Afghanistan Research and Evaluation Unit

Case Study Series

Community-Based Dispute Resolution Processes in Bamiyan Province

Deborah J. Smith with Shelly Manalan

Funding for this research was provided by the United Kingdom Department for International Development (DFID)

December 2009

Editor: Vicki Quinlan for AREU

Layout: Jay Lamey

About the Authors

Deborah J. Smith is a Senior Research Manager at the Afghanistan Research and Evaluation Unit (AREU). Since joining AREU in February 2006, Deborah has managed a research portfolio that includes: community-based dispute resolution; the representation of women's interests in the Wolesi Jirga; gender mainstreaming in government ministries; the problem use of psychotropic drugs; and family dynamics and family violence. Previously, Deborah worked at the London School of Hygiene and Tropical Medicine where she conducted health policy research in Malawi and Zambia. She has a PhD from the London School of Economics and Political Science, for which she conducted field research on gender issues in Rajasthan, India.

Shelly Manalan joined the Afghanistan Research and Evaluation Unit in March 2007, working with the gender research team in the study of community-based dispute resolution processes in Bamiyan, Nangarhar, Kabul and Balkh provinces. At the time of writing she was a research officer at AREU and is currently continuing as a consultant. Shelly holds a master's in development studies and a bachelor's in economics, both from the London School of Economics.

About the Afghanistan Research and Evaluation Unit

The Afghanistan Research and Evaluation Unit is an independent research organisation based in Kabul. AREU's mission is to conduct high-quality research that informs and influences policy and practice. AREU also actively promotes a culture of research and learning by strengthening analytical capacity in Afghanistan and facilitating reflection and debate. Fundamental to AREU's vision is that its work should improve Afghan lives.

AREU was established in 2002 by the assistance community working in Afghanistan and has a board of directors with representation from donors, the United Nations and other multilateral agencies, and non-governmental organisations. AREU currently receives core funds from the governments of Finland, Norway, Sweden, Switzerland and the United Kingdom. Specific projects have been funded by the Foundation of the Open Society Institute Afghanistan (FOSIA), the Asia Foundation (TAF), the European Commission (EC), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the United Nations Development Fund for Women (UNIFEM) and the World Bank.

Acknowledgements

First and foremost we would like to express our gratitude to the residents of the villages in Bamiyan province where this research was conducted, who willingly gave up their time to talk to the research team. Without these people's knowledge, understanding and insights into their own lives and community histories this research would not have been possible. Their support however went beyond simply reporting the details of community-based dispute resolution in their communities, but also included the hospitality they showed the research team in terms of endless cups of tea, introductions to other members of the community, and invitations to attend village *jalasas*, buzkashi games and wedding parties.

Similarly, we would like to acknowledge and express our gratitude to those district-level officials the research team spoke with, for their time, candour and knowledge of the district where they work.

While our names appear on the front cover of this report, other members of the research team played at least an equal part in conducting the research for this report. Fauzia Rahimi, Jamila Wafa, Zia Hussain, Shafiq Ziai and Baser Nader were responsible for the collection of data in the field and played varying roles in the analyses of the first round of data collected. Fauzia Rahimi should be given a special mention for the role she played in bringing together and writing up the contextual and site selection information that appear in Section 2.

Deborah J. Smith and Shelly Manalan
April 2009

Table of Contents

Glossary vii

1. Introduction 1

2. Research Methodology, Site Selection and Context 5

3. Power, Authority and Change in Community-Based Dispute Resolution Processes ... 9

   3.1 "Power as authority" and "power as coercion" in community-based dispute resolution 9

   3.2 Authority: Right and responsibility in community-based dispute resolution processes 11

   3.3 The change in dispute resolution processes over time and coercive power in village-level dispute resolution 16

   3.4 District-level actors in community-based dispute resolution processes 19

4. Between the State and the Community: Processes, Relationships and Participation ... 23

   4.1 Choosing between the district and the village 24

   4.2 Between the state and the village 31

5. Principles and Outcomes: Keeping the Peace—Using *Islah*, *Qanoon-i-urfi* and Sharia in Community-Based Dispute Resolution Processes 37

   5.1 *Qanoon-i-urfi*, *Islah* and Sharia 38

   5.2 Giving authority and implementing decisions 43

   5.3 Outcomes for women in community-based dispute resolution processes 44

6. Processes, Links and Choices, Principles and Gender Equity: Concluding Comments 46

Annex 1: Dispute Cases 48

Recent Publications from AREU 61

List of Boxes and Tables

Box 1: Characteristics of those in authority in community-based dispute-resolution Processes..... 11

Box 2: Women's roles as decision-makers in dispute resolution processes 12

Table 1: General Categories of Disputes 14

Box 3: Improvement in dispute resolution processes..... 17

Box 4: Opinions about arbabs and how they resolved disputes..... 17

Box 5: Dispute resolution during the Taliban regime 19

Box 6: Rights and responsibilities of the *Ulama Shura* 22

Box 7: Reasons for not taking a dispute to the *woliswali*, legitimate expenses and the length of time it takes to resolve a dispute in the *woliswali* 24

Box 8: Reasons for not taking disputes to the *woliswali*: illegitimate expenses..... 25

Box 9: Positive reasons for keeping disputes in the village: Subjectivity and knowledge of the white-beards 26

Box 10: Women have greater access to their village white-beards than to the *woliswali* 28

Box 11: Women's ability to access white-beards in the village..... 29

Box 12: Women's limited access to dispute resolution at village level..... 29

Box 13: Authority and implementation power..... 32

Box 14: White-beards protecting themselves 33

Box 15: Perceptions of the law 33

Box 16: Anger and punishment..... 35

Box 17: Flexibility of *urf*-based decision making 39

Glossary

aghel	an area of a village; it is common in Bamiyan for villages to be divided into several smaller communities which are then called *aghel*
ailaq	spring and summer habitat and pasture land located outside of the main village
akhond	another term used for mullahs
amer	order letter
Amlak	land registration department
arbab	head of the community
ariza	claim letter
baad	the practice of compensating a murder (or even an accidental killing) by the family of the guilty party giving either one or two never-married girls in marriage to the victim's family
baad bini	hatred
Behsood	a district in Wardak Province
beyab	immodest
buzkashi	national game played on horse back
chodar	scarf
deya	compensation
Enqelaab	literal translation is "revolution" but is used to describe the period of resistance to the Soviet occupation of Afghanistan
farari	refugees
germona	deposit
Hazaragi	a dialect of Dari spoken by Hazara people
Hazarajat	area of Afghanistan stretching across the central highlands and including Bamiyan and Day Kundi provinces and parts of Ghazni and Wardak
huquqi	literal translation rights used to refer to civil law
iftar	meal to break the daily fast during Ramazan
islah garan	those who make Islah-based decisions
islah	essentially means the promotion of peace and maintaining community social cohesion through negotiation and reconciliation; it is an Islamic principle
jafari	Shia legal code
Joghori	a district in Ghazni Province
jalasa	meeting

jalb	summons letter
janjal	argument/fight
jerib	unit of land measurement—one jerib is roughly equal to 1/5 hectare
keena	hostility
khunbaha	literal translation is "blood price," used to mean the amount of compensation that should be given if someone is killed
madrasa	school focused on teaching Islamic subjects
modir-i-huquq	officer of the department dealing with civil law
nekah	the marriage contract, read by the mullah, and the main part of the marriage ceremony that confirms a couple is married
ozur	apology
Pashtunwali	code of conduct and custom for Pashtun people
qanoon-i-urfi	customary law
qawm	often translated as tribe or clan; essentially a kinship group that can range considerably in size and scope
quroot	dried yoghurt
reesh-safedan	white-beards (senior men)
sar-safedan	white-hairs (senior women)
shahadat	to provide evidence
Sharia	Islamic law
sheerbaha	literally meaning "milk-money," used to refer to money given to a mother by her daughters-in-law at the time of marriage as a form of payment for having given birth to her and bringing her up
shuba-i-huquq	department dealing with civil law
shura	council
sulh	peace
thul	extended family group
ulama	group of religious scholars
woliswal	district governor
woliswali	district; used to refer to the central town of a district and can also be used to refer to government offices in the district
zena	extra-marital sexual relations

1. Introduction

In 2006, the Afghanistan Research and Evaluation Unit (AREU) began researching community-based dispute resolution processes in Afghanistan. Research was conducted in Bamiyan, Nangarhar and Balkh provinces as well as in Kabul city. In Bamiyan Province, qualitative data collection was conducted in one district centre and in two villages of the same district between October 2006 and July 2007. Bamiyan Province was chosen as one of the sites for this research because there is a dearth of data on how disputes are resolved and on the customary practices used for resolving disputes in Hazarajat, of which Bamiyan forms a part.

Particularly in recent years, very little has been written more generally about how community-based dispute resolution processes operate, and little of this is based on in-depth qualitative data collection at the village or community level.[1] Much of what has been written focuses on or highlights those customary practices for dispute resolution found in *Pashtunwali*, leading authors who rely on secondary data to make arguments such as: "In Afghanistan the most prominent form of customary law is based on the Pashtun *Pashtunwali*."[2] By examining how different communities resolve disputes, this research aims to correct this imbalance in available information and to contribute to the discussion on the future relationship between the state and community-based dispute resolution processes. The research also provides information on the extent to which women participate in dispute resolution as compared to men, whereas previous work has primarily focused on the outcomes for women within these processes rather than looking at the ways in which women themselves are actors within community-based dispute resolution.[3]

Community-based dispute resolution refers to the processes used for resolving disputes within the community in which the dispute has taken place.[4] The parametres of the "community" from this perspective depend on the nature of a dispute. Within the context of this study, "community" most often refers to the residents of the village in which the dispute has taken place; the village is also the location in which most actors in the dispute, both disputants and those called on to resolve the dispute, reside as well as the space in which the dispute is to be resolved. However, some disputes are contained

1 Reports based on primary data collection however include: T. Barfield, N. Nojumi and J. A. Their, *The Clash of Two Goods: State and Non-State Dispute Resolution in Afghanistan* (United States Institute of Peace, 2006); Norwegian Refugee Council, "Position Paper: The Relationship between the Formal and Informal Justice Systems in Afghanistan" (2007); Women and Children Legal Research Foundation, *Baad, Painful Sedative* (Afghanistan, 2004); N. Nojumi, D. Mazurana and E. Stites, "Afghanistan's System of Justice: Formal, Traditional and Customary" (Medford: Feinstein International Famine Center, 2004); International Legal Foundation, "The Customary Laws of Afghanistan" (Kabul: 2004); T. Barfield, "Informal Dispute Resolution and the Formal Legal System in Contemporary Northern Afghanistan" (United States Institute of Peace Draft Report, 2006); Checchi and Company Consulting, Inc for USAID Afghanistan Rule of Law Project, "Field Study of Informal and Customary Justice in Afghanistan and Recommendations on Improving Access to Justice and Relations between Formal Courts and Informal Bodies" (2005).

2 Esther Meininghaus, *Legal Pluralism in Afghanistan* (Bonn: Zentrum für Entwicklungsforschung [Center for Development Research], 2007), 15.

3 Women and Children Legal Foundation, *Baad Painful Sedative*.

4 "Community" is an often used but rarely defined term. Drawing on Agarwal's, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge: Cambridge University Press, 1994), 3, the definition of a community can be based on residency, e.g. the village community, or on social grouping, e.g. a religious community or a *qawm* community. A person can simultaneously be a member of several different communities. For example, he or she can be a member of a particular *qawm* within a village, which also spreads across several villages. It is recognised that communities tend to not be homogeneous, but instead heterogeneous in terms of power, resources and interests.

within a particular *qawm*[5] community or extended family within a village. Still other disputes incorporate more actors from different geographical locations, such as disputes between villages. In some examples, actors from outside the immediate community may be drawn on to assist in resolving particular disputes.

These processes for dispute resolution are also referred to as "informal justice"[6] or "customary law."[7,8] At the beginning of this research the term "customary law" was used to describe the subject for investigation. However, it was soon determined that a study which focused solely on customary law would be too limited, as it would only focus on those processes used for dispute resolution defined as *qanoon-i-urfi* (customary law), and fail to recognise other principles that are viewed by those implementing them as distinct from *qanoon-i-urfi*, primarily Sharia. Indeed, decision-makers in community-based dispute resolution processes, spoken to by the research team, often made a clear distinction between Sharia and *qanoon-i-urfi,* as is explored in Section 5.

Using the term "informal justice" when referring to these processes is also misleading as it sets them in an artificially dichotomous relationship to the state justice sector, and thus implies that they operate independently from state institutions. In reality, state actors may work in collaboration with actors in village-level community-based dispute resolution processes, as is discussed in Section 4.

A wide variety of disputes are resolved at the community level; most common among these are disputes about access to and use of resources, particularly land, but also water and sources of fuel and fodder. Other disputes that may be resolved at the community level are both deliberate and accidental killings, disputes about marriage arrangements, disputes about sexual abuse or deviance, other acts of violence, theft, and payment for services. These disputes vary in size considerably, from those between neighbours over a land boundary to those between villages over access to and ownership of larger portions of land. They can be disputes between family members of both a criminal and domestic nature, such as violence within the family or issues of inheritance. In fact, disputes about inherited land were common in the villages of Bamiyan Province where this research was conducted. Disputes that are resolved through community-based dispute resolution processes can be criminal and civil, and criminal or civil. That is, some disputes are purely civil in nature, while others may begin as civil disputes and become violent, and are then both civil and criminal (for examples of this see cases 2 and 3 in Annex 1). This recognition that criminal and civil disputes cannot be clearly delineated from one another takes account of the role that community-based dispute resolution bodies have in resolving the causes of criminal actions and reconciling the families of those involved.[9,10]

5 *Qawm* is often translated as "tribe" or "clan" and essentially means a kinship group that can range considerably in size and scope.

6 See: Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Polity Press, 2002), 36; NRC Position Paper, *The Relationship between the Formal and Informal Justice Systems in Afghanistan* (Kabul, 2007); and Barfield et al., *The Clash of Two Goods*.

7 "Customary law" can best be described as a non-codified system of laws or rules which is recognised by the community using them as a legitimate form of justice.

8 See Amy Senier, "Rebuilding the Judicial Sector in Afghanistan: The Role of Customary Law in al Nakhlah," *The Fletcher School Online Journal for Issues Related to Southwest Asia and Islamic Civilization* (Spring 2006).

9 A case can also be made for certain criminal cases to be resolved solely by community-based dispute resolution mechanisms, such as petty theft. See Barfield et al., *The Clash of Two Goods*, and Amy Senier, "Rebuilding the Judicial Sector in Afghanistan."

10 The argument that community-based dispute resolution mechanisms have a role to play in criminal cases does not deny the duty or right of the state to prosecute criminal cases.

In studying the processes used for dispute resolution, this research has focused on four central themes: the processes used in resolving and or regulating disputes at community level; the relationships between these processes at the community level and state actors at district-level; the principles underlying the outcomes of dispute resolution processes; and equity within these processes, with a particular focus on gender equity. Gender equity itself has been analysed in regard to four dynamics: women's ability to access dispute resolution processes which are dominated by men; women's contribution to these processes, in comparison to men's contribution; women's role as decision-makers in resolving disputes; and the outcomes for women as compared to men of the decisions made within these processes.

Key arguments

The principle arguments this report makes in relation to the four research themes are:

Potential for change in community-based dispute resolution processes

- Community-based dispute resolution processes are not static and do not rest on an unchanging imagined version of tradition and custom. They are instead continually revised over time to adapt to changing social relationships, political structures and new problems.
- The principles underlying and used to rationalise the outcomes of dispute resolution processes are complex, drawing on Islamic and customary ideals, and negotiation and pragmatism, and as such are not fixed but adapt to the changing dynamics of individual cases and wider societal influences.

Links and relationships between village-level community-based dispute resolution and the state

- Community-based dispute resolution processes do not operate in isolation from state institutions, but instead frequently work in collaboration with them.
- Residents of villages make decisions based on experience and knowledge when choosing between taking a dispute to state institutions or those with the authority to resolve disputes in their villages. However, because individuals (female, male, young, old, wealthy, poor, etc.) face varying levels of social and practical restrictions that constrain their choices, they may come to different conclusions about which system is best for them.
- Disputes of both a criminal and civil nature are resolved at the community level. Indeed often criminal actions have their root causes in civil disputes. As such, it is not possible to make a definite distinction between the resolution of civil and criminal cases.

The comparative advantage of community-based dispute resolution processes

- Processes for resolving disputes are a key way of maintaining peace and social cohesion at the village-level.
- While community-based dispute resolution processes may not always and immediately bring a resolution to a dispute, they may well regulate or contain the dispute, i.e. prevent a dispute erupting into violence.
- Community-based dispute resolution, as practiced in the villages of Afghanistan, not only offers a functioning alternative in light of a weak state justice system, but

also has particular advantages over state or formal justice, such as its elements of distributive and restorative justice.[11]

Gender equity and community-based dispute resolution processes

- While women's access to and participation in these processes is particularly constrained, spaces in which women do access and influence dispute resolution processes can be found.
- Although their roles as decision-makers in dispute resolution processes are severely limited, women are recognised by community members to play a key role as decision-makers in disputes of a domestic nature.
- Decisions made through these processes, contrary to common belief, can provide recourse for women to assert their rights.
- Women's access to these processes and participation in them is constrained and at times decisions are made which do not uphold women's human rights. However, this is not an outcome of community-based dispute resolution or customary law of itself but is instead a consequence of prevailing gender roles and relations in Afghanistan more widely.

The next section provides an overview of the methodology used for both the collection and analyses of the data and details regarding the selection of the research sites, including an overview of their social, economic and geographical contexts. This provides an important background to the rest of the report, explaining not only why the research team was able to access and understand certain phenomena, but also why certain types of information are not available, such as quantitative information. Section 3 focuses on the roles, responsibilities, and sources of power of decision-making actors involved in community-based dispute resolution processes. It also discusses how the operation of community-based dispute resolution has changed over time since the Soviet-Mujahiddin War until the present. Section 4 discusses the relationships between state and village-level actors, how and why people make the choices they do as to how and where to resolve their disputes, and the roles women play as both disputants and witnesses in these processes. Section 5 focuses on particular practices used for resolving disputes, the principles that underlie the decisions made, and the outcomes of particular dispute resolution processes. Finally, Section 6 is structured around the four key themes of the research and makes concluding comments on the processes used for resolving disputes in the community, the relationships between state actors and village-level actors, gender equity within community-based dispute resolution processes, and the principles underlying these processes.

11 Distributive justice seeks to address the underlying causes of conflict, and restorative justice involves a community-based model of justice that places strong emphasis on the restoration of dignity, peace, and upholding relationships between offenders and victims.

2. Research Methodology, Site Selection and Context

The primary methods used for data collection were semi-structured interviews, informal conversations and focus group discussions. These different methods were used in a flexible and open-ended manner in order to give respondents the opportunity to define the most important issues for them.

Two villages from the same district in Bamiyan Province were the focus of the data collection, which was complemented by interviews with district-level actors. At district-level, the research team spoke to the following respondents: the district judge, the *woliswal* (district governor), the police commander (head of the district police department), the prosecutor, *modir-i-huquq* (officer of the department responsible for civil law), the head of the *madrassa* and member of the *Ulama Shura* (group of religious scholars), and the head of the *Ulama Shura*. Both the *woliswal* and the police commander were interviewed twice. The researchers also spoke to one member of Bamiyan's Provincial Assembly, who plays a role in dispute resolution across the province.

The research team conducted 44 interviews with men and 40 interviews with women across both villages (a very small number of these were second interviews with the same respondent). The respondents were a mixture of people who are regularly involved in dispute resolution, those who have had or were having disputes themselves, and family members of disputants. In each village, six focus group discussions were held, three with groups of men and three with women.

All interviews were recorded using written notes which were then translated into English and transcribed as-close-as-possible to verbatim. Translation itself presents particular challenges and the research team continually discussed the proper translation of certain words and phrases. The team was keen not only to have a direct word-for-word translation but also to understand what was implied when certain words or phrases were used in Dari or Hazaragi[12] compared to their English equivalents. As is seen throughout this report, specific words, particularly those used to refer to customary or Sharia practices and principles, are in the original Dari or Arabic with detailed explanations provided in the glossary, footnotes or parenthesis.

The methodological approach incorporated collecting three types of knowledge from respondents. One, individuals were asked for generalised information as to types of disputes and how they resolve disputes in their communities; two, particular cases were investigated through interviews and informal conversation with disputants, their family members and those involved in resolving the dispute; and three, opinions, thoughts and feelings about dispute resolution and suggestions for ways forward were sought from community members and district-level actors. Individual cases were explored alongside generalised information to avoid only receiving responses based on expected behaviours or normalised practices. For example, when the research team asked in a general manner about disputes, they were told many times that women do not participate in *jalasas*[13] (meetings), yet when accounts of particular disputes were explored, women reported themselves or were reported to have been present at the *jalasas* held to resolve them. It was, nevertheless, important to collect the more generalised information to gain a historical perspective on dispute resolution in the area, to broaden the understanding of how disputes are resolved in the types of cases that the research team were not able

12 Dialect of Dari spoken by Hazara communities.

13 Dari terms are pluralised throughout this study by adding the standard English "s", so that *jalasa* becomes *jalasas*.

to explore directly, and to cross check and compare the information collected about individual disputes. The research team collected opinions, thoughts and suggestions for ways forward for dispute resolution as they believed that the communities themselves are able to understand and analyse their own lives, and are able to identify ways to improve things. Indeed, unlike the common practice of conducting focus group discussions at the beginning of a data-collection period, these were held at the end of the field work. The rationale for this was to present some of the research findings to community members to get their opinions on them, and to discuss potential ways forward for community-based dispute resolution once the researchers themselves had a good understanding of the ways in which these processes are working.

The analysis of the data has corresponded with this approach, exploring the differing descriptions and opinions regarding individual disputes and at the same time drawing out themes and subthemes across the data as a whole. ATLAS.ti qualitative analysis software was used to code the text of the transcripts and fieldnotes in order to organise the text into sets of quotations about particular themes and subthemes. Detailed case histories were also brought together and summaries of some of these are in Annex 1.

Of the two villages selected, one is relatively close to the *woliswali* (literally meaning "district," but used to refer to the district's central town), being an hour's drive away in good weather. The other village is far more remote and takes approximately four hours to drive to in good weather and up to 10 hours in winter, when there is a lot of snow on the roads. It was a deliberate decision to select villages whose accessibility to the *woliswali,* and therefore the representatives of the state justice system and administration, is significantly different. This was done to see whether remoteness from state actors leads to less engagement between the community and the state. Interestingly, as is shown in Section 4, in the case of these two villages it does not. The researchers also used other selection criteria when choosing the villages. First, village size (it was important that the villages were large enough that several different extended families, and even *qawms,* could be living there), and second, that it was known that disputes were ongoing in these villages. The villages were then selected through a process of talking to state actors and representatives of non-government organisations (NGOs) in the area, as well as visiting several possible villages and having informal conversations with the residents.

The people of the near village are all Hazara and include people from Jaghori[14] and Behsood,[15] and people originally from this part of Bamiyan Province. These different Hazara groups began leaving their places of origin around 120 years ago when King Abdul Rahman conquered and ruled much of Hazarajat, causing people to flee their native areas.[16] These groups are sometimes described as *farari* (refugees), even generations later, by the original inhabitants of the area.

The near village lies across a valley with settlements on the mountains on either side. There are 20 small *aghels*[17] separated from each other by farmland and hills; in each *aghel* there are approximately 25-30 households and around 400 households in the village. A river flows through the centre of the village, which is prone to flooding during the spring months and completely dries out during the summer months. There are at least three shops in the village.

14 Those whose families originate from the Jaghori district in Ghazni Province.

15 Those whose families originate from the Behsood district in Maidan Wardak Province.

16 See Mousavi, "The Hazaras of Afghanistan: An Historical, Cultural, Economic and Political Study" (Palgrave Macmillan, 1998), for more details on the history of the region.

17 An *aghel* is a smaller village that co-exists with other small villages within the boundaries of one larger village. In the northern provinces of Afghanistan, the word *qeshlaq* is used to describe this.

Most people in the village own their own land and cultivate potatoes, wheat, barley, corn and beans. Those who do not own land work as sharecroppers. Some of the younger men from the area currently live and work in Kabul and Iran; others work locally as daily wage labourers when work is available. Livestock is a major source of livelihood and people own sheep, goats and cows. During the spring and summer months the livestock is taken to graze on the village *ailaq*s.[18] The older women in the families are mainly responsible for the animals on the *ailaqs*.

There are two schools in the village, one for girls and one for boys, who are all taught from first grade to 12th grade. Some of the boys from the village also attend school in the *woliswali*. There is no clinic in the village and people have to travel to the *woliswali* for all healthcare.

The more remote village has around eight *aghels* but the research team focused on the most populated *aghel* in the area. Again, the population is all Hazara but includes people originally from Jaghori, Behsood and Daizangi[19] areas. There are 173 households in this *aghel* which is on the main road through the district leading to the *woliswali*. There are a number of small shops beside the road and this is the area of the village where men tend to congregate. Further away from the main *aghel*, a river runs parallel to the road and a number of villagers live on both sides of it.

As in the near village, livelihoods in this area are dependent on agriculture and animal husbandry; some people own land and others engage in share cropping. The village's *ailaqs* are a fair distance from the village—approximately a four to five hour walk. The elder women in the village reported to the research team how, when they return from the *ailaqs*, they trade their dairy products such as butter and *quroot* (a form of dried yoghurt) for dried fruits with women in the villages between their *ailaqs* and village.

As in the near village, there are two schools, one for boys and one for girls. The girls' school is from first to eighth grade and the boys' school is from first to 12th grade.

When the researchers selected the villages it was also important to gauge whether they would be welcomed. It should be noted that the research team experienced virtually no resistance from the communities or difficulties in gaining access to respondents, both women and men. Instead, many people were extremely keen to talk about their lives in general as well as their own disputes and others that have happened in their communities.

The research team was made up of two Afghan women and two Afghan men who are members of the Hazara, Pashtun and Tajik ethnic groups, and two British women. The researchers thought it was necessary to have a team made up of mixed ethnicities as they knew at the outset that the research would be conducted in Hazara, Pashtun and Tajik areas. This proved fruitful in the field; it made access easier because team members were from similar ethnic groups to the communities where the work was conducted, but also because, at times, respondents were eager to explain their own customary practices in great detail to people of different ethnic groups. The Afghan team members were primarily responsible for data collection and interacting with the communities, but community members and district-level respondents were also introduced to the expatriate researchers. It was important that all team members were introduced to the

18 *Ailaqs* are low hills of pastureland located a distance from the village. Some members of each household will permanently move to their *ailaqs* during the grazing months.

19 Those whose families originated from the Waras district in Bamiyan Province and from Day Kundi Province.

communities so that the community was aware of everyone who was involved in the project and would have access to the transcripts of their interviews.

Before the team began work in each village it sought permission from both male and female community elders and leaders. It ensured that as many members of the community as possible understood what the research team's aims and objectives were and how long researchers would be working in the area. For example, it was important to make it clear, through introductory meetings and follow up meetings with groups and individuals, that there would be no direct benefits from participating in the research. The researchers got informed consent from respondents before conducting either individual interviews or focus group discussions. Respondents were, as far as possible, given time to think about whether they wanted to talk with the research team or not and to discuss this with their families. The researchers also got consent to take written notes during interviews and focus group discussions. Since many of the respondents were illiterate or semi-literate, verbal rather than written consent was obtained.

The data collection was divided into two phases. A first round of interviews and informal conversations was conducted in late 2006 followed by preliminary analysis of the data. A second round of interviews began in the spring and summer of 2007. During this second round, the teams interviewed new respondents, re-interviewed earlier respondents and initiated focus group discussions. Conducting the data collection in two phases gave the research team time to reflect on the first round of data collection and to consider what might be missing from the data and what themes could be explored further before returning to the research sites.

3. Power, Authority and Change in Community-Based Dispute Resolution Processes

This section focuses on the roles, responsibilities and sources of power and influence of some of the different actors involved in community-based dispute resolution processes. It discusses both district-level and village-level actors with particular attention paid to decision-makers in these processes. In describing how individuals and groups act in community-based dispute resolution processes, this section contributes to two of the key arguments presented in this report. First, through an exploration of how the roles of different actors have changed over time, this section shows how community-based dispute resolution processes have changed and continue to change, rather than remaining static in an imagined version of tradition and custom; these processes have proved themselves to be adaptable to changing social and political structures and relations in Afghanistan. Second, in discussing women's position as actors in these processes, it is argued that although women's roles as decision-makers in dispute resolution processes are severely limited, community members recognise that women do play decision-making and advisory roles in certain types of disputes.

It is important to remember when discussing the different actors in these processes that an actor may be an individual, such as a disputant, village elder or district-level official; or it may be an institution or body, such as a *jalasa* or court. An individual may be a different type of actor at different times; for example, a man may play the role of decision-maker in resolving certain disputes but at another time he may be a disputant himself. Likewise, individuals may simultaneously have different roles in dispute resolution, such as being a village elder who is also a relative of a disputant. The actors discussed in this report are not only those people who are currently part of dispute resolution processes but are also individuals or institutions that have played a role in dispute resolution processes in the past.

As the case histories in Annex 1 illustrate, the most overt processes for dispute resolution take place in a meeting, or series of meetings, called a *jalasa*. These are attended by *reesh-safedan* ("white-beards," being elderly men), at times *sar-safedan* ("white-hairs," being elderly women), disputants, and any witnesses to the case. If the disputants and witnesses are women, the nature of their attendance at a *jalasa* varies from dispute to dispute and is discussed in sections 4 and 5. A *jalasa* for dispute resolution is a flexible body; its structure and location not only change from dispute to dispute, but it can also change during the resolution of one dispute. For instance, a *jalasa* to resolve a dispute over a small amount of land may be held on the land under dispute or, for larger inter-*qawm* or inter-village disputes, a *jalasa* may be held in a central public space. *Jalasas* are also often held in the homes of the white-beards who are taking part. The size of a *jalasa*, where it is held, and who attends it is flexible and depends on the nature of the dispute, its resolution, and the needs of community members.

3.1 "Power as authority" and "power as coercion" in community-based dispute resolution

Central to this section is an understanding of how power is attained and exerted. Drawing on early conceptualisations of power by Lukes,[20] this report adopts a distinction between "power as authority," described by Lukes as compliance based on generalised values, and

20 Steven Lukes, *Power: A Radical View* (London: McMillan Press Ltd., 1974).

"power as coercion," being compliance where there is no choice to do otherwise. Having a more direct application for this study is how this distinction is expressed by Skalnik[21] between what he calls "authority as opposed to power." In his work, "*authority* is the right to act and make laws, *power* is understood as an ability to enforce obedience... . Thus *right* stands against *coercion*, recognised ability against force or the threat of it." (Author's emphasis.)

Although Skalnik is referring to power as exerted by the state the same distinctions between "power as authority" and "power as coercion" are useful for understanding how different actors influence and are seen as having both a right, or not, and a responsibility to resolve disputes. This section argues that the right to be a decision-maker in community-based dispute resolution processes is based on being in a position of authority, rather than having coercive power, and that an individual's authority is achieved and held due to the level of respect they receive from others. This is clearly articulated by one man who was engaged in a dispute about the ownership of inherited land in the near village:

> *The power of the white-beards is because of the respect the people have for them. White-beards don't have any soldiers and even the woliswali doesn't pay attention to white-beards' decisions or if disputants accept their decision or not. The power of white-beards to implement their decisions [lies in] the honour they are held in and the respect the people show their elders.*

However, the idea that the *right* to be a decision-maker in dispute resolution is based on authority does not negate the reality that other manifestations of power, including more coercive forms, also influence these processes. Nevertheless, the community in general does not usually see actors, if they are using coercive power, as having a *right* to this influence. It should also be noted that coercive power and authority are not mutually exclusive; instead, an individual may be in a position of power because he or she is respected but also because they are able to wield coercive power and enforce obedience.[22]

The rest of this section is divided into three parts. The first two parts focus on decision-makers at village-level, beginning with a look at how particular village-level actors gain the authority to be responsible for the resolution of disputes. The discussion also considers what motivates an individual in the community to get involved in resolving disputes. The second part features a discussion on power as coercion and how this form of power has imposed itself on dispute resolution processes at different points in time. The discussion focuses on how dispute resolution processes have changed over time as a reflection of the changing nature of wider power dynamics in the area. The discussion in the third part of the section is about the primary actors at district-level in community-based dispute resolution processes. It considers what forms of power district-level actors are able to exert and how this power is created and maintained.

21 P. Skalnik, "Authority versus Power: a View from Social Anthropology" in *Anthropology of Power*, ed. A. Cheater (London and New York: Routledge, 1999).

22 While this section focuses on "power as authority" and "power as coercion," the authors recognise that other forms of power, which are often harder to observe, are also exerted within the communities. For example, resistance to dominant power dynamics (for a fuller discussion of these forms of everyday resistance see J.C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* [New Haven and London: Yale University Press, 1985]) and the Foucauldian conceptualisation of power as something which neither one person nor a group of people have over others but instead as something which is exerted in manifold and multiple forms of domination and subjugation within social organisms (M. Foucault, *Power/Knowledge: Selected Interviews and Other Writings*, 1972 –1977, ed. Colin Gordon [London and New York: Prentice Hall, 1980]).

3.2 Authority: Right and responsibility in community-based dispute resolution processes

This section discusses who in the community is viewed as having the attributes giving of authority to preside over dispute resolution in the villages, and what these attributes are. While certain men are viewed as possessing these attributes for exercising authority within the public realm of the village, some women are viewed as having the necessary attributes to exercise such authority within the domestic realm and specifically when disputes involve other women.

At the village level, the right to resolve disputes based on authority is vested, in the main, in a quorum of particular men, commonly referred to as "white-beards." While at times it was difficult for respondents to express exactly how a man becomes recognised as a white-beard, it is possible to identify certain characteristics necessary for having this authority: being trusted, being thought of as having the wider community's interests in mind, being knowledgeable about the community, and being thought of as making just decisions. As the quotations in Box 1 indicate, all of these characteristics are seen as essential.

Box 1: Characteristics of those in authority in community-based dispute-resolution Processes

A white-beard is old and the people respect him a lot and people accept him as their elder. He solves disputes; he knows that the people will accept his decision. His relatives, neighbours and all the people who know him, they respect him and accept his sayings.

— Woman speaking in a focus group in the remote village

He should have poya qawmi ("*poya qawmi*" means that people know about his ancestors)*, and be a person who has honour and the trust of his qawm.*

— White-hair speaking during a focus group in the remote village

This responsibility is given [to them] because they make the right decisions; decisions which are not in favour of one side and which are based in the truth.

— White-beard and headmaster of the school in the near village speaking during a focus group discussion

The [white-beards are the] people who think for the goodness of the people and don't want the people's issues to become bigger.

— Woliswal

These characteristics are seen to be most commonly the characteristics of elder men and indeed the vast majority of those involved in resolving disputes are elder men. However, there are exceptions to this and certain younger men may also participate in dispute resolution. This is usually because they are perceived as having specific knowledge or skills, or have a particular position in the village. For example, in the more remote village the local school teacher plays a role in dispute resolution, being perceived as having particular skills and having a respected position in the village. Being educated, while not presented to be as important as the factors outlined above, was mentioned as a desirable qualification for decision-makers. In another example, a white-beard from the near village reported that while he is not old enough to normally be considered a white-beard, he is viewed as one primarily because his father was a well-respected white-beard of the village.

In fact, examples were provided in both villages in which white-beards were described as inheriting the position from their fathers. Nevertheless, it is important to stress that inheriting this position of authority is not automatic, as is explained by these two village white-beards:

> *This is not something a person inherits from his father or forefathers. There are people whose forefathers were honest people, but their sons are corrupt.*
>
> *My father wasn't a white-beard. I am thankful to God and the people who trust me and invite me to their jalasas. We were very poor. When I was a young man I used to work in Kabul; I had a karachi* (hand cart).

This second quotation also points to the fact that not all white-beards are the wealthiest or seemingly most influential members of the village.

Particular elder women, referred to as "white-hairs," are also in positions of authority, at least within the context of their extended families. It is extremely unusual for these women to be included as decision-makers in inter-family or inter-*qawm* disputes.[23] However, their authority is similarly based on respect, their perceived ability to make just decisions, and their knowledge of family relationships and "women's problems."[24] The recognition of women's knowledge in a different area was most clearly expressed when both female and male respondents said that women do and should play some role in the resolution of marital or other domestic disputes, specifically those involving women.[25] The quotations in Box 2 illustrate this.

Box 2: Women's roles as decision-makers in dispute resolution processes

Women don't have any specific roles in the resolution of disputes in the jalasas. But in the small disputes, like fighting between children which then sometimes causes their mothers to fight, there are some white-hairs who advise both sides and bring peace between them.

— White-beard from the more remote village

We have women's jalasas—why wouldn't we? We have elder women and white-haired women. If the women have disputes between each other we collect a few elder women and we resolve it.

— Younger woman speaking during a focus group discussion in the remote village

Yes, sometimes when there is fighting among the people or arguments among relatives they come to me and then I advise them and solve their issues.

— White-hair from the remote village

The research team was curious to know how disputes are resolved at the *ailaqs* in spring and summer, when older women usually stay there to look after the animals and there are some younger men but very rarely elder men. The team was particularly interested in the more remote village where the *ailaqs* are located some distance from the village.

23 The previous *arbab* of the near village reported that he could remember a village nearby which, in the past, had a woman *arbab* who also took part in every *jalasa;* he described her as being a very courageous woman.

24 Respondents often used the term "women's problems" to refer to problems that affect both men and women—such as problems in a marriage.

25 After one fieldtrip, one researcher observed that the old women sometimes gather to discuss issues and problems and make decisions but no one calls this a *jalasa*.

Case 1 in Annex 1, "Attack at the *ailaq*," shows that when a serious dispute does occur at the *ailaqs* it may be taken back to the village for resolution. Furthermore, in focus group discussions with men, when asked about dispute resolution in the *ailaqs* they reported that serious disputes would be brought back to the village to be resolved. However, both men and women reported that the elder women resolve disputes which are small in nature at the *ailaqs*.

It should be noted here that women in the more remote village reported that they have more involvement in dispute resolution, either as decision-makers or through other forms of participation, than women in the near village. The research team believes that a major reason for this is the geography of the villages. The inhabitants of the near village live in compounds generally at a distance from one another, which limits women's social mobility. People in the remote village live in much closer proximity to each other, giving the women visibly more social mobility. Another suspected reason is the influence of one dynamic woman called Rana,[26] who plays a particularly important role as a white-hair and, through her example, perhaps encourages and makes it acceptable for other women in the remote village to be involved.

Rana is in her late 40s to early 50s and is a teacher at the village school. Her husband is a *mullah* and also a known white-beard of the area. During her interview, she explained that if a dispute is within her relatives or *qawm*[27] she will attend the *jalasa*, particularly if it is a dispute involving women or between two women. She gave an example of a dispute which she took responsibility for resolving:

> *At the end of autumn my elder sister-in-law had a dispute with her [eldest] son, who is married and lives separately... They had a dispute about wood, which belonged to his mother [my sister-in-law]. The eldest son wanted to use his younger brother's wood to make windows. His mother told him that the wood belongs to his younger brother. Then they had an argument about this and the elder son wanted to go to the woliswali. Then I went to their house and found a solution... Their dispute was becoming very big, but my sister-in-law's son didn't want the dispute to get bigger because people would laugh at us... No one wanted to go to the white-beards so I went to their house with that boy's uncle to find a solution.*

People's opinions on whether women do or should have a decision-making role in dispute resolution vary. Some do not perceive women as having the required characteristics and particular required knowledge, as these quotations from the *woliswal* and a male villager express respectively:

> *There should be attention paid to women because it is risky for them to make a decision, they are illiterate and they don't have knowledge so they cannot solve issues. Instead they might increase the issues. They cannot make good decisions.*

> *This is a village not a city—most of the women are illiterate and they don't have enough knowledge to make a decision, so they don't participate in jalasas.*

When it was pointed out to the respondent that many of the male decision-makers are also illiterate, another man in the same focus group discussion explained:

26 To protect the identity of respondents all names in this paper have been changed.

27 In this context, when she says her *qawm* she was referring to the people originally from the village, like herself, rather than those who have migrated there from Behsood and Jaghori. The line between extended family and *qawm*, in this context, is often difficult to draw.

But men are always outside the house and they know about all the things which happen in the village. For example, if someone has a dispute about a land boundary, men know what the reality is; but women are at home and they don't know about these kinds of things.

These men are referring to disputes outside the immediate family and, to some degree, outside the extended family. It was more common for men to deny women's role, or their right to roles as decision-makers, in any type of dispute than it was for women to deny them. Part of the explanation for men's denial of women's involvement in resolving disputes is how men conceptualise disputes compared to how women conceptualise them. Generally, men divide disputes into categories of big disputes and small disputes. Big disputes include large land disputes, murder, rape and other very violent crimes; small disputes include those over land boundaries or small amounts of land or other resources, fighting between neighbours, and the like. Women would more often conceptualise disputes as existing in three categories: those of a domestic nature, and small and big disputes. Table 1 provides examples of how disputes are categorised. These classifications are very subjective and do vary slightly between different respondents. Because women recognise the category of domestic disputes, which are the disputes women play a role in resolving, they are less likely to deny that women have any decision-making role in dispute resolution processes.

Table 1: General Categories of Disputes

Big Disputes	Small Disputes	Domestic Disputes
A "not too serious" or serious beating of a woman by a man not her husband	Disputes over land boundaries or animals grazing	A "not too serious" beating of a woman by her husband
Murder	Fighting between children that may or may not lead to adults fighting*	
Big fights between two groups	Household petty theft	
Zena (sexual relations between two people who are not married to each other)	A fight between two individuals	A fight between two individuals from the same family
Disputes over land more than 30 *jeribs*	Disputes over land less than 30 *jeribs*	Arguments over the distribution of resources within one household
Disputes over inheritance including women claiming their inheritance rights		
	Divorce	

*It is interesting that respondents mentioned disputes over fights between children from different families on many occasions.

Although there was a general agreement that women do not play a role as decision-makers in disputes beyond those in the domestic realm, there was disagreement about whether women should begin to do this in the future, as this excerpt from a focus group discussion illustrates:

D: *We don't let our women sit in jalasas since we have enough white-beards to resolve our disputes.*

Q: *Why?*

D: *In our village if a hen crows we will slaughter it. So there is no need for women to sit in a jalasa for resolution of disputes.*

I: *It is right, but white-beards know about villagers and women are busy in house works and during the summer they go to ailaqs, so they don't have enough information to resolve a problem between two villagers. As yet we haven't a hen which crows.*

M: *In my opinion, if experienced women of the village who are white-hairs participate in jalasas it is not a baad idea. They will learn how to resolve disputes.*

People would also point to how things have changed and how there is now a school for girls in the village, and say that if girls are going to school then women can play a bigger role in dispute resolution. A woman from the remote village believes people are more knowledgeable now and that the "*rights of men and women are now equal*," and so women should play a bigger decision-making role in *jalasas*. One man from the remote village mentioned women in senior political positions on the global stage—former US Secretary of State Condoleezza Rice and Germany's Chancellor Angela Merkel—as an argument for women being capable of becoming decision-makers in *jalasas;* another argued that some women in their village are more knowledgeable than some men.

Motivations for resolving disputes in the village

Since the desirable characteristics for decision-makers in dispute resolution are not those of self-interest but involve concern for the well-being of the community overall and an ability to be just as well as knowledgeable, it could be argued that there is no apparent personal benefit to be gained, of an economic nature for example, from being a decision-maker. Bearing this in mind, it is necessary to consider what white-beards' and white-hairs' motivations are for taking on this responsibility. Within the context of immediate or even extended-family disputes, the motivations are perhaps obvious. Since this is the only realm in which women play a primary role in resolving disputes, their motivations are not discussed here. However, for disputes involving the wider community, the motivations may be less apparent. The following section argues that white-beards' motivations are neither purely altruistic nor purely self-interested.

The maintenance of community honour, and through this personal honour, is a primary motivation for white-beards to contain and resolve disputes within their villages. A village which is known to have many unresolved disputes is seen as a dishonour to the elders of that community. Consequently, it is argued that by maintaining peace and resolving disputes in the village, white-beards maintain not only the honour of the village but, in turn, their personal honour. In maintaining both personal and village honour they enhance the amount of respect they have and, in turn, increase their own levels of authority and personal power.

Beyond the maintenance of respect and honour, another motivation is to avoid a dispute affecting others; villages are small and communities are interwoven to such a degree that if one member of the community is in dispute it will affect others. Similarly, if disputes are not resolved quickly they may become larger and lead to violence in the village.

A further motivation for white-beards lay in a feeling of responsibility which comes from "tradition" or the way things have always been done. So, the reasons for white-

beards taking on this responsibility go beyond being a purely rational decision-making process and rest in an acceptance of the prescribed roles for particular members of the community, as the quotation below explains:

> *Since the past, white-beards have wanted to resolve villagers' disputes. White-beards don't want to see their villagers in trouble or [with] problems. Our fathers have done this and now we are doing it.*
>
> — White-beard speaking during a focus group discussion in the near village

Nevertheless, the section below explores the significant changes that have occurred in the way disputes are resolved at village-level in this area of Bamiyan.

3.3 The change in dispute resolution processes over time and coercive power in village-level dispute resolution

> *The time before the Enqelaab* (literally meaning "revolution," used to refer to the time of resistance to the Soviet occupation) *was a very dark time. People were very poor and poor people were walked over. People were uneducated and whoever the landowners were, were the kings of the people and poor people farmed for them. At that time, every village had an arbab and the arbabs were cruel and their whole lives they were fed from people's houses. If the arbab took people's disputes and resolved them in the woliswali, he would take goats and chickens from people. We also had arbabs here; they took people's lands by force. Now the arbabs time has ended, after the Enqelaab; it is better now.*
>
> — Woman from the near village

The picture of dispute resolution painted so far is of an egalitarian process with those making decisions doing so for the overall good of the community. This section considers other actors who have played decision-making roles in dispute resolution processes, often using more coercive methods to enforce their decisions. As with other aspects of people's lives in Afghanistan, community-based dispute resolution processes have been influenced by the different periods of conflict and the changing regimes in different areas of Afghanistan. This section, therefore, also shows how dispute resolution processes have changed over time and reflect wider social and political change. It is argued here that the majority of respondents in this research think dispute resolution processes have improved in recent years, becoming more representative and less corrupt.

Before and during various periods of the *Enqelaab, arbabs* played the principle role in dispute resolution processes at village-level. However, throughout this time, the power and influence of the *arbabs* diminished as commanders, *akhonds* (a term used for *mullahs*, but which is less respectful and implies that the person is less educated than someone who would be normally called a *mullah*) and other political forces gained power in Hazarajat, to the point that people now talk of the *arbabs* as a thing of the past.[28] Prior to the *Enqelaab, arbabs* were recognised representatives of the government at village-level and were reported to have either taken the lead in dispute resolution in the village independently of the *woliswal,* or they were given the power by the *woliswal* to resolve disputes at village level.

Opinions vary on dispute resolution under the *arbabs,* or indeed on the process which

28 The *Enqelaab* period represented a significant change in political and social organisation in Hazarajat. It is recognised more widely that the *arbabs* lost much of their power as Hazara leadership transferred to political parties and commanders; see Mousavi, *The Hazaras of Afghanistan,* for a fuller discussion.

the *arbabs* followed for dispute resolution. However, there is general agreement that the process has improved since the *arbabs'* power diminished. Reasons for this include the responsibility for resolving disputes changing from being with one person, the *arbab*, to the inclusion of several white-beards, chosen by the disputants. This is illustrated in Box 3.

Box 3: Improvement in dispute resolution processes

In the past, decisions were made by arbabs and they had a big influence on jalasas' work. Even one couldn't get married without giving a sheep to the arbab… at that time just the arbabs were making decisions but now people can choose their white-beards for a jalasa and they make the decision.

— White-beard from the remote village

In the past, people couldn't defend their huq (rights). *The arbab made all the decisions and they were forced to accept whatever the decision was. Because they didn't have any other options and there weren't any places for them to go to take and solve their disputes… One white-beard was the arbab and anything he said people accepted. Now it is very good because all the people can give their opinions.*

— Woman speaking during a focus group discussion in the remote village

Respondents in the research accused the *arbabs* of abusing their power and exploiting the poorer and weaker sections of the community, and only resolving disputes in favour of those who paid bribes to them. This is illustrated in Box 4:

Box 4: Opinions about *arbabs* and how they resolved disputes

My mother said there were arbabs before and the arbabs seized people's land by force. Nowadays it is better; there is less cruelty. Now, people can resolve their disputes through their white-beards. Like, for example, if two farmers are fighting with each other the people collect white-beards and hold a jalasa and they resolve the dispute.

— Younger woman from the near village

The goodness of having an arbab was that he ate the people's huq and filled his stomach!

— Older woman speaking during focus group discussion in the near village

Before the Enqelaab there were arbabs in the villages and whatever they decided had to be accepted by the disputants. They would even beat the disputants if they didn't accept their decisions and a jalasa couldn't be held without slaughtering one or two sheep. But there is no need for sheep or beating by the white-beards.

— White-beard speaking during a focus group discussion in the remote village

As the last quotation in Box 4 shows, the *arbabs* were reported to have used physical violence, perhaps the most direct and observable form of coercive power, to enforce their decisions.

Women respondents were generally more critical of the previous *arbabs* than men were. This may be due in part to the manner in which the researchers collected the data; for instance, the previous *arbab* of the near village was present in one of the focus group discussions with men in which they discussed changes to dispute resolution processes over time.

Despite the vast amount of criticism of the system for dispute resolution during the

time of the *arbabs,* there was some support for it. Some respondents believed that the type of autonomous power, and at times coercive power, used to resolve disputes led to decisions being made quickly and enforced. The quotation below illustrates this. The woman speaking, while recognising the cruelty of the *arbabs*, also believes that if they had not been so harsh then disputes would not have been resolved; they would have become worse and more difficult to contain:

> *Arbabs behaved cruelly with people, they took things from the people and then solved their issues. If they hadn't, the disputes would take a long time to resolve and would become bigger and have not been resolved.*
>
> — Woman speaking during a focus group discussion in the remote village

The data generally reveals that, for some people, the quick resolution of disputes and decision-makers ensuring their decisions are implemented are as important as ensuring that the results of decision-making processes are just. However, the data also reveals that respondents believe decisions made by those with authority rather than decisions made by those who use coercive power are more likely to be accepted and maintained over the long-term. The district prosecutor explained how many disputes from the past are being reopened:

> *In the past, the mujahiddin government, commanders and akhonds were very influential and the decisions were made according to what they wanted. At that time this was accepted by people because they were frightened of them. Now, most of the people are not accepting those decisions and want to reopen the cases.*

It was reported that the use of coercive power to resolve disputes continued throughout the *Enqelaab* and during successive periods of fighting after the Soviet withdrawal, when different armed groups gained influence in the area. Participants in focus group discussions reported that during the period of commander and *akhond* rule, disputes were not resolved in the villages but in the *woliswali* because the commanders held power there.

While all the people the researchers spoke to accepted that the power and influence of commanders has diminished considerably, it was found that local former commanders still have influence over dispute resolution processes. This was especially the case in the near village. There, a former commander who had been particularly significant in the past was reported to still use coercive power to influence the outcome of disputes, as is discussed in Case 2 in Annex 1, "A former commander influencing dispute resolution." It was also reported that this former commander still has significant influence at the *woliswali*. During a focus group discussion, one group of women reported that people in his *qawm* do not take disputes to the village white-beards but take them straight to the *woliswali*, where he has influence. Similarly, in Case 1, "Attack at the *ailaq,"* there is evidence that both the white-beards and the *woliswal* felt intimidated by the former commander who was accused of beating Akbar's mother.

Overall, it is a somewhat mixed picture as to how much influence former commanders have over dispute resolution processes in these communities now. While respondents reported there is significant influence over a small number of disputes, many respondents from both villages said commanders have limited influence, if any, over the outcomes of most dispute resolution processes.

Respondents said that although during the times of the *arbabs*, the *Enqelaab* and periods of fighting after this, disputes were resolved quickly but, according to many, unjustly,

they also reported that during the period of the Taliban there were no disputes because people focused on survival. This is illustrated by the quotations in Box 5:

Box 5: Dispute resolution during the Taliban regime

The time of the Taliban was the worst time that people remember and they, the Taliban, came… [near to here] and all the people ran away. Some took care of themselves and some took care of their animals and houses. They didn't have any disputes at that time and everyone was just thinking about their [survival].

— Older woman speaking in a focus group discussion in the near village

During the Taliban people had a baad life, they were all busy trying to make a living and find food for their children—there were no disputes. People ran away to the mountains and most of the children died of cold and hunger.

— Younger woman speaking during a focus group discussion in the remote village

3.4 District-level actors in community-based dispute resolution processes

Government and woliswali are the same... woliswal means power; it means power is in his hand.

— White-beard speaking during a focus group discussion in the near village

Don't you know the meaning of government? I mean the woliswal, the woliswali is government for us.

— White-beard speaking during a focus group discussion in the remote village.

While the relationships between state actors and village-level actors in dispute resolution processes are discussed in detail in Section 4, this section looks at the key actors at the district-level: principally the *woliswal* and the *Ulama Shura*. This section does not aim to describe these different actors' roles according to Afghan law or the Constitution but instead what their roles and responsibilities are perceived to be by themselves and the communities in the district.

The *woliswal* is the most influential actor in dispute resolution at district-level and the person whom respondents mentioned most often.[29] He plays three primary roles in relation to dispute resolution: One, he acts as a gatekeeper to other district-level actors, such as the police, *shuba-i-huquqi* (department dealing with civil law), prosecutor, and courts;[30] two, at times he acts as a decision-maker in particular disputes; and three, he acts as a point to register the outcomes of certain dispute resolution processes conducted in the villages. The second and third roles are discussed in Section 4 in more detail. However, it is important to understand the position of the *woliswal* in order to understand why he is able to wield so much influence over dispute resolution processes.

The *woliswal* exerts both authority and more coercive power. As the quotations at the beginning of this section illustrate, villagers see the *woliswal* as the government at district and village-level and, to some, he is the president's direct representative in the

29 When the fieldwork began, the woliswal of the district at the time had been in the position for 15 months. He is Hazara and originally from Ghazni Province.

30 Hamish Nixon, *Subnational State-Building in Afghanistan* (Kabul: AREU, 2008), found the same for the 12 different districts where he conducted research on sub-national state building. He emphasises how the woliswal's influence "extends well beyond his formal powers."

district. This man, speaking in a focus group discussion in the remote village, described the *woliswal* as a paternalistic figure:

> *When children fight each other people go and complain to their father or to an older brother, not to a younger brother. I think the woliswal is like that.*

However, it is not the character or behaviour of an individual *woliswal* that gives the position this authority but, instead, it is the historical stability of the position.[31] The post of *woliswal* has existed since the expansion of the state at the end of the 19th century under the Amir Abdur Rahman Khan,[32] and it has continued through the different conflicts and the different regimes in this area and in many areas of Afghanistan.

Other district-level state actors generally accept the role of gatekeeper played by the *woliswal*; the *modir-i-huquq* (officer of the department dealing with civil law) said:

> *Everyone who has a huquqi dispute* (civil dispute) *can come straight to the huquq office without any consideration and signature from the woliswal, but it has remained as a custom from the past that people first go to the woliswal... and the people know that the woliswal is the head of all departments; people go to the woliswal.*

Some villagers also believe that it is the law that people should take their disputes to the *woliswal* first rather than any other department, as this quotation from a white-beard from the remote village during a focus group discussion illustrates:

> *This is something according to the law of the country. And one who takes his dispute to the woliswali, he should go to the woliswal first. They should do the hierarchical steps. He should first go to the woliswal, then it is up to the woliswal where he sends the case.*

Although the stability of the *woliswal's* position and it being seen as the most important and influential government position at district-level are what give the *woliswal* authority, he is also seen to have coercive power. This is mainly exercised through his control of the police and his ability to give orders to individual police officers, as the *woliswal* himself expresses here:

> *Once I beat a man who was making a false claim; I took him out of this office and ordered the soldier to beat him as well. Also, a week a go I was having my iftar* (meal to break the daily fast during Ramazan) *when the soldier came and said that there was a man who wanted to see me. When I went out I saw that the man had brought his brother on a horse and he was claiming that his brother was beaten baadly... I asked him to show me his back and I tried very hard to find a wound but couldn't so I realised his claim was false.*

The quotation also shows that the *woliswal* will make decisions autonomously about disputes that come to him. The openness and almost pride with which he told the research team about this illustrates that he also believes it is his right to make decisions in this manner and to punish those he believes deserve it.

The police commander in the district agreed with this view and said that the *woliswal* has the right to make decisions about where disputes should go and whether a dispute

31 There is often very little stability as to the individual who holds this post. Nixon, *Subnational State-Building in Afghanistan,* found that in the districts he studied the *woliswals* had only been in post for eight months on average.

32 Asta Oleson, *Islam and Politics in Afghanistan* (Richmond: Curzon Press, 1995).

should come to the police. He reported to the research team that if anyone comes directly to the police with a case he will tell them to go to the *woliswal* before coming to him.[33]

The other primary actor in community-based dispute resolution at the district-level is the *Ulama Shura* (*Shura* of Islamic scholars) which all respondents understand as having the remit to use *jafari* jurisprudence (Shia legal code) to resolve certain disputes. The head of the *madrassa*, who is also a member of the *Ulama Shura,* reported that there are ten permanent members of the *Ulama Shura* and a further 60 non-permanent members who are *mullahs* from the different villages in the district. They hold regular meetings, either once or twice a month (there is differing data on this). Different people have different perceptions of what power and rights the *Ulama Shura* has, as the quotations in Box 6 show (over page).

In reality, the *woliswal* refers many different cases to the *Ulama Shura*; one example of this was a murder case, even though the *woliswal* argued that he only refers what would be classified as small disputes to the *Ulama*. Despite the general recognition of the role the *Ulama Shura* has to play in dispute resolution, the head of the *Ulama Shura* reported that its members get no support in implementing their decisions from district-level government officials.

From the data, it is evident that not only do the *Ulama Shura* members have disputes referred to them by the *woliswal,* but the members also have disputes which come directly to them at their regular meetings. The *mullahs* who are members of this *shura* also participate in *jalasas* to resolve disputes in the villages or will be appointed by the *woliswal* to resolve disputes in particular villages.[34]

Other *shuras* are also present at the district-level, including the *shura-i-rafar* (welfare *shura*) and the *shura-i-echtemai* (social *shura*).[35] However, neither of these *shura*s was reported to have a role in dispute resolution. Nevertheless, it is worth mentioning them if only to highlight the point that the researchers found that the word *shura* is used to refer to bodies which are more fixed in their membership and have more regulated meetings than the *jalasas* that come together to resolve disputes. This is not only true at district-level but also in the villages where the community development councils (CDCs) of the National Solidarity Programme (NSP) are referred to as *shura*. Throughout the research, there was never an occasion when anyone referred to a meeting or body (except the *Ulama Shura*) for dispute resolution as a *shura*. Likewise, the NSP *shuras* in the villages where the research was conducted played no role in dispute resolution, even if some of their members were also white-beards involved in dispute resolution.

This section has provided a brief overview of the different actors involved in community-based dispute resolution from the district-level. The next section features a discussion on their roles in more detail and their relationship to the white-beards and disputants from the two research sites.

33 It is extremely unusual for disputants to go to the police. Of the many cases explored through the research, in only one had a party in the dispute gone directly to the police with their grievance and this was a relatively minor grievance about meat sold from a sick cow.

34 The research team did not follow any cases that had been referred directly to the *Ulama Shura* or cases in which the disputants had gone directly to the *Ulama Shura*, mainly because they did not come across any examples in the villages where this had happened. However, as is described in Case 3, "Land Dispute," *mullahs* from the *Ulama Shura* were present at a *jalasa* in regard to the dispute.

35 These *shuras* are made up of representative white-beards from the different villages in the district and form a link between the government at district-level and the villages.

Box 6: Rights and responsibilities of the *Ulama Shura*

There is an official letter from the Supreme Court saying that the majority of people here are Shia, and therefore the cases should be solved in Jaffari Sharia, but the judges who are coming here have studied Sunni Sharia so they don't know anything about Jaffari Sharia.

— Head of the madrassa

Regarding ahwaal shakhseeya (personal law) *the Supreme Court has sent a letter saying that in those areas where Shias live, courts can send such cases to the Ulama Shura if both sides of the dispute agree.*

— Head of *Ulama Shura*

In the Constitution it is clearly written that the Shia people can use the Jafariah Sharia for three things: divorce, marriage and inheritance. Other disputes should be solved through Hanifi Sharia. The people cannot differentiate this and they are claiming that, "Since we have ulamas who are Shia, we also want to solve our other problems through Jafari."

— A judge

Ulama Shura are well-known people and they are recognised by the district and they are established for the resolution of problems among the people. Therefore, I don't think there's any legal problem in sending cases to the Ulama Shura.

— *Woliswal*

4. Between the State and the Community: Processes, Relationships and Participation

> *Whoever wants their dispute to become big and wants deya* (compensation) *and punishment will go to the woliswali. Those who don't want a big fight and want a peaceful decision solve their disputes using the white-beards.*
>
> — Woman who has an ongoing dispute about violence in the family and is from the remote village

This section focuses on the processes for resolving disputes in the villages and the links and relationships between village-level dispute resolution processes and district-level state representatives in community-based dispute resolution are discussed. The section begins with a look at respondents' opinions on the advantages and disadvantages of taking a dispute to the *woliswali* or resolving it in the village. This is followed by an analysis of why and when disputes are referred from the village to state actors at the *woliswali* and vice-versa. The section also addresses further one of the key themes of the research: gender equity in community-based dispute resolution processes. Whereas Section 3 considered the role women play as decision-makers, this section discusses women's comparative access to both the district and the white-beards to resolve their own disputes.

The section contributes to four of the key arguments of this study:

1. Community-based dispute resolution processes do not operate in isolation from state institutions, but instead frequently work with them. In fact, this section argues that there is close cooperation and interaction between representatives of the state at district-level and white-beards and disputants in the resolution of disputes.
2. Village residents usually make decisions based on experience and knowledge when they choose between taking a dispute to state institutions or to the village white-beards.
3. While women's access to and participation in these processes may be particularly constrained, spaces in which women do access and influence dispute resolution processes can be found.
4. Where there is a lack of women's access to these processes and their participation in them, this is not an outcome of community-based dispute resolution or customary law itself, but is a consequence of prevailing gender roles and relations in Afghanistan more widely.

Although the research team selected these two villages because of their significantly different distance from the *woliswali* there was no evidence that this affected the relationship between dispute resolution at village-level and district-level. Instead, findings on the relationships between state representatives at district-level and actors in dispute resolution at village-level were similar for both villages. Likewise, contrary to the research team's initial expectations, women and men had similar knowledge about and opinions on how disputes are resolved in their communities. Women with the same level of knowledge about, and who share similar opinions on, processes for dispute resolution indicated that they also have significant knowledge of disputes in the village, even those located in the public realm.[36]

36 The research team asked women how they got their knowledge about disputes that are located in

4.1 Choosing between the district and the village

This section examines what informs people's decisions about whether to take a dispute to the *woliswali* or to the village white-beards. As it was argued in the previous section, the *woliswal* is the key government actor at district-level in community-based dispute resolution. Nevertheless, many people do not distinguish between the different district-level actors when they discuss where to take a dispute for resolution, they simply talk about going to the *woliswali*. However, it is clear that for the vast majority of people the first point of call is the office of the *woliswal*.

The factors which influence decisions about where to take a dispute are divided into two categories. The first consists of factors which highlight the negative aspects of taking a dispute to the *woliswali* and the second category consists of factors which highlight the positive aspects of having a dispute resolved in the village. The decision about whether a reason is a negative factor with regard to the *woliswali* or a positive factor for resolution at village-level is based on how people presented these arguments.

Box 7: Reasons for not taking a dispute to the *woliswali*, legitimate expenses and the length of time it takes to resolve a dispute in the *woliswali*

The people here are very poor and they cannot afford the expenses of the way to the woliswali, like transportation, food expenses in hotels and rent for spending the night in the woliswali. If the people resolve their disputes through their white-beards it has two benefits: first, there will be no expenses, and second, the disputes are resolved faster than in the woliswali.

— White-beard in the remote village

If a man is travelling for seven or eight hours to the woliswali, he doesn't have much time to roam around these government offices. If they stay here in restaurants they will have to pay at least 100 Afs per night for their accommodation and food which I think is too much for a villager... therefore they are keen to solve their problems through mullahs, white-beards and Ulama Shura. I also think this is good for the government offices because their workload is lessened.

— Head of police

Poor people like me bring their disputes to the elders in the village because they can't undergo the court's expenses and they know that at least they can have a decision in a short time and the dispute or case won't last for years.

— Disputant in the near village

The negative factors associated with taking a dispute to the *woliswali* relate mainly to time and money, in particular the length of time it will take to resolve a dispute and the expenses a disputant will have to pay, both legitimate and illegitimate. As the quotations in Box 7 illustrate, the legitimate expenses associated with taking a dispute to the *woliswali* are usually transport and accommodation costs. It is interesting that there was little difference between the two villages in discussing these costs, despite their vastly different levels of accessibility to the *woliswali*. Some respondents also raised the issue of double costs; not only do people have to pay these expenses but also their labour is lost in the village.

the public realm of the village and the processes used to resolve them. The said their sources included information from children who hear things and often deliver tea and food to *jalasas,* and from generally socialising in the village and hearing what is going on. One woman also told the team that when *jalasas* are being held in public spaces in the village she stands nearby and deliberately listens.

Time is a negative factor for two reasons. First, the amount of time a disputant might have to spend in the *woliswali* in order to see the relevant people may be lengthy; second, it may take a long time to get a resolution through the state justice system.

Many respondents complained about illegitimate expenses, for example bribes. In fact, it was widely asserted that only rich people who could afford to pay bribes went to the *woliswali* because only they had the influence and wealth to ensure that a dispute taken there would be resolved in their favour. By contrast, it was asserted that the poor (all those who described this situation saw themselves as poor) preferred to resolve their disputes using white-beards in the village, as is illustrated by the quotations in Box 8. As the last quotation illustrates, some respondents complained that even the white-beards could be "bought." However, this view was rarely stated in either village.

Box 8: Reasons for not taking disputes to the *woliswali*: illegitimate expenses

The people who are poor are keen to solve their disputes through jalasa because they don't have enough money to pay bribes, but the people who are wealthy are keen to solve their problems in courts because they have money to give bribes and have decisions made in their favour.

— Woman living in the near village

Whoever has power is happy to resolve in the woliswali and whoever is poor is happier to resolve their dispute though Ulama or white-beards. If both sides sit in the jalasa it is better.

— Male disputant living in the near village

First I will go to the white-beards; if they cannot solve my problem then I will go to the woliswali. I think if people have money and give money to someone who has authority in the woliswali or at village-level, they will be the winner.

— Disputant and head of women's CDC in the near village

Respondents expressed four main, positive factors for resolving a dispute in the village. The first was the white-beards' subjective knowledge because they are members of the community in which the dispute has taken place. People believe this puts the white-beards in a better position to understand the "truth" of the dispute, to see who is guilty and to understand the background to the dispute. The quotations in Box 9 express this view (next page).

In contrast to this, people think that district-level actors do not know about the village and so are seen as reliant on the white-beards' knowledge anyway. This is illustrated in Case 4, "Zakera's Dispute with her Mother," in Annex 1, and is explained in this quotation from a man living in the remote village who was speaking in a focus group discussion:

> *In every case, the woliswali needs the help of the white-beards. If there is fighting and the dispute goes to the woliswal they will need the white-beards for shahadat* (to give evidence) *and without white-beards' shahadat, or in some cases with observations of the white-hairs, the woliswali wouldn't be able to make a decision.*

The second positive factor for resolving a dispute in the village is that it will stop the dispute from escalating. The third reason is closely related to this and is the belief that taking a dispute to the *woliswali* will create greater hostility between the disputing parties. The way in which village-level *jalasas* aim to contain disputes and maintain peace and social cohesion is discussed in further detail in Section 5.

Box 9: Positive reasons for keeping disputes in the village: Subjectivity and knowledge of the white-beards

Villagers who have disputes and don't want to make a false claim take their disputes to the jalasa because the people in the jalasa know everything in the village. But those who make false claims, like my opponent, take their dispute to the court, because the court and the judge don't know about the case.

— Male disputant living in the near village

White-beards know about disputes better than anyone else in the village. Even if going to the woliswali didn't have any expenses it would need a lot more time to resolve the case in the woliswali than in the village. In the village, white-beards can understand in one or two days who is right and who is wrong... but it would take a lot of time for the woliswal to find out the reality and then make a decision.

— Man speaking during a focus group discussion

Because the white-beards know what the matter is and what happened here and they know who is guilty, all the people are happy to solve their problems in the white-beards' jalasa. Also, for the woliswali to solve our problems they need witnesses and the problem will become bigger and bigger. But for the white-beards it is easy to solve the disputes and all the people are happy to solve their disputes in the white-beards' jalasa.

— Woman living in the near village

Not going to the state because it would increase the animosity between disputants was expressed most strongly in relation to disputes among family members. Even when disputes between family members are taken to the *woliswali*, the fact that the disputants are related to each other will be a factor the *woliswal* will use to advise the disputants to resolve their dispute using the white-beards in their village.

The fourth reason for resolving a dispute in the village is that it maintains village honour. Ideas of shame and honour in relation to dispute resolution were briefly discussed in Section 3, however this section illustrates how it is considered to be more dishonourable for disputes involving women or anything of a sexual nature to go to the *woliswal*. Indeed, for a woman to have to go to the *woliswali* at all is not considered a good thing, as this man from the near village explains in relation to a particular dispute:

> *We told the woliswal that both sides of the dispute are our relatives and we want to solve the problem in our village. I also told the head of the police and the woliswal that because, in this case, a woman is involved, it is very shameful for us that a woman from the village comes to the woliswali for an investigation.*
>
> — White-beard from the near village

The majority of people think cases of *zena* (sexual relations outside marriage) are best resolved in the village. However, a few instances, like the one a white-beard discusses here, are thought to be very serious and should be referred to the *woliswali*. The white-beard was speaking during a focus group discussion just after the rest of the group had expressed the opinion that such cases should be resolved in the village:

> *But if such a [sexual assault] case goes to the woliswal, I don't think it is shameful. It is good to punish a guilty person in the woliswali. White-beards make Islahi decisions but they don't have any power to punish someone in the village. If someone is guilty in such kinds of cases he should be punished in order for it to be a lesson to others.*

While more negatives than positives were given about taking a dispute to the *woliswali,* there were certain elemets which were seen as advantageous by some in connection with specific cases. Most important among these was the belief that the *woliswali* can punish the guilty person and has the power to implement decisions. These two perceived positives of taking a dispute to the *woliswali* are explored in greater detail later.

As was described in Section 3, disputes fit into two or sometimes three categories: big disputes, small disputes, and disputes of a domestic nature. While there are many reasons for taking a dispute to the *woliswali*, which are explored in the next section, there is a general belief that big disputes should go to the *woliswali* and that small disputes should be resolved in the village.

Women's differing access to the* woliswali *and the village white-beards

> *Here, if a woman goes to the woliswali it is not good because people will taunt her son or husband saying, "Your wife went to the woliswali." So I think this could be a big reason that women themselves feel more comfortable taking their disputes to the white-beards rather than the woliswali. We are victims of a negative culture. If we see it from a Sharia point-of-view, a woman can go to the woliswali or white-beards, it is their right.*
>
> — White-beard from the remote village

While the previous discussion considers both men's and women's generalised choices about whether to take disputes to the *woliswali* or the white-beards, the research team recognises that most women are more restricted than most men in accessing either the *woliswali* or the white-beards. This section explores more specifically women's access to both the *woliswali* and the white-beards. The main argument of this section is that, while all women may not have the same ease of access to white-beards and *jalasas* as men, these village-level institutions for dispute resolution are far more accessible to them than the *woliswali* and, consequently, any part of the state justice system. The restrictions women face in accessing the *woliswali,* and to a lesser degree village-level community-based dispute resolution processes, are not due to the particular functioning of these processes themself, but are due to the restrictions on women's mobility and association by the gender systems of the area. As the quotation at the beginning of this section suggests, many people think that women should or do have the right to take their disputes to either the *woliswali* or the white-beards of their village, but as the man speaking says, a "negative culture" prevents them from being able to do this.

The quotations in Box 10 (next page) make it clear that many people feel that women have more access to the white-beards in their own village than to the *woliswali*.

Although the reasons most often cited for women's lack of access to the *woliswali* are related to their restricted mobility—which is in itself linked to shame, honour and restrictions on women associating with "strange" men—the last two quotations highlight the more practical point that women do not have access to the resources necessary to go to the *woliswali*, which were explored previously in this study.

Despite it being expressed in a generalised way that women do not go to the *woliswali* and that social norms do not permit women to go to the *woliswali*, respondents gave a number of different examples in which women did take their disputes to the *woliswali*. Likewise, the research team explored some individual cases in which women took their disputes to the *woliswali*, as is illustrated in Case 1, "Attack at the *Ailaq,"* and Case 5, "Inherited Land Dispute,*"* in Annex 1. Respondents also gave other examples in which women had had disputes about inheritance, violence in the family, and land.

Box 10: Women have greater access to their village white-beards than to the *woliswali*

Yes, [women] will go to their white-beards; the white-beards will solve the dispute. Also, the elders will not let women go to the woliswali; it is difficult for them to go.

— Woman from near village

It is good for [women] to go to the white-beards, not to the woliswali. It is difficult to go to the woliswali for women. They cannot reach the woliswali.

— Woman speaking during a focus group discussion in the remote village

Yes, it is difficult for women, the woliswali is too far. Also, women don't have the money to spend to go to the woliswali.

— Woman speaking during a focus group discussion in the remote village

See, most of the women here are dependent on their husbands and they don't have any direct income. Most of them can't even pay their transportation costs to go to the woliswali and take their cases there. So both of them [in this case] didn't go to the woliswali and came directly to [the white-beards].

— White-beard from the remote village

The women involved in these cases and others were usually accompanied by a male relative when they went to the *woliswali* and who sometimes argued their case themselves. Despite this, there is some level of acceptance for women who do not have a male relative to accompany them to go to the *woliswali* alone. A closer look at the way in which people talk about the shame of an unaccompanied woman going to the *woliswali* shows that this shame is, in fact, owned by the men in the family rather than the woman herself. That is, respondents said it is men in the family who would be "taunted" for "allowing" a woman from their family to go to the *woliswali* alone, or for going at all, when there are men in the family who should have gone as her *wakil* (representative). This quotation and the one at the beginning of the section illustrate this point:

> *This is because it is shameful for men and people will say that the wife of so and so went to the woliswali alone and her husband doesn't know about this. It is a very big shame. If women have any problem they should be patient for their family and for their house. They can't do anything even if they want to.*
>
> — Female member of disputant's family living in the near village

Family or household structure is one factor which influences the acceptability of women accessing the *woliswali*, with widowed women with no close male relatives having more right to independently present a dispute at the *woliswali*. The other significant factor is age; older women are not just more likely to be able to travel to the *woliswali* independently but are then able to present their own case once there. However, physical access is not the only issue. Although it was rarely discussed, one woman said that even when women can travel to the *woliswali* they are not taken seriously.

> *Women can take a dispute to the woliswali but it has no advantage, no one hears what women say. This is because the woliswali and all the employees there are men and they decide in men's favour, or whatever they want. And no one considers the rights of women.*
>
> — Female disputant living in the near village

Women in both villages are seen as having easier access to the village white-beards, as the quotations in Box 11 describe.

Box 11: Women's ability to access white-beards in the village

Yes, if they have a problem or dispute they come to a jalasa and they bring their dispute.

— Man speaking during a focus group discussion in the near village

Yes [women] can bring their disputes to the jalasas. When they have problems with someone in the village or in their family, with their husband or mother-in-law or father-in-law, they bring such kinds of disputes to jalasas for the white-beards [to resolve].

— White-beard living in the remote village

I had a dispute for four months. I went to... [some] white-beards to resolve our dispute. The white-beards went to my brother's house and they told my brother to give me my right, because I am a widow and I have orphaned children.

— Female disputant in the remote village

Yes, they can bring their cases if they are involved in the case... Women can bring their problems to the white-beards if their husbands beat them baadly or the husband gets angry and leaves the house.

— White-hair living in the remote village

While this was the most common point of view, the quotations in Box 12 show that there were people who saw things differently.

Box 12: Women's limited access to dispute resolution at village-level

Women cannot go to the jalasa and woliswali because it is shameful for women if they go and claim outside the house. Their husband and father and brother will take the dispute to the woliswali and white-beards. Women don't go, it is shameful.

— Female disputant in the near village

Women don't have arguments and disputes that will be sent to the jalasa. Another thing is that women don't know where to go to resolve their problems. And also they don't let them go to jalasas.

— Woman speaking in a focus group discussion in the near village

People will say that the woman is argumentative and that she goes to the white-beards and woliswali all day. Women don't have permission to go to the woliswali and jalasa. If the woman goes to the nayak or jalasa, when she comes back her husband will divorce her... Then the poor women are forced to be submissive and they cannot go anywhere.

— Woman speaking in a focus group discussion in the near village

It is important to note that these voices are emphasising that women do not go to the *jalasas* rather than saying they should not access the white-beards or *jalasas*. Yet in both villages there are examples of women taking their disputes to white-beards. Overall, men did acknowledge that women have the right and ability to go to white-beards of the village; in fact, those who denied this the most were women from the near village who were, generally, the most conservative group of people.

As the quotations in Box 12 show, these women from the near village argued strongly

that women have nowhere to go with their disputes and they were less clear than others about the different levels of accessibility between the *woliswali* and white-beards. This is in line with this group's more general despondency about the effectiveness of community-based dispute resolution. The main reason women gave for women not being able to approach white-beards with their disputes was again related to ideas of shame and honour and women's restricted mobility.[37]

Whether it is acceptable or not for a woman to take a dispute to the white-beards is influenced by the nature of the dispute, as are other aspects of people's choices about where they take disputes. The research team asked women during focus group discussions specifically about cases of violence in the family[38,39] and again the answers were somewhat mixed. At the extreme it was seen as shameful for women to take this type of dispute anywhere, as this woman from the near village says:

> *Not under any circumstances [can issues of violence against women in the house] go to the woliswali and jalasas. If they go, there won't be any reputation and honour for them and the villagers will say that the woman is beyab* (immodest)*, that they take their internal fighting outside, and other baad words... women should always be calm and silent.*

The ideal resolution most commonly given for this situation was for there to be an elder in every family who can resolve disputes, as this white-beard from the near village says:

> *In every house there is an elder and most of the time elders of the family play a role in resolving disputes between husbands and wives and between daughters-in-law and mothers-in-law. If it is not solved in the family, then they will call a close relative... because they feel ashamed to take their complaint to the jalasa.*

However, women also said that such problems could be taken beyond the family or even the *qawm* if it were not possible to resolve them in the family, as this woman from the remote village explains:

> *If they don't accept the decisions made by the elder of the family, then a person who is not involved in the dispute will go to bring a white-beard to solve their janjal* (argument/fight)*. Then they will discuss with the white-beard whether they are guilty.*

While most women's access to either the *woliswali* or the village white-beards is constrained compared with most men's access, it was evident that there are somewhat less constraints on women accessing the elders of their own community than on them accessing state actors. Opinions varied considerably as to how constrained women's access is to the white-beards in their communities. However, evidence from the cases explored by the research team showed that women are indeed able to bring cases to the white-beards and participate in the *jalasas* to resolve their disputes. The factors which

37 It is interesting to note that women in a meeting outside their homes said women cannot go out and that women do not leave their houses.

38 The rationale for focusing on this type of dispute is two-fold. First, the gender team at AREU was concurrently conducting research on family dynamics and family violence; second, violence in the family is a common problem faced by women and the research team wanted to see the potential for community elders to be involved in limiting or controlling this.

39 In this context "family" refers to immediate family rather than extended family. It would appear that if women experience violence from more distant relatives it is more acceptable for them to take the dispute to the white-beards, particularly if they have the support of their natal family (unmarried girls) or their husbands in doing so.

restrict women's access to dispute resolution processes—such as a lack of mobility and the belief that women are receptacles of family honour—are not specifically linked with community-based dispute resolution processes, but are, instead, the result of wider gendered ideals and relations in society.

4.2 Between the state and the village

> *[This] district is very populated compared to other districts in Bamiyan; it has the population of four districts. For workers of one woliswali it is difficult to deal with the population. So I can say that yes, the woliswal would send cases to the white-beards in the villages. This is why the woliswal has accepted the white-beards as his colleagues in dispute resolution in the villages.*
>
> *— Man speaking during focus group discussion in the remote village*

While this discussion has considered the perceived advantages and disadvantages and issues of access related to dispute resolution at village and district-level, in reality both district-level actors (principally the *woliswal* and, at times, members of the *Ulama Shura*) and village white-beards are involved in the resolution of many individual disputes. The ways in which a dispute is resolved can be divided into three likely scenarios.

In the first, a disputant goes to the white-beards in their community to seek advice and help in resolving a problem and a *jalasa* may or may not be held. The white-beards then refer the disputant to the *woliswal* or the disputant decides to go after consulting the white-beards. The *woliswal* in turn refers the dispute back to the village for resolution. In the second scenario, a disputant goes straight to the *woliswal* and the *woliswal* persuades him to return to their village to solve it through village white-beards. In the third scenario, a dispute is taken to the white-beards and they resolve it in the village and at no point is the *woliswal* involved.[40]

Scenario 1: From white-beards to woliswal and back again

This is a common scenario in both villages. Case 4, "Zakera's Dispute with her Mother," in Annex 1, is an example of this. In this case, an initial decision was made in a *jalasa* about ownership of Zakera's father's land. Zakera's mother was not happy with the decision and went to the *woliswal* who, after some investigation, returned the dispute to the village.

Zakera's mother wanted to take the dispute to the *woliswal* from the beginning but the white-beards persuaded her not to as they knew it would ultimately be referred back to them for resolution. As Zakera's sister explains:

> *When my mother wanted to go to the woliswal the white-beards told her, "You can use your money for all the expenses but we are sure you will come back to the village."*

This demonstrates the confidence that actors in dispute resolution at village-level have that the *woliswal* will refer most disputes back to the village for the white-beards to resolve. In fact, this case and the more generalised data revealed that this was the most common reaction by the *woliswal* when a case reached his office. So it is important to consider what the *woliswal's* motives for referring a dispute back to village white-beards are.

40 These three scenarios are an over-simplification of reality to some degree. Many other manoeuvres may be possible in dispute resolution and may vary greatly from dispute to dispute. Reading the individual cases in Annex 1 will show this more clearly.

Two reasons were given as to why the *woliswal* sends disputes back to the village. The first was because it was thought that the *woliswal* agreed with the reasons provided in Section 4.1—that having a dispute resolved within the state justice system would be too expensive and too time consuming for most people. This is expressed by this man during a focus group discussion in the remote village:

> *Our woliswal has sympathy with his people. Everyone talked about expenses. I think the woliswal also knows that disputes won't be resolved in a short time in the woliswali and people will have to stay in the woliswali for a long time, so he refers cases to the white-beards in the village.*

However, others saw the *woliswal* as having less sympathetic reasons for doing this, and believed his motive is to reduce the work of the government offices. Some people argued that it would be impossible for the *woliswali* to resolve the large numbers of disputes anyway. One woman described how the *woliswal* visited the remote village and told the community to resolve their disputes using their white-beards as it would be better for them.

White-beards and disputants can have equally strong reasons for referring disputes to the *woliswali*. First, people repeatedly told the research team that for white-beards to resolve disputes, particularly big disputes, they need a letter of permission from the *woliswal*. Second, disputants and white-beards refer a dispute to the *woliswal* when they feel unable to resolve it. Third, if a disputant is not happy with the outcome of a *jalasa* and the decision made they will go to the *woliswal*.

Box 13: Authority and implementation power

When the woliswal gives the letter, the white-beards names are written and it says that whichever side doesn't accept the white-beards' decision, the white-beards will refer the case back to the woliswal and he will imprison them.

— Female disputant from the remote village

If it isn't a big dispute like murder or theft, people will bring their disputes to the white-beards. Even in that case it is better to have a letter from the woliswal because having a letter from the woliswal makes the white-beards' decisions legal and stronger.

— Man speaking during a focus group discussion in the remote village

The power should be that the woliswal gives a letter to the white-beards, and then the white-beards hold a jalasa and the people should be scared of the woliswal's letter and accept the white-beard's decision.

— Female disputant from the near village

The first reason was the one most commonly referred to and is the most important in explaining the relationship between district-level government representatives and dispute resolution processes at village-level, and how the community perceives this relationship. Three reasons were given for why the white-beards want this referral letter from the *woliswal*. The first is because it is believed that a letter from the *woliswal* gives the white-beards permission to resolve the dispute in the village. This, in turn, gives their decisions more authority and so increases the potential for the decisions to be implemented. The quotations in Box 13 illustrate this. The second reason, reported by the white-beards themselves, is that they feel the need for a letter from the *woliswal* to protect themselves from any repercussions—particularly if the disputants do not accept their decisions. This is explained by the quotations in Box 14.

Box 14: White-beards protecting themselves

I said that their dispute is complicated and in such circumstances sometimes fighting happens—if we go without the order of the woliswali and a fight happens we cannot answer that. The woliswal will ask us, "Who gave you permission to do this work?" In that case we won't have any answer.

— White-beard from more remote village

They said this because if they don't take a letter from the woliswali, the government might in the future say that they resolved the dispute without permission. On the other hand the white-beards and mullahs won't take the responsibility [of resolving a dispute] without the woliswal knowing. Every dispute that goes to the woliswali comes back to the white-beards.

— Neighbour of disputant in the near village

White-beards are very poor people and they can't give an answer to the woliswal's questions after making a decision. If they resolve such kind of disputes the woliswal may ask them, "Why did you make this decision and who told you to make this decision?" Because sometimes when disputants don't accept a decision they go to the woliswali.

— Man speaking during a focus group discussion in remote village

The third reason, closely connected to the previous two, is the white-beards' and others' perception that the law is that they should receive a referral from the *woliswal* before resolving disputes in the village. See quotations in Box 15.

Box 15: Perceptions of the law

Now we have a government and these cases should be reported to the government; if someone doesn't report to the government it is a crime. After the case reaches the government and then if both sides agree, it can be referred to the white-beards.

— White-beard from the near village

Most of the people take [their disputes] to the woliswali. The dispute can't be resolved by the white-beards without a letter from the woliswali.

— Female disputant in near village

The *woliswal's* letter of permission for the white-beards to resolve the dispute includes the names of those white-beards who will be the primary decision-makers at the *jalasa*. Usually he asks the disputants who they would like to represent them but, at times, he may also select which white-beards he wants to be present in the *jalasa*. For example, in Case 3, "Land dispute," in Annex 1, the *woliswal* insisted that two of the *mullahs* from the *Ulama Shura* were part of the *jalasa* to be held once the dispute was referred back to the village. In a dispute that the *woliswal* has referred to the white-beards, once the white-beards reach a decision they prepare a decision document, which they and the disputants sign or put their thumb prints on, and a copy is given to the *woliswal*. The research team also found examples of decision documents being drawn up even when the *woliswal* had not been involved in the dispute. White-beards and disputants usually hold copies of these documents, but if the dispute was not referred by the *woliswal* a copy of the decision document is not given to him.

The second reason for a dispute going to the *woliswali*—even after the disputant has approached the white-beards—is that the white-beards think they cannot resolve the dispute and they ask the disputants to take their case to the *woliswali*. However, as this

white beard from the near village describes, when this happens the *woliswal* will often want to refer the case back to the white-beards again:

> *First they come to their white-beards to resolve their problems. If the white-beard can't resolve the problem, or if one of the sides of the dispute doesn't accept the elder's decision, then they go to the woliswal. When they go to the woliswali they have to pay for the transportation, hotel rent, food expenses... then they say, "What a baad thing have we done not accepting our white-beards' decision," and they come back to the white-beards. This second time they will get an order from the woliswal, who refers the case to the white-beards.*

As this quotation also shows, the third and final reason a dispute that has gone to the white-beards will then go to the *woliswal* and back to the white-beards is that a disputant is not happy with the decision made in the *jalasas*. Even in these cases the *woliswal* is very likely to refer disputants back to their villages for the white-beards to try to come up with another solution to the problem.

White-beards repeatedly complained about disputes being returned to them by the *woliswal* because a disputant does not agree with the decision they have made. They had already reached a decision on a dispute once and did not want to go through the whole process again. They related this to their lack of power to implement a decision if a disputant does not agree with or simply does not comply with the decision. The white-beards' power to implement decisions is discussed further in Section 5.

Scenario 2: From woliswal to white-beards

This scenario is as common as Scenario 1. In Case 3, "Land Dispute," Case 7, "Fighting Between Brothers' Families," and Case 8, "Dispute Over Forest Land," in Annex 1, the disputes were initially taken to the *woliswal* who referred them back to the village. In Case 3 the dispute had already been taken to the *woliswali* before it was returned to the village because one of the disputants went to the *woliswal* after it turned violent. The *woliswal* then referred the case to the police commander and several men were imprisoned. The white-beards from the village then had the imprisoned men released and offered to resolve the dispute in the village. In this case, the disputant agreed for the dispute to be resolved in the village because of the expenses and respect for the white-beards. However, the *woliswal* asked for two *mullahs* from the *Ulama Shura* to be present at the *jalasa* to assist in resolving the dispute.

Other examples show that in some cases people go directly to the *woliswali* to get justice and resolution through the state justice system. They may pursue this for a while but, due to the negative reasons associated with dispute resolution in the *woliswali* explored in Section 4.1, after some time they often ask for the white-beards to resolve the dispute. This quotation from an interview with a white-beard from the near village about his dispute over land ownership illustrates this point:

> *We first went to the woliswali and the case was there for almost two years and it was not resolved. At that time, my father was a very old and my uncle was also very old, and therefore I was involved in the case with my cousins. After the passing of time we became very fed up with the court system and we voluntarily asked the help of the white-beards in this regard. At that time we collected 60 white-beards from the different parts of the district to solve our dispute... Although I had a Sharia deed the white-beards gave our land to my cousin... We said that since it is dispute within the family, and also the white-beards requested us to accept the decision, we accepted it. The dispute had also become very violent; at that time everyone was armed and*

my father thought that if we don't accept the decision, it will make a very big war in the village.

The research team was interested in why people would go to the *woliswali* at all knowing the difficulties they would face and, more importantly, that there would be a very high chance their dispute would return to the village for resolution anyway. The data revealed two very closely related reasons for this: people feel angry and go to the *woliswali* as an immediate reaction to an event without thinking it through, and they want the person they feel has wronged them to be punished. The quotations in Box 16 illustrate this.

Box 16: Anger and punishment

Because at that time if one of the disputants is beaten, he is angry and until he goes to the woliswali he will remain like that.

— White-beard from the near village

Some people like the woliswal because they want the woliswal to punish the other side.

— Woman from the remote village

He beat me and my daughter, even though we were innocent, so I wanted to go to the woliswali because my heart was in pain and I had no one.

— Female disputant from the remote village

While scenarios 2 and 3 show disputes going to the *woliswali* only once and then being referred back to the village for resolution, some cases are more complicated and disputes go backwards and forwards between the village and the *woliswali* several times. An example of this is Case 7, "Fighting Between Brothers' Families," in Annex 1. In other examples, the dispute is not simply referred between the *woliswali* and the village but, instead, representatives of the *woliswal* will attend *jalasas* as observers and advisers. Case 8, "Dispute Over Forest Land," in Annex 1, is an example of this.

This discussion has demonstrated so far that strong links do exist between officials of the state and the community for dispute resolution and that representatives of the state are themselves actors in community-based dispute resolution. Similarly, a significant number of decisions made in *jalasas* at village-level are recorded in the *woliswal's* office. Related to this is the importance more generally of written documentation in community-based dispute resolution. Even when there is no need to send a decision letter back to the *woliswal,* white-beards keep records of these for themselves and give copies to the disputants.

Scenario 3: Keeping it in the village

They are motherfuckers who are doing this (laughing). *We are here to resolve the disputes and we are trying our best to resolve a dispute and we tell them, "Don't go to the woliswali because it doesn't have any benefit, you will lose your time and money and your case cannot be resolved there," but they insist, "I have to go to woliswali." When they go there they are roaming around departments like hashish smokers in Jalalabaad, and when they know that the dispute cannot be resolved in the woliswali they come back to the white-beards.*

— White-beard from the near village

As the quotation shows, and as explained in Section 4.1, white-beards also have a strong desire to keep disputes in the village despite, at times, wanting a letter of permission

from the *woliswal* to resolve big disputes. This final scenario was one the research team came across less frequently and was generally only a scenario for disputes that were deemed to be small and easily resolvable.[41] Of the cases presented in Annex 1, only Case 6, "A Love Marriage," is one in which the dispute did not go to the *woliswali* at any point. This was because the white-beards were able to persuade the girl's father to accept their decision and not go to the *woliswali*. Other disputes that the research team explored, but which are not in Annex 1 and did not go to the *woliswali* at any point, were: a dispute between two brothers over the ownership of wood which was resolved by Rana, the teacher discussed in Section 3; an attack on a woman grazing her animals on someone else's land that left her quite badly injured; an uncle refusing to pay his nephew properly for work that he had done for him; and two divorce cases, one of which was particularly complicated because two wives had been exchanged in marriage but only one of them wanted to divorce (the other was also forced into divorce and lost custody of her children as a result).

41 There may be some methodological bias here because the research team chose to explore in more depth the more complex cases which show the relationships between the state and the community.

5. Principles and Outcomes: Keeping the Peace—Using *Islah*, *Qanoon-e-Urfi* and Sharia in Community-Based Dispute Resolution Processes

> *When, in a district, half of the people are happy with the judge and half of the people are not happy, it means that the judge is a very good judge and has made the decisions through state law. And if the whole district is happy with the judge it reflects that the judge has made all the decisions according to qanoon-i-urfi. Because we can make all the people happy using urf, but we cannot make all the people happy using Sharia and state law.*
>
> — District judge

The previous section began the discussion on the processes to resolve disputes, in terms of the relationships between the state and village-level dispute resolution. This section continues to discuss these processes and considers the principles which underlie decisions made at a *jalasa*. In doing so, the section contributes to four of the key arguments of the report:

- The principles underlying and used to rationalise the outcomes of dispute resolution processes are complex, drawing on Islamic and customary ideals, negotiation and pragmatism.
- Community-based dispute resolution processes are a key way in which peace and social cohesion are maintained in villages.
- While women's access to and participation in these processes may be constrained, spaces for women to participate in dispute resolution processes can be found.
- Decisions made through these processes, contrary to common belief, can provide recourse for women to assert their rights.

The section begins with a discussion on the key sets of principles used to resolve and justify decisions within community-based dispute resolution processes. It is then argued that the ideal aim of community-based dispute resolution is to keep the peace within a community, and a description is given of how customary practices are used to do this. The importance of pragmatism in these processes is demonstrated and, linked to this, is an illustration of how these so-called traditional practices can change over time and are flexible to political, social and economic context. The next part of the section discusses how people choose between using Sharia and *qanoon-i-urfi* (customary law) to make decisions on disputes. It demonstrates how, in the majority of cases, *urf* (custom) is used rather than Sharia and the various reasons for this are discussed. The final part of this section considers issues associated with the outcomes of dispute resolution and the difficulties in ensuring the implementation of decisions made within village-level dispute resolution processes. It also highlights how the outcomes of these processes can be in women's favour.

It is important to emphasise that the understanding and interpretations of Sharia and Islamic principles presented and discussed in this section are based on the data that community members provided rather than the authors' own interpretations of Sharia or Islam. The discussion here is of community members' perceptions, understandings and interpretations of Sharia and Islamic principles compared with their descriptions of customary practices.

5.1 *Qanoon-i-urfi, Islah* and Sharia

Both *qanoon-i-urfi* (customary law) and Sharia are used to resolve disputes within the *jalasa* system. *Islah* essentially means the promotion of peace and maintaining social cohesion in the community through negotiation and reconciliation and this underlies and informs many of the decisions made using customary law. Respondents sometimes used the terms *urf* and *Islah* interchangeably, but it is important to make a distinction between the two. *Islah* better describes the principle behind *qanoon-i-urfi*; that is, of resolving disputes in order to make peace between disputants; *urf* simply means custom.

Respondents, in particular white-beards, made a very clear distinction between using customary law or using Sharia to decide on and resolve disputes. Despite this, using *urf* is partly justified because it follows the principles of *Islah*. The quotation below illustrates both the way in which *urf* and Sharia decisions are seen as being distinct and, at the same time, how the use of *urf* is presented as being within the remit of Islamic principles, through the commonalities it shares with *Islah*:

> *Islah-based decisions are urfi decisions. Urf is also not out of the circle of Sharia. But urfi or Islahi decisions aren't specific like Sharia decisions. Islah garan* (those who make Islah-based decisions), *after seeing the situation, make a decision at that time which is acceptable for both sides.*
>
> — White-beard from the remote village

Qanoon-i-urfi was used to resolve or to attempt to resolve the majority of cases that the research team explored. Likewise, respondents reported that *qanoon-i-urfi* was used to resolve most of the cases the research team were told about during interviews and focus group discussions. Later parts of this section discuss the reasons for this and why, in most disputes, the white-beards find *urf* a more practical system of justice to apply than Sharia. However, respondents also reported that while the white-beards advise disputants about how their disputes should be resolved, as do district-level officials, disputants can choose to have a Sharia- or *urf*-based decision made. A white-beard from the near village and the head of the *Ulama Shura* express this respectively in these quotations:

> *It depends on the disputants—if they say that they want a Sharia decision, jalasa people will make a Sharia decision. In that case, disputants have to choose some mullahs for the jalasa as well.*

> *It is up to disputants. When they come to me in the beginning, I mean before starting our jalasa, I ask them for authority. Now if they give me full authority I will try to make an Islah-based decision, but if they say, "No, we want a Sharia decision," then I will make a Sharia decision.*

There are some very clear reasons why *qanoon-i-urfi* is chosen over Sharia-based decisions. They mainly relate to the *Islah* ideals of keeping the peace, which allows for negotiation and flexibility compared with the perceived rigidity and inapplicability of Sharia-based decisions to the prevailing social and economic conditions. The primary, overt aims of a *jalasa* are to resolve the dispute and enable the disputants to live in the same community without future conflict, rather than identifying a guilty person and prescribing punishment. Finding the "truth" behind a dispute—who has been wronged and by whom—may nevertheless be part of this process of creating peace. The flexibility of *urf*-based decisions allows for these things, as the quotations in Box 17 show.

Box 17: Flexibility of *urf*-based decision making

The decisions [in customary law] are different according to different cases. Customary law has no rules, it is very unbounded. If a decision brings peace between two disputants it is customary law.

— White-beard from the near village

See, Islah decisions are not fixed like Sharia decisions... For example, if two people have a dispute about land and there isn't any document or shahed (witness) *to say whose land it is, the white-beards try to convince the owner of the land to give some of the land to his opponent in order to resolve the dispute... Now see, if someone claims that they have a share in the land and a jalasa... tells him, "You don't have a share," it would create baad beni* (hatred) *in the future and it won't let them live peacefully. If by giving some land you end a baad beni forever, I don't think that is an unfair decision.*

— White-beard from the near village

For example, if two disputants have a dispute over land and the amount of land is 10 jeribs, they will say to one of the disputants, "Look see, we know that these 10 jeribs of land belong to you, but the other disputant is like your brother and if you give him two jeribs of your land it will be very good for both of you."

— District Judge

The last two quotations also point to the privileging of community needs over individual rights; maintaining peace and social harmony can, as these examples show, take precedence over perceived rights of ownership as well as rights to compensation. In Case 7, "Dispute Between Brothers' Families," Fauzia wants compensation for her miscarriage but the focus of the white-beards was to prevent any further violence between the two families. It should be remembered that ending a conflict can also have benefits for individuals. In these examples of land disputes, the conflict ended and any land that was not being used due to the dispute came quickly back into use.

Deya (compensation) and *ozur* (apology)

The quotation below introduces one of the most common practices for ending disputes: a person who is seen to be the guilty party in a dispute has to give *ozur* (apology) to the person or family they have wronged. This usually takes the form of providing a meal, which often involves slaughtering a sheep or a goat for a number of people from the offended person's family or *qawm* and possibly other village residents too:

> *It was the month of Ramazan and we went to the beaten man's house during the night. After having dinner we asked the elders... to investigate the case from both sides. Finally we found who was guilty... We jalasa members discussed the way of its solution together and everyone gave his opinion. We all agreed to use Islah to resolve the dispute. One of the jalasa participants said both sides should arrange a party and slaughter a sheep for it. I opposed that, saying, "If both sides have to organise the party, what is the difference between innocent and guilty?" Then it was decided that the guilty person should slaughter a sheep and invite 20 people from the side of the man who was beaten.*
>
> — White-beard from the near village

The rationale for using this form of dispute resolution is clearly explained by this white-beard from the near village:

> *The white-beards are doing this because they want to make peace between them. There is a proverb that "the black pot makes hearts white." With food, most problems can be solved; if we think deeply, all these disputes and fights are related to food.*
>
> — White-beard from near village

An apology and providing food for the wronged party was often presented as an alternative to the harsh demands of *deya* (compensation) in Sharia. *Deya* was one of the most discussed Sharia practices, usually in relation to disputes which had turned violent and people were then seeking *deya* as compensation for their injuries. Sharia specifies amounts for different types of injuries.

However, in most cases the white-beards are reluctant to comply with demands for *deya* and they gave two reasons for this. First, the amounts specified by Sharia are unaffordable and therefore inappropriate for these communities, so this was changed to providing food, as described earlier. They presented this as an instance of Sharia principles being adapted to become *urf*, as these quotations explore:

> *Yes there is deya, but not so much, because people are poor and they are not able to pay deya. They will ask for deya but just a small amount, not the big amount of deya, and the person who receives the deya will forgive them, then the issue is resolved. The way of resolving the issue has changed from Sharia to urf.*
>
> *— Woliswal*

> *See, when we talk about deya for compensation of injuries, this in itself is a Sharia-based decision; but when we negotiate and lessen the amount of deya it is an urf-based decision.*
>
> — White-beard from the near village

The second reason for not asking the guilty party to pay *deya* to the wronged party is because it can cause future hostility between the different disputants and their families, as the quotations below show:

> *If, in a jalasa, it is decided to give a deya, it will prolong the grudge after the decisions are made. And whoever gave the deya will keep his enmity and grudge for the future. When some dispute is resolved according to urf law, it will be peaceful between the disputants and it ends the dispute for the future.*
>
> — Woman speaking during a focus group discussion in the near village

> *If we had taken deya, it would have been high. The white-beards apologised to us, Sabor and whoever was injured. The white-beards said that deya would create hostility in the future and that it was better if we didn't say anything about deya. We also didn't say anything in the jalasa. The white-beards told us this before the jalasa. We also didn't want to take it.*
>
> — Female disputant from the near village

Some people reported that white-beards in a *jalasa* will usually negotiate for a wronged party to accept an apology and food rather than demanding a *deya*. However, not all disputants are happy to forgive the party that has wronged them and to give up the full amount of *deya* they feel entitled to. For example, Fauzia in Case 7, "Fighting between Brothers' Families," still feels she should receive compensation for the unborn child she and her husband lost because her husband's brother's family beat her. The white-beards involved in resolving the dispute, while insisting that her brother-in-law pay for her hospital expenses, thought it best just to advise the families not to argue in the future.

Similarly, Zara in Case 1, "Attack at the *Ailaq,*" wanted compensation for her injuries but the white-beards felt it was better for her to forgive Sameer (her attacker) because if she did not, the burden of *deya* would have fallen on his parents as Sameer had left the village. Although both these examples involved women, it was not believed that they were not granted *deya* because they are women, but instead because it was felt important to maintain peace between the families.

Deya is not the only Sharia prescription for resolving disputes or punishing the guilty that was reported as being inappropriate. Corporal and capital punishments prescribed by Sharia, while less often discussed, were thought by some people to be too severe. This quotation from a white-beard from the remote village explains:

> *The white-beards' decisions are made according to Islah and the decisions of the court are made according to Sharia. For example, in a theft case according to Sharia law the thief's hand should be chopped off. But if such a dispute comes to the white-beards, they will resolve it through Islah and will not chop off the thief's hand... Sulh-*(peace) *based decisions are also the order of the prophet—sulh is not something outside of Sharia in my opinion... But if for one mistake we cut off a thief's hand he will be needy up until the end of his life. But also I cannot reject the order of Sharia, which is cutting off the thief's hand. But in such situations the white-beards can resolve the problem using sulh [peace]... and sulh is something according to Sharia.*

A lack of evidence precluding the use of Sharia in dispute resolution processes

The reasons provided for choosing *urf* over Sharia for dispute resolution are essentially based on pragmatism and the desire to maintain peace and social cohesion in the community. However, another often-reported reason for not using *Sharia* relates to the types of evidence demanded by Sharia. Based on the respondents' understanding of Sharia, there are two forms of proof that provide sufficient evidence for a Sharia-based decision: written documents (for example, title deeds to land) and *shaheds* (witnesses). So, for example, in the case of a land dispute where neither side of the dispute has a title deed and there are no witnesses to give evidence about who the land belongs to, an *urfi* decision would have to be made as the evidence is not thought to be strong enough for a Sharia decision. These quotations illustrate this:

> *See, Islahi decisions are made when there isn't any document or proof. In such circumstances what can one jalasa do? A Sharia decision needs documents, or if there isn't a document there should be some people who can give shahadat* (evidence/ testimony).
>
> — White-beard from the near village

> *We make Islahi decisions when there isn't any shahadat or document to base a decision on. For example, if someone has a dispute on boundaries of his land and there isn't anyone to give shahadat about the reality, white-beards have to make an Islahi decision to end the dispute.*
>
> — Man speaking during a focus group discussion in the near village

However, while a lack of documentation is common—or at least trustworthy, legitimate documentation—a lack of witnesses is less common and they are frequently used when making *urfi* or *Islahi* decisions. As explored in Section 4, the knowledge that white-beards have about the village and village relations is a primary rationale for people to resolve their disputes through a *jalasa* rather than at the *woliswali*.

Participation of women as witnesses in community-based dispute resolution processes

Along with participating as disputants, women's participation as witnesses in *jalasas* is a way in which they are able to influence dispute resolution processes. Of the cases in Annex 1, Case 1, "Attack at the *Ailaq,*" most clearly illustrates the role women play as witnesses. In this story, three white-hairs were asked to examine Zara's injuries and report them to the *jalasa*.

Discussions about women's roles as witnesses are much like discussions on their roles as disputants and produce mixed opinions. Some people said straight-forwardly that this is an important role for elderly women, particularly in cases of violence toward women. While nearly all respondents accepted that there is no social or cultural sanction against women being witnesses, some denied that it ever happened in their village, such as this white-beard from the near village:

> *They [women] can give shahadat or bring their dispute to the jalasa, but I haven't seen a woman who has given shahadat in a jalasa in our village yet.*
>
> — Man speaking during a focus group discussion in the near village.

Case 9, "Kidnapping Case," is an example of this form of denial of women's participation which the case study data reveals. The first quotation is from the mother of the girl who was kidnapped and the second comes from the brother of the boy who was accused.

> *His daughter and his daughter-in-law were also there. Nasreen and my sister, Tuba, were also there [at the jalasa]. Tuba has now died. His daughter-in-law's name is Saghar and they also called my daughter [to the jalasa]. They asked my daughter and she said, "I was coming home from school on my way home when they attacked me. Shafiqa and Saghar pulled me into their house." When the white-beards called Shafiqa and Saghar they said, "My brother told us to kidnap the girl and bring her to the house so he could take her with him to Kabul."*
>
> *No, there were no women. The women were not asked because this was a man's jalasa.*

In examples where women are witnesses they may not attend the whole *jalasa* but instead are called on to provide evidence at a particular time. One respondent reported that at times women witnesses will sit in a separate room to give evidence with one or two white-beards going to speak to them. Either way, there is evidence to support women's participation in *jalasas* as witnesses, as there is to support their participation as disputants, with the age and the character and the nature of the dispute all affecting their level of participation.

When Sharia is used and why

> *Sometimes, for example in nekah [confirmation of marriage], divorce and sometimes in the division of inheritance, mullahs of the village use Sharia law. In such cases, there isn't any other way.*
>
> — Man speaking during a focus group discussion in the remote village

As the quotation above shows, there are some cases in which it is thought Sharia has to be used. One case, reported to the team by a white-beard in the remote village, involved a woman claiming her share of her father's inheritance. She initially took her claim to the *woliswal* who referred it back to the village. The white-beard telling this

story told the research team that since it is within Sharia for a woman to claim her father's inheritance, the *jalasa* used Sharia principles to resolve the dispute. Indeed, cases of women fighting for their rights to inheritance were reported often. Similarly, a number of cases of divorce were reported in which Sharia principles were used.

However, beyond inheritance and divorce cases, only one case was found in which a Sharia decision, in the form of corporal punishment, was directly applied. This case and the reasons for using Sharia to resolve it are in Annex 1 (Case 9, "Kidnapping Case").

Indeed, a key difference between both state and Sharia justice and customary law is that customary law places less emphasis on punishment and instead prioritises the restoration of good relations between disputants.

5.2 Giving authority and implementing decisions

Another key difference between state justice and dispute resolution through customary methods is the source of the power of implementation. In customary law, the white-beards' implementation power comes only from the authority they hold in the community, whereas state actors are also able to exert coercive power and so are viewed as able to implement decisions. This was discussed in Section 3. Indeed, decision-makers in *jalasas* often expressed frustration that they are powerless to do anything if disputants do not agree with their decisions and do not abide by them. They said it was particularly frustrating when disputants then take their cases to the *woliswal* who will refer the case back to the white-beards to be resolved again. However, at the heart of *qanoon-i-urf* (customary law) and the *jalasa* process is the idea that a resolution will be negotiated until all sides agree, rather than *jalasa* members enforcing a decision; the aim is to reach a consensus on a resolution to the dispute. Because the white-beards' base their decisions on making peace, they are inherently dependent on both sides in a dispute agreeing to abide by the decision made in the *jalasa,* rather than white-beards having any form of coercive power to implement their decisions.

> *No, they don't force disputants to accept their decisions since their decisions are based on Islah.*
>
> — Disputant from the near village

> *See, acceptance of an Islah decision is up to the disputant. If they don't accept the decision we can't force them, since it is not a court decision.*
>
> — *Modir-i-huquq*

So, even though white-beards become frustrated when their decisions are ignored or not implemented, to bring in any kind of external force for implementation—particularly that using coercive power rather than obligation through authority—would be to go against the very principles of peace-making and negotiation that *qanoon-i-urfi* rests on.

The first stage in the *jalasa* is, in fact, for the disputants to give authority to the white-beards and, by doing so, agree to accept whatever decision they make. This is expressed by a white-beard from the near village:

> *Yes, we have taken written authority; if we didn't take authority from both sides then our decision has no value... We take full authority from disputants, for example if we make a decision that one side of the dispute should leave the area, he should leave because we take authority from him.*

The disputants may simply give this authority verbally or it may be written down that it has been agreed to. In Case 3, "Land Dispute," in Annex 1, the *woliswal* drew up the authority document. Everyone signed that they would agree to the decision of the white-beards and if they did not accept this then the woliswali would hold them responsible. In this case a *germana* (deposit) of 50,000 Afs was decided on but was not paid in advance. Instead, anyone who did not accept the decision would have to pay this afterwards, and it was reported they would have to pay the money to the *woliswal*. However, most people who were asked said that paying a deposit to the white-beards at the start of a dispute resolution process is not the custom of the area. One person did mention that on one occasion it had been agreed that *germana* would be paid to the *woliswal* if the disputants did not accept the decision of the *jalasa*. Unfortunately, there was not sufficient information about this to make any conclusive comments.

5.3 Outcomes for women in community-based dispute resolution processes

Various organisations and individuals working on human or women's rights issues in Afghanistan state, and it is commonly believed, that community-based dispute resolution processes do not respect women's rights or provide a recourse for justice for women. While of course examples of this being the case can be found, this research also found the opposite can be true and a number of the cases in Annex 1 support this.

In Case 1, "Attack at the *Ailaq,"* after Zara was beaten by Sameer for coming to the rescue of Sameer's wife, who he was beating, the *jalasa* found in Zara's favour. Sameer and his family were expected to offer an apology to Zara. Although Zara felt she deserved to receive *deya* (compensation) for her injuries, it is unclear whether the *jalasa* members agreed with her or not, as their overriding concern was to create peace between the two families.

In Case 4, "Zakera's Dispute with Her Mother," the white-beards found in Zakera's favour in a dispute between Zakera and her brother and mother. However, because her mother and brother continued to contest the outcome, the white-beards did not implement the decision and Zakera eventually gave up her claim to her father's land. Despite this, it is clear that the *jalasas* supported Zakera, a woman claiming access to land over her mother and brothers claim to the land. The fact that her father was still alive and could state that he had given the land to Zakera no doubt helped her.

In another case regarding a woman's land rights, Case 5, "Inherited Land Dispute," no conclusive and acceptable decision was reached about the ownership of the land because Fatima was still contesting the decision that the land belongs to her nephew's son. However, *jalasas* continue to be held in the village and it is clear that the white-beards are still willing to listen to Fatima's side of the story and give up their time to resolve the dispute.

Case 6, "A Love Marriage," shows how the root cause of the dispute lies in Aqela's father demanding a high bride-price from Nasir so that he could marry Aqela. This led to the couple running away together. The white-beards' overriding concern in resolving this dispute was whether the girl had gone of her own free will. Once it was established that she had gone freely, they negotiated with the families to agree on an affordable bride price and the marriage went ahead. In all the discussions that the research team had with the different parties involved in this dispute it was found that Aqela had wanted to marry Nasir. This is, then, another example of a dispute being resolved in a woman's favour.

In Case 7, "Fighting Between Brothers' Families," it can be seen that keeping the peace between the two families takes precedence over Fauzia's claim to compensation for her miscarriage caused by the beating she received at the hands of her brother-in-law's family. However, the *jalasa* did accept that her brother-in-law was guilty and agreed that he should cover the cost of Fauzia's medical expenses.

Case 9, "Kidnapping Case," is a clear example of how a girl and her father's story of attempted sexual abuse by a boy in the village was believed by the white-beards attending the *jalasa*. This is one of the few examples of Sharia punishment being directly applied because it was felt that the boy's offence was severe and that the punishment would set an example to others. This decision was made despite there being assumptions from some people that the girl must have been in a consensual relationship with the boy. Indeed, when discussing a similar dispute in a focus group discussion with older women, two women expressed the opinion that girls who are sexually attacked are themselves to blame in some way. Indeed, one woman quoted the expression, "if the bitch doesn't wag her tail, the dog won't come."[42]

These cases are examples of *jalasas* providing a space for women to demand justice and to assert their rights; they also show that community-based dispute resolution processes do, at times, uphold a woman's right to be free from violence, to have access to land, and to marry who they choose. People gave other examples during focus group discussions and interviews where both the *Ulama Shura* and *jalasas* in the village had upheld, in particular, women's claims to land. However, it was reported to be rare for women to claim their right to land and there was some degree of cultural expectation for woman not to make that claim, particularly if she had a husband who could support her. As such, the blame for women not being able to assert their rights to land is, in this case, more to do with wider cultural norms and expectations than community-based dispute resolution mechanisms.

One of the customary practices commonly identified as an abuse of women's human rights is the practice of *baad*, in which a girl or girls from a murderer's family are given as compensation to the family of the victim, and so it is worth addressing here. This is primarily a Pashtun practice but it was occasionally raised in discussions in Bamiyan Province and it was acknowledged that it was practised occasionally in the area. For example, one white-beard from the near village reported that *baad* had been practised in the area in the past, but such cases would now be resolved through *deya*. The *woliswal* also reported that it was occasionally practised during the time of the mujahiddin. However, another white-beard from the near village said *baad* was not a custom of the area. He argued that if you thought deeply about it, it is not justice that someone pays for someone else's crimes and it destroys their life. One woman also said during a focus group discussion in the remote village that it was not a practice of the area. She said that if a mother sees her daughter having problems with her husband she will say to her daughter, "I didn't give you instead of blood" (referring to the practice of *baad*). Since this is primarily a Pashtun practice, why discuss it here at all? Primarily it has been done to demonstrate that customary law is practised differently in different places and that some of the most abusive practices are not used across the whole of Afghanistan.

Like most institutions in Afghanistan, community-based dispute resolution processes are far from gender equitable in terms of access, participation or outcomes. Despite this, examples can be found in which women's rights are upheld by decisions made though these processes and it is important to identify and build upon the spaces where women have been able to claim their rights and protection within these processes.

42 Although the team did deliberately seek cases that involved women, simply speaking to as many women as men about their disputes brought these cases to the fore; they did not look specifically for cases which had positive or negative outcomes for women.

6. Processes, Links and Choices, Principles and Gender Equity: Concluding Comments

As was outlined in the introduction to this case study, the research has been structured around four key themes: the processes used in community-based dispute resolution, the links or relationships between dispute resolution processes at village-level and state actors at district-level; the principles applied in community-based dispute resolution processes; and gender equity in these processes.

This study, primarily in Section 3, described how these processes have changed over time in this area of Bamiyan. These processes have changed alongside the changing regimes and social and political context of the area. Respondents to the research argued that since the time of resistance to the Soviet occupation, the old autocratic power dynamics of their communities and villages have broken down. Reflecting this, and at a time of relative peace and stability in this area of Bamiyan, the manner in which disputes are resolved could be described as having become more egalitarian or democratic. This ability to change over time makes it clear that community-based dispute resolution processes can adapt in accordance with changing social and political circumstances.

The cases detailed in Annex 1, as well as the discussion throughout this study on how disputes are resolved, demonstrate that these processes can also be flexible to the demands of particular cases. The way in which a dispute is resolved changes depending on the nature of the case: a variety of different decision-makers are called on; the spaces for resolution change from dispute to dispute; the principles used change; and there are varied degrees of collaboration between state actors and village-level actors.

The links and relationships between state actors and community-based dispute resolution processes were a major part of the research, primarily because these links are so prominent. Indeed, as discussed in Section 4, rather than existing in opposition to the state, community-based dispute resolution processes frequently work in cooperation with agents of the state at district-level. This study has argued that community-based dispute resolution processes in many examples are enacted between the district and the village, with representatives of the state playing roles in dispute resolution at village-level.

Section 4 also showed how people make choices about whether to take their dispute to state institutions or to village-based institutions for resolution. Attempts are made to resolve most disputes at village-level, at least in the first instance, whether disputants later go to the *woliswali* or not.

This section also demonstrated how people's choices are restricted as to where and how a dispute is resolved, particularly women's choices. Even when disputants choose to take a dispute to the *woliswali,* their options on how or where it is resolved at district-level are further restricted due to the *woliswal's* control and his gatekeeping role, which may prevent cases going to other institutions at district-level.

As with many aspects of community-based dispute resolution, pragmatism featured heavily in choices as to where to resolve a dispute. The most important factors influencing these choices are the goals of resolving a dispute in the shortest time possible and with the least expense.

Pragmatism also guided choices about whether to use Sharia or *qanoon-i-urfi* in making

decisions about disputes. Keeping or restoring the peace is the primary stated objective of *qanoon-i-urfi,* which is rooted in the Islamic principle of *Islah*. However, in practice, elements of *Islah*, *urf* and Sharia may be used in combination to resolve a particular dispute. Indeed, while not wanting to romanticise the roles that white-beards and the *jalasa* system play in these communities, this study has found that community-based dispute resolution processes do play an important role in maintaining peace and social cohesion in their communities.

It was noted in Section 5 how the principles underlying state justice are fundamentally different to those underlying community-based dispute resolution due to the different emphasis placed on individual and community rights, restoring peace, and punishing the guilty party. Another key difference between community and state-based dispute resolution is the value placed on subjectivity and objectivity. Subjectivity is a highly-prized attribute among decision-makers in community-based dispute resolution, as discussed in Section 4; state justice, at least in theory, places a greater emphasis on objectivity, particularly from those passing judgement.

Throughout this study, attention was paid to the differing roles of men and women in these processes. Section 3 featured a discussion on where men's and women's right to be decision-makers in these processes stem from, and sections 4 and 5 looked more specifically at women's participation as witnesses and disputants in these processes. The case histories in Annex 1, and other cases mentioned in the paper, illustrate how the outcomes of these processes do not always ignore women's rights, but at times uphold them.

This study has therefore emphasised where there are spaces for women's participation in community-based dispute resolution processes. Primarily, the study has argued that the negative outcomes for women and the limitations they face in accessing, participating and making decisions in community-based dispute resolution processes are a consequence of gender roles and relations in Afghan society more widely, rather than a result of dispute resolution processes specifically.

Overall, this study has presented the case that community-based dispute resolution processes offer a viable alternative to state justice in a context where the reach of the state is weak and the state justice sector has severe limitations. The study also makes the case that community-based dispute resolution, with its emphasis on keeping the peace and restoring social cohesion, plays an important role in Afghan communities—one which a state justice system, however efficient, would not be able to do.

Annex 1: Dispute Cases[43]

Case 1: Attack at the *Ailaq* (remote village)

This is the story of Zara, a woman in her 50s who has two daughters and one son (who is the village *buzkashi* champion). Zara was badly beaten by Sameer, a man in his late 30s, at the *ailaq*. The story illustrates:

- That when serious disputes happen at the *ailaq* they will be brought back to the village for resolution
- That women do access the *woliswali* to resolve their disputes
- That women participate in *jalasas* as disputants
- That women participate in *jalasas* as witnesses
- That the outcomes of dispute-resolution processes can favour women

Background to the dispute

This dispute began approximately one year prior to the second round of fieldwork in the village. Zara, who is a widow, did not have a man from her family to accompany her and her daughter to the *ailaq*. She agreed to pay Sameer to help them take their animals there and to stay at his home in the *ailaq*. While staying there, Zara intervened when Sameer viciously beat his wife. Sameer then attacked Zara and badly injured her. Zara returned to the village to get support from her son, Akbar. Initially, Zara and Akbar went to Sameer's parents, who were very apologetic; they knew their own son to be a troublemaker. They begged Zara and Akbar not to go to the *woliswali*.

Resolution process

The reports of the resolution processes vary from respondent to respondent, particularly about the order of what happened. This account is an amalgamation of the key points in the story. Although one white-beard reported that the dispute never went to the *woliswali*, both Zara and her son said they went to the *woliswali* at least once and that the *woliswal* referred the case back to the village and sent a police officer with them. Zara was keen to tell the research team that she spoke at the *woliswali* and gave her own story about what had happened. Akbar, Zara's son, said he chose to go to the *woliswali* because everyone in the village is frightened of Sameer, who had previously been a commander and is known to be a troublemaker and particularly violent. Akbar believes Sameer's brother bribed the *woliswal* so that he would not deal with this case; he also believes that officials at the *woliswali* are frightened of Sameer because he has threatened police officers in the past.

After the attack, Sameer hid in the *ailaqs* and then disappeared altogether. It was reported that he disappeared not only because of this dispute but because he was wanted in connection with other disputes, although this contradicts the idea that officials from the *woliswali* are intimidated by him.

Because Sameer's parents had pleaded with them to resolve the dispute in the village, Zara and her son agreed to a *jalasa*. This was held in Sameer's brother-in-law's house

43 Not all the details of all of these cases are given here because many of them are extremely complicated and some disputes have lasted a number of years. Instead, the basic outline of the disputes are presented.

and lasted between five and six days. Five white-beards of the village, Sameer's father, brothers and brother-in-law, Zara's son, and Zara all attended. Sameer was still at the *ailaq* and did not attend. Zara was again keen to tell the research team how she explained what had happened at the *ailaq* during the *jalasa*. The white-beards asked three women to act as witnesses and examine Zara's injuries. Interestingly, one of these women was Sameer's mother, as it was thought that if she saw Zara's injuries she would know Zara was telling the truth. The two other women were acknowledged white-hairs of the village. The stories about how they verified the injuries vary slightly. Some said the women looked at Zara's injuries in a separate room and reported to a white-beard, who then wrote down what they said, and that the women also verbally described Zara's injuries in the *jalasa*. Others denied the women participated in the *jalasa*. The three women put their thumb prints on the report which recorded their observations. The white-beards also asked Zara to go to the clinic so that doctors could examine her injuries. However, Zara's daughter reported that, at the clinic, doctors refused to look at Zara without authorisation from the *woliswal* because they did not want to get involved in the case.

Outcome and its rationale

The outcome of the *jalasa* was that Sameer had to give *ozur* to Zara and her family. This was to be done by slaughtering an animal on the *ailaq* and providing food for Zara's family, as well as looking after Zara's animals on the *ailaq*. In fact, it was Sameer's parents who had to provide the food and offer the apology because Sameer had disappeared. The sheep was slaughtered on the *ailaq* and food provided there to show everyone who had seen Sameer beat Zara that his parents were now apologising. Zara said it was also agreed that Sameer should pay a certain amount of *deya* to her. However, a white-beard involved in the dispute did not report this fact and it is likely that Zara simply felt she deserved *deya*, whereas the white-beards were concerned to end the dispute and to create peace between the two families.

Case 2: A Former Commander Influencing Dispute Resolution (near village)

This dispute was about the ownership of inherited land and was between Zahir and his maternal second-cousin, Nawroz. (Nawroz acted on behalf of his mother in the dispute.) Nawroz is related on his father's side to Haji Zia, who was an important commander during the time of the mujahiddin and the Taliban. Haji Zia reportedly still exerts considerable influence, at district-level at least, and has armed men working for him. Nawroz's father was also said to be a powerful commander, but he lives in Kabul. This story illustrates:

- that former commanders are still able to influence dispute resolution processes, although in this case influence is mainly exerted at the *woliswali* and within Haji Zia's own extended family;
- the relationship and links between the state and village based dispute resolution processes;
- the way in which something can start as a civil issue but can become criminal.

Background to the dispute

The dispute began around 2003 when Nawroz claimed and forcibly took possession of 12 *jeribs* of land from Zahir, who had been farming the land for roughly 35 years. Zahir is a man in his mid-50s who now, without possession of the land, works as a sharecropper.

Nawroz is a generation younger than Zahir.

Nawroz's claim was based on his belief that when his grandfather died he left his land to Nawroz's grandmother. Zahir believes the land is his because he it was left to his mother. Zahir also reported that he had a Sharia deed for the land in his late grandfather's name. It was reported that the grandfather had written a will which had since been lost.

The dispute had simmered for some time and escalated when Nawroz forcibly took the land with the support of his family—and possibly the police (it is unclear from the interview transcripts). There was fighting between the two families and Zahir was badly injured. Zahir reported that he was frightened for his life and had to leave the village at night for fear of being attacked by Nawroz's family.

From the start of his interview, Zahir said that he believed Nawroz's false claim would be upheld by the *woliswali* because of Nawroz's connection with Haji Zia.

Resolution process

Despite Zahir having a Sharia document saying the land belonged to him, both Zahir and others reported that he does not have the power to claim his land back because of the influence Nawroz has at the *woliswali* through his connections to Haji Zia.

After Nawroz took the land, Zahir went to the *woliswal*, who sent a delegation to the village to take written statements from people living in the area. Zahir said that Nawroz bribed a significant number of people to give "false" evidence against him. Zahir expressed his feelings of hopelessness as he did not know anyone influential at the *woliswali* and did not have enough money to pay bribes.

The white-beards of the area did try to stand up to Nawroz and went to the *woliswal* on Zahir's behalf, but had no success. The case went to the district court where it was decided that the land should remain with Nawroz. Zahir appealed to the provincial court which decided in Zahir's favour because Nawroz could not show a deed for the land and because Zahir took 12 white-beards to act as witnesses for him. However, nothing further happened and Zahir did not get the land back. Zahir then took the case to the district court of a neighbouring district but Nawroz refused to attend when he was summoned.

One year before the research team's visit, Zahir complained to the *Ulama Shura* about the then-district judge of the area who had made the initial decision against him. The judge confessed to the *Ulama Shura* that he had made the wrong decision, but that he had been forced to make the decision by Haji Zia's "bodyguards." The *Ulama Shura* wrote to the *woliswal* saying the judge had confessed to making an unjust decision. However, it was reported that the *woliswal* still did not accept the *Ulama Shura's* decision. Zahir even tried to have his dispute resolved at the *Ulama Shura* but his opponent refused to go there too. He said their issue was not a Sharia issue and therefore it could not be resolved through the *Ulama Shura*.

Zahir wants to resolve the dispute through the village elders because, according to him, they know the truth behind the case and would therefore make a decision in his favour. However he does not have support for this; the *woliswal* will not write the letter referring the dispute to the white-beards and said that since Zahir's case was in the court already, it would be impossible to take it back and resolve it within the community.

Outcome and its rationale

The case is at a stalemate. Nawroz has actual possession of the land although the last court decision was in Zahir's favour. Nawroz refuses to resolve the dispute at a *jalasa*.

Case 3: Land dispute (near village)

This is the story of a land dispute between Sabor, a farmer in his early 30s, and Azghar, who are from different *tuhls* (extended family groups who, in the context of this village, live near each other in small collections of compounds). This story demonstrates:

- How a dispute which might begin as a civil issue can deteriorate into a criminal matter
- How the relationships between the *woliswali* and village based dispute resolution work (it is an example of a dispute which the *woliswal* refers back to the village white-beards for resolution and which they successfully resolve)
- How members of the *Ulama Shura* may participate in dispute resolution in the villages
- How disputants are willing to accept a final decision they are not completely satisfied with in order to keep peace in the community and out of respect for the white-beards
- How disputants can be persuaded to forgive *deya* in order to keep the peace

Background to the dispute

Sabor claimed ownership of land which his father cultivated prior to his death and recently began to build a house on the land. Azghar and members of his *tuhl* claimed that the land was common land. They physically attacked Sabor and his family. They badly beat Sabor, who suffered a serious head injury which required hospital treatment.

Dispute resolution process

While Sabor was in hospital, he and his uncle wrote a claim letter to the *woliswal* about the attack. The *woliswal* referred them to the police commander who sent a *jalb* (summons letter) to Azghar and members of his *tuhl* telling them to come to the *woliswali*. There were between eight and 12 names from Azghar's *tuhl* on the *jalb* and they were all imprisoned. This was only for a short period of time, no more than 24 hours. This was because a large group of white-beards came to the *woliswali* and asked for the imprisoned men to be released and for permission to resolve the dispute in the village. The *woliswal* was happy to refer the dispute back to the village.

The *woliswal* asked two *mullahs* from the *Ulama Shura* to be present at the *jalasa,* one of whom was the head of the *Ulama Shura*. One respondent reported that the *woliswal* wrote to the *mullahs* saying that if the disputants did not accept the *mullahs*' decision they should be sent back to the him and he would then make the decision.

A *jalasa* lasting for one day was held on the land in question with representative white-beards from both opposing *tuhls* present. Sabor slaughtered a sheep for lunch and some of the participants of the *jalasa* went to his home and some went to Azghar's home.

Outcome and its rationale

The *mullahs* and white-beards had requested the disputants to give them authority to make an *Islahi* decision but the disputants wanted a Sharia decision. The original decision made was that Sabor did indeed own the land as it had been cultivated by his family for at least the past 30 years—3 or 4 white-beards gave verbal and written witness statements to this effect. According to *jafari* jurisprudence, if land that was uncultivated is then cultivated, the cultivator can claim ownership of the land. However, Azghar was not happy with this decision so the white-beards persuaded Sabor to grant him a small portion of the land (approximately 2 x 25 metres) to keep the peace. With regard to the injuries that Sabor had suffered, the white-beards asked Sabor to forgive Azghar's *tuhl* instead of taking *deya* so that peace would be kept. In his interview, Sabor said he was not happy about this and had wanted Azghar punished, but out of respect for the white-beards he had accepted the decision. It can be seen that the rationale for this decision was based on a mixture of Sharia and *Islahi*. The decision that the land did indeed belong to Sabor was reported to be based on *jafari* jurisprudence; Sabor giving a small piece of land to Azghar and forgoing the *deya* are principles which were based more on *urf* or *Islah*.

Both sides in the dispute, the white-beards, and the *mullahs* signed or put their thumb prints on a document outlining the decision; one copy was kept by each disputant and one copy went with the *mullahs* to be kept by the *Ulama Shura*. Sabor also took a copy to the *woliswal* and the police commander. Stones were laid to demarcate which part of the land belonged to whom.

Case 4: Zakera's Dispute With Her Mother (remote village)

This is a family dispute over the use of land between Zakera and her husband on one side, and Zakera's brother and their mother on the other. The dispute was initially a civil dispute which became violent and therefore criminal in nature. This story illustrates how:

- The *woliswal* relies on the knowledge of the village white-beards to resolve disputes
- A dispute can go back and forth between the *woliswali* and the village
- Decisions made in dispute resolution processes can be in women's favour

Background to the dispute

There was conflict between Zakera and her mother-in-law, so Zakera and her husband Wahdad moved to Zakera's parent's home. This occurred about three months before the start of data collection in the village. Zakera's father gave her a piece of land to build a house on. However, Khibar, Zakera's brother, and their mother were not happy about this and refused to allow any building on the land.

Resolution process

Wahdad brought a group of white-beards to the house to resolve the matter. He told the white-beards that his father-in-law had given the land to Zakera, but that Khibar would not let them build on it. Zakera's father confirmed this. The outcome of this *jalasa* was that the land belonged to Zakera and stones were laid to mark out the piece of land. This decision was documented. However, Khibar would not accept the decision.

The morning after the *jalasa,* Zakera saw her mother attacking Wahdad. Zakera told her mother to stop fighting and embarrassing the family, but Zakera's mother threw herself to the ground and started to beat herself until her face bled, so that she could then accuse Wahdad of beating her. Some elder women of the village came to the scene and advised Zakera's mother not to argue with her daughter and Wahdad.

Later, Zakera's mother did go to the *woliswali* to claim that Wahdad had beaten her. The white-beards tried to persuade her not to go as they were sure the dispute would only be referred back to them anyway. Wahdad was imprisoned for one night but he was released because the police believed he was innocent; some white-beards had told them that Zakera's mother-in-law had lied and that her injuries had been self-inflicted. The *woliswal* said they could not resolve issues between mothers and daughters and referred the dispute back to the village.

Outcome of the dispute and its rationale

Although the white-beards made an initial decision that the land belonged to Zakera, it was not accepted by one party and so went to the *woliswal*. The *woliswal* referred the case back to the white-beards because they knew the details of the case and also because he viewed it as a family dispute. In the end, Zakera and her husband decided not to stay on the land her father had given her and so there was no need for the white-beards to hold another *jalasa*.

Case 5: Inherited Land Dispute (near village)

This was a family dispute over land between Eqball and his father's maternal aunt's half-sister, Fatima, over six *jeribs* of land. This story shows that:

- Women are able to take their disputes to the white-beards
- Female disputants do participate in *jalasas*
- Disputes can go backwards and forwards between the village and the *woliswali* over a number of years
- Some disputes cannot be resolved in the village and end up waiting for resolution within the state justice system

Background to the dispute

This dispute began in the early 1990s and has been ongoing for approximately 15 years. Fatima is a widow in her 50s who lives with her daughter and son-in-law. She is in dispute with Eqball, her great-nephew (her elder *nasaka* sister [daughter of father's other wife]'s son's son), over the ownership of six *jeribs* of inherited land, which Eqball cultivated. Both sisters believed they should inherit the land. When Fatima's sister and her husband died, the dispute over land ownership passed to their nephew who then also died, and Fatima is now in dispute with her nephew's son, Eqball.

Resolution process

Different respondents had different versions of how many *jalasas* have been held. However, it is evident that the dispute intensified after the death of Fatima's sister. Initially, Fatima and her son-in-law, who is acting as her *wakil* (representative), took the dispute to the *woliswali* who referred it back to the village. At the first *jalasa* held between Fatima and her nephew, several white-beards represented each side and one

mullah was present. A white-beard who was a witness on behalf of Fatima's nephew reported that this *jalasa* had decided in favour of the nephew. Fatima, however, said that the white-beards from both sides could not agree. Everyone with whom this case was discussed agreed that Fatima attended the *jalasas* herself and presented her own case. Fatima also said that it was her who had approached the different white-beards and organised the *jalasas* over the four years since her sister had died. However, both Fatima and her daughter did tell the research team that people talked about Fatima and said she is not a good woman because she participated in the *jalasas*.

Recently the dispute flared up again when Eqball tried to cultivate the land and Fatima prevented him from doing so. He went to the *woliswali* to get an *amer* (order letter) from the police but by the time he got this order it was too late to start cultivation. The order was written by the police commander who said Eqball could cultivate the land until a court decision about who owned the land was made.

In his interview, Eqball discussed a more recent *jalasa* and argued that in this one the white-beards made the decision that the land belongs to him. The *jalasa* lasted one day and a decision was given the next day. Eqball had reported to the *woliswal* that he was organising this *jalasa* and the *woliswal* wrote a letter with the names of the white-beards on it. The *jalasa* members asked various members of the community to act as witnesses; that is, they were asked who the land belonged to. This information was used as evidence of who owned the land. Once a decision was made, it was recorded and a copy of that document was also given to the *woliswal*. During her interview, Fatima's daughter accused Eqball of bribing the white-beards.

Outcome and its rationale

After hearing the witnesses' statements, the *jalasa* members made a decision in Eqball's favour. However, Fatima still did not accept the decision and went back to the *woliswali*. When the *woliswal* tried to persuade Fatima to accept the *jalasa's* decision she refused. The *woliswal* then referred the case to the court. The court asked the disputants if they wanted to resolve the dispute in the court or again with the village elders. Eqball was willing to resolve the dispute through the white-beards but Fatima was not. The dispute had not been resolved by the time the research team finished their fieldwork.

Case 6: A Love Marriage (remote village)

This is the story of Aqela, who ran away from home to marry Nasir against her family's wishes. Aqela's and Nasir's great-aunts are sisters. The story illustrates how:

- certain cases are resolved within the village without the knowledge of the *woliswali*;
- older women may be present at *jalasas*;
- women can have a voice and influence over the outcomes of dispute resolution processes.

Background to the dispute

Aqela left her home with Nasir, who she had some form of relationship with and wanted to marry. The couple had decided to run away because Aqela's father asked for a bride-price which Nasir and his family could not afford to pay.

When Aqela's father discovered that his daughter was missing he called on a white-beard, Hajji Shakir, who is related to him, to help find her. People told them that Aqela had gone with Nasir to his father's house. When Hajji Shakir and other village white-beards went to speak to Nasir's father, he said he did not know where his son was. It seems he really did not know where the couple were and, indeed, Aqela said that initially they went to a neighbour's house and hid there. Nasir's mother describes these events as being less pleasant than many of the male respondents reported. She described Aqela's family members surrounding the house and said they were even on the roof. They searched the house but could not find the couple. The next day, Nasir and Aqela went to Nasir's house and his father brought together a group of white-beards from their *qawm* and they all went to visit Aqela's family.

Aqela reported that all her family were extremely angry; her mother blamed her father for demanding a bride-price which no one could afford and her cousins threatened to kill her. Aqela's father said that his daughter had been taken by force.

Resolution process

Aqela's father wanted to go to the *woliswali* but the white-beards persuaded him to resolve the dispute in the village. The white-beards thought it best to bring the two families together in a *jalasa* and resolve the matter. Both Aqela's father and Nasir's father gave written authority to the white-beards to resolve the matter and agreed to accept whatever decision they made. The white-beards first wanted to know whether the girl went of her own free and visited her to ask. White-beard Hajji Shakir quoted Aqela as saying: "I have the right to one husband from God. I wasn't brought by force. I came of my own free will. I will marry this boy." This satisfied the white-beards and they returned to Aqela's father's house for the *jalasa*.

Although Hajji Shakir said that no women attended the *jalasa* because there was no need, Aqela reported that her sister had talked to the white-beards and tried to resolve the matter. Similarly, a close female relative of Aqela's family reported that Aqela's mother spoke in the *jalasa*. She had defended her daughter and said that her husband was asking for too much for a bride-price.

Outcome and its rationale

It was decided that Nasir's father should pay a bride-price of 80,000 Afs to Aqela's father—he eventually gave three cows instead—and that 10,000 Afs should be paid as *sheerbaha* (payment given to a mother for bringing up her daughter). Nasir's family also had to give a party and provide food for over 100 people from the village. The white-beards had to persuade Aqela's father and said that even if Nasir did not pay him because he is poor and cannot afford it, the two young people have to get married because Aqela went of her own free will. After the dispute was resolved, Nasir and Aqela went to her house and a *mullah* performed the *nekah*. At least one white-beard said the decision was Sharia based, because it was based on both Aqela and Nasir freely agreeing to marry each other. It was also reported that the two families now have a good relationship.

Case 7: Fighting between Brothers' Families (near village)

This was a dispute between two brothers, Wakil and Alem, and their wives, Fauzia and Parween. This story illustrates how:

- Disputes can go back and forth between the *woliswali* and the village

- Community rights and keeping the peace can take precedence over individual rights
- Women participate as disputants in *jalasas*
- The *woliswal* relies on the knowledge of the village white-beards for disputes to be resolved
- The *woliswal* is particularly keen for family disputes to be referred back to the village

Background to the dispute

Fauzia was beaten very badly by her brother-in-law Alem, his wife Parween, and their children, an attack so bad that she miscarried and her husband Wakil had to take her to hospital.[44] (This was not the first time that Alem had beaten Fauzia but, Wakil explained, previously they had resolved it within the family. A white-hair and a white-beard from the family had talked to Alem and advised him on the matter. The previous beatings had also been inside the house, unlike this one that happened in a public space.) Wakil asked Alem what had happened and said that Alem then also attacked him and encouraged his daughters to throw stones at him. Alem's wife had a slightly different version of events and said Fauzia had beaten up her daughter and her husband, and then Wakil and Alem had fought each other. However, this is improbable and was not backed up by what the white-beards and other people reported. Wakil said the whole village knew about their family dispute and that the white-beards asked them not to go to the *woliswali*, but to resolve their problems in the village. He said the white-beards told him that, because Alem is his older brother, he should respect him and not make a claim against him.

However, when Wakil and Fauzia were at the hospital in the *woliswali,* they saw Alem and mistakenly thought that he was there to make a claim against them. Consequently, Wakil went to the *woliswal* to claim against his brother.

Resolution process

The *woliswal* referred the case back to the white-beards and wrote a letter to them which said that since the dispute was a family dispute, it should be resolved in the village, particularly, he said, since the white-beards knew better than the w*oliswal* what had happened.

A *jalasa* was held and it was decided that Alem should pay 1,000 Afs as compensation for Fauzia's medical expenses (Wakil said the costs had, in fact, been far more than this) and the two families were advised to live in peace. Wakil and Fauzia did not accept this decision. Fauzia wanted *deya* or *khunbaha* (blood price) for the unborn child she lost due to the beating. The white-beards thought that to ask for *khunbaha* would cause greater hostility between the families. Both Fauzia and Parween said they spoke in the *jalasa* and presented their cases.

Wakil took the case back to the *woliswal*. The white-beards wrote on the back of the initial referral letter from the *woliswali* that they could not resolve the dispute. Wakil said he took his case to the criminal department this time. Alem, however, found out that Fauzia had miscarried and that Wakil was going to the *woliswali* and so left the village

44 Wakil said that when he first heard his wife screaming and saying his brother had beaten her, he thought that she "must have made some mistake" so he also beat her for accusing his brother. Issues related to the blame for men's violence being placed on women are discussed in the forthcoming D.J.Smith, *Challenging Myths and Finding Spaces for Change: Family Dynamics and Family Violence in Afghanistan* (Kabul: AREU).

and disappeared. Wakil said the criminal department would not do anything further with the case until Alem returned to the village.

Outcome and rationale

After Alem returned to the village, at least one further *jalasa* was held and the final decision remained the same as it was before, although the white-beards took responsibility for ensuring that Alem and his family would not attack Wakil's family again. Alem has never paid the compensation agreed on. Wakil is now happy to leave things as they are and not return to the *woliswali* and pursue the case further. He explained how, with the passing of time, his anger dissipated. However, his wife is not happy with the results of the *jalasa* and still wants to receive *khunbaha* for the loss of her child.

Case 8: Dispute Over Forest Land (remote village)

This is a land dispute between two parts of the remote village that are on different sides of the river. The north side has just 15–20 houses and most of the residents are related to each other; the south side is the main side of the village where most of the research was conducted. The dispute was about ownership of a wooded area of land beside the river. This story demonstrates:

- the relationship between *woliswali* and village-level dispute resolution processes—in particular how the *woliswal* sends a delegation to the village to be part of a *jalasa*.

Background to the dispute

In the past, the wooded area was on the south side of the river but flooding caused the river to divide and it now flows on either side of this area, with the bigger part of the river flowing on the south side. Both sides in the dispute claimed the land in the middle as theirs and both claimed to have documents to prove they own it. Haji Nazer, a white-beard and son of a former *arbab,* holds the deeds for the south side. One of the white-beards said that the deed has no value because it is not stamped. The primary actor, Ali from the north side, does not have any deed to say he owns the land but does have documents stating he has been paid tax on the land previously. Ali also claims that because this was his father's land and his father cultivated it, he does not need deeds.

There were different stories about who owned the land and the history of the land. However, a white-beard from an area closer to the north side of the river, who declared himself to be neutral in the dispute, was quite certain in his interview that Ali owns the land and that the land has always been in his family. During a focus group discussion, a woman from the south side also said the land belongs to the north side.

A significant factor in igniting the dispute was that the people living on the south side of the river started to prepare for building a stream as the first stage in a hydro-electricity project. The people from the north side would not let them build this stream. In response, the community from the south side decided to collect wood from the trees on the land. The dispute had been ongoing for about three to four months at the time of data collection.

Those from the south side said that when they went onto the land, Ali and his community fired on them with rifles, although no one was injured. Ali had been a commander during the mujahiddin times and so it is likely he is armed, although he did not refer

to this incident in his interview. Instead, Ali talked about being frightened because his community was vastly outnumbered and he described fleeing to the *woliswali*. Others said that the white-beards from both sides came to talk to each other after this incident and before anybody went to the *woliswali*. Some reported that the north side told the south side they were going to claim at the *woliswali* and that the south side did not try to stop them. In all accounts, Ali was among those who went to the *woliswali*.

When Ali gave his claim letter to the *woliswal*, the *woliswal* wrote a letter to the criminal and *amlak* (land registration) departments, who both sent an officer with Ali to the area. One respondent said that, at this point, the police disarmed Ali. Another respondent said that two people from the south side were also arrested. The same respondent also believed that neither Ali nor anyone from his extended family was arrested because Ali is in the same political party as the police officer dealing with the case. This respondent also accused Ali of bribing officials in the *woliswali* and some of the white-beards.

It does appear that the police were quite involved in this case. At least one respondent reported that the police department wrote the letter with the white-beards' names on it referring the case back to the village for resolution. Ali said he was keen for the case to be resolved in the village to avoid the costs and time of resolving it through the courts.

A delegation from the *woliswali* was sent to the village to sit in the *jalasa* as observers and decision-makers. One respondent said that the village had to pay the petrol and food costs for these representatives of the *woliswali*.

A *jalasa* was held in the mosque on the south side of the river. Various reports said that most of those in attendance at the *jalasa* were from the south side of the river—up to 90 people— but only the elders attended from the north side. Ali claimed that he selected six white-beards who would be impartial and that Haji Bela, from the south side, selected white-beards that would have taken his own side. Indeed, Ali claimed that the south side white-beards were themselves disputants.

All the village people provided the food for lunch for the elders and the representatives from the *woliswali*.

Outcome and rationale

The research team spoke to one white-beard who said that they had wanted to make an *Islahi* decision and divide the land between the two sides, but neither side would agree to this. After two days of conversation, the *jalasa* failed to come to a decision. The same white-beard said the only way to resolve the dispute now was through the courts. The white-beards wrote to the *woliswal* saying they could not come to a decision that was satisfactory to both sides and that the dispute would have to be resolved at the *woliswali*. When the research team finished their fieldwork in Bamiyan, the dispute was still unresolved, but no further violence connected to it had been reported.

Case 9: Kidnapping Case (remote village)

This is the story of Hashema. Sakhi attempted to sexually abuse Hashema after his sister and sister-in-law kidnapped her. As with all the disputes the research team explored, there were different versions of what happened in this case. This dispute was complicated further because it involved attempted or actual sexual abuse and some respondents were reluctant to talk about this aspect of the case, or they would only hint at it or talk about it using euphemisms. The reasons for giving the details of this story are:

- This was the only case in which corporal punishment, as specified by Sharia, was used to resolve a dispute
- It demonstrates that women can be witnesses to cases but there may be denial of the role that they play
- It demonstrates how village white-beards will dissuade disputants from taking their cases to the *woliswali,* particularly if the dispute is between family members or involves women
- It illustrates how outcomes made in dispute resolution processes can aim to protect women from violence

Background to the dispute

Hashema and Sakhi are related; Hasheema's mother is Sakhi's first cousin. Despite this, Hashema and Sakhi are roughly the same age and were both between 12 and 14 when the incident happened.

Hashema's mother explained that Sakhi's sister and sister-in-law had attempted to kidnap Hashema on her way home from school but, on this the first occasion, Hashema had got away and lost her *chodar* (scarf) in the struggle. On the second occasion they were successful. Hashema's father said that it was when his daughter went to collect her *chardor* from Sakhi's house that he trapped her. Hashema's mother said her sister heard Hashema's screams and rescued her, but Hashema's father said it was he who, after a neighbour reported hearing Hashema screaming, went and rescued his daughter. He described how he found his daughter holding a scythe and defending herself. He insists that the boy did not manage to sexually abuse his daughter.

The only person from Sakhi's immediate family who the research team spoke to was his brother, who gave a different version of events. He said that Hashema had been having a relationship with Sakhi; she had planned to run away with him and had gone to his house of her own free will.

Resolution process

Hashema's father went to the *woliswali* after the event; he reported spending 15 days there. He wanted the government to deal with the case and for Sakhi to be punished. The *woliswal* did refer him to the police. He said they came to the village and wanted to take Sakhi's sister and sister-in-law back to the *woliswali*. However, the white-beards persuaded them not to do this. Two of the village white-beards also went to the *woliswali* to bring the girl's father back to the village. Finally, the police commander wrote a letter to particular white-beards of the village instructing them to resolve the dispute.

The white-beards did not want the dispute resolved in the *woliswali* because the families were closely related to each other and because, according to them, disputes like these should not be taken outside of the village. Despite this, everyone concerned recognised that this case was serious.

During an interview with the research team, Hashema's father expressed his feelings of powerlessness at not being able to get justice at the *woliswali* or in the village. He was obviously distressed throughout the interview and believed it was his position in the village compared with the position of Sakhi's family that led to his inability to get justice for his daughter. These quotations illustrate this:

He is a powerful man in the village. In the past he was a commander and people are

scared of his family; in the past he was an army! Every one knows that he is a cruel man. He has a lot of pride—riding around on motorcycles and wandering up and down the streets. He says, "I am the only one in the village—there is no one except me."

When I was in the woliswali, Haji Eshaq, who is the nephew of Ewaz, made a plan to kill a chicken and invite me, saying that the problem will be solved... I said I wouldn't eat anything. Such food for a father is like poison. Ewaz killed chickens and invited the white-beards. They were eating and I was sitting in a corner of the room waiting for their decision. Some of them came and said I should eat but I said, "I will not eat that poisonous food." I couldn't do anything. I was crying.

A *jalasa* was held at which 12 white-beards were present, including the boy's paternal uncle and the girl's maternal grandfather. During the *jalasa*, the white-beards sent three older women to ask Hashema if the boy had attacked her or not; she said nothing had happened. The girl's mother said that she, her sister and the boy's sister and sister-in-law were called into the *jalasa* and asked questions by the white-beards. Sakhi's brother denied this and said no women were present at the *jalasa* and that Hashema was not asked what had happened. One white-beard reported that when he spoke to the boy, he admitted to at least kidnapping Hashema.

Outcome and its rationale

The boy's brother reported to the research team that, during the *jalasa*, he asked Hashema's father what he wanted done. Hashema's father said he wanted the boy to leave the village, never to be seen again, and that he wanted the hostility to end between the families. Sakhi's brother said Hashema's father then changed his mind and wanted the boy to be whipped.

A white-beard spoken to about this case said that the white-beards decided on this punishment (whipping the boy) as the case was serious and that they wanted to use Sharia to end the dispute. They also believed that such a punishment would satisfy all sides and allow them to move on.

It was agreed that Sakhi would be whipped. There are different accounts of how severe this beating was. Sakhi's brother said that Sakhi was hung up by his feet and whipped until he was unconscious and black all over, and that this was done in public. Hashema's father, however, reported that they only whipped him slightly.

A white-beard presented the case as being finished with both sides in the dispute satisfied. He said the outcome of the *jalasa* had been reported back to the *woliswal* to "register in his books." In their interviews, Hashema's family are clear that they are not happy with the outcome of the *jalasa*. Hashema's father had always wanted, and still wants, the case to be dealt with in the *woliswali*. He has given up on any chance of this as the quotation below shows:

I realised that nobody asks about poor people and so I decided to take the claim letter back and keep it. When a government arrives that cares about the rights of of poor people, I'll take it to the woliswali.

Hashema's mother and father both reported that the dispute between the families continued and that Sakhi's father beat Hashema's father about a year ago. Hashema's father also said one of Sakhi's cousins came after him with a rifle recently and, if the other villagers had not intervened, he would have been shot.

Recent Publications from AREU

All publications are available for download at www.areu.org.af, and most in hardcopy for free from the AREU office in Kabul.

December 2009	Community-Based Dispute Resolution Processes in Nangarhar Province, by Deborah J. Smith
November 2009	Voting Together — Why Afghanistan's 2009 Elections were (and were not) a Disaster, by Noah Coburn and Anna Larson
September 2009	A Closer Look — The Policy and Law-making Process Behind the Shiite Personal Status Law, by Lauryn Oates
September 2009	Toward an Afghan Democracy: Exploring Perceptions of Democratisation in Afghanistan, by Anna Larson
August 2009	Patronage, Posturing, Duty, Demographics: Why Afghans Voted in 2009, by Noah Coburn and Anna Larson
July 2009	Searching For My Homeland: Dilemmas Between Borders — Experiences Of Young Afghans Returning "Home" From Pakistan And Iran, by Mamiko Saito
July 2009	From Access to Impact: Microcredit and Rural Livelihoods in Afghanistan, by Paula Kantor
July 2009	Afghanistan Research Newsletter 22
June 2009	Beyond Poverty Factors Influencing Decisions to Use Child Labour in Rural and Urban Afghanistan, by Pamela Hunte
June 2009	Water Management, Livestock and the Opium Economy: Opportunities for Pro-Poor Agricultural Growth, by Lorene Flaming
June 2009	Policy Note: Improving Mutual Accountability for Aid Effectiveness, by Rebecca Roberts
May 2009	Confronting Child Labour in Afghanistan, by Amanda Sim
May 2009	Policymaking in Agricultural and Rural Development, by Adam Pain
May 2009	Poppy Free Provinces: A Measure or a Target?, by David Mansfield
May 2009	Research and Development for Better Livestock Productivity, by Euan Thomson
May 2009	Between Discipline and Discretion: Policies Surrounding Senior Subnational Appointments, by Martine van Bijlert

The Afghanistan Research and Evaluation Unit (AREU) is an independent research organisation based in Kabul. AREU's mission is to conduct high-quality research that informs and influences policy and practice. AREU also actively promotes a culture of research and learning by strengthening analytical capacity in Afghanistan and facilitating reflection and debate. Fundamental to AREU's vision is that its work should improve Afghan lives.

All AREU publications are available for download at www.areu.org.af and in hard copy from the AREU office:

Flower Street (corner of Street 2), Shahr-i-Naw, Kabul

phone: +93 (0)799 608 548 *website:* www.areu.org.af *email:* publications@areu.org.af