

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
LOCAL GOVERNMENT, ELECTIONS AND
RURAL DEVELOPMENT DEPARTMENT

NOTIFICATION

Peshawar, dated the 01.2018.

No. _____.-The following draft rules, which the Government of the Khyber Pakhtunkhwa, in exercise of the powers conferred by section 112 of the Khyber Pakhtunkhwa Local Government Act, 2013 (Khyber Pakhtunkhwa Act No. XXVIII of 2013), read with clause (b) of sub-section (1) of section 29 and Seventh Schedule thereof, is pleased to make the Khyber Pakhtunkhwa Amicable Settlement of Disputes Rules, 2018, is hereby published for information of persons likely to be affected thereby, and notice is hereby given that the proposed rules together with any objection and suggestion with respect thereto, which may be received by Secretary to Government, Local Government, Elections and Rural Development Department, within a period of 15 days from the date of publication of this Notification, shall be taken into consideration after expiry of the said period.

*Asst. Secy. Govt. of Khyber Pakhtunkhwa
Law Deptt.*

**THE KHYBER PAKHTUNKHWA FORUM FOR AMICABLE SETTLEMENT
OF DISPUTES (CONSTITUTION AND FUNCTIONS RULES, 2018.**

PART -I
General

1. Short title and commencement.---(1) These rules may be called the Khyber Pakhtunkhwa Amicable Settlement of Disputes Rules, 2018.

(2) These rules shall come into force at once.

2. Definitions.---In these rules, unless there is anything repugnant in the subject or context,-

- (a) "Act" means the Khyber Pakhtunkhwa Local Government Act, 2013 (Khyber Pakhtunkhwa Act No. XXVII of 2013);
- (b) "amicable settlement of dispute" means amicable settlement of dispute through conciliation, mediation or other recognized mode of alternative dispute resolution;
- (c) "Appendix" means the Appendix, appended to these rules;
- (d) "conciliator" means a conciliator, nominated for amicable settlement of disputes under rule 3;
- (e) "convener" means the Nazim, who shall chair the proceedings of the panel for amicable settlement of disputes;



- (f) “dispute” means a quarrel, difference or disagreement of parties on the issues, as specified in **Appendix-I**;
- (g) “forum” means a forum of conciliators, constituted for amicable settlement of disputes, under rule 3 of these rules;
- (h) “Nazim” means the Nazim of the village council or neighborhood council, as the case may be;
- (i) “panel” means a panel of conciliators, nominated from the forum, for amicable settlement of disputes, under these rules;
- (j) “party” means the party to dispute, referred to the panel for amicable settle of disputes;
- (k) “Secretary” means the Secretary of the village council or neighborhood council, as the case may be; and
- (i) “village council or neighbourhood council” means a village council or neighbourhood council, as specified under sections 26 and 27 of the Act;

(2) Words and expressions, used but not defined in these rules, shall have the same meanings as are assigned to them in the Act.

PART- II **Amicable Settlement of Disputes**

3. Constitution of the forum.---(1) Each village council or neighbourhood council, as the case may be, shall constitute a forum of conciliators for amicable settlement of disputes. The names of conciliators shall be included in the forum after inviting recommendations from the residents of the concerned village council or neighbourhood council, as the case may be, through advertisements or other means of communication.

(2) No person shall be included in the forum as conciliator, unless he-

- (a) is above the age of thirty-five years;
- (b) is not a previous convict;
- (c) has proven integrity and impartiality;
- (d) is a retired judge, revenue officer or police officer; and
- (e) is a doctor, an engineer, academician, teacher, social worker or a businessman, and belongs to a respectable family, having background in agriculture and holding sufficient landed property, known to be experienced and respected in the field of amicable settlement of disputes resolution.

(3) The names of the conciliators, recommended for each village council or neighbourhood council, as the case may be, shall be submitted to the concerned office of Nazim for approval by the respective village council or neighbourhood council, as the case may be, through a majority decision.

(4) The Nazim, with the approval of the village council or neighbourhood council, as the case may be, shall issue a formal notification of the forum in the manner as specified in the **Appendix-II**.

(5) A forum for each village council or neighbourhood council, as the case may be, shall consist of twelve (12) conciliators of whom three (03) shall be women.

(6) The tenure of conciliators shall be for a period of two (02) years from the date of their nomination, unless terminated or resigned earlier, as the case may be:

Provided that in case of dissolution or completion of tenure of the village council or neighbourhood council, as the case may be, the tenure of the conciliators shall stand terminated automatically.

(7) The village council or neighbourhood council, as the case may be, shall, from amongst the forum, constitute a panel, consisting of three conciliators, under the chairmanship of the Nazim, as per **Appendix-III**, according to the nature of dispute:

Provided that in case a dispute relates to a woman, one conciliator shall be female.

(8) The conciliators, before taking the responsibility, shall take oath, which shall be administered by the Nazim, in the manner as specified in the **Appendix-IV**.

(9) In case of vacancy, in the forum, due to resignation, termination, death of a conciliator or any other reason, such vacancy shall be filled for the remaining period, within two weeks after occurrence thereof, through fresh expression of interest from the public by fulfilling the criteria as specified in sub-rule (2) above.

(10) A conciliator may resign, at any time, in writing address to the village council or neighbourhood council, as the case may be, from the membership of the forum:

Provided that he shall continue to work till his resignation is accepted by the concerned village council or neighbourhood council, as the case may be.

(11) Where a conciliator displays or is accused for partiality or malpractice, an aggrieved party may file a complaint to the village council or neighbourhood council in this respect. If on scrutiny of such complaint the village council or neighbourhood council, as the case may be, is satisfied that a prima facie case is made out, it shall summon the aggrieved party and serve notice to the such conciliator, listing the grounds, rendering him unsuitable for performing his functions upon receipt and consideration of the reply from such conciliator and after hearing and recording the grounds, the village council or neighbourhood council, as the case may be, may disqualify such conciliator.

(12) These rules alongwith the forum of conciliators shall be translated in urdu as well as in local languages and displayed at prominent public places in the village council or neighbourhood council, as the case may be.

(13) The membership of the conciliator shall be liable to be cancelled by the village council or neighbourhood council, as the case may be, through a majority decision, if any of the condition of sub-rule (2) is violated.

Asst. Legal Officer
Govt. of Karnataka
1st Dept.

PART -III
**REFERRAL OF DISPUTE FOR
AMICABLE SETTLEMENT**

4. Dispute brought by the parties.---(1) All disputes, before filing of the case in a Court of law or lodging of First Information Report in the police station concerned, may be brought to the office of Nazim by the parties, either verbally or through a written application as specified in **Appendix-V**:

Provided that where the request is made verbally by the party, the Secretary shall reduce the request into writing in the shape of application form, as specified in **Appendix-V**.

(2) The Secretary shall issue a receipt, maintained in the register, as specified in **Appendix-VI**, showing the date of receipt of the application and the names and addresses of the parties and the nature of dispute. The register, so mentioned, shall be open for inspection by the parties at office hours.

(3) All such requests and applications, received in the office of Nazim, the Secretary shall place it before the Nazim, for further processing under these rules.

(4) The Nazim, after receiving a case from the Secretary, shall refer the matter to village council or neighbourhood council, as the case may be, for proposing the attendance of the party, or parties, as the case may be, against whom a complaint has been received:

Provided that no application, involving matrimonial dispute or domestic violence, shall be processed, except upon a complaint, made by a husband or a wife or elders of their family, as the case may be.

(5) After ensuring the attendance of such party or parties, the Nazim, after prior approval from the village council or neighbourhood council, as the case may be, shall refer the dispute to a panel for its amicable settlement.

5. Procedure of settling disputes brought by the parties.---(1) The panel may have recourse to the process of amicable settlement of dispute, subject to agreement of parties or dispute resolution as specified in **Appendix-VII**.

(2) In consultation with the parties, the panel may decide the dispute through amicable settlement under these rules. The dispute shall, preferably be decided within a reasonable time from the date of commencement of the proceedings, but such reasonable time shall not exceed one month.

(3) A dispute, referred to the panel, shall be facilitated by the conciliators, nominated for such panel, except under un-avoidable and compelling circumstances.

(4) If any conciliator is approached or influenced by any party, he shall immediately withdraw himself from the panel by informing the village council or neighborhood council, as the case may be, whose membership shall be replaced by such village council or neighbourhood council, as the case may be, with such other impartial conciliator from the forum.

(5) The proceedings shall be held in the office of Nazim or any other place within the village council or neighbourhood council, as the case may be, as the parties mutually agree. Such village council or council or neighbourhood council, as the case may be, shall provide suitable and secure environment and venue for holding of conciliatory proceedings, which shall be accessible to the parties.

(6) When a dispute, involves parties from two different village council or neighbourhood council, as the case may be, before which the matter has been brought, such village council or neighbourhood council, as the case may be, in the first instance, may request the Nazim of the other village council or neighborhood council, as the case may be, to designate one or more of its conciliator to join the proceedings of amicable settlement of dispute, under these rules, in that particular instance:

Provided that where one of the parties is a female, it shall be conducted in the village council or neighbourhood council in which she ordinarily resides.

(7) In resolving the dispute, the panel shall proceed in the following manner:

- (a) the convener shall, in consultation with the parties to the dispute, subject to the time limit, as specified, in sub-rule (2), fix the time schedule, dates as well as the venue for the meeting of the panel in the case;
- (b) the meetings shall be arranged separately or jointly with the parties to the dispute, giving consideration to the facts of the dispute;
- (c) the parties to the dispute shall be present personally, unless it is not practicable or possible for bona fide reasons, in which case both or any of the parties may be represented through their duly authorized representative, except a lawyer, who are fully conversant with the facts of the dispute; and
- (d) the parties may present their contentions and views verbally on oath or in writing, supported by affidavit, and may furnish documentary material to substantiate their claim and assertions;

(8) If deems appropriate for the amicable settlement of the dispute, the panel may conduct site visit or inspection for fact finding in order to reach a final and just decision.

(9) The panel may seek reasonable assistance from individuals or institutions, as it deems appropriate for the amicable settlement of the dispute in hand and may obtain the services of experts with regard to any technical aspects of the dispute.

(10) During the proceedings of the amicable settlement of dispute, the panel shall make every reasonable effort for ensuring informal, cost free and simplified resolution of disputes between the parties.

(11) The panel shall be guided by the principles of fairness, justice, impartiality and equality, giving due consideration to the rights and obligations of the parties to the dispute as well as to the specific circumstances of the dispute in hand, for its amicable settlement.

(12) Without prejudice to the voluntary nature of the proceedings for amicable settlement of disputes, the parties to the dispute shall be asked to enter and participate in the proceedings in good faith and with an explicit intention of settling the dispute amicably.


Assistant
Govt. of Punjab
Law

(13) Where the parties agree, in writing, to be bound by the settlement facilitated by the panel, the convener shall announce the settlement agreement at the end of the proceedings in the manner as specified in **Appendix-VIII**, which shall be signed by the convener and conciliators. The signatures and thumb impressions of the parties to the dispute shall also be obtained thereon, and attested copies of the agreement shall be provided to both the parties.

6. Disputes referred by the Court.---A Court of competent jurisdiction, may, if deems necessary, refer to the village council or neighbourhood council, as the case may be, a dispute, by incurring the powers conferred to it under section 89-A of the Code of Civil Procedure, 1908 (V of 1908).

7. Procedure of settlement of dispute referred by Court.---(1) In cases where a matter has been referred to the village council or neighborhood council, as the case may be, for amicable settlement by a Court of competent jurisdiction, under section 89-A of the Civil Procedure Code, 1908 (V of 1908) or any other relevant law, for the time being in force, by mutual consent of the parties, the final report of the proceeding or the settlement, if arrived at, shall be forwarded to that Court of competent jurisdiction, under the signatures of the convener, conciliator and parties. In such cases the final settlement between the parties shall be subject to the approval of the Court, which had referred the matter for the amicable settlement of the panel, in the first instance. In case the settlement is not reached before the stipulated time as specified in sub-rule (2) of rule 5 of these rules, the report to this effect shall be sent to that Court under the signatures of the convener. In such event, the convener may request an extension in the time period from such Court, referring the matter, for making further effort for the amicable settlement of the dispute.

(2) Where no agreement is arrived at between the parties or where the panel is of the view that no settlement is possible or where it is felt that it would be proper in the interest of justice to proceed judicially, in the matter, the panel shall report the same to the referring Court in writing, with information to the parties.

(3) The panel shall disclose the factual information, received from one of the parties to the other party for enabling it to respond and comment on it in an appropriate manner. However, in case factual information from one of the parties is provided to the conciliators, subject to confidentiality, such information shall not be passed on to the other party. In such circumstances, the information, withheld from the other party, shall not be considered by the panel so as to jeopardize the interest of other party.

8. Role of the conciliators and parties.---(1) The conciliators shall make every reasonable effort in assisting the parties in arriving at an amicable settlement of the dispute. They shall also attempt to ensure proper communication of the views of the parties to each other, assist them in identifying issues, minimize misunderstandings, explore areas of compromise and generate options in an attempt to resolve the dispute and convince the parties, about the long term benefits of a just settlement of the dispute. The conciliators shall, however, not impose, coerce or try to dictate terms for a specific resolution of the dispute. It shall be the responsibility of the conciliators to explain their facilitating role in the dispute to all the parties to the dispute.

(2) The meetings and contents of the conciliation proceedings of the panel shall be confidential and none of the conciliators shall disclose them to a third party, unless expressly permitted by the parties.


Assistant Director
Govt. of Karnataka
Law Department

(3) The parties shall also maintain the confidentiality of the Conciliation proceedings of the panel and shall not divulge or use the whole or any part thereof as evidence or material against the other party in the same or a related dispute at any other forum.

(4) The privacy of the conciliation proceedings of the panel shall be maintained and presence of any other person, except the parties to the dispute, shall be subject to the mutual consent to the parties to the dispute and who shall also be bound by confidentiality of the proceedings.

(5) If, during the conciliation proceedings before the panel, any party to the dispute initiates any other process of resolution of the dispute, such party shall immediately disclose the fact to the panel and to the other party.

9. Code of conduct and ethics for conciliators.---The conciliators shall make every effort to abide by the code of conduct as specified in **Appendix –IX**, which shall serve as recommended guidelines in facilitating amicable settlement of disputes.

10. Voluntary services.---(1) The panel or any of the relevant staff of the village council or neighbourhood council, as the case may be, shall not charge anything, in cash or kind, in lieu of the services, rendered in connection with the conciliation proceedings, conducted under these rules.

(2) The panel shall make all reasonable efforts to meet the genuine requirements for the smooth functioning of the panel. The panel shall work on voluntary basis for their respective communities for social cohesion and conflict free society.

11. Record.---(1) The Secretary, under overall supervision and guidance of the convener, shall maintain record of the disputes, referred to or brought before the panel, along with the names, addresses of the parties, subject of dispute, original applications and referrals, if applicable, as well as copies of the final reports and settlement.

(2) The Secretary, under the supervision of the convener, shall prepare a monthly report, giving the list of information, covering the items, mentioned under sub-rule (1) above. If required, the copies of such reports shall also be sent to the relevant offices for information.

12. Immunity.---No conciliator shall be held liable for anything done in good faith, or omitted from being done, during the proceedings, nor shall he be summoned by any party to appear in a Court of law to testify with respect to the action taken or information received by him during the course of such proceedings.

13. Training.---The Local Government, Elections and Rural Development Department may, from time to time, arrange trainings, workshops and group discussions to sensitize and educate the elected representatives, officials and administration of village council or neighbourhood council, as the case may be, and to enhance their capacity and knowledge in alternative dispute resolution and related fields the following subject:

- (a) alternative dispute resolution and conciliation techniques for resolution of disputes;
- (b) Code of Conduct and Ethics;
- (c) Local Government Laws and Rules;

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- (d) Land, Property and Revenue Laws, including laws on inheritance;
- (e) family laws;
- (f) human right and child rights;
- (g) basics of Court Procedure (Civil and Criminal);
- (h) any other subject deemed appropriate;

Asstt. Secretary
Govt. of Khyber Pakhtunkhwa

14. Repeal and savings.---(1) The Khyber Pakhtunkhwa Musalihati Jirga Rules, 2006, are hereby repealed.

(2) Notwithstanding the repeal of the said rules, any notification or instructions issued, orders made or disputes settled under the repealed rules shall continue to remain in force until altered, amended or withdrawn.

**Secretary
Local Government Elections and
Rural Development Department.**

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Appendix-I
[see rule 2(e)]

Disputes which may be brought to the panel of Conciliators, for amicable settlement.

1. Contractual disputes.
2. Commercial disputes.
3. Partnership disputes.
4. Money disputes such as bouncing of cheques (pre-F.I.R).
5. Family disputes excluding disputes relating to physical abuse.
6. Disputes relating to land and property.
7. Disputes relating to inheritance.
8. Compoundable offences or any other dispute capable of being amicably settlement.


Asstt. Legal Officer
Govt. of Karnataka
Law Department

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NOTIFICATION

Asstt. Legal Draftt
Govt. of Karnataka
Law Department

<u>Name of member</u>	<u>S/D/W of</u>	<u>Address</u>
1. _____ _____	_____ _____	_____ _____
2. _____ _____	_____ _____	_____ _____
3. _____ _____	_____ _____	_____ _____

Signature of Nazim

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APPENDIX-III

[see rule 3(7)]

**NOMINATION OF MEMBERS FOR THE PANEL
FOR THE AMICABLE SETTLEMENT OF DISPUTE**

I, _____, Convener of the
forum for amicable settlement of disputes hereby appoint the following
members as a panel for amicable settlement of disputes for facilitating parties
to the dispute, referred for amicable settlement:

- 1.
- 2.
- 3.

Convener:
Forum for Amicable Settlement of Disputes
Name and No. of Village Council or Neighbourhood Council:

Asstt. Legal Officer
Govt. of Karnataka
Law Department

APPENDIX-IV
[see rule 3(8)]

Oath of Office

I, _____, selected as member of the forum of Conciliators for Amicable Settlement of Disputes of village Council or neighbourhood council _____ do hereby solemnly swear (affirm in case of non-muslims)-

Asstt. Law Officer
Govt. of Khyber Pakhtunkhwa
Law Department

- That I shall bear true faith and allegiance to Pakistan and strengthen its ideology, integrity, solidarity and prosperity through discharge of my duties and perform my functions in accordance with Section 112 (1) read with 29(b) of the Khyber Pakhtunkhwa Local Government Act-2013, and Forum for Amicable Settlement of Disputes (Constitution & Functioning) Rules 2015, and other relevant Law, Rules, Bye-laws and regulation honestly, efficaciously and efficiently to the best of my ability.
- That I shall act in accordance with law and rules, and that as a member of Panel of Conciliators / Forum for Amicable Settlement of Disputes shall ensure that disputes that are brought to Forum for Amicable Settlement of Disputes are resolved amicably, through conciliation and all functions within my scope are carried out lawfully, diligently and consistent with the objectives of the Forum for Amicable Settlement of Disputes.
- That I shall always work in the interest of the people.
- That I shall promote access to justice, and to the best of my ability, prevent misuse of power, ensure equality and promote the involvement of oppressed persons, particularly women in securing their own rights.
- That I shall coordinate with the village or neighbourhood council in discharge of my functions.
- That in all circumstances I shall do right to all people according to law, without fear or favour, ill will, or discrimination.
- That I shall not directly or indirectly communicate or reveal to any person any matter which shall become known to me in my capacity as Conciliator, except as may be required for the due discharge of my duties.

Signature of Declarant

Counter Signed

Presiding Officer

Seal of presiding officer

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APPENDIX-V

[see rule 4(1)]

**APPLICATION TO VILLAGE COUNCIL OR NEIGHBOURHOOD COUNCIL
FOR AMICABLE SETTLEMENT OF DISPUTES**

I _____ S/o _____ and I _____
S/o _____ R/o _____ have a dispute which briefly is
regarding the following subject matter:-

Asstt. Legal Draftsman
Govt. of Karnataka
Law Department

I/we have not been able to resolve this dispute through my/our own efforts thereof I/We seek the guidance of the forum for amicable settlement of disputes for resolving this dispute. I/we agree that we shall disclose all the requisite information to the forum for amicable settlement of dispute for the complete understanding of the dispute by it and that we will abide by the forum for amicable settlement of disputes (Constitution and Functions) Rules, 2018 and such other rules as may be agreed to at the amicable settlement of disputes meetings.

- | | |
|---------------------|---------------------|
| 1. Applicant Name: | 2. Applicant Name: |
| Applicant CNIC No.: | Applicant CNIC No.: |
| Address: | Address: |
| Date: | Date: |
| Diary No.: | Diary No.: |

Signature by receiving

Stamp

Date

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APPENDIX-VI

[see rule 4(2)]

Register to be maintained by the Forum for Amicable Settlement of Disputes

Left page of Register for Entering Applications to the Forum for Amicable Settlement of Disputes

Application No. & Date.	Name/ Address of Applicant.	Name/ Address of Opposite Party.	Brief Title and Description of the case.	Entered through (person filing form) Signature of Applicant.	Signature of the Opposite Party.

Right page of Register for Entering Settlement of the Forum for Amicable Settlement of Disputes

S. No.	Date of Settlement.	Name/ Address of Applicant.	Name/Address of Opposite party.	Number of sittings.	Brief Description of Settlement.	Signature Of Conciliation Committee Member and Parties.

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APPENDIX-VII

[see rule 5(1)]

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into at _____ in _____ Village/
Neighbourhood Council No. between.s/or/o..... and
. s/o.....r/o.....

WHEREAS a dispute arose between us and we agreed to resolve the dispute
through the efforts of the Forum for Amicable Settlement of Disputes of (name
and No.) Village / Neighbourhood Council on (date)

AND WHEREAS the dispute was settlement has been reached between us on
the terms and condition set out below:-

WE THE PARTIES hereby agree:-

- a) To abide by the terms and condition of final settlement set out below,
reached through our own volition and the efforts of the Forum for
Amicable Settlement of Disputes;
- b) To abide by all such matters as have been resolved in terms of the
Agreement to refer to settlement signed on;
- c) And to implement and comply with the terms of this final settlement fully
in letter and spirit and to report compliance to the Convener Forum for
Amicable Settlement of Disputes within 30 days of the signing of this
final settlement agreement.

IN WITNESS whereof we have placed our signatures and thumb impressions
on this final settlement agreement in the presence of Convener and Members
of Forum for Amicable Settlement of Disputes of:

1. Name of Party

Signature:

CNIC No.:

Address:

2.

Name of Party:

Signature:

CNIC No.:

Address:

Convener Forum for Amicable Settlement of Disputes

Member:

Member:

Member:

Seal of Forum for Amicable Settlement of Disputes and date

Asstt. Convener
Govt. of Karnataka
Law Department

APPENDIX –VIII

[see rule 5(13)]

**AGREEMENT FOR SETTLEMENT OF DISPUTE THROUGH PANEL
FOR AMICABLE SETTLEMENT OF DISPUTE**

THIS AGREEMENT is made and entered into at between of _____

On this day _____ and _____

WHEREAS a dispute has arisen between us and we desire that the Forum for Amicable Settlement of Dispute of Village / Neighbourhood Council No. _____ where we reside to resolve the disputes, we the parties to the dispute agree as follow:

1. To accept and abide by the forum for Amicable Settlement of Disputes (Constitution and Functioning) Rules 2017 and such other rules as may be agreed to at the forum for amicable settlement of disputes meetings, all of which shall be deemed to be part of this Agreement.
2. To abide, in particular, by the following provision of the aforementioned rules:
 - (a) to maintain complete confidentiality at all times in respect of all matters coming to our knowledge during the conciliation process from any source whatsoever;
 - (b) not to compel any conciliator to divulge such matters to any authority whatsoever, at any time;
 - (c) to maintain, at all timed confidentiality in respect of views expressed, of proposals, offers or suggestions made rejected or agreed to, by the other party with regard to a possible settlement or of admissions made by another party, at any time during the meetings and not reveal such information in litigation, arbitration or other dispute resolution process;
 - (d) to disclose fully and honestly to each other and to the conciliators, all information which is relevant and which will aid the parties to reach a settlement and is appropriate to the conciliation process;
 - (e) to disclose to the forum and to each other forthwith if any steps are taken to initiate any other dispute resolution process during the pendency of the conciliation process; and
 - (f) that the forum and the conciliators shall not be held liable in an manner, whatsoever, for any act or omission in connection with the conciliation
3. to abide by the interpretation of any rules relating to the dispute resolution which may be given by the conciliators and of any other rules which may be given by the forum.
4. To abide by any settlement that may be reached at the conclusion of the dispute resolution process and to implement it faithfully in letter and spirit.


Asstt. Lao D. P. P. P.
Govt. of Khammoua
Lao D. P. P. P.

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IN WITNESS of this Agreement we have placed out signatures and thumbs impression atonin presence of witnesses of this day of

For and on behalf of
the First Party.

For and on behalf of
the Second Party.

Signature :

Signature :

Name :

Name :

Designation

: Designation

:

WITNESSES:

WITNESSES:

1. _____

1. _____

2. _____

2. _____

Asstt. Legal Officer
Govt. of Karnataka
Law Department

APPENDIX-IX

[(see rule 9)]

CODE OF CONDUCT AND ETHICS

The Conciliators shall follow and observe these principles strictly and with due diligence.

a. Ethics Framework for Conciliators – underlying principles

i. Duty, Selflessness and Service to the Community:

Duty and selfless service to the community is a laudable practice, sanctioned and preferred in Pakhtun and Islamic traditions. There is a great history and tradition in Khyber Pakhtunkhwa of dispute resolution – so that individuals, families and the communities are reconciled so that all may live together peaceably. The Conciliator must not charge any fees for his/her services. Any “bond” taken during conciliation must be returned as agreed once the dispute is resolved – or when parties have agreed to take their dispute elsewhere. Conciliators should make decisions and settlements solely for the benefit of the disputants and the community at large. They should not conduct conciliations for financial or material gain for themselves, their families, associates or friends. Conciliators must not use their position for any political advancement.

ii. Honesty and Integrity:

Conciliators must not place themselves under any financial or other obligation to persons or organizations that might influence them in performing their conciliation duties. Conciliators must declare any current or potential conflicts of interest. Conciliators shall disclose to all parties any ties, association, or potential biases they may have with any of the disputants. This includes acknowledgement of any prior relationship withdraw – this applies at the beginning and during the process.

iii. Objectivity, Impartiality and a Commitment to Equal Rights:

Conciliators must remain objective, impartial, just, fair and conciliatory throughout the process. They must not allow themselves to be influenced by external factors or undue pressure in the performance of the mediation. Conciliators should share with the parties the approach he or she will be following in resolution of the disputes.

Conciliators will recognize that certain groups or individuals are treated differently by society. This may be on the grounds of age, gender, race, sect, ethnicity, marital status, disability, social and economic status, sexual orientation, religious belief or other personal traits. Conciliators must not discriminate against, or treat these individuals or groups differently or in a less favourable way. All parties to a dispute should enjoy the same rights to a fair conciliation process. Conciliators should be aware of how disputants might be feeling, be empathetic, and think from their perspective – especially so, for weaker disputants.

iv. Confidentiality of Conciliation Services:

Conciliation proceedings and all information obtained from and about the disputants and other participants through the conciliation process shall be treated as confidential – unless there is express permission from the parties to share such information for research and data reporting purposes only. Personal details such as names, contact details, addresses, family details or other personal information must not be disclosed. The Conciliator and parties should also appreciate that there may be a situation where parties appear in court and in such a case, confidentiality should be respected. Any settlement agreement shall be presented in court for evidence purposes only and the Conciliator should be exempted from becoming a party to the case as a witness, unless public policy, law, rules or regulation requires Conciliators to share any information pertaining to the terms and conditions of the settlement.

v. Leadership:

Conciliators often enjoy the status of community leaders. The fact that disputants come to Conciliators is indicative of the high esteem in which Conciliators are regarded in the community. They should protect, support and promote the principles contained in this Code by demonstrating the highest levels of integrity and impartiality, thus setting an example for the community as a whole. Conciliators shall also strive to learn from other professionals in the field and share their experience and knowledge with others.

vi. Commitment to legislative framework:

Conciliators undertake to conciliate, conduct and reach settlements in accordance with the Constitutional and legislative frameworks of Pakistan and Khyber Pakhtunkhwa. Mediators will pay particular attention to the Fundamental Rights Chapter of the Constitution of Pakistan in Part II of Chapter 1 and must undertake to promote and protect such rights at all times, particularly those relating to women, children, ethnic or religious minorities and other marginalized groups. Women, children and persons of disability, where relevant, have right to be consulted in decisions that affect them – this is particularly so where issues of giving informed consent arise. Conciliators should keep themselves updated and be aware of any changes in relevant legislation.

b. Standards for Conciliators:

Competence and Self-assessment:

Due to the sensitive and difficult role of the Conciliators, they will maintain high standards of skill and competence while providing conciliation services. Conciliators should always consider whether they have the right knowledge, skills, experience and attributes to mediate any given dispute. If there is a real possibility that the Conciliator is inhibited by any of his or her personal attributes in achieving successful, independent, fair and unbiased conciliation services, he or she should withdraw from the process. If a dispute is not within his or her skill, knowledge and competence, the Conciliator will withdraw from the process and refer the dispute to other conciliators or fora.


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Characteristics – a Conciliator should-

- Be of a good character, impartial and trustworthy
- Have a good reputation in the community
- Have good knowledge of the area, community, culture and custom
- Be calm, patient and not get emotionally involved
- Have a good education (this includes formal and informal experiences, knowledge of family values) knowledge of Islamic teaching and awareness of relevant Pakistani laws;
- Illiteracy or lack of formal qualifications/education should not be a bar to being selected as Conciliator, if other attributes can be relied upon
- Appreciate the need for confidentiality
- Be devoted to the principles of community service

c. Preventing harm:

Safety and Security:

At all times, the safety and security of the Conciliators and disputants must be paramount. Disputants and Conciliators must undertake not to bring any arms or ammunition or other weapons to the mediation process. Conciliators must not undertake any conciliation where their personal safety and security and that of their families may be compromised. Where there is potential for violence, Conciliators should make it clear that they are unable to assist until there is a credible commitment to a non-violent resolution of the dispute. During the process, if it is likely that safety and security might be compromised, Conciliators should withdraw from the process and report the matter to the police.

Conciliators must select a safe and secure venue for the Conciliation process. If necessary, precautionary measures must be put in place – consider also alerting the police. Where there is high tension between the disputants, it might be necessary to ensure that they are not in the same venue at the initial stages of mediation. Parties should only meet when the conciliator is satisfied that it is safe for them to do so.

Protecting and promoting the rights of all:

Conciliators commit to upholding the legitimate, legal, and constitutional and human rights of all disputants and others who may be affected by the settlements. Conciliators should never pressurize or coerce disputants into accepting a settlement which is detrimental to their rights, even if the disputants themselves agree to such infringements. Legitimate, free and informed consent must be obtained from women where this is an issue in the dispute. This is particularly important in family and marriage related disputes. Although scuffles and fights amongst children (where adult members of families are like to be involved and the risk of dispute escalating is high) may be subject to conciliation. However, serious issues around child welfare, neglect and abuse should not be mediated. Such disputes should be referred to the Family, Child and Welfare Department. Conciliator must persuade disputants not to enter into settlements which are unlawful. Where such attempts fail, Conciliators must withdraw from the process.

While the Conciliator has a duty to be impartial, he or she also has a responsibility to protect the interests of women, children, ethnic or religious minorities, marginalized and other vulnerable groups,

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especially those who are unable to give voluntary and informed consent to settlements. Conciliators must not support settlements which are based on illegal customary practices (including Swara and deprivation of inheritance). Conciliators have a positive duty to challenge any settlement based on illegal customary practices and must use their best endeavors to discourage such settlements. Where all efforts to discourage such settlements have failed, the Mediator should withdraw from Conciliation. This is particularly so when disputants negotiate over women and children or do not conform to law and the constitution of Islamic Republic of Pakistan. Any such unlawful practices should be reported to the authorities.

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CONCILIATION PROCESS

Contacting Conciliators:

Disputants may contact Conciliators based in the community directly or they may be referred by the court to a community Conciliator with the consent of the parties. Members of the community and other person(s) may, with the consent of all the disputants, refer disputes to Conciliators

Pre-conciliation session:

At the initial meeting of Conciliators and disputants, Conciliators should explain how the conciliation process works, what is expected for disputants and what Conciliators can (and can't) do. Issues to be discussed might include:

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- No aggressive language, behavior or violence will be tolerated; no weapon of any kind will be brought to the conciliation process
 - The process works **ONLY** when disputants come to the process with good will and a bona fide willingness to reach a settlement
 - The process and all of the details will remain confidential
 - There will be no fee payable to the Conciliator – any “bond” will be paid back
 - Each disputant will have an equal opportunity to present their arguments, information and witnesses and to challenge the information given against them.
 - The conciliation process is not necessarily about deciding who is guilty or at fault – but to find a solution acceptable to all parties
 - The conciliation process is wholly voluntary and the Conciliator will refuse the service if there is any coercion; **both** parties must agree to the appointment of the Conciliator; either party can withdraw from the process at any time
 - There will be no imposition of the Conciliator's will or personal views – the disputants themselves will be expected to reach and agree a settlement
 - The Conciliators cannot support settlements which will violate the legitimate rights of other(s) (e.g. Swara and inheritance deprivation)
 - All disputants will be expected to honour any settlement they've agreed
 - The settlement will be written down and signed by all disputants.
 - Current or potential conflict of interest
 - Registration of a First Information Report (F.I.R) or civil proceedings by either or both disputants. [if so, great care should be taken to ensure this is not done to pressurize a weaker disputants].

Conciliation:

During conciliation process, full disclosure of all facts related to the dispute must be shared with the Conciliator so that the information may be used appropriately and in the best interest of the disputants. If the outcome of the conciliation results in an acceptable settlement to all, an agreed settlement will be drafted detailing all the issues involved and terms on which parties have agreed to settle their dispute or differences. Each disputant and the Conciliator will sign the settlement. In some disputes it may be necessary to undertake the mediation with another Conciliator, with the consent of the disputants.

Disputes involving women should be mediated by female Conciliators where possible. Where a dispute involves a member of a minority group or where a disputant suffers a disability, Conciliators should ensure that such disputants feel completely comfortable with the process.

Conciliators should ask an ethnic minorities disputant whether the presence of a member of a minority group will assist, subject to the other disputant(s) consent. Conciliators must ensure that the needs and interests of the weaker disputant is not compromised – any power or relationship imbalance between disputants should not unduly influence the process.

If conciliation is unsuccessful, parties may refer their dispute to state justice institutions such as police and/or courts. In such cases, conciliators should inform disputants about their option registering an F.I.R or commence civil proceedings.

Informed settlements in Conciliation:

The conciliator has a duty to ensure that disputants fully understand the options available, the advantages and disadvantages in order to make informed decisions. The Conciliator should advise disputants to obtain legal advice, if this deemed helpful. The Conciliatory should ensure that each of the participants fully understands the terms and conditions of the settlement. Disputants must be given a reasonable opportunity to assess and consider the settlement so that they are entirely comfortable with the outcome.

Fair and Just Settlements in Conciliation:

While Conciliators must be impartial between disputants, they must ensure that the process is fair, especially when there are differences in the power and authority of the disputants. Conciliators should try and defuse any manipulative or intimidating negotiating techniques utilized by disputants. They should take great care to ensure that the disputant who may have registered an F.I.R or civil proceedings is not doing so to put undue pressure on the opposing disputant. If the Conciliator finds that it is not possible to eliminate such undue pressure and unfair bargaining techniques from the process, he or she should not permit the mediation to proceed and should disassociate themselves from the process.

Do No Harm Safeguards:

In order to reduce the risk of doing unintentional harm, Conciliators should abide by following safeguards:

- Withdraw from the process if the process or the settlement involves breaching human rights, or violates Constitutional or other legal provisions of Pakistan – particularly the rights of children, women, ethnic or religious minorities or other vulnerable groups and report the same to state authorities (e.g. Swara and inheritance deprivation)
- Disputes involving serious issues of child welfare, neglect and abuse should not be conciliated
- Refuse to take financial awards/fee for taking sides with one disputant against the other
- Discourage parties from pressurizing and threatening each other for a settlement, especially through registration of F.I.R or civil proceedings
- In order to ensure the safety of conciliators and the disputants and their associates confidentiality of conciliation proceedings shall be maintained

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- Women, children, minorities, vulnerable and the disadvantaged should not be discriminated against and should not be pressurized to accept settlements without their free will and informed consent. Consent, or lack of it, in family/marriage disputes must be considered and taken into account.
 - Any monies provided by disputants in form of a "bond", security or surety must be returned to disputants.
 - Do not make it worse for the disputants
 - Settlements should be with a view to de-escalating the dispute

Network and knowledge-sharing:

To create cohesion and a collegiate platform for Conciliators, a Network organization will be established by the Conciliators. The Network will provide all Conciliators with an opportunity to take forward conciliation work as a group and promote the services within the community. The Network, as a body, will also allow Conciliators to manage the needs and interests of the Conciliators as a body. The network forum will also provide an opportunity for Conciliators to share experiences, share knowledge, identify gaps in learning and development with a view to create an atmosphere of mutual support and advancement. Conciliators should be willing to share knowledge and good practices with others – they should avail themselves of training opportunities and be willing to impart knowledge to others.

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