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WHEN RABBITS ARE IN CHARGE OF CARROTS: LAND GRABBING, TRANSITIONAL JUSTICE AND ECONOMIC-STATE CRIME IN AFGHANISTAN

Huma Saeed and Stephan Parmentier

Abstract: Afghanistan constitutes a good example of how the absence of transitional justice measures leads human rights violators of past regimes to remain in positions of power with impunity and to continue to engage in other forms of crimes. In particular, this article focuses on land grabbing as a form of economic-state crime in the country. Relying on data gathered from fieldwork in Kabul in 2013 and 2014, we illustrate that economic crime, which is instigated, supported and carried out by the state apparatus, is a form of state crime, which criminology needs to address more seriously. Criminological literature on socio-economic rights violations as a form of economic and thus state crime is very limited, particularly in conflict and post-conflict situations. By focusing on economic-state crime in the (post-)conflict situation of Afghanistan, we aim at bridging the classical divide between transitional justice studies on one hand and criminology on the other hand.

Keywords: transitional justice; critical criminology; state crime; economic crime; land grabbing; Afghanistan

Introduction

A Kabul-based researcher and civil society activist stated in an interview during the fieldwork in 2013:

The main issue in Afghanistan is that after 2001 the former military groups occupied major governmental posts. These groups have burned a city or village; have committed genocide, and many other crimes. When a government is formed with such elements in power, without any form of accountability, what can we expect to happen? I think that the main reason for such high level of corruption in the country is that war groups hijacked the seat of power. Can we expect economic

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reconstruction, rule of law or development from them? The economic gap has become very big now, the rich becoming richer, and the poor, poorer.¹ (23 July 2013, Kabul)

This quote captures the essence of post-2001 developments in Afghanistan, marked by the prevalence of endemic corruption across various layers of society, an entrenched culture of impunity and worsening security situation. Heavily backed by the international community's neoliberal agenda, 16 years after the fall of the Taliban regime, the achievements have been, at best, disappointing. Short-term stability never brought long-term security as insurgency escalated in the country after 2006. State institutions are weak and corrupt, if not outright predatory. Economic development lags and large sectors of the population are still on the brink of starvation. According to Mark Bowden, the UN Resident and Humanitarian Coordinator for Afghanistan, 9 million Afghans – that is almost one-third of the population – need humanitarian assistance in 2017 due to a worsening security and economic situation (BBC Persian, 18 January 2017). This is despite the fact that Afghanistan has been one of the leading global recipients of official development aid during the last decade (Poole 2011). Nevertheless, reconstruction has been patchy and hardly cost-effective, and the country continues to rank as one of the poorest in the world (UNDP 2015). Most importantly, despite the desire of a big portion of the population towards the implementation of justice, the demands for justice and recognition of victims and survivors of almost four decades of conflict have been utterly ignored (Echavez et al. 2016; Saeed 2015; AIHRC 2005).

Despite the rhetoric of the international community after the events of 11 September 2001, the mild measures of transitional justice proposed in the Action Plan for Peace and Reconciliation of 2006, let alone stronger mechanisms such as trials or truth commissions, stood no chance of being implemented because they threatened directly a substantial part of the national political establishment. Meanwhile, the international actors engaged in the architecture of the political system in Afghanistan never mustered the political will to challenge this entrenched interest, fearing that taking on strongmen and warlords in the absence of a strong central state would reignite a cycle of civil war. To the contrary, the international community deliberately accommodated them, giving priority to short-term stability over justice (Gossman and Kouvo 2013).

As a result, one of the outcomes of the resurgence of a culture of impunity was the engagement of powerful people in land grabbing, of which the neighbourhood of Shirpur, located a mile north of Kabul City, became a powerful symbol. On 3 September 2003, 100 armed police officers bulldozed around 30 homes in this neighbourhood, affecting over 250 people. The then minister of defence and Kabul's chief of security directly played a role in this operation (Kothari 2004), as

well as 300 high-ranking government officials, including ministers, deputy ministers, governors, and other powerful warlords who distributed the land among themselves (Manan 2012). Demolishing the old neighbourhood, built mainly with one-story traditional mud houses, they built colourful mansions with a style that sometimes is referred to as “narco-tecture” or “poppy palaces,” denoting the revenues from poppy cultivation and drug dealings used to build the mansions (Brulliard 2010). “Sherpur” in Persian means “child of a lion”. However, with the incidents that took place in 2003 and onwards, residents of Kabul started to call the area as “sherchur,” meaning, “looted by lions”. As such, today the neighbourhood, physically and symbolically, for most Afghans embodies corruption, human rights violations and an entrenched culture of impunity. Moreover, the case of land grabbing in Kabul and other major cities in Afghanistan has become a rampant phenomenon and a defining feature of post-Taliban Afghanistan.

How can we understand the phenomenon of land grabbing from the perspective of transitional justice (TJ hereinafter) on one hand and criminology on the other hand in the complex geopolitical context of Afghanistan, a country in war for nearly four decades? With multiple regime changes and no TJ mechanisms in place, Afghanistan continues to be in war; however, it concurrently bears some hallmark of post-conflict reconstruction, as indicated through the donor community involvement.²

We offer some insight on this question, arguing that in the absence of TJ measures during multiple periods of transition, and in particular following the fall of the Taliban regime, those accused of masterminding and carrying out serious human rights violations in the past not only strengthened their political stronghold in the new government but also continued to engage in other forms of crimes, namely economic crimes, of which land grabbing will be discussed here. We will further demonstrate that economic crimes understood in this context can be classified as a sub-set of state crime. Thus, the “post-conflict” reconstruction process, aided by the presence of international contractors and companies, became a powerful mechanism in which new types of crimes were perpetrated. In elucidating this argument, we rely on concepts from critical criminology and TJ. Before delving into the case study, we offer a brief discussion of the latter concepts.

The methodology used for this research comprised both fieldwork and desk research, particularly relying on local sources and data. The fieldwork was carried out by the first author in two phases in Kabul, using qualitative methodology, with an emphasis on a case study approach (Y in 2013). While fieldwork in 2013 was an exploratory experience, full-fledged semi-structured interviews were conducted in 2014. In total, 43 interviews with individuals and 13 group discussions, each consisting of at least three people, were conducted in their native Dari (Persian) or Pashto languages, the two official languages of Afghanistan.

Transitional Justice, State Crime and Economic-State Crime

Our contribution rests on the perspectives from two major fields of study, transitional justice on one hand and criminology on the other hand.

Transitional Justice

An emerging sub-field of human rights (Arthur 2009), TJ can be defined as a component of democratic transition, embodied in a set of societal and institutional processes, which tries to seek accountability for past atrocities through a number of mechanisms such as criminal trials, truth commissions, victim reparations and institutional reforms (Parmentier 2016). However, regardless of the adopted mechanism, TJ measures have thus far predominantly addressed civil and political rights violations at the expense of leaving out socio-economic rights violations (Carranza 2008; De Greiff and Duthie 2009; Mani 2008; Miller 2008; Muvingi 2009). Nevertheless, as there has been a major shift in the application of TJ from its “original context” – societies emerging from authoritarianism – to those coming out of violent conflict (De Greiff 2009),³ addressing socio-economic rights violations has gained further momentum. According to Carranza (2008), the violation of such rights, enumerated in the International Covenant on Economic, Social and Cultural Rights can amount to economic crime, which TJ measures need to take seriously. He goes so far as to characterize large-scale corruption as a crime against humanity. Here of course is an interesting link between transitional justice and criminology.

Criminology, Economic Crime and State Crime

In criminology, the discipline par excellence to study crime, the notion of economic crime is rather malleable. As Larsson states, there is enough “conceptual vagueness and elasticity” (2001:121), and Friedrichs (2000) likens it to a “Chinese puzzle” for whichever way one turns with it, new difficulties and conundrums are encountered. In criminology, economic crime is often discussed under white-collar crime, corporate crime, organized crime or occupational crime, the very concepts that suffer from a lack of definitional precision (Helmkamp, Ball and Townsend 1996; Slapper and Tombs 1999: 1–19 as quoted by Larsson 2001). Sutherland (1949: 9) in his famous work “White-collar Crime” defined it as “a crime committed by a person of respectability and high social status in the course of his occupation”. However, as Nelken (2012: 625) argues, “there are important differences in general and legal culture that affect the meaning of and response to white-collar crime (and its contrasting category of ordinary crime)”. Perhaps due to such contextual and legal differences, each country has to employ the term economic crime considering its own legal and societal idiosyncrasy. In Sweden, for

example, economic crime may refer to “tax offences, accountancy offences, money laundering and offences against creditors” as the most reported offences and convictions related to economic offending (Korsell 2002: 45). Regardless of a lack of definitional consensus, what they all seem to have in common is that such crimes are committed by a powerful sector of the society, or at least organized, planned and tolerated by them. In some cases, the state itself can be a part and parcel of the practice. We therefore maintain that the notion of state crime too is relevant under such circumstances, as we shall demonstrate with the case of land grabbing in Afghanistan.

State crime too has been formulated in different ways. Karstedt (2014) discusses two major trends in the criminological literature. One offers a more legalistic approach (as represented by Chambliss 1989) and the other is based on the notion of state deviancy as represented by a number of critical criminologists. Chambliss’s understanding of the concept of state-organized crime was as follows: “acts defined by law as criminal and committed by state officials in pursuit of their jobs as representatives of the state” (1989: 184). However, some scholars (Rothe and Mullins 2011) consider this definition rather conservative and legalistic as it assumes crime to be declared illegal by the state itself. The other and broader approach is based on harmful and injurious acts. In this tradition, Green and Ward (2012, 2004) propose a human rights-based approach, which builds upon the concept of state deviancy rather than a strictly legal definition of state crime. What the authors highlight in this approach is the deviance acts by states, which are “sometimes veiled and not always legally proscribed” or sanctioned by civil and criminal laws. This includes a range of socially injurious activities, including human rights violations and the state’s inability to apply and monitor human rights norms within its jurisdiction.

We adopt the latter approach in the current article, stating that land grabbing in Afghanistan is a form of economic crime in which the state apparatus at various horizontal and vertical levels in the country’s power structure is involved. However, an important point to clarify in our understanding of state crime in a context such as that of Afghanistan is the personal motivations and gains, which are as important as organizational ones, and perhaps even more so when we discuss the phenomenon of state crime in the context of a weak and failed state, with many kleptocrats in leading positions in the government. Moreover, state crime in such circumstances can perhaps better be explained through the lens of economic crime.

Economic-State Crime

In our view, economic crime, as outlined above, cannot be understood apart from state crime and vice versa. We thus refer to this phenomenon as economic-state

crime, where individuals in position of power in state – and society at large – engage in illegal and injurious acts in such a way that lead to violation of socio-economic as well as civil and political rights of individuals and community. In our approach, we adopt elements of the economic crime framework, which has been developed by Larsson (2001) in an attempt to understand the economic aspects of a crime. Considering a lack of consensus on the concept of economic crime, Larsson’s framework offers a concrete approach, which can be employed as a tool to understand the phenomenon of land grabbing in Afghanistan. However, as mentioned already, in our analysis the role of the state apparatus is intrinsic to land grabbing in Afghanistan; we thus refer to the practice as economic-state crime. While in the section below, we discuss the four prongs of Larsson’s framework as adopted in this article, in the empirical section each prong will be presented according to the specific context of Afghanistan, where the role of the state will also become clear as well as its connections to transitional justice.

Larsson’s Framework on Economic Crime

Larsson (2001) discusses seven criteria in the framework he develops for understanding the economic aspects of a crime. They are the actor, the motive, the context of the action and the means employed, the character of the act, the consequences/harm, the legislation and the expertise. Of these, we find four prongs, albeit slightly shortened and modified according to our specific case study, to be relevant for the empirical analysis in this article. As contexts of crimes vary (North Europe vs. Afghanistan), the other three criteria may directly be relevant for Sweden, for example, but less so for the case of land grabbing in Afghanistan. The four prongs, chosen and applied to our case, are as follows:

1. The actor: Larsson discusses two approaches with regard to the actors. The first one is Sutherland’s (1949) approach to white-collar crime, with a focus on the high-status individuals in the context of their positions. The second relates to legal persons, such as companies, which can fall under the domain of the corporate crime. For our case analysis, we adopt the first approach with a focus on individuals within the political system and the wider society. Such actors can be individuals of high status within the executive, the legislative, and the judiciary, apart from their role and status in a certain section of the society, that is, as powerful warlords. As our empirical research did not focus on companies that occupy a role in land grabbing, we exclude the category of legal persons.
2. The motive, which relates to “economic motivation or objective underlying a criminal act” where crimes are motivated by “economic profit” (Larsson 2001: 125). Larsson considers this understanding in the context of capitalist

and liberal states as a useful approach to “call attention to ‘the criminogenic character’ of capitalism and the profit motive” (2001: 126). He further argues that by “associating the profit motive with economic crime, attention is focused on the problematic aspects of a market economy that is maintained by and encourages interaction based on a rational calculation aimed at maximizing individual utility” (ibid).

3. The context of the action and the means employed. This refers to taking “advantage of the transactional and organizational forms of the economic sphere – contracts, monetary transactions, corporate forms, etc. – in a criminal way” (ibid). This also means “the context of societal resource management processes, offenses against the rules, organizational forms and institutions with whose help this resource management is carried out” (Larsson 2001: 124).
4. Consequences/harm: According to Larsson, “economic offences would be those that give rise to an economic injury or that damage the economic system” (2001: 127–128), thus focusing on the consequences of the offence. This can be a damage not only to the interest of individuals but also to the community at large (Magnusson 1985).

The Case of Afghanistan

Before presenting the empirical analysis, it is necessary to first shed some light on the complex political history of Afghanistan during the last four decades. We then address the TJ status following the fall of the Taliban regime and the crime of land grabbing in a transitional setting.

Country Background

A cross road between Central Asia, South Asia and the Middle East, Afghanistan’s geopolitical location has rendered the country and its people to invasions, migrations, and incorporation into many empires and dynasties throughout its long history (Ewans 2002).

In its latest epic, caught between the Cold War games after the US established a close military tie with Pakistan in the 1950s, Afghanistan leaned towards the support of the Soviet Union. Following a number of peaceful decades, albeit still suffering from poverty and underdevelopment, in April 1978 a Soviet-backed coup ushered the country into a period of mass disappearances and killings of the opposition by the then Soviet-backed regime in Kabul, known as the People’s Democratic Party of Afghanistan (PDPA). After seizing power, the PDPA government launched repressive measures, leading to the arrest and summary execution of thousands as well as targeting opponents, particularly disappearing them (Saeed

2015). The dissidents included political activists, university professors and students, religious figures, and other minority groups. Calling such practices crimes against humanity, the Afghan Justice Project (2005) states that the number of disappearances between April 1978 and December 1979 alone is estimated to be in the tens of thousands. Such unrest in the country eventually gave birth to massive uprisings of people. Realizing the fact that the situation in Afghanistan was only deteriorating and the PDPA government was not able to keep the country under its control, on 24 December 1979, the Soviet Union invaded Afghanistan with 115,000 troops. The occupation of the country led to further suppression, execution and torture of dissidents, the aerial bombardment of the countryside, and an influx of refugees. During this period alone, Afghanistan lost some one million people and around five million took refuge to countries all over the world, particularly in neighbouring Pakistan and Iran. The ten-year long Afghan-Soviet conflict finally ended with the Geneva Accord, sponsored by the United Nations in 1988 (Human Rights Watch 2005; The Afghanistan Justice Project 2005).

After the Soviet withdrawal and the collapse of the PDPA government in 1992, various religious fanatic parties, known as the Mujahidin, waged a war of power against each other. During the years of the Soviet occupation and the Afghan resistance, these parties were financed, trained and armed by the CIA and with Saudi Arabian money channelled through Pakistan (Parmentier et al. 2017). Meanwhile, a number of Shia parties received financial and political support from the government of Iran. After the Soviet Union's withdrawal from Afghanistan and its ultimate disintegration, the US lost its interest in Afghanistan. As Rubin (2002: 8) puts it, "Afghanistan was left with no legitimate state, no national leadership, multiple armed groups in every locality, a devastated economy, and a people dispersed throughout the region, indeed the world." As a result of a full-scale civil war among the mentioned parties, heinous crimes against humanity were committed: abducting, disappearing and executing innocent civilians became an ordinary routine; sexual violence, including gang rapes, became a systematic weapon of war and a means of ethnic cleansing; finally, the ongoing bombardment of Kabul left tens of thousands dead and forced many to leave the city (The Afghanistan Justice Project 2005). According to a Human Rights Watch report (2001), "in 1994 alone, an estimated 25,000 were killed in Kabul, most of them civilians killed in rocket and artillery attacks. By 1995, one-third of the city had been reduced to rubble".⁴

In September 1996, after seizing other important cities, the Taliban took control of Kabul. They did so under the name of establishing peace, security, and more importantly, their version of Islamic or Sharia law. Under this extreme religious ideology, the Taliban decreed that women should not work outside, should not attend any learning institution, and should follow a strict dress code, of which "burqa" became a famous symbol. Similarly, men were ordered to grow long

beards and refrain from Western dress or haircuts. Like the civil war period under the Mujahidin government, the Taliban too committed crimes against humanity. In August 1998, in the northern city of Mazar-e-Sharif, they massacred over 2,000 people, of whom many belonged to the Hazara ethnic minority. A similar massacre happened in Yakawlang, a central province (Human Rights Watch 2001; Rashid 2010).

The events of 11 September 2001 in the US ultimately resulted in the fall of the Taliban regime, primarily through a US-led military intervention in Afghanistan. Many Afghans presumed a window of opportunity was opened shortly after, leading to an end to the long wars in the country and their miseries (Rubin 2003). The 2001 Bonn Agreement established the political framework for a post-Taliban Afghanistan, emphasizing that the country should first establish a transitional government before holding its first presidential election. The Afghan Transitional Administration was established in 2002, led by Hamid Karzai who was officially elected as the president of Afghanistan in two subsequent elections in 2004 and 2009 and remained in power until 2014.

The Status of Transitional Justice in Afghanistan

The most important contribution of the Bonn Agreement in relation to human rights was, under its Article 6, the establishment of the Afghanistan Independent Human Rights Commission (AIHRC), whose responsibilities include the investigation of human rights violations. However, in an attempt to secure an agreement between different factions, some of whom were accused of gross human rights violations, the UN-led team avoided the inclusion of any references to investigate past human rights violations and war crimes (Winterbotham 2010).

Notwithstanding the UN approach, aspirations were raised as to the implementation of TJ and responding to victims' needs. Based on a nation-wide consultation among 6,000 participants, the AIHRC published its much-cited report "A Call for Justice" (2005), which established that almost 70% of Afghans consider themselves direct or indirect victims. The report also served as a baseline for the establishment of the Action Plan for Peace, Reconciliation and Justice (for simplicity, often referred to as the Action Plan). The Action Plan identified five key components of justice and reconciliation for Afghanistan, including truth seeking, symbolic measures, accountability mechanisms involving vetting procedures, institutional reform, and reconciliation (Government of the Islamic Republic of Afghanistan 2005). The Action Plan nevertheless remained mainly on paper, with its mandate expiring in March 2009 (Winterbotham 2010). Fierce opposition from within the Afghan Parliament and important sectors of the Karzai Administration did not allow its implementation. On the contrary, in March 2007 the Parliament passed the National Reconciliation, General Amnesty and national Stability Law

(the Amnesty Law) that ensured a blanket amnesty for all perpetrators of human rights abuses of the past regimes, thus turning impunity into law (Kouvo 2010). Many national and international human rights organizations condemned this act, arguing that a blanket amnesty for serious war crimes goes against the standards of international law.

The Amnesty Law shattered any hope for justice that many Afghans longed to see. Despite many regime changes, each responsible for committing international crimes, TJ has surely and steadily been sidelined during Afghanistan's political transitions up until today. Instead, the notorious warlord and leader of the Islamic Party of Afghanistan, Gulbuddin Hekmatyar, who was not in the government formula initially, has recently been included through a Peace Agreement signed between his party, Hezb-e Islami, and the Afghan government on 22 September 2016 (BBC Persian, 22 September 2016). While the Afghan government and their international supporters applaud this development as a major political success, for TJ supporters and war victims this means yet another stab in the back. Moreover, the Amnesty Act has further entrenched the culture of impunity and virtually removed any opportunities to legally sanction past and present war crimes. As a result, with well-known perpetrators who hold high positions of power, human rights violations, including gross violations of socio-economic rights, continue to be tolerated by the Afghan government and the international community (Azad 2013, Wisner 2008).

Land Grabbing Facilitated in a Transitional Context

Although property and land grabbing in Afghanistan had started during the years of the civil war, particularly the seizure of the properties of the Hindu/Sikh minority in Kabul (Royae 2016; Ibrahim 2003), it became a defining feature of post-Taliban Afghanistan, especially under the Karzai administration. There are different accounts of the acres of land grabbed in Afghanistan. The Afghanistan Freedom House (2016) has recently published a report on land grabbing relying on many documents and interviews with over 70 individuals, belonging to both governmental and non-governmental sectors. In it, they cite various amounts of jiribs⁵ of land. They state that in 18 provinces of Afghanistan alone, 1,966,411 jiribs of land have been taken. Citing a number of former advisors to Karzai who were delegated to investigate land grabbing, the report states that 4.5 million jiribs of public land have been grabbed across Afghanistan by people in position of power for personal use (Khetab 2016). This position was also confirmed during our fieldwork in an interview with a key government official who had worked for a number of years on land grabbing. Citing a survey by the Government's Affairs Attorney, he stated that 4.7 million jirib land has been appropriated in 23 provinces between 2004 and 2008 alone. He further stated,

We have documented those public lands, which have been grabbed. But I had to run for years in different provinces, holding my head in my hand to collect data. What we say is based on such documents, but still no one, except God, knows the truth about the millions of jiribs of land that have been seized. (2 November 2014, Kabul)

As mentioned above in the case of Shirpur, and the many Shirpurs that followed in the following years throughout Afghanistan, most of those engaged in land grabbing are either warlords per se or commanders, members of parliament (MPs) or politicians associated with them. They are all products of the last 40 years, engaged in every phase of the conflict as outlined above. By 2001, however, they had been militarily defeated and politically relegated to obscurity. Some factional commanders even anticipated disarmament after the Bonn conference (Gossman 2006: 262). A Parliament member interviewed also was of the same opinion when her view was asked on the TJ implementation:

The major issue was that those who were part of the previous regimes came back to power. This was the biggest treason to the people of Afghanistan. Our people did not expect this. They [the warlords] themselves did not expect this. They thought they would be sidelined like the Taliban or brought to trial. But to the contrary, they were brought back to power, giving them authority and even more value. (2 November 2014, Kabul)

Nevertheless, in pursuing its goal, the US-led Coalition forces, initially – and continuously – relied on the warlords because of their opposition to the Taliban. By backing them militarily, politically and financially, the US reinvigorated those warlords. Their human rights records did not matter as long as they were able to serve the American interest. Furthermore, by entrenching them in the post-Taliban regime, they found new opportunities to engage in other forms of crimes, that is, economic crime such as land grabbing. The director of Government Affairs in the Ministry of Justice echoed this concern:

If some people were punished from the beginning of the Karzai government for the crimes they committed . . . During the first 10 months after Karzai came to power, it was very peaceful here, not even the beak of a bird was hurt. After they saw that there was such immunity, land grabbing started, from the door of the presidential palace. Mr. Karzai's brother grabbed land in Qandahar to build *shahrak*, those lands belong to the Ministry of Defense. But who dares to demand accountability and to bring this on paper? I tried to authenticate this information, we even sent a delegation, but they deny their involvement. (14 October 2014, Kabul)

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Calling the Afghan warlords spoilers and a headache, the US's special envoy and ambassador to Afghanistan, Mr. Khalilzad details in his recent memoirs his various missions to different parts of Afghanistan where he had to encounter each warlord in their stronghold in an effort to persuade them to join the political process by demobilizing their militias. Offering them "honorific positions" within the president's office or cabinet often sealed such deals (2016: 203). What Mr. Khalilzad does not mention, however, is the subsequent outcomes of such deals, particularly the lack of accountability not only as regard to the crimes committed by them in the past, but their ongoing engagement in a number of economic crimes, such as land grabbing, drug trafficking, mining theft and corruption. This notion was captured well in an interview with the head of the AIHRC when she was talking about the role of the international community in relation to corruption:

Foreign countries encouraged corruption in Afghanistan. I once argued with Mr. Khalilzad as to why almost all of the contracts of the Ministry of Defense are given to Marshal Fahim and his family members and relatives? He told me this way he [Mr. Fahim] would get busy with money and would leave politics. But he didn't leave politics. (13 August 2013, Kabul)

Despite rhetoric about human rights, which was one of the pretexts to invade Afghanistan, TJ initiatives were curbed at every stage of political development. As Mani (2003: 23) argues, there was an implicit agreement in the elite political circles among both national and international players that it was not the right time to tackle TJ. The interests of the US-led international community – centred on its fight against Al-Qaeda and the Taliban – triumphed over justice. As a result, the power grip of warlords was further tightened to the point that they ended up controlling the Parliament and eventually passing the Amnesty Law discussed earlier. The legal immunity further emboldened their impunity; a weapon in their hands with which they could more easily and surely engage in land grabbing, among other crimes, fearing no persecution. After all, the Amnesty Law was an assurance that if they could get away with the crimes they committed in the past, they could get away with their current acts as well, with the newly acquired economic and political power. A former commissioner from the AIHRC captured this notion very well:

Not only Jehadi leaders, but also PDPA and Taliban leaders, from all three phases of conflict, have been present in the government. From one perspective, i.e. political, this was perhaps good, but from a justice perspective, this was very disappointing for the victim. Economically, they have become much more powerful, and their political influence is also substantial. (21 October 2014, Kabul)

Land Grabbing in Afghanistan: A Form of Economic-State Crime?

We have maintained in this article that land grabbing in Afghanistan is a phenomenon that can be linked to both TJ and criminology. While the section above demonstrated this connection in a TJ context, or lack thereof, here we would like to discuss land grabbing in criminogenic terms, using the economic-state crime lens discussed earlier.

The Actor

As mentioned earlier, high-profile people in Afghanistan have grabbed massive amounts of public and private lands in every nook and corner of the country. Such actors can be individuals of high status within the executive, the legislative, and the judiciary, in addition to their broader societal role and status. In a context such as that of Afghanistan, this is important given the prevailing tribal system still in many parts of the country and the overall patrimonial relationship. This could be based on ethnic, religious and political affiliations or simply based on their status as warlords, a concept that has come to embody an important and distinct reality entrenched in today's Afghanistan's socio-political landscape (Giustozzi 2012). Importantly, in the discussion of the actors in Afghanistan, especially during the last 16 years, the role of the international community cannot be overlooked, particularly in enabling and facilitating the warlords' return to power (Khalilzad 2016) and their negligence of the massive cases of corruption and land grabbing in which they have been involved.

In a 2013 report, investigated by the Afghan Parliament, the head of the parliamentary commission, who was assigned to investigate the matter that "a number of powerful people who are supported by the government have seized land under the excuse of building residential areas. The seized lands have a value of approximately 7 billion US dollars" (BBC Persian 2013). The same BBC report quotes an adviser of Karzai, the then president of the country, on economic and construction projects who expressed similar concern about the engagement of high-profile people in the government who appropriate land. He further called the problem of land grabbing more severe and worrisome than the country's fragile security situation.

In another comprehensive investigative report published by the *Daily 8 AM*,⁶ the newspaper accessed documents that show the involvement of 15,831 individuals as "relatives of high status government officials, members of parliament and other powerful and influential people who have been engaged in land grabbing". Referring to a document by the presidential advisory board on construction, the paper states that

courts, attorney offices, municipalities, Directorate of Government's Affairs [within the Ministry of Justice], members of parliament, council members, responsible in the ministries of Urban Development, Defense, Interior and the

National Security Directorate are among supporters and collaborators of land grabbers. (Rostami 2013)

Calling it a “land eating oligarchy,” the newspaper argues that land grabbing has become a powerful phenomenon where those engaged in the act fear of no authority and accountability mechanism.

As these reports state, land grabbers, whether as warlords or influential people with some power, have been associated with the executive, judiciary or the legislative branch of the state. Often, however, all three branches have been accomplices in facilitating the act, eased particularly by an entrenched culture of endemic corruption, lack of accountability, impunity and a patronage system. During fieldwork in several periods, many interviewees captured this notion. A high-ranking official in the Ministry of Justice, who proudly asserted he never took a bribe or bowed down to power, stated,

Four MPs once came to me, one of whom was saying he went to Haj [the Muslim pilgrimage to Mecca] ten times and he is such a good Muslim and innocent, etc., etc. I told him that I wished instead he had gone to Dharamsala or a Church ten times but spoke the truth. I had captured his theft there and then . . . Such are the people who put pressure. The MPs come here and want to use their connections in relation to other people, but I do not submit to them. (14 October 2014, Kabul)

Another senior advisor to the Ministry of Urban and Rural Development talked of a synergy among various branches of government where corrupt practices are used as a catalyst for “political gift” exchanges:

In a nice neighborhood of Kabul, our ministry built houses on land belonging to the government. Warlords were not involved in this project, but the ministry gave them to the warlords who are members of the parliament as a “political gift”. This way, the ministers can ensure to earn their vote in the Parliament. Or if a minister is caught in corruption and bribery, and his/her case goes to the Parliament, the MPs will support him due to bribes they have received (the house in this case). (20 August 2013, Kabul)

A victim of land grabbing, a businessman reported that his, and that of his extended family’s, 3,500 m² land was grabbed by a commander whose brother served as an MP. He was further threatened for another 14,000 m² of his land. He detailed how he had to run from one office to the other in an attempt to take his land back, but to no avail. Frustrated by this situation, instead of investing in a new business, he stated,

There is so much corruption in this government. Five to six judges are involved in our case. Out of this, only two of them are honest with a clean conscience. But those who tell the truth get replaced. (19 August, 2013, Kabul)

It is noteworthy to mention that such acts not only took place but also thrived during a period where the international community had been heavily present in Afghanistan, offering its military, political and financial “support”. If they have not directly been involved in the phenomenon of land grabbing, indirectly, arguably, they have been supportive of the mentioned actors by incorporating them in the system, as discussed earlier.

The Motive

Clearly, land grabbing in Afghanistan is motivated by economic profit. This argument can easily be applied in the context of a kleptocratic and predatory state in a conflict/post-conflict situation in relation to a strong culture of impunity that allows such practices. Land grabbers often use the space to build residential palaces, *shahraks* (little cities), gas stations, markets or use them for private agricultural purposes. During 11 years (2002–2013), 228 *shahraks* were built throughout Afghanistan, of which 230,000 jiribs of land were grabbed illegally. While construction work is frequently conducted without the agreement of the relevant authorities, they are often sold or rented out to people (Rostami 2013). Some individuals in the government see the construction of such *shahraks* as a positive development. An advisor from the Ministry of Urban Development who was interviewed for this research stated that in the face of the need for housing and shelter for the returnees and internally displaced people (IDPs), the *shahraks* serve a purpose (20 August 2013, Kabul). While such actions in part have taken place because of government’s failure to provide basic shelter and housing to its citizens, the profit drizzling out of land grabbing alone have generated a fortune for those involved, albeit often through illegal and criminal means. A former Afghan human rights commissioner-turned-researcher stated,

Land grabbing perhaps can’t be categorized as a war crime or a crime against humanity, but it is organized crime with the aim to gain economic profit. Land mafia in some cases can be individual, but often they are organized in particular when it comes to the seizure of public property that then they turn into their personal profit. Shirpur is a good example of this. (21 October 2014, Kabul)

Moreover, the palaces built on the appropriated land and with illegal revenues such as heroin and opium, of which Afghanistan is one of the largest exporters, have often been rented out to the international community. Using the space for

embassies, offices, guesthouses, and so forth, the monthly rent has ranged anywhere from US\$25,000 to US\$100,000 per month for a villa (Freston 2013; Starkey 2011; Lekic 2015). This clearly indicates that the international community too has had its share of responsibility towards generating illegal profit in the country, even if the edifices were used for legal purposes.

The Context and Means Employed

The context in which land grabbing has taken place in Afghanistan bears a number of criminal features. It is often carried out through mafia-like, organized groups, which are often connected to a warlord or powerful person with connections. Most importantly, the means by which it is implemented is threat and violence in the face of resistance, whether by authorities or those whose lands were appropriated. Furthermore, they often seem to be organized groups, which many during interviews referred to as “land mafia”. While many government officials have implicitly or explicitly supported land grabbing, as discussed above, a number of courageous authorities have tried to safeguard certain public lands, specifically. Nevertheless, they had to face consequences, including physical violence. In an interview, a district director in Kabul discussed his ordeal in relation to a handful of public properties in his district, which powerful armed men wanted to take by force and which he defended against many threats, including physical attacks on him. Repeatedly he had to make bold statements to the land grabbers, emphasizing that no deal will be made unless they bring reliable documents from relevant authorities:

This is public and national land, I am not going to make a deal on this. The district needs it; the nation needs it. The district needs it for building a school, a daycare or a mosque. (30 September 2014, Kabul)

Likewise, a deputy mayor of Kabul stated,

Three of our district directors were beaten in district one. They won't even take them to the hospital. Eventually, a passerby took them to the hospital; one has become disabled. The arm of the first district director was broken; another time they hit him on the head. He spent three months in the hospital. With what kind of force can we work without the cooperation of the police? Police itself is part of these powerful and land grabbers. (22 September 2014, Kabul)

Even senior officials are not protected from such situations if they insist on keeping away from corruption. A high-ranking official at the Ministry of Justice admitted that he receives threatening letters on a daily basis under his office doors, stating “be careful, if you don't want to lose your head, don't interfere in our

work”. He went on to say proudly that he does not submit to them as he has God to protect him.

Apart from the threat or use of violence, forged documents is another criminal means through which land grabbers are able to implement their projects. Endemic corruption in the system obviously serves as a great facilitator. This notion too was captured in the words of the mentioned district director:

Due to corruption in the court and the administrative system, they forge documents to show property ownership. In the last two years, I have rejected a number of such *qabala* [land ownership document]. The land belongs to the government and they have forged this document to show ownership. This is a crime. (ibid)

More importantly, the entrenched corruption in the system allows land grabbers to change the ownership of such documents in the original sources, hardly leaving a trace for the actual owner to prove tenure. This notion as well came up on a number of occasions during interviews. Frustrated by the situation, a senior advisor to the Ministry of Urban and Rural Development stated,

They have even forged documents in its very original source, i.e. at the Ministry of Justice. Land grabbers have gone even this far. These are the kind of challenges that a government project faces. They go to develop a plan, but instead face such obstacles. (20 August 2013, Kabul)

A Kabul deputy mayor who was receiving many such demands expressed similar sentiments. On one occasion, he was offered US\$100,000 in bribes in exchange for his signature “authenticating” a forged *qabala*. He refused to sign as he had done on other occasions as well (13 August 2013, Kabul).

Consequences and Harm

Land grabbing has produced numerous harmful consequences to individuals as well as communities. While the first category relates to private property of individuals, the latter concerns primarily public property.

During the last 40 years, millions of Afghans left their land and property to escape violence. Years and decades later upon return to their homeland, they could no longer access their property because a warlord or powerful person, often possessing military power, had seized it. Numerous such stories exist of individuals, and their families, in major cities. In Kabul City alone, which over the last decade has witnessed the return of refugees in millions, many had to settle in temporary settlements, which often lack basic facilities such as water, and, on most occasions,

proper shelter itself, that is, built from makeshift “walls” such as plastics. A senior official at the Ministry of Returnees and Repatriates (MoRR) relates this situation to the inability of the government as well as to the culture of impunity:

The government itself is incompetent. For example, in a situation that it wants to build a public project, such as a road, the law says that if private properties come on the way, the government is responsible to provide another land or property, with costs that it entails, to the affected person. However, we have had situations where a warlord or commander has taken over such a project, to benefit himself, i.e. a road towards his own residence, and has destroyed private properties without any compensation. Obviously in such situation, people were harmed, they perhaps were not aware of the law or simply too afraid. (8 October, 2014)

Beyond such settlements, at a community level the harmful consequences of land grabbing can be assessed at least on two occasions. First of all, as the *Daily 8 AM* writes, 20% of land grabbing has taken place in the planned parts of major cities across Afghanistan (Rostami 2013). Likewise, the official from the MoRR confirmed this point:

The powerful have taken advantage of the gaps in the government and seized lands in the best parts of the city, those areas allocated for parks or other or other public services . . . This has produced harmful consequences for people because they no longer have access to green areas or parks and other public spaces. Indeed, seizing public land is a crime. (8 October 2014, Kabul)

This means the government is not able to build and implement its public projects, such as housing, schools, and parks, thus producing negative economic, social and political consequences for residents that ultimately lead to undermining the government’s legitimacy for its inability to provide basic services. A good example of this is the Kabul New City, a project in the making since 2006 led, initially, by the Japan International Cooperation Agency (JICA). Kabul City, as it is, hosts millions more people than its actual capacity, populated mainly with the returnees and the IDPs. The new project, located in the Deh Sabz area north of Kabul airport, is meant to inhabit around three million people. The project implementation process, however, has faced numerous obstacles due to the presence of armed powerbrokers, including the kidnapping of its international engineers.

Secondly, as discussed, most of the *shahraks* built in the last decade lack basic construction standards. As an example, in an earthquake-prone city such as Kabul, they do not meet the international standards. Such buildings are labelled, not surprisingly, as the “death buildings” by residents of Kabul (Khamosh 2015).

In short, to conclude this section, one consequence of the land grabbing in Afghanistan has been the creation of a skewed situation, leading to increased inequality where, while the majority do not own any property in a city like Kabul, a minority of the land grabbers can have access to as many as ten palaces, an issue that came up in a number of interviews. This is a grim picture for a country that has already been ravaged by war, for many decades and in many ways, but for the sake of this article we emphasize the socio-economic aspect. The free market economy, championed by the neoliberal agenda, has had its share towards creating a situation of dependency on one hand and extreme inequality on the other. A prominent professor of economics at the University of Kabul, who argues that the economic destruction of Afghanistan started during the years of the civil war, expressed a very critical view towards these “open door policies”:

During the last decade it became even worse; we did not build economic capacity. We only relied on mercantilist capital, not on our traditional one. We became a consumerist-only country, dependent on other countries and their exports . . . They ruined everything from an economic point of view, including economic thinking; we don't have it today. We only copy the prescriptions of other countries, only copying them. This is the worst situation from an economic point of view. . . . Open door policies have hit hard our economy, meaning it was like a bullet fired at it. (23 October 2014, Kabul)

Conclusion

We have argued that in “post-conflict” contexts in the absence of robust TJ measures, not only past human rights violations remain unaddressed but also a fertile ground is postulated for other forms of crimes, in particular economic-state crime. Without a strong, centralized and legitimate state, the rule of law is absent and accountability mechanisms at best remain on paper. The case of land grabbing in Afghanistan demonstrates the argument in a powerful manner. As a result, there is no meaningful instrument in Afghanistan adept and potent enough to counter land grabbing, which has become an octopus-like phenomenon with its tentacles spreading across the country. Though there is a High Office of Oversight and Anti-corruption⁷ in place, and a number of ad hoc mechanisms have been established over the years to assess major cases of corruption or land grabbing, when the state apparatus is a part and parcel of such widespread practices, any accountability mechanism amounts to the Afghan saying of “putting rabbits in charge of carrots”. It is important to note that such local initiatives on land grabbing – and corruption in general – have not been in any way linked to TJ efforts, even if many

of its perpetrators, as discussed, have been human rights violators of the past conflicts. In reaction to a law passed by the Afghan Parliament in September 2013 to assess land grabbing, a law professor at Kabul University remarked,

I don't think that the names of big shots can be released under the current government or that their cases will be even sent to the court . . . Most of the land-grabbers in the country are friends and allies of Karzai's government. (Sarwar 2013)

The international community, particularly the US, has played a crucial role in creating this situation. The US and their allies deployed their hegemonic power in an attempt to persuade the Afghans – and themselves – that justice was a luxury that could be postponed to brighter days. The present was to be left to backroom deals (Gossman 2006: 265) with the same warlords that had terrorized the country, arguing that stability will bring justice in due time. The facts on the ground have proven this assumption wrong. This strategic mistake sits at the core of the failure of the hegemonic project for state-building in Afghanistan, where both domestic and international legitimacy have largely failed. Lawlessness, systemic corruption and land grabbing, drug trafficking, lack of security, and spreading insurgency are among the main hallmarks of failure of the US-led project in Afghanistan, a failure that is increasingly hurting the interests of the US itself. This is most apparent in the cost in blood and treasure of the military operation in Afghanistan while the strategic goals increasingly seem either ill-defined or unattainable. Furthermore, as the US found itself locked in with the warlords-supported Karzai, and currently Ghani, regimes, tensions between Kabul and Washington have been growing in parallel with bitter disputes within the American administration itself, another testament to the contradictions in the policy.

In terms of TJ, with such policies and practices, millions of victims of past – and current – human rights violations have been sidelined at every stage of the political negotiations, ignoring their demand for justice, and social justice at large. During fieldwork, access to housing and property often came up as the top priority by most victims interviewed. In the face of the ongoing surge on land grabbing, and the state's incapacities to perform its role as duty bearer, access to this basic human right may well remain an unattainable dream for at least another generation.

What is the implication of all this for criminology? The case study demonstrates not only the involvement of powerful people in committing criminal acts, but also the very injurious and harmful nature of this phenomenon at multiple levels, individual and societal. The economic-state crime lens, which we have used to provide an analysis of land grabbing in Afghanistan, illustrates this point in more detail. Moreover, it demonstrates the role of the international community

in directly or indirectly supporting, or at least condoning or tolerating, the act. It therefore suggests that criminologists can play a vital role in investigating conflict/post-conflict contexts by using their critical lenses and tools to analyse specific cases of crime, identifying the actors, the nature of the act and its consequences. By doing so, criminologists can extend a helping hand to TJ scholars and practitioners, who, in turn, can design context specific accountability mechanisms based on the diagnosis made. This, for the domain of criminology, can mean going beyond its conventional approach towards ordinary crimes in Western societies, and engaging more actively in other types of crimes in conflict and post-conflict contexts. In other words, it draws criminological attention towards human rights violations – and socio-economic and cultural rights in particular – where thus far the field has remained marginally engaged.

Notes

1. All the quotes from interviews and local sources have been translated from Dari (Persian) into English by the first author.
2. Apart from the billions of international aid that came to Afghanistan following the fall of the Taliban regime in 2001 (Poole 2011), in its latest pledge the donor community in Brussels promised US\$15.2 billion to the Afghan government (BBC News, 5 October 2016).
3. Other scholars stretch this argument even further and state that TJ should be considered as part of the ongoing conflict, that is, in the form of judicial intervention (Engstrom 2013). We adopt this line of argumentation for the case of Afghanistan.
4. https://www.hrw.org/reports/2001/afghan2/Afghan0701-01.htm#P228_56166.
5. Jirib (also written as jerib) is the unit of land measurement in Afghanistan, which is standardized at 2,000 square metres or 1.5 hectares. Source: <http://www.unc.edu/~rowlett/units/dictJ.html>.
6. *Daily 8 AM* is considered one of the leading newspapers of Afghanistan with a reputation to conduct high-quality investigative journalism, including a number of reports on land grabbing and mining mafia.
7. <http://anti-corruption.gov.af/en/page/1733>.

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