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Email: camp@camp.org.pk

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In this issue:

Jirga Monitor:
Introductory Note' ... 1

Different Types of
Jirga ... 2

Jirga Decisions...
(July-August 2011)
.... A Review ... 3

Short listed Jirga
Decisions ... 4

Community Appraisal & Motivation Programme



H No. 217, St. 39, F-11/3,
Islamabad 44000, Pakistan.
Tel: +92-51-222 5196-97
Fax: +92-51-222 5198
www.camp.org.pk

BIMONTHLY JIRGA MONITOR

July - August 2011 Issue 2

'Jirga Monitor: Introductory Note'

Greetings to you all from CAMP's bimonthly publication Jirga Monitor's Editorial Team.

CAMP's baseline study "Understanding Jirga: Legality and Legitimacy in Pakistan's Federally Administered Tribal Areas" has been published and was launched on 20th July 2011. Honourable Governor Khyber Pakhtunkhwa, Barrister Masood Kausar, attended the ceremony as chief guest, while Ms. Feryal Ali Gauhar, eminent human rights activist, Sheikh Jehan Zada Khan, tribal Malik and Jirga elder were among the panelists. Mr. Naveed Ahmad Shinwari CEO CAMP and author of the above mentioned research study presented key findings of the report while the ceremony was moderated by Syed Talat Hussain, senior journalist and broadcaster.

Since our last publication in July 2011, project activities for Jirga Component have been in full swing. Five Advocacy and Awareness sessions were held with different stakeholders e.g. civil society representatives, academics, lawyers and students, in Islamabad, Lahore and Peshawar. Roundtable discussions are planned for September and October 2011, while arrangements for 15 Radio shows for

Advocacy and Awareness on 'Reforms in Tribal Jirga System' are also underway.

In addition to all these activities, we are publishing the second issue of Jirga Monitor. CAMP's presence in FATA has supported this activity; through the existing network of over 200 CSOs in FATA, we have received 14 Jirga decisions. The number was not very high because the holy month of Ramadan fell in August this year, which also was reporting time for the Jirga Monitor, and Jirga's usually don't convene during Ramadan. For the next issue we are hoping to receive more cases and decisions.

It is important to note that even though we received 14 cases in total, details of six cases are given in this issue. Brief details of all the decisions however, are mentioned in a separate table.

In this issue, along with Jirga decisions and a commentary on these decisions, a brief note on the types of Jirga is also added to give you a better understanding.

We look forward to your feedback and suggestions to help us improve and make Jirga Monitor an informative and interesting read.

Editorial Team: • Naveed Shinwari • Mariam Khan • Fareeha Sultan • Aezaz-ur-Rehman
• Neha Gauhar • Khawar Khurshid • Shahid Ali

Different Types of *Jirga*

In the last issue of '*Jirga Monitor*' we gave you a brief introduction of *Jirga*, its different dimensions and its significance in Pakhtun Society. In this issue various types of *Jirga* have been discussed.

Sarkari or FCR *Jirga* refers to a *Jirga* system sponsored by the government, more specifically by the political administration led by political agents or his subordinates. Primarily, the FCR *Jirga* deals with all criminal and civil cases in the administered areas of any particular agency or Frontier Region (FR). The laws are administered by the Political Agent acting as a District Magistrate. He establishes the *Jirga* with the consent of the disputant parties to regulate the formation of *Jirga*(s). The *Jirga* examines all the evidence within the framework of the issues framed and submits its recommendations to the political administration.

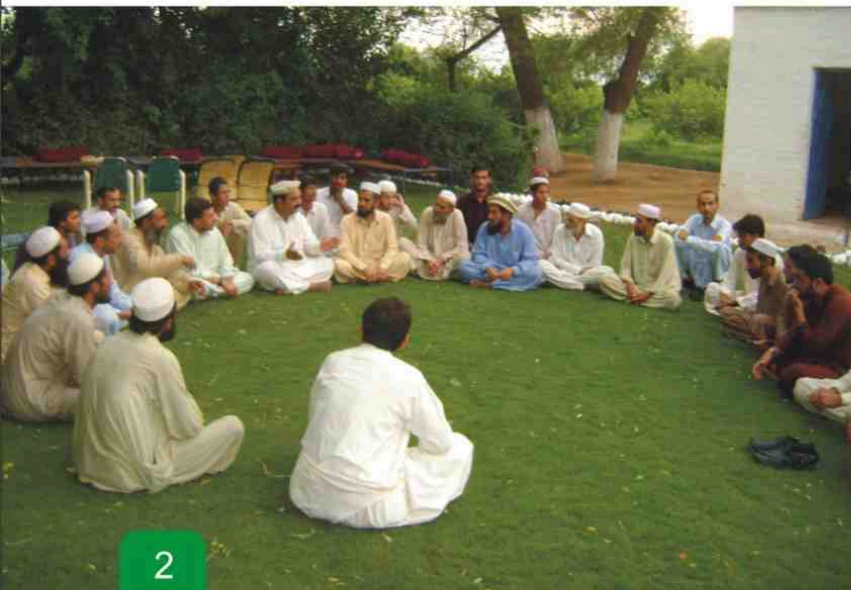
The nomination of the *Jirga* members is the most sensitive and salient aspect of this practice, as it is essential to recommend someone who is truly trusted by the society. *Jirga* members are selected from a panel of Maliks or Liaison people maintained by the government. In order to ensure transparency, the disputed parties are allowed every so often to nominate the members themselves.

Olas* or Informal Local Representative *Jirga is an assembly of the elders comprising each household of

a certain village or community. *Olas* *Jirga* convenes to discuss various criminal and civil disputes and also to resolve them consensually so that all parties receive compensation accordingly. Usually, *Olas* *Jirga* are convened to resolve disputes involving collective property rights, rights and distribution of irrigation water or common concerns, such as the selection of a site for a mosque.

When a dispute arises, elders approach both parties and set up a *teega* (*guarantee*) to prevent a further aggravation of the situation. The monetary value of *teega* could be either money or weapons. *Teega* is usually maintained for a certain time period and then followed by a proper constitution of a *Jirga*. The *Jirga* then takes time to collect evidence, analyse the evidence, and talk to both parties and villagers, takes *waak* (consent) from parties involved. The *Jirga* members may take time or hold as many sessions with parties as they deem necessary to take a decision. Decisions made by *Olas* *Jirga* are rarely challenged, as it is perceived to be more credible and has legitimacy within the communities.

Loya* or Grand *Jirga is not relevant in the context of FATA; however it has been practiced for centuries in our neighbouring country, Afghanistan. *Loya* *Jirga*, or the grand assembly, is a dispute resolution process through which representatives of various areas, which mainly comprise of tribal and political leaders, religious scholar, elders and others gather to discuss and vote on issues at the national level. *Loya* *Jirga* primarily focuses on issues of national interest which includes, selection of a new ruler, a declaration of war, the adoption of peace treaties or a new constitution, and decisions of vital regional and international issues affecting Afghanistan. However, the nomination of representative participants of this *Jirga* is quite susceptible and sensitive; slight mismanagement and imprecision destroys the credibility and efficacy of this imperative process.



Jirga Decisions... (July-August 2011) A Review

S No	Dispute	Nature of Case	Location	Type of Jirga
1.	Ownership of Land	Civil	Khyber Agency	<i>Olas</i>
2.	Sale of Vehicle and Loan Recovery	Civil	Khyber Agency	<i>Olas</i>
3.	Sale and Purchase of Land	Civil	Kurram Agency	<i>Olas</i>
4.	Division of Property	Civil	Orakzai Agency	<i>Olas</i>
5.	Business Issue	Civil	Kurram Agency	<i>Olas</i>
6.	Passage Way and Injury	Civil& Criminal	Bajaur Agency	<i>Olas</i>
7.	Division of Inheritance Property	Civil	Landikotal	<i>Olas</i>
8.	Debt Recovery	Civil	Landikotal	<i>Olas</i>
9.	Sectarianism	Civil	Landikotal	<i>Olas</i>
10.	Passage Way	Civil	South Waziristan Agency	<i>Olas</i>
11.	Ownership of Land and its Boundaries	Civil	Bajaur Agency	<i>Olas</i>
12.	Compensation for Injury	Criminal	Bajaur Agency	<i>Olas</i>
13.	Noncompliance of Culture and Tradition	Civil	South Waziristan	<i>Olas</i>
14.	Dispute over Mutual Purchase of Truck	Civil	South Waziristan Agency	<i>Olas</i>

Short listed *Jirga* Decisions

Three in One

Niaz Mohammad bought three vehicles from Nigar Hussain. After some time Niaz Mohammad claimed that Nigar Hussain had failed to produce the registration papers. He also held Haji Jahangir Afridi responsible, being the guarantor to this deal and demanded that Haji Jahangir pay him Rs.1, 60,000. All three men belong to Khyber Agency.

An interesting twist happened when Haji Jahangir not only denied these claims, but also as a counter charge alleged that Niaz Mohammad introduced someone by the name of Wahid to him. On the guarantee of Niaz Mohammad, Jahangir supplied some goods to Wahid, who later did not pay him saying that the goods provided to him were not in fine quality and had been changed. Niaz Mohammad also refused to be the guarantor for Wahid. That is when it was decided to consult *Jirga* for negotiation and mediation.

The *Jirga* elder were Hameed Khan, Syed Ghani and Haji Danish, who nominated four people i.e. Hayat Nazar, Walayat Shah, Hikmat Gull and Kashmir for fact finding.

The witnesses talked to all concerned as is the norm, recorded their statements and submitted a detailed report to the *Jirga*. Based on the report, the *Jirga* asked both Niaz Mohammad and Haji Jahangir to produce two witnesses from each other's tribes. They also warned that if any one failed to do so, he would be punished by the *Jirga*, e.g. Niaz Mohammad had to prove by producing witnesses, that he was not a guarantor of Wahid. If he failed to satisfy the *Jirga* elders then he would be responsible for returning the goods that were provided to Wahid. Regarding the dispute of payment of money by Haji Jahangir to Niaz Mohammad, the *Jirga* ordered Jahangir to pledge that he owed no money to Niaz Mohammad and this oath should also be supported by two people.

Commentary: Resolving three disputes in one *Jirga* shows that how *Jirga* saves time; whereas in settled areas of Pakistan the disputants had to approach the civil court and file three separate cases which would have cost them a lot more time and money.

Opening the Road to Peace

In Kurram agency, a *Jirga* was called to resolve a case where three people were involved in a road construction project. The disputants, Daud Khattak, Sadiq Shah and Shamsheer Ahmad sat down to divide the responsibilities before the construction work was initiated. That is when the dispute started...

Sadiq Shah claimed to be the contractor of the project, and demanded that he should delegate the responsibilities of other partners, while Shamsheer Ahmad said that since the

contract had been given to Sadiq Shah on his advice, he should be laying out the roles and responsibilities of all the partners. After much argument, it was decided that the *Jirga* should intervene and help them come to a decision.

The *Jirga* came together and its members included Farhan Khan and Syed Ghani, who nominated Masood Khan and Aurangzeb Khan to do the fact finding and ground work. The nominees set out to meet with relevant people who could help give some background information about the road construction project and the three disputants. Several statements were recorded and shared with the *Jirga*. The nominees told the *Jirga* elders that originally the road construction contract was given to Farhan Khan, who further asked Shamsheer Khan to arrange labour and other logistics through Daud Khattak Sadiq Shah. Shamsheer Khan did the needful, while the finances were managed by Farhan Khan to him as was decided. To substantiate these statements, Abdul Ghafoor was introduced as witness in the *Jirga* proceedings.

The *Jirga* decided that Shamsheer Khan will chalk out the roles and responsibilities of the road construction project. It was also decided that the other two parties are equally involved in the project, so with the consent of Shamsheer Khan the *Jirga* decided that Mr. Sadiq Shah will provide construction material, while the Daud Khan will arrange for the labour. Both will be paid by Shamsheer Khan. All three parties agreed with this decision and the *Jirga* elders asked all of them to submit Rs. 2,00,000 and two Kalashnikovs each as surety to follow the decision of *Jirga*.

Commentary: This rather complex case may have erupted into a serious fight because of the money involved in the project. However thanks to the *Jirga*, it was decided through mediation alone. This also shows how *Jirga* validates its decision by asking for sureties from the disputants. An interesting feature is that weapons were demanded as surety from the disputants to ensure that the *Jirga*'s decision is respected, showing that weapons are an integral part of Pakhtun culture.

Ensuring Societal Harmony

FATA has witnessed numerous incidents of sectarian clashes between *Sunnis* and *Shias* in the past few years. Landikotal is no exception as sectarian violence has taken many lives. Nonetheless, this is a decision about a case in which *Jirga* intervened and solved a sectarian clash amicably.

The disputants; Hafiz Abdul Maalik, Haji Maroof Khan, Haji Abu Saeed, Malik Nawab Khan, Haji Adal Khan, Haji Ali Khan, Haji Nadir Khan and Haji Sakhi Jan used to hold their religious activities in different areas. There were arguments

among community members from different sects at religious occasions. Moreover, they also showed disrespect for each other's sect. These arguments were getting long-winded and threatening, making elders from the community bring together a *Jirga* to resolve these disputes.

After meeting all the representatives of both groups the *Jirga elders*; Malik Jan, Haji Mohammad Nabi Gul, Haji Aurangzeb, Haji Gul Mohammad, Haji Azmat Khan and Haji Saleh Alam decided that from then onwards people from both sectarian groups will respect each other. They would not malign each others sects and respect one another. The *Jirga* decided that violators of this decision will be penalized Rs.5, 00,000. Haji Farooq Jan, Haji Gul Khan and Haji Gulab were the witnesses in this case.

Commentary: This was a sensitive case. Frequently, the decisions of cases which involve conflict between different sects result in protests and violence. However, in this case *Jirga* efficiently and effectively resolved the conflict, encouraging different sects to live in the same area in harmony.

Collective Responsibility

Hameed Gul and his brother Wazir Gul belonging to Orakzai Agency inherited some property. Being the elder brother, Hameed was responsible for the sale and all other matters related to the property. While managing these property matters there were many transactions made by him in which he took loans and lent money to people. When he could not pay back his loans, he claimed that being the share holder in the property Wazir Gul was also responsible for the payments. Wazir Gul, on the other hand refused this claim saying that that he was never a part of any property matter with Hameed Gul. They decided to approach *Jirga elders*; Haji Ameer Khan, Noor Badhshah, Shah Wali and Haji Danish to convene a *Jirga* and settle this dispute.

Jirga elders nominated Haji Abdul Manan and Khan Shaheen for fact finding. After the due process *Jirga* said that it was proved that Hameed Gul was looking after all the property related matters, therefore he was responsible for all the deals and contracts. It was also decided that the factory which Hameed Gul was looking after should be given to him and he will pay Wazir Gul a share worth Rs.4, 86,000. The truck belonged to both the brothers and will be shared by them. An allowance of Rs.65, 000 will be paid to Wazir Gul by Hameed Gul for holding the ownership of truck for one year. The following year the truck will be given to Wazir Gul. In case it is sold then both share the money. Both parties will submit Rs.1, 00,000 and two rifles as surety of implementing the decision of *Jirga*. Both parties before taking any decision on these issues will inform the *Jirga* members.

Commentary: The *Jirga* decision taken by the tribal elders

seems impartial. Furthermore, a unique aspect of the traditional justice system highlighted in this case was that the *Jirga* also decided that they will monitor the implementation of *Jirga's* decision by both parties. A penalty was also fixed as a surety of implementing the decision.

Loud and Clear Message

In tribal society of FATA enmity between two people, or two groups is common. Sometimes, it is passed on from one generation to the other. Consequently, several precious lives are lost, not only of those involved in the feud but sometimes, also innocent lives. One such incident happened in Bajaur Agency when two rivals Naqeebullah and Mohammad Rahim opened fire at each other. Nasir-ud-Din along with his son Anwar ud Din was also present in the market and during this firing incident, Anwar received bullets in his leg and the leg was badly injured. Nasir-ud-Din claimed that he spent Rs.1, 20,000 on his son's treatment and asked Naqeebullah and Mohammad Rahim to pay the expenses incurred on the treatment. Both parties refused to pay this amount. Hence, Nasir-ud-Din had no choice but to go to *Jirga* to settle the matter.

The *Jirga* elders; Abdur Rehman, Mohammad Zahir, Mohammad Naqeeb, Mohammad Saad and Membraz Khan investigated the issues and heard all the parties. The witnesses; Mohammad Ali Khan, Mir Kalam and Barkat Khan were also questioned. Ultimately, the *Jirga* elders decided that both Naqeebullah and Mohammad Rahim were not only responsible for this injury but they also committed a serious crime by exchanging fire in an open market. They were asked to pay Rs. 2, 20,000 to Nasir-ud-Din. The extra money was compensation to the grieved party. It also served as a fine for exchanging bullets in an open market. In case, they repeat this a fine of Rs.5, 00,000 will be charged.

Commentary: This is a milestone decision; the *Jirga* compelled both parties to pay not only for damages but also for compensation. The decision shows that rival groups had committed a crime by opening fire in a market. If *Jirga* would not have taken this decision, not only would the enmity have increased, but Anwar would have not gotten justice.

Deep Rooted

Zakriya Khan and Tahir from Masti Khel Tribe, South Waziristan objected to some actions of Afrasiab and Haji Hassan. They all belonged to the same tribe. They claimed that Afrasiab and Haji Hassan had violated tribal traditions and customs. Since, it was causing serious fights between the groups, therefore elders decided to convene a *Jirga*.

The *Jirga* elders Haji Zar Mohammad and Haji Syed Ghani after thoroughly probing the matter, hearing all those

involved and questioning the witnesses issued a warning to Afrasiab and Haji Hassan to mend their ways and respect the norms set by their tribes. Mohammad Amin was appointed their guarantor while Zakriya Khan and Tahir were warned for their offensive behavior and Israel Khan gave guarantee on their behalf.

Commentary: In this case the *Jirga* itself took the initiative and certain members of a tribe were obligated by *Jirga* to follow the traditions and customs of that particular tribe. It is not difficult to gauge how deeply rooted are traditions and customs in Pakhtun society. This reiterates the words of Syed. Talat Hussain during the advocacy and awareness sessions for 'Reforming the Tribal *Jirga*': "it is very good to be proud of traditions and customs, however, there comes a time when the tradition needs to be reviewed and analysed. If it is becoming a hindrance in development, it should be reevaluated and amended, otherwise, not only the tradition but the society will also become stagnant'.

Sustainable Traditional Institution

After the death of Lal Khan, of Bajaur Agency, his sons inherited the house that was next to Lal Mar Khan's house. These houses were located between their landholdings. The dispute among them was over the passage way to access their respective lands. Sons of Lal Mohammad Khan (late) did not allow access to Lal Mar Khan. Moreover, they also shot Musa Khan over this dispute.

Jirga elders ; Gul Alam, Haji Yaqoob Shah and Haji Ayub Shah had to get involved for the settlement of these issues after seeking the consent of both parties. The six witnesses involved in this case were Behram Khan, Sahibzada Khan, Haji Akbar Khan, Ghafar Khan, Haji Adeel Khan and Khitab Gul who were questioned about the facts of the dispute. After meticulous consultation and inquiry the *Jirga* elders decided that a twelve feet passage way will be left by both the parties to access their properties. No one will be allowed to construct or have any kind of right of ownership on this passage way.

Even though Musa Khan had forgiven the sons of Lal Khan (Late) however, the *Jirga* imposed a fine of Rs.3, 00,000 on them. It was further decided that if any of the parties would violate this settlement they would be punished with a fine of Rs. one million

Commentary: Compensation for the injured party makes *Jirga* a sustainable traditional institution as reflected in this decision. The kind of mediation conducted by the *Jirga*-elders binds the disputants to mutually agree over a decision. This decision also shows that basic objective behind the tradition of *Jirga* is to establish harmony in the society.

Conclusion:

A cursory glance at the *Jirga* Decisions received by CAMP's Rule of Law (*Jirga* Component) team reveals that all across seven agencies cases solved by *Jirgas* were of different nature including property disputes, monetary disputes, land disputes, sale and purchase issues, and distribution of irrigation water dispute etc. Looking at the nature of the disputes and the fact that people went to *Jirgas* to solve their disputes strengthens the notion that social balance and tribal harmony hinge exclusively on the institution of the *Jirga* in Pakhtun society. The decisions also show that even smaller disputes involving land or business deals can trigger hostilities that are interminable and that *Jirga* prevented these cases from collapsing under the burden of unresolved disputes.

In all of the cases above, the decisions were made by *Olas* *Jirgas*. When the CBOs and CAMP staff who compiled this information were inquired about the absence of any decisions by FCR, they reported that no decision or hearing was done by the FCR *Jirga* during the reporting period. This reconfirms the trust in the *Olas* *Jirga* and further strengthens the research results compiled by CAMP for its baseline study 'Understanding *Jirga*: Legality and Legitimacy in Pakistan's Federally Administered Tribal Areas'.

It is important to remember of course that although CAMP's network of CBOs and staff are present across all seven agencies of FATA, and have access to local information, they may not have access to certain areas due to security reasons, and therefore they cannot get information on *Jirga* decisions from those areas.

Another missing element is decisions regarding women, children, minorities and other marginalized groups. Had we received such decisions, it would have been easier for us to strengthen our campaign.

These reported decisions lack another component. Some portion of teega (guarantee money or weapons) goes to the *Jirgamars* as well. The description of these cases does not entail any such element. When, CSOs' representatives and CAMP staff were inquired about this, they did not have any information as they didn't ask while collecting and gathering information. To address this, CAMP intends to hold another session with these CSOs. Earlier, they were giving a briefing on the objectives and purposes of the *Jirga* Monitor and the methodology we are going to adopt for the information gathering. Now, we will focus on the absent factors in their reporting.

We look forward for the feedback of our distinguished readers and stakeholders. If you want to make any comments, criticism or give your opinions on any decisions made by *Jirga* please feel free to contact us.