



AN EVALUATION OF THE KHOST COMMISSION ON CONFLICT MEDIATION (CCM)

THE LIAISON OFFICE



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Table of Content

1	INTRODUCTION.....	3
2	PROJECT CONTEXT	3
3	METHODOLOGY.....	5
4	PROJECT DESCRIPTION – THE CCM IN KHOST	6
4.1	CCM Membership	7
4.2	Quick overview of CCM cases	8
5	REASONS FOR THE CCM SUCCESS.....	10
6.1	Human Success Factors	10
5.1.1	Impartiality and Neutrality	11
5.1.2	Unity among CCM members	11
6.2	Organisational/procedural success factors	12
5.2.1	Offer services free of charge	12
5.2.2	Speed and quality of service provided	13
5.2.3	Assisting the Afghan Government in providing justice	13
6.3	Words of caution – success to being the only alternative?	14
6	CHALLENGES/WEAKNESSES OF THE CCM	15
6.1	Lacking link to the formal justice system	15
6.2	Averting or Serving Justice – the problem with criminal cases.....	16
6.3	What cases to judge.....	17
6.4	Recognition/lacking publicity.....	17
7	CONCLUSION.....	18
7.1	Sustainability	18
7.2	Replicable model or one-of-a-kind success?	19
8	WORK CITED.....	19

1 Introduction

Two and a half years 'after its inception, the experience of the Khost Commission on Conflict Mediation (CCM) demonstrates that, far from being antagonistic, government and traditional justice systems can be mutually reinforcing' (TLO 2008a, 5). The CCM so far has successfully resolved 23 disputes, some extremely protracted, dealt with emerging conflicts, and de-escalated active conflicts by brokering cease-fires; all under government supervision and approval.

The purpose of this evaluation is to critically examine the factors that have led to the success of the CCM, while at the same time identify challenges that need to be addressed. In order to ensure that the CCM remains a legitimate, effective, and sustainable conflict resolution body in the southeast.

2 Project Context

Khost Province (along the provinces of Paktia, Paktika and southern parts of Ghazni) used to be a single administrative region known as Loya Paktia (Greater Paktia), with Gardez as the regional political and administrative centre. Loya Paktia was split into the current administrative units in two phases: in 1978, Paktika (and the southern parts of Ghazni) was given the status of an independent province from Paktia; then in the early 1990s during the *mujahideen* government of Burhanuddin Rabbani Khost became an independent province. Despite these new administrative divisions, the provinces are best thought of as a cluster, as the population has overlapping tribal and religious relations and shares tribal leadership.

While Gardez in Paktia still functions as political centre in the Southeast (due to its proximity to Kabul), Khost has managed to become the economic and cultural regional centre of Loya Paktia. Due to its close proximity to Pakistani markets and important agricultural output linked to a favourable climate, Khost has become a thriving economic centre. Cultural and literary associations, an educated population, and the concentration of economic wealth have encouraged the development of an active civil society.

Due to the favourable weather, the agricultural output of Khost is highest in the Southeast and its connection to the industrial areas of Punjab and Karachi (Pakistan) is strongest. This makes Khost one of the important trade centres in Afghanistan with very strong economic links to Pakistani markets. The mountainous terrain of the seven Khost districts that border Pakistan's FATA agencies (Kurram and North Waziristan) has innumerable unofficial passes through which goods are imported to Afghanistan.¹ This may be done to avoid taxation by the Pakistani state, to save on transportation goods or circumvent export bans by Pakistan (e.g., on flour in 2008) and closures of official border passes.

¹ Total border length of 134 km: Jaji Maydan, Bak, Gurbuz, border with Kurram Agency and Khost (Matun), Tani and Spera border with North Waziristan agency. Tere Zayi (sometimes also referred to as Alisher) district borders both Kurram and North Waziristan Agency.

Goods such as automobiles, timber, cigarettes, and electronics, or products coming from Iran and Central Asia are smuggled into Pakistan's Federal Administered Tribal Areas (FATA) and later to other Pakistani markets. In particular, the smuggling of timber is depleting a scarce natural resource in Southeast Afghanistan—forests. At the same time, Khost is dependent on Pakistani markets for the import of many goods of daily use. This has proven dangerous when trade is blocked by either the insurgency, the Pakistani government, or Pakistani Pashtun tribes in order to avoid the export of goods that are scarce in Pakistan, such as flour and cement (construction material), which could lead to price increases in Pakistan.

In the current so-called “war on terror”, the Southeast, and especially Khost, has become a centre of interest. There is renewed attention to Greater Paktia and the adjacent FATA areas in Pakistan since the insurgency, supported from inside Pakistani territory (which seems to be one of the main regional command/regrouping areas of militants) is increasing tensions along the Durand Line.

The level of insecurity has risen sharply in Khost. Insecurity in Paktika has already spilled over to Logar and Ghazni and is affecting Khost. The insurgency has spread rapidly in several districts in Khost (Bak, Tere Zayi, Gurbuz, Tani, and Spera), and is slowly reaching the gates of Kabul.

Tribes on both sides of the border are increasingly mistrustful of each other. Tribes on the Pakistani side, including Afghans in the Afghan refugee camps, perceive all those on the Afghan side of the border as working with the infidels –i.e., the Afghan government and foreign security forces – and therefore as non-Muslims. This is directly linked to targeted propaganda on the Pakistani side claiming that Afghanistan has become the centre of sin (selling alcohol, banning prayer calls and allowing promiscuous Indian TV-soap and music clips). Parallels to rhetoric used by the *mujahideen* and their Pakistani supporters during the *jihad* are evident, as *mujahideen* said the same thing about the Soviet Union and the Afghan Government of that time. Religion and sovereignty is once more being used as a powerful propaganda tool in the FATA and Southeast cluster Provinces. Likewise, tribes in southeastern Afghanistan see the Pakistani government, insurgency groups and their leaders as a threat to stability and development in the region.

While the insurgency has gained ground in Khost and almost all tribes have sections within the current insurgency, large segments of the community do not support the insurgency directly. Yet, they also see no reason to fight the insurgency as 1) the government is unable to get tribes on board due to weak sub-national governance; 2) tribes do not feel that the government would even support their fight, or be able to guarantee them protection; and 3) they do not want to fight an insurgency that may rule their area in the future. In areas where tribes feel that the Afghan Government is unable to protect them from the insurgents, they may strike a deal with the insurgents in order to stay alive. The latter can be considered a survival technique in a volatile environment rather than ideological support.

This “survival behaviour”, incidentally, is not limited to tribes, but as noted above, to local government structures as well. Some district governments are largely incapable of tackling the insurgency, let alone protecting the community and its leaders. On the side of the Afghan

Government, only the Afghan National Army(ANA) and central police structures effectively have strength and capability, while other government bodies often stay neutral. An example of the latter is Gurbuz District in Khost where there are three border crossings, one of them official, and the other two unofficial. At the two unofficial crossings the border police seem particularly susceptible to bribery and corruption vis-à-vis smugglers, whereas on the official pass customs officers levy taxes. The strength and efficiency of the insurgency is thus very much affected by how tribes and local government structures react to them.

In sum, the situation in Khost (and the Loya Paktia) is complex, unstable, and often violent. There are several mutually reinforcing factors that have a negative impact on security and stability. There is a lack of development and education leading to underemployment, which in turn creates a frustrated youth without prospects that can easily be recruited by the insurgency (or likewise manipulated by other actors). There is an influence of religious-radical networks that still receive support from Pakistan-based radical groups and their patrons. The traditional leaders are caught in the middle and find it ever harder to remain neutral in the current tug-of-war over influence in the Southeast.

Today, the window of opportunity that existed in the years immediately following the fall of the Taliban is rapidly closing. Restoring stability in Khost, and the greater Southeast, becomes more difficult with each day. Nevertheless, the region still presents a good opportunity to engage customary structures into security, justice and governance arrangements. The restoration of the rule of law and justice provision is a key prerequisite for guaranteeing security. It here where the CCM or similar bodies can play a crucial role.

3 Methodology

Information for this evaluation was collected via semi-structured interviews and focus group discussions (FGDs). Due to security concerns in Khost, non-probability sampling was used in order to reduce the risk to the two local surveyors. A mix of purposive/stratified, judgement and convenience sampling was used to select those interviewed. Surveyors also relied on snowballing technique, where they used referrals from initial interview partners to identify additional ones. Only those who had at least heard of the CCM were interviewed

In total, 46 individuals were interviewed between 6-13 January 2009 in five FGDs (19 participants) and 27 semi-structured interviews. Two FGDs specifically interviewed conflict parties of resolved cases (four people total).

In addition to interviewing all members of the CCM (5), nine government officials (9), three traditional *jirga* mediators (3), a cross-section from the general public (9), two officers of the United Nations Assistance Mission in Afghanistan (UNAMA) and conflict parties of two conflicts resolved by the CCM (4 FGDs), one pending case with the CCM (2 FGDs), and one conflict outside the CCM (2 FGDs) were interviewed.

- *Government* (9): Provincial Police Headquarter, Department of *Hooquq* (Rights)², Director of Tribal Affairs, Office of the Prosecutor (Saranwali Istinaaf) and prosecutors (2), Governor's Office (3, including the Deputy/Acting Governor who used to be a CCM member)
- *General Public* (9): Tribal elders (2), shopkeeper (1), teacher (1), medical doctor (1), NGO worker (1), unspecified urban resident (1), representative of an IDP/Returnee camp (1), an *ex-jihadi* commander working on road security.

4 Project Description – the CCM in Khost³

The Commission on Conflict Mediation (CCM) emerged out of the initiatives of the then Khost Governor Arsala Jamal (2006-2009), who realized that the formal court system was too weak to deal with the multitude of land- and resource-based conflicts in his province. Feeling that the capacity of the formal court was not able to deal with conflicts in a speedy and efficient way, and fearing that unresolved conflict had a great potential to destabilize the province and region, he sought an alternative to the court system, yet did not want to hand full authority to the informal system either.⁴

The Directorate of Tribal Affairs in Khost, supported by UNAMA, tried to organise a *shura* to work on existing conflicts, which however did not work out and collapsed.⁵ One of the problems was that the *shura* was run by a former *mujahideen* commander, who contributed funds to secure his interests.⁶

Having knowledge of, and trust in, The Liaison Office (TLO) the Governor asked it for assistance to find a system that could assist the Afghan government to cope with the increasing number of land- and resourced-based conflicts. On 23 November 2006, TLO facilitated a large *jirga* (called by the Governor) between customary structures (tribal elders, religious figures, district councils) and local government (district governors and line departments). One of the outcomes of this *jirga* was the idea of the CCM. Subsequently, TLO assisted the Governor in

² The General Department of Huqooq (and the departments in the provinces, and sub-directors in the districts) is a judicial organ operating within the framework of the Ministry of Justice. It was established to facilitate the adjudication of disputes (e.g., debts, properties) and civil right cases arising between citizens and real and legal persons; to follow-up on those cases; and to effectuate resolution through tribal elders, or patriarchs, and chiefs. The resolution of said disputes were in the form of reconciliation and/or referrals to the courts in order for the cases to be equitably settled. Further, the objective behind the creation of this directorate was to pre-empt and prevent ethnic, tribal, and family disputes as well as to promote the maintenance of public order in the country. It is worth mentioning that the Huqooq department provides substantial revenues to the treasury of the state as a result of the legal cases and is considered a major support for the budget of the state. In fact, the General Directorates of Huqooq are self-sufficient and does not rely on the state's budget. (<http://www.moj.gov.af/?lang=en&p=e6>; accessed 9 February 2009)

³ The section draws a focus group discussion with CCM members, 8 January 2009 and an earlier description of the CCM: The Liaison Office (TLO), 2008a, *Between the Jirga and the Judge: Alternative Dispute Resolution in Southeastern Afghanistan*, TLO Program Brief 1/2008. Kabul: TLO.

⁴ Interview, former CCM member and Deputy Governor, 13 January 2009

⁵ Interview, CCM member, 13 January 2009

⁶ Interview, CCM member, 13 January 2009

identifying and selecting six commissioners that would be representative of the local tribal diversity.⁷

The Governor initially wanted to put the CCM under the Directory of Tribal Affairs and lobby for government salaries.⁸ However, some nominated CCM members who did not want to work for the government that currently did not have a good reputation refused this.⁹ The Head of the TLO Khost office ended up proposing that TLO would assist in the management of the CCM and build its capacity until it was to become independent. The CCM formally started its work in *hoot 1385* (March/April 2007).¹⁰

Though it essentially builds upon the customary structure of the *jirga*, the unique feature of the CCM is that it is authorized and sanctioned by the Office of the Governor. Usually customary structures function independently of, and not under the supervision of, the government. While not yet formally linked to the court-system, the CCM does function along the lines of an out-of-court arbitration/mediation mechanism, with the one exception that its decisions hold the stamp of approval of the provincial governor.

Even though the CCM was not modelled after the system Wardak (2004) proposed, it does bear some close resemblance to it. In addition, the CCM fulfils one of the linkage mechanisms proposed by Barfield *et al.* (2006) –that is, the referral of cases between the formal and informal system.

4.1 CCM Membership

The CCM was initially composed of six members, who represented the bigger tribes in Khost (Zadran, Mangal, Lakan, Tanai, Sabari and Ahmadzai). The members of the Commission consider this tribal diversity as one of their strengths.¹¹ However, not all tribes of Khost are represented—something the CCM itself is conscious of.¹² Notably the Gurbuz, Jaji,¹³ Matoon, and Babakarkhail are missing.¹⁴ The CCM member from the Ahmadzai tribe also represents the Afghan nomads (the Kuchi) that migrate through Khost in winter. Many recent land conflicts in Khost involve the Kuchi who are trying to settle. Of the thirteen districts in Khost, the CCM members come from about half (6): Khost, Musa Khel, Sabari/Yaqubi, Spera, Tani, Alisher/Tere Zayi.

The CCM overcomes this ‘representation bias’ by enlisting the assistance of other tribal leaders throughout their work, especially in the final decision-making *jirgas*. For example, they called a 30-person *jirga* to help broker a ceasefire in a local tribal conflict.¹⁵

⁷ Interview, CCM members, 7, 9, 12 January 2009

⁸ Interview, CCM member, 13 January 2009

⁹ Interview, CCM member, 13 January 2009

¹⁰ Interview, CCM member, 13 January 2009, former CCM member and Deputy Governor, 13 January 2009

¹¹ Interview, CCM member, 8 January 2009 – He noted that in the past he could only mediate for his own tribe, with the CCM he was able to mediate affairs between tribes.

¹² Interview, CCM member, 9 January 2009

¹³ Interview, CCM member, 13 January 2009

¹⁴ Interview, Director of Huqooq Department, Khost, 6 January 2009

¹⁵ Interview, CCM member, 13 January 2009

The commission members also come from a diverse background, including

- Three previous government Officials:
 - Director of Refugee Affairs in Khost
 - Director of Communications in Khost
 - Governor of Zabul and Takhar provinces during the Communist regime
- One religious scholar/mullah¹⁶
- One ex-communist official
- One ex-military man¹⁷

The CCM also tends to cover at least part of the political and social spectrum. CCM members were chosen along the same criteria as any *jirga* representative: knowledge of customary law, experience in mediation, impartiality, and standing in their communities.

The CCM has recently been reduced to five members, as one of them was appointed as Deputy Governor in 2008. As the CCM is a joint-initiative with the Office of the Governor, TLO had to wait for the recent appointment of a new Governor until it could seek a replacement for the missing sixth member and discuss increasing the CCM to eight members in order to make it more representative.

The Khost Director of TLO functions as the CCM project manager and thus in many ways an informal seventh member of the CCM; assisting them in their work, attending many meetings, and partaking in some of the deliberations. Some of the outsiders, however, seem to consider him to be a permanent fixture of the CCM,¹⁸ with his own good standing in the community having influenced how the CCM is perceived.

4.2 Quick overview of CCM cases

Referral of cases: The CCM only works on disputes referred and authorized by the Governor, and more recently also the Chief of Police. Prior to referral, the Governor discusses with both conflict parties if they would agree to have their case resolved by the CCM, or if they would rather use the state courts or possibly seek another customary solution. Only when the conflict parties have agreed to work with the CCM is their case officially referred.¹⁹ An independent mediator described the CCM mandate as too narrow, due to the fact that it only dealt with government referrals.²⁰

Nowadays conflict parties also directly approach the CCM through members of the Commission belonging to their tribe. In some other cases, the CCM members may also encourage people to bring their cases to the Commission. Sometimes external mediators also recommend conflict parties to approach the CCM.²¹

¹⁶ Interview, CCM member and Deputy Governor, 13 January 2009

¹⁷ Interview, Director of Huqooq Department, Khost, 6 January 2009

¹⁸ Observations of lead researcher

¹⁹ Interview, former CCM member and Deputy Governor, 13 January 2009

²⁰ Interview, *jirga* mediators, 12 January 2009 (two separate interviews)

²¹ Interview, *jirga* mediator, 9 January 2009

When one of the conflict party requests for mediation, the commission calls the other party and asks for the consent of the second party. If the second party agrees to have their case resolved by the Commission, they inform the Office of the Governor who then formally refers the case to them.²²

Thus, even if the CCM identifies cases, or if outsiders approach them, they seek the authorization of the Governor prior to commencing with the case. So far the Office of the Governor has never prevented anybody from going to the CCM, with the exception of purely criminal cases.²³ Nevertheless, some respondents wondered if the Governor even has the power to turn down conflict parties who specifically request to use the CCM.²⁴ In other words, the overall strength of the state vis-à-vis customary structures is questioned.

Type of cases: The majority of the cases the CCM has deal with are related to land and property disputes. The cases range from small disputes (e.g., over shops in the bazaar, plots, cars or other businesses) to larger conflict involving entire tribes and high escalation potential. Land disputes due to the legacy of war, duplicate land documents; illegal land seizures and population pressure have been on the rise in post-Taliban Afghanistan (The Liaison Office 2008b). A key problem is the loss of livelihoods of Kuchi nomads who have begun to seek permanent settlement on common pastureland. The Commission has dealt with several cases involving Kuchi and wants to increasingly do so.

Even though the CCM is not supposed to deal with criminal cases (*jazayi*), they have recently resolved one that was linked to a property dispute (destruction of houses), and have one pending case where trees were illegally cut in a boundary dispute.²⁵ Such cases are usually only passed to the CCM if the Governor feels the land dispute is the primary problem.²⁶ The Office of the Prosecutor, however, criticised such practise as preventing just punishment for criminals.²⁷

The CCM often works on cases of high urgency where violence has occurred (or is about to escalate) and a cease-fire needs to be brokered to de-escalated conflict – a task that can be described as peacemaking.²⁸ Several of the cases the CCM has dealt with have had a long conflict history with both the formal and informal justice system failing to resolve it. Not all cases are purely about ‘justice’ issues, but sometimes clearly associated with reconciliation and peacemaking, such as sorting out the use of common and government land where neither conflict side can claim it as its own. Recently, the Commission has also tried to work preventively in identifying cases that are still latent but could erupt into violent conflict.

²² Interview, Head of Executive and Director of Administration, Office of the Governor, 13 January 2009

²³ Interview, Head of Executive and Director of Administration, Office of the Governor, 13 January 2009

²⁴ Interviews, Director of Tribal Affairs, Khost, 6 January 2009

²⁵ Interview, Prosecutor, 12 January 2009

²⁶ Interview, Administration Manager/Police Officer, Police Head Quarter, Khost, 13 January 2009

²⁷ Interviews, Head, Office of the Prosecutor in Khost, 13 January 2009; Administration Manager, Office of the Prosecutor, 11 January 2009; Prosecutor, 12 January 2008

²⁸ Interviews, Director of Huqooq Department, Khost, 6 January 2009; Head of UNAMA and Political Officer, Khost, 6 January 2009

Since its establishment almost two years ago, the CCM has had 31 referrals from the Office of the Governor, 23 of which have been successfully resolved (with no resumption of hostilities so far), three have been referred to the provincial court, and the rest are still pending. The CCM usually has a quick turn around, but one or two conflicts can take longer, with the longest taking six months to resolve. A more detailed assessment of the cases the CCM has dealt with is still pending

5 Reasons for the CCM Success

Aside from the Office of the Prosecutor, all government officials interviewed (even one prosecutor), independent mediators, conflict parties, the general public, and UNAMA officials had a positive opinion about the CCM. At least in the eyes of Afghan government officials in Khost, the CCM has made a lasting contribution to peace and security in the Province – and possibly helped to prevent further destabilisation. Two government officials even considered the CCM to be ‘god-sent’ (Blessing of Allah),²⁹ making a great contribution to peace and security in the province.³⁰ In their eyes, the CCM seemed successful where others (both informal *jirgas*, and formal government courts) had failed.³¹

The only critique two independent mediators put forth was that the CCM had a narrow mandate – dealing only with government approved cases, while they were working with a much greater variety of conflicts.³² This critique, however, can also be considered a strength of the CCM – as they essentially were set up as a hybrid mechanism to link informal with formal justice, and in the words of a prosecutor ‘provide a bridge between the government (court) and the people’.³³

It is important to analyse more closely why the CCM has been seen so successful despite its invisibility beyond the narrow circle of actors it deals with: government, UNAMA, mediators and conflict parties. It was not easy to find individuals of the general public that had heard about the CCM, unless they had family members or friends involved in cases dealt with by the Commission.³⁴

The success factors of the CCM can be divided into what can be considered human and organisational/procedural factors.

6.1 Human Success Factors

One of the key success factors of the CCM is clearly the people it is comprised of. One could argue the Governor of Khost, with the assistance of TLO, was able to assemble ‘a few good men’ that were not only from the most respected (*khan*) families but also had a ‘clean’ reputation as mediators.³⁵ Coming from a known *khan* or *malik* family was interpreted as not

²⁹ Interviews, Director of Tribal Affairs, Khost, 6 January 2009, former CCM member and Deputy Governor, 13 January 2009

³⁰ Interview, Head of Executive and Director of Administration, Office of the Governor, 13 January 2009

³¹ Interview, Director of Tribal Affairs, Khost, 6 January 2009

³² Interviews, independent mediators, 12 January 2009, two different interviews.

³³ Interview, Prosecutor, 12 January 2009

³⁴ Several interviews (9), general public, 18-13 January 2009

³⁵ Interview, Director of Tribal Affairs, Khost, 6 January 2009

being able to 'lose face' through making wrong decisions and not needing financial gain from conflict parties either.³⁶ Thus the credibility of individual CCM members made for the legitimacy of the entire body.

One could argue that the Governor, when creating the Commission, picked the raisins out of the available pies in that he sought to put a familiar customary mechanism under state supervision. In addition he selected the most respectable elders he could find.

All this is particularly important in a situation where the formal, but also increasingly the informal, justice system, is seen as corrupt and lacking partiality. This finding of "a few good men" as a key to the success of any kind of justice mechanism needs to be kept in mind when thinking up replicating the CCM elsewhere.

5.1.1 Impartiality and Neutrality³⁷

CCM members and other interviewees agreed that the perceived impartiality of the Commission was seen as a major asset. In a time where conflict parties feel they can shop around for their preferred decision and both formal and informal justice providers can be bought, which disadvantages the poor, a body that seems incorruptible just and fair is rare. Especially the diversity of the Commission, both in terms of their tribal but also social and political background, and that they invited outside opinions and ranged the composition of their *jirgas* was repeatedly highlighted.³⁸ To maintain neutrality, as noted above, when dealing with conflicts that involved their tribe or if they had any relationship with a conflict parties, CCM members would voluntarily resign from being part of investigations.³⁹

Interestingly, in most interviews it was not only the admiration and respect for the CCM that was noted, but especially for the TLO Khost Provincial Coordinator – the 'invisible' seventh CCM member. The statement: 'When the water is clean at the top of the stream, it will remain clean to the end'⁴⁰ seems to almost suggest a 'halo effect' where the good reputation of the TLO Khost Provincial Coordinator contributed to the good reputation of the CCM. Those, however, who did not know individual members of the CCM, however, were a bit more careful with their judgement. One person interviewed offered a poem to describe the general situation of distrust: 'I am suspicious of myself, you and the mullah'.⁴¹

5.1.2 Unity among CCM members

A diverse conflict resolution body can only work well together, especially when consensus decisions have to be reached, if they tend to share similar values and outlook. All CCM members interviewed emphasized that they appreciated the mutual deep respect among them,

³⁶ Interviews, general public (tribal elder), 8 January 2008

³⁷ Interviews, general public (4), 9-13 January 2009

³⁸ Interviews, general public (3), 9-13 January 2009

³⁹ Interviews, Head of Executive and Director of Administration, Office of the Governor, 13 January 2009; former CCM member and Deputy Governor, 13 January 2009, but it was echoed throughout the interviews

⁴⁰ Interview, general public (commander and representative of returnee/IDP camp), 9 January 2009

⁴¹ Interview, general public, 12 January 2009

the cordial behaviour between them, and above all the feeling of unity derived from trying to work for peace – and not personal benefit. External interviews, both from the government and the general public echoed this observation and were impressed by it.

In a time of distrust from many years of war and where *jirga* mediators have been charged with taking the sides of conflict parties, it seemed rare to find a body that stands in unity and is not easily divided. This is exemplified by the fact that no examples were given where a CCM member may have sided with his tribe in a conflict case, rather it was noted that tribal affiliation was used to convince conflict parties of CCM decisions. There were even examples where a CCM member would withdraw himself from a case if he felt it would bias a decision.⁴²

6.2 Organisational/procedural success factors

The positive elements in this category were clearly the offering of a familiar customary mechanism to rural communities that bears the stamp of approval from the Afghan government. Providing conflict resolution free of charge decreases the possibility for corruption and increases access of justice to the poor.

5.2.1 Offer services free of charge

The fact that the CCM was able to offer their services free of charge (requesting no *khalat*), and never requested to be reimbursed for expenses incurred, was cited by CCM members as well as outsiders as big reason for their success,⁴³ as it provided for fairness and equal access to justice, even by the poor.⁴⁴ Furthermore in traditional *jirgas*, conflict parties who reject a decision do not get the *baramta/machalga* returned, which tends to serve as a financial pressure mechanism to reach agreements. While the CCM did ask for a guarantee (*jeg laas*), especially in difficult cases, it was returned once a decision was reached, regardless of conformity with a decision passed. It was unclear, however, if this fine difference between the CCM and regular *jirgas* was fully understood by all conflict parties, as at least one conflict party interviewed stated that they agreed to the final decision as they did not want to lose the money and land they had given as *machalga*.⁴⁵

Nevertheless, the fact that the CCM members worked free of charge (or only for a small honorarium) and paid for expenses out of their own pocket was repeatedly noted. It provided the CCM with a reputation that its members did not stand to benefit from conflicts they dealt with. Not taking fees was even described as liberating by a CCM member, feeling this would free him from being offered bribes.⁴⁶ In a society where hospitality is particularly valued and a sign of grandeur, it seemed important that the CCM members, instead of asking conflict parties to pay

⁴² Interview, CCM member and Deputy Governor, 13 January 2009

⁴³ Interview, Director of Huqooq Department, Khost, 6 January 2009; Director of Tribal Affairs, Khost, 6 January 2009; but it was raised in most interviews

⁴⁴ Interview, Head of Executive and Director of Administration, Office of the Governor, 13 January 2009

⁴⁵ Focus group discussion, conflict party of resolved conflict, 8 January 2009

⁴⁶ Interview, CCM members, 13 January 2009

for expenses, offered food during meetings.⁴⁷ This little gesture of generosity alone created trust even among the most difficult and hardened conflict parties.

5.2.2 Speed and quality of service provided

Despite the fact that some case took longer (one six months), the CCM was repeatedly praised for their speed, especially in comparison to the formal justice system.⁴⁸ The resolution of several long-standing cases that have troubled the government/police and impacted negatively on security for quite some time was noted.⁴⁹

CCM members were praised for their knowledge,⁵⁰ thorough investigation techniques, and especially not shying away from going to the field. Only one mediator compared them to ‘boys’ as he was the age of their grandfathers.⁵¹ While ‘not boldly going where no one had gone before’, CCM members were credited with being able to go where government, including the police, could not⁵², with a police officer relating embarrassing stories of being chased away by communities.⁵³

The ability to reach acceptable and sustainable decisions and broker cease fires even for protracted conflicts (some as old as 80 years having claimed many lives)⁵⁴ considered as dead-ends,⁵⁵ was attributable to the Commission’s lengthy deliberations, thorough fact-finding, involvement of other experts (other mediators, elders), and, above all, taking the time to sit with conflict parties to explain their decision in detail.⁵⁶ Here, one could argue the CCM seemed to have adopted some aspects of formal justice systems found in western countries, including the idea of a jury – the greater *jirga* that is sometimes called. The reason why no enforcement seemed needed was that a decision was not imposed upon (as it is in the formal justice system and also in *jirgas*) but made in complete understanding with both sides of the conflict. While parties were allowed to reject a CCM decision, it has not occurred so far.

5.2.3 Assisting the Afghan Government in providing justice

Even if the Office of the Prosecutor had his doubt about the legitimacy of the CCM, others saw them as taking ‘a load of their shoulders,’⁵⁷ relieving a backlog in the government system.⁵⁸ Both

⁴⁷ Interviews, Director of Huqooq Department, Khost, 6 January 2009; Director of Tribal Affairs, Khost, 6 January 2009

⁴⁸ Interviews, Prosecutor, 12 January 2009; Administration Manager/Police Officer, Police Head Quarter, Khost, 13 January 2009; general public, 8, 13 January 2009

⁴⁹ Interviews, Administration Manager/Police Officer, Police Head Quarter, Khost, 13 January 2009; Director of Tribal Affairs, Khost, 6 January 2009; Head of Executive and Director of Administration, Office of the Governor, 13 January 2009

⁵⁰ Interviews, Head of Executive and Director of Administration, Office of the Governor, 13 January 2009; general public (4), 9-13 January 2008

⁵¹ Interview, Independent mediator, 12 January 2009

⁵² Interview, Head of Executive and Director of Administration, Office of the Governor, 13 January 2009

⁵³ Interviews, Administration Manager/Police Officer, Police Head Quarter, Khost, 13 January 2009

⁵⁴ Interviews, Director of Tribal Affairs, Khost, 6 January 2009

⁵⁵ Interview, Administration Manager/Police Officer, Police Head Quarter, Khost, 13 January 2009

⁵⁶ Interview, Prosecutor, 12 January 2009

⁵⁷ Interview, Head of Executive and Director of Administration, Office of the Governor, 13 January 2009

the Director of Tribal Affairs and the Department of Huqooq felt that they used to drown in cases they were unable to deal with, let alone implement – and with the CCM came relief.⁵⁹ An understaffed police, feeling unable to implement even the few cases the court resolved, was happy for the CCM to not only resolve cases, but implement them directly in a lasting manner.⁶⁰ The police even lamented that court decisions were less lasting than those passed by the CCM, as in murder cases the family of the victim may still seek revenge once an offender was released.⁶¹ The CCM in contrast was able to not only achieve an outcome, but at the same time worked to reconcile communities, ensuring that blood revenge would not occur.

UNAMA officials see the CCM as having helped the Khost government to gain significant political grounds through getting the credit for assisting in the resolution of conflicts;⁶² after it is known that the CCM was the idea of the past Governor, and its decisions carry his stamp.

The relationship between the CCM and Khost government seems reciprocal, as the Office of the Governor assists the Commission in its access to government bodies, and does not seem to hesitate to speak to conflict parties with whom the Commission may have problems. A case was highlighted where the CCM had obtained 300 police officers to help de-escalate conflict where parties had armed themselves.⁶³ In turn, the CCM only accepts cases the Governor or police refer to them, never those that have already received a legitimate court sentence (unless an outcome was ambiguous such as granting the 'right' to two opposing parties), and overall listens to the Governor's office.⁶⁴

One has to contrast these observations with the fact that all interviews from the general public revealed that they thought the CCM was created out of weakness of the government and to balance out an inefficient court system.⁶⁵ A government official also offered a word of caution, questioning the strength of government supervision by wondering if the government was even able to reject a referral to the Commission if they requested it.⁶⁶

Nevertheless, interviews from the general public emphasized the crucial importance of government oversight and formal referral of cases.⁶⁷ The outcome so far shows a win-win situation – where both the elders, and the government/Governor receive praise.

6.3 Words of caution – success to being the only alternative?

Despite all the praise for the CCM, it is important to share findings from interviews with conflict parties that are somewhat sobering. They seem to suggest that the CCM might simply be the

⁵⁸ Interviews, former CCM member and Deputy Governor, 13 January 2009; Administration Manager/Police Officer, Police Head Quarter, Khost, 13 January 2009

⁵⁹ Interviews, Director of Huqooq Department, Khost, 6 January 2009; Director of Tribal Affairs, Khost, 6 January 2009

⁶⁰ Interview, Administration Manager/Police Officer, Police Head Quarter, Khost, 13 January 2009

⁶¹ Interview, Administration Manager/Police Officer, Police Head Quarter, Khost, 13 January 2009

⁶² Interviews, Head of UNAMA and Political Officer, Khost, 6 January 2009

⁶³ Focus group discussion, CCM members, 8 January 2009

⁶⁴ Interview, Head of Executive and Director of Administration, Office of the Governor, 13 January 2009

⁶⁵ Interviews (9), general public, 8-13 January 2009

⁶⁶ Interviews, Director of Tribal Affairs, Khost, 6 January 2009

⁶⁷ Interviews, general public, 8, 9 January 2009

best possible case scenario for conflict at this point in time, with any resolution being better than none. The following statements from conflict parties and others do beg the question if solutions were accepted simply to reach closure:

- 'When the CCM proposes a solution, one or both parties may or may not be happy with the outcome, but people accept their decision in order to get rid of the problems and possible threats they face due to long-running conflict.'⁶⁸
- 'People do not go against the decisions of the commission because they know that they cannot achieve any better results elsewhere'⁶⁹
- We did not want to lose the *machalga* paid, as we could not afford the loss of money and land.⁷⁰
- We accepted the decision to avoid bloodshed⁷¹
- We wanted to avoid losing honour/face by having to go through the court system⁷²

6 Challenges/weaknesses of the CCM

Despite all the praises so far, interviews also highlighted several challenges and weaknesses of the CCM that need to be addressed to guarantee a long-term sustainability. A commander and representative of a returnee/IDP camp and a prosecutor, for example, thought it was much too soon to praise the success of the Commission as not enough time had passed to see if some all decisions indeed were sustainable and would not unravel in due time.⁷³ Furthermore, time may only tell if there are indeed cases that the CCM would be unable to resolve, as one conflict party interviewed suggested theirs to be such.⁷⁴ The issue of record keeping is not dealt with here, as this has been already acknowledged by TLO and the United States Institute of Peace (USIP) has provided funds to assist in this matter.

6.1 Lacking link to the formal justice system

The Afghan justice apparatus includes the Ministries of Justice and Interior as well as the office of the attorney general and the court systems. With the exception of the Office of the Governor (formerly under the MoI and now under IDLG) and the Police (MoI), the CCM has no formal linkages with the main bodies of the justice system, which has already created legitimacy issues. The prosecutors interviewed were mostly negative about the CCM, especially as the Commission had not been officially introduced to them, neither in writing nor verbally.⁷⁵ The

⁶⁸ Interview, Director of Huqooq Department, Khost, 6 January 2009

⁶⁹ Interviews, Director of Tribal Affairs, Khost, 6 January 2009

⁷⁰ Focus group discussion, conflict party resolved case, 8 January 2009

⁷¹ Focus group discussions (3), conflict parties resolved case, 7-8 January 2009

⁷² Focus group discussion, conflict party pending case, 7 January 2009

⁷³ Interviews, general public (commander and representative of returnee/IDP camp), 9 January 2009; Prosecutor, 12 January 2009

⁷⁴ Interview, conflict party outside CCM, 9 January 2009

⁷⁵ Interviews, Head, Office of the Prosecutor in Khost, 13 January 2009; Administration Manager, Office of the Prosecutor, 11 January 2009; Prosecutor, 12 January 2008

Head of the Prosecution Office feels that the CCM has no legal recognition for him, and legally cases should not be referred to them. It is of course also possible that the Prosecution Office simply fears a loss of revenue from bribes associated with cases they are losing to the CCM.

As the TLO Programme Brief already argued (2008a, 7) 'The mistrust of the Provincial Court can be partly traced to the CCM's ambiguous status within the Afghan Judicial system'. Thus, if the CCM is to survive in the long-term, it needs to move from being a 'pet-project' of the Governor to becoming a legitimate structure that is integrated with the formal justice system. Otherwise, it is all too possible that down the road, the CCM may become only a further competitor on the 'market place of settlements', worse yet a slighted court system may try to sabotage CCM decisions. Despite all praises, the Office of the Governor did acknowledge that there is a need to improve CCM-government cooperation.⁷⁶

Especially feelings of competition need to be addressed. The Office of the Prosecutor felt envious of the collaboration between the CCM and the police when the latter only informed them about crimes four months after they occurred.⁷⁷ Another prosecutor, however, felt less strong about his lack of interactions with the CCM, given that he was dealing with criminal cases and the CCM usually dealt with others, even though he admitted that he heard the CCM had dealt at least with one criminal case.⁷⁸

As the state court system and the CCM have much to offer each other (referrals, victim-offender mediation), establishing a formal working relationship between the two bodies is vital for the CCM's existence. Obtaining a more formal linkage with the Afghan government could mean also to add an executive power to the CCM, which was raised as weakness by one conflict party.⁷⁹

6.2 Averting or Serving Justice – the problem with criminal cases

The Office of the Prosecutor felt especially strong about the CCM dealing with criminal cases (*jazayi*),⁸⁰ which clearly fall under the jurisprudence of the court. He cited the differentiation under *shari'a* between *Haq-ul Abd* (violations of individual right, where the victim is allowed to forgive and ask for compensation) and *Haq-ullah*, 'the rights of Allah' where no forgiveness can be given, but punishment needs to follow.⁸¹ While he cited no personal animosities with individuals of the Commission, he felt strongly that referrals should come via the Office of Prosecutor, not via the Police or Office of the Governor in order to ensure that violations of *Haq-ullah* did not reach the CCM.⁸²

While the reconciliation aspect between conflict parties, especially victim and offender is crucial for keeping peace within and among communities, the CCM has to be careful of not being used

⁷⁶ Interview, CCM member and Deputy Governor, 13 January 2009

⁷⁷ Interview, Head, Office of the Prosecutor in Khost, 13 January 2009

⁷⁸ Interview, Prosecutor, 12 January 2009

⁷⁹ Focus group discussion, 9 January 2009

⁸⁰ *ibid*

⁸¹ Interview, Head, Office of the Prosecutor in Khost, 13 January 2009

⁸² Interview, Head, Office of the Prosecutor in Khost, 13 January 2009

as a mechanism to avoid justice. A conflict party in at least one case openly admitted that he hoped to avoid a jail sentence by having his case decided by the CCM.⁸³

6.3 What cases to judge

There is a question if the CCM should deal with all cases that are brought to them, or reject those that could harm its reputation in the long-term. Even though these following two cases were cited as an illustration of the increased popularity of the CCM, it could also be interpreted as individual CCM members using 'their weight' to achieve an outcome – which in the future could be misinterpreted as favouritism. Even if it happened out of sympathy for the victims, with no alternative motive in mind, in a politically-charged environment, the CCM might be advised to strictly stick to cases that the governor refers to them:

- One of the smaller cases involved a young man from the Kuchi who was a Taliban fighter and had been killed in an operation of the National Army. The Army had kept the dead body in their custody in Khost city. The relatives of the young men approached the Commission and requested for assistance in mediating a release of the body for proper burial and last rites. In a matter of two hours, two commission members, supported by the Director of the Khost TLO office had negotiated the release of the body.
- In another case, the traffic police had impounded the car of an individual who lacked proper registration document. The individual did not take no for an answer until one CCM member accompanied him to the traffic department to assist in releasing and registering the vehicle.

6.4 Recognition/lacking publicity

While the CCM is known within the small circle it operates in (Office of the Governor, Police, Tribal Affairs, Department of Huqooq, UNAMA, mediators and conflict parties), it lacks greater recognition.⁸⁴ Among interviews conducted, the knowledge among the general population was especially vague. It was hard enough to find individuals to interview who had heard about the CCM and those who were interviewed had vague and superficial knowledge. Also one conflict party who did not have their case pending with the CCM said they could not make a decision about the utility of the Commission, as they simply had not enough information.⁸⁵

The fact that Governors of neighbouring provinces (Paktia and Paktika) have heard of the success of the CCM and now want one of their own, does not mean that the CCM is known to everybody else in the region, including some government bodies. This is something the CCM has realised with one Commissioner being particularly keen on working more on public relations. Rather than assuming that its good work speaks for itself, the government and the CCM need to begin to publicly announce their services to counter misinformation and accusations of biasing access. Especially the Office of the Governor needs to officially introduce the CCM to government bodies, both in Khost and the Central Government, and mend the strained relationship with the court system.

⁸³ Focus group discussion, conflict parties pending case, 7, 13 January 2009

⁸⁴ Interview, Prosecutor, 12 January 2009

⁸⁵ Interview, conflict party outside CCM, 9 January 2009

Visibility, however, may prove a double-edge sword in an insecure environment where a growing insurgency is only too happy to exploit unresolved conflict. Already one CCM member noted that he did not want his community to know what his job was in fear of being targeted.⁸⁶ If the CCM becomes more visible, he may no longer keep his job a secret and then it would be up to the government, or perhaps his tribe to ensure his security. Thus, while greater recognition may help the legitimacy of the government it could prove fatal for some of its Commissioners.

7 Conclusion

This first quick evaluation of the CCM has tried to raise some success factors of the CCM, but also challenges that still need to be faced. Overall, we conclude that the jury is still out on the final verdict for the CCM, as only time will show if it is able to integrate itself successfully into Afghanistan's justice infrastructure and can find long-term funding which is not considered as biased. There is also still the question if such a Commission can continue to work if the situation in the Southeast continues to destabilize as they are dealing with resource-related conflicts, which the insurgency may be interested to keep unresolved in order to retain recruitment grounds and fuel anti-government sentiments.

In addition to interviewing more conflict parties as to their experience with the CCM, two factors are worth discussing for the CCM: its sustainability and the ability to replicated it elsewhere, especially outside the Southeast (even though a CCM was recently established in Paktia):

7.1 Sustainability

So far the CCM has managed to work effectively because Commissioners were able to work free of charge and pay for own expenses, with TLO fronting a small honorarium. This is clearly not a long-term solution and CCM members as well as most others interviewed noted the need for salary or at minimum a reimbursement of expenses to Commissioners,⁸⁷ to ward off corruption⁸⁸ and honour their services. While Commissioners noted that they were happy to offer their services for free, they hoped at least to have their expenses (phone costs, travel costs etc.) reimbursed, as fronting the bill was not sustainable for them in the long run.

The question, however, is who should front the bill? The most logical solution would be for the government to pay for the CCM, yet Commissioners have been reluctant accept pay from government sources, as well as the local Provincial Reconstruction Team (PRT) as in their mind both would tarnish their reputation.⁸⁹

At present, TLO has supported the CCM, since late 2008 with the support of USIP. This, however, may also not be sustainable in the long-term as this makes the CCM dependent on external funding, and once this ceases so might be the CCM. Thus, possibly one of the

⁸⁶ Interview, CCM member, 7 January 2009

⁸⁷ Interviews, Administration Manager/Police Officer, Police Head Quarter, Khost, 13 January 2009; Director of Huqooq Department, Khost, 6 January 2009; Director of Tribal Affairs, Khost, 6 January 2009

⁸⁸ Interviews, general public, 8-13 January 2009

⁸⁹ Interview, CCM member, 8 January 2009

greatest success factors of the CCM, providing services free of charge, may in the end prove non-sustainable.

The question to be answered, however, is how long the CCM is needed. TLO currently sees the CCM as a temporary mechanism (5-10 years) that deals with difficult and explosive conflicts in the absence of a functioning formal state mechanism. As conflicts are increasingly exploited by the insurgency, the CCM provides an important justice as well as peacebuilding function. If the time frame then is 5-10 years, it is possible to support a mechanism such as the CCM from external sources, with the knowledge that it likely will only exist until the most severe conflicts are mediated and the formal justice system has come up to speed in being able to deal with the remaining caseload.

7.2 Replicable model or one-of-a-kind success?

In addition to calls for an increase of the CCM membership from six to eight, plus replacing the lost member who became Deputy Governor, there are calls from the Governors of Paktia and Paktika for the establishment of a similar commission in their provinces. Due to funding from USIP this is already underway in Paktia. The fact that the personal reputation of the individual CCM members, and that of the Khost TLO Provincial Coordinator, is tightly linked to the legitimacy of the Khost CCM, raises the question if it really is possible to find 'more good men' in Khost, expand the CCM to the district level to facilitate work of the provincial one,⁹⁰ or replicate the CCM in other provinces? There are already words of caution that the CCM in Khost should only be expanded if individuals of equal quality and standing can be found,⁹¹ and with comparable knowledge and spirit of unit.⁹² There are also fears that if the commission becomes too big, it would no longer be effective and united, one of its current strengths.⁹³

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⁹⁰ Interview, Head of Executive and Director of Administration, Office of the Governor, 13 January 2009

⁹¹ Interview, Head of Executive and Director of Administration, Office of the Governor, 13 January 2009

⁹² Interview, CCM member and Deputy Governor, 13 January 2009

⁹³ Interview, CCM member, 12 January 2009