Justice Beyond the Reach of Law

Strengthening legal rights and protections in Afghanistan's rural communities

Dispute resolution in Afghanistan is a local affair, with village, tribal, or religious elders handling most disputes by direct request of disputants or referral from district authorities. However, informal justice providers rely primarily on local customary practice, which is a durable and legitimate form of dispute resolution for most cases, but can also invade the legal jurisdiction of Afghanistan's state justice system and render decisions that contravene Afghan law and Islamic human rights. In more egregious cases, customary decisions represent gross violations of basic human rights norms – with most violations disproportionately harming women.

In an effort to strengthen access to justice in the forums where most Afghans resolve disputes, the United States Agency for International Development (USAID) designed the Rule of Law Stabilization – Informal Component (RLS-I). USAID's implementing partner, Checchi and Company Consulting, conducted an in-house impact evaluation and showed that sustained engagement of traditional village mediators strengthened legal rights and protections for both men and women, reduced the incidence of harmful social practices, addressed the women's rights concerns associated with a male-dominated forum, and facilitated recognition and acceptance of the respective jurisdictions of state and non-state justice actors.

Context

In Afghan communities, traditional dispute resolution (TDR)[1] fills a time-honored role of maintaining peace through consensus-building, compromise, and adherence to religious and/or customary codes of practice. In larger disputes where more serious damage has been done to property or persons, TDR is a mechanism by which the aggrieved or victimized parties receive restitution and offer forgiveness to the perpetrators, with the intent of restoring harmony between parties and within the larger community.

Informal justice is not only the forum where most Afghans access justice services, but is also a battleground where nascent district governments compete with anti-government elements for local legitimacy, with village elders caught in between. RLS-I is thus a broad-based effort to safeguard Afghans' legal rights and protections in an environment where state justice cannot yet provide such services, and link communities with the state where government services exist.

To achieve these objectives, RLS-I educates local mediators and citizens on their legal rights and obligations under Afghan constitutional and statutory law, strengthens women's roles in disputes affecting women, establishes the state's exclusive jurisdiction over criminal prosecution and penalty, and raises awareness that some cultural practices recognized by Afghans themselves as potentially harmful are both illegal and un-Islamic.

RLS-I was first piloted in 2010 in 15 key districts as a legal awareness raising initiative, and marked USAID's initial attempt to address legal literacy and human rights concerns by targeting local mediators at the village and district level. RLS-I subsequently expanded to an additional 33 districts over two program phases.

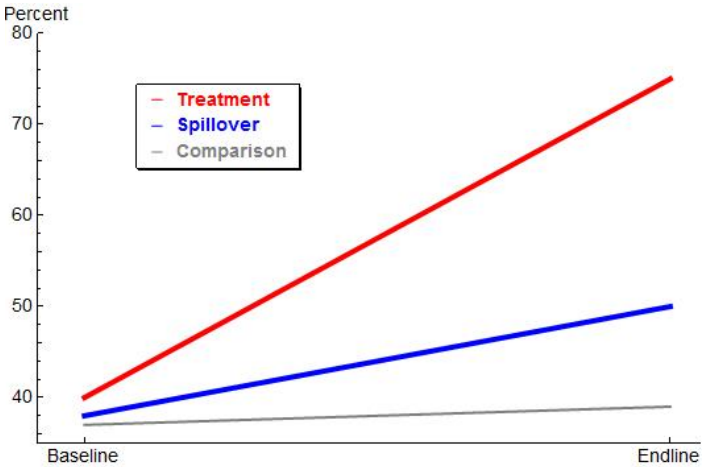
Evaluation

The evaluation took place over two program phases covering the periods October 2011 – September 2012 and October 2012 – January 2014. There were both continuities and differences across each evaluation round, both of which provided insight into the programmatic setting and trajectory of RLS-I outcomes and impacts. In the most recent evaluation round, RLS-I surveyed members of RLS-I's key beneficiary groups (elders, disputants, and citizens) in nine districts before and after programming.[2] Among elders, there were two treatment

[1] Also referred to as informal, local, or community-based dispute resolution.

[2] The evaluation surveyed approximately 500 elders and 500 disputants in two data collection rounds before and after the program, with the sample split evenly between program and non-program groups. The evaluation also included a survey of 1,800 households before and after the program in six districts.

groups – elders who participated directly, and elders who did not attend RLS-I activities but may have contributed to RLS-I objectives through interaction with program participants. Graphically, the design is as follows:



The grey line indicates secular changes over time that are not related to RLS-I. The blue line represents gains among elders who potentially experienced positive peer effects after interacting with RLS-I elders. The red line represents the direct effect of RLS-I upon its participants.

Findings

The following key findings reflect evaluation measurements taken at various points between December 2011 and August 2013, as well as triangulating measurements against qualitative assessments and the attendance records of RLS-I participants.

RLS-I is validated by its participants

Ninety-five percent of program participants surveyed reported that RLS-I activities were of practical benefit to them. Over 80% of elders consulted RLS-I learning and outreach material at least occasionally and also shared the information with someone outside of their immediate household. Over 70% of surveyed elders reported applying some aspect of RLS-I training in their home communities, and that RLS-I learning and outreach material helped them solve some problem or answer a question on legal rights and protections. Nearly half of RLS-I elders reported a willingness and ability to attend activities even if lunch and transportation were not provided.

RLS-I elders are in higher demand and report changes in personal and community practice

Afghans requested the mediation services of RLS-I elders 15% more than comparison group elders in the previous 3-6 months. RLS-I elders were also 30% more likely to report a positive change in how disputes were resolved in their communities compared to one year ago, and 24% more likely to successfully provide a concrete example of what positive change had occurred, relative to comparison group elders.

RLS-I elders recognize the legally-acceptable scope for non-state dispute resolution

Elders reporting that their dispute adjudication resolved the criminal aspects of a case fell by 11%, while elders reporting that their dispute adjudication resolved only the civil aspects of a case increased by 38%, relative to comparison group elders. Additionally, the proportion of elders refusing to answer queries on jurisdiction (suggesting avoidance behavior for adjudication they knew to intrude upon the jurisdiction of the state) fell by more than half – from 43% to 20%.

RLS-I elders record and register decisions more often than elders who do not participate in RLS-I

Amidst a general increase in dispute documentation and registration, RLS-I elders record their decision and register these decisions with a government entity by 26% and 13% more than comparison group elders, respectively. This increase in formality of informal decisions contributes to their longevity, legality, and visibility to state actors.

RLS-I elders gain and retain practical and relevant knowledge helping them resolve disputes…

RLS-I elders demonstrate strong knowledge gains of 10-40% in topics such as family, inheritance, and rights of the suspect, detained, and accused. Family and inheritance topics are of immediate and practical relevance to elders resolving disputes, while knowledge of Afghans' legal rights in criminal matters helps citizens in their interaction and discourse with district authorities. Anecdotal reporting supports the latter result, with many RLS-I elders and *spinsaries*[3] negotiating outcomes with district officials based on learning from RLS-I workshops.

[3] Female elders who play complementary roles in traditional justice. These roles are often hidden behind more public deliberations conducted by men, but can be decisive in safeguarding women and children's rights.

… but RLS-I elders struggle to retain knowledge of legal rights they may not see in their communities or practiced by their district government

On measures of more abstract constitutional rights such as freedom of assembly or gender equality under the law, there is a mild gain in more secure districts and more educated elders, but no gain or even a decline in such knowledge in insecure districts with less educated elders. This is best explained as a lack of practical relevance, failure to see such rights demonstrated in their communities or practiced by their district governments, and a more critical reception to any knowledge content relating to an Afghan's sense of identity and religiosity. Also, evaluation results in one experimental district where the RLS-I program cycle was repeated over the course of two years showed very strong results, suggesting that learning barriers could be overcome with repeated exposure to RLS-I workshops.

The success of RLS-I is contingent upon an elder's capacity to learn

RLS-I operates at the margins of basic human capacity, with overall literacy rates at one-third to one-half for men, but much lower literacy in the South region and among women. Predictably, elders who were at least partially literate and completed some primary school education fared best on RLS-I knowledge tests. An elder who scored at the 75th percentile or higher at baseline exceeded 21% gain scores at endline, while an elder who scored no higher than the 25th percentile at baseline gained 4-6% at endline.

While higher-capacity elders show more progress in learning legal literacy and thus improve access to justice, it is the lower-capacity elders in more rural areas where the struggle for government legitimacy is most acute. Engaging these elders may not yield demonstrable gains in learning but does contribute to stabilizing conflict-affected communities. This suggests that program design decisions face a tradeoff between demonstrating gains in more secure areas, and strengthening local dispute resolution in less secure areas against competing sources of mediation from local militias or anti-government elements.

Afghans seeking the mediation of RLS-I elders are more satisfied with their dispute resolution

RLS-I elders scored 11% and 8% higher on disputant assessments of procedural fairness and justice of the outcome, respectively, compared to disputant assessments of comparison group elders.

More RLS-I graduates involved in a dispute resolution results in higher disputant satisfaction

For every RLS-I graduate who helps mediate a dispute, disputant satisfaction is predicted to increase 4-7% relative to disputants who seek the mediation services of elders who did not participate in RLS-I. Disputes adjudicated by three RLS-I graduates scored 15-25% higher on justice measures compared to disputes without any RLS-I graduates among the mediators, with some measures as high as 30%.

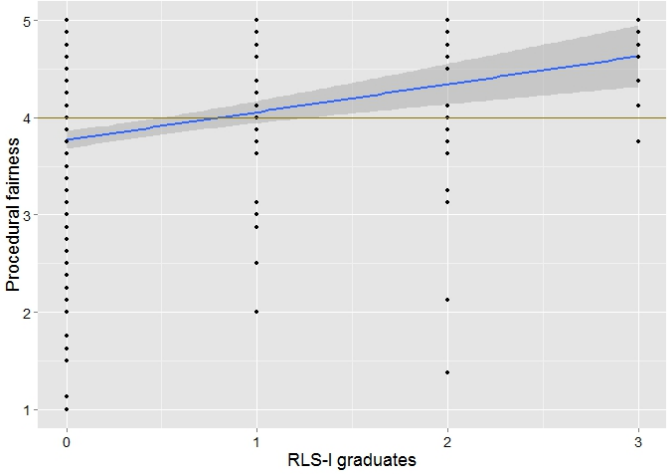


Figure: As more RLS-I graduates help mediate an Afghan's dispute, the disputant's satisfaction rating increases as much as 30%. The gold line represents the comparison group.

Higher elder knowledge results in higher disputant satisfaction

The 12-14% average gain in elder knowledge is predicted to increase disputant assessment of procedural fairness by 9%, increase overall justice of the outcome by 6%, and decrease disputant assessment of undue influence by 4%. The following graph illustrates the relationship between elder knowledge, on a scale of 0-100, and the satisfaction rating of the disputant, on a scale of 1-5, whose dispute he helped resolve:

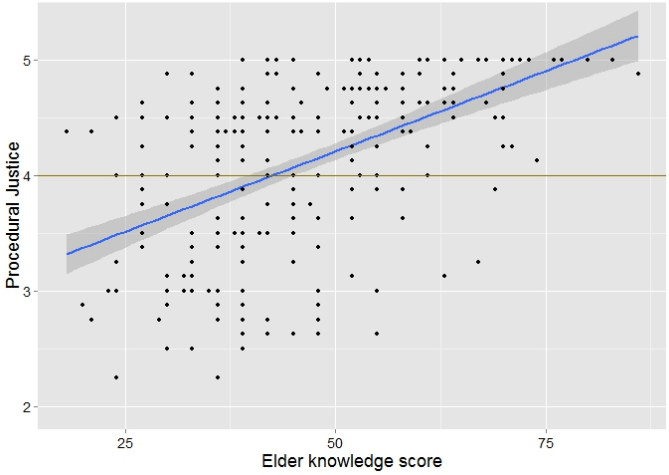


Figure: More knowledgeable elders are associated with more satisfied disputants. In the graph above, each disputant satisfaction rating corresponds to the specific elder who helped mediate the dispute.

RLS-I raises awareness on illegal and un-Islamic practices that harm women and girls

RLS-I includes awareness raising and advocacy against harmful practices at every level of programming – from workshops for male and female elders, to outreach material to households, to radio and television programming throughout a district or region. Household surveys during Phase 2 showed a 14% increase in respondents affirming that giving away girls in marriage (*baad*) was both illegal and un-Islamic. This result was not replicated in the Phase 3 household survey, but households were 7% more likely to support alternatives to *baad*, and 4.6% more likely to affirm that *baad* was not an effective solution to a dispute.

Citizens in RLS-I districts are more likely to report a change in women's roles as disputants, mediators, and decision makers

Households in RLS-I districts reported a 17% increase in women taking their disputes directly to the decision making body, relative to households in comparison districts. Households were also 19% more likely to support the idea of women serving as dispute resolvers, and 24% more likely to support the idea of women serving as dispute resolvers for other women. It is possible that awareness of RLS-I-supported forums for women's dispute resolution and advocacy contributed to this last result.

Female disputants assess elders more critically than male disputants

Female disputants report negative assessments of procedural fairness and justice of the outcome even as males report positive assessments on the same measures. Women also assess lower values of undue influence over the dispute adjudication. These opposing measures by gender could be nonsensical (especially considering the small sample size of female disputants) but could also indicate that RLS-I raises the expectations of women more deeply and/or at a faster rate than for males.

Discussion

"My son, Israel, is an educated boy. I carried RLS-I handouts to him. During his off days, he makes short notes from handouts in white flip charts and presents these at the Mosque congregations. [He focuses on] the inheritance shares in the handouts… and he also encourages each one individually to give the rightful portion to their daughters, sisters, wives and other family members."

- Comment from female elder

Program evaluation in conflict-affected environments

This brief summarizes over two years of research and evaluation to validate the RLS-I development hypothesis that capacity building of informal justice actors increases access to justice and strengthens stability in conflict-affected areas.

The link between elder capacity building and improved disputant assessment justifies the claim that the USAID development hypothesis is validated and that RLS-I improves access to justice.[4] This demonstration of impact is strongest where elders have some level of education, implementation is not threatened by insecurity, and where there is a district government that is at least partially functioning. This leads to heterogeneous outcomes by region or district.

Other relevant factors include the timing of measurement relative to the proposed trajectories of RLS-I impacts and the historical strength of informal justice as a locally-adaptive institution. In Kunar province in eastern Afghanistan, for example, RLS-I shows strong effects, a result that likely generalizes to relatively secure districts east of Kabul. In battleground areas such as Kandahar, on the other hand, results are more measured or even exhibit worse outcomes than at baseline, which likely reflects a "J-curve" impact trajectory[5] in which initial results show worse outcomes before they get better – for example, by raising citizen expectations prior to elders revising their adjudication practice, or by exposing elders to new knowledge that conflicts with what they thought they knew

[4] RLS-I managers also believe that the program improves stability in more insecure areas, but the evaluation cannot demonstrate impact due to the fluid and kinetic implementation environment.

[5] See Woolcock for a discussion of a J-curve impact trajectory, and Paluck or Blattman for examples.

prior to elders discarding old knowledge and accepting new knowledge as their own.[6]

More speculatively, negative outcomes may also reflect attempts by program participants to use RLS-I programming in a manner that strengthens informal justice practices and stability in a community at the expense of local state-building and women's and children's rights.[7] This is suggested both by qualitative monitoring reports and evaluation data, where elders from Zhari district, and to a lesser extent Mohammad Agha elders, show contrary outcomes on jurisdictional boundaries between formal and informal.

Obviously such reactions, should they come into more direct evidence, must be contested and overcome in the event of future programming. But seeing results of legal literacy programming in Kandahar may primarily be a matter of applying the appropriate program cycle, with a 12-month program cycle in eastern Afghanistan often adequate, but perhaps both longer and deeper programming needed in more insecure districts and/or where local justice traditions are more entrenched. In neighboring Uruzgan province, for example, extended programming didn't seem to affect disputant perception but did boost elder knowledge scores by 29% - stronger than the high-performing district of Chawkai (Kunar), while Kandahar elders demonstrated a range of lackluster results from significant losses to slight gains.

The donor response to negative or absent outcomes should certainly not be disengagement and ceding the informal local self-governance and dispute resolution space to elders, ungoverned militias, or anti-government elements. Rather, more prolonged exposure to simpler versions of learning content is recommended, per the RLS-I program report. In eastern Afghanistan, elders and state actors alike report that the effect of RLS-I is to expand and build the capacity of a network of elders who cooperate with district governments to extend the rule of law to more distant villages – connecting local dispute resolution to the state and building government legitimacy at the local level while empowering elders to continue their time-honored roles in resolving community problems. In Kandahar, such effects seem to be premature, especially in the context of corruption issues endemic to all levels of governance throughout the province. But the case of Uruzgan, where the program cycle was repeated over the course of two years, shows that results are possible even in deeply insecure areas.

Similarly, more peri-urban and secure districts in Kandahar such as Arghandab and Dand – districts where elders have more education and a stronger connection to the state – are considered successful outcomes for RLS-I. Success in Kandahar's Zhari district should therefore be considered nascent rather than beyond the reach of a legal literacy program.

Elders in all districts personally validate the development hypothesis and implementation approaches of RLS-I. Elders consistently report that they would like to maintain their historical roles in local self-governance and dispute resolution, but also state a desire for strong and effective government with which they would be glad to cooperate. Security and governance issues prevent such a result in Kandahar presently, making legal awareness programming all the more crucial to increase legality of decisions, mitigate and prevent harms, and prepare local elders for eventual incorporation into state structures.

Traditional justice, gender justice

Measures relating to women in informal justice present a mixed picture that does not lend itself to general conclusions. Elders report no change in women's roles and participation in TDR, but households report strong increases in women's actual participation as well as in support of women's participation in TDR for disputes involving both men and women. Similarly, RLS-I regularly received anecdotal evidence of improved TDR outcomes for women as well as a more general sense of empowerment within informal justice. However, female disputants generally assess their experience 15-30% lower on measures of justice relative to male disputants. This study shows no evidence that RLS-I reduces this gender justice gap in TDR, and may even increase it as a short term effect.

As has been previously noted, instances where RLS-I results show worse outcomes are considered to be at least partially explained by raising citizen expectations before elders revise their adjudication practice.[8] RLS-I conducts its

[6] When a *Shari'ah* professor from Nangarhar University visited Kandahar for guest lectures, his immediate comment was that "Kandahar elders need to learn that they don't know anything."

[7] This possibility is also discussed in Blattman, pg 2: "…greater informality could encourage traditional practices that contravene the rule of law to reach and enforce bargains outside the law."

[8] This explanation suggests that there is a time lag between RLS-I programming and revised adjudication practice by elders that occurs later than citizens raising their expectations as a result of RLS-I outreach. Alternatively, elders might revise their adjudication practice at roughly the same time frame as citizens raise their expectations, but the evaluation measurement takes place before disputants' observation of such is reflected in their assessments. The time lag may occur in the programming, in the measurement, or both.

outreach generally through legal literacy materials and directly to *spinsaries* and *spinsary* groups. The evaluation measures for female disputants provide another piece of evidence in support of this mechanism, and that it affects women more sharply than men.

RLS-I has shown exemplary performance in targeting female participants, with a female participation rate approaching 50% across all program phases from 2011-2014. Given this level of participation and an understanding of the context surrounding gender and traditional justice, it may be unsurprising that women assess informal justice more critically than men, and that RLS-I may heighten this effect.

Furthering, and discovering, evaluation best practice

USAID's initiation and support of an in-house impact evaluation by its implementing partner represents bold new practice, and does not yet fit comfortably within USAID policy and planning guidance for implementing partners. The RLS-I evaluation design meets the standards of rigor required by the USAID Evaluation Policy, but was conducted by an internal sub-contractor in Phase 2 and fully in-house in Phase 3. This is not best practice according to the evaluation policy, which requires that impact evaluations be conducted by external experts.

However, in-house impact evaluation has the advantage that the implementing partners who undertake them will have full situational awareness of the context, evolution and "mission creep" that affect all programs over time, and (hopefully) an immediate grasp of what most needs to be measured and why. External evaluators may not appreciate the context and may be more interested in theoretical constructs to inform an academic debate rather than the nuts and bolts of program implementation.

The experience of RLS-I suggests that USAID can benefit from establishing a programmatic space where its implementing partners may feel safe in undertaking internal evaluation initiatives that can promote learning to improve implementation while addressing larger development research and policy questions to assist USAID managers and leaders. To accomplish such an environment of trust and a commitment to experiment, learn, and improve, it is recommended that implementing partner monitoring and evaluation functions include applied research and experimentation in addition to monitoring outputs and identifying outcomes. [9]

Regardless of how USAID proceeds, the RLS-I impact evaluation summarized here remains an example of USAID's willingness to "crawl the design space" in applying evaluation best practice, explore new practice, and continually discover what works and what does not – not just for development, but also development evaluation.

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[9] For a guiding reference see It's All About MeE, which introduces the concept of structured experiential learning as an additional function for program M&E systems.