

Report

Afghanistan: Blood feuds, traditional law (pashtunwali) and traditional conflict resolution



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Report **Afghanistan: Blood feuds, traditional law (pashtunwali) and traditional conflict resolution**

SAMMENDRAG

Denne rapporten presenterer enkelte sentrale aspekter ved blodhevn, konfliktløsning og tradisjonell lovgivning i Afghanistan. Notatet gir på ingen måte uttømmende informasjon om temaene. Anmodninger og spørsmål til Landinfo fra UDI og UNE om temaene har vært bestemmende for hva som er tatt opp i notatet.

SUMMARY

This report presents some key aspects relating to blood feuds, traditional laws and conflict resolution in Afghanistan. It does not, however, provide a comprehensive picture of all matters relating to Afghan subjects. The information presented answers specific questions Landinfo has received from Norwegian immigration authorities regarding traditional conflict resolution in Afghanistan.

CONTENTS

1. Customary laws	5
2. Pashtunwali.....	6
3. About honour, shame and revenge in Pashtunwali	7
4. Blood revenge / Feuds	8
4.1 Causes of blood revenge.....	9
4.2 Taking revenge	10
5. Pashtunwali and conflict resolution	11
5.1 Jirga	12
5.2 Decisions/solutions.....	13
6. Customary laws and conflict resolution among ethnic groups. Blood feuds..	15
6.1 Hazara-dominated areas.....	17
6.2 Nuristan	17
6.3 North Afghanistan	18
7. Afghan crime statistics.....	19
8. References	21

1. CUSTOMARY LAWS

In this report, the term customary laws refers to an informal shared understanding and perception of right and wrong, way of life, behaviour and morals in a social group or a local community, and also includes principles, rules, procedures and systems for conflict resolution (ILF 2004, p. 7).

There is a close relation between customary law and *sharia* law in Afghanistan. T. Barfield claims that “In rural areas, however, there is such melding of their tribal law with Islamic religious law that the two are often viewed as inseparable and mutually supportive” (Barfield 2003, p. 4). It is a relatively widespread perception among Afghans that the customary laws are reflecting or are in accordance with fundamental religious values and standards, which is not always the case. In a study of family structures and family legislation in Afghanistan, the Max Plank Institute (MPI) points out that:

Common persons have also little knowledge of Islamic law and most of them think that customary law complies with the Shari‘a. In reality, most regulations of customary law contradict both Islamic law and Afghan statutory law. Most people don't see this contradiction because the members of the jirga very often include the religious figures of the village, the mullahs. Even when the decisions of the jirgas are not in accordance with Islamic law, the participation of religious figures in the decision-making of the jirga makes people believe that the decision complies with Islamic law (MPI 2005, p. 10).

This must probably be viewed, among other things, in conjunction with the fact that religion (Islam) is deeply integrated in Afghans' lives, the low education level and also with the widespread perception that Afghans are particularly good Muslims. The traditional legal system normally implements a combination of customary laws and a local interpretation of sharia. According to a report from the International Legal Foundation (ILF), the involved parties may in some cases choose whether the case will be heard according to customary laws ('pastho') or sharia (ILF 2004, p.7).

Customary law is largely part of an oral tradition. In practice, traditional and local interpretations of the law regulate most Afghans' lives, and the legal situation in different areas of the country will vary. In the Human Development Report for 2007 it is pointed out that traditional councils deal with more than 80 % of legal cases in Afghanistan. It also states:

Although jirgas and shuras can be biased against women and other vulnerable groups, data shows that a majority of the people surveyed view them as trustworthy, efficient, and less corrupt than state courts (CPHD 2008, p. 91).

Customary laws are dynamic; they are manipulated, disputed and changed continuously as a result of changes in the social systems they regulate.

2. PASHTUNWALI

Pashtunwali is the most comprehensive and elaborate of the customary law systems in Afghanistan. Pashtunwali serves as a manual for the Pashtun population's way of life, social order, rights and obligations, morals and code of honour. Pashtunwali regulates and guides most aspects of a Pashtun's life.

It has been pointed out that customary laws are under development. The fact that there are a number of local variations of Pashtunwali and the fact that it is a part of an oral tradition, probably limits the general validity of some of what is presented here. Compared to Pakistan, relatively few studies have been carried out on Pashtuns and Pashtunwali in Afghanistan. The presentation of the main principles in Pashtunwali will largely be based on Professor Thomas Barfield's work *Afghan Customary Law and Its Relationship to Formal Judicial Institutions* (Barfield 2003), and on a study of customary laws in Afghanistan from 2004 conducted by the International Legal Foundation (ILF). In the introduction to this study, it is emphasised that:

The following should be regarded merely as a snapshot of certain customary laws rather than as a comprehensive academic description of the complex and diverse customary laws of Afghanistan (ILF 2004, p. 4).

Pashtunwali means 'doing Pashtu/being Pashtu', and one central mechanism in the norm system is the basic principle of personal autonomy in a society of equals, where everyone has equal political rights. Barfield points out that Pashtunwali is difficult to practise in class-structured societies or in societies with strong government control. Consequently Pashtunwali is most widespread in marginalised, rural and often poor areas beyond government control. Barfield points out that:

This is a code of conduct that stresses personal autonomy and equality of political rights in a world of equals. Thus it is more than a system of customary laws, it is a way of life that stresses honor above all else, including the acquisition of money or property. It is a code that is practically impossible to fulfill in a class-structured society or in areas where governments prohibit such institutions as blood feuds. It is therefore the people who inhabit the most marginal lands that are poor and beyond government control who see themselves as the only true Pashtuns because only they can maintain the strict standards of autonomy demanded by the Pashtunwali. In richer rural areas, such as the irrigated plains around Peshawar or Kandahar, this [is] less possible because leadership of local lineages came to be permanently dominated by hereditary landlords who reduced their fellow tribesmen to the status of clients. Here it was the landowning elite that tended to display the values of the Pashtunwali because only they had enough autonomy to meet its standards of behavior. In Swat, Pakistan, for example, Pashtun landlords created political factions composed of clients in order to compete with other powerful landlords, but it was clear that the khans were politically and economically superior to these clients (Barth 1959). Pashtuns, even wealthy ones, who moved to large cities were even farther removed from the values of the Pashtunwali because there they were enmeshed in state systems of government that restricted autonomy and cash economies that valued money more than honor. It is for this reason that

examples of customary law as a living tradition are found mainly in the marginal areas of rural Afghanistan even though the ethos of the Pashtunwali is common to all rural Pashtuns. Thus the Pashtun tribes that have remained in the hills and deserts continue to draw a sharp distinction between themselves and their tax-free, blood feuding, way of life (nang) and those Pashtuns who live under state control (qalang). The hill tribes assert that it is only they who follow the proper Pashtun way because their cousins on the plains and in the cities have been stripped of any true autonomy and are forced to obey state regulations (Barfield 2003, s. 5).

According to ILF, all Pashtuns in rural areas adhere to Pashtunwali in one form or another (ILF 2004).

3. ABOUT HONOUR, SHAME AND REVENGE IN PASHTUNWALI

Dignity, honour, shame are central concepts in Pashtunwali. This comes across, among other things, in the language, Pashto, which has a large and nuanced vocabulary relating to shame. To be perceived as dishonorable is among the most serious fates that can befall a Pashtun and his family. The paramount importance of honour is illustrated by the fact that at murder in certain contexts is considered to be both an acceptable and necessary act in order to restore a group's status.

Shame is primarily connected to the behaviour of women:

Sharm (shame) has mainly to do with the behaviour of the women of the group whose honour is at stake and with male control over the female half of the society (Glatzer 1998, p. 4).

Women cannot increase the standing (accumulate honour) of a family or a group; in reality, they can only contribute to reducing it. The behaviour of women influences the whole group or family's status, in particular that of male relatives. Women are required to be modest and respectable, and men are responsible for their behaviour and have an absolute obligation to protect the women of the group. Women are considered irrational beings with low self-discipline and little control over their impulses. At the same time as women must be protected against outsiders, they must be controlled and protected against their own weaknesses and inclination to engage in indecent/immoral behaviour.

Protecting the family (women) and property is closely linked in Pashtunwali. A man who cannot protect his family and property does not receive respect and 'anyone is free to snatch away from him what he wants, his possessions, his land' (Glatzer 1998, p. 5). Glazer points out that *namus* is often the cause of conflicts. He describes *namus* as follows:

It means privacy and the protection of its sanctity. In the narrower sense namus refers to the integrity, modesty and respectability of women and to the absolute duty of men to protect them. In a wider sense namus means the female part of the family, of the clan, tribe and of the Afghan society; in the widest sense it is the Afghan home-land to be protected (Glatzer 1998, p. 4).

Report **Afghanistan: Blood feuds, traditional law (pashtunwali) and traditional conflict resolution**

One aspect of the ideal for what constitutes a man of honour and dignity (*nang*) in Pashtunwali balances between two main characteristics:

- 1) *Tura* (sword) – Courage, aggressiveness and readiness to engage in self-sacrificing war/battle. ‘Readiness for violence and war is but one aspect of the traditional ideal of a male person.’
- 2) *Aql* (reason) – Reason and social responsibility. “Reason and social responsibility (*aql*). *Aql* is deliberate and prudent behaviour intended to benefit one’s family and one’s wider social environment up to the entire ethnic group, the nation (if such a notion exists) and even up to the entire Muslim *umma*. [...] A man of *aql* is one who reasons and acts in an integrative social way, he is hospitable and generous, he grants asylum, reaches to balanced social judgements and is able to act as a mediator in conflicts” (Glatzer 1998).

Tura and *aql* entail knowing when one should fight and draw one’s sword and when one should show restraint and demonstrate care for the family and society. The ideal for young men is to be dominated by *tura* (aggression) and, to a lesser extent, *aql* (reason). However, young men are expected to ask older men for advice and also to adhere to any advice they might provide. *Tura* and *aql* are related to the individual, not the group; every man must show courage and aggressiveness through individual actions. According to Glatzer, a man will fight:

first of all for his personal honour and autonomy, then for that of his family and clan. A strong motive for displaying turá is to demonstrate one’s own equality and autonomy and consequently that of one’s family and clan and that one has not to bow down before any arbitrary power (Glatzer 1998).

The importance of 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] 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 (Barfield 2003).

Theft, rape and murder are considered to be immoral behaviour, but sanctioning perpetrators is not considered a responsibility of the community; this responsibility rests with the victim and revenge is an acceptable reaction. Local tradition, public opinion and Pashtunwali sets limits on the legitimacy of the revenge – how, who and where (Barfield 2003).

4. BLOOD REVENGE / FEUDS

In Afghanistan, murder is a very serious act that can entail a risk of serious sanctions for the murderer and his family. Murder can trigger a demand for blood revenge.

Report **Afghanistan: Blood feuds, traditional law (pashtunwali) and traditional conflict resolution**

Blood revenge is primarily a Pashtun tradition, and its connection to honour is illustrated by the fact that failure to reciprocate is deemed a sign of moral weakness, and may imply whole kinship groups being seen as lacking in moral character. Both reporting a murder to the authorities and negotiating for financial compensation with the perpetrator's family can be interpreted as weakness and as indicating that the group is not strong enough to defend its honour.

A decision in the governmental judicial system does not necessarily exclude the risk of violent retaliation. The victim's family can still be expected to kill the murderer when he is released (unless there is a settlement to end the feud locally). A local community will not consider a revenge killing legitimised by tradition to be a criminal act (Barfield 2003). According to Barfield, some homicides do not fall within the blood revenge category:

- If the death is the result of an accident and is involuntary, the victim's family may be entitled to compensation, but not blood revenge.
- In cases where the victim has been involved in dishonourable acts, for example theft or adultery, blood revenge is not considered legitimate.
- Killing in connection with war – violence between opposing groups and not between two individuals – gives the right to blood revenge in peacetime.
- The killing of close family members, for example a brother, is not subject to revenge. As blood revenge is the obligation of a (kin) group, this would mean taking revenge on oneself. The perpetrator may have to leave the local community, however.

Blood revenge closely linked to honour. A killing that provokes revenge, has in one way or another dishonoured the kin group/clan/tribe. Within the victim's kin group there is a limited, collective responsibility to take revenge and contribute to restoring honour. The person taking revenge should be a close relative of the victim, only in some Pashtun communities is it considered legitimate to hire a substitute to take revenge in the name of the victim.

Killings connected to political conflicts/battles do not legitimise blood revenge, and revenge for such killings may be characterised as private revenge. Nor do killings and attacks against family members by political opponents or in connection with a political or military conflict constitute a collective responsibility within the kin group to avenge these acts. The revenge will therefore be directed at the perpetrator, and the conflict is concluded when the perpetrator is killed (Strand 2007, p. 3).

4.1 CAUSES OF BLOOD REVENGE

Killings are often an outcome of existing conflicts, and killings in connection with all types of conflicts can, in principle, end in blood revenge. According to information available to Landinfo, however, killings resulting in blood feuds occur more frequently in connection with some conflict categories than others. The extent of blood feuds that are a result of a particular category of conflict, for example land disputes, will thus depend on the number of land disputes in an area. Conflict analyses conducted by Cooperation for Peace and Unity (CPAU) in five different provinces in Afghanistan look into how the extent of different conflicts varies during a year. In all of the studied areas, conflicts relating to land and water are the most

Report **Afghanistan: Blood feuds, traditional law (pashtunwali) and traditional conflict resolution**

common; family conflicts (marriage/divorce, domestic violence) follow in second place. The results can thus reflect a fact related to the cause(s) of blood revenge that is pointed out by a number of sources, including UNHCR:

In Afghanistan there is the word namus. Namus translates as 'honour', but it translates as 'property' as well. Based on the Afghan traditional proverb 'zan, zar, zamin' (women, gold, and land), 'property' or namus covers wife (or the honour of female family members), property, the right to water and land. If one of these elements of namus is violated, then for sure the question of blood feud and revenge will arise (ACCORD 2007, p. 34).

CPAU's figures indicate that blood feuding is a generally rare occurrence, and that it to a certain extent follows the same seasonal pattern as other conflicts. The findings from the Baharak district in Badakhshan illustrate this pattern. There, cases of blood revenge follow the same pattern as land/water conflicts and family/marriage conflicts. The CPAU registered an increase in all these conflict categories in the autumn. The CPAU explains this as follows:

Domestic/marriage disputes and blood feuds / murders also correspond with these seasonal spikes, perhaps indicating linkages between these conflicts and seasonal land / water conflicts. For example, weddings are often scheduled after the harvest, and harvest yields pay off outstanding debts or seal marriage agreements, so the linkages between agricultural cycles and interpersonal conflicts are significant (CPAU 2009a, p. 12).

In other districts and provinces in the CPAU analysis, the correlation between blood feuds/murders and other conflict categories, is less evident (CPAU 2009c, p. 12; CPAU 2009d, p. 17). This could be linked to the fact that the low number of blood feuds and murder surveyed make it difficult to identify patterns and draw conclusions. However, the extent of blood feuding and murder is generally significantly lower than other conflict categories, which can indicate that only a minority of conflicts culminate in blood feuds.

4.2 TAKING REVENGE

According to Barfield, it is optimal that revenge is taken against the murderer or the perpetrator of the misdeed, but, under some conditions, killing his brother or other patrilineal kin represents an alternative. Revenge cannot be exacted against women and children. The person exacting the revenge should be a close adult male relative of the victim, but in exceptional cases 'hired assassins' sometimes carry out the revenge (Barfield 2003). Ideally, the killing should be carried out man to man and face to face (courage), but ambushes are also acceptable.

It can be problematic or impossible for the victim's kin group to exact revenge. This is the case, for example, if the murderer is from a more powerful family than the victim and revenge could have fatal consequences. If it is deemed impossible to avenge a killing, the victim's family will often leave to avoid the shame they may face by failing to exact revenge and having to live in proximity to the murderer(s).

However, a blood feud can lie dormant until the victim's family believes it is capable of exacting revenge. Young sons can be given a responsibility to avenge their murdered father when they reach adulthood – revenge can be taken months, years, even generations after an offence. A Pashtun proverb illustrates the low importance

Report Afghanistan: Blood feuds, traditional law (pashtunwali) and traditional conflict resolution

attached to time: “A man took his revenge after one hundred years although he regretted acting in haste” (Barfield 2003, p. 7).

Landinfo is not aware of any sources presenting information indicating the prevalence of pre-emptive revenge (i.e. murdering the male relatives of a victim in order to make the other group unable to avenge the initial murder). In Landinfo's experience, such scenarios are unlikely, as they violate Pashtunwali and most possibly will be considered unacceptable by local communities. It is likely that the local community would intervene and impose serious sanctions, for example expulsion from the area. Moreover, in the Afghan context, it would be extremely difficult to kill all male family members in a family who could be given responsibility for carrying out revenge. This would normally involve a large number of men.

5. PASHTUNWALI AND CONFLICT RESOLUTION

Pashtunwali has procedures for conflict resolution. A dialogue aimed at a peaceful solution between the parties can be initiated in several ways, including:

- The parties themselves taking the initiative by contacting a legally knowledgeable person or persons (*marakchi*) or ask a traditional council (*jirga/shura*) to be convened.
- In cases where the local community is concerned about the consequences of a conflict, self-appointed negotiators with local origin can convene a meeting of the parties with a view to arriving at a solution.
- A presumptively weaker party can seek assistance from a lokal power-holder in order to get him to intervene in the conflict. This can be done by sacrificing an animal at the entrance to the house of the powerful person, who is then obliged to assist in settling the dispute (Barfield 2003).

When a conflict that entails a risk of a of large-scale and prolonged effect on the local community becomes known, the local community will attempt to intervene by sending intermediators to the parties involved to ask for a truce (Barfield 2003). It is often difficult to refuse such a truce, particularly if it is proposed by men with power, influence or a religious background. In principle, however, revenge killings are considered to be conflicts between families, and it is only in more exceptional cases that the local community intervenes, i.e. in disputes over boundaries and uses of community controlled forestland or pasture that can provoke warfare between rival groups. Since revenge will often be difficult to carry out for families with few resources, they will probably seek local help with mediation more often (even though this can mean a loss of reputation) (Barfield 2003).

When conflicts have escalated and have become very serious, attempts will be made to persuade the parties to accept a negotiated settlement. The local community has no formal means at its disposal, but is dependent on putting social pressure on the parties to accept the negotiated solution(s) (Barfield 2003).

5.1 JIRGA

As pointed out, relatively uncomplicated conflicts can be settled by individuals with knowledge of customary and religious laws (*marakchi*). Assuming that the parties are willing to accept a negotiated settlement in cases where conflicts have escalated, a jirga will be convened. In principle, a jirga is an open discussion forum at the village level. The forum comprises elders, men deemed knowledgeable and respectable. A jirga makes decisions of importance to the local community, for example regarding repairs to a local mosque or an irrigation system. Women and children are not permitted to participate in or meet with the jirga. Local jirgas can also deal with and mediate settlement of blood feuds. The number of jirga members and the members of a jirga will vary from case to case, but the more serious – and thus more complicated – the conflict, the more members of the jirga.

Even though the jirga is primarily associated with the Pashtuns, there is

well-documented evidence showing that jirga (or jirga-like local institutions) are also used as the main mechanisms of dispute settlement among Afghan Tajiks, Hazaras, Uzbeks, and Nuristanis. Recent field research indicates that there are striking similarities between the traditional Pashtun jirga and shura among other ethnic groups. [...] Among Afghan Tajiks, Hazaras and Uzbeks, local councils called shuras operate as informal mechanisms of dispute settlement, resource management, public infrastructure, and support to the local mosque (CPHD 2007, p. 91-92).

A jirga can be convened either in a private place or in a public place, for example in a mosque. The smallest or most local jirga is called *maraka*. All members of the jirga are considered equal and the negotiations should be open and free. The jirga has no leader and the members sit in a ring to symbolise that they are equals. Decisions must be arrived at by consensus (ILF 2004; Barfield 2003). The consensus requirement means that anyone who disagrees and does not wish to be bound by the decision must leave the jirga (Barfield 2003).

The number of members in a jirga will depend on the nature of the case. In conflicts between villages and tribes, a jirga will consist of an equal number of jirga members from both sides. In personal/family conflicts, the jirga members will be people who the parties trust. The jirga members are expected to be unbiased (ILF 2004). In serious, extensive conflicts, as many as ten jirga members can participate. They investigate, question and confront the parties and suggest a solution.

If a jirga does not find a solution, or one of the parties does not accept the jirga's proposed solution (*kazha*), the conflict can be appealed and a larger jirga (*maraka*) is convened (Barfield 2003). If the larger jirga is also unable to resolve the conflict, a jirga cutting across family, tribe and clan boundaries, a so-called *tukhum*, can be convened. The number of members in a *tukhum*

is determined by doubling the number of original judges at the first maraka and then doubling that figure. So if a first level maraka that began simply with two judges, the tukhum would have eight marakachian (Barfield 2003).

The parties to the conflict must provide for the travelling jirga members when a *tukhum* is convened. Accommodating visiting jirga members over a long period is expensive and this can result in the parties feeling obliged to accept the *maraka's*

decision because they cannot afford to appeal to a *tukhum*. Disputes involving blood feud often go directly to the second level *tukhum* (Barfield 2003).

How long a jirga will deal with a case depends on the complexity of the conflict. A jirga can take from a few hours to several weeks. If the case involves serious injury or valuable land, assets of equivalent value are collected from both parties before the jirga starts its deliberations (*machilgha* or *baramta*). The assets can be cash, weapons or livestock. *Machilgha/baramta* is intended to ensure that the jirga's decision is accepted. If one party does not accept a decision, this party's share of the *machilgha* goes to the opposing party or is divided between the jirga members. The value of *machilgha* also depends on the gravity of the case. The more serious the case, the more valuable the *machilgha* (ILF 2004; Barfield 2003). As Barfield points out:

*The most difficult cases are those in which the parties refuse to sit down with one another directly and cannot agree on a common set of judges. In this case each side appoints its own set of intermediaries who sit down together to decide the case. The judges are therefore in some sense adversaries who are expected to present the strongest case they can for their party. They are nevertheless constrained to decide the case on the basis of Pashtun tradition. Also as intermediaries they have less of a vested interest in the outcome than the parties themselves and are under social pressure to make a finding. Failure to accept the judges' common decision results in the offending side being publicly branded violators of Pashtun tradition and having their *baramta* is forfeited to their opponents. Religious figures often play an important role in bringing about settlements in these serious cases. Because they are generally not kin to either side they are seen as more neutral and because a religious reputation is based on sanctity and ability to attract followers through sage advice. In contrast to a Pashtun *khan* whose reputation rises because he wins disputes violently, religious figures gain prestige because they are able to settle them in ways that leave the honor of both sides intact (Barfield 2003).*

Decisions made by a *tukhum* are final and cannot be appealed. In Pashtun areas in the south and east, there is a separate "police force", known as *arabakai*, which is usually under the command of a local commander. *Arabakai* often have the responsibility for ensuring that the jirga's decisions are complied with and followed up by the parties (ILF 2004).

5.2 DECISIONS/SOLUTIONS

In accordance with fundamental Pashtun norms, a jirga's most important role is resolving conflicts and restoring balance between the parties. In connection with the CPHD report *Bridging Modernity and Tradition: Rule of Law and the Search for Justice*, a nationwide questionnaire survey was conducted with the aim of studying decisions made by either jirgas or shuras.

The survey indicated that (i) peace (*solh*) or compromise between the parties is the most frequent outcome of a jirga/shura hearing. *Nanawate*¹ has a central place in the

¹ "In the case of an intentional or accidental murder, the murderer's relatives may help carry the victim's body to the grave site. A member of the murderer's family also may lie in the grave dug for the victim implying his surrender to death. Another form of Nanawati requires that the aggressor go to the other party's house with *some elder, learned men, aged people and some old ladies* and slaughter
Report **Afghanistan: Blood feuds, traditional law (pashtunwali) and traditional conflict resolution**

legal system and, as Landinfo understands the term, it incorporates both asking for forgiveness and forgiving, as well as accepting solutions whose main purpose is to restore/build relations between conflicting parties. As far as Landinfo is aware, several of the other ethnic groups have corresponding terms, for example *ozrana* among the Hazaras.

Thereafter follows (ii) compensation to the victim, then (iii) *ratal*, i.e. collective social boycott, (iv) *baad*, which means that one or more young women from the perpetrator's family are married into the victim's family, and (v) burning down the perpetrator's house. It is important to emphasise that (i) and (ii) are the outcome of the vast majority of decisions:

Three-quarters of the respondents said that solh was always or sometimes the final outcome; half of all respondents said that compensation of the victim was always or sometimes the final result. The overwhelming majority of the respondents reported that ratal and baad were never or sometimes the final outcome, while the burning of the offender's house was far less common (CPHD 2007, p. 93).

Baad does not exclusively entail young, unmarried women being married into the victim's family; it can also entail both families marrying girls into each others' families. Two families in conflict thereby become related to each other. For this reason, girls are often preferred as compensation instead of financial assets. There is broad agreement that *baad* is a tradition that often results in violations of fundamental human rights. This also applies to cases where the jirga decides to impose sanctions on the family, for example banishment, loss of property by burning houses and the slaughtering of cattle. In such cases, there will often be the local *arabakai* that ensure that the jirga's decisions are followed up. ILF states that certain Pashtun clans/tribes practise capital punishment (ILF 2004), while Barfield points out that Pashtunwali does not allow for the possibility of such penal sanctions (Barfield 2003, p. 13).

Murder is not the only offence that can result in serious sanctions. The infliction of permanent, serious injury, for example blinding someone, can result in sanctions corresponding to killing. Sanctions for kidnapping/violating married women illustrate how important the protection of the family's women is in Pashtunwali; the sanction can correspond to up to seven killings. If adultery is discovered, both parties shall be stoned to death (ILF 2004; Barfield 2003).

Even though certain sanctions in Pashtunwali are serious and entail the infliction of suffering, much of the normative basis in Pashtunwali appears to be aimed at reintegration rather than punishment. *Baad*, *poar* (financial compensation (blood money))² and particularly *nanawate*, are institutions that aim to reconcile,

a sheep. Taking the sheep is mandatory and the number of sheep will differ according to the importance and seriousness of the case. If the conflict is between families, the sheep is slaughtered at the gate of the house. If the conflict is between tribes, it is slaughtered at the gate of the local mosque. Nanawati for the murder and abduction of a married woman requires the giving of four copies of the Holy Koran, four women, and a fat sheep to the victim's family. The Nanawati for the taking of a person's weapons by force during a fight requires a visit to the victim's house with a sheep. Refusing the Nanawati subjects the victim family to accusations of opposing the Nerks and Tselays of Pashtuns - an allegation that *no one can afford*" (ILF 2004, p. 10-11).

² The perpetrators will be given an opportunity to pay *poar* (also called *khoon*) to the victim. *Poar* (as Report **Afghanistan: Blood feuds, traditional law (pashtunwali) and traditional conflict resolution**

compensate and restore balance between the perpetrator, the victims and their immediate social surroundings, usually the village.

6. CUSTOMARY LAWS AND CONFLICT RESOLUTION AMONG ETHNIC GROUPS. BLOOD FEUDS

Pashtunwali is – by far – the most extensive and developed of the customary legal systems in Afghanistan. The other ethnic groups in the country also have customary laws that are implemented in traditional conflict resolution processes. In the same way as with the Pashtuns, well-reputed persons with knowledge of traditional norms and councils of elders (*shuras*) play an important role in resolving conflicts. Less information is available, however, about the practise of customary laws among non-Pashtun groups.

Afghanistan has been torn by war for the past 30 years, with severe consequences for the formal judicial system. The judicial system is characterised by corruption, lack of competence and nepotism. Combined with the fact that the central government and the state judicial system enjoy very little support outside the cities, this has contributed to a problematic and difficult relationship between state laws and the customary legal systems. There has also been continuous conflict between forces that represent a sharia-based legal system and those representing the official legal system (statutory law). Sharia-based councils/courts strengthened their position during the Soviet/PDPA period. In many rural areas where Pashtunwali was not the predominant legal system, and where the central government had little influence, it was often religious scholars (*ulema*) who resolved disputes, especially in civil cases (Barfield 2003, p. 32). As Barfield points out, quoting the French scholar Olivier Roy:

They [sharia courts] were viewed as bulwarks against the tyranny of the powerful that offered at least four advantages over the justice system previously employed by the central government:

1. *sharia norms were more in harmony with rural Afghans religious view of the world than government legal codes;*
2. *the qazi of the resistance movement was more accessible than his government equivalent and usually not corrupt;*
3. *court proceedings in both civil and criminal cases were conducted orally in a way that was understood by everyone; and*
4. *cases were disposed of quickly (Roy 1990:156) (Barfield 2003, p. 33).*

Barfield suggests that the role played by sharia and religious scholars (*ulema*) in many local communities in non-Pashtun areas has developed into a form of traditional administration of the law:

with other sanctions) will vary from tribe to tribe.

Report **Afghanistan: Blood feuds, traditional law (pashtunwali) and traditional conflict resolution**

It was no surprise then that sharia law and the ulema who interpreted it began to play a larger role in society. In many respects this form of sharia law began to take the place of customary law in non-Pashtun regions. Given the informality of its administration and lack of deep legal training by most of the judges who administered it, it was in many ways a type of customary system itself (Barfield 2003, p. 33).

As regards blood revenge among other groups, Barfield points out that:

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 courts, particularly where disputants are not members of a single ethnic group, but even here informal mechanisms predominate (Barfield 2003, p. 25).

Arne Strand also states that blood revenge and private revenge are accepted, but less widespread among non-Pashtuns:

As mentioned, blood vengeance as practised between Pashtuns has not been as common among the other ethnic groups in Afghanistan. It does happen, however, perhaps most in areas where, historically, there has been a mix of Pashtun and other ethnic groups and where common norms have taken root over time. Personal revenge, on the other hand, has become normal, both internally within the different groups and between them. Interviews with leaders in Tajik and Hazara networks uncover both that private revenge is widespread and that the different groups have mechanisms for handling it. As documented in the Faryab province in Northern Afghanistan, among other places, the majority of conflicts are resolved through councils of elders. The conflicts include rape and murder, although conflicts about water and land predominate. A senior leader of a district administration said that very few such cases were brought to them, and he saw it as positive that they were resolved locally.

[...]

In an interview with the deputy leader of a Hazara council currently active in Kabul, Shia Islam was referred to as a guiding principle for how murder cases were handled within this group, and that, with reference to religion, they distinguish between killings that are carried out with and without the intention to kill. In cases of planned and premeditated murder, the sanction can either be 1) a revenge killing, or 2) compensation of 100 camels or c) 200 sheep (Strand 2007, s. 10-11, translated from the Norwegian original).

In 2001, the International Legal Foundation (ILF) took the initiative to map the customary laws of Afghanistan, focusing on criminal law concepts. The report, which was made public in 2004, includes material from Hazarajat, Nuristan and the northern regions, and it is stressed in the introduction that “in Afghanistan, the need for such understanding is particularly acute because customary laws, de facto, govern the lives of a majority of the population” (ILF 2004). The following is mainly based on the ILF report. In this context, it is important to include a reminder about the limitations of the report, and that the ILF stresses that the report must be viewed “as a snapshot of certain customary laws rather than as a comprehensive academic description of the complex and diverse customary laws of Afghanistan” (ILF 2004).

Report **Afghanistan: Blood feuds, traditional law (pashtunwali) and traditional conflict resolution**

6.1 HAZARA-DOMINATED AREAS

According to the ILF report, most conflicts in Hazarajat (central Afghanistan: Bamyan, Orozgan, Wardak and Balkh) are dealt with pursuant to religious and customary laws (ILF 2004).

The Hazaras' council or traditional court (corresponding to the jirga) is referred to as the *maraka/marka* and/or *shura*. A *maraka* can have from three to thirty members, depending on how serious the case is. A *maraka* consists of elders and religious capacities (*ulema, saiid*). They are referred to as *maarkachi*. If the conflict involves Hazaras from different districts, the *maraka* will include members from the involved districts and sometimes also from other districts. Before the negotiations can begin, the parties must accept the full authority of the *maraka*. Decisions by the *maraka* are binding, and those who do not adhere to them, risk expulsion from the tribe and/or the imposition of sanctions on the family (not being invited to weddings, funerals, etc.) (ILF 2004).

In cases of intentional murder, the case will normally be transferred to the judicial authorities and the murderer will be imprisoned in a public prison. The judicial authorities can, in consultation with the parties, return the case to the *maraka* for a decision/sentence.

The suspect will remain in the authorities' custody, however. In addition to an assessment of the animosity between the families involved, the *maraka's* decision will be based on the evidence collected, the testimony of witnesses questioned and assessments of the suspect's general behaviour and history. If the suspect is found guilty, the punishment will normally include a form of apology and compensation (*deyat*) to the victim's family. If the suspect does not accept the punishment, he will remain in prison. Offering women in marriage (*baad*) is not common among Hazaras, but it sometimes takes place in connection with the resolution of conflicts between different tribes (ILF 2004).

6.2 NURISTAN

In Nuristan province, formerly a district in Kunar province, the majority of the population is Nuristani. In Nuristan, the village is the political entity and is

governed according to customs. Every village has a council and its members are chosen by the villagers. They include elders, the Mullah Imam, and other persons from families firmly established in the village. They govern the village (ILF 2004).

The village council also functions as a jirga (*awri, awra, awrjast* and *uloo*) and the council members are called *majlis*. The council members (normally between three and five) are elected for one or two years, and

must be known as morally upright, virtuous, and God-fearing. They must be religiously observant, peaceful, firmly rooted in the village, and knowledgeable about the basic rules of the Jirga. They should have at least a formal primary education whether religious or scientific (ILF 2004).

If the parties to a conflict fail to resolve a conflict, the leader of the village or the mulla will initiate convention of an *awri* to settle the dispute/conflict. The parties are then obliged to comply with the *awri's* decision, and the sanction for not doing so

can be expulsion from the village. In the same way as in Pashtun and Hazara legal traditions, the parties must deposit assets (*garaw* or *zamanat*). If one of the parties does not accept a decision, that party's guarantee (deposited assets) will be divided between the council members or distributed to the welfare of the public / given to the community.

The council's decision (*rogha-jura*) will normally involve the guilty party/instigator having to pay the victim compensation and making a public apology (fixed rules depending on the gravity of the case).

The Nanawati, Uzr in Nuristani, or apology, is an intricate part of the resolution. As seen in other portions of this report on customary laws, the custom of apologizing is common among all Afghan tribes and has a special place in the interaction among people in all parts of the country. The perpetrator must apologize. The apology can take different forms. It generally depends on the crime. The perpetrator will be asked to go, with some elders from the village or members of the jirga to the house of the victim, with a bull or a sheep. Once the parties engage in Nanawati (or apology), they are reconciled (ILF 2004).

Offering young girls in marriage as compensation in a conflict is not practised in Nuristan.

Murder is dealt with by an expanded village council:

[T]he village council will gather in an expanded version with the Mullah Imam, the head of the village, members of the victim's family, elders from the village and surrounding villages (ILF 2004).

The parties can choose whether the murder case will be decided pursuant to customary laws or sharia. If the parties choose sharia, the case is transferred to the mullas. An *awri* will first consider whether the murder was premeditated, manslaughter, in self-defence etc. In cases of manslaughter or self-defence, the council will try to persuade the victim's family to accept reconciliation and compensation. Execution is the punishment for premeditated murder, unless the victim's family forgives and accepts compensation from the murderer's family (ILF 2004).

6.3 NORTH AFGHANISTAN

The northern regions are ethnically complex, and the customary laws and conflict resolution mechanisms have local variations with certain common features.³ Normally, traditional resolution of a conflict will involve a *shura/jirga/mookee-jamaat-khana* that usually consists of an imam and two members, but in more serious cases, for example murder, a *shura/jirga/mookee-jamaat-khana* can consist of 12 persons (elders from different areas). A *shura* usually meets in the mosque or some other place that is considered neutral. The tradition of furnishing a guarantee by depositing assets is also common in the northern areas.

³ For more detailed information, see part four, pp. 50-68 of *The Customary Laws of Afghanistan*. The chapter discusses examples of customary laws in Kunduz, Faryab, Takhar and Badakhshan and distinguishes between Ismaili/non-Ismaili districts (ILF 2004).

Normally the decisions involve the victim's family being offered compensation in the form of assets (money, land areas, etc.) from the offender. In Faryab, it is more common that a conflict is brought before the local commander before the case is taken to the local jirga/shura. Offering women in marriage as compensation (*baad/badal*) is not an accepted form of conflict resolution in the north, as it is considered to be in violation of Islam and sharia. *Baad* and *badal* are primarily Pashtun traditions that are most widespread in rural areas (ILF 2004).

7. AFGHAN CRIME STATISTICS

The crime statistics in Afghanistan are incomplete, and murder statistics are no exception. No statistics of murders related to revenge and blood feud are available (Strand 2007, p. 8). The quantitative information on murder/revenge killings/blood feuds is neither representative nor reliable.

In his 2007 report, Arne Strand refers to an interview with a senior judge and the head of the *Studies and Investigation Department* of the Afghan Supreme Court. He estimates that close to 80 % of all murders are due to blood feuds or private revenge (Strand 2007, p. 8). According to the same report, the total number of murders in 2006 was 1166, which is the sum total of the crime statistics from three official sources (Strand 2007, p. 6;).

In 2009, the Cooperation for Peace and Unity (CPAU) carried out conflict analyses for the period 2002-2008 in selected districts in five different provinces (Kabul, Wardak, Kunduz (CPAU 2009), Badakhshan and Ghazni).⁴ In the reports, the extent of blood feuds and murders relating to other types of conflicts is discussed. CPAU states that 2 % of the total number of conflicts registered in the analysed districts are due to blood feuds/murder. If the figures are limited to conflicts in and between families, the percentage of blood feuds/murder is 3 % (CPAU 2009f, p.7). It is a feature of all five reports that blood feuds/murder is the smallest conflict category by far. The five reports show variations between the different provinces and districts, however. The reports concerning the city of Kunduz in Kunduz and the districts of Chak and Sayedabad in Wardak do not mention blood feuds/murder at all. It is therefore natural to draw the conclusion that blood feuds does not occur often in these districts.

The report from the districts of Farza and Kalakan in Kabul (province) contains no registered blood feuds/murders in the period 2005-2007. In 2008, it is stated that approx. 5 % of the cases are due to blood feuds/murder (CPAU 2009c, p. 11). A corresponding report from the Bahrak district in Badakhshan contains no cases in 2005 and 2006, but an increase was registered in 2007 to 9 % blood feuds/murder cases (CPAU 2009a, p. 11). According to the report about the districts of Jaghori and Malestan in Ghazni, there has been a general increase in all types of conflicts, with

⁴ CPAU uses so-called Peace Councils, among others, i.e. locally-based units comprising representatives of the local population, which in principle are open for everyone who wishes to participate. In total, CPAU has 750 Peace Council members. The Peace Councils submit Conflict Monitoring Reports to CPAU; these reports contain lists detailing which conflicts in the local community have been notified to the Peace Council.

the exception of blood feuds/murder (CPAU 2009d, p. 15). The report does not present absolute figures for blood feuds/murder, but an overview showing incidences of different conflict categories and seasonal variations indicates that the figures are very low. The overview is based on data from March 2005 to March 2008 that indicate that blood feuds/murder mainly occurs in spring (May), and that it accounts for 1-2 % of the total number of conflicts. Activity in this conflict category is not reported at other times of the year (CPAU 2009d, p. 17).

A study from 2005 conducted by a group of NGOs, which studied different types of conflict in Badakshan, Badghis, Farah, Ghazni (Jagori and Malistan), Herat, Kabul, Kunduz, Logar, Parwan and Wardak, shows large geographical variations in the number of murders (not just revenge killings):

There are some striking differences in the areas where interviews were undertaken, though the exact numbers of murders is difficult to establish as there seems to be overlapping reports between some neighbouring villages. However, the general trend is that there are relatively few murders registered in Badakshan and Kunduz provinces and in Jagori and Malistan districts of the Ghazni province, areas primarily inhabited by Tajiks and Hazaras. Though, for the Ghazni province ethnic tensions between Pashtun nomads and Hazaras over grazing rights had in two instances led to murder. [...] But, based on the NGO study, ethnicity is neither a major cause of conflict nor does not in itself seem to provide a guarantee against conflict and murders. The Tajik dominated village Sarah in Parwan province reported 20 murders over the last year. However, there are comparatively extremely high rates of murders registered in some primarily pashtun districts, as in Badghis, Logar and Farah provinces, with reports of as many as 10 murders being committed in some larger villages (Strand 2009, p. 3).

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