



# Effectiveness of Dispute Resolution Councils in Alternative Dispute Resolution: A Study of Selected Districts of Khyber Pakhtunkhwa

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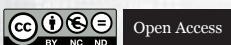
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## Abstract

**Background:** Dispute resolution is the process through which conflicts, misunderstandings are handled. It is an effective process for smooth functioning of any sort of organization. It further helps in maintaining peace in the society as well as in an organization.

**Objective:** This study seeks to appraise and evaluate the effectiveness of Dispute Resolution Councils (DRCs) in the select districts of Khyber Pakhtunkhwa, Pakistan.

**Methods:** The effectiveness of ADR forums is gauged through magnitude of satisfaction and trust of beneficiaries accessing its services as well as affordability and timeliness of dispensation of justice to them.

**Findings:** It was found that DRCs have become highly consequential to the peacemaking due to impartial setup and the provision of equal opportunity to parties involved in any case.

**Conclusion:** Despite the overall success of DRCs, they are still affected by problems such a poor documentation, infrastructure, lack of training and most importantly the absence of any enforcement mechanism of their decisions.

**Implication:** This study puts forth various reforms that may include the standardization of documents, provision of sufficient capital and adequate infrastructure, and auguring the role of these avenues to strengthen the implementation of their decisions.

**Keywords:** Dispensation, Peacemaking, Dispute Resolution Councils

**Paper Type:** Research Paper

**JELClassification:** Ko, K3

## Introduction

Since time immemorial, there have been a multiplicity of mechanisms that humans have devised and resorted to in order to deal with the innumerable conflicts that have arisen among them. In fact, among social scientists, it is widely believed that in the absence of formal and informal avenues for the resolution of disputes, people would take the law in their own hands and criminality and lawlessness would substantially increase. Thus, mechanisms for dispute resolution are instrumental in preventing otherwise serious offences and thereby help preserve the peace of society.

The process of dispute resolution has been defined by different organizations around the world. Perhaps, the most widely accepted definition is given by the New York State Dispute Resolution Association (NYSdra) which states that ‘Dispute Resolution’ consists of “methods used by the trained neutrals to help people to communicate more clearly, negotiate effectively, develop and evaluate solutions, or resolve conflicts”. Another definition given by the Harvard Law School, captures the essence of dispute resolution as “one of the several different processes used to resolve disputes between parties, including negotiation, mediation, arbitration, collaborative law, and litigation”.

In other words, Alternate Dispute Resolution (ADR) is a mechanism which ensures that a court-room trial shall be the last recourse to justice. While elucidating the efficacy of ADR and the use of its integral components i.e. Negotiations, Mediation and Arbitration in Pakistan, researchers have noted ADR’s effectiveness is acknowledged by both the corporate and legal communities in the country. ADR, is thus seen as a means of resolving disputes in an inexpensive and timely manner circumventing the lengthy costly and technical process associated with conventional litigation.

In the Indian subcontinent, the presence of platforms for the dispensation of alternate dispute resolution can be traced back to the pre-colonial times. Perhaps, the most potent form of ADR practiced in the region prior to and during the British Raj has been the Jirga system, presided over by tribal chief(s) to settle civil and criminal disputes through customary laws.

Consequently, Pakistan subsequent to its independence has retained the original form and variants of the traditional justice system, which have played an instrumental role in delivering justice across the country. These forums have comprised the Jirga in Khyber Pakhtunkhwa, the Federally Administered Tribal Areas (FATA) and Baluchistan, Faislo in Sindh and Panchayat in the Punjab province, and have been fundamental to dispensing justice by which conflicts have been settled between individuals, families, communities and tribes. These forums are present alongside forums such as traditional ADR and public ADR ranging from private courts at community level to conciliation courts at council level. The weakness of the state bureaucracy and judicial process in Pakistan has created space for such forums.

Disputes in Pakistan have mainly emanated from a ‘configuration of factors relating to the state system, the unstable regional setting, and the global system at large.’ Besides these, the socio-cultural settings, and issues including lack of education and awareness about

human rights and hostile political and ethnic relations are often responsible for generating significant conflict in Pakistan.

Furthermore, a review of the arbitration act has been initiated to promote effective arbitration in Pakistan under the access to justice program. The institution of Musalihat Anjuman act as conciliation forums has been provided at the level of Union Councils for dispute resolution through ADR. Presently, the Strengthening Rule of Law Program (SRLP) has been pivotal in addressing gaps in the justice sector through engaging with judicial and police officials.

ADR has considerably risen in prominence after the formation of the Dispute Resolution Councils (DRCs) at the behest of the KP Police, when the then IG, Nasir Khan Durrani launched a pilot project in 2014. Recognizing the significance of these councils, they were formally inducted in the criminal justice system in 2015, when the KP assembly passed the “Police Order 2002 Amendment Act 2015.” Further revisions and amendments were made in the law in 2017 to extend affordable and impartial justice via the DRCs.

This study seeks to engage in the appraisal of the performance and effectiveness of dispute resolution councils (DRCs) in 9 districts of Khyber Pakhtunkhwa (KP), so as to gauge the efficacy and the extent of compliance of these councils to ADR standards, national and provincial laws.

The study is further classified into following sections: Section 2 reviews the relevant literature followed by research methods in Section 3. Likewise, Section 4 covers data analysis and results.

## Review of Literature

The effectiveness of ADR, in its various manifestations is widely acknowledged and appreciated by the corporate and legal communities (Danuri et. al., 2012). Khan (2004) reported that the formal and informal institutions of justice complement each other rather than being mutually exclusive. As it is argued in Pakistani society that Panchayats decide in the favor of the powerful and influential people, but still these alternative dispute resolution mechanisms are supported because of ease of access and lower cost.

Similarly, Tanveer( 2017) and Ali et al. (2009) also stated that ADRs in 21st century finds quicker, easier, inexpensive and effective approach towards justice. Further highlighting the challenges to modern justice system McManus and Silverstein (2011) pointed out that due to exorbitant and lengthy processes modern justice system was found to be less effective. Ramzan (2016) in this regard built on the narration related to effectiveness of ADRs and its importance in clearing the existing backlog of cases.

According to Braithwaite and Gohar (2014), Muslahathi Committees served a vital role by acting as platforms for providing restorative justice and policing local communities. Despite limited contributions, this form of “deliberative democracy” does reduce retributive acts of violence and helps the police in gaining credibility, with the potential to become a model of legal pluralism and an efficacious hybrid organization. Conversely, while examining

the effects of the local government ordinance (LGO) in KP province, Danuri et. al., (2012) argued that citizen-state relations that the LGOs sought to change, overlooked the role of confounding influences impacting these processes. This may include the non-governmental organizations, the indigenous cultural norms of Pushtanwali and Jirgas. Thus, the UNDP assisted in setting up Musalihati Jirgas at the Union Councils level in KP as people there place more trust in conventional dispute resolution forums (Ahmed, 2011).

Ramzan and Mahmood (2016), state that ADR can be effective at providing justice at the lower level, decisions by the ADR court may be set aside in case of the insufficient knowledge of the judge, lack of competence or any affiliation with either party that may influence the outcome of the case. Similarly, Iqbal (2016), notes that conflicting parties often choose to seek to legal remedy from ADR mechanisms rather the conventional legal systems. He remarks that while the Dispute Resolution Councils (DRCs) are only meant to support the conventional legal system, the vast scope of judicial interventions in DRC decisions makes their function to “minimize the supervisory role of court.”

In order to streamline and hasten the dispensation of justice, the Chief Justice of Pakistan approved the National Judicial Policy formulated by the National Judicial Policy Making Committee. This included the prioritization of cases involving women, juveniles, rent dispute, stay orders, bail matters, small claims and minor offences as defined under the Small Claims and Minor Offences Courts Ordinance 2002. The power of deciding of such cases may be offered to all civil judges in all districts (Bukhari and Haq, 2017), which can help in reducing the backlog of cases and reduce the burden on the conventional legal system.

## Research Method

This study employed a combination of a quantitative and a qualitative approach for the evaluation of the DRCs’ performance and effectiveness. For this purpose, 9 districts were selected as model districts while looking at the area of coverage in terms of the province. Further districts were defined based on culture of districts and number of disputes resolved by councils in the region.

For conducting an appraisal of the current state of the DRCs, the SDPI team collected the secondary data undertaking the desk review and literature review. An extensive desk review was facilitated by the current secondary data sources available with government bodies, members of civil society and academia. For an in-depth insight the effectiveness of the district dispute resolution council, the team conducted face-to-face interviews with multiple stakeholders including the service providers as well as the recipients of the DRCs’ services. To conduct these interviews, a semi structured questionnaire was developed and used for gathering information on different aspects of dispute resolution councils and their compliance with ADR standards, national and provincial laws and Pakistan’s constitution. A total of 100 interviews in 09 selected districts were conducted, consisting of, 10 police officials, two police support staff, 36 DRC Members, 43 beneficiaries and nine readers. The team organized 18 FGDs - two each, with one being conducted with males and the other with females, in each of the nine districts visited. It is expected that collaboration between beneficiaries, service

providers, civil society organizations and other stakeholders shall lead to a more fruitful and constructive discourse on the subject. The FGDs were organized by the help of the UNDP and the focal persons consulted in the respective DRC. The discussion initiated in the FGDs was along the lines of the aforementioned questions.

**TABLE-1: Number of Respondents by type and Focus Group Discussions in nine Districts**

Types	Bannu	Buner	Chitral	D.I. Khan	Lower Dir	Upper Dir	Kohat	Shangla	Swat	Total
<b>KIIs</b>										
DIG/DPOs/Add. SP/SP/DSP <sup>1</sup>	1	1	2	0	1	2	1	1	1	10
Police Support Staff	0	0	0	0	1	1	0	0	0	2
DRC Members	2	2	5	4	6	9	3	7	1	36
Beneficiaries	12	4	5	6	8	4	3	6	2	43
Reader	1	1	1	1	1	1	1	1	1	9
<b>Total KIIs</b>										<b>100</b>
<b>FGDs</b>										
Male	1	1	1	1	1	1	1	1	1	9
Female	1	1	1	1	1	1	1	1	1	9
<b>Total FGDs</b>										<b>18</b>

The following research questions, designed separately for beneficiaries and service providers, served as the key guidelines for conducting a holistic evaluation in the study:

**Beneficiaries:** How effective are the councils in resolving disputes at the local level? What types of alternative resolution forums exist in your area/locality? Are you satisfied with the resolution of your dispute? Are the DRC members neutral and impartial to both parties? How trustworthy are the DRC members in guarding the intimate details of your case?

**Service Provider:** In your opinion, are the councils effective in resolving disputes? Have you ever referred any dispute to forum for alternate dispute resolution? What mechanisms have been put in place for the referral of cases to the DRCs and how can they be improved? To what extent do you think litigants are content with the resolution of their disputes? To what extent are the councils compliant with gender and human rights as well as national and provincial laws, the constitution and ADR standards? Are women adequately represented in the district’s DRC?

1 Regional Police Officer (DIG, Malakand Division), District Police Officers (DPOs) of Buner, Chitral, Dir Lower, Shangla, Additional Superintendent of Police (Add.SP) of Kohat, Superintendent of Police (SP-Investigation) Dir Upper and Deputy Superintendent of Police (DSP-Headquarters) Upper Dir.

## Data Analysis and Results

### *DRCs in KP: A Situation Analysis*

This section revolves around the visual and situational analysis of current performance of the Dispute Resolution Councils across the nine districts, comprising Kohat, Bannu, D.I. Khan, Buner, Lower Dir, Upper Dir, Shangla, Swat and Chitral for 2016 and 2017.

Dispute Resolution Councils (DRCs) were made part of the justice system through Khyber Pakhtunkhwa Police Act (2014). Currently they are functional in 24 districts across the province and settling civil disputes across the province. Objective of this study is to analyze the capacity development in nine districts of the province. Thus looking at the data for 2016 and 2017, number of cases received to police station increased.

Thus looking at the data as figures shown below, the number of cases received, compromised, referred to legal action and pending increased. Among these provinces as far as number of cases is concerned, in Kohat total number of cases received were 771 in comparison to 2016 where total of 428 cases were received. Whereas total number of cases which were compromised were recorded to be 392 out of 771 in 2017, in comparison to 374 in 2016. During this same period within Kohat significant increase was observed for the cases under process. In 2016 there were total of 43 cases under process whereas in 2017 there were total of 369 cases which are yet to be solved and are under process.

After that Bannu followed by Chitral were found to be the district where number of cases were highest. In Bannu, there were 441 cases received whereas in Chitral total of 403 cases were received during 2017. As can be noted from figure below during 2016, there were total of 115 cases received in Bannu which increased to 441 in 2017. Further it can be viewed that percentage of compromising of cases also improved. During 2016 in Bannu there were total of 74 cases compromised which increased to 290 during 2017. Similarly depending upon nature of disputes, it can also be viewed that number of cases referred to courts for legal action increased. There was total increase to 117 in 2017 in terms of cases compromised.

Whereas when it comes to Chitral in comparison to 2016 (79 received), as mentioned above, there was significant increase in number of cases received found. During 2016 in Chitral there were only 61 cases which were compromised whereas with the increase in number of cases received there was an increase in the number of cases compromised. In 2017 total of 382 cases compromised making it 79.08 percent of the total cases. There was minimal number of cases referred to legal action. There were only 20 cases referred in 2017 in comparison to 15 during 2016. There was only single case which remained in pending in comparison to 2016 where there were three cases. Further looking at the data, it can be observed that in Swat during 2017, there were total of 324 cases received followed by Buner 232.

In Swat, there was increase to 324 cases from 139 in terms of cases received. During this same period there were 219 cases compromised in comparison to 2016 where with low number of cases received there were only 94 cases compromised. The important factor to note for

Swat is that with the increase in number of cases there is increase in number of cases pending. During 2017 there were total of 76 cases which were not solved and continued to 2018.

Similarly looking at Buner total cases were 54 in 2016. In 2017 as discussed above number of cases received in Buner increased, there was also increase in cases compromised. Out of 232 cases received, there were 187 cases compromised in comparison to 2016, out of 54 there were 52 cases compromised. With this increase in number of cases there was increase minor increase in number of cases referred i.e. total of 44 cases were referred to the courts functional in district.

Further discussing the DRCs, in Lower Dir over the period there was minimal increase in cases received during 2017. In 2016, there were total of 124 cases received which increased to 128 in 2017. On the contrary there was decrease in number of cases solved. In 2016 there were 77 cases which were compromised which decreased to 54 during 2017. Important point here to be observed is that number of cases referred to legal action is also on a high. In 2016 there were total of 47 cases referred to courts whereas in 2017 there was minimal decline in the number of cases referred and total of 38 cases were referred. It was during the same process total of 36 cases were found open and are under process with no decision yet made.

In D.I. Khan there was significant increase in number of cases. There were total number of cases received reached to 119 in 2017 from 39 of 2016. Similarly looking at the number of cases compromised there was significant increase in the number and it remained in terms of percentage static. Out of 119 cases received, 117 were compromised in 2017. The compromised cases in 2016 were 100 percent in 2016. There was only one case referred to legal action and was left open this year.

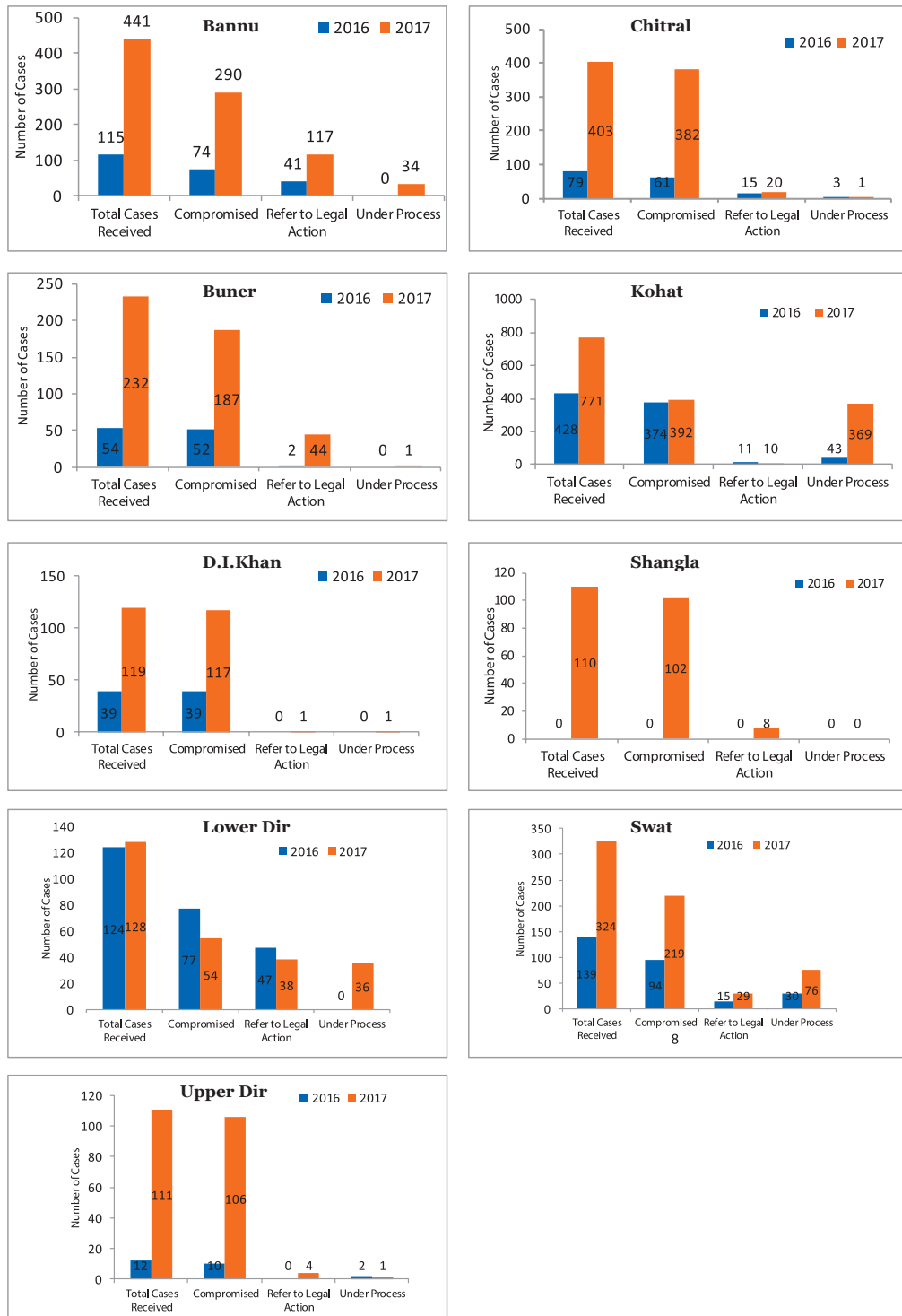
Similarly in Upper Dir, a significant increase in number of cases was observed. In 2016, only 12 cases were received whereas in 2017 the number increased to 111. Further with this increase there was an increase in number of cases compromised. During 2016 out of 12 cases, 10 cases were compromised whereas in 2017 there were 106 cases compromised. There were only four cases referred to legal action in 2017 and one remained under process during this period.

In comparison to eight districts mentioned, Shangla was important where significant increase in the data was observed. In 2016, there was no case received whereas the number increased to 110 in 2017. During this period out of total 110 cases, 102 were compromised whereas eight were referred to legal action.

## **Effectiveness of DRCs**

The data clearly demonstrates that an overwhelming majority of the beneficiaries (80%) viewed the DRCs as highly effective. In their answers, these respondents stated the effectiveness of these councils was rooted in the neutrality and impartiality of the DRC members in obtaining, gathering and examining the relevant evidence to a case by fully consulting both parties. The fact that both parties in a case could view the DRC as such an egalitarian

**FIGURE 1: Disputes Received, Compromised, Referred to Legal Action and Under Process in 9 Districts**

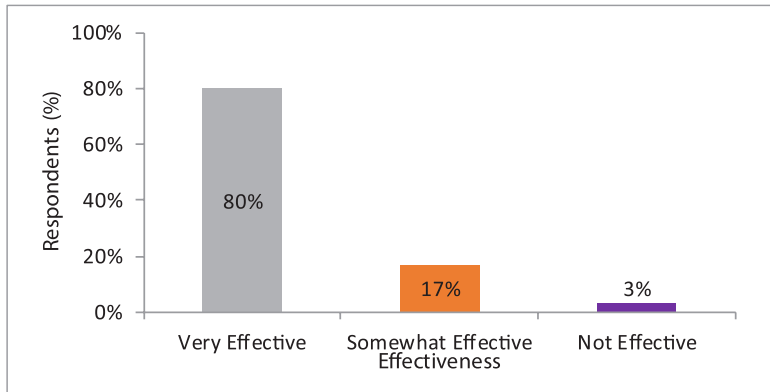




platform for the redressal of their grievances helped them in agreeing to the authority of the council in proposing an agreement which can be accepted by both in good faith.

Furthermore, other widely held opinions among our respondents were that they deemed the DRCs to be considerably more affordable, accessible and swifter alternative to the Jirgas and courts. Also, as opposed to the conventional justice system, it's implausible that the decisions of the DRC are influenced by ulterior motives.

**FIGURE 2: Effectiveness of DRCs**



Source: Author's Calculation

An additional 17 percent of the respondents were of the view that DRCs are somewhat effective and the remaining three percent of respondents stated that didn't consider the DRCs to be effective at all. The primary reasons one-fourth of all the beneficiaries in our KIIs and FGDs weren't upbeat the effectiveness of these councils, included, recurrent absence of the defendants; decisions being influenced by the defendants' socio-political stature and refusal of one party to comply with the DRCs' decisions.

### Affordability and Timeliness

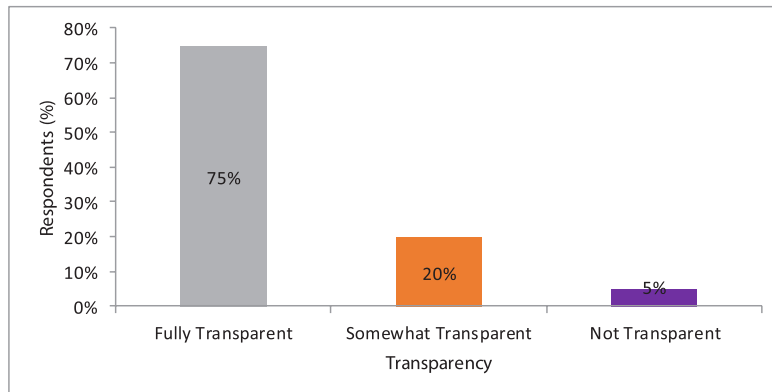
There is a substantial difference between the DRCs and the local courts when it comes to the cost incurred and time spent in the litigations. On average, a civil case in the courts takes about one to two years to be solved and the cost is around PKR 0.1 million. Conversely, in the DRCs, most disputes are resolved within a span of 3-4 months, and the litigants don't have to bear any expenses either, apart from the transportation costs. This gulf that exists between both these judicial systems in terms of their affordability and timeliness, has raised the likelihood of people consulting the councils to settle civil conflicts. In particular, the DRCs have proven to be a boon for the poor in all the nine districts visited, all of whom were unanimous in reporting their preference of DRCs over courts primarily because DRCs circumvented the expensive, protracted and technical litigation process in the courts.

## Accountability and Transparency

Upon being asked about the extent of accountability and transparency in the DRCs, 75 percent of the respondents thought that DRCs functioned in a fully transparent manner. This is primarily because the DRC members go to great lengths to ensure that the proceedings of the DRC are in full compliance to Pakistan's constitution and mindful of indigenous cultural norms and practices, without being swayed by a person's socio-economic standing. Additionally, several DRCs' members stated that to ensure transparency, if one party objects to a panel, then another panel is assigned to deal with their case.

For instance, a staff member of the DRC, who also had his case, regarding an inheritance issue with his brother, heard in the DRC, told us that it is made sure that members who share any relations with either of the two parties are not made part of the panel reviewing the case of those two parties so as to prevent the agreement from being decidedly biased in someone's favour.

**FIGURE 3: Transparency of DRCs**



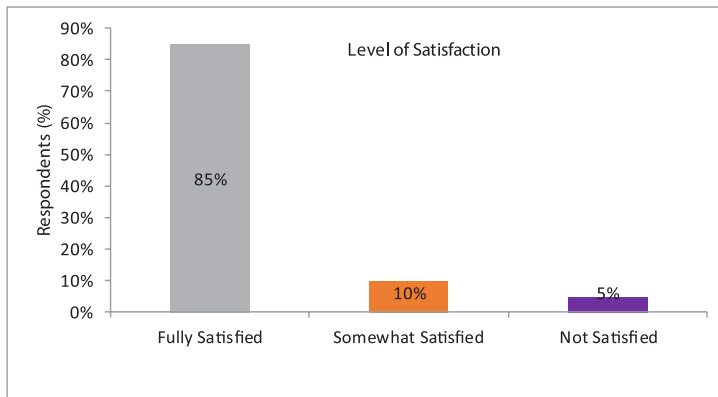
Source: Author's Calculation

On the contrary, 25 percent of the respondents were of the view that in cases where there was room for political and tribal influence, the transparency of the DRCs may be slightly compromised, whereas an additional 5% stated that there was no transparency in the DRCs. Our key informants told us that the DRC members often didn't fully investigate and examine the details of a case before striking a compromise between both the parties.

## Satisfaction Level

According to the survey, 85 percent of all the beneficiaries surveyed were extremely satisfied with the outcome of their case. The stated contentment of the respondents was because of the fact that since the DRC members were natives of the respective districts, they were always respectful of the local traditions while striking an agreement. What resonated across the responses of the various responses was the fact that as both parties felt they were fully consulted with in an impartial manner during the proceedings, they were happy with the timely and equitable outcome of the case.

**FIGURE 4: Level of Satisfactions of Beneficiaries**



Source: Author's Calculation

On the other hand, a small but significant share of the beneficiaries, 10%, stated they were partially satisfied with the DRC's decisions. While those said this did acknowledge and appreciate the timely and inexpensive resolution of their cases, they still didn't think that the outcome of the case was particularly fair for them. Especially in cases involving conflicts over money or property, both parties are convinced and persuaded to share the losses as well to maintain a degree of equitability in the outcome of the case.

In a certain dispute involving two brothers, the plaintiff, who was the eldest brother had given his younger brother, the defendant, his house on a contract of five years. When this time limit expired, the younger brother refused to vacate the house and demanded monetary compensation to do so. In the end, according to the plaintiff, due to the DRC's decision, I had to pay him a portion of the monetary compensation he demanded, despite not being liable to do so, as I was willing to compromise because he was my brother.

Moreover, 5% of the respondents also stated that they were extremely dissatisfied with the way their cases and complaints had been handled by the DRC members. In particular, a plaintiff who despite having signed a Mukhtarnama or agreement with the defendant regarding a land dispute, was very unhappy with the resolution of his case. He considered the compromise unfair because I think the decision of my case was influenced by the politics prevalent here like it is in the courts, since, the DRC members are inclined towards the powerful. As this was the case in my dispute, the defendant often chose not to appear before the council and the members didn't investigate the details properly which compromised the impartiality of their decision.

Another person who had his case, regarding being sold a smuggled car by deception, referred to the DRC was forced to make a settlement out of the DRC because of a delay of over one year. This person, the plaintiff attributed the delay to the members did nothing to make the defendant, who was continuously absent in all the hearings of the DRC. Therefore, I reached out to him on my own and we mutually decided to solve our dispute outside the purview of the DRC.

## Self-Respect and Honor

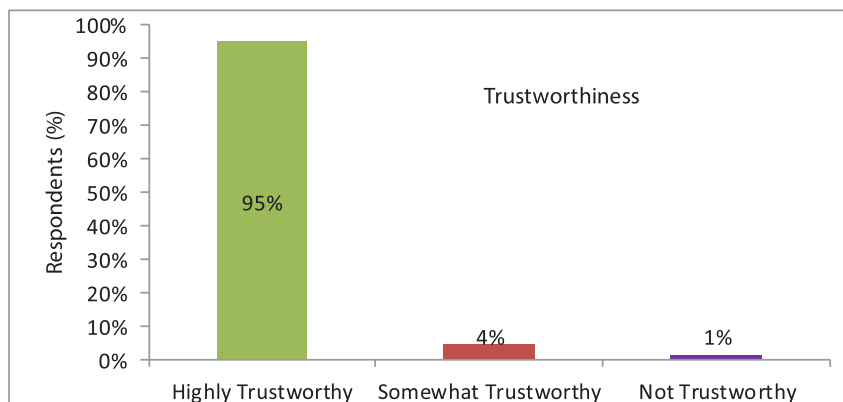
Respecting a person’s self-esteem and honor is an integral part of the resolution of any disputes, especially those which arise in tribal settings. In particular, in cases of familial or marital strife, litigants want such matters to be heard and resolved in relatively private setting, without the intervention and meddling of those in the audience as this could tarnish the self-esteem of either party. Even in cases, pertaining to pecuniary issues and land conflicts, people can feel slighted in the presence of others in the vicinity of the hearing.

As one of the parties to a divorce case informed us, such respect which could also be extended through other ways, is often absent. For instance, they told us that: “Despite traversing a large distance to come to the DRC and being on time, we were told to wait for hours and forced to sit outside. There should at least be a waiting room for us to wait in and some refreshments offered to us before our case is heard.”

## Trustworthiness

Most DRC beneficiaries feel that the constituent of the councils are reliable and trustworthy people when it comes to divulging intimate details about their personal lives, in stark contrast to their trust of other judicial mechanisms. Additionally, they also place their faith in them to lead them to a relatively just outcome. This is illustrated by that that 95 percent of the respondents stated that they considered the councils to be highly trustworthy. Only a minuscule portion of these respondents didn’t consider the DRCs to be partially (4%) or fully (1%) reliable.

**FIGURE 5: Level of Trust of Beneficiaries**



Source: Author’s Calculation

The reasons for the overwhelming trust of people on the DRCs were because DRC members were well-known, reputable and highly competent individuals. The litigants directly interacted with the members without the intermediation of lawyers. The members, for their part were also highly cognizant of the local issues in their particular districts and also took an active

interest in the particular facets of a case. Rather than casting the terms of any case in favor of one party, the members were even-handed and unprejudiced in dealing with all the cases.

## Quality

The beneficiaries were in near consensus regarding the quality of services provided by the DRCs, with 90 % rating them as excellent and an additional 7 % also rating them to be good. Respondents in most of the DRCs were of the views that were provided with a sitting space and basic utilities like sanitation facilities, something they would not be afforded in the local courts. As, according to one highly educated beneficiary, formerly embroiled in an intense property and monetary dispute with his maternal uncle: “The quality of services rendered by the DRC members can never quite be matched by the quality of services in the courts. The DRCs stand out as an accessible platform, convenient and inexpensive system for resolving disputes swiftly and consensually, all of which would be impossible for the great majority of cases handled in the courts.”

**Figure 6: Quality of Services Provided**



Source: Author's Calculation

## Conclusion

The roles and prominence of the Dispute Resolution Councils have immensely expanded in the brief time frame that these councils have existed in the province of Khyber Pakhtunkhwa. Across all the districts, under consideration in this study, there was increasing confidence in the DRCs as an effective justice mechanism as opposed to other conventional and contemporaneous justice systems in the country. This confidence was evident not only through the responses of the indigenous community members but was also well-documented in the increasing numbers of cases being reported to and successfully settled by these bodies.

The delays and non-resolution of disputes led to deaths, deprivation, loss of billions to the economy, closure of businesses and severe negative implications for the society, especially conflict prone areas. Thus, the establishment and creation of the dispute resolution councils not only bodes well for the peace and security of the region but also for the cohesion of our nation.

Thus, in order to make these systems work to their fullest potential and that too without compromising justice, they need to be mutually worked upon so that any gaps between informal and formal understanding can be reduced. In this context, certain broader guidelines for these informal mechanisms be prepared and shared with the communities. ADR needs to be popularized as a potent means of accessing justice, accessible to the masses. The incoming provincial and national governments in this year should continue the work of DRCs in KP. While the KP government, in particular, should endeavor to enhance the institutional and technical capacity of these councils so that they are able to perform their functions of providing attainable and equitable justice, more smoothly.

## Conflict of Interest

No conflict of interest existed between authors while preparing this article

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