



INTEGRITY
WATCH
AFGHANISTAN



CORRUPTION AND JUSTICE DELIVERY IN KUNDUZ PROVINCE OF AFGHANISTAN

2018

CORRUPTION AND JUSTICE
DELIVERY IN KUNDUZ PROVINCE OF
AFGHANISTAN

Integrity Watch Afghanistan

2018

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Jawid Azizi

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Kolola Poshta, Kabul, Afghanistan

Email: info@iwaweb.org

Website: www.iwaweb.org

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ABOUT INTEGRITY WATCH AFGHANISTAN

Integrity Watch is an Afghan civil society organization committed to increasing transparency, accountability, and integrity in Afghanistan. Integrity Watch was created in October 2005 and established itself as an independent civil society organization in 2006. The head office of Integrity Watch is in Kabul with provincial programmatic outreach in Balkh, Bamiyan, Herat, Kabul, Kapisa, Kunduz, Nangarhar, Paktia, and Parwan provinces of Afghanistan.

Over the last decade, Integrity Watch's work focused on: Community Monitoring, Research, and Advocacy.

Ever since its establishment, Integrity Watch has tried to encourage active citizenship and community mobilization through its programs. The community monitoring work included development of community monitoring tools, mobilizing and training communities to monitor infrastructure projects, public services, courts, and extractives industries.

The research work focused on policy-oriented research measuring trends, perceptions and experiences of corruption and covering wide range of corruption related issues including security and justice sectors, extractive industries, public finance and budget management, and aid effectiveness. The objective is to develop new, ground-breaking empirical research in order to set the agenda, influence decision-makers, bring to the public attention non-documented and un-explored issues.

Integrity Watch has taken up a pioneering role in advocating for knowledge-based decision-making and informed public debate on corruption and integrity issues. The advocacy work includes facilitation of policy dialogue on issues related to integrity, transparency, and accountability. IWA's policy advocacy has been to examine accountability of the government and service providers to the communities they serve. The issues focused on to date are access to information, budget transparency and accountability, aid transparency and effectiveness, effective public service delivery, and anti-corruption.

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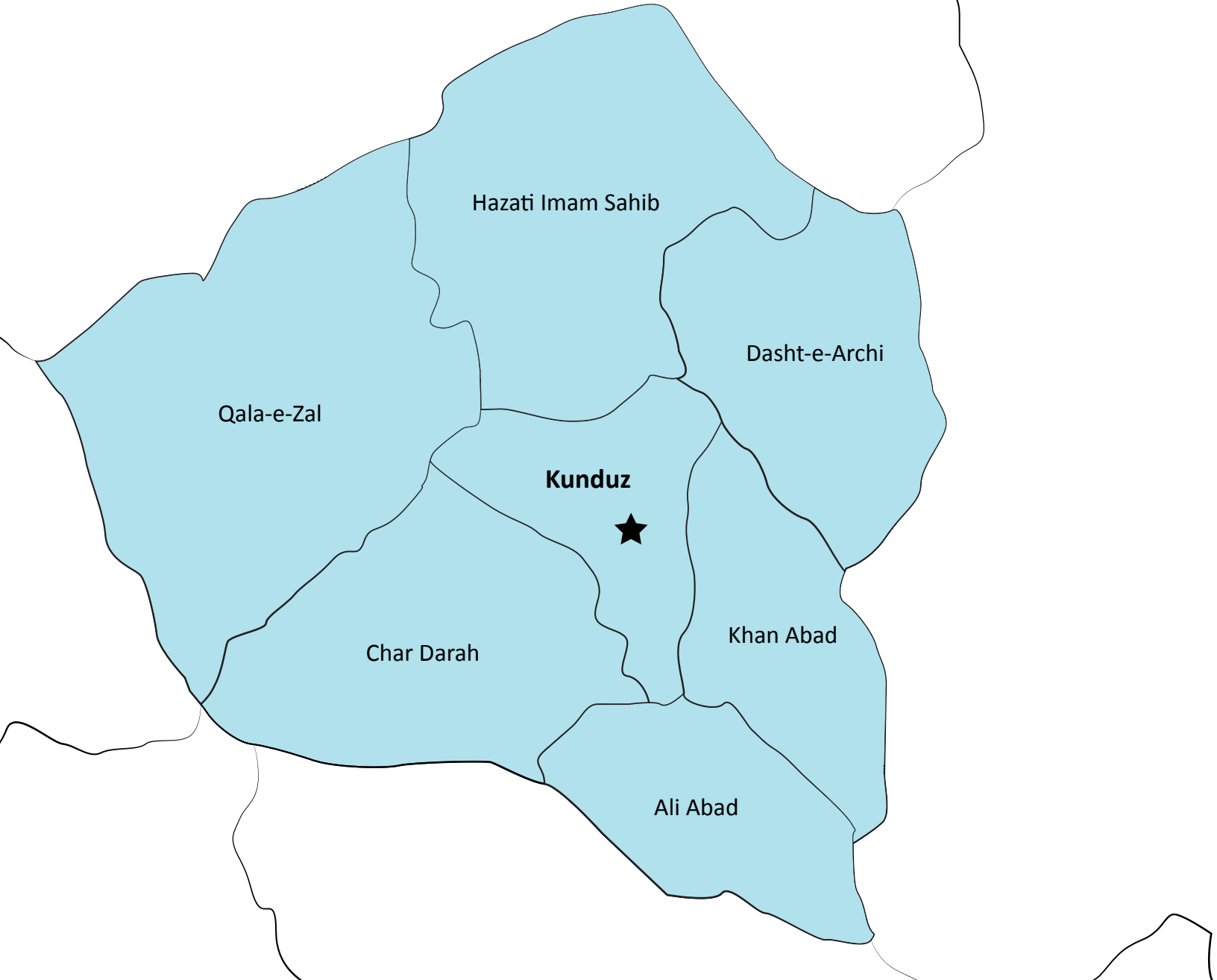
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ACRONYMS

AIBA	Afghanistan Independent Bar Association
AIHRC	Afghanistan Independent Human Rights Commission
AOGs	Armed Opposition Groups
ALP	Afghan Local Police
ANP	Afghanistan National Police
ANSF	Afghanistan National Security Forces
CBDR	Community-Based Dispute Resolution
ANP CID	Afghan National Police Criminal Investigation Division Police
DOJ	Department of Justice
IDPs	Internally Displaced Persons
IWA	Integrity Watch Afghanistan
MOJ	Ministry of Justice
NGO	Non-Government Organization
NRC	Norwegian Refugee Council
USIP	United States Institute of Peace
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
WAW	Women for Afghan Women

KUNDUZ PROVINCE



Legend

- ★ Province Capital City
- District Boundary
- ▣ Province Boundary

EXECUTIVE SUMMARY

In the northern province of Kunduz, a weak provincial government dominated by local power brokers and militia groups has fueled a Taliban insurgency that is gaining increasing local support and territorial control. Kunduz province is a microcosm for the broader challenges in Afghanistan of systematic corruption, an armed insurgency, rampant narcotics-driven criminality, poor governance, and a weak rule of law.

Integrity Watch Afghanistan is conducting a Community Based Monitoring – Trial Program (CBM-T) in Kunduz province. This assessment aims to inform the targeted delivery of the initiative by examining the current state of the justice system in the province. Specifically, the assessment sought to test the hypothesis that *citizens mostly do not use the formal justice system because of corruption*.¹ It was found that although the prevalence of corruption in the state justice system is a major deterrent for citizens, equally significant is the bureaucratic and inefficient nature of state justice institutions and low social acceptance of state justice amongst local communities. Not with standing, the most significant barrier for citizens in accessing state justice is the lack of presence of state justice institutions in many parts of the province.

Although the state justice system in Kunduz was assessed to be steadily developing in 2014², much of the gains over the past decade have been undone by the Taliban offensives since 2015. Specifically, the capture and temporary occupation of district centers and the provincial capital of Kunduz city resulted in

widespread infrastructure destruction and a lasting psychological impact on residents. In 2017 the writ of the state justice system is limited to the provincial capital and some district centers. Nearly all judges in Kunduz’s seven districts have been relocated to Kunduz city. Only Aliabad and Imam Sahib courts still function at the district-level. The majority of prosecutors are also working from the provincial capital. Only prosecutors for Aliabad, Khanabad and Imam Sahib continue to have a presence in the districts.

With the insurgency intensifying in Kunduz province, territorial control is the main determining factor for whether citizens are using state justice institutions. In areas under the control or influence of the government, citizens are using Community-Based Dispute Resolution (CBDR), state justice institutions and the Taliban judiciary. Citizens also seek assistance from some Non-Government Organizations (NGOs)³, lawyers of the Afghanistan Independent Bar Association (AIBA) and Commanders of the Afghan Local Police (ALP). In areas under the control or influence of the Taliban, citizens are using CBDR and the Taliban judiciary. In these areas, citizens are less likely to use the state system due to its limited presence, low social acceptance or for fear of Taliban retaliation. Low social acceptance results from the social stigma associated with using the state justice system. Specifically, some citizens consider it shameful to take matters to the court.

With the exception of Imam Sahib district, citizens’ demand for state justice services is very low throughout Kunduz province. Where citizens are using the state system, the most frequently requested service is for civil law documents from the courts. The most popular requests are for martyr certification, power of attorneys, inheritance letters, and marriage certificates. This suggests a demand for state justice services in order to access other government services, such as the martyr pension or protection of formal land rights. In addition, disputes related to land, inheritance, divorce and alimony are the common causes of action for civil law litigation in the courts.

- 1 This research question was developed based on the findings of IWA’s 2014 and 2016 National Corruption Survey. Those surveys found that both urban and rural respondents most frequently identified prosecutors and judges, and the courts, as the most corrupt actors or institutions in the country. See Integrity Watch Afghanistan, ‘National Corruption Survey 2014’, 2014 <https://iwaweb.org/national-corruption-survey-2014/>; Integrity Watch Afghanistan, ‘National Corruption Survey 2016’, 2016 <https://iwaweb.org/national-corruption-survey-2016/>
- 2 United Nations Assistance Mission, ‘Kunduz Provincial Profile of Rule of Law and Justice Institutions’, September 2014. Although a provincial needs assessment conducted by Roeder Tilmann in 2011 found “no concrete signs for an established state justice system” in many of the districts of Kunduz. See Tilmann Roeder, ‘Provincial Needs Assessment: Criminal Justice in Kunduz Province’, March 5, 2011.

- 3 E.g. Women for Afghan Women and Norwegian Refugee Council provide legal aid services.

While government or Taliban territorial control determines what justice system is available to citizens within an area, corruption is highly relevant to shaping citizen's preferences for the different systems. Although there is no strict hierarchy of preferences, Kunduz residents generally prefer CBDR to state and Taliban justice, because of its efficiency, low incidence of corruption, and high social acceptance. Citizens also prefer Taliban justice for its efficiency and reputation for being corruption-free.⁴ Corruption in state justice institutions is consistently cited as a major deterrent for citizens from using the state system. In addition, inefficient and poorly administered procedures are equally as significant a deterrent as corruption. Further, citizens are dissuaded by the low social acceptance of state justice. As a result state justice is often treated as a forum of last resort.

Notwithstanding, there is evidence that anti-corruption measures implemented by the national government have had a positive impact on the state justice system in Kunduz. Justice sector stakeholders widely perceive that corruption in the form of bribery has declined in the judiciary as a result of judges receiving higher salaries. Nevertheless, the interference of powerful actors in the judiciary continues to undermine judicial independence. Corruption is also perceived to persist in the Department of Justice (DOJ) and the Afghan National Police (ANP).

Summary of key recommendations:

- **Prioritize security of justice personnel and infrastructure:** All stakeholders should give priority to the security of justice personnel and infrastructure to enable state justice institutions to function, at the minimum in the provincial capital of Kunduz.
 - **Mobile civil registries:** The Kunduz judiciary could explore the feasibility of conducting mobile civil registries in the districts to better serve citizens' demands. Though, this should only be attempted following an assessment
- **Strengthen cooperation on land dispute resolution:** The Kunduz judiciary and DOJ-Huquq should strengthen cooperation with CBDRs on land dispute resolution, for example by documenting referrals, monitoring outcomes and registering CBDRs decisions and documents in the DOJ-Huquq Department.
 - **Strengthen the network of defense lawyers:** AIBA and donors should promote networking and solidarity amongst Kunduz's defense lawyers to bolster resilience against rising insecurity. Especially promote solidarity efforts amongst women defense attorneys and women's rights activists, who face disproportionate security risks.
 - **Focus CBM-T on judicial inefficiencies and corruption risks:** IWA should focus its CBM-T program on understanding the procedural inefficiencies and corruption risks in the judiciary. IWA should also expand monitoring efforts to: DOJ-Huquq Department, the Prosecutor's Office and the Police CID. Drawing on monitoring data IWA should formulate evidence-based reform proposals to the Supreme Court and the government to reduce corruption and increase efficiencies in state justice institutions.
 - **Further research on social acceptance of state justice:** IWA could conduct further research to understand factors that contribute to low social acceptance of the state justice system, specifically to identify any factors beyond reducing corruption and increasing efficiency that would increase social acceptance of the state justice system.

4 Although in some cases, where Taliban commanders exercise judicial powers there have been instances of bribery and cronyism. See Antonio Giutozzi, Claudio Franco, and Adam Backzo, 'Shadow Justice: How the Taliban Run Their Judiciary', Integrity Watch Afghanistan, 2012.

ASSESSMENT METHODOLOGY

The assessment methodology was comprised of a mixture of qualitative methods including individual in-depth interviews, observation and desk research. The research team consisted of a lead researcher based in Kabul, two researchers based in Kunduz, and an international consultant, engaged to prepare the final report based in Washington DC.

A total of 62 individual in-depth interviews were conducted using a semi-structured questionnaire. Respondents were identified through a purposive and snowball sampling methods. Of those interviewed, 23 respondents were formal justice sector stakeholders from Kunduz including judges, prosecutors, AIBA defense lawyers, AIHRC officials, and NGOs representatives. In addition, interviews were conducted with 22 litigants, including 12 individuals who have litigated a case in the courts or have been prosecuted for a criminal offence, and 10 individuals who had sought to mediate a dispute through a CBDR. A further 17 interviews were conducted with CBDR mediators.

Additionally, 11 individual interviews were conducted project participants, beneficiaries and stakeholders of the CBM-T program. The interviews collected individual perspectives of the strengths, weaknesses and impact of the program.

Furthermore, IWA researchers undertook one-day observations of the offices of the seven district courts. At the Kunduz city court complex, IWA researchers observed the operations of the Kunduz appeal and primary courts, and the offices of the Chahar Dara, Dashte Archi, Khanabad, and Qalay-i-Zal courts, which are now operating from the same complex. IWA researchers travel led to Aliabad and Imam Sahib to observe court activities.

Finally, a literature review, desk research and discussions with other organizations conducting justice sector or rule of law programming in Kunduz have helped to ground the findings.

There were methodological limitations due to the inability of researchers to travel to opposition-controlled areas to interview individuals with experience of the Taliban judiciary or Taliban judges. This limitation was overcome through triangulation with other interview data and desk research. Further, original interview transcripts were prepared in Dari and translated to English for analysis by the author. To minimize translation errors, IWA's lead researcher reviewed and checked all transcripts.

OVERVIEW: KUNDUZ PROFILE

Kunduz province represents one of the most complex political and security landscapes in Afghanistan. Ethnically heterogeneous, Kunduz is dominated by political factions, militias, criminal networks, and the Taliban-led insurgency. Terrorists groups such as the Islamic Movement of Uzbekistan (IMU) and Islamic State Khorasan (IS-K) are also present.⁵ Kunduz is strategically located as a border province to Tajikistan and a main thoroughfare for the northern eastern provinces to the commercial centers of Mazar-i-Sharif and Kabul city. Kunduz is also an important political theater with a high concentration of local actors with alliances to national-level actors, representing the main political factions in the country.⁶

Geography

Kunduz province is bordered by Tajikistan to the north, Balkh to the west, Baghlan to the south and Takhar to the east. Kunduz province is divided into seven administrative districts including the provincial center of Kunduz, Aliabad, Chahar Dara, Dashte Archi, Imam Sahib, Khanabad and Qalay-i-Zal. Two major highways cross through Kunduz -- Route 2 leading from Kabul through Kunduz city to the Sher Khan Bander (the official border crossing to Tajikistan); and Route 302 leading from Mazar-i-Sharif through Kunduz to eastern provinces Takhar and Badakshan. As a result, Kunduz is a strategic location for narcotics smuggling to Tajikistan, and the smuggling of weapons, alcohol, and precursor chemicals into Afghanistan.⁷

Economy

Kunduz has a mixed economy based on agriculture, animal husbandry, trade and some light industry.⁸ Remittance from labor migration is also a significant proportion of household income.⁹ Kunduz is the second most important commercial hub in northern Afghanistan after Mazar-i-Sharif, and is part of the trade route from Tajikistan to Kabul. Due to unfavorable climate and soil conditions, there is little to no poppy cultivation in the province, but Kunduz is a major transit route for narcotics to Tajikistan. Unlike in other parts of the country, landholdings in Kunduz tend to be small plots, with an average size of 1.34 ha per family.¹⁰

Demographics

Kunduz province is densely populated with an estimated population of just over 1 million people¹¹ covering a land area of 8,040km squared.¹² Kunduz is one of the most multi-ethnic provinces in the country. Afghanistan's five major ethnic groups are represented in Kunduz province with Pashtuns estimated to be the largest (33%), followed by Uzbeks (27%), Tajiks (20%), Turkmen (9.4%), and Hazaras (3.5%).¹³ In addition Arabs (4.6%), Baloch (1%), Pashai, Nooristani and Sadat (combined 0.5%) are present.¹⁴ Since there is no reliable population census in Afghanistan, these figures are estimates¹⁵.

8 Ibid, 41.

9 Ibid, 42.

10 Ibid, 46

11 The Afghanistan Central Statistic Office (CSO) estimates the population of Kunduz in 2017-18 to be 1,049,249 including the nomadic population. Since no official census has been conducted in Afghanistan since 1979, population estimates by CSO is based on a formula applied to data collected in the 2003-05 households listing. Some organizations, such as the Liaison Office have estimated the population of Kunduz to be as high as 1.7 million in 2009 based on an estimate of 221,058 households with an average of 8 members. See The Liaison Office, 'Provincial Assessment Kunduz', May 2010, 18.

12 The Liaison Office, 'Subnational Governance Capacity Needs Assessment in Northern Afghanistan: Badakshan, Baghlan, Balkh, Kunduz, Samangan and Takhar', November 2010, 11.

13 Ibid, 19.

14 Ibid.

15 The last official census was taken in 1979 and has not been repeated since. Population estimates by CSO is based on a formula applied to data collected in the 2003-05 household listing.

5 Interviews with defense lawyers in Khanabad and Kunduz city refer to an emerging IS-K presence in Chahar Dara, Dasht-e-Archi, Khwaza Dasta of Khan Abad district. The Islamic State Khorasan province (IS-K) is reported to have emerged in Afghanistan in 2014 in eastern Nangarhar province. See Casey Johnson, 'The Rise and Stall of the Islamic State in Afghanistan', United States Institute of Peace, Special Report 395, November 2016.

6 From 1992 to 2001 Kunduz province reflected a microcosm of the national-level conflict as all relevant national actor had a social or ethnic base in the province. Many of these actors and political factions have reemerged in the post-2001 political and security landscape. See Nils Wormer, 'The Networks of Kunduz: A History of Conflict and Their Actors, from 1992 to 2001', Afghan Analyst Network, 2012, 1.

7 TLO, May 2010, 45.

Kunduz's ethnic make-up is significant for understanding allegiances and political factions that dominate Kunduz's governance and security institutions, the composition of militia groups, and the local Taliban insurgency. During the Afghan war in 1979, in Kunduz, like in most other parts of the country, power shifted from the traditional elite to foreign-funded commanders, known as 'mujahedeen' who led armed militias against the Soviet backed People's Democratic Republic of Afghanistan (PDPA)-ruled government. Following the collapse of the PDPA regime in 1992, and the ensuing civil war, mujahedeen parties fractured when their multi-ethnic factions broke up, and commanders started to construct their constituency along ethnic lines.¹⁶

Civil war 1992-1996

During the civil war from 1992 to 1996, Kunduz was subjected to the power contest between Jamiat-e Islami and Hezb-e Islami and their shifting alliances with Junbish-e Milli, Ittehad, Hezb-e Mahaz and at times Wahdat and Haraket-e Inqilab Islami.¹⁷ Although these political factions receive support from ethnic blocs of Tajiks, Pashtuns, Uzbeks, and Hazaras, the last three decades of war has illustrated that ethnic blocs do not reliably support one faction. With the exception of Uzbek support for Junbish-e Milli, Tajiks, Pashtuns, Hazaras have changed allegiance to political factions in order to secure political deals.

Post-2001 international military intervention

The US-led international military intervention in 2001 shifted the power balance away from the Taliban back to the Northern Alliance.¹⁸ Tajik and Uzbek

commanders took over the security institutions in Kunduz. Pashtun power was diminished and the appointment of Pashtuns in government positions was seen to be symbolic.¹⁹ The decline of Pashtun dominance in Kunduz is relevant to the return of the Taliban. Although Taliban support extends beyond the Pashtun ethnic group, the majority of support in Kunduz is found in Pashtun communities. This support is more pragmatic than ideological in nature due to historical land policies and insecurity over land tenure. In the post-2001 period, Pashtun political marginalization and exclusion from the security institutions is a grievance that has been exploited by the Taliban insurgency.

Taliban insurgency

Kunduz province was the Taliban's major stronghold in northern Afghanistan, and the last northern province to fall in December 2001 to the US-backed Northern Alliance.²⁰ The Taliban re-emerged in Kunduz in 2006, and the province has become one of the frontlines in the Taliban's insurgency.²¹ Beginning in 2008 the Taliban expanded into Aliabad, Chahar Dara and Khanabad districts.²² Following the 2014 security transition, German and US troops left the province under the control of Afghan government forces, militias, Taliban and other armed opposition groups. By 2015, the Taliban were present in most areas in Aliabad, Chahar Dara, Dashte Archi, and significant areas of Qalay-i-Zal and Khanabad districts. Beginning with the annual spring offensive in April 2015 the Taliban escalated its offensive in Kunduz province, culminating in the capture and occupation of Kunduz city by Taliban forces on September 27, 2015 for

16 According to Nils Wormer, during the 1980s support for a political faction was not based on belonging to a tribe or ethnic group, with Pashtuns prominent in Jamiat-e Islami and Tajiks prominent in Hezb-e Islamic. See Nils Wormer, 'The Networks of Kunduz: A History of Conflict and Their Actors, from 1992 to 2001', Afghanistan Analyst Network, August 2012, 67. For example, Aref Khan was a Pashtun and a well-known Jamiat commander before switching over to the Taliban and becoming governor of Kunduz in 1997. See TLO, May 2010, 51.

17 According to Nils Wormer, citing Dorransoro, three phases can be distinguished between 1992 and the emergence of the Taliban in 1996. In the first phase, Jamiat was in a coalition with Jombesh and Wahdat, and was in contest with Hezb-e. In the second phase, Wahdat leaves, and Ittehad and Haraket-e Inqilab join the Jamiat coalition, and Jombesh joins Hezb-e. In the third phase, Jamiat, Hezb-e and Jombesh reconcile to face the Taliban. See Wormer, 14.

18 The Northern Alliance in 2001 including a collection of all the mujahedeen parties and some of the biggest were Jamiat, Hezbi Wahdat, and Junbish e-Milli.

19 According to TLO, this accelerated the loss of Pashtun dominance in Kunduz that began under the mujahedeen government in 1992. See TLO May 2010, 7

20 During the civil war of 1992 to 1996 Kunduz was a key battleground between different government and non-government aligned jihadi groups such as Jamiat, Junbish, Hezb-e Islami, Ittehad, Mahaz-e Melli, Hezb-e Wahdat, and during 1996 to the assassination of Masood on September 9, 2001 was contested between the Taliban and the coalition of Northern Alliances forces led by Shad Masood. From 1992 to 2001 Kunduz was never completely controlled by any of these groups. See Nils Wormer, 'The Networks of Kunduz: A History of Conflict and Their Actors, from 1992 to 2001, Afghan Analyst Network, 2012, 13-38.

21 Although many reports have the Taliban re-emerging in 2008 there were also reports of Taliban presence emerged as early as 2006 in Chahar Dara district but there was unwillingness by the local government officials to acknowledge these reports. See The Liaison Office, 'Provincial Assessment Kunduz', May 2010, 126.

22 TLO, May 2010, 127.

fifteen days.²³The Taliban had captured for the first time a provincial capital city, destroying and damaging government infrastructure, and intimidating local residents.

In October 2016, the Taliban seriously challenged government forces again for control of Kunduz city. At the time of preparation of this report, the Afghan government controls the six district centers and Kunduz city, and the main highways into the province. The remaining areas in Kunduz are controlled by the Taliban or are contested between Taliban and government forces.

Militias, ALP and community defence groups

The proliferation of an array of informal security groups in the form of community defence groups, militias and ALPhas added another layer to the conflict dimension in Kunduz province. In response to the Taliban insurgency, communities and the Afghan government began forming community defense groups around 2008.²⁴ These informal security groups proved over time to be less effective in countering the insurgency, and more of a challenge to law and order in the province. Informal security groups have illegally taxed, intimidated, harassed local residents, committed violent crimes, including kidnapping, murder and rapes, and are engaged in smuggling and other illicit trades. The formation of non-state armed groups with or without state backing presented an opportunity for former jihadi commanders who have been marginalized in the post-2001 power structure of Kunduz to rebuild their power base and status in their community.²⁵ The US-led and government-backed Afghanistan ALP program became significant in the power structure of the province as major local actors competed to be in it. The bulk of the initial 1,125 ALP positions for Kunduz went to pro-Jamiat commanders, which gave rise to the perception that Jamiat dominated both the formal and informal security institutions.²⁶

Political factions

Political factions dominate Kunduz's governance landscape. The Taliban insurgency in Kunduz was fuelled in part by a sense of Pashtun loss of power or perceived marginalization after 2001.²⁷ Although many Pashtuns held executive offices in the post-2001 power structure in Kunduz, Tajiks and Shura-ye-Nazar dominated the security institutions, which targeted Pashtun communities when the Taliban re-emerged. Educated non-militant Taliban who had lost their jobs in the state apparatus (non-Hezbi aligned Taliban) and those who had returned from Pakistan to find their land occupied were the early supporters of the Taliban insurgency. What distinguishes Kunduz from other provinces, in terms of power dynamics is that no individual actor or group has influence over the entire province or even a district. Power is fragmented amongst a host of individuals, who have influence only in their discrete territory.²⁸

Land policies

Historically sparsely populated, Kunduz was the destination for several waves of Tajik, Uzbek, Turkmen immigration from Central Asia triggered by the Russian Red Army conquest of the region in the early twentieth century, and the state consolidation policies of several Afghan central governments.²⁹ Pashtun immigration to the north consisted of two key phases. The first phase predominantly took place under the state consolidation efforts of Amir Abdur Rahman (1880-1901) whereby Pashtun families were encouraged to migrate to the north through favorable land allocation policies or forcibly relocated.³⁰ A second wave of Pashtun migration to the north occurred from the 1930s to the 1970s as part of the industrialization efforts of the government. Pashtun families were drawn to the north by favorable land sales as well as forcibly resettled.³¹ Favorable land allocation to Pashtun families often forcibly displaced non-Pashtun customary land users.³² These past land allocation policies underpin land and water conflicts in Kunduz today.

23 Rod Nordland, 'Taliban End Takeover of Kunduz After 15 days', The New York Times, October 13, 2015, <https://www.nytimes.com/2015/10/14/world/asia/taliban-afghanistan-kunduz.html>

24 TLO, May 2010, 145.

25 Ibid, 146.

26 Helena Malikiyar, 'Kunduz Did Not Happen Overnight', Opinion, War & Conflict, Al Jazeera, <http://www.aljazeera.com/indepth/opinion/2015/10/kunduz-afghanistan-151022051623212.html>

27 TLO, May 2010, 154-156

28 42 influential actors or families were identified by TLO in 2010. See TLO, May 2010, 68.

29 Nils Wormer, 'The Networks of Kunduz: A History of Conflict and Their Actors, from 1992 to 2001', Afghanistan Analyst Network, August 2012, 7.

30 Ibid.

31 Ibid.

32 See Liz Alden Wily, 'Looking for Peace on the Pastures: Rural Land Relations in Afghanistan', Afghanistan Research and Evaluation Unit, December 2004, 66.

THE JUSTICE SYSTEM(S) IN KUNDUZ PROVINCE

Like much of Afghanistan, Kunduz province is legally pluralistic and is comprised of state and non-state justice systems³³. The state justice system is comprised of: fixed courts, the prosecutor's office, the department of justice, the ANP, and prisons. This assessment only covered the ANP Criminal Investigation Division (ANP CID). The non-state justice system is comprised of an array of individuals and bodies that exercise quasi-governance and dispute resolution authority outside of the state system. When discussing state and non-state justice systems in Afghanistan, it is important to keep in mind, as Noah Coburn clarified in his study of informal justice for the United States Institute of Peace (USIP) “[i]n Afghanistan, the informal system is preponderant, while the formal system seeks preponderance but remains secondary”.

This report will apply the term Community-Based Justice Mechanisms (CBDRs) to describe the array of *shuras*³⁴ or *jirgas* of elders, religious scholars or influential individuals who exercise quasi-governance authority and mediate disputes in Kunduz province. This is to allow for the distinction of another non-state justice actor – the Taliban. The Taliban judiciary is present in many areas of the province that is under Taliban control or influence. Past research by IWA found that the Taliban use mobile courts with trials conducted by Taliban ulama (religious scholars) in different locations within a district.³⁵ This assessment found a level of collaboration between the state justice system and CBDRs, and the Taliban judiciary and CBDRs, but no

state and Taliban collaboration.

In addition, a number of other government institutions, NGOs and individual authorities provide some form of justice assistance to citizens. These include: Directorate of Women's Affairs (DOWA), the Afghanistan Independent Human Rights Commission (AIHRC), Women for Afghan Women (WAW), Norwegian Refugee Council (NRC),³⁶ the Afghanistan Independent Bar Association (AIBA) as well as commanders of the Afghan Local Police (ALP) commanders or other commanders of pro-government militias in areas under their influence. Assistance provided by these institutions, organizations or actors ranges from legal aid to dispute resolution to referrals to the state justice system and CBDRs. There was no evidence of referrals by these organizations/actors to the Taliban, although there is evidence of citizens taking matters to the Taliban.

33 The term is applied to denote any system outside of the Constitutionally prescribed state governed system of justice in Afghanistan but the author recognizes that there is no clear binary between state and non-state systems in Afghanistan, with state actors also involved in non-state processes. See Noah Coburn, 'Informal Justice and the International Community', United States Institute of Peace, Peaceworks No.84, 2013.

34 *Shura* is an originally Arabic word that has been adopted into Dari and Pashtu to refer to permanent or quasi-permanent local council. It is distinct to a *jirga* which is Pashto word referring to ad hoc meetings convened to address a specific issues. See Noah Coburn and John Dempsey, 'Informal Dispute Resolution in Afghanistan', United States Institute of Peace, Special Report 247, August 2010, 3.

35 See Antonio Giutozzi, Claudio Franco, and Adam Backzo, 'Shadow Justice: How the Taliban Run Their Judiciary', Integrity Watch Afghanistan, 2012, 13.

36 NRC delivers an Information, Counseling and Legal Assistance (ICLA) program in Kunduz focus on civil law assistance to refugees and internally displaced persons.

Below is a list of the main justice providers in each district:

Table 1: Compiled based on perceptions collected from individual interviews.

Districts	Main Justice Providers
Aliabad	CBDRs, state judiciary, prosecutor's office, Taliban judiciary
Chahar Dara	CBDRs, Taliban judiciary
Dashte Archi	CBDRs, Taliban judiciary
Imam Sahib	CBDRs, state judiciary, prosecutor's office, Department of Justice - Huqooq, AIBA, ALP and pro-government militias
Khanabad	CBDRs, prosecutor's office, AIBA, ALP and pro-government militia commanders
Kunduz City	CBDRs, state judiciary, prosecutor's office, DOJ, prison, DOWA, AIBA, national and international NGOs/ humanitarian assistance organizations
Qalay-i-Zal	CBDRs, Taliban judiciary

The writ of the state justice system

In 2011 the state justice system in Kunduz was described as non-existent beyond Kunduz city.³⁷ Three years later the assessment was upgraded to “steadily developing”, with improvements in legal aid, legal education, human capacity building, and rehabilitation of some district infrastructure.³⁸ Weaknesses remained in the area of access to formal justice institutions for women, returnees, villagers, minorities and children. However, in 2017, many of the gains of the past decade have been reversed, and the writ of the state justice system has narrowed to Kunduz city and some district centers.

In 2015 the Taliban expanded its influence across Kunduz province. As more districts fell under Taliban control, district judges and prosecutors re-located to Kunduz city. Since July 2015 district judges from Chahar Dara, Dashte Archi, and Qalay-i-Zal districts

37 A provincial needs assessment conducted by Roeder Tilmann in 2011 found ‘no concrete signs for an established state justice system’ in many of the districts of Kunduz. See Roeder Tilmann, ‘Provincial Needs Assessment: Criminal Justice in Kunduz Province’, March 5, 2011.

38 UNAMA, Kunduz Provincial Profile of Rule of Law and Justice Institutions, September 2014.

have been working from the Kunduz appeal court building in Kunduz city. Judges from Khanabad district shifted to Kunduz city in September 2016. Only the judges of Aliabad and Imam Sahib remain working in their districts.³⁹ Since Aliabad district is located next to the main highway into the province, government forces have concentrated effort to maintain control of the district, which has enabled the court building to remain open. The Taliban expansion in Imam Sahib was countered, and the court and district government offices remain active.⁴⁰ The district governor's office, court, prosecutors and ANP buildings were damaged during the attack on Imam Sahib in the September 2015 when the Taliban proceeded to capture Kunduz city.

In addition to the reduced presence of judges, half of the district prosecutors in the province have consolidated their presence in Kunduz city. Prosecutors for Chahar Dara, Dashte Archi and Qalay-i-Zal districts are operating from the ANP headquarters in Kunduz city.⁴¹ Only prosecutors for Aliabad, Khanabad and Imam Sahib continue to have a presence in the districts.⁴² Prosecutors are relying on telephone communication to collect evidence for cases that occur in the districts.⁴³ Likewise, the ANPCID, which has not been very active in the past few years in Kunduz, is also confined to Kunduz city.⁴⁴ With limited ability to travel to district areas to investigate crimes, the ANP's CID officers also rely on information collected through telephone communication.

Furthermore, officials from the DOWA and the AIHRC are mostly confined to Kunduz city. The AIHRC confirmed using telephone communication with residents in the districts to fulfill its monitoring mandate. The assessment team was unable to confirm the presence of DOJ officials beyond Kunduz city, although the Acting Director of the

39 IWA researchers travelled to Aliabad and Imam Sahib and observed the courts were open and judges and administrative staff were present.

40 However, it was noted that villages in the east of Imam Sahib such as Karwat, Arik Burdi, Ismael Qishlaq and Aaq Massod are under the influence of the Taliban.

41 Following an attack on the prosecutor's office in Kunduz city on October 27, 2014, the office was destroyed and prosecutors were re-located to the ANP compound on the airport plateau and have remained there. In 2016 an office was renovated for prosecutors within ANP compound.

42 Interview with Director of Kunduz Attorney General's Office, May 2017.

43 Interview with defense attorney, May 10, 2017.

44 See UNAMA, Kunduz Provincial Profile of Rule of Law and Justice Institutions, September 2014.

DOJ states “all [DOJ] departments in the province are functioning and employees do their work in the official hours everyday”.⁴⁵

The consolidation of judges, prosecutors and other justice officials in Kunduz city reflects a narrowing of the writ of the state’s justice system. At the time of this assessment, government territorial control extends mostly to district centers and Kunduz city.⁴⁶ In many districts, including Chahar Dara, Dashte Archi, Khanabad and Qalay-i-Zal the government controls the district center, while the remaining territory is influenced by the Taliban or contested between government forces and Taliban fighters.⁴⁷ Given this context, the main determining factor for whether citizens are using state or Taliban justice institutions is territorial control. In areas controlled by the government, citizens use CBDRs, state justice institutions and the Taliban judiciary. In areas controlled by the Taliban, citizens use the Taliban judiciary or CBDRs. Citizens mostly do not approach state justice institutions in Taliban controlled territory for fear of retaliation from opposition forces, and because of the limited presence of state justice institutions or low acceptance by communities of government institutions.

Lasting impact of the Taliban offensives in 2015

The developmental progress that has been made over the past decade in Kunduz, particularly with regards to infrastructure development for state justice institutions was wiped away in the Taliban campaigns of 2015. The district governor compounds where many of the district courts offices were housed were destroyed or severely damaged when the Taliban took over the district centers from April to June 2015. According to the chief judge of the Dashte Archi district court, “when the Taliban took Dashte Archi, they totally destroyed the court. Nothing was left. No door or room, no desk and chair”.⁴⁸ Similarly, the chief judge of the Chahar Dara district court confirms:

*“Chahar Dara primary court fell to the Taliban in the spring of 1394. Everything has been stolen from the court. All justice organizations, security departments and civil departments collapsed. Nothing was left...”*⁴⁹

The Taliban offensive that year culminated in the capture and occupation of Kunduz city by Taliban and armed opposition forces (AOGs) on September 28 for 15 days.⁵⁰ The capture of the provincial capital for the first time since the insurgency began in Kunduz in 2008⁵¹, was also the first time a provincial capital city has been occupied by Taliban and AOGs in the country. The offensive caused 848 civilian casualties (289 deaths and 559 injuries) and also allegedly involved arbitrary killings and gender-based violence against women and girls.⁵² It also resulted in widespread infrastructure damage to government buildings, the offices of NGOs and international organizations.⁵³ The Taliban targeting of women who worked outside of the home led to the departure of a cohort of professional women from Kunduz province. However for residents, the lasting impact has been psychological.

During the Taliban offensive on Kunduz city, Taliban fighters and/or opportunistic criminals ransacked and looted from government offices, the offices of local NGOs and international organizations.⁵⁴ Taliban fighters and/or opportunistic criminals entered the Kunduz city appeal court complex and vandalized offices and looted files and computers.⁵⁵ Similarly, the office of the AIHRC was also ransacked during the Taliban occupation. Glass windows were

45 Interview Acting Director, DOJ, May 2017.

46 Respondents to this assessment estimated government control of Kunduz city up to 3km or less from the main square or up to the main entrances into city. Does not include ANSF or NDS estimates.

47 Based on estimates provided by respondents to this assessment. Does not include ANSF or NDS estimates.

48 Interview, Head of Dashte Archi primary court, Kunduz city, May 27, 2017.

49 Interview, Head of Chahar Dara primary court, Kunduz city, May 29, 2017.

50 The Taliban formally announced its withdrawal on October 13, 2015. See UNAMA, ‘Afghanistan Human Rights and Protection of Civilians in Armed Conflict: Special Report on Kunduz Province’, December 2015, i.

51 Although many reports have the Taliban re-emerging in Kunduz in 2008 there were reports of Taliban presence as early as 2006 in Chahar Dara district but there was unwillingness by the local government officials to acknowledge these reports. See The Liaison Office, ‘Provincial Assessment Kunduz’, May 2010, 126.

52 See UNAMA, ‘Afghanistan Human Rights and Protection of Civilians in Armed Conflict: Special Report on Kunduz Province’, December 2015, 2 and 14.

53 See also UNAMA Special Report on Kunduz for description of damage to civilian property.

54 UNAMA’s reporting of the events attributed looting to Taliban fighters and opportunistic criminals. See UNAMA Special Report on Kunduz, 3.

55 Various accounts provided by justice stakeholders in Kunduz city. IWA researchers observed the physical damage to court offices is still visible during the period of assessment.

shattered, vehicles, computers and office equipment were stolen and a security guard was killed during the attack.⁵⁶ Many local and international organization NGOs had their offices raided including the AIBA, NRC, International Development and Law Organization (IDLO). According to a former IDLO legal advisor, “IDLO’s office was looted and all the boxes that contained investigation tools for the prosecutors and criminal investigation division’s police were stolen”.⁵⁷ Taliban forces overran the United Nations Assistance Mission to Afghanistan (UNAMA) compound in Kunduz city, and UNAMA evacuated its staff, and provided evacuation support to staff of local NGOs.⁵⁸

The most pernicious element of the Taliban’s campaign in Kunduz city was the systematic targeting of women professionals. Taliban forces went door-to-door searching for women identified as working for NGOs, media organizations, government institutions or in a public role.⁵⁹ The Director of WAW, a well-known advocate of women’s rights in the province Hassina Sarwari was amongst the cohort of professional women targeted, and was forced to flee the province.⁶⁰ At the time WAW provided a shelter program for abused women and girls, a family guidance center and a center for the children of women prisoners.⁶¹ Like many other local NGOs, WAW offices were looted, and computers and vehicles were stolen. Taliban fighters went a step further and burned down WAW’s women shelter.⁶² The burning of premises by the Taliban often denotes sanctioned punishment. During interviews with IWA’s researchers respondent made a point to highlight that although their offices were looted and vandalized, it was not burnt. For example, according to the director of AIBA:

“During the fall of Kunduz to Taliban, people entered our office...a very good camera that was given to us by GIZ was stolen. They also broke a cabinet in hope of finding cash inside. Windowpanes were broken. There was nothing else in our office apart from laws. Luckily, they didn’t set the office on fire”.

Media reporting also described attacks against radio stations run by women, with one burned and two organizations looted.⁶³ The Fatima Zahra Girls’ High School and the Women’s Empowerment Center, which held social and political awareness sessions and tailoring classes, were also looted.⁶⁴ The Taliban’s targeting of women professionals and women’s organizations in the Kunduz offensive showed the ground reality of the Taliban’s unchanged hardline stance on women’s rights, despite representations of a more tolerant position made at peace talks in Qatar earlier that year.⁶⁵

A generation of women professionals was forced to leave Kunduz province. Women journalists, NGO workers, and government officials fled to neighboring provinces and Kabul. Most have not returned.⁶⁶ Some women professionals who did return, in order to protect themselves and their families, entered into negotiations with the Taliban on the terms under which they could continue to live and work in the province.⁶⁷ In one example, the conditions required the head of a government department to maintain a low profile and to be less vocal about women’s rights.⁶⁸ While such negotiated conditionality with the Taliban may on the one hand, enable services for women to continue to operate, it

56 Interview with AIHRC official, May 10, 2017.

57 Interview defense lawyer in Khanabad and former IDLO legal advisor, May 10, 2017.

58 Interview with former UN official, June 21, 2017.

59 See Alissa J. Rubin, ‘Fear of Taliban Drives Women out of Kunduz’, New York Times, October 14, 2015, <https://www.nytimes.com/2015/10/15/world/asia/taliban-targeted-women-kunduz-afghanistan.html>. See also Amnesty International, ‘Afghanistan: Harrowing accounts emerge of the Taliban’s reign of terror in Kunduz’, October 1, 2015, <https://www.amnesty.org/en/latest/news/2015/10/afghanistan-harrowing-accounts-emerge-of-the-talibans-reign-of-terror-in-kunduz/>

60 Dr. Hassina Sarwari has since left Afghanistan.

61 Rubin, NYT.

62 Fortunately, shelter residents had been evacuated with the assistance of UNAMA the night before the attack. Interview former UN official, June 21, 2017.

63 Rubin, NYT.

64 Ibid.

65 Taliban representatives at the peace talks vowed to permit women to work outside the home, even in male-dominated professions like engineering. See AFP, ‘Afghan Taliban ‘soften stance’ on women’s rights: activists’, May 10, 2015, <https://www.dawn.com/news/1181115>. A few months later, in September 2015, Fawzia Bostani, a civil engineer who works for the Ministry of Public Works in Kunduz was targeted when the Taliban entered Kunduz city. See Rubin, https://www.nytimes.com/2015/10/15/world/asia/taliban-targeted-women-kunduz-afghanistan.html?_r=0

66 See Danielle Moylan, ‘We can’t go back’ say women activists on Taliban Kunduz ‘hit list’, The UK Telegraph, October 18, 2015, <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/11938891/We-cant-go-back-say-women-activists-on-Taliban-Kunduz-hit-list.html>

67 Interview with former UN official, June 21, 2017.

68 Ibid.

also restricts the scope and level of these services. The effect has been to diminish women's rights activism in the province.

Sexual assault against women including rape allegedly took place during the Taliban occupation of Kunduz.⁶⁹ Due to the break down in security, human rights monitors were unable to confirm how widespread the incidents were.⁷⁰ The Taliban took considerable steps to deny the allegations that its forces committed acts of rape against women, and to target and punish those who would publicize it.⁷¹ The allegations that Taliban forces committed rape against women is a significant break from the Taliban's public position prohibiting rape by its forces. A stance the Taliban took during the civil war to distinguish itself from the chaos and disorder of the Northern Alliance groups, which did engage in random acts of sexual violence against women.⁷² During the Taliban offensive, TOLO news reported that Taliban fighters had committed rape at a girls hostel.⁷³ The Taliban quickly denounced the report and TOLO News suffered a direct reprisal for making the allegations public, with a suicide attack that killed seven of its staff members.⁷⁴

Although the number of civilian casualties and infrastructure damage from the Taliban campaign was significant, for many residents the lasting impact has been psychological. The realization that the state can collapse, and Afghan security forces can be overrun in a major city like Kunduz shook many. The director of AIBA confirmed, "[s]ince most of our employees are young people, it took time to encourage them psychologically to resume their duties". For justice personnel, continuing to work in

their roles presents a daily risk of direct or indirect attack. According to a defense attorney in Khanabad, "sometimes clashes between government and the opposition erupt while we are on our way to the office, and therefore we return home".⁷⁵ The Taliban came close to capturing Kunduz city again in October 2016, and seriously challenged government forces in Qalay-i-Zal and Imam Sahib districts in early 2017. For residents of Kunduz city, the fear is not whether but when the Taliban will return.

State Judiciary

The state judiciary in Kunduz faces high-levels of insecurity, poor infrastructure, low demand for its services, a lack of enforcement capacity and competition from non-state justice mechanisms. Only two courthouses remain operational in the districts. The remaining district courts are operating from the Kunduz appeal court complex in Kunduz city.

Court office hours in Aliabad and Imam Sahib were observed to be generally from 8am to 12pm. In Kunduz city, the offices of the Kunduz primary court, and other district courts generally were observed to be between 8am to 4:00pm.

There are 227 justice personnel associated with the state judiciary in Kunduz province.⁷⁶ The current number of judges on the Tashkil is 82 individuals, most of who are working in the Kunduz city. There are also 145 administrative and support staff to the judiciary, many of who hold senior grade roles. It is estimated that the courts are at 85-96% of its Tashkil capacity.⁷⁷

69 See for e.g. Amnesty International, 'Afghanistan: Harrowing accounts emerge of the Taliban's reign of terror in Kunduz', October 1, 2015, accessed October 21, 2017, <https://www.amnesty.org/en/latest/news/2015/10/afghanistan-harrowing-accounts-emerge-of-the-talibans-reign-of-terror-in-kunduz/>

70 See UNAMA Special Report on Kunduz.

71 Interview with former UN official, July 21, 2017.

72 The Taliban did engage in forced marriages, a sanction form of sexual violence against girls. Interview with former UN official, July 21, 2017.

73 See 'Taliban 'Rape' Girls At Hostel After Kunduz Attack', TOLO News, October 19, 2015, <http://www.tolonews.com/afghanistan/taliban-rape-girls-hostel-after-kunduz-attack>

74 The reporter who covered the story in Kunduz was threatened and has subsequently left Afghanistan. Interview former UN official, June 21, 2017. See also TOLO News, 'Seven TOLO TV Employees Killed In Wednesday Attack', January 21, 2017, <http://www.tolonews.com/afghanistan/seven-tolo-tv-employees-killed-wednesday-attack>

75 Interview with defense lawyer in Khanabad. May 10, 2017.

76 Official Tashkil provided by the Afghan Supreme Court. See Annex A.

77 Interview with UN official, May 22, 2017.

Table 2: Based on official Tashkil provided by the Afghan Supreme Court, October 2017. See also Annex A.

Grades	Judicial	First	Second	Third	Fourth	Fifth	Sixth	Seventh	Eighth	Total
General Directorate of Kunduz province appeal court	82	0	1	1	23	37	39	6	38	227

A very low court caseload has been consistently noted in past assessments.⁷⁸ Of the eight provinces surveyed in a national assessment of the legal aid sector by the Asia Foundation and Ministry of Justice (MOJ) in 2016, Kunduz had the second lowest criminal caseload (2660 active criminal cases) placing the province only ahead of Bamyan (2480 active criminal cases).⁷⁹ This is despite Kunduz's population being ten times the size of Bamyan.⁸⁰ Kunduz trails well behind its neighbors, Balkh (4570 active criminal cases) and Badakhshan (4043 active criminal cases).⁸¹ In the same year, Kabul had the highest criminal caseload (12,190 active criminal cases), followed by Nangarhar (7905 active criminal cases) and Herat (6564 active criminal cases).⁸²

According to observation and interviews at courthouses by IWA researchers, Imam Sahib district court has the highest caseload of all the courts, with a higher number of criminal and civil matters than Kunduz primary court.⁸³ Qalay-i-Zal has the lowest caseload of the district courts, with no residents attending the court's office in Kunduz city during the assessment period.

It was also observed that although demand was low, citizens were attending the court, mostly to request civil law documents. The Kunduz primary court receives daily requests for preparation of inheritance letters (taraka khat), power of attorneys (wakalat khat), and marriage certificates (nikkah

khat). Residents of Chahar Dara seek assistance for land disputes, as well as marriage certificates and martyr documentation. Similarly, Khanabad residents are seeking assistance with martyrdom certification. In Aliabad, residents mostly attend the court for preparation of martyr certificates and for some traffic-related incidents. The demand for civil law documents suggests that citizens are using state justice services in order to access other services. In addition to civil documents, the courts receive request for assistance with land, inheritance, divorce and alimony disputes.

The physical security of the court buildings and of its personnel is the most significant challenge for the judiciary in 2017. The court complex in Kunduz city is located next to the National Directorate of Security, which makes it more vulnerable to attacks by armed opposition forces. The west wall of the court compound faces a road and open fields, making it a vulnerable entry point for a complex attack. The Supreme Court in Kabul has provided funding to enable the building of concrete barriers to reinforce the west wall. Little other infrastructure investments have been made despite significant damage to court offices and equipment during the Taliban offensive of 2015. IWA researchers observed that in some offices, furniture and equipment are worn out to the point of being unusable.

Further, a lack of detention facilities in the districts continues to be a challenge for Kunduz's judiciary. Criminal defendants are housed in the Kunduz city prison. To conduct trials in the district requires detainees to be transported to district courts by road. This has been a challenge for the Aliabad court, where criminal trials are being delayed due to the difficulty of transporting detainees securely to the Aliabad courthouse.⁸⁴ The lack of female detention facilities presents certain risks for women and girls, who are housed in the same facilities as male detainees.⁸⁵ In addition to the potential for abuse by prison guards and other inmates, female prisoners

78 See UNAMA 2014; Tilmann 2011.

79 Bamyan had 2480 active criminal cases in the same year. Dominique Day and Siavash Rahbari, 'Legal Aid Assessment and Roadmap', The Asia Foundation and the Ministry of Justice, April 30, 2017, http://asiafoundation.org/wp-content/uploads/2017/05/AG_Legal-Aid-Assessment-and-Roadmap.pdf

80 Kunduz has about 1 million people compared to an estimated 100,000 people in Bamyan. See Afghanistan Central Statistic Organization (CSO) estimates for 2017-2018, <http://cso.gov.af/en/page/demography-and-socile-statistics/demograph-statistics/3897111>

81 TAF and MOJ, 16.

82 Ibid.

83 According to an internal UNAMA Kunduz Provincial Profile of Rule of Law and Justice Institutions in 2014, Imam Sahib has the second largest workload behind Kunduz primary court.

84 Interview with head of Aliabad primary court, 21 May 2017.

85 Interview with AIHRC monitor, May 10, 2017.

are particularly vulnerable to abduction and abuse if the prison were to be attacked again by Taliban forces.

Taliban Judiciary

Establishing a judiciary has always been a military priority for the Taliban as it is a way for the Taliban to define its shadow government. Past research by IWA found that although at the beginning of the insurgency, fixed courts and lengthy trials were common, since 2012 the Taliban judiciary has been reflected in mobile courts, leaner structures, and shorter trial periods in insecure areas.⁸⁶ The Taliban judiciary has a reputation for being free of corruption, which is often contrasted with the pervasive corruption found in the state's judiciary.⁸⁷ However, this reputation is at times contradicted by incidents of corruption resulting from the interference of Taliban commanders in judicial processes.⁸⁸

There has been an expansion of Taliban-administered justice in most districts of Kunduz corresponding with increasing Taliban control of territory. According to residents in Qalay-i-Zal district, communities living under the control of the Taliban refer cases to the Taliban for adjudication. Communities under the control of the Arbakis⁸⁹ or ALP, refer their cases to CDBRs, with some serious criminal and civil cases being referred to the courts. In Aliabad, litigants are taking their matters to the government and Taliban courts for resolution. A resident of Aliabad district estimates that the Taliban judiciary is resolving "thousands" of cases in the district. Although these perceptions denote the Taliban judiciary is dealing with a high number of cases, actual figures are not known.

Due to the security risks, IWA researchers did not travel to Taliban controlled areas to interview Taliban judges or citizens who have taken cases to Taliban courts. Interviews with justice stakeholders highlighted a divided opinion of the Taliban judiciary, with the most notable split between the views of

prosecutors and defense attorneys. Prosecutors tended to view the Taliban courts negatively. According to a prosecutor in Dashte Archi, the "Taliban court is unjust court. The decisions they take aren't acceptable to us because they are against the law."⁹⁰ A similar opinion was shared by a prosecutor in Imam Sahib, who stated that the "Taliban do informal things. In my opinion, their courts are rejected. They resolve cases however they want which doesn't relate to Sharia".⁹¹

On the other hand, defense attorneys tended to see the Taliban courts playing a positive role in providing efficient justice to citizens. According to a defense attorney in Imam Sahib district:

"90% of people are satisfied from Taliban courts, based on the information that public people provided to us. Generally, people approach us for legal issues, but court processed the case very slowly, which can take about six months when the same case was solved by Taliban in three months".⁹²

Another defense attorney in Kunduz city shared the same opinion:

"I am okay with the Taliban courts because in some issues they are better than government courts and they resolve issues in a shorter span of time. We have good laws but we don't have capable and good judges to resolve the issue in a good manner."⁹³

In support of the views of defense attorneys, a representative of an NGO that works on youth and women issues in Kunduz city also expressed a positive opinion of the Taliban judiciary. According to the representative:

"Most of Taliban courts resolved issues and problems of people in a good manner especially land confiscation by powerful authorities during the war and Taliban delivered justice in this regard and resolved the issues easily."⁹⁴

86 See Antonio Giutozzi, Claudio Franco, and Adam Backzo, 'Shadow Justice: How the Taliban Run Their Judiciary', Integrity Watch Afghanistan, 2012.

87 Ibid, 27.

88 Ibid.

89 Arbaki is a Pashto word that has been used to refer to a traditional security force that is called upon to implement the decision of a tribal jirga and are under the direction of tribal elders. See Andrew Wilder, 'Cops or Robbers? The Struggle to Reform the Afghan National Police', Afghanistan Research and Evaluation Unit, July 2007, pin cite 43.

90 Interview with Dashte Archi prosecutor, May 2017, Kunduz city.

91 Interview with Imam Sahib prosecutor, May 2017, Imam Sahib.

92 Interview defense attorney, May 2017, Imam Sahib.

93 Interview defense attorney, May 2017, Kunduz city.

94 Interview NGO representative, May 2017, Kunduz city.

This divided opinion of the Taliban judiciary may reflect certain biases towards the government or the Taliban. It may also reflect fear of retaliation from the Taliban for expressing a negative opinion. Further investigation through interviews with litigants who have taken cases to Taliban courts as well as citizens charged with criminal offences by the Taliban judiciary would shed more light on motivations for certain perceptions of Taliban justice.

Community-Based Dispute Resolution

In both government controlled and Taliban controlled territory, CBDRs are the most widely used justice mechanism. According to residents, the courts and the Taliban are also referring disputes to local *shuras* and *jirgas* for resolution. The majority of cases handled by CBDRs relate to land and water disputes, as well as traffics incidents, thefts and murders. CBDRs handling of murder cases are common, as the state's criminal law writ has always been limited in Kunduz.

CBDRs are widely perceived to be the most accessible, efficient, and accepted form of dispute resolution for citizens in Kunduz. For CBDR litigants, the main reason for going to a CBDR was the efficiency of the process. A simple matter could be resolved in one day and a complex matter might take three months. Another reason is not possessing formal documents, particularly for land and property related dispute, that would allow litigants to take the matter to a state judiciary. Since the land law framework requires formal documents to establish ownership or property rights, many citizens with no formal documents or customary documents are unable to litigate their case in the court.⁹⁵ Furthermore, because leaders in the community facilitate mediation, there is high local acceptance.

Nonetheless, because CBDRs do not have the ability to enforce its decisions, and often decisions are not written, there is a risk of disputes re-igniting. According to a defense attorney in Kunduz city, “[t]he only negative point of informal justice is that it isn't well documented and if there is any conflict or quarrel in the future there won't be any formal documents”.⁹⁶ Another weakness is the application of negative customary norms and practices, such as

the application of *ofbaad* –exchanging girls to settle blood feuds, debts and other disputes. Although recent studies have found the practice has declined or is receiving less support.⁹⁷ A further weakness is the lack codified procedural rules to guarantee the impartiality and independence of the dispute resolution process.

There are mixed views amongst justice stakeholders as to what should be the relationship between the state and CBDRs. Many justice stakeholders support some form of cooperation, while others would like to see CBDRs phased out as the state system becomes more prominent. Many judicial officials and defense lawyers interviewed supported some form of coordination between state justice institutions and CBDRs. Advocates for women and children's rights however, believe that the state justice system should be the primary justice system and CBDRs should be phased out.

Prison

Kunduz has one prison facility located inside Kunduz city. During the Taliban capture of the provincial capital in September 2015, one of the first government institutions to be attacked was the prison. Around 600 prisoners, including 111 designated national security detainees were released.⁹⁸ Many prisoners were allegedly given weapons to join the fight with the Taliban.⁹⁹ There were 57 children and 35 women prisoners held at the prison who disappeared after the attack.¹⁰⁰ According to the director of Kunduz prison, the prison population fell to zero overnight, but around 20 inmates were recovered and returned to the prison in the ensuing days after the Afghan forces cleared the city of Taliban and AOGs.¹⁰¹

95 See for e.g. Erica Gaston and Lillian Dang, 'Addressing Land Conflict in Afghanistan', United States Institute of Peace, Special Report 372, June 2015.

96 Interview May 2017.

97 A 2014 study by the Civil and Liberal Initiative for Peace in Kabul, Parwan and Panshir provinces found the practice has declined. See Civil and Liberal Initiative for Peace 'Assessment of the Practice of Baad and its Adverse Social Impacts in Afghanistan', August, 2014, <http://openasia.org/en/g/wp-content/uploads/2015/01/Research-Draft-21-Oct-2014-3-1.pdf>. The Asia Foundation's 2017 annual survey found only 12% of respondents supported the practice of baad and baddal, compared to 18% in 2016. See The Asia Foundation, 'Afghanistan in 2017: A Survey of the Afghan People', 2017, https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf

98 Interview with UN Official, May 22, 2017.

99 UNAMA Special Report on Kunduz, 1.

100 Remarks by Belquis Ahmadi, 'Implications for Afghanistan: The Taliban Seizure of Kunduz', United States Institute of Peace, panel discussion, October 28, 2015, Washington DC.

101 Interview with director of Kunduz prison, May 25, 2017.

At the time of this assessment, the prison population has risen to 319 individuals, including 295 males and 24 female inmates.¹⁰² Almost half of inmates are held in pretrial detention, including 144 male and 1 female detainees.¹⁰³ According to a defense attorney in Imam Sahib at least 18 of the female inmates are from Imam Sahib district and have been charged with the moral crime of running away.

The prison is located within a residential area inside Kunduz city, which presents a security risk for residents if the prison was again targeted by opposition forces. There is a plan to move the prison towards the airport plateau to better secure the building and to mitigate the risk of being overrun in a future attack. National security detainees are also being transferred to Kabul's Pul-e-Charkhi prison to avoid the risk of detainees being released in the event of a future Taliban attack.¹⁰⁴

Legal Community

The legal community in Kunduz is comprised of private lawyers registered with AIBA and law graduates not registered with AIBA, but delivering legal aid services for NGOs and international humanitarian organizations. As of March 2017, Kunduz had 101 attorneys registered with AIBA, including 14 female attorneys.¹⁰⁵ Private lawyers provide legal counsel and represent citizens in cases that go to court, including in providing a criminal defense. Private lawyers do not represent clients in the Taliban judiciary or in CBDRs proceedings. However, private lawyers do represent national security defendants, including suspected Taliban fighters in the state judiciary.

Most private lawyers charged a fee for their services, although under the Advocates' Law private lawyers are required to defend at least three criminal cases per year *pro bono*.¹⁰⁶ *Pro bono* cases are identified or certified by the Ministry of Justice Legal Aid Department.¹⁰⁷ In 2016, AIBA registered lawyers undertook 109 *pro bono* criminal defense

cases.¹⁰⁸ Kunduz ranks third as the destination with the highest number of *pro bono* cases, after Kabul (440 *pro bono* cases) and Herat (245 *pro bono* cases).¹⁰⁹ Despite being the destination with the second lowest criminal caseload in 2016, only ahead of Bamyan, Kunduz had nearly five times the number of *pro bono* criminal defense cases as Bamyan.¹¹⁰ This suggests a highly active legal community in Kunduz, despite a relatively lower caseload in the state judiciary compared to other provinces.

However, for the legal community in Kunduz, the caseload has declined significantly due to a narrowing of the government's territorial control. A defense lawyer working in Khanabad observed:

"The cases have totally vanished. Most people don't refer [cases] to us. Government control less territory while opposition controls much of the territory. A defense lawyer has no value for them".¹¹¹

Insecurity is the major factor limiting the ability of lawyers to travel to the districts to meet with clients and to access potential casework. However, unlike judges and prosecutor, defense attorneys believe they are less likely to be targeted by AOGs because defense attorneys provide assistance to all citizens including suspected insurgents. According to an attorney in Kunduz city:

"I believe that armed opposition (Taliban) understands that the only people who defend them in legal cases after being arrested by government are us and it is a right of every citizen that they can have an advocate."¹¹²

102 Interview with UN official, May 22, 2017.

103 Ibid.

104 Ibid.

105 According to an AIBA national membership list as of March 2017 there are 101 registered defense attorneys, 87 of whom are male and 14 female.

106 Article 13(15) of the Advocates' Law. *Pro bono* refers to work undertaken without charge.

107 Article 43 of AIBA's By-Law states that *pro bono* cases must be identified by MOJ. Article 13(15) of the Advocates' Law states that the cases must be confirmed by MOJ.

108 TAF and MOJ, 63.

109 Ibid.

110 Bamyan has 22 *pro bono* cases registered with AIBA. See TAF and MOJ, 63.

111 Interview with defense lawyer in Khanabad. May 10, 2017.

112 Interview with defense attorney, Dashte Archi, May 10, 2017.

Major legal issues

Land Disputes

Land and property-related disputes are the most common cause of action for litigation in the state judiciary or dispute resolution in CDBRs or the Taliban judiciary. The most prevalent disputes are related to issues of land ownership, land usurpation, inheritance of land and property, water divisions and pastoral land use. There is a high degree of forum shopping associated with land dispute resolution, with litigants seeking assistance in CDBRs, the state judiciary and the Taliban courts, based on a calculated judgment of what forum can provide the best outcome in particular circumstances. For example, a farmer in Dashte Archi interviewed by IWA had a land dispute with a powerful individual, a former commander. Perceiving the local *shura* to be too weak to resolve the matter he took his case to the court. Ultimately, land conflicts in Kunduz persist not due to a lack of dispute resolution, but as a result of historically unfair land distribution policies, land usurpation by powerful individuals, and weaknesses in the land law framework.¹¹³

Morality Crimes

Despite promises from President Ghani to end the practice of arresting women and girls for ‘running away’¹¹⁴ and other ‘moral crimes’, IWA found that the majority of women and girls serving prison sentences in Kunduz have been convicted of ‘running away’ by the state.

There are currently 24 female detainees at Kunduz prison, 23 convicted and 2 held in pre-trial detention. According to a defense attorney in Imam Sahib, 18 female detainees are individuals from Imam Sahib who had attempted to leave abusive marriages. This is consistent with other research conducted in Afghanistan, which has found that often women and girls charged with ‘running away’ are fleeing domestic violence.¹¹⁵

In another case, IWA interviewed a couple from Qalay-i-Zal detained in Kunduz prison for adultery charges. The couple had approached a district government representative in Qalay-i-Zal for a marriage certificate, and were arrested by the ANP CID and prosecuted for adultery. In these cases it is often the family that requests the punishment. In Afghanistan where arranged marriages remain the norm, individuals who seek to marry without their family’s approval risks family members exerting influence over authorities to enact criminal punishment.¹¹⁶ Although human rights advocates are calling on the government to abandon the practice of imprisoning women and girls for running away and moral crimes, these punishments persists as long as prosecutors and judges are still willing to lay charges and convict.

In Kunduz female defendants are convicted at a higher rate than male defendants. Of the 295 male detainees in Kunduz prison only 144 are convicted, representing a 49% conviction rate for men compared to 95% conviction rate for female detainees (being 23 convicted out of 24 detainees). Further monitoring of women prisoners is needed in Kunduz to ensure women and girls unlawfully imprisoned are provided with the necessary legal assistance to overturn their convictions. Or at the very least to ensure women prisoners, who have been victims of violence, are provided with counseling and social service support.

Kidnapping, murder, theft and banditry

Kidnapping, murder and violence committed by criminal gangs is prevalent in Kunduz city and in districts like Khanabad and Imam Sahib. The power structure in Kunduz is highly fragmented, with local power brokers outside of the state system exerting significant influence. A key group of powerful actors are commanders of pro-government militia groups and/or the ALP. Militia related violence and criminality has been well documented in Kunduz.¹¹⁷ The Taliban capture of Kunduz city in September 2015 dislodged many of these commanders from their areas of influence. One notable example is the departure of Mir Alam, the prominent Tajik commander from his stronghold in northwestern

113 See for e.g. Gaston and Dang.

114 Human Rights Watch, “Afghanistan: End ‘Moral Crimes’ Charges, ‘Virginity’ Tests”, May 25, 2016, accessed October 21, 2017, <https://www.hrw.org/news/2016/05/25/afghanistan-end-moral-crimes-charges-virginity-tests>

115 See for e.g. Human Rights Watch, “I Had to Run Away”: The Imprisonment of Women and Girls for “Moral Crimes” in Afghanistan, 2012, https://www.hrw.org/sites/default/files/reports/afghanistan0312webwcover_0.pdf

116 Ibid, 34.

117 According to ATR Consulting, ‘ALP abuses went unpunished but were publicly known and reflected negatively on the state’, ‘Governance Strengthening Initiative for Kunduz’ presented to the President of Afghanistan. Ashraf Ghani, November 2015, 6.

Kunduz city.¹¹⁸ As a result of the departure of a number of strongmen, some militia groups have transformed into criminal gangs.

Criminal groups are widely perceived to be involved in kidnapping for ransom, thefts and other violent crimes. In particular, kidnapping for ransom has become increasingly prevalent in Kunduz and has resulted in the departure of many business people. Kidnapping incidents are investigated by the NDS in Kunduz, and IWA was not able to conduct interviews with NDS officials to better understand the nature of these investigations.

In addition to criminal groups, violent clashes between competing ALP units is also common. These have been most intense in Khanabad district. According to a prosecutor in Khanabad:

“Khan Abad is little Afghanistan. It has 265 police personnel and approximately 2000 unauthorized armed persons. These unauthorized armed groups sometimes support the government, and sometimes act only for their own interests.”¹¹⁹

Gun violence and physical assault is also common amongst a well-armed civilian population. Small altercations can quickly escalate into violence. Combined, criminally driven and militia driven violence in Kunduz contributes to a highly insecure environment.

Sexual Violence Against Women and Children

With rising insecurity in Kunduz, women and children have become more vulnerable to violence including sexual violence. The Director for the Special Attorney General’s office for violence against children confirmed that rape cases have increased in recent years.¹²⁰ Rape crimes were also identified by a number of other respondents. According to a prosecutor in Kunduz city criminal groups are responsible for exploiting an environment of insecurity to engage in criminal acts including rape:

“Most criminal groups exist in Imam Sahib and Khanabad districts and they are irresponsible armed people that loot houses, take money from people by force, rape women and do lots of other illegal activities. They do whatever evil things they want to do.”¹²¹

Although intimate partner violence is prevalent in Afghanistan¹²², traditional norms restricting the interaction of men and women who are not related to each other means sexual violence committed by perpetrators who are not family members are unusual. The sexual assault of women is highly controversial as it is considered not only an attack against the individual but is also an attack on the honor of her family which can lead to violent retaliation. Incidents of rape were prevalent during the civil war years in Kunduz, and fuelled support for the Taliban who took a strong stance against the sexual assault of women. The rising frequency of rape and sexual assaults against women and children reflects a situation of increasing insecurity in Kunduz, with militias and armed criminal groups committing violence with impunity.

118 Many of the IDPs who arrived in Kabul in the aftermath were residents of areas that had been guarded by Mir Alam and his militias. Interview with former UN Official, June 21, 2017.

119 Interview May 2017, Kunduz city.

120 Interview May 2017, Kunduz city.

121 Interview May 2017, Kunduz city.

122 See for e.g. Tim Luccaro and Erica Gaston, ‘Women’s Access to Justice in Afghanistan: Individual Versus Community Barriers to Justice’, United States Institute of Peace, Peaceworks 2014.

CORRUPTION AND JUSTICE DELIVERY

Although the prevalence of corruption is highly relevant to shaping citizens' preferences for the many different justice systems in Kunduz province, it is secondary to the accessibility of the justice mechanism itself, and at times equal insignificance to other factors, such as the efficiency of the justice process and the social acceptability of the justice provider.

For many residents of Kunduz the main justice system at the district-level are CDBRs and the Taliban judiciary. CDBRs are the most widely accessible justice system in the province, operating in every district, down to the village and hamlet-level. This assessment was unable to determine with precision how prevalent the Taliban judiciary is in Kunduz province. There is a general assumption amongst residents that Taliban courts operate in areas controlled or influenced by the Taliban. Past assessments have found that the Taliban courts in Kunduz were established as far back as 2010.¹²³ The mobile nature of the Taliban judiciary implies a higher level of accessibility than the state judiciary, which is made up of fixed courts.

With the insurgency intensifying in Kunduz province, and the government controlling less territory, state justice institutions have become the least accessible justice mechanism. Only the residents of Ali Abad and Imam Sahib districts still have access to the state judiciary in their respective districts. Other residents must travel to Kunduz city in order to access court services. Likewise, the department of justice, prosecutor's office, and police CID mainly work in Kunduz city. Thus, citizens mostly do not use the state justice institutions because it is not accessible to them.

Secondary to the accessibility of a justice mechanism, a number of factors shape citizens' preferences for certain justice systems. Although respondents did not express a strict hierarchy of preferences: low corruption, efficiency of process and social acceptability of the justice provider, were frequently cited as the key factors influencing preference for a justice mechanism. Most respondent stated a preference for CDBRs because of its efficiency, social acceptability and low incidence of corruption.

Respondents also indicated a preference for the Taliban judiciary for its efficiency and reputation of being free of corruption. However, views of the Taliban judiciary were often mixed, with respondents also citing the Taliban judiciary's harsh punishment and arbitrariness of decision-making as a deterrent. Respondents view the high incidence of corruption and inefficiency of the state judiciary as the major deterrent for citizens in using state justice services. Some respondents also cited low social acceptability as another factor deterring citizens from state justice institutions. Therefore, although corruption is highly relevant in deterring citizens from using the state judiciary, inefficiency of process and low social acceptability are also significant factors.

Perception of Corruption in the Justice Sector

State justice institutions

While most respondents stated that corruption is prevalent in state justice institutions, no litigant who had taken a case to the state judiciary would confirm directly encountering corruption. A number of theories can be suggested for this result, such as the sensitive nature of identifying corrupt actors, embarrassment with being associated with corruption, or that interviews were conducted with a limited sampling of litigants who have not directly experienced corruption. Notwithstanding, for the purpose of this report, examining respondents' perception of corruption rather than actual experience is still useful for understanding perspectives as it shapes preferences.

Nearly all respondents perceived the state justice system be the most vulnerable to corruption due to the low salaries of personnel and a lengthy and bureaucratic process that allows for more opportunity for rent-seeking behavior. Corruption is viewed to be most prevalent in the DOJ and the ANP, and least prevalent in the judiciary. Respondents were silent on corruption in the prosecutor's office. A number of respondents identified the DOJ specifically when referring to corruption in justice institutions. For example one respondent stated *"corrupt people shouldn't lead institutions such as*

123 TLO, May 2010, 112.

the director of justice in Kunduz”¹²⁴, and another respondent claimed, “corruption is not in the court, it is in the department of justice”.¹²⁵ Corruption in the ANP in Kunduz has been well documented and involves amongst other things, paying for positions, extortion, eliciting bribes, and being subject to influence by powerful individuals.¹²⁶ Corruption in the DOJ, specifically the Huquq office and legal aid unit has not been widely documented. This may be because surveys of citizens’ perception of corruption in Afghanistan often centers on the judiciary. For example, the Asia Foundation’s annual national survey of the Afghan People consistently lists the judiciary or courts as an institution where citizens encounter a high prevalence of corruption, but the survey does not include the prosecutor’s office or the Ministry of Justice.¹²⁷ Further research on corruption in the formal justice system should focus on the different institutions that make up the state justice system alongside the judiciary.

A positive finding was that many respondents believe corruption has declined in the Kunduz judiciary. The main reasons given for this change is the increased salaries of judges. For example different respondents stated, “all offices are engaged in corruption except for the judges who have fair and high salaries”, and “since their [judges] necessities have been met, 99% corruption has been cleared and the little remaining will also go away”. Some respondents perceive a direct link between the government’s anti-corruption reforms and reduced corruption the judiciary in Kunduz:

*“After the national unity government came to power, especially the leadership of the general attorney’s office, corruption decreased because salaries of the director went up but there is some corruption because salaries of employees didn’t yet go up”.*¹²⁸

Notwithstanding, even if bribe taking has decreased, judges in Kunduz are still vulnerable to influence or interference by powerful figures. Such pressure can lead to judges dropping a case or can result in biased

decisions in favor of well-connected individuals. In Imam Sahib, the powerful Ibrahimi family is known for exercising a strong hold on state institutions including the courts. According to a defense attorney working in the district, being a member of the influential clan can enable individuals to subvert justice:

“If anyone commits a crime including murder, robbery, adultery or looting of house but is part of Ibrahimi’s tribe, they will get free without any fine. Also, all judiciary systems are influenced by Ibrahimi (Uzbek) tribe and even single phone call can free a killer criminal; because the head of Afghan Parliament is also Ibrahimi”.

A number of pressure points make judges vulnerable to influence. According to one respondent, a source of pressure is the fear of losing their job, “judges do not rule in accordance with the law for fear of losing their jobs”. Another respondent stated that it is also a fear of violent reprisal. The respondent relayed a conversation in which the respondent requested the judge to rule in his case:

“Yesterday I asked the judge to solve this case. He replied that he can’t. I told him that like a powerful person, a judge can resolve issues. He replied that those who have guns have power, and a judge can’t do anything.”

However, the Supreme Court rejected any possibility of such repercussions and claimed that it has put in place oversight mechanisms to prevent pressure points and this has helped in further improvements of the judicial services. Also, if Judges do not rule in accordance with the law or subvert the justice, Supreme Court investigate them and issue administrative penalties and even Judges may lose their job. (Aman. Iman Supreme Court communication, February 25, 2018)¹²⁹

Although judges in any context can face violent reprisals from armed groups, such as criminal gangs and mafias, an insecure environment as well as a lack of personal security for judges in Kunduz makes judicial personnel particularly vulnerable to influence and interference.

124 Interview justice stakeholder, May 2010, Kunduz city.

125 Interview justice stakeholder, May 2010, Kunduz city.

126 TLO, May 2010, 120.

127 See The Asia Foundation, ‘A Survey of the Afghan People: Afghanistan in 2016’, 2016, https://asiafoundation.org/wp-content/uploads/2016/12/2016_Survey-of-the-Afghan-People_full-survey.Apr2017.pdf

128 Interview justice stakeholder, May 2017, Kunduz city.

129 Information was provided by the Supreme Court upon review of the report and did not come from our primary data

Community-Based Dispute Resolution

In Kunduz province, CBDRs are widely seen to be the least vulnerable to corruption. Respondents cited low incidents of bribery in CBDRs compared to the state court as a key reason for seeking justice in CBDRs. Respondents also view *shura* elders or mediators to be individuals of good standing in the community, and the mediation process to be accountable and transparent. None of the litigants who had taken a dispute to a CBDR for resolution confirmed paying a bribe or exerting influence over mediators. However, some mediators did confirm that they were offered gifts or disputing parties had tried to exert influence over their decisions, but they withstood these pressures. This would suggest that CBDRs are not free of corruption. The fact that citizens tend to be less concerned with corruption in CBDRs could be due to lower incident rates of corruption or a level of acceptance that gift giving or influence pedaling is part of the process. Corruption in CBDRs had been documented in the customary ‘Mirab’ water management system in Kunduz.¹³⁰ Further research could help shed light on corruption in CBDRs in Kunduz, and determine whether CBDRs are not associated with corruption because incidences of corruption is rare or whether certain corrupt practices in CBDRs are seen as acceptable or other reasons.

Taliban judiciary

Although IWA was unable to interview Taliban judges or individuals who had taken cases to the Taliban courts, interviews with litigants in the state court or CBDRs shed some light on perception of the Taliban judiciary. Respondents who had taken their case to the state court tended to view the Taliban judiciary negatively, claiming Taliban decisions are rushed and based on Sharia and not state law. These respondents were also more likely to state that they would not take their case to a Taliban court. Respondents who had taken their dispute to a CBDR tended to view the Taliban neutrally or more favorably. In reference to the Taliban judiciary respondents cited its lack of corruption as compared to the state courts as a reason why citizens may take cases to the Taliban. According to a respondent in Qalay-i-Zal, citizens prefer the Taliban judiciary to the state court because it is not corrupt:

“Because [sic] there is corruption and bribes in the government court, and people are not able to pay money for bribes, therefore people go the Taliban and the Taliban solve the cases in the best way.”

While the Taliban judiciary is generally perceived to be free of corruption, past IWA research found that there are increasing incidences of corruption and cronyism that the Taliban leadership have found challenging to contain.¹³¹ The Taliban judiciary is a key institution within the Taliban’s shadow government structure. The establishment of a Taliban judiciary of Ulema members is usually a sign of Taliban effective control of territory. In more insecure or contested areas, Taliban commanders are more likely to adjudicate matters because of the difficulty of bringing in civilian judges into insecure areas.¹³² This mirrors the practice of the government, in which there is more adjudication by the district governor or ALP commanders in insecure areas where civilian judges have been withdrawn.¹³³ Past research by IWA found Taliban commanders have received bribes and engaged in cronyism to influence judicial decisions.¹³⁴

Perception of Efficiency

In addition to corruption, the inefficiency of the state justice system is often cited as a major deterrent for citizens in using state justice services. Civil litigants cited the slow, lengthy and bureaucratic procedures of the state judiciary to be as much of a deterrent as corruption.

Although a higher level of due process and documentary burden in the state judiciary would add to the time frame, this is not always necessarily justified given the overall low caseload.

The inefficiency of state justice institutions is often compared to the timeliness of CBDRs. According to a litigant in Aliabad, the efficiency of a CBDR process was a major draw card:

“I am a busy farmer. I don’t have much time for dispute settlement. Thus, we try to settle our disputes quickly through shura of our own village.”

130 See Khibar Rassul, ‘Water Use & Local Conflict: Case Study from Kunduz’, Cooperation for Peace and Unity, 2011.

131 Giutozzi, Franco & Backzo, 27

132 Interview with former USAID officer who served in Kandahar in 2009-2010, September 2017, Washington DC.

133 Interview with former researcher for The Liaison Office, September 2017, Washington DC.

134 Ibid.

[Farmer, Aliabad].

Litigants view CBDRs to be both efficient and transparent:

“A jirga or council is comprised of elders and influential people who resolve conflicts in very short span of time without any bribery and with all the transparency.” [Farmer, Dashte Archi].

Even for residents living in territory under government control, CBDRs are the preferred justice mechanisms to avoid corruption and inefficiency in the state judiciary:

“We live under the state controlled territory. We will not take dispute to opposition. We will not take it to [the] court or government either. If we take it to [the] court our time will be wasted and we have to pay bribes of thousands of Afghans. We are very busy too.” [Shopkeeper, Imam Sahib].

In Kunduz’s pluralistic justice system, citizens are able to undertake a high degree of forum shopping. Given this competitive environment, efficiency of process can be a significant factor as low corruption in shaping citizens’ preferences. In order for the state judiciary to become more competitive in this market place, both corruption must be lowered and efficiency increased, ideally without compromising due process.

Perception of Social Acceptance

In addition to low corruption and high efficiency, citizens generally prefer CBDRs as it is seen to hold high social acceptance. For respondents, *shura* decisions are undertaken by elders of the community and are based on the norms of the community, and thus highly accepted. Litigants, who had taken their case to a CBDR, cited the fact that disputes have always been solved by elders in their community as the primary reason why they took their dispute to a CBDR. When asked to compare citizens’ preference for state and non-state justice a defense attorney emphasized the importance of traditional norms in shaping perception of CBDRs, *“we can’t be indifferent towards informal justice system. People do respect their traditions.”*¹³⁵

135 Interview defense attorney, May 2017, Imam Sahib.

In contrast, there is a social stigma attached to engaging with the state justice system. Many respondents used the word “shameful” to describe the nature of the deterrent from using the state system. An NGO worker in Kunduz states, *“[a]ttending courts is assumed a disgrace and shame in districts and all cases are resolved by councils, elders and Taliban courts.”*¹³⁶ A defense attorney in Kunduz city offers the same view, *“approach to courts is considered a shame among our people.”*¹³⁷ Although respondents did not elaborate on the cause of this “shame”, one implication is that the state system is viewed to be antithetical to the accepted norms, practices or traditions in communities. Past research by USIP examining women’s access to justice suggests that insider and outside dynamics might be a factor.¹³⁸ Another potential cause is corruption. A respondent alluded to corruption when comparing the higher social acceptance of CBDRs and Taliban justice to state justice:

*“Taliban investigates the local people and use Sharia law for resolving conflicts. Jirga and councils use traditions, cultures and Sharia law for resolving issues. Government courts don’t use the laws at all and can’t solve cases. That is why people approach either Jirgas or Taliban. Government has a lot of problems.”*¹³⁹

The charged of “shame” was not associated with taking a matter to the Taliban judiciary. Conversely, respondents cited the Taliban’s application of Sharia as highly acceptable. A better understanding of the causes of “shame” related to using the state justice system can shed light on the impact of social stigma as a deterrent factor.

136 Interview NGO representative, May 2017, Kunduz city.

137 Interview defense attorney, May 2017, Kunduz city.

138 Tim Luccaro and Erica Gaston, ‘Women’s Access to Justice in Afghanistan: Individual Versus Community Barriers to Justice’, United States Institute of Peace, *Peaceworks* 2014, 37

139 Interview farmer from Dashte Archi, May 2017.

PERCEPTION OF IWA'S CBM-T PROGRAM

IWA's Community Based Monitoring – Trial Program (CBM-T) is the first program of its kind in Afghanistan. The program aims to increase citizens' participation in Afghan courts and monitor judicial compliance to Afghan procedural laws. The program promotes transparency in judicial decision-making, increases awareness of the state justice system, empowers citizens to monitor trials and generate valuable data that can help promote higher integrity in the judiciary.

The program started in 2011 with 15 communities in Mahmood Raqi and Kohistan districts of Kapisa province and in Bamyán city and Yakawlang district of Bamyán province. The CBM-T program is now also running in Balkh, Herat, Kabul, Kunduz, Nangarhar, Paktia and Parwan, and covers criminal and civil proceedings.

In Kunduz province the CBM-T program commenced in 2015 and has since monitored 398 criminal proceedings, and 77 civil proceedings. The majority of proceedings monitored are in the Kunduz appeal court and primary court. Of the district courts, more proceedings have been monitored in the Imam Sahib district court than in the Alia Abad and Khanabad district courts. Trial monitoring has not yet expanded to the district courts of Chahar Dara, Dashte-Archi and Qalay-i-Zal.

Table 3: Criminal and civil proceedings monitored under CBM-T between March 2016 and December 2017.

Court	Criminal proceedings monitored	Civil proceedings monitored
Kunduz appeal court	287	61
Kunduz primary court	77	9
Alia Abad	7	1
Khanabad	5	4
Imam Sahib	22	2

Court monitoring data highlights a number of key themes that did not arise during this assessment. Notably, most criminal trials and civil hearings take place within judge's offices rather than a public courtroom. In the majority of criminal proceedings, a defense attorney is not present to represent

the defendant. On the occasion when a defense attorney is present, the defense attorney has been retained and paid by the defendant. Defendants are more likely to have a defense attorney present in an appeal court proceeding than a primary court proceeding. In civil proceedings, parties are generally self-represented.

In addition to trial monitoring, the CBM-T program has conducted an extensive outreach campaign. Outreach activities have been conducted to mobilize community members and identify potential trial monitors; to conduct mock trials to increase public awareness of trial procedures; and to provide feedback to the community of key issues and trends observed by trial monitors. Outreach activities have played a key role in increasing public awareness of the right to attend open trials. There is now a general acceptance amongst court actors of the presence of trial monitors during court proceedings, and broader acceptance that any member of the community can attend open trials. Trial monitors have also helped to improve understanding amongst litigants and defendants of fair trial principles, including the right to a defense counsel in criminal proceedings, and the right to a presumption of innocence.

Judges have welcomed trial monitoring as a means to publicizing the positive work of the court. For judges, trial monitoring can act as a 'bridge' between citizens and the government. Specifically, judges believe trial monitoring has contributed to greater public awareness of the workings of the court and the role and responsibilities of judges and other court actors. Trial monitors have observed that their presence has improved the professionalism of judges and increased the transparency of trial proceedings. A trial monitor observed:

"From the time we have begun monitoring in the court, the behavior of judges has changed a lot, even they treat the public people well. Bribery and embezzlement have curtailed to a greater extent. [Judges] were taking bribes openly before..."

According to prosecutors, trial monitoring plays a positive role in building trusts between the state justice system, civil society and the general public.

Monitoring has also improved the efficiency and effectiveness of court processes. However, prosecutors caution that monitoring should be “comprehensive and not provisional”, meaning that monitoring should not be conducted selectively.

For trial monitors, the primary goal of trial monitoring is to promote a better understanding amongst the general public of the Constitutional right to a public trial, and the right of every citizen to attend an open trial.¹⁴⁰ Trial monitors see their role as identifying discrepancies in the application of procedural laws. For example, discrepancies can range from judges failing to wear their judicial uniform, to the lack of representation by a defense lawyer for defendants in criminal proceedings, to the reading out of verdicts following the conclusion of a case. Trial monitors also see their role in providing critical information to defendants and litigants about fair trial principles, as well as providing feedback to local communities about their observation of the courts’ workings. Trial monitors further see their role as creating, where possible, a positive image of the court to the community.

The most positive change arising from trial monitoring has been the shift in behavior of judges. Judges are more likely to behave in a professional manner and are more polite in their speech, are more likely to wear their official robe, and to generally follow procedural rules when a trial monitor is present in a proceeding. The second most positive change has been the increased awareness amongst civil society actors, community leaders and the general public that trials should be open, with only a few exceptional cases, and that any member of the community can attend a trial, including relatives of the accused in a criminal matter.

Notwithstanding, trial monitors are limited in their ability to access to information beyond what can be collected through observing trial proceedings. Court administrators are often unwilling to make additional information available to trial monitors, meaning that observation of a case through to completion is often difficult. Trial monitors also lack of access to attend all cases, particularly for matters where trials are not conducted openly such as personal status cases and cases involving charges of violence against women.

140 Article 128 of the 2004 Afghan Constitution stipulates, ‘[i]n the courts in Afghanistan, trials shall be held openly and every individual shall have the right to attend in accordance with the law. In situations clarified by law, the court shall hold secret trials when it considers necessary, but pronouncement of its decision shall be open in all cases’.

IMPLICATION OF FINDINGS FOR IWA'S CBM-T PROGRAM

The most immediate implication for IWA's CBM-T program in Kunduz of these findings is the limited scope for trial monitoring given the narrow presence of the state judiciary and low caseload overall in the province. CBM-T monitors will also need to be careful to distinguish between a trial and court administrative procedures. Public trials are protected under Article 128, but not necessarily administrative procedures by the courts such as the issuing of civil documents.

In addressing the limited presence of the state judiciary the following steps could be taken to increase the impact of the CBM-T program:

- Expand CBM-T monitoring to the prosecutor's office, DOJ and ANP CID
- Expand monitoring to CBDRs

Recognizing that corruption, but also equally procedural inefficiencies and low social acceptability may deter citizens from using the state justice system or shape preferences for non-state justice systems, the CBM-T program should focus on monitoring the following in the state judiciary and other state justice institutions (disaggregated by districts):

- Corruption risks including vulnerabilities to influence by external actors and groups, including type of actors/groups exerting influence, prevalence of interference, forms of interference type of external actors/groups and outcomes produced by interference
- Inefficiencies in procedures including case management procedures, administrative procedures and any unofficial procedures/ decision making etc.
- Citizens perception of the state judiciary including amongst users and non-users and stakeholders

Given the high demand for civil documents, the CBM-T program should focus monitoring on the following (disaggregated by districts):

- Type of civil documents requested disaggregated by districts

- Frequency of request for civil documents disaggregated by district
- Reason for requesting civil documents, purpose and use
- Effects of possessing civil documents

In terms of civil cases, the CBM-T program should focus on monitoring on the following (disaggregated by districts):

- Causes of action (i.e. reason for bringing the case)
- Parties to the case, relationship to each other etc.
- History of dispute
- Length of process in the courts
- Laws applied/jurisprudence
- Judicial decision-making and outcomes
- Effects of decision/enforcement outcomes

Specifically in relation to disputes related to land and water, the CBM-T program should focus on monitoring (disaggregated by districts):

- Cause of action
- Presence of or lack thereof of formal land documents and/or evidentiary documents
- Presence of or lack thereof of customary (urfi) land documents and/or evidentiary documents
- Prior litigation in CBDRs or with Taliban judiciary or state judiciary or other state justice institutions or other actors/ institutions
- History of the dispute including duration, parties to the disputes, any previous dispute resolution etc.
- Decision making and outcomes
- Effects of decision/enforcement outcomes

For criminal law matters the CBM-T program should focus on:

- Age and gender of the defendant and other relevant demographic details
- Type of charge including the type and level of evidence to lay charges
- Background of defendant and the case
- Presence of a legal defence
- Quality of the legal defence
- Strength of the prosecutor's case
- Any issue of prosecutorial bias
- Length of process in the courts
- Laws applied/jurisprudence
- Judicial decision-making and outcomes
- Effects of decision/enforcement outcomes

Specifically in relation criminal cases involving moral crimes or the crime of 'running away' the CBM-T program should focus on:

- Age and gender of the defendant and other relevant demographic details
- Type of charge including the type and level of evidence to lay charges
- Background of defendant and the case
- Presence of a legal defence
- Quality of the legal defence
- Strength of the prosecutor's case
- Any issue of prosecutorial bias
- Length of process in the courts
- Laws applied/jurisprudence
- Judicial decision-making and outcomes
- Effects of decision/enforcement outcomes

CONCLUSION AND RECOMMENDATIONS

In Kunduz the primary reason citizens do not use the state justice system is because it is the least prevalent. With CDRs and Taliban courts more widespread in the district, non-state justice systems are a more accessible option for citizens. In areas where the state justice system is accessible, a number of factors deter citizens from using state justice. These include the high prevalence of corruption, procedural inefficiencies and low social acceptability. The perception that corruption is most pronounced in state justice institutions has made state justice the least popular choice for citizens. Equally significant is the predominant view that state justice institutions are less efficient than CDRs and the Taliban judiciary. Furthermore, there is a social stigma attached to using state justice that does not apply to non-state justice systems.

Addressing corruption and inefficiencies in the state justice system could increase citizens' preference for state justice and increase local acceptance. The CBM-T program can help to diagnose areas of inefficiency and corruption risks within the state justice system, and help shape reforms. Trial monitoring can also help to increase public confidence in the state justice system by highlighting positive changes in the court workings and successful outcomes for citizens who engage with the courts. However, unless the state justice system can become more widespread, particularly at the district-level, it is unlikely to outstrip CDRs or the Taliban judiciary in terms of demand for its services.

Key recommendations:

- **Prioritize security of justice personnel and infrastructure:** All stakeholders should give priority to the security of justice personnel and infrastructure to enable state justice institutions to function, at the minimum in the provincial capital of Kunduz.
- **Mobile civil registries:** The Kunduz judiciary could explore the feasibility of conducting mobile civil registries in the districts to better serve citizens demands. Though, this should only be attempted following an assessment of the feasibility and permissibility of such an initiative and the potential risks to the safety and security of justice personnel.
- **Strengthen cooperation on land dispute resolution:** The Kunduz judiciary and DOJ-Huquq should strengthen cooperation with CDRs on land dispute resolution, for example by documenting referrals, monitoring outcomes and registering CDRs decisions and documents in the DOJ-Huquq Department.
- **Strengthen the network of defense lawyers:** AIBA and donors should promote networking and solidarity amongst Kunduz's defense lawyers to bolster resilience against rising insecurity. Especially promote solidarity efforts amongst women defense attorneys and women's rights activists, who face disproportionate security risks.
- **Focus CBM-T on judicial inefficiencies and corruption risks:** IWA should focus its CBM-T program on understanding the procedural inefficiencies and corruption risks in the judiciary. IWA should also expand monitoring efforts to: DOJ-Huquq Department, Prosecutor's Office and Police CID. Drawing on monitoring data IWA should formulate evidence-based reform proposals to the Supreme Court and the government to reduce corruption and increase efficiencies in state justice institutions.
- **Conduct further research on factors contributing to low social acceptance of state justice:** IWA should conduct further research to understand factors that contribute to low social acceptance of the state justice system, specifically to identify any factors beyond reducing corruption and increasing efficiency that would increase social acceptance of the state justice system.

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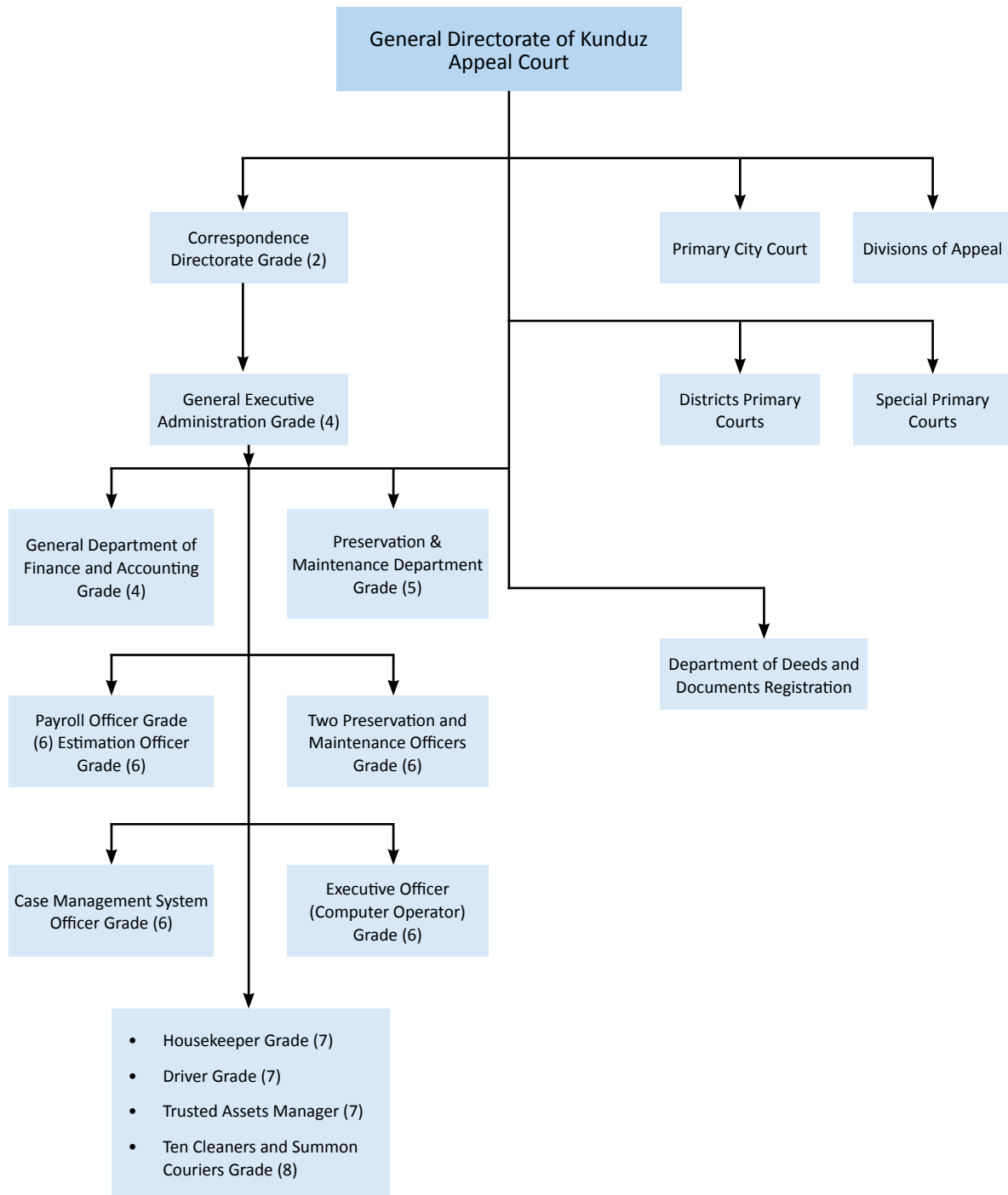
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ANNEX: A

Structure of General Directorate of Kunduz Appeal Court



Source: Translated from documented provided by the Afghanistan Supreme Court October 2017

ANNEX B

Questionnaire for KIs with Formal Justice Actors in Kabul (Ideally a High-Ranking Official from the Supreme Court, Attorney General's Office and AIBA)

Interviewee information:

Name:

Current role/title:

Years serving in current role:

Previous role/title:

Home province/district:

Age:

1. Can you please describe to us the status of justice system in Afghanistan?
2. How would you compare your provincial office in Kunduz with offices in other northeastern provinces? The rest of the country?
3. What is the level of communication between your office and the Kunduz office?
 - a. What issues do you communicate about?
 - b. Who do you communicate with the most?
4. Do people from the Kabul offices ever visit the Kunduz?
 - a. Who visits and how often?
 - b. What is the generally the purpose of the visit?
5. What is your level of understanding of what happened to your office in Kunduz during Sep/Oct 2015?
6. Can you describe the state of your Kunduz office before September/October 2015 and after?
 - a. Has the office re-opened?
 - b. Have people returned to work?
 - c. How much of the office was destroyed?
 - d. What did the Taliban take or target in your office?
 - e. What was the other impact of the Taliban attack on your office?
7. Can you describe the level of capacity in your Kunduz office now? What are the main strengths and weaknesses?
8. Can you describe the major challenges faced by your Kunduz office?
9. Given the security situation in Kunduz, what support are you providing in Kabul?
10. What is your response to some of the surveys, which label judiciary as the most corrupt institution in Afghanistan?
11. Some believe there is a linkage between insecurity, corruption and late delivery of justice/injustice and vice versa. Do you also share the same opinion?
12. What is your opinion about informal justice system or Taliban courts in Kunduz?
13. Is there anything else you would like to add?

Questionnaire for KIIs with Formal Justice Actors in Kabul (Ideally a High-Ranking Official from the Supreme Court, Attorney General's Office and AIBA)

Interviewee information:

Name [Optional]:

Current role/title:

Years serving in current role:

Previous role/title:

Home province/district:

Age:

14. Can you please describe to us the current status of judiciary in Kunduz province?
15. Can you describe the state of the following institutions in Kunduz before September/October 2015? Can you describe the state of the following justice institutions in Kunduz after September/October 2015?
 - a. Courts
 - b. Attorney general's office
 - c. DOJ/Huqooq
 - d. DOJ/Legal aid department
 - e. Police CID
 - f. prison
 - g. Head of juvenile rehabilitation center
 - h. NGO legal aid organizations
 - i. AIBA
 - j. AIHRC
 - k. DOWA

[Note – you want to find out whether these offices have re-opened, the state of their physical infrastructure, whether personnel have returned to work, opening hours, citizens attending these offices].

16. What happened to the following institutions when the Taliban took over Kunduz city in late September/October 2015?
 - a. Courts
 - b. Attorney general's office
 - c. DOJ/Huqooq
 - d. DOJ/Legal aid department
 - e. Head of provincial Police CID
 - f. Head of provincial prison
 - g. Head of juvenile rehabilitation center
 - h. NGO legal aid organizations
 - i. AIBA

- j. AIHRC
- k. DOWA

[Note – you want to know whether these institutions were specifically targeted, what happened to the personnel, what happened to the physical office].

17. Who controls territory in Kundoz?
 - a. What areas/districts does the government currently control in Kundoz?
 - b. What areas/district does the Taliban control?
 - c. What areas/districts does pro-government militia groups control?
 - d. Are there armed groups neither supporting the government or Taliban? What areas do they control?
 - e. What areas are criminal groups active? What are their main activities?
18. Who are the main justice service providers in the following areas [examples: government, community elders, religious leaders, shuras, militia commanders, Taliban, NGOs, other]:
 - a. Kundoz city
 - b. Khan Abad
 - c. Aliabad
 - d. Chaha Dara
 - e. Dasht-e Archi
 - f. Qala-i-Zal
 - g. Imam Sahib
19. What are the main conflict issues in:
 - a. Kundoz city
 - i. What is the most violent conflict issue?
 - ii. Who are the main actors associated with these conflict issues?
 - iii. Where do people go to resolve their conflict?
 - b. Khan Abad
 - i. What is the most violent conflict issue?
 - ii. Who are the main actors associated with these conflict issues?
 - iii. Where do people go to resolve their conflict?
 - c. Aliabad
 - i. What is the most violent conflict issue?
 - ii. Who are the main actors associated with these conflict issues?
 - iii. Where do people go to resolve their conflict?
 - d. Chaha Dara
 - i. What is the most violent conflict issue?
 - ii. Who are the main actors associated with these conflict issues?
 - iii. Where do people go to resolve their conflict?

- e. Dasht-e Archi
 - i. What is the most violent conflict issue?
 - ii. Who are the main actors associated with these conflict issues?
 - iii. Where do people go to resolve their conflict?
 - f. Qala-i-Zal
 - i. What is the most violent conflict issue?
 - ii. Who are the main actors associated with these conflict issues?
 - iii. Where do people go to resolve their conflict?
 - g. Imam Sahib
 - i. What is the most violent conflict issue?
 - ii. Who are the main actors associated with these conflict issues?
 - iii. Where do people go to resolve their conflict?
20. What are the most common civil or criminal law issues in Kundoz?
- a. Kundoz city
 - i. What are the most common civil or criminal law issues?
 - ii. Who are the main actors associated with these legal issues?
 - iii. Where do people go to resolve these legal issues?
 - b. Khan Abad
 - i. What are the most common civil or criminal law issues?
 - ii. Who are the main actors associated with these legal issues?
 - iii. Where do people go to resolve these legal issues?
 - c. Aliabad
 - i. What are the most common civil or criminal law issue?
 - ii. Who are the main actors associated with these legal issues?
 - iii. Where do people go to resolve these legal issues?
 - d. Chaha Dara
 - i. What are the most common civil or criminal law issues?
 - ii. Who are the main actors associated with these legal issues?
 - iii. Where do people go to resolve these legal issues?
 - e. Archi
 - i. What are the most common civil or criminal law issues
 - ii. Who are the main actors associated with these legal issues
 - iii. Where do people go to resolve these legal issues?
 - f. Qala-i-Zal
 - i. What are the most common civil or criminal law issues?
 - ii. Who are the main actors associated with these legal issues?

- iii. Where do people go to resolve these legal issues?
 - g. Imam Sahib
 - i. What are the most common civil or criminal law issues?
 - ii. Who are the main actors associated with these legal issues?
 - iii. Where do people go to resolve these legal issues?
- 21. What type of conflict or justice issues are people bringing to your institution?
 - a. Who is bringing the issue to your institution?
 - b. How do you address their justice/conflict issue?
 - c. What has been the outcome to these issues?
- 22. What are some of the challenges that your institution faces in providing justice services?
- 23. What has been the impact of influential people or the waseta system of favors on your work?
- 24. What has been the impact of insecurity on your work?
- 25. What has been the impact of lack of resources on your work?
- 26. What is your opinion about informal justice system or Taliban courts?
- 27. What is your response to some surveys, which label the judiciary as the most corrupt institution in Afghanistan?
- 28. Some believe there is a linkage between insecurity, corruption and late delivery of justice/injustice and vice versa. Do you also share the same opinion?
- 29. What type of informal justice systems are working in:
 - a. Kundoz city
 - b. Khan Abad
 - c. Aliabad
 - d. Chaha Dara
 - e. Archi
 - f. Qala-i-Zal
 - g. Imam Sahib
- 30. (only ask from legal NGO representatives) Is your organization in any way engaged with formal or informal justice system? If yes, please explain?
 - a. What are the strengths of the formal justice institutions you have directly observed?
 - b. What are the weaknesses of the formal justice institutions you have directly observed?
 - c. What are the strengths of the informal justice mechanisms you have directly observed?
 - d. What are the weaknesses of the informal justice mechanisms you have directly observed?
- 31. What do you think should be the relationship between formal and and informal justice systems in Kunduz taking into account the conflict, political security and economic factors?
 - a. Do you think everyone should use formal justice institutions?
 - b. Do you think everyone should use informal justice institutions?
 - c. Do you think informal justice should be phased out when the formal justice system becomes stronger?

- d. Do you think there could be a mix of formal and informal justice? Why and how would it work?
 - e. Other model?
32. How has corruption/favoritism affected both systems? Which system do you believe is more vulnerable to corruption and favoritism?
 33. How can CSOs, media and other socio-political groups help promote transparency and accountability within formal and informal justice systems?
 34. Is there anything else you would like to add?

Semi-Structured Interview Questionnaire for the Litigants of Formal and Informal Justice in Kunduz

Interviewee Information

Name [Optional]:

Occupation:

Age:

Male/Female:

Home district:

Level of education obtained:

1. How many times have you brought a dispute/case to a court/Jirga or other forum?
2. Can you please explain the dispute/case you have referred to the court/Jirga or other forum?
3. Why did you take your case to the Jirga/court/forum to take your case? Did you take your case/dispute to another other person or place?
4. How long has it been since you have referred your case to the court/Jirga or other forum? Or how long did the matter take to resolve?
5. Are you satisfied with the court/Jirga/Taliban court process? Please describe your reasons
6. Are you satisfied with the court/Jirga/Taliban court outcome? Please describe your reasons
7. Will you accept the decision of the court/Jirga/Taliban court even if it is not in your favor? Or do you accept the decision of the court/Jirga/Taliban court? Was the decision in your favor?
8. If you feel you have not been treated fairly by court/Jirga/Taliban court and that the case should have been decided in your favor, will you take your case to another source for reexamination or accept the decision?
9. Has the judge/prosecutor/ court staff or members of Jirga asked you for bribe, gift or any other favor?
10. Did you offer the judge/prosecutor/ court staff or members of Jirga a bribe, gift or favor to influence the outcome without being asked? Do you think your opponent party can intimidate or bribe members of Jirga or court staff in order to settle the case in his/her favor?
11. Did you have any support from an influential person in the case?
12. Did the other party have support from an influential person in the case?
13. How familiar you are with court/Jirga/Talban court procedures?
14. What source do you think Jirga members/court/Taliban court will use to settle your dispute? Afghan laws, sharia, local customs?

15. Which system will you take future disputes/ case for settlement (Taliban Jirga/Jirga or court)? Why?
16. Do you agree with the notion that due to poor delivery of justice, people have joined insurgents (Taliban and others) to avenge the injustice done to them? Please explain.
17. Has it ever happened that you or any other member of your family has taken a case to the Taliban for settlement? If yes, please describe in details?
18. Is there anything you would like to add?

Semi-Structured Interview Questions with Active Informal Justice Sector Actors (Tribal Elders, Religious Scholars, Shura Members and Others)

Interviewee Information

Name [Optional]:

Occupation:

Age:

Male/Female:

Home district:

Level of education obtained:

1. How many disputes have you mediated?
2. What type of disputes have you mediated?
3. How did you get involve in the dispute as a mediator?
4. Can you explain the process you took to mediate the case?
5. How long was the process of mediation? Is it still ongoing?
6. What was the outcome?
7. Did the parties accept the decision?
8. What was done to ensure the decision was enforced/implemented?
9. Did you receive payment for the mediation?
10. Did you receive any other gifts or payments?
11. Did you ask for payment or gifts from the parties?
12. Did the parties offer you for gifts or payments without you asking?
13. Did anyone try to influence the mediation process? How?
14. Do you ever resort to practice of baad and badal in order to settle a dispute?
15. Have you had a case that has been taken to a court or referred to another Jirga/Taliban court for review/ reconsideration?
16. What process do you think is best to address justice or conflict issues in your community?
17. Do you believe there is linkage between late delivery of justice/injustice and other social issues such as corruption, insecurity and insurgency? Why?
18. Based on your direct experience how has dispute settlement mechanism (Jirga/Shura) evolved in recent years? Are current Jirga/Shura practices different from the past ones?
19. What is your opinion about formal judiciary?

20. Is there any coordination/understanding between Jirga/shura and formal judiciary?
21. Do Taliban also resolve disputes in your area? If yes, what do you think about it?

Observation of formal justice institutions

Name of researcher:

Period of observation:

Location/office of observation:

1. Is the office opened to the public? Are members of the public entering and leaving the office?
2. Are employees of the office coming into the office?
3. What hours are employees working in the office?
4. What damage can you see to the office infrastructure?
5. Can you see members of the public inside the office talking to staff?
6. What issues are members of the public bringing to the office? Have they sought help from somewhere else first?
7. What responses are they getting from staff?
8. Were members of the public satisfied with the process?
9. Were members of the public satisfied with the outcome?
10. Would members of the public come back to the office?
11. Any other observations?

Observation of informal justice mediation

Name of researcher:

Period of observation:


Location/office of observation:

1. Who is present during the mediation?
2. Who is mediating the dispute?
3. What is the dispute/case being mediated?
4. What is the argument from one party? What is the argument from the other party?
5. What is the process for mediation?
6. What was the outcome?
7. How was the decision been enforced or not enforced?
8. Were parties satisfied with the process?
9. Were parties satisfied with the outcome?
10. Would the parties use the mediation process again?
11. Any other observations?



INTEGRITY
WATCH
AFGHANISTAN

Kolola Poshta,
Kabul, Afghanistan


 +93 (0) 780 942 942

 info@iwaweb.org


 www.iwaweb.org

 [@IntegrityWatchA](https://twitter.com/IntegrityWatchA)

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