

CORI

country of origin research and information

CORI Thematic Report

Afghanistan; Blood Feuds

February 2014

Commissioned by the United Nations High Commissioner for Refugees, Division of International Protection.

Any views expressed in this paper are those of the author and are not necessarily those of UNHCR.



Preface

Country of Origin Information (COI) is required within Refugee Status Determination (RSD) to provide objective evidence on conditions in refugee producing countries to support decision making. Quality information about human rights, legal provisions, politics, culture, society, religion and healthcare in countries of origin is essential in establishing whether or not a person's fear of persecution is well founded.

CORI Country Reports are designed to aid decision making within RSD. They are not intended to be general reports on human rights conditions. They serve a specific purpose, collating legally relevant information on conditions in countries of origin, pertinent to the assessment of claims for asylum. Categories of COI included within this report are based on the most common issues arising from asylum applications made on the basis of blood feuds by nationals from Afghanistan. This report covers events up to January 2014.

COI is a specific discipline distinct from academic, journalistic or policy writing, with its own conventions and protocols of professional standards as outlined in international guidance such as The Common EU Guidelines on Processing Country of Origin Information, 2008 and UNHCR, Country of Origin Information: Towards Enhanced International Cooperation, 2004.

CORI provides information impartially and objectively, the inclusion of source material in this report does not equate to CORI agreeing with its content or reflect CORI's position on conditions in a country. It is acknowledged that all sources have a bias, it is for decision makers to place a weight on sources, assessing relevance to each individual application.

CORI Country Reports are prepared on the basis of publicly available information, studies and commentaries within a specified time frame. All sources are cited and fully referenced. Every effort has been taken to ensure accuracy and comprehensive coverage of the research issues, however as COI is reliant on publicly available documentation there may be instances where the required information is not available. Any translations made are unofficial translations made by CORI, as with all sources referenced, please see the full text of the original article. The reports are not, and do not purport to be, either exhaustive with regard to conditions in the country surveyed, or conclusive as to the merits of any particular claim to refugee status or asylum. Every effort has been made to compile information from reliable sources; users should assess the credibility, relevance and timeliness of source material with reference to the specific research concerns arising from individual applications.

CORI is an independent centre providing specialist research resources to support Refugee Status Determination.

CORI works internationally with all parties to RSD, including governments, legal representatives and NGOs, producing commissioned research reports and providing knowledge management services. CORI works to improve standards of COI production through capacity building and training.

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April 2013

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1. PREVALENCE OF BLOOD FEUDS AMONG DIFFERENT ETHNIC GROUPS

1.1. Apart from the tradition of blood feuds in the Pashtunwali, the tribal code of the Pashtuns, do blood feuds also occur in other ethnic groups in Afghanistan (Hazara, Tajik, etc.)?

[See also [Section 3. Character of Blood Feuds, 3.1.1 General motivations/triggers](#)]

In an interview with CORI in January 2014 *Dr Noah Coburn*, a political anthropologist based in Afghanistan, reported that Pashtuns had a,

"higher tendency to practice, but all groups can be involved in feuds that descend into violence."¹

In an interview with CORI in January 2014 *Professor Thomas Barfield*, President of the American Institute for Afghanistan Studies, reported that blood feuds occurred amongst non Pashtun ethnic groups "but not as frequently."²

In July 2009 the *United Nations High Commissioner for Refugees* (UNHCR) reported that the tradition of blood feuds was practiced by Pashtuns and other ethnic groups in Afghanistan,

"This is a practice well recognized as part of the traditional moral code of the Pashtuns or Pashtunwali. However, this tradition has also entered the practices of other ethnic groups."³

In July 2003 *Professor Thomas Barfield* of Boston University reported that the practice of blood feuds is less common occur among non-Pashtun groups,

"Blood feud and private revenge taking also occurs but is less common among non-Pashtun groups. There is a greater willingness to take problems to government

¹ CORI Interview with Dr Noah Coburn, conducted by telephone, 28 January 2014

² CORI Interview with Professor Thomas Barfield, conducted via written correspondence in response to written questions. 28 January 2014

³ United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, July 2009, <http://www.refworld.org/docid/4a6477ef2.html>, accessed 13 December 2013

courts, particularly where disputants are not members of a single ethnic group, but even here informal mechanisms predominate."⁴

In May 2011 *UNHCR* reported on a group of 86 Tajik families (516 individuals) who fled their villages of origin in 2008 due to a fear of revenge killings by tribe members supporting the opposing side in clashes between armed factions linked to warlords and militia,

"In December 2008, a group of 86 families was displaced from three villages in Jawand (20 from Teraj, 20 from Lalabay and 46 from Khoja Sorkhian) belonging to the Tajik tribes of Taymani, Shabazi and Lalabay. Reports indicate intertribal tension in the area and different armed factions linked to warlords and militia regularly clash. As tribe members, they feel under pressure from the tribe to take part in the fighting and are legitimate targets for the opposing faction. Intertribal revenge killings of tribe members of the opposing side are a common tactic so the families decided it was safer for them to flee. They are dispersed over several villages in the Shakh area and do not expect to be able to return to Jawand in the near future."⁵

1.2 INTER-ETHNIC/ SECTARIAN ELEMENTS

1.3 Do blood feuds occur between members of different ethnic groups (e.g. Pashtuns v. Tajiks) or between members of two groups of different sectarian backgrounds?

[See also [Section 3, Character of Blood Feuds, iii Under what circumstances may the conduct of women against local customs or religious expectations give rise to a blood feud?](#)]

In an interview with CORI in January 2014 *Professor Thomas Barfield* reported that blood feuds are more likely to occur within the same ethnic group or sub group,

"Blood feuds are usually with[in] an ethnic group (and even subgroup) because hostility between ethnic groups is not personalized (Group X did this to us, lets get even versus Individual Y did this, we will take it out on his kin). One reason for this is that the system of blood feuds also has means of resolving them that depends on

⁴ Barfield, Thomas, Afghan Customary Law and Its Relationship to Formal Judicial Institutions, 26 June 2003, <http://www.usip.org/sites/default/files/file/barfield2.pdf>, accessed 14 December 2013

⁵ United Nations High Commissioner for Refugees (UNHCR) Afghanistan Protection Cluster: Protection Overview (Northern and North-Eastern Region - 2010), 11 May 2011, available at: <http://www.refworld.org/docid/4dd21fe52.html>, accessed 3 January 2014

direct relations between the parties, reconciliation between groups is more like a peace treaty—group to group.”⁶

However in an interview with CORI in January 2014 *Dr Noah Coburn* reported that blood feuds are more likely to occur between different tribes, stating that disputes are

“probably more likely to turn violent between completely different tribes because there's more social distance between those two groups and so its harder to resolve. The one potential exception to that is perhaps sometimes family feuds can turn quite deadly if there's a feeling that honour has been breached but in general the farther the social distance the more likelihood there is for violence.”⁷

In 2008 *Oxfam International* researchers in the Ghourian district of Herat reported land disputes as the most common cause of conflict, which usually involve Pashtuns and Tajiks,

“The biggest reason for conflict is land disputes, which mainly happen between Pashtuns and Tajiks”⁸

In 2008 *Oxfam International* researchers in the Ghourian district of Herat reported that inter-ethnic tensions threaten social cohesion,

“Despite a strong sense of national identity, ethnic and tribal affiliations have long been of significance. Inequalities and rivalries between ethnicities existed prior to the Saur Revolution of 1978, but were intensified by conflict as tensions increased and commanders sought to exploit differences for their own ends.”⁹

In May 2011 *UNHCR* reported that a group of 86 Tajik families (516 individuals) from Jawand district in Badghis province who fled their villages of origin in December 2008 feared intertribal revenge killings by tribe members supporting the opposing side in clashes between armed factions linked to warlords and militia.”¹⁰

⁶ CORI Interview with Professor Thomas Barfield, conducted via written correspondence in response to written questions. 28 January 2014

⁷ CORI Interview with Dr Noah Coburn, conducted by telephone, 28 January 2014

⁸ Oxfam International, *Community Peacebuilding in Afghanistan: The Case for a National Strategy*, February 2008, http://www.oxfam.de/files/20080228_communitypeacebuildinginafghanistan_359kb.pdf, accessed 3 January 2014

⁹ Oxfam International, *Community Peacebuilding in Afghanistan: The Case for a National Strategy*, February 2008, http://www.oxfam.de/files/20080228_communitypeacebuildinginafghanistan_359kb.pdf, accessed 3 January 2014

¹⁰ United Nations High Commissioner for Refugees (UNHCR) *Afghanistan Protection Cluster: Protection Overview (Northern and North-Eastern Region - 2010)*, 11 May 2011, available at: <http://www.refworld.org/docid/4dd21fe52.html>, accessed 3 January 2014

2. PASHTUNWALI – MODERN EXAMPLES

2.1 The sources which examine the cultural norms of the Pashtunwali are largely based on field work from the 1970s. Are there more modern examinations of the cultural rules surrounding blood feuds in Afghanistan, which may shed light on the impact of thirty years of war and the resulting displacement and dispersal of whole communities on the meaning and application of the Pashtunwali?

In an interview with CORI in January 2014 *Professor Thomas Barfield* reported that post-1970's research on the cultural norms of Pashtunwali is difficult to access,

"What little material there is comes from the 1970s when research was active. The Afghan government did not allow such research by foreigners (and trained no Afghans to do it) before 1965 and the beginning of the war in 1978 stopped research for decades. There is undoubtedly some new research done since 2001, but is mostly buried in a "grey literature" of contracted reports on projects designed to deal with the legal system. This is often unavailable to scholars except by chance and [is] also of very uneven quality."¹¹

In July 2003 *Professor Thomas Barfield* reported that Pashtuns regard following the precepts of the Pashtunwali as a requirement of being a "real Pashtun",

"Being born into a Pashtun lineage and speaking Pashto are the primary markers of Pashtun ethnic identity. But Pashtuns also insist that being a "real Pashtun" demands that one not just speak Pashto, but "do Pashto," that is follow the precepts of the Pashtunwali."¹²

In July 2003 *Professor Thomas Barfield* reported that homicide generates the strongest demand for personal blood revenge, and described how it can be deemed a sign of weakness not to seek blood retaliation,

"Homicide generates the strongest demand for personal blood revenge. There is the obvious desire to punish the person who committed the act by the victim's

¹¹ CORI Interview with Professor Thomas Barfield, conducted via written correspondence in response to written questions. 28 January 2014

¹² Barfield, Thomas, Afghan Customary Law and Its Relationship to Formal Judicial Institutions, 26 June 2003, <http://www.usip.org/sites/default/files/file/barfield2.pdf>, accessed 14 December 2013

family, but it also involves questions of honor and personal responsibility. Not seeking blood retaliation personally is deemed a sign of moral weakness, even cowardice, not just of the individual who was wronged, but his whole kin group. Payment of compensation agreed to by both parties can also bring an end to the dispute without violence, but settling too quickly may also impugn the honor of the victim's kin group. Nor is this a task that can be shifted to the state. Reporting a murder to get action from government officials is considered a sign of weakness, that the kin group is too weak to take revenge honorably themselves."¹³

In 2006 the *United States Institute of Peace*, an independent federal institution created and funded by the US Congress, reported that the importance attached to honour in Afghan custom results in revenge killings and unresolved blood feuds. If an individual is killed due to political affiliations, it may result in a wider response,

“Because Afghan custom dictates that the family of victims of violence are honour bound to retaliate, or reconcile, revenge killing is a source of conflict between community members. Consequences of unresolved blood feuds have become magnified in the current environment of instability. If a family member is killed due to political affiliations, it may provoke a wider response between armed groups.”¹⁴

Between 1 April 2006 and 10 April 2006 a team led by *Professor Thomas Barfield of Boston University* visited three provinces in northern Afghanistan (Balkh, Kunduz and Takhar) to examine the current state of the Afghan legal system, particularly the relationship between the formal and informal systems. *Professor Thomas Barfield* reported that the practice of exchanging women as compensation (baad) was condemned in northern Afghanistan and individuals interviewed stated that such practices were not condoned, unlike the Pashtun in southern Afghanistan,

“Exchange of women as compensation (baad) was universally condemned as in conflict with both sharia law and local custom. Village elders and officials all pointedly noted that unlike the Pashtun south, such practices had never existed and were not condoned in the ethnic groups of the north.”¹⁵

¹³ Barfield, Thomas, Afghan Customary Law and Its Relationship to Formal Judicial Institutions, 26 June 2003, <http://www.usip.org/sites/default/files/file/barfield2.pdf>, accessed 14 December 2013

¹⁴ United States Institute of Peace (USIP) The Clash of Two Goods State and Non-State Dispute Resolution in Afghanistan, 2006, http://www.usip.org/sites/default/files/file/clash_two_goods.pdf, accessed 3 January 2014

¹⁵ Barfield, Thomas, Informal Dispute Resolution and the Formal Legal System in Contemporary Northern Afghanistan, 21 April 2006, http://www.usip.org/sites/default/files/file/barfield_report.pdf, accessed 30 December 2013

In 2006 *Professor Barfield* reported that customs in the north differed from those of Pashtuns in the south,

“In all three provinces people made it clear that their customs differed from those of the Pashtuns in the south. As an elder in Imam Sahib stated, ‘Among Pashtuns women cannot inherit anything and the widows are not permitted to re marry except to her husband’s brothers. It is totally different with Uzbek and Tajik women. They are allowed to inherit and get married after the death of their husbands’.”¹⁶

In August 2008 *UNHCR* reported that many individuals living in camps in the eastern region of Afghanistan were “hamsaya” – a Pashto term applied to an individual who has abandoned his home as a result of poverty or a blood feud, seeking protection in another village,

“According to an assessment made 30 June 2008, there are 3,589 families residing in Chamtala, including 275 families who were transferred from Farm Hada in mid-June. The majority of them are 2008 returnees from Jalozai camp who originate from Khogyani, Hisarak and Sherzad districts. They have built make-shift shelters and are living with their family members. Before the war, many of these returnees were “hamsaya” who either farmed the land or tended the animals of landlords

Hamsaya” is one of the three pillars of Pashtunwali – the rules and regulations of the Pashtun tribes – and refers to an informal system of power similar to the relationship between lord and vassal (or clientism). The word “hamsaya” means friend in Pashto, but the term is applied to a man who abandons his home because of poverty or a blood feud and seeks the protection of an elder in another village.”¹⁷

¹⁶ Barfield, Thomas, *Informal Dispute Resolution and the Formal Legal System in Contemporary Northern Afghanistan*, 21 April 2006, http://www.usip.org/sites/default/files/file/barfield_report.pdf, accessed 30 December 2013

¹⁷ United Nations High Commissioner for Refugees (UNHCR) *National Profile of Internal Displaced Persons (IDPs) in Afghanistan*, August 2008, <http://www.unhcr.org/49ba33a02.pdf>, accessed 3 January 2014

3. CHARACTER OF BLOOD FEUDS

3.1 Motivating Factors/Triggers

3.1.1 General motivations/triggers

In August 2011 *Dr Noah Coburn* authored a United States Institute of Peace report, stating that the causes of disputes in Afghanistan vary widely and often include land, water, family and criminal matters.¹⁸

In an interview with CORI in January 2014 *Professor Thomas Barfield* reported that disputes which become violent can trigger blood feuds,

"Blood feuds are triggered by personal violence, sometimes deliberate, sometimes unplanned, that arises out of a dispute. In other words it is not the dispute itself but actions arising from it that start blood feuds."¹⁹

In an interview with CORI in January 2014 *Dr Noah Coburn* reported that 'blood feud' is not a term that is used locally and noted that "all groups can be involved in disputes that descend into violence",

"I'm not sure that blood feuds are actually a category in Afghanistan as much as feuds are categories and feuds can turn violent and sometimes blood is involved. [] in Afghanistan at least, there is no term for blood feud, there's a term 'badal' which technically translates as 'revenge'. But 'blood feuds' is a term that we apply [in the west], not one that they would use in local conversation."²⁰

In an interview with CORI in January 2014 *Dr Noah Coburn* reported that the term 'badal', meaning revenge, is a Pashtun word and noted that a Dari equivalent is also used. Under the concept of badal "if a wrong is done to you it needs to be rectified and so quite

¹⁸ Dr Noah Coburn, United States Institute of Peace, Special Report 285, The politics of dispute resolution and continued instability in Afghanistan, p3, August 2011, <http://www.usip.org/sites/default/files/sr285.pdf>, accessed 20 January 2014

¹⁹ CORI Interview with Professor Thomas Barfield, conducted via written correspondence in response to written questions. 28 January 2014

²⁰ CORI Interview with Dr Noah Coburn conducted by telephone, 28 January 2014

frequently that involves land, well most frequently it involves land but you can also have similar disputes within the family."²¹

In an interview with CORI in January 2014 *Dr Noah Coburn* reported that feuds can turn violent if honour is considered to have been breached, such issues might include,

"Anything that violates the sanctity of your home which includes your women, so at the far end of the spectrum adultery, a little bit less perhaps, trespass. But again those are the types of things that actually that 95% of the time, but maybe not adultery of course, but 95% of the time there is a way to resolve that peacefully, its just the ones that come to everybody's attention that spiral off that can't be resolved locally."²²

In July 2003 *Professor Thomas Barfield* reported on the importance of honour in the Pastunwali. Honour combined with the risk of extensive and serious consequences if a man or group's honour is questioned, leads to a strong focus on restoring status, and, in this context, revenge (badal) is a central institution in Pashtunwali. A person seeks revenge and justice for something that has been done against him and his family,

"Revenge (badal) is the means of enforcement by which an individual seeks personal justice for wrongs done against him or his kin group. It is this right and expectation of retaliation that lies at the heart of the Pashtunwali as a non-state legal system. Kill one of our people and we will kill one of yours; hit me and I will hit you back."²³

In 2006 the *United States Institute of Peace*, an independent federal institution created and funded by the US Congress, reported that the importance attached to honour in Afghan custom results in revenge killings and unresolved blood feuds. If an individual is killed due to political affiliations, it may result in a wider response,

"Because Afghan custom dictates that the family of victims of violence are honor bound to retaliate, or reconcile, revenge killing is a source of conflict between community members. Consequences of unresolved blood feuds have become magnified in the

²¹ CORI Interview with Dr Noah Coburn conducted by telephone, 28 January 2014

²² CORI Interview with Dr Noah Coburn conducted by telephone, 28 January 2014

²³ Barfield, Thomas, *Afghan Customary Law and Its Relationship to Formal Judicial Institutions*, 26 June 2003, <http://www.usip.org/sites/default/files/file/barfield2.pdf>, accessed 14 December 2013

current environment of instability. If a family member is killed due to political affiliations, it may provoke a wider response between armed groups.”²⁴

In 2008 *Oxfam International* reported that disagreements between families is a major source of conflict which may lead to revenge (badal) or the practice of giving a woman as compensation (baad). Discriminatory treatment and violence against women is also a cause of disputes,

“Another major source of conflict... is disagreements within or between families. Such disputes can easily spread to tribes or communities, and in a significant number of cases relate to women, marriage, or sexual relations. Violence can result from the transgression of traditional conjugal norms, such as the provision of dowries, arranged marriage, the custom of a family providing a girl for marriage as compensation for a crime (baad), or to resolve a dispute (badal), or the practice whereby a widow is expected to marry her deceased husband’s brother. Domestic violence against women or severely discriminatory treatment is also often a cause and consequence of family, tribal, or community disputes.”²⁵

3.1.2 Under what circumstances may land disputes give rise to a blood feud?

In an interview with CORI in January 2014 *Professor Thomas Barfield* stated that a violent dispute over land, leading to a persons death, may result in a blood feud. Professor Barfield stressed that it is the death, rather than the dispute over land which triggers a potential blood feud,

"Land may be the ultimate source of many blood feuds but the feud itself results when an argument, say about a disputed land boundary, leads to a heated argument, a personal confrontation between the opposing parties that then results in a fight, and in the course of that fight someone is killed. The source of the dispute is about land but the blood feud is about taking revenge for the loss of life. In settling the blood feud it is the life lost that is at issue although those attempting to

²⁴ United States Institute of Peace, *The Clash of Two Goods State and Non-State Dispute Resolution in Afghanistan*, 2006, http://www.usip.org/sites/default/files/file/clash_two_goods.pdf, accessed 03 January 2014

²⁵ Oxfam International, *Community Peacebuilding in Afghanistan: The Case for a National Strategy*, February 2008, http://www.oxfam.de/files/20080228_communitypeacebuildinginafghanistan_359kb.pdf, accessed 03 January 2014

resolve it may strive to clear up the underlying problem as a means of reducing the chance of a recurrence."²⁶

In an interview with CORI in January 2014 *Dr Noah Coburn* reported that 3 decades of displacement and multiple deeding systems has given rise to conflict over issues of land ownership,

"with 30 years of war and a very unclear deeds system and people sent out of the country as refugees numerous times there's just a lot of land that's been up for grabs in the last 3 decades so often times you'll have land that has been abandoned that someone comes along and takes and more confusingly that person might take it and then sell it, who then sells it to someone else who sells it to someone else and then the original owner comes back and because the deeding system is not entirely clear and because there was a different deeding system under the Taliban and under the Communists, which is still often recognised but again there are some serious issues there. Quite frequently what will happen is dispute over land will start small and then expand. . I attended a jurga to resolve one of these where essentially a nephew had taken land from his uncle they had got into a shoving match over it and the uncle had responded by essentially firebombing the nephews house and then basically there was a divide between members of the family and there was a small scale war that started in Nangarhar between the two tribes but that was over a minimal amount of land but because it has escalated quickly and because nobody had resolved it, it spiralled into a more severe case."²⁷

In September 2013 *IRIN News* reported that land disputes have become increasingly common in the last 10 years due to increased competition and the return of refugees. *IRIN News* reported that disputes were expected to grow and that there had been little improvement in the land system,

"Fifty years ago, Dost Mohammad's grandfather had 1,000 sheep grazing on the family's plot of land on the outskirts of Kunduz City, Afghanistan. The family's livestock numbers have since decreased significantly, but then, so has the size of their land. "We keep getting pushed further and further back," said Mohammad. "We're also having problems bringing our sheep to Badakshan. We will be killed today if we bring our sheep there."

Over the past 10 years, land disputes across the country have become increasingly common, reflecting long-term trends, like environmental degradation, increasing

²⁶ CORI Interview with Professor Thomas Barfield, conducted via written correspondence in response to written questions. 28 January 2014

²⁷ CORI Interview with Dr Noah Coburn, conducted by telephone. 28 January 2014

competition over land in both rural and urban areas, a high population growth rate, and the 4.6 million former refugees who have returned from neighbouring countries in the past decade. Presidential elections, to be held in 2014, are also worsening tensions.

There has been little success in resolving the issues or improving the land system. Analysts warn the number of disputes is likely to grow.

“That’s going to be the next big conflict in Afghanistan,” warns Barmak Pazhwak, a US Institute of Peace (USIP) senior programme officer, in a recent report. “This is a very risky thing because the conflict will be all over the country and will be really unmanageable.”²⁸

In August 2013 *Afghan Analysts News*, an independent research NGO, reported that a lack of coherent land policy and legislation is leading to conflict between current land users/owners, returning IDPs, refugees and investors,

“Probably in addition to the Kuchis others will also contribute to the explosive situation. Deprived groups – homeless returnees still waiting for land allocation and IDPs who fled from conflict in their home provinces, all eager to settle close to Kabul’s job market, security and services – could contribute to what is potentially becoming a “class war” between landless people and private investors, with armed populist leaders instigating ill-fated constituencies. There seems little alternative until the laws regulating land tenure are adjusted, for example to guarantee collective or communal rights to land property or utilisation and to implement a coherent national land policy for disadvantaged groups.”²⁹

In July 2012 *Afghanistan Watch* reported that land disputes are common and often violent,

“Throughout Afghanistan, disputes over land ownership are a common and often violent proposition. According to surveys done by Oxfam and Cooperation for Peace and Unity (CPAU), an estimated 28 to 36 percent of local level conflicts in the country are related to land.

[]

²⁸ IRIN, Analysis: Land disputes add to Afghanistan's security woes, 10 September 2013, <http://www.irinnews.org/fr/report/98722/analysis-land-disputes-add-to-afghanistan-s-security-woes>, accessed 20 January 2014

²⁹ Afghanistan Analysts News, Land Grabs (2): Deh Sabz, the new and the old, 15 August 2013, <http://www.afghanistan-analysts.org/land-grabs-2-deh-sabz-the-new-and-the-old>, accessed 21 January 2014

One particularly common issue stems from the lack of a reliable land tenure or titling system. Across the country disputes have erupted regarding land ownership. In some cases, the government has claimed land, which it can then sell at preferential rates (or simply give) to allies, friends and those who pay the largest bribes. Emblematic cases of governors and mayors allegedly distributing government land to relatives and friends have emerged in Ghor, Helmand, Nangarhar, Kabul and among other provinces.

The financial inducements to participate go beyond simply bribes and construction contracts. Vertically integrated operations have emerged, with the same families and associates being involved in construction, private security, related import/export businesses (for example of building materials) and retail and consumer businesses in newly constructed urban townships, along with the provision of other services.

In Nangarhar, the areas adjacent to the provincial capital Jalalabad, especially along the main highway route, have witnessed similar convoluted construction schemes. In the ensuing and almost inevitable land disputes, the deciding factor has usually been the comparative strength of political connections. ³⁰

In July 2012 *Afghanistan Watch* reported that in recent years conflict over land between different tribal groups has been constant in some areas. *Afghanistan Watch* reported on a two year conflict between the Alisherkhel and Sipai in Achin district ,

"Conflict in Achin, Shinwar and neighboring districts of Nangarhar has been nearly constant in recent years. Tribal groups have battled with each other, and insurgents have mounted an escalating campaign against NATO and central government forces.

The recent conflict between the Alisherkhel and Sipai has its proximate roots in actions taken by the Sipai. In early 2010, elements of the Sipai tribe set up tents, cabins and reportedly a small school on the area of land in question in Achin district in order to stake their claim. As reported by the Afghanistan Analyst Network, " The Alisherkhel reacted swiftly, demolishing the buildings which, according to them,

³⁰ Afghanistan Watch, Natural resources and conflict in Afghanistan, July 2012, http://www.watchafghanistan.org/files/Natural_Resources_and_Conflict_in_Afghanistan/Natural_Resources_and_Conflict_in_Afghanistan_Full_Report_English.pdf, accessed 21 January 2014

represented the first step towards their rivals' encroachment" on territory they viewed as rightfully theirs.

The fighting quickly intensified, with numerous dead and injured reported on each side. Afghanistan National Army forces were present in the area but were "struggling to overcome" the fighting and secure the area. The conflict also caught the attention of international media, such as the New York Times, who reported that the combat included the use of RPGs, machine guns and mortars.

Neither side achieved decisive victory and the Afghan National Security Forces were either unable or unwilling to enforce any of several ceasefires proposed by the provincial authorities from Governor Sherzai's office. The combatants settled into trench-style warfare that would last for nearly two years."³¹

In July 2012 *Afghanistan Watch* reported that the conflict between the Alisherkhel and Sipai which led to an estimated 30-40 casualties started following a street fight in which a Sipai leader's nephews were killed and for which he sought badaal (revenge) against the perpetrators,

"Several short term ceasefires were negotiated and then broken by one or both sides. The violent conflict continued virtually unabated; by May 2011, after more than a year of armed hostilities, 30-40 casualties had accumulated between the two camps.

But what had prompted the Sipai to make their initial incursion into the disputed area in March 2010? And how were both sides able to obtain relatively advanced weaponry, including sufficient ammunition to continue fighting for such a long period?

The Sipai clan live primarily in the Mamand Valley in southern Achin district near the Pakistani border. In mid 2009, a leader of the Sipai, Malik Niyaz , came into dispute with local Taliban commanders, who often used the valley as a transit point

³¹ Afghanistan Watch, Natural resources and conflict in Afghanistan, July 2012, http://www.watchafghanistan.org/files/Natural_Resources_and_Conflict_in_Afghanistan/Natural_Resources_and_Conflict_in_Afghanistan_Full_Report_English.pdf, accessed 21 January 2014

into Afghanistan. Previously, the Sipai had a history of cooperating with the Taliban, likely because of economic benefits and mutual interests in the smuggling of goods to and from Pakistan. According to an interview with the US State Department representative in Nangarhar PRT at the time, however, a “street fight” broke out between two nephews of Malik Niyaz and the local Taliban commander, reported in the New York Times as Commander Khona.”³²

The fight resulted in the death of the two nephews, enraging Malik Niyaz. He wasted no time in endeavoring to take badal, or ritual revenge, on the perpetrators and the Mamand Valley quickly descended into warfare. Commander Khona called for Taliban reinforcements from Pakistan, enlisting a “more senior commander” to help him regain control of the valley.

Sensing that the entire Sipai sub-tribe was under threat from the angry Taliban, other tribal leaders, namely Malik Usman, the other major power player among the Sipai, joined Malik Niyaz in raising a tribal militia to defend the valley. In the end, after numerous clashes, the combined Sipai militia forces successfully drove off the Taliban fighters at least temporarily.”³³

In May 2011 Afghan newspaper *Pajhwok Afghan News* reported that three cousins were killed in a dispute over land distribution in Zaranj City, in the southwestern province of Nimroz,

“Ali and Mahboob -- inherited 10 acres of land from their father and shared it evenly 10 years ago. But due to high land prices, their sons did not agree to the distribution between their fathers.

The dispute surfaced three years ago when the cousins traded fire that resulted in four deaths.”³⁴

³² Afghanistan Watch, Natural resources and conflict in Afghanistan, July 2012, http://www.watchafghanistan.org/files/Natural_Resources_and_Conflict_in_Afghanistan/Natural_Resources_and_Conflict_in_Afghanistan_Full_Report_English.pdf, accessed 21 January 2014

³³ Afghanistan Watch, Natural resources and conflict in Afghanistan, July 2012, http://www.watchafghanistan.org/files/Natural_Resources_and_Conflict_in_Afghanistan/Natural_Resources_and_Conflict_in_Afghanistan_Full_Report_English.pdf, accessed 21 January 2014

³⁴ Pajhwok Afghan News, Land dispute claims three lives in Nimroz, 5 May 2011, <http://www.pajhwok.com/en/2011/05/05/land-dispute-claims-three-lives-nimroz>, accessed 20 January 2014

In August 2009 *International Crisis Group* reported that Afghans who seek to reclaim their land after returning home from displacement may be particularly vulnerable to and disputes with an ethnic dimension,

“As Afghans attempt to resettle in their home provinces or migrate to the country’s more secure and economically productive zones, land disputes risk sparking deep-rooted tribal, ethnic or sectarian violence.”³⁵

In May 2011 the *BBC* reported that five British soldiers had been shot dead at a checkpoint Nad Ali, Helmand province, in 2009 as a result of a blood feud between a local Taliban commander and a police officer over a land dispute,

“Speaking at the inquest at Wiltshire and Swindon Coroner's Court in Trowbridge, Lt Col Walker said there was a feud between "one of the local villager boys [who] was a local Taliban commander" and the police commander over land elsewhere in the region.

The police commander "ended up being the checkpoint commander at Blue 25 and from there he was trying through policing to get at the Taliban commander", he said. 'I think there was an element of blood feud which is a cultural practice.' He went on to say the dispute between the local Taliban commander and the police was "driving a wedge" between the communities.”³⁶

In May 2011 the *Telegraph* further reported on the incident stating that the soldiers were there to defuse local tensions between villagers and the Afghan National Police (ANP),

"The British soldiers were at the checkpoint in the village of Shin Kalay, which was on a vital supply route, to defuse a "blood feud" between a police commander and the local Taliban.

That had caused tensions between villagers and the ANP, which had been accused of beatings, paedophilia and corruption.”³⁷

³⁵ " International Crisis Group, Afghanistan: What Now for Refugees, 31 August 2009, <http://www.refworld.org/docid/4a9b95512.html>, accessed 3 January 2014

³⁶ BBC, Rogue Afghan attack inquest: 'Blood feud' in area, 17 May 2011, <http://www.bbc.co.uk/news/uk-13420991> accessed 1 January 2014

³⁷ The Telegraph, British soldiers 'unlawfully' shot dead by rogue Afghan policeman, inquest rules, 20 May 2011, <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/8526177/British-soldiers-unlawfully-shot-dead-by-rogue-Afghan-policeman-inquest-rules.html>, accessed 28 January 2014

3.1.3 Under what circumstances may the conduct of women against local customs or religious expectations give rise to a blood feud?

[See also [Section 3.3. Women and Girls, 'Baad'](#)]

In an interview with CORI in January 2014 *Professor Thomas Barfield* reported that the violation of a woman by an outsider may lead to her relatives seeking retaliation, if a woman is perceived to have brought dishonour on her family she and the man involved may be killed, but that the latter's death would be considered outside of the 'revenge circle,'

"Blood feuds involving women generally centre on a violation against a woman by outsiders, for example rape or elopement. A woman's male relatives (or husband if married) make seek the offenders life in retaliation.

A second category is loss of their honour (*namus*) resulting either from a woman's perceived behaviour that is believed to shame the group internally that results in her murder. In such "honour killings" the woman (and in the case of an elopement sometimes the man) are killed in an attempt to restore the groups' honour ([the] fact that the very incident occurred lowers the perception of a group's honour permanently and taking even such violent action cannot fix that fact.) It is important to note that such killings do not fall into the revenge cycle even when the man involved is killed because (at least by Pashtun thinking) revenge cannot be taken by relatives of a man engaged in a dishonourable act at the time of his murder (a thief killed in the house of his victim, an adulterous man killed *in flagrante delicto*). A successful elopement can sometimes spark a blood feud if the man's groups provides protection of the couple but comes to no accommodation with the woman's group."³⁸

In an interview with CORI in January 2014 *Dr Noah Coburn* reported that any act considered to violate the sanctity of the home, which includes women, may give rise to violent dispute,

"there is a whole range of things, [] from adultery to simply being accused of staring at somebody else's women or trying to peak over the wall at them. [] most of those things get resolved locally pretty quickly, if you peak over a wall most of the time that doesn't become a blood feud. [] preserving the sanctity of your women is

³⁸ CORI Interview with Professor Thomas Barfield, conducted via written correspondence in response to written questions. 28 January 2014

very easy in the village where everybody are cousins but all of a sudden you leave and go live as a refugee in Karachi or something or even worse you leave and go live as an immigrant in London all of a sudden the people living next door to you are no longer your 3rd and 4th cousins but are essentially strangers, so that's one of the things that makes these so called honour killings."³⁹

In January 2011, Australian based newspaper the *Herald Sun* reported on a Pashtun woman and Hazara man seeking asylum after their marriage resulted in a blood feud,

"A young Afghan couple want asylum in Australia after their marriage sparked a bloody tribal war, tit-for-tat kidnappings and intervention by US Special Forces and President Hamid Karzai. They now fear her family is trying to hunt them down to kill them to preserve her family's so-called honour. Their problems started 10 months ago in Oruzgan province, where most Australian troops are based, when 20-year-old Massoma ran off with her lover, a member of the Hazara tribe, which has been persecuted by her tribe, the Pashtuns, for centuries

"If my family finds me, they will cut me into pieces because married a Hazara boy without their permission," Massoma said."⁴⁰

3.1.4 In relation to both 3.1.1 and 3.1.2 above, what distinguishes conflicts or offences that may be addressed in accordance with the traditional conflict-resolution mechanisms of the group or through the formal justice system, from conflicts or offences that are not addressed through these mechanisms and that result in a retaliatory cycle of violence?

[See also [4. Settlement Mechanisms, Formal v. Traditional Justice Mechanisms](#)]

In an interview with CORI in January 2014 *Professor Thomas Barfield* reported that continued retaliation is an indication that usual dispute resolution has failed,

"Conflicts may be brought for settlement to traditional conflict resolution mechanism, but the problem of a blood feud is that the offence is against an individual or family (not the community) and they have the right, and even obligation, to seek revenge. They can only be brought in a dispute resolution mechanism by voluntarily agreeing to it, although considerable social (and sometimes governmental) pressure may be

³⁹ CORI Interview with Dr Noah Coburn conducted by telephone, 28 January 2014

⁴⁰ Herald Sun, Save us, plead Afghan blood-feud lovers, 9 January 2011, <http://www.heraldsun.com.au/archive/news/save-us-plead-afghan-blood-feud-lovers/story-e6fr7lf-1225984337772>, accessed 31 December 2013

exerted to get them to do so. Even then a solution cannot be imposed but [must] be accepted by the offended party (again often with some community pressure).

Continued retaliatory violence is evidence that the usual mediation structures cannot cope with the problem. Reasons include 1) because one side is too powerful to be called to account at the time; 2) the groups are too distantly related or have too few common interests to be brought together voluntarily (blood feuds between one part of a valley and another, or the American example of the Hatfields and McCoys that follows this pattern), 3) the inability of the state to impose its will by taking legal actions against all involved—that serves as a spur to get local dispute mechanisms working because the prospect of state intervention is not desired by any of the contesting parties."⁴¹

3.2 INTENDED TARGETS

3.2.1 To what extent can family members other than the male heads of household, or their direct heirs, be targeted or affected by blood feuds, including women and girls?

[See also [Section 3, Character of Blood Feuds, iii Under what circumstances may the conduct of women against local customs or religious expectations give rise to a blood feud?](#) [Section 3.3. Women and Girls, 'Baad'](#)]

In an interview with CORI in January 2014 *Professor Thomas Barfield* reported that adult men are the targets of blood feuds,

"Women, girls and boys are excluded as targets in blood feuds. The most common targets are brothers of the perpetrator although other adult patrilineally related males may be at risk. Opinions seem to differ about the range of suitable targets—an old grandfather is the most senior male but killing him would likely be seen as disreputable."⁴²

⁴¹ CORI Interview with Professor Thomas Barfield, conducted via written correspondence in response to written questions. 28 January 2014

⁴² CORI Interview with Professor Thomas Barfield, conducted via written correspondence in response to written questions. 28 January 2014

In July 2003 *Professor Thomas Barfield* reported that under the Pashtunwali, revenge should be ideally be directed at the murderer, but there are conditions under which the murderer's brothers or patrilineal kin are targets. Women and girls are excluded as targets,

“Revenge should ideally be directed at the murderer alone, but under some conditions the Pashtunwali makes his brothers or other patrilineal kin legitimate substitute targets. Women and children are excluded as targets of revenge in all cases.”⁴³

3.2.2 In the case of extended families living in the same area, if not in the same house, who can be targeted?

In an interview with CORI in January 2014 Professor Thomas Barfield reported that,

"An extended household living together is likely to be considered a single social unit and all adult males in it are potentially at risk."⁴⁴

In 2008 UK-based newspaper *The Telegraph* reported a blood feud which had spilled into a neighbouring town, involving the entire population,

“The fighting split Mohammad Rahim along clan lines, involved the entire population, and spilled into neighbouring Weygel. A total of 318 men were killed in the fighting, which involved 160 families.”⁴⁵

3.3 WOMEN AND GIRLS - ‘BAAD’

In April 2013 the United States Institute of Peace defined the cultural practice of ‘baad’,

“Baad is the practice through which women are used as compensation for criminal acts or as restitution for personal injury suffered by another party or family.”⁴⁶

Article 3(4) of the Afghan Elimination of Violence against Women Law defines ‘baad’ as,

⁴³ Barfield, Thomas, *Afghan Customary Law and Its Relationship to Formal Judicial Institutions*, 26 June 2003, <http://www.usip.org/sites/default/files/file/barfield2.pdf>, accessed 14 December 2013

⁴⁴ CORI Interview with Professor Thomas Barfield, conducted via written correspondence in response to written questions. 28 January 2014

⁴⁵ *The Telegraph*, *Afghan blood feud ends after 30 years*, 1 June 2008, <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/2061531/Afghan-blood-feud-ends-after-30-years.html>, accessed 3 January 2014

⁴⁶ United States Institute for Peace, *Lessons Learned on Traditional Dispute Resolution in Afghanistan*, 3 April 2013, <http://www.cmi.no/publications/file/4945-http-www-usip-org-files-rol-trd-pdf.pdf>, accessed 2 January 2013

“*Baad*: Marrying a woman to someone as blood price or to achieve peace linked to murder, sexual violence or other circumstances to observe indecent customs and traditions.”⁴⁷

In February 2006, the *UN Special Rapporteur on Violence against Women , its Causes and Consequences* reported that baad is used as a ‘heinous’ type of forced marriage used to avoid a potential blood feud,

“Another particularly heinous type of forced marriage is the Pashtu practice of bad, where a woman or girl is ceded by one family to another to settle a dispute upon the orders of a local council (jirga), thus preventing a potential blood feud between them. While bad may serve to settle a dispute between two families, it does so at the expense of women, who are reduced to property to be exchanged and disposed of as desired. In this sense it constitutes a high risk situation for women who are married under such an arrangement.”⁴⁸

In February 2012, the *New York Times* reported that the roots of the cultural practice of baad predate Islam. The practice helps compensate for a lost relative and is used as a dispute-resolution mechanism,

“The practice of trading women dates to before Islam, when nomadic tribes traveled Afghanistan’s mountains and deserts. Even today, outside Afghanistan’s few urban areas, many of these traditions have deep roots, experts on tribal justice systems said. “For the nomads, there were no police, there was no court of law, no judge to organize the affairs of humans, so they resorted to the only things they had, which were violence and killing,” said Nasrine Gross, an Afghan-American sociologist who has studied the status of Afghan women. “ Then when a problem doesn’t get resolved,” Ms. Gross said, “you offer the only things you have: livestock is more precious than a girl because the livestock you can sell, so you give two rifles, one camel, five sheep and then the girls they can sell this way.”⁴⁹

In July 2013 the *UN Committee on the Elimination of Discrimination against Women* (CEDAW Committee) expressed its concern at the persistence of harmful cultural

⁴⁷ Law on Elimination of Violence Against Women, 15 January 2011

<http://www.saarcgenderinfobase.org/programs/detail.php?aid=105&catid=3>, accessed 30 December 2013

⁴⁸ Ertürk, Yakin, UN Special Rapporteur on Violence against Women, Its Causes and Consequences, Integration Of The Human Rights Of Women and a Gender Perspective: Violence Against Women, E/CN.4/2006/61/Add.5, 15 February 2006, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/108/06/PDF/G0610806.pdf?OpenElement>, accessed 2 January 2014

⁴⁹ New York Times, For Punishment of Elder’s Misdeeds, Afghan Girl Pays the Price, 16 February 2012, <http://www.nytimes.com/2012/02/17/world/asia/in-baad-afghan-girls-are-penalized-for-elders-crimes.html?pagewanted=all>, accessed 15 December 2013

practices such as baad in Afghanistan, and cases of self-immolation and running away from home in response to violence against women. Despite efforts to implement domestic law, incidents of violence against women are often not reported due to societal views of women as subordinate,

“...It [The Committee] is deeply concerned at the persistence of adverse cultural norms, practices and traditions which are harmful to women, such as child marriage, *baad* (settlement of disputes by giving away girls), *badal* (exchange marriages) and forced marriages, including forced marriages of widows. It is further concerned at cases of self-immolation and running away from home as a response to harmful practices and violence against women. It is concerned that, despite the specific efforts to implement the Law on the Elimination of Violence against Women, incidents of violence and harmful practices remain underreported owing to the subordinate role of women in Afghan society, cultural beliefs and the victims' fear of retaliation by their family and of being stigmatized by their communities.”⁵⁰

In December 2010, the *United Nations* described the practice of baad as “one of the most egregious types of violence against women in Afghanistan.” The woman suffers punishment for a crime she did not commit by being given in baad to restore family honour,

“The practice of baad or giving away of girls to settle disputes, forms one of the most egregious types of violence against women in Afghanistan. Baad allows communities or families to settle crimes such as murder, in theory to restore peace and order between the conflicting parties, by transferring punishment for the crime to a woman or girl. The “honour” of the aggrieved family is “restored” through punishing the woman for a crime she did not commit.”⁵¹

In its 2012 Country Human Rights Report on Afghanistan, the *United States Department of State* (USDOS) reported the practice of baad by local untrained militia,

“There were credible reports of abuses of power by “arbakai” (untrained local militia) commanders and their followers. These included accounts of murder, rape,

⁵⁰ Committee on the Elimination of Discrimination against Women (CEDAW Committee) Concluding Observations: Afghanistan .30 July 2013 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fAFG%2fCO%2f1-2&Lang=en accessed 30 December 2013

⁵¹ Office of the United Nations High Commissioner for Human Rights & United Nations Assistance Mission in Afghanistan, Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan, 9 December 2010, http://unama.unmissions.org/Portals/UNAMA/Publication/HTP%20REPORT_ENG.pdf, accessed 15 December 2013

assault, the forcible levy of informal taxes, and the traditional practice of "baadh," the transfer of a girl or woman to another family to settle a debt or grievance"⁵²

In its 2012 Country Human Rights Report on Afghanistan, *USDOS* reported that there were 1,121 cases classified as 'traditional and cultural violence' reported to the *Afghanistan Independent Human Rights Commission (AIHRC)* including cases of baad. The majority of women did not seek legal assistance as they were unaware of their rights or they feared prosecution or being returned to their families/perpetrators of violence,

"According to the AIHRC between March and June there were 1,748 cases of violence against women reported, of which 475 were cases of physical violence and 152 were cases of sexual abuse. A total of 1,121 cases were classified as traditional and cultural violence, such as child and forced marriages, the practice of exchanging women to settle disputes (baadh), forced isolation, and honor killings. Most women did not seek legal assistance for domestic or sexual abuse because they did not know their rights or because they feared prosecution or return to their family or the perpetrator. Women sometimes turned to shelters for assistance and sometimes practiced self-immolation, with the Ministry of Women's Affairs reporting that there were more than 171 cases of suicide as a result of domestic violence"

In April 2011 the *United Nations Committee on the Rights of the Child (CRC)* expressed its concern at the persistence of harmful traditional practices in Afghanistan such exchanging girls as dispute resolution,

"The Committee is however seriously concerned that harmful practices such as child marriage, giving away girls as dispute resolution, forced isolation in the home, exchange marriage and "honour" killings are pervasive and cause suffering, humiliation and marginalization for millions of Afghan women and girls."⁵³

In April 2011 the *UN Committee on the Rights of the Child* reported that girl victims of sexual abuse and exploitation are at risk of the practice of baad,

⁵² US Department of State (USDOS) Country Human Rights Reports 2012: Afghanistan, <http://www.refworld.org/docid/517e6e73f.html>, accessed 03 January 2014

⁵³ UN Committee on the Rights of the Child (CRC), Concluding Observations : Afghanistan, 8 April 2011, CRC/C/AFG/CO/1, available at: <http://www.refworld.org/docid/4dc7bd492.html> accessed 2 January 2014

“Girl victims of sexual abuse and exploitation are at risk of honour killing, the practice of *baad* or forced marriage with their rapist, and rejected by their families.”⁵⁴

In December 2010 the United Nations Assistance Mission in Afghanistan and the Office of the United Nations High Commissioner for Human Rights reported that the practice of *baad* is prohibited under Sharia law and Afghan law, as well the international human rights obligations of Afghanistan,

“Under Sharia law the practice of giving away girls to settle disputes violates the principle of consent, a prerequisite for a valid marriage in Islam, and serves to treat women as property which is prohibited. The practice is also illegal under Afghan law – under both the EAW (Elimination of Violence against Women) law and the Penal Code – as well as Afghanistan’s international human rights obligations. *Baad* violates the fundamental human rights of women, and can amount to exploitation and slavery under international law.”⁵⁵

In July 2013 *Human Rights Watch* identified *baad* as a form of discrimination against women in Afghanistan,

“Extreme forms of discrimination remain part of the day-to-day experience of most Afghan women, and violence against women is common and largely unpunished. [...]...Harmful marriage practices, including the swapping of daughters in marriages between two families (*bada*) often through an agreement made when the children are very young, the giving of girls to resolve disputes (*baad*), polygamy, and the sale of women through marriage agreements continue mostly unchecked.”⁵⁶

In March 2011 *Human Rights Watch* reported that *baad* is a criminal offence under Afghan law,

“*Baad* is a criminal offence under article 517 of the 1976 Afghan Penal Code, but the article only applies to widows and women above age 18, and the sentence for perpetrators of *baad* cannot exceed two years. Despite having been partially

⁵⁴ UN Committee on the Rights of the Child (CRC), Concluding Observations : Afghanistan, 8 April 2011, CRC/C/AFG/CO/1, available at: <http://www.refworld.org/docid/4dc7bd492.html> accessed 2 January 2014

⁵⁵ Office of the United Nations High Commissioner for Human Rights & United Nations Assistance Mission in Afghanistan, Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan, 9 December 2010, http://unama.unmissions.org/Portals/UNAMA/Publication/HTP%20REPORT_ENG.pdf, accessed 15 December 2013

⁵⁶ Human Rights Watch, Submission on the Combined Initial and Second Periodic Report of Afghanistan to the United Nations Committee on the Elimination of Discrimination against Women, July 2013, <http://www.hrw.org/news/2013/07/04/submission-combined-initial-and-second-periodic-report-afghanistan-united-nations-co>, accessed 13 December 2013

criminalized for more than 30 years, many women and *Jirga* members interviewed by Human Rights Watch were not aware of the law or the prohibition of the practice.

The penal code provisions against *baad* were supplemented by the Elimination of Violence Against Women law, passed by President Hamid Karzai through a presidential decree in 2009, while the Afghan parliament was in recess. The 2009 law criminalizes *baad*, increasing potential sentences for *baad* up to 10 years, extending its application to girls under age 18, and widening the scope of those who could be considered complicit in the crime.”⁵⁷

In July 2013, the *Afghanistan delegation* presenting to the UN Committee on the Elimination of Violence against Women reported that the Law on the Elimination of Violence against Women of 2009 contained provisions prohibiting the concept of *baad*,

“There was a commitment to preventing violence against women in Afghanistan, as out by the enactment of the Law on the Elimination of Violence Against Women of 2009. Prosecution offices to implement the Law would eventually be established in all provinces and sheltered housing had been set up in 18 provinces for women victims of violence. The Law also contained provisions prohibiting the buying and selling of women, forced and underage marriages and the concept of *baad* (the use of marriage to settle disputes).”⁵⁸

In March 2009 the *Institute for War and Peace Reporting* – an international media development charity that runs programmes in Afghanistan, reported a case of a two-year old girl traded in *baad* to resolve a dispute resulting from the sexual misconduct of her uncle,

“Two-year-old Nilab sits on the floor, drawing with a stick. She is wearing a red dress and black shoes, her unruly curls falling in her eyes. Shy around strangers, she hides her face behind her big sister from time to time. The toddler has no idea what awaits her: she has been traded away in *baad*, to make up for the sexual misconduct of her uncle. *Baad* is a traditional means of settling disputes in Afghanistan, and usually involves giving a young girl to the family of the perceived victim of a crime. “My uncle Jawad was found guilty of having unlawful sexual relations with Noria, my father's cousin,” said Mariam, Nilab's 19-year-old sister,

⁵⁷ Human Rights Watch, Afghanistan: Stop Women Being Given as Compensation, March 2011, <http://www.hrw.org/news/2011/03/08/afghanistan-stop-women-being-given-compensation>, accessed 13 December 2011

⁵⁸ Committee on the Elimination of Discrimination against Women, Summary record of the 1132nd meeting, 23 July 2013 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/453/94/PDF/G1345394.pdf?OpenElement>, accessed 13 December 2013

tears running down her face. "Noria became pregnant, but her husband has been working in Iran for the past seven months. Noria's father-in-law accused Jawad of being the father, and the families agreed to settle the matter through the local jirga (council). The jirga decided that Nilab should be given to Noria's brother-in-law, who is only six years old. Everyone agreed".⁵⁹

In March 2009 the *Institute for War and Peace Reporting* – an international media development charity that runs programmes in Afghanistan, reported that the practice of baad is accepted by many Afghans as a dispute resolution mechanism,

"Baad is seen as a way of avoiding more violent means of satisfying grudges, and many Afghans applaud the practice."Without baad, we would have conflict between the families, with murder and revenge," said Nadira, a member of the family who accepted Nilab. "Baad is a good thing. Killing and enmity are prohibited in Islam."⁶⁰

In March 2009 2009 the *Institute for War and Peace Reporting* – an international media development charity that runs programmes in Afghanistan, reported that the practice of baad is the standard penalty for a serious crime,

"Slowly the practice became widely accepted, even though there is no religious or legal basis for it. When a man kills, rapes, or has sexual relations with someone other than his wife, a local council can step in to mediate. Lesser offences can usually be settled by the exchange of money, perhaps a few sheep or a cow. But the standard penalty for a serious crime is for the offender's family to part with a girl, who is given to the victim's family."⁶¹

In March 2009 the *Institute for War and Peace Reporting* – an international media development charity that runs programmes in Afghanistan, reported that victims of baad endure beatings and mistreatment, and sometimes are at risk of death,

"Often the girl given in baad is little more than a slave; she can be beaten or mistreated, or even killed. Much domestic violence in Afghanistan can be traced back to the tradition of baad, according to human rights activists."⁶²

⁵⁹ Institute for War and Peace Reporting, Afghan Girls Suffer for Sins of Male Relatives, 26 March 2009 <http://www.refworld.org/docid/49dc4b201c.html>, accessed 2 January 2014

⁶⁰ Institute for War and Peace Reporting, Afghan Girls Suffer for Sins of Male Relatives, 26 March 2009, <http://www.refworld.org/docid/49dc4b201c.html>, accessed 2 January 2014

⁶¹ Institute for War and Peace Reporting, Afghan Girls Suffer for Sins of Male Relatives, 26 March 2009, <http://www.refworld.org/docid/49dc4b201c.html>, accessed 2 January 2014

⁶² Institute for War and Peace Reporting, Afghan Girls Suffer for Sins of Male Relatives, 26 March 2009, <http://www.refworld.org/docid/49dc4b201c.html>, accessed 2 January 2014

In March 2009 the *Institute for War and Peace Reporting* – an international media development charity that runs programmes in Afghanistan further quoted *Judge Sayeed Mohammad Sami*, head of the *Afghan Independent Human Rights Commission* and *Mah Gul Yamam*, a legal expert at the *Afghan Human Rights Organisation*,

“Baad is a negative tradition with no legal or moral basis,” said Judge Sayeed Mohammad Sami, head of the Afghan Independent Human Rights Commission for the north. “A human life can never be traded away. It will take a long time and much hard work to get rid of this terrible practice.”

According to Judge Sami, 571 cases of violence had been recorded in the north over the past year. Out of these, eight were attributed to baad. However, he added, the number could be much higher, since many families do not report such incidents. Baad is illegal, said Mah Gul Yamam, a legal expert at the Afghan Human Rights Organisation.

“According to the laws of Afghanistan, a perpetrator bears personal responsibility for his crimes,” she said. “This responsibility cannot be transferred to others. But unfortunately, in Afghanistan, when a man commits a crime, it is the females that have to bear the punishment.”⁶³

3.3.1 Baad - Number of cases

In February 2012, the *New York Times* reported on the number of cases of baad,

“There is no official count of the number of girls given each year in baad, but in Kunar Province, where Shakila’s case took place, the director of the women’s office and a female member of Kunar’s provincial council said that they were aware of one or two cases every month from the province and that many cases never came to light. They had not heard of Shakila’s situation.”⁶⁴

In March 2011 *Human Rights Watch* reported that cases of *baad* happen regularly,

“The extent of the practice of *baad* throughout Afghanistan has not been documented. Human Rights Watch conducted preliminary research between December 2009 and

⁶³ Institute for War and Peace Reporting, Afghan Girls Suffer for Sins of Male Relatives, 26 March 2009, <http://www.refworld.org/docid/49dc4b201c.html>, accessed 2 January 2014

⁶⁴ New York Times, For Punishment of Elder’s Misdeeds, Afghan Girl Pays the Price, 16 February 2012, <http://www.nytimes.com/2012/02/17/world/asia/in-baad-afghan-girls-are-penalized-for-elders-crimes.html?pagewanted=all>, accessed 15 December 2013

June 2010, in order to document a number of cases in Kabul and surrounding provinces. According to women's rights activists interviewed by Human Rights Watch, cases of baad regularly occur, involving babies, girls, adolescents, and adult women.”⁶⁵

In December 2010, the *United Nations* reported that baad is practiced in communities throughout the country,

“UNAMA HR [United Nations Mission in Afghanistan, Human Rights] found that giving away girls to settle disputes, through baad, takes place in communities throughout the country. In spite of the prevalence of this practice, many Afghans expressed strong opposition to it. As an informal method of dispute resolution, UNAMA HR found that in the central region more baad is practiced in conflict zones where the Government exercises less authority and lacks legitimacy (for example, conflict-affected areas such as Tagab and Alasay district in Kapisa province, Uzbin in Sarobi district of Kabul province) and in remote areas where the formal rule of law institutions are weakest.”⁶⁶

3.3.2 Violence against women and girls as a result of baad

In July 2013, *UNICEF* reported a case of baad in which a 6 year old girl given in to settle a dispute with a neighbouring family was subjected to beatings and hard labour,

“When Suraiya was 6 years old, her older brother eloped with a neighbour's daughter. In an attempt to buy peace, Suraiya's parents gave her to the neighbour's family. For four years, the family forced her to perform heavy household chores and kicked and thrashed her with knives, sticks and iron rods. Suraiya escaped from the family, only to find herself locked behind bars for begging, shortly after. Suraiya's story is not unique. Her parents were practising baad, the custom of trading young girls to settle debts or family disputes. Many young girls are physically and emotionally violated by those who receive them. Like Suraiya, some girls manage to escape from such torture only to find themselves on the street, homeless, vulnerable and at risk of being exploited further.”⁶⁷

⁶⁵ Human Rights Watch, [Afghanistan: Stop Women Being Given as Compensation](http://www.hrw.org/news/2011/03/08/afghanistan-stop-women-being-given-compensation), March 2011,

<http://www.hrw.org/news/2011/03/08/afghanistan-stop-women-being-given-compensation>, accessed 13 December 2011

⁶⁶ Office of the United Nations High Commissioner for Human Rights & United Nations Assistance Mission in Afghanistan, Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan, 9 December 2010, http://unama.unmissions.org/Portals/UNAMA/Publication/HTP%20REPORT_ENG.pdf, accessed 15 December 2013

⁶⁷ United Nations Children's Fund (UNICEF) Programme Aims to Protect Vulnerable Children and Reunite Them with Their Families, 14 September 2012, <http://www.refworld.org/docid/5124f7f92.html>, accessed 15 December 2013

In February 2012, the *New York Times* reported on a case of baad in which an 8 year old girl, Shalika, was given to settle a family feud. Shalika's uncle had eloped with the wife of a district strongman, and the district leader ordered her to be abducted in retaliation for the dishonour his family had suffered. Shalika and her cousin were subjected to beatings and held for a year,

“Shakila, 8 at the time, was drifting off to sleep when a group of men carrying AK-47s barged in through the door. She recalls that they complained, as they dragged her off into the darkness, about how their family had been dishonored and about how they had not been paid. It turns out that Shakila, who was abducted along with her cousin as part of a traditional Afghan form of justice known as “baad,” was the payment. Although baad (also known as baadi) is illegal under Afghan and, most religious scholars say, Islamic law, the taking of girls as payment for misdeeds committed by their elders still appears to be flourishing. Shakila, because one of her uncles had run away with the wife of a district strongman, was taken and held for about a year. It was the district leader, furious at the dishonor that had been done to him, who sent his men to abduct her.[...] “We did not know what was happening,” said Shakila, now about 10, who spoke softly as she repeated over and over her memory of being dragged from her family home. “They put us in a dark room with stone walls; it was dirty and they kept beating us with sticks and saying, ‘Your uncle ran away with our wife and dishonored us, and we will beat you in retaliation.’”⁶⁸

In September 2012 UNICEF reported a case of a 6 year old girl given in baad in an attempt to resolve a dispute when her brother eloped with a neighbour's daughter. The girl was subjected to mistreatment,

When Suraiya was 6 years old, her older brother eloped with a neighbour's daughter. In an attempt to buy peace, Suraiya's parents gave her to the neighbour's family.

For four years, the family forced her to perform heavy household chores and kicked and thrashed her with knives, sticks and iron rods.

⁶⁸ New York Times, For Punishment of Elder's Misdeeds, Afghan Girl Pays the Price, 16 February 2012, <http://www.nytimes.com/2012/02/17/world/asia/in-baad-afghan-girls-are-penalized-for-elders-crimes.html?pagewanted=all>, accessed 15 December 2013

In March 2011 *Human Rights Watch* reported a case of an 8 year old girl given in *baad* because of a murder committed by her brother. The girl was subjected to beatings and food deprivation,

“In another case Amina A. (name changed), age 21, described witnessing Fauzia F. (name changed) being ill-treated at the hands of Amina's aunt. According to Amina, a *jirga* ordered that Fauzia be given in *baad* to her aunt's family because of a murder that was committed by Fauzia's brother. Fauzia was 12 when she was given in *baad*. Describing the relationship between mother-in-law and daughter-in-law, Amina said: My aunt hated her [Fauzia.] She kept saying she would never forgive Fauzia because her brother killed her son. She would beat her and not give her food. Pull her hair. Whenever I saw Fauzia she was very sad. She would not say very much. Since Amina's parents left her province, Amina has not been able to visit her aunt or Fauzia and did not know how Fauzia was at the time Human Rights Watch spoke with her in February 2010.”⁶⁹

In 2011 *Human Rights Watch* also documented cases where girls given in *baad* became victims of domestic violence with no real mechanism for escaping from violence apart from risking their lives by running away. In March 2011 *Human Rights Watch* reported an instance in which a woman, Wasifa, who had tried to run away after being given in *baad* in 2008, had been killed by her family to restore honour.

“Human Rights Watch spoke with Hasina H. (name changed), Wasifa's friend who lived in the same village.... [-]...According to Hasina, Wasifa was 13 when the *jirga* ordered her father to give her in *baad* to a creditor as compensation for an overdue loan. Wasifa did not want to be married to him and escaped to Kabul. A cousin traced her in Kabul and convinced her to return home promising her that she would not be forcibly married. Neighbours saw Wasifa on the day she returned, but she has not been seen since then in nearly two years. Describing how scared she has been since Wasifa disappeared, Hasina said: We all know that the family killed her but no one talks about it.”⁷⁰

⁶⁹ Human Rights Watch, Afghanistan: Stop Women Being Given as Compensation, March 2011, <http://www.hrw.org/news/2011/03/08/afghanistan-stop-women-being-given-compensation>, accessed 13 December 2011

⁷⁰ Human Rights Watch, Afghanistan: Stop Women Being Given as Compensation, March 2011, <http://www.hrw.org/news/2011/03/08/afghanistan-stop-women-being-given-compensation>, accessed 13 December 2011

In March 2011 *Human Rights Watch* reported a case where a girl given in *baad* had her nose and ears cut off when she tried to escape from her father-in-laws family who were beating her,

“Bibi Aisha told Human Rights Watch about her harrowing experience of being given away in *baad* to make amends for an attempted murder by her uncle. Bibi Aisha recalls her misery when she was sent away to her husband's house:

One night when I was 16 years old, my father gave my hand to my father in law's hand... I didn't know anything about *baad*. I was shocked at what was happening to me. I asked my dad where I am going and he said, "You're married now." My husband wasn't there. He was in Karachi. I went to Kandahar province to stay in my in-law's house. I stayed there for almost three years. My in-laws were beating me terribly. They were always telling me, "Your uncle tried to kill us."

Aisha tried to escape but the police released her to her father-in-law. After her release, she was brutally attacked and her nose and ears were cut off. She survived and found refuge in a women's shelter. Bibi Aisha's case received much public attention after her photograph was published on the cover of *Time* magazine. With the support from women's rights groups, she was flown to the US to have reconstructive surgery.”⁷¹

In October 2012 the *Institute for War and Peace Reporting*, an international media development charity, reported a case of a woman given in *baad* as compensation for a crime committed by her brother, and is now subjected to beating by her in-laws,

“My brother kidnapped a girl, and in recompense for his actions, I was married to a member of the victim's family,” she told Institute for War and Peace Reporting. “They are always beating me. My husband doesn't treat me well, and I don't have a good relationship with my mother- and father-in-law.”Farida blames her own family, arguing that they could have convened a council to mediate a peace deal, or paid over a sum of money. ‘Sometimes I want to commit suicide – jump into the river or set myself on fire - but then I think that it's OK, this life will pass,’ she said.”⁷²

⁷¹ Human Rights Watch, Afghanistan: Stop Women Being Given as Compensation, March 2011, <http://www.hrw.org/news/2011/03/08/afghanistan-stop-women-being-given-compensation>, accessed 13 December 2011

⁷² Institute for War and Peace Reporting, Women Traded to End Afghan Feuds, 5 October 2012, <http://iwpr.net/report-news/women-traded-end-afghan-feuds> accessed 22 December 2013

In its 2012 Country Human Rights Report on Afghanistan, *USDOS* reported that there were 1,121 cases classified as ‘traditional and cultural violence’ reported to the Afghanistan Independent Human Rights Commission (AIHRC) including cases of baad. The majority of women did not seek legal assistance as they were unaware of their rights or they feared prosecution or being returned to their families/perpetrators of violence. Cases of suicide and self-immolation as a result of domestic violence were reported,

“According to the AIHRC between March and June there were 1,748 cases of violence against women reported, of which 475 were cases of physical violence and 152 were cases of sexual abuse. A total of 1,121 cases were classified as traditional and cultural violence, such as child and forced marriages, the practice of exchanging women to settle disputes (baadh), forced isolation, and honor killings. Most women did not seek legal assistance for domestic or sexual abuse because they did not know their rights or because they feared prosecution or return to their family or the perpetrator. Women sometimes turned to shelters for assistance and sometimes practiced self-immolation, with the Ministry of Women's Affairs reporting that there were more than 171 cases of suicide as a result of domestic violence”

In March 2009 the *Institute for War and Peace Reporting* – an international media development charity that runs programmes in Afghanistan, reported that victims of baad endure beatings and mistreatment, and sometimes are at risk of death,

“Often the girl given in baad is little more than a slave; she can be beaten or mistreated, or even killed. Much domestic violence in Afghanistan can be traced back to the tradition of baad, according to human rights activists.”⁷³

3.4 DURATION OF BLOOD FEUDS

In an interview with CORI in January 2014 *Professor Thomas Barfield* reported that there is no defined period of time in which a blood feud will last and may continue until resolved or burns out,

"A Pashtun proverb says “A man took his revenge after one hundred years although he regretted acting in haste.” A blood feud is ongoing until it is settled or burns out.

⁷³ Institute for War and Peace Reporting, *Afghan Girls Suffer for Sins of Male Relatives*, 26 March 2009 <http://www.refworld.org/docid/49dc4b201c.html>, accessed 2 January 2014

The longer it last the wider the cycle of killing and counter killing goes on, and the layers make hard to untangle. Here state intervention plays a key role. Where the state can impose its laws, then blood feud tends to end because the state treats them all as illegitimate murders and will punish both sides. Blood feud is characteristic of areas where the formal rule of law is weak or non-existent.”⁷⁴

In July 2003 *Professor Thomas Barfield* reported that blood feuds can last for generations. The long-running nature of such disputes is referenced in Pashtun proverbs,

“The long period that may elapse between an offense and its resolution is recognized in a number of Pashtun proverbs: “A man took his revenge after one hundred years although he regretted acting in haste;” or “Revenge is a dish best eaten cold.” Given that each revenge killing demands a response by the new victim’s family, blood feuds between hostile kin groups can last for generations and involve many deaths if left unresolved.”⁷⁵

In April 2012 Pakistani-based news channel *Dawn* reported a blood feud between families that lasted 35 years and killed 67 people,

“A grand jirga comprising tribal elders from Dir and Afghanistan on Friday settled a decades old blood feud between two local families. According to locals, the families of Malik Zarin and Malik Mir Alam have an enmity for the last 35 years in which 67 lives have been lost until now.”⁷⁶

In April 2012 *Stars and Stripes* – an American newspaper that reports on matters affecting members of the United States Armed Forces, reported a blood feud that lasted 28 years and killed as many as 50 people,

“Nazir Gul, 58, an uncle of one of the victims, asserted that the dispute began when Shazaad killed one of his brothers while both families lived in a refugee camp in Pakistan, where they had fled during the Soviet occupation.

⁷⁴ CORI Interview with Professor Thomas Barfield, conducted via written correspondence in response to written questions. 28 January 2014

⁷⁵ Barfield, Thomas, *Afghan Customary Law and Its Relationship to Formal Judicial Institutions*, 26 June 2003, <http://www.usip.org/sites/default/files/file/barfield2.pdf>, accessed 14 December 2013

⁷⁶ Dawn, *Jirga Settles Decades Old Blood Feud*, 21 April 2012, <http://www.dawn.com/news/712234/jirga-settles-decades-old-blood-feud>, accessed 01 January 2014

Whatever ignited the blood feud, the ensuing 28 years has brought tit-for-tat killings, leaving as many as 50 people dead. The bloodshed trailed the families to Afghanistan when they returned in 2005.”⁷⁷

In July 2003 *Professor Barfield* reported that in cases where revenge cannot be carried out, the victim’s family will often leave the village to avoid shame. As the dispute is unresolved, the feud may continue for years,

“Taking revenge is often no easy task, particularly if the murderer is from a powerful family and the victim’s kin group is weak. If revenge cannot be carried out the victim’s family will often leave the village to avoid the public shame of having to live in proximity to the killers. Such unresolved cases may linger for years and hang over the communities like uncollected debts.”⁷⁸

In June 2008 UK-based newspaper *The Telegraph* reported on a 30 year blood feud which had claimed over 300 lives,

“The men of an Afghan village have emerged from their fortress homes, safe for the first time in 30 years after the end of a blood feud which had claimed more than 300 lives.

The settlement of Mohammad Rahim is celebrating the end of a war that many believe, though few actually remember, began for age-old reasons – “Zan, Zar, Zemin”, or Women, Gold, Land.

For three decades it ran unchecked and confined the male population to their homes, which were quickly turned into fortresses with bricked-up windows and gun loopholes in the walls. The locals say that even the Taliban took one look at the chaos and went elsewhere.

[...]

⁷⁷ Stars and Stripes, In Khost, not naming names, but mediating blood feuds, 12 April 2012, <http://www.stripes.com/news/reporter-s-notebook/in-khost-not-naming-names-but-mediating-blood-feuds-1.174268>, accessed 03 January 2014

⁷⁸ Barfield, Thomas, Afghan Customary Law and Its Relationship to Formal Judicial Institutions, 26 June 2003, <http://www.usip.org/sites/default/files/file/barfield2.pdf>, accessed 14 December 2013

The fighting split Mohammad Rahim along clan lines, involved the entire population, and spilled into neighbouring Weygel. A total of 318 men were killed in the fighting, which involved 160 families.”⁷⁹

In May 2011 US-based human rights organization *Human Rights First* reported on the phenomenon of individuals involved in family feuds providing false information to the international military forces in Afghanistan about members of the opposing family, with a view to having them arrested and detained. *Human Rights First* reported on one such case that was continuing for more than 25 years,

“T.K., a farmer from Khost province, was detained for about five months on suspicion of being a Taliban commander. He told Human Rights First: “We have hostility within my tribe, from a long time ago, when the Russians were in Afghanistan, during jihad time. My uncle was killed, and this feud continues more than 25 years later.” He believed he was detained based on false statements told to U.S. forces.”⁸⁰

⁷⁹ The Telegraph, Afghan blood feud ends after 30 years, 1 June 2008, <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/2061531/Afghan-blood-feud-ends-after-30-years.html>, accessed 03 January 2014

⁸⁰ Human Rights First, Detained and Denied in Afghanistan, May 2011, <http://www.refworld.org/docid/5122423c2.html>, accessed 03 January 2014

4. SETTLEMENT MECHANISMS, FORMAL v. TRADITIONAL JUSTICE MECHANISMS

4.1 What are the requirements that can be placed on families who are engaged in a blood feud in order to terminate the feud?

In an interview with CORI in January 2014 *Professor Thomas Barfield* reported that,

"The usual procedure is to get the offended side to accept a blood money payment for their relatives loss, get an apology from the offenders kin, and have some form of reconciliation ceremony. Among Pashtuns there was also an exchange an exchange of women in marriage (*baad*) between the two groups designed to forestall future conflict. Most non-Pashtuns did not follow this custom and today it seem on the wane and replaced by blood money. Ironically this may have been due in part to the Taliban's condemnation of the practice as unIslamic. The extent that it does still occur is a big topic in debates on informal dispute resolution by those who oppose it."⁸¹

In July 2003 *Professor Thomas Barfield* reported that under generally Pashtunwali those taking revenge should be a close relative of the victim,

"The person taking the revenge should be a close relative of the victim, although in some Pashtun traditions it was legitimate to hire a substitute to take revenge in the name of the victim. The most honorable revenge attacks take place face to face, but killing in ambush is also acceptable as long as the revengers take public credit for their deed. Revenge attacks cannot be carried out in a mosque or against a guest. The goods and weapons of a man killed in a revenge attack cannot be robbed and his relatives should be given quick notice of the death so that they can recover his intact corpse for burial."⁸²

In July 2003 *Professor Thomas Barfield* reported that punishment by the State does not absolve the obligation for a family to kill their relatives murderer,

⁸¹ CORI Interview with Professor Thomas Barfield, conducted via written correspondence in response to written questions. 28 January 2014

⁸² Barfield, Thomas, Afghan Customary Law and Its Relationship to Formal Judicial Institutions, 26 June 2003, <http://www.usip.org/sites/default/files/file/barfield2.pdf>, accessed 14 December 2013

“In any event, punishment by a government court does not erase the obligation to take revenge: a victim’s family is expected to kill the murderer once he is released from prison unless there is a settlement to end the feud before that time.”⁸³

4.2 Does prosecution under formal justice mechanism put an end to the blood feud?

In an interview with CORI in January 2014 *Professor Thomas Barfield* reported that State punishment does not absolve a family’s obligation to seek revenge unless a settlement has been reached,

“No, punishment by the state is irrelevant. The state can convict a man for murder and jail him for 20 years, but the moment he is released he will be a target of revenge unless the case was resolved between the two parties in the meantime. Similarly there is often resentment if the state attempts to jail someone for murder after the community got the two families to reconcile on the assumption the state has no business interfering.”⁸⁴

In April 2012 Pakistani news channel *Dawn* reported a case of a long-running blood feud in which the importance of tribal jirgas was highlighted,

“A grand jirga comprising tribal elders from Dir and Afghanistan on Friday settled a decades old blood feud between two local families. According to locals, the families of Malik Zarin and Malik Mir Alam have an enmity for the last 35 years in which 67 lives have been lost until now.

On Thursday, more than 100 notables from Afghanistan, including parliamentarians, had reached Shalkho Kas, a hilltop between Pakistan and Afghanistan, to attend the grand jirga at the hujra of Malik Ayub Khan, son of late Malik Zarin, in Miskini Darra. Elders of Mishwani tribe received them.

The jirga was told that Afghanistan President Hamid Karzai had taken personal interest in feud settlement. Speakers highlighted importance of tribal jirgas, saying

⁸³ Barfield, Thomas, *Afghan Customary Law and Its Relationship to Formal Judicial Institutions*, 26 June 2003, <http://www.usip.org/sites/default/files/file/barfield2.pdf>, accessed 14 December 2013

⁸⁴ CORI Interview with Professor Thomas Barfield, conducted via written correspondence in response to written questions. 28 January 2014

they always played vital role in settling disputes and blood feuds. They said use of force couldn't resolve dispute."⁸⁵

4.3 Formal v Informal/Traditional Justice Mechanisms

In an interview with CORI in January 2014 *Dr Noah Coburn* reported that social distance between the actors involved is a key factor in how conflict is resolved and whether an issue is dealt with under the concept of revenge rather than through conflict resolution mechanisms,

"More often than not it has to do with social distance between the actors much more than what the feud is actually over. Because the way that these feuds are usually resolved is by using family members as intermediaries. So if this feud is with your fourth cousin then you could use your second cousins to help resolve that feud. If its within the sub tribe its much easier to resolve than if its two different sub tribes and it's even more difficult to resolve if its between two distinct ethnic groups. So actually the really interesting thing that I think we have difficulty with in western legal system in terms of adapting it, its got much less to do, usually, with what the feud is over and more to do with the social context for the feud."⁸⁶

In April 2013, the *United States Institute of Peace* reported that the formal justice system in Afghanistan is often a last resort, due to accessibility issues in rural areas, poverty, corruption, and weak enforcement mechanisms. As a result, the majority of disputes are resolved using traditional dispute resolution mechanisms,

"Despite significant donor attention over the last 10 years, judicial institutions remain largely inaccessible to a population isolated from most forms of Afghan government by insecurity, geography, and grinding poverty. Too few judges, prosecutors, and defense lawyers, the majority poorly trained and underpaid, severely limit the capacity of the justice sector. Persistent issues with corruption and weak enforcement capabilities have compounded these problems. The formal justice system is often the forum of last resort. As a result the majority of disputes in Afghanistan are resolved by dispute resolution mechanisms outside of the formal justice system, by individual tribal elders, maliks or mullahs who hold a place of

⁸⁵ Dawn, Jirga settles decades old blood feud, 20 April 2012, <http://www.dawn.com/news/712234/jirga-settles-decades-old-blood-feud>, accessed 03 January 2014

⁸⁶ CORI Interview with Dr Noah Coburn, conducted by telephone, 28 January 2014

respect in the community; by groups of such individuals meeting as a jirga or a shura; or in some places by Taliban-affiliated individuals or courts."⁸⁷

In August 2011 *Dr Noah Coburn* authored a United States Institute for Peace report which stated that a dispute over the inheritance of land which led to the killing of four family members was resolved with the signing of a pact which set out consequences for those violating the agreement,

"in one major dispute in which USIP's DRC was involved in Nangarhar, a disagreement over the inheritance of land between an uncle and a nephew led to a feud in which four family members were killed. By the time the dispute was brought to the DRC, the most salient issue had become the murder of the family members, making it simultaneously a dispute over land, inheritance, and murder."

[] In several cases involving USIP's DRCs, communities acknowledged that the fear of increased bloodshed led them to involve both government officials and local elders in an attempt to make the resolution of the cases as final as possible. In the resolution of the murder involving the uncle and nephew described above, all parties signed a pact stating that anyone violating the agreement would have their homes burned down and their properties looted."⁸⁸

In July 2012 *Afghanistan Watch* reported that for many Afghans extra-legal measures, including violence, are preferable to the court system which is viewed as corrupt and inefficient. *Afghanistan Watch* reported on a 2011 case in Jalalabad,

"where a small landowner had returned from Pakistan to find his land occupied by a wealthy businessman.

After nearly a decade of legal maneuvering in the snails-pace court system of Afghanistan, no final judgment has been made. The notoriously corrupt and inefficient courts have convinced many Afghans that other measures, often illegal or extra-legal, including violence or Taliban adjudication, are preferable."⁸⁹

⁸⁷ United States Institute of Peace, *Lessons Learned on Traditional Dispute Resolution in Afghanistan*, 3 April 2013, <http://www.cmi.no/publications/file/4945-http-www-usip-org-files-rol-tdr-pdf.pdf>, accessed 2 January 2013

⁸⁸ Dr Noah Coburn, United States Institute of Peace, *Special Report 285, The politics of dispute resolution and continued instability in Afghanistan*, August 2011, <http://www.usip.org/sites/default/files/sr285.pdf>, accessed 20 January 2014

⁸⁹ Afghanistan Watch, *Natural resources and conflict in Afghanistan*, July 2012, http://www.watchafghanistan.org/files/Natural_Resources_and_Conflict_in_Afghanistan/Natural_Resources_and_Conflict_in_Afghanistan_Full_Report_English.pdf, accessed 21 January 2014

In October 2011 *Dr. Ali Wardak* (Reader (Associate Professor) in criminology at the University of Glamorgan, United Kingdom) reported that the majority of disputes are resolved through informal dispute settlement mechanisms such as jirgas or shuras consisting of local elders and leaders,

“...The overwhelming majority of disputes in Afghanistan are resolved outside of the state justice system. The most important non-state institutions in Afghanistan are jirga and shura. The particular form and composition of a jirga or shura are determined by the nature of a dispute at hand, but typically by a body of respected marakachian or rishsafidan (local elders and leaders) who refer to customary laws in order to reach a settlement that is acceptable to disputants and to the community. Jirga and shura address issues ranging from minor bodily harm and agricultural land boundaries to serious and sometimes violent conflicts concerning communal lands and murder.”⁹⁰

In September 2013 *IRIN News* reported that there are several systems governing issues relating to land and that recent amendments to state laws have failed to create an enforceable system of ownership rights,

"Land is regulated by a patchwork of formal and informal systems: the Civil Code, Sharia, customary law and statutory law.

The Afghan Land Authority has recently been mandated to make changes to the 2008 Land Management Law, the closest thing the country has to a national land statute, according to an Afghanistan Research and Evaluation Unit (AREU) report.

But researchers and analysts say that many amendments have been made to state land laws over the past 10 years, bearing few results, and that laws still do not adequately address the main issue: how to create a clear and enforceable system of ownership rights.”⁹¹

In September 2013 *IRIN News* reported that Afghans were reluctant to register disputes with the government due to fears over land grabs, bribery and corruption and that small land disputes were more typically referred to informal justice systems such as shuras,

⁹⁰ Wardak, Ali, State and Non-State Justice Systems in Afghanistan: The Need for Synergy, 32 University of Pennsylvania Journal of International Law 1305 20 October 2011, [https://www.law.upenn.edu/journals/jil/articles/volume32/issue5/Wardak32U.Pa.J.Int'l.L.1305\(2011\).pdf](https://www.law.upenn.edu/journals/jil/articles/volume32/issue5/Wardak32U.Pa.J.Int'l.L.1305(2011).pdf), accessed 2 January 2014

⁹¹ IRIN, Analysis: Land disputes add to Afghanistan's security woes, 10 September 2013, <http://www.irinnews.org/fr/report/98722/analysis-land-disputes-add-to-afghanistan-s-security-woes>, accessed 20 January 2014

"In 2009, USIP funded a series of pilot projects on traditional dispute resolution in districts throughout the country. The projects were based on the idea that introducing formal procedures in the handling of land disputes, such as written referrals, registration and records, would over time lead to a stronger system with rules and regulations. For example, people might start to rely more on the formal court procedures and less on 'jirgas' - informal systems of adjudication - when handling more serious cases, such as criminal offenses.

But USIP's research showed that most communities resisted formal documenting procedures. There was a prevailing sense that formal procedures did not offer tangible results and instead carried high social, economic and security costs. Many feared documentation of land ownership in Afghanistan - the third most corrupt in the world, according to Transparency International - could lead to their being targeted for land grabs, excess government taxes and bribes.

Instead, local government officials typically referred small land disputes to the informal justice systems, such as 'shuras' - local councils. Use of referrals and registration for larger land disputes depended on the value of the property and the reputation of local government officials. The more corrupt the officials were, the less likely people were to register disputes.

Variations were observed by area. In provinces such as Kunduz, which have fewer land disputes and a higher level of registered land documentation, disputants were less sensitive about registering cases or seeking official approval. But in Nangarhar, where land grabs and corruption are more common and few legal land documents exist, people overwhelmingly said they were unwilling to register disputes with the government."⁹²

In October 2011 *Dr. Ali Wardak* (Reader (Associate Professor) in criminology at the University of Glamorgan, United Kingdom) reported that Afghans place greater trust in informal dispute-settling mechanisms such as jirgas and shuras, which are also perceived as more accessible, efficient and less corrupt,

⁹² IRIN, Analysis: Land disputes add to Afghanistan's security woes, 10 September 2013, <http://www.irinnews.org/fr/report/98722/analysis-land-disputes-add-to-afghanistan-s-security-woes>, accessed 20 January 2014

"In addition, jirgas and shuras are shown to be more accessible, more efficient (in terms of time and money), perceived as less corrupt, and more trusted by Afghans compared to formal state courts."⁹³

In April 2013 the *United States Institute of Peace* reported that research showed that Afghans viewed that 'family law' cases should be dealt with through informal justice mechanisms and identified a social stigma associated with bringing domestic issues into public forums, including before informal actors,

"Family law cases involve personal disputes or details that families considered private and would not want shared in any public forum, or even referenced through public registration of any kind. Both community members and local officials strongly argued that these cases belonged with informal justice mechanisms rather than the formal justice system.

[...]

The social stigma associated with bringing domestic issues into public forums – including before informal actors – continues to present a serious barrier against family law cases being transferred to or monitored by any actors outside the family, particularly representatives of the state."⁹⁴

In April 2013 the *United States Institute of Peace* reported that Afghan government officials shared the same normative values that domestic disputes should not be dealt with in public forums or through formal channels,

"Government officials interviewed tended to agree that family disputes involve private details that should not be aired publicly. Officials who were interviewed and other community representatives said that family cases that are brought through formal channels are often verbally referred to informal dispute mechanisms, without any official recognition or written referral process. Some comments from government actors suggest they may have also resisted registering these cases because they thought it was inappropriate."⁹⁵

⁹³ Wardak, Ali, State and Non-State Justice Systems in Afghanistan: The Need for Synergy, 32 *University of Pennsylvania Journal of International Law* 1305 20 October 2011, [https://www.law.upenn.edu/journals/jil/articles/volume32/issue5/Wardak32U.Pa.J.Int'lL.1305\(2011\).pdf](https://www.law.upenn.edu/journals/jil/articles/volume32/issue5/Wardak32U.Pa.J.Int'lL.1305(2011).pdf), accessed 2 January 2014

⁹⁴ United States Institute of Peace, Lessons Learned on Traditional Dispute Resolution in Afghanistan, 3 April 2013, <http://www.cmi.no/publications/file/4945-http-www-usip-org-files-rol-tdr-pdf.pdf>, accessed 2 January 2013

⁹⁵ United States Institute of Peace, Lessons Learned on Traditional Dispute Resolution in Afghanistan, 3 April 2013, <http://www.cmi.no/publications/file/4945-http-www-usip-org-files-rol-tdr-pdf.pdf>, accessed 2 January 2013