

JIRGA MONITOR

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Community Appraisal &
Motivational Programme



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Editorial

Greetings to all our readers!

CAMP brings you yet another diverse and interesting issue of its periodical newsletter '*Jirga Monitor*' comprising of major developments and commentaries on the traditional Pakhtun dispute resolution system.

The Supreme Court of Pakistan recently urged the government to initiate an awareness campaign by involving educational institutions, the media and NGOs to make sure that women were not exchanged to resolve disputes through the *Jirga* system.

Meanwhile, a major development of note is the recent formulation of an all female *Jirga* in Swat which deliberates on issues involving women, particularly when it comes to violation of rights. To read more on this, please turn to Page 6.

These developments have reinforced CAMP's pledge to bring about constructive changes within the *Jirga* system. Since 2010 we have been implementing the Rule of Law Programming in Pakistan (RLPP) project aiming to reform the *Jirga* system through research, capacity building and advocacy initiatives. One of the main objectives of our campaign is to improve women representation and inclusion in *Jirgas*; one of our resounding successes involved obtaining consensus from tribal elders and religious Qazis throughout FATA at the Grand *Jirga* of May 2012 for enforcing a permanent ban on *Swara*, *Xhag* and Bride Price to protect and promote women's rights in the tribal regions.

We came to know of some women who are involved in *Jirgas* at the local level in Mardan, so our RLPP team went to meet them and find out about their efforts. An account of the meeting is provided on Page 7, compiled and written by RLPP Project Manager, Ms. Fareeha Sultan.

The RLPP project's activity brief on training sessions conducted for sensitization of audiences in Khyber Pakhtunkhwa province and accounts of *Jirga* decisions shared by training participants and others are regular features of *Jirga Monitor* and are included in this issue as well on Pages 3 and 5 respectively.

We hope that our interventions through the RLPP project will continue to yield more positive results as we expand our scope beyond KP to the rest of Pakistan. InshAllah!

RLPP team
Jirga component



Training Workshops: “Sensitisation on Traditional Justice System and Human Rights”

Background:

Under Phase IV of the Rule of Law Programming in Pakistan (RLPP) project, our target area has been expanded to Khyber Pakhtunkhwa (KP) and Balochistan provinces.

Therefore, six training sessions were planned for implementation in KP out of which four were conducted during June 2013. In these sessions, a total of 97 individuals including youth, traditional *Jirga* members, Union Councilors, elders, religious minorities (Christians) and females from eight district of KP took part. These trainings were conducted in Peshawar and Islamabad according to the needs and availability of participants.

Revision of Training Manual:

Before initiating these workshops, the training manual developed in previous phases was revised keeping in view the needs and requirements of audiences in KP and Balochistan. In particular, a new chapter on Formal Court mechanisms and protections under the Code of Civil Procedure (CPC) 1908 was added. Other topics of the training manual include; the relationship between *Jirga* and Pakhtunwali; Fundamental Rights and Constitution of Pakistan; Alternate Dispute Resolution Mechanisms; International instruments on Fundamental Rights; Women Rights in *Jirga*; and Islam and Human Rights.

The participants were provided with handouts of presentations and other training material on each topic to ensure easier understanding and maximum participation.

Facilitators of Training Workshop Sessions:

The RLPP team members who were involved in the compilation of the training manual were the main facilitators of the training workshops. Nonetheless, renowned experts were also invited to deliver lectures on specific topics, such as: Professor Alam Zeb (Head of Law Department, Hazara University); Dr. Miraj-ul-Islam Zia (Director Centre for Islamic and Arabic Studies, University of Peshawar); Dr. Anis Ahmed (Vice Chancellor, Riphah International



University); Mr. Arshad Jan (UDNP); Mr. Ali Imran (Human Rights Advocate); Mr. Ali Zaman (Advocate Peshawar High Court); and, Mr Malik Atta Ullah Khan (Tribal Malik from Khyber Agency).

Proceedings of Training Workshop Sessions & Participation:

The training workshop sessions were divided according to the topics in the training manual ranging from international instruments of Human Rights to domestic laws and protection mechanisms. Individuals sessions on women’s rights and rights of indigenous peoples (including children and minorities) were also conducted to further sensitise participants and enhance their knowledge on different topics.

The participants were encouraged to take part in group work and exercises in order to generate more interest amongst them for understanding difficult concepts of law, Human Rights and dispute resolution. Visual aids such as documentaries, pictures and case studies from the previous phases of RLPP were shared with the participants to enhance their knowledge further.

Handouts containing relevant provisions of Universal Declaration of Human Rights (UDHR), Convention on Elimination of Discrimination Against Women (CEDAW), Constitution of the Islamic Republic of Pakistan 1973 and *Jirga* system were shared for encouraging comparative review. In addition, the participants were given problem situations such as disputes to resolve as *Jirga* members in light of their newly acquired knowledge of laws and protection mechanisms.

Participants were asked to fill out evaluation forms both at the start and conclusion of the training workshop to gauge the increase in understanding and knowledge as well as to address any fears and expectations they had at the beginning and whether their concerns had been addressed.

At the conclusion of each training workshop, all individuals were awarded certificates to acknowledge and appreciate their participation.

Feedback of Participants:

In general, participants – even those with little or no knowledge of laws and rights – demonstrated a good understanding of the training topics/material. Even those individuals who did have some knowledge about their rights expressed the view that prior to attending these



training sessions they had not been familiar with the institutions and instruments under which their rights are protected and enforced.

Members of the KP Christian community representing religious minorities expressed satisfaction at their inclusion in the training workshops, and also requested for separate training sessions aimed exclusively at the human rights and protection issues of ethnic and religious minorities.

The female participants also shared case studies from their areas illustrating where the *Jirga* system falls short in protecting women's rights. It was heartening to note that even though women are not part of the *Jirga*, most of them were aware of its functioning and norms. Meanwhile, traditional *Jirga* members shared their

experiences of *Jirgas* and representatives of civil society from District Mardan pointed out that female *Jirgas* are being organised in Mardan which have been very constructive in resolving many disputes.

Overall, the participants were enthusiastic and remained involved in the proceedings. In relation to any fears and expectations, most expressed satisfaction and appreciated CAMP's efforts in spreading awareness through such workshops. Thus, these workshops have been successful in fulfilling their aim of sensitising different groups of society with respect to incorporating laws and constitutional provisions and demonstrating their utility for the traditional *Jirga* system.

Launching Ceremony Of “Understanding Justice Systems Of Khyber Pakhtunkhwa, FATA and Balochistan: The Pakhtun Perspective”



CAMP launched its research report “Understanding Justice Systems of Khyber Pakhtunkhwa, FATA & Balochistan: The Pakhtun Perspective” on Tuesday, 25th June at Marriott Hotel, Islamabad.

The report presents an analysis of findings on Pakhtuns' experiences living in the provinces of Khyber Pakhtunkhwa (KP) and Balochistan, and the Federally Administered Tribal Areas (FATA) of Pakistan in relation to their dealings with both the formal and informal justice systems including the *Jirga*, Nizam-e-Adl regulations (applicable only in Malakand), the police, district administration and others.

The survey for this research report was conducted in the aforementioned areas with a total sample size of 3,900 adult male and female respondents. Speaking at the launch, Ms. Mandy Zeckra, Counselor for Economic Cooperation & Development reiterated the German government's support to the RLPP project as an attempt to understand the environment, diversity of culture, structures and systems defining Pakistan as a country and society; creating public awareness on informal and formal justice systems; and the decision making of local *Jirgas*.

At the launch, an overview of the methodology and limitations was presented by co-author, Ms. Neha Ali Gauhar with particular reference to respondents' knowledge of human Rights,

women's and minorities' rights, and Fundamental Rights and freedoms guaranteed by the Constitution of the Islamic Republic of Pakistan 1973.

The key findings of the report were presented by the lead author, Mr. Naveed Ahmad Shinwari, which included significant data on the trust and confidence expressed by Pakhtuns in the traditional *Jirga* system. An overwhelming majority of respondents stated that the *Jirga* violates the rights of women and minorities. Some recommendations made by the report include advocating women representation in the *Jirga*; election of *Jirga* members and generating a demand for reforming the *Jirga* system from within itself.

Ms. Feryal Gauhar, renowned Human Rights activist, commented on the discrepancies in various justice systems which are at odds with each other and thus create confusion in the sphere of Human Rights, especially in relation to protecting women's and minorities' rights. She provided the Swat conflict and resulting militancy as an example where women suffered the most and feared that this may happen in FATA as well. She added that the data in this report reflects that the writ of the Constitution must be extended to FATA, and it must be ensured that the *Jirga* becomes inclusive for minorities, women and other traditionally marginalised communities.

The keynote speech was delivered by Mr. I.A. Rehman, Chairman Human Rights Commission of Pakistan (HRCP), who commended CAMP's efforts but also observed that a more in depth analysis is required to explore the dynamics of Pakhtun society. He also pointed out that the culture of Pakhtunwali overrides all other beliefs and practices, and therefore is inherent in Pakhtun life. Participants at the launching ceremony included representatives of civil society, lawyers, Human Rights activists, donors, media, and I/NGOs who were invited to provide feedback and pose questions to the panel. The ceremony was concluded through the distribution of shields as tokens of appreciation to the panelists.



Jirga addresses concealing of information

In village Sangeena of Malakand, Akhowat Khan killed Ashraf Khan in 1980 over a land dispute, and fled after committing the murder. Ashraf Khan's family wanted revenge either from Akhowat or his family. A formal complaint was filed at the local police station but there were regular reports of gunfire and fighting on both sides.

After more than 30 years of enmity, the deceased's family claimed to have information as to the whereabouts of Akhowat Khan, and accused his relatives of hiding him elsewhere to protect him. According to the local customs, the families had been ordered to remain separate and refrain from entering each other's territories. In 2008, Akhowat Khan passed away and his funeral was conducted in his village and he was buried at the family cemetery.

After Akhowat Khan's death, the deceased's family approached the local *Jirga* and accused his relatives of concealing his whereabouts all this time; their argument was that this was the only way that they could have known of his death in time and brought his body back for burial.

Thus a *Jirga* was formed to analyse this allegation and resolve the longstanding dispute. It was found that Akhowat's family was indeed guilty and had intentionally aided and abetted a criminal fugitive to avoid punishment which had led to further tensions between the families.

Ashraf Khan's family was compensated in the form of three Kalashnikovs and were directed to submit Rs. 40,000 as surety for refraining from any other action against Akhowat Khan's family in future. Both parties agreed and swore to uphold this decision of the *Jirga*.

This case study illustrates that if disputes are left unresolved for years, especially if one party is deliberately concealing information to avoid punishment, it can lead to further complications and violence. Thus, the *Jirga*'s intervention is all the more important for community disputes since it analyses qualitative aspects, including one party's history of behaviour so that a decision can be made and more importantly effectively implemented as well.

Pakhtunwali and Islamic Principles in Jirga

A violent dispute erupted between two residents of Batkhela, Rehmat Saeed and Gul Siddque which resulted in both dying of gun wounds. This situation escalated into a serious clash between their families as no clear responsibility could be determined for either of the deaths. However, Gul Siddique's relatives stated that Rehmat had instigated the gun fight and thus they were now entitled to avenge his death.

In order to prevent more violence from erupting, local elders formed a *Jirga* headed by Amani Malik who approached both families for resolution of this issue. The *Jirga* members successfully convinced both sides that more bloodshed would serve no purpose and instead fuel more violence and loss of life.

After mediations, the families were persuaded to forgive each other unconditionally. In light of the Islamic compensation of 'Qisas' (an

eye for an eye), the religious figures of the *Jirga* interpreted the situation as an equal loss of both sides and thus ended the dispute there and then. The *Jirga* arranged for condolence prayers for the deceased individuals and an invitation for lunch to officially mark the end of enmity between both sides as is the local custom there.

In this situation, the *Jirga* mechanism enabled two parties to reconcile through peaceful mediations without any limitation of time. Along with Pakhtunwali, the *Jirga* also utilised Islamic values and principles of justice to implement its decision. It also illustrates the strong role of elders in these communities, as they take into account the negative consequences of prolonged disputes. The inclusion of elders and religious figures strengthens the *Jirga* system as people respect them due to their knowledge, experience and influence.

Upholding Customary Values

After Haji Khan Zareen, a resident of Malakand died, his entire estate was left to his three sons, comprising of two houses and agricultural land. His eldest son, Kareem, had lived with this father in one house while his two brothers occupied the second house with their respective families. Meanwhile, the land was jointly cultivated and maintained equally by all three brothers.

After their father's death, the two younger brothers, Hakim and Musa, objected to their elder brother occupying one whole house while they had to share their home. They stated this was extremely unfair and thus demanded an equal distribution of their father's property under which each brother would be entitled to an independent ownership of his share.

For this purpose, they approached elders of their family and a *Jirga* was formed with Aziz ul Hakeem heading the deliberations. After hearing the statements of all three brothers, it was decided that Kareem would keep the house he was already living in; being the first born son he was entitled to an advantage as was the custom there. However, he was also under a duty to provide for and take care of his younger siblings and their families as a father would do. On the other hand, if he were ever to sell his father's house, his brothers would be entitled to an equal share in the proceeds of sale. It was also decided that cultivation of the agricultural land and its maintenance would continue as it had been during Haji Khan's lifetime.

This decision was willingly accepted by all three brothers and Kareem was required to provide an undertaking to assure the gathering that he would care for his younger brothers.

Such decisions illustrate that the *Jirga* upholds customary values, especially those which preserve and strengthen family ties; therefore, its role in reconciliation between family members is crucial. It allows family practices and rituals to take precedence and enforces decisions taken by people themselves instead of forcing decisions on them.

This can also be witnessed from the interventions of both community and *Jirga* elders who always provide people with the option to pick and choose suitable outcomes for themselves.

Accessing Justice for Women

16-year-old Tahira died last year of acid burns inflicted allegedly by her husband. However, despite the formulation of the Acid Control and Acid Crime Prevention Bill (2010), her poverty stricken parents could not obtain justice. Police refused to get involved and the local male-dominated *Jirga* suggested the couple's son should marry one of the offender's sisters to settle the dispute ('*Swara*'). This is when, Jan Bano, Tahira's mother took her plea to the all women *Jirga* in Saidu Sharif, Swat.

Khwaindo Tolana (Sister's Group), the first ever female *Jirga* was formed to provide legal support to women through police and government authorities. In simple words it is "a community assembly set up to win justice for women in the face of immense discrimination". It is a 25-member all-woman *Jirga*, with Tabbassum Adnan as its head. It has emerged out of a women's empowerment programme in the area and claims to have provided justice to 11 women so far.

Bano's case was taken up by Khwaindo Tolana and protests demanding legal action against Tahira's husband were organised, which compelled the police to formally register a case against him. Unfortunately, the man is now a fugitive and has been on the run ever since then. Nevertheless, Bano has also been provided the services of a lawyer to contest her daughter's case.

This all women *Jirga* represents the first step of a positive beginning. We hope it will provide women access to justice and a platform to fight for their rights without fear or the interference of men. But for any real impact, more of such *Jirgas* should be formed to provide Pakhtun women elsewhere access to justice. Taking a cue from this, traditional *Jirgas* comprising of male members must refrain from making decisions that tend to reinforce biases against indigenous and/or marginalised groups and will end the practice of 'trading' women as compensation for crimes committed by men ('*Swara*') through *Jirga*'s decisions.

Protecting Women from Unjust *Jirga* Decisions

Under the Criminal Law (Amendment) Act of 2005, Section 310A was inserted into the Pakistan Penal Code (PPC) under which the practice of giving females in marriages for settling disputes (such as *Swara*, *Vani*, *Badl-e-Sulh*) is a crime. The Prevention of Anti-Women Practices (Criminal Law Amendment) Act of 2011 amends this section to provide for protection against these customs.

This is the culmination of a Supreme Court verdict of April 24, 2006 in which the government was directed to amend Section 310 of the PPC or make an insertion into the Family Act, 1964 to effectively dissolve all marriages conducted under *Vani*.

In the same verdict the Court directed the Registrars of all High Courts and the Presidents and General Secretaries of district level and Tehsil Bar Associations to establish legal aid committees for the purpose of assisting victims of *Vani* or *Swara*.

Collaborative Efforts for *Jirga* Reform

On July 6th 2013, a *Jirga* in village Bangla Gabool, 5 km from Rajanpur district in Punjab, ordered Noor Hassan either to give his three sisters in marriage along with Rs. 10,00,000 to the victim's family as compensation for the murder of Mukhtar Hussain, or remain submerged in water for a considerable time to prove himself innocent. Otherwise the victim's family claimed that they would have the right to kill him in revenge.

After this story was reported in the media, the Supreme Court of Pakistan took suo moto action against this incident and directed Federal and Provincial governments to take action against such illegal *Jirgas* and their decisions. The Apex court also stressed that law enforcing agencies must ensure that local *Jirgas* do not 'barter' females as a remedy for resolving disputes.

The legal proceedings focused on collaborative efforts to bring about reforms in the *Jirga* system; the Court asked the

government to launch an awareness campaign by involving educational institutions, media and NGOs so that unjust decisions made by this centuries old dispute resolution mechanism could be brought forward and solutions to remove the discrepancies found within this system could be removed.

While '*Jirga*' has been used to describe the local mechanism for dispute resolution which in fact is the Panchayat in Punjab, CAMP uses this term only to describe the dispute resolution mechanism prevalent in Pakhtun society for centuries and thus makes a clear distinction between this and other informal forums for dispute resolution across the country.

At present, under the Rule of Law Programming (RLPP) project (Phase IV), CAMP is conducting a comparative research study on various informal justice systems across Pakistan, in order to increase awareness regarding the differences and similarities found in these systems.

It's been three years ...

We began this journey of 'Sensitisation on Traditional Justice System and Human Rights' in August 2010 under the project 'Rule of Law Programming in Pakistan' (RLPP) and it has been very interesting and insightful.

It has provided us with ample opportunities to tread the unknown and explore the hidden. One such chance was when my colleague Aezaz and I set off for Mardan on a bright sunny day in July to meet some inspiring local women. Mohammad Arif, Executive Director Saiban Welfare Society, who had attended our training workshop on Fundamental Human Rights in June 2013 introduced these women and their work to us.

Since the inception of our project we have been striving for the realisation and protection of women rights in *Jirga* decisions. The Grand *Jirga* held on 29th May 2012 through which we managed to successfully enforce a ban on discriminatory practices such *Swara*¹, *Khag*² and Bride Price³ through the consensus of tribal elders and religious Qazis; this was an extremely important milestone, not only for our project, but also for the people in general.

Moreover, during our advocacy campaign, stakeholders have offered various suggestions to improve female representation in *Jirgas*. Women *Jirgas* run by 'women for women' was one such suggestion that received mixed reactions from various audiences. Little did we know that this idea was already being implemented in some form in 10 Union Councils in District Mardan.



On reaching our destination we found Fehmida, Sania, Nasira Noor, Saadia, Gulpari, Fatima, Hazrat Bahar, Gultaj, Fahmina, Razaqat, Noshina Begum, Afroza Bibi and Sadaqat Bibi eagerly awaiting us to share their stories. They are all part of committees set up under a project run by a national NGO aiming to increase awareness on health issues, ensuring equal participation of women in national and provincial political spheres and building their capacity in dispute resolution to enable local



populations to solve their issues effectively irrespective of cast, creed and gender. These committees consist of an equal number of both men and women.

Some among them are former Tehsil Councillors, while others are political workers, and contested in 2013 elections while some are illiterate; however, despite different backgrounds and exposure, they all share a passion to bring about change for their fellow sisters.

It was heartening to see that all of them are well versed with the problems of women in their areas and the changing status of women over the years:

"A decade ago there was lack of education but now the female literacy rate has increased and so women are more aware of their rights. They have the support of their parents as well, who are sending their daughters to schools and colleges, and even universities. This has helped in improving the status of women. For example, over a period of time the number of 'Swara' and women trafficking cases has decreased tremendously. Nonetheless, it is still prevalent in some areas especially in rural areas. Women also face health or economic issues, but honour

¹ The custom calls for a girl to be given away in marriage to an aggrieved family as compensation for a serious crime committed by her father, brothers or uncles (any male relatives in general). Generally, girls are given in *Swara* marriage as compensation for murder, adultery, abduction and/or kidnapping committed by the men of her family.

² This historical custom, *Khag*, is a man's declaration of claim over a woman for marriage. Through this custom, men (particularly paternal cousins) have a birthright to marry their female cousins, even if their match is incompatible.

³ Bride price usually consists of tangible items (cattle, gold etc.) or money that is paid by the groom to the bride's family in exchange for the bride. The value and amount of items varies according to the bride's age and appearance.



killing, incompatible marriages and domestic violence remain major problems which women are still facing”.

Another thing that impressed us about these women is their knowledge of various laws and bills drafted and implemented for the protection of women and how they utilise their provisions to sensitise their respective communities. Rafaqat Bibi shared one particular instance, which is as follows:

“A girl in my town was constantly teased by boys on her way to and from school. Since this is considered an attack on family honour in our area, her father stopped her from pursuing her education. When I came to know about this I went to visit her mother and told her about Sexual Harassment Bill that was passed by National Assembly in 2010. I also sensitised her father about this law and convinced him to lodge a FIR with the local police station. We went to the police station and lodged a complaint against the two boys nominated by the girl. The police arrested them and asked their parents to settle this issue and warned them of strict legal consequences. A Jirga of elders was called by both families and the boys’ families were made to assure the Jirga that such an incident would never happen and as a punishment, the boys were banned from entering the village for life. The girl went on to continue her studies and now is in college”.

The women who are members of dispute resolution committees locally known as *Jirgas* mostly solve problems of domestic nature. In case of a problem or dispute, at times they themselves intervene while sometimes the affected parties contact them. After investigating the issue they convene a meeting of all women in the neighbourhood and deliberate. Usually, it takes them three to seven days to sort out the matter and convince the parties to agree to a decision. Saeeda, while explaining the procedure of deliberation, stated:

“Our work does not end here. We have a proper monitoring system as well, under which we visit homes and ensure that our decision is implemented fully. We strive for the protection of women’s rights through the Jirga system. I participate in and manage all female Jirgas. In disputes where women’s rights are under discussion by the male Jirga, we try to present our case through our male members but first women of the community develop their consensus and then we send our message to the men”.

Elderly women among them use their experience and wisdom gained over the years to keep the peace within their community. Taj Bibi is one such elder who shared her experience with us:

“As an older woman I actively participate in all the activities related to the welfare of women in my area. I share my experiences with them and make sure that disputes are resolved with wisdom and without creating more differences. Over the years,

I have learned that very small disputes can cause larger conflicts. Thus, I try my best to resolve these disputes at a very early stage.”

Nonetheless, it neither was nor is easy for them to come out of their homes; these women themselves have had their own share of social constraints and challenges. Saeeda commented on some of these problems:

“It is generally very difficult for women to work outside the home in our communities. Men do not allow women to work in the field. People in our own communities raise objections and sometimes even resort to character assassination. For me also it was no different as I had to face strong resistance from my family and harassment by neighbours whenever I would go out. Initially, it was also difficult to win the trust of the community and a challenge to persuade women to share their problems with these female Jirga members. Sometimes family members don’t welcome our intrusion into their family matters, but we have to deal with these problems as well.”

Nonetheless, “nothing deters our determination”, as Rafaqat Bibi puts it aptly. She goes on to say that:

“There were many problems on the way. I received death threats, but I never paid any attention to them. I was lucky to have family support throughout. Although I didn’t get married but I have raised my nephews in a way that they share with me my zeal to help others.”

Most of them spoke in Pashto, a language that I can barely comprehend but the twinkle in their eyes and the resonance of strength in their voices while sharing their experiences had an appeal of its own ...the language of never fading willpower and steely determination in the struggle to not only make their own lives better but also of those around them.

(Special thanks to Mohammad Arif for arranging a meeting with the aforementioned women.)

