

RE: Conflict Resolution Mechanisms

1. In case of the conviction of a murder through a competent court in Afghanistan, would it be possible to avoid the sentencing if the family of the victim and the family of the murderer decided to settle the issue out of court (e.g. Jirga)?

Yes, it is possible to avoid sentencing through Jirga, but before reporting to police.

When a crime happens, there is a high possibility to avoid the sentencing through family or traditional settlement council (Jirga); it's very common all over the country. But the Jirga shall take place before police report, when police is informed of a case it hard to settle through Jirga, because police don't have authority to drop the case. However, in some of these incidents they illegally withdraw the case from police department as well and parties argue that a peaceful settlement is reached through Jirga and no need for further proceedings.

In most cases, even if the police want to drop a case, the settlement shall take place when the case is with police and before referral to Attorney (police has authority to keep the case and defendant for up to 72 hour), but when it is referred to Attorney Office, it very unlikely to settle it through Jirga. If police drop the case at any time and as result of any settlement by Jirga, its deemed illegal and corruption.

Please also note that as per Afghanistan Laws and Islamic Sharia, in the murder case, there are two types of punishments/sentences:

- a. Rights of God (Society Right): these punishments which are written in the laws can't be avoided or compromised, unless the crime is not reported to the police and not proceed through Attorney Office and Courts. In case of murder it is mostly serving imprisonments and sometimes death penalty.
- b. Rights of servant (Victim or it's family Right): these punishments can be compromised at anytime and anywhere, whether through a Jirga or a mutual settlement of the parties, these punishments are also defined in two types.
 - Qesas (Retaliation): It means the family of the victim has the right to retaliated the crime through demanding death sentence for the murderer.
 - Deyat (Compensation): It means the family of victim has the right to demand compensation of the crime through payment of an amount of money by the murderer or its family.

The real role of Jirga is to consider and find settlement for the second type of punishment which refers to the victim's family, and it can be negotiated at any time before a court verdict about it, and if a settlement is reached, the release letter would be provided to the officials, and it has a major role in the reduction of the pressure on the murderer in the judicial proceedings. But it is never deemed as a parole or dismissal of the case from official proceedings in court and attorney office and later sentencing of the murderer.

2. Which other conflict resolution mechanisms exist in Afghanistan?

In criminal cases, there is none.

3. Would it be possible to completely void the court order?

There is no legal way possible to void order. However, there are illegal ways to do so. As I mentioned above, if the parties which desire to reduce the sentence or deescalate the situation, the most possible and used method is to avoid the police report. If a police report is made, it's common to influence the local police department to not proceed it. And normally police won't withdraw it as well, because even in the detection stage (while case is with police) withdrawal of the case and its settlement through Jirga is illegal, and in such cases police is also bribed or influenced.

If the case is reported to police and police proceeded to Attorney Office, it's not possible to void the court verdict through Jirga or settlement, in such occasions, any party which desire to void the court verdict, it uses bribery and relationship influences to Attorney and Court to reduce the sentence, but still it can't withdraw the case completely.

However, if the Jirga decides to settle the second part of the sentence or punishment (compensation), it also can't void court order for imprisonment, but it certainly would be a major factor to dismiss civil action (civil action in such cases would be monetary compensation claims and claims for sentencing the murderer).

4. What would be needed to do so and how would the court be informed of the Jirga decision?

If the case is not reported to the police, only agreement of both parties are sufficient to do so, if police is informed, agreement of parties and police is required (such agreement of police is illegal, but occurs), if the case is referred to Attorney Office, it very unlikely to do settlement through Jirga.

If decisions of Jirga are about Compensation, it is filed in the casefile through police (if the case is with police) or Attorney (if the case is with attorney). If the decisions of Jirga are about the withdrawal or dismissal of the case and release of the murderer it is never referred to court and court don't accept such decision, so, it's useless to be informed of it.

5. In which instances would the Jirga decision not be accepted by the court?

If the Jirga decision is against law, it is not acceptable to the court. And it includes any settlement for release of the murderer and dismissal of the case, even if the release is for payment of any monetary or likewise compensation to the family of the victim.