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CASE STUDY

Long-standing disputes

Afghanistan's mountainous and inhospitable terrain, combined with poor natural resource management, causes intense competition for arable land. The return of refugees and internally displaced persons to their homes since the fall of the Taliban regime has further aggravated that competition. Due to heavy reliance on land for subsistence and income, disputes are common. Other themes commonly underlying disputes are murder, violent crimes, the kidnapping of women for marriage, and the behavior of powerbrokers.

The dictate of *Pashtunwali* and other tribal codes that men avenge assaults on their honor often causes relatively small disputes between neighbors or family members to evolve into long-standing, destabilizing conflicts and various kinds of criminal violence, including murder, involving entire tribes or ethnic groups. Such conflicts can further escalate into long-standing disputes that are potentially destabilizing to entire communities due to limited state presence and weak traditional dispute resolution (TDR).

Long-standing disputes are often based on a single incident, but, over time, can become baffling in their complexity. The number of actors involved snowballs, further entangling the opposing parties and adding to the intractability of the conflict. In addition, many disputes go back decades and records relevant to the conflict, such as property deeds, are often few and far between.

The **USAID funded Rule of Law Stabilization Program – Informal Component (RLS-I)** has implemented a program of legal training workshops, issue-based discussion groups, state-TDR coordination meetings, and networking meetings for male and female village elders and government representatives in 33 districts in nine provinces. These activities enable elders to resolve disputes more effectively and in accordance with law.

The following are brief descriptions of three long-standing disputes that were resolved with the help of RLS-I program participants and that illustrate the challenges faced by informal and formal justice sector actors in resolving such disputes.

Babrak and Shahmaz Gul, Kama district (Nangahar province)

Thirty-one years ago, two cousins, Babrak and Shahmaz Gul, disagreed about the use of a footpath. The disagreement soon escalated into violent conflict between the men's families on numerous occasions with even the women throwing stones at each other. A female member of Babrak's family was wounded and Shamaz Gul's brother's hand was broken. Babrak then stripped Shahmaz Gul of his clothes in front of the whole village.

Babrak referred the dispute to the government. Despite both parties paying the fines that the formal justice sector imposed, the conflict between the two parties did not end.



Formal and informal justice sector actors identify specific disputes that have persisted over time, or had a particularly destabilizing effect on communities in the district, in a USAID funded RLS-I discussion session on long-standing disputes. Chora district (Uruzgan province), May 2012



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Elders discuss the qualities required of an elder to resolve disputes, and best procedural practice in traditional dispute resolution in a USAID funded RLS-I discussion session. Shinwar district (Nangarhar province), January 2013

Both families migrated to Pakistan during the Saur Revolution and the subsequent presidency of Nur Muhammad Taraki (1978-1979). One night, someone attacked Babrak's home and killed his brother. Babrak claimed that Shahmaz Gul was the killer. Babrak took his grievance to the Criminal Affairs Department under the Taliban, but was told they could not resolve the dispute as the killer was unknown.

Shahmaz Gul's family came back to Afghanistan to live in Bihsud district (Nangarhar province) and Babrak's family returned to Kama district, where Babrak seized Shahmaz Gul's land.

On various occasions during its three-decade span, the disputants and local community leaders referred the dispute to the formal justice sector, but the families refused to accept the resulting decisions and continued to attack each other's properties. Similar-

ly, local elders held many *jirgee* without resolving the conflict, either because the disputants did not respect the elders making the decisions or felt their decisions were not impartial.

At last, Babrak took the dispute to the Kama District Governor, who submitted the case to a local, government-sponsored district council. As the dispute had now escalated to tribal proportions and was destabilizing the region, the council attempted to select respected and authoritative elders to participate in a traditional dispute resolution process known as a *jirga* and resolve the dispute conclusively.

The district council decided the *jirga* should be headed by Malik Metakhil, an influential and skilled RLS-I trained mediator with more than 20 years of TDR experience and track record of good cooperation with the formal justice sector. A majority of the other members of the *jirga* were also RLS-I trained elders. Both parties agreed to the selected *jirga* members and authorized them to resolve their dispute. Upon investigation, the *jirga* found that a third party (another cousin), who benefitted from and had fueled the enmity between the two families, was the source of the problem. The *jirga* imposed a fine of 700,000 Pakistani Rupees (PKR) (\$7,100) on the third cousin, and directed that, of that amount, 450,000 PKR (\$4,600) should be paid to Babrak's family for the loss of his brother and 200,000 PKR



Elders learn about the definitions and types of property; leasehold and freehold rights; *pre-emption* and right of first refusal; seizure and access rights; types and validity of deeds; and common disputes arising from property and deeds issues, in a USAID funded RLS-I workshop on property law. Qalat district (Zabul province), September 2012



(\$2,000) to the female relative who had been wounded in the stone-throwing incident. The remaining money covered the expenses of the *jirga*.

As part of the decision, the *jirga* also required Babrak to return Shahmaz Gul's land in Kama district. One piece of land that had belonged to the grandfather of the three cousins was to be divided into thirds and distributed among the three cousins.

The *jirga* also encouraged Shahmaz Gul to have his family offer their condolences to Babrak's family for the loss of his son and request their forgiveness (a traditional custom known as *nanawati*). The District Governor and the District Court approved the *jirga*'s decisions, and the disputants implemented them. Since the dispute was resolved in October 2012, there have been no further issues.

Malik Metakhil explained that the parties involved had frequently requested giving girls from each of the disputants' families in marriage to members of the other disputants' families to resolve their dispute (a common customary practice known as *baad*). Malik Metakhil refused to agree to these requests, as he had learned from RLS-I discussion sessions that this practice violates the legal rights of the girls involved.

Malik Zarin and Malik Mir Alam Khan, Asmar district (Kunar province)

Thirty-three years ago, Malik Mir Alam had a conflict with his uncle, Malik Zarin, about land they shared in Asmar district (Kunar province). The conflict soon escalated into violence when Malik Zarin mobilized the men he commanded in the *jihad* against the Russian invasion against Malik Mir Alam. In response, Malik Mir Alam trained his own militia to oppose Malik Zarin. Both parties suffered many casualties: 85 men were killed and over 100 wounded. All members of the extended families of Malik Zarin and Malik Mir Alam were at risk of retribution. The conflict had grown to tribal dimensions and severely destabilized the region.

More than 100 *jirgas* attempted to resolve the dispute but failed, as neither of the parties wanted to comply with any of these *jirgee* decisions and the hostilities continued for over three decades.

President Hamid Karzai personally negotiated with the disputant parties to try to reach a solution on three separate occasions, most recently after the death of Malik Zarin in a suicide bombing unrelated to the dispute in spring 2012, when Malik Zarin's sons were invited to the Presidential palace. The President strongly urged them to resolve their dispute and to bring an end to the violence.

After this meeting, President Karzai referred the case to the Kunar provincial authorities once again and instructed the district administration to come to a peaceful and final resolution of the conflict. The Asmar district administration planned a *jirga* and government officials invited respected elders



Formal and informal justice sector actors network, learn, and share experiences across the district in a USAID funded RLS-I district network meeting. This is considered crucial to facilitate dialogue for the resolution of long-standing disputes. Surkh Rod district (Nangarhar province), November 2012



from Nuristan, Laghman, Kunar and Nangarhar provinces to participate. Eight hundred elders, including TDR mediators trained in the RLS-I program, sat on the *jirga* for many days and their decision was announced in Asad Abad, the Kunar provincial capital, on 23 April 2012.

As the casualties and injuries to both parties were about equal, the *jirga* imposed no fines or other punitive measures. Both parties agreed to this and embraced after promising the *jirga* elders they would keep the peace and seek no further retribution. No hostilities have been reported since April 2012.

An RLS-I trained elder who participated in the *jirga* expressed his enthusiasm for the RLS-I program by remarking on the positive changes in formal justice sector actors' attitudes:

“RLS-I has done a great job in helping us demonstrate our competence to government officials who before did not value tribal elders' work. In an RLS-I network meeting, tribal elders expressed their views regarding dispute resolution and government officials recognized that tribal elders have the capacity to make a positive difference; now they want to know our thoughts and respect the ideas we have shared with them. All these ideas were about peace: how to encourage disputants to stop fighting and bring peace to our communities.”

Another member of the *jirga* expressed his gratitude for RLS-I training:

*“We had never thought such an organization as RLS-I would invite us, and ascribe such value to the *jirga* system. RLS-I invited us to participate in the program's activities and then provided us with the opportunity to express and share with other elders our views and ideas regarding disputes. [RLS-I] has given us knowledge, boldness and courage, which persuaded us to volunteer for the resolution of such long-standing disputes.”*

Shingul and Zaher, Batikot district (Nangarhar province)

Some 30 years ago, during the Saur Revolution (1978), which marked the beginning of the communist regime, Nasrullah of Batikot district (Nangarhar province) sold his land to Shingul, who was from Hisarshahi village in Rodat district. Shingul migrated to Pakistan soon after, and an influential and well-known power broker named Zaher seized Shingul's land.

Shingul returned to his land in Bati Kot district in the winter of 2012 only to find that Zaher had taken it, and a conflict resulted. Local elders and a local *shura* made three attempts to resolve the conflict, but the disputing parties did not accept their mediation.

Shingul filed a complaint against Zaher with the Bati Kot District Governor. The District Governor referred the dispute to the Bati Kot District Court, which in turn invited respected and authorita-



An elder from Nangarhar province exhibits his use of an RLS-I decision letter (Nangarhar province), October 2012



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tive RLS-I trained elders, such as Malik Esa Khan, Malik Wahid and Malik Matiullah, to mediate the dispute in a *jirga*.

The head of the *jirga*, Malik Matiullah visited each of the parties separately. In the course of the investigation, he learned that when Nasrullah sold his land to Shingul, Zaher had a right of first refusal to a section of the land but Nasrullah had not recognized his right. Malik Matiullah also established that Shingul had a valid deed to the land issued by a court.

On 2 February 2013, the *jirga* announced its decision: Zaher would buy from Shingul the section of land over which he held the right of first refusal. In addition, the *jirga* ordered Shingul to reimburse Zaher for the money he had invested in the land during the three decades of Shingul's absence. Both parties accepted the decision. The *jirga* recorded the decision and sent the decision letter to the Bati Kot District Governor and the District office of the Ministry of Justice (known as the *Huqooq*.) The Bati Kot District Governor and the Nangarhar Provincial Court then approved the decision.

Though this dispute had resulted only in some minor injuries, had it not been resolved quickly it would likely have led to serious injuries or even murder and the destabilization of the community. A noteworthy aspect of the resolution of the dispute was the absence of the traditional (but often misused) cash deposit required from the disputants prior to the commencement of the *jirga* to ensure their compliance with its decision..

Malik Matiullah, the head of the *jirga*, explained the significance of such an advance in TDR:

“Before we used to assign a huge deposit for a resolution, and in truth we were mostly interested in our own benefit and considered the deposit our wage in the jirga. RLS-I taught me that such a deposit is forbidden by law and that it is more likely to result in further disputes among disputant parties rather than in peace.

Without any deposit, we resolved the dispute and both of the disputing parties really appreciated our efforts. This is the first long-standing dispute that has been resolved without the use of a deposit from the disputants.”

Thanks to USAID funding, collaboration between the TDR elders and formal justice sector actors has improved, the capacity of TDR to resolve disputes fairly has grown, and elders feel bolstered in their ability to resolve long-standing disputes.