

Afghanistan's Bonn Agreement One Year Later A Catalog of Missed Opportunities

Introduction

A few weeks after the United States and its coalition partners toppled the Taliban in late 2001, representatives of various Afghan factions met in Bonn, Germany under the auspices of the Special Representative of the Secretary-General for Afghanistan to map out Afghanistan's future. After laborious negotiations between Afghan military commanders, representatives of Afghanistan's different ethnic groups, expatriate Afghans, and representatives of the exiled monarch—and under substantial pressure from the United States and other external powers to reach an agreement—the Bonn Agreement was signed on December 5, 2001.

The delegates to the Bonn conference, some of whom had been bitter enemies during the last two decades, made surprising progress. They agreed on an interim power sharing arrangement, the creation of a new constitution, and elections in 2004. Through the Bonn Agreement they set out a schematic roadmap and timetable for establishing peace and security, reconstructing the country, reestablishing some key institutions, and protecting human rights.

Though it was not a comprehensive peace agreement and did not include key provisions, such as formal commitments by Afghanistan's neighbors to respect the country's neutrality (and end outside support to different military factions), most Afghans believed that the Bonn Agreement represented the best chance possible for establishing peace, security, and protection of human rights in Afghanistan. With the participation of so many Afghan factions and the promise of political and economic support from the world's major powers, the agreement offered hope to some of the world's most repressed and abused people. Afghans could finally dream of an end to violence, better living conditions, and a future for their children.

But this hope was tempered by the immense challenges that lay ahead. Virtually all the institutions of a functioning civil society had been destroyed, including the parliament, the courts, much of the civil service, and most of the educational and health systems. Under the Taliban the majority of the population—females—had been denied the right to education and work. The country was littered with landmines. Much of its infrastructure had been destroyed by the shelling, shooting, and neglect that had become the staple of everyday life.

It was beyond the capacity of the Bonn Agreement or any other agreement to provide a short-term remedy for all these problems. At best, reconstruction will take years. It will also take time to develop and nurture a new political culture in which civilian authority will be supreme, national interests will prevail over regional or sectarian ones, and disputes will be resolved peacefully. Even with the formal signing of the Bonn Agreement, Afghanistan remained a country where violence and the use of force had become the first resort to settle disputes and resolve conflicting claims to power.

In spite of the inevitable and predictable obstacles, there was still much that could have, and still can be, achieved, even if at times only in the form of incremental progress. But, because of the conscious choices made by key actors, notably Afghan military leaders and the United States, the processes set in motion by the Bonn Agreement are now faltering in key areas such as human rights, public security, the rule of law, and economic reconstruction.

In the area of human rights (as in many other areas), the primary problem is the continuing power of Afghanistan's warlords. When the U.S. confirmed its commitment to the future of

Afghanistan, it spoke about the primacy of democratization and human rights. Yet its actions have shown this commitment to be shallow. After the overthrow of the Taliban, it employed a “warlord strategy” in order to relieve it of its security and human rights responsibilities.

Although the Taliban had effectively unified the military command of most of the country, and thereby undermined the country’s endemic military feudalism, the United States and others helped to reestablish this system as part of their strategy for removing the Taliban from power, while Afghanistan’s neighbors, particularly Iran, strengthened their local proxies. These regional and local military commanders, many of whom still receive arms, money, and political support from the United States and some of Afghanistan’s neighbors, filled the vacuum created by the overthrow of the Taliban. In the past year, most of these warlords have become more, not less, entrenched in power.

Warlords now represent the primary threat to peace and stability in the country. As Human Rights Watch and other groups have documented throughout the year since the signing of the Bonn Agreement, local and regional military commanders and their troops regularly abuse the human rights of those Afghans living in areas under their control. This is no surprise, since many are the same men who helped perpetuate war in Afghanistan for more than twenty years, systematically violating the human rights of millions of Afghans in the process.

In Kabul, the security and human rights situation has improved markedly, largely because of the introduction of the International Security Assistance Force (ISAF) and the heavy international presence in the capital. But beyond Kabul poor security, generalized criminality, and limited regard for basic human rights have marked the year since the signing of the Bonn Agreement. Each of these factors has in turn negatively affected reconstruction efforts and the delivery of humanitarian assistance. Travel on many roads remains unsafe from extortion by local soldiers or criminals (often one and the same). Outside Kabul, U.N. officials often have little ability to protect persons at risk of human rights abuses. Vulnerable women and minorities, displaced persons, Afghans who stand up to abusive warlords, and even Afghan government officials have virtually no one to turn to when their lives or safety are threatened.

The power of the warlords has made it impossible for the Afghan Transitional Administration to establish its authority much beyond Kabul. It has also hindered any discernible progress in making the transition from a militarized to a genuinely civilian government. In this environment, even U.N. officials monitoring human rights violations, compliance with the Bonn Agreement, and disarmament of local military forces, have had serious difficulties carrying out their duties.

Nations that promised to assist in strengthening stability and security in Afghanistan—chief among them the United States, but including the United Kingdom, Australia, Canada, Turkey, Germany, the Netherlands, and Italy—have not adequately addressed the security and human rights problems caused by the continued dominance of Afghanistan’s warlords. The United States blocked proposals by Afghan leaders, including President Hamid Karzai, and the United Nations, for an expanded ISAF to patrol the countryside and act as a deterrent to renewed fighting and human rights abuses by warlords and their subordinates. The solution offered by the U.S., to have warlords provide security outside of Kabul while the international community trains a future Afghan army, has proven to be a failure.

The protection of human rights and the creation of a secure environment for Afghans should be part of a mutually reinforcing effort to rebuild Afghanistan. Yet some have conflated security with political stability, and framed political stability and human rights as competing goals—a zero sum game. This is wrong. While there are occasional short-term tradeoffs, experience and

lessons learned elsewhere have made it clear that sustainable improvements in security and human rights are mutually reinforcing.

Confronting the warlords is a major challenge. It requires a strong international commitment and a variety of sophisticated strategies. Efforts need to be made to sever the patron-client relationships that create loyalty to local—instead of national—leaders and institutions. For example, Afghan leaders and donors need to devise training and job programs (which could be part of the national reconstruction effort) that will be more attractive to young men than life as a soldier in the army of a warlord.

Yet there is little apparent commitment within the international community to engage in these efforts. The Afghan Transitional Administration is not powerful enough to confront the warlords on its own. It needs the sustained and genuine commitment of the United States and others to take on the warlords. This will require a substantial, if necessarily phased, expansion of the International Security Assistance Force (ISAF), many more U.N. human rights monitors, and the assistance of U.S. and other external armed forces inside Afghanistan.

For example, one step would be to strip regional and local military leaders of their civilian functions and appoint separate civilian administrators, answerable to Kabul, in these areas. This would take from many warlords, who often perform both functions (as “Governors” or other honorific), some of the finance and patronage that animates the patron-client relationship. Yet, instead of adopting strategies such as these, the United States and others provide the arms, financial support and legitimacy that have helped keep these men in power.

Confronting warlords is only part of the solution. It is also crucial to move as quickly as possible to establish the institutions that over time can act as a countervailing force to warlordism and the culture of impunity that dominates Afghanistan. A functioning and independent judiciary, a strong National Human Rights Commission, trained health workers and teachers, and a professional civil service will form the backbone of the new Afghanistan promised in the Bonn Agreement. Donors must move more quickly to turn their aid pledges into reality and provide the funds necessary to begin the enormous reform process.

It is not too late to salvage the promises of the Bonn Agreement. International actors in Afghanistan, especially the United States and the incoming leaders of ISAF, Germany and the Netherlands, must act now to revive the Bonn process. The United Nations also must make greater efforts to uphold the human rights principles in the Bonn Agreement.

Analysis of the progress in implementing key provisions of the Bonn Agreement

I. Reorganization of Military Forces in Afghanistan

Bonn Agreement, Section V (1): *“Upon the official transfer of power [December 22, 2001], all mujahidin, Afghan armed forces and armed groups in the country shall come under the command and control of the Interim Authority, and be reorganized according to the requirements of the new Afghan security and armed forces.”*

Bonn Agreement, Annex I: *“[T]he participants request the assistance of the international community in helping the new Afghan authorities in the establishment and training of new Afghan security and armed forces.”*

The signatories of the Bonn Agreement recognized the crucial need to create a unified national army and a professional police force to bring a permanent end to armed conflict around the country. But in the year since the Bonn Agreement, there has been almost no progress in unifying the fractured forces of Afghanistan into a national army.

In the Bonn Agreement the representatives of armed factions pledged that their forces would come under the command of the central government after it took power on December 22, 2001. The United States, which supported and armed all of the main warlords present in Bonn and participated in the talks, was in a strong position to exert pressure on commanders to submit to Kabul's rule and to provide President Karzai with the tools to establish an independent military leadership structure.

But for most of the past year the U.S. and other key states appeared to not understand or to ignore the problem. The U.S. and its coalition partners, as well as Iran and Pakistan, failed to back immediate efforts to centralize military authority. While the official policy of these countries was to work with President Karzai to help him strengthen his administration, the U.S., Iran, and Pakistan actively supported local warlords in various regions of the country. The United States and some of its coalition partners provided many warlords with cash, weapons, uniforms, and communications equipment, both during and after the war against the Taliban (the U.S. admitted to arming local warlords as late as October of 2002; Iran and Pakistan also continue to supply and assist local commanders).

Many warlords with records of human rights abuses strengthened their grip on power in areas they had seized after the collapse of the Taliban. Some supplemented their power by establishing smuggling and drug production operations. No meaningful steps have been taken by the United States, Iran, Pakistan or other governments to blunt these developments, or even to raise concerns about these issues publicly.

Men such as Daoud Khan, a Tajik commander in the northeast, General Abdul Rashid Dostum, the military commander of northern forces and the deputy defense minister, Ismail Khan, the governor of Herat, Gul Agha Sherzai, the governor of Kandahar, and Karim Khalili, a Vice-President, continue to command local armies whose primary loyalty is to them personally and not to the central government. Most significant is Afghanistan's defense minister, General Mohammad Qasim Fahim, who continues to command an army whose primary allegiance is to him. There are several smaller warlords in the southeast and central areas who also command local forces.

Aside from the immense political difficulties in constructing a national army, so long as the Kabul administration is unable to pay the salaries of commanders and rank and file soldiers it will be difficult, if not impossible, for it to exercise command and control over the various forces around Afghanistan or force their compliance with the Bonn Agreement.

The lack of military unity has had serious human rights consequences. Afghanistan's many armies have continued to fight each other in localized conflicts that have killed scores of civilians and displaced thousands from their homes in the north, southeast, and west of the country. Hostilities have also led to summary executions, looting, and theft and have contributed to the suspension of humanitarian and reconstruction projects. At various times, ethnic minorities have been targeted. Some warlords have also used their forces to re-implement Taliban-era social restrictions on women and girls, in conflict with the orders of the administration in Kabul.

The effects of military factionalism were on full display during the summit held in Bonn to mark the anniversary of the Bonn Agreement. As the summit got under way on December 2, 2002, fighting between the forces of the Governor of Herat, Ismail Khan, and another local commander from the south led to many deaths and forced hundreds of civilians to flee the area.

The enduring system of “fiefdoms” which now exists in Afghanistan, reinforced by the policies of the U.S. and other international actors, is simply not conducive to long-term stability or to the protection of human rights. Some officials in the transitional administration, the United Nations Assistance Mission in Afghanistan (UNAMA), and ISAF now worry that tensions between warlords could escalate into open conflict and put at risk the entire Bonn process.

a. Training

The United States, United Kingdom and France have taken the lead in providing assistance in the training of soldiers, while Germany has taken responsibility for training the police. Successful training programs necessarily take a great deal of time, but these programs have proceeded slowly and have been limited to Kabul. President Karzai only announced plans for demobilization and reorganization of the Afghan military on December 2, 2002, during the one-year anniversary summit on Afghanistan in Bonn.

There have been serious weaknesses in the scope and quality of the internationally led army and police training programs in the last year. The military training programs have been too small considering the anticipated size of the army (President Karzai’s plans call for an army of approximately 70,000) and its purpose (the most important of which is to put the monopoly of the means of force into the hands of a rights-respecting national army and take it away from rights-abusing warlords).

The current commander of ISAF, Major General Akin Zorlu of Turkey, pointed out in late November that only half of the six hundred troops who completed the first training for the new national army remain in the barracks in Kabul and only 1,400 have graduated so far this year. This is a very modest number when compared with the tens of thousands in the forces commanded by the various warlords around the country.

With the police, Germany has made progress in establishing a training infrastructure in Kabul. But the program needs to be expanded and to include other areas of Afghanistan. Until a trained force is ready, an expanded ISAF or other international force, such as an armed UN Civpol force, should be deployed to improve security and human rights protections outside of Kabul. Afghans interviewed by Human Rights Watch have repeatedly requested this type of assistance.

b. Demobilization, Disarmament, and Reintegration

Though Afghanistan is overflowing with armed and dangerous soldiers, no progress has been made to demobilize, disarm, and reintegrate rank and file fighters in the past year. No credible national, regional, or local demobilization programs have been undertaken. A National Defense Commission met in September and October to discuss demobilization and related issues, but made little progress.

The continued provision of arms and other support of various warlords by the U.S., Iran, Pakistan and others, and the absence of ISAF from the areas in which regional and local armies operate, made such programs nearly impossible in the past year. This was a crucial missed opportunity.

But demobilization, disarmament and reintegration remain a high priority. President Karzai recently announced plans to begin the integration and demobilization processes. Success will depend on strong international assistance, both financial and military. Influential nations such as the U.S., U.K., Iran, Pakistan, Germany, and the Netherlands will need to help convince reluctant and recalcitrant leaders to participate. The cost, though high to donors, will be a wise investment.

It is imperative that more attention be put on this issue in the coming year. To complement the training programs, the U.S., U.K., France, and Germany should lead a well-funded and large-scale demobilization, disarmament, and reintegration program—particularly outside Kabul. These programs should include components aimed at severing entrenched client-patron relationships among troops and commanders, such as employment, training, and other forms of economic development for demobilized soldiers.

c. Vetting Human Rights Abusers

Systematic efforts, including drawing on the intelligence assets of external powers, should be made to ensure that individuals with records of human rights abuses are not recruited into the new army and police forces. It is the responsibility of the transitional administration and the countries offering training to vet new trainees to ensure that they are not inducting known human rights abusers. Unfortunately, neither the army nor police training programs have made serious efforts to vet trainees or decommission officers with records of serious human rights abuses, passing up a good opportunity to have a positive influence on Afghanistan's future security forces.

President Karzai's administration is too weak to tackle this problem on its own (it was not even mentioned in the recent decree), but with the support of the United States, United Kingdom, France, and Germany much could be done to address this problem. Working with the Ministry of Defense, Ministry of Interior, Ministry of Justice, and the Afghan Human Rights Commission, those nations offering training could establish hiring criteria, an information database, and a complaints process. Afghan and international officials should also consider plans for all trainees to sign a document declaring that they have not been responsible for human rights abuses (including war crimes) in the past and agreeing to cooperate with future inquiries if credible allegations are made against them in the future.

II. The International Security Assistance Force (ISAF)

Annex I: "Conscious that some time may be required for the new Afghan security and armed forces to be fully constituted and functioning, the participants in the UN Talks on Afghanistan request the United Nations Security Council to consider authorizing the early deployment to Afghanistan of a United Nations mandated force. This force will assist in the maintenance of security for Kabul and its surrounding areas. Such a force could, as appropriate, be progressively expanded to other urban centres and other areas."

Mindful of the difficulties of integrating the different warlords armies into a new national army and creating a new police force, the participants in the Bonn talks urged the U.N. Security Council to provide for an international security force (ISAF) in Kabul and left open the possibility that this force could be expanded across Afghanistan in the future.

The Afghan government, U.N. Secretary General Kofi Annan, UNAMA, and many others have repeatedly called for the expansion of ISAF beyond Kabul to improve security and the protection

of human rights nationwide. Afghans of all backgrounds throughout the country have voiced overwhelming support for the idea. Even many warlords have voiced support for expansion.

The primary reason ISAF has not been expanded has been the opposition of the United States, which refused to consider expansion beyond Kabul at the time of its creation. The U.S. later modified its position and said it would not oppose expansion, but it also said it would not contribute troops and remained uncommitted to providing nations interested in contributing forces with the necessary logistical, intelligence, and air evacuation assistance that would make ISAF expansion viable.

Recently announced plans to place more U.S. forces engaged in humanitarian work in enclaves in different parts of Afghanistan may provide a useful deterrent to potential human rights abusers, but risk further legitimizing the power of local warlords with whom they interact on daily basis.

Other states are also responsible for the failure of ISAF to expand. ISAF's leaders—first the United Kingdom and later Turkey—made it clear during 2002 that they would not contribute troops to an expansion, while other key nations, such as France, Canada, Australia, and the incoming commanders of ISAF, Germany and the Netherlands, have thus far refused to participate in an expansion of the force.

One year after Bonn, the United States and its European allies continue to skirt their obligation to provide security throughout Afghanistan by blaming each other for not providing troops or other assistance. The failure to expand ISAF has been and continues to be a tragic missed opportunity, putting the lives, human rights, and stability of Afghans at grave risk.

The international community must act now to improve security and protect human rights outside of Kabul. Intermediate steps should be explored, such as incremental rollouts of ISAF troops to selected areas of concern and increased and more visible patrols on roads and in cities.

III. Protecting Human Rights

Annex II Section (6): “The United Nations shall have the right to investigate human rights violations and, where necessary, recommend corrective action. It will also be responsible for the development and implementation of a programme of human rights education to promote respect for and understanding of human rights.”

In Annex II of the Bonn Agreement the United Nations was given an affirmative right under the Bonn Agreement to investigate human rights violations. However, UNAMA has not implemented a strong strategy on human rights over the past year. Partially because of the limited scope of ISAF, UNAMA has focused on maintaining short-term political stability in Afghanistan with a minimum of U.N. involvement in human rights monitoring.

UNAMA human rights officials did investigate human rights abuses in various parts of Afghanistan throughout 2002 and maintained a limited number of human rights monitoring staff in all regional areas. UNAMA staff mediated many disputes between commanders and in a number of cases prevented local armed conflicts from erupting. UNAMA human rights staff also intervened in several cases to protect vulnerable persons and encourage warlords to change their conduct.

But UNAMA's work was seriously hampered by the absence of adequate security forces beyond Kabul, which made it difficult and at times impossible for the U.N. to offer meaningful protection

to persons at risk. Afghans who wished to be politically active, open newspapers, challenge local authorities, or engage in similar activities have often been too scared to act. Moreover, UNAMA's leadership was often reluctant to publish its findings openly or to highlight human rights abuses by politically important Afghan actors. This contributed to the general sense of impunity surrounding the warlords, and further disheartened Afghans who sought to sideline those abusing power.

Overall, UNAMA's "light footprint" approach—limiting the number of international staff and increase Afghan participation in reconstruction efforts—was not an effective approach in addressing the human rights situation in Afghanistan. U.N. offices in the mission had an insufficient number of human rights staff, and monitoring and investigation work has only been a modest priority. UNAMA continues to reject suggestions to substantially increase the number and geographical breadth of U.N. human rights monitors despite its unique mandate to carry out this work and the expressed desire of many Afghans for a greater U.N. presence. UNAMA's human rights staff needs to be strengthened so that it can effectively report on abuses and intervene with authorities to remedy and prevent them.

In addition, the United States and other external powers must begin to take measure to weaken the hold on power of warlords and other known human rights abusers. For example, an expanded ISAF or U.S.-led coalition forces could work with Afghan officials to take control of customs posts (for example, through an internationally respected company) so that customs revenues flow directly into national coffers instead of fuelling the illegal activities of warlords. The international community could also put more resources into monitoring humanitarian and reconstruction assistance to ensure that it is not strengthening warlords.

The failure of the international community and UNAMA to give human rights greater priority has contributed to the general sense of impunity in the year since the Bonn Agreement. For example, in Herat Ismail Khan has consolidated his power, creating a mini-state in the west of Afghanistan in which there is no dissent and his opponents have been threatened, tortured, and sometimes killed. Warlords like Ismail Khan and others continue to literally get away with murder.

IV. The Afghan Human Rights Commission

Section III (C) (6): *“The Interim Administration shall, with the assistance of the United Nations, establish an independent Human Rights Commission, whose responsibilities will include human rights monitoring, investigation of violations of human rights, and development of domestic human rights institutions.”*

The Bonn Agreement was notable from a human rights perspective as it specifically established a national Human Rights Commission to monitor and investigate human rights conditions in Afghanistan. Many Afghans, NGO officials, and U.N. staff expected donors to take full advantage of this provision and significantly strengthen human rights protections by directing resources to building up the capacity of the Afghan commission.

It took almost six months for the Commission to begin operations. One year after the Bonn Agreement, the Afghan Human Rights Commission still does not have adequate resources or receive sufficient political, logistical, or moral support from the international community to effectively investigate or monitor human rights conditions. It lacks training, vehicles, and access to areas outside Kabul. It also suffers from serious staffing problems.

Fear of political violence against the Commission directly affects its work (at least two members of the commission have been threatened with violence, including the leader of the commission, Sima Simar). Other Commission members are not adequately trained to oversee or carry out human rights investigations. The Commission has not carried out general monitoring of human rights conditions, and has not conducted any major investigations outside of Kabul, where its capacity is especially weak.

The Commission and its staff need financial and moral support and physical protection. While there are plans to provide substantially more resources to the Commission, the international community needs to do more to give confidence to the commission. In late 2002, UNAMA increased its coordination with the Commission on monitoring and investigations. It is crucial for UNAMA, ISAF, interested NGOs, and diplomatic missions in Kabul to liaise as much as possible with the Commission.

Donors should fund human rights experts who have worked in similar conflict and post-conflict situations to come to Afghanistan to train and assist Commission staff. ISAF's mandate should be amended to specifically include the responsibility to liaise with the Commission.

But the reality is that because of its limitations the Commission is not going to be a driving force in the protection and promotion of human rights in the foreseeable future. In the meantime, UNAMA, ISAF and others will have to step in and play a significant role in monitoring and investigating abuses.

V. The Loya Jirga

Section I (4): "An Emergency Loya Jirga shall be convened within six months of the establishment of the Interim Authority.... The Emergency Loya Jirga shall decide on a Transitional Authority, including a broad-based transitional administration, to lead Afghanistan until such time as a fully representative government can be elected through free and fair elections to be held no later than two years from the date of the convening of the Emergency Loya Jirga."

The Bonn Agreement established a special commission to convene an Emergency Loya Jirga—or grand council—in Kabul in June 2002. It was charged with choosing a head of state for a transitional administration and appointing its key ministers. All involved parties agreed that the overall aim of the loya jirga (first articulated by the Security Council resolution 1383 on December 6, 2002), was the creation of a "broad-based, multi-ethnic and fully representative" Afghan government.

That the loya jirga was even possible, and that it did in fact occur, was an important political breakthrough for Afghanistan. After twenty-three years of war, many Afghans were understandably overjoyed that leaders were gathering, and that political decisions were being made through an "exchange of words, rather than an exchange of bullets," as one delegate put it. To many observers, the possibility of the meeting ending in deadlock, chaos, or violence was very real, and there was significant relief that it did not.

Still, there were serious shortcomings with the loya jirga. Despite the promise of a partially democratic or at least loosely representative political event, the loya jirga selection process and meeting was marred by manipulations and abuses by Afghan warlords and commanders, who

interfered with the decision-making of other representatives. Many of the delegates selected to the loya jirga were selected and controlled by local commanders.

Throughout the country, warlords and regional military commanders were selected for the loya jirga. General Dostum, the deputy defense minister in the interim authority and regional leader of the north of Afghanistan, managed to have himself elected to the loya jirga despite the fact he was serving as a military commander and was accused of being complicit in human rights violations, both of which made him ineligible for the loya jirga under the agreed upon procedures. Other governors also attended in violation of the loya jirga procedures, including the governor of Kandahar, Gul Agha Sherzai, the governor of Nangahar, Haji Abdul Qadir, and Ismail Khan. In spite of the rules, both the United States and UNAMA pressured the Afghan loya jirga commission to allow regional governors and military commanders to attend in the interest of political expediency.

At the first and second stages of the selection process, Human Rights Watch documented several cases in which local warlords directly or indirectly intimidated delegates through threats and the heavy presence of armed troops. Delegates complained of a widespread and systematic pattern of intimidation and threats by warlords and regional leaders, covert and overt surveillance by intelligence agents allied with the Tajik-dominated Northern Alliance, and a general failure by the loya jirga commission, relevant U.N. officials, and other international actors to enforce provisions in the Bonn Agreement and the loya jirga procedures that were meant to sideline Afghan military leaders and Afghans with records of serious human rights abuses. Though there were some brave exceptions, many delegates who were legitimate representatives of Afghan society were afraid to speak or vote freely. Some who did speak critically—about the prominence of the warlords and Islamic fundamentalists at the meeting—received death threats and other intimidating messages. UNAMA worked diligently during the loya jirga selection process and the loya jirga itself to minimize the effects of this climate and in many cases were successful in blunting the effects of the intimidation and threats. At the close of the loya jirga, President Karzai invited delegates who had been threatened to report abuses to his office directly, but at the time of this writing, no apparent action had been taken to hold abusers accountable.

The secret ballot, which could have decreased the impact of intimidation by warlords and intelligence agents, was not used after the second day of the proceedings. The voting for Hamid Karzai's presidency proceeded by secret ballot and was largely uncontroversial. Later votes taken on the arrangement of the transitional government and its key personnel, however, were highly irregular. There was no debate or proper vote on the composition of the next administration (instead, most of the composition of the cabinet was negotiated behind closed doors for months beforehand, and then approved by a vague "voice" vote at the loya jirga itself) and the loya jirga never approved any plan or proposal for the design of the government. It is very possible that a secret ballot for the composition of the cabinet would have produced a different result.

VI. Future Issues

As noted above, the Bonn Agreement lays out several procedures to reestablish the rule of law and democratic institutions, and to strengthen human rights. It is important for the international community and Afghan government to focus on these provisions in the coming months:

- ***The Constitutional Loya Jirga.*** Under Section I(6) of the Bonn Agreement, a special commission is to be appointed by the transitional administration to convene a constitutional loya jirga, which will adopt a new constitution for Afghanistan. It is vital that international actors and the United Nations put special emphasis on promoting a

human rights agenda during this loya jirga. Efforts should be made to ensure that international human rights principles are included in the constitution and that general amnesties for gross human rights abuses are prohibited. Strong attention must be paid not only to the substance of the constitution, but to the process of adopting it: UNAMA, in cooperation with ISAF and other nations involved in security in Afghanistan, must work hard to ensure the independence and safety of the loya jirga participants. Great attention must be paid to ensuring the security of at-risk delegates so that the problems at the 2002 loya jirga can be avoided.

- ***Elections.*** The elections planned for the summer of 2004 are of critical importance to Afghanistan's future. The risk that the 2004 elections will not be carried out in a democratic manner is very real. Unless more is done to strengthen institutions to protect independent candidates and political opponents of the warlords, the warlords will likely hijack the process, giving themselves the enhanced credibility of being "democratically elected" and possible parliamentary immunity from prosecution for past or current crimes. If the warlords are further legitimized in the process, their hold on power will become even more entrenched. Expansion of ISAF and U.N. human rights protection staff is especially important for ensuring that registration and the pre-election period is as safe as possible. Training and recruitment of election staff should also move forward as quickly as possible. The Afghan administration and U.N. mission should create a strong national and international monitoring team for the elections, to be coupled with ISAF or other international security forces, tasked with monitoring *and* protecting all political parties, at-risk candidates, and, most importantly, voters. Attention should also be put on strengthening free press and media.
- ***Legal and Judicial Reform.*** Because of the paucity of trained lawyers and jurists, Afghanistan needs substantial outside help in the drafting of relevant laws. It will also need assistance to meet the Bonn Agreement's instruction to the transitional administration to convene a judicial commission to oversee the rebuilding of the Afghan judicial system, in cooperation with international actors. These are critical areas that require focused attention and donor support. Only with a functional legal and judicial system will the human rights of Afghans be protected and the cycle of impunity broken.
- ***Accountability.*** Though complicated and dangerous, efforts must begin soon to address past abuses. Many Afghans want the international community to take bolder steps on the issue of investigations of past crimes. A useful first step would be for UNAMA, with the protection of ISAF, to begin to collect evidence on mass grave areas, including those created by the Soviet-backed government, the Taliban, and mujahidin forces. Obviously, such investigations are extremely sensitive, and without adequate protection Afghan witnesses and others who might cooperate or work on such investigations could be put in danger. This is another reason to enlarge the current ISAF force and expand its mandate beyond Kabul. These investigations could be extremely productive in establishing a sense of accountability in Afghanistan and to counteract years of impunity.

Recommendations

1. ISAF should be expanded as soon as possible. Germany and the Netherlands should take the lead in lobbying other nations to contribute troops to an expanded ISAF when they take command of ISAF in early 2003. The U.S., Iran, Pakistan, Central Asian States and other nations involved in Afghanistan should agree to share intelligence with ISAF about the security situation in areas of Afghanistan about which they have information. The U.S. and coalition forces should offer necessary assistance to enable ISAF expansion, including supplying intelligence, logistical support, and assistance with emergency evacuation.
2. The U.S. and other nations involved in security in Afghanistan should stop arming regional and local military commanders and allowing such forces to seize discovered arms caches. All outside states should cease the provision of arms, ammunition, equipment, funds and other material support to regional and local military commanders. All such assistance should go through the Ministry of Defense in Kabul in a coordinated manner.
3. The international community should support efforts by President Karzai, outlined in his December 1, 2002 decree, to establish a professional and ethnically balanced Afghan National Army and demobilize unnecessary forces.
4. In consultation with the Afghan Transitional Administration, donors should finance a national demobilization, disarmament and reintegration program to reduce the numbers of men under arms in Afghanistan. Such a program should fit into national reconstruction efforts, offering employment, training, land, suitable tools, or other reintegration materials to demobilized soldiers.
5. The Afghan Transitional Administration should promulgate a decree regarding the separation of civilian and military security roles at the national, regional and local level. Regional and local military leaders should not also hold the position of Governor or other civilian titles, and vice-versa.
6. UNAMA should substantially increase its human rights monitoring presence around the country to act as both a deterrent and to help break Afghanistan's cycle of impunity. UNAMA should create a trust fund for human rights to finance this initiative.
7. Donors should offer appropriate training, seconding of staff, all necessary financial support, and strong political support to the National Human Rights Commission. The National Human Rights Commission should begin to monitor the human rights situation and issue reports and findings in areas in which it can safely operate. Individuals who have the resources and strength to push forward a strong human rights agenda should be appointed to the Afghan Human Rights Commission.
8. Accountability for grave human rights abuses must remain a key goal for the Afghan Transitional Administration and the international community. Efforts have to be made to hold perpetrators of grave abuses accountable for their crimes. UNAMA and the National Human Rights Commission, along with outside experts on forensics, should begin work on securing sites of mass graves and taking testimony from witnesses, taking into account necessary security measures for investigators and witnesses.
9. President Karzai should ratify the Rome Statute of the International Criminal Court as soon as possible.
10. Donors should immediately release the balance of funds pledged but not disbursed for Afghanistan's reconstruction. Poverty is one of the most serious human rights problems facing Afghans, who need both emergency assistance to survive the coming winter and reconstruction assistance to begin to create a sustainable economy.