

Security and Justice in a Failed State Context

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The Effects of State Failure on Human Attitudes toward Formal Institutions concerned with
Justice and Security in Kunduz, Afghanistan

by

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A thesis submitted in partial fulfilment
of the requirements for the degree of:

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I hereby present my thesis in partial fulfilment of the requirements of the degree of Master of Science in Human Geography, with a specialisation in Conflicts, Territories and Identities. The research conducted for this thesis was done in Kunduz, Afghanistan, as part of the research for the baseline study of the evaluation of the Netherlands Integrated Police training Mission in Kunduz, Afghanistan.

In June 2011, I left for the first time for Afghanistan to work for an Afghan NGO; the Cooperation for Peace and Unity. It was a one month assignment, and I was to analyse local level disputes in Kunduz province and Takhar province in Northern Afghanistan. My work was published as two [unnamed] Local Conflict Trend Analysis Papers in early 2012.

When I returned to the Netherlands in July 2011, I was asked by the same Afghan NGO if I was interested in coming back to Kabul to work for them as a project manager. Together with an American colleague, Seth Peavey, I was responsible for managing the (field-)research related to the evaluation of the Netherlands Integrated Police training Mission in Kunduz, Afghanistan. As a project manager, I was directly involved in and partly responsible for the research methods and instrument development; I was overseeing the field research team in Kunduz; and I was involved in analysing the data results and writing the first drafts of the baseline study.

My final assignment in Afghanistan was from January 2012 till March 2012. During this period I was working as an interim-manager on a literacy and education program for the Community Training Institute, which is part of the Afghan owned company CETENA GROUP. This program was funded by the Public Affairs Section of the US Embassy in Kabul, and it provided education to 10,000 students throughout the country (of whom 7,000 were women).

It was my thesis supervisor dr. Jair van der Lijn, who recommended I use the primary data that was collected for the NL-IPM baseline study, for my master thesis. He recommended doing so not only because I had contributed to collecting this primary data, but also because I was privileged enough to be able to work in that country on a number of research and development projects. I can only hope that the insights I have gained during my time in Afghanistan have positively contributed to the discussion and analysis of the data that underlies this thesis.

However, this research would not have been the same without the support from a number of persons. First I would like to thank the Afghan research team that helped with the collection and analysis of the primary data for the baseline study of the NL-IPM: Tamim Sharifzai, Samiullah Sabauoon, Rafi Yousafzai, Mohammad Mudaser, Shukria Azadmanesh, Ahmad Shah Momin, Akbar Ludin, Nazreen Quraishi, Qari Matullah, and Anisa Nehzat. Furthermore, this job could not have been done without the support and contributions made by my fellow project manager, Seth Peavey. Also, I would like to thank João Vasco Rodrigues, first secretary at the Royal Netherlands Embassy in Kabul, for his support, insights and trust in the research we were doing.

Finally, I would like to give special thanks to my three mentors during this research process; dr. Peter Tamas (Wageningen university and Research), dr. Mario Fumerton (Utrecht University) and dr. Jair van der Lijn (Radboud University Nijmegen). I would like to thank these three mentors for their trust, patience, insights and critiques both in Afghanistan and back home, in the Netherlands.

Executive Summary

This study centres on primary data that was collected for the baseline study of the Netherlands Integrated Police training Mission (NL-IPM) in Kunduz. The focus of this study is on how human attitudes toward formal institutions concerned with justice and security in peripheral Afghanistan are affected by state failure. It will be argued that three interacting and mutually reinforcing factors underlie the “failure” of the Afghan state. The first factor would concern the contested or de-monopolized provision of law and order. The second factor would concern the flawed or weak structural features of the institutions concerned with law and order. And the third factor would concern the historical opposition to formal, centralized institutions that is proclaimed to exist in rural or peripheral parts of the country. This study aims to investigate how these factors are perceived by rural or peripheral populations, or how they in turn affect the popular perception of formal institutional functioning.

Of central importance to formulating an answer to the research question underlying this thesis, is the theoretical concept of “subjective rationality”. This theoretical concept centres on the premises that even though human agents are rational in their decisions, their assessment of reality and its options are coloured by socially constituted “knowledge” and through the reflection or feedback on one’s own and other’s “experiences”. These factors are what distort a human agent’s rational assessment of institutional options. In effect, this study seeks to create a better understanding of human agency within Afghanistan’s justice and security system(s), by reflecting on 1) what are popularly considered socially and culturally preferable (inter)actions; and 2) what are the popularly proclaimed most effective institutional options.

This study will in fact argue there exists a large diversity among popular assessments of formal state functioning. Although a relatively large segment of the population has proclaimed there were institutional flaws and weaknesses present within the formal system, it will be argued that on an overall level the majority view of the

population was one that actually considered the state as being relatively capable, accessible, effective and efficient in terms of providing justice and security. In addition, it will be argued that no such thing exists as an overall (dominant) popular assessment of the formal justice and security system as being weak or failed – so even though there might be a popular opposition to state institutions, human agents turn out to be very pragmatic when they are in need of justice and security. In fact, the data results will show significantly large levels of popular preference for and popular confidence in civil institutions concerned with justice and security.

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Chapter I

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Introduction

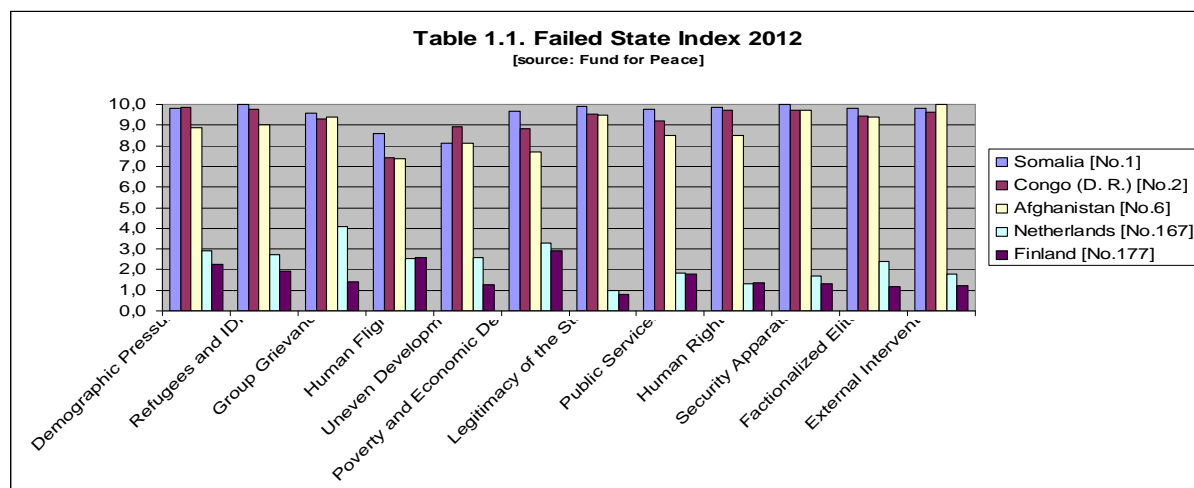
The “Failed” Afghan State and the Provision of Justice and Security

The incomplicancy of states with international norms of (good) governance and their inability and/or unwillingness to deliver “essential” political goods to its citizenry, has resulted in a growing body of studies dealing with the phenomenon of state failure (e.g. Englehart 2009; Hoeffler 2009; Malek 2006; Rotberg 2003; 2007). The breakdown of state institutions should not only be understood as the total collapse of institutions, as also their flawed or biased functioning is generally described as institutional decline – i.e. it is this biased or flawed functioning that is as likely to obstruct or hamper the provision of (essential) political goods (Rotberg 2003; 2007; 2010).

In international media and politics, as well as in Western academia, Afghanistan is often labelled a schoolbook example of a failed state (e.g. Djavadi 2009; François & Sud 2006; Mallaby 2002; Rotberg 2007; Vázquez 2012). Current explanations of Afghanistan as a prime case of a failed state, centre on the proclaimed break down of its formal institutions and the violent contestation of the state’s legal and political authority (e.g. Englehart 2010; Lafraie 2011; Nuruzzaman 2012). This image of Afghanistan as a failed state is being (re)confirmed annually when the Fund for Peace (2012) publishes its index ranking 177 countries worldwide based on their level of state failure. Their annual study focuses on social, economic and political pressures that these 177 countries have to cope with and how these pressures affect the state functions rendered.¹ For the last five years Afghanistan has ranked in the

1 The actual twelve indicators that are used by the Fund for Peace to measure these social, economic and political pressures that states have to cope with are the following: 1) Mounting demographic pressures; 2) Massive movement of refugees or internally-displaced persons (IDPs); 3) Legacy of vengeance-seeking group grievance or group paranoia; 4) Chronic and sustained human flight; 5) Uneven economic development along group lines; 6) Poverty and/or sharp or severe economic decline; 7) Criminalization and/or delegitimization of the state; 8) Progressive deterioration of public services; 9) Suspension or arbitrary application of the rule of law and widespread human rights abuse; 10) Security apparatus operates as a state within a state; 11) Rise of factionalized elites; 12) Intervention of other states or external political actors (FFP 2011a, 6-20). Countries

top ten of the Failed State's Index. On points such as the legitimacy of the state (score of 9.5 out of 10.0)², state and functioning of the security apparatus (score of 9.7 out of 10.0)³, existence of factionalized elites (score of 9.4 out of 10.0)⁴ and external interventions (score of 10.0 out of 10.0)⁵ Afghanistan scored exceptionally bad (see Table 1.1 for comparison with other failed and most stable states; source: FfP 2012a).



Three of the four points on which the Afghan state scored exceptionally badly are related to the provision of security and justice; i.e. the legitimacy of the state (and its institutions); the state and functioning of the security apparatus (which may be considered flawed or biased); and, the existence of factionalized elites (both within

receive grades for each indicator, with 1 meaning little problems/hardly any negative societal impacts and 10 meaning big problems/huge negative societal impacts.

2 This indicator measures the presence of: 1) -Massive and endemic corruption or profiteering by ruling elites; 2) -Resistance of ruling elites to transparency, accountability and political representation, revealed by scandals, investigative journalism, criminal prosecution or civil action; 3) -Widespread loss of popular confidence in state institutions and processes; 4) -Growth of crime syndicates linked to ruling elites (FfP 2011a, 14).

3 This indicator measures the presence of: 1) -Emergence of elite or praetorian guards loyal to a leader, that operate with impunity and by-pass the chain of command of regular armed forces; 2) -Emergence of state-sponsored or state supported "private militias" that terrorize political opponents, suspected "enemies," or civilians seen to be sympathetic to the opposition; 3) -Emergence of an "army within an army," secret intelligence units, or other irregular security forces that serve the interests of a political clique or leader; 4) -Armed resistance to the governing authority, violent uprisings and insurgencies, proliferation of independent militias, vigilantes, or mercenary groups that challenge the state's monopoly of the use of force (FfP 2011a, 18).

4 This indicator measures the presence of: 1) -Fragmentation of ruling elites and state institutions along ethnic, class, clan, racial or religious lines; 2) -Use of nationalistic political rhetoric by ruling elites, often in terms of communal irredentism (e.g., a "greater Serbia") or of communal solidarity (e.g., "ethnic cleansing" or "defending the faith"); 3) Absence of legitimate leadership widely accepted as representing the entire citizenry (FfP 2011a, 19).

5 This indicator measures the presence of: 1) -Military or paramilitary engagement, both covert and overt, in the internal affairs of the state at risk by outside armies, states, identity groups, or entities that affect the internal balance of power or the resolution of conflict; 2) -Economic intervention by outside powers, including multilateral organizations, through large-scale loans, development projects, or foreign aid, such as ongoing budget support, control of finances, or management of the state's economic policy, creating economic dependency; 3) -Humanitarian or strategic military intervention into an internal conflict or for regime change (FfP 2011a, 20).

the political system and contesting the authority of the formal system) (FfP 2011b; ICG 2007a; 2010). What should be acknowledged in the study of state failure, is that security and justice are generally considered *the* two paramount political goods for the prosperity and order of states (Rotberg 2003; Hoeffler 2009; Englehart 2009; Malek 2006). By security as a political good is meant the projection of state power, the state monopoly on violence and the freedom from criminal attacks (Rotberg 2007). Second to security, Robert Rotberg (2007, 86) identifies a 'predictable, recognizable, systematized method of adjudicating disputes and regulating both the norms and the prevailing mores of the society or societies in question' as a key political good.

When reflecting on the literature dealing with the flaws or biases that underlie the hampered or obstructed provision of justice and security to the Afghan population, the issues are generally proclaimed to concern: the criminalization of the Afghan police force; an ethnic and tribal imbalance in the Afghan police force and judicial system (encompassed by ethnic-tribal favouritism); a disrespect of individual rights by the Afghan police; persistent corruption within both the police force and the state courts; and a lack of independence of the Afghan police and formal courts (i.e. external actors trying to obstruct or influence the outcome of cases; e.g. warlords; politicians) (ICG 2007a; 2007b; 2008; 2010; Jensen 2011; Perito 2009; TI 2010; Wilder 2007). In effect these issues see themselves reflected in the Fund for Peace's *Country Profile: Afghanistan*, as it states that: the population has lost hope in the government and 'traditional tribal politics have superseded the central government's initiatives' (FfP 2012b). The Fund for Peace proclaims this is primarily due to that in the last decade(s) the 'country has seen little development as the central government has focussed its energies on combating its enemies' (FfP 2012b). However, one should note that the Afghan state is no Western state and that its development has brought forth several structural factors that should be taking into consideration when studying state failure in Afghanistan.

Structural Factors underlying the provision Justice and Security in a Failed Afghan State

The formal justice system in Afghanistan has experienced a multitude of influences over the last decades, hinting towards a somewhat circular development in the ideological basis of the formal legal system. Western legal thought (primarily French) was of great influence in the 1950s and 1960s, as state law was to gain prominence over *shari'a* law (Wardak 2004). And, when Marxists took control over the country in a coup in 1978, they tried to introduce a Soviet-style judicial system based on a radical Marxist ideology – though this Soviet-style system was unable to take root, as it was already rejected shortly after its implementation (Barfield 2010; Wardak 2004). After the withdrawal of the Soviet Union (in 1989) and the civil war that succeeded the collapse of the Soviet proxy-regime (i.e. Najibullah regime) in 1992, *shari'a* again was declared as the basis of the state – first by the mujahedeen and later on it was fermented by the Taliban (Wardak 2004). After the Taliban regime was ousted from power, the Bonn Agreement foresaw a prominent role for the 1964 constitution in the post-Taliban legal order. And, with the 1964 constitution as a basis, the new system was to be both Islamic and respectful of global human rights, in an attempt to establish legitimacy for the new government and its institutions (Katzman 2001; Lau 2003). The multitude of external influences and their succession of one another, have led to an absence of consistency in the judicial development of the formal system. In effect, in a number of cases it is even proclaimed that after a governing regime collapsed or was ousted from power, the formal judicial system collapsed with it – e.g. the toppling of the Taliban in 2001 (ICG 2003).

One should note that this before mentioned multitude of influences was encompassed (and in fact enabled) by several decades of violent conflict (Ewans 2002; Barfield 2010). The impact of several decades of conflict on the formal system in Afghanistan has been tremendous for primarily two reasons. First, the formal institutional presence of the successive Kabul based governments withered, as formal government institutions ceased to exist in many parts of the country due to the

violent conflict (Barfield 2001-02; 2008). Second, in the absence of formal institutions providing the Afghan population with law and order, informal (insurgent) institutions developed or gained (even more) prominence in the apparent judicial and security vacuum (Barfield 2008; 2010; Jensen 2011).

In addition to the influence of decades of violent conflict on the ability of the formal government to project its power throughout the country, a number of studies have also proclaimed that there exists a historical distrust among rural populations toward the formal government in Kabul and its affiliated institutions (Barfield 2004; 2010; Peavey 2012a; Jensen 2011). In effect, since the establishment of the Afghan state there has been a wide gap in terms of law and order between centre and periphery. Urban centres and rural areas hold different conceptions, traditions and cultures of rule of law (Jensen 2011, 929). Although post-2001 formal initiatives of rule of law promotion are primarily urban-centric in their approach⁶ (e.g. ICG 2003; Perito 2009), the majority of the Afghan population remains living in rural areas.⁷ Afghanistan knows a history of tension between the state legal system, customary law and *shari'a* law. The spatial dimension of the tensions between competing legal systems primarily concerns the tension between urban regions and rural areas, which is explained as a tension between centre regions and peripheral areas. Scholars such as Kara Jensen (2011) and Thomas Barfield (2002; 2008) have argued that 'while the state justice system holds a monopoly in urban regions it faces competition in villages in rural areas, where crimes and other disputes are traditionally handled under tribal or customary law' (Jensen 2011, 934). Again; the spatial-legal tension is proclaimed to reside in the historical resistance by rural Afghans to the imposition of outside laws - both modern-secular law and *shari'a* law - by central governments (Barfield 2004; 2010). Even though attempts have been made by central governments to project their power throughout the nation, Thomas Barfield (2008, 359) described the Afghan state's ability to provide law and order to its population in the following way:

6 This claim of rule of law promotion being primarily urban-centric does not include the Afghan Local Police initiative; i.e. the integration of local militias in a particular branch of the formal police (HRW 2011; Jones & Muñoz 2010).

7 Estimates about the (demographic) urban-rural ratio center around 23%-23,6% of the population living in urban areas and 77%-77,4% of the population living in rural areas (CIA 2012; CSO 2011-12).

‘In theory, state law applied to all residents of Afghanistan equally; but in practice, government institutions were found almost exclusively in urban areas and in provincial centres of administration.’

It is this quote that characterizes the proclaimed divergence between rural and urban areas or peripheral and central areas in terms of the impact of the formal judiciary system on the Afghan population. In effect, a number of studies even estimate that 80% to 90% of the Afghan population – especially those living in the rural or peripheral areas of the country – continue to look to informal (non-state) institutions to provide justice and security (CPAU 2012; Scheye 2009; TLO 2010). A majority of those seeking justice turn to local community councils, which are generally comprised of local elders or other respected authority figures who mediate disputes that occur within their community; i.e. *shuras* or *jirgas* (Barfield 2002; 2008; Merrell 2010). Kara Jensen (2011, 942) described the underlying rationale for this peripheral opposition towards formal rule of law, as:

‘For many in rural Afghanistan, the right and responsibility for justice resides in the person wronged or their family or tribe, not within the state. As a result, actions taken by the state are not considered to be dispensing justice. Therefore, rural Afghans see punishments imposed by the state as either inadequate, in that a settlement between the parties will have to be reached even if the perpetrator has been punished under the state system, or inappropriate because if the parties have already reached a settlement there is no need for the state to get involved.’

It is this rationale based on personal ownership over justice, that would explain the popular preference for community councils when in need of this political good.

Apart from community councils that have provided justice and security to the Afghan population, additional informal justice and security providing institutions have formed in the absence of the formal state in peripheral Afghanistan. In the absence of a functioning formal judicial system, Taliban courts (and other insurgent institutions) began operating (Jensen 2011; Barker 2009). What is noteworthy is that

authors such as Kara Jensen (2011) and Stephan Tanner (2002) proclaim that the initial rise of the Taliban in the mid-1990s was actually based on their ability as the only group to provide law and order in what they describe as an anarchic state. These authors suggest a somewhat similar trend may currently take place, as in the proclaimed peripheral absence of the Afghan state (and ISAF) again Taliban courts are formed (Jensen 2011, 930).

A last comment of note, is that the jurisprudence underlying these different forms of informal judicial institutions (both Taliban courts and community councils) centre on interpretations of Islamic *shari'a* law – which is considered an integral part of Afghan society – yet at the same time customary or tribal laws are also very prominent in informal jurisprudence (often tribal or customary legal codes are accorded prominence over Islamic *shari'a* law; e.g. Taliban and the tribal *pasthunwali*⁸ code, although it was generally framed as being fundamentally Islamic) (Barfield 2010; Hawkins 2009).

To conclude this section; apart from formal institutional decline, state failure in Afghanistan would thus also concern an absence of the 'entitlement to exclusive, unqualified, and supreme rule within a delimited territory' (McGrew 2005, 25). In effect, the Afghan state would lack the primary characteristics of what would internationally be defined as key to the being of a state; i.e. the monopoly on authoritative rule-making within the geographical territory comprising the state; and the monopoly of the means of physical violence (Hay and Lister 2006; Smith 1986; Weber 1925 [1978]). This has historically been the case, with an apparent preference and confidence among peripheral populations for informal justice providers; in specific, community councils such as *shuras* and *jirgas*. However, in the absence of the formal system in peripheral areas may also grow insurgency related institutions

8 –Pashtunwali is a series of tenets on how a Pashtun must live. These tenets define how the tribe interacts and provide guidelines for normative behaviours in living a Pashtun lifestyle [í]The tenets apply equally to males and females and are generally accepted as *ghayrat/nang* or bravery; *badal* or revenge; *melmastia* or hospitality; *pardah* or gender differences; *namus* or face/honour; and *shura* or council.ø(Hawkins 2009, 17).

concerned with justice - however it remains unclear to what extent they are able to fill the proclaimed vacuum of the state.

Research Focus and Research Question

As indicated before; Afghanistan as a social environment for the provision of justice and security, is a highly complex one. This study will focus on how its population deals with the complexities surrounding the institutional provision of security and justice; complexities that are proclaimed to be – or generally interpreted as – linked to the “failure” of the Afghan state.

As this study centres on primary data that was collected for the baseline study of the Netherlands Integrated Police training Mission (NL-IPM) in Kunduz⁹, its focus will be on the *civil* provision of law and order in the Afghan society – as opposed to the military provision of security, which is generally (counter)insurgency related. In fact, insecurity may be caused by violent conflict but also by criminality or disputes that remain unresolved (CPAU 2012) – and the latter often remain under-reported due to a (counter)insurgency-centric bias (e.g. Sedra 2006; Jones 2006). This study focuses in particular on criminal acts and disputes as forms of injustice and insecurity, as they can be interpreted as primarily affecting community-level law and order.

The data that was collected for the NL-IPM primarily concerns the popular perception of the functioning of formal institutions, as the NL-IPM primarily aims to strengthen the *formal* rule of law. In order to account for this state-centric bias in the research question, the social context for human agency in relation to justice and security will be specifically approached as the state failure phenomenon; i.e. the deconstruction, decline and absence of “essential” structural components of the Afghan state. Because the data that was used for this study was conducted specifically for the NL-IPM evaluation, there was no freedom to adjust this bias – the bias was calculated and desired by the donor. Rather than reject the data for this study because of this bias, the specific formulation of the research question will allow it to (at least) partially engage with new insights in the important, ongoing theoretical debate on state failure/collapse.

⁹ Chapter II will reflect on the data that was collected, and on its underlying methodology and limitations.

This study will not so much aim at offering any generalizing explanations concerning the popular attitudes towards formal institutions, but rather be an attempt to map the diversity of agency with regard to human interactions within a judicial system(s). This study will attempt to produce a counter-narrative against: 1) the large body of system-centric studies concerned with state failure in Afghanistan (see next section of this chapter); and 2) the proclaimed popular rejection in peripheral Afghanistan of the formal system, and the subsequent popular preference for informal institutions – the latter point would rather concern an attempt to nuance.

This counter narrative will attempt to map the diversity in popular perceptions of the functioning of formal institutions concerned with justice and security – rather than accept that no human agency exists, as dominant social structures cause an absolute popular rejection of institutions affiliated with the central government. This approach would in turn lead to the formulation of the following research question:

How does state failure affect human attitudes toward formal (civil) institutions concerned with justice and security in Kunduz, Afghanistan?

Concluding; this study will in specific focus on the passive and (re)active attitudes of the population in Kunduz toward the formal civil system. Passive attitudes will concern the proclaimed confidence of human agents in the functioning of the formal system, whereas (re)active attitudes should be understood as the human interaction with institutions only after a case or dispute has occurred; i.e. the actual popular preference for institutions when they are in need of justice or security.

Scientific and Societal Relevance

What should be noted is that the majority of studies concerned with state failure seek to explain its impact on society from a structure-system oriented perspective or from an institutionalist perspective (e.g. Englehart 2009; Hoeffler 2009; Malek 2006; OECD 2008; Rotberg 2007). In effect, the focus of these studies is generally on how institutional or systemic decline or collapse affects the governance of societies – or rather how it creates a lack of (good) governance in societies (Rotberg 2003; OECD 2008). The human impact of state failure is then often explained in rather Hobbesian (1651) terms of social disorder (e.g. Herbst 1996-97; Krasner and Pascual 2005; Rotberg 2002). Even when academic studies have attempted to take a less normative stance toward state failure or state collapse – in effect, explaining “weak states” as hybrid state like-entities – they still approach it from a structure-system oriented perspective (e.g. Robinson 2008; Boege et. al. 2008).

One of the main biases affecting specifically studies on state failure in Afghanistan, is the distortive influence of the US-led state (re)building initiative (e.g. ICG 2007a; 2010; Perito 2009; Peavey 2011). This bias has two main effects; as it either seeks to view security and justice in Afghanistan from a counter-insurgency (COIN) coloured perspective, or from a normative perspective assessing the current level of “good governance” in the country (e.g. ICG 2007a; 2010; Perito 2009; Peavey 2011).

What these approaches to the “failed” Afghan state lack, is that they do not take the human agency dimension into account. In effect, in system-centric or institution-centric studies on state failure in Afghanistan, the agency of the “passive” (non-insurgent) segments of the population is generally implied to be subjected (read: non-existent, due) to the functioning of formal and informal systems (e.g. Jensen 2011; Perito 2009; Wilder 2007). So, when one system is proclaimed to have flaws, would this then automatically mean that either the other system will provide “better” justice and security to the population, or would it rather mean that there is an absence of justice and security in society? These questions can only be understood from a perspective centring on human agency and the rationality behind the

institutional preferences and confidence of a population when they are in need of justice and security.

It is this approach which underlies the first part of the relevance of this study. The second part concerns the analysis of what may be considered quite unique empirical data, as the data directly reflects on how a peripheral population in a war-torn country deals with issues concerned with (local) law and order (in the absence of a “strong” state). And although this data was first published in the baseline study for the Netherlands Integrated Police training Mission, it has not been used for the purpose as this thesis study did; i.e. although the data findings were published, it lacked a thorough analysis and discussion of the possible implications of its data findings. This study attempts to at least partly fill that gap.

The data used for this study was gathered as part of the baseline study for the NL-IPM, though its intended use was aimed at measuring the impact of the NL-IPM. This thesis study very ambitiously hopes to contribute to creating a better awareness of how the peripheral population in Kunduz interacts with formal institutions. In fact, a better understanding of this process from an agent-centric perspective may improve the structural “improvements” that the Dutch rule of law-strengthening mission actually envisions.

Kunduz: A Provincial Profile

Kunduz is a primarily rural province situated in the north of Afghanistan, sharing a national border with Tajikistan and provincial borders with the provinces of Takhar, Baghlan, Samangan and Balkh. The province has seven districts: Ali Abad, Archi, Chahar Dara, Imam Sahib, Khan Abad, Kunduz and Qalay-I-Zal. The Kunduz River dominates the province, as it flows from south to north into the Amu Darya river, which forms part of the border between Afghanistan and Tajikistan. To the south, the province brushes against the northern fringes of the Hindu Kush. The province covers a little over 8,000 km², of which three quarters is flat and 12 percent is mountainous or semi-mountainous (WFP 2012).

Exact data on the demographic composition of Afghanistan and its specific provinces has been problematic for over three decades. The last grand population census in Afghanistan was held in 1979, and demographic/population data in following decades primarily concerned extrapolations from the 1979-data. Since then, Afghanistan has experienced a number of successive regime changes and extended periods of violent conflict; resulting in the displacement and killing of millions of Afghans - a factor that makes predicting population growth or decline very hard.¹⁰ Furthermore, the 1979-census was never completed due to security problems, and only 67% of the districts was covered (CSO 2012). All these factors contribute to the unreliability of demographic data based on extrapolations from the 1979-census.

So, after taking into consideration that getting access to reliable demographic data on Afghanistan is hard, one should realize it is even harder to find reliable data sources on the size and (especially) the composition of the population of specific rural provinces - as is the case with Kunduz. One of the main problems with accurate

10 Though exact data on the total number of people that were internally displaced or fled the country are hard to come by, the UNHCR estimates that over 5.7 million refugees have returned to Afghanistan since 2002 (UNHCR 2012). According to the Internationally Displaced Monitoring Center, about 450,000 people remained to be internally displaced at the end of 2011 due to the continued armed conflict (IDMC 2012). Exact numbers on Afghans killed since 1979 also remain to be absent, though UNAMA and Human Rights Watch estimate several thousands to be killed every year between 2006-2011 ó no (reliable) estimates/data was found on numbers prior to 2001 (Guardian 2012).

estimates and data concerns the often unadjusted reproduction of statistical/demographic data over time by international aid organizations, Afghan NGOs and even Afghan ministries. The best example of this practice is the almost unadjusted copying of statistical data from the CSO's *Kunduz: A Socio-Economic and Demographic Profile* from 2003, by the Ministry of Rural Rehabilitation and Development (MRRD) for their *Provincial Development Plan, Kunduz Provincial Profile* in 2007, the Cooperation for Peace and Unity's 2009 *Conflict Analysis: Kunduz City, Kunduz Province* and subsequently by the World Food Programme's online profile of Kunduz province (WFP 2012).

According to the CSO's *Kunduz: A Socio-Economic and Demographic Profile* (2003) – and its subsequent copiers – Kunduz province has a total population of 773,387 of whom 387,789 (50.1%) are male and 385,618 (49.9%) are female (MRRD 2007; CPAU 2009; WFP 2012(!)). On the other hand, the CSO's most recent report on Afghanistan's population data estimated that Kunduz has a total population of about 935,600 of whom 476,200 (50.9%) are male and 459,400 (49.1%) are female (CSO 2011-12). This means a difference in estimated population size of about 162,300. In effect, the World Food Program (2012) would publish outdated demographic estimates (from CSO 2003), even though more recent data estimates are available.

Unlike the limited number of sources providing estimates of demographic data on a national level, on a provincial level the only serious provider of demographic data is the Central Statistics Organization, Afghanistan – even though their current data stems from extrapolations from the incomplete 1979 census. According to their estimates, about 230,600 (24.6%) people live in Urban areas in Kunduz whilst the majority of the provincial population lives in rural areas; i.e. 705,000 or 75.4% of the population (CSO 2011-12). Though the urban-rural ratio is perhaps only a little higher on a national level (if the estimates are correct), on a provincial level Kunduz does reflect a 1-to-3 urban-rural ratio. Note that on a district level this is not the case. The diagram below will provide a more detailed breakdown of the urban-rural population composition per district, based on the CSO 2011-12 population data:

No.	Minor Civil Division	Total Population Urban And Rural			Urban			Rural		
		Both Sexes	Male	Female	Both Sexes	Male	Female	Both Sexes	Male	Female
	Total	935.6	476.2	459.4	230.6	118.6	112.0	705.0	357.6	347.4
1	Kunduz Centre	297.8	152.1	145.7	139.6	71.8	67.8	158.2	80.3	77.9
2	Char Dara	70.2	35.7	34.5	0.0			70.2	35.7	34.5
3	Ali Abad	45.1	22.8	22.3	0.0			45.1	22.8	22.3
4	Khan Abad	153.5	77.7	75.8	38.1	19.6	18.5	115.4	58.1	57.3
5	Imam Sahib	221.8	113.0	108.8	32.5	16.6	15.9	189.3	96.4	92.9
6	Dasht Archi	80.9	41.1	39.8	3.0	1.6	1.4	77.9	39.5	38.4
7	Qala-e-Zal	66.3	33.8	32.5	17.4	9.0	8.4	48.9	24.8	24.1

Source: Afghanistan CSO population data 1390 (2011-12)

*Figures in (x 1,000)

As the majority of the population lives in rural areas, agriculture is the primary source of income for about two-thirds of the households in Kunduz (MRRD 2007; WFP 2012). Major agricultural products include wheat, corn, rice, melons, almonds, grapes and cotton (MRRD 2007; WFP 2012). Besides agriculture, about three-thirds of rural households and less than half of urban households own livestock or poultry (MRRD 2007; WFP 2012). The most common livestock are sheep, cattle, poultry, donkeys and goats. Though the previous livelihood data was first published in 2007, there was no reason to question the validity and relevance of it to depict the livelihood situation of the population in Kunduz in 2011 - though percentages may have shifted to some extent. When we cross-checked this data during a meeting with local staff from CPAU's field office in Kunduz province, they confirmed the previous claims based on their own observations in the different districts of Kunduz province. Rather than confirming specific statistics, they confirmed the agreed upon general image of the livelihood situation of the population in Kunduz that was created.

However, what was not included in this “image” of the livelihood situation in Kunduz was the share of drugs in the income of households in Kunduz. During a number of meetings with CPAU staff from the Kunduz field office they proclaimed that drugs were not so much grown in their province, but rather trafficked through their province – because of its location as a border province on route to the former Soviet-republic Tajikistan with north of it the Russian “market”.

What remains absent in the CSO demographic data on Kunduz province is an accurate estimate of the ethnic-tribal breakdown of the population in Kunduz province. Even though concrete estimates remain absent, general claims on ethnic affiliations are still made by other sources (e.g. MRRD 2007; WFP 2012). Primarily because Kunduz is a border province and a “centre of migration”, it is proclaimed to be characterised by a diverse ethnic population. The major ethnic groups are Pashtuns, Uzbeks, and Tajiks, with also a significant presence of Hazara and Turkmen (MRRD 2007; WFP 2012). Which ethnic group is the biggest plurality or majority in Kunduz province remains to be debated, as different sources proclaim either the Tajiks are the largest group (e.g. USAID 2011) or (Ghilzai) Pashtuns are the largest ethnic group (e.g. NPS 2011). Although the methodology of the NPS (2009) remains unclear, they do have the most detailed breakdown of the ethnic composition of the population of Kunduz on a provincial level:

- Pashtun: 33 %
- Uzbek: 27 %
- Tajik: 22 %
- Turkmen: 11 %
- Hazara: 6 %
- Pashai: 1 %

Furthermore, the overall literacy rate is estimated to be around 33 % (WFP 2012). However, only about one quarter of the women in Kunduz is estimated to be literate, compared to two-fifths of men (WFP 2012). If correct, the overall literacy rate in Kunduz would be a little higher than the overall literacy rate in the whole of Afghanistan.

Chapter II

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Theoretical and Methodological Approach

Introduction

This master thesis centres on the primary data that was collected as part of the baseline study for the evaluation of the (still ongoing) Netherlands integrated Police training Mission (NL-IPM) in Kunduz, Afghanistan. Although in name a police training mission, the Dutch effort in Kunduz is not limited to the mere training of the Afghan Uniformed Police. In effect, under the mission's umbrella a number of capacity building initiatives have been deployed. The capacity building initiatives are aimed toward state and (some) non-state judicial institutions and organizations concerned with the provision of law and order. Because of the diversity of initiatives that were deployed by the Dutch to (further) strengthen the Afghan justice system in Kunduz, multiple ministries were involved in the actual development and execution of the NL-IPM. The Netherlands ministries of foreign affairs, of defence, and of security and justice, were all directly involved in the development of the intervention logic underlying this mission. Furthermore, these ministries are all directly responsible for overseeing certain parts of its execution – with the Royal Netherlands Embassy in Kabul being responsible for outsourcing several capacity building or training programs to both Afghan and international development organizations.

As the intended outcomes that were envisioned by the intervention logic were designed to strengthen the Afghan justice system in Kunduz, the focus of the evaluation of the NL-IPM was on measuring its societal impact. Assessing the impact of the mission, was outsourced by the Royal Netherlands Embassy in Kabul, Afghanistan, to an Afghan NGO called Cooperation for Peace and Unity (CPAU). In order to measure the societal impact of the mission, a five-year-long annual assessment of its progress was to be conducted in all seven districts of Kunduz

province. The baseline study concerned the assessment of the state and functioning of the Afghan justice system in Kunduz prior to the deployment of the NL-IPM. The baseline study would thus serve as a reference point (i.e. point zero or as a baseline) for measuring its future progress. As such, the primary data collected for this first annual study solely reflected on the (then-)state of law and order in Kunduz province, rather than on the societal impact or progress of the NL-IPM.

Because the primary data used for this thesis was gathered as part of the NL-IPM, its underlying rationale was based on the intervention logic as developed by the three ministries involved, rather than on a research question specifically formulated for this master thesis. For that reason, the research question that was formulated for this thesis had to fit the data that was collected for the NL-IPM. And, subsequently, the theoretical approach underlying this thesis was thus developed while reflecting on what the data actually suggested. In effect, this process allowed for a more empery-reflective approach to the theoretical frame underlying this thesis – as opposed to collecting empirical evidence fitting a theory, an existing theory (i.e. Anthony Giddens’s structuration theory) was adjusted in order to “fit” the empery.

The next sections of this chapter will first reflect on how the empery gave rise to theory; second, it will reflect on what research methods were used for collecting the primary data; and third, it will reflect on what limitations and constraints underlie this research.

Theoretical Approach

In order to be able to create a theoretical understanding of how human attitudes toward formal institutions are affected by “state failure”, one needs to be able to dissect the concept of state failure in its specific Afghan context. As mentioned in the previous chapter, three interacting and mutually reinforcing component parts of the “failed” Afghan state can be distinguished in the current body of literature. First, it concerns the contested or de-monopolized provision of law and order. This first factor is in fact partly caused by the second factor, namely the flawed or weak structural features of the institutions concerned with law and order. In turn, the third structural factor would also relate to the first factor, as a historical opposition to formal, centralized institutions is proclaimed to exist in rural or peripheral parts of the country.

In effect, the first factor would imply that there are a multitude of institutions concerned with law and order (Barfield 2002; 2008; Peavey 2012), while the third factor would imply that there is a preference among rural or peripheral populations for especially informal institutions (Barfield 2010; Jensen 2011); i.e. *shuras* and *jirgas*. At the same time, the data underlying this study would suggest that this popular preference for informal institutions is not at all absolute. Specifically for this reason it is of importance to gain knowledge of why people diverge from what is considered socially preferred behaviour; i.e. why would people not approach informal institutions when in need of justice.

Anthony Giddens formulated a social science theory, explaining human agency within its social environment. Rather than substantively focusing in his explanation on either individual actors or on societal totalities, he proclaims that the focus should reside with the study of social practices (Giddens 1979; 1984). In general, social practices are not random nor are they completely voluntarily. He rather explains them as ordered and stable across space and time, vested in what he calls their “recursive” or “routinised” nature. When human agents produce social practices,

they do so by drawing upon “structural properties” (social rules and resources) that were in turn formed by prior (recursive) social practices.

At the heart of structurationalism lies the theoretical emphasis on the proclaimed duality of structure. The duality of structure implies a mutually reinforcing interaction between social structures and human agency. In effect, one of the theory’s main propositions is that ‘the rules and resources drawn upon in the production and reproduction of social action are at the same time the means of system reproduction’ (1984, 19). In other words, social structures are both medium and outcome of the practices they recursively organize, according to Giddens (1979; 1984). These social structures should be understood as “memory traces”, and they are instantiated in their social (inter)actions.

Hence, it is this theoretical proposition that would explain the prevalence of a proclaimed popular preference for informal institutions in rural or peripheral Afghanistan (Barfield 2002; 2008; 2010; Jensen 2011). In effect, this popular preference would concern a dominant belief of what is socially and culturally preferred and acceptable behaviour. And, this popular belief would thus be primarily vested in the “centuries” long recursive nature of popular interaction with these specific informal institutions.

At the same time, however, Giddens approaches human agents not as complete products of their social environments – as social environments are also products of their human agents. According to Giddens (1984), human agents indeed have a capacity for self-reflection in their (inter)actions and they are actually conscious of what they are doing. This would thus suggest that people are not completely constrained by social practices prior to their own, as they may deviate from them when they are no longer considered to be adequate patterned practices. According to Anthony Giddens (1979; 1984) this is what gives rise to changes or developments in social structures and, subsequently, social systems.

However, what remains unanswered for in his theory is why and in what cases human agents actually diverge from socially and culturally preferred and acceptable behaviour – without automatically explaining it as a structural change. If every

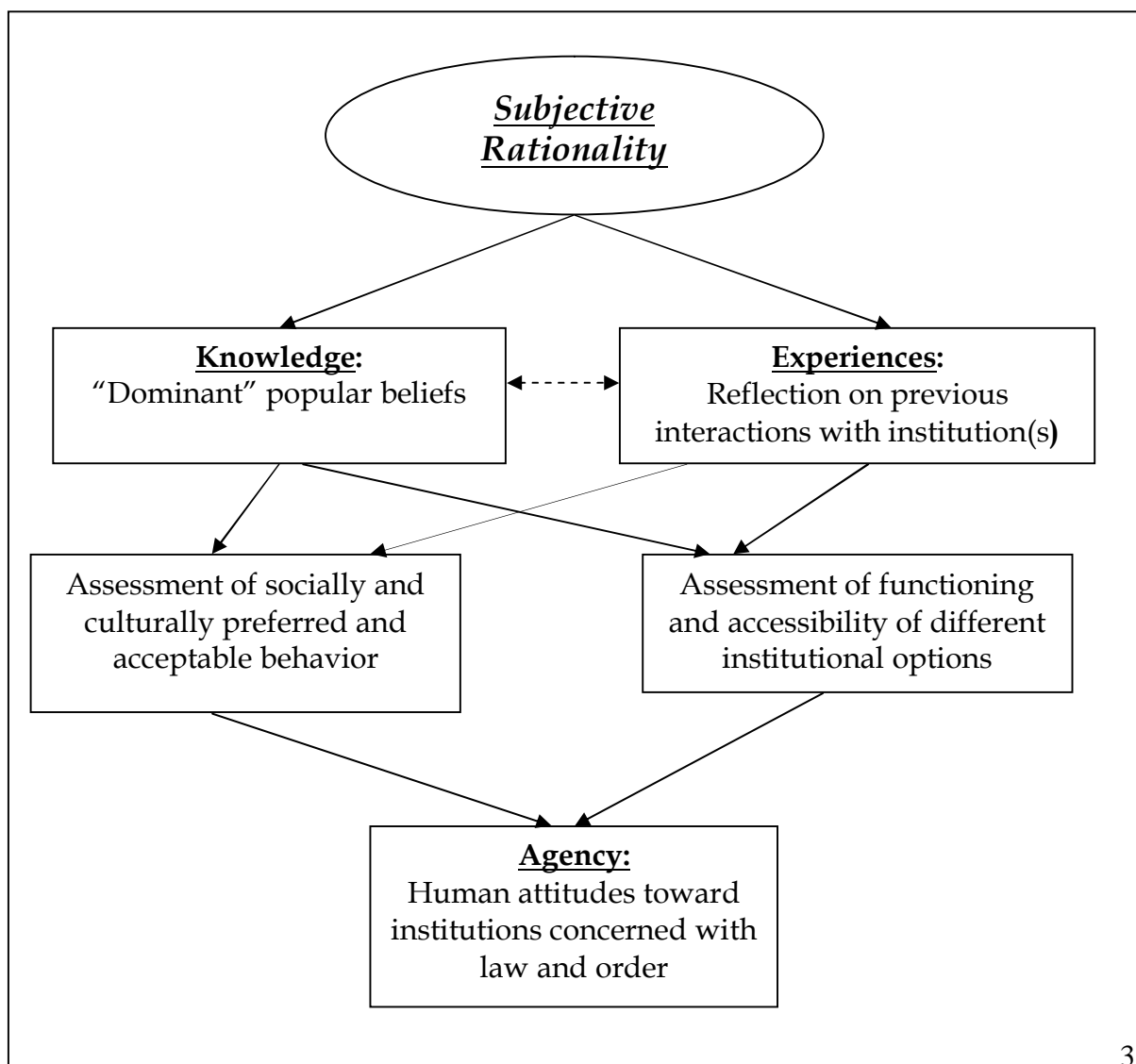
human interaction with the formal system automatically implicated a change in the dominant social structures, Barfield (2002; 2008; 2010) and Jensen (2011) would not be writing about a historical opposition to state institutions.

For this reason, in this study it will be argued that when one wants to explain human attitudes toward formal institutions in a failed state context, one should not discard the importance of human agency. Even as human (inter)actions are formed within a specific social context, one should not forget that people do things because they have an intended (optimal) outcome in mind – an argument that even though it is borrowed from rational choice theory (RCT) (Myerson 1997), would still be very applicable to the study of agency in relation to structure when it concerns a person's justice (or security). For that reason, this study will attempt to integrate the RCT argument that decisions for social (inter)action are driven by an agent's objective 'to maximize the expected value of his own payoff' (Myerson 1997, 2), with the structuralist argument that social structures are in the end what both enable and constrain human agency (Giddens 1984). This approach to human agency would suggest that human attitudes are coloured by both their social environment (Giddens 1979; 1984) as well as by the rational consciousness of the "performing" human agents (Myerson 1997; Pizzorno 2008). Therefore, it would concern a subjective rationality (see: Scheme 2.1.).

Reasoning and extrapolating from Anthony Giddens (1979; 1984), one should accept that both "knowledge" and (personal and other's) "experiences" are of importance for the creation and maintaining of social structures. In this context, "knowledge" would constitute dominant popular beliefs about the social world, while "experiences" reflect on (in this case) previous interactions with institutions. Subsequently, the interplay between "knowledge" and "experiences" would be responsible for a human agent's *assessment of what constitutes socially and culturally acceptable and preferable behaviour*. At the same time, dominant popular beliefs about social reality, in combination with one's own and one's social environment's experiences with institutions, are what colour a human agent's *assessment of the*

functioning of the different institutional options. And this is where the RCT argument would come in (Myerson 1997; Pizzorno 2008), as the human agent decides on what institution to approach based on 1) his assessment of what are socially acceptable or preferable (inter)actions and 2) his assessment what institution would provide him with the most optimal outcome. In fact, these two points do not necessarily have to coincide, as the most optimal outcome might actually be to diverge from what are socially acceptable or preferable (inter)actions. Hence, this would explain the co-existence of a historical opposition in rural or peripheral communities toward the formal system (Barfield 2002; 2008; 2010; Jensen 2011), while at the same time a (relatively large) segment of the peripheral population approaches formal institutions when in need of justice (or security) – latter claim is based on initial primary data findings and analysis, as published in the NL-IPM baseline study (Peavey 2011).

Scheme 2.1. - Subjective Rationality



Methodological Approach

So, with this theoretical frame in mind, how then can we explain human attitudes in peripheral Afghanistan toward formal institutions in a context of state failure? We have already determined that the first constituting assessment of subjective rationality – what are socially preferable institutional options – is answered with a strong popular preference for informal institutions; i.e. *shuras* and *jirgas* (Barfield 2002; 2008; 2010; Jensen 2011). So subsequently, the second constituting assessment of subjective rationality should concern the functioning and accessibility of the institutional options an agent has. In specific, when one wants to study how state failure affects human attitudes, one needs to capture the popular perception of the functioning and accessibility of institutions belonging to the formal system. In this instance, even though Afghanistan might be an internationally proclaimed case of a failed state (e.g. FfP 2011), it remains of importance to assess to what extent its population actually perceives state institutions as weak or the weakest institutional options when in need of justice (and security). The follow-up step would thus be to put this popular perception of “state failure” in perspective; i.e. how do state institutions perform compared to other informal institutions.

As the popular perception of what constitutes socially and culturally preferred (inter)actions has been determined by Barfield (2002; 2008; 2010), this study will attempt to form an image of: 1) the popularly proclaimed state of the formal Afghan justice system; and 2) the different levels of popular preference and confidence for both formal and informal institutions concerned with law and order. In effect, the aim is thus to uncover how this perceived state of the Afghan state affects institutional decisions when people are in need of justice. The data that was collected as part of the baseline study for the NL-IPM will allow for the formation of an image resembling these “missing elements” to grasp the subjective rationality of peripheral agents in search of justice (and security).

A variety of instruments was developed for the NL-IPM impact assessment, ranging from surveys, focus groups and key informant interviews to semi/non-structured citizen accounts and literacy tests (that were distributed among police recruits). The sample units for the NL-IPM study were community members (men, women and children), police recruits, police officers, the higher police management, formal justice officials, informal justice officials and prisoners. This study relies on the data that was *published* in the 2011 Baseline Assessment (Peavey 2011). However, not all the collected and published data was relevant for the research question underlying this thesis. A selection was made among the available data. In effect, the first and second round survey results were primarily used for reflecting on the popularly perceived state of formal institutions concerned with justice (and security). Citizen accounts in combination with survey results were used to reflect on the popular preference and confidence for institutions concerned with justice (and security). And, follow-up interviews were used to reflect on the rationale behind popular interactions with institutions concerned with justice and security.

As this study focuses on the agency of human actors in their social context, the situated knowledge of these agents – i.e. their “knowledge” of the social system(s) and its structural features – is what needs to become apparent. For that reason, the primary data sources for this study were two separate community surveys that were implemented in October and November 2011 respectively. The first round survey was conducted of 1,047 community members throughout Kunduz. The second round survey was conducted of 684 community members in late November. The first round community survey reflected on the perceived capability of the AUP, ethnic composition of the AUP, drug use and criminal activity, AUP fairness, judicial corruption and independence, gender and ethnic bias in the formal and informal justice system, and access to state and non-state judicial systems. The second round survey covered additional topics that were not included or were not sufficiently captured in the first survey. These topics include perceptions about the size of the AUP, police corruption, trust in justice actors, and unfair treatment by state and non-state institutions, among other issues.

A team of 38 local researchers (10 Kabul based researchers, 14 local male surveyors and 14 local female researchers) carried out the data collection in all seven districts of Kunduz province, Afghanistan. The instruments that were used for the data collection were developed in both English and Dari. The instruments were first field-tested in Kalakan district, Kabul province, before being discussed (and improved) with local researchers in Kunduz province. The first round community survey was then conducted in October 2011. The research instruments subsequently underwent further modifications in mid-November following the receipt of additional program information from the Netherlands Embassy in Kabul; i.e. an additional clarification on the intervention logic underlying the NL-IPM. The procedure of sample selection for the community surveys was as follows:

“For the sampling of the first community survey, villages and communities within each district were written on pieces of paper and randomly selected in order to generate a random sample. Within each village, surveyors were instructed to go to every second street and select households at random based on the digits of the serial numbers on Afghan banknotes. Within each household, the male and female surveyors interviewed two males or two females respectively. The surveyors made an effort to select both younger and older respondents in the target households. Each respondent was interviewed individually. Likewise, the surveyors were also instructed to use random sampling in the implementation of the second survey, but time constraints led the surveyors to rely increasingly on convenience sampling. Approximately 10 to 15 target villages were selected within each district for both surveys” (Peavey 2011, 21).

It should be noted that the surveys were not weighted, but were rather adjusted in advance to reflect the suspected distribution of the population and balance of ethnicities in the province as well as to include a sufficient number of respondents in each district (a minimum of 95 and 85 surveys respectively were conducted in the

districts other than Kunduz city, during the first and second round surveys). The bulk of survey-interviews was conducted in Kunduz city for two main reasons: 1) it has by far the largest population in all of the province; and 2) it was the best accessible for both the local and Kabul based research staff (both in terms of logistics as in terms of security[!]).

The citizen accounts were collected as part of the first community survey, though the questions only applied to those citizens that actually had a case or dispute that they had referred to either a formal or informal justice institution – or they had some close to them who had a case or dispute. The narratives that the respondents gave were written down and coded by the interviewers, based on the following three points: 1) what was the case or dispute about?; 2) to which institution was the case or dispute referred?; 3) how was the interaction with the institution and functioning of the institution assessed. As not every interviewed person had a case or dispute of their own or knew someone who had a case in the last year, the sample size of the citizen accounts was far lower than the sample size of the total first survey round.

The data from both the first and second survey for the NL-IPM (incl. citizen account sections) was entered into a database by the Kabul based research staff – the data was gathered in Dari [and Pashto] – and then analyzed using SPSS. A selection of the published statistical, primary data findings is what is used for this study, because the “raw data” is not in the possession of the author of this thesis; i.e. the original data is with the organization contracted to conduct the NL-IPM impact assessment.

The follow-up interviews had a sample size of 57 and they were conducted by a small group of local Afghan researchers in all seven districts of Kunduz province. The aim of these interviews was to uncover the rationality behind institutional decisions of people that had referred cases to both formal and informal institutions concerned with justice and security – in addition to uncovering the actual “legal process” of a case that was brought to a justice institution.

The people that were interviewed, were in some cases respondents from the second survey round while in other cases they had not been interviewed prior to the follow-up interviews. In practice, the respondents for the follow-up interviews were approached as soon as they could be identified as having been closely involved in referring a legal or criminal case to either a formal or informal institution. Practically this meant that respondents were primarily from the communities of the local Afghan researchers.

Due to serious time constraints, the target sample size was not met (i.e. the desired amount of follow-up interviews: 20 per district with at least 8 interviews for formal institutions and 8 for informal, and a total of 45 interviews in the provincial capital). When the target numbers were expressed, it was already anticipated that these numbers would not be met. In the end, the number of interviews per district differed, ranging from 6 interviews (in Char Dara and Ali Abad) to 10 interviews (in Qala-e-Zal and Kunduz Centre) per district, with a provincial total of 57.

As the sample size was considered to small to be included in the NL-IPM baseline study, the data results were left out of the report. However, some of the data results were used for the local conflict trend analysis paper that was also published by CPAU (2012a). As I contributed to those publications as well, I was able to access the original data sets in English in excel, and use them for this thesis study.

Limitations, Constraints and Considerations

Conflict and post-conflict areas are often not the most ideal laboratories to conduct social research. The problematic security dimension often prohibits certain questions to be asked and when sensitive questions are asked, the answers are often too unreliable. It poses a problem with acquiring the right human resources; i.e. often the availability of local research staff that are both well educated and have experience, is problematic. Also, certain areas are not to be travelled due to security risks, which in turn may create a problem with regard to sample selection procedures.

Of great importance with regard to this study, were issues that became apparent during the debrief sessions following the completion of the second field research phase. In some cases, deviations from random sampling were noted. In several cases these deviations were caused by security concerns, including a break-out of fighting between rival militias in Char Dara. The fire fight occurred during the data collection period and it temporarily blocked two of the local surveyors from returning to one of the primary roads in the district. Another problem, that several female surveyors encountered was related to specific gender-related security and cultural obstacles. These obstacles made it difficult throughout the research to travel to certain areas, and in turn some local researchers had to deviate from the sampling procedures. As the work from the local researchers was monitored by the Kabul based researchers, the monitoring team had to intervene on several occasions. A couple of local female researchers had to be replaced because of deviations from the sample selection procedures and a number of surveys in the second round of data collection had to be discarded for this reason; i.e. of the close to 800 surveys that were conducted during the second round of data collection, only 684 were considered viable. For this reason, most of the data that was used throughout the NL-IPM evaluation concerned data that was gathered during the first round of field research. Even though measures were taken to counter deviations from the sampling procedure during both rounds of research (but especially in the second), the security dimension did force several researchers to access “safer” areas. As a consequence, this brought about that those people interviewed were perhaps more inclined to favour a more pro-GIRoA stance.

The chapters covering the data findings (Chapter III & Chapter IV) will reflect specifically on how the data was collected and what limitations and constraints underlie the interpretations and claims that can be made based on the data results. The reason for this specific approach to the “knowledge” that was generated by the data findings as published in the NL-IPM baseline study and in this thesis, is that one needs to reflect on the credibility of the evidence that underlies knowledge in order to be able to assess what one actually knows.

Chapter III

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The Perceived State of Formal Justice and Security

Introduction

This chapter reflects on the popularly proclaimed state of the formal Afghan justice system; a system that faced a number of challenges related to the failure of the Afghan state. The focus lies on uncovering the popular perception of the functioning of formal institutions and organizations concerned with the provision of law and order. This is done by first reflecting on the publicly proclaimed capacity and capability of both the AUP and the formal courts with regard to the provision of security and justice. And second, by reflecting on the popular perception of institutional flaws within the formal system concerned with law and order (focus points are similar to the institutional “flaws” formulated in Chapter 1). The aim of this chapter is to uncover dominant popular narratives related to state justice. As has been argued in the chapter covering the theoretical approach, popular narratives are what generally underlie the popular assessment of institutional functioning. In effect, it are these dominant popular narratives that may (de)form the rationale behind an individual’s preference for – and confidence in – particular institutions concerned with justice (and security).

A number of earlier studies has been conducted on problems relating to the “proper” functioning of the Afghan courts and AUP. The results of these studies have served as reference points for identifying obstacles to accessing the state justice system in peripheral Afghanistan (e.g. ICG 2007b; ICG 2010; Jensen 2011; Perito 2009; Wilder 2007). Furthermore, when quantitative data was available in these studies, it has been used in a number of instances for comparison with the purpose of strengthening the validity of the primary data used in this study.

Popular Perception of Formal System Capacity and Capability

In order to reflect on the popular perception of ANP (and in particular AUP) and formal court functioning, this part of the study will first focus on the popularly proclaimed police size-sufficiency, and police capability to provide security and justice to the communities living in Kunduz; second, this section will focus on popularly proclaimed formal court effectiveness and efficiency. These two points should underlie the primary projection and popular perception of state power in terms of law and order. In addition to the two before mentioned points, this section will also reflect on the popularly proclaimed physical accessibility of formal institutions concerned with law and order. In other words, to what extent is there a formal institutional or organizational presence recognizable and available to the Afghan population in both the rural and urban areas of Kunduz province.

Police Size-Sufficiency & Capability

Data on the size of the AUP presence in Kunduz was provided by the Royal Netherlands Embassy in Kabul, Afghanistan.¹¹ The size and structure of the ANP is laid out in a personnel chart called a *tashkil*¹², which is developed by the Afghan MoI. According to several publications, the “accuracy” of AUP *tashkils* remain questionable. The number of recorded personnel in each province and district does not necessarily match the total number of personnel allocated by the *tashkil*. Furthermore, personnel records maintained by the MoI and regional police headquarters don’t often match the number of personnel that are actually active within the AUP (e.g. AAN 2011; RUSI 2009). According to the AUP *tashkil*, the size of the police force in Kunduz province was supposed to total 1691 in 2011. Of these 1691, an undefined number is not an AUP officer or patrolman, as this number also

11 Both the AUP *õtashkil* numbers^ö and AUP *õactive-personnelö* numbers were provided by the Royal Netherlands Embassy in Kabul, Afghanistan.

12 Explanation of *tashkil* as provided by the Afghan Analysts Network (2011): “*Tashkil* means “organisation” or “structure”, it comes from the Arabic root sh-k-l, and *shakl* means “shape”, “form” or “figure”. So, *tashkil* was adopted for describing the personnel chart of the ANP and the ANA.” In addition, RUSI (2009, 97) explain *tashkil* as: “An organizational document dictating force structure, personnel numbers, command relationships, and unit/staff functions and mission descriptions for the ANP.”

includes personnel such as cooks and drivers. Unfortunately there was no personnel break down provided by the Netherlands Embassy, therefore it was not possible to make any distinctions between different kinds of personnel employed within the AUP.

As the numbers of AUP personnel provided in the *tashkil* should best be interpreted as target levels formulated by the MoI, an attempt was made to cross-check the *tashkil* numbers with “active personnel” lists. Due to bureaucratic obstacles and travel restrictions caused by the security situation, the research team had to rely on active-personnel data provided by the Royal Netherlands Embassy in Kabul. Only the personnel numbers for Khan Abad district and the four main precincts in Kunduz centre could be provided by the Netherlands embassy; something which seriously hampered the attempt to cross-check *tashkil* data.¹³ Only in Khan Abad district the personnel records as provided by the Netherlands embassy matched the *tashkil* target numbers. In the four precincts in Kunduz Centre the active AUP numbers fell short of *tashkil* “targets”. The distribution of AUP personnel over the seven districts of Kunduz province – according to the *tashkil* – is provided in Table 4.1.; with the “corrected” AUP personnel data in a separate column. A clear majority of the AUP is allocated to the most populous district, namely Kunduz Centre. What should be noted is that this number also includes personnel employed at the Provincial HQ and in “specialized” AUP units (see Table 4.1.). The data as provided by the Netherlands embassy did not specify the tasks or duties of the personnel employed at the Provincial HQ and other AUP units. For that reason it remains unclear to what extent this large number of personnel (379 pers.) actively contributes to the provision of security, law and order specifically in Kunduz centre – or whether they contribute on a provincial level rather than a district level.

13 Furthermore, the methods of data collection used for the active-personnel numbers provided by the Netherlands Embassy were unspecified(!); most likely the data was collected by observations on location conducted as part of the Netherlands Integrated Police training Mission.

District	AUP <i>tashkil</i> (2011)	Corrected personnel number (Jan. 2012)
Ali Abad	98	-
Char Dara	207	-
Dasht Arche	107	-
Imam Sahib	204	-
Khan Abad	205	205 (= 100% of <i>tashkil</i> number)
Kunduz Centre	599	-
~ Precinct 1	55	40 (= 73% of <i>tashkil</i> number)
~ Precinct 2	55	49 (= 89% of <i>tashkil</i> number)
~ Precinct 3	55	33 (= 60% of <i>tashkil</i> number)
~ Precinct 4	55	42 (= 76% of <i>tashkil</i> number)
~ Provincial HQ and other units	379	-
Qala-e-Zal	50	-

Source: Royal Netherlands Embassy in Kabul, Afghanistan; published in: Peavey 2011, p. 28.

Although the AUP is not the only ANP branch in Kunduz province – there are also ABP, AHP, ALP and CID branches in Kunduz – it is with its size the largest police presence in the province. In addition, the total size of the ANP *tashkil* in Kunduz province was proclaimed to amount to 1810 in 2011 (Röder 2011) – a number that has grown from 1,140 within two years time (Chilton et. al. 2009).

The next step in this study was to identify whether a possible relationship existed between police size as expressed in the AUP *tashkil* and the popular perception of the police size as being sufficient for the provision of law, order and security. Although a significant organizational growth has occurred over the last couple of years within the ANP/AUP in Kunduz in terms of *tashkil* size, these numbers did not seem to match the size of the police force that the population deemed needed for the formal provision of security, law and order. During the second survey round conducted in late November 2011, one of the survey questions was formulated to capture the popular assessment of police size in relation to its capability to provide security, law and order (see Table 4.2. for results of the survey). Note that this question was formulated as “police” in general, rather than reflecting on one of the specific police branches (for example AUP or ALP). As was noted in the chapter on research methods, it was determined during the instrument development stage that community members – particularly in rural areas – lacked the ability to consistently

differentiate between the AUP and other branches of the ANP. For that reason, the more common word “police” was used, as the AUP was/is by far the largest branch of the ANP in Kunduz province.

Table 4.2. Popular Perception of Police Size as Sufficient for Provision of Law, Order and Security

	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	Province Total
Sufficient	58%	12%	52%	68%	27%	67%	63%	51%
Insufficient	42%	88%	48%	32%	73%	33%	37%	49%

Source: Peavey 2011, p. 105. – Survey time: Late Nov. 2011 / Sample Size: 635 [See: Annex I – Q.4.1.]

The results of this survey question differed strongly between districts, with the highest scores in terms of popularly proclaimed police size-sufficiency being above 60% in only three of the seven districts; i.e. Qala-e-Zal (63%), Kunduz Centre (67%) and Imam Sahib (68%). What stands out is that although the size of Char Dara’s *tashkil* (207 pers.) is roughly comparable to the size of the *tashkils* in Khan Abad (205 pers.) and Imam Sahib (204 pers.), their outcomes in terms of popularly proclaimed size-sufficiency differ greatly; i.e. 12 % (Char Dara) against 27% (Khan Abad) and 68% (Imam Sahib). What is even more noticeable is that both Khan Abad and Imam Sahib have a population that greatly exceeds the size of the population of Char Dara; i.e. roughly two and three times. For that reason – even leaving aside concerns regarding the reliability of demographic and *tashkil* data – no direct claims on a causal relationship between popularly perceived police size-sufficiency and the absolute or relative AUP *tashkil* sizes can be made.

Although no claims on any such quantitative correlations can be made, a possible explanation for the very low score of Char Dara district may be found in the higher presence of active armed groups compared to other districts in November 2011.¹⁴ During the second round of community surveys, heavy fighting took place between different local militias over control of territory in Char Dara. Subsequently, ISAF artillery based at the Kunduz PRT base fired “warning shells” into the district. This

14 This claim was based on local surveyor observations and experiences in Char Dara in November 2011, as well as on informal talks with NATO/EUPOL staff employed at the PRT in Kunduz ó claim was also formulated in: Peavey 2011.

heavy fighting, which took place during the time that the interviews were conducted, may be a factor that substantially contributed to the large amount of negative responses. In effect, a possible implication of the heavy fighting may be that the way the survey question was formulated¹⁵ caused that the attention for size-sufficiency in relation to police capability, was replaced by a primary focus on the provision of security in general.

In comparison, the first round survey question on police capability was conducted in October 2011 and displayed rather different results from its follow-up question in late Nov. 2011; i.e. the initial question painted a less negative image of the police capability to provide security (see Table 4.3.). What should be noted is that the first round survey question only reflected on the popularly proclaimed capacity of the Afghan police to provide security to the population in a district – whereas “law and order” were left out of the first round survey question, as well as the reference made to the size of the police force.

Table 4.3. Popular Perception of Police Capability to Provide Security

	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	Province Total
Capable	84%	41%	61%	76%	48%	80%	65%	67%
Not capable	16%	59%	38%	23%	51%	19%	34%	33%

Source: Peavey 2011, p. 106. – Survey time: Oct. 2011 / Sample Size: 1039 [see: Annex I – Q.4.2.]

In the first round survey, especially the districts of Ali Abad (84%), Kunduz Centre (80%) and Imam Sahib (76%) scored particularly high. These results are noteworthy, as they would suggest that large segments of the population in these districts either feel (very) secure or are very confident in the (individual) capabilities of the Afghan police force. At the same time it should be noted that the data showed large statistical discrepancies between the two relatively similar survey questions (see Annex I); i.e. the districts of Ali Abad (26 percentage points), Char Dara (29 percentage points), Khan Abad (21 percentage points) and Kunduz Centre (13 percentage points) had the largest statistical discrepancies. One possible explanation for the discrepancy in data

¹⁵ I.e. “Do you think there are enough police in this district to provide security law and order?”

between the first round survey question and the second round survey question may be that there was an increased confidence in the individual capacity of Afghan police, though there remains to be a popular dissatisfaction with the actual (apparently limited) size of the police force in a number of districts. However, another – more self-critical – explanation may be a possible unreported(!) deviation from the sampling methods by (some) local survey staff. Note: the possibilities to cross-check primary data was limited during the second survey round, due to security and time constraints. A third possible explanation may be that popular perceptions of police functioning not only highly vary over space, but also over time(!). Therefore, the popular perception on law and order in October may (strongly) differ from perceptions held in November.

When comparing data on the popular perception of police functioning on a provincial level (see Table 4.3.) with data from a similar study (TAF 2011) on popular confidence in police performance on a regional level (North-East; incl. Kunduz), one will find that these percentages are very close to each other; i.e. data from this study proclaims a 67% capability rate (“security provision”, in: Peavey 2011, 106) versus a 69% capability rate (“job performance”) in the TAF (2011, 36) study. However, the same TAF study also states that 55% of the “North-East” population never or rarely ever has any fear for its safety, whereas 46% of the North-East population sometimes or often fears for their personal safety or that of their families (TAF 2011, 28). What should be noted here is that safety and security may not only reflect on the job performance of the AUP/ANP, as it is also of relevance to the job performance of the ANA in this particular question – hence this may explain the 12 percentage point “security perception” difference between the primary data used in this study (see Table 4.3.) and the primary data from the TAF (2011, 28) study. Overall, the TAF (2011) data seems to generally confirm the provincial image of popularly perceived police capabilities – in terms of security provision – as based on the primary data of this study. Unfortunately, no data was found on the popularly proclaimed police size-sufficiency in similar studies to compare the primary data of this study with;

hence no claims about the external validity of police size-sufficiency data can be made.

Formal Court Effectiveness and Efficiency

According to the MoI *tashkil*, the Kunduz province judiciary is supposed to be 74 judges strong. However, the actual number was short of this target, with only 46 sitting judges in 2011 (Röder 2011) – a breakdown of the judiciary per district can be found in Table 4.4.

District	Number of Judges	Attorney General Office Staff (Prosecutors, Administrators)
Ali Abad	1	3 (2, 1)
Char Dara	2	3 (2, 1)
Dasht Arche	2	3 (2, 1)
Imam Sahib	2	3 (2, 1)
Khan Abad	3	3 (2, 1)
Kunduz District	35	53 (38*, 15)
~ Primary Court	13	-
~ Appeal Court	22	-
Qala-e-Zal	1	3 (2, 1)
<i>Total</i>	46	71 (50, 21)

Source: MPIL Provincial Need Assessment; published in: Peavey 2011, p. 104.
 * Includes 17 prosecutors who are temporarily working in Kunduz from other provinces.

Furthermore, a major problem facing the Afghan formal court system is the lack of legal (university-level) education among the judiciary. Several studies have indicated that a majority of judges had not obtained the educational training as required by law (e.g. ICG 2010; Jensen 2011) – judges are legally required to have a background in either secular law or *sharia* law. A 2011 study conducted by the Max Planck Institute for International Law estimated that about 30% of the Afghan judiciary held a modern law degree, while a majority has some(!) background in *sharia* law (Röder 2011). However, this same study estimated that around 90% of the Afghan judiciary had attended additional legal trainings or courses offered by MPIL, GIZ and other organizations in recent years (Röder 2011). Nonetheless, problems with regard to the educational background of the judiciary were still identified as one of the major

obstacles for the improvement of formal court effectiveness and capabilities in 2011 (e.g. Jensen 2011; Röder 2011). Apart from institutional flaws such as corruption (which will be covered later in this chapter), a lack of or insufficient legal education among the judiciary may pose very grave obstacles to the functioning of the formal legal system. In effect, it may seriously hamper the effectiveness and efficiency of formal courts, as well as that it may undermine the popular confidence in the decisions made by courts.

In order to assess the popular confidence in the formal legal system, two questions reflected on the popular perception of formal court effectiveness and efficiency.¹⁶ In a direct question community members were asked if they believed that formal courts functioned effectively and efficiently (see Annex I - Table 4.3.). On a provincial level, about 40% of the population proclaimed that formal courts were effective and efficient institutions for solving justice related issues, compared to 35% of the provincial population who either somewhat disagreed or strongly disagreed with that claim. In five of the seven districts, either a small majority or an even smaller plurality of the population proclaimed to view formal courts as effective and efficient institutions; i.e. Ali Abad (58% agreed to 23% disagreed), Char Dara (55% agreed to 30% disagreed), Imam Sahib (54% agreed to 22% disagreed), Khan Abad (32% agreed to 28% disagreed) and Qala-e-Zal (32% agreed to 24% disagreed). The two exceptions were Kunduz District (29% agree to 50% disagree) and Dasht Arche (27% agree to 61% disagree). What becomes apparent is that these numbers do not *convincingly* support general claims of a popularly proclaimed effective and efficient functioning of the formal court system. However, it remains debatable to what extent this data on its own would actually support opposite claims of institutional weakness as one would expect in a failed state.

16 A number of questions were also formulated to reflect on the popular perception of prosecutor functioning. However, during the debriefing sessions with the local surveyors and the Afghan research staff it became apparent that the overall majority of the rural population lacked a thorough awareness of the exact working of the formal legal system, due to a lack of experience with it; especially how prosecutors and lawyers fulfill their tasks was generally a guess to them (many people ó especially women ó are not represented by a lawyer in court but rather by a village elder or older family member for reasons of communal authority). For that reason, the questions reflecting on the effectiveness and efficiency of formal courts are what represent the most relevant and usable data of the popular perception of the formal legal system. For that reason, the data on the popular perception of prosecutor functioning was not included in this thesis.

A second question was formulated to reflect on the popular perception of the likelihood that administrative or legal mistakes would occur during a legal process. This question was formulated to assess the popular perception of formal court capabilities (see Annex I – Table 4.4.). Though the outcomes of this question were overall more positive than the previous question, the general image remained similar to the confidence distribution in the first survey question. On a provincial level, about 48% of the population was either somewhat confident or very confident that legal or administrative mistakes are *unlikely* to be made by formal courts, compared to 27% of the population somewhat or strongly opposing that statement. Again, in five of the seven districts, either a majority or a plurality of the population proclaimed to view formal courts as effective and efficient institutions. However, this time the numbers were more in favour of the formal courts; i.e. Ali Abad (57% unlikely [that mistakes are made] to 11% likely), Char Dara (62% unlikely to 18% likely), Imam Sahib (76% unlikely to 12% likely), Khan Abad (44% agreed to 18% disagreed) and Qala-e-Zal (33% agreed to 23% disagreed). Again, the two exceptions were Kunduz District (35% unlikely to 44% likely) and Dasht Arche (29% unlikely to 58% likely).

In comparison, according to data from a 2011 study conducted by The Asia Foundation on the popular perception of formal court effectiveness, 58% of the population in Afghanistan’s North-East (incl. Kunduz) either strongly or somewhat agreed that state courts were effective at delivering justice against 39% who somewhat or strongly disagreed with that statement. What should be noted is that although the percentage of the population expressing their confidence in formal court effectiveness is (far) larger in the TAF (2011) study than the provincial numbers from both survey questions on formal court effectiveness/efficiency used in this study, there is a far lower number of respondents in the TAF (2011) study that remained “neutral”. Furthermore, what undermines the external validity of the primary data in relation to the data from the TAF (2011) study, is that the (formal court-)confidence distribution on a provincial and district level is absent – for that

reason no analysis can be conducted in order to assess whether the data on a provincial or district level is perhaps more alike.

Overall speaking, the quantitative data seems to contradict claims of a (historical) general popular rejection of the state and its encompassing justice system in peripheral or rural areas in Afghanistan (e.g. Barfield 2008; Barfield 2010; Jensen 2011) – at least in terms of an absolute verbal rejection of state justice, the data seems to suggest that these kind of scholarly claims are untrue. Rather, a majority of the population seems to either have varying levels of confidence in the effective/efficient functioning of the state justice system, or they are at least neutral towards it – this may be considered positive, as the population does not (openly) express a verbal rejection of the effective and/or efficient functioning of the state justice system when they are neutral.

Physical Accessibility of Formal Institutions

Last but not least is the popular perception of the physical accessibility of formal justice and security institutions. In other words, how does the population assess their physical proximity to formal institutions. According to a 2011 study conducted by the Max Planck Institute for International Law, proper access to state judicial institutions was relatively good throughout Kunduz province. According to this study this was because judicial institutions were present in each district, the formal institutional capacity had improved during recent years and that infrastructure witnessed significant investments and improvements (Röder 2011).

During the first round of community surveys, respondents were asked if there were formal courts, and police stations that they could get to. The possible answers were: (1) Yes, easy to access; (2) Not easy, but can access if necessary; and (3) Not Accessible. In addition to the questions covering the accessibility of the primary formal institutions, respondents were also asked about the accessibility of *shuras* and

jirgas. Due to reasons of security, no direct questions could be asked to the respondents about the “accessibility” of insurgent institutions; e.g. Taliban courts.

The data results showed that overall, about 89% of the population had access to *shuras* or *jirgas*, compared to 87% of the population having access to police stations and 82% of the population having access to state courts (see Annex I – Q.4.5-Q.4.7.). In general, the easiest institutions to access were *shuras* or *jirgas* (67%), followed by police stations (58%) and then state courts (52%). These quantitative findings on a provincial level would thus be in line with the before mentioned findings from the Provincial Needs Assessment conducted by the Max Planck Institute for International Law (Röder 2011).

With regard to the district level breakdown of these numbers, Qala-e-Zal has by far the worst access to both formal and informal justice institutions; i.e. 58% of the population has access to police stations, 38% has access to formal courts and 63% has access to *shuras* or *jirgas*. However, Qala-e-Zal should be considered an exception, as in the rest of the districts 75% of the population or more has access to the formal justice and security system. Furthermore, what should be noticed is that in Kunduz Centre the population has better access to the formal justice and security system than to informal (non-insurgent) institutions. In effect, 96% of the population has access to the formal system, of whom 81% has *easy* access to police stations and 72% has *easy* access to formal courts, compared to 92% of the population having access to *shuras* or *jirgas*, of whom 61% has *easy* access.

Factors that would explain the prevalence of the formal system in Kunduz Centre, are the facts that it is the provincial centre – and therefore the centre of the formal system – and that it has by far the largest percentage of urban centred population (47%) in the province. However, if one would compare other districts with the highest absolute or relative urban populations with, for example, the two districts with the smallest urban populations, one would find that no correlation between the urban-rural ratio and the prevalence of the formal over the informal system in terms of accessibility exists:

- Khan Abad has the second largest (absolute) urban population with 38,100 (= 25%) and 82% of the population has access to police stations and 79% to formal courts, compared to 92% having access to *shuras* or *jirgas*;
- Imam Sahib has the third largest (absolute) urban population with 32,500 (= 15%) and 95% of the population has access to police stations and 91% to formal courts, compared to 94% having access to *shuras* or *jirgas*;
- Qala-e-Zal has the second largest (relative) urban population with 17,400 (= 26%) and 58% of the population has access to police stations and 38% to formal courts, compared to 63% having access to *shuras* or *jirgas*;
- Char Dara reportedly has no urban population and 74% of the population has access to police stations and 75% to formal courts, compared to 88% having access to *shuras* or *jirgas*;
- Ali Abad reportedly has no urban population while 94% of the population has access to police stations and 97% to formal courts, compared to 95% having access to *shuras* or *jirgas*.

To conclude, the overall majority of the respondents indicated that they could have access to institutions related to the formal system if there was a need to. Only in Qala-e-Zal did significant segments of the population indicate that they were not able to physically access formal institutions. For a peripheral province such as Kunduz this is a relatively significant finding, as it would indicate that the formal system does have a local institutional representation available to the majority of its peripheral population when they would indicate they are in need of services related to law and order. Overall, however, the majority of the population still has better or more access to informal institutions (read: *shuras* and *jirgas*) than to formal institutions. This most likely has to do with the fact that community councils reside within the local communities themselves, rather than in the district capitals.

Institutional Flaws in the Formal System

This next section will reflect on uncovering publicly proclaimed institutional flaws. According to a number of earlier studies the performance of the Afghan judiciary in general remains weak due to pervasive corruption, a lack of judicial independence, the criminalization of security forces, a lack of respect for human/individual rights and the ethnicization of formal organizations and institutions (e.g. FfP 2011; ICG 2007b; ICG 2008; ICG 2010; ICG 2012; Jensen 2011; Perito 2009; Wilder 2007). In order to uncover the public perception of the institutional flaws obstructing the provision of justice and security, this section will focus on the before identified points. This section will first reflect on the popular perception of corruption and the independence of both the police and formal courts in Kunduz province. Second, this section will reflect on the proclaimed criminalization of the Afghan police force and on the respect of the Afghan police for individual rights. This is done by focusing on the publicly perceived levels of engagement of police officers in criminal activities and on the public perception of Afghan police respecting the individual rights of the population in Kunduz. Finally, this study will focus on the public perception of ethnic representation and ethnic favouritism within the Afghan police.

Corruption and Independence of Formal Justice and Security Providers

In order to assess the popular perception of how pervasive corruption within the police force was in 2011, respondents were asked how likely they thought it would be that the police would help them if they would not pay a bribe. In addition to this survey question, respondents were also asked about their experiences with police corruption. These questions were included as the “knowledgeability” of individuals is not only formed by dominant popular narratives of police corruption, but also by personal experiences that allow for a personal assessment of what institutional options are considered attractive or not attractive.

The results of the initial survey question reflecting on the popular perception of police bribery were that just over half of the population of Kunduz province (59%) thought that the police would help without paying bribes (see Annex I – Q.4.8.). However, a large share of this 59% believed that even though the police would help without bribes, they would not give much effort; i.e. 25% of the population believed that the police would not give much effort without bribes (even they would still help) compared to 35% that believed that the police would do their best even without receiving bribes.

The districts with the highest percentages of popular belief that the police would help without bribes were Dasht Arche (79% believed they would receive [some] help compared to 17% that believed they would receive no help) and Kunduz Centre (70% believed they would receive [some] help compared to 18% that believed they would receive no help). The districts with the lowest percentages of popular belief that the police would help without bribes were Imam Sahib (38% believed they would receive [some] help compared to 36% that believed they would receive no help) and Char Dara (41% believed they would receive [some] help compared to 37% that believed they would receive no help).

Overall, the results indicate that in each district the segment of the population proclaiming that they believe they would receive (some) help from the police even without paying bribes still exceeds those who believe that the police would not help at all without bribes. However, the same data would also indicate that in each district there is still a popularly perceived culture of bribery prevailing within the formal police. In effect, the results show that in each district either a small majority or a large plurality of the population still believes that bribes are essential to receive either “extra” help or help at all from the police.

In addition to the survey question reflecting on popular beliefs of police bribes, respondents were also asked about their own experiences with police bribery. Two survey questions were formulated to reflect on both the personal experiences of the respondents and on the experiences of their direct social environment with bribery. Only small minorities of the respondents (17%) indicated that either they themselves

had to pay a bribe or they knew someone else (23%) who had to pay a bribe to the police (see Annex I – Q.4.9. & Q.4.10.). In effect, this may indicate that although popular beliefs about a culture of bribery within the Afghan police force is still prevailing in Kunduz province, it is likely not so much the product of direct experiences but rather from hear-say and outdated(?) dominant beliefs.

In comparison, popular belief about the prevalence of a culture of bribery within the formal court system is far more negative than popular belief about the Afghan police (see Annex I – Q.4.11.). Overall, only 45% of the population in Kunduz believed that a bribe was never needed when dealing with state courts. Only in three out of the seven districts in Kunduz did a majority of the respondents indicate that they believed that a bribe is never needed when dealing with formal courts; i.e. Ali Abad (58%), Khan Abad (66%) and Kunduz Centre (54%). The lowest level of popular belief that bribes were never required for state courts was found in Char Dara (17%). This finding was in line with the previous finding on popularly proclaimed bribery and the Afghan police.

With regard to the popular perception of the independence of state courts and the Afghan police, in both cases a majority of the provincial population believed that powerful groups and individuals was capable of influencing legal or criminal processes (see Annex I – Q.4.12. & Q.4.13.). Again, a large segment of the respondents was more negative about the independence of state courts (64% believed powerful groups and individuals can influence a legal or criminal process) than about the Afghan police force (52% believed police were influenced by powerful groups or individuals). The districts that were the most negative about the independence of the Afghan police were Char Dara (78% did not believe state courts were independent compared to 8% who did believe so), Imam Sahib (58% did not believe state courts were independent compared to 18% who did believe so) and Dasht Arche (57% did not believe state courts were independent compared to 33% who did believe so).

In comparison, the districts that were the most negative about the independence of the state courts were Qala-e-Zal (85% stated that courts were not independent), Ali Abad (80% stated that courts were not independent), Imam Sahib (78% stated that

courts were not independent) and Char Dara (70% stated that courts were not independent).

What can be noted is that in the districts where there was a majority of respondents who believed there was still a culture of bribery prevailing within the formal police, they were also the most negative about bribery in the formal court system. As mentioned before, in general the population was more convinced about a prevailing culture of bribery within the formal court system than within the Afghan police force. Also with regard to popularly proclaimed independence of state courts and Afghan police, people were more negative about the formal court system than about the police. The general picture that arises is that people in the districts of Char Dara, Imam Sahib and Qala-e-Zal were the most negative about corruption and the most sceptical about institutional or organization independence.

Police Criminalization and Respect for Individual Rights

Recent quantitative data on how and on what level police officers are engaged in criminal activities in Kunduz province is absent. Rather, anecdotal stories appear in Western newspapers or (more qualitative) studies on the criminalization of the ANP (or one of its branches; esp. ALP) on a domestic level (e.g. CPAU 2009; Rubin 2012; Wilder 2007). Relevant for this particular study is not so much the actual level of police involvement in illegal activities, but rather its popularly perceived level. Criminal activity concerns a rather broad definition covering a wide range of unlawful practices; such as the unlawful/illegal apprehension of other persons' property, sexual offences such as rape, as well as murders and kidnappings (e.g. CPAU 2009; Rubin 2012; Wilder 2007). Police involvement in all of these criminal activities would contribute to the popularly perceived criminalization of the Afghan police force. In order to assess the level of popularly proclaimed criminalization of the ANP/AUP, one of the survey questions reflected on the perceived level of police involvement in illegal or criminal practices. Respondents were asked about how

many police they believed to be involved in criminal activities, with possible answers being: none, some, half and most (of the police force in this district).

Overall, the outcome was that less than half of the population (47%) believed that no one of the police in their district was involved in any criminal activities (see Annex I - Q.4.14.). Dasht Arche was in this instance an exception, as 75% of the population believed that none of the police officers were involved in criminal practices. The lowest scores were visible in the districts of Imam Sahib (30% said none of the police), Kunduz Centre (38% said none of the police) and Char Dara (39% said none of the police). However, if one would add "some of the police" to "none of the police" together, one would get a completely different image with 87% of the population in Kunduz proclaiming that either none or (only) a few of the police in their districts were engaged in criminal activities. Hence this image would suggest that the overall majority of the population in Kunduz province considered the police force *not* to be overtly criminalized. In fact, in six out of seven districts more than 80% of the population viewed the police as *not* overtly criminalized - except for Khan Abad district where only 74% of the population viewed the police as *not* overtly criminalized. Therefore it can be stated that a publicly proclaimed criminalization of the Afghan police force is *not* threatening to undermine the popular legitimacy of the ANP/AUP.

The second (related) focus point was popular experiences with the ability of the police to uphold individual rights in their interaction with the population. Individual rights in this context were concerned with the protection of the population from police brutalities and threats when they interacted with the ANP - as such it was explained by the surveyors to the respondents. The overall majority of the population in Kunduz proclaimed that they had not been treated unfairly by the police (75%) nor did they know anyone who had been treated unfairly by the police (61%) (see Annex I - Q.4.15. & Q.4.16.). Discrepancies were visible in the data results as in four districts 31-33% of the population proclaimed they were treated unfairly by the police (i.e. Char Dara, Dasht Arche, Khan Abad and Qala-e-Zal), compared to three districts that centred around 14-20% (i.e. Ali Abad, Imam Sahib and Kunduz

Centre). These numbers were higher when the respondents were asked if they knew anyone (else) in their community who had been treated unfairly. The worst scores were seen in Qala-e-Zal and in Dasht Arche, as respectively 52% and 49% of the population claimed that they knew at least one person in their community who was treated unfairly in the last year. In the other five districts the percentages were lower, as they centred around 32-38% of the population proclaiming that they knew at least one person in their community who was treated unfairly in the last year.

Based on the popular experiences with the police capability to uphold individual rights, a relatively large segment of the population supposedly had had bad experiences, which in turn may negatively affect popular preferences for institutions concerned with justice and security. However, what lacked in this study was data on the public perception of the capability of the police to uphold individual rights – only data on popular experiences was collected. As both experience and (dominant) popular narratives or perceptions are equally important to the “knowledgeability” of individual decision makers, it is a great loss that this data on the popular perception is not available. Therefore, the ability to make any meaningful claims about this point is limited.

The Ethnicization of the Formal System

As mentioned in the (demographic) background of Kunduz and Afghanistan, Afghan society contains a large number of ethnic (and tribal) groups. Though ethnic fragmentation has not been a publicly proclaimed prominent feature during the three decades of conflict in Afghanistan – perhaps except for the period of the Afghan Civil War from 1992 till 1996 – claims have been made concerning the ethnic-tribal privileging of certain ethnic pluralities and minorities in governing institutions over the past decades in a number of publications (e.g. Barfield 2010; Ewans 2002; Gannon 2004). No ethnic group in Afghanistan actually constitutes a majority, therefore “plurality” is used to indicate the largest ethnic groups in Afghanistan; i.e. Pashtuns and Tajiks.

This section will reflect on the publicly proclaimed ethnicization of (or the privileging of individuals belonging to certain ethnic groups by) formal institutions and organizations concerned with law and order. In addition to the survey questions reflecting on the ethnicization of formal institutions and organizations, a survey question will also reflect on the level of ethnicization of *shuras* and *jirgas*. Furthermore, as the police had by far the largest formal institutional presence in the province and it functions in general as the entry point to the formal system concerned with justice and security, one survey question will also reflect on whether respondents felt whether or not their ethnic group was sufficiently represented within the ANP/AUP.

Overall, 60% of the population in Kunduz believes that their ethnic group is sufficiently represented within the police force, while less than 25% of the population of the different ethnic groups feels that their ethnicity is *not* sufficiently represented – except for Hazaras with 26% of the Hazara population feeling that their ethnic group is not sufficiently represented within the police force (see Annex I – Q.4.17.). When reflecting on the public perception of ethnicity based privileging, about 62% of the overall population believes that the police treats all ethnic groups equally (see Annex I – Q.4.18.). This overall number on perceived equal treatment of ethnic groups would thus be in line with the number of perceived ethnic representations within the police force. In five out of seven districts, an overall majority of the population believes that each ethnic group is treated equally by the police; i.e. Ali Abad (75%), Qala-e-Zal (74%), Imam Sahib (70%), Kunduz Centre (65%) and Char Dara (52%). Only in Dasht Arche does a larger segment of the population (49%) believe that certain ethnic groups are privileged over others, compared to 46% who believe that all ethnic groups are treated equally.

Compared to 62% majority of the population believing that all ethnic groups are treated equally by the police, is only 35% of the population that believes that state courts treat all ethnic groups equally (see Annex I – Q.4.19.). This percentage is even lower with *shuras* and *jirgas*, as only 21% of the respondents believes that all ethnic groups are treated equally by these informal community councils (see Annex I – Q.4.20.).

To what extent and in what way these results would mean that ethnicity is of considerable importance with regard to the popular preference for the formal or informal system remains unclear. The data that was collected does not specify what ethnic groups are privileged and what groups are discriminated by institutions concerned with justice and security. Furthermore, as ethnic privileging and discrimination seems to prevail in both the formal and informal system, it is hard to tell to what extent it may actually make a difference what institution one would prefer. The only claim that can be made is that the ethnicization of formal and informal justice and security does indeed seem to occur.

Concluding Remarks

This chapter attempted to create an image of how internationally proclaimed state failure or state collapse is locally perceived (on a district level). The quantitative data suggests that the popular perception of the institutional capacities and capabilities of the formal system is rather diverse in Kunduz. Contradictory to international depictions of the Afghan state as a failed or collapsed state, relatively large segments of the population in Kunduz province seem to uphold a rather positive view of its formal institutional capacities and capabilities with regard to justice and security – although it should still be noted that also significantly large pluralities seem to have a lesser faith in the formal institutional capacities and capabilities. These differences in the popular perception of institutional capacities and capabilities should be interpreted as constituting the first pillar of dominant (local) popular narratives of the functioning of the formal system. As mentioned in the introduction, the second pillar constituting dominant (local) popular narratives of the formal system is formed by the popular perception of institutional flaws. In effect, (in some cases significant) differences in the popular perception of the functioning of the formal system were noticeable on a local (read: district) level.

What should be kept in mind, is that dominant (local) popular assessments of the functioning of the formal system are relative rather than absolute, as they should be compared to the popularly perceived functioning of alternative (informal)

institutional options. For that reason, the next chapter will reflect on the popular preferences for and confidence in both formal and informal institutions concerned with justice and security. Only in combination with that data can one formulate claims of what elements of dominant popular narratives of state failure are of significance; and in effect, how state failure may actually affect popular attitudes towards formal institutions concerned with justice and security.

Chapter V

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Popular Preference and Confidence in Institutions concerned with Justice and Security

Introduction

This chapter reflects on the different levels of popular preference and confidence for both formal and informal institutions concerned with law and order. The aim of this chapter is to uncover how the perceived state of the Afghan state affects institutional decisions when people are in need of justice and/or security. This is done by first reflecting on 1) what institutional decisions were actually made when people had disputes, criminal cases and/or other legal issues; and 2) what institutions were considered the most effective in helping the population. Second, this chapter will reflect on the rationality behind institutional choices made. In other words, what were the motives for individuals approaching specific formal or informal institutions when they are in need of security and/or justice.

As mentioned in earlier chapters, Afghanistan is often labelled as a schoolbook example of a failed state where formal institutions are flawed or not functioning at all. However, as this chapter will show, internationally proclaimed and/or popularly perceived formal institutional decline and institutional flaws do not necessarily implicate that informal institutions are considered preferred alternatives to the formal system.

Popular Preference and Confidence

This section will reflect on popular decisions for formal or informal institutions when in need of justice and/or security. The quantitative data that was used for this section was collected during two survey rounds in October and November 2011, covering all seven districts of Kunduz province. During the first survey, respondents were asked to give an account of their last legal and/or criminal case – this only applied to those respondents who themselves or whose relatives had a case in 2011. The questions that were answered in the survey based on the citizen accounts, reflected on 1) what the respondents' last criminal and/or legal case or dispute was about, and 2) which formal or informal institution was actually approached in order to solve the issue. The second survey round contained four hypothetical questions that were posed to all respondents about their institutional choices in specific case-categories, in order to assess the popular confidence in the different institutions providing law and order.

What should be noted, is that the analysis of the quantitative data used in this study does face a number of limitations, which in turn may limit the possibilities to make well founded claims. As was mentioned before, the primary datasets remain to be property of the NGO that conducted the research for the evaluation of the NL-Integrated Police training Mission in Kunduz, Afghanistan. Therefore, the quantitative data used in this study could only be copied as it was presented in the official NL-IPM Baseline Study (Peavey 2011).¹⁷ For that reason, no (additional) statistical analysis could be performed on the first round data results covering the level and distribution of actual institutional preferences per case-category. Furthermore, the first survey round only covered a limited range of institutional

17 It should be noted that the two 'questions' from the first survey round give a somewhat inaccurate representation of 'reality' in the way the data was used in the NL-IPM baseline publication. For example, the first question referred to the last 'case' of a respondent ('what was the dispute about?'), which was used in the official baseline publication to provide an image of what legal/criminal issues were of more or lesser concern to the population in Kunduz. However, as the data was decided to be used in this way, the initial question should also have included the possibility of respondents having more than one legal or criminal case per year. This same critique also applies to the question reflecting on 'where the (last) dispute was taken to', as respondents may have had several cases where they approached different institutions for.

options as no answers included informal justice and/or security providers such as Taliban and local strongmen.

The second survey round did include questions covering popular institutional choices per case-category. However, rather than reflecting on actual popular decisions, the questions centred on both a hypothetical criminal case and a hypothetical land dispute. This was done to avoid putting respondents in a position where they had to admit they had interacted with insurgent elements – as in the citizen accounts of the first survey round no respondent mentioned either local strongman or (other) insurgent elements. Furthermore, it should be noted that the questions in the second survey round were more justice-centric than security related. For that reason it was decided not to include ANP/AUP as an answer-option for the survey questions. It should be noted that this exclusion of the ANP/AUP from the survey questions may cause a distorted representation of the actual level of popular confidence in institutions concerned with law and order – as ANP/AUP may in practice operate as providers of justice.

The data results from the citizen accounts showed that land related disputes were most common throughout Kunduz, comprising 37% of the cases, followed by family related disputes comprising 21% of the cases (see Annex I – Q.5.1.). Issues over land generally concerned contested claims of ownership, inheritance disputes (note: this is not considered a family dispute) and cattle or harvest(!) theft (CPAU 2012). Only in Dasht Arche were family related disputes the most common, comprising 36% of the cases compared to 27% of the cases being about land. Family cases generally comprise marriage and divorce related issues – including domestic violence, abuse and kidnappings, as well as related financial restitutions (CPAU 2012). On a provincial level, other case-categories were less significant as they (individually) comprised 10% or less of the reported cases.

A similar dispute and legal case mapping attempt conducted by The Asia Foundation, found that on a regional level (North-East; incl. Kunduz) land and property cases combined comprised 68% of all cases (Röder 2011). The discrepancy between the data results in this thesis and the TAF study may either be explained by

the difference in range of sample areas (the TAF North-East region comprised several provinces and not only Kunduz) or by the fact that the respondents of the NL-IPM evaluation were only asked to refer to their last case. What both studies do have in common, however, is that land disputes and cases over land are the most common in Kunduz.

When the respondents were asked to recall to which institution they took their last legal or criminal case or dispute, this was done to assess the popular preference for institutions concerned with justice and security. Even though the quantitative data from the first survey round would allow for only limited and generalizing claims to be made, it remains significant that overall in these citizen accounts 59% of the cases were referred to the formal system (both police and state courts combined) (see Annex I - Q.5.2.). In effect, the ANP/AUP (39%) was the most preferred individual institution, followed by *shuras* and *jirgas* (29%), formal courts (20%), and last *arbakai* (14%). Only in Char Dara (23%) and in Qala-e-Zal (45%) less than half of all cases were dealt with by the formal system. The district with the highest percentage of respondents referring their cases to the formal system is the provincial capital (Kunduz Centre; 75%), closely followed by Dasht Arche with 74% of the reported cases being referred to either the police or a state court. In effect, these data results would implicate that the formal system would still comprise the popularly most preferred institutions concerned with law and order in five out of seven districts in Kunduz province.

In comparison, in the second round survey respondents were asked about what institution would be most effective in helping when a crime was committed against them. Rather than asking which institution the respondents would (hypothetically) prefer, this question was asked to reflect on which institution enjoyed the greatest popular confidence. The data results showed that 55% of the respondents stated that a formal court would be most effective in helping them (see Annex I - Q.5.3.). What is significant is that relatively few respondents expressed a greater confidence in institutions that may be considered as rivalling with the state for local power and

control (i.e. Taliban (5%), local strongman (5%) and *arbakai* (8%)). In six out of seven districts, formal courts enjoyed the largest popular confidence. Only in Ali Abad did *shuras* and *jirgas* enjoy a larger popular confidence than state courts; 46% of the respondents in Ali Abad considered *shuras* and *jirgas* the most effective institution compared to 25% of the respondents expressing most confidence in state courts. A follow-up question asking respondents what institution would be least effective in helping when a crime was committed against them only confirmed these data-results. The only thing noticeable in the data results for this question was that a particularly negative attitude was noticeable in Ali Abad against local strongmen compared to other districts (see Annex I Q.5.4.).

When respondents were asked about what institution would be most effective in helping when they had a land dispute, again 55% of the respondents stated that a formal court would be most effective in helping them (see Annex I - Q.5.4.). Also here when a follow-up question was asked later in the survey about what institution would be least effective in helping when they had a land dispute, the answers only reconfirmed the popular confidence that the respondents expressed in state courts (see Annex I - Q.5.4.).

Two things stand out when comparing the data results on popularly proclaimed confidence in institutions when dealing with criminal cases and when dealing with land disputes. Firstly, what stands out in these data results is that even though in the first survey round popular preference for *shuras* and *jirgas* exceeded popular preference for state courts, popular confidence in state courts is still proclaimed to exceed popular confidence in *shuras* and *jirgas*. In effect, 55% of the respondents proclaimed that state courts are the most effective institutions compared to 24-5% of the respondents claiming that *shuras* and *jirgas* are the most effective institutions. This would in fact indicate that even in a context of state failure, popular preference and confidence continues to reside largely with formal institutions over informal alternatives.

Furthermore, it is also significant that even though criminal cases and land disputes are inherently different in nature, respondents seem to consider formal courts as the

most effective in helping them with both types of cases. One would have expected that community councils such as *shuras* and *jirgas* would have enjoyed a larger popular confidence when dealing with land disputes, as they should have a larger awareness of the local contentious issues at play (claim based on: CPAU 2012). However, this does not seem to be the case, as the popular assessment of institutional performances does not seem to be case-category dependent.

The Rationality of Popular Choices

This section will reflect on the rationality behind popular decisions for formal and informal institutions when in need of justice (and/or security). This section aims to uncover why some people prefer formal institutions over informal institutions (and *vice versa*) when they have criminal or other legal cases. Claims made in this section primarily centre on 57 “follow-up” interviews that were conducted by a small group of local Afghan researchers in all seven districts of Kunduz province (see Annex II for interview format). The aim of these interviews was to uncover the rationality behind institutional decisions of people that had referred cases to both formal and informal institutions concerned with justice and security – in addition to uncovering the actual “legal process” of a case that was brought to a justice institution.

As the 57 interviews followed-up on the second round surveys, they were conducted in the last days of the second field research period in late November, 2011. What should be noted is that due to serious time constraints (less than 36 hours) and the fact that most of the research staff were occupied with other tasks, only limited human and material resources could be made available to conduct these interviews. Furthermore, only in Kunduz Centre and Khan Abad did the security situation allow for a relatively safe travel throughout the entire district by the research staff. For that reason, the initial methods for sample selection were largely neglected(!) by the research staff conducting the follow-up interviews. The people that were interviewed, were in some cases respondents from the second survey round while in other cases they had not been interviewed prior to the follow-up interviews. In practice, the respondents for the follow-up interviews were approached as soon as they could be identified as having been closely involved in referring a legal or criminal case to either a formal or informal institution. Practically this meant that respondents were primarily from the communities of the local Afghan researchers. Due to the before mentioned constraints, the target numbers were not met (i.e. the desired amount of follow-up interviews: 30 per district with at least 10 interviews for formal institutions and 10 for informal, and a total of 45 interviews in the provincial

capital). When the target numbers were expressed, it was already anticipated that these numbers would not be met. In the end, the number of interviews per district differed, ranging from 6 interviews (in Char Dara and Ali Abad) to 10 interviews (in Qala-e-Zal and Kunduz Centre) per district, with a provincial total of 57.

On a positive note, close to all case-categories were covered by the follow-up interviews. A majority of cases concerned land related issues or family issues, and cases were almost equally referred to both formal and informal institutions. However, insurgency related institutional options (e.g. Taliban and warlords) were not reflected upon by the respondents. Also, only one respondent was interviewed that referred his case to the and *arbakai*. The absence from these institutional options from the data results, together with the limited sample size, significantly reduces the empirical bases to make any generalizing claims. In fact, on a district level the sample size can be considered so small that this study will avoid making claims about the rationality of institutional choices on a district level at all.

When reflecting on the rationality for popular choices to refer cases to institutions linked to the formal justice and security system, a rather small range of motivations was expressed by the respondents. The primary motivation of respondents to refer their cases to state courts was reportedly “trust”. This applied to all reported case-categories that were dealt with by the formal courts; i.e. land/property cases, family cases (“kidnappings”) and criminal cases. In this context, trust was explained as confidence in the ability of formal courts to bring a case to a good end. This did not only mean that the judgement of state courts was considered fair when the institution was approached, but also that the respondents were confident that formal courts were capable of enforcing their decisions(!). What was also noteworthy, is that several respondents stated that their primary rationale for approaching a formal court was that state courts were actually capable of summoning the opposing party. These claims would indicate that formal courts were still considered to be stronger (or perhaps even the strongest) institutional options by parts of society. Also, in a number of cases, the rationale for referring a case to a formal court was that *shuras* or *jirgas* were not able to solve a case prior to a formal court taking (over) a case.

When respondents were asked why they didn't refer their cases to other institutions concerned with justice and security, the overall majority proclaimed that there were no better alternatives to the formal courts. Other arguments that were mentioned were accusations of a lack of independence of other (informal) institutions, that other institutions were corrupt and that 'it is customary to go to *shura* first, but they couldn't solve the dispute.'¹⁸ In a number of cases, community members were reported to be of influence in the assessment of what institutional option would be best, though in the overall majority of cases the decision was made by the head of the family or the "victim" himself or herself.

What stands out is that the overall majority of the respondents expressed that they were satisfied with the way the formal courts solved their cases. This is significant, as good experiences are considered to be of importance for repetitive social practices (Giddens 1979). In this case that could implicate that when the respondent has another criminal or legal issue, he would be more likely to refer it to a formal institution. Also, none of the respondents but one reported that they had to pay any bribes to formal court officials. The only costs that were mentioned by the respondents that they encountered were transportation costs, yet they did not seem to be significant enough to the respondents to prevent a future return to a formal institution.

In the cases where respondents expressed that they were not satisfied with the way a state court resolved their issues, it primarily concerned issues where the interference from external actors was reported. In one case from a small rural community in Khan Abad, a community member reported that his neighbour's daughter was "kidnapped" – though the respondent did not want to share with the interviewer by whom.¹⁹ The case was reportedly first dealt with by a local community council, and then by a district court before it was taken to the provincial court. When the case was dealt with by the community council, they came to a verdict though they were not

¹⁸ Interview with a community member from Dasht Arche (Interview ID-No.: DA001).

¹⁹ The case was reported as a kidnapping by the father of the ÷victimö, though it remains unclear if the ökidnappingö actually happened with the consent of the daughter (Interview ID-No.: KA003).

capable to enforce it; i.e. the daughter was not released by her kidnapper(s). For that reason the victim's father went to the district court accompanied by a "white beard", in order to indicate that the community elders supported the father's decision to approach a formal court.²⁰ However, as the opposing party proved to be too powerful for a local community council to "enforce" a verdict, the father's hope to find support within the formal system proved to be in vain. According to the respondent, several political actors intervened in the process on behalf of the opposing party, and for that reason the case had not been resolved. Still, what remains to be noteworthy in this case is that the formal court was proclaimed to be approached – by a community member with the consent of his village elders²¹ – because it was considered a strong institution(!) and hoped to be independent enough as well.

When reflecting on the primary motivations for respondents to have referred their cases to the Afghan police, again references were made to popular trust (or confidence) in the institutional capabilities of the police as being part of the formal system. Furthermore, the respondents proclaimed that the police was a very effective institution in handling cases relating to theft, violence, murders and kidnappings – in fact; more effective than other institutions, and therefore the best institutional option. Another motivation that was expressed by a respondent, was that 'the police has guns'.²² This argument would indicate that guns were needed to enforce a decision on the opposing party as they were likely more powerful than the victim. An indication for this argument would be that it was reported by the respondent that external actors tried to (unsuccessfully) influence the outcome of this case. In the end the case was reportedly successfully resolved by the police, and the respondent expressed his satisfaction with the ANP/AUP. Overall, in the cases that were reportedly referred to the ANP/AUP, the majority of the respondents again

20 The translator, used the word *ōwhite beardō* to indicate a respected community elder. A long beard is considered to be worn by respectable persons for cultural and religious reasons; and the *ōwhiteō* implicates that the person is old and therefore wise.

21 This could be explained as the acknowledgement from the village elders that the formal court was better capable of enforcing their institutional decisions.

22 It concerned a case over an access to water related disputed, which was reported by a community member from Khan Abad at the local police precinct (Interview ID-No.: KA006).

expressed their satisfaction with the handling of their cases by the formal system. As a respondent from Khan Abad proclaimed: "It is clear to all people that we have a good police and good government".²³

What is noteworthy, is that several respondents from Char Dara, Ali Abad and Khan Abad mentioned that they directly took their cases to either the district governor or to the local police commander.²⁴ Even though these actors belonged to the formal system, they were not approached according to the "official procedures" of how criminal or legal cases should be handled. In effect, these actors belonging to the formal system were approached in a patrimonial way; i.e. these formal actors were primarily required to resolve disputes through their personal judgements. The respondents proclaimed that they did not trust the institutional and organizational instruments belonging to the formal system unless a powerful leader ordered them to act in an honest and effective way. This was needed to make sure that the "institutional decisions" would be enforced. So, although the respondents proclaimed they preferred the formal system over the informal system, they did not trust all the structural features comprising the formal system.

When reflecting on the primary motivations for respondents preferring *shuras* and *jirgas* over the formal system, the main arguments were 1) confidence or trust in the institutional fairness and effectiveness, 2) they are not corrupt and 3) a sense of ownership over the community councils was felt. The reported cases solely concerned water and land related disputes; i.e. disputes that were not characterized by a significant power asymmetry among the disputants, as in these cases they were all members of the same communities or families. What should be noticed is that although "justice" was desired, it was not so much a punitive justice that was required but rather a restorative form or mediated form of justice.

²³ It concerned a theft case that was reported by a community member from Khan Abad district at the local police precinct. The case was successfully resolved to the satisfaction of the respondent (Interview ID-No.: KA009).

²⁴ Cases that were reported primarily concerned land and water related disputes (e.g. Interview ID-No: KA010; AB001; CD002).

When respondents were asked why they took their cases to these institutions, the main answers were: 1) no better institutional options were present, as these community councils offer the most effective and efficient form of justice (unlike formal courts that often take a long time to deal with cases); 2) the financial costs for justice are much lower, as no costs for legal representation²⁵, transportation²⁶ and bribes have to be made; 3) local customs dictate that you first take your case to a local community council. In effect, the respondents that had their cases resolved by *shuras* or *jirgas* were all satisfied with the outcome. However, at the same time it should not be forgotten that several cases that remained unsolved by *shuras* or *jirgas* were subsequently referred to the formal system.

25 According to the follow-up interviews, in practice, many people from rural communities are represented by community elders or the head of the families rather than by official lawyers.

26 Community councils take place in communities themselves, whereas people generally have to travel outside of their (rural) communities to gain access to formal institutions.

Concluding Remarks

Overall, the formal system is described in the narratives of respondents reflecting on the motivations for their institutional preferences as comprising relatively strong and trusted institutions. This is an important finding, as in a country ravaged by ongoing violent conflict and where there is a large asymmetry of power among the population, the strength and independence of institutions when the population approaches them is essential for winning popular trust and support. Even though formal institutional strength and independence is not at all absolute in Kunduz province, it is still considered by many respondents as the most preferable institutional option for these very reasons.

Where informal institutions such as *shuras* and *jirgas* are preferred, it is primarily because of reasons of societal/communal expectations (first approaching informal communal institutions is considered socially appropriate or preferable over going to the formal system), institutional trust and institutional ownership as community councils are familiar to the individual community members (they gather within communities on a regular basis; e.g. CPAU 2012), and more pragmatic concerns relating to costs, time and travelling.

What should be noted, is that there likely is an overrepresentation of popular preferences and confidence for formal institutions in the data results used in this study. It should be kept in mind that a number of other studies, estimate that the significance of informal justice institutions is far greater than is portrayed in this study; i.e. some studies even going as far as proclaiming that 80-90% of criminal cases and other disputes are resolved by informal institutions (CPAU 2012; Scheye 2009; TLO 2010).²⁷ Unfortunately, it was not possible in this study to reflect on the importance and significance of insurgency related institutions as popularly deemed viable alternatives for the formal system. Doing research in a conflict zone –

²⁷ What should be noted is that these studies are written to investigate the desirability of linking formal and informal justice systems ó these õstudiesõ have an agenda(!). The research methods that were used to derive to these estimates remain often unclear, and the statistical estimates are most likely directly copied from older publications (claim is based on the fact that always the same estimates are given over time; and the same secondary sources are referred).

especially when evaluating the impact of a “military” mission – means that answers are not always as honest and open as is desired. It also means that not always all questions can be asked; as the line between the popular perception of doing research and doing intelligence is very thin. Lastly, it also means that the sample areas are often limited to territories where the more pro-government communities reside. These limitations should be kept in mind when reading the claims that were made in this chapter – as careful as I have tried to be with formulating claims based on the primary data that was used.

Chapter V

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Conclusion

The Effects of State Failure on Human Attitudes toward State Institutions concerned with Justice and Security

This study has sought to formulate an answer to the question; how does state failure affect human attitudes toward formal institutions concerned with justice and security in Kunduz, Afghanistan? Of central importance to formulating an answer to this question was the theoretical concept of “subjective rationality”. By using this concept, this study has attempted to map the diversity of agency with regard to human interactions within Afghanistan’s judicial system(s). By using this theoretical concept, this study has sought to create a better understanding of human agency, by reflecting on what are considered socially and culturally preferable (inter)actions, and by what are the popularly proclaimed most effective institutions. This theoretical concept centres on the premises that even though human agents are rational in their decisions, their assessment of reality and its options are coloured by socially constituted “knowledge” and through the reflection or feedback on one’s own and other’s “experiences”. These factors would in turn distort the rational assessment of institutional options.

Subsequently; state failure is internationally proclaimed to reflect in a negative way on the functioning of formal institutions. Therefore, it could have been expected that a strong popular preference and confidence for informal institutional alternatives would have existed. In effect, the suspected effect of state failure on human attitudes toward formal institutions would have been one of popular rejection and/or neglect. This popular rejection would have been rooted in a popular assessment of formal institutional functioning as being weak and/or flawed. Previous studies have proclaimed that there is a strong preference for informal institutions – as mentioned in previous chapters – so it would have been logic if this preference was legitimized by a dominant popular assessment of formal institutions as: being criminalized;

encompassing a strong ethno-tribal imbalance; disrespecting individual rights; facing persistent corruption; lacking independence; and (therefore) not being capable, accessible, effective and efficient in terms of providing justice and security.

However, the data results did not confirm such a “reasonably expected” dominant popular assessment of the formal system on an overall level – though differences in dominant popular perceptions existed among the different districts. What is significant, is that the data results rather suggest that there exists a large diversity among popular assessments of formal state functioning. Although a relatively large segment (read: large pluralities) of the population did indicate that there were institutional flaws and weaknesses present within the formal system, on an overall level the majority view of the population was one that actually considered the state as being relatively capable, accessible, effective and efficient in terms of providing justice and security. This would in fact mean, that international or academic assessments of state failure were not necessarily reflected in popular assessments of state functioning.

The absence of an overall dominant popular assessment of the formal justice and security system as being weak or failed, was also reflected in the significantly large levels of popular preference for and popular confidence in civil institutions concerned with justice and security. The data results indicated that an overall majority of the population in Kunduz actually preferred the formal system over the informal system, and the same was the case with regard to the proclaimed confidence in the formal system. These data results – as mentioned before – may incorporate a more pro-GIRoA bias, as the surveys were conducted in more “pro-government sample areas” due to safety and accessibility concerns. However, even though this bias may exist, the image as created by these data results would still prove valid to indicate that the popular preference for informal institutions is not at all absolute in peripheral Afghanistan. Furthermore, as large variations existed among the popular preference and confidence for institutions concerned with justice and security, this would hint that the population actually had large levels of agency.

Most significantly, the rationale behind the actual institutional choices reflected primarily the RTC-argument of agent's seeking the most optimal outcome for their cases and disputes. Only in a small number of cases, did the respondents indicate that it actually was considered the socially and culturally preferred action to first approach an informal community council. At the same time, it should be noted that both respondents preferring formal institutions and respondents preferring informal institutions proclaimed that their institutional choices concerned the most effective and capable ones. This may in fact imply that their rational assessments are in fact subjective; formed by perhaps different locally dominant narratives of institutional functioning, in addition to what are considered socially preferable (inter)actions.

So, in order to understand the effects of state failure on human attitudes toward formal institutions concerned with justice and security, one needs to understand the social context. Rational choices of human agents are subjected to the forming influences of their social environments, which would suggest that the assessment of the functioning of the state system depends on both "popular knowledge" and "popular experiences". But perhaps even more importantly, formal institutions may be considered weak or flawed, yet their informal institutional alternatives are by large segments of the population judged as even less effective and capable - popular confidence would thus be relative, yet it would still empower human (inter)actions with the formal system. And even though a popular opposition to state institutions might exist in peripheral Afghanistan, human agents turn out to be very pragmatic when they are in need of justice and security.

Recommendations and Reflection

This thesis experienced a number of methodological and empirical constraints as the data was collected as part of the baseline study for the NL-IPM. The primary point is that the legal and security landscape in Kunduz and in Afghanistan is far greater than the two “systems” that were primarily covered in this study; i.e. the state system and the community council system. It is therefore strongly recommended that future studies should take these other informal institutional options (more extensively) into consideration.

Furthermore, this study did not reflect on how power projected by conflicting parties (e.g. GIRoA, Taliban, arbakai, warlords) affects human interactions with institutions concerned with justice and security. Several studies have suggested there exists a causal link between territorial control and popular “cooperation” (e.g. Kalyvas 2006). One should not forget that the violent contestation over territorial control is often a characteristic of state failure (Rotberg 2002; 2007). Therefore, it would be more than logic to include this power dimension in future studies on human interactions with formal and informal institutions in a failed state context.

The experience was that questions concerning, for example, Taliban courts or local warlords were generally considered to be too sensitive. The reliability of the data that would have been derived based on survey questions covering these topics would have been too unreliable. Two points of recommendation therefore would, possibly, allow for more reliable data covering these sensitive topics. First, a qualitative approach rather than a quantitative approach would most likely produce more reliable results. When conducting large scale surveys in a war-torn society, the essential band of trust between surveyor and respondent is often not properly created – primarily due to time pressures as target numbers have to be met. Furthermore, in a country such as Afghanistan what people don’t say is often just as important as what people say. Large scale surveys are unable to capture these non-verbal forms of communication. Perhaps ethnographic research would therefore be more accurate than conducting large scale surveys.

Second, when one is conducting research in a war-torn society for a militarily involved donor, often respondents interpret research as intelligence gathering. In the perception of the respondents, the researcher or surveyor becomes part of the conflict and therefore the respondent will most likely “adjust” their answers in order not to upset any of the conflicting actors – unfortunately, often including the surveyor. Future studies reflecting on human interactions with the informal security and justice system(s) should therefore attempt to refrain from interaction with military involved organizations, as it will colour the data collected.

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Annex I

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Community Surveys: Data Results

Question 4.1. "Do you think there are enough police in this district to provide security, law and order?"								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Sufficient	58%	12%	52%	68%	27%	67%	63%	51%
Insufficient	42%	88%	48%	32%	73%	33%	37%	49%

Source: Peavey 2011, p. 105. – Survey time: Nov. 2011 / Sample Size: 635

Question 4.2. "Can police provide security in this district?"								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Capable	84%	41%	61%	76%	48%	80%	65%	67%
Not capable	16%	59%	38%	23%	51%	19%	34%	33%

Source: Peavey 2011, p. 106. – Survey time: Oct. 2011 / Sample Size: 1039

Question 4.3. "Do you think the courts act effectively/efficiently?"								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Strongly Agree	16%	24%	4%	17%	5%	12%	0%	11%
Somewhat Agree	42%	31%	22%	37%	27%	17%	32%	29%
Neither Agree nor Disagree	20%	16%	12%	24%	41%	21%	44%	25%
Somewhat Disagree	17%	25%	46%	16%	27%	45%	16%	28%
Strongly Disagree	6%	5%	15%	6%	1%	5%	8%	7%

Source: Peavey 2011, p. 126. – Survey time: Nov. 2011 / Sample Size: 673

Question 4.4. "If you were to bring a criminal case to a formal court, do you think the process will happen without any administrative or legal mistakes or problems?"								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Strongly Agree (= no mistakes)	20%	28%	19%	55%	4%	23%	3%	22%
Somewhat Agree	37%	34%	10%	21%	40%	12%	30%	26%
Neither Agree nor Disagree	32%	20%	12%	12%	38%	21%	44%	25%
Somewhat Disagree	10%	13%	41%	7%	17%	32%	16%	20%
Strongly Disagree (= lots of mistakes)	1%	5%	17%	5%	1%	12%	7%	7%

Source: Peavey 2011, p. 126. – Survey time: Nov. 2011 / Sample Size: 673

Question 4.5. "If you wanted to, is there a police station that you could get to?"								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Yes, easily accessible	73%	39%	67%	63%	53%	81%	12%	58%
Not easily, but can access if necessary	21%	35%	25%	32%	29%	15%	46%	29%
Not accessible	5%	25%	7%	4%	18%	3%	42%	14%

Source: Peavey 2011, p. 128. – Survey time: Oct. 2011 / Sample Size: 1006

Question 4.6. "If you wanted to, is there a court that you could get to?"								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Yes, easily accessible	73%	38%	58%	54%	47%	72%	10%	52%
Not easily, but can access if necessary	24%	37%	31%	37%	32%	24%	28%	30%
Not accessible	3%	25%	10%	8%	20%	3%	61%	17%

Source: Peavey 2011, p. 128. – Survey time: Oct. 2011 / Sample Size: 1027

Question 4.7. "If you wanted to, is there a shura or jirga that you could get to?"								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Yes, easily accessible	81%	56%	55%	79%	71%	61%	54%	67%
Not easily, but can access if necessary	14%	32%	38%	15%	21%	31%	9%	22%
Not accessible	5%	11%	5%	6%	8%	7%	36%	10%

Source: Peavey 2011, p. 128-9. – Survey time: Oct. 2011 / Sample Size: 1020

Question 4.8. "Would the police help you if you don't pay a bribe?+"								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Yes, of course	37%	17%	57%	19%	31%	50%	24%	35%
Yes, but would not give much effort	25%	24%	22%	19%	21%	20%	36%	24%
No, they would not help	13%	37%	17%	36%	19%	18%	15%	22%
Maybe, don't know for sure	25%	21%	5%	25%	29%	12%	24%	20%

Source: Peavey 2011, p. 115. – Survey time: Oct. 2011 / Sample Size: 650

Question 4.9. "Did you have to pay a bribe in the last year?+"								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
No	93%	83%	85%	88%	77%	90%	68%	84%
Yes, once	6%	9%	9%	8%	10%	6%	24%	10%
Yes, a few times	1%	5%	5%	5%	6%	3%	8%	5%
Yes, more than five times	0%	3%	1%	0%	7%	2%	0%	2%

Source: Peavey 2011, p. 111. – Survey time: Oct. 2011 / Sample Size: 665

Question 4.10. "Do you know anyone who had to pay a bribe in the last year?+								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
No	78%	58%	50%	51%	44%	76%	34%	57%
Yes	16%	16%	26%	23%	19%	16%	30%	21%
Don't know	7%	26%	24%	26%	36%	8%	37%	23%

Source: Peavey 2011, p. 111 – Survey time: Nov. 2011 / Sample Size: 665

Question 4.11. %If you were to bring a dispute to the courts, how likely do you think it is that you would have to pay a bribe?+								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Never	58%	17%	33%	35%	66%	54%	36%	45%
Less than half the time	20%	12%	33%	14%	23%	21%	38%	23%
Half the time	13%	15%	16%	8%	5%	14%	18%	12%
Most of the time	4%	32%	13%	25%	2%	7%	5%	11%
Always	4%	24%	6%	18%	4%	4%	3%	8%

Source: Peavey 2011, p. 127. – Survey time: Nov. 2011 / Sample Size: 1027

Question 4.12. %Are police influenced by powerful people and groups?+								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Strongly disagree	6%	3%	9%	1%	8%	8%	2%	5%
Disagree	23%	5%	24%	17%	18%	21%	9%	17%
Neither agree nor disagree	23%	14%	10%	25%	29%	33%	51%	26%
Agree	42%	62%	45%	48%	42%	28%	34%	43%
Strongly agree	8%	16%	12%	10%	2%	10%	4%	9%

Source: Peavey 2011, p. 116. – Survey time: Nov. 2011 / Sample Size: 676

Question 4.13. %A strongman or commander in a nearby area had illegally taken a piece of property. If you were to take a case to court, could you win?+								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Yes	20%	30%	57%	22%	56%	57%	15%	36%
No	80%	70%	43%	78%	44%	43%	85%	64%

Source: Peavey 2011, p. 127. – Survey time: Nov. 2011 / Sample Size: 998

Question 4.14. %Do you think any of the police in this district are engaged in criminal activities? If so, how many?+								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
None	43%	39%	75%	30%	49%	38%	43%	47%
Some	45%	51%	22%	57%	25%	51%	39%	40%
Half	10%	5%	2%	2%	14%	10%	14%	8%
Most	3%	5%	1%	12%	12%	2%	4%	5%

Source: Peavey 2011, p. 106. – Survey time: Oct. 2011 / Sample Size: 1037

Question 4.15. "Have you been treated unfairly by the police in the last year?+								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Yes	14%	31%	33%	18%	31%	20%	31%	25%
No	86%	69%	67%	82%	69%	80%	69%	75%

Source: Peavey 2011, p. 109 – Survey time: Nov. 2011 / Sample Size: 669

Question 4.16 "Do you know anyone in your community who has been treated unfairly by the civil police in the last year?+								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Yes, I know lots of people	11%	9%	18%	16%	14%	7%	14%	12%
Yes, I know more than one person	11%	14%	14%	15%	8%	14%	15%	13%
Yes, I know one person	11%	10%	16%	7%	15%	13%	24%	14%
No, I know no one	68%	68%	51%	63%	62%	67%	48%	61%

Source: Peavey 2011, p. 108 – Survey time: Nov. 2011 / Sample Size: 668

Question 4.17. %Do you think your ethnic group is sufficiently represented in the police?+								
	Pashtun	Tajik	Uzbek	Hazara	Turkmen	Arab	Other	[Weighted] Province Total
Strongly disagree	6%	5%	6%	5%	5%	5%	5%	6%
Somewhat disagree	17%	14%	16%	21%	8%	18%	5%	15%
Somewhat agree	14%	13%	20%	15%	11%	17%	5%	15%
Strongly agree	45%	53%	38%	39%	49%	50%	65%	45%
Don't know	18%	15%	19%	18%	27%	9%	20%	18%

Source: Peavey 2011, p. 110 – Survey time: Oct. 2011 / Sample Size: 1028

Question 4.18. %Do you think that the police treat each ethnic group equally?+								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Strongly disagree	1%	8%	12%	3%	9%	0%	6%	6%
Somewhat disagree	16%	16%	37%	23%	20%	27%	15%	22%
Somewhat agree	35%	16%	10%	19%	15%	38%	29%	24%
Strongly agree	40%	36%	36%	51%	34%	27%	45%	38%
Don't know	8%	24%	4%	4%	21%	8%	5%	11%

Source: Peavey 2011, p. 113 – Survey time: Nov. 2011 / Sample Size: 675

Question 4.19. %Do you think that the formal courts treat each ethnic group equally?+								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Strongly agree	1%	23%	6%	8%	6%	9%	1%	8%
Somewhat agree	44%	22%	14%	43%	30%	13%	30%	27%
Neither agree nor disagree	21%	24%	13%	13%	30%	27%	40%	24%
Somewhat disagree	23%	18%	44%	28%	31%	41%	26%	31%
Strongly disagree	11%	14%	22%	8%	2%	10%	3%	10%

Source: Peavey 2011, p. 124 – Survey time: Nov. 2011 / Sample Size: 660

Question 4.20. %Do you think that the shuras and jirgas treat each ethnic group equally?+								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Strongly agree	6%	2%	5%	4%	1%	0%	2%	3%
Somewhat agree	34%	13%	17%	29%	18%	3%	16%	18%
Neither agree nor disagree	17%	14%	9%	22%	20%	16%	45%	20%
Somewhat disagree	26%	37%	40%	42%	48%	53%	33%	40%
Strongly disagree	18%	35%	29%	4%	13%	28%	4%	19%

Source: Peavey 2011, p. 124-5 – Survey time: Nov. 2011 / Sample Size: 668

Question 5.1. %What was the dispute about? [based on narratives given by community members]+								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Land	30%	44%	27%	55%	36%	38%	39%	37%
Water	4%	27%	8%	0%	15%	8%	10%	10%
Crime	4%	3%	5%	10%	9%	14%	0%	6%
Traffic Accident	17%	9%	9%	0%	9%	8%	10%	10%
Financial Disputes	19%	6%	8%	7%	12%	3%	9%	10%
Family Disputes	23%	9%	36%	17%	19%	19%	15%	21%

Source: Peavey 2011, p. 117 – Survey time: Oct. 2011 / Sample Size: 460

Question 5.2. %Where did you take the dispute? [based on narratives given by community members]+								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Police	55%	14%	37%	47%	43%	56%	17%	39%
Formal Court	9%	9%	37%	19%	12%	19%	28%	20%
Shura/Jirga	26%	43%	12%	30%	22%	25%	43%	28%
Arbakai	11%	34%	14%	5%	23%	0%	12%	14%

Source: Peavey 2011, p. 117 – Survey time: Oct. 2011 / Sample Size: 505

Question 5.3. %If a crime was committed against you, which institution would be the most effective in helping you?+								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Formal Court	25%	49%	61%	62%	55%	75%	49%	55%
Shura/Jirga	46%	39%	15%	24%	24%	15%	21%	25%
Taliban	1%	8%	10%	4%	9%	3%	0%	5%
A Local Strongman	12%	0%	3%	2%	8%	3%	4%	5%
Arbakai	13%	4%	4%	2%	4%	1%	26%	8%
Other	4%	0%	7%	5%	0%	9%	1%	3%

Source: Peavey 2011, p. 118 – Survey time: Nov. 2011 / Sample Size: 651

Question 5.4. %If a crime was committed against you, which institution is the least effective in helping you?+								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Formal Court	7%	25%	20%	4%	13%	11%	18%	14%
Shura/Jirga	24%	7%	20%	16%	16%	10%	21%	16%
Taliban	10%	24%	5%	17%	13%	28%	29%	18%
A Local Strongman	47%	10%	32%	10%	21%	27%	19%	24%
Arbakai	12%	31%	21%	49%	33%	23%	25%	24%

Source: Peavey 2011, p. 119 – Survey time: Nov. 2011 / Sample Size: 664

Question 5.5. %If you had a dispute over land, which institution would be the most effective in helping you?+								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Formal Court	57%	47%	51%	64%	50%	67%	49%	55%
Shura/Jirga	14%	38%	27%	26%	26%	21%	20%	24%
Taliban	1%	8%	7%	1%	7%	3%	3%	4%
A Local Strongman	12%	1%	6%	1%	9%	1%	4%	5%
Arbakai	0%	4%	2%	2%	1%	0%	10%	3%
Huqooq	14%	2%	7%	4%	6%	8%	13%	8%

Source: Peavey 2011, p. 119 – Survey time: Nov. 2011 / Sample Size: 664

Question 5.6. %If you had a dispute over land, which institution would be the least effective in helping you?+								
	Ali Abad	Char Dara	Dasht Arche	Imam Sahib	Khan Abad	Kunduz Centre	Qala-e-Zal	[Weighted] Province Total
Formal Court	8%	18%	28%	8%	11%	10%	11%	14%
Shura/Jirga	16%	8%	17%	19%	15%	7%	24%	15%
Taliban	12%	23%	2%	14%	13%	24%	27%	17%
A Local Strongman	37%	17%	23%	6%	21%	36%	20%	23%
Arbakai	20%	24%	15%	46%	31%	20%	5%	23%
Huqooq	6%	9%	15%	2%	6%	2%	7%	7%

Source: Peavey 2011, p. 120 – Survey time: Nov. 2011 / Sample Size: 659

Annex II

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Follow-Up Interviews: Interview Template

Name of surveyor:

Date:

District:

Village:

Interview code:

1. Did you or a close friend or relative take a case or dispute to a formal/informal institution (Example: police, court, *huqooq*, *shura/Jirga*)? If it was someone other than you, please describe your relationship.
2. What was that case or dispute about? If you (or your close friend or relative) have had more than one case or dispute, please just describe the most recent one.
3. Where was the case taken to?
4. Why did you (or your close friend or relative) take it there?
5. Why did you or they not take it anywhere else?
6. Did you (or your close friend/relative) represent yourself/themselves, or was a proxy, representative or advisor used? If so, who?
7. Please describe your (or your close friend or relative's) interactions with the members of that institution. How helpful were they? How did they do their job?
8. Were any errors or mistakes made in the handling of the case? If so, what were the mistakes?
9. Did you (or your close friend or relative) have to pay any other costs (Example: transportation costs, legal fees, etc.)?
10. Were there any external actors (Example: warlords, politicians, local commanders, etc) who tried to influence or affect the outcome of the case or to obstruct the case? If so, how?