

# Justice & Governance in Eastern Afghanistan: Review of Government Engagement



## Review of JGEA Project Government Engagement

At the provincial level, government engagement under the JGEA project has proceeded more smoothly and thoroughly than in other similar TLO projects. The success of this engagement seems to stem from two factors. On the one hand, TLO has provided each CCM training in Afghan statutory and Sharia law, which is a fairly new feature of TLO programming (and was an extremely new feature of TLO programming when the JGEA project began in 2012). The CCMs deeply engaged with the training, going so far as, in some cases, citing legal provisions in their decisions. It also appears that the training created an enabling environment for CCM-government engagement, with the provincial governments in Logar, Khost and Paktia having reasonable confidence in the CCMs' intent, and ability, to follow the law.

The second factor that appears to contribute to CCM-government engagement is personal support extended from provincial government officials to the CCM. Such support can certainly be effective and beneficial. However, given the unitary nature of the Afghan state, provincial governments have only limited ability to *officially* engage with CCM-type bodies (e.g. by the signing of a joint MoU). By contrast, Kabul officials in theory have greater capacity for official engagement, but are held back by the lack of an approved government policy or law providing authorization, and laying out a framework, for cooperation with non-state dispute resolution bodies.

Of course, this situation is neither new to Afghanistan, nor new to the JGEA project. Indeed, it hampered Kabul-level government engagement throughout the first year of the project. For this reason, at the beginning of the project's second year, TLO developed a new "Services Bureau Strategy", which is to say a strategy for the guesthouse for elders which TLO maintains in Kabul and for the project's Kabul Liaison Officer to more effectively pursue Kabul-level government engagement. At this time, the success of this strategy remains difficult to determine. Nevertheless, Kabul government officials and CCM members did have some initial success in the mediation of a severe tribal dispute in Dand Patan district of Paktia province.

### ***Provincial-level Engagement***

The JGEA Project has further strengthened the existing linkage between the formal and informal justice sectors in the Project provinces (Logar, Paktia, and Khost). As a result of CCMs regular confidence building meetings organized by the project staff with provincial line departments, Huquq, criminal departments and provincial courts and as well as provincial governors. When it is necessary to refer a case from a local government to the CCMs, the provincial Huquq offices provided relevant documents and legal provisions to make it easy for the CCMs to mediate the cases. The performances of the CCMs have gained them recognition of the formal justice sector and cases are given back to the CCMs from the local offices of the Huquq or courts. In Logar province, the local Huquq has asked The TLO project staff to provide the location of each member of its CCM, so that they can refer cases. Based on TLO's statistics, during the Project period, there were in total 15 cases referred to the CCMs by the formal justice sector: 9 in Logar, 3 in Paktia and 3 in Khost.

The linkage in criminal cases is more complicated. In the majority of cases, CCMs members referred criminal cases to the formal justice system for handling *Haq-ul-Ilah* (state's right). However, in some criminal cases, where the court's function could not go beyond imposing sentence punishment to the defendants, it was the CCMs that reconciled the parties and prevented revenge at the community level. This is particularly true for cases involving different ethnic groups, where the likelihood of continued conflict is high. In some cases, CCMs also directly dealt with criminal cases referred by the community elders and the conflict parties, which invaded the authority and jurisdiction of courts. Although in some cases arguably inconsistent with the law, some local courts/Huquq offices tended to recognize such decisions by giving their stamp approval to the CCMs' decision if they considered these decisions to be right.

### ***Kabul-level Engagement***

The importance of both formal and informal justice sectors in ensuring access to justice in Afghanistan has been widely discussed during the confidence building meetings at provincial level. It has been pointed out that while the informal justice system has an important role to play being in such close proximity to the Afghan population and therefore can assist in resolving local disputes fairly successfully, the formal justice system is vital in ensuring that cases are resolved equitably and in accordance with Afghan statutory and Sharia law and international human rights standards. The interdependence of these two sectors has been observed in reality at provincial level- government engagement , as judges and prosecutors sometimes refer cases to the informal system and vice versa. In 2008, the Government of Afghanistan began to focus on the informal justice sector and as such, both Afghanistan's National Justice Sector Strategy and the Afghanistan National Development Strategy of 2008 highlighted the need for the government to adopt a policy on the Afghan state's relations with non-state resolution councils. Unfortunately, after the change in the appointment of a new Minister of Justice (MOJ) in January of 2010, work on the draft traditional dispute resolution policy was discontinued and replaced by a draft law, which is still pending in the Taqin of the MOJ. The three CCMs and other local women representatives are therefore provided with workshops and courses in Afghan statutory, Sharia, and fundamental human rights and the relation between the formal and informal justice systems. The question of how these actors should be adopted in the official Afghan justice system is left to the central government. During the meeting organized with the MOJ by the project staff during the project period, the Deputy Minister pointed out the informal justice sector is potentially extremely important in improving the Afghan justice sector, particularly because they are, at the moment, the only decently functioning judicial actors with any legitimacy amongst the Afghan people. The MOJ has suggested that there is a dire need for approved policy or law on the relation between the formal and informal justice systems in the country, and then – but only then – may MOJ officially sign any MoUs on traditional mechanisms. For the time being MOJ is able to support the traditional mechanism only implicitly and not officially.

More recent attempts to arrange Kabul-level government meetings have also faced these difficulties, while also meeting with some success. In particular, TLO, during the most recent RCCM meeting, attempted to arrange meetings between the RCCM and the Independent Directorate of Local Governance (IDLG) and Ministry of Border and Tribal Affairs (MBTA). Here the IDLG, while still

theoretically willing to meet with the RCCM, expressed a similar concern to the MoJ, stating that opposition from some ministries, and the Ministry of Women's Affairs in particular, meant that they would be sharply limited in the extent and terms of their engagement.

Events have proceeded more robustly with those government bodies immediately concerned with the resolution of particular conflicts. An initial collaboration between the CCMs and Kabul government officials took place in Dand-e Patan district, occasioned by a severe conflict between the Zazi and Mangal tribes. At that time, both the Paktia CCM and members of the Khost CCM, along with provincial government officials, were heavily involved in mediating the dispute, and a delegation from Kabul – including the Minister and Deputy Minister of Tribal Affairs, the Minister of Interior, and Paktia parliamentarians – came to assist. The Paktia CCM, which had previously mediated a ceasefire to the conflict, facilitated the travel of these officials to Dand-e Patan, where the delegation of both non-state and government leaders met with the conflict parties, and obtained their agreement to refer their dispute to the provincial court. This initial engagement thus appears to have been successful, but in light of the MBTA, MoI, and Parliament not having a clear dispute resolution portfolio, the terms of future engagement remain to be worked out.

The extent of potential Kabul-level engagement also remains more opaque than would be desirable for simple logistical reasons. Although TLO, around the time of the most recent RCCM meeting, as above, did schedule meetings with the IDLG and MBTA, this scheduling did not take into account the attendance of most high level Directorate and Ministry officials at a series of meetings with the Turkish government. Thus these officials were not available to meet with the RCCM, and TLO is making attempts to reschedule.

### ***Conclusion***

Thus, as of now, TLO's government engagement efforts have advanced only slightly from where they stood at the beginning of Project Year 2, with robust provincial engagement, and fairly anemic Kabul-level engagement. Because the absence of relevant government officials has also stymied TLO's engagement efforts – that is, a factor which appears more happenstance than to relate to any act or omission on TLO's part – the effectiveness of TLO's increased efforts at Kabul-level engagement is also at this time difficult to assess. With that said, TLO continues to pursue such engagement, and the MBTA appears a sensible place to start. To this end, TLO is tentatively planning to itself meet with the MBTA in the near future, and to arrange a meeting between the MBTA and RCCM when the latter is next in Kabul.