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RULE OF LAW STABILIZATION PROGRAM - INFORMAL COMPONENT

ARGHANDAB, KANDAHAR ASSESSMENT AND ACTION PLAN

OCTOBER 2010

Contract Number: DFD-I-00-04-00170-00

Task Order Number: 4

October 2010

This publication was produced for review by the United States Agency for International Development. It was prepared by Checchi and Company Consulting, Inc.

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Introduction

In the summer of 2010, the Rule of Law Stabilization Program – Informal Component (RLS-I) conducted an assessment of community-based dispute resolution (CBDR) in Arghandab district of Kandahar province. This report's results have been categorized into top-line findings, historical context, disputes and main actors, CBDR patterns, and a brief methodology. The objectives of the assessment were three-fold:

1. Gain an in-depth understanding of the nature of disputes, context surrounding those disputes, and choices Afghans make regarding the settlement of their disputes within the district;
2. Use this information to design implementation activities fulfilling RLS-I's objectives of stabilization and sustainability, including which activities, when and where activities should be held, and which community members are best positioned to assist RLS-I in the process;
3. Enable RLS-I to build relationships based on trust and rapport with different community members and state actors within the district.

Top-line findings

- **Actors Involved in CBDR Exist at All Levels:** Several actors within Arghandab are involved with dispute resolution, including district government officials, sub-district government actors, former *jihadi* commanders, and authentic tribal/community elders. District government officials, such as the District Governor, Chief of Police, members of the District Development Assembly (DDA), and police check-post commanders are actively involved in the resolution of disputes. Sub-district government officials, such as village councils previously developed as Community Development Councils, have been actively involved in dispute resolution and often sublimated other elders from traditional roles in CBDR.
- **Corruption and Rule by Commanders Undermining District and Sub-District Government:** The most significant factors dissuading Afghans from using the state justice sector in Arghandab are 1) corruption and perception of corruption in both government institutions, including the district government, and sub-district institutions that have displaced traditional CBDR elements, and 2) the power granted to former *jihadi* commanders, those connected with powerful elements with Arghandab, and/or perceived illegitimate elders. Some of the specific actors identified in Arghandab fall within more than one of these categories and often can be or have been members of the district or sub-district government. These factors were identified as potentially driving people to the Taliban justice system.
- **Strengthen CBDR Links in an Inclusive Manner:** The district government in Arghandab is viewed as being dominated by the Alkozai tribe and biased towards one faction of Alkozais, including the sub-district government actors. It is essential that all activities designed to increase links between the population of Arghandab and the district government are designed to be inclusive of all groups

present within the population, or else risk the appearance of continued bias and favoritism.

- **Re-establish Authentic Elders Essential to CBDR Development:** Re-establishing authentic tribal leaders' authority and creating strong links between these actors and state institutions is likely to be the most important way to prevent Afghans from turning to Taliban justice. CBDR processes have largely disintegrated over the past 30 years in Arghandab. Therefore, the processes and practices used for resolving disputes in the south are less standardized and structured in comparison to the processes used in other parts of Afghanistan. In the eyes of most community members interviewed, authentic tribal elders are the only legitimate decision-makers in dispute resolution, because their power rests in trust and respect rather than coercion.
- **Resolution of Historical Causes of Conflict:** Dispute resolution in Arghandab frequently requires the resolution of the underlying historical causes of conflict between different tribal groups and different groups of elders. Respondents directly identified these problems as reasons why some Afghan could turn to the Taliban for justice.
- **Cultural, Political, and Tribal Contexts a Significant Factor.** The greatest destabilizing conflicts in Arghandab originate from inter- and intra-tribal disputes that began generations ago. This includes an internal Alkozai conflict originating from a post Soviet-*jihad* split of two powerful Alkozai *mujahedeen* commanders. Consequently, a deep understanding of the historical roots of conflict and the changing nature of political, social, and economic relations among the tribes is essential to working in Arghandab.
- **Women's Roles in CBDR Exist, But Are Limited:** Some Arghandab women have brought their disputes and problems to male elders and have influence over dispute resolution processes and outcomes in Arghandab. Research has demonstrated that authentic elders and tribal leaders have worked to protect women against discriminatory and abusive practices, defending women's rights through CBDR processes, more often than previously thought. However, it is unknown how regularly this occurs.

Types of disputes

The research revealed that the most common type of disputes identified were disputes originating from land or property issues. These types of disputes include disputes over land boundaries, inherited land, claims to government land, seizure of land by government (eminent domain claims), division of jointly owned property, or claims to property that was abandoned by the former owner often fleeing conflict.

Similarly, business disputes and disputes over water use were identified as occurring within the district, though less often. Contracts or simple business arrangements were very rarely mentioned, though one such dispute was identified as being the cause of lingering animosity within Arghandab.

Water use disputes occur more frequently, including disputes over the violation of agreed-upon water usage schedules that led to violence. In Wakil Kala, some respondents identified water and irrigation disputes (including damage to irrigation channels) to be the primary type of conflict in the village.

Domestic or family-related disputes were identified as both very common and unquantifiable due to the personal nature of the conflict. Respondents stated that family-related disputes are likely to be dealt with or hidden by the family, making it impossible to correctly assess how common those disputes are brought forward to CBDR. Respondents both within the community and the district government discussed the shame that domestic disputes or disputes involving women can bring to a family, a community, or a tribe. Family Disputes include domestic violence charges, polygamy disputes, bride-price disputes, kidnapping of women, disputes between families, female relationships outside of marriage and divorce.

Similarly, sexual violence disputes occur within Arghandab, though it could not be ascertained how often. The nature of sexual violence strikes to the heart of the family image within the community and often is not reported or claims are withdrawn after it is reported. Research did identify that of the reported cases of sexual violence, some cases of sexual abuse are related to the tribal dispute between the Alkozai tribe and Ghulzai tribal confederation. The Alkozai police have been accused of kidnapping Ghulzai boys to be their *halek* (boys kept for sex). Sexual abuse of young boys is reportedly commonplace and sometimes involves state actors. Other cases of sexual abuse allegedly included the rape of a man by another group of men, and the kidnapping and the rape of young women.

Almost all of the disputes that were identified by the research that became violent, resulting in injury and/or death, originated from a civil dispute described above. Most often those disputes that ended in violence involved land disputes, water disputes, or business disputes. However, given the violent aspects of both sexual assault and family disputes and the norms of the community regarding the privacy of such matters, it is undeterminable how many of those types of disputes have led to destabilizing violence.

Political history

The recent political history of Arghandab is one of factionalism and tribalism. During the Soviet-mujahedeen war, the Jamiat-e-Islami (JIA) was the most dominant *jihadi* group in the district. Mullah Naqibullah Akhund (Mullah Naqib), an Alkozai, was the commander of Jamiat-e-Islami in the district. Many times, allegiance to Jamiat-e-Islami came from allegiance to Mullah Naqib. Gulbuddin Hekmatyar's Hizb-e-Islami had a minority representation in the district, despite having more support from Afghans across the province as a whole.

After the Soviet regime collapsed, fighting broke out between Hezb-e-Islam and Jamiat-e-Islami over control of Arghandab. Zabit Jalil, a powerful Alkozai and a member of Jamiat-e-Islami, broke with Mullah Naqib and switched allegiances to Hezb-i-Islami. The resulting conflict between Mullah Naqib and Zabit Jalil, which has continued in post-Taliban era, divided the Alkozai tribe within Arghandab, influencing both the nature of disputes and the potential for their resolution.

Mullah Naqib famously submitted to the Taliban, choosing not to contest their rule over Kandahar; however, he remained a neutral actor in the province neither directly supporting nor opposing the Taliban during their rule. In the post-Taliban era, Mullah Naqib was reportedly instrumental in liberating Kandahar from Taliban control and negotiating Taliban surrender. Through this process he became closely associated with the post-Taliban government. Zabit Jalil, however, (now based in Pakistan) has closer links to the Taliban as a member of Hizb-e-Islami.

After Mullah Naqib died as the result of an improvised explosive device (IED), his son Karimullah assumed his position as leader of the Alokazai faction loyal to his father. Since the fall of the Taliban, most government positions in Arghandab have been held by Alkozai loyal to Mullah Naqib, with all District Governors being Alkozai, except for a short period in 2009 when an Achakzai held the position.

Closely related to the conflict between the different *jihadi* factions is the on-going conflict between the Alkozai and the Ghulzai. The conflict's roots date back to the 19th century and the policies of Amir Abdurahman Khan. In the recent past Ghulzai tribes were linked more to the *jihadi* faction Hezbi-e-Islmai, with Alkozai being linked more often to Jamiat-e-Islmai. While the Alokazai dominate the district in terms of population and representation in state institutions, the Ghulzai own a disproportionate portion of the land. According to the Ghulzais, the Alkozais have made attempts to take land from the Ghulzai in the district.

Ghulzais interviewed claimed that the Alkozai accuse the Ghulzai of supporting the Taliban and inform the international military forces (IMF) that particular Ghulzai are working with the Taliban. One research respondent, for instance, reported that in 2007 areas of Arghandab district which most Ghulzai populate were raided by the American forces under the influence of an Alkozai-dominated district government and Alkozai commanders. This resulted in several Ghulzai deaths and the destruction of their property without cause, as the majority of areas did not have links to the Taliban.

However, Ghulzai respondents pointed out that some key Taliban commanders are indeed Ghulzai. A view of many Ghulzai interviewed was that Ghulzai of Arghandab have no choice but to support the Taliban, because they are both the only viable opposition to the Alkozai-dominated government and the only protection from the Alkozai.

Additionally, the Popolzai tribe (the tribe of President Karzai) was also identified as attempting to gain more influence and control of the district since it is one of the few districts which they do not control. This was mentioned far less often by respondents, so that we can assume that it has less influence on disputes.

The recent assassination of the District Governor will have a substantial impact on both the interaction with and perception of the District Government. The new District Governor has been reported as more active and engaged, though this cannot be confirmed.

Dispute resolution actors and their relationships

1. **CBDR actors:** Respondents from all research villages identified three groups of dispute resolution actors at the sub-district level:
 - a) Members of the ‘government imposed’ village shuras - viewed by other elders and many villagers as being linked to the district government and corrupt, including accusations of stealing the assistance materials intended for distribution in the villages.
 - b) Former *jihadi* commanders that gained power during the Soviet-mujahedeen war and subsequent civil war.
 - c) Authentic or legitimate tribal or community elders - those elders recognized in the community as neutral arbiters and respected for their status, seniority, and wisdom.

2. **State justice actors:** State justice officials are also involved in Arghandab’s CBDR processes, primarily these three actors:
 - a) District police chief - resolves disputes himself with the elders he selects, and from time to time refers disputes back to the villages.
 - b) Police check-point commanders - often members of the village shuras and former *jihadi* commanders.
 - c) District Governor - involved in dispute resolution as well as referring cases back to villages for resolution.

The research demonstrates a strong link between executive branch state actors at the district level (district governor, police chief) and the non-state CBDR actors. Members of the judicial branch or other government positions related to the justice system are generally excluded from the CBDR system. According to the research, the strongest links are between village councils, the former *jihadi* commanders, the police check-post commanders, and the chief of police.

Under the National Solidarity Program, Community Development Councils were established in Arghandab in 2005. CDCs are designed to be implemented in clusters of families or villages with at least 25 families. The CDC representatives are to be decided by the community, though it is unclear what mechanism is used to elect these representatives. These representatives are given the responsibility to assist with the allocation of development projects and aid within the villages. However, according to the respondents in the research, the CDC members became a *de facto* village council/*shura*, with members chosen by the dominant Alkozai faction or selected by then district governor.

Moreover, the perception is that many who have served on these village councils have exploited their positions to usurp governance authority at the local level. The perception, at the very least, within the villages researched is that the CDC process has established illegitimate village councils or *shuras*. These councils/*shuras* are still populated by those who are intimately tied to the reigning Alkozai faction and are viewed as systemically corrupt.

Almost all tribal elders that were from different factions described their links to the state as weak or non-existent, with nearly all elders, regardless of faction expressing

the desire and need to have stronger ties between the state and CBDR. In particular, elders from all factions within the villages said that they would like to be recognized as the legitimate leaders in the community, some directly expressing the desire to have their decisions registered with state bodies. Though, an appropriate member of the district government that would be acceptable was identified.

Research showed that at least some of the decision documents from *jirgas* are already provided to the police chief or district governor. Several elders from different tribes stated that registering *jirga* decisions with state bodies would bolster credibility, and discourage forum shopping. Presently, if a disputant doesn't accept the outcome of a decision made in a *jirga* and goes to the district center, the district governor or police chief may refer it back to the village for another decision to be made.

Elders also believed that there were risks associated with becoming more closely linked to the state. Villagers might not see elders as neutral arbitrators in disputes, with elder's reputations suffering from strong links to the state. Elders felt they could be tainted by the perceived corruption of state institutions and tribal biases.

Some respondents also highlighted conceptual differences between state justice mechanisms and CBDR. The state justice system's objectives were perceived as punishing guilty parties whereas CBDR priorities and processes were viewed as reconciling disputants, maintaining peace, and social cohesion.

CBDR processes and practices

The Arghandab research resulted in a complex picture concerning both the history of CBDR and the manner in which disputes are being resolved today. Different opinions and anecdotes were found amongst different tribal and gender groups, which it is beyond the scope of this assessment. However, certain facts were consistent and provide an overview of dispute resolution processes and practices in Arghandab.

While respondents would at times present an ideal version of how disputes should be resolved (and the research suggested that many are resolved in this way), the political dynamics active within Arghandab distorts these processes. Many respondents, including those associated with the dominant political forces in the district, attested to coercive elements corrupting the practice of CBDR in Arghandab.

Historically, disputants would choose which elders would represent them in a *jirga* to decide the outcome of their case. The elders that were typically chosen were from a group in the community who had been recognized as possessing the skills, attributes, and experience to resolve disputes. Many respondents described that often sons had even inherited this role and responsibility from their fathers. However, most respondents described the current environment as being forced to rely on a specific pool of elders, which instead of being chosen by general community assent or recognition are drawn from those who are politically, financially, and/or martially powerful. The number of identified elders has increased dramatically, according to several respondents, and if a dispute reaches the district authorities, respondents state that the district authorities will refer the case to certain elders by state actors – often members of the village council/*shura*.

The size and nature of a dispute also determines how it will be resolved. Both criminal and civil cases are brought to elders for resolution. The chief of police admitted that on several occasions he has referred criminal cases back to village elders for resolution. As stated above, disputes concerning marriage arrangements, those having their origins in the domestic sphere, or conflicts between relatives (disputes that go to the identity and reputation of the family, the community, and the tribes) are less likely to be brought to state actors, than land disputes.

Men have more direct access to elders who resolve disputes than women. Women identified the ability to address conflicts through an elder's wife so that her dispute reaches the attention of the male elders who are in a position to intervene on her behalf and find a resolution. Similarly, disputes that involve women and are located within the domestic sphere are less likely to have a *jirga* held for their resolution. In the examples given, elders will discuss the dispute separately with the parties, steering them to compromise and agreement.

The practices for dispute resolution in Arghandab tend to be less standardized or structured than those used in other parts of the country. However, key principles and practices of negotiation, peace-keeping, and maintaining social cohesion are at central to CBDR. The common use of *nanawati* (processes of formally asking for an apology) in bringing a dispute to resolution, is frequently invoked in accidental killing cases (such as road traffic accidents) and other forms of physical harm. It is generally accompanied by compensation paid to the injured party. Usually elders represent the perpetrator, asking for forgiveness from the victim's family. The more senior an elder, the more weight an apology will carry. *Nanawati* and the paying of compensation will often be accompanied by a *maraka* – an event during which all parties to the case convene, including the elders involved in making its resolution and possibly other village residents, to announce the resolution to the dispute.

The role of the Taliban in dispute resolution

In the three villages that the RLS-I staff conducted research, none were directly controlled by the Taliban. However, some villagers interviewed described the Taliban as having access to the villages during the night, threatening to dissuade elders and citizens from working with the government of the district. The team encountered only one story of current dispute that had been taken to the Taliban, generally described as across the river or in neighboring districts.

Almost universally, the Taliban was described as having undermined elder-based CBDR during their rule in Arghandab. However, people interviewed expressed various opinions on Taliban justice. These ranged from those who saw it as Islamic, fair, quick and equitable to those who saw it as brutal and corrupt. Descriptions of the characteristics of Taliban justice also varied, including one report by a state actor who described the Taliban as succumbing to the use of *jirgas* and negotiation in meting out justice.

Frustration with the current system or current government seemed to inform some of these opinions. Those who described the state justice system and the current CBDR

mechanisms in the villages as corrupt and/or inefficient were more likely to believe that people will eventually turn to the Taliban to resolve disputes if nothing is done to increase access to justice.

Additionally, several Ghulzai tribal elders described frustration that Alkozai factions associated with former tribal leader Mullah Naquib or his son Karimullah have attempted to convince international forces that most Ghulzais as part of the Taliban insurgency. This coincided with a general feeling of disenfranchisement and feelings of persecution by Ghulzais within the district.

Research methodology

The methodology adopted knowledge-gathering for the assessment was purely qualitative. The research methods used for data collection have been a mixture of individual semi-structured interviews, informal conversations, and observation. The data has been analyzed by dividing text into key themes or categories of information which are then grouped together and read as a whole. In addition, reading and re-reading individual stories was necessary to extract meaning, and discussing opinions and suggestions made by individuals was required to ascertain what is meant when particular individuals make specific suggestions or voice opinions on different issues.

The research interviews were conducted over a six-week period in three villages and with elders and state actors at the district level. Due to security concerns, the research teams had to limit themselves to the eastern portion of Arghandab. Villages were evaluated based on the tribal make-up, requiring a representative tribal split consistent with overall tribal dynamics in the district. Elders and women from Alkozai, Nasar, Sulamankhil, and Popalzai tribes from these villages and district were interviewed.

The guiding tenets informing the methodology for this research included:

- Respondents to the research, both state actors and community members, are able to articulate, understand and analyze their own experiences;
- Without trust-building and understanding established over time between researcher and respondent, data will tend to be normative, lack depth and not truly reflect the complexities of social and political realities;
- Three types of information are necessary to provide a rounded understanding and analysis of how CBDR functions: 1) individual stories and disputes (from disputants, *jirgamaran*, and other community members), 2) generalized information regarding disputes and their resolution, and 3) respondent's opinions and suggestions on methods to improve the status quo.

During this assessment, the district governor for Arghandab was assassinated in Kandahar City. In addition, a very influential elder within Arghandab was also assassinated. Directly after the conclusion of the interviews for this assessment, ISAF conducted a joint military campaign targeting insurgent forces within Arghandab. Additionally, district government actors have been replaced or dismissed following the conclusion of the interviews. It is impossible to predict how any of these events, either individually or jointly, will impact the situation in Arghandab.

Conclusions

Arghandab presents a complicated situation in terms of local governance and maintaining the rule of law. Those interviewed showed little faith in the current formal justice system, and identified CBDR as an essential component to resolving disputes. However, several actors from multiple political and tribal factions have undermined the traditional system with increasing political, financial, and martial exercises of authority.

While most Afghans see authentic tribal elders as those with the legitimacy to resolve their disputes, others have been given the power to do this through their links to the state and the establishment of sub-district governing councils. The state is viewed, generally, as corrupt and biased in favor of particular tribes and factions. Opinions about the Taliban and Taliban justice vary; however, unless a viable alternative, like returning dispute resolution authority to authentic tribal elders, Taliban justice could appear more attractive.

As most of the disputes that occur in Arghandab, violent or not, property or family disputes, enabling elders to address these disputes at the village-level would discourage escalation of disputes. Additionally, the state's interest in criminal cases is being undermined by both elders and district justice actors' inconsistent actions. Therefore, work must be done to bring the state government together with elders recognized by the community as effective in resolving disputes, in order to develop a sustainable system of resolving disputes and addressing criminal violations.

Elders within the community expressed a lack of understanding of the formal justice sector or specific guidelines for the formal system. Perceptions of the formal justice system as corrupt and inefficient are both based on fact and experience and exaggerated by misunderstandings. While most elders demonstrated an understanding of fundamental human rights required by the Afghan Constitution, they also expressed a desire to learn more about the Government of Afghanistan and formal laws.

Finally, the largest most destabilizing disputes in Arghandab are along generational lines. The fundamental distrust that exists between both the Alkozais and the Ghulzais and both factions of the Alkozai tribal split will not be resolved overnight. Both disputes are fed by political, financial, and martial dynamics within the district. Coordinated efforts, both top-down and bottom-up, are required and can only be accomplished over a substantial amount of time.

After the research was concluded, as stated above, Arghandab underwent significant events including a large military campaign by IMF. The impact of these events cannot be calculated within the context of this report.

Arghandab, Kandahar Action Plan

Given the above assessment and findings, RLS-I has identified three goals of immediate concern that can be addressed in the next four months. All activities will support the following three RLS-I goals:

- 1) Strengthen, legitimize, and standardize links between state and CBDR actors in a manner that is inclusive and sustainable. The most consistent result of the assessment was a disenfranchisement of traditional elders at the local level. Therefore, activities must be designed to promote CBDR mechanisms in a manner that is predictable and consistent with state justice requirements.
- 2) Promote access for all, including women's access, to both state justice and CBDR mechanisms. Fundamental misunderstandings concerning each other exist both in the community and at the state justice level. Activities must be designed to increase the availability of justice mechanisms for members of all tribes and both genders, including demystifying the state justice system and decreasing the influence of corrupting influences in CBDR mechanisms.
- 3) Begin the process of addressing foundations of long-standing, destabilizing disputes. The assessment above demonstrated that as an outgrowth of long-standing disputes between the Ghulzais and Alkozais and an internal split with the Alkozais, ongoing smaller disputes have erupted undermining stability. Activities must be designed to target both the overall larger dispute dynamic, but also to address inequities that can address smaller disputes that exacerbate the larger dispute.

Most activities will contribute to more than one of the goals above. Each activity is made up of several different events and actions that will be implemented at different stages.

- 1) Identify and Promote Appropriate State Justice Counterpart for CBDR Links: Recognizing that the district government is still in transition in relation to the state justice actors, the first step in creating, legitimizing, and standardizing links between CBDR elements and the state justice system will be working with an identified state justice representative. The District Stabilization Team has been working with the prosecutor and is looking to establish a qualified Huqooq in Arghandab. RLS-I will establish a close relationship with both the Huqooq, in order to support the Huqooq. RLS-I will explore the Huqooq's unique linkage with formal justice institutions and how that linkage can be strengthened through systems such as case flow management and case tracking between formal and informal systems. In addition, RLS-I will work to include the prosecutor's office in developmental plans to address criminal cases that may need referring to the District Center. This process will be ongoing and depend heavily on the development of the offices in the district government.
- 2) Creation of Elder's Networks: In order to strengthen and legitimize CBDR mechanisms and promote access to CBDR, RLS-I must first work with elders

to lessen disenfranchisement. To address or begin addressing the destabilizing disputes within Arghandab, neutral elders that are respected will be needed to work with disputants in a culturally appropriate manner. RLS-I will work with elders to create and/or strengthen male and female elder's networks, providing opportunities for members of these networks to come together to discuss and resolve particular problems, devise new ways to strengthen CBDR, and establish foundations for sustainable cooperation. Promotion of elders' networks both within the district and at the regional level will be threaded throughout all of the activities, both supporting and being supported by all planned activities. Additionally, RLS-I will facilitate specific network gatherings with regional, provincial, district, and tribal elders on throughout the program.

- 3) **Specialized Seminars and Workshops:** In order to both promote access to justice and strengthen CBDR, RLS-I will work with elders and state justice actors within Arghandab to promote understanding of the state justice system, Afghan legal requirements, and facilitate methods on how to promote legitimate CBDR mechanisms within Arghandab. Seminars for male and female elders and state justice actors on individual's rights in Islam, the Afghan Constitution, civil and criminal law/procedure, processes in the state justice system, and how to standardize links between the state and CBDR will be conducted over the next four months. Seminars will be conducted in both the villages and at the district center.
- 4) **Legal Advice Center:** In order to both demystify the state justice system and to increase access to the state justice system for both elders and community members at large, RLS-I will establish an advice center in Arghandab to serve the general public seeking help with basic legal questions.
- 5) **Defense Attorneys:** Part of the remit of RLS-I is to help enhance the presence of Defense Attorneys in Arghandab. Defense attorneys by their status within the state justice system and Afghan Constitution work to enhance the community's access to justice in general. RLS-I will work to strengthen the presence of an International Legal Foundation (ILF-A) defense attorney in the district.