

Afghanistan Research and Evaluation Unit
Case Study Series

**Community-Based Dispute
Resolution Processes in
Bamiyan Province**



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Table of Contents

Glossary	vii
1. Introduction	1
2. Research Methodology, Site Selection and Context	5
3. Power, Authority and Change in Community-Based Dispute Resolution Processes ...	9
3.1 “Power as authority” and “power as coercion” in community-based dispute resolution.....	9
3.2 Authority: Right and responsibility in community-based dispute resolution processes.....	11
3.3 The change in dispute resolution processes over time and coercive power in village-level dispute resolution.....	16
3.4 District-level actors in community-based dispute resolution processes	19
4. Between the State and the Community: Processes, Relationships and Participation ...	23
4.1 Choosing between the district and the village.....	24
4.2 Between the state and the village	31
5. Principles and Outcomes: Keeping the Peace—Using <i>Islah</i> , <i>Qanoon-i-urfi</i> and Sharia in Community-Based Dispute Resolution Processes.....	37
5.1 <i>Qanoon-i-urfi</i> , <i>Islah</i> and Sharia.....	38
5.2 Giving authority and implementing decisions	43
5.3 Outcomes for women in community-based dispute resolution processes	44
6. Processes, Links and Choices, Principles and Gender Equity: Concluding Comments	46
Annex 1: Dispute Cases	48
Recent Publications from AREU	61

List of Boxes and Tables

Box 1: Characteristics of those in authority in community-based dispute-resolution Processes.....	11
Box 2: Women’s roles as decision-makers in dispute resolution processes	12
Table 1: General Categories of Disputes	14
Box 3: Improvement in dispute resolution processes.....	17
Box 4: Opinions about arbabs and how they resolved disputes.....	17
Box 5: Dispute resolution during the Taliban regime	19
Box 6: Rights and responsibilities of the <i>Ulama Shura</i>	22
Box 7: Reasons for not taking a dispute to the <i>woliswali</i> , legitimate expenses and the length of time it takes to resolve a dispute in the <i>woliswali</i>	24
Box 8: Reasons for not taking disputes to the <i>woliswali</i> : illegitimate expenses.....	25
Box 9: Positive reasons for keeping disputes in the village: Subjectivity and knowledge of the white-beards	26
Box 10: Women have greater access to their village white-beards than to the <i>woliswali</i>	28
Box 11: Women’s ability to access white-beards in the village.....	29
Box 12: Women’s limited access to dispute resolution at village level.....	29
Box 13: Authority and implementation power.....	32
Box 14: White-beards protecting themselves	33
Box 15: Perceptions of the law	33
Box 16: Anger and punishment.....	35
Box 17: Flexibility of <i>urf</i> -based decision making	39

Glossary

<i>aghel</i>	an area of a village; it is common in Bamiyan for villages to be divided into several smaller communities which are then called <i>aghel</i>
<i>ailaq</i>	spring and summer habitat and pasture land located outside of the main village
<i>akhond</i>	another term used for mullahs
<i>amer</i>	order letter
<i>Amlak</i>	land registration department
<i>arbab</i>	head of the community
<i>ariza</i>	claim letter
<i>baad</i>	the practice of compensating a murder (or even an accidental killing) by the family of the guilty party giving either one or two never-married girls in marriage to the victim's family
<i>baad bini</i>	hatred
<i>Behsood</i>	a district in Wardak Province
<i>beyab</i>	immodest
<i>buzkashi</i>	national game played on horse back
<i>chodar</i>	scarf
<i>deya</i>	compensation
<i>Enqelaab</i>	literal translation is “revolution” but is used to describe the period of resistance to the Soviet occupation of Afghanistan
<i>farari</i>	refugees
<i>germona</i>	deposit
<i>Hazaragi</i>	a dialect of Dari spoken by Hazara people
<i>Hazarajat</i>	area of Afghanistan stretching across the central highlands and including Bamiyan and Day Kundi provinces and parts of Ghazni and Wardak
<i>huquqi</i>	literal translation rights used to refer to civil law
<i>iftar</i>	meal to break the daily fast during Ramazan
<i>islah garan</i>	those who make Islah-based decisions
<i>islah</i>	essentially means the promotion of peace and maintaining community social cohesion through negotiation and reconciliation; it is an Islamic principle
<i>jafari</i>	Shia legal code
<i>Joghori</i>	a district in Ghazni Province
<i>jalasa</i>	meeting

<i>jalb</i>	summons letter
<i>janjal</i>	argument/fight
<i>jerib</i>	unit of land measurement—one jerib is roughly equal to 1/5 hectare
<i>keena</i>	hostility
<i>khunbaha</i>	literal translation is “blood price,” used to mean the amount of compensation that should be given if someone is killed
<i>madrasa</i>	school focused on teaching Islamic subjects
<i>modir-i-huquq</i>	officer of the department dealing with civil law
<i>nekah</i>	the marriage contract, read by the mullah, and the main part of the marriage ceremony that confirms a couple is married
<i>ozur</i>	apology
<i>Pashtunwali</i>	code of conduct and custom for Pashtun people
<i>qanoon-i-urfi</i>	customary law
<i>qawm</i>	often translated as tribe or clan; essentially a kinship group that can range considerably in size and scope
<i>quroot</i>	dried yoghurt
<i>reesh-safedan</i>	white-beards (senior men)
<i>sar-safedan</i>	white-hairs (senior women)
<i>shahadat</i>	to provide evidence
<i>Sharia</i>	Islamic law
<i>sheerbaha</i>	literally meaning “milk-money,” used to refer to money given to a mother by her daughters-in-law at the time of marriage as a form of payment for having given birth to her and bringing her up
<i>shuba-i-huquq</i>	department dealing with civil law
<i>shura</i>	council
<i>sulh</i>	peace
<i>thul</i>	extended family group
<i>ulama</i>	group of religious scholars
<i>woliswal</i>	district governor
<i>woliswali</i>	district; used to refer to the central town of a district and can also be used to refer to government offices in the district
<i>zena</i>	extra-marital sexual relations

1. Introduction

In 2006, the Afghanistan Research and Evaluation Unit (AREU) began researching community-based dispute resolution processes in Afghanistan. Research was conducted in Bamiyan, Nangarhar and Balkh provinces as well as in Kabul city. In Bamiyan Province, qualitative data collection was conducted in one district centre and in two villages of the same district between October 2006 and July 2007. Bamiyan Province was chosen as one of the sites for this research because there is a dearth of data on how disputes are resolved and on the customary practices used for resolving disputes in Hazarajat, of which Bamiyan forms a part.

Particularly in recent years, very little has been written more generally about how community-based dispute resolution processes operate, and little of this is based on in-depth qualitative data collection at the village or community level.¹ Much of what has been written focuses on or highlights those customary practices for dispute resolution found in *Pashtunwali*, leading authors who rely on secondary data to make arguments such as: “In Afghanistan the most prominent form of customary law is based on the Pashtun *Pashtunwali*.”² By examining how different communities resolve disputes, this research aims to correct this imbalance in available information and to contribute to the discussion on the future relationship between the state and community-based dispute resolution processes. The research also provides information on the extent to which women participate in dispute resolution as compared to men, whereas previous work has primarily focused on the outcomes for women within these processes rather than looking at the ways in which women themselves are actors within community-based dispute resolution.³

Community-based dispute resolution refers to the processes used for resolving disputes within the community in which the dispute has taken place.⁴ The parameters of the “community” from this perspective depend on the nature of a dispute. Within the context of this study, “community” most often refers to the residents of the village in which the dispute has taken place; the village is also the location in which most actors in the dispute, both disputants and those called on to resolve the dispute, reside as well as the space in which the dispute is to be resolved. However, some disputes are contained

1 Reports based on primary data collection however include: T. Barfield, N. Nojumi and J. A. Their, *The Clash of Two Goods: State and Non-State Dispute Resolution in Afghanistan* (United States Institute of Peace, 2006); Norwegian Refugee Council, “Position Paper: The Relationship between the Formal and Informal Justice Systems in Afghanistan” (2007); Women and Children Legal Research Foundation, *Baad, Painful Sedative* (Afghanistan, 2004); N. Nojumi, D. Mazurana and E. Stites, “Afghanistan’s System of Justice: Formal, Traditional and Customary” (Medford: Feinstein International Famine Center, 2004); International Legal Foundation, “The Customary Laws of Afghanistan” (Kabul: 2004); T. Barfield, “Informal Dispute Resolution and the Formal Legal System in Contemporary Northern Afghanistan” (United States Institute of Peace Draft Report, 2006); Checchi and Company Consulting, Inc for USAID Afghanistan Rule of Law Project, “Field Study of Informal and Customary Justice in Afghanistan and Recommendations on Improving Access to Justice and Relations between Formal Courts and Informal Bodies” (2005).

2 Esther Meininghaus, *Legal Pluralism in Afghanistan* (Bonn: Zentrum für Entwicklungsforschung [Center for Development Research], 2007), 15.

3 Women and Children Legal Foundation, *Baad Painful Sedative*.

4 “Community” is an often used but rarely defined term. Drawing on Agarwal’s, *A Field of One’s Own: Gender and Land Rights in South Asia* (Cambridge: Cambridge University Press, 1994), 3, the definition of a community can be based on residency, e.g. the village community, or on social grouping, e.g. a religious community or a *qawm* community. A person can simultaneously be a member of several different communities. For example, he or she can be a member of a particular *qawm* within a village, which also spreads across several villages. It is recognised that communities tend to not be homogeneous, but instead heterogeneous in terms of power, resources and interests.

within a particular *qawm*⁵ community or extended family within a village. Still other disputes incorporate more actors from different geographical locations, such as disputes between villages. In some examples, actors from outside the immediate community may be drawn on to assist in resolving particular disputes.

These processes for dispute resolution are also referred to as “informal justice”⁶ or “customary law.”^{7,8} At the beginning of this research the term “customary law” was used to describe the subject for investigation. However, it was soon determined that a study which focused solely on customary law would be too limited, as it would only focus on those processes used for dispute resolution defined as *qanoon-i-urfi* (customary law), and fail to recognise other principles that are viewed by those implementing them as distinct from *qanoon-i-urfi*, primarily Sharia. Indeed, decision-makers in community-based dispute resolution processes, spoken to by the research team, often made a clear distinction between Sharia and *qanoon-i-urfi*, as is explored in Section 5.

Using the term “informal justice” when referring to these processes is also misleading as it sets them in an artificially dichotomous relationship to the state justice sector, and thus implies that they operate independently from state institutions. In reality, state actors may work in collaboration with actors in village-level community-based dispute resolution processes, as is discussed in Section 4.

A wide variety of disputes are resolved at the community level; most common among these are disputes about access to and use of resources, particularly land, but also water and sources of fuel and fodder. Other disputes that may be resolved at the community level are both deliberate and accidental killings, disputes about marriage arrangements, disputes about sexual abuse or deviance, other acts of violence, theft, and payment for services. These disputes vary in size considerably, from those between neighbours over a land boundary to those between villages over access to and ownership of larger portions of land. They can be disputes between family members of both a criminal and domestic nature, such as violence within the family or issues of inheritance. In fact, disputes about inherited land were common in the villages of Bamiyan Province where this research was conducted. Disputes that are resolved through community-based dispute resolution processes can be criminal and civil, and criminal or civil. That is, some disputes are purely civil in nature, while others may begin as civil disputes and become violent, and are then both civil and criminal (for examples of this see cases 2 and 3 in Annex 1). This recognition that criminal and civil disputes cannot be clearly delineated from one another takes account of the role that community-based dispute resolution bodies have in resolving the causes of criminal actions and reconciling the families of those involved.^{9,10}

5 *Qawm* is often translated as “tribe” or “clan” and essentially means a kinship group that can range considerably in size and scope.

6 See: Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Polity Press, 2002), 36; NRC Position Paper, *The Relationship between the Formal and Informal Justice Systems in Afghanistan* (Kabul, 2007); and Barfield et al., *The Clash of Two Goods*.

7 “Customary law” can best be described as a non-codified system of laws or rules which is recognised by the community using them as a legitimate form of justice.

8 See Amy Senier, “Rebuilding the Judicial Sector in Afghanistan: The Role of Customary Law in al Nakhlah,” *The Fletcher School Online Journal for Issues Related to Southwest Asia and Islamic Civilization* (Spring 2006).

9 A case can also be made for certain criminal cases to be resolved solely by community-based dispute resolution mechanisms, such as petty theft. See Barfield et al., *The Clash of Two Goods*, and Amy Senier, “Rebuilding the Judicial Sector in Afghanistan.”

10 The argument that community-based dispute resolution mechanisms have a role to play in criminal cases does not deny the duty or right of the state to prosecute criminal cases.

In studying the processes used for dispute resolution, this research has focused on four central themes: the processes used in resolving and or regulating disputes at community level; the relationships between these processes at the community level and state actors at district-level; the principles underlying the outcomes of dispute resolution processes; and equity within these processes, with a particular focus on gender equity. Gender equity itself has been analysed in regard to four dynamics: women's ability to access dispute resolution processes which are dominated by men; women's contribution to these processes, in comparison to men's contribution; women's role as decision-makers in resolving disputes; and the outcomes for women as compared to men of the decisions made within these processes.

Key arguments

The principle arguments this report makes in relation to the four research themes are:

Potential for change in community-based dispute resolution processes

- Community-based dispute resolution processes are not static and do not rest on an unchanging imagined version of tradition and custom. They are instead continually revised over time to adapt to changing social relationships, political structures and new problems.
- The principles underlying and used to rationalise the outcomes of dispute resolution processes are complex, drawing on Islamic and customary ideals, and negotiation and pragmatism, and as such are not fixed but adapt to the changing dynamics of individual cases and wider societal influences.

Links and relationships between village-level community-based dispute resolution and the state

- Community-based dispute resolution processes do not operate in isolation from state institutions, but instead frequently work in collaboration with them.
- Residents of villages make decisions based on experience and knowledge when choosing between taking a dispute to state institutions or those with the authority to resolve disputes in their villages. However, because individuals (female, male, young, old, wealthy, poor, etc.) face varying levels of social and practical restrictions that constrain their choices, they may come to different conclusions about which system is best for them.
- Disputes of both a criminal and civil nature are resolved at the community level. Indeed often criminal actions have their root causes in civil disputes. As such, it is not possible to make a definite distinction between the resolution of civil and criminal cases.

The comparative advantage of community-based dispute resolution processes

- Processes for resolving disputes are a key way of maintaining peace and social cohesion at the village-level.
- While community-based dispute resolution processes may not always and immediately bring a resolution to a dispute, they may well regulate or contain the dispute, i.e. prevent a dispute erupting into violence.
- Community-based dispute resolution, as practiced in the villages of Afghanistan, not only offers a functioning alternative in light of a weak state justice system, but

also has particular advantages over state or formal justice, such as its elements of distributive and restorative justice.¹¹

Gender equity and community-based dispute resolution processes

- While women's access to and participation in these processes is particularly constrained, spaces in which women do access and influence dispute resolution processes can be found.
- Although their roles as decision-makers in dispute resolution processes are severely limited, women are recognised by community members to play a key role as decision-makers in disputes of a domestic nature.
- Decisions made through these processes, contrary to common belief, can provide recourse for women to assert their rights.
- Women's access to these processes and participation in them is constrained and at times decisions are made which do not uphold women's human rights. However, this is not an outcome of community-based dispute resolution or customary law of itself but is instead a consequence of prevailing gender roles and relations in Afghanistan more widely.

The next section provides an overview of the methodology used for both the collection and analyses of the data and details regarding the selection of the research sites, including an overview of their social, economic and geographical contexts. This provides an important background to the rest of the report, explaining not only why the research team was able to access and understand certain phenomena, but also why certain types of information are not available, such as quantitative information. Section 3 focuses on the roles, responsibilities, and sources of power of decision-making actors involved in community-based dispute resolution processes. It also discusses how the operation of community-based dispute resolution has changed over time since the Soviet-Mujahiddin War until the present. Section 4 discusses the relationships between state and village-level actors, how and why people make the choices they do as to how and where to resolve their disputes, and the roles women play as both disputants and witnesses in these processes. Section 5 focuses on particular practices used for resolving disputes, the principles that underlie the decisions made, and the outcomes of particular dispute resolution processes. Finally, Section 6 is structured around the four key themes of the research and makes concluding comments on the processes used for resolving disputes in the community, the relationships between state actors and village-level actors, gender equity within community-based dispute resolution processes, and the principles underlying these processes.

¹¹ Distributive justice seeks to address the underlying causes of conflict, and restorative justice involves a community-based model of justice that places strong emphasis on the restoration of dignity, peace, and upholding relationships between offenders and victims.

2. Research Methodology, Site Selection and Context

The primary methods used for data collection were semi-structured interviews, informal conversations and focus group discussions. These different methods were used in a flexible and open-ended manner in order to give respondents the opportunity to define the most important issues for them.

Two villages from the same district in Bamiyan Province were the focus of the data collection, which was complemented by interviews with district-level actors. At district-level, the research team spoke to the following respondents: the district judge, the *woliswal* (district governor), the police commander (head of the district police department), the prosecutor, *modir-i-huquq* (officer of the department responsible for civil law), the head of the *madrassa* and member of the *Ulama Shura* (group of religious scholars), and the head of the *Ulama Shura*. Both the *woliswal* and the police commander were interviewed twice. The researchers also spoke to one member of Bamiyan's Provincial Assembly, who plays a role in dispute resolution across the province.

The research team conducted 44 interviews with men and 40 interviews with women across both villages (a very small number of these were second interviews with the same respondent). The respondents were a mixture of people who are regularly involved in dispute resolution, those who have had or were having disputes themselves, and family members of disputants. In each village, six focus group discussions were held, three with groups of men and three with women.

All interviews were recorded using written notes which were then translated into English and transcribed as-close-as-possible to verbatim. Translation itself presents particular challenges and the research team continually discussed the proper translation of certain words and phrases. The team was keen not only to have a direct word-for-word translation but also to understand what was implied when certain words or phrases were used in Dari or Hazaragi¹² compared to their English equivalents. As is seen throughout this report, specific words, particularly those used to refer to customary or Sharia practices and principles, are in the original Dari or Arabic with detailed explanations provided in the glossary, footnotes or parenthesis.

The methodological approach incorporated collecting three types of knowledge from respondents. One, individuals were asked for generalised information as to types of disputes and how they resolve disputes in their communities; two, particular cases were investigated through interviews and informal conversation with disputants, their family members and those involved in resolving the dispute; and three, opinions, thoughts and feelings about dispute resolution and suggestions for ways forward were sought from community members and district-level actors. Individual cases were explored alongside generalised information to avoid only receiving responses based on expected behaviours or normalised practices. For example, when the research team asked in a general manner about disputes, they were told many times that women do not participate in *jalasas*¹³ (meetings), yet when accounts of particular disputes were explored, women reported themselves or were reported to have been present at the *jalasas* held to resolve them. It was, nevertheless, important to collect the more generalised information to gain a historical perspective on dispute resolution in the area, to broaden the understanding of how disputes are resolved in the types of cases that the research team were not able

12 Dialect of Dari spoken by Hazara communities.

13 Dari terms are pluralised throughout this study by adding the standard English "s", so that *jalasa* becomes *jalasas*.

to explore directly, and to cross check and compare the information collected about individual disputes. The research team collected opinions, thoughts and suggestions for ways forward for dispute resolution as they believed that the communities themselves are able to understand and analyse their own lives, and are able to identify ways to improve things. Indeed, unlike the common practice of conducting focus group discussions at the beginning of a data-collection period, these were held at the end of the field work. The rationale for this was to present some of the research findings to community members to get their opinions on them, and to discuss potential ways forward for community-based dispute resolution once the researchers themselves had a good understanding of the ways in which these processes are working.

The analysis of the data has corresponded with this approach, exploring the differing descriptions and opinions regarding individual disputes and at the same time drawing out themes and subthemes across the data as a whole. ATLAS.ti qualitative analysis software was used to code the text of the transcripts and fieldnotes in order to organise the text into sets of quotations about particular themes and subthemes. Detailed case histories were also brought together and summaries of some of these are in Annex 1.

Of the two villages selected, one is relatively close to the *woliswali* (literally meaning “district,” but used to refer to the district’s central town), being an hour’s drive away in good weather. The other village is far more remote and takes approximately four hours to drive to in good weather and up to 10 hours in winter, when there is a lot of snow on the roads. It was a deliberate decision to select villages whose accessibility to the *woliswali*, and therefore the representatives of the state justice system and administration, is significantly different. This was done to see whether remoteness from state actors leads to less engagement between the community and the state. Interestingly, as is shown in Section 4, in the case of these two villages it does not. The researchers also used other selection criteria when choosing the villages. First, village size (it was important that the villages were large enough that several different extended families, and even *qawms*, could be living there), and second, that it was known that disputes were ongoing in these villages. The villages were then selected through a process of talking to state actors and representatives of non-government organisations (NGOs) in the area, as well as visiting several possible villages and having informal conversations with the residents.

The people of the near village are all Hazara and include people from Jaghori¹⁴ and Behsood,¹⁵ and people originally from this part of Bamiyan Province. These different Hazara groups began leaving their places of origin around 120 years ago when King Abdul Rahman conquered and ruled much of Hazarajat, causing people to flee their native areas.¹⁶ These groups are sometimes described as *farari* (refugees), even generations later, by the original inhabitants of the area.

The near village lies across a valley with settlements on the mountains on either side. There are 20 small *aghels*¹⁷ separated from each other by farmland and hills; in each *aghel* there are approximately 25-30 households and around 400 households in the village. A river flows through the centre of the village, which is prone to flooding during the spring months and completely dries out during the summer months. There are at least three shops in the village.

14 Those whose families originate from the Jaghori district in Ghazni Province.

15 Those whose families originate from the Behsood district in Maidan Wardak Province.

16 See Mousavi, “The Hazaras of Afghanistan: An Historical, Cultural, Economic and Political Study” (Palgrave Macmillan, 1998), for more details on the history of the region.

17 An *aghel* is a smaller village that co-exists with other small villages within the boundaries of one larger village. In the northern provinces of Afghanistan, the word *qeshlaq* is used to describe this.

Most people in the village own their own land and cultivate potatoes, wheat, barley, corn and beans. Those who do not own land work as sharecroppers. Some of the younger men from the area currently live and work in Kabul and Iran; others work locally as daily wage labourers when work is available. Livestock is a major source of livelihood and people own sheep, goats and cows. During the spring and summer months the livestock is taken to graze on the village *ailaqs*.¹⁸ The older women in the families are mainly responsible for the animals on the *ailaqs*.

There are two schools in the village, one for girls and one for boys, who are all taught from first grade to 12th grade. Some of the boys from the village also attend school in the *woliswali*. There is no clinic in the village and people have to travel to the *woliswali* for all healthcare.

The more remote village has around eight *aghels* but the research team focused on the most populated *aghel* in the area. Again, the population is all Hazara but includes people originally from Jaghori, Behsood and Daizangi¹⁹ areas. There are 173 households in this *aghel* which is on the main road through the district leading to the *woliswali*. There are a number of small shops beside the road and this is the area of the village where men tend to congregate. Further away from the main *aghel*, a river runs parallel to the road and a number of villagers live on both sides of it.

As in the near village, livelihoods in this area are dependent on agriculture and animal husbandry; some people own land and others engage in share cropping. The village's *ailaqs* are a fair distance from the village—approximately a four to five hour walk. The elder women in the village reported to the research team how, when they return from the *ailaqs*, they trade their dairy products such as butter and *quroot* (a form of dried yoghurt) for dried fruits with women in the villages between their *ailaqs* and village.

As in the near village, there are two schools, one for boys and one for girls. The girls' school is from first to eighth grade and the boys' school is from first to 12th grade.

When the researchers selected the villages it was also important to gauge whether they would be welcomed. It should be noted that the research team experienced virtually no resistance from the communities or difficulties in gaining access to respondents, both women and men. Instead, many people were extremely keen to talk about their lives in general as well as their own disputes and others that have happened in their communities.

The research team was made up of two Afghan women and two Afghan men who are members of the Hazara, Pashtun and Tajik ethnic groups, and two British women. The researchers thought it was necessary to have a team made up of mixed ethnicities as they knew at the outset that the research would be conducted in Hazara, Pashtun and Tajik areas. This proved fruitful in the field; it made access easier because team members were from similar ethnic groups to the communities where the work was conducted, but also because, at times, respondents were eager to explain their own customary practices in great detail to people of different ethnic groups. The Afghan team members were primarily responsible for data collection and interacting with the communities, but community members and district-level respondents were also introduced to the expatriate researchers. It was important that all team members were introduced to the

¹⁸ *Ailaqs* are low hills of pastureland located a distance from the village. Some members of each household will permanently move to their *ailaqs* during the grazing months.

¹⁹ Those whose families originated from the Waras district in Bamiyan Province and from Day Kundi Province.

communities so that the community was aware of everyone who was involved in the project and would have access to the transcripts of their interviews.

Before the team began work in each village it sought permission from both male and female community elders and leaders. It ensured that as many members of the community as possible understood what the research team's aims and objectives were and how long researchers would be working in the area. For example, it was important to make it clear, through introductory meetings and follow up meetings with groups and individuals, that there would be no direct benefits from participating in the research. The researchers got informed consent from respondents before conducting either individual interviews or focus group discussions. Respondents were, as far as possible, given time to think about whether they wanted to talk with the research team or not and to discuss this with their families. The researchers also got consent to take written notes during interviews and focus group discussions. Since many of the respondents were illiterate or semi-literate, verbal rather than written consent was obtained.

The data collection was divided into two phases. A first round of interviews and informal conversations was conducted in late 2006 followed by preliminary analysis of the data. A second round of interviews began in the spring and summer of 2007. During this second round, the teams interviewed new respondents, re-interviewed earlier respondents and initiated focus group discussions. Conducting the data collection in two phases gave the research team time to reflect on the first round of data collection and to consider what might be missing from the data and what themes could be explored further before returning to the research sites.

3. Power, Authority and Change in Community-Based Dispute Resolution Processes

This section focuses on the roles, responsibilities and sources of power and influence of some of the different actors involved in community-based dispute resolution processes. It discusses both district-level and village-level actors with particular attention paid to decision-makers in these processes. In describing how individuals and groups act in community-based dispute resolution processes, this section contributes to two of the key arguments presented in this report. First, through an exploration of how the roles of different actors have changed over time, this section shows how community-based dispute resolution processes have changed and continue to change, rather than remaining static in an imagined version of tradition and custom; these processes have proved themselves to be adaptable to changing social and political structures and relations in Afghanistan. Second, in discussing women's position as actors in these processes, it is argued that although women's roles as decision-makers in dispute resolution processes are severely limited, community members recognise that women do play decision-making and advisory roles in certain types of disputes.

It is important to remember when discussing the different actors in these processes that an actor may be an individual, such as a disputant, village elder or district-level official; or it may be an institution or body, such as a *jalasa* or court. An individual may be a different type of actor at different times; for example, a man may play the role of decision-maker in resolving certain disputes but at another time he may be a disputant himself. Likewise, individuals may simultaneously have different roles in dispute resolution, such as being a village elder who is also a relative of a disputant. The actors discussed in this report are not only those people who are currently part of dispute resolution processes but are also individuals or institutions that have played a role in dispute resolution processes in the past.

As the case histories in Annex 1 illustrate, the most overt processes for dispute resolution take place in a meeting, or series of meetings, called a *jalasa*. These are attended by *reesh-safedan* ("white-beards," being elderly men), at times *sar-safedan* ("white-hairs," being elderly women), disputants, and any witnesses to the case. If the disputants and witnesses are women, the nature of their attendance at a *jalasa* varies from dispute to dispute and is discussed in sections 4 and 5. A *jalasa* for dispute resolution is a flexible body; its structure and location not only change from dispute to dispute, but it can also change during the resolution of one dispute. For instance, a *jalasa* to resolve a dispute over a small amount of land may be held on the land under dispute or, for larger inter-*qawm* or inter-village disputes, a *jalasa* may be held in a central public space. *Jalasa*s are also often held in the homes of the white-beards who are taking part. The size of a *jalasa*, where it is held, and who attends it is flexible and depends on the nature of the dispute, its resolution, and the needs of community members.

3.1 "Power as authority" and "power as coercion" in community-based dispute resolution

Central to this section is an understanding of how power is attained and exerted. Drawing on early conceptualisations of power by Lukes,²⁰ this report adopts a distinction between "power as authority," described by Lukes as compliance based on generalised values, and

²⁰ Steven Lukes, *Power: A Radical View* (London: McMillan Press Ltd., 1974).

