



PEOPLE'S PEACEMAKING PERSPECTIVES

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Pakistan

THE PROVINCIALLY ADMINISTERED TRIBAL AREAS (PATA) of Khyber Pakhtunkhwa (KP) is one of the most conflict-affected areas in Pakistan. Swat and Lower Dir districts in Malakand Division were particularly affected by intense fighting in 2009. While many people have returned since government control was re-established in July 2009, post-conflict recovery has been slow and the situation remains fragile. Efforts to support reconciliation between communities and militants (who are often from these communities) are needed in this post-conflict transformation phase in Swat and Lower Dir.

Recent experiences of militancy have highlighted the significance of the *Jirga* system as a conflict prevention, resolution and reconciliation instrument, reuniting different parts of society in Swat and Lower Dir. *Jirga* – an integral part of Pakhtun culture – is a gathering of elders convened by an intermediary to hear grievances between contesting parties and reach decisions by consensus. It is a legitimate justice mechanism in the sense that it is an acceptable form of justice to the people it governs and a respected part of Pakhtun life. However, in some instances its weaknesses, including a lack of representation of women and minorities, poor implementation of human rights, and a lack of clarity on its status in the wider judicial system, have allowed militant groups to advocate and find support for alternatives, as illustrated by the Taliban's imposition of their version of Sharia courts. These flaws need to be addressed as part of efforts to improve the entire judicial system. Potentially beneficial linkages between formal and informal justice mechanisms need to be better understood and where appropriate, strengthened, so that one of the burning drivers of conflict in the region – the lack of access to timely and impartial justice to address social and political grievances – is dealt with holistically and without delay.

The findings in this Policy Brief are drawn from consultations with local communities and a range of Pakistani and international actors who have experience of the *Jirga* system in KP. It presents local perspectives on the *Jirga* system, the challenges it brings and areas for improvement, including the inclusion of marginalised and vulnerable groups.

The European Union (EU) can play a constructive role in helping the Government of Pakistan to address the range of political and judicial issues necessary to improve access to justice in PATA, including by supporting improvements to the *Jirga* that will complement wider reforms as well as strengthen its recognised conflict resolution and reconciliation function.

KEY OUTCOMES

- **Reform of the wider judicial system is crucial for preventing future conflict:** strengthen the functional linkages between formal and informal mechanisms and clarify the status and potential of *Jirga* to complement the judicial system.
- **A more representative and inclusive *Jirga* system will improve access to justice for all members of society and reduce local tensions and conflicts in PATA:** adapt the customary system to include marginalised and vulnerable groups.
- **Time-honoured *Jirga* plays a constructive and effective role in conflict transformation and resolution:** enhance the understanding and use of *Jirga* in contributing to reduced levels of militancy in PATA.

The People's Peacemaking Perspectives project

The People's Peacemaking Perspectives project is a joint initiative implemented by Conciliation Resources and Saferworld and financed under the European Commission's Instrument for Stability. The project provides European Union institutions with analysis and recommendations based on the opinions and experiences of local people in a range of countries and regions affected by fragility and violent conflict.

"*Jirga* is the backbone of Pakhtun society."

Female civil society member,
Lower Dir

Findings and Recommendations

1.

Reform of the wider judicial system is crucial for preventing future conflict: strengthen the functional linkages between formal and informal mechanisms and clarify the status and potential of *Jirga* to complement the judicial system.

"*Jirga* is a very effective tool for settling disputes, but that doesn't mean that *Jirga* does not have room for improvement."

Female civil society member, Swat

There is very limited and inconsistent access to justice in PATA through a mix of formal and informal justice mechanisms that include formal courts, Sharia courts and the informal *Jirga* system, and the boundaries between them are not always clear. Cases can also move between these systems. The formal justice system is often disregarded because it is lengthy, costly and at times corrupt and has been unable to gain credibility among the local population during the past 150 years. In its present state, it was not perceived by research participants to be able to enforce its own decisions without the consent of the tribes, or their elders.

The *Jirga* system is the preferred option for conflict resolution, despite its weaknesses, and must be recognised as the dominant justice system in PATA. Despite the centrality of *Jirga* to Pakhtun society, it would be inappropriate to assume that it holds all the answers to increasing access to justice. Social and political changes in Pakistan and the influence of conflict in neighbouring Afghanistan have affected the evolution of the *Jirga*. Despite enjoying a renaissance in the recent past, research participants believed that as a viable system of governance the *Jirga* has in fact been in long-term decay. While defending its continued importance to Pakhtun society, stressing its value and relevance, there was tacit acceptance that the experience of *Jirga* now is different to that in the past and those involved in the *Jirga* no longer command the same respect, not least due to perceived corruption in the system.

In the eyes of many consulted, this corruption stems from the way that *Jirga*

members are selected. Rather than choosing the most qualified, positions can be bought by the powerful and rich – with some local people referring to the system as 'the Money *Jirga*'. At the same time, many local people voiced even greater concerns about corruption in the formal justice system. There was frustration that *Jirga* has not kept pace with modernisation in the region. This is seen as a result of government attempts to sideline it in the past.

There are huge inconsistencies within and between *Jirga* practice which stymies external understanding of the region. There are also tensions about whether *Jirga* should or should not be part of the formal judicial system, how they might be linked, and whether the state has a role. Views also differ at the local and central levels about its mandate. Despite its successes, the lack of clarity in its functions and huge variability across the tribal areas – in the context of an already discredited and deficient formal and informal system – contribute to a vacuum, which has been exploited by militants in recent years, enabling them to enforce different forms of 'justice' and weaken the state.

"The *Jirga* is the best alternative. *Jirga* is comparatively successful because of the people's traditional attachment with it and love for it. The court system is very costly for them financially and in terms of time."

Male community leader, Swat

Despite criticism of the *Jirga* within Pakistani society and beyond, the *Jirga* system continues to represent a core element of Pakhtun social order. Respondents in both Swat and Lower Dir indicated that they preferred *Jirgas* (as a concept) to the formal system, in part because the formal system was deemed to be costly, corrupt and time-consuming and *Jirga* were perceived to be more

reliable and faster. Several respondents discussed *Jirga* as if it were the prevailing legal system in the area in part because of its cultural and historical importance. Given how *Jirga* is regarded, there are strong opinions and sensitivities about how it should be improved reflected in the recommendations made below.

"*Jirga* need to be formalised, but no role should be given to government in the constitution and proceedings of *Jirga*. The state administration should be made subordinate to *Jirga* and the only role for administration should be in the implementation of *Jirga*'s decision."

Participant, group discussions, Lower Dir

RECOMMENDATIONS

- Support the strengthening of the *Jirga* system in the context of wider judicial reform, in close coordination with government and civil society.
- Develop an in-depth understanding of the *Jirga* system and the potential role it can play in conflict resolution and justice provision, and clarifying its status within the wider judicial system, for example, by mapping different *Jirga* that exist and conducting a wider study on people's perceptions of *Jirga*.
- Provide longer-term and more strategic technical and financial support to enable sustainable reform to the *Jirga* and the wider judicial system, moving away from more piecemeal, short-term and pilot phase approaches and improving coordination and coherence between donors, government and civil society.
- Ensure that efforts to support the strengthening of the *Jirga* system are done in a consultative and participatory manner that is sensitive to cultural norms thus promoting locally owned, led and acceptable reforms that take place over a reasonable period of time.

2.

A more representative and inclusive *Jirga* system will improve access to justice for all members of society and reduce local tensions and conflicts in PATA: adapt the customary system to include marginalised and vulnerable groups.



TOP: Daily life is beginning to return to normal in Swat as young girls go to school.

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MIDDLE: Partially-sighted Sidra Bibi feels helpless in an alien environment. Conditions are harder than usual for disabled internally displaced persons (IDPs) at the five remaining camps in Peshawar. © ABDUL MAJEED GORAYA/IRIN

BOTTOM: The majority of IDPs have returned but the trauma of conflict lingers with the discovery of mass graves. © TARIQ SAEED/IRIN

"*Jirga* ... needs to be brought into conformity with the modern world dynamics such as issues pertaining to peace and stability, human rights and violence against women."

Interview, Swat

Currently, the *Jirga* system is not representative or inclusive of the communities it serves, with marginalised and vulnerable groups including women, disabled people and minority groups excluded from directly participating in and influencing *Jirga* decisions. Concerns were raised by some participants about the weak implementation of human rights principles, which is hampered by low levels of awareness of international human rights standards and those enshrined in the Pakistan Constitution and the Quran. A few female and several male interviewees outlined substantive concerns about women's rights in *Jirga*, particularly the use of *Swara* (the giving of young women and girls in marriage as a method of resolving conflict) and women's participation.

"The *Jirga*, a purely male institution, neither sanctions women as a member, nor as a witness or a plaintiff. Women may access *Jirga* only through a male relative. In case of grievances against her male relatives, no recourse whatsoever is available."

Interviewee, Swat

Presently women are not allowed to participate directly in *Jirga*, but do so through male members. Women's engagement has traditionally been constrained by the predominance of male *Jirga* members and their reluctance to encourage female participation. Among all respondent groups a common view was that women's participation can benefit not only women, but the *Jirga* more generally,

as long as it is in line with overriding social mores. There was support for the creation of separate *Jirgas* for women, or possibly mixed *Jirgas*.

"...logically women can take part in *Jirga*; if they can appear in courts before strangers, they should be able to become *Jirga* members and participate in a system where they feel and get more respect."

Male youth, Swat

However significant resistance to increasing female participation came from religious leaders who suggested, for example, that women's testimony was worth only half that of a man's. Identifying ways in which women's participation can be improved would need to be carefully calibrated to reflect differing social mores and traditions within and between communities.

Youth respondents argued that every strata of society should be given proper representation proportional to population and should include: "...*Falah-e-Tanzeem* [social organisations], government institutions and community based organisations..." Younger respondents wanted to see a broader selection of *Jirga* leaders and the creation of a formal office, which would move meetings from a *hujra* (a place of guests and gatherings for the male population in the community) to a permanent community hall.

External impetus or pressure for change, for instance to broaden participation, risks generating resistance among communities who are likely to seek to protect what is seen as an integral part of their identity. Therefore substantial effort is required to promote and foster local voices calling for change in the context of a central and provincial political process; using *Jirga* through its leaders to modernise *Jirga* practice, at their own pace.

IDPs from Swat in Jalojai camp
in Peshawar, 2009.

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RECOMMENDATIONS

- Ensure that efforts to make the *Jirga* system more inclusive and representative are culturally sensitive and based on broad consultation, thus promoting locally owned and led reforms that take place in a locally acceptable timeframe.
- Promote evidence-based reforms of the *Jirga* system to ensure that marginalised and vulnerable groups including women, youth, disabled people and minority groups can participate and are better represented.
- Support community members' suggestions to improve representation through establishing separate or mixed *Jirga* to increase women's participation and ability to resolve their disputes through *Jirga*, and to increase youth engagement in *Jirga*.
- Support and promote education on human rights within communities to increase understanding and awareness of them in a context-sensitive manner, drawing on international human rights standards and those enshrined in the Pakistan Constitution and the Quran, to inform the strengthening of the *Jirga* system.



Jirga: a conflict prevention tool

Jirga is a central feature of Pakhtun culture – a tool to resolve domestic, local and even regional conflict. It provides access to justice for people in the Provincially Administered Tribal Areas, particularly as the formal system is perceived to be costly, corrupt and time-consuming. One respondent in Lower Dir noted its conflict prevention role:

“In our area two tribes had a dispute over land and litigation, which started in the lower courts [and] had reached the Supreme Court. The court decided in favour of the Essa Kheil tribe but there was no way to implement the court’s decision, which resulted in constant tension between the two tribes and [it became] a security threat for the whole area ... *Jirga* members tried to settle the dispute between them. These people solved this dispute amongst the tribes and prevented a large scale conflict.”

3.

Time-honoured *Jirga* plays a constructive and effective role in conflict transformation and resolution: enhance the understanding and use of *Jirga* in contributing to reduced levels of militancy in PATA.

"...post-conflict Swat needs a forum which can reunite the society and such a function can be well performed by *Jirga*."

Female community member, group discussion, Swat

During the mid-1990s, militancy intensified when Teherk-i-Nifaz-i Shariat-i-Muhammadi (TNSM) led a violent campaign to introduce Sharia law in the Malakand Division.

The TNSM was one of the founding groups of the Tehrik e Taliban Pakistan (TTP) in December 2007, which brought together 13 militant groups. The TTP established groups across KP including in Swat and Lower Dir, wresting large parts of the region out of state control – including gaining administrative control of Swat, setting up Islamic courts and attacking girls' schools. A military operation in 2009 enabled the government to regain control of the region, under the authority of the army.

While armed conflict has ended in Swat and Lower Dir, the transition back from military to civilian rule has been slow and peaceful reconciliation between different members of the communities still needs to take place. The underlying pressures which gave rise to militancy in the first place have not necessarily subsided. Renewed conflict remains a real threat in the eyes of local residents, especially when the Pakistan Army withdraws from Swat creating a vacuum in terms of leadership and defence, which may lead to another crisis in law and order. There is also a risk that Taliban forces may try to attack these areas again potentially resulting in revenge attacks. Such attacks may target *Jirga* members and other community leaders.

There was consensus among those consulted that *Jirga* is a suitable mechanism for conflict resolution and reconciliation in this post-conflict transformation phase, primarily because it reflects pre-existing

social norms and is an expression of Pakhtun society. The importance of *Jirga* to Pakhtun culture meant that it was the system that Pakhtun leaders reached for to resolve conflicts associated with Taliban extremism and to prevent the Taliban from expanding their influence in new areas. The flexibility and proximity to the communities they serve lend *Jirga* particular appeal over official systems.

Jirga can address conflict at multiple levels, as one civil society member in Swat noted, "at the individual level *Jirga* addresses issues that impact parties involved in a dispute (land, water, marriage) and at the community level *Jirga* works to resolve issues that impact the entire community (building of a mosque, school)." Some respondents felt that institutions like the *Jirga* were necessary to foster local level reconciliation, as one female respondent in Swat said "...after the military operation now it is time to work towards uniting people and ensuring peace in the region. This can be done through *Jirga*."

The recent past, with experiences of militancy and natural disasters, have presented the *Jirga* with an unprecedented challenge: to provide local leadership but at the same time to respond to the changing demands of the population, the state and the international community. This has been further complicated by modernisation and globalisation which have brought new found wealth and power to particular groups and in the eyes of some communities has contributed to the degradation and corruption of the *Jirga*. However, despite being a popular and cherished social institution, the practice of *Jirga* has never remained static. To stay relevant to people in Swat and Lower Dir, it now needs to respond to the demands of young people, women, ethnic minorities and a number of elders to ensure it

becomes an even better mechanism for managing conflicts and accessing justice for all.

RECOMMENDATIONS

- Identify and recognise the positive role *Jirga* can play during this post-conflict transformation phase to promote reconciliation within and between communities in areas recently affected by conflict.
- This should be informed by research, supported by the Government of Pakistan, the EU and others, that looks in more detail at the *Jirga*'s role in conflict transformation including how it can reunite and reconcile communities.
- Support co-ordinated efforts by civil society and the Government of Pakistan to maximise the positive role *Jirga* can play in building peace and reconciliation as part of wider efforts to secure sustainable peace and security in PATA.



This map is intended for illustrative purposes only. Saferworld and Conciliation Resources take no position on whether this representation is legally or politically valid.

References and Acknowledgements

The findings in this Policy Brief were drawn from a wider report entitled *The Jirga: justice and conflict transformation* conducted by Saferworld under the People's Peacemaking Perspectives project. For full details of the project and the report on which this brief is based, please visit: www.saferworld.org.uk/PPP

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Methodology

This policy brief is based on research carried out between May and November 2011 through group discussions and interviews conducted in Swat, Lower Dir, Peshawar and Islamabad. In total 14 group discussions were carried out in the two main research areas, Swat and Lower Dir: seven in each site – four with men and three with women. There were 113 participants (61 male, 52 female) in the group discussions and a further 27 took part in interviews (20 in Swat and Lower Dir, 7 in Peshawar and Islamabad). These interviews were used to validate findings from the group discussions and explore potential policy and programme responses to the issues identified by the local respondents. Those interviewed included a range of Pakistani and international actors who have experience of the *Jirga* system in KP.

The representation of disadvantaged groups in discussions was challenging, in part due to the nature of Pakhtun society and the male- and community leader-dominated nature of the *Jirga*. Efforts were made to ensure that there was equal male and female representation in target groups, with the exception of community/religious leaders who were exclusively male, reflecting Pakhtun society in the areas studied. As the study focused on Pakhtun experiences of *Jirga* the respondents were exclusively Pakhtun. In general, the respondents were politically, socially and culturally conservative, though there were no known representatives of militant groups in the sample.

Saferworld has worked in Pakistan since 2002, cooperating with local civil society organisations. Saferworld's partner for this PPP research was Community Appraisal and Motivation Programme (CAMP).