

Afghanistan's Creaking Court System

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Most Afghans prefer the traditional, tribal system of justice to state courts, according to a new report. The area around the Afghan Supreme Court in Kabul is teeming with people, both plaintiffs and defendants. Some have spent months, even years waiting for a resolution to their problems. Many have given bribes; many more have lost cases on lower courts because, they say, they could not afford to pay the judge.

But one thing unites them all - their anger and dissatisfaction with the Afghan justice system.

"In our courts, bribery is at such a level that anyone with money can buy a decision in his favour," said Mohammad Zaki. "There is no justice."

Zaki has spent seven months trying to find out what has happened to his wife. While he was away in Iran working as a labourer, his wife became pregnant by another man. Zaki is convinced she was raped, and brought a case in a tribal court against the man he holds responsible.

The elders sitting in judgement ruled that the alleged rapist must pay Zaki the equivalent of 15,000 US dollars so that he could remarry.

The man accused, however, rejected this decision, and insisted that the case be brought before a state court. After a judicial hearing, the man was briefly jailed, but soon bought his way out.

The wife, meanwhile, remains imprisoned, on charges of having sexual relations outside marriage.

Zaki now has no wife, no money, and no decision on his case.

"I preferred the decision of the elders," said Zaki. "The accused has money, so he paid the court and they released him. But I still know nothing about my wife, or the child."

Zaki is now making the rounds of the Supreme Court.

"There is no one here who will listen to me," he complained. "They just send me from office to office."

His case illustrates the difficulties of the Afghan justice system, where two traditions exist in uneasy symmetry, with the population caught in between.

On the one hand is the formal justice system, where written laws are administered by official courts, in a manner similar to the western legal tradition.

On the other is the centuries-old tribal system, where councils called “jirgas” or “shuras” make decisions based on local traditions and mores.

According to a recent report by the Centre for Policy and Human Development at Kabul University, the state system lags far behind the traditional courts in terms of public confidence and effectiveness.

In a questionnaire cited by the report, fewer than 20 per cent of Afghans put the state courts first when asked “Whom do you trust most to resolve any dispute you might have?” while over 70 per cent said that tribal or community elders and shuras were their preferred option.

The study condemned the state court system for corruption and ineffectiveness, saying that problems in the judiciary were jeopardising the entire structure of state governance.

“Corruption in the judiciary undermines confidence in governance, as it facilitates corruption across all sectors of government,” read the report.

The Supreme Court reacted swiftly and decisively, summoning several of the authors to the court for a dressing down.

“This report is an absolute lie,” said Abdul Rashid Rashed, spokesperson for the Supreme Court. “These people are just against the system. They were summoned to the Supreme Court and questioned about the accuracy of the report, and in the end they accepted that their report was not based on truth. And they apologised.”

According to Rashed, Afghans do trust the courts and use the legal system to resolve their problems.

“We only have problems in some areas like Khost, Kunar, Paktia and Paktika provinces,” he told IWPR, referring to Pashtun-dominated areas on Afghanistan’s southern and eastern fringes. “The rest of Afghanistan goes to the courts, and respects their decisions.”

Rashed acknowledged that bribery and corruption were an issue, and that claimants faced long delays in having their cases resolved. However, he maintained, steps had been taken to remedy these problems.

“In the past year and a half, we have fired or replaced approximately 700 judges,” he said. “Nowadays people do trust the courts.”

According to Rashed, those who have access to state courts both trust them and use them. This accounts for approximately 60 per cent of the population. The rest, he said, may live in remote areas where the state system has not yet penetrated.

Some of the compilers of the report denied that they had apologised. They were not able to give their names, however, as they said the Supreme Court had warned them not to talk to the media.

But Dr Daoud Saba, one of the report's main authors, insisted that the document was produced according to international standards, and was founded on scientific methods.

"This report reflects the reality of Afghanistan," he said.

Those milling around the Supreme Court seem to agree. Most complain about delays in decisions, corruption, and bribery.

"It has been more than two years since a commander claimed my property," said Najibullah, from Ghor province. "There's still no result. It was heard in provincial courts, and now in the Supreme Court - but no decision yet."

Land issues are particularly difficult to resolve given Afghanistan's turbulent recent history. Returning refugees may find that their property has been taken by a local strongman; neighbours quarrel over borders or water rights. In many cases, no formal deeds or proof of ownership exist. The legal system has not yet developed ways of dealing with the issues.

"One of the primary challenges to land administration, and thus a central cause of land disputes, is the absence of an effective legal framework for land issues," according to the report.

Najibullah said that he had not paid any bribes or been asked for money.

But bribery does not always solve the problem, as a man from Takhar province found out to his cost.

"I have money, and I paid the judge," said the man, who did not want to give his name. "But the other side also has money, and they too paid the judge. So my case has been dragging on for 12 years."

Nasrullah Stanekzai, former deputy minister of information and culture, now a professor of law at Kabul University, sees serious problems with the study.

"I do not accept this report at all," he said. "They did not contact any of the Afghan legal institutions when they were compiling this report. They did not contact the law department at the university. But it is clear that people are turning to the jirgas to solve their problems. This is particularly true in Pashtun areas."

Stanekzai disagrees with the report's conclusions.

"I do not believe that only 20 per cent of the people trust the justice system," he said. "If we look at the cities, where millions of people live, there are only state courts. But unfortunately, Afghanistan's justice system is not complete. It is not independent, and there is a lot of corruption. The procedures take too much time, and are very difficult. For all of these reasons, people go to the traditional jirgas."

The jirga system also has its problems, as the report points out. Many practices embraced by local tradition are in violation of Afghan legislation, such the tradition of “bad”, an exchange in which a woman or girl is offered in marriage as a means of settling a dispute.

As time goes on, the report says, the two systems should cooperate and reinforce each other. Its authors propose “a hybrid model for justice in Afghanistan, in which alternative dispute resolution mechanisms remain important in providing justice, but under the regulation of state institutions”.

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