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Local Conflict Management

**An Analysis of Local Conflict Management Approaches in
Baghlan, Balkh, Helmand, and Nangarhar**

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A. Acronyms and Abbreviations

ACTED	Agency for Technical Cooperation and Development
AGO	Attorney General's Office
ANSF	Afghan National Security Forces
AOG	Armed Opposition Groups
ASOP	Afghanistan Social Outreach Programme
CPAU	Cooperation for Peace and Unity
CPHD	Center for Policy and Human Development
DACAAR	Danish Committee for Aid to Afghan Refugees
DCC	District Coordination Council
GIRoA	Government of the Islamic Republic of Afghanistan
ICG	International Crisis Group
IDLG	Independent Directorate for Local Governance
IDP	Internally Displaced Person
IWA	Integrity Watch Afghanistan
JSC	Justice Sub-Committee formed under a DCC
MoJ	Ministry of Justice
NGO	Non-Governmental Organization
NSP	National Solidarity Programme
PRT	Provincial Reconstruction Team
SNGDS	Sub-National Governance and Development Strategy
TLO	The Liaison Office
UNDP	United Nations Development Programme
UNODC	United Nations on Drugs and Crime
USAID	United States Agency for International Development
USIP	United States Institute for Peace
WAD	Directorate of Women's Affairs

B. Executive Summary

This study has examined the main drivers of vulnerability to local conflict: disputes over land, water, and inheritance and the breakdown of law and order and governance structures. All of these in turn are closely related to issues of poverty and limited livelihood opportunity. This vulnerability means that the smallest livelihood related shocks, such as those arise from a dispute over land, can have a serious if not devastating impact on people's lives and human security. Such disputes are more likely to grow into conflict, including violent conflict. Local conflict resolution mechanisms have traditionally been developed as ways of preventing this from happening, promoting local stability, and providing greater assurances of people's livelihoods and human security. Due to the importance of these objectives, the providers of conflict resolution services enjoy local legitimacy, improved social status, and access to resources.

The study has also examined four distinct approaches to local conflict management, developed and implemented in different parts of the country, on different levels, and within different socio-economic and security environments. At first glance, all four approaches have been successful in resolving local conflicts. However, a deeper analysis is less reassuring. There is a lack of understanding and systematic attempts to address the impact on the perceived legitimacy of the state, as well as the incentives and expectations created for members of the various conflict resolution mechanisms. It is especially important for the United Nations Development Programme (UNDP) to understand and internalize these dynamics, and the reputational risks they pose, as it considers its potential engagement with local conflict resolution mechanisms.

Using local institutions for conflict resolution may be effective in the local context, but does not easily serve as a mechanism for strengthening the relationship between citizen and state and might have the opposite impact. This could be one of the major constraints for future attempts to strengthen state institutions at sub-national level, including the role of the state as the main provider of conflict resolution services and statutory law as the main legal framework used in Afghanistan. In addition, such mechanisms may well serve to solidify and strengthen existing power structures and the role of elites, especially in Nangarhar and Helmand. The approaches in Balkh and Baghlan are farther removed from politics, and thus do not lend themselves as readily to formation of the same kinds of incentives and expectations.

Recommendations

This study does not recommended that any of the four approaches should be replicated in its entirety. However, there are important lessons learned from each which should be taken into account in future program design.

One immediate question is whether UNDP should, in fact, work with local conflict resolution mechanisms. In the ideal world, this would **not** be recommended. However,

as UNDP and its partners are already working with local conflict management and this is not likely to change in the near future, the following lessons and recommendations can be used to develop a more conflict-sensitive program:

1. Continue working with and building up formal sub-national governance institutions, focusing on areas where the security situation will allow UNDP to do so meaningfully.
2. Work with local know-how.
3. Conduct a context analysis and a conflict sensitivity analysis of the program and the implementation area, with a special focus on the types of local structures the program would likely be affecting and the kinds of incentives and expectations the program would create.
4. Create space for a wider public participation in setting up the program, and hold regular elections for the members of conflict resolution mechanisms.
5. Structure any future councils or *shuras* in a manner that creates space for more than just the traditional actors to engage. For instance, there could be a time limit on how long a single individual could be member.
6. Build in measures to prevent corruption, beginning with regular elections and time limits on membership in the councils.
7. Emphasize broader legal awareness.
8. Use the program as part of a larger, integrated approach.
9. Work to develop conflict resolution and analysis skills among the broader community, focusing beyond the actors who traditionally provide such services.
10. Create special space for women, for instance through local women's councils.
11. Internalize an understanding of the political power dimensions of working with local conflict management.

In addition, this study recommends that UNDP conduct more in-depth analyses of the Pul-e-Khumri and Helmand case studies. In Pul-e-Khumri this would focus on understanding the underlying drivers and enablers of the cooperation that has emerged (more or less organically) between government officials and local communities. In Helmand, this would look further into how the Provincial Reconstruction Team (PRT) in Helmand managed to use conflict resolution as part of a larger, seemingly more organized and integrated approach.

C. Comparative Summary of Local Experiences

Approach	Local Ownership	Effectiveness	Conflict Sensitivity	Impact/Relationship Between Citizen and State	Sustainability
Justice Shura Approach in Nangarhar	In terms of local ownership, there are two different dimensions to the Justice Shura approach. On the one hand it is locally-driven through its reliance on local elders and Maliks, who have also been selected to represent the people in other settings, such as the NSP shuras. On the other hand, no form of public consultation takes place with local community members during the selection process for the Justice Shura members.	This program has clearly been effective in providing conflict resolution services to local communities, and helps to resolve conflicts. The program has also managed to motivate the members of the Justice Shuras to work against <i>baad</i> , share experience, and support other informal justice providers. It is unclear whether the attempt to link formal and informal justice institutions has been effective, as the primary target on the formal side appears to have been district governors rather than official actors within the justice system, such as the <i>Huqooq</i> .	There are questions regarding the conflict sensitivity of this approach. (1) The selection of Justice Shura members is heavily dependent on the capacity of the implementing organization's local staff. (2) Selection is cleared with the local District Governor, creating opportunities for undue influence. (3) There is a heavy focus on local elders and Maliks. (4) There was a growing expectation and desire among members of the Justice Shuras to be formally recognized by the government in their role as local leaders and providers of conflict resolution services.	Overall this program seems to have had a negative impact on the relationship between citizen and state. Although the personal relationships between the members of the Justice Shuras and formal government actors might have improved, the relationship between citizen and state has been dependent on the Justice Shura members, who have taken all the credit for any achievements, reinforcing popular belief that the government does not care about the people. The cooperation with the government actors seems to be seen only in terms of reducing the negative impact of the government, rather than positioning government as a support figure and service provider.	Parts of this approach are likely to remain in the long run. (1) The program is based on existing local power structures and local mechanisms for conflict resolution, which are likely to remain after the program ends. (2) However, the long-term cooperation among the members of the Justice Shuras, and between them and government officials, is unclear. There is no evidence of long-term thinking in the set-up of the Justice shuras in terms of how to regulate them and renew their membership. (3) The outcomes of the conflicts resolved by Justice Shuras seem to be sustainable, as they have been conducted on the basis of consensus building, where all parties have agreed to the outcome.
DCC/JSC Approach in Helmand	For all intents and purposes, this program is founded in a solid approach to local ownership within an Afghan context: a government driven process is creating space	In terms of conflict resolution, it is hard to determine the effectiveness of the JSCs. A 2010 study found the conflict resolution activities of JSCs to be limited and lacking	N/A	It is difficult to evaluate the overall impact of this program on the relationship between citizen and state. On the one hand actions such as successful public advocacy for replacing corrupt judges, creating space for elections,	The strong government ownership of this program, regular elections, and working with local elites enhance the long-term sustainability of the DCC/JSC as a local institution. Although the strong local government involvement is

	<p>for ordinary citizens to elect their representatives on a regular basis. This is conducted through a Jirga type election, open only to a section of the community. However it is unclear if the local power dynamic, social structures, and security situation really create space for free elections to be held, or if it is only the local elite and their supporters who are able to participate in the election process.</p>	<p>(Ladbury, 2010), while more recent information does not emphasize the role of the JSC as a conflict resolution institution, rather as a platform for support and sharing among members who are engaged with conflict resolution in their own roles as local community elders.</p> <p>However the DCCs in general are viewed as a positive factor within the improved situation in Helmand province.</p>		<p>and influence over government resources could result in a greater sense of ownership among the local population, with a positive impact.</p> <p>On the other hand, trends in other programs indicate that it is more likely that the DCCs improve the relationship between the elected elders and government officials rather than between the people and the state; this was also supported in the 2010 study.</p> <p>As conflict resolution services are provided on a personal basis by the elected members of the DCC/JSC, this could strengthen the relationship between citizens and local elders at the cost of the relationship between citizen and state.</p>	<p>driven by large donor engagement, it does represent an opportunity for relationships, habits and expectations to be established, which would carry this forward at a local level past the period of peak donor engagement.</p>
<p>Local Community Approach in Pul-e-Khumri</p>	<p>This approach has been developed and implemented locally, without any NGO, donor, or government engagement.</p>	<p>Although it is difficult to assess the overall effectiveness of this approach, it does bring together the strengths of different institutions in order to provide conflict resolution services, in line with the principle of restorative justice.</p>	<p>The new function of the Women's Affairs Directorate can result in exaggeration of conflicts and punishment of women. This might be due to some parts of the community not being ready for this development and the new space made available for women.</p>	<p>Although within the framework and limitations of this study it is difficult to determine the overall impact on the relationship between citizen and state, this approach should in principle have a positive impact as different institutions are working together to provide a better services to local community members. However, questions remain over the continued perception of the formal justice system as corrupt and slow.</p>	<p>As this approach has been developed and implemented locally without any outside involvement, it is likely to be sustainable over time, given that the security situation and the capacity of the different institutions is high enough for collaboration and partnership to continue. Furthermore, the practice of restorative justice should enhance the sustainability of conflict resolution.</p>

<p>Peace Council Approach in Balkh</p>	<p>Community ownership of Peace Councils is relatively high. Usually the engaged members are individuals who are respected and trusted by the community. However, the one-time election process means that only the members of the community who are able to attend that one meeting will have a say in the composition of the Peace Councils, undermining a broader engagement of the wider village. Furthermore, women do not participate in the selection and election of male Peace Council members, and vice versa.</p>	<p>Within a year and a half, the Peace Councils had resolved 169 conflicts in 39 villages, indicating that this can be an effective mechanism for resolving local conflicts.</p>	<p>There are two primary concerns in relation to conflict sensitivity. (1) The one-time election of the Peace Councils favours those who can participate, mainly those who have time because they are not out working in the fields (the main activity in many rural areas) or elsewhere. This can result in conflict later on as some groups not represented at the moment may not be happy with the set-up of the Peace Councils, (2) The Peace Councils are also at risk of being co-opted by local strongmen or warlords who can use them for personal gain. No adequate checks and balances could be identified that would prevent such a scenario.</p>	<p>Similar to some of the other approaches, Peace Councils appear to have had a positive impact on the relationship between members of the Peace Councils and local government actors and also strengthened the relationship between citizens and the members of Peace Councils, at the cost of the relationship between citizen and state.</p>	<p>This approach is community-driven and based on local structures, which would suggest a favourable outlook for sustainability. In addition, the use of a restorative form of justice is likely to result in more sustainable decisions. However, the vulnerability to local strongmen and potentially undemocratic representation might undermine sustainability in the long run.</p>
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D. Purpose and Acknowledgements

The UNDP office in Afghanistan has recently developed a Sub-National Governance and Development Strategy (SNGDS), based on two broad sets of objectives:

Pillar A – Building capable and accountable sub-national government Institutions for service delivery. This pillar aims to promote the capacities of sub-national executive institutions at Provincial, District and Municipal levels to provide services in an accountable, inclusive, responsive manner, while ensuring more involvement of women.¹ It may be viewed as promoting the “supply” of good, conflict-sensitive local governance and accountable service delivery.

Pillar B – Empowering the population, civil society, and sub-national elected bodies to hold sub-national governments accountable, ensuring stabilization, peace-building, and inclusion. This pillar aims to ensure that the population, representative bodies, and civil society organizations have the ability to engage with, influence and hold sub-national government institutions accountable for the effectiveness, quality, and equity of public service delivery. This pillar will seek to ensure that marginalized and vulnerable groups are part of prioritizing and monitoring service delivery. It may be viewed as promoting the “demand” for good local governance and accountable service delivery.

As part of the process of designing an operational program for Pillar A, UNDP has had studies conducted to identify diverse practices and innovations introduced to improve government responses to citizens' grievances and manage conflicts at the local level.

This paper focuses on local conflict management. In its first two sections, the study paper analyzes sources of vulnerability to local conflict, different actors, and the challenges they face in relation to providing conflict resolution services. It aims to provide a basic understanding of local conflict management in Afghanistan; those who are already well versed in the subject may wish to continue to the following section, which examines four different approaches to local conflict management used in Balkh, Baghlan, Nangarhar, and Helmand.

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The responsibility for the contents and views expressed in this study rests exclusively with the authors and does not reflect any other commitment.

¹ These objectives also apply at the national level, insofar as central government institutions facilitate sub-national governance and service delivery.

E. Vulnerability to Local Conflicts

Local conflicts are a common occurrence which can have a devastating impact on people's human security, livelihoods, and relationships (including community coherence). There is a wide consensus in the literature on local conflicts in Afghanistan that disagreements over land, water and inheritance are the main drivers of local conflicts (El Saman, 2008; Dennys & Zaman, 2009). Other major sources of vulnerability to local conflict include the breakdown of rule of law and of governance structures (Rassul & Peavey, 2012).

1. Land, Water, and Inheritance

The predominance of disputes over land, water, and inheritance (itself often related to land and water) suggests that limited livelihood opportunities and poverty are primary sources of vulnerability to local conflicts. The slightest livelihood related shock can have significant if not devastating impact on people's lives and human security.

Land-related conflict exists at all levels of Afghan society, in a variety of different shapes and sizes, with varying political, economic, and social impacts. The primary enabling factor for land-related conflicts is the lack of proper ownership documentation (Coburn & Dempsey, 2010). More than three decades of violent conflict has seriously undermined both formal and informal records and community "institutional memory" concerning land ownership. Furthermore, the political turmoil during this period resulted in distribution of land based on patron-client relationships by successive political actors who came to power at different times, resulting in multiple claims of ownership for the same land based on conflicting commitments and differing legal documents.

One example is the large amount of land which was seized by the Taliban and distributed to the Pashtun population in the North, which was followed by often-violent retaliation and land grabbing by non-Pashtuns after the fall of the Taliban (CMI, 2007; Gompelman, 2010). In the post-Taliban period, predatory actions by powerful warlords and local militia (*arbaki*) commanders have further increased illegal land grabbing and created additional uncertainty and conflict over land. Another example is the conflict over land ownership in the central highlands between settled communities (mainly Shiite Hazaras) and nomads (mainly Sunni Pashtuns), which is growing more violent and is being politically manipulated and exploited. One of the main drivers of conflict between nomadic and settled communities is the refusal of the settled communities to accept legal property ownership documents held by the nomads from the late 18th Century and early 19th Century, along with the refusal by the nomads to accept more recent ownership documents held by settled communities (Rassul, 2010). The economic importance of land and the uncertainty created around it creates both the right space and incentive for conflict to emerge.

Similar to land, water is also a vital economic resource. Although Afghanistan as a whole, by some estimates, has more than enough water to meet the needs of its

population (Rassul, 2011a), it is unevenly distributed between different parts of the country. Moreover, the long period of violent conflict has largely destroyed Afghanistan's water infrastructure and thus the people's opportunities to utilize the available resources (CPHD, 2011). Afghanistan is also subject to wide fluctuations in the availability of water, owing to its traditional dependence on melting snow from nearby mountains to provide most of the water necessary for agricultural activities (Rassul, 2011). More than 80 percent of the precipitation that Afghanistan receives during an average year occurs in the form of snow in high elevation areas (Rout, 2008), which melts and flows to lower elevation areas where most of Afghanistan's population and agricultural lands are located. However, the amount of snow can change significantly from year to year, leaving the agricultural sector prone to both floods and severe droughts (Thomas, 2011). The devastating impact water can have on livelihoods combined with fluctuations and uncertainty regarding its availability, deficient water infrastructure, and the breakdown of rule of law and governance structures in relation to formal and informal water management mechanisms are significant sources of vulnerability to both local and wider violent conflicts (Rassul, 2011b).

Conflicts over inheritance follow similar principles and are mainly linked to the inheritance of land ownership and water usage rights. An increasingly common tendency is to use women as a means of getting access to resources, including land, water rights, and property of different kinds. This is usually initiated by the husband who seeks to access the inheritance left by his father-in-law, creating disputes between the husband and the brothers and other male relatives of his wife. An interesting dimension is the increased awareness in some parts of the country regarding inheritance issues, including the fact that women under *Shari'a* law usually have access to more than is customary under local norms. This creates incentives for women and their husbands to approach the Taliban for solving inheritance related conflicts, in order to benefit from the Taliban's greater reliance on *Shari'a* law (Ladbury, 2010).

2. Breakdown in Governance Structures and Rule of Law

More than three decades of violent conflict in Afghanistan has also disrupted formal governance and rule of law structures (as well as some informal structures), undermining these potential sources of conflict prevention and mediation and further limiting livelihood opportunities, thereby exaggerating vulnerability to conflict generated by poverty and economic marginalization.

The disruption of governance structures means, for example, that the management structures put in place for water distribution are no longer functioning (Rassul, 2011b; Thomas & Mujeeb, 2009). The traditional *Mirab* system used for local water management and distribution, which used to be supported by the government, has largely broken down throughout the country. This has given space to what used to be illegal practices, such as growing rice and building water mills in upstream areas.² This

² Between the early 1930's and the beginning of the Mujahedeen rule in 1992, it was illegal to grow rice and set up water mills in upstream areas, as these practices consumes more water and put the livelihood of downstream communities in danger.

was evident in a recent field visit to Dawlatabad district in Balkh province, where the local villages were experiencing water shortage due to previously illegal practices in the upstream district of Balkh.³ This has created tensions and conflicts between upstream and downstream villages. Furthermore within the villages there are conflicts and tensions involving those who are able to take more water due to their location, if they are relatively upstream, and those who have the capacity for force and violence.

The breakdown in rule of law has created space for predatory behavior among various actors, including local strongmen, warlords, *arbakis*, armed opposition groups (AOG), and certain sections of the Afghan National Security Forces (ANSF). This predatory behavior promotes uncertainty and conflict, especially with people who have lost their property as a result. Furthermore, the uncertainty and lawlessness creates incentives for individuals and groups with powerful patronage to try their luck at seizing control of more resources. This vacuum also creates space for illegal taxation by various armed actors including the Taliban, HiG, local warlords, *arbakis*, and actors within the ANSF (SwedePeace & CPAU, 2012). It is worth noting that this usually takes place in insecure areas, where the economic situation and livelihood opportunities of the local population are already severely marginalized.

3. Political Importance of Local Conflict Resolution

This overview of the main drivers of vulnerability to local conflict suggests that poverty and limited economic opportunities are at the foundation of people's vulnerability. Although the breakdown of rule of law and governance structures is an important factor increasing vulnerability to local conflict, to a considerable extent it does so by exaggerating economic marginalization. The slightest livelihood related shock can have significant if not devastating impacts on people's lives and human security. This is particularly important in view of the deep, widespread, and lasting poverty that is prevalent in rural Afghanistan. Historically, local conflict management has provided a vital service to Afghan communities and has been an important part of people's livelihood and survival strategies.

The mechanisms of local conflict management and resolution have provided a forum for managing disputes and conflicts, a legal framework, and in essence an important dimension of rule of law (in its most basic sense), which has enabled among other things greater security around property ownership and the usage of resources, and thus positively enabled economic and livelihood opportunities. This is why local conflict management mechanisms are commonly referred to as informal justice institutions.

Providing such a vital service naturally brings with it a political dimension and political opportunity. Providing local conflict management services has historically been and continues to be a significant source of local legitimacy, power, and access to resources. Throughout history and more recently since the formation of the modern Afghan state in the late 19th Century, there has been continuous struggle between central-state and

³ It is unclear whether these practices are still illegal or if there is simply a lack of capacity and awareness among local government actors for acting according to the law and government policies.

local power holders over the monopolization of the provision of local conflict management and the legal framework within which these services are provided. Different legal frameworks have been used as tools in attempts at monopolize local conflict management. King Abdur Rahman Khan (1880-1901) was the first leader who used *Shari'a* as a means of undermining customary law and pushing for local conflicts to be settled within the state justice system, which he controlled. More recently the Taliban's approach of a Wahhabi interpretation of *Shari'a* to local conflict management, based swift and violent enforcement, is one of their hallmarks and a significant source of their local legitimacy (Braithwaite & Wardak, 2013). The power struggle over providing local conflict management services and the accompanying benefits is taking place on all levels of Afghan society, between and within powerful groups and religious actors at local level, between various AOGs and the Government of the Islamic Republic of Afghanistan (GIROA), and even within the government, between different ministries.

Local conflict management mechanisms are vital for people's livelihoods and, as such, function as a powerful control mechanism and a means of improving one's social status and legitimacy with the local population. For Afghanistan's development partners, this also means that working with local conflict management can become very political and dangerous.

F. Conflict Resolution in Afghanistan

The issue of conflict resolution and management is an important part of the overall justice delivery discussion in Afghanistan, which has become a major topic of interest to both academics and policymakers in recent years. Within the Westphalian state model, the responsibility for conflict resolution lies with the state and its judicial branches. However, in Afghanistan the formal justice system has never managed to penetrate the entire country, especially in rural areas. This has led to the emergence of a hybrid and patchwork legal system, composed of both formal and informal institutions that reflect various Islamic, traditional, secular, and Marxist influences, which provides conflict resolution services (Wardak A. , 2004).

1. Formal Mechanisms of Conflict Resolution

The formal justice institutions in Afghanistan have been influenced to varying degrees by western and radical Marxist legal thought and by both moderate and radical interpretations of Islamic law (Wardak A. , 2004). However, the formal legal system has never been fully centralized or sufficiently well-managed to penetrate into rural areas. The first serious attempt at centralizing the legal system was undertaken by King Abdur Rahman Khan (1880-1901). He closely linked the legitimacy of his rule to Islam and stressed that his royal decrees reflected divine commands; deviation from these decrees was to be regarded as tantamount to disobedience to the divine rules. He therefore undertook the Islamization of the judiciary, pushing aside tribal codes against the will of local actors (El Saman, 2008).

King Ammanullah Khan (1919-1929) tried to further centralize the judiciary and undermine informal justice institutions by introducing the principle that *“no special court to hear and adjudicate a special case or issue may be established outside the framework of the regular judiciary”* in the country’s first constitution (El Saman, 2008, p. 6). King Ammanullah also proclaimed *Shari’a* as the foundation for every judicial activity. In the 1950s and 1960s, the justice system was modernized and state law, rather than *Shari’a*, became the primary basis of the formal justice system. King Zahir Shah (1933-1973) drafted a new constitution in 1964, which again called for the consolidation of authority under a centralized law. During this period, the state gradually started to penetrate into rural areas. Subsequently the mujahedeen, formed after the Soviet invasion in 1979, refocused on using the *Shari’a* as the foundation of any judicial activity; this approach was deepened under Taliban rule (Senier, 2006).

Most of these regimes have partly used their systems of justice as tools for achieving their political goals (Wardak A. , 2004). This has resulted in a fragmented formal rule of law with limited reach. The formal justice system has been and still is elitist and corrupt, involving long delays and lacking legitimacy (ICG, 2003; UNDP/CPHD, 2007; ICG, 2010). Thus, throughout history, the shortcomings of the formal legal institutions in Afghanistan have made getting access to them and to formal conflict resolution mechanisms by ordinary Afghans, especially in the rural areas, a difficult challenge. The

formal rule of law is seen as “a sword whose grip lies in the hands of the rulers, and its blade in the hands of ordinary people” (UNDP/CPHD, 2007, p. 42).

Structure of the Formal Justice System

The formal justice institutions include the judiciary, the Ministry of Justice (MOJ), and the Attorney General’s Office.⁴ The judiciary is composed of the Supreme Court (*stara mahkama*), the Courts of Appeal, and the Primary Courts, and is an independent organ of the state. The stated role of the judiciary is to protect the fundamental rights of all Afghan citizens, to resolve legal disputes in a fair and transparent manner, and to work to ensure justice through an independent, honest, and effective judicial system. The Supreme Court is the highest judicial authority in Afghanistan and is based in the capital Kabul. It is responsible for the overall management and administration of the judiciary, including the appointment of judges, their impeachment, and assuring the constitutionality of laws and their consistency with *Shari’a*.

The MOJ is a central government institution within the justice system. The mandate of the MOJ includes (UNDP/CPHD, 2007):

- Drafting, reviewing, and proposing legislative documents and amendments, and providing legal and legislative advice to GIRoA and its Ministries;
- Acting as legal counsel for GIRoA to defend state properties and interests, and to litigate in courts;
- Regulating and managing legal aid services and cooperating with defense counsels;
- Resolving civil and commercial disputes among citizens;
- Developing and publishing legal information to enhance public awareness.
- Publishing legal documents;
- Managing the evaluation and registration of political parties and social organizations; and
- Managing affairs related to prisons, detention centers, and juvenile rehabilitation centers.

Departments within the MOJ include Legislative Drafting, Central Prisons (this department was transferred from Ministry of Interior to Ministry of Justice in 2003), Juvenile Rehabilitation, Publication, Administration, Government Cases, Political Parties, Social Organizations, and the *Huqooq* department. The *Huqooq* department is the deals primarily with the resolution of local civil conflicts, in accordance with the formal Afghan legal framework.

The Attorney General’s Office (AGO) is established according to Article 7 of the Constitution. The AGO is an independent office of the executive branch but is not under the authority of the Executive. Its duties are to investigate and prosecute crimes.

⁴ A more detailed description of these various institutions can be found in UNDP/CPHD, 2007, p. 69.

2. Informal Conflict Resolution Mechanisms and Restorative Justice

The people of Afghanistan have, throughout their history, developed a rich culture of providing conflict resolution services on a local level, one which remains critically important for modern daily life. Because the formal justice institutions are ineffective, fragmented, and lack resources, legitimacy and reach, ordinary Afghans (especially in rural areas) must still rely on informal justice institutions in order to get access to justice. The informal system has become more capable of replicating the role of the formal court system when dealing with civil cases rather than with criminal ones, because the informal system lacks the same capacity to arrest individuals and impose penalties, such as prison sentences.

A great many potentially serious disputes relating to issues such as domestic violence, divorce, inheritance, and marriage are normally settled among the disputants themselves and/or within the family. This reliance on private solutions is intended to protect family honor and to prevent disputes from becoming a burden on other societal institutions (Ladbury, 2010). Disputes that are considered public or become public are mainly solved through informal justice institutions; the most prevalent among these institutions are the *Jirga* and its close equivalent, the *Shura* (Smith & Manalan, 2009).

The term *jirga* is widely used in Pashto but it can also be found in Dari and Turkish languages (UNDP/CPHD, 2007). It usually refers to the consultative gathering, which may consist of only a few people or a larger group. The *jirga* is most closely associated with the rituals and processes of Pashtun traditional tribal dispute settlement, where people sit in a large circle in order to resolve a dispute or make collective decisions about important communal issues and problems. *Shura* is an Arabic word referring to the process of “consultation,” which became widely used in Afghanistan during the mujahedeen era. The *shura* mechanisms are strikingly similar to *jirgas* in their role of resolving disputes and making collective decisions. However, whereas a *jirga* usually meets to discuss a specific issue, a *shura* is usually a permanent or quasi-permanent council (Coburn & Dempsey, 2010).

These informal justice institutions are used for dispute settlement at the community level or the *manteqa* level (several communities), and incorporate the prevailing *narkh* (customary laws), institutionalized rituals, and the views of a body of *marakachian* (elders and leaders) whose *prikra* (judgment) is binding (morally and socially) on all of the parties involved. *Narkh* is a centuries-old unwritten body of civil and penal tribal customary laws, and *marakachian* is the term for local or tribal elders and leaders who are respected for their expertise and social influence (UNDP/CPHD, 2007). In some parts of the country the informal justice institutions also incorporate *machalka* (financial deposit), where both parties have to make down payments which are only returned to both parties once they have adhered to the *prikra*; this is mainly practiced in the eastern parts of the country from Zabul to Khost. Another key term among the Pashtun population is *Pashtunwali*, which is a range of tribal and honor codes.

These practices are used to deal with issues ranging from relatively minor problems, such as disputes over the boundaries of farms and minor bodily harm, to more serious offenses such as murder or—in the case of a *Loya Jirga* (Grand Jirga)—the ratification of a new national constitution. In civil cases the *prikra* can be appealed. If one of the parties sees the *prikra* as unfair, considers the customary law as wrongly applied, and/or suspects corruption and favoritism, then the *prikra* can be appealed. The appeal goes to another *Jirga/shura* (most commonly in a neighboring village), and if the second *Jirga/shura* agrees that the *prikra* of the first was not fair then the elders in the *jirga/shura* will lose their reputation and the right to participate in future conflict resolution, and might also have to pay a fine to the parties (UNDP/CPHD, 2007). The actors within these institutions are more trusted than GIRoA officials and are thought to be able to resolve local conflict quicker because they are less corrupt and know the area and the people well (Barfield, 2010).

Restorative Justice within the Informal Conflict Resolution Mechanisms

“Most people [here] resolve their disputes through the jirga. And this helps us and the local people a great deal. In fact, jirgas do the jobs that courts in Kandahar are unable to do: First of all because of security problems and our weak enforcement capabilities, we could not enforce our decisions. But the jirgas' decisions are enforced by the community through social pressure and other mechanisms. Second, courts could settle a dispute, but could not end enmities between the disputants. A jirga does both. In most civil cases, we encourage people to resolve their disputes by jirga, and then bring them to the court. As long as these decisions do not contradict the law and sharia, we endorse them formally.”

Head of the Provincial Appeals Court in Kandahar
(UNDP/CPHD, 2007)

The conflict resolution services provided by informal justice mechanisms generally follow the principle of restorative justice (Barfield, Nojumi, & Thier, 2006; Wardak & Braithwaite, 2013), aimed at rebuilding relationships among people and enabling them to continue existing within their local communities. This is closely linked to the foundational needs which informal conflict resolution mechanisms have been developed to address, the importance of the community for individual survival and livelihood.

Another reality in Afghanistan is the limited economic opportunities available for the elderly, women, and children, especially in rural areas. These members of the household are usually dependent on young male household members for their income. Livelihood-related disputes such as disputes over water, land, and livestock usually involve young males. In such a situation punishing the young males through imprisonment also means punishing the entire household, as their main breadwinner is lost. This is yet another important factor which the informal justice institutions take into account. Adopting a restorative justice approach in such a scenario means that justice is served in such a way that the overall harm to the community members (beyond the

victim) is minimized, and this is seen as a more productive way of providing conflict resolution services, justice, and stability.

Peace and reconciliation of the disputants is identified as the main outcome of engaging with informal justice institutions (UNDP/CPHD, 2007). The *Nanawate*, which means seeking forgiveness (or a truce offer) and the obligatory acceptance of that offer, is an important feature of local conflict resolution mechanisms focused on producing peace and reconciliation between disputants. One of the most important aspects of the *Nanawate* is that the offender is publicly held responsible for his or her wrong-doing, thus signaling that such behavior is unacceptable. However, at the same time, the offender is treated with respect and is assured that "you are one of us and we accept you back among us" (Braithwaite J. , 2000). In this way the damage caused by the wrongdoing is repaired and the offender is reintegrated into the community.

3. Challenges of Corruption, Warlords, and Women's Access

The long period of conflict in Afghanistan has had a profound effect on how people access conflict resolution services and the ways these services are delivered. It has changed various power dynamics among and between communities, introduced new actors, and helped corruption to become a major problem. These factors directly undermine both the formal and informal justice institutions, thus limiting or changing the ways that people get access to conflict resolution services and the types of legal frameworks under which these services are provided.

Corruption

Corruption is a major problem in Afghanistan. The Integrity Watch Afghanistan 2010 survey revealed that corruption is seen as the third biggest problem in Afghanistan, just behind insecurity and unemployment (IWA, 2010). Rural areas have seen a disproportionate increase in corruption, with a recent UNODC survey indicating that 79 percent of rural inhabitants think that the level of corruption has increased, compared with only 73 percent of urban inhabitants (UNODC, 2010). Within the public sector, which is identified as the most corrupt sector by 72 percent of the survey respondents, actors within the judicial system (judges and prosecutors) are the ones who are reported to most commonly ask for bribes, estimated at around 47 percent of the time.

Corruption within the formal justice institutions is an obstacle in itself for preventing the wider phenomenon of corruption. It is unlikely that a corrupt court will produce a proper outcome in cases involving corruption. Furthermore, a weak judiciary provides "legal" protection to those in power for dubious or illegal strategies such as embezzlement, nepotism, crony privatizations, or political decisions that might otherwise encounter resistance in the legislature or from the media (UNDP/CPHD, 2007).

Informal justice institutions are also being affected by corruption. The increased engagement of the international community with *jirgas/shuras* in assistance delivery through activities such the National Solidarity Program (NSP) is bringing in the financial

factor into these institutions. While traditionally the primary motivation for community elders and others who mediate between the parties has been merit and honor, such motivations are now in danger. A USIP report recommended that “*Programs should not spend large amounts of money on strengthening informal mechanisms, which could increase incentives for corruption and would delegitimize some of the very aspects of informal justice that make it attractive*” (Coburn & Dempsey, 2010, p. 7).

Pressure from Warlords and AOGs

Access to justice is also being threatened by local commanders and warlords, who try to control the population by using their military and financial power to influence the decisions of justice and conflict resolution institutions. Many such incidents have been recorded around the country (Coburn & Dempsey, 2010).

The formal and informal justice institutions are also under pressure from AOGs. One of the key attributes of the Taliban regime (1996-2001) remembered among Afghans is its success in providing and harshly enforcing its version of the rule of law (Braithwaite & Wardak, 2013). A recent study in Helmand province showed that AOGs have their own complex legal system based on a *Wahhabi* interpretation of Islamic law (an extreme school of thought within Islam) (Ladbury, 2010).

In Helmand the decades of war have caused the communities to lose some of their cohesiveness, which has had a negative effect on local informal institutions’ capacity to enforce *prikra*, which relies on social pressure. The multiplicity of options has also meant that people can pick and choose who to go to; if they are not happy with the decision of the local *jirga*, they might want to try their luck with an AOG commander. Both of these factors have had a tremendous negative effect on the *prikras* issued by traditional informal justice institutions. The fact that they are less able to enforce the *prikra* and that it can be reopened in another court system has played right into the hands of the AOGs. The decisions taken within an AOG’s justice system is enforced to the letter, even with violence if necessary, and their word is final.

Although the AOGs do provide justice which is not corrupt, is swift, and is rigidly enforced, it is not focused on restoring relationships and is thus unable to fulfill a vital function needed especially in rural communities. Their focus on a Wahhabi interpretation of the *shari’a* is not in line with local traditions of using a more moderate interpretation through the Hanafi school of thought. AOG decisions were also seen as unfair at times because they were made too quickly, without sufficient consideration to all the different angles. The punishments are harsh and while this has a deterrent effect, it does not help reconcile the parties. “*A common view was that the AOGs aren’t really interested in justice, they just use justice as a means of control.*” (Ladbury, 2010).

Women’s Access to Justice

It is extremely difficult for women in Afghanistan to obtain access to conflict resolution services, through either formal or informal justice institutions. Domestic abuse is one of

the most common factors undermining the human security of women in Afghanistan, with an estimated 87 percent of Afghan women experiencing at least one form of physical, sexual, or psychological violence or forced marriage (Nijhowne & Oates, 2006). These victims often have little recourse for addressing or escaping their abusers. While there are Afghan laws that forbid forced marriage, domestic violence, and sexual assault, such laws are rarely enforced by the national police and state justice institutions (Habib, 2011). Even worse, abused women who attempt to escape their situation are often inappropriately punished for committing “moral crimes” and forced to move back into the abusive household.

Many family-related disputes are aggravated and allowed to escalate as a result of women’s lack of access to justice institutions. Cultural obstacles make it difficult for women to approach either formal or informal justice actors. There are very few female employees in the formal system, which makes it socially difficult, if not impossible, for women from rural areas to bring a dispute to the police, courts, or *huqooqs*.

Within the informal system women also have limited opportunity as they must rely on a male relative – such as a father or husband – to bring the case before a local justice institution. In the absence of any male relatives willing to intervene on their behalf, most women would have no means of seeking help for their situation. This lack of options makes Afghan girls and women highly vulnerable to violence and other forms of abuse or unfair treatment, seriously undermining their human security.

In some parts of the country women prefer to turn to the Taliban when seeking justice; this is especially true when it comes to inheritance-related issues (Ladbury, 2010). As discussed above, this is because *shari’a* law is more generous regarding the sharing of inheritance between men and women than local traditions such as *Pashtunwali*. However, it can be equally difficult, if not more so, for women to access and get their views properly heard by the Taliban justice system.

One of the main challenges for the informal justice sector is the practice of *baad*. *Baad* is a traditional custom mainly among Pashtuns, but also occurs among other groups, in which a woman (or young girl) from the perpetrator’s family is given in marriage to the victim’s family. Traditionally, the practice of *baad* is based on an attempt to form family bonds in order to rebuild broken relationships and promote communal harmony. International development and human rights groups and activists are heavily focusing on *baad*, which they see as treating women as compensation for the ill action of a male relative. Due to the increased financial cost of marriage, the practice of *baad* is increasingly taking a financially motivated shape, thus further legitimizing the criticisms of the international community and human rights groups.

G. Four Experiences with Local Conflict Management

This section discusses four distinct approaches to local conflict management, implemented by different actors, at different levels, and in different parts of the country, with a common factor of attempting to link formal and informal justice institutions. The Justice Shura approach in Nangarhar is implemented on district level and has been designed and implemented by an Afghan NGO. The approach in Helmand, based on Justice Sub-Committees under DCCs, is also implemented on a district level but is implemented by GIRoA with close financial and technical support from the United Kingdom PRT in Helmand. The Peace Council approach used in Balkh is implemented on a village level, by an international NGO which has a long-term relationship with the targeted communities. The local community approach in Pul-e-Khumri is a community driven approach on district and sub-district level, which has grown naturally and has not been supported by any outside actor.

1. Nangarhar: Justice Shuras

The approach taken by The Liaison Office (TLO) in Nangarhar is based on existing local structures, mainly along ethnic lines. In Nangarhar TLO has worked to establish two Justice Shuras. One is in the Fifth District of Jalalabad City, which is a new community of refugees and IDPs, both from within Nangarhar province and from neighboring provinces experiencing increased levels of insecurity. The second is located in the Momandara district of Nangarhar province. The Justice Shura in Jalalabad is composed of 18 individuals, mainly tribal elders and Maliks from different tribes. The Justice Shura in Momandara includes 15 individuals, also mainly tribal elders and Maliks.

TLO relied on local staff who had extensive previous experience working with local conflict resolution institutions, mainly known as *jirgas* in Nangarhar. Suitable elders and Maliks were identified and approached to join the Justice Shuras; the focus was on identifying those who were already among the most prominent and respected members of their communities and had a good reputation. An attempt was also made to achieve balance among tribes and groups in the targeted area. The list of suitable candidates was then discussed with local government authorities for approval. It was clear from the field visit to the Fifth District in Jalalabad that the local elders selected for the Justice Shura were also active in NSP Shuras and a range of other *shuras* and committees.

As traditional practitioners of local conflict resolution, at first these individuals did not receive any further training on conflict resolution skills and management. Later on in the program, short legal awareness training sessions were provided, which resulted among other things in an increase awareness of the arguments against *baad*. TLO also initiated a process in which providers of conflict resolution services, mainly tribal elders and Maliks from different tribes, were meeting to share experiences and approaches to local conflict resolution. This experience was seen as highly positive by Justice Shura members, as it broadened their understanding of conflict resolution approaches across different tribes and the experience with their application. There was also a clear desire

among the members of the Justice Shura in the Fifth District of Jalalabad city to expand this process of experience sharing to the north and to include other ethnic groups.

One of the main aims of the program was to create a linkage between the formal and informal justice institutions. This was done through the organization of regular meetings between actors from the government side and members of the Justice Shuras. Formal justice actors were initially paid US \$100 per month to participate in these meetings, but the payments were later stopped. The objective was to improve personal relationships and share information and advice on ongoing processes of local conflict resolution. The Justice Shura members and local TLO staff indicated that many conflicts had been referred to the Justice Shura by local justice actors and that several, mainly criminal, cases had been referred to the formal justice actors by the Justice Shuras. It appeared that a pragmatic approach had been taken in choosing which of the formal justice actors to engage, rather than a procedural or rule-based one. There was a particular focus on DGs, who may not be directly involved with the formal justice system but are nevertheless key justice and conflict resolution providers representing GIRoA at district level. There were also referrals to judges. However, the primary organ of the state dealing with local conflicts, the *Huqooq* department, seems to have not been included. Meetings with the head of the *Huqooq* department and his deputy in Nangarhar province indicated that they had no knowledge of or engagement with the TLO program.

By mid-2011, the Justice Shuras in Nangarhar had managed to hear an estimated 150 cases (TLO, 2011). Members of the Justice Shuras were not only active in their own communities but also mentioned that the experience, expertise, and recognition they received had led people from different areas and districts to call upon their support during the resolution of conflicts.

Justice Shura Approach	
Local Ownership	In terms of local ownership, there are two different dimensions to the Justice Shura approach. On the one hand it is locally-driven through its reliance on local elders and Maliks, who have also been selected to represent the people in other settings, such as the NSP shuras. On the other hand, no form of public consultation takes place with local community members during the selection process for the Justice Shura members.
Effectiveness	This program has clearly been effective in providing conflict resolution services to local communities, and helps to resolve conflicts. The program has also managed to motivate the members of the Justice Shuras to work against <i>baad</i> , share experience, and support other informal justice providers. It is unclear whether the attempt to link formal and informal justice institutions has been effective, as the primary target on the formal side appears to have been district governors rather than official actors within the justice system, such as the <i>Huqooq</i> .
Conflict Sensitivity	There are a number of questions regarding the conflict sensitivity of

	<p>this approach. (1) The selection of Justice Shura members is heavily dependent on the capacity of the implementing organization’s local staff. (2) Selection is cleared with the local District governor, creating opportunities for undue influence. (3) There is a heavy focus on local elders and Maliks. (4) There was a growing expectation and desire among members of Justice Shuras to be formally recognized by the government in their role as local leaders and providers of conflict resolution services.</p>
<p>Impact/Relationship Between Citizen and State</p>	<p>Overall this program seems to have had a negative impact on the relationship between citizen and state. Although the personal relationships between the members of the Justice Shuras and formal government actors might have improved, the relationship between citizen and state has been dependent on the Justice Shura members, who have taken all the credit for any achievements, reinforcing popular belief that the government does not care about the people. The cooperation with the government actors seems to be seen only in terms of reducing the negative impact of the government, rather than positioning government as a support figure and service provider.</p>
<p>Sustainability</p>	<p>Parts of this approach are likely to remain in the long run. (1) The program is based on existing local power structures and local mechanisms for conflict resolution, which are likely to remain after the program ends. (2) However, the long-term cooperation among the members of the Justice Shuras, and between them and government officials, is unclear. There is no evidence of long-term thinking in the set-up of the Justice shuras in terms of how to regulate them and renew their membership. (3) The outcomes of the conflicts resolved by Justice Shuras seem to be sustainable, as they have been conducted on the basis of consensus building, where all parties have agreed to the outcome.</p>

Table 1 - Evaluation Table: Justice Shura Approach

Key Strengths

A major strength of this approach has been the number of conflicts that a localized institution like this can help to resolve. The members of Justice Councils were already local leaders who knew the local population and conflict dynamics. This kind of local know-how creates opportunities for engagement in conflict resolution. It was also valuable that this is a restorative justice approach which seeks to work through consensus-building and rebuilding relationships.

The attempt to link formal and informal justice institutions has been based on a pragmatic approach, focused on working with DGs, who are technically outside the formal mechanism for resolving local conflicts but in practice play an important role in local conflict resolution. This pragmatic approach appears to have promoted more efficient delivery of conflict resolution services.

Key Challenges

The focus on existing local leaders is nevertheless a major challenge, especially within the context of Nangarhar province. Local leaders are a key target group of high-level political rivalry, through which different actors seek to expand their patron/client relationships in order to increase their influence on local communities and their status as negotiation points with Kabul, especially during election periods. They have also been active in a range of other institutions, including the NSP Shuras. Although there was no evidence of corruption among the members of the Justice Shuras, the absence of any real checks and balances to hold them accountable could easily result in scenarios in which Justice Shuras might be misused. Furthermore, the expectations created or increased among the members of the Justice Shuras, of being formally recognized as justice providers and local leaders, could possibly indicate two things: first, the main motivation behind the engagement of local leaders in such programs and activities may be shifting towards finding an access point into the Afghan government and to the resources available within the government system; and second, members may seek to become more involved in politics. While the latter could conceivably be either a positive or a negative factor, the absence of public consultation during the selection process does not enhance their legitimacy.

The overall situation in Nangarhar has resulted in a very active local leadership class, especially in areas close to Jalalabad city, whose main motivation appears to be kickbacks, privileges, and access to political power. Their increased active participation has meant that the same individuals occupy many different positions, leaving little space for others. An interview with a farmer from Surkh Rod indicated that with the same individuals involved in all leadership bodies, the people are becoming increasingly dependent on them in their daily lives. He also stated that many of the Maliks are corrupt and steal money from aid which is meant for the people.

Lessons Learned: Justice Shura Approach

- (1) Working with local know-how and local knowledge of conflict dynamics appears to promote a more efficient approach to conflict management.
- (2) Improved awareness among local communities and conflict resolution practitioners of the arguments against practices such as *baad* can have a positive impact and reduce their incidence.
- (3) Use of a restorative justice model can lead to more sustainable resolution of conflicts while also improving local relationships and stability.
- (4) Working with local conflict resolution has a political dimension, which can have severe negative impacts when the wrong kinds of individuals are included and/or wrong incentives created.

- (5) Conflict sensitivity (“do no harm”) and context analysis should be included in future programming.
- (6) Space should be created for a wider public participation in the process.
- (7) Working through informal justice institutions and actors as a mechanism for strengthening the bond between people and the state is unlikely to achieve the desired outcome.

2. Helmand: Justice Sub-Committees under District Community Councils

Development agencies based at the PRT in Helmand have worked to establish Justice Sub-Committees (JSCs) under the district-level District Community Councils (DCCs). The DCCs are formed under the Afghan Social Outreach Program (ASOP), implemented by DLG.⁵ Each DCC is composed of around 40 counselors, chosen through elections in each district. New general elections are to be held every three years; however, in practice elections are only held in parts of Helmand where security conditions are appropriate, mainly urban centers and relatively secure rural areas. The DCC has three primary focus areas: security, justice and governance, and socio-economic development. Members receive training in various subjects including statutory law, gender and human rights. They also receive a stipend to cover travel and hospitality costs, which is now being phased out (initially US \$130 per month and currently US \$50 per month). It was suggested that the phase-out is not having a negative impact on participation. The DCCs are seen as a positive counterbalance to local governors and other GIRoA officials. Examples were provided of successful advocacy through DCCs for the replacement of corrupt judges and for improvements in the distribution of government resources.

JSCs are formed under the DCCs as their main bodies dealing with local conflict resolution. During the formation process efforts are made to ensure wide representation across the district and of different tribal and ethnic groups, to ensure better access for all residents of the district. The roles of the JSCs are outlined in the Community District Plans developed by DCC members during their initial training and planning workshops. These roles are reasonably similar across all districts and can be summarized as (Ladbury, 2010):

- (1) To hear and resolve disputes.
- (2) To ensure links among communities, government, and justice sector providers.
- (3) To encourage and support those who currently solve disputes in communities.
- (4) To promote respect for basic rights in communities.
- (5) To increase the access of excluded populations to dispute resolution mechanisms.

⁵ Due to a recent government decisions, District Development Assemblies established through the Ministry of Rural Rehabilitation and Development (MRRD) and District Community Councils established through IDLG, will be joined under District Coordination Councils

Members of the JSCs (and the DCCs) are actively engaged in resolving local conflicts in their traditional role as community elders and use the JSC as a platform for support and exchange of information. Some members are also involved with registering the conflicts.

DCC/JSC Approach	
Local Ownership	For all intents and purposes, this program is founded in a solid approach to local ownership within an Afghan context: a government driven process is creating space for ordinary citizens to elect their representatives on a regular basis. This is conducted through a Jirga type election, open only to a section of the community. However it is unclear if the local power dynamic, social structures, and security situation really create space for free elections to be held, or if it is only the local elite and their supporters who are able to participate in the election process.
Effectiveness	<p>In terms of conflict resolution, it is hard to determine the effectiveness of the JSCs. A 2010 study found the conflict resolution activities of JSC to be limited and lacking (Ladbury, 2010), while more recent information does not emphasize the role of the JSC as a conflict resolution institution, rather as a platform for support and sharing among members who are engaged with conflict resolution in their own roles as local community elders.</p> <p>However, the DCCs in general are viewed as a positive factor within the improved situation in Helmand province.</p>
Conflict Sensitivity	N/A
Impact/Relationship Between Citizen and State	<p>It is difficult to evaluate the overall impact of this program on the relationship between citizen and state. On the one hand actions such as successful public advocacy for replacing corrupt judges, creating space for elections, and influence over government resources could result in a greater sense of ownership among the local population, with a positive impact.</p> <p>On the other hand, trends in other programs indicate that it is more likely that the DCCs improve the relationship between the elected elders and government officials rather than between the people and the state; this was also supported in the 2010 study. As conflict resolution services are provided on a personal basis by the elected members of the DCC/JSC, this might strengthen the relationship between citizens and local elders at the cost of the relationship between citizen and state.</p>
Sustainability	Strong government ownership of this program, regular elections, and working with local elites, all enhance the long-term sustainability of the DCC/JSC as a local institution. Although the strong local

government involvement is driven by large donor engagement, it does represent an opportunity for relationships, habits and expectations to be established, which would carry this forward at a local level past the period of peak donor engagement.

Table 2 - Evaluation Table: DCC/JSC

Key Strengths

There are several positive aspects to this approach, including the strong local ownership in areas where it can be implemented, the use of elections, and capacity building of the elected officials of the DCC.

However, a major strength of the program seems to be its use as part of a more comprehensive and integrated approach towards improving the situation in Helmand. During the implementation of this program, Helmand province has seen: a transition to Afghan security forces, with an estimated 18,000 ANSF currently placed in Helmand; reported improvements in the capacity of the police; and an increase in the availability of formal justice actors at district level. Although these processes might not have been implemented in a fully-integrated manner and much more could probably be done to create added value in this regard, this experience suggests that a comprehensive and integrated approach may have stronger results.

Within a comprehensive approach, the political dimension of conflict resolution services can become a powerful tool for generating greater legitimacy for institutions and individuals, such as the DCCs and their members, and as a consequence for other activities they are engaged in. It is worth bearing in mind that these synergies can work in both directions—other activities can have a negative effect when they reflect poorly upon the capacity of local elders to provide conflict resolution services.

Key Challenges

There are also challenging aspects of this program, one being the limited space and opportunity for women to access and influence the DCC/JSCs. Women are also generally believed to prefer statutory law rather than customary law, as practiced by local elders.

There is a challenge with the expectations that are generated for members of these councils and the solidification of their roles. It is reported that members of the DCCs/JSCs were unhappy with the arrival of formal justice actors such as the *Huqooq* department, who were seen as rivals to elders within their communities. Although the local *Huqooqs* and the traditional justice actors are reported to have overcome their differences and are working together, this is more than likely due to the weakness of the local *Huqooq* department. This raises fundamental issues of the obstacles created for long-term transition to formal justice, as well as the need for greater integration within this approach.

Corruption and perceptions that these bodies may serve as a showpiece or smoke screen constitute another major challenge. In 2010, public statements through TV and Pashto blogs accused members of the DCC of corruption. A member of the DCC also called it a showpiece and indicated that people were only participating because of financial incentives and access to resources (Ladbury, 2010, p. 20).⁶

In the long term, sustainability might also be a problem due to the way elections are held, which creates more space for some groups than others and thus might not be widely accepted. If changes are introduced in the election process and organization of these groups, it is uncertain what impact this will have.

Lessons Learned: Justice Sub-Committees under DCCs

- (1) Using conflict resolution as part of a comprehensive and more integrated approach, working with strengthening both formal and informal institutions and enhancing the capacity and space for local community to engage with both, can have significant benefits, in terms the legitimacy and trust it enables.
- (2) Regular elections can play a vital role in ensuring long-term sustainability and eventually become a means of creating checks and balances.
- (3) Women appear to prefer to access statutory law.⁷
- (4) In the short run, the role created for the elders and Maliks by formalizing their roles within the framework of the DCCs/JSCs, combined with capacity building training, can fill an important local governance gap, where local leaders effectively serve as an extension of the government in their increased usage of Afghan legal framework and cooperation with the Afghan state. However, in the long run, the incentives this creates in combination with the resources made available to them and their increased social status, can make a transition to formal governance and justice systems more challenging and may result in conflict and even violence, as political means of maintaining their role. This is particularly likely due to the weakness and limited capacity of the government.
- (5) JSCs can be a double edged sword. The political dimension and empowerment of local communities and leaders through institutions such as the DCCs/JSCs can on the one hand enable a joint common approach to local problems such as the removal of corrupt judges. At the same time it can further solidify local elite structures and, as a consequence, the inequality which currently exists, making wider empowerment of the local population more difficult. This raises fundamental questions for long-term democratic state building.

⁶ It should be noted that, due to the limitations of this study, the level of corruption and public perception of the DCC as a “showpiece” could not be confirmed or disproved.

⁷ With the possible exception, in some areas, of inheritance-related disputes.

3. Baghlan: A Local Approach in Pul-e-Khumri District

The local approach to conflict resolution in Pul-e-Khumri district of Baghlan province grew out of the local context and population. It was not initiated or supported by any NGO, governmental, or international organization. The district is largely seen as a secure area with relatively well established government institutions, within an Afghan context. The local approach to conflict resolution in Pul-e-Khumri is therefore an interesting case study, as it is locally driven and gives an insight into how people and local institutions can adapt to an improved security situation and increased government presence and authority, finding ways to work together.

The main types of local conflict in Pul-e-Khumri include those related to family issues, inheritance, land, and water (USAID, 2012). There are three primary actors dealing with conflict resolution in Pul-e-Khumri: the informal justice system, the formal justice system, and the local Directorate of Women's Affairs (WAD). There is a form of division of labour among them, in which the informal justice system is most frequently used for conflict resolution, mainly focusing on civil cases. The formal justice system deals mainly with criminal and more complicated civil cases. The WAD is being approached by local women for help in resolving their conflicts and disputes.

Commonly when a conflict occurs, especially in the public sphere, the first actors to become aware of it and to be engaged are the informal justice institutions, owing to their local presence and people's trust in them. Depending on the type of conflict and the wishes of the different parties involved, the process of conflict resolution is either initiated through the informal justice system or referred to the formal justice system. There are three main intermediaries who may function as a bridge between the formal and informal justice institutions: the *Huqooq*, within an urban setting the *wakil* (an elected sub-district mayor⁸), and within a rural setting an *arbab* (similar to a *wakil*). Criminal cases are the most common type of cases referred to the formal system, as it is seen as more capable of dealing with and enforcing outcomes in such cases. This acknowledgement by the informal system is a good indication of the progress of the formal system. However it should also be borne in mind that the formal system in Pul-e-Khumri is still seen as corrupt and slow (USAID, 2012).

The informal justice institutions in Pul-e-Khumri are similar to those elsewhere in Afghanistan, in relation to the way they are formed, the people who are part of the system, and the ways they are managed and utilized. They primarily function within an urban context on the basis of residence clusters, meaning that they do not generally operate on a district level and cannot be categorized to be operating on a village level. The main specific factor in Pul-e-Khumri is a more educated population who have relatively good relationships with the government, which in turn has some capacity to work with local communities in conflict resolution but not enough to meet all their needs. These conditions create space for such a local hybrid model to grow.

⁸ Within a district there may be a number of sub-districts, sometimes called police districts.

The WAD is the only local government institution where women can meet and speak with other women who are part of the government. This has created a new space for women to access justice. The WAD sometimes functions as a referral mechanism. However, it is risky for women to approach the WAD, especially in more serious cases. There are reports of instances in which women have been punished by their family and local elders for approaching the WAD for conflict resolution.

Interestingly, it is reported that an increased number of conflicts, after they have been resolved and a verdict reached within the formal system, are referred once again to the community and the informal system where forgiveness and reconciliation is sought (USAID, 2012). The practice of granting forgiveness to a convicted person and his/her family is reportedly fairly common. The primary purpose is typically to re-establish good relations within a community and promote stability, and there is usually financial compensation to the victim and/or his/her family (USAID, 2012).

Local Community Approach in Pul-e-Khumri	
Local Ownership	This approach has been developed and implemented locally without any NGO, donor, or government engagement.
Effectiveness	Although it is difficult to assess the overall effectiveness of this approach, it does bring together the strengths of different institutions in order to provide conflict resolution services, in line with the principle of restorative justice.
Conflict Sensitivity	The new function of the Women’s Affairs Directorate can result in exaggeration of conflicts and punishment of women. This might be due to some parts of the community not being ready for this development and the new space made available for women.
Impact/Relationship Between Citizen and State	Although within the framework and limitations of this study it is difficult to determine the overall impact on the relationship between citizen and state, this approach should in principle have a positive impact as different institutions are working together to provide a better services to local community members. However, questions remain over the continued perception of the formal justice system as corrupt and slow.
Sustainability	As this approach has been developed and implemented locally without any outside involvement, it is likely to be sustainable over time, given that the security situation and the capacity of the different institutions is high enough for collaboration and partnership to continue. Furthermore, the practice of restorative justice should enhance the sustainability of conflict resolution.

Table 3- Evaluation Table: Local Community Approach in Pul-e-Khumri

Key Strengths

A key strength of this approach is its natural evolution without outside support. It provides a potentially useful insight into how local government institutions and local communities can find ways of working together and utilizing each other’s strengths to

provide better services to local community members. The locally grown nature of this approach also means that it is shaped by local needs, realities, and available capacities, and not necessarily by political considerations.

This approach is also creating valuable space for people to engage with different institutions for a more sustainable resolution to various types of conflicts.

Although it is not part of the WAD's mandate to provide conflict resolution services to women, the relatively improved government presence in the district and, especially, the employment of women officials by the WAD, creates space for women to find alternative ways of getting support. This is both a positive sign in terms of institution building at the sub-national level and an insight into the ingenuity, creativity and need among Afghan women and the population at large.

Key Challenges

This approach is dependent on space being created by an improved security situation and better capacity among the government institutions, which enables a partnership to emerge with local communities. A breakdown in either of these factors could seriously undermine the approach.

Furthermore, the issue of corruption is a major challenge. It is reported that the formal justice system, including the *Huqooq*, is regarded as slow and corrupt. Interviews with local development practitioners also indicated that the increased role of the *wakils* and *arbabs* as a bridge between people and the state has resulted in increased level of corruption, as this role becomes treated like a business involving brokerage fees.

Lessons Learned: Local Community Approach in Pul-e-Khumri

- (1) Under the right conditions, partnership between formal and informal institutions can emerge naturally. In particular, improved security conditions combined with improved government capacity at the sub-national level creates an opportunity for partnerships to emerge, where people and the state can work together.
- (2) Improved government capacity and performance at the sub-national is a vital step towards improved legitimacy and recognition which creates space for partnership.
- (3) Locally grown approaches are likely to be better adapted to local needs and capacities, and are thus more likely to be sustainable in the long-run.
- (4) When culturally appropriate space is made available for women to get support for conflict resolution, they will use it.
- (5) Corruption is a major challenge, both with the formal and informal institutions, for the legitimacy and long-run viability of partnerships.

(6) This new approach is fragile and highly dependent on the continued capacity of the local government institutions and on political and security conditions in the province.

4. Balkh: Peace Councils

The Peace Council approach has been implemented by Action Aid Afghanistan, across four districts in Balkh and Jawzjan provinces. This analysis focuses on the 39 Peace Councils set up in the Balkh and Dawlatabad Districts in Balkh province.

Peace Councils are village-level dispute resolution bodies elected by the people; separate male and female Peace Councils established. Each usually consists of around 30 individuals, mostly local elders, mullahs, teachers, and farmers. The Peace Councils are set up through one-time elections. Normally people from the village(s) to be served are invited for a meeting in a location within their communities. In the meeting, Action Aid facilitators give a presentation on the intended structure and function of the Peace Councils and introduce certain recommended criteria for selection of members. A number of people are nominated by the community (or by themselves) and then an election is held, usually in the local mosque.

The members of Peace Councils are provided with a range of training aimed at enhancing community-level capacity to generate a common understanding of conflict, its root causes, how conflict turns into violence, and how conflicts can be resolved in a peaceful and durable manner. This is then followed up with training on listening, negotiation, mediation, dialogue and conflict resolution skills and techniques. Action Aid training material usually contains the following topics: **(1) Concepts** of conflict, violence, peace, development, identity, and power; **(2) Skills** of conflict analysis,

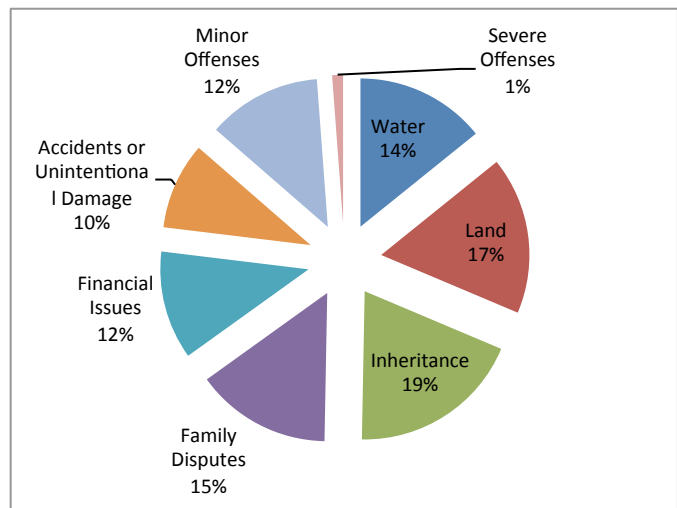


Table 4: (Van Halema & Rassul, 2013)

communication, negotiation, mediation, and perceptions; and **(3) Strategies** such as conflict management style and practical peace plans. The training is provided during a five-day workshop for each Peace Council.

Peace Councils are provided log books for documenting their activities. Based on the log books analyzed, a total of 169 conflicts had been resolved within the period of a year and a half between 2010 and 2011 (Van Halema & Rassul, 2013). As indicated in the chart above, the main types of conflicts resolved by the Peace Councils included land, inheritance, family disputes, and water.

Peace Council Approach in Balkh	
Local Ownership	Community ownership of Peace Councils is relatively high. Usually the engaged members are individuals who are respected and trusted by the community. However, the one-time election process means that only the members of the community who are able to attend that one meeting will have a say in the composition of the Peace Councils, undermining a broader engagement of the wider village. Furthermore, women do not participate in the selection and election of male Peace Council members, and vice versa.
Effectiveness	Within a year and a half, the Peace Councils had resolved 169 conflicts in 39 villages, indicating that this can be an effective mechanism for resolving local conflicts.
Conflict Sensitivity	There are two primary concerns in relation to conflict sensitivity. (1) The one-time election of the Peace Councils favours those who can participate, who have time because they are not out working in the fields (the main activity in many rural areas) or elsewhere. This can result in conflict later on as some groups not represented at the moment may not be happy with the set-up of the Peace Councils. (2) The Peace Councils are also at risk of being co-opted by local strongmen or warlords who can use them for personal gain. No adequate checks and balances could be identified that would prevent such a scenario.
Impact/Relationship Between Citizen and State	Similar to some of the other approaches, Peace Councils appear to have had a positive impact on the relationship between the members of the councils and local government actors and also strengthened the relationship between citizens and members of Peace Councils, at the cost of the relationship between citizen and state.
Sustainability	This approach is community-driven and based on local structures, which would suggest a favourable outlook for sustainability. In addition, the use of a restorative form of justice is likely to result in more sustainable decisions. However, the vulnerability to local strongmen and potentially undemocratic representation might undermine sustainability in the long run.

Table 5- Evaluation Table: Peace Council Approach in Balkh

Key Strengths

A key strength of this approach is that it opens up space for a wider engagement in local conflict resolution. Whereas in many other approaches focus is put on local elders, maliks, and religious actors for conflict resolution, Peace Councils have also engaged with others, including teachers, farmers, and local traders. Through the capacity building training aimed at transferring skills as well as legal awareness, more people are made able to engage in local conflict resolution processes. A more diverse group also means

more diverse perspectives and reasoning available within the Peace Councils, which may be one reason why they are able to deal with so many different types of conflicts.

Another key strength is the formation of women's Peace Councils, which both creates space for women to act as conflict resolution service providers and provides them with better access to such services in a culturally sensitive manner. Women's Peace Councils mainly work with resolving minor conflicts, but may also act on behalf of local women in bringing more serious cases to the men's Peace Councils.

In addition, a positive finding during the field study was that the types of expectations and incentives regarding personal power and political dynamics, identified among members of other bodies such as JSCs and Justice Shuras, could not be discerned among the members of the Peace Councils in Balkh province. This might be due to the localized approach taken by Action Aid and/or the broader context in Balkh province, where political focus is aimed mainly at the provincial and regional level, leaving a lower level of political interest in village level activities in the districts of Balkh and Dawlatabad.

Key Challenges

In the short run, the key challenges of this program are related to the way the Peace Councils are established, with the potential that they will neither be democratically representative of their local communities nor give all members of the community the same opportunity to participate in the nomination and election process. It is also based around the risk of having local warlords or strongmen, who are very common in the northern parts of Afghanistan, use these councils for their own personal benefit as they have done with some NSP shuras.

In the long term another key challenge is focused around the capacity of this approach to bridge the gap between citizen and state. If the activities and services provided by the Peace Councils result in an improved relationship between members of the Peace Councils and the local community the cost of the relationship between citizen and state, then: (1) the increased legitimacy and social status of the Peace Council members might have a corrupting influence on them, and (2) the increased disconnect between citizen and state due to the perception of an inactive state which does not work for the people, leaving the people to work for themselves, could make citizens more vulnerable to anti-government propaganda.

Lessons Learned: Peace Council Approach in Balkh

- (1) Opening up space for a broader range of participants than just the traditional actors engaged in conflict resolution can be a good way of diversifying the perspectives and reasoning that shapes informal conflict resolution institutions, and may be a good tool for long-term modernization of the informal justice system.

- (2) Similarly, opening up space for a wider group to engage in providing local conflict resolution services could reduce the political legitimacy available for only one group or individual to misuse.
- (3) Capacity building aimed at building conflict resolution and conflict analysis skills is a useful tool for more effectively enabling a broader group of people, especially women, to engage with local conflict resolution.
- (4) Working with a localized approach through a relatively apolitical implementing organization can help to minimize the formation of potentially negative expectations and incentives members of informal conflict resolution institutions such as the Peace Councils.
- (5) Context analysis should be undertaken to ensure that the approach gives space for all to participate and builds in checks and balances to prevent the misuse of these councils by a group or individual.
- (6) Local conflict resolution services provided by non-state actors can have a positive impact on the relationship between citizen and the non-state actors at the cost of the relationship between citizen and state.

H. Conclusions and Recommendations

This study has examined the main drivers of vulnerability to local conflict which can generally be summarized as disagreements over land, water, and inheritance and the breakdown of law on order and governance structures. All of these in turn are closely related to issues of poverty and limited livelihood opportunity. This vulnerability means that the smallest livelihood related shocks, which might come in the form of a dispute over land or water, can have a serious if not devastating impact on people's lives and human security. Such disputes are more likely to grow into conflict and even violent conflict. Local conflict resolution mechanisms have traditionally been developed as a way of preventing this from happening, enhancing local stability and providing greater assurances of people's livelihoods and human security. Due to the importance of providing such a service and the accompanying social and economic security, the providers of conflict resolution services enjoy local legitimacy, improved social status, and access to various resources. To a greater or lesser extent they are empowered on an individual level due to their role as dispute resolvers, a power dimension to the practice of conflict resolution which is often overlooked, ignored, or exploited.

The study has also examined four distinct approaches to local conflict management developed and implemented by different actors, in different parts of the country, on different levels and within different socio-economic and security environments. At first glance, all four approaches are successful in practically resolving local conflicts. However a deeper analysis is less reassuring. There is a lack of understanding and systematic attempts to address the impact on the perceived legitimacy of the state, as well as the incentives and expectations created for members of the various conflict resolution mechanisms. It seems unlikely that using local institutions for conflict resolution will be an effective mechanism for strengthening the relationship between citizen and state, and might well have the opposite impact. Indeed, this could be one of the major constraints on future attempts to strengthen the state at sub-national level and as the main provider of conflict resolution services, and the role of statutory law as the main legal framework used in Afghanistan.

Compounding these issues is the fact that development partners may also have a proactive engagement with such informal institutions, especially in Nangarhar and Helmand, which serves to solidify and strengthen existing power structures. The approaches in Balkh and Baghlan appear to be more distant from politics, and thus less likely to lead to the same kinds of issues. These challenges, as well as the reputational risks they pose, are especially important for the UNDP to understand, as it considers its potential engagement with local conflict resolution mechanisms.

Local conflict resolution, especially when it follows the principles of restorative justice, is an important part of Afghan society and plays a vital role in providing basic security and a rule of law framework for local communities. This importance has been recognized by various power political brokers who seek to use the provision of local conflict resolution for their own agendas. The long-term aim should be to develop a state system able to provide such services, but in the short run creative approaches need to be developed

for supporting local conflict management institutions in a responsible and effective manner.

Recommendations

Overall, none of the approaches are recommended to be replicated in their entirety. However, there are important lessons learned from each experience which should be included in future program design. Two alternatives have been developed for the consideration of the UNDP for future engagement with local conflict management.

Alternative One: Focus more on the Formal System

The first and **highly recommended** alternative is for the UNDP **not** to work directly to promote informal institutions of local conflict management. Instead UNDP should take a close look at the Pul-e-Khumri case study and work to improve the conditions for a natural partnership to emerge between citizen and state, including:

1. Continue working with and building up formal sub-national governance institutions, focusing in areas where the security situation will allow UNDP to do so meaningfully.
2. Work to enhance legal awareness through targeted awareness campaigns tailor-made for each area, using local know-how.
3. Promote the principles and usage of restorative justice, as appropriate, within the formal justice system.
4. Actively work against corruption, especially within the legal system.
5. Take a long-term and responsible approach, as the outcome is more likely to be sustainable and effective.

Alternative Two: Informed and Conflict-Sensitive Engagement

The second alternative, if UNDP is determined to work with local conflict management mechanisms, is to take on board the following lessons and recommendations in order to develop a conflict-sensitive program:

1. Continue working with and building up formal sub-national governance institutions, focusing on areas where the security situation will allow UNDP to do so meaningfully.
2. Work with local know-how.
3. Conduct a context analysis and a conflict sensitivity analysis of the program and the implementation area, with a special focus on the types of local structures the program would likely be affecting and the kind of incentives and expectations the program would create.
4. Create space for a wider public participation in setting up the program, and hold regular elections of conflict resolution mechanisms.

5. Structure any future councils or *shuras* in a manner that creates space for more than just the traditional actors to engage. For instance, there could be a time limit on how long a single individual could be member.
6. Build in measures to prevent corruption, beginning with regular elections and time limits on membership in the councils.
7. Emphasize broader legal awareness.
8. Use the program as part of a larger, integrated approach.
9. Work to develop conflict resolution and analysis skills among the broader community, focusing beyond the actors who traditionally provide such services.
10. Create special space for women, for instance through local women's councils.
11. Internalize an understanding of the political power dimensions of working with local conflict management.

In addition, this study recommends that UNDP conduct more in-depth analyses of the Pul-e-Khumri and Helmand case studies. In Pul-e-Khumri this would focus on understanding the underlying drivers and enablers of the cooperation that has emerged (more or less organically) between government officials and local communities. In Helmand, this would look further into how the PRT in Helmand managed to use conflict resolution as part of a larger, seemingly more organized and integrated approach.

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