

**SHAHMAHMOOD MIAKHEL**

smiakhel@usip.org

NOAH COBURN

ncoburn@usip.org

Promoting Stability and Resolving Provincial Disputes in Afghanistan: USIP's Dispute Councils Program

Summary

- Currently numerous disputes at the local level are unresolved in Afghanistan, leading to local instability, a growing distance between the government and people and encouraging communities to turn to the Taliban.
- In March 2010, USIP began working with local elders, government officials (particularly governors and officials from the Ministry of Tribal Affairs) and religious figures to address a range of disputes in Nangarhar and Kunar provinces in eastern Afghanistan.
- These networks of elders, working closely with government officials and, in some cases, the international military, have addressed conflicts that include land disputes, criminal cases, and disputes involving the Taliban. Since 2010, USIP's Dispute Resolution Project has participated in and recorded the resolution of over 120 cases.
- The project suggests several methods for facilitating dispute resolution that rely on flexible networks of locally legitimate political figures which will strengthen the government, promote rule of law and decrease the appeal of the Taliban.

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The Imperative of Effective Local Conflict Resolution

The current insurgency in Afghanistan is taking advantage of local feuds and the instability that they create. While some members of the Taliban have ideological ties with the insurgency in Afghanistan, it is clear that a significant number of communities have joined the insurgency due to the failure of both the Afghan government and the international community to provide effective transparent governance and rule of law. The failure to build a legitimate judiciary and the residual undermining effects of previous communist regimes, Afghan resistance groups in 1980s, warlords and the Taliban's influence on local structures has made unresolved disputes a growing concern at the national—and international—level. In some areas, the Taliban have directly encouraged disputes, often pitting communities against the Afghan government and coalition forces. Elsewhere, Taliban leaders have increased their authority and appeal by providing more effective justice mechanisms than the state has been able to provide. Together, these trends work against international efforts to secure Afghanistan and thereby illustrate the need for a serious focus on dispute resolution.

Despite the weakness of the formal justice sector, local communities have been resolving disputes peacefully for years. Elders use tribal mechanisms¹ to resolve issues between individuals

and communities in manners that often emphasize restorative justice. The way that these bodies function varies, and Pashtuns often rely on ad hoc gatherings referred to as jirgas, while most non-Pashtun groups rely on shuras, or more fixed councils.² The flexibility of these mechanisms is one of the things making them so efficient. Often the figures who work in dispute resolution are not only knowledgeable about local issues, but have connections to marginalized groups who may have recently turned towards the Taliban. In many areas, however, the past 30 years of conflict have undermined the position of local elders. Instead, warlords have increasingly shaped access to justice through the use of arms and illicit funds, often with the support of corrupt government officials, leading communities to turn away from government institutions.

In the cases where elders do continue to exert influence, there needs to be greater cooperation between these elders, communities and government officials. In much of rural Afghanistan today there continues to be three pillars of power: spiritual leaders (mullahs and members of the ulema), traditional leaders and government officials (particularly district and provincial governors).³ Unfortunately, most efforts by the Afghan government and the international community to encourage dispute resolution and access to justice only focus on one of these groups or one specific issue (e.g. land). In order to address this shortcoming, USIP since 2010 has been bringing together figures from each of these pillars in a series of pilot projects, aimed to facilitate resolution of disputes on a range of issues.

USIP's Dispute Resolution Councils

Since March 2010, USIP has worked with the Ministry of Tribal Affairs (MoTA) and the provincial governors of Kunar and Nangarhar provinces to create two councils of respected tribal and religious leaders to serve as the centers of wider networks of respected community figures in order to increase cooperation between state officials and respected community figures called Dispute Resolution Councils (DRC). In each province, 10 members were selected who were both members of the ulema and respected tribal leaders. The selection process acknowledged the social and political differences in the two provinces. In Nangarhar, representatives from most of the major tribal groups were selected, while in Kunar, elders were selected from different geographic areas. Once formed, these groups functioned as informal networks of elders upon whom communities could call when needed rather than as sitting bodies. The reputations of these men encourage communities to bring cases to them. In turn, the inclusion of various members of the DRC in the resolution process added legitimacy in the eyes of the communities.

USIP provided members of the councils with some training on dispute resolution, but more importantly, facilitated dialogue and cooperation between DRC members, government officials and members of the international community. USIP also brought DRC members from Kunar and Nangarhar together so that they could meet one another, discuss dispute resolution strategies and lay the groundwork for resolving potential inter-provincial disputes. USIP facilitators worked with council members to record the cases in which members of the DRC were involved. In order to protect those involved, USIP did not publicize this project until the project's conclusion in March 2011 when the deputy minister of Tribal Affairs briefed local media.

Types of Cases Resolved

In total, the elders who are a part of the DRC program networks have resolved more than 120 cases in the past 12 months. Of those, USIP gathered detailed records on 105 (48 from Nangarhar, 56 from Kunar and one that crossed the border between the two provinces). In both provinces, land continues to be the most contentious issue (31 out of 48 cases from Nangarhar, and 26 out of 56

from Kunar), but elders also dealt with 30 cases that involved criminal issues such as assault and kidnappings. These issues are often related as almost 25 percent of cases involving land also had criminal elements.

DRC members have also become involved in resolving key provincial political issues. In February 2011, several members of Parliament and provincial council members requested the removal of the governor of Nangarhar, a move strongly opposed by several communities and groups of local elders, straining the relationship between these groups and the government. DRC members from Nangarhar requested that elders, including DRC members, come from neighboring Kunar province to take part in dialogues as outside reconcilers to assist in dialogues that prevented the outbreak of violence.

Another mark of the program's success was the willingness of political actors from local communities and government officials to refer cases to the DRC. In each province, cases were most likely to be referred by local communities (41 of 105), but government officials also came to refer a sizable number (27).

This demonstrates significant buy-in from various leading political figures within each province—something often missing from other resolution programs that either work to build capacity within government structures, or only target local communities to the exclusion of government structures.

Land, Murder and Detention

It is difficult to classify many of the disputes in Afghanistan, since conflicts over land can easily turn violent, adding a criminal element. In areas where the Taliban are active, there is also a danger that insurgents will become involved in disputes. For example, in Nangarhar, there was a case about whether a certain man had legally purchased his house 40 years ago. The supposed owner began threatening those who had brought the case to the prosecutor, stating that he would seek support from Taliban members active in the area. To prevent further escalation of the case, a DRC member brought the issue to the Director of Tribal Affairs in the provincial capital. Along with two other DRC members, they went to the village to consult with other elders who had become concerned about the potential for Taliban intervention. After securing authority from the community to arbitrate and a financial sum of 220,000 Afghanis to guarantee their decision, the group returned the house to the man under the condition that his brother, a reputed drug user, could no longer live there. This outcome ultimately satisfied both sides.

A second case involved the murder of a government employee in Kunar. The victim's family assumed that one of the killers had been a man with whom the family had previously feuded. After convincing police to arrest the man, they decided to take matters into their own hands and tried to kill the accused man or members of his family. Concerned that violence might ensue between the families, the Kunar governor intervened and asked a jirga, led by a DRC member, to address the case. The members of this jirga convinced the victim's family to participate and to give the elders time to investigate. After receiving authority from both sides, jirga members discovered that the accused had not even been in the area at the time of the murder. The family accepted their decision and all sides are now cooperating to find the real killers.

DRC members have also helped resolve disputes between community members and coalition forces. Earlier this year, for example, U.S. troops detained four men as suspected insurgents. The men had been carrying weapons due to involvement in a local feud. The fathers of these men were unsure how to approach the International Security Assistance Forces (ISAF) and their resentment of ISAF led them to consider joining the local Taliban. Instead, they approached a well-known DRC member who had contact with the U.S. military base where the men were being held. Despite the

ABOUT THIS BRIEF

The authors work in the Kabul office of the United States Institute of Peace on projects that help communities resolve conflict, increase access to justice and promote the rule of law. Shahmahmood Miakhel is USIP's Country Director in Afghanistan. From 2003-2005, he was Afghanistan's deputy minister of the Interior and he previously worked for the United Nations Assistance Mission in Afghanistan as a governance adviser. Noah Coburn is a political anthropologist focusing on informal justice at USIP's Kabul office. He has been conducting research on violence and local political structures in Afghanistan since 2005 and is currently a visiting fellow at the University of Michigan.



UNITED STATES
INSTITUTE OF PEACE

2301 Constitution Ave., NW
Washington, D.C. 20037

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DRC member's concerns that his involvement would make him a Taliban target, he went to the base and eventually the men were released to him since he was trusted by coalition forces there.

The local reputations of the DRC members and their cooperation with local governors and MoTA officials proved essential to resolving most of these cases. In the case involving ISAF, we see how prominent elders may serve as an important bridge between coalition forces and communities intimidated by the Taliban. These results suggest that dispute resolution projects involving government officials, local elders and religious leaders are far more likely to be successful than cases focused on a single group. In turn, dispute resolution will continue to encourage stability, bring the people and the government closer together, and will weaken efforts by insurgents to undermine local governance and rule of law.

Key Recommendations

- Help the government of Afghanistan and international community make dispute resolution a priority and work to facilitate the addressing of grievances on a village, district, provincial and national level.
- Encourage government officials to engage communities through local elders.
- Strengthen the capacity of the MoTA, the Ministry of Justice and other government bodies, and increase their authority to work with local communities.
- Establish provincial level networks of elders in other provinces, and consider establishing similar programs at the district level.
- Actively bring ulema members into dispute resolution processes, particularly on issues such as re-integration where they have authority.
- Strive to engage the international community to work through local government officials and elders to systematically access communities.
- Encourage the international community and local officials to formally recognize local elders and religious figures.
- Establish mechanisms with local government officials to document cases to help to prevent future disputes.

Endnotes

1. Not all ethnicities organize themselves into tribes in Afghanistan (e.g. Tajiks), but most continue to use tribal mechanisms in the sense that politics are reliant on a series of networks tied to kinship, marriage, and economic cooperation creating groups referred to as *qaum* or *khel*.
2. For more information on informal justice mechanisms in Afghanistan see Coburn and Dempsey, 'Informal Dispute Resolution in Afghanistan,' USIP Special Report, Thomas Barfield, Neamat Nojumi and J Alexander Thier, 'The Clash of Two Goods: State and Non-State Dispute Resolution in Afghanistan,' USIP, or any of the reports written by Deborah Smith, Shelly Manalan or Rebecca Gang for the Afghan Research and Evaluation Unit.
3. This division is not always precise. See Coburn, 2011, *Bazaar Politics: Power and Pottery in an Afghan Market Town*, Stanford University Press. For some of the issues involving the international community and these figures see Miakhel and Coburn, 'Many Shuras Do Not a Government Make,' USIP Peacebrief.