



**USAID**  
FROM THE AMERICAN PEOPLE

# RULE OF LAW STABILIZATION PROGRAM - INFORMAL COMPONENT

## ASSESSMENT AND ACTION PLAN SUB-DISTRICT 9, KANDAHAR CITY

JUNE 2011

Contract Number: DFD-I-00-04-00170-00  
Task Order Number: 4

June 2011

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

# TABLE OF CONTENTS

INTRODUCTION.....	2
TOP-LINE FINDINGS .....	2
SUB-DISTRICT BACKGROUND.....	5
DISPUTE TYPES .....	6
ADR ACTORS AND THEIR RELATIONSHIPS.....	7
ADR PROCESS AND PRACTICES.....	12
THE TALIBAN'S ROLE IN DISPUTE RESOLUTION .....	15
CONCLUSION .....	16
ACTION PLAN .....	17

## Introduction

---

During May 2011, the Rule of Law Stabilization Program – Informal Component (RLS-I) conducted an assessment of the alternative dispute resolution (ADR) community in Sub-District 9 (SD9) of Kandahar city, focusing on *Gozars* (“avenue” and adjoining neighborhood) 3 and 6. This report provides top-line findings from the assessment, including information about the dispute types, dispute resolution actors, and the district’s dispute resolution practices, processes, and principles.

The assessment’s objectives were three-fold. First, to gain an in-depth understanding of the nature of disputes, the context surrounding those disputes and choices Afghans make regarding the settlement of their disputes within the sub-district. Second, to use this information to design activities fulfilling RLS-I’s objectives of stabilization and sustainability. This includes activity types, when and where those activities should be held, and which community members are best positioned to assist RLS-I in the process. And third, to enable the RLS-I field teams to build relationships based on trust and rapport with community members and state actors in the sub-district and city, which is essential for the successful implementation of all activities.

RLS-I’s male and female field research teams conducted twenty five (25) semi-structured interviews of one to four respondents each followed by follow-up conversations, informal discussions, and observation over a three-week period in both *gozars*. In addition, RLS-I conducted two male and two female focus groups of five to eight members each for a total of 48 male and 34 female respondents. Included were elders, government actors, and women from representative tribes and subtribes of the sub-district.

## Top-Line Findings

---

- **Strong disputant preference for ADR:** Nearly all male and female respondents indicated a preference for ADR and its practitioners for their: familiarity/trust; accessibility/responsiveness; cost and time efficiency; and focus on conciliatory outcomes. Privacy also plays into informal justice preferences, especially in family/personal disputes. While ADR practitioners enjoy a level of trust far above formal justice actors, bias still occurs in some cases where power/wealth, intimidation, or tribal, familial, or political alliances are present.
- **Views of state actors mixed:** Respondents indicated a strong mistrust of the formal justice system (city/province level due to limited sub-district staffing), citing high illegitimate costs, bias, long processing times, inaccessibility, incompetence, and the punitive, zero-sum approach of formal justice processes and outcomes. Some noted the justice institutions’ vulnerability to manipulation

by powerful actors. These views contrast with respondent reflections on the pre-war formal justice system as primary, effective, and utilized. The Ministry of Justice's *Huqooq* office has no presence in SD9 and its province-level representatives maintain only infrequent contact with sub-district elders. Government actors - primarily police commanders and, to a lesser extent, municipal staff - at the sub-district level, on the other hand, were seen as relatively proactive partners to ADR practitioners.

**While ADR practitioners enjoy a level of trust far above formal justice actors, bias still occurs in some cases where power/wealth, intimidation, or tribal, familial, or political alliances are present.**

- **ADR-government collaboration significant:** Formal justice actors aside, government officials collaborate with informal justice elders in resolving SD9 disputes. This is attributable to mutual recognition of disputant preferences for ADR and state actors' limited capacity to expediently address a large number of disputes. Similarly, ADR actors defer to state offices in cases beyond their capabilities to resolve, e.g., 'large' criminal disputes, including murder, or where disputants have rejected a *jirga* decision. State actors mostly refer 'minor' civil disputes, but occasionally serious criminal cases, including murder, to elders for concurrent collaborative efforts at reconciliation. In the few cases referred to elders by formal justice actors, elders register those decisions with the courts. This referral and registration process is yet to be formalized.
- **ADR not immune to bias:** While most ADR elders enjoy a healthy margin of trust, a few respondents, particularly women, noted bias among some practitioners along tribal, linguistic, regional origin, and familial lines. This seemed to be more likely when minority (non-Pashtun) disputants sought justice from majority elders. Others cited elders' vulnerability to influence by wealthy or powerful players, which biases outcomes against poorer or less influential disputants. Respondents generally see past mediators as more honest and qualified than those of today. The non-use of disputant deposits, or *machalgha* (used in some regions to promote disputant compliance with elder decisions), by ADR practitioners removes a corruptible ADR mechanism, thus reducing the probability of manipulated *jirga* decisions.
- **Customary law versus rights:** No evidence emerged that rights-violating customary practices like *baad* - or the giving of girls and women as compensation in cases of accidental or intentional killing - are used in dispute resolution within the urban SD9. (As noted, most murder cases go to the formal justice sector for resolution.) In land dispute examples, it became clear that ownership rights, even state ownership, may at times be flexible, depending on the actors, circumstances, documentation, and compromise needed to resolve the dispute. Overall, SD9 ADR decisions today are seen as more in line with Afghan and

Islamic law, which results in fewer rights-violating reconciliatory/compromise decisions.

- **Islam valued:** Many respondents expressed a desire for ADR, and justice decisions generally, to comply with Islamic principles. They recommended involvement of Islamic and legal scholars in jirga processes, as well as training for elders in Islamic and Afghan law.
- **Elder networks:** Respondents made little mention of existing elder networks as mechanisms of learning and/or collaboration. However, elder respondents made multiple requests for assistance in establishing said networks, as well as elder-state-scholar networks.
- **Women as mediators:** While most women play no role as mediators in ADR generally, wives of elders do play a key role in facilitating access for female disputants to elders. Women also play a direct role in resolving women-related disputes and managing family or children's disputes prior to escalation. Women play an integral role in *nanawaty*, a formal apology custom central to alleviating enmity between disputants. Several male elders perceived that Islam forbids women's involvement in ADR, but suggested that the issue be examined, and that women's opinions should be considered.
 

**Several male elders perceived that Islam forbids women's involvement in ADR, but suggested that the issue be examined, and that women's opinions should be considered.**
- **Fairness/equity in ADR:** While more constrained than male disputants, nearly all respondents indicated various avenues for women to access ADR mechanisms when faced with disputes. While outcomes can discriminate against women (e.g., denial of inheritance), a majority of male and female respondents indicated that the rights and wellbeing of women are often considered and granted in determining outcomes. However, in a few cases, family restrictions on movement and/or communication leaves women in the hands of male representatives, which could result in unfair and/or coerced ADR outcomes. As indicated above, biased or coerced ADR processes can result in inequitable, unjust, and unsustainable ADR outcomes for any participant in a dispute resolution process.
- **Ownership of process and outcome:** Multiple respondents stressed the importance of disputant choice in selecting representation, and consent to ADR decisions in the legitimacy/sustainability of those decisions and the process itself. In most cases, disputant selection of jirga representatives appears to positively affect disputant satisfaction with outcomes. It follows that this non-binding framework would promote an emphasis on reason, persuasion, and disputant ownership of and compliance with ADR outcomes.
- **Sources of conflict:** The usurpation and redistribution of government land in SD9 has created many disputes between the government and current occupants,

and between multiple claimants to the same land. Other dispute types include: access to water distribution; family, including inheritance and in-law; business/financial; criminal; escalation/revenge; and tribal/ethnic friction.

## Sub-District Background

---

Kandahar City's Sub-District 9 is a large suburban area north of the city center. Gozar 3 is an older, relatively more stable area than the newer, more transient Gozar 6, also called Loya Wilayah. Economic migrants began settling the area in the late 1970s after victory by the communist People's Democratic Party of Afghanistan (PDPA). Other migrants, including internally displaced persons (IDPs), from Helmand, Uruzgan, Zabul, Farah, Ghor and other provinces have settled the area in various phases since. In 2006, a group from Kandahar's IDP camp, Zhari Dasht, which included northerners from Faryab, Jowzjan and Sar-e-Pul provinces, settled in Loya Wilayah. The population now includes a minority of Tajik, Turkmen, Uzbek, Arab, Baluch, and Hazara. Most of these groups now speak the majority language, Pashtu. In the past few years, IDPs from surrounding rural districts have sought safe haven in the area.

The transient nature of Loya Wilayah undermines social and government control, which is exploited Taliban insurgents and their families seeking refuge after being driven from rural strongholds. Taliban have attempted to assert control with illegal checkpoints, and plan and launch attacks from the area. Other migrants with their own grievances against the government facilitate the insurgents' presence. The urban safe havens are difficult to counter militarily due to a high concentration of civilians. While there is no evidence that the Taliban have attempted to establish a robust justice system in SD9, there are some indications that disputants have sought their assistance (see Taliban). Of note is the recent Taliban killing of Haji Sidiqullah, a prominent elder well respected for his unbiased dispute resolution skills.

Loya Wilayah is comprised of two areas. Loya Wilayah 1, which Najibullah's communist government developed with a water supply and paved roads. Loya Wilayah 2 was populated beginning in 1992 after the collapse of the communist regime. Two Jihadi commanders, the late Mullah Naqibullah (Alkozai) and Amir Lalai (Popalzai), occupied the government land and began selling or distributing it without formal documentation.

## Dispute Types

---

### Land Disputes

Not surprisingly, respondents most frequently cited land issues as a source of conflict within Sub-District 9. Having usurped government land, beginning with the civil war period in the early 1990s, commanders sold the land to private individuals - at times more than one - or distributed it to allies without formal title. Many of these parties then constructed homes or shops. Subsequently, disputes have arisen when the government or another party lays claim to the land. Compounding the problem, one respondent asserted that Kandahar municipality's issuance of title to usurped land promotes illegal seizure of additional lands.

### Water and Electricity

About a third of respondents cited competition over water pumps as sparking disputes, which at times escalate to violence. By one estimation, there is a single hand pump for every 20-30 houses in the sub-district. A few respondents expressed resentment at 'gun holders' dominating water queues. Several respondents mentioned pirating of electricity or cable television wires as another source of conflict between neighbors.

**Most dispute types are prone to escalation and expansion, including serious violence, without timely intervention. Without reconciliation, enmities may last until honor has been restored.**

### Family-related Disputes

The most common family-related disputes cited (by about one third of respondents each) were: inter-family disputes over abusive treatment of or restrictions on women/girls by in-laws - most common in coerced relationships like exchange marriages (*badal*) where events on one side impact the other; children's disputes, which can easily escalate into violence and inter-family enmity; and inheritance disputes over the right to and/or distribution of inheritance (which were split about evenly between male-male and male-female). Less frequently mentioned were: 'women-related' disputes; eloping and pre-marital sexual relations, or accusations thereof; polygamy disputes between wives; accusations of infertility; disputes between sisters-in-law; divorce-related disputes; dissatisfaction with the birth of a girl; infidelity or accusations thereof; disputes between 'play boy' men over boys; and domestic abuse and subsequent inter-family conflict.

### Property/Business

About one third of respondents cited late or non-payment of debt to or between shopkeepers as a common source of disputes. Others involved house construction or sales disagreements or misunderstandings.

## Criminal Disputes

Just under half of respondents cited theft as a common criminal offense. About one quarter cited murder, while a single respondent described the kidnapping of two girls for future marriage. Another described the rape of a teenage boy by another boy and the victim's subsequent murder of the rapist.

## Tribal

Multiple respondents commented that disputes of any kind can take a tribal, linguistic, ethnic, or regional-origin tone. In some cases ethnic/tribal or religious slurs initiate disputes and even violent conflict. One Tajik respondent complained about being targeted by members of the Pashtun majority. One male focus group member explained: "[Some] people of this area have come from other provinces like Farah, and Ghazni. Their tribes do not reside here, which is why injustice happens to them."

**"[Some] people of this area have come from other provinces like Farah, and Ghazni. Their tribes do not reside here, which is why injustice happens to them."**

**- Male Focus Group Member**

## Underlying Factors

In addition to tribal, linguistic or regional origin, respondents cited a lack of education, illiteracy, poverty, and unemployment as underlying disputes of most types. "Eating this meal of poverty is passing on us as a fire," commented one female. Several female respondents cited ignorance of Islamic and Afghan law provisions for women's and other rights as sources of disputes.

## Escalation, Revenge

Most dispute types, including minor water queue fights, are prone to escalation and expansion, including serious violence, without timely intervention. And without reconciliation, enmities may last until honor has been restored.

# ADR Actors and their Relationships

---

## ADR Actors

**Mediators:** Are elders respected for their dispute resolution role. The position is traditionally inherited patrilineally, however, more recently, other powerful actors have assumed the title, but are not always held in the same esteem. Mediators are often members of other village, district, provincial, and national governance or representative bodies. "Elder," while a more general term, is used interchangeably

with mediator here. While "mediator" is commonly used in the Afghan context, the role more closely resembles that of a Western arbitrator.

**Wakeel:** An intermediary between residents of a *gozar* (there may be more than one per *gozar*) and the municipality. Some *wakeels* act to resolve less serious disputes and work with elders and state actors on others.

**Mullah:** Local religious leader that may be involved in resolving disputes. Generally not as respected as *Ulema* for awareness of Islamic law, but are more prevalent than *Ulema*, which facilitates their more frequent participation in *jirgas*.

**Ulema:** Religious scholars consulted or directly involved in dispute resolution when needed and available. Highly respected for Islamic law expertise, which bolsters *jirgas*' credibility and helps to prevent decisions violating Islam. Less numerous than mullahs and consequently used more selectively.

**Women:** Rarely involved as mediators in dispute resolution outside the home. However, wives of elders often act as liaisons between village women and their elder husbands, and counsel women involved in disputes. Women in general often defuse low-level disputes, including children's disputes, before they escalate.

**Family:** Members attempt to resolve family-level disputes, but refer to elders when they are unable.

## State Actors

**Police:** Sub-district stations are first points of contact in criminal cases. At times elders escort disputants to the police in major cases, or when disputants have rejected a *jirga* decision. Police mostly refer minor cases to elders for resolution, but occasionally work with mediators to address serious criminal cases, including murder.

**Sub-district municipal manager:** State representative at the sub-district level. Office property records manager provides relevant documentation, if available, in land disputes.

**Ministry of Justice Huqoq Department:** Moj branch at the Kandahar province level. Responsible for addressing civil disputes, but maintains infrequent contact with elders. SD9 office is unstaffed.

**Courts:** Judges and prosecutors have only occasional contact with ADR actors, but refer a few cases to informal justice and register those decisions. The city-level court is the first point of contact to formal justice. The sub-district court is unstaffed.

**NSP Shura:** Former members of the National Solidarity Program (NSP) Shura (Community Development Councils) are prominent in dispute resolution in SD9.

**Provincial Council:** Members, including Ahmad Wali Karzai, President Karzai's brother, participate in resolving disputes in Kandahar province (not necessarily SD9). A few respondents raised concerns about disproportionate influence of PC members and other powerful actors in ADR. Others see their involvement as positive.

### Perceptions of the State Justice System

A strong majority of respondents view the formal justice system and actors as: inaccessible behind fortified compounds; unavailable to average people; corrupt/bribe demanding; inefficient with timelines of many months; biased in favor of wealthy or influential disputants; incompetent; unqualified; and unfamiliar with local people, having received their appointments through political, tribal or other connections. A few respondents noted favoritism when disputants are related to or familiar with formal justice actors. Several complained that unbiased and 'clean' formal justice is unavailable without influential connections. Another gave an example of a woman being denied her share of inheritance in court, illustrating that formal justice does not guarantee basic rights.

Furthermore, the punitive nature of formal justice outcomes is seen as counteracting reconciliation and even exacerbating conflict between disputants. This is especially pronounced when the state issues punitive sanction, such as a jail sentence, after ADR actors have successfully addressed the underlying cause of a conflict and made peace between the parties. These factors reduce the overall use of the formal justice system to about 10-20 percent of all cases.

**Furthermore, the punitive nature of formal justice outcomes is seen as counteracting reconciliation and even exacerbating conflict between disputants.**

However, not all negative views of formal justice may be attributable to the institution itself. A few respondents cited cultural taboos as influencing views of formal justice - one female respondent said that it is a shame for women to take their disputes to the formal sector. A few others implied that formal justice can be useful when disputes involve non-property-owning migrants for whom the threat of exile as an enforcement mechanism (an option in *jirga* processes) holds less sway.

It should be noted that several respondents portrayed a more favorable view of the formal justice system under the reign of King Zaher Shah, when the courts, seen as strong and effective, resolved most disputes.

### Views of ADR and its Actors

In line with findings in other districts, respondents heavily favored ADR and its practitioners for their: speed (a few hours to a few weeks) and cost efficiency; fairness; integrity; familiarity with the local context; accessibility; consensus-based decision making; and focus on reconciliatory outcomes and community peacemaking. Several respondents also noted elders' tribal/regional representativeness and efforts at non-discriminatory decision making. "They don't ask people who they are," said one. One male focus group member said, "They resolve disputes for the sake of

Allah and for the pride that they have been selected by the people. Whenever a dispute happens, tribal elders resolve it as if it were theirs."

However, respondents also cited several weaknesses of the *jirga* system in SD9. According to a few female focus group respondents, some mediators demonstrate bias along ethnic/tribal, economic, or political lines. Another focus group identified a low awareness of Islamic law as fostering "violations" (see Equity). A few respondents singled out self-appointed former commander mediators as favoring relatives and friends. "We can't say that all of them are either good or bad...There are some mistakes in their work, which creates a lot of problems." Still, ADR and its practitioners in SD 9 enjoy an estimated 80 percent usage rate.

### **Current Status of ADR**

Years of war has marginalized or eliminated some respected, competent, and unbiased elders while other powerbrokers have become influential - often by force or intimidation. These actors, according to one respondent, have begun resolving disputes "in either a good or bad way." This contributes to lower quality ADR outcomes and bias toward the 'rich and powerful,' resulting in less satisfaction and a sense of unfairness among beneficiaries of mediation, especially the poor. According to another, otherwise honest elders are now more intimidated by powerful actors, which contribute to unfair outcomes. Several respondents pointed out, however, that, despite being weakened, the system of patrilineal inheritance of the mediator role continues, arguing that elder quality is approximately where it was prior to the outbreak of war. A few respondents attributed lower respect for elders to 'illiterate' people, rather than the elders themselves.

***Years of war has marginalized or eliminated some respected, competent, and unbiased elders while other powerbrokers have become influential - often by force or intimidation.***

Several respondents noted an increased compliance with Afghan and Islamic law in ADR decisions, which includes the elimination of *baad*, the granting of women's inheritance, and better access for women to elders in divorce and widow cases. Respondents suggested that this is due in part to greater collaboration with religious scholars, and training after the fall of the Taliban.

Need has also bolstered the prominence of informal justice mechanisms as the once prevalent formal sector disintegrated with war. Furthermore, elders are no longer prevented from practicing ADR by Zaher Shah's government or the Taliban. Needless to say, "It is the informal justice system which resolves the people's disputes, no matter big or small. If people don't have access to this system, everything would be destroyed and more insecurity would be on the way," said one respondent.

## Formal-Informal Collaboration

Elders and government officials interact regularly to resolve SD9 disputes. (The specific government actors involved is not always specified in responses, but the police are the primary point of contact for disputes within SD9.) Faced with an unmanageable dispute burden, the state refers cases to elders. As needed, elders refer serious criminal cases, cases they are unable to resolve, or cases where disputants have rejected a *jirga* decision, to government actors. Serious criminal cases, including murder, are referred to the police or provincial-level state actors, although one respondent described a police referral of a murder case to elders. Elder-Huqooq interaction appeared to be limited due to an unstaffed SD9 Huqooq office. No respondent specified SD9 elder interaction with the provincial Huqooq. Elders interact to some degree with the SD9 municipal manager, whose office maintains property records. Whatever state-elder interaction exists is generally ad hoc and unstructured.

Elders and formal justice actors (courts and prosecutors) enjoy very little collaboration in referring cases, largely due to lack of trust. Elders cite the poor reputation of the formal justice sector in wanting to avoid any affiliation. Similarly, formal justice actors do not wish to be tainted by the 'bad habits' of customary justice practices like *baad* (though reportedly obsolete in SD 9). One respondent commented that formal justice actors have requested ongoing communication on cases, but that the elders have avoided reciprocating due to real or perceived interference. Another cited elders' fear of loss of stature and leadership in choosing to avoid the formal system.

Still, areas of overlap exist. Several respondents described influential elders utilizing contacts within government and formal justice institutions to facilitate access for disputants (and avoid bribes) - even when disputants had rejected a *jirga's* decision. Elders in one example reconciled the families of an arrested murder suspect and victim to defuse enmity; several respondents described such concurrent actions as essential to the success of the formal justice process. Finally, two respondents described the periodic government upholding of *jirga* decisions as supporting ADR.

## Reconciliation vs. State's Rights

While State-ADR interaction offers opportunities for improving justice, several stories indicated that concurrent state and ADR roles in criminal cases raise jurisdiction and conflict resolution questions. A typical scenario involves elders successfully reconciling two parties in a serious criminal case like murder, with the state subsequently exercising its right to prosecute - to the dissatisfaction of the guilty party's family. One example is the refusal of a guilty party in a murder case to register a successful ADR decision with the state for fear that the government would exercise its right to prosecute. One respondent stated that punitive imprisonment does little to alleviate enmity, thereby fostering a reoccurrence. Reconciliation, he said, will only be achieved through negotiation between the families.

## Women

Women in SD9 rarely play a role in general cases of dispute resolution. Wives and female relatives of elders, however, play a central role in female disputants accessing ADR by acting as conduits to the elders or consulting/counseling the women themselves. Respondents indicated that women are consulted and can at times participate directly in 'women-related' disputes such as divorce, widows, inheritance, and *baad*. In one marriage dispute, the female relatives of both sides participated in a parallel, but separate, discussion. Women also play an important role in the customary request for forgiveness, or *nanawati*. One female respondent complained, however, that women are not always consulted when they should be and, when consulted, their views are not always taken seriously.

## ADR Process and Practices

---

### Selection of Forum

Disputants and government actors rely heavily on local elders in the vast majority of civil, 'small,' and family-related disputes, as well as many criminal disputes, including those involving violence. The interviews suggest that a majority of serious criminal cases like murder and kidnapping go first to the police.

### Selection of Representatives and Other Actors

Responses indicate that a large majority of disputants freely select their *jirga* representatives or delegate the task to other elders. A few, however, indicate that a combination of elder intervention/selection and government selection of elders determines who will resolve the dispute. How this choice in representation impacts disputant satisfaction with a *jirga's* decision is worthy of further research, but several respondents noted its centrality to gaining disputant satisfaction and compliance with *jirga* decisions.

### Evidence/Information

"We consider all aspects of disputes so that the solution is acceptable to both" - reflects the pride that many elder respondents expressed in aiming for well-researched, fact-based decisions. Specifics mentioned included interviews with disputants and witnesses, and review of related documentation, especially in land disputes, if available.

### Authority

Prior to issuing a decision, elders usually take authority (*waak*) (often written) from the disputants. SD9 interviews indicate that this is generally non-binding, although a few indicated that elders sometimes seek disputant commitment to accepting their

decision. A majority, however, indicated that ultimate acceptance of the *jirga* decision lies with the disputants, as elders in SD9 do not employ coercive enforcement mechanisms such as deposits. Like choice in representation, a few respondents noted the importance of the non-binding nature of outcomes, which would appear to promote disputant ownership and mediator attention to persuasive fairness in ADR processes.

### **Deliberative Process**

Most respondents indicated a consultative process with disputants followed by a collective deliberation process between elders culminating in consensus around a solution.

### **Solutions**

Many respondents noted a lack of specific 'rules' in pursuing the primary objective of ADR in SD9 - reconciliation between the parties and community harmony. Several did, however, express a desire to issue Islamic and Afghan law-compliant decisions. It follows then that measures violating these standards, such as *baad*, or the use of girls as compensation in murder cases, are reportedly extinct in the area. "If an innocent is punished, it is injustice - tribal elders no longer want to maintain injustice in the region or country." Similarly, others explained that women's inheritance is now regularly issued.

Other commonly mentioned solutions include: exile from the community; corrective monetary compensation in business or even violent disputes; apologies and promises of improved behavior; compromise or 'splitting the difference,' particularly in land disputes; and encouragement to forgive. Overall, elders expressed a desire to persuade disputants to accept solutions through careful deliberation and reason. To dissuade a revenge attack in one example, elders argued that, "Blood cannot be washed with blood." In one case, mediators' simple shaming of a husband for domestic abuse was enough to correct the behavior.

Achieving equitable outcomes appears to be a central tenant of ADR in SD9. For example, compensation is often ordered from one disputant to another if disproportionate harm has been done, but if harm or injury is determined to be relatively equal, as in one children's dispute with injuries, the elders simply ordered the sides to apologize. In SD9, where undocumented land claims are a key source of disputes, determining equitable compensation or compromise can be particularly challenging and risk violations of 'rightful' ownership. For example, in one case, a recent land purchaser faces multiple claims to the land after the sale, all of which are undocumented. The case is resolved with the current owner paying one of the claimants an addition sum.

## Documentation/Enforcement

Because elders focus on reconciling disputants, many respondents explained that enforcement mechanisms are rarely needed. As noted, a financial deposit, or *machalgha*, is not taken in SD9 as is common in some other regions, which significantly reduces elders' enforcement capacities, but may increase their emphasis on agreeable/sustainable solutions. When disputants refuse a decision, they are, according to some, 'on their own' - or can appeal to state actors. The non-use of *machalgha* has the added advantage of reducing incentives for corruption.

Other mechanisms promoting disputant compliance include written decisions signed by both disputants and, in a few cases, filed or registered with state or formal justice actors, which promotes their enforcement by those actors. Others include the stature of and trust in elders involved in dispute resolution; participation of respected Islamic scholars; use of witnesses and public announcements; threats of public shaming; a promise to comply; threat of referral to state actors/police; threat of beating; threat of exile; moral arguments such as treating an aunt like your mother; and disputant commitment to the outcome.

## Appeals

Though rarely used, according to respondents, the most common 'appeals' mechanism is taking a case to the formal sector when dissatisfied with a *jirga* outcome. Multiple respondents indicated that when one side is weak, or poor, elders support the party if the case moves to the state or formal justice actors - especially when a powerful or 'brutal' party makes the appeal. Government actors at times support elders' decisions by refusing to reconsider cases or simply referring it back to the elders. Only one respondent noted the option of appealing to another group of elders. In one example, the disputants, frustrated with both the formal and informal justice sectors, take the case to the Taliban.

## Equity/Fairness

As indicated above, respondents by a strong majority indicate trust in the fairness of elders in determining dispute outcomes, including where tribal dynamics are involved. However, some responses highlight areas for improvement.

While restricted relative to males, women involved in disputes have various avenues for access to ADR. As indicated, women can access mediators through female relatives of elders who act as conduits and initial points of contact. This is often followed by direct verbal (from behind a door or curtain) communication with elders. Male relatives also represent women in the *jirga* process, although one female respondent emphasized that this can lead to misrepresentation of the woman's perspective and undesirable imposed solutions. This is especially true when a woman's family restricts her to the house, where she is at the whim of her family or

in-laws. In domestic cases, examples indicate that a woman's blood relatives must often advocate for her rights and wellbeing within in-law families.

A mixed picture emerged on the fairness of outcomes in women's dispute cases. Women respondents were more likely to note instances where outcomes are decided without their consent, including forced marriage of widows. Similarly, disputes on one side of an exchange marriage often impose unwanted and unfair consequences (i.e., forced divorce) on the women (and men) of the other side. Another case involved denial of a sister's inheritance by elders. Female respondents cited a lack of awareness of Islam in explaining violations of their rights.

However, in several respondent examples, the rights and welfare of women were considered and honored. One example involved a girl being removed, by her request, from her abusive family. In another, elders ordered a husband to fulfill promises made to his third wife, including the right to visit her blood relatives.

In dispute resolution generally, other factors at times result in inequitable ADR outcomes. A few respondents described how key powerbroker 'gun holders' within and outside the *jirga* system have come to wield undue influence over elders and ADR processes, thus distorting solutions in favor of allies. In some cases neither elders nor the state are able control these actors. Occasionally, disputant stature itself leads to biased decisions favoring the wealthy/powerful party. In one example, elders fail to order sufficient compensation from a powerful disputant to cover a poor shooting victim's medical expenses. Another is that of a member of a large tribe receiving all property in a land dispute. The weaker, isolated disputant received only threats against further complaints. A few respondents complained of tribal bias by some ADR practitioners, including an example of a *mullah* telling a disputant to "go to your own area." One female respondent said, "It is not a fact that elders are as clean as angles. Sometimes they make very unjust decisions."

## The Taliban's Role in Dispute Resolution

---

Most responses indicated no preference for or substantial use of Taliban justice within SD9. One women's focus group member said that, "Taliban were very brutal to these people during their rule...decisions used to be imposed on them and they were forced to accept...or be beaten up." However, another focus group described Taliban resolution of one case after unsuccessful attempts at settlement in the formal and informal systems. There is speculation that other members of the Taliban support network continue to use Taliban justice either covertly in SD9 or by traveling to nearby Taliban strongholds.

Other respondents indicated that forum selection is, to a significant degree, a practical matter, naming Arghistan, Maaruf, Panjwai, Zherai, and Nesh districts as locations where people may use Taliban justice simply because it is dominant and they "don't feel the need to take their disputes to tribal elders - the Taliban implement their decisions." In some areas, tribal elders reportedly coordinate dispute resolution with the Taliban as the group is seen as Islam-compliant and 'clean.'

## Conclusion

---

The interviews indicate a strong preference for ADR in Sub-District 9 of Kandahar city. Though somewhat diminished through the marginalization and/or killing of respected elders, and addition of powerful, yet less experienced, mediators, ADR practitioners are for the most part trusted and admired. Roughly 80 percent of disputes are addressed through ADR due to its low cost, speed, and focus on disputant consent to the authority of elders and their decisions, which promotes an emphasis on genuine disputant satisfaction/reconciliation. While the corruptible practice of deposit, or *machalgha*, is not practiced in SD9, pockets of wealth, power, ethnic and regional origin bias remain.

Government-elder collaboration is mixed, with state actors referring disputes to the informal system and elders referring serious criminal cases, irresolvable disputes, and rejected decisions to the government. Regular formal justice-elder collaboration, however, is minimal, with low levels of trust on both sides. Formal justice actors are seen as inaccessible, corrupt, and incompetent.

Not surprisingly, women as ADR actors saw virtually no inclusion in dispute resolution other than consultation in women-related disputes. But they, and men, described several ways women disputants are able to access ADR mechanisms. Furthermore, equitable ADR results for women emerged, demonstrating that consideration of administration of justice/fairness to women is not at all foreign to ADR practitioners in SD9.

Both women and men expressed a desire to improve ADR, including reducing violations of rights, reducing the corrupting influence of dominant parties in ADR processes, improving mutual understanding/collaboration between the formal and informal sectors, and fostering elder networking/collaboration on 'legacy' disputes, while protecting the reconciliatory strengths of ADR. Above all, respondents cited the primacy of Islamic and Afghan law as desired normative parameters of ADR outcomes.

## Action Plan

---

This action plan addresses areas for improvement in the ADR mechanism and in formal-informal collaboration in SD9, as outlined in this assessment. The specifics of what and how activities are implemented will be refined in collaboration with beneficiaries. Targeted activities are designed to progress ADR and state actors toward established goals. A representative group of elders, state actors, and women from SD9 and surrounding areas will be invited to foster substantive exchanges and networking.

### Goals and Related Activities

#### **1. Foster links between state and ADR processes**

Given the tenuous ADR-state/formal justice relationships, RLS-I will sponsor interaction of state and ADR actors in SD9, Kandahar city and provincial offices (as appropriate and required, given current levels of government staffing). RLS-I will sponsor working groups to bolster understanding of formal-informal justice roles under the law, the strengths and weaknesses for each system, and how the two may collaborate to capture positive components of each while attenuating the negative. Discussion could include an exploration of the intersection of the formal and informal justice systems in criminal cases and other respondent ideas such as formation of elder-state-formal justice dispute resolution shuras. Depending on progress and participant initiative, steps will be taken to formalize and systematize the collaboration. This could entail: determination of standard referral and registration formats; establishing a case flow management and tracking system within the Huqooq's office; provision of needed filing equipment for storage of decisions; and ongoing communications systems to support the legality of ADR decisions.

#### **2. Raise ADR actor awareness of Afghan and Islamic Law**

Many respondents expressed a desire to form and be subject to Islam-compliant justice. Women and men requested education on Islamic and Afghan law to better inform and legitimize their decision making on family, inheritance, land, property, and criminal law issues as well as individual and women's rights. RLS-I will sponsor seminars on these issues. Special attention will be given to equal treatment under Islamic and Afghan law regardless of wealth, ethnicity, gender, etc. Additionally, elders will be offered a comparative course or workshop on arbitration and mediation to illuminate ways to improve ADR processes and promote disputant ownership of outcomes. University law professors and high-level Afghan legal veterans/experts will be utilized for their expertise and stature among elders. Qualified/respected judges will be approached to train ADR actors to bolster mutual respect.

**3. Support elder network**

RLS-I will support mediators in establishing a diverse, representative network of elders to – as requested by respondents – share lessons learned and best practices, explore ‘rules’ in collaboration with Islamic and Afghan law experts/officials for improving ADR practices, address ‘legacy’ or long-standing disputes and establishing a volunteer Conflict Resolution Committee (CRC) for said purpose. Other respondent ideas include involving religious and legal scholars in network working groups and establishing a common meeting facility.

**4. Lessen bias/corruption in ADR and state justice**

Create an anti-corruption working group of elders, state and community leaders. Ideas will be exchanged and strategies developed for reducing corruption in ADR and state justice processes. Strategies and tactics for reducing the corrupting influence of powerful and/or wealthy figures on ADR processes will be explored.

**5. Support women's role in and access to ADR mechanisms**

RLS-I will explore local women’s interest in establishing dispute resolution groups, or *spinsary*, to focus on bolstering their existing role in mediating family and women-related disputes. Enhanced dispute resolution skills and establishment of women's ADR teams will bolster their effectiveness in addressing women's disputes and in defusing 'small' conflicts prior to escalation. Respected *jirgamaran* will be asked to train the women in ADR skills.