

Justice & Governance in Eastern Afghanistan: CCM Working Procedures



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Chapter: One General Provision

Article 1: Rationale

This Working procedure has been enacted in recognition of the need to establish three provincial and one regional Commissions on Conflict Mediation (CCMs) that include members who are representative of the population, have received appropriate training, are increasing efforts to include women, and have begun to resolve major disputes in each target province Logar, Paktia and Khost

Article 2: Purpose

The purpose of the working procedures for the CCMs shall seek to resolve disputes and, especially at the regional level, develop policy recommendations, working with respected traditional elders, local religious leaders, and other individuals and relevant government officials in each target province, which can contribute to the enduring resolution of disputes.

The CCMs shall operate in compliance with its status as Commissions on Conflict Mediation (CCMs) under the project goals and objective, in close coordination with the legal system of Afghanistan.

Article 3: Terms

The following expressions have the meanings set forth in this article:

1. **Mediation** is a process for resolving disagreements in which impartial third party (the mediator) helps two or more people in dispute to attempt to find a mutually acceptable resolution
2. **Conflict** is an expressed struggle between at least two interdependent parties who perceive incompatible goals, scarce resources, and interference from others in achieving their goals." a conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other.
3. **Strategy** a Strategy is a plan of action or method of approach designed to achieve a particular goal.

Article 4: Roles and Responsibilities

- a) The CCM shall give equal value to the views of each member of the dispute parties, without prejudice to the ability of CCM members to assign greater or less evidentiary weight to parties' statements.
- b) The CCM shall keep details of the mediation process confidential
- c) The CCM shall be neutral and impartial

- d) The CCM shall consider equal value to the rights of minority and women during the decision-making
- e) Dispute resolution by the CCM shall be voluntary and non-binding (except with the express, written, and voluntary consent of the dispute parties) and be based on the Concurrence of all parties.
- f) The CCM members shall thoroughly investigate all disputes. They shall strive to know the phenomenon of dispute, type of dispute, developing process of dispute, method of dispute analysis, and factors of dispute which takes place in environment such as in the family, School, community, and be able to eliminate it professionally
- g) The process will be conducted expeditiously. Each CCM member will make every effort to be available for the bi-weekly CCM meeting, and as needed for the prompt resolution of disputes.
- h) CCM members shall endeavor to reject cases which are beyond their expertise such as criminal cases and death related cases

Article 5: Powers of the CCM

The CCM shall exercise only those powers enumerated in this working procedure and as implemented in any Laiha, Tarzulamal, or other legislative instrument issues in coordination with the government of Afghanistan.

Article 6: Amendment of this *Tarzulamal* (Procedure)

This *Tarzulamal* (Procedure) may be amended by the CCM members to achieve the purposes of **Error! Reference source not found.** and the governing process stated in Article 1.

Chapter: Two Functions

Article 7: Conflict resolution

- a) The CCM shall mediate and facilitates conflict resolution in good faith and to the extent of their appropriate powers.
- b) The CCM shall support preventive action, helping individual disputant parties avoid preventable mistakes
- c) In its resolution of conflicts, the CCMs shall keep in mind their strategies for women's and government engagement, as well as the rights and dignity of minority parties.

Article 8: Before the Negotiation

The CCM may enter disputes at the request of the parties or being appointed by an authoritative third-party. The CCM has these main tasks at this stage;

- a) The CCM members must build credibility with the disputants

- b) The parties must have confidence in the CCM members personally, the CCM's parent organization, and in the mediation process itself
- c) The CCM, in a way non-prejudicial to its impartiality, must create a relatively close, comfortable relationship with the parties.
- d) The parties must be educated about the mediation process, since it is ultimately the parties themselves who must resolve their dispute
- e) Mediators may initiate contact with the parties in person or by phone or letter.
- f) Where there is some barrier to contacting parties it may be helpful to have a Liaison Officer or other member of CCM project staff introduce the mediator
- g) The timing of CCM's entry depends upon what type of intervention they plan to make, early intervention may produce more cooperative, less coercive settlements and better relationships
- h) Late intervention may allow the issues to develop more fully, and the disputants to have exhausted their desire and ability to continue the conflict

After these steps have been taken, the CCM must secure the parties' commitment to mediation. This commitment may range from an informal oral agreement to a formal written contract, depending upon the situation.

Article 9: Negotiation

The CCM members may facilitate the settlement in any manner the mediator believes is appropriate and is acceptable to the parties. The CCM will help the parties on their underlying interests and concerns explore resolution alternatives and develop settlement options. The CCM will decide when to hold joint meeting, and when to confer separately with each party.

Article 10: Settlement

If a settlement is reached, a preliminary memorandum of understanding or term sheet normally will be prepared a signed or initialed before the parties separate. Thereafter, unless the mediator undertakes to do so, representatives of the parties, or with the parties' express consent, CCM members or project personnel, will promptly draft a written settlement incorporating all settlement terms. This draft will be circulated, amended as necessary, and formally executed. If litigation is pending, the settlement may provide that the parties will request dismissal of the case. The parties also may request the court to enter the settlement as consent judgment.

Article 11: Failure to agree

If a resolution is not reached, the CCM members will discuss with the parties the possibility of their undergoing further mediation or agreeing on advisory or binding arbitration. Such further action will not commence, unless all parties agree.

Chapter: Three Strategy Development

Article 12: Women Engagement Strategy

The CCM members shall work together to decide what women engagement strategy is best suited to their situation. This strategy shall be developed in coordination with women's civil society organizations, provincial Departments of Women's Affairs, and, if they are active in the area, local *spinsari*. The CCM members may develop a women's engagement strategy incorporating, but not necessarily limited to, the following:

- a) The CCM members may help to identify the interests at stake in the related conflict, and to clarify their respective goals for the development of women engagement strategy
- b) The CCM may help to explore the range of possible, probable and acceptable methods for the development process of women engagement strategy
- c) The CCM members may describe the basic types of strategies for resolving women related disputes within the strategy
- d) The CCM can help the parties to clarify the criteria that will guide their choice of the strategy
- e) The CCM can assist the women related issues in weighing their options and reaching a decision
- f) Finally, the CCM can help the women their strategies into a coherent, consistent approach to women related issues at national level

Article 13: Methods for Discovering Interests

There are two types of methods for discovering interests, indirect and direct. Indirect methods include testing, and hypothetical modeling. Direct methods include questioning the parties, and brainstorming. The CCM members may employ these methods as follow;

- a) CCM members may test for interests by listening to a party's statements, tentatively identifying the interest expressed, and then expressing that interest back to the party for further feedback in hypothetical modeling the party ranks a number of hypothetical settlements in terms of satisfaction.
- b) Questioning the parties, and brainstorming.
- c) Parties may try to bluff, or misrepresent their interests. CCM members must be alert for such bluffs, and try to call them.

- d) Mediators may use persuasion or rationalization to induce a party to abandon their bluff and present a more accurate picture of their interests.
- e) The CCM members must also encourage each side in the dispute to acknowledge the other side's interests, even if they do not agree with those interests
- f) Finally the mediator shall incorporate both parties' interests into a joint problem statement. A joint problem statement "enables negotiators to commit to work on a common problem because they believe that their needs will be respected, if not met by, the solutions that will be developed

Chapter: Four Miscellaneous Decrees

Article 14: Meetings

- a) The CCMs shall endeavor to hold meetings not less than bi-weekly at their principal locations or at such other locations, as agreed by the majority of the CCM members.
- b) Such meetings shall be of sufficient frequency and duration to ensure the full implementation of the dispute resolution within the duration of the CCM operation.
- c) The CCMs shall hold at least five confidence-building or coordination meetings at provincial level (months 5-9 of the project), and also meet with government officials from time to time to facilitate CCM operation and build government-CCM cooperation.
- d) The CCM shall also hold a project review meeting at end of year one
- e) A Liaison Officer at Kabul level shall facilitate meetings between CCMs and the government officials

Article 15: Notice Requirements

- a) All CCM members shall be notified in advance of all meetings to provide sufficient time to prepare and participate in the dispute resolution of the CCM affairs
- b) Notice of meetings shall be sent to each member at their mobile contact or at such place or in such form as the member may designate to the CCM in writing.
- c) Notice requirements may be waived, in writing, at any time prior to or after a meeting.

Article 16: Quorum Requirements

- a) The presence of 75% of the CCM members shall constitute a quorum.
- b) Actions taken at any meeting where 100 percent (100%) of the CCM members were notified pursuant to the requirements of article 16 and at least 75% of the members were present, shall bind all CMM members to the decisions made at the meeting.

**Article 17**

CCM members shall, to the extent appropriate and consistent with CCM autonomy, assist TLO personnel in executing required monitoring and evaluation, record-keeping, reporting and research aspects of the present project.

Article 18: Record and registration

All the results and project activities shall be registered and documented and then TLO will upload it to its website for future use.

Article 19: Validity

This working procedure is subjected to execution after the approval of the TLO and the DONOR organization in Afghanistan