

The Dynamics of Justice Provision in the Context of Irregular Warfare and Legal Pluralism

Why a majority of the Afghan population in Kunduz continues to use informal justice despite international-led judicial reform

Executive Summary

Since the events of 11 September 2001 the Western world has become caught up in what George W. Bush declared as the 'war on terror'. Bush's doctrine declared that strong conquering states – like the Soviet Union during the Cold War – no longer pose a threat to the United States and its allies but rather weak states should be of concern. This implied that terrorists find a safe haven in weak or failed states from which they can operate internationally and threaten the security of other nations throughout the world. After the events of 11 September, it was therefore considered a strategic priority for the United States and its allies to firstly defeat the Al Qaida related Taliban regime, and secondly rebuild a secure environment and a resilient state in Afghanistan.

Although the first objective was accomplished relatively easily, the results of re-establishing the Afghan state have not been very promising. Despite large-scale institutional capacity building and all the international donor's dedicated resources, the Afghan state has been incapable of extending its effective governance beyond district centers, including the provision of justice. Research indicates that around eighty per cent of the population uses informal justice mechanisms to resolve their disputes, instead of governmental institutions.

This case study research investigates the Dutch Integrated Police-training Mission (IPM) in Kunduz as it is part of the larger constellation of Western statebuilding efforts in Afghanistan. Generally, Dutch government officials and police trainers have claimed several successes with regard to re-establishing and reforming the formal justice sector in Kunduz. Nevertheless, it seems that most Afghans in Kunduz continue to make use of informal justice instead of formal justice. To get a better understanding of this discrepancy, the following research question was formulated: "Despite the improvements Dutch police trainers and government officials claim with regard to re-establishing and reforming the formal justice sector in Kunduz, why does a majority of the Afghan population not make use of formal

justice institutions, but instead continues to use informal justice mechanisms - such as village elders and community councils - to resolve disputes at the local level?"

A theoretical framework of opportunity structures has been developed to establish a better understanding of why people use informal justice. Seven relevant features of the larger opportunity structure have been identified:

- the existence of legal pluralism;
- the environment of irregular warfare and the contested territorial control it entails;
- the opportunities for disputants to influence (and “shop” for) justice providers in order to have a justice outcome that best suits their own interests;
- the effectiveness of verdicts offered by local informal actors, either by restoring community harmony or by coercive means and limited effectiveness of verdicts offered by formal justice providers;
- the proximity of informal justice providers;
- the cultural barriers for women to bring disputes outside of their family or village;
- the limited awareness among Afghan community members of state law and the availability of formal justice.

By investigating how the Dutch IPM affected these identified opportunity structures, the purpose has been to measure the impact of the mission on the use of formal and informal justice.

In cooperation with an Afghan partner organization, the author carried out fieldwork in Afghanistan. Two units of analysis were identified: (1) the local Afghan population in Kunduz and (2) the Dutch IPM workers. With regard to the first unit of analysis, respondents from areas with different sorts of territorial control were disaggregated: mainly government controlled territory; mainly *arbakai*¹ controlled territory; mainly Taliban controlled territory; and ‘contested’ territory. With regard to the second unit of analysis, the author interviewed a number of police trainers and government officials working at the Dutch military compound in Kunduz.

The results of this thesis show that the context of irregular warfare and legal pluralism shape an environment in which local political actors use justice provision as a

¹ Interpretations of the term *arbakai* vary considerably throughout Afghanistan. In most cases the separation between local commander led groups, tribal militias and ex-combatants is not clear-cut. They are understood here as semi-official, local self-proclaimed security forces that often function as *de facto* tribal militias.

strategic tool. State and non-state actors that possess territorial control or implement governance are also in the position to provide and implement justice outcomes. Justice outcomes of both formal and informal justice providers can effectively be influenced by disputants that are in possession of the relevant political connections and financial resources. Due to these opportunity structures, community members have strong incentives to use the justice provided by local political actors that possess territorial control or sufficient political capital. The provision of justice itself is used by local actors to maintain territorial control or increase political capital. As the efforts of the Dutch Integrated Police-training Mission in Kunduz mainly emphasised institution- and capacity building in the formal sector and the incorporation of informal procedures into state law, it is argued that the mission has insufficiently changed the relevant opportunity structures that shape the predominant use of informal justice, and yielded limited results.

This study has brought the concept of contested territorial control into the debate on international-led judicial reform, showing territorial control as an essential concept through which we are able to understand the dynamics of justice provision in the context of irregular warfare and legal pluralism. It indicates the relevance of understanding the opportunity structures that shape the dynamics of justice provision, if the endeavour of judicial reform by external actors is situated in a complex legal and political environment. If the context is not carefully considered through a broad analytical lens, an impact assessment is deceiving. Judicial reform may become an effort in which external actors accomplished their own set of goals in terms of capacity building, whereas the empirical reality for community members remains largely unchanged.