

**Developments in the Police and Justice  
Sectors in Kunduz Province, Afghanistan,  
2010–2018:  
A Literature Review**

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## Executive Summary

In this report, we examine the main developments in the police and justice sectors in Kunduz province, Afghanistan between 2010 and 2018. The report is based on an extensive literature review and synthesis. The sources studied include academic publications, research reports of Afghan and international organizations, NGO reports, government publications, journalistic accounts, and statistical datasets. The literature search generated a comprehensive overview of the available sources, but it has to be borne in mind that the number of existing studies with an explicit focus on the details of the police and justice sectors in Kunduz province are limited. As a consequence, the report presents the major developments, but some details remain unaddressed due to a lack of independent studies and/or available information. The key findings are summarized below.

### Police Sector

- Although the capability of the Afghan Uniformed Police (AUP) to carry out its tasks improved in some respects during the investigated time frame, overall it was worse in 2018 than in 2010. An important explanatory factor for this negative trend is the intensification of the Taliban insurgency in Kunduz province. The worsening security situation severely affected the AUP's *de facto* reach in the province, especially after foreign troops withdrew from the Provincial Reconstruction Team (PRT) in Kunduz by late 2013. This in turn negatively affected many aspects of the AUP's daily work. By 2018, the AUP had very limited effective presence or authority outside of Kunduz city and a part of the Aliabad district.
- However, the overall negative developments within the AUP were not only a reflection of exogenous factors. In areas that were secure enough to carry out civilian policing, the AUP's capability to prevent and fight crime remained limited. The AUP was strongly influenced by local power brokers, and it allowed a range of pro-government militias to operate with impunity throughout the investigated time frame. Moreover, the AUP was engaged in crimes it was supposed to fight and prevent. A wide range of sources report corruption, bribery, beatings, and torture by AUP officers in Kunduz province. Based on the surveyed literature, these practices persisted throughout the time frame studied without an identifiable trend of improvement or deterioration. Several studies indicate that the AUP's misconduct and the limited sanctioning of pro-government militias directly contributed to the resurgence of the Taliban.
- Management and oversight procedures that could have mitigated some of the police misconduct were structurally weak. Although some modest improvements were made with regard to community policing, accountability problems persisted. Corruption remained a structural issue in both the higher and lower ranks of the AUP.
- The number of women in the AUP modestly increased between 2010 and 2013, but compared to the total AUP force in Kunduz province they were severely

underrepresented. No reliable data could be obtained for the number of women in the AUP between 2013 and 2018. Sociocultural barriers for women to join the police and sexual assault and harassment within the AUP persisted between 2010 and 2018.

- AUP staff in Kunduz province reported that the professional skills necessary to carry out their tasks had improved by 2013 due to the training provided by foreign-sponsored police-training missions. Putting these skills into practice has been challenging, however, due to the intensified Taliban insurgency, corruption and misconduct within the AUP, weak accountability, and the entanglement of police chiefs with local power brokers. Consequently, the intended longer-term goals of police-training missions, such as the Dutch Integrated Police Training Mission (IPM) in Kunduz province, were mostly not achieved.

### **Justice Sector**

- In the formal justice sector of Kunduz province some improvements were made, while a number of structural problems persisted during the time frame studied. Office buildings were built and training programs were provided that enhanced the capacity of the courts and the Department of Justice (DoJ). The number of attorneys registered with the Afghanistan Independent Bar Association (AIBA) increased, including an increased number of female attorneys. The positions of judge and prosecutor however, continued to be fully male-dominated. Corruption and political interference in the justice sector persisted throughout the time frame studied, but in the perception of some justice sector stakeholders, the acceptance of bribes in the judiciary diminished somewhat towards the end of the time frame. The situation in the prison and detention centers was dire throughout the time frame studied, particularly for female detainees. The geographical reach of the formal system throughout the province fluctuated over time but remained fairly limited.
- Most of the achievements in the formal justice sector were constrained by the intensification of the Taliban insurgency. Over the years, district offices were attacked by the Taliban, and as a consequence, judges, prosecutors, and *huqooq* employees had to relocate to Kunduz city. By 2018, the core of the formal justice system continued to function only in Kunduz city and in the district center of Imam Sahib.
- Throughout the studied time frame, a majority of the cases were addressed by informal justice mechanisms in the form of *shuras* and *jirgas* of elders, religious scholars, or influential individuals. Generally, the informal justice mechanisms provide a process of dispute resolution that is faster and has a relatively higher level of social acceptance among the local population. However, alongside the Taliban's advancements in territorial control, the Taliban's influence over these informal practices increased.
- The Taliban's judiciary existed in Kunduz province throughout the time frame studied. In the earlier years, the reach of the Taliban judiciary was limited to a few

districts, but the judiciary expanded its reach alongside the Taliban's increase in territorial control. By 2018 it was observed that a Taliban provincial court existed and Taliban courts were present in each of the districts. Some observers note that the Taliban essentially "out-governs" the Afghan administration not because the Taliban is perfectly organized but rather because the state justice system mainly operates remotely from Kunduz city.

- Overall, access to justice throughout Kunduz province, in particular for women, did not improve during the time frame studied. In terms of access to justice, sociocultural barriers for women remained significant, and security-related barriers increased with the intensification of the Taliban insurgency.
- The dire security situation, the targeting of justice personnel, the structural issue of corruption, and the limited acceptance of formal justice institutions by the general public largely constrained longer-term improvements in the capacity of the formal justice sector. Moreover, the expansion of the Taliban judiciary diametrically opposed what was intended in the mandates of foreign-sponsored missions and programs.

## Acronyms and Abbreviations

<b>AACP</b>	Afghan Anti-Crime Police
<b>ABP</b>	Afghan Border Police
<b>AIBA</b>	Afghanistan Independent Bar Association
<b>ALP</b>	Afghan Local Police
<b>ANA</b>	Afghan National Army
<b>ANCOP</b>	Afghan National Civil Order Police
<b>ANP</b>	Afghan National Police
<b>ANSF</b>	Afghan National Security Forces
<b>ASFF</b>	Afghanistan Security Forces Fund
<b>AUP</b>	Afghan Uniformed Police
<b>CBDR</b>	Community Based Dispute Resolution
<b>CIP</b>	Critical Infrastructure Police
<b>CID</b>	Criminal Investigation Department
<b>CMD</b>	Comprehensive Mission Design
<b>CPAU</b>	Cooperation for Peace and Unity
<b>CSTC-A</b>	Combined Security Transition Command – Afghanistan
<b>DoJ</b>	Department of Justice
<b>EUPOL</b>	European Union Police Mission to Afghanistan
<b>GIZ</b>	<i>Deutsche Gesellschaft für Internationale Zusammenarbeit</i> (German Development Cooperation)
<b>GPPT</b>	German Police Project Team
<b>IDLO</b>	International Development Law Organization
<b>IOB</b>	<i>Directie Internationaal Onderzoek en Beleidsevaluatie</i> (Policy and Operations Evaluation Department)
<b>IPM</b>	Integrated Police Training Mission
<b>ISAF</b>	International Security Assistance Force
<b>IWA</b>	Integrity Watch Afghanistan
<b>JSSP</b>	Justice Sector Support Program
<b>JTTP</b>	Justice Training Transition Program
<b>LOTFA</b>	Law and Order Trust Fund for Afghanistan
<b>NATO</b>	North Atlantic Treaty Organization
<b>NDS</b>	National Directorate of Security
<b>NTM-A</b>	NATO Training Mission in Afghanistan
<b>NUG</b>	National Unity Government
<b>PAE</b>	Pacific Architects and Engineers
<b>PRIME</b>	Police Reform Indicators and Measurement Evaluation
<b>PRT</b>	Provincial Reconstruction Team
<b>RTC</b>	Regional Training Center
<b>SIGAR</b>	Special Inspector General for Afghanistan Reconstruction
<b>TAF</b>	The Asia Foundation
<b>TLO</b>	The Liaison Office
<b>UNAMA</b>	United Nations Assistance Mission in Afghanistan

**UNDP** United Nations Development Programme  
**UNODC** United Nations Office on Drugs and Crime

## **Dari, Pashto, and Arabic Terms**

*Arbaki* – in theory, a tribal community police force that protects their community from outside threats and implements the decision of the local Jirga (village council) (Jones & Muñoz, 2010, p. 27). In practice however, the behavior of *arbaki* and the way they are perceived by local populations differ greatly among localities.

*Huqooq* – literally the rights of an individual under the law; it is commonly used to refer to the district-level civil law offices under the Department of Justice.

*Jirga* – the term *jirga* is understood here as the institution that has historically resolved political, social, economic, cultural, judicial, and religious conflicts by making authoritative decisions. *Jirga*, is “the product of Pashtun tribal society and operates according to the dictates of the *Pashtunwali*, an inclusive code of conduct guiding all aspects of Pashtun behavior and often superseding the dictates of both Islam and the central government” (Carter & Connor, 1989, p. 7).<sup>1</sup>

*Mujahedeen* – persons performing *jihad*. In the context of Afghanistan it is generally used in reference to the guerrilla-type Islamist armed groups fighting during the Soviet–Afghan war.<sup>2</sup>

*Mullah* – a Muslim learned in Islamic theology and sacred law.

*Pashtunwali* – an inclusive code of conduct guiding all aspects of Pashtun behavior and often superseding the dictates of both Islam and the central government (Carter & Connor, 1989, p. 7).

*Sharia* – in a jurisprudential context it means Islamic law. It is also used to “refer to legislation, legitimacy, and legality in modern Arabic literature” (Wardak, 2003b, p. 5).

*Shura* – a “group of individuals that meets only in response to a specific need in order to decide how to meet the need. In most cases, this need is to resolve a conflict between individuals, families, groups of families, or whole tribes” (Carter & Connor, 1989, p. 9).<sup>3</sup>

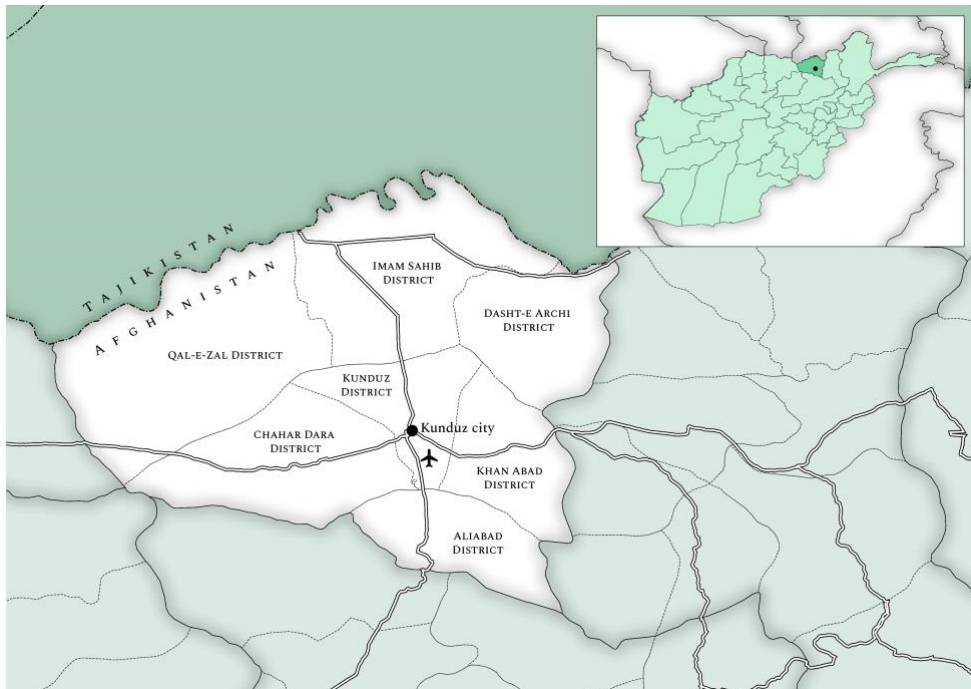
*Tashkil* – organizational plan of the Afghan police that details the organizational structure, personnel numbers, command relationships, and descriptions of unit functions.

<sup>1</sup> For the origins of the term, see Wardak (2003a).

<sup>2</sup> For a more elaborate discussion on the meaning of *mujahedeen*, see Bhatia (2007) and Ruttig (2006).

<sup>3</sup> For elaboration on this term, see Coburn (2013).

## Map of Kunduz Province



*Map 1 – Map of the original seven districts of Kunduz province, Afghanistan.  
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# 1 Introduction

In this report, we examine the main developments in the police and justice sectors in Kunduz province, Afghanistan between 2010 and 2018. The findings are based on a literature review of academic sources, research reports of Afghan and international organizations, NGO reports, government publications, journalistic accounts, and statistical datasets. The report is written at the request of IOB<sup>4</sup> and is one of several contributions that inform the overall post-mission evaluation of the Dutch Integrated Police Training Mission (IPM) that took place in Kunduz province, Afghanistan, from 2011 until 2013.

The report first discusses the methodology that was followed during the literature review. Second, it provides a background and brief history of the political and security situation in Kunduz province. Third, it assesses the developments in the police sector, including the relations to prosecutors. Fourth is the assessment of the justice sector and the rule of law more generally. Fifth, we present the main conclusions.

<sup>4</sup>*Directie Internationaal Onderzoek en Beleidsevaluatie (IOB), Ministerie van Buitenlandse Zaken.* English translation: Policy and Operations Evaluation Department, Ministry of Foreign Affairs of the Kingdom of the Netherlands.

## **2 Methodology**

The evaluation of police-training missions in conflict-affected settings is a daunting task (Bajkarati et al., 2006; Bayley & Perito, 2010; Den Heyer, 2010). Due to the complexity of the security and justice sectors and a lack of available and reliable data, it is often impossible to measure the specific outputs, outcomes, and long-term effects of police-training missions and security and justice reform programs more broadly (Rynn & Hiscock, 2009). This is often further compounded by contextual factors, such as an uncertain security situation, which restrict access for outside observers. Moreover, it is difficult to untangle causes and results and to attribute changes in the police and justice sectors to particular programs and missions (Rynn & Hiscock, 2009). The objective of this report, however, is not to fulfill the more methodologically encompassing task of directly attributing changes in the police and justice sectors to the Dutch IPM. Rather, it seeks to describe developments in the civilian police, police–prosecutor collaboration, and the justice sector in Kunduz province from 2010 until 2018. Based on this analysis, the report indicates to what extent the initial long-term goals of the Dutch IPM were accomplished by 2018. However, the report is not able to directly attribute the developments towards or away from these goals to actions taken by the Dutch IPM between 2011 and 2013.

### **2.1 Literature Review**

The report is based on an extensive literature search, a review, and a synthesis. Multiple sources have been compiled on the police and justice sectors in Kunduz province. These include academic sources, research reports by Afghan and international research organizations, NGO reports, government reports, journalistic accounts, and statistical data collections. Some of these sources were already in the possession of the authors of this report because of past research projects on the security and justice sectors in Kunduz province (Dirkx, 2017b; Frerks & Terpstra, 2018; Terpstra, 2019; Terpstra & Dirkx, 2016). These sources were complemented by a literature search using online academic search engines and sources provided by IOB and thematic experts.

The literature search was focused on thematic areas that are relevant to the IPM, namely policing, judiciary, police–prosecutor collaboration, access to justice, and trust in police and judicial institutions. The geographical focus is Kunduz province, but the context has been extended to northern Afghanistan or the whole of Afghanistan in instances when a search of Kunduz province alone yielded insufficient results. Altogether, the literature search generated a comprehensive overview of the available academic and non-academic sources, but it has to be noted that studies with an explicit focus on the details of the police and/or justice sector in Kunduz are scarce. Consequently, the report is able to describe the major developments in the police and justice sectors, but several details remain unaddressed due to a lack of independent studies and/or available information. As a measure of quality control, feedback was provided on earlier drafts of this report by anonymous reviewers, thematic experts, and IOB.

## 2.2 Indicators

The indicators used to assess developments in the police and justice sectors in Kunduz province are partly based on the Police Reform Indicators and Measurement Evaluation (PRIME) framework by Bajraktari et al. (2006) and partly based on the Access to Justice framework by Bedner and Vel (2010). These frameworks are used more widely to assess the effectiveness, legitimacy, and sustainability of police forces in conflict-affected environments (Den Heyer, 2010) and access to justice in areas where the state does not possess a monopoly on the legitimate use of force (Bedner & Vel, 2010; Helbling, Kälin & Nobirabo, 2015).<sup>5</sup>

With the main focus of the IPM on reinforcing the capability of the Afghan Uniformed Police (AUP), we made a comprehensive assessment of the AUP on the basis of the applicable and most relevant indicators of the PRIME framework. Since the rule of law component of the mission addressed a sector rather than one specific actor, the assessment of the justice system has focused on a larger number of actors in the formal and informal justice sectors. Given the scope of this study, we limited the assessment of these actors to the most rudimentary abilities of justice provision. Chapter 4 on the police is therefore in-depth and more narrowly focused on the AUP, whereas Chapter 5 on the justice sector has a broader character and includes courts, the Department of Justice (DoJ)/*huqooqs*, attorneys, detention centers, *shuras/jirgas*, and the Taliban judiciary.

For the different themes and indicators we collected as much relevant information as possible for the time frame between January 1, 2010 and December 31, 2018. It was not possible to find comparable information for every specific part of the time frame. To give an example, for some themes and indicators data was available for January 2011, September 2014, and January 2017, whereas for other themes and indicators, pieces of information were available for August 2012 and January 2016. As a consequence, there are several gaps remaining throughout the reported time frame. Some of those gaps, however, could possibly be filled by evidence presented in the other reports that are part of the evaluation of the Dutch IPM carried out by IOB.

## 2.3 Challenges and Limitations of the Study

Given the nature of conducting a literature review, this report highlights findings that are based on data collections carried out by other researchers. Though we assess the quality of each of these sources, we lack the specific insights into how that data was collected and analyzed. As the authors of this report, we therefore have limited insight into the specific data collection techniques and the methodological rigor of the referenced studies. This has to be borne in mind while reading this report.

Attention has been paid to qualitative and quantitative sources. Both types have their respective advantages and weaknesses. The weaknesses of the available material cannot

<sup>5</sup> The frameworks chosen are generally well-suited to be used in conflict-affected environments, but some adjustments were necessary in light of the objective of this assignment (e.g., the addition of the themes police-prosecutor cooperation and community policing). For the general readability of the report we merged and re-ordered some of themes of the original PRIME framework.

be underestimated. The security situation in Kunduz has been dire at several instances between 2010 and 2018, which has made it extremely difficult for researchers to collect data purposefully and systematically. Common data collection challenges include the following:

- threats to the personal security of researchers and respondents,
- scarcity of data,
- lack of monitoring of field surveyors,
- high staff turnover within research organizations,
- unsteady access to certain districts at certain points in time,
- incorrect expectations of researchers and respondents about data collection,
- multiple layers of interpretation in the data collection process,
- blind spots about if and how research is conducted, and
- social desirability in the answers of respondents.

In light of these challenges, the data that is presented in this report has to be treated with caution. The quantitative data especially is questionable because of the difficulty in establishing a representative sample. The Survey of the Afghan People carried out by The Asia Foundation (TAF), for example, has mainly been conducted outside of “inaccessible districts” (TAF, 2018, p. 226). In 2018, only 7% of the surveys were conducted among respondents who were coming from “inaccessible districts” or “insecure areas” (TAF, 2018, p. 226). Given the fact that large parts of Kunduz province came under Taliban control between 2014 and 2018, it is therefore likely that there is a strong overrepresentation of respondents from government-controlled territory in this sample. Wherever quantitative data is presented it has to be kept in mind that it gives a reasonable indication at best but could be wholly inaccurate at worst. These challenges have partly been mitigated by the triangulation of sources wherever possible but should not be underestimated.

## **3 Background and History of Kunduz Province**

### **3.1 Introduction**

This chapter provides background information and an overview of historical developments in the realms of politics, security, and justice in Kunduz province to the extent that it is relevant for an understanding of continuities and changes within the AUP and the justice sector between 2010 and 2018. It starts with a description of the ethnic composition of the province, after which the strategic importance of Kunduz is explained. This is followed by a brief history of Kunduz province during the period of 1992–2010. The chapter then highlights key events and developments in Kunduz between 2010 and 2018 in terms of politics, security, and justice. It concludes with an overview of the main international missions that aimed to improve the quality of the police and the formal justice sector.

### **3.2 The Ethnic Composition**

Kunduz province is located in northeast Afghanistan. It borders Tajikistan to the North, Takhar province to the East, Baghlan to the South, and Balkh to the West. Until 2015, it consisted of seven districts: Imam Sahib, Dasht-e Archi (also known as Archi), Khanabad, Aliabad, Chahar Dara, Qal-e-Zal, and Kunduz city. In late 2015, President Ghani announced the creation of three additional districts within the geography of the already existing seven districts: Aqtash, Gultapa, and Gulbad (Karimi & Hamdard, 2015). The total population is estimated to be around one million, consisting of various ethnic groups. Approximately 34% is Pashtun, 27% Uzbek, 20% Tajik, 9% Turkmen, 5% Arab, 3% Hazara, and a few small groups of Baluch, Pashai, and Nuristani (Wörmer, 2012, p. 8).<sup>6</sup>

The current ethnic heterogeneity of the population is the result of several waves of forced and voluntary migration since the 1850s. The most significant group moving to Kunduz since then are Pashtun communities from southeast Afghanistan (Wörmer, 2012, pp. 7–9). The alterations in the ethnic makeup of the province have induced various conflicts about land and resources as well as political representation throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries. As will become clear, ethnicity has also been a major factor for the current armed conflict.

### **3.3 The Strategic Importance**

In addition to ethnicity, Kunduz province's strategic location has been an important source of conflict. With the completion of the Salang tunnel in 1964, Kunduz came to lie at the intersection of the roads connecting Mazar-e Sharif with northeastern provinces and Kabul through the Hindu Kush Mountains to Tajikistan. It contributed to the development of the province as a significant drug trafficking hub, and military control of the province became a precious asset during times of war. Especially during the civil war of the 1990s, Kunduz became a major battleground. The ethnic diversity

<sup>6</sup> These figures should be considered a reasonable estimation. There are no official uncontested statistics on ethnicity.

and strategic location of the province provided all major *mujahedeen* factions with support bases and stakes in Kunduz (Dirkx, 2017b; Münch, 2013; Wörmer, 2012).

During the post-2001 US-led invasion of Afghanistan, the strategic relevance of the province also featured strongly. Together with Kandahar, Kunduz was the last Taliban stronghold to fall to the Northern Alliance (Wörmer, 2012). Moreover, for the International Security Assistance Force (ISAF), the North was considered of increased strategic importance when the Taliban severely and effectively targeted NATO convoys from Pakistan by 2008–2009. It made the northern supply route through Kunduz gain importance as a gateway to Kabul (Noetzel, 2011; Terpstra, *forthcoming*).

### **3.4 A Brief Political History of Kunduz Province (1992–2010)**

The current armed conflict in Kunduz province has extensive historical roots. Prior to and during the Soviet war of the 1980s, various armed groups of *mujahedeen* fighters emerged. Supported by various external actors (especially the United States, Saudi Arabia, Iran, and Pakistan), they fought the Soviets and the Najibullah regime (Hussain, 2012, p. 252; Malejacq, 2016, p. 100). After the fall of the Najibullah regime in 1992, the various factions fought each other in a bloody civil war.<sup>7</sup>

#### *3.4.1 Civil War and the Rise of the Taliban*

During the Afghan civil war of the 1990s, foreign support for the *mujahedeen* decreased drastically (Malejacq, 2016). Several factions fought over Kunduz province, creating a high number of casualties and shifting frontlines (Wörmer, 2012, pp. 13–20).<sup>8</sup> The provincial capital switched hands five times, after which it was controlled by the Taliban from June 1997 until November 2001 (Münch, 2013, pp. 10–11; Wörmer, 2012). The Taliban received support from Pakistan and successfully bribed several commanders of opposing factions, which by that time had loosely united in the Northern Alliance. Most defections to the Taliban followed ethnic lines, however. Wörmer (2012, p. 43) points out that the Taliban's control of Kunduz was characterized by a "Pashtun domination of the provincial administration."

When by October 2001 the US Air Force started to target Taliban positions by airstrikes, and US Special Operations Forces supported Northern Alliance factions on the ground, the balance of power was about to change once again. Talibs in the North retreated to defend their stronghold in Kunduz, but after a bloody battle and series of negotiations, the province fell into the hands of the Northern Alliance by late November 2001 (Malejacq, 2020; Wörmer, 2012). Kunduz retained a strong potential support base for the Taliban, however, partly due to its large Pashtun community.

#### *3.4.2 US-Led Invasion and the Northern Alliance*

When the Northern Alliance and the US coalition forces took over Kunduz province in 2001, the commanders and governors who came to rule the province were mostly non-Pashtun. In the wake of the ousting of the Taliban regime, ethnic Pashtuns throughout

<sup>7</sup> For an elaborate overview of the various factions at the national level, see Ruttig (2006).

<sup>8</sup> In Kunduz province, the most important *mujahedeen* factions included Jamiat-e Islami, Jombesh-e Melli, Hezb-e Islami, and Ittehad-e Islami. For an excellent overview of the *mujahedeen* factions in Kunduz province, see Wörmer (2012).

the North faced widespread abuse (Bouckaert, 2002, pp. 43–44). The abuse included beatings, extortion, stealing, murder, and sexual violence. The ethnic Pashtuns were specifically targeted as they were seen as closely related to the Taliban, whose leadership consisted mostly of Pashtuns from southern Afghanistan (Bouckaert, 2002, p. 1). In some instances, those who were affiliated with the new post-2001 ruling elites captured the land of Pashtuns (Münch, 2013, p. 15). The Pashtun community mainly lost land in districts where they constituted a clear minority, such as Qal-e-Zal and Imam Sahib, but some Pashtun also lost their land in Dasht-e Archi and Chahar Dara, where they had a stronger representation (Münch, 2013, p. 15). Particularly from the segments in the population that were excluded from the new ruling networks, the Taliban would gain support in the following decade (Münch, 2013, p. 1; Terpstra *forthcoming*).

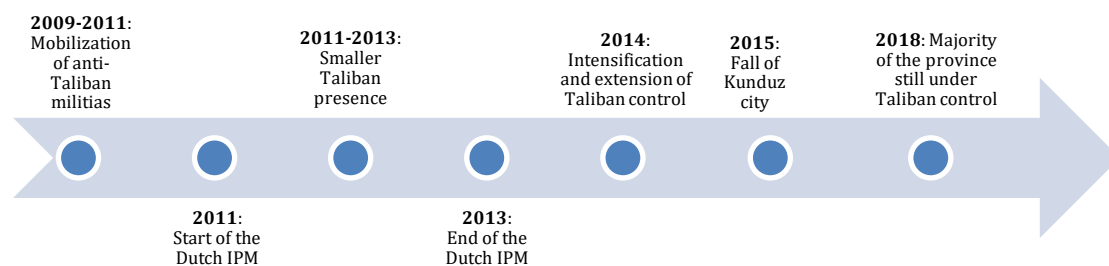
The Taliban insurgency made its first incursions back into the Pashtun areas of Kunduz province in 2006 (Giustozzi & Reuter, 2011, p. 7). It gradually started to invest more resources in northern Afghanistan by setting up local cells from 2007 onwards and increased military operations. Simultaneously, international forces in the South increased military pressure on the Taliban, which forced the insurgents to move a larger part of their assets north (Giustozzi & Reuter, 2011, p. 7).

### 3.5 Key Developments in Kunduz Province (2010–2018)

The trend of a resurging Taliban continued in the time frame under investigation in this report. Between 2010 and 2018, control of the province shifted further in favor of the Taliban, which has severely constrained the ability of the AUP and the formal justice sector in Kunduz to carry out their tasks. While there were some increases in government control during this time frame, overall the Afghan government controlled less territory in 2018 than it did in 2010. This has had far-reaching negative consequences for the effectivity, legitimacy, and sustainability of the formal police and justice sectors in Kunduz.

#### 3.5.1 Timeline of Key Events

The timeline below briefly lays out the most important events that took place in the investigated time frame. The remaining part of this paragraph explains the process that connects these events and fleshes out the implications for the AUP and the formal justice sector in Kunduz.





### 3.5.2 *The Mobilization of Anti-Taliban Militias*

In early 2010, the Afghan government possessed territorial control throughout most parts of Kunduz province, but the Taliban and other groups also controlled significant parts (TLO, 2010, pp. 59–65). The Afghan government controlled Kunduz city, Khanabad, Qal-e-Zal, Imam Sahib, and approximately half of Aliabad. The majority of Chahar Dara district however, was under control of the Taliban, and in Dasht-e Archi there was a belt of insurgency that controlled Pashtun villages. The Taliban also controlled the half of Aliabad where the government had no control (TLO, 2010, pp. 59–65).

The limited control of the government in parts of the province was of major concern to the provincial administration. Already in 2009, the provincial governor engineer Mohammad Omar had asked for additional police and military forces, but when the Kabul government did not grant his request and the German-led ISAF forces were unwilling to fight the Taliban, the governor started to equip local *jihadi* commanders. Many of these commanders, including himself, had fought against the Taliban in 2001 alongside US forces (Goodhand & Hakimi, 2014, p. 33; Münch, 2013, p. 36; Wörmer, 2012, p. 40).

The mobilization of anti-Taliban militias contributed to ousting the Taliban from most parts of Kunduz province by early 2011. Provincial governor engineer Mohammad Omar was assassinated by the Taliban in October 2010, but the provincial chief of police, Abdul Rahman Sayedkhaili, continued to fund militias to fight the Taliban with money provided by the interior minister, Besmillah Khan. He simultaneously bribed a number of Taliban commanders to switch sides. The efforts of Sayedkhaili were further advanced by the deployment of US Special Operations Forces whose task was to kill and capture insurgents. By January 2011, the provincial chief of police declared Kunduz be cleared of Taliban activity (Bell et al., 2011, p. 6; Dirx, 2017b, p. 384; Goodhand & Hakimi, 2014, p. 34). While many of the Taliban commanders were killed, arrested, or ordered to return to Pakistan, clandestine operators and local shadow organizations remained largely intact (Giustozzi & Reuter, 2011, p. 14). Overall, the net result was that the territorial control of the government increased, but the Taliban was far from defeated. In March 2011, the Taliban struck back when it killed Police Chief Sayedkhaili (Münch, 2013, p. 41).

### 3.5.3 *The Drawdown of Foreign Troops*

Throughout 2012, the Afghan government remained in control of most parts of the province, but this changed when German and American forces were drawing down from Kunduz in 2013. From then on, the Taliban increasingly challenged the Afghan National Security Forces (ANSF) and the various pro-government militias.<sup>9</sup> By the end of September 2014, the Taliban had taken back control of Dasht-e Archi and Chahar

<sup>9</sup> Alongside the Taliban insurgency, a number of other armed opposition groups have been operating in Kunduz province, including the Islamic Movement of Uzbekistan (IMU) and Jundullah, who at times pledged allegiance to Islamic State Khorasan (Ali, 2016). Though the Taliban is the largest and main opposition group in the province, the IMU and Jundullah have had their influence as well.

Dara (though with the exception of the district centers) and some parts of Khanabad.<sup>10</sup> The United Nations Assistance Mission in Afghanistan (UNAMA) reported that these districts were practically inaccessible for the police without special high security measures (UNAMA, 2014, p. 4).

#### *3.5.4 The Fall of Kunduz*

During 2015, the Taliban nationwide were “switching full gear to civil war mode...to contest government control” (Giustozzi, 2017, p. 24). In Kunduz, it continued to launch offensives, and it conquered various parts of the province. By late September 2015, it even took control of Kunduz city (Ali, 2016a). It caused “shock waves” among the Afghan political and security elite as well as foreign donors (Giustozzi, 2017, p. 28; see also Felbab-Brown, 2017, p. 23). For the first time since 2001, the Taliban managed to temporarily take over one of the major cities of Afghanistan (Cooke & Urwin, 2015). Although the ANSF with the support of the US Air Force managed to retake the provincial capital, the Taliban retained its presence outside the city. Integrity Watch Afghanistan (IWA) found that in 2015 “the Taliban were present in most areas in Aliabad, Chahar Dara, Dasht-e Archi, and significant areas of Qal-e-Zal and Khanabad districts” (2018, p. 6).

#### *3.5.5 The Consolidation of the Taliban’s Resurgence*

In October 2016, the Taliban again challenged the ANSF for control of the provincial capital, a clear sign that the vulnerability of Kunduz city had persisted. According to one observer, several videos on social media showed how Afghan National Police (ANP) officers surrendered to the Taliban without a fight (Ali, 2016a). In response to the Taliban’s advances, Afghan and American forces conducted various counteroffensives. A combination of night raids, airstrikes, and targeted killings resulted in the deaths of several key Taliban commanders, including the Taliban’s provincial shadow governor, Mullah Salam (Ali, 2017; SIGAR, 2017, p. 83). In spite of this, the Taliban managed to remain in control of most rural areas and even expanded its control over the summer of 2017 through a series of attacks against the ANSF in Kunduz (Ali, 2017).

By 2018, the Taliban still controlled most of Kunduz province, particularly outside the provincial capital. Moreover, in recent years, Kunduz has consistently ranked among the provinces with the largest percentage of insurgent control or influence (SIGAR, 2017; 2018a; 2019).<sup>11</sup> Based on information obtained from NATO’s Resolute Support mission, SIGAR (2018b) provides a nationwide assessment of territorial control with the district level as its unit of analysis. In 2018, it found that insurgents in Kunduz province influenced five out of the original seven districts (Chahar Dara, Dasht-e Archi,

<sup>10</sup> RMO – GIZ-Risk Management Office – Analysis. Security update Afghanistan 28 September 2014.

<sup>11</sup> Two other provinces with high percentages of insurgent influence and control are Helmand and Uruzgan (SIGAR, 2017; 2018; 2019). The Resolute Support mission distinguishes five categories to determine the stability of a district: 1) insurgent control, 2) insurgent influence, 3) contested, 4) government influence, and 5) government control (SIGAR, 2018b).

Imam Sahib, Khanabad, and Qal-e-Zal).<sup>12</sup> Within these districts, the AUP and the formal justice sector have had no or very limited effective authority to carry out their tasks (IWA, 2018, p. 7). In the other two districts (Kunduz and Aliabad), control was contested between the government and insurgents (SIGAR, 2018b, p. 12).<sup>13</sup> In 2018, NATO's Resolute Support mission estimated that 62% of the population in Kunduz province was under the control or influence of insurgents (SIGAR, 2018a, p. 70).

Although the assessments provided by SIGAR (2018b; 2019) give an indication of the relative strength of the Afghan government and the Taliban, it is important to point out that the competition for controlling territory in Kunduz province does not neatly follow district boundaries. Moreover, when looking more closely at dynamics within the districts it becomes clear that control varies between localities. For example, Ali (2019) points out that

Dasht-e Archi is a district in which the government forces' presence is mainly symbolic, protecting as people put it "a few billboards within the district centre" (the forces are only able to protect the district governor office, district police chief's compound and limited areas around the district centre).

He furthermore mentions that within the district the Taliban controlled almost 80% of the territory and set up "a parallel shadow government in the district to deal with daily affairs" (Ali, 2019).

The effects of the Taliban governing the daily lives of people in Kunduz province is confirmed and documented in several recent research reports and journalistic accounts (Ali, 2019; Bjelica & Clark, 2018; Jackson, 2018; Mashal & Rahim 2017; Sediqi 2018). To illustrate, the Taliban are reported to have banned the government-owned telecom provider Salam, and they collect taxes on harvests, teachers' salaries, marriage ceremonies, and fuel and vegetable trucks passing their checkpoints (Jackson, 2018; Mashal & Rahim, 2017). They have also been notorious for collecting electricity bills from thousands of homes (Bjelica & Clark, 2018). In addition to these sources of funding, the Taliban has taken over the cross-border smuggling trade that was previously controlled by government officials and local power brokers (Jackson, 2018, p. 22). The revenue of the Taliban in Kunduz is reported to be \$10 million per month, but it is uncertain how reliable this figure is (Jackson, 2018, p. 21).

<sup>12</sup> According to Resolute Support's methodology, districts are assessed as under "insurgent influence" when there is no district governor present, limited governance provided by the Afghan government, and the insurgents are active and well-supported. The activities of the Afghan police and army in these areas are limited, and the collapse of the district is expected. In terms of infrastructure, the insurgents control most of it, but there is also some control by the government. With regard to the local economy, insurgent taxation is dominant, while there is still some effective taxation by the government, and wages are paid in some places. Finally, in terms of communication, insurgent messaging is dominant, but messaging by the government is also reaching people in the district (SIGAR, 2018b, p. 5).

<sup>13</sup> According to Resolute Support's methodology, districts are assessed as "contested" when there is no district governor present, limited governance provided by the Afghan government, and the Afghan security forces and insurgents are both present, while neither is able to dominate the area. The control of key infrastructure routinely passes between the government and the insurgents in these areas. Wages by the Afghan government are paid, and there is effective taxation, but there is also an effective shadow system of insurgent taxation. In terms of communication, neither the government nor the insurgents are able to dominate messaging (SIGAR, 2018b, p. 5).

In sum, the Afghan government controlled less territory in Kunduz in 2018 than it did in 2010, which has seriously limited the reach of the AUP and the formal justice sector. The impact of the assassination of both a governor and a police chief, the constant encroachment by the insurgents, the vulnerability of the provincial capital, and ineffective responses from provincial and national government officials should also be highlighted.<sup>14</sup> Between 2010 and 2013, the Afghan government managed to increase its control through an anti-Taliban coalition consisting of the Afghan National Army (ANA), the Afghan National Police (ANP), the Afghan Local Police (ALP), local power brokers, various pro-government militias, and US Special Operations Forces. Yet as foreign forces withdrew from Kunduz, the Taliban made gains, and by 2018, most of the province was under the control or influence of the Taliban. Unsurprisingly, the consolidation of the Taliban's resurgence has had negative consequences for the overall capabilities of the AUP and the formal justice sector, as will be discussed further in the next chapters.

### **3.6 Main International Missions in Kunduz**

During and prior to the investigated time frame of 2010 until 2018, there were various international missions and programs in Kunduz that sought to improve the quality of the ANP and the formal justice sector. The guiding logic behind these missions was to contribute to the official goal of the ISAF mission and the NATO alliance in Afghanistan, which was “to help create a liberal state that would exercise a monopoly on violence in its territory” (Münch & Veit, 2018, p. 275). The German, American, and Dutch governments undertook bilateral missions, and NATO, the EU, and the UN sponsored multilateral missions. It is important to point out however, that the vaguely formulated goals of the overall ISAF mission were interpreted differently by member states and that political aims, such as strengthening the NATO alliance and getting visibility on the international stage, have played a part in deciding to partake in international missions in Afghanistan (De Graaf et al., 2015; Münch, 2013; Münch & Veit, 2018; Terpstra & Dirkx, 2016; Westerterp, 2015). The most important missions in Kunduz and their relation to each other are discussed in brief.

From 2003 until 2013, Germany was the lead nation controlling the Provincial Reconstruction Team (PRT) in Kunduz. Their German Police Project Team (GPPT) focused on training Afghan police officers and on creating training capacities in the form of training infrastructure and training for Afghan instructors (FFO & FMI, 2014, p. 9). The German government also sponsored several Rule of Law programs, which were implemented by GIZ and partner organizations. From 2007 onwards, the EU became engaged in police training through its EU Police Mission for Afghanistan (EUPOL) (Dirkx, 2017a; ECA, 2015; Larivé, 2012). Based at the PRT in Kunduz, it focused on training higher-ranking ANP officers, including the provincial chief of police. EUPOL also facilitated a training aimed at improving the cooperation between the police and prosecutors.<sup>15</sup> From 2011 until 2013, the Dutch IPM operated from the

<sup>14</sup> The authors thank one of the peer reviewers for pointing this out.

<sup>15</sup> Eindevaluatie Geïntegreerde Politietrainingsmissie, pp. 24–26.

PRT in Kunduz and focused on training the AUP for civilian tasks (Frerks & Terpstra, 2018). In addition, it supported already existing missions and programs, such as the EUPOL mission, the NATO Training Mission – Afghanistan (NTM-A), and the Rule of Law programs of GIZ.<sup>16</sup>

The US was also involved in police training and justice reform in Kunduz. In 2004, the private contractor DynCorp set up a Regional Training Center (RTC) next to the PRT, where it trained Afghan police officers (SIGAR, 2017, p. 31). Coordination with the German-led efforts seemed problematic, however. Wilder (2007, p. 28) pointed out that during a visit to Kunduz in November 2006, “DynCorp personnel at the Regional Training Centre were largely unaware of what the German police advisors were doing in the adjacent German PRT, and vice versa.” The Americans were also involved in training police officers in Kunduz through the Combined Security Transition Command – Afghanistan (CSTC-A), which from 2009 onwards was brought under the command of the NTM-A. This was the largest police-training program in Afghanistan in terms of trained recruits and funding. In a review of US efforts to reform the ANP, SIGAR (2017, p. 93) concluded that “the United States supported the increased militarization of the ANP, arming local police with AK-47s, light machine guns, and military standard light combat vehicles.”<sup>17</sup> Overall, the Afghanistan-wide transatlantic tension between the militarized American approach and the European focus on civilian policing also surfaced in Kunduz province (Dirkx, 2017b; Frerks & Terpstra, 2018; Friesendorf, 2011).

The “security transition” purported by ISAF in 2010 emphasized the importance to “help set the conditions for the irreversible transition to full Afghan security responsibility and leadership” (ISAF, 2010). By 2013, it was questionable whether this ambition was achieved (Münch, 2014; Sedra, 2014), but foreign troops drew down from Afghanistan nevertheless, including Kunduz province. As a result, efforts to strengthen the ANP and the formal justice sector in Kunduz declined in scope. Under NATO’s Resolute Support mission, which started in 2015, the bulk of international support for police training has been conducted from regional commands instead of provincial commands. Kunduz province falls under NATO’s regional Train, Advise, and Assist Command – North (TAAC-N), which is led by Germany from Mazar-e Sharif in the adjacent Balkh province (SIGAR, 2017, pp. 109–110).

<sup>16</sup> Eindevaluatie Geïntegreerde Politietrainingsmissie, pp. 24–26.

<sup>17</sup> New York Times journalist James Dao, who accompanied a US infantry battalion in Kunduz during the summer of 2010, confirmed this image. He asserted that the American soldiers did “not only try to hone the combat skills of the local police — a ragtag group of illiterate young men and aging fighters — but also accompany them into the most contested hamlets in the region” (Dao, 2010).

## **4 Police Sector**

### **4.1 Introduction**

This chapter describes developments in the AUP in Kunduz province during the time frame of 2010 until 2018. The chapter begins with a short overview of the role of the AUP within the ANP and the objectives that guided the Dutch IPM. Against this background, the chapter describes the main developments in the capability of the AUP in Kunduz province. It details these developments both in quality and quantity. Specific attention is paid to human rights, the treatment of women, the treatment of ethnic minorities, and community policing initiatives since these were important elements of the mission's aims.<sup>18</sup> The chapter concludes with an explanation of the observed developments in the AUP's capabilities in Kunduz by taking into account both endogenous factors, such as the AUP's human resources and equipment, as well as exogenous factors, such as the drawdown of foreign military troops and the rising Taliban insurgency. The chapter concludes that the capability of the AUP to carry out its tasks improved in some respects within parts of the investigated time frame, but overall it was worse in 2018 than at both the beginning and the end of the IPM.

### **4.2 The Afghan National Police**

The ANP consists of four pillars: the Afghan Uniformed Police (AUP), the Afghan National Civil Order Police (ANCOP), the Afghan Border Police (ABP), and the Afghan Anti-Crime Police (AACP) (US DoD, 2017, p. 91). According to the Afghan Ministry of Interior (MoI), the responsibility of the ANP is to

enforce the rule of law; maintain public order and security; detect and fight crimes; control borders; protect the rights, assets and freedoms of both Afghans and foreigners in Afghanistan according to national laws; and operate without ethnic, gender, language or religious discrimination (Ministry of Interior, 2013).

Reinforcing the capability of the AUP in Kunduz was one of the main focus areas of the IPM;<sup>19</sup> therefore, we focus on the AUP specifically. As indicated in Chapter 3, the AUP in Kunduz has been supported through various bilateral and multilateral police-training missions, including the IPM. The long-term objective of the mission with regard to police capability was to improve the quality of the civilian police in Kunduz province. Prior to the deployment, the formal objectives of the Dutch IPM with regard to the AUP's capability were outlined in the Comprehensive Mission Design (CMD).<sup>20</sup> Eight themes were identified for which narrower objectives were formulated. These themes included recruitment and selection, AUP training and operational level, community policing, management and specialist training and operational level, literacy,

<sup>18</sup> Comprehensive Mission Design (CMD) for Integrated Police training Mission in Afghanistan (HoA-approved CMD extract 07-07-2011).

<sup>19</sup> Comprehensive Mission Design (CMD) for Integrated Police training Mission in Afghanistan (HoA-approved CMD extract 07-07-2011).

<sup>20</sup> Comprehensive Mission Design (CMD) for Integrated Police training Mission in Afghanistan (HoA-approved CMD extract 07-07-2011).

tracking and tracing/retention, training curricula, and equipment. Annex 1 provides an overview of the specific objectives for each of these themes as identified in the CMD.

The mission's objectives with regard to police capability provide insight into the intended outcomes of the Dutch police training. In order to evaluate the police capability of the AUP we adopted indicators from the PRIME framework, which was developed by Bajraktari et al. (2006) to assess the effects of police reform efforts in (post-)conflict settings. The assessment is primarily based on qualitative evidence, but it is complemented by quantitative evidence where possible. The objective of this chapter is to describe developments in the police sector in Kunduz province from 2010 until 2018 but without trying to assess to what extent these developments can be directly attributed to the Dutch IPM.

### **4.3 Performance Effectiveness**

Under performance effectiveness, we assess the AUP's personnel, its training and equipment, its authority and reach, its ability to fight and prevent crime, and the cooperation with prosecutors. Based on this assessment we conclude that the performance effectiveness of the AUP in Kunduz province decreased in the investigated time frame. While there are some positive developments within parts of the investigated time frame, the overall capacity of the AUP, its reach, its ability to deal with crime, and the coordination with the wider justice sector have diminished between 2010 and 2018.

#### *4.3.1 Personnel*

##### Number of AUP Personnel

Estimates of the number of AUP personnel in Kunduz vary significantly between sources and should be treated with extreme caution. Furthermore, the number of AUP that are mentioned in the *tashkil* may differ from the actual numbers on the ground (Peavy & Witte, 2012). A further complicating factor is that most reports mention the number of ANP personnel in Kunduz province without specifying how many of those are part of the AUP. Based on the available evidence, it seems that the number of AUP personnel declined in the investigated time frame, especially in the outlying districts.

In an assessment for the German Embassy in Kabul, The Liaison Office (TLO) found that the number of ANP personnel was reduced significantly at the beginning of 2009 under the assumption that the province was stable.<sup>21</sup> In May 2010, an estimated number of over 424 ANP were deployed in Kunduz (TLO, 2010, p. 118). It is not specified how many of those were part of the AUP. TLO (2010, p. 118–120) estimated that each district had none, one, or two ANP police bases in May 2010, as presented in the table below.

<sup>21</sup> The TLO report states, “[a]t a time when Kunduz was considered relative safe, nearly half of his Afghan National Police contingent was reassigned to more volatile parts in the country, creating a vacuum the insurgency could exploit” (TLO, 2010, p. 9).

Table 1 – ANP police bases and check posts in Kunduz in May 2010 (TLO, 2010, p. 118–120).

<i>District</i>	<i>Bases</i>	<i>Check posts</i>
<i>Kunduz city</i>	<i>two ANP bases</i>	<i>nine check posts</i>
<i>Aliabad</i>	<i>no ANP base</i>	<i>five check posts</i>
<i>Chahar Dara</i>	<i>one ANP base</i>	<i>at least five check posts</i>
<i>Dasht-e Archi</i>	<i>one ANP base</i>	<i>no check posts</i>
<i>Imam Sahib</i>	<i>two ANP bases</i>	<i>no information available</i>
<i>Khanabad</i>	<i>one ANP base</i>	<i>four ANP check posts</i>
<i>Qal-e-Zal</i>	<i>one ANP base</i>	<i>four ANP check posts</i>

By 2011, the number of ANP personnel rose in a belated response to the resurging Taliban insurgency. The Max Planck Institute notes, based on data provided by EUPOL, that the ANP *tashkil* of Kunduz province of February 2011 comprised 1,810 staff, of which 180 were officers, 486 sergeants, and 990 policemen (MPIL, 2013, p. 25; see also Goodhand & Hakimi, 2014, p. 32; Münch, 2013, p. 40). The Max Planck Institute furthermore indicates how many ANP were part of the district commands that report to the ANP chief of police in Kunduz. It reported that Imam Sahib, Khanabad, and Dasht-e-Archi each had 90 ANP, whereas Qal-e-Zal, Chahar Dara, and Aliabad each had 53 ANP. At the time, reinforcements from Kabul were sent to Kunduz, which included 370 ANCOF personnel along the Shir Khan Bandar–Kunduz city highway and a reserved unit of 40 men in the Imam Sahib district (MPIL, 2013, p. 25).

Based on data provided by the Embassy of the Netherlands in Kabul, Peavy and Witte (2012, p. 19) reported that the Afghan MoI’s target for the AUP *tashkil* in 2011 was 1,557. It was estimated that approximately 1,524 AUP personnel were active in Kunduz by January 2012.

There is even less available information about the number of AUP in Kunduz province in more recent years. Based on documents from the Afghan MoI, Oxfam (2013, p. 27) reports that by February 2013 the total ANP force in Kunduz province consisted of 3,716 personnel. A dataset provided to the authors by IOB states that the assigned number of ANP personnel in Kunduz by February 2013 was 2,287 and is thus much lower than the numbers mentioned by Oxfam.<sup>22</sup>

Baczko and Dorronsoro (2016, p. 7) conducted fieldwork in Kunduz in 2014 and found that

[a]t the provincial level, the balance of power between the army and police on the one hand, and the militias on the other,... clearly favours the latter. Policemen number no more than 200 in Khanabad, 200–300 in Dasht-e Archi and 300 in Chahar Dara.

<sup>22</sup> Dataset provided to the authors by IOB.



None of the surveyed literature contained specific information on the number of AUP personnel in Kunduz from 2015 until 2018, although there is a consensus that it likely declined because of the advances of the Taliban in the province (Ali, 2016; 2017; 2018; Fisher & Mercado, 2016; Frerks & Terpstra, 2018, pp. 264–265).

### Ethnicity

Police-training missions, such as the IPM in Kunduz, envisioned that the AUP would consist of an ethnic and tribally balanced force with sufficient opportunities for women.<sup>23</sup> The formal policy of the Afghan MoI is also to recruit according to police quotas based on the ethnic composition of Afghanistan (CPAU, 2016, p. 75). It is important to point out, however, that there may be different views on what a “tribally balanced force” and “sufficient opportunities for women” means in practice. Surveying the literature, it becomes clear that the AUP in Kunduz province has been male-dominated, and rather than merit-based, the recruitment of AUP officers is related to an applicant’s connections to former *jihadi* commanders and local strongmen (APPRO, 2015; CPAU 2016; Münch & Veit, 2018; TLO, 2010). TLO noted in 2010 that “future policemen usually are first and foremost loyal to the commanders or strongmen who introduced them to the ANSF, rather than their assigned superior” (TLO, 2010, p. 121).

Tajiks seem to have been overrepresented in the AUP in Kunduz province, while all other ethnic groups appear underrepresented. CPAU (2016, p. 75) presents the following table related to ethnic targets and the actual composition of the AUP in Kunduz province in January 2014. It is unclear, however, what this data is based on and whether the presented percentages are a good approximation of the actual ethnic composition of the AUP.

*Table 2 – Ethnic targets and composition of the AUP in Kunduz province in January 2014*

Rank	Ethnicity				
	<i>Pashtu</i>	<i>Tajik</i>	<i>Hazara</i>	<i>Uzbek</i>	<i>Others</i>
Officer	13%	15%	16%	7%	12%
NCO	26%	39%	36%	23%	27%
Patrolmen	61%	46%	48%	70%	61%
Total % of Force	41%	43%	5%	6%	5%
Ethnic Target	44%	25%	10%	8%	13%

The CPAU study furthermore indicates that many Pashtuns “have a strong sense of disenfranchisement and exclusion from state institutions (including the Afghan National Security Forces - ANSF), Arbakai and ALP and this has been an important mobilisation tool for the Taliban in Kunduz” (2016, p. 23, 75). CPAU concludes that

<sup>23</sup> Comprehensive Mission Design (CMD) for Integrated Police training Mission in Afghanistan (HoA-approved CMD extract 07-07-2011).

“patronage networks are firmly rooted within the ANP and influence recruitment, career advancement and posting assignments” (CPAU, 2016, p. 23). This image of the Pashtun marginalization from government institutions is confirmed in several other studies (Dirkx, 2017b; Fisher & Mercado, 2015; Goodhand & Hakimi, 2014; International Crisis Group, 2015; Münch, 2013; Terpstra, 2018; *forthcoming*).

### Women

The number of women in the AUP in Kunduz province increased between 2010 and 2013 (Oxfam, 2013; Peavy & Witte, 2012). Yet despite this increase, the number of women involved in the AUP remained extremely low compared to the overall size of the AUP in Kunduz province (MPIL, 2013; Peavy & Witte, 2012). There were only 23 female staff in 2011, most of whom were based in Kunduz city. Four out of seven districts did not have a single female police officer (Peavy & Witte, 2012, p. 19).<sup>24</sup> Yet another source states that by January 2012 only two districts did not have female police officers.<sup>25</sup> Based on documents from the Afghan MoI, Oxfam (2013, p. 13) reported that by February 2013 there were 33 female police in Kunduz Province. On a different page in the same report, it is stated that there were 42 women (Oxfam, 2013, p. 27), yet it is unclear on what source these numbers are based.

It is unclear whether the number of women in the AUP in Kunduz province further increased or decreased between 2013 and 2018. Afghanistan-wide data suggests that the number of women within the ANP has been consistently lower than the set goals of the Afghan MoI and international donors (SIGAR, 2017; 2018). By early 2018, there were 3,040 women employed within the ANP in Afghanistan, which by then consisted of a total of 129,156 staff (SIGAR, 2018a, pp. 110–114).

Throughout the time frame studied, women in the AUP in Kunduz province faced significant gender-specific constraints to carry out their tasks, including social and cultural barriers as well as sexual assault and harassment (APPRO, 2015; Oxfam, 2013; Rubin, 2015; SIGAR, 2017). A study conducted by Oxfam (2013, p. 28) explains this as follows:

There is significant opposition to women working outside the home across most of Afghanistan. Female police are regarded as having particularly low status, for a number of reasons, including mixing with men in the workplace, having to spend nights away from home, and sharing living and eating quarters with men. Allegations of prostitution within the ANP – as well as widespread rumours of abuse and harassment – contribute to this perception and make it harder to attract educated women into the police force.

The report also mentioned an example of a policewoman in Kunduz province having to move house several times because her neighbors found out about her work (Oxfam, 2013, p. 28). Based on the literature, it is not possible to see to what extent these obstacles for women in the AUP in Kunduz diminished, increased, or stayed the same during the time frame studied.

<sup>24</sup> This confirms the nationwide pattern of severe female underrepresentation within the AUP (SIGAR, 2017, pp. 149–151).

<sup>25</sup> Dataset provided to the authors by IOB.

### 4.3.2 *Training and Equipment*

Between 2010 and 2018, the AUP in Kunduz received training to enhance its capacity through various foreign-sponsored missions and programs. Some of these missions, such as the Dutch IPM, were set up during the 2011–2013 time frame, while others were already established prior to the arrival of Dutch police trainers. As indicated in Chapter 3, the Afghanistan-wide transatlantic tension between the militarized American approach and the European focus on civilian policing also surfaced in Kunduz province (Friesendorf, 2011; Goodhand & Hakimi, 2014). It is likely that these different approaches to police training in Kunduz led to variegated outcomes, but it is difficult to assess this in detail.

While there are multiple sources that report on the different foreign police-training programs that took place in Kunduz, there is limited information on differences in the comparative quality of these programs (Friesendorf, 2011). In addition, only a handful of studies provide information on how the training was experienced by AUP officers (CPAU 2013; 2014; Frerks & Terpstra, 2018; Peavey & Witte, 2012). With regard to the Dutch IPM, these studies show that the AUP officers in Kunduz highly appreciated their training and judged it as useful in executing their work. The newly acquired and improved skills included things such as a better understanding of the basics of the Afghan constitution, fundamental human rights, women’s rights, and principles of good governance. In addition, they were taught about practical policing skills, the importance of professional policing conduct, and how to implement community policing (Frerks & Terpstra, 2018, pp. 248–254). The study of Frerks and Terpstra (2018) shows that in general AUP officers were content with the training they received through the Dutch IPM. It is important to point out, however, that if and how they put their training into practice is a wholly different question that will be discussed in subsequent paragraphs.

In addition to police training, foreign donors also provided infrastructure and equipment to the AUP to carry out its tasks. The literature reviewed gives limited specific information on this matter. With regard to infrastructure, SIGAR conducted two reviews of ANP facilities in Kunduz. They found that in the construction process of the ANP provincial headquarters in Kunduz city there were delays and a five-million-dollar cost increase (SIGAR, 2013b). In addition, they emphasized problems with the facility’s design that raised concerns about the facility’s usability and sustainability. SIGAR (2013a) also found that the construction of the ANP Main Road Security Company in Kunduz was behind schedule and “may not be sustainable” because of a lack of backup electrical power, and no plan for operation and maintenance after the site would be handed over to the Afghan government.

With regard to equipment, the authors did not obtain specific information from independent studies in relation to the AUP in Kunduz province. A dataset provided by IOB indicates that in 2012 AUP officers in Kunduz province were generally equipped with a 9mm pistol, an AK-47 assault rifle, and handcuffs.<sup>26</sup> Reports on Afghanistan as

<sup>26</sup> Dataset provided to the authors by IOB.

a whole highlight that the ANP often lacks part of the necessary equipment to carry out its tasks (CPAU, 2016; SIGAR, 2017).

From 2013 onwards, Dutch, German, EU, and NATO police-training programs in Kunduz province were handed over to the Afghan government as foreign forces were drawing down from the province (Frerks & Terpstra, 2018; SIGAR, 2017).<sup>27</sup> According to a periodical of the Royal Netherlands Marechaussee, eight Afghan police trainers completed the necessary training to continue the police training after the withdrawal of the Dutch forces. The article also mentions that the Dutch trainers compiled a mentor syllabus for the Afghan trainers, which they could use as educational material to support the training of AUP officers (Van Waardenberg, 2013, p. 6–11).

For the period after this handover of responsibility for police training, there are limited independent written sources. A journalistic account reports that six months after the German troops left Kunduz province, there was a sense of disillusionment and abandonment among the Afghan army and police. To illustrate, the Kunduz deputy police chief allegedly dismissively said, “They simply ran away. It was too soon” (quoted in Abé, 2014). CPAU (2016, p. 40) found that “the training centre established by the IPM and the (Dutch-trained) Afghan trainers have continued to work with the AUP” but that the satisfaction of AUP staff with the received training in 2014 was lower than in 2011 and 2012. In interviews conducted with nine AUP management staff in Kunduz in 2014, it was mentioned that the training was in need of a greater emphasis on education relating to the law, human rights, and religious matters (CPAU, 2016, pp. 40–41). In addition to the interviews, CPAU conducted a survey with 182 AUP staff in Kunduz in 2014. The respondents identified the management of checkpoints, patrolling, identification of suspects, and education as elements that should be improved in their training. They also mentioned that training is necessary to depoliticize and enhance the AUP leadership (CPAU, 2016, p. 41).

In the literature reviewed by the authors for this report no information was found on the specifics of police training between 2015 and 2018. The US Department of Defense (2015, pp. 66–67) signaled that throughout Afghanistan “significant gaps remain in training and operational readiness rates across all ANP forces. Over the last six months, the lack of an operational readiness cycle has degraded ANP effectiveness.”

#### *4.3.3 Authority and Reach*

The main laws that govern the conduct of the ANP (including the AUP in Kunduz) are the Interim Criminal Procedure Code (ICPC) of 2004 and the Afghanistan Police Law of 2005 (Wilder, 2007, p. 4).<sup>28</sup> In addition to these laws, the United States has unilaterally set up several police programs without the Afghan government’s consent. In Kunduz, for example, it set up the Critical Infrastructure Police (CIP) in the spring of 2011, but President Karzai disbanded it in December 2011 when he found out about its existence (Dirkx, 2017b; Münch, 2013). President Karzai did authorize the establishment of the ALP through a presidential decree in August 2010 (Goodhand &

<sup>27</sup> Eindevaluatie Geïntegreerde Politietrainingsmissie, p. 24.

<sup>28</sup> Islamic Republic of Afghanistan, Ministry of Justice, Police Law, Official Gazette, no. 862, Kabul, 22 Sept. 2005.

Hakimi, 2014, pp. 12–13). As of June 2015, the ALP officially falls under the command and control of the AUP, but its authorized strength is separate from the AUP (DoD, 2015, p. 27).

The establishment of the ALP alongside the AUP has had ambiguous consequences for the *de facto* territorial control of the Afghan government in Kunduz province and the ability of the AUP to carry out its tasks. The ALP was meant to provide security, fight the Taliban, and support the AUP in outlying districts, but in Kunduz province, the Tajik and Uzbek dominated ALP units soon became known for their predatory behavior towards the local population, especially Pashtuns (Dirkx, 2017b; Felbab-Brown, 2016; Goodhand & Hakimi, 2014; HRW, 2011). While the US-sponsored ALP program was important in expanding the Afghan government's territorial control in Kunduz province between 2010 and 2013 (see also Chapter 3), in the mid to long term their predatory behavior alienated many Pashtuns and the civilian population more generally. Moreover, the ANP are found to be complicit in a number of ALP offenses, which further eroded the public's trust in the provincial authorities (Cecchinel, 2014c; Fisher & Mercado, 2015). Cecchinel (2014c), for example, reports that provincial Police Chief Andarabi used ALP units, other militias, and "some of the most notorious criminals of the province" in a raid that was meant to oust the Taliban from parts of the Dasht-e Archi district but which "became more of a looting rampage." Local residents told the Afghanistan Analysts Network that these armed men "looted houses, stole motorbikes, jewelry and money from both men and women, as well as taking wheat and sheep." By preying upon the local population rather than protecting them, these kinds of operations led to increased support for the Taliban. They indirectly contributed to the resurgence of the Taliban from 2013 onwards. Some sources report that, arguably, many Pashtuns in Kunduz have been better off with the Taliban than the US-backed ALP (Cooke & Urwin, 2015; International Crisis Group, 2015).

#### 4.3.4 *Crime*

Arguably, one of the most fundamental tasks of the AUP in Kunduz is to prevent and fight crime (Ministry of Interior, 2013). Within the context of Kunduz province, where various armed groups have been engaged in open hostilities for years, it is insufficient to merely look at fluctuations in crime rates. Indeed, as Bajraktari et al. (2006, p. 22) remind us, to assess the crime-fighting effectiveness of a police force in such contexts of general lawlessness, it is important to evaluate "how extensively they collect crime statistics and how they apply those statistics to set and achieve crime-fighting and crime prevention goals."

It is unclear if and how the AUP in Kunduz has recorded crime statistics and used these in its daily operations to fight and prevent crime and how this has changed between 2010 and 2018. It seems likely there have been exchanges of information between foreign forces, the National Directorate of Security (NDS), and the AUP in Kunduz related to crime statistics and intelligence, but there is no explicit evidence in the surveyed literature that confirms this. The US Department of Defense (2015, p. 68) does mention that "implementing intelligence-led policing throughout all ANP pillars

remains a challenge” nationwide. “Moreover, ANP forces in rural areas often lack the capacity and basic knowledge to conduct intelligence-led operations effectively” (US Department of Defense, 2015, p. 68).

One aspect that did feature strongly in the available literature is that the AUP has been unable and, in some cases, unwilling to make arrests. A wide variety of sources suggest that the AUP in Kunduz province between 2010 and 2018 systematically refrained from making certain arrests under the instructions of local power brokers or influential government members (Cecchinell, 2014c; Dirx, 2017b; Fisher & Mercado, 2015; Frerks & Terpstra, 2018; Goodhand & Hakimi, 2014; HRW, 2011; Münch, 2013; UNAMA, 2015). These cases include, among others, armed robberies, extortion, drug trafficking, abuse, rape, and murder. Based on the surveyed literature, there is no quantifiable increase, decrease, or stability in this regard throughout the studied time frame.

Although the AUP seems to have been able to fight crime to some extent during the investigated time frame, its ability to do so has been constrained repeatedly by influential power brokers and government officials. In addition, the AUP was engaged in crimes it was supposed to fight and prevent, as explained above. It is important to highlight that these crimes by the AUP in Kunduz were committed both during and after international police-training programs ended. Based on the literature we surveyed, it is not possible to state whether this increased, decreased, or remained the same throughout the time frame studied.

#### *4.3.5 Police–Prosecutor Cooperation*

The cooperation and coordination between the Afghan civilian police and the wider justice sector in Kunduz received special attention in the IPM. Specific objectives were formulated in the CMD, which aimed to improve the awareness, coordination, and cooperation in the justice chain.<sup>29</sup> Annex 1 details the specific objectives of the IPM in this regard.

The actors within the police and justice sectors that in theory should cooperate in criminal investigations are the Criminal Investigation Department (CID) of the ANP and the prosecutor’s office. However, the relation between the two bodies has been complicated throughout Afghanistan due to a variety of reasons. Authors point to problems for prosecutors related to hiring sufficient as well as educated staff, low salaries, the timely handling of cases, and the general lack of technical equipment necessary to carry out investigations (ICG, 2010; IWA, 2018; MPIL, 2011; Singh, 2014). Complaints are common about both the police and prosecutors being corrupt and about their low professional competence (IWA, 2018; Singh, 2014). As Singh (2014, p. 625) put it, in Afghanistan “there is a sense that prosecution and justice are commodities for sale.”

<sup>29</sup> Comprehensive Mission Design (CMD) for Integrated Police training Mission in Afghanistan (HoA-approved CMD extract 07-07-2011).

These nationwide problems also featured in the 2011 assessment of Kunduz province by the Max Planck Institute. It concluded that “cooperation between the CID and prosecutor is generally seen as a problem” due to a lack of, for example, “the expertise and technical equipment which would be necessary for professional crime scene investigations that produce sufficient evidence for criminal prosecution” (MPIL, 2011, p. 15). The report mentioned that apart from the CID, the prosecutors also receive evidence from the NDS in important cases. Importantly, in 2010 there were no regular meetings between the ANP and the prosecutor’s office (MPIL, 2011, p. 15). The report explicitly recommended investing in a more “effective police-prosecutor cooperation” (MPIL, 2011, p. 28). At the time of writing the MPIL report, there were 51 prosecutors in Kunduz “with three prosecutors working in each of the six districts and all others in the provincial capital” (MPIL, 2011, p. 23–24).

In Kunduz province, several foreign-sponsored efforts have attempted to improve the capacity of prosecutors and their cooperation with the ANP. The Dutch IPM contributed to this goal by supporting the EUPOL mission and projects undertaken by GIZ.<sup>30</sup> The US State Department also funded police–prosecutor programs. The US firm Pacific Architects and Engineers (PAE) carried out the Justice Sector Support Program (JSSP) between 2005 and 2013. The International Development Law Organization (IDLO) from 2013 onwards implemented its successor, the Justice Training Transition Program (JTTP) (SIGAR, 2014, p. 1). There were also coordinated efforts. In 2012, for example, the USAID’s Rule of Law Stabilization Program and JSSP offered criminal law and procedure training in Kunduz called the National Initiative for Justice Advancement Training. It aimed to provide basic legal education on criminal laws and procedures for judges, defense attorneys, prosecutors, and the police (SIGAR, 2014, p. 11–12).

Information on how the different police–prosecutor programs were experienced is limited. In assessments of the Cooperation for Peace and Unity (CPAU) during the lifespan of the Dutch IPM, cooperation, according to AUP officials and prosecutors, was generally seen to have improved, although several problems remained. Corruption and the timely handling of cases stood out as key issues hindering the effective cooperation between the ANP and prosecutors in the province (CPAU, 2013; 2014; Peavey, 2011).<sup>31</sup>

Once the Taliban started to gain territory, beginning in late 2013, the reach of prosecutors in rural areas naturally diminished. Additionally, in September 2014 UNAMA reported that government-friendly militias seemed to control parts of districts like Khanabad and Qal-e-Zal, “enjoying impunity and having crimes in these parts remaining non investigated by state police and prosecution” (UNAMA, 2014, p. 2). On October 27, 2014, the Taliban attacked the prosecutor’s office in Kunduz city, which

<sup>30</sup> Eindevaluatie Geïntegreerde Politietrainingsmissie, pp. 24–26.

<sup>31</sup> In addition to training, international donors also provided infrastructure for prosecutors in Kunduz. In 2009, the construction of a new provincial prosecutor’s office was completed with funding provided by the United Nations Office on Drugs and Crime (UNODC) and the Italian government. In addition, GIZ built prosecutors’ offices in the six rural districts of Kunduz (MPIL, 2011).

resulted in the deaths of six prosecutors, while at least nine others were injured (IWA, 2018, p. 9; CPAU, 2016, pp. 61-62). Moreover, the five-year-old office was destroyed, and prosecutors were relocated to the ANP's facilities where in 2016 an office was created within the police's compound (IWA, 2018, p. 9).

Over the course of 2015, when the Taliban further expanded its control of the province, several district judges and prosecutors relocated to Kunduz city. In Imam Sahib, for example, the prosecutor's office and other government buildings were damaged as part of the offensive leading to the Taliban takeover of Kunduz city (IWA, 2018, p. 29). A former IDLO legal advisor reported that during the 2015 Taliban takeover of the provincial capital, "IDLO's office was looted and all the boxes that contained investigation tools for the prosecutors and criminal investigation division's police were stolen" (quoted in IWA, 2018, p. 11).

This diminished reach of prosecutors continued in the following years, which in turn negatively affected the cooperation between prosecutors and the AUP. IWA (2018, p. 2) reported that in 2017, "the majority of prosecutors are...working from the provincial capital. Only prosecutors for Aliabad, Khanabad and Imam Sahib continue to have a presence in the districts." Consequently, prosecutors increasingly rely on telephone communication to collect evidence for cases that occur in the districts. In late 2018, a resident of Dasht-e Archi confirmed that to register a case one has to go to the provincial capital to find the prosecutors of a district, who are unavailable most of the time (Ali, 2019). IWA (2018, p. 19) concludes that because the "prosecutor's office, and police CID mainly work in Kunduz city...citizens mostly do not use the state justice institutions because it is not accessible to them." Moreover, GIZ (2018, p. 6) concluded in an evaluation of its Rule of Law program that "the example of Kunduz province highlights the fact that it is extremely difficult to follow up on results in districts in which state control has disappeared completely." Based on the available evidence, it is unknown how many prosecutors worked in Kunduz in 2018, but it is clear that their reach is limited to the provincial capital. It is also clear that many of the problems mentioned at the beginning of the time frame have persisted (IWA, 2018; UNAMA, 2015, pp. 66-67), yet it is unclear to what extent this improved, deteriorated, or stayed the same.

#### **4.4 Management and Oversight**

In this section on management and oversight, we assess the AUP in terms of its mission and procedures, budget and compensation, corruptibility and political influence, and accountability.

##### *4.4.1 Mission and Procedures*

The Afghan MoI oversees the ANP, of which the AUP forms an integral part. Kunduz province is part of the ANP regional zone 808, which covers the Northeast, and is managed by a regional police commander (DoD, 2015, p. 63; SIGAR, 2017). Within Kunduz province, the provincial chief of police is the highest police officer in the chain



of command. Under his authority, there are six district chiefs of police. Within the police force there are several ranks ranging from a patrol officer to a police general.<sup>32</sup>

Although there is a formal management structure in place, in practice the operations of the AUP in Kunduz are highly influenced by regional power brokers, militia commanders, and political networks that predate the establishment of the ANP (Dirkx, 2017b; Münch, 2013; Wörmer 2012). Between 2010 and 2014, under the Karzai government, ethnic Tajiks and Jamiat-affiliated politicians and power brokers significantly influenced operations of the AUP in Kunduz, thereby creating an informal chain of command (Goodhand & Hakimi, 2014; HRW, 2015; Münch, 2013).<sup>33</sup> Münch and Veit (2018, p. 286) point out that ISAF forces in Kunduz were aware of the illicit behavior and corruption of their Afghan counterparts within the police. As the intensity of the Taliban insurgency increased, they seemed “more willing to tolerate the undesired behaviour of intermediaries who promised to be effective allies for counterinsurgency” (Münch & Veit, 2018, p. 286). They conclude that “international intervention forces almost unavoidably empowered local elites and thereby unintentionally undermined the official goal of strengthening the central government” (Münch & Veit, 2018, p. 286).

At the national level, factionalism in the formal chain of command increased from 2014 onwards. After the 2014 presidential elections, a power-sharing agreement emerged between the newly elected president, Dr. Ashraf Ghani, and CEO Dr. Abdullah Abdullah. Part of the agreement that resulted in the National Unity Government (NUG) was that Abdullah’s team would appoint senior officials in the MoI and therefore have influence on the ANP. President Ghani’s team was allowed to appoint senior officials in the Ministry of Defense and the NDS (International Crisis Group, 2017, p. 13–14). This factionalism within the NUG was directly relevant for the operations and chain of command at the provincial level in Kunduz because different elements of the ANSF reported to different commanders (Malejacq, 2017; Terpstra, *forthcoming*). This jeopardized the responsiveness of the Afghan police and army in Kunduz during the Taliban’s upsurge in 2015 (Cooke & Urwin, 2015, p. 2; Fisher & Mercado, 2016; Terpstra, 2018; *forthcoming*). As Malejacq (2017) points out, political differences between ministries under President Ghani and ministries under CEO Abdullah created coordination problems between the ANP, the ANA, and the NDS in responding to the insurgency in Kunduz. It can hence be concluded that informality in the chain of command persisted throughout the time frame from 2010 until 2018, but that under the NUG from 2014 onwards factionalism within the national level formal chain of command increased.

With regard to following procedures and a code of conduct, several sources report these have been frequently disregarded (CPAU, 2016; MPIL, 2011; Peavey, 2011; UNAMA, 2011; 2013; 2015; 2017). For example, although the AUP is constitutionally required

<sup>32</sup> Dataset provided to the authors by IOB.

<sup>33</sup> For more detailed information see Annex 2 – Provincial Police Chiefs, Kunduz province, 2010–2018.

to hold suspects no longer than 72 hours in custody before handing the case over to a prosecutor, in practice this rule was often not followed (MPIL, 2011, p. 16; UNAMA, 2011). Rather, the ANP in Kunduz province was found to regularly detain suspects for illegally long periods of time, ranging from five days to three months (CPAU, 2011). In addition to the illegally long periods of detention in police prisons, ANP officers have also been found to mistreat detainees, including cases of torture (UNAMA; 2011; 2013; 2015; 2017).

#### 4.4.2 *Budget and Compensation*

Within the surveyed literature, there is no specific information on the budget for the AUP in Kunduz between 2010 and 2018. There are several sources, however, that report on the budget for the ANP at the national level. The funding for the ANP's budget has been largely dependent on foreign donors, particularly the United States (Friesendorf, 2015, p. 39; Planty & Perito, 2013; SIGAR, 2017; 2019; Suhrke, 2013, p. 280).

In 2005, the Afghanistan Security Forces Fund (ASFF) was established and has since been the most important means of US financial support for training, equipping, and staffing the ANSF (including the ANP). Between 2010 and 2016, there was a downward trend in US funding for the ANP. Whereas in 2010 the ANP received \$3.6 billion through the ASFF, in 2016 this contribution was \$780 million (SIGAR, 2017, p. 66–67). There seems to have been a slight increase since then. In 2018, the ASFF contribution to the ANP was \$860 million (SIGAR, 2019, p. 53).<sup>34</sup>

Since 2011, the ASFF contributions to the ANP have gone directly to the Afghan MoI. Although the goal was to develop ministerial capacity and capability with regard to budget development and execution, in practice this “removed US oversight and accountability mechanisms” (SIGAR, 2017, p. 66). The widespread corruption within the MoI and the ANP has, according to SIGAR (2017, p. 131), contributed to “the significant waste of U.S. funds and resources.” The report also notes that police development has been treated as “a secondary mission for the US government” compared to its engagement with the ANA, which led to “gross underfunding, under-resourcing, and less mentoring of police units, as compared to army units” (SIGAR, 2017, p. 169).

A second important source of funding for the AUP has been the Law and Order Trust Fund for Afghanistan (LOTFA), which was established by UNDP in 2002. The multilateral fund is primarily used for the payment of salaries to the ANP through the Afghan MoI (Murray, 2007, p. 110; SIGAR, 2017, p. 29; Wilder, 2007). The contributions to LOTFA fluctuated between 2010 and 2015. To illustrate, in 2011, LOTFA funding was \$668 million, in 2013 it was \$348 million, and in 2015 it was \$545 million (SIGAR, 2017, p. 29). Since then, annual contributions have decreased. The LOTFA budget was halved from \$565 million in 2016 to \$263 million in 2018. The 2018 annual budget for LOTFA was the lowest since 2008 (SIGAR, 2019, p. 63).

<sup>34</sup> This includes \$59.8 million for ANP salaries, which, prior to 2015, were listed in a separate budget from the ANP.

Similar to the ASFF, LOTFA has suffered from limited oversight and accountability mechanisms, which resulted in “an environment where corruption became ingrained in LOTFA” and “the lack of conditionality placed on the funds allowed corrupt officials to operate with impunity” (SIGAR, 2017, p. 30). The 2017 report on the reconstruction of the ANSF by SIGAR (2017, p. 29) furthermore asserted that

[t]he instability of funding has likely been a contributing factor to the Afghan government’s inability to provide consistent salaries to police officers operating on the front lines against a growing insurgent threat, which, in turn, has affected retention and quality of life for these officers and their families.

Salaries of AUP officers have been low throughout the investigated time frame (SIGAR, 2017, p. 124; TLO, 2010, p. 120). Data from ISAF suggests that AUP salaries in 2011 ranged from \$165 per month for AUP patrolmen to \$1,095 per month for a police general. This generally remained the same in the years that followed (SIGAR, 2017, p. 124).

In addition to problems related to corruption, fluctuations in international funding, and low salaries, there are also concerns over the sustainability of funding for the ANP (SIGAR, 2017; Suhrke, 2013). As pointed out by SIGAR (2017, p. 123), “the financial obligations for the current ANP force size are unsustainable for the Afghan government” due to “severe shortfalls in domestic revenue targets.”

#### 4.4.3 *Corruption and Political Influence*

Corruption within the AUP has been pervasive throughout Afghanistan. The sources reviewed show that Kunduz province is no exception in this regard (Frerks & Terpstra, 2018; MPIL, 2011; 2013; Münch 2013; TLO, 2010). In 2010, TLO (2010, p. 120) estimated that corruption was widespread within the AUP at several levels, including higher-level corruption and lower-level corruption. In 2018 IWA (2018) reported that corruption continued to be a widely perceived problem within the ANP of Kunduz province. Although the powerful actors in the Kabul government that influence the AUP’s operations in Kunduz changed to some extent between 2010 and 2018, the practice of outside political interference has persisted throughout the studied time frame. On the severity of corruption, the authors were not able to identify a clear improvement or deterioration on the basis of the literature in the studied time frame. The issue of corruption seems most fairly assessed as a structural issue within the AUP in Kunduz province.

The AUP in Kunduz has been anything but politically independent during the investigated time frame.<sup>35</sup> Between 2010 and 2014, especially Jamiat-affiliated politicians and government officials (mostly ethnic Tajiks) influenced appointments of high AUP officials in Kunduz (Cecchinell, 2014c; Goodhand & Hakimi, 2014; Münch,

<sup>35</sup> Annex 2 lists the provincial chiefs of police in Kunduz between 2010 and 2018 and indicates the ethnicity and political affiliation as well as details related to the appointment as police chief. As Gardizi, Hussmann, and Torabi explain, “[e]x-jihadi commanders sometimes claim to have a legitimate right to a state position on the basis of their high positions during the Soviet-Afghan war or their military power in a particular district or province” (2010, p. 18). Higher positions within the AUP are hence often seen as goods for sale that are filled with former *mujahedeen* commanders.

2015; Münch & Veit, 2018, p. 278–279).<sup>36</sup> After foreign forces withdrew from Kunduz province by late 2013 and with the arrival of the National Unity Government (NUG) of President Ghani and CEO Abdullah in 2014 the patronage networks and appointments of government officials seems to have shifted somewhat (Malejacq, 2017; Matta 2015). However, since the appointments of police chiefs falls under the MoI controlled by Dr. Abdullah Abdullah, the political influence of Jamiat seems to have persisted within the AUP in Kunduz. Higher-level corruption also involved decisions to arrest or not arrest certain individuals suspected of having committed a crime. Baczkó and Dorronsoro (2016, p. 8) found that in the wake of the Kanam massacre of 2012, no arrests were made by the AUP because the people were killed by militiamen under the influence of the regional Jamiat-affiliated power broker Mir Alam.<sup>37</sup>

Furthermore, there is an economy behind the appointments of police chiefs. In order to become a police chief, one generally pays multiple government officials to secure the position. Once the person becomes a chief of police, these considerable “fees” need to be recovered as soon as possible by the appointed individual because the tenure of such a position can be short (TLO, 2010, p. 12; see also Gardizi, Hussmann & Torabi, 2010; MPIL, 2013). Münch points out that such positions “grant access to large amounts of foreign money as well as the means of generating other forms of licit and illicit income” (2013, p. 9).

Corruption in higher ranks also affects the lower-level AUP officers. In 2010 TLO noted that “the upper ranks of the ANP try to increase their salary by spending less money on food for the officers or by selling much needed equipment. This has had a negative effect on the moral of the troops as well as on their integrity and own behaviour” (2010, p. 120). The lower ranks already received very low salaries, which makes it not uncommon for AUP officers in Kunduz to complement their salary with bribes in various forms. A regular practice was requiring travelers at police checkpoints to pay a “fee,” which allows them to continue their journey without any additional checks or measures (TLO, 2010, p. 120).

Several studies indicate that ISAF forces present in Kunduz province until late 2013 were aware of the political interference and corruption within the AUP (Dirkx, 2017b; Goodhand & Hakimi, 2014; HRW, 2011; Münch, 2013; Münch & Veit, 2018). Münch and Veit emphasize that the reason that the German-led ISAF troops did not forcefully punish this behavior is “the crucial importance placed on casualty avoidance” by the German government, which in turn made PRT commanders depend heavily on local Afghan actors who could more easily accept harm caused to their own forces if necessary (2018, p. 276). The restricted mandate of the Germans limited their actions to working with those in formal state positions, such as the ANA, the ANP, and the provincial government.<sup>38</sup> Consequently, “by seeking a middle way between acceptable ‘corruption’ and effectiveness, the Germans (along with other ISAF forces in the region) eventually adapted to the local power structure” (Münch & Veit, 2018, p. 279).

<sup>36</sup> See also Annex 2 for the list of the provincial chiefs of police in Kunduz province.

<sup>37</sup> See also Hewad (2012).

<sup>38</sup> Similar caveats applied to the Dutch IPM in Kunduz province (Frerks & Terpstra, 2018).

In the attempt to keep the Taliban at bay in the province, conditions arose in which the Afghan actors in Kunduz province that fitted the ISAF profile of acceptable intermediaries were, among others, police chiefs that straddled their “formal postings with informal networks” (Münch & Veit, 2018, p. 279). For example, police commander Daud Daud and provincial police chief Sayedkhaili were perceived both as “a little corrupt” and as effective forces against the Taliban (Münch & Veit, 2018, p. 279).

#### *4.4.4 Accountability*

Surveying the literature, it is not possible to observe a clear quantifiable change in the presence and strength of oversight mechanisms within the AUP in Kunduz province. It is clear, however, that external oversight and accountability has been weak throughout the entire investigated time frame (Cecchinell, 2014; CPAU, 2016; HRW, 2015; Münch, 2013; UNAMA, 2011; 2013; 2015; 2017). UNAMA (2011, pp. 40–41) found that

[a]ccountability of both NDS and ANP officials for torture and abuse of detainees is weak, not public and rarely enforced. Limited independent, judicial or external oversight exists of both NDS and ANP as institutions and of alleged crimes committed by NDS and ANP officials including torture and abuse. As a matter of practice, most claims of criminal conduct, abusive or unprofessional behaviour are dealt with internally and they rarely (in the case of NDS) or inconsistently (in the case of ANP) result in cases being handed over to prosecutors for independent criminal investigation. When cases warrant criminal investigation, the process of referring cases to an external criminal agency is unclear and infrequently used.

With regard to civil oversight of the police, CPAU (2016, pp. 74–75) reported that some respondents in the AUP’s management in Kunduz mentioned that a series of complaint boxes had been introduced in district locations, such as village mosques. They believed, however, that civilians would most likely not use these complaint boxes and instead go to a village elder or a police station if they had a complaint. The report also mentions that in 2014, the police did “not have any current initiatives to make the AUP more accountable to the population” because they perceive that police accountability and feedback systems do not need any improvement (CPAU, 2016, p. 75). In a similar vein, UNAMA (2017, p. 9) found that throughout Afghanistan, “the internal oversight mechanisms to address complaints of torture and ill-treatment within ANP remained under-developed,” and Human Rights Watch (2015, p. 4) observed “rampant impunity” within the Afghan state, including the ANP.

## **4.5 Community Policing**

In this section on community policing we assess the human rights record of the AUP in Kunduz province, the involvement of the public with policing, and the level of public acceptance of the AUP.

### *4.5.1 Human Rights*

The AUP in Kunduz has a dismal record when it comes to respecting and protecting basic human rights. Frerks and Terpstra (2018, p. 249) found that AUP officers in Kunduz seemed to have “a certain level of awareness about human rights and human rights issues” in 2013, but they point out that whether they put this in practice is a different question. Multiple reports indicate the AUP has been engaged in human rights

abuse throughout the investigated time frame (Baczko & Dorronsoro, 2016; Cecchinel, 2014c; HRW, 2015; UNAMA, 2011; 2013; 2015; 2017). Illustrative is the already mentioned “looting rampage” of militias and ALP units under the command of Police Chief Andarabi in Dasht-e Archi in September 2013 (Cecchinel, 2014c). In addition, various provincial police chiefs had strong links to Mir Alam, who himself was the provincial chief of police in Baghlan province from 2005 until 2007 and subsequently became Kunduz province’s most notorious power broker. Militias under the command of Mir Alam and ALP units under his influence committed a wide range of human rights abuses under the watch of the ANP with impunity (Hewad, 2012; HRW, 2015). In one infamous case, a former Taliban commander named Ishaq Nizami switched sides and became a commander of five ALP units. He and his men were involved in the rape of a Kuchi (Pashtun nomad) woman. When Nizami became a suspect in the case by June 2012, “the provincial police chief, Samiullah Qatrah, tried to protect Nizami from prosecution” (Goodhand & Hakimi, 2014, p. 36). Only after a large public outcry and the direct intervention of President Karzai himself were Nizami and his men put on trial and convicted to sixteen years in prison (Goodhand & Hakimi, 2014, p. 36). UNAMA (2011; 2013; 2015; 2017) reported extensively on the torture of detainees by ANP personnel, and according to CPAU (2016), bribery, police violence, and human rights violations continued to be a problem within the AUP in Kunduz province. UNAMA (2011, p. 37) reported that in April 2011,

[d]uring a series of interrogations, ANP officials in Kunduz provincial headquarters beat a detainee on the soles of his feet with cables, slapped the detainee and beat him repeatedly on the back with a metal rod. ANP officials demanded he either confess to killing a local commander or pay a large bribe.

Moreover, in 2012 and 2013, UNAMA (2013, p. 46) found “sufficiently credible and reliable incidents of torture...at the ANP provincial headquarter” in Kunduz city. According to UNAMA, the following testimony of a detainee from Kunduz is illustrative of this dynamic:

I was taken to ANP HQ in Kunduz. Twelve ANP at Kunduz ANP HQ beat me with kicks on my back. I denied the allegation that I had detonated the IED. The head of the counter-terrorism unit (XXX) of ANP Kunduz ordered an ANP officer to bring him a pipe. The pipe was about one meter long and 10-15 inches thick. My hands and legs were tied and I was told to lie down. I was beaten with that pipe. XXX was telling me to confess. I refused. Then XXX burned both my thighs and legs with a hot chained/coiled electric boiler. [UNAMA observed fresh marks consistent with burns on the thighs and legs of the detainee]. My hands were raised and then tied. I was beaten on my testicles twice with a sandal. I had to confess to make the torture stop. If I had not confessed, they would have carried on beating me. They made a video of my confession...and then the torture stopped (2013, pp. 47–48).

Torture of detainees by the ANP continued in the years that followed (UNAMA, 2015; 2017). Between February 1, 2013 and December 31, 2014, UNAMA found ten sufficiently credible incidents of ill-treatment and/or torture in Kunduz province, including an incident involving the torture of a child (UNAMA, 2015; pp. 55–62). In 2016, UNAMA again documented several cases of ill-treatment and torture of detainees by the ANP in Kunduz.

Although the Afghan government voiced its commitment to end the torture of detainees, UNAMA (2017) concluded the practice had persisted within the AUP, including in Kunduz province. It remains unclear on the basis of these sources, however, on what scale torture has taken place. Moreover, the available literature suggests that human rights abuses by the AUP occurred throughout the time frame studied, but it remains unclear to what extent these practices increased, decreased, or stayed the same.

#### 4.5.2 *Public Involvement*

Various foreign sponsored programs attempted to involve the local population in policing Kunduz province. The German, Dutch, and EUPOL missions as well as GIZ projects focused on community policing (also known as *Police-e-Mardumi* in the Dari language). In spite of these programs, during the investigated time frame, the involvement of the public with the AUP decreased in Kunduz province as a whole because of the diminished presence of the AUP outside the provincial capital (Frerks & Terpstra, 2018; Stoker & Westerman, 2018, p. 974). As described in Chapter 3, the most important explanation for this development is the resurgence of the Taliban. CPAU (2016, p. 68) explains that

[d]espite the rollout of community policing projects by GIZ and EUPOL in Kunduz, the imperative of fighting a violent insurgency takes precedence over the ‘softer side’ of policing work, which involves strengthening trust with communities and civil oversight of policing.

Although there is an overall negative trend with regard to community policing in Kunduz province between 2010 and 2018, there were a few positive developments before the intensified resurgence of the Taliban. Between 2010 and 2014, the AUP in Kunduz participated in various activities with the local population, including, for example, a run through Kunduz city with youngsters and workshops about the work of the police at secondary schools (Secretariat of Police-e Mardume – Ministry of Interior, 2013; 2014). In September 2014, with support of the German and Dutch governments, a new office and library facilities were inaugurated at the Department of *Police-e-Mardumi* within the Provincial Headquarters of the AUP in Kunduz city (German Cooperation with Afghanistan, 2014). According to GIZ (2018, p. 5), ten consultation meetings between the police and local population were held in Kunduz province between 2014 and 2017. They also mention however, that “in Kunduz province, the worsening security situation has...had a negative impact on participation by women. In the more remote districts in particular, participation is decreasing considerably. In contrast, participation remains relatively stable in the more accessible districts” (GIZ, 2018, p. 5). Based on the surveyed literature, this trend seems to have continued in 2017 and 2018. The German government reported that on May 24, 2017 a *Police-e-Mardumi* conference was held at the police headquarters in Kunduz city. It was reported that high-level government officials, the police, and 280 citizens of Kunduz province attended the event (German Cooperation with Afghanistan, 2017). In districts with no or limited government control, however, which by 2018 constituted most of the province, community policing initiatives by the AUP seem to have disappeared completely (GIZ, 2018).

### 4.5.3 Public Acceptance

The acceptance of the AUP as the legitimate source of internal security is difficult to measure. Since not all areas of the province have been controlled consistently by the government during the investigated time frame, it is likely that views on the police diverge greatly (see for example: Kalyvas, 2006). Moreover, even when asked directly, people may give socially acceptable answers (Peavy & Witte, 2012). To be precise, “one must keep in mind that community members may tend to avoid expressing negative views about the police” (CPAU, 2016, p. 69).

Nevertheless, the TAF annual survey provides data on the public trust in the ANP. The TAF data suggests a relatively constant level of trust over time in Kunduz province with a decrease in 2015, but it is questionable, however, how representative this data is, for reasons explained further below. It suggests fairly high levels of trust, while multiple sources report police misconduct vis-à-vis segments of the population (see for example section 4.5.1). The results from the TAF survey are shown in the graph below.

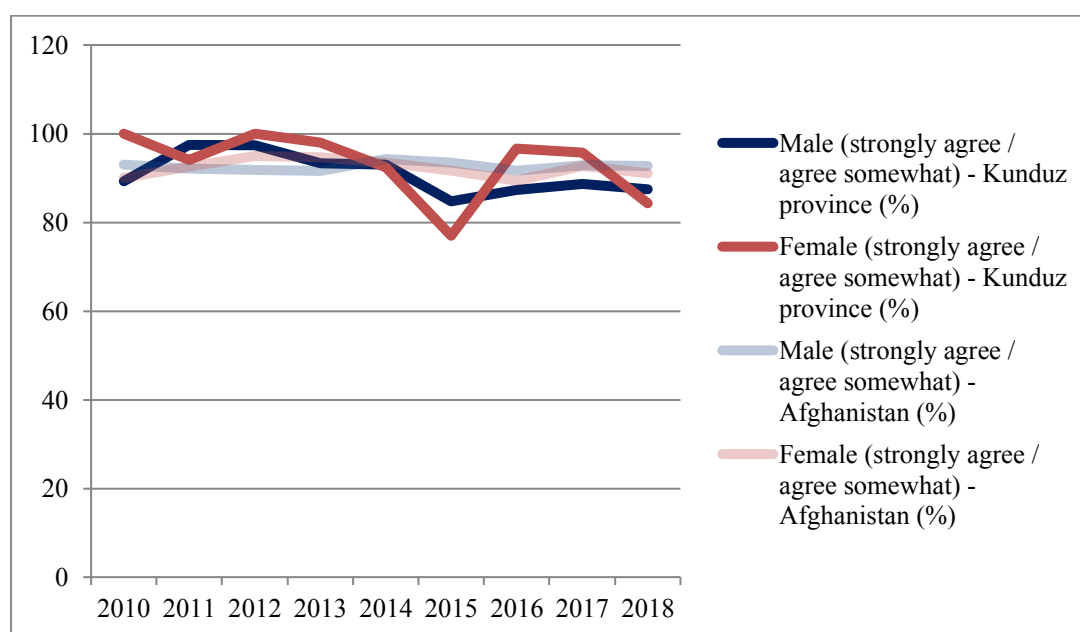


Figure 1 – Responses to the statement: “The ANP is honest and fair with the Afghan population” – Sample Kunduz province and Afghanistan wide - Data collected by The Asia Foundation - Graph created by Dirkx and Terpstra.

Several important caveats apply to these results. Though the sample on the national level is usually around the  $n=10,000$ , the Kunduz province sample has been relatively small, which means that these results are certainly not representative and are without statistical validity for the general population in Kunduz province. For Kunduz province it fluctuated over the years between  $n=27$  (2014) at its lowest and  $n=227$  (2011) at its highest.

The second problem is that it is not entirely clear under which actors’ territorial control these surveys were conducted. Based on the methodological explanations that TAF provides, it is likely that a large majority of the conducted surveys stem from government-controlled territories. If that is the case, the figures would give a distorted



picture of the situation in the province since it is likely that people in Taliban-controlled territory will give different answers about state institutions.<sup>39</sup>

Possibly as a result of these methodological problems, the TAF annual survey gives a more positive picture of people's trust in the ANP than other sources lead one to believe. Other sources indicate that in terms of public perceptions, the psychological impact of the fall of Kunduz should not be underestimated (Cooke & Urwin, 2015; IWA, 2018, pp. 10–12). The fact that the Afghan security forces could be overrun in the provincial capital damaged the trust of the population in the ability of the Afghan state to provide security and justice for its citizens (IWA, 2018, p. 10). As Cooke and Urwin (2015) pointed out with regard to the fall of Kunduz, “the combination of an unresponsive, factionalized government and a large number of abusive militias contributed to popular distrust of the Afghan state” (2015, p. 2).

#### **4.6 Explanations of the Developments**

During the time frame of 2010 to 2018, the capability of the AUP to carry out its tasks decreased. An important explanatory factor for this negative trend is the resurgence of the Taliban in Kunduz province. The worsening security situation severely affected the AUP's *de facto* reach in the province, especially from 2013 onwards. This in turn affected many aspects of the AUP's daily work.

The overall negative developments within the AUP in Kunduz province were not merely a reflection of exogenous factors, however. Within areas in Kunduz that were secure enough for the AUP to carry out civilian policing, it did not live up to the expectations set out in the mandates of the various foreign police-training missions. The AUP's capability to prevent and fight crime has been strongly influenced by local power brokers. Moreover, the AUP itself has been an integral part of crimes it was supposed to fight and prevent. Multiple sources report corruption, bribery, beatings, and torture by AUP officers in Kunduz throughout the investigated time frame. Women remained severely underrepresented in the AUP.

Management and oversight procedures that could have mitigated some of the police misconduct have been structurally weak. Throughout the entire period from 2010 until 2018, there have been indications of severe accountability problems towards both Afghan government institutions and the wider public. Corruption remained pervasive in both the higher and lower ranks of the AUP. Moreover, ALP forces and other pro-government militias were able to act with relative impunity under the auspices of the AUP.

ISAF troops in Kunduz were largely aware of the undesirable behavior of the AUP, but they did not sanction it forcefully. As the intensity of the Taliban insurgency increased,

<sup>39</sup> As explained earlier in Chapter 2, the Survey of the Afghan People has mainly been conducted outside of “inaccessible districts” (see TAF, 2018, p. 226). In 2018, only 7% of the surveys were conducted amongst respondents that were coming out of “inaccessible districts” or “insecure areas” (TAF, 2018, p. 226). Given the fact that large parts of Kunduz province came under Taliban control or influence between 2014 and 2018, it is therefore likely that there is a strong overrepresentation of respondents from government-controlled territory in this sample.

they seemed more willing to tolerate a degree of corruption and misconduct as long as Afghan police chiefs proved to be effective strategic allies.

## 5 Justice Sector

### 5.1 Introduction

In addition to the objective of reinforcing the capability of the AUP, the IPM aimed to improve the quality of the Afghan judicial system and the awareness and acceptance of the Afghan judicial system in Kunduz province.<sup>40</sup> The justice and rule of law components of the IPM focused on a sector with multiple justice providers. Therefore, this chapter has a comprehensive scope that includes multiple relevant actors in the judicial landscape of Kunduz province.

First, the chapter briefly discusses the character of justice provision in Afghanistan. Second, it assesses the developments during the selected time frame for the formal justice sector: (i) the courts, (ii) the DoJ and *huqooqs*, (iii) defense attorneys, (iv) legal education, (v) prison and detention centers, and (vi) corruption. Third, it assesses the developments in the selected time frame for the informal justice sector: *shuras*, *jirgas*, and the Taliban judiciary. Fourth, key themes that closely relate to the missions' broader objectives are discussed: (i) legal awareness, (ii) trust in the judiciary, and (iii) access to justice.

### 5.2 Justice Provision in Afghanistan

In Afghanistan, the legal system has historically consisted of three competing – yet also overlapping – parts: (i) state legal codes, (ii) Islamic religious law, and (iii) local customary law (Barfield, 2008, p. 351). Contrary to most nations in contemporary history, where state power has moved contenders for legal authority to the margins or eliminated them, in Afghanistan, the power of each has waxed and waned (Barfield, 2008, p. 351; Rubin, 1995). Like in most other parts of Afghanistan, the judicial context of Kunduz province is therefore most accurately characterized as a place of legal pluralism: “the existence of multiple normative and judicial orders that co-exist within one sociopolitical space” (Benda-Beckmann, 1997, p. 1). Various actors are involved in the justice sector wherein formal and informal practices overlap and intertwine (ATR, 2015; Bedner & Vel, 2010; MPIL, 2011; Peavey, 2012; Terpstra, 2019). How these three elements play out on the local level in the present time varies from one locality to another. State legal codes generally find more resonance in urban centers, whereas customary law usually finds more application in the periphery.

### 5.3 The Formal Justice Sector

Within the formal justice sector, the most relevant institutions in Kunduz province are the courts, the DoJ and *huqooqs*<sup>41</sup>, prison and detention centers, and the Afghan Independent Bar Association (AIBA).

#### 5.3.1

<sup>40</sup> Comprehensive Mission Design (CMD) for Integrated Police training Mission in Afghanistan (HoA approved CMD-extract 07-07-2011).

<sup>41</sup> Though the *huqooq* is seen as a bridge between the formal and informal system, we address it here as an institution that is formally a part of the DoJ.

### 5.3.2 Courts

The trend during the studied time frame was a fluctuating number of judges authorized on the *tashkil* and operating in practice (see the table below). The existence of courts in the districts of Kunduz province also fluctuated, varying between a presence in all districts and a presence in only a few districts.

The 2010–2013 time frame

In 2010, there were approximately 50 judges active throughout Kunduz province (TLO, 2010, p. 111). The established primary court of Kunduz and the provincial Appeals Court consisted of

Year	<i>Tashkil</i> authorized	Actual number
2010	Information missing	50
2011	80	67
2014	74	60
2017	82	Approximately 70–79

seven divisions each (UNAMA, 2014, p. 1). The primary court covered criminal, civil, public rights, public security, and traffic cases. The provincial appeals court dealt with family and juvenile cases (MPIL, 2011, p. 15). A special anti-corruption court with regional jurisdiction was established in early 2010 (UNAMA, 2014, p. 1). In 2010, in each district, at least one judge was present, but that used to be two or three in previous years (TLO, 2010, p. 111). Because of the pressing security situation in early 2010, most of the districts had only one judge left. In some district courts, such as the one in Dasht-e Archi, the judges were forced to temporarily relocate to Kunduz city for security reasons (TLO, 2010, p. 111). People who wanted to use these district courts had to travel to Kunduz city.

In early 2011, the formal court system in Kunduz consisted of 67 sitting judges, with an authorized number of judges in the *tashkil* of up to 80 judges (MPIL, 2011, p. 15). In each of the districts, one primary court operated with at least three judges as far as the security situation allowed it (MPIL, 2011, p. 15). Physical court buildings did not exist in each district. In Aliabad, there was no courthouse, and in Chahar Dara, the court sessions were held in the district governor’s office (MPIL, 2011, p. 15). Most of the buildings were not owned by the state but were rented from private parties and as a result, much of the budget went toward paying the rent of the buildings (MPIL, 2011, p. 15). There were no female professionals amongst the judges and prosecutors at the time (MPIL, 2011, p. 13). In 2011, the only women working in the formal justice sector were “two staff members of the Family Dispute Office of the Department of Justice (...)” (MPIL 2011, p. 13).

According to the 2011 assessment of the Max Planck Institute, the court system in Kunduz was handicapped by a variety of administrative deficiencies (2011, p. 15). The “registration system for incoming cases” was “primitive” (MPIL, 2011, p 15). There was “no functioning registration office” and “depending on the case, the judge who first receive[d] a case” decided on whether and how to proceed with it. As such, there was “no standardized procedure for processing cases – from filing proceedings to scheduling cases for hearing and trial” (MPIL, 2011, p. 15). The institute further

observed that the courts passed sentences “with little explanation” (MPIL, 2011, p. 14). The court hearings were “frequently interrupted by visitors and (...) [were] full of other persons not involved in case” (MPIL, 2011, p. 14). Nevertheless, the report concluded that “minimum standards” had been established, and the focus reportedly “shifted towards improving the performance of the judges in particular and of the [judicial] system in general” (MPIL, 2011, p. 15). As for the cooperation with higher levels of the judiciary, the institute estimated that the judiciary lacked “effective coordination with the Supreme Court in Kabul due to [a] lack of transportation and communication tools” (MPIL, 2011, p. 15).

### The post-IPM time frame

By September 2014, the numbers of sitting judges had decreased somewhat to 60 sitting judges and an authorized *tashkil* of 74 judges for the whole province (UNAMA, 2014, p. 1). There were still no female professionals amongst the judges and prosecutors (UNAMA, 2014, p. 9). In September 2014, UNAMA reported that all districts, including those influenced by the insurgency, had active courts with usually at least two judges and one administrator (2014, p. 2). The standard legal setting ideally remained “three judges for each district” (UNAMA, 2014, p. 2).

In 2015, the formal justice system was severely affected by a resurgent Taliban. Most of the infrastructure that had been developed was destroyed during the Taliban’s campaigns in 2015 (IWA, 2018, p. 10). The district court offices that were mostly located on the district governor compounds were severely damaged or destroyed once the Taliban captured these places between April and June 2015 (IWA, 2018, p. 10). IWA quoted the chief judge of the Dasht-e Archi district court in an interview: “when the Taliban took Dasht-e Archi, they totally destroyed the court. Nothing was left. No door or room, no desk and chair” (IWA, 2018, p. 10).<sup>42</sup> A similar story was recorded in Chahar Dara district. The chief judge of Chahar Dara reportedly stated during an interview: “Chahar Dara primary court fell to the Taliban in the spring of 1394 [2015]. Everything has been stolen from the court. All justice organizations, security departments and civil departments collapsed. Nothing was left (...)” (IWA, 2018, p. 10).<sup>43</sup>

During the eventual attack on Kunduz city itself, Taliban fighters and other irregular criminals looted government offices, NGO offices, and international organizations. They entered the city appeal court complex where they vandalized offices and looted files and computers (IWA, 2018, p. 10). According to Jackson (2018, p. 20), the recordkeeping of the formal system was attacked too. She noted,

Several judges spoke of the Taliban’s efforts to steal official records in order to ensure that they had accurate accounts of land ownership or prior litigation. This was corroborated by civilians and by interviewees on the government side. During seizures of district centers and cities, the Taliban have systematically taken records from the prosecutor’s office, as well as marriage

<sup>42</sup> IWA’s interview with the head of the Dasht-e Archi primary court. The interview took place in Kunduz city on 27 May 2017.

<sup>43</sup> IWA’s interview with the chief judge of Chahar Dara. The interview took place in Kunduz city on 29 May 2017. The spring of 1394 in the Solar Hijri calendar equals the spring/summer of 2015 in the Gregorian calendar.

records and land deeds. They have also coerced or bribed government officials to steal specific records on their behalf (Jackson 2018, p. 20).

With the Taliban's advancement in 2015, the judges from Chahar Dara, Dasht-e Archi, and Qal-e-Zal had to relocate to Kunduz city (IWA, 2018, p. 9). Since then, they continued their work from the Kunduz appeal court building in Kunduz city. The judges from Khanabad relocated to Kunduz city in summer 2016 (IWA, 2018, p. 9). Only in Aliabad and Imam Sahib the district judges remained within the districts itself (IWA, 2018, p. 9).

In total, there were 227 documented justice personnel associated with the state judiciary in Kunduz province by October 2017 (IWA, 2018, p. 12).<sup>44</sup> The total number of judges authorized on the *tashkil* was 82. Most of these judges were working in Kunduz city and not in the districts anymore. Moreover, there were approximately 145 staff members in administrative and supportive positions for the judiciary. According to the estimation of IWA, based on an interview with a UN official, the courts were at 85–96% of the *tashkil* capacity (IWA, 2018, p. 12).<sup>45</sup>

In general, the physical security of the court buildings and its personnel has been a challenge throughout the time frame studied (TLO, 2010; IWA, 2018, p. 13; UNAMA 2014). District judges and the provincial chief of justice are known to be concerned about their personal safety. The assassination of the judge that headed the Internal Security Dewan at the Kunduz appeal court in August 2013 and an attack on a judge in May 2014 demonstrate that these concerns have been well-founded (UNAMA, 2014). As further observed by IWA,

The court complex in Kunduz city is located next to the National Directorate of Security, which makes it more vulnerable to attacks by armed opposition forces. The west wall of the court compound faces a road and open fields, making it a vulnerable entry point for a complex attack. The Supreme Court in Kabul has provided funding to enable the building of concrete barriers to reinforce the west wall. Little other infrastructure investments have been made despite significant damage to court offices and equipment during the Taliban offensive of 2015. IWA researchers observed that in some offices, furniture and equipment are worn out to the point of being unusable (2018, p. 13).

### 5.3.3 Department of Justice/Huqooqs

According to the Max Planck Institute, the DoJ had 53 employees in Kunduz province in 2011. There was a legal aid department with four defense lawyers and a *huqooq* in each district (MPIL, 2011, p. 17). Furthermore, the institute reported that three *huqooq* staff members were working in each district of Kunduz in 2011 (MPIL, 2011, p. 17). The *huqooq* offices belong to the DoJ and were intended to act as the link between formal and informal justice mechanisms (MPIL, 2011, p. 17). According to the Max Planck Institute, the *huqooq* offices were

<sup>44</sup> IWA (2018) here refers to a *tashkil* document that the organization obtained from the Afghanistan Supreme Court in October 2017. It is available in their report on page 31 in a translated English version.

<sup>45</sup> The authors were not able to find written sources to support this, but it seems likely that there were no female professionals amongst the judges and prosecutors at this time either.

(...) not competent in criminal matters. Such cases have to be referred to the police and/or prosecutors. When a civil case is brought before a *hoqooq* office, the *hoqooq* staff refers the case to a local shura first. On [the] district level, this can be a shura established under the National Solidarity Program (NSP) or another shura, which seems to be capable of conflict resolution. If the shura is not able to mediate a solution, the *hoqooq* staff tries to find a solution in consent with the parties involved. Written case information from the shura is taken into consideration. If the *hoqooq* staff is not able to negotiate a solution either, the case is referred to the ordinary courts (MPIL 2011, p. 17).

According to the Dutch government, GIZ reported that the *huqooqs* throughout Kunduz province were approached for approximately 374 cases in 2011, 764 cases in 2012, and 912 cases in 2013.<sup>46</sup> It was further reported that some of those cases were solved, referred to a court, or remained in progress.<sup>47</sup> The authors were, however, not able to find any other sources or studies to compare these numbers to.

UNAMA reported that new office buildings for the *huqooqs* were built and handed over to the DoJ in 2013 (2014, p. 4). The DoJ head office in Kunduz was newly built and opened in early 2014 (UNAMA, 2014, p. 4). In 2014, all branches of the DoJ were moved to this office (UNAMA, 2014, p. 4). In 2014, it was further reported that the DoJ office building and *huqooqs* in the various districts were at their right sizes but were remarkably underused by the public (UNAMA, 2014, p. 3). Reportedly, this was not because they were malfunctioning but because of the noncommunication of parts of the population with state institutions in general (UNAMA, 2014, p. 4).

For the 2014–2017 time frame, GIZ reported on Northern Afghanistan that “*huqooqs* are still regarded more highly than the state courts by the local population,” but the “confidence in non-governmental institutions such as *jirga* and *shura* is considerably higher and has increased in the period under review” (GIZ, 2018, p. 5).<sup>48</sup> GIZ further reported that in a number of districts in the provinces of Kunduz, Baghlan, and Badakhshan, there was “no more access or only very limited access to the *huqooqs* following their takeover by the Taliban or other rebel groups” (2018, p. 5). On the number of cases handled by the *huqooqs*, GIZ notes that given the security situation, “no or only few data were available,” particularly from Kunduz province (2018, p. 5). Field visits would be required to verify which districts still maintained a functioning *huqooq* by 2018.

Finally, according to IWA, corruption is perceived to be persistent within the DoJ. In interviews held by IWA, a number of respondents reportedly identified the DoJ specifically when asked about corruption in justice institutions (IWA, 2018, p. 19).

#### 5.3.4 *Defense Attorneys and the Legal Community in Kunduz (AIBA)*

AIBA was established in Kunduz province at the beginning of the time frame studied (MPIL, 2013, p. 27). The general trend has been that the number of registered attorneys

<sup>46</sup> Source: Eindexvaluatie Geïntegreerde Politietrainingsmissie, pp. 24-26. The formal justice system of Kunduz province was reported to have handled 2660 criminal cases in 2016 (TAF and MoJ 2016, p. 16).

<sup>47</sup> Eindexvaluatie Geïntegreerde Politietrainingsmissie, pp. 24-26.

<sup>48</sup> It has to be noted that the GIZ report does not differentiate between government-controlled territories, contested territories, and insurgency-controlled territories.

with AIBA increased. At the same time, the geographical reach of the attorneys fluctuated.

In February 2011, there were 21 registered defense attorneys in Kunduz province according to the Max Planck Institute (2011, p. 20). According to the institute, they usually worked “as legal counsellors and provide[d] only written statements but rarely represent[ed] defendants at trials” (MPIL, 2011, p. 20). On 18 September 2011, a Kunduz sub-office of AIBA was opened as the first provincial office in Afghanistan (MPIL, 2013, p. 27). On 28 November 2012, the first regional bar exam was taken by 41 applicants, including 3 female applicants.

By January 2013, according to AIBA, there were 50 registered defense attorneys in Kunduz province—6 women and 44 men (MPIL 2013, p. 27). Of those 50 lawyers, 39 brought cases of the public in front of courts and other justice institutions (MPIL 2013, p. 27). In a Memorandum of Understanding between AIBA and the Department of Women’s Affairs of Kunduz Province, it was agreed that AIBA would provide “free legal advice to cases referred to the DoWA” (MPIL, 2013, p. 31). These included cases of domestic violence and women who ran away from home (MPIL 2013, p. 31).

By September 2014, AIBA had 70 registered lawyers, of which 10 were female (UNAMA, 2014, p. 5). AIBA continued to provide legal advice and legal aid, but the coverage throughout the province was modest because fewer services were available outside of Kunduz city (UNAMA, 2014, p. 5). Only outside of the insurgent-controlled areas could female professionals work relatively well in the law profession (UNAMA, 2014, p. 9). In February 2015, the Kunduz branch of AIBA opened a new office.<sup>49</sup> During the attack on Kunduz city, however, most legal professionals had to flee. This was also the case for the attorneys.

AIBA-registered attorneys have been involved in *pro bono* cases. According to the Advocates’ Law of Afghanistan, lawyers are required to defend three criminal cases each year free of charge – *pro bono*.<sup>50</sup> This requirement is further reiterated by AIBA’s By-Laws.<sup>51</sup> In Kunduz province, AIBA lawyers reportedly took up 109 *pro bono* cases in 2016 (TAF & MoJ, 2017, p. 63). In Balkh, for example, the number was only 43. In Kabul however, the number was 440 (TAF & MoJ, 2017, p. 63). Compared to neighboring Balkh province, Kunduz had a low criminal caseload in the formal justice system (Kunduz 2660 in 2016 – Balkh 4570 in 2016), but a relatively high number of *pro bono* cases handled (TAF & MoJ, 2017, pp. 16, 63). Therefore, comparatively, it seems that the attorneys’ capacity and willingness to defend *pro bono* cases was relatively high in Kunduz province in 2016, whereas the caseload in the court system as a whole was relatively low.

By March 2017, 101 attorneys (87 male attorneys and 14 female attorneys) were registered with AIBA in Kunduz province (IWA, 2018, p. 16). As IWA observed at the

<sup>49</sup> See for example: <http://www.germancooperation-afghanistan.de/en/news/afghan-lawyers%E2%80%99-association-opens-new-offices-kunduz-german-and-dutch-support>

<sup>50</sup> Advocates’ Law, Article 13(15).

<sup>51</sup> AIBA By-Law, Article 43.



end of the time frame, attorneys in Kunduz “provide legal counsel and represent citizens in cases that go to court” (IWA, 2018, p. 16). This included providing criminal defense (IWA, 2018, p. 16). The attorneys generally “do not represent clients in the Taliban judiciary or in CBDRs proceedings,” but “do represent national security defendants, including suspected Taliban fighters in the state judiciary” (IWA 2018, p. 16). Despite the evolving security situation, it seems that AIBA-registered attorneys continue to function. There are also law graduates who operate in Kunduz without being registered to AIBA, delivering legal aid services for humanitarian organizations and NGOs (IWA, 2018, p. 16).

### 5.3.5 Legal Education

Kunduz province does not have an elaborate tradition of legal education in terms of modern law (MPIL, 2011, p. 24). The opening of a law faculty in Kunduz city, however, created opportunities for students to study modern law in Kunduz province itself. In 2011, there also were about 57 students attending a private law school, called the Ajir Institute. Max Planck estimated that about 120 students in total studied law at these two schools in 2011 (MPIL, 2011, p. 24).

Similar to other parts of Afghanistan, only about 30% of the Kunduz judiciary was reported to possess a modern law degree in 2013, and most of them had a *sharia* law background (MPIL 2013, p. 22). Most of the judges, however, took part in additional training programs and courses offered by international organizations throughout the years (MPIL, 2013, p. 22; UNAMA, 2014, p. 2).

By 2014, over 90% of the judges had reportedly attended trainings and courses, especially the legal education training courses offered by the Max Planck Institute (UNAMA, 2014, p. 2). The level of education reportedly remained similar to that in other provinces, and the majority of judges continued to have a *sharia* law background (UNAMA, 2014, p. 2). In the surveyed literature, there were no independent studies that reported on the levels of legal education in Kunduz province specifically for the time frame after 2014.

For 2016, GIZ reported that other northern provinces, such as Balkh, Baghlan, Jowzjan, and Takhar, hosted 89 female law students with internships in various institutions in the judicial sector, including the courts, public prosecutor office, the police, the DoJ, and the authority responsible for women’s affairs at the provincial level (2018, p. 4). This, however, did not seem to have taken place in Kunduz province (GIZ, 2018, p. 4).

For Afghanistan as a whole, TAF and MoJ reported in 2017 that legal education “remains a bifurcated system that creates inefficiencies and a divided legal landscape” (2017, p. 157). Afghan legal professionals are generally versed only to a limited extent in the laws, *sharia*, and practical skills necessary to “navigate the complex, rich and still developing legal landscape of Afghanistan” (2017, p. 157). Much more effort is necessary in terms of “basic skills (basic research writing and analysis), an understanding of doctrine (law and *sharia*) and practical skills (legal writing, trial advocacy, etc.) (...)” (2017, p. 157). If these skills are not improved, “students will continue to fail to serve the needs of the justice system” (2017, p. 157).

### 5.3.6 *Prison and Detention Centers*

In January 2011, there were an estimated 460 inmates in the central prison of Kunduz (MPIL, 2011, p. 19). Of that number, 16 inmates were female. The pretrial detainees and convicted inmates were held separately (MPIL, 2011, p. 19). Furthermore, there was a Juvenile Rehabilitation Centre where thirteen juvenile offenders were accommodated. According to the Max Planck Institute, the prison's capacity was only a maximum of 150 inmates, so the prison was severely overcrowded (MPIL 2011, p. 19). Generally, the hygiene conditions were poor, and the prisons lacked enough guards and staff to properly search visitors (2011, p. 19). With the low number of staff, it was relatively easy to smuggle weapons inside (MPIL 2011, p. 19). Another concern was the existence of suspected Taliban members amongst the inmates that would allegedly be recruiting fighters (MPIL 2011, p. 19). As already described in Chapter 4, torture of detainees has been reported by UNAMA throughout the studied time frame in reference to NDS and ANP facilities in Kunduz province (UNAMA, 2011; 2013; 2015; 2017).

On 28 September 2015, during the fall of Kunduz city, the Taliban overran the Kunduz city central prison (Osman, 2015, p. 2). The Taliban released hundreds of inmates from the prison, among whom there were a substantial number of Taliban fighters (Osman 2015, p. 2). According to UNAMA, around 600 prisoners were released, and some of them were provided with weapons to fight alongside the Taliban (UNAMA, 2015, p. 1). About 57 children and 35 women were also amongst these 600 (IWA, 2018, p. 15). Only about 20 inmates of the original 600 returned to prison after the government forces retook the city (IWA, 2018, p. 15).

By 2018, the prison population in the central prison of Kunduz had risen again to 319 inmates—295 male and 24 female (IWA, 2018, p. 16). Of these 319, 145 were held in pretrial detention (IWA, 2018, p. 16). Allegedly, a majority of the women were charged with the 'moral crime' of running away (IWA, 2018, p. 16). IWA (2018, p. 16) further reported that there were limited detention facilities in the districts. Most criminal defendants were therefore being held in the central prison. However, conducting the trials in the district courts requires transportation of the inmates, which was difficult given the security situation. In the Aliabad court for example, the trials were delayed because of the transportation problem (IWA, 2018, p. 13). In the districts, female inmates were usually held in the same detention facilities as male inmates, putting them in a particularly vulnerable position. As IWA emphasized, "In addition to the potential for abuse by prison guards and other inmates, female prisoners are particularly vulnerable to abduction and abuse if the prison were to be attacked again by Taliban forces" (IWA 2018, pp. 13-14).

### 5.3.7 *Corruption*

In 2011, it was observed that a general culture of corruption was found throughout the whole of the formal justice system in Kunduz (MPIL, 2011, p. 16; MPIL, 2013; IWA, 2018). This was reported both amongst personnel with low incomes and personnel with larger private resources. At various levels, personnel were known to be accepting bribes (MPIL, 2011, p. 16). Moreover, the Max Planck Institute stated in 2011 and 2013 that

a main deterrent of the “capacity of the judiciary to effectively deliver justice are interventions of politicians and local strongmen in judicial affairs” (MPIL, 2011, p. 15; MPIL 2013, p. 23).

At the end of the time frame studied, the general culture of corruption seems to still have existed. Nearly all respondents of the IWA study in Kunduz province perceived the state justice system as a whole to “be the most vulnerable to corruption due to the low salaries of personnel and a lengthy and bureaucratic process that allows for more opportunity for rent-seeking behavior” (IWA, 2018, p. 19). A continuing problem that was reported throughout the whole time frame studied is powerful actors interfering in the judiciary, which undermines judicial independence. As IWA notes, “judges in any context can face violent reprisals from armed groups, such as criminal gangs and mafias, an insecure environment as well as a lack of personal security for judges in Kunduz makes judicial personnel particularly vulnerable to influence and interference” (2018, p. 20). At the same time, IWA (2018) also reported that in the perception of the stakeholders interviewed in their study, bribe taking in the judiciary had at least somewhat diminished. The perception was that this resulted from judges receiving higher salaries (IWA, 2018, p. 19). This appeared to have followed from anti-corruption measures at the national level.<sup>52</sup>

Overall, it seems fair to assess corruption as a structural issue not only in Kunduz province but throughout Afghanistan (see for example: Gardizi, Hussmann & Torabi, 2010; IWA, 2018; UNAMA, 2018). The authors were not able to establish a definite improvement or deterioration based on the literature, but it appears that bribe taking in the judiciary decreased somewhat (or at least the perception of it), while the influence and interference by powerful figures persisted.

#### **5.4 Informal Justice Mechanisms**

As in most parts of Afghanistan, the population of Kunduz largely relies on informal justice mechanisms, particularly for civil cases (Coburn, 2013; MPIL, 2011; Murtazashvili, 2018; Peavey, 2012; Wimpelmann, 2013). Relevant actors outside of the formal system include *jirgas* and *shuras* of elders and religious leaders/village representatives (MPIL, 2011, IWA, 2018; Carter & Conner, 1989; Wardak, 2003a), and the Taliban judiciary (Ali, 2019, IWA, 2018; Jackson, 2018). In some studies, the term “community-based dispute resolution” (CBDR) is used in reference to the “array of *shuras* or *jirgas* of elders, religious scholars or influential individuals who exercise quasi-governance authority and mediate disputes” (IWA, 2018, p. 8). The Taliban judiciary is treated as a separate category (IWA, 2018, p. 8).

##### *5.4.1 Shuras and Jirgas*

Following Carter and Connor (1989), we define *shura* as a “(...) group of individuals that meets only in response to a specific need in order to decide how to meet the need. In most cases, this need is to resolve a conflict between individuals, families, groups of

<sup>52</sup> The IWA report does not provide a specific time frame for this development. Hence, the authors were not able to identify at what point in time this perception seemed to have changed.

families, or whole tribes” (p. 9).<sup>53</sup> The term *jirga* is understood here as an institution that has historically resolved political, social, economic, cultural, judicial and religious conflicts by making authoritative decisions (Wardak, 2003a). *Jirga* is “the product of Pashtun tribal society and operates according to the dictates of the *Pashtunwali*, an inclusive code of conduct guiding all aspects of Pashtun behavior and often superseding the dictates of both Islam and the central government” (Carter & Connor, 1989, p. 7). Wardak defines the *jirga* more broadly on multiple levels of society: “[the] *jirga*, its norms, techniques and processes define the indigenous ways Afghans resolve local, tribal and national conflicts” (...) (2003a, p. 17).

In informal justice mechanisms, there is often a lack of understanding of “the Afghan Constitution, statutory law and binding international law,” which can lead to “severe violations of fundamental and human rights” (MPIL, 2013, p. 29). This holds true especially for “cases involving women or children and in the settlement of criminal cases by *shuras*” (MPIL, 2013, p. 29). Generally, *shuras* and *jirgas* in Kunduz have been reported to be “discriminatory on the basis of class, gender and money” (2013, p. 30). In both *shuras* and *jirgas*, it has to be noted that strongmen and warlords are often able to influence decisions (Wardak, 2003a, p. 5; Carter & Connor, 1989; Terpstra, 2019). Hence, the actual capacity of enforcement can be limited if the *shura* or *jirga* decision goes against the interests of influential people involved in the dispute (IWA, 2018, p. 15; Terpstra, 2019, p. 12). In 2018, IWA reported a lack of codified procedural rules to guarantee impartiality and independence in informal justice mechanisms (IWA, 2018, p. 15). In the time frame studied, it seems fair to state that the influence of powerful actors on informal justice provision persisted, while the Taliban’s influence increased (also see the next section on the Taliban judiciary).

Nevertheless, both at the beginning and the end of the time frame studied, the *shuras* and *jirgas* were reported to be a widely accepted form of dispute resolution (MPIL, 2011, pp. 20-21; IWA, 2018, p. 21). As the Max Planck Institute noted in the first year of the studied time frame, many inhabitants of Kunduz province preferred informal, traditional systems of conflict resolution because they are viewed as more efficient and relatively free from corruption, and their decisions are generally accepted (MPIL, 2013, p. 29). In the realm of criminal cases, the informal sector was popular too because it may offer “victims the possibility to receive material compensation for harm done to them, and to restore harmony in the local community” (2013, p. 29). At the end of the time frame studied, CBDR mechanisms such as *shuras* and *jirgas* continued to be perceived as the most accessible and accepted form of dispute resolution (IWA, 2018, p. 15; TAF, 2018, pp. 120-123).

The Max Planck Institute concluded that the relation between courts and informal systems of conflict resolution in the Kunduz region generally tended to be constructive and cooperative (2013, p. 30). According to the Max Planck Institute ordinary people did not seem to perceive a conflict between formal and informal sectors of the judiciary (2013, p. 29). The government sometimes takes an observer role in the process of a

<sup>53</sup> See also: Coburn (2013).

*jirga*, or the district governor solves a case in the presence of the local elders and disputants (ATR, 2015, p. 31). In other instances, cases are referred from a *jirga* to the *huqooq*, or from the court to a local *jirga* (see for example: ATR, 2015). Based on the investigated literature, the authors were not able to establish whether that cooperation improved or deteriorated over time.

#### 5.4.2 *The Taliban Judiciary*

In 2010, there were Taliban judges active in Kunduz province, although they were not as extensively organized as they became by 2018. The Taliban had set up its shadow judiciary run by *mullahs*, though the number of *mullahs* involved was not verifiable at the time (TLO, 2010, p. 138). According to TLO, the Taliban judiciary was “rather an ad-hoc establishment of a Taliban court or appointment of a Taliban judge” if the Taliban’s services were requested or needed (TLO, 2010, p. 111). Reportedly, for people who had problems in the past with accessing the formal court system, the Taliban justice system was perceived as “accessible, free of corruption, and efficient” (TLO, 2010, p. 138). The Taliban was usually able to enforce its decisions through commanders operating in a particular area (TLO, 2010, p. 138). At the time, TLO reported that most cases heard by Taliban courts were about unresolved land and/or property disputes (2010, p. 138).

In areas that were under the control of the Taliban at the time, the enforcement of a Taliban court ruling was generally guaranteed in contrast with a ruling given by the state judicial system (TLO, 2010, p. 138). A judge from Kunduz province reportedly confirmed that the local population chose to turn to the Taliban because they hoped to have their conflicts “resolved quickly and efficiently without having to bribe court officials” (TLO, 2010, p. 138). Further, the Max Planck Institute reported in 2011 that the Taliban operated parallel justice structures (MPIL, 2011, p. 15):

Gortepa area of Kunduz city and Mullah Quli of Dasht-e Archi reportedly have judiciary and conflict resolution committees to which some citizens submit cases for consideration that have been pending in the courts for a long time. Besides, the Taliban form *ad hoc* courts in other areas of the province (MPIL 2011, p. 15).

Additionally, the Max Planck Institute reported that some local *shuras* in the districts of Chahar Dara and Dasht-e Archi were under the influence of the Taliban (MPIL 2011, p. 22).

By 2018, the Taliban judiciary was one of the main mechanisms that resolved judicial cases in Kunduz province. However, the exact figures of the cases handled are not known (IWA, 2018, p. 14). Following the pattern of increased territorial control, the Taliban judiciary expanded its reach throughout the years (IWA, 2018, pp. 14-15; Ali, 2019; Terpstra, *forthcoming*). For many people living under insurgent control, the only available option to resolve their grievances became the Taliban court (Ali, 2019, p. 11).

According to a report on Taliban governance by Jackson in 2018, Kunduz province “had a [Taliban] appeals court in the province and [Taliban] judges for every district”

(Jackson, 2018, p. 19).<sup>54</sup> In a recent study carried out by Afghanistan Analysts Network in Dasht-e Archi district, all the respondents agreed that “the Taleban ‘out-govern’ the Afghan administration, particularly in the justice sector, in addressing disputes among local people” (Ali, 2019, p. 11). This is not because the Taliban judiciary system is perfectly organized but because the government justice system is effectively paralyzed and operating remotely from Kunduz city (Ali, 2019, p. 11). As reported in the first years of the time frame studied, locals tend to take their cases to the Taliban court because the cases are generally “adjudicated faster, without corruption and with satisfactory outcomes” (Ali, 2019, p. 11). Ali (2019, p. 11) explains that registering cases with the Taliban is usually the most effective way for a disputant to make sure that the opposing party shows up for the court case.

According to IWA (2018, p. 15), the Taliban sometimes refer disputes to local *shuras* and *jirgas* for resolution throughout Kunduz province, but this practice seems to differ from one locality to another. As two fieldwork-based studies in Kunduz indicate, the Taliban’s district governor, Taliban judges, and local elders play a key role in the Taliban judiciary (Ali, 2019, p. 12; Jackson, 2018, p. 19). For example, Ali explains about the Taliban judiciary that

Minor cases, such as family disputes, are sometimes referred to the local elders’ council. This depends on both sides accepting the move. The elders’ council decisions are often approved by the Taleban court and again implemented by the [Taliban] shadow district governor (2019, p. 12).

However, in other instances, the Taliban judiciary has been known to go against an informal settlement brokered by local elders (Giustozzi et al., 2013, p. 26). In general, customary codes of conduct (such as *Pashtunwali*) and the Taliban’s interpretation of *sharia* agree on some issues and disagree on others (Giustozzi et al., 2013, p. 26; Leibl, 2007).<sup>55</sup>

Moreover, one has to be aware of the harsh punishments that the Taliban continues to mete out (Giustozzi et al., 2013; Jackson, 2018). As explained by Giustozzi et al.,

Murder is in principle punished with the firing squad, but the victim’s family can forgive if they like, usually in exchange of blood money. Government officials, soldiers and police (all considered to be criminals by the Taliban) are also to be punished with hanging after having been warned to quit their job; spies are to be shot. Adulterers (married men and women) are to be stoned and thieves to have a limb amputated; lashes are inflicted on those responsible of other infractions, such as ‘adultery’ with an unmarried woman (120 lashes), adultery with a widow (60 lashes) (...) (2013, p. 24).

<sup>54</sup> According to Jackson, Kunduz province had stationary Taliban judges in all districts in 2018 with appointed courts and jails, whereas in other provinces such as Logar, there was only one provincial judge and a few mobile Taliban judges (2018, p. 19).

<sup>55</sup> Giustozzi et al. (2013, p. 26) explained, “In some occurrences, the Taliban judiciary can (...) go against an informal settlement. (...) These divergent attitudes are reflected in the approach of the [Taliban] judges towards Pashtunwali (...). Settlements brokered by village elders in Pashtun villages will typically follow Pashtunwali. Reconciling Pashtunwali, other community codes (which exist among Tajiks, Uzbeks, and other ethnic groups) with Sharia is in any case not always easy. (...) the retributive Islamic law, focusing on the crime, lacks, in specific situations, the flexibility offered by reparatory customary law, which is focused on the unity of the community”.

Furthermore, as Jackson (2018) explains, individuals who are suspected by the Taliban of spying for the government are often pressured to make a confession and then executed. These pressured confessions are also used to further instigate fear amongst the population.

### 5.5 Legal Awareness Amongst the Population

In the beginning of the time frame studied, the Max Planck Institute reported that the DoJ tried to raise legal awareness amongst the population of Kunduz, particularly through the *huqooq* offices. Its method involved appointing one staff member in every district who would distribute information to citizens about the services that state justice institutions can offer them (MPIL, 2011, p. 23). Generally, there was not a high awareness of state justice institutions and legal rights amongst the population. This certainly was, and continues to be, related to the high levels of illiteracy amongst the general population.<sup>56</sup>

In the surveyed literature, no independent studies with a representative sample from Kunduz province were found to identify an increase or decrease in public legal awareness specifically. For Afghanistan as a whole, TAF and MoJ were cautiously optimistic about increased legal awareness in 2016–2017: “Throughout Afghanistan, public legal awareness is increasing. While, unfortunately, it may remain lowest among those most in need of counsel” (2017, p. 4).

### 5.6 Trust in the Judiciary

According to the data collected in the TAF annual survey, the trust in courts in Kunduz fluctuated, with the general trend being slightly upwards during the time frame studied. The figure below shows the responses over time to the question, “Tell me do you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the following statements about state courts: state courts are fair and trusted.”

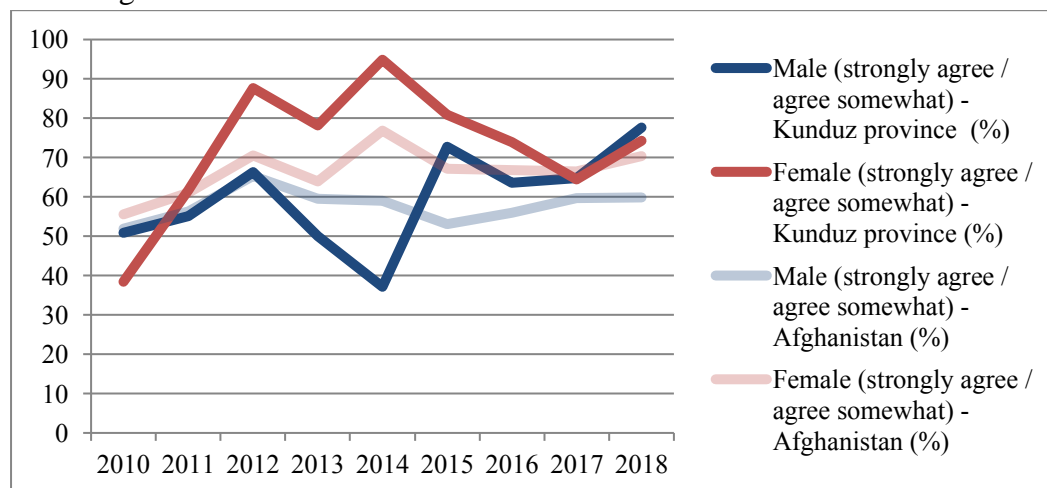


Figure 2 - Responses to the statement, “State courts are fair and trusted” – Sample Kunduz province and Afghanistan wide – Data collected by The Asia Foundation – Graph created by Dirx and Terpstra.

<sup>56</sup> As noted by one of the Afghanistan experts reviewing this report.

However, as explained in Chapter 4, it is necessary to emphasize that several important caveats apply to these results.<sup>57</sup> As noted earlier, the size of the sample in Kunduz province has been relatively small. This prevents the results from being representative or having statistical validity for the general population in Kunduz province. For Kunduz province, the sample fluctuated over the years between 27 respondents (2014) at its lowest and 227 (2011) at its highest.

The second problem, as noted earlier, is that we do not know under which actors' territorial control these surveys were conducted. Based on TAF's own methodological explanations, it seems likely that a large majority of the conducted surveys stem from government-controlled territories. This would provide a distorted picture of the situation in the province because it is likely that people in Taliban-controlled territory will give different answers about state institutions.<sup>58</sup>

Possibly as a result of these methodological problems, similar to the problems identified in the previous chapter on the police, the TAF annual survey paints a more positive picture of people's trust in the justice system than other sources. Other sources indicate that in terms of public perceptions, the psychological impact of the fall of Kunduz should not be underestimated (Cooke & Urwin 2015; IWA 2018, pp. 10-12). As Cooke and Urwin (2015) noted with regard to the fall of Kunduz, "the combination of an unresponsive, factionalized government and a large number of abusive militias contributed to popular distrust of the Afghan state" (2015, p. 2).

## **5.7 Access to Justice**

As the discussion above indicates, access to justice in Kunduz province means something different than access to formal institutions only. According to Bedner and Vel (2010), access to justice exists if

People, notably poor and disadvantaged, suffering from injustices, have the ability to make their grievances be listened to and to obtain proper treatment of their grievances by state or non-state institutions leading to redress of those injustices on the basis of rules or principles of state law, religious law or customary law in accordance with the rule of law (p. 7).

These stages in the process of gaining access to justice show how delicate and comprehensive the whole process is. In most aspects, access to justice has been limited for the population in Kunduz, particularly for women and ethnic minorities. Given the context of legal pluralism, a state-centric conceptualization of access to justice cannot suffice. Therefore, we include access to both state and nonstate institutions.

### *5.7.1 Developments from 2010 to 2018*

Throughout the time frame studied, the constraints for people to get access to justice were considerable. Amongst other barriers, shifts in territorial control narrowed

<sup>57</sup> See also 4.5.3 of this report, in which we highlight the same caveats that apply to this source of data in the context of Kunduz province.

<sup>58</sup> As explained in Chapter 2, the Survey of the Afghan People has mainly been conducted outside of "inaccessible districts" (see e.g. TAF, 2018, p. 226). In 2018, only 7% of the surveys were conducted amongst respondents that were coming out "inaccessible districts" or "insecure areas" (TAF, 2018, p. 226). Given the fact that large parts of Kunduz province came under Taliban control or influence between 2014 and 2018, it is likely that there is a strong overrepresentation of respondents from government-controlled territories in this sample.



opportunities for civilian populations to find access to justice.

In 2011, the Max Planck Institute reported that “access to the judicial institutions remain[ed] limited for marginalized groups including women and children, returning refugees and small ethnic minorities such as Kuchi nomads” (MPIL, 2011, p. 23). According to the institute, the main reasons state justice services were not extensively used were “their weak performance on the one hand, and lack of information and confidence in them among the citizens on the other” (MPIL, 2011, p. 23).

In 2011, an estimated 80% of the cases in Kunduz province were solved by *shuras/jirgas*; few cases were solved by courts or the Taliban judiciary (MPIL, 2011, p. 17, 24). Access to these informal institutions was easier to obtain than access to formal justice institutions. Informal mechanisms were generally more efficient and less affected by corruption, and the decisions were considered more socially acceptable (MPIL, 2011, p. 21). However, according to Bedner and Vel (2010), that does not necessarily mean that the disputants obtained “proper treatment of their grievances by state or non-state institutions leading to redress of those injustices on the basis of rules or principles of state law, religious law or customary law in accordance with the rule of law” (p. 7). With regard to *shura* mediations, the Max Planck Institute reported that “women rarely have any influence on the choice of the persons involved in the conflict resolution” (2011, p. 23).

According to UNAMA sources dating from September 2014—before the fall of Kunduz city—formal justice offices (consisting of the courts, prosecution, *huqooq*/Department of Justice) in a number of districts of Kunduz province were “simply under-used,” while crimes were “either not being investigated by police, and civil disputes [were] simply not brought to the state system” (UNAMA, 2014, p. 1). In Dasht-e Archi, Chahar Dara, and parts of Aliabad, this underuse was a result of the state’s lack of territorial control (UNAMA, 2014, p. 1). In parts of Khanabad the underuse was not the direct result of a resurgent Taliban but rather of the power of pro-government militias, who largely enjoyed impunity from the state’s judiciary (UNAMA, 2014, p. 1).

In 2016, Kunduz province state judiciary continued to have a low caseload in the formal justice sector compared to other provinces in Afghanistan (IWA, 2018, p. 13). TAF and MoJ reported that Kunduz province had only 2660 active criminal cases in 2016 (TAF & MoJ, 2017, p. 16). Compared to its neighbors Badakhshan (4043 active criminal cases) and Balkh (4570 active criminal cases), this was relatively low (TAF & MoJ, 2017, p. 16).

At the end of the time frame studied in 2018, most cases in Kunduz province were still handled by CBDR mechanisms, including *shuras* and *jirgas* (IWA, 2018, p. 15). As IWA reported,

In both government controlled and Taliban controlled territory, CBDRs are the most widely used justice mechanism. According to residents, the courts and the Taliban are also referring disputes to local *shuras* and *jirgas* for resolution. The majority of cases handled by CBDRs relate to land and water disputes, as well as traffic incidents, thefts and murders. CBDRs’

handling of murder cases is common, as the state's criminal law writ has always been limited in Kunduz (2018, p. 15).

According to IWA "the citizens' demand for state justice services" was still "very low throughout Kunduz province" in 2018 (IWA, 2018, p. 2).

### 5.7.2 *Impact of Territorial Control on Access to Justice*

Given the fluctuating influence of the Afghan government, pro-government militias, and the insurgency in the time frame studied, territorial control can be considered to be a key determinant shaping the population's access to the formal justice system and the Taliban judiciary (IWA, 2018, p. 9; Terpstra, 2019, pp. 11-14). As IWA noted,

(...) the main determining factor for whether citizens are using state or Taliban justice institutions is territorial control. In areas controlled by the government, citizens use CBDs, state justice institutions and the Taliban judiciary. In areas controlled by the Taliban, citizens use the Taliban judiciary or CBDs. Citizens mostly do not approach state justice institutions in Taliban controlled territory for fear of retaliation from opposition forces, and because of the limited presence of state justice institutions or low acceptance by communities of government institutions (2018, p. 9).

The security situation further defines where judges, prosecutors, and attorneys can locate themselves or where they can travel. Defense attorneys are less of a target than prosecutors and judges, but they also face a significant security threat while carrying out their duties. In some cases, the Taliban actually needed these attorneys to defend them in court (IWA, 2018, p. 16).

IWA quoted a defense lawyer who worked in Khanabad: "The cases have totally vanished. Most people don't refer [cases] to us. Government controls less territory while opposition controls much of the territory. A defense lawyer has no value for them" (IWA, 2018, p. 16).<sup>59</sup> Qal-e-Zal was the district with the lowest caseload (IWA, 2018, p. 13). IWA reported that the demand for state justice services was low throughout the province, with the exception of the Imam Sahib district (2018, p. 15).

### 5.7.3 *Impact of Corruption and Formal Procedures on Access to Justice*

While the nature of territorial control shapes which justice provider is available to the population in a particular geographical area, the perceptions of corruption are important for understanding the preferences that people have for one system to another (IWA, 2018, p. 3). Perceptions of corruption in state institutions and the low social acceptance of the state judiciary are consistently cited as a major reason for civilians to refrain from approaching state systems (IWA, 2018, p. 3). IWA argued that "inefficient and poorly administered procedures" in formal justice in Kunduz were still one of the main reasons the population was deterred from approaching the formal justice system (2018, p. 3).

Another reported reason for people to avoid the formal system was when they did not possess formal documents. Because inhabitants of Kunduz often did not possess formal documents that would be relevant in land and property disputes, the state judiciary would not be an option for them (IWA, 2018, p. 15). However, with local leaders'

<sup>59</sup> Interview conducted by IWA with a defense lawyer in Khanabad on 10 May 2017.

mediation, such disputes could be resolved in a socially acceptable way with or without formal documents, even in government-controlled territories (IWA 2018, p. 15).

#### *5.7.4 Barriers for Women to Access Justice Institutions*

Women in Kunduz province had limited access to justice institutions during the studied time frame. Overall, sociocultural barriers persisted throughout the time frame studied, while security-related barriers increased. The Max Planck Institute asserted in 2011 that the limited access was due to a couple of reasons. First, there were societal rules according to which women are generally restricted to “their role within the families as daughters, wives, and mothers. It [was] hardly accepted that women take positions in public life” (2011, p. 13). A second reason was the high rate of illiteracy (2011, p. 13). A third reason was the lack of a safe space for women in Kunduz province, where many women “live under the control of their fathers and husbands; those who dare to leave their homes if they have been mistreated usually have to return sooner or later” (2011, p. 13). A fourth reason was male domination in justice institutions. As pointed out earlier, there was not a single female judge or prosecutor in Kunduz province at the time of the study (2011, p. 13). Finally, there were only a “few attorneys in Kunduz province who [were] able and willing to represent women in legal affairs” (MPIL, 2011, p. 13).

In 2013, most barriers for women remained. Women continued to encounter major “social and logistical obstacles in approaching the police, courts and other justice institutions” (MPIL, 2013, p. 19). There were “virtually no female state justice officials in the province, and cultural norms typically prevent[ed] female justice-seekers from approaching exclusively male government offices. In both – the formal and informal justice systems – women were generally forced to depend upon a male relative to represent them” (MPIL, 2013, p. 19). The main difference at this moment in time was the number of female attorneys who were registered with AIBA: six registered female attorneys in January 2013 (MPIL, 2013, p. 27).

These barriers for women were confirmed in an Afghanistan national-level report by Luccaro and Gaston in 2014:

Women faced the most significant barriers when they chose to seek the assistance of state or external actors, particularly state mechanisms. All the normative barriers present at the family and community level are also present when women try to access state and external mechanisms, but to a much greater degree. The fear of the consequences of going outside the home (community stigma or disapproval, physical retaliation from family members, loss of economic sustenance, and so on) is even more intense at this level than at the community level. In addition, much as women are skeptical of community mechanisms, women often doubt that they will find justice in state mechanisms due to the poor conduct of state actors or the overall perception of dysfunctional government service delivery. That social norms tend to bar opportunities for women to represent themselves also makes justice harder to secure (2014, p. 35).

According to TAF and MoJ, there was in 2016–2017 “some belief that the criminal justice system is increasingly considered a fair and accessible forum, particularly for

traditionally vulnerable groups like women” (TAF & MoJ, 2017, p. 32).<sup>60</sup> Other sources reported that for women in particular, there continues to be “a social stigma attached to engaging with the state justice system” (IWA, 2018, p. 22). For women in particular, the rise in rape and sexual assault cases in Kunduz province due to militias and criminal groups operating with impunity is deeply concerning (IWA, 2018, p. 18).

The annual survey of TAF in Kunduz province shows the perception amongst women that courts treat men and women equally fluctuated throughout the time frame studied (see the figure below – the data for 2010 on Kunduz province is not available). The response to the statement that ‘state courts treat men and women equally’ changed somewhat over the years amongst the respondents. In January 2011, 74,54% of the female respondents strongly agreed or agreed somewhat with the statement. Of the male respondents, 52,6% agreed strongly or agreed somewhat with the statement. In January 2018, 59,67% of the female respondents strongly agreed or agreed somewhat with the statement. Of the male respondents, only 47,54 agreed strongly or somewhat with the statement. However, once again, it must be remembered that the same list of caveats that were already explained in Chapter 4 and in section 5.6 of this chapter also apply to these survey results.

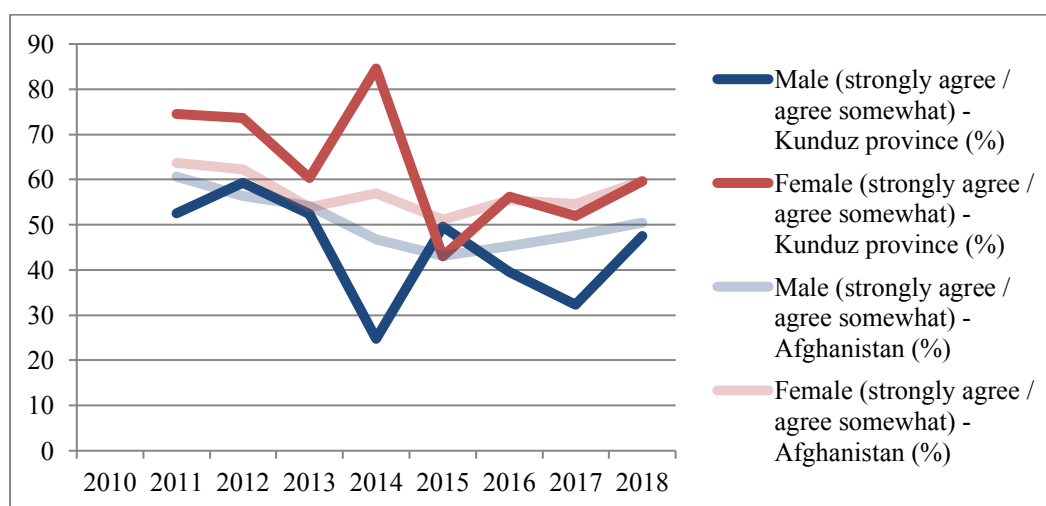


Figure 3 – Responses to the statement, “State courts treat men and women equally” – Sample Kunduz province and Afghanistan wide – Data collected by The Asia Foundation – Graph created by Dirkx and Terpstra.

Finally, a significant observation was that female defendants were convicted at a considerably higher rate than male defendants in Kunduz province (IWA, 2018, p. 17). Amongst the women, 23 were convicted out of 24 detainees, whereas only 144 out of 295 male detainees were convicted (IWA, 2018, p. 17). Most of these female detainees serving a prison sentence in Kunduz were convicted by the state for ‘running away’ from an abusive marriage and other so-called ‘moral crimes’ (IWA, 2018, p. 17).

<sup>60</sup> TAJ and MoJ do not base this claim on specific empirical evidence or a specific study. Rather, the report emphasizes this point because “Afghan civil society, the Afghan government, and the donor community” made a variety of efforts to “ensure that women and children have enhanced access to resources given the challenges these populations face navigating the justice system given their particular status” (TAF and MoJ 2017, p. 32). Several NGOs for example, “operate exclusively on behalf of women and children” (TAF and MoJ 2017, p. 32).

### 5.7.5 *Impact of the Fall of Kunduz City on Women in a Legal Profession*

People working in government or human-rights-related positions, and particularly women, were targeted during the Kunduz city assault. UNAMA reported,

[the] (...) Taliban commenced house to house searches using pre-prepared lists containing the names and addresses of human rights defenders, and in particular women, women active in public life, NGO workers, United Nations staff, journalists and Government officials, including lawyers, judges and prosecutors (2015, p. 15).

UNAMA continued,

During the Taliban's house-to-house searches, which reportedly occurred over several days, Taliban sought out women human rights defenders by going directly to their homes and asking for them by name. The Taliban reportedly used lists that included the women's individual names, addresses and the organizations that they worked for. On being told that the woman they sought was not at home, Taliban reportedly threatened and, in some cases, physically assaulted their family members or damaged their property (2015, p. 15).

For female professionals in particular, such as journalists, women's rights activists and government officials, it was considered unsafe to return to their work in Kunduz once the government had taken back control by the end of 2015. This was due to the threats by the Taliban directed at them or their families (IWA, 2018, p. 10). Most women did not return to their jobs, and those who did were able to do so only by striking a deal with Taliban representatives (IWA, 2018, p. 10).

## 6 Conclusion

### 6.1 The Police Sector

Several foreign-sponsored police-training missions and programs sought to improve the quantity and quality of the AUP in Kunduz province. In spite of these efforts, the AUP in 2018 was in a worse position than it was in 2010. Although there are some positive developments and although AUP officers generally found their training to be useful, the intended longer-term goals of police-training missions such as the Dutch IPM in Kunduz province were mostly not achieved. An important factor behind the limited results was the resurgence of the Taliban in Kunduz province. While the mandates of the German, Dutch, and EU police-training missions presupposed a sufficiently secure province for the AUP to carry out civilian policing, the security situation evolved in the opposite direction. Between 2010 and 2013, a broad anti-Taliban coalition of the ANA, the ANP, the ALP, pro-government militias, and US Special Operations Forces managed to push back the Taliban, thereby increasing the reach of the AUP. However, from 2014 onwards, shortly after the foreign forces withdrew from the PRT in Kunduz, the Taliban increasingly gained territory, and by 2018, it controlled most of the province. This severely affected the AUP's *de facto* reach in the province, which in turn influenced many aspects of the AUP's daily work.

The overall negative developments within the AUP in Kunduz province were not merely a reflection of exogenous factors such as the Taliban's resurgence and the withdrawal of foreign troops. Additionally, within areas in Kunduz province that were secure enough for the AUP to carry out civilian policing, it did not live up to the expectations set out in the mandates of the various foreign police-training missions. The AUP's ability to prevent and fight crime was strongly influenced by local power brokers throughout the time frame studied. Moreover, the AUP itself was engaged in the crimes it was supposed to fight and prevent. Multiple sources reported cases of corruption, bribery, beatings, and torture by AUP officers in Kunduz province. This happened both during foreign police-training missions and after these missions ended. Several authors suggested that the misconduct by the AUP forces, and allowing pro-government militias to prey upon the civilian population with impunity, contributed to the resurgence of the Taliban.

Management and oversight procedures that could have mitigated some of the police misconduct were structurally weak throughout the investigated time frame. Throughout the entire time frame of 2010 until 2018, there were indications of severe accountability problems toward both Afghan government institutions and the wider public. The number of women in the AUP modestly increased between 2010 and 2013, but compared to the total AUP force in Kunduz province, they were severely underrepresented throughout the time frame studied. Moreover, sociocultural barriers for women to join the police and sexual assault and harassment within the AUP persisted between 2010 and 2018. No reliable data were obtained on the number of women in the AUP between 2013 and 2018.

Community policing initiatives achieved some modest improvements in terms of public involvement with the AUP. However, given the intensified presence of the Taliban, the reach of these initiatives became increasingly limited to the provincial capital.

## **6.2 The Justice Sector**

In addition to the police, foreign-sponsored missions and programs also sought to improve the formal justice sector in Kunduz province. However, while there were some positive developments, the intended longer-term goals were mostly not achieved. Office buildings were built and training programs were provided that enhanced the capacity of the courts and the DoJ, and the number of active and educated attorneys increased. An increasing number of female attorneys were registered with AIBA over time, but many women in the law profession were not able to return to their positions after the fall of Kunduz city to the Taliban in 2015. The positions of judge and prosecutor continued to be fully male dominated. Corruption in the form of political interference in the justice sector persisted throughout the time frame studied, while the perception of bribe taking for the formal judiciary appeared to have decreased. The situation in the prison and detention centers of Kunduz was dire throughout the time frame studied, particularly for female detainees. Reports of abuses against women and torture of security-related detainees in facilities in Kunduz city and Dasht-e Archi district further underline this.

Similar to the capacity of the police, the capacity of the formal justice sector in Kunduz province was largely shaped by the developments in the security situation between 2010 and 2018. Over the years, district offices were attacked by the Taliban insurgency, and as a consequence, judges, prosecutors and *huqooq* employees had to relocate to Kunduz city in several instances. This made it impossible for the formal justice system to function effectively in the districts, with the exception of the district center of Imam Sahib and Kunduz city itself. The intensification of the Taliban insurgency increasingly diminished the reach of the formal justice system.

A majority of the cases throughout the time frame studied were handled by informal justice mechanisms in the form of *shuras* and *jirgas* composed of elders, religious scholars, or influential individuals. There is generally a higher level of social acceptance of dispute resolutions that have been mediated by local councils. However, like formal justice mechanisms, these informal justice mechanisms are known to be affected by political interference by powerful individuals. Additionally, they have become increasingly influenced by the Taliban.

The Taliban's judiciary existed in Kunduz province throughout the time frame studied. However, as the Taliban expanded its territory, the Taliban's judiciary also expanded its reach and established courts in every district, including a provincial court. The Taliban seems to be essentially "out-governing" the Afghan administration, not because the Taliban is perfectly organized but because the state justice system is primarily operating remotely from the provincial capital.

Overall, access to justice throughout Kunduz province, in particular for women, did not improve during the time frame studied. The sociocultural barriers for women in accessing justice remained pervasive, and the number of security-related barriers increased with the intensification of the Taliban insurgency. Though a separate study is needed on the position of women under the Taliban judiciary, the expectation that women will not be in a better position to receive proper solutions to their grievances under Taliban rule seems justified.

Various foreign-sponsored missions and programs have sought to improve the quality of the formal – and to some extent informal – justice sector. Given the structural issue of corruption, the dire security situation, and the limited acceptance of formal justice institutions by the general public, the longer-term results of these programs were limited. Furthermore, the increased presence of the Taliban judiciary diametrically opposed what was intended in these missions and programs.

Overall, the limited reach of the Afghan government diminished the capacity of the AUP and formal justice sector to exercise their mandates. At the same time, however, the limited reach of the Afghan state is also the *result* of internal issues such as poor management and poor governance of Afghan police and justice institutions.



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## Annex 1 – Objectives of the IPM

### Objectives of the IPM in the Police Sector

#### *Police Capability Objectives of the IPM*<sup>61</sup>

<b>1. Recruitment and Selection</b>	The Afghan government is capable of filling its AUP <i>tashkeel</i> through ethnic and tribally balanced recruitment whereby the women receive sufficient opportunities. The quantity and quality of recruits meets the fundamental criteria like no drug abuse, motivation and sufficient amount of women.
<b>2. AUP training and operational level</b>	In order to improve the quality of the AUP to such a degree that they can perform community policing tasks without help, AUP personnel will be offered basic and additional training courses, and on-the-job training and mentoring. At the end of the mission, all civilian police officers have received basic training and a 5 months mentoring period, which includes 10 weeks additional training. As a result, the police are better capable to uphold security, law and order, and have a greater respect for the individual rights of civilians
<b>3. Community Policing</b>	The AUP has made a transition towards community policing. The execution of their civilian police tasks is adapted to the local situation and circumstances. The quality of the execution of these tasks has improved and as a result of that, the acceptance of the AUP by the population has improved. The civilian police take the needs of communities into account, including the needs of women. Trust and respect between the police and the population is strengthened.
<b>4. Management &amp; Specialist training and operational level</b>	The quality of the management level of the civilian police is improved and the AUP is capable of managing its own police processes. As a result of this the civilian police acts more accountable.
<b>5. Literacy</b>	Literacy courses are a permanent element in both the basic training of 8 weeks and the 10 weeks of additional training. The reading and writing skills of AUP-personnel, trained by the Netherlands, have improved and as a result of this, the AUP is increasingly capable to execute its community policing tasks.
<b>6. Tracking &amp; Tracing / Retention</b>	The Afghan MoI is able to track & trace its own personnel through an adequate system. Dutch trained AUP personnel are traced, and their function and deployment location are known. This system can also be used to follow the professional development. The tracking and tracing system includes refreshment courses, if required.
<b>7. Training curricula</b>	The curricula for the basic training and 10 weeks additional training are continuously developed and updated in coordination with the Ministry of Interior, NTM-A and EUPOL.
<b>8. Equipment</b>	The equipment of the AUP meets the level that is necessary for the sustained execution of its tasks. There are sufficient bullet proof vests available in the police stations.

<sup>61</sup> Comprehensive Mission Design (CMD) for Integrated Police training Mission in Afghanistan (HoA approved CMD-extract 07-07-2011).

*Cooperation Police – Justice Objectives of the IPM<sup>62</sup>*

<b>1. Awareness and coordination in the justice chain</b>	The coordination of activities between justice actors and the coordination of donor support are improved. Functional relations between the civilian police and the criminal justice system are strengthened, cases are handled more timely and effectively and pre-trial apprehension meets legal standards and had prosecutors' oversight. This leads to a strengthened trust in the civilian police and prosecutors.
<b>2. Cooperation in the justice chain</b>	The cooperation between the police and the formal justice sector is improved. The civilian police and the employees in the justice sector are more aware of the judicial chain. The knowledge of each other's systems has improved and cooperation between the police and the formal justice sector is improved. As a result of this, cases are handled more timely and effectively.

**Objectives of the IPM in the Justice Sector**

*Judicial Objectives of the IPM<sup>63</sup>*

<b>1. Formal Justice System</b>	All actors in the justice sector have improved knowledge of integrity, basic rights, gender and regard for the position of ethnic and religious minorities, and act accordingly. State justice institutions act effectively and efficiently. Prosecutors are increasingly able to process cases brought forward by the police. Lawyers have sufficient capabilities to provide legal aid in criminal cases. Judges have the knowledge, capacity and independence to rule on cases brought to the court in reasonable time. As a result of this more cases are handled by appropriate institutions and the confidence in the formal justice institutions has improved.
<b>2. Connection between the formal / informal justice sector</b>	Huqooq officers have sufficient knowledge of the law to increase access to justice and the protection of basic rights, both in formal and informal justice practices. As a connection between the formal and the informal sectors, the huqooq officer refers cases to the appropriate institution for processing.

*Rule of Law in Society Objectives of the IPM<sup>64</sup>*

<b>1. Civic education/ awareness</b>	The awareness of the population of the tasks and responsibilities of formal justice institutions is improved by means of civic education. Confidence in and use of the formal system is increased. The awareness of basic rights is improved, leading to a higher popular demand for better protection of basic rights in the justice sector.
<b>2. Accessibility</b>	Obstacles for access to justice are reduced, notably for women, children and vulnerable groups. As a result of this women and vulnerable groups enjoy better access to justice.
<b>3. Protection of vulnerable groups</b>	Social, ethnic and religious minorities are better protected by the justice system. Insight is gained on the position of vulnerable groups in different processes on conflict resolution, both formal and informal. A strategy is developed and implemented on how to improve their protection.

<sup>62</sup> Comprehensive Mission Design (CMD) for Integrated Police training Mission in Afghanistan (HoA approved CMD-extract 07-07-2011).

<sup>63</sup> Comprehensive Mission Design (CMD) for Integrated Police training Mission in Afghanistan (HoA approved CMD-extract 07-07-2011).

<sup>64</sup> Comprehensive Mission Design (CMD) for Integrated Police training Mission in Afghanistan (HoA approved CMD-extract 07-07-2011).

## Annex 2 – Provincial Police Chiefs, Kunduz Province, 2010–2018

Time Frame	Name	Ethnicity	Political Affiliation	Comments
2009–2010	Mohammad Abdul Razak Yaqubi	Hazara	Ittehad-e Islami  (TLO 2010, p. 108)	<p>“Abdul Razaq Yaqubi, a Hazara from Bamiyan, is said to be technically astute and runs the police efficiently, although he is not particularly well connected to local power holders” (TLO 2010, p. 108).</p> <p>“Yaqubi graduated from the police academy and worked as CoP and deputy CoP in [the] southern provinces for more than nine years. In 2005, he became deputy CoP in Kunduz and in 2007 CoP” (TLO 2010, p. 109).</p> <p>“(…) Abdul Razeq Ayub Yaqubi (2008–10), who had been professionally trained as officers by the Soviets. The Germans were especially satisfied with Yaqubi whom they regarded as very reliant and not corrupt. Like Nashir, however, these chiefs of police were not very influential and, with their limited local power base, not efficient in fighting the insurgency” (Münch 2013, p. 31).</p>
2010–2011	Abdul Rahman Sayedkhili	Tajik	Jamiat-e Islami/Shura-e-Nazar  (MPIL 2013, p. 13)  (Münch and Veit 2018, pp. 278-279).	<p>Killed in a suicide attack in March 2011.</p> <p>“The Chief of Police, Abdul Rahman Sayed Kheili ‘Maulana’, is a Tajik jihadi commander from Parwan province with little professional policing background. He is politically linked to Shura-eNazar/Jamiat. He was transferred from Parwan to Kunduz on 13 September 2010. Although he was cooperative with the international community and was positively engaged in DIAG activities during his tenure in Baghlan, he has shown little interest in addressing criminality and corruption within the police. After Mr. Sayed Kheili was killed in a bomb attack – suicide bomber – Mr. Samiullah Qatra, a former jihadi commander, was appointed as the Chief of Police” (MPIL 2013, p. 13).</p>
2011	Ali Razayie	Unknown	Jamiat-e Islami	Ali Razayie served as the interim PCoP from March 2011 to April 2011, after Sayedkhili’s death.
2011–2012	Samiullah Qatra	Tajik	Jamiat	“After Sayedkheli’s death, Samiullah Qatra became the provincial chief of police in Kunduz around June 2011. Being a Jamiati

			(Kunduz provincial Profile)	<p>from Badakhshan, he was close to Mir Alam and also an advocate of the militia programme. Probably to hold Mir Alam at bay, in November 2012 Karzai replaced Qatra – even by Afghan standards, he had a reputation of being heavily ‘corrupt’ – with Khalil Andarabi, the former’s archenemy from Baghlan. He took a more distanced stance towards the militias” (Münch 2013, p.42-43).</p> <p>“Amir Mir Alam has placed himself at the heart of the province’s political networks and nowadays plays a central role in the militias’ command; thanks to his Jamiati background he has also strong links with the provincial police commander, General Samiullah Qatra, and prominent powerbrokers in Kabul” (Hewad 2013).</p>
2012–2013	Muhammad Khalil Andarabi	Tajik	<p>Hezbi Islami (ATR district profiles) (Cecchinel 2014c).</p>	<p>“Andarabi’s home region in Baghlan province is home to many prominent <i>jihadi</i> commanders. Tajiks from Andarab have been dominating the structures of power in Baghlan since 2011 in addition to exerting considerable influence in neighboring Kunduz province. After his appointment as provincial chief of police (President Karzai has supported Pashtun Hezb-e Islami figures and groups in Kunduz and Baghlan in an attempt to neutralize the influence of the Tajiks in the two provinces), Andarabi is said to have assigned his followers numerous positions within the local administration and police apparatus. Some of these men were also affiliated with Hezb-e Islami. These appointments were much to the annoyance of Jamiati Mir Alam who had been the main figure allocating positions of power before Andarabi’s appearance on the scene. At the same time, Mir Alam’s myriad commanders and militia groups (particularly in the districts of Kunduz city and Khanabad) constituted a resolute challenge to Andarabi’s authority as chief of the security forces in the province” (Cecchinel 2014c).</p> <p>Dismissed as chief of police by Fahim in October 2013 when Karzai was out of the country (Cecchinel 2014c).</p>

2013–2014	Ghulam Mustafa Mohseni	Tajik	Shura-e Nazar/Jamiat	<p>“On 24 October 2013, General Ghulam Mustafa Mohseni was officially inaugurated as the new security chief of Kunduz province. Originating also from Andarab, he is the brother of the late Rasul Khan, chairman of the Provincial Council for two consecutive mandates until he was killed in a suicide attack in May 2013. Although both hail from the same Andarab district of Baghlan, Andarabi and Mohseni are known rivals, as reflective of the factional fragmentation in the area” (Cecchinell 2014c).</p> <p>“More than a year later, in November 2013, the Police Chief Khalil Andarabi was replaced with Mir Alam’s ally Mustafa Mohseni. The reason may have been Andarabi’s use of predatory illegal militias and ALP in anti-Taliban operations. It may, however, have also been because Andarabi was a rival of Mir Alam from his time as a police chief in Baghlan, and had made several appointments in the provincial security apparatus that were unfavourable to Mir Alam, including in the Kanam area of Kunduz city, which Mir Alam saw as his sphere of influence. Many sources claimed that Fahim and Mir Alam pushed Khalil Andarabi out with an eye to the 2014 presidential elections” (Derksen 2017, p. 156).</p>
2014–2015	Abdul Saboor Nasrati	Tajik	Shura-e Nazar/Jamiat	<p>Previously police chief in Badakshan. (Münch 2013, p. 60).</p> <p>“Also Kunduz’ newly appointed police chief, General Abdul Sabur Nasrati, opposes the governor on his militia policy. A Tajik from Panjshir, he is a known supporter of the Jamiat party (and as such [is] close to many of the militias in the province)” (Matta 2015).</p> <p>“The governor, a Pashtun appointed by President Ghani, does not get along with the police chief, a Tajik appointed from the Abdullah camp for ‘balance,’ nor with his deputy, a long-serving mujahed” (Matta 2015).</p>
2015–2017	Qassim Jangal Bagh	Unknown	Shura-e Nazar/Jamiat	<p>“Former officials in the Rabbani government supplied information to Human Rights Watch about Wahdat and Ittihad abductions, noting that commanders in Jamiat, Harakat, Junbish, and Hezb-e Islami</p>

				sometimes detained civilians as well, usually just for ransom. A former official in the interim government who was familiar with ongoing criminality by various factions, said that Anwar Dangar, a high-level commander in Shura-e Nazar, was ‘deeply involved in kidnapping schemes,’ and that another Jamiat commander, Kasim Jangal Bagh, was regularly implicated in abduction, or hostage-taking, for ransom” (HRW 2005, pp. 54-55).
2017–2018	Abdul Hameed Hameedi	Tajik	Unknown	
2018	Abdul Baqi Nuristani	Pashtun	Unknown	