

**Analyzing Alternative Dispute Resolution mechanism: DRCs  
in Khyber Pakhtunkhwa's Criminal Justice System**



Author

**Minahil Sohail**

Registration Number: 00000327366

Supervisor

**Dr. Muhammad Makki**

**Department of Peace and Conflict Studies (CIPS)  
National University of Science and Technology (NUST)**

**Islamabad**

**(2022)**

**Analyzing Alternative Dispute Resolution mechanism: DRCs in  
Khyber Pakhtunkhwa's Criminal Justice System**



By

**Minahil Sohail**

**Registration No: 00000327366**

**Supervised by**

**Dr. Muhammad Makki**

**Department of Peace and Conflict Studies Centre for  
International Peace and Stability (CIPS)  
National University of Sciences and Technology (NUST)  
Islamabad  
(2022)**

**Analyzing Alternative Dispute Resolution mechanism: DRCs in  
Khyber Pakhtunkhwa's Criminal Justice System**

By

**Minahil Sohail**

**Registration No: 00000327366**

A thesis submitted in partial fulfillment of the requirements for the  
degree of Master of Science Peace and Conflict Studies

Supervisor

**Dr. Muhammad Makki**

**Department of Peace and Conflict Studies**

**Centre for International Peace and Stability (CIPS)**

**National University of Sciences and Technology (NUST)**

**Islamabad**

**(2022)**

## THESIS ACCEPTANCE CERTIFICATE

It is certified that the contents and form of the MS thesis titled “Analyzing Alternative Dispute Resolution mechanism: DRCs in Khyber Pakhtunkhwa’s Criminal Justice System” written by Ms. Minahil Sohail (Registration No. 00000327366) of Centre for International Peace and Stability has been vetted by the undersigned, found complete in all respects as per NUST status/regulations, is free of plagiarism, errors and mistakes and is accepted as partial fulfillment for the award of MS/MPhil Degree. It is further certified that the necessary amendments as pointed out by the GEC members of the scholars have also been incorporated in the said thesis and have been found satisfactory for the requirement of the degree.

Supervisor: \_\_\_\_\_

Dr. Muhammad Makki  
CIPS, NUST

Head of Department: \_\_\_\_\_

Dr. Muhammad Makki  
CIPS, NUST

Associate Dean: \_\_\_\_\_

Dr. Tughral Yamin  
CIPS, NUST

Dated: \_\_\_\_\_

## **CERTIFICATE FOR PLAGIARISM**

It is certified that this MS thesis titled “Analyzing Alternative Dispute Resolution mechanism: DRCs in Khyber Pakhtunkhwa’s Criminal Justice System” by Ms. Minahil Sohail (Registration No. 00000327366) has been examined by me. I undertake that:

- a. The thesis has significant new work/knowledge as compared to the works already published. No sentence, equation, diagram, table, paragraph, or section has been copied verbatim from previous works. All material used has been directly referenced.
- b. The work presented is the original work of the author (i.e., there is no plagiarism). No ideas, processes, results, or words of others have been presented as the author’s own work.
- c. There is no fabrication of data or results. The thesis has been checked using TURNITIN (a copy of the originality attached) and found within limits as per HEC plagiarism policy and instructions issued from time to time.

---

Signature of Supervisor

Dr. Muhammad Makki

Centre for International Peace and Stability  
(CIPS) National University of Sciences and  
Technology (NUST) Islamabad, Pakistan

## **AUTHOR’S DECLARATION**

I, Minahil Sohail, hereby state that my MS thesis titled, “Analyzing Alternative Dispute Resolution mechanism: DRCs in Khyber Pakhtunkhwa’s Criminal Justice System” is my own work and has not been submitted previously by me for taking any degree from National University of Sciences and Technology (NUST), Islamabad, or anywhereelse in the country/world.

At any time if my statement is found to be incorrect even after my Graduation, the university has the right to withdraw my MS degree.

---

Name of Student: (Minahil Sohail)

Date: 9<sup>th</sup> September 2022

## **COPYRIGHT STATEMENT**

- Copyright in text of this thesis rests with the student author. Copies (by any process) either in full, or of extracts, may be made only in accordance with instructions given by the author and lodged in the Library of NUST Centre for International Peace and Stability (CIPS). Details may be obtained by the Librarian. This page must form part of any such copies made. Further copies (by any process) may not be made without the permission (in writing) of the author.
- The ownership of any intellectual property rights which may be described in this thesis is vested in NUST Centre for International Peace and Stability, subject to any prior agreement to the contrary, and may not be made available for use by third parties without the written permission of the CIPS, which will prescribe the terms and conditions of any such agreement.
- Further information on the conditions under which disclosures and exploitation may take place is available from the Library of NUST Centre for International Peace and Stability, Islamabad

## **Dedication**

I dedicate this thesis to my family for their love and encouragement throughout my pursuit of education. Special gratitude to my mother, who has always pushed me to be my most authentic self and for being my best cheerleader.

To my siblings, friends and classmates who shared their words of advice and generous support from the day I decided on this topic till the day I concluded my thesis.

And lastly, I dedicate this thesis to the people of Khyber Pakhtunkhwa - may you forever remain resilient to the tides of time.



## **Acknowledgements**

First and foremost, I would like to express my deepest gratitude to Allah Almighty as, with His blessings, this project has successfully been completed.

I would like to acknowledge that completing the arduous task of conducting research is not possible without the time, insight, and support of many individuals. I have been fortunate to have people around me who encouraged me every step of the way. During the course of this study, I faced multiple difficulties in my personal life, which led to a lack of self-confidence and completing this research felt like a heavy cross to bear. However, I am grateful to the faculty and staff of the Centre for International Peace and Stability for being understanding of the struggles and distresses that students face and for providing support to all.

Foremost, I want to extend earnest respect and sincere thanks to my thesis supervisor, Dr Muhammad Makki, for his invaluable feedback, which improved the quality of my research. I owe a huge debt of gratitude for his constructive guidance throughout the study. His research writing seminar greatly enhanced my writing and proved beneficial for developing my thoughts into flowing arguments. I am deeply appreciative of the confidence my supervisor invested in my capability to carry out this research, without which it would not have been possible.

I am grateful for the generosity of Dr. Bakare Najimdeen for guiding me, particularly in terms of research methodology and equipping me with the knowledge early on when I started this degree. I would further like to acknowledge Dr. Ahmed Waqas' guidance during the initial topic brainstorming session, which served as a guide for discovering my area of interest. Each of my professors has variously equipped me with the knowledge I required to pursue this effort to a satisfactory completion. Beyond that, and perhaps more importantly, each of these individuals has gone out of their way and beyond their professional requirements to be available for help and guidance whenever I needed it and have been personally invested in my work and my success. I am forever grateful for this network of support.

Moreover, I would like to thank my dear friend, Zahra Malik, for being a guide when it came to studying the legal aspect covered in the dissertation; her recommendations of which sources to look at were especially beneficial. To all the respondents who took the time out of their lives to

participate in this research out of their goodwill, I am grateful for their kindness and courtesy extended to me, and I treasure the knowledge I have gained through these interactions.

To my parents and my family, who have supported me in my academic journey- and the more complicated and difficult journey of life- every single step of the way. Wherever my strength fell short, their words of encouragement and silent prayers were winds to my sails, slowly but surely carrying me to a destination that sometimes seemed too hazy and unclear. Anything I ever achieve in my life; I shall always owe it to you.

## **Abstract:**

Conflict resolution has established an eminent place in literature over time. Scholars and practitioners have extended efforts toward devising alternative mechanisms for resolving conflict at a local level. In the previous decade, there have been efforts aimed at strategizing effective mediation approaches among disputed parties under the auspices of Alternate Dispute Resolution (ADR), resulting in the formation of Dispute Resolution Councils in Khyber Pakhtunkhwa. Disputes on the local level have the tendency to spiral into violent conflict resulting from the lack of effective means caused by the abject failure of the criminal justice systems. ADR strategized as DRC can provide a credible and timely process for resolving differences. The qualitative-based research examines the strengths and weaknesses of DRCs, what we know and what is yet to be known about the growth and impact of the initiative. Such an analysis will aid us in comprehending the structural and operational dynamics of the councils. The techniques set up by the council have the tendency to strengthen dispute settlement systems and bridge the gap between formal legal systems and traditional modes of acquiring justice. It is necessary that the specific Pashtun context be examined as centuries-old systems *Jirga* as a tenet of *Pashtunwali* holds immense significance when resolving disputes in the province of Khyber Pakhtunkhwa. The case of Peshawar, which is considered an urban setting as opposed to the remainder of the province, is studied in terms of Dispute Resolution Councils' effectiveness. The role *Jirgas* play in justice provision is an aspect that is covered alongside the communities' approach towards moving to a formalized method of ADR. DRC may have particular value in stabilizing disputes and community-building efforts when the criminal justice system is weak and social tensions are high. For Pakistan Vision 2025, the National Internal Security Plan decodes the importance of developing measures for the promotion of security and peacebuilding. This indicates the importance of initiatives like the DRC being a strategic effort of community engagement towards conflict resolution, social cohesion, and peace.

**Key Words:** Alternate Dispute Resolution, Dispute Resolution Councils, Conflict Resolution, *Jirga*, *Pashtunwali*, Khyber Pakhtunkhwa, Criminal Justice System, Law and Order, Judiciary

## Table of Contents

<b>THESIS ACCEPTANCE CERTIFICATE .....</b>	<b>iv</b>
<b>CERTIFICATE FOR PLAGIARISM .....</b>	<b>v</b>
<b>AUTHOR’S DECLARATION .....</b>	<b>vi</b>
<b>COPYRIGHT STATEMENT .....</b>	<b>vii</b>
<b>Dedication.....</b>	<b>viii</b>
<b>Acknowledgements.....</b>	<b>ix</b>
<b>Abstract:.....</b>	<b>xi</b>
<b>List of Figures.....</b>	<b>xiv</b>
<b>Chapter 1. Introduction .....</b>	<b>1</b>
1.1 Research Questions and Objectives:.....	2
1.2 Research Methodology:.....	4
<b>Chapter 2. Literature Review – Traditional Mechanisms of ADR in the Contemporary World.....</b>	<b>7</b>
2.1 Understanding the Concept of Alternate Dispute Resolution (ADR): .....	7
2.1.1 Defining Alternate Dispute Resolution (ADR).....	7
2.1.2 The Role of Traditions in Dispute Resolution .....	8
2.2 The Yoruba of Nigeria .....	10
2.2.1 The Process of Mediation & Role of Elders .....	11
2.3 The Rwandan Gacaca Courts .....	12
2.3.1 The Process of Mediation & Role of Elders .....	13
2.3.2 Formalizing the Gacaca Courts.....	13

2.4 Sulha .....	14
2.4.1 Concept of Sulah .....	14
2.4.2 The Process of Sulha .....	15
2.4.3 The Jaha Mediation Committees.....	16
<b>Chapter 3. The Case of Peshawar in Khyber Pakhtunkhwa Pakistan.....</b>	<b>17</b>
3.1 Khyber Pakhtunkhwa:.....	17
3.1.1 Federally Administered Tribal Areas (FATA) Merger with KPK:.....	18
3.2 The Case of Peshawar:.....	19
3.2.1 History .....	19
3.3.2 Law & Order Situation and the Justice System: .....	21
<b>Chapter 4. Analyzing Jirgas and Dispute Resolution Councils.....</b>	<b>24</b>
4.1 Jirga.....	25
4.1.1 An Element of Pashtun Identity .....	25
4.2 The Framework of Dispute Resolution Councils .....	27
4.3 Unwillingness to Adopt New Modes.....	31
4.4 Lack of Trust and Capacity Issues in Institutions.....	35
<b>Chapter 5. Discussion and Conclusion: .....</b>	<b>38</b>
<b>Bibliography .....</b>	<b>43</b>

## List of Figures

Figure 1. Geographical Location of FATA - KPK merger .....	18
Figure 2. Map of District Peshawar .....	21



## Chapter 1. Introduction

Several decades of theory and research have yielded enormous literature concerning the heterogeneity of mechanisms that have been constructed and adopted for the purpose of dealing with the myriad conflicts that have emerged among humans. Since time immemorial, it has been observed that if disputes are not resolved in time through formal or informal courses of action, civil unrest, crimes, and lawlessness increase substantially. For the preservation of peace in a society, it is important that mechanisms of dispute resolution or conflict de-escalation be devised.

Dispute Resolution as a concept has been defined in many different ways all around the world. One such definition of Dispute Resolution given by the Harvard Law School, which encompasses the concept in precise language, states that generally, dispute resolution refers to one or more processes that are devised for dispute resolution between parties, including arbitration, mediation, negotiation, collaborative law and litigation.’ (Program on Negotiation, n.d.) That is to say, it is a method used to evaluate and develop a solution for a conflict in question. Alternate Dispute Resolution (ADR), on the other hand, is a mechanism which is observed as a means of dispute resolution in a manner which does not take as long as a formal court proceeding, nor is it as expensive.

In the context of Pakistan, the socio-cultural setting of the society plays an overarching role in the lives of individuals. The formal justice system ought to resolve conflicts and settle disputes, yet there exists a centuries-old mechanism, present since the pre-colonial era, to restore justice, and that has followed through in these communities and continue to do so today. One such indigenous system in the province of Khyber Pakhtunkhwa, where a tribal lifestyle remains a norm, is Jirga. While writing about Pashtunwali, Yasmeen Aftab (Ali, 2013) states that the Pashtuns have followed a code of conduct since the pre-Islamic era, and it still holds great value to them. The Jirga, which is a component of Pashtunwali, is where decisions are made through



consensus by tribal elders and the decision is obeyed without question. It is a system of resolving disputes and is a way to deliver justice to parties that have brought their case to the elders in a Jirga. It is, in fact, an important part of Pashtun society and culture and a mechanism to resolve disputes.

Moreover, Alternate Dispute Resolution has gained much prominence after the Kyber Pakhtunkhwa Police formed the Dispute Resolution Councils (DRCs). Nasir Khan Durrani, IG Police at the time, launched it in 2014. Soon afterwards, the importance of these councils was recognized, and they were formally initiated into the criminal justice system a year later. (Police, 2014) Ziauddin states that the DRCs, in many ways, has been a revolutionary measure. The Dispute Resolution Councils initiated their functions after amendments were made to the Police Order 2002, and local police supervision to dispute reconciliation was offered.

The approach and expectation are promising, yet there arises a question if the Dispute Resolution Councils would be a success in communities where the role of culture is overarching. An initiative of this sort could be taken as a threat to their code of life. If that is the case, could Dispute Resolution Councils be a sustainable solution in replacing a centuries-old system which has been resolving disputes among conflicting parties? Furthermore, the effectiveness of DRC as a viable dispute resolution system needs to be analyzed.

## **1.1 Research Questions and Objectives:**

Alternate Dispute Resolution, as observed, has remained fairly common in traditional societies. These systems in place were not backed by state authority, although in various cases had the trust and support of the community. The transformation from traditional societies has been a slow process, although, to a systemized process of justice provision and conflict settlement, the effectiveness of it is where the ambiguity lies. It is necessary to analyze the Alternate Dispute Resolution Mechanisms that are introduced in place of traditional means, one such being in the form of the Dispute Resolution Council in Khyber Pakhtunkhwa province of Pakistan. Is there a likelihood of both mechanisms, the old and the new, to remain in cooperation, or would one replace the other? Another question that comes to mind is if the interrelation between local

indigenous and cultural justice systems and legally backed councils devised in a similar essence proves beneficial for the issue of justice pendency in courts? If the newly devised mechanism proves to be successful in resolving conflict, would it be viewed as a threat to the traditional tenet Jirga of the Pashtunwali code? The question that arises here naturally is the effectiveness of this mechanism and the role of the Dispute Resolution Council; such a structure has been transparent, but what are the limitations that have not yet made it part of a regular dispute resolution mechanism for the local population, and does it correlate with the socio-cultural fabric of the society?

This research will aid in answering these questions by a thematic analysis of the interaction between Jirgas and Dispute Resolution Councils. Taking Peshawar, which is the provincial capital of Khyber Pakhtunkhwa, as the case study, the groups involved in the functioning of these councils as well as exploring the concept of Jirga and the justice system of the traditional society would aid in answering the successes and limitations of both systems. In case of a clash between both systems of justice provision, what would incentives for a peaceful, more just society be? To sum up all these questions into categories, we can stipulate the following research questions to assist in the analysis:

### **1.1.1 Research Questions:**

1. How were the Dispute Resolution Councils developed and institutionalized under the criminal justice system, and what are the key operational and functional dynamics of DRCs?
2. Does a correlation exist between a local indigenous justice system and a legally binding justice system?
3. Does the presence of an Alternate Dispute Resolution mechanism threaten the Jirga system in the region? If so, how can DRC play a role in making dispute resolution a more efficient mechanism in the same socio-cultural setting?

4. How do DRCs interact with the Jirga system? And how can DRC play a role in making dispute resolution a more inclusive approach in the same socio-cultural setting?

## **1.2 Research Methodology:**

To examine the efficiency of Alternate Dispute Resolution in the form of Dispute Resolution Councils, it is necessary to understand how justice provision has been materializing in a traditional setting. The proposed research aims to utilize an exploratory, qualitative methodology by means of which semi-structured, in-depth interviews with a few accommodating participants are engaged in regard to acquiring the primary data required for this research. Qualitative Research is an in-depth understanding of social phenomena as opposed to the use of statistical procedures. (Quantitative and Qualitative Research, 2021) This form of data collection, especially interviews, is considered to dispense a ‘deeper’ understanding of social experience. (Silverman, 2000) As a consequence, interviews are particularly deemed important when the subject matter is sensitive, and a group environment is not ideal for a participant to share their views confidently. (P. Gill, 2008) The analysis of the subject matter undertakes a case study approach. It is a research design which has extensively been used in various disciplines, specifically establishing itself in the field of social sciences. It is used for the generation of detailed and multifaceted interpretations of a complex phenomenon in a real-life context. (The Case Study Approach, 2011) The research has been delimited to the Dispute Resolution Councils set up in Peshawar for data collection purposes which would be conducted through semi-structured interviews. These interviews have some questions that are predetermined in advance while it also allows an opportunity for spontaneity to explore topics relevant to the interviewee. (Pollock, n.d.)

This research has focused on taking value from the strengths of qualitative research through interviews with participants of a limited number, the responses of which have been detailed through a thematic analysis. Thematic Analysis enables researchers to deduce the interconnection between various concepts incisively and compare them with the reproduced data.

Through the use of thematic analysis, there is the likelihood of existing possibility to link the opinions and concepts learned and draw a comparison with the data that has been gathered during the research. (Alhojailan, 2012) Predominately, to ensure amicable and honest responses while having an unreserved yet rich discussion on the research matter, some respondents were allowed to remain anonymous. Eight interviews were conducted with legal professionals possessing varied terms of service as jury members at Dispute Resolution Councils, police officers currently in service and retired from Khyber Pakhtunkhwa police, and well-respected Jirga leaders of the community as well as locals. Two interviews were conducted with experts who have played an important role as influential Jirga leaders and in a highly respected position as Assistant Inspector General Peshawar, having served as District Policy Chief in various districts of the province. Lilleker describes interviews with 'Elites' or 'Experts' as interviewing individuals believed to possess the knowledge and prestige relevant in the respective field and tend to have close proximity to power. (Lilleker, 2003) Elites are defined as individuals who hold the ability to exercise influence through their position of power, social capital and social networks within their social structures. (Harvey, 2011) Since the individuals that were interviewed had served as an officer in the police and as an influential leader in the community, they were deemed as persons who could influence decisions in some capacity in their respective domains.

Three of the interviews were conducted face to face, and others were sent interview requests via social media, particularly through LinkedIn and emails; these interviews were conducted over telephonic communication due to the geographical distance between the researcher and the respondents. The interviews lasted for about 40 to 50 minutes on average. By the same token, with full disclosure, the interviews were recorded and, at a later stage, objectively transcribed. The respondents were of varied backgrounds, ranging from Jirga leaders, police officers, legal professionals, and locals from the community (specifically those who had their cases resolved or withdrawn; interacted with Jirgas and Dispute Resolution Councils). This allowed an insight into the attitudes and viewpoints of individuals from different professional and social settings. A glimpse into the operational dynamics and challenges of both Jirgas and Dispute Resolution Councils through various lenses and the traditional familiarity of the concepts of justice.

The knowledge and information shared during the interview process by the respondents were taken at face value and assumed to be authentic in regard to each participant's experience and understanding. Many of the insights shared by the respondents are indicative of similar experiences in the literature reviewed throughout this research. In addition to the primary data, the research utilized secondary data resources. Analyzing the secondary data allows the researcher to assess existing literature and case studies on the subject matter available through research articles, academic papers, and available books on relevant case studies written by scholars. Furthermore, this research incorporated statistical reports and summaries of legal court cases published by the National Judicial Policy Making Committee and Dispute Resolution Councils by Khyber Pakhtunkhwa Police, respectively.

Responses collected via interviews have been interpreted through thematic analysis, which seeks to identify, analyze, and report patterns within collected data. The thematic analysis describes and minimally organizes data in rich detail. Although, it often goes further into the interpretation of various aspects of the research topic. (Boyatzis, 1998)

## **Chapter 2. Literature Review – Traditional Mechanisms of ADR in the Contemporary World**

This chapter covers the pre-existing research that has been conducted on Alternate Dispute Resolution mechanisms that are in place in various traditional societies in different countries around the world. It is an insight into the informal justice systems that are present and function in communities without formal cooperation of the government.

### **2.1 Understanding the Concept of Alternate Dispute Resolution (ADR):**

#### **2.1.1 Defining Alternate Dispute Resolution (ADR)**

Alternate Dispute Resolution (ADR) has been defined as any method that resolves disputes without litigation. The techniques and processes of conflict resolution that do not occur under government authority are assembled under ADR. Some of the most widely practiced Alternate Dispute Resolution methods are arbitration, mediation, negotiation, conciliation, and transaction. Each form of Alternate Dispute Resolution has some characteristics in common with other methods such as the parties involved in a conflict being enabled to find workable solutions outside of traditional court proceedings but with different rules. The rapidity, confidentiality, and flexibility that come with the use of Alternate Dispute Resolution is its main advantage. (Alternate Dispute Resolution, n.d.) Essentially, as Best describes it that the concept of Alternate Dispute Resolution revolves around the pursuance of implementation of peaceful yet non-conventional methods of conflict settlement. The preservation of relationships after reaching settlements through the use of the least expensive means is the ultimate goal. (Best, 2006)

### **2.1.2 The Role of Traditions in Dispute Resolution**

Roger Mac Ginty (Ginty, 2008) when describing dispute-resolution and conflict management techniques, that have been established over a long period through local customs, refers to them as traditional and indigenous peacemaking. He notes that some of its common features were and remain to be decision-making through consensus, restoration of the human or resource balance, and exchanges of compensations intended to fortify harmonious relationships between and among groups. Mechanisms for nonviolent dispute resolutions were designed and maintained by many traditional societies for the construction of peace. The peace that they aimed to achieve was far different from the version introduced to the world by colonial powers or that produced in the contemporary era by the international community.

As the conversation of who the ‘indigenous’ is progresses; the International Labor Organization (ILO) in the indigenous and tribal people convention no. 169 gives support and recognition to indigenous actors including governments and people. The convention states the indigenous peoples as follows:

“(a) Tribal peoples in independent countries whose social, cultural, and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their customs or traditions or by special laws or regulations.

(b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all their own social, economic, cultural, and political institutions.” (Organisation, 1989)

McCaslin suggests that the cultural environment has a role to play when it comes to the way justice is perceived. The indigenous approach toward justice is very different from the western culture, as it develops from beliefs of interconnectivity holistically. (McCaslin, 2005)

Lieberman and Henry characterize ADR as “a set of practices and techniques that aim

(1) to permit legal disputes to be resolved outside the courts for the benefit of all disputants;

(2) to reduce the cost of conventional litigation and the delays to which it is ordinarily subject;  
or

(3) to prevent legal disputes that would otherwise likely be brought to the courts.”

Mediation, Arbitration and Negotiation are processes included in these practices and techniques. The role of mediators is to mediate family disputes; arbiters participate in arbitrating fights that ensue over access to resources, civil and criminal cases in a court of law are litigated by litigants; peacebuilding efforts, as well as sanctions and treaties, follow when warfare has erupted. (Jethro K. Lieberman, 1986)

At the heart of the debate that “Every conflict is local inasmuch as the local environment sets the stage and the local people endure the consequences” aligns with Avruch’s description of conflict that it is, in fact, culture-bound. (Avruch, 2010)

“Alternative Dispute Resolution” (ADR) and “Restorative Justice as formalized practices are established, to a certain extent, through localized indigenous conflict management approaches. Although the effectiveness of these decontextualized and professionalized versions of approaches towards conflict management is guaranteed when placed in their intended localized contexts, it might not yield the same results when isolated from these settings or when rescaled to measure up to national demands. (Akanmu G. Adebayo, *Indigenous Conflict Management Strategies: Global Perspectives*, 2014)

Different parts of the world still extensively use indigenous methods of peace and conflict mechanisms. Examples such as the Gacaca Courts in Rwanda, Andes community in Latin America, Yoruba of Nigeria, the Akan people of Ghana using conflict resolution methods, Buddhist elders in Cambodia playing a major role in mediation and Chief’s courts in Swaziland. (Akanmu G. Adebayo, *Indigenous Conflict Management Strategies: Global Perspectives*, 2014)



## 2.2 The Yoruba of Nigeria

Traditional societies are and will remain of relevance for cultures in contemporary societies. While studying African history, when traditional societies are looked at throughout the continent of Africa a realization is necessary to isolate western biases. Essentially, studying the concepts of morality and religion as they stemmed among indigenous African people and how it shaped societal actions as well as individuals is of great relevance. (Rosado-Tisgie, 2014) Based on that viewpoint, analyzing traditional mechanisms for conflict resolution and justice provision becomes easier to comprehend.

One of the largest ethno-linguist groups residing in sub-Saharan Africa are the Yoruba. They comprise 21 percent of the modern-day population of Nigeria and are the majority of the population in their communities. (Yoruba People, 2020) The Yoruba in Nigeria reside in modern cities but their ways of resolving disputes are by nature, traditional. When a dispute is taken up in court between Yoruba, it is viewed as a mark of shame on the conflicting parties, they are deemed as not good people who campaign for reconciliation. This does not translate to them as people who do not view conflict as a component of life. An old Yoruba saying clarifies this “The tongue and teeth often come in conflict. To quarrel and get reconciled is a mark of responsibility” (Isaac O. Albert, 1995). At the family level when disputes occur, for instance, an argument between cowives or among parents and their children who may have run away, are generally presented before the mogaji and the baale, who are the lineage head and an elderly head of the district, respectively. Both disputing parties are required to state their cases before them, and the elders present questions and attempt towards a compromise where disputing parties are to accept some part of the blame. Consequently, it is important to note that whenever various dimensions and sources of conflicts broke out in traditional African societies, the indigenous institutions in place step in to handle the conflicts and they are predominantly responsible when it comes to managing such conflicts. (Aboyeji, 2019)

The traditional justice system in Yoruba land, the mediators are not as uncompromising when it comes to awarding punishments in civil offenses. The ultimate goal of the mediators is to settle disputes in an amicable manner. However, mediators, sometimes, awards uncomplicated fines to deter any particular unacceptable or antisocial behaviour from occurring. Kola nuts and local

gins have ritual significance and so often it is these items that are demanded. The kola nuts that are presented are in a smaller quantity passed around after being broken for everyone to eat as a celebration for reaching the resolution for the conflict. The drink is also shared with all to taste, in case of gin or palm wine not being available, drinking water is used for the aforementioned purpose. In addition to that, the gin or palm wine is poured as libation to the ancestral gods of the people involved in the dispute that has been resolved. These actions aid the reinforcement of the strength in reconciliation. (Adeyinka Theresa Ajayi, 2014)

### **2.2.1 The Process of Mediation & Role of Elders**

Usually in traditional conflict resolution processes, the elders hold an influential place, in the Yoruba community the focus is on the agba – an elder. Although, the term entails a richer definition than a senior. According to Lawrence’s observation, “As an attribute, agba suggests the quality of being reflective in the sense that data presented are not just accepted hook and sinker but put into the court of reason, looking at the pros and cons and asking questions about the motive of the person who presents the data and the possible consequences which the data might have for the person or other persons or the society at large.” Apart from that, there are other qualities that are required for a person who is recognized as agba, they should demonstrate courage, selflessness, tolerance, and kindness. Therefore, the leadership that encompasses agba is a model for the community to follow and act as a leader for them. As a consequence, agba is a model for the community and a leader in the Yoruba society. An intriguing aspect of the role of agba is also that in some instances the ancestors can be regarded as agba, reason for this being the wisdom, experience and knowledge transcends the living world and follows into the hereafter. The procedure of conflict resolution in the traditional Yoruba community, the head of the family and the appointed leader or head of the village are involved. Both conflicting parties are given a chance to share their side of the story without any interruption from the opposition party. Moreover, the parties involved in the conflict resolution process are believed to share their side of the story truthfully, but if there are any doubts, they are asked to swear upon deities that hold value to them. The concerned parties bring their issues forward and present themselves before the elders. The reason for that is, that the elders are trusted as they place their confidence

in them, their integrity as well as the wisdom they have accumulated over the years speak for their character and have won the support of the community. (Lawrence, 2013)

The process of dispute resolution commences from when the elders and the parties participating in the council introduce themselves. The review of the case begins by each of the elders present during the proceedings, this starts from the 'junior elders' and progresses towards the most 'senior elder' present. Each elder, while they review the case make use of contextually relevant proverbs, wise -sayings and other artistic expressions. This process continues till it is the term of the most senior elder, also the head of the village, to finish his submission. By the time the process concludes the witnesses party to the conflict have realized what the resolution for the dispute be. The goal that the elders set during the conflict resolution is reconciliation between the parties through striking a balance and avoiding the blame of responsibility upon either one. Some of the techniques used by elders for conflict resolution and settlement by the elders are the use of proverbs, persuasion, and setting a precedent, alongside which subtle blackmailing and the use of black magic are also included. The might behind the decisions of elders is exclusively cultural, as they are at liberty to use emotional blackmail and threaten the conflicting parties to social excommunication. (Jerome T. Barrett, 2004)

In the rare occurrence of parties being dissatisfied with the decision that the agba has made, the council reconstitutes the elders but in a specific case of this sort in which the ancestors are to preside the proceedings. The decision that results in this arrangement is deemed as the final one that is to be acknowledged and accepted by the conflicting parties. (Achebe, 2002)

### **2.3 The Rwandan Gacaca Courts**

Erin Daly illustrates that in Rwanda, an indigenous mediation program known as the Gacaca Courts is known to endorse truth and promote reconciliation during conflicts. The Gacaca Courts are an ideal example of the way indigenous forms of dispute resolution can play a monumental role in conflicts. In Rwanda, the Gacaca courts are traditional courts functional in the community today where elders meet to discuss the conflict being dealt with. These courts, which entail a new participatory form of justice and communal expertise are a new form of participatory justice and

communal enterprise. They are purposive to expedite justice accompanied by working within the confines of the traditional framework. (Daly, 2002)

Phil illustrates that Gacaca as a term is literally understood as “lawn”, translated as short grass, which in the case of neighborhood disputes is a traditional conflict resolution system. (Clark, 2010) Also, known and understood as the public place where male elders of the neighborhood met to resolve problems that arose locally. (Ingelaere, 2016)

### **2.3.1 The Process of Mediation & Role of Elders**

Urwin and Mironko explore on this further illustrating that prior to the colonial era, the signification of the word was, in fact, a meeting and a place utilized by village elders for meeting regarding amicable solving of problems or attempts to mediate conflict while seated on Gacaca-covered ground. (Peter Uvin, 2003) This practice is presumed to have been developed in the pre-colonial era but resumed to be implemented throughout the time of colonialism and after the independence in 1962. Bornkamm builds on the findings by adding that the traditional practice of Gacaca included honoured elders of the community known as *inyangamugayo* (which translates as “those who detest disgrace”) gathered when needed to act as mediators in disputes that involved family or were inter-family, usually revolving around issues of inheritance, property, personal injury, marital relations among others. (Bornkamm, 2012)

### **2.3.2 Formalizing the Gacaca Courts**

The involvement of the Rwandan government happened when they attempted to promote reconciliation through the traditional means of justice provision through the Gacaca court system. Traditionally the Gacaca courts, the community’s elders constituted of the panel of judges who were responsible for implementation of justice to conflicting parties impartially. (Longman, 2009, p. 306) the responsibility and tasks of the courts were to deal with feuds associated with property or other disputes that were domestic in nature and were accountable for masquerading a plague in the community. The biggest role the traditional Gacaca courts played

was in restoring the balance lost in the community due to dispute as well as reconciliation this also included the task of reintegrating a perpetrator into the community for restoration of peace and aiding community building. (Brounéus, 2008) Furthermore, the most important goal of the modern day Gacaca court constituted speeding up the processes of prosecutions, punishing those who are guilty of crimes, liberating the victims, as well as establishing of truth and reconciliation between the conflicting parties in genocide – the Hutus and the Tutsis. (Ingelaere, 2016) the modern system of the traditional Gacaca court was categorized into different levels and phases to specifically reduce the burden of case pendency and justice provision on Rwanda’s prison system and their national court. The accessibility of the Gacaca Courts resulted in the mechanism being used to settle the different cases that arose in the Rwandan genocide.

## **2.4 Sulha**

The term “sulha” originates from the word Sulh in the Arabic language. The literal action taken for bringing a conflict or dispute to a halt is Sulh which an abstract concept in regard to peace is Salaam. (Pely, 2009) The word can also be understood through the concepts of ‘forgiveness’, ‘reconciliation’ and ‘forgiveness’. The principles revolving sulha are rooted in culture of tribes and deemed as one that has come from wisdom and experience the ancestors have passed down from one generation to another. (Lang, 2002) Sulha came into being to counter conflict, it was a response for the need to restore peace and order among and between parties in villages. Reconciliation was necessary so that feuds or quarrels among tribes do not spiral out of control creating a threat to larger community. (Jabbour, 1996)

### **2.4.1 Concept of Sulah**

The concept of Sulah is embedded in religious as well as social norm. Some sources of its roots and history date back to Christian scripture and pre-Islamic Semitic writings. The general belief that persists regarding Sulah is that it is an Islamic concept. Setting aside that debate permanently, in a diplomatic understanding of the concept is that of it being a concept that was

adopted by Islam and over the course of time it became directly associated with conflict resolution mechanisms in Islam. In the contemporary world, the practice of sulha is common all-around Middle East by communities of different religions such as Muslims, Druze and Christians. Most extensively it is viewed as a distinctive feature or considerably a hallmark when it comes to resolving conflicts in traditional Arab society, translating to an important element of the Arab culture. (Rohne, 2006)

#### **2.4.2 The Process of Sulha**

For conducting the ritual of Sulha, there is a committee in place known as Jaha in the Arabic language. The Jaha takes its power from the places the members in the community hold, and that it does not operate on its own but with the explicit authorization of the disputing parties. The conflicting parties or individuals are generally the families of the offender and the victim. The Jaha committee comprises of well-respected men of the community who have built a reputation of being honest, just, and wise. Their intelligence and even-handedness play a role in them being appointed to act as members of the Jaha. The roles of elders are commonplace in traditional Alternate Dispute Resolution mechanisms. However, the positions are only reserved for men and women cannot participate in these committee proceedings for Sulha. The Jaha is headed by, in most cases, the senior most experienced member. This individual is handed over the managerial duties of Jaha's activities and they are responsible to steer the disputing parties towards an agreement, however rocky that road might seem. The success of the resolution is often dependent on the Jaha leader's clout in the community he is a part of. The Jaha can be headed by one member alone or more. It is favorable for disputants and the community to have influential members to maximize the possibilities towards reaching a resolution for the dispute in question.

(Pely, 2009, p. 82)

The Sulha was historically under tribal law, which was the only means of making and enforcing decisions when it came to conflict resolution. Today, this practice strengthens civil society order, respect, and reconciliation among conflicting parties or feuds between communities. Time has passed, but the basic goal of Sulha remains the same. It is about righting injustices and resolving

conflicts between individuals, families, neighborhoods and communities. The mechanism has survived many years and has been adapted in the modern contexts of life. In Arabic traditions, conflicts are frowned upon in the community and there is a need to resolve them for communities to thrive. Hence, it is necessary to prevent feuds snowballing into unreconcilable conflicts. (Alzoughbi)

### **2.4.3 The Jaha Mediation Committees**

The process involves the decision to create a mediation committee which is known as Jaha. After which a date is decided to pay a visit to the home of the family of the victim where the extended family is also present. This is the community participation that occurs during these processes. Family holds great importance in traditional conflict resolution mechanisms. The offender is to come with the mediation team and with his/her family. The offender is expected to showcase humility and acknowledge their wrongdoing offer an apology to the offended and make a commitment to repair the damage that has been done by them. The Jaha or mediation team is present to take the responsibility of making sure the compensation for the damage is carried forward and the implementation of the decisions has been done. In response to this, apology is accepted, forgiveness is given while the mediation team is there to witness. Concluding the proceeding, as a ritual or reconciliation the attendants break bread together to symbolize commitment to friendship and peace. (Zaru)

## **Chapter 3. The Case of Peshawar in Khyber Pakhtunkhwa Pakistan**

### **3.1 Khyber Pakhtunkhwa:**

Known as the land of hospitality with a rich culture and history, Khyber Pakhtunkhwa is the province nestled in the north-western region of Pakistan with a total area of 101,741 km<sup>2</sup>. The population is estimated as 35 million which corroborates that Khyber Pakhtunkhwa constitutes 11.9% of the total population of the country. The literacy rate of the province is 53% ranking it as the third literate province of the country. The youth of the region with innovative ideas and extensive wisdom makes up half of the population of Khyber Pakhtunkhwa which evidently increases optimism in terms of potential of the province. The province is famed for its exceptional cuisine that has retained itself through centuries because of the archived traditional techniques responsible for its uniqueness and remarkable flavours. As the rich history of the region with ancient roots attracts archeologists and researchers it also creates an allure for tourists with its numerous archeological sites. The northern region has scenic views and exotic beauty in abundance which attracts international eye with a positive lens and gives a competitive edge to other provinces for this reason. The natural beauty of the region consists of lush green valleys and mountains with ice-packed peaks. Tourism in the region generates a large employment opportunity for unskilled labour in the country regardless of the most remote areas. Khyber Pakhtunkhwa is responsible for generating heavy revenue through agriculture and forestry for the economy, making it the third-largest provincial economy in Pakistan. It contributes 20% in mining output and 10% of GDP. The climate conditions of Khyber Pakhtunkhwa vary and dwindle between two extremes, the northern regions face extreme cold winters with pleasant summers but heavy rainfalls while the south of the region enjoys a more moderate winter but significantly hotter summer. (Government of Khyber Pakhtunkhwa, n.d.)



### 3.1.1 Federally Administered Tribal Areas (FATA) Merger with KPK:

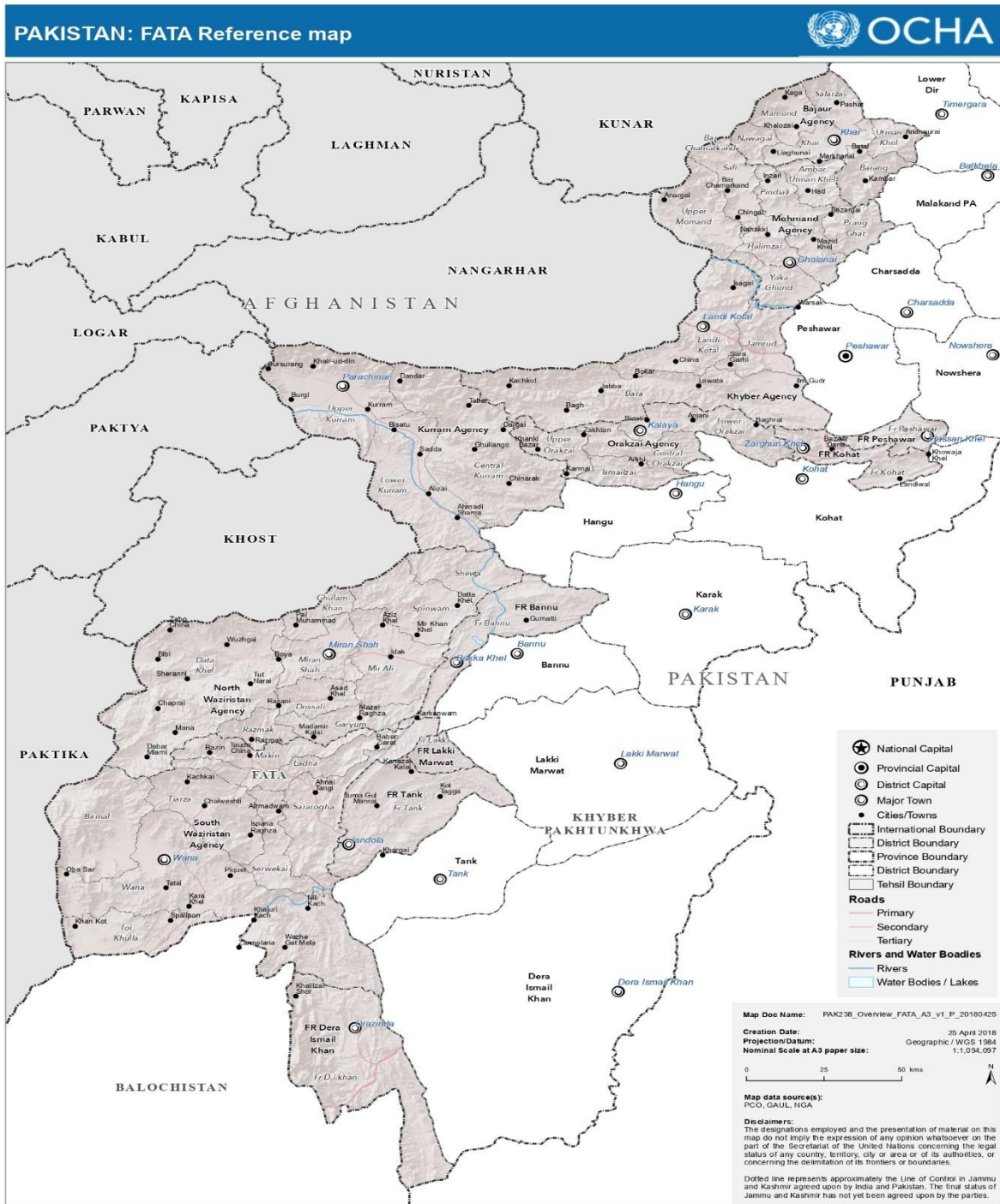


Figure 1. Geographical Location of FATA - KPK merger

Since the time of Pakistan's independence, the province has seen many shifts. Federally Administered Tribal Areas (FATA) have now been merged into the province which since the time of Pakistan's independence was a semi-autonomous region governed through the Frontier Crimes Regulation. The region was given special status in 1973 Constitution of Pakistan which translated as the Parliament having no authority to create laws for the respective areas. The President of Pakistan reserved the right to extend any law made by the Parliament with respect to modifications and exceptions as the political dynamics and socio-cultural peculiarities are considered. In 2018, the 25<sup>th</sup> Amendment became a decisive judgement when these areas were merged into the province of Khyber Pakhtunkhwa. It resulted in seven agencies and six frontier regions merging as all federal laws in existence in force became applicable to the newly merged areas of the province. This shift included the provincial laws made by the Parliament for Khyber Pakhtunkhwa would automatically be applicable to erstwhile Federally Administered Tribal Areas (FATA) exempt of any additional formal regulatory actions. Forums under the Frontier Crimes Regulations in regard to matters such as civil, criminal and other matters would be dissolved. The cases that had already been place under the former regulations would be transferred to the courts in place province wide. Jirga being an important justice system of the areas also lost its legal footing after the merger while procedural laws in place became the substantive measure for the newly declared region of broader Khyber Pakhtunkhwa. (Awan, 2019)

## **3.2 The Case of Peshawar:**

### **3.2.1 History**

The city of flowers, Peshawar, is not known for concrete buildings but for upholding its traditions and roots with pride. Cradled between the Indus River and the Khyber Pass, Peshawar is an ancient doorway that has witnessed many crusades that shaped the fate of this world. It is the capital of the province of Khyber Pakhtunkhwa with history dating back to 539 BCE, which

establishes it as the oldest city in the country and one of the oldest in South Asia. (Capital of Khyber Pakhtunkhwa (Peshawar), n.d.) Peshawar became known as the axis of Pashtun and Hindko intellectuals. For most of the British rule in the region the dominant culture was that of Hindko speaker, known as 'Khaarian' which meant city dwellers in the Pashto language. A city with a rich history, it is a home to empires and civilizations and has been romanticized for its distinct culture by artists and musicians. (Peshawar, n.d.) Peshawar is a home to some of the oldest relics; one such being the Bakhshali Manuscript which was mathematical work inscribed on birch bark. (J J O'Connor, 2000) With a total area of 1,275 km<sup>2</sup> (Peshawar District Demographics, n.d.) it is located approximately 160 km west of Islamabad, the capital city of Pakistan. Peshawar has multiple towns and revenue villages, out of which majority are rural, some are partly urban while a few are urban. Predominantly the languages spoken in Peshawar are Pashto, Hindko and Urdu. (District Peshawar, n.d.) Geographically, it is not situated in the monsoon region like the northern parts of the Khyber Pakhtunkhwa province, temperature drops to 4 °C while the summers remain fairly hot going up to 40°C. Being the capital of the province, it serves as an administrative centre as well as the economic hub for the region. Infrastructural development and projects associated with agricultural development underway Peshawar has gained national and international attention from investors. However, the modern changes have massively shifted the sight of the city transforming it into a modern terrain, the deep-rooted cultural legacy of the region remains intact.

The district wise census that was released by the Pakistan Bureau of Statistics (PBS) highlighted that the Peshawar division which comprises of Charsadda, Nowshera and Peshawar districts has a population surpassing 7.9 million in comparison to the statistic of 1998 being 3.39 million. Peshawar district in the Peshawar division alone has had the highest annual growth rate of 3.99% as per the results of 2017, the population surged from 2.0 million in 1998 to 4.26 million. This growth was followed by Nowshera with rise of 2.94% with 1.5 million as its total population. Lastly, Charsadda district happened to be of 1.6 million. (Ullah, 2017)



Figure 2. Map of District Peshawar

(Peshawar District UC Ward List, MNA MPA Seats)

### 3.3.2 Law & Order Situation and the Justice System:

Munir Ahmad writes that a set of agencies and processes set up by governments to limit crime and enforce penalties on law violators is called the criminal justice system. This framework has diverse components that require working in unity and in support of one another for the provision of justice not just to the victim of a crime but to the accused as well. He further elaborates that a dependable and well-engineered criminal justice system is responsible for providing a quick remedy to victims of a crime but also ensures the protection of the accused's legitimate rights. It is a system built on values of equality, fairness, justice, and fair play for everyone involved. It is

a framework designed to operate with the goal of maintenance of peace and societal order alongside a first-hand interaction with crimes and criminals. (Mughal, 2012)

The living standards of citizens of the province of Khyber Pakhtunkhwa have eroded over an extended period of time. These encompassed the devastating aftermath of over three decades of the Afghan conflict, the militancy spill-over from erstwhile Federally Administrated Tribal Areas, destruction caused by the horrifying earthquake of 2005, Swat conflict resulting in the internal displacement of 3 million people in 2009, and the devastating effects that resulted from the unprecedented floods that occurred in 2010.

Khyber Pakhtunkhwa and erstwhile FATA region were subject to a progressively worsening conflict. In addition to that, KPK encountered issues of increasing litigation as well as weak contract and regulatory enforcement. These issues are believed to be pre-conditions for delayed growth and stunted employment growth for any region subject to them. As a consequence, rule of law reforms remains an important element for growth in the province. The rate by which justice is delivered which creates a justice gap is high in KPK's criminal justice system.

One of the state's primary responsibilities is the protection of its citizens from all kinds of threats, whether external or internal while regulating justice provision. Moreover, these are what justifies the creation of the state as well as symbolizes its continual existence. The development of any state can be indicated through the efficiency of its judicial system. Estrada while reiterating the interpretations of Hobbes' on the role and responsibility of states concluded that "The king carries two swords, sword of war and sword of justice". (Estrada, 2012)

At court level, this gap in justice has impacted delays and the growing occurrence of case pendency results in deferred litigation. The issue of case pendency in courts is alarming and while it exists the relatively constrained socio-political environment plays a role. According to The Law and Justice Commission of Pakistan, performance statistics calculated by the National Judicial Policy Making Committee NJPMC specifies that there are a total of 1,806,881 cases in all courts of Pakistan. In the case of Khyber Pakhtunkhwa, the pending cases in courts are 197,301. (Faisal Shahzad, 2020, p. 48) These numbers are counterproductive and discouraging to the cause of justice in any state, region, or city. There are numerous factors for this reason, the low rate of conviction in the province directly reflects the state of the same backlash the justice system gets for unimpressive performance when it comes to delivering justice. Some of the

reasons highlighted by Gul and Ali are the delay in First Information Report being forwarded to the District Police Prosecutor. The report consists of useful information for preliminary investigation a delay in the conduction of further investigation reflects as negligence of police officers and hence, there is a poor rapport. In addition to that, a criminal case that is taken up the criminal matters of the case are to be investigated by police officers as it does not come under the jurisdiction of the court and hence, the lack of cooperation between the two does not aid the case. The delayed submissions of challans and FIRs due to backlogged, slow mechanisms are partly the case that both the police and the justice systems are accused of in competencies. There is a lack of good forensic laboratories and facilities for efficient investigations in the province and hence, samples for testing are sent to Islamabad or Lahore which slows down processes by a large scale. From the time that the crime has occurred till the time preliminary investigation for the most basic Deoxyribonucleic Acid (DNA) tests cannot be carried out in time. The lack of resources interferes in provision of justice as well as inadequacy to the police department operations. (Parveen Gul, 2018, pp. 77-83)

Most importantly, the absence of a framework which could prove itself to be comprehensive and builds a link between formal as well as informal justice system was a challenge when it came to justice provision in the region. (Pakistan, 2015, pp. 5,13)

## **Chapter 4. Analyzing Jirgas and Dispute Resolution Councils**

According to one of the definitions for ADR shared by Harvard Law School (Alternate Dispute Resolution, n.d.) it is a variety of techniques and processes designed to help disputed parties come to an amicable solution short of litigation. The judicial system used to settle disputes is the most excessively used processes for resolving disputes and maintaining a just environment. Although, the judicial system has been subjected to a myriad of setbacks because of delays in proceedings, the time taking procedures and excessive costs has made people devise new ways for a more efficient solution. (Hrishikesh Jaiswal) Systems of dispute resolution before an articulate rule of law have existed long before the first formal legal judicial court was initiated. One such mechanism is called ‘Jirga’ which still exists in a Pakhtun societies. It is an institution that was established for resolving disputes. (Mushtaq Ahmad, 2020) It is a dispute resolution method that is being practiced for centuries in rural communities. The concept of Pashtunwali revolves mainly around the Jirga which for many Pashtuns is the most important component of the Pashtun culture. It signifies the values Pashtuns hold close to themselves most such as peace, justice, and reconciliation. A Jirga, normally, has tribal elders who are either given a seat at the Jirga because of their seniority in their tribe or they could have inherited the right to be part of the decision-making selected few. (Yousaf, 2021) In research at the University of Gondar (Ajanaw Alemie, 2018) which was based on the indigenous conflict resolution mechanisms; revealed that they were more flexible as opposed to formal court proceedings. The nature of such mechanisms involved consensus building through open discussions for exchanging information and giving room for clarification on the conflict issue. The desired end result is shared dialogue, harmony and a sense of solidarity among community members. Such platforms have been historically a permanent form of justice system providing restorative forms of justice to local communities. Regardless of the important role that Jirgas have played in the past it has constantly been subjected to scrutiny and criticism because of the informal structure which may

not always lead to both parties receiving a fair conclusion. One of the biggest reasons for the criticism is the lack of a legal backbone for such an arrangement. (Muhammad Hassan, 2019)

## **4.1 Jirga**

### **4.1.1 An Element of Pashtun Identity**

In the Pashtun culture, it is often claimed that jirga as an institution is the oldest and most dominant one. Evidence remains too scarce to verify this (Hassan M. Yousaf), it is, although, clear that jirga ‘had both a political and a judicial character’ (Magnus Marsden, 2012) and is viewed as an integral element of the Pashtun way of life as described by Wylly. (Wylly, 1912) it is, above all, the tribal council of elders gathered to resolve conflicts. (Siddique, 2014) In the Pashto language and culture, the ‘masharan’ are senior elders among the Pashtuns that head the council of elders. (Ahmed, 2013) ‘Jirga’ as a term refers to the deliberation and dispute resolution mechanism followed for centuries by Pashtun tribes. (Siddique, 2014) Oberson describes Jirga as regulating mechanism in the Pashtun way of life by discussing issues that range from daily inter-family disputes to inter-tribe as well as intra-tribe conflicts that have a social and political nature and fall in the interest of all Pashtuns. (Oberson, 2002)

Participation from local and tribal elders is necessary for a Jirga to function, these elders are known as Maliks and Khans, tribal elders, and heads of clans respectively in the Pashto language. Jirga proceedings are carried out by Maliks whereas a Khan is the presiding member and has a ceremonial role acting as the chair of the meeting or focal point. (Hassan M. Yousaf) Further elaborated as:

A jirga is an assembly of leaders that makes decisions by consensus according to Islam and Pashtunwali, the Pashtun social code. The two main and important elements of Jirga are justice and culture once this is followed accordingly, then the goal of jirga can be easily achieved. (Syed Moazzam Shah, personal communication, 28 May 2022) Pashtunwali is a set of rules for a



Pashtun directing his way of life. These rules lay out a manner through which tribes engage with each other and over all acts as a guide for a Pashtun's lifestyle. It is extremely essential to the identity of being a Pashtun and there is no distinction between practicing Pashtunwali and one's identity of Pashtun. For a Pashtun, there is no difference between his/her identity as being Muslim abiding by Islamic Law. (Personal communication, 30 May 2022) An assembly of leaders that make decisions by consensus according to Islam and Pashtunwali. Justice and culture are the core characteristics through which a conclusion is reached. Inherently, it is not a mechanism that could be replaced in a traditional Pashtun society. (Personal communication, 30 May 2022)

Conclusively, Pashtunwali is a tribal code for the Pashtuns, building on the same concept "If law is a system of enforceable rules governing social relations and legislated by a political system, it might seem obvious that law is connected to ideology," writes Christine Sypnowich. (Sypnowich, 2001)

Over the years, the Jirga has been a very important element of conflict resolution for the Pashtuns in tribal areas of Pakistan erstwhile Federally Administration Tribal Areas (FATA). (Yousaf Farooq, 2018) Wardak writes about this in detail on how Jirga also holds great value in Pashtun-dominated Afghanistan as well. (Wardak, 2003)

Jirga as a practice, reflects the culturally embedded traditions that Pashtuns have in place till date. It is a demonstration of the processes which displays the unity with which they solve social as well as the personal problems collectively. (Lal Zaman, 2018) Jirga is understood as a centuries old system sustaining a role in conflict resolution with an authoritative and decisive role. (Fakhr ul Islam, 2013) The acceptance of the mechanism for a balanced economic and social life has been a reason for the authority it possesses. Hence, jirgas are effective mechanisms used for conflict resolution among Pashtuns. An elder local commenting on the successes of a Jirga stated that:

A successful Jirga is when it includes both elements, justice, and culture, it will most surely be recognized, and the decision will last forever. It is possible when the leaders are familiar with both. The culture of the tribe who brings forward their issues is very important to be taken well into consideration. (Personal communication, 29 May 2022)

During a conversation with one of the respondents, discussing the importance of Jirga in the Pashtun society, stated:

Social evils can be eradicated through the Jirga system. We have been using this method for centuries and it has proven to be effective. It is very close to my heart and my identity as I have had my matters dealt with swiftly by letting the elders make a decision in the light of justice. (Personal communication, 29 May 2022) Another respondent while discussing the subject commented that: The justice system in Pakistan is extremely slow and complicated. It takes years to have your case be seen the light of the court room, on top of which the expenses are not worth it. Jirga is simple, swift and fair, it does not take years to reach a decision and is suited to the ones who believe in Pashtunwali code and honors it. (Personal communication, 29 May 2022)

## **4.2 The Framework of Dispute Resolution Councils**

Alternate Dispute Resolution can be an effective mechanism for providing justice at lower level. (Rabia Manzoor, 2019) These processes could be of various types but could also seemingly be like a standard trial. In Pakistan the relations between the community and the police are intricate and so are the reforms. Political intervention, meager financial resources, mistrust, lack of education and miscommunications are some of the reasons why the relations between police and communities are poor. (Bahadar Nawab, 2019) The idea behind the Dispute Resolution Council (Police, 2014) in the words of Nasir Khan Durrani was to create a mechanism in the essence of a Jirga which would strive in a region where community is closely knitted and involved. The goal of the DRCs is prompt settlement of petty issues without the rough, cumbersome process that more often than not is expensive for the common man to afford which makes it difficult for individuals or parties to be served with justice. This specific mechanism known as the Dispute Resolution Council in the Khyber Pakhtunkhwa province of Pakistan is based on facilitation of a common man's petty issues towards amicable resolution through an alternate process, which involves members of the civil society, of restorative justice. As the province of Khyber Pakhtunkhwa is characterized by the code of 'Pakhtunwali', the initiative was based in the same essence of the customs of the region and the tribal populations. The most important goal that was set out for the Dispute Resolution Councils as the amicable resolution of disputes.

Jirga revolves around the tradition of intervention of reputable and respected elders. Unfortunately, terrorism and militancy had plagued the region not only disrupting law and order situation but mechanisms for resolution and reconciliation under the code of Pakhtunwali. Civil courts in Pakistan are under resourced and overburdened and in a situation where offences of a smaller scale are forwarded from the police the parties have to bear the high costs and time-consuming process for proceedings. The delay that is faced in the dispensation of justice causes frustration and despondency. This is where the role of the Alternate Dispute Resolution in the form of Dispute Resolution Council becomes imperative. (Police, 2014)

A legal professional and jury member of the Dispute Resolution Council in Peshawar shared her dissatisfaction with the Jirga system's limitations and for the system not being inclusive. While highlighting the issues that people face when acquiring justice and why they prefer the traditional method she explained:

The major chunk of population of the Khyber Pakhtunkhwa is illiterate, even if the case of Peshawar is considered, traditions and customs are kept close especially in the outskirts of the seemingly urban setting of the city. These people are unaware of their basic right, particularly womenfolk. The injustices and excesses caused to this segment of society has been a major concern. It is a matter of common knowledge that normally, courts are located at District and Tehsil Headquarters, far away from certain villages. A socio-economically weak individual, living in a distant village has to travel many miles to take his or her dispute to the court while incurring expenditure and wasting substantial time. For them, access to justice becomes an uphill task. Thus, for justice they approach local Jirga elders so their concerns and issues could be addressed. (Kanwal Ibrahim, personal communication, 3 June 2022) Consequently, the reluctance of people while approaching formal systems due to the lack of resources, the traditional system is one preferred in majority of the cases.

Similarly, a police officer expressed his concerns regarding the traditional system and explained a major reasons for why a formalized system was needed urgently, his expressed that:

The experience of acquiring justice through jirga exposes people the system to corruption, favoritism and making the dispute resolving volunteer efforts in business. The people with influence, having law breaking history have become the jurist having no or any education, values, or norms. The realization of this plight of people prompted the authorities to legislate on

the subject. The conventional court system of Pakistan, today, finds itself embroiled in a myriad of structural and administrative issues. The civil courts too are excessively over-burdened and under-resourced. Therefore, whenever petty issues involving non-cognizable offences get forwarded to civil courts from the police, the involved parties find themselves following a long and expensive process of justice. The delay in dispensation of justice, if at all dispensed, causes a feeling of frustration, humiliation, and despondency. (Personal communication, 5 June 2022) Two members were inducted in the Dispute Resolution Council of Gulberg, Peshawar- a Christian man Samuel and a woman known as Saima Ambreen. (Khan, 2020) The likelihood of a similar instance occurring in a Jirga where a woman or a person from a minority group, specifically one who is not Muslim is very low. Representation is necessary and gives space to these groups to approach such institutions without hesitation.

Furthermore, another respondent added to the importance of formalized Alternate Dispute Resolution by stating that:

It is necessary to realize that to bypass the rigmarole of conventional justice system and to formalize the concept of alternate dispute resolution, the role of Dispute Resolution Council becomes imperative. Therefore, to facilitate the common man in getting his petty issues resolved amicably through an alternate process of restorative justice involving members of the civil society is predominantly highlighted as the need of the hour since a long period of time. I am of the view that adoption of such modes and means for dispute resolution, apart from self-help, indeed is self-salvation i.e., salvage of valuable time and money which deserves to be encouraged and practiced. This, however, is possible only when the disputants show their willingness for adoption of such modes. (Personal Communication, 5 June 2022)

The strategic framework devised by the Khyber Pakhtunkhwa police was initiating the Dispute Resolution Councils (DRCs) which is an elaborate mechanism chalked out to maintain law and order in the essence of social and cultural norms of the land. To understand the initiative, it is necessary to delve into the details of how the Dispute Resolution Councils function. An extensive code of ethics has been assembled for ensuring that the behavior of members is non-partisan and impartial. The civil society members that take up roles in DRCs consist of retired civil and military officers, lawyers, educationists etc. they take up the central role of resolving disputes along with analyzing facts and looking over contested police investigations. Considering

the structures of DRCs and their purposes, jury rooms have been set up in police stations at district headquarters alongside some Tehsil Headquarters to create the space for the parties and members for DRCs engagements.

There are 21 members in a Dispute Resolution Council, and they are further divided into seven panels each consisting of three members. The members are designated roles as the jury with one of them being the arbitrator for effective dispute resolution. The panel is designated to meet once a week at the DRC to conduct operations. Whichever panel has a case presented to it makes it their responsibility to fall through all the proceedings unless a special circumstance arises. The KP police ought to keep the proceedings and operations of the DRC as transparent and free of monopolization as possible, for which membership of these councils are kept in a fluid state which means the members are not permanent. In case of violation of the code of conduct the membership is revoked by the District Police Officer. The council is also expected to be functioning in close liaison with the SDPO in concern. Every aspirant is subjected to a thorough background check before they are approved to become a member at any Dispute Resolution Council with the approval of the District Police Officers. (Anjum, 2017)

The operational framework of DRC is planned and organized by the secretary who has been elected from within the members through the procedure prescribed. For advising the members of DRC on laws as well as an acting support staff every Dispute Resolution Council has a dedicated police officer attached. Another aspect worth mentioning in the working modalities for DRCs is that a council member is not to take a case on his own rather the applicant may be referred to the police. The council members have certain limitations such as they would not be expected to agree to take up a case without the provision that both parties involved should give written consent. The council members are be instructed to refrain from giving recommendations that are in opposition to the Constitution of Pakistan and is against the law a simple example would be underage marriage etc. (Police, 2014)

A legal professional while sharing raised some key points regarding the inclusivity that is advantageous for the functioning of Dispute Resolution Council which can rarely be identified in the Jirga system in place:

DRCs have articulated a code of ethics which categorically states that an individual is only illegible for membership if they have an apolitical background. The individual should have a

good reputation and should be well respected in his community. If in case a council member takes office in association with a political party, they will have to voluntarily end their membership with the Dispute Resolution Council. It is important to keep in mind that these councils are designed to resolve disputes amicably among segments of society and mainly focus on providing free and expeditious justice to the vulnerable parties who cannot afford to go through a lengthy formal litigation process. These processes can be expensive and thus make it difficult for vulnerable groups to be in a position where they can contest civil cases that are complicated. In these situations, Dispute Resolution Councils have aided the society being an initiative creating a positive impact for ensuring peace and cooperation. The biggest flaw in the Jirga system is that of the lack of participation of women or their issues being taken into consideration. DRC's have jury members that are educated females making it a favorable option for women as well. (Personal communication, 3 June 2022) A legal professional commented on the types of cases that are brought up to these councils for settlement stated that, most of the disputes that are presented are usually over issues of money, property which may or may not have snowballed into feuds concerning ego and honour. The issues are usually petty that lead to more fatal and unfortunate results for parties such as deaths. Other rivalries are old which seem to have never reached an end. (Personal communication, 3 June 2022)

### **4.3 Unwillingness to Adopt New Modes**

Taking into account the Pashtun refugees that moved into urban Pashtun settings such as Peshawar, were confronted with ideas of what it meant to be a Pashtun and how to follow the Pashtun code Pashtunwali in a new environment. In an urban setting what it means to be Pashtun and exercising of customary law seems to be quite different as opposed to the smaller scale in refugee camps or tribal districts. The social organization of this sort has predominantly evolved but alongside this, these laws have lost some of their authorities that they once had. Customary Laws are created by indigenous people and local communities, these are a set of beliefs, customs and practices that are deemed as obligatory rules. These laws form an intrinsic section of the economic and social way of life for the populations. The same laws gain acceptance through the collective recognition and acceptance of the respective communities, religious groups, tribes or

the local people. This clashes with the formal written law that is derived by the state that holds authority and backing of the state. (Organization, 2016) Jirgas incorporate customary laws, make decisions and settle disputes through the institutionalized rituals that they have formed through the use of traditions and customs. (Barakatullah Advocate, 2013, pp. 45-47)

The reason because of which may have caused the shift and changes is primarily the decrease of social pressures that are required to ensure the enforcement strictly in a community which is more diverse but a segregated community, nevertheless. (Kakar)

Specific to the case of Peshawar, which is primarily an urban setting, there is an assumption to have a different approach towards the Jirga system and possibly an inclination towards Dispute Resolution Councils as it is a modern approach to an old system of the region. However, in one of the interviews, the participant expressed his views that:

As of now, in Peshawar, the Jirga system it's not entirely traditional in the majority of cases as the community elders that were respected and thought highly of have passed away. The people who are in control of the structure are those who prefer putting themselves at an advantage and are more interested in themselves than in the overall good of the people or community. It is quite simple to highlight and be able to identify the biased decisions that are made on a daily basis and those that the institutions manipulate and have been doing so in the recent years. People who are selfish and usually work for their personal gains in exchange of what benefits they can gain through the framework have primarily taken over. Jirga reforms are necessary and of the essence as of now, but it is also important to keep in mind that the vested interest groups are to be kept away and the esteemed tenet of Pashtunwali that has kept Pashtuns all over the world united should not be left in the harms of materialism. (Personal communication, 29 June 2022) Adding on to that, a respondent commented on the limitations of the Jirga system that are being highlighted by saying that: The Jirga system should not be put to blame and held responsible for the offensive practices that have been occurring widespread over the region. Instead, it is important to highlight the elders who are accountable for manipulating and exploiting the system for their own personal benefit and political gains and doing so in the name of religion. The concept of Jirga in essence is a noble one, it is to make peace prevalent and not disrupt it. However, the parties responsible for polluting it are at fault not the Jirga system itself. It remains

as the preferred version of dispute resolution if the corrupt leaders are removed from the decision making positions. (Personal communication, 29 June 2022)

Furthermore, another respondent expressed his opinions about the system of Jirga in Peshawar in the following words: Generally, the Jirga members are illiterate in rural areas, but in Peshawar there are many well educated elders and Jirga leaders that oversee the proceedings. However, in a certain number of cases the decisions are twisted according to the whims of those who wish to benefit from the use of politics. These proceedings are dominated by rich and resourceful people and that affects the value of the decision enormously. (Personal communication, 29 May 2022) In many cases, Jirga members are not aware of the laws or legal procedures and the nominated members are usually leading the proceedings in exchange for money to voluntarily provide favors. Other ways in which they benefit from these exchanges is through vehicles, a percentage of land, food, or money. Regardless of these prevalent issues, there is a trust in the familiarity of the system and the lawlessness and social evils that are promoted through this are not overpowering enough to shift to newer ways as in conclusion the efforts are towards a resolved conflict. (Personal communication, 3 June 2022) One of the consistent criticisms of Jirgas is the educational background and legal knowledge of the Jirga elders today.

Dispute Resolution Councils were initiated to revive the revered tradition of dispute resolution through restorative justice and are not a mode that a large part of civil society has eased into. The code of 'Pashtunwali' which creates the Jirga system is a significant element of the Pashtun identity and the legalization of another system in its place is not an approach that the locals welcome wholeheartedly. Their trust in elders and age-old systems is unwavering and unshakeable. A legal professional expressed their views on whether formalized informal justice systems have room for growth by explaining that:

There has been a shift in recent times to institutionalize out of court settlements and Alternate Dispute Resolution which we may find Jirga to be. There is focus on regulation of Jirgas and other informal justice mechanisms and systems. Dispute Resolution Councils and other such models appear to be formalizing informal justice systems. It will be viewed as a threat, but ultimately informal justice system will give way to some sorts of interventions and those may prove to be rather positive than negative. (Isfandyar Khan, personal communication, 29 May 2022)



In Peshawar there are a total of three DRCs, Dispute Resolution Council Center, Tatara Police Station Phase 7 Hayatabad, Dispute Resolution Council Center CANTT Gulberg, and Dispute Resolution Council Center City Gulbahar. (Dispute Resolution Council)

In Pakistan focusing on Khyber Pakhtunkhwa, all institutions which serve as forums for justice delivery are ultimately loaded with people seeking grievance redressal, these could be courts or simply other systems of Alternate Dispute Resolution. If Dispute Resolution Councils were not enough, we have Ombudsman for dealing with rights of women seeking inheritance, etc. Jirga is; however, a deeply embedded system and that fact cannot be minimized when introducing a new system for justice provision. Initially, there is hesitation but with passage of time and through sharing of success stories and other factors, people end up using these newly established forums. (Isfandyar Khan, personal communication, 29 May 2022) Ombudsman has been defined as an individual who essentially helps in settling complaints, the ombudsman investigates and reports in the process. The affiliation of an ombudsman varies, majority of the times they are found working alongside organizations or businesses who are dedicated to advocate for people such as employees, consumers, patients, etc. They are supposed to be unbiased and fair in their judgement as the role requires them to be. (Ombudsman, n.d.)

One of the reasons for the disapproval and unwillingness towards new modes of Alternate Dispute resolution is commented on by one of the respondents precisely:

Peshawar District is divided into four towns which are further divided into multiple Union Councils each, majority of which are rural. Union Councils are defined as an overarching term used for Cantonment Boards, Municipal Committees, Union Administrations, Union Councils as a whole and in an instance when there is an absence of a local governing body the Union Council could act as a responsible body to govern the local area. (Union Council) The segment of society that resides in these rural settings is distant from the district facilities including Dispute Resolution Councils. The most basic necessities like access to healthcare serves as a challenge because of distance and travel expenses. In most cases, that is entirely disregarded and when it comes to dispute resolution, for it to become a priority the issue has usually snowballed into a situation which inhibits these individuals from performing their day to day tasks. These may include land issues or escalated family disputes. An individual living in these areas might have to

travel miles to reach a court with their dispute to be resolved. The incurring expenditure on travel and substantial waste of time does not make it a suitable option. Instead, approaching the local Jirga elders is the preferred alternative. (Personal communication, 3 June 2022)

#### **4.4 Lack of Trust and Capacity Issues in Institutions**

The most common crisis that the governments in developing countries face is that of the generated mistrust among its citizens towards it. Multiple crises effect these countries which tests the competencies of governing bodies to the maximum. (Naseer, pp. 4-7) The citizens of a country expect from the government and its institutions to govern in an effective manner for the prosperity and progress of the society. In the case of Pakistan, political instability has been a cause of lack of trust in the state and its institutions. The instability that Yousaf and Nauman comments on is one that has led the country towards tension with neighboring nations, it has caused security issues, poverty with shocking high inflation rates as well as inefficient education systems. (Naila Yosuf, 2015, pp. pg 144,146) These problems have magnified into the lack of faith that the citizens face and it has escalated into different forms, the effects of which was described by one respondent as:

Erstwhile Federally Administered Tribal Areas region after its merger with Khyber Pakhtunkhwa does bring with itself grievances of the people of that region. They have been sidelined for a long time and withheld accesses to basic rights that facilities that were available for citizens living in other regions of the country. Understandably, such a treatment led to a response of a lack of trust in the formalized mechanism introduced by the state in the form of dispute resolution councils. Not primarily the residents of this area, but their families that have been living in a less volatile region do have their reservations when it comes to having faith in institutions as their extended families had to suffer for many years in such. A new system that that the Khyber Pakhtunkhwa government had in place only seemed like an attack to their cultural practice that had been in place for a long time. The thought that upon joining the new province their old customs in place are being changed and their identity is threatened played a huge role in the growing resentment and continues to do so. (Personal communication, 5 June 2022)

There has been a history of a inaccessibility of justice in the courts of the country, people have kept their traditional ways close in their communities because they believe that as the state has turned their backs on these people and the ‘thana culture’ has made the process of acquiring justice so complicated they have strengthened their cultural ways and customary laws instead of trusting institutions that are backed by the judicial system or law enforcement. (Personal communication, 5 June 2022) ‘Thana culture’ is a term used for the notorious culture of abuse of authority and repression by authority itself. Inefficacy and corruption being the common highlighted themes of this concept attributes to the negative social aspects of the work ethic displayed by police. Police officers are accused of lack of transparency, bribery, and sidelining operations through the abuse of power and position, the absence of professionalism in the police has been one of the leading reasons for the mistrust that has masqueraded among society against law enforcement officials. (Layyah, p. 13)

The locals in the city had an apparent dissatisfaction, however different from those of the residents of erstwhile Federally Administered Tribal Areas, which was common in some of the remarks made by officials in their understanding of the matter, one of them commented in agreement by stating: The government makes mighty claims when it comes to merit based opportunities whether it is scholarships or jobs but when they use the public to attain their power, they do the complete opposite. The promises made about employment and provision of justice are empty words to give hope to the downtrodden man, but he is not cared for. There is no reason for him to trust the institutions in place that vow to provide all that which it does not. (Personal communication, 4 June 2022)

A legal professional in agreement of the locals’ discontent and mistrust in authorities said that it is difficult to trust the justice system predominantly because litigation lingers for years without a conclusive decision in sight. There is a need to resolve the issues of the people that keep adding to the list of pending cases in courts. There is a large gap when it comes to the expectation of people and the deliverable capacity of the governmental institutions. The deficit in these areas is increasing with each passing day and the trust is simultaneously decreasing. The organs of the government are not seen in coordination with the various departments when it comes to Khyber Pakhtunkhwa. (Personal communication, 4 June 2022) The common man finds it difficult to trust politicians generally because there is a lack of checks and balances when it comes to the state

institutions, the police for ensuring security of the people yet when a policeman is seen there is an insecurity surrounding them. The violations of laws are the biggest reasons for their mistrust as traffic challans can be avoided when the palms of the traffic police are greased. The lack of political will of the state and the politicians that pay no heed but intend to sustain deep pockets, fail to implement policies. (Personal communication, 29 May 2022)

The introduction of Dispute Resolution Councils has indeed been proven to be a game changer in the district, however, the parties and individuals critical due to their lack of trust in law enforcement agencies and justice system are of the opinion that the respective councils are approached as they are convenient cover ups. The courts and police are avoided to dodge investigations and so no legal weight is carried as repercussions. (Personal communication, 29 May 2022) Adding to that a Jirga leader stated that people approach the Dispute Resolution Councils as hiding behind the veil of incompetency becomes a win-win situation for both parties as most facts are not brought to light and it serves as a mutually beneficial setting for the misconduct by both parties as well as their losses incurred. They are also of the view that the Dispute Resolution Councils, similar to the Justice System aids the wealthy and influential to escape punishment without an inquiry into the matter. For the parties that present their cases in the councils believe that a detailed investigation could put their ongoing attempt for justice in jeopardy and make the process more complicated than towards a settlement, which in majority of the cases are a win-win situation. (Personal communication, 29 May 2022)

## **Chapter 5. Discussion and Conclusion:**

This research has sought to explore the dynamics of the Dispute Resolution Councils and Jirgas in the case of Peshawar. The workings and operations of the Jirga are understood by the residents of the district as they associate it with their identity of being Pashtun. The findings of the study reveal that the forum gathers whenever a problem arises or is brought up to them, two parties are involved in the process where patient hearing of both is done so in the presence of witnesses. The process is consistent regardless of how it may be adopted in case of a proceeding during a Jirga where the facts being known to the elders, the parties are still given an equal chance to express themselves. The implementation of decisions made by the elders of the Jirga are examined to be objective in nature after hearing subjective experiences and accounts presented by conflicting parties. The conclusion that is deduced is in accordance with the local customs and Islamic teachings. However, after considering the recognized mechanisms for these proceedings and decisions it is tricky to reach a conclusive decision in some cases, in such instances the parties are then asked to take an oath on the holy book of Quran which is the highest form of an oath a Muslim can take. Comparing this to the courts in Yoruba where parties are to swear upon deities is a similar setting in a different traditional setup, the act is similar, as in both cases they submit themselves to be truthful as they involve a higher power in the process. The decision made after that is final and similarly, the seal of the fate of the decision becomes mandatory upon the disputing parties after the oath has been sworn. Regardless of that, the common understanding is that the parties are to honor the verdict of the Jirga. However, after the oath is taken that notion becomes for solidified and as a result makes the decision more conclusive and binding.

In addition, the common fact that establishes among the mechanisms is that they derive their power from the people as well as from historical and cultural significance. Jirga is a system that is deep rooted in the culture of Pashtuns and close to their hearts. It is a platform that has served the community over centuries for their personal as well as collective conflicts and has remained active till date. This system has resolved conflicts among people and kept the peace sustained. It would not be deemed as an overstatement if one says that peace among Pashtuns owes its credit

to this mechanism. The techniques, processes, and norms that govern the Jirga correspond with the native Pashtuns way of resolving national, tribal as well as local disputes. Furthermore, it is an important part of the national identity of Pashtuns. It is necessary to study the way in which Jirgas have been used to maintain peace instead of disregarding it as primitive and comparing its limitations to modern day mechanisms.

Based on the study, some of the respondents were displeased with the introduction of another system in the place of Jirgas as they hold cultural value. Jirgas may have their limitations, yet it is not replaceable for them and there is much hesitation accepting new ways that threaten the existence of it. Some of the respondents were dissatisfied with the ills that existed in the Jirga system such as bribery, corruption, and other inconsistencies. There are individuals that question the Jirga system continuously for its lack of accountability and transparency in decision making. It is a common occurrence that the elders sometimes use their political or economic strength to change the result of a fair decision. Educated people working in law enforcement as well as other high-status jobs also agreed that Jirga, which may not be backed by the government, would still not be a system that would be eradicated as it is tied to community, culture and identity. The provision of protection that is provided by it is difficult to question as an attempt to regulate and reform the mechanism would encounter systemic constraints for the state. There is, however, a need for a meaningful dialogue regarding the problems that the masses face with the traditional forms of justice provision. The provincial government must launch campaigns dedicated to the education of tribal masses especially since the change of demographics after the merger of Federally Administered Tribal Areas with the province of Khyber Pakhtunkhwa. There is a need for authorities to gain the trust that has been lost by the people and be mindful of the accessibility to all. Peshawar, being the capital of Khyber Pakhtunkhwa and the urban center of the Pashtun population, has had reservations against formal justice systems. Regardless of being an urban setting with all forms of formal justice systems and formal courts a large majority of the respondents shared their reservations against them. The research builds on the basis of understanding the limitations of the justice system and the lack of trust in the institutions in the city which is important when highlighting the role of informal justice system in the area. For both reasons, people tend to be hesitant and unwelcoming to newer introduced systems. The existing justice systems have underlying problems that the state and provincial government needs to address to strengthen the linkages between such formal institutions that they introduce and the

informal systems that are already in place to provide justice to the people and resolution to the in times of disputes.

When taking into consideration the functional and operational aspects of Dispute Resolution Councils in Peshawar, it can be deduced that the regulations are very similar to those of Jirgas that take place. In a way, Dispute Resolution Councils can be acknowledged as the refined version of Jirgas, where there is inclusivity and educated professionals involved in decision making. The high number of cases resolved in Peshawar by Dispute Resolution Councils since its introduction indicated that the community is responsive and there is room to flourish. The Secretary DRC stated that the Dispute Resolution Councils in Peshawar, since 2016 had received around 2858 applications of disputes by various parties and individuals out of which more than 2600 cases had been offered a settlement and resolution. (The Pros and Cons of Dispute Resolution Councils, 2022) This highlights a quantitative image of the success of these councils. Although, when it comes to the disappointment of individuals it pertains to the corruption of the few and powerful in the Jirgas and prefer a way to solve their problems without having fair decisions manipulated for the greed of the powerful which is also something that that is highlighted in the Dispute Resolution Councils. In addition to the advantages of the grievances, the biggest had been the role it played in the growing popularity of Dispute Resolution Councils has been the speedy resolution of conflicts as well as the process being inexpensive and accessible where available. However, Peshawar which is relatively an urban setting has numerous rural dwellings where people still opt for the Jirga system instead of bearing the costs of travel to reach the council in the main city. That indicates it is not accessible to a considerably larger portion of the Pashtun society regardless of its growing popularity and success. In addition to that, it has been noted that the first point of contact for people in terms of approaching an authority for face issues, is the Jirga system. They prefer the traditional system over district administration and followed by the Dispute Resolution Council or the police depending on the complexity of the situation. The Jirga often times have failed to safeguard the rights of women when it comes to disputes in the decision-making processes because of the domination of men in these spaces. These individuals are usually of deep-seated beliefs and naturally, reluctant to move against century old customs that infringe the rights of women. They are inclined to make decisions that are socially acceptable by other members of the society. Another popular opinion during the course of this study was that of conventional regulations of justice being responsible

for often isolating indigenous populations, viewing them as easy targets to impose already designed templated of an ideal rule of law which has been taken as an offence by tribal leaders and society. Traditional wisdom in place can create a peaceful society if empowered to assemble their own indigenous solutions and more fortified mechanisms for restorative justice. There is reluctance and a lack of trust because of the belief that formal institutions work to serve the rich and powerful. In essence, the Dispute Resolution Council have been primarily based upon the workings of Jirgas to exercise familiarity and keeping the process as simple and transparent as possible. The approach that the Khyber Pakhtunkhwa Police used has been a revolutionary model, making justice more accessible for minorities and especially for women, who often times cannot plead their cases in formal courts in conservative societies such as tribal Pashtuns. The inclusivity of this model and gradual easy access would work in the favour of both the citizens and the state and will slowly build trust and aid a better the relationship in terms of trust and peace building.

Furthermore, some of the mention-worthy successes that were noted by the locals in the Dispute Resolution Councils were that the ordeal of filling lengthy applications is avoided, and the process is cost effective and efficient. There is no need for lawyers to be present at the proceedings. Hiring a lawyer and having them plead your case is a long weary process that is highly costly for the common man. The concept of an amicable settlement among parties through respectable elders is evidently historic and deeply entrenched in the socio-cultural fabric of Khyber Pakhtunkhwa and naturally, the inclination towards seems justified. A society, however, should have the space to consider, discuss and be permanent contributing body to its justice system. Dispute Resolution Council is an initiative in a similar line which has been brought forward by collective institutional wisdom. Other such Alternate Dispute Resolution mechanisms should be emulated in other parts of Pakistan where cultural manifestations of justice systems need the involvement of rule of law, if not a part of formal proceedings but as pilot projects to observe the impact of fair and swift adjudication. In other traditional societies, formalizing traditional justice systems worked in favour for the state such as the Gacaca Courts in at the time of genocide.



For both mechanisms to be further reviewed, the starting point is to review the processes of Jirgas and analyze the law under which Dispute Resolution Councils are functioning as well as the Statement of Procedures. The framework has to be backed by the law and noted if it is thorough and how that translates to what it means by the Dispute Resolution Councils dispensing justice. It is necessary to analyze if the disputes being mediated, conciliated, or arbitrated and there is not enough clarity when it comes to it. In addition to that, it is important to study if the parties that lead these processes are independent and well-informed to make choices or not. The roles that the lawyers play is of essence to review if the legal advice provided to the parties is appropriate and if the decisions that the parties accept has legal implications when closing their disputes. There will always be matters with positive outcome and others which may not be suitable for formalized informal systems and may need to be brought before an alternative and suitable forum. The biggest question that remains unanswered is the process in the case of deadlocks during the execution of the decisions of Dispute Resolution Councils, and further a dismissal of taking the matter to court.

## Bibliography

- Aboyeji, A. J. (2019). Peace and Conflict Management in Traditional Yoruba Society. *Journal of Living Together*, 209-2011.
- Achebe, C. (2002). *Things Fall Apart*. Heinemann Books.
- Adeyinka Theresa Ajayi, L. O. (2014). Methods of Conflict Resolution in African Traditional Society. *An International Multidisciplinary Journal, Ethiopia*, 142-145.
- Ahmed, A. (2013). *The Thistle and the Drone: How America's War on Terror Became a Global War on Tribal Islam*. Brookings Institution Press.
- Ajanaw Alemie, H. M. (2018). Roles of Indigenous Conflict Resolution Mechanisms for Maintaining Social Solidarity and Strengthening Communities in Alefa District, North West of Ethiopia.
- Akanmu G. Adebayo, J. J. (2014). *Indigenous Conflict Management Strategies: Global Perspectives*. Lanham: Lexington Books.
- Akanmu G. Adebayo, J. J. (2014). *Indigenous Conflict Management Strategies: Global Perspectives*. Lexington Books.
- Alhojailan, M. I. (2012). Thematic Analysis: A Critical Review of its Process and Evaluation. *West East Journal of Social Sciences*, 39-47.
- Ali, Y. A. (2013, August 6). *Understanding Pashtunwali*. Retrieved from The Nation: <https://nation.com.pk/06-Aug-2013/understanding-pashtunwali>
- Alternate Dispute Resolution*. (n.d.). Retrieved from Cornell Law School: [https://www.law.cornell.edu/wex/alternative\\_dispute\\_resolution](https://www.law.cornell.edu/wex/alternative_dispute_resolution)
- Alternate Dispute Resolution*. (n.d.). Retrieved from Harvard Law School: <https://hls.harvard.edu/dept/opia/what-is-public-interest-law/public-interest-work-types/alternative-dispute-resolution/>
- Alzoughbi, Z. (n.d.). *Wi'am: The Palestinian Conflict Transformation Center*. Retrieved from Alaslah: <https://www.alaslah.org/sulha/>

- Anjum, S. (2017, January 16). *KP Police introduce Dispute Resolution Councils*. Retrieved from The News: <https://www.thenews.com.pk/print/179526-KP-Police-introduce-Dispute-Resolution-Councils-in-province>
- Avruch, K. (2010). Cross-Cultural Conflict. *UNESCO-EOLSS*, 42-56.
- Awan, M. H. (2019, March 20). *25th Constitutional Amendment*. Retrieved from Daily Times: <https://dailytimes.com.pk/367340/25th-constitutional-amendment-a-milestone-for-rule-of-law-part-i/>
- Bahadar Nawab, S. U. (2019). Community–Oriented Policing: Political, Institutional and. *Journal of Human Security* , 41-53.
- Barakatullah Advocate, I. A. (2013). Jirga System in Pakhtun Society: An Informal Mechanism for Dispute Resolution. *Pakistan Journal of Criminology*, 45-47.
- Best, S. G. (2006). *Introduction to Peace and Conflict Studies in West Africa: A Reader*. Spectrum Books.
- Bornkamm, P. C. (2012). Rwanda's Gacaca Courts: Between Retribution and Reparation. *Oxford University Press*.
- Boyatzis, R. E. (1998). *Transforming Qualitative Information: Thematic Analysis & Code Development*. SAGE.
- Brounéus, K. (2008). Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts. *SAGE Journals*.
- Capital of Khyber Pakhtunkhwa (Peshawar)*. (n.d.). Retrieved from KP Government: [https://kp.gov.pk/page/peshawar\\_1](https://kp.gov.pk/page/peshawar_1)
- Clark, P. (2010). *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda*. Cambridge University Press.
- Daly, E. (2002). Between Punitive and Reconstructive Justice: The Gacaca Courts in Rwanda. *New York University Journal of International Law and Politics*, 355, 368.
- Dispute Resolution Council*. (n.d.). Retrieved from Peshawar Police: [https://www.peshawarpolice.gov.pk/drc\\_address.php](https://www.peshawarpolice.gov.pk/drc_address.php)

- District Peshawar*. (n.d.). Retrieved from Local Government, Elections & Rural Development Department: <https://www.lgkp.gov.pk/districts/district-peshawar/>
- Estrada, F. (2012). El Leviathan de Thomas Hobbes. *SSRN Electronic Journal*.
- Faisal Shahzad, D. T. (2020). Criminal Justice and Model Courts in Khyber Pakhtunkhwa: An Interdisciplinary Critique and A Case Study. *Journal of Law and Society*, 45-68.
- Fakhr ul Islam, K. F. (2013). Jirga: A Conflict Resolution Institution In Pukhtoon Society. *Gomal University Journal of Research*.
- Gelleman, M. I. (2007). Powerful Cultures: Indigenous and Western Conflict Resolution Processes in Cambodian Peacebuilding. *Journal of Peace Conflict & Development*.
- Ginty, R. M. (2008). Indigenous Peace-Making Versus the Liberal Peace. *Cooperation and Conflict: Journal of the Nordic International Studies Association*, 145-146.
- Government of Khyber Pakhtunkhwa*. (n.d.). Retrieved from KP Government: <https://kp.gov.pk/>
- Harvey, W. S. (2011). Strategies for Conducting Elite Interviews. *SAGE Publications*.
- Hassan M. Yousaf, A. G. (n.d.). *Towards Understanding Pukhtoon Jirga*. Lahore: Sang-e-Meel Publications.
- Hrishikesh Jaiswal, P. M. (n.d.). Alternate Dispute Resolution in Rural India: A Brief Study about Panchayat System. *Legal Encyclopedia*.
- Ingelaere, B. (2016). *Inside Rwanda's /Gacaca/ Courts: Seeking Justice after Genocide (Critical Human Rights)*. University of Wisconsin Press.
- Ingelaere, B. (2016). *Inside Rwanda's Gacaca Courts*. University of Wisconsin Press.
- Isaac O. Albert, T. A. (1995). *Informal Channels for Conflict Resolution in Ibadan, Nigeria*. Ibadan: IFRA.
- J J O'Connor, E. F. (2000, November). *The Bakhshali Manuscript*. Retrieved from MacTutor: [https://mathshistory.st-andrews.ac.uk/HistTopics/Bakhshali\\_manuscript/](https://mathshistory.st-andrews.ac.uk/HistTopics/Bakhshali_manuscript/)
- Jabbour, E. (1996). *Sulha: Palestinian Traditional Peacekeeping*. House of Hope Publications.

- Jerome T. Barrett, J. B. (2004). *A History of Alternate Dispute Resolution: The Story of a Political, Social, and Cultural Movement*. San Francisco: Jossey-Bass.
- Jethro K. Lieberman, J. F. (1986). Lessons from the Alternative Dispute Resolution Movement. *The University of Chicago Law Review*, 424-439.
- Kakar, P. (n.d.). Tribal Law of Pashtunwali and Women's Legislative Authority.
- Khan, J. (2020). *Minorities, Women Gain Representation on Peshawar Dispute Resolution Council*. Retrieved from Pakistan Forward: [https://pakistan.asia-news.com/en\\_GB/articles/cnmi\\_pf/features/2020/11/12/feature-01](https://pakistan.asia-news.com/en_GB/articles/cnmi_pf/features/2020/11/12/feature-01)
- Lal Zaman, Q. K. (2018). Critical Discourse Analysis: Jirga and its Survival in Pakistan. *Pakistan Journal of Criminology*, 33-34.
- Lang, S. (2002). Sulha Peacemaking and the Politics of Persuasion. *Journal of Palestine Studies*.
- Lawrence, B. (2013). An Indigenous Yoruba Socio-Political Model of Conflict Resolution.
- Layyah, D. P. (n.d.). *Annual Policing Plan 2016-2017*. District Layyah.
- Lilleker, D. G. (2003). Interviewing the Political Elite: Navigating a Potential Minefield. *Politics*.
- Longman, T. (2009). An Assessment of Rwanda's Gacaca Courts. *A Journal of Social Justice*.
- Magnus Marsden, B. D. (2012). *Fragments of the Afghan Frontier*. C Hurst & Co Publishers Ltd.
- McCaslin, W. D. (2005). *Justice as Healing: Indigenous Ways*. Living Justice Press.
- Mughal, D. M. (2012). Law of Inverstigation into Cognizable Case. 27.
- Muhammad Hassan, I. U. (2019). A Legal Framework for the Jirga Community Mediation in Khyber Pakhtunkhwa. *Islamabad Law Review*, 1-21.
- Mushtaq Ahmad, M. J. (2020). Revival of Jirga through DRC with Special Emphasis on Sustainable Resolution of Conflict: With Reference To District Swabi-Kp Pakistan. *Psychology and Education*.

- Mushtaq Ahmad<sup>1</sup>, M. J. (2020). Revival of Jirga through DRC with Special Emphasis on Sustainable Resolution of Conflict: With Reference To District Swabi-Kp Pakistan. *Psychology and Education*.
- Naila Yosuf, B. N. (2015). Examining Citizen's Confidence in Institutions of Pakistan: An Analysis of Citizen's Trust. *International Journal of Academic Research in Business and Social Sciences*, 144-146.
- Naseer, S. (n.d.). Building Trust in Government. 4-7.
- Oberson, J. (2002). *Khans and Warlords: Political Alignment, Leadership and the State in Pashtun Society*. Bern.
- Ombudsman*. (n.d.). Retrieved from Merriam Webster: <https://www.merriam-webster.com/dictionary/ombudsman>
- Organisation, G. C. (1989, June 27). *Indigenous and Tribal Peoples Convention, 1989 (No. 169)*. Retrieved from United Nations Human Rights: <https://www.ohchr.org/en/instruments-mechanisms/instruments/indigenous-and-tribal-peoples-convention-1989-no-169>
- Organization, W. I. (2016). *No. 7 Customary Law and Traditional Knowledge\**. Geneva.
- P. Gill, K. S. (2008). Methods of Data Collection in Qualitative Research. *British Dental Journal*, 292-293.
- Pakistan, I. (2015). *Reclaiming Prosperity in Khyber-Pakhtunkhwa*.
- Pakistan: FATA Reference Map*. (2018, April 25). Retrieved from Relief Web: <https://reliefweb.int/map/pakistan/pakistan-fata-reference-map-25-april-2018>
- Parveen Gul, B. A. (2018). Factors Affecting the Conviction Rate: A Case Study of Khyber Pakhtunkhwa. *Journal of Law and Society*, 77-83.
- Pely, D. (2009). Resolving Clan-Based Disputes Using the Sulha, the Traditional Dispute Resolution Process of the Middle East. *Dispute Resolution Journal*, 83-84.
- Peshawar*. (n.d.). Retrieved from Peshawar Development Authority: [https://www.pda.gkp.pk/About\\_Us/about\\_peshawar](https://www.pda.gkp.pk/About_Us/about_peshawar)

- Peshawar District Demographics*. (n.d.). Retrieved from KP Government:  
[https://kp.gov.pk/page/peshawar\\_district\\_demographics](https://kp.gov.pk/page/peshawar_district_demographics)
- Peshawar District UC Ward List, MNA MPA Seats*. (n.d.). Retrieved from Politic:  
<https://www.politicpk.com/peshawar-district-uc-ward-list-mna-mpa-seats->
- Peter Uvin, C. M. (2003). Western and Local Approaches to Justice in Rwanda. *Global Governance*.
- Police, K. (2014). *Dispute Resolution Councils - Khyber Pakhtunkhwa Police*.
- Pollock, T. (n.d.). *The Difference Between Structured, Unstructured & Semi-Structured Interviews*. Retrieved from OliverParks: <https://www.oliverparks.com/blog-news/the-difference-between-structured-unstructured-amp-semi-structured-interviews>
- Post, T. F. (2022, January). *The Pros and Cons of Dispute Resolution Councils*. Retrieved from The Frontier Post: <https://thefrontierpost.com/the-pros-and-cons-of-dispute-resolution-councils/>
- Program on Negotiation*. (n.d.). Retrieved from Harvard Edu:  
<https://www.pon.harvard.edu/category/daily/dispute-resolution/>
- Quantitative and Qualitative Research*. (2021, September 21). Retrieved from UTA Libraries:  
[https://libguides.uta.edu/quantitative\\_and\\_qualitative\\_research/qual](https://libguides.uta.edu/quantitative_and_qualitative_research/qual)
- Rabia Manzoor, S. S. (2019). Effectiveness of Dispute Resolution Councils in Alternative Dispute Resolution. *Quest Journal and Social Sciences*, 50-63.
- Rohne, H. (2006). *Cultural Aspects of Conflict Resolution : Comparing Sulha and Western Mediation*. Berlin: Duncker and Humblot.
- Rosado-Tisgie, V. M. (2014). Traditional Conflict Resolution Skills: Nigeria Case Study. 13-14.
- Siddique, A. (2014). *The Pashtun Question: The Unresolved Key to the Future of Pakistan and Afghanistan*. London: Hurst & Co.
- Silverman, D. (2000). *Doing Qualitative Research: A Practical Handbook*. London: SAGE Publications.

Sypnowich, C. (2001). *Law and Ideology*.

*The Case Study Approach*. (2011, Jun 27). Retrieved from PMC:

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3141799/>

Ullah, I. (2017, August 30). *Peshawar records highest population growth among all KP divisions*. Retrieved from Tribune: <https://tribune.com.pk/story/1494460/peshawar-records-highest-population-growth-among-k-p-divisions>

*Union Council*. (n.d.). Retrieved from Law Insider:

<https://www.lawinsider.com/dictionary/union-council>

Wardak, A. (2003). *Jirga - A Traditional Mechanism of Conflict Resolution*. *University of Glamorgan*.

Wylly, C. H. (1912). *From the Black Mountain to Waziristan*. London: Macmillan.

*Yoruba People*. (2020, October 15). Retrieved from New World Encyclopedia:

[https://www.newworldencyclopedia.org/entry/Yoruba\\_People](https://www.newworldencyclopedia.org/entry/Yoruba_People)

Yousaf Farooq, H. R. (2018). *FATA Tribes: Finally Out of Colonial Clutches? Past Present and Future*. *Center for Research & Security Studies*.

Yousaf, F. (2021). *Jirga, Its Role and Evolution in Pakistan's Pashtun "Tribal" Society*. In *Clan and Tribal Perspectives on Social, Economic and Environmental Stability* (pp. 105-118). Bingley: Emerald Publishing.

Zaru, J. (n.d.). *The Demands of Peace and Reconciliation*. *SAGE Journals*.