

<b>Institution:</b> University of South Wales		
<b>Unit of Assessment:</b> 20 Social Work and Social Policy		
<b>Title of case study:</b> A Hybrid Model of Justice System in Afghanistan: Promoting Inclusive and Restorative Justice		
<b>Period when the underpinning research was undertaken:</b> 2007 -2015		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b> Dr Ali Wardak	<b>Role(s) (e.g. job title):</b> Professor of Criminology	<b>Period(s) employed by submitting HEI:</b>  January 1996 – present (on unpaid leave and worked with UNDP: 2006 – 2008)
<b>Period when the claimed impact occurred:</b> 2014 – 2017		
<b>Is this case study continued from a case study submitted in 2014?</b> No		
<b>1. Summary of the impact</b> (indicative maximum 100 words)		
<p>Dr Ali Wardak at the University of South Wales developed a ‘hybrid model of justice system in Afghanistan’ linking Afghan state and non-state justice systems in mutually constitutive ways. This model has had significant influence in Afghanistan supported by the United States Institute of Peace (USIP) and the United Nations Development Programme (UNDP). It was implemented into Afghanistan’s 2016 draft ‘Law on Conciliatory <i>Jirgas</i> in Civil Disputes’, which is an updated version of the 2010 Afghan law ‘The Law on Dispute Resolution, <i>Jirga and Shura</i>’. It has also resulted in the decrease of <i>baad</i> – use of women as means of dispute resolution – in Afghanistan.</p>		
<b>2. Underpinning research</b> (indicative maximum 500 words)		
<b>Background on <i>Jirga and Shura</i></b>		
<p>Following the collapse of the Taliban regime in Afghanistan in 2001, the country’s justice system needed rebuilding and radical innovation. However, the international community and the post-Taliban administration(s) initially focused only on rebuilding the Afghan state justice system with patchy ‘legal engineering’ (R1). In 2006, Dr Wardak was invited by the United Nations Development Programme (UNDP) to lead a national survey in Afghanistan’s 32 provinces and qualitative fieldwork. While on unpaid leave from the university, Dr Wardak and his team successfully completed this UNDP supported research. Key insights and recommendations were published as <i>Afghanistan Human Development Report</i> (R5), with a preface by (former) President Hamed Karzai. The <i>Report</i> revealed that the overwhelmingly majority of criminal offences and civil disputes in Afghanistan were dealt with by non-state justice providers, most often local councils called <i>jirgas/shuras</i>. Many citizens preferred <i>jirgas/shuras</i> because they were speedier, more accessible, transparent, cost-effective, and restorative than Afghanistan’s state justice system. However, they excluded women, and sometimes violated Afghan law and international human rights principles.</p> <p>One striking example is <i>baad</i> in the case of murder: in order to prevent revenge killings, it is sometimes recommended by <i>jirgas/shuras</i> that the offender’s close female relative be married to a victim’s close relative. The practice of <i>baad</i> clearly violates the human rights of women as well as Afghan law. Moreover, even when there are no violations, <i>jirgas/shuras</i>’ decisions are not</p>		

recognised by the state. Analysis of the nationwide field data resulted in the development of a 'hybrid model of justice system in Afghanistan' linking Afghan state and non-state justice systems in mutually constitutive ways. The model advocates Alternative Dispute Resolution (ADR) and Human Rights Units (HRU) to function alongside the state justice system. ADR Units would help disputants select an appropriate *jirga/shura* to handle minor criminal offenses and civil cases, and offer them a choice to refer to the nearest state court. Serious criminal cases would fall exclusively under the remit of the state justice system. The proposed HRU (mainly staffed by women) would be mandated to monitor and approve *jirga/shura* decisions, in order to ensure consistency with human rights principles. Beside this internal oversight mechanism, *jirgas/shuras* decisions would also be monitored externally and endorsed by the nearest primary court, ensuring that Afghanistan's laws are not violated. Decisions reached in this way would be officially registered as legally binding. However, *jirgas/shuras'* decisions that fail to be endorsed by either the HRU or the relevant state court, or are rejected by at least one disputant, would be referred to the state justice system for processing. Although offering inclusive and restorative justice to all citizens, Afghanistan's Supreme Court saw the *Report* as a threat to its authority and banned it. However, it received strong support from the United States Institute of Peace (USIP), which tailored recommendations of the 'hybrid model' into its rule of law projects implemented in different parts of the country ([https://www.boell.de/sites/default/files/assets/boell.de/images/download\\_de/worldwide/Bridging\\_ModernityandTradition.pdf](https://www.boell.de/sites/default/files/assets/boell.de/images/download_de/worldwide/Bridging_ModernityandTradition.pdf)). The USIP is an independent international organisation whose activities in Afghanistan involve working with the Afghan government, civil society, and other authorities through policy-oriented research, analysis, and training. Very importantly, the USIP incorporated key recommendations from the 'hybrid model' in the '*National Policy on the Relationship between the Formal Justice System and Dispute Resolution Councils*' that it developed (R2). Similarly, the U.S. Agency for International Development (USAID) used key insights of the 'hybrid model' and the USIP *Policy* for the implementation of its Rule of Law and Stabilization - Informal Justice Sector Component (RLS-I) programmes in Afghanistan. A key focus of these programmes has been linking traditional dispute resolution mechanisms into formal state justice sector institutions in the country.

### **Updating the 'hybrid model' with complementary field research on civil dispute resolution**

Success of the USIP projects induced Afghanistan's Ministry of Justice to draft a '*Law on Dispute Resolution Jirga and Shura*' in 2010. However, due to continued opposition to the 'hybrid model', the draft law was withdrawn from Afghanistan's Council of Ministers' session in the same year. As the main objection of critics of the draft 2010 law concerned the formal empowerment of *jirgas/shuras* to deal with minor criminal offences, Wardak conducted complementary field research in 2014/15 in Afghanistan's five key regional centres – Kabul, Kandahar Herat, Kandahar, and Mazar -e- Sharif. This research focused exclusively on civil dispute resolution. A USW Departmental Research Awards Scheme (DRAS) supported this research, which was facilitated by Afghanistan's Ministry of Justice and the UNDP. While this phase of the research confirmed key findings of the 2007 *Report*, it also revealed emergence of new non-state justice providers. These mainly included international and national Non-Governmental Organizations (NGOs), religious educational institutions, and individual members of the *ulama* (Islamic religious scholars/jurists) (R3; R4). More importantly, as this phase of research focused on applicability of the original 'hybrid model' to civil disputes exclusively, it defined the parameters within which non-state justice providers have operated and identified their modalities of co-operation with the state justice system. This new phase of research also classified the categories of civil disputes that could be dealt with through formalized collaboration between state and non-state justice providers in both urban and rural areas. (R3; R4). Key recommendations were directly fed into the new draft '*Law on Conciliatory Jirgas in Civil Disputes*' that Wardak developed with assistance from Afghanistan's Ministry of Justice and the UNDP. It is important to mention that this research furthermore recommended that the revised draft law is discussed at a national conference attended by officials from Afghanistan's Ministries of Justice and Women's Affairs, the Supreme Court, *ulama*, traditional mediators and human rights organisations before it is processed officially by legislative organs. It also recommended that in order to promote a shared understanding of the

final version of the new law, joint capacity building programmes need to be conducted for all key state and non-state justice providers at sub-national levels throughout the country (R4).

### 3. References to the research (indicative maximum of six references)

R1 Johnson, C. Maley, W. Their, A., Wardak, A. (2003) *Afghanistan's Political and Constitutional Development*, Humanitarian Policy Group, Report (January), London: ODI (Accessible at: <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5888.pdf>)

R2 United States Institute of Peace (2009) '*National Policy on the Relationship between the Formal Justice System and Dispute Resolution Councils*', Kabul, USIP (Available upon request).

R3 Wardak (2016) *A Decade and a Half of Rebuilding Afghanistan's Justice System: An Overview*, Leiden: VVI – University of Leiden (Accessible at: <https://www.universiteitleiden.nl/binaries/content/assets/rechtsgeleerdheid/instituut-voor-metajuridica/afghanistans-justice-system-vs-2016.10.04.pdf>)

R4 UNDP (2015) *Civil Disputes Resolution in Afghanistan*, Unpublished Field Research Report, Kabul, UNDP (Available upon request).

R5 Wardak, A. 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, and Kabul, Afghanistan (Accessible at: <http://hdr.undp.org/sites/default/files/nhdr2007.pdf>)

### 4. Details of the impact (indicative maximum 750 words)

#### ***Wardak's research was implemented into Afghanistan's Draft Law on Conciliatory Jirgas in Civil Disputes***

In light of the new phase of research and consultations with key stakeholders, the 2010 draft law was revised fully and replaced by a new draft '*Law on Conciliation in Civil Disputes*' that was presented to the Ministry of Justice of Afghanistan in November 2014 by Wardak (S4). Following its further revision by Wardak – in coordination with Afghanistan's Ministry of Justice – the draft was extensively debated, and endorsed by major women's and civil society representatives, including Afghan Women Network, Women and Children Legal Research Foundation, Tribal Liaison Office, and the UN Women. While the UN Women Office in Afghanistan is dedicated to promoting gender equality and the empowerment of women at national level, Afghan Women's Network has active presence in key Afghan regional centres including Kabul, Herat, Mazar-e-Sharif, Kandahar, Bamiyan, Paktia, Nangarhar and Kunduz. The latter two organisations represent major national civil society platforms whose activities involve policy-oriented research as well as advocacy for the protection of women's and children rights in Afghanistan. The agreed draft law was then reviewed and amended by the Afghan Government Cabinet's (of Ministers) Law Committee in 2016 with a new title – '*Law on Conciliatory Jirgas in Civil Disputes*' (S3). On 13 September 2020, the Cabinet Law Committee held a follow up meeting (chaired by H.E. Sarwar Danesh Afghanistan's Second Vice President) during which the '*Law on Conciliatory Jirgas in Civil Disputes*' was approved (S1). However, due to some technical concerns by Afghanistan's Independent Human Rights Commission, the Independent Association of Defence Lawyers, and the State Ministry of Human Rights, it was recommended that the draft law is reviewed by a 'technical committee' before it is presented to the country's Council of Ministers, and then to the Afghan Parliament for final approval. Despite various political and bureaucratic obstacles, production of the draft 'Law on Conciliatory

*Jirgas* in Civil Disputes’ and its expected approval by the Afghan Parliament signifies a direct impact of the ‘hybrid model of justice system in Afghanistan’ on legal reform in the country.

**Contributing to the rejection of the practice of baad in Afghanistan**

As outlined in its 2014 version, in 2009 Wardak’s research received strong support from the United States Institute of Peace (USIP), which incorporated key recommendations from the ‘hybrid model’ in the ‘National Policy on the Relationship between the Formal Justice System and Dispute Resolution Councils’. Consequently, USIP training projects and USAID’s Rule of Law and Stabilization - Informal Justice Sector Component (RLS-I) programme tailored key aspects of the *Policy* into their rule of law projects implemented in different parts of the country (S6). While USIP’s training projects continue to be implemented in Afghanistan, phase two of the USAID’s RLS-I program operated from 2010 to 2014 in the country. The key focus of these programmes and projects was to improve the quality of Afghanistan’s informal justice and to strengthen its links to the state justice system, in order to safeguard women’s rights and to expand their access to justice. These programmes, mainly focused on the training of traditional mediators, co-ordination between local state justice institutions and *jirgas/shuras*, and legal awareness about Afghan and human rights laws. Wardak helped to devise and deliver several of USIP’s training programmes (S6). The effectiveness of these programs has been instrumental in the increasing rejection of the practice of *baad* in Afghanistan, which is evident from the 2017 Asia Foundation Survey (S7, p.140-141):

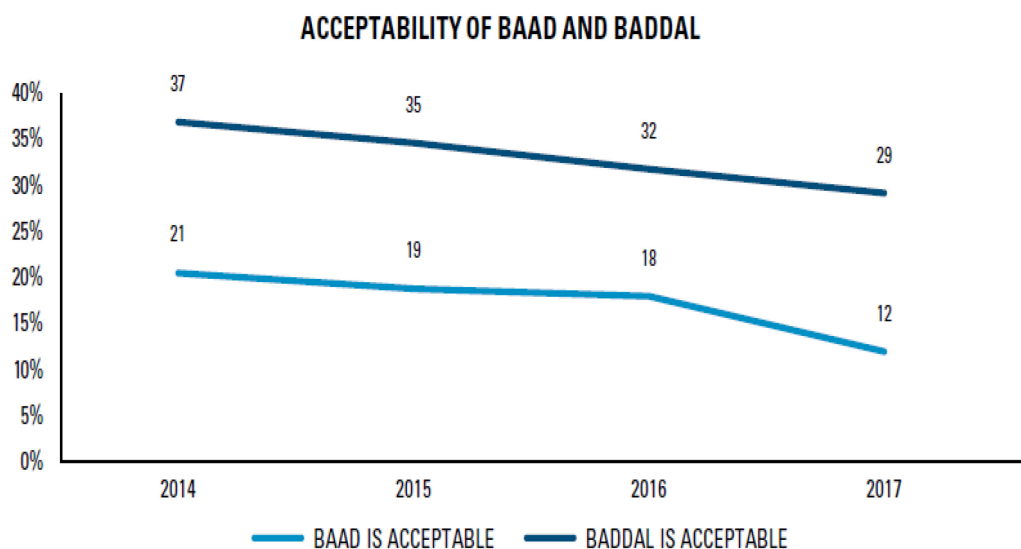


Figure 1: Acceptance of *baad*

Indeed, according to an evaluation report of the USAID’s RLS-I programme in Afghanistan’s selected provinces, it explains the reduction of *baad* ‘...as a result of both the RLS-I program, as well as previous programming or activities over the past ten years.’ (S8, p.41). Furthermore, President Ashraf Ghani of Afghanistan during his visit to Afghanistan’s Khost province in 2018, confirmed that *baad* has been eliminated there (S4). Very importantly, this positive change in the attitudes of people towards women’s rights is not merely attitudinal. While *the 2007 Afghanistan Human Development Report* (R5 p.93) indicated that 28% of respondents said *baad* was ‘always’ or ‘sometimes’ an outcome of *jirga/shura* decision making, a study conducted by Civil and Liberal Initiative for Peace in 2014 in three Afghan provinces reports that: ‘Among the respondents, more than 60% report that they have not heard even a single case of BAAD in their areas. Around 50% say that they merely heard 1 to 3 cases of BAAD in their areas.’ (S2, p.22).

In sum, while the 'hybrid model's most tangible impact is the draft 'Law on Conciliatory *Jirgas* in Civil Disputes' in Afghanistan, it has also contributed to the actual reduction in cases of *baad* in the country.

**5. Sources to corroborate the impact** (indicative maximum of ten references)

S1 Cabinet Law Committee (2020) 'Law Committee Approves Three Draft Laws', Office of the Second Vice President of the Islamic Republic of Afghanistan, Kabul (language: Persian. Accessible at: <https://www.vpo.gov.af/%d8%a9%d9%85%db%8c%d8%aa%d9%87-%d9%82%d9%88%d8%a7%d9%86%db%8c%d9%86-%d8%a9%d8%a7%d8%a8%db%8c%d9%86%d9%87-%d8%b3%d9%87-%d8%b3%d9%86%d8%af-%d8%aa%d9%82%d9%86%db%8c%d9%86%db%8c-%d8%b1%d8%a7-%d8%aa%d8%a3/>)

S2 Civil and Liberal Initiative for Peace (2014) 'Assessment of the Practice of Baad and its Adverse Social Impacts in Afghanistan, CLIP, Kabul, Afghanistan, (Accessible at: <http://openasia.org/en/g/wp-content/uploads/2015/01/Research-Draft-21-Oct-2014-3-1.pdf>)

S3 Ministry of Justice of Afghanistan (2016) 'Law on Conciliatory *Jirga's* in Civil Disputes' Kabul, MoJ (Available upon request).

S4 Ministry of Justice of Afghanistan (2014) 'A Consultative Workshop on a Field Research Report on Civil Dispute Resolution in Afghanistan' (language: Persian. Accessible at: <http://old.moj.gov.af/fa/news/38308>)

S5 Pajhwok News Agency (2018) (Accessible at: <https://www.pajhwok.com/en/2018/04/10/ghani-praises-%E2%80%99no-more-baad-marriages%E2%80%99-khost>)

S6 Testimony by Dr Noah Coburn, former Justice Specialist and Researcher, United States Institute of Peace in Afghanistan (Available upon request).

S7 The Asia Foundation (2017) *The Survey of the Afghan People*, The Asia Foundation (Accessible at: [https://asiafoundation.org/wp-content/uploads/2017/11/2017\\_AfghanSurvey\\_report.pdf](https://asiafoundation.org/wp-content/uploads/2017/11/2017_AfghanSurvey_report.pdf))

S8 USAID (January 2014) Performance Evaluation of the Rule of Law Stabilization – Informal Component Programme', Kabul: USAID (Accessible at: [https://pdf.usaid.gov/pdf\\_docs/pa00jxpm.pdf](https://pdf.usaid.gov/pdf_docs/pa00jxpm.pdf))