

Afghanistan

Criminal law, customary justice and informal dispute resolution

Country of Origin Information Report





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July 2020

More information on the European Union is available on the Internet (<http://europa.eu>).

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The Afghan National Army held a shura, a meeting with the local leaders, after the two-day mission was complete. The leaders discussed what the ANA can do to ensure the local people's safety and projects that will make their living conditions better.

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Disclaimer

This report was written according to the EASO COI Report Methodology (2019).¹ The report is based on carefully selected sources of information. All sources used are referenced.

The information contained in this report has been researched, evaluated and analysed with utmost care. However, this document does not claim to be exhaustive. If a particular event, person or organisation is not mentioned in the report, this does not mean that the event has not taken place or that the person or organisation does not exist.

Furthermore, this report is not conclusive as to the determination or merit of any particular application for international protection. Terminology used should not be regarded as indicative of a particular legal position.

'Refugee', 'risk' and similar terminology are used as generic terminology and not in the legal sense as applied in the EU Asylum Acquis, the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees.

Neither EASO nor any person acting on its behalf may be held responsible for the use which may be made of the information contained in this report.

The drafting of this report was finalised on 30 June 2020. Any event taking place after this date is not included in this report. More information on the reference period for this report can be found in the methodology section of the [Introduction](#).

¹ The EASO methodology is largely based on the Common EU Guidelines for processing Country of Origin Information (COI), 2008, and can be downloaded from the EASO website: <http://www.easo.europa.eu>.

Glossary and abbreviations

AAN	Afghanistan Analysts Network
AIHRC	Afghanistan Independent Human Rights Commission
<i>Baad, bad, ba'ad</i>	The practice of exchanging women/girls to resolve a dispute; exchanging daughters between families for marriage to avoid bride price costs ²
<i>Badal/ badaal</i>	The concept of revenge or retribution in the <i>Pashtunwali</i> ³
<i>Bacha bazi</i>	A practice whereby boys are exploited by wealthy or powerful men for entertainment, particularly for dancing and sexual activities ⁴
<i>Diyya/diyat</i>	Under Islamic Law, the payment of <i>diyya/diyat</i> ('Blood money') is an alternative to 'eye for an eye' punishment (<i>qisas</i>) ⁵
EVAW	Elimination of Violence Against Women Law, which criminalises 22 forms of gender-based violence and was passed by Presidential Decree in 2009
<i>Hanafi</i>	Islamic jurisprudence in use in Afghanistan; one of the four schools of Sunni jurisprudence ⁶
Hazara	An ethnic group who are mainly Shia
<i>Hadd</i> (plural: <i>hudud</i>)	A category of crime under Islamic Law. Punishment for crimes against God prescribed in the <i>Quran</i> , sometimes punishable by death ⁷
<i>Huquq/ Huqoq</i> Department	A department within the Justice Ministry dedicated to resolve family issues or civil cases through mediation under the Civil Procedure Code prior to referral to court; provincial departments/offices exist in all 34 provinces ⁸
<i>Jirga</i>	A council or assembly of tribal elders held for dispute resolution; <i>jirgamar</i> refers to elders whose profession is dispute settlement ⁹
<i>Kangaroo court</i>	A tribunal outside statutory judicial authorities that does not follow official legal procedures
<i>Khunbaha</i>	In <i>Pashtunwali</i> , the word referring to 'blood money' or compensation ¹⁰
Kuchi	Nomadic Pashtuns

² FRC, *Pashtunwali: an analysis of the Pashtun way of life*, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#), p. 14; 19

³ FRC, *Pashtunwali: an analysis of the Pashtun way of life*, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#), p. 8

⁴ UNAMA, *Afghanistan protection of civilians in armed conflict 2019*, 22 February 2020, [url](#), p. 88

⁵ ALEP, Stanford Law School, *An introduction to the Law of Afghanistan*, 2017, [url](#), p. 139

⁶ ALEP, Stanford Law School, *An introduction to the Law of Afghanistan*, 2017, [url](#), p. 21

⁷ ALEP, Stanford Law School, *An introduction to the Law of Afghanistan*, 2017, [url](#), pp. 87-88

⁸ Afghanistan, MoJ, *General directorate of huqoq, n.d.*, [url](#)

⁹ ALEP, Stanford Law School, *Introduction to the Criminal Law of Afghanistan*, 2012, [url](#), p. 76

¹⁰ Rzehak, L. *Doing Pashto*, March 2011, [url](#), p. 18

<i>Maraka</i>	A specialist in dispute resolution of the <i>jirga</i> ; member of the <i>jirga</i>
MoWA	Afghanistan's Ministry of Women's Affairs
MoA	Afghanistan Ministry of Agriculture
<i>Namus</i>	The concept of sexual integrity and chastity of women according to the <i>Pashtunwali</i> ; it is the duty of Pashtun men to protect the <i>namus</i> of the women of their household ¹¹
<i>Nanawatai</i>	The concept of seeking forgiveness under the <i>Pashtunwali</i> ; <i>nanatawai</i> means the offender admits guilt and then gives blood money (<i>khunbaha</i>) or compensation of some kind ¹²
<i>Nang</i>	Social honour of one's family or household under the <i>Pashtunwali</i> ; Pashtun men must defend the honour (<i>nang</i>) of their extended family as well ¹³
<i>Narkh</i>	Code of punishments under the <i>Pashtunwali</i> ¹⁴
<i>Pashtunwali</i>	A traditional social, cultural, and quasi-legal code regulating the Pashtun way of life. It is believed to have been adopted by Pashtuns from time immemorial ¹⁵
<i>Qisas</i>	Under Islamic Law, <i>Qisas</i> are crimes against the bodily integrity of a person; when one person harms or kills another, an alternative to 'eye for an eye' punishment (<i>qisas</i>) is the payment of <i>diyya/diyat</i> ('blood money') ¹⁶
<i>Sharia</i>	The religious law of Islam; Islamic canonical law
<i>Shura</i>	A decision-making community council; often formed for non-state dispute settlement; made up of a group of people with community authority (elders) to discuss and find solutions to a problem ¹⁷
<i>Swara</i>	Compensation marriage according to <i>Pashtunwali</i> ¹⁸
<i>Ta'azir</i>	A category of crimes under Islamic Law ¹⁹
<i>Ulema, ulama</i>	Muslim scholars/clerics
<i>Zina</i>	Unlawful sexual intercourse between a man and a woman outside the legal relationship of marriage, including adultery and fornication ²⁰

¹¹ Nation (The), Understanding Pashtunwali, 6 August 2013, [url](#)

¹² FRC, Pashtunwali: an analysis of the Pashtun way of life, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#), p. 48

¹³ Nation (The), Understanding Pashtunwali, 6 August 2013, [url](#)

¹⁴ FRC, Pashtunwali: an analysis of the Pashtun way of life, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#), pp. 28-29

¹⁵ FRC, Pashtunwali: an analysis of the Pashtun way of life, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#), p. 27

¹⁶ ALEP, Stanford Law School, An introduction to the Law of Afghanistan, 2017, [url](#), p. 87

¹⁷ ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012, [url](#), p. 76

¹⁸ FRC, Pashtunwali: an analysis of the Pashtun way of life, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#), p. 37

¹⁹ ALEP, Stanford Law School, An introduction to the Law of Afghanistan, 2017, [url](#), p. 139

²⁰ ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012, [url](#), p. 90

Introduction

The purpose of this report is to provide relevant and updated information for the assessment of international protection status determination, including refugee status and subsidiary protection, and in particular for use in EASO's country guidance development on Afghanistan.

This report is meant to be read in conjunction with other 2020 EASO COI reports on Afghanistan, which provide relevant information regarding topics such as state structure and security forces, the main insurgent groups, targeted violence, security situation and armed conflict developments, key-socioeconomic indicators.

Terms of Reference

The terms of reference (ToR) of this report were defined by EASO based on discussions held with and input received from COI experts in the EASO COI specialist network on Afghanistan and from policy experts in EU+ countries²¹ within the framework of a country guidance development on Afghanistan. Terms of reference for this report can be found in [Annex II](#).

Methodology

This report is produced in line with the EASO COI Report Methodology (2019)²² and the EASO COI Writing and Referencing Style Guide (2019).²³ The information gathered is a result of research using public, specialised paper-based and electronic sources until 30 June 2020. Some additional information was added during the finalisation of this report in response to feedback received during the quality control process, until 15 July 2020. Sources in Pashto and Dari used in this report were duly assessed and informally translated by EASO.

Large sections of this report draw upon the [EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017](#).²⁴ Based on the consideration that, for its nature, the topic addressed in this report is not subject to rapid changes, in some cases, entire sections from the 2017 EASO COI report have been reproduced, after having thoroughly verified the current validity of the information and the accessibility of sources. In other cases, some content has been left out and updated with most recent information and sources. The sections on specific profiles targeted under societal and legal norms present in the 2017 EASO COI report have intentionally not been included, since some of these topics are addressed in other EASO COI reports and queries on Afghanistan due to be published in 2020.

Structure and use of the report

The report is divided into three parts. The first part focuses on presenting an overview of the socio-legal framework for punishment of crime in Afghanistan, describing the pluralistic legal system of codified and uncodified, formal and informal (customary) norms which govern Afghan society.

The second part focuses on the topic of land dispute as one of the main sources of conflict in Afghanistan, providing information on formal and informal mechanism of dispute resolution, including Taliban's involvement in resolving land disputes.

The third part of the report provides an overview on the practices of blood feuds and revenge killing, including customary blood feud resolution and compensation, and prosecution by the state.

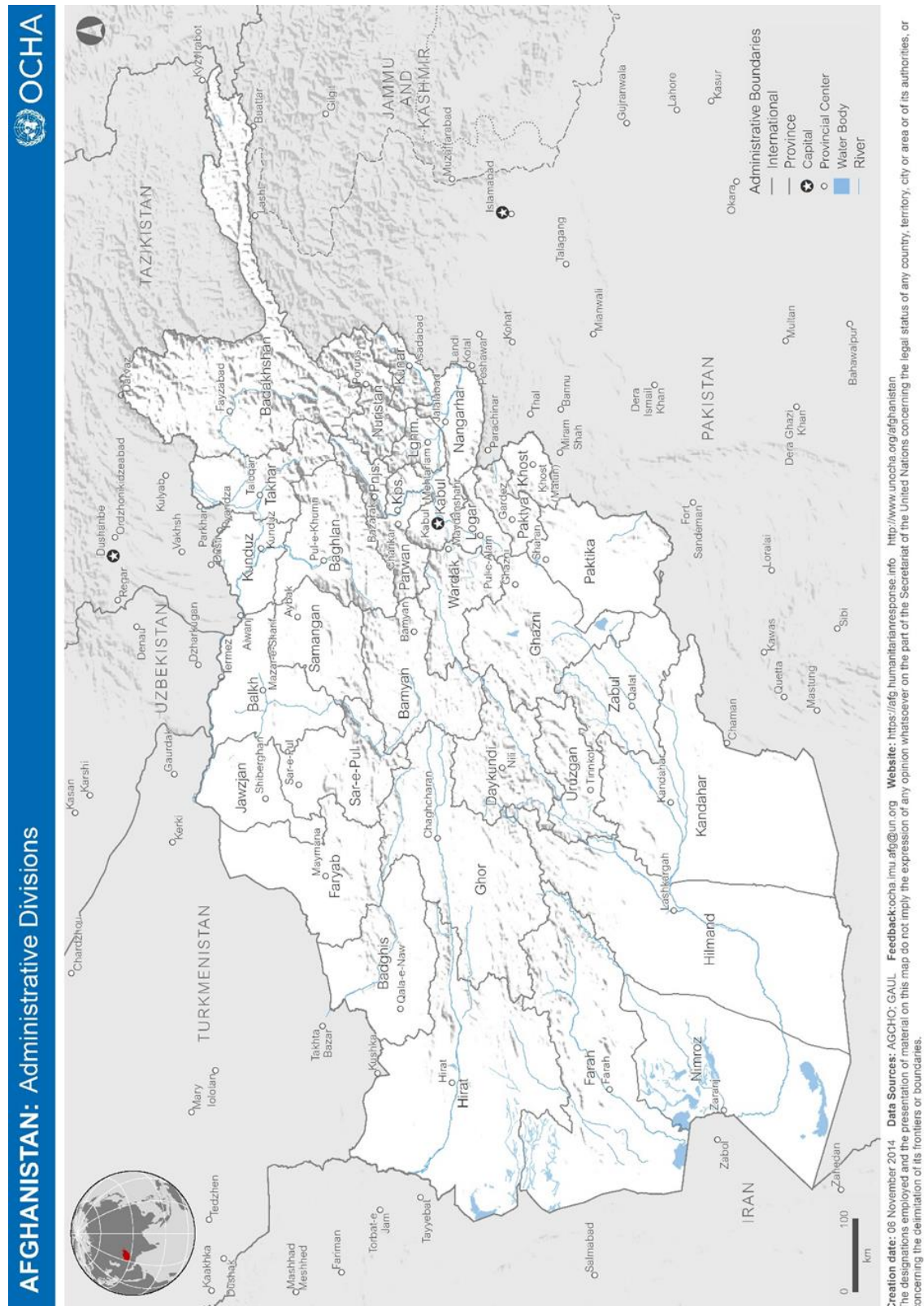
²¹ EU Member States plus Norway and Switzerland

²² EASO, EASO Country of Origin Information (COI) Report Methodology, June 2019, [url](#)

²³ EASO, Writing and Referencing Guide for EASO Country of Origin Information (COI) Reports, June 2019, [url](#)

²⁴ EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#)

Map



Map 1: Afghanistan - administrative divisions, source: UNOCHA²⁵

²⁵ UNOCHA, Afghanistan - administrative divisions, January 2014, [url](#)

1. Overview of socio-legal framework for punishment of crime

1.1 Legal pluralism

Afghanistan has a pluralistic legal system whereby multiple sources of law interact with one another.²⁶ Justice is administered on the basis of a mixture of overlapping and sometimes contradictory legal codes²⁷, which include the 2004 Constitution, international law, statutory law, regulations, *sharia* law, and customary (informal, traditional) law.²⁸ Afghanistan's highly diverse society includes urban, rural and tribal segments, each having norms and mechanisms to settle disputes; however, two dominant systems are used by Afghans to obtain justice: through the state, and through non-state systems.²⁹

The Constitution recognises Islam as the official religion of the state³⁰ and Islamic principles are reflected throughout Afghanistan's constitution, statutory laws and uncodified customary norms.³¹ Article 3 of the Constitution requires that 'no law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.'³² Article 130 of the Constitution explains the hierarchy of Afghanistan's laws³³, stating that:

'In cases under consideration, the courts shall apply provisions of this Constitution as well as other laws. If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner.'³⁴

In communication with EASO in 2017, scholar Neamat Nojumi explained that Afghan laws are structured on three inter-related tiers: the constitution and statutory laws passed by Parliament, *sharia* laws adopted on the basis of legal volumes as determined by the Ministry of Justice, and customary law. Dr Nojumi noted that there is a hierarchical structure and approach in the application of laws: the constitution positions statutory law above *sharia* and customary law. Judges are obligated to apply statutory laws; if they do not suffice, the judge can apply the permitted version of *sharia*, and if that is not sufficient, a judge can apply customary principles, as long as they do not contradict the legal system or violate the basic rights of citizens.³⁵

Although Article 130 of the Constitution was understood by observers to mean that it may only be used for civil matters, the US Department of States (USDOS) reported that it was also applied to criminal cases by many judges and prosecutors.³⁶

²⁶ ALEP, Stanford Law School, An introduction to the Law of Afghanistan, 2017 [url](#), p. 43

²⁷ Rahbari S., From Normative Pluralism to a Unified Legal System in Afghanistan? Cambridge University Press, 2 October 2018, [url](#); ALEP, Stanford Law School, An introduction to the Law of Afghanistan, 2017, [url](#), p. 43

²⁸ ALEP, Stanford Law School, An introduction to the Law of Afghanistan, 2017, [url](#), p. 43

²⁹ Nojumi, N., The merits of non-state justice: An effective mechanism for a stable Afghanistan, 5 November 2014, [url](#); Singh D., The management of legal pluralism and human rights in decentralized Afghanistan, in The Journal of Legal Pluralism and Unofficial Law, 3 September 2019, Vol. 51, Issue 3, pp. 350-380, Full article available under request at [url](#)

³⁰ Afghanistan, Constitution of Afghanistan, 26 January 2004, Art. 2, [url](#)

³¹ ALEP, Stanford Law School, An introduction to the Law of Afghanistan, 2017, [url](#), p. 43

³² Afghanistan, Constitution of Afghanistan, 26 January 2004, Art. 3, [url](#)

³³ ALEP, Stanford Law School, An introduction to the Law of Afghanistan, 2017, [url](#), p. 46

³⁴ Afghanistan, Constitution of Afghanistan, 26 January 2004, Art. 130, [url](#)

³⁵ Nojumi, N., email, 22 September 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 16

³⁶ USDOS, Country Report on Human Rights Practices 2019 – Afghanistan, 11 March 2020, [url](#), p. 8

Afghanistan's criminal law draws on several sources rather than one single source. However, Islamic law is considered to shape all aspects of Afghan criminal law, particularly the Criminal Penal Code.³⁷ Under Islamic law, there are three types of crime: *hudud*, *qisas*, and *ta'azir* crimes.³⁸

Afghanistan enacted a new Penal Code in 2017 to replace the 1976 legislation. The new Penal Code was approved through the Presidential Legislative Decree on 15 May 2017 and entered into force in February 2018. The 2017 Penal Code aims at modernising and harmonising criminal law.³⁹ The International Committee of the Red Cross (ICRC) noted that the new Code combines ten former separate criminal laws and the penal provisions of 33 laws of other scopes.⁴⁰ The new Code also incorporates all mandatory crimes under the UN Convention against Corruption, the UN Convention against Transnational Organized Crimes (UNTOC) and its three protocols. Moreover, it incorporates the Rome Statute of the International Criminal Court (ICC), including war crimes, crimes against humanity and genocide.⁴¹

Like the 1976 Penal Code, the new 2017 Penal Code regulates punishments that fall under the *ta'azir* crimes, while *hudud* and *qisas* crimes are regulated under Islamic law. Although *hudud* and *qisas* crimes are not included in the Penal Code, the Code still gives judges the authority to implement such punishments in accordance with *Hanafi* jurisprudence of Islamic Law.⁴²

In Afghanistan, many disputes, ranging from disagreements over land to criminal acts, are settled outside of the formal court system, in informal institution such as local *jirgas* and *shuras*. Punishment is largely based on the concept of retribution and the type of punishment can differ significantly, but typically it is decided in a manner that is equal to how the perpetrator injured the victim.⁴³ The USDOS noted that, throughout 2019, traditional justice mechanisms remained the main recourse for many, especially in rural areas. In major cities, criminal cases were decided by state courts, most of which administered justice unevenly, adopting a mixture of codified law, *sharia*, and local customary norms. To resolve civil cases, authorities frequently resorted to the informal system, the government mediation mechanism through the Ministry of Justice *Huquq* (civil rights) office, or, in some cases, through negotiations between the parties facilitated by judicial personnel or private lawyers.⁴⁴

1.2 Hudud crimes

Hudud (plural of *hadd*) crimes are the most serious crimes under Islamic law and are considered transgressions against God. Since *hudud* punishments are specifically mentioned in the *Quran* and the *Sunna* (actions and sayings⁴⁵) of the Prophet, their execution is mandatory.⁴⁶

Sources describe *hudud* crimes and punishments as follows:

- theft of property (amputation of the hand);
- adultery, fornication, illicit sexual relations (*zina*) (100 lashes, death by stoning, exile)⁴⁷;

³⁷ ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012, [url](#), p. 9

³⁸ ALEP, Stanford Law School, An introduction to the Law of Afghanistan, 2017 [url](#), p. 139

³⁹ USDOS, 2018 Human Rights Report – Afghanistan, 13 March 2019 [url](#), p. 7; FIDH/Armanshahr Foundation/OPEN ASIA, Update for the 1st European Union (EU)-Afghanistan Special Working Group on Human Rights, Good Governance and Migration Kabul, Afghanistan 5 May 2018, [url](#)

⁴⁰ ICRC, Afghanistan Penal Code, 2017, n.d. [url](#)

⁴¹ UN, Afghanistan: UN mission welcomes new penal code, urges measures to protect women from violence, 22 February 2018, [url](#)

⁴² Rahimi M., Afghanistan's new Penal Code: Whether or Not to codify Hudud and Qisas, The University of Texas at Austin, School of Law, [url](#)

⁴³ ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012, [url](#), p. 3

⁴⁴ USDOS, Country Report on Human Rights Practices 2019 – Afghanistan, 11 March 2020, [url](#), p. 9-11

⁴⁵ Oxford Islamic Studies Online, Sunnah, in Esposito E. J. L., The Islamic World: Past and Present, n.d., [url](#)

⁴⁶ ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012, [url](#), p. 87

⁴⁷ On the punishment of exile, the ALEP report however noted that 'while some jurisprudence suggests an offender should serve one year in exile, the Hanafi School does not require exile'. ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012 [url](#) p. 91

- defamation, in particular regarding false accusations of illicit sexual relations (80 lashes);
- drinking alcohol or ingesting intoxicants (80 lashes);
- apostasy (repentance within 3 days or face death, banishment, imprisonment);
- highway robbery (crucifixion, death, amputation of a foot or hand, exile).⁴⁸

Although *hudud* crimes are ‘wholly inflexible’ in terms of enforcement, the standard of proof for most *hudud* crimes is very high and ‘witnesses must corroborate any claim before guilt can be established.’⁴⁹ According to Siavash Rahbari, an expert on legal issues in Afghanistan and former law specialist for the Asia Foundation, ‘the new Penal Code takes a similar approach to *hudud* crimes as the 1976 code, meaning that *hudud* punishments continue to be a viable option under Afghan law but are wholly uncodified. The main difference between the codes is the reduced sentences for the *taziri* versions of the crimes.’⁵⁰ (See Section [1.4 Ta’azir crimes and the new Penal Code](#))

In an email exchange with EASO in 2017, expert Neamat Nojumi noted that the formal Afghan legal system is bound by the more secular constitutional provisions and does not adhere to the ‘totality of *hudud*’ in the way that it is done in Saudi Arabia or Iran. Dr Nojumi further explained that *hudud* punishments are not applicable in Afghanistan’s formal legal system and practices, but they are adhered to and practiced by the Taliban and insurgent groups. Islamist groups in Afghanistan apply a literal form of *sharia* with emphasis on the implementation of *hudud* penalties.⁵¹ (See Section [1.8 Taliban’s parallel justice system](#))

In 2019, there were reports of criminal charges based on interpretations of Islamic law, for example reports of officials charging women and men with immorality or running away from home, or reports of police often detaining women for *zina* at the request of family members.⁵² In 2013, Human Rights Watch estimated ‘that half of all women in prison and about 95 percent of girls in juvenile detention in Afghanistan were arrested on “moral crimes”.’⁵³ During 2019, those detained for ‘moral crimes’ continued to be primarily women.⁵⁴

1.3 Qisas crimes

Qisas crimes in Islamic law in Afghanistan are those that deal with offences to the ‘bodily integrity of another’ such as homicide and physical injury.⁵⁵ *Qisas* is a system of ‘equality in retaliation’ whereby the victim is permitted to inflict the same injury to the person who committed the *qisas* transgression against them. Punishments are not mandated specifically by the *Quran*, and therefore, victims can traditionally demand the payment of *diyat*, or blood money as a compensation. According to the Afghanistan Legal Education Project (ALEP), this ‘allows the victims and their families to serve in the unique position as decision maker with regard to punishment’ and they can decide whether to demand compensation or inflict the same injury on the offender as retributive justice; they may also decide to

⁴⁸ Oxford Dictionary of Islam, Hadd, *n.d.* [url](#); ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012 [url](#) pp. 87-100; Rahimi M., Afghanistan’s new Penal Code: Whether or Not to codify Hudud and Qisas, The University of Texas at Austin, School of Law, [url](#); Okon E. E., Hudud punishment in Islamic criminal law, in European Scientific Journal May 2014 edition vol.10, No.14, [url](#), p. 234

⁴⁹ ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012, [url](#) pp. 87-88

⁵⁰ Rahbari S., From Normative Pluralism to a Unified Legal System in Afghanistan? In Asian Journal of Law and Society, 5 pp. 289–314, Cambridge University Press, 2 October 2018, [url](#)

⁵¹ Nojumi, N., email, 22 September 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 17

⁵² USDOS, Country Report on Human Rights Practices 2019 – Afghanistan, 11 March 2020, [url](#), p. 8

⁵³ HRW, Submission to the Committee on the Elimination of Discrimination against Women Review of Afghanistan, 75th Session, 23 December 2019, [url](#)

⁵⁴ Washington Post (The), In male-dominated Afghanistan, justice for women is complicated, 24 June 2019, [url](#); HRW, World Report 2019, Afghanistan (Events of 2018), 17 January 2019, [url](#)

⁵⁵ ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012, [url](#), p. 100; Rahimi M., Afghanistan’s new Penal Code: Whether or Not to codify Hudud and Qisas, The University of Texas at Austin, School of Law, [url](#)

forgive the offender.⁵⁶ A detailed explanation of the categories of *Qisas* crimes and how they are handled under the *Hanafi* school can be found in the ALEP book on Afghan criminal law.⁵⁷

ALEP provides examples of *Qisas* crimes and punishments, which include:

- intentional murder (retribution of an equal nature or *diyat mughallazah* - higher than normal amount of *diyat* compensation);
- unintentional murder (monetary compensation);
- intentional or unintentional physical injury and maiming (retaliation under certain conditions, or compensation).⁵⁸

For Pashtuns, retributive revenge (*badal*) through the death of the offender (*Qisas*) is a synonymous concept in justice under the *Pashtunwali*, sometimes resulting in blood feuds.⁵⁹ See Chapter [3. Blood feuds and revenge killings](#)

1.4 *Ta'azir* crimes and the new Penal Code (2017)

Ta'azir crimes in Islamic law in Afghanistan are acts that constitute violation of public morality and welfare.⁶⁰ These crimes are the least serious according to Islamic law, however they still encompass very serious offences.⁶¹ *Ta'azir* are all offences which are not included within *hudud* and *qisas* crimes; the punishments for such crimes cannot replace *hudud* or *qisas* punishments, but they may be used as an additional punishment or as an alternative punishment 'when *hudud*'s demanding elements are not satisfied'.⁶² The punishments for the *ta'azir* crimes are decided by the state which has 'a great deal of freedom' in defining the crimes and determining the punishments, provided that such freedom is 'exercised within the spirit of the general rules of Islam and the public interest'. Likewise, the execution of the punishment is at the discretion of the judges, who may impose multiple punishments for a single crime. *Ta'azir* punishments include 'admonition, reprimand, threat, boycott, public disclosure, fines, seizure of property, imprisonment, flogging, and in some instances, death'.⁶³

Like the 1976 Penal Code, the new 2017 Penal Code regulates *ta'azir* crimes. Article 2(1) of the 2017 Penal Code stipulates that 'this law regulates *Ta'aziri* crimes and punishments.' Article 2(2) of the same code stipulates that 'offenders of crimes that fall under *Hudud*, *Qisas* and *Diyat* shall be punished in accordance with the provisions of the *Hanafi* jurisprudence of the Islamic law.'⁶⁴

Sources noted that, compared to the 1976 Penal Code, the new Code foresees reduced sentences for certain *ta'aziri* crimes.⁶⁵ For instance, some offences which were previously punishable by death

⁵⁶ ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012, [url](#), pp. 100-101

⁵⁷ ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012, [url](#), pp. 100-104

⁵⁸ ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012, [url](#), pp.100-104

⁵⁹ FRC, *Pashtunwali: an analysis of the Pashtun way of life*, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#), p. 48

⁶⁰ ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012, [url](#) p. 101

⁶¹ ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012, [url](#), p. 33

⁶² The ALEP report explained that for the *hudud* crimes, the standard of proof is 'quite demanding'. It further stated: 'For most crimes, including adultery, witnesses must corroborate any claim before guilt can be established. Witness veracity is evaluated in terms of gender, community standing, the content of the statement, and the number of witnesses present. Punishment for a hadd offense is only tempered when the accused repents prior to arrest. For instance, if a thief repents and returns stolen property before the sentence is executed, the hadd lapses'. ALEP, Stanford Law School, University, Introduction to the Criminal Law of Afghanistan, 2012, [url](#), p. 87-88

⁶³ ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012, [url](#), p. 104

⁶⁴ Afghanistan, 2017 Penal Code, Official Gazette N. 1260, 15 May 2017, Art 2(1); Art 2(2) (informal translation by EASO), available at [url](#); Rahimi M., Afghanistan's new Penal Code: Whether or Not to codify *Hudud* and *Qisas*, The University of Texas at Austin, School of Law, [url](#)

⁶⁵ Rahbari S., From Normative Pluralism to a Unified Legal System in Afghanistan? In *Asian Journal of Law and Society*, 5 pp. 289-314, Cambridge University Press, 2 October 2018, [url](#); UN, Afghanistan: UN mission welcomes new penal code, urges measures to protect women from violence, 22 February 2018, [url](#)

penalty became punishable by life imprisonment.⁶⁶ ICRC lists some of the main developments introduced by the new Code as follows:

- ‘- The incorporation of alternatives to imprisonment (of up to 5 years) and incarceration of minors (of up to 3 years) with the discretion of the judge. Requires it (mandatory) where a sentence is 6 months or less. War crimes are excluded from such alternatives.
- Death Penalty offenses are reduced from the former 54 to 14. Several crimes formerly liable to death penalty are assigned in the new Code a form of imprisonment called the “first degree continued imprisonment (30 years)”.’⁶⁷

ICRC further notes that the new Code criminalises, *inter alia*:

- ‘- Illicit manufacturing and traffic in firearms;
- Sexual abuse of boys, extending the prohibition to all related acts, including knowingly attending a performance that involves such practice;
- Forced virginity testing of women suspected of having engaged in consensual extra-marital sex (clearly distinguished from rape).’⁶⁸

The original version of the draft 2017 Penal Code proposed to legislators contained a specific chapter on the elimination of violence against women, which included, among others, all provisions of the Elimination of Violence Against Women law (EVAW).⁶⁹ The EVAW law, enacted by presidential decree in 2009, is considered the main legislative protection in Afghanistan for women victims of gender-based violence, including harmful traditional practices.⁷⁰ Due to the opposition against the EVAW law by a number of conservative members of parliament, eventually President Ghani ordered the Ministry of Justice to remove the EVAW chapter from the new Penal Code. Activists campaigned to preserve the EVAW law in its stand-alone form decreed in 2009⁷¹, and the law is now applicable alongside the new Penal Code⁷² and implemented on an *ad hoc* basis.⁷³

The UN and other observers raised concerns over the removal of the chapter criminalising violence against women⁷⁴ as well as over the presence in the Code of vague provisions allowing the application of *sharia* law and the execution of its punishments for some criminal offenses⁷⁵ under the discretionary

⁶⁶ AI, Amnesty International Report 2017/2018 – Afghanistan, 22 February 2018, [url](#), p. 69

⁶⁷ ICRC, Afghanistan Penal Code, 2017, nd., [url](#)

⁶⁸ ICRC, Afghanistan Penal Code, 2017, nd., [url](#)

⁶⁹ Netherlands, MFA, Country of Origin Report Afghanistan, March 2019, [url](#), p. 51

⁷⁰ UNAMA/OHCHR Injustice and Impunity: Mediation of Criminal Offences of Violence against Women, May 2028, [url](#), p. 15; Article 5 of the EVAW states: ‘The commission of the following [22] acts shall be deemed as violence against women: Rape; Forcing into prostitution; Recording the identity of victim and publicizing it in a manner that damage the personality of victim; Setting into flames, using chemicals or other dangerous substances; Forcing into self-immolation or suicide or using poisonous or other dangerous substances; Causing injury or disability; Battery and laceration; Selling and buying women for the purpose or under pretext of marriage; Baad [offering a woman in marriage to compensate for a murder or restore peace]; Forced marriage; Prohibiting from right of marriage or choosing husband; Marriage before the legal age; Abusing, humiliating, intimidating; Harassment/ persecution; Forced isolation [denying visit to family]; Forcing a woman into drug addiction; Depriving from inheritance; Preventing from possession of personal property; Denying right to education, work and access to health services; Forced labour; Marrying more than one wife without observing the provision of Article 86 of Civil Code; Denial of relationship.’ Afghanistan, Law on Elimination of Violence Against Women (EVAW), 2009 Presidential Decree No. 91 of 20 July 2009, Art. 5, [url](#)

⁷¹ HRW, World Report 2018: Events of 2017, Afghanistan, 1 January 2018, [url](#), p. 3

⁷² Netherlands, MFA, Country of Origin Report Afghanistan, March 2019, [url](#), p. 51

⁷³ Netherlands, MFA, Country of Origin Report Afghanistan, March 2019, [url](#); Appro (Afghanistan Public Policy Research Organization), New Penal Code and EVAW Law: To Incorporate or Not to Incorporate?, July 2018, [url](#), p. 5

⁷⁴ UN News, Afghanistan: UN mission welcomes new penal code, urges measures to protect women from violence, 22 February 2018, [url](#); Appro, New Penal Code and EVAW Law: To Incorporate or Not to Incorporate?, July 2018, [url](#), p. 1

⁷⁵ FIDH/Armanshahr Foundation/OPEN ASIA, Update for the 1st European Union (EU)-Afghanistan Special Working Group on Human Rights, Good Governance and Migration Kabul, Afghanistan 5 May 2018, [url](#); Rahimi M., Afghanistan’s new Penal Code: Whether or Not to codify Hudud and Qisas, University of Texas School of Law, [url](#)

power of the judge.⁷⁶ UNAMA noted that the new Penal Code, contrary to the Penal Code of 1976, no longer mentions ‘honour killings’ as a mitigating circumstance in murder cases.⁷⁷ Monitoring the period 2015-2017, UNAMA found that the enforcement of national legislation aiming to protect women from violence remained a challenge in Afghanistan; in cases of murder and honour killings of women between 2016 and 2017, UNAMA found a *de facto* impunity.⁷⁸

The implementation and awareness of the EVAW law throughout 2019 are described as limited.⁷⁹ During 2019, AIHRC recorded 4 693 incidents of violence against women, including 238 cases of murder of women, 96 of which constitute honour killings. The same source stated that incidents of violence against women in 2019 were about 8.4 % higher than 2018, noting that such a high level of violence is due to various factors, including low levels of public awareness of women's rights, weak rule of law, and insecurity across various parts of the country.⁸⁰ In a research paper published in 2020, the executive director of the Rule of Law Program at Stanford Law School, Mehdi Hakimi⁸¹ stated that ‘the EVAW Law’s passage in 2009 marked a historic step in fighting violence against women in Afghanistan. A decade later, however, this legislative initiative has been little more than a symbolic triumph. The reality is that violence against women and girls is rampant—perpetrated by both private and State actors.’⁸²

In its report for the year 2019, UNAMA noted that, despite the fact that the practice of *bacha bazi* has been criminalised in the new Penal Code, there are reports that such crime continues to exist and is mainly perpetrated by the Afghan national security forces. There was only one case, to UNAMA’s knowledge, in which such a crime was successfully prosecuted under the provisions of the revised Penal Code.⁸³

1.6 Practices of corporal and capital punishment by the government

Article 29 of the Constitution prohibits ‘punishment contrary to human dignity’⁸⁴, and Afghanistan is a party to the UN Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (UNCAT) since 1987.⁸⁵ However, corporal punishments by the state are permitted by law in Afghanistan due to the pluralistic legal system whereby Islamic and civil laws interact with one another (see Section [1.1 Legal Pluralism](#)), allowing individual judges and courts to determine how to prescribe punishments under either code.⁸⁶

In 2015, Human Rights Watch described corporal punishment by district Afghan courts as occurring with ‘regularity’ for crimes of adultery, noting that some district judges kept a lash in their office.⁸⁷ However, reports of corporal punishment, including the use of lashings and beatings, are more frequent in areas controlled by Anti-Government Elements (AGEs).⁸⁸ The report published in 2019 by

⁷⁶ Rahimi M., Afghanistan’s new Penal Code: Whether or Not to codify Hudud and Qisas, University of Texas School of Law, [url](#)

⁷⁷ UNAMA/OHCHR, Injustice and Impunity: Mediation of Criminal Offences of Violence against Women, May 2018, [url](#), 22-23

⁷⁸ UNAMA/OHCHR, Injustice and Impunity: Mediation of Criminal Offences of Violence against Women, May 2018, [url](#), pp. 6; 21-23

⁷⁹ USDOS, Country Report on Human Rights Practices 2019 – Afghanistan, 11 March 2020, [url](#), p. 8

⁸⁰ AIHRC, Summary Report on Violence against Women 2018-2019, 23 March 2020, [url](#)

⁸¹ For more information on Mehdi Hakimi, see Mehdi Hakimi, Biography, n.d., [url](#)

⁸² Mehdi J. H., Elusive Justice: Reflections on the Tenth Anniversary of Afghanistan’s Law on Elimination of Violence Against Women, in *Northwestern Journal of Human Rights*, Vol. 18. Issue 1, Winter 2020, [url](#), p. 71

⁸³ UNAMA, Afghanistan protection of civilians in armed conflict 2019, 22 February 2020, [url](#), p. 9

⁸⁴ Afghanistan, Constitution of Afghanistan, 26 January 2004, Art. 29, [url](#)

⁸⁵ UN Treaty Collection, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984, Participants, status at 30 June 2020, [url](#)

⁸⁶ ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012, [url](#); Rahimi M., Afghanistan’s new Penal Code: Whether or Not to codify Hudud and Qisas, University of Texas School of Law, [url](#)

⁸⁷ HRW, Dispatches: A court-sanctioned lashing in Afghanistan, 2 September 2015, [url](#)

⁸⁸ Australia, DFAT, DFAT Country Information Report Afghanistan, 27 June 2019, [url](#), p. 43; RFE/RL/Gandhara, Taliban Revive Harsh Rule In A Remote Afghan Province, 1 March 2019, [url](#); Guardian (The), ‘I lost consciousness’: woman whipped by the

the Australian Department of Foreign Affairs and Trade (DFAT) stated that reports of cruel, inhuman or degrading punishment by government officials persist, and such incidents are largely undocumented; however DFAT did not provide information on the sources of such reports.⁸⁹

The death penalty in Afghanistan is envisaged under both the Penal Code and Islamic law.⁹⁰ The 2017 Penal code significantly reduces the number of crimes for which the death penalty applies.⁹¹ Article 170 of the new Penal Code stipulates:

‘Death penalty shall be applied in the following cases unless it is defined differently within the law:

- 1) Genocide, crimes against humanity, war crimes, offence against the state, terror and explosion, abduction and hostage taking, banditry that results in the death of a person.
- 2) Intentional murder as defined within the law.
- 3) Crimes that lead to the occupation of the territory of the Islamic Republic of Afghanistan, entirely or partly, by a foreign government or crimes that harm the national sovereignty, territorial integrity or independence of the country.
- 4) Gang rape of a woman.
- 5) Gang rape of a man that results in the death of the victim.’⁹²

In a 2016 article, AAN analysts noted that although the death penalty is legal in Afghanistan, according to both the criminal code and Islamic law, actual executions have been implemented on an *ad-hoc* basis.⁹³ DFAT stated that, as of mid-2018, there were 720 prisoners on death row; however, actual executions have been rare since 2001.⁹⁴ Approximately 100 individuals were sentenced to death during 2016⁹⁵, five men were executed in November 2017 for abduction and murder, and at least three prisoners were executed in 2018.⁹⁶ According to information available to the UN, no executions were held in 2019. However, as of November 2019, some 700 people were reported to be on death row, including about 100 convicted of crimes against internal and external security.⁹⁷

1.7 Customary justice

Customary and local interpretations of Islamic laws are intertwined and combined in processes of traditional dispute resolution.⁹⁸ Drawing upon traditional practices, local customs and religion, informal justice mechanisms have existed in Afghanistan for centuries.⁹⁹ Sources note that customary and informal dispute resolution mechanisms are complex systems, are not monolithic, and should be

Taliban over burqa without veil, 18 April 2018, [url](#); AI, Human Rights in Asia-Pacific; Review of 2019 - Afghanistan, 30 January 2020, [url](#)

⁸⁹ Australia, DFAT, DFAT, Country Information Report Afghanistan, 27 June 2019, [url](#), p. 41

⁹⁰ ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012, [url](#), p. 11, 106; Bjelica, J. and Qaane, E., Afghanistan’s latest executions, AAN, 11 May 2016, last updated 9 March 2020, [url](#)

⁹¹ UN, Situation of human rights in Afghanistan, and technical assistance achievements in the field of human rights, 16 January 2020, [url](#), p. 7

⁹² Afghanistan, 2017 Penal Code, Official Gazette N. 1260, 15 May 2017, Art 170 (informal translation by EASO), available at [url](#)

⁹³ Bjelica, J. and Qaane, E., Afghanistan’s latest executions, AAN, 11 May 2016, last updated 9 March 2020, [url](#)

⁹⁴ Australia, DFAT, DFAT Country Information Report Afghanistan, 27 June 2019, [url](#), p. 40

⁹⁵ AI, Amnesty International Report 2016/2017 – Afghanistan, 22 February 2017, [url](#), p. 61

⁹⁶ Australia, DFAT, DFAT Country Information Report Afghanistan, 27 June 2019, [url](#), p. 40

⁹⁷ UN, Situation of human rights in Afghanistan, and technical assistance achievements in the field of human rights, 16 January 2020, [url](#), p. 7

⁹⁸ Norway, LandInfo, Afghanistan: Blood feuds, traditional law (Pashtunwali), 1 November 2011, [url](#), p. 5; FRC, Pashtunwali: an analysis of the Pashtun way of life, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#), pp. 45-46

⁹⁹ ALEP, Stanford Law School, Introduction to the Criminal Law of Afghanistan, 2012, [url](#), pp. 76-77

understood as involving numerous justice actors ranging from *jirgas* and *shuras*, to include also individual religious scholars, jurists, community members, NGOs, and national institutions.¹⁰⁰

In 2017, scholar Neamat Nojumi explained that customs and customary law continue to play a valuable and important role in Afghan society. Customs are adhered to by individuals within a family, while customary law encompasses normative principles adhered to by a community, and those traditions differ among groups. For example, Tajik, Hazara, Uzbek, and Turkmen follow different social codes from Pashtuns in relation to marriage, inheritance, and public appearances, though there are some overlapping issues across all groups, such as gender discrimination and blood feud practices.¹⁰¹

Throughout 2019, traditional justice mechanisms remained the main recourse for many Afghans, especially in rural areas where the formal legal system often does not exist and local elders and *shuras* are the primary means of resolving both criminal matters and civil disputes. According to the USDOS, such informal institutions and the Taliban also imposed punishments without regard to the formal legal system.¹⁰² According to the 2019 Survey by the Asia Foundation¹⁰³, more than 46 % of Afghans have applied to *shuras* or *jirgas* to solve their disputes, 41.5 % to state courts, and around 25 % to the *Huquq* department. The preference revealed urban-rural divide: rural inhabitants appealed more to *shuras/jirgas* (48 %), while urban residents preferred appealing to state courts and the *Huquq* department (around 52 % and 30 % respectively).¹⁰⁴ The survey further found that the vast majority of Afghans believed that local *shuras* and *jirgas* are fair and trusted (81.2 %), that they follow local norms and values (74.4 %), that such institutions are effective at delivering justice (74.2 %), and that they resolve cases quickly and efficiently (73.2 %).¹⁰⁵

In 2017, Dr Nojumi further noted that the diversity of non-state justice comes mainly from the segmentation of the population into urban, rural, and tribal sectors, with the principles of enforcement being based on accepted norms in each context. He noted that in the urban centres within city districts or at the centre of the rural districts people do often have the option to access both forms of state and non-state mechanism while in the peripheries of the cities and rural districts accessing the state justice system is limited. Within the tribal belt of Afghanistan, mainly across the border with Pakistan and in part with Iran, non-state justice forms the dominant legal system. Within these localities, Afghan tribal communities have the presence of a generation of ‘traditional expertise’ (*Jirgamar*) whose profession is dispute settlement. Nojumi made the observation, based on his research of Afghans’ experiences of local governance, that non-state justice is widely understood by the population, and such mechanisms as *jirgas* and *shuras* are seen as an affordable and functional way to resolve disputes more effectively than can be done through state institutions due to their basis in social trust with

¹⁰⁰ AREU, LGAF – Afghanistan, 22 June 2017, [url](#), p.129; Wardak, A., A decade and a half of rebuilding Afghanistan’s justice system: an overview, 2016, [url](#), pp. 11-12. For detailed information on jirga/shura procedures including for land disputes, refer to Afghanistan, (MEC) Independent Joint Anti-Corruption Monitoring and Evaluation Committee, Final Report of the Public Inquiry into Land Usurpation, November 2014, [url](#), pp. 36-38; UNAMA, The Stolen Lands of Afghanistan and its People, August 2014, [url](#), pp. 27, 37-38; ALEP, Stanford Law School, An Introduction to the Property Law of Afghanistan, 2015, [url](#), pp. 31-35

¹⁰¹ Nojumi, N., email, 22 September 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 18

¹⁰² USDOS, Country Report on Human Rights Practices 2019 – Afghanistan, 11 March 2020, [url](#), pp. 9-11

¹⁰³ Asia Foundation (The), Afghanistan in 2019: A Survey of the Afghan People is The Asia Foundation’s fifteenth annual public opinion survey in Afghanistan. The Asia Foundation describes the Survey as ‘the longest-running barometer of public opinion in Afghanistan’. Since 2004, the Survey has gathered the views of more than 129,800 Afghans on topics such as security, elections, governance, the economy, essential services, corruption, youth issues, reconciliation with the Taliban, access to media, migration, the role of women, and political participation. For the purpose of the 2019 Survey, the Asia Foundation conducted face-to-face interviews with a national sample of 17,812 Afghan respondents aged 18 years and above, across all 34 provinces from July 11 to 7 August 2019. For more information on the methodology used for the Survey, please see Asia Foundation (The), Afghanistan in 2019: A Survey of the Afghan People, 2 December 2019, Appendix 1: Methodology, [url](#), p. 257

¹⁰⁴ Asia Foundation (The), Afghanistan in 2019: A Survey of the Afghan People, [url](#), pp. 23, 144

¹⁰⁵ Asia Foundation (The), Afghanistan in 2019: A Survey of the Afghan People, 2 December 2019, [url](#), p. 23

adjudicators.¹⁰⁶ In a 2014 article, Nojumi also noted that non-state systems are oriented toward the re-establishment of harmony and the prevention of disruption in the community and in relationships. He makes the point that traditional customs and norms within a family may or may not apply to other families; noting that negative practices such as honour killings and retribution are usually carried out and planned in secret, without involving the broader community; by contrast, customary law is meant to be a consultative process.¹⁰⁷

Neamat Nojumi observed that although popular, there are numerous aspects of customary laws that contradict *sharia* and vice versa, particularly in relation to women's rights, which are neglected or denied.¹⁰⁸ Although it is a widely held perception among Afghans that customary laws are in line with Islamic *sharia*, in practice the two contradict one another at times¹⁰⁹, as well as also contravening official state laws in some practices.¹¹⁰ In its report for the year 2019, Amnesty International pointed out that traditional and informal forms of justice continued to be implemented in Afghanistan contrary to the principle of rule of law, human rights standards, and Afghan laws.¹¹¹

For more information on dispute resolution through non-state mechanisms like *jirga* and *shura*, see Section [2.2.2 Customary and traditional mechanisms](#).

1.8 Taliban's parallel justice system

After being ousted from power in 2001, the Taliban re-emerged gradually transitioning into an insurgent parallel system of governance.¹¹² The Taliban dismiss the Afghan Constitution as a product copied from the West and imposed on a Muslim society, rather than based on the principles of Islam.¹¹³ In 2020, in territories under their control, the group continued to operate a parallel judicial system (see also [2.3.3 Taliban involvement in land disputes](#)), based on a strict interpretation of *sharia*.¹¹⁴ Taliban courts are described as 'kangaroo courts'.¹¹⁵ It is reported, however, that many Taliban commanders impose arbitrary punishments without reference to such a system.¹¹⁶

The Taliban courts have become significantly widespread and they are also reported to reach far beyond Taliban-held areas.¹¹⁷ Taliban courts receive cases from people who live in government-control cities and who do not necessarily support Taliban rule but may feel that they have no viable

¹⁰⁶ Nojumi, N., email, 22 September 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), pp. 21-22

¹⁰⁷ Nojumi, N., The merits of non-state justice: An effective mechanism for a stable Afghanistan, 5 November 2014, [url](#)

¹⁰⁸ Nojumi, N., email, 22 September 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 22; AIHRC/CEDAW, AIHRC Specific information on the issues relevant to the the implementation of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), to be convened in February 2020, Geneva Switzerland, January 2020, available at [url](#), p. 5-6

¹⁰⁹ Norway, LandInfo, Afghanistan: Blood feuds, traditional law (Pashtunwali), 1 November 2011, [url](#), p.5; FRC, Pashtunwali: an analysis of the Pashtun way of life, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#), pp. 45-46.

¹¹⁰ FRC, Pashtunwali: an analysis of the Pashtun way of life, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#) pp. 45-46.

¹¹¹ AI, Human Rights in Asia-Pacific; Review of 2019 - Afghanistan, 30 January 2020, [url](#)

¹¹² Clark K., Bjelica, J, One Land, Two Rules (1): Service delivery in insurgent-affected areas, an introduction, Afghanistan AAN, 6 December 2018, last updated 15 April 2020, [url](#); Smith S.S., Service Delivery in Taliban Influenced Areas of Afghanistan, USIP, April 2020 [url](#), p. 3

¹¹³ Haress G., Why the Taliban should read the Afghan Constitution, AAN, 9 April 2019, last updated 9 March 2020, [url](#)

¹¹⁴ USDOS, Country Report on Human Rights Practices 2019 – Afghanistan, 11 March 2020, [url](#), p. 10-11; Bleuer C., Sadat S. A., Ali O., One Land, Two Rules (8): Delivering public services in insurgency-affected insurgent-controlled Zurmat district, AAN, 4 September 2019, last updated 9 March 2020, [url](#)

¹¹⁵ Salaam Times, Taliban brutality takes center stage with couple's execution in Ghor, 28 April 2020, [url](#)

¹¹⁶ Freedom House, Freedom in the World 2020 - Afghanistan, 4 March 2020, [url](#)

¹¹⁷ Jackson, A., Weigand, F., Rebel rule of law - Taliban courts in the west and north-west of Afghanistan, ODI/HPG/NRC, May 2020, [url](#), p. 1; Jackson, A., Amiri R., Insurgent Bureaucracy: How the Taliban Makes Policy, USIP, Peaceworks No. 153, November 2019, [url](#), p. 10; Baqakhil A. Q., Rahimi W., et al., Assessment Report- Health and Integrated Protection Needs in Ghazni Province, Agency for Assistance and Development of Afghanistan (AADA); The Johanniter International Assistance, December 2019, [url](#), p. 53

alternative.¹¹⁸ An increasing number of Afghans across the country were reported to seek justice in Taliban courts due to feeling frustrated¹¹⁹ with the state's bureaucracy, corruption, and lengthy processing times.¹²⁰ Various sources reported that Taliban courts were a preferable alternative¹²¹, and that they were perceived as accessible, fast, and less corrupt¹²² than the government-established courts.¹²³ Neamat Nojumi observed that people might turn to the Taliban when one side of the dispute did not receive a favourable verdict either from the state or non-state justice process.¹²⁴

Primary Taliban courts are established at a district level and have hearings on one or two days a week.¹²⁵ Describing the provision of services provided by the Taliban in Dasht-e Archi, a district in Kunduz province, AAN analyst Ali Obaid, reported, for instance, that the Taliban have established a justice committee which operates as a primary court. To register their cases, people submit their letters to the committee and get a receipt with an exact date for the hearing. Depending on the complexity of the specific case and availability of Taliban's judges, the court can take a few days to review the cases. Ali Obaid further explained that 'locals usually take their cases to the Taleban court, where they are adjudicated faster, without corruption and with satisfactory outcomes. For many people, the only available option for their grievances is the Taleban court. Although they do not readily admit it, they often register their cases with the Taleban court so that they can force the opposing side to attend the hearing and accept the Taleban verdicts.'¹²⁶

In Dashti Simi and some parts of Shnai Simi, areas within Nad Ali, a district in Helmand province, the Taliban operate a mobile judiciary service. However, due to concerns by the group of being attacked by government and foreign forces, such a mobile justice service is not operated prominently and it is not easily accessible.¹²⁷ In Andar district of Ghazni province, the Taliban exercise full control of the justice sector and, according to a case study by AAN, the local community said to prefer justice services provided by the Taliban courts.¹²⁸ Similarly, in Obbeh district in Herat province, local respondents told AAN that they felt disheartened by corruption within the official justice system, and that Taliban courts are faster and more efficient. In some cases, however, people said they were forced to resort to Taliban courts since they had no other option.¹²⁹ In the district of Zurmat, in Paktia province, local government officials interviewed by AAN stated that the Taliban courts play 'a key role in the district, where different cases are registered daily in their court'; cases are mainly said to be land disputes or family conflict. Moreover, according to AAN's source, if a Taliban court cannot reach a verdict, they can refer the case to a Taliban court based in Pakistan.¹³⁰

¹¹⁸ Jackson, A., Weigand, F., The Taliban's war for legitimacy in Afghanistan, *Current History*, 118 (807), November 2019, [url](#), p. 145;

¹¹⁹ Arab News, Afghans turn to Taliban in forgotten province, 9 February 2020, [url](#)

¹²⁰ National (The), Afghans flock to Taliban courts seeking swift justice, 20 May 2019, [url](#)

¹²¹ Smith S.S., Service Delivery in Taliban Influenced Areas of Afghanistan, USIP, April 2020 [url](#), p. 6

¹²² Semple, M., Afghanistan's Islamic Emirate Returns: Life under a Resurgent Taliban, WPR, 18 September 2018, [url](#); Jackson, A., Weigand, F., Rebel rule of law - Taliban courts in the west and north-west of Afghanistan, ODI/HPG/NRC, May 2020, [url](#), p. 1; Obaid A. One Land, Two Rules (3): Delivering public services in insurgency-affected Dasht-e Archi district in Kunduz province, AAN, 26 February 2019, last updated 9 March 2020, [url](#)

¹²³ Jackson, A., Weigand, F., The Taliban's war for legitimacy in Afghanistan, *Current History* 118 (807), 2019, [url](#), p. 145

¹²⁴ Nojumi, N., email, 22 September 2017 in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 83

¹²⁵ Jackson, A., Weigand, F., Rebel rule of law - Taliban courts in the west and north-west of Afghanistan, ODI/HPG/NRC, May 2020, [url](#), p. 4

¹²⁶ Obaid A. One Land, Two Rules (3): Delivering public services in insurgency-affected Dasht-e Archi district in Kunduz province, AAN, 26 February 2019, last updated 9 March 2020, [url](#)

¹²⁷ Sabawoon A. M., One Land, Two Rules (6): Delivering public services in insurgency-affected Nad Ali district of Helmand province, 2 June 2019, last updated 9 March 2020, [url](#)

¹²⁸ Muzhary, F. R., One Land, Two Rules (7): Delivering public services in insurgency-affected Andar district in Ghazni province, AAN, 13 June 2019, last updated 9 March 2020, [url](#)

¹²⁹ Kazemi S. R., One Land, Two Rules (2): Delivering public services in insurgency-affected Obbeh district of Herat province, AAN, 9 December 2018, last updated 9 March 2020, [url](#);

¹³⁰ Bleuer C., Sadat S. A., Ali O., One Land, Two Rules (8): Delivering public services in insurgency-affected insurgent-controlled Zurmat district, AAN, 4 September 2019, last updated 9 March 2020, [url](#)

Punishments enforced by the Taliban parallel justice system include execution, mutilation¹³¹ and stoning to death.¹³² UNAMA stated to have documented four cases in 2019, in which the Taliban executed punishments against women based on their own justice system for committing adultery or having an 'immoral relationship'. 'In three of these cases the women were lashed and, in one case, the woman was executed, accused of eloping.'¹³³ During 2019, Afghanistan's Independent Human Rights Commission (AIHRC) documented 13 extrajudicial trials against women, noting that the perpetrators of these incidents are 'fugitives', and they are in the areas controlled by the anti-government armed groups. These incidents occurred in Faryab and Ghor provinces.¹³⁴

Media sources reported cases of women being flogged for going out without a male guardian¹³⁵, or for wearing a burqa without covering the face.¹³⁶ In 2018, in Shahrak district in Ghor province, a boy and a girl were shot dead by the Taliban for 'running away from home'.¹³⁷ In March 2019, a pregnant woman in Sancharak District in Sar-e-Pol province was sentenced to death by the Taliban and instantly killed along with her unborn child for reportedly criticising the Taliban by calling their war against the government 'illegitimate'.¹³⁸ In January 2020, Afghan officials accused the Taliban of executing at least six members of the same family, including an infant girl, in a remote village in Faryab province.¹³⁹ According to Afghan officials, the Taliban sentenced the family to death for 'immoral acts', accusing them of working in prostitution. However, according to Andkhoy district chief Sultan Mohammad Sanjer, locals claimed that the real reason behind this execution was the fact that a family member was a former Taliban militant who recently took part in the peace process.¹⁴⁰

In February 2020, AIHRC informed it was investigating a video footage showing an Afghan woman being stoned to death. At the time of the report, it was not clear yet whether the footage referred to an incident which occurred in 2015 in Ghor province, as the Taliban claim, or a more recent stoning in the Taywara district of Ghor province, as Afghan journalists and activists state. Radio Free Europe/Radio Liberty reported that in response to a Twitter post by a spokesman for Afghan President Ashraf Ghani, Sediq Sediqqi, stating to be 'utterly shocked and saddened' after watching the video, a Twitter account linked to the Taliban¹⁴¹ replied that the punishment of 'stoning for adultery is Islamic ruling that cannot be rejected by any Muslim'.¹⁴² However, both the Taliban and government officials denied being the perpetrators of this act.¹⁴³

¹³¹ USDOS, Country Report on Human Rights Practices 2019 – Afghanistan, 11 March 2020, [url](#), p. 10-11

¹³² Kazemi S. R., One Land, Two Rules (2): Delivering public services in insurgency-affected Obbeh district of Herat province, AAN, 9 December 2018, last updated 9 March 2020, [url](#); AI, Human Rights in Asia-Pacific; Review of 2019 - Afghanistan, 30 January 2020, [url](#)

¹³³ UNAMA, Afghanistan protection of civilians in armed conflict 2019, 22 February 2020, [url](#), p. 19

¹³⁴ AIHRC, Summary Report on Violence against Women 2018-2019, 23 March 2020, [url](#)

¹³⁵ RFE/RL, Taliban Revive Harsh Rule In A Remote Afghan Province, 1 March 2019, [url](#); Guardian (The), 'I lost consciousness': woman whipped by the Taliban over burqa without veil, 18 April 2018, [url](#)

¹³⁶ Guardian (The), 'I lost consciousness': woman whipped by the Taliban over burqa without veil, 18 April 2018 [url](#)

¹³⁷ Pajhwok, Taliban gun down runaway woman, boy in Ghor, 24 October 2018, [url](#)

¹³⁸ Salaam Times, Taliban murder pregnant woman, unborn child in Sar-e-Pul, 25 March 2019, [url](#); USDOS, Country Report on Human Rights Practices 2019 – Afghanistan, 11 March 2020, [url](#), p. 10-11

¹³⁹ Reportedly, Six Family Members Shot Killed by Taliban in Faryab, 19 January 2020, [url](#)

¹⁴⁰ ABC news, Afghan officials say Taliban kill 6 members of same family, 19 January 2020, [url](#)

¹⁴¹ The reliability of the account referred to as linked to the Taliban by RFE/RL could not be verified by EASO

¹⁴² SediqSediqqi, [Twitter], posted on: 1 February 2020; IEAFG, [Twitter], posted on: 2 February 2020 [url](#)

¹⁴³ RFE/RL, Afghan Rights Group Investigating Video Of Woman Being Stoned To Death, 3 February 2020, [url](#)

2. Land disputes

2.1 General

In Afghanistan, the land is a primary source of local conflicts¹⁴⁴ and violence.¹⁴⁵ The disputes over land were reported to occur in the context of growing urbanisation, population growth, and high numbers of returnees to the country¹⁴⁶ as well as because of longstanding war, tribal conflict, and ineffective land administration.¹⁴⁷

As noted by Afghanistan Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC) and United States Institute of Peace (USIP), the predominant types and nature of conflicts around land and water varied by region and depended on the strength of the government, tribal networks, and the presence of powerful locals and warlords in the area.¹⁴⁸ Abubakar Siddique, a senior correspondent for Radio Free Europe/Radio Liberty (RFE/RL), explained in his interview with EASO in 2017 that land disputes occurred mainly among individuals and families and involved powerful elites while in rural areas land conflicts could expand to include whole families, communities, ethnicities, tribes, or clans within one tribe.¹⁴⁹

Land tenure in Afghanistan is largely based on customary practices, tradition, or local memory.¹⁵⁰ Land registration remains 'highly irregular' with only cities, or even only parts of the cities, having been formally surveyed. In peri-urban areas, ownership is held through the unregistered title (*urfi qabala*). Despite the efforts of the government and international agencies to have the land surveyed and registered, owning land 'outside of the formal titling system' was reported even in the capital.¹⁵¹

Local media reported on numerous cases of families and individuals involved in conflicts over land and property in different regions of Afghanistan. For instance, in May 2019, a verbal clash between two families over inherited land in a village in Khost district, Baghlan Province, turned into an armed clash, as a result of which three persons, including one woman, were killed.¹⁵² The same month, unknown gunmen were reported to have killed seven members of a family due to a personal feud that was possibly connected to a land dispute in Kabul.¹⁵³ In April 2020, it was reported that six people were killed and 26 injured because of clashes over land ownership among tribesmen from Durbaba and Nazian districts in Nangarhar Province¹⁵⁴; in the same month, four persons, including two women, were injured in a clash between two tribes over land ownership in Dan Patan district, Paktia Province.¹⁵⁵ Reporting on a land-related conflict in Dehdadi district of Balkh Province, in which two persons were killed and one injured, Pajhwok Afghan News noted that the residents felt that the authorities were unable to respond to such cases of violence.¹⁵⁶

¹⁴⁴ Choudhury, N., Power, Inequality, and Local Land Conflict in Afghanistan: A Study of Kabul's Peri-Urban Areas, Afghan Institute for Strategic Studies (AISS), 2019, [url](#), p. 1. AISS defines itself an 'independent, not-for-profit research institute' which aims to address strategic issues related to Afghanistan, see [website], n.d, [url](#)

¹⁴⁵ Muzhary F. R., One Land, Two Rules (10): Three case studies on Taleban sales of state land, AAN, 15 April 2020, [url](#)

¹⁴⁶ New Humanitarian (The), Land disputes add to Afghanistan's security woes, 10 September 2013, [url](#)

¹⁴⁷ MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014, [url](#), p. 13

¹⁴⁸ MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014, [url](#), p. 41; USIP, Addressing land and conflict in Afghanistan, June 2015, [url](#), p. 8

¹⁴⁹ Siddique, A., Skype interview, 11 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 74

¹⁵⁰ AREU, LGAF – Afghanistan, 22 June 2017, [url](#), p.7; Denmark, DIS, Report from Danish Immigration Service's fact finding mission to Kabul, Afghanistan, 25 February to 4 March 2012, May 2012, [url](#), pp. 40-41

¹⁵¹ Choudhury, N., Power, Inequality, and Local Land Conflict in Afghanistan: A Study of Kabul's Peri-Urban Areas, Afghan Institute for Strategic Studies, 2019, [url](#), p. 1

¹⁵² Pajhwok Afghan News, Woman among 3 killed over land dispute in Baghlan, 9 May 2019, [url](#)

¹⁵³ Ariana News, Seven members of a family shot dead in Kabul, 27 May 2019, [url](#)

¹⁵⁴ Pajhwok Afghan News, Nangarhar: 6 killed, 26 injured in clash over land, 7 April 2020, [url](#)

¹⁵⁵ Pajhwok Afghan News, 3 dead as rival tribes clash in Paktia, 9 April 2020, [url](#)

¹⁵⁶ Pajhwok Afghan News, Increasing crime incidents worry Balkh dwellers, 26 October 2019, [url](#)

Summarising, sources reported on land dispute situations caused by issues such as:

- the arrival of displaced people, refugees, returnees, or IDPs, including those who have left their place of origin and return to reclaim their land /property after an extended period away¹⁵⁷;
- involvement of insurgents or armed groups in local intra-tribal or intertribal divisions over land, including arming one side against another¹⁵⁸;
- illegal land sales and land-grabbing by powerful elites, warlords¹⁵⁹, strongmen¹⁶⁰, or powerful individuals¹⁶¹, or receiving land distributed or obtained through corruption and bribery of officials¹⁶²;
- claims over contested definitions of private, public, national, or commonly held land ownership¹⁶³, such as land being used for informal camps and settlements¹⁶⁴;
- multiple and competing claims for the same land, involving warlords, powerful commanders, political or armed local actors¹⁶⁵;
- security and tenure over highly valued urban property, involving politicians and parties¹⁶⁶, or land disputes in urban areas where property is taken by powerful individuals and elites¹⁶⁷;
- conflicts over government-owned land¹⁶⁸ or land recognised to belong to the government after the construction of residential buildings¹⁶⁹;
- ownership disputes between individuals and family members, such as disputed inheritances.¹⁷⁰

¹⁵⁷ NRC, Strengthening Displaced Women's Housing, Land and Property Rights in Afghanistan, November 2014, [url](#), p. 27; Denmark, DIS, Report from Danish Immigration Service's fact finding mission to Kabul, Afghanistan, 25 February to 4 March 2012, May 2012, [url](#), pp. 40-41; Muzhary, F., Resettling nearly half a million Afghans in Nangrahar, 12 May 2017, [url](#); Pajhwok Afghan News, Corruption hits hard land distribution to returnees, 1 May 2017, [url](#)

¹⁵⁸ Hakimi, A., Telephone interview in April 2016, in EASO Country of Origin Information Report: Afghanistan – Recruitment by armed groups, September 2016, [url](#), pp. 20-21; Pajhwok Afghan News, Why Daesh chose Achin district as its base, 9 March 2016, [url](#); Pajhwok Afghan News, Jawzjan farmers taken to Taliban court, 15 February 2017, [url](#)

¹⁵⁹ Rao, S., Turkstra, J., Enhancing security of land tenure for IDPs, FMR 46, May 2014, [url](#), p. 15; IWPR, Afghanistan: Teacher's Land Seized, 21 November 2017, [url](#)

¹⁶⁰ Pajhwok Afghan News, 33,000 acres of govt, private land grabbed in Kahdahar, 28 October 2019, [url](#); Pajhwok Afghan News, 23,000 acres of land reclaimed from Balkh grabbers, 6 February 2020, [url](#)

¹⁶¹ Pajhwok Afghan News, 650,000 acres of government land usurped nationwide, 15 March 2017, [url](#)

¹⁶² MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014, [url](#), p. 27; UNAMA, The Stolen Lands of Afghanistan and its People, August 2014, [url](#), p. 10, 17

¹⁶³ Rao, S., Turkstra, J., Enhancing security of land tenure for IDPs, FMR 46, May 2014, [url](#), p. 15; AREU, LGAF -Afghanistan, 22 June 2017, [url](#), pp. 43-44

¹⁶⁴ Rao, S., Turkstra, J., Enhancing security of land tenure for IDPs, FMR 46, May 2014, [url](#), p. 15; UN Human Rights Council, Report of the Special Rapporteur on the human rights of internally displaced persons on his mission to Afghanistan [A/HRC/35/27/Add.3], 12 April 2017, [url](#), pp. 13-15

¹⁶⁵ Rao, S., Turkstra, J., Enhancing security of land tenure for IDPs, FMR 46, May 2014, [url](#), p. 15; Tolo News, 20 people injured in Balkh clashes, 19 April 2015, [url](#); Pajhwok Afghan News, Balkh land dispute leaves 50 wounded, 19 April 2015, [url](#); Pajhwok Afghan News, Year-long Jawand land dispute settled after loss of 6 lives, 25 July 2015, [url](#); KP, Five killed, six wounded over land dispute in Parwan 11 July 2015, [url](#)

¹⁶⁶ Rao, S., Turkstra, J., Enhancing security of land tenure for IDPs, FMR 46, May 2014, [url](#), p. 15

¹⁶⁷ Siddique, A., Skype interview, 11 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 73; Washington Post, In Afghanistan, the Taliban isn't the only group battling for land, 31 May 2016, [url](#)

¹⁶⁸ Pajhwok Afghan News, Land dispute puts Hairatan traders in trouble, 13 February 2017, [url](#); Pajhwok News, 6,000 acres of usurped land reclaimed in Paktika, 12 July 2017, [url](#); Pajhwok News, 650,000 acres of government land usurped nationwide, 15 March 2017, [url](#)

¹⁶⁹ Pajhwok Afghan News, 2 people killed over land dispute in Logar, 18 January 2017, [url](#)

¹⁷⁰ Denmark, DIS, Report from Danish Immigration Service's fact finding mission to Kabul, Afghanistan, 25 February to 4 March 2012, May 2012, [url](#), pp. 40-41; MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014, [url](#), p. 34; Siddique, A., Skype interview, 11 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 73; Pajhwok Afghan News, 2 killed 1 injured in clash over land in Parwan, 1 April 2017, [url](#); Pajhwok Afghan News, Woman among 3 killed over land dispute in Baghlan, 9 May 2019, [url](#)

UNOCHA's 2019 report stated that 'disputes over land pose immediate protection and early recovery challenges in humanitarian operations.'¹⁷¹

2.2 Land disputes among nomadic and sedentary groups

The real number of nomadic households in Afghanistan is unknown. Antonio Giustozzi, a researcher with an extensive number of publications on nomad-settler conflicts in Afghanistan, noted that the number of 'actively migrating nomads' — fully active nomadic households and actively migrating members of partially settled households — was estimated at 1.5 million in 2004 but is expected to be much lower today.¹⁷² The Independent General Directorate of Kuchi, established within the Ministry of Agriculture (MoA)¹⁷³ in 2006 to monitor, report on and solve nomad-related issues, estimated the number of semi-nomads at 150 000 – 220 000 while reporting that full nomadism was substantially extinct.¹⁷⁴ According to Giustozzi, nomadism in Afghanistan is 'hybridised' with remaining semi-nomads partially integrated within settled communities¹⁷⁵: the clear distinction between farmers and nomads has blurred by 2001 with the emergence of semi-sedentary nomad groups.¹⁷⁶

MoA, which is responsible for pastures, 'seems to consider' the Pasture Law of 1971 as the basis of its operations.¹⁷⁷ While the Pasture Law distinguishes between private, community, and public pastures and allows nomads to access only public pastures, the distinction between the types of pastures is often blurred which 'makes the emergence of conflicts easy'.¹⁷⁸

Although the large majority of nomads are Pashtuns, there are also Uzbek, Pashai, Aimaq, Baluch, Turkmen, and Gujar nomadic communities.¹⁷⁹ The state granted Kuchis-Afghan nomads, who are Pashtuns and reside in southern and eastern parts of the country¹⁸⁰ - special representation in the parliament; the regulation, however, was reported to be violated by some candidates who lacked Kuchi origin.¹⁸¹ Jogis, a small¹⁸² semi-nomadic community, were reported to be denied from owning property and accessing jobs, education, and healthcare because of their stateless status.¹⁸³ The members of the community received their first national ID cards to vote in the October 2018 Wolesi Jirga (House of People) elections but some claimed that their ID cards were not accepted by the government afterward.¹⁸⁴ Another nomadic group that was reported to remain not recognised by the government were Mosulis.¹⁸⁵

As noted by Giustozzi, the Kuchi Directorate estimated that about 45 % of nomads, semi-nomads, and settled nomads were involved in some type of conflict. About 20 % of those involved in land disputes were active nomads involved in conflicts with other active nomads, 60-70 % were active nomads involved in conflicts with settlers, and 10-20 % were active nomads involved in conflicts with settled

¹⁷¹ UNOCHA, Humanitarian Needs Overview – Afghanistan, December 2019, [url](#), p. 32

¹⁷² Giustozzi, A., Typologies of nomad-settler conflict in Afghanistan, AREU Issues Paper, AREU, January 2018, [url](#), p. 5

¹⁷³ Giustozzi, A., The Role of the Afghan State in Managing Nomadism and Nomad-Settler Conflict, AREU, December 2018, [url](#), p. 4

¹⁷⁴ Giustozzi, A., Can the Afghan state intervene successfully in the conflict between nomads and settlers?, AREU, February 2020, [url](#), p. 2; Giustozzi, A., Nomad-settler conflict in Afghanistan today, October 2019, AREU, [url](#), p. 9

¹⁷⁵ Giustozzi, A., Nomad-settler conflict in Afghanistan today, October 2019, AREU, [url](#), p. 1

¹⁷⁶ Giustozzi, A., Typologies of nomad-settler conflict in Afghanistan, AREU Issues Paper, AREU, January 2018, [url](#), p. 6

¹⁷⁷ Giustozzi, A., The Role of the Afghan State in Managing Nomadism and Nomad-Settler Conflict, AREU, December 2018, [url](#), p. 4; Giustozzi, A., Typologies of nomad-settler conflict in Afghanistan, AREU Issues Paper, AREU, January 2018, [url](#), p. 15

¹⁷⁸ Giustozzi, A., Typologies of nomad-settler conflict in Afghanistan, AREU Issues Paper, AREU, January 2018, [url](#), p. 15

¹⁷⁹ Giustozzi, A., Typologies of nomad-settler conflict in Afghanistan, AREU Issues Paper, AREU, January 2018, [url](#), p. 2

¹⁸⁰ Minority Rights Group International, Afghanistan – Kuchis, n.d., [url](#)

¹⁸¹ RFE/RL, Afghan Nomads Cite Poor Representation in Elections, 11 October 2018, [url](#)

¹⁸² Afghanistan Central Statistic Office (CSO) had no information about the exact number of Jogies living in the country as of 2019, see Pajhwok Afghan News, Jogies say ID cards issued to them not accepted now, 19 June 2019, [url](#)

¹⁸³ RFE/RL, Jogis: Afghanistan's Tiny Stateless Minority Strives to Survive Without Rights, Services, 14 October 2019, [url](#)

¹⁸⁴ Pajhwok Afghan News, Jogies say ID cards issued to them not accepted now, 19 June 2019, [url](#)

¹⁸⁵ RFE/RL, Jogis: Afghanistan's Tiny Stateless Minority Strives to Survive Without Rights, Services, 14 October 2019, [url](#); RFE/RL, Afghanistan's Marginalized Minority Fights Stateless Status, 29 June 2015, [url](#)

nomads.¹⁸⁶ The reasons for the disputes comprised denial of access to pastures, disputes over borders of villages' pastures and public pastures accessible to nomads, construction of houses on pastures by nomads, taking pastures for cultivation by farmers, nomads' herds damaging farmers' crops, a conflict between various nomad communities, and a conflict between nomads and the authorities.¹⁸⁷

The blocking of nomad migration routes was reported to occur largely on the southern fringes of the Hazarajat.¹⁸⁸ Hazarajat is a mountainous region that comprises the provinces of Bamiyan and Daykundi and parts of the provinces of Ghazni, Ghor, Uruzgan, and Wardak, which are the traditional homeland of the Hazara. Hazarajat is heavily dependent on agriculture for economic and employment opportunities; it is highly vulnerable to droughts and floods and has a 'severely underdeveloped' infrastructure.¹⁸⁹ The blocking of access to land by Hazara farmers, who prevented nomads from reaching pastures to avoid damage to crops grown on the nomads' route and village pastures, was reported to take place particularly in Behsud district of Wardak Province and in parts of Ghazni Province.¹⁹⁰ The passages on the nomads' migration route in Behsud, which was 'the most violent spot of nomad-farmer conflict in Afghanistan', were reported to be under the control of local Hazara militias.¹⁹¹

Beyond the areas in Hazarajat, the conflict between nomads and settlers 'has spread to many corners of the country and pits mostly Pashtun nomads versus Hazara, Tajik and Pashtun settlers'.¹⁹² Furthermore, Uzbek nomads were reported to be involved in a conflict over the use of pastures with farmers of several Pashtun tribes in Kalam Guzar area of Kunduz Province. Both sides have appealed to Uzbek or Pashtun politicians and strongmen for help and support.¹⁹³ In Khost and around several villages in Farah, the conflicts were reported to involve Baluchi nomads and Alokozay farmers.¹⁹⁴

As found by Giustozzi, land grabbing and illegal appropriation constituted the most important type of conflicts related to the nomadic population in Afghanistan.¹⁹⁵ Urban expansion, intensified by the return of Afghans from Pakistan, Iran, and other countries and internal migration from rural areas¹⁹⁶, caused a rise in prices of land in pasture areas. The demand for land created prerequisites for 'grabbing pastures and turning them into townships' and brought competition and fight between nomads and settlers for appropriating the pasturelands to build on them or sell them for urban development.¹⁹⁷

2.3 Land dispute resolution

2.3.1 Formal mechanisms

Land related disputes are considered civil matters under the statutory law.¹⁹⁸ Land-related disputes are mediated by *Huquq* (Rights) offices; however, in its 2019 report, UNAMA expressed concerns over their effectiveness and capacity to enforce court decisions and land titles.¹⁹⁹

¹⁸⁶ Giustozzi, A., Can the Afghan state intervene successfully in the conflict between nomads and settlers?, AREU, February 2020, [url](#), p. 1; Giustozzi, A., Nomad-settler conflict in Afghanistan today, October 2019, AREU, [url](#), p. 16

¹⁸⁷ Giustozzi, A., Typologies of nomad-settler conflict in Afghanistan, AREU Issues Paper, AREU, January 2018, [url](#), p. 8

¹⁸⁸ Giustozzi, A., Typologies of nomad-settler conflict in Afghanistan, AREU Issues Paper, AREU, January 2018, [url](#), p. 9

¹⁸⁹ Australia, DFAT, DFAT Country Information Report, Afghanistan, 27 June 2019, [url](#), p. 10

¹⁹⁰ Giustozzi, A., Typologies of nomad-settler conflict in Afghanistan, AREU Issues Paper, AREU, January 2018, [url](#), p. 9

¹⁹¹ Giustozzi, A., Nomad-settler conflict in Afghanistan today, October 2019, AREU, [url](#), p. 20

¹⁹² Giustozzi, A., Can the Afghan state intervene successfully in the conflict between nomads and settlers?, AREU, February 2020, [url](#), p. 1

¹⁹³ Giustozzi, A., Nomad-settler conflict in Afghanistan today, October 2019, AREU, [url](#), pp. 24-25

¹⁹⁴ Giustozzi, A., Typologies of nomad-settler conflict in Afghanistan, AREU Issues Paper, AREU, January 2018, [url](#), p. 13

¹⁹⁵ Giustozzi, A., Typologies of nomad-settler conflict in Afghanistan, AREU Issues Paper, AREU, January 2018, [url](#), p. 8

¹⁹⁶ Choudhury, N., Power, Inequality, and Local Land Conflict in Afghanistan: A Study of Kabul's Peri-Urban Areas, Afghan Institute for Strategic Studies, 2019, [url](#), p. 1

¹⁹⁷ Giustozzi, A., Nomad-settler conflict in Afghanistan today, October 2019, AREU, [url](#), pp. 1, 22-23

¹⁹⁸ MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014, [url](#), p. 44

¹⁹⁹ UNAMA, Afghanistan's Fight Against Corruption – Groundwork for Peace and Prosperity, May 2019, [url](#), p. 42

Sources reported that there was little expectation of obtaining fair treatment at courts, and frequently such courts are not present or lack appropriate staff.²⁰⁰ Disputants in land disputes with the means to pay off or bribe judicial officials were able to obtain favourable outcomes.²⁰¹ Furthermore, in attempts to obtain different outcomes, court orders were occasionally ignored and the same case was re-tried simultaneously in various courts. Challenges within the court system dealing with land disputes included lack of documentation or fraudulent land documents, lack of awareness about court proceedings by litigants, delays, and the lack of safety for court officials who reportedly experienced threats, and beatings.²⁰²

According to the research conducted by Giustozzi on nomad-settler conflicts, the authorities remain often ‘the first port of call for help’ in case of land disputes.²⁰³ However, while 40 % of nomads and settlers involved in land disputes said they appealed to the authorities, none of them mentioned receiving any help. Some government officials claimed success in resolving disputes involving nomads through third-party mediation but said that the state was frequently able to solve only minor issues, e.g. the seizure of animals and limited damage to crops.²⁰⁴

In February 2020, the Pajhwok Afghan News published a statement of the head of the Ministry of Urban Development and Housing (MUDH), according to which 1 600 people applied to judicial organs over land grabbing instances during the solar year that ends on 21 March 2020. Security forces reportedly helped to ‘recover 250 000 acres of land from grabbers’. More than 15 800 people involved ‘were referred to judiciary organs’, with strongmen being found among the land grabbers.²⁰⁵

2.3.2 Customary and traditional mechanisms

Land disputes are frequently resolved through informal community resolution mechanisms engaging local elders or through *shuras* (gathering of elders) and *jirgas* (councils).²⁰⁶ According to the Asia Foundation’s 2019 survey, land disputes solved by *shuras* and *jirgas* formed more than 49 % of the cases solved by these customary institutions.²⁰⁷

As noted by various sources, the Afghans often preferred the customary law system to resolve disputes due to a better familiarity with the system, lower costs, emphasis on community harmony, and lack of trust in the formal system because of corruption, distance, and delays.²⁰⁸ *Jirgas* and *shuras* were reported to be preferred particularly by rural inhabitants, who generally perceived the formal justice

²⁰⁰ ACCORD, Afghanistan: Dokumentation des expertengespraches mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016, [url](#), pp. 14-15; Siddique, A., Skype interview, 11 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 77; Wily, L., Land, People, and the State in Afghanistan: 2002-2012, February 2013, [url](#), pp. 90-91

²⁰¹ ALEP, Stanford Law School, An Introduction to Property Law of Afghanistan, 2015, [url](#), p. 32; AREU, LGAF – Afghanistan, 22 June 2017, [url](#), p. 179

²⁰² MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014, [url](#), pp. 34-35

²⁰³ Giustozzi, A., The Role of the Afghan State in Managing Nomadism and Nomad-Settler Conflict, AREU, December 2018, [url](#), p. 6

²⁰⁴ Giustozzi, A., The Role of the Afghan State in Managing Nomadism and Nomad-Settler Conflict, AREU, December 2018, [url](#), p. 6; Giustozzi, A., Nomad-settler conflict in Afghanistan today, October 2019, AREU, [url](#), p. 47

²⁰⁵ Pajhwok Afghan News, 1,600 people referred to judiciary over land-grab this year, 26 February 2020, [url](#)

²⁰⁶ USIP, Addressing Land and Conflict in Afghanistan, June 2015, [url](#), p. 3; ACCORD, Afghanistan: Dokumentation des expertengespraches mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016, [url](#), pp. 14-15; Siddique, A., Skype interview, 11 August 2017, in EASO COI Report Afghanistan: Individuals targeted under societal and legal norms, December 2017, [url](#), p. 78; MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014, [url](#), pp. 36-38; USDOS, Afghanistan 2019 Human Rights Report, 11 March 2020, [url](#), p. 10; Nader, J., Roberts, F., Inclusive local peacebuilding in Afghanistan – Lessons from practice, in Incremental peace in Afghanistan, ACCORD, issue 27, June 2018, [url](#), p. 81

²⁰⁷ Asia Foundation (The), Afghanistan in 2019: A Survey of the Afghan People, [url](#), pp. 23, 144

²⁰⁸ ALEP, Stanford Law School, An Introduction to Property Law of Afghanistan, 2015 [url](#), p. 32; Siddique, A., Skype interview, 11 August 2017 in EASO COI Report Afghanistan: Individuals targeted under societal and legal norms, December 2017, [url](#), p. 78; Wily, L., Land, People, and the State in Afghanistan: 2002-2012, February 2013, [url](#), pp. 90-91; MEC, Final Report of the Public Inquiry into Land Usurpation, November 2014, [url](#), pp. 34-35; Wardak, A., A Decade and a Half of Rebuilding Afghanistan’s Justice System, 2016, [url](#), pp. 13-14; NRC, Skype interview, 29 August 2017, in EASO COI Report Afghanistan: Individuals targeted under societal and legal norms, December 2017, [url](#), p. 78

system as corrupted and inaccessible: resulting from a more extensive use by the rural population, *jirgas* and *shuras* solved a larger number of cases than formal mechanisms.²⁰⁹

Decisions made by *jirgas* and *shuras* are outside the justice system of the state and are not legally binding or formally recognised, and their decisions sometimes violate the *sharia* and the statute law as well as human rights.²¹⁰ USDOS reported that, in 2019, in rural areas local elders and *shuras*, which were ‘the primary means of settling both criminal matters and civil disputes’, ‘imposed punishments without regard to the formal legal system’.²¹¹ According to CEDAW 2020 report, ‘many cases of gender-based violence and discrimination against women and girls are referred to *jirgas* and *shuras* for advice or resolution, especially in rural and remote areas’. Furthermore, the decisions made by the informal justice mechanisms were reported to frequently discriminate against women.²¹²

In his research of land conflicts involving nomadic populations, Antonio Giustozzi noted that non-state mediators – typically from neighbouring tribes or clerics – had reportedly greater access than state institutions as they were able to enter Taliban-controlled areas. However, mediation costs were reported to be high: for instance, in Farah, a mediation allegedly cost AFN 480 000 [EUR 5 680], which was shared equally between the two communities engaged in the conflict.²¹³ Only a minority of conflicts had successful non-state mediation; moreover, in some instances, the solution was only temporary or partially successful.²¹⁴

2.3.3 Taliban involvement in land disputes

According to the researcher Ashley Jackson, dispute resolution is the Taliban’s ‘primary non-military form of engagement with civilians and the first “service” it offers’.²¹⁵ During the communication with EASO in 2017, Abubakar Siddique explained that in some cases the Taliban might not allow *jirgas* and other social bodies to form, wanting people to rely on the Taliban’s systems to resolve their disputes.²¹⁶

Land disputes—as well as the cases related to divorces and robberies—were reported to be the most common cases heard by the Taliban courts²¹⁷ (see also [1.8 Taliban’s parallel justice system](#)). Researching conflicts related to the nomadic population, Antonio Giustozzi gave an example when a tribal elder admitted seeking and obtaining support from the Taliban besides other parties, such as Hizb-i Islami commanders and one of the nomad strongmen to solve a conflict when nomads from Zabul Province blocked access to pastures to the Baluchi nomads.²¹⁸

²⁰⁹ Nader, J., Roberts, F., Inclusive local peacebuilding in Afghanistan – Lessons from practice, in *Incremental peace in Afghanistan*, ACCORD, issue 27, June 2018, [url](#), p. 81. This report draws on research by the British and Irish Agencies Afghanistan Group (BAAG) in 2017, which aimed to document examples of community and civil society-led peacebuilding initiatives. The research involved a desk study and 15 semi-structured interviews with employees of a number of international and Afghan NGOs operating in Afghanistan.

²¹⁰ UNAMA, *The Stolen Lands of Afghanistan and its People*, August 2014, [url](#), p. 37; Wardak, A., *A Decade and a Half of Rebuilding Afghanistan’s Justice System*, 2016, [url](#), pp. 11-12; NRC, Skype interview, 29 August 2017, in EASO COI Report, *Afghanistan Individuals targeted under societal and legal norms*, December 2017, [url](#), p. 78

²¹¹ USDOS, *Afghanistan 2019 Human Rights Report*, 11 March 2020, [url](#), p. 10

²¹² CEDAW, *Concluding observations on the third periodic report of Afghanistan [CEDAW/C/AFG/CO/3]*, 10 March 2020, [url](#), p. 4

²¹³ Giustozzi, A., *Nomad-settler conflict in Afghanistan today*, October 2019, AREU, [url](#), p. 43

²¹⁴ Giustozzi, A., *Can the Afghan state intervene successfully in the conflict between nomads and settlers?*, February 2020, AREU, [url](#), p. 2

²¹⁵ Jackson, A., *Life under the Taliban shadow government*, Overseas Development Institute (ODI), June 2018, [url](#), p. 19

²¹⁶ Siddique, A., Skype interview, 11 August 2017, in EASO COI Report, *Afghanistan Individuals targeted under societal and legal norms*, December 2017, [url](#), p. 82

²¹⁷ National (The), *Afghans flock to Taliban courts seeking swift justice*, 20 May 2019, [url](#)

²¹⁸ Giustozzi, A., *Typologies of nomad-settler conflict in Afghanistan*, AREU Issues Paper, AREU, January 2018, [url](#), p. 14

Primary Taliban courts are established at a district level and have hearings on one or two days a week.²¹⁹ Shadow district governors make decisions concerning minor issues²²⁰ and, as underlined by Jackson, ‘are often the first port of call for dispute resolution’, particularly for disputes over land or resource ownership as well as for civil cases or in the locations ‘where Taliban judges are overstretched or absent’.²²¹ Researcher Michael Semple observed the work of the Taliban district administrator in Chapa Dara, Kunar Province, whose role was to adjudicate disputes related to land ownership, grazing rights, debts, and elopement; at the same time, a district judge (*qazi*) was engaged in dealing with ‘difficult’ cases.²²² AAN-published research revealed that in Topra Kash, Kunduz Province, a Taliban district governor was ‘supported by the military committees’: in case of a land dispute, the governor would ‘ask the military commander of the specific village’ to implement the court’s decision.²²³ When disputes over land and/or resource involve several districts, tribes, or villages, an outside commission of Taliban elders can be formed.²²⁴

Women were reported to be able to appeal to Taliban courts—particularly in cases related to inheritance, divorce, and family issues—either directly or via their male relatives.²²⁵

During 2017-2020, the official website of the Taliban, the Voice of Jihad, claimed to resolve ‘slight and major disputes and feud that disturbed the peace’.²²⁶ In February 2020, Taliban reported on resolving an enmity between two families, which lasted for more than two decades and claimed ‘several lives’, during a ‘peace and reconciliation ceremony’ of the ‘Islamic Emirate’s Dispute Resolution Commission for the legal and social problem of the public’ in Modol district of Nooristan Province. The news stated that ‘[t]he tribesmen appreciated the step taken by the Islamic Emirate and expressed joy and satisfaction over the reconciliation efforts that ended a 20-year long dispute between two families.’²²⁷ In other cases, it was mentioned that intra-tribal conflicts were settled in Mehtarlam, the capital of Laghman Province²²⁸, and Marwara and Shigal districts of Kunar Province.²²⁹

In January 2018, Pajhwok Afghan News reported on an armed clash between civilians and Taliban militants over a land dispute in Musa Qala district of southern Helmand province, when Taliban’s shadow governor for Helmand ‘wanted to distribute land owned by Alizai tribe to Ishaqzai tribesmen’.²³⁰

²¹⁹ Jackson, A., Weigand, F., Rebel rule of law - Taliban courts in the west and north-west of Afghanistan, ODI/HPG/NRC, May 2020, [url](#), p. 4

²²⁰ Semple, M., Afghanistan’s Islamic Emirate Returns: Life under a Resurgent Taliban, WPR, 18 September 2018, [url](#); Jackson, A., Life under the Taliban shadow government, Overseas Development Institute (ODI), June 2018, [url](#), p. 19

²²¹ Jackson, A., Life under the Taliban shadow government, Overseas Development Institute (ODI), June 2018, [url](#), p. 11

²²² Semple, M., Afghanistan’s Islamic Emirate Returns: Life under a Resurgent Taliban, WPR, 18 September 2018, [url](#)

²²³ Ali, O., One Land, Two Rules (3): Delivering public services in insurgency affected Dasht-e Archu district in Kunduz province, AAN, 26 February 2019, [url](#)

²²⁴ Jackson, A., Life under the Taliban shadow government, Overseas Development Institute (ODI), June 2018, [url](#), p. 19

²²⁵ Jackson, A., Weigand, F., Rebel rule of law - Taliban courts in the west and north-west of Afghanistan, ODI/HPG/NRC, May 2020, [url](#), p. 6

²²⁶ Voice of Jihad, Islamic Emirate resolves 60-year-old feud between two tribes, 8 January 2017, [url](#); Voice of Jihad, Islamic Emirate resolves 20-year-old feud between two Families, 26 February 2020, [url](#)

²²⁷ Voice of Jihad, Islamic Emirate resolves 20-year-old feud between two Families, 26 February 2020, [url](#)

²²⁸ Voice of Jihad, Mujahideen resolve 17 year-long feud between 2 tribes, 8 October 2017, [url](#)

²²⁹ Voice of Jihad, Mujahideen resolve dispute over water issue between two tribes; 4 minions killed, 16 January 2017, [url](#)

²³⁰ Pajhwok Afghan News, 4 tribesmen killed in clash over Helmand land dispute, 15 January 2018, [url](#)

3. Blood feuds and revenge killings

3.1 *Pashtunwali* and blood feuds

Among Pashtuns, blood feuds arise from the principle of *badal*, retributive justice, which is the central component of *Pashtunwali*.²³¹ It requires the restoration of honour through carrying out revenge or that those who commit an injustice against another's honour must compensate those who have been wronged.²³² While *Pashtunwali* is dominant across tribal Pashtun communities²³³, its practice can be also observed among non-Pashtuns and among other ethnic groups.²³⁴ Furthermore, *Pashtunwali* has tribal and regional variations.²³⁵

Blood feuds characteristically occur in areas where the government and rule of law is weak or non-existent²³⁶, where there is easy access to weapons, leading to a quick escalation of violence.²³⁷ Because of the lack of state enforcement and/or police forces, in most rural areas some relatively minor incidents concerning land disputes can rapidly escalate into violence.²³⁸ However, as noted by Neamat Nojumi in 2017, in some cases, any homicide or killing, which is not mitigated, can potentially lead to a blood feud, regardless of the presence or the absence of the government.²³⁹

Blood feuds for revenge-taking can be the result of personal violence or wrongdoing that is seen as being against honour, disputes involving land, or family conflicts and relationships.²⁴⁰ To be perceived as 'dishonourable' or shameful is among the most serious transgressions for Pashtun men and families.²⁴¹ In Pashtun society, shame is strongly connected to a woman's behaviour, which is believed to reflect the reputation of her family and, specifically, male family members.²⁴² As men are

²³¹ The central concepts in *Pashtunwali* revolve around notions of honour (*nang*) and shame, as well as hospitality (*melmastiya*) and dignity (*ghairat*). See, Norway, LandInfo, Afghanistan: Blood feuds, traditional law (*Pashtunwali*), 1 November 2011, [url](#) p. 7; FRC, *Pashtunwali: an analysis of the Pashtun way of life*, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#), pp. 29-36, 42

²³² FRC, *Pashtunwali: an analysis of the Pashtun way of life*, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#), p. 30; UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014, [url](#), pp. 4, 10; Rzehak, L. Doing Pashto, Afghanistan Analysts Network (AAN) Thematic Report, March 2011, [url](#), pp. 14-15; Norway, LandInfo, Afghanistan: Blood feuds, traditional law (*Pashtunwali*), 1 November 2011, [url](#), p. 8

²³³ Nojumi, N., email, 22 September 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 84

²³⁴ Netherlands, Country of Origin Report on Afghanistan, November 2016, [url](#), p.75; UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014, [url](#), p. 4; Barfield, T., et al., *The Clash of Two Goods – State and Non-state Dispute Resolution in Afghanistan*, 2011, [url](#), p. 11; Siddique, A., Skype interview, 11 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 84; Waheed, A., Skype interview, 26 August 2017 in in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 84, Nojumi, N., email, 22 September 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 84

²³⁵ ILF, *The Customary Laws of Afghanistan*, September 2004, [url](#); also cited in Norway, LandInfo, Afghanistan: Blood feuds, traditional law (*Pashtunwali*), 1 November 2011, [url](#), pp. 6-7; Ruttig, T., email, 27 September 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 85

²³⁶ UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014, [url](#), pp. 34-35; Waheed, A., Skype interview, 26 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 83

²³⁷ Waheed, A., Skype interview, 26 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 83

²³⁸ Giustozzi, A., *Nomad-settler conflict in Afghanistan today*, October 2019, AREU, [url](#), p. 42

²³⁹ Nojumi, N., email, 22 September 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 83

²⁴⁰ UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014, [url](#), pp. 10-11, 19; Rzehak, L. Doing Pashto, AAN Thematic Report, AAN, March 2011, [url](#), pp. 14-15, 18-19; Waheed, A., Skype interview, 26 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 84

²⁴¹ Norway, LandInfo, Afghanistan: Blood feuds, traditional law (*Pashtunwali*), 1 November 2011, [url](#), p. 7

²⁴² Siddique, A., Skype interview, 11 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 85; Norway, LandInfo, Afghanistan: Blood feuds, traditional law (*Pashtunwali*), 1 November 2011, [url](#), p. 7

responsible for the accumulation of honour and reputation through protection of their property and families²⁴³, they have the duty to protect the honour of the women (*nang*) under their responsibility. Failing to protect women's honour means a drop in respectability within the community; the *namus* (social honour of family) becomes a frequent cause of conflicts.²⁴⁴

Revenge killing happens mainly among Pashtuns, but in cases involving women's honour, it occurs among all ethnicities that see it as a customary transgression.²⁴⁵ Blood feuds are not solely based on *Pashtunwali* and can occur among other ethnic groups.²⁴⁶ According to Ahmad Waheed, clashes and feuds do occur and are likely to develop between different ethnic groups living in the same area: for instance, Hazara and nomadic groups, or in regions where Pashtun and Tajik or Uzbek groups border each other.²⁴⁷

Among the Pashtuns, revenge is part of *Pashtunwali*; however, Abubakar Siddique explained that even among Pashtuns, many different tribal formations influence how blood feuds occur.²⁴⁸ As noted by Thomas Ruttig, while blood feuds are not limited to situations arising from resource conflicts, most feuds occur within certain ethnic sub-groups. For instance, in the case of Pashtun society, these sub-groups comprise core family, extended family, 'clan' subtribe, and tribe.²⁴⁹ Ahmed Waheed pointed to cousin rivalry (*turboor*) among Pashtun families as a factor that escalates blood feuds.²⁵⁰ The adherence to *Pashtunwali*, as observed by Neamat Nojumi, fades away as one moves toward the urban centres and is not effective or enforced among urbanite Pashtuns.²⁵¹

Under *Pashtunwali*, the taking of revenge does not need to be immediate.²⁵² Feuds can go on for generations and impact entire tribes or communities.²⁵³ In an email to EASO on this issue in 2017, Thomas Ruttig gave the opinion that the number of revenge cases has grown exponentially because the conflict in Afghanistan has exacerbated the causes for conflicts like blood feuds.²⁵⁴ He explained that there is a high probability that blood feuds will continue to be violent, as such issues are not easily forgotten.²⁵⁵ Antonio Giustozzi gave the following example of a land dispute, which grew into a blood feud that lasted more than a decade and affected more actors than were involved in the beginning:

'In one case recounted by an interviewee in Derai (Khost), in 2003 some nomads killed the son of a local landholder who was complaining to them about their planting wheat on his land. The nomads claim to own that land, which they bought in the past. Afterward, the colonel stormed the nomad

²⁴³ Norway, LandInfo, Afghanistan: Blood feuds, traditional law (Pashtunwali), 1 November 2011, [url](#), p. 7

²⁴⁴ Norway, LandInfo, Afghanistan: Blood feuds, traditional law (Pashtunwali), 1 November 2011, [url](#), p. 7; FRC, Pashtunwali: an analysis of the Pashtun way of life, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#), pp. 51-52

²⁴⁵ Waheed, A., Skype interview, 26 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 84

²⁴⁶ Nojumi, N., email, 22 September 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 84

²⁴⁷ Waheed, A., Skype interview, 26 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 84

²⁴⁸ Siddique, A., Skype interview, 11 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 85

²⁴⁹ Ruttig, T., email, 27 September 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 84

²⁵⁰ Waheed, A., Skype interview, 26 August 2017; Siddique, A., Skype interview, 11 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 84

²⁵¹ Nojumi, N., email, 22 September 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 84

²⁵² Rzehak, L. Doing Pashto, March 2011, [url](#), pp. 14-15

²⁵³ FRC, Pashtunwali: an analysis of the Pashtun way of life, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#), p. 30; Rzehak, L. Doing Pashto, March 2011, [url](#); Waheed, A., Skype interview, 26 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 85

²⁵⁴ Ruttig, T., email, 27 September 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 86

²⁵⁵ ACCORD, Afghanistan: Dokumentation des expertengespraches mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016, [url](#), pp. 16-17; Ruttig, T., email, 27 September 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 86

settlement, killing seven. The blood feud that started in this way is still going on and resists all attempts by the elders of the two communities to end it, even if the elders agreed that the nomads would withdraw from the occupied land. The conflict spread as the local villagers started attacking nomads indiscriminately, not just the Niazi, who were originally involved.²⁵⁶

3.2 Customary blood feud resolution and compensation

Under *Pashtunwali*, blood feuds can be avoided through seeking forgiveness (*nanawatai*) of the injured party and requesting that they forego *badal*.²⁵⁷ *Nanawatai* can be sought by the individual offender approaching the offended party to ask for forgiveness or through a *jirga* with local tribal elders and the *ulema* (clerics); however, *nanawatai* is not applicable in cases related to *namus* and not normally sought in a case of murder as Pashtun society considers forgiving murder as a disgraceful and coward act.²⁵⁸ As explained by Neamat Nojumi, taking revenge is linked to the ‘ability to apply violence’: according to the researcher, ordinary Afghans cannot easily take revenge against people in the position of power and those protected by armed men and security.²⁵⁹

According to LandInfo, the vast majority of decisions resolved through customary dispute resolution resulted in peace (*solh*), or the payment of compensation.²⁶⁰ The payment of ‘blood money’ (*khunbaha*) is done to avoid further cyclical revenge and ‘blood shed’ and to resolve disputes peacefully: under *Pashtunwali*, once compensation is paid, the blood feud ‘must end’.²⁶¹ As explained by Ahmed Waheed, the likelihood of permanence for decisions that end feuds depends on the situation and level of trust between parties: in some cases, a lasting solution is achieved, while in others decisions are broken and not upheld. Further, decisions to end feuds or disputes may be undermined by territory changing hands, or, if the government becomes weaker in the local area. If the parties have the will to resolve it, they may pursue a new decision from the government or Taliban; however, if they do not wish to resolve it, parties abandon this and focus instead on assuring their protection.²⁶²

Instead of paying blood money, families can give the offended party one or several girls for marriage²⁶³, which occurs in rural areas.²⁶⁴ The practice of exchanging girls between families, known also under the term *swara* in Pashto²⁶⁵, is a customary solution as a form of compensation to address revenge killings of young men.²⁶⁶ According to the Pashtun practice of *baad*²⁶⁷, women and girls are given or exchanged

²⁵⁶ Giustozi, A., Nomad-settler conflict in Afghanistan today, October 2019, AREU, [url](#), p. 42

²⁵⁷ FRC, Pashtunwali: an analysis of the Pashtun way of life, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#), p. 30; Rzehak, L. Doing Pashto, March 2011, [url](#), p. 18

²⁵⁸ FRC, Pashtunwali: an analysis of the Pashtun way of life, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#), pp. 30-31, 54

²⁵⁹ Nojumi, N., email, 22 September 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 89

²⁶⁰ Norway, LandInfo, Afghanistan: Blood feuds, traditional law (Pashtunwali), 1 November 2011, [url](#), p. 14

²⁶¹ Rzehak, L. Doing Pashto, March 2011, [url](#), p. 18

²⁶² Waheed, A., Skype interview 28 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 89

²⁶³ Rzehak, L. Doing Pashto, March 2011, [url](#), p. 19; FRC, Pashtunwali: an analysis of the Pashtun way of life, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#), p. 42

²⁶⁴ Nojumi, N. et al., Life and Security in Rural Afghanistan, 2009, pp. 108-109; ACCORD, Afghanistan: Dokumentation des expertengespraches mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016, [url](#), pp. 16-17; Siddique, A., Skype interview, 11 August 2017 in in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 90

²⁶⁵ Siddique, A., Skype interview, 11 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 90; FRC, Pashtunwali: an analysis of the Pashtun way of life, in Austria, BFA, AfPak: Principals of the tribal & clan structure, 5 April 2017, available at [url](#), pp. 42, 51-52

²⁶⁶ Nojumi, N. et al., Life and Security in Rural Afghanistan, 2009, pp. 108-109; ACCORD, Afghanistan: Dokumentation des expertengespraches mit Thomas Ruttig und Michael Daxner vom 4 Mai 2016, June 2016, [url](#), pp. 16-17; Siddique, A., Skype interview, 11 August 2017 in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 90

²⁶⁷ UNHCR, CORI Thematic Report, Afghanistan: Blood Feuds, February 2014, [url](#), p. 38

to settle family debts or resolve family disputes;²⁶⁸ for instance, a woman can be given to the ‘offended’ family in order to avoid the escalation of blood feud between families.²⁶⁹ The practice of *baad*, which is prevalent in rural areas²⁷⁰, results in forced (at times early) marriage for the women and girls given in exchange.²⁷¹

In 2019, it was reported that two girls of Kuchi communities were exchanged for access to clean water resources to avoid disputes, serious conflicts, and blood feuds.²⁷² The exchange marriage decision is made by families or *jirgas*, and women and girls are expected to comply.²⁷³ As explained by Abubakar Siddique, women and girls given to other families as compensation might find themselves being divorced by their husbands or being forced to divorce by their in-law-families as soon as another conflict between the two families arises.²⁷⁴

According to RFE/RL, also boys in rural areas were ‘often impelled to marry because of long-held local or tribal traditions: customs on the inheritance rights of widows, the settlement of blood feuds, or prearranged agreements between families to exchange their children for marriage’. The source mentioned that child marriages of boys were less frequent than child marriages of girls and tended to remain underreported.²⁷⁵

In June 2020, RFE/RL reported on an incident described as an ancient customary revenge which took place in Manduzai, a district in the province of Khost. A mob made up of hundreds of members of the Pashtun tribe Mangal burned down the houses of four families whose male members were accused of having killed seven members of a rival family and injured three others a few days before. According to the source, the burnings occurred after a *jirga*, a council of Mangal tribal leaders, met and ‘invoked an ancient custom to mobilize a Cheegha or tribal posse against a real or perceived atrocity’.²⁷⁶

3.3 Prosecution by the state

Article 25 of the 2009 EAW law prohibits *baad* exchange marriages²⁷⁷, and the new 2017 Penal Code no longer mentions ‘honour killings’ as a mitigating circumstance in murder cases.²⁷⁸ Monitoring the period 2015-2017, UNAMA found that the enforcement of national legislation aiming to protect women from violence remained a challenge in Afghanistan; in cases of murder and honour killings of women between 2016 and 2017, UNAMA found a *de facto* impunity.²⁷⁹ USDOS reported that in 2019 the ‘implementation and awareness of the EAW’ remained limited.²⁸⁰

In 2015 and 2016, local media reported on tribal elders declaring bans on the marriage to settle blood feuds in Balkh, Khost, and Paktika.²⁸¹ According to a media source, no cases of arrest and/or

²⁶⁸ HRW, I had to run away, March 2012, [url](#), p. 32

²⁶⁹ IWPR, Hope for Afghan women traded to end feuds, 17 January 2017, [url](#);

²⁷⁰ RFE/RL, Rural Afghan girls continue to fall victim to ‘baad’ marriages, 28 July 2015, [url](#); IWPR, Hope for Afghan women traded to end feuds, 17 January 2017, [url](#)

²⁷¹ Pajhwok Afghan News, Forced and early marriages: a form of trafficking in persons, 29 March 2017, [url](#)

²⁷² Diplomat (The), Afghanistan’s Most Vulnerable Women, 9 April 2019, [url](#)

²⁷³ Nojumi, N. et al., Life and Security in Rural Afghanistan, 2009, pp. 108-109; RFE/RL, Rural Afghan Girls Continue to Fall Victim to ‘Baad’ marriages, 28 July 2015, [url](#); Waheed, A., Skype interview, 28 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 90

²⁷⁴ Siddique, A., Skype interview, 11 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 90

²⁷⁵ RFE/RL, Boys with Brides: Afghanistan’s Untold Dilemma of Underage Marriages, 12 August 2019, [url](#)

²⁷⁶ RFE/RL, Tribe Burns Down Houses Of Alleged Murderers In Southeast Afghanistan, 16 June 2020, [url](#)

²⁷⁷ HRW, I had to run away, March 2012, [url](#), p. 33

²⁷⁸ UNAMA/OHCHR, Injustice and Impunity: Mediation of Criminal Offences of Violence against Women, May 2018, [url](#), 22-23

²⁷⁹ UNAMA/OHCHR, Injustice and Impunity: Mediation of Criminal Offences of Violence against Women, May 2018, [url](#), pp. 6; 21-23

²⁸⁰ USDOS, Afghanistan 2019 Human Rights Report, 11 March 2020, [url](#), p. 8

²⁸¹ Pajhwok Afghan News, Ulema in Khost ban blood feud marriages, hefty bride price, 15 September 2015, [url](#); Pajhwok Afghan News, Balkh clerics declare blood feud marriages illegal, 14 August 2016, [url](#); Pajhwok Afghan News, Paktika jirga decides against blood feud marriages, 22 September 2015, [url](#)

prosecution of *jirga* elders or family members were reported in Afghanistan in connection with the *baad* practice as of August 2019.²⁸² In May 2020, RFE/RL reported on the murder of an 18-year-old woman in Baharak district, Badakhshan Province, after she rejected a family-arranged marriage, ran from home, and took refuge at the district police headquarters with her boyfriend. After being entrusted to her brother, the woman was murdered by him for dishonouring the family. According to the provincial office of AIHRC, the case was mishandled by the police and was one of many similar cases of violence against women.²⁸³

According to a confidential source interviewed by the MFA of the Netherlands, perpetrators of blood feuds or honour killings are not usually prosecuted because of the assumption that women should not 'dishonour' their families by being engaged in the things not allowable by the community. Local authorities tend to avoid involvement in matters related to honour killings, asking community elders to find a solution to a related dispute.²⁸⁴

In an interview with EASO in 2017, Ahmad Waheed explained that the weakness of state judiciary systems to resolve such conflicts also contributes to their continuation, as feuds become intermixed with existing rivalries, the broader conflict and taking sides to protect oneself, thus contributing to the complexity of resolving the underlying cause. As a consequence, few conflicts are resolved and feuds become increasingly prolonged and complex with time.²⁸⁵ Similarly, Neamat Nojumi indicated that, traditionally, Afghans did enjoy greater access to dispute resolution in the past and could opt for state or non-state mechanisms; however, with the rise of Islamist armed groups and a new generation of strongmen within the government, access to justice became limited, contributing to the overall weakening of the justice systems of the country.²⁸⁶

²⁸² Inside Over, Baad Tradition: Virgins Given Away to End Disputes in Afghanistan, 29 August 2019, [url](#)

²⁸³ RFE/RL, Horrific Murder Of Teenage Girl Again Puts Spotlight On Afghanistan's 'Honor' Killings, 7 May 2020, [url](#)

²⁸⁴ Netherlands, MFA, Country of Origin Information Report Afghanistan, March 2019, [url](#), p. 71

²⁸⁵ Waheed, A., Skype interview 28 August 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 91

²⁸⁶ Nojumi, N., email, 22 September 2017, in EASO COI Report, Afghanistan Individuals targeted under societal and legal norms, December 2017, [url](#), p. 91

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Annex II: Terms of Reference

Overview of socio-legal framework for punishment of crime

- Legal pluralism
- Hudud crimes
- Qisas crimes
- Ta'azir crimes and the new Penal Code (2017)
- Taliban's parallel justice system
- Customary justice

Land disputes

- Land disputes among nomadic and sedentary groups
- Land dispute resolution
- Formal mechanisms
- Customary and traditional mechanisms
- Taliban involvement in land disputes

Blood feuds and revenge killings

- Pashtunwali and blood feuds
- Customary blood feud resolution and compensation
- Prosecution by the state

