

Institution: University of South Wales
Unit of Assessment: C22
Title of case study: A New Hybrid Model of the Justice System in Afghanistan
<p>1. Summary of the impact</p> <p>The key recommendations of the ‘hybrid model’ of the Justice System in Afghanistan, developed by Dr Wardak, were written into draft Afghanistan law under the title, ‘<i>The Law on Dispute Resolution, Shuras and Jirgas</i>’, by the Ministry of Justice. The ideas derived from Wardak’s new model were piloted in different parts of Afghanistan by the United States Institute of Peace, by USAID, TLO and CPAU. Preliminary results of pilot studies, in selected districts in Afghanistan, indicate that the hybrid model provides workable solutions to many of the problems that Afghan state and non-state justice systems currently face.</p>
<p>2. Underpinning research</p> <p><u>The research</u></p> <p>During the early 2000s, Dr Ali Wardak (a native of Afghanistan) became concerned about the high level of corruption, inaccessibility and ‘elitism’ of the formal State justice system in Afghanistan. At the same time he became interested in traditional non-State dispute resolution called Jirga and Shura (Council of Elders) that is used by the majority of people seeking justice. In 2002, he published a paper titled, ‘Jirga: Power and traditional conflict resolution in Afghanistan’ [1]. Later that year, Wardak and three co-researchers from Australia, UK and the USA were invited by the Overseas Development Institute (London) to conduct field research on the current situation of law and politics in Afghanistan. Wardak, alongside his three co-researchers, travelled to Afghanistan and completed their field research in different parts of the country. The findings of this research were published as <i>Afghanistan’s Political and Constitutional Development in 2003</i> [2]. This publication is the first official report on the subject in post-Taliban Afghanistan.</p> <p>The report caused a great deal of interest, and, in 2004, Wardak was invited to present a paper on the relationships between formal and informal justice in Afghanistan at the Australian National University, in Canberra. This paper was subsequently published in the <i>International Journal of Crime, Law and Social Change</i> in 2004 under the title ‘Building a post-war justice system in Afghanistan’ [3]. It was the first publication to link his ideas about informal and restorative justice to the formal justice system in Afghanistan. In August 2006, Wardak attended a meeting of the United Nations Development Programme (UNDP) in Afghanistan and was asked to be a lead author of the 2007 <i>Afghanistan Human Development Report</i> focusing on Rule of Law. In 2007, the UNDP published the report under the title, ‘<i>Bridging Modernity and Tradition: Rule of Law and the Search for Justice</i>’ [4]. Wardak was the first author of the report. As part of the process of writing the report, he designed and supervised a survey of justice processes in 32 of the 34 provinces of Afghanistan. Based on the findings of the survey and his ethnographic data in Afghanistan, he proposed his own ‘Hybrid Model of the Justice System in Afghanistan’. The UNDP report was prefaced and praised by President Karzai personally, and was launched in New York and in Kabul.</p> <p><u>The new insights or findings</u></p> <p>Dr Wardak’s research produced what is described as the ‘hybrid model’ of justice for Afghanistan. The ‘hybrid model’ combined and blended traditional Afghan justice (<i>Jirga</i> and <i>Shura</i>) with more modern Afghan State justice system and existing human rights institutions in Afghanistan. The ‘hybrid model of Afghan justice’ proposes the creation of institutional links between state and non-state justice systems and a female-dominated human rights unit as a check and balance on rights abuses by both courts and <i>jirgas</i>, while courts and <i>jirgas</i> were also each checks and balances on the other. According to this model, the Alternative Dispute Resolution (ADR) mechanisms would handle minor criminal offenses and civil cases, giving people a choice to have their cases heard at the nearest state court. All serious criminal cases, according to the model, would fall</p>

exclusively within the jurisdiction of the state justice system. The model further proposes that when ADR decisions fail to be approved by either the proposed Human Rights Unit or the concerned state court, they would need to be revised, or referred to state justice system for adjudication. Also, when ADR decisions are not satisfactory to one or both disputants, they can be taken back to the state justice system.

3. References to the research

[1] Wardak, A. (2002) '*Jirga: Power and Traditional Conflict Resolution in Afghanistan*' in *Law After Ground Zero*, Edited by John Strawson, London: Cavendish.

[2] Wardak, A. (with Johnson, C. et al) (2003) *Afghanistan's Political and Constitutional Development*, Humanitarian Policy Group, Report (January), London: ODI/DFID. (<http://www.odi.org.uk/resources/details.asp?id=4810&title=afghanistans-political-constitutional-development>.)

[3] Wardak, A. (2004) 'Building a Post-War Justice System in Afghanistan', *Journal of Crime, Law and Social Change*, Vol. 41: 319 – 341.

[4] Wardak, A. (with Saba, D. and Kazem, H.) (2007) *Bridging Modernity and Tradition: the Rule of Law and the Search for Justice*, Afghanistan National Human Development Report, UNDP/CPHD, Kabul, Afghanistan. (<http://hdr.undp.org/en/reports/nationalreports/asiathepacific/afghanistan/name,3408,en.html>)

4. Details of the impact

Impact (1) Change in Afghan Law

Because of vested interests and complex Afghan politics, the 'hybrid model' and its key recommendations were opposed by the Afghan government for over a year after its publication. In 2009, the Afghan Ministry of Justice - with the help of United States Institute on Peace (USIP) - drafted a '*National Policy on Relations Between the Formal Justice System and Dispute Resolution Councils*'. The key recommendations of the 'hybrid model' of justice developed by Dr Wardak were written into the draft 'National Policy'. The draft policy, which was subjected to weekly discussions by a complex 'working group' for a very long time, was subsequently amended and drafted as '*The Law on Dispute Resolution, Shuras and Jirgas*', by the Ministry of Justice. The draft law includes four chapters and 26 articles. The key objectives of this law are:

1. To avoid dispute resolution between natural persons by Dispute Resolution Shuras and Jirgas that is illegal or violates Shariah.
2. To provide access to easy, fair and cost effective justice for people before their cases are officially handled by formal justice institutions.
3. To improve and develop proper and acceptable local traditions and customs.
4. To ensure legal and Sharia based rights of citizens especially of women and children as they are vulnerable group in the society.
5. To minimise accumulation of cases in the justice and legal institutions especially in the courts.
6. To maintain relationship between Dispute Resolution Shuras and Jirgas and Justice Institutions.
7. To determine duties and authorities of Dispute Resolution Shuras and Jirgas.

The 'hybrid model' and the '*The Law on Dispute Resolution, Shuras and Jirgas*', caused some debate among national and international players tasked with rebuilding the justice system in Afghanistan. As the debate continued, it has become part of a wider political debate in the country. Since 2008, the implementation of the law was delayed as a result of opposition from the Afghan Supreme Court (which has vested interests in the existing judicial/justice system) and from some politicised women/human rights groups in Afghanistan who suggested that the new model of justice proposals were anti-women and in breach of human rights. Wardak contested these criticisms and further debate ensued. As a result of continued pressure from conservative

Impact case study (REF3b)

circles within the Afghan legal establishment and from some politicised women/human rights groups, the draft law has not yet been forwarded to the Afghan Parliament for discussion and final adoption.

Impact (2) Implementation of the 'hybrid model'

Despite these concerns, ideas derived from Wardak's new model were piloted in different parts of Afghanistan by the United States Institute of Peace, by USAID, TLO and CPAU. Preliminary results of pilot studies, in selected districts in Afghanistan, indicate that the hybrid model provides workable solutions to many of the problems that Afghan state and non-state justice systems currently face. [5] In fact, in the northern Kunduz province, Wardak proposal has been given an architectural instantiation by the UN Assistance Mission in Afghanistan (UNAMA) Rule of Law Program, with the local *shura* office co-located in the same little buildings as the Department of Women's Affairs and the Hoquq (rights) Department of the Ministry of Justice. [6]

One of the main aims of the 'hybrid model' and its recommendations has been the reform of Afghanistan's justice system, so that it provides accessible justice effectively, cost-effectively, and transparently and in accordance to human rights principles to all Afghan citizens. However, political obstacles towards the implementations, some national and international organisations including the United States Institute of Peace, by USAID, TLO and CPAU implemented some of the recommendations of the hybrid model at local level in selected provinces. The results indicate that this has direct impact on the lives of local peoples. A key example is that *baad* (the use of women as a means of dispute resolution) as *Jirga* outcomes had become increasingly rare. [7] Also, there is indirect evidence that as a recommendation of the 'hybrid model', a recent study indicate that an overwhelming majority of people in Kunduz province is supportive of inclusive (of men and women) processes of traditional dispute resolution. [8] Also as a result of the implementations of the ideas derived from this model, there is now closer and a more effective cooperation among state and non-state justice institutions in some Afghan provinces. [9]

5. Sources to corroborate the impact

[5] Sinclair, M. (2013) 'Regional TDR Assessment – TC South, Afghanistan Rule of Law and Stabilisation Programme (Informal Component), Assessment, Kabul: USAID; USAID (2013) Monthly Report – February 2013, *Afghanistan Rule of Law and Stabilisation Programme (Informal Component): Assessment, Kabul: USAID; Dunn, D. Chisholm, D. and Mason, E. (2011) Afghanistan Rule of Law and Stabilisation Programme (Informal Component): Assessment, Kabul: USAID; Wardak (2010) A Field Assessment: Linking Formal and Informal Customary Justice Mechanisms in Ahmad Aba (Paktia) and Zone 5 of Jalalabad, Unpublished Report: Kabul: TLO.*

[6] Wardak, A. and Braithwaite, J. (2013) 'Crime and War in Afghanistan Part II: A Jeffersonian Alternative?', *British Journal of Criminology*, Vol. 53/2: 197-214.

[7] Smith, D. and Lamely, J. (2009), *A Holistic Justice System for Afghanistan*. Kabul: Afghanistan Research and Evaluation Unit; Dunn, D., Chisholm, D. and Mason, E. (2011), *Afghan Rule of Law and Stabilization Programme (Informal Component): Assessment*. Kabul: USAID; USAID (2013) 'Success Story: Male Elders Protect Young Girls Rights', *Afghan Rule of Law and Stabilization Programme (Informal Component)*, Kabul: USAID March 2013.

[8] Cooperation for Peace and Unity (CPAU) (forthcoming), *Kunduz Justice Mapping*. Kabul: CPAU.

[9] USAID Rule of Law Weekly Report (January January 18 – 24), *Afghan Rule of Law and Stabilization Programme (Informal Component)*, Kabul: USAID.