

section

III

# In-Depth Interviews

# Summary of Qualitative Findings

This summary presents the most salient findings from 50 in-depth interviews (IDIs). Given the diversity of participants and dispute types, these findings attempt to convey an account that can be generalized as much as possible. Despite geographic, ethnic, and gender diversity of participants, there was remarkable cohesion around the role and efficacy of dispute resolution arbiters in Afghanistan.

## Perceptions of Dispute Resolution Bodies

### Village Elders and the Jirga

Participants were nearly unanimous in their sentiment that community elders are the de facto individuals responsible for solving problems among local residents. In some communities elders are elected, while in other communities, the position is inherited by the kin of previous elders. Many community elders are also mullahs or imams and are therefore highly respected members in the community. Irrespective of how elders are designated, they are held, with a few exceptions, in high esteem by their communities for their knowledge of Islam, wisdom, impartial judgment, and respect for all community members.

*"The [jirga] leadership position can be either inherited or not inherited in my community. There are some leadership positions that are not inherited: they are selected by the Mullah, community elders and wise people. There are some people whose father and grandfather were community elders and they inherit the position. We think that because his father was active and smart, therefore his son is also smart and deserves to hold a leadership position. His son is trained by his father and can bring justice."*

- Female, 29, Kandahar, Rural, Inheritance Dispute

The most common disputes involve the improper use of irrigation water, intra-family conflict, and conflicts between families caused by children. Participants cite a lack of education and unemployment as the underlying causes of disputes in their community. Unemployed men in particular are more frequently involved in disputes in an effort to generate an income. Many participants note that uneducated people, unaware of the legal consequences of their actions, tend to spark disputes over land, water, and inheritances.

*"There are people in the state courts who are corrupt. We try to solve 80% of disputes by holding jirgas. We have created an elders shura so we mostly address our problems that way. The state courts are mostly biased. For example, they took the side of Hazara people even if they were guilty...because their staff are mostly Hazara."*

- Male, 27, Ghanzi, Rural, Land Dispute

*"First, we attempted to convince the opposing party to resolve our dispute ourselves without involvement of a third party. However, they did not accept our suggestion and continued to tell us to find another way to bring water to our farmland."*

**- Male, 31, Kandahar, Rural, Water Dispute**

When a dispute occurs, nearly all participants first attempt to find a resolution themselves before involving a third party. There is a strong desire to keep knowledge of a dispute from spreading beyond those immediately involved for fear of judgement and straining relations with the community at large. If the parties involved are unable to reach a solution, the case is brought before the village elders.

*"The jirga solves many types of problems, for example, it resolves divorce cases, addresses problems over a women's share of an inheritance. It also solves cases of violence against women – some women are beaten by her husband's family and the jirga will interfere to resolve these family problems."*

**- Female, 28, Kandahar, Rural, Physical Assault Dispute**

Under most circumstances, elders are viewed as the preferred arbiters of a dispute because of their training in Islamic law and perceived impartiality. The village elders form a jirga of respected members of society from the surrounding community. This group is responsible for collecting facts from all parties involved and issuing a just decision. A few participants note that the jirga has been known to favor the wealthier or more politically connected party, but this is a small minority. Participants mention that some disputes are too complicated or contentious for the jirga to solve, such as an inheritance conflict between multiple family members. If the jirga is unable to reach a solution, it will typically refer the parties to a government court. That said, most participants view the jirga as the preferred arbiter to solve a dispute.

## **Local Police**

Most participants have limited trust in the local police force. Some villages report having responsible and effective local police, but most report they are incompetent, corrupt, and unqualified to solve a dispute. The primary purpose of the police is to maintain government control against Taliban and other insurgent groups. They are mandated to patrol highways, monitor checkpoints, and ensure the safety of local residents. Most participants consider the police to be ill-equipped for this task and generally unreliable.

*"The cause of all these disputes is that we do not have any government or rule of law. What is the police station for? There are 300 to 400 police in the police station. If they are on duty and actually on patrol, none of these incidents will happen. They should not let vagrants in the streets. They should ask people. They all sleep on their bases and half of them go to their house after just signing the attendance sheet in the morning and their payments is sent to their accounts. If 400 staff from the police station actually patrolled, these incidents would not happen."*

**- Male, 28, Kabul, Rural, Family Dispute**

Although members of the police force are recruited from their local villages, participants have limited interaction with them.

Given that the police are easily bribed and typically recruited from the ranks of the unemployed, participants do not consider them to be an impartial institution capable of administering justice. Many participants have seen police accept bribes from criminals or extort innocent civilians who were involved in a legitimate dispute.

*"They [police] are tasked to achieve the government's goals to eliminate militants in their areas, but in fact, they do what they want and they apply their own governance on people, they take money from wealthy people and fruit from gardeners by force, they do what they want, local police misuse the government name."*

- Male, 44, Kandahar, Urban, Inheritance Dispute

## State Courts

Participants offer mixed perceptions of and experiences with the state courts. State courts are typically located in the district center and provincial capitals. Nearly all participants understand that state courts are staffed with professional lawyers and judges – professions associated with high degrees of education. Some participants note that state courts are where one must appear to settle a land title transaction, file for divorce, or seek a resolution to a legal dispute. Courts are also seen as responsible for issuing sentences for imprisonment and administering fines for illegal activity. It's clear that state courts are viewed as a legitimate institution of the Afghan government.

There is substantial variation in the perceptions of state court effectiveness and impartiality. Some participants view state courts as capable of administering justice according to the civil law because those responsible are well-educated and understand the importance of a respected legal system. Some participants do not feel the state courts treat the poor and ethnic minorities equally, however. A plurality of participants thinks judges and prosecutors in state courts can be bribed to influence a decision. Due to the various layers of administrative bureaucracy with judges, lawyers, prosecutors, and clerks involved in the legal process, there is greater potential for bribery due to the multitude of actors involved in the dispute process. It should be noted, however, that very few participants who actually had a dispute resolved through a state court paid a bribe or were concerned that the other party had.

## Dispute Resolution Process

Participants were asked to share particular details of a dispute in which they themselves were involved. This section discusses general trends of the dispute resolution process. Of all the disputes that were discussed in the IDIs, a greater number involved other family members and neighbors. Disputes among family members often include a female family member seeking the inheritance of a deceased male family member, typically a father or husband. Disputes between neighbors frequently originate from a disagreement over the use of irrigation

water or a common property wall or fence. The vast majority of disputes were with people from within the same community.

For most disputes, those involved informally consult a male member of their own family for advice on how to resolve the dispute. More often than not, the participant tried to approach the other party first in an effort to come to a resolution without involving elders, the jirga, or courts. This practice was particularly prevalent among disputes that involved members of the same family or neighbors. There is a strong desire to avoid any public awareness of the dispute from both parties to avoid generating additional conflict within what is already a tense situation. Very few participants sought the official assistance of a lawyer.

One of the most striking themes to emerge is the high emotional toll participants suffer while trying to resolve their dispute. Many participants mention strained relationships with their families and communities, high levels of stress caused by the uncertainty of the outcome of the dispute, and how the outcome will affect their relationship with the other party. Intra- family disputes commonly result in family members refusing to speak with each other for months.

*"We had a very bad feeling [during the dispute] because people were laughing at us and our interaction with my uncles and my mother's families became worse. We could not express joy or sorrow at parties because people did not see us in a positive light."*

- Female, 28, Nangarhar, Rural, Inheritance Dispute

## Jirga

Given the variety of dispute arbitration groups and their unique procedures, each dispute has a unique story. There are some commonalities, however. Among participants who brought their dispute before a jirga, there is a formal procedure where the jirga convenes and each party presents their side of the story with as much evidence as possible. Members of the jirga review the evidence presented and speak with other members of the community who may have witnessed or been involved with the dispute. The entire resolution process is fairly quick; no participants expressed concern that the process was too lengthy. All disputes that involve a jirga were resolved within the local community.

*"Well, there are so many disputes of this kind in Afghanistan like family conflicts, inheritance, divorce and other crimes and disputes that occur in a family that should be solved first by the both parties between themselves and if they did not come to an agreement they can refer to the jirga. If they could not solve their disputes through these ways, they can refer to the courts to solve their disputes."*

- Female, 30, Nangarhar, Rural, Family Dispute

Once the jirga arrives at a decision, both parties comply with the outcome. There are very few cases where a party to the dispute did not accept the jirga's solution even if they vehemently disagreed. The jirga has the authority to demand payment for damages, force an inheritance to be distributed to the rightful heir, and determine where a fence should be placed. Nearly all participants who had their dispute solved by the jirga felt that the decision was impartial and they

respected the elders who were involved. In the majority of cases, both parties were able to resume normal interactions after the dispute was resolved even if they did not communicate during the resolution process.

## State Courts

Participants have varied experiences with state courts. Some went directly to the state court at the suggestion of a respected male family member. Others were referred to the state court by the village elders because the elders did not have the ability or authority to solve the dispute. Unless the participant lived in the district or provincial capital, they had to travel to the courthouse to file their case and present it to the judge. In some cases, participants had to return to the courthouse multiple times to appear before the judge or sign a document, which incurred travel expenses. Participants who had their dispute resolved through a court note that it took many months in most cases until a final decision was made. During this time, some participants suffer from anxiety over the outcome as they are unable to get frequent updates on the status of their dispute.

*“Courts solve problems regarding land, shops, and money, so people go to the courts. People accept the judges’ decisions. If there are no courts, people will take each other’s land and shops.”*

- Female, 45, Kandahar, Rural, Land Dispute

Very few participants note having formal legal representation; most simply represent themselves. That said, some courthouse staff helped participants navigate the paperwork and proceedings and explained how the process would work. Female participants had to enlist the support of a male family member to accompany them to the courthouse and in many cases, help advocate for her. Not all participants feel the state courts had all of the necessary evidence to make an informed and impartial decision. There is concern among some that the courts can be bribed and judges will disregard important evidence to favor one party over the other. There are also some cases where the judge intentionally delays issuing a decision until the participant pays a bribe. Similar to rulings from the jirga, the outcome is typically respected by both sides, although there are a few instances where one party did not comply with the outcome because they suspected the court had been bribed.

## Conclusions

The dispute resolution process in Afghanistan can involve a variety of actors and institutions. Moreover, each community has its own standard processes that are largely driven by respect for the village elders. Elders are revered for their wisdom, training in Islamic law, and respect for all members of the community. Most disputes are first brought to the elders, who advise both parties to pursue their dispute through a jirga or to go directly to the state courts. If they advise going to a jirga, the disputing parties present their case and evidence to the entire group. Since the jirga is comprised of local elders, they are typically aware of the dynamics within the community and are seen as highly trustworthy. Their decision is respected, and typically is successful in resolving the dispute and helping both parties mend their relationship.

State courts are seen to have considerable authority over legal matters and are more likely to be utilized for disputes that require a legal formality such as a divorce or inheritance conflict. Given the multiple layers of government bureaucracy and the common practice of individuals representing themselves, state courts generally take longer to resolve disputes. Not all courts are seen as impartial; some are asked to pay a bribe by a judge or clerk which undermines the perception of impartiality the courts are supposed to uphold.

Nearly all participants recall their dispute having a negative effect on their personal relationships, which was a major cause of anxiety and stress. Regardless of the avenue through which their dispute was resolved, most participants are pleased with the outcome and more importantly, relieved that it is over.