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RODAT AND KAMA, NANGARHAR ASSESSMENT AND ACTION PLAN

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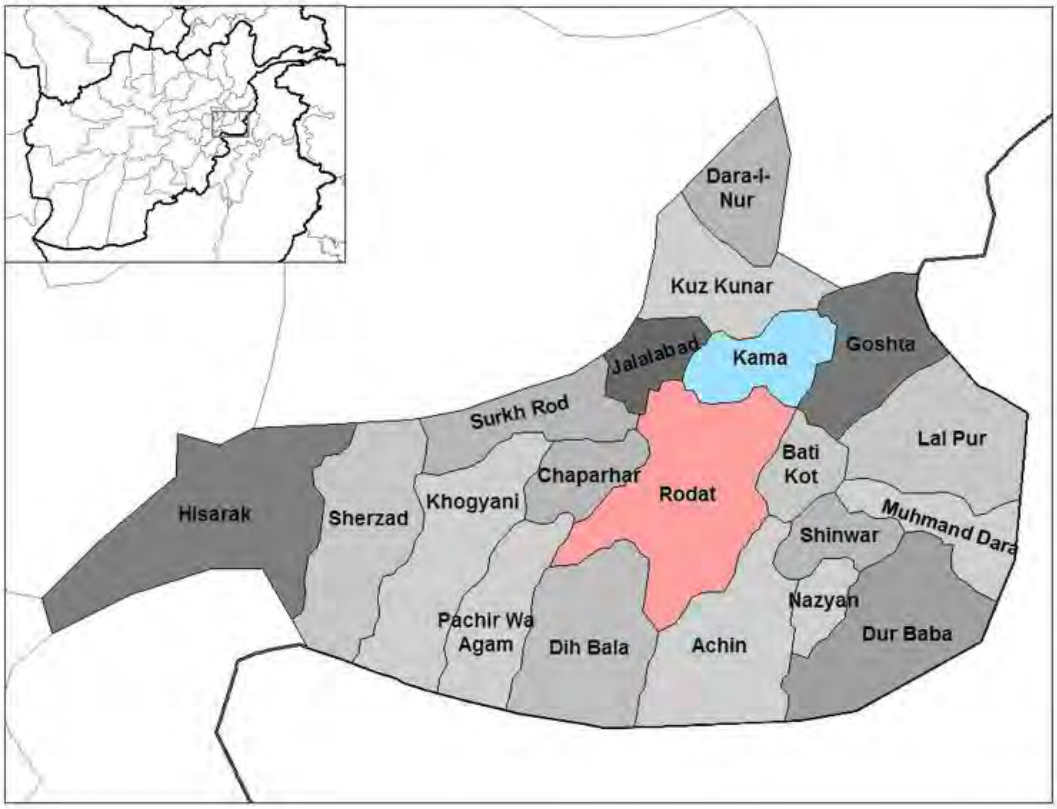

Introduction

During April 2011, the Rule of Law Stabilization Program – Informal Component (RLS-I) conducted an assessment of the alternative dispute resolution (ADR) community in Rodat and Kama districts of Nangarhar Province. 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 district. Second, to 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, and 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.

RLS-I's male and female field research teams conducted fifty (50) individual semi-structured interviews with follow-up conversations, informal discussions, and observation over a three-week period in three geographically and tribally diverse villages. Respondents included elders, district-level government actors, and women from representative tribes and subtribes of the villages. Locations were selected based on security, access, tribal diversity, population dynamics, and presence of disputes.

Top-line Findings

- **Disputant preference for ADR processes:** Nearly all male and female respondents indicated a preference for ADR mechanisms for their: familiarity/trust, accessibility/responsiveness, efficiency in cost and time, and focus on conciliatory outcomes. Privacy also plays into informal justice preferences, especially in family/personal disputes. ADR actors are valued for their intervention skills in defusing escalating situations.
- **State actors less utilized**: Nearly all respondents cited lengthy processing time, high legitimate and illegitimate costs, and the adversarial, zero-sum approach of state justice processes as making the mechanism less desirable. Some noted the vulnerability of nascent justice institutions to coercion by powerful actors. District actors are often viewed as outsiders with little knowledge of villagers, their history, and disputes - a point highlighted by local elders and state actors alike.
- **Mutual ADR-state respect and collaboration:** Most district-level state actors praised the ADR system and actors as invaluable for resolving the district's disputes. This is due in large part to state-actor acknowledgement of disputant preferences and their own limited capacity to address a large number of disputes

in a timely, cost-effective manner. Similarly, ADR actors value and use state offices as 'fallback' mechanisms in cases beyond their capabilities to resolve alone, e.g., 'large' disputes such as highly contentious murder cases and violent inter-tribal disputes. State actors regularly refer cases (60% by one estimate) - even serious criminal cases such as murder - to elders. Elders subsequently register those decisions with the state. This referral and registration process is yet to be formalized.

- **ADR not immune to corruption:** While highlighted less in reference to ADR than the state, several respondents cited misuse of ADR processes for personal gain. One common example was the use of the disputant deposit, or *machalgha* (designed to ensure disputant compliance with elders' decisions), by *jirgamaran* (ADR elders) for personal expenses. Less common, but more serious, is elders' intentional distortion of decisions to force disputants to reject those decisions, thereby forfeiting the deposit - to the elders. Others cited *jirgamarans*' vulnerability to influence by wealthy or powerful actors, which biases outcomes against poorer or less influential parties. Respondents generally see past mediators as more honest and qualified than those of today.
- **Customary law versus rights:** The interviews demonstrate that Kama and Rodat jirgamaran have largely shifted away from certain negative customary practices like *baad* - or the giving of girls and women as compensation in cases of accidental or intentional killing - and toward a greater awareness and implementation of Islamic and Afghan law. Male respondents universally framed *baad* as a thing of the past. Several Rodat female respondents, however, cited its continued, if declining, use in limited areas. The practice is reportedly being replaced with money, livestock, and food, and, where state collaboration is involved, punitive sanction.
- **ADR outcomes subject to capacities of practitioners**: The interviews indicate that arbitrators' familiarity with Islamic and Afghan law directly impacts the quality of and compliance with those standards in many areas, including family law and inheritance.
- **Religious/legal scholars valued:** Virtually all respondents highly value Islamic and Afghan law experts for their expertise in promoting Islamic law-compliant jirga decisions.
- **Elders networks:** The interviews indicate elder collaboration with outside jirgamaran in particularly challenging or 'big' disputes as a method of giving the process greater objectivity and stature. This collaboration appears ad hoc with minimal ongoing networking.
- **Women's role in ADR**: While most women have no role as mediators, they play a key role in managing and resolving disputes. Male and female respondents described women as instrumental in defusing minor conflicts prior to escalation. They regularly mediate intra-family disputes and often inter-family disputes. Women play an integral role in *nanawaty*, a formal apology custom central to alleviating enmity between disputants. While more constrained than male villagers, nearly all respondents indicated various avenues for women to access

ADR processes when faced with disputes. Female respondents expressed a desire to increase their involvement in resolving disputes between women.

- **Fairness/equity in the ADR Process**: Corrupt or uninformed ADR processes can result in inequitable compromise, violation of rights, and unsustainable ADR outcomes. Multiple respondents described cases where faulty solutions and attempted enforcement failed to bring true reconciliation and conflicts re-emerged.
- **Ownership of process:** In most cases disputant selection of jirga representatives appears to positively affect disputant satisfaction with outcomes.
- **Tension between coercive enforcement and reconciliation:** While adherence to arbitrated jirga decisions is often enforced through the threat of withholding *machalgha,* the reliance on the coercive practice may shift focus from away from administering justice and/or facilitating reconciliation between the parties. This dynamic highlights the point that ADR practice in Rodat and Kama is largely binding arbitration rather than a participatory mediated process, which may reduce disputant ownership of and compliance with the result.
- **Sources of conflict**: Land, water, family, inheritance, property/business, personal offense, escalation/revenge.

District Background

Kama: The populous Kama district is an economic, cultural, and political center of Nangarhar province approximately 20 km from Jalalabad. Its wealth is rooted in a rich agricultural and husbandry industry. The relatively well-educate population is homogenously Pashtun with a majority Mohmand tribe with Zakheel, Bazeed Kheel, Akhonzadagan subtribes. Many other groups have migrated to the district to capitalize on its agricultural and water resources. Tribal disputes are not prominent, but an array of local and national power brokers complete for influence. Dominant parties beginning with the anti-Soviet Jihad are Hezb-e-Islami - Gulbaddin Hekmatyar (HIG) and Mahaz-e-Mili Islami - Peer Syeed Ahmad Gailani. An important Mahaz-e-Mili commander was Mawlavi Shakor, uncle of Mirwais Yassini, a prominent member of the Afghan Parliament (MP) with historical connections to President Karzai. Currently, key power brokers include: Yassini; Abrar, a well-connected Provincial Council member; Ihsanullah Kamavi, head of the Herat customs directorate with connections to former minister of economy Anwarul Haq Ahadi; Haji Shazada, director of the Jalalabad central bank branch with connections to Hazrat Ali, a well known eastern power broker; and Attaullah Luddin, former HIG MP and current Peace Council member with significant influence in the district. These and other influential actors are known to take sides in local disputes, often to the chagrin of ADR actors - and opposing disputants.

Rodat: The district is located 25 km from Jalalabad in central Nangarhar. Its economy is almost exclusively agricultural. High unemployment motivates many young men to seek jobs in Pakistan to remit income home. The district is ethnically Pashtun with a majority Mohmand tribe and Hassan Kheel, Natha Kheel and Shadi

Kheel subtribes. One small minority tribe, Hazarboz, is prominent in business. HIG is dominant, but additional parties, including Itihad-e-Islami and Islami Hizb - Younas Khalis, have been active. Currently no major power broker or 'warlord' dominates Rodat. Other actors include: MP Lutfullah Baba; Haji Shawali, influential father of Provincial Council member, Lal Mohammad Duranai; and Qari Yousuf, a low-level commander with connections to MP Haji Zaher, son of the late Haji Qader (Islami Hizb - Younas Khalis), former governor of Nangarhar. Haji Zaher is known for opposing the current governor, Gul Agha Sherzai, an outsider from Kandahar. Zaher's discontent reportedly stems from his family losing control of border customs. Zaher is thought to have instigated conflicts in the interest of undermining Sherzai. One involves a joint town construction project of Rodat businessman Najeeb Zarab (Hazarboz) and Sherzai. It is said that Zaher instigated public opposition to the project to undermine Sherzai. The dispute was resolved through a jirga of influential and government actors. A second case in August 2010 involves speculation that Zaher instigated a tribal dispute between Mohmand of Rodat and Arab of Behsud over occupation of desert land to demonstrate insecurity on Sherzai's watch.

Types of Disputes

Land disputes: In order of most-frequently cited, land disputes center on: refugee returnee claims to land previously owned but often undocumented; seizure by 'powerful people' or 'warlords' of both government and private land; popular occupation of government land; government displacement of informal or 'customary' occupants of land. Other land disputes stem from: purchase rights, or *shafa*, of land of deceased owners; access or right-of-way across private land; property boundaries; land shortage due to population increases; claims to and construction on common grazing lands - often manifest on inter-communal or inter-tribal scales; and disregard for documented land agreements.

Water and irrigation: Water disputes, primarily a concern of Rodat district, center on access to and control of irrigation water/canals and pumping systems. Increased scarcity due to a drier climate and demand of a growing population compound the problems. This has increased reliance on tube wells and their tariff-collecting owner/managers. One official cited inadequate/unmanaged distribution systems as a source of concern.

Family-related disputes: While somewhat obscured due to privacy concerns, the family disputes discuss by respondents center on: children's fights which can quickly escalate into inter-family conflicts; 'women-related' disputes; inter-family disputes over unhappiness and/or poor treatment of girls/women by in-laws in coerced relationships like *baad* or as part of an exchange marriage (*badal*). Respondents also mentioned eloping and extra-marital sexual relations, or accusations thereof, and premarital pregnancy. The least frequently mentioned were polygamy and infertility.

Inheritance: Male and female respondents cited division of inheritance as a common source of disputes. Examples given include competition between siblings of a deceased parent and between a mother and her sons over division of a deceased husband/father's property. Several female respondents cited ignorance of Islamic and Afghan law provisions for women's inheritance as sources of the disputes.

Property/business: Typical examples include one party's sheep eating another's crops and disagreement over the quality of a wood cutting deal - both of which escalated to violence.

Insults/personal attacks: Offenses to one's honor including slander or 'tale telling' between disputants, which commonly and rapidly lead to higher levels of conflict.

Escalation, revenge: Several respondents, especially women, complained that civil disputes, including 'tiny' problems (e.g., children's fights) frequently and rapidly escalate to violence and a cycle of revenge attacks, thereby entrenching enmity between families, communities, or tribes.

Criminal disputes: Respondents cited assault and murder - usually stemming from less serious or civil disputes - most frequently. Theft was mentioned rarely.

Underlying factors: Several respondents highlighted a lack of education, poor economic conditions, and the psychological legacy of war as underlying factors contributing to the prevalence and seriousness of conflicts in the communities. A female respondent said, "Educated people ignore minor disputes...uneducated enlarge issues and make trouble for themselves and the opposite party."

Weak governance/formal justice: A few respondents also cited weak governance and justice/enforcement institutions. One example involved the police failing to intervene in a tribal land dispute which escalates to violence. Another cites a general lack of respect for and enforcement of rights: "When there is no justice and rights are violated, disputes come automatically."

Flawed dispute resolution: Contributes to reigniting latent hostilities or creation of new conflicts as, according to several respondents, disputants become aware that they have received a 'bad deal' for themselves or their relatives. Several respondents noted the injustice of using one person to compensate for crimes of another - as in *baad* - and the frequent problems stemming from coerced relationships. Respondents also cited corrupted ADR processes resulting in unfair outcomes, which leave enmity - reignited in several examples as the losers and their offspring harbor a sense of injustice.

ADR Actors and their Relationships

- ADR actors:
    - 'Mediators'[1] (*jirgamaran*): Are elders respected for their dispute resolution role. The position is traditionally inherited patrilineally. More recently other powerful actors have assumed the role, 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 and *jirgamar* (sing.) here.
    - Religious scholars (*Ulema*): Consulted or directly involved when available and needed. Highly respected for their Sharia expertise, which bolsters *jirgas*' credibility and helps to avoid decisions violating Islam.
    - Mullahs: Local religious leader. May be involved in resolving disputes. Generally not as respected as Ulema for awareness of Islamic Law. More likely to implement local customary law.
    - Maliks: Village heads involved in ADR for their stature and familiarity with the actors.
    - Women: Rarely if ever involved as mediators in disputes outside the home. However, wives of elders often act as liaisons between village women and their *jirgamaran* husbands, and counsel women involved in disputes. Women in general often defuse low-level disputes, including children's disputes, before they escalate, and can influence outside conflicts by influencing their male family members.
    - Youth: Especially sons of mediators, at times observe the *jirga* process in preparation for a future role.
    - Villagers: Often intervene before low-level conflicts become more serious.
    - Officials: Occasionally observe *jirga* sessions to lend authority and legal expertise to the process, particularly in major cases.

- State actors:
    - District Governor (*Woliswal*): A primary point of contract when disputants take their conflicts to the district center (*Woliswali*). The DG in many cases refers disputes to village elders.
    - Police: Make arrests in criminal cases. Frequently coordinate detentions with ADR actions of elders.

[1] "Mediator" is used here due to its frequent use in translation. The function of a mediator, elder or jirgamaran more closely resembles that of a Western arbitrator.

- Ministry of Justice Huqooq Department: MoJ branch at the district level responsible for addressing civil disputes. Frequently refers disputes to ADR actors for resolution. Registers jirga decisions.
- Courts: Resolving some criminal and civil cases but referring a significant number back to ADR actors. Registers jirga decisions.
- IDLG District Shura: Members of its justice subcommittee have been active in resolving some disputes, at times in collaboration with the District Governor and elders.
- Other: members of the District Development Assembly and Community Development Councils have been active in dispute resolution. Members of Parliament have also participated in mediating large disputes.

Perceptions of the state justice system: Responses in Kama and Rodat on views of and confidence in the formal justice system mirrored those of RLS-I first phase districts - generally unfavorable. Primary concerns about state justice are high legitimate and illegitimate costs, lengthy processing times of two to four months or longer, limited knowledge of local communities, and the zero-sum punitive nature of official dispute resolution approaches. Respondents, including a few officials, also confirmed a lack confidence in the state's ability to protect rights due to low technical capacity, finite summons or enforcement capabilities, weak security, and corruption in state justice institutions, whose officials they accuse of working more for themselves or political allies than for average people. A frequent example given was officials charging disputants to simply refer their cases to ADR actors for resolution.

Perhaps most significantly, respondents cited the adversarial nature of formal justice processes. As one respondent said, "The outcome ends in victory, but bad feelings remain," which often fuel future conflicts between members of the same community.

Finally, the fledgling nature of state institutions at the district level leaves them susceptible to outside influence. One court official admitted that security concerns and intimidation by warlords are common. Another cited involvement by powerful brokers, including national politicians, which can result in unfair outcomes.

Views of ADR and its actors: With few exceptions, government and non-government respondents hold Kama and Rodat ADR - as the traditional dispute resolution mechanism at the local level - in high regard. Respondents most frequently cited: accessibility; low cost; short decision-making timelines (a few hours to over a month); local reverence for ADR actors; trust of these actors in private family or personal disputes; and an emphasis on reconciliation to maintain social cohesion. One former judge and current mediator said that, "Ninety-nine percent of people like the jirga system...only the jirga can bring peace between disputants and eliminate the enmity between them."

This strong support aside, respondents raised concerns about certain past and current ADR practices. A central theme was the use of certain customary practices which violate Islamic and Afghan law, including *baad* (which is discussed further under ADR Practices). More than one female respondent noted that some *jirgamaran* are unaware of Islamic law, are 'narrow-minded' and subsequently make inheritance and other decisions in violation of Islam. One former judge and mediator supported the view, pointing out that non-compliance with Islam often leaves disputants unhappy.

Another concern was the sacrifice of rights in the pursuit of reconciliation. One prosecutor pointed out that in the jirga system, reconciliation can come at the cost of rights, especially in land cases where title is sometimes violated in compromise solutions.

While significantly more trusted than state actors, several respondents indicated that jirgamaran are not immune to corruption. They noted, for example, that some *jirgamaran* take bribes and distort decisions to force disputant rejection of those decisions, thereby allowing the mediators to keep the disputant's *machalgha*.

While most respondents testified to the *jirgamaran's* independence, a few acknowledged their susceptibility to pressure. One senior elder complained that, "Powerful people affect the *jirga* and other peace processes. They always search for personal benefits in the blood of the poor." They can also simply ignore *jirga* decisions, according to another.

Current status of ADR: Respondent views of *jirgamaran* past and present were somewhat mixed, but a few patterns emerged. Generally, respondents held *jirgamaran* of the past in higher regard than today's, citing greater experience, integrity, and skill relative to the more numerous 'self-appointed,' 'boy' mediators of present. One female respondent credited "fear of Allah" in the hearts of past mediators with the difference. It was unclear if this perception stems from a systematic weakening of the *jirga* system during 30 years of war, as is more pronounced in the South. It is also unclear whether or not less skilled mediators have negatively impacted disputant satisfaction with reconciliatory outcomes.

Though generally less respected than in the past, respondents highlighted a few important advances in jirga practices. The costly past practice of disputant hosting of *jirgas* has basically ceased. Most *jirgas* today are held in neutral locations without hosting obligations, which helps to equalize disparities between wealthy disputants and poor. A second improvement is a greater awareness of Islamic law, which has facilitated a move away from negative customary practices.

Formal-informal collaboration: Despite these divergent perceptions of state and ADR institutions - and at least some perceived competition between the two - both state and ADR actor responses demonstrate a robust interdependent relationship in addressing civil and criminal disputes in Kama and Rodat. This dependency appears to be heavily weighted to the informal system. State actors frequently refer cases to village or district mediators, recognizing the benefits of ADR for disputants - and

their own limitations in addressing a large number of disputes from local contexts for which they are usually unfamiliar.

Upon resolution, elders submit written decisions to the referring office (district governor, Huqooq, or court) for registration. One Huqooq explained that if the disputants agree with the registered ADR decision, it is considered legal. In Kama and Rodat this referral and registration process lacks systemization, including formats and designated points of contact. Furthermore, jirga decisions mostly go unregistered if the case was not originally referred by the state.

At times elders refer particularly difficult or irresolvable cases to state actors – frequently to have the state refer the disputes back to elders to address the 'appeal.' Similarly, elders often refer disputants to, or disputants seek, state actors if they have rejected the jirga's decision.

Elders regularly interact with police when arrests have been made. They often intervene to mediate disputes and police release detainees on their recommendation.

Several state and elder respondents commented that this formal-informal collaboration does - and should to a greater degree - extend to information exchange. While state actors rely on elders for their local knowledge, the state and courts can provide legal documentation and advice (on both Afghan and Islamic law) in land and other disputes. Occasionally state officials observe important *jirga* sessions - presumably to signal state endorsement of the process and monitor its legality.

This collaboration benefits both sides as ADR actors get input to (if desired), and official endorsement of, their decisions, which can boost their legitimacy, improve compliance, and reduce the need for informal enforcement mechanisms like *machalgha*. The state actors increase their legitimacy by endorsing a trusted traditional institution, which saves disputants time and money and generally fosters reconciliation between the disputant parties - which promotes local stability.

Women: While women play almost no direct role as mediators in elder jirgas, both male and female respondents described their role as vital to community harmony. Wives of elders act as liaisons to elders and counsel women in disputes, defuse intra-family and children's disputes before they escalate, and influence their male relatives to avoid escalation in outside disputes. Women are also integral in the formal act of asking forgiveness – *nanawati* – and occasionally act as witnesses.

Furthermore, women have various paths to informal justice mechanisms when they find themselves involved in disputes. The most common is representation by a male family member. Others include working through an elder's wife, but several respondents also indicated direct access to elders, depending on the circumstances. In very rare cases, women have represented themselves in Jirgas. However, a female respondent explained that many uneducated women are unaware of whom to approach with disputes and are intimidated by approaching elders.

In terms of fairness for women and girls in ADR outcomes, a mixed picture emerged. For example, a few disputes over unhappy exchange marriages were decided in favor of the girls involved, either through separation or orders for improved treatment of the young women by in-laws. One ended, however, with the ordering of a girl back to her in-laws - and her suicide. Compliance of *jirga* decisions with Islamic law – which forbids *baad* and grants women a share of inheritance – appeared to depend on jirgamaran knowledge of Islamic and Afghan law.

Elders' networks: Respondents did not mention extensive inter-district collaboration in resolving disputes, but several elders acknowledged collaborating with outside 'neutral' mediators in 'big' cases and/or where they were unable to resolve the conflict. Joint inter-tribal *jirgas* occasionally form to address large or particularly challenging disputes.

Outside Influence: A majority responded that mediators operate independently, but several did comment that at times *jirgamaran* face pressure to resolve disputes in favor of one party or the other. This pressure could come from warlords or other 'powerful people,' including high-level officials or politicians. At times this pressure results in unfair – and unsustainable – outcomes, which reflects poorly on *jirgamaran*. Interestingly, women were more likely to acknowledge this dynamic. Key power brokers in Rodat have been weakened or eliminated, thus minimizing this dynamic relative to Kama.

ADR Process and Practices

Selection of forum: As outlined above, disputants and state justice actors alike rely heavily on ADR mechanisms in resolving disputes in Kama and Rodat, especially in civil and family-related or 'private' disputes, but also criminal disputes, including violence and murder. Most agreed, however, that serious criminal cases and 'large' disputes such as tribal land conflicts should initially go to state actors for action or official referral back to the elders - and by agreement of the disputants.

Selection of representatives and other actors: Respondents confirmed that disputants are nearly always free to select their *jirgamaran* without outside influence. This is true even after elders have initially intervened to defuse volatile situations. However, mediators at times are decided by outside government and informal actors. In one case, elders intervened in an escalating situation and imposed a solution - which both parties rejected. In another woman's inheritance case, disputants accepted the government-selected mediators' decision (which complied with Islamic law). The degree to which this 'coerced' arbitration reduces disputant ownership of the ADR process and outcome is undetermined.

Other actors become involved on an ad hoc basis. Village *maliks* intervene when requested or deemed necessary. Relatives, friends or associates may get involved if

they possess important insights or influence. In larger and/or more serious cases, elders of other areas or tribes may be used in addition to higher-profile actors like district or Provincial Council members or government officials. *Ulema* and *mullahs* may be consulted in the deliberation process, with *Ulema* generally more qualified in Islamic law than village-level *mullahs*. Nearly all respondents hold favorable views of these religious scholars as ensuring compliance with Islam. Their endorsement of the process and outcome can significantly impact disputant satisfaction and compliance.

Authority: At the same time and depending on the disputants' wishes or mediators' rules, the elders' decision authority (*waak*) can be either 'complete' (binding) or partial (non-binding). With complete authority, a deposit (*machalgha*) is nearly always taken from each disputant. The funds are subject to confiscation should a disputant reject the jirga's decision.

Evidence/Information: "I always see the truth and make my decision based on the reality." This response supports the widely voiced pride elders have in reaching accurate findings in resolving disputes. As one elder said, "We study the dispute well, and ask many people about the problems - our understanding regarding the case will lead us to justice." Specifics include conducting extensive interviews, reviewing related documents (at times in collaboration with the state) and confirming relationships in inheritance cases.

Solutions: An overriding objective of traditional ADR in Kama and Rodat is reconciliation of the parties and peace in the community. While often successful, the application of customary practice in pursuit of these objectives has at times meant violation of rights, both human in the case of *baad,* and other, such as property/land rights, where the spirit of compromise results in confiscating rightfully-owned property (though often undocumented). At least one respondent acknowledged placing peace above compliance with Islamic or Afghan law, stating, "We are not judges or state actors to use Sharia or other laws for dispute resolution; we bring peace so we use our traditional systems of dispute resolution." Unfortunately, unjust peace can lead to renewed animosities, as was demonstrated throughout the interviews.

However, most respondents indicated a shift away from some negative components of customary practice and toward greater compliance with Islamic and Afghan law. A primary example is the elimination of *baad* in all but a few locations in Rodat. The practice is increasingly seen as undesirable for its violation of Islam, its negative impact on women and girls, and the all too frequent inter-family conflicts resulting from the girls' low status in and poor treatment by in-law families. Alternative compensatory tools such as land, food, and money are replacing the practice. To avoid violations of Islam and individual rights, most respondents, including women, signalled a strong preference for participation of religious authorities in *jirgas*. One said, "Overall, the jirga without religious scholar is incomplete."

Various other ADR principles and practices emerged from the interviews. With a view to equity, one favors acknowledging the status and wealth of disputants, for example, in determining financial penalties, versus issuing fixed payments which place an inordinate burden on less wealthy parties. Another is the importance of accuracy - numerous elders explained their emphasis on facts and reason in gaining disputant compliance with their solutions. "We try to convince disputants to accept reality," explained one.

Reconciliation mechanisms highlighted in the interviews ranged from common to ad hoc and flexible. A few included: the formal forgiveness request of *nanawaty*; consent to exile - in one extreme case - from the community by demand of a murder victim's family; and, in one creative case, payment of compensation by the family of a girl who fled an exchange marriage - rather than extracting the other wife against her will, as is often the practice.

Documentation/Enforcement: Several factors impact disputant satisfaction and/or compliance with ADR outcomes. These may include: the authority or stature of ADR actors; prior consent to elder decisions, or *waak*; financial mechanisms such as *machalgha*; moral authority of elders and participating religious scholars; formalized processes and records; and, in the case of joint informal/formal action, coercive state enforcement mechanisms.

Multiple state actors confirmed that government referral of disputes to elders combined with disputant agreement and state registration imbues the decision with legal status and enforceability (within the bounds of state capacity). Likewise, unbiased/professional state and Islamic scholar consultation can help promote legal and Islam-compliant decisions, which fosters acceptance by disputants. One state actor suggested that elder-state collaboration in resolving disputes could obviate the need for corruptible practices like *machalgha* as state actors assume responsibility for enforcing state-endorsed *jirga* decisions.

Documentation currently in use includes written dispute referrals (state to elders), written decisions (mentioned by about 2/3 of respondents) and registration of these decisions with the government (about 1/3). Basically all jirga decisions were registered where the state referred the case to the elders.

Other enforcement mechanisms include: threat of fine for regression; threats of shunning/exile, violent revenge by the opposing family, and burning of houses (practiced in 'another area'); public announcement of decisions; and simple persuasion/reconciliation.

Whether or not reliance on the coercive nature of *machalgha* impacts elder attention to reconciling the parties - and disputant satisfaction with decisions - was unclear, but

several respondents cited lingering enmity between parties after decisions had been announced.

Appeals: Depending on the decision authority and deposit given to the elders when the disputants decide to arbitrate their case, disputants may or may not appeal to another jirga or state actors for re-consideration when dissatisfied with *jirga* outcomes. A second Jirga can review the first jirga's decision-making process and uphold or change the decision. Female disputants have reportedly sought state consideration when elders' decision on inheritance did not comply with Islamic law. The opposite has occurred as well.

Equity/fairness: With the increased application of Islamic and Afghan law in the districts, decisions have generally become more just, especially for women in cases of inheritance and the reduction or elimination of *baad*.

While mostly testifying to the integrity of jirgamaran - elder respondents overwhelmingly portrayed themselves as professional, honest, undifferentiating, and equitable regardless of client status or wealth, as required under Islam - a few respondents commented that some elders are known to solicit bribes, albeit less frequently than state actors. A few alleged elders' misuse of *machalgha* for expenses and intentional distortion of decisions to force disputants to refuse the decision, forcing forfeiture of the deposit. Both of these practices would disproportionately harm less wealthy disputants. Most respondents agreed that the elimination of jirga hosting has improved equity between rich and poor disputants in the ADR process.

While not overly prevalent, a few mediators acknowledged powerful outside players can impact *jirgamarans'* decision making, which results in unfair/inequitable and at times unsustainable outcomes.

The Taliban's Role in Dispute Resolution

Virtually all disputes are addressed through either informal or state actors. No respondent indicted use of Taliban forums for dispute resolution or a desire to return to the harsh enforcement mechanisms employed by the Taliban in the past. They did, however, note respect for Islam during past and current systems.

Conclusion

Kama and Rodat respondents indicated a clear preference for ADR and its accessibility, speed, low cost, and integrity while state justice institutions are far less utilized - except in some serious criminal cases - for the opposite reasons. However, recognizing the strengths and weaknesses of each system, both state and ADR actors are collaborating to improve dispute resolution services for citizens of the districts.

This cooperation provides a solid foundation for continued work in strengthening and legitimizing dispute resolution mechanisms. ADR brings a reconciliatory approach that resonates in the local context. The state brings awareness of Afghan and Islamic law, which bolsters the legitimacy/legality of ADR decisions, which in turn promotes local buy-in to reducing or eliminating rights-violating practices. This hybrid of customary reconciliation and Afghan/Islamic law-based rights reduces incentives for lingering social friction and future conflict. Informal and formal district justice actors have positive start to a symbiotic relationship which, with nurturing, can continue to improve.

But key challenges remain. Though extensive, the state-ADR collaboration has yet to be formalized and systematized. Elders, though well advanced relative other areas of Afghanistan, still desire greater awareness of Islamic and Afghan law. Corruption in the ADR system still occurs, which undermines the public's faith in its traditional institution. Women play an important role in managing conflict, but not all find easy access to the jirga system. RLS-I will work to address these.

Action Plan

This action plan identifies four goals and proposed activities to meet those goals in Kama and Rodat districts. Each activity will be composed of one or more events and/or actions to be implemented at different stages over the next two months. Elders, state actors, and women from Kama, Rodat and other districts will be invited to foster inter-district networking.

Goals and Related Activities

1. **Standardize and strengthen links between state and ADR processes**
   Given the ongoing interaction of state and ADR actors in Kama and Rodat, RLS-I will sponsor workshops with elders and state actors 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 which replicates a national standard; and providing needed filing equipment for storage of decisions. Workshops for elders and state justice actors will be conducted to explore ways to continue bolstering state-ADR collaboration, including ongoing communications systems to ensure the legality of ADR decisions.

2. **Raise ADR actor awareness of Afghan and Islamic Law**
   Respondents overwhelmingly 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. In addition to these courses, workshops on *baad* and *machalgha* will be conducted to allow elders to brainstorm strategies for eliminating or reducing the corrupting impact of the practices. Additionally, elders will be offered a comparative course or workshop on arbitration and mediation to illuminate ways to improve ADR processes with the aim of enhancing disputant ownership - and reducing the need for coercive enforcement. University law professors and high-level Afghan legal veterans/experts will be utilized for their expertise and stature among elders.

3. **Lessen the incidence and perception of corruption within ADR processes**
   Create an anti-corruption working group of elders and community leaders on the district level. Ideas will be exchanged and strategies developed for reducing corruption in ADR and state justice processes. Ideas for reducing the corrupting influence of powerful and/or wealthy figures on ADR processes will be explored.

4. **Strengthen women's role in and access to ADR mechanisms**
   RLS-I will support women in establishing local dispute resolution groups to focus on bolstering their existing role in mediating family and women-related disputes. Enhanced dispute resolution skills and establishing ADR women's teams will bolster their effectiveness in addressing women's disputes and defusing 'small' conflicts prior to escalation. Respected jirgamaran will be asked to train the women in ADR skills.