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RULE OF LAW STABILIZATION PROGRAM - INFORMAL COMPONENT

KUZ KUNAR, NANGARHAR ASSESSMENT AND ACTION PLAN

JANUARY 2011

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

January 2011

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

Between December 2010 and January 2011 the ***Rule of Law Stabilization Program – Informal Component*** (RLS-I) conducted an assessment of alternative dispute resolution (ADR) practices and principles in Kuz Kunar District in Nangarhar province. 38 interviews were conducted (75% male; 25% female) with ordinary village members in Shanga and Qalatak villages, district government officials and state justice actors assigned to Kuz Kunar District center.

This report provides top-line findings from the research, including information about the types of disputes in these districts and the elders and state justice actors that participate in dispute resolution. It also identifies the district's traditional dispute resolution practices, principles, and processes. Finally, this report briefly outlines the methodology used to collect and analyze the research data.

This assessment's objectives were three-fold. First, to gain an in-depth understanding of the nature of disputes in these districts; the historical, political and social context in which they manifest, as well as the reasons why people choose to resolve their disputes through ADR.

Second, to use the knowledge gained to design activities that support the implementation of the RLS-I program and its stabilization and sustainability goals. This includes determining which activities are needed to fulfill particular goals; identifying approved community members to help RLS-I facilitate activities; and working out when and where activities will take place.

Third, to enable the RLS-I field teams to build relationships based on trust and rapport with different community members and state actors in the districts, which is essential for the successful implementation of all activities.

Top-line Findings

- **Preference for Alternative Dispute Resolution (ADR).** Citing widespread corruption and the length of time it takes to decide cases in the formal justice system, nearly every respondent indicated that they preferred resolving disputes using traditional dispute resolution practices. Respondents resorted to state justice as a last resort when ADR mechanisms were unable to resolve their disputes. Small civil disputes that are filed with local courts often turn into serious criminal disputes because the disputes take so long to be addressed by the primary courts, leading to disputants taking up arms against one another.
- **Traditional dispute resolution brings peace to the community**. Community members and district government officials prefer disputes be resolved through ADR because it is widely perceived as a practice that will, not only bring peace between the opponents of a dispute, but also bring peace to the community as a

whole. Formal justice was seen as a "winner-take-all" approach that does not address the underlying causes of a dispute. Even in criminal cases where the accused is convicted and detained by the government, community leaders will often hold a jirga to resolve the bad blood between the accused, the victim and their respective families. When the underlying cause of a civil or criminal dispute is not addressed it often results in cycles of violent reprisals that threaten to destabilize the community.

- **District government supportive of ADR**. District government officials and formal justice actors were perceived to be supportive of ADR; respecting the decisions of jirgas. Despite district government officials and formal justice actors being heavily involved in ADR (by referring disputants to local elders), there was no indication they interfered or influenced the ADR decision making processes.
- **Existence of an ad-hoc jirga registration system.** In most disputes requiring the convening of a jirga, a written decision was produced. However, only disputes that were referred by the District Governor or state justice actors (typically judges) were then recorded with the district government.
- **Basic legal knowledge is lacking among ADR actors.** While both community members and district government officials were very positive about ADR, they often complained that community elders had little understanding of substantive legal concepts of inheritance law, property law, family law, or criminal law. Elders themselves requested receiving training and education in both state and Shari'a law.
- **Community stakeholders in ADR process.** Villagers prefer ADR actors address their disputes because they are seen as part of their community. Meanwhile district governmental actors and judges are viewed as outsiders who are perceived to have little factual or local contextual knowledge about the disputes, the disputants, and the destabilizing effect disputes can have on village life. This is compounded by the fact many district officials and judges are frequently transferred in to different posts and often have little knowledge of the district they are working in. Even judges and other district officials acknowledged that ADR is often best suited for resolving many kinds of conflicts because elders are in a better position to successfully mediate the case.
- **Third-party tribal leaders as an *Honest Broker***. In some large inter-tribal disputes in the districts, the disputants have been successfully engaged using tribal elders from a third-party tribe (seen as neutral) to help mediate the dispute in question. In large land disputes, elders from neighbouring areas are sometimes asked to assist in the resolution of major land disputes. When a dispute is inter-

tribal or inter-village it was deemed helpful to have elders who were not affiliated with the tribe or village lead a jirga because these elders had no interests in the disputes and were perceived as neutral and fair-minded.

- **Positive impact of women in ADR**. While most women in the districts have no direct access to ADR decision making processes at a district level, they do have some avenues to access ADR in their village. Most respondents (male and female) indicated that women are allowed to bring their disputes to a jirga through a male representative. At times women do take the lead in resolving intra and inter-family disputes that threaten their family stability, but this is usually within the confines of the home or the immediate family.

  Women do play an integral role in *nanawati*, a formal apology custom that is often seen as keeping the peace and preventing disputes from turning violent.

- **Declining human rights abuses**. While some human rights abuses such as *baad* (exchanging young females as a result of an accidental or intentional killing) still occur in Kuz Kunar, many tribes claimed they have disbanded the practice for alternatives such as exchanging money, livestock, and food.

- **Submission to a Jirga decision is voluntary but may come with a price.** In Kuz Kunar the disputants are free to accept or reject the decision of the jirga. However, in many communities the parties to a dispute are required to submit a deposit (*machalga)* at the start of the jirga process, which can be kept if a party refuses to accept the decision of the jirga. Communities that utilize *machalga* reasoned that it was an extremely effective tool to ensure that decisions were accepted. However, many expressed pride that they did not utilize *machalga* because it was forbidden in Islam and/or that it had become a corrupting influence. Many respondents shared stories of elders either keeping the *machalga* for themselves or using the proceeds to purchase food, mobile phone cards, and other claimed necessities.

Types of Disputes

The most common types of disputes occurring in Kuz Kunar are:

1) **Land disputes**: These include claims to government-owned land and land seized by the government, land seizures made by powerful warlords, land boundary disputes, inter-tribal land disputes, returning refugees with claims to abandoned land, and disputes with *Kuchi* nomads over grazing lands. There are also high-profile disputes between residents of Kuz Kunar and Qarghee District over large tracts of land.

2) **Family-related disputes**: These include disputes between families, between new wives and their in-laws, marriage and divorce disputes, honor killings, domestic disputes, and violent reprisals regarding female relationships outside of marriage.

3) **Disputes over water use**: These include villagers' disputes over water rights and irrigation channels, disputes between established villagers and *Kuchi* nomads over water rights, and disputes about government and warlords seizing access to valuable irrigation channels previously used by the community.

4) **Accidental killings**: Typically road traffic accidents resulting in death.

5) **Violent honor killings and revenge killings**: Most commonly, neighborly or inter-family civil disputes that rapidly turn violent, resulting in a cycle of revenge killings. Petty disputes or disagreements between villagers that escalate to violent retribution.

Dispute Resolution Actors' Relationships

- The research demonstrates a strong link between ADR actors at both the district-level (district *shuras*) and village-level (*maliks* and *jirgamaran*), and state justice actors such as judges, members of the Huqoq department, prosecutors, and district government officials.
- Often the lines between ADR and formal justice are blurred. For instance, one judge gave several examples of cases filed with his court where he chose to act as a *jirgamaran* (rather than a judge) with his judicial assistants to resolve the cases through a jirga. The judge explained to the disputants that it was for their benefit because the process would not be as lengthy or expensive as the formal justice system.
- Referrals are often made between ADR actors and state justice actors. For example, judges and members of the Huqooq often refer disputes filed with them to established village elders; however, there is no standard procedure for doing so, with referrals typically ad-hoc.
- While the district governor often acts as a conduit in traditional dispute resolution processes (receiving legal disputes from community members and referring their dispute by formal letter to village elders), he was rarely cited as trying to interfere in the dispute resolution process. However, many community members complained that the District Governor solicited a bribe from disputants before he referred their dispute to village elders or the District IDLG Shura.

ADR Trends, Practices and Processes

Almost all civil disputes in Kuz Kunar are brought to community elders and *jirgamaran* for resolution. Often community members initially seek the assistance of the District Governor (or other District official) when they have a dispute. The District Governor will then refer the dispute (often in exchange for a bribe) to the village *malik* who will instruct each disputant to select several respected village elders to serve on the *jirga*.

While district officials and judges often refer disputes to ADR actors, they don't appear to interfere in the ADR process and the decisions made by a *jirga* are respected by the district government. The formal justice system is seen as an avenue of last resort, only to be used when a dispute is so intractable it cannot be resolved through the ADR process.

It appears that there are mechanisms for recording decisions as part of the dispute resolution process in Kuz Kunar, with many reports of taking the recorded decision to the District authorities for registration. However, registering a decision or ADR outcome seems to be on an ad-hoc basis with no standard procedures or formal practices employed.

ADR decisions in Kuz Kunar often need an enforcement mechanism other than simply respecting the decision of the elders involved in ADR process. Respondents reported that sometimes *machalga* or fines were effective in enforcement of decisions (these can be both monetary and goods such as livestock and food).

There were also many anecdotes of disputants being ostracized from the community if they chose not to accept the decision of the elders and even some instances where disputants were threatened to accept the decision of the elders or face having their home burned to the ground.

The use of *machalga* was subject to differing opinions. Many thought it was a useful tool to ensure the decision of the elders was accepted by the disputants. However, there were also examples given of *machalga* being misused and abused by the elders. For instance, there were many anecdotes of elders using the funds to pay for their expenses and food. Some also mentioned rumors that some elders would make decisions they knew were unacceptable just so they could keep the money deposited as *machalga*.

In disputes involving murders and accidental deaths, the traditional practice of *baad* (giving girls from the offending family to the victim's family) is sometimes practiced. However most people indicated that this practice was decreasing in Kuz Kunar with many tribes preferring to exchange money and commodities instead. Most respondents admitted that the practice was both unconstitutional and against Islam, yet despite this the practice still occurs, and not surprisingly female respondents cited the practice more than male respondents. Furthermore, it was sometimes unclear if female respondents were talking

about past examples of girls being exchanged or if this was a practice still frequented in their village today.

While women do not sit on *jirgas* as decision-makers, they are still able to access the ADR process in their village, sometimes with the help of a male relative and sometimes by directly visiting their village *malik*.

Both men and women acknowledged that women sometimes play a large role in resolving disputes within the family, most often in a domestic (not public) forum. Because family disputes can quickly and unpredictably escalate into physical violence, women are crucial to preserving the peace between their families and in-laws' families.

Men also acknowledged that women play a central role in *nanawati* (a customary practice where forgiveness is sought from a victim's family) and often credited these women with being able to keep the peace and prevent revenge killings from occurring.

It is also noteworthy that a large number of men interviewed by RLS-I had no objections to women being given an expanded role in the dispute resolution processes, especially within the scope of family related disputes. Most district level officials also suggested that women could and should play a greater role in resolving disputes in their villages.

The Role of Taliban in Dispute Resolution

Kuz Kunar is a relatively secure district that sees sporadic insurgent activity.

There was no indication of people using the Taliban justice system in the villages visited by RLS-I staff. Some respondents described the Taliban justice system as brutal and un-Islamic while others lauded the fact that it was swift and effective.

Methodology

Shanga and Qalatak villages in Kuz Kunar were the focus of this research. 38 interviews were conducted with a broad cross section of the community (75% men; 25% women) from ordinary citizens to district government officials and state justice actors assigned to Kuz Kunar District center.

A field research team of two men and two women performed the majority of the data collection in the villages, while another research team made up of two men conducted interviews with government officials and state justice actors at the district level. The male and female research teams were a mixture of ages, with all of them from or living in Nangarhar at the time they were conducting the research. Field team members who worked on the data collection were selected based on their prior knowledge and work experience there. Field teams were trained by the senior traditional justice advisor regarding data collection, sensitivity, ethics, and building trust. All teams used a

combination of informal chat sessions over tea and in-depth, semi-structured interviews, with most respondents being interviewed more than once.

Most interviews were conducted one-on-one while some interviews were conducted with small groups of villagers. While focus group discussions and group interviews are also a common qualitative research method, it was decided that these would not be conducted for several reasons. As much of the data being collected is politically and socially sensitive, group interviews would not capture such data, as Afghans are less likely to be comfortable talking about their own or their neighbor's disputes in the company of their peers.

Field teams always conducted the interviews in pairs, with one of the team members taking detailed notes of the interviews. Field notes were kept, recording pertinent informal conversations and the field researchers' own observations. All field notes were translated into English, often on the same day the interviews were conducted.

Village-level respondents included village *maliks*, elders, shopkeepers, *Kuchi* nomads, farmers, religious leaders, and community members that used ADR in the past. District-level respondents included judges, prosecutors, members of the Huqoq Department, district government officials including the District Governor, and district shura members. Before data collection began, the field research teams, in conjunction with the regional justice advisors and senior traditional justice advisor, designed field interview guidelines for village and district-level respondents.

Conclusion

Kuz Kunar residents prefer ADR to the formal justice systems available to them, using the later only as a last resort in settling disputes for a number of reasons.

Firstly ADR is seen as a "peacemaker" in the community while the formal justice system is viewed more as a zero sum game with the judgment going to the "winner" in the dispute. The majority of respondents stated that ADR is more in line with their culture enabling a negotiated settlement that fosters peace in the community, where as a formal court judgment is perceived to increase animosity in the community through producing a "winner" and a "loser".

Most respondents were also aware of the limitations of the ADR system, in particular the potential for ADR actors to leverage informal fine systems for their own benefit. The majority of respondents also highlighted a lack of legal knowledge among ADR actors, this observation was also made by ADR actors openly admitting their lack of training in rule of law (ROL) matters and requesting training opportunities from RLS-I.

The training needs raised were based on the types of disputes most commonly brought to ADR actors with land disputes being the most prevalent followed closely by family disputes and conflict arising from road traffic accidents and revenge killings. In short a range of training activities are needed to improve the effectiveness of ADR actors from property, inheritance and family law to criminal and constitutional law as well as human rights in the context of Islam.

Women in general don't have a recognized public role in ADR processes in Kuz Kunar despite being the lead actors in many family disputes, and often having an "influencing" effect in conflict resolution. Consequently women's role in ADR is often undervalued, minimized or conflicted and therefore limited. There was general agreement that women could play a broader and more effective role in ADR in the right context; with appropriate training and community consultation.

Respondents also believed that the human rights abuses previously associated with ADR are part of the past and are not a present day issue, further supporting ADR as the preferred path for resolving disputes.

Links between ADR and the formal system are evident, but nascent, with some evidence that ADR and state actors are interested in strengthening these connections, and improving referral systems.

In summary the role of ADR in Kuz Kunar cannot be understated as it is overwhelmingly perceived to be the most fair, the most efficient and the most culturally appropriate conflict resolution process available to local villagers.

Action Plan

Based on the above findings a range of activities have been identified to address critical needs or opportunities which RLS-I proposes to implement to strengthen and enhance local dispute resolution processes and practices in Kuz Kunar.

The following goals are under-pined by RLS-I's community stabilization and sustainability objectives.

Goals

1) ***Strengthen and standardize links between the district government and ADR actors in a manner that is inclusive and sustainable.***

   While links exists between the district government and community elders, they are ad-hoc and not well designed or defined. There is interest from elders and district officials to strengthen linkages, through standardizing formal and informal engagement, eliminating substandard practices, registering decisions, and improving

cooperation in the enforcement of decisions. This will improve oversight of ADR practices in the villages, while enhancing governance at a district level.

2) ***Enhance equal access to justice systems (informal and formal), especially for women.***

Activities will be designed to increase the availability of justice mechanisms for members of both genders, including demystifying the state justice system. By increasing women's access to the decision making processes in ADR and the justice system, the impact of those decisions on women are better addressed.

3) ***Support ADR actors resolve intractable long standing disputes that have had a broad destabilizing effect on their communities.***

By nature these long term disputes are both destabilizing and difficult to resolve the longer they remain unresolved. ADR actors have expressed an interest in exploring new ways of addressing these key conflicts in ways that are culturally appropriate and expedient, but using methods, with support from RLS-I, that have not yet been trialed in Kuz Kunar, but have been successful in other districts or provinces.

Activities

1) **Creating an ADR Registration System for Decisions**: It is apparent from RLS-I research that some mechanisms already exist for recording ADR decisions, and sharing these with state actors, although only on an ad-hoc basis. By working with elders, and state actors, through a series of meetings and discussion sessions, RLS-I will support the development and use of an ADR outcomes registration process with the district government.

Through this process elders and district officials can come to a mutually agreed, sustainable solution, for the monitoring and oversight of ADR decisions and referrals to the state justice system relating to all aspects of Afghan law.

2) **Support to the Office of the Huqoq**: The Director of the Office of Huqoq within the Ministry of Justice (MOJ) has requested support from RLS-I to assist in the review and self-assessment of the Huqoq Office systems and processes along with mapping relations with local justice actors. This activity compliments RLS-I's work with ADR actors and the enhancement of interaction and cooperation between informal-formal justice actors and systems.

RLS-I will support dialogue between the Huqoq Office, District Governors, tribal elders and other ADR actors to learn what mechanisms would be the most culturally and politically appropriate for enhancing links between state and ADR actors.

RLS-I will explore the Huqoq's unique linkages with formal justice institutions and how that linkage can be strengthened through systems such as a case flow management system and case tracking between formal and informal systems.

3) **Creation of Elders' Networks**: Building on the success RLS-I has had in other districts, RLS-I will work to create elders' networks in Kuz Kunar; linking elders from Kuz Kunar to already established elders networks. These networks will have a multiplier effect on existing ADR mechanisms, in particular intractable disputes.

   RLS-I will provide opportunities for members of these elders networks (men and women) to come together to discuss and resolve particular problems, devise new ways to strengthen ADR, and establish foundations for sustainable cooperation.

   Strengthening of elders' networks both within the district and at the regional level will be threaded throughout all of RSL-I activities.

   These networks are a self-sustaining mechanism that not only strengthen and improve ADR within local communities, they also work to improve stability and social cohesion over the longer term at a district level.

   For example these networks can be utilized to reinforce alternatives to *baad* in cases of murder, as well as to create new mechanisms for linking the state justice system with the ADR system. They are also offer villagers a unique opportunity to access neutral elders from neighboring districts for the resolution of disputes that are either too large or too political for the elders within the district to be able to address.

4) **Specialized Seminars and Workshops:** RLS-I will deliver **s**eminars for elders (male and female) and state justice actors based on the programs research to date that are designed to resonate with local communities and justice sector participants. The topics will include individual's rights in Islam, inheritance law, land and boundary law, family law, and processes in the state justice system.

   These seminars are also designed to empower elders, building their knowledge of the state justice system, the laws of Afghanistan, and Islamic requirements. By enabling elders engaged in ADR to better understand the legal and religious context in which they make or facilitate decisions, the ADR outcomes are more likely to comply with the standards of the government of Afghanistan. Consequently ADR decisions or outcomes will also be easier to record and register, easier to enforce, and more sustainable in the long term.

5) **Women's dispute resolution groups:** RLS-I will work with women elders at the village level to create small groups of women responsible for resolving family related disputes in their village. RLS-I will also work with the male village elders

to gain their support for this activity and to help train the women's group about traditional dispute resolution practices, principles and procedures.

These women's groups will be modeled on existing women's groups facilitated by RLS-I in villages in Behsud and Surkh Road Districts. The women will assist other women in their village who have family related disputes and problems.

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