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

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Abstract

In this thesis I examine the opportunity structures that help explain why a majority of the Afghan population in Kunduz continues to use informal justice provision, particularly when there has been claimed improvements of judicial reform by external actors. It is argued that the context of irregular warfare and legal pluralism shape an environment in which local political actors use justice provision as a 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 pre-dominant use of informal justice, and yielded limited results.

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"The difference in perception becomes apparent in a famous example about sunglasses, did you ever hear that? It is about a Western NGO trying to explain something about women's rights in a village in Northern Afghanistan. The local elders refuse the NGO-workers to come into their village because they are wearing sunglasses. With these sunglasses they are supposedly able to see through the clothes of the women. The NGO-workers gave them their sunglasses to proof them otherwise. However, the elders still didn't believe it. If that is the level knowledge, and the difference in perception, you can imagine how hard it is to achieve something."[1]

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[1] Afghanistan-experienced NGO-worker in Afghanistan during informal talk with the author.
[2] See for example Kahler (2009: 1-2) who explains that the U.S. and its NATO allies reoriented its

Map of Kunduz province
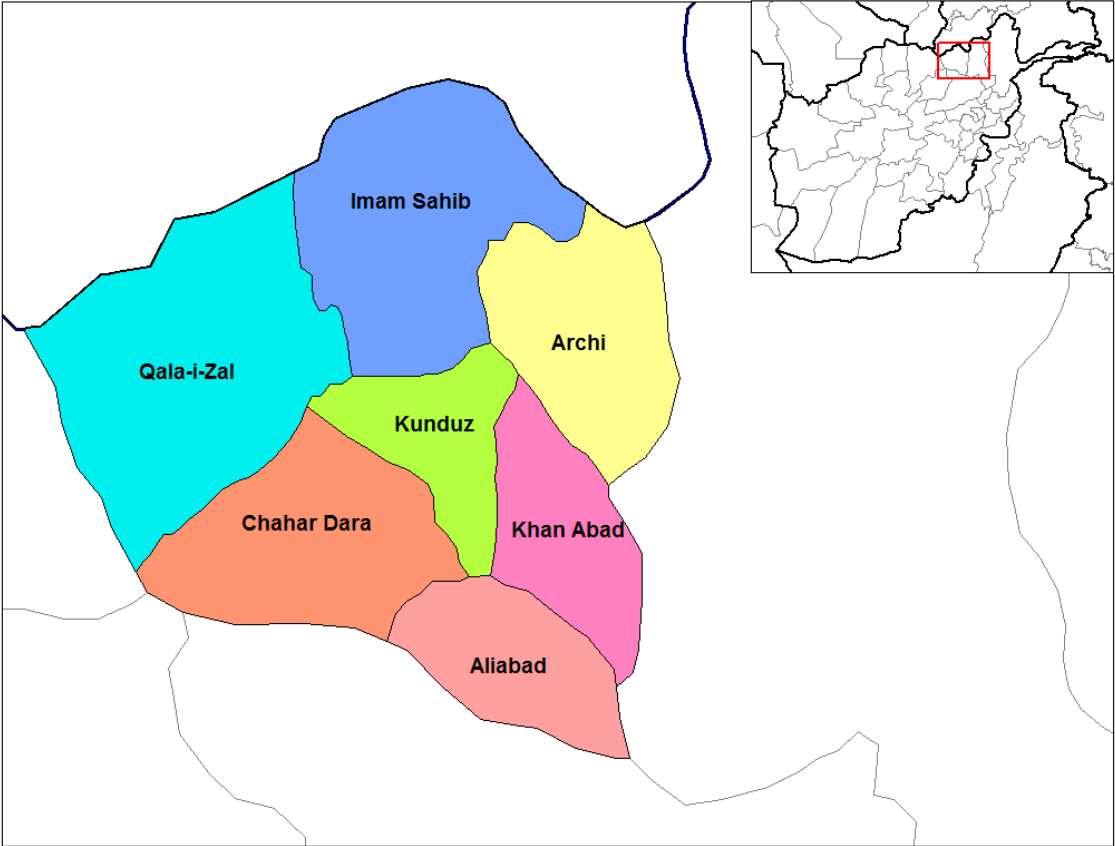
Acronyms and Abbreviations

AIBA – Afghan Independent Bar Association

ALP – Afghan Local Police

ANA – Afghan National Army

ANP - Afghan National Police

CPAU – Co-operation for Peace and Unity

EUPOL – European Police Mission in Afghanistan

IPM – Integrated Police-Training Mission in Kunduz

ISAF - International Security Assistance Force

JSW – Justice Support Worker

NATO – Northern Atlantic Treaty Organization

PC – Peace Council

PRT – Provincial Reconstruction Team

Dari and Pashtun Terms

Arbakai – semi-official, local self-proclaimed security forces that often function as *de facto* tribal militias.

Huqooq – literally the rights of an individual under the law; commonly used to refer to the district level Civil Law Offices under the Department of Justice.

Jirga – gathering of elders to resolve a dispute. The original Pashto word refers to the gathering of a few, or a large number of people.

Shura – gathering of elders to resolve a dispute. Dari loanword from Arabic, often translated as "council" or "meeting".

Mullah – religious leader, man who leads the prayer and is educated in Islam.

Sharia – Islamic Law as interpreted from the Quran and the hadith (sayings of Prophet Muhammad).

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Introduction

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[2].

Although the first objective was accomplished relatively easily, the results of re-establishing the Afghan state have not been very promising[3]. From the first years on, the Karzai government has not been able to monopolize the legitimate use of force, and was forced to buy-in support from regional commanders (Barnett and Zürcher, 2009: 43). Up until today, governmental leaders and state institutions are widely viewed by the population as corrupt[4] and Taliban insurgents are able to penetrate their attacks into large parts of the country including the capital of Kabul[5]. 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 (Wagemaker, 2012). Research indicates that around eighty per cent of the population uses informal justice mechanisms to resolve their disputes, instead of governmental institutions (Scheye, 2009: 21).

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[2] See for example Kahler (2009: 1-2) who explains that the U.S. and its NATO allies reoriented its security policies after the events of 11 September 2001. Afghanistan was considered a key base for Al Qaeda and therefore it became a strategic necessity, not a humanitarian priority, for the U.S. and its NATO allies to defeat the Taliban regime and to build a functioning state afterwards.

[3] In policy documents and academic literature the endeavour of rebuilding and establishing state institutions is commonly referred to as 'statebuilding', see for example: Paris & Sisk, 2009; Call & Cousens, 2008; Kahler, 2009; OECD, 2008. As Suhrke (2009: 227-247) evaluates, the Afghan state has weak legitimacy and limited capacity to utilize aid electively. More recently, the book *The Rule of Law in Afghanistan: Missing in Action* (Mason, 2011) has served as an evaluation on the statebuilding efforts in Afghanistan. Among the authors are activists who have participated in the effort to build a well-functioning Afghan state under the auspices of the US, UN, and various NGOs. The picture they paint can still be described as very critical and not very promising.

[4] See for the full account of the population's perceptions on corruption in the state system of Afghanistan: http://www.transparency.org/

[5] The researcher has been updated by the *Afghan NGO Safety Office* (ANSO) over the past half-a-year on the attacks executed by insurgents. These have been on-going, targeting Afghan government officials and international organisations in and outside of Kabul.

In order to understand why significant segments of the Afghan population use informal justice mechanisms, despite Western state capacity building, this case study investigates the Dutch Police-training Mission (IPM) in Kunduz as it is part of the larger constellation of Western statebuilding efforts in Afghanistan. The core argument of this thesis is that international engagement – the Dutch IPM in particular - has not sufficiently, or has unsuccessfully, changed the essential structures that shape the predominant use of informal justice by local populations in Kunduz. These structures include the existence of legal pluralism; contested territorial control; remaining opportunities for disputants to influence justice outcomes; the effectiveness of verdicts offered by local informal actors; the proximity of informal justice providers; the cultural barriers for women to bring disputes outside of their village; the limited awareness of Afghan community members of state law and formal justice.

The outline is as following. In the first chapter, the debate on judicial reform by external actors is discussed and the main question of this research is specified. The second chapter presents the methodology, and the limitations to this research. The third chapter identifies and analyzes the main structures that shape the pre-dominant use of informal justice in Kunduz. Subsequently, chapter four presents the claimed improvement of IPM workers. The impact of the Dutch IPM on the identified opportunity structures is evaluated in chapter five. The last chapter presents the conclusion, a theoretical discussion and the possibilities for further research.

1   The debate: judicial reform by external actors

Statebuilding strategies by Western interventionists have typically been driven by a Western Weberian perspective on statehood to inform their engagement.[6] From this point of view, the state is, and should be, a culturally uniform, territorially demarked entity in which the regime possesses the legitimate monopoly on violence. Moreover, the political system consists of a social contract between citizens on one hand, and a political system with a Montesquieian separation of powers on the other. As one of the Dutch government officials pointed out to me, "The police are part of the larger security sector and they have to manage the monopoly of violence. If they do that effectively, people will feel safer".[7] The monopoly on violence is regarded as a requirement for stability and sustainable peace in Afghanistan. If

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[6] See for example the arguments of Paris, 2004; Paris & Sisk, 2009; Kahler, 2009; Baker & Scheye, 2007; Boege et al., 2009

[7] IPM Int. code: PRT 05

the state however is not capable of establishing a monopoly on the legitimate use of force in its territory – as seems to be the case in significant parts of Afghanistan - what are the consequences for the *de facto* provision of justice?

Judicial reform, considered an essential factor for statebuilding in developing and fragile countries - has often emphasized the establishment of an effective legislature, training of professionals and the operational capacity for formal institutions to function[8]. Building judicial state institutions is in fact considered as one of the main means to achieve a liberal peace in countries evolving from violent conflict (Paris, 2004). In Afghanistan, it was found by several critical scholars[9] that the Western ideal-type models of judicial reform have been captured by corrupt state officials, and have been of limited effectiveness in providing justice in accordance with the needs of community members. Due to the political legacy of the past century there is a deep-rooted lack of trust between the people and state institutions (AISA, 2010: 5). The question therefore rises whether supporting the formal justice system by external actors actually adds to more stability and enduring peace?

Several authors have pointed out that foreign actors have changed the political and judicial landscape drastically after the fall of the Taliban.[10] A Western-like constitution was introduced and the state capacities, among which the police and formal justice system, were reinforced. Although the focus had been on re-establishing the ANA, the effectiveness of the ANP forces were soon to be found as a major instrument in stabilizing the country. The first major task was - and still seems to be - to establish a monopoly on violence. The government never established such a monopoly, but had to buy in the loyalty of commanders that ruled outside of the capital (Wagemaker, 2012: 166). Former local commanders were legalized into government positions, and made it, for example, police commander, proving themselves loyal to the national government. The real decision and political structures however ran outside of the official state structures (Maley, 2009).

At the same time, capacity building and institution building[11] were the mainstays of foreign-led statebuilding. By pursuing such a strategy, foreign actors in fact empowered

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[8] The OECD Report *Concepts and Dilemmas of State Building in Fragile Situations* (2008) stresses judicial reform as one of the crucial foreign policy priorities in post-war development situations together with (2) political process that legitimate the state and (3) re-establishment of a framework of security. For an overview of the norms and guidelines for implementing "judicial reform" in statebuilding efforts, see for example the Report of the UN Rapporteur on the Independence of Judges and Lawyers (July 2009) and the Report of the Office of the UN High Commissioner for Human Rights: *Rule-of-Law Tools for Post-Conflict States* (2006 : 5)

[9] See Barnett and Zürcher, 2009: 41-47; Suhrke, 2009: 227-247

[10] See for example Barfield, 2010; Rasanayagam, 2010

[11] Institution building is often referred to as the coordinated establishment of functional institutions – including a civil administration, police, prisons and judiciary. Capacity building usually refers to

former commanders that bought themselves into the legal structures of the government. This created a political structure with two realities: the legal state on one hand, and the actual patrimonial state structures on the other (Maley, 2009). As Wagemaker (2012) points out, in the early years after the fall the Taliban this dynamic created a weak foundation for the actual state formation process of Afghanistan. Using a *light footprint* approach, the foreign forces lacked the will and the national government lacked the capacity to make a real change and establish legitimate governance outside of Kabul (Burns, 2002; Wagemaker, 2012).

The result is still evident today. It is not the national government ruling most parts of Afghanistan, but local leaders – whether they are loyal to the regime or not (Barnett and Zürcher, 2009: 46). The population does not trust Karzai and his affiliates but instead local leaders at the subnational and village level (Wagemaker, 2012: 191-192). Governance is scattered and implemented by a variety of political actors, sometimes in cooperation, sometimes in conflict; some of them acting within state structures, some of them outside - the difference is not always clear. Also in Kunduz, an array of political actors control different parts of the territory. Within this context the Dutch Integrated Police-training Mission has taken shape.

In light of reported evidence, it seems insufficient to analyze only the political and judicial structures through a Weberian framework. Chances are high that much of what is going on in the political and judicial dimension will stay unrevealed.[12] With significant patrimonial structures running alongside the official legal structures, the whole picture can only be understood with a comprehensive approach, including state and non-state systems. This study is therefore directed towards investigating the opportunity structures[13] of both state and non-state justice provision. By using such a wide scope all actors that provide services – whether those are within or outside the state – are taken into the analysis. By adapting a users perspective, this study furthermore allows the local populations to identify the appropriate state or non-state justice providers.

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building the capacities of these institutions, for example having legal frameworks and appointment procedures; trained staff; infrastructure; and auditing capacity. See for example ISAF's official document on The London Conference on Afghanistan, 1 February 2006: *The Afghanistan Compact.*

[12] See for example: Boege et al. (2009) who argue that the modern Western-style Weberian state hardly exists outside the OECD countries. According to these authors, many states in the 'rest' of the world are political entities that do not resemble that model state.

[13] "Opportunity structure" is a well-established concept in literature on contentious politics, it assumes that individual and collective action are facilitated or constrained within a larger environment of discursive, social, and political opportunities. In other words, this context within which individual or collective action either happens or is hindered is what scholars refer to as an "opportunity structure" (Tilly and Tarrow 2007; Berclaz and Giugni 2005; Giugni 2009).

By using the analytical framework of opportunity structures, this study moreover aims to analyze how foreign intervention has shaped opportunities for local actors to empower themselves and provide justice according to their own standards. The evidence of this research indicates that *shuras/jirgas*[14], religious leaders and also local commanders provide justice services to the people in the absence of effective and non-corrupt state justice. The respondents of this study considered especially local councils and elders appropriate justice providers. Supporting the police and state justice, foreign actors seem to have supported those justice providers that are especially regarded as corrupt and ineffective[15]. The consequence of that corruption and ineffectiveness is dangerous, as the break of community harmony in case of a dispute may predict renewed violent conflicts between community members[16]. The question therefore rises whether foreign actors by empowering state actors have indeed added to stability, or inadvertently have shaped opportunities for corruption and instability.

Baker, Scheye and other scholars have argued for several years now that international engagement in fragile situations, should not necessarily focus on state actors, but on those actors that deliver effective services according to the needs of local people, whether state or non-state.[17] Supporting those actors, it is argued, will provide more effective security and justice to local populations; systems in place are more resilient and responsive to local needs, and such an approach overcomes the problem of local resistance to external-led reform (Baker & Scheye, 2007: 516). As such, we will have to analyze, if indeed, the actors in place provide more effective security and justice. Through the lens of opportunity structures, we investigate whether the population in Kunduz has indeed better access to, and receives more effective justice provision from the informal system and why. This research focuses, therefore, on three main sub questions:

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[14] The term *jirga* is understood here as the institution that has historically resolved political, social, economic, cultural, judicial and religious conflicts by making authoritative decisions. *Jirgas* are based on Pashtun culture. For the origins of the term see for example Wardak (2002) *Jirga: Power and Traditional Conflict Resolution in Afghanistan*. Analytically, the term *shura* is not differentiated from *jirgas* in this study as it refers to a similar type gathering for both Pashtun and non-Pashtuns. For elaboration on the term see for example Coburn (2013: 13-14) *Informal justice and the international community in Afghanistan.*

[15] As Suhrke (2009: 231-233) points out, the Karzai government leans for about ninety per cent of its budget on foreign aid. Barnett and Zürcher (2009: 46) explain with regard to the Karzai government that it has avoided decisive steps against the widespread corruption among subnational state elites. As the central government relies upon support of these sub national elites it is cautious to alienate sub national elites - including district governors and police commanders - with anti-corruption measures.

[16] Several respondents of the community questionnaire conducted in this study warned for the possible escalation of small unresolved disputes into killing and violent communal conflict.

[17] See for example Baker & Scheye, 2007; 2009; Scheye, 2009; Boege et al. 2009; Debiel et al. 2009

1. What are the opportunity structures that plausibly explain why the Afghan population in Kunduz uses informal justice provision?

2. What are the improvements that Dutch police trainers and government officials claim to have made in regard to re-establishing and reforming the (formal) justice sector in Kunduz?

3. How do the claimed improvements impact the identified opportunity structures that plausibly explain why the Afghan population in Kunduz uses formal or informal justice provision?

The main research question is formulated accordingly: "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?"

2 Methodology

The main and sub questions posed in the previous chapter bear implications for the design of this study. The purpose of this chapter is, therefore, to outline how the research has been designed; how the data is collected; and what the limitations are of the findings presented throughout this study.

2.1 Research design

For this research I chose to do what is often referred to as a ´case study´ method: "an empirical enquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident" (Yin, 2002: 13). In order to understand why a majority of the population in Kunduz uses informal justice, the unit of analysis is the population in different areas of Kunduz province, Afghanistan. As formulated in the main research question, I am particularly interested in why that happens *despite* the claimed improvements of Dutch IPM workers. The second unit of analysis is therefore a number of police trainers and government officials at the Dutch PRT in Kunduz.

A fundamental premise upon which this research builds is that individual and collective action are facilitated or constrained within a larger environment of discursive, social, and political opportunities[18]. Therefore this method focuses on the structural opportunities that local Afghans have to use formal and informal justice institutions, as will be presented elaborately in chapter three. I hypothesize that these contextual opportunities - at least partly - explain why Afghan residents use informal or formal justice provision.

I have identified these opportunities structures by (1) conducting document research. This involves reviewing the assessments of relevant research institutes with regard to the justice system in Kunduz of both foreign and Afghan institutes, and (2) I have identified the opportunity structures 'from within' with a self-developed 'scenario' research instrument[19]. As for the first stage I have identified the structural obstacles and opportunities, and how they have changed with the US-led intervention from 2001 onwards and the 2011 IPM in particular. In the second stage I have triangulated these findings with individual perceptions of opportunities structures by exploring what local Afghans themselves express about obstacles and opportunities with finding justice at various institutions.

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[18] Of which we as a research team (the author and Dirkx 2013) have referred to as an 'opportunity structure'.

[19] See the appendix for the full research instrument, and section 2.2.1 for the elaboration on the use and the choice for this kind of research instrument

I have sensitized the features of the larger – judicial - opportunity structure by using Bedner & Vel´s (2010) framework for empirical research on access to justice in developing countries where justice is provided by both state and non-state actors. I have, however, added several features drawn from the evidence collected in this study, including: local governance; local politics; and territorial control. Because local governance, local politics and territorial control are particularly more contested and conflictive in the context of Afghanistan than they are in the countries where the model was developed, it seemed necessary to add these features. Particularly because the evidence of this research indicates that the contested nature of territorial control, local governance and politics, have significant impact on the dynamics of justice provision.

With regard to the second unit of analysis, the Dutch IPM workers, I draw analytically from the idea that *frames* function to interpret and organize individual or collective experience, thereby guiding, inspiring, and legitimating the activities of social-political actors (Benford and Snow 2000: 614). As presented in chapter four, frame analysis has been conducted to identify the 'frames' that function to present the accomplishments of the IPM. What I have wanted to establish here, is an understanding of how the government officials and police trainers perceive a successful mission and what problems they believe the IPM has solved with regard to justice provision in Kunduz. The findings have been triangulated with available policy documents about the IPM.[20] The task has been to identify what aspects of the justice sector they perceive as being improved and how they believe that has impacted the use of justice provision by local Afghan populations.

As will be further elaborated in chapter five, the task has been to make a theoretical comparison between the identified opportunity structures and the claimed improvements of IPM workers. By making this comparison it has been identified how the Dutch claimed improvements impacted the different features of the opportunity structure, and how it has impacted the use of formal and informal justice based on the evidence of this study. Finally, this has enabled me to give an evaluation on how the IPM may (or may not) have impacted the dynamics of justice provision in Kunduz.

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[20] It has to be noted here, that most policy documents were not provided by the ministry, due to confidentiality.

2.2 Data collection

2.2.1 The first unit of analysis: Afghan community members

One of the limitations of doing research in a conflict zone like Afghanistan is that people live under a condition where they constantly fear for their lives. Thirty years of war has created an environment of mistrust and uncertainty. In a questionnaire, fear may lead people to give no answer or an untruthful answer. On top of that, in many families women are culturally not allowed to speak up against their fathers or their husbands. Given these conditions, one has to be extra careful with questions that are politically or culturally sensitive. For example, asking someone in a Taliban controlled village, what he thinks about the Taliban commander; or asking a woman if she experienced an assault by one of her family members and how she dealt with that, are very delicate questions. To limit the likelihood of getting no responses, or untruthful responses, we came up with a different method: we put

the respondent in a *third person's perspective*. Instead of directly asking a woman if she has ever been assaulted, which would probably lead to few responses, we introduced a *scenario* in which a man beats up his wife. Immediately after that, we would ask them to tell us what would happen next, *if it would be in their village*.[21] The purpose of such a method is to de-personalize the question, which makes a response - given the conditions mentioned above - more likely. Subsequently, putting the question into the context of their own village has made sure that the question would still relate to their *own experience and location*. What I tried to do here, is to put the respondent in an observer's position. What we have asked, in fact, is: "did you observe this phenomenon, if so, what happened?" After long consultation with the CPAU researchers and the other researchers involved in this project, this seemed to the best option.

Table 1

> SCENARIO I
>
> *The situation is about a girl named Amena who is 20 years old. She is married with a drug-addicted man. She is his second wife. As the husband is an addicted person, he always uses bad behaviour towards her. One day he is on drugs again, he fights with her and beats her up badly.*
>
> SCENARIO II
>
> *Mohammad and Qasab are both farmers and they are each other's neighbors. Qasab owns far more acres of land than Mohammad and also he has very good connections to the village authorities. Mohammad does not have good connections to powerful people and is poor. They are not relatives.*
>
> *As Mohammad was not in Afghanistan for a month, Qasab extends his own land further and confiscates all of Mohammad's land. When Mohammad comes back to the country he sees Qasab using his land. He requests his own land back, but Qasab would not submit it to him. Both of them start to argue that they are treating each other unfairly.*

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[21] See the Appendix for the full questionnaire

The *content* of the scenarios as presented in table 1, was chosen on the basis of the following parameters:

- *Locally recognizable* – the scenario should be easy to identify with for the respondent, it should be a scenario that connects to the experience of local villagers in Kunduz.
- *Regularly taking place* – we chose scenarios that were often mentioned by respondents of previous questionnaires conducted in Kunduz, as it would create a higher chance for the population to recognize this type of situation in their own experience.
- *Simple* – the scenario should be simple, so that everyone without any education would be able to understand the situation.
- *Acceptable* – the content should be such, that it limits non-response or untruthful response out of shame or honor. A scenario about rape, for example, was considered but dropped for this reason.

The CPAU database[22] of cases addressed by peace councils in Kunduz has inspired the content of the scenarios. On the basis of the information it was possible to identify scenarios that would be 'regularly taking place' and 'locally recognizable'. In consultation with the local researchers, we selected the scenarios that are 'simple' and 'acceptable'.

The surveyors were instructed to work in teams of two women or two men to make sure that they would be able to take enough notes and talk to women (the women´s team) and men (the men´s team). In consultation with the Afghan researchers we decided not to have the local surveyors use data recording devices. First of all, because it may scare respondents off to answer truthfully. The population in Afghanistan may become suspicious, because a lot of people in rural areas do not know what research is, or what researchers may want from them. According to the CPAU staff they often think the local surveyor is some 'bad guy who tries to trick them'. The second reason is that the surveyors are very poor. According to the CPAU staff giving them a recording device would create incentives for them to not give it back, or accidentally ´lose it´. The way to overcome this issue was to have two surveyors conduct the interviews together, so that one was able to ask questions, and the other to make elaborate notes.

The sampling method then, was *purposive* on the provincial, district and village level. On the provincial level, we included districts that have been addressed by the Dutch IPM, to

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[22] CPAU Database of Kunduz. *An overview of solved CPAU peace council cases in 2012.* And: CPAU Database of Kunduz. *Executive summaries of cases solved by CPAU cases in 2012.*

make sure we would be able to measure the possible impact of the mission. We successfully collected data from the districts: Qal-e-Zal and Alia Bad.

On the district level, we firstly looked for villages with different sorts of territorial control, as we hypothesized that the actors with territorial control, whether state or non-state, would have an important function in the provision of justice. Due to security reasons in Kabul and limited possibilities of communication with local surveyors, we were not able to establish a single definition on territorial control. Instead, the CPAU researchers have based the interpretation of territorial control on (1) their own impressions, and (2) the accounts of local community members by asking them who controls the area they live in. Although not ideal, as the interpretation of 'control' may have differed among the author, the CPAU researchers and the respondents, this approach seemed sufficient as it signifies territorial according to what was observable for the CPAU staff, crosschecked with the *perceptions* of local populations themselves. Also on the district level, we made a distinction between villages with a CPAU peace council[23] and those without. Taken together with the territories of control, this resulted in five different categories: mainly government controlled territory without a peace council; mainly government controlled territory with peace council; mainly *arbakai*[24] controlled territory; mainly Taliban controlled territory; and 'contested' territory.[25] All the villages inhabited less than 1.000 families. The data was collected both from the center and the rural areas in Qal-e-Zal and Ali Abad.

On the village level the sampling was purposive with regard to inclusion of men and women. As expected, this worked out for all the areas, except for those under control of the Taliban, in which only men could be consulted. Besides that, a couple of community members with special status have been interviewed, such as peace council members, local elders and local commanders. In total, a number of ninety-nine respondents[26] have answered

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[23] The (CPAU) peace council is basically a type of *shura*, however supported by justice support workers (JSW) and communication officers. The JSW has the legal knowledge of Afghan (sharia) state law, and can therefore be consulted by the peace councils. The peace councils are established in four Kunduz districts of Kunduz: Chanabad, Ali Abad, Imam Sahib, Char Dara.

[24] 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.

[25] The word 'mainly' is carefully chose there, because the data-set collected for the *arbakai* case study in the same villages shows that there are still other political actors that – although not necessarily substantially – that influence the configurations of power in those areas.

[26] When quoting the respondents of the community questionnaire an 'interview code' is used and mentioned in a *footnote*. The details on the interview are then to be found in the Appendix, corresponding to this interview code mentioned. The same system is used for the IPM questionnaire.

the questionnaire, which yielded – due to the open-ended questions - a large amount of rich data, and has allowed this study to draw from it in-depth and extensively.

2.2.2 The second unit of analysis: Dutch IPM workers

The second unit of analysis, the Dutch IPM workers, was investigated by the use of a different questionnaire.[27] The questionnaire was informed and structured by a logic of problem identification, proposed solutions, and the rationale behind those solutions, inspired by Benford and Snow´s (2000) framing theory. More specifically, these semi-structured interviews were to identify, with regard to justice provision in Kunduz the (1) contextual understanding or problem identification (2) proposed solutions to the identified problems and (3) claimed improvements due to the IPM.

With the exception of one, the interviews were conducted by two interviewers at the same time. Dirkx (2013), working on a case study about *arbakai,* asked questions about local militias and I asked questions about the justice case study. The emphasis on either one of the topics varied per interview, because some respondents simply had more to say about one of the two topics. Rule of Law Advisors, for example, were mainly interviewed about the content of this study. The reason we interviewed the respondents together was that it was in terms of time more feasible for respondents to do one interview for both of us, instead of two separate interviews. This could be seen as a disadvantage because we "missed" half the time to ask questions about the two specific topics, but doing the interviews together was also an advantage; we could both take notes and therefore yield more data than we could have done on our own. Particularly, because the security measures on the compound did not allow us to make recordings of the interviews. Under the circumstances, where both the recording was not allowed and time was limited, this way of interviewing seemed to most feasible option.

A complementary advantage of not recording the interviews was that people were able to talk freely, which seems to have resulted in open statements and critiques on the mission itself. Especially given the political sensitivity of the subject matter, no recording seems to have been an advantage for this research. All the interviewers were moreover granted anonymity and spoke with consent, this is also why the respondent's names and functions are encrypted for this document. Apart from the interviews we did at the military compound we were also able to have numerous informal conversations. These talks were of great value, because we got to see more from the perspective of the soldiers at the military compound, who we were not officially allowed to interview. The informal talks also helped

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[27] See Appendix for the full template of the questionnaire

us to get a better understanding of the mission and we were able to use that information in the interviews, so that we could ask better informed questions.

The sampling method at the military compound was purposive, as we specifically interviewed trainers that were in charge of the police training and diplomats that worked in political and rule of law advisory functions. It has to be noted that we did not select by ourselves, but that the somebody from the IPM staff made the selections for us. We believe this has not resulted into negative results as we spoke to all people relevant to answering the questions posed in this research.

2.3 Opportunities and limitations of working with an Afghan NGO

What needs to be explained here, is that working with CPAU has created several reliability limitations, but at the same time created unique data collection opportunities for this research. Despite several attempts by the researcher, the information on the whole process of training the surveyors and conducting interviews by the hired surveyors has for the largest part, stayed unrevealed.[28] This poses serious limitations to the reliability of the data collected in community perception-part of the research. Therefore, I pose the following seven statements that have to be kept in mind while reading the research.

1. We do not know how the surveyors decided where they would conduct the interviews in the villages themselves, or with whom, and what the steering role of a gatekeeper may have been.

2. Access to communities is only granted by certain gatekeepers that may want to have their stake in the story that surveyors are going to hear. Examples of these – politically involved – gatekeepers in this data collection are: the *jihadi* commander, *arbakai* commander Nabi, the peace council heads, the district governor, and maybe others we do not know of.

3. Expectations of the respondents towards CPAU (or their international partners) may have affected the data. What did the respondents expect from the surveyors? The respondent may expect money, visa, schooling, because they are connected to an organization from Kabul and indirectly to foreigners. Especially with regard to questioning the peace council members, this poses a reliability risk, since the peace council members are supported by CPAU. It is

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[28] We consulted CPAU several times asking for more explicit information about the choices made during the data collection. The best we eventually we able to get is a simple version of 'village observation form' (available in the appendix) we developed.

to be expected that this has created incentives to give positive answers. This seems plausible because of what our CPAU colleagues wrote down about the process: they introduced themselves as the ones establishing the peace councils, before asking the interview questions.

4. How the surveyors wrote down their notes creates a layer of interpretation. How that has affected the data precisely is unknown. We do not know what they deliberately or inadvertently left out of the transcripts.

5. Translations of the English questionnaires into Dari, and the translation of the Dari transcripts into English by the interpreters, has created two extra layers of interpretation, where certain nuances have gone lost.

6. We are not sure whether the local surveyors actually did all of the interviews, and all went to the intended areas

7. We are not sure whether the respondents mentioned in the transcripts answered all of the questions themselves

At the same time, working with CPAU has also created unique opportunities for this research. The clear advantage of using an Afghan NGO to conduct these questionnaires, is that the NGO has *access* to local surveyors that are able to consult the perceptions of the local population in all of the areas with different sorts of territorial control, including Taliban territory. This would not have been feasible without CPAU or a similar organization, due to security restrictions in the area for people from ´outside´; particularly Westerners. This has made the data-set of this study unique and particularly valuable for the evaluation of the Dutch IPM. Instead of only consulting 'safer' areas, we were able to collect data from mere insecure areas too. Secondly, contrary to a Western researcher moving around in Kunduz, the local surveyors did *not have to make use of armed guidance* while conducting the questionnaires. This has created the opportunity to overcome possible problems of reliability. The presence of arms plausibly creates an interview setting in which respondents are stimulated to give answers that the respondent thinks the researcher wants to hear.[29] Thirdly, working with CPAU, instead of working as a researcher alone, has allowed me to collect a hundred questionnaires for this study, which is a large amount for an MA thesis, particularly because the questionnaires involved open-ended questions.

An additional advantage of working with CPAU was the knowledge of the Afghan researchers that could be consulted for this study. As Wagemaker (2012) for example, argues,

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[29] As Tamas (2013) pointed out in a workshop to the researcher, this is a common problem with doing research in Afghanistan.

one of the reasons that doing research in Afghanistan is challenging, is the complexity of the Afghan society. To make sense of the current situation in Afghanistan, it is necessary for a researcher to experience the country by being on location, preferable for a timespan of at least several years. He stresses that 'outsiders' have great difficulty in participating in society, especially if they do not have Afghan roots. The opportunity to work with this limitation was to work with the Afghan researchers, as they have superior contextual knowledge on Afghan culture, society and possibilities of doing research in Kunduz. The Afghan researchers have been involved in the design of the research instruments, the formulation of the questions, the analysis and the interpretation of the data from the Afghan community members. As such, the whole design and data collection has been as culturally sensitive as possible.

2.4 Other methodological considerations

A common and main complaint about case study research is: how can you generalize from a single case? This is a fair question, as frequency generalizations would not be valid based on this data-set. What is often misunderstood here, are the different sorts of generalizations one as a researcher can make. As Yin puts it: "case studies are generalizable to theoretical propositions and not to populations or universes" (2002: 11). The main purpose of this study has been to gain a better understanding of why people use informal justice, not to measure how many of them do so. External validity[30] has therefore been created by embedding this research into debates on statebuilding in fragile situations, specifically the concerns raises by Baker & Scheye, on the effectiveness of justice provision by non-state actors. As such, despite the particularity of the context in Afghanistan, this research allows to generate knowledge on the debate of international engagement in conflict situations and more specifically judicial reform in the context of "irregular warfare"[31].

Finally, measuring the impact of a statebuilding mission, such as the Dutch IPM, is a delicate task, I therefore pose three main statements that need to be kept in mind while reading the results of the evaluative chapters. First, the precarious security and political situation in Kunduz is such that it is difficult to assess whether the efforts of the IPM *alone* have caused a particular effect. We cannot be sure which underlying conditions remain static

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[30] External validity refers to the extent in which the results of this study may be valid outside of the considered units of analysis. (Yin, 2009: 37).

[31] The term "irregular warfare" will be elaborated on in section 3.2. It is understood in this study as the "twin processes of segmentation and fragmentation of sovereignty: segmentation refers to the division of territory into zones that are monopolistically controlled by rival actors; while fragmentation refers to the division of territory into zones where the rivals' sovereignty overlaps" (Kalyvas, 2008: 205-406).

or change simultaneously. Similarly, we cannot always be sure whether the changes in perceptions are due to the Dutch efforts, or the efforts of other actors. Second, we need to recognize that the community perceptions may not change significantly, if the changes are not substantial enough. A study for the World Bank pointed out, for example, that even those projects that deliver substantial benefits are not sufficient to sway attitudes (Beath et al., 2012). Particularly in the early years of a project, the result may not improve the perceptions of the population. To conclude, we need to recognize the limited possibilities of knowing something substantial about the impact of the IPM at all.

Having introduced the theoretical debate on judicial reform by external actors and the questions emerging from the debate in chapter one, this chapter has presented the corresponding research design, data collection techniques and limitations to this research. The next step now, is to address the first sub question: "What are the opportunity structures that plausibly explain why the Afghan population in Kunduz uses informal justice provision?"

3   Opportunity structures

The purpose of this chapter is to present the identified opportunity structures that plausibly explain why the Afghan population in Kunduz uses informal justice provision. "Opportunity structure" is a well-established concept in literature on contentious politics, it assumes that individual and collective action are facilitated or constrained within a larger environment of discursive, social, and political opportunities. In other words, this context within which individual or collective action either happens or is hindered is what scholars refer to as an "opportunity structure" (Tilly and Tarrow 2007; Berclaz and Giugni 2005; Giugni 2009). The relevant features of that larger opportunity structure are identified throughout this chapter. It is argued that, within this opportunity structure, community members have different kinds of incentives that plausibly shape the pre-dominant use of informal justice. Every section ends with a concise conclusion of its findings.

3.1   Informal and formal justice provision: "legal pluralism"

The first feature of the opportunity structure is that *various* local political actors in Kunduz are involved in practices that can be considered justice provision or dispute resolution. To illustrate, several respondents mention an *arbakai* commander as the person to approach in case of land dispute between two farmers. In the same village, some other people mention the local elders as appropriate persons to approach in case of the farmer's land dispute. Moreover, the local religious leader, the *mullah,* is mentioned as an appropriate justice provider because he solves cases according to *sharia* law. Also, several state actors – the district office, governor and court - are mentioned to be solving disputes. Contrary to a situation in which the sovereign state rules over its whole territory, the opportunity structure in Kunduz consists of a multiplicity of political actors providing the same justice services. Broadly speaking, these justice providers are part of two mechanisms that may analytically be differentiated as: *informal* justice and *formal* justice.

In the literature on Afghanistan's rule of law reform, several conceptions are used with reference to the practices of solving disputes *informally*. I would argue that each of these terminologies are in some way flawed and I therefore prefer to use the term 'informal justice provision'. The terminology of "non-state justice" for example, is misleading because government officials are often involved in informal justice practices too. Especially district governors – as state actors - are reported as acting on their own behalf in dispute resolution (Coburn, 2013: 12). "Traditional justice" seems flawed because it connotes to some sort of backward past, which does not take into account the extent to which local councils have adapted to new political structures involving foreign or national NGO's. To illustrate, CPAU

works on a project where it establishes new local peace councils in villages that did not have such a council before. The term "community based dispute resolution mechanisms" neglects the very fact that some justice providers offer their services outside of their own local community. Taliban judges for example, are recorded to travel around different districts to offer their services (Giustozzi et al., 2013). Lastly, "alternative dispute resolution mechanisms" is misleading because it assumes that informal justice provision would be an alternative to the official structures. Whereas what we may observe in rural Kunduz is that the local elders are the first and only available justice provider. In this study for example, several respondents argued that a woman that gets beaten by her husband could only approach the local elders of the village to solve it, indicating that these actors are primary rather than 'alternatives' to the formal system.

In this study I will primarily use the term "informal justice provision" referring to practice of resolving disputes, outside of formal legal structures. After disagreement, resolving disputes may then vary from having two families agree upon the money that should be paid for a wedding, to having two neighbors agree upon the boundaries of their land possession after a dispute. When being asked, Afghans themselves often refer to these practices as "reconciliation", as dispute resolution for them may consist of "re-establishing community harmony" rather than the punishment of individuals. This is the broad scope in which this research defines informal justice provision. The actors involved in such practices are generally the local commanders, local elders, local councils and religious leaders. The content of the resolutions offered consists of customary law; these laws are usually characterized by a degree of fluidity and often depend on the customs of the particular village or tribe at stake. It is noteworthy that these practices and verdicts may correspond with state law, but not necessarily. For example, CPAU peace councils are able to consult a so-called Justice Support Worker who is familiar with Afghan state law. The council may take up his advice while deciding on their case, but in some cases they do not.

Formal justice provision in this study refers to the practice of resolving disputes within formal legal structures. Courthouses or the so-called *huqooq* offices in the district center offer these resolutions. The solutions are found according to Afghan state law, and the verdict is presented by actors that are, according to state law, entitled to do so, which usually would involve the judges. The governor, for example, is not considered a formal justice provider, as he is not *entitled* to offer legal verdicts to the population. The actors involved in such practices are generally the police, the prosecutors, the lawyers, and the judges. The content of the resolutions should be offered on the basis of state law. It has to be noted, however, that

due to limited knowledge of current Afghan state law, these formal justice providers may nevertheless offer verdicts that do not fully correspond with it.

According to the respondents of this study, both informal and formal mechanisms may be available and used at the same time in the same place, whether solely or complementarily. To illustrate, respondents from the same village would sometimes mention both local elders and the district court as available options to solve a dispute. Some respondents argued that the local elders are appropriate to solve disputes because they offer dispute resolution in accordance with 'custom and tradition' of the village, whereas in that same particular village another respondent stated that the court was the appropriate place to solve the dispute, because 'they solve the case legally'. As some respondents also explain, they could approach the elders first, and if they they are unable to solve it they would nevertheless be able to approach the district court. Similarly several other respondents explain that if the elders or the local commander is not able to solve their particular dispute, they could still go to the district center to solve their dispute through the formal system. What we may identify here, therefore, is what has been referred to as *legal pluralism*: "the existence of multiple normative and judicial orders that co-exist within one socio-political space" (Von Benda Beckmann, 2005; Scheye, 2009: 33).

One of the problems commonly associated with the existence of legal pluralism, is that people with sufficient resources and knowledge can go "shopping for justice": picking whichever legal system suits them best with regard to their own interests (ICHRP, 2009: 82). The evidence of this study indeed suggests that people, in some cases, are able to choose the justice provider that suits their own interest best. However, it has to be noted that the choices available are not always as plural as the concept of 'legal pluralism' may suggest. Especially poor people and women are constrained in finding any justice provider at all, let alone have the ability to make strategic decisions between one actor and another. Our community questionnaire reveals that particularly those disputants with more money, or good connections to powerful people[32] have the capacity and incentives to "shop" for justice. To put it differently, "justice shopping" may indeed take place, but it is shaped by the financial resources and connections that a particular justice seekers possesses, which will be further elaborated on in section 3.3.

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[32] Connections to the Taliban, *arbakai* commanders or the district governor, for example.

Section conclusion

To conclude here, whereas informal justice provision refers to customary law and is executed by a system of various actors through local gatherings and customary procedures, formal justice provision on the contrary, refers to state law, a system of formal actors and legal procedures. Hence, the opportunity structure does not only consist of a multiplicity of actors, but also of justice systems with distinctive normative and legal orders. This structure can be conceptualized as legal pluralism, in which some disputants are, and some are not, abled to "shop for justice".

3.2 Irregular warfare and contested territories

Despite some positive figures, violent clashes between different armed groups and the government remain ongoing in Kunduz province[33]. As several of the justice providers mentioned in this research are directly or indirectly involved in these clashes, the dynamics of justice provision are not isolated from the strategies that political actors may use to establish collaboration from the people. One of the strategies used to win the 'hearts and minds' is the delivery of public goods, among which the provision of justice (Kalyvas, 2008; 2012).

As Kalyvas (2008) explains, most contemporary civil wars are fought as asymmetric or "irregular" wars, and are sometimes referred to as "wars without fronts". Irregular warfare is defined by Kalyvas as the "twin processes of segmentation and fragmentation of sovereignty: segmentation refers to the division of territory into zones that are monopolistically controlled by rival actors; while fragmentation refers to the division of territory into zones where the rivals' sovereignty overlaps" (2008: 205-406).

The civil war in Kunduz province could be identified as "irregular war". First of all, instead of the state having complete control of the entire province, territorial control in Kunduz is *segmented*: both *arbakai*¸ and the Taliban possess the use of force throughout significant areas of the province, and encounters between the Taliban and the government are particularly conflictive. As Natalie Righton (2013) for example shows in a journalistic account of traveling through Kunduz, there are large parts of the province where the Afghan security forces cannot go because either Taliban, *arbakai* or some other autonomous armed group controls the areas and do not allow any control by governmental police, or other security forces. Also, as the observations of CPAU researchers in Kunduz indicate,

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[33] See for example the frontier post as it has recently recorded several causalities among Taliban and Afghan security forces: http://www.thefrontierpost.com/article/21980/

significant parts of the province are under full control of the Taliban or other armed groups, while other parts are under the control of the government.[34]

Secondly, the division of sovereignty in Kunduz is *fragmented*. For example, the CPAU observation forms[36] suggest a fragmentation of sovereignty, particularly in the areas that were identified as 'contested'. The local researchers observed that governance in those areas is divided between different conflicting political actors, such as *Jihadi* and *arbakai* commanders, and the so-called Afghan Local Police (ALP). Next to that, respondents in this study, coming from the 'contested' area stated Taliban, *arbakai* or local police were all appropriate actors to deal with their disputes.

Some patterns can be identified between the nature of territorial control and the justice providers available in that territory. Non-coercive informal justice providers, such as the local councils, elders and *mullahs* are available throughout all zones of territorial control. As the table 2 shows, the availability of these actors is not affected by the type of territorial control. The other types of actors, however, including local commanders, the Afghan Local police and courthouses are *not equally available* throughout the different zones of territorial control. To illustrate, only respondents from

Table 2 **Territorial Control.** This is a representation of the available types of justice providers mentioned by the respondents of this study.				
	Government	Contested	Non-government	
			Arbakai controlled	**Taliban** controlled
Formal justice	*District court*	*x*		
	District office	*x*	*District office*[35]	
	x	*Afghan Local Police*	*x*	
Informal justice	*x*	*Arbakai commander*		
	x	*Jihadi commander*	*x*	*Jihadi commander*
	Local councils (including CPAU peace councils)			
	Local elders			
	Local mullahs			

arbakai controlled territory and contested territory stated that the *arbakai* would be appropriate actors to approach, and the same held true for Taliban controlled territory. The contested area was the only area where the police, the *jihadi* commander, and the *arbakai*

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[34] The local researchers of this study were asked to fill out an 'observation form' about all the different areas they conducted interviews. This resulted in a data-set on the observed territorial control territorial control throughout these areas. In this form questions were answered like: who is in charge of this village? Who takes care of security in this area? The observation can be found in the appendix.

[35] The 'district office' is mentioned an appropriate justice provider in Taliban and *arbakai* controlled territory, however it is pointed out by all the respondents that it would require traveling to the district centre. This justice provider is therefore, not available in the territory itself.

[36] See previous note about the observation forms.

commander were all mentioned as available justice providers. In other words, the nature of territorial control seems to allow some actors to provide justice, and constrain or even exclude others.

The evidence of this study suggests that formal justice is mainly available on government controlled territory, and informal justice in all zones of territorial control. As illustrated in table 2, the district court, as a main formal justice provider, was mentioned only in government-controlled territory. The availability of the district office, mentioned in three categories, seems a-typical, as it is a governmental office available in *arbakai* and Taliban controlled territory. The respondents in those areas, however, all specifically mentioned that the office would *only* be available through traveling to the district center, which is under government control. This indicates that the district office itself is not available directly in their village, hence, not in the area under *arbakai* or Taliban control. The mechanism therefore seems to be that those actors that have territorial control over a given area are also in the position to offer justice services to the populations. To further illustrate this argument, one respondent explains "If there is Taliban, they can go to Taliban; if government they can go to government; if there is no one of them, then he can go to the elder of village for solving his problem."

These patterns – territorial control and the actor's availability to provide justice - are probably not a coincidence. Not only because of the simple fact that these actors are there, physically, but also because justice provision may serve as a *strategic tool* for local political actors in establishing collaboration from the population. As Kalyvas (2008) explains, we may state that in a country wrought by decades of civil war the capacity to offer stability in a given territory is attractive to local populations. In the context of irregular warfare, the effective provision of justice may indeed be a public service that induces collaboration from the community (Kalyvas, 2008: 406). The community likely appreciates stability brought by the Taliban providing sufficient justice services and therefore maintaining security in the village. For example, Giustozzi (2013) points out that the Taliban and other local commanders offer their provision of justice services to gather support from local populations. The provision of justice by Taliban judges is therefore part of the strategy to have a population that collaborates with them and reaffirm their power base in a given territory, even in contested territories. This indicates that the pattern between territorial control and the available justice providers should not only be explained by the physical presence of these actors in a given territory, but also as an active strategy.

Similarly, Coburn (2013) suggests, a positive cycle may therefore be identified between the successful resolution of disputes on the one hand and the increase of *political capital*[37] on the other. Those who have gained more political capital are the ones who can effectively resolve disputes, and more importantly, those who effectively resolve disputes, gain more political capital. Offering justice services may for these actors be a strategic choice. The following statement indeed indicates this:

Because whenever the case happens, if it remained unsolved, the consequences would be bad. Both parties would have enmity and the unity of the village will be broken, and the trust of people on the elders and leaders of the village will be decreased.[38]

The respondent suggests that, if the elders and other leaders of the village are shown incapable of solving the dispute, they will lose trust from the population. In fact, if they do not solve it, they will likely face enmity in the village. They fail as leaders of the village and their political capital as Coburn would call it, is diminished. If, however, they do solve the problem and make sure that unity in the village stays intact, it seems that they will keep the trust of the population. Providing effective justice services to the population, therefore, seems a tool for local political actors to maintain or even expand their control.

Moreover, as Coburn (2013) points out, those who take responsibility for local governance are often the same actors that provide justice services in the context of Afghanistan (2013: 26). As one of the respondents in this study states: "Yes she can go to the village elder they can solve their problem because they have responsibility over the village".[39] The elders may, for example, decide on the control over irrigation systems and at the same day solve a land dispute. Also, the district governor is mentioned several times by our respondents not as a political leader, but as an important and effective justice provider in case disputes. The same held true for local *arbakai* commanders such as 'commander Nabi'.

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[37] According to Birner & Wittmer (2003: 298) "Political capital" could be defined as "the resources used by an actor to influence policy formation processes and realize outcomes that serve the actor´s perceived interests. The way I perceive the concept is similar, but slightly different as I define not only as the resources *used*, but as the resources that are *available and potentially used*, which results into the definition that "political capital are the resources that are available to an actor and are potentially used to influence policy formation processes and realize outcomes that serve the actor´s perceived interests".

[38] Com. Int. code: Reza 03. For further details on the respondents and the date of the interview see the Appendix.

[39] Com. Int. code: Tamim 06

He taxes the people, provides security where the state lacks the capacity to do so[40], and is mentioned as an appropriate justice provider at the same time.[41] In other words, on the level of local-level the distinction between justice provision and governance is not all that evident or clear cut.

On a final note, Kalyvas also argues that "political actors who enjoy substantial territorial control can protect civilians who live on that territory – both from their rivals and from themselves – giving civilians a strong incentive to collaborate with them, *irrespective of their true or initial preferences* (emphasis added)"(Kalyvas, 2008: 406). The evidence of this study seems to indicate that mechanism: although respondents were not pleased with the Taliban regime and even opposed it, some of those living in Taliban controlled territory now, would nevertheless refer to the *jihadi* commander in their area for dispute resolution. To illustrate, one respondent from a Taliban controlled village says: "The Taliban, that regime was not good, it was very bad".[42] Later on he states: "Yes he can refer this case to the *Jihadi* commander (…) he can solve the problem because the people support him". In other words, despite the apparent bad sentiments towards the Taliban, respondents from that area may nevertheless ague that their justice services are effective and to be used. In section 3.4 I will elaborate more on the value added to effective justice provision by the local populations in Kunduz.

Section conclusion

What we may conclude here is that the context of irregular warfare shapes an environment in which justice provision is partly shaped by the nature of territorial control and the strategic behavior of local political actors that may try to capture popular support. Although un-armed actors provide justice throughout different zones of territorial control, the justice provided by armed actors is available only in those areas that are under their own control. Within these territories, the available justice provision by *other* coercive political actors seems limited, or even excluded. Dispute resolution may be used to maintain or expand territorial control, and it seems indeed part of the strategy to win 'the hearts and minds' of the people. The character of informal *and* formal justice provision is in such a context inherently political. In the next section I will follow up on this observation and shift the analytical lens to the

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[40] See a recent journalistic account in Qal-e-Zal of Kevin Sites (2013): *Swimming with Warlords.* Also, the evidence collected by Dirkx (2013) in the case study on *arbakai* shows that *arbakai* commanders - commander Nabi is just one example - provide security in several areas of Kunduz.

[41] In the questionnaire of this study, the same commander Nabi is mentioned as an appropriate justice provider.

[42] Com. Int. code: Hameed 16

disputants themselves. What are their opportunities to influence the justice outcomes offered by different justice providers, both in formal and informal justice mechanisms?

3.3 Opportunities to influence justice outcomes

In Kunduz, contrary to what we may expect as we are thinking from the judicial concept of *impartiality*[43], disputants may have significant influence on justice outcomes, both in formal and informal justice. One respondent points out, for example, that: "If such coincidence [a dispute about land] happens in our village the decision will be for the benefit of the powerful people, because there is nobody to ask for the rights of the poor people (…)"[44]. Then, the question is what makes somebody a powerful person that he is able to influence his justice outcome? Two characteristics seem to be of particular relevance here: *connections to powerful power people* and *money.*

Nearly all respondents of this study, argue that the land dispute scenario would be easily solved in advantage of the victim if he had 'good connections to powerful people', whether that would be in Taliban, *arbakai* or government controlled areas. Good connections to local commanders, for example, seem to be of benefit to the disputant. To illustrate, one respondent points out with regard to the land dispute scenario: "(…) if Mohammad had connections with the commanders he could get his land back".[45] Another one argues: "(…) if he had connection with the armed Taliban, then the Taliban could get his land immediately back to him".[46] Similarly, the evidence indicates that connections to the local elders can be used by the disputant. One respondent, for example, states that: " Yes if he had good connections with the *Arbabs*[47] and the elders of village this will be different, he would win the case".[48]

Next to having connections to powerful people, the use of money, seems effective in order to influence justice outcomes. Over the whole of Afghanistan it is recorded that a majority of the Afghan population perceives formal justice as corrupted. Sixty per cent of the respondents in a study of *Transparency International* (2013) felt that the Afghan judiciary was

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[43] Impartiality is understood here as the practice of 'treating all rivals or disputants equal'. The Universal Declaration of Human Rights, Article 10, states that: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

[44] Com. Int. Code: Hameed 07

[45] Com. Int. Code: Hameed 09

[46] Com. Int. Code: Hameed 22

[47] "Arbab" is a Persian/Darian word that means something similar to "boss" or "master". In this context it most likely refers to the head or representative of the village.

[48] Com. Int. Code: Tamim 11

either corrupt or extremely corrupted.[49] On the local level, several respondents in this study argue that the only way to get the land dispute in the proposed scenario solved in court is by paying bribes to state officials or judges. As one respondent claims: "Yes because he could give bribe to the government and could take back his land".[50]

The use of money seems particularly effective with regard to influencing justice outcomes provided by state actors. When asked if the land dispute would be handled differently if the victim [Mohammad] would be a wealthy person a respondent for example points out: "Yes it would be different, Mohammad could solve his problem in district and he wouldn't even ask the elders of the village to solve his problem".[51] This statement and other similar accounts indeed indicate that not only formal justice outcomes can be influenced by money, but also that bribes are likely to be more effective in formal justice institutions than they are to influence the justice outcomes offered by, for example, the elders. Also, the district governor, a state actor, but in this study considered part of the informal justice system, is recorded by the respondents of this study to let money decide his justice outcome. As one respondent point out, for example, with regard to the victim in a land dispute: "Yes, if he had money he could get his land again, the district governor would help him to get his land if he had given him some *Afghani* money".[52]

For influencing non-state actor's justice outcomes, money seems less effective, but the responses here are not one-directional. One of the respondents argues for example: "the case can be solved better without money in the local council".[53] Most respondents hold this opinion, but there is also a farmer in Qal-e-Zal who states: "Both elders and government would settle to benefit of Mohammad if he were rich".[54] All respondent that refer to local commanders however, point out that these commanders are not influenced by money, connections are more important. With regard to an *arbakai* commander one respondent states: "there will not be any different if he had money, because Commander Nabi is not a corrupted person."[55]

Consequently, despite what Afghan state law may indicate in theory, people who possess more money or connections to powerful people are able to influence justice outcomes, whether that is through formal or informal justice. Hence, people are not treated

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[49] See for the full account of the 2013's perceptions on corruption in the formal judiciary system of Afghanistan: http://www.transparency.org/gcb2013/country/?country=afghanistan
[50] Com. Int. code: Tamim 23
[51] Com. Int. code: Hameed 27
[52] Com. Int. code: Mariam 12
[53] Com. Int. code: Hameed 15
[54] Com. Int. code: Maryam 17
[55] Com. Int. code: Tamim 28

equally for the law. This is a well-known problem in developing and transitional countries. As Otto (2002) points out, 'legal certainty' is an important concept in legal doctrine; it refers to "the predictability of rules that apply in a certain case as well as to the legal interpretation and application of such rules by the judiciary and other law enforcement authorities". He notes that even though there is formal legal certainty, it is often highly unlikely that government institutions and individuals – in such countries - would pay much attention to it (2002: 25). As a consequence, the population does not benefit much from just formal legal certainty alone. In other words, the fact of writing a law in developing or transitional countries alone does not mean that formal institutions will indeed follow it.

The possible influence that a disputant can penetrate into the justice outcome may also shape the strategy that is followed by that disputant. This is where the concept of "justice shopping" becomes particularly relevant. The disputant with sufficient financial resources or good connections may directly 'buy' the right outcome, or try different "shops" to establish the desired outcome. If the disputant has good connections to the local commander, it will be more opportune to approach the commander. If the person has money, it is particularly opportune to approach the governor or the district court. Several respondents indeed point out that such opportunism can be observed. As they explain, if a disputant has money, he can go to the court, and pay a bribe to 'claim his right'. If the disputant is good friends or family with the local commander, the local elder or the *mullah,* he will probably go there first.

What needs to be pointed out here, as mentioned earlier, the capacity to "shop" for justice, plausibly depends on the resources and knowledge of the particular disputant. For the poor, such opportunities may not be available at all. The evidence of this study indicates the people who have the means to *choose* one justice provider or another can go shopping for justice. As several respondents point out, poor people, that are not aware of the opportunities to find justice outside of the village, for example, are not in the position, and do not shop for justice.

Section conclusion

To conclude this section, formal and informal mechanisms allow, to a larger or lesser extent, powerful people to influence justice outcomes. Neither formal justice, nor informal justice seems to provide justice that remains completely uninfluenced or 'impartial'. Drawing from the evidence presented, this indicates another feature of the larger opportunity structure: mainly state actors seem effectively influenced by the use of money by the disputant, non-state justice providers are effectively influenced by 'good connections to powerful people',

which creates a strong incentive for community members to collaborate with the powerful people in their village, and not with those who provide formal justice in the district.

3.4 Effectiveness of justice provision by state and non-state actors

> *(…) there is corruption in the government and they cannot solve the case in short time.*[56]

As Bedner & Vel (2010: 6) explain, *effective justice provision* requires "a remedy that goes beyond the decision made, the agreement signed or the regulation passed" and extends itself to "the implementation stage to secure the change". Similarly, Otto (2002) points out that real legal certainty requires, among other factors, that decisions actually be put into practice.

The data of this study reveals that local community members regard the effective resolution of disputes as very important, because unresolved, or partly unresolved disputes, could potentially pose security risks to the whole village. As one of the respondents, for example, argues: "If the land is grabbed (…) and the land is not returned, then it would have dangerous outcomes. This would result in insecurity for the whole village".[57] Another respondent suggests, the elders should make sure that disputes do not escalate and poses security threats to the whole community: "(…) the elders should decide and say the truth. (…) Otherwise their problem would increase and cause new disputes and fights. It would also damage the security of the region, and cause misery".[58]

Having a *timely* resolution seems particularly important to avoid instability and insecurity in the villages. According to the respondents of this study, local elders, *shuras*, *mullahs* and local commanders are, contrary to formal justice providers, able to offer timely dispute resolutions. With regard to the land dispute several respondents argued that if it would not be solved timely, it would end violently. One respondent for example points out: "If the case is not solved, gradually the situation goes to insecurity and getting worse and the condition of life changes to death for everyone".[59] A similar line of reasoning can be identified with regard to Taliban's justice provision. As Giustozzi points out: "there is a certain appreciation of the people for Taliban judges because they are able to solve disputes

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[56] Com. Int. code: Maryam 17
[57] Com. Int. code: Reza 07
[58] Com. Int. code: Reza 11
[59] Com. Int. code: Reza 01

quickly and effectively".[60] The data of this study also indicates an appreciation for the Taliban's quick resolutions: most people argued that the Taliban justice was, and is, extremely cruel but effective and quick. Formal justice on the other hand is regarded slowly and incapable of delivering timely solutions. One respondent, for example, states: "Yes she can go to the elders, because there is corruption in the government and they can't solve the case in short time".[61]

Moreover, the evidence indicates that having an effective resolution that restores community harmony seems more important than having a 'fair' or 'official' outcome for the individual. The respondents refer far more extensively to the effectiveness of bringing a solution than to the actual perceived fairness of the individuals concerned in the verdict. On answering why they could use this institution, they refer to people with authority, because they can give a verdict that is accepted by the people, either through coercion (commanders) or through respect and social control (elders, *shuras/jirgas)*. Only a couple of responses seem to indicate the opposite that having a 'fair' or 'official' verdict is important as shaping the justice path. Overall, however, the respondents seem to regard a solution that is restoring community unity particularly important, more than having a 'fair' or 'official' resolution per se.

Particularly elders, *mullahs* and *shuras/jirgas* are regarded best capable of offering solutions that maintain community harmony by the respondents of this study, better than formal justice providers. Coburn (2013) points out that in rural areas of Afghanistan, *islah,* or reconciliation, which is mentioned at several points in the Quran, is an important religious virtue for the implementation of verdicts by *mullahs,* elders and *shuras*. Beyond only offering a verdict, this concept implies the promotion of *social harmony* in the community is re-established (Coburn, 2013: 14). Informal bodies like the elders or *shuras/jirgas* may, together with the disputants come to an agreement over the terms of the resolution. By the reference to religious values instead of state law, the elders are capable to offer a resolution that is inevitable and uncontestable (Coburn, 2013). Similarly, several respondents of this study indeed point out, that the elders are "credible people"[62] and that "their decision is important and almost all people accept it".[63] Moreover, several respondents argue that the elders are

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60 Giustozzi during a presentation on the Report: Giustozzi, A., Franco, C. & Baczko, A. 2013. *Shadow Justice: How the Taliban run their judiciary.* Integrity Watch Afghanistan. 11-04-2013, Kabul, Afghanistan.
61 Com. Int. code: Maryam 17
62 Com. Int. code: Maryam 05, 06
63 Com. Int. code: Hameed 11

able to solve problems in accordance with the "custom and tradition of the village"[64], or: "the issue is referred to the village elders because they are selected by people, they are trustful people who speak the truth".[65]

Although Bedner & Vel (2010) do not hypothesize this in their model, another feature of the opportunity structure that plausibly explains why informal justice provision in Kunduz is used seems the responsibility that elders and *shuras/jirgas* already bear for solving general problems in the communities. As already touched upon in section 3.2, the perceptions that community members seem to hold about the responsibility of elders and *shuras* seem broad: they bear responsibility for solving general problems that occur in the village, whether these are governance related or involving the resolution of disputes. To illustrate, several respondents refer to the elders and the local *shuras* as the actors that have the responsibility to solve problems, because they are the ones that have the most information about the population, they gain respect, and trust from the communities. In contrast to the local commanders, which are considered effective resolvers of disputes because they are "powerful people" or because they "have many men and arms" nobody mentions any coercive means employed by the elders of *shuras*. Whether it involves the community´s decision to construct a road, or the community´s decision about how to solve a dispute about stealing a piece of land, the elders are involved. Similarly, the elders are considered the first representatives of the village. One respondent for example points out: "Yes he can go to the elders of their village (…) because the elders are the representative of the people"[66], another states, "(…) they are the elders of the people".[67] *Shuras* and *jirgas* are indeed, historical representative bodies of local populations, vested with decision-making authority over disputes and other political issues (Coburn, 2013: 14; Wardak, 2002).

Although the elders and *shuras/jirgas* may take up several governance-related task effectively, including the provision of justice, the main problem of their justice services are the limited capacities of coercive implementation. If one of the disputant does not agree upon the verdict offered, they have to rely upon the local commander or the government to implement the verdict. A shopkeeper in *arbakai* controlled territory, for example, states that the *jirga* would call in the commander of the village:

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[64] Com. Int. code: Hameed 18, 38
[65] Com. Int. code: Maryam 07
[66] Com. Int. code: Reza 04
[67] Com. Int. code: Reza 06

He will go to the elder of village with the legal document of land and ask the elder to take back his, then the elder will call bout to Jirga *and try to give the right to the correct person. If Qasab did not accept the decision by* Jirga *then the Participant of Jirga will call the commander of village and ask him to get the land by force from Qasab.[68]*

As one of the elders in a Taliban controlled village also points out, his power of implementation is limited, and depend on the will of Taliban commanders: "First we will advise him to (…) do not beat your wife, if he does not accept then we will refer him to Taliban".[69]

Due to the growing influence and independence of local commanders over the past decades (Giustozzi et al., 2013; Coburn, 2013) the decisions offered by elders and *shuras/jirgas* are not always 'inevitable and uncontestable'. Some reports have shown that armed groups in Afghanistan do whatever they want: they steal, rape, and kill with impunity.[70] Similarly, the evidence of this study indicates a certain degree of impunity with regard to local armed groups. A farmer in a Taliban controlled territory for example states: "Today, no one can grab the rights of others. Of course, anti-government groups and Taliban are exception. They do grab others right".[71] Another respondent states: "Powerful people must be driven from the area and elders should not let them create problems for others".[72] One of the respondents also states that arbakai commander Nabi "takes decisions without any formal justice process. No one can say anything, because of being afraid of him".[73] If the elders do not have support of the local commander, they seem to be empty handed if the verdict is not accepted by one of the disputants. This poses the question whether the elders and *shuras/jirgas* have the capacity to implement a verdict against a local commander, or even somebody with good relations to a local commander? Particularly, in such cases, the religious values may not seem so 'inevitable and uncontestable'.

One of the elders in a Taliban controlled village indeed points out that it will be difficult for him to implement a verdict that would be disadvantageous for the richer or powerful disputant. He states:

In our village, if someone takes the land of another person, he will not return it very easily. We will call them to the Jirga *and ask bout of them about the land documents. If the person has force or money*

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[68] Com. Int. code: Tamim 08
[69] Com. Int. code: Tamim 23
[70] See for example: Human Rights Watch (2011) *Just don't call it a militia.*
[71] Com. Int. code: Reza 04
[72] Com. Int. code: Maryam 03
[73] Com. Int. code: Reza 10

behind him, then it is difficult for a poor person to sit with him in the jirga *because everyone is afraid of him.*[74]

In other words, it will be difficult for the elder, or the *jirga/shura* to implement a verdict against someone who has a powerful position in the village. The verdict would then require implementation by force, which would usually be offered by local commanders themselves. If the verdict is not accepted by one of the disputants, the only other option seems referring the case to the government. One elder, for example, states that the court is an option to find a resolution if a verdict is not accepted by one of the disputants. If, for example, disputant A refuses the verdict offered by the *jirga,* then disputant B may "go to court and the members of the *jirga* will help him in the court as witness".[75] As another respondent in Qal-e-Zal points out, if the solution is not accepted by one of the disputants, it can be referred to the government: "At first we try to solve this problem with collaboration of elders if he [one of the disputants] does not accept the decision, the case would be introduced to the government".[76]

There may, however, be cases where *both* the local commanders and the government become involved. One of the respondents points out:

First we will advise him if he did not accept then we will refer him to the commander of our village then the commander will call some of his relatives and ask them to help this person. If the case doesn't solved then the commander refer them to the government and this is governments job what decision the will take.[77]

In the light of reported evidence, the question should be raised here what would happen if one disputant is backed up by a local commander and the other by the government? What happens then, who 'wins'?

As explained earlier, the capacity of formal justice provision is very limited in the territories that are under control of non-state armed groups, particularly those that are in conflict with the government, such as the Taliban. A verdict offered by the courthouse will therefore have little resonance in those areas where the police or other state actors are not present. In these territories the local commanders, local elders, *shuras/jirgas* or *mullahs* make decisions about right and wrong. Approaching the government for someone living in such a

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[74] Com. Int. code: Tamim 18
[75] Ibid.
[76] Com. Int. code: Maryam 03
[77] Com. Int. code: Tamim 08

territory is therefore not very effective. Therefore it is very likely in Taliban or *arbakai* controlled territory, that those with good connections to the local commander will win the dispute and have a justice outcome in line with their personal interests.

In the government-controlled areas, it is more likely that state actors can implement their verdicts, because the conflictive armed groups are not as intrusive as in those areas where they possess territorial control. If a disputant in these areas pays bribes to the state actors, it seems more likely that he will win the case. Having connections to the government also seems be an asset in government controlled areas. With regard to land dispute scenario a respondent in government controlled territory explains: "if he had relationship with the government, he would have solved his problem through legal channels and the result would have been different".[78] Another respondent from the same village argues: "Yes if he had good connections with the police (…) he could get his land".[79]

The evidence is not conclusive, but what we may deduce here is that the actor in possession of territorial control is most likely to have final say over the justice outcome. Connections to the police and other state actors, as well as money seems to work well in government controlled areas, whereas connections to Taliban trumps money and connections to state actors in those areas where the Taliban possess territorial control. In the contested area, connections to the government seem more efficient than in Taliban controlled areas. As one of the respondents from that area explains: "If having a relationship with powerful people, in the government, like minister, provincial governor, district governor, security commander, he would get his land easily".[80]

If we merge this analysis with what we found in the previous sections on territorial control and political influence, there seem to be strong incentives for community members to collaborate with the local commanders that possess territorial control in their village. Not only may local commanders protect civilians from others and from themselves, as they possess the coercive means to provide security, good connections to the Taliban or *arbakai* commander will also be an advantage in disputes. As we identified earlier, buying yourself a justice outcome in court will not help much if the other disputant has connections to the Taliban or *arbakai*.

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[78] Com. Int. code: Reza 03
[79] Com. Int. code: Hameed 07
[80] Com. Int. code: Reza 05

Section conclusion

To conclude, the feature of the opportunity structure that can be identified here is the limited capacity of formal justice to provide quick solutions, and the timely way in which local indigenous justice providers are seen to solve disputes. Local elders, *shuras/jirgas* and *mullahs* are well-accepted informal justice providers, but not always capable of implementing their verdicts without the support of armed groups. What Baker & Scheye (2007) point out with regard to effectiveness of justice provision by non-state actors seems, in the case here, accurate. At least some of the mechanisms in place indeed serve quicker and therefore more effective solutions to local populations than formal justice providers.

3.5 Other barriers to using (formal) justice

Drawing from the evidence in this study, three other general barriers that plausibly explain why community members use informal instead of formal justice, need to be presented here: geographical presence of justice providers; cultural barriers for women; and limited awareness of formal justice.

3.5.1 *Geographical proximity of informal justice*

If we approach the same question from a more practical point of view, geographical proximity of justice providers seems another main factor in explaining why people from rural areas use informal justice: formal justice is far away and requires long traveling, often over insecure roads.[81] To illustrate, one of the respondents points out: "Yes he can refer to the elders of the village (…) because we are far from the institutions".[82] It is not for all villagers possible to travel further than their own village. In other words, the geographical presence of the elders or a commander as the only one providing justice provision in their village may be an important factor in determining whether they use one mechanism or another. The reasons for limited traveling may be financial, cultural or even just a lack of knowledge of what is outside of the community.

Financial resources of the justice seeker may matter with regard to overcoming the geographical distance of formal justice providers. If using a particular forum requires traveling, it may be impossible for poor people to approach that institution. It may also be very dangerous to travel over long and even short distances.[83] The district court for example,

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[81] Logically, however, this barrier seems not as relevant to those populations that live in, or very close to the city center.

[82] Com. Int. code: Hameed 14

[83] The CPAU staff in Kunduz pointed out to the researcher that people in rural areas sometimes need to travel to very insecure areas to approach any justice institution in the district centre.

may not be attainable for local Afghans due to the costs that come with traveling to the district center or insecurity on the roads. On top of that, if the procedure takes a long time; it may cost the justice seeker even more because that person will usually not be able to work while being away from his own village, and needs to overcome the same barriers multiple times. The limited geographical presence of formal justice providers presents us with another feature of the opportunity structure: actors that operate within informal mechanisms are geographically closer to the population, closer than the district court or the *huqooq* office that are stationed in Kunduz city. Community members may therefore have strong incentives - driven by practicality but also security - to use justice provided by the actors that are geographically close to them.

3.5.2 Cultural barriers for women

As Bedner & Vel (2010) point out, access to justice provision may be constrained by cultural barriers. I would therefore argue that another feature of the opportunity structure that plausibly shapes justice provision in Kunduz is the socio-cultural inequality of women. Women are generally not allowed to travel on their own, especially in traditional areas women are not allowed out of their own village or even their own homes without a male accompanying her.[84] Several respondents point out that women may find dispute resolution in family matter, but only if she is represented by a male relative that could travel to the district center for her and function as her proxy. Since the formal justice providers are far away from rural areas, they pose new barriers for the population to approach them.

Our questionnaire indicates that it is more difficult for women in Kunduz to use justice provision than for men, particularly the services offered by formal justice providers. With regard to our first scenario, some respondents indeed argued that the victim, a woman, would not be able to find a resolution to her problem, because it would put shame over the family. An elder from Ali Abad claimed for example that it would be a "shame for us to send the problem of our family to an outsider".[85] Therefore, the way to solve such a dispute is, as he argues, within the family. On top of that, even if women are allowed to use justice provision, it may be preferred to stay within the boundaries of the village, to limit the shame put on her family. As a shopkeeper claims: "it is good to solve the problem among the

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[84] Recently, 20 July 2013, Reuters mentioned that one of Karzai's main religious advisers will not overturn a decree issued by clerics in the North re-imposing Taliban-style curbs on women, letting, for example, women not travel outside of their homes without a man accompanying her. http://www.reuters.com/article/2013/07/20/us-afghanistan-edict-idUSBRE96J02220130720

[85] Com. Int. code: Tamim 18

community instead of government, they will not shame to share their problem".[86] The only alternative option for women seems to be the use of a proxy representative. She has to depend on male family members to do so. Several respondents argue that it is not appropriate for a woman to solve a problem by herself, if she wants to approach a justice provider several respondents point out that she should be represented by her father or another male relative.

The cultural opportunity structure constrains women to go out of their village and find dispute resolution. As a consequence, these women have to rely upon their male relatives, or the possibilities within the village itself. Because of these cultural barriers women have strong incentives to not act at all, solve disputes within the village, and to approach a justice provider through a male proxy.

3.5.3 Limited knowledge and awareness of formal justice provision

As Bedner & Vel (2010) point out, awareness or self-confidence with regard to a perceived injustice is the first step for a person to be able to access dispute resolution. The notion that a perceived injustice refers to a normative framework from which a person may claim his or her right, could be seen as an early stage in finding dispute resolution at all. To put it differently, if the only normative or legal order that a person is aware of is connected to informal justice and not formal justice, that person will not use the formal justice system, but the informal.

In Kunduz, at least some segments of the population, seem to be unaware of formal institutions and their basic rights under state law. Firstly, the data of this study shows that some people do not know that formal justice institutions exist at all; hence why they solve disputes by other means. For example, one of the elders points out with regard to the first scenario: "(...) if a person never gone to the district center doesn't know anything so that's why they refer it to the elders of the village".[87] Secondly, not all people are aware of state law and the basic duties and rights they possess accordingly. As a peace council member points out for example: "the problem here is a lack of education and people are not aware from the law". In other words, if a person does not know about his or her basic rights, how could he or she claim it through the formal justice system? A lack of awareness constrains the population in Kunduz to use formal justice provision.

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[86] Com. Int. code: Tamim 08
[87] Com. Int. code: Hameed 01

3.6 Conclusion

To recap, seven relevant features of the larger opportunity structure have been identified throughout this chapter:

- 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.

Based on these structures, community members seem to have strong incentives to use informal justice instead of formal justice. Both formal and informal justice may be available in the same socio-geographical space. The larger environment, however, is not stable but conflictive. This leads to the strategic use of justice provision by local political actors. The provision of justice is used by some of these actors to establish collaboration and deter non-collaboration of civilians. At the same time, community members with sufficient connections or financial resources have the ability to "shop" for justice, and find a justice outcome that suits their interests best. This study has indicated that, contrary to what we may expect from the judicial concept of impartiality, disputants themselves have significant opportunities to influence justice outcomes, both in formal and informal justice provision. Connections to powerful people and money are two main 'goods' to trade in for a preferred justice outcome.

The capability of effectively providing and implementing justice may create strong incentives for community members to use justice provided by actors with territorial control over their area, irrespective of their true or initial preferences. Not only may local commanders protect civilians from others and from themselves, good connections to the Taliban or *arbakai* commander will also be of advantage in case of disputes. As identified, outside of government controlled territory, buying yourself a justice outcome in court will not help much if the other disputant has connections to the Taliban or *arbakai.*

Having timely resolutions that can be implemented is regarded important by community members in order to prevent violent escalation of disputes. Particularly local elders, councils and *mullahs* are able to offer those timely resolutions, if necessary with the enforcement of a local commander. These local non-armed justice providers are moreover best capable to deliver justice that restores community harmony. Because of timeliness, effectiveness and appropriateness, community members seem to appreciate and respect the decisions made by these actors.

Considering other more general barriers to the use of formal justice, this chapter has shown that the geographical proximity of justice provision matters: formal justice is far away and for populations in rural areas it requires long traveling, often over insecure roads. For women in Kunduz it especially more difficult to use justice provision than for men. Women are often not allowed out of their village or even out of their homes, and are therefore unable to approach formal justice by themselves.

Having identified the opportunity structures that plausibly explain why populations in Kunduz use informal justice, the next step is to investigate the perspectives of the Dutch IPM workers. The second sub question of this study will be addressed: what are the improvements that Dutch police trainers and government officials claim to have made in regard to re-establishing and reforming the (formal) justice sector in Kunduz?

4 Claim-making by the IPM workers

"The number of lawyers has significantly grown, so there is more access to justice for the population".[88]

The purpose of this chapter is to present the claimed improvements of Dutch IPM workers with regard to re-establishing and reforming the (formal) justice sector in Kunduz. With regard to the perceptions of Dutch IPM workers, four core themes are identified from the empirical evidence collected in this study: legal awareness; formal justice; informal justice; and access to justice. The chapter addresses each of these themes by breaking them down into four constituent parts: the identified *problems* before the start of the mission[89]; the *solutions* executed by the IPM[90]; the *improvements* resulting from the IPM; and the *motivations* behind these efforts[91].

4.1 Legal awareness

A first 'identified problem' by the Dutch IPM workers in Kunduz before the mission started, is a *lack of legal awareness*. The population, and also the people working in the judicial sector are not aware of state law and people's basic rights accordingly. As several respondents point out, the policemen and the actors within the judicial chain are unaware of the prescriptions in Afghan state law. Also, it is perceived that the population itself, particularly in rural areas, was not aware of state law before the mission started. One of the respondents, for example, claims: "So if you talk about legal awareness, that was non-existent in the rural areas of Kunduz before the mission started. The local population was not aware of the Afghan laws".[92]

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[88] IPM Int. code: PRT03. Original Dutch statement: "Het aantal advocaten is enorm gegroeid, dus is er meer toegang tot recht voor de bevolking".

[89] The identification of the problems is theoretically understood here as a way of "diagnostic framing". More specifically, it is seen as *problem identification*: "the articulation and amplification of an aspect of the world collectively considered to be in need of ameliorative action" (Snow & Benford 1992:137).

[90] The presentation of *solutions* by the IPM workers is theoretically understood as "prognostic framing": "how the problematic aspect of reality ought to be trans-formed, including what is to be done to achieve such a state of affairs" (Benford, 1993: 798).

[91] The motivations behind the solutions are theoretically understood as a way of "motivational framing". This includes "the construction of appropriate vocabularies of motive" for engaging in collective action (Benford & Snow, 2000: 617).

[92] IPM. Int. code: PRT04. Original Dutch statement: "Dus als je het hebt over bewustzijn in rurale gebieden voordat de missie begon, dan was die er niet. De lokale bevolking was niet op de hoogte van Afghaanse wetten".

According to the respondents, the Dutch IPM has executed or funded several projects to find solutions to this problem. Legal awareness should be improved by, for example, radio projects, theatre, awareness projects in schools, handing out instruction leaflets, and the mentoring of local councils. One respondent, for example, states: "by the use of radio programs and theatre, work has been done to improve the awareness of Afghan state law, so this idea embedded in the minds of the people, I believe".[93]

The claimed improvements resulting from these efforts are several. First of all, the Afghan population in Kunduz has increased knowledge of Afghan law compared to the beginning of the mission. Secondly, some respondents claim that Afghan *mullahs* have more knowledge of Afghan law than they did before the mission. Thirdly, by the building of *huqooqs* offices in several districts a couple of respondents claim that this has raised the profile of these offices and the awareness of people that the *huqooqs* are there for the population. Fourthly, the CPAU peace councils have been established. By the justice support work that has been done, these *shura* type of gatherings have a better notion of Afghan law. Fifthly, one of the respondents argues that there is more awareness of women's rights because several *mullahs* have advocated those to the people as well as radio broadcastings.[94]

The motivation behind these efforts seems that awareness of Afghan state law and formal institutions will increase the reach of the Afghan state beyond its district centers. As one of the respondents points out, improving the 'rule of law' in Kunduz requires a "change of mentality".[95] Most of the respondents pointed out that improving the legal awareness among the population will increase the use of those justice providers that are incorporated in Afghan state law, such as the courts and the *huqooq* offices. Instead of approaching the local mullah or local elders, they will now seize the opportunity to use formal justice, which will expand the state's influence and improve the rule of law.

4.2 Formal justice

The second problem identified by the respondents is a *lack of quality and quantity in the formal justice sector*, including the police, prosecutors, lawyers and judges. Within the judicial chain there was, before the mission, no cooperation. The personnel were uneducated, and there were not enough qualified policemen, prosecutors, lawyers and judges. As one of the

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[93] IPM Int. code: PRT 04. Original Dutch statement: "Door middel van radioprogramma's en theaterstukken wordt er gewerkt aan bewustwording van Afghaanse wetgeving, dus dat idee ontwikkeld zich wel in de hoofden van mensen naar mijn inzicht".
[94] IPM Int. code PRT04
[95] IPM Int. code: PRT05 Original Dutch statement: "Het verbeteren van de RoL vraag om een mentaliteitsverandering"

respondents points out, for example: "there were courthouses and lawyers, but it was very minimal".[96]

The solutions to these problems have been, in its basic form, to train and mentor prosecutors, lawyers, *huqooq* workers, and to build a better infrastructure by establishing new justice offices. By supplying meetings between, and mentoring to, the different actors in the justice chain, cooperation in the whole chain was meant to improve.

The claimed improvements resulting from these efforts are several according to the respondents of this study. Firstly, police and prosecutors have gone from no cooperation to some cooperation. Secondly, there are now a few female lawyers as opposed to none a few years ago. This is considered a big improvement because prior to the mission there was not a single lawyer available for women. Thirdly, the police now use more evidence-based methods, as opposed to conviction-based methods. Fourthly, the AIBA is established and does good work with respect to defending human rights. They, for example, look after prisoners that are unlawfully detained. Fifthly, there are now more policemen in the Kunduz police corps. Sixthly, police offices are better organized. The policemen, for example, now know how to take care of police cars. Seventhly, a significant number of lawyers and judges have been (better) educated, which improves the quality of the whole justice system and the knowledge about Afghan law. Eighthly, there are more female law students, which is a sign that there are increased opportunities for women to become active in the justice sector. Finally, the literacy rate is now higher among policemen than it used to be before the mission.

The general motivation behind these efforts seems to create a formal justice sector that has the capacity to provide justice and security to its people. As one of the respondents pointed out: "the police is part of the larger security sector and are there to defend the monopoly on violence. If you do that effectively, people will feel safer."[97] Similarly, the *Artikel 100 Brief*[98] of 7 January 2013 to the Dutch parliament states: "Strengthening civil police and the judicial chain aims to strengthen the rule of law, through which the safety of the

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[96] IPM Int. code: PRT 04. Original Dutch statement: "Er waren rechtbanken en er waren advocaten, maar dat was er zeer minimaal".

[97] IPM Int. code: PRT05. Original Dutch statement: "De politie maakt deel uit van de bredere veiligheidssector en zijn moeten het geweldsmonopolie zien te handhaven. Wanneer je dat effectief doet gaan mensen zich veiliger voelen."

[98] According to the Dutch Constitution "the Government shall inform the States General in advance if the armed forces are to be deployed or made available to maintain or promote the international legal order. This shall include the provision of humanitarian aid in the event of armed conflict" (Dutch Constitution, art. 100). The Government shall inform the parliament with a so-called *Artikel 100 Brief* in which the reasons for deployment are explained.

Afghan population (…) will increase".[99] The assumption seems that improving the quantity and quality of the police and the judicial sector will increase the capacities of the state to govern its territory and provide security and justice to the population.

4.3 Informal justice

The third identified problem here, is, the *informal justice sector* that works outside of Afghan state law and does not always obey the Human Rights treaties that Afghanistan has ratified. Particularly, the respondents refer to local elders, *shuras/jirgas* and the *huqooq* offices. The justice providers are considered to offer verdicts that are not always in line with the official basic rights of the Afghan citizens. In other words, informal justice is accepted, but only if it offers justice outcomes that are not conflictive with Afghan state law and the human rights treaties that Afghanistan has ratified. One of the respondents points out, for example:

A point of concern is legal certainty. If they [elders or shura members] *sit down under a tree and they claim to have reached a consensus, but we notice that someone has become the victim of that, we do condemn that. Those are usually the vulnerable groups: women, girls and children*.[100]

Similarly, the *Artikel 100 Brief* to the Dutch parliament states:

Informal justice is generally executed on the basis of customary law and sharia. Those mechanisms are vulnerable to unlawful influence and the people involved are usually insufficiently aware of internationally recognized basic rights. The lack of knowledge on Afghan Constitution, Afghan state law and international law in the informal justice system leads to violations of fundamental rights, especially for children and women and in cases about criminality.[101]

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[99] *Artikel 100 Brief* to the Dutch Parliament. Original Dutch statement: "De versterking van de civiele politie en de justitiële keten beoogt de Afghaanse rechtsstaat te versterken, waardoor de veiligheid van de Afghaanse bevolking (…) zal toenemen".

[100] IPM Int. code: PRT 04. Original Dutch statement: "Een punt van aandacht is de rechtszekerheid. Als ze dan onder een boom hebben gezeten en zeggen we hebben consensus bereikt, maar wij zien dat iemand de dupe is dan keuren we dat niet goed. Dat zijn dan de zwakkere groepen: vrouwen, meisjes, kinderen".

[101] *Artikel 100 Brief* to the Dutch Parliament. Original Dutch statement: "Informele rechtspraak geschiedt over het algemeen op basis van gewoonterecht en de sharia. Dergelijke mechanismen zijn kwetsbaar voor oneigenlijke beïnvloeding en betrokkenen zijn veelal onvoldoende op de hoogte van internationaal erkende basisrechten. Het gebrek aan kennis van de Afghaanse grondwet, het Afghaanse recht en internationaal recht binnen het informele systeem leidt tot schendingen van fundamentele rechten, vooral als het gaat om vrouwen en kinderen en in zaken over criminaliteit".

The executed solutions to these problems have been to install better monitoring over informal justice mechanisms[102], in particular the mentoring and education of *huqooq* employees, as these offices are considered the bridge between formal and informal justice. Secondly, offering juridical advise to local councils, including CPAU peace councils, is considered an effective solution to this problem.[103]

According to several respondents the connection between formal state law and justice provided by informal actors, has improved due to these efforts. First of all, physically there are more *huqooqs*, which, as several respondents claim, creates a better connection between formal and informal justice. Also, it is considered that this will have the population use the huqooqs instead of local elders or commanders to solve disputes. Secondly, as several respondents point out, the CPAU peace councils, a form of shura and considered informal justice, now work better within the framework of Afghan law. So informal justice provision by these actors has been transformed into a mechanism that is more applicable to Afghan state law than it was before the mission. Thirdly, the *huqooq* employees have now better knowledge of Afghan law, which makes it more likely that their work will stay within the framework of state law, as one of the respondent points out.

The general motivation behind these efforts seems to create more accountability and transparency over these bodies. People may continue to use informal justice providers, but it has to be under the "monitoring of state law".[104] Having justice provided within the boundaries of state law will create a judicial system that is more accountable and more transparent, which again will improve the rule of law and make the state more capable to govern its territory.

4.4 Access to justice

A fourth identified problem is a general *lack of access to justice*. Particularly in rural areas, the respondents of this study claim that the access to justice was very limited or non-existing before the mission. One of the respondents points out: "The access to justice is bad, the problem is that people in rural areas do not come up with the idea to approach the justice system".[105] Women did not have any chance of getting legal aid, so they had, before the mission, no access to legal representation, some respondents claim. In the *Artikel 100 Brief* to the Dutch parliament it was stated: "Access to justice is very limited. In large areas of

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[102] *Artikel 100 Brief, 2011: 8* and IPM Int. code: PRT 04
[103] *Artikel 100 Brief, 2011: 3* and IPM Int. code: PRT04
[104] IPM Int. code: PRT07
[105] IPM Int. Code: PRT 04. Original Dutch statement: "Toegang is slecht, het punt in de rurale gebieden is dat ze niet bedenken. Ze hebben geen besef dat ze iets kunnen aangeven".

Afghanistan the population still approaches informal justice to solve conflicts, even if it is about criminality".[106] Interestingly, the *Artikel 100 Brief* suggests that 'access to justice' is *merely* related to formal justice. It is expressed that informal justice is used by a majority of the Afghan population, but nevertheless these people should get 'access to justice' in the formal sector. Or, at a very minimum, their basic rights according to state law should be obeyed in the informal sector.

The claimed solutions to improve 'access to justice' seem therefore mainly aimed at improving formal capacities (the mentoring and education of lawyers, prosecutors and judges and the building of justice offices), or incorporating the informal justice mechanisms into the framework of Afghan state law (the establishment of local peace councils).

Due to these efforts, several respondents claim that the population of Kunduz has now has better access to justice. One of the respondents for example claims:

There are now more educated lawyers and there are courses for prosecutors, so that means that people get better access to justice. Also the building of huqooqs has provided for a push in the right direction. Thanks to the activities of GIZ there is a significant difference with a couple of years ago. More judges, more prosecutors, more lawyers, so there is more access to justice.[107]

A couple of other respondents similarly claim that the placement of more huqooq offices has improved access to justice, for example: "I expect that the efforts of the Dutch and GIZ increase the profile of the huqooq. It's an independent office, where people can turn to with their disputes".[108] Second, because the AIBA has an office now, people have a location where they can access lawyers, which makes it easier to access justice. Thirdly, as mentioned earlier, women can now access legal aid councils, which was completely impossible before the mission. With regard to the establishment of peace councils, people may have easier 'access to justice' now. As one of the respondents points out: "What you can expect though, for

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[106] *Artikel 100 Brief* to the Dutch Parliament. Original Dutch statement: "De toegang tot de rechtspraak is zeer beperkt. In grote delen van Afghanistan richt de bevolking zich nog steeds tot informele vormen van rechtspraak om conflicten op te lossen, ook als het gaat om criminaliteit".

[107] IPM Int. Code: PRT 03. Original Dutch statement: "Er zijn meer advocaten opgeleid en er zijn cursussen over openbare aanklagers, dat betekent dat mensen meer toegang krijgen. Ook het opzetten van de huqooqs hebben daar een goede push aan gegeven. Mede dankzij de activiteiten van GIZ is er een significant verschil met een aantal jaar geleden.Er zijn meer rechters, aanklagers, meer advocaten. Op die manier is er meer toegang tot recht".

[108] IPM Int. code: PRT 07

example if you look at the work of the CPAU peace councils, is that people may be able to settle disputes and therefore avoid violent conflict".[109]

4.5 Conclusion

In this section four main themes have been presented in which the Dutch IPM workers identified major problems, explained solutions and claimed improvements: legal awareness; formal justice; informal justice; and access to justice. With regard to the first theme, the claim is that the population in Kunduz now has slightly increased knowledge of Afghan state law compared to the beginning of the mission. With regard to the second theme, the formal justice sector, cooperation in the justice chain improved: there are more lawyers, policemen, and judges, and they are better educated and informed about human rights; there are better policing methods and organization; prisoners are better protected; and there are now more female law students. With regard to the third theme, there are physically more *huqooqs* and the employees now have better knowledge of Afghan law; also some local councils now work better within the framework of Afghan state law. With regard to the fourth theme, it is claimed, that there is now more access to justice: people have a location where they can access lawyers; women can now access legal aid councils; and the population has now better access to local peace councils that work within the framework of Afghan state law.

To conclude, the focus of the Dutch IPM has been on improving the formal justice sector and shaping an informal justice sector that follows Afghan state law and Human Rights treaties. Although, on itself, the benchmarks of this capacity building seem to be accomplished, the question arises what the impact has been on the use of justice by community members. The IPM workers seem to know *what* they did and *why* they did it, but they seem uncertain about the specific *effects* of what they did. For example, one of the respondents admits: "So there is more access to justice, but if people actually use it, is the next step".[110] Therefore I will now turn to the last sub question and assess whether the claimed improvements have impacted the identified opportunity structures that plausibly explain why Afghan populations use informal justice.

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[109] IPM Int. code: PRT 07

[110] IPM Int. code: PRT03. Original Dutch statement: "Dus er is meer toegang, of mensen er ook daadwerkelijk naar toegaan is natuurlijk de volgende stap."

5 Impact of the IPM on the identified opportunity structures

Measuring the impact of a statebuilding mission is a delicate task. Therefore, I would like to remind the reader, that the three statements made with regard to measuring the impact of the Dutch IPM in the methodological section of this study (section 2.4), should be kept in mind while reading this section of the chapter. What the reader will notice throughout this section is that several of the opportunity structures have not directly been addressed by the IPM, and some of the others have. All of the previous identified opportunity structures, however, will be presented, and the (lack of) impact of the IPM on each of these structures will be analyzed.

5.1 Informal and formal justice provision: "legal pluralism"

The context of "legal pluralism" seems in some places slightly impacted due to the establishment of new CPAU peace councils. The different normative and legal orders still exist parallel to each other, but the CPAU peace councils have tried to incorporate the normative order of Afghan state law into the verdicts offered by local council members. Which may indicate an expansion of Afghan state law into informal justice mechanisms. A respondent in a village with a peace council states there has been significant change over the past three years: "the council that is created in the village makes sure that the villagers can now refer to them for solving their problems".[111] Another respondent in that village also indicates a clear change: "If it would happen three years ago the procedure of it was hard because the people didn't have enough information about law and another thing is that everything was solved based on custom and tradition of the village". [112]

However, it should be noted here that the establishment of the peace councils by itself does not necessarily mean that legal pluralism in those contexts has shifted into a single normative and legal order. Respondents in villages with peace councils, for example, still claim that other informal providers would be available to them, such as the village elders: "she can refer to the elders of the village or to the peace council to solve her problem".[113] What we may state here is that the context of legal pluralism still exists, with some minor changes in the direction of one normative order of state law induced by the establishment of peace councils.

One could, based on the evidence available, also argue that the establishment of the peace councils has reinforced the existing legal pluralism. As one of the IPM workers points

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[111] Com. Int. code: Reza 8
[112] Com. Int. code: Hameed 38
[113] Com. Int. code: Hameed 14

out: "At the other hand, I also met some people who were very critical of the CPAU PC's. They say it reinforces the informal sector and therefore destabilizes the formal sector".[114] A nuance is necessary here, because the *normative order* of Afghan state law may be expanded through the peace councils, the formal *institutional order* however, is not necessarily expanded, as peace councils are still regarded informal justice providers outside of the state's institutional structures. So at the same time, one may argue that the establishment peace councils has kept legal pluralism intact or has even reinforced it.

5.2   Irregular warfare and contested territories

Territorial control was contested in Kunduz before the mission, and it still is today. The purpose of the Dutch police-training mission has not been to change the power structures of Kunduz, as one of our respondents at the military compound in Kunduz emphasizes.[115] According to the Dutch IPM workers interviewed in this study, local militias and other armed groups do not matter to the objectives of the Dutch mission. The Dutch do not seem to have impacted the zones of territorial control in Kunduz, or at least they do not claim to. Contrary to the majority of community member respondents that do not claim there is any difference of territorial control in their village, a couple responses indicate a change over the past three years. A Qal-e-Zal shopkeeper, for example, argues: "Three years ago the elders of the village didn't have the authority to solve the problems because the control was in hand of Taliban and other powerful people".[116] A village elder mentioned improvements have been made due to the government that now has territorial control over his village: "If it would happened three years ago this problem wouldn't solve because three years ago the security was not good and now the government is here and security is good."[117] The question for the responses remains whether these changes are due to international forces or the battles between local conflicting armed groups. Such an impact cannot be identified based on the evidence of this study.

What we do know is that most of the villages consulted in this study seem to have remained under the same territorial control over the past three years. As the evidence of this research indicates, the local elders, *shuras* and local commanders are particularly accessible in the areas where the government is absent. If the elders and commanders are still the actors governing several areas throughout Kunduz, the community members will still have incentives to collaborate with those political actors and use their justice provision. Which, at

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[114] IPM Int. code: PRT 07
[115] IPM Int. code: PRT 05
[116] Com. Int. code: Hameed 19
[117] Com. Int. code: Hameed 02

least partly, seems to explain why, people in these areas keep using informal justice to solve disputes. The impact of the IPM in the territories outside of the government-controlled areas, seems, therefore, limited to an increase of awareness as will be explained in section 5.7. Future research with a broader scope on how international actors in general have affected territorial control in Kunduz, such as the German forces, could give more clarity on the effects of the international community as whole here.

5.3 Opportunities to influence justice outcomes

As the respondents of this study have pointed out, in Kunduz, disputants may still have significant opportunities to influence justice outcomes, both in formal and informal justice. Our survey reveals some responses that claim changes with regard to these opportunities, one respondent states for example: " (…) three years ago the people were using their power a lot but now it became less".[118] A twenty-seven year old housewife states that small improvements have been made: "the difference is not a lot, but three years ago nobody could get their right and the corruption was a lot but now these situations are less and the government is investigating the corruption".[119] Despite severe claims about the opportunities for disputants to influence justice outcomes for personal interest, there may be slight improvements here. Nearly all respondents of the community questionnaire still claimed that the victim of the land dispute would get his land back easily if he had money or the right connections. It is difficult to assess whether the opportunities to do so, are smaller now, what we do know is that they still exist according to most of the respondents consulted in this study. What we may conclude is that despite possible small improvements, the confidence that respondents of this study show in having an impartial verdict remains very limited. This held true for both formal and informal justice. As a consequence, community member still have strong incentives to keep good connections to local political actors, in order to gain some sort of legal certainty.

5.4 Effectiveness of justice provision by state and non-state actors

One of the features of the opportunity structure identified in this study is the limited capacity of formal justice to provide quick solutions, and the timely way in which informal justice providers are seen to handle disputes. The IPM workers claimed to have booked small successes with regard to more effective court procedures and cooperation in the judicial chain. Some traces of these improvements could be found in the community

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[118] Com. Int. code: Hameed 14
[119] Com. Int. code: Hameed 21

questionnaire. A twenty-seven year-old man from Qal-e-Zal, for example, claims that formal justice will provide for a quick solution: "Yes because at that time the trial procedure was so long and now it is easier than before".[120] Another man mentions that the government has become more effective in his village: "Three years ago the government was not able to provide justice for the people".[121] Other responses did not indicate any changes in the effectiveness of formal justice provision. Which does not necessarily mean the IPM has not impacted the effectiveness, but it indicates that it has not substantially enough changed the opportunity structure to change the perceptions of most respondents interviewed in this study.

5.5 Geographical proximity of informal justice

As this study has asserted, geographical proximity is one the features of the opportunity structure that plausibly explains why people use formal or informal justice. Have the Dutch created institutions that are closer to the people outside of the district center? The only example of that are the CPAU peace councils. Through these councils it seems that the Dutch indeed have impacted the opportunity structures of justice provision. With more appropriate institutions closer to the communities outside of the district center, opportunities have been created to find justice more easily. It also partly explains why people in Kunduz continue to use local level dispute resolution by community councils rather than state institutions. In fact this is where the Dutch deliberately impacted the opportunities to find justice outside of the district center. The building of *huqooq* did not seem to change this geographical structure, because these were not placed outside of the district centers.[122]

5.6 Cultural barriers for women

As several respondents highlighted, in most cases it is culturally not appropriate for women to try and solve a dispute. She will at least need a proxy[123] to do so, especially when she is referring to an institution outside of her own village. Has the Dutch IPM impacted these cultural barriers for women? It is very difficult to be conclusive, but the evidence indicates a change for some of the respondents. A fifty-year-old female respondent argues that the ability for women to solve their disputes has changed over the past three years:

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[120] Com. Int. code: Maryam 03
[121] Com. Int. code: Hameed 05
[122] As explained by a Dutch government official during the lecture: *Long road to Afghan Peace: Statebuilding and Post-2014 Challenges.* 11 July 2013 in the Hague, the Netherlands.
[123] Some respondents for example argued that the women in the scenario should deal with the problem through her father. Her father should approach the appropriate institutions, not herself.

Yes it would be different because such facilities that we have now we didn't have them three years ago and the women were not allowed to go out of their houses without their family members, but now they can go anywhere and they can refer to any institutions. [124]

Another male respondent argues similarly that: "Three years ago, everything was hidden, women couldn't call for justice but now everyone has the freedom to talk and claim their rights"[125].

Several statements however, particularly those in Taliban controlled areas, suggest the opposite with regard to the family dispute scenario: "In my view, here is not any significant change based on the years".[126] One of the female respondents claimed with regard to the first scenario, that this is what would happen after the beating: "She will escape from home or goes to court to take divorce and may suicide if she does not have any way. There is not any female *shura* or any other institutions or persons to handle female issues in our village".[127] Such a statement indicates that in fact the only way for a woman to get the problem with her husband solved is to escape from her home and approach the district court to take a divorce. The respondent claims that nothing has changed for women in her village over the past three years.

The statements that do indicate a change of opportunities for women could be interpreted as a sign on itself. Even though the opportunities do not seem to have changed for all of our respondents, there does seem to be an opening of space for women in some areas. The question rises, why some women do, and some do not indicate a change? Some statements indicate a difference between rural areas and the district center. The chairman of a peace council in Ali Bad for example states the following:

In the cities some changes has come as it was not that much developed. And in the cities everyone can ask for their right better, both men and women. But in the villages, the story is not that different yet. Only in some villages, there are councils now, in these places the villagers can refer to those councils for solving problems like these [scenario I].[128]

This statement indicates a difference between rural areas and the city center. It also indicates that the change made in rural areas could be due to the establishment of community

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[124] Com. Int. code: Hameed 20
[125] Com. Int. code: Tamim 29
[126] Com. Int. code: Reza 11
[127] Com. Int. code: Myriam 01
[128] Com. Int. code: Reza 8

councils.[129] In fact this analysis of the chairman seems to correspond with claims made by Dutch governmental officials, arguing that especially in the district center the opportunities for women to approach justice institutions have improved. But, as mentioned before, the evidence here is not conclusive. To establish an idea on what scale such changes have or have not occurred, a quantitative study will have to follow up these findings.

With regard to using formal justice, the data of this study does not necessarily indicate a change. If we for example look at what respondents claim with regard to custom and tradition in the village, the elders were - for that reason - regarded appropriate institutions three years ago, and they still are today. There seems to be a certain appreciation to settle family disputes within the village. Although state institutions may potentially resolve family disputes, the shame that taking a case there would entail, constraints people to do so: "First we are trying to solve the problem in the village then if we could not solve we refer it to the government. Because it is shame for us to send the problem of our family to an outsider".[130]

Based on the empirical data, we need to conclude that those cultural structures have not changed significantly. Due to these cultural barriers women still have strong incentives to not act at all upon offenses, solve disputes within the village, or to approach a justice provider through a male proxy. In general one could say that that some women may have been empowered to deal with their disputes, however not necessarily to take those disputes to formal justice institutions. They may be empowered to deal with it within the boundaries of her village.

I have been cautious to draw conclusions here because the research instrument has not addressed perceived changes in specific cultural features, only general statements of change or non-change about how people deal with a family dispute as described in the scenario. Further research specifically focused on changes in the cultural dimension would be necessary to draw more in-depth conclusions on how cultural features of the opportunity structures have, or have not, changed.

5.7 Limited knowledge and awareness of formal justice provision

As mentioned in the previous chapter, the knowledge about formal justice institutions seems to shape whether people would approach local elders or governmental institution in the

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[129] It has to be noted here, that there may be a financial incentive for the chairman of the peace council to portray the achievements of CPAU peace councils too positively. So such a statement should be weighted carefully, as the organisation who is asking the questions, is the same as the organisation supporting his community council.

[130] Com. Int. code: Tamim 18

district. The Dutch IPM workers generally claim that the awareness of Afghan state law and the profile of *huqooq* offices have been improved. The evidence indeed suggests that segments of the population are more aware of their rights according to state law than they used to be three years ago. A female respondent stated:

Yes if this situation had happened three years ago women could not do anything because they didn't know about their right but they know about there right now and can defense from it and decide that want to live with her husband or want to be divorced.[131]

In other words, now that some women of the population have more awareness of their rights under Afghan state law, they have better opportunities to defend those rights.

As Bedner & Vel (2010) point out, awareness or self-confidence with regard to a certain perceived injustice is the first step for people in the process of getting access to justice. The notion that some perceived injustice refers to a normative framework that may protect a person, could be seen as an early stage in finding dispute resolution. For that matter, the evidence of this study indicates that some people are better aware of their rights. As a farmer points out with regard to the first scenario: "If this situation was happening three years ago, at that time the people did not have information about related formal organs/agencies to address the problem. After taking workshops they now have more information than before".[132] So this respondent[133] indeed claims that through workshops people have more information than before. I would argue that knowing your rights indicates a change in the opportunity structure. Knowing as person that your basic rights are – according to Afghan state law – violated, seems one of the first steps to accessing justice provision.

Based on the responses in our questionnaire, it seems indeed likely that the Dutch IPM has impacted the information available on Afghan state law and the awareness of certain basic rights accordingly. As a forty-five year old women points out: "Three years ago the people were not aware of such institutions or it was not available on that time, but today the women refer to the justice offices".[134] So both the knowledge about where institutions are and the knowledge on state law seem to be increased for some of our respondents.

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[131] Com. Int. code: Myriam 01
[132] Com. Int. code: Reza 03
[133] This person was from the government controlled area with a CPAU peace council installed. As mentioned in the methodological section, there may be a financial incentive for this person to portray the achievements of CPAU peace councils too positively.
[134] Com. Int. code: Hameed 10

The claims made by several of the government officials involved in the IPM about legal awareness seem to be fair for that matter. As one of the IPM workers points out:

So if you talk about the awareness in rural areas before the mission had started: it was absent. The local population was not aware of Afghan state law. I think people now know a little bit more, but there is still a long way to go. [135]

The radio broadcastings and school programs[136] may explain why some of our respondents have more knowledge on state law. Similar to several other respondents, one of the community members points out: "yes before people haven't had access to media and haven't trained as well but currently it is changed".[137]

Although these findings seem to indicate a positive change in the opportunity structures to find justice, we need to put those in perspective. As Bedner & Vel (2010) point out, the process of accessing justice can be explained by analyzing several stages, from the beginning till the end. The very fact that some people have more awareness about state law does not necessarily mean that they have the ability to solve disputes. According to Bedner & Vel (2010) access to justice exists if:

- *People, notably poor and disadvantaged,*
- *Suffering from injustices*
- *Have the ability*
- *To make their grievances be listened to*
- *And to obtain proper treatment of their grievances*
- *By state or non-state institutions*
- *Leading to redress of those injustices*
- *On the basis of rules or principles of state law, religious law or customary law*
- *In accordance with the rule of law*

These stages show us how delicate and comprehensive the whole process actually may be. In other words, part of the process but not the full resolution is people recognizing that they have been treated unfairly according to state law.

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[135] IPM Int. Code: PRT 04. Original Dutch statement: "Dus als je het hebt over bewustzijn in rurale gebieden voordat de missie begon, dan was die er niet. De lokale bevolking was niet op de hoogte van Afghaanse wetten. Ik denk dat men nu iets beter op de hoogte is, maar we zijn er nog lang niet".
[136] IPM Int. code: PRT 03
[137] Com. Int. code: Myriam 18

Moreover, knowing more about state law does not necessarily induce a change of behavior. Despite the fact that community members may be better informed, they still face other unchanged barriers with regard to using formal institutions, as explained throughout this thesis. This may explain why people know more about state law and state institutions, but nevertheless use informal justice. On top of that, no evidence was found to indicate that having the verdicts of informal justice incorporated into Afghan state law induces a change in the use of justice. There was, for example, not a single respondent who argued that an institution would be used *because* of human rights or the content of state law. The question that has to be raised here, is why? Maybe the questionnaire should have involved more precise questions with regard to the content of verdicts offered by the various institutions. It could also mean that such content does not matter in the perception of our respondents.

Drawing from international human rights treaties, Afghan state law and international human rights law, the IPM has firmly put itself in a normative position where every verdict that is not in line with these laws, is regarded illegitimate. As one of the Dutch officials pointed out: "It is alright as long as the law and justice come together. Justice then refers to the Universal Declaration of Human Rights. It is possible that those two come together".[138] What the Dutch have tried to establish with regard to local councils for example is to draw boundaries of Afghan state law into the verdicts of the local *shuras*. There is, however, no sign that the local populations would have incentives to start using these institutions *because* they are now better in line with state law.

5.8 Conclusion

This chapter has shown that people continue to use informal justice, despite the claimed improvements of the Dutch IPM workers, because the use of justice provision is shaped by several opportunity structures that have not been addressed or have insufficiently changed. The structure of 'legal pluralism' has been addressed due to the establishment of new CPAU peace councils. This, however, has not changed legal pluralism into a single normative and legal order, nor has it changed the incentives to use informal justice. Secondly, territorial control was contested in Kunduz before the mission and it still is today. Third, this study has indicated that disputants may still have significant opportunities to influence justice outcomes, both in formal and informal justice. This structure seems insufficiently changed.

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[138] IPM Int. code: PRT 04. Original Dutch statement: "Het is prima zolang het recht en rechtvaardigheid samenkomen. En rechtvaardigheid slaat dan terug op de universele verklaring voor de rechten van de mens. Het kan dus zijn dat die samenkomen".

Fourth, the limited capacity of formal justice to provide quick solutions, and the timely way in which informal justice providers are seen to handle disputes has insufficiently changed.

Furthermore, other barriers to the use of formal justice have not sufficiently changed to indicate a change in the use of informal justice. As this study has asserted, geographical proximity is one the features of the opportunity structure that plausibly explains why people use formal or informal justice. The evidence indicates that formal justice provision has not sufficiently become more approximate to populations outside of the district center. Although some changes are recorded, it seems to remain culturally inappropriate for a woman to try and solve a dispute in the formal system. The only barrier that seems sufficiently changed to prove a real change in the perceptions of the respondents in this study, is legal awareness. The Dutch IPM has impacted the information available on Afghan state law and the awareness of certain basic rights accordingly. Although these findings seems to indicate a positive change in the opportunity structures to find justice, we need to put those in perspective. Awareness alone does not create an environment in which populations will start using formal justice, instead of informal justice.

To conclude, despite the claimed improvement on the themes of legal awareness, formal justice, informal justice and access to justice, the opportunity structures that plausibly shape the use of justice provision, have not sufficiently changed. This is to explain that the efforts of the Dutch IPM may have been successful according to its own measurements, but have not sufficiently changed the structures that shape the pre-dominant use of informal justice.

6 Conclusion and discussion

This thesis has examined the opportunity structures that plausibly explain why a majority of the population in Kunduz continues to use informal justice, despite the claimed improvements of Dutch police trainers and government officials with regard to re-establishing and reforming the formal justice sector. As a case study, the purpose of this conclusion is not to make (frequency) generalizations of the whole of Afghanistan, or even Kunduz province, but instead, to give an in-depth analytical understanding of the dynamics of justice provision in the context of irregular warfare and legal pluralism.

The thesis has shown that several unaddressed, or insufficiently changed opportunity structures explain why local populations in Kunduz continue to use informal justice, despite the efforts of the Dutch IPM. The Afghan state does not possess a monopoly on the legitimate use of force, nor does it possess a 'monopoly on the provision of justice'. In the context of legal pluralism, justice is provided by a variety of local (conflictive) political actors. In territories outside of governmental control, non-state actors function as the *de facto* providers of governance and justice. Actors with territorial control or sufficient political capital are able to provide and implement justice, whereas the provision of justice helps them to maintain territorial control or increase their political capital. It is a vicious cycle. Local actors are therefore able to claim the provision of justice in several areas of the province, and limit or even exclude the provision of formal justice.

Governance and the provision of justice are not clearly separated in local-level realities: the same actors involved in local politics are involved in the provision of justice. Justice provision is, in areas investigated for this study, political, and per definition not impartial. Both formal and informal justice can effectively be influenced by 'good connections to powerful people' and money. Some people are therefore able to "shop" for their preferred justice outcome. Money is particularly effective in formal justice, good connections in informal justice. Good connections, however, seem to trump money alone. Community members therefore have incentives to collaborate with the powerful people in their village, as they may support them with the justice outcomes they prefer.

There is an appreciation among community members for quick, effective and implemented solutions over official verdicts because it prevents the escalation of disputes into violent conflict and insecurity. Local elders, *shuras/jirgas* and *mullahs* are regarded as the most capable for restoring community harmony, both in government and non-government controlled territory. Outside of government controlled territory, there is an appreciation for local armed actors such as the *arbakai* and the Taliban who have the capacity to effectively

implement justice-related decisions and therefore maintain stability in the area. Formal justice is regarded as slow and ineffective in restoring community harmony. At least some of the informal mechanisms in place therefore provide justice that is better responding to local needs and more effectively implemented.

For rural populations, formal justice is far away and requires traveling long distances, both in government and non-government controlled territory. Community members may therefore have strong incentives to use justice provided by the informal actors that are geographically near.

For women it is more difficult to use justice provision than for men. Women are often not allowed out of their village or even out of their homes. It may pose shame on the whole family if a case involving a woman becomes public, particularly when brought to the formal justice sector.

With the emphasis on capacity building in the formal sector and the incorporation of informal procedures into state law, the Dutch IPM has emphasised state capacity building. This has insufficiently changed the structures that shape the *use* of informal justice. The claimed improvements of the IPM workers have not impacted most of the identified opportunity structures. Legal pluralism still exists today, and the establishment of local peace councils even enforces the use of informal justice. The territories are still contested and non-state actors possess enough political capital to provide justice in several parts of the province. Informal bodies are still able to offer quick and needs-responsive solutions that are appreciated by community members. Cultural constrains for women remain intact, and informal justice has remained more geographically convenient for rural populations.

The only significant identified impact of the Dutch IPM on the use of informal justice is the information available on Afghan state law and the awareness of basic rights among some of the population. Awareness alone, however, has not created an environment in which populations have the ability or incentives to stop using informal justice, and start using formal justice.

6.1 Discussion

If we consider that statebuilding and judicial reform have been aimed at building a state that is more capable of controlling and governing its territory and providing justice to its population, this study shows that even with a severe dedication of resources, the possibilities for external actors to do so are limited. Despite institution building and capacity building, people continue to use informal justice. This study has brought the concept of contested territorial control into the debate on 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. Moreover, this research has indicated 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 unchanged.

The findings of this study also stipulate that the debate on judicial reform in fragile states, should recognise the inherent political dimension of international engagement when working in a context of irregular warfare. If the justice providers are the same actors as the armed political actors that fight for territorial control, justice provision may easily become part of the strategy to capture popular support. Reforming and rebuilding state structures does not change the incentives for local populations to collaborate and use the justice provided by the approximate actors in their village. Expecting a change in the use of informal justice by 'only' raising awareness, mentoring judges, prosecutors, lawyers and improving judicial infrastructure, then seems inadequate.

Baker, Scheye and other scholars have pointed out that international engagement in fragile states should emphasise the delivery of effective services according to the needs of local people. This study has indicated that non-state actors in the informal justice sector effectively take up state functions in communities where the government is not involved. Influential non-state actors in Kunduz may indeed offer themselves as ''hybrid'' providers of public goods as Debiel & Lambach (2009) have argued. By doing so, they position themselves as 'functional equivalents' of the state. Conforming this argument, the establishment of local (informal) peace councils in Kunduz province seems to have yielded the most positive results from a user's needs perspective. This has shown an effective way to nevertheless reach out to populations outside of government-controlled territory.

6.2 Further research

- First of all, to improve the impact assessment of the Dutch IPM on the dynamics of justice provision requires follow-up assessments in the next couple of years. As explained in the methodology section, the impact or change in the perception of community members may become apparent after several years.

- Further research specifically focussed on changes in the cultural dimension is necessary to draw more in-depth conclusions on how cultural features of the opportunity structures may have (or may not have) changed. Particularly how shame and honor affect the dynamics of justice provision have remained large under-researched in this province. The data of this research has yielded insufficient data to support valid claims on these topics.

- A specific comparative study on the differences between urban and rural Kunduz would shape a more complete picture of how geographical presence may affect the dynamics of justice provision in Kunduz. Such an approach would give better insight into some of the differences identified in this study.

- Future research should be conducted with a broader scope on how international actors in general have affected territorial control in Kunduz – such as the German forces. This could give more clarity on the effects of the international community as a whole, beyond the scope of the Dutch IPM alone. Also it would allow us to make a comparative impact assessment of the different approaches used by various international actors.

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7 APPENDIXES

7.1 Community questionnaire

7.1.1 Quoted respondents

Interview code (in order of occurrence in the text)	Gender	Age	Date of the interview	District	Position in the community	Territorial control
Reza 03	Male	65	2-6-2013	Ali Abad	Farmer	government
Hameed 07	Female	20	5-6-2013	Ali Abad	Teacher	government
Hameed 09	Male	70	6-6-2013	Ali Abad	Farmer	Taliban
Hameed 22	Male	48	6-6-2013	Ali Abad	Jihadi commander	Taliban
Tamim 11	Male	47	6-6-2013	Ali Abad	Local people	Taliban
Tamim 23	Male	65	6-6-2013	Ali Abad	Elder	Taliban
Hameed 27	Male	60	4-6-2013	Qal-e-Zal	Council member	government
Maryam 12	Male	48	4-6-2013	Qal-e-Zal	Council member	Arbakai
Hameed 15	Female	48	6-6-2013	Ali Abad	House wife	government
Maryam 17	Male	39	4-6-2013	Qal-e-Zal	Farmer	government
Tamim 08	Male	49	5-6-2013	Qal-e-Zal	Shopkeeper	Arbakai
Reza 07	Male	45	5-6-2013	Qal-e-Zal	Shopkeeper	government
Reza 11	Male	37	6-6-2013	Ali Abad	Ethnic influential person	Taliban
Maryam 05	Male	55	4-6-2013	Qal-e-Zal	Shepard	Arbakai
Maryam 06	Male	63	4-6-2013	Qal-e-Zal	Farmer	government
Hameed 11	Male	45	6-6-2013	Ali Abad	Farmer	Taliban
Hameed 18	Female	20	5-6-2013	Ali Abad	House wife	government
Hameed 38	Male	57	6-6-2013	Ali Abad	Mullah	Taliban
Maryam 07	Male	37	4-6-2013	Qal-e-Zal	CDC deputy	Arbakai
Reza 04	Male	45	6-6-2013	Ali Abad	Farmer	Taliban
Reza 06	Male	59	6-6-2013	Ali Abad	Ethnic elder	Taliban
Maryam 03	Male	27	5-6-2013	Qal-e-Zal	unknown	Arbakai
Tamim 28	Male	55	5-6-2013	Ali Abad	Elder	Taliban
Reza 05	Male	59	6-6-2013	Ali Abad	Ethnic elder	Contested
Tamim 18	Male	55	4-6-2013	Ali Abad	Elder	Taliban
Hameed 01	Male	57	4-6-2013	Qal-e-Zal	Elder	government
Reza 08	Male	50	3-6-2013	Ali Abad	Chairman peace council	government
Hameed 14	Female	20	4-6-2013	Ali Abad	Council member	government
Hameed 19	Male	30	5-6-2013	Qal-e-Zal	Shopkeeper	Arbakai
Hameed 02	Male	56	4-6-2013	Qal-e-Zal	Head of the village	Arbakai
Hameed 21	Female	27	8-6-2013	Ali Abad	House wife	Arbakai
Hameed 05	Male	27	4-6-2013	Qal-e-Zal	Carpenter	Arbakai
Hameed 20	Female	50	8-6-2013	Ali Abad	House wife	Arbakai
Tamim 29	Male	32	3-6-2013	Ali Abad	livestock holder	Contested
Maryam 01	Female	35	5-6-2013	Ali Abad	unknown	government
Reza 08	Male	50	3-6-2013	Ali Abad	Chairman peace council	government
Tamim 18	Male	55	4-6-2013	Ali Abad	elder	Taliban
Reza 03	Male	65	2-6-2013	Ali Abad	Farmer	government
Tamim 16	male	55	3-6-2013	Ali Abad	CDC member	government

Interview number	
District name	
Village name	
Sub-Village name	
Date of the interview	........./........./2013
Interviewer name(s)	
The respondent's sex/gender	Male Female
Age	
Years living in the village	
Position in the community	
Levels of education obtained (Don't tell them answers. Please circle all that apply.)	No school Some primary school Completed primary school Some secondary school Completed secondary school Some high school Completed high school University Trade School Madrassa/Religious school
What ethnic group or groups do you belong to? [Circle all that apply]	Tajik Uzbek Pashtun Hazara Turkmen Arab Other: ……..
Does your household own land?	Yes No
Does your household own more land or less land than the average household in the village?	More Average Less
How many people work on the land?	1-10 11-50 51 or more
Is that more or less people working on that land than the average household in your village?	More Average Less

Situation A

The situation is about a girl named Amena who is 20 years old. She is married with a drug-addicted man. She is his second wife. As the husband is an addicted person, he always uses bad behaviour towards her. One day he is on drugs again, he fights with her and beats her up badly.

1. Imagine this happened in one of your neighbors' houses, what happens next? Please tell me step by step.

2. Is there anything else that's important to hear about this story that I missed?

3. Why is it like this?

4. Would it be different if she was his first wife? If so, why?

5. Are there other things that would change the outcome? If so, why?

6. Would it be different if this situation had happened three years ago?

7. And before that, during the Taliban regime, would the problem be dealt with differently?

8. Do you think that was better or worse? Why?

10. In your village, is there a specific person or institution that women in Amena's position could approach to resolve her problem?

	Is there a specific person or institution she can approach to solve her problem?	Why this specific person or institution?	Will this person or institution resolve her problem? Why (not)?
	Yes she can …		
	Or she can …		
	Or she can …		

11. In your village, is there a specific person or institution that women in Amena's position can probably not approach to resolve her problem? Why not?

	Is there a specific person or institution she can probably not approach?	Why not?
	She can not …	
	She can not …	
	She can not …	

12. What else *should* be there for Amena to solve her problem?

Situation B:

[ASK THE REPONDENT TO LISTEN CAREFULLY TO THE DETAILS OF THIS STORY]:

Mohammad and Qasab are both farmers and they are each other's neighbors. Qasab owns far more acres of land than Mohammad and also he has very good connections to the village authorities. Mohammad does not have good connections to powerful people and is poor. They are not relatives.

As Mohammad was not in Afghanistan for a month, Qasab extends his own land further and confiscates all of Mohammad's land. When Mohammad comes back to the country he sees Qasab using his land. He requests his own land back, but Qasab would not submit it to him. Both of them start to argue that they are treating each other unfairly.

1. Imagine this happened in your village, what happens next? Please tell me step by step.

2. Is there anything else that's important to hear about this story that I missed?

3. Why is this what happens next?

4. Would it be different if Mohammad had good connections to powerful people in the area? If so, why and what kind of people?

5. Would it be different if Mohammad was one of the rich persons in the village? Why (not)?

6. Are there other things that would change the outcome? If so, why?

7. Would the steps be different if this situation had happened three years ago?

8. And before that, during the Taliban regime, would the problem be dealt with differently?

9. Do you think that was better or worse? Why?

10. If a situation like this happens in your village, is there a specific person or institution that somebody in Mohammad's position could approach to resolve his problem?

Is there a specific person or institution he can approach to solve her problem?	Why this specific person or institution?	Will this person or institution be able to solve his problem? Why (not)?
Yes he can …		
Or he can …		
Or he can …		

11. If a situation like this happens in your village, is there a specific person or institution that he cannot approach to resolve his problem? Why not?

Is there a specific person or institution he can probably not approach?	Why not?
He can not …	
He can not …	
He can not …	

12. What other ways *should* be there for Mohammad to solve his problem?

7.2 IPM questionnaire

7.2.1 Respondents

Interview code	Date of the interview	Location	Occupation
PRT01	8-5-2013	PRT KUNDUZ	IPM worker
PRT02N	8-5-2013	PRT KUNDUZ	IPM worker
PRT03	9-5-2013	PRT KUNDUZ	IPM worker
PRT04	9-5-2013	PRT KUNDUZ	IPM worker
PRT05	10-5-2013	PRT KUNDUZ	IPM worker
PRT06	10-5-2013	PRT KUNDUZ	IPM worker
PRT07	11-5-2013	PRT KUNDUZ	IPM worker

7.2.2 Template

Interview nr.	
Geslacht	
Locatie	
Datum	
Tijd	
Functie + duur functie	
Verantwoordelijkheden	
Met welke actoren heeft u contact vanuit deze functie?	
Was u daarvoor op een andere manier betrokken bij Afghanistan? Zo ja, hoe?	

Rechtssystemen Kunduz

Bewustzijn

- **Situatie voor de missie** (Welk rechtssysteem / welke groepen / welke rechten)

- **Nederlandse interventie** (Wat gedaan / waarom zo / (on)eens met de aanpak)

- **Resultaat** (Verbetering / welk rechtssysteem / welke groepen / bron)

Formele sector

- **Situatie voor de missie** (situatie / problemen / oorzaken)

- **Nederlandse interventie** (Wat gedaan / waarom zo / (on)eens met de aanpak)

- **Resultaat** (Verbetering / welke onderdelen nu effectief / welke groepen / bron)

Informele rechtspraak

- **Situatie voor de missie** (situatie / problemen / oorzaken)

- **Nederlandse interventie** (Wat gedaan / waarom zo / (on)eens met de aanpak)

- **Resultaat** (Verbetering / welke onderdelen nu effectief / welke groepen / bron)

Toegang tot rechtspraak

- **Situatie voor de missie** (situatie / problemen / oorzaken)

- **Nederlandse interventie** (Wat gedaan / waarom zo / (on)eens met de aanpak)

- **Resultaat** (Verbetering / welke onderdelen / welke groepen / bron)

Eric Scheye - 80 tot 90 procent buiten de formele sector. Voornamelijk in afgelegen gebieden.
Wat is uw mening hierover?
In publieke uitlatingen focus op formeel recht. Wat is uw mening?

Succes?
(terugblik / politie / justitie / definitie van succes / overall succes?)

TEN SLOTTE:
Eigen onderwerpen / inbreng ?

7.3 Village observation form

(To be filled out by each team of surveyors in each village they visit)

Time and date of the observation: .... AM/PM ..../......../ 2013	
Name district:	
Name village:	

Name village:	**Population (approximately):**
	Altitude: ....meters
	Ethnic groups apparent:
	Shura: YES/NO
	Peace Council: YES/NO
	Main powerful group:
	2nd powerful group:
	3rd powerful group:
	Distance to Kunduz City in hours: .... hours by …….………..
	Main economic activities in the village:
	What does the village look like?
	How many people do you see in the streets?
	How would you describe the interaction of the people you see in the streets?
	Amount of surveys conducted:
	Survey numbers:

7.4 Personal experience

"Take your expectations. Cut them in half. And be glad when you get half of that". [139]

First of all, I realized that doing field research in a conflict situation is something completely different from only doing literature research about such an area. I had done several research projects during my bachelor, but only in the Netherlands under relatively easy conditions. Doing research in Afghanistan is working in a whole different league. The conditions for research are so hard in many different ways that probably the most useful question that I as a researcher can ask myself is: "what can we know given the limitations of doing research in Kunduz?" Or as Peter Tamas put it during his workshop to CPAU researchers: "when I am teaching research methods in the Netherlands I start by asking: 'what is your question?' Now that I am teaching here, I start with: 'what can we know?'

7.4.1 *Different organizational standards*

During our preparation in the Netherlands, we assumed that Afghan NGOs would have an archive where all the data of the past years would be stored. Based on this assumption, as every research organization in the Netherlands would have such a central database, we designed a research method involving renewed analysis of already available raw data. As soon as we got to Kabul, we asked several staff members about the data. Turns out that some of the raw data from previous reports has disappeared along with old staff members. Instead of building a central database, every researcher has raw data on his or her laptop and many of the previous employees fled or got fired, leaving none of that data behind. In other words, if you start working with an organization in a conflict zone like Afghanistan, do not assume that they have the same organizational standards as a first-world country.

It is also important to acknowledge that the hierarchical and consensual structure within the NGO we worked with has posed limitations to the research process. Several times when me and Dirkx needed something, we had to go up the chain of command to get it. It seems that the staff was mainly dedicated to follow the order of superiors. In order to work within this structure Peter Tamas has suggested inviting the different research staff to think critically and creatively with us on the process of data gathering and identification of research topics. Which worked out quite well with the research staff, we have been

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[139] Peter Tamas, 2013, qualitative researcher in crisis situations, long-term experience with doing research in Afghanistan.

cooperative towards each other and in the end they decided several steps in the research process too.

7.4.2   Financial dependency on the donor, research standards

During our preparation in the Netherlands, we used several reports of different IO's and NGO's working in Afghanistan. Getting a little bit deeper into what people write about Afghanistan, we started the question some of these reports like a critical student is supposed to do, however we still used several of these finding to create an understanding of what is going on. Not being in the country, one needs some sort of reference point to begin with. One of these reports was a progress report, based on data in the baseline report. We asked the researchers who worked on that report to do some analysis together over the data from both years, to find interesting patterns. Turns out that a bunch of the raw data is missing, meaning they wrote the second report not on comparing raw data, but on comparing raw data to what was written in the first report. In other words, they did not exactly make an appropriate comparison and it is nowhere in the methodology accounted for. As I understood, and this is speculation with some certainty, they did not want to make this lack of evidence explicit, because it would have turned the report invalid, hence, their contract may be ended. The contract for this project was the only long-term contract that they had, so it was important for the existence of the organization to keep it.

What this example shows us is the dependent relationship between the donor and a local NGO. Second it shows us that the dependent relationship may have negative effects on the research standards that such an NGO follows. What I as a researcher learned from this, is that there may be high financial incentives for a research NGO in a third-world country to neglect basic research standards, as in the situation described above. Hence, cooperation with such an organization demands, as much insight into their research process as possible, and also the output of such an organization should be weighted carefully.

7.4.3   Reliability of field surveyors

The financial incentive mentioned above does not only work on the organizational level, it also counts for the individual level. Afghanistan is in the top-3 of most corrupt nations in the world. Being back home, this is a very abstract notion. Experiencing an Afghan organization however, has turned this into a practical understanding. As one of our trusted researchers told us during a workshop, he used to work for a larger research organization. During his employment he was asked to conduct focus group interviews in Kandahar province. He was allowed to fly there, so he asked for the money and told his boss that he would buy the ticket himself. However, what he did in reality: he conducted focus groups in Kabul and he kept

the money for the flight ticket to himself. Nobody from the organization ever found out. The striking part of this story is that he seemed an honest and trustworthy employee. Once again, what I as researcher learned from this, is not that 'all Afghans are untrustworthy', but rather that people who work in conflict zones, or in third-world countries, may have stronger financial incentives than I as a researcher would expect at first sight. That means that even if everything on the organizational level works out fine, I as a researcher I should be very cautious with regard to the reliability of surveyors in the field.

A solution to that, as Peter has pointed out, is twofold. At the one hand it is important to have effective control mechanism installed. A complete accounting for the whole process and day-to-day contact with field researcher will make the chance smaller that surveyors will be cheating with the interviews. Also an extensive debriefing may be useful for that matter. CPAU for example has worked on an extensive field guide that will be followed in all future research projects, making every step that people in the field take explicit.

However, not everything can effectively be controlled in the field. So from that point of view, the best way to go is always to build up trust. This is, of course difficult to establish from the other side of the world. So as a researcher it is therefore always better to involve yourself with local researchers personally if possible. Talking with them, asking for their ideas may create a situation where they feel more ownership over the whole research process.

7.4.4 Context sensitive research instruments

Working in the Netherlands on our research proposal, we came up with several ideas on what we wanted know, and how we could attain that knowledge. The practice in the field however, is very different. Developing the research instrument in Kabul, I picked up a scenario from the CPAU database:

The situation is about Sami and Adila, they are brother in law and sister in law. Sami went to a room in Adilas' house to take a power bar. When Adila asked him not to do that, as the children were watching TV, and because of this would have to go outside and play in the cold where they might become ill. Sami did not agree with her request and instead he beat her and took the adapter away.

What is wrong with this scenario? One of the CPAU researchers said to me: "people will not understand". I asked him why, because to me the scenario seemed rather straightforward. He told me: "people in the villages will not know what a 'power bar' is, because they do not have any". This is a simple example out of many, of how my knowledge as a foreign

researcher is limited and inferior in several aspects to that of local researchers. Developing a good questionnaire therefore, asks for the involvement of locals. If I as a researcher would not involve local researchers, it is pretty sure that the data will be affected by a lack of cultural sensitivity. I would be asking questions that people do not understand, or would be culturally sensitive leading them to tell lies or avoid the rest of the interview. So in other words, it is very important to be sensitive to the environment in which data will be collected.

Another experience was while running the test for Toon's research instrument. There was a question about the activities of *arbakai* and a question about the responsibilities of *arbakai*. Linguistically, in English there is a clear difference between 'activities' and 'responsibilities'. Running the test in Afghanistan taught us, that people do not understand the difference between those two words. Separation of these two questions, in the Afghan context, does not make sense. This is something that a foreign researcher can only find out by testing his or her instrument in the local context. Running such a test will make the instrument more adequate and give better results.

Striking for that matter is also that so much value is added to quantitative research in such a context. If you do not fully comprehend the meaning that responds may add to a concept as justice, justice system or dispute resolution. How could you ask a question like: "does the police bring justice in your life?" I would argue that an answer to such a question tells you nothing. The only way to work with such a concept, as I experienced now, is to break it down and operationalize it to its fullest. However, that is only possible based on knowledge of local conceptions on justice. Which then, either requires a researcher to start with qualitative research, or to base the operationalization on previous qualitative research in that area on that topic.

7.4.5   *Reliability of reports*

Another experience related to the donor-NGO relationship is that the terms of reference set out by the donor, heavily affect the outcome of research. With regard to the rule of law in Kunduz, the Dutch embassy has made the reference for the evaluation clear on putting an emphasis on police-work. Consequently, the survey among community members involved an emphasis on the security and justice activities of policemen. Whereas in fact, in large parts of the province these actors do not matter much in power structures or cannot even visit due to the security situation. So if we are genuinely interested in the security situation, these terms of reference may very well delude the result of this research. Putting it differently, because the donor pays, the donor decides the research focus. Hence, the donor shapes, at

least partly, what social representation of the reality the 'independent' research organization is going to make.

Also methodologically, it is worth to note that the questions regarding dispute resolution are asked in the same questionnaire as the questions about the police. What I, together with my colleagues learned is that in these answers the idea of thinking about police is already planted in people's minds by previous questions. So if you subsequently ask, who do you approach in case of an dispute, the respondent is more likely respond with something about the police than for example alternative justice, or for example just 'his uncle'. This is only to show how terms of reference set out by the donor may influence the research results.

7.4.6   Political sensitivity of the project

The Kunduz mission has been a sensitive topic in Dutch national politics. Hence, the research that I am doing is embedded in a political sensitive context. This is something that we experienced in most of the encounters with the Dutch Ministry of Foreign Affairs. One example is a high-level government official who stressed that we should very well be aware of the word 'fighting'. He stressed that Afghan community members would probably mention this word far more often than the Dutch would do. He moreover explained to us, that 'fighting' in the Afghan context means something different from what Dutch people may understand by the same word. Although this remark on itself seems nothing more than a first-year anthropology lesson, in the political context I believe that a remark like this is significant. Apparently, this diplomat cares about the wording we will use in our reports.

What I learned from this is that with such a politically sensitive research topic, one should understand that the story that people tell might very well be a strategic story. In other words, the representation of the social reality that they present is not only shaped by their own interpretation, and it is also shaped by their political strategy. Typically, it is framed in a particular manner and I believe that is also how it should be understood. Which moreover strengthens my epistemological stance that an objective picture of reality is impossible to obtain, the only thing we can know is different perceptions of social reality.

7.4.7   The research is as solid as its weakest link

What the above has also taught me is that the whole research chain should be solid. As a musician, I know that and old saying goes that a band is as good as its weakest musician. In research, the outcome of a study is as solid as its weakest link. Especially by doing research in a conflict situation like Afghanistan, there are many parts of the chain that can cause serious problems of reliability. One of the examples that came up during the workshop with

the CPAU researchers is about a rural village in Kunduz. One of the researchers asks the local gatekeeper, a *mullah*, if they could interview some of the people in his village. The *mullah* says yes, and picks ten people from the village to talk to them, only men. What does the surveyor do? A possibility is that he would just interview these ten people and leave and nobody involved in the analysis or writing of report would ever found out that the local *mullah* shaped the selection of respondents. Hence, the ones doing analysis and writing the report would go with data, which is not adequately understood. As a consequence, the report makes claims over a population or phenomenon that is inadequate without knowing it. From a researchers' point of view, this shows how important it is to control the whole chain of research and have the whole choosing and thinking process of field research accounted for. If the field researchers would note that they only interviewed those people that the *mullah* picked, the analysis would be more adequate and lead to less distorted results.

At the same time, this feasibility issue is probably the most complicated one. What I learned from doing this kind of research, by that I mean in cooperation with a local NGO, is that it is a necessity, which makes research possible, but also far more complicated. As there is simply no secure way in which I as a Dutch blond blue eyed 1.95 cm tall guy could go into some Afghan villages without an escort of military personnel, let alone interviewing women. For that matter, the cooperation makes the research possible. At the same time working with local surveyors adds up several layers of interpretation to the data that I will eventually get. First, there is the initial instrument in English. Then the translator interprets the instrument and translates it into Dari. I explain the idea of the whole research and the instrument to one of the researchers in Kabul. He interprets my explanation, takes the Dari survey and explains what the field surveyors should do. The surveyors interpret his explanation and take the questionnaire to the field. They ask the questions and the respondents interpret the questions being asked. Then they survey interprets the answer given to him and writes it down. After that, the translator interprets the transcript and translates it into English. Finally I interpret the English document and write the report. As this whole chain shows, there are several layers of interpretation in this research. I am very well aware of this now, and therefore handle the result with care. However, if we look at other foreign reports on Afghanistan, I suppose that at least half the layers described above are also apparent. This is rarely explicitly accounted for. Which makes you wonder how reliable research actually is in such a context.