanitarian treatment in times of war. The phrase "Geneva Convention" usually refers to the 1949 treaties negotiated in the aftermath of World War II (1939-1945), which modified the wording of the two 1929 treaties and included two new conventions. The Geneva Conventions specify in detail the basic rights of prisoners of war, civilians, and military personnel; create provisions for the injured and sick; and offer safety for populations in and around a conflict zone.³³ The Geneva Conventions are rules that only apply during times of armed conflict and strive to safeguard persons who are not or have stopped participating in hostilities.

The first convention addressed the treatment of injured and ill armed forces on the battlefield, This First Geneva Convention lays out rules for the humane treatment, respect for their dignity, and medical care of injured and ill soldiers while they are on the front lines of combat. Its goal is to protect combatants from additional harm and to make sure they receive the necessary medical care when they are unable to engage in combat.³⁴

This protection is extended to individuals who are ill, injured, or shipwrecked at sea during armed conflicts by the Second Geneva Convention. It describes the responsibilities of the parties engaged in the conflict to help those in need, regardless of their nationality, and to ensure their safe passage, medical attention, and assistance.³⁵

³¹ *The role of international humanitarian law in the search for peace: Lessons from Colombia* (2021), <https://international-review.icrc.org/articles/ihl-search-for-peace-lessons-from-colombia-914>

³² *The Geneva Conventions of 1949 and their Additional Protocols*, <https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>

³³ *IHL law, IHL treaties, Geneva conventions, (1949)*, International Committee of the Red Cross. Archived from 2013, retrieved (2007), <https://ihl-databases.icrc.org/en/ihl-treaties>

³⁴ Sperry, C. (1906). "The Revision of the Geneva Convention, 1906". *Proceedings of the American Political Science Association*. 3: 33–57. doi:10.2307/3038537. JSTOR 3038537]

³⁵ Yingling, Raymund (1952). "The Geneva Conventions of 1949". *The American Journal of International Law*. 46 (3): 393–

The Third Geneva Convention specifically addresses the treatment and protection of prisoners of war during wartime. During an armed conflict, a combatant who is captured by an opposing party is considered a prisoner of war. Humanitarian law provides and establishes clear standards for their humane treatment, including provisions for their physical and mental well-being, fair treatment, and protection against torture, cruel treatment, or degrading conditions. protection for people who fall into the hands of the enemy during an armed conflict. In the event that the person is a combatant, they are protected as POWs. The person is protected as a civilian if that is the case. "Nobody in enemy hands can be outside the law," as stated in the ICRC Commentary on the Geneva Conventions.

The Convention emphasizes the importance of maintaining contact between prisoners of war and their families and ensures their eventual release and repatriation after the cessation of hostilities.³⁶

The Third Geneva Convention defines the categories of persons who are entitled to prisoners of war status:

1. Prisoners of war are people who fall under one of the following categories and are under the enemy's authority:
2. Members of a Party's armed forces, as well as militia or volunteer corps participants in said armed forces.
3. Parties to the conflict who have a relationship with other militias and volunteer corps, including those from organized resistance movements, and who operate within or outside of their own territory, even if it is occupied, as long as they meet the following requirements:
 - that of being commanded by a person responsible for his subordinates.
 - that of having a fixed distinctive sign recognizable at a distance.
 - that of carrying arms openly.
 - that of conducting their operations in accordance with the laws and customs of war.
4. Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.
5. Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labor units or of services responsible for the welfare of the

³⁶ "The Geneva Convention Relative to the Treatment of Prisoners of War" (PDF). *The American Journal of International Law*. 47 (4): 119–177. 1953. doi:10.2307/2213912. JSTOR 2213912. S2CID 154281279. Archived from the original43.

armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card.

6. Members of crews, including masters, pilots, and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favorable treatment under any other provisions of international law.
7. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.³⁷

The following shall likewise be treated as prisoners of war under the present Convention:

- A. Persons belonging, or having belonged, to the armed forces of the occupying country, if the Occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.
- B. The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favorable treatment which these Powers may choose to give. . . .³⁸

The definition of a prisoner of war was expanded in 1977 by Additional Protocol I to account for the changing meaning of "combatants," which is linked to new military tactics. As per the updated definition, individuals who participate in the conflict, including civilians, and armed groups that are not officially part of the regular armed forces may also be granted prisoner-of-war status³⁹. The following is an expanded meaning of combatant and armed forces:

³⁷ *IHL Treaties - Geneva Convention (IV) on Civilians, (1949) - Article 4*. <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-4>

³⁸ *IHL Treaties - Geneva Convention (III) on Prisoners of War, 1949 - Article 4*. (n.d.). <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-4>

³⁹ *IHL Treaties - Additional Protocol (I) to the Geneva Conventions, 1977 - Article 44*. (n.d.). <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-44>

- The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct or its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party.
- These armed forces will be subject to an internal disciplinary system that will, among other things, ensure adherence to international law regulations that apply in times of armed conflict.
- Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.⁴⁰

Finally, the fourth convention the protection of civilians during armed conflict is the main objective of the Fourth Geneva Convention. It creates standards for the humane treatment of civilians, placing special emphasis on their right to life, human dignity, and fundamental freedoms. In addition to prohibiting acts of violence, discrimination, and collective punishment against civilians, the Convention also establishes guidelines for the provision of basic services like food, shelter, and medical attention.⁴¹

The Geneva Conventions' protective scope is additionally strengthened and expanded by the Additional Protocols to the Conventions. These protocols cover topics like the use of specific weapons, safeguarding victims of non-international armed conflicts, and creating the International Fact-Finding Commission, which is essential to looking into possible Convention violations.

The development of the Geneva Conventions was closely associated with the Red Cross, whose founder, Henri Dunant, initiated international negotiations that produced the Convention for the Amelioration of the Wounded in Time of War in 1864. This convention provided for the immunity from capture and destruction of all establishments for the treatment of wounded and sick soldiers and their personnel, the impartial reception and treatment of all combatants, the protection of civilians providing aid to the wounded, and the recognition of the Red Cross symbol as a means of identifying persons and equipment covered by the agreement. More than 180 states have become parties to the Geneva Conventions of 1949. The importance of the Geneva Conventions and their additional protocols was reflected in the establishment of war-crimes tribunals for

⁴⁰ *Doctors without borders | The Practical Guide to Humanitarian Law*. (n.d.). <https://guide-humanitarian-law.org/content/article/3/prisoners-of-war/>

⁴¹ Bugnion, Francios (2000). "The Geneva Conventions of 12 August 1949: From the 1949 Diplomatic Conference to the Dawn of the New Millennium". *International Affairs*. 76 (1),pp 41–51

Yugoslavia (1993) and Rwanda (1994) and by the Rome Statute (1998), which created an International criminal court .⁴²

The 1949 treaties safeguard individuals who meet the requirements for protected persons in international armed situations. Geneva Conventions and their Additional Protocols remain indispensable instruments in mitigating the suffering and promoting the humane treatment of individuals affected by armed conflicts. By upholding these treaties and ensuring their implementation, the international community strives to alleviate the horrors of war, protect the rights and well-being of those caught in its midst, and uphold the principles of humanity and respect for human dignity in times of strife.

1.5.2. Hague convention 1954

This is basically soldier's law in practice. Its objective is to establish guidelines for the conduct of warfare, such as what can be attacked and how, in order to carry out the fighting. It provides guidelines that restrict the devastation caused by fighting beyond what is actually required to accomplish the military objective or mission. Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols:

- a. The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict
- b. Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict
- c. Chemical Weapons Convention (1993): Prohibition of the use of chemical weapons
- d. Biological Weapons Convention (1972): Prohibition of the use of biological weapons
- e. Anti-Personnel Mine Ban Convention (1997): Prohibition of the use of anti-personnel landmines

These conventions and protocols form the basis of IHL and provide the legal framework for the protection of individuals and the mitigation of harm during armed conflicts. While the specific references do not address peace directly, they establish rules and principles aimed at minimizing suffering, protecting civilians, and upholding human dignity, which indirectly contribute to the establishment of peaceful conditions.

Rules were required not only to protect civilians from the enemy but also to regulate the manner in which the fighting was to be conducted in order to prevent them from the effects of the fighting. Consequently, as the law developed, it aimed to satisfy both requirements and stay up to date with advancements in warfare. That is exactly what the

⁴² The Editors of Encyclopaedia Britannica (2017) *Cowra breakout* | *History & Facts*.
<https://www.britannica.com/event/Cowra-breakout>.

1977 Protocols Additional to the Geneva Conventions do: they frequently update and combine aspects of Hague and Geneva law. The dynamic nature of the law of armed conflict is clear. It makes an effort to consider what is occurring on the front lines of modern warfare. These treaties become national law and are binding on all States once they have ratified them.⁴³

1.6. United Nations security council resolutions

The Security Council resolutions are formal expressions of the opinion or will of UN organs. It is an official document accepted by fifteen members of the Security Council and is adopted by a vote of the Council members. The resolution is adopted if nine or more of the fifteen Council members vote for the resolution, and if it is not vetoed by any of the five permanent members (P5) (China, France, Russia, Great Britain and USA). UNSC resolutions may concern current UN activities (e.g., elections to the International Court of Justice), but are more often adopted as part of the UNSC's work to ensure the peaceful settlement of international disputes and eliminate threats to international peace and security. Security Council resolutions may impose sanctions aimed at maintaining peace and security. In particular, the resolution may resolve military measures against the offending state, establish international tribunals, approve mandates of peacekeeping forces, impose restrictive measures (asset freeze, travel ban) on individuals. Under the Charter of the United Nations, all Member States are obligated to comply with Council decisions⁴⁴.

The United Nations' founders pledged to make the globe a safer place. They built a structure and mechanisms to prevent threats to world security in order to avoid slaughter like World War II.

This is most evident in the fact that the UN Security Council has been given nearly unlimited authority in cases of peace violations. All Member States are bound by its resolutions.

1.6.1. Role and authority of the security council

According to the United Nations Charter, the Security Council has primary responsibility for maintaining international peace and security.

It is up to the Security Council to decide when and where a UN peacekeeping mission should be deployed.

⁴³ Ibid,29

⁴⁴ UNRCCA, 2020. United Nations Security Council Resolutions.

The Security Council responds to crises across the world on a case-by-case basis and has a variety of alternatives at its disposal. When discussing the launch of a new peacekeeping mission, many different factors are considered, including:

- Whether there is a ceasefire in place and the parties have committed themselves to a peace process intended to reach a political settlement.
- Whether a clear political goal exists and whether it can be reflected in the mandate.
- Whether a precise mandate for a UN operation can be formulated.
- Whether the safety and security of UN personnel can be reasonably ensured, including in particular whether reasonable guarantees can be obtained from the main parties or factions regarding the safety and security of UN personnel.

A peace operation is established by the Security Council by the adoption of a Security Council resolution. The resolution establishes the mission's mandate and size.

The Security Council continuously oversees the work of UN peacekeeping operations, including through periodic reports from the Secretary-General and by holding dedicated Security Council sessions to discuss the work of specific operations.⁴⁵

The Security Council has the authority to extend, revise, or terminate mission mandates as it deems necessary.

All UN members commit to accept and carry out Security Council decisions under Article 25 of the Charter. While other UN committees give recommendations to Member States, the Council is the only one with the authority to make decisions that Member States must follow.

1.6.2. Peacekeeping operations and conflict resolution

Peacekeeping has been one of the most important conflict resolution tools employed by the international community to restore or protect peace and security. Since 1948, the United Nations has established 70 peace operations and has progressed significantly, embracing peace tactics that go beyond just military considerations.

Indeed, the promises of peacekeeping as an efficient conflict-resolution tool may explain, to some extent, the shift toward multifaceted missions and the extraordinary number of troops deployed in the recent decade. As a result, the increased importance of peacekeeping efficacy has inspired a fresh wave of empirical research on whether and under what conditions UN peacekeeping works.

Peacekeepers are mostly deployed in conflict or post-conflict environments where violence is either ongoing or lingering. Thus, violence remains a priority for peace missions. Consequently, peacekeeping is deemed successful or effective according to whether it curbs conflict in several dimensions. Effective missions are those responsible for decreasing the intensity of battle violence, protecting civilians, and containing conflict diffusion and recurrence in the postwar phase. Each mission, however, is deployed in different contexts and operates under variable conditions that affect the

⁴⁵ *Role of the Security Council* (1946). <https://peacekeeping.un.org/en/role-of-security> council.

operation’s capacity to influence conflict. Concerning mission features, peacekeeping success is more likely when large contingents are deployed under robust mandates. Mission type, size, and composition signal credible commitment from the international community and empower peacekeepers to halt violence while guaranteeing the implementation of peace agreements.

- organizations, such as the African Union and the European Union, have conducted their own peace operations—an additional 65 missions between 1946 and 2016.⁴⁶As Figure 1 shows, the number of countries contributing to UN peace operations, merely 45 after the end of the Cold War, has reached almost 120 in the contemporary period (Figure 1, bins, left-hand Y-axis). In the same temporal span, the number of “Blue Helmets,” or peacekeeping troops, increased from 10,000 to almost 100,000 globally (Figure 1, thick line, right-hand Y-axis).

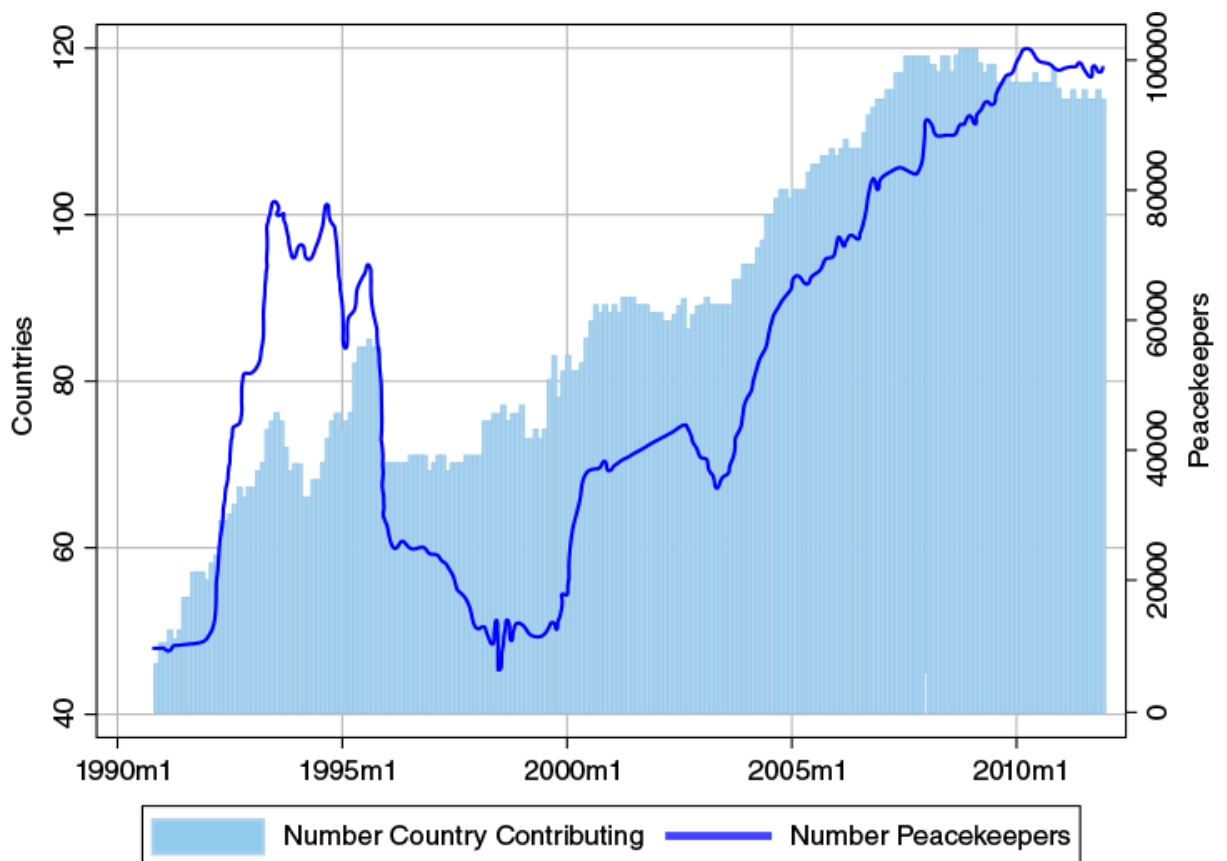


Figure 1. Number of peacekeepers and number of countries contributing (Kathman, 2013). Figure created by authors.

⁴⁶ Williams, P. D. (2017). Global and regional peacekeepers: Trends, opportunities, risks and a way ahead. *Global Policy*, 8(1), 124–129.) <http://dx.doi.org/10.1111/1758-5899.12393>

The United Nations' increasingly active role after the end of the Cold War has drawn further attention to peacekeeping.⁴⁷

1.6.3. Sanctions and peace enforcement measure

Under Chapter VII of the United Nations Charter, the Security Council has the authority to take measures to maintain or restore international peace and security. Article 41 sanctions cover a wide range of enforcement tools that do not entail the use of military force. Since 1966, the Security Council has established 31 sanctions regimes, in Southern Rhodesia, South Africa, the Former Yugoslavia (2), Haiti (2), Angola, Liberia (3), Eritrea/Ethiopia, Rwanda, Sierra Leone, Côte d'Ivoire, Iran, Somalia/Eritrea, ISIL (Da'esh) and Al-Qaida, Iraq (2), Democratic Republic of the Congo, Sudan, Lebanon, Democratic People's Republic of Korea, Libya (2), the Taliban, Guinea-Bissau, Central African Republic, Yemen, South Sudan and Mali. Security Council sanctions have taken a number of different forms, in pursuit of a variety of goals. The measures have ranged from comprehensive economic and trade sanctions to more targeted measures such as arms embargoes, travel bans, and financial or commodity restrictions. The Security Council has applied sanctions to support peaceful transitions, deter non-constitutional changes, constrain terrorism, protect human rights and promote non-proliferation.⁴⁸ So, The Security Council may order coercive measures against individuals, in connection with the fight against international terrorism. Such individuals are then targeted as members or supporters of entities posing a threat to peace. This applies to individuals suspected of being members of Al-Qaeda or providing it with material or financial support.

The sanctions, which are often called "targeted sanctions" or "intelligent sanctions", usually involve:

- freezing of financial assets, funds, and other economic resources,
- embargoes on arms sales,
- bans on Foreign travel.

The Security Council is able to establish subsidiary committees, called Sanctions Committees, to oversee the proper execution of sanctions and compile lists of those affected based on information supplied by governments. They also monitor the implementation of state-level enforcement measures. UN member states are responsible

⁴⁷ Di Salvatore, J., & Ruggeri, A. (2017). Effectiveness of peacekeeping operations. *Oxford Research Encyclopedia of Politics*. <https://doi.org/10.1093/acrefore/9780190228637.013.586>

⁴⁸ *Sanctions | United Nations Security Council* (1966), <https://www.un.org/securitycouncil/sanctions/information>.

for implementing sanctions at national level and are therefore required to adopt national implementation measures and make sure that the individuals concerned comply with them.

In the case of European Union member states, the implementation of sanctions is based on the adoption of joint positions or European Union regulations which are directly applicable in the member states' domestic legal systems.⁴⁹

1.7. The UNESCO universal declaration on cultural diversity

An important international document that highlights the value of cultural diversity as a basic human right and a way to enrich societies everywhere is the UNESCO Universal Declaration on Cultural Diversity. This declaration, which was accepted by the United Nations Educational, Scientific, and Cultural Organization (UNESCO) in 2001, provides a framework for UNESCO's efforts to promote and safeguard cultural diversity around the world.

The proclamation acknowledges the importance of cultural diversity for long-term growth, intercultural communication, and the end of poverty. It reaffirms that cultural diversity is something that all people share and that it should be respected, preserved, and encouraged.

The UNESCO Universal Declaration on Cultural Diversity acts as a guide for nations and organizations in developing policies and strategies that give priority to the protection and promotion of cultural diversity because it acknowledges that diversity is a source of creativity, innovation, and sustainable development.

Article 1 – Cultural diversity: the common heritage of humanity

Culture takes diverse forms across time and space. This diversity is embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind. As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations.

Article 4 – Human rights as guarantees of cultural diversity

The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.

⁴⁹ *United Nations Sanctions - Committee of Legal Advisers on Public International Law - www.coe.int .*
<https://www.coe.int/en/web/cahdi/united-nations-sanctions>.

The importance of cultural diversity as a force for mutual understanding, inclusive development, and social cohesion is emphasized in the UNESCO Universal Declaration on Cultural Diversity. It emphasizes the need for group efforts to respect, protect, and advance cultural diversity, acknowledging it as an essential human right and a valuable resource.⁵⁰

⁵⁰ Universal declaration on cultural diversity,(2001), General conference of the United Nations educational, scientific and cultural organization at its thirty-first session, United Nations human rights office of the high commissioner, <https://www.ohchr.org/en/instruments-mechanisms/instruments/universal-declaration-cultural-diversity>

Chapter II; TRADITION AND TRADITIONAL NORMS

2.1. Tradition

Tradition is a complex and diverse notion that involves the transmission of customs, beliefs, practices, and information passed down through generations within a culture, family, or social group. It acts as an essential link between the past and the present, assisting in the preservation and dissemination of a specific group's or society's values, history, and identity. It is a complex and multidimensional idea that includes a broad range of elements, such as the passing down of practices and knowledge through the generations within a specific culture, family, or social group, as well as the transmission of customs and beliefs. It acts as a crucial link between the past and the present, preserving and disseminating the history, values, and sense of community of a particular group.

Traditions often involve rituals, ceremonies, celebrations, or other activities that foster a sense of continuity, belonging, and connection to the past. They play a crucial role in shaping our understanding of the world and our place within it while also providing a foundation for social cohesion and emotional well-being. Furthermore, traditions have a profound emotional impact on individuals. They often evoke feelings of nostalgia, comfort, and familiarity. Engaging in familiar traditions can provide a sense of stability and security in an ever-changing world. They offer a sense of predictability and order, providing reassurance and a source of emotional grounding. Traditions can also be a source of joy, happiness, and celebration, creating lasting memories and deepening interpersonal relationships.⁵¹

2.1.2. Definition of Tradition

A tradition is a set of ideas or behaviours (folk custom) passed down through a group of people or society that have symbolic value or unique significance and have their origins in the past.⁵² Common examples include festivals or impractical but socially significant clothing (such as lawyers' wigs or military officials' spurs), but the concept has also been applied to social conventions, behaviours such as greetings, and so on. Traditions can live on and evolve for hundreds of years—the word tradition derives from the Latin word *tradere*, which literally means to transmit, hand on, or offer for safekeeping. It is widely considered that traditions have a long history.

The impeding phrase "according to tradition", or "by tradition", usually means that whatever information follows is known only by oral tradition but is not supported (and perhaps may be refuted) by physical documentation, by a physical artifact, or other quality evidence.

⁵¹ Ezra, A. (2023) *Why are traditions important (15 reasons + examples)*. <https://upjourney.com/why-are-traditions-important>.

⁵² Green Thomas A, (1997). *Folklore. An Encyclopedia of Beliefs, Customs, Tales, Music and Art*.pp.800

Tradition refers to beliefs, objects, or traditions performed or believed in the past, originating in it, being passed through time by being taught from one generation to the next, and being performed or believed in the present.⁵³

Tradition can also relate to ancient ideas or customs that have lost or arcane roots and have existed since time immemorial.⁵⁴ Traditions were originally passed down orally, without the need for a writing system. Poetic methods like as rhyme, epic storytelling, and alliteration can help with this process. Traditions may also be adapted to suit the needs of the day, and the changes can become accepted as a part of the ancient tradition.⁵⁵ Tradition changes slowly, with changes from one generation to the other being seen as significant. Thus, those carrying out the traditions will not be consciously aware of the change, and even if a tradition undergoes major changes over many generations, it will be seen as unchanged.

There are various origins and fields of tradition; they can refer to:

- The forms of artistic heritage of a particular culture.⁵⁶
- Beliefs or customs instituted and maintained by societies and governments, such as national anthems and national holidays, such as Federal holidays in the United States.⁵⁷
- Beliefs or customs maintained by religious denominations and Church bodies that share history, customs, culture, and, to some extent, body of teachings.⁵⁸

2.1.3. Historical context of tradition

J. Hobsbawm introduced the phrase “invention of tradition” to describe circumstances in which a new activity or object is introduced in a way that implies a connection with the past that is not necessarily there.⁵⁹ A tradition can be deliberately created and spread for personal, commercial, political, or national self-interest, as in colonial Africa; or it can be

⁵³ Langlois, S. (2001). “Traditions: Social”. International Encyclopedia of the Social & Behavioral Sciences. Pp. 15829–15833

⁵⁴ *Innovation in religious traditions.* (n.d.). Google Books. https://books.google.it/books?id=AD2hShiXNjEC&pg=PA1&redir_esc=y#v=onepage&q&f=false

⁵⁵ Ibid,53

⁵⁶ Lilburn, Douglas (1984). *A Search for Tradition.* Wellington: Alexander Turnbull Library Endowment Trust, assisted by the New Zealand Composers Foundation

⁵⁷ Ibid,53

⁵⁸ Anthony Giddens (2003). *Runaway world: how globalization is reshaping our lives.* Taylor & Francis. P. 39 For example, one can speak of Islam’s tradition or Christianity’s tradition.

⁵⁹ Thomas A. Green (1997). *Folklore: an encyclopedia of beliefs, customs, tales, music, or art.* ABC-CLIO. P. 800

quickly adopted based on a single highly publicized event, as in the case of the white wedding gown, which only became popular after Queen Victoria wore a white gown at her wedding to Albert of Saxe-Coburg.⁶⁰ The rebuilding of the Palace of Westminster (site of the British Parliament) in the Gothic style is an example of a traditional creation. Similarly, most of the traditions associated with the monarchy of the United Kingdom, which are thought to be centuries old, actually date from the nineteenth century.⁶¹ Other instances include the invading troops' construction of tradition in Africa and other colonial territories.⁶² In order to gain legitimacy, colonial powers would frequently establish a "tradition" that they could use to justify their own position. For example, a colonial power may regard a particular succession to a chieftom as customary in order to favour their own candidates for the role. Often these inventions were based in some form of tradition, but were exaggerated, distorted, or biased toward a particular interpretation.

2.1.4. Importance and significance of tradition

Traditions play a crucial role in our lives. They provide us a sense of belonging and identity, connect us to our past, and help us understand our place in the world. In the simplest terms, they are necessary for our lives and the way we live them. The importance of traditions lies in the fact that they provide continuity in our lives. They give us a sense of roots and belonging, as well as providing structure and stability. They also foster a sense of community, as we join together in celebrating and honoring our shared history. Traditions also provide us with important moral lessons and values, teaching us about respect for others, loyalty, responsibility, and other important life skills.

Traditions are also significant since they may assist in the preservation of culture. We ensure that our culture does not fade away with time by preserving the same practices, language, and rituals. We maintain our culture alive and growing by celebrating festivals, attending special events, and participating in traditional activities. Also help to create a stronger bond between individuals or groups of people and it can help in fostering a sense of belonging within a community and promote collaboration.⁶³

2.1.5. Transmission of tradition across generations

The process by which cultural practices, values, beliefs, knowledge, and abilities are passed down from one generation to the next is referred to as the transmission of tradition across generations. It is critical to the preservation of cultural assets and the

⁶⁰ Ingraham, Chrys (2008). *White Weddings: Romancing Heterosexuality in Popular*. pp.60-61. New York

⁶¹ Ibid,53

⁶² Hobsbawm, E & Ranger, T. (1983). 'The invention of Tradition' pp. 210

⁶³ *The importance of valuing your traditions - FasterCapital*. (n.d.). FasterCapital. <https://fastercapital.com/content/The-Importance-of-Valuing-Your-Traditions.html#Why-Traditions-are-Important>

maintenance of social cohesiveness among communities. While conventions, rituals, storytelling, craftsmanship, and artistic expressions are all examples of traditions, their transmission maintains their longevity and importance over time.

Here are a few key factors for the transmission of tradition throughout generations:

- **Oral tradition:** Oral tradition is a primary means of conveying information and cultural activities in many societies. This comprises the oral transmission of stories, legends, myths, and historical narratives from elder generations to new generations. Oral tradition is critical for the preservation of language, cultural identity, and historical memory.
- **Intergenerational learning:** Intergenerational learning happens when elder members of a community or family share their knowledge, experiences, and abilities with younger members of the community or family. Apprenticeships, mentorship, or informal teaching within families or communities can all be examples of this.
- **Museums, libraries, archives, and community-based organizations,** among others, play an important role in maintaining and conveying traditions between generations. They provide spaces for the documentation, presentation, and diffusion of cultural history, ensuring future generations have access to tradition.⁶⁴
- **Rituals and ceremonies:** Rituals and ceremonies are important components of tradition, and they are frequently used to remember significant life events, celebrate cultural values, and strengthen social relationships. Participating in these festivals and observances teaches younger generations about their cultural history and their place in the larger community.
- **Cultural education:** By including cultural education into curricula or offering specialized programs focusing on traditional arts, crafts, music, dance, and other cultural practices, formal and informal educational systems play a role in conveying tradition. These educational activities help to ensure that future generations have the opportunity to learn about and participate in their cultural heritage.⁶⁵
- **Adaptation and innovation:** While cultural continuity is the goal of tradition transmission, it is not static. Traditions change and adapt to new circumstances, and younger generations may reinterpret or modify old traditions while remaining true to their cultural roots. This continuous process ensures that traditions stay relevant and meaningful in modern cultures.

It is crucial to emphasize that in modern times, the transmission of tradition can face obstacles due to reasons such as globalization, urbanization, migration, and the effect of digital technologies. Communities and people, on the other hand, frequently undertake

⁶⁴ UNESCO. (2003). Convention for the Safeguarding of the Intangible Cultural Heritage.

⁶⁵ Nieland, J., & van der Zeijden, A. (Eds.). (2017). Cultural Heritage in a Changing World. Routledge.

intentional attempts to conserve and transmit tradition, recognizing its importance in preserving cultural variety, identity, and social cohesiveness.⁶⁶

2.2. Types of tradition and functions and roles of tradition

Traditions can take various forms and serve diverse functions and roles in societies. Here are some examples of popular sorts of traditions, as well as their associated purposes and roles:

2.2.1. Social and cultural traditions

Customs and traditions are actions, behaviours, and standards that are shared and expected of a particular culture. People from different cultures act and behave differently depending on their customs and traditions. Social customs and traditions vary across nations and cultures. A good citizen is one who follows customs and traditions, was loyal to national ideals, and had a sense of social responsibility. In addition to being shared norms, practices, and acts within a particular culture, customs and traditions play a crucial role in defining social and cultural identity. Individuals from various cultures behave and act in different ways because of their traditions and customs, which influence their worldview, morals, and social interactions. These social norms and traditions, which represent the distinct history and heritage of every community, show a great diversity across countries and cultures.

It is impossible to underestimate the impact that social norms and traditions have on the entire world. By acting as links between various cultural contexts, they promote appreciation and understanding amongst people and contribute to the enrichment of global diversity. Social and cultural traditions illustrate the various ways in which people express their values, beliefs, and experiences, and they add to the collective tapestry of humanity.

Social customs and traditions cover broader cultural dimensions that come together to form a social culture, in addition to individual behaviours and practices. Social culture is frequently understood to be the outward manifestation of a country's customs, which can be seen in national holidays, customary dress, food customs, creative expressions, and linguistic traits. These social culture components are highly valued as markers of ancestry and community identity and play a vital role in defining a community's identity.

Social customs and traditions lead to social culture, which is considered by most people to be the manifestation of national holidays, dress, cuisine, and linguistic characteristics. The influence of social customs and traditions on the world is immense. Therefore,

⁶⁶ Smith, L. T. (1999). *Decolonizing Methodologies: Research and Indigenous Peoples*. Zed Books

Social, and cultural traditions encompass a wide range of behaviours, norms, and rituals that are deeply embedded in a particular society or culture. These traditions have a significant impact on social relationships, cultural identity, and a community's way of life.⁶⁷

2.2.2. Religious and spiritual traditions

Religious traditions are constellations of beliefs, practices, and institutions used to describe a common type of religiosity. Religious traditions are broad understandings of the supernatural produced in societies and practiced by groups and individuals. Traditions espouse distinctive explanations, and in contemporary religious traditions these are codified in texts considered sacred by individuals and institutions that adhere to and produce that form of religion. Contemporary religious traditions include Baha'i, Buddhism, Christianity, Confucianism, Druze, Hindu, Islam, Jain, Judaism, Mormon, Sikh, Sufism, Taoism, and Zoroastrianism.

Religious and spiritual traditions vary greatly among nations and locations. They include faith-related beliefs, rituals, practices, and teachings, plus the search for meaning and transcendence. These traditions are frequently associated with sacred texts, scriptures, or authoritative pieces.⁶⁸

Many religious traditions emphasize the importance of prosocial behavior, and thus enculturation in specific religions may influence prosocial behavior. Numerous studies in psychology have now shown that 'priming' (unconsciously bringing to mind) thoughts of God causes theists, but not atheists, to give more in behavioral games. One current theory holds that modern world religions, such as Christianity and Islam, were able to spread precisely because they effectively enculturated norms of prosocial behavior which galvanized large-scale cooperation among relatively anonymous strangers. According to this view, followers of modern world religions, such as Christianity and Islam, will be more likely to have internalized these norms of prosocial behavior and will thus treat anonymous others with greater fairness and generosity.⁶⁹

2.2.3. Social cohesion and community building

Traditions play a significant role in fostering social cohesion and strengthening community bonds. They provide a shared framework of beliefs, values, and practices that unite individuals within a community. Here are some key points on this topic:

⁶⁷ *Social customs and traditions of the world* (no date). <http://sociologyindex.com/social-customs-and-traditions.htm>

⁶⁸ Sherkat, D. E. (2015). Religiosity. In *Elsevier eBooks* (pp. 377–380). <https://doi.org/10.1016/b978-0-08-097086-8.84020-9>

⁶⁹ Henrich, Daniel J. Hruschka, Joseph Henrich, (2010).” International Encyclopedia of the Social & Behavioral Sciences”, Second Edition, (2015)

1. **Creating a Sense of Belonging:** Traditions help individuals develop a sense of belonging and identity within a community. By participating in shared rituals, celebrations, and practices, individuals feel connected to their cultural heritage and to one another.⁷⁰
2. **Transmitting Cultural Values:** Tradition serves as a means of transmitting cultural values, norms, and knowledge from one generation to the next. It provides a framework for teaching and reinforcing social and ethical values, guiding behavior, and shaping collective identity.⁷¹
3. **Building Interpersonal Relationships:** Participating in traditions often involves communal gatherings and shared experiences. These interactions foster social connections, encourage cooperation, and build trust among community members.
4. **Preserving Cultural Heritage:** Traditional practices, rituals, and customs are often rooted in a community's history and cultural heritage. By preserving and continuing these traditions, communities maintain a connection to their past and ensure the continuity of their cultural legacy.⁷²
5. **Encouraging Intergenerational Exchange:** Traditions provide opportunities for intergenerational exchange, where older members pass down knowledge, skills, and cultural practices to younger generations. This exchange strengthens family bonds and facilitates the transfer of cultural heritage across age groups.⁷³

2.2.4. Role of elders and oral tradition

Elders play an important role in tradition and oral tradition. Elders frequently possess wisdom, knowledge, and cultural practices passed down through generations. They play an important role in the preservation and transmission of oral traditions within communities.

The ability of storytelling is the most common means for Indigenous groups to observe oral tradition. The Elders—older members of the community—transmit legends and history to succeeding generations through oral tradition.

Stories told by the Elders are often ongoing and can be continued over a long period of time, ensuring that the stories have many layers which allow for unique interpretations. Usually, these stories are tailored to suit the age group of their audience and impart relevant life lessons.

⁷⁰ Brown, Michael F. (2008). *The Role of Tradition in Japan's Industrialization: Another Path to Industrialization*. Oxford University Press.

⁷¹ Cohen, Abner. (1985). *Symbolizing Boundaries: Identity and Diversity in British Cultures*. Manchester University Press.

⁷² Smith, Anthony D. (1991). *National Identity*. University of Nevada Press

⁷³ Yinger, J. Milton. (1976). *Ethnicity: Source of Strength? Source of Conflict?* Sage Publications.

The spiritual obligation of the Indigenous community to their Creator often ties into the stories that are passed down—including how certain creatures, like the werewolf, were created. Storytelling and these oral records keep Indigenous cosmologies and aspects of their culture alive, like how stories told by the Métis have a spiritual aspect to them and are influenced by their ancestral cultures (Cree and Ojibwa). Within Indigenous communities, there are also stories for specific occasions, such as prayer offerings and expressions of gratitude. A few tales are considered sacred and told only to select people in the community.

Storytelling has recently become critical to the survival of Indigenous cultures. Elders share stories about where they obtain food, how to prepare and eat food, and how to harvest specific crops throughout the year; this knowledge is important for the survival of younger generations and their families. The Indigenous oral tradition is still popular in modern times. Their experiences, however, are now told through print media such as books, poetry, films, and artworks. While societal pressure and assimilation of Indigenous cultures have had an impact on the storytelling tradition, not every aspect of Indigenous culture has been catalogued; stories told by Elders continue to play an important role in imparting knowledge and lessons to younger generations in the community.⁷⁴

2.2.5. Tradition in the modern world

The twentieth century marked a significant turning point in human history, as it witnessed the emergence of unique spaces entirely dedicated to the celebration and preservation of diverse cultures and identities. Modern society is challenging traditional values through rapid technological advances, globalization, changing social norms, and shifting cultural landscapes, often leading to new ways of thinking and living that may conflict with older beliefs and practices.

Tradition in the modern world is a complex and ever-changing subject. While traditional rituals and customs have historically played an important role in societies, modern times has witnessed substantial changes that have affected the relevance and dynamics of tradition.

Graeme Reid Director, Lesbian, Gay, Bisexual, and Transgender Rights Program wrote that a close look at the context from the resolution of the United Nations Human Rights Council (UNHRC) in September 2012 arose reveals that traditional values are often deployed as an excuse to undermine human rights. And in declaring that “all cultures and civilizations in their traditions, customs, religions and beliefs share a common set of

⁷⁴ Aditya, A., Aditya, A., & Aditya, A. (2021, October 18). *Observing oral tradition in Indigenous communities*. The Medium -. <https://themedium.ca/observing-oral-tradition-in-indigenous-communities/>

values,” the resolution evokes a single, supposedly agreed-upon value system that steamrolls over diversity, ignores the dynamic nature of traditional practice and customary laws, and undermines decades of rights-respecting progress for women and members of the lesbian, gay, bisexual, and transgender (LGBT) communities, among others.

Human Rights Watch has recorded instances in which people's social, political, civil, cultural, and economic rights have been impeded rather than improved by discriminatory aspects of traditions and practices in various nations across the world.

For instance, several ethnic communities in Kenya have customary laws that discriminate against women when it comes to inheritance and property ownership. "They talk about African traditions," a woman informed us, "but there is no tradition you can speak of—just double standards."

Customs and traditions that violate human rights must be changed to eliminate discriminatory elements, according to international human rights law, which includes the Convention on the Elimination of All Forms of Discrimination Against Women and the Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women in Africa.

Tradition need not be out of step with international human rights norms and standards. For many people living in rural areas, such as parts of sub-Saharan Africa, traditional values interpreted in customary law may be the only recourse to any form of justice. Nor is the substance of the HRC resolution all bad. Its text specifically states that “traditions shall not be invoked to justify practices contrary to human dignity and that violate international human rights law.”⁷⁵

But according to Robert McC. Adams, Secretary of the Smithsonian Institution, we are less likely to think of tradition as a dynamic force that has been molded by human creativity over time and is now suited to the modern environment. All traditions, it is clear, had to start somewhere, and they had to be novel and inventive back then. Actually, this topic is directly examined in the thought-provoking book *The Invention of Tradition* (Eric Hobsbawm and Terence Ranger, eds., Cambridge University Press, 1983). Scottish tartans, sport awards, and Freemasonry rituals are a few examples of some customs that appear to have been purposefully and deliberately established. Others, occasionally even those involved in revolutionary movements, incorporated symbols, or rituals they want to maintain into a mythical past that might have been created by fusing inventiveness with bits of common memory.⁷⁶

⁷⁵ Reid, G. (2020, October 28). The Trouble with Tradition. *Human Rights Watch*. <https://www.hrw.org/news/2013/01/11/trouble-tradition>

⁷⁶ Adams, R. (1983) 'Living Traditions in a Modern World' (Smithsonian Institution).

2.2.6. Difference between traditional and modern society

A society can be categorized into three broad categories: post-modern, modern, or traditional. In traditional societies, the significance of religion and magic in shaping behavioral norms and values reflects a sense of continuity with a perceived past. Rituals, sacrifices, and feasts hold great importance in maintaining social cohesion and expressing cultural identity.

Traditional society can be characterized by the following features:

- (1) Social status is determined by birth, and individuals do not aspire to social mobility. The social hierarchy is deeply ingrained and remains relatively unchanged from one generation to another.
 - (2) Customs, traditions, norms, and values deeply rooted in the past strongly influence individual behavior. These customs are passed down through generations, leading to a sense of stability and continuity.
 - (3) Social organization is based on a hierarchical structure, where individuals occupy specific positions and roles within the society. This structure provides regularity and predictability in social interactions.
 - (4) Primary groups and kinship relations play a central role in social identity and interaction. People closely identify with their immediate communities and rely on kinship ties for support and cooperation.
 - (5) Individuals are often valued based on social interactions more than their actual status warrants. Personal relationships and reputation carry significant weight in traditional societies.
 - (6) Traditional societies tend to hold conservative views, valuing the preservation of established customs and norms.
 - (7) The economy in traditional societies is characterized by simplicity, often relying on basic tools rather than advanced machinery. Economic productivity is generally modest, focused on meeting subsistence needs rather than generating surplus wealth.
 - (8) Mythical thinking and religious beliefs dominate the worldview of traditional societies, with rational reasoning taking a backseat in decision-making processes.
- Modernity, on the other hand, represents a departure from traditional society. Modern societies place a high value on reason and science, which significantly shape their cultural and social fabric.

Stuart Hall identifies six key characteristics that distinguish modern society from its traditional counterpart:

- (1) The rise of a secular and materialistic culture, accompanied by a decline in the influence of religion on societal norms and values.
- (2) The transition from a feudal economy, reliant on land ownership and services, to an economy focused on the accumulation of capital, private property ownership, and large-scale production and consumption of commodities for the market.

(3) The marginalization of religious influence in state and political matters, with secular political authority gaining dominance in modern societies.

As society progresses from traditional to modern, these characteristics highlight the shifting dynamics and evolving norms that shape social, economic, and political systems.

(4) The transition from a social order based on a simple division of labor to a more complex division of labor characterized by specialization has led to significant changes in social dynamics. These changes have resulted in the emergence of new classes and altered relationships between men and women within society.

(5) The formation of new nations or communities, whether defined by ethnicity or nationality, has given rise to unique identities and traditions that serve their own specific purposes. For instance, France rejecting aristocracy and monarchy, Britain accepting monarchy only as a symbolic figurehead, and Egypt rejecting monarchy in favor of democracy. These cultural characteristics reflect the diverse ways in which societies have reshaped their political structures and values.

(6) In tandem with societal transformations, there has been a notable shift towards a scientific and rationalistic worldview. This intellectual characteristic is marked by an increased emphasis on scientific inquiry and reason as the primary means of understanding the world. The belief in progress, the role of government and the state in driving progress, and the pursuit of economic development have become central tenets of modern society. Additionally, there is a recognition of human beings' capacity to exert significant control over nature and the environment. This modern worldview often tends to perceive the world in terms of dualisms or opposites.

While traditional societies were characterized by rituals, customs, collectivity, communal ownership, a status quo mindset, and a simpler division of labor, modern societies have witnessed the rise of scientific inquiry, an emphasis on reason and rationality, a belief in progress, the recognition of the important role of government and the state, an emphasis on economic development and a more complex division of labor, as well as a view of human beings as capable of exerting substantial control over nature and the environment. These contrasting characteristics highlight the significant societal shifts that have accompanied the transition from traditional to modern societies.⁷⁷

The following is emphasized by traditional values:

- Religion is very important in respondent's life.
- people believe in Heaven.
- One of people's main goals in life have been to make their parents proud.
- People t believe in Hell.
- People attend church regularly.
- People get comfort and strength from religion.
- People describe self as "a religious person.
- Euthanasia is never justifiable.

⁷⁷ Mondal, P. (2014) Difference between Traditional and Modern Society.

<https://www.yourarticlelibrary.com/society/difference-between-traditional-and-modern-society/39157>.

- Work is very important in people's life.
- There should be stricter limits on selling foreign goods here.
- Suicide is never justifiable.
- Parents' duty is to do their best for their children even at the expense of their own well-being.
- People seldom or never discuss politics.
- People places self on right side of a left-right scale.
- Divorce is never justifiable.
- There are absolutely clear guidelines about good and evil.
- My country's environmental problems can be solved without any international agreements to handle them.
- If a woman earns more money than her husband, it's almost certain to cause problems.
- One must always love and respect one's parents regardless of their behavior.
- Family is very important in respondent's life.
- People are relatively favorable to having the army rule the country.
- People favor having a relatively large number of children.
- On another side secular-rational values highlight the difference.
- The following is emphasized by survival values:
- Political leaders are more likely to be men than women.
- To be fulfilled, a woman needs to have children.
- Rejection of homosexuals
- Public opinion toward government control over business and industry is largely positive.
- A child needs a home with both a father and mother to grow up happily.
- One must always love and respect one's parents regardless of their behavior.
- It is never acceptable to engage in prostitution.
- Men have a greater right to employment than women do when jobs are in low supply.⁷⁸

2.2.7. Positive aspect of tradition

In traditional societies, tradition can contribute positively to the settlement of disputes and the promotion of peace. It includes inherited cultural behaviors, beliefs, and rituals that have been passed down through the ages and frequently represent the knowledge and life experiences of a community. The following are some advantages of tradition as a means of resolving disputes:

⁷⁸ Baker, R. I. a. W. E. (2000). Modernization, cultural change, and the persistence of traditional values. *American Sociological Review*, 65(1),pp19–51.
<https://doi.org/10.2307/2657288><https://www.jstor.org/stable/2657288>

- **Social Harmony and Community Cohesion:** Social harmony and community cohesion are frequently emphasized in traditional practices. They foster a feeling of community responsibility, collaboration, and belonging. Traditional conflict resolution techniques can promote unity and enable peaceful resolutions by referencing common cultural values and norms. The decline of an institution: The Jirga in Pakistan's North-West Frontier Province.⁷⁹
- **Inclusive and Participatory Processes:** Conventional methods of resolving conflicts frequently call for the active involvement of a range of community members. Shuras and Jirgas are examples of community meetings that give people a forum to express their concerns, hear other viewpoints, and participate in decision-making. This inclusivity can increase the legitimacy and acceptability of conflict resolutions by allowing for a wider range of viewpoints.⁸⁰
- **Cultural Sensitivity and Local Knowledge:** traditions have a strong cultural and historical foundation that are deeply rooted in a society. They take into consideration the community's distinct values and customs while reflecting its particular needs and dynamics. Traditional conflict resolution techniques can provide culturally appropriate solutions by acknowledging and valuing local knowledge and cultural sensitivities.⁸¹
- **Preservation of Identity and Cultural Heritage:** Conventional methods of resolving disputes can aid in the preservation of the identity and cultural heritage of a community. They ensure that the community's distinctive customs and ways of life are preserved by helping to maintain cultural values and practices (Tutu, 2000). Maintaining one's identity can improve social cohesiveness and pride, which can result in more long-lasting peacebuilding initiatives.
- In many situations, using traditional methods to resolve conflicts is a faster approach.⁸²

2.2.8. Negative aspect of tradition

Tradition can help society resolve conflicts, but there are also potential drawbacks that should be acknowledged and dealt with. Numerous negative aspects of tradition have been identified by academic research, studies and when it comes to conflict resolution. Also, Human Rights Watch has documented instances in which people's social, political, civil, cultural, and economic rights have been restricted rather than improved by discriminatory aspects of customs and traditions in various countries across the world.

⁷⁹ Pankhurst, D. (1992). *Journal of Commonwealth and Comparative Politics*, pp.168-187.

⁸⁰ Lederach, J. P. (1997). "Building peace: Sustainable reconciliation in divided societies. US Institute of Peace Press"

⁸¹ Galtung, J. (1996). "Peace by peaceful means: Peace and conflict, development, and civilization". Sage Publications.

⁸² Tutu, D. (2000). "No future without forgiveness. Random House"

Here are some positive elements of tradition as a source for conflict resolution:

- **Discrimination and Exclusion:** Based on characteristics like gender, caste, or ethnicity, traditional practices can frequently reinforce discrimination and exclusion. Sen and Grown's (1987) study, for instance, demonstrates how traditional dispute resolution techniques in some societies may marginalize women and prevent them from having equal representation and participation in these processes. Therefore, traditional values can be a tool used to restrict the human rights of women, who are frequently the ones responsible for upholding cultural norms and values. Human Rights Watch has demonstrated that Afghanistan occasionally employs these "values."
- **Lack of Adaptability:** Conventional methods that have their roots in societal and historical norms might not always be appropriate or flexible in the face of modern conflict. Bush and Folger (1994) have highlighted that strict adherence to traditional practices without allowing for adaptation or innovation can impede the exploration of novel concepts, strategies, and resolutions, which can impede the successful resolution of conflicts.
- **Enshrined Power Structures:** Customs can support prevailing hierarchies and power structures, giving preference to members of particular social groups or those in positions of authority. Wood and Gibney (2010) contend that conventional methods of resolving conflicts might reinforce current inequality in power and neglect to address underlying structural injustices and inequalities.
- **Limited Use of Human Rights:** It's possible that certain traditions do not sufficiently uphold or acknowledge international human rights norms. For instance, certain customs may violate people's rights to individual freedoms and liberties, including those of vulnerable or marginalized groups. This may run counter to the human rights principles specified in international legal frameworks. Many rural residents in places like Afghanistan and sub-Saharan Africa may have no other access to justice than customary law, which is based on traditional values. Traditions shall not be invoked to justify practices contrary to human dignity and that violate international human rights law. Regretfully, "tradition" is frequently invoked as an excuse for discriminatory practices and rights violations, and it can be readily appropriated by countries seeking to suppress more expansive social, political, and legal liberties as well as the rights of specific groups. In these settings, human rights are subordinated to "tradition."⁸³

⁸³ Reid, G. (2020) 'The Trouble with Tradition,' Human Rights Watch, 28 October.
<https://www.hrw.org/news/2013/01/11/trouble-tradition>

Chapter III; THE POSSIBLE ROLE OF TRADITION IN FOSTERING PEACE AND WOMEN'S RIGHTS IN AFGHANISTAN

3.1. Introduction

3.1.1. Background and context of Afghanistan's post-conflict situation

The Afghan conflict: refers to the series of events that have kept Afghanistan in a near-continuous state of armed conflict since the 1970s. Following the mainly nonviolent 1973 coup d'état that overturned 40-year-ruling Afghan monarch Mohammad Zahir Shah in absentia, the Kingdom of Afghanistan collapsed, causing early instability.⁸⁴ The concurrent formation of the Republic of Afghanistan, led by Mohammad Daoud Khan, marked the end of the country's generally tranquil and stable phase in contemporary history. The Saur Revolution, which violently ousted Khan's regime and formed the Democratic Republic of Afghanistan, didn't lead to all-out fighting until after 1978. Subsequent unrest over the radical reforms that were being pushed by the then-ruling People's Democratic Party of Afghanistan (PDPA) led to unprecedented violence, prompting a large-scale pro-PDPA military intervention by the Soviet Union in 1979.⁸⁵ So, the internal conflict that began in 1978 between anticommunist Islamic guerrillas (the anti-Soviet Afghan mujahideen received extensive support from Pakistan, the United States, and Saudi Arabia in a joint covert effort that was dubbed Operation Cyclone.) and the Afghan communist government (formed the Democratic Republic of Afghanistan aided in 1979–89 by Soviet troops), leading to the overthrow of the government in 1992.⁸⁶

Although the Soviets withdrew from Afghanistan in 1989, the various mujahideen factions continued to fight against the PDPA government, which collapsed in the face of the Peshawar Accord in 1992. However, the Peshawar Accord failed to remain intact in light of the mujahideen's representatives' inability to reach an agreement on a power-sharing coalition for the new government, triggering a multi-sided civil war between them.⁸⁷ By 1996, the Taliban, supported by Pakistan's Inter-Services Intelligence, had seized the capital city of Kabul in addition to approximately 90% of the country, from 1996 until 2001, the Taliban, a Sunni Islamic fundamentalist movement with a Pashtun majority, ruled over the majority of Afghanistan. Comparatively, the Taliban's Islamic Emirate of Afghanistan only received diplomatic recognition from Pakistan, Saudi Arabia, and the United Arab Emirates, and was not represented at the United Nations however happened another civil war for the next five years. In the wake of al-Qaeda's 9/11 atrocities, the Taliban administration refused to turn over terrorist leader Osama bin

⁸⁴ *Instability in Afghanistan, (2023).* | *Global Conflict Tracker.* (n.d.). Global Conflict Tracker. <https://www.cfr.org/global-conflict-tracker/conflict/war-afghanistan>

⁸⁵ www.ariananews.af. 9 March 2022. Retrieved (1 October 2022)

⁸⁶ The Editors of Encyclopaedia Britannica (2024) *Leonid Brezhnev* | *Biography, Cold War, & Facts.* <https://www.britannica.com/biography/Leonid-Ilich-Brezhnev>.

⁸⁷ Wikipedia contributors (2024a) *Afghan conflict.* https://en.wikipedia.org/wiki/Afghan_conflict.

Laden, the U.S. and allies invaded the nation in October 2001 and swiftly overthrew it. The Taliban leadership moved to southern Afghanistan and over the border into Pakistan after the U.S.-led invasion. From there, they launched an insurgency against the international coalition soldiers, the Afghan national security forces, and the government in Kabul, which was supported by the West. During this time, the Northern Alliance's Islamic State of Afghanistan enjoyed widespread international recognition and was represented at the United Nations.⁸⁸

The invasion of the United States triggered the 20-year-long War in Afghanistan, in which NATO and NATO-allied countries fought alongside the nascent Islamic Republic of Afghanistan to combat the Taliban insurgency. During the Battle of Tora Bora, the American-led military coalition failed to capture bin Laden, who subsequently relocated to Pakistan and remained there until he was killed by U.S. SEAL Team Six in Abbottabad in 2011. Nonetheless, the fighting in Afghanistan continued, eventually leading to the 2020–2021 American withdrawal and ultimately ending with the 2021 Taliban offensive, which led to the re-establishment of the present-day Islamic Emirate. Though the country-wide war ended in 2021, clashes and unrest currently persist in some parts of Afghanistan due to the ISIS–Taliban conflict and the anti-Taliban Republican insurgency. As of 2022, the collapsed Islamic Republic of Afghanistan remains the internationally recognized government of the country.⁸⁹

3.1.2. Traditional conflict resolution mechanisms in Afghanistan

Shuras and jirgas are local councils that meet to discuss and settle conflicts. They are made up of well-respected elders and powerful community members. These organizations provide forums for candid discussion, reaching agreements, and enforcing customary laws and norms. The community members that participate in these councils typically accept and respect the decisions made there, which are regarded as binding.

There are a number of reasons why traditional conflict resolution techniques are so common in Afghanistan. First of all, Afghan society is an ‘traditional society’ refers to a community that is deeply rooted in the past and often engaged in ritualistic and customary practices so, these systems are deeply ingrained in Afghan society, having been handed down through the generations from their ancient origins. They are regarded as representing the community's collective wisdom and knowledge, which is based on traditional and cultural values.

Second, there are benefits to using traditional conflict resolution techniques that are particularly important in Afghanistan. They are less expensive, more easily accessible, and better known in the community than formal legal systems. In many parts of the nation,

⁸⁸ *Instability in Afghanistan | Global Conflict Tracker* (2023). Center for Preventive Action <https://www.cfr.org/global-conflict-tracker/conflict/war-afghanistan>.

⁸⁹ UNAMA. 26 January (2022). Retrieved (1 October 2022)-8 Stars and Stripes.

where resources are scarce, and infrastructure is problematic, traditional mechanisms offer a practical and effective way to settle conflicts.

Furthermore, these mechanisms frequently place a high priority on upholding relationships and social cohesion within the community. Rather than using harsh penalties, they set more emphasis on rapprochement and the restoration of harmony. This strategy is in line with Afghan cultural values, which place a high value on preserving peace within the community and avoiding potential conflicts.

But it's important to understand that there are limitations to using conventional conflict resolution techniques. Because they frequently mirror prevailing power structures and social hierarchies, they can occasionally sustain discriminatory practices, especially those directed towards women and marginalized groups. Women's opinions and voices are frequently minimized or left out of these processes completely.⁹⁰

Within the context of traditional conflict resolution mechanisms, efforts are being made to promote gender-inclusive and rights-based approaches and address these shortcomings. Increasing awareness, developing capacity, and involving women and civil society organizations in the development and reform of these mechanisms are some of the steps. It is possible to maximize the effectiveness of conventional conflict resolution techniques in Afghanistan while making sure they respect the values of justice, equality, and human rights for all members of society by acknowledging and attempting to overcome these constraints.⁹¹

Some common mechanisms include:

3.1.2.1. Jirga: The traditional assembly system

According to the Pashto Descriptive Dictionary jirga is an original Pashto word, which in its common usage refers to the gathering of a few, or a large number of people; it also means consultation according to this source. According to Ghyathul-Lughat it is derived from jirga, which means a 'wrestling ring', or 'circle', but is commonly used to refer to the processes of the Pashtun traditional tribal jirga where people gather and sit in a large circle in order to resolve disputes and make collective decisions about important social issues. Rubin, a prominent scholar, describes the institution of jirga in this way: 'The jirga includes all adult males and rules by consensus. In theory, a jirga can be convened at any level of tribal organisation, from the smallest lineage to an entire confederation. Jirgas are most commonly held at the lineage level, but there are larger tribal or even inter-tribal

⁹⁰ *Traditional dispute resolution and Afghanistan's women.*

<https://www.usip.org/publications/2011/12/traditional-dispute-resolution-and-afghanistans-women#:~:text=At%20least%2080%25%20of%20all,councils%20called%20shuras%20or%20jirgas>

⁹¹ *The fragmentation of Afghanistan, (1995): state formation and collapse in the international system / Barnett. . . - Catalogue | National Library of Australia. (n.d).*
<https://catalogue.nla.gov.au/catalog/2122777>

jirgas as well, at least among the eastern Pashtuns.’ While this description depicts almost all the important aspects of this traditional Afghan social institution, Loya Jirga, Peshawar: Aman a contemporary Afghan scholar, has formally defined the concept and says that jirga is ‘... that historical and traditional institution and gathering of the Afghans, which over the centuries, has resolved our nation’s all tribal and national political, social, economic, cultural, and even religious conflicts by making authoritative decisions’. indeed, jirga has over the centuries, operated as an important mechanism of conflict resolution among the Pashtuns, and has contributed to the maintenance of social order in the rest of the Afghan society both in direct and indirect ways.⁹²

Jirga as a National Afghan Institution was an exclusive Pashtun tribal institution that operated as a mechanism of conflict resolution only in non-urbanized (or less urbanized) Pashtun populated areas in the south and east of Afghanistan. There is emerging evidence which shows that jirga, or its equivalents, are used as informal mechanisms of conflict resolution in rural or less urbanized areas where Afghan Tajiks, Hazaras, Uzbeks, predominate as the main ethnic group.⁹³ What is striking is that there are close similarities between the Pashtun jirga and the non-Pashtun shura. Carter and Connor (1989) confirm that among Afghan Tajiks, Hazaras and Uzbeks, jirga-like councils, which are commonly referred as shura, operated as a mechanism of conflict resolution. These Afghans dealt with relatively less serious conflicts, problems, and issues informally through shura which, Carter and Connor (1989: 9) operationally define in this way: ‘A shura is a group of individuals which meets only in response to a specific need in order to decide how to meet the need. In most cases, this need is to resolve a conflict between individuals, families, groups of families, or whole tribes.’ This description would seem to indicate that shura and jirga, are fundamentally very similar Afghan informal (non-state) mechanisms of conflict resolution that operate in varying social and tribal contexts.⁹⁴

In fact, many of the concepts and techniques such as ‘ozrkhahi’, ‘nagha’, ‘molamat’, ‘ras-e-qaum’, ‘reeshsafidan’ that are used in the process of dispute settlement among Afghan Hazaras are the exact equivalents (in Dari language) of those used in the process of the Pashtun tribal jirga.⁹⁵ Carter and Connor (1989) go on to say that, in contrast to the strongly institutionalized and egalitarian jirga, the shura, which has been significantly

⁹² Wardak, A. (2016). ‘Jirga - A Traditional Mechanism of Conflict Resolution in Afghanistan’, University of Glamorgan. https://www.researchgate.net/profile/Ali-Wardak/publication/254937578_Jirga_-_A_Traditional_Mechanism_of_Conflict_Resolution_in_Afghanistan/links/574c0d1908ae1e99d0e4e551/Jirga-A-Traditional-Mechanism-of-Conflict-Resolution-in-Afghanistan.pdf

⁹³ Hashemi, M. (2000) ‘Qadamhaie Asshti Baine Uzbakan’, in Qadamhaie Ashti wa Masauliate ma Afghanha: Kabultec: Falls Church, VA.

⁹⁴ Carter, L. and Connor, K. (1989) A Preliminary Investigation of Contemporary Afghan Councils, Peshawar: ACBAR

⁹⁵ Malekyar, S. (2000) ‘Qadamhaie Ashti wa Solh dar Ananaie Hazarahaie Afghanistan’ in Qadamhaie Asshti wa Masauliate ma Afghanha, Kabultec: Falls Church, VA. pp. 62-71

militarized over the past 24 years of Afghan war, is more related to a short-term advisory council of elders, landlords, khans, and military commanders with no clearly defined rules. The shura is also frequently involved in civil wars and military crises, the resolution of which is strongly influenced by landlords, khans, and, more recently, warlords and military commanders.

Loya jirga is a Pashto phrase made up of two words: 'loya,' which means "grand," and 'jirga,' which means "gathering" or "assembly." In Afghan political tradition, a loya jirga is a "grand assembly" of Afghan tribal leaders, elders, and others who convene to discuss critical national issues and make collective decisions. Because loya jirgas have been held in Afghanistan for centuries, the word is deeply established in Afghan culture and history. The best-known loya jirga in Afghan history is the one conducted in Kandahar in 1747, during which several Afghan tribes chose Ahmed Shah Durrani (Ahmad Shah Baba) as the country's ruler.⁹⁶

3.1.2.2. Shura: Local councils and decision-making structures

Carter and Connor (1989) confirm that among Afghan Tajiks, Hazaras and Uzbaks, jirga-like councils, which are commonly referred as shura, operated as a mechanism of conflict resolution. These Afghans dealt with relatively less serious conflicts, problems, and issues informally through shura which, Carter and Connor (1989: 9) operationally define in this way: 'A shura is a group of individuals which meets only in response to a specific need in order to decide how to meet the need. In most cases, this need is to resolve a conflict between individuals, families, groups of families, or whole tribes.' This description would seem to indicate that shura and jirga, are fundamentally very similar Afghan informal (non-state) mechanisms of conflict resolution that operate in varying social and tribal contexts. Shura is a concept similar to Jirga, though it is more often utilized in Afghanistan among non-Pashtun communities. It also includes gathering respected community members to discuss and resolve disputes. Shuras can be convened at several levels, ranging from village to regional to national assemblies.⁹⁷

A Shura, or reconciliation council, is generally headed by the Imam of the local mosque, accompanied by the Walkill, and one or more elder. The Imam is also known as Ulema or Mullah. The Walkill – or Kalanter – is the person assigned by the village to be the link between the village and the government. He is not necessarily an elder. He is given the position of Walkill generally because he is educated -- often the only educated man in the village. Because there is a presumption that the son of an educated man is also educated, the position of Walkill is often hereditary.

The size and exact composition of the Shura will depend on the gravity of the dispute. A Shura can be held at the village, district, or regional level. If a case is of little importance -- land under 200 square meters, petit larceny, etc. -- the Shura may consist of one Imam and two elders. In more important cases -- murder, adultery, and land disputes over

⁹⁶ Roashan, R. (2001) 'Loya Jirga: One of the Last Political Tools for Bringing Peace in Afghanistan', IAS, www.intitute-for-afghan-studies.com

⁹⁷ Ibid,94

pasture rights -- the Shura may consist of 12 elders from different villages and different ethnic groups. The Shura generally meets in the mosque, which is considered a sacred and impartial place. It can also meet in a Madrassa or even in the house of a neutral person of good will who agrees to host the meeting. If the weather is favorable, it can be held outdoors under the shade of trees.

Before the proceedings begin, in some villages the parties deposit money with the members of the Shura as a guarantee, known in the Pashtun areas as Machalgha. If one party to the dispute does not accept the decision of the Shura, he will lose the Machalgha and will have to seek redress from national government courts. At that point, the elders will attempt to disassociate themselves from the matter. The parties to the dispute are present during the proceedings. When a woman is a party to the conflict, the Shura will ask her to appoint a representative. If the Shura suspects that the representative is not impartial, the woman will be asked to represent herself (it happens rare). The elders usually open the proceedings saying sit down without faith but stand up faithful, meaning that the decision must be made faithfully, honestly, and impartially. The law applied is Islamic law as understood by the local Imam. When a criminal case is being adjudicated, people are notified so that many can attend and learn a lesson from the punishment.⁹⁸

Based on my 4-year experience in 60 villages as a legal consultant, master trainer, and legal awareness officer in family cases and violence against women, I can say that the councils in such cases, in some cases, supported the men's side in the case and in the decision-making sessions. They did not consider neutrality. As someone who had formed 60 conflict resolution committees in 60 villages, I can say that there was still a patriarchal view in solving cases, or if the man was guilty, they still convinced the woman to continue her normal life. not to have complaints, and even in most of the local committees that were formed at the village level, women were not present in that committee. But there must have been one or two women in the committees formed by our NGO. Despite the many educational detectives that we had provided to our committee members over the course of three years, the female members of our committees secretly expressed that, in most cases, they were not informed, and the men themselves made the decision. The problem was that women could not protest because the local elders, who were members of the committee and council, easily dissolved women's membership.⁹⁹

3.2. Tradition and women's inclusion in peacebuilding processes

Tradition and the involvement of women in rebuilding processes in Afghanistan have been continuous topics of discussion and challenges. In Afghanistan, social and cultural traditions have frequently excluded women's participation in decision-making processes,

⁹⁸ Research of The International Legal Foundation. (September 2004), www.TheILF.org

⁹⁹ Jahed, b, (2019), Legal awareness officer legal assistant in 63 villages, (2016-2021), Herat, Afghanistan

including peacebuilding. However, attempts have been made to secure women's involvement and meaningful engagement in peacebuilding initiatives. Widespread harmful traditional practices – child marriage, giving away girls for dispute resolution, forced isolation in the home, exchange marriage and “honor” killings – cause suffering, humiliation and marginalization for millions of Afghan women and girls. Such practices are grounded in discriminatory views and beliefs about the role and position of women in Afghan society. Many Afghans, including some religious leaders reinforce these harmful customs by invoking their interpretation of Islam. In most cases, however, these practices are inconsistent with Sharia law as well as Afghan and international law and violate the human rights of women.¹⁰⁰

3.2.2. The importance of women's participation in peacebuilding

Despite the United Nations' landmark Security Council Resolution on Women, Peace, and Security in 2000, which emphasized the importance of women's engagement in peacebuilding, only one in every 40 peace treaty signatories has been a woman over the last 25 years. Despite this, research from non-governmental groups and women's rights organizations indicates that women are active peacemakers, resolving problems at all levels of society with little or no recognition.¹⁰¹ Following the approval of United Nations (UN) Security Council Resolution 1325 in 2000, recent peace-building efforts in conflict-affected countries have a substantial gender component, at least on paper. One of the main purposes of this paper was to address the special needs of women and girls, in order to strengthen women's capacities to act as agents in relief and recovery processes in war and situations after conflicts. These goals are supported by a growing body of evidence showing that violent conflicts have differentiated effects on women, men, boys and girls. Furthermore, gender equality may be associated with a lower risk of inter- and intra-state conflicts, improved respect for human rights the promotion of democracy and lower corruption in society. These factors are arguably central to successful peace-building processes.¹⁰² Women have the ability to create peace in their families, neighborhoods, communities, workplaces, and society at large. As a result, their active participation in the peacebuilding process is critical to ensuring long-term peace. For women to play a positive role in peacebuilding, it is important to first create awareness on the role of women in peacebuilding. In a largely male-dominated and gender-biased society, men are less aware of the need for women's participation.¹⁰³ Evidence from a large literature on peace building, which has illustrated the importance of women's groups in setting up

¹⁰⁰ UNAMA report, (2010). Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan, Kabul, Afghanistan.

¹⁰¹ Rahmani, M. (2023) Womankind's Advisor/Advocate on Afghanistan and Director of the Afghan Women's Resource Centre (AWRC)

¹⁰² Justino, P., Mitchell, R. and Müller, C. (2018) 'Women and Peace Building: Local perspectives on Opportunities and Barriers,' *Development and Change*, 49(4), pp. 911–929. <https://doi.org/10.1111/dech.12391>.

¹⁰³ Ababa, A. (2021). The role of women in peacebuilding from a religious perspective paper, Kabul, Afghanistan.

schools, health clinics and other social services and organizing peace rallies and acting as local intermediaries for the peace in Afghanistan. According to national-level analysis, women in Afghanistan built safe spaces for women and girls to gather and organize. This is due to the fact that formal community participation institutions, such as jirgas (a traditional assembly of male leaders), are not open to women. Women-only places enable them to talk and mobilize for peace and conflict resolution.¹⁰⁴

women's voices are essential for achieving sustainable peace, inclusive development, and a just society", said Ms. Aleta Miller, UN Women Representative in Afghanistan. "As this year also marks 20 years since the adoption of Security Council resolution 1325, we have an opportunity now to use the momentum around this anniversary to amplify women's voices and elevate their participation on peace in Afghanistan", stated Ms. Miller.

"Women and girls have taken the brunt of conflict, so why do we continue to see peace and women's rights framed as a trade-off? They are not at odds", said Dr. Habiba Sorabi, a member of the Peace Negotiations Team. "The women of Afghanistan are clear – peace must mean peace for all Afghans and must not come at the expense of the rights of the women."

"The intra-Afghan peace process cannot ignore an undeniable force that has emerged in Afghanistan's recent history: women's demands for a future Afghanistan that respects and promotes their human rights are stronger than ever", said Ms. Ingrid Hayden, the Secretary-General's Deputy Special Representative for Afghanistan. "Afghan women need commitments and action to ensure their participation and the continued protection of their human rights in an inclusive Afghanistan. This intra-Afghan peace process is the opportunity for that", said Ms. Hayden.¹⁰⁵

So, women's participation in the peace efforts is vital to sustain peace in Afghanistan, and that it requires an active role from the government and the international community in supporting women's seats at the table and their meaningful participation.¹⁰⁶

3.2.3. Traditional approaches to women's inclusion

The main barriers to women's political participation are the profusion of society-based violence against women, ideological barriers and cultural norms that have actively excluded them from political and social spaces and roles. Insecurity has affected women adversely by limiting their ability to move freely. Traditional barriers such as low levels of literacy and poverty are among the other barriers. Arguments used against women's political participation are often religious, but findings from the interviews with religious

¹⁰⁴ Justino, P. Mitchell, R. Müller, C. (2018). International institution of social studies

¹⁰⁵ UN Women report, (2020). Afghanistan Research and Evaluation Unit (AREU), Kabul, Afghanistan.

¹⁰⁶ Ghafoori, I. (2020). "Women's Participation in the Afghan Peace Process: A Case Study." United Nations Entity for Gender Equality and the Empowerment of Women.

scholars showed that there is no religious restriction to women participating in the peace efforts.¹⁰⁷

Gender policy in Afghanistan have long been part of a larger ideological conflict between conservative(traditionalist) and modernist forces. As part of the modernization drive, male political leaders have frequently led efforts to promote and emancipate women. Such gender measures have been continuously contested and, at times, reversed by the conservative orthodoxy, which mostly consists of religious leaders and the rural populace. This trend has been repeated in recent Afghan history, even before the Taliban, with a succession of governments led by kings, Marxists, and Mujahideen during the last century. Each of these political movements resulted in a reevaluation of women's roles and legislative acts that either aided or hindered women's emancipation. Although none of these administrations lasted, they have had an impact on Afghan culture.

Thus, traditionalists and modernists, opponents and supporters of women's rights, can draw justification for their stances from antecedents in Afghan history. While Islam served as a unifying force among various regional identities and tribes, religious practice was generally voluntary and defined by tolerance and respect. Transition within tradition: Restoring women's participation in Afghanistan.¹⁰⁸

Gender roles in Afghanistan have frequently been intertwined. Adults of both sexes acknowledge that each play relevant and important roles, albeit in different realms, as in many traditional communities. This is especially true in rural Afghanistan, where men and women play similar responsibilities in agricultural activity. In carpet weaving, for example, males' herd and shear the sheep, while women spin the wool into yarn and weave the carpet. In the house, women frequently wield enormous power over their husbands; nevertheless, each has a distinct and defined position. Women are frequently in charge of finances, household administration, and family welfare. Men frequently make ultimate decisions about topics involving the outside world, such as arranged marriages and the family's interactions and dealings within their society. In addition to Afghan society's traditional and historical standards, years of internal strife have had an impact on gender relations. With the enforcement of exclusionary policies regarding women's participation in the Afghan political, socio-economic, and educational institutions, the ill-effects of war have been most harsh on Afghan women. They have not only suffered from hunger, deprivation, and despair, but they also have endured the politicized gender policies that have constrained their access to productive roles and resources such as land and credit. Although Afghanistan is a moderate Islamic society,

¹⁰⁷ *Women's participation in the Afghan peace process: A case study (September 2020) - Afghanistan* (2020). <https://reliefweb.int/report/afghanistan/women-s-participation-afghan-peace-process-case-study-september-2020>

¹⁰⁸ *Harvard Kennedy School*. (2024, March 14). Harvard Kennedy School. <https://www.hks.harvard.edu/>

some have wrongfully used concepts of gender under Islam as a tool to support their political agendas.¹⁰⁹

3.2.4. The Role of traditional, community and conflict in promoting women's education

Throughout history, Afghan women have encountered numerous obstacles in achieving their rights, especially the right to education. The predominance of patriarchal ideologies and strong traditional values was one important factor impeding progress in this area. During the reign of King Amanullah, there was an important to note incident wherein the monarch attempted to provide women with equal rights and even incorporated provisions regarding this in the constitution. But people who adhered to social norms and traditional beliefs fiercely opposed these progressive measures. The king's efforts were ultimately undermined by public opposition stemming from the patriarchal ideology and resistance to change against tradition. These formidable obstacles proved to be significant challenges.

There was another dark period that saw a major decline in women's rights in Afghan society. Women's rights were drastically restricted during this time, frequently as a result of conservative ideas being imposed and traditional customs being strictly adhered in. Women faced repressive circumstances that limited their autonomy and participation in society, and they were deprived of their fundamental rights, including the right to an education. These instances demonstrate the negative consequences of tradition when it's employed to restrict women's rights and keep them from obtaining an education. tradition that is embedded in patriarchal standards has the potential to impede efforts to achieve gender equity and to continue gender inequality. Certain aspects of tradition can impede the realization of women's rights and hinder societal development.

Here, we take a quick look at some of Afghanistan's past periods; During the rule of Amir Habibullah Khan (from 1901 and 1919), a special call for women's education in the contemporary system, or what is known as formal education in Afghanistan, was launched. (Emir Habibullah Khan (1872-1919 CE) ruled Afghanistan between 1901-1919 CE. He was assassinated during a hunting trip following popular campaigns against him due to his reformist and modernizing initiatives.) During his reign, the first girls' school to operate followed an English curriculum, but it was met with intense opposition from Afghan tribal chiefs and religious authorities. These measures, which were regarded as undermining community values and religious rituals, were linked to his efforts to limit dowries and infuse Western modernity into Afghan society.¹¹⁰ Despite targeting Afghanistan's elite, traditionalist forces blamed his killing on these reforms. (Amanullah

¹⁰⁹ Zulfacar, (2001). " Transition within Tradition Conference ", Kabul, Afghanistan

¹¹⁰ Ahmed-Ghosh, H. (2003). "A History of Women in Afghanistan: Lessons Learnt for the Future or Yesterdays and Tomorrow: Women in Afghanistan", Journal of International Women's Studies 4, no. 3, <https://vc.bridgew.edu/jiws/vol4/iss3/1>

Khan (1892-1960) ruled Afghanistan from 1919 to 1929 and led his country to complete independence from British influence. He abdicated the throne under the pressure of the challenges that affected his rule. His brother, Inayat Ullah Khan, ruled for three days, after which Habibullah Kalakani seized power. Amanullah Khan died in exile.)

In Afghanistan, Amanullah Khan, Habibullah Khan's successor, and Mahmud Tarzi pioneered a new reformist ideology. Tarzi, a progressive thinker, believed that education was essential for economic growth, power, and prosperity.¹¹¹ He advocated for equal educational and job opportunities for men and women as a catalyst for cultural, urban, political, and economic advancement. Amanullah Khan initially worked to reconcile Islam with modernity. His administration, however, soon clashed with conservative elements.¹⁴ Part of the reason for this dispute was a failure to give compelling arguments that directly challenged conservative norms.

Masturat, the first girls' school, was created in 1921 by Princess Soraya, Amanullah Khan's wife and Mahmud Tarzi's daughter. Over 800 females enrolled at the institution between 1921 and 1928. Ten of the 205 Afghan students sent abroad to study were female.¹¹² During this period of educational reform, there were also calls for societal modernization, such as the prohibition of polygamy, the abolition of dowries, and the promotion of female workforce involvement. The most contentious plan, however, was to encourage women to go openly in public. Tribal elders and Islamic groups reacted angrily to this proposition. In response, Amanullah Khan reversed many of these laws, including polygamy bans and raising the legal marriage age. As a result, women in Kabul began wearing hijabs again, and rural women's schools were closed. However, these late concessions were insufficient to silence the mounting conservative opposition, leading Habibullah Kalakani to depose Amanullah Khan, who spent out his days in exile. Kalakani's nine-month regime saw the closure of all women's schools.¹¹³

In 1929, under King Mohammad Nader Shah, who took a cautious approach to women's rights and education. He mandated the wearing of hijabs and closed all women's schools from the start of his reign. Following the killing of Nader Shah, his son Mohammad Zaher Shah came to the throne. Mohammad Zaher Shah (1914-1978) came to power at the age of 19 and his rule lasted from 1933 until 1978 when he was killed in a Communist Party orchestrated coup.) In addressing Afghan public opinion, Prime Minister Sardar Mohammad Daoud Khan, a supporter of modernity, was more reserved. Kabul's first

¹¹¹ Gregorian, V. (1967). Ideology of Nationalism and Modernization in Afghanistan," Middle East Journal 21, no. 3. <http://www.jstor.org/stable/4324163>

¹¹² Sadat, H. (2004). "History of Education in Afghanistan," ReliefWeb, <https://reliefweb.int/report/afghanistan/history-education-afghanistan>

¹¹³ Ahmed-Ghosh, H. (2003) "A History of Women in Afghanistan: Lessons Learnt for the Future or Yesterdays and Tomorrow: Women in Afghanistan," Journal of International Women's Studies: Vol. 4: Iss. 3, Article 1. <https://vc.bridgew.edu/jiws/vol4/iss3/1>

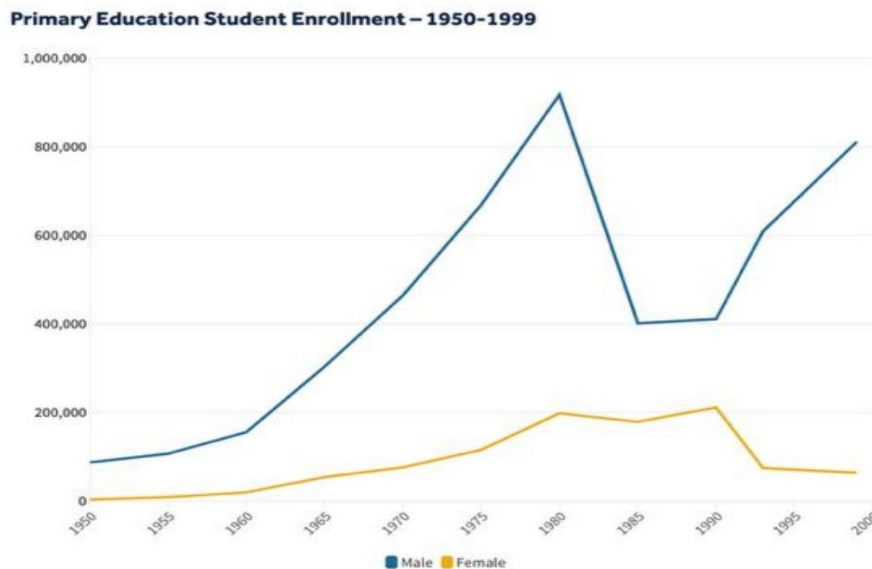
women's institute opened in 1946, followed by two girls' high schools and a women's college of education in 1947. By 1949, the first female high school graduates were beginning to teach in elementary schools.¹¹⁴

The 1950s and 1960s saw considerable advancements in women's education and labor-force integration. Prime Minister Daoud advocated for a balanced approach, balancing reformist, and conservative views. He saw the hijab as a personal option for women, urging moderation and adherence to cultural values and customs. He improved infrastructure with Soviet assistance, considerably increasing education in Afghanistan and developing a generation of female educators, doctors, and nurses.¹¹⁵

Women's political involvement and voting rights were recognized in the third constitution, which was ratified in 1964. A woman was appointed as Minister of Health, and three women served in parliament as representatives. This era also witnessed the establishment of the first women's organizations, which campaigned against forced marriage, promoted female literacy, and advocated for women's rights.

Based on Figure 1: which indicates the enrollment movement of students in public schools by gender, a large increase in the number of girls enrolled in formal education, both elementary and secondary schooling, can be seen.

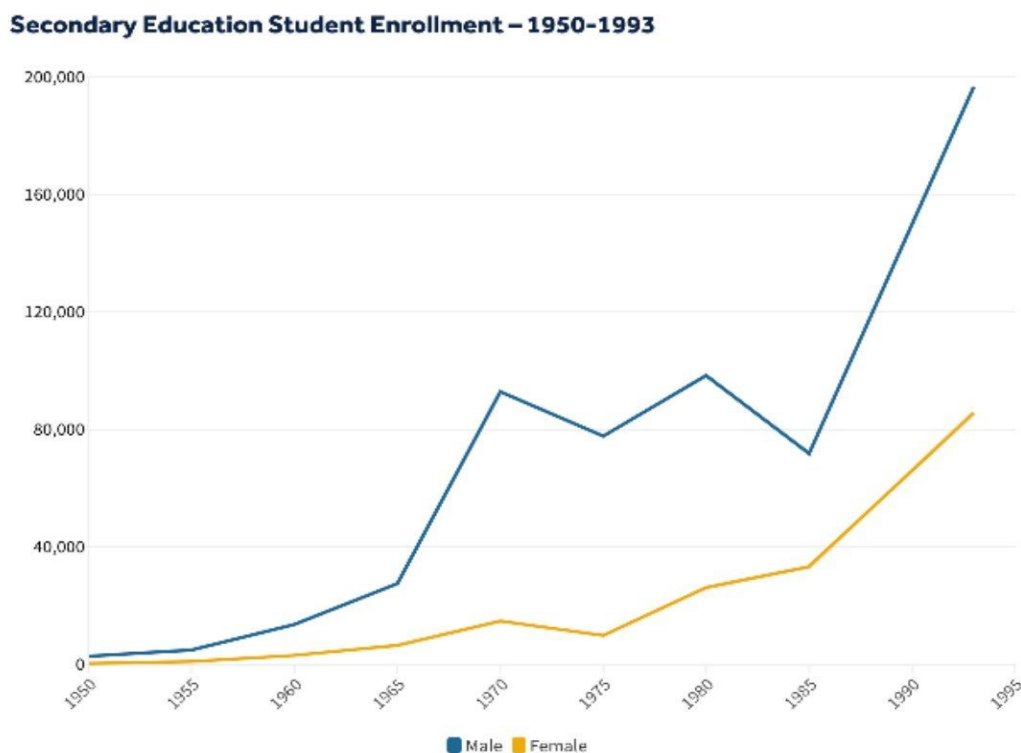
Figure 1: The Growth of General Education in Afghanistan (Student Enrolments: 1950–1999)



¹¹⁴ Ibid,112

¹¹⁵ Ibid,113

Secondary Education Student Enrollment – 1950-1993¹¹⁶



After 1979, the Soviet-dominated Democratic Republic of Afghanistan prioritized education, particularly for girls. The regime began a literacy drive aimed at children, adolescent females, and women. The initiative was met with considerable opposition from the start, in part because the campaign was entwined with the communist political agenda. The curriculum was packed with Marxist terminology encouraging urban and modern mores and behavior, frequently dismissing traditional models as outdated. As a result, there was a huge backlash against education, particularly in rural areas, with widespread suspicion and rejection of government education projects.

The 10-year conflict with the Soviets precluded both educational system expansion and an increase in school enrollment. Primary school enrollment was just 54% for males and 12% for females in 1980, according to World Bank data (Gender Stats, 2002). Illiteracy

¹¹⁶ Middle East Council on Global Affairs. (2023, March 7). *Women's Education: Cultural and Religious Solutions from the Heart of Afghanistan* - Middle East Council on Global Affairs. <https://mecouncil.org/publication/womens-education-cultural-and-religious-solutions-from-the-heart-of-afghanistan/>

remained exceedingly high, particularly among women. However, in 1989, Kabul had seven higher education institutes with a total of 15,319 male and female students. Kabul University alone has over 7000 students, with 65% of them being female. Furthermore, the Medical Institute under the Ministry of Public Health had 3000 students, bringing the total number of students to almost 18,000, more than double the enrollment of the previous decade¹¹⁷

Discrimination against women in education and work began to surface after the Mujahideen took control of Kabul in 1992. Nonetheless, a study by the Ministry of Education (1994/1995) stated that there were 628,660 students in Afghan primary schools, of which 168,820 (27%) were girls, and 11,548 instructors, with 6,662 (58%) being women, from their ascent to power up to the Taliban's takeover in 1996. There were 282,340 students in secondary education (grades 7–12), including 85,692 girls (30%), with a teaching staff of 5,926 men and 6,522 women (52%). There were 10,700 students in higher education, with approximately 3,000 female students (nearly 28%).

Women's education continued despite significant obstacles and a tough economic and security landscape. However, women's education was not as crucial or problematic during this period as it had been under earlier regimes.^{118, 119}

During the Taliban's initial ruling in 1996, women's education was banned. The Taliban's constraint on girls going to school and on women working as teachers resulted in a severe drop in education for both girls and boys.¹²⁰ However, with the start of the US occupation in 2001, educational institutions opened their doors to women once more. Despite major attempts to learn, particularly for women, obstacles in girls' education have persisted. The situation was multifaceted, with key impediments such as societal anger, tradition, security concerns, physical and verbal assaults on women and way to education, and economic restraints such as a school shortage, insufficient teaching staff, and administrative corruption.

¹¹⁷ Amiri, R. Hunt, S. Sova, J. (2004). "Transition Within Tradition: Women's Participation in Restoring Afghanistan, (Conference leaders). https://www.hks.harvard.edu/sites/default/files/wappp_files/pdfs/art3a10.10232fb3asers.0000046612.13353.0f.pdf

¹¹⁸ Pourzand, N. (1999), "The Problematic of Female Education, Ethnicity and National Identity in Afghanistan (1920-1999)," *Social Analysis: The International Journal of Anthropology* 43, no. 1, <http://www.jstor.org/stable/23166559>

¹¹⁹ United Nations Educational, Scientific and Cultural Organization [UNESCO], (1995), Bangkok, Thailand, <https://unesdoc.unesco.org/ark:/48223/pf0000104919.locale=en>

¹²⁰ GenderStats database of gender statistics. (2002). Afghanistan, Thematic Data, Education. Retrieved April 22, 2004, from World Bank Web site: <http://devdata.worldbank.org/genderstats/genderRpt.asp?rpt=education&cty=AFG,Afghanistan&hm+home2> Hariri, B. (1997).

According to a 2021 UNESCO report, the student population witnessed a substantial increase from 2001 to 2018, rising from one million to approximately ten million across various educational levels. This figure comprised 6.5 million primary school students (40% females), one million middle school students (35.7% females), one million high school students (34% females), and 400,000 university students (24.6% females). Furthermore, the female illiteracy rate saw a decline from 83% to 70% between 2011 and 2018.¹²¹

Since the Taliban rule took over the country in mid-August 2021, Afghanistan's record on women's rights has been clearly one of the worst in the world. Despite claims to 'keep women's rights in accordance with Sharia law,' the Taliban began repressing citizens' rights from the first weeks of its rule, with women being the primary target of restrictions. The Taliban not only forbids women and girls from traveling without a male relative, but they also deny them post-primary education, bar them from many public venues, and limit their employment to health care and elementary education. Women were also barred from working for non-governmental organizations (NGOs) in most sectors beginning in December 2022. They are making Afghanistan one of the most restrictive countries in the world when it comes to women's education.¹²²

Afghanistan is home to a diverse range of ethnicities, sects, and social structures, with the Pashtun being one of the most numerous. They have their own language and follow strict rules and traditions, which are regulated by the notion of 'Pashtunwali,' which embodies the cultural and emotional aspects unique to Pashtuns. This ethical code interprets activities designed to safeguard the tribe's structure and hierarchy. Women's roles in Pashtun society are predominantly domestic, and their pursuit of education is considered as a break from traditional standards.

If a woman leaves her house, it is considered a disgrace among Pashtun tribes, who have a long-standing history of barring women from attending school. Some members of this ethnic group believe that contemporary education undermines family harmony. This tribal factor consequently adds another barrier to women's education. However, there are distinctions within the Pashtun community, particularly between urban and rural Pashtuns.

¹²¹ The right to education: What's at stake in Afghanistan? (2021). United Nations Educational, Scientific and Cultural Organization, Paris, France.

¹²² Leclerc, G & Shreeves, R. (2023), Factors Limiting Afghan and Pakistani Girls' Access and Participation in Education," Open Access Library Journal 8, e7488, European Parliamentary Research Service. <https://doi.org/10.4236/oalib.1107488>

As a result, ingrained habits and traditions may not be the single cause of women's education barriers, but rather one of numerous crucial and interconnected elements. These include harassment, kidnapping, and rape, all of which contribute to women's bodily insecurity. Women who are subjected to physical harassment and kidnapping suffer additional consequences, with cultural humiliation resulting in significant familial retaliation. Families frequently abandon or isolate abducted girls on their way to school. In such circumstances, the victims are typically blamed for their situation, particularly if they face harassment. As a result, many families prefer to keep their girls out of school in order to prevent social embarrassment.¹²³

Some people, particularly in villages, believe that literacy is appropriate for a female to the extent that she can just read and write because, according to tradition, a girl's responsibility is to become a wife and mother, thus they don't require a lot of literacy. Girls only need primary schooling. Unfortunately, some females are forced to study in accordance with societal and familial traditions. In Afghan society, there is an idea that, first, there is no need for a girl to learn, second, if she studies, elementary classes are sufficient, and third, studying the two areas of teaching and medicine is beneficial for girls because these two fields deal with women.¹²⁴

3.2.5. Addressing gender-based violence through traditional mechanisms and traditional leaders

Gender-based violence is a serious problem in Afghanistan, and addressing it requires a multifaceted strategy. While formal legal systems are critical in combatting such violence, traditional processes and leaders can also make substantial contributions to advancing gender equality and reducing violence against women.

Afghanistan, as a country that is a member of the Convention on the Prohibition of All Forms of Discrimination against Women, has an obligation according to international law to take the necessary measures to prevent violence against women, protect women from it and deal with cases of violence against women, regardless of to assume that the violence was committed by private or public actors. The law prohibiting violence against women, which came into effect in 2012, is the most important legal document to protect women from violence in Afghanistan. The law has criminalized twenty-two (22) acts of violence and harmful customs and traditions against women and girls. Except for five serious crimes, including the crime of sexual assault and forced prostitution, this law allows the victims of these crimes. that at every stage of legal prosecution, he withdraws from the pursuit of his complaint, which has enabled mediation in cases of violence against

¹²³ Leclerc, G & Shreeves, R. (2023), Factors Limiting Afghan and Pakistani Girls' Access and Participation in Education," Open Access Library Journal 8, e7488, European Parliamentary Research Service. <https://doi.org/10.4236/oalib.1107488>

¹²⁴ Ibid,99

women. The government is obliged to prosecute five serious crimes without considering a complaint or withdrawing Complaint by victims.¹²⁵

It is critical to recognize that traditional methods and leaders have been shown to have biases and to support patriarchal norms. In some circumstances, they may promote men's interests or fail to render objective and fair decisions. Domestic violence is an old culture in our country, for example, Violence is embedded in a woman's mind, as it is said that a girl wearing a white wedding dress goes to her husband's house, when she wants to go out, she has to leave with a shroud. This means that when women go to the husband's house, they do not decide to go out themselves or leave the husband's house. It is only possible when the woman is shrouded, and her body is removed. For the women of this land, it is true, and it has a practical aspect, without taking into account the life of a human being is being destroyed and this sinister phenomenon has victimized women for years and this issue has almost become a norm. Unfortunately, the traditions, customs, and customs of our people in this land still confirm the acceptance of this disgusting process.¹²⁶

Traditional and causal factors can not only prevent entering into conflict resolution mechanisms; But they can also prevent access to justice. Many of these barriers have a two-fold application: First, they reduce the ability of women to access justice. Second, if women also achieve it, they prevent the solution of the case or problem in a way that cannot fulfill the rights of women. Conservative social standards limit women's basic freedoms from marriage and divorce to child custody and their freedoms in sightseeing. It is said that one of the most prominent religious authorities issued a decree in 2012 that women are second in rank to men. While it is illegal for girls to marry under the age of 16 or 15 with the permission of their parents, still in some societies, girls who are much younger than the mentioned age are given to husbands, and some are even betrothed at birth.¹²⁷

“A culture of impunity exists for sexual violence in the country. It is always seen as private matter of the family. State institutions refuse to intervene in some cases. In other cases, they promote the ownership of females in the family by men”. Dr. Sima Samar, the Chairperson of the Afghanistan Independent Human Rights Commission at the Senate Foreign Relations Committee, February 23, 2010. USA.¹²⁸

In general, before August 2021, an extensive system of safe houses and services, such as legal counsel, medical attention, and psychosocial support, was available to female and girl survivors of gender-based violence. Violent crimes against women and girls were

¹²⁵ عدالت از نگاه زنان افغان، (2015)، کمیشنری عالی ملل متحد برای حقوق بشر، هیئت معاونت ملل متحد در افغانستان، کابل، افغانستان.

¹²⁶ Haqyar, S. (2020), “report of HUMAN RIGHTS & ERADATION OF VIOLENCE ORGANIZATION”.Kabul, Afghanistan.

¹²⁷ report of United State Institute of Peace,(2014) Kabul, Afghanistan, https://www.usip.org/sites/default/files/PW98_Women-Access-to-Justice-in-Afghanistan-DARI.pdf

¹²⁸

handled by prosecutor's offices and special courts. Thousands of women and girls received services from this system each year, despite its shortcomings.¹²⁹

3.2.6. National action plan for the women of Afghanistan

Afghanistan continues to be among the world's poorest nations. Due to discriminatory practices against women, such as the imposition of limited social, economic, and political roles, women are more vulnerable to poverty and suffer from it more acutely. According to local studies, unequal power dynamics within the family cause members of the household to bear the brunt of poverty's hardships at different rates.

For instance, comparing the GDPs of men and women in Afghanistan based on Purchasing Power Parity-adjusted per capita GDP offers an indicator of the differences in economic status between the sexes. In 2002, this was estimated to be worth \$1,182 for men and \$402 for women in Afghanistan. It indicates that in Afghanistan, men are roughly three times more prosperous financially than women. The lack of access to basic utilities like power, water, transportation, and roads makes it difficult for people's lives and health to improve. This is particularly true for rural women, who perform routine caregiving and reproductive tasks on top of mostly unpaid productive work.¹³⁰

The confluence of extreme poverty, poor health, and low level of education substantially hinders women's ability to participate in the waged workforce. The underestimation and underpayment of Afghan women's productive contributions to agriculture and livestock management persist, and their restricted access to economic resources, including capital, markets, information, and technology, restricts their ability to enter the paid workforce. In addition, it was discovered that women are generally not allowed to control their own income mostly in the villages and countryside and that wage discrimination based on gender is widespread, especially in the industries of weaving, construction, commerce, and harvesting.¹³¹

However, social prejudices, violence, and other factors such as being under the authority of men continue to limit the conditions in which Afghan women can exercise their political rights. For instance, according to a report, 87% of respondents said that a woman could not vote unless her husband, or another male family member gave her permission. A nationwide survey of men revealed that they would never permit their wives to vote.¹³² Ensuring women's strong participation in national institutions, such as the National Assembly and the civil service, is one area where the government has successfully supported women. The 20% female representation in the Constitutional Loya Jirga led to

¹²⁹ Kiana, H. (2022). مرگ در حرکت آهسته زنان و دختران تحت حاکمیت طالبان, Amnesty International.

¹³⁰ Millennium Development Goals, Islamic Republic of Afghanistan Country Report (2005), UNDP, Summary Report, Kabul, Afghanistan.

¹³¹ Maletta, H. (2002-2003), Gender, Wealth, Wages and Employment in Rural, Women at Work, Afghanistan, Ministry of Agriculture and Animal Husbandry, Information Management and Policy Unit, Government of Afghanistan

¹³² Afghanistan 2004 National Elections. (2004), Voter Education Planning Survey, The Asia Foundation. Kabul, Afghanistan

significant advancements for women in Articles 83 and 84 of the Constitution, guaranteeing seats for women in the upper and lower houses.

The National Solidarity Program (NSP) has been mandated by the government to guarantee women's participation as actors and beneficiaries at the community level. It is yet unknown how this policy will actually affect women's leadership and political engagement.¹³³ There may be a link between the rise in violence in homes and public places and women's increasing participation in non-domestic activities and their ongoing advocacy for gender equality. Nonetheless, the prevalent culture of female subordination, women's low social standing, and their lack of empowerment continue to be the main contributors to violence against women (VAW).

The adoption of policies to address forced marriage, particularly for underage girls and widows, as well as physical, sexual, and verbal abuse, is hampered by the lack of official reporting, recording, and case analysis. Domestic violence, which is mostly committed by intimate partners, is still an underreported problem that calls for legislative and educational changes, as well as protection for vulnerable women, counseling, and support for the financial independence of victims. Women's rights to participate in Afghan society are consistently denied by acts of public violence, verbal abuse, and assault that are specifically intended to impede women's advancement.¹³⁴ The national Constitution's Article 22 established the principle of nondiscrimination and the equality of men's and women's rights and obligations. Women's participation in the democratic processes established by the Bonn Agreement reached previously unheard-of levels.

The government established gender as a linking perspective in the national development framework, ratified the Convention on the Elimination of All Forms of Discrimination Against Women, and adopted gender mainstreaming as a strategy for advancing women's status under the Berlin Plan of Action. Afghan women's lives also saw changes during this time as they participated in electoral and civil service reform processes and re-entered the political, social, and economic spheres that had been unfairly closed to them for more than 20 years. Women and girls returned to school, and the government began investigating the areas where serious violations of women's rights occur. In order to improve the government's response to violence against women, the government formed the Commission on the Elimination of Violence Against Women, whose mission was to start program and policy initiatives.

NAPWA envisions that “Afghanistan will be a peaceful and progressive country where women and men enjoy security, equal rights, and opportunities in all aspects of life. This vision captures the three main themes of the United Nations Decade for Women - peace, development, and equality.

3.2.6.1. Mission of NAPWA:

As articulated in the I-ANDS, it is the —collective responsibility of all sectors, institutions, and individuals to include women or gender concerns in all aspects of

¹³³ Afghanistan Statistical Yearbook; (September 2003), Central Statistics Office, No. 24, Kabul

¹³⁴ The Situation of Women and Girls in Afghanistan, (March 2004), Report of the Secretary General, United Nations Economic and Social Council, Commission on the Status of Women, 48th Session-

government work – from policies, to budgets, programs, projects, services, and activities, including recruitment, training, promotion and allocation of benefits and opportunities. The mission of NAPWA is to actively promote institutions and individuals to be responsible implementers of women ‘s empowerment and gender equality by providing clear focus and direction, coordinated action, and shared commitment to the Government ‘s vision.¹³⁵ The Ministry of Women's Affairs, which will remain the government's lead ministry for the promotion of women's advancement, will lead the executive branch of government in implementing and enabling this mission, which will be pursued at all levels of the state apparatus.

NAPWA will work toward gender equality and women's empowerment. In a state of gender equality, both men and women are free to exercise their rights, participate equally in and gain the rewards of progress, and are not prevented from pursuing the goals that are just, moral, and essential to leading fulfilling lives. On the other hand, women who are empowered take charge of their lives, decide how to go with them, reach their full potential, make wise decisions, and have a positive impact on the systems, procedures, and choices that have an impact on their wellbeing.

3.2.6.2.Strategies:

1)Elimination of discrimination against women:

The Afghan government acknowledges that one of the main barriers to women's empowerment and gender equality is discrimination against them. The constitutional guarantees of equality of rights and respect for human dignity are breached, and women are prevented from obtaining resources that could enhance their abilities and overall welfare. CEDAW, one of the international conventions to which Afghanistan is a party, defines discrimination against women‘ as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” Elimination of discrimination against women is a principle that is contained in the Universal Declaration of Human Rights which “affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex”.

2) Development of women’s human capital

Afghanistan's government holds that every man and woman have the right to the full realization of their potential, and that this is necessary for the country to grow into a progressive and dynamic one. The government is aware of its responsibility to give its

¹³⁵ Afghanistan National Development Strategy: (2006), An Interim Strategy for Security, Governance, Economic Growth and Poverty Reduction, Government of Afghanistan: p.153

people the resources and surroundings necessary to reach their full potential. Another essential component of nation-building is the development of human capital. Afghan women, who constitute half of the nation's population, represent an enormous source of potential human resources just waiting to be developed. Investing in the human capital of women will have a positive knock-on effect on Afghan society and family life.

The Afghan government acknowledges that decades of marginalization and restriction, exposure to violence, and disadvantage in many areas of life have severely depleted women's intellectual resources, making it difficult for women to develop their human capital. Therefore, we will increase our spending on initiatives that will, among other things, increase their life expectancy, improve their health and educational standing, help them develop economic skills, improve their political leadership and decision-making abilities, give them more mobility, and encourage a change in public perceptions of women's and men's roles in society.

3) Promotion of women's leadership

We recognize that gender inequality—where power is distributed significantly in favor of men—is a major contributing factor to women's low status in Afghan society. Women who lack the autonomy to make decisions and shape society's decisions suffer from low self-esteem, distorted perceptions of themselves, and behaviors that impede their ability to reach their full potential as people. People who are not used to women exercising leadership and power will inevitably oppose the advancement of women's leadership in Afghanistan. The low quality of women's human capital, in addition to insecurity, mobility constraints, numerous responsibilities, and inadequate support networks, will pose significant obstacles to the strategy's execution.

These issues are recognized by the Afghan government, which is still dedicated to advancing women in leadership roles in the public and personal sectors. It acknowledges that female leadership can be seen as a means to an end in and of itself. The Afghan government recognizes that if half of the population is kept out of the political process, it will be impossible to create a responsive and well-informed governance system. As such, it is aware of that encouraging women to assume leadership roles is essential to achieving this goal.¹³⁶

The Government of Afghanistan recognizes the existing challenges and is fully committed to empowering women and promoting their leadership roles in both the public and private sectors. The government understands that women's leadership is not only a means to achieve progress but also an essential goal in itself. It acknowledges that to establish a governance system that truly serves the interests and well-being of its people, it is crucial to include women in decision-making processes. Excluding half of the population from participating in governance hinders the ability to build an inclusive and responsive system.

¹³⁶ Aide Memoire for Expert Group Meeting, (2005), —Equal participation of men and women in decision-making processes, | United Nations

To address this issue, the Afghan government is dedicated to achieving the Afghanistan Millennium Development Goals (MDGs) [The Millennium Development Goals (MDGs) adopted by all members of the United Nations set measurable targets for enabling more human beings to enjoy the minimum requirements of a dignified life by 2015. As a result of what the Afghan constitution calls “the injustices and shortcomings of the past, and the numerous troubles imposed on our country, “Afghanistan could not participate in the formulation of these goals. In September 2000, when the Millennium Summit was held at the UN General Assembly in New York, Afghanistan was still in a state of war and turmoil. Only since March 2004, when President Karzai endorsed the MDGs in a letter to the United Nations Secretary-General, has Afghanistan's government been able to begin planning its contribution to the global task. The gains made in re-establishing the state of Afghanistan provide a strong foundation for realization of these goals. Afghanistan, however, having lost over two decades to war, has had to modify the global timetable and benchmarks to fit local realities. The rest of the international community defined the MDGs, to be attained by 2015, against a baseline of 1990. target of having thirty percent representation of women in elected and appointed positions at all levels of government by 2020.¹³⁷ This target is considered the minimum acceptable level of women's representation, recognized as a "critical mass" that can bring about transformative change in a given context. The United Nations Economic and Social Council endorsed this target in its pursuit of achieving thirty percent women's representation in decision-making positions by 1995. Recognizing that women's leadership is an essential component for advancing women's rights and empowerment, the government will prioritize the attainment of thirty percent representation of women in the civil service within the next decade. This will be accomplished through the adoption and implementation of an affirmative action policy by the Civil Service Commission (CSC), aligning with the government's Priority Reform and Restructuring (PRR) program.

By actively working towards these goals, the government aims to create an environment where women have equal opportunities to contribute to the development and decision-making processes of Afghanistan. This commitment to promoting women's leadership is not only a reflection of the government's dedication to gender equality but also a strategic step towards creating a more inclusive and prosperous society for all its citizens.¹³⁸

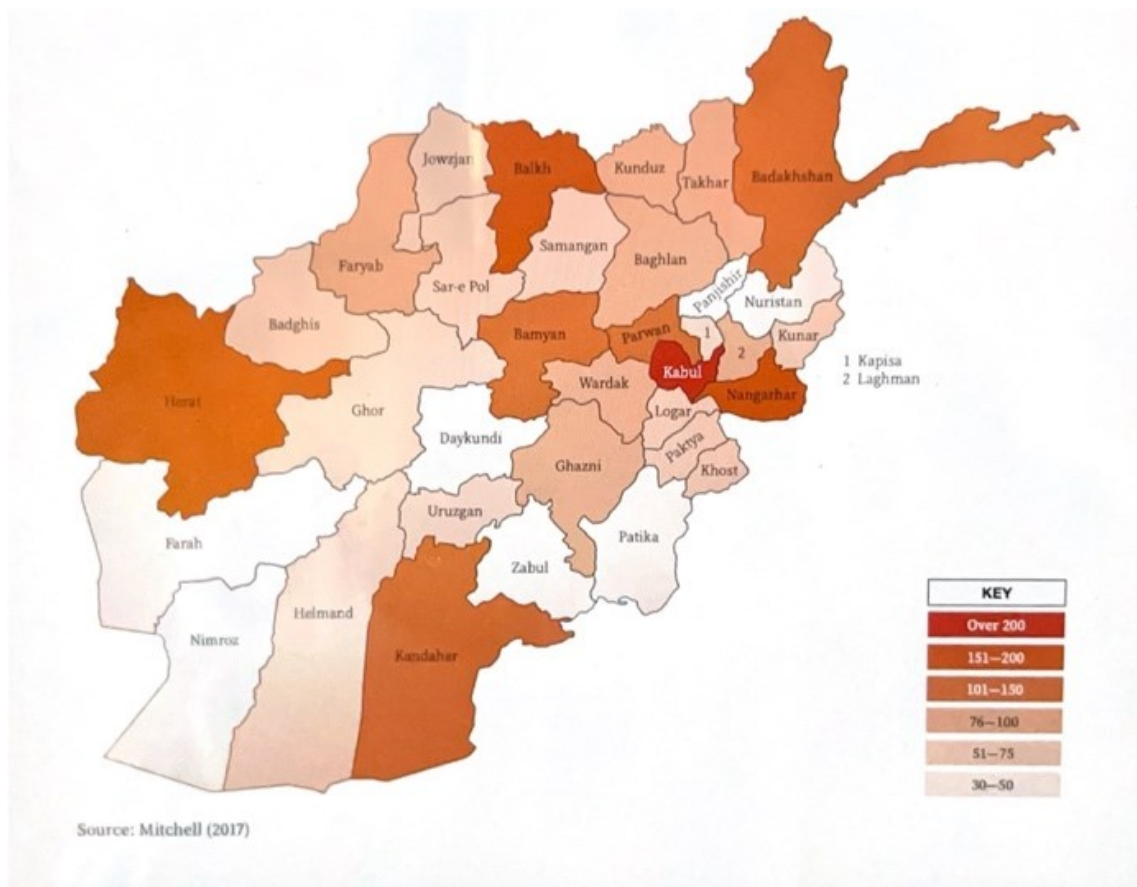
3.3. The role of NGOs and civil society

Civil society organizations (CSOs) and non-governmental organizations (NGOs) are critical to Afghanistan's economy, political life, and culture. These organizations operate in a challenging environment and are confronted with a variety of severe obstacle.

¹³⁷ Millennium Development Goals Islamic Republic of Afghanistan Country Report 2005, National action plan for the women of Afghanistan (NAPWA), (2007-2017)

¹³⁸ Bowden, M & Siddiqi, Sh. (2020), Lesson for Peace Afghanistan, NGOs and civil society in Afghanistan.

Afghanistan remains one of the world's major beneficiaries of bilateral assistance, and the government budget is heavily reliant on aid: in 2018, donors funded over 80% of all public expenditure and 55% of the government budget. NGOs play a vital role in donor risk management strategies due to their operational capacity and reach acquired over the last three decades, as evidenced by the enormous resources and spending delivered to or through NGOs in Afghanistan.¹³⁹



Following the events of September 11, 2001, Afghan civil society entered a new phase of operation in a much more open environment, with its members receiving greater recognition from governmental institutions and the general public. They have worked to promote civic education, as well as to advocate for legislative reforms and policy problems. After 2002, the involvement of the media and women-led organizations, among other components of civil society, grew more prominent. As a result, in the current context, civil society includes community organizations, non-governmental organizations (NGOs), academia, voluntary groups and individuals, women's organizations, unions,

¹³⁹ Bowden, M & Siddiqi, Sh. (2020), Lesson for Peace Afghanistan, NGOs and civil society in Afghanistan.

social organizations, cultural organizations, and individuals who advocate for religious enlightenment, human rights, women's rights, free speech, accountability, peace, and justice, among other things.

Members of Afghan civil society are not only following and assessing the peace process, but they are also involved in local peace building and calling for an immediate ceasefire and permanent peace. The role of civil society organizations is even more important because, while most political groups involved in the peace process are there to share power, civil society groups are advocating for transparency, issue-based peace talks, and addressing the root causes of conflict and violence.

Thousands of organizations and groups, as well as individuals, exist throughout Afghanistan, in both rural and urban regions, with views that are not necessarily partisan to any side of the conflict. Today's civil society activists advocate for justice, human rights, and dignity, as well as responsibility from any ruling force. Some of the key messages that civil society is sending to the peace process are to listen to Afghan voices, support democratic values, promote accountability and inclusivity, and include war victims and women among peace builders, mediators, and members of the negotiating team, because no peace effort can succeed if individual rights of those who lost loved ones in the war are ignored (or half the population).¹⁴⁰

3.3.1. Women empowerment and overcoming barriers to women's participation during the presence of the American government.

Afghanistan is a country with a history of gender inequality and violence against women. To address this issue, both national and international institutions, as well as non-governmental organizations (NGOs), have launched women empowerment initiatives aimed at bringing about change. The Afghanistan Women's Empowerment Programs, for example, featured projects aimed at achieving gender equality by expanding women's social and economic engagement, among other things.

The establishment of a new political system in Afghanistan after the September 11 incident in 2001 caused the question of women's political participation to be reviewed in this country. The effort to establish a democratic system and the attention of this system to provide the necessary grounds for increasing the political and social activities of women has led to the presence of more women in the political and social arenas.¹⁴¹

Afghanistan's 2004 Constitution guaranteed women's equality before the law, the right to an education, and the freedom to work. On a policy level, the Islamic Republic of Afghanistan ratified the Convention on the Elimination of All Forms of Discrimination

¹⁴⁰ *The role of civil society in the Afghan peace Process* | ISPI. (2022, December 9). ISPI. <https://www.ispionline.it/en/publication/role-civil-society-afghan-peace-process-29046>

¹⁴¹ مشارکت سیاسی زنان افغانستان در ساختار جدید قدرت پس از حادثه 11 (1391, January 1). ساحره، غ. د. & مقصودی، م. سیئامبر. <https://sanad.iau.ir/journal/prb/Article/524392?jid=524392>

Against Women (CEDAW) in 2003, followed by the Elimination of Violence Against Women (EVAW) Law, which was adopted by Presidential Decree in 2009. With the 2015 National Action Plan (NAP) based on UN Security Council Resolution (UNSCR) 1325, women were recognized as vital actors in peace and security as part of the global women, peace, and security (WPS) agenda. In 2017, the Women's Economic Empowerment National Priority Program (WEE-NPP) and the 2017-2021 Afghanistan National Peace and Development Framework (ANPDF) both encouraged women's economic empowerment.¹⁴²

Afghanistan established its first National Action Plan (NAP) in 2015, with two phases of implementation: 2015-2018 and 2019-2022. The NAP was designed by the Ministry of Foreign Affairs, which also acts as the chair of the Steering Committee, which will collaborate with other government departments, civil society, and international organizations to implement and monitor the NAP. The NAP was created to address the issues that Afghan women experience in the aftermath of war and conflict, and it is organized around the four basic pillars of UNSCR 1325: participation, protection, prevention, and relief and recovery. Nonetheless, despite the fact that the NAP is being implemented in the context of a continuous conflict, it does not address disarmament issues, nor does it link the spread of weapons to women's insecurity. Furthermore, there have been several issues in resourcing the NAP implementation.¹⁴³

In the Afghanistan Sustainable Development Goals (ASDGs) for health, education, livelihoods, and gender equality, the Afghan government established targets and objectives to improve the rights of women and girls. Under gender equality the 2017 report noted that in the country 24% of civil servants were women, 28 % of parliamentarians were women, 30% teachers were women and 74% of health clinics and hospitals across the country employed at least one female healthcare worker.¹⁴⁴

I can say from my 5-year personal experience in an NGO, the Independent Commission for Human Rights and Civil Society in order to strengthen women's rights and reduce violence against women, that there were many programs to increase the conscious presence of women in society and reduce violence against women by different organizations. Adapted For 5 years, I worked in 60 villages of Herat in the field of strengthening women's rights and reducing violence against women. Our focus was mostly on the villages because the women and men in the villages were illiterate or had a low level of literacy. In general, their lives were based on old customs and traditions, and in resolving family disputes and violence against women, they turned to ethnic elders, community elders, and local elders, because referring to official organs and formal justice

¹⁴² Gall, F. (2022), Gender in humanitarian action Afghanistan, Research on challenges, barriers and opportunities for women. https://asiapacific.unwomen.org/sites/default/files/2022-06/af-Research-on-Challenges-Barriers-Opportunities-women-CSOs_full-report_0.pdf

¹⁴³ Ibid, 141

¹⁴⁴ Gall, F. (2022), Gender in humanitarian action Afghanistan, Research on challenges, barriers and opportunities for women. https://asiapacific.unwomen.org/sites/default/files/2022-06/af-Research-on-Challenges-Barriers-Opportunities-women-CSOs_full-report_0.pdf

is against custom and tradition. and it was still causing shame to that family. Therefore, the presence of all these issues in a patriarchal society made women's rights to be at the lowest level and women were not aware of their rights.

Our organization had and implemented several programs to strengthen the access of women affected by violence to justice. For two decades, one of the criticisms of the projects of non-governmental organizations and civil society was that sensitive words such as human rights and violence against women were used in the programs, and in the majority of the program's women were invited, not men. Therefore, in our organization, slightly different programs were included in order to reduce sensitivities. We tried to introduce women's rights from the address of Islam and Sharia, and also in all programs such as monthly meetings, monthly public awareness raising about women's rights, monthly workshops, focus groups discussion on women's rights and solving cases of violence against women in both male and female sections. In addition, there were groups of teachers in the field of workshops and educational programs in public schools and religious science schools in both male and female sections. In our programs, we had a group of 15 influential clerics in different neighborhoods who became members of the Directorate of Hajj and religious affairs. Because these clerics had great influence on the people. Every week, they had the duty to talk about women's rights and the importance of women in the society and family in the sermons of Friday prayers. And every year, academic programs at the university level were conducted between students and professors in the analysis of women's rights, and finally, the Family Disputes Resolution Committee, which consists of defense lawyers, police, court clerks and the women's affairs department representative, the head of the Directorate of Hajj and religious affairs. In general, different and influential forces of the society were considered in the programs so that we can effectively create changes in line with women's rights. As someone who is responsible for all educational programs, awareness raising events and handling referring and consulting cases as a legal assistant and master trainer, I can say that changing the people's point of view, especially at the village level, is a very difficult task, but with a coherent program, we can create a change in people's point of view.

At first, the community elders did not accept the presence of women in the established councils of the village, but with great efforts, they accepted, although at first, in some villages, our members were not informed about the cases that happened and still, the community elders did not accept me as a consultant and did not report to me. Even in one case, one of the elders of the village called me a person who misleads women. He thought that I was the cause of destroying families because I was explaining their rights wrongly and contrary to the traditions.

Unfortunately, the level of awareness of the people of the villages were so weak that they do not even give the rights that Islam has given to women, and mistakenly call the wrong traditions and customs Islamic. Women were capable, but their courage was taken away. The most cases that happened at the village level were these; Forced marriage, underage marriage, beatings, deprivation of the right to inheritance, deprivation of the right to study and work, Badal marriages (a family would give its daughter to the son of the opposite

family, and in return, the family would give its daughter to the son of this Unfortunately, in murder cases, the victim is a girl who is given as blood price to the victim's family, this is an old custom and tradition not Islamic.¹⁴⁵

3.3.2. Strengthening women's role in conflict resolution and reconciliation

During Afghanistan's 40-year war, women have suffered in a variety of ways. They have always been at the forefront of the battle to promote peace and equality from the years following the fall of the Taliban rule (2001) till now. As an example, consider the women of Afghanistan who have died as a result of the conflict. According to the United Nations Office for Afghanistan (UNAMA) figures, about 1,202 women were affected between January 1 and December 31, 2019. 345 women were killed, while 857 others were injured. This number represents a 4% increase over 2018. The total number of casualties was lowered in 2020, with 390 killed and 756 injured out of a total of 1,146. Furthermore, the overall loss of women has grown during this time.

According to UNAMA data, the number of non-military women killed in 2020 increased by 13%. Women and children account for 43 percent of all non-military casualties. Based on the report of Afghanistan's Independent Rights Commission in 2020

Female civilian casualties total 847, with 330 killed and 517 injured. According to the Independent Human Rights Commission on Afghanistan's Civilian Casualty Report, eight civilians were murdered and 15 were injured every 24 hours in 2020.¹⁴⁶

Even though women have historically been excluded from negotiation tables and security apparatuses, evidence of women's contributions to conflict prevention and resolution is emerging. Several empirical studies demonstrate that women contribute in a unique, substantive, and quantitative way to ensuring and maintaining peace. Evidence suggests that when women contribute to prevention and early warning, peacemaking, peacekeeping, and post-conflict resolution and rebuilding, security operations are more successful and durable. A qualitative assessment of women's influence in recent peace processes, most notably in Guatemala (1996), Northern Ireland (1998), Liberia (2003), and the Philippines (2014), demonstrates the essential role that women may play in conflict resolution and promoting stability. Afghan women can prevent their men from turning to the pages of war and extremism in this country. Even the local officials of Herat believed that if women are given key roles and leadership, they can resolve conflicts in families. play a more effective role.¹⁴⁷

Afghanistan, a country that has been embroiled in civil warfare for the longest time, requires permanent peace more than ever. Peace without the active and effective

¹⁴⁵ Ibid,99

¹⁴⁶ پاسخ به نیازمندیهای جنسیتی در آتشبس و توافقاتنامههای مربوط به آن، (2021)، رهنمود شماره 1،
Report of UN woman

¹⁴⁷ صدای امریکا. تاکید بر نقش زنان در روند صلح. (2017, April 6). -هرات, خ. ن. <https://www.darivoa.com/a/herat-women/3799002.html>

participation of women will be a negative peace, with less discussion and agreement on development and human security. Only those in conflict settle the war among themselves in negative peace talks, and there is no discussion of guaranteeing respect for human rights, women's rights, civic rights, and the rights of social minorities. Of course, it is evident in this conversation that the role of women is designed to incorporate all segments of society as peace players, rather than being limited to a few roles and symbolic symbols at the national level.

By highlighting and increasing the role of women in the peace process, developments such as justice and security will be broader and more sustainable. Afghan women have been widowed, kidnapped, tortured, sold, raped, subjected to violence, their body organs stolen, and even sold as slaves as a result of conflict. Women have the right to be actively participating in the process of peace discussions for long-term success at the conclusion of these sacrifices and immense suffering. Gender equality involvement has also been shown to contribute to long and enduring post-conflict peace. However, according to the narratives, the presence of Afghan women in the peace process was mainly invisible, and they are left on the outside edges of the peace process and formal conversations.¹⁴⁸

Women's security and peace agenda:

Security Council resolution 1325 on women's security and peace was the first resolution that recognized the unique and irreparable effects of war on women and girls. This organization asked the member countries and other influential people to investigate these conditions. Today, the agenda of women's security and peace is comprehensive. This agenda consists of 8 resolutions and requires all countries to:

To increase women's active and meaningful engagement in all domains and institutions of war prevention and conflict resolution, both formally and informally, and to support all peace and security activities and strategies, including:

- Peace negotiations!
 - Development aid management and planning
 - Peacekeeping operations, counter-terrorism activities, and the prevention of extremism and its propagation at many levels reconciliation
 - Justice, the electoral process, security sector reforms, and the establishment of institutions and activities consistent with political, social, and economic transition
- 2: Strengthening and defending women's and girls' rights, including additional steps to protect them from sexual and gender-based abuse in crisis situations, such as:
- Criminal prosecution
 - Equal access to justice
 - Increasing access to health care, psychological and social assistance, and services for social and economic integration
 - Pre-deployment training on sexual exploitation and abuse of peace process staff is also provided.

¹⁴⁸ صبح (2020) *لزوم تقویت روایت زنان در روند صلح* (2020) صبح <https://8am.media/fa/the-need-to-strengthen-womens-narrative-in-the-peace-process>.

3: Women's equal access to mechanisms, aid distribution services and recovery and ensuring that their special needs are considered. So far, 79 countries around the world have established national programs to enhance women's peace and security.

Afghanistan, however, as one of the most vulnerable and afflicted countries, lacks a clear national plan for women's peace and security. Considering the seriousness of the disaster, the establishment of human rights institutions and civil activities, and the flood of international aid, women are still deeply involved in achieving their natural rights and effective participation in the process, both officially and directly, as well as unofficially and indirectly.

Peace is a right of women from every level of society, thus equitable involvement of women (between women) in different cultures and levels should not be overlooked, as it creates the road and chance for new figures and abilities to avoid power monopolization and partisan and party sharing. In the realm of peace and politics, ineffective and repetitious acts have become a new entryway to security, peace, and women's development. This project will have a substantial impact on the administration of justice and the restoration of trust in the government and its initiatives.

The Afghan woman's 40-year experience in the peace process emphasizes the right to decide the proper environment as well as the right to be respected in her political and social position. The Afghan Women's Foundation urges the Afghan government, the Taliban, the US government, the major world powers, the United Nations, the UN Security Council, the Human Rights Commission, international women's rights organizations, peace mediators, diplomatic institutions, and individuals not to abandon women's suffering and grief.¹⁴⁹

About 3,000 women, after months of preparation, gathered in the National Consensus of Afghan Women for Peace - or Ijma for short - on the 9th of August 2017 in the tent of the Loya Jirga in Kabul. 700 of them - as mentioned in President Ghani's speech - have participated from the provinces. This conference was held in response to the wide and frequent request of women - from inside and outside the government - for the meaningful participation of women in possible peace talks with the Taliban.

Meaningful participation extends beyond consulting or having a symbolic representative in future peace talks. Rather, as Sima Samar, the head of the Afghanistan Independent Human Rights Commission, stated during the unveiling of the commission's research on the peace process, "meaningful and wider participation of women in all stages and various efforts of peace" is required. She also advised against keeping the "impunity system" in place.

The Afghan Women's Network issued a six-point declaration prior to the intra-Afghan discussions in Moscow in August 2018

¹⁴⁹ انکشاف زنان در روایت صلح (2019). منصورى، ب.

<https://pajhwok.com/opinion/%D8%A7%D9%86%DA%A9%D8%B4%D8%A7%D9%81-%D8%B2%D9%86%D8%A7%D9%86-%D8%AF%D8%B1-%D8%B1%D9%88%D8%A7%DB%8C%D8%AA-%D8%B5%D9%84%D8%AD>.

- Give women a seat at the negotiation table.
- Do not choose peace at the expense of human rights.
- Women's rights must be expressed.
- Change nothing about the political system.
- Don't play with the country's laws and public order.
- Maintain contacts with the world community.

The women's press release continues on to state that "Afghan women will not accept peace at the cost of losing their freedom and rights - which they have earned with difficulty in recent years." And they add on stating that "putting restrictions on women's rights under the title of peace and security is not acceptable". This section of the proclamation refers to the Taliban's claims that during the years 1996- 2001, as well as in areas under their control, they prohibited girls' education owing to security threats, and that these limits will be lifted once the situation improves. Security will be improved.¹⁵⁰

3.4. Transitional Justice in Afghanistan

Presenting careful consideration to the ideas of transitional justice and advocating for victims' rights has enormous ethical implications. Prioritizing these principles can help to build a solid foundation of trust between the people and the government. However, the significance of transitional justice goes beyond basic ethical considerations. It also has enormous strategic importance, particularly in terms of obtaining long-term political advantages and fostering societal peace. When a government actively participates in transitional justice processes, it sends a strong message to its citizens: their rights and well-being are paramount. By addressing grievances and injustices committed during times of conflict or political turmoil, the government demonstrates its commitment to preserving justice and promoting healing in society. This, in turn, fosters trust and confidence among the people, as they see tangible efforts to right past wrongs. Furthermore, transitional justice is a critical tool for achieving long-term political goals. Governments can effectively address the root causes of conflicts and divisions within a society by acknowledging and redressing historical injustices. This proactive approach not only aids in reconciling opposing factions, but also reduces the likelihood of future grievances stemming from unresolved issues. By fostering a reconciliatory environment, the government lays the groundwork for political stability and social cohesion, laying the groundwork for long-term peace. Embracing transitional justice mechanisms can improve the country's international standing. By actively pursuing justice and defending victims' rights, a government demonstrates its commitment to human rights principles and the rule

¹⁵⁰ Ruttig, T. (2020, May 4). "زنان و مذاکرات صلح افغانستان: "اجماع ملی زنان برای صلح". *Afghanistan Analysts Network - Dari Pashto*. Afghanistan Analysts Network - Dari Pashto. <https://www.afghanistan-analysts.org/dari-pashto/reports/war-and-peace/%D8%B2%D9%86%D8%A7%D9%86-%D9%88-%D9%85%D8%B0%D8%A7%DA%A9%D8%B1%D8%A7%D8%AA-%D8%B5%D9%84%D8%AD-%D8%A7%D9%81%D8%BA%D8%A7%D9%86%D8%B3%D8%AA%D8%A7%D9%86-%D8%A7%D8%AC%D9%85%D8%A7%D8%B9-%D9%85%D9%84/>

of law. This commitment reverberates around the world, strengthening the country's reputation as a responsible and just member of the international community. Such recognition can lead to increased diplomatic opportunities, collaboration, and international support, giving the country more leverage in pursuing its political goals. The goals of transitional justice differ depending on the social context in which it is implemented. However, several fundamental goals are consistent across situations. These goals include recognizing the victims' dignity, acknowledging, and compensating for violations of people's rights, and working to prevent such violations from happening again in the future. A critical goal is to ensure access to justice for society's most vulnerable members, particularly survivors of rape and sexual violence. Transitional justice efforts aim to create an environment in which survivors can come forward, seek justice, and receive the support and reparations they need to rebuild their lives.¹⁵¹

So, in many post-conflict settings, the process of confronting a country's bloody history through a variety of legal and non-judicial processes, commonly known as transitional justice, has become the standard. Between 1978 and 2001, more than 1 million Afghans were killed, 1.3 million were disabled, and tens of thousands were forcefully vanished. From 2001 to 2021, the War on Terror took the lives of an estimated 241,000 people. Furthermore, as of December 2020, Afghanistan has one of the biggest populations of internally displaced people (IDPs), with over 3.5 million from conflict and violence alone (not to add 1.1 million from disasters).

The United Nations Refugee Agency (UNHCR) also considers its 2.6 million registered Afghan refugees as one of the world's largest such groups. (Even yet 2.6 million is merely the recorded total; millions more are unregistered, mainly in Iran, Pakistan, and, increasingly, Turkey. According to the previous Afghanistan Ministry of Refugees and Repatriation, registered and unregistered Afghans outside the nation totaled 6 million in 2018.¹⁵²

In the aftermath of establishing interim and transitional administrations, the topic of transitional justice remained a highly sensitive and avoided issue for a significant period. Renowned officials from the United Nations and the United States strongly asserted that it was premature to embark on any form of accountability for past atrocities. They

¹⁵¹ Ruttig, T. (2020b) *“زنان و مذاکرات صلح افغانستان: اجماع ملی زنان برای صلح” - Afghanistan Analysts Network - Dari Pashto*. <https://www.afghanistan-analysts.org/dari-pashto/reports/war-and-peace/%D8%B2%D9%86%D8%A7%D9%86-%D9%88-%D9%85%D8%B0%D8%A7%DA%A9%D8%B1%D8%A7%D8%AA-%D8%B5%D9%84%D8%AD-%D8%A7%D9%81%D8%BA%D8%A7%D9%86%D8%B3%D8%AA%D8%A7%D9%86-%D8%A7%D8%AC%D9%85%D8%A7%D8%B9-%D9%85%D9%84/>.

¹⁵² Saeed, H. (2022) *The failure of transitional justice in Afghanistan: Impunity turned into law*. <https://www.justsecurity.org/78252/the-failure-of-transitional-justice-in-afghanistan-impunity-turned-into-law/>.

expressed concerns that such actions could disrupt the delicate peace process, which relied heavily on the cooperation of factional leaders who might themselves face scrutiny in potential war crimes investigations.

International actors exhibited reluctance in confronting militia leaders, citing the necessity of involving or appeasing all influential factions to maintain stability. There was a genuine apprehension that excluding these leaders from positions of power could trigger a dangerous escalation of tensions, potentially leading to a full-blown civil war. Consequently, the continued prominence of many of these commanders can be attributed, at least in part, to the Pentagon's strategy of supporting them as a means to counter al-Qaeda infiltration.

It is crucial to note that the perpetuation of these leaders' influence was not an inevitable outcome but rather a consequence of complex political considerations and security priorities. The delicate balancing act between justice, stability, and the need to combat extremist threats shaped the cautious approach taken towards transitional justice in the early years.

This cautious stance adopted by senior officials aimed to navigate the challenges of post-conflict societies delicately, where the wounds of war were still fresh and the potential for renewed violence loomed. However, as time progressed and the peace process advanced, the need for addressing past injustices and providing avenues for accountability gradually gained recognition as an essential element of sustainable peacebuilding.

During the Bonn conference, the topic of war crimes and the potential implementation of an amnesty prohibition was indeed on the agenda. Intense deliberations and debates unfolded behind closed doors, highlighting the significance and complexity of the issue. Within this context, the initial version of the agreement, authored by the United Nations, explicitly stated that the interim administration was not permitted to grant amnesty for war crimes or crimes against humanity. The discussions surrounding this provision were marked by passionate exchanges and differing viewpoints among the conference participants. The inclusion of such a prohibition sparked contentious debates, reflecting the divergent perspectives and interests at play. It underscored the fundamental tension between the pursuit of justice for past atrocities and the imperative of maintaining stability and promoting a successful transition.

The deliberations at the Bonn conference illuminated the intricate interplay between the desire for accountability and the pragmatic concerns of fragile peace processes. The draft agreement's language regarding amnesty for war crimes represented a crucial point of contention, as it raised questions about the delicate balance between justice, reconciliation, and the need to secure the participation and cooperation of various factions involved in the conflict.

The discussions at Bonn and subsequent negotiations would shape the final agreement, determining the approach towards addressing war crimes and the possibility of amnesty within the context of transitional justice. The outcome of these deliberations would have

significant implications for the future trajectory of the country, influencing the path towards reconciliation, stability, and the establishment of a just and inclusive society. The Bonn Agreement included provisions that aimed to address human rights concerns in Afghanistan. One of these provisions called for the establishment of an Afghan human rights commission, tasked with promoting human rights and conducting investigations into human rights violations. Additionally, the agreement granted the United Nations the authority to investigate instances of human rights abuses and, if deemed necessary, recommend appropriate measures to address them.

Within the realm of human rights, transitional justice falls under the mandate of the United Nations Assistance Mission in Afghanistan (UNAMA). As part of its efforts, UNAMA has provided assistance and support to the Afghanistan Independent Human Rights Commission (AIHRC) in their endeavors to advance human rights, including transitional justice initiatives. Furthermore, UNAMA has maintained a team of human rights monitoring personnel stationed in different regions of Afghanistan to observe and report on the human rights situation.

By incorporating transitional justice and human rights monitoring into its activities, UNAMA and the AIHRC work collaboratively to address past human rights violations, promote accountability, and foster a culture of respect for human rights in Afghanistan. These efforts contribute to the broader goal of achieving sustainable peace, justice, and reconciliation in the country.¹⁵³

In 2005, the Afghanistan Independent Human Rights Commission (AIHRC), which was founded in the December 2001 Bonn Agreement outlining a transitional government and new institutions following the Taliban's fall, held a national consultation with 6,000 Afghans. The aim was to gather public feedback for "a national strategy for transitional justice and addressing the abuses of the past." The end consequence was the printing of a manifesto titled "A Call for Justice." The commission discovered that 69 percent of those interviewed identified themselves or immediate family members as direct victims of human rights violations in the previous 20 years, 45 percent desired immediate accountability in the form of trials, and 76.4 percent believed that bringing war criminals to justice would "increase stability and security." The majority of responders (61%) opposed the notion of giving amnesty in exchange for confessions.¹⁵⁴

¹⁵³ Gossman, P. (2009). *Transitional Justice and DDR: The Case of Afghanistan*, Research Unit International Center for Transitional Justice. <https://www.ictj.org/sites/default/files/ICTJ-DDR-Afghanistan-CaseStudy-2009-English.pdf>

¹⁵⁴ . *RefWorld* | UNHCR's global law and policy database. <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=publisher&docid=47fdfad50&skip=0&publisher=AIHRC&querysi=transitional%20justice&searchin=fulltext&sort=date>.

due to the high demand for justice and accountability among Afghans, the report was instrumental, among other things, in laying the groundwork for the next step, the development of an "Action Plan for Peace, Reconciliation, and Justice" (the Action Plan) by the President's Office, the AIHRC, and the United Nations Assistance Mission in Afghanistan (UNAMA). The 2005 Action Plan identified five key components of justice and reconciliation in Afghanistan: truth-seeking (particularly the establishment of a record of abuses), symbolic measures (such as memorials or days of remembrance), accountability mechanisms (including vetting procedures for public office), institutional reform, and reconciliation. The Action Plan once again categorically rejected amnesty provisions, stressing that neither Islam nor international law permit amnesty for grave abuses of human rights, including crimes against humanity.¹⁵⁵

Internally, members of the Afghan administration and Parliament were strongly opposed to any meaningful transitional justice structures. After all, many of those in the government and Parliament were former mujahedeen and warlords accused of committing significant human rights crimes during the civil war in the 1990s. Depending on the kind of justice delivered, any transitional justice policy might have either directly targeted them or harmed their political, social, and economic interests.

The National Assembly passed a bill on national reconciliation in March 2007 that included a provision granting immunity from prosecution for actions, including war crimes, committed during the nation's protracted wars, which was a major setback to efforts to end impunity. It grants "all political parties and belligerent sides who were in conflict in one way or the other prior to the establishment of the Interim Administration" immunity from prosecution. The legislation was passed by the Lower and Upper House, and sent to the president, who amended it and sent it back to the Lower House. The Lower House voted on it, but as of this writing, President Karzai has not signed the legislation and its legal status remains unclear. The bill as it stands leaves open the possibility for victims to initiate prosecutions.

So, in March 2007, the Parliament passed the "National Reconciliation, General Amnesty, and National Stability Law" (the Amnesty Law), which ensured blanket amnesty for all perpetrators of human rights abuses committed by previous regimes, exactly what the majority of 6,000 Afghans polled had opposed. Thus, impunity became law. Externally, the US-led coalition force prioritized their perceived immediate political interests over justice. In 2003, Rama Mani stated for the Kabul-based Afghanistan Research and Evaluation Unit that there was an underlying agreement among elite political circles of both national and international parties that it was "not the right time" to address

¹⁵⁵ Saeed, H. (2022) *The failure of transitional justice in Afghanistan: Impunity turned into law*. <https://www.justsecurity.org/78252/the-failure-of-transitional-justice-in-afghanistan-impunity-turned-into-law/>

transitional justice. Thus, the human rights records of these apparent allies were irrelevant as long as they benefited US and international goals.¹⁵⁶

3.4.1. Role of transitional justice in peace negotiations

Over a million people have died in Afghanistan's three decades of conflict, and the nation's citizens have experienced the worst human rights abuses. Afghans have a strong desire for justice, but since the Taliban fell, the transitional government has purposefully disregarded calls to address these historical injustices because of its base of international support.

By conducting a thorough national consultation and creating a coherent, multifaceted transitional justice strategy based on public input, the nation has taken the first steps toward redressing these historical injustices. However, because of the country's continuous insecurity and its reliance on the erratic political will of Afghanistan's leadership, the strategy's success is still in doubt.¹⁵⁷

If I want to start from the 1978 Hafizullah Amin coup to Dr. Najibullah's assassination, the communist governments of that period, along with the Soviet Union, engaged in a range of atrocities including riots, torture, imprisonment, and killings, employing new and distinct methods. These actions were characterized by their distinctiveness. A significant number of government officials, heavily influenced by Russian aggressors and intoxicated with power, swiftly eliminated anyone they deemed suspicious or opposed to the Soviet government and occupying forces.

Noor Mohammad Taraki, Hafizullah Amin, and their leaders, backed by the Soviet Union, initiated and perpetuated a campaign of imprisonment, mass killings, and even burying people alive. These horrific acts persisted until the end of Dr. Najibullah's presidency. It was during this time that, for the first time, government authorities resorted to burying their opponents under massive amounts of soil, stones, and sand using tractors. Thus, the military-intelligence communists and their allies, with support from the Russian invaders in Afghanistan, became known as the "pioneers of the country's first mass graves," leaving a dark historical legacy.

A mass grave has been unearthed in the Chamtale plain, located on the northern outskirts of Kabul. This grave has been present in Afghanistan since the era of the pro-communist regimes.

¹⁵⁶ Saeed, H. (2022) *The failure of transitional justice in Afghanistan: Impunity turned into law.* <https://www.justsecurity.org/78252/the-failure-of-transitional-justice-in-afghanistan-impunity-turned-into-law/>

¹⁵⁷ Nadery, A N., (2007), "Peace or Justice? Transitional Justice in Afghanistan, Commissioner on transitional justice with the Afghanistan Independent Human Rights Commission". https://www.boell.de/sites/default/files/assets/boell.de/images/download_de/worldwide/Peace_or_Justice_Nadery_Oct2007.pdf

According to a report from the BBC, the International Security Assistance Force (ISAF) has recently made the discovery of a mass grave in the eastern area of Kabul, the country's capital. The grave was specifically found in the Pul Charkhi region.

another mass grave, approximately 400 deceased individuals have been interred. The grave is situated in the northeastern province of Badakhshan in Afghanistan, during the time when Hafizullah Amin held power within the communist regime. Among the victims are women, elderly individuals, and some of the bodies bear signs of their eyes and hands being closed. Additionally, certain individuals are bound together with chains, and bullet wounds can be observed on several bodies. 24 thousand bodies buried in a mass grave in Herat province from 1978 to 1979 have been discovered.¹⁵⁸

Approximately four decades ago, in 1978 and 1979, the security forces of the communist regime arrested a significant number of Afghan families' relatives without any charges and transferred them to undisclosed locations. To this day, many families are still awaiting the return of their loved ones. Some refuse to believe that their relatives have passed away and are hesitant to hold mourning ceremonies for them.

The Kabul-based newspaper, *Hasht Sobh*, recently (2013) published a list containing the details of around five thousand individuals who were reportedly killed in Afghanistan during the late 1950s (according to the solar calendar system), the intelligence agency of that time. Following the coup d'état on April 7, 1978, the Communist government, the people's Party (Khalq) and the *Flaq* (Pharcham) engaged in various crimes, including severe torture within prisons, mass murders, burying people alive, and forcibly disappearing individuals.

After the overthrow of Afghanistan's communist government led by Dr. Najibullah, the Mujahideen, who had exposed the crimes, destruction, and killings committed by the Soviet and communist invaders during the Jihad, promised social justice to the people of the country. Particularly, Western countries, America, and their global and regional allies initiated armed struggles against the Soviet Union's aggressors and their puppet governments. Their aim was to bring the necessary freedom, genuine independence, and happiness to the people of our nation. However, in 1992, the Mujahideen cunningly seized political power, leading to disastrous consequences. On one hand, they became responsible for the first devastating internal war, the second violation of human rights, and the re-displacement of the people. On the other hand, they orchestrated assassinations, looting, and organized killings that claimed the lives and property of innocent citizens, while also targeting political and military opponents as well as ethnic groups other than their own.¹⁵⁹

¹⁵⁸ *orozgani, siasi, ariaye*. (n.d.). <https://www.ariaye.com/dari5/siasi/orozgani2.html>

¹⁵⁹ BBC News فارسی. (2013, September 30). چهاردهه انتظار، خانواده‌های قربانیان جنگ هنوز امیدوارند.

BBC News فارسی.

https://www.bbc.com/persian/afghanistan/2013/09/130926_k05_afghan_mass_grave

Then after the Mujahadin reliable sources claimed that the Taliban had massacred large numbers of people when they took over Mazar-i-Sharif in August. According to reports, these attacks were carried out in retaliation for the anti-Taliban forces' massacre of thousands of Taliban soldiers when they recaptured the city in 1997 following a brief Taliban occupation. Political killings, kidnappings for ransom, torture, rape, arbitrary detention, and looting occurred by armed groups, local commanders, and renegade individuals. The conditions in prison are bad. It was common to have summary justice. Difficult and harsh laws are enforced, and harsh penalties are the norm in Taliban-controlled areas. The Ministry for the Promotion of Virtues and Suppression of Vice (PVSV), the Taliban's Islamic courts and religious police, enforced their harsh interpretation of Islamic punishments, including public executions for adultery or murder and amputations of one hand and one foot for theft. For other infractions, Taliban militiamen often decided, right or wrong and meted out punishments such as beatings on the spot. Various factions infringed on citizens' privacy rights. Both Taliban and anti-Taliban forces were responsible for the indiscriminate bombardment of civilian areas. Women's human rights conditions were terrible. Women were still frequently the victims of forced marriage, rape, and kidnapping across the nation. One issue was the trafficking of women and girls. The way that women and girls were treated kept getting worse. Discrimination against women and girls was widespread, particularly in regions controlled by the Taliban.

According to estimates from Human Rights Watch, the UN Special Rapporteur on Afghanistan, and other sources, the Taliban may have killed between 2,000 and 5,000 people in Mazar-i-Sharif. Numerous reports suggest that a significant number of civilians lost their lives while attempting to escape the conflict or find a shelter. There were reports that in the days that followed the city's capture, Taliban fighters conducted a systematic search for weapons and for men and boys of the ethnic Hazara community, many of whom the Taliban beat, immediately killed, or detained. Men who are Tajik and Uzbek are also said to have been targeted, though not as much.¹⁶⁰

The majority Shi'a Muslim ethnic Hazara people were reportedly the target of the massacre in Mazar-i-Sharif. In the days after August 8, the newly appointed Taliban governor allegedly made numerous anti-Shia and anti-Hazara speeches in and around Mazar-i-Sharif, some of which were broadcast on radio. He threatened the Hazaras with violence in these speeches because they had assisted in the killing of Taliban soldiers in Mazar a year earlier. In 1997, the Pashtun-majority Sunni Muslim Taliban briefly took control of Mazar-i-Sharif. The Taliban forced some Mazar residents to recite Sunni prayers as proof that they were not Shi'a during their search operations. Governor Niazi gave hateful speeches against Hazaras over a few weeks, they believed Hazara people are

¹⁶⁰ *Human Rights Report* - (1998). https://1997-2001.state.gov/global/human_rights/1998_hrp_report/afghanis.html.

not Muslims and we must kill them or you must convert to Sunnis, Islam , leave Afghanistan, or face death.¹⁶¹ According to Ahmad Rashid, one of the Taliban commanders told the following account of the Taliban's incursion into Mazar-e-Sharif: Mullah Omar gave us permission to kill for two hours, but the Taliban began killing like crazy while we were working on this task, which lasted for two days. They were firing at everyone—men, women, children, carters, shopkeepers, and even goats and donkeys. The corpses were abandoned in the roadways. For six days, people were not allowed to bury their relatives. Taliban fighters would break into the homes with great force, and if it was discovered that the occupants were Hazara relatives, they would massacre every individual within.

The Taliban put the arrested in containers and locked their doors, so that the prisoners would suffocate. They took some of these containers to Dasht Laili and massacred the prisoners there. According to one of the eyewitnesses, when the door of one of the containers was opened, roughly three hundred prisoners were dead and only three prisoners remained alive.

Approximately 400 Hazara women were forced into slavery during the Taliban's assault on Mazar-e-Sharif.¹⁶²

In 2001, the human rights organizations Human Rights Watch and Amnesty International published a detailed report under the title "Massacre in Yakavlang in January 2001 " and documented the statements of eyewitnesses. "This organization has received the details of more than 170 victims, but it is believed that the actual number of massacred people is more than 300."

Amnesty International wrote in its 2001 report: "According to the information, the victims included farmers, teachers, workers, shopkeepers, a doctor, carpenters, office workers, a religious leader, religious school students, human rights activists and bakers." After seizing Yakavlang, the Taliban forces attacked the market, forcing people from their houses and shooting them in front of the marketplace. After the massacre, the Taliban forces set fire to the houses and shops and left the bodies in the snow, which were buried by the women the following days because there were no young men left in that village.

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¹⁶² - طالبان، فقه 162

<https://fa.wikifeqh.ir/%D8%B7%D8%A7%D9%84%D8%A8%D8%A7%D9%86?highlight=%D8%B5%D8%A7%D9%84%D8%AD%DB%8C+%D8%A7%D9%81%D8%BA%D8%A7%D9%86%DB%8C#foot57>

¹⁶³ 'dw.com, 11 January, 'اکرمی, ا. (2023). 'بازماندگان قتل عام یکاوانگ خواستار مجازات عاملان شدند.

<https://www.dw.com/fa-af/%D8%A8%D8%A7%D8%B2%D9%85%D8%A7%D9%86%D8%AF%DA%AF%D8%A7%D9%86-%D9%82%D8%AA%D9%84%D8%B9%D8%A7%D9%85-%DB%8C%DA%A9%D8%A7%D9%88%D9%84%D9%86%DA%AF-%D8%AE%D9%88%D8%A7%D8%B3%D8%AA%D8%A7%D8%B1-%D9%85%D8%AC%D8%A7%D8%B2%D8%A7%D8%AA-%D8%B9%D8%A7%D9%85%D9%84%D8%A7%D9%86-%D8%B4%D8%AF%D9%86%D8%AF/a-64337126>

After the United States and NATO entered Afghanistan in 2001 and the Taliban's defeat by the NATO alliance and American forces the country has seen ongoing military attacks, civilian deaths, and military casualties nearly since 2003, The Taliban's acting minister of interior and leader of the Haqqani network, Sirajuddin Haqqani, stated on February 24, 2022, that in the previous 20 years, their fighters had carried out 1050 suicide attacks.¹⁶⁴ The Costs of War Project (The Costs of War Project is a nonpartisan research project based at the Watson Institute for International and Public Affairs at Brown University that seeks to document the direct and indirect human and financial costs of U.S. wars in Iraq and Afghanistan and related counterterrorism efforts. The project is the most extensive and comprehensive public accounting of the cost of post-September 11th U.S. military operations compiled to date) estimates that 176,000 people died in Afghanistan during the conflict, including at least 52,893 opposition fighters, 69,095 military and police personnel, and 46,319 civilians. It is possible that there are more deaths than have been reported because of "disease, loss of access to food, water, infrastructure, and/or other indirect consequences of the war." The Uppsala Conflict Data Program reports that 212,191 people were killed in the conflict. According to the Cost of War project's 2015 estimate, based on the ratio of indirect to direct deaths during conflicts, the number of people who have died from war-related indirect causes may have reached up to 360,000 extra.¹⁶⁵

In conclusion, the conflict in Afghanistan can be divided into three phases.

- The initial phase commenced in 1978 with a violent revolution led by the top leadership, which was followed by the Soviet Union's occupation in December 1979. This occupation facilitated a period of approximately 15 years during which two factions of the authoritarian pro-communist People's Democratic Party of Afghanistan ruled. Most of the atrocities, such as forced disappearances, mass killings, and the displacement of ordinary civilians and political opponents, took place during this phase of the conflict.
- The second phase began when the Soviet-backed regime of Najib Ullah collapsed, leading to the formation of Mujahideen governments. During this period, the various military factions that had been fighting against the Soviet troops and the pro-communist regime came to power and subsequently started fighting amongst

¹⁶⁴ العربية. سرپرست وزارت داخله طالبان: طی 20 سال 1050 حمله انتحاری انجام دادیم. (2022, February 24). فارسی. <https://farsi.alarabiya.net/afghanistan/2022/02/24/-%D8%B3%D8%B1%D9%BE%D8%B1%D8%B3%D8%AA-%D9%88%D8%B2%D8%A7%D8%B1%D8%AA-%D8%AF%D8%A7%D8%AE%D9%84%D9%87-%D8%B7%D8%A7%D9%84%D8%A8%D8%A7%D9%86-%D8%B7%DB%8C-20-%D8%B3%D8%A7%D9%84-1050-%D8%AD%D9%85%D9%84%D9%87-%D8%A7%D9%86%D8%AA%D8%AD%D8%A7%D8%B1%DB%8C-%D8%A7%D9%86%D8%AC%D8%A7%D9%85-%D8%AF%D8%A7%D8%AF%DB%8C%D9%85>

¹⁶⁵ Wikipedia contributors. (2024, February 15). *Civilian casualties in the war in Afghanistan (2001–2021)*. Wikipedia. [https://en.wikipedia.org/wiki/Civilian_casualties_in_the_war_in_Afghanistan_\(2001%E2%80%932021\)](https://en.wikipedia.org/wiki/Civilian_casualties_in_the_war_in_Afghanistan_(2001%E2%80%932021))

themselves. This resulted in chaos and another wave of severe human rights violations in the country.

- The third phase commenced when the Taliban emerged and gained control over Afghanistan from 1995 to 2001. While all Afghan citizens suffered under the Taliban regime, women, as well as ethnic and religious minorities, were the primary victims of their rule.

The conflict resulted in a devastating loss of life for over a million Afghans, with approximately two million individuals being left disabled as a result. Additionally, thousands more were subjected to detention and torture due to their political beliefs. Almost all of the country's cities were destroyed, and agricultural fields were burned. Throughout the three decades of war, more than seven million people were forcibly displaced from their villages and towns, seeking refuge in Iran, Pakistan, and other parts of the world.

It was only with the signing of the Bonn Peace Accord in December 2001 that a path towards ending these years of conflict was established. The nature of the conflict, involving both international and internal dimensions, has left a lasting legacy of brutal violations and human rights abuses, which are considered among the most severe in the history of Afghanistan. The consequences of past abuses are evident in all aspects of Afghan society, both psychologically and physically.

The new Afghan government and the international community, who both advocated for "peace first, justice later," did not respond to the voice of victims seeking justice. The Special Representative of the Secretary General of the United Nations at the time, Lakhdar Brahimi, was largely responsible for formulating the international community's justice policy. However, despite Brahimi's long-term plan to secure justice in Afghanistan through judicial reform and political stabilization of the nation, his "peace first, justice later" position discouraged the establishment of any kind of framework for Afghan justice initiatives. As a result, four years after the Bonn Conference, the political process and transitional justice have developed separately, undermining true peace and security.

UN Secretary General Kofi Annan presented the idea of "peace versus justice" in a different way in his report to the Security Council on the rule of law and transitional justice in post-conflict nations. "Justice and peace are not contradictory forces," the author wrote. Instead, when properly pursued, they support and encourage one another.¹⁶⁶

When it came to the question of transitional justice in Afghanistan, the international community responded very differently than it did in other post-conflict nations. The Special Tribunal established in Iraq to try former ruler Saddam Hussein for war crimes and crimes against humanity has already held trials and rendered decisions; with the

¹⁶⁶ ('The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,' (2004) "Report of the Secretary General, UN Document S/2004/616")

strong support of international actors, a process of vetting Ba'ath party members who are still in the police force was carried out. The International Criminal Court has made dealing with the Lord's Resistance Army in Uganda the highest priority. Afghanistan ratified the Rome Statute in March 2003, making it a member of the International Criminal Court, but the country still shows little interest in addressing the grave crimes against humanity that remain. For instance, in May 2003, a paramilitary group in the Bala Murghab district of Badghis province massacred over thirty civilians, sexually assaulted women, and set fire to an entire village.

The UN only issued a public statement condemning the incident, despite the calls for justice from the public.

Furthermore, some international community members went one step further in order to contribute their assistance in the fight against terrorism in Afghanistan: they provided financial and political support to some of the most most notorious warlords, including Ali in the east, Zadran and Shairmohmaad in the south, Amanullah Zairkoh and Khan in the west, and General Dostum in the north. They gained legitimacy from the support rather than being marginalized. The "peace first, justice later" strategy encouraged a state of impunity and promoted the local warlords to use more violence. The implementation of this strategy largely harmed the peace process and the legitimacy of Afghanistan's newly elected democratic government.

Some of the most well-known violators of human rights have assumed significant official positions, defying the public's spoken requests that government officials be thoroughly investigated. The judiciary has been filled with numerous dishonest people who have a history of violating human rights, and it has become politicized. The people's trust in government institutions will erode if this situation persists, which will benefit the Taliban and prevent Afghanistan's democratic reforms. Already, the Taliban have been able to establish unofficial courts because of to the lack of properly operating judicial institutions. These courts are respected in some regions as de facto courts, and people file cases before them.

The first national human rights workshop, which brought together President Hamid Karzai, a large number of civil society, and religious leaders in March 2002, opened a narrow window of time for reflection on the past. The workshop's goal was to talk about justice for previous violations of human rights. The first national human rights workshop, which brought together President Hamid Karzai, an abundance of leaders from civil society, and religious leaders in March 2002, opened a narrow window of time for reflection on the past. The workshop's goal was to talk about justice for previous violations of human rights. The Afghan Independent Human Rights Commission (AIHRC) was given a mandate to "undertake national consultations and propose a national strategy for transitional justice and for addressing the abuses of the past" as a result of the great demand for justice that was shown during the national human rights workshop.

A survey intended to collect numerical data and analyze preferences was part of the extensive consultation; 4151 people answered it. More than 2000 people participated in more than 200 focus group discussions that the Commission organized in an effort to gather qualitative data and evaluate opinions. During the eight months of consultation, 32 of Afghanistan's 34 provinces were covered, along with the populations of refugees in Pakistan and Iran. This was not meant to be a scientific study, even though the Commission employed social science methodology; rather, it was an attempt to represent public opinion as a result of this consultation.¹⁶⁷

The public was enthusiastic and supportive of the process, even though the consultation was held in a very challenging security scenario. The majority of participants in each focus group discussion were open to talking about these topics. Being consulted seemed to be a source of gratitude in and of itself. When answering a survey question, a man in Parwan's Salang district became quite emotional and said, "Now I feel that I am a part of this society." No one ever asked about our opinions on such crucial choices. "So far, no one has asked us: what do you, victims, want?" stated a man in Kandahar. Do you want to exact revenge? Are you looking for a place to live? Participants in one of the focus groups held in the villages expressed their opinion that the consultation was a unique chance for the Afghan people, pointing out that no one had conducted a national consultation with the populace since King Amanullah Khan.

The quotes mentioned above illustrate that the national consultation was regarded as an initial measure towards fulfilling the aspirations of most Afghans, who desired to restore their confidence in public establishments. A national conversation about transitional justice issues was sparked by the consultation and the publication of the "A Call for Justice" report that followed. It gave victims a chance to speak up, and it also made prominent political figures who had fought in the civil war and were regarded as the faces of human rights violations, strongly oppose the transitional justice system.

These political figures, who fought the Soviet Union during Afghanistan's 1980 occupation, have also identified themselves as religious leaders on behalf of the Mujahedeen. They imply that the Mujahedeen and devout Muslims are the target audience for the transitional justice programs. They labeled the AIHRC's members as "not good Muslims" and demanded an immediate response against them. But the response from the former prominent political figures has given the media a boost to talk about the matter in a more comprehensive way and has drawn more clerics and Mullahs to discuss justice as one of the key principles of Islam. However, it also discouraged victims from publicly speaking out. The victims thought about the warlords' and former political leaders' public attack as an act of direct intimidation. The President and his team's political will to back transitional justice initiatives were also weakened by this.

President Karzai approved the report titled "A Call for Justice" on January 29, 2005. In order to confront those members of the international community and the Afghan

¹⁶⁷ افغانستان و دادگاه بین المللی جزایی (2020, October 28). *Human Rights Watch*.
<https://www.hrw.org/gbz/news/2017/11/19/311004>

government regarding their "peace first, justice later" policy, he was instrumental in challenging the report and his pledge to carry out its recommendations while Louise Arbor, the UN High Commissioner for Human Rights, was present.

Regarding the topic of transitional justice, the report also brought together a sizable number of religious leaders, civil society activists, and elders from various provinces. Since then, the public has discussed and supported the idea of transitional justice extensively, broadening the debate's audience.

Mullahs, in contrast to popular belief, are strong supporters of the idea of justice for past atrocities. Contrary to other transitional justice cases, where religious leaders have been instrumental in advocating for and demanding justice, in Afghanistan these leaders have been remarkably inactive in the advocacy and campaigning for transitional justice. This is primarily because some former Mujahedeen leaders—who also claim to be religious leaders—have taken a stand against transitional justice, and clerics and mullahs are afraid of being perceived as being against the Mujahedeen.

However, during the focus group discussions and closed-door meetings held during the pre-consultation processes in various parts of the country, the most active participants were members of civil society, clerics, and mullahs. They were also the most radical in seeking criminal justice for past atrocities against human rights. The warlords' political control had a significant impact on the participation of moderate religious leaders. One lesson from Afghanistan's experience with transitional justice is that religious leaders should be involved in the pursuit of justice from the beginning to prevent any misjudgment and misinterpretation of the transitional justice processes with regard to religious values and figures in a highly politicized post-conflict environment like Afghanistan's, where religion plays a significant role in sociopolitical developments.

The President constituted a three-person panel, which included his senior advisor, in response to the opinions presented in the AIHRC's public consultation on the necessity of advancing accountability. The panel's assignment was to take into account the conclusions and suggestions made in the report and, working with the AIHRC and the United Nations Assistance Mission in Afghanistan (UNAMA), create an action plan for putting into practice a national strategy for justice, peace, and reconciliation. In June 2005, the Islamic Republic of Afghanistan presented its "Action Plan for Peace, Justice, and Reconciliation" at an international conference held in The Hague. After that, it was given to President Karzai, and in December 2005, the Afghan cabinet approved it.

Afghans are not familiar with the term "transitional justice," which they frequently misunderstand to mean solely dealing with issues of criminal responsibility. While creating the action plan, efforts were made to clarify that the initial goals of transitional justice strategies are to achieve peace and national reconciliation, to reestablish harmony and collaboration, to alleviate the victims' suffering and wounds, and to rejoin citizens into a peaceful society. Beyond concepts like courts, prisons, and revenge, interventions such as reparations, healing of the psychological and physical suffering, and reintegration into the community of citizens whose social relationships have been damaged are all necessary. A culture of forgiveness, brotherhood/ /sisterhood, and strengthening of

solidarity between the nation's present and future generations had to be established as the core value of the action plan due to the political situation and sensitivities surrounding the issue of transitional justice in Afghanistan.

A transitional justice strategy should balance several goals, including truth-seeking, victim recovery, reintegrating offenders of minor crimes into society, reparations, maintaining peace and stability, and strengthening democracy, the rule of law, and the administration of justice. This is demonstrated by the successful experience of nations that have overcome violent crises. However, forgiveness and reconciliation have received a lot of attention in political circles, with little regard for giving victims their dignity back and honoring their wishes. However, the victims still demand responsibility for previous crimes even though they support political reconciliation for reasons of security. Regretfully, Afghanistan does not currently have a formalized victims' group or organization that can represent victims' rights and formulate their requests. Through consultation with the victims' families, the AIHRC made an effort to represent the victims' perspectives when creating the Action Plan.

The Action Plan acknowledges the realities of the country and places emphasis on Afghanistan's religious values and the imperative to maintain stability and security. It strives to encompass various aspects within five main areas: symbolic actions, institutional reform, truth seeking and documentation, reconciliation, and strategies for criminal justice. These five areas are interconnected and mutually supportive. Given the current security situation in Afghanistan, the significance of reconciliation becomes particularly crucial, as lasting peace necessitates social reintegration and reconciliation. It is also important to implement measures that facilitate the return and reintegration of all adversarial groups into society, thereby reducing tensions and violence. It is essential to note that this perspective on peace and justice does not imply granting impunity for acts such as genocide, war crimes, crimes against humanity, and other grave human rights violations. On the contrary, taking decisive action against these crimes aligns with universally accepted moral principles, which Afghanistan must uphold to fulfill its obligations under international law.

The Action Plan, which has been carefully crafted as a transitional justice strategy for Afghanistan, has faced challenges due to a lack of political determination thus far. As a result, it has not yet been put into action. The absence of justice awareness in Afghanistan has allowed a culture of impunity to thrive, leading to increased violence and insecurity in recent years. This underscores the fact that achieving lasting peace in a post-conflict setting requires addressing past injustices and ensuring justice is served. Afghanistan has taken a unique approach to address past human rights abuses by constructing its proposed transitional justice strategy based on the will and perspectives of its people. This approach has involved a bottom-up methodology and extensive consultation, avoiding predetermined and preselected processes. If the recent commitment made by the President to implement the Action Plan is followed through, Afghanistan has the potential to become a successful case study for transitional justice. By effectively implementing a

nationally informed policy on transitional justice, it can help prevent further cycles of conflict.¹⁶⁸

Despite these difficulties, Afghanistan has not seen a significant process for reforming the rule of law or the security sector. Public trust in the Afghan National Police (ANP) and official justice sector institutions is low and they are viewed as corrupt. Insufficient education and training in Islamic and secular Afghan law continues to affect judges and attorneys. As stated by Wisner, militia leaders have influence over certain judges and lawyers, and judges themselves are vulnerable to corruption and bribery because of their low salary. According to an Afghan judicial respondent, this meant that war crime prosecutions were not warranted at this time. He made the following argument if the judicial system in Afghanistan does not have jurisdiction over the other crimes that have happened, then how can it over war crimes?"

Afghanistan ratifies the Rome statute in February 2003, What role might the ICC carryout in Afghanistan? Only from the day the treaty comes into force does the ICC have prospective jurisdiction. This indicates that the Court does not have jurisdiction over crimes committed prior to 2003, when Afghanistan ratified it. It was brought up at an October 2009 ICC conference that over the previous six years, there have been significant civilian casualties from armed attacks, roadside explosions, suicide attacks, and aerial bombardments by international forces. An ICTJ respondent questioned whether these amounts enough violations of human rights to warrant ICC involvement, even though they amount to numerous violations. The conflicts and abuses that occurred during the twenty-five years prior to the signing of the Rome Statute would inevitably be ignored in any investigation or possible prosecution by the ICC. Thus, it is doubtful how this will affect resolving the past and meeting victims' demands for justice. It is risky to think that by emphasizing crimes after 2003, some of the worst violators of human rights violations will go unpunished. Does the ICC have political support? The GoA has not yet invited the court to address crimes, and it seems that most people in the government and justice sectors want to avoid having the ICC get involved.¹⁶⁹

According to Article 68 of the Rome Statute, member states must work closely with the Court in order to investigate and prosecute foreign crimes that fall under its purview. Soon after joining the ICC, the majority of other members drafted their laws pertaining to cooperation with the ICC. Afghanistan is still in the process of drafting these cooperation laws, nearly seven years after it joined the ICC. An AIHRC Commissioner actually claimed that the MoJ ignored a draft law that the AIHRC had created. The government's

¹⁶⁸ Ibid,157

¹⁶⁹ Refworld - UNHCR's Global Law and Policy Database. (2024, February 11). *The state of transitional justice in Afghanistan: actors, approaches and challenges*. Refworld. <https://www.refworld.org/reference/research/areu/2010/en/72757>

vacant seat at the Assembly of State Parties (ASP) to the International Criminal Court (ICC) is arguably the most blatant sign of its disinterest.¹⁷⁰

Since 2007, the prosecutor's office has been gathering information to decide whether to pursue a full investigation or not. The prosecutor's initial investigations into the crime situation in Afghanistan were made public. Given that it is the final stage, the International Criminal Court's duties include determining whether national authorities "are unwilling or unable to investigate and prosecute cases of alleged crimes." If this action is permitted, the prosecutor under the International Criminal Court's jurisdiction will have the authority to look into any and all crimes, including war crimes and crimes against humanity, that are claimed to be committed by all parties to the Afghanistan conflict. Human Rights Watch documents multiple breaches of international humanitarian law and human rights committed by Afghan government forces. These breaches include enforced disappearances, arbitrary executions without trial, and routine and systematic torture by government forces, particularly the Afghan National Army, the National Security Directorate, and local police. has authored Electric shocks, brutal beatings, beheadings, protracted suspensions, and forced submersion in water are some examples of these forms of torture. The Taliban organization, which has carried out multiple suicide attacks and other planned attacks on thousands of civilians, including judges, lawmakers, ethnic defenders, and journalists, is also well-documented in Human Rights Watch's collection. These individuals have been the target of suicide attacks or building and vehicle explosions. Cases of torture by CIA agents in Afghanistan were documented in a 2012 report titled "Transfer of control to the Enemy". Examples include brutal beatings, sleep deprivation, being confined in cramped spaces for extended periods of time, forced undressing, food, and water deprivation, using water to suffocate until unconscious, and exposure to extremely hot or cold temperatures. Gram, which in one instance resulted in a prisoner's death. Multiple crimes were verified in a summary of the US Senate Intelligence Committee's 2014 report, the complete details of which are still under wraps as part of the CIA's detention and questioning program. A 2015 Human Rights Watch report on CIA torture, titled "No More Excuses," challenged the United States' claim that CIA agents responsible for torture could not be prosecuted in the United States. challenged and objected to it.¹⁷¹

Several factors determine whether transitional justice is effective in fostering peace in Afghanistan. First and foremost, the international community and the government must demonstrate their political will and support. Second, it needs to be combined with initiatives to deal with the underlying issues that lead to conflict, such as inequality, poverty, and corruption. Thirdly, it needs to be inclusive and involve all parties involved, such as marginalized groups, victims, and civil society organizations.

¹⁷⁰ Nadery, N. (2009), Consultative Meeting on the Obligations of Afghanistan under the ICC, Kabul, Afghanistan

¹⁷¹ *Human Rights Watch* (2020) '28' جزایی، دادگاه بین المللی جزایی، October. <https://www.hrw.org/gbz/news/2017/11/19/311004>.

In post-conflict societies such as Afghanistan, the promotion of peace is dependent upon the implementation of transitional justice. It can assist in addressing previous violations of human rights, encouraging accountability, and averting their recurrence. But a few things need to come together for it to be successful, such as political will, inclusivity, and attempts to deal with the root causes of the conflict.

Afghanistan's people need to heal as a nation and as individuals because their society is wounded. We are aware that people cannot heal from past traumas by ignoring or refusing to acknowledge them. In one form or another, they have to confront them, in their own way, at their own time, when they are strong enough to do so, with the assistance of knowledgeable and empathetic outsiders and, in certain situations, legal institutions.

Additionally, it is far too easy to overlook crimes against other people. "It isn't hard to get along with somebody else's troubles," as we say in America. Islam teaches that there are two kinds of sin: sin against God and sin against one's fellow human being, just like Judaism did before it. For the former, seeking forgiveness from God alone is necessary; God will not pardon a transgression against another individual until we first seek that person's pardon. Their religion and culture are full of customs and traditions that make reparations for crimes and conflicts, however, the purpose of these tribal rites of reconciliation between rival clans was never to make up for the hundreds of thousands, even millions, of people who were tortured and killed.¹⁷²

3.5. Peace process in Afghanistan

Afghanistan is made up of various ethnic groups, including Pashtun, Hazara, Tajik, Uzbek, Turkmen, and Nuristani. 99% of them are Muslims, divided into two religions: Shia and Hanafi. People who have experienced the bitter taste of war for many years.

Following the withdrawal of Russian forces in 1989 after ten years of war, the people hoped to resume their lives in the shadow of peace and tranquility, but with the Russians' departure, civil and ethnic wars began in the country, and this time, a lack of national unity ignited the flames of war in Afghanistan, opening the way for the emergence of the Taliban. The Taliban took control of Kabul shortly after they came to power in 1994. This occurred while civil wars were still raging throughout the nation. Using the people's beliefs and the slogan "implementing the orders of Islam," this group gained power. It peaked in influence when Osama Bin Laden became an al-Qaeda member. However, the slaughter of people in several cities, most notably Mazar-e-Sharif, soon revealed the true nature of this group. A violent massacre unfolded in 1998, specifically targeting the city of Mazar-e-Sharif and its Shiite population. It is estimated that this horrific event resulted in the loss of 6,000 to 7,000 lives. The massacre was not confined to Mazar-e-Sharif alone, as similar atrocities were perpetrated in Yakavlang and other cities, causing

¹⁷² Barnett R. Rubin, (May,2003).” Transitional Justice and Human Rights in Afghanistan”, Published by: Oxford University Press on behalf of the Royal Institute of International Affairs.

<https://www.jstor.org/stable/3569363>

numerous casualties. So, Afghanistan's population diversity in terms of ethnicity and religion contributes to the nation's instability.¹⁷³

After the arrival of US forces in Afghanistan and the defeat of the Taliban in 2001, people hoped that US forces and their international allies would take steps to decentralize the authority contained in the 2004 constitution, promote local administration and effective decision-making by local people, and strengthen and improve local institutions, despite the fact that the political system was centralized between 2001- 2021 in the center (Kabul).

Under Barack Obama's presidency, the first steps were taken to start peace negotiations between the Taliban and Afghan groups. Authorities in Washington tried this tactic multiple times in 2011, 2012, and 2013, but none of them worked. After US President Donald Trump was elected in 2017, the topic of starting peace negotiations was brought up once more.¹⁷⁴

The peace talks and movement began in 2018 with talks between the Taliban, the main insurgent group fighting against the Afghan government, and American troops; this occurred while the US had 20,000 soldiers inside Afghanistan to support the Afghan government; however, the majority of the negotiations took place in Doha, Qatar's capital. The mutual agreement between the Taliban and the US was expected to be followed by the US's gradual withdrawal from Afghanistan and the start of peace talks within the country. Furthermore, the United States and Afghanistan's neighbors, including Pakistan, China, India, and Iran, as well as Russia, helped to facilitate the peace process.¹⁷⁵

As part of the peace process, two peace treaties have been signed so far. On September 22, 2016, the first peace agreement was signed between the Islamic Republic of Afghanistan and the Golbedin Hizb-i-Islami militant group. The second peace agreement between the United States and the Taliban was signed under the name of the "Doha Agreement" on February 29, 2020, according to which, if the Taliban adheres to the commitments, within 14 months, all American forces will be withdrawn from Afghanistan.¹⁷⁶

¹⁷³ خیرگزاری صدای افغان (آوا), اخبار افغانستان و جهان (2012, November 8). Ava press.

Afghan Voice Agency | خیرگزاری صدای افغان (آوا) / اخبار افغانستان و جهان

<https://www.avapress.com/fa/article/51872/%D8%B6%D8%B1%D9%88%D8%B1%D8%AA-%D9%88%D8%AC%D9%88%D8%AF-%D8%B5%D9%84%D8%AD-%D8%A7%D9%85%D9%86%DB%8C%D8%AA-%D8%A7%D9%81%D8%BA%D8%A7%D9%86%D8%B3%D8%AA%D8%A7%D9%86>

¹⁷⁴ چند دهه حضور طالبان در افغانستان؛ از سقوط تا ظهور مجدد

<https://www.aa.com.tr/fa/%D8%A7%D8%AE%D8%A8%D8%A7%D8%B1-%D8%AA%D8%AD%D9%84%DB%8C%D9%84%DB%8C/%DA%86%D9%86%D8%AF-%D8%AF%D9%87%D9%87-%D8%AD%D8%B6%D9%88%D8%B1-%D8%B7%D8%A7%D9%84%D8%A8%D8%A7%D9%86-%D8%AF%D8%B1-%D8%A7%D9%81%D8%BA%D8%A7%D9%86%D8%B3%D8%AA%D8%A7%D9%86-%D8%A7%D8%B2-%D8%B3%D9%82%D9%88%D8%B7-%D8%AA%D8%A7-%D8%B8%D9%87%D9%88%D8%B1-%D9%85%D8%AC%D8%AF%D8%AF/1972644>

¹⁷⁵ Pajhwok, (December 4, 2019), Retrieved 6, www.pajhwok.com

¹⁷⁶ Ibid, 159

3.5.1. Challenges and Obstacles in the Peace Process

The international community and the Afghan government are not doing enough to guarantee that Afghan women are fully included in all peace processes. The "full participation" of women in the April 2021 negotiations between the Afghan parties must be in accordance with UN Security Council Resolution 1325 on women, peace, and security.¹⁷⁷

Obstacle to a lasting peace based on center for statistic and international studies reported by Elena I. Méndez Leal (Former Program Coordinator and Research Assistant, Project on Prosperity, and Development), Shannon McKeown project manager.

3.5.1.1. The covid-19 pandemic

Concerns that the Taliban is not engaging in negotiations in good faith and is holding out for political shifts in the United States that could lead to a complete troop withdrawal are major roadblocks to peace. Covid-19 has put more pressure on Afghanistan's already unstable healthcare system while causing the country's terrible security and economic circumstances. Response efforts have been restricted by past cuts to the healthcare system and reconstruction, and the virus has spread throughout the region in part due to existing gaps in socioeconomic status.¹⁷⁸

3.5.1.2. Lack of women participants in Peace talks

Noticeably absent from the government and Taliban delegations is adequate representation of women, presenting concerns for whether the peace talks will include explicit mention of women's rights. The number of women representatives from the Afghan government is only four, and the Taliban delegation has no women representatives. Habiba Sarabi (The first Afghan woman to serve as a governor in a province) was initially the sole female participant in the Moscow peace talks. "Why should I be the only woman in the room?" stated Dr. Sarabi in Moscow. We have not participated in the conflict. Of course, we can help bring about peace. The 51 percent of individuals are not to be disregarded. I hope the hosts remember that going forward. Then only two women attended the inter-Afghan summit in Moscow in February 2019: Hawa Alam Nuristani, the head of the Independent Election Commission at the time and a former member of the Supreme Peace Council, and Fawzia Kofi, a former member of parliament. Habiba Sarabi was one of four women on the 21-member team that represented the majority of Afghans in the Doha talks between the Afghan government and the insurgent Taliban.

¹⁷⁷ Afghanistan: Women's full participation needed in talks. (2021, March 22). *Human Rights Watch*. <https://www.hrw.org/news/2021/03/22/afghanistan-womens-full-participation-needed-talks>

¹⁷⁸ Leal, E.I.M. *et al.* (2022) *Lessons from the El Salvador Peace Process for Afghanistan*. <https://www.csis.org/analysis/lessons-el-salvador-peace-process-afghanistan>.

The significant price for Afghan women is that in an effort to quickly make peace with the extremists, all the rights they have earned since the Taliban regime fell in 2001—rights protected by the constitution—are being given up. The participation of women in the peace negotiations with the Taliban was fast declining in 2021.¹⁷⁹

Heather Barr, interim co-director of women's rights at Human Rights Watch, said, "The minimal inclusion of women at the Moscow talks shows an appalling disregard for Afghan women's struggle for over a decade to be full participants in peace processes as called for by the UN Security Council." "Women have once again been marginalized and ignored, and even the Afghan government's insufficient degree of female representation at the Doha meeting appears to have missed away."¹⁸⁰

In September 2020, the intra-Afghan peace negotiations got underway in Doha. The Taliban's future role in running Afghanistan is being discussed by the two parties as well as a permanent ceasefire. Afghans, particularly women and members of minority groups, are doubtful about the negotiations and worry that repression will return. The idea of "peace now-justice later" has guided Afghanistan's peace process up to this point. The Taliban's attitude on governance, power-sharing, and/or reconciliation has not been made clear. Their view on minorities' and women's rights is ambiguous, and there is a wide range of opinions within the Taliban. In contrast, the Afghan government has demanded the implementation of an inclusive government that supports the rights of minorities and women, as well as an immediate cessation of hostilities.

The intra-Afghan talks indicate that peace in Afghanistan is possible. However, the precipitous departure of all foreign forces could also portend a decrease of foreign supporting for Afghanistan's stability and the peace process. The advancements made by women in the last 20 years cannot be undermined by a deal with the Taliban.¹⁸¹

The deputy head of Human Rights Watch's women's rights department, Haiderbar, noted that women were somewhat excluded from the Doha peace agreement between the United States and Afghanistan, calling it "transparent and comprehensive." Additionally, she

¹⁷⁹ چرا نقش زنان در گفت وگوهای صلح اندک است؟ (2021). ملی. آ

<https://armanemili.com/%DA%86%D8%B1%D8%A7-%D9%86%D9%82%D8%B4-%D8%B2%D9%86%D8%A7%D9%86-%D8%AF%D8%B1-%DA%AF%D9%81%D8%AA%E2%80%8C%D9%88%DA%AF%D9%88%D9%87%D8%A7%D9%8A-%D8%B5%D9%84%D8%AD-%D8%A7%D9%86%D8%AF%DA%A9-%D8%A7%D8%B3/>.

¹⁸⁰ Human Rights Watch (2021b) 'Afghanistan: Women's full participation needed in talks,' 22 March. <https://www.hrw.org/news/2021/03/22/afghanistan-womens-full-participation-needed-talks>.

¹⁸¹ Standing with Afghanistan: Inclusion and women's rights in peace talks (no date). <https://www.lowyinstitute.org/the-interpreter/standing-afghanistan-inclusion-women-s-rights-peace-talks>.

underlined that after 2021 "there has been a systematic violation of women's rights," and that the Doha agreement paved the way for the Islamic Emirate to return to Afghanistan. This is true even though human rights groups have previously denounced Afghanistan for violating women's basic rights, such as the ability to participate in politics, the economy, and society and to receive an education.

Regarding Mr. Khalilzad's involvement in the Doha Agreement, Mrs. Bar also stated: "Zalmi Khalilzad, the senior representative of the US government, was questioned about the rights of Afghan women at that time. He dismissed it as a matter for Afghans to settle among themselves, which was overly ignorant."¹⁸²

At first Mohammad Ashraf Ghani, the President of the National Unity Government of Afghanistan, said in Kabul: "The position of Afghan men and women is the same and clearly defined in the first and second chapters of the Afghan constitution, and in the inter-Afghan peace dialogue, the first and second chapters of the constitution of this country are the government's red line. Afghanistan's Constitution was the highest law in the country."¹⁸³ There are 162 articles and 12 chapters in this law. It began in 2002 and received approval in the same year. Elections, democracy, and individual rights have all been carefully considered in this law. The government is discussed in the first chapter, and citizens' freedoms, gender equality, and non-discrimination against women are highlighted in the second chapter, which discusses citizens' fundamental rights and responsibilities.¹⁸⁴

3.5.1.3. Lack of inclusivity of civil society

Inadequate representation of internal third-party actors and civil society is another barrier to peace. The possibility and success of peace talks will depend on the involvement of civil society. Leaders of religious and tribal groups, victim organizations, NGOs, universities, labor unions, media professionals, artists, youth and women's groups, and community development organizations are examples of civil society stakeholders. Although formal civil society representation at the peace talks is unlikely, civil society organizations should be actively involved in the peace process as advisors to guarantee that their interests are considered.

¹⁸² <https://www.khaama.com/persian/archives/117271>. (2023) هیدریار: توافق نامه دوحه زنان را کنار گذاشت

¹⁸³ Welle, D. (2020b) «حقوق زنان در مذاکرات صلح بین الافغانی خط سرخ باشد» *dw.com*, 1 March. <https://www.dw.com/fa-af/%D9%86%DA%AF%D8%B1%D8%A7%D9%86%DB%8C-%D8%B4%D8%A8%DA%A9%D9%87-%D8%B2%D9%86%D8%A7%D9%86-%D8%A7%D9%81%D8%BA%D8%A7%D9%86-%D8%A7%D8%B2-%D8%A7%D9%85%D8%B6%D8%A7%DB%8C-%D8%AA%D9%88%D8%A7%D9%81%D9%82%D9%86%D8%A7%D9%85%D9%87-%D8%B5%D9%84%D8%AD-%D8%A8%D8%A7-%D8%B7%D8%A7%D9%84%D8%A8%D8%A7%D9%86/a-52598225>.

¹⁸⁴ <http://old.moj.gov.af/fa/page/legal-frameworks/168329941684>. قانون اساسی افغانستان - وزارت عدلیه - جمهوری اسلامی افغانستان

The Islamic State and Levant Khorasan are two examples of external and internal insurgent groups that are not associated with the Taliban but are determined to ensure that Islam plays a major role in Afghanistan's political, social, and cultural future. However, more representation of these groups will hinder peace rather than advance it. Large-scale attacks against civilians, as well as against Afghan security forces and the Taliban, have been carried out by the Islamic State and Levant Khorasan groups.¹⁸⁵

3.5.1.4. Releasing of 5000 Taliban prisoners

A part of the peace agreement was the release of 5,000 Taliban prisoners by the government and the beginning of talks between the government and the Taliban group within three months after the signing of the agreement. But the negotiations were held in September with a delay of several months. Of course, 1,000 Afghan soldiers, who were also imprisoned by the Taliban, were included in the release of prisoners from both sides. The most important tangible achievement of the Doha agreement for the United States is that no American soldier has been killed in one year.¹⁸⁶

The history of Afghanistan demonstrates the large number of Jirgas that have been established there, the majority of which have occurred during king overthrows and government establishments, in the midst of rivalry between tribal chiefs, or when their rulers and lords have succeeded in capturing or preserving territory through force. Since society does not contain the power, they must win the support of the populace. Experts claim that the central government officials, particularly Ashraf Ghani and his advisors, ordered the security forces not to fight long before the Taliban took control of the government.

Finally, the last Loya Jirga in the period of Ashraf Gani under intense pressure from Washington, the Afghan government convened the Loya Jirga for Afghanistan's peace. Salahuddin Rabbani, the leader of the Jamiat-e-Islami Party, called the Loya Jirga "a show" and called it an act against the law in the presence of popular law-making institutions. Meanwhile, Atta Mohammad Noor, the head of Jamiat-e-Islami, and Marshal Abdul Rashid Dostum, the leader of the Afghan National Movement, have supported the holding of the Loya Jirga. But human rights organizations and Amnesty International have expressed concern. Amnesty International said that victims should be considered in the Afghan peace process, and the Afghan Human Rights Commission has called for transparency, attention to the rights of victims, and guarantees that released prisoners will not harm civilians again.¹⁸⁷

¹⁸⁵ Leal, E.I.M. *et al.* (2022b) *Lessons from the El Salvador Peace Process for Afghanistan*. <https://www.csis.org/analysis/lessons-el-salvador-peace-process-afghanistan>

¹⁸⁶ BBC News فارسی (2020) 'با تایید رهایی زندانیان طالبان از سوی لویه جرگه، مذاکرات بین الافغانی تا سه روز دیگر'، *BBC News* فارسی، شروع می شود 7 August. <https://www.bbc.com/persian/afghanistan-53690239>.

¹⁸⁷ BBC News فارسی (2020) 'با تایید رهایی زندانیان طالبان از سوی لویه جرگه، مذاکرات بین الافغانی تا سه روز دیگر'، *BBC News* فارسی، شروع می شود 7 August. <https://www.bbc.com/persian/afghanistan-53690239>.

After two days of debate on August 17-19, 2020, the Loya Jirga agreed to release 400 Taliban members deemed "dangerous". This Loya Jirga made an approximately 3,200 people from across Afghanistan, including 700 women. Belqis Roshan, a female member of parliament, protested during Afghanistan's President Mohammad Ashraf Ghani's speech at the start of the Loya Jirga, stating, "Paying ransom to the wild Taliban is national betrayal."

The Afghan government claims to have released approximately 6,500 Taliban prisoners. These prisoners were not released immediately following the Loya Jirga and the signature of Afghanistan's President; the process of releasing them, which officials said was case-by-case, took about six months.

According to the Afghan government, some of these prisoners are involved in drug trafficking, while others have been charged with war crimes and face the possibility of returning to the battlefield. There have been reports in recent months (2020) of these released prisoners returning to Taliban strongholds, and it has been suggested that they were a contributing factor to the recent increase in violence.

3.5.1.5. Terror

The opening of Afghanistan peace talks began on September 15, 2020, with the presence of US Secretary of State Mike Pompeo and a number of foreign officials at Sheraton Doha Hotel. The first three months of the peace talks were spent on drafting the negotiation procedure. The wave of organized murders has targeted a record number of journalists and social activists, both men and women. The Afghan government holds the Taliban directly and indirectly responsible for targeted assassinations. However, the Taliban accused the Afghan National Security Department of issuing some "threats and warnings" to certain individuals. According to Taliban spokespersons, these developments "are not related to the peace process". The United Nations has described civilian casualties in 2020, particularly in the fourth quarter, as "horrible and alarming," with 3,035 civilians killed and 5,785 injured. The topic of "power sharing" and the establishment of a framework related to the "a temporary governor government" is coming up more and more now that the main agenda of the Afghan peace talks is being discussed. Both proponents and opponents of the provisional administration are dividing their votes. Zalmay Khalilzad, the US Special Representative for Afghanistan Peace, reportedly informed the two sides' delegations that they needed to come to an agreement on a "power sharing structure" prior to the complete withdrawal of US forces by May 1, 2021. Nonetheless, Mr. Ghani has opposed the transitional government, viewing it as "interruption". He highlights the electoral process as a legitimate means of transferring power.

According to the Taliban, they did not formally bring up the topic of the temporary governance during the talks. However, Taliban representatives have stated that Mr. Ghani

is the primary impediment to peace and that their group is prepared to work with a new government should he step down as president of Afghanistan.¹⁸⁸

3.5.2. High council for national reconciliation (HCNR)

Hamid Karzai formed the Afghanistan High Peace Council (HPC) as part of the Afghanistan Peace and Reintegration Program in order to hold talks with certain Taliban groups. The HPC was established on 5 September 2010.¹⁸⁹ Burhanuddin Rabbani led the formation of this council, which also included a number of jihadist commanders and leaders, community elders, and—most intriguingly—some former Taliban members who are now residents of Afghanistan under the protection of the Afghan government. There were eight women on this council as well. One year after the founding of the Afghan High Peace Council, Mr. Rabbani was killed by the Taliban in a suicide attack. After Rabbani, his son Salahuddin Rabbani assumed leadership of the Peace Council. When Salahuddin Rabbani and Masoum Stanakzai, the head of the Peace Council Secretariat, were appointed to positions of authority within the national unity government, the Peace Council was left without a leader until 2014, when Ashraf Ghani named another Jihadist leader, Pir Seyed Ahmad Gilani, as the head of the council. Following Gilani's passing, another Jihadist leader, Karim Khalili, did this job. Indeed, prior to the Supreme Peace Council's formation, the Office of Peace Consolidation—which was headed by another jihadist leader, Sibghatullah Mujadadi—was in operation and worked to help those dissatisfied with the armed forces return to their regular lives.¹⁹⁰

The Supreme Peace Council's responsibilities include:

- Recognizing and recognizing the difficulties and barriers to the consolidation of peace
- Restoring peace again
- Security
- Get rid of violence!

¹⁸⁸ BBC News 'فارسی' (2021) 'یک سال از توافقنامه دوحه گذشت؛ بایدن چه نقشه ای برای صلح افغانستان در نظر دارد؟' *BBC News فارسی*, 28 February. <https://www.bbc.com/persian/afghanistan-56222610>.

¹⁸⁹ Wikipedia contributors (2024b) *Afghan High Peace Council*. https://en.wikipedia.org/wiki/Afghan_High_Peace_Council.

¹⁹⁰ (2019) شورای عالی صلح افغانستان، از آغاز تا امروز. <https://www.independentpersian.com/node/12521/%D8%B4%D9%88%D8%B1%D8%A7%DB%8C%E2%80%8C%D8%B9%D8%A7%D9%84%DB%8C-%D8%B5%D9%84%D8%AD-%D8%A7%D9%81%D8%BA%D8%A7%D9%86%D8%B3%D8%AA%D8%A7%D9%86%D8%8C-%D8%A7%D8%B2-%D8%A2%D8%BA%D8%A7%D8%B2-%D8%AA%D8%A7-%D8%A7%D9%85%D8%B1%D9%88%D8%B2>.

- Recognizing and presenting pacifist solutions based on science and reality, as well as bolstering the Supreme Peace Council's efforts to bring about enduring peace.¹⁹¹

The Supreme Peace Council was founded in 2010 with the goal of restoring stability and peace to Afghanistan at great expense and with support from both the domestic and international community. However, as time went on and there were more conflicts and acts of violence, this possibility declined out, and the council was unable to fulfill its intended role.

The Supreme Peace Council's role in promoting non-violence and peace is not perceived as significant or positive. It lacks effective plans for ensuring security and restoring peace. According to a majority of respondents, over 80%, the Supreme Peace Council is seen as symbolic and not considered effective. Furthermore, past experiences have demonstrated that the Council's performance and accomplishments in promoting non-violence and peace are not noteworthy.

Most researchers believe that the Supreme Peace Council has primarily produced negative results in terms of performance and accomplishments. It is thought that in terms of security and pacifism, the council has not significantly improved things. According to the majority, the Supreme Peace Council's main duties include actively promoting security and peace, holding talks with opposition parties, and encouraging harmony among diverse ethnic groups.

Regarding the difficulties and roadblocks to peace consolidation, these include foreign intervention, the rise of radicalism and ideology, inadequate management, disinterest on the part of the parties to the reconciliation, low public awareness, ineffectiveness of the government and Afghan high Peace Council, and presence of corruption were the obstacles to the consolidation of peace.

The main causes of the rise in extremism are the low literacy rate and educational poverty of the general population, harsh and diverse interpretations of religion, the inadequate role of religious scholars and schools, the presence of extreme religious schools, and old and traditional customs.¹⁹²

The Supreme Peace Council served as the sole Afghan government entity with the responsibility of establishing. the Headquartered was in Kabul, the Secretariat of the Supreme Peace Council operated from 2010 until July 2019 when President Ghani dissolved it, subsequently replaced by the Ministry of Peace Affairs. While the authorities have yet to provide an official explanation, several factors can be attributed to the dissolution of the Supreme Peace Council.

Firstly, the Council faced allegations of dishonesty and corruption, which tainted its reputation. Afghan senators and lawmakers have voiced concerns about rampant

¹⁹¹ شورای عالی صلح و نقش منفی آن در صلح طلبی (2019) صبح <https://8am.media/fa/high-peace-council-and-its-negative-role-in-peacefulness/>.

¹⁹² شورای عالی صلح و نقش منفی آن در صلح طلبی (2019b) صبح <https://8am.media/fa/high-peace-council-and-its-negative-role-in-peacefulness>.

corruption and a lack of tangible achievements, citing these as fundamental reasons for the Council's termination. In 2017, Deputy Speaker of the Senate, Asif Siddiqui, emphasized the need for transparency and effectiveness, cautioning international donors about the limited allocation of funds towards peace initiatives. With the Council's perceived lack of tangible outcomes, calls for its disbandment grew louder.

Secondly, the inclusion of warlords, who were implicated in heinous crimes, within the High Peace Council raised questions about accountability. The presence of such individuals undermined the Council's legitimacy, especially when civil society and human rights advocates opposed their involvement due to their prior criminal records. This compromised the Council's ability to address the grievances of victims and survivors, eroding public trust and casting doubt on the prospects of genuine reconciliation and justice.

Thirdly, the Supreme Peace Council faced criticism for its lack of experience in negotiation, mediation, and conflict resolution. The organization struggled to demonstrate transparency in terms of its objectives and operations, which hindered its effectiveness. The composition of the Council, consisting predominantly of former warlords, further limited its capacity to enhance its capabilities and promote inclusivity in the peace process.

The culmination of these factors ultimately led to the dissolution of the Supreme Peace Council. Its dissolution stands as a significant moment in Afghanistan's ongoing efforts to achieve lasting peace and justice. Moving forward, there is a pressing need to establish alternative mechanisms that prioritize transparency, accountability, and the active participation of diverse stakeholders, including civil society and human rights advocates. Only through meaningful and inclusive processes can Afghanistan overcome the challenges posed by its complex history and pave the way for a more just and peaceful future.¹⁹³

After the tensions caused by the 2019 elections and the announcement of the results of the 2020 presidential elections, Kabul witnessed the swearing-in ceremony of two presidents. However, after months of tension and political conflict, President Ghani and Dr. Abdullah signed a political agreement to form a new government, based on which a The Afghanistan High Peace Council (HPC) for National Reconciliation (the state ministry for peace) was established under the chairmanship of Dr. Abdullah and in front of President Ghani as the president of Afghanistan was recognized.¹⁹⁴

¹⁹³ UN women report, (2020), "women participation in the Afghan peace process", Kabul, Afghanistan.

¹⁹⁴ سرنوشت شورای عالی مصالحه ملی چه می شود؟ (2020). سروش, ع. <https://www.etilaatroz.com/106652/what-will-happen-to-supreme-national-reconciliation-council>.

Authorities:

These are the authorities that the Chairman of the High Council for National Reconciliation will have:

- Leading the national peace process affairs.
- Leading meetings of the High Council for National Reconciliation.
- Appointing officials and executive and administrative employees, including *mansubin* (officials) of the State Ministry for Peace.

Authorities of the High Council for National Reconciliation:

- The High Council for National Reconciliation shall verify, approve and lead the affairs related to peace process.
- The decisions and approvals of the High Council for National Reconciliation shall be taken based on majority votes taking the country's national exigencies [interests] into account.
- The decisions and approvals of the High Council for National Reconciliation shall be final and binding to be implemented in the light of the country's constitution.
- The negotiation team shall serve under the guidance of the leadership committee of the High Council for National Reconciliation, act in accordance with its approvals and guidelines, and report to the chairman and the High Council for National Reconciliation.

In the case that the High Council for National Reconciliation needs to consult, the president of the Islamic Republic of Afghanistan will call for meetings.

The High Council for National Reconciliation's duties

- Build national, regional and international consensus on peace affairs.
- Attract international aid and support for better advancement of peace affairs.
- Attract international aid for the reconstruction after establishment of peace.¹⁹⁵

¹⁹⁵ Ruttig, T. (2020a) *The 17 May 2020 Political (power-sharing) Agreement between Dr Ghani and Dr Abdullah (Dari and English)*. <https://www.afghanistan-analysts.org/en/resources/afghan-government-documents/the-17-may-2020-political-power-sharing-agreement-between-dr-ghani-and-dr-abdullah-dari-and-english>.

Ashraf Ghani, the president of Afghanistan, has approved a 46-member Leadership Committee for the High Council for National Reconciliation (HCNR), but everyone has been quick to criticize the decision. The most notable denial has come from Dr. Abdullah Abdullah, who maintains that he has the legal authority to lead the peace process and appoint people to the HCNR in accordance with the power-sharing agreement. To sum up, Ghani appears committed to maintaining control over the HCNR and its extensive power over peace negotiations with the Taliban.

The possibility of effective and cohesive leadership in the peace process on the part of the republic is being endangered by the ongoing power struggle between President Ghani and Dr. Abdullah over appointments to the High Council for National Reconciliation (HCNR). The two men's political agreement, which put an end to the conflict over the disputed presidential election in September 2019, called for the formation of a High Council for National Reconciliation, headed by Dr. Abdullah, to oversee the peace process and a cabinet with shared powers. However, power struggles and mistrust caused obstacles to efforts to put the agreement into practice. These have made it more difficult to form the HCNR and the cabinet. Although it appears that the cabinet appointments have finally been finalized, Ghani's announcement of the HCNR's formation appears to be an attempt to maintain control over the council. Some have become estranged and angry with Abdullah.

The negotiation team of the government was present. Leading the 21-person group, which was revealed by the government on March 26, 2020, is Masum Stanekzai, a prominent Ghani aide who is a Pashtun from Logar and the former head of the National Directorate of Security (NDS). The members are mostly male, younger than the (HCNR) members, and mostly mid-ranking. They come from a variety of ethnic and factional backgrounds, including the families of some prominent leaders, like Batur Dostum (son of Abdul Rashid) and Khaled Nur (son of Atta Muhammad). (<https://www.ecoi.net/de/dokument/2038185.html>)

Some civil society organizations took issue with the team's makeup. In a statement released on March 30, the Transitional Justice Coordination Group (TJCG), which describes itself as “a coalition of more than 26 human rights and war victims, organizations, and independent activists,” claimed that the delegation was “incomplete” because there was “no representative of victims of war.” It urged the government to involve representatives of war victims, stating that experiences demonstrate that “excluding war victims from the negotiation process makes the peace very fragile” and that their stories can “have transformational effect on the negotiators, content and agenda of peace negotiations.”¹⁹⁶

After the announcement of the list of members of the Supreme Council of Reconciliation, a number of political figures opposed it and did not accept membership in the Council. In

¹⁹⁶ Ruttig, T. (2020a) *Looking ahead to Intra-Afghan Negotiations: A scrutiny of different political groups' plans for peace.* <https://www.afghanistan-analysts.org/en/reports/war-and-peace/intra-afghan-negotiations-a-look-at-various-afghan-peace-plans>.

addition to Abdullah Abdullah and Hamid Karzai, Salahuddin Rabbani, head of Jamiat-e-Islami, Golbedin Hekmatyar, leader of Hizb-e-Islami, Rahmatullah Nabil, former head of national security, Ismail Khan, one of the jihadi leaders, Karim Khalili, former head of the Supreme Peace Council, and a number of other political figures have been announced. Some figures did not accept the membership of the council like Hamid Karzai (Former president). In addition to political figures, several civil organizations and women also criticized this opportunity. Shahrazad Akbar, the head of the Human Rights Commission, and Marie Akrami, the head of the Afghanistan Women's Network, criticized the low presence of women in the announced list.¹⁹⁷

In addition, this council has authority over the leadership of the peace process. One of the primary responsibilities of the Supreme National Reconciliation Council is to foster consensus at the national, regional, and international levels. Concurrently, Hanif Atmar (former Afghanistan National Security Adviser in 2018 and present Foreign Minister) and Abdullah Abdullah attempted—but were never successful to travel throughout the region to reach a consensus.

3.5.3. Actors and stakeholders in peace negotiations

A multitude of internal and external actors and stakeholders are actively engaged in the ongoing peace negotiations in Afghanistan, each bringing their unique perspectives and playing crucial roles in shaping the future of the country. These participants and actors contribute to the complexity and dynamics of the peace process. Let's delve into the roles of some of these important actors:

3.5.3.1. Internal actors and stakeholders:

1) Afghan government:

The Afghan government is a key player in the peace talks as the country's legitimate government. It is in charge of making sure that the rights and opinions of the Afghan people are upheld at every stage of the process, representing their interests. So, the Afghan government is a major player in peace talks and speaks for the interests of the Afghan people. It negotiates with different opposition parties to create a political environment that is both inclusive and stable. Unfortunately, three key components of Afghan society were excluded from the internal peace discussions. The benefits of peace were unknown to youth, women, and civil society organizations, including the Afghan media. Other than being represented symbolically in certain government- or international community-organized meetings, these groups were not actively involved in the broader peace process. There was also disagreement over the terms of negotiations between non-Taliban groups and the Taliban. To project an image of a unified Islamic Republic, Ghani desired a two-sided table with the government and the Taliban on one side. However, some saw this arrangement as an unacceptable opportunity for technocrats in the government to take

¹⁹⁷ <https://www.etilaatroz.com/106652/what-will-happen-to-supreme-national-reconciliation-council/>. *سرنوشت شورای عالی مصالحه ملی چه می شود؟* (2020b). سروش, ع.

charge of the peace talks. Consequently, the president's political opponents encouraged multi-party negotiations where all parties—the government, the Taliban, political parties, and civil society—could negotiate according to their respective interests. The absence of a mutual understanding or well-defined goals for the peace process among non-Taliban groups ultimately played a role in the inability to reach a resolution.

Apart from leadership issues, the political peace process was complicated by technical chaos. The High Peace Council was in a constant state of competition with the president of Afghanistan, and it never gained the authority required to represent the political side of the peace process. Later, under Dr. Abdullah Abdullah, it became the High Council of National Reconciliation. The State Ministry of Peace tried, but was unable, to present itself as the peace negotiations' technical arm. Others correctly saw "technical matters" as a tactical instrument used to influence the outcome.

Other government agencies also made leadership claims, which served to further discolored matters. The Office of the National Security Council (ONSC), which had a Directorate of Peace and Reconciliation Affairs, was the most important of these organizations. In addition, the Ministry of Foreign Affairs struggled to maintain its reputation as the foreign countries' go-to source for peace-related matters. Local Afghans and foreign diplomats had trouble coordinating their activities with the government because of the disjointed involvement of too many individuals and institutions in the peace process.

The formation of factions within the Afghan state's negotiation team made worse the situation due to rivalries, incompetence, and ideological differences. The government-led team the president eventually assembled was not united. The principal negotiator was Masoom Stanikzai, a former head of the intelligence agency. However, Stanikzai's previous affiliation with parties known for their adherence to communist ideologies meant that the Islamist Taliban ignored him. The Taliban requested that Stanikzai be excluded from the peace talks from the central government in Kabul through the channels of the Chinese and Uzbekistani governments. According to one of the negotiators, Fawzia Koofi, a covert channel of communication between the government and the Taliban opened in Doha in parallel with the official negotiations team. There were never direct talks for peace between the Taliban and the government of Afghanistan. A small group of officials met with the Taliban in Qatar on multiple occasions, but this was the only direct communication between the two parties. Although they worked out the basic framework for the discussions, they were never able to create or even negotiate an agenda.

2)Civil Society organizations:

Afghan Civil Society Organizations, which include grassroots movements, women's groups, and human rights organizations, are vital in promoting an outcome that is both inclusive and peaceful. They offer suggestions, speak for underrepresented groups, and keep an eye on how peace accords are being carried out. (United Nations Assistance Mission in Afghanistan (UNAMA) - "Peace and Reconciliation) Afghan civil society

cannot be left to fend for itself at this point in time. In addition, it is imperative to convey to the Taliban that, in contrast to two decades ago, the Afghan civil society of today possesses significant power and ability to take action. The Afghan population has a voice that needs to be heard more loudly right now; it should not be treated like a player in a political game.¹⁹⁸ Civil society organizations expressed concern about the ineffectiveness of the peace negotiations process and the absence of representatives from civil institutions, stating that the people of Afghanistan support an open, equitable, and inclusive peace. They continued: "In the peace process, the participation of civil society, women and youth has been weak and have had symbolic role." A representative of a civil society organization stated at a press conference in Kabul that although the people are the primary victims of the war in Afghanistan, their representatives are not part of the peace process. He also added that the peace process has given the Taliban a stronger political and military identity. The delegates of civil society continued The US representative to Afghanistan, Zalmay Khalilzad, is in talks for peace with neighboring nations, but he has not had direct conversations with women and youth, the leaders of civil society and the representatives of the people.¹⁹⁹

3)Taliban:

An insurgent group that has been actively engaged in the Afghan conflict is the Taliban. Their concerns and integration into the political system are the focus of negotiations as they are a major stakeholder in the peace process. (Council on Foreign Relations (CFR) - "The Taliban in Afghanistan") According to the United States Institute of Peace (USIP), the Taliban's participation in the peace talks has been crucial for achieving a sustainable peace agreement. They have been recognized as a major stakeholder in the conflict and have been involved in direct negotiations with the Afghan government. The Taliban took part in the peace negotiations with the Afghan government. The Taliban continue in carrying out attacks and using violence despite taking part in talks; they frequently target Afghan security forces, civilians, and infrastructure. Reports state that during the peace negotiations, the Taliban have carried out suicide bombings, offensives, and violations of ceasefires. These acts have created serious obstacles for the talks to move forward and sparked doubts about the Taliban's commitment to a diplomatic agreement. It is crucial to remember that the Taliban is a complicated, diverse organization, and that some of its members may agree with peace negotiations. While some Taliban factions have

¹⁹⁸ *Why the Afghan peace process failed, and what could come next?* (2022). Middle east institute <https://www.mei.edu/publications/why-afghan-peace-process-failed-and-what-could-come-next>.

¹⁹⁹ «در مذاکرات صلح افغانستان حضور نماینده گان جامعه مدنی حتمی است» (2018). زی, ص. ۱. <https://pajhwok.com/fa/2018/12/29/%D8%AF%D8%B1-%D9%85%D8%B0%D8%A7%DA%A9%D8%B1%D8%A7%D8%AA-%D8%B5%D9%84%D8%AD-%D8%A7%D9%81%D8%BA%D8%A7%D9%86%D8%B3%D8%AA%D8%A7%D9%86-%D8%AD%D8%B6%D9%88%D8%B1-%D9%86%D9%85%D8%A7%DB%8C%D9%86%D8%AF/>.

demonstrated a willingness to negotiate, others have persisted in using violence to achieve their goals.²⁰⁰

6 July 2021 - In the first half of 2021, civilian casualties in Afghanistan reached its highest level. Since May, when international military forces started to withdraw and the conflict increased following the Taliban attack, civilian casualties have been at their highest level, with a notable rise in both deaths and injuries. The United Nations has issued a new report in which it warns that civilian casualties in Afghanistan could occur by 2021 if there isn't a major decrease in violence since UNAMA started keeping track of them.

recording the greatest number of civilian deaths in a given year. 5,183 civilian casualties (1,659 killed and 3,254 wounded) are reported in UNAMA's mid-2021 report on the protection of civilians in armed conflicts in Afghanistan. This is a 47% increase over the same period in 2020. Since May 1st, there has been a marked increase in the number of civilian deaths and injuries during this time the period. The fact that a majority of civilian casualties happened in May and June and are comparable to the overall number of civilian casualties in the current year raises grave concerns. The last four months have been documented. With 2,392 civilian casualties in May and June (783 killed and 1,609 injured), these two months saw the highest number of casualties since UNAMA started keeping record of them systematically in 2009. There have been 2,791 civilian casualties from January to April 2021 (876 killed and 1,915 wounded). What is particularly shocking and deeply worrying is that women, boys and girls account for nearly half of civilian casualties in the first half of 2021, which includes a total of 46 percent of civilian casualties. The UN representative, who also serves as UNAMA's chief, stated that trying to resolve the issue militarily would only make the Afghan people's suffering worse.²⁰¹

3.5.3.2. External actors and stakeholders:

1) United states:

In the Afghan conflict, the United States has been a significant external actor. It was crucial to the first overthrow of the Taliban government in 2001, and it has been involved in attempts at peace since then. The United States facilitates talks between the Taliban and the government of Afghanistan. (United States Institute of Peace (USIP) - "Afghanistan Peace Process") The role of the United States was equally important in forestalling peace. The fight against terrorists was the primary stated goal of American involvement in Afghanistan for a long time. Thus, the Afghan government consistently

²⁰⁰ *Afghanistan peace efforts* (2021). United States Institute of Peace (USIP), <https://www.usip.org/programs/afghanistan-peace-process>.

²⁰¹ UNAMA report, (June, 2021), https://afghanistan.un.org/sites/default/files/2021-07/26%20July%202021%20-%20CIVILIAN%20CASUALTIES%20SET%20TO%20HIT%20UNPRECEDENTED%20HIGHS%20I%20N%202021%20UNLESS%20URGENT%20ACTION%20TO%20STEM%20VIOLENCE%20-%20UN%20REPORT%20%28Dari%29_0.pdf

promoted its peace initiatives as a counterterrorism plan while operating under the sway of this policy.

America's attitude toward the threat evolved over time as significant terrorist hotspots spread throughout the globe. The United States thus turned its focus to leaving Afghanistan and gave the conclusion of its long-term presence in the country top priority. The 2020 agreement between U.S. officials and the Taliban called for security guarantees in exchange for the withdrawal of American forces and the Taliban's pledge to combat terrorism; however, it also encouraged the initiation of peace negotiations among Afghans and limited the discussion of a ceasefire to later intra-Afghan talks.

When the decision was made for the United States to withdraw and the potential collapse of the Afghan government loomed, the focus shifted towards prioritizing negotiations with the Taliban over engaging with the Afghan government. Diplomats and military officials from the United States, Europe, and regional nations eagerly sought discussions with the Taliban. The insurgent group interpreted this influx of international visitors as validation of the impact they had made through their use of violence. With the entire world seemingly knocking at their door and the United Nations having given its endorsement to the agreement they had forged with Washington; they felt a growing certainty that capturing Kabul was only a matter of time.

The Taliban, in their pursuit of favorable outcomes, urged the United States to exert pressure on the Afghan government to capitulate without any conditions. Notably, due to foreign influence, the Afghan authorities released over 5,000 Taliban prisoners in 2020, despite the risks posed by these dangerous individuals. In return, the Afghan government received only a fraction of their own prisoners. Contrary to their promises, these violent extremists rejoined the battlefield with heightened determination for revenge, while the Taliban leadership rewarded their time spent in detention by granting them positions as field commanders. This decision had profound consequences, as it not only undermined the security situation but also demonstrated a disheartening lack of accountability.²⁰²

On February 29, 2020, the US and the Taliban signed a peace accord. This agreement covers four main points: the Taliban group's pledge not to use Afghan territory against the security of the US and its allies; a timeline for the US and NATO forces to withdraw completely within the next 14 months; the holding of intra-Afghan talks on March 10; and the discussion of a comprehensive ceasefire during the inter-Afghan talks. As part of the agreement, the United States also promised to review and lift the sanctions against Taliban members as soon as intra-Afghan negotiations begin and by August 27, 2020.²⁰³

2)Regional Powers:

Numerous regional powers actively participate in the peace process and have a stake in Afghanistan's stability. These comprise nations such as China, Russia, Pakistan, and Iran. They influence the talks and encourage attempts to come to a long-lasting peace accord.

²⁰² Ibid,198

²⁰³ BBC News 'شورای امنیت سازمان ملل متحد از توافقنامه صلح طالبان و آمریکا حمایت کرد' (2020c) فارسی BBC News 11 March. <https://www.bbc.com/persian/afghanistan-51830599>.

- (1) Pakistan: For many years, Pakistan's principal ally in Afghanistan has been the Taliban, and Islamabad has used them as a main tool to exert influence over its western neighbor. Islamabad was assisting the insurgents in resuming government in Kabul long before the last American forces left the country and even before the Trump administration made the decision to do so. However, it attempted to rebuild the Taliban through agreements on power sharing that would gain financial and diplomatic backing across the world. The Taliban's quick military win and their forced takeover of the Afghan state presents Pakistan with a chance, but it also presents significant obstacles.
- (2) India: India, like the rest of the world, became off guard by how quickly the Taliban took control of Afghanistan. Delhi has always viewed Afghanistan through the lens of its competition with Islamabad. India started aiding the fighters of the Northern Alliance who were opposing the Taliban's rule in 1996, when the Taliban, aided by Pakistan, first conquered Kabul. India kept away from sending its security forces to Afghanistan after the United States and the North Atlantic Treaty Organization (NATO) intervened in the wake of the September 11 attacks. This was because the United States did not want Afghanistan to turn into yet another space for conflict between Islamabad and Delhi. It perceives an increasing threat to its security interests emanating from Afghanistan, but it lacks both substantial leverages to protect them and good lines of communication with the Taliban to make its priorities clear. Therefore, it is likely that the government will adopt a dual strategy of publicly criticizing the Taliban while secretly cooperating with them due to political expediency.
- (3) Iran: Twenty years, what a difference. Prior to the United States' invasion of Afghanistan in 2001, Iran and the Taliban were fierce enemies. After the Taliban killed eleven Iranian diplomats and a journalist in Mazar-i-Sharif in 1998, the two sides came dangerously close to going to war. After three years, Tehran was crucial in assisting the United States in overthrowing the Taliban and installing a new republic in their place. Tehran's perception of the Taliban appears to have changed dramatically now that the group is back in control of Kabul. The United States' withdrawal from Afghanistan is "an opportunity to restore life, security, and lasting peace," according to newly appointed President Ebrahim Raisi. Iran does not appear to be planning to assist anti-Taliban organizations at this time, but that could change if Tehran loses confidence in Kabul. Iran seems to be hoping to foster friendly relations with the newly formed government led by the Taliban and promote a more pluralistic power structure through its increased efforts at intra-Afghan mediation, which began in July. Iran still maintains an open consulate in Herat and an

embassy in Kabul. However, it has alternatives in case things get worse. The National Resistance Front of Afghanistan's leader, Ahmad Masoud, who has been fighting the Taliban in Panjshir Valley and was exiled in Iran, is one example of an internal Taliban opponent with whom it could collaborate. Additionally, Iran was able to secure the release of former warlord Ismail Khan, who headed an anti-Taliban militia and is currently in Mashhad, Iran. The Taliban briefly detained Khan when they recently took control of Herat.

- (4) China: China's primary interests in Afghanistan revolve around concerns about potential instability spilling over into neighboring regions, such as Pakistan and Central Asia, as well as within China itself, posing a threat to Chinese citizens and projects. Consequently, China has made promoting stability a top priority in its Afghanistan policy, primarily through diplomatic and economic engagement. This includes participating in the former U.S.-led peace process and gradually establishing its own regional dialogue mechanisms. However, China's previous economic involvement in Afghanistan has faced challenges, with two major projects—the Mes Aynak copper mine since 2008 and the Amu Darya oil field since 2011—remaining stagnant due to an uncertain security environment. To safeguard its security interests, China has adopted a longstanding approach of maintaining relations with all key Afghan actors, including the former Afghan government and the Taliban, in order to hedge its bets and ensure protection.

From a geopolitical perspective, the U.S.-NATO withdrawal presents Beijing with both opportunities and challenges. On one hand, China has long been uncomfortable with the proximity of U.S. military bases in its western region. The withdrawal provides China with the potential to expand its influence more openly in Central Asia. On the other hand, China is apprehensive not only about the security void that may emerge in the region following the departure of international forces but also about the increased pressures it may encounter in the Indo-Pacific region. As Washington, now relieved of Afghanistan-related obligations, redirects its attention and resources towards areas in China's southern and eastern periphery, China is concerned about potential heightened tensions in the Indo-Pacific arena.

- (5) Russia and central Asia: Moscow is in a good position to handle Afghanistan under Taliban rule. It has been participating in intra-Afghan negotiations more and more since 2015, hoping to raise its diplomatic profile and protect itself from the expected U.S. withdrawal, which it believed might destabilize the region. The result has been friendly relations with the Taliban, who have even asked Moscow to mediate between them and Ahmad Masoud, the leader of the National Resistance

Front, who has refused to accept Taliban rule and is threatening to launch an uprising from the Panjshir valley in the north.

Russia is also pleased to act as both intermediary and bodyguard for the Central Asian countries as they warily navigate their own relations with Afghanistan. Because of their shared history, these states should all be worried about how the Taliban's takeover may affect their security. When the Taliban withdrew from Kabul in the late 1990s, insurgents backed by al-Qaeda with bases in Afghanistan attacked Kyrgyzstan, Tajikistan, and Uzbekistan. Throughout the past two decades, the United States and other foreign forces stationed in Afghanistan have received assistance from all five of these Central Asian states in the form of overflight, refueling, and basing. They are now, though, hedging their bets with Moscow, which has stated that it no longer wants American forces to be present in the area. Russia has already established a base in Tajikistan and has assured Dushanbe that it will send more security forces there if necessary. Tajikistan, Uzbekistan, and Russia concluded cooperative military drills in mid-August close to the Afghan border. Early in September, the Collective Security Treaty Organization, led by Moscow, intends to conduct additional joint exercises in Kyrgyzstan. Russia sees the diplomatic and military assistance it is providing the Central Asian states as a way to strengthen its security as well as its hand in the region. Russian talking points today stress the need for Afghans to make their own decisions about their country's future. Kremlin is in no hurry to recognize the Taliban's rule formally, or to remove UN sanctions that apply to the movement or its members, but Russian officials stress that the Kremlin has no intention of sending troops back to Afghanistan.²⁰⁴

3)United Nations:

The UN offers diplomatic support to the peace negotiations as well as a platform for such discussions. The UN's responsibilities for post-conflict reconstruction include coordinating international assistance, mediating disputes, and providing dialogue. (United Nations Assistance Mission in Afghanistan (UNAMA) - "Peace and Reconciliation") The United Nations Assistance Mission in Afghanistan (UNAMA) is a UN Special Political Mission tasked with assisting the people of Afghanistan. UNAMA was established on 28 March 2002 by United Nations Security Council Resolution 140. UNAMA is headed by Special Representatives of the Secretary-General (SRSG) for Afghanistan. UNAMA has been an integrated mission since 2008, following the UN Secretary-General's directive. This means that in order to better support Afghanistan in accordance with nationally defined priorities, the Special Political Mission and all UN

²⁰⁴ *With the Taliban back in Kabul, regional powers watch and wait* | Crisis Group (2021). <https://www.crisisgroup.org/asia/south-asia/afghanistan/taliban-back-kabul-regional-powers-watch-and-wait>.

agencies, funds, and programs operate in a multifaceted and integrated manner. In addition to being in charge of all UN operations within the nation, the SRSG also has direct control over the Security, Human Rights, Peace and Reconciliation, and Strategic Communication Services departments. UNAMA's Field Offices are supervised by the Head of Staff of the SRSG.²⁰⁵

Afghan government presented the proposal at an international conference aimed at creating a platform for peace talks. In 2018 (UNAMA) declared that we support the Afghan government's renewed demand for unconditional peace negotiations with the Taliban as well as planning out of a peace framework. According to the press release, the Mission "strongly supports the vision for peace through intra-Afghan dialogue and urges all parties involved to engage at the earliest time." UNAMA commended the Afghan government's declared willingness to engage in dialogue on any topic as part of a peace process, including important matters like the constitution, the easing of sanctions against individuals and organizations, and the release of prisoners.

In March 2002, the UN Security Council created a political mission known as UNAMA. The UN Department of Political Affairs (DPA) notes that Afghanistan is still a war-torn nation, endangering the sustainability of its gains.

The DPA notes that the region and the larger international community have a risk in and a role to play in helping to create the conditions for peace and that peace negotiations between the Afghan Government and armed opposition groups are the best chance for ending the conflict. UNAMA expressed its encouragement at the countries and organizations that actively participated, saying, "We look forward to increased cooperation to assist with Afghan peace efforts and to address the shared problem of terrorism and transnational crime."²⁰⁶

The resolution made clear that neither the UN Security Council nor this institution recognize the "Islamic Emirate of Afghanistan," and that the Islamic Emirate's return is not supported. According to a UN Security Council resolution, efforts should be made to protect the rights of all citizens, particularly those of women, and that a variety of political groups and civil activists, including women, should take part in the peace negotiations process. Additionally, this document acknowledges the process of reducing the level of violence in Afghanistan and requests that the parties carry it out in order to guarantee a long-term ceasefire in this nation.²⁰⁷

Four specific recommendations are made in the UN Secretary General's special envoy's independent assessment report. These are as follows: "Consider a set of urgent measures

²⁰⁵ Wikipedia contributors (2024d) *United Nations Assistance Mission in Afghanistan*.
https://en.wikipedia.org/wiki/United_Nations_Assistance_Mission_in_Afghanistan.

²⁰⁶ *UN mission welcomes Afghan Government's proposal for peace talks with Taliban* (2018).
<https://news.un.org/en/story/2018/02/1003781>.

²⁰⁷ BBC News 'شورای امنیت سازمان ملل متحد از توافقنامه صلح طالبان و آمریکا حمایت کرد' (2020d) فارسی
11 March. <https://www.bbc.com/persian/afghanistan-51830599>.

to address the basic needs of the Afghan people and strengthen trust through more structured engagement; Attracting international attention and cooperation in issues that affect regional and global security and stability; "creating a plan of action for political engagement, which is thought to be essential for Afghanistan's reintegration into the world community, and lastly deciding on unique frameworks and mechanisms to oversee and guarantee the effective execution of the recommendations."

3.5.4. The role and contribution of women to the establishment of peace

If we explore into the realm of traditions, religious beliefs, and sacred aspects, it becomes evident that women in Afghanistan have historically played a role in decision-making processes, primarily through the traditional jirga system, which has been traditionally dominated by men. However, there have been instances where women have either supported or directly participated in these processes, even without the backing of male family members. A notable example is their involvement in Nanwat, a culture of conflict resolution, where women assume the roles of wives, mothers, or daughters of the accused individuals. The respect accorded to women often contributes to a swifter resolution of conflicts. Such cases highlight how women have remained central figures in certain contexts, including their engagement in discussions related to women's rights.

In specific societies, women have played significant roles in conflict resolution, leading to greater acceptance of their perspectives and contributions, even by religious authorities. For instance, Khost province there is a well-known woman named Maldara, who has consistently challenged her male counterparts, demonstrating that active participation in a jirga is not only acceptable but also essential.²⁰⁸

The tradition of throwing the shawl has a long history in Afghanistan, where women have played a vital role in ending conflicts and fostering peace. This practice holds deep cultural significance and has been instrumental in resolving major conflicts throughout the region.

When it was first introduced, giving someone a shawl was very important to both of them. Shawls were thrown as a call for an end to hostilities, and women's tents were revered as sacred spaces. This action would compel the leaders of the opposing parties to meet, take a seat, and actively seek to put an end to the hostilities and conflicts. The tradition of a woman throwing a shawl as a symbol of peace and conflict resolution holds a significant place in the history of the Pashtun ethnic group. This unique practice carries deep cultural and symbolic meaning, representing the desire for harmony and the resolution of conflicts within the community.

In Pashtun culture, the shawl holds great symbolism as a garment that encompasses warmth, protection, and unity. When a conflict arises, particularly in the context of inter-tribal disputes or feuds, the involvement of women in finding a peaceful resolution is

²⁰⁸ Ibid,193

highly valued. In such situations, a respected woman from the community, often a matriarch or an elder, takes on the role of a mediator.²⁰⁹

Religious arguments have frequently been employed as the primary means to curtail women's participation in jirgas and other formal political forums. However, religious authorities, both male and female, often dismiss these objections as inconsequential or unfounded. They argue that there is no religious text that explicitly prohibits women from engaging in peace and conflict resolution efforts. On the contrary, religious scholars with deep knowledge of their faith provide examples of the role's women have historically played or can potentially play. These examples can be found in Islamic texts, such as the Peace of Hudaibiyah, where the Prophet Muhammad (PBUH) heeded the advice of Umm Salma, showcasing his respect for women and their counsel in peace treaties.

By assuming the roles of mothers, wives, or daughters, women contribute positively to advising and influencing decision-making processes. Khadijah, the Prophet's first wife, she was a well-known businesswoman played a crucial role in supporting him and influencing important decisions. Religious scholars have also affirmed that Islam does not impose restrictions on women confining them solely to their homes. However, religion has been misused as a tool in religious discussions to limit women's activities outside the domestic sphere.

These perspectives shed light on the multifaceted dynamics at play, where traditional practices, religious beliefs, and women's active participation intersect. By recognizing the historical examples of women's involvement and the absence of religious injunctions against their participation, it becomes increasingly important to challenge societal norms and empower women to contribute meaningfully to decision-making processes and conflict resolution efforts.

For there to be a sustainable peace in Afghanistan, women must actively participate in national peace efforts. To do this, the international community and the government must actively support women's seats at the negotiating table. Women have traditionally played mostly symbolic roles. However, women came up with inventive ways to make the most of their limitations. In addition to engaging in direct dialogue with elements of the anti-government community, this also entails the creation of non-governmental peace councils at the local level and the involvement of women in peace efforts and conflict resolution, particularly with regard to domestic violence and violence against women and family issues. women's rights activists and civil society organizations initiated to encourage women's involvement in national peace initiatives.

The basic obstacles in women's political participation are numerous social violence against women, including ideological barriers and cultural norms that have clearly

²⁰⁹ "نقش زنان برای صلح، طوریکه گفته می شود کم و تشریفاتی نیست" (2020). حسرت, ا.ص.

<https://pajhwok.com/fa/2020/12/13/the-role-of-women-for-peace-as-it-is-said-is-not-small-and-ceremonial/>.

deprived women of political and social spaces and roles. Social structures created by men, and it is also dominated by men, which restricts women to a symbolic position, insecurity that has affected women's ability to move freely, and traditional obstacles such as low literacy and poverty. Arguments against women's political participation are often based on religion, but the findings of religious scholars show that there are no religious restrictions for women's participation in peace efforts.

The government of Afghanistan should include women at the leadership level of the Supreme National Reconciliation Council so that they have the power to make decisions. At least two of the deputies of the Supreme National Reconciliation Council must be women. (Women-Participation-in-the-Afghan-Peace-Process/2020)

Throughout the past 19 years, Afghan women have undeniably played a significant role in shaping various aspects of society, including the drafting and preparation of laws, political reforms, economic growth, literature, education, and diplomacy. Their invaluable contributions and the sacrifices they have made during years of conflict and violence cannot be overlooked. Therefore, any political agreement with the armed opposition, particularly the Taliban, must incorporate the voices and concerns of Afghan women. This inclusive approach is crucial for fostering a society that embraces diversity and provides an environment conducive to the empowerment and development of women.

It is important to recognize that women have borne the brunt of both major conflicts and smaller-scale civil wars, making immense sacrifices for the betterment of their communities and the nation as a whole. Excluding them from pivotal peace talks can undermine the stability and long-term sustainability of any peace and reconciliation efforts in Afghanistan. By neglecting the active participation of women in the peace process, there is a risk of perpetuating a fragile and incomplete peace, leaving the country vulnerable to ongoing challenges and unresolved grievances.

Therefore, it is imperative that women's perspectives, experiences, and aspirations are fully integrated into the peace negotiations. Including Afghan women in the decision-making processes ensures that their rights, needs, and aspirations are adequately addressed, and that their contributions are acknowledged and valued. By embracing an inclusive and gender-sensitive approach to peacebuilding, Afghanistan can establish a solid foundation for a more equitable and prosperous future, where the potential of all its citizens, regardless of gender, can be fully realized.²¹⁰

²¹⁰ "نقش زنان برای صلح، طوریکه گفته می شود کم و تشریفاتی نیست" (2020). حسرت، ا.ص. <https://pajhwok.com/fa/2020/12/13/the-role-of-women-for-peace-as-it-is-said-is-not-small-and-ceremonial/>.

Conclusion

To sum up, international agreements like the United Nations Charter and other human rights instruments are vital for fostering world peace and motivating nations to give diplomatic and nonviolent conflict resolution methods top priority while respecting human rights. These agreements seek to establish a more just and peaceful global framework in which states work together to settle conflicts and improve the welfare of all citizens.

But it's crucial to understand that there may be opposition and mistrust towards international agreements and ideas like human rights in traditional societies like Afghanistan. The belief that these concepts are imported from Western nations and do not fit in with regional customs and traditions frequently causes this skepticism. Some people might not be willing to accept or follow international documents because they see them as tools used by Western societies for their own interests.

Under such circumstances, it becomes imperative that the international community—including the US and the UN—recognize and respect national customs and traditions. Approaching conflict resolution and peacebuilding with sensitivity and a thorough comprehension of the local context is crucial. The positive aspects of tradition should be acknowledged and used to help close the gap between international frameworks and local practices, resulting in a more inclusive and successful approach to peacebuilding.

Discovering points of agreement and developing trust can be accomplished by interacting with local communities, honoring their customs, and highlighting the values of justice, peace, and dignity that are universal. It is crucial to show through communication and cooperation that global documents and ideas can coexist with regional customs and traditions and can even enhance the prosperity and well-being of the populace.

The Afghan transitional justice process encountered numerous obstacles and ultimately fell short of addressing the crimes carried out by warlords during the civil conflicts. Due to the warlords' support from foreign forces and the ethnic makeup of the Afghan government, their positions within the government were cemented, making it difficult to hold them accountable for their deeds. In Afghanistan, the people themselves demanded justice and punishment for those accountable for human rights violations during the civil wars, despite the elders' longstanding tradition of amnesty and forgiveness. Sadly, the public's voices were ignored during the Islamic Republic of Afghanistan's rule and the negotiations for peace with the Taliban. In a recent debate held under pressure from Washington, the Loya Jirga reached a decision that satisfied the United States. Many people, who felt that justice was not being served, were unhappy with this decision, which included the release of dangerous prisoners.

Finding a balance between promoting universal human rights principles and honoring and protecting tradition should be the ultimate objective. A more peaceful and harmonious society that values both regional customs and the values enshrined in international documents can be established by cooperating and embracing the positive aspects of tradition.

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