



**CAAT Special Report**

# **Asymmetric Justice: Identifying and Resolving Security Bearing Disputes**

**29 December 2011**

"This material may be reproduced by or for the U.S. Government pursuant to the copyright license under clause at DFARS 252.227-7013 (November 1995). The U.S. Government retains Unlimited Rights. Unlimited rights means right to use, modify, perform, display, release, or disclose technical data in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so."

"DESTRUCTION NOTICE – For classified documents, follow the procedures in DOD 5200.22-M, National Industrial Security Program Operational Manual (NISPOM), Section 7, paragraph 5-700 or DOD 5200.1-R, Information Security Program Regulation, Chapter IX. For unclassified, limited documents, destroy by any method that will prevent disclosure of contents or reconstruction of the document."

**(NIU) Executive Summary**

(NIU) Formal justice is nearly absent in rural areas throughout Afghanistan. Afghans resort to a variety of authoritative structures to resolve conflict. As demonstrated by Asia Foundation's most recent survey, locals still resort to traditional and non-formal means of conflict resolution much more than formal and official processes.<sup>1</sup> Outside of provincial capitals, traditional justice is the most viable means of resolving conflict resulting from land, water, marriage, commercial and financial disputes.<sup>2</sup> For decades villagers have remained virtually untouched by formal justice. Those who venture to the formal courts find them to be inaccessible, inefficient, or untrustworthy - thus abandoning elements of Afghan Governmental legitimacy and transparency.<sup>3</sup> According to the aforementioned Asia Foundation study, less than half those surveyed felt that state courts were trustworthy when compared to other means of conflict resolution.<sup>4</sup> In some areas, lack of any dispute resolution forum leaves many disputes unresolved. This justice vacuum results in a series of escalating events causing insecurity, instability, and an opportunity for the Taliban to bring order.

(NIU) Few if any ISAF resources have been dedicated to enhancing the capacity or capability of traditional justice, whether by establishing connectivity between the Jirga and the formal court, or ensuring disputes are resolved.<sup>5</sup> This report presents a dispute targeting methodology that specifically enables the Hoquq to resolve disputes that have a direct or indirect effect on security and stability. This grassroots COIN effort represents a national way-ahead, advancing stability and security through justice.

**(NIU) Background**

(NIU) Conflict resolution has the ability to transcend both cultural and geographic boundaries. The capacity to mediate differences and arrive at mutually acceptable solutions does not require a complicated set of rules. In many parts of the world solutions are garnered with sensitivity to culture – solutions involving communication between disputants while searching for a 'win-win' situation, or restorative outcome.<sup>6</sup>

---

<sup>1</sup> (NIU) Mohammed Osman Tariq, Najla Ayoubi, and Fazel Rabi Haqbeen, *Afghanistan in 2010: A Survey of the Afghan People* (The Asia Foundation: 2010), 125.

<sup>2</sup> (NIU) For the purposes of this work, conflict resolution and traditional justice are interchangeable words; both are used as an umbrella term for dispute resolution at the village and tribal levels. In addition, traditional Justice is an umbrella term for Jirga (typically an ad hoc assembly to resolve a specific dispute either locally or nationally) or a Shura (typically a permanent assembly at the District, Provincial or National level).

<sup>3</sup> (NIU) International Legal Foundation.2004\_www.TheILF.org\_September 2004; Soraya Sarhaddi Nelson, *Rural Afghans Resistant to Official Judicial System*, December 2008.

<sup>4</sup> (NIU) Tariq, Ayoubi, and Haqbeen, *Afghanistan* at 130.

<sup>5</sup> (NIU) Both USAID's Rule of Law Stabilization – Informal Program and USIP's work in traditional justice has made significant progress.

<sup>6</sup> (NIU) Vinod Swami, *Conflict Across Cultures*, 1992.

In this respect, searching for a mutually beneficial answer may involve religious leaders, tribal elders, and community leaders who can address difficult issues and truths for the parties, and make suggestions for potential declarations.<sup>7</sup> One can imagine the difficulty in resolving disputes across ethnicities, cultures, and customary understandings or beliefs.

(NIU) In Afghanistan, traditional justice has dealt with these nuanced social situations for centuries as a fully functional conflict resolution mechanism. Understanding, connecting, and enabling village level conflict resolution is an imperative in order to build a sustainable rule of law infrastructure. Grasping the complexities of conflict resolution in Afghanistan is difficult; understanding how to interface and impact the counter-insurgency environment through an asymmetric conflict resolution apparatus appears impractical. It is often easier to gravitate towards what is comfortable or familiar: westernized concepts and legal principles that are neither applicable nor warranted. Nonetheless, as sure as water for crops or walls around a compound, the need for dispute resolution is constant.

(NIU) There is no denying the Taliban understand this insatiable need. The villagers' attraction to the Taliban is rooted in the absence of effective alternatives, rather than ideological affinity. The Taliban places emphasis on resolution through mediation, providing a fair verdict crucial to the tranquility of the community.<sup>8</sup> The Taliban justice system offers a system of restorative justice where disputes are resolved through consultations with persons appointed by the shadow government who hear the testimony and provide resolutions based on equity, customary law, and sharia law.<sup>9</sup> Those who use the Taliban justice system, either willingly or under duress, are content with this similarity to the traditional justice forums.<sup>10</sup> For the Taliban, this ensures population loyalty, adherence to Sharia law,<sup>11</sup> perception that the Taliban

---

<sup>7</sup> (NIU) Id at *Conflict Across Cultures*.

<sup>8</sup> (NIU) Id. at *Afghanistan in 2010: A Survey of the Afghan People*.

<sup>9</sup> (NIU) According to the 2010 "Taliban Code of Conduct" only the (shadow) governor, district administrator, and their deputies are authorized to deliberate legal cases brought up by the people. Resolution is primarily sought through consultation of the matter with the appointed deputies. If no resolution is available, then the case is referred to the court (at the district level) where the district administrator will review the matter. Lastly, the case, if warranted can be heard at the provincial level where, according to the TB Code of Conduct, the shadow governor of each province should establish a provincial court composed of a judge and two well-educated members for attending cases which cannot be dealt with at the district and village levels.

<sup>10</sup> (NIU) In an interview with farmers from Maiwand, they stated that "the Taliban announced to villagers that if they face any kind of problems, they (villagers) should come to the court and they will find a transparent judgment". In addition they stated "they (Taliban) deal with a number of cases: land disputes, family disputes, loan disputes, robbery, killing, fighting and the people are happy with them". Author Unknown, *Canwest News Service*, The Edmonton Journal, Oct. 2008.

<sup>11</sup> (NIU) Sharia law is the code of conduct or religious law regulating individual conduct both personal and moral; custom-based body of law based on the Quran and the religion of Islam making religious texts, and the subsequent interpretation the law.

are community oriented, and most importantly it counters GIRoA efforts.<sup>12</sup> It may be enough to understand that if the Taliban are providing this service, then it is something citizens need rather than want. Therefore, the Afghan Government, with ISAF assistance, should be providing the same or better service.<sup>13</sup>

(NIU) The great majority of resources, time, and effort devoted to expanding the Rule of Law in Afghanistan are dedicated to building a functioning formal justice system.<sup>14</sup> Few ISAF resources have been dedicated to enhancing capacity or capability of traditional justice, whether by establishing connectivity between the Jirga and the formal court, or ensuring disputes are resolved.<sup>15</sup> International actors and international donors have traditionally forged the way, liaising with dispute resolution forums and leaders.<sup>16</sup> Military commanders often find they are the benefactor of these international efforts versus the entity able to counteract the effects of unresolved disputes through organic resources. Unfortunately, in areas where

---

<sup>12</sup> (NIU) The insurgents enjoy reciprocity with the population as natural alliances are formed as a result of geographic proximity - beyond the efficient and fair resolution to the dispute - and are manifested with espousal of ideology, garnering trust of the people, utilizing safe havens; and creating fertile recruiting grounds of disenfranchised young men with the acquiescence of their families.

<sup>13</sup> (NIU) Albeit, there is no current provision outlining the GIRoA's intent to formally recognize the traditional justice system and how it complements the formal justice system. As recently as early 2011, the MOJ drafted a document detailing the formal recognition of the traditional justice system, jurisdictional mandates, recordation, training of tribal elders, women rights, etc. This document languished at the Lower House for several months, where it remains today. The international community has called for a less restrictive legislative answer.

<sup>14</sup> (NIU) For example, the international community complies with the U.S. Rule of Law Strategy for Afghanistan and intends for a close engagement with the local populace to provide for the 'natural re-emergence' of traditional justice systems to ensure dispute resolution needs are met at the grassroots level. In addition, the draft ISAF HQ STABDIV 'Transition Strategic Directive – Rule of Law' is pointedly geared towards development or support of traditional justice forums. Further, GIRoA's intent to formally recognize the traditional justice system has met various levels of disagreement by the MoJ and the international community, and no formal law is currently in place. In addition, the Constitutional mandates (Art. 35 allowing formation of parties) and the Civil Procedure Code (Art 231 allowing the settling of disputes outside of court) allow for a reasonable expectation matching a traditional reality that disputes will be settled outside of judicial system; SBD's enables the Hoquq to link the GIRoA legitimacy under the Law on Procedure of Obtaining Rights.

<sup>15</sup> (NIU) There may be exceptions, for example RoLFF's efforts in RC South to involve the Provincial Hoquq in dispute resolution at Sarpoza prison.

<sup>16</sup> (NIU) USAID showcases solid success with the Rule of Law Stabilization Program; Informal Component as it concentrates on developing community based dispute resolution, helps to create forums where they were decimated by war, offers legal training for Jirgamen, and enables connectivity to the formal court. In addition, The SBD methodology compliments this program well as it concentrates on the government structure, e.g. this program utilizes the Office of the MoJ (Hoquq) to bring resolution of disputes to the people. Further, USIP (United States Institute of Peace) has made significant strides with their continued work in assuring access to dispute resolution through traditional justice forums and creating concrete relationships between the formal justice system and community based dispute resolution systems. In addition, other international actors such as (GIZ) (implementer for the German Development Cooperation) is currently training Hoquq's on civil law, law of absolute rights, and ethics. Dunn, Chisholm, and Mason, *Assessment Report of Afghanistan Rule of Law Stabilization Program (Informal Component)*, USAID (Kabul), January 2011; Observations from an interview with Shahmahmood Miakhel, Assistant Country Director, USIP, April 2011; Observations from an interview concerning rule of law programs under GIZ'd, Philipp Rotmann, POLAD (GIS) to Senior Civilian Representative (Germany), April 2011.

civilian expertise does not exist or is not active due to lack of human capacity, this liaison effort falls to the way side.

### **(NIU) The Preliminary Solution**

(NIU) In April 2011 the CAAT support in developing a solution to civil disputes as a root cause of insecurity and instability. CAAT dispatched their Rule of Law Advisor to investigate, research, and support the request. CAAT developed a preliminary solution based on the concept that disputes are best resolved at the community level by trusted actors with whom villagers are familiar (Jirgamen, Arbob's, or Wakil's).<sup>17</sup> In short, the CAAT developed the Security Bearing Dispute (SBD) program which allows ISAF to identify disputes that effect security and stability and through trusted relationships with local government officials, namely the Hoquq,<sup>18</sup> hold GIRoA officials accountable to propel resolution. GIRoA involvement in the dispute - via the Hoquq - is immediately apparent while international involvement is transparent.

(NIU) In order to implement the SBD, CAAT identified two prerequisite factors:

- (NIU) Peripheral enablers must exist in a chosen AO to include VSO, ALP, NGO's, Rule of Law Field Force (RoLFF), and other international actors.<sup>19</sup>

---

<sup>17</sup> (NIU) Jirgamen are members of the ad hoc village council that are summoned by the disputants to resolve a specific dispute; Arbob (Malik) or Arbob Wakil is a local village ruler or a tribal elder who makes decisions based on the needs of a village or set of villages. He is often the first one to be brought a dispute, he relays the dispute to the Jirga (of which he will be member) or is trusted or requested to resolve the dispute himself; Wakil (Khan) is most aptly described as the district level mayor or the "Head of Shura". Interviews with the Arbob Wakil, Provincial Hoquq, and Provincial Chief Justice.

<sup>18</sup> (NIU) Also known as the General Legal Department, it is regarded as the MOJ's office to resolve civil matters via mediation. In other words, the Hoquq is the conflict resolution forum. The Hoquq has a tashkil at every provincial and district center. The Hoquq functions like a mediation center and either resolves disputes, or refers them to the courts for remedy. Department of the Hoquq, Ministry of Justice for Afghanistan. 2010.www.moj.gov.af.2010

<sup>19</sup> (NIU) These enablers provide 'tentacles' into the environment. Relying on the hired Afghan local and the unit's HUMINT capacity will likely not provide a complete picture of the rule of law environment. Other CF's entities need to be intimately involved to ensure a complete picture prior to taking action. In some cases, Afghan tashkils may not be filled and malign, incompetent, or absent actors may covet public official positions. The Rule of Law Field Force (RoLFF) is ensuring that district level governance billets have the minimum necessary key personnel prior to emplacing resources. In partnering with the RoLFF, and conducting mutually supporting pre-mission analysis, viability of the program will become readily apparent. In some situations, the vacant position will not be resolved; imploring the Provincial Hoquq and Provincial Justice to act will be intricate to resolving anti-GIRoA sentiments. The "train has left the station" and we must utilize what personnel are available to create sustainable solutions and results. Other peripheral enablers such as VSO and their resulting ALP are mutually supporting concepts. A limitation of the SBD program is security, and villager's willingness to bring matters to the government from outside the security bubble. The VSO program expands the security bubble thereby creating a vacuum that this program fills through a sustainable interaction with the GIRoA justice system. This will be vital as the VSO conducts 'Shape' operations in insecure areas; this program encourages the Hoquq to reach out to Arbob Wakil's in that area in anticipation of the vacuum that will be created. Attempting to establish relationships between the GIRoA and that area post judicial vacuum will be a lost opportunity; villagers who easily accessed the Taliban to resolve disputes now have no recourse but for the Hoquq.

- (NIU) A CDR's willingness to dedicate resources to a soft effort and continue to press a program that may not show tangible results for several months.<sup>20</sup>

(NIU) Initial mission analysis exposed the need to identify and understand various factors to ensure transparency; to provide a sustainable solution for access to justice; and to enable the GIRoA to impart legitimacy, expediency, and fairness to the populace. With this in mind, the following issues must be understood at the tactical level:<sup>21</sup>

- **The Battle-Space:** tribal structure, economy, leadership, shadow government leadership and insurgent areas of operation, infrastructure, communication, and judicial capacity.
- **Potential Actors:** anyone that *could be* involved in dispute resolution either in the formal or traditional justice systems from the village to the provincial capital.
- **Mapping Existing Justice Systems:** the location of any functioning Jirga system, and identification of any individuals who serve as connective tissue between traditional justice and the GIRoA.<sup>22</sup>
- **Cultural and Political Nuances:** intimate understanding of cultural and political nuances at the village and district level that affect the resolution of disputes.<sup>23</sup>
- **Coalition Forces:** situational awareness of CF LOO's, capacity, and capability.<sup>24</sup>

### (NIU) Security Bearing Disputes

(NIU) As a precursor to discussion, it is necessary to understand how a community or individual grievance can have a bearing on security. Many citizens are not opposed to the formal court and would take their civil disputes there if they thought it

---

<sup>20</sup> (NIU) The CDR will understand that the indirect and direct results of this effort can enable security and security in Tranche 2, 3, and 4 areas, allowing for ISAF and IA's to conduct effective good governance operations. In addition, the CDR will understand that soldier assigned this position cannot consider it an additional duty, but rather a full-time position.

<sup>21</sup> (NIU) Most of this information can only be garnered after exposure to the tactical battlespace; intimate knowledge can only be garnered in close proximity to the problem.

<sup>22</sup> (NIU) Due to the natural cultural fragmentation in the actual practice of dispute resolution that occurs due to tribal boundaries, terrain, leadership, and ethnicity, simple put, one area may decide things differently than another.

<sup>23</sup> (NIU) Cultural and political nuances translates to 'how things really work' at the district level and can only be realized after initial relationship building. This will be intricate to understanding later in the methodology. For example, despite initial analysis, most units will not have the resources or the intuition to find out whether a Hoquq exist, in addition to the possibility that the Hoquq is the brother-in-law to the District Governor.

<sup>24</sup> (NIU) See footnote 15 – knowledge that unit is there meets initial criteria for an area, capacity and capability will not be readily apparent without a 'hands-on' inquiry.

to be fair and efficient.<sup>25</sup> This is often not the case. In practice, villagers seeking resolution from GIROA end up disappointed, distrustful, and angry - fueling anti-GIROA sentiment. For instance, a citizen seeking resolution of a land dispute will seek recourse at the village level, and if left unsatisfied approach the District Governor. This may result in the case being referred to the Hoquq or the Court. If there is a District Hoquq or District Judge within geographic proximity, resolution may require an additional nine months to five years.<sup>26</sup> This inefficiency plays a primary role in frustrating citizen's previously optimistic demeanor.<sup>27</sup> Citizens often turn to Taliban courts, not out of ideological fervor, but out of necessity.<sup>28</sup>

(NIU) In cases where there are no Taliban courts, citizens rely strictly on traditional justice which may leave the problem unresolved between different ethnic tribes, resulting in violence and murder; a family's loss is easily blamed on a corrupt government that is unable to provide assistance. Further, those villagers who have their land taken by the government have no immediate recourse except through what they view as a corrupt and inefficient entity. This provides the Taliban with access to the population; it showcases their ability to provide solutions to problems via a civil service.

(NIU) From a practical standing, these obstacles may seem insurmountable. To the contrary, providing transparent support to the local governance structure would enable an already established and sustainable Afghan process on an established

---

<sup>25</sup> (NIU) In expression of their feelings towards the use of Taliban Jirga, one Afghan stated "we see trouble from the Taliban, from NATO, and from the Afghan government." *Afghans Turn to Taliban Shadow Government*, Canwest News Service, The Edmonton Journal, October 2008.

<sup>26</sup> (NIU) For those individuals who live in the rural areas, submitting your dispute to GIROA is not a possibility. As a result of the geographic isolation and lack of interaction with GIROA, trusting GIROA with your problems is unlikely. In addition, in many areas, the tashkil supports both a district judge and district level Hoquq. In reality, the district judges primarily reside at the provincial capital and hold court at that location – citing the "security situation" as a reason citizens must come to them from the district. The Hoquq, on the other hand, generally lacks the personnel to fulfill the district tashkil.

<sup>27</sup> (NIU) A common complaint among Afghan citizens is the amount of time it takes to process the case. In many scenarios, the reported timeline for resolution is 9 months to 5 years. For example, when a person brings a land matter before the court, they often have documentation and witnesses to substantiate their accusation. The court, understanding that disputes can easily flare into murder cases, pay deference to the defendant's ability to counter the matter with his own documents and witnesses. Every time one party claims to have another witness or document the judge must postpone the proceeding to ensure both parties are given the opportunity to defend their position. In addition, the appeals process can be lengthy. Corruption has an equally important role in citizen dissatisfaction. In many cases, citizens report being approached by a 'friend' of the court requesting payment for a favorable resolution. In western speak this person is referred to as the 'bagman'.

<sup>28</sup> (NIU) A villager petitioned the Court and the Jirga, both of which agreed that the land in dispute lawfully belonged to him. The defendant, well-connected to a local warlord ignored the Court order, who was afraid to act in fear for their well-being. The petitioner approached the Taliban who held their own Jirga, reviewed documents, listened to witnesses, and arrived at the conclusion as the Court; under Taliban direction, the defendant returned the land. Jerome Starkey, *Afghans Turn To Taliban Justice As Insurgents Set Up Shadow Government*, Times (London), December 2009.

tashkil, developing skill sets and mitigating negative influences.<sup>29</sup> The practical tenants to impart to local GIRoA officials include:

- Hoquq should engage the populace in order to spread legal rights awareness to the people.<sup>30</sup>
- The Hoquq and the District Governor should identify disputes that cause, or are perceived to cause anti-GIRoA sentiment.
- District Governor should provide oversight of cases referred to the courts to ensure timely resolution.<sup>31</sup>
- District Governor should devise metrics to ensure citizens are remedially satisfied with fair (uncorrupt) and legitimate decisions.<sup>32</sup>

(NIU) These practical goals expose one of the most important “drivers” of the SBD program: mapping the operational rule of law environment. Understanding how and why civil disputes are decided, by whom, or why they are left unresolved is innate to understanding the political gamesmanship surrounding these disputes. To obtain a high level of granularity, it is necessary to identify all the actors who have the ability to influence resolution and determine the course of disputes from the village to the district center.<sup>33</sup> As this task was applied to one district, within a particular province it became clear that at the tactical level, where the traditional justice system and district level formal justice system meet, they are mutually supporting and intimately entwined.

### **(NIU) Understanding the Asymmetric Justice System**

(NIU) As you see from the graph below, an *asymmetric relationship* exists between the formal courts and the traditional resolution forums. Simply, there is no hierarchical or linear structure for a dispute to reach resolution; finality is a rarity. Although an injured party will most likely first seek resolution at the family or village level, the recommendations given by these forums are often taken to another forum,

---

<sup>29</sup> (NIU) This will not be a uniform methodology. There will be districts that do not have a Hoquq or a trustworthy District Governor; recourse will have to be made with the provincial governor or the provincial Hoquq.

<sup>30</sup> (NIU) Hoquq’s are also responsible for informing citizen’s of their rights which they are entitled to under law. This includes the ability to have disputes heard in a fair and transparent manner by the Hoquq, and the Courts, and provide witnesses and documents to prove their case. In addition, those rights also include an accused party’s rights to provide witnesses and documents in defense of the accusation.

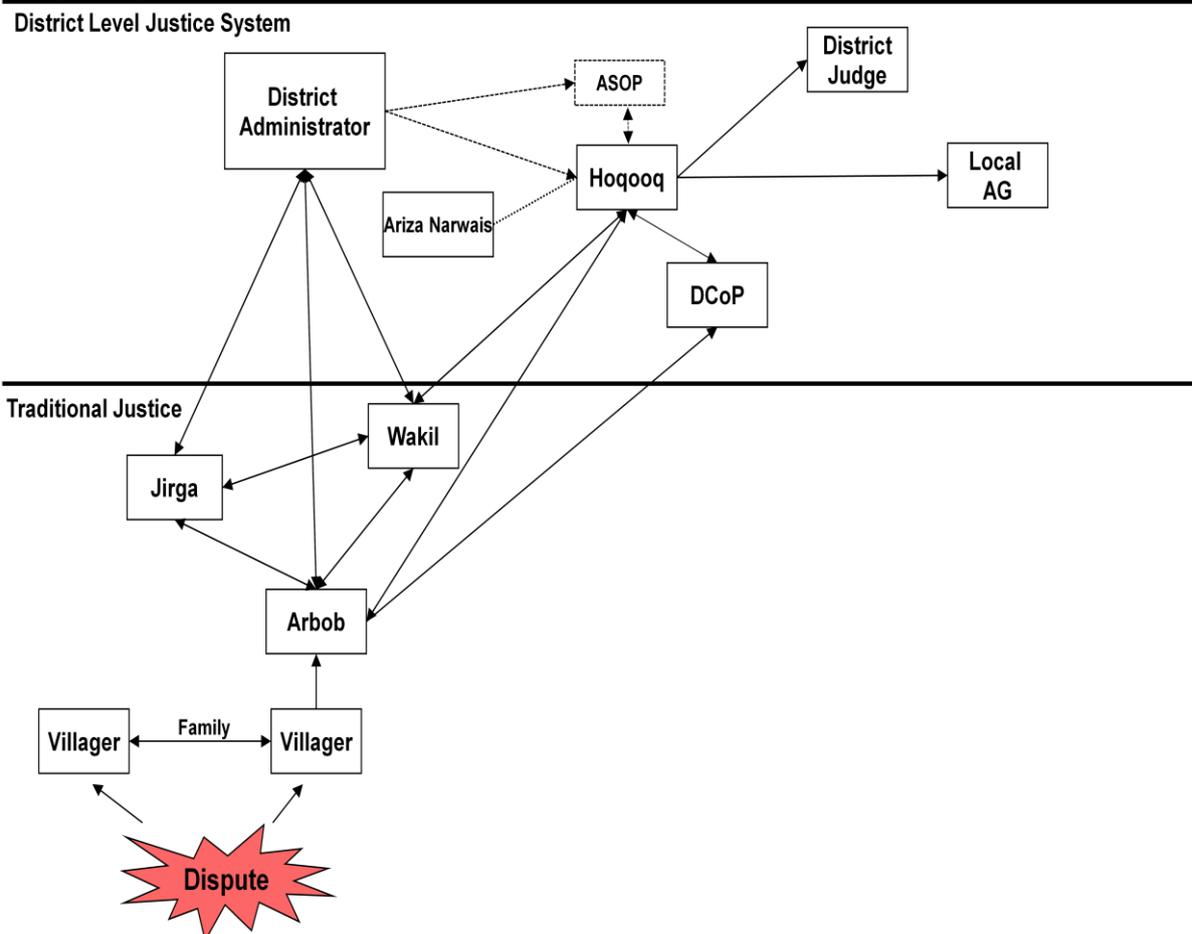
<sup>31</sup> (NIU) District Governor is interchangeable with Provincial Governor.

<sup>32</sup> (NIU) District Governor is interchangeable with Provincial Governor or Provincial Hoquq.

<sup>33</sup> (NIU) The importance of relationships is further explored in the targeting methodology, specifically the ‘Fix’.

resulting in a *bounce* effect from entity to entity.<sup>34</sup> Afghans “appeal” or seek a different opinion because they can; they are never satisfied due to the perception of

**(NIU) Graph 1 – Asymmetric Justice System**



corruption, favoritism, or outright injustice.<sup>35</sup> In some cases, disputes are relayed to the formal system and sent back to the traditional forum with recommendation. Many Afghans agree this asymmetric system, slipshod to Western standards, allows for a just and reasonable outcome; justice is served since the ability to seek justice in other forums thwarts corruption and nepotism.<sup>36</sup>

(NIU) A dispute can range from a public insult, to a criminal matter, to a land dispute over water, or grazing rights.<sup>37</sup> At the fundamental level, in an effort to not ‘air dirty laundry’, the dispute may be managed and resolved between family members. Depending on the “size” of the dispute, it may be voluntarily brought by the injured

<sup>34</sup> (NIU) Afghans claim that until the matter reaches the Hoquq, it is a ‘voluntary’ submission and the parties have the right to submit it elsewhere.

<sup>35</sup> (NIU) Taken from an interview with District Judge, May, 2011.

<sup>36</sup> (NIU) In an interview with the Provincial Hoquq in May 2011, he conveyed that the ability to seek resolution in different forums is like an appeals process.

<sup>37</sup> (NIU) In most scenarios, disputes are centered on land, water, and grazing rights. Criminal matters brought to the District Governor will be sent to the local Attorney General or District Chief of Police. The observation above was taken from an Interview with District Governor, June 2011.

party to the Arbob for resolution or referral.<sup>38</sup> In the event the dispute is referred to a Jirga, the Arbob makes the necessary arrangements to ensure proper representation.<sup>39</sup> The conflict can also go directly from the Arbob to the Wakil, who can refer the matter to the Jirga, or send the dispute to the District Governor or Hoquq with or without his recommendation. The Arbob can do the very same thing and by-pass the Wakil. Notwithstanding, Afghans will often take the matter to who they know in government and may go directly from the Arbob to the District Governor, Hoquq, District Chief of Police, Provincial Chief Justice, or even the Provincial Governor.<sup>40</sup>

(NIU) In most scenarios, the government actor introduced to the dispute is the District Governor. Although part of the executive branch, he often plays the role of arbitrator, and by nature of his position can be the actor whose recommendation produces resolution. District wide, he is often proffered the opportunity to hear and recommend potential solutions to issues, suggest they return to the Jirga, go to the Wakil, or refer the claimant (and the Elders) to the Hoquq. For those disputes that

---

<sup>38</sup> (NIU) An Arbob Wakil (Malik on other parts of the country) serves as the de facto leader of the village, sub-tribe or tribe. Common duties include heads of villages or town councils, arbiters in local conflicts, representatives to district or provincial councils, and tax collectors. An Arbob has the authority to resolve disputes on his own, (if the parties wish) and if forming a Jirga, will likely be the head of the Jirga or a member. Lastly, in case the parties approach the government or the Wakil, the Arbob will be a member of the delegation that accompanies the claimant.

<sup>39</sup> (NIU) An Arbob will assist to gather relatives of the claimant (and of the defendant) and elders from the village or neighboring villages; the number can be five Jirgamen or 25 Jirgamen, all of whom the parties will agree are the appropriate body to represent them in the dispute. In addition, the Jirga will request waak (authority to resolve the dispute) to enable the body's decision to be binding and legitimate in the eye's of the community. Once given, the community will know that they agreed to allow the council to hear the matter and will therefore honor the decision (Pashtunwali). In addition, both parties will provide Machilgha (or Baramta) to the Jirga which serves as a money or material equivalent of a legal guarantee to allow the selected members to hear the dispute. If the disputants accept the decision, the deposit will be returned. If the disputants refuse the decision, the Machilgha will be split amongst the elders or spent in the community. More often than not, there is a peaceful, albeit unrecorded, solution to conflicts such as simple insults, debts, and family matters that would never reach the level of the GIRoA or bear on security. In some disputes, parties are willing to part with the Machilgha and can "save face" if they can present a reasonable argument to the community claiming the Jirga was corrupt. This is most common when another village or tribe is the opposite party. According to interviews, this is the split in keeping with Jirga decision or continuing along the asymmetric apparatus that allows for little finality. In many cases, the enforceability mechanism is nonexistent allowing for disputants to appeal the decision. Approaching the Jirga was a "voluntary decision" and can be easily ignored. Those that reject the Jirga's judgment may be ostracized by the community, but may be avoided when a neighboring tribe, minority ethnicity or government is blamed. The observation above was taken from an interview with the Chief Clerk to the Supreme Court; Interview with an Arbob Wakil, 2011; Interview with the Provincial Hoquq, May 2011.

<sup>40</sup> (NIU) For example, while the author waited to speak to a Supreme Court Justice in February 2011, he engaged in conversation with four older gentlemen who appeared to the eye as weary travelers. The elders explained that a land dispute between families in the District has led them to walk for three days in order to seek counsel with Supreme Court Justice, whom they know and trust. They only sought his recommendation, post Jirga decision, with intent to return to the Jirga with his written recommendation. Why not go to the DG or PG? They don't understand the politics of our villages, the Justice does, besides, it is not their concern.

reach the Hoquq, this is the beginning of the end for asymmetric possibility.<sup>41</sup> The Hoquq will typically return a decision within 30 days once both parties have the opportunity to present documentation and witnesses.<sup>42</sup> The Hoquq's decision is binding, but if the parties desire, recourse is sought at the District Court.<sup>43</sup>

(NIU) The Hoquq is the 'tip of spear' for perceived government legitimacy. Coalition Forces' role should be as transparent as possible. ISAF should not be viewed as a body that is ensuring the resolution of disputes.<sup>44</sup> Whether the matter was resolved in the Hoquq's office or referred back to the Jirga with the Hoquq's recommendation, GIRoA having a role in assisting with the resolution results in a perception of legitimacy causing population loyalty to transfer from the insurgency to GIRoA.<sup>45</sup>

### **(NIU) Targeting Process**

(NIU) The SBD methodology utilizes a hybrid version of F3EAD (Find, Fix, Finish, Examine, Analyze, Disseminate) changed to F3A3 (Find, Fix, Finish, Analyze, Accountability and Assess). These elements provide a framework to identify, vet, and determine what parties can assist in creating a restorative resolution. A description of the elements is as follows: Find – identify a dispute that may have an effect on security or stability; Fix – interview local actors and corroborate the basis and history of the dispute; Finish – determine and clearly articulate if the dispute is

---

<sup>41</sup> (NIU) Legally speaking, prior to this interaction the traditional justice decisions were not binding, whereas on paper, the Hoquq's decision, or that of the Court's, will now have documented standing over any future disputes resulting from this case.

<sup>42</sup> (NIU) Citizens approach the Hoquq either directly, or upon referral from the District Governor, DCoP, District Judge, Wakil, or Arbob's. Prior to presenting the dispute to the Hoquq, the claimant, accompanied by 2-3 elders (to include the village Arbob), will go to the Ariza Narwais to obtain necessary paperwork for the Hoquq. The Ariza Narwais is similar to a notary. He has informal permission by the District MoJ representative to provide reading and writing skills to a claimant; he will fill out the paperwork to include a description of the dispute, and name and location of the parties. The busiest days for the Hoquq are market days, i.e. two a week in districts, where villagers are likely to be in the District Center for other business. The Hoquq will initially review the paperwork, hear the injured party, and then request the claimant return within a week with any documentation and witnesses. The Hoquq then issues a summons for the other party that will be delivered by the DCoP. The summons is a half piece of paper with defendant's name, claimant's name, nature of dispute, where and when to appear - signed and delivered by courier from the Hoquq to the DCoP. Observations above were drawn from an Interview with District Hoquq, June 2011.

<sup>43</sup> (NIU) In many areas the district court is not available and recourse and resolution is often sought from the District Governor, who may be reluctant to get involved, or consistently send disputes back to the traditional system for resolution. At this point, the only recourse is the provincial court where district judges often sit and hold court in fear for security and safety. The same can be stated concerning the Hoquq. Generally speaking, the Hoquq is often a neglected entity that has received little support from the international community. The provincial and district Hoquq positions are often filled with under qualified individuals who may not venture out to the district level. It appears attitudes of the population may reflect that geographic distance from a district judge that manifests in mistrust; every effort should be made for the assigned justice to visit the district center and resolve disputes.

<sup>44</sup> (NIU) If this were the case, what should have been viewed as an Afghan to Afghan process will become a tainted foreign solution. Further, the Hoquq and the Courts will be seen as providing corrupt decisions centered on western needs, not a legitimate means to access justice.

<sup>45</sup> (NIU) The populace utilizes the insurgent justice system as a natural continuation of the Jirga because it is a reliable and efficient resource.

directly or indirectly related to security or stability; Analyze - determine and be able to clearly articulate the reasoning for who amongst Coalition Forces leadership will interface with who amongst the GIRoA to propel resolution to the dispute; Accountability – carry the proposed interaction and basis of reasoning to the designated Afghan government official to help motivate action; and Assess – determine if holding GIRoA accountable was successful with respect to resolution of the dispute.

### **(NIU) F3A3 – Find**

(NIU) Placing an identified dispute into one of the categories below marks the first step in the targeting methodology. This allows a dispute to be evaluated prima facie as to whether it is directly or indirectly related to security and stability. Those parameters are:

1. Government versus individual, village, minority, or ethnicity.<sup>46</sup>
2. Village versus village or individual (specifically of parties from different ethnicities or tribes).<sup>47</sup>
3. Individual versus individual (particular attention when of different ethnicity or traditional with a scarred history).<sup>48</sup>

(NIU) Based on an instant evaluation, one of two courses of actions can be taken to compel resolution of a dispute. The first course of action offers flexibility to counter the lack of finality in the asymmetric environment; the GIRoA can be interjected into the procedure prior to completion of every step of the targeting methodology.<sup>49</sup> For those disputes that are new to the Hoquq's office and fresh in their inception, it is plausible to insist on immediate reaction from both the District Governor and the

---

<sup>46</sup> (NIU) An example of a government dispute would be a land dispute involving a new police station being built on what village elder's claim is their land, e.g. village Elders of said District, of said Province versus an alleged land grab by the ANP for a new substation). Government disputes are particularly relevant for families who have suffered from a real or perceived government land grab.

<sup>47</sup> (NIU) Minor disputes between villages concerning land, water, or grazing rights can easily escalate into violent confrontations between villages, offering the potential for Taliban intervention. Village disputes involving different ethnicities, tribes, or minorities should receive close attention from the Hoquq.

<sup>48</sup> (NIU) This type of dispute will likely not rise to the level of an SBD as most are easily resolved at the village Jirga or by the Arbob. If brought to the attention of the Hoquq, they are likely sent back to the Jirga or easily resolved by his office. However, it is these types of disputes that the Hoquq should be immediately involved and gain instant legitimacy through interaction with the public on simple, easy to resolve matters. In addition, if two individuals are of different tribes, ethnicity, or an employee of GIRoA, or close relative of a government official, the potential for anti-GIRoA sentiment or harm to stability could be afoot.

<sup>49</sup> (NIU) The closely intertwined district level justice system and traditional justice system offers several options to disputing parties. While program does not seek to change the traditional justice means of resolving disputes, it does seek to legitimize government legal capacity and the population's perception of corruption and expediency. In this respect, a perception of lack of finality is perceived, and real when a case enters the formal court system.

Hoquq.<sup>50</sup> The opportunity for the Hoquq to engage the populace at the embryonic stage of a dispute can create instant legitimacy for the GIRoA. In addition, immediate action can dispel prior grievances based on previous interaction with GIRoA, perceived corruption, and lack of expediency.

(NIU) In some situations, the Hoquq can resolve a claim by traveling to the Jirga and offering his recommendation in person.<sup>51</sup> In these instances, the Hoquq is limited to traveling in secure areas, but should be encouraged to travel as often as possible. In addition, the Hoquq should be encouraged to accompany ANA and ANSF to locations that may be on the fringe of secure areas. The perception that GIRoA played a role in resolving the community grievance is a victory. By encouraging the Hoquq to have consistent interaction with villagers, *in the village*, whether the Hoquq's recommendation is accepted or not, presence alone will place the GIRoA fingerprints on restorative justice.

### **(NIU) F3A3 – Fix**

(NIU) The other course of action is apparent where instant analysis reveals the dispute to be ripe with local societal history and recommendations for prior resolution have been stifled, potentially manifesting into anti-GIRoA sentiment. In this scenario, the “Fix” serves as the corroboration element and is both the most cumbersome and important.<sup>52</sup> Finding out “what’s really going on” behind the dispute involves gathering, and cross-checking information through conversations with local politicians and powerbrokers, both government and non-government alike.<sup>53</sup> This is the heart

---

<sup>50</sup> (NIU) For example, a dispute can be immediately identified as involving the government simply because the accused is a government official (ANSF, ANA, Ministry employee, etc) and the opposing party or injured party is a citizen, a tribal elder, minority, etc.

<sup>51</sup> (NIU) This is the case in said District, said Province, as a result of the said ISAF unit Rule of Law Officer's inquiry to the District Governor, the District Governor ordered the Hoquq out to a nearby village to resolve a dispute over debt immediately following the day after the dispute was brought to the District Governor by the Arbob of that particular village.

<sup>52</sup> (NIU) The more extensive the effort to corroborate information the easier it will be to determine whether the dispute is directly or indirectly related to security and stability (the Finish). In other words, the more details gathered; the more finite and obvious the ‘Finish’ and ‘Analysis’ will become. In addition, as the aperture of understanding the dispute is narrowed, so increases the knowledge of the dynamics in the area. Importantly, the intent of extensive corroboration is not to confirm the dispute falls within one of the categories. To the contrary, excessive corroboration through various sources ensures easy facilitation through the remainder of the targeting process, and the possibility of a hyphenated process to encourage the Hoquq to take immediate action.

<sup>53</sup> (NIU) The rule of law officer will engage with the Hoquq, District Governor, District Chief of Police, Judge, Wakil (Head of Shura), VSO, PRT, HUMINT, and Arbob (if accessible). All are spokes that can confirm, or deny each other's interpretation; overlaying each perspective provides for narrower site picture. Keep in mind that all these actors will have a varied perspective not only on what disputes are important, but why the dispute exists. Specifically, word of mouth is the primary means by which information is shared. Hence, sound reasoning from a public official, while not taken with a grain of salt, may be based on hearsay as it was conveyed through a chain of people prior to gaining his ear, all of which or none of which may have added, misinterpreted, or otherwise changed the facts and circumstances of the dispute. Therefore, enabling the follow-on elements of the methodology requires a complete understanding of why the dispute exist, how it relates to security, and what Afghan body is going to resolve the dispute. With this knowledge at hand, enabling the Hoquq to preemptively act outside the targeting methodology is possible as the understanding of dynamics will

of the SBD process: the ability to corroborate information through trusted relationships to ensure a restorative and acceptable end to any given dispute. The rule of law officer must become intimate with individual disputes in a culture that prefers to resolve matters behind closed doors - between disputing families at the village level - not air their problems to the world.

(NIU) The rule of law officer's ability to corroborate information is partially facilitated through KLEs, intelligence sources, and exchanging information with ISAF partners.<sup>54</sup> An additional and necessary element is the assistance of a local 'trusted agent' who will provide vital insight on the societal history of a dispute. While not serving as the individual who approaches claimants or elders to propose remedies, he serves as a close-knit member of the community who understands the social history of the area, the political ambition of government actors, blood relationships with traditional justice actors, familial ties, natural tribal lines, and other subject matter that has caused or resolved disputes.<sup>55</sup> Utilizing the perspective of this actor is an absolute necessity.<sup>56</sup> Based on his perspective, the ability to overcome misinformation, and in some cases disinformation allows for a more accurate and detailed picture. This person need not be a tribal elder or other local, larger than life actor that everyone knows and respects, rather the "trusted agent" could be a young, idealistic defense attorney with no strong connection to any local political figure.<sup>57</sup>

### **(NIU) F3A3 – Finish and Analyze**

(NIU) With the appropriate understanding of dispute dynamics, the "Finish" step determines whether the dispute directly or indirectly relates to security or stability. With information garnered from the "Fix" step, it is now possible to specifically articulate who, what, why, and how the dispute effects security and stability. This will

---

allow for a wider site picture and instant target recognition; resolution of these types of disputes becomes possible – and sustainable - without ISAF overwatch.

<sup>54</sup> (NIU) The Human Terrain Team (HTT) should also provide valuable insight on local tribal dynamics, and traditional disputes, and have identified local power brokers and their ambitions.

<sup>55</sup> (NIU) For example, there is a dispute in said Province that has allegedly lasted for nearly three generations. Seasonal rains allows for the grass on plateau in northern said Province to grow longer and provide seasonal grazers with more feed for their livestock. Arguments often lead to bloodshed and according to locals, nearly every season, the Taliban are approached to resolve the issues surrounding this dispute. Understanding the dispute is easy, but moving to resolve requires a historical and cultural perspective. Observations from an interview with District Chief of Police, of said District, of said Province, May 2011.

<sup>56</sup> (NIU) There will be reasoning or historical context behind a community grievance that only a well-informed indigenous actor can explain. We are often confined to our COP's and FOB's and while our interaction with Afghans is consistent, our *real* understanding of cultural nuances is quite limited.

<sup>57</sup> (NIU) Selecting a trusted actor from outside the area is also a plausible course of action. An obvious drawback would be the individual isn't from the area and may not be as familiar with the social history of a dispute as a local. Actually employing the 'actor' raises the possibility of empowering a malign actor. Any local actor will harbor some element of familial/tribal ties, there will be an agenda. The bias is mitigated by the multitude of resources utilized in the 'Fix' step of the targeting process that will subjectively root out and disregard bias in the analysis. In addition, the power to resolve disputes is not being given to the local actor on behalf of ISAF. Lastly, using the JARB process may not produce the 'right' individual for the mission and CERP may provide for very remedial reimbursement of travel expenses as he moves throughout the district.

also confirm the general analysis conducted in the “Find” step where general parameters were used to determine whether the dispute was related to security.

(NIU) The “Analyze” step will be used to determine who from CFs will interface and highlight the dispute with what particular official from the Afghan government. The priority is to enable an *Afghan to Afghan* process making the path the dispute traveled through the asymmetric system vital, particularly what recommendations were made and by what parties. No matter who the “Analyze” step determines should interface in resolving the dispute, the District Governor should be encouraged to monitor disputes on his own accord, and utilize metrics to do so. The District Governor’s involvement will ultimately be assured as he will likely be the person of first contact if a superior government official is made aware of the need for a resolution.<sup>58</sup>

### **(NIU) F3A3 – Accountability and Assess**

(NIU) The final steps in the SBD targeting methodology are “Accountability” and “Assess.” “Accountability” is the part of the methodology where CFs expresses concern over the unresolved dispute to their appropriate Afghan counter-part. Inquiry to the Hoquq and review of Hoquq Book or Court files accomplish the “Assess” step – determining whether the dispute was resolved, by what means, and to what result.<sup>59</sup> Ensuring recordation of the resolution by the Hoquq is important to assist future adjudication of the same civil case or criminal action as a result of the resolution.<sup>60</sup>

(NIU) In addition to recordation, designing and deploying metrics will play an important role in the long term development of Security Based Dispute resolution. In order to actively track the progress of this program, and the peripheral positive by-products that may not be readily apparent, development of simple, easily obtained points of information are necessary. Some examples of metric questions include the number of recordation by the District Court per month (or provincial court); number of cases the Hoquq resolves per month; how many disputes the Hoquq goes to the village to resolve; how many village visits result in resolution; number of cases referred to the Wakil or the Jirga from the District Governor per month; number of

---

<sup>58</sup> (NIU) If the “Analyze” portion determines provincial level intervention, conditions dependent, it may prove fruitful to inform the District Governor the ISAF chain of command may seek out his superiors on this particular issue.

<sup>59</sup> (NIU) If the dispute is resolved by the Hoquq or the Courts, the resulting decision will be recorded in the Hoquq book which will list the names of parties, villages, father’s names, details of the dispute, and the resulting decision, and who made the decision. Further, the said District Hoquq indicated that villages that are pro-GIRoA will come to this office on market day to record the decisions made by their Jirga that week, but few come if they live in insecure areas. The above observations were taken from an interview with the said District Hoquq, of said District, of said Province, May 2011.

<sup>60</sup> (NIU) In some cases, despite resolution of the dispute in the traditional or formal sectors displeased parties may continue to violate the agreed upon resolution. This often causes the case to be ‘reheard’ and injected back into the asymmetric system. In other cases, a common course of action for unsatisfied parties is violence. The Provincial Justice for said Province stated “I would welcome all the Jirga decisions recorded in my court so I understand the civil dispute that caused the murder to take place”. Observations were drawn from an interview with said Province Chief Justice, March 2010.

cases referred to the Hoquq by the District Governor per month; number of cases referred to the Court; number of cases resolved by the Court; or the amount of time for resolution in any given forum.<sup>61</sup> In an effort to determine villagers' perception of the formal justice system (particularly the Hoquq) and to chart areas of discontent in the district, a set of questions was added to an on-going Human Terrain Team (HTT) SWEAT assessment.<sup>62</sup> These questions seek to "force-multiply" the JAG's ability to gather information and focus on the perception of the formal justice system. A hybrid model of SWEAT was introduced to the patrols and informally named SWEAT-Justice (or SWEAT-J).<sup>63</sup>

### **(NIU) Conclusion**

(NIU) The projection of the Hoquq as a legitimate actor both at the village and district level will allow for the development of security and stability. Enabling the Hoquq to be an element in resolving differences promotes faith in the government while not interfering with traditional justice actors or forums and thwarts insurgent's access to the population. Dedication of ISAF resources is immediately necessary to shore up what has been a neglected and misunderstood area of the rule of law. Enabling the appropriate Afghan legal mechanism can provide for positive population perception and enable working, legitimate 'local' formal justice system.

---

<sup>61</sup> (NIU) Questions should be curtailed to reflect the capability and capacity of the given district.

<sup>62</sup> (NIU) SWEAT assessment (Sewer, Water, Education, Academics, and Trash) is intended to gauge the infrastructure of a given area.

<sup>63</sup> (NIU) The Justice section included the questions 1. *Where do judges, prosecutors, Hoquq and court staff work? Do they come to your village? Would they be welcome here? Would you use their services to get help with any issues?* 2. *Who would you go to if someone stole your motorcycle/bike/sheep? Why would you go to that person?* 3. *Who would you go to if your neighbor damaged your land/home/crops? What if the neighbor refused to pay damages? Why would you go to that person?* 4. *How do you take a problem to a Jirga? The Wakil? Arbob? The Hoquq? The Courts? The District Administrator? What kinds of problems would you take to each of these people?* 5. *If you had a dispute with the government, could you get it resolved in a fair manner? Why/why not? How would you get it resolved? Ask the same question, but instead of the government, it's a dispute with the local powerbroker.* 6. *Do you have to pay money to get your matter heard?* 7. *Do you know who the district judge is? The Hoquq? The District Administrator?* 8. *Does the Arbob or religious leaders ever solve disputes in your village? Do you have a Jirga? Who is the Jirga leader? What kind of disputes do either handle?* 9. *Do you feel you would get justice if you took your case to a GIRoA court? To the District Administrator? To the Hoquq? Why/why not?* 10. *If you could not resolve a dispute within the village, where would you go to resolve the matter? to whom?* 11. *Are there any disputes in the village that have not been resolved? Between other tribes? Other villages? Between your village and the government (include ABP, ANP, etc)? (GET DETAILS – names, contact information, and content)* 12. *Do you know of any disputes over land, water, or grazing rights disputes? Any of those resulted in violence between families, neighbors, villages? past or present?* 13. *(If speaking to an Arbob or Elder) In the last several weeks, how many disputes have been resolved between families, Arbob, or the local Jirga? How many have the Hoquq been a part of? How many have the Wakil been a part of? How many have the District Administrator been a part of?*

**THE INTENT OF CAAT SPECIAL REPORT IS TO SHARE UNCLASSIFIED REPORTS TO UNITS DEVELOPING TRAINING PLANS IN PREPARATION FOR DEPLOYMENT INTO THE AFGHANISTAN THEATER OF OPERATIONS. ALTHOUGH UNCLASSIFIED, THESE REPORTS CAN CONTAIN SENSITIVE INFORMATION ON CURRENT TACTICS, TECHNIQUES, AND PROCEDURES. RESPECTFULLY REQUEST THAT LEADERS HANDLE THIS INFORMATION TO BOTH SUPPORT TRAINING REQUIREMENTS AND PROTECT EFFECTIVE PRACTICES.**

**James Brown, COL, USA  
HQ ISAF-CAAT, Commanding**