

# Understanding the informal justice system:

Opportunities and possibilities for  
legal pluralism in Pakistan

Naveed Ahmad Shinwari

Introduction by Dr. Osama Siddique



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Community Appraisal & Motivation Programme (CAMP)

**Understanding the informal justice system:**

Opportunities and possibilities for legal pluralism in Pakistan

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# Acknowledgements

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This report is an expression of my mission to understand the common people of Pakistan, their way of life and how they react to the situations they are caught in, and how they resolve their disputes and conflicts.

The subject of this report is the opinion of Pakistanis with regards to the systems of justice in Pakistan. In 2010 and 2012, similar research studies were conducted among the Pakhtuns in Federally Administered Tribal Areas (FATA), and Khyber Pakhtunkhwa and Pakhtun areas of Balochistan. In this report, comparisons between Pakhtun populated areas and the rest of Pakistan's three provinces are presented.

In developing this understanding, many people have contributed to this latest edition. The compilation of this report would never have been possible without the active involvement and intellectual insights of the 2,700 men and women respondents of Punjab, Sindh, and Baloch areas of Balochistan, who are most familiar with the subject. They were extremely helpful in sharing their knowledge and insights of the institutional issues and dynamics of the informal justice system – a difficult topic for policy makers, civil bureaucracy, practitioners, academics and civil society organisations. Their willingness to contribute to this report has helped Community Appraisal and Motivation Programme (CAMP) to develop a perspective on various aspects of formal and informal justice systems, which are the focus of this report.

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All views expressed in this report are solely mine, as are any mistakes and errors.

Naveed Ahmad Shinwari  
Principal Author and Chief Executive (CAMP)

# EXECUTIVE SUMMARY



# EXECUTIVE SUMMARY

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Pakistan, a predominantly Muslim country, was carved as a new state in August 1947 out of British India – with an area of 803,940 square kilometres, of which 25,220 square kilometres are covered with water. According to the latest figures, Pakistan's population is now 180 million (of which 60 per cent is young people), making it the seventh largest country in the world in terms of population. However, the average literacy rate in Pakistan is around 60 per cent, and literacy levels in rural areas are even lower (tribal women have the lowest literacy rate at just three per cent).

Pakistan inherited its formal justice system from Britain. It was developed under British Colonial rule, and continues to follow the path laid down by the imperialist forces. The judicial structure in Pakistan was derived from the Code of Civil Procedure (CPC) 1908 and the West Pakistan Civil Courts Ordinance (Ord. II of 1962). However, the formal court system evolves as its circumstances change: one of the latest amendments was the addition of the Nizam-e-Adl courts as part of conflict resolution in Malakand in 2009.

The subject of this report is access to justice and the state of human rights in Pakistan under both the formal and informal justice systems. In 2010 and 2012 similar research studies were conducted among the Pakhtuns in FATA, Khyber Pakhtunkhwa and Pakhtun districts of Balochistan. In this report, comparisons between these provinces are presented.

This report is based on both qualitative and

quantitative data. For the qualitative information, three provincial round-table discussions with stakeholders and 75 key informant interviews were used to gather insights and opinions. Minutes were recorded, analysed and utilised to write this report. Background and historical material used in the report came from a review of historical books, newspapers, reports, articles, journals, and experience gained through CAMP programmes. The quantitative data was produced by recording the perceptions of 2,700 men and women on different aspects of justice and dispute resolution affecting the lives of the people of Pakistan.

The statistics were drawn from interviews and included the perceptions of 50 per cent men and 50 per cent women. The objective was to sample enough adult males and females, urban and rural, to achieve a 95 per cent confidence level for their opinions on key issues related to the formal and informal justice systems of Pakistan. In this report, the anecdotal findings from the qualitative methods are followed by the statistical findings from the quantitative methods. Often the qualitative findings reflect widely-held beliefs about the traditional system of justice, but the quantitative findings show male and female respondents' current opinions at the present time.



## Perception of formal and informal institutions

This study highlights some striking differences between the data from Pakhtun districts and the data from the rest of Pakistan. For example, Pakhtun *jirga* in Khyber Pakhtunkhwa and Balochistan's Pakhtun populated districts is held in high esteem by the overwhelming majority – and is trusted more than other forms of informal dispute resolution systems (*panchayat*, *faislo* and Baloch *jirga*) in other parts of Pakistan. This is not surprising as Pakhtun *jirga* is comparatively more organised.

A startling revelation from the data shows that an overwhelming majority of respondents did not know about some of the formal institutions. With regards to the formal institutions that they were familiar with, the majority hold negative perceptions of these. People's lack of knowledge and negative perceptions of formal justice systems is perturbing and needs to be taken seriously and addressed by the policy makers. Lack of access to the formal justice system in most parts of the country undermines the rule of law, and leads to a breakdown of law and order. During the round-table discussions, the overwhelming majority of participants blamed the formal judicial system for poor people's denial of access to justice, compelling them to take the law in their own hands. Due to gaps in the administrative and executive system, people are forced to find another relief system.

Formal institutions are largely by-passed, regarded as inaccessible, expensive, corrupt, and believed to be influenced by political peddling.

An overwhelming majority of respondents (92 per cent) is aware of the existence of the police department; this is followed by those who are aware of the informal dispute resolution system (78 per cent).

Despite the negative views about the police, respondents believed the police is the most prominent institution for settling disputes, followed by the informal systems of *khandan* (extended family) and *biradari* (clan).

Less than a quarter of respondents (21.9 per cent) believed that the Superior Judiciary is 'affordable' and 'speedy'.

Pakhtun respondents show more confidence in the Pakhtun *jirga*, in comparison to respondents from other provinces who were asked about their respective informal justice systems (*panchayat*, *faislo*, Baloch *Jirga* etc.).

## Access to justice and conflict dynamics in Pakistan

It is evident that ordinary people have a good understanding of access to justice, and the media seems to have played a pivotal role in educating the masses on this subject. However, the concept of justice and its inaccessibility is clear when analysing the data.

Respondents show little trust on informal justice systems (*panchayat*, *faislo*, Baloch *Jirga*) as compared to formal justice systems. However, common perceptions favour the use of extended family, neighbourhood and clan – which are also informal institutions and which have shared a fairly large burden of cases with formal and informal justice systems. If we are to consider extended family, neighbourhood and clan as forums of informal justice systems where a higher percentage of people take their cases, then it can

The majority of respondents in Pakistan (65 per cent) believed that there has been access to justice 'to a moderate extent', compared to only 13.6 per cent who believed there has been access to justice 'to a large extent'.

Long timeframes and high costs are the most significant reasons limiting people to access the formal justice system in Pakistan.

Pakhtun respondents believed they would contact the *Jirga* in case of a conflict or dispute, whereas respondents from the rest of Pakistan are most likely to contact the police.

Respondents who accessed various dispute resolution systems believed that they were most satisfied with extended family (94 per cent), followed by informal justice systems (47.6 per cent) in comparison to the formal systems such as the Superior Courts (15.8 per cent) or the police department (14 per cent).

The majority of respondents would prefer to take criminal cases to the police (53.3 per cent); only 15.3 per cent said they would take cases of a civil nature to the police. For resolving civil cases, the top choice for respondents was extended family (24.5 per cent).

It can be safely argued that the majority in Pakistan prefers the informal mechanism – despite a lower preference shown for *panchayat*, *faislo* and Baloch *jirga*.

With regards to disputes of a petty nature and the state's institutions' inability to dispense justice on time and with affordability, this sometimes leads to widespread anger, frustration, and violence, Pakistan is a case in point – formal judicial systems are failing to provide access to justice for all. Cases which could easily be concluded and

amicably resolved, often linger on for decades and develop more complexities. Poor people have little or no access to justice, whereas the wealthy elite not only dominate the system but are also part of the law-making. Nevertheless, the data still shows that people generally prefer to approach the formal courts for criminal and complex cases, and that they use other options as a last resort.

Parallel informal justice systems that lack technical knowledge and flexibility often violate human rights, especially in relation to women and minority groups.

## Efficiency and effectiveness of formal and informal justice systems

Traditional methods of dispute resolution are a strong component of social control in the rural areas of Pakistan. Pakistan's legal system needs to be effective and efficient if it is to be sustained for a long time.

Once it is established that Pakistan's judicial system is efficient and effective then the importance of the informal justice system will be considerably reduced. General perceptions seem to support the assumption that the informal justice system is effective and efficient and these two characteristics have kept the informal justice system in operation for a very long time. Furthermore, the majority believes that the informal justice system is effective and efficient when dealing with criminal and civil disputes. However, more respondents thought that the informal justice system is more effective when dealing with civil matters than criminal cases. Respondents very responsibly identified challenges faced by the informal justice system, in particular with regards to issues that stem out of such verdicts that violate the Constitution of Pakistan and international human rights standards.

Out of 22 institutions, respondents believed that the five most effective institutions in dispensing justice and other services were informal institutions (clan, neighbourhood, family, informal justice systems and large local land owners).

The 'fairest' institutions dispensing justice services were also identified as informal institutions, including extended family, clan and others, followed by the lower courts and police.

More Pakhtun respondents (85.7 per cent) agreed that the 'informal justice system is a speedy and affordable justice system' compared to respondents from the rest of Pakistan (75.8 per cent).

Various assumptions were tested through several questions with options. The results favoured the informal justice system, surprisingly. However, there were certain assumptions, issues and challenges identified relating to the informal justice system – for example, the majority believes that the informal justice system reaches verdicts under political influence.

Interestingly, the majority agreed that the informal justice system reconciles disputing parties and restores harmony within rural societies – which formal justice can not ensure, according to the respondents.

With regards to the notion that the informal justice system can help reduce militancy in the country, the majority of respondents agreed. This should not be oversimplified as the current context of militancy is too complex, and we have unfortunately reached a stage where the informal justice system seems helpless.

## Operation of informal justice systems

It is interesting to discover that most of our respondents are aware of the existence of various informal institutions and that they have an understanding of the way such institutions operate in their respective communities.

Members of the informal justice system are most likely to be local respected citizens (who are not politicians), according to the majority of the respondents. Religious leaders seem to be more involved in the informal justice systems in KP and Balochistan, compared to other areas of Pakistan.

Women's representation/role in the informal justice system is mostly limited to the extended family, neighbourhood and clan. Only 7 per cent of the respondents believed that women attended the proceedings of the informal justice systems.

Almost half of the respondents (48 per cent) believed that the decisions taken by informal dispute resolution systems are made after consensus among all the members, while 20 per cent believed these decisions are made unanimously.

More than half of the respondents (51.6 per cent) confirmed that customary or tribal law is taken into consideration when deciding a case; 35.7 per cent believed that cases are decided combining both customary law as well Islamic law.

More than three-quarters of the respondents (76.9 per cent) showed their satisfaction over evidence collection under the informal justice system process. Only 16 per cent said that they were not satisfied with the evidence collection standards in the informal justice system.

Participation by women in the proceedings – as decision makers, witnesses or parties – presents a major challenge. The majority of respondents confirmed that women are not allowed to attend proceedings of *panchayat*, *faislo* or Baloch *jirga*. However, it is encouraging that the data suggests that women are participating in other informal mechanisms – such as *khandan* (extended family), *mohalla* (neighbourhood), and *biradari* (clan) etc. Interestingly, Sindh is credited for the highest levels of women's participation in the proceedings of informal institutions.

A sizeable percentage of respondents said that the informal justice system offers opportunities for the involvement of minority groups and women in its proceedings. However, our knowledge and experience contradicts this. Nonetheless, there may be certain situations where vulnerable groups are provided with the opportunity to participate in the proceedings.

The participation of ethnic groups in the process – in the context of all informal institutions – is also seen as particularly challenging in Punjab, Khyber Pakhtunkhwa and Balochistan. However, data from Sindh conveyed a pluralistic openness towards ethnic and religious minorities.

The majority believed that the decisions of the informal justice system are reached through consensus, and are accepted voluntarily by both parties, leaving little need for appeal or for accessing the formal judicial system.

Another interesting finding is that the majority of respondents were satisfied about the levels of evidence collection under the informal justice system. In reality, there is very little evidence collected, as the local residents and mediators often presume to know the facts in advance.

Links between the informal justice system and formal institutions have no formal recognition. This is due to the fact that it is illegal for a formal

institution to associate itself with the informal justice system. However, in reality officials from the formal system are involved informally to sort out cases, according to the study.

## The state of human rights under informal justice systems

There are many surprising and interesting facets of formal and informal institutions – which either offer justice services directly to the masses or help provide easy access to justice. On several occasions respondents showed a good understanding. However, many were also oblivious of certain facts.

Overall, the survey shows that respondents have faith in informal institutions – more precisely, those institutions that are closer to them and more accessible – such as *khandan*, *mohalla*, *biradari* and the informal justice system. Although these institutions have no formal recognition, this does not mean that they are free of any obligations. Cases have been reported where human rights were violated, and the state machinery had to react and declared the informal justice system illegal. However, as the majority shows their support for these institutions, these informal institutions continue to survive and operate informally and without state patronage. Respondents reveal that they have lost their faith in the state's institutions – which, in turn, makes it easy for people to approach informal institutions for dispute resolution and other matters. People are also often unaware of the formal judicial system and its network. It is for these reasons that informal institutions are surviving and thriving.

Various state and non-state institutions were tested under various human rights standards – international standards, the Pakistan Constitution and Islamic principles. The overwhelming majority of respondents sadly did not know whether the

Respondents who were familiar with the rights, protections and remedies available in the Constitution of Pakistan and general laws (61.1 per cent) is only slightly higher than those who are familiar with the international standards of human rights (52.9 per cent); while a higher percentage were familiar with Islamic legal principles and legal injunctions pertaining to human rights (77.4 per cent).

The majority of the respondents believed that the informal justice systems complied more with international human rights standards and the fundamental rights guaranteed by the Constitution of Pakistan, in comparison to the formal systems such as the police department and the formal courts.

64.6 per cent of respondents agreed that informal dispute resolution systems are at times biased against women in matrimonial disputes, while over a quarter of the respondents (28 per cent) disagreed with this notion.

More than half of the respondents (52.6 per cent) supported informal justice systems making decisions in favour of honour killings; 41 per cent opposed it.

Almost half of the survey respondents (46.9 per cent) agreed that indirect representation of women in the informal dispute resolution systems is effective, whereas 31.8 per cent did not agree.

various institutions complied with the international human rights standards, and the human rights enshrined in the Constitution of Pakistan and Islamic principles and legal injunctions. Nonetheless, the few respondents that were aware generally gave favourable

verdicts with regards to the informal institutions and their compliance with these human rights standards.

With regards to women and the informal justice system, survey findings reveal that the issue of how the informal justice system treats women is controversial, and viewpoints vary considerably. After cross-tabulation of several datasets, generally, men were more inclined than women to state that the informal justice system supported women; educated women were more inclined to be critical of the informal justice system (although not always) than uneducated women; and women from the rural sector claimed that they were treated more unfairly than urban women. There were also many who complained about the way the informal justice system treated women.

There is a need for an extensive awareness campaign at the grassroots level with regards to the protection of human rights – human rights that are enshrined in international human rights law, Pakistan's Constitution and Islamic principles.

## The way forward

The way forward is clear. The findings of this research on the formal and informal systems of justice are encouraging, but questions have been raised too. One thing is absolutely certain: both the informal justice system and the formal judicial system need to be reformed. The following are some suggested steps that the government of Pakistan can follow for judicial reform:

- understand the functions and operations of the formal and informal justice systems and decide the overall aim of the justice system;
- investigate the positive and problematic features in the relationship between the formal and informal justice systems;
- organise a national dialogue and share the

A large group of respondents (44.5 per cent) confirmed their support for the informal justice system if recognised by the government, whereas 24.9 per cent did not favour this integration.

40 per cent of survey respondents believed that if informal justice systems are integrated into the formal system, they would be plagued with the same weaknesses inherent in the formal system; 35.9 per cent had the opposite view.

Almost three quarters of the respondents (74.9 per cent) agreed that women-led informal dispute resolution systems should be set up.

will improve markedly as a result; hopefully in the not too distant future, we will see all Pakistani citizens benefiting from easy access to the fair, efficient and effective justice system that they deserve.

model of a new system for adaptation and recognition;

- develop methods and infrastructure for implementation and a system for evaluating the changes;
- continue to evaluate and revise the model.

The suggested steps for reform can be used as a first point for discussion, and can be debated with experts and policy-makers alike. The reform agenda that develops must be dynamic, changing over time following rigorous evaluation and critical analysis.

Ultimately, for a particular legal system to be considered just, the present normative values, sensibilities and expectations of a society must be reflected in the legal system. The present study lays bare a general finding that Pakistanis are able to access both formal and informal, community-based dispute resolution processes in order to seek relief.

It is hoped that if adopted, evaluated periodically, and reformed accordingly, the overall justice sector

# CHAPTER 1

**NOT RELICS OF THE PAST BUT AVENUES OF OPPORTUNITY:  
THE FUTURE ROLE OF TRADITIONAL INFORMAL DISPUTE  
RESOLUTION MECHANISMS IN THE PAKISTANI JUSTICE SECTOR**



# CHAPTER 1

## NOT RELICS OF THE PAST BUT AVENUES OF OPPORTUNITY: THE FUTURE ROLE OF TRADITIONAL INFORMAL DISPUTE RESOLUTION MECHANISMS IN THE PAKISTANI JUSTICE SECTOR

Dr. Osama Siddique

The domination of formal dispute resolution systems in post-colonial developing countries has been such that any mention of informal dispute resolution systems invariably generates a reaction and critique that categorises any reliance on and continuation of a role for the informal – especially traditional mechanisms for dispute resolution – as regressive and inequitable. A blind adherence to an exclusivity of the formal dispute resolution system is the outcome of several commonly held notions and frequently voiced arguments which are briefly stated below.

### **The domination of the formal – main arguments**

(i) The formal dispute resolution system denotes progress and sophistication over ostensibly archaic and outdated informal dispute resolution systems – it is the triumph of 'contract' based rights over purely 'status' based dispensations; the ascendancy of objective justice over subjective justice;

(ii) The formal dispute resolution system is meant to uphold a common law – which is the same for all and which provides additional mechanisms for protecting minorities and historically vulnerable groups – and that emerges out of deliberative democratic processes. In contrast, informal dispute resolution systems are largely perceived

to uphold traditional customs, and to adhere to varying, communal and often inequitable norms, and to perpetuate processes and mechanisms that lack the fundamentals of modern concepts of due process and natural justice;

(iii) The formal dispute resolution system is an embodiment of the state and its commitment to provide efficient and just dispute resolution based on 'universally' accepted norms of justice as well as carefully calibrated policy choices, and thereby structured, funded and institutionally supported to deliver efficient and fair outcomes. In contrast, informal dispute resolution systems are perceived as aberrations and/or divergences of inconsistent pedigree and quality from state dispensed justice. As a consequence, they are seen to invariably undermine the writ of state law and thus ultimately the state itself;

(iv) The formal dispute resolution system is not only meant to resolve disputes but to also, while doing so, uphold constitutional rights in modern constitution democracies where the constitutional document is the ultimate testimony to and safeguard for the expression of the popular will, to be bound by certain definite and invocable collective norms. Furthermore, the formal legal system is also expected to constantly remain cognizant of international consensus on universal human rights and to uphold the state's



international treaty obligations while resolving disputes and dispensing justice, especially where such international norms have been incorporated into state law through appropriate legislation. On the other hand, informal dispute resolution systems are perceived as rigid, parochial, provincial, insular and frequently in violation of constitutional as well as international treaty obligations;

(v) The formal dispute resolution system is operated by an educated and specialised cadre of judges and their support staff that is specially trained and incentivised to deliver a uniform, consistent, predictable, reliable, even-handed and efficient brand of justice. Informal dispute resolution systems, however, are seen to alter tremendously from individual to individual and from area to area, thereby violating some of the primary aspirations of modern law – i.e., uniformity, consistency, equity, and predictability;

(vi) Good laws and legal systems are meant to progressively evolve with modern political and economic developments and evolving social and cultural perceptions of individual and group rights and obligations. Therefore, formal dispute resolution systems are expected and calibrated to embrace and adjust to such societal progressions and evolutions and to also come up with answers to increasingly complex social, economic and political disputes and contestations. Informal dispute resolution systems, on the other hand, are perceived to lack such capacity, ability and sophistication and are thought, at best, to make sense in very simple social and economic transactions;

(vii) Predictability and consistency of outcomes is also a function of establishing, recording and following precedents which is something that a formal dispute resolution system is meant to establish and staunchly follow. The same is not quite seen to be the case with informal dispute

resolution mechanisms; and,

(viii) A modern formal adversarial dispute resolution system is served and facilitated by a professional class of lawyers and other legally-trained people who are meant to assist courts in reaching just and efficient decisions and to facilitate them in meaningfully improving and developing the law. The informal dispute resolution mechanisms lack this additional dimension and disputants are perceived to be invariably left to fend for themselves without any able legal assistance, so that more often than not the powerful dominate the weak, and caprice, clout and intimidation determine the actual outcomes of disputes decided by such dispute resolution mechanisms.

### **Overarching assumptions and ground realities**

If a centralised formal dispute resolution system were essentially to function efficiently, equitably and staunchly adhering to the ethos of a constitutional democracy, all the above arguments about its advantages have a lot of resonance. This, however, is not to say that all the afore-stated assumptions and perceptions about informal dispute resolution systems are unassailable, as shall be shortly discussed. Furthermore, in actual practice there are several caveats and departures from theory when it comes to the everyday performance of formal legal systems in post-colonial developing countries. For a start, in post-colonial developing nations in particular, the formal systems often have a prominent alien and alienating, elitist, and inaccessible dimension to them.<sup>1</sup> As these nations confront the myriad issues of low economic growth, inequitable wealth distribution, weak social and economic indicators, unstable politics as well as frequent bouts of undemocratic rule, fragile institutions, and multiple levels of

1. See Osama Siddique, *Pakistan's Experience with Formal Law: An Alien Justice* (Cambridge: Cambridge University Press, 2013), at 174 (hereafter 'Pakistan's Experience with Formal Law').

entrenched societal exploitation based, among other things, on race, caste, sect, gender, ethnicity, class, age and sexual orientation, their formal legal systems frequently face political interference and domination, elite capture, and special interest group control. Independent judiciaries are few and far between and even where they try and assert themselves, they find themselves simply overwhelmed by resource shortage, low public policy prioritisation and massive workloads – caused both by slow processes and consequently delayed outcomes (low disposal rates) as well as ever-escalating rates of disputes and contestations in society (high rates of new litigation).

The overarching laws are often archaic and institutional support from other – equally weak and/or overwhelmed – political and justice sector institutions is not always forthcoming. As a result, the lived experience of millions of disputants and litigants on the ground – an already highly disparate group in terms of wealth, education and social contacts, privilege and leverage – is highly unsatisfactory. The formal processes for the resolution of disputes and the eventually dispensed justice are more often than not unintelligible, slow, expensive, open to obstruction and/or corruption, inaccessible, and frequently flouted by those who can do so with impunity. At various levels, instead of becoming a shield for the already defenceless, the formal justice system is co-opted by – or plays into the hands of – the aggressor and the mischievous as a coercive weapon. At other levels, the poor, the disempowered and the uneducated simply cannot decipher and/or meaningfully seek recourse to it due to its alien and complex language, unscrupulous lawyers, insufficiently trained judges, convoluted and outdated laws and processes, weak administration and governance, and rampant corruption.<sup>2</sup>

It can be argued that the only solution lies in strengthening and improving the formal legal

system rather than contemplating any informal solutions. However, this argument is more aspirational than realistic as several decades after independence from colonial rule, neither the flawed legal systems nor societal inequities and modes of exploitation have shown many signs of abatement and acceptable levels of reform.<sup>3</sup> Meanwhile, the vast multitude of the populations of post-colonial developing countries is finding the gaps between their everyday problems and the dispensations of the formal legal system getting larger and larger. Simultaneously, as populations rapidly grow bigger, and governance and official service delivery fail to catch up, disputes in society grow in number and complexity and the formal legal systems get increasingly embroiled and burdened. In addition, a fair number of court contestations are often not standalone and are instead connected to past conflicts and grievances as well as additional on-going legal battles – the courts regularly become arenas for settling multiple scores. Elongated embroilment of an opponent in a resource and energy sapping court battle – which is often frivolous or malicious – is itself a tactic or even the ultimate goal. Given this state of affairs, it makes sense at least to honestly understand and realistically assess how many citizens continue to resolve disputes outside courts and who does so, and whether these mechanisms are all bad or whether they have any merit and potential. If the latter is true, then does it make sense to closely examine these mechanisms and explore possible opportunities for embracing, accepting, selectively anointing, monitoring and developing linkages with those aspects of the same that can bring some relief to both the crowded courts and the harassed litigants?

Coming back to the possible misconceptions and apprehensions about informal dispute resolution systems, a fair and objective assessment of the possible merit and potential of the same is impeded by several factors that are described below.

2. Id.  
3. Id.

## Prejudices against the informal – the main strains

(i) Being so used to the exclusive operation and overarching culture of the domestic formal legal systems, many people are ill-informed about and often partisan in favour of the same. At the same time they remain ignorant of the fact (due to lack of exposure and informed journalistic and academic dialogues) that alternative dispute resolution (ADR) – whether court assisted or non-court assisted – continues to play a major role in justice systems all over the world in order to provide simpler and cheaper solutions in suitable cases, and also to lessen the burden on courts so that their valuable time can be dedicated to cases that are more fit for formal adjudication;

(ii) Sections of the legal fraternity – judges, lawyers, bureaucrats and others trained in formal law – are either deeply contemptuous of informal solutions or are unwilling to relinquish institutional turf or potential clients, or both. The primary evidence for this is that despite legislation to bring about court assisted ADR in Pakistan, the mechanism is barely used and no necessary concomitant steps have been taken to date in order to institutionalise and regularise the same;

(iii) Even otherwise, in Pakistan as well as in other post-colonial developing countries, the given and often received formal law is imagined in a narrowly doctrinal manner and not sufficiently attuned to the important sociological dimensions that characterise the complex interplays between law and society. In other words, there is hardly any recognition of current and cutting-edge research elsewhere that emphasises the fact that formal legal systems everywhere can continue to impact different citizens in an asymmetric manner, simply because the background rules that they uphold can be very asymmetric in nature. This could not be truer in post-colonial states that continue to carry

forward a colonial legacy in several post-colonial laws and procedures that were formulated in the first place under imperatives, among other things, of privileging certain sections of society and subjugating others. In addition, many sections of society in such states continue to live in very diverse situations that are characterised by different social norms, cultural practices, economic conditions and socio-political frameworks as well as very divergent levels of understanding of and/or acceptance of the dominant culture and norms enshrined in the formal legal system. This necessitates a careful scrutiny of the various gaps between official norms and local customs and practices and suitable adjustments in both in order to promote commonly shared ideals of society. Furthermore, a regular scrutiny of how political, economic and social patterns of domination and power skew the processes and outcomes of a formal legal system in their own favour is also essentially missing – thus creating a false impression of objective fairness simply because the dispute resolution process has a formal feel, form and structure. However, an approach to envisioning and analysing law as a possible source of private coercion, as well as a valuable tool in service of society (particularly for those in greatest need of assistance) is absent in milieus where the law was, and at several levels continues to be employed as an instrument of rule and domination. This has a direct correlation with fragile federal structures, weak political and democratic norms and practices, and nascent institutions, especially those vital for generating and sustaining robust politics as well as knowledge production, i.e. political parties and collectives as well as the intelligentsia. Evidence-based scholarly inquiry is both rare and inhibited, not least because of the weaknesses of the legal academy in the region;<sup>4</sup>

(iv) Given that the court systems in post-colonial developing countries are still largely governed and

4. See Osama Siddique, *Legal Education in Pakistan: The Domination of Practitioners and the 'Critically Endangered' Academic*, Journal of Legal Education, Volume 63, Number 3 (February 2014); and, also *Martial Laws and Lawyers: The Crisis of Legal Education in Pakistan and Key Areas of Reform*, 5 Regent J. Int'l L. 95 (2007).

administered as if they exist in some past century and also the near-absence of any mechanisms for reliable collection and incisive analysis of essential disaggregated data on the number, features and nature of legal cases, there is insufficient empirical information to fully gauge where the bottlenecks in the formal system are and where suitable disputes can be systematically filtered or taken out of the formal system through court directions. Not only do the governments, courts and other related institutions in post-colonial developing countries generate very little reliable disaggregated data on court litigation, they are also largely wary of sharing it with researchers and critical commentators. In other words, the basic raw material required for diagnosing systemic problems, formulating informed policies, institutional administrative adjustments, and effective reform prescriptions, in order to selectively employ informal systems in a complimentary manner for assisting both the courts and the disputants, is simply missing. The wholesale condemnation of the informal is as empirically ungrounded as the unquestioned celebration of the formal courts as more efficient, more reliable, and as equal opportunity forums;

(v) The exclusivity of fiscal, monetary, and administrative control over the formal legal system by those who are also the direct operators and beneficiaries of the same also results, especially in weak democratic milieus, in an exclusivity of control over the extant discourses on the condition and reform of the formal legal system. In other words, any ideas to constructively explore and develop linkages between the formal and the informal are either not discussed with any great rigour, and even if they are, they do not find their way into the exalted decision-making avenues. As a result, the dominant official reform discourses are largely not introspective, largely uncritical, and frequently self-perpetuating;

(vi) Informal dispute resolution systems are often confused with traditional community-based dispute resolution systems. Instead of

appreciating that the term 'informal dispute resolution systems' is used to denote essentially simpler, more flexible, quicker, and less expensive mechanisms that provide solutions to ordinary and everyday disputes – and, therefore, these can be both traditional community-based mechanisms as well as various permutations of state and community partnership as well as court assisted and supervised regimes of arbitration and mediation – the term is simplistically and erroneously conflated with purely traditional modes of justice, (and there too, despite some of their advantages and positives, is associated merely with the most crude, retrogressive and scandalous output generated by some of them). Sometimes, such reductionism is even more erroneous and informal justice is wrongly equated with an extreme phenomenon, such as instances of the more brutal Taliban style of justice; and,

(vii) The dominant legal culture is defined and upheld by the English speaking class and the informal systems are both conceptually unintelligible to as well as deemed culturally inferior by the same – equated as they are in the post-colonial mindset with misdirected plebeian notions of popular justice and unsophisticated aspirations and mechanisms for dispute resolution.

### **Growing popular discontent with the performance of the formal legal system in Pakistan**

Given the above, it would be useful at this stage to evaluate briefly the actual performance of the Pakistani formal legal system in view of the perception of its end-users. A recent survey of litigants in the Lahore District Courts, for instance, presented a rather remarkable result. Of the 440 randomly surveyed litigants, as many as 42 per cent dissatisfied litigants said that they would not like to bring their disputes to the courts in future; instead, they would rather explore ADR possibilities. Another 39.5 per cent expressed

frustration with the courts and stated that only the lack of any viable alternatives would cause them to approach the courts again. Thus, as many as 81.5 per cent of the interviewees voiced their lack of faith in the formal legal system and expressed a yearning for informal alternatives.<sup>5</sup> This is a resounding indictment of the country's formal legal system. The results are highly noteworthy not just due to the magnitude of discontent but also because they don't come from a far-flung area or a remote location but indeed from the main district courts of a major metropolis, situated in one of the most socio-economically developed districts of the largest and most affluent Pakistani province. The numbers speak volumes about ordinary people's disenchantment with the formal legal system at several levels, as well as the continuing relevance of informal alternatives. This is just a representative recent empirical insight. A variety of governmental and non-governmental public perception surveys and reports over the years only confirm and supplement its findings about popular dissatisfaction with various facets of the formal legal system.<sup>6</sup>

Despite ever-escalating litigation, mounting caseloads for courts, and consequent delays in legal proceedings, historically very little attention has been paid to the state of informal dispute resolution mechanisms in Pakistan. Very little thought has gone into possible linkages and arrangements between the formal and the

informal, both to lighten the burden on courts and also to provide additional cheaper, simpler and accessible options to the citizens.<sup>7</sup>

### Informal dispute resolution systems – the international experience

While the idea of informal mechanisms to augment and support the formal legal system continues to largely face neglect in justice sector reform thinking in Pakistan, elsewhere in the world it is now well understood that not all types of disputes are suitable for a formal court-based solution.<sup>8</sup> Further, that the vast majority of disputes actually never make it to court at all. Certain studies estimate that 80-90 per cent of all disputes are resolved through informal mechanisms.<sup>9</sup> The reasons for this include, as mentioned earlier, the fact that many forms of disputes are more amenable to resolution at other levels; there may be issues of access to and affordability of the formal system; formal systems may command limited public confidence; and court time is a precious asset often reserved for more complex and significant matters. There is also growing recognition of the relative neglect of informal justice systems by donor-funded programmes, especially in light of the fact that they are seen to furnish quick, cheap and culturally relevant remedies for the majority of populations, especially the poor and the disadvantaged.<sup>10</sup> For instance, according to an evaluation report from the Danish Ministry of

5. See Pakistan's Experience with Formal Law.

6. See for instance, Caroline Wadhams, Brian Katulis, Lawrence Korb, and Colin Cookman, Partnership For Progress: Advancing a New Strategy for Prosperity and Stability in Pakistan and the Region, (Center for American Progress November 2008); Crisis Group Asia Report N°160, Reforming the Judiciary in Pakistan, 16 October 2008; Crisis Group Asia Report N° 86, Building Judicial Independence in Pakistan, 10 November 2004; Crisis Group Asia Report N° 137, Elections, Democracy and Stability in Pakistan, 31 July 2007; Crisis Group Asia Briefing N° 70, Winding Back Martial Law in Pakistan, 12 November 2007. See also, Government of Pakistan's National Reconstruction Bureau: Social Audit of Governance and Delivery of Public Services: Baseline Survey 2004-5; Government of Pakistan's National Reconstruction Bureau: Social Audit of Governance and Delivery of Public Services: Baseline Survey 2002 – National Report; Corruption in Judicial Systems: Transparency International's Global Corruption Report 2007; Transparency International Pakistan: National Corruption Perception Survey, 2006; Transparency International: National Integrity Systems – Country Study Report Pakistan, 2003; Transparency International Pakistan: Survey on Nature and Extent of Corruption in the Public Sector, March 2002; and, periodic Human Rights Commission of Pakistan's Reports. See also Richard Blue, Richard Hoffman & Louis-Alexandre Berg, Pakistan Rule of Law Assessment – Final Report (USAID: November 2008).

7. See Osama Siddique, *From the Case and the Court to the Dispute and the Disputant: Revitalizing Informal Justice in Pakistan*, in Indian Legal System Reform: Empirical Baselines and Normative Frameworks (Sudhir Krishnaswami ed., New Delhi: Oxford University Press) (forthcoming in Fall, 2015). [hereafter 'From the Case and the Court to the Dispute and the Disputant'].

8. Id.

9. See Ewa Wojkowska, Doing Justice: How informal justice systems can contribute, United Nations Development Programme, Oslo Governance Centre, The Democratic Governance Fellowship Programme, December 2006.

10. Id.

Foreign Affairs: “The majority of the population is often not in a position to access the formal legal system for various cultural, linguistic, financial and logistical reasons. Their access to justice largely depends on the functioning of informal systems, which have been neglected in terms of external support.”<sup>11</sup> A vast literature now recommends that more effective social regulation and greater allocation of social disputes to ADR can furnish many desirable substitutes to court-based adjudications.<sup>12</sup>

### The informal in the colonial era

At this juncture, it is also instructive to take note of how customary practices in post-colonial societies such as India, Pakistan and Bangladesh have historically been subject to periods of heightened governmental interest in the potential of informal dispute resolution mechanisms and also instances of selective co-option by the colonial state. This had divergent consequences – while formal acceptance or tolerance enhanced customary mechanisms in certain instances, such co-option also led to inadvertent or deliberate transformation in many cases. The colonial legislative forays to establish a structured and controlled operation of the village *panchayats* in Punjab in the years immediately preceding Indian independence, the extensive process of codification of the *rewaj* (or local practice) in Punjab, and also the general codification of the *dharmashastras* (Hindu wisdom literature) are prime examples.<sup>13</sup> This formalisation of informal law led, it has been forcefully argued, however, to the empowerment of property-owning elites in the former; and in the latter to the elevation of one distinct set of traditions favouring a certain

notion of patriarchal land and property ownership regimes (which suited foreign rule) over others that were more progressive, for example towards the inheritance rights of women.<sup>14</sup>

Colonial schemes of codification of the dynamic, oral and multifarious concept of Islamic Shariah through the creation of Muslim Personal Law has also been criticised for having rigidified it, and for introducing a particular bias towards normative positions suited to the imperatives of the Raj.<sup>15</sup> Thus, there is compelling historical evidence that customary norms and dispute resolution mechanisms were frequently formalised in the colonial era for the primary purpose of extending certain state policies (including those of winning the loyalty of local political strongmen) rather than purely extending a cheap and acceptable mode of dispute resolution to ordinary people. In contrast to more organic and evolving norms and mechanisms they therefore often failed to gain wider public confidence and support. These lessons from the colonial past ought to act as a stern reminder for any reform efforts in the post-colonial state.

### Pakistani justice sector approaches toward informal dispute resolution mechanisms

The justice sector reform agenda in Pakistan over the past decade and a half has been essentially funded and driven by international donor led reform programmes. A recurring weakness of these 'court and case'-focused and efficiency-fixed reform approaches has been their consistent obliviousness to complex and diverse underlying societal disputes and contestations and their disregard of the multiple fissures between

11. See Danish Ministry of Foreign Affairs, *Danida Evaluation: Danish Support to Promotion of Human Rights and Democratization*, Volume 2: Justice, Constitution and Legislation (Copenhagen: Evaluation Secretariat, Ministry of Foreign Affairs, 2000). Cited in Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Rule of Law Series, Carnegie Endowment for International Peace, Democracy and the Rule of Law Project, No. 41, October 2003.

12. See Syed Ali Murtaza & Osama Siddique, *The Retrospective Report: Mapping and Assessment of Justice Sector Interventions – Donors and Government, 1998-2010* (The Asia Foundation: 2010) [hereinafter the 'Retrospective Report'].

13. See *From the Case and the Court to the Dispute and the Disputant*.

14. See Neeladri Bhattacharya, *Remaking Custom: The Discourse and Practice of Colonial Codification*, in *Tradition, Dissent and Ideology: Essays in Honour of Romila Thapar* (R. Champaklaxmi and S. Gopal eds., 2001), [hereafter 'Remaking Custom']; and also, Nandini Bhattacharyya-Panda, *Appropriation and Invention of Tradition: The East India Company and Hindu Law in Early Colonial Bengal* (Oxford University Press, 2008).

15. See Scott Alan Kugle, *Framed, Blamed and Renamed: The Recasting of Islamic Jurisprudence in Colonial South Asia*, *Modern Asian Studies*, Vol. 35, No. 2. (May, 2001); and also, Jörg Fisch, *Cheap Lives and Dear Limbs: The British Transformation of the Bengal Criminal Law 1769-1817* (Franz Steiner Verlag. Wiesbaden 1983).

prevalent social norms and practices and the official normative framework. Largely technically-oriented, these programmes have not taken account of the need for dialogue and collaboration to resolve the tensions implicit in the differences between these social norms and official codes.<sup>16</sup> The on-going neglect – barring some fairly recent exceptions – of the potential of informal systems to support and supplement the state in providing cheap, intelligible and accessible justice to the weakest and most vulnerable reflects what has been described in international literature as the 'cultural hegemony' of formal law. Such 'hegemony' may well be doctrinal as well as institutional, as indeed it may also manifest in terms of its special language, procedures, categorisations and general *modus operandi*.<sup>17</sup> To borrow a concept from Foucault and apply it in this context, legal 'normalisation' ought to be under special scrutiny, especially when it seems increasingly violative of diversity, pluralism and popular modes of access to justice, or when it ignores (or seeks to erase or transform) what the common person finds more intelligible, accessible and fulfilling.<sup>18</sup>

In this context it is important to direct attention to a recent official Pakistani Study on the state of informal justice in the country, conducted by a team of appellate court judges, which highlights the acute need to develop meaningful linkages between a variety of non-state informal dispute resolution mechanisms operating in the country and the state's formal legal system. It advocates, among other things, more effective legislation for viable arrangements for referring disputes from the formal to the informal sphere, and suitable frameworks for linking the operation and outcomes of informal mediations, arbitrations and reconciliations with the formal system in order to

achieve more expeditious resolution of disputes, reduction of pendency in courts, and, enhanced access to justice for the marginalised and the poor.<sup>19</sup> This Study also emphasises the need to make constitutional and legal obligations more comprehensible and widely understood by translating them into common language, so that they can be employed by traditional mediators and arbitrators while resolving disputes.<sup>20</sup> The Study makes some important recommendations regarding both traditional ADR mechanisms (*jirga*, *panchayat*, *faislo*, *sulh* etc.) as well as ADR based in specially created public bodies (particularly, Musalihat Anjuman and Small Claims and Minor Offences courts (SMOC courts)). These recommendations call for better allocation of appropriate kinds of disputes, institutionalised and regularised case directions/redirections by the courts to both kinds of ADR mechanisms, as well as referral of complex cases by the informal mechanisms to the courts. Furthermore, since the decisions of the informal mechanisms are not enforceable by the law, the Study advocates further close examination of the interaction of the formal and the informal systems in order to identify additional interfaces and linkages.<sup>21</sup>

Over the past half a decade or so, some of the most prominent developments towards promoting court-assisted and informal dispute resolution mechanisms in Pakistan have included, among other things: (i) amendments to the Code of Civil Procedure for promoting court-assisted ADR; (ii) special ADR committees for tax matters; special initiatives for expeditious resolution of commercial disputes; and, establishment of bodies such as the Karachi Centre for Dispute Resolution; (iii) promulgation of the Small Claims and Minor Offences Ordinance and the subsequent setting up of the SMOC courts for

16. See Pakistan's Experience with Formal Law.

17. See for instance Sally Falk Moore, *Law as Process: An Anthropological Approach* 55 (Routledge & Kegan Paul 1978); see also, Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans* 1, 14-15 (The University of Chicago Press, 1990).

18. See Michael Foucault, *Discipline and Punish: The Birth of the Prison* (Vintage Books, 1975); See also *Remaking Custom*.

19. See Study on Informal Justice System in Pakistan, Sindh Judicial Academy (2008) (hereafter 'Sindh Judicial Academy Study').

20. Id.

21. Id.

expediting and facilitating the resolution of minor disputes; (iv) introduction of local mediation bodies called Musalihat Anjuman ('MAs') under the Local Government Ordinance 2001 ('LGO 2001'); and, (v) introduction of a new Arbitration Act.<sup>22</sup> While (i) and (ii) have been comparatively somewhat successful, either in creating the necessary enabling environment for further reforms or in introducing ease of access and efficiencies for certain types of dispute resolution, the performance and prognosis is far from satisfactory as far as the remaining – and more significant structural and systemic – reforms are concerned.

Looking first at the SMOC courts, the enabling law did not mandate the establishment of exclusive courts for this purpose – existing courts/judicial officers were declared to also perform the function of SMOC courts. Consequently, no discernable improvement has resulted in terms of reduction in delays and in case disposals. Further, reportedly the governing ordinance has actually been superseded by a new law, which does not require separate SMOC courts. Thus no distinct SMOC courts have been established and very few SMOC cases appear to have been filed.<sup>23</sup>

In a context where reform of the formal has historically been the predominant focus, the MA reforms were a key intervention that sought to forge linkages between the formal and the informal. Funded by the UNDP, the MAs were designed to form an ADR mechanism for arbitration, mediation and reconciliation of disputes, and were supposed to be operationalised in various districts in the country under the LGO 2001.<sup>24</sup> This initiative, among other things, focused on: constituting and

operationalising MAs in union councils in selected districts; capacity building of MAs; establishing partnerships between judiciary, police and MAs for fair and equitable dispensation of justice; and, promoting community advocacy for legal rights of women and active participation of men to end gender-based violence.<sup>25</sup> Official reports indicate heartening progress in terms of successful operationalisation, capacity-building and training.<sup>26</sup> As is usually the case, however, there is a considerable gap between official reporting on progress and the situation on the ground. So far this initiative's actual level of success is heavily contested and far from clear. The LGO 2001, the essential framework of the MA reforms, envisions creation of Insaaf Committees (ICs) elected by the Union Councils, which in turn are meant to appoint panels of respected persons of integrity and good judgement from the communities to constitute the MAs. The LGO 2001 also envisions cases being referred by any court to the MAs, where the proceedings are pending. However, lack of clarity on the status and provisions of the LGO 2001, lack of sustained governmental commitment to the reform, the absence of detailed rules for actual functioning, lack of funds, and the limited role and participation of female councillors have been blamed by the reform donors themselves for lacklustre outcomes.<sup>27</sup> According to one independent survey, only eight per cent of the respondents reported the presence of MAs in their communities and areas.<sup>28</sup>

Other critics have also pointed out that the LGO 2001 actually needs various amendments in order to, among other things, address existing ambiguities and contradictions in the law and the roles of its envisioned operators; rationalise conflicts with other overlapping and as yet

22. *Id.*

23. See Retrospective Report.

24. See UNDP website page on the Musalihat Anjuman project.

25. *Id.*

26. *Id.* See also Gender Justice through Musalihat Anjuman: A Proposal for Completion of Planned Activities during Existing Pilot Project Phase and Upscaling/Extension from 2007 to 2011, UNDP (2011) [hereafter 'Musalihat Anjuman: Proposal for Completion of Planned Activities']; see also Gender Justice through Musalihat Anjuman: Project Facts, UNDP (2011).

27. See Musalihat Anjuman: Proposal for Completion of Planned Activities.

28. See Naveed Ahmed Shinwari and Neha Gauhar, Understanding Justice Systems of Khyber Pakhtunkhwa, FATA and Balochistan: The Pakhtun Perspective, Community Appraisal and Motivation Programme (CAMP), April, 2013 [hereafter 'Understanding Justice Systems'].



unrepealed laws; provide a framework for linkages between different MAs; and, embrace and address important areas of operation where the MAs are likely to play a role, or may have no choice but to play a role (about which the governing law is currently silent). Subordinate legislation on its own, it is argued, is not likely to succeed in alleviating these various problems.<sup>29</sup> This is quite apart from the continuing imperative of framing detailed rules for the meaningful operation of MAs in a context where they are meant to have linkages and interfaces with various existing justice sector and local government institutions.<sup>30</sup>

Regarding the new Arbitration Act, several factors continue to impede this reform from having any creditable impact on easing the caseload pressure on courts and making less time-consuming dispute resolution options available to the public.<sup>31</sup> Key factors include opposition from both the bench and the bar, absence of mechanisms for mandatory referrals, the dearth of specialised ADR resource persons, and lack of a requisite enabling framework as well as necessary training.<sup>32</sup>

The above points to the acute need to salvage and resuscitate the various existing initiatives in the area and to fill current gaps by boosting the impetus and enabling environment for the formal court system to rely on ADR mechanisms; for developing better systems, guidelines and frameworks for enhancing court referral of cases to ADR mechanisms, and, for overall awareness generation to increase the demand for these ADR services. At the same time, once informal mechanisms and mediators reach just decisions, there is as yet no mechanism to extend formal recognition to such decisions. Such official

recognition would empower ADR providers and allow them to work with greater confidence and consistency, thereby increasing their efficacy in ending on-going disputes and building their stature as decision-makers whose decisions have legal sanction and thus cannot be flouted. It would also raise public esteem for and faith in the formal justice system under the auspices and through the support of which these informal mechanisms would be operating. By giving informal verdicts the force of formal law in appropriate spheres and situations, the justice extended by the informal sector could be projected as an extension of the overall commitment of the formal justice system to providing easily accessible and locally acceptable solutions to disputants and contestants and to protecting the rights of the weak and the vulnerable.

### Context matters – case study: the Pakhtun areas of Pakistan

The Pakhtun areas of Pakistan – comprising of the provinces of Khyber-Pakhtunkhwa (KP), certain areas in the province of Balochistan, the Federally Administered Tribal Areas (FATA) and the Provincially Administered Tribal Areas (PATA) may be unique in terms of the variety of historical and contemporary legal and governance systems, disparate constitutional arrangements, attempts at political and social engineering, short-term institutional hybrids, and multiple administrative frameworks that they have encountered and continue to do so. At the same time, barring a few exceptions and variations at the popular normative level, *pakhtunwali* is the unwritten code of life that governs Pakhtun society in this vast territory, and indeed in neighbouring Afghanistan.<sup>33</sup> *Pakhtunwali* is a combination of

29. See Zafar Iqbal Kalanauri, *The Implementation Strategy for Successful Functioning of Musalihat Anjuman*, (Undated).

30. Id

31. See Retrospective Report. See also Program Completion Report: Access to Justice Program (Pakistan) (Loans 1897-PAK, 1898-PAK, and 1899-PAK), Asian Development Bank, 29 December, 2009. Several of these shortcomings appear as classic factors that lead to failure of ADR. See Government of New Zealand, Ministry of Justice website, at <http://www.justice.govt.nz/publications/global-publications/a/alternative-dispute-resolution-general-civil-cases/7-opportunities-for-improved-adr-take-up>

32. See Retrospective Report.

33. See Osama Siddique, *The Other Pakistan: Special Laws, Diminished Citizenship and the Gathering Storm* (December 5, 2012). Available at SSRN: <http://ssrn.com/abstract=2185535> or <http://dx.doi.org/10.2139/ssrn.2185535>; see also The Jirga: Justice and Conflict Transformation, Community Appraisal and Motivation Programme (CAMP) and Saferworld, March 2012 [hereafter *Jirga: Justice and Conflict Transformation*].

belief systems, social institutions and values and normative benchmarks. Viewed simplistically, it can appear to be a paradoxical code of life that places an equally high premium on the seemingly contradictory values of revenge and hospitality. Like any framework of human social existence, however, *pakhtunwali* endeavours to strike a balance between the competing perspectives and imperatives of different sections of society, while embracing its own particular notion of a social contract. It also responds to contextual and geographical imperatives (such as the inhospitable terrain, the local political economy, modes of industry and production, and the contests which arise over competing demands for limited resources).<sup>34</sup> Though arguably somewhat exaggerated and oversimplified, the following quotation captures well the multi-tiered phenomenon of *pakhtunwali*. "It is law inasmuch as it is enforced by *maliks* and *jirgas* and was accepted as such by the British Frontier Crime Regulations. It is custom insofar as every Pakhtun knows what to do or not to do under it in the circumstances of daily life. It is manners because a 'true khan-like' Pakhtun never departs from it. It is mind-set because all Pathans accept it."<sup>35</sup>

Like all normative frameworks enjoying longevity, *pakhtunwali* also pursues a certain notion of rights, justness and equity. These notions may, and indeed do at times, violate other notions of justice – both within Pakistan as enshrined in its constitutional framework, and internationally as reflected in human rights charters and treaties. Reconciling the aspiration to comply with the national constitution and international human rights norms without forcibly uprooting or transplanting a culture which has been largely acceptable for centuries and still commands the support of many is a major challenge for any

reform endeavours pursuing greater linkages between formal and informal dispute resolution systems in the area.<sup>36</sup>

*Pakhtunwali* provides the overarching normative framework or informal 'legislative code' within which the *jirgas* operate. The term *jirga* refers to both a practice and an institution. It is essentially a congregation of elders (often including *maliks* or heads of dominant tribes), convened by an intermediary to resolve disputes through meetings, consultations and evidence gathering, that delivers verdicts which comprise a variety of punishments and social sanctions.<sup>37</sup> It is thus a mode of customary dispute resolution that operates at several levels. There are some variations across the vast Pakhtun region due to local differences of *rewaj* (custom). Akin in many ways to a jury, it is used to settling more circumscribed local disputes within the family, clan, tribe, and sub-tribe as well as larger inter-tribal conflicts.<sup>38</sup> Significant in this context are a set of principles for dispute resolution, mechanisms for peace-keeping, tools for tribal cooperation and promotion of co-existence, approaches toward women, and social ostracisation and penal sanction frameworks.<sup>39</sup>

The *pakhtunwali* and the *jirgas* operate in the context of, and alongside: the formal legal system in place in those parts of this region that are part of the mainstream Pakistani governance framework, the special colonial era mechanisms – somewhat amended in recent years – in place in FATA, the shariah-inspired court-based legal system in PATA, and *shariah* itself (as well as its local interpretations by elders). This creates contestations at several levels, in settled districts of KP, for instance, the three systems – formal law, the *shariah* itself, and the *jirga* – create a complex

34. For more on *pakhtunwali* see Palwasha Kakar, *Tribal Law of Pakhtunwali* and Women's Legislative Authority, Harvard Islamic Legal Studies Program, 2005.

35. See Spain W James, *Pathans of the Latter Day*, (Oxford: Oxford University Press, 1995), at 39.

36. A rigorous anthropological study of Pakhtun culture and society is the classic work, Fredrik Barth, *Political Leadership among Swat Pathans*, University of London, Athlone Press, 1959.

37. Definitions vary from source to source as the practice also differs from place in terms of its ambit and process, but not in any major substantive way. This definition encompasses the main features and characteristics of the *jirga* and has been gleaned from the various sources cited in this chapter.

38. See *Understanding Justice Systems*.

39. See Dr. Sherzaman Taizi, *Jirga System in Tribal Life*, Area Study Center (Russia, China and Central Asia) April, 2007.

three-way contestation, as well as important areas of overlap and mutual support.

### Three-way contestations

The *shariah* has always been dynamic and open to diverse interpretations according to context. The static notion of codified Muslim Personal Law, current state-sanctioned notions of *shariah* (where too there have been divergences between the Supreme Court and the parallel structure of the Federal Shariat Court introduced by the military dictator Zia-ul-Haq on issues such as interest and land reforms) and various other living interpretations of *shariah* as put forward by the *madaris* (religious seminaries), Islamic scholars and schools of thought, and tribal elders, therefore, have constant tensions. There are also areas where the contestation arises from conflict between the *pakhtunwali* and *jirga* decisions and both *shariah* (state sanctioned as well as the larger phenomenon) and formal law (especially the Fundamental Rights and Principles of Policy under the Constitution) – for example in the customary practice of *swara* (the marrying of a girl in the family to an enemy in order to end a feud).<sup>40</sup>

In other situations, what the formal law says or does in practice is quite different (denoting the internal understanding of judges etc.) from what it may nominally embrace as *shariah* through codification or what may be widely embraced as *shariah* in society and/or in mainstream Islamic scholarly interpretations (and is not even nominally embraced by formal law) – for example in the hudood punishments (for theft, adultery and other crimes, the allowance of polygamy, the special tax to be paid by minorities, certain aspects of inheritance law such as what do grandchildren inherit from grandparents if the parents have expired, various aspects of child

custody including whether strict age limits denoting when children should go to which parent can prevail over the 'child welfare' calculus routinely employed by the courts, the status of interest on capital and its acceptability in banking etc). Understanding the levels of compatibility, interface and interaction between these systems is highly important to guide efforts to enhance the ways in which citizens can access the most appropriate means of recourse, including through case referral between the formal and informal systems.

### The continuing popularity of *jirgas* in Pakhtun areas

Any outright cooption, continued neglect, or a blunderbuss mainstreaming of the customary dispute resolution mechanisms in the Pakhtun areas in order to fully align them with formal law would be unrealistic, unpopular, unfair and counter-productive. Recent empirical inquiries in representative Pakhtun areas found that when asked about various kinds of informal dispute resolution systems prevalent in their communities and areas, 81.2 per cent of the respondents from KP and PATA reported the existence of the *jirga*.<sup>41</sup> On the other hand, while 88.8 per cent reported the presence of district administration and police, only 42.6 per cent actually reported the presence of mainstream formal courts.<sup>42</sup> In terms of who to contact in case of a conflict or dispute, the *jirga* was at the top with 61.7 per cent of the respondents mentioning it, followed by district administration and police (28.9 per cent). Formal courts were only mentioned by 0.6 per cent of the respondents.<sup>43</sup>

Exploring forum shopping behaviour, a survey of representative respondents in KP and Balochistan also tells an interesting story. When asked about where they would refer their critical criminal

40. See Anatol Lieven, *Pakistan: A Hard country*, Penguin Books, 2012, at 118-121.

41. See *Understanding Justice Systems*.

42. Id.

43. Id.

disputes (murder, theft, robbery etc.,) the following were the responses: *jirga* (47.6 per cent), district administration and police (37.7 per cent) and formal courts (8 per cent). Asked about their forum preference for civil disputes the responses were: *jirga* (59.1 per cent), district administration and police (16.9 per cent) and formal courts (14 per cent). When asked about forum preferences according to the nature of dispute, the most prominent response (44.5 per cent) showed a preference for the courts for deciding complex cases while 12.6 per cent of respondents confirmed that they would refer cases concerning land and property to the courts. Only 5.8 per cent identified *jirga* as a preferred option for resolving complex disputes. At the same time, only 9.5 per cent of respondents said that they would take all cases to formal courts. On the other hand, 38 per cent of respondents said they would refer all cases to the informal systems and 14.5 per cent also said they would not refer any cases to the formal courts.<sup>44</sup> Various important findings and insights are embedded in this. It can be safely gauged that Pakhtun communities across the region continue to repose greater confidence in the *jirga* system as compared to the formal and other informal systems. However, the data from the same study also shows that Pakhtuns have fast eroding confidence in the implementation capacity of the *jirga* system; very importantly, for quite a few there are also additional substantive issues with the same, including patriarchal attitudes, violation of due process and equal protection principles, elite capture, inadequate representation and prejudicial approach towards the rights of women, especially vis-à-vis inheritance, rights of widows and divorcees to remarry etc.<sup>45</sup>

It would be self-defeating to ignore the high degree of support which the *jirgas* continue to court in Pakhtun areas, the continuing respect for

tribal elders as custodians of traditional wisdom, and the obvious advantages of accessibility, intelligibility and affordability that *jirgas* often offer. At the same time, the state can't ignore the importance of formal courts to tackle more intractable and complex issues. Neither can it forget that courts may provide easier recourse and better protection to those segments of society that apprehend and face greater vulnerability and disempowerment under traditional informal dispute resolution mechanisms. There is sufficient evidence that the latter can at times engage in serious process and substantive rights violations – rights that are meant to be safeguarded by the constitution and the national formal legal system for the country's entire citizenry.<sup>46</sup>

The above analysis and findings are very pertinent when it comes to other areas of Pakistan that retain traditional normative and dispute resolution frameworks operating alongside the formal law regime. Traditional dispute resolution mechanisms such as the *panchayat* in Punjab, the *faislo* in Sindh, and the *jirga* in parts of Sindh and Baluchistan are institutions of great provenance and have embodied the practical dispute resolution dimensions of customary norms, understandings and practices. However, these traditional institutions and mechanisms and their current operations, if any, are barely documented and we have no clear contemporary empirical understanding of the roles that they continue to play alongside, in conjunction with, or in contradiction to the formal legal system. For all the aforementioned reasons that necessitate a better mapping and understanding of the *jirga* in Pakhtun areas and the development of possible linkages between the informal and the formal, these customary frameworks also need to be much better understood. In many ways, this report makes a very significant endeavour

44. Id.

45. Id. See also *Jirga: Justice and Conflict Transformation*; see also Women's Rights in Pakistan – Status and Challenges, Stakeholders Joint Submission for Pakistan's Review in The Human Rights Council (14<sup>th</sup> Session, October 2012); see also Naveed Ahmad Shinwari, *Understanding Jirga, Community Appraisal and Motivation Program (CAMP)*, 2011.

46. See *From the Case and the Court to the Dispute and the Disputant*.

towards doing so.

## Neglected research

To reemphasise the above point, while the aforementioned empirical work provides valuable initial insights, any informed administrative and legislative interventions in this complex area require much more credible information. The paucity of empirical research on the actual performance of the formal legal system and the state of informal dispute resolution mechanisms greatly inhibit the contemplation of meaningful reform thinking and approaches. A detailed and disaggregated understanding of citizen expectations as well as how various components of the justice sector address the needs of different segments of society, especially those of the poor and the most vulnerable, remains pending. As a result, the following remain fairly unexplored questions:

(i) How disputes emerge in society (the nature of disputes, the frequency of certain dominant kinds of disputes etc);

(ii) how disputes get resolved or are perpetuated; and subsequently, whether, how, and how many of these disputes become legal contestations;

(iii) detailed mapping and documentation of the actual operation of various traditional as well as contemporary informal dispute resolution mechanisms (the latter include modern versions and variants of traditional mechanisms as well as inherently modern mechanisms such as market committees, traders' unions etc), focusing on their existing structure(s), management and administration, roles and responsibilities, capacity, membership, working practices, different stages from complaint to execution, processes, checks and balances, record-keeping, incentives/payment/reward structures and implementation mechanisms, in order to identify

areas of further engagement and collaboration;

(iv) perceptions and perspectives of different segments of society regarding different forums for dispute resolution, in particular the preferences of women and other vulnerable groups and the reasons for those perceptions;

(v) detailed assessment of the state of health and continuing operation of the traditional dispute resolution mechanisms in conflict areas e.g. in PATA, where they were targeted by the *Taliban*;

(vi) closer understanding of the historical and current operation of the formal-informal hybrids, for instance, the formal *jirgas* in FATA, their evolution, amendments made over the years, and relevant lessons for forging greater linkages between the formal and the informal – there is some empirical and also considerable anecdotal evidence to suggest that such formal-informal hybrids also exist in Punjab and Sindh, as also does the utilisation of the informal by the formal based on subjective official choices i.e., local police involving and utilising the *panchayat* during criminal investigations;<sup>47</sup>

(vii) detailed mapping and exploration of current policies, rules, processes and practices in the formal justice system vis-à-vis referral/direction of cases to the court-assisted as well as informal ADR mechanisms; and,

(viii) further exploration of the complex interaction between local normative codes such as *pakhtunwali* and other local and regional normative understandings and customary practices, *shariah* and formal law in order to identify areas of overlap as well as conflict and thus to better understand forum shopping behaviour. This should include further examination of where human rights and civil liberty principles in the Constitution resonate, complement, support, and overlap with

47. See Osama Siddique & Saif Anjum, The Punjab Crime Perception Survey Report (Asian Development Bank: 2009).

customary practices and/or the *shariah* in order to identify areas of complementarity and conflict, and the devising of suitable strategies to build an overall Constitution-compliant normative framework and practices for dispute and conflict resolution.<sup>48</sup>

## CONCLUSION

International literature, previous reform experience in Pakistan, and available contemporary research suggest that the main challenges in supporting the informal sector and strengthening the formal-informal interface – in Pakistan as well as elsewhere in South Asia – are to both approach the reform of the informal sector in tandem with reforms to the formal sector (and not as truncated and isolated activity) and to strike a balance between retaining the informal character, intelligibility, local accessibility and legitimacy of the customary justice systems, while making sufficient improvements to their functioning and effectiveness.<sup>49</sup> In other words, whilst the state needs to guide, augment and support provision of informal justice in a regular, predictable, equitable, and enforceable manner – and also needs to be seen to do so (thus boosting public confidence in the state) – this should not compromise the fundamental benefits of informal systems. The risk of 'too little' state involvement in customary justice must be balanced against the risk of 'too much' state involvement.

The risk of insufficient visible state involvement in improving informal justice is that enhancements of the non-state alternatives in such manner may make the state appear even less capable, by comparison, of providing adequate (formal) justice services. It is important, therefore, that the

government gets the deserved credit, for these enhancements. Simultaneously, the state needs to avoid – in reality as well as in perception – the notion that it is adopting a co-option strategy which is seen primarily to serve the purpose of strengthening state control, or of prioritising state or political interests in the informal justice process.<sup>50</sup>

It is worth re-emphasising that any state reforms to recognise, enhance and supervise the informal ought to ensure that they avoid taking away the vitality of the informal – the Indian experience, for instance, illustrates the danger of taking the desirable 'informal' out of informal justice.<sup>51</sup> This can have the unintended and undesirable consequence that the informal starts becoming as bureaucratic, procedurally rigid, slow, and cumbersome as the formal legal system, and/or as susceptible to elite capture.<sup>52</sup> There is also the risk of the informal mechanisms getting relegated in the popular consciousness as something inferior that are meant only for the poor, while the formal justice system with its relatively smart courts and fancy lawyers remain reserved for the rich.<sup>53</sup> Commentators have argued that one aspect is that the Indian state promoted local mediation alternatives like *Nyaya Panchayat* and *Lok Adalat* have created an apartheid-like impression among certain sections of the underprivileged.<sup>54</sup>

At the same time, it is very important to meaningfully address the multiple fissures between social norms/customs and the official framework through fostering an open and public policy dialogue. Ignoring the differences does not mean they are not there, and sustained policy dialogues are required to help the informal systems evolve in a way which preserves cultural relevance and intelligibility whilst taking account

48. See From the Case and the Court to the Dispute and the Disputant.

49. See Janine Ubink, *Customary Justice Sector Reform*, Research and Policy Note, University of Leiden Faculty of Law and International Development Law Organization, 2011.

50. See From the Case and the Court to the Dispute and the Disputant.

51. See Marc Galanter and Jayanth K. Krishnan, "Bread for the Poor:" *Access to Justice and the Rights of the Needy in India*, 55 *Hastings L.J.* 789 (2004).

52. *Id.*

53. *Id.*

54. See Marc Galanter and Jayanth K. Krishnan, *Debased Informalism: Lok Adalats and Legal Rights in Modern India* (2003).

of vital rights enshrined in the national normative and constitutional frameworks. This is likely to generate some difficult discussions and decisions, since it is very possible that, at one level, informal justice mechanisms are deemed more legitimate because they accord with principles which run counter to official norms.<sup>55</sup>

Not only from a distributive consequences standpoint but also from a narrower efficiency perspective, no formal justice system in the world can and does have the capacity and capability to resolve all disputes in society. Reforms towards assisting and persuading formal sector operators in the use of court-assisted ADR as well as community-based mediation, whilst building efficient court directions and case referral procedures, can strengthen the ability of the formal sector to benefit from the informal sector as a key resource and partner in justice provision.<sup>56</sup> At the same time, direct support for informal ADR capacity, alignment of the informal function with constitutional principles and norms (particularly those that enshrine the rights of disempowered and vulnerable groups) through effective oversight, and, suitable recognition of appropriate outcomes emanating from the informal in order to ensure their effectiveness and implementation, will both complement and reinforce the formal sector.<sup>57</sup> This integrated and multi-pronged approach to the full justice spectrum stands the best possible chance of achieving the concrete outcomes of reduced case backlog, accelerated litigation, better qualitative results, greater choice of accessible forums for the public, and, quicker dispute adjudication and conflict resolution in society, and, as a consequence enhanced government legitimacy as well as public trust in the state.<sup>58</sup>

Ultimately, however, all these policy deliberations and any suitable reform interventions are possible

only after the development of a much more nuanced understanding of the current state of play when it comes to the current state of existence and continuing operation of informal dispute resolutions systems in the country. The seminal research that underlies the analysis conducted in this report towards this end promises to not only excavate, collate, analyse and present invaluable new information but to also hopefully revive and invigorate the much-needed national debate on the future role of informal dispute resolution mechanisms in the Pakistani justice system.

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55. See From the Case and the Court to the Dispute and the Disputant.

56. Id.

57. Id.

58. See Pakistan's Experience with Formal Law.

# CHAPTER 2

## PERCEPTION OF FORMAL AND INFORMAL INSTITUTIONS





# CHAPTER 2

## PERCEPTION OF FORMAL AND INFORMAL INSTITUTIONS

### INTRODUCTION

Pakistan, a predominantly Muslim country, was carved as a new state in August 1947 out of British India. With an area of 803,940 square kilometres, of which 25,220 square kilometres are covered with water, Pakistan is nearly twice the size of California.<sup>1</sup> According to the latest figures, Pakistan's population is now 180 million (of which 60 per cent are young people), making it the seventh largest country in the world in terms of population. However, the average literacy rate in Pakistan is around 60 per cent, and literacy levels in rural areas are even lower (tribal women have the lowest literacy rate at just 3 per cent).

Pakistan is a federation of four provinces carved from linguistic and historic roots, with a strong central government. Pakistan administers some special areas through its federal government, namely FATA (Federally Administered Tribal Areas), Northern Areas (NA) and Pakistan's Administered Kashmir. Pakistan has a parliamentary government headed by an elected prime minister and a cabinet which runs the government, whereas the President heads the country. The national parliament is divided into an elected National Assembly elected through adult franchise suffrage whereas its Senate – the Upper House – is elected by the provincial and national elected members of the provincial and national

assemblies. During General Parvaiz Musharraf's era, women were given 33 per cent representation in parliament through a special quota system.

In terms of its location, history, and culture, Pakistan is a meeting ground for various pluralistic traditions.<sup>2</sup> The country boasts of multitude of native languages, of which there are currently more than 80 – major languages among them are Urdu, Punjabi, Siriaki, Sindhi, Pushtu, Balochi etc. To solve the problem of communication, Mr. Mohammad Ali Jinnah, the founder of Pakistan, made Urdu the national language. However English remains the main official language.

### The formal structure of the courts in Pakistan

Since the main theme of this study is access to justice, a brief account of the formal structure of the courts in Pakistan is provided here in order to explain the workings of the formal judicial system of Pakistan.

Pakistan inherited its formal justice system from Britain. It was developed under British Colonial rule, and continues to follow the path laid down by the imperialist forces. The judicial structure in Pakistan was derived from the Code of Civil Procedure (CPC) 1908<sup>3</sup> and the West Pakistan Civil Courts Ordinance (Ord. II of 1962). However, the

1. Ifthikhar H. Malik, *Culture and Customs of Pakistan*, 2008, p.1.

2. *Ibid*

3. Hussain, Faqir (Registrar, Supreme Court of Pakistan) *The Judicial System of Pakistan*, Revised (15 February 2011)

formal court system evolves as its circumstances change: one of the latest amendments was the addition of the Nizam-e-Adl courts as part of conflict resolution in Malakand in 2009.

Under the 1962 Ordinance, the power for determining the class and jurisdiction of the civil judges lies with the relevant High Court.<sup>4</sup> The courts' structure of Pakistan, in descending order, is as follows:

- A. Supreme Court of Pakistan (premier court seated in the federal capital, Islamabad)
- B. Federal Sharia Court
- C. High Courts of Pakistan (provincial and federal level)
- D. District and Sessions Courts (district level)
- E. Civil Judge/Judicial Magistrates' Courts – these deal with purely civil matters except as empowered under Section 30 of the Code of Criminal Procedure (CrPC) 1898 to hear criminal matters.
- F. Special Courts

#### **A. Supreme Court of Pakistan (SCP)**

The Supreme Court of Pakistan (SCP) is the premier court of the country – it has the final authority in all legal and constitutional matters.<sup>5</sup> It is comprised of a Chief Justice and 16 permanent judges.<sup>6</sup> It has a permanent seat in Islamabad, with Branch Registries in the capital of each province at Lahore, Peshawar, Quetta and Karachi.<sup>7</sup>

Justices of the Supreme Court are supervised by the Supreme Judicial Council, and derive their authority from Articles 176 to Article 191 of the Constitution of the Islamic Republic of Pakistan 1973, which explain the functions and powers of

the court.

The Supreme Court has original jurisdiction in disputes involving the federal or provincial governments under Article 184; it will exercise original jurisdiction while enforcing fundamental rights, but only when a question of 'public importance' is involved.<sup>8</sup> Appellate jurisdiction in civil and criminal matters is exercised by the SCP under Article 185, while Article 186 provides scope for advisory jurisdiction while extending advice to the government in legal matters.

#### **B. Federal Sharia Court (FSC) of Pakistan**

The Federal Sharia Court (FSC) of Pakistan was established under a Presidential Order in 1980.<sup>9</sup> The rationale for its establishment is to scrutinise all laws within the country in order to ascertain whether they are in line with Islamic values as expressed in the Holy Quran and Sunnah.<sup>10</sup> The FSC is comprised of eight Muslim judges, including the Chief Justice of Pakistan.<sup>11</sup> Among the judges at least three must be Islamic Scholars/Ulema who are well versed in Islamic law.<sup>12</sup> The decisions of the FSC are binding on all the High Courts and other subordinate courts.<sup>13</sup> The Supreme Court also has a Sharia Appellate Bench which has the power to review decisions of the FSC.<sup>14</sup>

#### **C. High Courts of Pakistan**

There is one High Court in each province as well as one in the federal capital of Islamabad.<sup>15</sup> They are as follows:

1. Lahore High Court, Lahore, Punjab
2. Sindh High Court, Karachi, Sindh
3. Peshawar High Court, Peshawar, Khyber Pakhtunkhwa

4. Ibid

5. PLD 2001, S.C. 607, Constitution of the Islamic Republic of Pakistan 1973

6. Constitution of Islamic Republic of Pakistan 1973, as amended by the Constitution (Eighteenth Amendment) Act 2010 (Mahmood, M, p 601)

7. Faqir Hussain (Registrar, Supreme Court of Pakistan) The Judicial System of Pakistan, Revised (15 February 2011)

8. Ibid

9. Ibid

10. Article 203D, Constitution of Islamic Republic of Pakistan 1973

11. Article 203C, Constitution of Islamic Republic of Pakistan 1973

12. Ibid

13. Faqir Hussain (Registrar, Supreme Court of Pakistan) The Judicial System of Pakistan, Revised (15 February 2011)

14. Ibid

15. Ibid

4. Balochistan High Court, Quetta, Balochistan
5. Islamabad (Federal) High Court, Islamabad

The High Courts are the appellate forums for all civil and criminal cases within the territorial limits of each respective province.<sup>16</sup> Articles 192 to 203 of the Constitution of the Islamic Republic of Pakistan 1973 provide for the functions and powers of the High Courts in Pakistan.

Under the Constitution, any particular High Court will exercise both its original and appellate jurisdiction under Article 199 for the enforcement of Fundamental Rights and review of judgements/orders of the subordinate courts in civil and criminal disputes.

#### **D. District and Session Courts of Pakistan**

The District and Session Courts are functional in every district of each province, with civil jurisdiction under the West Pakistan Civil Court Ordinance 1962 and criminal jurisdiction under the Code of Criminal Procedure (CrPC) 1898.<sup>17</sup>

In each district headquarters, there are numerous Additional District and Session Judges who usually head the courts. A District and Sessions Judge has both executive and judicial power all over the district within his jurisdiction.<sup>18</sup>

The Sessions Court is also a trial court for severe criminal offences such as murder, rape, armed robbery and others where specific amounts of gold and/or cash is involved. It also serves as an appellate court for civil suits of lesser value.<sup>19</sup>

All towns and cities of Pakistan now have a separate Additional District Court and a Sessions

Judge. These courts all have equal authority within their respective jurisdiction. When hearing criminal cases, it is known as the Sessions Court; while adjudicating upon civil cases, it becomes the District Court.<sup>20</sup>

The High Court exercises appellate jurisdiction over the lower courts in each province,<sup>21</sup> and, in turn, the Supreme Court of Pakistan has authority and appellate jurisdiction over the decisions of High Court.<sup>22</sup>

#### **E. Civil Judge and Judicial Magistrates' Courts (with power of Section 30 of Cr.PC 1898 only in criminal trials)**

There are multiple Civil and Judicial Magistrates' Courts in every tehsil and district.<sup>23</sup> A Magistrate under the powers of Section 30, Code of Criminal Procedure (CrPC) 1898, has the authority to hear criminal cases, excluding those cases that would involve the death penalty as punishment, for example, attempted murder, banditry, robbery, extortion, etc.<sup>24</sup>

In relation to awarding penalties, the Magistrates' Courts can only award a punishment of up to seven years' imprisonment.<sup>25</sup> Where imprisonment is deemed to be more than seven years, that particular case must then be referred to a higher court.<sup>26</sup> Each Judicial Magistrate's Court is also given a jurisdiction, normally covering one or more police stations of any particular locality.<sup>27</sup>

#### **F. Special Courts' of Pakistan**

In addition to the above mentioned courts there are some Special Courts or Tribunals and Boards

16. Ibid

17. Ibid

18. Ibid

19. Ibid

20. Ibid

21. Ibid

22. Ibid

23. Section 30, Pakistan's Code of Criminal Procedure 1898

24. Ibid

25. Ibid

26. Ibid

27. Ibid

that deal with 'specialized' cases that require certain expertise for resolution.<sup>28</sup>

These include the banking/consumer courts; anti-corruption, anti-terrorism, and anti-narcotics courts; family courts and special magistrate courts (seated at the District/Sessions Courts); labour relations courts; juvenile courts; numerous tribunals which include the services tribunal, and income tax tribunals; and, the Federal Board of Revenue (FBR).

### G. Nizam-e-Adl in Malakand

One of the most recent additions to the formal courts system in Pakistan has been the Nizam-e-Adl. In the case of the Nizam-e-Adl we have a special mechanism for justice that came about as part of the negotiations to establish a settlement to the civil war in the Swat Valley that ended in 2009. Malakand has been part of PATA since 2007. It had previously been a Tribal Area known as the Malakand Protected Area, part of the Malakand Agency of PATA. From 1970 to 2000 the district was part of Malakand Division, and as part of PATA, it had the other systems of justice described above. As a means to end the civil war of the mid-2000s, the government of Pakistan negotiated a ceasefire by agreeing, in part, to establish Sharia-based Courts. In 2009 these courts were established after legislative approval of the Presidential proposal.

Hence in an area that had been under the regulations and justice systems previously described, a new system came into being. In other chapters we examine how Nizam-e-Adl functions and the opinion of Malakand's citizens toward Nizam-e-Adl in comparison with the pre-existing systems of justice.

The Nizam-e-Adl consists of the following three levels:

1. Ilaqa (local);

2. Zila (district);
3. Darul Qaza (the highest level), to which appeals from the lower courts can be made.

To date, only the highest level (Darul Qaza) has been established. The judges (Qazi) at each level are appointed by the government. This government appointment apparently was not anticipated by the Tehreek-e-Nafaz-e-Shariat-e-Mohammadi/ Movement for the Enforcement of Islamic Law (TNSM) because in 2009 Sufi Mohammad said 'Delegating Qazis' powers to judges is Ghair Sharai.<sup>29</sup> We want Qazis in accordance with Sharia.' He said the TNSM wanted to transform the judicial system into an Islamic Sharia system. The point is that from early Islamic times the Qazi had been appointed by the Islamic rulers from among confident men who were known to have studied Islamic jurisprudence, and Sufi Mohammad may have believed that he would have been consulted about appointees. Hence, perhaps, the appointees would have been stricter. There is another aspect that comes from the scholarly debate about the term *Ijma* or the consensus of the community. For some, the term refers to the opinion of the community of Sharia scholars; for others, the term 'community' refers to the whole Muslim community. Therefore, an interesting aspect of the system as practised in the Malakand context is that these courts defer to local traditional and religious interpretations of Sharia law by the disputants rather than an absolute Sharia code. It is more in the broader Hanafi<sup>30</sup> school of legal thought. This reminds us of the variation in *jirga* conclusions from area to area simply because the local interpretation of Pakhtunwali varies (in the same way as the variations of interpretation of what applies from Sharia). In other words, there is a varying jurisprudence, but, in this case, because the Nizam-e-Adl began in the context of Malakand in 2009, we can assume that previous *jirga* and also formal systems of PATA from 1970 onward would have tempered or influenced this system too.

28. Faqir Hussainr (Registrar, Supreme Court of Pakistan) The Judicial System of Pakistan, Revised (15 February 2011)

29. The English meaning of this expression is "not according to Sharia."

30 It is derived, from the Qur'an, the authentic narrations of the Prophet (Hadith), Consensus (ijma), and analogical reasoning (qiyas), qiyas only being applied if direct material cannot be found in the Qur'an or Hadith. It is this last reasoning that makes the Pakistani application considering the beliefs or traditions of the disputants relevant, but also a point of friction with the TNSM.

Some reports indicate that what leaders like Sufi Muhammad and Muslim Khan of the TNSM had in mind was the application of Sharia as practised and advocated by the Taliban.

Proceedings of the Nizam-e-Adl are initiated by an aggrieved party. The complaint can be filed directly by any citizen. It is not necessary to employ a lawyer, the filing fee is minor, and when the parties are brought before the judge (Qazi), the judge uses both Sharia law and a negotiated settlement between the parties to arrive at a conclusion. This aspect, the negotiated settlement rather than a punishment brought against a “guilty party” and a fine paid to the state, echoes traditional Pakhtun justice procedures and brings closure to a dispute. It is a system of mitigation and conflict resolution.

Another important aspect of the system is the formal study of Sharia law among the lawyers in Pakistan. Because many of these urban scholars study both Sharia and Pakistani jurisprudence, as well as international law and civil rights, their outlook is more forward-thinking with dispute settlements bringing more modern practices into the realm from national and international debates. As a result, we are seeing a drop in the use of traditional punishments, such as hand chopping for robbery, stoning for adultery etc.

With regards to this survey, the initial enquiry about various formal and informal institutions aimed to gauge the level of respondents' awareness and to document the opinions they have of each institution. This will eventually help us to chalk-out a strategy, so that we can move forward with well-informed policies and programmes.

Please note that although the institutions listed aim to complement the rule of law and satisfy the legal and social needs of the local populace, this

does not necessarily mean that they do satisfactorily address the legal needs of the respondents.

#### H. *Jirga* under FCR (Frontier Crimes Regulation)

The FCR defines *jirga* as a 'council of elders' which is 'a council of three or more persons convened according to the Pathan.....usage as the Deputy Commissioner may direct'.<sup>31</sup> However the 1973's Constitution of the Islamic Republic of Pakistan in article 247(6) has formally used the words 'tribal *jirga*' in the context of changing the status of FATA.<sup>32</sup> The use of the word *jirga* in the Constitution refers to the importance and recognition of the *jirga* system in tribal affairs. According to Hart, the literal meaning of the word is an assembly which addresses questions between parties.<sup>33</sup>

*Jirga* in every day practice refers to a tribal institution of decision-making and dispute settlement that incorporates the prevalent local customary law, institutional rituals, and a body of village elders whose collective decision about the resolution of dispute (or local problem) is binding on the parties involved.<sup>34</sup>

FATA is divided into two administrative categories i.e. 'protected areas' and 'non-protected areas'. Protective areas are areas under the direct control of the government, while non-protective areas are administered indirectly by the political administration through local tribes.

In protected areas of FATA, civil and criminal cases are decided by the political administration vested with both judicial and executive powers.

A modified form of *jirga* (*Sarkari*) was adopted for use by the PAs (Political Agents)<sup>35</sup> as a formal mechanism for dispensing justice and resolving conflicts in the FATA under the Frontier Crimes

31. Section 2 (a) of The Frontier Crimes regulations, 1901

32. Article 247(6) of The Constitution of Islamic Republic of Pakistan, 1973

33. David M Hart, Guardian of the Khyber Pass, Vanguard Books, 1985, Page 71

34. Ali Wardak, University of Glamorgan, UK, (2002 b). Note: The Pashtun/Pukhtun *jirga* system is almost the same on both sides of the Afghan-Pakistan border.

35. Political Agent is a representative of federal bureaucracy. Unlike his counterpart in the settled districts of Pakistan, he was appropriately given this titled. The incumbents of this office were drawn from the Indian civil or sometime military service who would have acquired a certain degree of proficiency not only in Pashto but also in administrative affairs of the area. Only the most outstanding men of very high caliber were posted as political agents. On one hand he was the representative of the Crown, charged with ensuring that the area he administered posed no serious security threats for the government and on the other hand he was an advocate of the tribes vis-à-vis the government.

Regulation (FCR). The state in this case plays a very distinct role. The aggrieved person goes to the PA, or, if the PA suspects a crime, the PA charges a person. In protected areas of FATA, political officers, vested with judicial powers, deal with civil and criminal cases. One of the ways of seeking redressal of the grievances against a person or group of persons is to approach the administrative courts in the concerned tribal agency.<sup>36</sup> An application in the court of the political or assistant political agent may be submitted to initiate a case. After completing the necessary inquiries and investigations, cognizance of the case is taken and a *jirga* is constituted both for civil (section 8 of the FCR, 1901) and criminal matter (section 11), from the maliks enlisted with the political administration and who get *lungi* (economic benefit) from the political administration.<sup>37</sup> The disputant parties under the FCR have the right to raise objection on the nominated *jirga* members but practically the political administration rarely considers any such objection.<sup>38</sup> The case is then referred to the FCR *jirga* for *rai* (opinion) and award. Mostly the *jirga* opinion and award is made through the decision of the political officer. It is alleged that in most cases the *jirga* members sign a blank piece of paper; subsequently an opinion pertaining to be the *jirga* decision is actually written by the political administration according to their own wishes.<sup>39</sup>

The party who bribes and/or influences the political administration will easily get a favourable decision.<sup>40</sup> Under the FCR, PA or APA can refer and constitute the *jirga* but in practice these powers are predominantly exercised by the Political Tehsildar (PT) and Naib Tehsildar (NT).<sup>41</sup> Implementation of the decisions of FCR *jirga* is the responsibility of the political administration.

Disputants are allowed to select their mediators, although the political administration does play a role in this selection. Mediators first intervene to achieve a truce (*tiga*) between parties in a criminal case, or to obtain security (*muchalga*) in cash or kind for civil disputes. Thereafter, parties must arrive at a consensus concerning the mode of settlement – arbitration, *riwaj* (customary law) or *Sharia* (Islamic law). Once the mode of settlement is agreed upon, mediators arrange for the selection of a *jirga* with the consent of the parties to the dispute. Implementation of *jirga* decisions in non-protected areas is the responsibility of the tribe.<sup>42</sup> The *jirga* may mete out punishment to an offender, and impose a heavy fine. Occasionally, more serious measures may be taken such as expelling an individual or a family from the area, or confiscating, destroying or setting fire to homes and property. In such cases, the entire tribe joins together as a *lakhkar* (army) to enforce the decision. If the political authorities are party to the truce, any violations of the truce may result in the administration suspending or repealing any economic benefits enjoyed by the offending party.

Pakhtun tribes in FATA generally support the *jirga* as an efficient institution dispensing justice. At the same time they are of the opinion that the involvement of the political administration has put its status and future at stake because the political administration handpicks the *jirga* members.<sup>43</sup> Decisions under FCR *jirga* often favour those with political or economic clout at the expense of poor or vulnerable parties, and because of this, FCR *jirga* has lost public credibility.<sup>44</sup> On the other hand, the survey results and opinions of key informants show that *Olas* *jirga* is viewed as the most credible and trusted institution, providing cheap and speedy justice to local people in FATA. However, the fact that money and power also

36. Interviews with Mr. Iqbal Mohmand, Deputy Attorney General KP, Peshawar High Court Building, Peshawar, 10/2/2011

37. Interview with Muhammad Rafiq Khan Momand, Deputy Advocate General, Khyber Pakhtunkhwa, Peshawar High Court building, Peshawar - 20/1/2011

38. Interview with Karim Mehsud Advocate, President FATA lawyers Forum, Peshawar Law College, Peshawar, 21/1/2011

39. Interviews with lawyers from FATA (January 2011 Peshawar) and 19 focus-group discussions with respondents with men, women, youth and litigants of FATA (February-March 2011) 40 Ibid

41. Interview with Habib-ur-Rehman Advocate, Khyber Agency, Peshawar Law College, Peshawar, 21/1/2011

42. Interview with Attaullah Khan Advocate, from FR D.I Khan, Peshawar Law College Peshawar University, 26/1/2011

43. Interviews with lawyers in Peshawar, January 2011 and focus-group discussions and consultations with various groups – February-March 2011

44. This can be supported by the results of survey and respondents' views during the focus-group discussions and consultations

have influence over *Olasi jirga* was admitted by the members of the focus-group discussions, other key informants and survey respondents. It is clear that tribal societies, which have undergone tremendous change over the last few decades, are not immune to the influence of money – money has become a symbol of status and even the tribal elders can not save their communities from this. Nevertheless tribal people in FATA support the *jirga* system over the formal judicial system – as the formal system has failed to deliver justice and the costs involved in the litigation process make it economically unviable for these poor tribal communities.

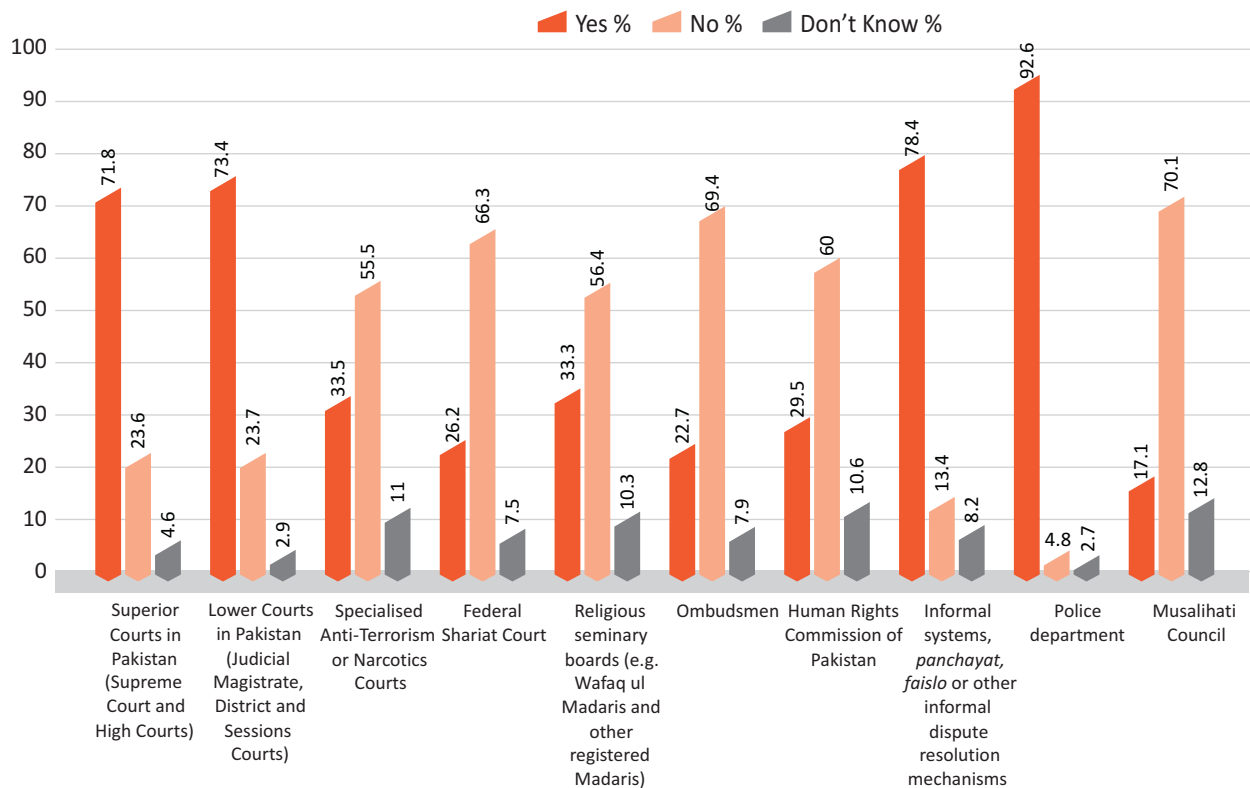
## Survey findings and analysis

This section provides analysis on respondents' perceptions of various institutions – formal as well as informal.

## Awareness of institutions and actors

Generally, for dispute resolution, people in Pakistan have access to a number of formal and informal institutions to satisfy their legal service needs. The majority of Pakistan's population lives in rural areas that have limited access to formal justice system for a variety of reasons. In addition, people have developed negative opinions about the formal justice system – this is explained in the introductory chapter and is elaborated upon further in this report on several occasions. The main reasons why people choose the informal dispute resolution system are: people's lack of awareness of the formal institutions and actors; distance to the courts from their dwellings; the high fees of courts and lawyers which poor people can not afford to pay; people's lack of trust in formal institutions and actors; the lengthy, time-consuming and painful process involved to get

### Are you aware of the following institutions and actors?



Are you aware of the following institutions and actors? Cross-tab with Urban/Rural areas.				
Institutions and actors	Awareness	Urban %	Rural %	Total %
Superior Courts in Pakistan (Supreme Court and High Courts)	Yes	75.2	68.4	71.8
	No	24.8	31.6	28.2
Lower Courts in Pakistan (Judicial Magistrate, District and Sessions Courts)	Yes	77.8	69	73.4
	No	22.2	31	26.6
Specialised Anti-Terrorism or Narcotics Courts	Yes	38.1	28.9	33.5
	No	61.9	71.1	66.5
Federal Shariat Court	Yes	29.9	22.5	26.2
	No	71.1	77.5	73.8
Religious seminary boards (e.g. Wafaq ul Madaris and other registered Madaris)	Yes	40.9	25.6	33.3
	No	59.1	74.4	66.7
Ombudsman	Yes	26.5	18.9	22.7
	No	73.5	81.1	73.3
Human Rights Commission of Pakistan	Yes	37.3	21.6	29.5
	No	62.7	78.4	70.5
<i>Jirga</i> system, <i>panchayat</i> , <i>faislo</i> or other informal dispute resolution mechanisms	Yes	74.9	81.9	78.4
	No	25.1	18.1	21.6
Police department	Yes	91.2	93.9	92.6
	No	8.8	6.1	7.4
Musalihati Council	Yes	22.1	12.1	17.1
	No	77.9	87.9	82.9

justice; and a belief that formal institutions and actors are corrupt and favour the rich and influential.<sup>45</sup> Whilst urban populations tend to approach the state's legal system, it was also observed by the majority of participants of the round-table discussions that informal remedies are also available in urban areas to address disputes and reconcile litigants.<sup>46</sup>

There is a need to analyse and compare data from both rural and urban areas, along with ascertaining the overall level of respondents' awareness of institutions and actors.

In the first graph, our concern is not the level of interest, but the difference between the rural and urban responses. With the exception of the Musalihati Council and Ombudsman, the percentage difference between rural and urban respondents is minor, and the level of awareness about the institutions is very similar in both rural and urban areas (as was the case with our previous study on the justice system in Khyber Pakhtunkhwa, FATA and Balochistan).<sup>47</sup>

Institutions and actors concerning formal and informal justice or dispute resolution systems, or related area of work, are introduced in the subsequent pages through various questions. However, first there is a need to understand the level of awareness of the respondents on the existence of various institutions and actors in their areas.

The graph is self-explanatory and shows the level of awareness of respondents. The most significant finding is that the police department topped the list, as the overwhelming majority of respondents (92.6 per cent) was aware of the existence of the police department in their area. Interestingly, next came the informal dispute resolution system (*panchayat*, *faislo*, and Baloch *jirga*), which was identified by more than three quarters of respondents (78.4 per cent). The Lower and Superior Courts were identified by 73.4 per cent and 71.8 per cent, respectively.

The above data shows that the majority of the Pakistani population is aware of both formal and informal institutions and actors dispensing justice

45. Round-table discussion in Lahore, Karachi and Quetta – August – December 2013

46. Ibid

47. See Naveed Shinwari and Neha Gauhar, 2013. Understanding Justice Systems of KP, FATA and Balochistan: The Pakhtun Perspective. CAMP



and resolving disputes. However, a significant number of respondents were not aware of certain formal institutions – such as Ombudsman, Federal Shariat Court etc.

### Opinions about institutions and actors

This question aims to document the opinion of the respondents about various formal and informal institutions concerning justice dispensation or dispute resolution.

The study treats each institution separately, beginning with a brief introduction for each institution and actor. Respondents were provided with different attributes – both negative and positive – and they were asked to say if these attributes were reflected in each institution.

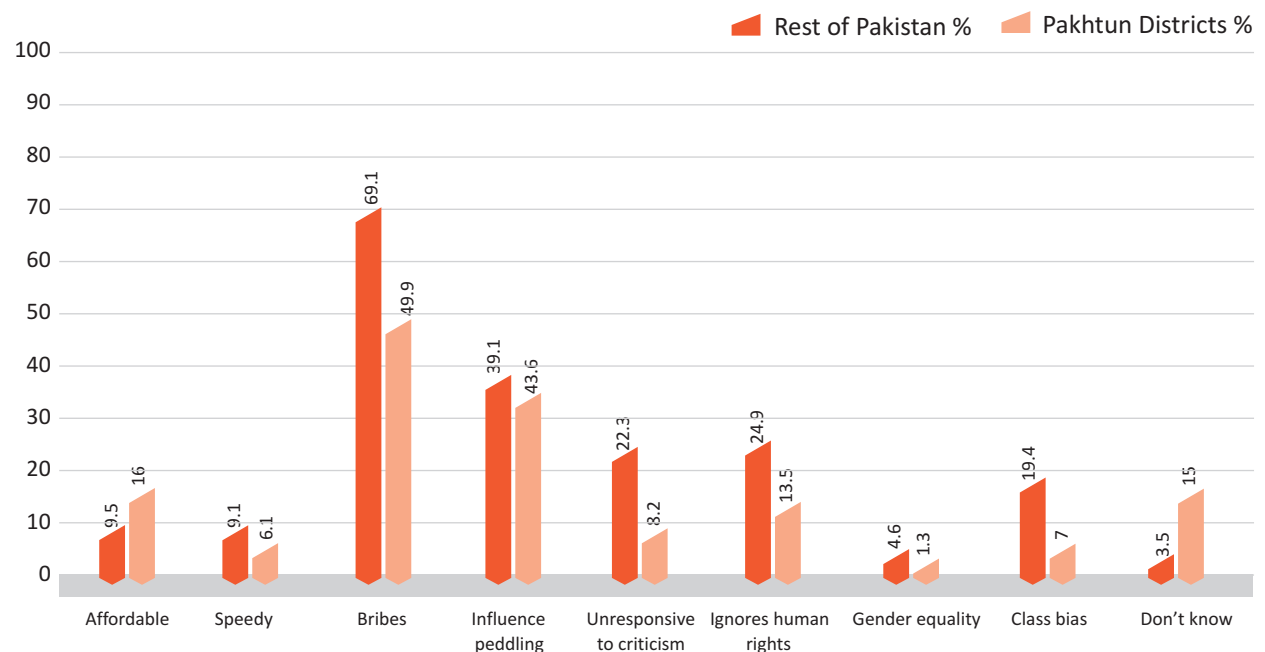
### Provincial police authorities and their local representatives (e.g. SHO, DSP, etc.)

The first institution tested under various options through this question was provincial police

authorities and their representatives. The police derived its powers of arrest, investigation, and search from the Criminal Procedure Code of 1898. Furthermore, the Pakistani authorities under the Government of India Act 1935 adopted pre-independence laws. Crimes are reported to the police, who then register a First Information Report [FIR]. Police authorities are responsible for maintaining public order, investigating crimes, and arresting offenders.

The majority view of the police department in Pakistan is negative. People have developed ill feelings towards the police for numerous reasons, the most common of which is that the police are seen to be corrupt and to yield to political pressure.<sup>48</sup> In particular, negative views were expressed during round-table discussions organised in Karachi, Lahore and Quetta where participants blamed the police department and its officials for their corrupt practices which led to people's loss of faith in the formal institutions and thereby impacted overall law and order and the violation of human rights.<sup>49</sup> The feudal system is

### Provincial police authorities and their local representatives (e.g. SHO, DSP, etc.)



48. Round-table discussions in Lahore, Karachi and Quetta, and Key Informants' Interviews (KIIs) with lawyers and journalists, August – December 2013

49. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

also responsible for influencing the police department, and for swaying verdicts in civil and criminal cases.<sup>50</sup>

Overall, the survey shows that respondents have negative views of the police in general. More than two-thirds of respondents (69.1 per cent), believe that police authorities take 'bribes', and 39.1 per cent said that police authorities are involved in 'influence peddling'. In addition, 24.9 per cent of respondents said that the police 'ignore human rights' (in all likelihood due to numerous media reports which have criticised the police for mishandling people and ignoring their rights); 22.3 per cent said the police are 'unresponsive to criticism'; 19.4 per cent said the police had a 'class bias'. Only 9.5 per cent of respondents thought that dealing with police authorities is 'affordable' (due to the heavy cost of bribes for favourable police support, along with other expenses, which poor people cannot afford to pay).<sup>51</sup>

Comparing the above data from all provinces with the data from the Pakhtun populated areas of KP and Balochistan, it appears that the Pakhtun

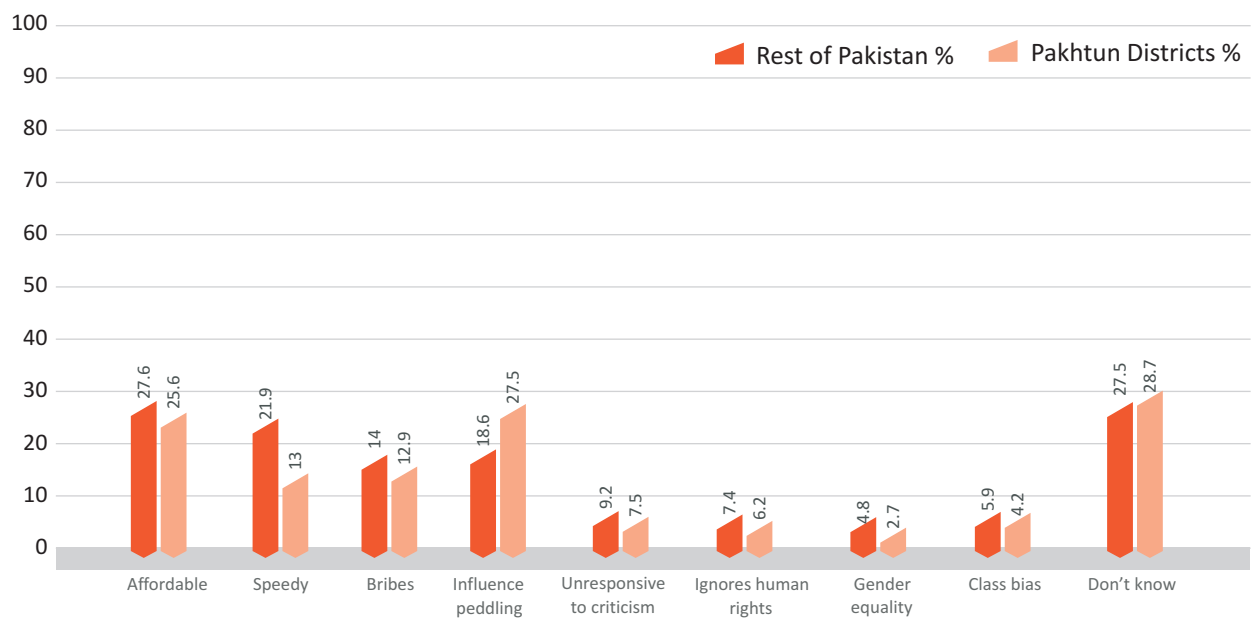
community is slightly more optimistic about the police department, compared to other provinces. It also suggests that the police departments in KP and Balochistan are performing well.

### Superior Courts in Pakistan i.e. Supreme Court and High Courts

In recent years the Superior Judiciary, under the former Chief Justice of Pakistan Justice (retired) Iftikhar Muhammad Chaudhry, who stood up against the military dictator in 2007 and refused to obey the unconstitutional orders of former President General (retired) Pervez Musharraf, had gained considerable respect nationally and globally. The Chief Justice's *suo moto* actions on several issues of national interest also made headline news in the media, making him and the superior judiciary very popular. However, the former Chief Justice's son and his alleged misuse of power received widespread criticism within the media and in political circles.

Views expressed during round-table discussions also favoured the Superior Judiciary's recent *suo*

### Superior Courts in Pakistan i.e. Supreme Court and High Courts



50. Interview with Rizwan Tariq, Editor newspaper Jang, Karachi, 25 August 2013  
 51. Interview with Advocate Tahir Iqbal, Legal Reform Forum (NGO), 25 August 2013, Karachi

*moto* actions on issues which were seen against the Constitution of Pakistan and/or where the rights of the people were violated. However, they also shared some concerns on the Supreme Court's selective *suo moto* actions and suggested that there are numerous instances where the Superior Judiciary has disappointed people in Pakistan by not reacting to certain incidents.<sup>52</sup>

In our survey of 2700 respondents in Pakistan, data here shows that less than a quarter of respondents (21.9 per cent) believed that the Superior Judiciary is 'affordable' and 'speedy'; 18.6 per cent believed that the Superior Judiciary is prone to 'influence peddling'; 14 per cent said that 'bribes' affect the performance of the Superior Judiciary; and more than one quarter (27.5 per cent) said they did not know. Other aspects can be seen in the table.

Overall the results show respondents' optimism, despite recent criticism against the retired Chief Justice (Iftikhar Chaudhry) who made his mark in the legal history of Pakistan. With regards to

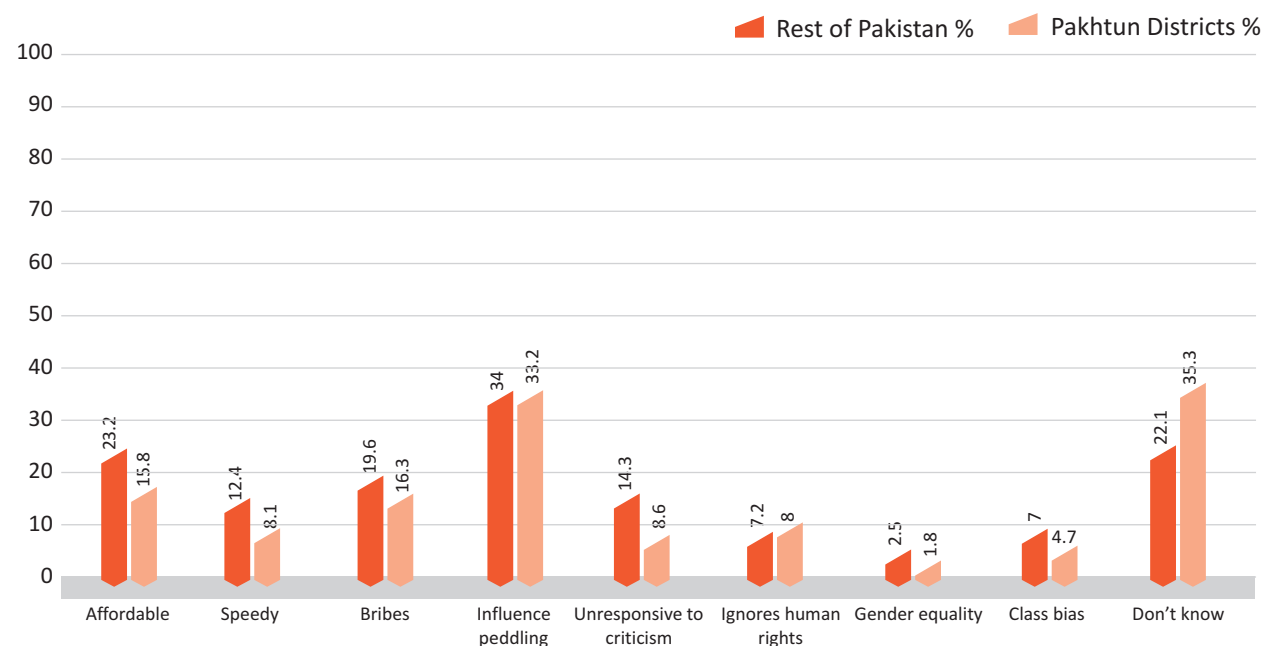
results from the Pakhtun districts of KP and Balochistan, there is not a significant variation, except that respondents are slightly more pessimistic in relation to the attributes of 'influence peddling' and 'speedy'.

### Lower Courts in Pakistan i.e. Judicial Magistrate, District and Sessions Courts

Generally, the lower courts in Pakistan have little credibility for numerous reasons – they are seen as unaffordable, slow, corrupt, inaccessible, etc.<sup>53</sup> Delays when using the service cause anxiety and frustration and people tend to choose other options<sup>54</sup> – options which are cheap and easy, and which solve their problems without spending too much time.<sup>55</sup> Keeping in view these general trends, the survey asked respondents to share their opinion about the lower courts of Pakistan.

The data reveals that one-third of the respondents (34 per cent) believed that the lower courts are prone to 'influence peddling'; surprisingly, 23.2 per cent said that the lower

### Lower Courts in Pakistan i.e. Judicial Magistrate, District and Sessions Courts



52. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

53. Interview with Rashid Rehman-Editor Daily Times, 22 August 2013, Lahore

54. Ibid

55. Ibid

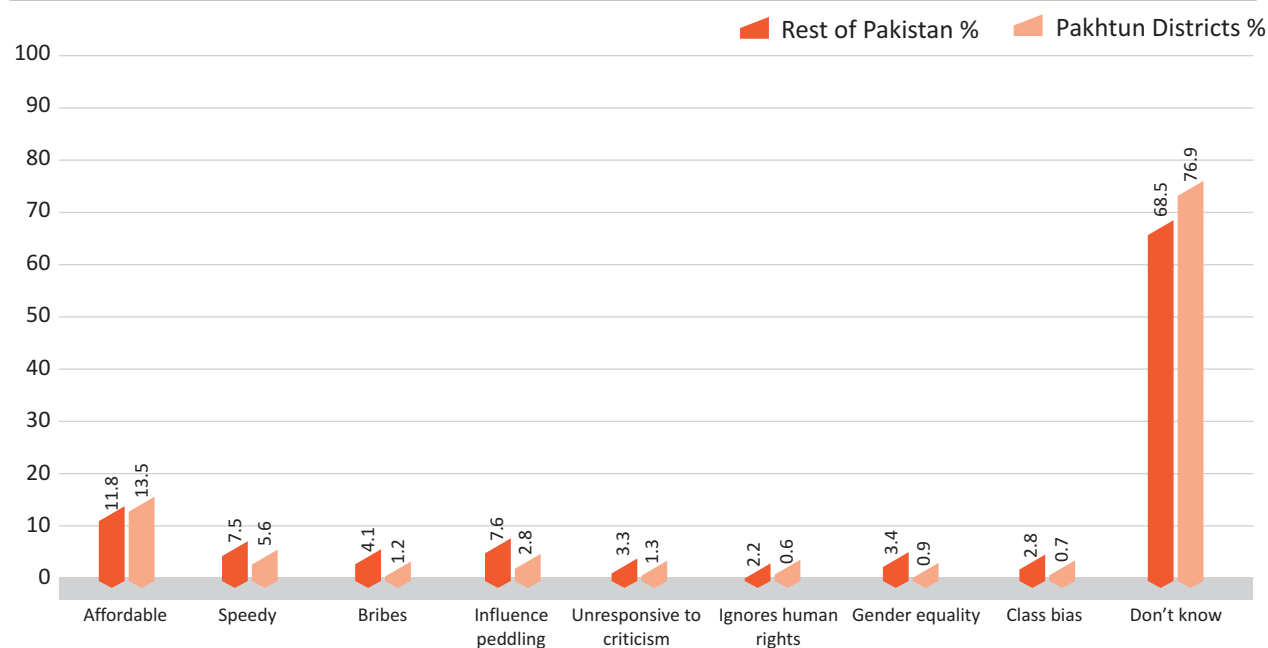
courts are affordable; close to one-fifth (19.6 per cent) pointed to 'bribes' as another negative aspect of the lower courts; 14.3 per cent said that the lower courts are 'unresponsive to criticism'; and 12.4 per cent believed that the lower courts provide 'speedy' justice to the population. Just 7 per cent of respondents thought that the lower courts are 'class biased'. However, according to the round-table participants it was generally believed that the court system prefers and supports the richer classes while ignoring those who can not afford to pay the high fee of lawyers.<sup>56</sup>

Comparing the data from the rest of Pakistan with the data from the Pakhtun districts of Pakistan, it is evident that more respondents in Pukhtun districts did not know what to think, and fewer Pakhtun respondents believed that the lower courts are affordable. Other data results are very similar.

### Federal Shariat Court

Pakistani society is roughly 97 per cent Muslim –

#### Federal Shariat Court



56. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013  
 57. <http://www.result.pk/wafaqul-madaris-al-arabia-result.html> Accessed 25 November 2014

comprising various sects who are supposed to have an understanding of the Federal Sharia Court (FSC), located in Islamabad. However, the majority of respondents in our survey (68.5 per cent) said they did not know very much at all about the Federal Sharia Court.

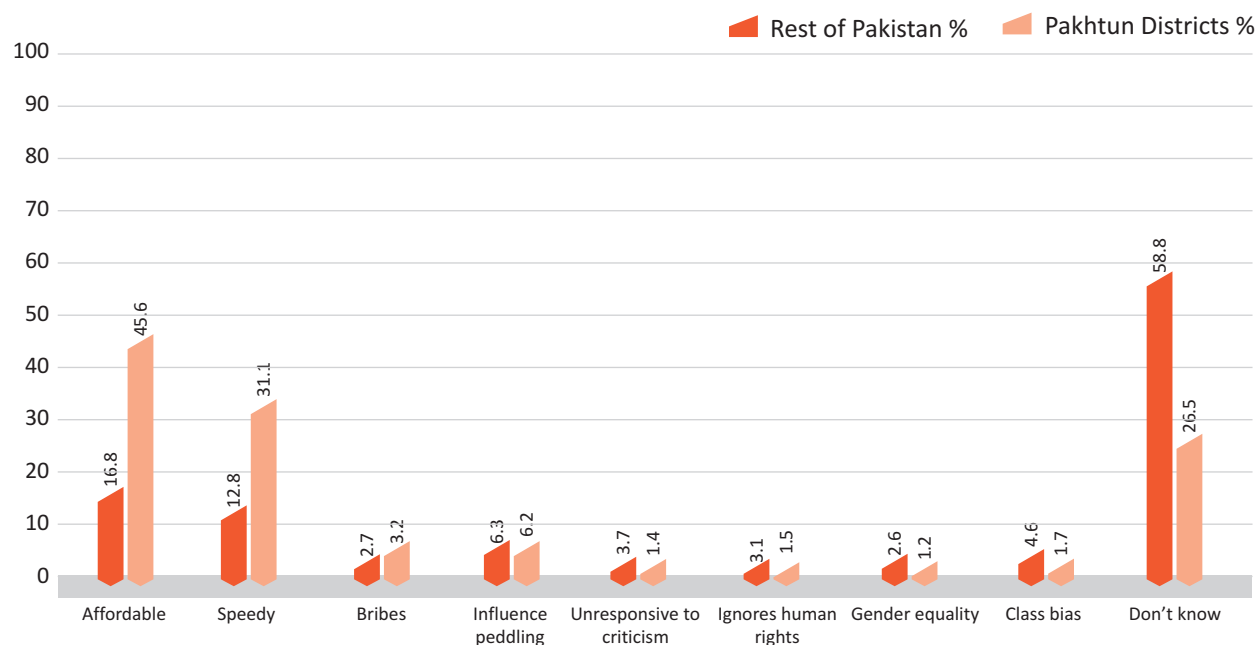
The data showed that 11.8 per cent of respondents believed that the FSC is 'affordable'. There was also some negative opinion about the courts, as you can see from the data in the table.

There is little difference in the data from Pakhtun districts, with the exception of the fact that more respondents from Pakhtun districts did not know what to think.

### Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)

Wafaq ul Madaris Al-Arabia of Pakistan was founded in 1957 in West Pakistan. It is the largest federation of Islamic Seminaries in the world.<sup>57</sup> Religious clerics who sit on these boards often provide opinions on family law issues based on

## Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)



Islamic law precepts. The 'madaris certificates' they issue can be brought to a general court to support one's claim. Some other recognised religious seminaries are Wafaq/Tanzeem ul Madaris/Rabit ul Madaris, Tanzeem-ul-Madaris Ahle Sunnat, Wafaq-ul-Madaris Al-Arabia, Wafaq-ul-Madaris Al-Salafia, and Rabita-ul-Madaris Al Islamia. There are thousands of religious madrassas operating in Pakistan; most of them under the management of the above-mentioned organisations.

Male and female respondents from all three provinces were asked to share their opinions of the above-mentioned religious seminary boards. More than half of the respondents (58.8 per cent) said they did not know about this institution's characteristics; only 16.8 per cent believed that these institutions are 'affordable'; followed by 12.8 per cent who believed that religious seminaries are 'speedy' in providing services to the population; 6.3 per cent of respondents believed that religious seminaries are 'unresponsive to criticism'; and just 2.7 per cent believed that such institutions are involved in

'bribery'. The rest of the table is self-explanatory.

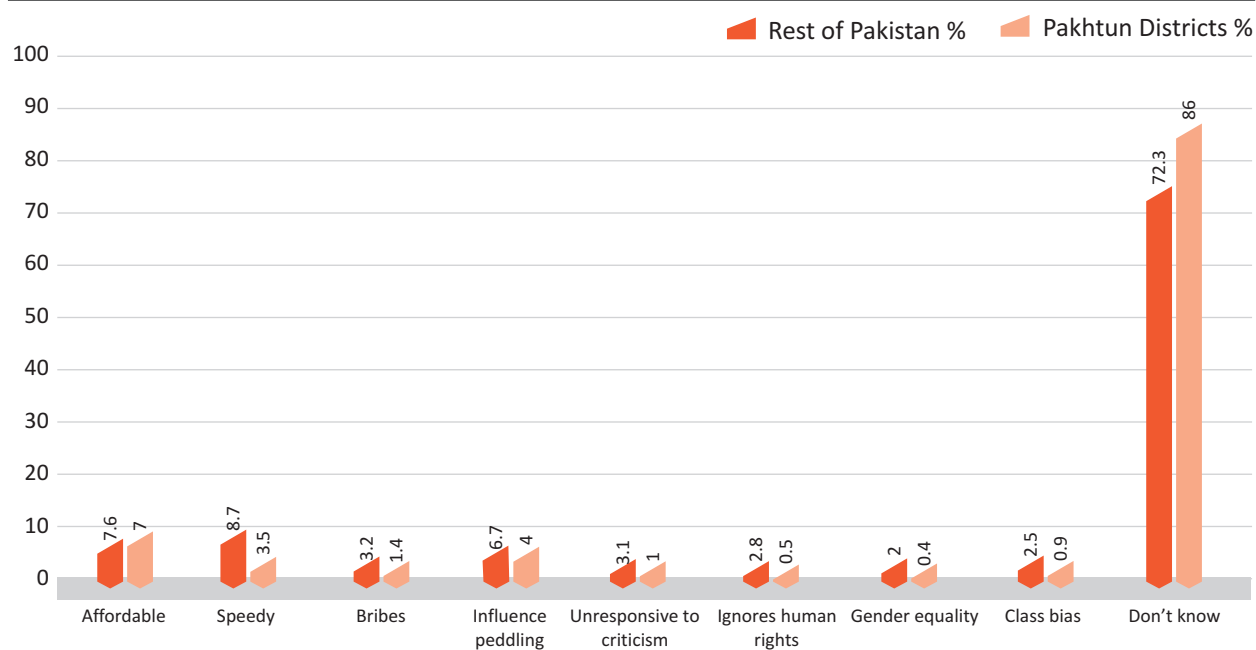
Comparing this data with the data from Pakhtun districts, we see some significant differences. For example, 45.6 per cent of respondents in Pakhtun districts, (as opposed to only 16.8 per cent of respondents from rest of Pakistan), believed that religious seminaries provide 'affordable' services to the people, while 31.1 per cent of respondents from Pakhtun districts (compared to only 12.8 per cent from the rest of Pakistan) are more optimistic and believed that religious seminaries are 'speedy' in providing services. Twice as many respondents in the rest of Pakistan do not know about this institution's characteristics (58.8 per cent) as compared to 26.5 per cent of respondents in Pakhtun districts. Other results are very similar.

### Ombudsman (Mohtasib)

On 8 August 1983, the office of the Federal Ombudsman was established under the Wafaqi Mohtasib (Ombudsman) Order, 1983 (President's Order No. 1 of 1983).<sup>58</sup> In Pakistan, the establishment of an Ombudsman institution had

58. Website of Pakistan's Federal Ombudsman [www.mohtasib.gov.pk](http://www.mohtasib.gov.pk) accessed 25 November 2014

## Ombudsman (Mohtasib)



been advocated for some time before Article 276 of the Interim Constitution of 1972 provided for the appointment of a Federal Ombudsman (Wafaqi Mohtasib in Urdu) and Provincial Ombudsmen.<sup>59</sup> The Ombudsman is an independent institution, established under law, to provide speedy relief to the general public in case somebody has suffered 'maladministration' at the hands of a Federal Government Agency. Other Ombudsman agencies in Pakistan include Provincial Ombudsman (Mohtasib-e-Aala) offices in Punjab, Balochistan and Sindh; a banking Ombudsman, the Banking Mohtasib Pakistan; a Federal Insurance Ombudsman and a Federal Tax Ombudsman.<sup>60</sup> The disputed region of Azad Jammu and Kashmir also has an Ombudsman office.<sup>61</sup>

The following survey results confirm that the majority in Pakistan do not have a very clear idea about the Office of Ombudsman and its mandate. The table below shows that 72.3 per cent did not know about the characteristics of the Ombudsman.

Analysing the positive aspects of the Office of Ombudsman, a total of 8.7 per cent of respondents said that this institution provides a 'speedy' service; 7.6 per cent said that the Office of Ombudsmen is 'affordable'; and only 6.7 per cent believed that the Ombudsman can be 'influenced' by the powerful in order that a weaker party does not receive due justice.

When comparing this data from the rest of Pakistan to the data from the Pakhtun districts of KP and Balochistan data, there are no significant variations, except that an even higher number of respondents in Pakhtun districts did not know about the Office of the Ombudsman.

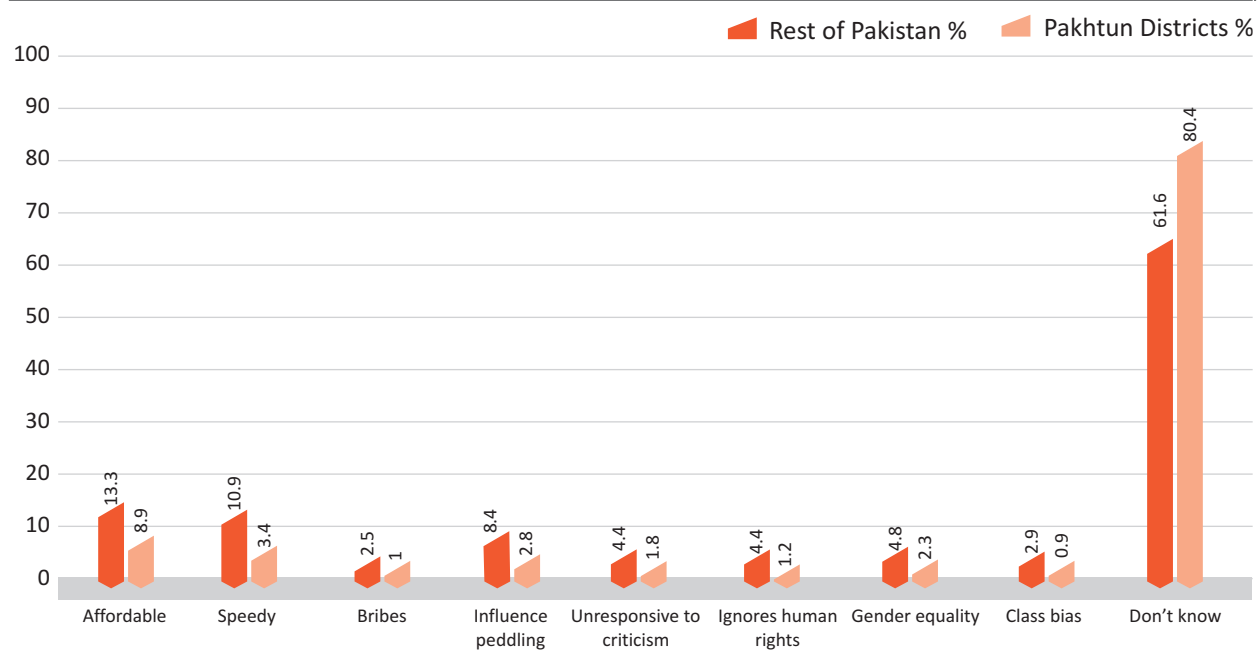
### Human Rights Commission of Pakistan (HRCP)

In 1987, the Human Rights Commission of Pakistan (HRCP) was founded by some very prominent human rights activists. The HRCP is an independent, non-profit organisation which is not associated or affiliated with the government or any political party. It is mandated to: spread awareness of human rights among the people; to

59. Website of Wikipedia [http://en.wikipedia.org/wiki/Ombudsmen\\_in\\_Pakistan](http://en.wikipedia.org/wiki/Ombudsmen_in_Pakistan) accessed 25 November 2014

60. Ibid  
61. Ibid

## Human Rights Commission of Pakistan (HRCP)



mobilise public opinion; to collect information; to disseminate knowledge about human rights abuses; and to monitor and defend human rights in Pakistan. HRCP also operates a “Complaint Cell” where individuals can call to lodge a complaint. HRCP has branches all over the country, including in some of FATA's Agencies and Frontier Regions).

The data shows that 61.6 per cent of respondents did not know about the characteristics of the HRCP and therefore they could not share their opinion; 13.3 per cent of respondents thought that the HRCP provides 'affordable' services; and 10.9 per cent of respondents said that the HRCP provides 'speedy' services. There was little pessimism shown.

In comparing this data from the rest of Pakistan data with the results from the Pakhtun districts of KP and Balochistan, an overwhelming majority (80.4 per cent) in KP and Balochistan did not know about the characteristics of the HRCP and could not share their opinion. There is little pessimism shown from KP and Balochistan.

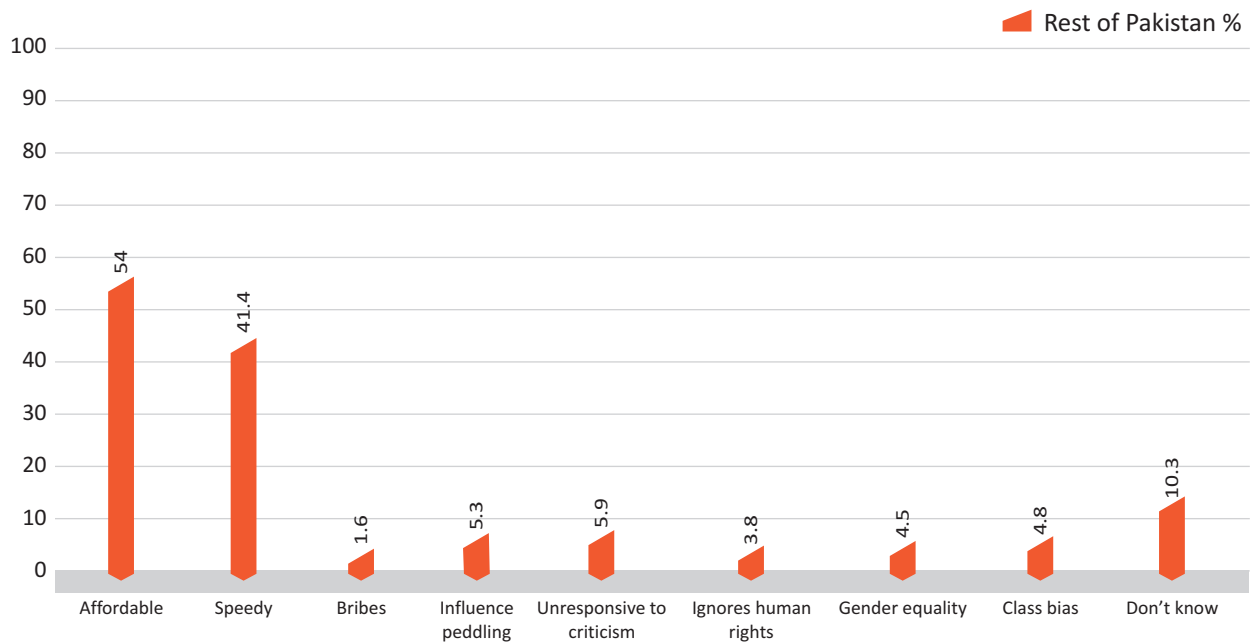
### ***Khandan* (extended family)**

*Khandan*, or extended family, is patriarchal in character and headed by a male. It is bigger and beyond the size of an immediate family unit, and consists of grandparents, aunts, uncles, and cousins. The entire family may live in the same compound or household or in a closely located neighbourhood. In South Asian societies, the kinship bond is much stronger in rural communities than in urban ones. Extended family systems have survived in rural set-ups due to social, economic, security and political reasons. Looking at the tribal governance systems in Pakistani tribal societies, it is obvious that they rely on kinship for protecting honour – they often take the law into their own hands for political ends, and they share the economic burdens and profits.<sup>62</sup>

Not surprisingly, respondents show a great deal of support for *khandan*. The majority of respondents (54 per cent) said that *khandan* is 'affordable' with regards to the services or assistance it provides in times of need; and 41.4 per cent believed that *khandan* provides 'speedy' services/solves issues

62. Interview with Abdul Razaq Gumrani, Manager Sindh province, HANDS (NGO), 25 August 2014, Karachi

### ***Khandan* (extended family)**



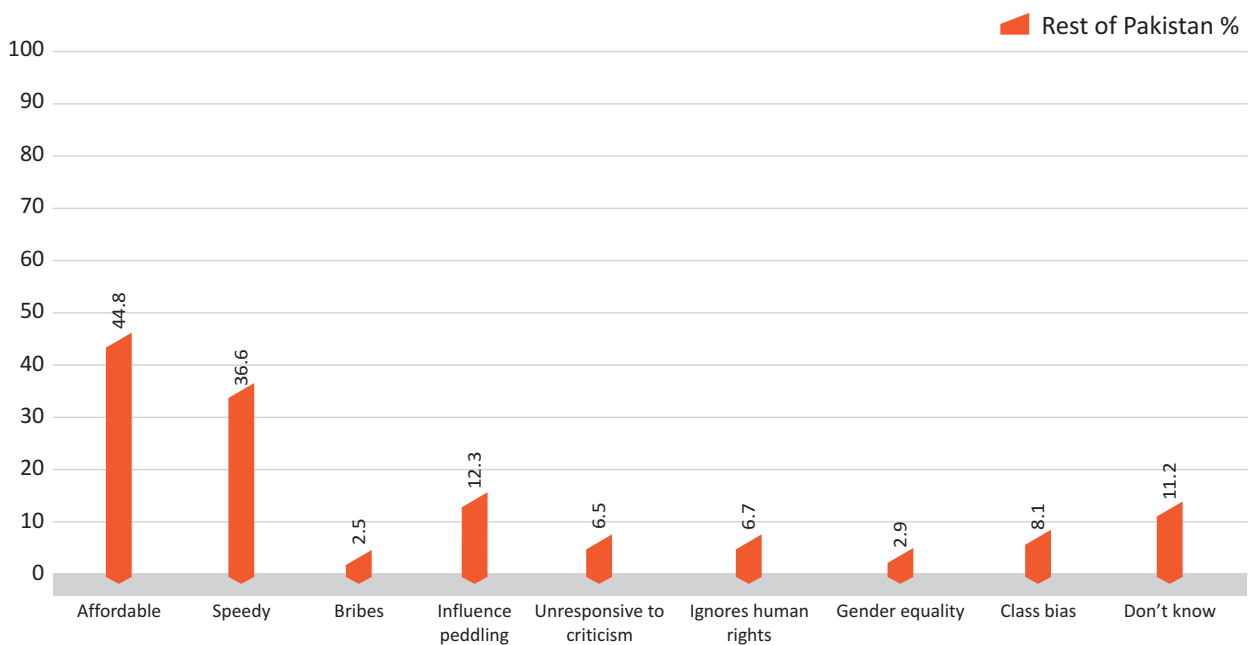
quickly. The results reflect Pakistani society's trust in the *khandan* system.

### ***Mohalla* (neighbourhood)**

In Pakistan, *mohalla* (or neighbourhood) has an

important role to play in extending solidarity and moral support to those who are faced with disputes or other problems.<sup>63</sup> The respondents were asked to share their opinion about *mohalla* and surprisingly, the data shows a great deal of trust in the *mohalla* system. For example, 44.8 per

### ***Mohalla* (neighbourhood)**



63. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013



cent believed that *mohalla* provides 'affordable' services, while 36.6 per cent thought *mohalla* is a 'speedy' mechanism. It is interesting that 12.3 per cent of respondents described *mohalla* as 'influence peddling'. Politics in neighbourhoods can often be contentious, with wealthy and/or politically strong groups and individuals trying to control and influence the local affairs.

This question about *mohalla* was not included in the 2012 survey in Pakhtun districts, so we cannot make comparisons between the regions.

### **Biradari (clan)**

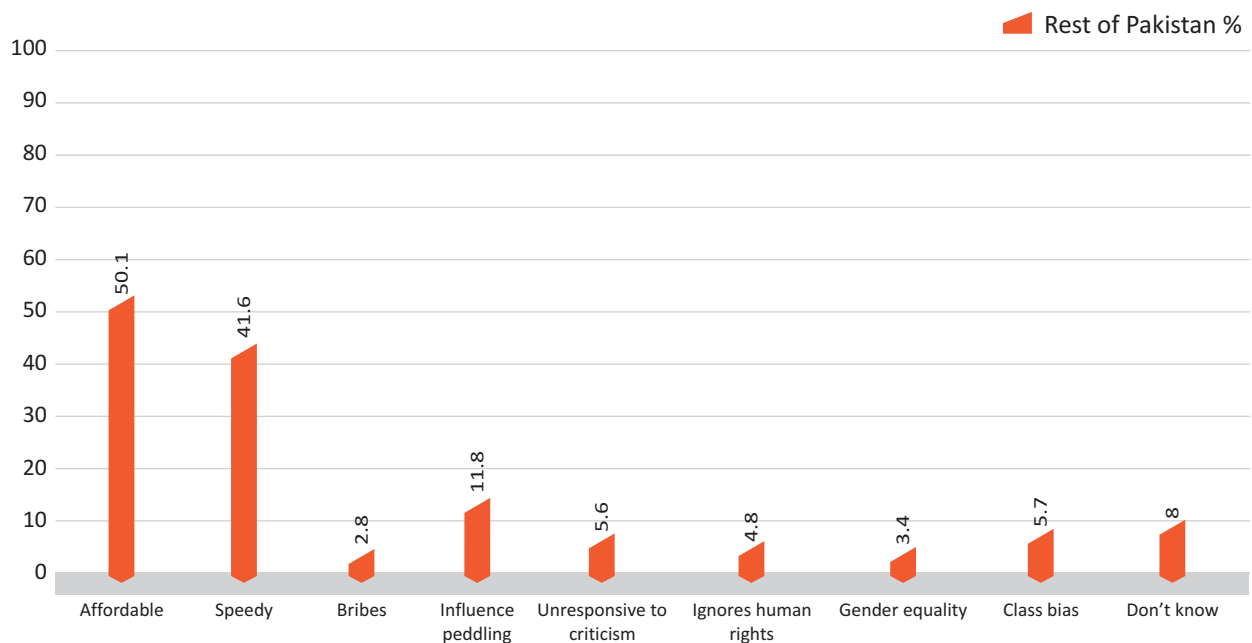
*Biradari* (or clan) is an informal institution which is very strong in Pakistan, especially in rural areas, and more specifically in Pakhtun and Baloch communities that are more tribal in terms of governance and outlook.<sup>64</sup> The clan provides a protection and security mechanism against external factors and threats. To improve this mechanism, each family within clan or *biradari*

helps to shape a political agenda, and invests in support mechanisms for times of insecurity or calamity.<sup>65</sup> *biradari* also plays a significant role in addressing legal and civil disputes within its clan and or against another clan.<sup>66</sup> Keeping in view its role and functions, it was important to gauge the views of respondents on *biradari*.

The data shows that more than 50 per cent of respondents thought that the *biradari* system is 'affordable' and 41.6 per cent thought that the *biradari* system provides 'speedy' services to its members. Respondents were not without concerns: some 11.8 per cent said the *biradari* system was prone to 'influence peddling'. This reflects similar sentiments as shown above for *mohalla* – where the rich and politically strong try to exert influence over the other, weaker members of the group.<sup>67</sup>

This question about *biradari* was not included in the 2012 survey in Pakhtun districts, so we cannot make comparisons between the regions.

### **Biradari (clan)**



64 Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

65 Ibid

66 Interview with Nadeem Qureshi, Judge Customs Appellate Court, 26 August 2013, Karachi

67 Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

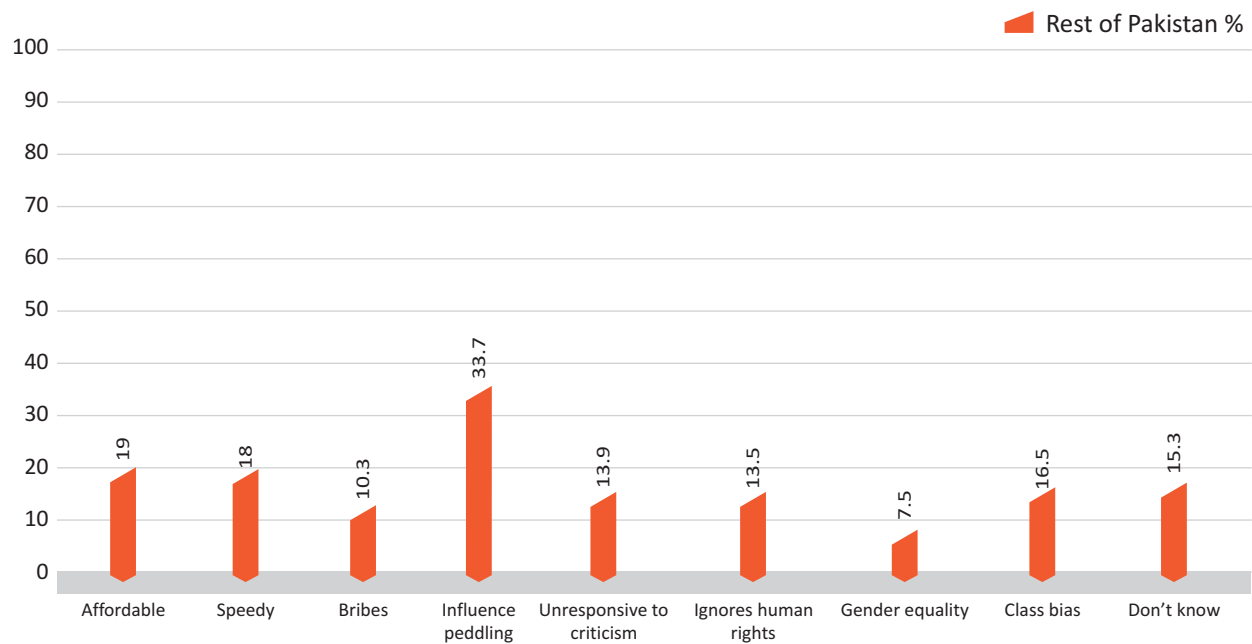
### Large local landowners (Village Chaudhry/Malik/Sardar/Wadera)

In Pakistani society and politics, large landowners play a vital role – both negative and positive. However, they are generally perceived negatively. The issue is that large swathes of land are owned by just a few families – this has created an extreme imbalance of power between them and their labourers (*kisan*).<sup>68</sup> Political parties with socialist or liberal philosophies have always targeted these large landowners as they have always influenced the political scene in Pakistan. These landowners have remained not only beneficiaries of this system but the major stumbling block in changing the status quo.<sup>69</sup> Participants of the round-table discussions viewed the involvement of feudal lords in the informal justice system's operation as negative, and believed that their involvement always favours their fellow landowners only.<sup>70</sup> Since these large landowners play a role in dispute resolution – most of the time as part of the dispute – this

survey also included this category in the list.

After studying the survey data, the findings reflect the true sentiments of the general public. For instance one-third (33.7 per cent) showed their dissatisfaction over the role of 'local large landowners' and believed that this group is involved in 'influence peddling'. Some 19 per cent believed that local landowners' services are 'affordable', and 18 per cent thought large landowners provide 'speedy' services. According to participants at the round-table discussions, generally, large landowners do not charge fees from local communities and they usually incur the cost of any activities – so that in return they get respect from the community and can exert their influence on local people for their own political gain during times of need.<sup>71</sup> The data shows that 16 per cent of respondents believed that large landowners are 'class biased'; 13.9 per cent said that large landowners are 'unresponsive to criticism'; 13.5 per cent said they 'ignore human rights'; and surprisingly, only 7.5 per cent of

### Large local landowners (Village Chaudhry/Malik/Sardar/Wadera)



68 Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

69. Ibid

70. Ibid

71. Ibid

respondents said that local large landowners are committed to 'gender equality'.<sup>72</sup>

### **Village panchayat (akhat, pareh, pareh panchayat, pareon) or faislo or Baloch jirga**

Like many other informal dispute resolution systems in the world, village panchayat, faislo, Pakhtun jirga and Baloch jirga existed and flourished in rural society, long before the advent of the British incursion in the Sub-continent. Please refer to Chapter 3 of this study for a detailed account of the informal justice system.

The data is divided into two sets which show two striking revelations. Firstly, the data for the rest of Pakistan shows respondents' confidence in the informal dispute resolution system: 27.2 per cent believed that the informal dispute resolution system is 'affordable' and 29.1 per cent identified it as 'speedy'. However, some 21 per cent said that there is an element of 'influence peddling' in the informal dispute resolution system. As shown in the table, other attributes of informal justice systems were identified by respondents in the rest

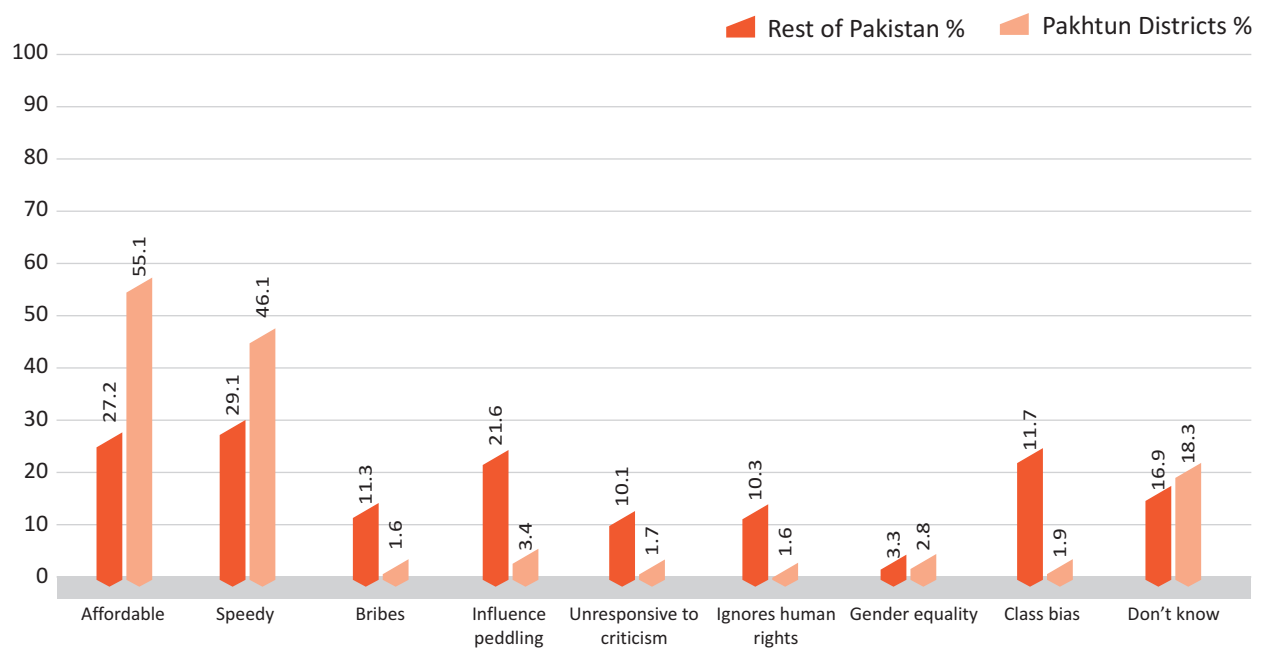
of Pakistan. Respondents in Pakhtun districts identified aspects of their jirga system of informal justice.

Secondly, if we compare the informal justice systems of other provinces and ethnic groups with Pakhtun jirga, we see a very clear difference of opinion. Pakhtun respondents, both men and women, showed more confidence in jirga as compared to the rest of Pakistan data – for example, 55.1 per cent thought that Pakhtun jirga was 'affordable' and 46.1 per cent felt it was 'speedy' in providing justice to the people.

To further explain reasons for less support in the rest of Pakistan as compared to Pakhtun districts of Pakistan, please refer to the following provincial data.

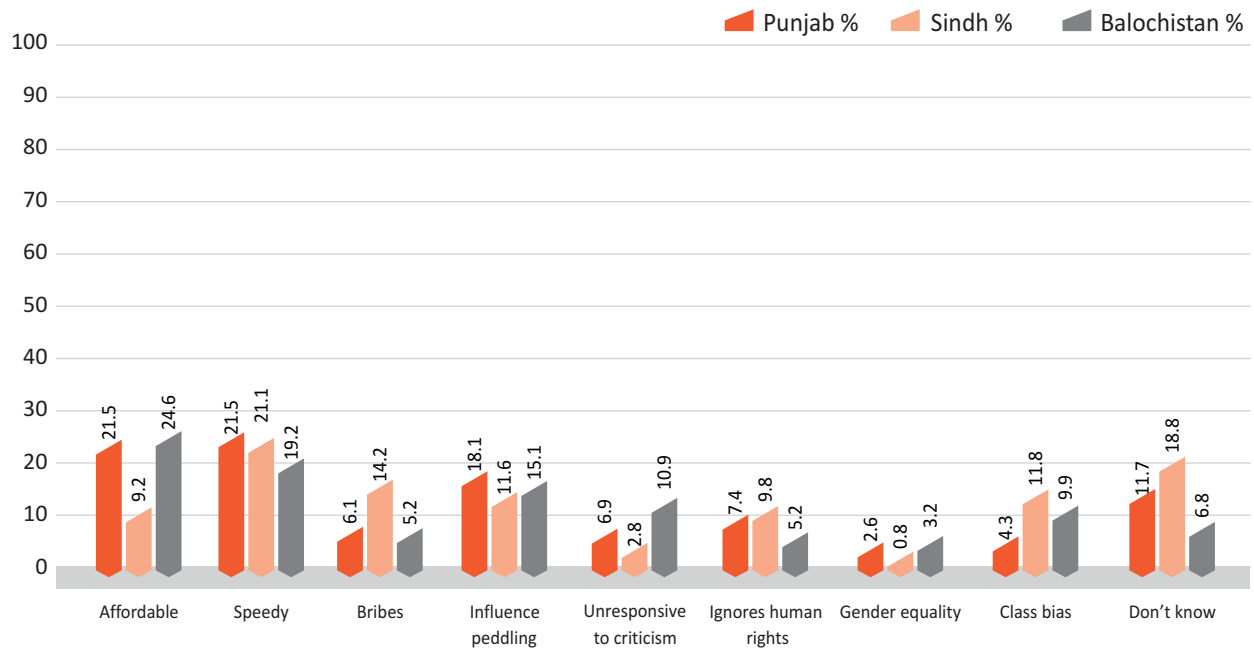
The overall trend shows that the informal justice system takes fourth place in terms of the satisfaction of people in Sindh, Punjab and Baloch districts, as one can argue that *khandan*, *mohalla* and *biradari* are much stronger than informal justice systems in these regions. *Khandan*,

### **Village panchayat or faislo or Baloch jirga**



72. Ibid

### Village panchayat or faisla or Baloch jirga - Provincial cross-tabulation

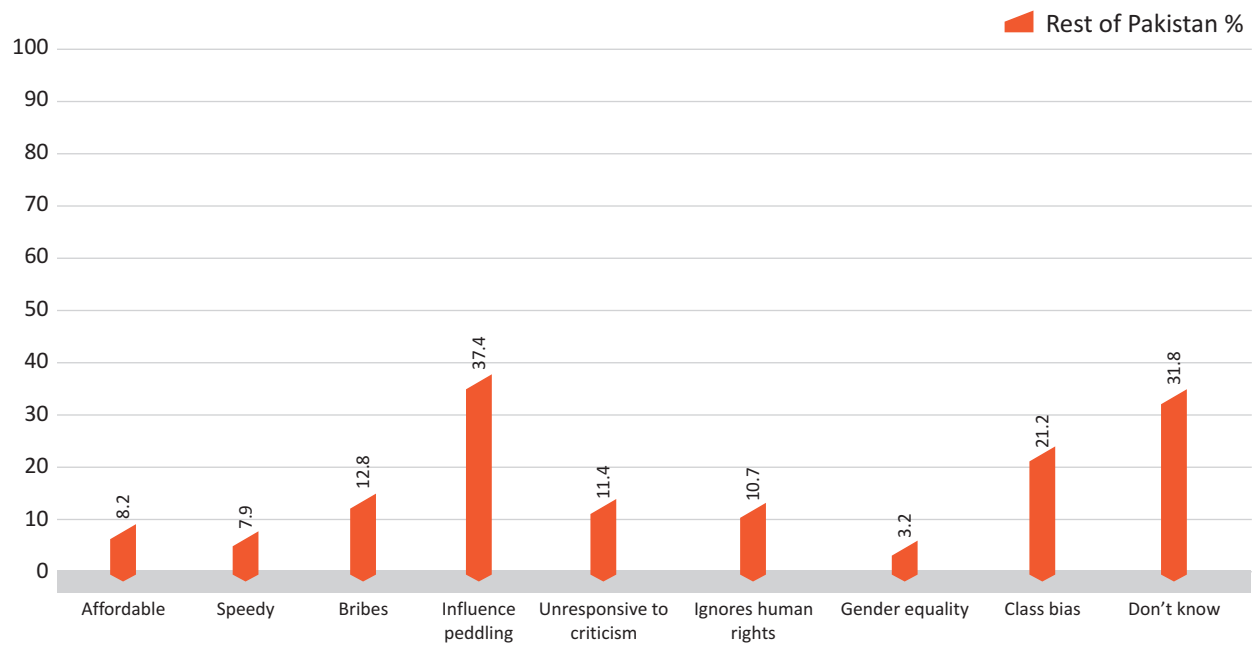


*mohalla* and *biradari* play a significant and similar role in resolving cases at their levels, and removing the need to access the informal justice systems at all.

### Influentials (local, provincial, national)

It is generally perceived by Pakistani society that influentials play a role in manipulating or influencing local power and politics, both negatively and positively, depending on their

### Influentials (local, provincial, national)



interest.<sup>73</sup> This study intends to document how the male and female respondents viewed influentials in their respective areas.

According to the data, a high percentage of respondents identified the negative, rather than positive, attributes of influentials. As indicated by the use of term 'influential', 37.4 per cent believed that influentials are involved in 'influence peddling' when resolving an issue or engaging with local matters; 21.2 per cent believed that influentials are 'class bias', which was echoed by the participants of the round-table discussions; and 12.8 per cent believed that influentials receive 'bribes' when addressing any issue that is brought to their attention.

#### Local bureaucracy – *patwaris* (land record keepers); *nambardars* (village headmen); *tehsildars* (Tehsil administration/revenue collection heads) or others

The following data shows respondents lack of trust of the local bureaucracy. There is a general perception that local bureaucracy officials receive

a cut or bribe when resolving civil matters, and poor people always feel victimised in dealing with them.<sup>74</sup>

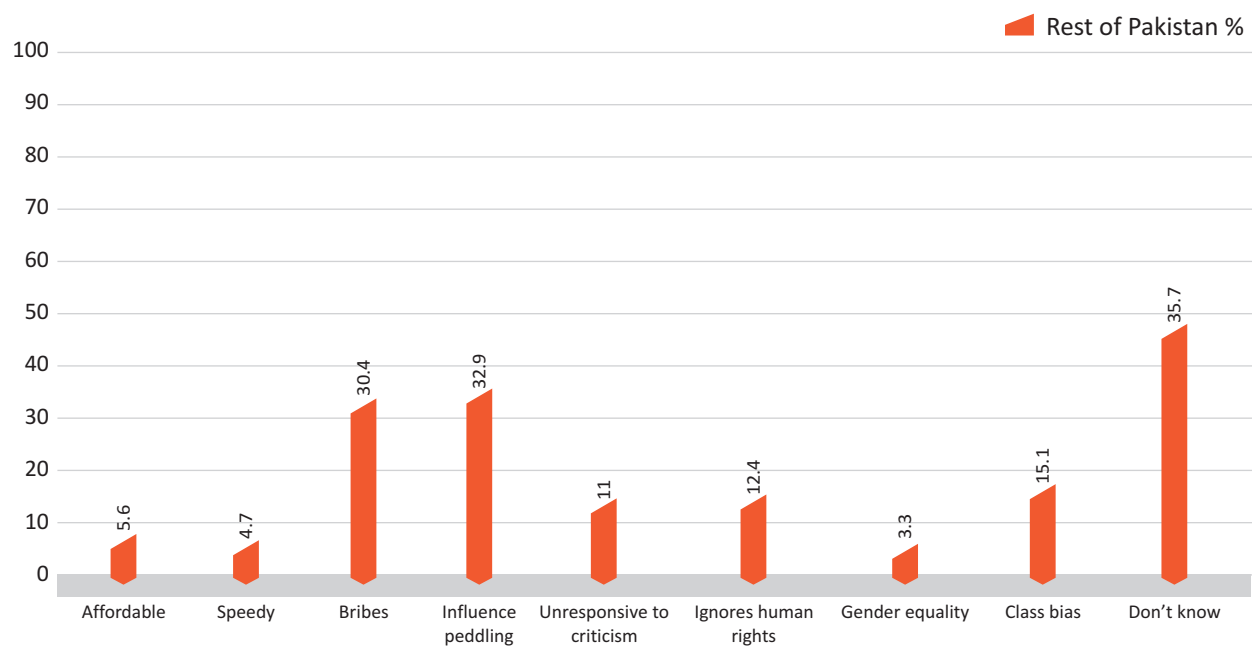
The positive attributes of local bureaucracy were only identified by a negligible number of respondents in our survey: 5.6 per cent said they offered an 'affordable' service; 4.7 per cent said they were 'speedy'; and 3.3 per cent associated them with 'gender equality'.

Negative attributes were identified by a much higher number of respondents, as you can see from the table. However, more than one-third said they did not know about the attributes of local bureaucracy.

#### District civil bureaucracy (DROs, DCOs, district magistrates etc.)

District civil bureaucracy is predominantly mandated to maintain law and order, dispense justice (both criminal and civil), and provide other services related to law and order and access to justice. Unfortunately, respondents' opinion about

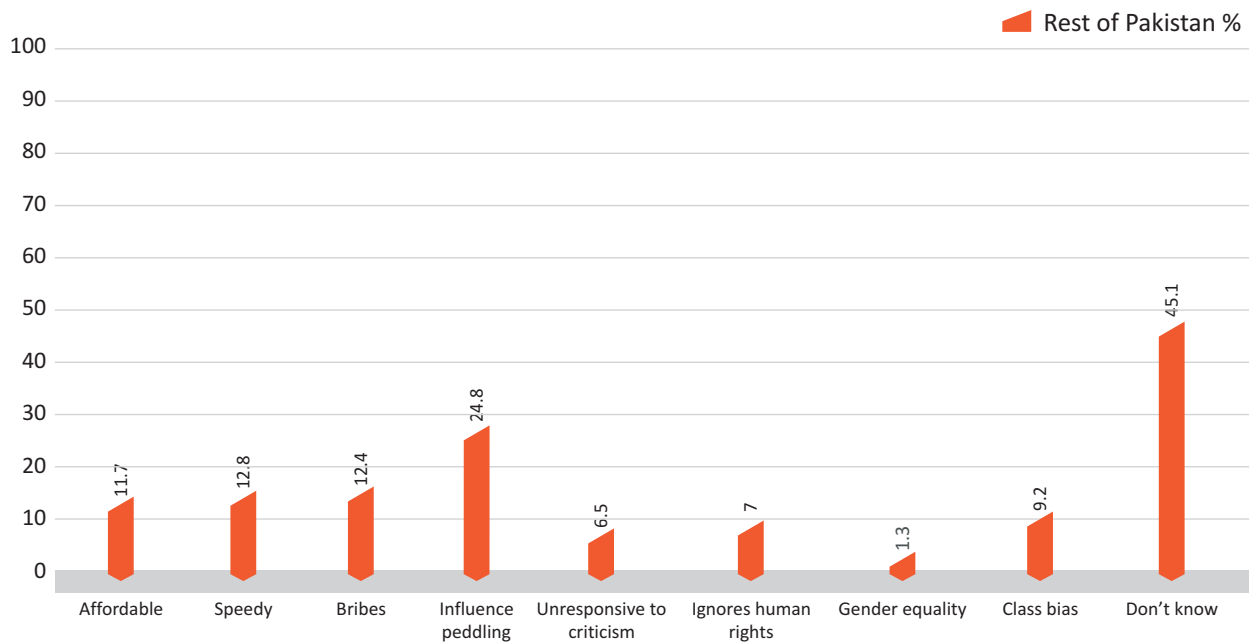
#### Local bureaucracy - *patwaris*



73 Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

74. Ibid

### District civil bureaucracy



civil bureaucracy is also not very positive.

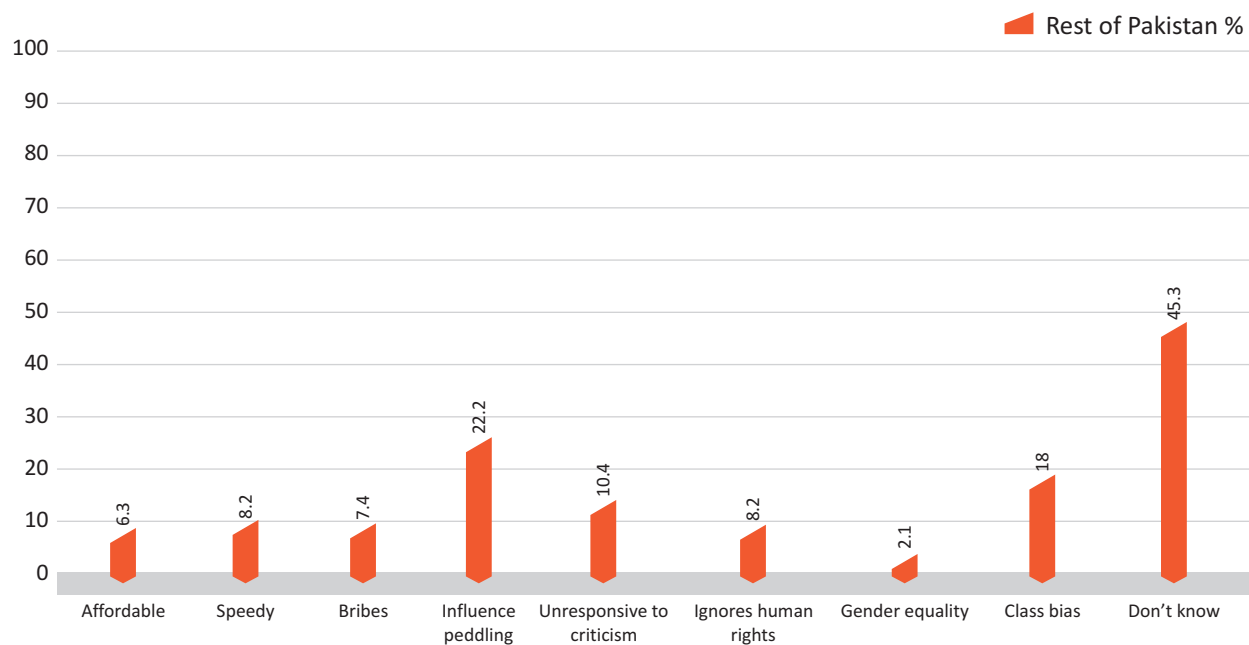
In general, negative attributes (rather than positive attributes) were identified by a higher group of respondents. Surprisingly, close to half of the respondents said they did not know about the

attributes of district civil bureaucracy.

### Political groupings/vote banks (*dharras*)

Major political parties in Pakistan have set-up their own small, local political groups/vote banks

### Political groupings/vote banks (*dharras*)



(dharra). These political groups also play a role in the local power politics and try to influence local situations and issues.<sup>75</sup> According to the data, a high group of respondents (22.2 per cent) believed that political groups are involved in 'influence peddling'; 18 per cent thought that such groups are 'class biased'; and 10.4 per cent believed that such political groupings are 'unresponsive to criticism'.

The rest of the data is self-explanatory and shows that respondents were not very positive about the role of political groupings. Surprisingly, 45.3 per cent said they did not know about the attributes of political groupings. This could be because in general people in Pakistan do not like to associate themselves with any political party – vote-casting history shows that the majority do not vote in general elections.

### Self-provision village organisations; community organisations

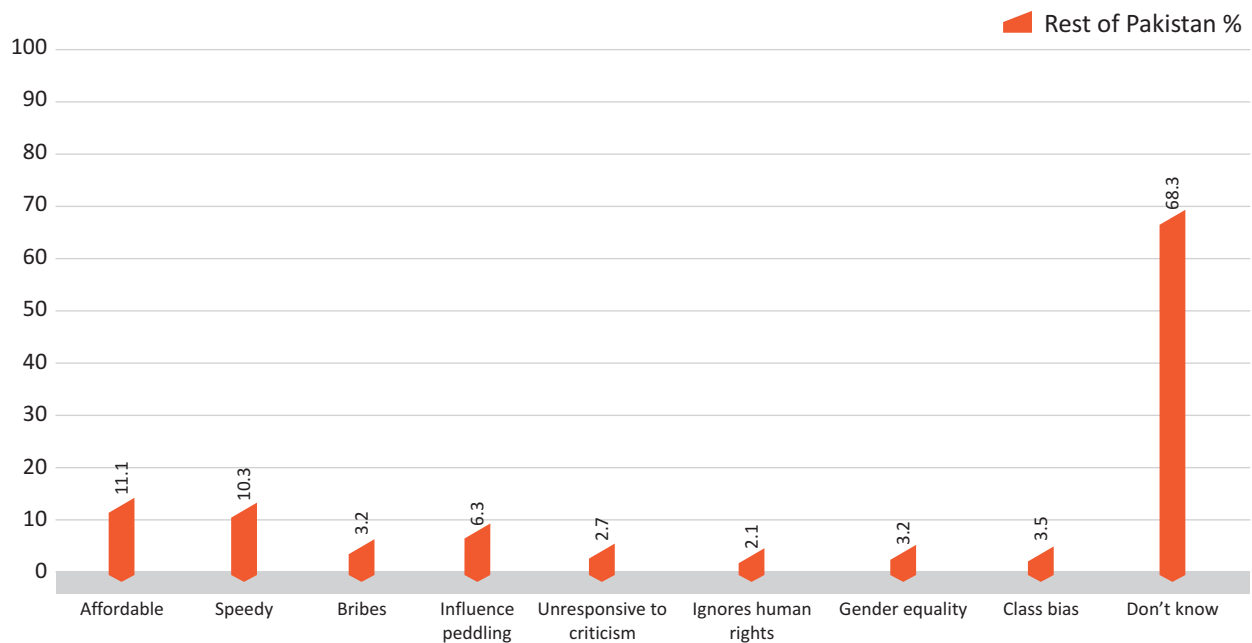
Self-provision village organisations or community organisations have existed for a long time. However, until recently, they were not very well

organised. This began to change when NGOs (non-governmental organisations) were introduced into the remote areas which the government could not reach due to its limited resources. Pakistani society saw a mushrooming of NGOs in Pakistan, especially during the Afghan jihad of the 1980s when United Nations organisations, the US and western NGOs and humanitarian aid agencies set up their offices and operations in Pakistan, helping Afghan refugees who crossed the Durand Line in search of shelter and humanitarian assistance.

Generally, development NGOs mobilise and work through communities, especially in the rural areas of Pakistan. The data shows that the presence of community organisations in rural areas is small and there is still a very large portion of Pakistan's landscape and community which remains untouched by such groups. However, where they do exist, they carry out work in developing their respective communities.

The question aimed to find out whether such organisations have a presence, and if so what role are they playing in terms of influencing local

### Self-provision village organisations; community organisations



75. Ibid

politics and addressing local disputes and needs etc.

Not surprisingly, more than two-thirds of respondents (68.3 per cent) could not share their opinion, as they seem to have no knowledge of the presence of community organisations. From the respondents who did know about these organisations, it is encouraging to see that more respondents identified positive attributes of community organisations than negative aspects. For example, 11.1 per cent and 10.3 per cent of respondents believed that community organisations are 'affordable' and 'speedy', respectively. Only a negligible 3.2 per cent said that community organisations take bribes.

### Local NGOs

According to some reports, there are more than 100,000 NGOs registered in Pakistan. However, there may be only a few thousand that are active and working in the development, humanitarian and policy advocacy sectors in Pakistan.<sup>76</sup>

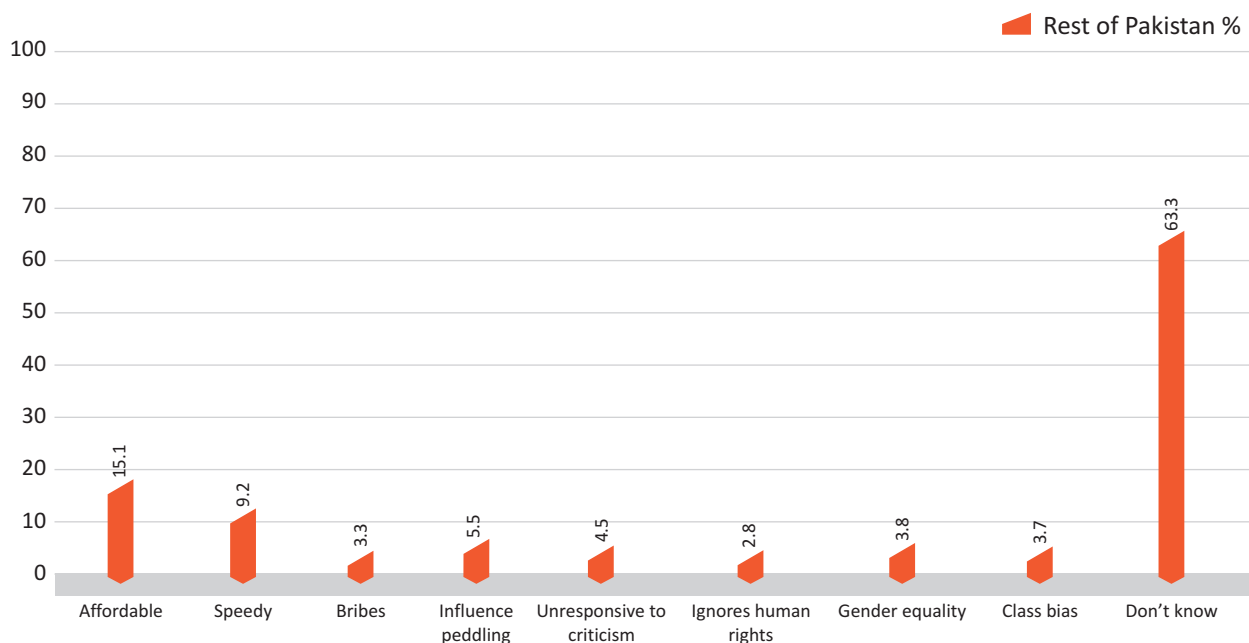
As described above, NGOs particularly target

Pakistan's rural areas and this is reflected in the survey findings. The majority of respondents (63.3 per cent) said they did not know about NGOs, surprisingly. However, a significant proportion of respondents (15.1 per cent) believed that NGOs provide 'affordable' services, and 9.2 per cent thought that NGOs provide 'speedy' services. Negative aspects were identified by a negligible proportion of respondents – this indicates that people generally have a positive experience with NGOs.

### Private dispute resolution mechanisms that charge a fee

The question on private dispute resolutions mechanisms that charge fee was added to this survey, as during the course of qualitative data gathering some key informants identified this institution. However, the existence of these mechanisms is not known by many.<sup>77</sup> The structure of such institutions varies from place to place: some mechanisms are run by criminal gangs and others under the patronage of the political elite.<sup>78</sup>

### Local NGOs



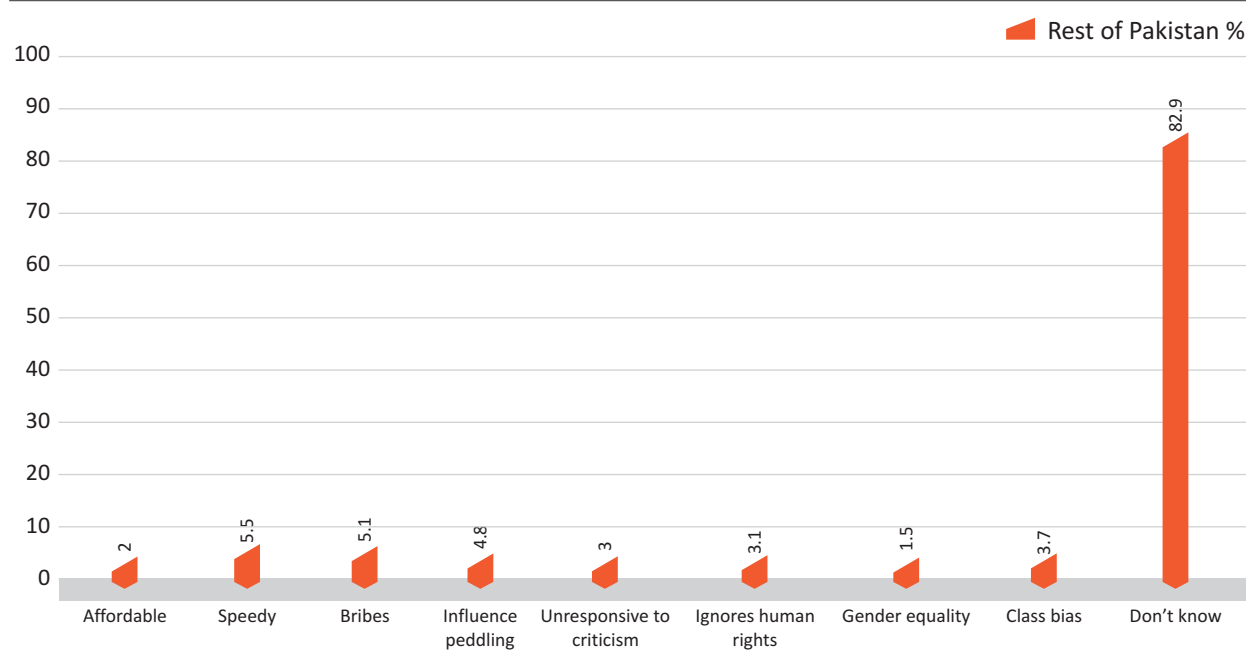
76. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

77. Ibid

78. Interview with Jawad Hassan, former Additional Attorney General of Pakistan, 7 August 2013, Islamabad



### Private dispute resolution mechanisms that charge a fee



According to the survey data, 82.9 per cent of respondents had not heard of these private dispute resolution mechanisms that charge fee.

Nevertheless, in certain situations such institutions do exist and play a role. In most cases their role is perceived as negative and manipulative.<sup>79</sup> The data shows that those who know of such institutions predominantly hold negative views of them. However, some respondents said that such institutions offer an 'affordable' and 'speedy' service – it may be those who could afford to access these institutions and had good experiences.

#### Local crime lords

'Crime lords' are most prevalent in slums, but they sometimes operate in other rural areas and urban centres too. Their presence is feared by local communities and is not appreciated by the majority. This survey aimed to gather respondents' views about crime lords, so as to give a comparison to other institutions, and to

identify elements which challenge the existence of the judiciary and the breakdown of security in Pakistan.

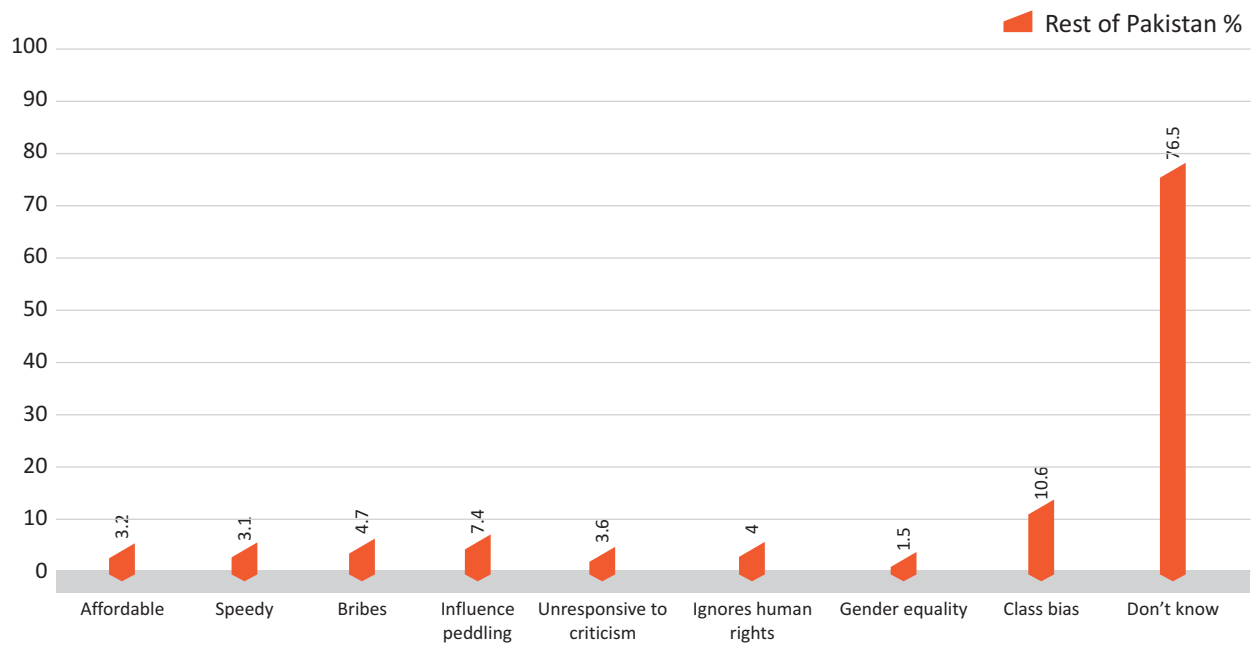
When asked this question, more than three quarters of respondents (76.5 per cent) said they did not know about crime lords – either they did not know or they did not want to speak openly. Of the respondents who did share an opinion, 10.6 per cent said that crime lords are 'class biased'. Apart from the negative attributes which are obvious in this case, some respondents identified positive attributes too, surprisingly. It is possible that the rich and powerful may have a positive view of such institutions, as they may have a favourable relationship with crime lords.

#### Religious leaders in the community

Religious leaders are well respected within communities across Pakistan, especially in rural areas. The role and prestige of religious clergy and leaders has increased tremendously during recent years, especially during the Afghan Jihad against

79. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

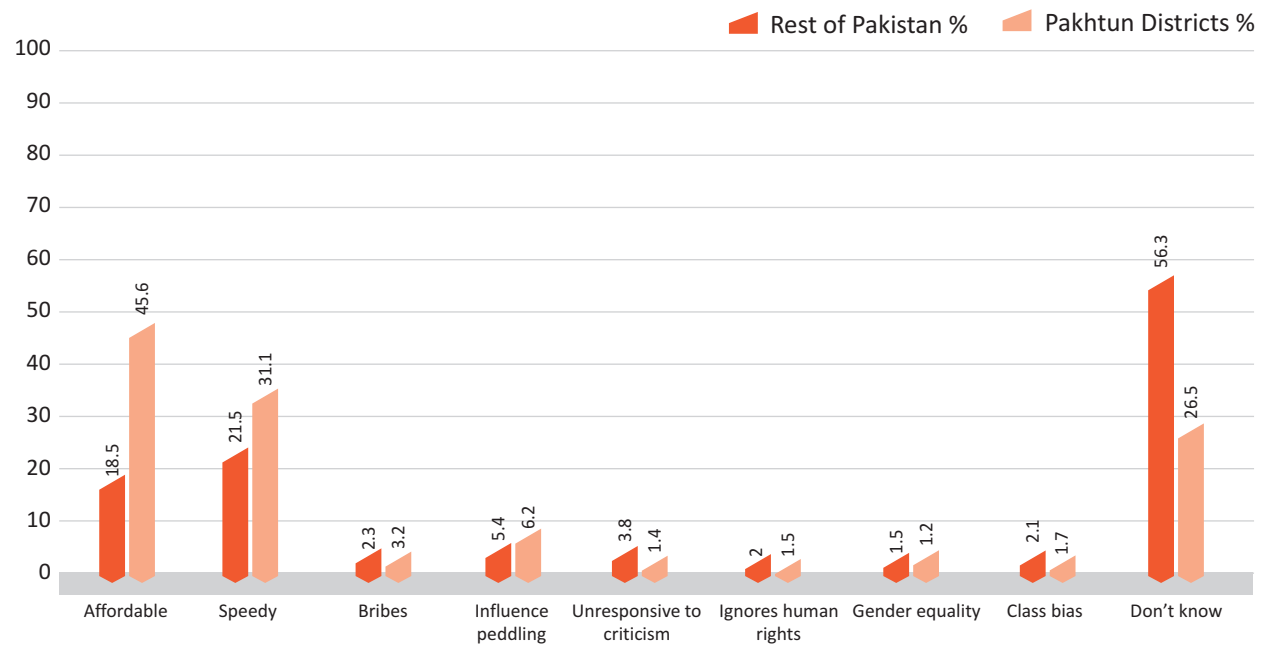
## Local crime lords



the Soviet occupation in Afghanistan, when Pakistan helped the Afghan *Mujahideen* during their struggle.<sup>80</sup> Religious leaders were utilised to

garner support at the grassroots level for Jihad in Afghanistan, especially in FATA, KP, Balochistan and the southern part of Punjab.<sup>81</sup>

## Religious leaders in the community



80. Interview with Rashid Rehman-Editor Daily Times, 22 August 2013, Lahore

81. Ibid

However, recently religious leaders have received criticism for their role in dispute resolution, particularly in cases where their harsh decisions have violated the rights of the people involved.<sup>82</sup> Generally, disputants consult religious leaders over petty issues and family matters. Respondents of round-table discussions confirmed that religious leaders are also available to resolve complex matters, such as cases of robbery/theft, murders, honour killing, etc.<sup>83</sup> In recent times, the media has highlighted the role of religious leaders in certain cases – especially cases of a criminal nature where religious leaders made harsh decisions.<sup>84</sup> It has been observed that verdicts issued by religious leaders have violated human rights.<sup>85</sup>

The graph shows data for rest of Pakistan as well as data for Pakhtun districts of KP and Balochistan. The results show a clear distinction between opinions from respondents in Pakhtun districts and from respondents in the rest of Pakistan. For example, more than half (56.3 per cent) of the respondents from the rest of Pakistan said they

did not know about religious leaders, while in Pakhtun districts only one quarter (26.5 per cent) said they did not know. A higher number of Pakhtun respondents (45.6 per cent) believed that the services of religious leaders were 'affordable', compared to only 18.5 per cent of respondents from the rest of Pakistan. Another striking comparison is with regards to views on the speed of service. In Pakhtun districts, 31.1 per cent said that religious leaders provide 'speedy' services, compared to 21.5 per cent from the rest of Pakistan.

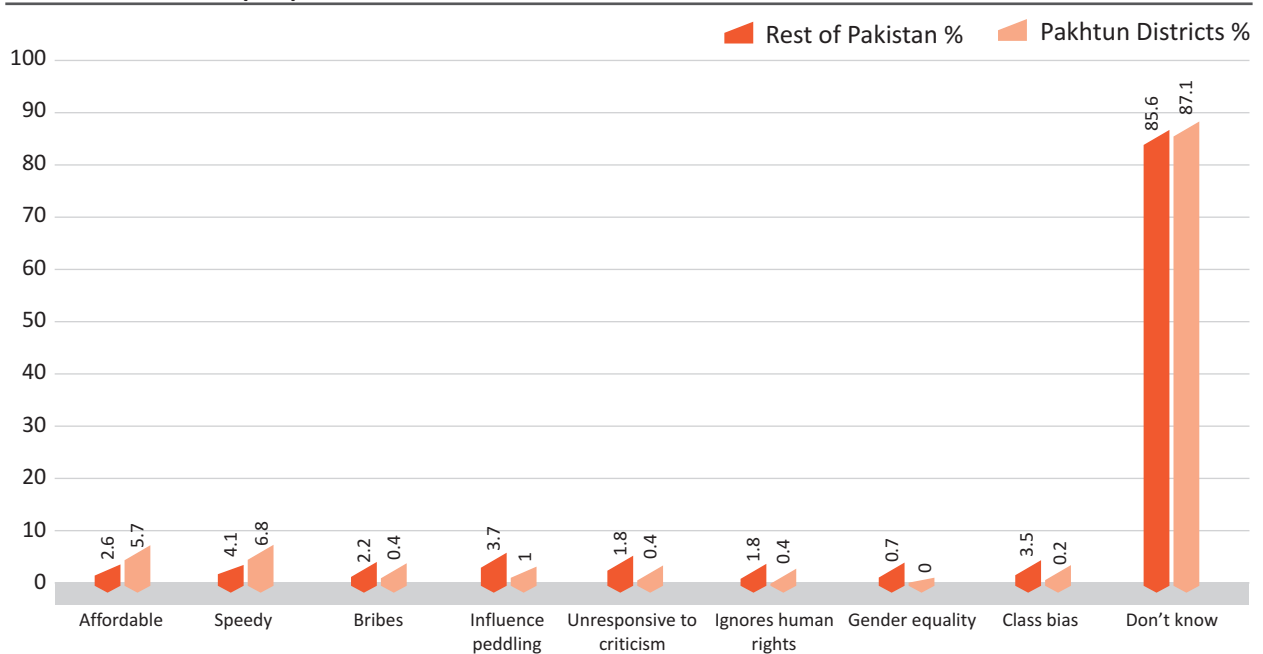
In analysing respondents' views of the negative attributes of religious leaders in both regions, there is little variation.

On the whole, the above data shows that religious leaders are more highly respected in Pakhtun districts than in the rest of Pakistan.

### Musalihati Council (MC)

Established under the Local Government

### Musalihati Council (MC)



82. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

83. Ibid

84. Interview with Rizwan Tariq, Editor Daily Jang newspaper, 25 August 2013, Karachi

85. Ibid

Ordinance 2001, Musalihati Councils or Anjuman are Alternative Dispute Resolution (ADR) mechanisms for the settlement of disputes and mediation. These councils were set-up in 22 districts of Pakistan with the objectives of: building cooperation amongst the judiciary, police and Musalihati Anjuman; promoting the accountable and equitable dispensation of justice; promoting the legal rights of women, and the role of men in ending violence; and maintaining law and order.

The surveys for respondents in the rest of Pakistan and Pakhtun districts were undertaken at different times. 3 districts out of 12 - where Musalihati Anjuman were set up alongside the local government system - were part of the survey sample. The survey results below indicate that the overwhelming majority of respondents in both regions – 85.6 per cent in the rest of Pakistan and 87.1 per cent in Pakhtun districts – did not know about the attributes of the MCs because they are not active in their districts. The rest of the data is self-explanatory.

The data shows a small variation between both regions on both negative and positive attributes of Musalihati Councils.

### **Existence/presence of various formal and informal institutions within communities**

Respondents were asked about the presence of various formal and informal institutions which respondents can access for getting services regarding justice and/ or to settle their disputes. Respondents were provided with a long list (with multiple choices) of relevant institutions which are directly or indirectly involved in resolving people's disputes and issues.

Respondents identified the various institutions which they considered most important. Police authorities or their representatives stood out as the most prominent institution and was identified

by 80.7 per cent of respondents. In Pakhtun districts too, 88.8 per cent, an overwhelming majority, identified police authorities. This response was predictable, as the network of police stations and their presence is highly visible and people have a good knowledge of the police. The second highest-ranked institution was *khandan* (extended family), which was identified by 77.2 per cent of respondents; 72.7 per cent of respondents identified *biradari* (clan); and 71.1 per cent of respondents identified *mohalla* (neighbourhood). Respondents have very carefully and responsibly identified the above-mentioned institutions according to their importance and existence. The data here shows that these institutions have close links with people.

In terms of other institutions that respondents identified as per their order of importance, the next institution was the local landowner which was identified by 54.2 per cent of respondents.

Next is 'lower courts' – which was identified by 43 per cent of respondents. It should be noted that lower courts exist in urban centres and therefore they are more accessible to urban populations as opposed to rural communities.

Finally, *panchayat/faislo/Baloch jirga* takes seventh place in the list in terms of the results from respondents in the rest of Pakistan, though in Pakhtun districts it takes second place on the list (with 81.2 per cent of respondents identifying *jirga* during the 2012 survey conducted in Pakhtun districts of KP and Balochistan). It is generally perceived that local informal dispute resolution mechanisms do exist in the rural areas of Pakistan. Although this may be true in the case of Pakhtun districts, the results for the rest of Pakistan do not completely endorse this. Further data analysis later in this report may help us to draw some conclusions.

The data in the rest of the table is self-explanatory.

Do you have the following institutions in your community/area?		
Institutions	Rest of Pakistan %	Pakhtun districts %
Provincial police authorities and their local representatives (e.g. SHO, DSP, etc.)	80.7	88.8
Superior Courts in Pakistan (Supreme Court and High Courts)	13.3	42.6
Lower Courts in Pakistan (Judicial Magistrate, District and Sessions Courts)	43	Did not ask
Federal Shariat Court	4.6	Did not ask
Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	17.4	Did not ask
Ombudsman	8.5	Did not ask
Human Rights Commission of Pakistan	9.1	Did not ask
<i>Khandan</i> (extended family)	77.2	Did not ask
<i>Mohalla</i> (neighbourhood)	71.1	Did not ask
<i>Biradari</i> (clan)	72.7	Did not ask
Large local landowner (Village Chaudhry/Malik/Wadera)	54.2	Did not ask
Village <i>panchayat</i> ( <i>akhat pareh</i> , <i>pareh panchayat</i> , <i>pareon</i> ), <i>faislo</i> , Baloch <i>jirga</i>	42.9	81.2
Local influentials (local, provincial, national)	35.2	Did not ask
Local bureaucracy – <i>patwaris</i> (land record keepers); <i>nambardars</i> (village headmen); <i>tehsildars</i>	37.5	Did not ask
District civil bureaucracy (DROs, DCOs, District magistrates etc.)	20.4	Did not ask
Political groupings/vote banks ( <i>dharras</i> )	21.5	Did not ask
Self-provision village organisations; community organisations	7	Did not ask
Local NGOs	19.5	Did not ask
Private dispute resolution mechanisms that charge a fee	1.4	Did not ask
Local crime lords	3.5	Did not ask
Religious leader in the community	14.7	Did not ask
Musalihati Council	4	Did not ask
Other	0.3	0.4
Don't know	1.3	1

## CONCLUSION

This study compares recent survey results for the three Pakistani provinces of Punjab, Sindh and Baloch districts, with 2012 data gathered in Pakhtun districts of Khyber Pakhtunkhwa and Balochistan.

This chapter highlights a few striking dissimilarities between the two data sets. For example, Pakhtun *jirga* in KP and Balochistan's Pakhtun populated districts is held in high esteem by the overwhelming majority and is trusted more than other forms of informal dispute resolution systems (*panchayat*, *faislo* and Baloch *jirga*) in other parts of Pakistan. This is not surprising as Pakhtun *jirga* is comparatively more organised. However, it is important to share another reason

which might have affected the overall result for *panchayat*, *faislo* and Baloch *jirga*. The Pakhtun survey generally discussed Pakhtun *jirga* as the only informal justice system, whereas the recent survey had enhanced the list of choice for respondents with more informal institutions to choose from including *khandan*, *mohalla*, and *biradari*. This might have divided respondents' choice and affected the overall result.

The data shows that the overwhelming majority of respondents did not know about some of the formal institutions. With regards to the formal institutions that they were familiar with, the majority hold negative perceptions of these. People's lack of knowledge and negative perceptions of formal justice systems is perturbing and needs to be taken seriously and addressed by

the policy makers. Lack of access to the formal justice system in most parts of the country undermines the rule of law, and leads to a breakdown of law and order.<sup>86</sup> During the round-table discussions, the overwhelming majority of participants blamed the formal judicial system for poor people's denial of access to justice, compelling them to take the law in their own hands.<sup>87</sup> Due to gaps in the administrative and executive system people are forced to find another relief system.<sup>88</sup>

Despite their institutional weaknesses, lack of inclusivity and poor infrastructure, informal dispute resolution institutions are being approached by the majority in Pakistan. Formal institutions are largely by-passed, regarded as inaccessible, expensive, corrupt, and influenced by political peddling.

This survey and previous surveys provide sufficient evidence for policy makers to begin a debate for a judicial system which could accommodate informal institutions at some level. A few options and questions are raised in the last chapter of this study for policy makers to mull over.

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86. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

87. Ibid

88. Interview with Saif Anjum, Special Home Secretary, Punjab, 22 August 2013, Lahore

# CHAPTER 3

## ACCESS TO JUSTICE AND CONFLICT DYNAMICS IN PAKISTAN



# CHAPTER 3

## ACCESS TO JUSTICE AND CONFLICT DYNAMICS IN PAKISTAN

### INTRODUCTION

Access to justice is defined by UNDP as 'the ability of people to seek and obtain a remedy through formal or informal institutions of justice, in conformity with human rights standards'.<sup>1</sup> UNDP's report further elaborates, 'This definition describes people's ability to solve disputes and reach adequate remedies for grievances, using formal or non-formal justice systems. It further clarifies that the justice process has qualitative dimensions, and should be carried out in accordance with human rights principles and standards.'<sup>2</sup> As is reflected in the definition and elaborated further in the same report, 'access to justice goes beyond access to formal structures of courts and the legal system. It incorporates a process that comprises more normative understanding of fairness and accountability, which result in strategic approaches that ensure equal and equitable access to rights and services.'<sup>3</sup>

In this study we have identified the following formal and informal institutions dealing with justice services. However, the number may not be restricted to the following institutions and might go beyond this list.

- Formal courts of law – both lower and superior courts as well as Federal Shariat Court
- State administrative authorities and institutions (police department, district administration, paralegal services, Ombudsmen)
- Nizam-e-Adal – in case of Malakand division of Khyber Pakhtunkhwa
- Musalihati Councils (MCs) or state's sponsored alternative dispute resolution mechanism, which was trialled in 22 districts of Pakistan but could not continue providing their services the moment Local Bodies (LBs) were dissolved in 2007. MCs were informal but were having state's patronage. Local elections are expected to take place in the near future and it is anticipated that LBs will be revived again.
- Informal dispute resolution mechanisms – *panchayat, faislo*, Baloch *jirga*, Pakhtun *jirga*.

In addition, other informal institutions, such as extended family, clans and neighbourhood, political *dharra*s, etc. provide other options accessible to people for such remedies. This study uses theoretical analysis from available material developed for other situations, and primary data from Pakistan respondents help reinforce the

1) Access to justice assessments in the Asia Pacific: A review of experiences and tools from the region, UNDP, February 2012

2) Ibid

3) Ibid



argument for having a legal pluralism, which could be accessed by the rich and poor in Pakistan. In the introductory chapter of this study, Dr. Osama Siddique provides extensive information and strong arguments for why the informal justice system does not currently do more in supporting the formal judicial system of Pakistan. Dr. Osama also explains why informal dispute resolution systems have been criticized, and how the formal justice system is assumed (especially by judges, lawyers, bureaucrats and others trained in formal law) as an embodiment of the state and its commitment to uphold a common law which is the same for all and which provides additional mechanisms for protecting minorities and historically vulnerable groups – and that emerges out of deliberative democratic processes. Dr. Osama argues convincingly for informal justice systems to be integrated into the state's justice system. This chapter will build on Dr. Osama's argument and will provide some academic evidence to support the case for the integration of informal justice systems into Pakistan's formal justice system, making it a country with pluralist legal systems working together or simultaneously.

Like many other countries with colonial history, Pakistan's formal judicial system was developed for the first time under British Colonial rule, whereas informal justice systems existed and persisted before the advent of British Raj. Despite gaining independence from Britain, Pakistan continues to practice the British formal system without bringing any reform to it.<sup>4</sup> Pakistan took a while after independence to develop its first Constitution in 1956, which was obviously in accordance with Western ideologies and law. Since the advent of independence, the external imposition of legal systems has in some ways increased, as 'the new nations frequently stress legal uniformity as a key to nation-building'.<sup>5</sup> The legal system of Pakistan continues to follow the

path laid down by the imperialist forces. Unfortunately, however, despite all of its sophistications, the majority in Pakistan (representing the poorest sectors) do not understand the formal court procedures and language, and view it as an alien system.

According to George C. Pavlich (1996):<sup>6</sup>

'Buying ecclesial indulgences for absolution is no longer common practice, but purchasing justice is. In secular worlds under postmodern conditions, the aim of such purchase is not to find salvation in the hereafter, but to rectify circumstances in the here and now. Many critical scholars engaged in legal thought, in *juris disciplina*, have suspended metanarratives pertaining to an eternal, singular justice, or a *lex eterna*, which promises equal treatment to all those who come before it (Lyotard and Thebaud 1985, Derrida 1992, White 1987/8). For, in the everyday, temporal processes of law, the *lex temporalis*, a steady stream of bewildered litigants must endure the costly, time-consuming and inhospitable processes of the courthouse. The liberal promise of equality before the law today rings as little more than a formal, hollow abstraction, largely favouring those with the means to play the legal game.'

The formal system of Pakistan is assumed to be more sophisticated, effective, and efficient than the informal dispute resolution system. However, this is highly misleading. The widely-acknowledged shortcomings of, and hostility to, the Pakistani formal justice system by the majority of its citizens, illustrate the system's limits and limitations.<sup>7</sup>

Pavlich (1996) adds that typically, 'the mechanisms of litigation usurp conflict from a given situation and transform it, often unrecognizably to those involved, into a

4) See Osama Siddique (2014). Pakistan's Experience with Formal Law.....

5) George Westermark, Legal pluralisms and village courts in Agarabi, PhD Thesis, the University of Washington, p. 4.(1981)

6) George C. Pavlich, Justice Fragmented: Mediating community disputes under postmodern conditions, Routledge. p. 1.(1996)

7) Interview with Nadeem Qureshi, Judge Customs Appellate Court, 26 August 2013, Karachi

professionalised legal dispute'...<sup>8</sup> and that 'having such a situation in front, a common man will opt for options which he sees as less expensive, quick and in accordance with his needs'.<sup>9</sup>

The majority in Pakistan rely on restorative (healing) principles – which are derived fundamentally from indigenous or rural societies and their practices in Pakistan's major cultures. There is sufficient evidence to prove that this restorative informal justice system is effective and has legitimacy within the masses despite its illegal presence in Pakistan society. The fact that advocacy has grown stronger shows that traditions, customs, and native laws (customary law) remain effective and efficient in rural as well as industrial cultures; it also shows that traditions, customs, and native laws are potent mechanisms for social control in a modern society.<sup>10</sup>

The existence of normative legal systems operating independently or semi-independently from the state is an empirical reality in almost every decolonised country in the world.<sup>11</sup> The 'informal justice' systems refer to those forms of justice that are said to take place outside of the formal courtroom, in settings that are less rule-bound and adversarial.<sup>12</sup> Such informal justice systems are operating under different customs and traditions in Pakistan's heterogeneous society. This study focuses on four major cultures and languages, namely *panchayat* (Punjab), Pakhtun *jirga* (KP, Balochistan's Pashtun speaking districts and FATA), *faislo* (Sindh) and Baloch *jirga* (Balochistan's Baloch districts). Despite their prevalence, legitimacy within the masses and the growing academic recognition of their existence, Pakistan's 'positivist' state institutions and civil society have remained very critical of their existence.

On the other hand, critiques of formal justice

systems demonstrate that informal justice systems and practices hold the promise of a justice that is more accessible, empowering and participatory, less costly and less adversarial. Before we analyse the survey data, it will be helpful to analyse briefly some academic literature developed on the informal justice systems.

Andrew Woolford and R.S. Ratner state that the 'informal' characteristics that unite these justice practices are:<sup>13</sup>

- o They are intended to facilitate the participation and empowerment of the parties involved in the conflict without necessary recourse to legal professionals;
- o They are adaptable to the specific conditions of the conflict at hand, rather than rigidly bound by rules;
- o Their legitimacy does not derive from authorities, but rather from the representative and deliberative involvement of concerned parties, as well as participant satisfaction.

To support this argument, Albert Fiadjoe shares the following model from Zehr (1990) providing assumptions for retributive and restorative justice systems:<sup>14</sup>

8) George C. Pavlich, *Justice Fragmented: Mediating community disputes under postmodern conditions*, Routledge. p. 1.(1996)

9) Interview with Saif Anjum, Special Secretary Home, Punjab, 22 August 2013, Lahore

10) Nonso Okafo, *Reconstructing Law and Justice in a Postcolony*, Ashgate Publishing Company, p.8.(2009)

11) Franz von Benda-Beckmann (1985) quoted in Miranda Forsyth, 2009, *A bird that flies with two wings: Kastom and state justice systems in Vanuatu*, University Printing Services, ANU

12) Andrew Woolford and R.S. Ratner, *Informal Reckonings: Conflict Resolution in Mediation, Restorative Justice and Reparations*, Routledge – Cavendish, Page 1(2008)

13) *Ibid.* p. 2–3.

14) [Source: Adapted from Zehr, 1990] Zehr, H, 'Retributive Justice, Restorative Justice', Mennonite Central Committee. Quoted in Albert Fiadjoe (2004). p.125.

Retributive	Restorative justice
Crime is an act against the state, a violation of a law, an abstract idea.	Crime is an act against another person or the community.
The criminal justice system controls crime.	Crime control lies primarily in the community.
Offender accountability defined as taking punishment.	Accountability defined as assuming responsibility and taking action to repair harm.
Punishment is effective; threat of punishment deters crime; punishment changes behaviour.	Punishment alone is not effective in changing behaviour and is disruptive to community harmony and good relationships.
Victims are peripheral to the process.	Victims are central to the process of resolving a crime.
The offender is defined by deficits.	The offender is defined by capacity to make reparation.
Focus on establishing blame, on guilt, on past (did he/she do it?).	Focus on problem solving, on liabilities or obligations, on future (what should be done).
Emphasis on adversarial relationship. Imposition of pain to punish/deter.	Emphasis on dialogue and negotiation. Restitution as a means of restoring both parties' goal of reconciliation/restoration.
Community on sideline, represented abstractly by the state.	Community as facilitator in restorative process.
Response focused on offender's past behaviour.	Response focused on harmful consequences of offender's behaviour, emphasis on the future.
Dependence upon proxy professionals.	Direct involvement by participants.

Woolford and Ratner add that 'in contrast, the formal justice system fails on these three grounds. The court-based system of formal justice disempowers the parties to a dispute by making legal professionals the key participants in the dispute resolution process. Formal law serves the primary function of reinforcing state legitimacy rather than restoring positive community relations.<sup>15</sup> This is precisely so because crime has hitherto been regarded as an offence against the state (society) ... not many recognise such a system as being capable of achieving 'justice' for all.<sup>16</sup>

15) Ibid. p. 3.

16) Albert Fiadjoe, *Alternative Dispute Resolution: A Developing World Perspective*, Cavendish Publishing, p.109.(2004)

17) Albert Fiadjoe. p.1.

Albert Fiadjoe (2004) argues,<sup>17</sup>

“There is no question but that conflict resolution, through the process of negotiation, mediation and arbitration, has become an acceptable and, indeed, inevitable part of creative lawyering in the 21st century. That explains why all self-respecting law schools now provide for skills training in the field of Alternative Dispute Resolution (ADR) as part of their core offering.”

Furthermore, roots of informal dispute resolution

systems or restorative justice systems can be traced in Islam from its early stages of advent. According to Jerome T. Barrett with Joseph P. Barrett, (2004):<sup>18</sup>

'From the earliest days of Islam, Muhammad (PBUH-570 to 632 AD) encouraged and practised *tahkim*, or arbitration, to resolve a variety of disputes. Muhammad's role as arbitrator is sanctioned by revelation. Once Islam became dominant in a community, local law was amended to include arbitration. The Islamic tradition and culture focuses more on the group or community than on the individual. Originating in ancient Middle Eastern tribes and villages were the dispute resolution practices of *sulh* (settlement) and *Musalaha* (reconciliation). The two together, often referred to simply as *Sulh*, have been used to control conflict and maintain harmony within and between tightly knit social groups. The ritual practices involve conversations, information sharing, and exchanging promises about the future.'

Although informal justice systems may be preferred for reasons cited above, they have the tendency to violate human rights, especially women's and minority rights. Informal justice systems are seen to have abetted inhuman cultural practices against women such as *swara* or

*wani*<sup>19</sup> and have contributed significantly to the rise of cases of violence against women in Pakistan. For instance, in cases of murder, informal justice systems may recommend direct vengeance or the exchange of women as *swara/wani*. According to a 2012 UNICEF report, approximately 1000 women are killed in Pakistan per year in the name of honour. In other words, 25 per cent of the total honour killings in the world occur in Pakistan.<sup>20</sup> Human rights challenges posed by informal justice systems are discussed further in chapter six of this study.

## Survey findings and analysis

The survey aimed to gather respondents' understanding of access to justice. This section will also make use of the previous survey (2012) data documented from Pakhtun districts of Pakistan, which will help draw comparisons among various institutions, regions, cultures and circumstances. This section analyses the survey findings pertaining to respondents' knowledge and experience of access to justice, correlating with dynamics of conflict and disputes.

### Understanding access to justice

The respondents were provided with multiple options and were allowed to select more than one

What is your understanding of access to justice?		
Response	Rest of Pakistan (%)	Pakhtun districts (%)
Right to a fair and just trial	53.8	50
Access to justice for all, especially for vulnerable groups (women and minorities etc)	28.5	40.46
Proper hearing, trial and remedies against grievances	40.1	40.1
Better access to opportunities for employment and income generation	13.6	Did not ask
Better distribution of society's resources	21	Did not ask
Other	1.3	2.33
Don't know	11.6	7.33

18) Jerome T. Barrett with Joseph P. Barrett, A History of Alternative Dispute Resolution: The Story of a Political, Cultural, and Social Movement. Published in affiliation with the Association for Conflict Resolution. Jossey-Bass: A Wiley Imprint. P.13–14.(2004)

19) *Swara* (in Pushtu language) or *Wani* (in Punjabi language) means marriage of a girl from the offender's family/tribe to the victim's close relative without her consent

20) Situation Analysis of Women and Children in Pakistan, National Report, UNICEF, p.118.(2012)

option. The concept of access to justice is assumed to be technical and for a layperson it is hard to correctly define. Nonetheless, it can be argued that common perceptions often convey correct sentiment.

The data shows some interesting trends. More than half of the respondents (53.8 per cent) believed that access to justice meant the 'right to a fair and just trial' whereas 40 per cent thought that access to justice meant a 'proper hearing, trial and remedies against grievances'. For 28.5 per cent of respondents, access to justice meant 'justice for all, especially vulnerable groups (women and minorities)'; 21 per cent believed access to justice meant 'better distribution of society's resources'.

Comparing both sets of data, we see striking similarities except in one area. According to the data, Pakhtun districts seem more realistic of access to justice and more respondents believed in access to justice for all, especially for vulnerable groups as compared to the respondents in the

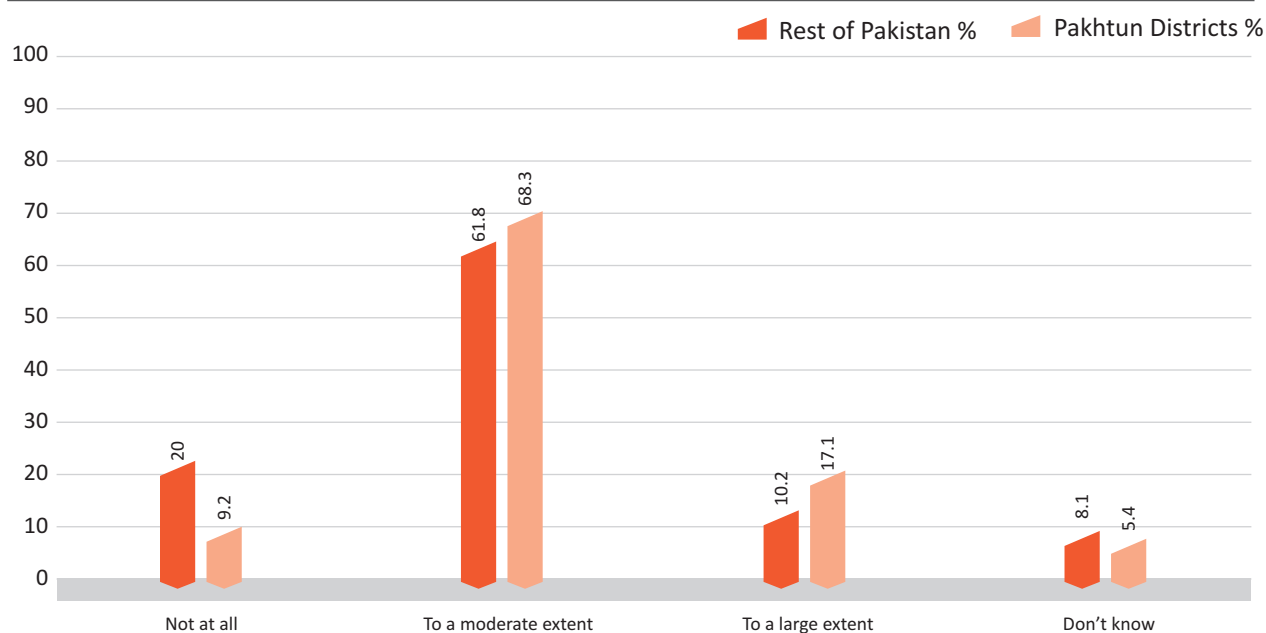
rest of Pakistan. It is to be noted that two options given in the rest of Pakistan survey were not offered in the Pakhtun districts survey.

### Perception of access to justice

Once respondents had been asked to define access to justice, they were further asked to share their perception of how access was ensured to all. As shown in the table below, the majority (61.8 per cent) believed that 'to a moderate extent' there has been access to justice in their districts or area. In Pakhtun districts too, a two-third majority (68.3 per cent – slightly higher than the rest of Pakistan) had the same opinion about equal access to justice. Respondents from the rest of Pakistan survey seemed to be more pessimistic – 20 per cent of respondents thought that there has been no access to justice at all, compared to only 9.2 per cent from Pakhtun districts who responded to this question.

More respondents in Pakhtun districts (17.1 per cent) as compared to those in the rest of Pakistan

### To what extent do you think there has been access to justice in your district/area?



(10.2 per cent) thought that there has been access to justice to a large extent. The overall data for this inquiry shows that people in the rest of Pakistan are more pessimistic than those in Pakhtun districts.

Participants of the round-table discussions in Punjab, Sindh and Balochistan were also quite distrustful about access to justice under the formal justice system. The majority of the participants of the round-table discussions criticised the role of the informal justice system, which often violates the rights of vulnerable people. However, they equally criticised the formal judicial system, which is not accessible to vulnerable groups.<sup>21</sup>

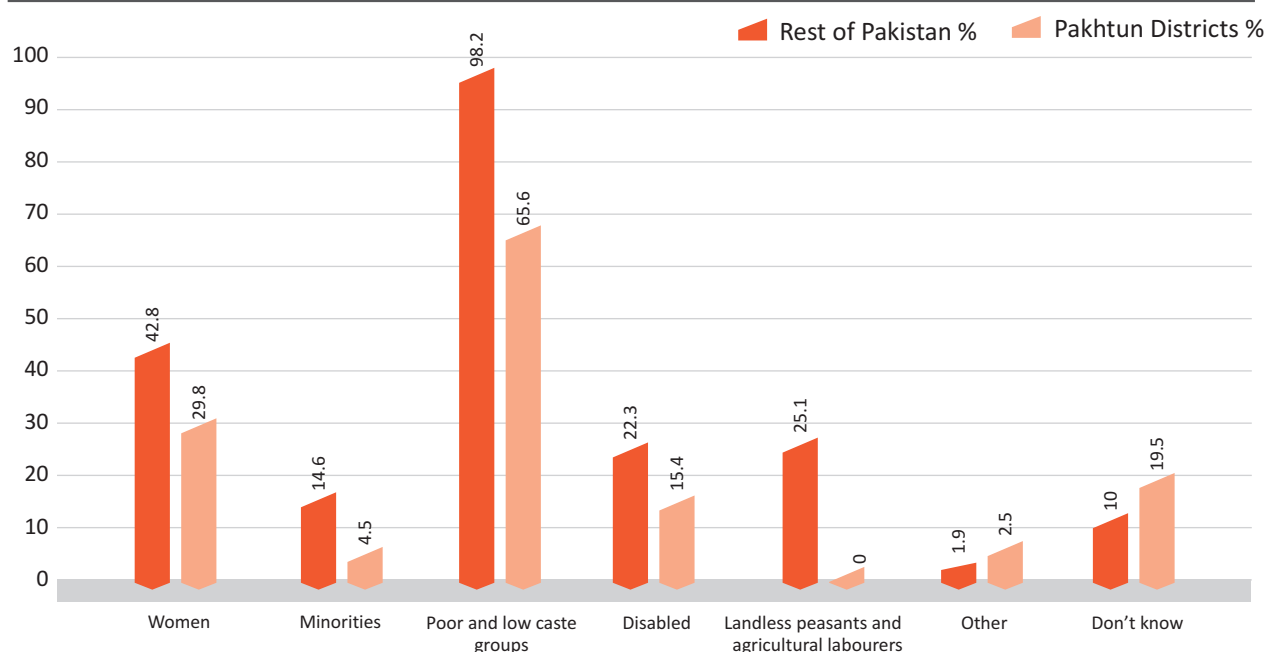
### Perception of equal access to justice – under the formal system

This question addresses the issue of access to justice for different groups of society. Respondents were asked to share their opinion on

the categories of individuals/groups who do not have access to justice under the formal justice system.

The graph shows significant variations in the data for both regions. For instance, in Pakhtun districts, 29.8 per cent believed that women do not have access to the formal justice system, whereas in the rest of Pakistan survey 42.8 per cent of respondents believed that women do not have access to justice. We have seen and observed that vulnerable women scarcely have access to justice due to numerous cultural, financial and physical barriers. However, respondents in Pakhtun districts, as compared to the respondents in the rest of Pakistan, seem to have little realization of the fact that women have not been given ample opportunities and space to have access to formal justice.<sup>22</sup> In addition, 98.2 per cent of respondents from the rest of Pakistan survey thought that poor and low caste groups do not have access to justice, as compared to Pakhtun districts where 65.6 per cent believed this. This is a significant

### What categories of individuals/groups do not have access to justice in your district/area under the formal justice system such as the Supreme Court, High Courts and Lower Courts?



21) Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

22) Interview with Maryam Bibi, Chief Executive Khwendo Kor (Sisters' Home – NGO), 13 August 2013, Peshawar

23) Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

24) Ibid

variation between both sets of data. The reason could be that there isn't really a culture of castes in Pakhtun areas as compared to other provinces, and that Pakhtun society is more egalitarian than other cultures as argued by many western anthropologists, writers and historians – although women have low status in Pukhtun society.

25.1 per cent of respondents believed that 'landless peasants and agricultural laborers' have access to formal justice. Please note this was a new category added in the latest survey conducted in the rest of Pakistan.

Participants of the round-table discussions were also very cynical about vulnerable groups' access to justice under the formal justice system. Vulnerable groups are always neglected under any system – be it formal or informal – as they do not have ample opportunities and resources to satisfy their needs pertaining to justice.<sup>23</sup> Informal justice systems favour rich and influential groups; if

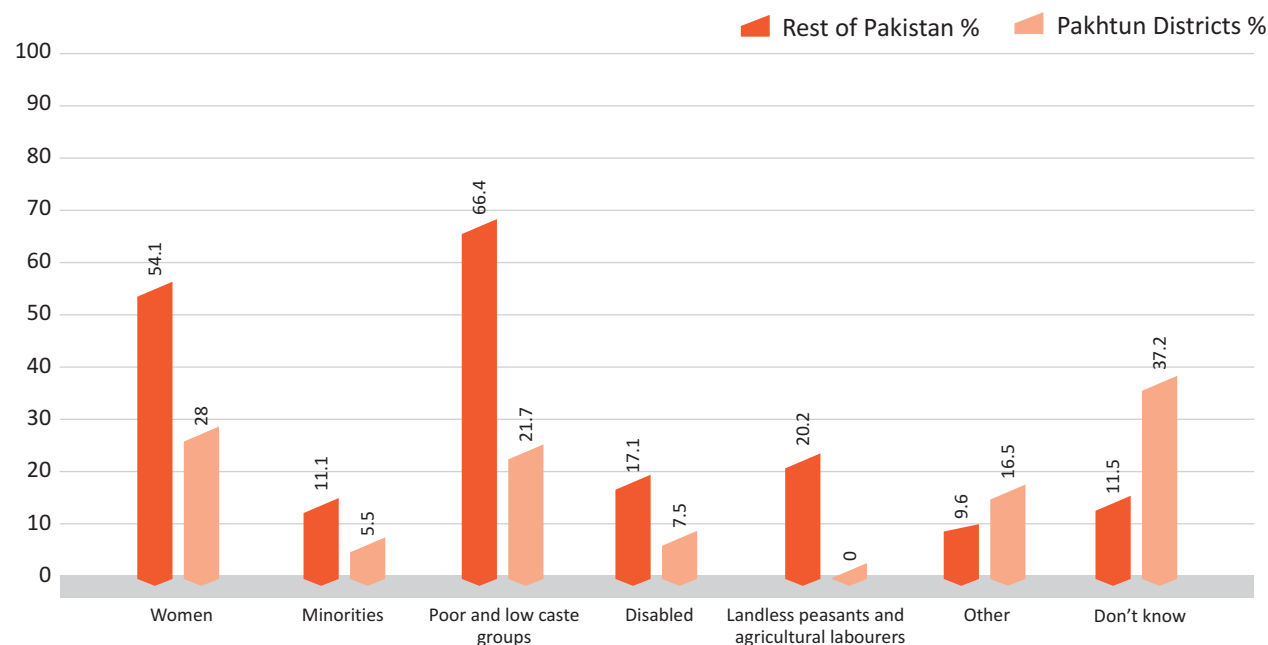
vulnerable people approach the formal court system, they end up facing resourceful opponents and losing their cases.<sup>24</sup>

### Perception of equal access to justice – under various informal justice systems

A similar question with similar options is repeated here, but this time the question is in reference to the informal justice system, specifically village *panchayat*, *faislo*, and Baloch *jirga*. This data is further compared with data sets gathered from Pakhtun districts and Pakhtun *jirga*. The data provides a striking contrast with the previous opinions and with the Pakhtun region about the formal and informal systems of justice.

More than half of respondents (54.1 per cent) believed that women do not have access to justice under informal justice systems. This shows respondents' clarity on women's lack of access to informal justice systems – *panchayat*, *faislo* and

### What categories of individuals/groups do not have access to justice in your district/area under informal justice system such as *jirga/panchayat/faislo*?



23) Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

24) Ibid

Balochi *jirga*. Comparing this data with Pakhtun districts and Pakhtun *jirga*, only 28 per cent believed that women have no access to Pakhtun *jirga*. Since women have indirect access to Pakhtun *jirga* through their male family members, it might be perceived by respondents in Pakhtun districts that women have access to *jirga*. However, if women do not have direct access then this access to justice under the informal justice system itself becomes questionable.

On the question of minorities, only 11.1 per cent thought that minorities do not have access to informal justice systems in Punjab, Sindh, and Baloch areas of Balochistan, while in Pakhtun districts, only 5.5 per cent thought so.

Another striking comparison is on poor and low caste groups. Two-thirds (66.4 per cent) of respondents from the rest of Pakistan believed that poor and low caste groups do not have access to informal justice systems in Punjab, Sindh and Baloch districts of Balochistan, in comparison to only 21.7 per cent from Pakhtun districts. This is three times lower. As stated above, in Pakhtun districts, low caste systems and biases might not be an issue.

Overall, the above data clearly conveys that the rest of Pakistan and Pakhtun districts have a different perception on how vulnerable groups suffer when it comes to accessing informal justice systems for justice services.

Women, who receive punishment under the informal justice system, are seen as the most vulnerable segment of the Pakistani society.<sup>25</sup> Participants of round-table discussions in Punjab and Sindh were also wary of the role of informal justice systems when dealing with vulnerable groups. They shared their concerns over the punishment *sang chatti, vani* – all against women.<sup>26</sup> Informal justice systems also give rise to cases of *karo kari* (honour killings) against both

men and women. In many cases, women are killed and men escape the punishment by paying money or a girl in marriage (as *vani*).<sup>27</sup> Participants of Balochistan round-table discussions were more in favour of Baloch *jirga* which they believed was more accessible to all. However, they could not provide sufficient justification that there was accessibility for women.<sup>28</sup>

This is also true to some extent with other informal justice systems within various cultures and major ethnic groups in Pakistan. However, in areas such as Punjab and Sindh there is the possibility or flexibility for women to attend the proceedings of informal justice systems as a party or as a witness.<sup>29</sup> We rarely hear of or see any instances where a woman takes part in such proceedings as a mediator or decision-maker.

### **Perceived reasons for limited access to justice under the formal justice system**

The survey used another angle to explore perceptions of access to justice i.e. to document reasons, perceived by the respondents, for limited access under the formal justice system. Multiple-response questions were asked of respondents in a qualified manner. Data is also compared with the Pakhtun districts of KP and Balochistan at the end of this question. The list of options provided was limited in the previous survey. However, more options were added to the survey under analysis to understand new dimensions and how respondents have perceived them when responding to this question. Since the list of options is fairly long, few are worth analysis and many have less significance.

Close to three-quarters (73.1 per cent) of respondents from the rest of Pakistan believed that access to justice under the formal court system is limited due to time involved – which does not allow cases to be expedited and resolved within time. Although considerably lower, this was

25. Interview with Maryam Bibi, Chief Executive Khwendo Kor (Sisters' Home – NGO), 13 August 2013, Peshawar

26. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

27. Interview with I.A. Rehman, Director, Human Rights Commission of Pakistan (HRCP), 22 August 2013, Lahore

28. Round-table discussion in Quetta, 11 December 2013

29. Round-table discussions in Lahore and Karachi, August 2013



also believed by the majority (57.8 per cent) of respondents in Pakhtun districts. This is compelling evidence that ordinary men and women in Pakistan have lost their trust in the formal justice system of Pakistan.<sup>30</sup>

Another important argument is the high cost of lawyers' fees, which most of the time, is beyond the reach of ordinary people in Pakistan. For those who do take their case to court, they often end up losing due to their inability to afford the lawyer's

fee. This is reflected, and rightly so, in the survey data for both regions – it is the second highest option on the list in both regions of Pakistan and perceived similarly by all ethnic groups of Pakistan. Close to half, 49.4 per cent, in the rest of Pakistan and 56.5 per cent in Pakhtun districts of Pakistan believed that limited access to justice under the formal court system is due to high legal fees/charges of lawyers, which they cannot afford to pay.

What are the reasons for limited access to formal justice as well as reluctance to access formal courts?		
Options	Rest of Pakistan (%)	Pakhtun districts (%)
Time consuming and cases not expedited	73.1	57.8
Legal aid department understaffed	12.6	10.6
Unavailability of legal aid	10.3	8.7
Accused overstay without trial due to lack of understanding of their legal rights	15.4	18.5
High legal fees of lawyers	49.4	56.5
Not all cases reported	17.6	
Long distances to courts	15.9	36.5
High level of corruption in the courts	21.8	16
Justice structures concentrated in towns	6.4	9.2
Not aware of how to access justice by those in remote areas	12.4	15
Widespread confusion about the legal system	5.8	11.5
Dissatisfied with the fairness of the court process	13.3	Did not ask
Interviewee ill-equipped to fight a legal battle due to lack of experience or legal know-how	6.3	Did not ask
Interviewee under social/community pressure to settle out of court with opponent	8.7	Did not ask
Interviewee facing threats/coercion from opponent to settle out of court	6.5	Did not ask
Interviewee concerned with the quality and/or commitment of the lawyer	6.3	Did not ask
Legal opponent is able to unfairly influence the court process	6.7	Did not ask
An out of court solution seems simpler and quicker in comparison	9.2	Did not ask
Laws and formal procedures are complex and unintelligible	7.1	Did not ask
Laws are complex as they are in English	7	Did not ask
Other	3	1.2
Don't know	12.3	17.3

30. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

The last option worth mentioning is 'long distances to courts'. Of the respondents in the rest of Pakistan, 15.9 per cent said that formal courts are a long distance from their dwelling – which hinders their access to justice under formal justice systems – whereas 36.5 per cent, a larger group in Pakhtun districts, believed this. This could be due to harsh terrain and remote regions in Pakhtun areas of Pakistan.

### Perceived reasons for limited access to justice under the informal justice system

Just as in reference to the formal system, the respondents were asked to share the reasons for limited access to justice under the informal justice system, such as village *panchayat*, *faislo*, and Baloch *jirga*. This comparison draws understanding of the general feelings of ordinary Pakistani citizens when they access justice systems – under both modalities.

What are the reasons for limited access to informal justice mechanisms as well as reluctance to access informal mechanisms?		
Options	Rest of Pakistan (%)	Pakhtun districts (%)
Informal systems lack authority to implement their decisions.	25.5	10.1
Members of informal systems are not qualified to resolve complex disputes.	15.5	14.2
Informal systems are inaccessible for women.	26.7	18.8
Informal systems are inaccessible for minorities.	11.9	5.5
Members of informal systems sometimes take bribes.	13.8	8.4
Members of informal systems are biased at times.	28.1	13.5
Sometime their solutions are unsustainable/unworkable.	11.2	14.8
No precedents of previous decisions.	7.8	8.4
People don't have faith in the capacity and efficiency of such mechanisms.	8	Did not ask
These mechanisms are vulnerable to private pressure and influence.	20.4	Did not ask
Such mechanisms are outdated and unfamiliar with modern ideas of fairness and justice.	5.8	Did not ask
No such viable mechanisms exist anymore in my area/locality.	6.2	Did not ask
People have greater faith in the fairness of the court system.	11.3	Did not ask
The court system is more easily accessible.	6.4	Did not ask
Influential people feel more confident of manipulating the informal systems.	8.5	Did not ask
Weaker parties feel more empowered by the formal legal/court system.	4.4	Did not ask
The law mandates going to the formal legal system for certain kinds of disputes.	4.7	Did not ask
Lack of satisfaction with past outcomes of non-court dispute resolution mechanisms.	5.1	Did not ask
Often one of the parties is a trouble-maker and needs to be taught a lesson in court.	6.1	Did not ask
Often one of the parties is a trouble maker and wants to embroil his/her opponents in court contestations.	4.5	Did not ask
Other	5.5	12.5
Don't know	17.6	38.3

What are the reasons for limited access to informal justice mechanisms as well as reluctance to access informal mechanisms? Cross-tab with Provinces			
Options	Punjab %	Sindh %	Balochistan %
Informal systems lack authority to implement their decisions.	11.1	13.4	7.1
Members of informal systems are not qualified to resolve complex disputes.	8	5.4	5.1
Informal systems are inaccessible for women.	8.4	12.5	10.8
Informal systems are inaccessible for minorities.	3.6	7.1	4
Members of informal systems sometimes take bribes.	4	4.2	7.3
Members of informal systems are biased at times.	14.3	14.4	6.4
Sometime their solutions are unsustainable/unworkable.	3.4	3.2	5.9
No precedents of previous decisions.	2.2	1.2	4.9
People don't have faith in the capacity and efficiency of such mechanisms.	3.7	1.3	3.8
These mechanisms are vulnerable to private pressure and influence.	9.7	5.6	8.2
Such mechanisms are outdated and unfamiliar with modern ideas of fairness and justice.	2.6	2	2.2
No such viable mechanisms exist anymore in my area/locality.	2.4	3.9	1.5
People have greater faith in the fairness of the court system.	4.3	3.9	4.8
The court system is more easily accessible.	2.5	0.6	3.6
Influential people feel more confident of manipulating the informal systems.	2.4	3	4.2
Weaker parties feel more empowered by the formal legal/court system.	1.6	0.3	2.7
The law mandates going to the formal legal system for certain kinds of disputes.	1.7	0.2	3
Lack of satisfaction with past outcomes of non-court dispute resolution mechanisms.	1.9	1.5	2.4
Often one of the parties is a trouble-maker and needs to be taught a lesson in court.	3.9	0.1	2.7
Often one of the parties is a trouble maker and wants to embroil his/her opponents in court contestations.	1.8	1	2.2
Other	1.1	4.4	1.6
Don't know	5.4	10.6	5.7

The survey findings are further compared with the Pakhtun *jirga* findings of the previous survey. Various options under this question were provided to the respondents.

Looking at both data sets gathered from both regions in different times, it is clear that there is a striking perception difference between the rest of Pakistan and Pakhtun districts. There is a need to cross-tabulate the data by region as well, which is elaborated, in the following lines. For instance, 28.1 per cent (the highest figure on the list) of respondents from the rest of Pakistan believed that members of informal justice systems are biased at times when resolving or deciding a case, while 13.5 per cent of Pakhtun respondents (less than half of rest of Pakistan), believed so. The following cross tabulation by province shows more favourable perceptions, with similar views in Sindh and Punjab as compared to Baloch districts of Balochistan. The reason could be Baloch people's tendency to favour tribal ways of living and their trust in the traditional justice system

and their tribal elders.

Another high group of respondents was the 26.7 per cent of respondents from the rest of Pakistan areas, who believed that informal justice systems are inaccessible for women. In Pakhtun districts, this figure was lower – 18.8 per cent of respondents believed that women have no access to the informal justice system.

Another interesting dimension to access to justice under the informal justice system is its perceived lack of authority to implement decisions. The data from both regions clearly shows that respondents lacked confidence on this aspect of the informal justice system. One quarter of respondents from the rest of Pakistan believed that the informal justice system lacks authority to implement its decisions, while only 10.1 per cent respondents of Pakhtun districts believed so. In the case of tribal *jirga* in FATA, the authority of tribal *masharan* (elders) is strong and has the support from the community to implement *jirga* decisions.<sup>31</sup> In rural

31) See Naveed Shinwari, Understanding Jirga: Legality and Legitimacy in Pakistan's Federally Administered Tribal Areas. CAMP (2011)

parts of Pakhtun districts of KP and Balochistan, it is believed that *jirga* decisions<sup>31</sup> are respected and owned by disputant parties voluntarily and there is a social pressure to implement decisions.<sup>32</sup>

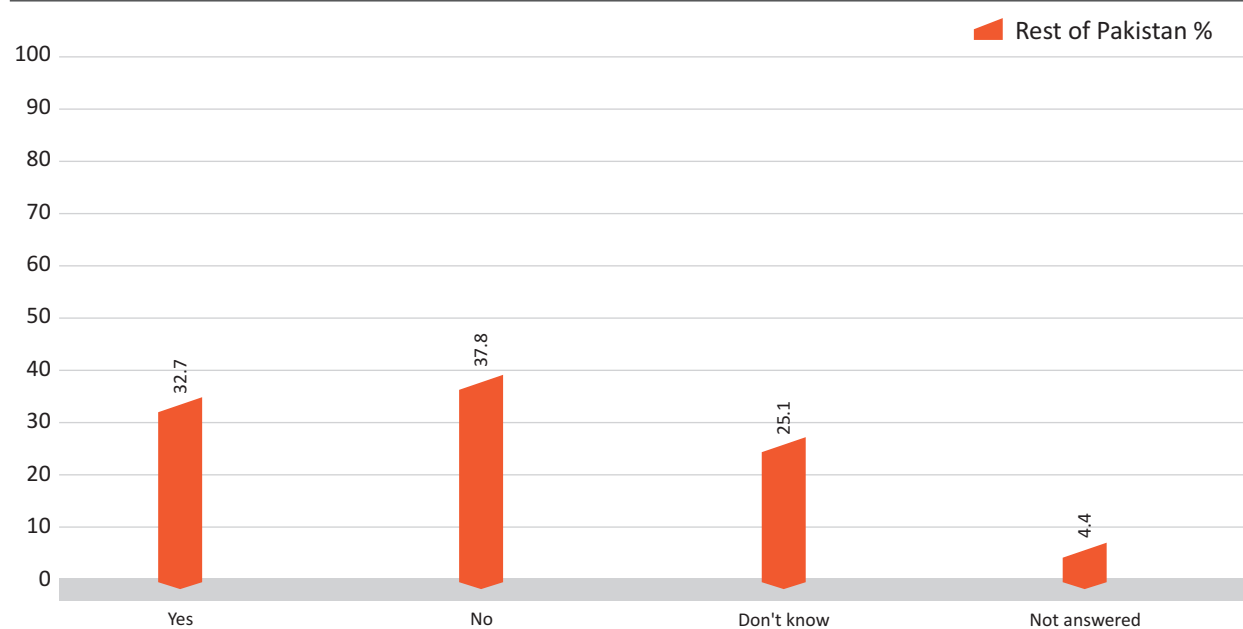
Cross tabulation by province is self-explanatory and provides sufficient evidence to support the argument that the informal justice system is interestingly more organised in Pakhtun and Baloch districts as compared to Punjab and Sindh.

### Other entities providing justice services to the communities

There are other actors and institutions that provide justice services to the local communities on petty civil issues, such as NGOs, religious leaders/groups etc.

Results astonishingly showed that 32.7 per cent of respondents in the rest of Pakistan believed that other institutions (NGOs, religious groups) provide justice services to the local communities. This is a fairly significant proportion of the sample.

### Apart from formal justice system are other informal justice systems like NGOs, religious groups etc. showing their interest about people's access to justice?



32) See Naveed Shinwari and Neha Gauhar, Understanding Justice Systems of KP, FATA and Balochistan: The Pakhtun Perspective. CAMP (2013)

33) Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

34) Ibid

Participants of the round-table discussions were also aware of how the rule of law and access to justice are seen as key agendas in today's politics, and how NGOs run programmes on these topics to raise local communities' level of awareness on access to justice.<sup>33</sup> Participants added that 'religious leaders too are either helping the local population or tending to exploit situations in their favour, in areas where people have either limited access to justice or they completely lack access to justice'.<sup>34</sup>

### Main issues that instigate conflict

The study aimed to determine the major issues leading to violent conflicts or disputes. The question, 'what are the main issues that instigate conflict?', was posed in the last survey conducted in Pakhtun districts and with some additional options, it was included in the recent survey conducted in the rest of Pakistan. The data draws some very interesting comparisons.

Interestingly, the major issue identified by the majority in both surveys (64 per cent in rest of

Pakistan and 53 per cent in Pakhtun districts), was conflict over young people and children quarrelling and fighting.

Another high group of respondents (43.3 per cent) believed that issues around agricultural land instigate conflict, and 34.7 per cent thought that land grabbing was an issue that leads to conflict. Family honour, identified by 34 per cent of respondents, was also identified as a critical issue that was believed to lead to conflict. There were a number of other options provided to the respondents and each one was identified according to their importance in different circumstances.

Comparing the data of both surveys conducted at different times, in different regions and in different cultural settings, we see similarities of understanding of issues by the respondents. However, there were a few exceptions. For example, issues of neighbourhood (possession of

a shared wall / property etc) were identified by 21.8 per cent of respondents in the rest of Pakistan, compared to 43.1 per cent for Pakhtun districts of KP and Balochistan. In Pakhtun culture, especially in rural areas, neighbourhood disputes such as over a shared wall or property are considered a question of honour; these always lead to a conflict at some point. It is for this reason that more respondents in Pakhtun districts identified this as an issue, compared to the respondents in the rest of Pakistan.

Another issue identified was 'grazing animals'. Rearing livestock is one of the major occupations in the rural communities of Pakistan, especially in Punjab and Sindh due to huge amount of lands available for grazing as compared to KP and Balochistan – where most of the land is either barren, or mountainous and infertile. Therefore, for respondents from the areas in the rest of Pakistan, this could be a major issue leading to conflicts.

What are the main issues that instigate conflict in your community?		
Options	Rest of Pakistan (%)	Pakhtun districts (%)
Agricultural land	43.3	37.5
Urban property – (private)	15.9	Did not ask
Urban property – (commercial)	13.7	Did not ask
Land grabbing	34.7	Did not ask
Distribution of water sources ( <i>warabandi</i> )	30.2	25.8
Neighbourhood (position of shared wall, property, etc)	21.8	43.1
Political violence	14.8	6.8
Grazing animals	20.7	8.3
Sectarian	10.2	7.6
Family issues (forced marriages, divorce, child custody, shared property, wedding expenses)	29.5	27.4
Youth/children quarrelling and fighting	64.4	53.3
Family honour issues	34	25.2
Tribal clashes	9.4	9.9
Tribal customs such as <i>swara/vani/karo kari</i> , bride price and <i>jhag</i>	6.9	3.9
Militancy	2.5	1.8
Terrorism	8.5	3.4
Unequal distribution of aid	5.4	9.4
Theft/robbery	21.6	20.8
Murder/homicide/rising crime	8.5	12.2
Other	3.7	7.9

Political violence was also identified by more respondents in the rest of Pakistan as compared to Pakhtun districts of Pakistan. In the major provinces of Punjab and Sindh, large landowners hold political power and make up major political parties such as PML (N), PML (Q), PPP and MQM. Due to tough competition for political power, violent incidents become inevitable in these regions, rather than in Pakhtun districts of KP and Balochistan.

Participants of the round-table discussions in Punjab, Sindh and Balochistan also blamed political leadership and Sardars for promoting and sustaining political violence, especially during the times of elections.<sup>35</sup>

### Who to contact in situations of conflict or dispute

In response to the question, 'who would you contact in situations of conflict or dispute?', the reply from respondents from the rest of Pakistan is astonishing and fairly different to the reply from respondents from the Pakhtun districts of KP and Balochistan. On the whole, the data is self-explanatory. However, a few options from the list are worth mentioning. For instance, a large group of respondents (32.5 per cent) confirmed that they would contact the police authorities in the case of any conflict or dispute. In the Pakhtun districts of Pakistan the majority surprisingly identified Pakhtun *jirga* as a favourite choice. With regards to respondents from the rest of Pakistan, 25.4 per cent confirmed extended family as a key choice, 18.6 per cent chose clan and 8.7 per cent of respondents identified large, local landowners. Only 5.4 per cent of respondents chose informal justice systems – *panchayat*, *faislo* and Baloch *jirga* – which is very surprising. This might be due to the fact that several more options were added for this survey – such as extended family, neighbourhood and clan. These informal family and clan-based institutions are perceived as

part of various layers of the informal justice system that is also serving their members with justice services.<sup>36</sup>

### Experience of litigation

Questions were asked to understand whether respondents or their family members had experienced any litigation and if so, how was their experience of accessing formal or informal justice systems.

In order to ascertain the level and types of disputes or conflicts, respondents were asked if they had various types of litigation experience. They were asked to respond with 'yes', 'no', 'don't know' or simply 'no response'.

Crimes should be assumed as a rare thing in any society and because the majority may not have experienced it, we will look at the 'yes' attribute of the question rather than counting those who said 'no'. This will help us to understand the level of violence and the nature of litigations within Pakistani society in different regions and different circumstances. The table shows the responses to the question.

The most common response (24.9 per cent) confirmed that they or their family members experienced fraud or had been victims of theft. This alarming figure shows the prevalence of fraud or theft in Pakistan. The reasons for this include a lack of capacity of our civilian security agencies, loopholes in the legal system urbanisation and high levels of poverty.<sup>37</sup> With the average across the various Pakistani regions at 24.9 per cent, it is surprising that 36.1 per cent of respondents in Sindh confirmed that they had been victims of fraud or theft, while in Punjab, the biggest province in terms of population, only 19.3 per cent of respondents confirmed this. Balochistan shares the same percentage (19.1 per cent), however, as this is the smallest province in

35) Ibid

36) Interview with Saif Anjum, Special Secretary Home, Punjab, 22 August 2013, Lahore

37) Interview with Advocate Tahir Iqbal, Legal Reform Forum (NGO), 25 August 2013, Karachi

Who do you first contact in case of any conflict or dispute?	
Options	Rest of Pakistan (%)
Provincial police authorities and their local representatives (e.g. SHO, DSP, etc.)	32.5
Superior Courts in Pakistan (Supreme Court and High Courts)	0.8
Lower Courts in Pakistan (Judicial Magistrate, District and Sessions Courts)	1
Federal Shariat Court	0.2
Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	0.1
Ombudsman	0.1
Human Rights Commission of Pakistan	0.1
<i>Khandan</i> (extended family)	25.4
<i>Mohalla</i> (neighbourhood)	1.1
<i>Biradari</i> (clan)	18.6
Large local landowner (Village Chaudhry/Malik/Wadera)	8.7
Village council ( <i>akhat, pareh, pareh panchayat, pareon/faislo/Baloch jirga</i> )	5.4
Local influentials (local, provincial, national)	0.3
Local bureaucracy – <i>patwaris</i> (land record keepers), <i>nambardars</i> (village headmen), <i>tehsildars</i>	1
District civil bureaucracy (DROs, DCOs, district magistrates etc.)	0.5
Political groupings/vote banks ( <i>dharras</i> )	0.1
Self-provision village organisations; community organisations	0.1
Local crime lords	0
Religious leader in the community	0.3
Musalihati council	1.9
Other	0.2
Don't know	0.7
Not answered	0.8
<b>Total</b>	<b>100</b>

Pakistan in terms of population, it seems that the ratio of cases of fraud and theft is also higher in Balochistan. Data for the Pakhtun districts is the lowest with only 11.5 per cent of respondents confirming an experience with theft and fraud. Another finding is that 16.2 per cent of respondents (and/or their family members) had sustained injuries in road accidents. This is also the second highest response (12.9 per cent) for those surveyed in the Pakhtun district. The remainder of the list is self-explanatory, it does not need detailed analysis but is instead left for

readers' observations.

### Access to justice systems in the case of litigation

A multiple response question was put to the small proportion of the survey who had confirmed that they or their family members had experienced any sort of litigation.

As shown in the table from the small proportion of respondents in the rest of Pakistan with experience of litigation, the majority (62.7 per

Have you or your household members experienced any of the following?					
Response	Yes %	No %	Don't know %	No response	Total %
Victim of theft or fraud	24.9	59.9	3	12.3	100
Victim of assault	12.7	65	4.3	18.1	100
Victim of domestic abuse	7.7	70	3.5	18.8	100
Victim of forced marriage	2.7	73.6	4	19.7	100
Victim of tribal customs such as <i>swara/vani/karo kari</i> , bride price and <i>jhag</i>	4.6	71.1	4.7	19.7	100
Family member has gone missing or disappeared	4.8	70.7	4.6	19.8	100
Arrested without warrant by the administration or police	4	70.7	6	19.3	100
Accused of an offence under the Anti-Terrorism Act	1.1	72.3	6.3	20.3	100
Accused of committing sexual abuse/assault (under the Hudood Ordinances or the Pakistan Penal Code)	1.1	71.2	6.7	21	100
Accused of committing any other crime	4	70.4	7	18.6	100
Unlawful detention, search or arrest by the political administration	2.3	71	6.4	7.6	100
Bribery to police, <i>Khasadar</i> or Levies force	5.5	68.1	6.4	20.1	100
Assault or torture by FC or Army	1.3	72.1	6.1	20.4	100
Money recovery, or debt/obligation settlement	1.3	72	6.9	19.9	100
Contract enforcement in business dealings	2	70.8	7.6	19.6	100
Purchase or sale of movable property	2.5	71	6.8	19.7	100
Lease and rental issues: disrepair, eviction etc.	1.5	72	5.7	20.7	100
Family law issues: divorce, maintenance, child custody, guardianship, inheritance	2.3	72	5.4	20.4	100
Dispute with employer for unpaid wages	2.4	71.9	5.3	20.4	100
Debt bondage	2.3	72.6	5	20.1	100
Found involved in sectarian violence	1	73.2	5.3	20.4	100
Found involved in tribal/family clashes	4	70.6	4.5	20.9	100
Injured in an accident (e.g. in motor vehicle etc.)	16.2	63.6	3.4	16.9	100

cent) confirmed that they had approached the police authorities. This is an amazing finding and directly opposes what we found in Pakhtun districts where only 16 per cent confirmed that they had approached a police department. Out of the small proportion of respondents in the rest of Pakistan, 45.9 per cent had confirmed that they had approached their clan to resolve their dispute, and 43.8 per cent confirmed that they had accessed their extended family to resolve their dispute.

Surprisingly, only 15.2 per cent confirmed that they had accessed local informal justice systems

(village *panchayat*, *faislo* and Baloch *jirga*) to resolve their dispute. However, looking at the Pakhtun data from the previous survey, a larger group of respondents (17.5 per cent) who shared that they had experienced litigation, accessed *jirga*.

The comparisons reflect startling contrasts and reveal how informal justice systems are perceived, accessed and trusted in different regions under different cultures and environments. The survey data confirms that the informal justice system is more organised and practised in Pakhtun districts of KP and Balochistan, than in the rest of Pakistan.



Have you or your household members experienced any of the following?					
Household members experienced (Pakhtun districts)	Yes %	No %	Don't know %	No response %	Total %
Victim of theft or fraud	11.5	84	3.3	1.3	100
Victim of assault	5.5	88.7	4.2	1.6	100
Victim of domestic abuse	3.8	88.3	5.3	2.5	100
Victim of forced marriage	0.8	90.9	6.2	2.1	100
Victim of tribal customs such as <i>swara</i> , bride price and <i>jhag</i>	0.6	89.4	7.9	2.1	100
Family member has gone missing or disappeared	2	90	6	2	100
Arrested without warrant by the administration or police	1.9	88.1	7.2	2.8	100
Accused of an offence under the Anti-Terrorism Act	0.8	87.9	7.7	3.7	100
Accused of committing sexual abuse/assault (under the Hudood Ordinances or the Pakistan Penal Code)	0.2	88.3	7.8	3.7	100
Accused of committing any other crime	1.2	88.1	7.9	2.8	100
Unlawful detention, search or arrest by the political administration	0.8	89.7	7	2.6	100
Bribery by police, <i>Khasadar</i> or Levies force	3.6	86.3	7.8	2.3	100
Assault or torture by FC or Army	0.9	89.8	6.9	2.4	100
Money recovery, or debt/obligation settlement	1	87.5	9.3	2.3	100
Contract enforcement in business dealings	2.7	84.8	10	2.4	100
Purchase or sale of movable property	7.3	80.5	9.6	2.5	100
Lease and rental issues: disrepair, eviction etc.	2.5	85.8	8.9	2.9	100
Family law issues: divorce, maintenance, child custody, guardianship, inheritance	1.9	86.9	8.3	2.9	100
Dispute with employer for unpaid wages	0.6	87.5	9.5	2.4	100
Debt bondage	1.1	88	8.5	2.4	100
Found involved in sectarian violence	0.4	89.6	7.2	2.8	100
Found involved in tribal/family clashes	3.2	87.8	6.3	2.7	100
Injured in an accident (e.g. in motor vehicle)	12.9	79.2	4.8	3.1	100

This was also observed during round-table discussions in Lahore, Karachi and Quetta – in Quetta the situation was different and participants from the Baloch ethnic group were more supportive of Baloch *jirga* than compared to those in Punjab and Sindh.<sup>38</sup> Participants of the round-table discussions also revealed that informal justice systems – in their respective regions – are under the influence of an elite

(Sardar, Wadera and Chaudhry) – which people scarcely trust.<sup>39</sup> The majority of participants at the Sindh and Punjab round-tables were more in favour of formal institutions and believed that people should access formal rather than informal remedies. However they were also concerned about the short-comings of the formal justice system.<sup>40</sup>

38) Round-table discussions in Punjab, Sindh and Balochistan, August – December 2013

39) Ibid

40) Round-table discussion in Lahore and Karachi, August 2013

If yes, which of the following justice systems did you access for resolving your conflict/dispute?	
Options	Rest of Pakistan (%)
Provincial police authorities and their local representatives (e.g. SHO, DSP, etc.)	62.7
Superior Courts in Pakistan (Supreme Court and High Courts)	6.8
Lower Courts in Pakistan (Judicial Magistrate, District and Sessions Courts)	13.6
Federal Shariat Court	2
Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	3.7
Ombudsman	2.9
Human Rights Commission of Pakistan	2.4
<i>Khandan</i> (extended family)	43.8
<i>Mohalla</i> (neighborhood)	18.4
<i>Biradari</i> (clan)	45.9
Large local landowner (Village Chaudhry/Malik/Wadera)	23.1
Village council ( <i>akhat, pareh, pareh panchayat, pareon /faislo/Baloch jirga</i> )	15.2
Local influentials (local, provincial, national)	8.2
Local bureaucracy – <i>patwaris</i> (land record keepers); <i>nambardars</i> (village headmen); <i>tehsildars</i>	4.5
District civil bureaucracy (DROs, DCOs, district magistrates etc.)	4.4
Political groupings/vote banks ( <i>dharra</i> s)	1.9
Self-provision village organisations; community organisations	2.1
Local NGOs	2.3
Private dispute resolution mechanisms that charge a fee	1.1
Local crime lords	2.1
Religious leader in the community	2.4
Musalihati Council	0.8
Other	2.2
Don't know	1.8

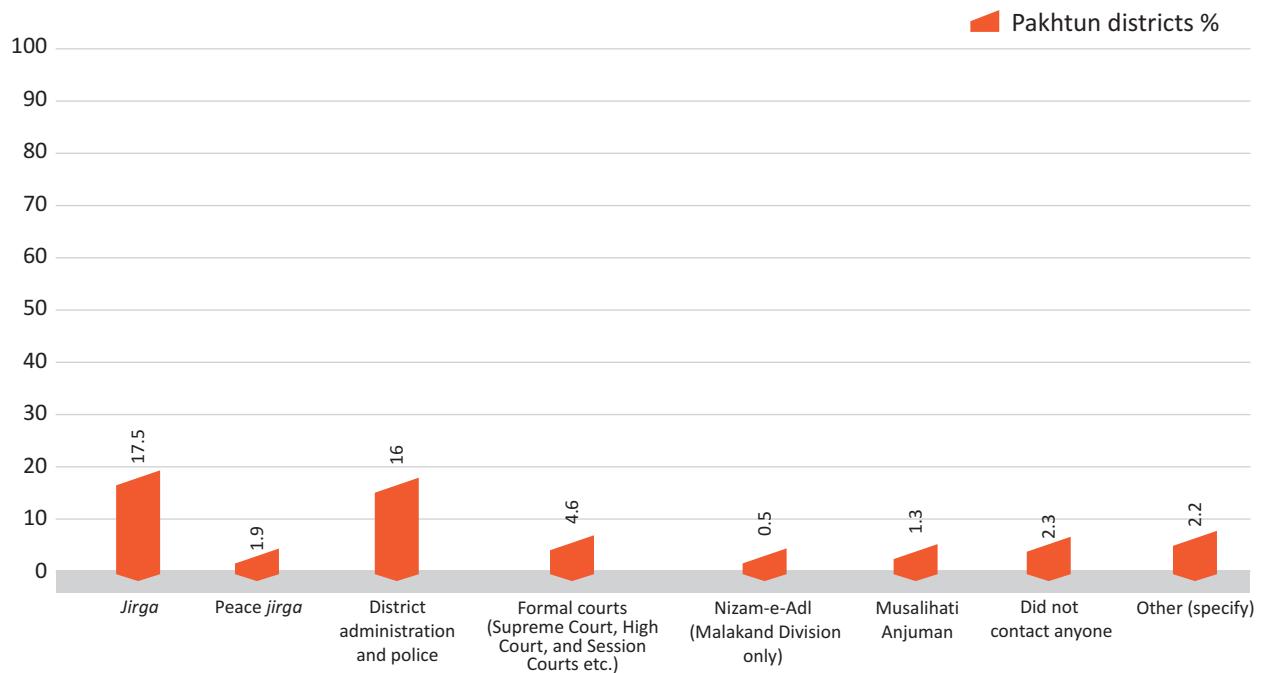
### Levels of satisfaction over dispute resolution systems

This question aims to determine how satisfied respondents and their family members were after experiencing institutions when facing litigation. As this question was asked only of those who had approached and had involved various dispute

resolution systems in resolving their legal issues, logically, the majority that had not responded 'yes' to the previous question were not included. In addition, there is a need to compare 'access' with 'contentment' responses, in order to assess the level of respondent satisfaction.

For instance, the majority (62.7 per cent) chose

## Access to justice systems in the case of litigation - Pakhtun districts



their police department to resolve their legal issues. However, the level of satisfaction of those who were very satisfied or somewhat satisfied was 51.9 per cent, which is low when compared to other options under analysis. Clans were approached by 45.9 per cent of respondents in the previous question, and the level of satisfaction was very high (92.5 per cent were very satisfied or somewhat satisfied).

Extended family was chosen by 43.8 per cent of respondents to resolve their legal issues, and their level of satisfaction was extremely high, topping the list, 94 per cent of respondents very satisfied or somewhat satisfied.

Another interesting finding is that of the 15.2 per cent of respondents who accessed informal justice systems in three provinces, their level of satisfaction was quite high (76.4 per cent). Respondents had little regret in approaching informal justice systems for resolving their legal issues.

Another surprising finding is respondents' access to the lower courts in Pakistan and their experience. Only 13.6 per cent of respondents confirmed that they had accessed lower courts to resolve their legal issues and among those respondents 75.2 per cent shared that they were satisfied with the results – which is also very surprising, as the majority have a negative perception of the lower judiciary.<sup>41</sup>

In recent years, the superior judiciary earned its reputation and prestige due to the lawyers movement during General (Retired) Pervez Musharraf's era, restoring the Chief Justice of Pakistan's Supreme Court. Despite that, only 6.8 per cent of respondents confirmed that they had accessed the superior judiciary for resolving their legal issues – depending on the complexity of the case/dispute – and 71.1 per cent were satisfied with the outcome of their cases.

In Pakhtun districts of KP and Balochistan, more than half (61.4 per cent) accessed Pakhtun *jirga*

41) Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

How satisfied were you with these institutions involvement?					
Options	Very satisfied %	Somewhat satisfied %	Somewhat unsatisfied %	Not satisfied %	Total %
Provincial police authorities and their local	14	37.9	21.9	26.2	100
Superior Courts in Pakistan (Supreme Court and	15.8	55.3	21.1	7.9	100
Lower Courts in Pakistan (Judicial Magistrate,	34	41.2	11.8	13.1	100
Federal Shariat Court	30.4	52.2	8.7	8.7	100
Religious seminary boards (e.g. Wafaq ul	45.2	26.2	11.9	16.7	100
Ombudsman	14.7	29.4	44.1	11.8	100
Human Rights Commission of Pakistan	32.1	39.3	21.4	7.1	100
<i>Khandan</i> (extended family)	63.7	30.3	3.1	2.9	100
<i>Mohalla</i> (neighborhood)	59.3	34	3.8	2.9	100
<i>Biradari</i> (clan)	58.3	34.2	3.5	4.1	100
Large local landowner (Village	31.6	37.6	12.2	18.6	100
Village council ( <i>akhat, pareh, pareh panchayat, pareon</i> ) or <i>faislo</i> or Baloch <i>jirga</i>	47.6	28.8	7.1	16.5	100
Local influentials (local, provincial, national)	12.6	30.5	24.2	32.6	100
Local bureaucracy – <i>patwaris</i> (land record keepers); <i>nambardars</i> (village headmen);	5.8	38.5	25	30.8	100
District civil bureaucracy (DROs, DCOs, district	29.4	21.6	23.5	25.5	100
Political groupings/vote banks ( <i>dharras</i> )	8.3	45.8	29.2	16.7	100
Self-provision village organisations; community	64	16	16	4	100
Local NGOs	29.6	33.3	18.5	18.5	100
Private dispute resolution mechanisms that	15.4	38.5	23.1	23.1	100
Local crime lords	18.5	25.9	22.2	33.3	100
Religious leader in the community	33.3	25	22.2	19.4	100
Musalihati Council	13.3	6.7	46.7	33.3	100

for resolving their legal issues and 94.6 per cent confirmed that they were satisfied with the *jirga* decisions. Comparing Pakhtun districts with the data from the rest of Pakistan, it is evident that Pakhtun *jirga* is more trusted than other informal justice systems in Pakistan. Nonetheless, in the rest of Pakistan, we see that the overwhelming majority access their clan and extended family and other informal mechanisms, as these institutions run similar procedures to other informal justice systems. However, they are not very well organised or established when compared to village council, *faislo* or Baloch *jirga*. The rest of the list is self-explanatory.

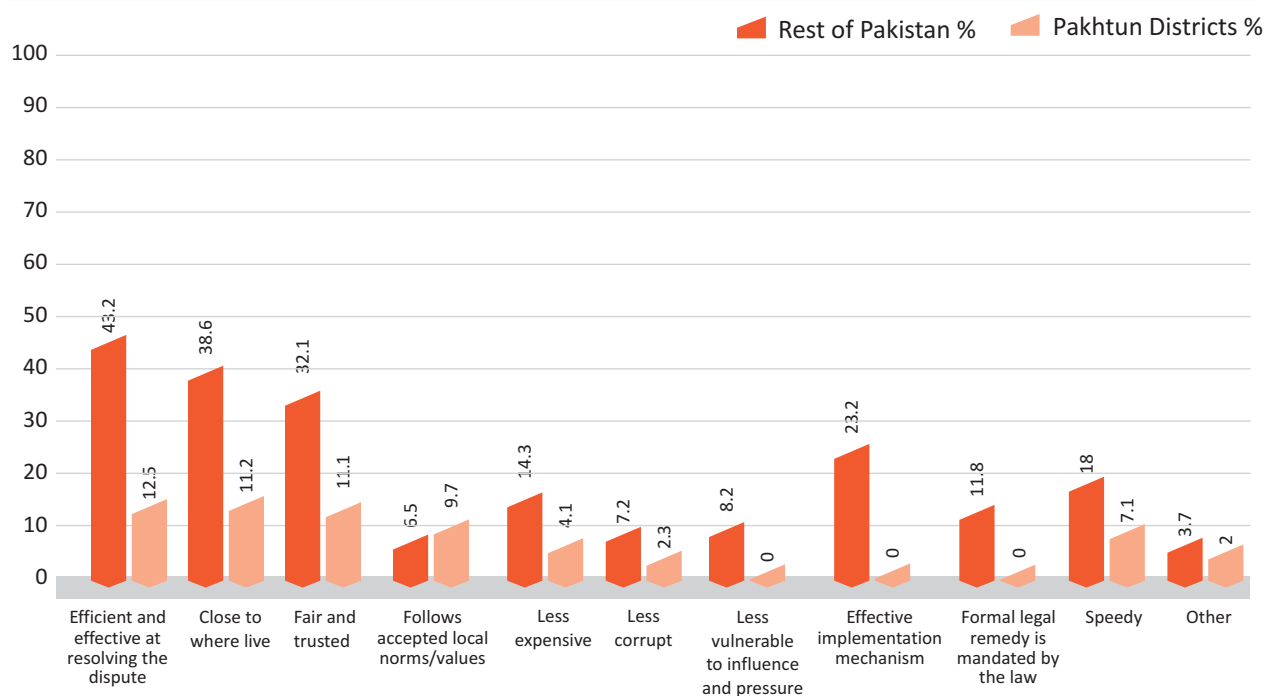
### Reasons for choosing various justice systems to deal with the dispute

Respondents were asked to share their reasons for choosing institutions to resolve their disputes. This question was general and was not asked in the context of each institution.

A high number of respondents (43.2 per cent) said that they chose the system because they believed it would be efficient and effective in resolving the dispute. This was followed by 38.6 per cent who chose it because it was close to where they live and easily accessible.

In addition, 32.6 per cent chose the system

## What were the reasons for choosing the justice systems to deal with the dispute?



because they believed it was fair and they trusted it; 23.2 per cent chose the system because of its effective implementation mechanism; and interestingly, only 18.0 per cent chose the system because they thought it was speedy. The rest of the data is self-explanatory.

### Preference for choosing an institution for criminal cases

This single response question aims to document another dimension of respondents' trust on various institutions in cases of criminal nature. Interestingly, more than half (53.3 per cent) confirmed that they would refer their cases of criminal nature to police authorities. Often, it appears that the first reaction in a criminal case is to visit a police station and lodge an FIR (First Information Report). However, 12.3 per cent confirmed that they would approach their clan if they faced a criminal offence, 7.4 per cent would refer the case to the informal justice system, and 7.4 per cent would approach their extended family in such situations.

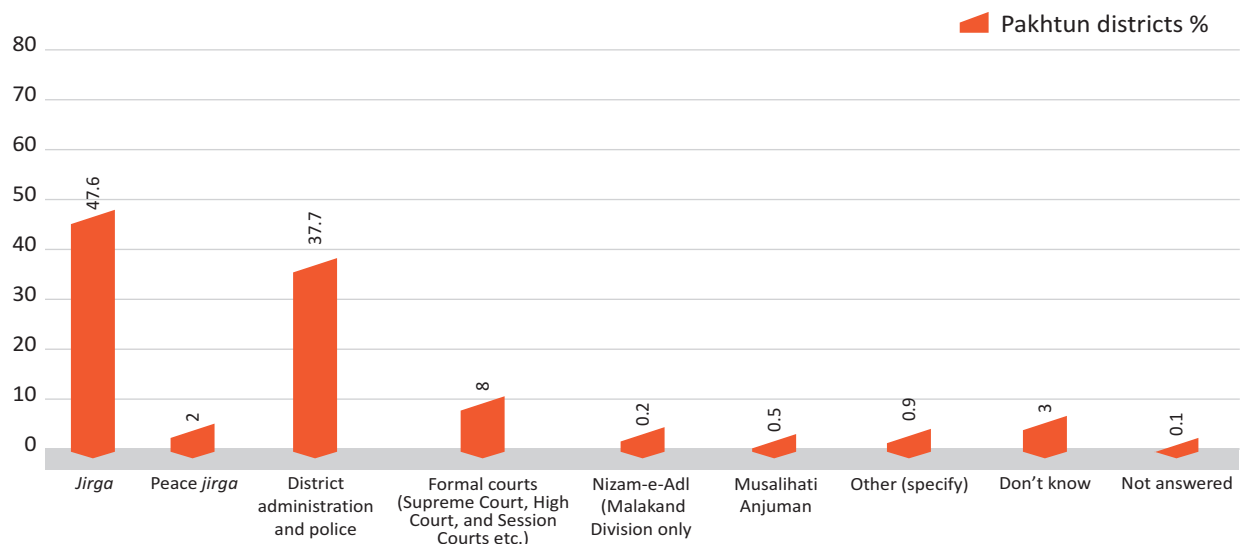
Results from previous questions suggest that police, clan, extended family and informal justice systems are dominant institutions which respondents believed that they could access during times of dispute. The same question was asked of respondents in Pakhtun districts but with fewer options, and with contrasting results. In Pakhtun districts of KP and Balochistan, a higher number of respondents (47.6 per cent) said they would approach 'Pakhtun *jirga*', and 37.7 per cent would approach the district administration and police.

Findings for both regions and surveys draw interesting comparisons. From this we conclude that the police department, where all cases of a criminal nature should go, is approached as a second option in Pakhtun districts. In the rest of Pakistan, people either have more trust in the police department, or they may not have other options available to them.

The rest of the list is self-explanatory and does not need detailed analysis but instead is left for readers' observations.

Where would you refer your serious criminal dispute (Murder/Theft/Robbery etc) for resolution?	
Options	Rest of Pakistan (%)
Provincial police authorities and their local representatives (e.g. SHO, DSP, etc.)	53.3
Superior Courts in Pakistan (Supreme Court and High Courts)	2.1
Lower Courts in Pakistan (Judicial Magistrate, District and Sessions Courts)	3.3
Federal Shariat Court	0.3
Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	0.5
Ombudsman	0.3
Human Rights Commission of Pakistan	0.1
<i>Khandan</i> (extended family)	7.4
<i>Mohalla</i> (neighbourhood)	0.3
<i>Biradari</i> (clan)	12.3
Large local landowner (Village Chaudhry/Malik/Wadera)	6.9
Village <i>panchayat</i> ( <i>akhat pareh</i> , <i>pareh panchayat</i> , <i>pareon /faislo</i> /Baloch <i>jirga</i> )	7.4
Local influentials (local, provincial, national)	1.5
Local bureaucracy – <i>patwaris</i> (land record keepers); <i>nambardars</i> (village headmen); <i>tehsildars</i>	0.5
District civil bureaucracy (DROs, DCOs, district magistrates etc.)	0.1
Political groupings/vote banks ( <i>dharra</i> s)	0
Private dispute resolution mechanisms that charge a fee	0
Local crime lords	1.9
Religious leader in the community	0.1
Musalihati Council	0.4
Other	0.3
Don't know	0.9
Not answered	0.2
<b>Total</b>	<b>100</b>

### Preference for choosing an institution for criminal cases - Pakhtun districts



### Preference for choosing an institution for civil cases

In Pakistan, disputants rarely take their civil disputes to formal institutions. Instead they rely predominantly on informal institutions such as their clan, extended family, village council, landlords etc.<sup>42</sup>

The survey aimed to document how respondents react to the question, 'which institution would you

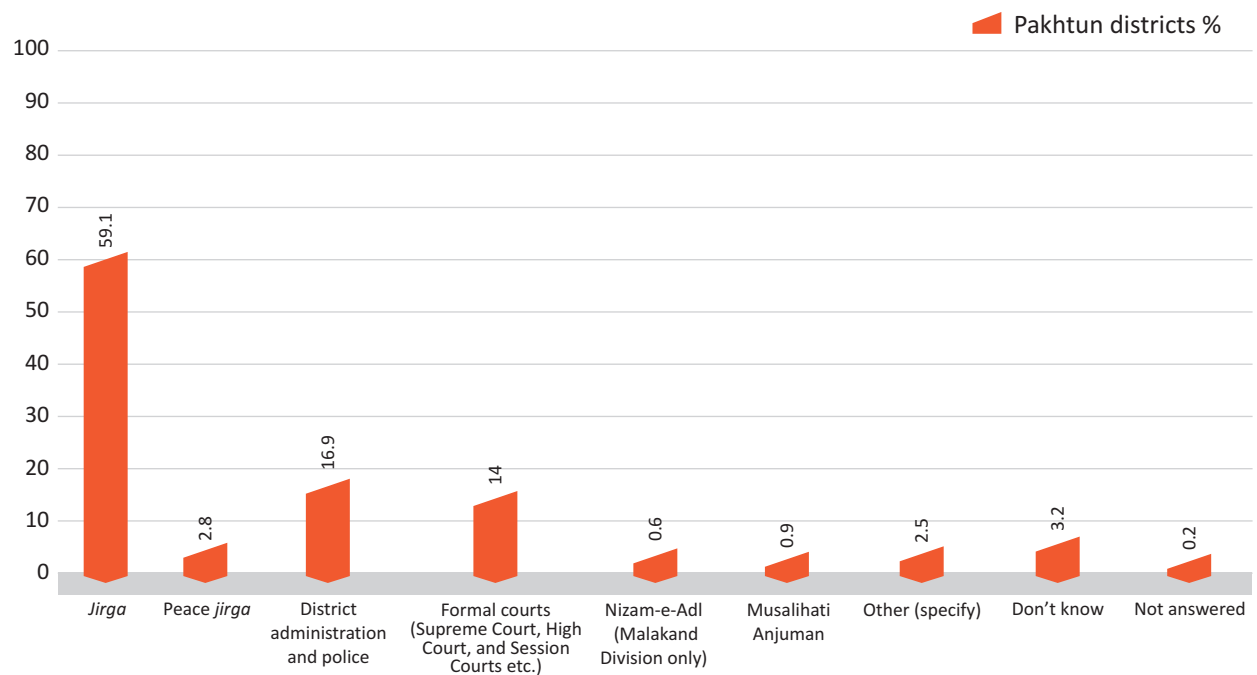
prefer to use for a civil case?'. A higher percentage of respondents (24.5 per cent) confirmed that they would resolve their civil cases through their extended family, followed by 17 per cent who chose their clan.

In the previous question, 53.3 per cent of respondents confirmed that they would prefer to take their criminal cases to police authorities. However, only 15.3 per cent of respondents said they would prefer to take civil cases to police

Where would you refer your civil dispute (land disputes/divorce etc) for resolution?	
Options	Rest of Pakistan (%)
Provincial police authorities and their local representatives (e.g. SHO, DSP, etc.)	15.3
Superior Courts in Pakistan (Supreme Court and High Courts)	2.5
Lower Courts in Pakistan (Judicial Magistrate, District and Sessions Courts)	8
Federal Shariat Court	0.5
Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	0.6
Human Rights Commission of Pakistan	0.3
<i>Khandan</i> (extended family)	24.9
<i>Mohalla</i> (neighbourhood)	0.7
<i>Biradari</i> (clan)	17
Large, local landowner (Village Chaudhry/Malik/Wadera)	10.4
Village council ( <i>akhat, pareh, pareh panchayat, pareon /faislo/Baloch jirga</i> )	8.9
Local influentials (local, provincial, national)	1.3
Local bureaucracy – <i>patwaris</i> (land record keepers); <i>nambardars</i> (village headmen); <i>tehsildars</i>	2.1
District civil bureaucracy (DROs, DCOs, district magistrates etc.)	0.1
Political groupings/vote banks ( <i>dharras</i> )	1.1
Self-provision village organisations; community organisations	0.1
Local NGOs	0.1
Local crime lords	0.1
Religious leader in the community	0.4
Musalihati Council	1.7
Other	0.2
Don't know	3.7
Not answered	0.2
<b>Total</b>	<b>100</b>

42) Interview with Advocate Tahir Iqbal, Legal Reform Forum (NGO), 25 August 2013, Karachi

### Preference for choosing an institution for civil cases - Pakhtun districts (%)



authorities, and 10.4 per cent said they would prefer to approach local large landowners for settling their civil disputes.

In considering Pakhtun *jirga*, which was the preferred choice by 59.1 per cent of respondents in Pakhtun districts, only 8.9 per cent of respondents in the rest of Pakistan chose to refer their civil cases to informal justice systems such as the village *panchayat*, *faislo*, Baloch *jirga*. The rest of the list is self-explanatory and does not need detailed analysis, but is instead left for readers' observations.

#### Respondents' inclination towards different justice systems

To delve even deeper, this survey sought to understand which formal and informal dispute resolution systems respondents were inclined to choose, depending on the nature of the dispute. They were asked which system they would prefer if faced with a dispute. Several options were provided to the respondents.

A high percentage of respondents (38.8 per cent) said they would take all criminal cases to formal courts (Supreme court, High Courts, Session Courts etc); 31 per cent confirmed that they would take to the formal courts cases of a complex nature that informal justice systems could not resolve; 25.6 per cent confirmed that they would take cases concerning land or property to the formal courts; and 15.5 per cent believed that they would take all cases (both civil and criminal) to the formal courts.

The most significant result of these findings was in respondents' preferences in criminal cases. The data showed that respondents preferred formal courts (38.8 per cent) over informal justice systems (9.2 per cent) for resolving criminal cases. They believed formal courts have the authority and knowledge to resolve such cases while informal justice systems lack not only the authority to implement decisions, but they are ill-equipped with legal knowledge to resolve criminal cases.

The data also confirmed that informal justice



What types of cases would you prefer to take to the formal courts (Supreme Court, High Court, Session Court etc) and what type of cases would you prefer to take to the informal dispute resolution mechanism?				
dispute resolution mechanisms? Options	Rest of Pakistan (2013)		Pakhtun Districts (2012)	
	Formal (%)	Informal (%)	Formal (%)	Informal (%)
All cases	15.5	18.5	9.5	38
All cases of public interest	4.7	6.3	2.1	22.5
Only complex cases that the informal systems cannot/could not solve	31	12.2	44.5	5.8
All cases of crime	38.8	9.2	9.8	4
Cases concerning land or other property	25.6	34.1	12.6	20.4
Certain family cases, for example, divorce	12.1	43	3.8	20
Business and commercial transactions	11.1	6.9	14.5	8.6
None	10.4	11.2	0.8	0.6
Other	1	1.9	11	8.9
Don't know	5.8	7.3	0.1	0.1

systems were preferred by respondents to resolve cases concerning property: 25.6 per cent preferred formal systems and 34.1 per cent preferred informal systems. In certain family cases such as divorce, 12.1 per cent preferred formal systems and 43 per cent (a significant majority) preferred informal systems. Another interesting comparison was in respondents' preferences in cases of a complex nature – 31 per cent preferred formal systems and only 12.2 per cent preferred informal systems.

In comparison with the 2012 survey of Pakhtun districts, the results are very different from the survey from the rest of Pakistan.

For all cases, 38.0 per cent of respondents preferred the informal justice system and only 9.5 per cent preferred the formal justice system. With regards to complex cases, 44.5 per cent of respondents preferred to approach the formal courts, and 5.8 per cent preferred the informal justice system. In relation to cases of public interest, 22.5 per cent preferred to approach the *jirga* and only 2.1 per cent preferred the formal courts. Another interesting finding is respondents' preference in family cases. Twenty per cent of

respondents preferred to take family cases (such as divorce) to *jirga* and only 3.8 per cent preferred to take such cases to the formal justice system.

## CONCLUSION

Combining the evidence gathered from the survey, key informants interviews and round-table discussions, conclusions for the rest of Pakistan and Pakhtun districts can be drawn differently.

It is evident that ordinary people have a good understanding of access to justice, and the media seems to have played a pivotal role in educating the masses on this subject. However, the concept of justice and its inaccessibility is clear when analysing the data.

For instance, in the rest of Pakistan respondents show little trust of informal justice systems (village *panchayat*, *faislo* and Baloch *jirga*) as compared to formal justice systems. However, common perceptions favour the use of extended family, neighbourhood and clan – which are also informal institutions and which have shared a fairly large burden of cases with formal and informal justice systems. If we are to consider extended family,

neighbourhood and clan as forums of informal justice systems where a higher percentage of people take their cases, then it can be safely argued that the majority in Pakistan prefers the informal mechanism – despite a lower preference shown for (village *panchayat*, *faislo* and Baloch *jirga*).

With regards to respondents from the Pakhtun dominated districts of KP and Balochistan, results are pretty straightforward and clear: they prefer Pakhtun *jirga* in all cases – both criminal and civil.

With regards to disputes of a petty nature and the state's institutions inability to dispense justice on time and with affordability, sometimes leading to widespread anger, frustration, and violence, Pakistan is a case in point – formal judicial systems are failing to provide access to justice for all. Cases, which could easily be concluded and amicably resolved, often linger on for decades and develop more complexities. Poor people have little or no access to justice, whereas the wealthy elite not only dominate the system but are also part of the law-making. Nevertheless, the data still shows that people generally prefer to approach the formal courts for criminal and complex cases, and that they use other options as a last resort.

Parallel informal justice systems that lack technical knowledge and flexibility often violate human rights, especially in relation to women and minority groups.

The Pakistani justice system – both formal and informal – is in need of a complete overhaul. It is high time that the government of Pakistan takes measures to improve and reform its justice sector. Please refer to Chapter 7 for more details.

# CHAPTER 4

## EFFICIENCY AND EFFECTIVENESS OF FORMAL AND INFORMAL JUSTICE SYSTEMS



# CHAPTER 4

## EFFICIENCY AND EFFECTIVENESS OF FORMAL AND INFORMAL JUSTICE SYSTEMS

### INTRODUCTION

This chapter argues that traditional institutions (the informal justice system, extended family, clans and neighbourhoods etc.) and customary laws are strong components of social control in under-developed societies like Pakistan. This chapter also analyses the weaknesses of the formal judicial system, which is based on English common law inherited from the British. In presenting survey findings concerning trust, effectiveness and fairness, this chapter examines the perception of Pakistani society regarding the legality and legitimacy of formal and informal systems of justice.

At present, justice-related services in Pakistan are offered by the state's sponsored judicial system, whereas the informal justice system is operational in all of Pakistan, especially in rural areas, without the state's patronage.

Informal justice systems include Pakhtun *jirga* that operates in FATA, KP and Balochistan's Pakhtun populated districts, while *panchayat*, *faislo* and Baloch *jirga* are practised by communities in Punjab, Sindh and in Baloch areas of Balochistan, respectively. With the exception of

FATA, the formal system described in previous chapters applies to the entire country. In this chapter the descriptions and analysis of the two disparate forms of justice systems in the survey area are based upon a conceptual division between legality and legitimacy.

The principle of legality is easier to define and comprises the body of law established by the congress or parliament of the nation under a constitutional framework. Thus, its focus is on the written rules that comprise a state's system of statutory law, and the application by decision-makers of those rules – which have been established beforehand – in a manner that does not entail discretionary departures from established law. In other words, the principle of legality is closely related to the formalist approach to the rule of law, which tends to focus on purely formal characteristics that a legal system must possess, and shies away from assessments of the fairness of specific laws or legal decisions. According to Friedmann (1994) law is a codification and replacement of traditional authority.<sup>1</sup> That does not alter the fact that the courts have to decide many cases, often with respect to immensely complex and interwoven problems.<sup>2</sup> Sometimes the legitimacy of a court

1. L.M. Friedmann, *The Republic of Choice. Law, Authority and Culture*, p. 17. Harvard University Press: Cambridge Mass., 1994a (1990).

2. J.L.M. Gribnau, Legitimacy of the Judiciary <https://www.yumpu.com/en/document/view/14735741/legitimacy-of-the-judiciary-jlm-gribnau-i-b-2-legitimacy->

decision is questioned because a decision in a case runs contrary to public opinion that is often quite superficially informed by the media.<sup>3</sup> Another problem is that formal legal procedures may take a long time, whereas the substance of individual consent to a process of decision-making, that may initially attach to and legitimate outcomes, thins as the process expands in scope and lengthens in time.<sup>4</sup>

On the other hand, the principle of legitimacy is linked to criteria such as clarity, comprehensible, non-arbitrary and non-retrospective application. The ability of a legal system to deliver justice in a form that is acceptable to the people it governs is necessary for gaining legitimacy. Indeed, it is the notion of justice that makes laws meaningful to ordinary people in their day-to-day lives. But the idea of justice is different for each society based on its particular assessment of 'right' versus 'wrong'. In other words, it is the values, norms, and expectations of the people toward the legal system that convey legitimacy. As one would expect, in each society the notions of justice and how it is rendered are not static, but rather subject to change in response to evolving social, political and economic conditions. In the end, for a particular legal system to be considered just, the present normative values, sensibilities and expectations of a society must be reflected in the legal system. In other words, social definitions of justice should coincide with the institutions, laws, and procedures of a state's justice system. In this respect, legitimacy conforms with substantive conceptions of the rule of law, which looks to the outcome of laws against criteria such as justness or fairness.

Legality and legitimacy can further be conceptualised and ensured on the basis of a system's effectiveness and efficiency.

According to Nonso Okafo (2009)<sup>5</sup>

'A system based on Customary Law, the English Common Law, Constitutionalism, Religious Law, or any other philosophy, has to be effective and efficient to be sustained over a long period of time'.

This chapter analyses how formal and informal legal remedies are available to, and perceived by, the people of Pakistan, on the basis of their efficiency and effectiveness that make such institutions legal and legitimate.

## Survey findings and analysis

### History of operations of various formal and informal institutions

The institutions listed above have been operating in the survey respondents' areas for differing lengths of time.

The survey aimed to record respondents' opinion on how long these institutions have been operating. This would indicate their level of knowledge about these institutions and the way they approach them. Background information on these institutions is included in chapter 3 of this study. The list is self-explanatory.

### Effectiveness of institutions dispensing justice and other services

The opinion of 2700 adult respondents from Punjab, Sindh and Baloch districts of Balochistan was recorded with regards to their views on the effectiveness of the 22 formal and informal dispute resolution systems listed in the table.

The data clearly demonstrates that overall, respondents viewed informal institutions as more

3. Ibid

4. Vining 1995, p.280. In urgent cases, a party can resort to a speedy civil or administrative procedure (interim injunction proceedings or provisional relief) before the president of a district court; see Blankenburg and Bruinsma 1991, p. 23 ff.

5. Nonso Okafo, *Reconstructing Law and Justice in a Postcolony*, Ashgate Publishing Company, p.9. (2009)

How long have any of the following informal justice systems been operating in your community/area?								
Option	0-5 years %	6-25 years %	26-50 years %	50+ years %	Not exist %	Don't know %	Not answered %	Total %
Local/village <i>panchayat</i> or <i>faislo</i> or Baloch <i>jirga</i>	1.2	4.1	6.4	52.3	14	20.1	1.9	100
<i>Khandan</i> (extended family)	1.7	4.6	11.5	62.7	2.4	14.8	2.4	100
<i>Mohalla</i> (neighbourhood)	2.4	5.7	13.9	53.4	3.7	17.4	3.5	100
<i>Biradari</i> (clan)	1.4	4.1	10.7	59.6	4.3	17.1	2.8	100
Self-provision village organisations; community organisations	6.6	8.7	5.4	3.6	26.9	44.8	3.9	100
Private dispute resolution mechanisms that charge a fee	0.6	3.6	2.7	2.2	34.1	52.1	4.7	100
Local crime lords	0.5	4.7	4.9	6.6	29.6	48.9	4.9	100
Religious leader in the community	1.4	8.8	8.9	24.6	11	40.4	5	100
Large local landowner (Village Chaudhry, Malik, Wadera)	0.7	3.9	11.3	43.4	9.6	27.5	3.6	100
Local influentials (local, provincial, national)	1.3	7.9	12.7	21.9	11.3	40.3	4.7	100
Local NGOs	14.3	13	4	2.2	26	37.1	3.4	100
Musalihati Council	1.3	2.6	0	0	31.9	59.1	5.1	100
Political groupings/vote banks ( <i>dharra</i> s)	1.2	6.5	12.9	17.7	12	45.6	4	100

effective. Out of the 22 institutions listed in the table, a few are worth mentioning. (Please note that for ease of analysis, the data of 'very effective' and 'somewhat effective' is combined to be analysed as 'effective').

Looking at the list of institutions and respondents' reaction, clan, as an informal institution, was shown to be seen as an effective body when dealing with dispute resolution, according to the overwhelming majority (80.3 per cent).

According to two-thirds of respondents (76.2 per cent), the informal institution of extended family, was an effective body to resolve legal issues. 73.3 per cent believed that the informal institution of the neighbourhood was an effective body in resolving disputes.

Surprisingly, 66.3 per cent of respondents believed that informal justice systems (*village panchayat*, *faislo* or Baloch *jirga*) are effective institutions for dispensing justice. It is surprising because other data sets support assumptions that informal justice systems are rarely approached for resolving legal issues.

In addition, 50.1 per cent of respondents identified

large local landowners as people who were effective in resolving disputes. This is understandable, as, according to participants of round-table discussions, large landowners exert their influence for political gain, hence providing services to locals for resolving disputes.<sup>6</sup>

Out of the 22 institutions, the top five effective institutions in the list identified by the majority of respondents were informal institutions. Formal institutions remained lower in ranking for this particular question.

As far as Pakistan's formal institutions were concerned, 56.3 per cent of respondents believed that the lower courts were effective in dispensing justice, and 54.8 per cent believed the superior courts were effective institutions for dispensing justice. The police department was identified by less than half of respondents (41.2 per cent) as effective. Interestingly, in the previous chapter, the police was one of the institutions that most people said they would turn to (in order to make their disputes official). However, this question discusses the effectiveness of institutions – respondents showed a clear lack of faith in the effectiveness of the police department.

6. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

For the following systems please indicate how effective they are for dispensing justice.							
Institutions/options	Very effective %	Somewhat effective %	Somewhat ineffective %	Very ineffective %	Don't know %	Not answered %	Total %
Provincial police authorities and their local representatives (e.g. SHO, DSP)	5.3	35.9	24.3	28.3	4.9	1.3	100
Superior Courts in Pakistan (Supreme Court and High Courts)	19.1	35.7	12.4	3.6	26.4	2.8	100
Lower Courts in Pakistan (Judicial Magistrate, District and Sessions Courts)	18.1	38.2	13.2	8.5	20.4	1.5	100
Federal Shariat Court	7.5	16.1	4.5	2.6	65.3	4	100
Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	10.8	16.2	5.7	3.5	60.1	3.7	100
Ombudsman	2.9	13.6	4.7	3	71.8	4	100
Human Rights Commission of Pakistan	7.5	17.5	5.4	3.7	62.5	3.3	100
<i>Khandan</i> (extended family)	41.9	34.3	4.4	1.7	14.4	3.4	100
<i>Mohalla</i> (neighbourhood)	31.7	41.6	7.6	2.7	11.7	4.7	100
<i>Biradari</i> (clan)	40.2	40.1	5.6	2.3	9	2.8	100
Large local landowner (Village Chaudhry/Malik/Wadera)	14.7	36.1	15.9	14.5	15.7	3	100
Village <i>panchayat</i> ( <i>akhat, pareh, pareh panchayat, pareon</i> ) / <i>faislo</i> or Baloch <i>jirga</i> )	22.3	34	11.1	10.6	18.6	3.5	100
Local influentials (local, provincial, national)	6.3	26.1	17.9	18.2	28.1	3.3	100
Local bureaucracy – <i>patwaris</i> (land record keepers); <i>nambardars</i> (village headmen); <i>tehsildars</i> ( <i>Tehsil</i> administration/revenue collection heads) or others	3.5	16.3	21.5	20.7	34.4	3.7	100
District civil bureaucracy (DROs, DCOs, district magistrates etc.)	6	16.6	16.9	13.7	43.1	3.6	100
Political groupings/vote banks ( <i>dharras</i> )	3.2	14.2	15.9	17.4	46	3.3	100
Self-provision village organisations; community organisations	6.4	16.3	5.6	4.9	63.1	3.8	100
Local NGOs	8.4	17.3	6	4.1	61.4	2.8	100
Private dispute resolution mechanisms that charge a fee	1	7.2	3.9	5.9	78.9	3.1	100
Local crime lords	1	5.4	7.9	10	72.3	3.3	100
Religious leader in the community	11.8	23.4	6.1	3.1	52.3	3.3	100
Musalihati Council	1.8	7.5	4.2	3.4	79.9	3.2	100

### Fairness of formal and informal institutions dispensing justice services

Survey respondents were asked to rate the fairness of the various formal and informal institutions listed below. This data can be triangulated with the previous question and there is a need to analyse whether the results for this question reflect the results of the previous question.

Interestingly, extended family tops the list: the majority of respondents (56.1 per cent) believed

that it's a fair institution when resolving people's legal issues. Clan was second, identified by 55.9 per cent of respondents as an institution which provides fair services to the local communities. In third position, it's the neighbourhood, identified by 52.9 per cent of respondents, and in fourth place lies informal justice systems (*panchayat, faislo* and Baloch *jirga*) identified by 48.4 per cent.

46.7 per cent of respondents believed that the lower courts are fair in dealing with people's legal issues, while 44.7 per cent of respondents

For the following systems please indicate how fair they are for resolving disputes.							
Response	Very fair %	Somewhat fair %	Somewhat unfair %	Very unfair %	Don't know %	Not answered %	Total %
Provincial police authorities and their local representatives (e.g. SHO, DSP, etc.)	15.9	28.1	27.7	22.7	3.9	1.7	100
Superior Courts in Pakistan (Supreme Court and High Courts)	12.7	31.7	14.9	11.8	25.9	3	100
Lower Courts in Pakistan (Judicial Magistrate, District and Sessions Courts)	9.9	36.8	17.4	14.6	19.4	1.9	100
Federal Shariat Court	4.2	14.3	6.3	5.9	65.2	4.1	100
Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	6.1	16.1	6.6	7.7	59.5	3.9	100
Ombudsman	3.1	14	4.3	3.7	71	3.9	100
Human Rights Commission of Pakistan	5.4	17.1	8.9	4.5	60.4	3.7	100
<i>Khandan</i> (extended family)	26.9	29.2	15.4	14.6	11.4	2.4	100
<i>Mohalla</i> (neighbourhood)	19.9	32.9	18.3	9.8	14.2	4.9	100
<i>Biradari</i> (clan)	25.8	30.1	17.4	13	11	2.8	100
Large local landowner (Village Chaudhry/Malik/Wadera)	14.4	27.3	22	13.6	19.9	2.7	100
Village panchayat ( <i>akhat, pareh, pareh panchayat, pareon</i> ) / <i>faislo</i> or Baloch <i>jirga</i>	20.3	28.1	15.6	11.3	22	2.7	100
Local influentials (local, provincial, national)	9.1	20.6	24	14.1	28.9	3.4	100
Local bureaucracy – <i>patwaris</i> (land record keepers); <i>nambardars</i> (village headmen); <i>tehsildars</i> ( <i>Tehsil</i> administration/revenue collection heads) or others	8.7	14.9	23.5	14.8	34.7	3.3	100
District civil bureaucracy (DROs, DCOs, district magistrates etc.)	11	19	18.1	8.6	39.9	3.4	100
Political groupings/vote banks ( <i>dharras</i> )	8.6	11.7	19.3	13.4	43.5	3.4	100
Self-provision village organisations; community organisations	4.4	15.9	8	6.3	61.5	3.9	100
Local NGOs	6	15.1	8.3	8.1	59.3	3	100
Private dispute resolution mechanisms that charge a fee	2.5	7.4	4.8	5.9	76.4	3	100
Local crime lords	2.6	5.4	8.3	8.8	72.1	2.8	100
Religious leader in the community	9.9	23.5	5.7	4.1	53.9	3	100
Musalihati Council	2.9	7.4	3.3	1.7	81.8	3	100

identified the superior judiciary as a fair institution dispensing justice. Also worth mentioning is the police department, which was identified by 44.4 per cent of respondents as a fair institution.

The findings here provide interesting dimensions. It appears that overall, the results of this question complement the previous question's findings.

### Segments of Pakistani society which display more faith in the informal justice system

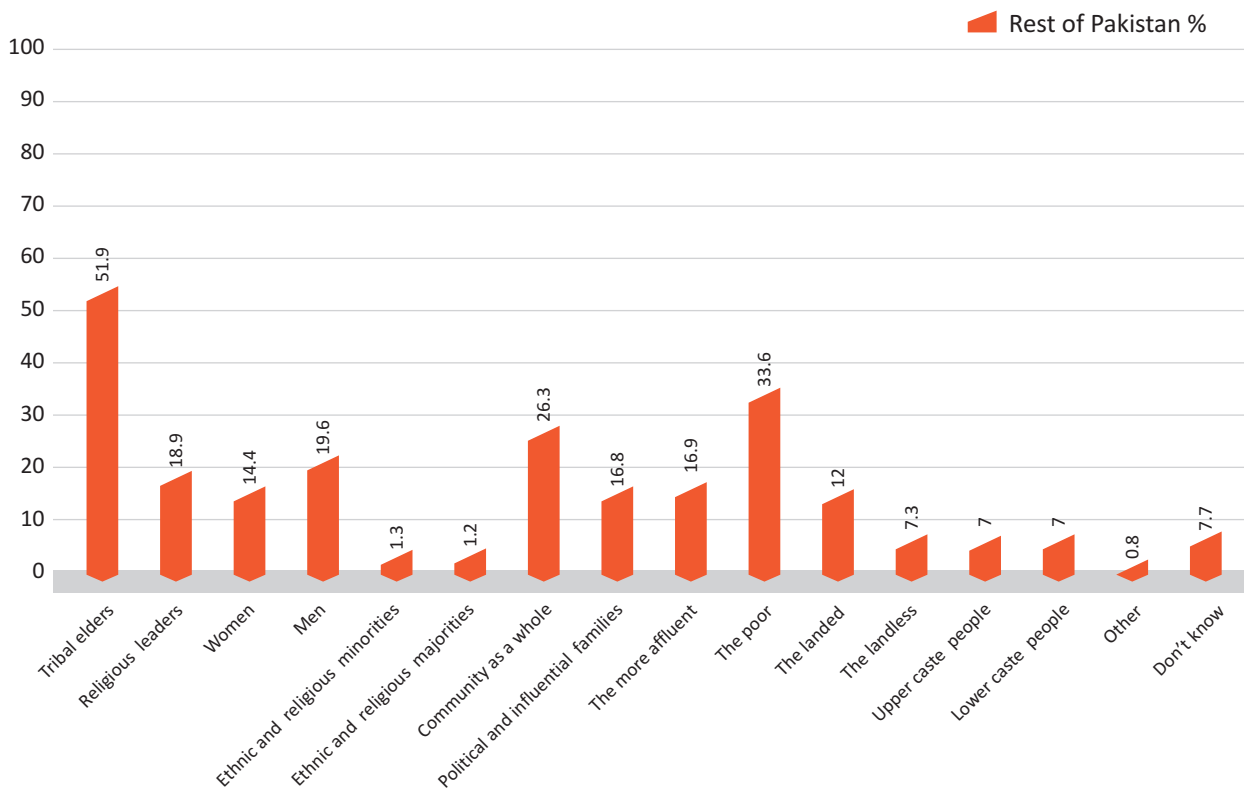
Respondents were allowed to select more than one institution when sharing their opinion about

which segments of society had faith in the informal justice system. According to the survey results, more than half (51.9 per cent) believed that tribal elders displayed the highest levels of faith in the informal justice system as compared to other members of society. This was followed by 33.6 per cent who thought that poor members of society displayed more faith in the informal justice system. This indeed makes sense, as the informal justice system is viewed as much cheaper, more accessible and quicker than the formal justice system.<sup>7</sup> The 'community as a whole' was viewed by 26.3 per cent of respondents to show faith in the informal justice system.

7. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013



## Which sections of the community display more faith in informal dispute resolution systems?



Other survey results are self-explanatory. Nonetheless, it is evident from the survey data that respondents show a trend which supports the typical narrative.

As explained earlier, poor people in Pakistani society face issues accessing the formal judicial system and its related institutions, whereas the informal justice system, despite all its flaws, is more accessible and feasible for poor people. According to round-table discussion participants, the informal justice system is very much rooted in Pakistan's tribal structure and mentality.<sup>8</sup> Interestingly, respondents seemed to concur with this.

### 'The informal justice system is a speedy and affordable justice system'

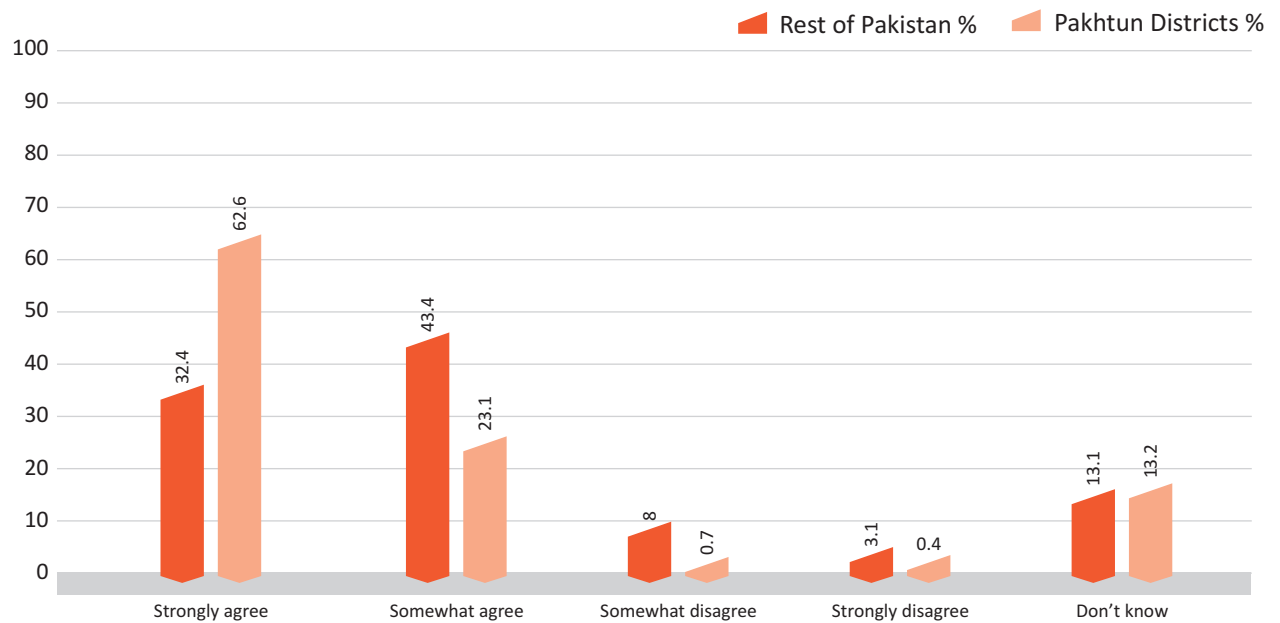
One of the strongest arguments favouring the

8. Ibid  
9. Ibid

informal justice system is its ability to provide people with a quick and affordable justice service, according to the majority in the round-table discussions.<sup>9</sup> To test this notion, respondents were asked to share their view of the statement, 'the informal justice system is a speedy and affordable justice system'. The data was further compared with the data from Pakhtun districts of Pakistan.

Findings show that more than three quarters (75.8 per cent) agreed with this notion whereas only 11.1 per cent disagreed. In the Pakhtun districts of Pakistan 85.7 per cent of respondents agreed with the notion – 10 per cent more than in the rest of Pakistan – whereas only 1.1 per cent of respondents disagreed in Pakhtun districts. The data shows that people in Pakhtun districts are more in agreement with the statement, as compared to those in the rest of Pakistan.

**‘The informal justice system is a speedy and affordable justice system’**



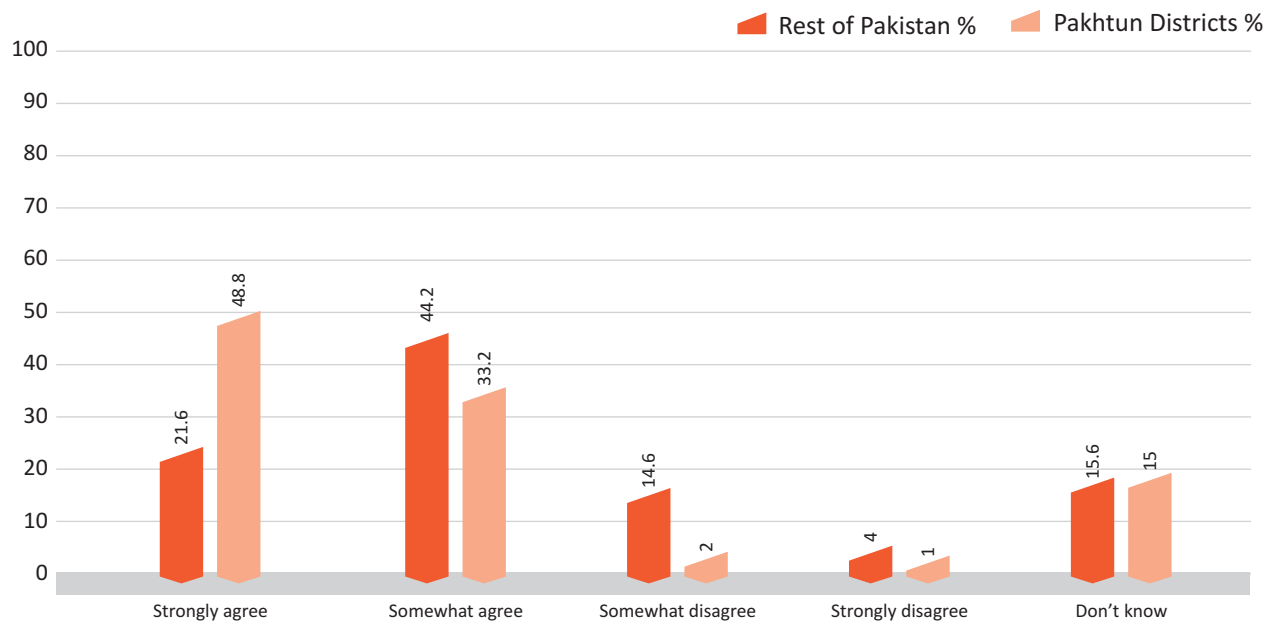
**‘The informal justice system compensates victims fairly’**

A restorative informal justice system compensates victims, whereas the state's retributive formal judicial system punishes the offender. The focus of the informal justice system is on reconciling both disputants, compensating the victim and putting a

burden of responsibility on the offender.

The notion that 'the informal justice system compensates victims fairly' was put to respondents and then compared with the previous study conducted in Pakhtun districts of Pakistan.

**‘The informal justice system compensates victims fairly’**



In the rest of Pakistan, 65.8 per cent agreed with the notion while only 18.4 per cent opposed it. We see more acceptance in Pakhtun districts of Pakistan, where 82 per cent agreed with the notion as compared to only 3 per cent who opposed it.

Therefore, it can be safely established that Pakhtun *jirga* is much stronger, better organised and more widely accepted in Pakhtun districts of Pakistan, as compared to other informal justice systems operating in other regions of Pakistan. This survey also establishes the fact that the majority in Pakistan agreed that informal justice systems compensate victims (the formal justice system of Pakistan does not).

### Salient features of the informal justice system – testing some more notions of justice systems

This section helps to understand how respondents perceived the informal justice system's positive

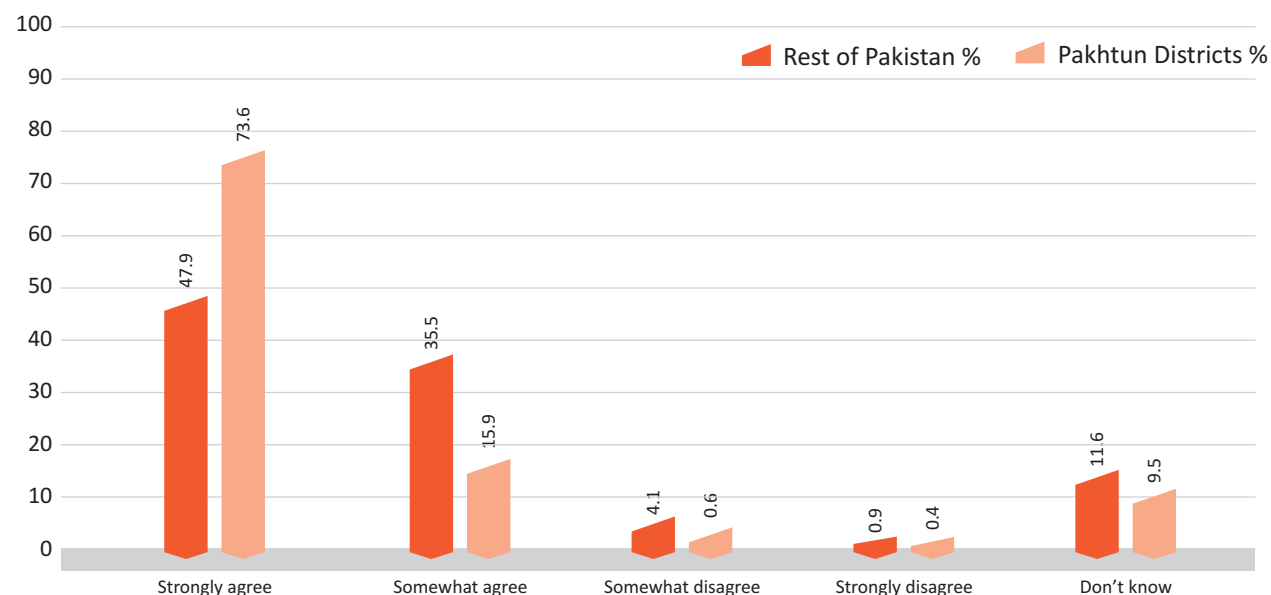
and negative features. Various notions were tested under the survey to gather respondents' opinions.

#### Notion a) 'Both parties are provided with equal opportunities to express their views in the informal dispute resolution system process.'

It is crucial to know whether both parties are given opportunities to express their viewpoints in proceedings of the informal justice system. This aspect seems to have been addressed under the formal justice system according to the Rule of Law principles, at least on paper. However, in reality, the situation is very different.<sup>10</sup> Rich people in court are given ample opportunities to express their views, whilst poor and vulnerable groups receive little – if any – opportunity.<sup>11</sup>

Survey results amazingly support the notion that both parties are provided with equal opportunities to express their views in the

#### a) 'Both parties are provided with equal opportunities to express their views in the informal dispute resolution system process.'



10. Idid  
11. Idid

informal justice system. A staggering 83.4 per cent of participants in the rest of Pakistan agreed with the notion. In Pakhtun districts, 89.5 per cent of respondents agreed with the notion.

It is surprising to know the common view on this dimension of the informal justice system. However, legal experts and human rights activists who are often well educated with a good understanding of the process, have a very different view. In general, they believe that the wealthy elite dominate the process, while poor people are not given the opportunity to express themselves openly.<sup>12</sup>

#### **Notion b) 'Nepotism or favouritism influences the decision-making process of the informal dispute resolution system.'**

Participants of the round-table discussions and experts who were interviewed alleged that members of the informal justice system are involved in favouritism and nepotism.<sup>13</sup> This could be true for both the formal and informal system,

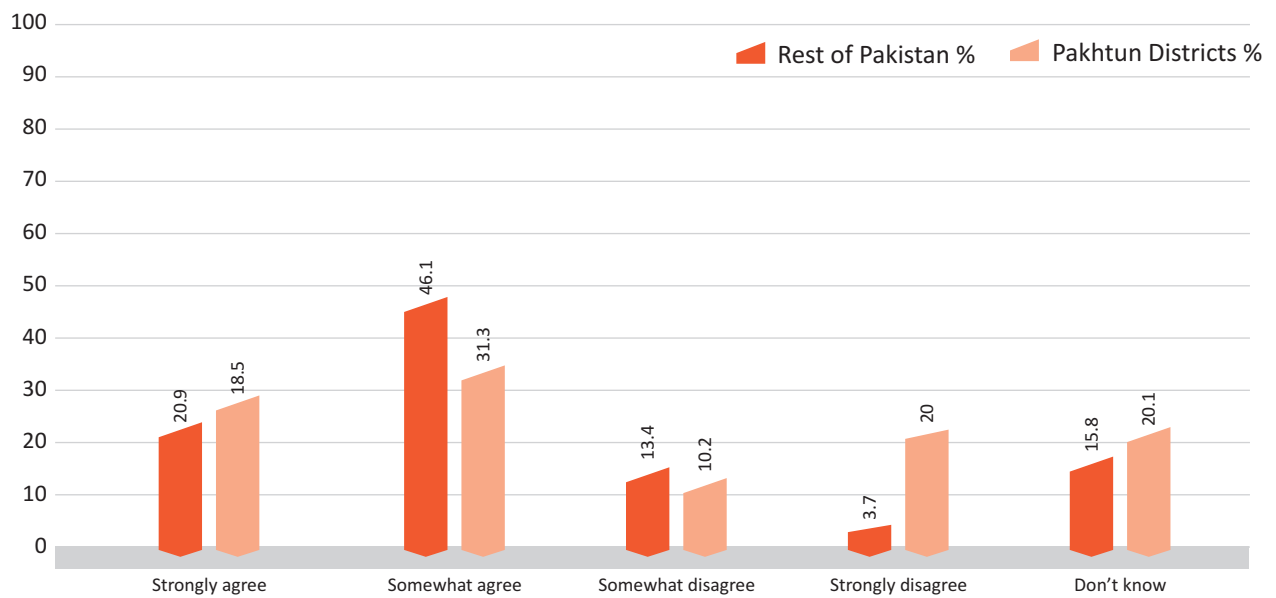
depending on the situation.<sup>14</sup>

The notion of nepotism or favouritism influencing the decision-making process was tested in the previous survey conducted in Pakhtun districts in 2012 and again repeated in the rest of Pakistan survey in 2013 (here under analysis).

The survey results showed that two-thirds (67 per cent) of respondents in the rest of Pakistan agreed with the notion; only 17.1 per cent disagreed. Surprisingly, 49.8 per cent of respondents in Pakhtun districts agreed with the notion; 30.1 per cent opposed it.

The survey results from these two different periods and from these two distinct areas depict interesting findings. It appears that the majority is sceptical about the credibility of the informal justice system with regards to nepotism or favouritism. It is obvious that such proceedings can easily be influenced by the rich and politically powerful.<sup>15</sup>

#### **b) 'Nepotism or favouritism influences the decision - making process of the informal dispute resolution system.'**



12. Ibid

13. Ibid

14. Interview with Jawad Hassan, former Additional Attorney General of Pakistan, 7 August 2013, Islamabad

15. Interview with Abdul Razaq Gumrani, Manager Sindh province, HANDS (NGO), 25<sup>th</sup> August 2014, Karachi

**Notion c) 'Decisions given by the informal dispute resolution system are unbiased and free from all kinds of pressure from the economically and politically powerful section of the society.'**

Respondents were provided with the notion that all decisions of the informal justice system are unbiased and free from all kinds of pressures from economically and politically powerful elite of the society. This notion is quite similar to the previous notion (b). The majority agreed with the notion (57.8 per cent) while 25.1 per cent disagreed. The views from Pakhtun districts were relatively different – two-thirds (66.6 per cent) agreed with the notion while just 11.9 per cent disagreed.

The above two notions (b) and (c) are two of the main arguments that critics of informal justice systems convey when opposing informal justice institutions' role in society – instead they often favour the modern western judicial system which is seen as serving all equally. However, the

respondents' reaction contradicts this.

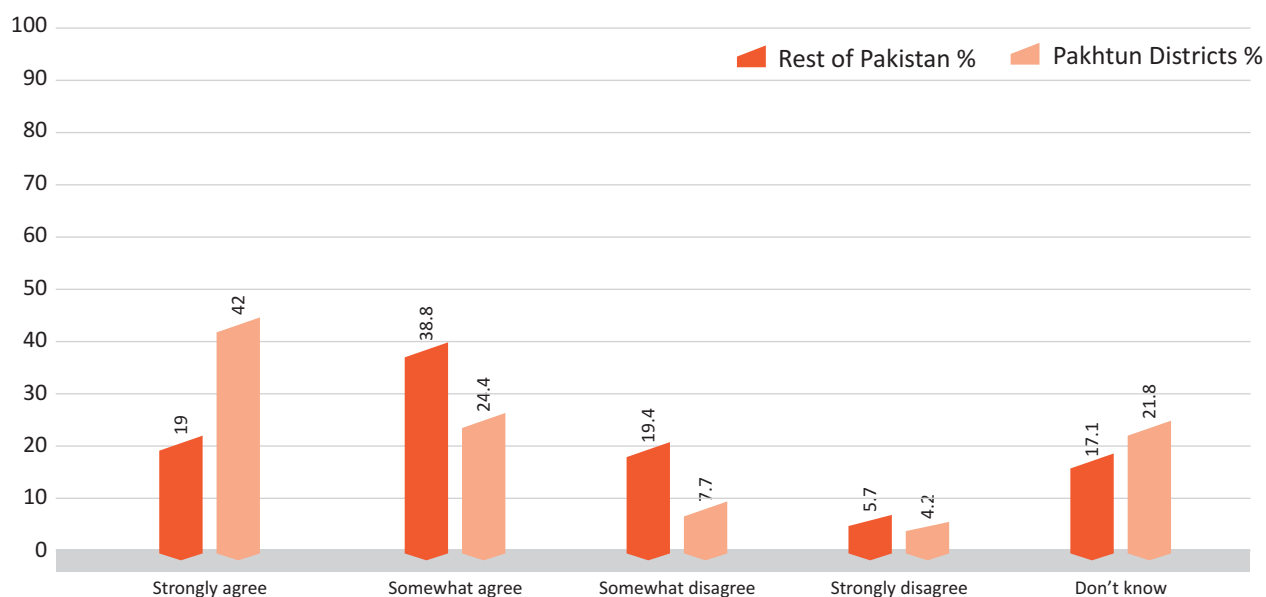
**Notion d) 'Some decisions of the informal dispute resolution system are harsh and not commensurate with the deed under scrutiny.'**

The informal justice system operates and provides services to ordinary people in Pakistan's rural areas; however, it is often criticised for its harsh verdicts, which often make headline news.<sup>16</sup> According to media experts, local rich and influential landlords manipulate situations and force informal justice systems to reach verdicts which favour their interests.<sup>17</sup>

Findings are self-explanatory and support the notion: 53 per cent agreed that some decisions of informal dispute resolution systems are harsh and not commensurate with the deed carried out, whereas 23.6 per cent disagreed with the notion.

In the Pakhtun districts of Pakistan, 35 per cent

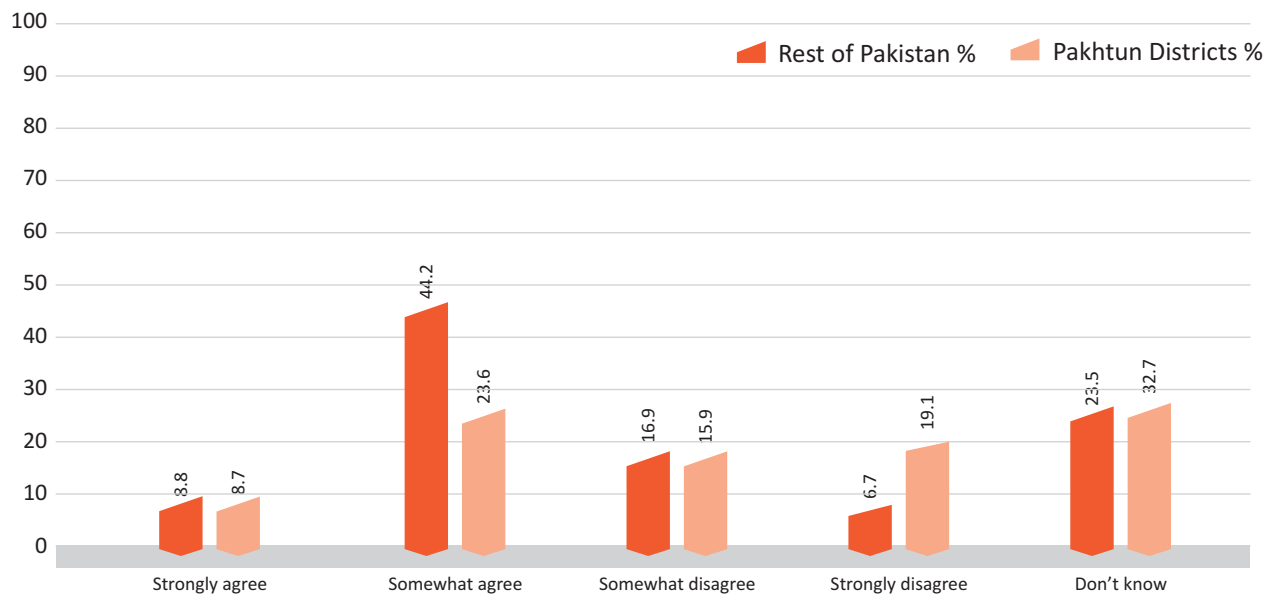
**c) 'Decisions given by the informal dispute resolution system are unbiased and free from all kinds of pressure from the economically and politically powerful section of the society.'**



16. Ibid

17. Interview with Rizwan Tariq, Editor Daily Jang newspaper, 25 August 2013, Karachi

**d) 'Some decisions of the informal dispute resolution system are harsh and not commensurate with the deed under scrutiny.'**



disagreed with the notion whereas 32.3 per cent agreed. On this aspect of the informal justice system, Pakhtun respondents seem uncertain.

The data shows that people in Pakistan generally perceive the informal justice system as a harsh system.

**Notion e) 'The informal dispute resolution system verdicts come into conflict with modern notions of justice or human rights.'**

According to key informants and participants of the round-table discussions, the informal justice system violates some basic human rights, especially those of women and minority groups, and the system fails to ensure that parties to the conflict/dispute receive justice according to international norms and standards.<sup>18</sup> Such cases of human rights violation have been highlighted in the media and have given the country a negative image.<sup>19</sup>

According to the data, a high number of respondents (46.3 per cent) agreed with the

**e) 'The informal dispute resolution system verdicts come into conflict with modern notions of justice or human rights.'**



18. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

19 Ibid

notion that informal dispute resolution system verdicts come into conflict with modern notions of justice or human rights; 28.6 per cent disagreed with the notion.

This is interesting and shows that ordinary men and women in Pakistan are aware of this issue.

**Notion f) 'The informal dispute resolution system fails to resolve disputes effectively.'**

Respondents from the rest of Pakistan seemed to be in two minds about how effective informal dispute resolution systems are in resolving disputes. While 36.9 per cent agreed with the notion, 37.8 per cent disagreed, and a quarter of respondents did not have an opinion.

Data from Pakhtun districts from the previous survey showed slightly different trends. Only 14.7 per cent believed that informal dispute resolution systems (*jirga*) fail to resolve issues effectively whereas 63.5 per cent thought they were effective. Trends are different for both regions and show uncertainty in the rest of Pakistan over the effectiveness of the informal justice system.

**Notion g) 'The informal dispute resolution system violates women's rights.'**

For your information, a detailed account has been provided in Chapter 6 on how the informal justice system violates human rights, especially with regards to women and minority groups. Here, we analyse the data provided from the survey.

With regards to the notion that the informal justice system violates women's rights, 49.1 per cent of respondents, close to half, agreed, whereas 27.5 per cent did not agree. It is encouraging that respondents were generally aware of the issues here.

**Notion: h) 'The informal dispute resolution system violates minority rights.'**

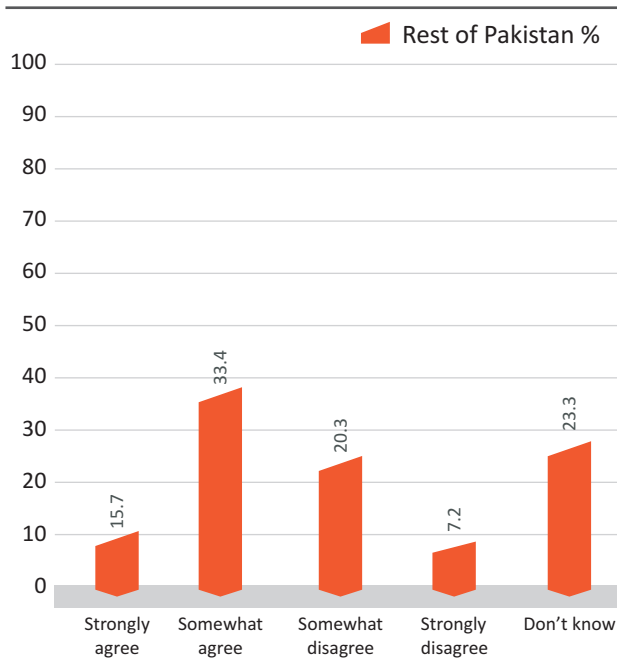
In testing this notion, a high number of respondents (44.3 per cent) agreed that informal justice systems violate minority rights, whereas 29.3 per cent disagreed with the notion. Chapter 6 discusses this issue in more detail.

**Notion i) 'The informal dispute resolution system maintains social order and restores harmony in a community.'**

**f) 'The informal dispute resolution system fails to resolve disputes effectively.'**

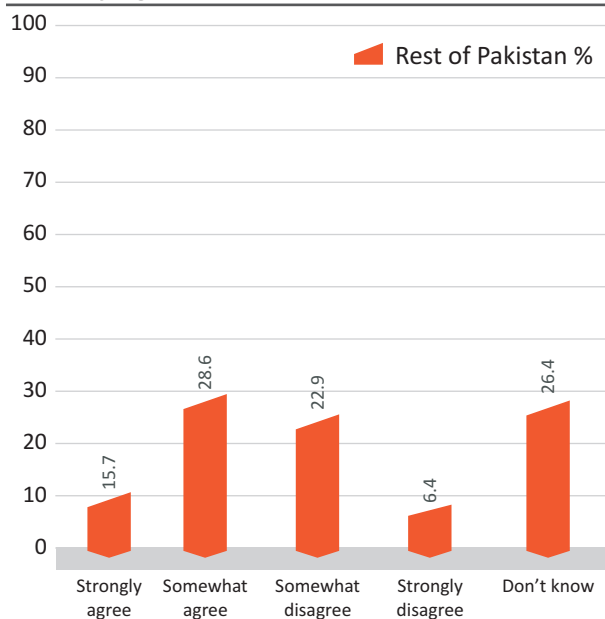


### g) 'The informal dispute resolution system violates women's rights.'



Informal dispute management and social control are prevalent in our rural society.<sup>20</sup> Generally, these endorse norms and values which serve to

### h) 'The informal dispute resolution system violates minority rights.'



promote peace, unity, harmony, a sense of common purpose, and progress.<sup>21</sup> The survey aimed to test the hypothesis of whether informal dispute resolution systems maintain social order and restore harmony in a community.

Interestingly, the majority of respondents (61.8 per cent) agreed with the notion, whereas only 11.7 per cent disagreed.

In Pakhtun districts 76.2 per cent agreed with the notion whereas only 4.9 per cent disagreed.

This demonstrates that informal justice systems have achieved credibility in restoring peace and harmony within communities. It's an important aspect and needs to be noted by the policy-makers, keeping in view the current crisis which the government institutions are facing (and failing to restore thus far).

Given the data here, it is interesting to explore why the Pakhtun region is facing militancy and crisis despite having indigenous institutions already in place which are rooted strongly within the masses. Experts and participants of the round-table discussions (organised for the previous survey) were of the view that indigenous institutions and tribal elders were never given the opportunity to resolve issues in the beginning. When problems later escalated out of control, it was too difficult for the elders and *jirga* to intervene at that stage. It is clear that institutions should be given the chance to help resolve issues from the beginning.

### Notion j) 'The informal dispute resolution system plays a positive role in conflict transformation and conflict resolution.'

This survey aimed to investigate the notion that informal justice systems play a positive role in conflict resolution, and transform conflict into peace. The data revealed that the majority of respondents (61.3 per cent) agreed with the

20. Interview with Saif Anjum, Special Secretary Home, Punjab, 22 August 2013, Lahore

21. Ibid



**i) 'The informal dispute resolution system maintains social order and restores harmony in a community.'**



notion, and only 11.1 per cent disagreed.

In Pakhtun districts, more respondents (73.4 per cent) agreed with the notion whereas just 5.3 per cent disagreed.

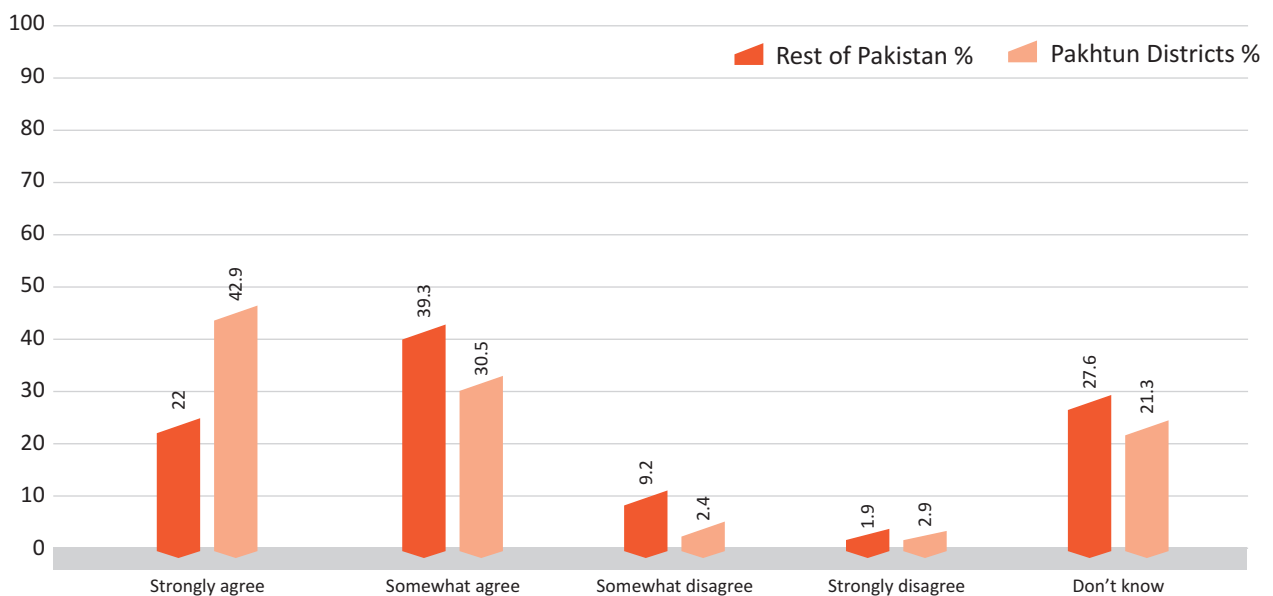
The common perception was that informal justice systems help resolve conflicts and transform

communal unrest into peaceful co-existence.

**Notion k) 'The informal dispute resolution system plays a positive role in reducing the level of militancy in the region.'**

Experience suggests that the employment of traditional mechanisms for conflict resolution

**j) 'The informal dispute resolution system plays a positive role in conflict transformation and conflict resolution.'**



helps develop community resilience against internal or external aggression. When such traditional approaches to dispute resolution are overlooked, small disputes can turn into large conflicts, leading to difficult, complex situations.

Respondents were asked whether they agreed or disagreed with the notion. Surprisingly, 52.8 per cent of respondents agreed with the notion, whereas only 15.5 per cent disagreed. A sizeable percentage (31.6 per cent) did not have an opinion.

Respondents from Pakhtun districts showed more certainty. Close to two-thirds (65.6 per cent) agreed with the notion, whereas only 5.7 per cent did not agree.

#### Notion l) 'The informal dispute resolution system is well placed to resolve civil disputes only.'

The informal justice system is often criticised for its role in handling criminal cases. It is seen as violating the state's law, and in addition, its

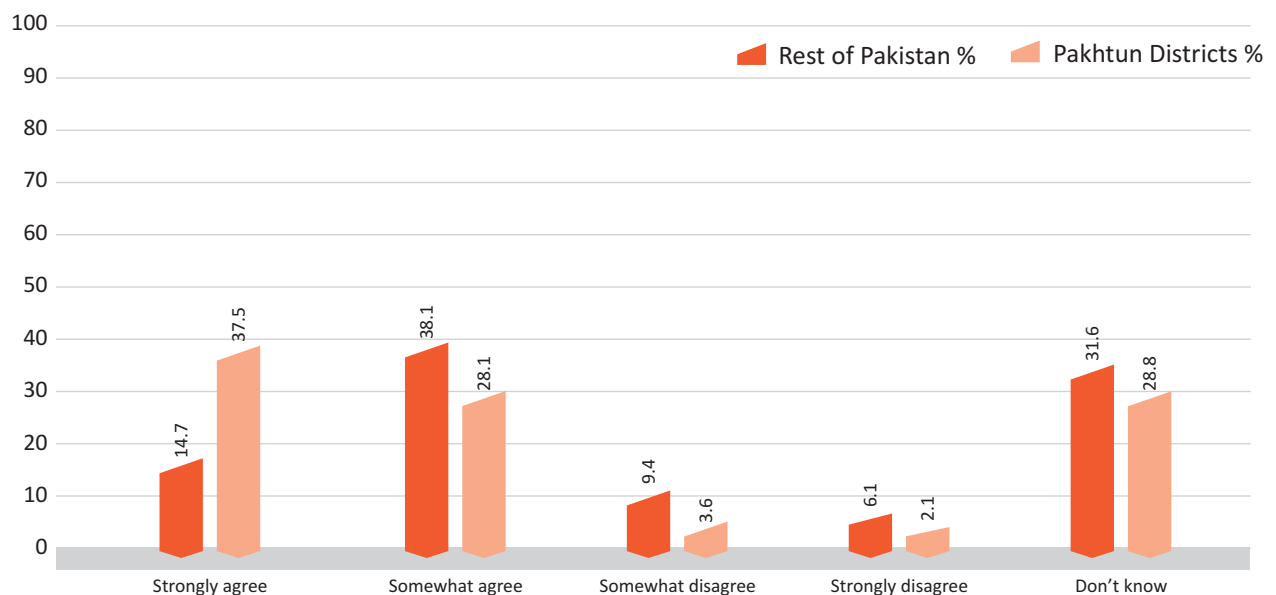
decisions often conflict with international human rights standards.<sup>22</sup> However, its role in resolving civil issues is by-and-large appreciated.<sup>23</sup> The notion that informal dispute resolution systems are well placed to resolve civil disputes was tested through the survey. A high number of respondents (47 per cent) agreed with the notion, while 27.6 per cent disagreed. A quarter (25.4 per cent) of respondents did not have an opinion.

In Pakhtun districts 40.5 per cent agreed with the notion (less than in the rest of Pakistan), whereas 29.1 per cent disagreed (a similar percentage to the rest of Pakistan).

#### Notion m) 'The informal dispute resolution system reintegrates and rehabilitates offenders into the community.'

Available literature suggests that one of the positive sides of informal justice systems is the reconciliation between or among disputants, and the reintegration (following rehabilitation) of offenders and criminals into the community. This

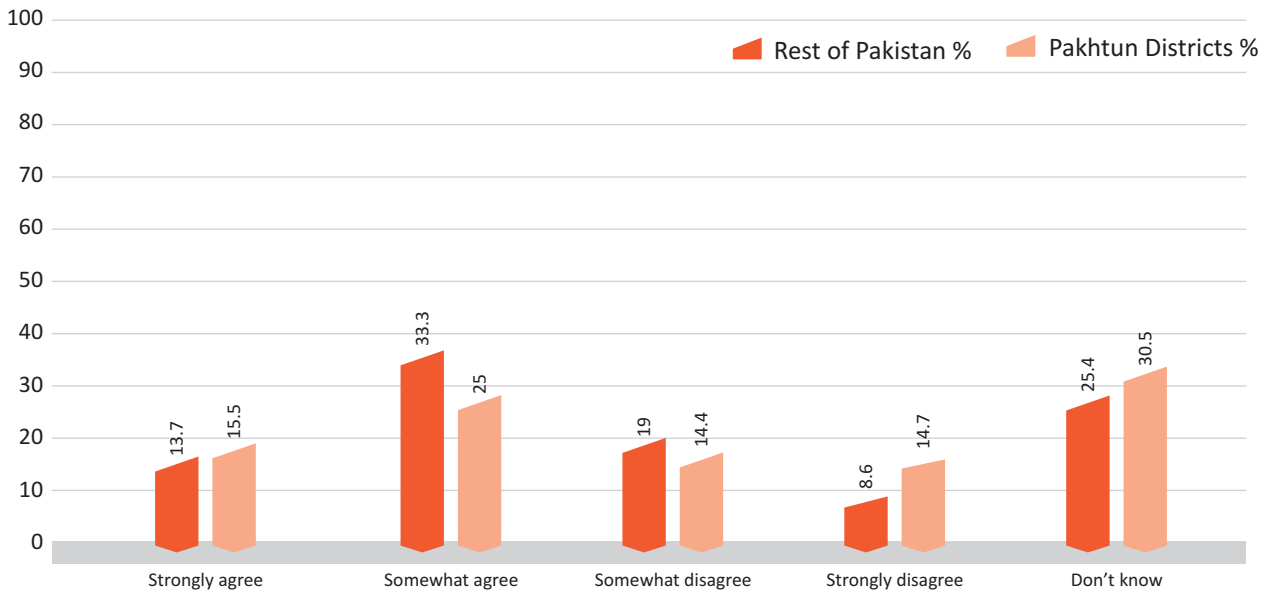
#### k) 'The informal dispute resolution system plays a positive role in reducing the level of militancy in the region.'



22. Interview with Jawad Hassan, former Additional Attorney General of Pakistan, 7 August 2013, Islamabad

23. Ibid

**l) 'The informal dispute resolution system is well placed to resolve civil disputes only.'**

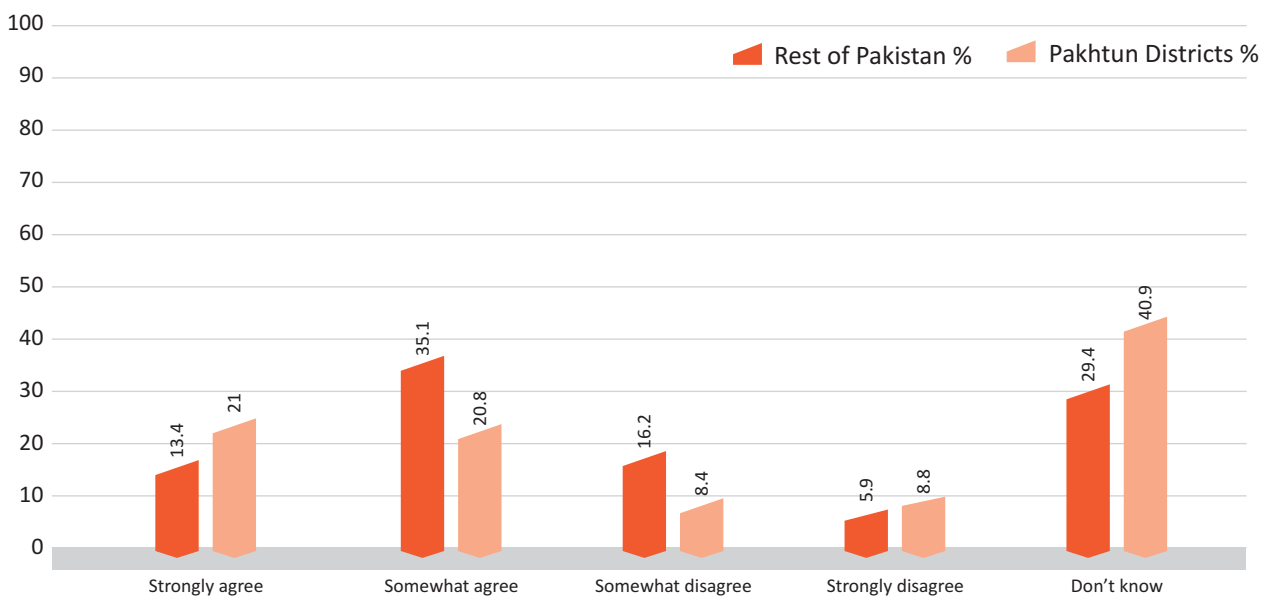


notion was tested through the survey and surprisingly, 48.5 per cent of respondents agreed with the notion, whereas less than a quarter (22.3 per cent) disagreed.

Surprisingly, in Pakhtun districts 41.8 per cent agreed (less than in the rest of Pakistan), 17.2 disagreed, and 40.9 per cent did not have an opinion – considerably higher than in the rest of Pakistan.

However, a sizeable percentage of respondents (29.4 per cent) were indecisive for reasons unknown.

**m) 'The informal dispute resolution system reintegrates and rehabilitates offenders into the community.'**



**Notion n) 'The informal dispute resolution system is well placed to resolve both civil and criminal disputes.'**

The ability of the informal justice system to resolve both criminal and civil disputes is doubted by civil society and public institutions. The survey aimed to test this notion. More respondents (40.1 per cent) agreed that the informal dispute resolution system is well placed to resolve both civil and criminal disputes, whereas a sizable 29.9 per cent disagreed with the notion, and 30 per cent of respondents who did not have an opinion. The results show a diversity of viewpoints on this issue.

In Pakhtun districts, 72.6 per cent agreed with the notion, whereas 6.7 per cent disagreed. As suggested by earlier data sets and this one too, the data for Pakhtun districts shows *jirga* as the more organised and accessed form of legal system for both criminal and civil cases. There are more cases of a civil nature than criminal cases.<sup>24</sup>

**Notion o) 'The informal dispute resolution system contributes to the rule of law.'**

According to the experts and civil society members who attended the round-table discussions organised under this research project, informal and traditional institutions contribute to the rule of law. However often they impact it negatively.<sup>25</sup> The term 'contribution' is taken as a positive attribute in the context of this notion.

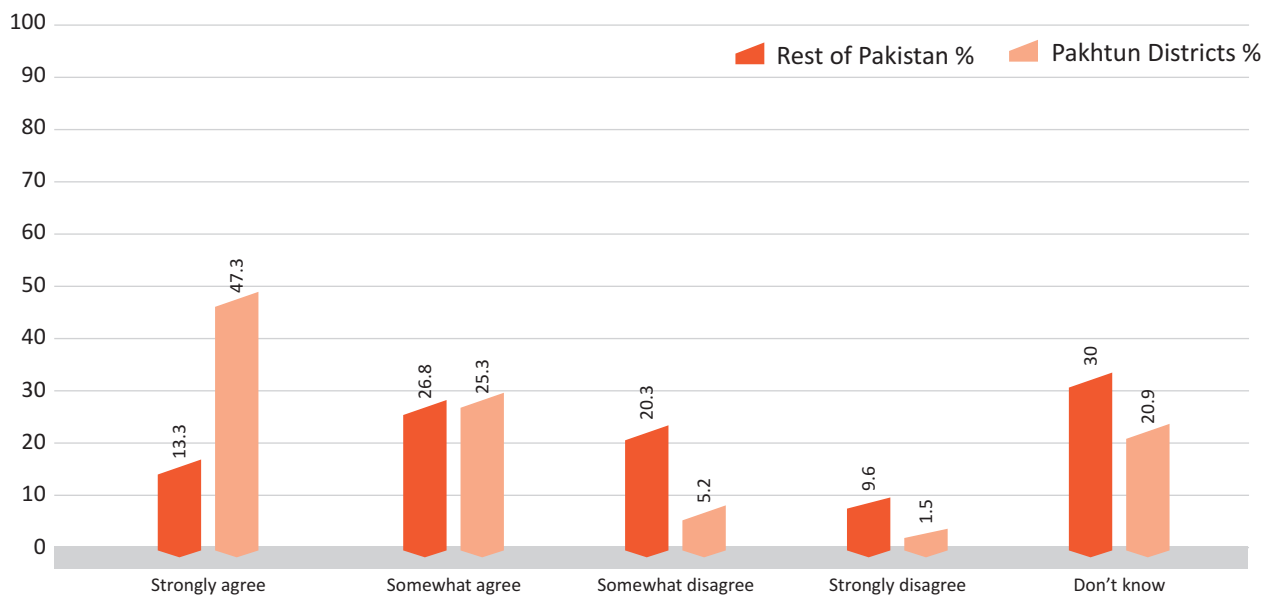
The data shows that 47.5 per cent of respondents agreed with the notion, 20.7 per cent did not agree, and 31.8 per cent did not have an opinion.

**Notion p) 'The informal dispute resolution system resolves some very serious crimes'.**

Legal experts and human rights activists believe that informal justice systems cannot resolve complex or serious issues and often cause situations leading to the breakdown of law and order and the violation of human rights.<sup>26</sup>

Surprisingly, a high number of respondents in our

**n) 'The informal dispute resolution system is well placed to resolve both civil and criminal disputes.'**



24. Interview with Advocate Tahir Iqbal, Legal Reform Forum (NGO), 25 August 2013, Karachi

25. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

26. Interview with Jawad Hassan, former Additional Attorney General of Pakistan, 7 August 2013, Islamabad

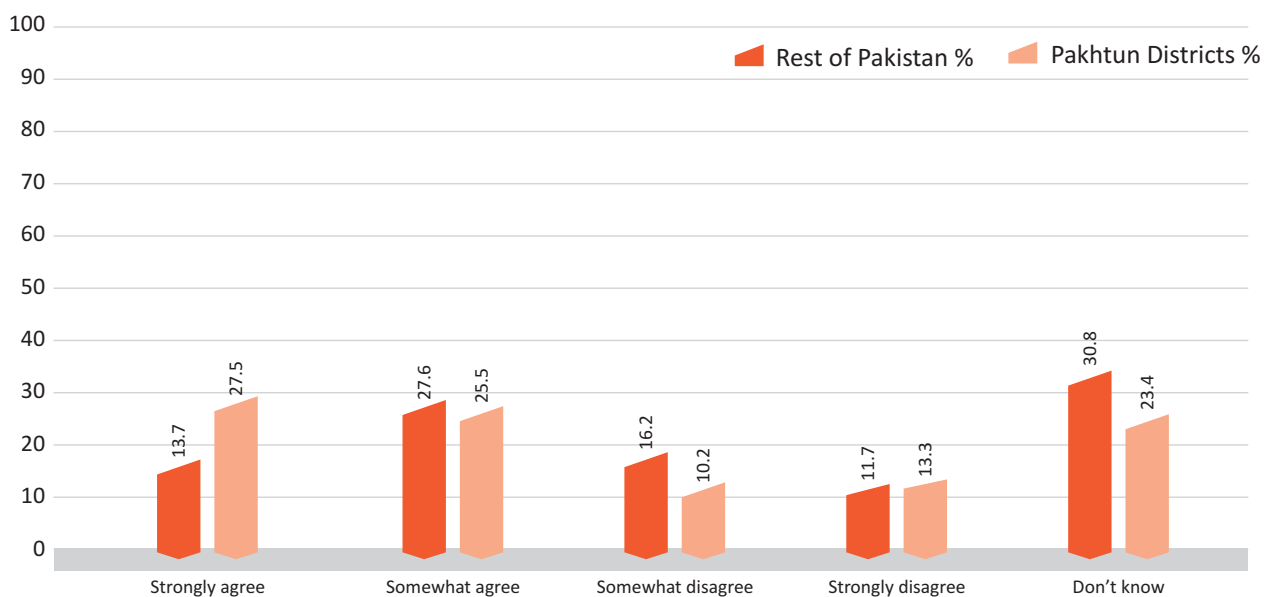
**o) 'The informal dispute resolution system contributes to the rule of law.'**



survey (41.3 per cent) opposed this view, and agreed with the notion that informal justice systems resolve some very serious crimes; 27.9 per cent did not agree.

Our survey showed that common perceptions

**p) 'The informal dispute resolution system resolves some very serious crimes.'**



27. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

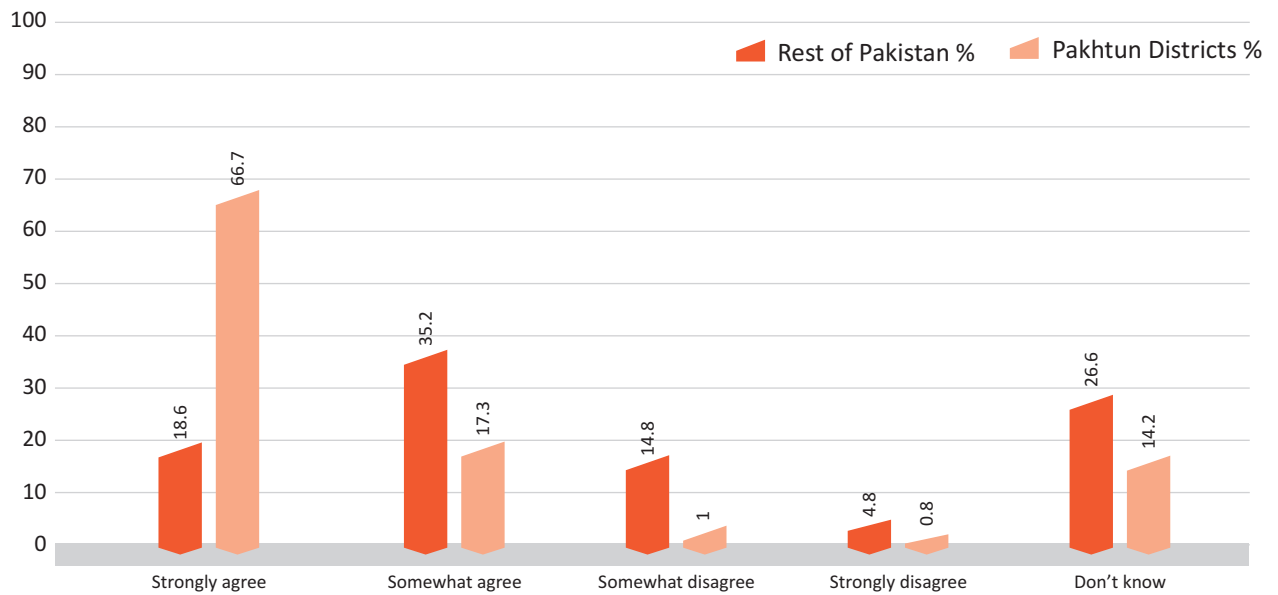
favour the informal justice system on this issue. However, in reality there are numerous challenges to overcome with regards to resolving serious issues through either formal or informal justice systems.

**Notion q) 'The informal dispute resolution system is organised, well established, transparent and an efficient institution in society.'**

Key informants and participants of the round-table discussions had reservations about the capacity of both institutions – formal and informal. They believed that neither system is well organised, transparent and efficient.<sup>27</sup> However, in our survey, the opposite view was expressed.

According to the findings, more than half of respondents (53.8 per cent) agreed with the notion, compared to only 19.6 per cent who did not agree. It may be the case that people in rural regions are more likely to agree with the notion, than those living in urban areas. For example, the provincial data below shows that there was a high percentage of people in Punjab (62.5 per cent) who agreed with the notion, and there was a

**q) 'The informal dispute resolution system is organised, well established, transparent and an efficient institution in society.'**

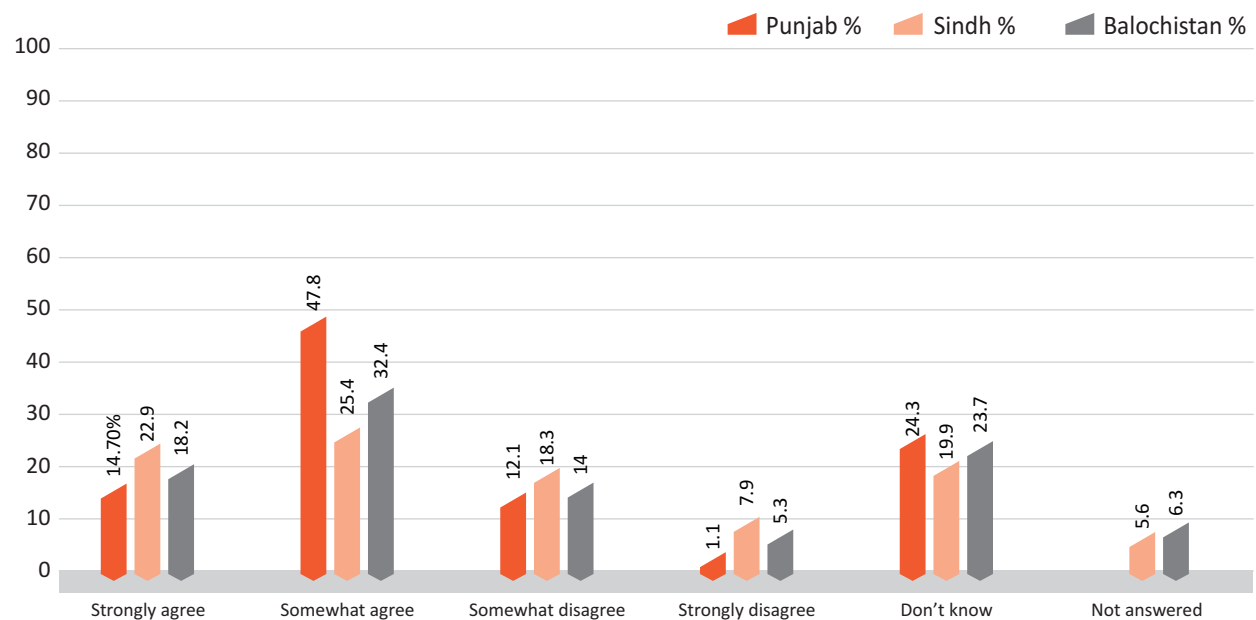


smaller percentage in Sindh (48.3 per cent) who agreed with it.

Respondents in Pakhtun districts appeared to have more acceptability of *jirga*: 84 per cent agreed with the notion.

**Notion r) 'The informal dispute resolution system creates lasting peace among disputants and reduces the possibility of future disputes and long-running vendettas.'**

**q) 'The informal dispute resolution system is organised, well established, transparent and an efficient institution in society.' (Provincial cross-tabulation)**



Informal justice systems have their roots within societies, especially in rural areas where people face disputes over land, water distribution, inheritance, etc. These issues often lead to violent conflicts if not resolved timely and according to local customs and traditions.<sup>28</sup> Experience shows that disputants often end up committing serious crimes against each other.<sup>29</sup> Therefore, the role of the informal justice system appears quite strongly to minimise tensions and resolve conflicts.<sup>30</sup>

To understand common perceptions, this notion was tested in the survey. According to the findings, surprisingly, 60.8 per cent agreed with the notion while only 12.4 per cent did not agree. In Pakhtun districts, 83 per cent of respondents agreed with the notion – this was significantly higher than in the rest of Pakistan.

The survey results support the argument that the formal justice system is unable to compensate victims, and cases are often resolved out of the court – where victims get compensation. It is for

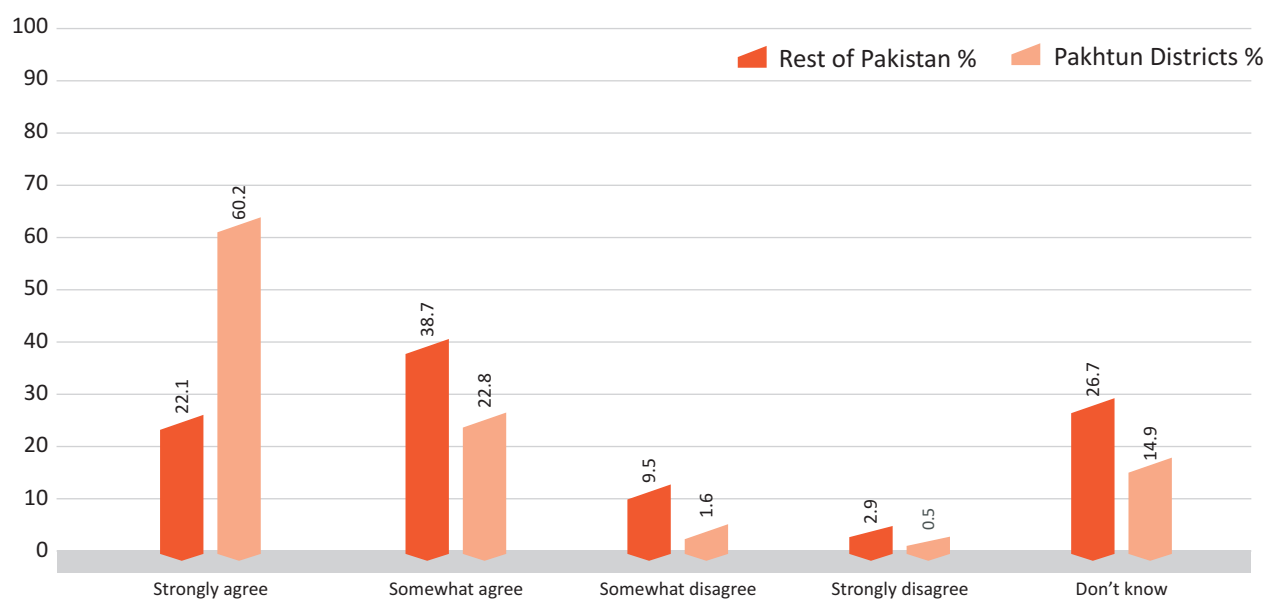
this reason that we see common support for the informal justice system.<sup>31</sup>

**Notion s) 'The informal dispute resolution mechanism will always be a simpler and more intelligible option than the formal courts.'**

The survey aimed to document common perceptions on this subject. However, the informal justice system is not simple and is not based on intelligent data or knowledge. Detailed accounts of the informal justice system and its positive and negative aspects have already been discussed in the opening chapters.

Interestingly, nearly two-thirds of respondents (65.7 per cent) agreed that informal dispute resolution mechanisms would always be a simpler and more intelligible option than the formal courts. A minority of 9.2 per cent disagreed with the notion. The survey findings are interesting and reflect ordinary people's faith in the informal justice system as opposed to the formal courts.

**r) 'The informal dispute resolution system creates lasting peace among disputants and reduces the possibility of future disputes and long-running vendettas.'**



28. Ibid  
 29. Interview with Saif Anjum, Special Secretary Home, Punjab, 22 August 2013, Lahore  
 30. Interview with Rizwan Tariq, Editor Daily Jang newspaper, 25 August 2013, Karachi  
 31. Interview with Saif Anjum, Special Secretary Home, Punjab, 22 August 2013, Lahore

**s) 'The informal dispute resolution mechanism will always be a simpler and more intelligible option than the formal courts.'**

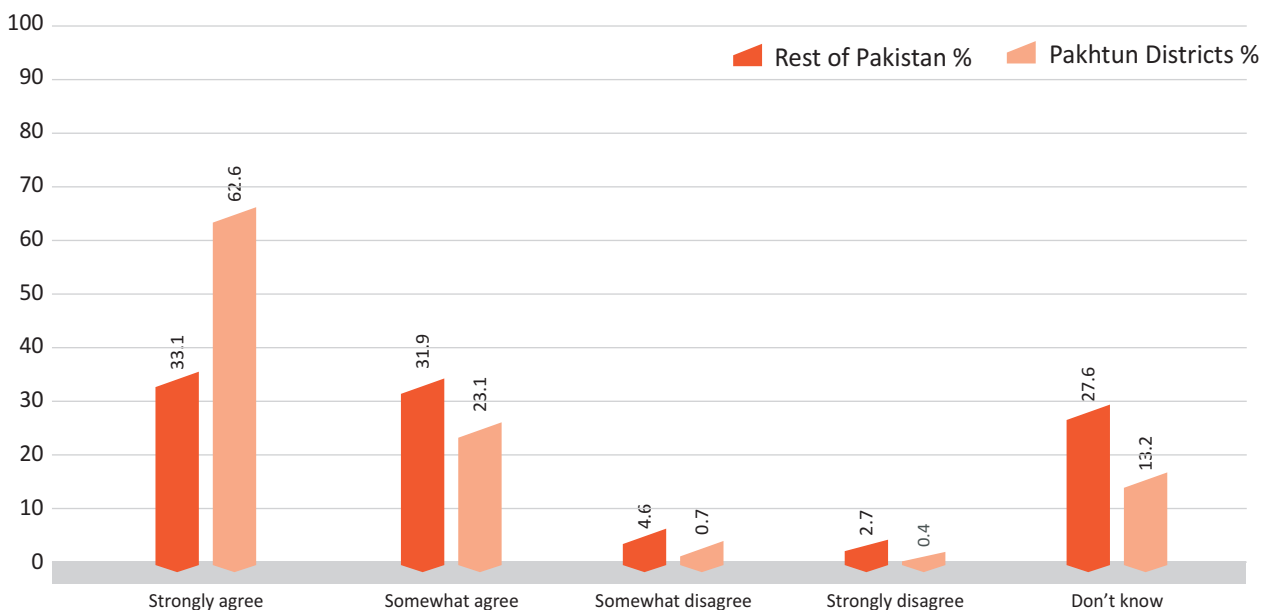


**Notion t) 'Informal dispute resolution mechanisms will always be less time-consuming and more expeditious than the formal courts.'**

The formal justice system has always been criticised for its delays in dispensing justice, and often disputants have to wait for decades to get justice.<sup>32</sup> The survey aimed to understand how ordinary people in Pakistan feel about this. The findings show that the majority of respondents (65 per cent) agreed that informal dispute resolution mechanisms would always be less time-consuming and more expeditious than the formal courts. Only 7.3 per cent of respondents did not agree with the notion.

In Pakhtun districts, respondents were very much of the opinion that the informal justice system is less time-consuming and more expeditious than the formal system: 85.7 per cent agreed with the notion whereas only 1.1 per cent disagreed. This shows that the Pakhtun population has a more favourable view than the rest of Pakistan on the reliability of *jirga*.

**t) 'Informal dispute resolution mechanisms will always be less time-consuming and more expeditious than the formal courts.'**



32. Interview with Advocate Tahir Iqbal, Legal Reform Forum (NGO), 25 August 2013, Karachi



This is indeed an incredible finding and conveys a strong message to the state's institutions to improve their performance.

### Involvement of government officials during proceedings in informal justice systems

As we are aware, the informal justice system operates in parallel to the government's judicial system. This often creates tension between the two systems, leading to a situation whereby the government takes stern action against the informal justice system. However, to improve the performance of the informal justice system, one suggestion is to involve government officials in the informal proceedings. This idea is tested in the survey to find out what people think of this proposal.

The data illustrated below shows that the majority (57.6 per cent) is supportive of government officials' involvement in the proceedings of informal justice systems. Only 20.9 per cent

disagreed with the idea.

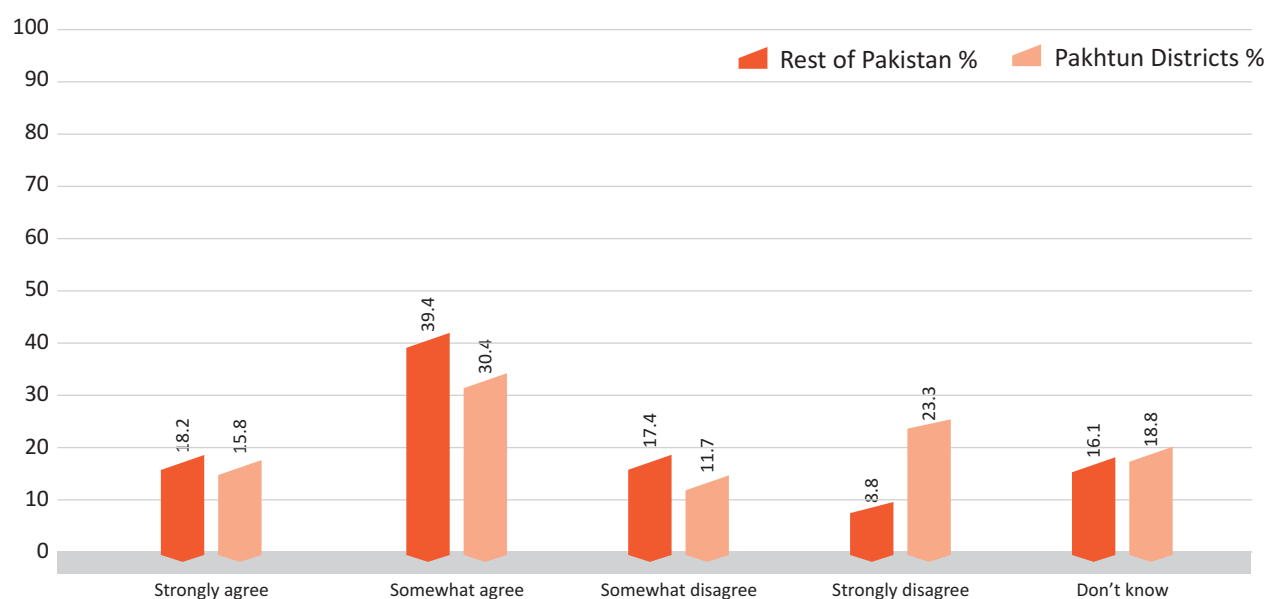
In Pakhtun districts, fewer respondents than the rest of Pakistan were in agreement.

Well-informed views are different than common perceptions. According to experts who attended round-table discussions, people are reluctant to involve government officials in the proceedings or other processes of informal dispute resolution systems, as by doing so they would lose the true essence of the informal justice mechanism.<sup>33</sup> Some experts are of the view that the beauty of informal justice systems would disappear if government officials were involved in the process. An added complication is that many people in Pakistan have negative views of government officials.

### The implementation mechanism of an informal justice system's decisions

To implement the decisions of formal courts,

### How strongly do you support the involvement of government officials in informal dispute resolution system proceedings?



33. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

there is an infrastructure of institutions responsible for the task – such as police, rangers, and in some cases even Pakistani military. However, for the informal justice system, no such institution exists to implement its decisions. Decisions of the informal justice system are honoured voluntarily and with the help of social pressure – making this institution somewhat organised but not very strong, it could be argued.<sup>34</sup> In FATA, however, traditional institutions have strong roots within society, and the use of community force (*lashkar*) is also available as an option to implement the decisions of *jirga*.<sup>35</sup>

Nonetheless, voluntary action, which forms the essence of the informal justice system, is highly esteemed by the people living in traditional societies in Pakistan.<sup>36</sup>

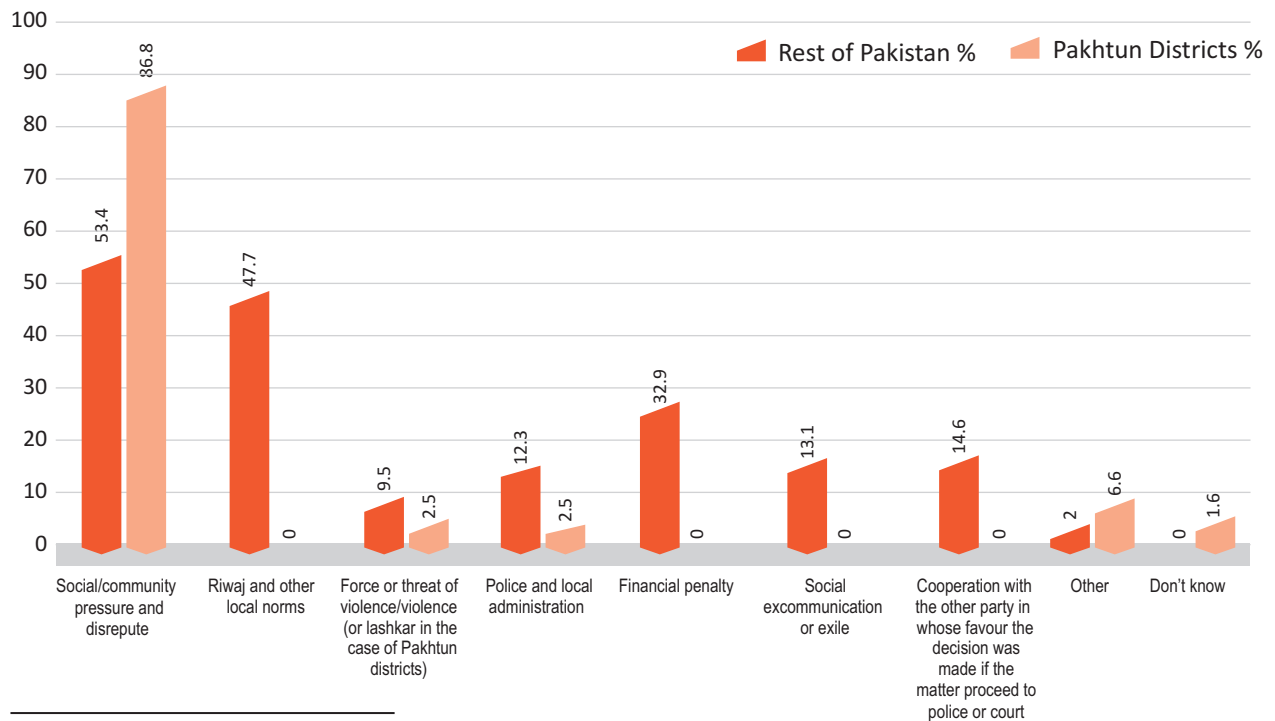
The survey aimed to document how the decisions of informal justice systems are implemented.

Based on the information gathered from the field and through literature review, several options were provided to respondents (they were allowed to choose more than one option).

The majority (53.4 per cent) identified 'social/community pressure' as the most viable option for the traditional justice mechanism to apply when implementing its decisions – non-compliance would lead to disrepute within society. In Pakhtun districts, an overwhelming majority of 86.8 per cent also chose this option.

The second most popular choice from respondents in the rest of Pakistan (47.7 per cent) was '*riwaj* and other local norms', followed by 32.9 per cent who chose a 'financial penalty' in the case of a violation of the decision. This option is considered fairly viable to implement. The rest of the data in the figure is self-explanatory.

#### How are the decisions of informal dispute resolution systems mostly implemented?



34. Ibid

35. See Naveed Shinwari, Understanding *jirga*, CAMP (2011)

36. Ibid

### What happens if the decision is not acceptable to a disputing party

Based on respondents' experience and knowledge about the subject, several options were provided and respondents were allowed to select more than one option. According to the survey result, a high percentage of respondents (48.6 per cent) thought that the accused party could take its case to the formal court if it wasn't satisfied with the decision. In Pakhtun districts only 34.2 per cent thought this.

In the rest of Pakistan, 44.1 per cent of respondents thought that the accused party could take its case to the police authorities, whereas 25 per cent in Pakhtun districts thought this. (Disputants usually take their cases to the police in order to pressurise opposing parties to agree to terms).

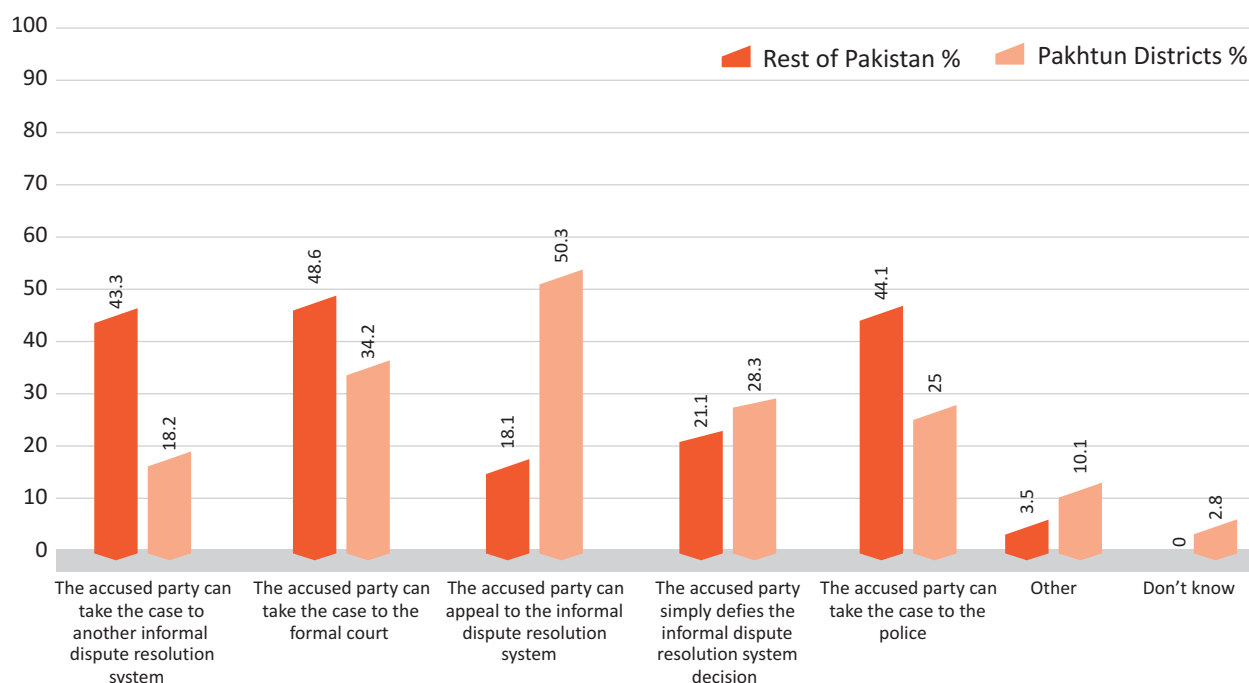
Another high group of respondents (43.3 per cent)

thought that the accused party could take the case to another group of community elders for another round of proceedings under the informal justice system – whereas in Pakhtun districts 18.2 per cent believed this.

In the rest of Pakistan, 21.1 per cent of respondents said that the accused party can simply defy the decision of the informal justice system, whereas in Pakhtun districts 28.3 per cent thought this. Since the decisions are to be honoured voluntarily, this suggests that parties to the disputes could completely reject the decisions of informal justice systems. However, in cases where this happens, other social norms and traditional mechanisms are often mobilised by the community in order that both parties to the disputes will honour the decisions.

Accused parties can lodge an appeal for a review to the same informal dispute resolution system, according to 18.1 per cent of respondents in the

### If the decision is not acceptable to a party, what happens?



rest of Pakistan and 50.3 per cent in Pakhtun district. It is generally observed that accused parties do appeal for review against the decisions, which they believe, do not meet the justice criteria.

## CONCLUSION

Traditional methods of dispute resolution are a strong component of social control in the rural areas of Pakistan. Pakistan's legal system needs to be effective and efficient if it is to be sustained for a long time. Once it is established that Pakistan's judicial system is efficient and effective then the importance of the informal justice system will be considerably reduced. However, general perceptions seem to support the assumption that the informal justice system is effective and efficient and these two characteristics have kept the informal justice system in operation for a very long time. Furthermore, the majority believes that the informal justice system is effective and efficient when dealing with criminal and civil disputes. However, more respondents thought that the informal justice system is more effective when dealing with civil matters than criminal cases. Respondents very responsibly identified challenges faced by the informal justice system, in particular with regards to issues that stem out of such verdicts that violate the Constitution of Pakistan and international human rights standards.

Various assumptions were tested through several questions with options. The results favoured the informal justice system, surprisingly. However, there were certain assumptions, issues and challenges identified relating to the informal justice system – for example, the majority believes that the informal justice system reaches verdicts under political influence.

Interestingly, the majority agreed that the informal justice system reconciles disputing parties and restores harmony within rural societies – which formal justice can not ensure, according to the respondents. The issue of

compensation was also discussed and respondents were mindful of the fact that the formal justice system has no such mechanism to compensate a victim's family, whereas the informal justice system does offer such remedies.

With regards to the notion that the informal justice system can help reduce militancy in the country, the majority of respondents agreed. This should not be oversimplified as the current context of militancy is too complex, and we have unfortunately reached a stage where the informal justice system seems helpless.

Ultimately, for a particular legal system to be considered just, the present normative values, sensibilities and expectations of a society must be reflected in the legal system. The present study lays bare a general finding that Pakistanis are able to access both formal and informal, community-based dispute resolution processes in order to seek relief.

# CHAPTER 5

## OPERATION OF INFORMAL JUSTICE SYSTEMS



# CHAPTER 5

## OPERATION OF INFORMAL JUSTICE SYSTEMS

### INTRODUCTION

This chapter deals with the operations of informal justice systems and their importance for the people of rural Pakistan. The chapter documents people's perceptions regarding the existing legal system for Pakistani rural communities so that an analytical view of the informal justice system in different contexts and under different cultures can be drafted.

Historically, individuals, social groups and societies have disputed and competed against one another over scarce commodities and resources – land, money, political power, and ideology.<sup>1</sup> In many parts of the world, traditional methods of administering justice, or locally integrated conflict transformation or resolution institutions, are being approached to resolve conflicts and to ensure peace and stability within local societies or tribes. Such institutions are often appropriate in the circumstances in which they operate because they satisfy the local cultural and religious sentiments. Such circumstances often make them more successful than contemporary or modern justice systems. The existing body of literature confirms that the nature and causes of conflicts and the mechanisms for resolving them are deeply rooted

in the culture and history of every society; they are, in many important ways, unique to each culture.

The existence of informal justice systems operating independently from the state is an empirical reality in Pakistan. 'Informal justice' systems refer to those forms of justice that are said to take place outside of the formal courtroom, in settings that are less rule-bound and adversarial.<sup>2</sup> Such informal justice systems are operating under different customs and traditions in Pakistan's heterogeneous society. However, this study aims to focus on the systems operating in four different Pakistani cultures (and languages), namely *panchayat* (in Punjab), Pakhtun *jirga* (in KP, Balochistan's Pashtu speaking districts and FATA), *faislo* (in Sindh) and Baloch *jirga* (in Balochistan's Baloch districts). In one form or another, informal justice systems exist in every village or community in Pakistan.

Despite the prevalence of informal justice systems, their legitimacy within the masses, and the growing academic recognition of their existence, Pakistani state's institutions and civil society have been very critical of their existence for providing parallel justice services, often violating the Constitution as well as international human rights standards. However, the state's

1. Ali Wardak, 'Jirga: Power and Traditional Conflict Resolution in Afghanistan' in *Law After Ground Zero*, Edited by John Strawson, London: Cavendish. (2002)

Note: The Pashtun/Pakhtun *jirga* system is almost the same on both sides of the Afghan-Pakistan border.

2. Andrew Woolford and R.S. Ratner, *Informal Reckonings: Conflict Resolution in Mediation, Restorative Justice and Reparations*, Routledge – Cavendish, p.1. (2008)

formal justice system, which is seen as an alien system by the masses, can not provide cheap and timely access to justice for poor people.<sup>3</sup>

Critics of the formal justice system believe that informal justice systems and practices hold the promise of a justice that is more accessible, empowering and participatory, less costly and less adversarial.<sup>4</sup>

Evidence shows that informal justice systems irrefutably manage the majority of disputes and the resolution of conflict in every rural community in Pakistan. There are instances where the state judicial system has some level of involvement with the traditional justice system, informally.<sup>5</sup> The central idea of the traditional ways of dispute management is that tribal or community elders have responsibility to resolve conflicts and restore communal harmony. They acquire this authority from their fellow community members and hold public meetings with the parties involved. Following the selection of representatives or mediators, evidence is shared by the parties' mediators during public meetings, conflict is extensively discussed and both parties are provided with the opportunity to speak and share their points of view. Finally, after getting consent, responsibilities are allocated to each party. The entire process is claimed to be transparent and the community observes this process as a witness.

### People in charge of the informal justice system

A wide variety of individuals and groups are responsible for the management of conflicts and petty disputes in different ethnic groups and cultures in Pakistan. It is often assumed that it is exclusively tribal chiefs who are responsible, but there are other actors too including:

- tribal chiefs who inherited this position;
- tribal elders or white beard respected ones (*sufaid rishaan*);
- various political leaders – at local, district, provincial and national levels;
- religious clergy;
- teachers, in some cases;
- social workers;
- retired judges;
- lawyers or other educated members from the community.

In addition, there are other well-respected individuals from the community who take part in such proceedings, providing their wisdom and knowledge on various matters.

### Types, procedures and proceedings of informal justice systems

Informal justice systems operate at different levels, depending on the nature and magnitude of a dispute or conflict. Composition, nature, proceedings and practices are different in different areas and cultures. This helps us to identify various forms of informal justice systems in Pakistan.<sup>6</sup> Pakhtun *jirga* is practised in Pakhtun communities across the region (even in Afghanistan's Pakhtun population), *panchayat* in Punjab, *faislo* in Sindh and Baloch *jirga* in Balochistan's Baloch inhabited districts.

Each type of system has a distinct nature with procedural variations. Local customs and sometime Islamic principles are drawn upon to reach a decision – after getting consent from disputants. Cases of a petty nature are often resolved at a lower, more localised level. In such proceedings, only a few relevant individuals or families, directly or indirectly involved, participate in the process.

3. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

4. Ibid

5. Interview with Saif Anjum, Special Secretary Home, Punjab, 22 August 2013, Lahore

6. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

Major cases (criminal and political) are managed with much more care and with the involvement of the community as a whole. In such situations, mediators, the entire community and other stakeholders take part in the proceedings. During the field work for this research document, experts divulged that government representatives, lawyers and police authorities do take part in such proceedings, informally, if there is a major issue faced by a community.

The following survey results document respondents' level of knowledge and views of the operations of informal justice systems.

## Survey findings and analysis

### Composition of the informal justice system

The membership composition of informal justice systems varies from place to place. This question is intended to gauge the level of respondents' understanding and knowledge on the matter.

Looking at the multiple response choices from the survey in the table, more than two-thirds (71.7 per

cent) of respondents confirmed that the informal justice system in their respective community is comprised of clan or tribal elders. In Pakhtun districts, 81.4 per cent confirmed this. In addition, 43 per cent of respondents in the rest of Pakistan said that local respected citizens (who are not politicians) make up the informal justice system (this option wasn't offered to respondents in the 2012 survey in Pakhtun districts); and 40.5 per cent said that the informal justice system is comprised of local wealthy and influential people (28.9 per cent of respondents in Pakhtun districts confirmed this).

It is quite obvious that tribal elders and religious leaders take a keen interest in resolving people's disputes. This work benefits them immensely, both politically and financially.

A striking comparison lies in the subject of the role of religious leaders – in the rest of Pakistan, 29.6 per cent identified religious leaders as part of informal justice systems, whereas in Pakhtun districts more than half (52.9 per cent) confirmed that religious leaders are part of the system. This shows that the role of religious leaders is seen as

<b>What is the composition of the informal justice system in your community/area? – Who are the members?</b>		
<b>Options</b>	<b>Rest of Pakistan (%)</b>	<b>Pakhtun districts (%)</b>
Local respected citizens (who are not politicians)	43.2	Did not ask
Local wealthy and influential people (who are not politicians)	40.5	28.9
Local politicians	25.1	Did not ask
Councillors of the union councils	19.9	18.2
Religious leaders	29.6	52.9
Civil society members	29.5	14.3
Clan or tribal elders	71.7	81.4
Local members of civil bureaucracy	4.2	Did not ask
Local police, other government representatives	5	Did not ask
Other	2.2	8.5



more important in KP and Balochistan than in the rest of Pakistan. One obvious reason for the rise in importance of religious leaders is their role in Afghan Jihad.

Surprisingly, the role of civil society in informal justice systems is seen by respondents as twice as strong (29.5 per cent) in the rest of Pakistan as compared to respondents in Pakhtun districts (14.3 per cent).

Due to establishment of Musalihati Councils under the Local Government Ordinance, councillors of union councils were also mandated to mediate and resolve petty disputes within their areas of jurisdiction. According to the data, 19.9 per cent in Pakistan and 18.2 per cent in Pakistan districts thought that councillors play a part in the *jirga* process.

### Women representation in the informal justice system

Women are not allowed to take part in the proceedings of informal justice systems, due to traditional barriers. In Karachi, many participants at the round-table discussion were of the view that

women are excluded from informal justice systems.<sup>7</sup> The women are neither part of mediation nor attend as a witness. According to one female round-table participant in Karachi, no-one listens to women, they are treated as property, and women receive punishment, even without participation.<sup>8</sup> However, there are exceptional circumstances where women are allowed to take part in such proceedings. This inquiry aims to understand if there is any involvement of women in the informal justice systems of various areas of Pakistan.

Respondents were given a list of informal institutions and they were asked if women were represented in any of those institutions (they could select 'yes' for more than one option).

### The informal justice system – *panchayat, faislo, Baloch jirga*

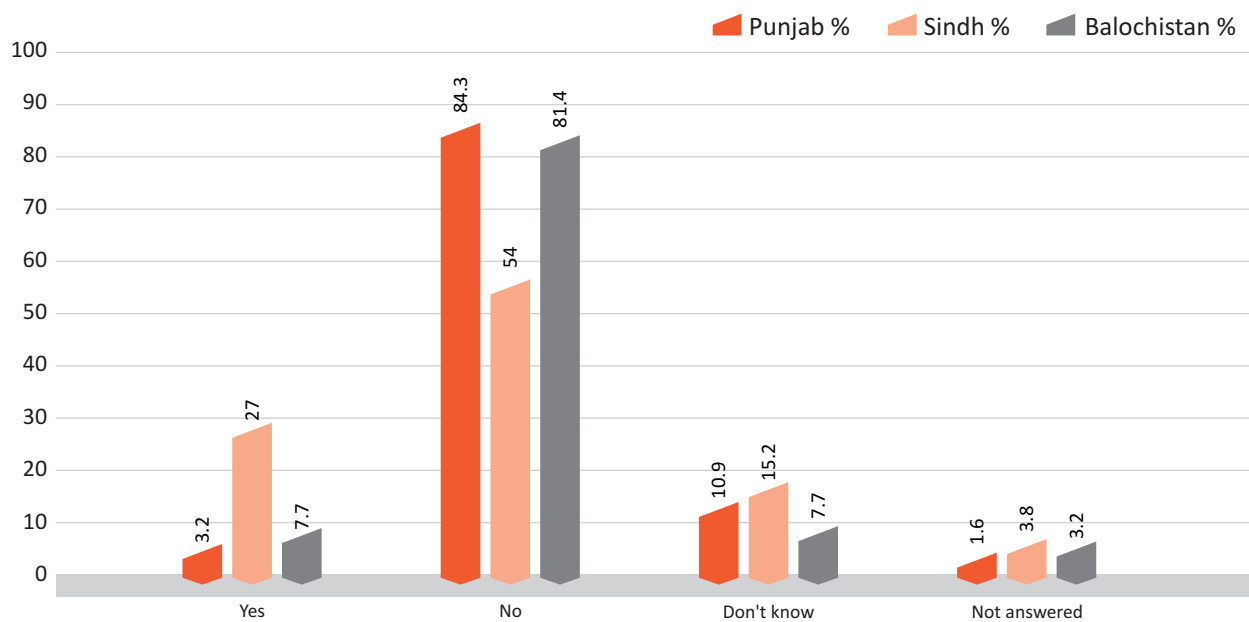
According to the data, 73.3 per cent confirmed that women are not given representation in the informal justice systems proceedings. Surprisingly however, 12.6 per cent said that women do have representation in such proceedings. This is a fairly large percentage, and might be due to

Do women have representation in the following?					
Response	Yes	No	Don't know	Not answered	Total
Local village <i>panchayat</i> or <i>faislo</i> or Baloch <i>jirga</i>	12.6	73.3	11.3	2.9	100
<i>Khandan</i> (extended family)	48.4	42.4	6.7	2.5	100
<i>Mohalla</i> (neighbourhood)	37.1	53.2	7	2.8	100
<i>Biradari</i> (clan)	39.6	50.6	7.1	2.7	100
Self-provision village organisations; community organisations	11.8	47.4	37.6	3.1	100
Private dispute resolution mechanisms that charge a fee	5.3	45.9	45.1	3.6	100
Religious leaders in the community	14	49.7	32.8	3.4	100
Large local landowners (Village Chaudhry/Malik/Wadera)	12.8	60.9	22.9	3.4	100
Local influentials (local, provincial, national)	16.7	49.7	29.9	3.7	100
Local NGOs	20.5	36.8	39.6	3.1	100
Musalihati Council	5.5	38.8	52.1	3.5	100
Political groupings/vote banks ( <i>dharras</i> )	17.8	41	37.9	3.4	100

7. Round-table discussion in Karachi, 28 August 2013, Karachi

8. A woman activists from the civil society sector shared her views at the Round-table discussion in Karachi – 28 August 2013

### Women representation in - *panchayat, faislo, Baloch jirga*



respondents' lack of knowledge or understanding of the informal justice system. Further enquiry into this matter is required focusing only on women's participation in informal justice systems proceedings.

Provincial data shows that 27 per cent of respondents in Sindh said that women do participate in their informal justice system; 7.7 per cent of respondents said this in Baluchistan; and 3.2 per cent in Punjab. This suggests that Sindh is more liberal and accepting of women's participation in society. Punjab's result is disturbing, particularly as this province has the highest literacy rate of the three.

With regards to the 7.7 per cent result from Baloch districts, this comes as a surprise because both Baloch and Pakhtun ethnic groups are very conservative with tribal structures which are still intact and operational. Cross tabulation by gender shows that more female respondents said 'yes' (7.4 per cent) than male respondents (5.3 per cent).

#### ***Khandan* (extended family)**

According to the data, slightly less than half (48.4 per cent) confirmed that women have representation in *khandan* matters, while 42.4 per cent said that women do not take part in such proceedings. Key informants and participants of round-table discussions thought that women do take part in such matters inside their extended family structures – especially older women who have gained considerable control within the family due to their age.<sup>9</sup>

#### ***Mohallah* (neighbourhood)**

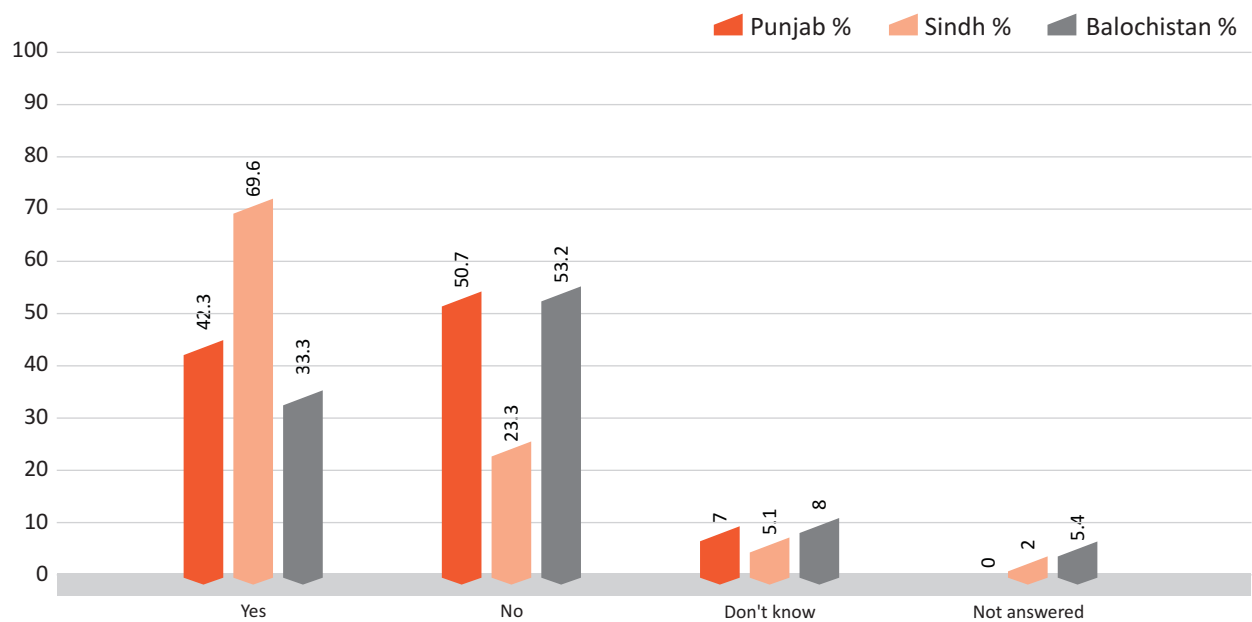
The above observation could be true for *mohallah* too. In neighbourhood politics, women do play their role, in certain matters and situations.<sup>10</sup> The majority of respondents (53.2 per cent) believed that women do not take part in *mohallah* matters; 37.1 per cent said that women do take part in *mohallah* politics in their respective regions.

Interestingly, when the data was compared by province, Sindh's result demonstrated high

9. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

10. Ibid

### Women representation in - Mohallah (neighbourhood)

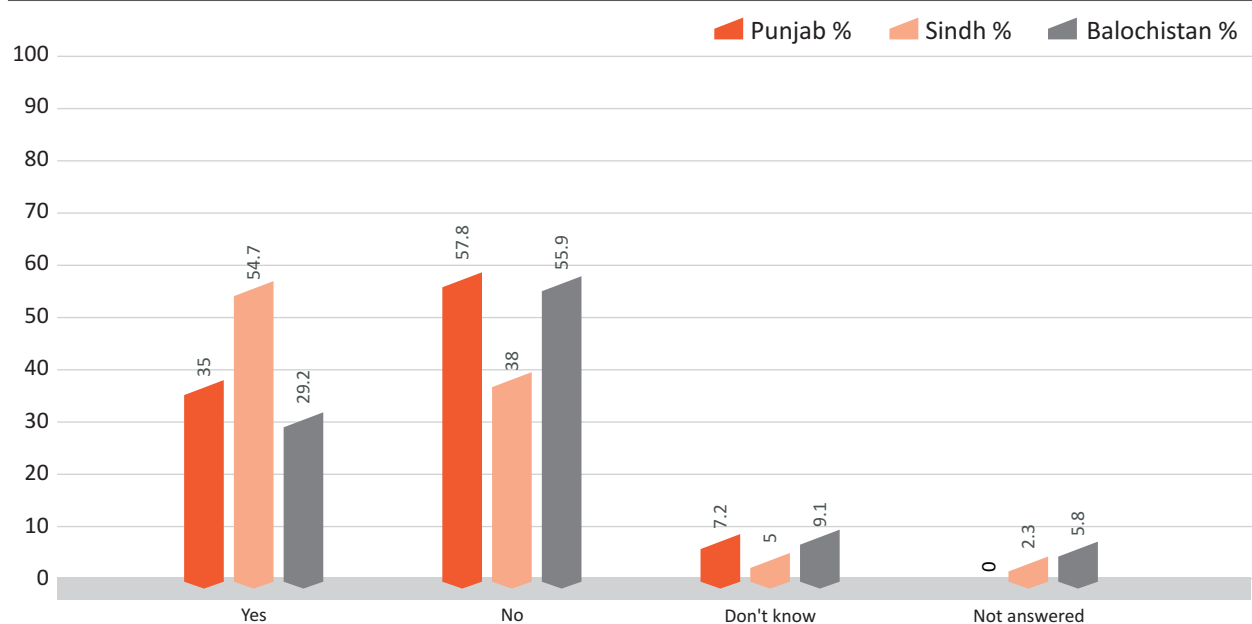


participation by women: 69.6 per cent of respondents confirmed that women do play a part in neighbourhood matters. Sindh is a liberal society where women are given more space and respect to make decisions. Sindh's survey result was followed by Punjab (42.3 per cent), and the Baloch districts of Balochistan (33.3 per cent).

### Biradari (clan)

Half of respondents (50.6 per cent) confirmed that women are not allowed to take part in matters settled within the clan. However, 39.6 per cent, which is a considerable proportion, said that women are given space to take part in decision-making within the clan.

### Women representation in - Biradari (clan)



According to the provincial data, Sindh once again demonstrated a more forward-thinking nature. Results confirmed that women's involvement in the clan is more acceptable in Sindh than in Punjab or Balochistan. Respondents in Punjab and Balochistan confirmed some degree of women's participation in clan proceedings which is interesting and encouraging. (During round-table discussions in Balochistan, participants had described women's involvement in the processes of Balochistan's tribal set-up as going against the culture.)<sup>11</sup>

### **Self-provision village organisation (VO); community organisation (CO)**

Formation of VOs or COs is mainly facilitated by NGOs during the process of community-driven development. Nonetheless, in some cases, villagers do initiate such processes on their own. The survey results for this inquiry are slightly surprising because during such processes women's participation is often required by NGOs in order to address gender equality issues. From the survey, only 11.8 per cent of respondents

confirmed that women have representation in VOs/COs while 47.4 per cent said women have no role to play in VOs/COs. More than one-third (37.6 per cent) did not have an opinion.

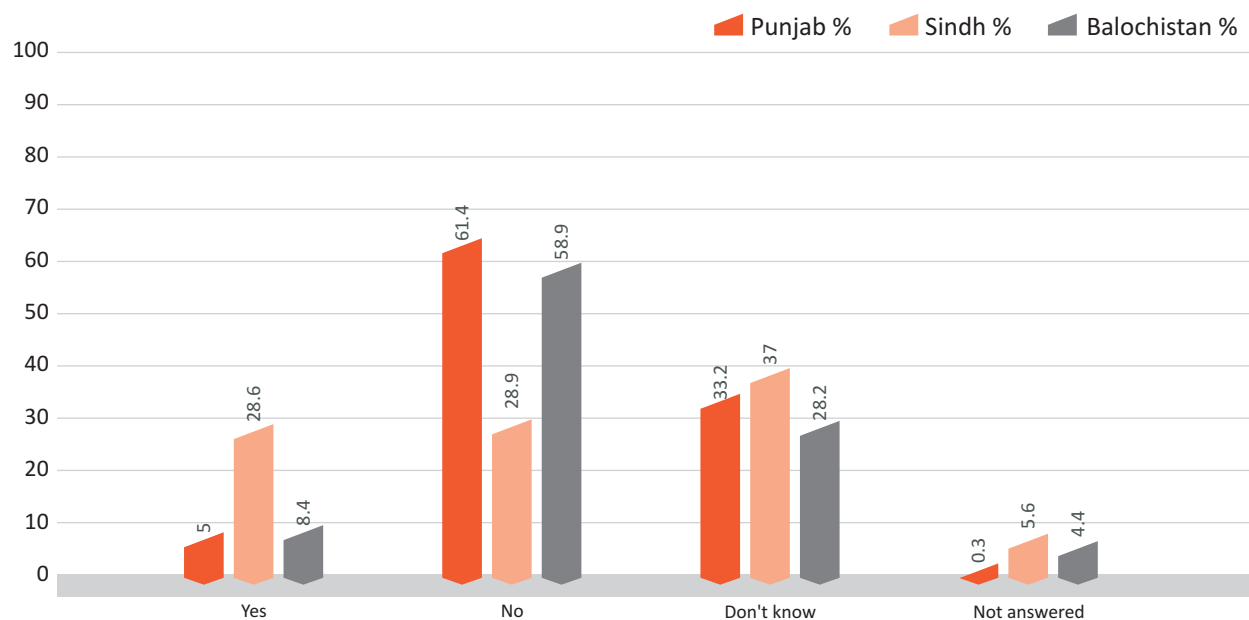
### **Private dispute resolution mechanisms (DRMs) that charge a fee**

Research shows that private DRMs do exist in Pakistani society although their presence is minimal and negligible. Some participants of round-table discussions also confirmed the existence of DRMs in their respective regions.<sup>12</sup> A negligible number of respondents, 5.3 per cent, confirmed that women participate in such mechanisms. In terms of provincial differences, 10.9 per cent of respondents from Sindh confirmed women's presence in DRMs, followed by 4.1 per cent of respondents from Baloch districts, and only 0.9 per cent from Punjab.

### **Religious leaders in the community**

When they are approached, religious leaders play a role in resolving communities' religious and civil

### **Women representation in - Religious leaders in the community**



11. Round-table discussions in Quetta, 11 December 2013

12. Round-table discussions in Karachi and Quetta, 28 August – 11 December 2013, respectively

matters. However, in some cases they also play a role in resolving local political issues and criminal disputes.<sup>13</sup> According to the survey, 14 per cent of respondents said that women are given opportunities to take part in such proceedings; however, it is not clear what role women play in such proceedings. Almost half of the respondents, 49.7 per cent, confirmed that women are not given representation in proceedings led by religious leaders. Personal observations, information gathered through round-table sessions and key informants' interviews reveal that women's involvement in such proceedings depends on the type and complexity of the issue or case.<sup>14</sup> In cases relating to child custody, divorce, inheritance or any other civil matter, a woman may be able to represent her case directly.<sup>15</sup>

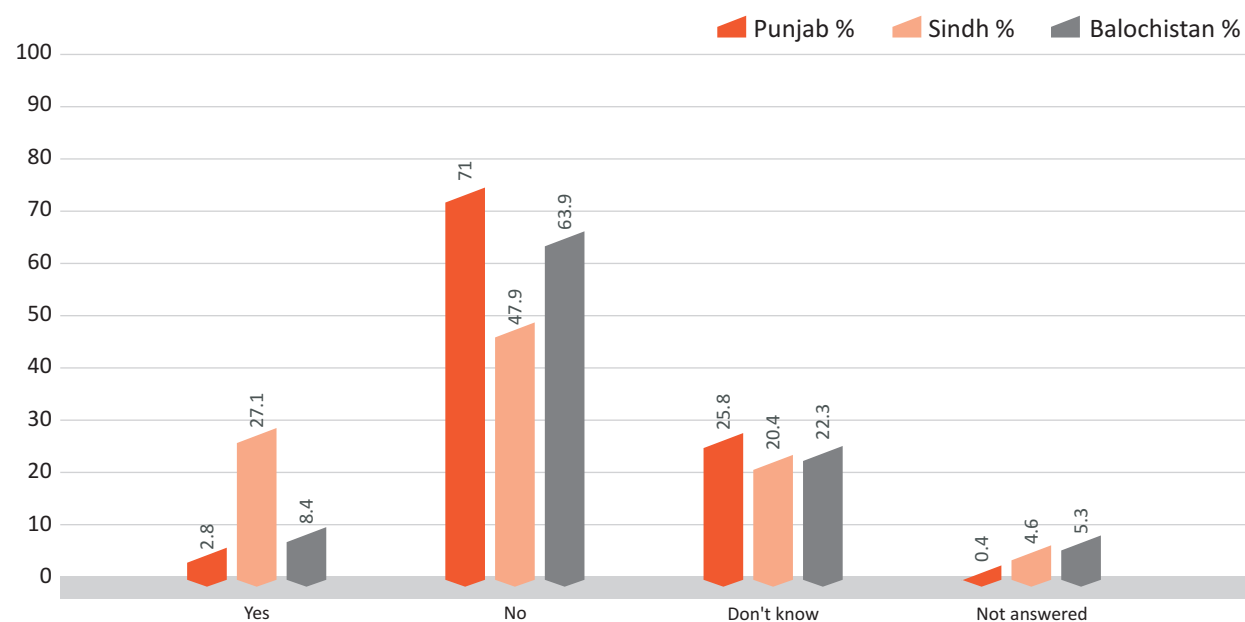
The provincial data reveals that the religious leadership of Sindh is more forward-thinking and has provided opportunities for women's

participation in such matters. The data reveals a huge gap between provinces, with Sindh as a leading province in including women in matters led by a religious leader.

### Large local landowners (Village Chaudhry/Malik/Wadera)

Punjab and Sindh are agrarian economies dominated by large landowners.<sup>16</sup> There is a perception that large landowners treat their labourers (*kisan* or *haris*) as their subjects and some of them run their own prisons.<sup>17</sup> The case of Baloch districts in Balochistan is not different from Sindh and Punjab where *sardars* (tribal chiefs) have complete control over the lives of the local people.<sup>18</sup> The patriarchal feudal mindset of this rural set-up does not offer opportunities for women to participate and represent themselves in legal disputes and matters.<sup>19</sup> According to the data, only 12.8 per cent of respondents confirmed that women are given representation, whereas

### Women representation in - Large local landowners (Village Chaudhry/Malik/Wadera)



13. Round-table discussion in Quetta, 11 December 2013, Quetta  
 14. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013  
 15. Interview with Tahir Iqbal Advocate, Legal Reform Forum (NGO), 25 August 2013, Karachi  
 16. Round-table discussions in Lahore and Karachi, August 2013  
 17. Ibid  
 18. Round-table in Quetta, 11 December 2013  
 19. Interview with I.A. Rehman, Director, Human Rights Commission of Pakistan (HRCPP), 22 August 2013, Lahore

60.9 per cent said that women are not given any representation. It might be the case that women are only given representation in civil matters, as was the case with other data sets.

The following provincial data shows Sindh once again as a forward-thinking region where women are given a role in proceedings led by large landowners.

### **Local influentials (local, provincial, national)**

The stature of influentials in this context is larger than tribal elders, local politicians, religious leaders, landowners, etc. Influentials can be rich individuals, landowners, politicians or non-political figures, tribal elders, or religious leaders – depending on their area of influence. Patterns in Pakistani society suggest that there are some women influentials as well, and that the majority of these have a political background and/or come from a feudal family.<sup>20</sup> However, according to the participants of the round-table discussions, the ratio of influential women to influential men is quite low.<sup>21</sup> According to the survey data (which

reflects similar findings), only 16.7 per cent of respondents believed that women are represented in the influential class, whereas almost half, 49.7 per cent, said that women have no representation in this class.

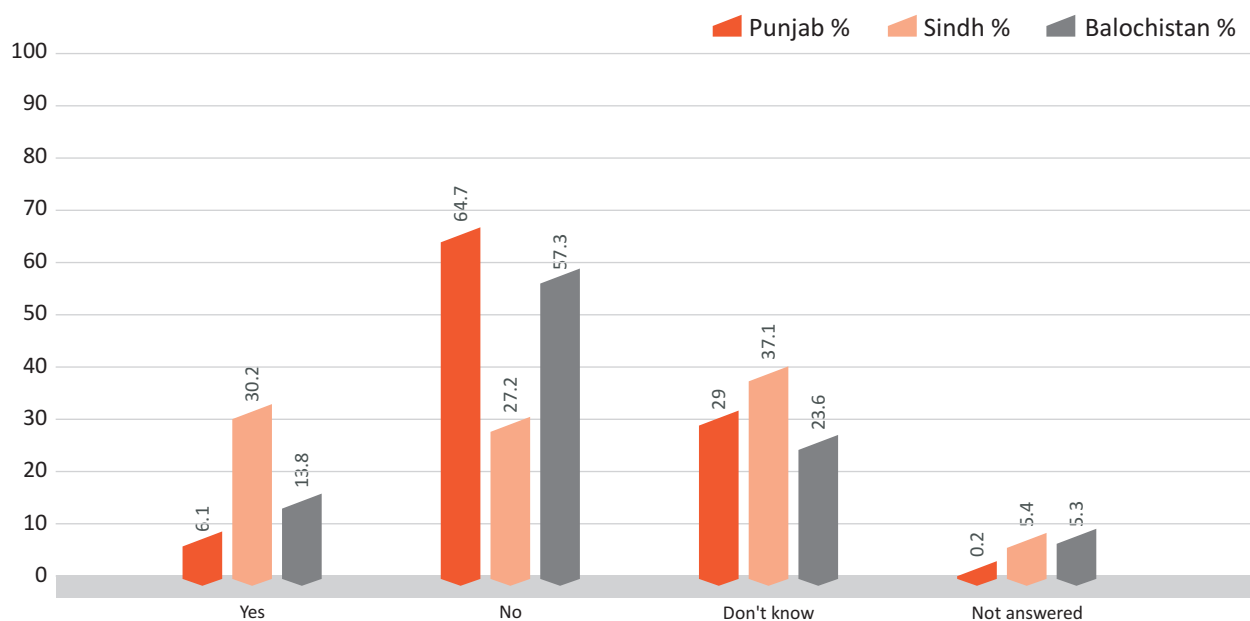
There is a need to examine the data by region as this will give us some idea of the local dynamics pertaining to women's representation in the influential class.

The table clearly shows that Sindh has more influential women than in Punjab and the Baloch districts of Balochistan.

### **Local NGOs**

Like VO/COs, there is a network of local NGOs in Pakistan. In recent years, during the Afghan conflict (1979-89), Pakistani society has witnessed a mushrooming of NGOs in Pakistan. However, a large part of Pakistan is still inaccessible for NGOs and their presence is restricted to urban centres and other rural areas.<sup>22</sup> One of the predominant themes in the work of NGOs is women's

### **Women representation in – Local influentials (local, provincial, national)**

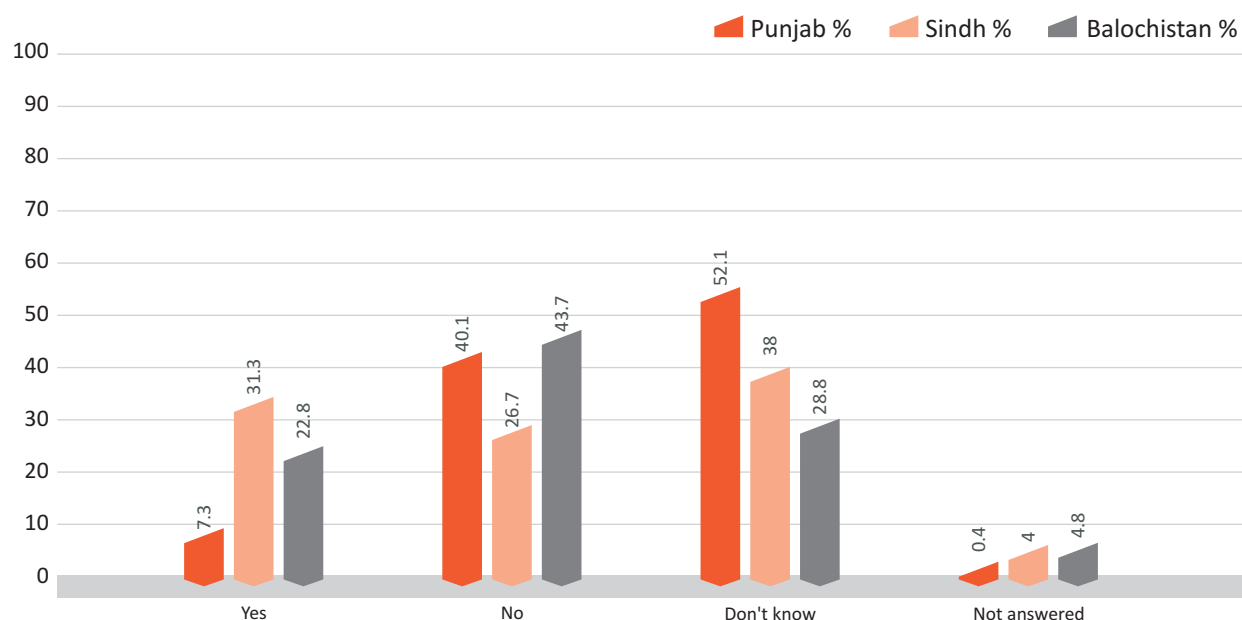


20. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

21. Ibid

22. Interview with Abdoul Razaq Gumrani, Manager Sindh province, HANDS (NGO), 25 August 2014, Karachi

## Women representation in - Local NGOs



empowerment, and they strongly encourage women's participation and inclusion.<sup>23</sup> Disappointingly, the data does not reflect this. This could be due to respondents' lack of exposure to NGOs, or that their personal interactions and experiences with NGOs have not involved women. Only 20.5 per cent of respondents confirmed that women are represented in local NGOs structures; 36.8 per cent said women were not represented; and 39.6 per cent (a considerable proportion), did not have an opinion.

With regards to provincial differences, 31.3 per cent of respondents in Sindh confirmed that women are represented in NGOs; 22.8 per cent confirmed this in Balochistan; and 7.3 per cent in Punjab.

### Musalihati Council (MC)

Musalihati Councils or Musalihati Anjuman were set-up during General (Retired) President Parvez

Musharraf's regime, in 22 districts of Pakistan.

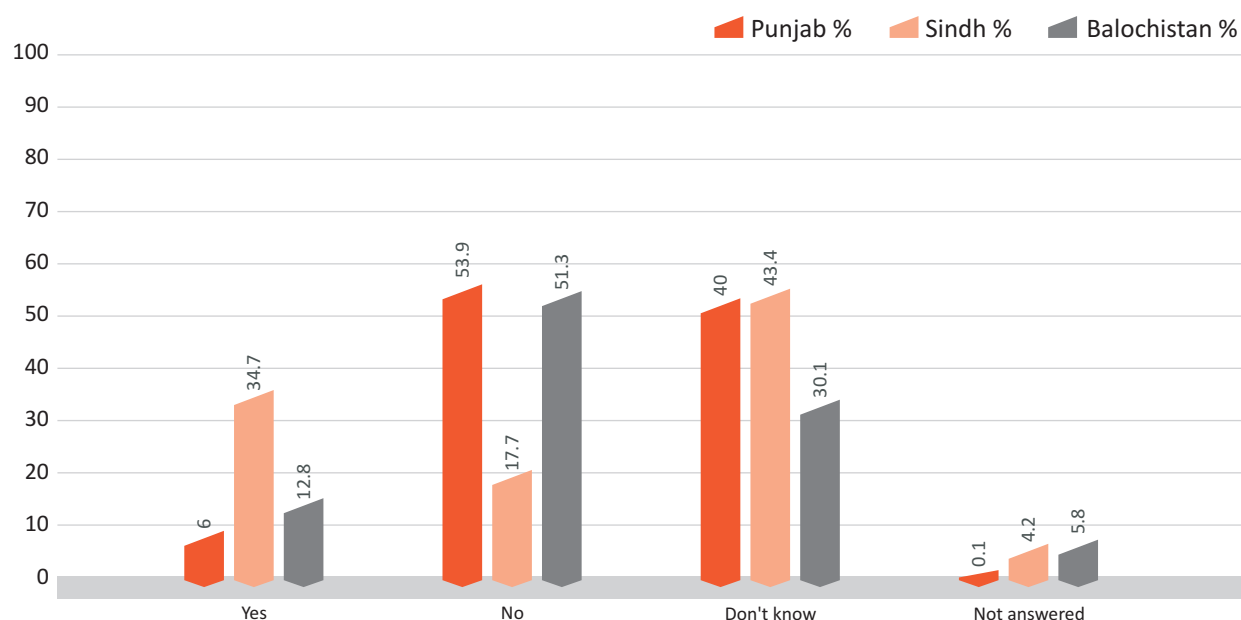
According to the survey, more than half of respondents (52.1 per cent) did not have an opinion on women's representation in MCs; only 5.5 per cent of respondents confirmed that women are represented in MCs; and 38.8 per cent said women are not represented. This is surprising as MCs are mandated to ensure women's participation in decision-making – each MC has at least two women councillors at union council level. Respondents are clearly unaware of this.

### Political groupings/vote banks (dharas)

The representation and participation of women in the political process is very much part of the democratic process. The Pakistani parliament has a 33 per cent quota for women, other than the elected women members. Therefore, women are part of political groupings/vote bank (*dharas*) in Pakistan.

<sup>23</sup> Ibid

## Women representation in - Political groupings/vote banks (*dharras*)



According to results from our survey, more than 17.8 per cent of respondents confirmed that women are represented in such political groupings. However, 41 per cent believed that women are not represented. According to the provincial data, 34.7 per cent of Sindh respondents are aware of women's participation in political groupings, as opposed to only 6 per cent of respondents from Punjab. This is surprising as the literacy rate in Punjab is higher

than in the other provinces. Even in Balochistan, 12.8 per cent of respondents confirmed that women participate in such political groupings.

### Representation of non-local ethnic and/or tribal groups/minorities in the informal justice system

This question aims to gather perceptions on whether non-local ethnic and/or tribal groups have representation in informal justice

Do non-local ethnic and/or tribal groups have representation in the informal justice system?					
Response	Yes %	No %	Don't know %	Not answered %	Total %
Local village <i>punchayat</i> or <i>faislo</i> or Baloch <i>jirga</i>	31	47.2	19.7	2	100
<i>Khandan</i> (extended family)	29	50.3	17.5	3.3	100
<i>Mohalla</i> (neighbourhood)	36.6	42.5	17.5	3.4	100
<i>Biradari</i> (clan)	29.6	47.7	19.4	3.3	100
Self-provision village organisations; community organisations	20	30.8	46.3	2.9	100
Private dispute resolution mechanisms that charge a fee	7.3	34.6	54.7	3.4	100
Local crime lords	8.8	34.4	53.2	3.6	100
Religious leaders in the community	22.2	34.9	39	4	100
Large local landowners (Village Chaudhry/Malik/Wadera)	21.5	43.6	31.6	3.3	100
Local influentials (local, provincial, national)	20.1	38.8	36.4	4.7	100
Local NGOs	18.3	32	46.3	3.4	100
Musalihati Council	7.6	29.6	59	3.8	100
Political groupings/vote banks ( <i>dharras</i> )	17.9	31.8	47	3.4	100



institutions. This question refers to ethnic groups/minorities, mainly Muslims and not necessarily religious minorities. Pertinent findings are analysed here, in particular in relation to a few institutions which are highlighted by high number of survey respondents.

### **Mohallah (neighbourhood)**

*Mohallah* (neighbourhood) is identified by 36.6 per cent of respondents who confirm that non-local ethnic and/or tribal groups are given representation in matters inside the neighbourhood. This is heartening and shows that Pakistani society is not very biased against non-local ethnic groups. However, this might not always be the case, as 42.5 per cent of respondents confirmed that non-local ethnic groups are not represented in collective matters dealt with by a neighbourhood institution.

### **Informal justice systems**

The data shows that informal justice mechanisms do provide some representation for non-local

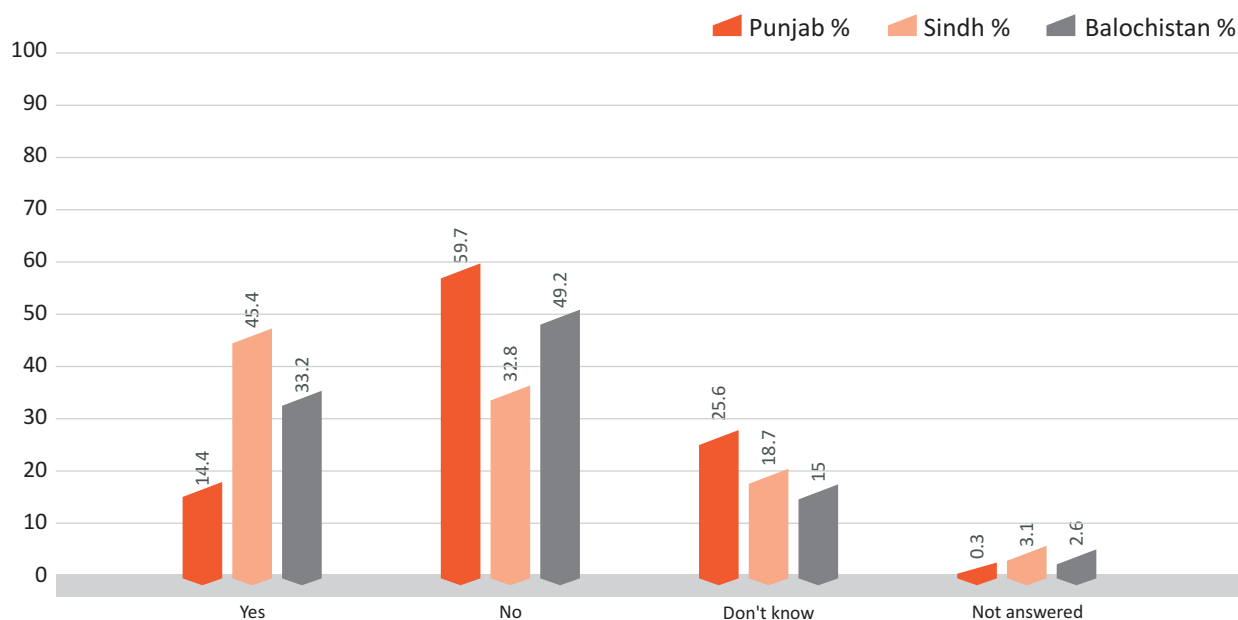
ethnic groups/minorities, in order to ensure participation for all: 31 per cent of respondents confirmed that non-local ethnic groups are represented in village *panchayat*, *faislo*, or Baloch *jirga*. However, 47.2 per cent of respondents said that non-local ethnic groups were not represented.

Further analysis of provincial data shows that 42.6 per cent of respondents in Sindh confirmed that other ethnic groups/minorities are represented in their informal justice system; 28 per cent confirmed this in the Baloch districts of Balochistan; and 16.2 per cent confirmed this in Punjab. This suggests that Sindh's people are the most accepting of other ethnic groups. Participants in round-table discussions also confirmed that Sindh is a pluralist society, which has opened its doors to other religious and ethnic groups.<sup>24</sup>

### **Biradari (clan)**

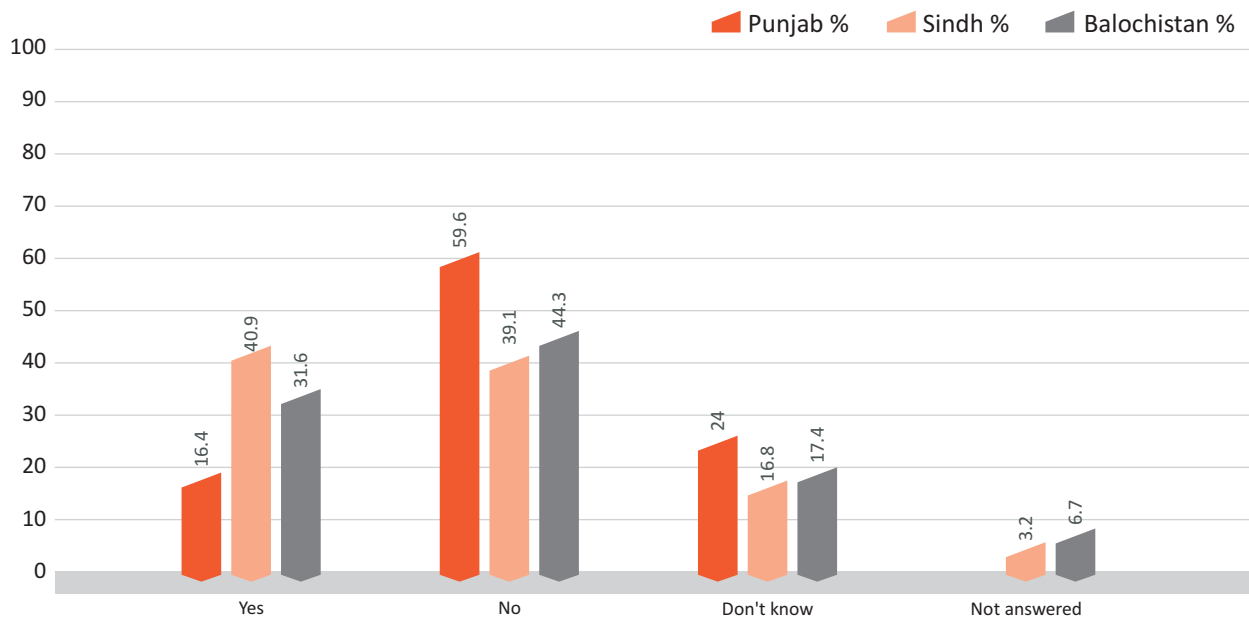
The *biradari* (or clan) system works in close confines and prefers to keep matters restricted

### **Non - local ethnic and/or tribal groups/minorities representation in - *panchayat*, *faislo*, Baloch *jirga*.**



24 Round-table discussion in Karachi, 28 August 2013

### Non-local ethnic and/or tribal groups/minorities representation in - *Biradari* (clan)



within its own circles. Nonetheless, the data reveals an interesting finding: 29.6 per cent of respondents confirmed that non-local ethnic groups are given representation in the clan system. Here, there is a need to understand the context, as this might be the case only in certain situations where a conflict or dispute arises between a certain *biradari* and a non-local ethnic group. In such situations, a clan might show willingness to allow non-local ethnic groups to participate so that the issue is resolved amicably, without resorting to violence. Of the respondents, 47.7 per cent said that there is no representation of non-local ethnic groups within the clan system.

The following graph investigates the provincial differences.

Once again data from respondents in Sindh province showed more acceptance of non-local ethnic groups within the clan system, followed by data from Balochistan and lastly Punjab.

#### ***Khandan* (extended family)**

After immediate family, *khandan* is the smallest unit in Pakistani rural society. *Khandan* has its

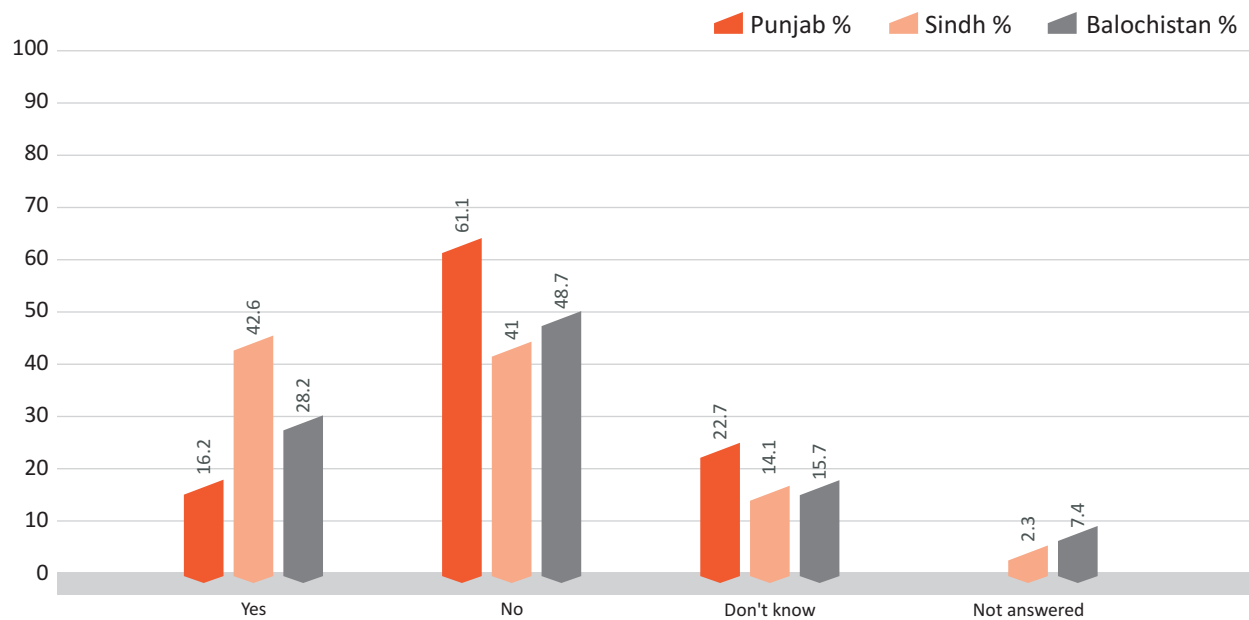
limits, with little openness for others to enter. However, according to the survey data, 29 per cent of respondents confirmed that non-local ethnic groups are given space to participate in matters dealt with by *khandan*. Following provincial cross-examination, Sindh is at the top of the list once again for its acceptance of non-local ethnic groups participating in *khandan* affairs.

#### **Representation of religious minorities (Christians, Sikhs and Hindus) in informal institutions**

The survey results show some interesting findings which contradict the current religious-political situation in Pakistan. Minorities are faced with numerous issues – the most important is their protection and safety.<sup>25</sup> Access to justice for minority religious groups, or being included in various processes of informal systems, might not be the most urgent issues for them at this stage. However, there are some encouraging signs from the survey which indicate that minorities are given some representation in informal justice systems. The data shown in the table is self-explanatory.

25. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

### Non-local ethnic and/or tribal groups/minorities representation in - *Khandan* (extended family)

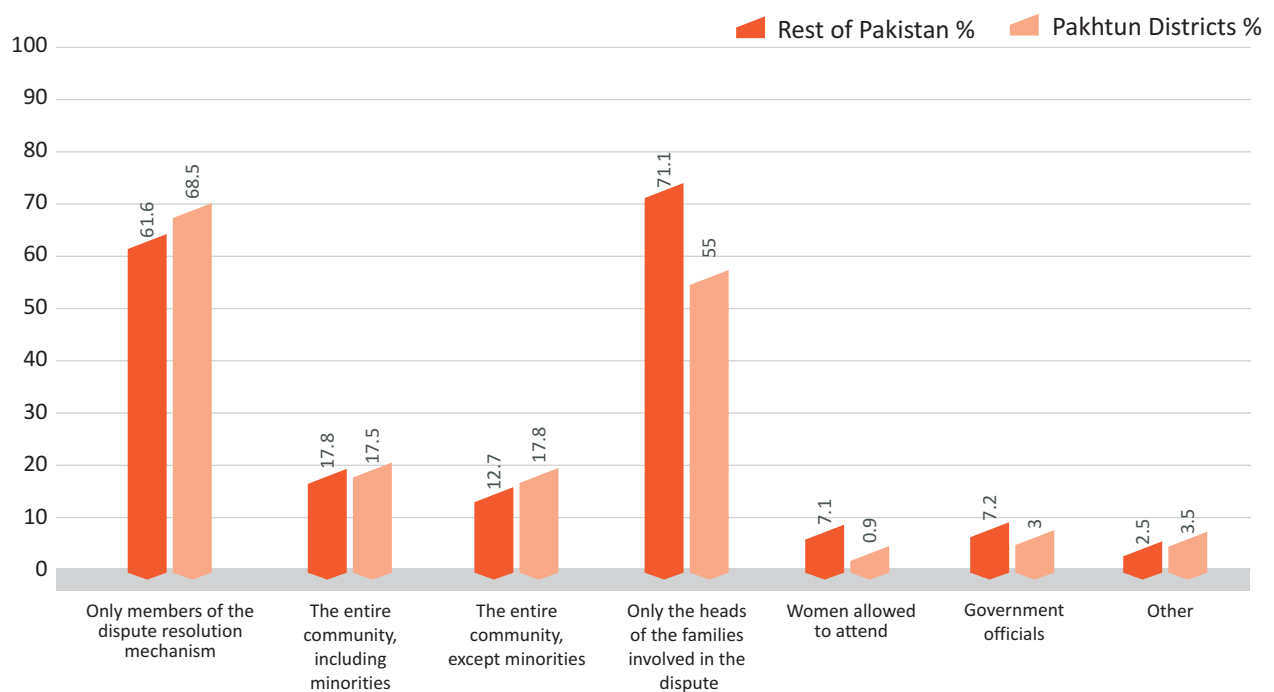


Please note that the information provided above does not necessarily confirm factual reality, but shows respondents' perceptions.

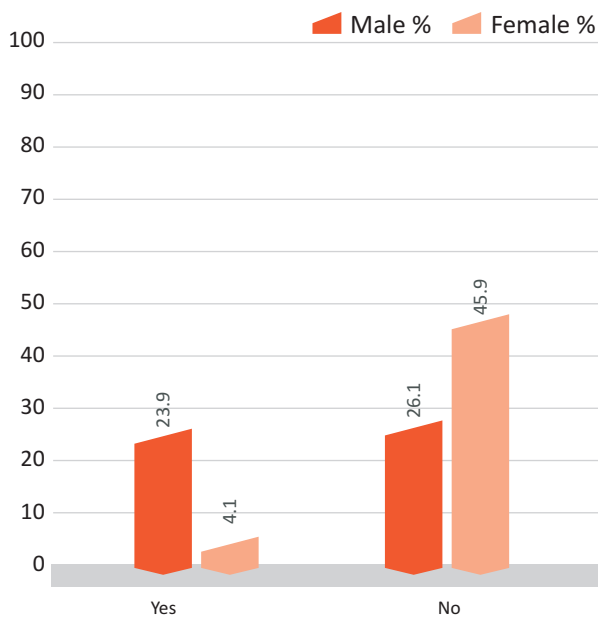
### Attendance at the informal dispute resolution system proceedings

Information gathered from key informants and experts, and through round-table discussions in

### Who attends the proceedings of the informal dispute resolution system?



### Have you attended these proceedings?



Karachi, Lahore, and Quetta, confirms that the attendance in proceedings of the informal justice system depends on the type and size of the dispute. The question was presented in a multiple-choice format, and respondents could select more than one option. Respondents' answers are based on their own experience and knowledge.

More than two-thirds of respondents (71.1 per cent) believed that only the heads of the families/parties involved in a dispute could attend proceedings, along with mediators or members of the informal justice system; and 61.6 per cent said that attendance was only permitted by members of the informal justice system. It appears that for some of the time only members attend and mediate, although at some stage they have to involve the parties to the dispute – without their participation a decision can not be reached.

In some cases, where a communal issue is involved, the entire community is given an opportunity to attend the proceedings and witness the entire process – only 17.8 per cent of

respondents confirmed that this happens. With regards to women's attendance, the result reflects previous data sets of this survey – only 7.1 per cent of respondents confirmed that women are allowed to attend (this usually depends on the nature of a dispute – for example, these could be predominantly family disputes).

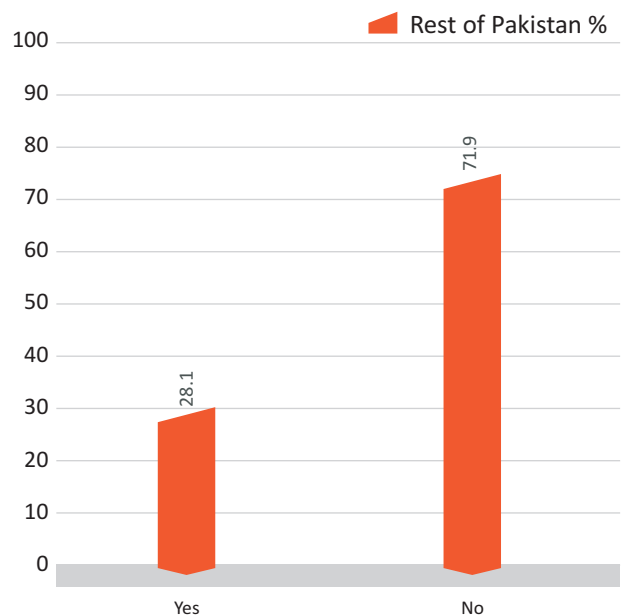
This data was compared with the data for the previous survey from the Pakhtun districts, and the results and pattern of responses are fairly similar.<sup>26</sup>

### Attendance at proceedings

In attempting to identify how many respondents had attended proceedings of the informal justice system, the survey found that 28.1 per cent of respondents had attended such proceedings, whereas 71.9 per cent said that they had never attended proceedings of the informal justice system in any capacity – whether as a member, a party or a community member.

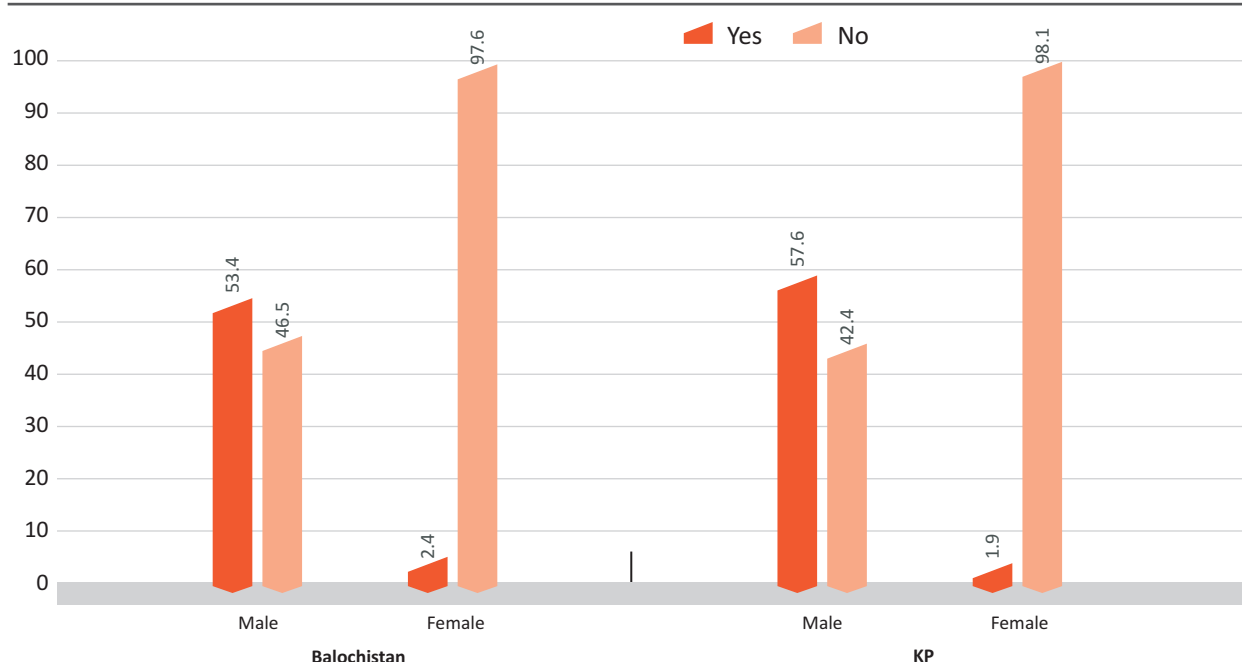
Cross-tabulation by gender clearly demonstrates that out of the 28.1 per cent of respondents who

### Have you attended these proceedings?



26. See Shinwari and Neha, *Understanding Justice Systems* (2013)

## Have you attended these proceedings?



had attended the informal justice system, only a fraction of the sample size (4.1 per cent) were women.

The data from Pakhtun districts in KP and Balochistan is similar, but rather more conservative for women, than the data from the districts in the rest of Pakistan.

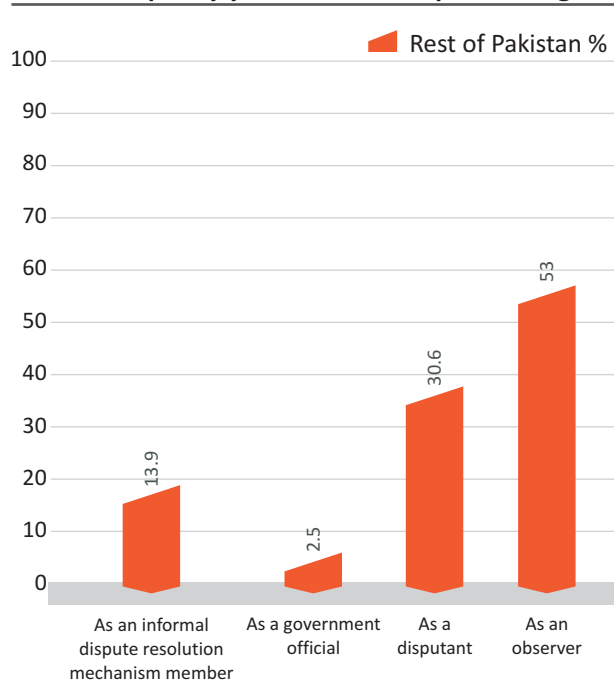
### Capacity in which respondents attended

Those who confirmed that they had attended the proceedings of the informal justice system were further asked in what capacity they had attended. Out of 402 respondents who confirmed their experience of the informal justice system, more than half (53 per cent) said that they had attended as observers; 30.6 per cent had attended as disputants; 13.9 per cent had attended as a member; and 2.5 per cent as government officials.

Presumably, respondents who attended as

government officials were not on official duty, but instead they were attending in a personal capacity.

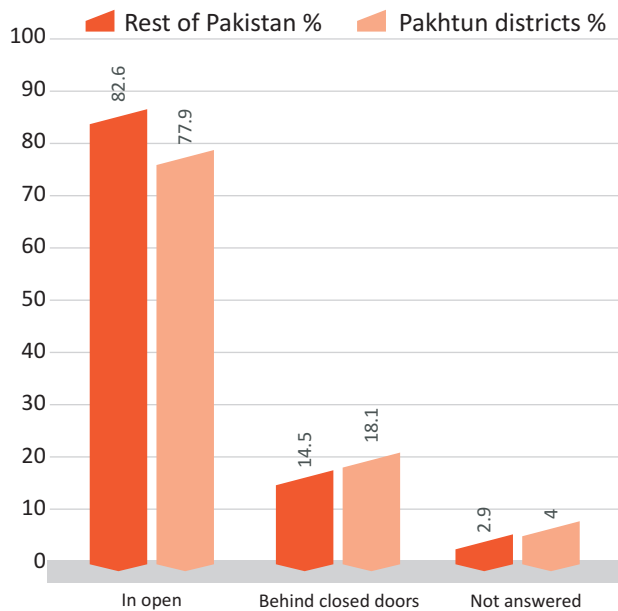
### In which capacity you attended IJS proceedings?



### Venue for informal dispute resolution system proceedings

Generally, dispute resolution systems are convened in an open area – depending on the magnitude and nature of the issue. Such proceedings are held in places accessible to both parties and to the community.<sup>27</sup> However, cases related to matrimonial matters are usually settled

#### How do informal dispute resolution systems convene their proceedings?



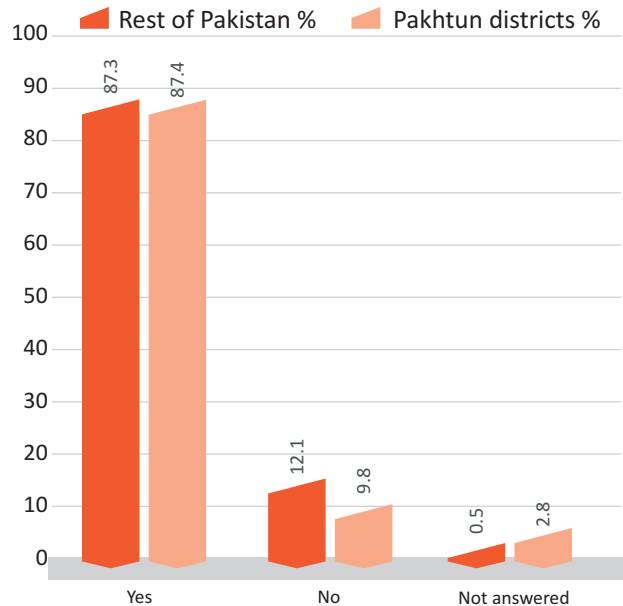
inside. With regards to the survey results, respondents' views reflect the general trends: 82.6 per cent thought that informal justice system proceedings are convened in an open space, whereas 14.5 per cent said that such proceedings take place behind closed doors.

The data from Pakhtun districts of Pakistan is not different from the rest of Pakistan data.

#### Presence of both parties to the dispute at the hearing

Generally, parties to the dispute are always

### Are both parties to the dispute always present at the hearing?



present in such proceedings. However, in certain circumstances, a disputant may be able to nominate a representative. The overwhelming majority of respondents (87.3 per cent) said that both parties to the dispute are always present at the hearing.

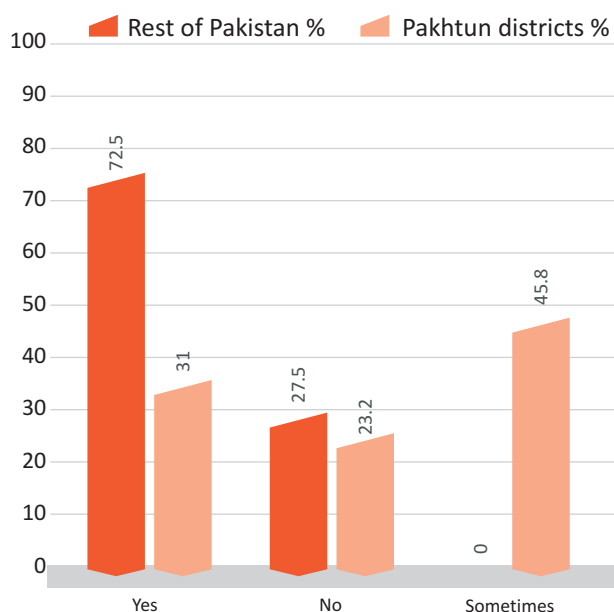
Data from Pakhtun district is very similar to the rest of Pakistan.

#### Finality of the decision of the informal dispute resolution system

In rural areas of Pakistan – in all provinces – it is believed that informal dispute resolution systems work parallel to the formal court systems in a way that challenges the writ of the state but is, at the same time, more acceptable to the local population.<sup>28</sup> Unanimous views were gathered during the round-table discussions that confirmed that parties to the dispute either accept the decisions of the informal justice system voluntarily, or members/mediators impose their decisions with the help of social pressure from the

27. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013  
28. Ibid

### Is the decision of the informal dispute resolution system final?



community.<sup>29</sup> However, cases of human rights violations have been often reported, leading to widespread criticism nationally and internationally. As the existence of such institutions is illegal and the superior judiciary has banned such informal institutions, the finality of their decisions is legally questionable.<sup>30</sup>

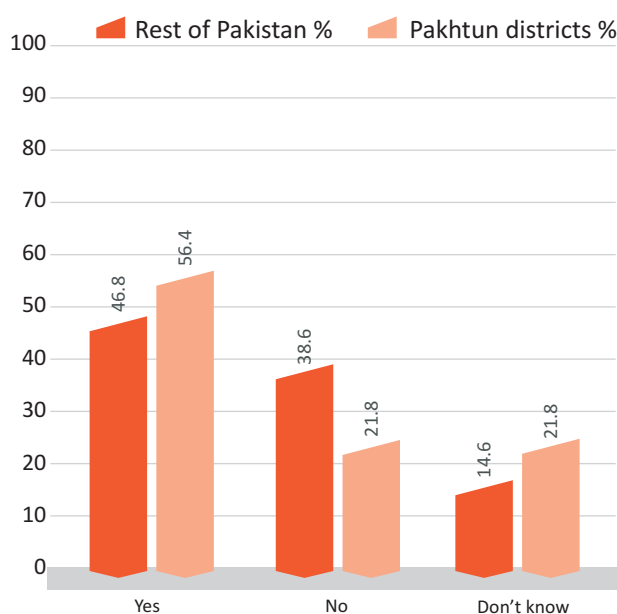
However, participants of round-table discussions said that within the rural communities of Pakistan, decisions of the informal justice system are generally accepted and honoured.<sup>31</sup> This was confirmed through the survey results too. According to the survey data, 72.5 per cent of respondents thought that the decisions of the informal justice system are final, while 26.2 per cent contest their validity.

The survey data for respondents in Pakhtun districts was slightly different and so were the responses. Data is self-explanatory.

### Provision for appeal in the informal dispute resolution system proceedings

Respondents seemed to be uncertain on this issue, as the survey results showed: 46.8 per cent of respondents believed that either party can lodge an appeal to the council of members to revisit or reconsider the decision – and that means, that the decision is not based on consensus; however, 38.6 per cent of respondents said that decisions can not be challenged and that there is no such provision for appeal.

### Is there provision for appeal in the informal dispute resolution system proceedings?



With regards to Pakhtun *jirga*, research suggests that *jirga* decisions are based on both parties' consent, and therefore decisions are announced after getting approval from both parties. Hence, such decisions are accepted voluntarily and the provision for appeal does not have any place. Nonetheless, it has been observed in some cases that if a party to the dispute is not happy with the decision, the party can request that community

29. Ibid

30. Interview with Jawad Hassan, former Additional Attorney General of Pakistan, 7 August 2013, Islamabad

31. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

elders organise another *jirga* led by different elders. If the party faces the same fate at the end of the second *jirga* then the decision is considered final. However, honouring the *jirga's* decision is voluntary, and anyone not happy with the *jirga* decision can access the formal justice system.<sup>32</sup>

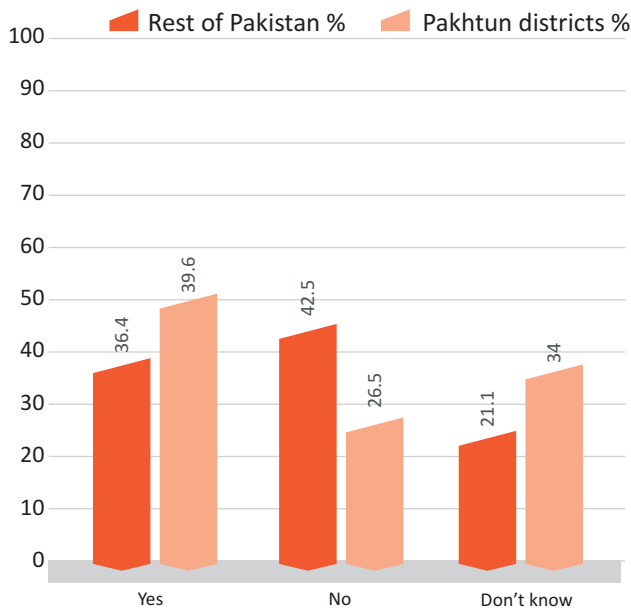
### In-built allocation for appeal in informal dispute resolution mechanism

This aspect is discussed in the previous section and it means that there is some cushion available for disputants to appeal to the council members to revisit a decision. Here we examine how respondents perceive this aspect.

A high percentage of respondents (42.5 per cent) thought that there is no such arrangement available in the informal justice system, whereas 36.4 per cent of respondents thought that there is provision for this.

The data from respondents in Pakhtun district shows that there is some variation in thinking.

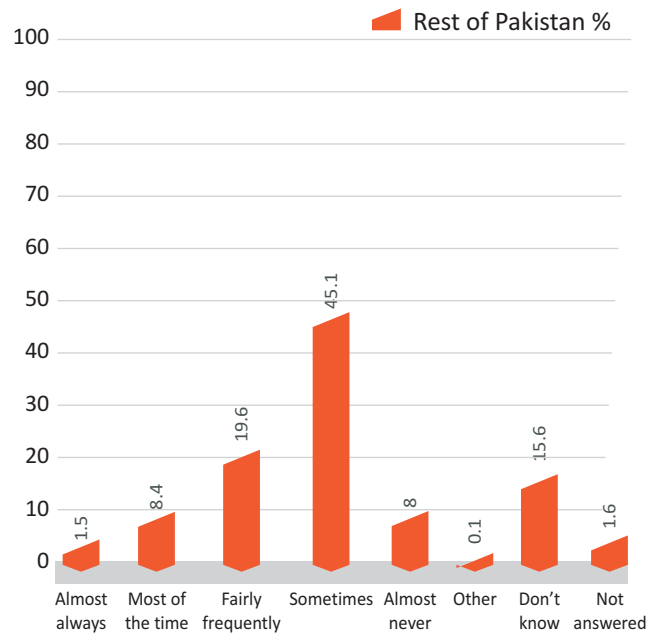
### Does the informal dispute resolution mechanism itself allow for appeals?



### Taking disputes to formal courts and tribunals in case the disputants are not satisfied with outcomes/decisions of informal dispute resolution mechanisms

Survey data shows that affirmative responses totalled 82.7 per cent – this is an overwhelming majority who believed a disputant could take his case to the formal court and tribunals.

### Do the disputants who are not satisfied with the outcomes/decisions of informal dispute resolution mechanisms then take their disputes to formal courts and tribunals?



Generally an appeal can not be lodged in a court of law against a verdict issued by the informal justice system, as the informal justice system has no recognition within the formal judicial system of Pakistan. Therefore, all actions of the informal justice system are considered against the law.<sup>33</sup> However, if a losing party is not satisfied with the verdict, it can lodge an appeal to the community to organise additional proceedings so that the case can be heard again.<sup>34</sup>

32. Interview with Saif Anjum, Special Home Secretary, Punjab, 22 August 2013, Lahore

33. Interview with Jawad Hassan, former Additional Attorney General of Pakistan, 7 August 2013, Islamabad

34. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013



### Decision under informal dispute resolution system

Although decisions are made after receiving consent from disputants, it has been noted through key informants' interviews and other sources, that council members often influence decisions.<sup>35</sup> A high percentage of respondents (48 per cent) believed that decisions under the informal justice system are reached through consensus. However, 20.8 per cent believed that the council members make decisions unanimously without consent from the parties to the dispute. Therefore, in cases of a unanimous decision, there might be a possibility that consent is not taken from disputants.<sup>36</sup>

Interestingly, 18.8 per cent of respondents said that members of the informal justice system take a decision on their own and conduct consultations for the sake of consultation only. Some

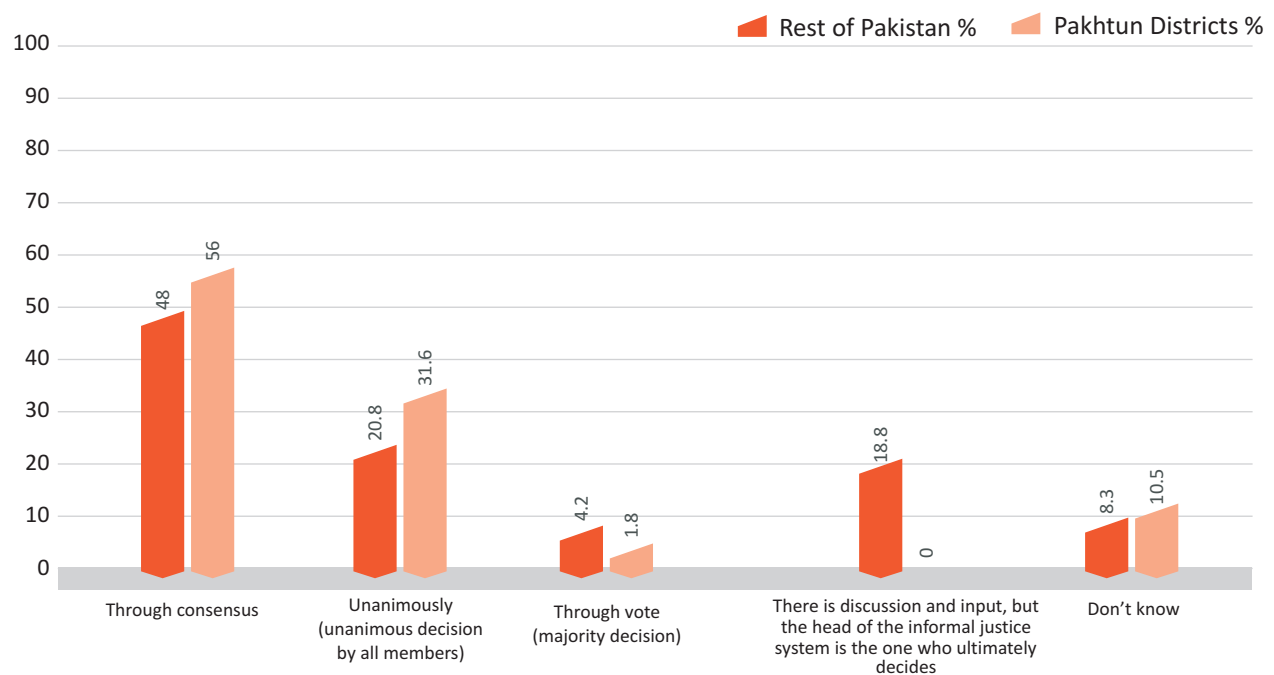
participants of the round-table discussions in Lahore also pointed out that the final decision lies with the head of *panchayat*.<sup>37</sup> Interestingly, 4.2 per cent of respondents confirmed that decisions are taken through a voting system. However, no such factual information was gathered during field research regarding this aspect. Council members are selected or nominated and not elected, and their decisions are reached following consultations within the council.<sup>38</sup>

The graph also shows the data from Pakhtun districts – where the majority of respondents (56 per cent) said that decisions were taken by consensus.

### Procedures/rules applied to resolve conflicts/disputes through the informal dispute resolution system

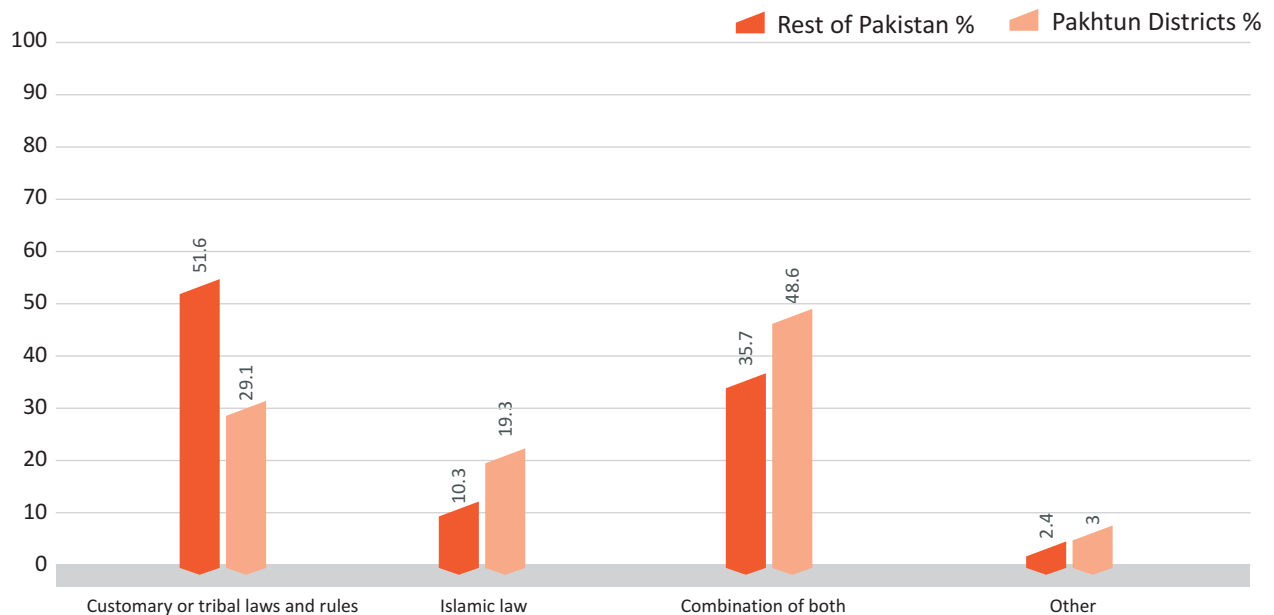
We are aware that informal dispute resolution

#### How are informal dispute resolution system decisions usually taken?



35. Ibid  
36. Ibid  
37. Ibid  
38. Ibid

## What procedures/rules are applied to resolve conflicts/disputes through the informal dispute resolution system?



systems are mainly based on local customs, tribal laws/rules. Islamic law also plays a crucial role and members of the council often consult with this for guidance and clarity.<sup>39</sup> Members of the informal justice system often take into account both Islamic law and tribal customs. However, tribal law often prevails over Islamic law.<sup>40</sup> This is particularly applicable in cases relating to vulnerable groups (women, children and minorities).<sup>41</sup> According to the data more than half of respondents (51.6 per cent) confirmed that customary or tribal law is taken into consideration when cases are decided; 35.7 per cent of respondents said that cases are decided using both customary and Islamic law principles; and 10.3 per cent said that the decisions of the informal justice system are only influenced by Islamic law.

In Pakhtun districts, it appears from the data that informal justice systems are more likely to draw on a combination of both religious and customary laws in reaching a decision.

### Satisfaction with the evidence collection and fact-finding mechanism of informal dispute resolution mechanisms

In terms of satisfaction with regards to evidence collection, the respondents are surprisingly supportive of the informal justice system. More than three-quarters of respondents (76.9 per cent) showed satisfaction with regards to evidence collection in the informal justice system process. Only 16 per cent of respondents said that they were not satisfied with the evidence collection standards in the informal justice system.

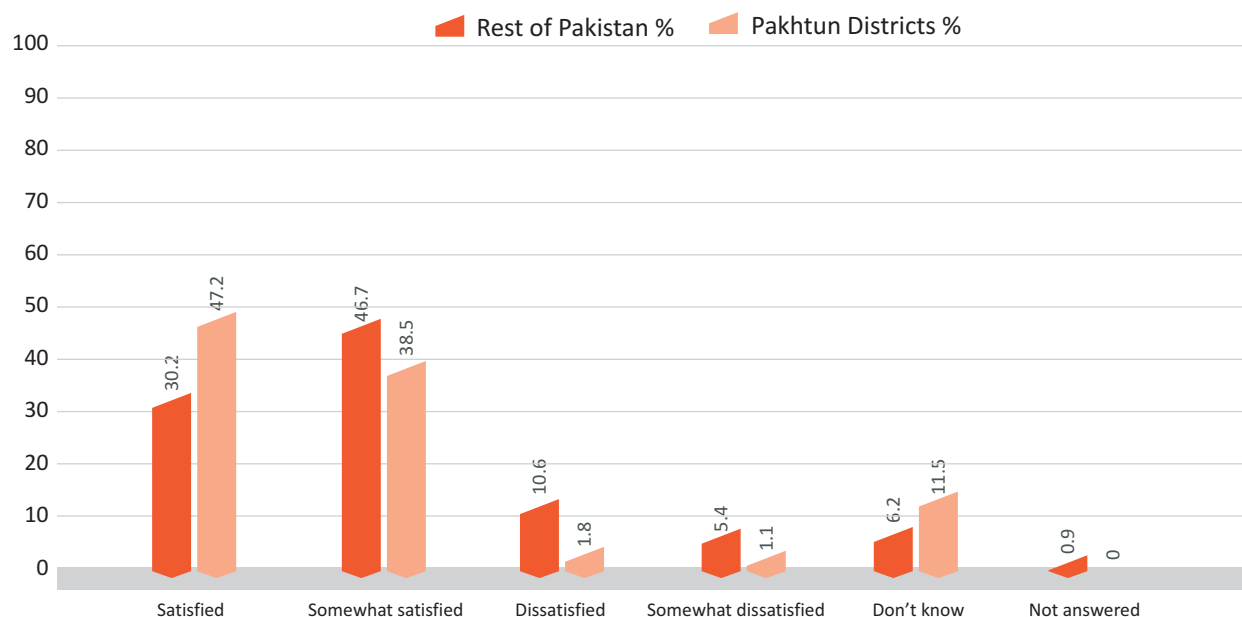
The survey results in the previous chapter show respondents' lack of trust in the ability of the informal justice system to deliver justice. However, the majority of respondents (76.9 per cent) believed that evidence collection under this system is of a satisfactory level. This contradiction indicates that respondents may be confused or have a lack of understanding on these issues.

39. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

40. Ibid

41. Round-table discussion in Quetta, 11 December 2013

### Are you satisfied with the evidence collection and fact-finding mechanism of informal dispute resolution mechanisms through the informal dispute resolution system?



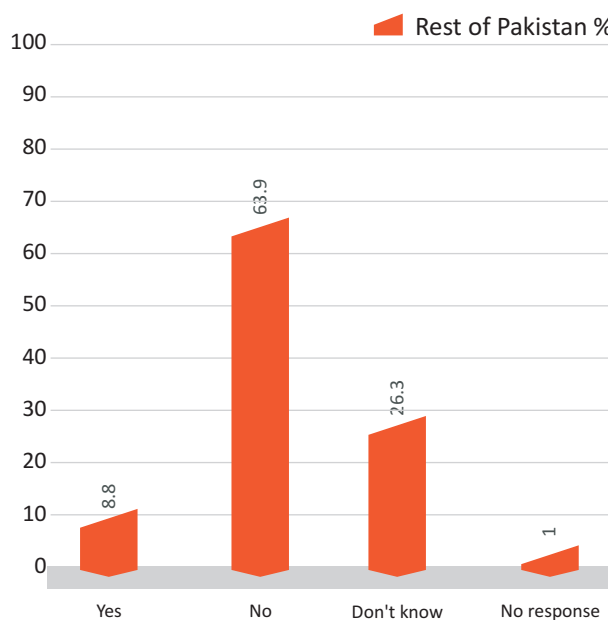
In Pakhtun districts, respondents seemed to be more satisfied than in the rest of Pakistan: 85.7 per cent of Pakhtun respondents said that they were satisfied.

#### Fee for disputes resolved through informal dispute resolution system

Participants of the round-table discussions were unanimous in their views regarding the high costs involved in formal courts systems – court fees, lawyers' fees, and finally elements of bribery and/or corruption.<sup>42</sup> Participants further emphasised that in considering the widespread poverty across Pakistan, the high cost involved in the formal legal system has helped informal remedies to survive.<sup>43</sup>

According to the data, the majority of respondents (63.9 per cent) confirmed that

### Do the disputants pay a fee for using the informal dispute resolution system when their disputes are resolved through it?



42. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013  
43. Ibid

members of the informal justice system do not take fees from the disputants. Only 8.8 per cent of respondents thought that members of the informal justice system charge a fee. More than a quarter of respondents did not have an opinion on this issue.

It is observed that widespread materialism is increasing and becoming a powerful driver in informal mechanisms – this means that money often becomes the deciding factor in reaching a decision.<sup>44</sup>

### Fee amount and method of payment

The 237 respondents (8.8 per cent) who confirmed that members of the informal justice system take a fee were asked how much this fee is, and how it is paid. They were presented with different options.

Out of the 237 respondents, a high number (29.5 per cent) believed that it depends on the affordability of a disputant – which means there is no fixed fee but whatever a disputant offers is acceptable; 24.1 per cent thought that the fee varies according to the seriousness of a dispute and the stakes involved; 15.2 per cent said that the fee aims to cover expenses incurred during the process and proceedings; and a small number of respondents, 27 out of 237, said that there is a standard fee charged for different kinds of disputes. However, according to the participants of the round-table discussions, there has been no such standard fee reported.<sup>45</sup> Some participants said that in cases of a commercial nature – such as a dispute over a business contract etc – mediators do charge a fee from the parties, but not in other cases.<sup>46</sup>

If yes, what is this amount?		
Options	Frequency	%
It depends on the paying capacity of the disputants.	70	29.5
It is a lump sum to cover expenses related to the dispute resolution process and proceedings.	36	15.2
It varies according to the seriousness of the dispute and the stakes involved.	57	24.1
It depends on how much time and effort it takes to resolve the dispute.	19	8
There are standard fees charged for different kinds of disputes.	27	11.4
Other	28	11.8
<b>Total</b>	<b>237</b>	<b>100</b>

### Role of police/local administration in the functioning of the informal dispute resolution system

Participants of the round-table discussions in Balochistan and Sindh said that the police and administration do play a role in high profile, political cases but that the role is not official – instead they seek to engage with the conflicting parties so as to avoid any possible incidents leading to a breakdown of law and order.<sup>47</sup>

According to the survey findings, the majority of respondents (61.1 per cent) believed that the police/local administration has no role in the functioning of the informal justice system. However, a sizeable 26.3 per cent of respondents

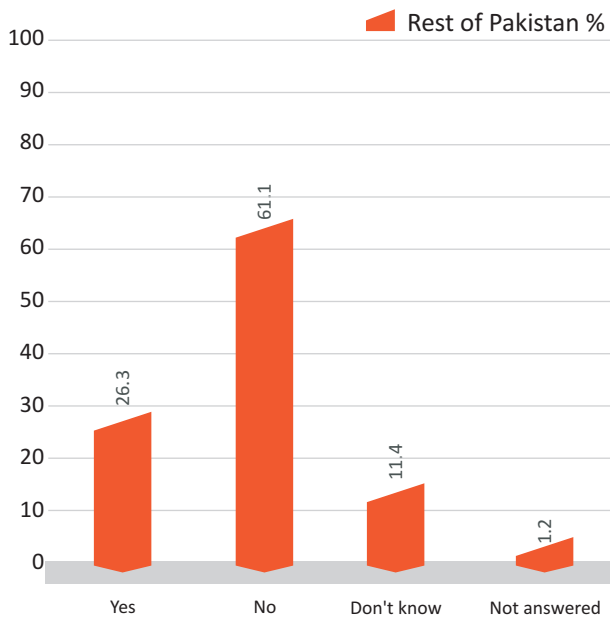
44. Ibid

45. Ibid

46. Ibid

47. Ibid

**Does the police/local administration have a role in the functioning of the informal dispute resolution system?**



believed that the police/local administration does play a role in the functioning of the informal justice system.

**Role of police/local administration in the implementation of the informal dispute resolution system's decisions**

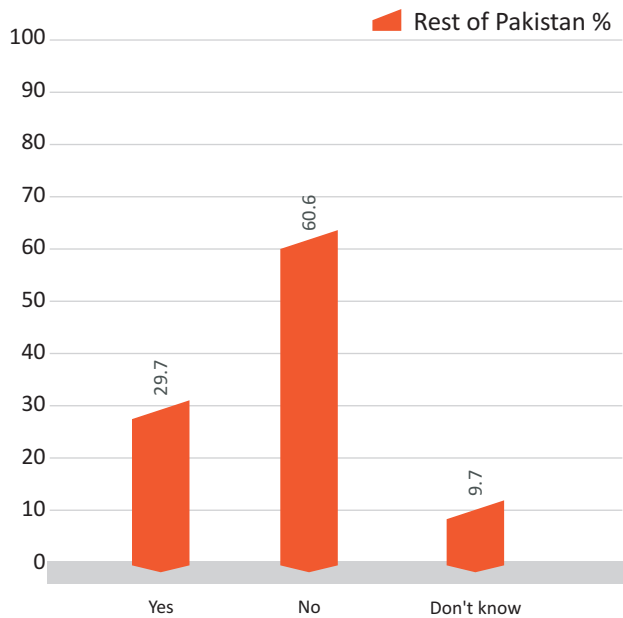
Respondents were further asked whether the police/local administration plays any role in implementing the decisions of the informal justice system. The majority of respondents (60.6 per cent) said that the police/local administration is not involved in such matters; 29.7 per cent said that the police/administration is involved in the implementation of the informal justice system's decisions. These figures reflect similar findings to those from the previous question.

**Provision for the parties to appoint a legal representative (similar to a lawyer in the formal justice system) in the informal dispute resolution system proceedings**

According to the data, around half of the respondents (49.5 per cent) believed that the

48. Ibid  
49. Ibid

**Does the police/local administration play a role in the implementation of the informal dispute resolution system's decisions?**

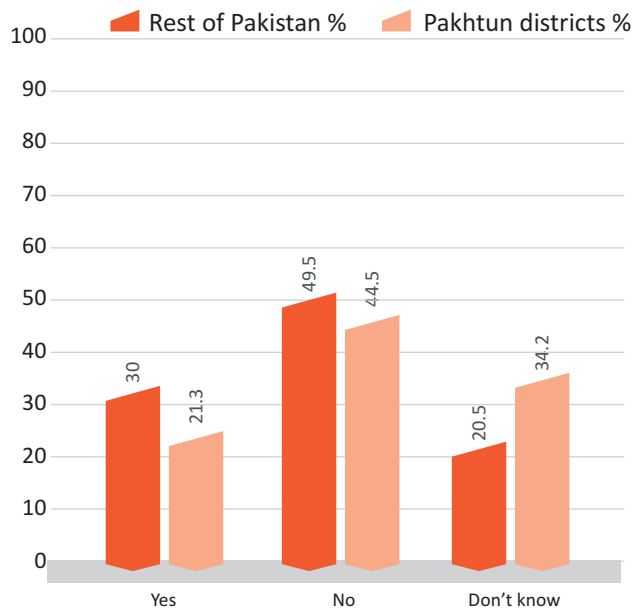


informal justice system has no such provision available for any disputant to appoint a legal representative. However, 30 per cent of respondents contradicted this. The data from Pakhtun districts is slightly different.

Officially, there is no such practice to appoint a legal representative because informal institutions have no legal backing. However, a *jirga* member/mediator could be a lawyer or a judge (retired). A party can nominate its representative – regardless of his qualification or background, and that means that the nominee could be a lawyer too. However, a nominee does not necessarily represent himself as a lawyer or legal representative but as a representative on behalf of a party.<sup>48</sup> Nevertheless, according to the majority in round-table discussions, members who have a legal background have more relevance and technical experience, so people might prefer nominating such members.<sup>49</sup>

According to the participants of the round-table discussions, rich and powerful individuals and families generally become members of the informal justice system in their areas, in order to

### Is there any provision for the parties to appoint a legal representative in the informal dispute resolution system proceedings?



exert pressure on the local people and sway decisions in their favour.<sup>50</sup>

### CONCLUSION

This chapter focused on respondents' opinions about the proceedings and operations of informal justice systems and its links with the formal institutions of Pakistan.

It is interesting to discover that most of our respondents are aware of the existence of various informal institutions and that they have an understanding of the way such institutions operate in their respective communities.

Participation by women in the proceedings – as decision makers, witnesses or parties – presents a major challenge. The majority of respondents confirms that women are not allowed to attend proceedings of *panchayat*, *faislo* or Baloch *jirga*. However, it is encouraging that the data suggests

that women are participating in other informal mechanisms – such as *khandan* (extended family), *mohallah* (neighbourhood), and *biradari* (clan) etc. Interestingly, Sindh is credited for the highest levels of women's participation in the proceedings of informal institutions.

A sizeable percentage of respondents said that the informal justice system offers opportunities for the involvement of minority groups and women in its proceedings. However, our knowledge and experience contradicts this. Nonetheless, there may be certain situations where vulnerable groups are provided with the opportunity to participate in the proceedings.

The participation of ethnic groups in the process – in the context of all informal institutions – is also seen as particularly challenging in Punjab and Balochistan. However, data from Sindh conveyed a pluralistic openness towards ethnic and religious minorities.

The data showed that the proceedings of the informal justice system take place in the open. However, it is noted that in certain sensitive cases – such as a family's civil matters (divorce, custody of a child or distribution of inheritance etc) – such proceedings take place inside.

The majority believed that the decisions of the informal justice system are reached through consensus, and are accepted voluntarily by both parties, leaving little need for appeal or for accessing the formal judicial system.

Another interesting finding here is that the majority of respondents were satisfied about the levels of evidence collection under the informal justice system. In reality, there is very little evidence collected, as the local residents and mediators often presume to know the facts in advance.<sup>51</sup>

50. Ibid

51. Ibid

Links between the informal justice system and formal institutions have no formal recognition. This is due to the fact that it is illegal for a formal institution to associate itself with the informal justice system. However, in reality officials from the formal system are involved informally to sort out cases. According to the experts, this helps to resolve conflicts amicably and prevents further bloodshed.<sup>52</sup>

According to the majority of respondents, the informal justice system is a quick and less expensive option, when compared to the formal system. Experts and participants of the round-table discussions also confirmed this. The majority believes that these two features make the informal justice system the only viable option for poor people to access, despite the availability of formal remedies.

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52. Ibid

# CHAPTER 6

## THE STATE OF HUMAN RIGHTS UNDER INFORMAL JUSTICE SYSTEMS





# CHAPTER 6

## THE STATE OF HUMAN RIGHTS UNDER INFORMAL JUSTICE SYSTEMS

### INTRODUCTION

UNDP defines 'access to justice' as 'the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards'.<sup>1</sup>

According to another report, 'providing accessible justice is a state obligation under international human rights standards, but this obligation does not require that all justice be provided through formal justice systems. If done in ways to respect and uphold human rights, the provision of justice through the informal justice system is not against human rights standards and the informal justice system can be a mechanism to enhance the fulfilment of human rights obligations by delivering accessible justice to individuals and communities where the formal justice system does not have the capacity or geographical reach'.<sup>2</sup> The report further explains that 'human rights obligations apply to informal justice systems and states have an obligation to ensure the respect, protection and fulfilment of human rights, including where informal justice systems are the main provider of justice. Analysing informal justice systems for human rights

compliance is complex. Both informal justice systems and formal systems need to be analysed together in terms of their ability to deliver human rights-compliant structures, procedures and outcomes. In some circumstances, the human rights deficiencies will be common to the formal system and the informal justice system alike; in others, the informal justice system might show benefits over the formal justice system'.<sup>3</sup> For example, informal justice systems could be a positive tool to divert juveniles from the more retributive aspects of formal criminal justice systems.<sup>4</sup> Where there is limited or no access to formal juvenile justice mechanisms, informal justice systems can emphasise restorative justice that, seeking harmony in the local community, attempts to reintegrate young offenders into the community.<sup>5</sup>

The current state of justice system in Pakistan clearly demonstrates that poor and vulnerable people have difficulties in accessing the formal justice system – due to affordability, reach (geographical consideration) and the lengthy timeframe involved. On the other hand, the informal justice system and its associated

1. UNDP, Programming for Justice: Access for All, A practitioner's guide to a human rights-based approach to access to justice.(2005)

2. Informal justice systems: charting a course for human rights-based engagement [www.unicef.org/protection/INFORMAL\\_JUSTICE\\_SYSTEMS.pdf](http://www.unicef.org/protection/INFORMAL_JUSTICE_SYSTEMS.pdf) Sponsored by UNDP, UNICEF and UN Women.

3. Interview with Saif Anjum, Special Secretary Home, Punjab, 12 August 2013, Lahore

4. Interview with Advocate Tahir Iqbal, Legal Reform Forum (NGO), 25 August 2013, Karachi

5. Ibid

institutions (*khandan, mohalla, biradari* etc) provide accessible, cheap and quick justice services – this fact is confirmed through this survey's findings.

Although informal justice systems may be preferred for the reasons cited above, there are strong concerns over their tendency to violate human rights, especially the rights of women and minority groups. This may explain why a survey conducted by Thomson Reuters in 2011 ranked Pakistan the 'third most dangerous country' in the world for women, after Afghanistan and the Democratic Republic of Congo.<sup>6</sup> Informal justice systems are seen to have abetted inhuman cultural practices against women such as *swara and wani or sangh chatti*<sup>7</sup> and these have contributed significantly to the rise of cases of violence against women in Pakistan. For instance, in cases of murder, informal justice systems may recommend direct vengeance or the exchange of a woman as *swara/wani/sang chatti*. In addition, approximately 1000 women are killed in Pakistan each year in the name of honour. This is 25 per cent of the total honour killings in the world.<sup>8</sup>

This chapter discusses the human rights situation generally perceived in Pakistan, and the challenge to protect human rights under both the formal and informal justice systems existing in Pakistan's diverse social settings. The chapter is divided into several sections and each section addresses formal and informal institutions and their various dimensions.

In addition, this chapter aims to document respondents' perceptions on various formal and informal institutions and their compliance with international human rights standards, the Constitution of Pakistan, Islamic principles and legal injunctions.

### Familiarity with international benchmarks and standards for human rights and human rights protection

It is important to know the level of respondents' knowledge of international human rights standards and benchmarks. According to the survey result, only 4.6 per cent confirmed that they were 'very familiar' with international benchmarks and standards for human rights and human rights protection; 48.3 per cent confirmed that they were 'somewhat familiar'; and 45 per cent confirmed that they were 'not at all familiar' with this.

It can be safely assumed that the overwhelming majority is not familiar with the subject under discussion; those who confirmed that they were 'somewhat familiar' with the subject show a lack of confidence in this area.

**How familiar are you with international benchmarks and standards for human rights and human rights protection?**



6. Niaz Mohammad, Mufti Mohammad Mushtaq Ahmed, Abdullah Abdullah, Fazle Omer and Naqeeb Hussain, "Honour Killings in Pakistan: An Islamic Perspective", Asian Social Science, Vol 8, No. 10, August 2012, p. 180

7. *Swara* (in Pushtu language) or *Wani* (in Punjabi language) and *sangh chatti* means marriage of a girl from the offender's family/tribe to the victim's close relative without her consent.

8. Situation Analysis of Women and Children in Pakistan, National Report 2012, UNICEF, p.118.

### Familiarity with the rights, protections and remedies available under the Constitution and general laws and procedures of Pakistan

To document another dimension of having any familiarity with the rights, protection and remedies available under the Constitution of Pakistan, respondents were asked another question. Surprisingly, the data shows that only 4.8 per cent of respondents confirmed that they are 'very familiar'. Those who confirmed that they are 'somewhat familiar' constitute a majority of 56.3 per cent. However, keeping in view the technicalities involved when it comes to the Constitution of Pakistan and the laws and procedures of the land, one can easily assume that the level of knowledge and awareness of ordinary men and women in Pakistan is low. In addition, there is a widespread low literacy rate compared to other developing nations.

With regards to the subject under discussion, 37.4

#### How familiar are you with the rights, protections and remedies available under the Constitution and general laws and procedures of Pakistan?



per cent confirmed that they are 'not at all familiar' with this.

### Familiarity with Islamic legal principles and legal injunctions pertaining to human rights

After recording perceptions on international human rights standards and the Constitution of Pakistan, respondents were asked whether they were familiar with Islamic principles and legal injunctions pertaining to human rights.

Pakistani society is religious in outlook, and members perform routine religious duties and rituals, following the fundamentals of Islam. However, most people are unaware of the true nature of Islamic principles, especially people's rights under Islamic principles.<sup>9</sup>

According to the data, only 8.7 per cent of respondents thought that they are 'very familiar' with Islamic legal principles and legal injunctions; 68.7 per cent confirmed that they are 'somewhat

#### How familiar are you with Islamic legal principles and legal injunctions pertaining to human rights?



9. Interview with Nadeem Qureshi, Judge Customs Appellate Court, 26 August 2013, Karachi

familiar' with this; and 21 per cent confirmed that they are 'not at all familiar' with the subject. If respondents are 'somewhat familiar', this does not mean that they are knowledgeable on the subject. The data, therefore, leads us to assume that the overwhelming majority in Pakistan is not aware of human rights under Islamic principles and legal injunctions.

### Various systems and their compliance with international human rights standards

To document respondents' perceptions on the compliance of various institutions with international human rights standards, respondents were provided with a list of institutions and they were asked if the institutions meet the standards.

Several institutions were listed that do not necessarily possess any policy or procedures in written form, but it was important to document how people see them as an institution working to protect their rights. While there were institutions on the list which were established constitutionally and according to the international standards,

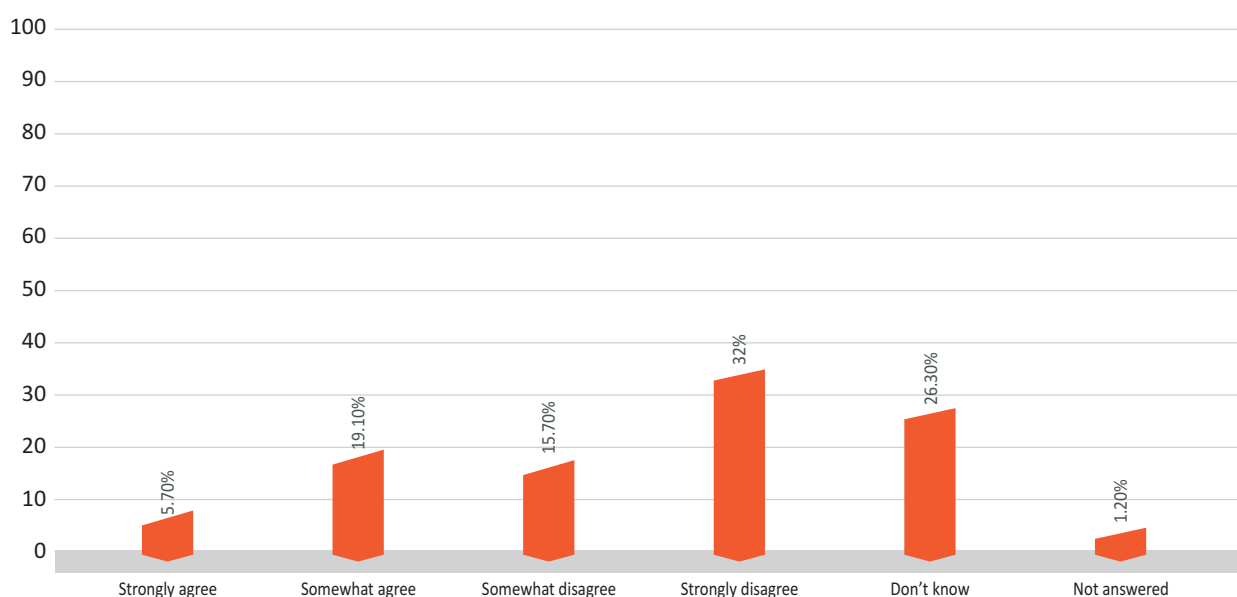
people shared different perceptions on the credibility of such institutions when it comes to human rights protection.

### Provincial police authorities and their local representatives (e.g. SHO, DSP, etc.)

A high number of respondents (47.7 per cent) did not agree that the policies and procedures of police authorities are in compliance with international human rights standards. It is worth mentioning here that the policies and procedures of police department may well be in compliance with the international human rights standards, although the actions and behaviour of individual officials may not reflect these standards – and this reflects negatively on the entire police department, leaving people critical of the police department as a whole for such violations.

A quarter of respondents (24.8 per cent) agreed with the notion that the police department is in compliance with international human rights standards.

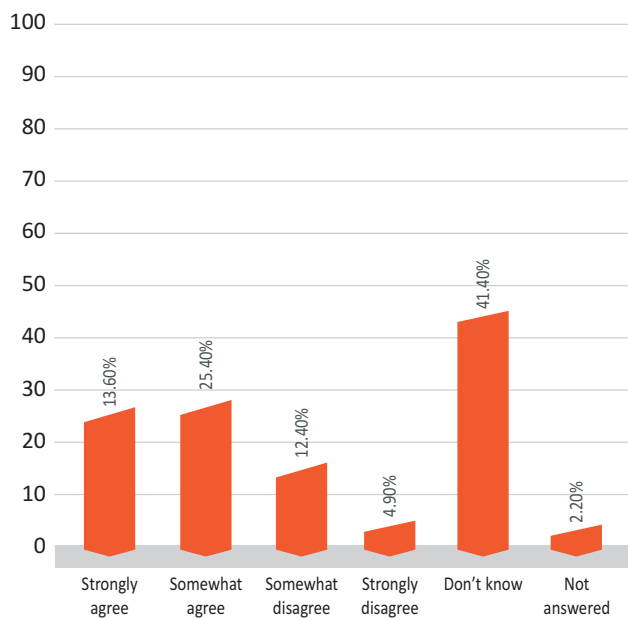
### Provincial police authorities and their local representatives (e.g. SHO, DSP, etc.)



### Superior Courts in Pakistan (Supreme Court and High Courts)

Superior Courts are mandated to safeguard the rights of Pakistani citizens and migrants, tourists, and refugees in Pakistan. The Superior Courts have developed significant credibility over the last few years, thus improving people's perceptions of their work. According to the survey data, a high percentage of respondents (39 per cent) agreed that the Superior Courts in Pakistan are in compliance with international human rights standards, whereas 17.3 per cent of respondents disagreed. Surprisingly, a higher group of respondents (41.4 per cent) did not have an opinion.

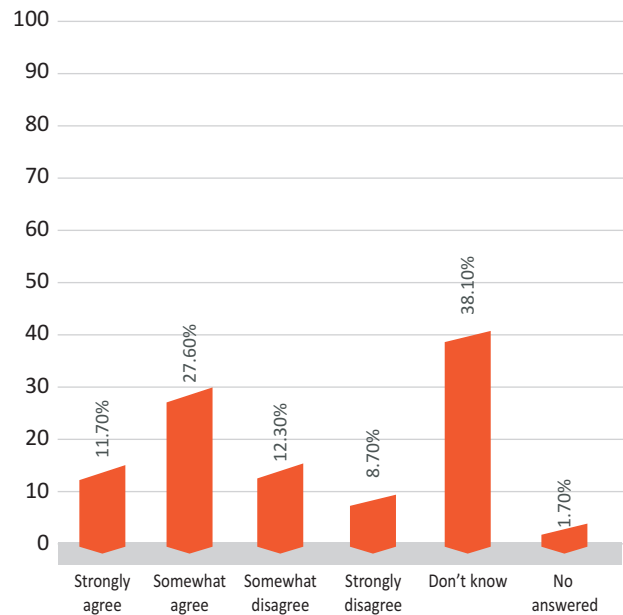
### Superior Courts in Pakistan (Supreme Court and High Courts)



### Lower Courts in Pakistan (Judicial Magistrate, District and Sessions Courts)

Unfortunately, the lower courts are widely criticised for: delays in reaching decisions; corruption; and political influence by the rich (usually at the expense of the poor).<sup>10</sup>

### Lower Courts in Pakistan (Judicial Magistrate, District and Sessions Courts)



The data shows surprising results: 39.3 per cent of respondents said that the lower courts in Pakistan are in compliance with international human rights standards; 21 per cent disagreed with the notion; and a sizeable portion (38.1 per cent) did not know.

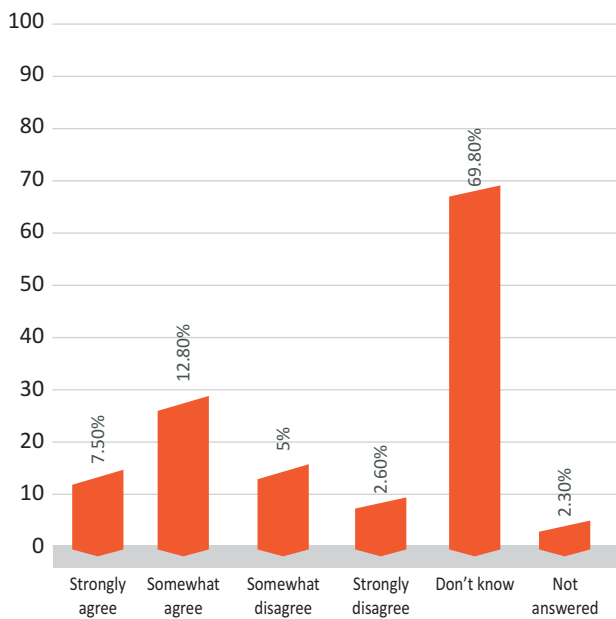
### Federal Shariat Court (FSC)

As stated in the previous chapter (with regards to people's awareness of institutions), ordinary Pakistani people have little idea of the existence of the Federal Shariat Court (FSC). Despite respondents' lack of knowledge, the survey documented whether respondents agreed with the notion that the FSC is in compliance with international human rights standards set out by the international community.

According to the survey data, nearly seven out of ten respondents (69.8 per cent) did not have an opinion; and 20.3 per cent said that the FSC is in compliance with international human rights standards.

10. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

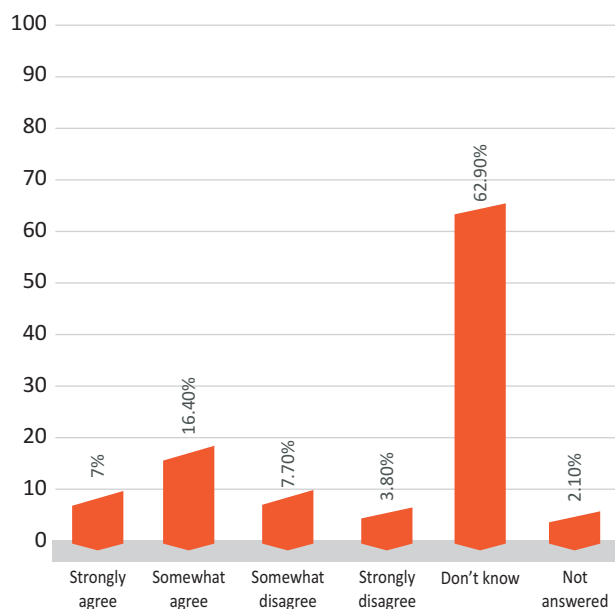
## Federal Shariat Court



## Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)

Again, the survey shows some astonishing results. Despite the fact that the overwhelming majority

## Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)

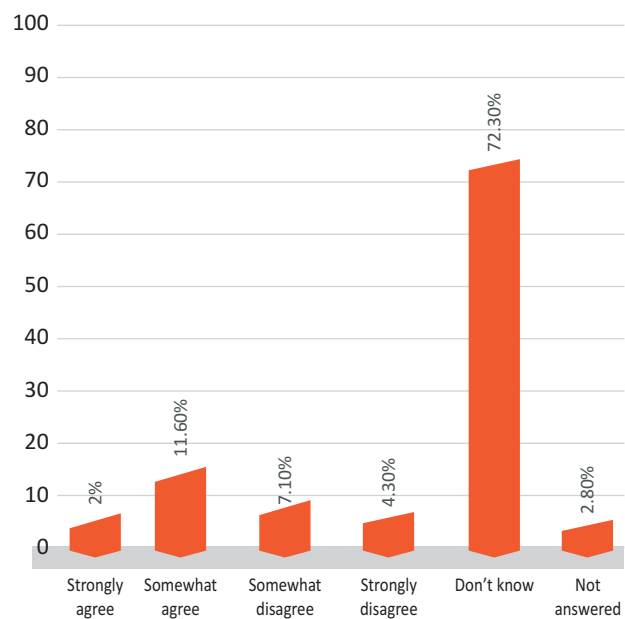


of Pakistani people is Muslim, the majority of respondents (62.9 per cent) did not have an opinion. Only 23.4 per cent agreed that religious seminary boards are in compliance with international human rights standards.

## Ombudsman

The general public seems to lack knowledge about the existence of the Ombudsman office: 72.3 per cent of survey respondents did not know whether the Ombudsman office and its policies

## Ombudsman

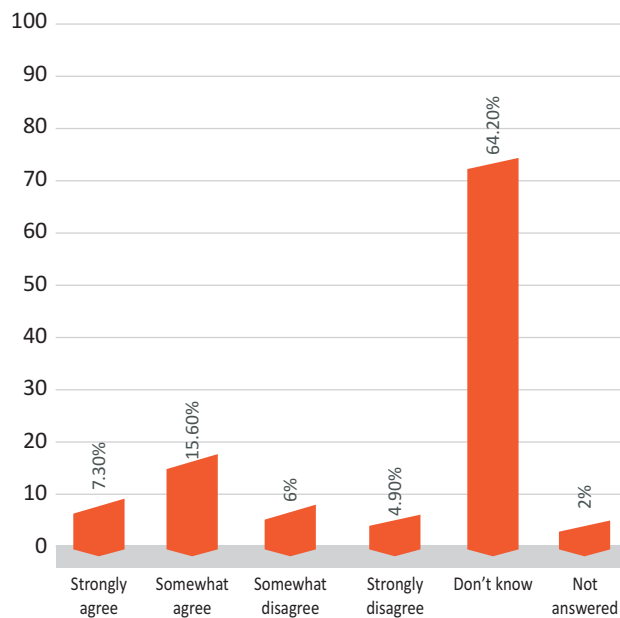


and procedures are in compliance with international human rights standards. Only 13.6 per cent agreed with the notion, and 11.4 per cent disagreed.

## Human Rights Commission of Pakistan (HRCP)

The HRCP is very popular within civil society organisations for its struggle to protect and uphold human rights in Pakistan. The majority of respondents had already shown their lack of awareness of the existence of the HRCP in Chapter 2 of this study (the findings shown in

### Human Rights Commission of Pakistan



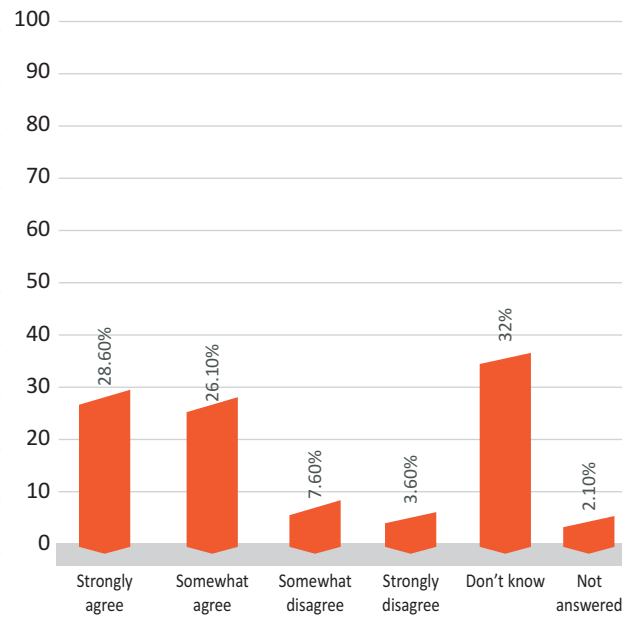
Chapter 2 reflect the data here). According to the data, the majority of respondents (64.2 per cent) did not know about this institution and therefore did not know if the HRCP meets international human rights standards; 22.9 per cent said that the HRCP did comply with international standards; 11.4 per cent said that it didn't.

### *Khandan* (extended family)

As stated earlier in Chapter 2 of this study, *khandan*, depending on its level of influence as an informal institution, plays an important role in resolving criminal and civil disputes, and prevents further tensions within and outside its domain. The system is widely respected and relied upon to resolve some complex issues – this has been supported by survey results on more than one occasion.

According to the data, the majority of respondents (54.7 per cent) agreed with the notion that *khandan* complies with international human rights standards, whereas only 11.2 per cent disagreed. The percentage of those who did not know is significant (32 per cent).

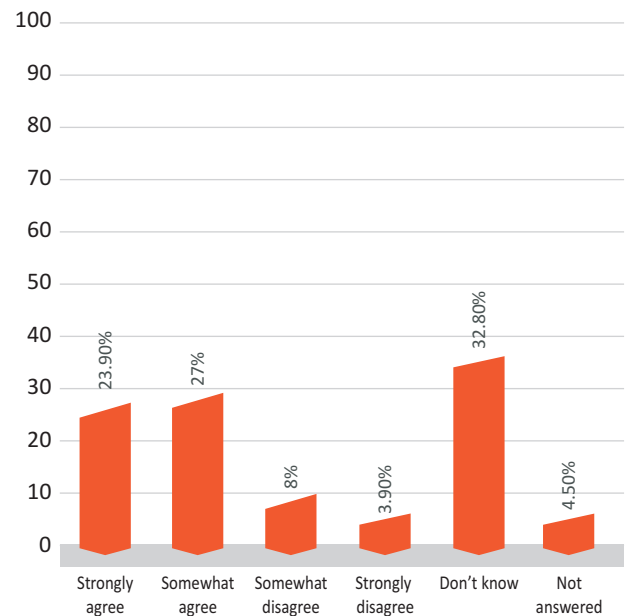
### *Khandan* (extended family)



### *Mohalla* (neighbourhood)

With regards to *mohalla* too respondents seemed to be surprisingly supportive – 50.9 per cent agreed that *mohalla* complies with international human rights standards and only 11.9 per cent disagreed.

### *Mohalla* (neighbourhood)



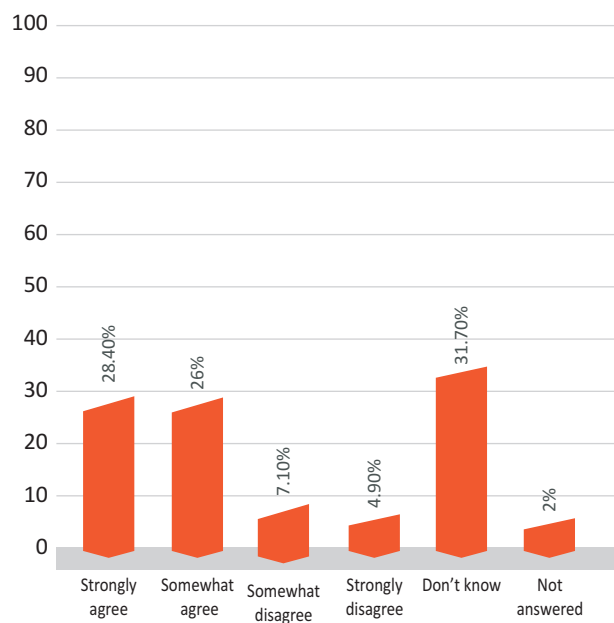
Again, the perception does not appear to be based on accurate and factual information. *Mohalla* does provide protection against external aggression; although *mohalla* also sometimes violates human rights within its internal domain.<sup>11</sup>

### **Biradari (clan)**

The *biradari* system in Pakistani society is very strong and provides protection against other clans or tribes in times of conflicts/disputes with regards to politics, personal feuds and land etc.<sup>12</sup> *Biradari*, as an institution might not be aware of international human rights standards. However, it does understand how to protect its own members against outsiders, and it will go to extreme lengths to do this – sometimes violating the rights of others in order to protect its own members.<sup>13</sup>

This is reflected in the data: 54.4 per cent of respondents agreed that the *biradari* system is in compliance with international human rights standards, whereas only 12 per cent disagreed.

### **Biradari (clan)**



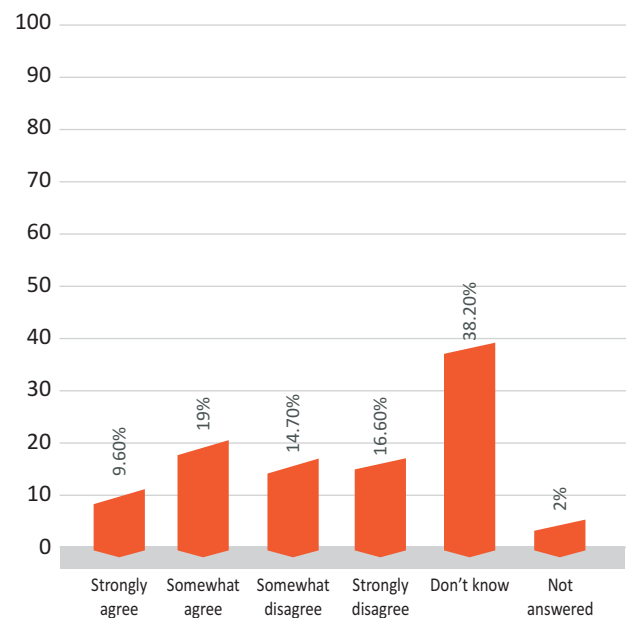
11. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013  
 12. Ibid  
 13. Interview with I.A. Rehman, Director, Human Rights Commission of Pakistan (HRCP), 22 August 2013, Lahore  
 14. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

### **Large local landowners (Village Chaudhry/Malik/Wadera)**

Survey results, with regards to respondents' perceptions of whether large local landowners comply with international human rights standards, are lower than for *biradari*, *khandan* and *mohalla*: 31.3% of respondents disagreed that large local landowners meet the international human rights standards; and 28.6 per cent agreed with the notion.

Although, the landowner result here is encouraging, there is a general negative feeling

### **Large local landowners (Village Chaudhry/Malik/Wadera)**



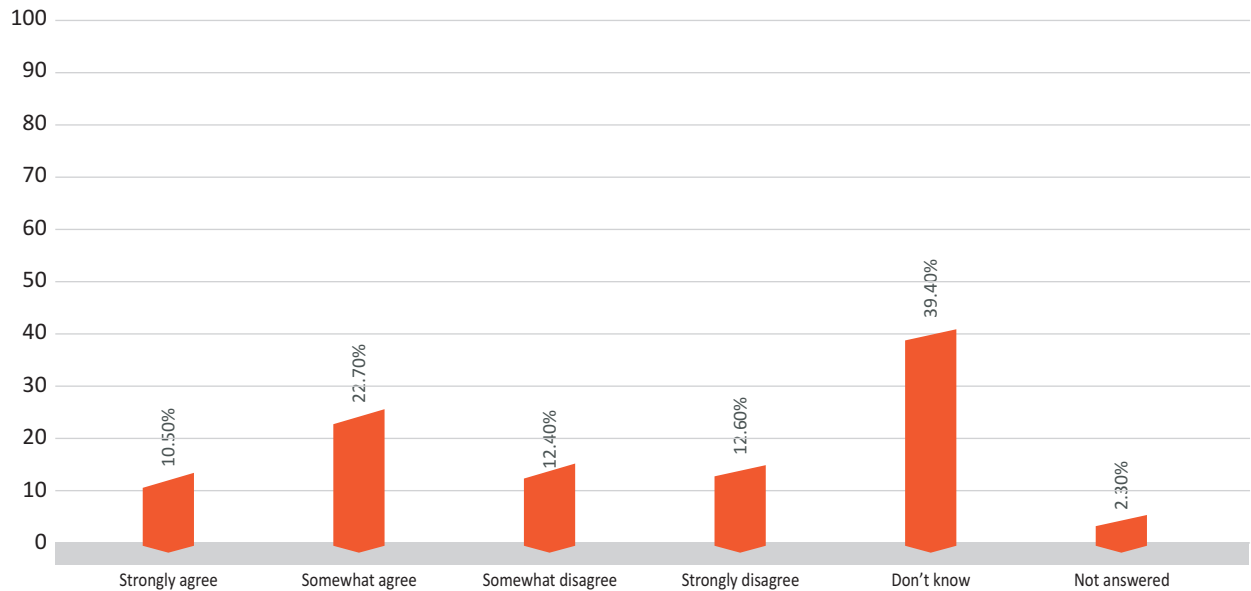
towards landowners and it is reported that they violate the rights of their agricultural labourers working in their fields.<sup>14</sup>

### **Informal justice systems - village panchayat, faislo or Baloch jirga**

Informal justice systems are widely condemned for their failure to ensure human rights. However,



### ***Village panchayat (akhat, pareh, pareh panchayat, pareon), faislo or Baloch jirga***



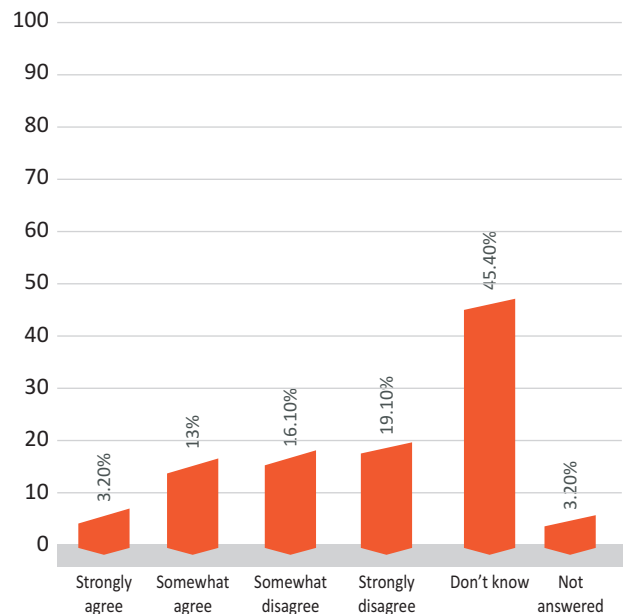
in Chapter 4, survey respondents seem to be supportive of informal justice systems – this contradicts data here where respondents seem to be divided on the notion. The results here show that only 33.2 per cent agreed that the informal justice system is compliant with international human rights standards; 25 per cent disagreed; and a significant number of respondents (39.4 per cent) did not know, surprisingly.

#### **Local influentials (local, provincial, national)**

One would argue that large local landowners (discussed above) also fall under the category of 'local influentials', because the wealth they possess also makes them influential. However, in this survey, they are dealt with separately.

According to the data, 35.2 per cent of respondents disagreed that local influentials comply with international human rights standards, whereas 15.2 per cent agreed with the notion. The highest number of respondents (45.4 per cent) did not know.

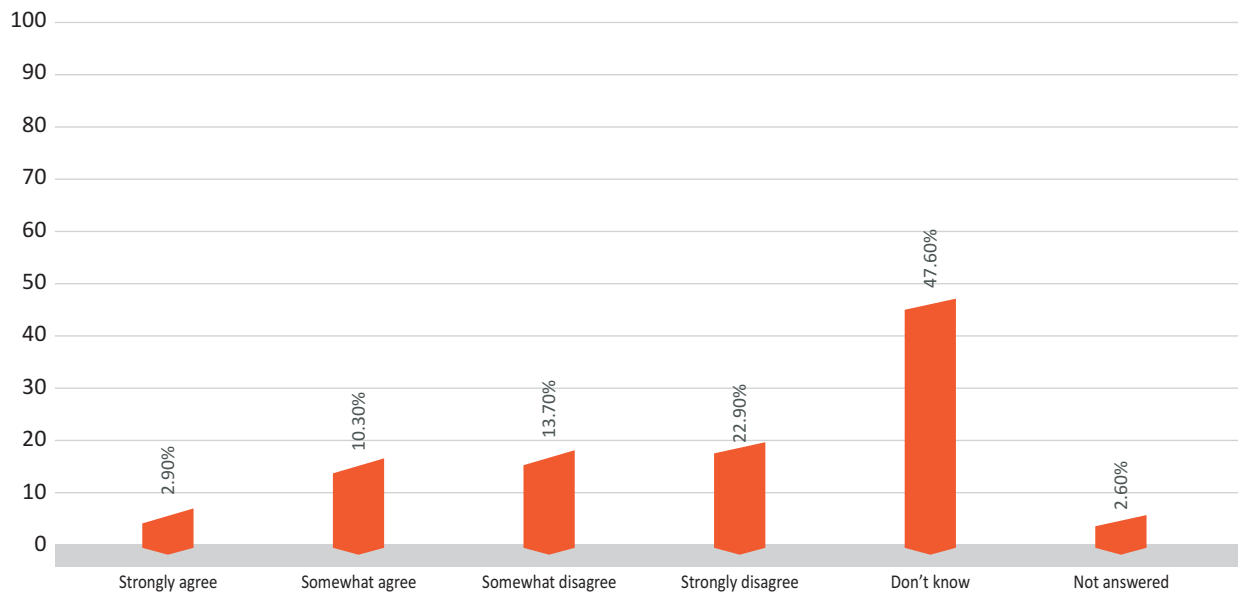
#### **Local influentials (local, provincial, national)**



#### **Local bureaucracy – patwaris (land record keepers); nambardars (village headmen); tehsildars (Tehsil administration/revenue collection heads) or others**

The survey results highlight an interesting aspect of respondents' opinions about local village or

**Local bureaucracy - *patwaris* (land record keepers); *nambardars* (village headmen); *tehsildars* (Tehsil administration/revenue collection heads) or others**



union council level bureaucracy. Generally people have negative views concerning *patwaris*, *nambardars*, *tehsildars* etc.<sup>15</sup> These bureaucrats hold positions which are small in grade but their influence in their respective localities is huge. Local people usually yield to their pressure and pay what the local bureaucracy demands, unfortunately.<sup>16</sup>

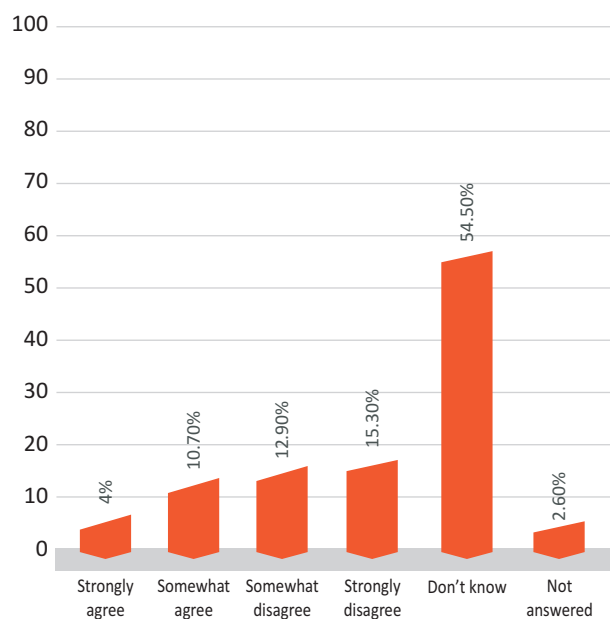
According to the data, 36.6 per cent of respondents believed that local bureaucracy is not in compliance with international human rights standards, and 13.2 per cent believed the opposite. Again, a high number of respondents (47.6 per cent) said they did not know.

**District civil bureaucracy (DROs, DCOs, district magistrates etc.)**

Respondents' perceptions about district civil bureaucracy are not very encouraging. Only 14.7 per cent of respondents agreed that district civil bureaucracy, as an institution, is compliant with international human rights standards; 28.2 per

cent of respondents disagreed with the notion; and more than half of the respondents (54.5 per cent) said they did not know.

**District civil bureaucracy (DROs, DCOs, district magistrates etc.)**

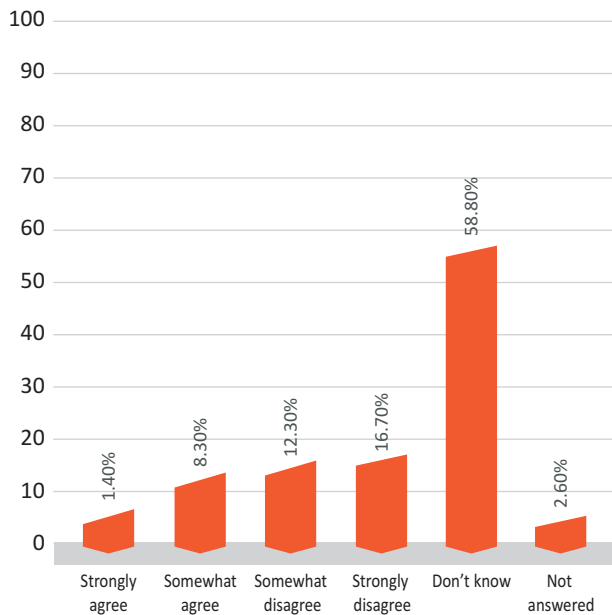


15. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013  
 16. Ibid

**Political groupings/vote banks (dharras)**

The key finding for this institution is respondents' lack of knowledge: 58.8 per cent of respondents said they did not know if political groupings complied with international human rights standards; 31 per cent believed that they do not comply; and only 9.7 per cent said that they do comply.

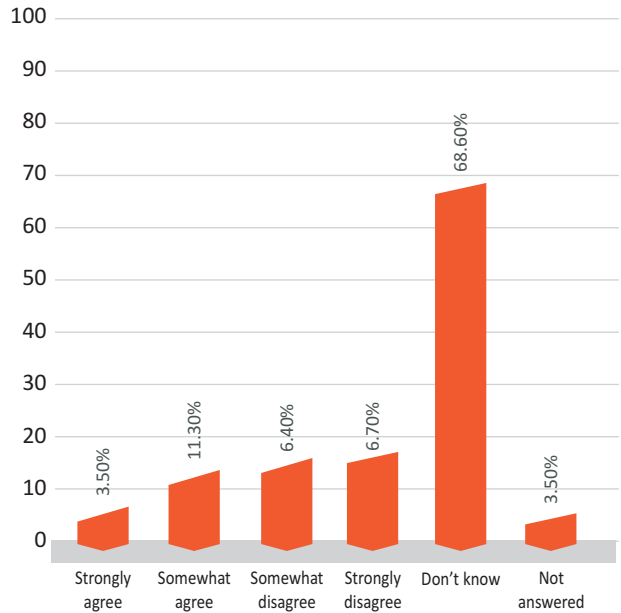
**Political groupings/vote banks (dharras)**



**Self-provision village organisations; community organisations**

As explained in the chapter dealing with respondents' awareness of institutions, people are not very familiar with the concept of CBOs (Community Based Organisations), and therefore, the result from the survey is not surprising. More than two-thirds of respondents (68.6 per cent) did not know if CBOs comply with international human rights standards; only 14.8 per cent agreed that they do comply; and 13.1 per cent disagreed with the notion.

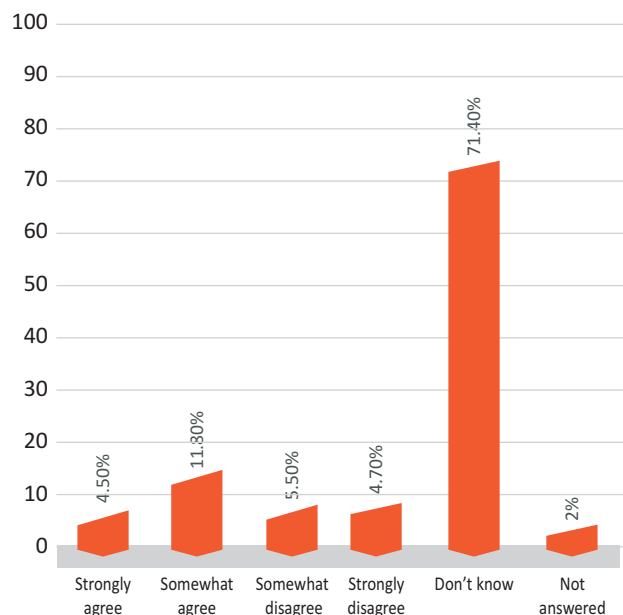
**Self-provision village organisations; community organisations**



**Local NGOs (Non Governmental Organisations)**

The survey results for NGOs is very similar to the results for CBOs. More than two-thirds of respondents (71.4 per cent) did not know

**Local NGOs**



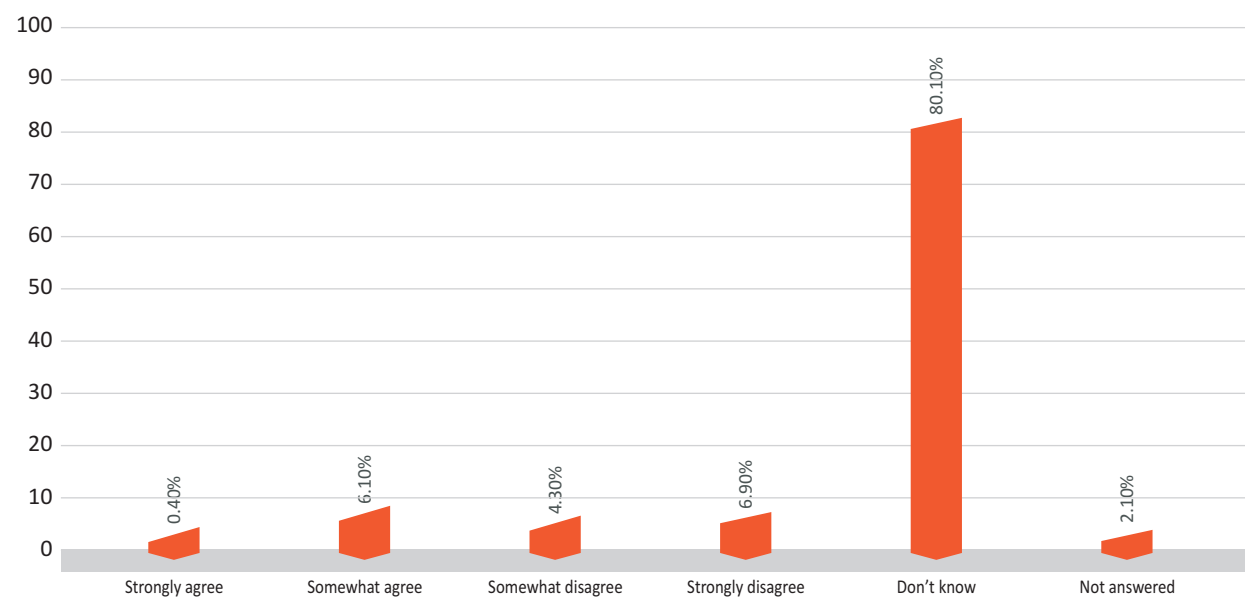
whether NGOs are in compliance with international human rights standards. In practice, NGOs usually make significant efforts to ensure that the rights of their beneficiaries are protected, but unfortunately this is rarely understood by the general public.<sup>17</sup> Only 16.3 per cent of respondents agreed that NGOs comply with international human rights standards; and 10.2 per cent disagreed.

### Private dispute resolution mechanisms that charge a fee

The survey results also show respondents' lack of faith in private dispute resolution mechanisms that charge a fee. Other data sets in this report suggest that private dispute resolution systems scarcely exist in Pakistan – there may only be a few in existence. Respondents shared their opinions based on their (little) knowledge or experience.

Looking at the data, surprisingly only 6.5 per cent of respondents agreed that private dispute resolution mechanisms are in compliance with

### Private dispute resolution mechanisms that charge a fee



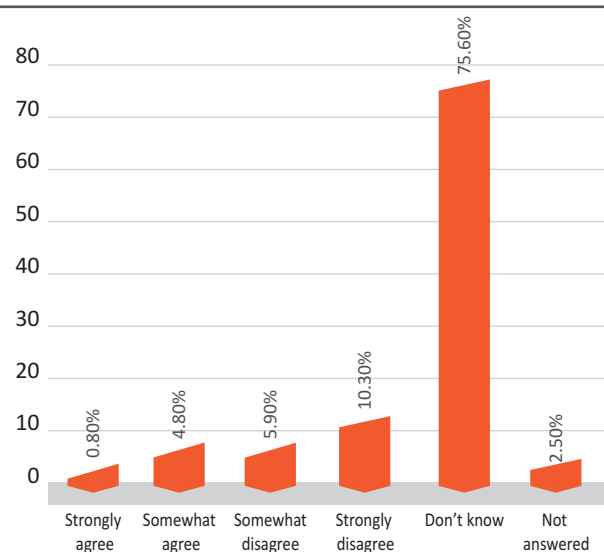
17. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

international human rights standards; 11.2 per cent did not agree; and an overwhelming majority of 80.1 per cent did not know.

### Local crime lords

The phrase 'crime lord' in itself carries negative connotations. It is interesting to see from the

### Local crime lords



results that three-quarters of respondents (75.6 per cent) said they did not know if local crime lords are compliant with international human rights - it is possible that they were frightened to share their thoughts, or perhaps they have not encountered any such criminal gang or 'crime lord'. However, 5.6 per cent did agree that crime lords are compliant with international human rights standards; 15.2 per cent did not agree with this notion.

### Religious leaders in the community

According to participants of round-table discussions, disputants generally approach local community elders, tribal leaders, family elders, and influentials to resolve their disputes amicably.<sup>18</sup> However, local religious leaders have also gained considerable prominence in recent times and they can also play a role in resolving people's disputes.<sup>19</sup>

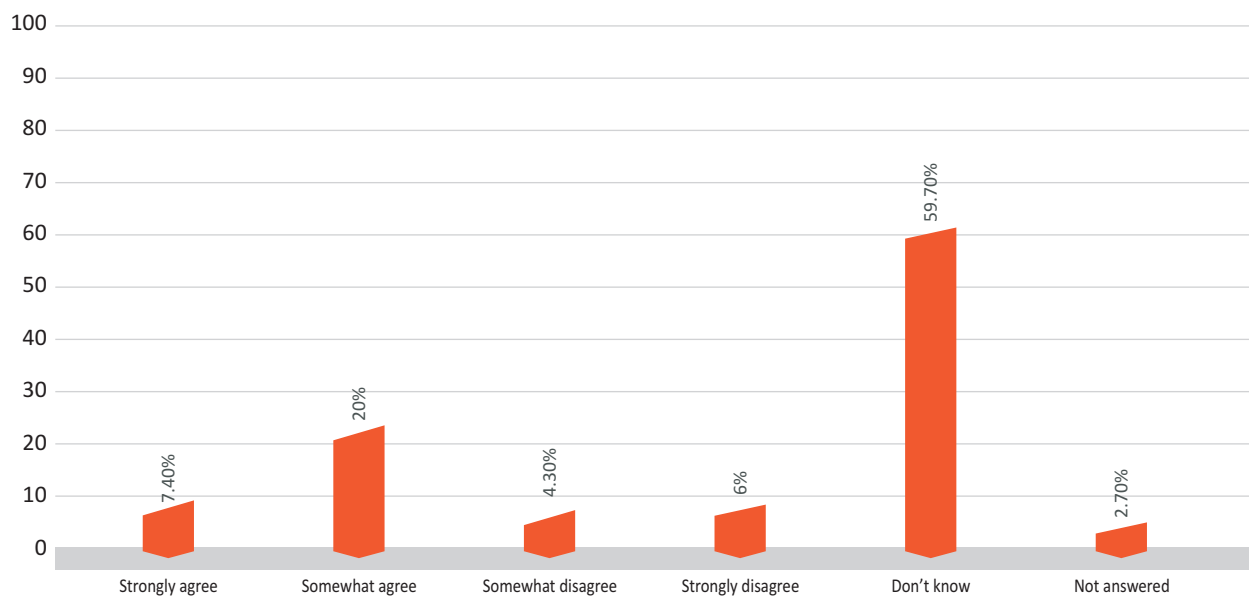
In the survey results, 27.4 per cent of respondents agreed that religious leaders comply with international human rights standards when

resolving disputes within their local settings, whereas 10.3 per cent disagreed with the notion. The majority of respondents (59.7 per cent) said they did not know, which seems surprising due to the fact that religious leaders exist in each and every village of Pakistan's overwhelmingly Muslim country. This might lead us to assume that the majority was unsure if religious leaders complied with international human rights standards but, in wishing to be respectful to this institution, decided not to risk offence.

### Musalihati Council (MC)

As explained previously in this report, local bodies/government systems were set-up during General (retired) Parvaiz Musharraf's era in 22 districts of Pakistan and Musalihati Councils were part of these. MCs were mandated to provide assistance to the local population as well as to local police stations to help resolve people's petty criminal and civil disputes. Since 2007, MCs have stopped providing their services, as this system was not continued.

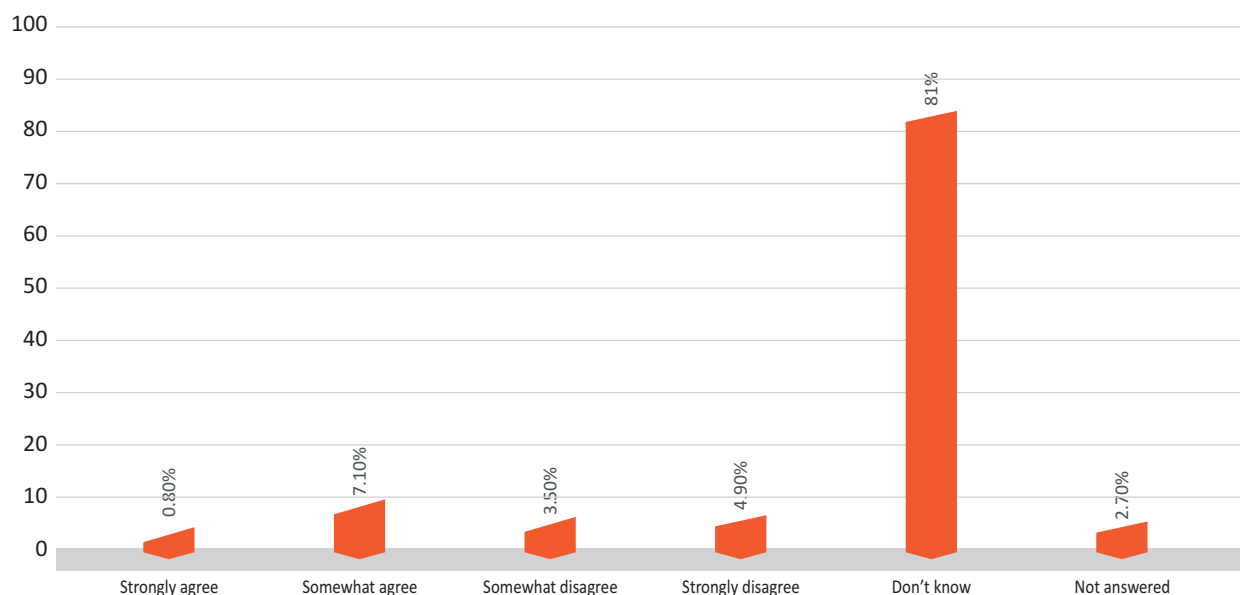
### Religious leaders in the community



18. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

19. Ibid

## Musalihati Council



According to the data, an overwhelming majority of respondents (81 per cent) said they did not know if MCs are compliant with international human rights standards; 7.1 per cent agreed that they are compliant; and 9.4 per cent said they are not compliant.

The above analysis of the 22 formal and informal institutions and their compliance with the international human rights standards, was based on respondents' perceptions gathered through the survey. The analysis was also informed by the opinions collected during the round-table discussions, which were organised in each of the provincial capital cities of Punjab, Sindh and Balochistan.

The survey furthered its enquiry by documenting what respondents thought about the compliance of various formal and informal institutions with regards to the fundamental rights guaranteed by the Constitution of Pakistan. The list of institutions remains the same as in the previous section; however, the question has a different angle and so produced different survey results.

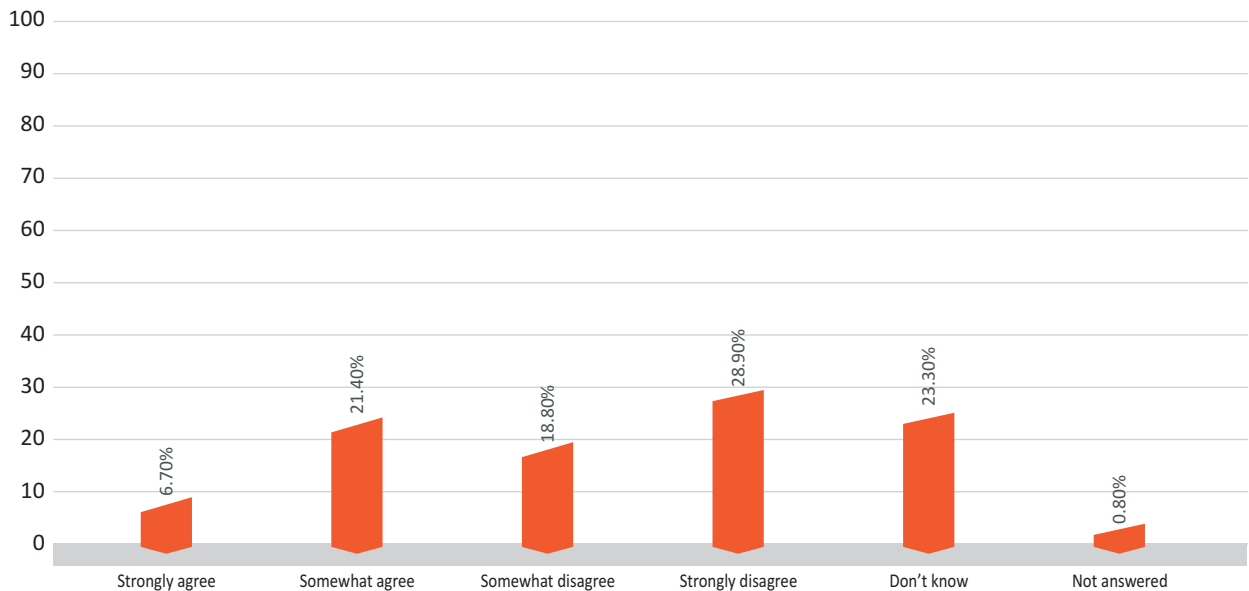
20. Ibid

### Various systems and their compliance with the fundamental rights guaranteed by the Constitution of Pakistan

#### Provincial police authorities and their local representatives (e.g. SHO, DSP, etc.)

With regards to whether provincial police authorities and their local representatives are in compliance with the fundamental rights guaranteed in the Constitution of Pakistan, a high group of respondents (47.7 per cent) did not agree that this was the case; and surprisingly, 28.1 per cent did agree with the notion. The police department is a formal institution set-up under the Constitution of Pakistan. Unfortunately, however, the general perception of the police is negative, due to its low performance and alleged corrupt practices – hence the high number of respondents who did not see the police as compliant with the fundamental rights guaranteed in the Constitution.<sup>20</sup>

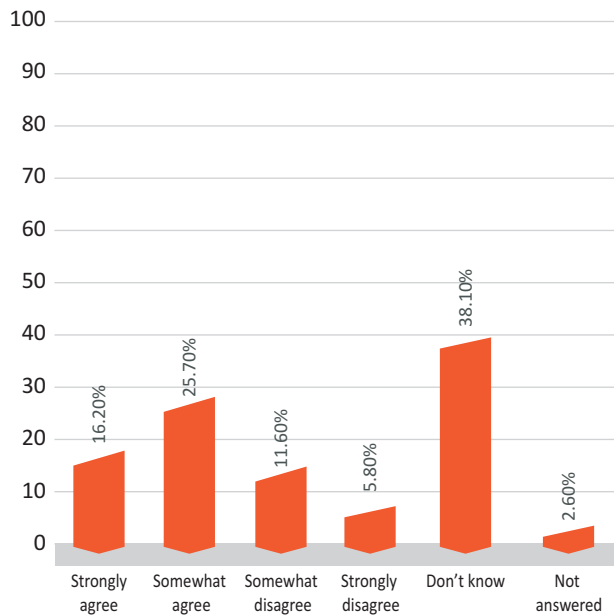
### Provincial police authorities and their local representatives (e.g. SHO, DSP, etc.)



### Superior Courts in Pakistan (Supreme Court and High Courts)

The Superior Courts are constitutionally

### Superior Courts in Pakistan (Supreme Court and High Courts)



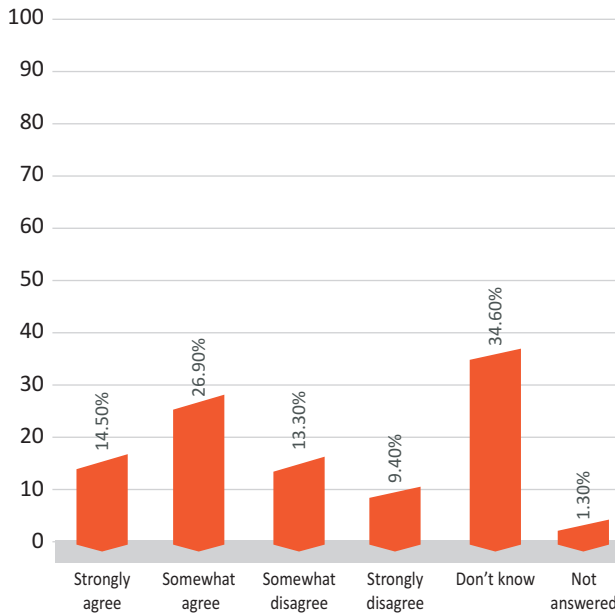
mandated to protect the rights of the people residing in Pakistan. A high percentage of respondents (41.9 per cent) agreed that the Superior Courts in Pakistan are compliant with the fundamental rights guaranteed in the Constitution of Pakistan. Surprisingly, 17.4 per cent disagreed with the notion. A sizeable proportion of the sample (38.1 per cent) did not know what to think.

### Lower Courts in Pakistan (Judicial Magistrate, District and Sessions Courts)

According to round-table participants, corruption and political influence manipulate lower courts processes.<sup>21</sup> However, despite common negative perceptions about the lower courts due to alleged corrupt practices, 41.4 per cent of respondents said that the lower courts in Pakistan are compliant with the fundamental rights guaranteed in the Constitution of Pakistan. Only 17.4 per cent disagreed with the notion; a sizeable 34.6 per cent did not know.

21. Roundtable discussions in Karachi, 28 August 2013

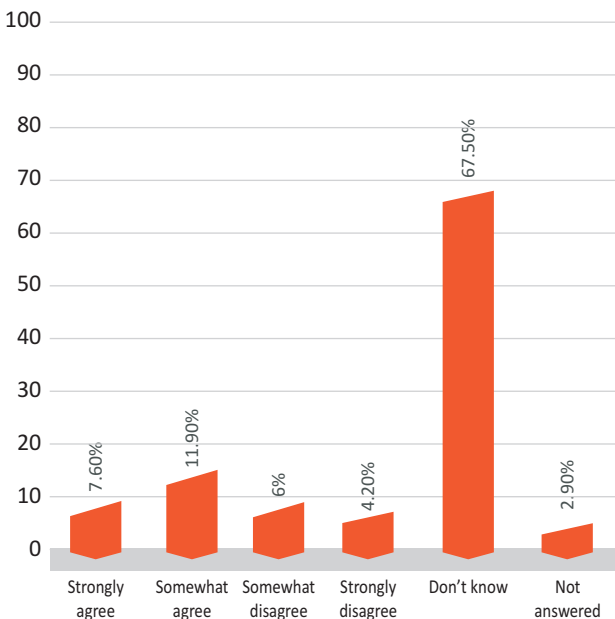
**Lower Courts in Pakistan  
(Judicial Magistrate, District and Sessions Courts)**



**Federal Shariat Court**

As stated earlier in this study, the general public in Pakistan are not fully aware of the Federal Shariat Court, and so it was difficult for respondents to

**Federal Shariat Court**

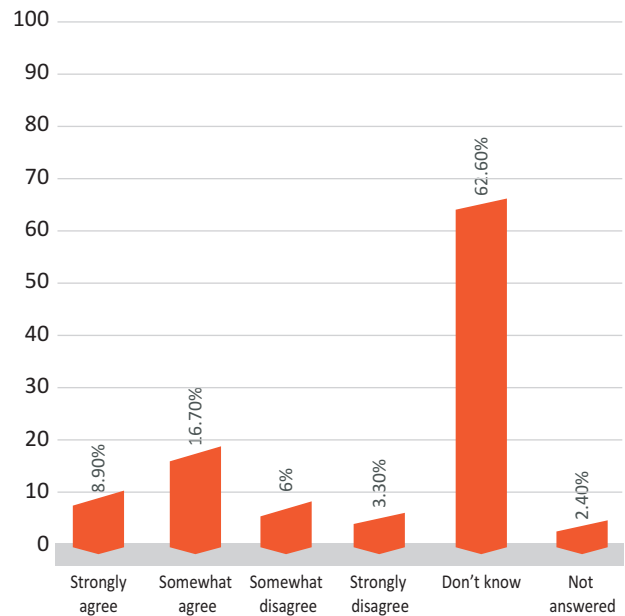


offer an opinion about this institution. This is evident from the striking 67.5 per cent who said they didn't know if the Federal Shariat Court is compliant with the fundamental rights guaranteed in the Constitution of Pakistan. Only 19.5 per cent agreed with the notion and 10.2 per cent disagreed.

**Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)**

The majority of respondents (62.6 per cent) did not know if the religious seminary is compliant with the fundamental rights guaranteed in the Constitution of Pakistan. However, a sizeable 25.6 per cent said it is compliant, and only 9.3 per cent said it is not compliant.

**Religious seminary boards  
(e.g. Wafaq ul Madaris or other registered Madaris)**



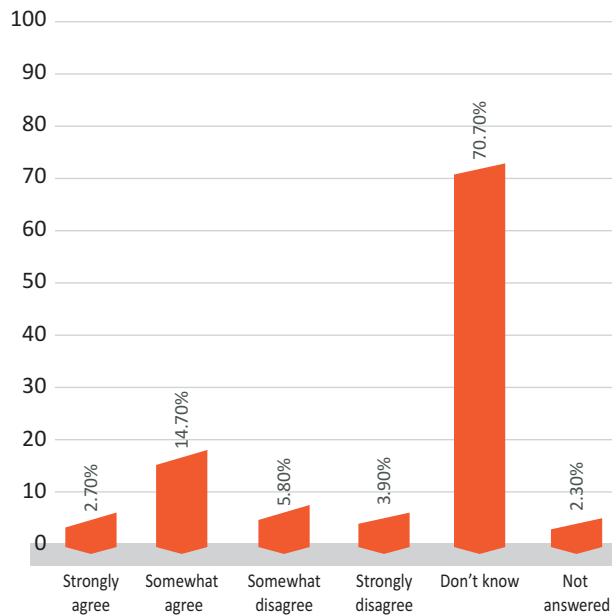
**Ombudsman**

As was the case in the previous questions, again the majority of respondents (70.7 per cent) did not know whether the office of the Ombudsman is compliant with the fundamental rights



guaranteed in the Constitution of Pakistan.

### Ombudsman



not know if the HRCP is compliant with the fundamental rights guaranteed in the Constitution of Pakistan. As stated earlier in this report, the general public in Pakistan do not know much about the HRCP and its efforts to protect the rights of the citizens of Pakistan. Nevertheless, a significant proportion of respondents (23 per cent) said that the HRCP is compliant with the fundamental rights guaranteed in the Constitution of Pakistan; 10.4 per cent did not agree with this.

### *Khandan* (extended family)

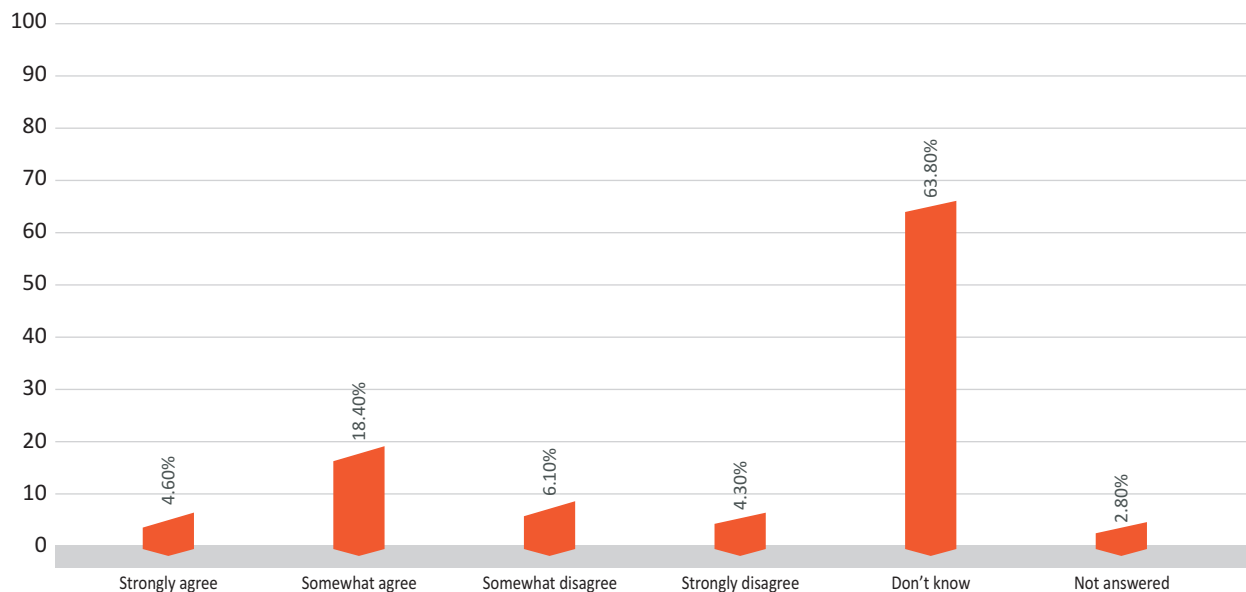
The survey result for *khandan* is again encouraging and consistent with the previous survey findings. A majority of 55.3 per cent agreed that *khandan*, as an informal institution, is compliant with fundamental rights guaranteed in the Constitution of Pakistan.

Only 11.2 per cent of respondents did not agree with the notion. A sizeable proportion (31.3 per cent) did not know what to think.

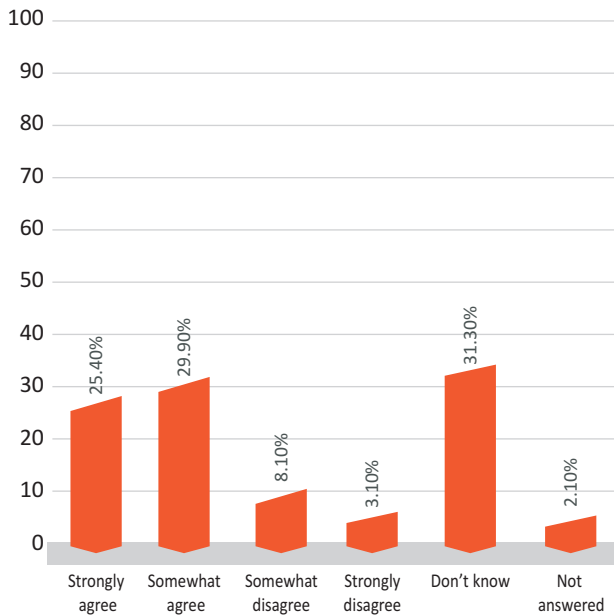
### Human Rights Commission of Pakistan (HRCP)

The majority of respondents (63.8 per cent) did

### Human Rights Commission of Pakistan



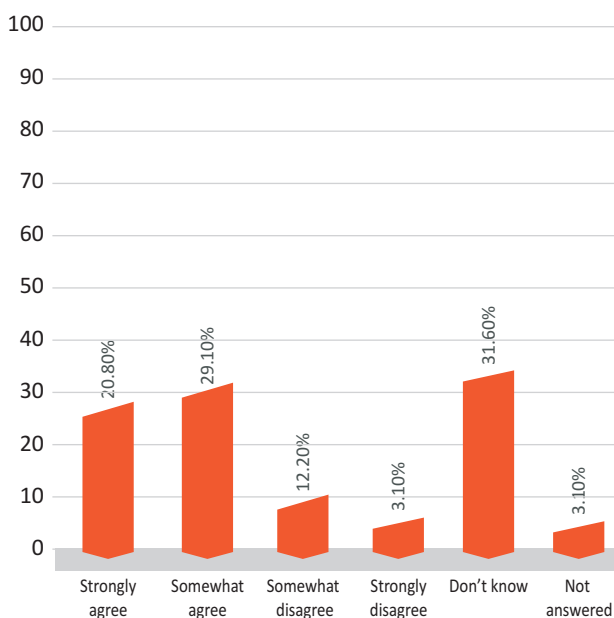
### **Khandan (extended family)**



### **Mohalla (neighbourhood)**

Around half of respondents (49.9 per cent) agreed that *mohalla* and its support mechanism is compliant with the fundamental rights guaranteed in the Constitution of Pakistan; only

### **Mohalla (neighbourhood)**

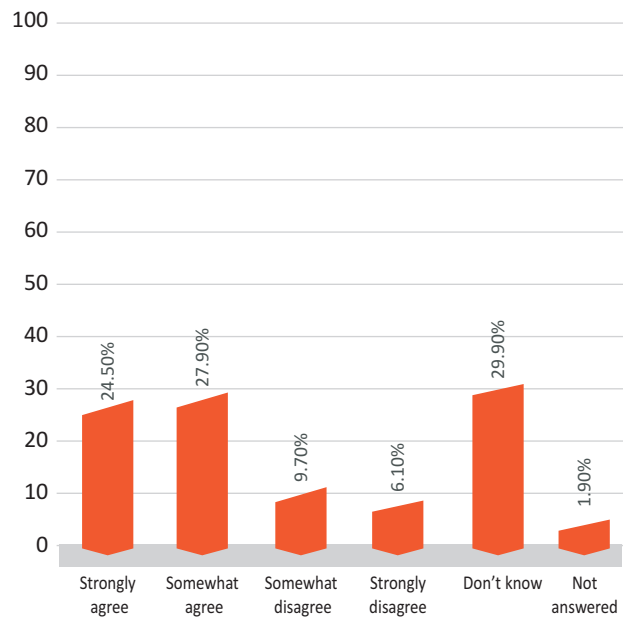


15.3 per cent did not agree with this notion. However, *mohalla* as an institution apparently has never been mentioned in the Constitution of Pakistan.

### **Biradari (clan)**

*Biradari* also gained majority approval from respondents once again, when 52.4 per cent agreed that *biradari* is compliant with the fundamental rights guaranteed in the Constitution of Pakistan; only 15.8 per cent did not agree with this notion.

### **Biradari (clan)**

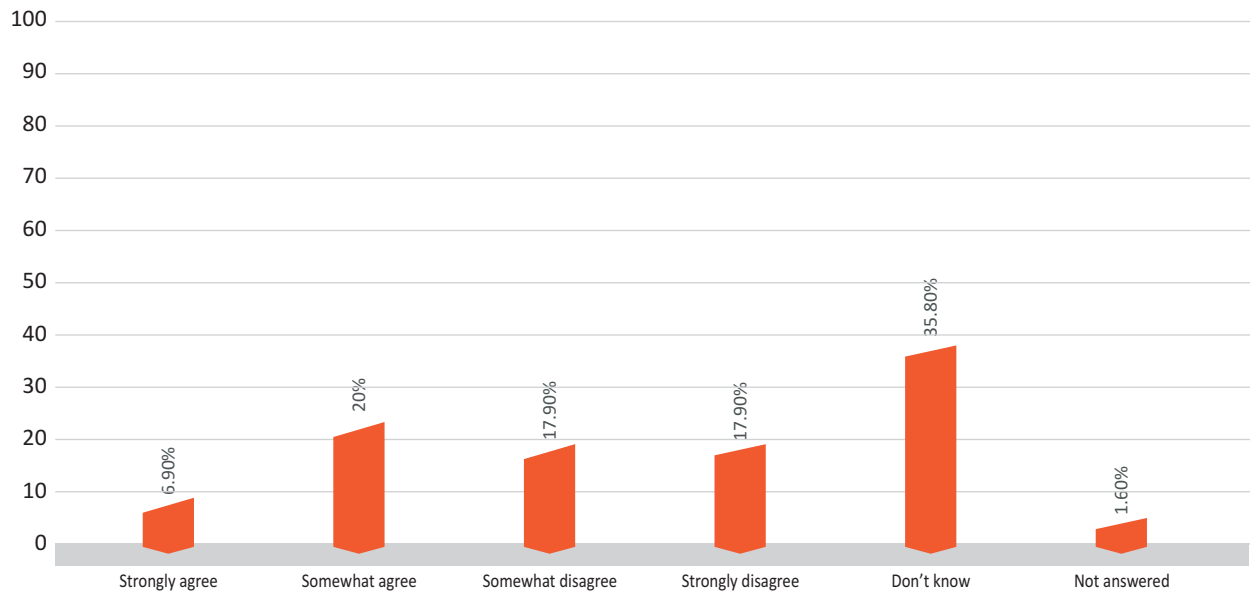


### **Large local landowners (Village Chaudhry/Malik/Wadera)**

With regards to large local landowners, 35.8 per cent of respondents said that these landowners do not comply with the fundamental rights guaranteed in the Constitution of Pakistan.

Most people in Pakistan's rural areas are poor and they rely on their village landowners for work and other favours. There is a negative perception

### Large local landowners (Village Chaudhry/Malik/Wadera)

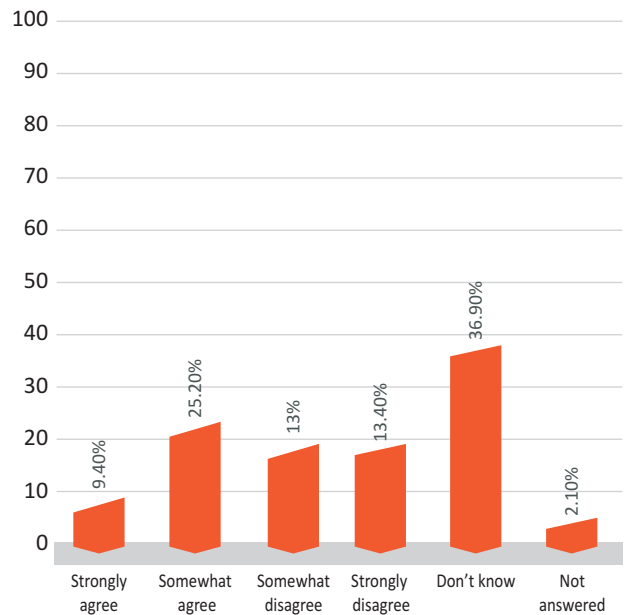


associated with these landowners – however, a significant proportion of respondents (26.9 per cent) still agreed with the notion that these landowners do comply with the fundamental rights guaranteed in the Constitution.

### Village *panchayat*, *faislo* or Baloch *jirga* – informal justice systems

Respondents of the survey seemed divided on the issue of whether informal justice systems comply with the fundamental rights of the Constitution: 34.6 per cent of respondents agreed that informal justice systems are in compliance with the fundamental rights guaranteed in the Constitution of Pakistan, whereas 27.3 per cent did not agree. Generally, informal justice systems are seen as institutions which perpetrate human rights violations, especially against women and vulnerable groups. However, despite this, the majority in rural areas still access these institutions for resolving their criminal and civil matters.<sup>22</sup>

### Village *panchayat* (*akhat*, *pareh*, *pareh panchayat*, *pareon*), *faislo* or Baloch *jirga*

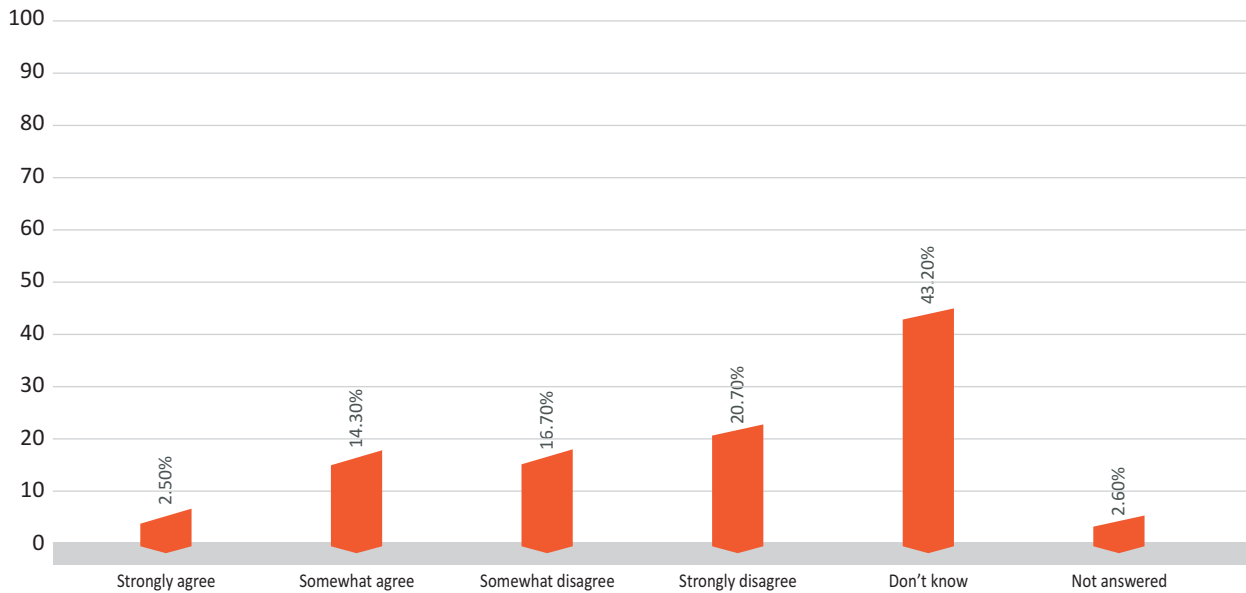


### Local influentials (local, provincial, national)

With regards to local influentials, the survey result reveals that a high number of respondents (37.4

22. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

### Local influentials (local, provincial, national)

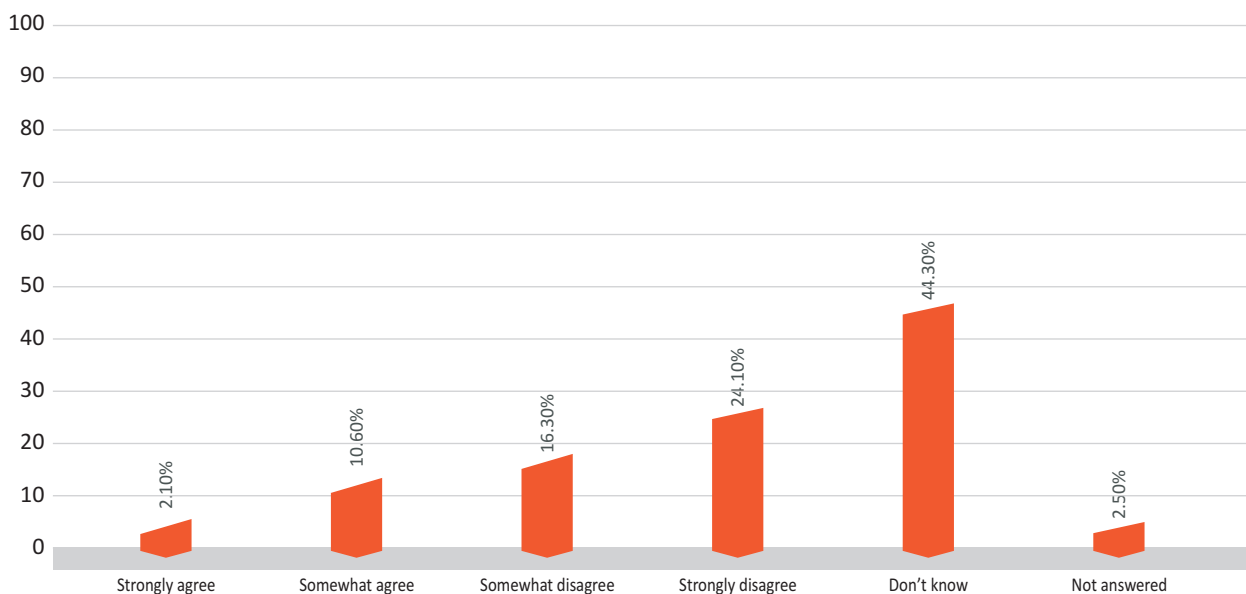


per cent) disagreed with the notion that local influentials comply with the fundamental rights guaranteed in the Constitution of Pakistan; 16.8 per cent agreed with the notion; and a significant 43.2 per cent did not know.

**Local bureaucracy – *patwaris* (land record keepers); *nambardars* (village headmen); *tehsildars* (Tehsil administration/revenue collection heads) or others**

As stated earlier, people hold negative

### Local bureaucracy - *patwaris* (land record keepers); *nambardars* (village headmen); *tehsildars* (Tehsil administration/revenue collection heads) or others

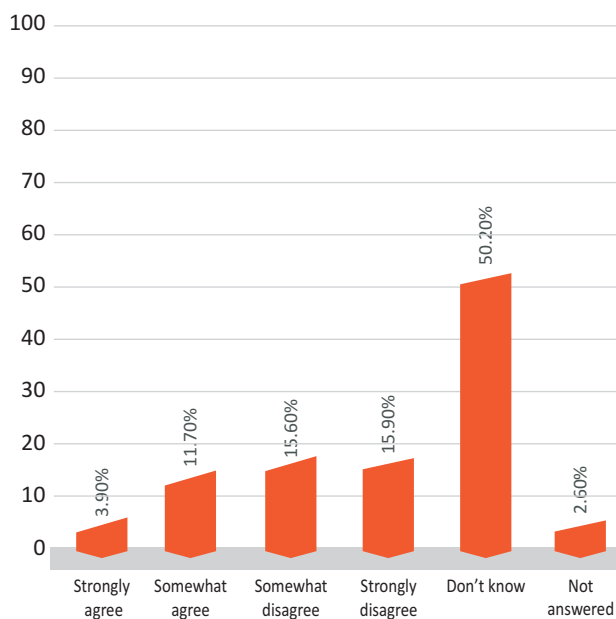


perceptions of local bureaucracy, and this is reflected clearly in the survey findings: 40.4 per cent believed that local bureaucracy does not comply with the fundamental rights guaranteed in the Constitution of Pakistan; only 12.7 per cent agreed with the notion; and a significant number (44.3 per cent) said they did not know.

### District civil bureaucracy (DROs, DCOs, district magistrates etc.)

For district civil bureaucracy, unsurprisingly, respondents seemed to hold a negative opinion.

#### District civil bureaucracy (DROs, DCOs, district magistrates etc.)

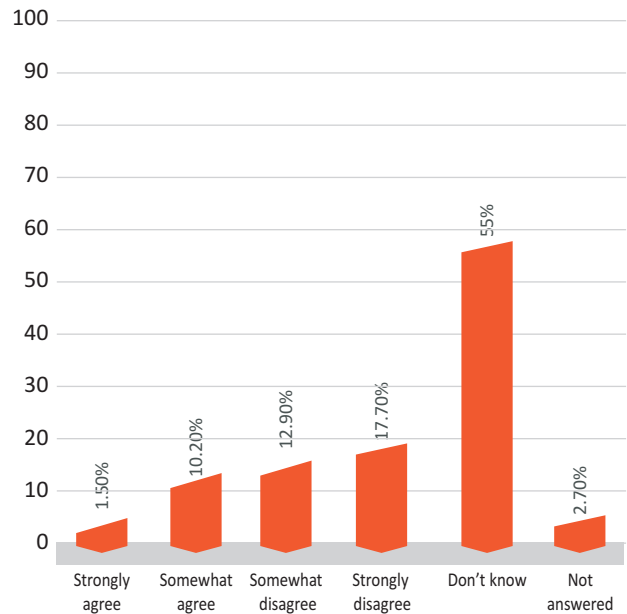


More respondents (31.5 per cent) disagreed with the notion that district civil bureaucracy is compliant with the fundamental rights of Pakistan's Constitution; 15.6 per cent agreed with the notion; and half of the sample (50.2 per cent) did not know.

### Political groupings/vote banks (*dharras*)

Respondents were vocal in sharing negative opinions about political groupings/*dharras*. Only 11.7 per cent of respondents agreed that political

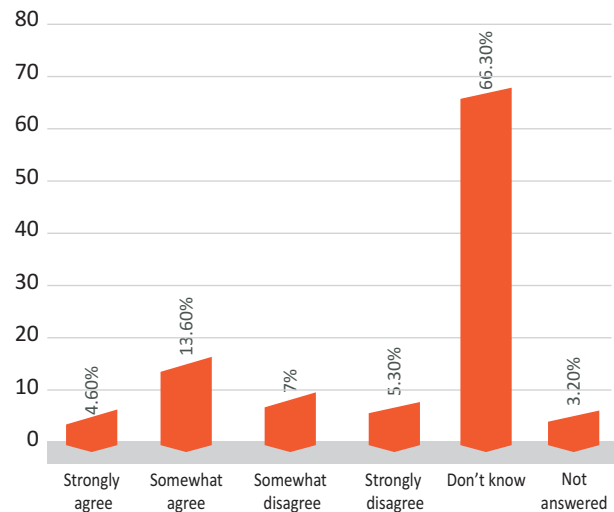
### Political groupings/vote banks (*dharras*)



groupings/vote banks are compliant with the fundamental rights guaranteed in the Constitution of Pakistan; more than double (28.6 per cent) did not agree; and more than half of respondents (55 per cent) did not know.

### Self-provision village organisations (VOs); community organisations (COs)

As was the case in previous questions, two-thirds Self-provision village organisations; community organisations

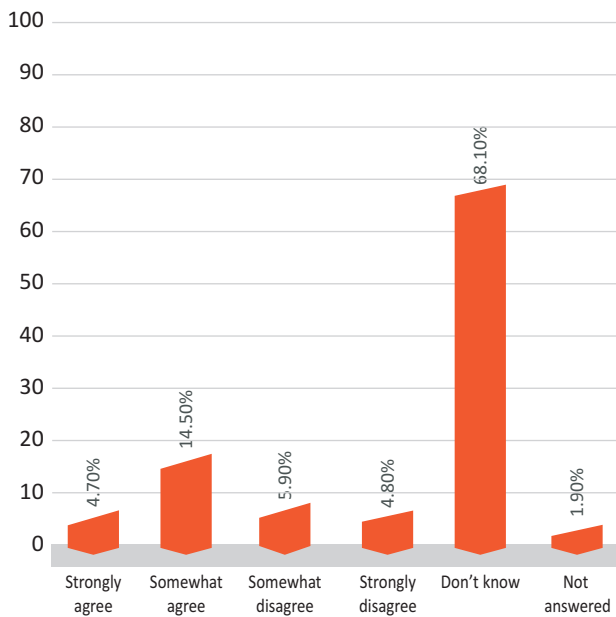


of respondents (66.3 per cent) did not know whether self-provision VO and COs are compliant with the fundamental rights guaranteed in the Constitution of Pakistan; only 18.2 per cent agreed that they are compliant; and 12.3 per cent said they are not compliant.

### Local NGOs

More than two-thirds of respondents (68.1 per cent) did not know if NGOs are compliant with the fundamental rights of the Constitution; only 19.2 per cent said that NGOs are compliant; and just over 10 per cent said they are not compliant. The reasons for the lack of awareness about the work of NGOs was elaborated upon in the previous parts of this study.

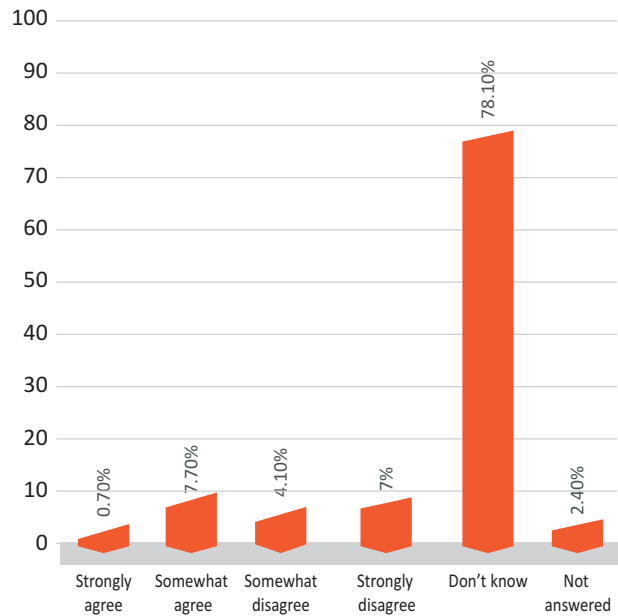
### Local NGOs



### Mechanisms that charge a fee

It is not a surprise that more than three-quarters of respondents (78.1 per cent) did not know whether mechanisms that charge a fee are compliant with the fundamental rights of the Constitution. As stated earlier, these mechanisms scarcely exist in Pakistan. Just 8.4 per cent of

### Mechanisms that charge a fee

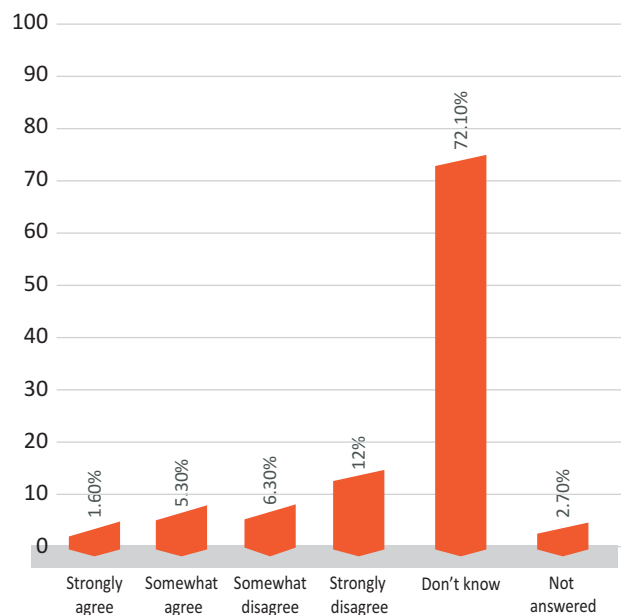


respondents agreed that these mechanisms are compliant, whereas 11.1 per cent said they are not compliant.

### Local crime lords

The term 'crime lord' clearly has a negative

### Local crime lords

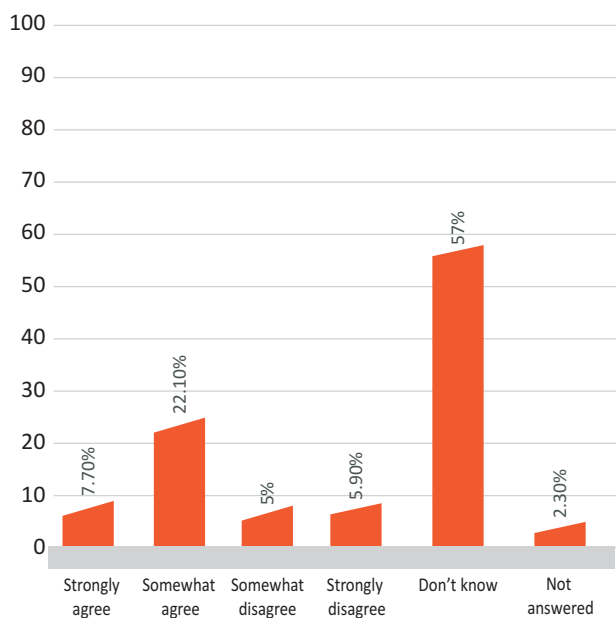


connotations. More than two-thirds of respondents (72.1 per cent) did not know if crime lords are compliant with the fundamental rights of the Constitution. Some 6.9 per cent said that local crime lords are compliant with these fundamental rights, whereas 17.3 per cent did not agree with this notion.

### Religious leaders in the community

Once again, the survey result for religious leaders is not encouraging. Only 27.8 per cent of respondents said that religious leaders meet the standards of fundamental rights guaranteed in

### Religious leaders in the community

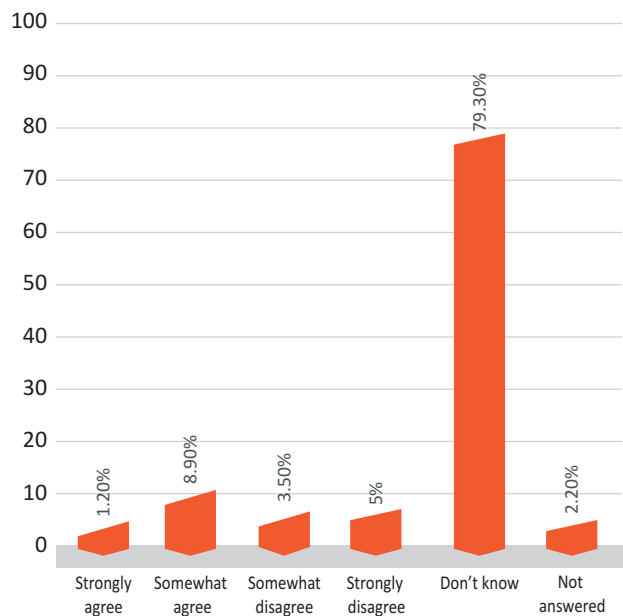


the Constitution of Pakistan; 10.9 per cent disagreed with this notion. More than half (57 per cent) said they did not know.

### Musalihati Council

The data shown in the table is self-explanatory. In past, the media has focused much attention on Musalihati Councils and their roles. Unfortunately, however, the overwhelming majority is still unaware of this institution and its work.

### Musalihati Council



### Do you agree that the following systems are in compliance with Islamic principles and legal injunctions?

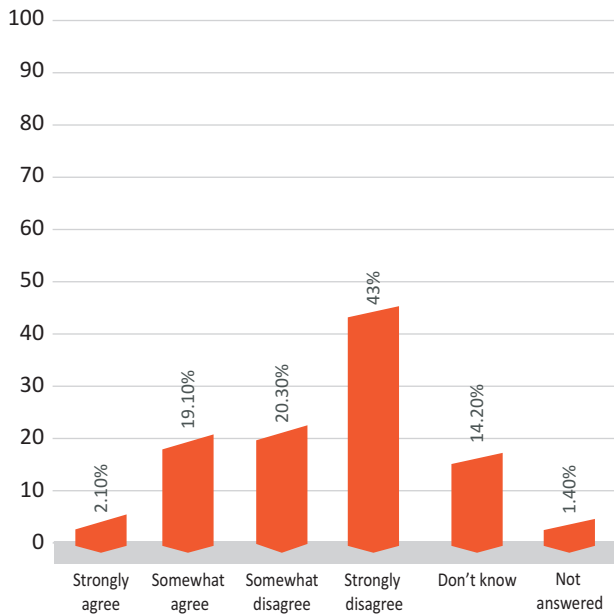
Here we investigate respondents' opinions of the listed institutions and their compliance under the Islamic principles and legal injunctions. Institutions are analysed and discussed in the same manner and sequence as discussed in the previous two questions.

### Provincial police authorities and their local representatives (e.g. SHO, DSP, etc.)

The majority of respondents (63.3 per cent) said that provincial police authorities do not comply with the rights enshrined under Islamic principles and legal injunctions; only 21.2 per cent said that the police do comply with these principles.

It is interesting to see how ordinary men and women view the police authorities with regards to their rights which are protected under Islamic principles and legal injunctions.

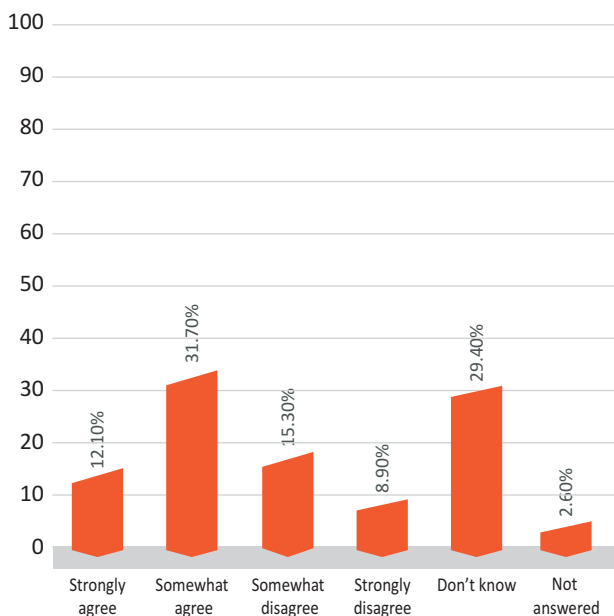
**Provincial police authorities and their local representatives (e.g. SHO, DSP, etc.)**



**Superior Courts in Pakistan (Supreme Court and High Courts)**

A high percentage of respondents (43.8 per cent)

**Superior Courts in Pakistan (Supreme Court and High Courts)**

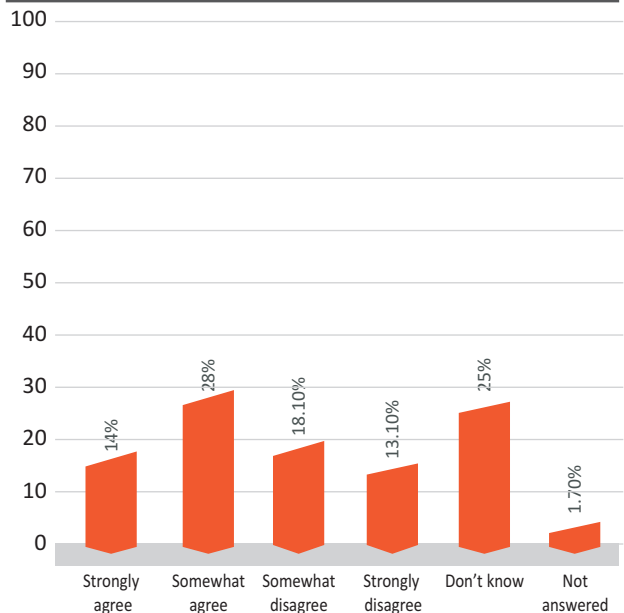


agreed that the Superior Courts in Pakistan are compliant with the rights guaranteed under Islamic principles and legal injunctions; whereas a substantial proportion of the sample (24.2 per cent) did not agree – a surprisingly significant proportion, especially given that Superior Courts also try cases under Islamic Jurisprudence (which means they are compliant with the Islamic principles and legal injunctions). Nevertheless, the common perception contradicts this and to some extent reflects negatively on the Superior Courts in this regard, unfortunately.

**Lower Courts in Pakistan (Judicial Magistrate, District and Sessions Courts)**

Respondents' views of the Lower Courts is very similar to their views of the Superior courts in Pakistan: 42 per cent agreed that the Lower Courts are compliant with the rights enshrined under Islamic principles and legal injunctions, whereas 24.2 per cent did not agree.

**Lower Courts in Pakistan (Judicial Magistrate, District and Sessions Courts)**



The respondents' opinions of both types of court is startling – as both institutions aim to uphold

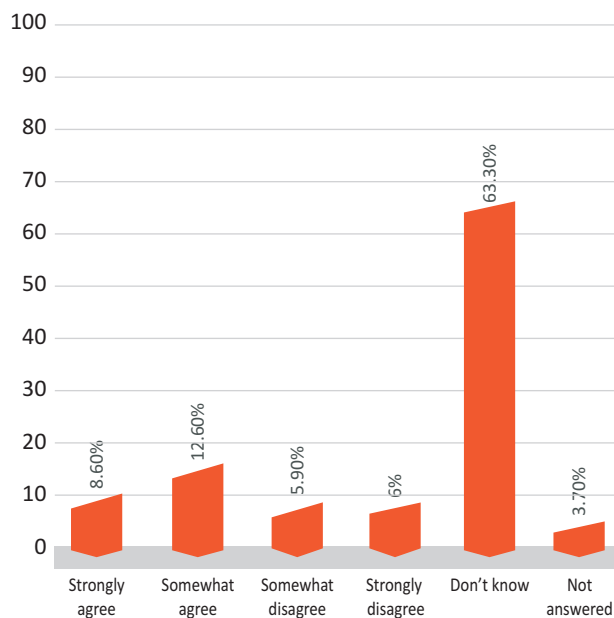


the rights of the people protected under Islamic principles and legal injunctions.

### Federal Shariat Court

The Federal Shariat Court is expected to interpret and apply Islamic principles and legal injunctions. However, surprisingly, 63.3 per cent of respondents were not aware of the FSC and did

### Federal Shariat Court



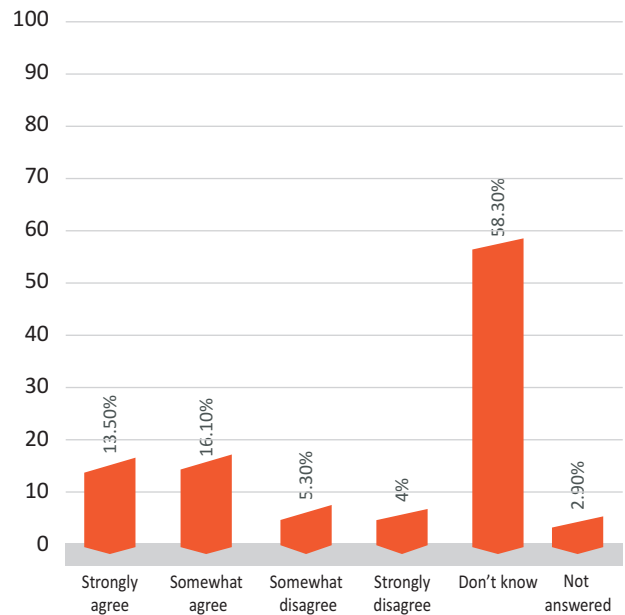
not have an opinion on this. Only 21.2 per cent agreed with the notion that the FSC complies with the human rights standards enshrined in Islamic principles, whereas, astonishingly, a sizeable 11.9 per cent disagreed.

### Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)

The survey result for this institution shows another striking revelation as 58.3 per cent did not know if religious seminary boards comply with the human rights standards enshrined in Islamic principles and injunctions. However, more than one quarter (29.6 per cent) agreed that religious seminary boards do comply with Islamic

### Religious seminary boards

(e.g. Wafaq ul Madaris or other registered Madaris)

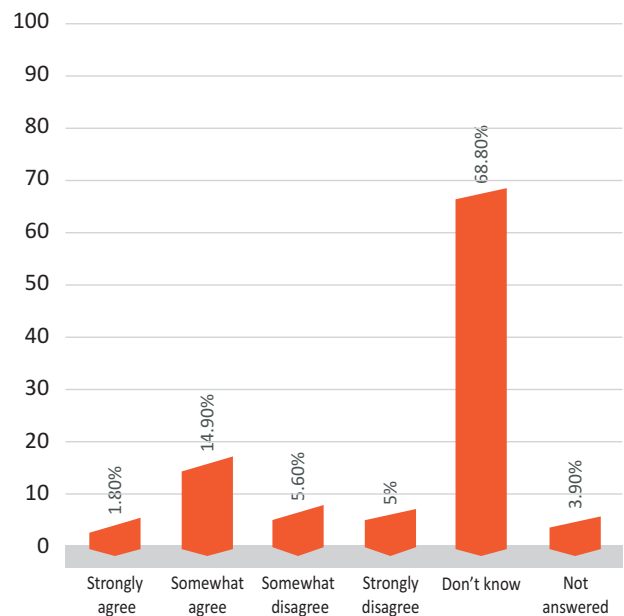


principles, whereas only 9.3 per cent did not agree with the notion.

### Ombudsman

Once again, more than two-thirds of respondents

### Ombudsman

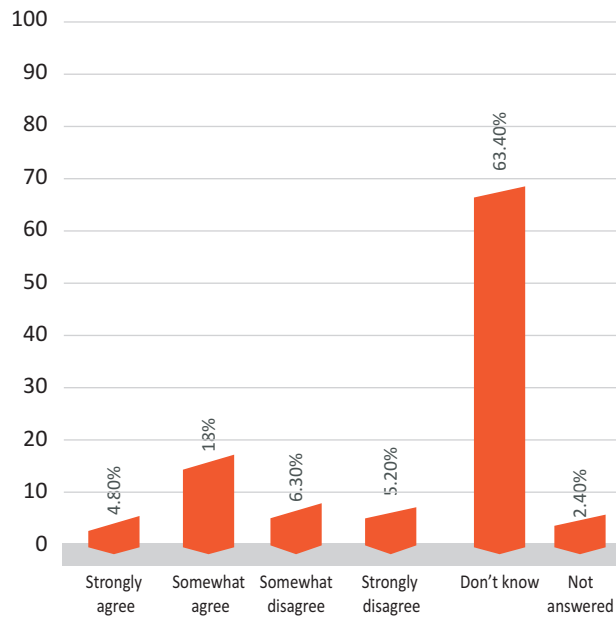


(68.8 per cent) could not share their opinion, as was the case in previous questions for this institution. Only 16.7 per cent agreed that office of the Ombudsman complies with the rights enshrined under Islamic principles and legal injunctions, whereas 10.6 per cent did not agree with this notion.

### Human Rights Commission of Pakistan

The majority of respondents (63.4 per cent) said they did not know if the Human Rights Commission of Pakistan was in compliance with

### Human Rights Commission of Pakistan

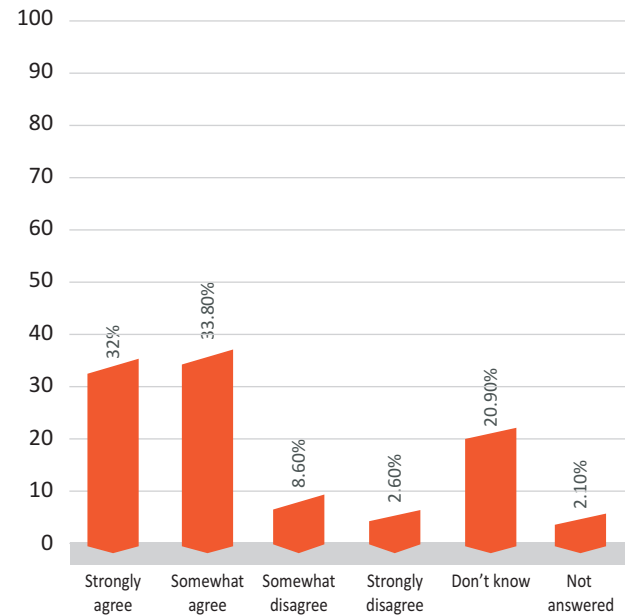


the human rights standards enshrined in Islamic principles and injunctions; 22.8 per cent agreed with the notion; and 11.5 per cent did not agree with the notion.

### Khandan (extended family)

With regards to *khandan*, an overwhelming two-thirds of respondents (65.8 per cent) agreed that as an informal institution *khandan* meets the human rights standards enshrined under Islamic principles and legal injunctions. Only 11.2 per

### Khandan (extended family)

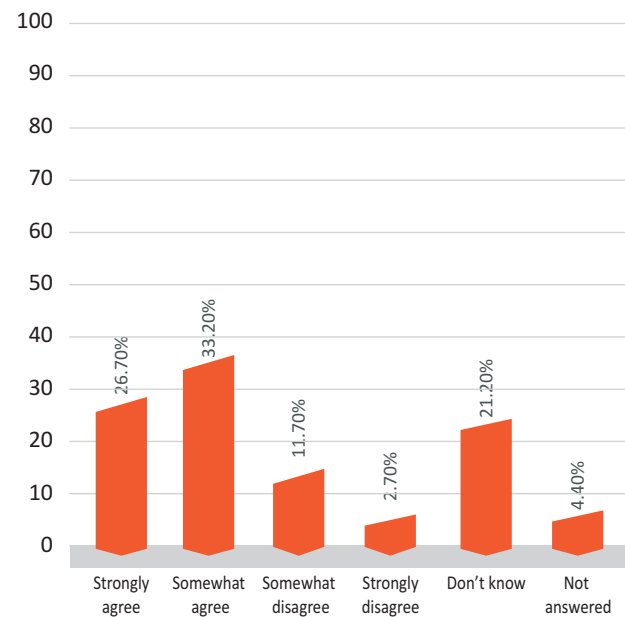


cent did not agree with the notion. It is interesting to see that Pakistani rural society is quite certain on this issue, and feels so strongly about family values.

### Mohalla (neighbourhood)

Respondents also hold *mohalla* in high esteem: a

### Mohalla (neighbourhood)

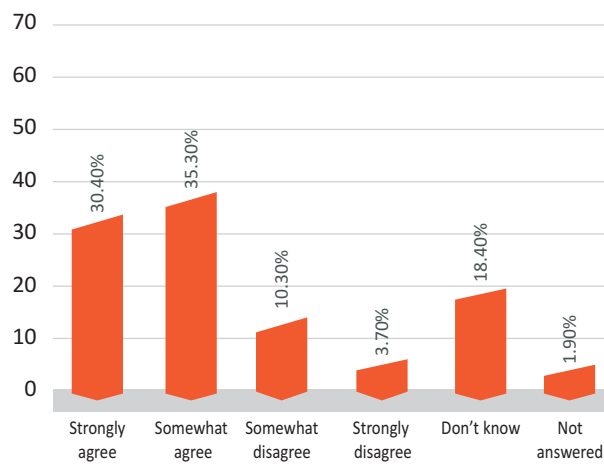


majority of 59.9 per cent agreed that the *mohalla* system protects the rights of the people enshrined under Islamic principles and legal injunctions, whereas only 14.4 per cent did not agree with the notion.

### **Biradari (clan)**

*Biradari*, as an institution, is also held in high esteem: a majority of 65.7 per cent of respondents agreed with the notion that *biradari* meets the human rights standards enshrined in Islamic principles; only 14 per cent did not agree with this notion.

### **Biradari (clan)**

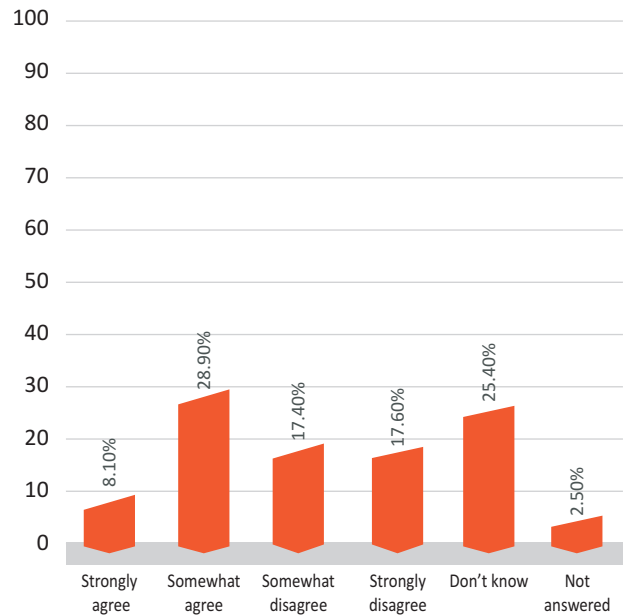


### **Large local landowners (Village Chaudhry/Malik/Wadera)**

Respondents seemed to be divided on their perspective of local large landowners. A quarter of respondents (25.4 per cent) said they did not know if these landowners comply with the human rights standards enshrined in Islamic principles. As discussed earlier, we are aware that large landowners for their own political gain help to resolve local disputes by exerting their influence on communities. This makes them a powerful institution.<sup>23</sup>

23. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

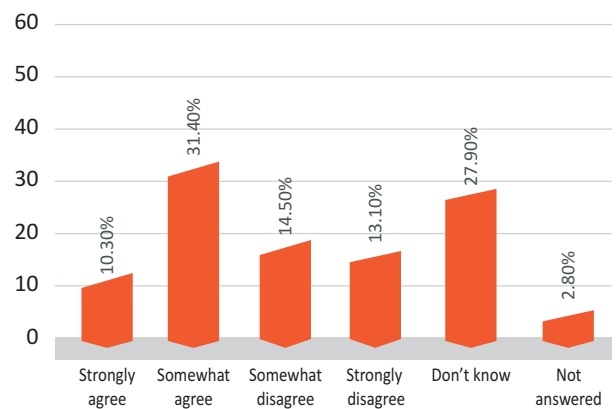
### **Large local landowners (Village Chaudhry/Malik/Wadera)**



### **The informal justice system - village panchayat (akhat, pareh, pareh panchayat, pareon), faislo or Baloch jirga**

Less than half of respondents (41.7 per cent) agreed that informal justice systems (*panchayat*, *faislo* and Baloch *jirga*) comply with the rights enshrined under Islamic principles and legal

### **Village panchayat (akhat, pareh, pareh panchayat, pareon) / faislo or Baloch jirga**

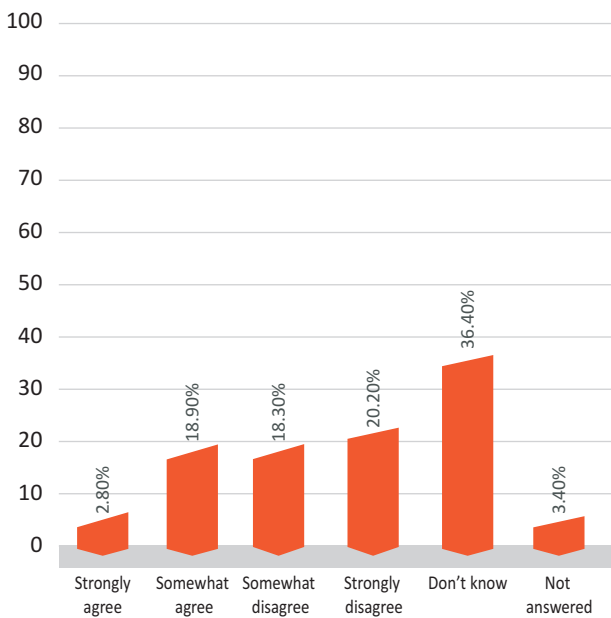


injunctions, whereas a significant size of respondents (27.6 per cent) disagreed, surprisingly.

**Local influentials (local, provincial, national)**

Respondents continued to show negative opinions of local influentials that work within their communities for their own political gain, according to general perceptions.<sup>24</sup> The data showed that 38.5 per cent of respondents disagreed that local influentials comply with the rights enshrined under Islamic principles and legal injunctions. Nevertheless a substantial 21.7 per

**Local influentials (local, provincial, national)**

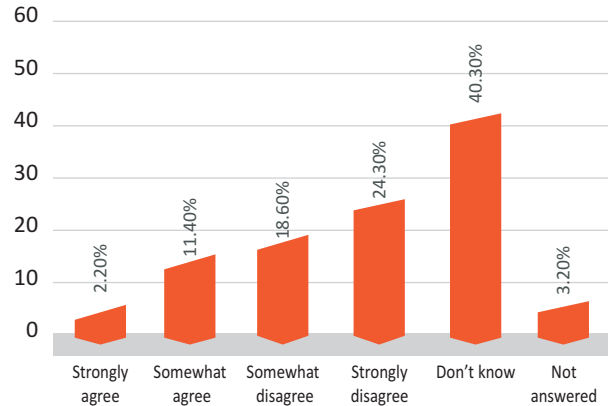


cent agreed with the notion, surprisingly. This indicates that influentials are successful in manipulating local matters in their favour.

**Local bureaucracy – patwaris (land record keepers); nambardars (village headmen); tehsildars (Tehsil administration/revenue collection heads) or others**

The results showed that 40.9 per cent of respondents disagreed with the notion that local

**Local bureaucracy - patwaris (land record keepers); nambardars (village headmen); tehsildars (Tehsil administration/revenue collection heads) or others**

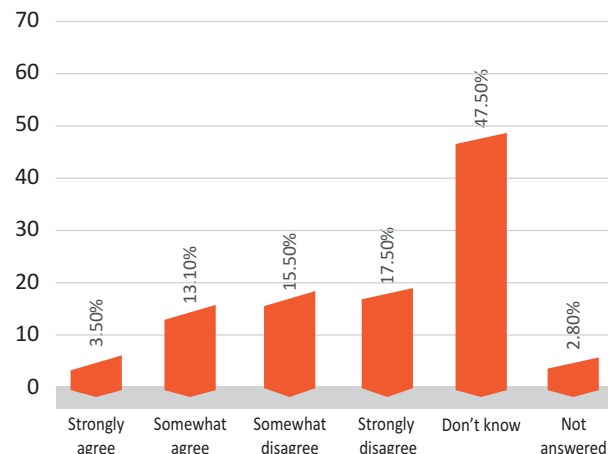


bureaucrats comply with the human rights standards enshrined in Islamic principles, whereas 13.6 per cent agreed with the notion. On the whole, the general public hold a negative opinion of the local bureaucracy due to allegedly corrupt practices.<sup>25</sup>

**District civil bureaucracy (DROs, DCOs, district magistrates etc.)**

The data showed that 38 per cent disagreed with the notion that the district civil bureaucracy is compliant with the human rights standards

**District civil bureaucracy (DROs, DCOs, district magistrates etc.)**



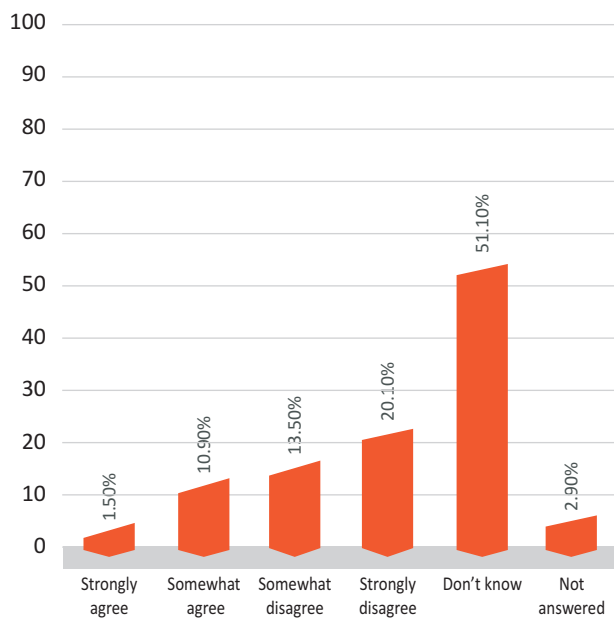
24. Ibid  
25. Ibid

enshrined in Islamic principles and legal injunctions, whereas 16.6 per cent agreed with the notion. Survey results are not surprising, as general perceptions of any bureaucratic institution are negative. Unfortunately, people have generally lost their faith in public institutions.

### Political groupings/vote banks (*dharras*)

More than half of respondents did not know if political groupings comply with the human rights standards enshrined in Islamic principles; a large

### Political groupings/vote banks (*dharras*)

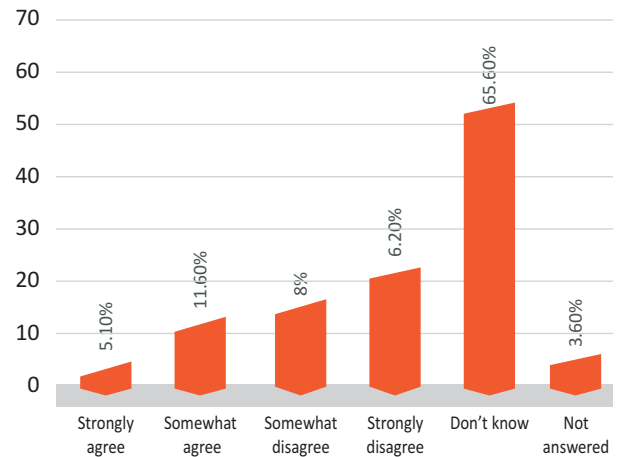


number of respondents (33.6 per cent) seem to hold a negative opinion of political groupings and they disagreed with the notion; and only 12.4 per cent agreed with the notion.

### Self-provision village organisations (VOs); community organisations (COs)

Due to a lack of knowledge about VOs/COs, close to two-thirds of respondents (65.6 per cent) did not know if they comply with the human rights standards enshrined in Islamic principles.

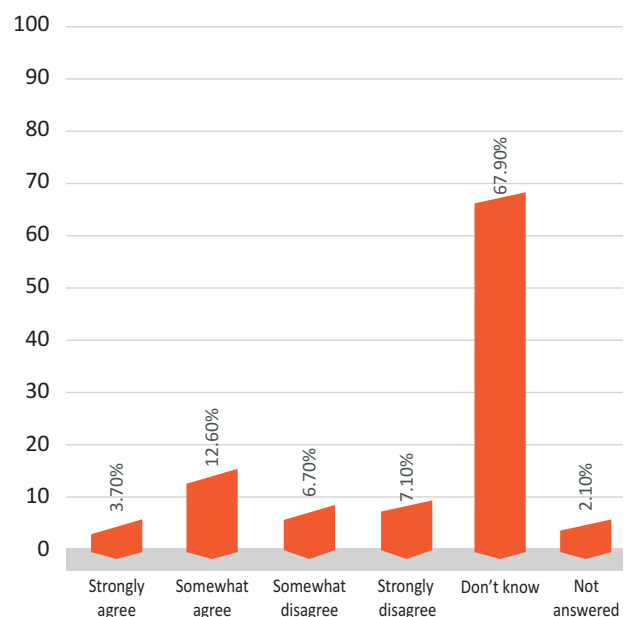
### Self-provision village organisations; community organisations



### Local NGOs

Again, the case for NGOs is very similar to community-based organisations (CBOs) – reasons for this were discussed in the first question of this section. More than two-thirds of respondents (67.9 per cent) seemed to have no knowledge of NGOs and did not share an opinion.

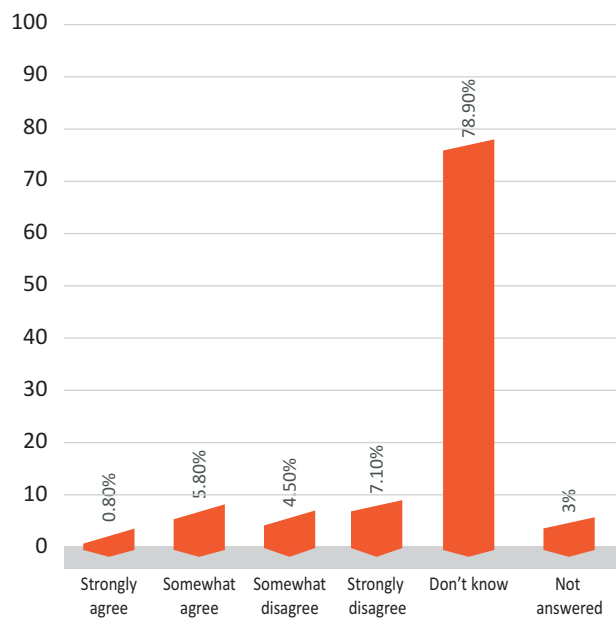
### Local NGOs



### Private dispute resolution mechanisms (DRMs) that charge a fee

Respondents seemed to have little knowledge about private DRMs: the overwhelming majority (78.9 per cent) said they did not know if private DRMs comply with the human rights standards enshrined in Islamic principles; only 6.6 per cent held a positive opinion and agreed with the notion.

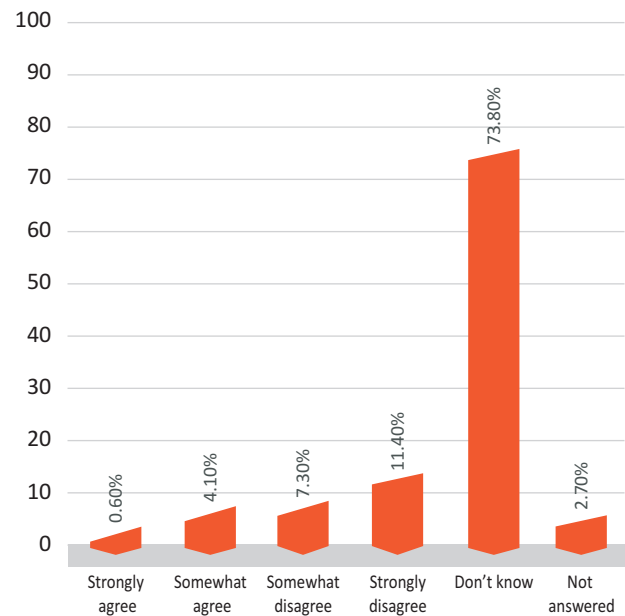
### Private dispute resolution mechanisms that charge a fee



### Local crime lords

With regards to perceptions about crime lords, in this questions as well as in previous questions, a large number of respondents held negative views, and the majority (73.8 per cent) said they did not know if crime lords comply with the human rights standards enshrined in Islamic principles. Only 4.7 per cent thought local crime lords are in compliance with Islamic principles and legal injunctions.

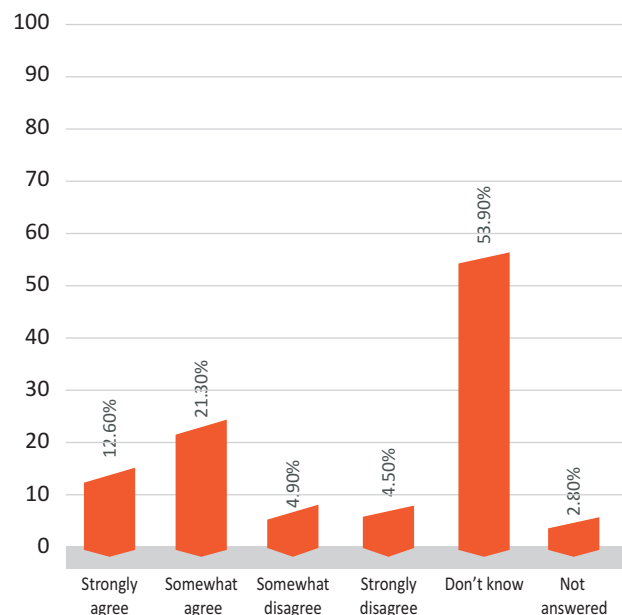
### Local crime lords



### Religious leaders in the community

One-third of respondents (33.9 per cent) agreed that religious leaders meet the human rights standards enshrined in Islamic principles and legal injunctions; only 9.4 per cent did not agree with

### Religious leaders in the community

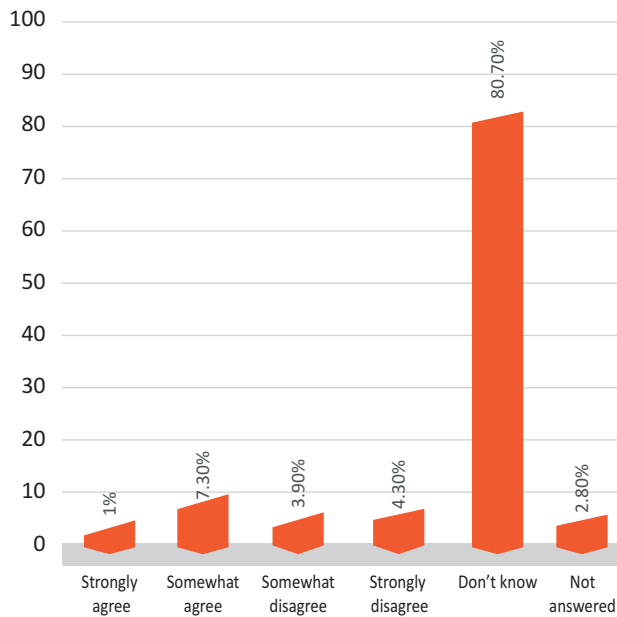


the notion. Surprisingly, more than half said they did not know.

### Musalihati Council (MC)

In the case of MCs an overwhelming majority of

#### Musalihati Council

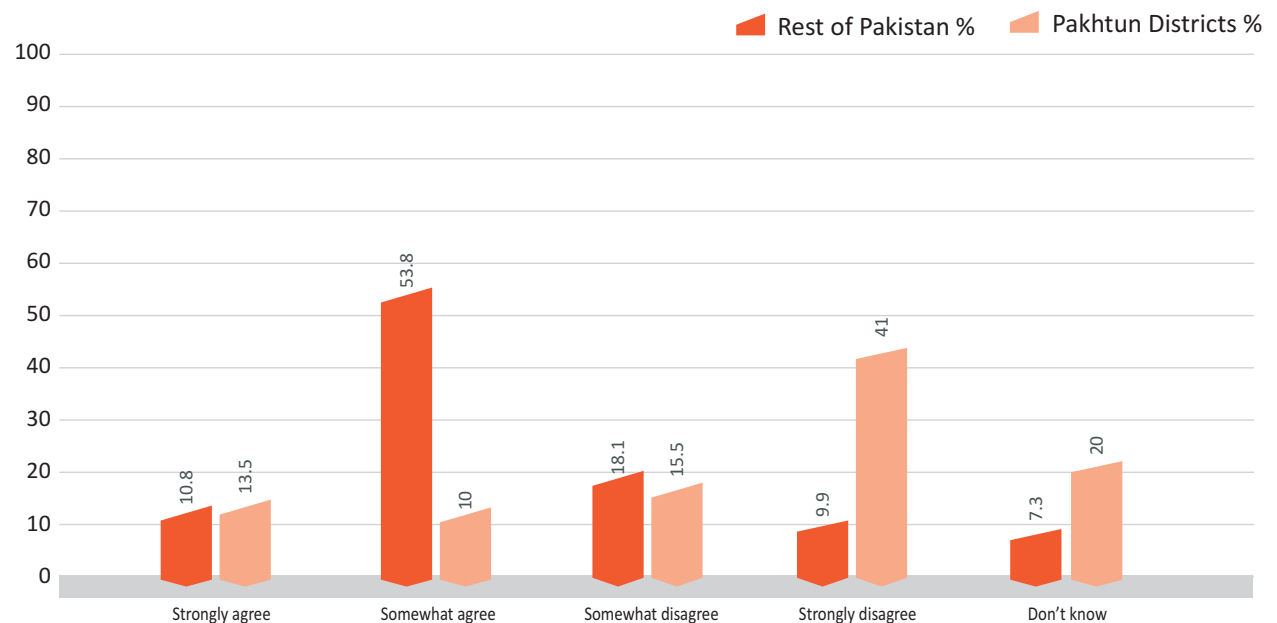


80.7 per cent was completely unaware of this institution and therefore they did not know if it complies with the human rights standards enshrined in Islamic principles; only 8.3 per cent agreed with this notion.

### Informal dispute resolution systems biasness against women when resolving matrimonial disputes including divorce and custody of children

It is generally perceived that informal dispute resolution systems are biased against women when resolving matrimonial disputes including cases of divorce and the custody of children. Women are not allowed to take part in the proceedings of informal justice systems mainly because of the patriarchal mindset of Pakistan's rural society where a woman's role is generally restricted to the household. The survey aimed to document respondents' opinion on this notion, and it found that people are generally aware of a gender bias: 64.6 per cent of respondents agreed with the notion that informal dispute resolution systems are at times biased against women in matrimonial disputes; a sizeable portion of the

### Do you agree that informal dispute resolution systems are at times biased against women when resolving matrimonial disputes including divorce and custody of children?



sample (28 per cent) disagreed with the notion.

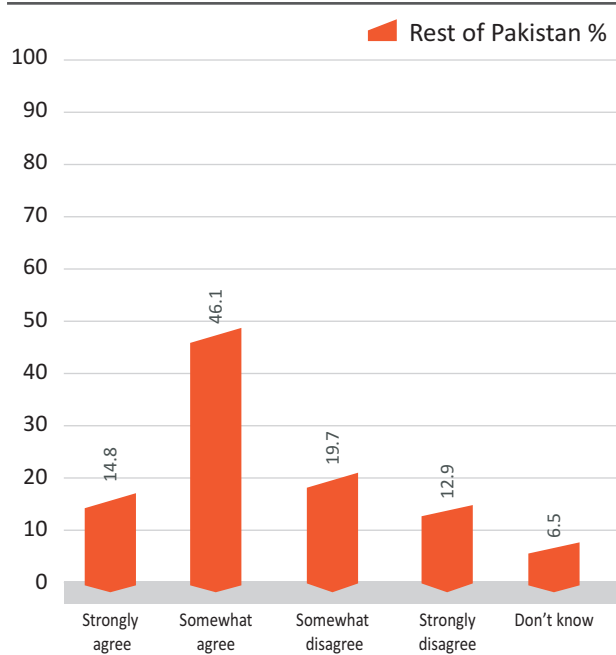
Respondents in Pakhtun districts had a very different opinion, as only 23.5 per cent agreed with the notion, whereas the majority of 56.5 per cent disagreed. This is surprising, and shows a lack of awareness of gender bias by Pakhtun respondents.

**Informal dispute resolution mechanisms biasness against poor people**

Interestingly, respondents show less positivity than they displayed in their previous opinions of informal justice systems, for example, that informal justice systems reconcile disputants and are affordable, speedy, transparent, etc. In the data, 60.9 per cent of respondents agreed with the notion that informal justice systems are biased against poor people; 32.6 per cent did not agree.

It is generally considered that poor and vulnerable people do not receive justice from either the

**Do you agree with the statement that informal dispute resolution mechanisms are biased against poor people?**



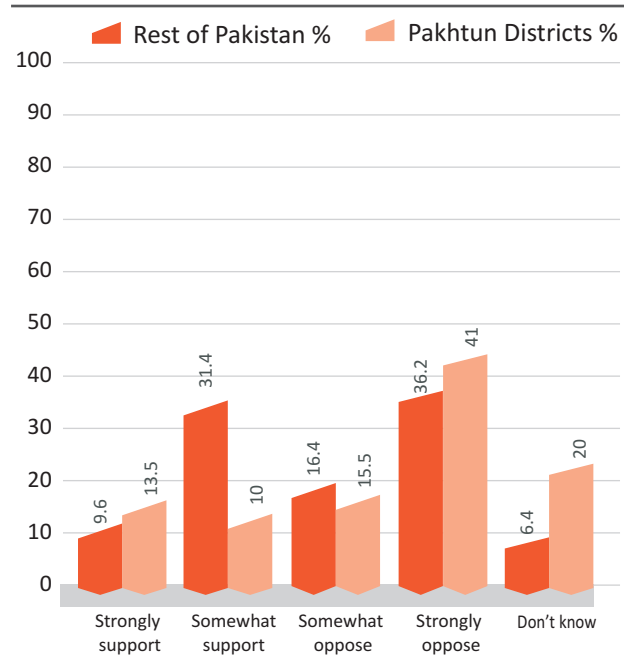
26. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013  
 27. Ibid  
 28. Ibid

formal or informal justice system. This is echoed during the round-table discussions.<sup>26</sup>

**Support/opposion for the informal dispute resolution system making decisions in favour of honour killing**

There is no justification to support killings in the name of honour and no law, or societal norm should support such heinous acts against

**Do you support/oppose the informal dispute resolution system making decisions in favour of honour killing?**



humanity.<sup>27</sup> However, media reports and other research studies argue that informal justice systems often justify cases of honour killings.<sup>28</sup> However it was shocking to discover that more than half of respondents in our survey (52.6 per cent) supported informal justice systems making decisions in favour of honour killings; 41 per cent opposed this. According to the data, respondents in Pakhtun districts were more in favour of decisions which support honour killing.

With regards to this issue, respondents were

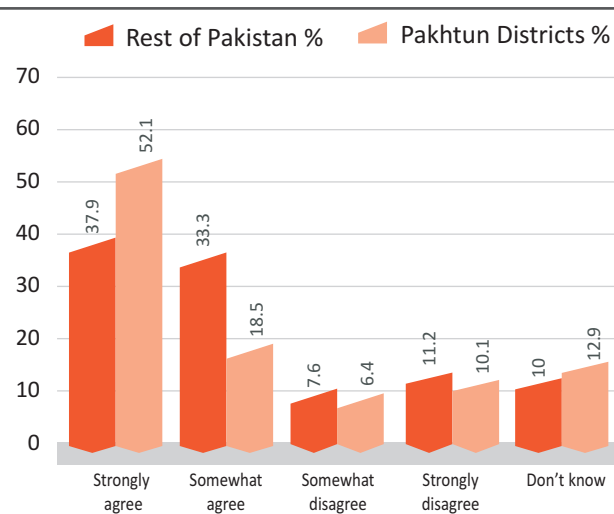


quite vocal – only 6.4 per cent said they did not know if they supported or opposed this.

### Direct or indirect representation of women in the informal dispute resolution system

Women are not allowed to take part in proceedings of informal justice systems. However, the survey intended to find out if respondents have had a different experience.

#### Do you agree/disagree that there is no direct representation of women in the informal dispute resolution system?



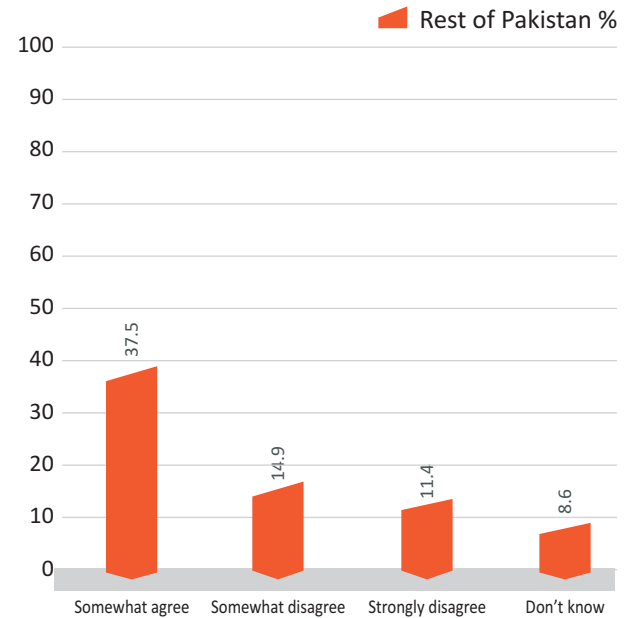
According to the data, 71.2 per cent of respondents agreed and confirmed that women are not directly represented in the proceedings of informal justice systems, whereas 18.9 per cent disagreed – these people may have seen or heard of women taking part in the proceedings of informal justice systems.

Interestingly, results for Pakhtun districts are similar.

### Representation of poor people in the informal dispute resolution system

In response to this question, nearly two-thirds of respondents (65.2 per cent) agreed that there is no representation for poor people in the informal

### Do you agree/disagree that there is no representation of poor people in the informal dispute resolution system



dispute resolution system; 26.3 per cent did not agree with the notion. The survey result is interesting and conforms to the general view.

### Agreement/disagreement over effective indirect representation of women (through male relatives) in the informal dispute resolution system

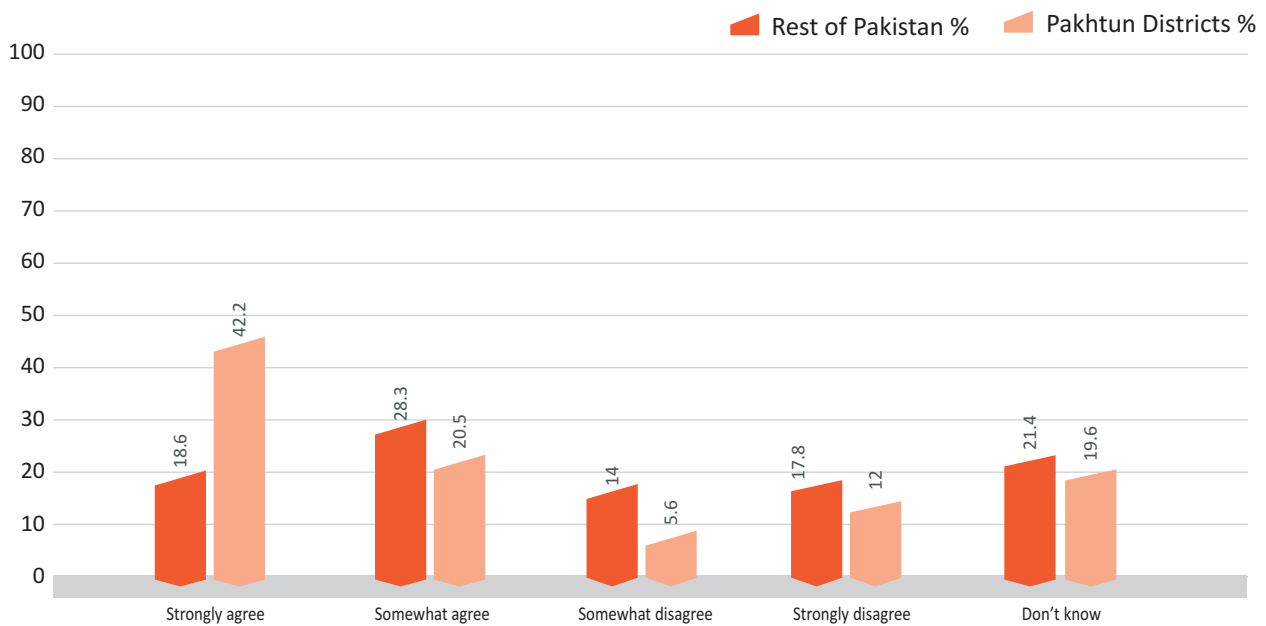
Women are usually indirectly represented through their male family members – usually brother, father, or son or in some cases in-laws. The survey aimed to understand respondents' views on the level of effectiveness of the indirect representation of women in the informal justice system: 46.9 per cent agreed that indirect representation is effective, whereas 31.8 per cent did not agree. A sizable 21.4 per cent said they did not know.

According to key informants, the indirect representation of women is not effective, as it always leads to more confusion and produces an unsatisfactory result for the women concerned.<sup>29</sup>

More respondents (62.2 per cent) in Pakhtun

29. Ibid. Views of the participants were critical of women's indirect representation in the informal justice system.

**Do you agree/disagree that there is effective indirect representation of women (through male relatives) in the informal dispute resolution system?**



districts were supportive of indirect representation for women.

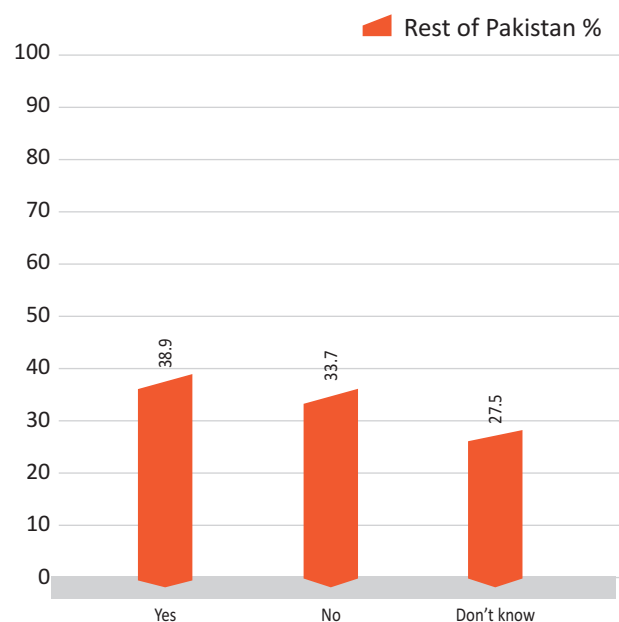
**Role of *swara/wani*, *karo kari*/ marrying women to the Quran/ bride price and *jhag*, in suitably and fairly resolving some complex issues which cannot be solved otherwise or by the formal legal system**

The response to this question is mixed and shows a diversity of opinion. A higher number of respondents (38.9 per cent) believed that local customs such as *swara/wani*, *karo kari*, marrying women to the Quran, bride price and *jhag* can suitably and fairly resolve some complex disputes which cannot be resolved otherwise or by the formal legal system, whereas 33.7 per cent believed the opposite. More than a quarter said they did not know, which shows that there are mixed feelings on the subject.

The result should not be too surprising as in Pakistan's rural areas many people seem to be completely unaware of the grave consequences and after effects of such ill practices. This is frustrating for those who are aware of the need to

protect people's human rights. Promoting equality is a difficult task in these rural areas, as these traditions which violate human rights are so entrenched in the way of the life and so deeply rooted in society.<sup>30</sup>

**Do local customs such as *swara/wani*, *karo kari*/ marrying women to the Quran/ bride price and *jhag*, suitably and fairly resolve some complex local issues which cannot be solved otherwise or by the formal legal system?**

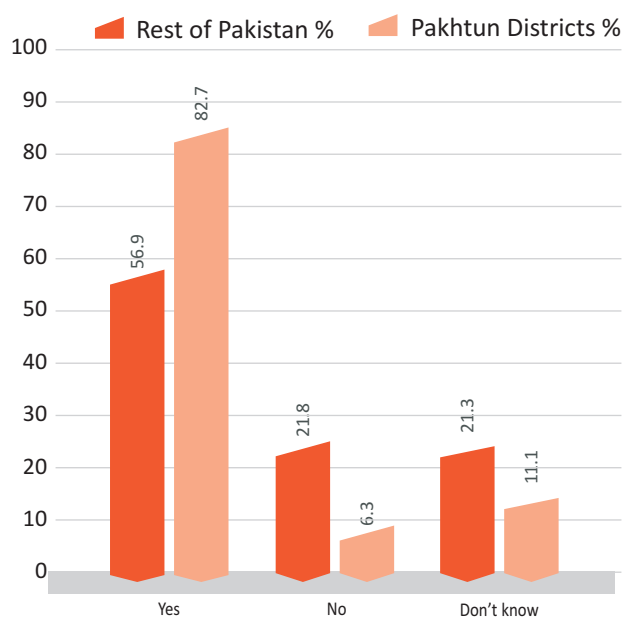


30. Interview with Abdul Razaq Gumrani, Manager Sindh province, HANDS (NGO), 25<sup>th</sup> August 2014, Karachi

### The belief that *swara/wani/karo kari*/ marrying women to the Quran/ bride price and *jhag* violate women's rights

Interestingly, the results for this question contradict the previous question's result. In the previous question, a significant number of respondents believed and justified *swara/wani/kro kari*/ marrying women to Quran/ bride price and *jhag* and believed that such practices can help resolve some very complex family disputes. However, in this question, the majority of respondents in the rest of Pakistan (56.9 per cent) and the overwhelming majority (82.7 per cent) in Pakhtun districts believed that such practices violate the rights of women. This leads us to assume that while the majority of respondents consider that these types of practices can be used to resolve complex disputes, they also recognise that they violate women's rights.

Do you believe that *swara/wani/karo kari*/ marrying women to the Quran/ bride price and *jhag* violate women's rights?



### CONCLUSION

This chapter is full of surprises and has revealed many interesting facets of formal and informal institutions which either offer justice services directly to the masses or help provide easy access to justice. On several occasions respondents showed a good understanding. However, many were also oblivious of certain facts too.

Overall, the chapter reveals respondents' faith in informal institutions – more precisely, those institutions that are closer to them and more accessible – such as *khandan*, *mohalla*, *biradari* and the informal justice system. Although these institutions have no formal recognition, this does not mean that they are free of any obligations. Cases have been reported where human rights were violated, and the state machinery had to react and declared the informal justice system illegal. However, as the majority show their support for these institutions (this is reflected in our survey results), these informal institutions continue to survive and operate informally and without state patronage. This chapter also divulges how respondents have lost their faith in the state's institutions – which, in turn, makes it easy for people to approach informal institutions for dispute resolution and other matters. People are also often unaware of the formal judicial system and its network. It is for these reasons that informal institutions are surviving and thriving.

Various state and non-state institutions were tested under various human rights standards – international standards, the Pakistan Constitution and Islamic principles. This chapter uncovered the fact that the overwhelming majority of respondents sadly did not know whether the various institutions complied with the international human rights standards, and the human rights enshrined in the Constitution of Pakistan and Islamic principles and legal injunctions. Nonetheless, respondents generally gave favourable verdicts with regards to the

informal institutions and their compliance with these human rights standards.

A considerable portion of this chapter is dedicated to women and the informal justice system. Survey findings reveal that the issue of how the informal justice system treats women is controversial, and viewpoints vary considerably. After cross-tabulation of several datasets, generally, men were more inclined than women to state that the informal justice system supported women; educated women were more inclined to be critical of the informal justice system (although not always) than uneducated women; and women from the rural sector claimed that they were treated more unfairly than urban women. There were also many who complained about the way the informal justice system treated women.

This chapter suggests that there is a need for an extensive awareness campaign at the grassroots level with regards to the protection of human rights – human rights that are enshrined in international human rights law, Pakistan's Constitution and Islamic principles.

# CHAPTER 7

THE WAY FORWARD



# CHAPTER 7

## THE WAY FORWARD

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### INTRODUCTION

This chapter is divided into two sections: the first section analyses respondents' perceptions of the informal justice system and its future face in Pakistan; the second section discusses more technical aspects of the legal system in Pakistan which could be based on legal plurality under the state's patronage – gradually integrating the informal justice system into the formal judicial system of Pakistan, in consultation with all the stakeholders.

This chapter delves into deep academic discussion to support various arguments, and provides a list of recommendations for future reforms within both the formal and informal justice systems. We highlight how informal justice systems have impacted the formal justice system and vice versa; we show why the informal justice system is still relevant to the present day context and has legitimacy within the masses; we identify gaps between the formal and informal justice systems; and we explain how to bridge those gaps with modern knowledge whilst keeping traditions intact and respecting traditional sentiments.

The informal justice system works in parallel to the state's judicial system. It challenges the writ of the state, especially in cases of murder wherein the exchange of girls (*swara*, *wani* etc.) is usually involved to settle disputes. The international community and civil society is critical of the

operations of informal justice systems in Pakistan, and rightly so. However, others argue that instead of completely abandoning the system altogether, it would be possible to revamp it and make it usable for people living in far-flung areas of Pakistan where access to formal justice institutions is very difficult. The state's justice system itself is criticised for its delays in dispensing justice, and for the fact that it can only be accessed by the wealthy elite who can afford to pay the huge sums to lawyers etc.

The first question that comes to mind is 'how can the informal justice system be integrated into the formal judicial system?'. Levels of integration could be different and various. To chalk out a way forward for the judicial system of Pakistan, one can not completely rely on the common perceptions gathered from this survey using a structured questionnaire. Therefore, various steps are discussed in the second part of this chapter using secondary data from available literature.

### COMMON PERCEPTIONS TO REFORM THE INFORMAL JUSTICE SYSTEM

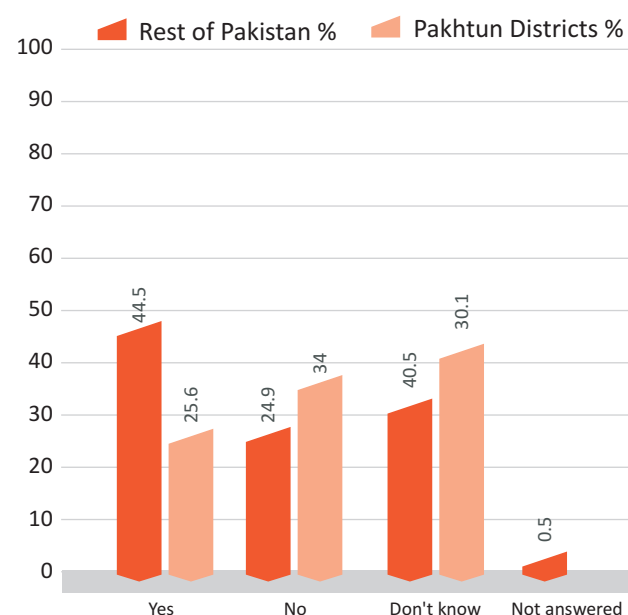
This section discusses certain questions and notions gathered from the survey, which provide interesting evidence to support this study's argument for a plural judicial system in Pakistan under the state's patronage. The following shows a series of questions that were put to respondents in our survey, and then analysed.

### Popular support in case informal justice system is recognised and integrated into the state's formal justice system

Firstly, we need to know whether people will support such integration and whether the state will incorporate the informal justice system under its patronage. According to the survey results, a large group of respondents (44.5 per cent) confirmed their support for the informal justice system if recognised by the government, whereas 24.9 per cent did not favour this integration. More than a quarter (30.1 per cent), which is a considerable proportion of the sample, said they did not know. If these people had been able to give an opinion, their judgement could have changed the whole result significantly.

The respondents from Pakhtun districts did not appear to be very interested in integrating Pakhtun *jirga* into the state's judicial system: 25.6 per cent of respondents showed their support, whereas 34 per cent said they did not support this. A significant number of respondents (40.5

### Do you believe that your community will support the informal dispute resolution system if it is recognised and integrated into the state's formal justice system?



per cent) from Pakhtun districts said they did not know.

### Nature of such recognition

The respondents who were in support of integrating the informal justice system into the formal judicial system were asked 'what should be the nature of such recognition and integration?'

A list of various technical options was shared with the respondents in order to extract their collective wisdom.

The results from the data show that a high group of respondents (24.7 per cent) thought that the state/courts should decide which kinds of disputes should be exclusively heard and decided by informal mechanisms, but that there are certain situations where an appeal can lie with the courts even in these cases. This was followed by 23.3 per cent of respondents who believed that the state should determine which kinds of disputes should be heard and decided exclusively by informal dispute resolution mechanisms. In that case, the state exerts its control and keeps a constant check on the informal justice system, and disputants do not enjoy the right to appeal under this option.

Another 19.9 per cent of respondents thought that the state/courts should promote, recognise and monitor all decisions of the informal dispute resolution mechanism and intervene wherever they think fit; and 19.8 per cent of respondents thought that the informal justice system should be allowed to decide all cases if they follow a certain basic process laid down by the state/courts, and that such decisions should have legal recognition and be binding but that such mechanisms can't hear or decide any dispute which involves the violation of fundamental rights under the Constitution of Pakistan and/or affects any vulnerable groups in society. This option could cause confusion in terms of deciding which cases may have violated fundamental human

What should be the nature of such recognition and integration?	
Options	Rest of Pakistan %
The state determines which kinds of disputes should be heard and decided exclusively by informal dispute resolution mechanisms.	23.3
The courts determine which kinds of disputes should be heard and decided exclusively by informal dispute resolution mechanisms.	19.3
The state/courts should decide which kinds of disputes should be exclusively heard and decided by informal mechanism but that there are certain situations where an appeal can lie with the courts even in these cases.	24.7
The informal mechanisms should have the power to be the first forum for hearing all kinds of disputes but that everything can be potentially appealed to the courts.	16.3
The informal dispute resolution mechanisms should decide all disputes if they follow a certain basic process laid down by the state/courts and that such decisions will have legal recognition and be binding but that such mechanisms can't hear or decide any disputes which involve a violation of fundamental rights under the Constitution of Pakistan and/or affect any vulnerable groups in society.	19.8
That the state/courts will promote, recognise and monitor all decisions of the informal dispute resolution mechanism and intervene wherever they think fit.	19.9
The state/courts will identify and recognise existing informal dispute resolution mechanisms, or establish and recognise new informal mechanisms and nothing beyond these will have any legal recognition for their dispute adjudication.	9.2
The state/courts will not only recognise and monitor informal dispute resolution mechanisms and their decisions but will also assist in the implementation of decisions.	10.1
All informal dispute resolution should be exclusively directed by the formal courts and conducted in conjunction with, through, or under the supervision of the district courts.	7.1
A combination of the above.	23.7
Other	6.3

rights under the Constitution, particularly because members of the informal justice system are not necessarily qualified lawyers or trained in law practice. For this reason, it may not be prudent to allow informal justice systems to deal with complex cases.

In addition, 19.3 per cent of respondents said that the courts should decide which kinds of disputes should be heard and decided exclusively by the informal dispute resolution mechanisms.

The results also showed that 16.3 per cent of respondents thought that the informal justice system should be the first forum for access to

justice but that a provision for appeal to the formal courts should be incorporated in the regulation. On technical grounds, this portrays a complex scenario whereby the members of the informal justice system are fully empowered to deal with all cases, including criminal and other complex cases – such as homicide, terrorism, sectarian violence, cases of violence against women, etc. Experts interviewed were not very much in favour of this notion and rejected this due to the lack of members' technical/legal knowledge.<sup>1</sup>

The data showed that 10.1 per cent of respondents thought that the state/courts should

1. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013



not only recognise and monitor informal justice systems and their decisions but also assist in the implementation of decisions. This seems relatively practical and reasonable, the state holds control over delegating cases which it deems appropriate, and at the same time helps the informal justice system in implementing its decisions. This seems a fairly feasible option and the majority of experts approved of this scenario. However, they reiterated that formal courts should not delegate complex criminal cases to the informal justice system.<sup>2</sup>

It appears from the results that 9.2 per cent of respondents believed that the state/courts should identify and recognise existing informal dispute resolution mechanisms or establish and recognise new informal dispute resolution mechanisms, and nothing beyond these should have any legal recognition for their dispute adjudication. This scenario seems confusing because on the one hand the state will recognise the existence of the informal justice system; however, on the other hand it will not allow the informal justice system to provide services legally.

The data showed that 7.1 per cent of respondents thought that all informal dispute resolution systems should be exclusively directed by the formal courts and in conjunction with, through, or under the supervision of the district courts. Again under this arrangement the state court system has complete control over the informal justice system mechanisms.

Interestingly, 23.7 per cent of respondents thought that a combination of all options mentioned above should be accepted by the state.

It appears that some of the scenarios in the graph seem reasonable and acceptable to the respondents surveyed. However some scenarios were completely rejected by experts.

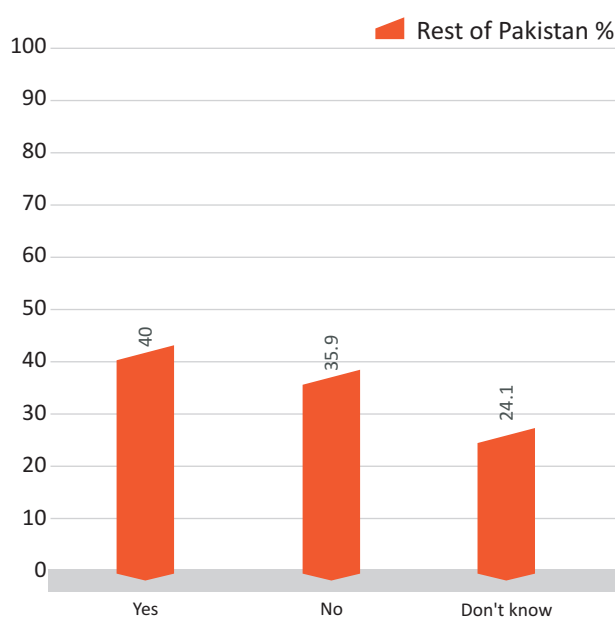
2. Ibid

### Fears of the informal dispute resolution system (after it is recognised) being plagued by the same weaknesses that afflict the existing formal justice system

In some parts of the world, informal justice systems have been recognised and incorporated into the formal judicial system of the state so that people can access justice easily. Conversely, the formal courts in Pakistan have not recognised the informal justice system ? instead they have taken stern measures to ban it in all parts of the country.

This question highlights a different aspect of the informal justice system. If recognised and incorporated into the formal justice system, would it be plagued by the same weaknesses that afflict the formal justice system of Pakistan, including the problems associated with the Supreme Court, High Court, and Session Court?

### If recognised and integrated, do you think informal dispute resolution systems could be plagued by the same weaknesses that afflict the existing formal justice system like the Supreme Court/High Court/Session Court?



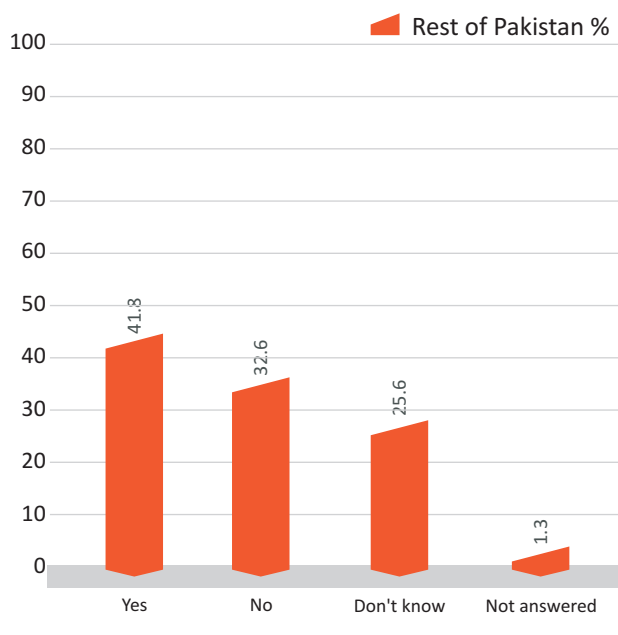
Respondents' reaction is divided: 40 per cent confirmed that it would be plagued with the same weaknesses, and 35.9 per cent had the opposite view. Some 24.1 per cent said they did not know.

This is a fairly technical question and needs to be addressed by experts. The majority of civil society experts at the round-table discussions shared the same reservations. They were of the view that the informal justice system should remain independent, however, there should be some monitoring from the state, particularly in terms of the verdicts dispensed, in order to prevent any violation of human rights.<sup>3</sup>

### **Fear of informal dispute resolution system losing the advantages it has over the formal justice system, after it is recognised**

Data sets in the previous chapters on this topic

#### **Once recognised and integrated, would informal dispute resolution systems lose the advantages (e.g. less expensive, more speedy, less corrupt, etc) they have over the formal justice system?**



3. Ibid  
4. Ibid  
5. Ibid  
6. Ibid  
7. Ibid  
8. Ibid

clearly reveal that the majority of respondents support the informal justice system because they find it speedy, affordable and less corrupt than the formal system. In addition, the majority of participants at the round-table discussions echoed views that the informal justice system is less corrupt, cheaper and faster in dispensing justice in the rural parts of Pakistan.<sup>4</sup> However, close to a quarter of respondents (25.6 per cent) showed a lack of clarity, and said they did not know if the informal justice system would lose its advantage if it became part of the formal judicial system.<sup>5</sup>

Other respondents were divided: a high percentage (41.8 per cent) agreed that informal dispute mechanisms would lose their advantages, whereas 32.6 per cent opposed this.

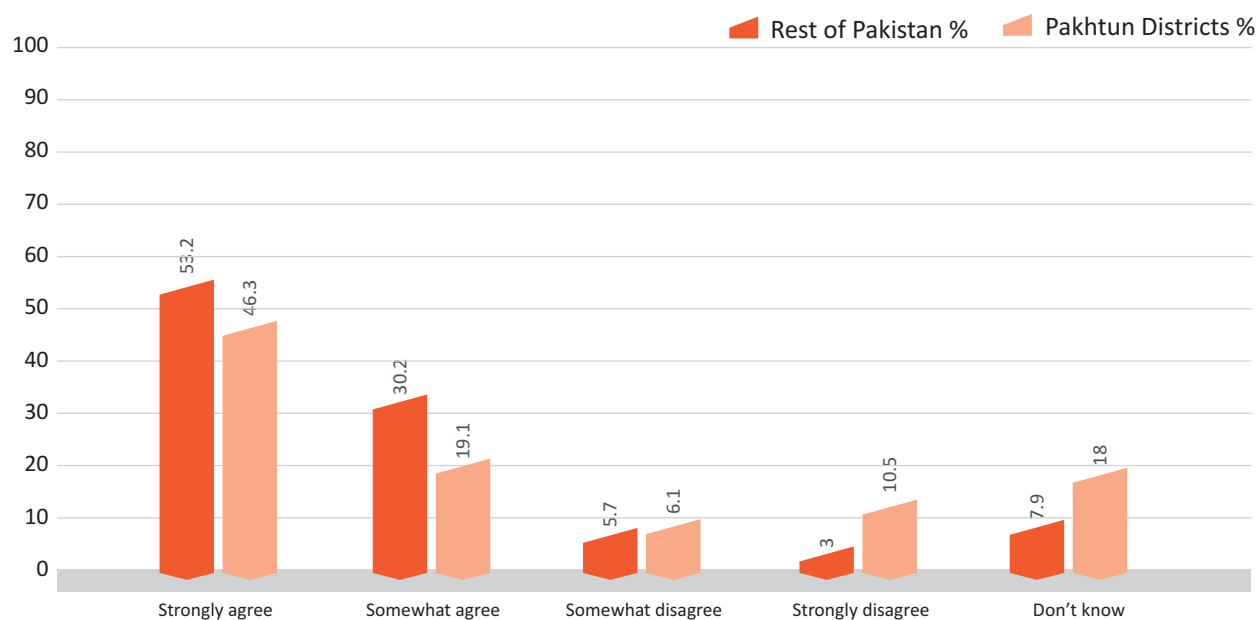
### **How strongly do you agree/disagree with the statements listed below?**

Respondents were asked to state how strongly they agreed or disagreed with various assumptions pertaining to the integration of the informal justice system into the formal judicial system. The aim was to help policy-makers to identify areas of intervention for reforming the overall justice sector in Pakistan.

#### **'Informal justice system decisions should be officially recorded.'**

Not all the decisions of informal justice systems are recorded. However the majority in the round-table discussions argued that in certain cases it is imperative to record decisions so that parties to the dispute can not back out.<sup>6</sup> In cases of civil disputes, decisions are usually recorded on paper.<sup>7</sup> In criminal cases, it is also observed that in some cases, members of the council do record proceedings and statements.<sup>8</sup>

### 'Informal justice system decisions should be officially recorded.'



In terms of the survey results, an overwhelming majority of respondents (83.4 per cent) agreed that decisions should be recorded for record keeping and transparency, and only 8.7 per cent disagreed with this.

The results from Pakhtun districts show a similar trend, revealing that the popular mind-set is changing as people realise that there is a crucial need to protect human rights.

### 'Informal dispute resolution system decisions should be officially enforced.'

According to the majority of participants in the round-table discussions, the informal justice system will lose its essence if government department and officials are formally involved.<sup>9</sup> However, some of the key informants were of the view that official involvement could assist the informal justice system in striving to improve its performance, and in starting to take decisions which consider the rights of women and minority groups.<sup>10</sup>

Contrary to the majority-view above, a staggering 80.4 per cent of respondents said that the decisions of informal justice systems should be enforced officially; only 9 per cent disagreed.

Results from Pakhtun districts show similar trends.

### 'There should be provision for a right to appeal to the courts against informal dispute resolution system decisions.'

In Pakhtun districts of Pakistan, a *jirga* decision is always accepted as a voluntary gesture agreed by both parties and it is not legally-binding for either party.<sup>11</sup> Social pressure (discussed earlier) helps enforce *jirga* decisions, and parties are free to take their cases to the formal courts if they are not satisfied with the decisions.<sup>12</sup>

The survey aimed to discover respondents' views on this dimension of the informal justice system and results are startling. More than three-quarters of respondents (78.5 per cent) agreed

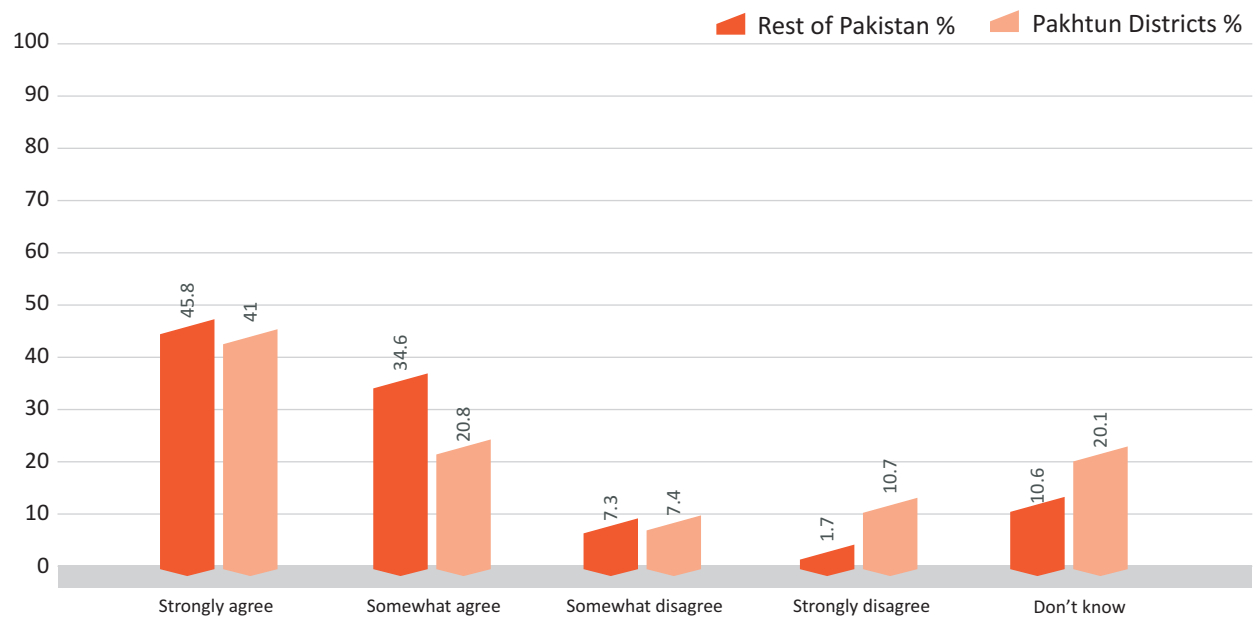
9. Ibid

10. Ibid

11. Interview with Advocate Tahir Iqbal, Legal Reform Forum (NGO), 25 August 2013, Karachi

12. Ibid

**‘Informal dispute resolution system decisions should be officially enforced.’**

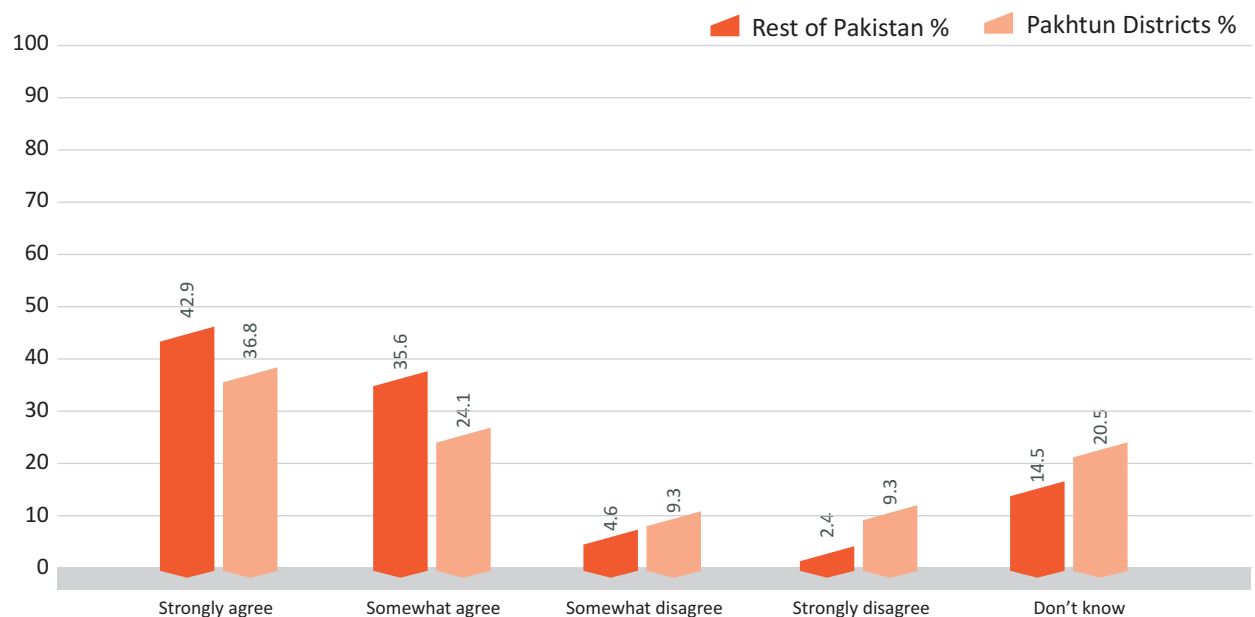


that there should be provision for appeal, free from social pressure, so that if a party is not happy with the decision of the informal justice system, they can appeal to the court against this decision.

Trends in Pakhtun districts are similar, although fewer respondents agree with the statement than in the rest of Pakistan.

This provision cannot be arranged by the informal justice system in isolation of the formal justice system – it can only happen if both formal and

**‘There should be provision for a right to appeal to the courts against informal dispute resolution system decisions.’**



informal justice systems work together.<sup>13</sup>

**‘The final decisions of informal dispute resolution systems need to be subject to the approval of appropriate Pakistani human rights bodies.’**

As stated earlier, informal justice systems are heavily criticised by state institutions and civil society, including the media, due to their lack of transparency and their tendency to violate human rights, especially the rights of women and minority groups. In addition, the council of elders for informal justice systems generally lack formal education and are unaware of the consequences of their decisions on people's basic rights.<sup>14</sup>

The survey result is encouraging: three quarters of respondents (75.3 per cent) agreed that decisions of informal justice systems need to be subject to the approval of human rights bodies; only 9.3 per cent disagreed. The trend Pakhtun areas is different. In Pakhtun districts, 45.6 per cent of respondents agreed

with the statement that decisions of informal justice systems need to be subject to the approval of human rights bodies, whereas 17.5 per cent disagreed. A considerable percentage of 36.9 per cent said they did not know.

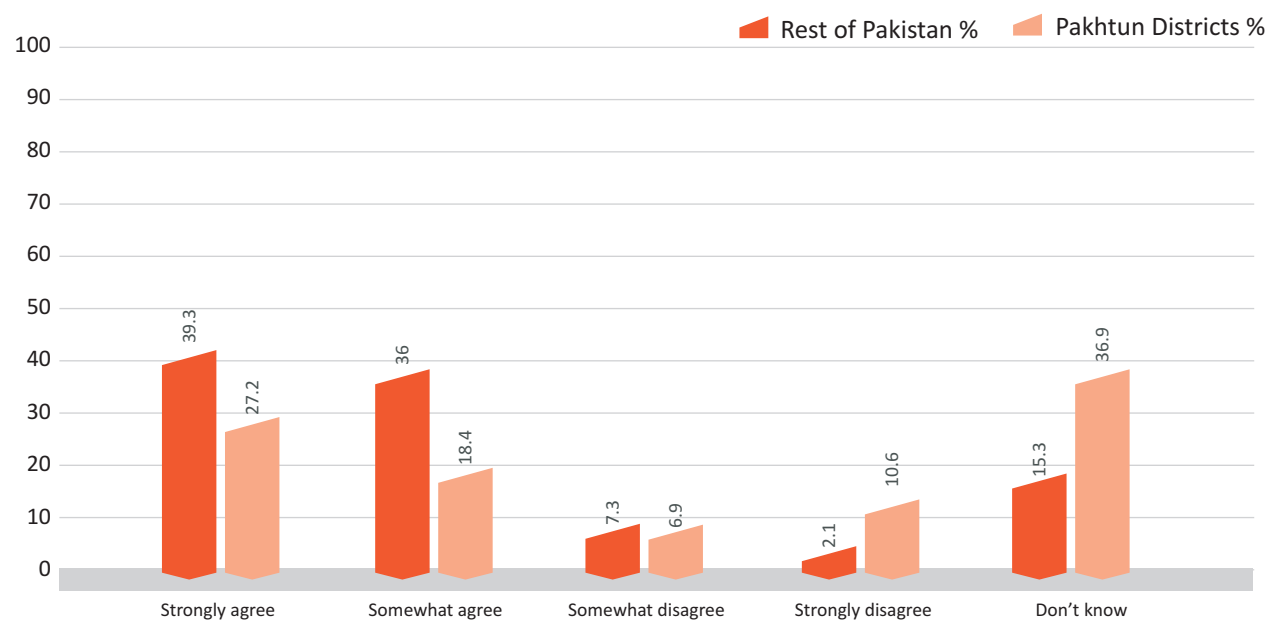
**‘Women should be given the right to observe informal dispute resolution system proceedings.’**

Women are not allowed to take part in informal justice system proceedings as observers, decision-makers or even as a party in most cases. Women's lack of participation raises important questions about gender inequality and women's lack of inclusivity.<sup>15</sup> Respondents were asked about various dimensions of women's involvement in informal justice systems.

The first question seeks to gauge respondents' agreement/disagreement on women's participation in informal justice system proceedings as an observer.

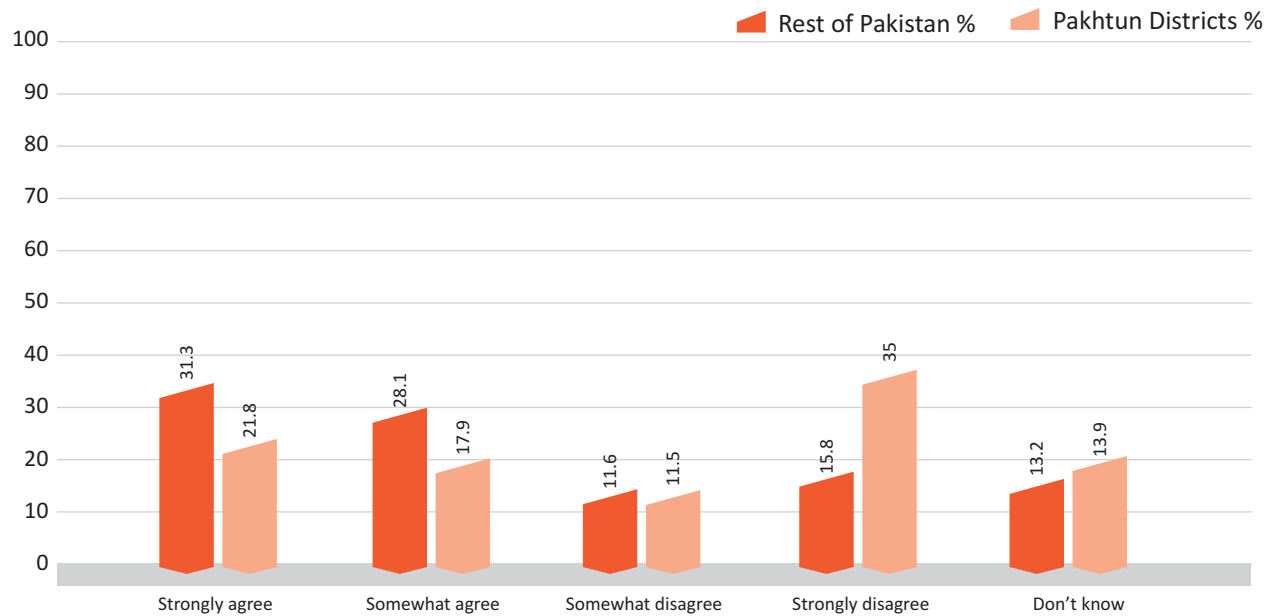
The survey findings are encouraging: the majority of respondents (59.4 per cent) agreed that

**‘The final decisions of informal dispute resolution systems need to be subject to the approval of appropriate Pakistani human rights bodies.’**



13. Ibid  
 14. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013  
 15. Ibid

**‘Women should be given the right to observe informal dispute resolution system proceedings.’**



women should be allowed to take part in the proceedings of informal justice systems; 27.4 per cent did not agree. As a first step this is very positive, and shows that Pakistani society might soon be ready to involve women in traditional justice systems.

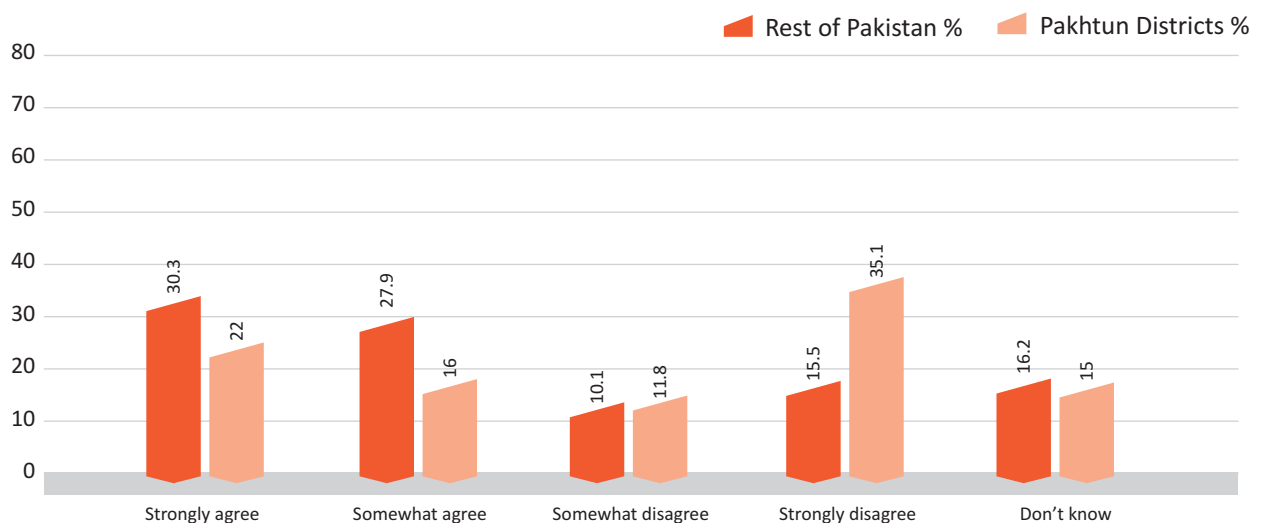
However, the data from Pakhtun districts is different. Nearly half of all respondents (48.9 per

cent) disagreed that women should be allowed to observe *jirga* proceedings; 39.7 per cent agreed.

**‘Women should be given representation in the decision-making body of an informal dispute resolution system as member.’**

Once again, respondents showed a positive mindset towards women's empowerment. When asked

**‘Women should be given representation in the decision-making body of an informal dispute resolution system as member.’**



if women should be given representation in the decision-making body of an informal dispute resolution system, the majority of respondents (58.2 per cent) agreed that they should, whereas a quarter of respondents (25.6 per cent) disagreed with the idea.

It might take some time before we reach a situation where we see women holding positions as decision-makers in informal justice systems. However, every society, including Pakistan, has capable women leaders; we look forward to such women becoming part of the decision-making process at every level in Pakistan, including within the informal justice system.<sup>16</sup>

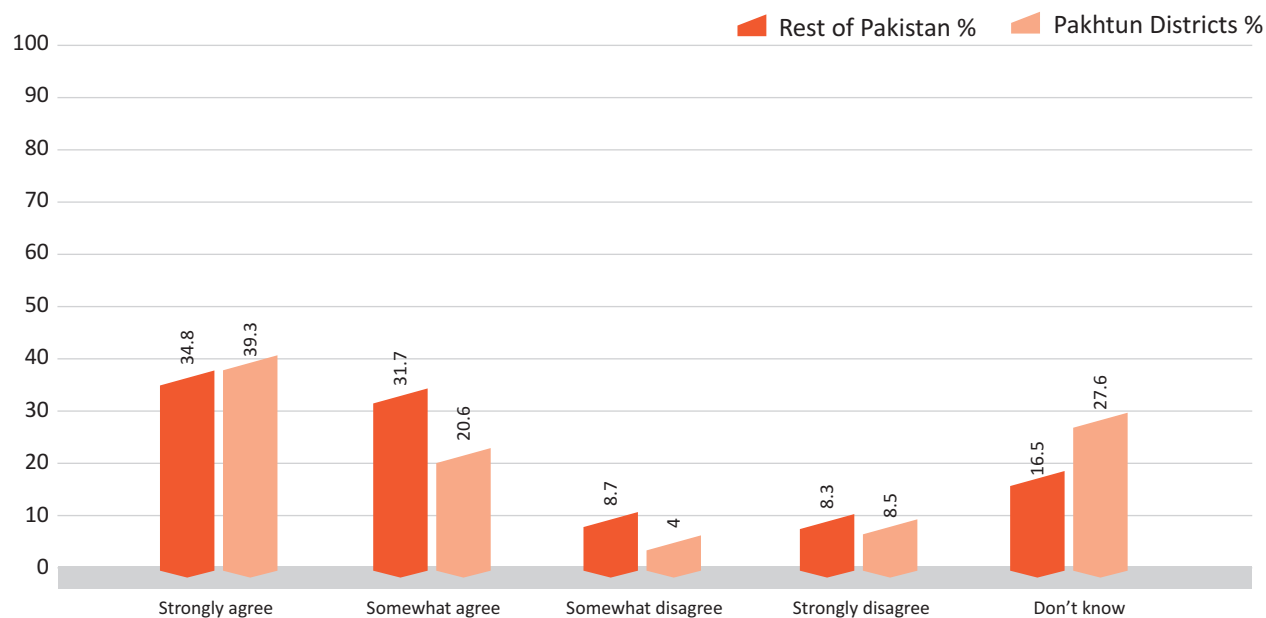
In Pakhtun districts, a higher proportion of the sample (46.9 per cent) disagreed with the notion, whereas 38 per cent agreed. Although the response level is lower than in the rest of Pakistan, this data from Pakhtun districts still shows encouraging signs of the need to empower women.

**‘Religious and ethnic minorities should be allowed to observe informal dispute resolution system proceedings.’**

**‘Religious and ethnic minorities should be allowed to observe informal dispute resolution system proceedings.’**

There are exceptional circumstances where religious minorities have been allowed to observe the proceedings of informal dispute resolution systems.<sup>17</sup> However minority groups are not usually allowed to do this<sup>18</sup> because unfortunately they are generally unaccepted and shunned by the overwhelmingly Muslim population (only around 3 per cent of the population is non-Muslim, consisting of Hindu, Christians and Sikh communities).<sup>19</sup>

The survey aimed to document respondents' reactions to this aspect of the informal justice system. It is very encouraging to note that two-thirds of respondents (66.5 per cent) agreed that religious and ethnic minorities should be allowed to witness the proceedings of such informal justice systems, whereas only 17 per cent did not agree.



16. Ibid  
 17. In previous studies, the author had interviewed key informants from Hindu and Christian minorities in FATA and KP  
 18. Round-table discussion in Lahore, 11 August 2013, Lahore  
 19. Ibid

According to the data, sentiments in Pakhtun districts appear to be similar.

**‘Religious minorities should be given a fair chance to resolve their disputes according to their customs and religious beliefs.’**

According to one of the key informants during field work in FATA, religious minorities are sometimes allowed to resolve their disputes according to their religion and customs.<sup>20</sup> However, this is generally not the case. Minority groups have been complaining quietly for years that they are not permitted to take part in village meetings pertaining to resolve their communal and family disputes.<sup>21</sup>

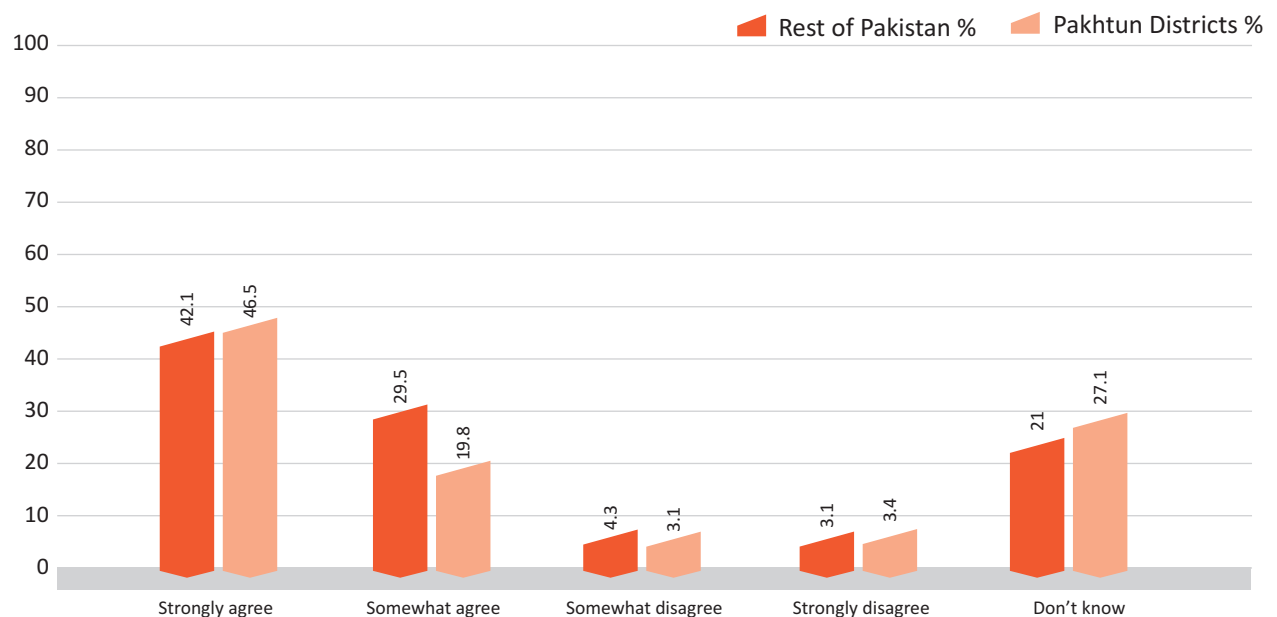
In terms of respondents' reaction to this aspect, more than two-thirds of respondents (71.6 per cent) agreed that minorities should be given a fair chance to resolve their disputes according to their customs and religious beliefs. A negligible percentage of 7.4 per cent did not agree.

Data from Pakhtun districts gathered in 2012 shows a similar trend.

**‘The informal dispute resolution system should be integrated into the formal justice system.’**

As discussed in previous chapters, available literature suggests that a number of developing countries in Africa, Latin America, and Europe have integrated informal systems into their formal justice systems, in one form or another, in order that poor people, especially those living in remote rural areas, can access justice services. They also ensure that such informal justice systems do not violate people's rights, especially the rights of women, children, minority groups and people with disabilities. In Pakistan, as in other countries in the Sub-continent, the laws and systems inherited from Britain have seen little reform in the 67 years since independence.<sup>22</sup> Formal institutions appear to be against the integration of informal justice systems into formal law due to a number of technical reasons and the fact that they do not want to see modern methods merged

**‘Religious minorities should be given a fair chance to resolve their disputes according to their customs and religious beliefs.’**



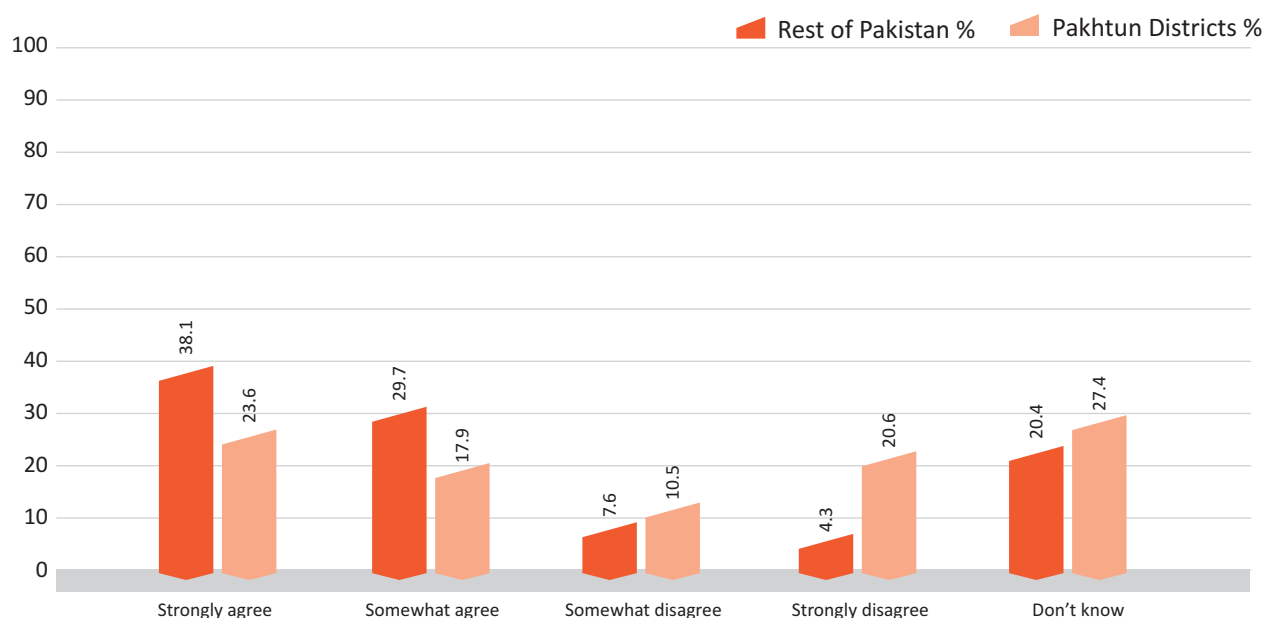
21. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

20. See Shinwari, *Understanding Jirga* (2011)

22. See Osama Siddique, *Pakistan's Experience with Formal Law: An Alien Justice*, p. 174 (Cambridge: Cambridge University Press, 2013)



## 'The informal dispute resolution system should be integrated into the formal justice system.'



with ancient traditions.<sup>23</sup> Interestingly, during the field work for this report, some people stated that they opposed integration because they did not want to see the informal justice system become polluted and corrupted by the formal justice system.<sup>24</sup>

With regards to the survey, two-thirds of respondents (67.8 per cent) surprisingly endorsed the idea of integration, whereas only 11.9 per cent did not agree.

These results are very encouraging and convey a strong message: the state's institutions should take account of the sentiments of its people and begin work on the technicalities and modalities of integrating the informal and formal justice systems.

Pakhtun respondents were less enthusiastic about integration, but there was still a significant proportion of respondents (41.5 per cent) who agreed with the idea.

### 'Informal dispute resolution system members should be elected through a proper electoral process.'

Members of the informal justice system are selected by local communities. These members are usually well-known and respected individuals who have attained their prominent position in the village due to their wisdom, piety, political influence, wealth (in most cases), and family background.<sup>25</sup> For such rural communities, these qualities give reassurance that justice will prevail with transparency and according to the local norms and religious sentiments, and that these members will ensure that decisions are implemented due to the power they hold.<sup>26</sup>

It is clear from this that the essential element of accountability is missing from this equation. Elected people who agree to take on a role should be accountable to the people they represent.<sup>27</sup> The underlying concept of local organisations

23 Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

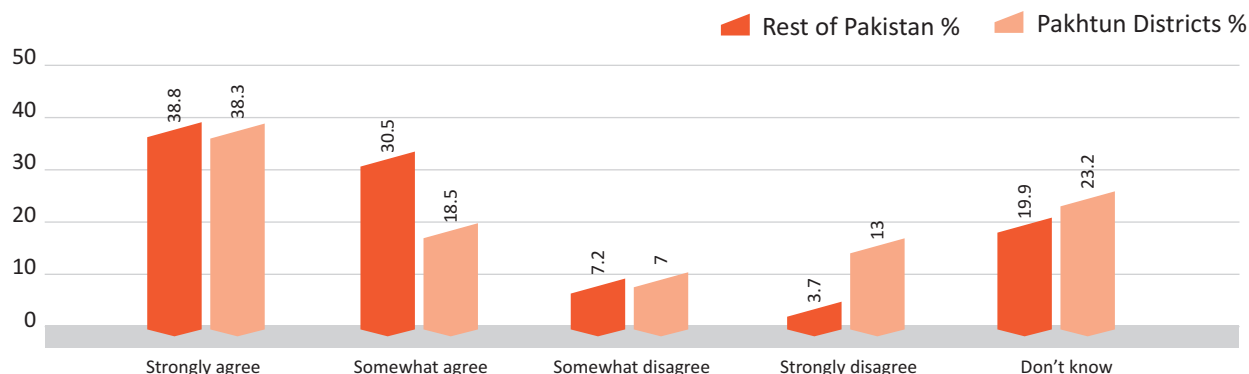
24. See Shinwari and Neha (2013)

25. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

26. Ibid

27. Interview with I.A. Rehman, Director, Human Rights Commission of Pakistan (HRCP), 22 August 2013, Lahore

**‘Informal dispute resolution system members should be elected through a proper electoral process.’**



working for grassroots development, and the setting up of Musalihat Councils, was to ensure this accountability.

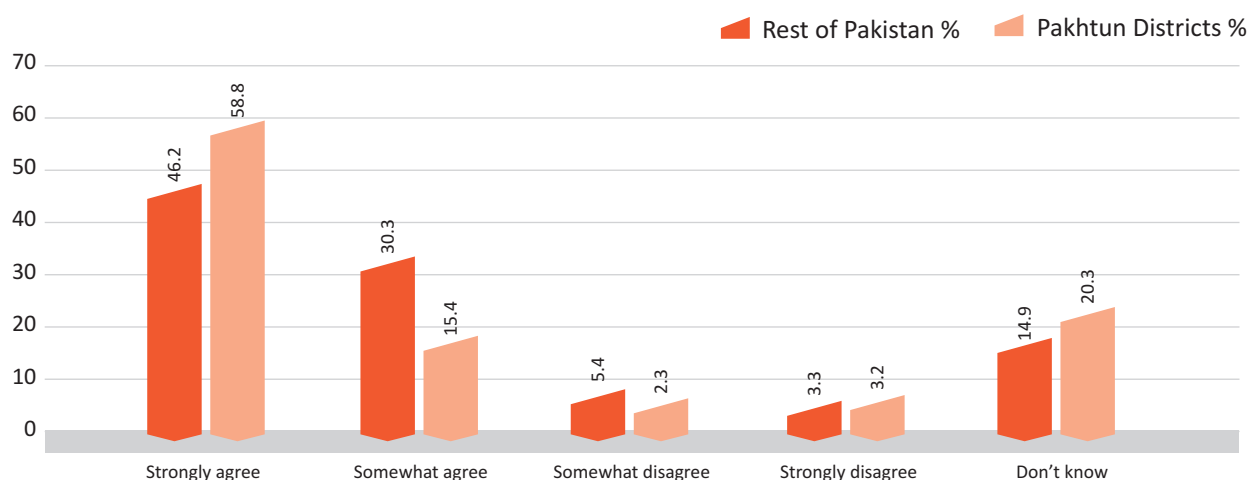
The survey data shows some very positive signs: more than two-thirds (69.3 per cent) of respondents agreed that members of informal justice systems should be elected and not selected, whereas only 10.9 per cent did not agree.

The results for Pakhtun districts show a similar (but slightly lower) trend in relation to *jirga* members.

**‘Members of the informal dispute resolution system should be sensitised through an educational programme on human rights, women's rights, rights in Shariah, and the fundamental rights of the Constitution of Pakistan.’**

During the course of implementation of its Rule of Law Project in FATA, KP and Balochistan, CAMP observed that traditional decision-makers of informal justice systems have traditional knowledge and wisdom however, they lack exposure to, and understanding of, the dynamics of today's modern world. It is for this reason that their decisions sometimes violate not only

**‘Members of the informal dispute resolution system should be sensitised through an educational programme on human rights, women's rights, rights in Shariah, and the fundamental rights of the Constitution of Pakistan.’**



international human rights standards but also the Constitution of Pakistan and even rights enshrined in Shariah.<sup>28</sup> There is a need for them to understand what is acceptable by today's modern standards, that can only happen if they are exposed to new ways of thinking and opportunities to learn.<sup>29</sup>

The results of the survey confirm that more than three-quarters of respondents (76.5 per cent) agree that there is a need for members of informal dispute resolution systems to be sensitised through an educational programme on human rights, women's rights, rights in Shariah, and the fundamental rights in the Constitution of Pakistan. Only 8.7 per cent did not agree.

Results from Pakhtun districts were very similar.

**'Women's informal dispute resolution system institutions should be formed to resolve women's issues.'**

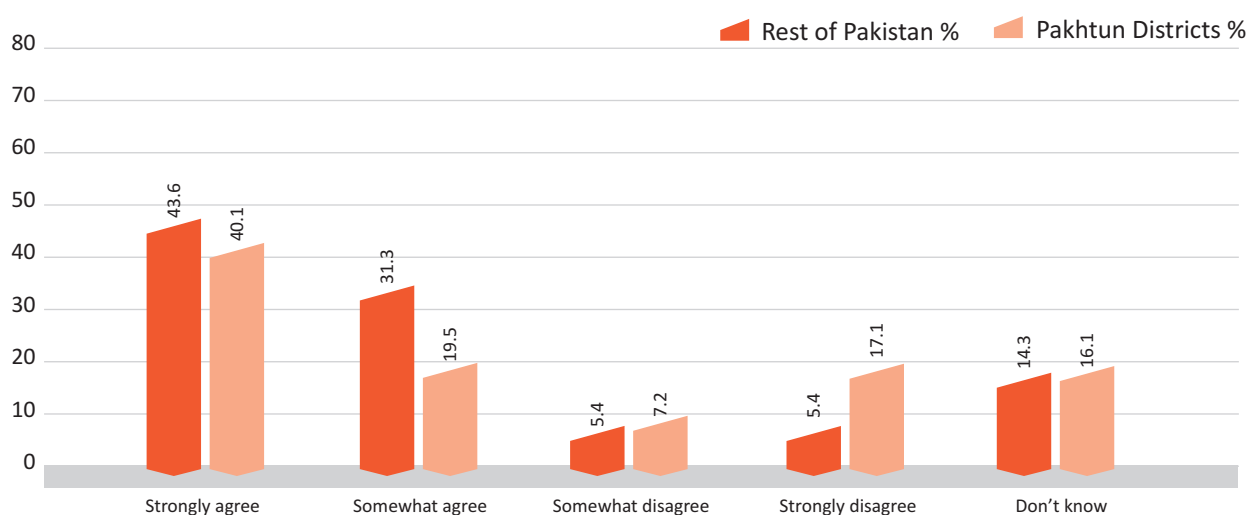
This idea, to develop women's dispute resolution systems, was met with a very positive reaction in our survey. Almost three quarters of the sample

(74.9 per cent) agreed that women-led informal dispute resolution systems should be set up; only 10.8 per cent did not agree.

The idea of setting-up women-led informal dispute resolution systems (or women's *jirga*) for resolving issues relating to women has already been piloted by UNDP Pakistan in a few districts of the Malakand region of Khyber Pakhtunkhwa province. Apparently, women's *jirgas* have been active in responding to cases of domestic violence, child custody, early/child marriages and other family related disputes. Although they have been fairly instrumental and successful in advocating for the rights of local women, there is still a long way to go in terms of changing views within the conservative setup of the rural communities of Khyber Pakhtunkhwa.<sup>30</sup> Nonetheless, women's *jirgas* should be appreciated and encouraged as a forum for women to redress their grievances. Hopefully, given time, these institutions will become a standard part of the local cultural set-up.<sup>31</sup>

The number of respondents in Pakhtun districts who supported the idea of women's *jirgas* was

**'Women's informal dispute resolution system institutions should be formed to resolve women's issues.'**



28. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

29. Ibid

30. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

31. Ibid

fractionally lower, but the data shows a very similar trend.

**‘Informal dispute resolution systems should be utilised effectively to bring reform to local customs and to ban traditional practices such as *swara/wani/karo kari* /marrying women to the Quran, bride price and *jhag*.’**

Traditional customs which are centuries old and deeply rooted in societies often do not reflect the realities of today's world or modern ways of thinking.<sup>32</sup> However, interfering with such local customs without involving local communities always leads to conflict.<sup>33</sup> Based on CAMP's past experience of bringing reforms to local customs through the traditional *jirga* system in FATA, it was felt there was a need to test the notion of reform on respondents from the rest of Pakistan.

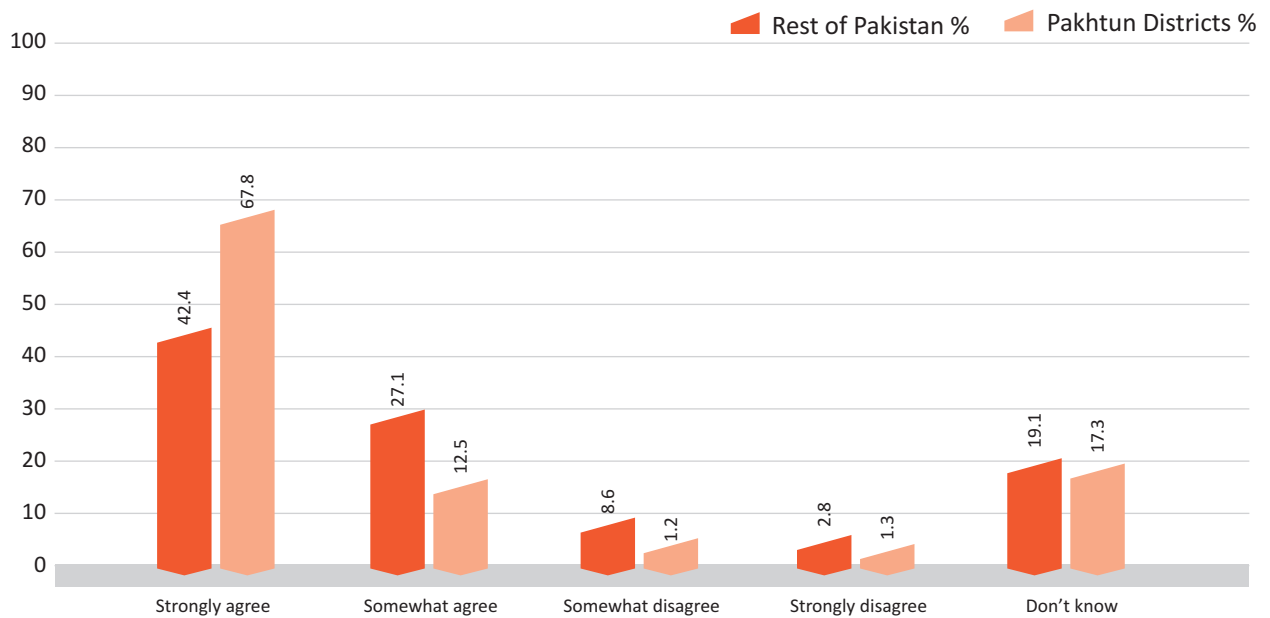
Surprisingly, more than two-thirds of respondents (69.4 per cent) agreed that informal dispute resolution systems should be utilised to bring reform to local customs or traditional practices that violate women's rights. Only 11.4 per cent did not agree. This finding is very encouraging and suggests that, if undertaken sensitively, such reform could be successful in eliminating these ancient practices that deny women their rights.

Surprisingly, more respondents in Pakhtun districts agreed with the need for reform.

**‘Informal dispute resolution system institutions should play a role in conflict transformation/resolution.’**

There is no doubt that informal dispute resolution systems do play a crucial role in resolving local conflicts and the minimising the impact of

**‘Informal dispute resolution systems should be utilised effectively to bring reform to local customs and to ban traditional practices such as *swara/wani/karo kari* /marrying women to the Quran, bride price and *jhag*.’**

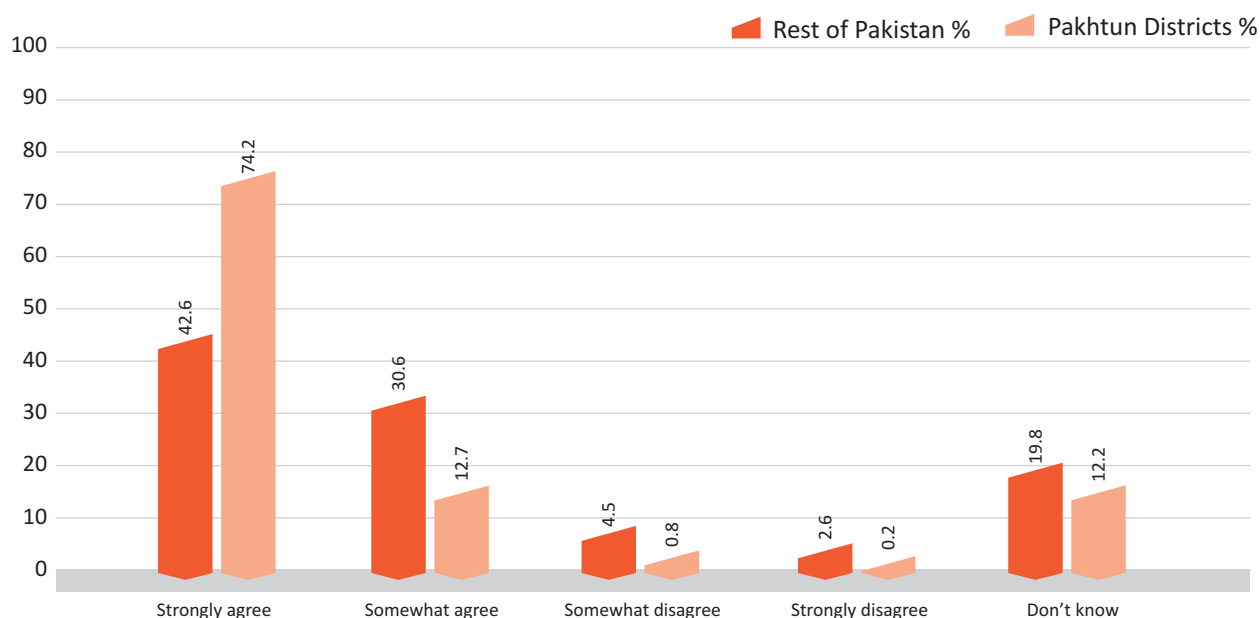


32. Interview with Abdul Razaq Gumrani, Manager Sindh province, HANDS (NGO), 25 August 2014, Karachi

33. Round-table discussions in Lahore, Karachi and Quetta, August – December 2013

34. Ibid

### 'Informal dispute resolution system institutions should play a role in conflict transformation/resolution.'



conflict.<sup>34</sup> However, here we try to understand what respondents' views are of the future role that such systems should play under the patronage of government. Today we are witnessing law and order breakdowns in all provinces of Pakistan, and such informal dispute resolution systems can arguably play a vital role in reducing the level of militancy and political violence.

According to the data, nearly three quarters of respondents (73.2 per cent) agreed that informal dispute resolution system institutions should play a role in conflict transformation/resolution; only 7.1 per cent did not agree.

If the government decides to implement a strategy based on these findings, there will be a great deal of popular support for this.

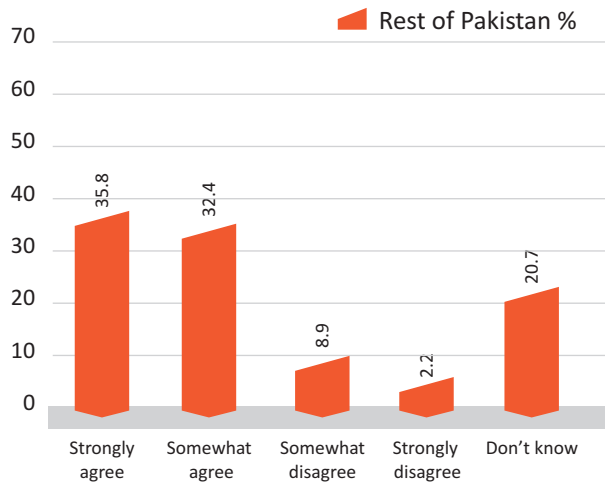
According to the data from Pakhtun districts, an overwhelming majority of 86.9 per cent also showed their agreement.

### 'In the case of integration, the state should only allow certain categories of cases to be undertaken by informal dispute resolution systems.'

Here we examine if respondents agree that only certain categories of cases ? delegated by the formal courts ? should be undertaken by informal dispute resolution systems, in the case of integration.

Interestingly, respondents were supportive on this aspect: more than two-thirds of respondents (69.2 per cent) agreed with the notion; only 11.1 per cent did not agree. Respondents are mindful of the fact that traditional informal justice systems might not be able to resolve complex disputes, which would be better dealt with by the formal courts. The role of both systems would need to be clearly defined so as to avoid any confusion.

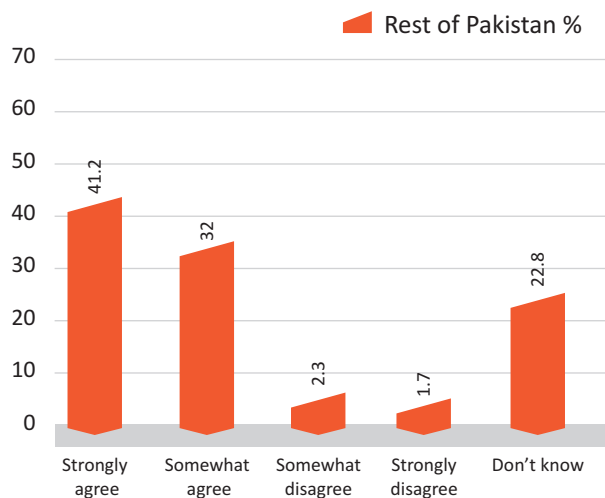
**‘In the case of integration, the state should only allow certain categories of cases to be undertaken by informal dispute resolution systems.’**



**‘In all cases involving fundamental rights under the Constitution, disputants should have the right to appeal for any decisions made by the informal justice system.’**

As stated earlier, at present disputants can take their cases to the formal courts if they are not

**‘In all cases involving fundamental rights under the Constitution, disputants should have the right to appeal for any decisions made by the informal justice system.’**



content with the decisions of the informal justice system. In addition, for those disputants involved in a case in the informal justice system, disputants are not bound to accept decisions; they are merely forced to comply by the social pressure that is intrinsic to such a conservative and traditional social set-up.<sup>35</sup>

This question is asked in the context of informal justice systems becoming part of the formal justice system. In that given arrangement we wanted to find out if respondents agreed with the notion that disputants should have the right to appeal to the formal courts, in cases where a violation of the fundamental rights guaranteed in the Constitution of Pakistan is feared.

The survey results showed that 73.2 per cent of respondents endorsed the notion; just 4 per cent disagreed with the notion.

**‘The state should approve membership of a recognised informal dispute resolution mechanism following some selection criteria.’**

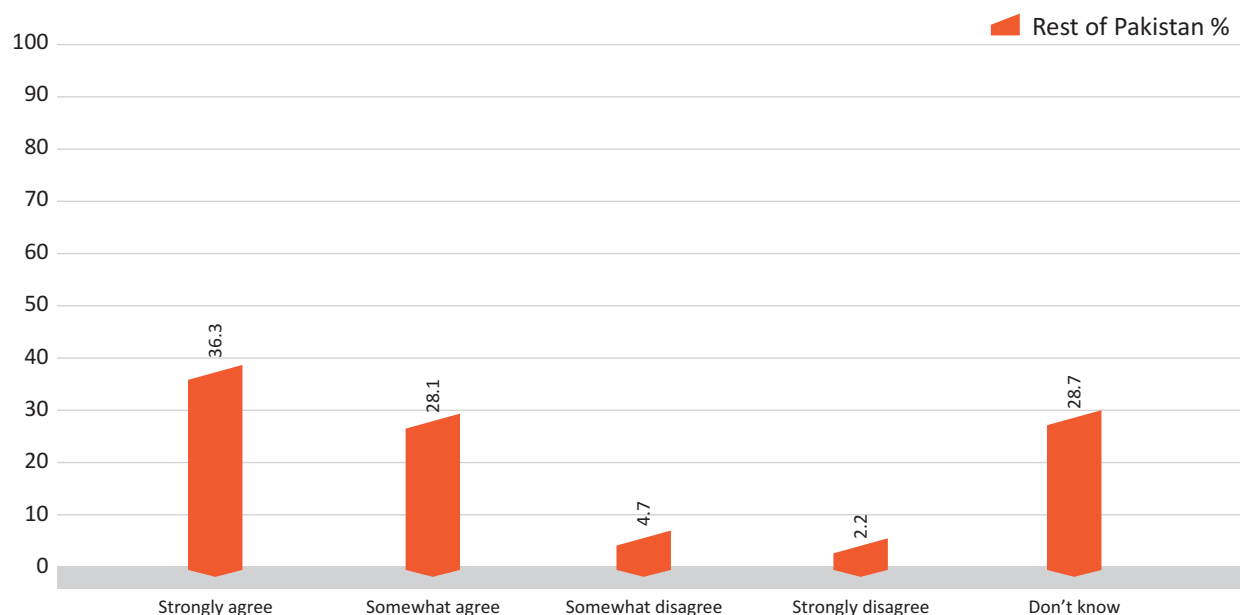
This proposal means that once the informal justice system is integrated into the formal judicial system then the state has to define some standards to improve the performance of informal justice systems and to ensure transparency and accountability. Interestingly, the majority of respondents (64.4 per cent) agreed with this proposal; only 6.9 per cent did not agree.

The first section of this chapter concludes here. It is very encouraging to see that most respondents would like to see reform and changes to the informal justice system – changes that address some of the key problems within the system through raising awareness, providing information and introducing new techniques.

A surprising finding of our survey with regards to respondents' opinions is their overwhelming

35. Interview with Abdul Razaq Gumrani, Manager Sindh province, HANDS (NGO), 25 August 2014, Karachi

**'The state should approve membership of a recognised informal dispute resolution mechanism following some selection criteria.'**



agreement on utilising the informal justice system to change unjust customs in their area. This evidence is something that CAMP has referred to when convincing tribal elders to ban detrimental practices that violate women's rights in FATA .

The overall results are very encouraging and there is sufficient evidence for policy-makers to bring reforms to the informal justice system through various steps including: educational programmes; incentives schemes for informal institutions; and assistance to comply with international human rights standards, the Constitution of Pakistan, and Islamic principles and legal injunctions.

The next part of this chapter argues for a programme of reform and for legal pluralism in Pakistan under the state's patronage. These arguments are based on research from available literature, cases studies of other countries, key informants interviews, round-table discussions with well-informed experts and human rights activists, as well as key findings from our survey on the perceptions of ordinary Pakistani men and women.

## POSSIBILITIES OF LEGAL PLURALISM IN PAKISTAN

This section discusses the possibilities available, and the lessons that can be drawn from our research.

Based on academic literature review, this section argues how formal and informal justice systems which function separately can be linked together so that their efforts complement rather than contradict each other, avoiding confusion for Pakistan's people. This chapter explains what steps the government of Pakistan should take in order to manage the functions of the formal and informal justice systems, so that each performs its role effectively.

The theory of legal pluralism has enormous relevance to the study of the informal justice system, opening up many possibilities and revealing lessons to be learned. According to Forsyth (2009), 'Legal pluralism has therefore been shown to be potentially very helpful in addressing cognitive-type questions about how

plural legal systems operate in practice in any given jurisdiction. It does not, however, currently have a great deal to offer in relation to answering normative questions about how plural legal systems could best relate to each other or other issues involving what Woodman (1999) calls 'planned pluralism'.<sup>36</sup> Forsyth further argues that 'this type of inquiry involves asking such questions as "How can we try to ensure that the different legal orders that exist in any particular jurisdiction operate in a way that maximises their ability to cross-fertilise, support and enrich each other, rather than to undermine and conflict with each other." The fact that legal pluralism does not currently greatly assist in addressing such questions is possibly one reason why to date it has been largely overlooked by development agencies such as the World Bank and the United Kingdom's Department for International Development, which have recently started to become involved in the development and reform of non-state systems.'<sup>37</sup>

Research suggests that in Pakistan legal reforms have largely not been on the agenda for policy-makers, and legal pluralism has never been discussed academically. Forsyth discussed three factors that have contributed to inhibiting the development of legal pluralism into a useful theory in the context of practical law reform – in its general context.<sup>38</sup> However, we have to see whether those factors have relevance in the context of Pakistan.

According to Forsyth, in the past decade or so, despite having made such large advances early on, legal pluralism has fallen into a theoretical morass out of which it appears unable to drag itself.<sup>39</sup> This could be the case for other developing countries too. Unfortunately, in Pakistan, as stated above, very little debate has been initiated

so far. Forsyth further adds, 'in this regard, it is noteworthy that a number of legal pluralists state explicitly that the theory ends up advocating immobility.'<sup>40</sup>

'The second factor limiting legal pluralism's relevance to law reform is its political nature,' according to Forsyth. 'It is clear that the relationship between the state and other legal systems is at the heart of the debates about legal pluralism. This is because law making and enforcing are two of the core functions of a state, arising from what certain political theorists term the 'social contract' between members of society and the state.'<sup>41</sup> In the context of Pakistan, this factor has some relevance. Since civil society and the highly educated class (Pakistan's 'legal fraternity') are quite powerful and influential, and because they are the principal beneficiaries of the *status quo*, they have deliberately inhibited any such academic debate on legal pluralism, unfortunately. This has resulted in a general lack of trust in the formal judicial system by the ordinary people in Pakistan.<sup>42</sup>

Finally, and most significantly, the theory has had limited relevance for law reform because the material produced has tended to be largely descriptive rather than normative, and has been limited to one site of study. This means that it has not been comparative, and has inhibited the development of overarching theories that could be used in a law reform context.<sup>43</sup> This is relevant to the international context, but, as stated earlier, no theoretical discussion has ever been initiated in Pakistan on the possibilities of legal pluralism. Had it been discussed, we might have witnessed some emerging possibilities. One cannot deny the fact that each country is faced with a different environment and different possibilities ? failure in one environment does not necessarily denote

36. Miranda Forsyth, *A bird that flies with two wings: Kastum and state justice systems in Vanuatu*, p.46. (The Australian National University E Press, 2009)

37. *Ibid*

38. *Ibid*, p.46.

39. *Ibid*, p.46.

40. *Ibid*, p.4.

41. *Ibid*, p.47.

42. This can be substantiated with the data from this study and previous studies compiled by CAMP as well as other organisations/institutions in Pakistan

43. Forsyth (2009), p.48.



failure in another.

It has been pointed out by many scholars that in today's Western world, the state is becoming increasingly 'hollowed-out', meaning that more and more state functions are being devolved to non-state actors.<sup>44</sup> This has particularly been the case in countries emerging from periods of weak or scattered government (such as those emerging from civil war) to a stronger state.<sup>45</sup> In Pakistan, like many other developing countries the opposite of this has occurred. The state has taken over more and more of the functions which used to be performed by traditional society in the absence of the state system.

On the one hand, the formal institutions and educated urban class of Pakistan is critical of the traditional local governance at village level which addresses local people's issues and needs. On the other hand, there is a complete vacuum of village-level local governance, which has created numerous problems leading to widespread despair and violent retaliation against the state's institutions. This means that in any particular environment there is always a need for the division of labour and functions between state and informal institutions, both of which are serving the population and addressing grievances. In the context of developing countries, although there has recently been a degree of recognition of this and of the consequent need to develop capacity at state and non-state levels, and effective linkages between these levels,<sup>46</sup> there is currently a lack of a methodology for *how* to go about doing this.<sup>47</sup>

Let us examine what steps and methods the state should undertake to devise a formula for managing a shift in functions between formal and informal justice systems, so that poor and vulnerable groups have easy access to justice. The following steps articulate this, and are based on

primary as well as secondary information gathered during research for this study.

### **1. Understand the functions and operations of the formal and informal justice systems**

This involves thorough and extensive fieldwork in each and every corner of Pakistan – focusing on all the major ethnic groups with their distinct cultural values and investigating their justice systems in terms of their environments, particular jurisdictions, the operation and procedures of various institutions, their strengths and weakness, and their relationship between/among themselves. Various methods can be offered to undertake this exercise – for example, carrying out a comprehensive survey in the whole country (with male and female respondents), in-depth interviews of experts and leaders (both formal and informal, respectively), and finally interviews with key actors and policy-makers to understand how the system works and how they see the system developing in the future. This may take a considerable amount of time as it is imperative to gather as much data as possible about each and every aspect of both systems. This will inform the design of a new system to offer efficient, effective and practical services to Pakistan's citizens. Such an exercise is long-overdue? no institution has ever undertaken any such investigation in the past.

### **2. Decide the overall aim of the justice system**

National consensus through a country-wide dialogue is imperative in order to consider the aims of the overall justice system – this could be decided at the end of the research process. In each different community or environment, priorities for the local population may vary. For example, communities might be concerned about: access to justice; or human rights protection; or security; or a breakdown of

44. Clifford Shearing and Les Johnston, *Governing Security: Explorations of Policing and Justice*, p.145 (2003)

45. Forsyth – p.48.

46. Sinclair Dinnen, 'Violence and governance in Melanesia', p.70.(*Pacific Economic Bulletin*, vol. 14, no. 1, 1999

47. Jennifer Corrin Care, 'A green stick or a fresh stic? locating customary penalties in the post-colonial era',*Oxford University Commonwealth Law*6, no. 1. p.59 2006.

traditions and customs; or indeed a range of other issues. Pakistan has gone to extreme lengths in deciding and devising justice systems for its various regions and environments. For instance, in the case of the Malakand Division of Khyber Pakhtunkhwa province (or to be more precise, the case of Swat), the local communities are faced with formal legal pluralism which includes the traditional justice system (*jirga*), Nizam-e-Adal (Sharia Law) and the formal judicial system. However, the way this has been set-up has only served to cause confusion for local people, and has led to widespread anger and despair, which in turn has fuelled violent reactions against the state institutions.

On the other hand, FATA, an area in Pakistan's constitutional as well as geographical boundary, operates just one justice system – a formal *jirga* system (FCR *jirga*) which is mainly based on local traditions but is led by government officials in the political administration.

There should be one aim for the overall justice system – based on research from existing formal and informal justice systems – and that aim should involve serving all people equally and fairly.

### **3. Investigate the positive and problematic features in the relationship between the formal and informal justice systems**

Investigation is required to understand the operation of the formal and informal justice systems and to identify areas where they interact, to discover positive and negative features of their relationship. In the case of Pakistan, there is no official recognition or acknowledgement of any such interaction. However, there is evidence available to suggest that an informal mechanism of interaction exists. For instance, in cases of civil and criminal disputes where there is a lack of strong evidence available, cases can linger on for decades ? in such cases litigants often end up eventually settling their disputes out of court

through the informal justice system.

Thorough research needs to be undertaken, and key people – who could be instrumental in building bridges between both systems – should be interviewed. There is also a need to examine case studies of selected areas – areas where there is legal pluralism and areas where a single judicial system is in operation. This will help us to understand how justice systems work in different environments, to recognise their strengths and weaknesses, and to analyse the relationships between them.

### **4. Organise a national dialogue and share the model of a new system for adaptation and recognition**

It is crucial to share the new draft recommended model with key stakeholders, and to initiate a dialogue for the validation of a new model, which is acceptable to all on an experimental basis. Views of all stakeholders should be taken into account, in order to ensure wider adoptability and acceptance, mutual recognition and regulation.

Before recognising and regulating the new judicial system, the state should determine the relationship between the formal and informal judicial system.

### **5. Develop methods and infrastructure for implementation and a system for evaluating the changes**

For any new law or Act to be implemented, proper infrastructure and institutional arrangements are required. This needs sufficient funding and human resources. A method for implementation needs to be devised which not only helps to smooth implementation of the new regulation but also evaluates changes. State and non-state systems are viewed as existing in a dynamic relationship ? this requires institutions to modify certain aspects of their relationships (externally and internally), while retaining their

own integrity.<sup>48</sup> Following consultation with all stakeholders, whatever method is devised should begin with a minimum mandate and should take on more tasks with the passage of time and after evaluating changes. A further principle that informs this approach is Selznick's concept of responsiveness, which 'entails reconstruction of the self as well as outreach to others.'<sup>49</sup>

## 6. Revise the model

The final step is to make sure that the model developed is constantly revised in consultation with all stakeholders. The model also needs to be updated in light of new empirical experiences from other countries around the world.

The above steps illustrate a suggested way forward to revamp the judicial system in order to: minimise the risk of human rights violations (from both the formal and informal judicial systems); improve security for ordinary people; increase access to justice; and improve law and order in the country. The restorative and reparative justice system in rural areas – which functions successfully through communities rather than individuals – should be encouraged and patronised by the state for improving law and order in the troubled areas of Pakistan.

## CONCLUSION

The way forward is clear. The findings of this research on the formal and informal systems of justice are encouraging, but questions have been raised too. One thing is absolutely certain: both the informal justice system and the formal judicial system need to be reformed.

The suggested steps for reform outlined above can be used as a first point for discussion, and can be debated with experts and policy-makers alike. The reform agenda that develops must be

dynamic, changing over time following rigorous evaluation and critical analysis.

It is hoped that if adopted, evaluated periodically, and reformed accordingly, the overall justice sector will improve markedly as a result; hopefully in the not too distant future, we will see all Pakistani citizens benefiting from easy access to the fair, efficient and effective justice system that they deserve.

48. Bougainville Constitutional Commission, *Report on the Third and Final Draft of the Bougainville Constitution*, p.197.

49. Philip Selznick, *The Moral Commonwealth: Social theory and the promise of community*, p.338.(1992)

# ANNEXURE



# ANNEX I

## RESEARCH METHODOLOGY AND SAMPLE PLAN

### INTRODUCTION

The subject of the current year's research is the opinion of adult Pakistani men and women with regards to the systems of justice in Pakistan, with more emphasis on the informal remedies accessed by common Pakistanis, especially in rural areas. In this report, comparisons between Pakistan's four provinces and four major cultures are presented.

This report is based on both qualitative and quantitative data. For the **qualitative** information, around 75 key informant interviews and three round-table discussions – each in Punjab, Sindh and Balochistan – were organised and used to gather opinions. Minutes were recorded, analysed, and utilised to both write this report and to inform the questionnaire design.

Background and historical material used in the report came from a review of historical books, newspapers, reports, articles, journals, and from the experience of CAMP programmes.

The **quantitative** data was collected through structured questionnaires. The objective was to sample enough adult males and females, from both urban and rural areas, to ascertain their opinions on key issues related to the formal and informal systems of justice for the people of Punjab, Sindh and Baloch districts of Balochistan with a 95 per cent confidence interval. Because gender plays such an important role in public opinion, equal numbers of males and females were interviewed at all levels of the community hierarchy in both village and urban neighbourhoods in twelve districts of Punjab, Sindh and Baloch districts of Balochistan. The sample goal was 2,700 respondents in total, and to accomplish that, using a trustworthy system of

substitution, over 3300 sample contacts were made. Although there may be slightly unequal numbers of males and females in each district due to seasonal migration and the emigration of males, plus the cultural tendency to prevent women from working away, an exact sample based on gender is not possible because current statistics are not available. It is assumed that the unknown deviation from the actual male/female proportion is slight and that it will not cause doubt of the conclusions and descriptive statistics herein.

### RESEARCH METHODS AND INSTRUMENTS

#### I. Qualitative

##### Key informant interviews

Sixty key informant interviews (KIIs) were conducted in twelve districts representative of the three provinces, and 15 KIIs were conducted in the provincial capitals of three provinces to inform and complement data collected in the quantitative surveys and round-table discussions. The purpose of the key informant interviews was to collect information from a wide range of people – community leaders or elders, lawyers/civil servants, religious leaders, teachers and civil society professionals – who have first-hand knowledge about the community and informal justice systems in general. A total of 75 key informant interviews were conducted in three provinces as per the following plan (table on the next page).

##### Desk review

For the historical background of the people and the area, facts about the governance system of Pakistan, and constitutional standing of formal and informal justice systems, a desk review was conducted using books, newspapers, reports, articles, journals, and CAMP experience in prior research and project implementation.

S. #	District	Province	Local journalist	SHO (police station)	Lawyer/civil servant	Local politician	Community elder
1	Rawalpindi	Punjab	1	1	1	1	1
2	Sargodha	Punjab	1	1	1	1	1
3	Muzaffargarh	Punjab	1	1	1	1	1
4	Kasur	Punjab	1	1	1	1	1
5	Dadu	Sindh	1	1	1	1	1
6	Khairpur	Sindh	1	1	1	1	1
7	Sanghar	Sindh	1	1	1	1	1
8	Benazirabad Nawabshah	Sindh	1	1	1	1	1
9	Jafarabad	Balochistan	1	1	1	1	1
10	Khuzdar	Balochistan	1	1	1	1	1
11	Bolan	Balochistan	1	1	1	1	1
12	Mastung	Balochistan	1	1	1	1	1
13	Lahore (provincial capital)	Punjab	1	1	1	1	1
14	Karachi (provincial capital)	Sindh	1	1	1	1	1
15	Quetta (provincial capital)	Balochistan	1	1	1	1	1
	<b>Total</b>		<b>15</b>	<b>15</b>	<b>15</b>	<b>15</b>	<b>15</b>

**Themes for the qualitative discussions (round-table discussions) and key informants interviews (KIIs)**

The following themes were used to focus the interviews on the research subject:

- Awareness of formal and informal justice systems;
- Conflict dynamics and access to justice;
- Legality and legitimacy of formal and informal justice systems;
- Hearings and proceedings used in the informal justice system;
- Implementation of informal justice system's verdicts;
- The state of fundamental rights in the *jirga*

system;

- The state of the rights of women in the *jirga* system and the inclusion of women in the decision-making process;
- A way forward for reforming the judicial system of Pakistan.

**II. Quantitative – perception survey**

In addition to a well-structured questionnaire, the key to successful social research is in the sampling frame. If well-designed, then the population and segments will be represented by a manageable number of interviews. The objective was to sample all of the 12 districts of Punjab, Sindh and Balochistan so that the margin of error would be

Sample districts	Province	Population 1998 Census	Sample size	Margin of error
Rawalpindi	Punjab	3363911	270	5.96
Sargodha	Punjab	2665979	220	6.61
Muzaffargarh	Punjab	2635903	210	6.76
Kasur	Punjab	2375875	200	6.93
<b>Sub-total</b>		<b>11041668</b>	<b>900</b>	<b>3.27</b>
Dadu	Sindh	1688811	260	6.06
Khairpur	Sindh	1546587	240	6.33
Sanghar	Sindh	1453028	230	6.46
Shaheed Benazirabad-Nawabshah	Sindh	1071533	170	7.52
<b>Sub-total</b>		<b>5759959</b>	<b>900</b>	<b>3.27</b>
Jafarabad	Balochistan	432817	300	5.66
Khuzdar	Balochistan	417466	280	5.85
Bolan	Balochistan	288056	200	6.93
Mastung	Balochistan	179784	120	8.94
<b>Sub-total</b>		<b>1318123</b>	<b>900</b>	<b>3.27</b>
<b>Grand total</b>		<b>18119750</b>	<b>2700</b>	<b>1.89</b>

**Note-1:** Stratified Sampling Method was used for sampling among provinces (2700 Sample size with 95% confidence level and  $\pm 1.89\%$  confidence interval)

**Note-2:** Proportionate Stratified Sampling Method was used for sampling within provinces at districts level (900 Sample size with 95% confidence level and  $\pm 3.27\%$  confidence interval)

small. The desired margin of error for all 12 districts of Punjab, Sindh and Balochistan remains 2 per cent.\* This margin of error, in reference to the selected 12 districts with an estimated population\*\* of approximately 18.12 million, called for a sample of 2,700 interviews.

The sample size of 2700 was drawn from the 12 districts of Punjab, Sindh and Balochistan. The sample per district used a Proportionate Stratified Sampling Method (PSSM) to ensure a representative sample for the entire population as well as for each district, as per the table:

Thus, based on the use of small samples per district, it is possible to make inferences about the sampled population which is, in this case, the people of Punjab, Sindh and Baloch districts of Balochistan within the planned margin of error.

### Margin of error

The overall margin of error with all interviews pooled under 'Punjab, Sindh and Baloch districts of Balochistan – Pakistan' for single questions of a 'Yes/No' nature was planned to not exceed 1.89 per cent at the 95 per cent confidence level. That is, if a random sample was drawn 100 times, then in 95 of the cases, one would expect there to be plus or minus 1.89 per cent difference around a sample mean. That being said, once one begins to partition the data set and look at specific district of the three provinces, then, within those units, the margin of error increases because of the smaller population size and sample size. The right-hand column in the table above summarises the margin of error by district.

\* Note that for smaller samples of smaller populations, the margin of error increases.

\*\* Current population statistics for Punjab, Sindh and Balochistan are not available; it was assumed that the 1998 census figures would be accurate enough.

## Sampling plan and field implementation

### Accessibility

At the beginning of this project, CAMP gathered information on the accessible areas within Punjab, Sindh and Balochistan by making a list of villages, towns and *tehsils* that were not accessible because of security concerns, government imposed curfews, and/or extreme weather conditions. That list was deducted from the master list of approximately 1180 villages and urban locations of the master list across Punjab, Sindh and Balochistan were located in inaccessible areas.

Two stages were used to select the sample. In the first stage, CAMP randomly selected from the accessible *tehsils*. In the second stage, CAMP randomly selected 405 villages/towns in the *tehsils* that were selected in the first stage. In addition to the evenly divided male to female ratio, the second stage was planned so that both urban and rural locations were sampled 50/50 and not according to the rural/urban population distribution.

In each village and urban location, five interviews of males and females were conducted. Because of

the culture of the region, female enumerators interviewed females, and male enumerators interviewed males. The resulting sampling frame is shown in the following table:

### **Selection of interviews**

#### Method of selecting starting points

In villages, the survey universe was divided into four areas i.e. two for male enumerators and two for female enumerators. In each area two starting points were selected by male and two by female enumerators. Male and female enumerators interviewed three respondents from one point and two from the other point. These starting points were local landmarks such as the house of a prominent landlord or tribal leader, famous shops, a mosque, Imam Bargah of Shiite community, schools and hospitals, etc. From each point, the enumerators (both male and female) would interview five respondents. In cities or towns, five respondents male or female were interviewed with two starting points for each urban location. In the city or town, male and female enumerators were assigned different urban locations for interviewing respondents.

District	Province	Total	Area	
			Urban	Rural
Rawalpindi	Punjab	270	140	130
Sargodha	Punjab	220	110	110
Muzaffargarh	Punjab	210	100	110
Kasur	Punjab	200	100	100
Dadu	Sindh	260	130	130
Khairpur	Sindh	240	120	120
Sanghar	Sindh	230	110	120
Nawabshah	Sindh	170	90	80
Jafarabad	Balochistan	300	150	150
Khuzdar	Balochistan	280	140	140
Bolan	Balochistan	200	100	100
Mastung	Balochistan	120	60	60
<b>Total</b>		<b>2700</b>	<b>1350</b>	<b>1350</b>



After selecting the starting points, the male enumerators selected a household on their left hand while female enumerators selected a household on their right hand. In some areas where the houses were scattered and this rule could not be applied precisely, the survey enumerators made a note of this difficulty on the contact sheet.

### **Bias due to 'starting point' methodology**

As stated above, the starting points in each village/town were local landmarks. From each point the enumerators (both male and female) would interview five respondents by counting off every third door or compound. This approach biased the sample toward the centre of villages. Typically the wealthy or more established families are located at these locations or in close proximity. These are generally the more urban and educated citizens of the community and their status probably influences statistics such as literacy rate, the use of media, educational status etc. when compared with the general population in those same villages and in other parts of Pakistan.

### **Method of respondent selection**

Before selecting the interviewees, the enumerators made sure that the respondents were 18 years old or above, that they were Pakistanis of Punjab, Sindh and Balochistan, and that they were from the selected village or urban location in the district. The survey enumerators also ensured that the respondents had not participated in any survey in the last six months.

### **Guidelines for replacing respondents (substitution)**

During the respondents' selection, if a desired respondent was not available or refused to be interviewed, the enumerator would try three times to interview the designated sampled household. If the interview was refused, or three attempts to interview did not work, then the enumerator

would skip three houses and knock at the fourth for a substitute.

The substitution system was a crucial part of this research. As is shown in the final table of this annex, in order to achieve the sample of 2700 interviewees, 3,300 contacts had to be made because for various reasons, 600 of the randomly selected interviewees did not meet the criteria.

In summary, the overall sampling design was robust and limited the margin of error for Punjab, Sindh and Baloch areas of Balochistan statistics. When specific districts are noted, the margin of error in the table above must be considered. Overall, the urban and accessibility biases must be kept in mind when reviewing the findings.

### **Questionnaire**

The 2013 survey used a structured questionnaire with both opened and closed response possibilities to replicate the methodology used for 2012 *Jirga* Perception Survey in FATA. After consultation with the donor, the previous questionnaires were revised for use in the 2012 *Jirga* Perception Survey in Punjab, Sindh and Balochistan.

The Pakhtun survey of 2012 had generally discussed Pakhtun *jirga* as the *only* informal justice system, whereas the recent survey had enhanced the list of choice for respondents with more informal institutions to choose from including *khandan*, *mohalla*, and *biradari*. This might have divided respondents' choice and affected the overall result.

### **Interviewer training**

Prior to conducting the survey, CAMP enumerators were trained by independent consultants, under the supervision of CAMP senior management who observed the training and pre-test interviews. The training for field enumerators and supervisors on the quantitative survey tool, methodology and pre-testing was conducted on 19-20 August 2013 for

Punjab, on 26-27 August 2013 for Sindh, and on 2-3 September 2013 for Balochistan.

The purposes of the pre-testing were to:

- Determine the time length of the interview
- Check questionnaire content
- Check the skipping and coding patterns
- Correct and improve translation

The pre-tests were conducted with adult Pakistani males and females aged 18 and above in the Punjabi Community at Lahore and suburbs on 20 August 2013. The average time of the interview during the pre-tests was 50 minutes. The minimum time taken to complete the interview was 40 minutes while the maximum time taken to complete the interview was 60 minutes. Hence, the general understanding of the enumerators on the questionnaire was found to be adequate and satisfactory. The enumerators were able to handle the questionnaire well and they read the questions to the respondents as written on the questionnaire without introduction of bias. Enumerators were also able to comply with the field methodology for data collection. Their understanding of the house-skipping pattern and following the left hand/right hand rule was also at par. The supervisors were able to manage the field supervision through different checking methods. Feedback related to the substance and structure of the questionnaire was shared with the senior management of CAMP.

### **Data entry and cleaning**

Upon the completion of the survey, CAMP performed the data entry of the 2700 questionnaires using a database entry programme. The data was then checked and cleaned using SPSS.

### **Survey management and monitoring**

The CAMP Project Coordinator (PC) coordinated the survey with the Survey Manager (SM). CAMP's PC and SM coordinated the initial training of the

enumerators, the pre-tests, and the field implementation. During the implementation of the survey, CAMP's senior management regularly followed up on the PC and SM.

### **Description of field team**

1. The enumerators were from the areas in which they interviewed.
2. The content of the questionnaire focused mainly on justice systems, and respondents appeared willing and happy to participate in this study.
3. Because the sampling plan was based on the feedback received from the field teams, the areas where these interviews took place were relatively safe and accessible to the enumerators.

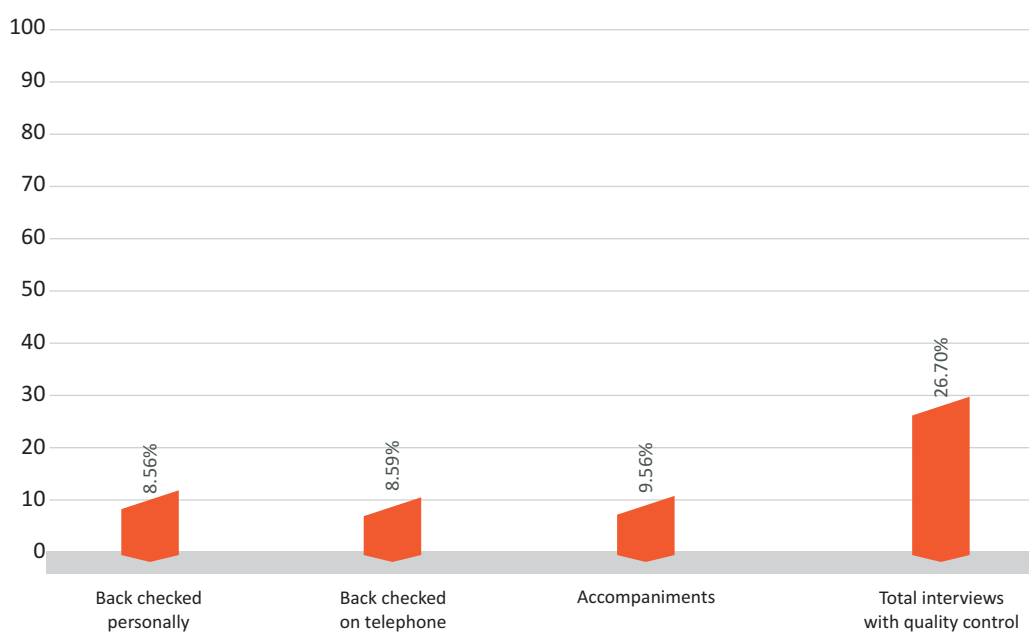
### **Back-checking and method of contact**

The table below provides the breakdown of the number of questionnaires back-checked per agency. Back-checking was done by the PC and the SM. The following table is a summary by type of back-checking derived from the contact sheets used by the enumerators:

Back-checking of the data collection process was made through different methods: 8.56 per cent of the total interviews was personally observed by the supervisors during the interviews; 9.56 per cent of the sample was back-checked by the supervisors during the data collection process by revisiting the villages and was confirmed by the respondents, their family members, or locals; 8.59 per cent of the interviews was back-checked and confirmed by telephone contacts from the CAMP office. A total 26.7 per cent of the interviews was back-checked for quality control. All the back-checked interviews were confirmed by the respondents. Not finding evidence to the contrary, it is assumed that all the data collected was from actually conducted interviews.

District	Sample	Back-checked personally	Back-checked on telephone	Accompaniments	Total interviews with quality control	Quality control %
Rawalpindi	270	25	20	30	75	27.78
Sargodha	220	15	20	15	50	22.73
Muzaffargarh	210	17	17	17	51	24.29
Kasur	200	30	20	27	77	38.5
Dadu	260	8	10	12	30	11.54
Khairpur	240	35	35	40	110	45.83
Sanghar	230	16	16	20	52	22.61
Benazirabad Nawabshah	170	5	32	22	59	34.71
Jafarabad	300	34	25	27	86	28.67
Khuzdar	280	10	18	12	40	14.29
Bolan	200	15	10	20	45	22.50
Mastung	120	21	9	16	46	38.33
<b>Total</b>	2700	231	232	258	721	
<b>%</b>		8.56	8.59	9.56	26.7	

### Quality Control



## Contact sheet and response rate

### Successful interviews / successful contact as per specification

District	Actual sample	No response/ door locked	Refused to cooperate	Age not required	Gender not required	Nationality not required	Interrupted interview	Successful interview	Total contacts made	Target achievement %
Rawalpindi	270	112	150	34	59	0	0	270	625	100
Sargodha	220	0	0	0	0	0	0	220	220	100
Muzaffargarh	210	6	6	0	0	0	0	210	222	100
Kasur	200	28	7	0	7	0	0	200	242	100
Dadu	260	7	20	6	3	0	5	260	301	100
Khairpur	240	66	41	0	2	0	5	240	354	100
Sanghar	230	31	31	0	0	0	0	230	292	100
Benazirabad Nawabshah	170	0	0	0	0	0	0	170	170	100
Jafarabad	300	0	0	0	0	0	0	300	300	100
Khuzdar	280	0	0	0	0	0	0	280	280	100
Bolan	200	1	4	4	4	0	0	200	213	100
Mastung	120	2	2	0	1	0	0	120	125	100
<b>Overall total</b>	2700	253	261	44	76	0	10	2700	3344	
<b>Overall %</b>		7.57	7.81	1.32	2.27	0	0.3	80.74	Response rate	

## CONCLUSION

The methods chosen produced both the quantitative and the qualitative information desired for ascertaining the opinions of the people of Punjab, Sindh and Baloch areas of Balochistan. Although compromises or assumptions had to be made due to a lack of current statistics and also because of the accessibility issue, the sampling frame was executed and this provided the confidence intervals and margin of error desired. When interpreting the results, it is important to keep the accessibility and the starting point biases in mind. The knowledge of bias is crucial to the rational interpretation of the apparent opinions; it is not a weakness (whereas hidden bias would be considered a weakness).

## ANNEX II

### QUESTIONNAIRE

#### **Understanding the informal justice system:**

Opportunities and possibilities for legal pluralism in Pakistan

SERIAL NUMBER: \_\_\_\_\_ DATE OF INTERVIEW: \_\_\_\_\_

PROVINCE: \_\_\_\_\_

DISTRICT: \_\_\_\_\_

URBAN/RURAL: \_\_\_\_\_

CITY/VILLAGE NAME: \_\_\_\_\_

AREA NAME: \_\_\_\_\_

MALE/FEMALE: \_\_\_\_\_

SUPERVISOR NAME: \_\_\_\_\_

SURVEYOR NAME: \_\_\_\_\_

**1: SOURCES OF INFORMATION**

**Q1: What sources of information do you have access to?** (Don't read the list – check appropriate box) - Multiple responses are allowed)

Response	Code	Response	Code
Pakistani Newspapers	1	Internet, books and films	10
Pakistani radio	2	Friends & family	11
Pakistan TV	3	Work colleagues	12
British Newspapers	4	Neighbours	13
British TV channels	5	Friday sermon	14
British radio	6	Communal gathering	15
American Newspapers	7	Government officials	16
American TV	8	Village or Clan or Tribal elders	17
American radio	9	Other (specify)	77

**Q2: Which sources of information do you trust the most?** (Don't read the list – check appropriate box) - Multiple responses are allowed)

Response	Code	Response	Code
Pakistani Newspapers	1	Internet, books and films	10
Pakistani radio	2	Friends & family	11
Pakistan TV	3	Work colleagues	12
British Newspapers	4	Neighbours	13
British TV channels	5	Friday sermon	14
British radio	6	Communal gathering	15
American Newspapers	7	Government officials	16
American TV	8	Village or Clan or Tribal elders	17
American radio	9	Other (specify)	77

**2. AWARENESS OF THE INSTITUTIONS AND ACTORS**

**Q3: Are you aware of the following institutions and actors?** (Multiple-choice question)

Name of Institution / Actor	Yes	No	Don't Know
a) Superior Courts in Pakistan ( Supreme Court and High Courts)	1	2	88
b) Lower Courts in Pakistan (Judicial Magistrate, District & Sessions Courts)	1	2	88
c) Specialized Anti-Terrorism or Narcotics Courts	1	2	88
d) Federal Shariat Court	1	2	88
e) Religious seminary boards (e.g. Wafaq ul Madaris and other registered Madaris)	1	2	88
f) Ombudsman	1	2	88

g) Human Rights Commission of Pakistan	1	2	88
h) Jirga system, Panchayat, Faislo or other informal dispute resolution mechanisms .	1	2	88
i) Police Department	1	2	88
j) Musalihati Council	1	2	88

**Q4: What is your opinion/perception of the following institutions and actors? Perceptions of Institutions and Actors – Codes: Affordable (01) Speedy (02) Bribes (03) Influence Peddling (04) Unresponsive to Criticism (05) Ignores Human Rights (06) Gender Equality (07) Class Bias (8) Don't know (99). (Multiple-choice question)**

Name of Institution / Actor	Affordable	Speedy	Bribes	Influence Peddling	Unresponsive to Criticism	Ignores Human Rights	Gender Equality	Class Bias	No Response or Don't know
a) Provincial Police Authorities and their local representatives (e.g. S.H.O, D.S.P., etc.)	01	02	03	04	05	06	07	08	88
b) Superior Courts in Pakistan ( Supreme Court and High Courts)	01	02	03	04	05	06	07	08	88
c) Lower Courts in Pakistan (Judicial Magistrate, District & Sessions Courts)	01	02	03	04	05	06	07	08	88
d) Federal Shariat Court	01	02	03	04	05	06	07	08	88
e) Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	01	02	03	04	05	06	07	08	88
f) Ombudsman	01	02	03	04	05	06)	07	08	88
g) Human Rights Commission of Pakistan	01	02	03	04	05	06)	07	08	88
h) <i>Khandaan</i> (extended family)	01	02	03	04	05	06)	07	08	88
i) <i>Mohalla</i> (neighborhood)	01	02	03	04	05	06)	07	08	88
j) <i>Biradari</i> (clan)	01	02	03	04	05	06)	07	08	88
k) Local Large Landowner (Village Chaudhry/Malik/Wadera)	01	02	03	04	05	06)	07	08	88
l) Village <i>panchayat</i> ( <i>akhat</i> )( <i>pareh, pareh panchayat, pareon</i> ) or <i>faislo</i> or Baloch <i>jirga</i>	01	02	03	04	05	06)	07	08	88
m) Local Influential(s)(local, provincial, national)	01	02	03	04	05	06)	07	08	88
n) Local Bureaucracy – <i>patwaris</i> (Land Record Keepers); <i>nambardars</i> (Village Headmen); <i>tehsildars</i> (Tehsil)	01	02	03	04	05	06)	07	08	88

administration/revenue collection heads) or others									
o) District Civil Bureaucracy (DROs, DCOs, District magistrates etc.)	01	02	03	04	05	06)	07	08	88
p) Political Groupings/vote banks ( <i>dharras</i> )	01	02	03	04	05	06)	07	08	88
q) Self-Provision Village Organizations; Community Organizations	01	02	03	04	05	06)	07	08	88
r) Local NGOs	01	02	03	04	05	06)	07	08	88
s) Private Dispute Resolution Mechanisms that charge a Fee	01	02	03	04	05	06)	07	08	88
t) Local Crime lords	01	02	03	04	05	06)	07	08	88
u) Religious leader in the community	01	02	03	04	05	06	07	08	88
v) Musalihati Council	01	02	03	04	05	06	07	08	88

### 3. LINKAGES BETWEEN FORMAL AND INFORMAL JUSTICE SYSTEMS

#### 3.1 CONFLICT DYNAMICS AND ACCESS TO JUSTICE

**Q5: Do you have the following institutions in your community/area–** (Multiple-choice response is allowed)

Response	Code
a) Provincial Police Authorities and their local representatives (e.g. S.H.O, D.S.P, e tc.)	1
b) Superior Courts in Pakistan ( Supreme Court and High Courts)	2
c) Lower Courts in Pakistan (Judicial Magistrate, District & Sessions Courts)	3
d) Federal Shariat Court	4
e) Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	5
f) Ombudsman	6
g) Human Rights Commission of Pakistan	7
h) <i>Khandaan</i> (extended family)	8
i) <i>Mohalla</i> (neighborhood)	9
j) <i>Biradari</i> (clan)	10
k) Local Large Landowner (Village Chaudhry/Malik/Wadera)	11
l) Village <i>panchayat</i> ( <i>akhat</i> )( <i>pareh</i> , <i>pareh panchayat</i> , <i>pareon</i> )/ <i>faislo</i> /Baloch <i>Jirga</i>	12
m) Local Influential(s)(local, provincial, national)	13
n) Local Bureaucracy – <i>patwaris</i> (Land Record Keepers); <i>nambardars</i> (Village Headmen); <i>tehsildars</i> (Tehsil administration/revenue collection heads) or others	14
o) District Civil Bureaucracy (DROs, DCOs, District magistrates etc.)	15
p) Political Groupings/vote banks ( <i>dharras</i> )	16
q) Self-Provision Village Organizations; Community Organizations	17
r) Local NGOs	18
s) Private Dispute Resolution Mechanisms that charge a Fee	19
t) Local Crime lords	20



u) Religious leader in the community	21
v) Musalihati Council	22
w) Other (Specify: _____)	77
x) Don't know	88

**Q6: Who do you first contact in case of any conflict or dispute? (Single Response)**

Response	Code
a) Provincial Police Authorities and their local representatives (e.g. S.H.O, D.S.P., etc.)	1
b) Superior Courts in Pakistan (Supreme Court and High Courts)	2
c) Lower Courts in Pakistan (Judicial Magistrate, District & Sessions Courts)	3
d) Federal Shariat Court	4
e) Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	5
f) Ombudsman	6
g) Human Rights Commission of Pakistan	7
h) <i>Khandaan</i> (extended family)	8
i) <i>Mohalla</i> (neighborhood)	9
j) <i>Biradari</i> (clan)	10
k) Local Large Landowner (Village Chaudhry/Malik/Wadera)	11
l) Village <i>panchayat</i> ( <i>akhat</i> )( <i>pareh</i> , <i>pareh panchayat</i> , <i>pareon</i> ) or <i>faislo</i> or Baloch <i>Jirga</i>	12
m) Local Influential(s)(local, provincial, national)	13
n) Local Bureaucracy – <i>patwaris</i> (Land Record Keepers); <i>nambardars</i> (Village Headmen); <i>tehsildars</i> (Tehsil administrative on/revenue collection heads) or others	14
o) District Civil Bureaucracy (DROs, DCOs, District magistrates etc.)	15
p) Political Groupings/vote banks ( <i>dharras</i> )	16
q) Self-Provision Village Organizations; Community Organizations	17
r) Local NGOs	18
s) Private Dispute Resolution Mechanisms that charge a Fee	19
t) Local Crime lords	20
u) Religious leader in the community	21
v) Musalihati Council	22
w) Other (Specify: _____)	77
x) Don't know	88

**Q7: What are the main issues that instigate conflict in your community? (Multiple-choice response is allowed)**

Response	Code
a) Agricultural land	1
b) Urban property – (Private)	2
c) Urban property – (Commercial)	3
d) Land grabbing	4
e) Distribution of water sources ( <i>warabandi</i> )	5
f) Neighborhood (position of shared wall, property, etc)	6
g) Political violence	7
h) Grazing animals	8

i) Sectarian	9
j) Family issues (forced marriages, divorce, child custody, shared property, wedding expenses)	10
k) Youth/children quarrelling and fighting	11
l) Family honour issues	12
m) Tribal clashes	13
n) Tribal customs such as <i>swara/vani/karo kari</i> , bride price and <i>jhag</i>	14
o) Militancy	15
p) Terrorism	16
q) Unequal distribution of aid	17
r) Theft/robbery	18
s) Murder/homicide/rising crimes	19
t) Other (specify)	77

**Q8: Have you or your household members experienced any of the following?** (Multiple-choice response is allowed)

Issues	Yes	No	Don't Know	No Response
a) Victim of theft or fraud	1	2	88	99
b) Victim of assault	1	2	88	99
c) Victim of domestic abuse	1	2	88	99
d) Victim of forced marriage	1	2	88	99
e) Victim of tribal customs such as Swara/Vani/Karo Kari, Bride price and Jhag	1	2	88	99
f) Family member has gone missing or disappeared	1	2	88	99
g) Arrested without warrant by the administration or police	1	2	88	99
h) Accused of an offence under the Anti-Terrorism Act	1	2	88	99
i) Accused of committing sexual abuse/assault (under the Hudood Ordinances or the Pakistan Penal Code)	1	2	88	99
j) Accused of committing any other crime	1	2	88	99
k) Unlawful detention, search or arrest by the political administration	1	2	88	99
l) Bribery to police, Khasadar or levies force	1	2	88	99
m) Assault or torture by FC or Army	1	2	88	99
n) Money Recovery, or Debt/Obligation Settlement	1	2	88	99
o) Contract enforcement in business dealings	1	2	88	99
p) Purchase or sale of movable property	1	2	88	99
q) Lease and rental issues: disrepair, eviction etc.	1	2	88	99
r) Family law issues: divorce, maintenance, child custody, guardianship, inheritance	1	2	88	99
s) Dispute with employer for unpaid wages	1	2	88	99
t) Debt bondage	1	2	88	99
u) Found involved in sectarian violence	1	2	88	99
v) Found involved in tribal/family clashes	1	2	88	99

w) Injured in an accident (motor vehicle, etc)	1	2	88	99
x) Any other act of violence/ crime or dispute (specify)				

**Instruction: If respondent experienced any then ask Q9, 10 and 11 otherwise move to Q12.**

**Q9: If yes, which of the following justice systems did you access for resolving your conflict/dispute? (Multiple-choice response is allowed)**

Response	Code
a) Provincial Police Authorities and their local representatives (e.g. S.H.O, D.S.P., etc.)	1
b) Superior Courts in Pakistan ( Supreme Court and High Courts)	2
c) Lower Courts in Pakistan (Judicial Magistrate, District & Sessions Courts)	3
d) Federal Shariat Court	4
e) Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	5
f) Ombudsman	6
g) Human Rights Commission of Pakistan	7
h) <i>Khandaan</i> (extended family)	8
i) <i>Mohalla</i> (neighborhood)	9
j) <i>Biradari</i> (clan)	10
k) Local Large Landowner (Village Chaudhry/Malik/Wadera)	11
l) Village <i>panchayat</i> ( <i>akhat</i> )( <i>pareh</i> , <i>pareh panchayat</i> , <i>pareon</i> ) or <i>faislo</i> or Baloch <i>jirga</i>	12
m) Local Influential(s)(local, provincial, national)	13
n) Local Bureaucracy – <i>patwaris</i> (Land Record Keepers); <i>nambardars</i> (Village Headmen); <i>tehsildars</i> (Tehsil administration/revenue collection heads) or others	14
o) District Civil Bureaucracy (DROs, DCOs, District magistrates etc.)	15
p) Political Groupings/vote banks ( <i>dharra</i> s)	16
q) Self-Provision Village Organizations; Community Organizations	17
r) Local NGOs	18
s) Private Dispute Resolution Mechanisms that charge a Fee	19
t) Local Crime lords	20
u) Religious leader in the community	21
v) Musalihati Council	22
w) Other (Specify: _____)	77
x) Don't know	88

**Q10: What were the reasons for choosing the justice systems to deal with the dispute?(Multiple-choice response is allowed – Maximum of three responses per option mentioned in Q. 9).**

Response	Code
Efficient and effective at resolving the dispute	01
Close to where I live	02
Fair and trusted	03
Follows accepted local norms/values	04
Less expensive	05
Less corrupt	06

less vulnerable to influence and pressure	07
Effective implementation mechanism	08
Formal legal remedy is mandated by the law	09
Speedy	10
Other (Specify: _____)	77

**Q11: How satisfied were you with their involvement?**

Response	Very Satisfied	Somewhat Satisfied	Somewhat Unsatisfied	Not Satisfied	Not applicable
a) Provincial Police Authorities and their local representatives (e.g. S.H.O, D.S.P., etc.)	1	2	3	4	88
b) Superior Courts in Pakistan (Supreme Court and High Courts)	1	2	3	4	88
c) Lower Courts in Pakistan (Judicial Magistrate, District & Sessions Courts)					
d) Federal Shariat Court	1	2	3	4	88
e) Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	1	2	3	4	88
f) Ombudsman	1	2	3	4	88
g) Human Rights Commission of Pakistan	1	2	3	4	88
h) <i>Khandaan</i> (extended family)	1	2	3	4	88
i) <i>Mohalla</i> (neighborhood)	1	2	3	4	88
j) <i>Biradari</i> (clan)	1	2	3	4	88
k) Local Large Landowner (Village Chaudhry/Malik/Wadera)	1	2	3	4	88
l) Village <i>panchayat</i> ( <i>akhat</i> , <i>pareh</i> , <i>pareh panchayat</i> , <i>pareon</i> ) or <i>faislo</i> or Baloch <i>Jirga</i>	1	2	3	4	88
m) Local Influential(s)(local, provincial, national)	1	2	3	4	88
n) Local Bureaucracy – <i>patwaris</i> (Land Record Keepers); <i>nambardars</i> (Village Headmen); <i>tehsildars</i> (Tehsil administration/revenue collection heads) or others	1	2	3	4	88
o) District Civil Bureaucracy (DROs, DCOs, District magistrates etc.)	1	2	3	4	88
p) Political Groupings/vote banks ( <i>dharra</i> s)	1	2	3	4	88
q) Self-Provision Village Organizations; Community Organizations	1	2	3	4	88
r) Local NGOs	1	2	3	4	88
s) Private Dispute Resolution Mechanisms that charge a Fee	1	2	3	4	88

t) Local Crime lords	1	2	3	4	88
u) Religious leader in the community	1	2	3	4	88
v) Musalihati Council	1	2	3	4	88
w) Other (Specify: _____)	1	2	3	4	88

**Q12: Where would you refer your serious criminal dispute (Murder/Theft/Robbery etc) for resolution? (Single Response)**

Response	Code
a) Provincial Police Authorities and their local representatives (e.g. S.H.O, D.S.P., etc.)	1
b) Superior Courts in Pakistan ( Supreme Court and High Courts)	2
c) Lower Courts in Pakistan (Judicial Magistrate, District & Sessions Courts)	3
d) Federal Shariat Court	4
e) Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	5
f) Ombudsman	6
g) Human Rights Commission of Pakistan	7
h) <i>Khandaan</i> (extended family)	8
i) <i>Mohalla</i> (neighborhood)	9
j) <i>Biradari</i> (clan)	10
k) Local Large Landowner (Village Chaudhry/Malik/Wadera)	11
l) Village <i>panchayat</i> ( <i>akhat, pareh, pareh panchayat, pareon</i> ) or <i>faislo</i> or Baloch <i>jirga</i>	12
m) Local Influential(s)(local, provincial, national)	13
n) Local Bureaucracy – <i>patwaris</i> (Land Record Keepers); <i>nambardars</i> (Village Headmen); <i>tehsildars</i> (Tehsil administration/revenue collection heads) or others	14
o) District Civil Bureaucracy (DROs, DCOs, District magistrates etc.)	15
p) Political Groupings/vote banks ( <i>dharras</i> )	16
q) Self-Provision Village Organizations; Community Organizations	17
r) Local NGOs	18
s) Private Dispute Resolution Mechanisms that charge a Fee	19
t) Local Crime lords	20
u) Religious leader in the community	21
v) Musalihati Council	22
w) Other (Specify: _____)	77
x) Don't know	88

**Q13: Where would you refer your civil dispute (Land Disputes/Divorce etc) for resolution? (Single Response)**

Response	Code
a) Provincial Police Authorities and their local representatives (e.g. S.H.O, D.S.P., etc.)	1
b) Superior Courts in Pakistan ( Supreme Court and High Courts)	2
c) Lower Courts in Pakistan (Judicial Magistrate, District & Sessions Courts)	3
d) Federal Shariat Court	4
e) Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	5
f) Ombudsman	6

g) Human Rights Commission of Pakistan	7
h) <i>Khandaan</i> (extended family)	8
i) <i>Mohalla</i> (neighborhood)	9
j) <i>Biradari</i> (clan)	10
k) Local Large Landowner (Village Chaudhry/Malik/Wadera)	11
l) Village <i>panchayat</i> ( <i>akhat</i> )( <i>pareh, pareh panchayat, pareon</i> ) or <i>faislo</i> or Baloch <i>jirga</i>	12
m) Local Influential(s)(local, provincial, national)	13
n) Local Bureaucracy – <i>patwaris</i> (Land Record Keepers); <i>nambardars</i> (Village Headmen); <i>tehsildars</i> (Tehsil administration/revenue collection heads) or others	14
o) District Civil Bureaucracy (DROs, DCOs, District magistrates etc.)	15
p) Political Groupings/vote banks ( <i>dharras</i> )	16
q) Self-Provision Village Organizations; Community Organizations	17
r) Local NGOs	18
s) Private Dispute Resolution Mechanisms that charge a Fee	19
t) Local Crime lords	20
u) Religious leader in the community	21
v) Musalihati Council	22
w) Other (Specify: _____ )	77
x) Don't know	88

**Q14: What types of cases you would prefer to take to the formal courts (Supreme Court, High Court, Session Court etc)? Multiple-choice response is allowed)**

Response	Code
a) All cases	1
b) All cases of public interest	2
c) Only complex cases that the informal systems cannot/could not solve	3
d) All cases of crime	4
e) Cases concerning land or other property	5
f) Certain family cases like divorce	6
g) Business and commercial transactions	7
h) None	8
i) Other (specify)	77
j) Don't know	88

**Q15: What types of cases you would prefer to take to the informal dispute resolution mechanisms? Multiple-choice response is allowed)**

Response	Code
a) All cases	1
b) All cases of public interest	2
c) all cases that involve community interests and stakes	3
d) All cases of crime	4
e) Cases concerning land property	5
f) Certain family cases like divorce	6
g) Business and commercial transactions	7

h) None	8
i) Other (specify)	77
j) Don't know	88

**Q16: What is your understanding of access to justice? Multiple-choice response is allowed)**

Response	Code
Right to fair and just trial	1
Access to justice for all, specially women and vulnerable groups (minorities etc)	2
Proper hearing, trial and remedies against grievances.	3
Better access to opportunities for employment and income generation	4
Better distribution of society's resources	5
Other (specify)	77
Don't know	88

**Q17: To what extent do you think there has been access to justice in your district/area?**

Response	Code
Not at all	1
To a moderate extent	2
To a large extent	3
Don't know	88

**Q18: What categories of individuals/groups do not have access to justice in your district/area under the formal justice system such as the Supreme Court, High Courts and Lower Courts? (Multiple choice response is allowed)**

Response	Code
Women	1
Minorities	2
Low caste groups	3
Poor	4
Disabled	5
Landless peasants and agriculture laborers	6
Other (specify)	77
Don't know	88

**Q19: What categories of individuals/groups do not have access to justice in your district/area under informal justice system such as *jirga/pancahyat/faislo*? (Multiple-choice response is allowed)**

Response	Code
a) Women	1
b) Minorities	2
c) Low cast groups	3
d) Poor	4
e) Disabled	5
f) Landless peasants and agriculture laborers	6

g) Other (specify)	77
h) Don't know	88

**Q19A. Apart from formal justice system are other informal justice systems like NGOs, religious groups etc. showing their interest about people access to justice.**

YES	NO	DON'T KNOW
1	2	88

**Q20: What are the reasons for limited access to formal justice as well reluctance to access formal courts? (Multiple-choice response is allowed)**

Response	Code
Time consuming and cases not expedited	1
Legal aid department understaffed	2
Unavailability of legal aid	3
Accused overstay without trial due to lack of understanding of their legal rights	4
High Legal fees of lawyers	5
Not all cases reported	6
Long distances to courts	7
High level of corruption in the courts	8
Justice structures concentrated in towns	9
Not aware of how to access justice by those in remote areas	10
Widespread confusion about the legal system	11
Dissatisfied with the fairness of the court process	12
Interviewee ill-equipped to fight a legal battle due to lack of experience or legal know-how	13
Interviewee under social/community pressure to settle out of court with opponent	14
Interviewee facing threats/coercion from opponent to settle out of court	15
Interviewee concerned with the quality and/or commitment of the lawyer	16
Legal opponent is able to unfairly influence the court process	17
An out of court solution seems simpler and quicker in comparison	18
Laws and formal procedures are complex and unintelligible	19
Laws are complex as they are in English	20
Other (specify)	77
Don't know	88



**Q21: What are the reasons for limited access to informal justice mechanisms as well as reluctance to access informal mechanisms? (Multiple-choice response is allowed)**

Response	Code
a) Informal systems lack authority to implement their decisions	1
b) Members of informal systems are not qualified to resolve complex disputes	2
c) Informal systems are inaccessible for women	3
d) Informal systems are inaccessible for minorities	4
e) Sometime members of informal systems take bribes	5
f) Members of informal systems are biased at times	6
g) Sometime their solutions are unsustainable/unworkable	7
h) No precedents of previous decisions	8
i) People don't have faith in the capacity and efficiency of such mechanisms	9
j) These mechanisms are vulnerable to private pressure and influence	10
k) Such mechanisms are outdated and unfamiliar with modern ideas of fairness and justice	11
l) No such viable mechanisms exist anymore in my area/locality	12
m) People have greater faith in the fairness of the court system	13
n) The court system is more easily accessible	14
o) Influential people feel more confident of manipulating the informal systems	15
p) Weaker parties feel more empowered by the formal legal/court system	16
q) The law mandates going to the formal legal system for certain kinds of disputes	17
r) Lack of satisfaction with past outcomes of non-court dispute resolution mechanisms	18
s) Often one of the parties is a trouble-maker and needs to be taught a lesson in court	19
t) Often one of the parties is a trouble maker and wants to embroil his/her opponents in court contestations	20
u) Other (specify)	77
v) Don't know	88

### 3.2 LEGALITY AND LEGITIMACY OF FORMAL AND INFORMAL JUSTICE SYSTEMS

**Q22: For the following systems please indicate how effective they are for dispensing justice.**

Response	Very effective	Somewhat effective	Somewhat ineffective	Very ineffective	Don't know
a) Provincial Police Authorities and their local representatives (e.g. S.H.O, D.S.P., etc.)	01	02	03	04	88
b) Superior Courts in Pakistan (Supreme Court and High Courts)	01	02	03	04	88
c) Lower Courts in Pakistan (Judicial Magistrate, District & Sessions Courts)	01	02	03	04	88

d) Federal Shariat Court	01	02	03	04	88
e) Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	01	02	03	04	88
f) Ombudsman	01	02	03	04	88
g) Human Rights Commission of Pakistan	01	02	03	04	88
h) <i>Khandaan</i> (extended family)	01	02	03	04	88
i) <i>Mohalla</i> (neighborhood)	01	02	03	04	88
j) <i>Biradari</i> (clan)	01	02	03	04	88
k) Local Large Landowner (Village Chaudhry/Malik/Wadera)	01	02	03	04	88
l) Village <i>panchayat</i> ( <i>akhat, pareh, pareh panchayat, pareon</i> ) / <i>faislo</i> or Baloch <i>jirga</i>	01	02	03	04	88
m) Local Influential(s)(local, provincial, national)	01	02	03	04	88
n) Local Bureaucracy – <i>patwaris</i> (Land Record Keepers); <i>nambardars</i> (Village Headmen); <i>tehsildars</i> (Tehsil administration/revenue collection heads) or others	01	02	03	04	88
o) District Civil Bureaucracy (DROs, DCOs, District magistrates etc.)	01	02	03	04	88
p) Political Groupings/vote banks ( <i>dharrais</i> )	01	02	03	04	88
q) Self-Provision Village Organizations; Community Organizations	01	02	03	04	88
r) Local NGOs	01	02	03	04	88
s) Private Dispute Resolution Mechanisms that charge a Fee	01	02	03	04	88
t) Local Crime lords	01	02	03	04	88
u) Religious leader in the community	01	02	03	04	88
v) Musalihati Council	01	02	03	04	88

**Q23:** For the following systems please indicate how fair they are for resolving disputes.

Response	Very fair	Somewhat fair	Somewhat unfair	Very unfair	Don't know
a) Provincial Police Authorities and their local representatives (e.g. S.H.O, D.S.P., etc.)	01	02	03	04	88
b) Superior Courts in Pakistan ( Supreme Court and High Courts)	01	02	03	04	88
c) Lower Courts in Pakistan (Judicial Magistrate, District & Sessions Courts)	01	02	03	04	88
d) Federal Shariat Court	01	02	03	04	88
e) Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	01	02	03	04	88
f) Ombudsman	01	02	03	04	88
g) Human Rights Commission of Pakistan	01	02	03	04	88
h) <i>Khandaan</i> (extended family)	01	02	03	04	88
i) <i>Mohalla</i> (neighborhood)	01	02	03	04	88
j) <i>Biradari</i> (clan)	01	02	03	04	88

k) Local Large Landowner (Village Chaudhry/Malik/Wadera)	01	02	03	04	88
l) Village <i>panchayat</i> ( <i>akhat, pareh, pareh panchayat, pareon</i> ) / <i>faislo</i> or Baloch <i>jirga</i>	01	02	03	04	88
m) Local Influential(s)(local, provincial, national)	01	02	03	04	88
n) Local Bureaucracy – <i>patwaris</i> (Land Record Keepers); <i>nambardars</i> (Village Headmen); <i>tehsildars</i> (Tehsil administration/revenue collection heads) or others	01	02	03	04	88
o) District Civil Bureaucracy (DROs, DCOs, District magistrates etc.)	01	02	03	04	88
p) Political Groupings/vote banks ( <i>dharra</i> s)	01	02	03	04	88
q) Self-Provision Village Organizations; Community Organizations	01	02	03	04	88
r) Local NGOs	01	02	03	04	88
s) Private Dispute Resolution Mechanisms that charge a Fee	01	02	03	04	88
t) Local Crime lords	01	02	03	04	88
u) Religious leader in the community	01	02	03	04	88
v) Musalihat Council	01	02	03	04	88

**Q24. How familiar are you with international benchmark and standards for human rights and human rights protection?**

Very familiar	Somewhat familiar	Not at all familiar
1	2	3

**Q25. How familiar are you with the rights, protections and remedies available under the Constitution and general laws and procedures of Pakistan?**

Very familiar	Somewhat familiar	Not at all familiar
1	2	3

**Q26. How familiar are you with Islamic legal principles and legal injunction?**

Very familiar	Somewhat familiar	Not at all familiar
1	2	3

**Q27: Do you agree that the following systems are in compliance with International Human Rights standards?**

Response	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	Don't Know
a) Provincial Police Authorities and their local representatives (e.g. S.H.O, D.S.P., etc.)	01	02	03	04	88
b) Superior Courts in Pakistan ( Supreme Court and High Courts)	01	02	03	04	88
c) Lower Courts in Pakistan (Judicial Magistrate, District & Sessions Courts)	01	02	03	04	88
d) Federal Shariat Court	01	02	03	04	88
e) Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	01	02	03	04	88
f) Ombudsman	01	02	03	04	88
g) Human Rights Commission of Pakistan	01	02	03	04	88
h) <i>Khandaan</i> (extended family)	01	02	03	04	88
i) <i>Mohalla</i> (neighborhood)	01	02	03	04	88
j) <i>Biradari</i> (clan)	01	02	03	04	88
k) Local Large Landowner (Village Chaudhry/Malik/Wadera)	01	02	03	04	88
l) Village <i>panchayat</i> ( <i>akhat, pareh, pareh panchayat, pareon</i> ) / <i>faislo</i> or Baloch <i>jirga</i>	01	02	03	04	88
m) Local Influential(s)(local, provincial, national)	01	02	03	04	88
n) Local Bureaucracy – <i>patwaris</i> (Land Record Keepers); <i>nambardars</i> (Village Headmen); <i>tehsildars</i> (Tehsil administration/rev enue collection heads) or others	01	02	03	04	88
o) District Civil Bureaucracy (DROs, DCOs, District magistrates etc.)	01	02	03	04	88
p) Political Groupings/vote banks ( <i>dharras</i> )	01	02	03	04	88
q) Self-Provision Village Organizations; Community Organizations	01	02	03	04	88
r) Local NGOs	01	02	03	04	88
s) Private Dispute Resolution Mechanisms that charge a Fee	01	02	03	04	88
t) Local Crime lords	01	02	03	04	88
u) Religious leader in the community	01	02	03	04	88
v) Musalihati Council	01	02	03	04	88

**Q28: Do you agree that the following systems are in compliance with Fundamental Rights guaranteed by the Constitution of Pakistan?**

Response	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	Don't Know
a) Provincial Police Authorities and their local representatives (e.g. S.H.O, D.S.P., etc.)	01	02	03	04	88
b) Superior Courts in Pakistan ( Supreme Court and High Courts)	01	02	03	04	88
c) Lower Courts in Pakistan (Judicial Magistrate, District & Sessions Courts)	01	02	03	04	88
d) Federal Shariat Court	01	02	03	04	88
e) Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	01	02	03	04	88
f) Ombudsman	01	02	03	04	88
g) Human Rights Commission of Pakistan	01	02	03	04	88
h) <i>Khandaan</i> (extended family)	01	02	03	04	88
i) <i>Mohalla</i> (neighborhood)	01	02	03	04	88
j) <i>Biradari</i> (clan)	01	02	03	04	88
k) Local Large Landowner (Village Chaudhry/Malik/Wadera)	01	02	03	04	88
l) Village <i>panchayat</i> ( <i>akhat, pareh, pareh panchayat, pareon</i> ) / <i>faislo</i> or Baloch <i>jirga</i>	01	02	03	04	88
m) Local Influential(s)(local, provincial, national)	01	02	03	04	88
n) Local Bureaucracy – <i>patwaris</i> (Land Record Keepers); <i>nambardars</i> (Village Headmen); <i>tehsildars</i> (Tehsil administration/revenue collection heads) or others	01	02	03	04	88
o) District Civil Bureaucracy (DROs, DCOs, District magistrates etc.)	01	02	03	04	88
p) Political Groupings/vote banks ( <i>dharras</i> )	01	02	03	04	88
q) Self-Provision Village Organizations; Community Organizations	01	02	03	04	88
r) Local NGOs	01	02	03	04	88
s) Private Dispute Resolution Mechanisms that charge a Fee	01	02	03	04	88
t) Local Crime lords	01	02	03	04	88
u) Religious leader in the community	01	02	03	04	88
v) Musalihati Council	01	02	03	04	88

**Q29: Do you agree that the following systems are in compliance with Islamic principles and legal injunctions?**

Response	Strongly agree	Somewhat agree	Somewhat disagree	Strongly disagree	Don't Know
a) Provincial Police Authorities and their local representatives (e.g. S.H.O, D.S.P., etc.)	01	02	03	04	88
b) Superior Courts in Pakistan ( Supreme Court and High Courts)	01	02	03	04	88
c) Lower Courts in Pakistan (Judicial Magistrate, District & Sessions Courts)	01	02	03	04	88
d) Federal Shariat Court	01	02	03	04	88
e) Religious seminary boards (e.g. Wafaq ul Madaris or other registered Madaris)	01	02	03	04	88
f) Ombudsman	01	02	03	04	88
g) Human Rights Commission of Pakistan	01	02	03	04	88
h) <i>Khandaan</i> (extended family)	01	02	03	04	88
i) <i>Mohalla</i> (neighborhood)	01	02	03	04	88
j) <i>Biradari</i> (clan)	01	02	03	04	88
k) Local Large Landowner (Village Chaudhry/Malik/Wadera)	01	02	03	04	88
l) Village <i>panchayat</i> ( <i>akhat, pareh, pareh panchayat, pareon</i> ) / <i>faislo</i> or Baloch <i>jirga</i>	01	02	03	04	88
m) Local Influential(s)(local, provincial, national)	01	02	03	04	88
n) Local Bureaucracy – <i>patwaris</i> (Land Record Keepers); <i>nambardars</i> (Village Headmen); <i>tehsildars</i> (Tehsil administration/revenue collection heads) or others	01	02	03	04	88
o) District Civil Bureaucracy (DROs, DCOs, District magistrates etc.)	01	02	03	04	88
p) Political Groupings/vote banks ( <i>dharras</i> )	01	02	03	04	88
q) Self-Provision Village Organizations; Community Organizations	01	02	03	04	88
r) Local NGOs	01	02	03	04	88
s) Private Dispute Resolution Mechanisms that charge a Fee	01	02	03	04	88
t) Local Crime lords	01	02	03	04	88
u) Religious leader in the community	01	02	03	04	88
v) Musalihati Council	01	02	03	04	88

### 3.3 HEARING AND PROCEEDINGS OF THE INFORMAL JUSTICE SYSTEM

**Q30: How long have any of the following informal justice systems been operating in your community/area?**

Response	0-5 Years	6-25 Years	26-50 Years	50 + Years	Don't know	Not exist
a) Local/Village <i>panchayat</i> or <i>faislo</i> or Baloch <i>jirga</i>	01	02	03	04	88	55
b) <i>Khandaan</i>	01	02	03	04	88	55
c) <i>Mohalla</i> (neighborhood)	01	02	03	04	88	55
d) <i>Biradari</i>	01	02	03	04	88	55
e) Self-Provision Village Organizations; Community Organizations	01	02	03	04	88	55
f) Private Dispute Resolution Mechanisms that charge a Fee	01	02	03	04	88	55
g) Local Crime lords	01	02	03	04	88	55
h) Religious leader in the community	01	02	03	04	88	55
i) Local Large Landowner (Village Chaudhry/Malik/Wadera)	01	02	03	04	88	55
j) Local Influential(s)(local, provincial, national)	01	02	03	04	88	55
k) Local NGOs	01	02	03	04	88	55
l) Musalihati Council	01	02	03	04	88	55
m) Political Groupings/vote banks ( <i>dharras</i> )	01	02	03	04	88	55

**Q31: What is the composition of the informal justice system in your community/area?– Who are the members? (Multiple-choice response is allowed)**

Response	Code
Local respected citizens (who are not politicians)	1
Local wealthy and influential people (who are not politicians),	2
Local politicians	3
Councillors of the Union Councils	4
Religious leaders	5
Civil society members	6
clan or tribal elders	7
local members of civil bureaucracy	8
local police, other government representatives	9
Other (specify)	77

**Q32: Do women have representation in informal justice system?**

Response	Yes	No	Don't know
a) Local Village <i>panchayat</i> or <i>faislo</i> or Baloch <i>jirga</i>	01	02	88
b) <i>Khandaan</i>	01	02	88
c) <i>Mohalla</i> (neighborhood)	01	02	88
d) <i>Biradari</i>	01	02	88
e) Self-Provision Village Organizations; Community Organizations	01	02	88
f) Private Dispute Resolution Mechanisms that charge a Fee	01	02	88
g) Religious leader in the community	01	02	88
h) Local Large Landowner (Village Chaudhry/Malik/Wadera)	01	02	88
i) Local Influential(s)(local, provincial, national)	01	02	88
j) Local NGOs	01	02	88
k) Musalihati Council	01	02	88
l) Political Groupings/vote banks ( <i>dharra</i> s)	01	02	88

**Q33: Do non-local ethnic and/or tribal groups have representation in the informal justice system?**

Response	Yes	No	Don't know
a) Local Village <i>panchayat</i> or <i>faislo</i> or Baloch <i>jirga</i>	01	02	88
b) <i>Khandaan</i>	01	02	88
c) <i>Mohalla</i> (neighborhood)	01	02	88
d) <i>Biradari</i>	01	02	88
e) Self-Provision Village Organizations; Community Organizations	01	02	88
f) Private Dispute Resolution Mechanisms that charge a Fee	01	02	88
g) Local Crime lords	01	02	88
h) Religious leader in the community	01	02	88
i) Local Large Landowner (Village Chaudhry/Malik/Wadera)	01	02	88
j) Local Influential(s)(local, provincial, national)	01	02	88
k) Local NGOs	01	02	88
l) Musalihati Council	01	02	88
m) Political Groupings/vote banks ( <i>dharra</i> s)	01	02	88

**Q34: Do religious minorities (Christians, Sikhs and Hindus) have representation in informal justice system?**

Response	Yes	No	Don't know
a) Local Village <i>panchayat</i> or <i>faislo</i> or Baloch <i>jirga</i>	01	02	88
b) <i>Khandaan</i>	01	02	88
c) <i>Mohalla</i> (neighborhood)	01	02	88
d) <i>Biradari</i>	01	02	88
e) Self-Provision Village Organizations; Community Organizations	01	02	88



f) Private Dispute Resolution Mechanisms that charge a Fee	01	02	88
g) Local Crime lords	01	02	88
h) Religious leader in the community	01	02	88
i) Local Large Landowner (Village Chaudhry/Malik/Wadera)	01	02	88
j) Local Influential(s)(local, provincial, national)	01	02	88
k) Local NGOs	01	02	88
l) Musalihati Council	01	02	88
m) Political Groupings/vote banks ( <i>dharras</i> )	01	02	88

### 3.4 HEARING AND PROCEEDINGS OF THE INFORMAL DISPUTE RESOLUTION SYSTEM

**Q35: Who attends the proceedings of informal dispute resolution system? (Multiple-choice response is allowed)**

Response	Code
Only members of the dispute resolution mechanism	1
The entire community, including minorities	2
The entire community, except minorities	3
Only the heads of the families involved in the dispute	4
Women allowed to attend	5
Government officials	6
Other (Specify: _____)	77

**Q36: Have you attended these proceedings?**

Response	Code
Yes	1 Go to Q37
No	2 Go to Q38

**Q37: If yes, in which capacity?**

Response	Code
As an informal dispute resolution mechanism member	1
As a Government official	2
As a disputant	3
As an observer	4
Others (specify)	77

**Q38: How do informal dispute resolution systems convene their proceedings?**

Response	Code
In open	1
Behind closed doors	2

**Q39: Are both parties to the dispute always present at the hearing?**

Response	Code
Yes	1
No	2

**Q40: Is the decision of informal dispute resolution system final?**

Response	Code
Yes	1
No	2
Sometimes	3

**Q41: Is there a provision of appeal in the informal dispute resolution system proceedings?**

Response	Code
Yes	1
No	2
Don't know	88

**Q42: Does the informal dispute resolution mechanism itself allow any appeals or are there any other higher informal mechanisms to appeal to?**

Response	Code
Yes	1
No	2
Don't know	88

**Q43: In your view do the disputants who are not satisfied with the outcomes/discisions of informal dispute resolution mechanisms then take their disputes to formal courts and tribunals?**

Almost always	Most of the times	Fairly frequently	Sometimes	Almost never	Don't know	Other (Specify)
1	2	3	4	5	88	77

**Q44: How are informal dispute resolution system decisions usually taken? (Single response)**

Response	Code
Through consensus	1
Unanimously (Unanimous decision by all members)	2
Through vote (Majority decision)	3
There is discussion and input but the head of the IDRM is the one who ultimately decides'	4
Don't know	88

**Q45: What procedures/rules are applied to resolve conflict/dispute through the informal dispute resolution system?**

Response	Code
Customary or tribal laws and rules	1
Islamic law	2
Combination of both	3
Other (Specify: _____)	77

**Q46: Are you satisfied with the evidence collection and fact-finding mechanism of informal dispute resolution mechanisms?**

Response	Code
Satisfied	01
Somewhat Satisfied	02
Dissatisfied	03
Somewhat dissatisfied	04
Don't know	88

**Q47: Do the disputants pay a fee for using the informal dispute resolution system when their disputes are resolved through it?**

Response	Code	
Yes	01	Go to Q48
No	02	Go to Q49
Don't know	88	Go to Q49

**Q48: If yes, what is this amount?**

Response	Code
It depends on the paying capacity of the disputants	1
It is a lump sum amount to cover expenses related with the dispute resolution process and proceedings	2
It varies according to the seriousness of the dispute and the stakes involved	3
It depends on how much time and effort it takes to resolve the dispute	4
There are standard fees charged for different kinds of disputes	5
Other (Specify: _____)	77

**Q49: Does the police/local administration have a role in the functioning of the informal dispute resolution system?**

Response	Code
Yes	1
No	2
Don't know	88

**Q50: Does the the police/local administration play a role in the implementation of the informal dispute resolution system's decisions?**

Response	Code
Yes	1
No	2
Don't know	88

**Q51: Is there any provision for the parties to appoint a legal representative (similar to a lawyer in formal justice system) in the informal dispute resolution system proceedings?**

Response	Code
Yes	1

<b>No</b>	<b>2</b>
<b>Don't know</b>	<b>88</b>

**Q52: Which sections of the community display more faith in informal dispute resolution systems?**  
(Please give only 3 responses)

<b>Response</b>	<b>Code</b>
Tribal elders	1
Religious leaders	2
Women	3
Men	4
Ethnic and religious minorities	5
Ethnic and religious majorities	6
Community as a whole	7
Political and influential families	8
The more affluent	9
The poor	10
The landed	11
The landless	12
Upper caste people	13
Lower caste people	14
Other (specify)	77
Don't know	88

**Q53: Do you believe that your community will support the informal dispute resolution system if it is recognized and integrated with the state's formal justice system like the Supreme Court/High Court/Session Court?**

<b>Response</b>	<b>Code</b>
<b>Yes</b>	<b>1</b>
<b>No</b>	<b>2</b>
<b>Don't know</b>	<b>88</b>

**Q54: What should be the nature of such recognition and integration?**

<b>Response</b>	<b>Code</b>
a) that the state determines which kinds of disputes should be heard and decided exclusively by informal dispute resolution mechanisms	1
b) that the courts should decide which kinds of disputes should be heard and decided exclusively by the informal dispute resolution mechanisms	2
c) that the state/courts decide that which kinds of disputes should be exclusively heard and decided by informal mechanism but that there are certain situations where an appeal can lie with the courts even in these cases;	3
d) Though the informal mechanisms be allowed the power to be the first forum for hearing all kinds of disputes but that everything can be potentially appealed to the courts	4
e) that the informal dispute resolution mechanisms be allowed to decide all disputes if they follow a certain basic process laid down by the state/courts and such decisions will have	5

legal recognition and be binding but that such mechanisms cant hear or decide any disputes which involve a violation of Fundamental Rights under the Constitution and/or affect any vulnerable groups in society;	
f) That the state/courts will promote, recognize and monitor all decisions by the informal dispute resolution mechanism and intervene wherever they think fit.	6
g) The state/courts will identify and recognize existing or establish and recognize new informal dispute resolution mechanisms and nothing beyond these will have any legal recognition for their dispute adjudication;	7
h) The state/courts will not only recognize and monitor informal dispute resolution mechanisms and their decisions but will also assist in the implementation of their decisions	8
i) All informal dispute resolution should be exclusively directed by the formal courts and conducted in conjunction with, through, or under the supervision of the district courts	9
j) A combination of the above	10
k) Other (specify: _____)	77

**Q55: If recognized and integrated do you think informal dispute resolution systems could be plagued by the same weaknesses that afflict the existing formal justice system like the Supreme Court/High Court/Session Court?**

Response	Code
Yes	1
No	2
Don't know	88

**Q56: Once recognized and integrated, would informal dispute resolution systems lose the advantages they have over the formal justice system like the Supreme Court/High Court/Session Court (less expensive, speedy, less corrupt, etc)?**

Response	Code
Yes	1
No	2
Don't know	88

**Q57: How strongly do you agree/disagree with the statement: 'informal dispute resolution system is a speedy and less expensive mechanism of dispute resolution'?**

Response	Code
Strongly agree	01
Somewhat Agree	02
Somewhat Disagree	03
Strongly Disagree	04
Dont know	88

**Q58: How strongly do you agree with the statement: 'One of the main outcomes of the informal dispute resolution system's decisions is a fair compensation to victims'?**

Response	Code
Strongly Agree	01

Somewhat Agree	02
Somewhat Disagree	03
Strongly Disagree	04
Don't know	88
No response	99

**Q59: How strongly do you agree/disagree with the following statements?**

Response	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	Don't know
a) both parties are provided with equal opportunities to express their views in informal dispute resolution system process	01	02	03	04	88
b) nepotism or favouritism influence the decision making process of informal dispute resolution system	01	02	03	04	88
c) decisions given by informal dispute resolution system are unbiased and free from all kinds of pressure from the economically and politically powerful section of the society	01	02	03	04	88
d) some decisions of informal dispute resolution systems are harsh and not commensurate with the deed done	01	02	03	04	88
e) informal dispute resolution system verdicts come into conflict with modern notions of justice or human rights	01	02	03	04	88
f) informal dispute resolution system fails to resolve disputes effectively	01	02	03	04	88
g) informal dispute resolution system violates women's rights	01	02	03	04	88
h) informal dispute resolution system violates minorities' rights	01	02	03	04	88
i) informal dispute resolution system maintains social order and restores harmony in a community	01	02	03	04	88
j) informal dispute resolution system plays a positive role in conflict transformation and conflict resolution.	01	02	03	04	88
k) informal dispute resolution system plays a positive role in reducing the levels of militancy in the region	01	02	03	04	88
l) informal dispute resolution system is well placed to resolve civil disputes only	01	02	03	04	88
m) informal dispute resolution system reintegrates and rehabilitates offenders into the community	01	02	03	04	88
n) informal dispute resolution system is well placed to resolve both civil and criminal disputes	01	02	03	04	88
o) informal dispute resolution system contributes to rule of law	01	02	03	04	88

p) informal dispute resolution system resolves some very serious crimes	01	02	03	04	88
q) informal dispute resolution system is organized, well established, transparent and an efficient institution in society	01	02	03	04	88
r) informal dispute resolution system makes lasting Aman among disputants and reduces the possibility of future disputes as well as long-running vendetta	01	02	03	04	88
s) informal dispute resolution mechanism will always be a simpler and more intelligible option than the formal courts	01	02	03	04	88
t) informal dispute resolution mechanisms will always be a less time-consuming and more expeditious option than the formal courts	01	02	03	04	88

**60: How strongly do you support the involvement of government officials in informal dispute resolution system proceedings?**

Response	Code
Strongly support	01
Somewhat support	02
Somewhat oppose	03
Strongly oppose	04
Don't know	88
No response	99

**4. IMPLEMENTATION OF INFORMAL DISPUTE RESOLUTION SYSTEM VERDICTS**

**Q61: How are the decisions of informal dispute resolution systems mostly implemented? (Multiple responses are allowed)**

Response	Code
Through social/community pressure and disrepute	1
Through <i>riwaaj</i> and other local norms	2
Through force or threat of violence/violence	3
Through police and local administration	4
Through financial penalty	5
Through social excommunication or exile	6
Through cooperation with the other party in whose favor the decision was made if the matter proceeds to police or court	7
Other (specify)	88

**Q62: If the decision is not acceptable to a party, what happens? (Multiple responses are allowed)**

Response	Code
The accused party can take the case to another informal dispute resolution system	1

The accused party can take the case to the formal court	2
The accused party can appeal the same to informal dispute resolution system	3
The accused party simply defies the informal dispute resolution system decision	4
The accused party can take the case to the police	5
Other (specify)	77

## 8. THE STATE OF RIGHTS OF WOMEN AND POOR IN THE INFORMAL DISPUTE RESOLUTION SYSTEM.

**Q63: Do you agree with the statement, that the informal dispute resolution systems are at times biased against women when resolving matrimonial disputes including divorce and custody of children?**

Response	Code
Strongly agreed	01
Somewhat agreed	02
Somewhat disagreed	03
Strongly disagreed	04
Don't know	88
No response	99

**Q64: Do you agree with the statement that informal dispute resolution mechanisms are biased against the poor?**

Response	Code
Strongly agreed	01
Somewhat agreed	02
Somewhat disagreed	03
Strongly disagreed	04
Don't know	88
No response	99

**Q65: Do you support/oppose the informal dispute resolution system making decisions in favour of honour killing?**

Response	Code
Strongly agreed	01
Somewhat agreed	02
Somewhat disagreed	03
Strongly disagreed	04
Don't know	88
No response	99

**Q66: Do you agree/disagree with the statement, that there is no representation of women in the informal dispute resolution system ?**

Response	Code
Strongly agreed	01
Somewhat agreed	02
Somewhat disagreed	03



Strongly disagreed	04
Don't know	88
No response	99

**Q67: Do you agree/disagree with the statement, that there is no representation of poor in the informal dispute resolution system ?**

Response	Code
Strongly agreed	01
Somewhat agreed	02
Somewhat disagreed	03
Strongly disagreed	04
Don't know	88
No response	99

**Q68: Do you agree/disagree that there is effective indirect representation of women (through male relatives) in the informal dispute resolution system?**

Response	Code
Strongly agreed	01
Somewhat agreed	02
Somewhat disagreed	03
Strongly disagreed	04
Don't know	88
No response	99

**Q69: Do local customs such as *swara/wani/karo kari*/Marrying women to Quran/bride price and *jhag*, suitably and fairly resolve some complex local issues which can't be solved otherwise or by the formal legal system?**

Response	Code
Yes	01
No	02
Don't know	88

**Q70: Do you believe that *swara/wani/karo kari* /marrying women to Quran/bride price and *jhag* violate women's rights?**

Response	Code
Yes	01
No	02
Don't know	88

## 9. RECOMMENDATIONS FOR REFORMS

### Q71: How strongly do you agree/disagree with the statements listed below?

Response	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	Don't know
a) informal dispute resolution system decisions should be recorded officially	01	02	03	04	88
b) informal dispute resolution system decisions should be enforced officially	01	02	03	04	88
c) Provision of a right to appeal to the Courts against informal dispute resolution system decisions	01	02	03	04	88
d) Final informal dispute resolution system decision need to be subject to the approval of appropriate Pakistani Human Rights bodies	01	02	03	04	88
e) Women should be given the right to sit in the informal dispute resolution system proceedings	01	02	03	04	88
f) Women should be given representation in the decision-making body of an informal dispute resolution system as member	01	02	03	04	88
g) Religious and ethnic minorities should be allowed to sit in the informal dispute resolution system proceedings	01	02	03	04	88
h) Religious minorities should be given a fair chance to resolve their disputes according to their customs and religious beliefs	01	02	03	04	88
i) informal dispute resolution system can be integrated into formal justice system	01	02	03	04	88
j) informal dispute resolution system members should be elected through a proper electoral process	01	02	03	04	88
k) informal dispute resolution system members should be sensitized through an educational programme on Human Rights, Women Rights, Shariah, and Constitution of Pakistan	01	02	03	04	88
l) Women's informal dispute resolution system institutions should be formed to resolve women issues	01	02	03	04	88
m) Informal dispute resolution system should be utilized effectively to bring reform in the customs and to ban traditional practices such as <i>swara/wani/karo kari</i> /Marrying women to Quran, bride price and <i>jhag</i> .	01	02	03	04	88
n) informal dispute resolution system institutions should play a role in conflict transformation/resolution	01	02	03	04	88
o) informal dispute resolution system should play its role in reducing the level of militancy in the area	01	02	03	04	88
p) state should decide that certain kinds of disputes should only be decided by formal courts and rest can go to informal	01	02	03	04	88
q) state should decide that certain categories of cases can't be decided by informal at all	01	02	03	04	88

r) state should decide that in all cases involving Fundamental Right under the Constitution the informal decisions can be appealed in an expedition manner	01	02	03	04	88
s) The membership of a recognized informal dispute resolution mechanism should also go through some kind of a state approval	01	02	03	04	88

**Q72: Rough distance from home to the district courts (in Kilometers):**

<i>Response</i>	<i>Code</i>	<i>Response</i>	<i>Code</i>
Less than 2 kms	1	Between 2 and 5 kms	2
Between 6and 10 kms	3	Between 11 and 15 kms	4
Between 16 and 20 kms	5	Between 21 and 30 kms	6
Between 31 and 50 kms	7	Over 50 kms	8

**Q73: Mode of Transportation routinely used by respondent for everyday transportation**

<i>Response</i>	<i>Code</i>	<i>Response</i>	<i>Code</i>
Public transport (bus/rickshaw/taxi/Tonga)	1	Private car	2
Private motor cycle	3	Car/motor cycle belonging to a friend or relative	4
Rented car/motorcycle	5	Bicycle	6
Pedestrian	7	Other (Specify _____)	77

## 10. DEMOGRAPHICS

### D10.1: Gender of respondents:

Male

Female

### D10.2: Age group of respondent

Response	Code	Response	Code
18-24 years	1	51-60 years	4
25-39 years	2	over 60 years	5
40-50 years	3		

### D10.3: Education level of respondent

Response	Code	Response	Code
Not schooled	1	Schooled up to Secondary Certificate level (Matriculation)	8
Basic schooling plus some vocational education	2	Schooled up to Intermediate level	9
Madrasa education 2-5 years	3	Schooled up to Bachelor level	10
Madrasa education 6-10 years	4	Master degree	11
Madrasa/seminary education of more than 10 years	5	Those up to professional education (Doctors, Lawyers and Engineers) or higher education than an MA	12
Schooled up to Primary level	6	vocational/education leading to a diploma in some trade/craft/technical ability	13
Schooled up to Middle level	7		

### D10.4: Education level of head of the household

Response	Code	Response	Code
Not schooled	1	Schooled up to Secondary Certificate level (Matriculation)	8
Basic schooling plus some vocational education	2	Schooled up to Intermediate level	9
Madrasa education 2-5 years	3	Schooled up to Bachelor level	10
Madrasa education 5-10 years	4	Master degree	11
Madrasa/seminary education of more than 10 years	5	Those up to professional education (Doctors, Lawyers and Engineers) or higher education than an MA	12
Schooled up to Primary level	6	vocational/education leading to a diploma in some trade/craft/technical ability	13
Schooled up to Middle level	7		

**D10.5: Monthly income of respondent's family in PKR? If respondent refuses to disclose the income of the household, ask for overall expenses and circle the appropriate code.**

Response	Code	Response	Code
Rs 6000 - 10000	1	Rs 20001 – Rs 25000	4
Rs 10001 – Rs 15000	2	More than Rs 25000	5
Rs 15001 – Rs 20000	3	Don't want to answer	6

**D10.6: Occupation of respondent**

Response	Code	Response	Code
Agricultural labourer	1	Provincial civil servant	18
Agriculture tenant	2	Shop owner	19
Crafts man	3	Local or district government employee	20
Employee in a private firm/business	4	Government employee	21
Chowkidar, security guard, security company employ (watchman)	5	Skilled labourer	22
Retired	6	Private company employee	23
Small and Medium Enterprise (SME) owner	7	Cottage industry owner	24
Industrial employee	8	Professional (doctor, engineer, lawyer, computer scientist etc	25
Civil servant	9	Small business owner	26
Clerical employee	10	Teacher	27
Farm owner	11	Technician	28
Home-based worker	12	Unskilled labourer	29
Lady health worker/Visitor (LHW/V)	13	Student	60
Large business owner	14	House Wife	31
White colour employee	15	Unemployed	32
Management/supervisor	16	Independently wealthy	33
Military, police, security personnel	17	Other (specify)	77

**D10.7: Marital status of respondent**

Response	Code	Response	Code
Married	1	Single	4
Widowed	2	Separated	5
Divorced	3	No response	99

**D10.8: How many people live in your household/compound?**

Number of People: \_\_\_\_\_

**D10.9: Religion of respondent**

Response	Code	Response	Code
Christian	1	Hindu	4
Sikh	2	Other (specify)	77
Muslim	3	No response	99

**(Ask if answer is 3 in D10.9)**

Response	Code	Response	Code
<i>Shiite</i>	<b>1</b>	<i>Sunni</i>	<b>3</b>
<i>Wahabi/Ahl-e-Hadees</i>	<b>2</b>	<i>No response</i>	<b>99</b>

**D10.10 What is your caste (Quom)?**

Caste	Code	Caste	Code
Arrain	1	Mughal	9
Jat	2	Pathan	10
Rajput	3	Baloch	11
Gujjar	4	Kashmiri	12
Sheikh	5	Other (Specify) _____	77
Awaan	6	No Response	99
Malik	7		
Syed	8		

**D10.11 What is your ethnicity?**

Ethnicity	Code	Ethnicity	Code
Punjabi	1	Seraiki	6
Urdu Speaking	2	Kashmiri	7
Sindhi	3	Behari	8
Balochi	4	Other (Specify) _____	77
Pathan	5	No Response	99

**D10.12: Would you be willing to participate in another survey later in this year?**

Response	Code
Yes	1
No	2
Don't know	88
No response	99

## Read Closing Statement

### To the Respondent:

"Thank you for participating in our survey. Do you have any questions– In the next few days my supervisor may contact you to evaluate the quality of my work and answer any other questions you may have about the interview. To help him do that, could I have your telephone number–"

### Respondent Information:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Tel No: \_\_\_\_\_

NIC Number \_\_\_\_\_

### Interviewer Certification:

"I certify that I have completed this interview according to the instructions provided to me.

Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

### To be completed by the Supervisor:

#### Interview subject to Back-check/Control

1. Yes
2. No

#### Method of Back-check/Control

1. Direct supervision during interview
2. Back-check in person by supervisor
3. Back-check by telephone by supervisor or the central office
4. Not subject to back-check

### Initial Questions (for Interviewer only)

Name of surveyor \_\_\_\_\_ Date of interview \_\_\_\_\_

Province \_\_\_\_\_ District \_\_\_\_\_ Tehsil \_\_\_\_\_

[1] Rural.

[2] Urban

## ANNEX - III

### TARGET DEMOGRAPHICS

#### Gender of the respondents

The survey was planned to incorporate men and women's perceptions on different aspects of

The age group 25-50 made up the larger group of the interviewees, because this age group is the most involved in informal dispute resolution proceedings.

Gender	Frequency	%
Male	1350	50
Female	1350	50
<b>Total</b>	<b>2700</b>	<b>100</b>

Age group	%
18-24 years	16.6
25-39 years	46.8
40-50 years	24.9
51-60 years	5.7
60 and above	4
Not Answered	2
<b>Total</b>	<b>100</b>

dispute resolution mechanisms affecting the life of the people of Pakistan. The following statistics show that the survey interviews of 2700 respondents was comprised of 50 per cent men and 50 per cent women.

#### Age group

The survey aimed to interview respondents over the age of 18 years. The survey data shows that respondents interviewed were predominantly in the middle age groups (aged 25-50 years), instead of in the younger or older age groups.

Nevertheless, considering the population pyramid, the middle age is not over-represented nor the older cohorts under-represented as shown by the table below.

#### Education

The following table shows statistics for the educational level of the respondents. The survey results show that 33.6 per cent of the respondents had not attended school; 13.2 per cent had been schooled up to primary level; 8.6 per cent had been schooled up to middle level; 12.6 per cent had been schooled up to Secondary Certificate level; and 4.8 per cent (combined age 2-10 years) of the respondents had received religious education. Other categories are explained in the table below.

If we analyse the entire data set, we can conclude that around 60 per cent of the sample is literate, including the 'religious education only' category. This is equal to the literacy rate for Pakistan.<sup>1</sup>



Education of respondent	%
Not schooled	33.6
Basic schooling plus some vocational education	1.6
Madrassa education 2-5 years	2.9
Madrassa education 6-10 years	1.9
Madrassa/seminary education of more than 10 years	1.5
Schooled up to Primary level	13.2
Schooled up to Middle level	8.6
Schooled up to Secondary Certificate level (Matriculation)	12.6
Schooled up to Intermediate level	11.8
Schooled up to Bachelor level	7.9
Master degree	4.1
Highly educated for a profession (e.g. doctors, lawyers and engineers) or above MA-level	0.4
Vocational education leading to a diploma in a trade/craft/technical ability	0.1
<b>Total</b>	<b>100</b>

#### Education of the head of the family

If the respondent was not the head of the family himself/herself, then they were asked about the education level of the head of the family. (Note:

there are hardly any female heads of families in Pakhtun society overall). In general, the survey has sampled slightly more literate people than the general population for the given age group.

Education of the head of the family	%
Not schooled	35
Basic schooling plus some vocational education	1.4
Madrassa education 2-5 years	2.5
Madrassa education 6-10 years	2.2
Madrassa/seminary education of more than 10 years	1.9
Schooled up to Primary level	14.2
Schooled up to Middle level	9.4
Schooled up to Secondary Certificate level (Matriculation)	11.6
Schooled up to Intermediate level	10.3
Schooled up to Bachelor level	6.6
Master degree	3.7
Highly educated for a profession (e.g. doctors, lawyers and engineers) or above MA-level	1
Vocational education leading to a diploma in a trade/craft/technical ability	0.1
<b>Total</b>	<b>100</b>

Income	%
Rs 6000 – 10000	31
Rs 10001 – Rs 15000	23.9
Rs 15001 – Rs 20000	16.4
Rs 20001 – Rs 25000	8
More than Rs 25000	9.8
Don't want to answer	10.9
<b>Total</b>	<b>100</b>

### Monthly income of the family

Statistics are self-explanatory and convey that nearly a third of families in our survey lives on less than 3\$ per day; an nearly a quarter of families lives on less than 5\$ a day.

Our survey data reveals that the majority in Pakistan make up the poor segment of society, while the lower middle class represents only 9.8 per cent of the population.

### Occupation

In the table (on the next page) the occupation of the male and female respondents shows that 29.6 per cent identified themselves as housewives (out of 50 per cent female respondents). The remaining 20.4 per cent of the women sampled worked as teachers, health workers, labourers and shopkeepers.

The second highest occupation on the list is 'agricultural labourer', which was selected by 12.3 per cent of respondents. This is followed by skilled labourer, shop owner, unskilled labourer etc.

Just 4.6 per cent of respondents identified themselves as 'unemployed' – this is a striking revelation, which is encouraging yet also confusing.

### Marital status

Early marriages are common in Pakistan's rural areas – which are mainly tribal in nature. Not surprisingly, 77 per cent of the population sampled was married. The practice of divorce is very rare and considered a sin in Pakistani society (borne out by only 0.4 per cent of respondents who identified themselves in this category). The number of widows is also very low, and because men readily remarry, the number of widowers in this group is very small compared with the number of widows.

Marital status	%
Married	77
Widowed	3.6
Divorced	0.4
Single	16.3
Separated	0.3
No response	2.4
<b>Total</b>	<b>100</b>

Occupation	Percent
Agricultural labourer	12.3
Agricultural tenant	1.4
Craftsman/skilled labourer	7.7
Employee in a private firm/business	1.9
Chowkidar, security guard, security company employee (watchman)	0.7
Retired	1.4
Small and Medium Enterprise (SME) owner	2.9
Industrial employee	0.2
Civil servant	0.7
Clerical employee	0.8
Farm owner	0.5
Home-based worker	0.9
Lady health worker/visitor (LHW/V)	0.6
White-collar worker	0.2
Management/supervisor	0.2
Military, police, security personnel	0.4
Provincial civil servant	1
Shop owner	6.5
Local or district government employee	0.3
Government employee	4.3
Unskilled labourer	5.6
Private company employee	1.7
Cottage industry owner	0.1
Professional (doctor, engineer, lawyer, computer scientist etc)	0.6
Small business owner	2.6
Teacher	3.6
Technician	0.4
Unskilled labourer	2.3
Student	3.4
Housewife	29.6
Unemployed	4.6
Independently wealthy	0.3
Other	0.6
<b>Total</b>	<b>100</b>

### Religion

Generally, non-Muslims make up less than 3 per cent of the population of Pakistan. The survey was successful in interviewing non-Muslims in their proportionate numbers. Hindu respondents make up 1.9 per cent; Christians 1.5 per cent; and Sikh 0.5 per cent. Muslims make up the overwhelming majority of respondents (94.7 per cent); 1.4 per cent did not want to disclose their religious identity.

Religion	%
Christian	1.5
Sikh	0.5
Muslim	94.7
Hindu	1.9
No response	1.4
<b>Total</b>	<b>100</b>

#### Shiite-Sunni proportion

Respondents who identified themselves as Muslim were subsequently asked which sect they belonged to. The results show that 83.7 per cent of these Muslim respondents are Sunni, and 8.6 per cent are Shia. A considerable number (7.7 per cent) did not want to disclose their sectarian affiliations.

Sect	Frequency	%
Shia	220	8.6
Sunni	1982	83.7
No response	198	7.7
<b>Total</b>	<b>2558</b>	<b>100</b>

## ANNEX - IV

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Community Appraisal and Motivation Programme (CAMP) is a national, non-profit and non-governmental organisation established and registered in May 2002. It works with some of the most underprivileged communities in Pakistan, responding to emergencies, improving access to quality health and education, creating livelihood opportunities, and working closely with communities and government departments to promote human rights, peace and security.