Sustainable Reintegration

There are many elements necessary in order to make an area more than simply bearable. The goal is to create a space that is livable and worthy of enjoyment, where all citizens can participate in society. Afghan involvement in the development of soft law instruments related to habitable infrastructure might be an avenue worth exploring in Afghanistan, particularly because some concepts are less controversial and more focused on livability, which could initially unify and involve many actors.

Development of soft law documents allow for participation by a wider range of society – not just lawyers and politicians – in setting and advancing international standards of conduct. Their non-binding nature and inclusivity can facilitate greater participation, consensus, and compliance.[1] One remarkable aspect of soft law is that so many different kinds of people other than lawyers are involved in its development and evolution: "diplomats, officials, politicians, social movements, NGOs, academics from various disciplines, commentators and the public at large."[2] This inclusion of non-State actors throughout the process might increase public support and societal pressure for the principles embodied therein.[3]

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[1] Ilias Bantekas and Lutz Oette, "International Human Rights Law: The Normative Framework," in *International Human Rights Law and Practice*, (Cambridge: Cambridge University Press, 2016), 65-67.

[2] Ilias Bantekas and Lutz Oette, "International Human Rights Law: The Normative Framework," in *International Human Rights Law and Practice*, (Cambridge: Cambridge University Press, 2016), 51. "This plurality of actors…opens space for the progressive development of international human rights law but may equally create tension…[and] may result in…the fragmentation of international law, which raises the spectre that different bodies, such as the ICJ, international criminal tribunals and human rights treaty bodies, develop diverging interpretations of the law."

[3] M. Barelli, "The Role of Soft Law in the International Legal System: The Case of the United Nations Declaration on the Rights of Indigenous People," *International and Comparative Law Quarterly* 58, No. 4 (2009): 957-983. http://openaccess.city.ac.uk/585/.

The United Nations 2030 Agenda for Sustainable Development[4] lists seventeen goals for creating sustainable livelihoods, many of which could apply to Afghan urban and rural areas, security and forced displacement, as well as to rebuilding war-ravaged societies and fostering transitional justice. (In his article, Antônio Sampaio makes specific mention of "resilient cities" as embraced by the Sustainable Development Goals. He argues that refugee flows into ill-prepared cities with inadequate management will almost certainly lead to greater warfare and/or low-level protracted conflict.)[5]

Almost every Goal of the 2030 Agenda could arguably apply to Afghanistan, most obviously Goals 4 and 5 regarding gender equality and inclusive education. However, a critical piece of sustainability is a lasting tranquility bolstered by respect for the rule of law. Goal 16 involves promoting peaceful and inclusive societies for sustainable development, providing access to justice for all, and building effective, accountable, and inclusive institutions at all levels. Included within this Goal are issues of promotion of the rule of law, reducing corruption and bribery, increasing accountability and transparency, acting in accordance with national legislation and international agreements, and strengthening relevant national institutions.

Many locals have identified these issues as critical to rebuilding Afghan society. For example, the Afghanistan Research and Evaluation Unit has made a concerted effort to develop transitional justice programs that specifically address past human rights violations through accountability, truth-telling, reparation and guarantees of non-recurrence. However, locals have

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[4] United Nations General Assembly, *Transforming Our World: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1. http://www.refworld.org/docid/57b6e3e44.html.

[5] Antônio Sampaio, "Before and After Urban Warfare: Conflict Prevention and Transitions in Cities," *International Review of the Red Cross*, Vol. 98, No. 901 (2016): 71-94.

also identified the need for a sturdy, functional criminal justice system that thoroughly rejects corruption and any "culture of impunity," which they find to be lacking in Afghanistan.[6]

Another possible soft law instrument mentioned in Sustainable Development Goal 11 (making cities and human settlements inclusive, safe, resilient and sustainable) is the Sendai Framework for Disaster Risk Reduction.[7] (Indeed, the Special Rapporteur UN Special Rapporteur for the Human Rights of Internally Displaced Persons mentioned the importance of the Sendai Framework in his 2017 Afghanistan report as did the UN General Assembly its draft of the New York Declaration.)

Within the Seven Global Targets identified by Sendai lies a commitment to reduce damage to critical infrastructure, which presents a huge challenge in Afghanistan. Particularly *apropos* is Sendai's Priority 4, which contains a commitment to develop anticipatory plans for disaster during recovery, rehabilitation and reconstruction. For a country continually plagued

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[6] Afghanistan Research and Evaluation Unit, "Perceptions of Peace and Justice from the Field – Eleven Years after 'A Call for Justice,'" last modified November 2016. https://areu.org.af/archives/publication/1624. *See also*: Amy Senier, "Rebuilding the judicial sector in Afghanistan: the role of customary law," *Al Naklah* (Spring 2006), accessed January 25, 2018, https://alnakhlah.org/2006/05/31/rebuilding-the-judicial-sector-in-afghanistan-the-role-of-customary-law-by-amy-senier/. This article argues that since the Afghan legal system has historically included a mixture of local customary law and tribal dispute resolution councils, building a modern atmosphere that heeds the rule of law, should include and incorporate aspects of this current system (to the extent these bodies and codes respect international human rights standards).

[7] "Sendai Framework for Disaster Risk Reduction," United Nations Office for Disaster Risk Reduction, last modified March 18, 2015. https://www.unisdr.org/we/coordinate/sendai-framework.

with displacement due to armed conflict as well as natural disasters,[8] efforts to rebuild Afghan society must involve comprehensive urban planning.[9]

> [T]he protracted conflict, poor governance and weak or corrupt institutions are reported to have led to a situation where disaster preparedness, risk reduction and emergency response mechanisms are weak or absent. As a result, natural disasters, including floods, mudslides, earthquakes, droughts and severe winter weather, are a further cause of vulnerability for people whose levels of resilience have already been worn down.[10]

The Future

Root causes for displacement must be clearly acknowledged and addressed. Armed conflict has caused enormous refugee flight and internal displacement and has rendered Afghanistan almost unlivable. Warring parties continue to violate International Humanitarian Law. Other States violate International Refugee Law by *refouling* Afghans to a country with widespread violence and armed conflict, massive internal displacement, destroyed infrastructure and a government that cannot protect them. "Afghanistan is currently a 'pressure cooker' of

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[8] *See*: "The ICRC's Approach to Urban Services During Protracted Armed Conflict: Q&A with Evaristo de Pinho Oliveira," *International Review of the Red Cross*, Vol. 98, No. 901 (2016): 201-213. According to the head of the International Committee of the Red Cross' Water and Habitat Unit, since warfare increasingly occurs for extended periods in densely populated areas, humanitarian actors must adjust their response from one of mere short-term reactivity to a long-term strategy of emergency-preparedness that emphasizes building relationships and maintaining connections to community resources.

[9] *See*: Lucy Earle, "Addressing Urban Crises: Bridging the Humanitarian-Development Divide," *International Review of the Red Cross*, Vol. 98, No. 901 (2016): 215-224. Lucy Earle argues that humanitarian actors are equipped with relatively outdated "tools and approaches…designed [for] rural regions affected by floods or droughts, and refugee movements across remote borders," rather than for future urban population growth, warfare, and chronic violence. *See also*: Michael Evans, "Future War in Cities: Urbanization's Challenge to Strategic Studies in the 21st Century," *International Review of the Red Cross*, Vol. 98, No. 901, 2016. Michael Evans discusses possible manifestations of future cities and developing appropriate military strategy.

[10] United Nations High Commissioner for Refugees, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan," 26-27, last modified April 19, 2016. http://www.refworld.org/docid/570f96564.html.

ongoing conflict, inadequate infrastructure, scarce resources, the arrival of IDPs, a malfunctioning government, entrenched corruption, extremist ideologies and the presence of criminal groups."[11]

Despite all of the negative factors, there is cause for hope. There are many strong unifying characteristics of the population, such as Islam, tribal hospitality, and a shared history of fierce resistance to foreign occupation. "Afghans are strong and resilient people, not given to despair and willing to work extraordinarily hard."[12] There is tremendous ethnic and linguistic diversity within Afghanistan. Dari and Pasto are the two official languages, but 45 languages are spoken within Afghanistan.[13] The largest ethnic group is Pashtun (42%), followed by Tajik (27%), Hazara (9%), Uzbek (9%), Aimaq (4%), Turkmen (3%), Baluch (2%) and other groups, including Aimaq, Farsiwan, Kyrgyz, Nuristani, Arab, Pashayi, Pamiris, Brahuis, Mongols, Qizilbash, Hindus, Kohistani, Gujars and Sikhs (4%).[14]

While Afghanistan remains heavily reliant upon international assistance for its enormous challenges, well-intentioned international actors must also step aside in order to allow and

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[11] Oxfam, "Returning to Fragility: Exploring the Link between Conflict and Returnees in Afghanistan," 32, last modified January 31, 2018. https://www.oxfam.org/en/research/returning-fragility-exploring-link-between-conflict-and-returnees-afghanistan.

[12] Laurel Corona, *Afghanistan: Modern Nations of the World* (San Diego: Lucent Books, 2002), 88.

[13] "Languages," Norwegian Afghanistan Committee, accessed March 15, 2018. http://www.afghanistan.no/English/Afghanistan/Languages/index.html.

[14] "Afghan Ethnic Groups," Reliefweb, last modified August 14, 2011. https://reliefweb.int/report/afghanistan/afghan-ethnic-groups-brief-investigation. "Ethnic Groups," Norwegian Afghanistan Committee, accessed March 15, 2018. http://www.afghanistan.no/English/Afghanistan/Ethnic_groups/index.html. "Estimates of the numbers of different ethnic groups have to be taken with a grain of salt. There has not been a census in Afghanistan for decades, and all figures are based on estimates. In addition, various ethnic groups often exaggerate their own population size for political reasons."

empower vulnerable populations to speak for themselves about what they want. International actors can supply Afghanistan with necessary resources, but they must also listen to and understand the population, including by increasing investment in and commitment to worldwide and regional diplomacy. "It is vital that international attention to Afghanistan does not wane further at this vital [*sic*] time and that humanitarian and development support is maintained and enhanced."[15]

Refugees and IDPs are essentially living in limbo, waiting to begin their lives again if peace resumes in their country and hoping that, in the meantime, their host community does not expel them. This is a terribly frustrating and depression situation, especially for those who cannot work, go to school, access necessary health care, or even venture out in public. Many have lost family and friends due to death, violence, distance, or other circumstances. "Afghan refugees need international attention more than ever before, and the utmost priority should be given to the resolution of this protracted humanitarian crisis in any future political settlement regarding Afghanistan."[16]

Along the spectrum of selfish geopolitical interests, travelers' curiosity, and altruistic humanitarian concerns, the world's gaze has been fixed on Afghanistan for over forty years. Certainly, that attention wanes with every other international crisis and all but disappeared during the 1990s. We all must remember that events in Afghanistan affect the future of Central

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[15] Report of the Special Rapporteur on the human rights of internally displaced persons on his mission to Afghanistan, "Role of the International Community," para. 1, A/HRC/35/27/Add.3 (April 12, 2017). https://reliefweb.int/report/afghanistan/report-special-rapporteur-human-rights-internally-displaced-persons-his-mission.

[16] Waseem Ahmad, "The Fate of Durable Solutions in Protracted Refugee Situations: The Odyssey of Afghan Refugees in Pakistan," *Seattle Journal for Social Justice* Vol. 15, Iss. 3 (Spring 2017): 655. https://digitalcommons.law.seattleu.edu/sjsj/vol15/iss3/10/.

Asia, the Middle East, the Indian subcontinent and, indeed, the rest of the world.[17] What happens in Afghanistan does not stay in Afghanistan – nor should it.

[17] Laurel Corona, *Afghanistan: Modern Nations of the World* (San Diego: Lucent Books, 2002), 88.