



# Traditional Justice in Afghanistan



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The role of the Afghan state justice institutions in maintaining rule of law and social orders is relatively weak. This particularly applies to rural Afghanistan, where almost 80% of the Afghan population lives in ( NHRDR 2008). Traditional justice system is active by default in many parts the country, being more powerfull in southern and eastern parts of the country where state justice institutions have nominal existence.

The system is composed of customary/tribal institutions of decision-making and dispute resolutions that incorporates the prevalent local customary law, institutionalised rituals and remediation. The members of these entities are village elders, influential leaders and sometime releiose leaders.

In larg part of rural Afghanistan especially south and east, more people rely on the traditional justice system than on the formal justice system. This is mainly because of the many challenges the formal justice system in communities are facing , particularly justice institutions outside of major towns. Many people view the formal justice system as foreign, corrupt, ineffective, expensive or geographically difficult to access. For these reasons, in many communities, traditional justice systems are used exclusively or at least far more frequently than the formal justice system. Traditional justice can be an effective way of managing disputes and maintaining peace and stability within communities.

The more community members share values and relationships (i.e., the more 'bounded' the community), the more effectively traditional justice can operate. Even in relatively unbounded communities (such as in major towns), people may prefer to use traditional justice to deal with certain types of issues, such as family and personal status issues, leaving the police to deal with criminal offences such as theft.

**Community-based mechanisms** to resolve conflicts and other “restorative justice” measures are increasingly viewed as a best practice across all social contexts. However, there is often a fundamental conflict between the values of the traditional justice system, which emphasises restitution and reconciliation, and a formal justice system which imposes sanctions and punishment.

International and national human rights obligations require that there be limits to the scope of the traditional justice system’s role, and fundamental rights to due process and fair punishment must be either respected by traditional justice systems or left to formal justice systems. It is important to delineate the roles of formal justice systems and traditional justice systems – e.g. through determining appropriate substantive jurisdictions for each, processes to avoid double jeopardy (where an offender is punished by both the formal justice system and traditional justice system), and appropriate sanctions to be used by these respective justice systems. Due to the weakness of the formal justice system in Afghanistan, however, in many communities traditional justice systems operate by default as the only justice system. Traditional justice mechanisms reflect the values of the communities in which they function. These values, however, are dynamic, and change over time. Community leaders are sometimes uncertain about how certain practices have come to be accepted in their communities – elders will say that the values are religious values, and religious leaders identify the same values as cultural, coming from the elders. This can occur particularly with harmful cultural practices, such as forced marriage, or payment of a girl as compensation or restitution (known as ‘bad’).

Village religious leaders, community leaders and elders rarely had any opportunity to learn about the Afghan legal system, or about legal and constitutional rights. Exposing community leaders to accurate information about rights can be very effective in removing misconceptions, both about Afghan laws and about the basis of traditional practices. Learning from our past experience, we have found it effective to approach these topics within the framework of the Afghan constitution and human rights according to Islam.

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*The governmnet recognizes that it must engage traditional justice actors— both to encourage and promote their strengths maintaining social orders while addressing their limitations and bad practices that violates human rights. The National Justice Sector Strategy of Afghanistan (NJSS) requires the development of a national policy on state relations with community dispute resolution mechanisms.*

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The approach pursued creates space for dialogue in communities about which values they should uphold, and whether changes in practices are required. These community discussions take time, but ultimately allow communities to have ownership over the results.

UNDP under the Justice and Human Rights in Afghanistan (JHRA) project engage with these local entities and provide them training and awareness on legal and constitutional rights of the Afghan people, and trying to harmonizing their work with the formal justice system.



*UNDP works closely with traditional justice actors building their capacity and awareness on legal and constitutional rights of the citizens. In 2007- 2009, UNDP through the Access to Justice at the District Level (AJDL) project trained 539 community leaders and representatives on topics such as personal status law, land law and rights of women and children. The trainings were provided in Baghlan, Badakhshan, Jawzjan, Kunduz, Nangahar, Samangan , Takhar, Balkh and Herat provinces.*

*The trainings provided to these community leaders aimed to convey the message of the peaceful settlement of the land related issues, abstaining from the traditions which violate the rights of citizens especially those of women, e.g. forced marriages of widows within the family, guaranteeing the respect to the property and ownership, especially the ownership rights of women and the role and duty of the community leaders in ensuring that the rights of the most vulnerable and needy in the community are respected.*



*In Samangan province a community leader, identified to UNDP monitoring staff a case of a young girl who was engaged to a man who already had a wife. When the girl found out that he was a married man, she refused to marry. The case went to Hazrat Sultan district court, however the man refused accepting the decision of the court. The court referred the case to the community and religious leaders and the man agreed to accept any decision made by them. The community leader who attended UNDP supported training noted that after the training he got, he is going to rule in favour of the girl and authorise a divorce for her.*