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Regional Assessment, Traditional Dispute Resolution: RC North

Rule of Law Stabilization Program – Informal Component (RLS-I)
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INTRODUCTION

During Phase 2 (September 2011 – July 2012), the Rule of Law Stabilization Program – Informal Component (RLS-I) prepared a series of district assessments profiling the traditional dispute resolution (TDR) mechanisms for three districts in two provinces of Regional Command (RC) North (shown on the map on the cover of this report) in which RLS-I implemented its program. This report synthesizes the findings of those district assessments, including information about dispute types and dispute resolution actors, practices, processes, and principles in order to highlight regional trends. While the information contained in this regional assessment is based on RLS-I research in the districts of Dahana-I-Ghuri, Puli Khumri (both in Baghlan province), and Pashtun Kot (Faryab province), materials from outside sources have also been consulted to provide a more comprehensive overview of the TDR landscape in the RC North region.

The Phase 2 district assessments' objectives were three-fold. First, to gain an in-depth understanding of the nature of disputes, the context surrounding those disputes, and the choices Afghans make regarding settlement of their disputes within the district. Second, to use this information to design implementation activities fulfilling RLS-I's objectives of stabilization and sustainability, including which activities should be conducted, when and where activities should be held, and which community members are best positioned to participate in the RLS-I program to help it achieve its objectives. The third objective was to enable the RLS-I field teams to build relationships based on trust and rapport with various community members and state actors in the district, which is essential for the successful implementation of program activities.

Data collection

The data for this TDR regional assessment encompasses the data collected for the three assessments prepared for the districts in RC North in the spring of 2012. For each district assessment, 20 individual interviews with male and female respondents and two male and two female focus group discussions were conducted.

Respondents for the district assessments usually included elders involved in TDR (*jirgamars*), elected or appointed community leaders (*arbabs*, *maliks*, *khans*, *wakils*), district-level government and formal justice sector actors, local religious leaders (*mullahs* and *mawlawis*), former *jihadi* commanders, current and former members of various village and district level *shuras*, and teachers and headmasters. Female respondents included members of Parliament, employees of NGOs, midwives, teachers, members of Community Development Councils, seamstresses, embroiderers, housewives, *spinsary*, wives of *mullahs* and *mawlawis*, and other respected women from representative ethnic groups of the villages. Locations for the interviews used for the district assessments were selected based on security, accessibility, ethnic diversity, population dynamics, and presence of disputes.

REGIONAL BACKGROUND INFORMATION

Regional geography and demographics

RC North encompasses nine provinces (Badakhshan, Baghlan, Balkh, Faryab, Jawzjan, Kunduz, Samangan, Sari Pul, and Takhar) and borders the countries of Turkmenistan, Uzbekistan, and Tajikistan to the north and China and Pakistan to the east. The territory of RC North comprises an area of approximately 62,607

square miles (162,151 square kilometers). While some parts of RC North, such as Badakhshan province, consist mostly of mountainous terrain, arid plains with scattered fertile farmlands and pastures along with some mountainous areas dominate the remainder of the region. The southern portion of the RC North borders the Afghan provinces of Badghis, Ghor, Bamyan, Parwan, Panjsher, and Nuristan.

The estimated current population of RC North is about 7,261,900. This includes approximately 904,700 residing in Badakhshan province; 863,700 in Baghlan province; 1,245,000 in Balkh province; 948,000 in Faryab province; 512,100 in Jawzjan province; 953,800 in Kunduz province; 368,800 in Samangan province; 532,000 in Sari Pul province, and 933,700 in Takhar province.¹

Tajiks and Turkic ethnic groups, such as Uzbeks and Turkmen, make up the majority of the population in RC North. There are also several pockets of large Pashtun populations living in various areas of the north; these Pashtuns were ordered to resettle in the north from the east and south during the late 19th and early 20th centuries by decrees of the Afghan rulers at the time.

Regional political and economic context

The area covered by RC North has experienced many political changes over the course of its history. Several waves of immigration from Central Asia and programs to resettle Pashtuns from the east and south of Afghanistan to the northern provinces have affected both economic and political development dynamics. Throughout most of the region the various ethnic groups have established good connections between their communities and have successfully arranged economic and political cooperation. Within most provinces, however, one ethnic group has managed to capture and control, at least to some extent, large parts of the economic and political sphere. Powerbrokers not only play a significant role in the politics of the region but, through their patronage networks, also have influence down to the district and village level; this influence often plays out in TDR and to some extent the formal justice sector.

The eastern parts of northern Afghanistan used to be home to large herds of livestock belonging to nomads of Turkic descent, but over time, with the increasing settlement of farmers in the area and installation and expansion of irrigation canals in Kunduz and other provinces, the region shifted to agriculture and related industries. The western parts of northern Afghanistan, including Mazari Sharif, the fourth largest city in the country, have an ancient history of trade and commerce due to ties to the ancient city of Balkh.

The Uzbek and Turkmen population have traditionally dominated commerce and trade, while the Pashtuns have focused predominately on agriculture and animal husbandry. In some areas, where large populations of Turkmen reside, carpet weaving, traditionally done by women, is a major source of additional income for many families. Since the fall of the Taliban regime in 2001, areas of RC North where official border crossings between the countries of Central Asian and Afghanistan exist have profited enormously from cross-border trade. A proposed gas pipeline project in the eastern area of RC North coming from Turkmenistan and the expanding mining activities in Badakhshan province have the potential to boost the region's economy in future.

¹ Afghanistan Central Statistics Office Population Projections (2013)
(<http://cso.gov.af/Content/files/Settled%20Population%20by%20Civil%20Division.pdf>, accessed 10 March 2013).

KEY FINDINGS

Traditional dispute resolution (TDR) is the primary forum used for solving civil disputes

TDR in its various forms represents the most frequently used dispute resolution mechanism in northern Afghanistan, in particular for disputes that fall under the civil law category. In rural areas and in areas under the control of government opposition groups, TDR nearly always addresses all types of disputes, including cases pertaining to criminal law.

The formal justice system is used extensively for resolving criminal cases

Where present, the formal justice system normally deals with all types of criminal cases as well as more difficult and complex civil cases. Although many disputants end up using the formal justice system at some stage in the dispute resolution process, many do so only because they cannot find another acceptable forum. This reluctance to engage the formal justice system is mainly attributed to the perception among residents that it is corrupt, slow, and ineffective in enforcing its decisions. Some respondents also acknowledge that in areas under government control, the formal justice sector's ability to hold a guilty party accountable through fines and/or imprisonment persuades some disputants to turn to the government.

Formal and informal justice sector collaboration

In districts where formal justice sector actors are present, there is usually at least some interaction between the two systems. The formal justice sector refers civil disputes to TDR elders, usually through the office of the *Huqooq* (the district-level representative of the Ministry of Justice), while TDR elders occasionally refer disputes to the formal justice sector when they are asked to address criminal cases or when TDR elders are unable to resolve complex civil disputes.

There appears to be limited institutionalized collaboration regarding the registration of written records of TDR decisions with formal justice sector actors. Both TDR and formal justice sector actors interviewed noted that this may result from some formal justice actors viewing TDR decisions as invalid as these decisions could involve illegal customary law practices. In turn, TDR elders reported their reluctance to cooperate closely with the formal justice sector because of those officials' distrust of TDR.

TDR combines Shari'ah and customary law in resolving disputes

More than in other areas of Afghanistan, respondents remarked that TDR in the north strives to resolve disputes by applying *Shari'ah*.² At the same time there is acknowledgement that due to elders' limited and/or incomplete knowledge of *Shari'ah* and the continued dominance of traditional practices in some communities, *Shari'ah* is often combined with customary law, inadvertently and, occasionally, intentionally. The latter practice is reportedly common because it helps to ensure acceptance of a TDR decision by the disputants and to restore community harmony. Since many disputants and community members are very familiar with the customs used to resolve disputes, they usually perceive their application as valid and fair.

Outside influence

In some districts of northern Afghanistan, powerbrokers reportedly heavily influence and intimidate elders to make TDR decisions that are biased toward disputants associated with or supported by the local

² Monitoring and evaluation data from RLS-I Phase 2 RC North districts shows that the knowledge score of respondents is on average 8% higher relative to the east and the south region results for *Shari'ah* requirements concerning family and inheritance matters.

powerbroker.³ While respondents also reported the influence of anti-government elements on TDR, their influence appears to be less dominant.

Anti-government elements undermine security, challenging the legitimacy of the district government, including the formal justice system

The presence of anti-government elements and criminal elements in many provinces and districts of northern Afghanistan threatens the reach and legitimacy of the Afghan government. Given the danger of being associated with government actors in insecure areas, many disputants and elders reportedly turn away from the formal justice system, believing that cooperation will not only be dangerous for themselves but will not be likely to yield decisions that would be accepted in their communities or that could be enforced effectively by the formal justice sector actors in their area.

Women have marginally more access to the TDR and formal justice system relative to RC East and RC South

Women, both as TDR actors and as disputants, are marginally better off with regard to access to and participation in dispute resolution. Women are able to contribute to TDR through participation in one of the many female community council sections established over the past decade and have better access to the formal justice sector through the Department of Women's Affairs. This government department often acts as an advisor on legal matters and women's rights as well as a mechanism for referring disputes involving women to formal or informal justice sector actors.

Equality in justice outcomes

According to respondents, women in RC North enjoy relatively more equality in justice outcomes with a greater respect for women's rights as the TDR system attempts primarily to apply *Shari'ah* in family and inheritance matters, rather than making decisions based solely on customary practices. Equality of justice outcomes for male disputants, while still perceived to be better relative to formal justice sector outcome, might occasionally be impacted negatively in some areas of RC North by the strong influence of powerbrokers as well as the prevalence of corruption in TDR in some communities.

TYPES OF DISPUTES

Ethnic, factional, and political disputes

Northern Afghanistan is one of the most ethnically diverse regions of the Afghanistan. The majority of the populations of RC North, where ethnic communities have lived closely together for decades, reported few problems with ethnic tensions. However, developments over the past three decades, including the 1992 – 1995 civil war, the rise of the Taliban regime, and its replacement by the current government, have led to the rise of tensions between the various tribal and ethnic groups in the region. This has reportedly contributed to the emergence of disputes over access to (political) power, land, water and other resources.

A prominent example of the struggle for access to power is the systematic appointment over the past five years of individuals affiliated with the former Northern Alliance and associated current political parties by the Ministry of Interior, also under the control of a former Northern Alliance affiliate, to key security

³ According to RLS-I monitoring and evaluation data, about 29% of elders in RLS-I Phase 2 districts in the north said that they felt that *jirgas* and *shuras* are being influenced and manipulated by outside forces, most notably by powerbrokers.

positions in the north. These include district and provincial chiefs of police as well as the regional police chief. As a consequence, various other ethnic groups as well as affiliates of other former *jihadi* factions have felt shut out of access to power and have sought alternative ways, such as bolstering local militias, capturing control of economic sectors or, on the extreme end, affiliating themselves with anti-government elements to restore what they view as a more appropriate balance of power.

Land

Land disputes are among the most common dispute types in northern Afghanistan. As in other areas of Afghanistan, in many provinces of RC North the population centers are located in the limited areas of fertile land; hence, conflicts over land distribution, boundaries, and passage rights are frequent. In several provinces such as in Faryab, Baghlan and Kunduz, where Pashtuns from the Afghan east and south have been resettled by force or were awarded land to secure the country's northern borders decades ago, disputes over land distribution are common.⁴ In areas where herdsmen and farmers have expanded onto government-owned land, disputes related to perceived usurpation and redistribution of that land by government authorities are reportedly frequent. Apart from disputes over agricultural land, in many urban or semi-urban centers, conflicts often break out over land parcels, as prices have risen in the recent past due to an increased demand for limited number of vacant and available plots.

Land grabbing by powerbrokers, often with the help of members of private militias, has also sparked many land disputes in the north. These disputes, often involving the government or influential powerbrokers aided by armed groups, are viewed as particularly difficult to resolve since neither the government nor the powerbrokers are willing to give up their claims or to compensate evicted families for the land or property seized as part of the dispute resolution process.

Water

Together with land disputes, respondents mentioned water disputes most frequently. After several years of drought and a constantly rising demand for more irrigated land, water has become an increasingly scarce resource in the north. Along the main irrigation canals, the community representative in charge of water management (known as a *mirab*) often attempts to prevent the outbreak of disputes over water. Nonetheless, with increasing volumes of water taken from the canals with more effective pumps, some downstream landowners and occupants are more frequently denied their allocated share. Due to the increased number of cases and their greater complexity, *mirabs* are now often unable to resolve the disputes. Once a water dispute has become too large or complex for a *mirab* to address or when a water conflict has already escalated to physical violence, TDR elders and formal justice actors are frequently asked to step in.

Inheritance

In the north, inheritance conflicts also present a major source of disputes. The limited supply of fertile agricultural land, even in areas with many irrigation canals, often sparks family disputes over the use and distribution of land when one of the owners has died. Returning refugees and internally displaced persons (IDPs) often demand their inheritance shares from other family members, sometimes years after the original owner has died. With increasing awareness of inheritance rights under *Shari'ah*, especially women's,

⁴ While many of the resettled populations received a standard amount of land at the time of resettlement, as specified in government decrees, undocumented or poorly documented sales and re-sales of that land as well as unused land being used by others and now reclaimed by ancestors of the originally resettled populations over the past decade have contributed to the rise in land disputes that are often very difficult to resolve due to the large number of parties involved in the conflicts.

many inheritance cases believed to have been settled are re-opened, often instigating disputes among family members, distant relatives, and other community members.

Family and women-related disputes

The majority of respondents also cited family-related disputes as one of the main sources of conflict in the north, not unlike in the east or south of Afghanistan. Respondents remarked that tensions within families are often due to insufficient living space and poor economic conditions. Furthermore, problems between a wife and her husband's parents, and rivalries between siblings and cousins are often at the root of many family disputes.

Arranged marriages and domestic abuse also tend to lead to intra- and inter-family conflicts that can easily escalate to violence. Elopement of young couples, especially among those from different ethnic communities, frequently causes tensions not only between the families of the boy and the girl but also between their respective communities. While respected local male and female elders usually manage to resolve smaller conflicts such as fighting between children or neighbors, TDR elders interviewed acknowledged that the kinds of disputes mentioned above can be difficult to address because of the feelings of shame and injured pride and honor associated with the underlying offenses. To adequately address these cultural sensitivities, some disputants demand a solution that encompasses elements of customary law to satisfy the notion of restoring honor.

Criminal disputes

Criminal disputes arise primarily from the escalation of all of the above disputes, although respondents also mentioned a rise in drug-related crimes and domestic violence. In northern Afghanistan, respondents noted that the majority of criminal cases are dealt with by the formal justice sector. However, even if the formal justice sector has addressed the criminal law aspects of a case, tribal elders are frequently asked to deal with the non-criminal, reconciliatory aspects of a criminal matter. Some respondents mentioned that, when cooperation between the formal and informal justice sectors is working well, formal justice sector actors might collaborate with TDR elders to ensure that all aspects of a crime are addressed satisfactorily.

Other disputes

Business- and resource-related disputes

Business-related disputes often occur in the larger commercial hubs of the provincial centers, such as Mazari Sharif district (Balkh province) or Kunduz district (Kunduz province). Resource-related disputes tend to arise in all provinces across northern Afghanistan over access to common pastureland or other natural resources, such as wild orchards or forestland. In Badakhshan province, for example, fierce competition exists over access to mines and smuggling routes. Respondents view these conflicts as difficult to resolve since they often involve significant sums of money. Further, natural resource-related conflicts may pit entire communities against one another.

Escalation, revenge

Many of the above dispute types tend to escalate when not resolved immediately or when a disputant views the TDR outcome as unjust and seeks revenge. Disputes that have not been fully resolved in the formal or informal justice system can also escalate and lead to acts of revenge. In order to prevent escalation, TDR actors stressed the importance of achieving full reconciliation of the disputants and restoration of community harmony. However, respondents noted that this was sometimes difficult or impossible, especially when powerbrokers attempt to manipulate TDR outcomes.

Underlying factors

The factors underlying disputes in the north of Afghanistan do not vary much from those in other parts of country. Low levels of general education and literacy and very limited awareness of legal and human rights norms fuel social tensions that often lead directly to disputes.

While the diminished use of customary practices that violate the rights of women – such as resolving a dispute by giving a girl from the offender’s family in marriage to a male member of the victim’s family (known as *baad*) – has reduced the number of disputes arising from TDR decisions, other customs, such as arranged marriages of children without their consent, still cause many disputes.

Respondents noted that the political and socio-economic events of the past decade have significantly contributed to an environment conducive to conflicts: large scale unemployment, particularly among youth; intra-family disputes often connected to inheritance; mistrust between community members; and the presence of the Taliban and other anti-government elements and the resulting counterinsurgency operations. In RC North, inter-ethnic tensions, competition between former members of various *jihadi* factions, and the destabilizing influence of numerous powerbrokers, who seek to take advantage of disputes and instability, have had an adverse impact on effective governance, including delivery of justice services.

JUSTICE SECTOR ACTORS AND THEIR RELATIONSHIPS

TDR actors

Mediators⁵

Mediators are typically tribal elders – *spingiri* in Pashto and *rish-e safed* in Dari (“white beards”) – educated people, and others respected for their dispute resolution skills and who are likely to be voluntarily selected by disputants as members of a *jirga* or *shura*⁶. This position is traditionally inherited patrilineally and requires a certain age and maturity. Mediators can operate independently, act as a member of a *jirga*, or belong to an institutionalized, permanent *shura* such as the Afghan Social Outreach Program (ASOP) *shuras* formerly sponsored by the Independent Directorate of Local Governance (IDLG), district and village *shuras* that are part of the National Solidarity Program (NSP), or peace councils⁷. In northern Afghanistan, as in other parts of the country, there are now some mediators appointed due to their wealth, power, and

⁵ "Mediator" is used here due to its frequent use in translations. The function of a mediator, elder, or *jirgamar* in resolving disputes is a combination of the roles of arbitrators and mediators in other legal regimes. As mediators, informal justice sector actors try to arrive at decisions that reconcile and are acceptable to the disputants and that restore harmony to the community. As arbitrators, they may rely on their status as authority figures to impose various forms of compensation and to order the disputants to reconcile.

⁶ Both *jirgas* and *shuras* are TDR mechanisms that are very prevalent in the north of Afghanistan. *Jirgas* are *ad hoc* assemblies of tribal elders convened to make specific decisions or resolve a specific dispute by consensus. In contrast, *shuras* are established permanent councils of respected community members. *Shuras* are often registered with GIRoA, represent the interests of their community to other institutions such as GIRoA bodies, and are often involved in resolving local disputes. *Shuras* are the more dominant TDR mechanism in the North as Community Development Councils (CDCs), District Development Assemblies (DDAs), and ASOP *shuras* are present in the majority of the districts. Institutions such as peace councils that are unique to the north also follow the *shura* format and often serve to address disputes in their communities. For the sake of simplicity, this regional assessment generally uses the term *jirga* to refer to both *jirgas* and *shuras* that will deal with dispute resolution. When appropriate, the particular TDR forum will be specified.

⁷ Peace councils often seek to create greater stability and avenues for peace within community by including community elders and other influential individuals who constitute a representative sample of the local population. As part of their mandate to unify communities and to promote sustainable peace, these councils often also play a major role in resolving community disputes.

connections to former *jihadi* factions, rather than selected for their merit-based status as trusted TDR practitioners embodying the qualities associated with traditional community elders.

Maliks, arbabs and wakils

In northern Afghanistan, prominent community leaders, usually appointed or elected at the village level, often take part in TDR processes either by acting as liaisons between the community and state actors who have been called in to resolve a dispute, or by participating directly in TDR. The terms *arbab* and *malik* are often used interchangeably in northern Afghanistan for an individual who represents a village or larger rural community. These community leaders are often asked to help in obtaining government identification documents or when a community member seeks government assistance in any other matter. A *wakil-e guzar* fulfills a similar function to a *malik* in more urban settings. Given the high population density of many provincial capitals in northern Afghanistan, a *wakil-e guzar* is often responsible only for a single city block or small neighborhood area.

Along the main irrigation canals in Takhar, Kunduz, and Baghlan but in also other provinces in the north, the local irrigation water manager (known as a *mirab*) has an important role in the community. He is often the first engaged in resolving water disputes. If a *mirab* cannot resolve a dispute, he will often participate in the TDR process by providing key testimony during the deliberation process. As most of the individuals who hold these positions have been elected or selected because of their good reputation and status as tribal elders, they are also sometimes asked to act as *jirgamars* to resolve water-related and other disputes outside of their own community. Like the title of tribal elder, these positions are often passed down from father to son.

Shura members

IDLG-sponsored ASOP shuras

Many respondents mentioned the dispute resolution activities of the justice committees of the now-defunct ASOP District Community Councils (DCCs), formerly sponsored by IDLG and also known in some areas as “local *shuras*.” Respondents noted that the membership of these district-wide *shuras* was often ethnically, tribally, and geographically representative of the district and that these *shuras* were therefore able to resolve disputes in areas where ethnic, tribal or factional tensions had often prevented traditional TDR mechanisms from doing so. Some interviewees also remarked that these *shuras* helped establish greater trust among the various ethnic, tribal, and other groups in a district, which reportedly has not only resulted in a better cooperation between the communities of a district and its formal justice sector actors but also within communities of a district. While the District Governor has no official position or function related to a DCC, he nonetheless often provides an unofficial link between the DCC and the government representatives in a district, in particular to the formal justice sector actors. In many cases, the District Governor attends all of the main DCC meetings and works closely with DCC elders, including referring disputes to the justice sub-committee.

At the time of compiling this regional TDR assessment, most DCCs no longer officially existed, although in some areas the DCCs, in particular the justice committees and their dispute resolution function continue on an unofficial basis.⁸ In areas where the DCCs have been disbanded in their entirety, respondents

⁸ The DCCs have 40-45 members and usually include three sub-committees: justice, development, and peace/reconciliation/security. In many of the districts where DCCs are now defunct, the justice sub-committee members continue to work.

remarked that disputants would frequently ask former DCC members to participate in TDR. Some respondents noted that, if a now-disbanded DCC had been popular in the district, its former members are still perceived to be among the best *jirgamars* to invite to a TDR forum.

National Solidarity Program (NSP) district and village-level shura members

In most areas of northern Afghanistan, the NSP program has established many Community Development Councils (CDCs) and District Development Assemblies (DDAs) that were initially intended to address only community development issues but have since emerged in many places as local-level dispute resolution mechanisms. In the majority of cases, when a dispute is not directly related to a development issue, disputants approach these *shuras* to obtain information about how and where best to have their dispute resolved. Often, elders of these *shuras* volunteer to assist the disputants in taking their case to formal justice sector actors or to explore the option of forming a *jirga* or having the dispute heard by a *shura* or peace council. In some cases, disputants might ask the *shura* they first approach, as a whole or some of its most prominent members, to resolve their dispute. Many NSP *shuras* members have received conflict mediation training and are also well connected to district government officials. As a result of these attributes, disputants reported satisfaction with the dispute resolution capacity of NSP *shura* members on several occasions. In a few areas of the north, a significant number of women are involved in NSP *shuras*, either as members of a *shura*'s women's section or, in a few cases, as members of mixed NSP *shuras*. In those areas, female disputants have reportedly been able to approach female *shura* members for advice and assistance in resolving their disputes. In that way, a few female disputants have been able to directly access a TDR mechanism. In the south and some areas of the east, the level of female participation in CDCs and DDAs is minimal or, at best, in name only. Therefore, female disputants in the north enjoy a significant advantage in accessing justice.

Women and youth

Women

Women still have only limited roles as TDR actors in northern Afghanistan. Although some are more active in TDR mechanisms as described above, the majority of women tend to be involved in dispute resolution only in their own homes or in their immediate neighborhoods. In communities where girls have access to education through high school and where cultural norms allow them to leave their homes without a male escort (known as *mahram*), women have been known to participate in *shuras* and women's groups that serve as referral mechanisms for female disputants or even as a dispute resolution mechanism for minor conflicts. In more conservative communities or remote areas, women are largely prevented from participating in dispute resolution due to strict local cultural prohibitions against women appearing in public or interacting with unrelated men.

Regardless of the environment, wives of prominent *jirgamars* and religious leaders often play small but important roles in traditional TDR processes. For example, they may be asked to investigate a dispute among female community members and inform their husbands of the results, to be shared with a *jirga* or *shura*, or act as witnesses in TDR proceedings. Prominent and respected older women in the community (known as *spinsary* or "gray-headed women") often participate in the traditional Pashtun practice of a ritual request for forgiveness (known as *nanawati*), when women from an offender's family, together with community elders and a local religious leader, go to the home of the victim's family to ask forgiveness and to end the animosities. Other ethnic groups in northern Afghanistan follow similar practices.

Family members

Respondents described family members as often being the first to mediate a dispute within the family, especially if it involves the women of the household. The family will call on outside mediators only if the dispute cannot be resolved within the family. Even if a *jirga* is convened to resolve a family dispute, its members are often distant relatives, in part to keep information about a family's affairs private. Women are normally not allowed to represent themselves in TDR proceedings; hence, a close male relative, known as a *mahram*, is usually required to act as a representative. Families are also instrumental in the customary forgiveness ritual, *nanawati*, to reconcile disputants, in part because the ritual requires the families of the disputants to prepare elaborate meals for each other as part of the reconciliation process.

Youth

The participation of youth in TDR varies among communities in the north. While in the south and east usually only individuals of a certain age are recognized as mature enough to participate in TDR, in the north, youth are reportedly more active in community matters and are more often included in community councils such as NSP *shuras*, which are also sometimes involved in dispute resolution. Some respondents attributed this to relatively higher rates of education among youth in the north and to less social focus on age as a criterion for community status relative to the east and the south. It is reportedly also more common to see sons of community elders, elected or appointed community officials, and government officials attend TDR proceedings in which their fathers are participating. By observing these proceedings, the sons learn about TDR mechanisms, as they are often expected to succeed their fathers as TDR practitioners.

Religious leaders

As in other parts of Afghanistan, religious leaders play an important role in dispute resolution in the north. However, few religious leaders are perceived to have sufficient education in Islamic law to allow them to effectively monitor the correct application of *Shari'ah* in TDR proceedings. Nonetheless, most community members reported that the presence of religious leaders lends legitimacy to TDR decisions and therefore makes them more acceptable to disputants and thus also easier to enforce.

Community residents

Like in the other regions of Afghanistan, residents of urban areas and villagers are often the first to intervene in disputes and to report them to village elders or government authorities. Residents of an area might also assist TDR elders and formal justice sector actors in the investigation of a dispute. A large proportion of village residents in the north have become involved in dispute resolution throughout the region's many *shuras*, such as the NSP *shuras* and the peace councils. By becoming involved with such TDR forums, villagers and to a lesser extent, residents of urban areas have received training in basic legal rights and dispute resolution techniques. These factors have reportedly contributed to fewer conflicts growing complex as community members help resolve disputes before they escalate.

Government officials

Government officials are sometimes asked to participate in TDR in their capacities as tribal elders, particularly when the government official is from the district where the dispute occurred and has long-standing ties to that community. Some officials who admitted to having been *jirga* members or having participated in TDR in another capacity noted that they were under the impression that government officials were not formally allowed to do so. Some government officials reported that they did not participate in TDR directly but rather helped organize *jirgas* formed to resolve difficult disputes initially

referred to formal justice sector actors or where district officials were approached to assist with facilitation of dispute resolution. Government officials who reported some involvement in TDR also remarked that their involvement gave the *jirgas* greater credibility, thereby helping with implementation of the decisions.

State actors

Provincial and District Governors

With the increasing presence of formal justice sector actors in many districts in the north, Provincial and District Governors are decreasingly involved in dealing with disputes. In some remote districts and in areas where few formal justice sector actors are present, or where the local communities are unfamiliar with the formal justice system, the District Governor continues to act as the disputants' main point of contact for referrals of disputes to the *Huqooq*, the courts, and, in some cases - particularly those concerning civil law violations - directly to the TDR elders. In some provinces, disputants might turn directly to the Provincial Governor when a dispute involves a matter that affects the population of more than one district or when disputants perceive the District Governor to be involved in the conflict.

Provincial and District Chiefs of Police

Unlike in many districts in the south, representatives of the police department, both at the provincial and the district level, are less likely to be directly involved in dispute adjudication. They do, however, refer disputes to the prosecutor's office, investigate crimes, make arrests, and assist in enforcement of and monitoring of court verdicts as well as TDR decisions. The latter usually happens only if a formal justice sector actor or the Provincial or District Governor has asked or instructed them to do so. In the case of TDR decisions, enforcement assistance and monitoring by police officials may also take place if TDR elders have registered a TDR decision with government authorities.

Courts

Although there is at least a primary court in many districts in the north, many of those courts are reportedly not very effective due to a shortage of professional staff (as not all authorized positions are filled),⁹ the poor qualifications of many individuals working in the court system, and a reported lack of administrative support from the Ministry of Justice in Kabul. Respondents reported that courts in the provincial capitals are seen as the most professional and effective in the north. Many district and provincial courts are perceived as corrupt and slow to resolve disputes. A few respondents mentioned, however, that in spite of these shortcomings, the courts are the only places where criminal disputes and complex civil disputes can be addressed. Many disputants noted that land disputes, which often require evaluation of old as well as the issuance of new documentation, are seen as "a government matter" and therefore, by default, are perceived as falling under the courts.

Prosecutors

In districts where a Prosecutor was reported to be present, respondents noted that this official was often perceived to be active in investigating disputes within the limits of allocated resources. Prosecutors were reported to work closely with the office of the *huqooq*, the district-level representative of the Ministry of

⁹ Frequently, not all positions in the formal justice sector that have been authorized and budgeted are filled, according to respondents in the RC North region. The reasons for this relate to lack of qualified staff, lack of staff willing to work in remote and/or insecure districts, or staff assigned to a district working from the provincial center due to security concerns or a lack of accommodation in the district. In this context, in some provinces, like Kunduz, for example, the staff problem has reportedly become less of an issue over the last year.

Justice, which refers many cases to the Prosecutor for investigation. Respondents, including some disputants who had used the formal justice sector, reported having had very limited direct interaction with the Prosecutor's office. In a few remote areas or areas under the control of anti-government elements, which are therefore inaccessible to the Prosecutor and his staff, TDR elders reported having assisted the Prosecutor's office in investigating disputes.

Huqooq department

The *Huqooq* is the Ministry of Justice branch at the district level responsible for mediating minor civil disputes or referring disputants to the appropriate justice mechanism. If the office of the *Huqooq* determines that a dispute includes aspects pertaining to criminal law, the case will be referred directly to the formal justice sector; if a case is a civil matter, the disputants are usually given the choice of having the dispute resolved through TDR or the formal justice sector. The office of the *Huqooq* also reviews and registers some TDR decisions, whether or not the *Huqooq* had originally referred the dispute to the elders. The *Huqooqs* in the RC North region appear far more active in advising disputants on the appropriate justice forum and in referring disputes than their counterparts in the south.

RLS-I monitoring and evaluation data collected in three districts in RC North, including two provincial capitals, showed that the rates of both TDR decision documentation and registration are relatively low compared to other regions of Afghanistan.¹⁰ One factor that may contribute to the slightly lower registration rate appears to be that, in the north, decisions brought to the *Huqooq* for registration would first be reviewed for legal compliance three out of four times, thereby encouraging registration only of decisions which completely adhere to Afghan statutory law or *Shari'ah*.¹¹

Respondents from some districts said they suspect some *Huqooq* representatives of corruption by, for example, demanding bribes from disputants before referring their cases to the formal justice sector or when disputants and TDR elders attempt to register TDR decisions with the office of the *Huqooq*.

Department of Women's Affairs (DoWA)

Where DoWA representatives are present, they often play a vital role in referring disputes involving women to the relevant justice sector actors and in providing legal advice to women, who are often unaware of their rights and unfamiliar with how the formal justice system functions. DoWA's ability to assist female disputants in ways not possible within the rest of the formal justice system is primarily due to the fact that women know that when they approach DoWA they interface with women and thereby avoid having to explain their situation to a non-relative male, which would violate local cultural norms. A few respondents pointed out, however, that when women discuss sensitive cases, such as rape, with DoWA, the department, often under outside pressure, might occasionally refer it to TDR. The women then will not only have to face the repercussions of having shared the dispute with someone outside of the

¹⁰ For example, in the North, 41% of elders from four districts in three provinces reported that in their communities, documentation of TDR decisions takes place; where documentation takes place, elders estimate that 45% of all decisions are documented. For survey districts from all three regions (RC North, RC South and RC East), on average 48% of the elders reported that decisions are documented; where decisions are documented, elders estimated that 58% of all disputes in their community are documented. Furthermore, of all the decisions reported as documented in the RC North survey districts, on average only 20% of the elders reported that these decisions are registered with government officials; where registration takes place, elders estimated that 35% of the documented disputes are registered. Across the three regions (RC North, RC South and RC East) 28% of elders noted that documented decisions are registered; where decisions are registered, elders estimated that registration occurs for 42% of all documented disputes.

¹¹ RLS-I monitoring and evaluation data showed that when TDR decisions are registered, they are reviewed for compliance with Afghan statutory law or *Shari'ah* about 76% of the time in the north, but only 51% of the time in the east and 67% of the south.

immediate family, but may also be subjected to severe punishment due to the application of customary practices in the TDR forum. Respondents remarked that, once a case has been submitted to TDR, neither DoWA nor any other government institution has much influence over what source of law and what practices the TDR forum applies. Only in the case that the TDR forum seeks to register a decision would the formal justice sector have the ability to review the decision for Afghan statutory and *Shari'ah* law compliance. In cases of rape and running away from one's husband, in particular, most TDR mechanisms are more likely to punish a woman rather than to adhere strictly to *Shari'ah*, which requires four male witnesses to an alleged act of adultery, a requirement that is seldom met. Most respondents, particularly women, acknowledged that for the majority of smaller, less complicated or controversial disputes, DoWA provides a unique means to address disputes involving women.

Perceptions: formal justice system

In most of the north, the formal justice system is used primarily to address criminal matters and complex or difficult non-criminal disputes. According to respondents, this is because the formal justice sector is perceived as able to implement criminal punishments and enforce complicated decisions in non-criminal matters. Several respondents mentioned that disputants' primary concerns with the formal justice system are the extensive time it takes to consider and resolve cases; the perception that formal justice system is plagued by corruption; and the perception that power and money rather than evidence are considered in reaching decisions. The absence or inaccessibility of formal justice sector actors in some areas forces disputants to turn to TDR, whether or not they would have considered taking a dispute to the formal justice sector in spite of these concerns.

While the formal justice system is popular and widely used in the provincial centers and surrounding districts, many rural residents expressed little trust in the formal justice system, citing unfamiliarity with its procedures and the perception that formal justice sector actors do not understand or appreciate the customs of the rural population. In addition, several respondents reported that many courts are unable to effectively enforce their decisions in rural areas, while TDR decisions are enforced effectively through community pressure.

Perceptions: informal justice system

The perception of TDR in general is very positive among elders, disputants, and some government officials, particularly District Governors. However, many formal justice sector actors do not hold a favorable view of TDR, claiming that the informal justice system relies too heavily on customary law. Many TDR elders interviewed reported that they view this claim as an attempt by formal justice sector actors to attract disputants to the formal justice sector to extract bribes in the process of resolving cases. Among disputants, TDR elders are often perceived as pillars of their community who aim to find the best solutions for disputants and the community; few disputants reportedly feel the same about the formal justice sector actors. While respondents have occasionally accused the informal justice sector of corruption and bias, many reported that these problems are generally much worse in the formal justice sector.¹² Respondents remarked that powerbrokers and anti-government elements at times manipulate the TDR system, thereby distorting its decisions. For example, in Pashtun Kot district (Faryab province), government officials were concerned that the influence of powerbrokers in TDR helps these powerbrokers and anti-government

¹² Elders interviewed by RLS-I in the north stated that they perceived some form of corruption in three out of four cases, a higher rate than in the east and about the same rate as in the south.

elements gain legitimacy, which is perceived as contributing to the overall weakening of government institutions.

The presence and empowerment of an increasing number of permanent TDR mechanisms such as peace councils has yielded mixed reviews. Many interviewees mentioned that, while in their view these councils may be less effective than more traditional informal justice sector mechanisms such as *jirgas*, disputants are nonetheless happy to have access to permanent dispute resolution mechanisms without having to use the formal justice sector, particularly for smaller civil disputes.

Current status of TDR

The TDR system dominates the provision of justice services in many districts in the north. According to most respondents, it is used extensively for addressing nearly all non-criminal matters and a few criminal matters. Although a few formal justice sector actors distrust TDR and wish it eliminated, the formal and informal justice sectors generally cooperate with one another to some extent. The majority of formal and informal justice actors and many disputants identified the connections to and extensive knowledge of their communities as primary strengths of TDR elders and the informal justice system. Respondents also value the TDR system for its accessibility in remote areas. Many disputants and elders cited TDR's cost-effectiveness and speed in adjudication as distinct advantages over the formal justice system.

Respondents universally acknowledged that the TDR system currently deals with the majority of non-criminal matters. Where few or no formal justice actors are present and/or where the state enjoys limited access, such as remote districts of Badakhshan or some districts of Faryab, TDR addresses all disputes, including those involving criminal matters. Many representatives of the formal justice system reported relying heavily on TDR actors to help them investigate or provide input on cases in the formal justice system. Respondents also reported that, under pressure from the formal justice system, and as a result of increasing levels of education and awareness of legal rights norms among the general population and the presence of more structured TDR institutions such as ASOP *shuras* and peace councils, the TDR system in the north is gradually moving toward decisions based entirely on Afghan statutory law and *Shari'ah* and away from decisions partially or entirely based on customary practices.

Formal-informal justice sector collaboration

There are both institutionalized and *ad hoc* linkages between the formal and informal justice systems in most districts of northern Afghanistan where formal justice sector actors are present. Even in districts where formal justice actors are not present, it is not uncommon for informal justice actors from these areas to reach out to formal justice actors on the provincial level or neighboring districts for assistance, in particular in criminal cases or complex non-criminal disputes that they cannot or do not want to address on their own. That means that the formal-informal justice sector collaboration takes place not only in areas where formal justice sector actors are present and easily accessible, but that TDR elders in some districts are known to actively seek the formal justice sector's assistance and cooperation, even when it requires traveling outside of their own district.

The District Governor or formal justice sector actors, where present, tend to refer cases to and accept cases from the TDR system. Elected or appointed community leaders often act as official and unofficial liaisons between communities and the office of the *Huqooq*, which is generally perceived to be the most approachable local representative of the formal justice sector. For family and other women-related

disputes, DoWA fulfills a similar liaison function. There are also informal linkages between the two justice systems that arise from personal relations and informal discussions between community elders and formal justice system actors. These connections often help make dispute resolution more efficient and are also perceived to facilitate the enforcement of decisions.

In most districts in the north, more organized and structured cooperation between the formal and informal justice sectors, for example through the systematic registration of TDR decisions by the formal justice sector, is just beginning to emerge. As some judges remain skeptical of the TDR system and some village elders continue to distrust the formal justice sector, cooperation is only slowly increasing. Pressure from powerbrokers and anti-government elements on TDR elders in some district also prevents TDR practitioners from seeking closer cooperation with the formal justice sector in those areas.

Women as dispute resolvers

While the cultural environment is perceived as less restrictive in the north, women nonetheless play only a limited role in dispute resolution, mainly because they are not allowed to join traditional *jirgas* and are able to serve as permanent members of *shuras* that hear disputes only under certain circumstances. Some conservative elders interviewed stated that even women with some education could not be trusted to make decisions that contribute to dispute resolution.¹³

In some of Pashtun communities in the north, tribal elders are willing to grant older women a ceremonial role in TDR, as prescribed by customary law only in the ritual process of requesting forgiveness from a victim's family, known as *nanawati*. In non-Pashtun and other relatively less culturally conservative environments such as urban or very ethnically diverse areas, where girls have more access to education, respondents report that women play more active roles as dispute resolvers. There are female judges working in some areas of the north, such as in Balkh province, and DoWA representatives, who play a supportive role in addressing disputes involving women. DoWA is present in most provincial centers and even some district centers. Women are frequently active in NSP-related *shuras* as well as peace councils and other decision-making bodies with officially recognized women's sections that have limited, but at least formally recognized, consultations with their male counterparts. Through these consultation mechanisms, female *shura* members are reportedly able to contribute to dispute resolution of larger and more difficult disputes in their communities.

However, women's primary role as dispute resolvers remains in the private sphere, where they are instrumental in resolving family-related disputes or in referring to TDR those disputes that they are unable to resolve. Unlike in the south of Afghanistan, several female respondents mentioned that women turn to wives of elected or appointed community leaders and local religious leaders for advice and assistance in resolving disputes relating to family law. Respondents attribute this to the fact that women in the north have more access to a greater network of women perceived as influential in their communities and that girls and women are generally perceived to be more aware of their legal rights relative to women in the south, for example.

¹³ With regard to women's participation in TDR, the north is significantly ahead of the south and the east. About 80% of the respondents in the RLS-I's survey in the north said women could participate in TDR, while only 15% of the respondents in the south agreed. Fifty-eight percent of respondents mentioned women's participation in TDR in the east. Women's participation in this case is defined not just as direct participation in a *jirga/shura* as a decision maker, but also includes representing oneself as a disputant, giving testimony as a witness to a dispute, providing background information to TDR elders, or acting as a character witness for one of the disputants.

Outside influences

Respondents noted that the level of outside influences on TDR forums is significant in many areas of the north, particularly in areas where powerbrokers or anti-government elements have a strong influence on communities. While family disputes reportedly remain largely unaffected by these outside influences, land, water, and property disputes; disputes associated with access to natural resources; and disputes connected to ethnic or factional tensions frequently draw the attention of powerbrokers, who then seek to influence or manipulate justice outcomes in their favor. Several disputants noted that in areas where ethnic tensions cause members of an ethnic minority to avoid some TDR mechanisms because they fear that they might be discriminated against, these disputants tend to turn to anti-government elements for what they believe will be unbiased decisions that can actually be enforced. The disputants may not approach formal justice sector actors, even if present, in such districts for the same reasons that disputants tend to avoid TDR mechanisms: fear of discrimination and bias.

TDR PROCESS AND PRACTICES

Selection of forum

With the wide range of options for dispute resolution available in most parts of RC North (at least for non-criminal matters), disputants reportedly choose the option that they believe will maximize their chances to obtain a favorable decision in the shortest period of time. Sometimes disputants try to do so by presenting a dispute to several formal and informal justice sector dispute resolution forums simultaneously. Respondents noted that some disputants seek advice from the office of the *Huqooq* and then usually follow that guidance. In some provinces in the north, DoWA works with the *Huqooq*, which might even advise female disputants to select a TDR forum for some types of disputes. According to some interviewees, female disputants usually feel obligated to follow the *Huqooq*'s recommendation.

Once disputants have decided to a *shura*, such as an ASOP *shura* or a peace council, they often have to abide by established processes of approaching the TDR mechanism. In some districts, respondents noted that disputants could either access peace councils and ASOP *shuras* directly or be referred to them by formal justice sector actors. In other districts, interviewees reported that only state actors had the authority to refer disputes to these *shuras* and that disputants themselves were not allowed to approach *shuras* without a referral from formal justice sector actors. Even in cases where disputants are allowed to turn to *shuras* directly, respondents remarked that parties to a conflict would often choose to approach NSP-related *shuras*, such as DDAs and CDCs, only after asking a trusted local elder and/or a member of the *shura* to provide an introduction.

In parts of the north controlled by, or under the influence of powerbrokers and/or anti-government elements, disputants have more limited options for choosing the forum to resolve their disputes. In these areas, disputants tend to turn to the TDR forum that is the most accessible and has the greatest authority to enforce its decision locally. Respondents noted that in these areas, powerbrokers and anti-government elements might sometimes even refer a dispute to TDR elders rather than dealing with it themselves. In these cases, the powerbroker or anti-government elements might reserve the right to dictate the composition of the TDR mechanism or to influence or veto the final decision of the TDR elders. In remote districts under government control but with little or no government presence, such as in parts of northern Badakhshan, disputants with conflicts of both criminal and non-criminal nature might contact the District Governor first, who would then refer the disputants to a suitable TDR mechanism.

Selection of TDR members

Depending on the forum chosen by the disputants, the process for selecting its members can vary greatly across the North. If a dispute comes before a peace council or the justice sub-committee of an ASOP *shura*, both of which have an established and fixed permanent membership, the disputants cannot select the members who will consider their dispute but must accept the forum as is. Some respondents noted that although this may mean that not all the members may be well suited to deal with a particular dispute (as might be the case with a *jirga* selected specifically to address one dispute), the membership is often geographically and ethnically diverse and is therefore viewed as more impartial, particularly by disputants who belong to an ethnic minority.

In case a disputant in the north wants to have a dispute addressed by a *jirga*, the disputant would follow the same procedure as in the east and the south: a *jirga* is convened on an *ad hoc* basis to resolve a particular dispute. The disputants select trusted *jirga* members in light of the type of dispute that needs to be resolved. Disputants often choose *jirga* members who are appointed or elected community leaders, religious leaders and other important and well-respected community members such as teachers. A disputant can refuse to approve a *jirga* member proposed by the opposing disputant, who would then have to nominate another *jirga* member to replace the rejected one.

Unlike the south, where large communities of the same tribe or ethnic group tend to be concentrated in certain districts, a particular tribe or ethnic group in a district of the more diverse north may be too small to yield several qualified *jirga* members; disputants are therefore often forced to invite *jirga* members from outside of their community. Those outside members may not be familiar with the customary law of the disputants' community, or might not be viewed as impartial by the disputants and their community. Given these potential difficulties in assembling a *jirga*, many disputants in the north might choose instead to have their dispute dealt with by one of the established *shuras* in their district or province.

Except in areas of Faryab, Baghlan and Kunduz provinces and parts of other provinces, Pashtun communities in most areas of the north are relatively small and spread out. Those smaller Pashtun communities often have their own councils which function more like a hybrid of typical *shuras* and *jirgas*. Like *jirgas*, these tribal councils are not standing bodies but usually meet only when a particular dispute needs to be resolved or other community matter must be addressed. Like *shuras*, however, the membership of these tribal bodies rarely varies, because of the limited number of trusted elders in these small communities. On occasion, in order to address a larger dispute, additional community members may be asked to join the tribal council temporarily for the resolution of that dispute. According to respondents, these hybrid Pashtun tribal councils are often called upon to deal with family law or inheritance matters that the disputants wish to have resolved according to the Pashtun customary norms and practices of their community. Apart from the Pashtun communities, other ethnic minorities in many provinces of northern Afghanistan have adopted a similar practice of forming ethnic councils that are also known to hear disputes.

As discussed above, formal justice sector actors in the north, such as the office of the *Huqooq* and DoWA, often play an instrumental role in selecting a dispute resolution forum. These formal justice sector institutions, along with the District Governor, often dictate the membership of a *jirga* and require that TDR elders appointed by them report back on the *jirga*'s decision.

Venue

Few respondents highlighted the issue of TDR venue selection. In most district centers, there is an assembly hall of some sort that can be used for *jirgas* and *shuras*. Many ASOP and NSP-affiliated *shuras* usually have a dedicated permanent space for their meetings. Tribal and ethnic *shuras* that do not meet frequently and small *jirgas* will usually convene at the home of a prominent community leader who is often also a member of the TDR forum. Larger *jirgas* meet in any space that can accommodate all its members. Given the tribal and ethnic diversity of much of the north, finding a suitable neutral TDR venue is reportedly rarely a problem.

Authority

As in other regions of Afghanistan, a hallmark of the TDR process in the north is that all parties grant authority to the TDR body to decide their dispute. This obliges the disputants to accept and implement any decision made by the forum that has been granted full authority.

Decisions made by larger TDR bodies, forums such as the former ASOP *shuras*, are usually respected given the relationship of those bodies to state actors, who have the power to enforce decisions. According to respondents, even if the same authority is granted to other TDR bodies their decisions are often either rejected, not fully implemented, or ignored. In order to avoid this, these TDR bodies might ask the disputants to give them written authority to resolve the dispute. Unlike those in the east, respondents did not report that TDR forums in the north demand a deposit (*machalgha*) from disputants at the outset of the TDR process to ensure their acceptance of and compliance with the TDR decision. Some elders noted that disputants usually abide by decisions made by the anti-government elements and local powerbrokers, even without having given written authority, as these groups and individuals are often feared because they have the means to enforce compliance.

Evidence and other information

Most TDR forums collect and consider evidence, and also hear witness accounts to gain a better understanding of the roots and history of the particular dispute they are asked to resolve. Frequently, some members of the TDR forum will be tasked to interview the disputants and other witnesses and pass on the information gathered to the entire TDR forum during the deliberation process. In some cases, such as land- or water-related disputes, TDR members might travel to the site of the dispute to inspect it in order to get an overview of the conflict and to note possible solutions to the dispute in light of findings at the site.

Depending on the TDR forum selected by the disputants, the evidence collection process might be more or less structured and extensive. A few respondents noted that *jirgas* whose membership is drawn from a single community might already be familiar with many of the circumstances of a particular conflict and therefore spend less time on evidence collection. The same process is generally known to take longer with *shuras* because the often diverse membership might be unfamiliar with the circumstances of a dispute that arises outside their own community. Some disputants accused *shuras* of not investigating and discussing each case fully during the investigation, reportedly due to an effort to resolve a large number of disputes within the limited timeframe of the *shuras*' periodically scheduled meetings.

Deliberative process

The TDR deliberative process and its duration depend on the number of parties to the dispute, the complexity of the case, the type of TDR forum and its size, and to some extent the willingness of the disputants to accept a decision without reservations.

More complex disputes and those involving multiple parties often require an extensive deliberation process to explore all aspects of the case and take into consideration all disputants' views by reviewing evidence and hearing witness testimonies. The choice of TDR forum can often have a significant impact of the form and the length of the deliberation process. Larger forums, which are often required to resolve more difficult disputes, tend to take more time, as all members must be able to review enough information to make an informed decision. Well-established *shuras* with a fixed membership that meet regularly according to a predetermined schedule, such as peace councils, NSP-related *shuras*, and ASOP *shura* justice committees can resolve disputes more quickly because they often have established routine methods to resolve disputes systematically. A few respondents noted that if a case is complex and cannot be resolved during a single session of a *shura*, resolution of the dispute could take a long time, as the next working session on the matter might not be until the next regularly scheduled meeting of the body.

If *shura* members are inexperienced in resolving cases involving complex legal issues such as property- and inheritance-related matters, it can take a long time for the *shura* to come to its decision, as outside experts often must be invited to help *shura* members understand the relevant Afghan law and *Shari'ah* provisions. Some respondents reported a few instances in which disputants from various tribal and ethnic backgrounds tried to reach an agreement through a TDR forum but demanded that their dispute be adjudicated according to a particular set of customary laws in order for the decision to be acceptable to all parties. Reaching an agreement on the source of applicable law for a particular dispute and then to ensure that all members of the TDR body are familiar enough with it to come to a decision can sometimes delay the TDR proceedings.

Sources of law

In the north, the sources of law on which TDR decisions are based do not tend to be as homogeneous as in the south. The majority of respondents pointed out that the primary emphasis of TDR is to restore community harmony, and that, therefore, a primary objective is to find a solution that the disputants and, by extension the community, find acceptable regardless of the source of law on which it is based. Many of the elders interviewed claimed that they apply *Shari'ah* in TDR because it is the most legitimate source of law for Muslim communities and that disputants are therefore more likely to accept and comply with the resulting decision. A number of respondents, including both disputants and elders, acknowledged, however, that due to elders' limited understanding of Islamic law, many TDR decisions are based, at least in part, on local customary law. Throughout the north, several interviewees lamented that a significant number TDR decisions might actually be based either on a mixture of Islamic and customary law (no matter which source of law the elders claim they have applied) or, when there is a dominant local powerbroker, decisions could be based entirely on that individual's personal opinions and preferences rather than any source of law. Several TDR elders stated, however, that they choose the source of law they deem most suitable for a particular case and which would be most acceptable to the disputants and the community. For example, elders in the Pashtun communities of Baghlan and Faryab provinces reported that disputants sometimes approach them and insist on having Pashtun customary law used as the source of law for TDR decisions regarding family matters.

Documentation and enforcement

Most respondents explained that a TDR decision would be announced orally (usually for smaller disputes) or committed to writing for all other disputes. Written documentation of TDR decisions in the north is often facilitated by a relatively high literacy rate compared to the general population of Afghanistan; hence, it is relatively more frequent. Some interviewees also noted that standing TDR mechanisms such as the justice committees of the now-defunct ASOP *shuras*, peace councils, and NSP-related *shuras* are also likely to document their resolution of a dispute in a decision letter. TDR mechanisms such as *shuras* and peace councils tend to have several literate members that who are capable of keeping records and noting decisions these bodies make on a regular basis. Many of these TDR bodies reportedly have some form of record book.

Respondents remarked that enforcement of a TDR decision is generally not a significant problem, especially when a respected TDR forum made the decision. Respondents pointed out, however, that this is not the case when one of the disputants holds a position of power that allows him to ignore the decision with impunity. In such instances, the other disputant usually tries to find an equally powerful backer to help ensure enforcement of the decision. According to respondents from Faryab and Baghlan provinces, the prevalence of armed groups associated with local powerbrokers or anti-government elements makes it easy for disputants to find a party to help ensure enforcement of a TDR decision although it might require some form of payment or compensation. In urbanized areas of the north and in districts surrounding those areas, disadvantaged disputants might seek help from government actors to enforce a TDR decision. Respondents reported that disputants take this path only if they are convinced that the state actor can effectively enforce the decision, as turning to the government could have negative consequences for the disputant if the government intervention fails to achieve its goal. The latter is particularly true for areas where anti-government elements have at least some level of influence.

Appeal of TDR decisions

Respondents from the northern provinces of Afghanistan reported that if they are not satisfied with a TDR decision, particularly in a minor civil matter, they are likely to try to obtain a more favorable decision from an alternative formal or informal justice sector forum. In more serious cases that would require some enforcement support, such as a dispute in which the decision might be unfavorable for a major powerbroker, disputants would turn to third party justice actors such as other powerbrokers or anti-government elements, or to formal justice sector actors with sufficient enforcement power, such as a Provincial Governor or Chief of Police, in order to have the decision implemented and enforced.

Equal access to justice and fairness of decisions

In general, men and women do not have equal access to the informal or the formal justice sector, although women in the RC North, particularly in urban areas and non-Pashtun communities, reportedly have greater access to justice than those in other regions of Afghanistan. Women from Pashtun-dominated communities have very limited access to justice, due to cultural restrictions that limit their interactions with unrelated males. Some respondents noted that there are also very conservative pockets of non-Pashtun ethnic groups with cultural restrictions that also prevent women from gaining access to justice without a male representative. However, many areas of the north have seen an increasing presence of women in the public sphere, for example as members of NSP *shuras*. This development has made it easier for female disputants to access TDR mechanisms directly as women are able to contact and talk to female TDR justice providers

without a male representative. Women in some areas of RC North reportedly also have comparatively greater access to formal justice sector actors through representatives of DoWA.

The majority of respondents in the north acknowledged that justice outcomes are occasionally manipulated due to corruption, bias in favor of the wealthy and powerful, and bias based on ethnic and tribal affiliation. Overall, however, the TDR system is still very much valued for its quick, fair and cost effective solutions. Due to the comparatively low costs of establishing a *jirga* or approaching a village *shura*, even poorer individuals are able to access dispute resolution services. Additionally, TDR outcomes are fairer in part because the elders, being familiar with the local circumstances, can, for example, consider disputant means in determining compensation. In terms of ethnic or tribal bias in TDR, respondents noted that the formal justice sector is not completely devoid of bias either, in particular for ethnic groups that are less represented in the government. While little, however, can be done by disputants to address ethnic bias in the formal justice sector, the TDR system offers the option to use an ethnic *shura* or tribal council to resolve intra-ethnic or intra-tribal disputes. Similarly, demographically representative *jirgas* and *shuras* can be established or selected in order to adjudicate inter-ethnic or inter-tribal disputes.

THIRD PARTY JUSTICE ACTORS' ROLE IN DISPUTE RESOLUTION

The presence and role in dispute resolution of third-party justice actors such as powerbrokers and anti-government elements varies greatly across RC North. Respondents from Dahana-I-Ghuri district (Baghlan province) and from Pashtun Kot district (Faryab province), for example, reported that third-party justice actors hear disputes, particularly criminal matters, in the absence of formal justice actors who would normally address them. Respondents from Dahana-I-Ghuri district also mentioned that the poor security situation and absence of formal justice sector actors in the district leaves them with no option but to engage TDR for disputes involving civil matters and to turn to third-party justice actors to resolve criminal matters that require an enforcement mechanism. In Pashtun Kot district, government opposition groups, powerbrokers, and the Afghan Local Police are all reportedly very active in dispute resolution, filling the void left by the absence or inaccessibility of formal justice sector actors and using the opportunity to establish their authority in the area.