Truth Seeking and the Role of Forensic Science

October 12-14, 2010
Kabul, Afghanistan

Physicians for Human Rights

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The first important pillar in our culture is justice. In our religion, Islam, all of the scholars are united that justice is the second pillar [principle] after unity. It is my feeling that during the history of Afghanistan our missing object has been justice.”

Aziz Rafaee, Director of the Afghanistan Civil Society Forum
For more than three decades, Afghanistan has been mired in violence. Generally, the time of violence and war is identified as having started with the Saur Revolution in 1978, during which the former President Daud Khan was executed and replaced with a communist style government that was soon after backed by a Soviet occupation lasting until 1989. After the Soviet withdrawal, the communist regime continued until they were ousted in 1992 by the insurgency popularly described as the "Mujahedeen." In late 1996, the Taliban took control of Kabul and established the Islamic Emirate of Afghanistan, which ended in 2001 with the US invasion of Afghanistan.

The violence, though, has yet to end. Current hostilities continue between Afghan and foreign coalition forces battling Taliban and other anti-governmental militants and their sympathizers. The impact of violence has, over the years, been widespread in Afghanistan, rendering almost every Afghan a victim. Countless have been exposed to torture, disappearances, executions, ethnic persecution, displacement, and other forms of widespread suffering. There are many mass graves bearing testimony to Afghanistan's past history of abuses by the differing warring factions. And yet, meaningful attempts to deal with the injustices of the past have been few and far between partially due to the ongoing hostilities, the precarious security situation, the weakened status of many governmental institutions, and the fact that many of the perpetrators of violence and mass atrocities remain in positions of power. The international community, perhaps due to its own involvement in the recent chapters of violence, has also been slow to press the Government of Afghanistan (GoA) to initiate a process of transitional justice, a process typically defined as a national reckoning with a legacy of human rights violations. This process involves disclosure and documentation of violations, a search for the truth about what happened, accountability for perpetrators, and the beginning of a national dialogue toward reparation and reconciliation.

Despite these and other challenges, some Afghan civil society organizations (CSOs), together with international non-government organizations, have sought to jump-start a national discussion on transitional justice. In that spirit, the International Forensic Program at Physicians for Human Rights (PHR), which has been engaged in Afghanistan since 1997 to document human rights violations, has coordinated with Afghan CSOs to undertake an ambitious program called “Securing Afghanistan’s Past.” This program, which will span several years, began with training Afghan National Police, Human Rights Investigators from different NGO’s, and medical doctors in the forensic documentation of mass graves. The program also includes two annual conferences on “Truth Seeking and the Role of Forensic Science,” the first of which took place in Kabul, Afghanistan in October 2010.

The program and conferences have been designed to initiate a dialogue between the victims of conflict and authorities in Afghanistan, to share information and ideas, to develop a policy and legal framework to protect and preserve mass grave sites and other scientific evidence of past abuses, and to begin more generally a process of truth seeking. As numerous mass graves continue to be discovered around the country, PHR is working to highlight the urgency of documenting, protecting, and preserving these sites. As all participants in the recent conference agreed, truth seeking must be addressed and legally defined as an essential part of any peace or reconciliation process. The October conference took place over three days (October 12-14) at Kabul’s Intercon-
The conference opened with a keynote address by Stefan Schmitt, Director of the International Forensic Program at PHR. Schmitt began his comments by referencing the famous words of Aleksandr Solzhenitsyn: “Violence can only be concealed by a lie, and the lie can only be maintained by violence. Any man who has once proclaimed violence as his method is inevitably forced to take the lie as his principle.” In the case of Afghanistan, Schmitt suggested, this assertion could not be more applicable, as each new regime in recent decades has inflicted a new round of persecution as it has simultaneously attempted to distort the historical record by denying past wrongs. Yet, as he stated, there is “one universal truth in this country, [which is] that everyone has been a victim of violence over the past 32 years.” With that, Schmitt explained that the purpose of the conference was to break the cycle of violence by starting a discussion about how to begin acknowledging and documenting the truth—the hard evidence that mass atrocities have left behind and the painful historical record with which the Afghan landscape itself has been scarred. Building a transparent, evidence-based, historical record through forensic analysis, Schmitt argued, would provide the country with an essential tool in reclaiming ownership of its own past and, by extension, its future.

A. BACKGROUND ON TRANSITIONAL JUSTICE EFFORTS IN AFGHANISTAN

Since the Bonn Agreement in 2001,1 which established the transitional government in Afghanistan following the US-led intervention, there have been only limited genuine efforts to begin a national dialogue on justice, accountability, and reconciliation in Afghanistan. National leaders have not vigorously pursued initiatives to end the culture of impunity because many of the perpetrators remain in positions of power at the local, regional, and national levels, or are potential negotiating partners for future reconciliation. And, due to the last decade of extensive foreign military engagement in the country, some states within the international community have also demonstrated a reluctance to call for a process that might, in effect, highlight their own complicity, to varying degrees, in human rights violations.2

1 Agreement On Provisional Arrangements In Afghanistan Pending The Re-Establishment Of Permanent Government Insti-

2 See e.g., Emily Winterbotham, The State of Transitional Justice in Afghanistan: Actors, Approaches and Challenges [Afghanistan Research and Evaluation Unit, 2010] at 23 (discussing the alleged resistance of United States and Afghan authorities to investigate the mass grave at Dash-e Laih).
Despite these challenges, some national and grassroots initiatives in Afghanistan have sought to advance a discussion on transitional justice. In 2002, the GoA established the AIHRC, with a mandate to undertake national consultations, propose a national strategy for transitional justice, and address the abuses of the past. In 2005, after conducting over 6,000 consultations with individuals around the country, the AIHRC produced a comprehensive study of people’s attitudes toward justice and accountability in light of the widespread human rights violations over the years. As the report’s findings demonstrated, there was a widespread demand for justice throughout the country.

The report, titled “A Call for Justice,” has become a seminal component in laying the foundation for any future effort toward transitional justice. The national government at the time incorporated many of the report’s recommendations into its Action Plan for Peace, Reconciliation, and Justice in Afghanistan that was adopted later that year, bringing transitional justice into the spotlight.

Among its many ambitious recommendations, the Action Plan called for the implementation of five key actions, including: (1) acknowledgement of the suffering of the Afghan people; (2) ensuring credible and accountable state institutions; (3) truth seeking and documentation; (4) promotion of reconciliation and national unity; and (5) the establishment of effective and reasonable accountability mechanisms.

The Action Plan, however, set out a limited timeline to accomplish these goals and, in March 2009, it expired. None of the goals had actually been achieved in a meaningful way by the deadline, and, until recently, President Hamid Karzai and the GoA had proved unreceptive to the AIHRC’s and civil society’s requests to extend the timeline and, correspondingly, the government’s commitment.

Not only has the GoA’s implementation of the Action Plan been limited, but soon after the Action Plan was launched the National Assembly initiated efforts to adopt a blanket amnesty bill. The bill, with some revisions, quietly passed shortly thereafter and wasn’t published in the Official Gazette until nearly three years later, in December 2008, as the Amnesty, National Reconciliation and Stability Law (Amnesty Law). The stated intention of this law is to promote national reconciliation among historically hostile factions, but it actually provides amnesty for all involved in the Afghan conflict, regardless of whether they merely took up arms or were responsible for the gravest human rights violations such as war crimes or crimes against humanity. Such blanket amnesties for serious war crimes are generally prohibited under international law. The Amnesty Law’s adoption, therefore, prompted an outcry from Afghan CSOs and international NGOs as well as from the then-United Nations Special Representative to the Secretary General in Afghanistan.

The passing of the Amnesty Law also demonstrated the serious political clout that many alleged human rights violators enjoy within government and the lack of will to pursue meaningful accountability. Consequently, it has frustrated the hopes of those within Afghanistan who seek to begin the transitional justice process.

Despite these setbacks, the grassroots push for transitional justice has continued to grow. In February 2009, representatives of more than 20 Afghan civil society organizations, with the support of AIHRC as well as international organizations such as UNAMA, the International Center for Transitional Justice (ICTJ), and the Open Society Institute of Afghanistan (OSI), established the Afghan Transitional Justice Coordination Group (TJCG). The TJCG is intended to help strengthen grassroots initiatives for transitional justice by sharing information and coordinating activities.

### B. AFGHAN VOICES CALL FOR TRUTH SEEKING AND ACCOUNTABILITY

Against this backdrop, the PHR conference aimed to reinvigorate the national discussion on transitional justice with presentations by several distinguished experts in Afghanistan and the international community. In a moving presentation, Dr. Sima Samar, Chairperson of the AIHRC and an internationally renowned women’s rights and human rights activist, remarked that, “This is an important issue in our country. We need to have a dialogue and understanding. If we don’t solve the problems we know to exist and we put them aside, our wounds will never heal.” She further declared that failure to do so would be to Afghanistan’s peril, as ignoring people’s pain and suffering will only fuel desires for vengeance. As she explained, “The people of Afghanistan are victims from all decades.” On a personal note, she commented, “For me as a victim… I cannot forget… They should at least confess and that is what I want as a victim so my pain and suffering is acknowledged.”

Indeed, as Dr. Samar explained, “Three decades of war have made the Afghan people victims in one way or another and truth seeking has not yet taken place.” The number of victims varies but the extent of atrocity is the same. Therefore, we need to eliminate vengeance (and hatred) and acknowledge the pain and suffering in order to provide a real and long-lasting reconciliation.” She further affirmed that perpetrators should be held accountable and that it is the government’s responsibility to bring them to justice and the citizens’ responsibility to push the government to do so.

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3 There have also been some international efforts including a report published by Human Rights Watch calling for the implementation of accountability mechanisms. See e.g., Human Rights Watch, Blood-Stained Hands: Past Atrocities in Kabul and Afghanistan’s Legacy of Impunity (2005).

4 In 2004, AIHRC’s mandate of “monitoring the observation of human rights in Afghanistan, to promote their advancement (both local and protection) was entrenched in Article 38 of the Constitution of the Islamic Republic of Afghanistan.” For the complete text of this provision, see Const. of Afghanistan, art. 38, available at http://www.amnesty.org/eng/document/19_dec_05.htm.

5 The complete text of this provision, see Const. of Afghanistan, art. 58, available at http://www.amnesty.org/eng/document/19_dec_05.htm.


8 Islamic Republic of Afghanistan, Ministry of Justice, Official Gazette, Issue No. 945 (2008). While the Amnesty Law was gazetted in December 2008, the official announcement of its publication was kept quiet and did not surface until over a year later, in December 2009. In addition to the substance of the law, many Afghan CSOs and international human rights groups also criticized the secretive process by which the law came about.

Dr. Samar counseled participants that there is a range of acts that the people of Afghanistan can undertake themselves—without waiting for the government—to heal wounds and bring dignity to victims. She advocated for better treatment of victims of rape and sexual violence, stating that victims should be protected and treated as victims and not as perpetrators. Citizens, she said, must be more respectful of preserving and protecting mass graves and providing dignity to human remains. Dr. Samar also affirmed that in order to move forward, Afghanistan should seek to address all crimes and hold all perpetrators accountable. She mentioned the important role AIHRC has played in assisting in the investigation and successful prosecution of Afghan perpetrators abroad, including, for example, the cases brought by prosecutors in the Netherlands in 2005 against two Afghan nationals for their respective roles in the torture of prisoners in Afghanistan in the 1980s and 1990s. Ultimately, Dr. Samar underlined the importance of ushering in an end to impunity by means of due process and other fair and legal procedures.

To compliment her powerful words, Dr. Samar’s colleague, Mohammad Qader Rahimi, Program Manager of AIHRC in Herat, spoke about the current state of the truth seeking process in Afghanistan—and its limitations. He provided an overview of AIHRC’s Transitional Justice Unit and the need for qualified experts to conduct proper investigations. He further affirmed the need for a climate of security so that experts can more efficiently carry out their work. Rahimi offered several examples of individuals tampering with or destroying evidence—by accident or by design. He also lamented the degree to which many witnesses are reluctant to register their testimonies for fear of reprisals.

For his part, Aziz Rafiee, Director of Afghan Civil Society Forum, called on his fellow Afghans to take affirmative steps to hold perpetrators accountable for their crimes. Rafiee underscored the importance of the discussion of justice for victims in Afghanistan. According to Rafiee, in Afghan culture and Islamic religion, justice is the most important pillar. Adding his voice to the chorus of exhortation that “in Afghanistan, all people are victims,” Rafiee reassured participants that “it is the promise and will of God that justice never dies. Sometimes it is marginalized or hidden, but it never dies.”

Yunus Akhtar, Director of Ertebat, an organization that supports emergency aid and construction projects in Afghanistan, spoke of the many chapters of violence in Afghanistan’s recent history and the resulting complexity of the conflict. For him, “truth seeking must be undertaken using any resources that Afghanistan has and the truth must be established and criminals must be introduced to the next generation, so that the people of Afghanistan do not face the same crisis in the future.” For those reasons, Akhtar affirmed the necessity for the Afghan people to have a “strong determination” and a “strong hope” to ensure justice in Afghanistan. Akhtar further emphasized that there is no existing national legal framework to address war crimes, and he affirmed the need to institutionalize one immediately. And, with respect to the Action Plan, according to Akhtar, “the challenge is that the government is honestly not committed to this issue.” Consequently, he called for stronger coordination among all stakeholders to more convincingly press the authorities to hold perpetrators accountable.

“This conference is based on the principle that the endless cycle of violence can only be broken... by beginning to acknowledge the truth. It is a conference about hope.”

Stefan Schmitt, Director of the International Forensic Program (PHR)

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10 Heshamuddin Hesam and Habibulla Jalalzoy were senior officials of the Khad secret police during Communist rule of Afghanistan in the 1980s and both were convicted of torture and war crimes by a district court in The Hague. See e.g., District Court of The Hague (Rechtsbank's Gravenhage): Cases against Heshamuddin Hesam and Habibulla Jalalzoy (October 14, 2005), 09/751004–04, 09/751005–04, 09/75006–05.
C. INTERNATIONAL AND COMPARATIVE APPROACHES TO TRANSITIONAL JUSTICE

In addition to the eloquent speeches by those experts living among the atrocities, the PHR conference also benefited from the contributions of international experts speaking more generally about comparative approaches to transitional justice. Presenters, such as Howard Varney of the ICTJ, Dr. Morena Mori of UNAMA’s Human Rights Unit, and Ajmal Pashtoonyar of the Canadian Department of Foreign Affairs, spoke about how various approaches to transitional justice may be applied to the Afghan context.

Drawing on his experience with South Africa’s landmark Truth and Reconciliation Commission, as well as his work in Sierra Leone and East Timor, Howard Varney noted that the right to truth is “an emerging principle in international law.” But a truth and reconciliation process is much more than a mere commission of inquiry, he noted, because it must do more than fact-finding. It must produce an impartial, accurate, historical, and factual account of the period under investigation. It must redress the needs of the victims and recommend necessary measures to prevent these violations from taking place again. It must help restore shattered lives and rebuild broken institutions. For these reasons, he stated, when a country decides to take this on a national truth commission affects the future of all the people in society. Consequently, all stakeholders must be consulted, particularly victims, in designing such a truth commission.

Varney noted that an inquiry that confronts the past with honesty, integrity, and vigor would be viewed as credible regardless of how painful the truth is. He cautioned that a corresponding legal framework must guarantee independence for the inquiry, and all organs of the state must be required to cooperate with it. A truth commission cannot be subject to manipulation. Ultimately, he said, the people will know if the findings of the truth commission are not accurate. Varney also explained the importance of following and upholding rules of procedural fairness. Only then will a truth commission appear to be legitimate and credible, and only then will its findings and recommendations have any hope of being received in a meaningful way by the society.

Varney cautioned against the use of amnesties. “There is a perception out there that when you have a truth commission, you must provide amnesty. But think twice about this. Most of the truth we uncovered in South Africa was not from the amnesty but from backbreaking research and interviews. The fact is,” Varney explained, “perpetrators don’t come forward unless they have to. The perpetrators who came forward in South Africa were the ones who knew we had compiled huge amounts of material on them already. We already knew their truth.”

Regarding the timing for these procedures, Varney explained that, while most processes of transitional justice are typically established at the end of hostilities, the ongoing, near-constant turmoil in Afghanistan makes further waiting impossible. Efforts should be undertaken now, he urged, to document abuses and to map a framework for moving forward in collaboration with as many sectors of civil society and national and international partners as possible. As an example, he pointed to several countries in Latin America that endured repressive rule by military juntas in the 1980s yet nevertheless courageously embarked on less ambitious, single-issue inquiries. As a result, truth seeking there took place on many different levels, and early steps laid important groundwork for the comprehensive transitional justice processes that followed after the period of repression ended.

In Varney’s view, Afghanistan is trending toward a process of “reconciliation without accountability.” As he explained, “the state appears to be eager to promote national reconciliation and healing but perhaps less eager to promote the investigation of the truth and efforts for accountability. When we see reconciliation commissions without an investigative arm who attempt to engage in truth seeking and fact-finding, while at the same time being tasked to make findings and recommendations, then we must ask what the real motivation is behind these initiatives.” Varney held out hope that human rights advocates and civil society organizations will push for a more comprehensive transitional justice process, creating “truth from below.” In that spirit, Varney affirmed PHR’s forensic science-based approach and suggested it could provide an enormous service of advancing the “conflict mapping” process, which is currently being undertaken by the AIHRC, to establish a record of what happened. In addition, he stated that civil society, in collaboration with international partners and, where possible, the GoA, should also begin pulling together the necessary data so that when the time comes to implement a transitional justice mechanism, such as a truth commission, there is already a strong foundation on which to build.11

In another presentation, Ajmal Pashtoonyar, a Justice Sector Officer at the Canadian Department of Foreign Affairs and International Trade, explained that the right of individuals to know the truth about the fate of disappeared persons or information about past abuses has been affirmed in treaties, international law, regional courts, and international and domestic tribunals. Given Afghanistan’s three decades of hostilities, with multiple actors, perpetrators and stakeholders, Pashtoonyar emphasized that it is important to have a consultative process. “We must ask: What do Afghans want?” For Pashtoonyar, “clarity is paramount in this process.”

Dr. Morena Mori, of UNAMA, offered her impressions of the current state of transitional justice in Afghanistan, endorsing the Action Plan and referring to it as the “road map.” She affirmed that states, nevertheless, have a responsibility to investigate crimes, and she noted that Afghanistan has not yet included the gravest international crimes enumerated in the Rome Statute of the International Criminal Court into its national legal framework. Dr. Mori concluded on a hopeful note, however, suggesting that Afghanistan should seize the opportunity to ensure that a truth and reconciliation commission be part of a final peace agreement. While the international community would surely support this process, the Afghan people must determine the nature and content of the process “in accordance with your tradition and custom.”

Diplomats also offered their support to the transitional justice process in Afghanistan. Remarkable on the importance of pursuing transitional justice mechanisms, while acknowledging the corresponding challenges, Hans Klemm the Ambassador for Rule of Law and Law Enforcement at the United States Embassy, commented that the United States “believes that developing forensic expertise in war crimes and human rights violations in Afghanistan is crucial to securing a more peaceful future.” The Deputy Head of Mission to the Embassy of Canada, Jess Dutton, also endorsed this process in Afghanistan: “The conference is very timely as Afghanistan begins to embark on the process of reconciliation and reintegration and truth seeking will be an important component to this process.... It’s the beginning of a dialogue and we look forward to supporting you as you move forward.” Georgette Gagnon, Head of UNAMA’s Human Rights Unit also noted that the conference demonstrated among Afghans “a willingness and effort to address past human rights violations even in the current climate.” She further stated that UNAMA is “committed to the fight against impunity. We are entering a critical and challenging phase with the reintegration and reconciliation process. We must remain vigilant to make sure this agenda is not lost as we move forward.”

Forensic Science — Documenting the Truth and Building Local Capacity and Sustainability

Stefan Schmitt of PHR explained in his keynote address, “forensics is the use of science in a legal context,” meaning that the methods of forensic science are transparent, and its results are credible and verifiable. The International Forensic Program at PHR uses science to document violations against human life and dignity. Its members are comprised of internationally renowned scientists (i.e., forensic archeologists, forensic anthropologists, and pathologists, among others) who provide their expertise in court cases, for training purposes, and to document evidence of crimes around the world. More generally, forensic science techniques—viewed as one part of a larger process of truth seeking and accountability—are used to reconstruct past human rights violations, to identify victims’ remains, to determine how they died or how they were killed, and, in some cases, to identify perpetrators. Forensic experts employ chain of custody practices consistent with the rules of criminal procedure.
The forensics portion of the PHR conference consisted of presentations by distinguished experts in criminal law such as Justice Mohammad Omar Babrakzai of the Afghan Supreme Court. There were also several high level Afghan and international participants, including General Mirza Mohammad Yarmand, Director of the CID at the Ministry of Interior, Dr. Amanda Sozer, a geneticist and consultant to PHR, Gillian Fowler, a PHR-consulted forensic archeologist, Dr. Khalid Bastor Hasan Zurmati, Director of the Medical Legal Department in Kabul, and Kawa Sahab of AIHRC, among others. These experts addressed the current state of forensics in Afghanistan as well as what measures need to be taken to improve it in order to advance the prospects of truth seeking.

Through the various presentations, three major themes emerged. First, there is an urgent need to secure and preserve mass graves both for protecting the integrity of the evidence held within and for providing dignity to the human remains found there. Second, despite its outdated facilities and methods, the current state of forensic science in Afghanistan is developing, and local capacity is improving from where it was even a few years ago. Moreover, there is a local willingness and need to establish facilities to run DNA analysis; however, it would require a serious commitment of training, funds, and vision to build local capacity and to ensure continued sustainability. And third, increased educational opportunities such as university courses in forensic archeology and anthropology are necessary to help train a new generation of local forensic scientists. In all cases, the forensic experts unanimously urged conference participants to have patience as the scientific process to identify remains takes much time and is often further encumbered by a lengthy and complex legal process.

A. DOCUMENTING AND PRESERVING MASS GRAVES

Properly securing a mass grave site is essential to establishing the facts and avoiding the loss of evidence. Providing an example, Kawa Sahab, a representative of AIHRC in Mazar, spoke about the mass grave site in Badakhshan. This site is believed to have contained the bodies of hundreds of victims of the Communist regime, but as Sahab recalled, the local community, while well-meaning, improperly excavated the grave thereby rendering any forensic analysis impossible. Stefan Schmitt underscored the importance of this security lapse by explaining, “We don’t know how many people were there or who they were. We lost an opportunity to gather all the information we could have.” Schmitt also noted that the mass grave at Dasht-e Chimtala was ineptly disturbed by untrained police officers, destroying crucial forensic evidence in the process.

B. BUILDING FORENSIC CAPACITY IN AFGHANISTAN

The GoA and the international community must join forces to increase the local capacity to document, collect, and preserve evidence of past abuses. However, developing local capacity also presents challenges. On the state of local forensic capacity, Schmitt recalled visiting the pathology laboratory at Kabul University in 2006 and being dismayed to discover that the methods and technology used there were “60 to 70 years old.” Since then, Schmitt has seen some ambitious strides locally, thanks in large part to the individual efforts of Dr. Zurmati and Justice Babrakzai, among others, and the creation of the National Research Center for Legal Medicine.

As Yahya Khan, head of the Criminal Investigations Department in the Afghan National Police Academy (ANPA), pointed out from the audience, another related challenge is the urgent need to protect mass graves from deliberate, malevolent tampering. Many individuals suspected of war crimes and crimes against humanity remain in positions of power within the government, and thus have the ability to disturb the graves irreparably to obfuscate their own complicity in carrying out these crimes. This issue is best illustrated by the mass grave that was first investigated by PHR in 2002 at Dasht-e Leloi. This site is believed to contain the remains of, among others, thousands of Taliban prisoners and al-Qaeda militants who allegedly surrendered to the Northern Alliance and United States Special Forces in 2001. Despite PHR’s initial efforts to exhume some of these remains with UNAMA support, a full investigation was never conducted and neither Afghan nor US authorities took further action. In 2008, however, PHR experts upon request of UNAMA returned to the site and discovered indications that the grave had been tampered with and that evidence had likely been destroyed.12

Dr. Sozer, a PHR consultant, geneticist and DNA specialist, speaking about the importance of building local capacity to analyze DNA and use it as a profiling tool for identifying human remains.

But, as Schmitt argued, updated technology and socio-religious attitudes are not enough. He highlighted the importance of creating a politically independent forensics infrastructure so that findings can be regarded as legitimate, both within and beyond Afghanistan. To that end, Schmitt cautioned that legal guarantees must be put in place to allow its director or medical examiner to function independently. Correspondingly, Schmitt explained that there is a tendency in Afghanistan to prohibit laboratories to control their own budget, which is problematic. PHR will continue to evaluate this issue and will return to the topic of independence again at a second conference planned for next year.

In her comments, Dr. Amanda Sozer, a geneticist and DNA specialist, addressed the subject of DNA profiling as an essential scientific tool for identifying human remains when other methods are not available. DNA profiling can be extremely costly and time consuming, but its results are nevertheless crucial for providing positive identifications for families seeking dignity for their loved ones as well as emotional closure. Not insignificantly, victim identification also provides families with the ability to obtain death certificates for their kin in order to prove their eligibility for reparations.

Dr. Sozer emphasized the importance of investing in the infrastructure to perform DNA analysis because it is "a very important tool in truth seeking." Building local capacity for DNA analysis requires not only the physical space of laboratories to accommodate the necessary equipment, but also the training of local experts to sustain the facilities. Dr. Sozer provided additional key considerations for the necessary, strategic long-term planning that is involved in establishing a DNA program, including: budget size, program mission and ambition, ability to maintain quality assurance and validate procedures, type of equipment and supplies needed, availability of adequately trained technicians, and the existence of legislative and/or legal restraints, among others. For its part, PHR is currently conducting a comprehensive needs assessment report of forensic analysis capacity in Afghanistan, and has been consulting with many local experts, including those at the National Research Center for Legal Medicine, the Forensic Medicine Directorate, and the MoI Crime Lab. The findings and recommendations of this study will seek to assist local institutions with strategic planning in this area.

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Speaking from a legal perspective, Justice Babrakzai stated that national criminal procedure "permits the officer in charge of the investigative authority to find out the truth." He referred specifically to Article 77 of the Amended Law of the Criminal Procedure Code, which permits courts to authorize forensic investigations, including the opening of a grave. In Justice Babrakzai's view, "the presence of forensic medical experts is one of the fundamental pillars in the legal system of the country." He cautioned that current Afghan law imposes a statute of limitations after a certain number of years on the use of evidence, rendering it unavailable to prosecutors after that period. But, given the advances in technology and the availability of DNA-based investigations, Justice Babrakzai acknowledged that the law should be amended to reflect these changes.

Significantly, during the question period, when a cleric and judge from the Kandahar Provincial Ulama asked whether removing bodies from a grave was itself a crime, Justice Babrakzai countered, "Do you want the identity of a criminal to remain hidden and that criminal to live in the society?" And when the questioner in turn expressed concern about disrespecting the dead body, Justice Babrakzai affirmed the importance of forensic evidence for providing the details of what happened and for bringing the "real perpetrators" to justice.

C. EDUCATING AND TRAINING LOCAL FORENSIC SCIENTISTS

Dr. Zurmati asserted that the teaching of forensics in Afghanistan has dramatically improved, especially over the last two years. That said, Afghanistan still lacks resources and capacity, although people have been doing their best despite these limitations. For example, Dr. Zurmati explained that, while the GoA has unanswered his request to support over one hundred extra posts for analyzing forensic reports from the provinces, "we are currently doing it unofficially." Like his fellow panelists, Dr. Zurmati also emphasized the importance of securing and maintaining the independence of forensic laboratories and protecting them from governmental pressure to ensure the best results for truth seeking.

"Unfortunately," Dr. Zurmati remarked, "we don’t have independence yet."
In her comments, Gillian Fowler, a forensic archeologist and anthropologist, sought to apply lessons learned from her experience in Guatemala. Fowler pointed to the importance of making forensics education available through university archeology and/or anthropology programs as well as through ongoing professional training opportunities. In Guatemala, Fowler explained, students of archeology and anthropology were trained to be the next generation of forensic specialists in those fields. However, there is no comparable university level forensic archaeology or anthropology program in Afghanistan. Similarly, training programs for professionals in, for example, human osteology and excavation techniques, cannot be a one-time experience. On the contrary, these methods require constant guidance and monitoring from trainers and the resources and funding to sustain this training over the long term.

International efforts have begun to play an essential role in providing much-needed forensic training. Zabi Mazoori, Afghanistan Program Assistant at PHR and a member of the Paraprofessional Mass Grave Site Team, gave an overview of a recent basic training workshop conducted by PHR in Afghanistan in May and June, 2010, at the ANPA in Kabul. The workshop, a joint venture among PHR, GPPT, ANPA, and AIHRC, provided intensive training to 18 students from around the country. The program included a two-week study on human osteology, where participants learned to distinguish gender, approximate age, human versus animal bone, and whether bones had been broken before or after burial. The program culminated in a practicum where students took part in the exhumation of a grave. The program provided a condensed version of materials that generally span years of study, and offered individuals the opportunity to learn the basic techniques for how to preserve and protect evidence and remains in a mass grave in a manner consistent with international standards. These techniques include the use of professional photography, GPS devices, and the technical sketching of crimes scenes. Each of these methods of recording the details of a mass grave provide experts with many ways to assure that evidence is documented and registered in the event a crime scene is subsequently disturbed.

Finally, amidst the technical contributions of the forensic experts, Valerie Meredith, who conducts the Tracing and Restoring Family Links programs for the International Committee of the Red Cross (ICRC), provided an overview of the ICRC’s role in protecting the dignity of human remains and returning them to their families. The ICRC also helps families by supporting payment for coffins, shrouds, and mortuary stays and transporting bodies from battlefields. And, with respect to unidentified human remains, the ICRC will bury people with identity numbers and provide further local support to hospitals, assisting with the management of human remains. The ICRC, Meredith stated, is well aware of the challenges Afghanistan is facing. But its ability to address those needs has been complicated by the public silence maintained by families who fear reprisals, by the lack of forensic capacity, and by the weak judicial process, among other factors. Nevertheless, Meredith affirmed the ICRC’s support of the next stage of forensic mapping and its interest in helping the country move forward with a meaningful transitional justice process.

Working Groups and Summary Recommendations

A. WORKING GROUPS

On the afternoon of the second day, panelists and audience participants divided into 11 working groups, moderated by facilitators, to discuss and debate designated topics and challenges concerning the implementation of transitional justice in Afghanistan. These topics included: the truth seeking process and documentation efforts in Afghanistan; barriers and challenges to transitional justice in Afghanistan; forensic science training and human identification resources; victim empowerment; missing persons strategy; reconciliation; government responsibilities; grave-site protection/cultural and religious aspects of
mass graves and the right to truth, memorials, international community and transitional justice, and women and transitional justice. Following vigorous discussion and debate on the topics, representatives of each working group presented their findings and recommendations at a plenary session on the third and final morning of the conference.

In their presentations, several groups reported on the significant hurdles that exist to pursuing transitional justice, including: ongoing hostilities and the absence of security throughout the country; the lack of political will both domestically and internationally to begin the process; known human rights violators occupying Afghan government posts; and widespread distrust of government. One group addressed the weaknesses within the legal system, including the Amnesty Law, and the absence of a legal framework for prosecuting war crimes and crimes against humanity in Afghanistan. Another group expressed frustration with Afghanistan’s complicated relationship with the international community. That group acknowledged appreciation of international efforts to help with local law enforcement capacity-building and training, but expressed disappointment in unfulfilled promises to promote human rights and in what they perceived as contradictory messages on accountability.

B. SUMMARY RECOMMENDATIONS

By the conclusion of the conference, following the plenary discussions and working group exchanges, a consensus emerged around eight essential recommendations which would have to be addressed and formally established by the Afghan government in consultation with Afghan CSOs and the international community. These recommendations are enumerated below:

- Establish an independent special unit for the documentation of past crimes including war crimes, crimes against humanity, and serious human rights violations. The unit would be comprised of representatives of the Afghan National Police, forensic specialists, prosecutors, and human rights activists. One important focus of the unit’s work would be the protection and documentation of mass graves. An advisory board would oversee the unit’s work.

- Create a national documentation center to archive the work of the special unit as well as ongoing documentation efforts by civil society/human rights organizations.

- Construct a comprehensive strategy to protect and document mass graves.

- Establish a national missing persons’ database to be maintained by AIHRC. Registration would be conducted in coordination with the Ministries of Education, Hajj and Religious Affairs, and Rural Development. UNAMA would provide oversight and technical support where required.

- Implement the Action Plan for Peace, Reconciliation, and Justice.

- Provide a legal definition for crimes in accordance with Afghanistan’s obligations under international law and the international conventions and treaties the state has signed.

- Establish an effective identification program for those alleged to have committed war crimes, crimes against humanity, and serious human rights violations from positions of authority in the government. The Advisory Panel on Appointments should be strengthened and its mandate extended to include other senior positions not currently covered.

- Expand resources for long-term capacity building and sustainability of forensic science in Afghanistan, including increased technical, material, and financial support as well as greater assurances of independence for forensic research facilities.

Conference participants were in agreement that these recommendations would provide a first step towards a meaningful dialog on truth, reconciliation, and justice and needed to be at the core of any reconciliation process.

Conclusion

This conference set out to demonstrate—and the wide-ranging coalition of participants resoundingly agreed—that truth seeking must be addressed and legally defined as a part of any peace and reconciliation process in Afghanistan. The conference highlighted the deep urgency to begin a dialogue toward transitional justice and reconciliation as more than three decades of violence have rendered nearly every Afghan citizen a victim, and mass graves have been discovered across the country. The truth seeking process has partially commenced in Afghanistan, but its progress has been slow and fitful for reasons this conference sought to explore and articulate. Nevertheless, participants were adamant that—despite the ongoing hostilities and the unstable security situation—the time to begin this discussion is now.

This conference also strove to emphasize the singular contribution that forensic science can and must make to any process of national reckoning. As long as the Afghan past remains sealed off, it is vulnerable to denial or distortion and there can be no meaningful reconciliation. Forensic research and documentation is crucial precisely because it can establish an objective, scientific, apolitical accounting of the facts. And as so many experts testified at this conference, before a society can heal its own wounds it must understand how and why they were sustained.

As the conference also made clear, however, in order to realize the potential contributions that forensic science can make, there is enormous work to be done. Afghanistan’s grave sites must be protected and preserved, local capacity for this research must be bolstered, and the research itself must be insulated from political pressures if it is to carry any legitimacy. Many present at this gathering have already been working toward addressing these challenges. Their subsequent efforts will be more effective for the alliances forged and the resources shared at conferences such as this one.

And, finally, this conference, for the first time, put governmental authorities and actors in dialogue with those in civil society—leaders who are working toward transitional justice in Afghanistan from other angles. Their efforts on legal reform, victims’ rights advocacy, and a host of other issues will help ensure that, once the process of creating an historical record based on scientific and forensic methods is established, it can be leveraged effectively. As the expert presentations, panels, and working groups made clear, the only means by which meaningful peace and reconciliation can be achieved is by beginning a truth seeking process, with vigorous yet respectful support from the international community.