

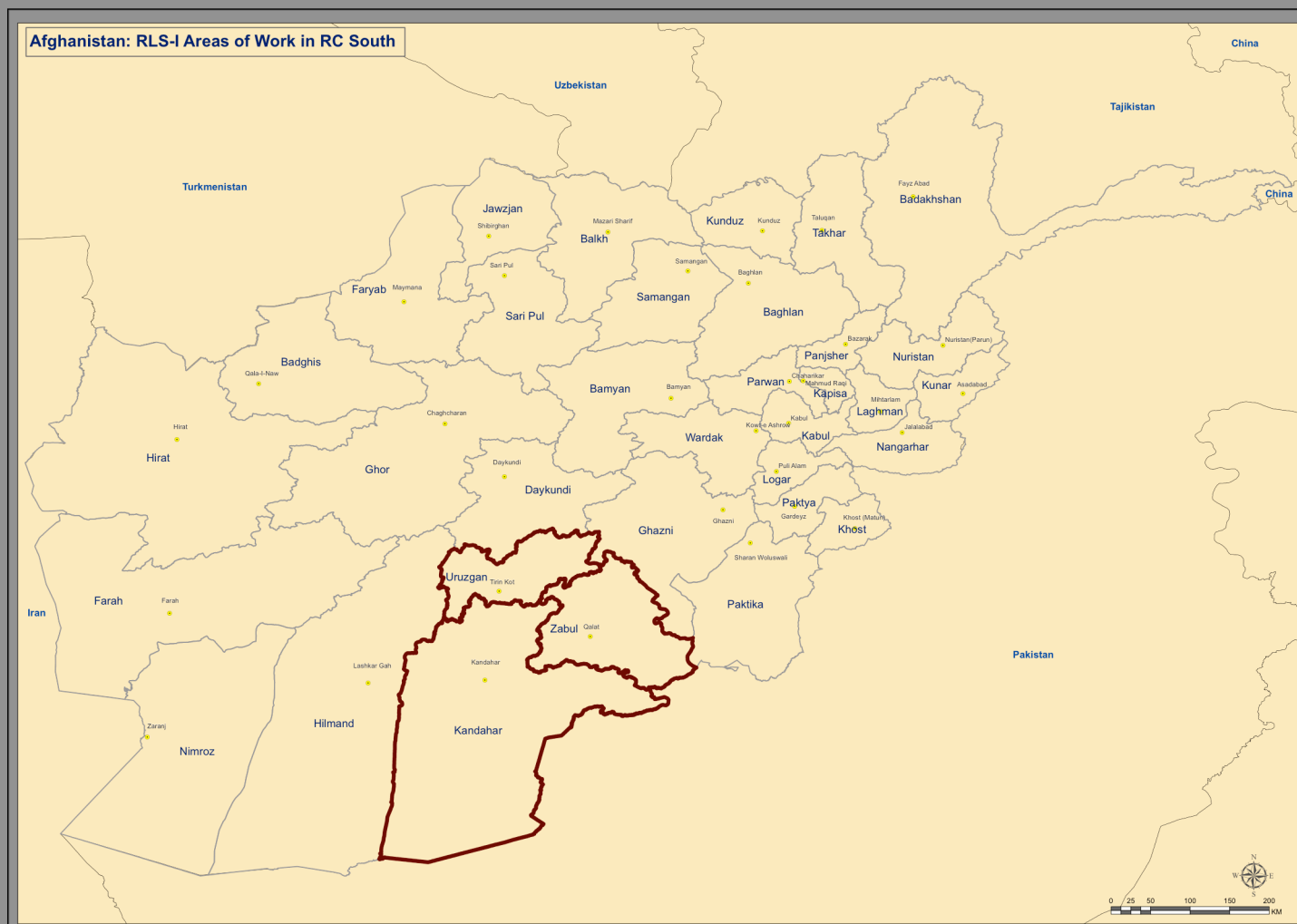


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REGIONAL ASSESSMENT, TRADITIONAL DISPUTE RESOLUTION: RC SOUTH

Rule of Law Stabilization Program – Informal Component (RLS-I)

Contract Number: AID-306-C-12-00013



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CONTENTS

INTRODUCTION.....	1
REGIONAL BACKGROUND INFORMATION	2
KEY FINDINGS.....	3
TYPES OF DISPUTES.....	5
JUSTICE SECTOR ACTORS AND THEIR RELATIONSHIPS.....	8
TDR Actors.....	8
State actors	11
Perceptions: formal justice system	13
Perceptions: Informal justice system.....	14
Current status of TDR.....	15
Formal-informal justice sector collaboration	16
Women as dispute resolvers	17
Internally displaced persons	17
Outside influences	18
TDR PROCESS AND PRACTICES.....	19
THE TALIBAN'S ROLE IN DISPUTE RESOLUTION	26
ANNEX I: FORMAL JUSTICE ACTORS IN RLS-I PHASE 1, PHASE 2 AND PHASE 3	
DISTRICTS IN RC SOUTH	28

INTRODUCTION

During Phase I (April 2010 – August 2011) and Phase 2 (September 2011 – July 2012), the Rule of Law Stabilization Program – Informal Component (RLS-I) prepared a series of district assessments profiling the traditional dispute resolution (TDR) mechanisms in districts in RC South (shown on the map on the cover of this report) in which RLS-I implemented its program. This report synthesizes the findings of those district assessments, including information about dispute types, dispute resolution actors, and the district's dispute resolution practices, processes, and principles in order to highlight regional trends. The information contained in this regional assessment is based on RLS-I research in the districts of Tirin Kot, Dihrawud, Chora (all in Uruzgan province), Qalat, Tarnak Wa Jaldak, Shahjoy (all in Zabul province), and Arghandab, Daman, and Spin Boldak and Kandahar municipality, sub-district 9 (all in Kandahar province).

The Phase I and Phase 2 district assessments' objectives were three-fold. The first objective was to gain an in-depth understanding of the nature of disputes, the context surrounding those disputes, and the choices Afghans make regarding settlement of their disputes within the district. The second objective was to use this information to design implementation activities fulfilling RLS-I's objectives of stabilization and sustainability, including which activities should be conducted, when and where activities should be held, and which community members are best positioned to participate in the RLS-I program and help it achieve its program objectives. The third objective was to enable the RLS-I field teams to build relationships based on trust and rapport with various community members and state actors in the district, which is essential for the successful implementation of program activities.

Data collection

The data for this TDR regional assessment has been collected under previous RLS-I Phases I and 2. Under Phase I, the data collection was somewhat unstructured, while under Phase 2 a refined set of research tools was used that included, in each district, an average of 25 semi-structured interviews (15 male, ten female) and two male and two female focus groups with at least seven members each. In preparation of this TDR regional assessment, four additional interviews were conducted in November 2012 in order to confirm regional trends identified from a review of the district assessments.

Respondents for the district assessments usually included elders involved in TDR (*jirgamars*), elected or appointed community leaders (*maliks*, *wakils*, *khans*), district-level government and formal justice sector actors, local religious leaders (*mullahs* and *mawlawis*), former *jihadi* commanders, current and former members of various village and district level *shuras*, as well as teachers and headmasters. Female respondents tended to include members of Parliament, employees of NGOs, midwives, teachers, members of Community Development Councils, seamstresses, embroiderers, housewives, *spinsary*, wives of *mullahs* and *mawlawis*, and other respected women from representative tribes and sub-tribes of the villages. Locations for the interviews used for the district assessments were selected based on security, accessibility, tribal diversity, population dynamics, and presence of disputes.

REGIONAL BACKGROUND INFORMATION

Regional geography and demographics

The provinces of Kandahar, Uruzgan and Zabul are situated in the south of Afghanistan. The three provinces share borders with one another and with the provinces of Helmand, Daykundi, Ghazni, and Paktika. Kandahar and Zabul provinces share a border with Pakistan to the south. The majority of the population of Kandahar, Uruzgan and Zabul provinces are Pashtuns, most of who belong to the Durrani tribal confederation, with the remainder belonging to the Ghilzai tribal confederation or to independent Pashtun tribes.

Unlike Kandahar province, with its urban center of Kandahar municipality, which has a population of 1,151,100 overall, Uruzgan (population 333,500) and Zabul (population 289,300) provinces have much smaller populations, mainly due to their mostly mountainous terrain with many small valleys that can sustain only a limited population.¹

Regional political and economic context

The south of Afghanistan, especially the area known as *Loya Kandahar* or Greater Kandahar, which includes Kandahar province and parts of what are now Uruzgan and Zabul provinces, has always been at the center of a struggle over political and economic control of the land between Central Asia and the Indian sub-continent. Since the 1600s, the Safavids and Mongols, and later the Ghilzai tribes, wrestled over the control of southern Afghanistan against the Persian emperor and later against the Durrani tribes. The 18th and 19th centuries and the first half of the 20th century were dominated by tribal rivalries between the Ghilzai and the Durrani.

During the second half of the 20th century, Kandahar province was also the battleground for the Afghan government against the Soviet forces that were supporting the pro-Soviet Peoples Democratic Party of Afghanistan. During the 1992-1995 civil war, Kandahar and the surrounding areas were heavily affected by the fighting between various *jihadi* factions. During this period, many residents of southern Afghanistan fled to Pakistan and Iran and large areas of fertile land and their complex irrigation systems were destroyed.

The civil war came to an end when the Taliban movement took over in 1995. The Taliban leadership moved the capital of Afghanistan from Kabul to Kandahar. They considered *Loya Kandahar* as their heartland, from where they sought to spread their influence across Afghanistan. In 2001, passing through Uruzgan province and with support from US Special forces, Hamid Karzai ousted the Taliban leadership from Kandahar and initiated what would become the current government of Afghanistan. Throughout the past decade, Kandahar and the south as a whole have played an important role in Afghan politics. When the Taliban first started to re-emerge in the south, in Zabul province in early 2003 and from mid-2005 in Kandahar province, the foreign military coalition and Afghan security forces mobilized in a renewed effort to defeat them.

Southern Afghanistan has re-emerged as a center of agricultural production over the past decade, famous especially for its pomegranates and almonds, which are often exported. After a brief hiatus in

¹ Afghanistan Central Statistics Office Population Projections (2013)(<http://cso.gov.af/Content/files/Settled%20Population%20by%20Civil%20Division.pdf>, accessed 2 March 2013).

the early 2000s, the production of poppy in Kandahar and Uruzgan and the associated narco-trafficking that also affects Zabul has grown again.

KEY FINDINGS

Informal (TDR) system preferred

Throughout RC South, primarily due to a long history of TDR as the only available mechanism for dispute resolution, the majority of the population prefers the customary approach to resolving disputes. In the respondents' views, TDR is a very accessible, inexpensive, and just mechanism that yields practical solutions to disputes and has an emphasis on community reconciliation. Despite this endorsement, some respondents voiced criticism regarding several changes that TDR has undergone in the region in the recent past, particularly with regard to the perceived rise of corruption and bias in the *jirga* system.

Limited presence and influence of the formal justice system

The majority of the respondents commented that the formal justice system in the south is not yet present to the degree needed for disputants to be able to bring their cases routinely to the formal justice sector actors outside urban areas. Its limited presence in many of the more remote areas and the perceptions by the majority of the respondents across the RLS-I districts in the south that the formal justice system is expensive (due to the necessity to pay bribes)² and slow deter many disputants from seeking assistance from the formal justice sector actors. Occasional remarks by respondents that the formal justice system is perceived as un-Islamic and does not apply a justice code with which disputants identify and are familiar reportedly also contributes to the limited interaction of most disputants with the formal justice sector.

Formal-informal justice sector collaboration unstructured and very limited

Formal-informal justice sector collaboration is still largely nascent in southern Afghanistan, with the exceptions being the provincial centers and a few districts where respondents report closer cooperation.³ Outside the urban areas, the formal justice sector tends to play a minor role and is usually consulted only in certain cases: when disputants seek to appeal a *jirga* decision or TDR elders seek government assistance in enforcing their decisions or to have their record of resolved disputes endorsed and/or registered. The formal justice sector actors or often just the District Governor and the District Chief of Police, if other formal justice sector actors are not present, tend to seek the collaboration of TDR actors when they want to refer a dispute to TDR or when they need assistance from local elders in investigating a dispute that has taken place in an area not accessible to state actors. As the interactions between the formal and the informal justice sectors vary greatly across provinces and districts, and sometimes even within a single district on a case-by-case basis, the majority of respondents characterized the interaction between the two justice sectors as unstructured.⁴

² In addition to the payment of bribes at many stages of the formal justice process, the cost of transportation required to reach formal justice sector institutions and the loss of income while traveling to and from those institutions and during their proceedings contributes to the perceptions that engaging the formal justice process is more expensive when compare to using TDR.

³ Respondents mentioned some form of close cooperation on particular issues in the districts of Dihrawud and Chora (both in Uruzgan Province), Shahjoy (Zabul province) and Spin Boldak (Kandahar province).

⁴ In the absence of a law formally regulating the interaction between informal and the formal justice sectors, most collaboration between the two justice sector relies on personal connections, *ad hoc* informal arrangements made by the district officials, or the initiative of TDR elders to demand better cooperation. RLS-I qualitative research shows that with

Customary law dominates; Shari'ah has become more important

Despite elders' increasing knowledge of *Shari'ah* and its increasing influence on TDR in the south, the majority of respondents identified customary law and its practices as the main source of law used to resolve disputes in TDR. In particular, in remote areas where even religious scholars and *mullahs*, who participate in *jirgas*, have only a limited understanding of *Shari'ah*, *Pashtunwali*⁵ still dominates. In deference to conservative cultural values, practices anchored in *Pashtunwali* such as *baad* are still practiced but are also increasingly called into question as un-Islamic. Influences on the perceptions of *Pashtunwali* through education and the experience of many returning refugees with a *Shari'ah*-based justice system has led to a push to base more TDR decisions on *Shari'ah*. In particular land disputes and inheritance claims, and to some extent also cases related to family law have benefited from this phenomenon.

Access to justice and fairness

While equality, in terms of access to justice in both the informal and the formal justice sectors, still does not exist for female disputants, justice outcomes in TDR are reportedly slowly improving for girls and women as *Shari'ah* (which is more equitable for women than *Pashtunwali*, in particular the areas of inheritance and family law) is increasingly applied. Access to TDR justice is reportedly easier for female and male disputants in southern Afghanistan than in the east, as disputant deposits (*machalgha*) are usually not required in the south. The majority of *jirgamars* interviewed insisted that TDR tends to yield just outcomes for most disputants, especially when the disputants select *jirga* members who are perceived as unbiased.⁶ Other respondents, in particular women and to some extent also TDR disputants, stated that, under pressure from powerbrokers, TDR elders frequently make decisions that disadvantage poorer or less powerful disputants.⁷

Taliban justice

Data collected by RLS-I in its program districts indicates that the Taliban, although far from universally present in the south, still play a role in dispute resolution, whether by adjudicating disputes, by influencing *jirga* members to reach a particular decision, or by prescribing a decision to them. Respondents occasionally noted that the Taliban are also sought out by disputants who want to appeal a *jirga* decision or who seek Taliban assistance in enforcing a *jirga* decision.

the replacement of a district official, TDR elders often have to start over on the process of establishing collaboration mechanisms.

⁵ Ethical code and traditional lifestyle of the indigenous Pashtun people

⁶ RLS-I M&E disputants' data indicates that 73% consider the decision of their specific dispute to be just.

⁷ According to RLS-I research, women interviewed perceive TDR less favorably than male respondents for the measures of TDR procedure, corruption and fairness of justice outcomes; this gender perception gap is about 25%-30%.

TYPES OF DISPUTES

Tribal/factional/political disputes

Conflicts falling into this category include long-standing disputes that can involve large populations in the region. Respondents throughout the south view these types of disputes as the most dangerous ones for the stability of their districts. Many of these disputes have pitted those aligned with the Afghan government against parties who either oppose the government or who try to stay away from government influence. Disputes over land and access to resources, including access to means of power such as being appointed to official government positions, have a high potential for escalation and often tend to draw in more conflict parties. Most respondents attribute disputes in this category to the government's general weakness as either their primary cause, or as one of their main causal factors.⁸

Land

Land disputes are among the most frequent in southern Afghanistan. With a limited fertile area along the main rivers and major irrigation canals, most land disputes in the region occur between family members or neighboring farmers who seek to expand their land holdings. Respondents also reported a few larger scale land disputes, usually involving usurpation and redistribution of government land, often creating conflicts between the government, the current occupants, and other claimants. Many land disputes also involve refugees returning from Pakistan or Iran as well as nomadic pastoralists (known as *kuchi*) and internally displaced persons (IDPs).

According to tribal elders interviewed, disputants often have either no documentation of their claimed ownership at all, or present several conflicting documents, issued by various governments, for the same plot of land. Land often has a high economic value, especially in fertile or urban areas, and also holds an important cultural significance for ethnic Pashtuns; disputants are therefore very reluctant to agree to give up land voluntarily. Powerbrokers, even if not directly involved in these disputes, often try to manipulate them to their advantage or to the advantage of their patronage network, thereby disputes are often further complicated. Several *jirgamars* said that the inability to enforce a *jirga* decision that settles a land dispute can tempt a dissatisfied disputant to reopen the dispute and continue the conflict.

Water

Respondents cited disputes about water as the next most frequently occurring type (after disputes about land) in southern Afghanistan. Mountainous and desert terrains make access to water crucial to ensure rural residents' livelihoods as farmers. In the past, water disputes reportedly escalated infrequently because they tended to occur on a regular basis and community elders were experienced in finding quick and acceptable solutions to the disputants' conflicts; this has reportedly changed in the recent past. With more droughts having reduced the overall volume of water available and more efficient pumps depleting existing reservoirs more quickly than they can be

⁸ In the absence of a powerful government, the majority of the population in remote areas have had to rely on the power structures dominated largely by tribes as well as affiliates of former *jihadi* factions in the past. With attempts to foster greater government influence in such districts over the past decade, tribes and other groups have tried to keep the balance of power. Any attempt by government officials to alter the power dynamics reportedly results in tensions and disputes within the communities. The government is hardly ever in a position to take complete control over all district power dynamics immediately. Respondents therefore noted that government presence is often disrupting the balance of power and as a result either contributes to the emergence of or re-ignition of tribal, factional and political disputes. Respondents do not view the government as powerful enough to intervene effectively to end such disputes or at least to contain them.

replenished, disputes over water now tend to be not only more frequent but also more severe. Along the main irrigation canals around Kandahar municipality and in other areas of the south, as in many other parts of Afghanistan, local water managers (known as *mirabs*) try to ensure an equitable distribution of the available irrigation water. However, the reduced availability of water, along with the changed patterns of water consumption and management, make it increasingly more difficult for elders to prevent or easily resolve water disputes. Elders from several districts also alluded to the fact that now entire tribes and sub-tribes, rather than just individual families, are entering into water disputes, which further complicates their resolution.

Inheritance

Due to the limited area of fertile land, typically the main or even sole asset of large families, inheritance disputes in the south are often more pronounced than in other areas of Afghanistan. Inheritance disputes initially resolved through decisions based on customary law (*Pashtunwali*) often re-emerge because there is no standardized inheritance system in *Pashtunwali*, as there is in Afghan statutory law and *Shari'ah*. Respondents stated a general preference for the application of *Shari'ah* inheritance law because disputants perceive that the application of a standardized system of inheritance ratios is likely to result in fewer recurring disputes and that disputants are more likely to respect decision based on *Shari'ah*. Women who would not be eligible for inheritance shares under *Pashtunwali* reportedly often try to secure a share of the decedent's assets for themselves and their daughters by demanding the application of *Shari'ah*. Refugees and IDPs who return to their homes after the death of a relative often discover that they have not received their shares of an inheritance, and thus challenge the distribution of assets to other relatives.

Family and women-related disputes

Respondents in the south reported that family-related disputes occur frequently, although most tend to be relatively minor and few require outside intervention to resolve. *Pashtunwali* usually discourages discussing family matters related to women and girls outside the immediate family. *Spinsary* groups therefore usually address smaller intra-family disputes such as fighting between a daughter-in-law and her mother-in-law. In the event of an inter-family conflict over, for example, an arranged marriage, *baad* or *badal*, close male relatives of the disputants are asked to intervene to resolve the dispute. Conflicts among children and youths reportedly occur frequently; however unless they escalate into violence, local elders and/or *spinsary* usually resolve them quickly. A few elders more familiar with *Shari'ah* stated that the application of *Pashtunwali* is often to blame for the emergence of conflicts related to women and girls.

Criminal disputes

Criminal disputes arise primarily from the escalation of disputes described above, although respondents also reported a rise in drug-related crimes. Criminal cases are often dealt with exclusively by tribal elders, particularly in remote areas where the state has little or no presence. In some areas, where the state has a greater presence, formal justice sector actors usually attempt to address criminal disputes. Even in those cases however, tribal elders will try to deal with the non-criminal and reconciliatory aspects of a dispute, particularly if the elders referred the case to formal justice sector. Representatives of the TDR system often ask formal justice sector actors to take into account any reconciliation reached through *nanawati* in order to justify a lesser punishment for an offender under statutory criminal law.

Other disputes

Business and resource-related disputes

Business-related disputes are particularly prevalent in the large commercial centers of Kandahar municipality and Spin Boldak district (Kandahar province), on the border with Pakistan. Several respondents pointed out that this type of dispute also tends to emerge in areas where high-value development and construction projects are being implemented. Disputes related to natural resources are reportedly also frequent, including those involving access to forested areas to collect firewood, access to valuable mineral and gem deposits, and the use of pastureland shared by villagers and *kuchi*. Tribal elders are usually asked to find solutions for these natural resource disputes, as they tend to escalate quickly because entire tribes are competing with one another for the resources. Business-related disputes can reportedly be resolved by various actors ranging from TDR elders and officials in charge of bazaars and markets, in the case of small disputes, to development *shuras* and formal justice sector actors, in the case of larger disputes arising under written contracts.

Escalation, revenge

When elders and other justice actors do not intervene immediately many of the disputes mentioned above can escalate quickly and can result in violence. According to some *jirgamars*, if disputes were not properly resolved and not all grievances of the disputants were addressed, acts of revenge usually follow. Many TDR actors therefore stressed the importance of reconciliation and restoring community harmony to prevent such a cycle of revenge. One tribal elder explained that *Pashtunwali* sometimes obligates the victim of a crime or his family to seek revenge and that it is acceptable to target relatives not involved in the original dispute. Crimes committed in revenge can therefore be particularly difficult to resolve and can easily spark a new wave of violence if community members do not address the situation immediately.

Underlying factors

To some extent, the underlying factors contributing to disputes in the south of Afghanistan do not vary much from those reported in other parts of Afghanistan: low levels of education and literacy; a very limited awareness of legal rights, especially those of women and children; and lack of standardized community norms regarding issues such as property and inheritance rights. All these factors tend to fuel social tensions, which often lead to disputes. The general lack of legal rights awareness among elders also influences many decisions in the dominant TDR system in the south; disputants often perceive those decisions as unjust. Many respondents noted that the political and socio-economic events of the past decades have also significantly contributed to an environment conducive to conflicts. Furthermore, interviewees pointed out that high unemployment, particularly among youth, inheritance disputes and general mistrust among community members, particularly in light of the presence of the Taliban and counterinsurgency operations, have all led to a level of instability that in turn causes more conflict potential. In the south, respondents pointed to inter-tribal tensions as an additional destabilizing factor that feeds into the general instability often associated with the lack of state presence and limited protection of rights.

JUSTICE SECTOR ACTORS AND THEIR RELATIONSHIPS

TDR Actors

Mediators⁹

Mediators are typically tribal elders – *spingiri* or “white beards”, educated people, and others who are respected for their dispute resolution skills and thus more likely to be selected as *jirga* members. The position is traditionally inherited patrilineally and requires a certain age and maturity. A few respondents pointed out that some mediators were now also included in TDR mechanisms who did not follow the traditional path to become mediators but have achieved that status because of their wealth or power. For example, in the commercial center of Spin Boldak district (Kandahar province), powerful mediators who are connected to business interests have emerged. Mediators may operate independently, join *jirgas*, or be members of an institutionalized, permanent *shura*, such as the *Islahe shura* in Uruzgan province, former IDLG-sponsored ASOP *shuras*, or district and village *shura* present in many districts in the south.

Maliks and wakils

These village leaders are frequently called upon to join TDR proceedings. Elected heads of villages (known as *maliks*) are usually sought out not only because of their stature in the community but also due to their formal role as liaisons with government officials. In an urban setting, a similar position exists for an individual who is the leader of a neighborhood or several densely populated blocks. Such a leader of an urban community is called a *wakil-e guzar* or *wakil*, the term often used in the south. *Maliks* might be involved in TDR as organizers or appointed members of a *jirga*, but might also serve as character witnesses. In the south, while *maliks* reportedly still hold a very important place in society and a few are still very active in dispute resolution, the number and the prominence of *maliks* have declined in some places, such as Zabul province. Respondents said that this might be because many tribal elders now communicate directly with district officials, without the need for a *malik* or *wakil* to act as an intermediary.

Shura members

Independent Directorate of Local Governance (IDLG)-sponsored Afghanistan Social Outreach Program (ASOP) *shuras*

Many respondents in the south mentioned that the now-defunct District Community Councils (DCCs), also known in some areas as the “local *shura*,” often heard disputes that, in the absence of the DCC, would have required the formation of a *jirga*. The justice subcommittee of the DCC usually included respected tribal elders who had been involved in TDR before joining the DCC. These *shuras* often absorbed the members of other pre-existing *shuras*, as was the case in Dihrawud district (Uruzgan province). The DCCs in Spin Boldak and Daman districts (both in Kandahar province) and Chora district (Uruzgan province) were also mentioned as examples of justice subcommittees hearing cases that would previously have been resolved the TDR system through *jirgas*. Many respondents reported that District Governors frequently cooperated closely with the DCCs, thereby helping the DCCs to be efficient dispute resolution mechanisms. Some respondents pointed

⁹ “Mediator” is used here due to its frequent use in translation. As used in this report, however, the term “mediator” or *jirgamar* denotes a role in dispute resolution that is a mix between arbitrators and mediators. As mediators, they try to arrive at decisions that are mutually acceptable to the disputants and that reconcile them and restore harmony to the community. As arbitrators, they may rely on their status as authority figures to impose various forms of punishment or compensation and to order the disputants to reconcile.

out that the fixed membership of the DCCs limited disputants' freedom of choice of members of the dispute resolution body, thereby sometimes adversely affecting disputants' perception of the members' impartiality. These issues reportedly arise less frequently with traditional TDR *jirgas*.

At the time of compiling this regional TDR assessment, most of the DCCs were no longer in formal existence, although in some areas, despite the discontinuation of the salaries, the DCCs as dispute resolution mechanisms have remained somewhat intact. In areas where the DCCs disbanded, it is noteworthy that disputants turn disproportionately to former members of the DCCs to serve on *jirgas*. Respondents speculate that if a DCC was popular in the district, then the associated elders enjoy a greater popularity and they are also perceived to be better *jirgamars*.

National Solidarity Program (NSP) district and village shuras

Respondents reported that the NSP *shuras*, whose main function is setting priorities for local development funding, are also occasionally involved in TDR, usually when a dispute relates to development issues. However, individual members of these *shuras* are reported to be active in *jirgas*. NSP *shuras* in remote areas are frequently approached by disputants seeking legal advice or recommendations for suitable *jirga* members.

Examples of other shuras operating in RC South whose members were described as influential in TDR

- **Nawai Kalai, Spin Boldak district (Kandahar province)**

This dispute resolution mechanism was founded in 2005, reportedly in response to the perceived exclusion of key representatives from the DDA shura. A group of influential tribal elders, including Achekzai, Noorzai, Mohammadzai, Ishaqzai, and Hotaks heard disputes and were also recognized by the Provincial Council of Kandahar and the District Governor at the time.

- **Islahe Shura, Tirin Kot district (Uruzgan province)**

The format of the *Islahe* (Peace and Reform) *Shura* located in Tirin Kot, the provincial capital of Uruzgan, is unique to that province. Matiullah Khan, the powerbroker and, now, the Uruzgan Provincial Chief of Police, formed and financed this *shura*. The *Islahe Shura* hears large-scale disputes from across the province. Although Matiullah Khan no longer finances this *shura*, it continues to serve as an important TDR mechanism that reportedly works closely with formal justice sector actors and is perceived by most respondents as fair and effective, not least because the connection to Matiullah Khan helps ensure a high-level of compliance with its decisions.

- **Provincial Council members (Kandahar province)**

Several prominent members of the Kandahar Provincial Council were known to be also active as *jirgamars*. For example, the late Ahmad Wali Karzai, who was the head of the Provincial Council, was well known for hearing and resolving disputes in his capacity as an important elder of the Popalzai tribe.

Women, family members, and youth

Women

The role of women as TDR actors in southern Afghanistan is extremely limited when compared with other regions. This is reportedly due to the strict local cultural prohibitions against women's interaction with male non-family members, as stipulated by *Pashtunwali*. Both female and male respondents noted, however, that women, especially wives of prominent *jirgamars*, play several smaller roles in TDR. First, they are instrumental in addressing family disputes within their extended

families as well as between women from neighboring households. Second, women have reportedly provided evidence in *jirgas* proceedings. Last, according to *jirgamars*, *spinsary* often participate in the traditional practice of *nanawati*, where women from an offender's family go with *jirgamars* and a *mullah* to the home of a victim's family to ask for forgiveness and to end the animosities. When women are disputants, they usually have access to TDR only through representation by a close male relative. When a woman has no male representative, *maliks* or *mullahs* of the village represent her. Only in extremely rare cases can a woman without a male representative (e.g., an elderly widow) represent herself before a *jirga*.

Family members

Respondents described family members as often being the first to mediate a dispute within a family, especially if the conflict involves the women of the household. Only if a dispute cannot be resolved within the family are outside mediators called upon. Often these mediators and representatives in *jirgas* are also distant family relatives. Male guardians of women and other close male relatives may act as representatives of their female family members if a dispute is mediated outside the family. Families are also instrumental in the process of reconciling disputants through *nanawati*, which often requires the preparation of elaborate meals that demand the collaboration of the disputants' families.

Youth:

The role of youth in TDR in the south does not appear to be uniform throughout the region. For example, in Chora district (Uruzgan province), elders mentioned that young men regularly attend *jirgas*, although their precise role is not clear. Elders from Tirin Kot district (Uruzgan province) noted that they "... teach the young generation the ways and the system of the *jirga* because we won't be alive to resolve disputes forever." In addition, some interviewees also mentioned that if young people are able to observe dispute resolution, they are less likely to initiate disputes themselves. Other respondents from Kandahar and Zabul provinces did not ascribe any role to youth in *jirgas*. Female interviewees felt that youth have no place in *jirgas* as they do not have enough experience and are out of place in that setting. Respondents from Uruzgan province also mentioned, however, that elders often call upon youth to help break up fights and to stand guard at *jirgas* in order to prevent the outbreak of fighting during the dispute resolution process.

Religious leaders

These include both village-level religious leaders (*mullahs*) and scholars (known as *Ulema*), who participate in *jirgas* as needed and available. *Ulema* are usually well-educated religious scholars with expertise in *Shari'ah*. The local population views their presence on *jirgas* as lending greater credibility to these TDR mechanisms because these religious figures are believed to help prevent decisions that would violate *Shari'ah*. This enhanced credibility leads to greater acceptance of, and compliance with, *jirga* decisions, according to local respondents. However, there are far fewer religious scholars in rural areas than there are *mullahs*; *ulema* are therefore less frequently encountered in *jirgas* than *mullahs*. *Mullahs* are generally less educated but more numerous in most villages, even in remote rural areas. Although most *jirgas* might therefore include a *mullah*, due to their limited knowledge of *Shari'ah* they are more likely to advise the use of local custom on occasion mistakenly equating it or believing it to comply with *Shari'ah*. The extent to which the participation of religious actors in *jirgas* ensures *Shari'ah* compliance is therefore unclear. Women interviewed often noted that, in the south, where *Pashtunwali* still prevails in the resolution of family-related disputes, the presence of a religious actor in the TDR process yields more favorable outcomes for women, since *Shari'ah* grants them more rights than *Pashtunwali* does, particularly in matters of inheritance, marriage, and divorce.

Villagers

Village residents and, in an urban setting, close neighbors are often the first to intervene in a dispute that is about to escalate. In such cases, villagers usually alert tribal elders and *jirgamars* to a conflict that might require their intervention. Village residents often provide evidence to a *jirga* and may also act as character witnesses. Furthermore, the announcement of a *jirga* decision to the village population reportedly encourages peer pressure on the disputants to comply. Ordinary village residents also play a role in TDR by referring disputes that they observe to tribal elders or formal justice sector actors, or by advising disputants on where and how to resolve their disputes. Community members who had faced similar legal issues as those involved in a particular dispute, and others who have some relevant legal knowledge, are also often consulted by potential disputants.

Government officials

Despite respondents' reports of the often weak connections between the informal and formal justice systems in the south, several government officials, including District Governors, reportedly participate in *jirgas* in their capacities as tribal elders or respected and well-educated members of the community. Although few respondents in Kandahar and Zabul provinces acknowledged the direct participation of government officials in TDR, respondents in Uruzgan province reported the occasional participation of District Governors in *jirgas* at the request of disputants. Several government officials stated that they believed that the law forbids them to participate in TDR in their official capacity but possibly also as private individuals. Nevertheless, respondents from Tirin Kot district (Uruzgan province) mentioned instances of disputants asking members of the Provincial Department of Agriculture and the Provincial Department of Commerce to serve on *jirgas* dealing with disputes related to land and commerce, respectively. Several tribal elders also acknowledged that government representatives are sometimes asked to act as subject matter experts in relevant disputes that are being resolved through TDR.

State actors

Annex I is a list of state actors, including formal justice sector actors, present in RLS-I Phase I, Phase 2 and Phase 3 (first tranche) districts in RC South as of December 2012.

Provincial and District Governors

In most areas of southern Afghanistan, Provincial and District Governors function as gatekeepers for access to the formal justice system and, in some cases, to the informal justice system as well. They are often the first points of contact for disputants approaching the government to have their cases heard. By default, this is true in districts where formal justice sector actors such as judges or prosecutors are not present or not posted on a permanent basis. According to respondents in Kandahar, Zabul, and Uruzgan provinces, Provincial and District Governors are moving away from resolving most disputes by themselves and instead rely more on formal justice sector actors to deal with disputes that have initially been brought to the Provincial or District Governor. In all three provinces, there is evidence that the quality of the interaction between the Provincial or District Governor and local tribal elders is instrumental in determining the extent to which state actors and elders refer disputes to one another. Even in areas where the Provincial or District Governor is not very active in referring disputes to elders, elders sometimes approach the Governor to assist with enforcement of TDR decisions, help with official documentation related to land disputes, intervention in serious cases that elders are unable to resolve through TDR, cases that involve criminal law elements, or when a TDR decision is rejected by one of the disputants. In some districts, the District

Governor might also take on additional tasks related to TDR: in Dihrawud district (Uruzgan province), for example, the District Governor sometimes announces TDR decisions to help foster compliance. Throughout the south, respondents agreed that the informal and formal justice sector interaction is better when the District Governor is from the district or province rather than an outsider.

Provincial and District Chiefs of Police

Apart from the District Governor, the District Chief of Police is often the only other government official present in remote districts and therefore also tends to be involved in dispute resolution when formal justice sector actors are not available. According to respondents, the tribal elders approach the District Chief of Police when elders are dealing with a criminal matter, a dispute that requires an arrest, or when a disputant refuses to accept or comply with a TDR decision. Respondents from the provincial centers of Kandahar and Zabul also noted that, even in these urban areas, the Chief of Police would consult with elders in serious criminal cases such as murder. District Chiefs of Police reportedly sometimes refer to the Prosecutor's office cases that have been brought to them, and then jointly investigate these cases. Only in some districts did interviewees report that the District Chief of Police still resolves disputes himself. In some areas still not completely under control of the government, like Shahjoy district (Zabul province), elders noted that the District Chief of Police was too preoccupied with security matters, which often require him to be away from the district center to oversee counter-insurgency operations, to deal with disputes that TDR elders might want to ask him to resolve.

Courts

The number of district-level courts in RC South is still limited, particularly in areas not entirely under government control and in remote areas where it is difficult to recruit qualified staff. In Kandahar province, for example, a judge might be responsible for three districts and be available only part-time in each. In general, tribal elders report limited interaction with the court system, as they usually bring disputes to the District Governor or the District Chief of Police or to the *Huqooq* (see *Huqooq* department, below), which then refer the matter to the courts. Respondents pointed out that in an area with limited state presence or where the courts unable to handle their entire caseload, the courts may refer cases to TDR tribal elders for resolution. Both formal justice sector actors and tribal elders noted that the lack of staff often prevents courts from taking on a greater caseload. Some elders also noted that, in order to avoid damaging their own reputations, they prefer to avoid close collaboration and association with the courts because of their slow adjudication and the perception that the courts are very corrupt.

Prosecutors

In districts where a Prosecutor was reported to be present, respondents noted that this official is usually viewed as active and, to the extent possible, investigates disputes for which he is responsible. In Kandahar province, TDR actors reported that they occasionally interact directly with the Prosecutor, particularly when the Prosecutor asks tribal elders to assist in an investigation. Some respondents claimed that they were not aware of the Prosecutor, even in districts where one is present. To some extent, this may be attributable to elders' admitted lack of familiarity with the Prosecutor's role in the formal justice sector. In the provincial centers, respondents pointed out that the Prosecutor occasionally recommends that the *Huqooq* refer non-criminal matters to tribal elders and that the Prosecutor collaborates with the District or Provincial Governor, especially when criminal matters need to be investigated.

Huqooq department

The *Huqooq* is the Ministry of Justice branch at the district level responsible for registering and addressing civil disputes. The District Governor and the District Chief of Police often refer cases brought to them to the *Huqooq* for further action (e.g., referral to the Prosecutor or the court, or referral to TDR). In a majority of districts in the south, respondents reported that *Huqooq* officials are active in referring disputes brought to them by disputants or tribal elders to the relevant formal justice actors, if present. If an appropriate formal justice sector actor is not available, the *Huqooq* will return the case to the TDR elders with permission to adjudicate it. Many *Huqooq* offices in the south, where present and active, reportedly also register TDR decisions, at least in large or complex cases that the *Huqooq* had originally referred to TDR elders. In some districts (e.g., Chora, in Uruzgan province) a RLS-I survey showed that elders documented about half of the disputes resolved through TDR and that, of those documented, about a quarter were registered with government authorities. In a few cases, respondents complained that the *Huqooq* representatives in their districts are considered corrupt and inefficient. Respondents occasionally cited understaffing in the *Huqooq* office as a reason for that inefficiency.

Others

Several respondents noted that tribal elders sometimes approach checkpoint commanders, whether from the Afghan National Army, Afghan National Police, or Afghan Local Police, to deal with disputes in remote areas and in areas with very limited government presence or influence. These requests can be for assistance in resolving a dispute, referring the dispute to the district center, arresting an individual, or helping enforce a TDR decision. Respondents reported that the *jirgamars* and disputants often consider the checkpoint commanders to be the only government representatives to whom they can reach out.

Perceptions: formal justice system

The majority of respondents, particularly tribal elders and women, claimed not to favor the formal justice system. Most frequently, respondents noted the long duration of formal justice sector dispute resolution proceedings and the need to bribe formal justice sector officials in order to have one's case heard and to obtain a favorable verdict. While such assertions might be made anywhere in Afghanistan, respondents in the south in particular view the formal justice system as something alien and remote.¹⁰ This perception might also be fostered or reinforced by the fact that in the majority of the districts in Kandahar, Uruzgan and Zabul provinces outside the provincial centers not all formal justice sector positions are filled. A few respondents from remote districts noted that there is no formal justice sector representative present and that tribal elders therefore rely on the District Governor and the District Chief of Police to deal with any disputes that they want to refer to the government. *Jirgamars* and ordinary residents mentioned that, even when formal justice sector actors are assigned to their district, they might not be present on a permanent basis, either because they do not live in the district, or the security situation has forced them to operate from the provincial center, or the formal justice sector actors are assigned to serve in more than one district. In all of

¹⁰ According to RLS-I research, there is 7% less documentation of disputes in the south region relative to the east (a proxy for linkage with the state). Meanwhile, elders from the south score lower on measures of perception of government legitimacy. For example, there is a 10% perception gap between elders from the south and those from the east with regard to the perception that Afghan law properly expresses their Islamic identity; a 6% gap between regions in recognizing the primacy of state courts and statutory law in case adjudication; and a 16% gap in perception of trust between citizens and government.

these situations, the respondents noted they are more likely to engage TDR actors to resolve disputes, since these individuals are always present and willing and able to help.

A few respondents from districts staffed with formal justice actors not originally from the south noted that they have less trust in these individuals because, while they might have had a formal legal education, there is a perceived cultural gap. For example, such outsiders reportedly do not understand the differences between *Pashtunwali* in the south and in other parts of the country, if they are familiar with *Pashtunwali* at all. A respondent from Kandahar province noted that in many places, residents trust a less well-educated individual from their own community who has been appointed as a formal justice sector actor significantly more than they trust a better-educated and more experienced outsider who was recruited to an official position. Hence, when a new judge comes from outside a district, he or she must first earn the trust of the population before the disputants would consider bringing a dispute to that judge's court. At the same time, many elders complained that they believe many individuals holding positions in the formal justice sector to be uneducated and unprofessional. In some instances, *jirgamars* also reported that newly appointed and even longer serving District Governors and formal justice sector actors might refuse to cooperate with tribal elders, even if the elders actively seek their cooperation. In some cases, interviewees attributed this refusal to engage with TDR elders as a lack of respect for TDR among formal justice actors.

Another issue, while slowly diminishing but still common, is the perception that Afghan statutory law is not based on *Shari'ah*. While the majority of the population, particularly the older generation, erroneously believe that *Pashtunwali* and *Shari'ah* are nearly the same, the general population does not trust the Afghan government in many places and do not believe that Afghan law is required by the Constitution to be, and in fact is, based on *Shari'ah*. This perception might also be fostered by the fact that, in the south, many operations conducted by foreign forces are carried out in the name of the Afghan government, which is therefore perceived as un-Islamic. In light of these obstacles, the formal justice sector has had a difficult time gaining widespread public acceptance in the south.

Perceptions: Informal justice system

People in southern Afghanistan rely much more heavily on the informal justice system, or TDR, than on the formal justice system to deal with dispute resolution. As the majority of the respondents stressed, this is mainly because TDR has been practiced for centuries and the population is familiar with and trusts TDR: its procedures, its practitioners, and its outcomes. Furthermore, many residents believe that, in most areas of the south, the formal justice sector rarely has the capacity to resolve disputes effectively, efficiently, and fairly.

While many things have changed over time (see Current status of TDR, below), people in the south, particularly in rural areas, report feeling more comfortable bringing their disputes to tribal elders for resolution because the elders are members of their communities who know the residents well and are believed to arrive at decisions that are in the best interests of those affected by a dispute and the community as a whole. Respondents said *jirga* members are selected based on their good character, their reputation for fairness, and their reputed knowledge and skill in resolving particular types of disputes. Respondents also noted that, according to TDR practice, disputants are free to choose *jirga* members. Their choices often include *maliks*, *mullahs* and government officials in their district who might serve as *jirga* members in their capacities as tribal elders. Disputants also sometime choose *jirga* members who come from a different area but who have ties to the community through their tribal affiliation or who are seen as well educated and/or influential. Interviewees from areas with

tribal tensions or other partisan conflicts, for example parts of Kandahar province or Chora district (Uruzgan province), mentioned that it was more common in the past to invite trusted individuals from outside of the immediate area, and even from a neighboring province, in order to have a more balanced and impartial *jirga*. Respected *jirgamars* often travel throughout the south to participate in dispute resolution by large *jirgas*. Respondents observed that, in order to facilitate documentation of *jirga* decisions, literate individuals, such as teachers, are now more frequently chosen to be *jirga* members.

Current status of TDR

The vast majority of respondents, including many government officials, acknowledged that the current TDR system, despite its flaws, still represents the most accessible, cheapest, and fairest dispute resolution mechanism. Nearly all respondents also commented that the TDR system has changed over time, particularly in the recent past. While respondents mentioned a number of positive changes within the TDR system over the past decade, a few interviewees also remarked that the TDR sector still faces challenges in some areas. Nonetheless, TDR remains the most trusted dispute resolution mechanism in the south.

Some respondents claimed that one of the recent favorable changes in TDR is that tribal elders now try to adhere more to *Shari'ah*, which in many cases is perceived as yielding fairer justice outcomes in the area of property and inheritance law and resulting in fewer instances of *baad* and other TDR practices associated with *Pashtunwali* that adversely impact women and girls. A few respondents also noted that the older generation of elders, who usually insist on the application of *Pashtunwali*, is slowly being replaced with individuals who have had more (even if still rudimentary) education and who are more aware of Islamic law.

Nevertheless, a majority of respondents also noted some negative changes in TDR. More respondents reported corruption and bias in TDR than they had perceived in the past. Respondents also noted that, while more tribal elders participate actively as *jirga* members, some of them appear to be involved only in order to collect bribes or enjoy the free meals provided during the deliberation process. While mentioned less often, in certain districts of Kandahar and Uruzgan provinces interviewees claimed that tribal tensions and, to a lesser extent, lingering tensions from past competition between various *jihadi* factions are now more frequently being played out in the TDR system. This often results in unfair justice outcomes for a disputant who belongs to a less powerful tribe or *jihadi* faction. Some respondents also noted that, with the exception of powerbrokers active in TDR, the majority of *jirgamars* are seen as less powerful and influential now than compared to the past. The main reasons respondents provide for these changes in TDR are the alteration in societal dynamics¹¹, the effects of the civil war, and the undermining of the TDR system by the Taliban regime. A few interviewees also attributed these changes to the emergence of competition from other justice systems, such as the government's formal justice system and that of the Taliban insurgency.

¹¹ Various respondents referred to changes to the traditional lifestyle in Afghanistan over the past decades; for example, that children now move to the cities in search of work, that village elders no longer command as much respect as they used to, and that individuals have gained political power and influence by amassing wealth and weapons rather than through the support and respect of the community.

Formal-informal justice sector collaboration

In southern Afghanistan, the state's presence and influence has nearly always been weak outside the larger urban centers such as Kandahar municipality. This has hampered the expansion of the role of the formal justice sector and, consequently, also its collaboration with the informal justice sector.

The majority of interviewees noted that tribal elders have been in charge of resolving disputes on their own for centuries and hence are reluctant to give up or even share this monopoly with the formal justice sector. Nevertheless, with the gradually increasing presence of formal justice sector actors in district centers across southern Afghanistan, elders have slowly increased their collaboration with these government representatives. A high level of skepticism regarding such collaboration still persists among tribal elders, mostly because the formal justice sector actors are rarely from the areas where they are posted, the formal justice sector's poor reputation for integrity, and the long delays associated with formal justice sector proceedings.

Despite this continuing skepticism, *jirgamars* have begun to cooperate with the formal justice sector in the south by, for example, asking the courts to assist in enforcing TDR decisions that have been rejected by one or more disputants. Several tribal elders from Kandahar, Zabul, and Uruzgan provinces noted that they tell disputants who are reluctant to accept a TDR decision that if they refuse to accept the TDR decision, the elders will refer the dispute to the courts, which disputants will usually wish to avoid. Formal justice sector officials from these provinces also reported that they often collaborate with tribal elders, either by referring civil disputes to them, or by asking elders to help investigate disputes in areas that are inaccessible to formal justice sector actors or, more recently, by agreeing to requests by tribal elders for the formal justice sector to endorse or register TDR decisions.

Formal justice sector actors also reported that they review a TDR decision for compliance with *Shari'ah* as well as Afghan statutory law, when it is presented to them for registration, or when a disputant requests a formal justice sector review. No interviewees could explain what happens if a formal justice sector actor determined that a TDR decision is not compliant with applicable law.

Many *jirgamars* remarked that they gained confidence in the formal justice sector when the District Governor, the *Huqooq*, or formal justice sector actors began to endorse or uphold their TDR decisions. On the other hand, several interviewees complained that when a disputant approaches the formal justice sector to appeal a TDR decision, some government officials simply hand the dispute back to the TDR system after taking bribes and squandering time.

A point of contention between formal and informal justice sectors remains the collaboration on adjudication of disputes that include aspects that should be dealt with by the formal justice sector according to statutory criminal law. Elders who have dealt with the civil law and conciliatory aspects of criminal acts often argue that decisions should be taken into consideration in formal justice sector criminal proceedings or should be considered as having settled the all aspects of the criminal act, making formal justice sector criminal proceedings unnecessary. In several cases in Kandahar, Uruzgan, and Zabul provinces, elders reported feeling that their respect in their communities is undermined when the formal justice sector brings criminal charges against an individual whose offense, the elders believe, has already been adequately dealt with by TDR. These elders claim that, in those circumstances, formal justice sector criminal proceedings will discourage disputants from turning to TDR if they believe elders cannot settle all aspects of a dispute once and for all. In light of

these concerns by tribal elders, some government officials have taken into consideration the observance of *nanawati* when required by a TDR decision and reduced an offender's criminal sentence. This has reportedly appeased some *jirgamars* and increased their willingness to collaborate more with the formal justice sector.

Women as dispute resolvers

Among both female and male respondents, there was a consensus that women played little or no role in TDR as dispute resolvers in southern Afghanistan, mostly due to the strict adherence to customs that prevent a woman from leaving her home, being seen in public, or being in the company of a male who is not her husband or a member of her immediate family.

Women reportedly do, however, play a role in resolving certain disputes, such as disputes within or between families and neighbors. Older female community members often try to prevent the escalation of such disputes or might be called to mediate conflicts between female disputants in a family or neighborhood. These older women, known as *spinsary*, are widely respected in the community and are often able to help resolve such disputes quickly.

Most female community members are, however, confined to a more passive role in dispute resolution, for example as witnesses (through male representatives or the wives of local elders or religious leaders) in TDR proceedings. Many *jirgamars* mentioned the vital role of women's testimony and assistance in investigating matters related to women. The wives of *maliks* and prominent *jirgamars* are often asked by elders to investigate disputes and report their findings to their husbands, who in turn share the information with the entire *jirga*. Several female respondents also noted that their husbands sometimes ask for their advice or opinion regarding a dispute. On very rare occasions, prominent *spinsary* might be asked to negotiate a settlement with female disputants on behalf of a *jirga*.

Many tribal elders said they believe women lack the education to act as *jirga* members and that they could therefore not be trusted to hear evidence and to come to a decision that would be fair to, and accepted by, the disputants. At most, tribal elders report being willing to grant older women a ceremonial role in TDR, as prescribed in *Pashtunwali*, in the ritual of requesting forgiveness, or *nanawati*. *Spinsary*, who are often also the most senior female members of their households, are usually respected in the community and participate in this process. Custom dictates that *nanawati* cannot be denied when a *spinsary* asks for it.

Internally displaced persons

Internally displaced persons (IDPs), who are numerous in southern Afghanistan, have a distinct disadvantage when they bring a dispute to the informal justice system. TDR is based on restoring community harmony through engaging community members to resolve a dispute. It is often difficult, however, for IDPs to find *jirga* members who will support their side of the dispute or, at least, be neutral in a community that an IDP is not actually part of. In several cases reported in Kandahar and Uruzgan provinces, areas that have a large number of IDPs, such as sub-district 9 in Kandahar municipality, have formed their own TDR councils in the IDP community. Nonetheless, in property and business-related disputes IDPs must rely on a *jirga* that consists largely of local elders who are more willing to favor a disputant with long-standing ties to the community. IDPs also tend to be poorer and from different tribes than local disputants, which reportedly compounds the

disadvantages of IDPs' outsider status with tribal and wealth biases favoring local disputants. IDPs are also less likely to be treated fairly by the local formal justice sector actors, because they often lack proper registration in their new place of residence and know few if any influential individuals who could advocate on their behalf.

Outside influences

Nearly all respondents mentioned the negative impact of outside influences on the TDR process. Many tribal elders who have been active as *jirgamars* for decades stated that this phenomenon has become more prevalent over recent decades as the traditional power structures in southern Afghanistan have become eroded through civil conflict, the emergence of the Taliban regime, and the current presence of foreign forces. The latter has reportedly enabled the rise of powerbrokers such as Matiullah Khan in Uruzgan province and the late Ahmad Wali Karzai and Abdul Raziq in Kandahar province, who became influential through the wealth and political and quasi-military power they were able to accumulate over the past decade.

While tribal tensions and old rivalries associated with membership in various *jihadi* factions lead to manipulation of the TDR system, respondents identified corruption as by far the most powerful means of manipulation. Several tribal elders throughout the three provinces in the south claimed that the level of corruption in TDR is still relatively low compared to the role it plays in the formal justice system. Other *jirgamars* acknowledged, however, that the influence of money is nearly unavoidable in many TDR disputes, particularly in high profile and large scale ones.

The Taliban are also reported to have a strong influence on TDR, particularly in some areas of Uruzgan and Kandahar provinces, and in several districts of Zabul province. Unlike powerbrokers who frequently seek to manipulate justice outcomes in their favor, or to support their associates, the Taliban are reported to intervene in TDR in order to assert their authority in an area, to intimidate tribal elders, and to ensure that no large scale disputes emerge that would call for the intervention of the government. Several respondents commented that when the Taliban intervene in TDR, they usually urge the TDR practitioners to apply *Shari'ah*, particularly in disputes involving land, inheritance, or women. Respondents mentioned several instances of the Taliban advocating the avoidance of *baad* and instead calling for the payment of *diyya*.¹² Respondents from Zabul province, however, cited a case in which the Taliban allowed TDR elders to use *baad* to resolve a dispute. Apparently, the Taliban's interpretation of *Shari'ah* and their insistence that their interpretation be applied in TDR depends on the local Taliban representatives' knowledge of *Shari'ah* and how it differs from local customary practices. Other respondents noted that the degree of Taliban influence on the application of *Shari'ah* in TDR also depends heavily on the extent of their control in a given area and their ability to pressure elders to implement *Shari'ah* or *Pashtunwali*. A few reports of very harsh punishments for criminal offenses have led many tribal elders to be skeptical of the positive impact of the Taliban on TDR that other respondents claim. In general, however, respondents agreed that where the Taliban have a strong influence on TDR, decisions tend to be more impartial and unbiased with regard to disputants' tribal affiliation or wealth.

¹² In Afghanistan often also referred to by its Arabic plural *diyat*, *diyya* is the custom of paying blood money in a murder case or incident of serious bodily harm to the family of the victim to avoid retaliation, the sum of the compensation is determined by *Shari'ah*.

TDR PROCESS AND PRACTICES

Selection of forum

The selection of the forum is usually the first step to the initiation of the TDR process. In southern Afghanistan, particularly in remote areas of Uruzgan, Kandahar, and Zabul provinces, respondents say that tribal elders are usually the first to urge disputants to seek outside assistance to resolve a dispute. In areas that are closer to district or provincial centers or in the urban centers of Kandahar, Uruzgan, and Zabul provinces, the District Governor or the office of the *Huqooq* may become involved at the initial stages of dispute resolution as well, either by requesting tribal elders to intervene and offer to form a *jirga* or by advising the disputants to decide whether they want to resolve the case through the TDR system or the formal justice sector.

Until the discontinuation of the IDLG-sponsored ASOP *shuras*, state actors (in Uruzgan province, usually the District Governor) referred many disputes to the justice committee of those *shuras*. In some cases TDR elders also asked the ASOP *shuras* to take up disputes, particularly if the elders felt that a case was too complex for them to resolve. Disputants themselves were reportedly rarely able to bring a dispute to an ASOP *shura* themselves, as either the District Governor or local elders first had to be consulted about whether the ASOP *shura* would be able and willing to consider the matter. Frequently, tribal elders who had been members of these ASOP *shura* justice committees had been active in TDR before the ASOP *shuras* were established. Similarly, in parts of Kandahar province, many district *shuras* and NSP-associated *shuras*, such as DDAs and CDCs, that are known to hear disputes comprise elders who have been active in TDR for several decades. The presence of experienced *jirgamars* on those *shuras* often accounts for their popularity among disputants.

In the past, in the absence of any other available forum, TDR was the only means available to resolve disputes. More recently, the presence of more formal justice sector actors, at least in the provincial centers, and the rising awareness of the role of the state in dispute resolution, the selection of a forum for dispute resolution has become more complicated.

A rural-urban divide has emerged with regard to access to justice. In the larger urban centers of Kandahar municipality and, to a lesser extent, in the relatively urbanized districts of Tirin Kot (Uruzgan province) and Qalat (Zabul province) the urban population tends to choose the formal justice sector to resolve their disputes. Respondents in districts close to Kandahar municipality mentioned that they turn to formal justice sector actors in the urban center in some cases. However, most disputants are reportedly deterred from doing so because of the time and expense of travel to the urban centers and the uncertain security situation along the roads from more remote areas.

According to several respondents, particularly government officials such as the District Governor, the District Chief of Police, and formal justice sector actors, tribal elders in the south are especially reluctant to give up their traditional role of resolving all aspects of disputes that are brought to them, including those that relate to acts that are deemed to be criminal acts under Afghan criminal law. Although, under *Shari'ah*, the state has exclusive jurisdiction over criminal acts, tribal elders remain reluctant to report criminal acts such as murder to government officials and to restrict TDR to addressing only the reconciliatory aspects of criminal acts. Some government officials reported that this situation is slowly improving because some formal justice sector actors have agreed to let the

tribal elders resolve the non-criminal, reconciliatory aspects of a dispute through TDR and to consider the TDR decision when dealing with the criminal law aspects of the dispute.

Selection of *jirga* members

Once a forum has been chosen, the disputants usually select the tribal elders who will participate in the *jirga*. Respondents noted that each party to the dispute can choose an equal number of *jirga* members, although both parties often agree on the selection of the main *jirgamars*, including the *jirga* chairman. While these individuals' contribution to the dispute resolution usually carried the same weight as that of the other *jirgamars*, these *jirga* members are usually in charge of chairing the meetings, recording the main points of the proceeding, and of facilitating the TDR process.

Each disputant also has the right to reject any proposed *jirga* member to whom the disputant is unwilling to grant *waak* (see Authority, below) as this authority is given to the *jirga* as a whole. If the disputants choose a TDR forum with an established membership (e.g., an NSP-affiliated *shura* such as a DDC or CDC), the disputants are expected either to accept the established membership or select a different forum. Several respondents mentioned that in many cases individual *jirga* members are self-appointed, or are suggested by state actors such as the District Governor, or promoted by powerbrokers. In those situations, disputants have no practical option other than to accept these *jirga* members notwithstanding their perceived bias in favor of one disputant or another or that those members may contribute to an unfair *jirga* decision.

Women are not known to participate in *jirgas* in southern Afghanistan. The majority of tribal elders stated, however, that the participation of a religious scholar or *mullah* in TDR proceedings is considered practically mandatory to ensure that *jirga* decisions conform to *Shari'ah* (although these local religious leaders typically have only a limited understanding of *Shari'ah*), thereby supporting the perceived legitimacy of those decisions.

Venue

Few respondents explicitly mentioned the issue of a *jirga* venue. Those interviewees who addressed this issue usually explained that selection of a venue perceived as neutral by all parties ensured that the *jirgamars* could reach a decision without coming under outside influences. Usually only *khans*, wealthy *maliks*, and powerbrokers have the means to furnish a TDR venue for a large number of *jirgamars* to address a large-scale dispute. *Jirga* members often feel compelled to favor a disputant who is associated with the host of the *jirga*, partly from a cultural obligation to honor one's host but also because a wealthy and influential host is sometimes able to punish or disadvantage a *jirgamar* in the future if that individual did not support the host's wishes. Several elders mentioned that Taliban threats now sometimes prevent them from associating themselves with the government, so that they can no longer choose a *jirga* venue in a government compound or even in a district center (the seat of the district government). In the case of larger disputes involving several tribes and sub-tribes, respondents pointed out that it can be difficult to identify a venue that all parties will accept as neutral and to which all parties are willing to travel.

Authority

In southern Afghanistan, unlike eastern Afghanistan, it is not customary for *jirgamars* to require a deposit or bond (known as *machalgha*) from the disputants to ensure their compliance with the *jirga* decision. In general, throughout southern Afghanistan *jirgamars* require disputants to grant authority (known as *waak*) to a *jirga* to investigate and resolve their dispute before commencing TDR

proceedings. Increasingly, however, *jirgamars* ask disputants for a letter of authority (known as *waak leek*) in order to have indisputable proof that all disputants have agreed to accept and comply with the *jirga* decision. Only in minor disputes is oral *waak* now considered acceptable. While in other parts of Afghanistan *jirgamars* will accept a conditional or partial grant of authority¹³ by disputants, in southern Afghanistan tribal elders will usually not start dealing with a dispute unless they have complete authority from all parties. Disputants usually have to grant authority to the *jirga* as a whole. If a disputant does not wish to grant authority to a *jirga* that includes a proposed *jirga* member to whom that disputant objects, the disputant must exercise his or her right to reject that proposed *jirga* member before the *jirga* is given authority and starts its work. Any rejected *jirga* member needs to be replaced by another *jirga* member who is acceptable to both disputants.

Jirgamars claim that the disputants' grant of authority to a *jirga* to resolve a dispute constitutes a pledge by the disputants to comply with the *jirga*'s decision. In fact, however, despite these grants of authority many disputants either do not comply with a *jirga* decision or seek to appeal the decision to the formal justice sector or the Taliban. A few disputants interviewed mentioned that, while they had initially intended to accept any decision of a *jirga*, they later decided not to do so because they felt that the *jirga* did not reach a fair decision. Some disputants implied that the influence of powerbrokers and corruption on the *jirga*'s decision made their commitment to accept that decision void.

Evidence and other information

Throughout the south, *jirgas* are reported to make an effort to review information related to a dispute before coming to a decision. Accounts vary among and within provinces in the south regarding the extent this is practiced and how much information and evidence *jirgas* consider. In Qalat district (Zabul province), for example, *jirgamars* report that they usually investigate all leads regarding the origin of a dispute and any information that might be relevant to a fair decision. In Shahjoy district (also in Zabul province), on the other hand, none of the *jirgamars* interviewed mentioned hearing witnesses during TDR proceedings. In Dihrawud district (Uruzgan province), disputants noted that when the DCC's justice committee heard disputes, it rarely sent anyone to the location of a dispute to investigate it or if they did, the investigator failed to seek all relevant witnesses and information. Respondents from Kandahar province mentioned that, in case of land disputes, they would carefully review any documentation that the parties to a dispute can present.

Although not noted explicitly by interviewees in any part the provinces in RC South, women appear to play a significant role in certain *jirga* investigations and information gathering, as witnesses in family-related cases or in disputes involving women. In those cases, women provide information that tribal elders would otherwise be unaware of. Given cultural prohibitions that prevent women from appearing before a *jirga*, their testimony is usually given to the wife of a *malik* or trusted *jirgamar* and then conveyed by the *malik* or *jirgamar* to the *jirga*.

Deliberative process

Respondents provided very few concrete descriptions of the TDR deliberation process. Most *jirgamars* and other respondents noted only that elders arrive at their decisions through a process of

¹³ Disputants can grant conditional or partial authority to a *jirga*. In the case of conditional authority, for example, disputants might agree to accept any *jirga* decision so long as it conforms to *Shari'ah*. In the case of partial authority, disputants might give a *jirga* the authority to investigate and adjudicate a dispute without agreeing to be bound by the *jirga*'s decision.

consultation and discussion of all aspects of a dispute. Respondents in Uruzgan and Kandahar provinces also noted that they make an attempt to hear witnesses' testimony and consider it in their deliberations. In Zabul province, respondents rarely mentioned the process of considering any information uncovered during the investigation stage. Respondents from Zabul province noted that, due to the sometimes emotional nature of disputes, disputants and their supporters should not be in the *jirga* venue simultaneously in order to avoid an outbreak of violence, even though this precaution often prolongs the deliberative process.

The duration of the deliberative process is often closely tied to the complexity of a case and the number of parties whose arguments and evidence need to be considered in order to reach a decision acceptable to all disputants and the community as a whole. One respected *jirgamar* added that the quality and thoroughness of the deliberative process is often instrumental to reaching a solution that will bring lasting harmony to the community. Interviewees agreed that the deliberative process should therefore not be rushed. Several disputants interviewed explained that, even if a *jirga* takes a long time to come to a conclusion, it is still likely that the TDR process will be faster than that of the formal justice sector, which is often accused of deliberately delaying the consideration of a dispute resolution in the hope of receiving bribes to speed up the process. However, a few respondents noted that, in isolated cases, tribal elders might add a few days to their deliberations to benefit from the free lunches that the disputants usually must provide to *jirga* members.

Sources of law

Throughout the south of Afghanistan, where *jirgas* have long been at the heart of dispute resolution and maintaining community harmony, many elders report that although they try use Afghan statutory law and *Shari'ah* as the sources of law in TDR (in preference to customary law) to the greatest extent possible, deference to tradition, their limited knowledge of Afghan statutory law, and TDR's focus on reconciliatory and restorative justice sometimes leads them to apply a mixture of sources of law to find an acceptable solution. Although many elders try to comply with *Shari'ah* in TDR decisions, their limited knowledge of that source of law often leads those to apply customary law, which they sometimes wrongly equate with *Shari'ah*. Many elders reported that they continue use *Pashtunwali* as a source of law in TDR decision at least to some extent, including the use of customary practices such as exchange marriages between the families of the disputants (known as *badal*) and *nanawati* to help ensure that disputants are reconciled and will comply with the *jirga* decision. In Uruzgan province, elders also noted that in light of a conservative culture and traditions, they often yield to pressure from disputants to reach a decision based on customary law including the use of *baad* and *badal*, rather than Afghan statutory law, as disputants would otherwise not abide by the *jirga* decision.

Some application of customary law at the expense of proper use of Afghan statutory law and *Shari'ah* in TDR arises from outside pressure on tribal elders or from attempts by tribal elders to appease disputants and to find the easiest way to reconcile the parties. For example, elders in Kandahar province reported that in property-related disputes, they were more likely to award each disputant at least a small share of a disputed property, rather than strictly applying *Shari'ah* property law, which would more likely result in a decision awarding the entire property to the disputant best able to present a valid claim.

Documentation and enforcement

The level of documentation and enforcement of TDR decisions varies among provinces in the south. An elder from Shahjoy district (Zabul province) noted that oral agreements between tribal elders might be considered more reliable than written agreements. This attitude extends to the relative value of oral and written TDR decisions. In Chora district (Uruzgan province), however, written documentation of TDR decisions appears to be fairly widespread, particularly in major or complicated cases and in areas where many different tribal communities live together and there is limited trust in the decisions being adhered to unless they are well documented. A majority of elders reported that written *jirga* decisions are acknowledged by the *jirgamars* by signing or applying their fingerprints to the decision letters. Copies of the decision letters are then distributed to the disputants; the chairman of the *jirga* might retain one copy as well. If possible, a copy of the decision letter is also filed with government officials or formal justice sector actors in the district or provincial center. In minor cases, the TDR decisions are announced orally, with witnesses present.

Registration of TDR decisions with a state authority is emerging only slowly. Many elders said they would welcome this procedure because they believe that it will provide greater leverage with state actors in securing enforcement of the decision and help prevent a reemergence of the dispute. Reportedly, documentation and subsequent registration fosters a commitment by the disputants to accept and implement the *jirga* decision and provides a powerful tool to ensure their compliance. A former Chora District Governor noted that more registration of written TDR decisions with state authorities would make them even more effective. He also noted that the registration of a TDR decision makes it easier for formal justice sector actors to check its compliance with Afghan statutory law than in the cases with only an oral TDR decision. Respondents pointed out two significant challenges to expanding the documentation and registration of written TDR decisions: the documentation is difficult, given the very low levels of literacy in some districts; and registration is difficult because of the unwillingness of some state authorities to register TDR decisions in the absence of a legal mandate and accepted bureaucratic procedures to do so.

A majority of respondents reported that voluntary compliance by disputants with a *jirga* decision is common, at least when they believe that the decision is fair. In other cases, respondents reported the use “soft” coercion to ensure compliance by disputants, including warnings to a recalcitrant party that the community will shun him or her or consider the disputant to be dishonest unless he or she complies with the decision. Elders may also warn disputants, implicitly or explicitly, of the possibility of enforcement by other authorities (the state or, in some cases, the Taliban) in order to urge the disputant parties to accept and comply with a *jirga* decision. In some cases, tribal elders try to persuade disputants that acceptance of the *jirga* decision is their obligation as good Muslims, particularly with respect to decisions in which a religious leader or scholar took part.

In order to ensure disputants’ compliance with a TDR decision, TDR elders might sometimes ask the District Governor to endorse it. Several elders noted, however, that while state authorities can get assistance from the police to implement their decisions, the police rarely comply with direct requests by elders to assist in the enforcement of TDR decisions. In Dihrawud district (Uruzgan province), however, a majority of tribal elders reported that state actors are willing to help enforce TDR decisions, especially if the formal justice sector actors originally referred the dispute to the TDR system.

Elders also report that state authorities might arrest a disputant who fails to comply with a TDR decision (particularly one endorsed by a District Governor or by a formal justice sector body) in order to compel compliance. State authorities in the south have also reportedly recently started to impose fines for violations of TDR decisions and have had the police collect payment of those fines from violators, if necessary. While these fines may not be authorized by Afghan statutory law, elders reportedly appreciate the efforts made by these state actors to assist in enforcing TDR decisions.

In Kandahar province, especially in districts where *jirga* members often include powerful tribal elders and powerbrokers, tribal elders stated that the presence of these individuals plays a significant role in ensuring compliance with TDR decisions, since almost no disputant would dare to oppose these individuals.

One elder from Shahjoy district (Zabul province) mentioned that only when the Taliban endorse a TDR decision its compliance by disputants is virtually certain. According to this respondent, "... there is no one who could deny the Taliban's decisions. And if someone refuses to accept a Taliban decision he either has to lose his life or leave his village."

Appeal of TDR decisions

There are few options available to a disputant who wishes to appeal or reopen a TDR decision. Disputants may try to persuade *jirgamars* to revise their decision or may try to convene another *jirga*, but most disputants reportedly turn to the formal justice sector to appeal TDR decisions.

In districts, where the District Governor is very involved in the dispute referral process, disputants seeking to appeal a *jirga* decision often approach that official first. Respondents in the south reported, however, that the District Governor will generally urge disputants to accept TDR decisions, especially if they conform to Afghan statutory law. In that context, several respondents noted that the state uses an appeal of a TDR decision as an opportunity to review the decision for compliance with statutory law. Interviewees further noted that other state officials (including the *Huqooq*) usually also urge disputants to accept TDR decisions and not to try to appeal it. Some elders remarked bitterly that the state actors might accept appeals of TDR decisions and then solicit bribes from the disputants, only to hand the matter back to the elders in the end. Delays by the formal justice sector in dealing with disputes, particularly appeals from TDR decisions, also deter disputants from appealing a TDR decision to the formal justice sector.

In Uruzgan province, respondents mentioned that requesting a second *jirga* to reconsider a dispute stigmatizes the disputant who requested it and that the second *jirga* is unlikely to yield a different, or more just, outcome. A few elders from Chora district explained that if a disputant tries to convene a second *jirga* or appeal a TDR decision to government authorities, *jirgamars* automatically consider that individual to be the guilty party, and would say so if asked to testify before the second *jirga* or state authorities. A *Huqooq* department member remarked that the use of the formal justice system to appeal informal justice sector decisions undermines the legitimacy of the informal justice sector, implying that he therefore tries to discourage disputants from appealing TDR decisions to the formal justice sector.

Equal access to justice and fairness of decisions

The majority of respondents noted that, in the south, women's access to justice, both to the informal and the formal justice sector, is still limited. Women are rarely able to present their own case to a

jirga, but instead must to rely on close male relatives, such as a husband, brother, or father, to represent their interests. While the formal justice sector allows women to bring cases directly to that forum, cultural conservatism and poor security in some areas effectively prevent women from doing so. In certain areas of the south, such as Dihrawud district (Uruzgan province), religious figures noted that women should have the same access to TDR that male disputants do. Other elders objected, however, stressing the shame that is associated under local cultural norms with women being in the public sphere.

A general lack of awareness of *Shari'ah* and Afghan statutory law, as well as cultural biases, contribute significantly to widespread violations of women's rights. Even if elders are aware of the requirements of *Shari'ah*, cultural norms often cause elders to apply customary law (*Pashtunwali*) despite its disadvantageous treatment of women (e.g., the use of *baad*). Respondents noted repeatedly that when family members supported and advocated on behalf of women, the treatment of female disputants tends to be more equitable.

Most respondents, particularly *jirgamars*, noted that the majority of the population perceives the TDR system as fairer and less corrupt than the formal system. In Shahjoy district (Zabul province), for example, respondents reported *jirga* decisions to be mostly unbiased, particularly in areas where the influence of powerbrokers is limited. A respondent explained that in areas where security is poor, the fairness of justice outcomes declines. Furthermore, respondents noted that especially high profile cases often attract the attention of powerbrokers and also the Taliban, who then attempt to assert outside influence on the *jirga* decision. Overall, most respondents agreed that the selection of *jirga* members known to make fair decisions is vital to ensure a fair decision. A respondent from Spin Boldak district (Kandahar province) added that in particular the exclusion of IDPs as well as residents without ties to an area, such as itinerant traders or members of minority tribes, are often disadvantaged in both the access to a *jirga* and the fairness of its decision.

Most often, interviewees underlined that there is a difference in the justice outcome between rich and poor disputants in the south. The absence of a disputant deposit (*machalgha*) reduces the opportunity for bribes and increases access to TDR even for individuals that do not have the means to provide a deposit. The wealth of a disputant increases the likelihood of obtaining a decision in his favor. The poor are often not able to pay *diyya* (blood money), which might be part of a settlement and therefore have to resort to *baad*. Occasionally respondents noted that if *jirgas* were fair, they would ensure that the disputants are fined according to wealth, so that an affluent disputant might be asked to contribute more money to compensate a poorer individual.

In addition to status and wealth, tribal bias was cited in several districts as contributing to the distortion of justice outcomes in the TDR system. In the context of the *Islahe shura* of Uruzgan province, respondents often mentioned that justice outcomes can be unfair for disputants who are at odds with local powerbrokers and for those from local minority tribes. Reportedly, elders often deviate from the fair justice outcomes because they fear retribution from powerbrokers if they do not accommodate their preferences. On occasion, justice outcomes might favor unlawful claimants, as the application of customary law supersedes *Shari'ah* in an effort to reinstate community harmony, in particular if one of the false claimants is a powerbroker.

THE TALIBAN'S ROLE IN DISPUTE RESOLUTION

Respondents have noted that the Taliban continue to play a role in dispute resolution in many areas of the south. In Zabul province, respondents noted that the level of Taliban influence in TDR varies significantly among districts depending almost entirely on their ability to operate in a particular district and to provide justice services and to influence or manipulate the TDR system there. Respondents from Qalat, Tarnak Wa Jaldak and Shahjoy districts (all in Zabul province) noted that, in Qalat, district the provincial center, residents neither seek nor trust the Taliban as justice providers, while in the other two districts residents' reports regarding the level of Taliban justice are far less clear-cut. In Tarnak Wa Jaldak district, for example, interviewees noted that in areas where the Taliban and government forces continue to compete for control, residents are more apt to bring their disputes to the Taliban. Some respondents described instances when residents of Tarnak Wa Jaldak district tried to bring disputes to the Taliban to be resolved but were turned away because, the Taliban said, they were "at war" and had no time to resolve disputes. In Shahjoy district, respondents observed that, in areas under their control, the Taliban appear to function as an authoritarian government.

In some areas, elders reported feeling compelled to inform the Taliban about any dispute that is brought before a traditional *jirga* to be resolved, and that the Taliban then usually instructs the elders to deal with the matter. In some instances, respondents accused the Taliban of dictating the membership of *jirgas* and their decisions. Respondents also reported that many residents in the south feel compelled to cooperate with the Taliban rather than with the formal justice sector because of the Taliban's warnings not to work with the government and because of the perception that the Taliban resolves most disputes impartially, strictly according to *Shari'ah*, and without the need to pay bribes.

Female respondents in Uruzgan province told of their good impressions of the Taliban regime's justice system because of their perception that it treats them relatively equitably, is relatively efficient, and decisively enforces its decisions. Even respondents from Tirin Kot district, the provincial center of Uruzgan, noted that some residents in search of a dispute resolution mechanism would travel to areas under Taliban control to seek Taliban adjudication. Even in several other areas of RC South that are not under Taliban control, elders are known to approach Taliban representatives to resolve disputes. Some respondents stated that there have been reports that elders were not always happy with the decisions of the Taliban in resolving disputes, but the same individuals also acknowledged the Taliban to be more effective in enforcing decision than elders or the formal justice sector.

In Kandahar province, respondents reported that residents of Spin Boldak district occasionally resort to Taliban justice when disputants are not satisfied with a *jirga* decision; these cases are also heard across the border in Chaman district in Pakistan. Residents of sub-district 9 of Kandahar municipality said that they rarely approach the Taliban for dispute resolution in the city itself, but that some city residents who may have been closely associated with the former Taliban regime travel to other districts for that purpose. In the more rural areas of Kandahar province, residents reportedly use Taliban justice because it is dominant, and because they view the Taliban as ensuring that their decisions are implemented efficiently.



In some of these areas, TDR elders also appear to consult and coordinate their decisions with the Taliban, as they value what they perceive as the Taliban's strict adherence to *Shari'ah* and the absence of corruption and the influence of powerbrokers. In Arghandab district, for example, elders believe that disputants will eventually turn to the Taliban for dispute resolution because they view both TDR and the formal justice sector as corrupt and inefficient. In a district near Kandahar municipality, elders reported that the Taliban frequently use the same TDR mechanisms as tribal elders. Respondents noted that this is a positive change from how the Taliban operated when they were in power during the late 1990s, when Taliban courts were established at the expense of TDR elders, who became marginalized in the provision of justice services.

ANNEX I: FORMAL JUSTICE ACTORS IN RLS-I PHASE 1, PHASE 2 AND PHASE 3 DISTRICTS IN RC SOUTH¹⁴

KANDAHAR PROVINCE		
Name	Position	District
Haji Shah Mohammad	District Governor	Arghandab
Mohammad Yousof	Executive Administrator of the District	Arghandab
Shah Jan	Head of <i>Huqooq</i> Office	Arghandab
Manzorullah	District Judge	Arghandab
Rahamtullah Noori	Deputy District Judge	Arghandab
Qazi Naseem	District Judge	Arghandab
Mohammad Nabi	Prosecutor	Arghandab
Haji Niaz Mohammad	District Chief of Police	Arghandab
Haji Siraj ul-Din	District Governor	Daman
Mohammadzai	Executive Administrator of the District	Daman
Mawoladad	Head of <i>Huqooq</i> Office	Daman
Mohammad Naseem	District Judge	Daman
Ahmadullah	Prosecutor	Daman
Ahmadullah Nazak	District Governor	Dand
Anwar Khan	Administrator of <i>Huqooq</i> Office	Dand
Mohammad Naseem	Village Cluster Administrator (<i>Da Kalo Mudir</i>)	Dand
Rashid Khan	Executive Administrator of the District	Dand
Ahmadullah	Prosecutor	Dand
Bismiullah	Deputy District Governor	Dand
Fareed Khan	Sub-district Chief of Police	Kandahar municipality, sub-district 9
Abdul Ahmad Khan	Municipal Sub-district Administrator	Kandahar municipality, sub-district 9
Nazar Ali	Chief of Police	Kandahar municipality, sub-district 9
Ubaidullah Madani	Head of the <i>Huqooq</i> Office	Kandahar municipality, sub-district 9
Faiz Mohammad Khan	Deputy Head of the <i>Huqooq</i> Office	Kandahar municipality, sub-district 9
Haji Fazal Mohammad	District Governor	Panjwayi
Abdul Ahad	Executive Administrator of the District	Panjwayi
Abdul Habib	<i>Amir Qariajat</i> (Head of Villages)	Panjwayi
Hikmatullah	Administrator of <i>Huqooq</i> Office	Panjwayi

¹⁴ This information from the RLS-I field offices in the Kandahar, Uruzgan, and Zabul provinces is based on the interaction of RLS-I field staff with the formal justice actors present in the RLS-I program districts of Phase 1, Phase 2 as well as the first tranche of Phase 3. This information is current as of December 2012.

KANDAHAR PROVINCE		
Name	Position	District
Mamoor Abdul Rahim	Deputy of <i>Huqooq</i> Office	Panjwayi
Mohammad Hashim Agha	District Governor	Spin Boldak
Ghulam Hazrat Khan	Executive Administrator of the District	Spin Boldak
Aziz Ur-Rahman	Judge	Spin Boldak
Mohammad Shoaib	Head of the <i>Huqooq</i> Office	Spin Boldak
Mohammad Aziz	Prosecutor	Spin Boldak
Mohammad Masom Khan	District Chief of Police	Zhari
Niyaz Mohammad Sarhadi	District Governor	Zhari
Mohammad Nader	Head of the <i>Huqooq</i> Office	Zhari
Haji Mohammad Hashim	Prosecutor	Zhari
Mawlawi Mohammad Ibrahim	Judge	Zhari
URUZGAN PROVINCE		
Loqman Samon	District Governor	Chora
Mullah Dad Mohammad	Head of District Court	Chora
Wali Mohammad	Executive Administrator of the District	Chora
Niaz Mohammad	Head of the <i>Huqooq</i> Office	Chora
Khuday Dad	Head of Criminal Investigation Division	Chora
Juma Gul	Justice Department	Chora
Hajji Aminullah	District Governor	Dihrawud
Omerkhan	Head of Criminal Investigation Division	Dihrawud
Shamamad	Prosecutor	Dihrawud
Abdul Wahed	Head of District Court	Dihrawud
Mohammad Sharif	Head of the <i>Huqooq</i> Office	Dihrawud
Haji Sayed Rasool	District Governor	Shahidi Hassas
Wali Dad	District Chief of Police	Shahidi Hassas
Abdul Wahid	Head of Primary Court	Tirin Kot
Ghulam Farooq Musesfer	Prosecutor ¹⁵	Tirin Kot
Baqi Khan	Advisor to the Criminal Investigation Division	Tirin Kot
Abdul Mohammad	Head of the <i>Huqooq</i> Office	Tirin Kot
Mawlawi Hamidullah	Head of the Criminal Investigation Division (Dewan)	Tirin Kot
Tor Mawlawi Hamdullah	Head of <i>Haji</i> and Religious Affairs Department	Tirin Kot
Mawlawi Mohammad Jan	Head of the Appeals Court	Tirin Kot
Haji Abdul Rahman	Head of <i>Sectoral</i> (IDLG) Directorate in the Provincial Governor's Office ¹⁶	Tirin Kot

¹⁵ Reportedly transferred to Jalalabad since the collection of the data, replacement unknown as of the date of this Regional Assessment.

¹⁶ This is a directorate under each Provincial Governor's office that plans, coordinates, and monitors, and reports on implementation of the Afghanistan National Development Strategy and its provincial development indicators.



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ZABUL PROVINCE		
Name	Position	District
Mohammed Sidiq	District Governor	Shahjoy
Qazi Sayed Sharif	District Judge	Shahjoy
Feda Mohammed	Head of the <i>Huqooq</i> Office	Shahjoy
Abdul Rahim	Prosecutor	Shahjoy
Seraj Ahmed	District Governor	Tarnak Wa Jaldak
Qazi Aminullah	District Judge	Tarnak Wa Jaldak
Shafiqullah	Head of the <i>Huqooq</i> Office	Tarnak Wa Jaldak
Khalilullah	Executive Administrator of the District	Tarnak Wa Jaldak
Ghulam Mohamed Safi	District Judge	Qalat
Atiqullah	Prosecutor	Qalat
Amanullah Faizi	Head of the <i>Huqooq</i> Office	Qalat