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Editorial

Dear Readers,

We bring you another interesting issue of the 'Jirga Monitor' this month which contains a detailed commentary on the historic May 2012 Grand Jirga, written by our respected journalist colleague, Mr. Ibrahim Shinwari as well as an overview of the success and achievements of Phase III of the RLPP project.

We are very happy to note such a heart-warming response to the May 2012 Grand Jirga, and it is indeed a historic achievement not only for CAMP, but also for the Jirga in FATA. This is adequately reflected in the article titled "The May 2012 Grand Jirga and its Impact". This article reports some opinions from local Maliks and thus illustrates its acceptance amongst the decision makers and opinions leaders of FATA. To read more, refer to the following pages.

We have also included the highlights and achievements of Phase III to present a brief overview of the activities we conducted; the impact of the May 2012 Grand Jirga's decision include numerous women being saved from being given away in Swara which is indeed a remarkable development for the tribal areas within the span of only a few months.

Examples of case studies of the tribal Jirga's steadfastness in resolving disputes form part of this issue which illustrate the effectiveness and utility of this traditional form of justice dispensation, which follows the principles of fairness, equality and peace building when giving and implementing decisions. To read the full case studies, refer to pages 5-6.

As a next step, we are planning to take our previous successes forward by expanding the scope of our activities to KP and Balochistan through a series of capacity building training workshops and advocacy events to raise awareness amongst the people of these areas. In addition, a new component pertaining to honour crimes in Pakistan will be introduced in Phase IV which will focus on highlighting related issues and raise awareness aimed at minimising such crimes across the country; a comprehensive research study will be conducted to gather relevant perceptions and based on the findings an advocacy campaign will be designed to target this social evil.

We at CAMP pray and hope that this positive trend in people's attitudes continues and the tribal region can continue its journey towards progress and inclusion into mainstream Pakistani society.

We also continue to value the support of our local civil society partners and anticipate that it will continue into the next phase and beyond, not only for CAMP and its projects, but also for the tribal region's development in future.

Barrister Irum Ali Khan
Editor and Advocacy Coordinator,
CAMP Office, Islamabad

RLPP Phase III: Highlights & Achievements

As Phase III of the Project has ended, looking back our journey so far, we share with you some of the highlights of the third phase, which are listed below:

May 2012 Grand Jirga: A Historic development in women's rights for FATA & its impact

- ❖ The Grand Jirga held on 29th May 2013 announced a ban on some of the *evil customs*; namely *Swara*, *bride price* and *Xhag* that violate women's rights in Pakistan's Federally Administered Tribal Areas (FATA) through agency level *Jirga* decisions endorsed unanimously by tribal Maliks and Jirgamaars;
- ❖ About 800 Maliks and *Jirgamaars* from FATA and 120 members of civil society CSOs, and Media etc.) participated and witnessed this historic decision;
- ❖ About 16 TV channels and 25 national newspapers - including 8 regional/local publications – printed coverage of the Grand Jirga;
- ❖ Local agency level Jirgas held across FATA resulted in unanimous consensus amongst all in relation to the banning of these discriminatory practices against women;
- ❖ The involvement of local communities across the tribal region was a positive development which gave a voice to the masses in relation to reforming the tribal Jirga system – in consequence, a core committee was formed comprising of representatives from all agencies and Frontier Regions (FRs) of FATA;

- ❖ In follow up investigations, it was found that at least 10-12 women were saved from being given as compensation in *Sawara*. CAMP has received messages of thanks and appreciation from female teachers from Orakzai Agency for the Grand Jirga's decision as now they can withstand family pressures to marry their illiterate cousins.
- ❖ As a result of the May 2012 Grand Jirga, the RLPP project was able to win the support of few organisations working for women and human rights. In particular, the Human Rights Commission of Pakistan (HRCP) agreed to collaborate with CAMP in its efforts towards reforming the traditional *Jirga* system.

Sensitisation and awareness raising

- ❖ A total of 105 individuals – including 47 men and 58 women – participated in a series of capacity building training workshops on 'Reforming the Tribal Jirga System through Sensitising on Fundamental Rights';
- ❖ A series of ten radio programmes aiming to sensitise a nation-wide audience on the merits and demerits of Jirga system in FATA were broadcast live weekly on national network from the National Broadcasting Station, Radio Pakistan.

"Understanding Justice Systems of Khyber Pakhtunkhwa, FATA and Balochistan: the Pakhtun Perspective"

- ❖ A detailed research study "Understanding Justice Systems of Khyber Pakhtunkhwa, FATA and Balochistan: the Pakhtun Perspective" was compiled after conducting a comprehensive perception survey with a sample size of 2,400 questionnaires – 1,600 in KP and 800 in Balochistan
- ❖ This study also included qualitative data obtained from 60 Key Informant Interviews – 40 in KPK and 20 in Baluchistan – as well as 28 Focus Group Discussions in total.



The May 2012 Grand *Jirga* & its Impact

Ibrahim Shinwari

Encouraging signs are emanating across different parts of FATA relating to the ban on *Swara*, *Xagh* and *Walwar* imposed by the Grand Jirga, held in Islamabad on May 29, 2012 organised by Community Appraisal and Motivation Programme (CAMP).

An overwhelming number of tribal elders, as well as political activists and members of civil society who took part in the historic Grand Jirga illustrates that alongside traditional tribal *Jirga* members, ordinary citizens of FATA are also supportive of the ban imposed on the aforementioned three coercive and unethical tribal traditions.

Malik Najaf Ali of Orakzai Agency believed that the response of ordinary tribesmen regarding the ban on *Swara*, *Xagh* and *Walwar* was very encouraging as most of them have benefited from the decisions of the May 2012 Grand Jirga.

“A very encouraging trend is that tribesmen are now discussing these issues in public whereas

prior to the May 2012 Grand Jirga, they had no courage to criticise these so-called tribal traditions”, Malik Shehryar of South Waziristan stated.

Malik Khurshid Wazir of South Waziristan said that the Tujikhel community of the Wazir tribe has now imposed a complete and effective ban on *Xagh*. “The practice of *Xagh* is a menace and a stigma on tribal customs and traditions” he said, adding that the May 2012 Grand Jirga organised by CAMP gave them enough courage to not only to claim it as an unlawful tradition but also to publicly condemn its practice.

“After this ban, any person violating the ban on *Xagh* will be expelled from our area and will also be liable to pay a fine of one million rupees”, he said. Such an effective and strict implementation of a ban on *Xagh* was unthinkable prior to the May 2012 Grand Jirga.

“We have not come across any opposition to the ban on Swara, Xagh and Walwar during various Jirgas or other gatherings at various places in Orakzai as common people are now more educated and aware about the negative effects of the three un-Islamic and unlawful practices”.

- **Malik Najaf Ali**

Haji Rahat Yousuf of Bajaur Agency said that the effectiveness and utility of Grand Jirga can be gauged from the fact that *Jirga* members have become very cautious about handling cases

regarding *Swara* and *Walwar* now.

“We now urge people or rival parties not to insist on *Swara* as a way to resolve their



conflicts”, he said while explaining changes in attitudes of *Jirga* members in Bajaur after the May 2012 Grand Jirga.

He noted out that recently a local *Jirga* decided that a young married couple from Nawagai tehsil of Bajaur should leave their area of residence rather than giving in to their parents demand for *Swara* to settle a dispute.

In Orakzai Agency, *Jirgas* of sizable strength held at Kalaya Madrasa, Kohat Madina Market and Hangu tehsil unanimously decided to effectively impose the ban on *Swara*, *Xagh* and *Walwar*.

“We persuaded the contending parties to accept compensation money rather than forcing the opposing group for *Swara* on at least three occasions after the May 2012 Grand *Jirga*”, Malik Najaf Ali said and added that *Jirga* members ensure that the ban on *Swara* is loudly pronounced and included in writing in every *Jirga* decision they made.

“This helps raise awareness about the negative effects of *Swara*, *Walwar* and *Xagh* on our society and also further strengthens the acceptance of this ban”, he iterated.

A political party activist in Bajaur Abdul Majeed said that the ban on these three un-Islamic practices has begun to appear in discussions amongst members of different political parties. He said that almost all the major political parties are supporting this ban fully and they have also promised to try and include the May 2012 Grand *Jirga* decision in their manifestos for the 2013 general elections in the tribal areas.

But Munir Bangash of Kurram Agency believed that consistent and continuing dialogue amongst the tribal elders, political activists, *Ulema* and local political administration was required to make the ban more effective on ground.

Mr. Bangash said that due to low literacy rate in FATA, a good number of tribesmen were still not fully aware about the ban on *Swara* and other practices. He suggested that CAMP should now organise more dialogues at the tehsil level in all tribal agencies to enable maximum awareness about the negative effects of these outdated tribal traditions.

Another elder from Kurram, Haji Gul Akbar said that a robust awareness campaign by CAMP will encourage the ordinary tribesmen to report cases of *Swara*, *Xagh* and *Walwar* to local *Jirga* members.

“There are still some areas where people try to conceal such cases and are not reported to either the Jirga or media”.

Haji Gul Akbar, Kurram Agency

For this purpose, he emphasised on an active and more vibrant role of media to help in unearthing and highlighting situations where such practices continue to take place.



Jirga Decisions

Consensus building within communities

In Mohmand Agency's village Borakhel a water supply scheme was to be initiated by an NGO but some people from the local community were strongly opposed to it. As a result, many disputes began arising from this issue which led to fears of escalation into violent conflict. Therefore, a local community elder Malik Haji Daleem Khan, along with his other friends organised a *Jirga* to develop consensus amongst the people and to investigate into the reservations they professed about this development scheme. After five days of detailed discussions and mediation with all the segments of society, the people finally agreed to allow the water supply scheme to be launched. After the *Jirga's* intervention, it was unanimously recognised that this scheme will not only help people but lay foundation for development.

This decision illustrates that consensus building is one of the major drivers of *Jirga* decisions; it always allows parties to explain their position and enables conflicting groups to resolve their disputes on their own. It also demonstrates that *Jirga* decisions are based on the principal of larger good of the people.

Evolving local customs

Malik Haji Noor Mohammad was approached by some people of his area in Tehsil Halimzai of Mohmand Agency, for permission to construct houses on land adjacent to their village. The land was not in use by the people owing to some very old tribal conflicts.

As a result, Malik Noor contacted notables of his area and the other village to seek their opinion. Within one week it was found the tribal conflict over mutual boundaries had ended and finally it was decided to allow the people of both villages to construct houses on this land.

The *Jirga* also agreed to adopt changes in such practices which are no longer relevant today. However, it was made clear that the only construction on this land would be of houses

alone and no agricultural activity would ever take place. It was also stipulated that during construction, the privacy of each party will be taken into due consideration; for this purpose it was decided that separate passage ways would be made for each family to gain access to their respective homes.

It can be observed from this decision that tribal people are quite flexible in adapting and incorporating logical changes into their customs and traditions. The *Jirga* here attempted to facilitate the people and come to a decision that would enable different communities to co-exist with ease. It also illustrates that community elders are always willing to help the people in resolving disputes to maintain peace and harmony.

Jirga resolves disputed ownership of land

This dispute concerned a piece of land in Khyber Agency, jointly owned by Mohammad Ishaq, Jan Haider and Saifoor Khan. There had always been a difference of opinion amongst them on issues related to the produce of land, sale and purchase, right of ownership as well as the mode of determination of shares for each of them.

After some time, the parties mutually decided to resolve these issues through the *Olas* *Jirga*, nominating Haji Abd-ur-Rashid and Syed Ghani as their *Jirga* elders. The elders, with the consent of all the parties, selected three people, Haji Abdullah Jan, Sher Aslam Khan and Amjad Khan as witnesses and instructed them to investigate the dispute. After meeting all concerned people and fact finding they brought the results of their investigation to the *Jirga* elders.

In light of evidence, *Jirga* elders decided the following stipulations would apply to this land:

- All three parties had equal shares in the land; this meant that they were equally responsible for all profits and losses regarding this land. Unless and until there is no family dispute regarding this land, the land would be jointly owned by the above three mentioned individuals.



- If any party wished to sell his share he would first have to offer his property to the other two parties and inform members of the *Jirga*. If, and only if, the other two shareholders could not purchase the land, the owner would have the right to sell his share elsewhere.
- All three parties would be responsible for their families regarding any right of ownership of this land, and were instructed to cooperate whenever required for any dispute on this specific land.
- If any party violated this decision, he would be fined with a penalty of Rs.10,000,00/-.

All the three parties agreed on this decision. A *Jirga* elder Mr. Syed Ghani took the responsibility of guaranteeing compliance with the *Jirga* decisions on behalf of all three parties.

This case illustrates that the *Jirga* is a complete system of dispute resolution, where witnesses are required and a proper investigation process is conducted before announcing a decision. It also explains how a *Jirga* facilitates disputants in coming to a mutually acceptable settlement. And lastly, the involvement of prominent community elders also allows the *Jirga* system to have exercise more authority over the parties in terms of enforcing their decisions.

Sale and purchase of land

Sher Ali purchased a piece of land from Hameed Khan in Kurram Agency. He paid a part of the purchase price and promised to pay the remaining after an agreed period of time. After a few days Hameed claimed that Sher Ali had no right over the land as he had failed to pay the remaining amount stating that the latter had specifically agreed to forfeit his claim on the land, in case of non-payment. On the other hand, Sher Ali claimed that he still intended to purchase this land and pay the remaining price on the agreed time, which had not yet expired.

Eventually the matter was referred to the *Olas* *Jirga* and the parties approached Haji Adam Khel, Sher Badhshah and Shah Wali for this purpose. After hearing both sides, the *Jirga* elders agreed with the land's value which had

been estimated at Rs. 1,70,000/- by the parties. Sher Ali was instructed to pay the remaining purchase price within a fixed time period (determined by the elders). On the other hand, Hameed Khan was persuaded to hand over possession to Sher Ali once he received the full purchase price within the stipulated time frame.

This decision illustrates that the *Jirga* provides equal opportunities to all disputants for explaining their view point. The *Jirga* attempts to understand the facts and encourages people to cooperate with each other. This decision also shows that the *Jirga* ensures a balanced outcome for both parties in terms of decisions which are both acceptable and applicable.

Conflicting boundaries

Meerash Khan and Shafiud Din owned adjoining properties in Bajour Agency separated by a small hill in the absence of any specific boundaries. Over time, this hill came to be known as the mutually shared boundary between both properties.

However, disputes also began arising as to the boundary since no demarcation among these properties was ever made. Eventually, the parties approached elders of their area to resolve this matter, and consequently a *Jirga* was formed comprising of Niaz Wali and Taj Mohammad.

The *Jirga* elders visited the properties and made demarcations to divide the disputed land with the mutual consent of both parties. The *Jirga* also instructed separate access ways to be developed on the lands of both parties, who accepted this division. In this case, the *Jirga* elders themselves took responsibility for peaceful implementation of this decision.

It can be observed in this case that people have faith in the *Jirga* system; in case of any difficulty in resolving a dispute, they willingly approach a *Jirga* for settlement. This shows that the *Jirga* has established trust and confidence amongst the people by fair and transparent decisions.

