



# JUSTICE *Denied*

Understanding conflicts  
& dispute resolution  
in selected districts of  
Khyber Pakhtunkhwa, Pakistan

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*The use of any material from this publication is encouraged. Acknowledgment is requested.*

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## **Omar Asghar Khan Foundation**

Established in 1999, Omar Asghar Khan Foundation is creating opportunities for people, particularly the vulnerable, to collectively secure human and livelihood rights by strengthening their asset base and making institutions and policies pro-poor. The Foundation's field-based work is primarily in Khyber Pakhtunkhwa. Its advocacy has a national focus. The Foundation has offices in Islamabad and Abbottabad.

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## Acknowledgements

This publication presents a summary of findings on the types and trends of disputes/conflicts and the pathways people choose as they respond to them. These findings are drawn from four separate data sources:

- a public perception survey
- oral testimonies
- focus group discussions and key informant interviews
- case briefs from a legal assistance facility

802 women and 794 men from 1,596 households of Districts Abbottabad and Mardan participated in the public perception survey. The time and information given by them is gratefully acknowledged. The Foundation would also like to acknowledge the support provided by Dr. Osama Siddique of the Lahore University of Management Sciences and Open Society Institute for reviewing the main questionnaires and allowing the use of the litigant questionnaire designed by him. Thanks are also due to Dr. Nadia Saleem for her guidance on the survey methodology. The Foundation's team completed the fieldwork and data compilation. In District Mardan it was assisted by the Pakistan International Human Rights Organization and in District Abbottabad by the Pakistan Youth Development Organization. The diligence of the field teams is acknowledged. Ms. Sana Majeed assisted the Foundation in compiling and synthesizing the data. Her expertise and contributions are also acknowledged.

Four women and three men in District Mardan and three women and six men in District Abbottabad shared their experiences of dealing with disputes. The Foundation would like to thank each of them for their time, information, insights and patience. These experiences were recorded in the form of sixteen oral testimonies by the Foundation's team.

An estimated 120 women and 155 men participated in ten focus group discussions held in Districts Abbottabad and Mardan. Additionally, two male lawyers and two female lawyers with more than 10-15 years' experience as well as one male and two female members of state and non-state alternate dispute resolution mechanisms were interviewed. The time and case details shared by participants of group discussions and the key informants are acknowledged. Pakistan International Human Rights Organization and Women Development Organization helped the Foundation organize the FGDs in Mardan. Their support is also acknowledged.

Since March 2011, the Foundation is providing legal assistance to poor women in District Abbottabad. In the first 15 months since its inception, more than 250 women have accessed the legal assistance facility. Their stories and litigation experiences have provided invaluable insights and real-time data, which are duly acknowledged.

The Foundation would like to acknowledge the contributions made by Dr. Faisal Bari and Mr. Kamran Arif of the Open Society Institute. Their advice and encouragement helped design the perception survey and draw out findings from it and other sources of information.

The Foundation synthesized evidence of people's experiences drawn from the four different data sources and compared them with government response expressed through public budgets. The focus of the Foundation's budget analysis were Khyber Pakhtunkhwa's budgets for FY2012-13 and 2011-12, for which it drew on its internal capacity.

Financial assistance extended by the Open Society Institute and the National Endowment for Democracy is also duly acknowledged.

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## Glossary





## Executive Summary

The system of justice provision in Pakistan has failed people. They face myriad types of conflicts and injustices, which can broadly be categorized by class, gender or location. Women and the poor are largely socially and politically excluded. The state's response reflected in its policies and budgets is inadequate and misdirected.

In the early hours of 16<sup>th</sup> March 2009 an executive order reinstated Chief Justice Iftikhar Mohammad Chaudhry. Jubilant citizens celebrated what was termed a people's victory – a triumphant culmination of a two-year epoch-making movement led by Pakistan's lawyers. The unparalleled movement was triggered by a reference filed against the Chief Justice in March 2007 by the regime of General Pervez Musharraf (1999-2008). Its immediate goal was the restoration of the Chief Justice, but it was also an expression of public aspirations for a judicial system that ensures legal equality for citizens and a functional democracy rooted in constitutionalism.

The lawyers' movement may have failed to fix Pakistan's broken justice system. But it was successful in inspiring activism in tens of thousands of citizens who chose to be a part of the struggle, and expanding a constituency of support for the rule of law, and the universal values of equality and justice in Pakistan. Pursuit of these ideals requires consistent actions at many different levels.

Omar Asghar Khan Foundation and the citizen coalition of its local partners, *Tehreek Huqooq-e-Hazara* (movement for the rights of the people of Hazara), were actively involved in the lawyers' movement since its early protests against the reference in March 2007 till the realization of its immediate goal of restoring the judges in March 2009, when they along with many others celebrated the people's victory. Their contributions were acknowledged by the leaders of the movement who invited the Foundation to be a part of a select group invited to hoist the national flag at the Chief Justice's house following his restoration.

The Foundation's continued efforts for fairness and justice place its focus on reducing injustices in society. In 2011-12, the Foundation collected data from Khyber Pakhtunkhwa's Districts Mardan and Abbottabad on the types and trends of disputes/conflicts and the pathways people choose as they respond to them. The data was collected from four separate data sources:

- a public perception survey involving 802 women and 794 men from five union council in District Abbottabad and eight union councils in District Mardan
- oral testimonies of four women and three men in District Mardan and three women and six men in District Abbottabad
- six focus group discussions involving 65 women and 80 men in the District Abbottabad and four focus group discussions involving 55 women and 75 men in District Mardan, as well as key informant interviews with two male, and two female lawyers, and one male and two female members of state and non-state alternate dispute resolution mechanisms
- case briefs of more than 250 women who have accessed the Foundation's legal assistance facility in District Abbottabad

The following is a summary of the findings drawn from these data sources. They present people's experiences with disputes/conflicts and the strategies they use to deal with them.

**People face diverse conflicts** *Zan, zar aur zameen* (women, wealth, and land) are fabled causes of conflicts. 42 per cent responses in the Foundation's study confirmed experiencing family-related disputes, while 32 per cent marked contestation of land ownership. Emerging grievances included *kidnapping* and *kidnapping for ransom* – with the latter also serving as a lucrative “business.” Other disputes include non-repayment of loans, disagreement on contractual obligations between tenants and landlords, petty squabbles between children, and crimes like theft or murder. Seemingly innocuous matters such as defeat in a cricket match, delay in serving a meal, or refusal to accept a marriage proposal can also trigger conflicts and even violence. Within the mix of major and minor disputes, the virtual absence of consumer-related grievances is striking.

**Social factors dominate list of conflict triggers** Despite gaps in conflict identification, 26 per cent of respondents believed that conflicts in the ten-year period since 2001-02 had increased. 19 per cent believed that conflict levels have remained stagnant.

Social factors emerged as dominant conflict triggers. Increased intolerance and decreased respect for each other were ranked as key causes of conflicts along with the absence of the rule of law. This indicates a consciousness and perhaps even concern about fragmentation, divisiveness, and an eroding social fabric. Trends over time highlighted escalating, and often provoked, religious intolerance. *Biradari* or clan identity is an important force in Pakistan's society, which inevitably is also reflected in its political system. The Foundation's study shows that rivalries based on *biradari* (clan) and political differences are chronic instigators of conflicts.

**The poor are more vulnerable** Terms used for the poor, like *mazloom* (oppressed) and *baybus* (powerless), confirm that oppression and helplessness are among the many dimensions of poverty. And that along with dearth of material possessions, poverty is also perceived as lack of power, respect and justice.

The Foundation's study validated the vulnerability of the poor. Out of every five respondents that experienced a conflict, three earned a monthly income of less than Rs.10,000. Realities behind these statistics are much more agonizing. Injustices faced by the poor include denial of basic services and livelihood, false accusations, beatings and even murders with impunity. The misery of injustices endured by the poor is compounded by their helplessness. Often, the poor simply decide not to respond. Factors that compel them to remain silent include *a more powerful oppressor or opponent*, which received the highest weightage in the Foundation's study. Those that may seek relief from court or non-court mechanisms face many challenges including crippling costs. For example, an average expenditure of about Rs.210,000 per case was estimated by aggregating the costs of 43 litigants interviewed. Moreover, 69 per cent of litigants estimated about Rs.27,000 as opportunity cost in terms of loss of income. The system that fails the poor seems to spring into action when manipulated by the rich and the powerful. Even serious offenses like man-slaughter can be swiftly settled in favour of the powerful, with the right amount of influence.



**Women are worse-off** Women are denied dignity and rights. They are more likely to be the aggrieved in marital disputes, which accounted for more than half of the family-related conflicts, which were 32 per cent of all conflicts recorded in the Foundation's survey. Inability to produce a male heir, a husband's decision to remarry, and disputes with in-laws are some of the familiar strains experienced by many women. Few are treated with dignity as wives and daughters/sisters-in-law. Some are even physically abused. Often women abandoned by their mates find themselves back in their parent's home. They may be socially ostracized, and their economic burdens may multiply if they have returned along with one or more children. Data from the legal assistance facility offered by the Foundation to poor women in Abbottabad since March 2011 shows that half of the total 134 cases are *claims for maintenance* made by estranged wives that have no personal income and are generally from poor households.

Women are also vulnerable to violence, and the threat of violence. They are often perceived as possessions and considered to represent the family honour. Distressingly, killing in the name of "honour" continues, even though its practice is often denied and sometimes even justified. The Foundation's survey shows a shift in perceptions in that a significant number of respondents recognized "honour" killing as a form of conflict. This included 25 per cent of the total uneducated, and 21 per cent of the total educated respondents, dispelling the myth that the uneducated do not consider this barbaric practice to be a crime.

Murders in the name of "honour," are often chilling. Equally disturbing is the role of society in prodding, abetting and even applauding them. Social pressure and even acceptance of revenge is not restricted to "honour" crimes. The Foundation's study shows that 28 per cent of those dealing with murder may use force, and half of them stated that it was likely to be their first response. The eye-for-an-eye tradition has helped spawn an entire industry of assassins. According to a senior criminal lawyer, the rate for a hired assassin ranges from Rs.20,000 to Rs.100,000, and can even exceed Rs.10,000,000 for a "high-value" target.

**A mix of court and non-court responses are used** The choice of one or multiple responses depends on the nature of conflict and the profile of the aggrieved and their opponent/s. The pathways they choose may also vary. The study indicates that disputes related to land or property rely on both formal and non-formal mechanisms for conflict resolution. In family-related disputes, the emphasis is higher on non-formal systems, validated by the fact that of the total respondents dealing with ongoing litigation only six per cent are in courts. And in criminal cases, the aggrieved depend more on formal mechanisms.

The availability of *jirga* as a non-court or alternate dispute resolution (ADR) mechanism was confirmed by 91 per cent of respondents. But there is little confidence in contemporary *jirgas* due to their decreased credibility and inability to enforce their decisions. 89 per cent of total female and 79 per cent of total male respondents said that *jirgas* in the past were better. The composition and mandate of *jirgas* varies. In some places, a group of local influential people comprises a *jirga* and in others it may be the local landlord. Mediation by elders in the family is also at times interchangeably called a *jirga*. The many forms of *jirgas* defy attempts to define them. They are essentially unregulated entities, a customary practice. Their assessment of disputes and the verdicts they pass are not guided by any set of laws, but depend entirely on the perceptions, beliefs and knowledge of the members of the *jirga*. More popular among new forms of ADRs are the *Musalihat* (mediation) *Anjuman* introduced under the Local Government Ordinance 2001 and the *Musalihat* Committee set up in selected police stations.

Of 149 respondents currently dealing with disputes, only 43 had cases pending before courts. 97 per cent complained of delays in court processes, and 28 per cent believed they were caused by case overload. About half of the responses cited distance and costs as key impediments to accessing courts. Opportunity costs in terms of loss of income is also a barrier especially as 86 per cent of litigants earned less than Rs.20,000 per month. 64 per cent litigants used savings and assets to meet litigation expenses. Litigants also criticized the lack of infrastructure and facilities provided within the court premises.



The Foundation compared people's experiences with government responses expressed through public budgets, with a focus on Khyber Pakhtunkhwa's budgets for FY2013-12 and 2011-12. Based on this comparison, it has made policy-relevant recommendations.

People experience myriad injustices, which can broadly be categorized by class, gender or location. Women and the poor are largely socially and politically excluded, and most vulnerable. The state and society are equally blameworthy for this despairing situation.

The executive's lack of intent is evident from the allocation of public funds. Out of Khyber Pakhtunkhwa's total budget outlay of Rs.303 billion for FY2012-13, only 1.12 per cent was allocated for administration of justice. Roughly eight times less than the amount allocated for security.

Skewed priorities are also apparent in the allocation for security as half of it is dedicated to brick and mortar, i.e., construction of high-security prisons and other buildings. Comparatively low priority is placed and funds allocated to develop the investigative and monitoring capacity of law enforcing agencies, which are also not fully utilized. Strategic interventions such as computerization of land records receive limited resources, and are moving at a slow pace. This is despite its potential to mitigate or resolve land disputes which account for 32 per cent of total disputes in the Foundation's survey.

## Creative investments are required to improve court and non-court systems

- Initiatives that *provide paralegal support or promote legal literacy* need to be significantly expanded. They must especially reach the poor and women.
- *Information centers* or paralegal assistance can be provided within court premises or be based in poor urban and rural communities.
- A *district helpline* can also be established to provide assistance and information to callers, including, recourse options, court processes, documentation needs, hiring counsel, estimated costs, and, available legal aid and referrals. Also needed is general information on rights – as citizens and as consumers.
- Public funds must be allocated for *basic infrastructure* like waiting areas, drinking water facilities and toilets. These must be separately available for women and men. Facilities for documentation support must also be provided.
- The *number of judges must be increased* from the present average of 10 judges to 1 million people, which compares very poorly with the international standard of 70-110 judges for 1 million people.
- An increase in judges will only be effective if complemented by *procedural improvements, adequate support like judicial officers and staff, and increasing capacity at all levels*. Moreover, assistance required by the court, like the *availability of government officials* especially *patwaris* (revenue officials), needs to be ensured.
- *Alternate dispute resolutions (ADRs) should be supported*. For them to be effective and fair, it is critical to define its parameters, criteria for selection and authority. Support is also needed to ensure they have knowledge of the laws, and are effectively monitored.
- Public funds must be allocated to promote *sports and culture* to promote understanding, social cohesion and a celebration of diversity to reverse increased intolerance and decreased mutual respect, which 83 per cent responses cited as key causes of increased conflicts. These funds must be equitably allocated to benefit all citizens, especially the poor and women, in the province.
- *Investments in the young*, especially in women, must include provision of platforms that provide them information, entertainment, and also meet their needs for healthy physical exercise.





## 1. Introduction

Euphoria inadequately describes public reaction to the executive order that reinstated Chief Justice Iftikhar Mohammad Chaudhry in the early hours of 16<sup>th</sup> March 2009. It was a defining moment. Jubilant citizens danced in the streets, celebrating what was termed a people's victory -- a triumphant culmination of an epoch-making movement led by Pakistan's lawyers.

It had all started two years earlier, in March 2007, when the regime of General Pervez Musharraf (1999-2008) filed a reference against the Chief Justice of Pakistan. Initial reactions were tentative. But soon, murmured objections to the overreach of executive authority turned into resounding public clamour for reigning in abuse of state authority and the perpetration of injustice.

Tens of thousands of citizens joined the protests. Many were arrested, injured and even killed. Their resolutely singular purpose sharply contrasted with their widely divergent backgrounds. Students from elite schools and universities, landless farmers, bankers, traders, rights activists, political workers, journalists and popular artistes – formed an inspiring but confounding kaleidoscope of citizen activism. Few stood to gain immediate personal benefit. Yet their cause was personal, for higher ideals. Fewer still, had likely received or expected relief from courts. Yet, they relentlessly campaigned for courts to become neutral arbiters of the law.

The unparalleled movement was an expression of public aspirations for a judicial system that ensures legal equality for citizens, for rule of law that restrains whims of rulers, for a functional democracy rooted in constitutionalism, and, for building a state that cares for its citizens. Striving for these goals, alongside many others, were Omar Asghar Khan Foundation and the *Tehreek Huqooq-e-Hazara* (movement for the rights of the people of Hazara).



*Hum mulk bachanay niklay hain - aao hamaray saath chalo*

*We are striving to save the country - come join us*

*Dastoor ki khatir niklay hain - aao humaray saath chalo*

*We are campaigning for the sake of the Constitution - come join us*





Protest march, Abbottabad, March 2009

*Tehreek Huqooq-e-Hazara*, THH, is a citizen coalition connecting largely poor, rural and urban women and men from across Hazara and other areas of Khyber Pakhtunkhwa. The Foundation helped establish the THH in April 2005 and has consistently assisted it in serving as a public platform amplifying citizen voices for democratic reform. Following the devastating 2005 earthquake, the THH projected citizen calls for prompt and equitable relief assistance and raised public demands for better policies and public budgets to deal with such disasters. Its advocacy influenced government rehabilitation policies following the 2009 displacement (due to conflict) and the 2010 floods. It continues to build public pressure for more transparent and fair public budgets so that improved public services like healthcare and education reach citizens, especially the poor.

THH and the Foundation were actively involved in the lawyers' movement since its early protests against the reference in March 2007 till the realization of its immediate goal of restoring the judges in March 2009. They drew on their roots within local rural people in Khyber Pakhtunkhwa to engage them in the movement, and also assisted coordination between bar associations, political workers, and the media. People's assemblies, protest rallies, torch-lit marches, camps and sit-ins were regularly organized across Abbottabad, Haripur, Peshawar and Islamabad. Public participation was mobilized for the June 2008 long march and the planned *dharna* (sit-in) in March 2009, despite reports of warrants issued for the arrest of the Foundation's key staff and police raids on its offices in Islamabad and Abbottabad.

Long march, Islamabad, June 2008

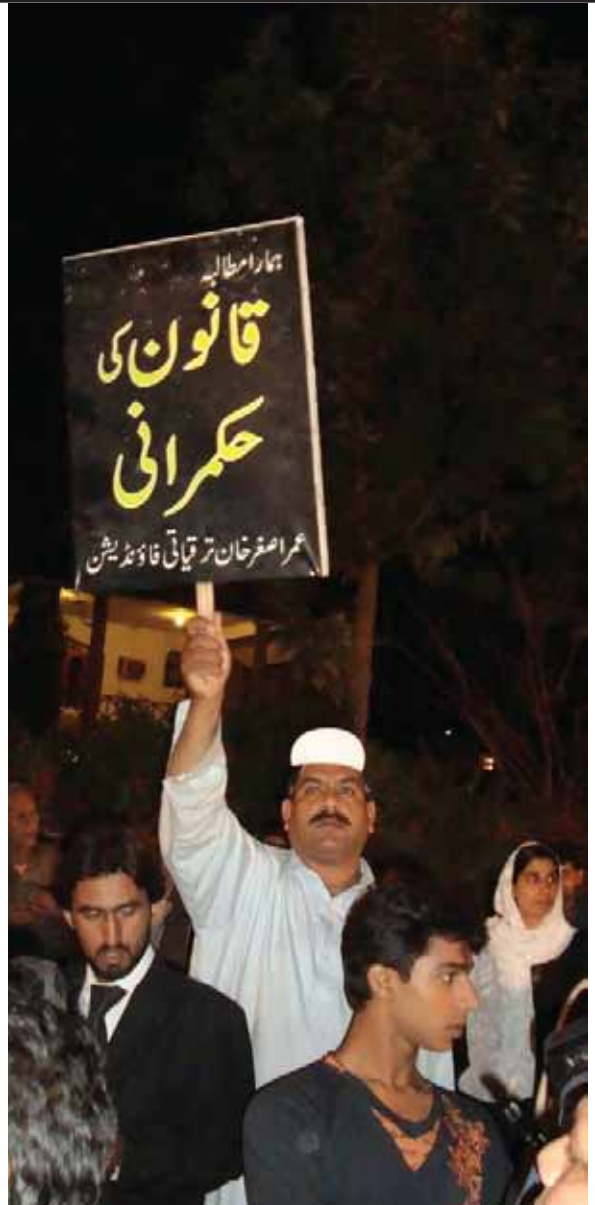




Leaders of the lawyers' movement, local bar associations and other stakeholders graciously acknowledged the contributions made by the Foundation and the THH. The Foundation's Executive Director, Mr. Ali Asghar Khan, was part of a select group of ten individuals invited by the movement's leaders to hoist the national flag at the Chief Justice's residence on 22nd March 2009. Bar associations in Haripur, Abbottabad, Mansehra and Balakot also hosted special receptions for this purpose.

Amidst the unrestrained celebrations following the restoration, flickered hopes that Pakistan was changing. That the groundswell and goodwill generated by the movement will translate into fair and efficient administration of justice for all citizens.

Celebrating outside the CJ's residence in Islamabad - 16<sup>th</sup> March 2009



Calls for shifting the spotlight to the broader issue of judicial reform were echoed at a people's assembly organized by the Foundation and THH on 31st March 2009 in Abbottabad.

“We struggled hard and are overjoyed with the restoration. But we must not stop here. Justice is still beyond the reach of the poor.”

Participant at the Peoples Assembly

Abbottabad, 31<sup>st</sup> March 2009



Barrister Aitzaz Ahsan and Ali Asghar Khan at the Peoples Assembly in Abbottabad

Despite the drama and dreams of the lawyers' movement (2007-09) the promise of rule of law remains elusive for most Pakistanis, especially the poor. Changes after the restoration fall far short of the aspired transformation. The judiciary is more assertive and independent than before, though some believe it is overly forceful. The National Judicial Policy announced in 2009 laid stress on quick disposal of cases, but little structural or procedural change has been instituted to reform the system.

The lawyers' movement may have failed to fix Pakistan's broken justice system. But it was successful in revitalizing citizen activism and creating a constituency of support for constitutional rule in Pakistan and the universal values of equality and justice. Pursuit of these ideals requires consistent actions at many different levels.

The Foundation's continued efforts for fairness and justice reflect the pragmatic route suggested in *The Idea of Justice* by Dr. Amartya Sen, and places its focus on reducing injustices in society. Its study conducted in selected districts of Khyber Pakhtunkhwa in 2011-12 aims to better understand the nature and causes of injustices faced by people, and the pathways they choose to deal with them. The Foundation also compared people's experiences with government priorities expressed through public budgets. This publication documents these findings and makes policy relevant recommendations to improve justice provision and strengthen the rule of law in Pakistan -- the goals which inspired so many to join the lawyers' movement.



## 2. Data sources & methodology

Data presented and analyzed in this publication is drawn from four separate data sources. Through each source, an effort was made to investigate a common set of basic issues:

- What are the kinds of disputes/grievances experienced?
- What are typical responses of the aggrieved? What factors influence responses? Do women and men; well-off and the poor respond differently?
- What are formal and non-formal recourse mechanisms? Who is able to access them? Have the mechanisms/access changed over time?

The findings from these three questions presented, in combination, people's experiences which were then compared with government responses expressed through public public budgets to answer a fourth question:

- How can access to justice be improved?

### 2.1 Public perception survey

The survey included a general questionnaire and a supplementary questionnaire on costs completed by all respondents. An additional litigant questionnaire was completed by respondents that are presently using court and/or non-court mechanisms for dispute resolution.

The survey was conducted in Districts Abbottabad and Mardan of Khyber Pakhtunkhwa. Inclusion of two districts was done to enable comparative analysis. The sample size for the survey included 10 per cent of total union councils of Districts Abbottabad and Mardan. In each selected union council, 10 per cent of villages/neighbourhoods were identified. The union councils and their sub-sites were selected to ensure rural/urban mix, and enable comparative analysis. In each sub-site, 10 per cent of total households were randomly identified in which one representative was interviewed. Half of the total people interviewed were women.

The survey team included 9 women and 13 men drawn from the Foundation's staff, the Pakistan International Human Rights Organization and the Pakistan Youth Development Organization. A two-day training of the survey team was conducted on 27-28 June 2011.



(from left to right) Dr. Nadia Saleem, Ali Asghar Khan and Rashida Dohad facilitating the training workshop

## Public Perception Survey

### District Abbottabad

Union Council	Village/ Neighbourhood	Total HH	# of Respondents General Form			# of Respondents Litigant Form		
			Male	Female	Total	Male	Female	Total
Banda Pir Khan	Banda Pir Khan	280	14	14	28	1	1	2
	Abdallan	140	7	7	14	0	0	0
	Murda Pattian	120	6	6	12	1	1	2
	Tarhana Bala	160	8	8	16	0	0	0
Mirpur	Mirpur Kalan	750	35	40	75	2	2	4
	Banda Ali Khan	200	10	10	20	1	1	2
	Maira Muzaffar	200	10	10	20	2	2	4
Kothiala	Joghan Mar	60	3	3	6	1	2	3
	Todoo Maira	60	3	3	6	1	0	1
Nammal	Majuhan	400	20	22	42	1	2	3
	Paiyan	130	6	7	13	1	1	2
Dewal Manal	Bhattiwala	280	14	14	28	2	2	4
	Hari Khaiteer	280	14	14	28	0	1	1
Sub Total		3060	150	158	308	13	15	28
<b>District Mardan</b>								
Bijli Ghar	Bijli Ghar	700	35	35	70	0	0	0
Mangah	Mangah	2300	115	115	230	2	3	5
Kas Korona	Kas Korona	600	31	31	62	0	5	5
Baghdada	Baghdada	1200	60	60	120	5	5	10
Shehbaz Garhi	Shehbaz Garhi	800	40	40	80	4	1	5
Mardan Rural	Mardan Rural	1200	60	60	120	2	2	4
Chamtar	Chamtar	2300	115	115	230	9	6	15
Gujar Garhi	Gujar Garhi	3750	188	188	376	3	7	10
Sub Total		12850	644	644	1288	25	29	54
Total		15910	794	802	1596	38	44	82



Zahid Shah of the Foundation interviewing a respondent in Mardan

A pilot test was conducted on 1st July 2011 in a union council of District Abbottabad. Based on the pilot, the questionnaires were fine-tuned and the survey was conducted over four weeks beginning on 6<sup>th</sup> July 2011.

The respondents were randomly selected. Out of 1,596 respondents, 637 were not educated, and 592 had received education upto matriculation. 70 per cent were from rural areas. About 35 per cent earned less than Rs.10,000 per month and nearly 50 per cent were from a monthly income bracket of Rs.10,000 - Rs.20,000.



## 2.2 Oral testimonies

The public perception survey helped identify women and men that were aggrieved. From among the aggrieved, oral testimonies of four women and three men in District Mardan and three women and six men in District Abbottabad were recorded by the Foundation's staff. These testimonies present details of the nature of grievance and trace the responses of the aggrieved. In three cases, the aggrieved decided against any form of redressal and recorded the reasons for their decision. Each testimony was transcribed, translated and documented in the form of a case study by the Foundation's staff. The oral testimonies provide glimpses of lives affected by disputes and help understand realities behind the quantitative data derived from the public perception survey.



Syeda Mehr Kanwal of the Foundation recording the testimony of a woman in Abbottabad

## 2.3 Focus group discussions and key informant interviews

A series of ten FGDs were held, five each with women and men. Six FGDs were held in District Abbottabad and four in District Mardan. 65 women and 80 men participated in the FGDs in Abbottabad and 55 women and 75 men were part of the FGDs in Mardan.

Also, key informant interviews were conducted of lawyers, members of *jirgas* and *musalihaat anjumans*/committees. The Foundation's staff conducted and documented the FGDs and interviews. These discussions provided important contextual and case-based details.

## 2.4 Case briefs – legal assistance

Since March 2011, the Foundation is providing legal assistance to poor women in District Abbottabad. More than 250 women accessed this facility in the first 15 months since its inception. Their case briefs provided invaluable insights on grievances experienced by them. Those that availed legal aid for filing a case also provided real-time information on their experiences as litigants. This data was analyzed to better understand the nature and trends of marital and family-related disputes faced by poor women, and their strategies of dealing with them.



The Foundation's Shazia Sardar recording a case at its Legal Assistance Facility in Abbottabad

## 2.5 Budget analysis

The Foundation reviewed the following set of documents relating to Khyber Pakhtunkhwa's budgets for FY2012-13 and FY2011-12 to assess government responses to people's experiences with disputes:

- Budget Speech (by the Minister of Finance, Government of Khyber Pakhtunkhwa)
- Annual Development Programme
- Government of Khyber Pakhtunkhwa White Paper
- Demands for Grants – Development Expenditure for 2012-13 and 2011-12
- Budget Estimates for Service Delivery 2011-14

Funds allocated for the administration of justice as well as investments in improving social cohesion were assessed.



### 3.1 People face diverse conflicts

*Zan, zar aur zameen* (women, wealth, and land) are fabled causes of conflicts, reconfirmed by the Foundation's study. 42 per cent responses cited family-related matters as the disputes experienced, while 32 per cent marked contestation of land ownership. Emerging grievances included *kidnapping* and *kidnapping for ransom* – with the latter serving for some as a lucrative “business.”

#### 3.1.1 Land, property and family disputes are common

Contested ownership of assets such as land and property are common disputes, accounting for about 32 per cent of responses. Multiple claimants, meandering processes of acquiring or transferring land ownership, and improper documentation can weave a web that may ensnare multiple generations of a family into protracted litigation and confrontation.

**Divisive property** 16 years ago Amina was only 28 when she was widowed. She works as domestic help to provide for her three sons and two daughters. Amina's eldest is 32 and the youngest about 16. Three of her five children are special persons. About 5-7 years' ago, after the death of her parents-in-law, Amina decided to build a house and began proceedings for partitioning the land jointly owned by her and others in her husband's family. Her husband's young nephew objected to the division and was granted a stay order by the court. But later, his appeal against its vacation was rejected. Amina, supported by her brother-in-law, continued pursuing the partition matter pending before the revenue officer for adjudication.

At the same time, she also requested a *jirga* to mediate a consensus over the land division. This further enraged the nephew. “How dare you send a *jirga* to our house,” he accused. Amina is distraught. “I don't want more hostilities, but I am also desperate for an early partitioning of land. I have already borrowed more than Rs.75,000 to pursue it. I cannot incur more debt. I am a poor woman. I have three children in wheel chairs to look after,” she said.

**Land ownership** 70-year old Nazar Din has spent more than 25 years pursuing ownership of his family land. His story begins in 1920 when his grandfather moved to Mardan and bought land. Nazar Din is not sure, but believes that the land owned by his grandfather extended to 240-800 canals (30-100 acres). After the death of Nazar Din's grandfather, sometime in the early 1930s, his sons contested ownership. Nazar Din's father who was one of the claimants approached the court demanding equal division of land between the sons. The case continued for seven years and was decided in favour of Nazar Din's father in 1940. Demarcation of land was done in compliance with the court's orders. But Nazar Din's father died before transfer of ownership could be done, and his brothers assumed ownership. Fearful of more disputes, Nazar Din's mother did not pursue the matter and simply locked up all related documents. At the time, Nazar Din was very young.

Nearly 50 years later, in 1995, Nazar Din accidentally discovered the documents among his mother's belongings, including the 1940 court order confirming the share awarded to Nazar Din's father.

Delighted with this “pot of gold” Nazar Din approached the revenue department and also his paternal uncles, to claim the land owned by his father. Despite Nazar Din's persistence, he was unable to cut through the red tape weaved by the revenue department. His uncles were dismissive of his claims. Frustrated, Nazar Din repeatedly requested mediation by elders, and other influential individuals. Many *jirgas* were called, including one called in 1996 by chairmen of two local union councils, and another in 2005-06, convened by a local nazim elected under the more powerful Local Government Ordinance 2001. The uncles simply ignored the orders of the *jirgas* asking them to give Nazar Din the ownership of land owed to his father.

“My family has lived humbly for years as our share of land was denied us. My uncles on the other hand have always been comfortable and are now even wealthier. That's why they remain impervious,” said Nazar Din who retired in 1997 after 34 years in government service. He continues to pursue his case.



Other disputes include family and martial disputes, non-repayment of loans, disagreement on contractual obligations between tenants and landlords, petty squabbles between children, and crimes like theft or murder. Seemingly innocuous matters such as defeat in a cricket match, delay in serving a meal, and refusal to accept a marriage proposal can also trigger conflicts and even violence.

**Violent reactions** The construction of a wall by Gul Khan next to his neighbor Sher Zaman's house in an urban neighbourhood of Abbottabad sparked an angry altercation between them. Incensed, Sher Zaman pulled out his gun and fired at Gul Khan. The shot missed Gul Khan by inches but hit a passerby, a poor labourer on his way home from work. The labourer survived but the bone in his upper arm was shattered.

Within the mix of major and minor disputes, the virtual absence of consumer-related grievances is striking. Despite increasingly violent public protests against crippling power outages, respondents in the study did not identify intermittent power supply as a matter to be taken to court. Similarly, sale of sub-standard items is often shirked off with a grumble rather than a demand for quality product against payment received.

"Cases against insurance companies and public utilities like water supply have been filed, but the numbers are still minimal."

Senior lawyer

Abbottabad



### 3.1.2 Kidnapping is among “new” grievances

Trends in conflicts showed that *kidnapping* and *kidnapping for ransom* are some of the more recent sources of grievances identified by 1,004 out of 1,536 respondents. They were more prevalent in Mardan, as 42 per cent of respondents listed them as compared to 16 per cent from Abbottabad.

“Since the past 4-5 years, I believe, the cases of kidnapping for ransom have overtaken the number of murder cases in the urban area of Mardan. In my experience most victims are from middle-income households. The ultra rich are less affected as they have personal security, and some are even likely patrons of gangs involved in this lucrative business.”

Senior criminal lawyer

**Mardan**

The menace of kidnapping for ransom has also affected poor households. Men are generally targeted. But women and even children are not spared. In most cases, the kidnapped individual is released on payment of large amounts as ransom. Some are killed, especially if the ransom amount is not paid.

**Held for ransom** Azam is a mason. He lived in Abbottabad until about two years’ ago when he was diagnosed with cancer, and he moved with his family to Rawalpindi for treatment. About four months ago, his 10-year old son, Tahir, left his home to buy a toy with Rs.10 given to him by Azam. A little away from his home, a stranger on a motorcycle intercepted Tahir, and promised to buy him a better toy with Rs.100. Excited, Tahir agreed to go with the stranger. Two days later, Azam received a ransom demand of Rs.3,000,000 for his son’s safe recovery. Distraught, he pleaded that he was a poor man. The kidnappers threatened to kill his son or enroll him as a suicide bomber. Azam was too afraid to contact the police. With much difficulty the ransom amount was reduced to Rs.1,000,000. Of that, Azam only had about Rs.20,000. The remaining was collected from relatives, friends and philanthropists. The ransom was paid in the tribal area beyond Dargai in Malakand where Tahir was held captive alongwith two other children. Tahir returned home safely. The fate of the other children is not known.

A close second in new problems, marked by 884 respondents was *harassment through mobile phones*. According to the Pakistan Telecommunication Authority, teledensity in the country is 70 per cent, second only to India in South Asia, with an estimated 116 million mobile phone connections as of February 2012. The numbers may indicate that many are vulnerable, but the harassment can range from generally harmless suitors asking: “want to be my frand [friend],” to more serious abuse.

#### Missed Call

Abbas and Arshad are neighbours. One evening, Abbas came home and saw a missed call from Arshad’s number on his wife’s mobile phone.

Infuriated, Abbas beat his wife despite her cries that she did not know anything about the call. He also stormed into his neighbour’s home shouting expletives. A fist-fight ensued leaving both Abbas and Arshad badly injured.







### 3.2 Social factors dominate list of conflict triggers

A fraying social fabric is creating conditions that generate conflicts. This is validated by 83 per cent of total respondents in the survey citing social factors such as escalating intolerance and decreased mutual respect as key reasons for increased disputes.

#### 3.2.1 Eroding social cohesion and increased intolerance are key underlying factors

Despite gaps in conflict identification, most significantly reflected in the negligible attention given to consumer-related disputes, 26 per cent of respondents believed that conflicts in the past ten-year period since 2001-02 had increased and 19 per cent felt that their levels have remained stagnant. 70 per cent of those that believed conflicts had increased were men. Perceptions did not vary significantly between urban or rural areas, and between the two districts of Abbottabad and Mardan.

Absence of rule of law was one of the five key reasons identified for escalating conflicts. It was preceded by four social factors. Eroding social cohesion, inability to discern between right and wrong, decreased mutual respect, and increased intolerance were ranked higher than the absence of rule of law. Responses categorized by district or on an urban-rural basis showed that perceptions were similar, with minor differences in ranking.



Reason	Ranking		Ranking	
	Abbottabad	Mardan	Urban	Rural
Decreased social cohesion	1	1	1	1
Increased inability to differentiate between right and wrong	2	3	4	2
Lack of mutual respect	3	2	2	3
Increased intolerance	4	4	3	5
Absence of rule of law	5	5	5	4

Note: ranking indicates aggregate number of responses, with 1 receiving the highest number of responses





#### Wall chalking in Abbottabad

One God, One God -- fulfills needs and removes hardships.  
Graves are to be respected, but bowing in front of them is forbidden.  
Tehreek-e-Dawat-e-Tauheed, Abbottabad

The responses and ranking indicate a consciousness and perhaps even concern about fragmentation, divisiveness, and an eroding social fabric. Changes over time highlighted declining religious tolerance. The rejection of religious diversity, differences between sects and even different *maslak* (schools of thought) are sharpening.

"Our local masjid (mosque) is run by a Tablighi maulvi (cleric) who follows the Deobandi *maslak*. Followers of the Barelvi *maslak* are not allowed in the masjid. Similarly, in Barelvi masjids, Tablighi and Deobandis are not allowed. This is now normal practice in many masjids in Abbottabad. Such restrictions were unheard of 20-30 years ago."

Omar Farooq  
Abbottabad

A related finding of the study is that *madrassah*-educated respondents confirming that they or their households had experienced conflict were four times more than others. A likely explanation of this difference may be that students enrolled in *madrassahs* are from households that are dysfunctional due to conflict and are also poor. Another possibility is that *madrassah* education may shape perceptions about conflict that account for the higher aggregate response of those that have received such training.

### 3.2.2 *Biradari* and political rivalry are chronic causes of conflicts

Among the more chronic causes of conflict, political rivalry was one of the most cited. Political loyalties in Pakistan present interesting contradictions. They may frequently change and yet be fiercely defended. Conflicts stemming from political rivalry are sharpest and can also be violent during election campaigning or polling day. But the rivalry continues to simmer, erupting into conflicts, sometimes at the slightest provocation.



An interconnected factor leading to conflicts is *biradari* (clan) politics. Anatol Lieven in his book *Pakistan – A Hard Country* claims that clan identity or kinship is the most important force in Pakistan's society, and that the power of kinship is inevitably also reflected in its political system. Terms like *junbay ki siyasat* or *biradari* politics are part of Pakistan's political lexicon. It is also a major factor in instigating conflicts.

**Political-Biradari Opponents** Two major *biradaris* in District Abbottabad aligned to different political groups, fiercely contested the 1985 non-party elections during General Ziaul Haq's regime. The groups came to blows several times during the election campaign and on polling day. Some months later, people associated with both groups were boarding a local bus. An argument erupted on the issue of who should board first, and quickly degenerated into a fist-fight. A senior leader of one of the groups was passing by. He attempted to intervene to stop the fight, but was severely beaten by the supporters of the opposing group. The son of the senior leader was on his way to a cricket match when he was informed of his father's beating. He rushed to the spot. Using his cricket bat, he beat several people, killing one on the spot. Violent hostility between the two feuding groups continued for several years, involving another murder, several FIRs, and court cases. There were also many efforts at rapprochement. In 1990 hostilities scaled down after the feuding groups signed a *razi nama* (agreement between feuding parties). But the acrimony continues to fester.







### 3.3 The poor are more vulnerable

Oppression and helplessness are among the many dimensions of poverty. These are also reflected in the terms used for the poor in different parts of the country, like, *mazloom* (oppressed), *baybus* (powerless), *laachaar*, *mufilis* and *majboor* (helpless). They show that along with limited material possessions, resources and income, poverty is also perceived as lack of power, influence, respect and justice.

The vulnerability of the poor to injustices was validated by the Foundation's study. Out of every five respondents that experienced a conflict, three earned a monthly income of less than Rs.10,000. Realities behind these statistics are much more agonizing.



#### 3.3.1 The poor often suffer in silence

The perception that the aggrieved seldom gets justice is pervasive. This belief is stronger if the aggrieved is a poor person.

"My husband works as a cobbler. He barely earns enough to feed our nine daughters and one son. About 4-5 years ago he was walking home when a speeding car hit him. He was severely injured and was unable to work for many months. The driver of the car did not even stop to see whether my husband had survived. He just sped away. We were not able to file any case or get any compensation."

Farida

District Mardan

**Murder most foul** In a rural area just outside Mardan city, the local people recall with horror the day they discovered Zaman's body. "It was last year in Ramzan. We found him about 10-15 minutes before *iftari* (time to break the fast). His throat was slit," they recounted. Zaman was the son of a local shepherd and was only about 5-6 years old when he was brutally slaughtered. It is not clear who killed him or why. "The child's father is very poor. He does not have any enmity. And the boy was simply grazing his cattle," said a local resident. Local people believe that extremists are responsible for the murder. "They want to terrorize us," they said. Zaman's father is too poor and afraid to pursue the case against his young son's killers.

Like Zaman's father, the misery of injustices endured by the poor is compounded by their helplessness. Often, the poor simply decide not to respond, especially if their oppressor or opponent is more powerful.

**Falsely accused** Mohammad Zahid is a poor man. He uses his donkey to transport material in the mountainous region of Union Council Nammal in District Abbottabad. His daily income is about Rs.100-Rs.150. Zahid had lived with his wife and two children in a mud-house provided by a local influential, Khan sahib, until the day the Khan sahib's goat went missing. Two associates of Khan sahib accused Zahid of stealing the animal. Threatening him, they warned that they would bring sniffer dogs and call the police if he did not return the goat. Ignoring his desperate pleas of innocence, the two locals thrashed Zahid. Fearing for his life, Zahid left the mud-house and took refuge in another home. Subsequently, the stolen goat was recovered from Khan sahib's nephew who admitted his guilt.

When Zahid was asked the reason for not taking any action against the false allegations and the brutal manhandling he had suffered, he said it was more prudent to move away than risk further intimidation from his powerful accusers. "I am a poor man, how could I challenge such powerful people? If I had tried, I am certain, no one would have stood by me."



**Unsolved** Shopkeepers of a local *bazaar* in Mardan had employed Basit Ali as a *chowkidar* (guard). One night while on duty, Basit saw two men trying to steal an *ara-machine* (saw mill), which generally costs between Rs.20,000-Rs.45,000. He raised an alarm and also tried to stop them. The thieves overpowered Basit and killed him. Basit was a poor man. He had left behind a wife and three minor sons. They were unable to pursue the case.

### 3.3.2 The poor face impunity, insecurity and costs

40 per cent responses cited strong opponent and/or feeling of personal insecurity as factors that compel the aggrieved to silently suffer. Those that seek relief from court or non-court mechanisms face daunting costs of accessing justice and high opportunity cost. An average expenditure of about Rs.210,000 per case was estimated by aggregating costs of 43 litigants interviewed. Moreover, 69 per cent of litigants estimated about Rs.27,000 as opportunity cost in terms of loss of income. In 55 per cent of cases, other household members accompanying the litigant also experienced a loss of income indicating a higher cumulative loss to the household. More than half, or 64 per cent of litigants, used savings and assets to meet court-related expenditures, and 7 per cent incurred debt to pursue their cases.

When aggregate responses on each factor that dissuade the aggrieved from responding were weighted as per levels of priority assigned, the following index emerged with the most important factor receiving a weight of about seven. Strong opponents, high cost of accessing justice and low credibility of the justice provision system were ranked as the most influential factors dissuading the aggrieved from seeking any form of recourse.



Factors that compel people not to respond	Weightage
Strong opponent	7.1
High cost of accessing justice provision institutions	7.1
Low credibility of justice provision institutions/systems	6.3
High opportunity cost	5.7
Feeling of personal insecurity	5.4
Fear of shame/censure	4.3
Limited access due to distance to formal justice provision institutions	2.5
Limited knowledge/information about justice provision institutions and processes	2.2
Social pressure to quash the issue	1.7



**Marital miseries** In 1986 Sajida was married to a daily wager in rural Mardan. Her mother-in-law frequently mocked her over the failure to produce an heir. Relenting, Sajida permitted her husband to remarry in 1999, and also gave her gold ornaments on the occasion. Sajida's husband secured a permanent job, and his second wife gave birth to four children. Sajida was content looking after the children and also earning a small income through tailoring.

After sometime, Sajida's husband started mistreating her and reportedly even beating her on minor issues. She endured it all, fearing that any resistance may ruin her marriage. But she was unable to remain silent when her stepson also joined in the bashing. Ignoring Sajida's pleas her husband turned her out of his house. For two months Sajida stayed at her parent's home waiting for her husband to take her back. During this time she met with an accident and broke her leg. Despite this mishap, her husband failed to contact her or provide any assistance. Instead, he accused Sajida of secretly selling her gold ornaments, and cited it as the reason he was unwilling to take her back.

Sajida wants justice but is unwilling to approach the police or courts. "I cannot afford to pay bribes to the police to lodge my complaint or meet court-related expenses like lawyer's fees," she said. Sajida is also hesitant to approach alternate mechanisms like *jirgas*. "I am a poor woman. *Jirgas* only aid the powerful and the wealthy," she believes. Sajida's lack of confidence in the justice system is influenced by her sister's bitter experience. "My sister challenged her divorce as well as her husband's second marriage in court, but failed to get any relief," she said.



Injustices faced by the poor contrast sharply with the experiences of the rich, and the powerful. The system that fails the poor seems to spring into action when manipulated by the rich.

**Different standards** 18-year old Babar is the son of a bureaucrat. While trying to put down a critically injured dog, he accidentally killed a 40-year old labourer who was loading material on a truck. A case was registered against Babar. The slain labourer was from the Galiat area. He had few relatives. The police named his 15-year old daughter as the complainant. Babar was arrested. Using his influence, Babar's father arranged bail and also a *razi nama*. Two weeks after the killing, the case was dismissed and Babar was acquitted.

**Denied water and voice** Water to a village in District Abbottabad is supplied by a locally operated gravity-flow system. About 6-7 years ago, 16-year old Jameel from a poor family accused the wealthy 28-year old Azhar of manipulating the water's management. "Your house gets ample water, while ours doesn't get any," he boldly complained. Azhar was infuriated by Jameel's perceived temerity. To "teach him a lesson" Azhar's men locked up Jameel, but he managed to escape. This further incensed Azhar. He barged into Jameel's home yelling abuses. He also threatened to disgrace Jameel's sisters. Equally angry, Jameel picked up the household rifle and fired at Azhar, killing him on the spot. Jameel was arrested and convicted. Azhar's supporters set Jameel's home and cattle on fire, and forced his family to leave the area.





### 3.4 Women are worse-off

“I was virtually forced into marriage in 2005. Six years later, my husband divorced me. I returned to my father’s home with my son and daughter. A few days later, my husband took my son from me. He is now threatening to take away my daughter as well. I want to resist him, but don’t know what I can do. My father is poor and very ill. He does not want to call a jirga. I cannot file a case as I am illiterate and do not know about court processes. I am afraid.”

Rabia

District Abbottabad

Sadly, the agony of this 30-year old rural woman is not uncommon. The survey conducted by the Foundation showed that family-related issues accounted for the highest number of conflicts experienced by households, 42 per cent. More than half, or 55 per cent, were marital disputes.

#### 3.4.1 Women are denied dignity and rights

Often women abandoned by their mates find themselves back in their parents’ home. Their stories generally begin with an initial period of relative conjugal happiness. Inability to produce a male heir, their husband’s decision to remarry, and disputes with in-laws, are some of the familiar strains experienced by many women. Few are treated with dignity as wives and daughters/sisters-in-law. Some are even physically abused. Back in their parents’ home, they continue to suffer. They are often socially ostracized. If they have returned along with one or more children, the economic burden on their father is multiplied.



**Abandoned** In 1989 Ghulam Mustafa of a rural area in District Abbottabad, arranged his daughter Zainab's marriage to his brother's son, Shamraiz. Initially they were happy together. Shamraiz worked at a roadside hotel in the nearby town of Hassan Abdal in District Attock. They had two children.

Around 2002, Shamraiz met another woman and married her in 2007. Zainab was devastated. Ghulam impatiently argued with his daughter, "men can marry as many times as they wish." Zainab continued to live with her husband for about two years after he remarried, despite his refusal to provide any support for her or their children. Ghulam complained to his brother and even tried to bring the families together to resolve the issue. When that failed, he approached other local influential people and asked them to intervene. A *jirga* was called. Shamraiz was asked to pay about Rs.2,000-5,000 per month as maintenance to Zainab.

"I did not want the conflict to lead to my daughter's separation or divorce, or any acrimony within the family. So I suggested that the resolution may be a separate house for Zainab for which I even offered financial support," Ghulam said. For about two months, the *jirga* tried to enforce its decision, but failed. Shamraiz sent divorce papers to Zainab.

Ghulam contacted the same *jirga* and also expanded it by including people known to his brother, Shamraiz's father. The *jirga* observed that Shamraiz deserves to be severely penalized. However, in view of *biradari* considerations and Shamraiz's poverty, he was exempted from the payment of monthly maintenance but was ordered to pay the agreed dower of Rs.135,000 and return Zainab's belongings including her dowry articles. The *jirga* also ruled that Shamraiz would have custody of the children. The children were sent to their father's home and the dowry articles were returned to Zainab within a month. However, the dower amount is still outstanding. There is also intense acrimony between Ghulam and his brother. It is not clear whether the *jirga* will be able to enforce its decisions.



Legal assistance provided by the Foundation in District Abbottabad provides distressing insights into the lives of poor women. Data from the first 15 months since the assistance was offered in March 2011 shows that nearly half of the total 134 cases were claims for maintenance made by estranged wives that had no personal income and were generally from poor households.

**Abused** 28-year old Amber is from a poor family. She is the only daughter and the eldest among four siblings. Despite financial hardships, Amber completed her post-graduate education. In 2010, she was married to a policeman, Imtiaz, whose attitude was harsh and hostile. Soon, he began beating Amber on the slightest pretext. "You don't know how to cook a decent meal," he would sneer. The birth of her son brought little respite. "Once he struck me so hard I started bleeding. He said he wanted to kill me," she claimed. Fearing for her life, Amber fled to her parent's home. A *jirga* called by Imtiaz directed Amber to return to her husband's home. It also asked Imtiaz to desist from physical abuse and to pay maintenance. Amber complied with the *jirga*'s decision, but little changed after she returned to her husband's home. She received more beatings and abuse. "My husband knew that my parent's are poor, and that I have nobody to turn to, that's why he abused me," believes Amber. In December 2011, after another quarrel and severe beating that left Amber injured, Imtiaz turned her out of his house. She approached the local police, but they refused to file an FIR. Amber is now with her parents and is looking for employment. She is also receiving legal assistance from the Foundation to file a case for maintenance and dower. "I do not want to add to the burdens of my poor parents. That's why I am seeking maintenance," she said.



### 3.4.2 Women face violence

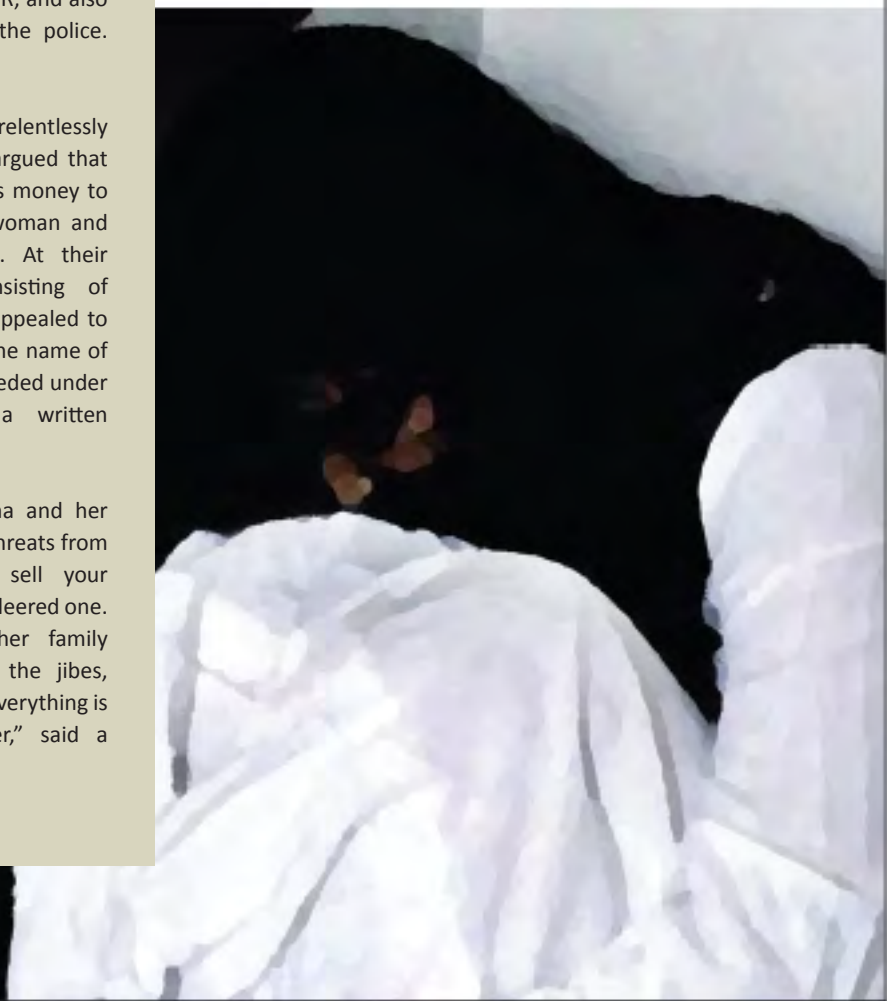
Women are also vulnerable to violence and the threat of violence. Often, women know their attackers and tormentors. And yet, they are often denied justice.

**Crime and punishment** 55-year old Raheema Jan lived in a village in District Abbottabad. After the death of her daughter, Raheema's granddaughter came to live with her. At the time she was only six years old. As the granddaughter turned 16 she started receiving many marriage proposals. One was from Rabbani's son, who was in the army. Despite the fact that Rabbani was a close relative, Raheema rejected the proposal on the grounds that his son was not considered of good character. Subsequently, the granddaughter was married to the son of another relative.

After some time, Raheema's granddaughter travelled to Rabbani's village to attend a wedding. One afternoon, Rabbani and his son forced her into a vacant house and raped her. Raheema paid a bribe to lodge an FIR, and also provided the medical report demanded by the police. Rabbani and his son were arrested.

Local people and even Raheema's own lawyer relentlessly pressurized her to withdraw the case. They argued that Rabbani was a wealthy man and could use his money to protect himself. And that, she was a poor woman and could not afford a protracted court case. At their intervention a *jirga* was convened consisting of representatives of Raheema and Rabbani. It appealed to Raheema's husband to withdraw the case in the name of Allah and forgive Rabbani and his son. He conceded under duress. Raheema's granddaughter gave a written statement withdrawing the case.

Adding to the miseries endured by Raheema and her granddaughter, were vicious insults and even threats from others in the village. "Why don't you sell your granddaughter as she is now a raped woman?" leered one. Agonized and exhausted, Raheema and her family relocated to another village – away from the jibes, accusations, and innuendoes. "In this country everything is possible with money. The poor just suffer," said a beleaguered Raheema.





**The use of terror** Shabana lived in Mardan. In 2011 she was about 16 years old when she rejected overtures made by Fazal who was allegedly connected with extremist groups. Fazal and his gang abducted Shabana and took her to Kohat. She was kept at a *madrassah*, and reportedly a *nikah* (marriage) was performed making her Fazal's "wife." After some months, Shabana escaped from her captives and returned home with great difficulty. Her family filed a case against Fazal. Shabana also named the *muntazim* (administrator) of the *madrassah* in the complaint. The accused obtained bail before arrest. They picked up Shabana's parents and allegedly tortured them. When the parents were released, they completely changed their stance and filed a statement saying that their daughter was lying and that Fazal had not abducted her. Soon afterwards, Shabana was again abducted. There is no trace of her whereabouts.



Women are often perceived as objects and possessions. They are seen to represent the family honour. Killing in the name of "honour," is not a new phenomenon. Its practice was often denied and sometimes even justified. The Foundation's survey shows that a significant number of respondents recognized "honour" killing as a form of conflict. These included educated as well as uneducated respondents, dispelling the myth that the uneducated do not consider this barbaric practice to be a crime. Of the total uneducated respondents 25 per cent cited "honour" killings as a new form of conflict compared to 21 per cent of the total educated respondents.

**In the name of “honour”** Ahsan from the Tanoli clan was a young, engaging man, well-regarded in the village. He was also active in politics, and was often on the other side of the political divide from the local Syeds. On 27th May 2008, Ahsan was brutally murdered. His autopsy showed his time of death was around 9:00-10:00 pm. A few hours later, the father of a local lawyer was also killed. The double murder stunned the village. Initially, Ahsan’s father filed an FIR against unknown people. Later the same day he named Syed Mushtaq, a former police inspector, after detection (sniffer) dogs traced his house, which was locked as the retired inspector and his family had fled the village the day the murders were discovered.

A few months before the murders, Syed Mushtaq’s daughter had eloped with Babar who was related to Ahsan’s wife. Syed Mushtaq hunted everywhere, but failed to recover his daughter. He accused Ahsan of assisting the elopement though he was away from the village at the time. The lawyer whose father was murdered was also labeled an accomplice. Before fleeing the village, the couple had requested his help in arranging a court marriage which he had reportedly declined.

Syed Mushtaq remained an absconder for 6-7 months until surrendering in January 2009. The case formally started, but little evidence was available and Syed Mushtaq was released on bail. Though “free,” he was fearful. Several attempts were made to kill him. In April 2011, Ahsan’s family agreed to meet Syed Mushtaq at his request. A *jirga* was arranged in which Syed Mushtaq, his son and also his nephew placed their hands on the Quran and swore that they had not murdered Ahsan or the lawyer’s father. A *razi nama* was signed and the cases were withdrawn. Both the murders remain unresolved.

Murders in the name of “honour” are chilling. Equally disturbing is the social pressure to commit them. Following Ahsan’s murder, his brothers were under unbearable pressure to take “revenge.” “Are you cowards? How can you tolerate the sight of your brother’s killer? He roams around a free man, in front of your very eyes, and yet you do nothing,” people in the village jeered. They were likely the same people who had also taunted Syed Mushtaq after his daughter had eloped. Notes were lobbed over the walls of his house saying that he should be ashamed that his daughter, a Syed, had run away with a Tanoli. “How can you tolerate this disgrace,” the notes accused. These details are not intended to explain or justify the heinous crimes, but to highlight the frightening role of society in prodding, abetting and even applauding them. Had Ahsan’s brothers murdered Syed Mushtaq, they would have been considered heroes. “If we had lost the court case, people would have doubled their pressure for revenge. Even now some people censure us for signing the *razi nama*,” said Ahsan’s younger brother, well-aware that the agreement has likely averted retaliatory murders that often embroil clans for many years.

The social expectation and even acceptance of revenge is not restricted to “honour” crimes. The eye-for-an-eye tradition has helped spawn an entire industry of assassins. The study results show that 28 per cent of those dealing with murder may use force, and half of them stated that it was likely to be their first response.

**“The police do their thing, while we begin plotting our own strategy to avenge the death of one of ours.”**

Young man

**Mardan**

According to a criminal lawyer in Mardan, the rate for a hired assassin starts from Rs.20,000 and can go upto Rs.100,000. “If the target is of high value, then the amount can even exceed Rs.10,000,000,” he said. Often, the “client,” also provides the required arms. According to another local lawyer, assassins have strong networks and delimitation of geographical boundaries. “If an assassin from one area is caught or is in any kind of trouble, assassins from other areas come to his rescue,” he explained. He believed that poverty, unemployment and illiteracy are the main factors that force young men to become hired assassins.



### 3.5 A mix of court and non-court responses are used

The choice of one or multiple responses depends on the nature of conflict as well as the profile of the aggrieved and their opponent/s. Often the aggrieved as well as their opponent/s may exercise different options. The pathways they choose may also vary.

The study results indicate that disputes related to land or property ownership rely on both formal and non-formal mechanisms for conflict resolution. In matters related to marriage and other family-related disputes, the emphasis is higher on non-formal systems, validated by the fact that out of the total respondents dealing with ongoing litigation only 6 per cent were in family courts. And in criminal cases like murder and kidnapping, the aggrieved appear to depend more on formal mechanisms.



Using PRA to assist analysis of pathways chosen by the aggrieved

Matrix showing types of disputes, responses and the pathways chosen by the aggrieved								
Disputes	Chronology of Responses							
	Elders mediate	Jirga	Police	Court	Use force	Secondary conflict	Revenge	No action (divine justice )
Property/Land		1	2	3	4	5		6
Non -Payment of Loan	2					3		1
Petty Quarrel among Children	1							
Domestic Disputes		1						
Denied Right of Passage		1		2				
Theft			1					
Murder		3	2				1	
Refusal to Vacate House by Tenant	1			2				
Refusal to Vacate Land (Tenant)				1				
Analysis by a group of 20 men, District Mardan								
Nature of Disputes	Responses of the Aggrieved							
	Aggregate Responses			First Response				
	Formal	Non-formal	Use of force	Formal	Non-formal	Use of force		
Agricultural Land Disputes	27%	59%	14%	4.5%	22%			
Personal/Residential	30%	70%		20%	10%			
Marital Disputes	29%	59%	3%	9%	29%			
Other Family Disputes	9%	81%		-	45%			
Murder	58%	14%	28%	28%	14%	14%		
Kidnapping	25%	75%		25%	50%			



### 3.5.1 Alternate Dispute Resolution: available but not effective

*Jirga* is the most prevalent form of ADR with 91 per cent of respondents confirming its availability. Its composition and mandate, however, varies. In some places, it is a group of local influential people, in others the local landlord, and then there are *jirgas* in which local officials may also be involved. Also, extensively available and often interchangeably called a *jirga* is intervention by *elders within the family*.

81 per cent of responses indicated that family-related disputes including marital disputes are referred to *jirgas* and *elders*.

“We seek intervention when the dispute becomes too big for us to handle. But we try to sort things out within the family,”

Samina

District Mardan

**Happy union** About three years ago, Faiza and Khurram eloped from their village near Abbottabad. They got married in a court and subsequently informed their families of their decisions and actions. Their parents disowned them and refused to maintain any contact with them. Later, elders from both sides of the family intervened, the couple tendered an apology for eloping, and the families forgave them. Faiza and Khurram returned to their village where wedding celebrations were organized.



Focus group discussion, District Abbottabad

To enforce its decisions, 33 per cent respondents claimed that *jirgas* and elders use social ostracization and public chastisement, and 31 per cent listed financial penalties for compliance. About eight per cent, also mentioned confinement and physical punishment.

**Water woes** Two farmers were arguing over the turn for using irrigation water in a rural area in Mardan. The argument became heated, and one attacked the other with a sickle. The matter was brought before a local *jirga*. They appealed for "*akhlas*," (manners and respect) to stop the argument. The attacker was also awarded a financial penalty, and the matter was resolved.

Despite the availability of *jirgas*, and the custom of seeking their mediation in disputes, there is little confidence in contemporary *jirgas*. 84 per cent of respondents believed that the effectiveness of *jirgas* and *elders within the family* to help resolve disputes has declined over time.

"Jirgas used to be far more effective before, now few comply with their decisions."

Young man

Rural Mardan

The reasons for eroding confidence in *jirgas* included decreased credibility and the inability to enforce decisions. Allegations of corruption were also made against *jirga* members. Sex-disaggregated data showed that women were more skeptical than men - 89 percent of total female respondents and 79 percent of male respondents said that *jirgas* of the past were better. The perception of respondents with *madrassah* training was notably different, as 70 per cent of them showed greater confidence in prevailing *jirgas* compared to only 15 per cent of respondents that were uneducated or had formal education.



**Chasing justice** Saleem from District Abbottabad met and fell in love with Gulshan of District Battagram. They were married in 1996. Their first few years together were happy. They had three children. Differences between them emerged in 2002 when Saleem's sister rejected the marriage proposal sent by Gulshan's brother. In 2003, Gulshan left Saleem and returned to her parent's home in Allai (Battagram). Saleem requested elders in his family and the community to serve as a *jirga* to resolve the issue. Despite the *jirga*'s intervention, no resolution was possible as Gulshan's family refused to comply with its decisions. At the death of his father-in-law, Saleem visited his wife's home and made a personal appeal for resolution of the matter to his mother-in-law. More *jirgas* were convened involving representatives of both families, and yet the matter could not be resolved.

The condition put forward by Gulshan's family was the acceptance of her brother's marriage proposal. Saleem's family demanded that they purchase land in Abbottabad as his sister was unwilling to live in the remote region of Battagram. Neither side relented, and the stalemate continued.

Saleem has now left the matter to fate. "I sold my cattle to cover travel and food costs of the *jirgas*, but I am a poor man and cannot afford to incur more expenditures. My in-laws have money. They bribed the *jirga* members and so my matter was never resolved," said Saleem who spent an estimated Rs.150,000 on the *jirgas*. He did not approach the courts. "I cannot afford lawyers and courts. I am poor and illiterate," he said. "I can either feed my family or spend money on dispute resolution," he lamented.





The many forms of *jirgas* defy attempts to define them. They are essentially unregulated entities, a customary practice. The assessment of disputes by *jirgas* and the verdicts they pass are not guided by any set of laws, but depend entirely on the perceptions, beliefs and knowledge of the members of the *jirga*. Some get it horribly wrong.

**“Kari”** Nisreen bibi’s husband was a drug addict. He seldom gave her any money and often beat her. Battered and dejected Nisreen wanted to leave her husband, but her only family, her brother, refused to give her refuge or support her. One evening, Nisreen’s young son became very ill. She begged her husband to take him to the hospital, but he refused. As the son’s condition worsened, Nisreen took him to the hospital where he was admitted. In the morning, his condition improved and he was released. When Nisreen returned home with her son, her husband started beating her, demanding to know where she had been all night. “I know you were with another man,” he alleged. A *jirga* was convened. After hasty proceedings it labeled her a “*kari*” (literally means “blackened” and is used to describe a woman accused of adultery). On the *jirga*’s order Nisreen was beaten by red-hot sticks, and then laid on burning embers. When her condition deteriorated, she was sent to a *Darul Aman* (government shelter home for women). A lawyer took up her plea for divorce. Nisreen worked as a domestic help. Three years later she won the case.

Over the last ten years, new forms of ADRs have also emerged which include state and non-state ADRs. The non-state ADRs include a mix of self-styled courts, *qabza* groups and the use of force. These were a choice of 26 per cent responses.



The state-supported ADRs were more popular. *Musalihat* (mediation) *Anjumans* set up in many union councils under the Local Government Ordinance 2001, and *Musalihat* Committees established at certain police stations received 1,986 out of 2,994 responses. These ADRs, especially the *Musalihat Anjumans*, have benefitted from external training and facilitation support through government and donor projects. Some fared better than others. Set up in 2006, the *Musalihat Anjuman* of Union Council Lora was one of three union councils of District Abbottabad that was given an award by the Local Government Department. The Secretary of UC Lora stated that the award was given due to results, proper functioning and followup of cases and monthly reporting. Though the LGO 2001 has been effectively rolled back, some of these mechanisms continue to function. Also active are some *Musalihat* Committees set up by the police. They handle a diverse range of issues.

<b>Musalihat Committee</b>	
<b>Mirpur Police Station, Abbottabad</b>	
<b>Nature of case - 2010</b>	<b>Number</b>
Conjugal rights/family cases	31
Transaction of money	48
Criminal	36
Civil	51
Miscellaneous	66



Land demarcations are typically recorded on a *latha* (cloth) by revenue officials

### 3.5.2 Courts are arduous and costly

*“Court/kutchery kay chakar say door raho”* (stay away from court processes) is common advice. It is not without reason. Cases, especially of land and property, often move glacially, consuming time and financial resources.

In the study, out of a total of 149 respondents that were currently dealing with disputes, only 43 had cases pending before courts. 62 per cent of these cases had been running for upto two years, entailing more than 20 court appearances. About half the cases were transferred/shifted more than three times. 97 per cent complained of delays in court processes, and 28 per cent believed they were caused by case overload.

**Zameen (land)** Amin and Talat are two brothers. In 2004 they jointly purchased land in an urban area of Abbottabad through a registered deed from Sher Khan. They decided to build a house for which a design was prepared and approved by the relevant authority. But when they started construction in 2006, a local individual, Imran, approached the court and obtained a stay order. He claimed that his father had bought *two canals 14 marlas* (one-third of an acre) from Sher Khan’s father in 1960, and that it included the land purchased by Amin and Talat. The court appointed a one-person commission to determine demarcation and ownership. The site was inspected alongwith the *patwari* (revenue official) and other related persons. A site plan was prepared. Statements of local people were also recorded. A report was submitted to the court, according to which the land purchased by Amin and Talat fell outside the demarcation of land claimed by Imran. The court decided in favour of the two brothers in 2010. However, the case between Imran and Sher Khan contesting land ownership continues.

About half of the responses cited distance and costs as key impediments to accessing courts. The total average expenditure on a case was Rs.210,000. 73 per cent of respondents confirmed that lawyers' fee was the biggest court-related expenditure, accounting for 37 per cent of total costs. Other costs included about 30 per cent incurred in travel-related expenses; 18 per cent on court fees, 8 per cent on documentary evidence, and 5 per cent on other miscellaneous expenses.

Litigants also confirmed the payment of bribes. However, the confessed amounts averaged about 2 per cent of total expenditure. Non-disclosure is a possibility, which means that actual expenditure on bribes may be higher. Locational differences were significant as 52 per cent of respondents from District Mardan included bribes in their list of expenditures, compared to 29 per cent of respondents from District Abbottabad. Sex-disaggregated data was also revealing. 70 per cent of men compared to 20 per cent of women said they paid bribes as part of their litigation expenses.

In addition to expenditures, opportunity cost in terms of loss of income was also recorded. 86 per cent of litigants belonged to the income bracket of upto Rs.20,000 per month. 69 per cent said that they had lost more than one month's salary, or an estimated average loss of about Rs.27,000. In 55 per cent of the litigation cases, other household members accompanying the litigant also experienced a loss of income, indicating that the cumulative loss to the household is likely to be more than the stated average loss per litigant.





64 per cent of litigants used savings and assets to meet court-related expenditures. Of these 73 per cent were men and 44 per cent were women. The difference indicated by sex-disaggregated data may be a reflection of the generally low asset base of women. With more than half of the total litigants confirming that they used savings and assets, it is likely that the poor with limited or no asset base decide against legal action, if aggrieved.

25 per cent of litigants received support from friends and relatives. Women were much more vulnerable and their dependence on friends and relatives was almost 3 times higher, 44 per cent compared to 15 per cent of male respondents. 7 per cent of litigants said that they incurred debt to pursue their cases. Only 9 per cent of respondents confirmed that they had availed legal aid.

Lawyers, mostly engaged on recommendations made by family or friends, were also criticized. Some litigants complained about lawyers' incompetence, overbooking and unavailability. And 30 per cent had even changed their lawyers.

The language and complexities of court processes left one out of five litigants at the mercy of their legal counsels. The poor who are often illiterate were worse off. Many lawyers also represent those not able to afford legal counsel. Sometimes, such cases are referred by judges and other court officials.

Litigants criticized the lack of infrastructure and facilities provided in the court premises. Even minor changes like benches for seating, and toilets - separate for men and women - would facilitate citizens as they pursue their cases in court.

“Representing the poor is hard work. They have no knowledge of required documents such as revenue record or nikha nama (marriage certificate), and they also don't have money to obtain these. Witnesses seldom appear for the poor, as they are not able to pay their travel expenses.”

Senior lawyer

Abbottabad





"Conditions need to be created that ensure there is no exploitation of any province for being a part of Pakistan. And that if any province considers whether it is better-off as a separate, independent, entity or as a part of the federation – the answer must always be that it is better-off as a part of Pakistan. While the 18th Constitutional Amendment has strengthened provincial autonomy, there is still unfinished business."

Salman Akram Raja

*Aman Ittehad National Convention*  
Islamabad, 28 June 2012



## 4. Comparing public experiences with public budgets

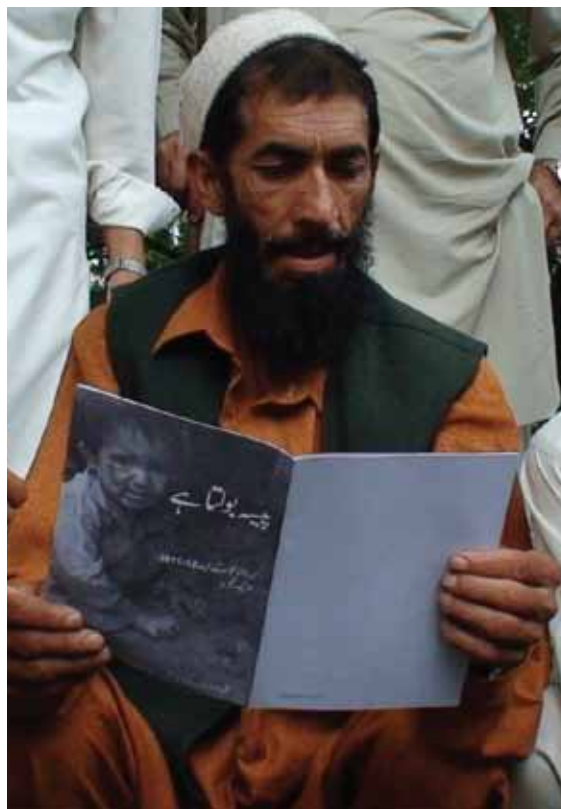
People experience myriad injustices, which can broadly be categorized by class, gender or location. Women and the poor are largely socially and politically excluded, and the most vulnerable. The state's response reflected in its policies and budgets is inadequate and misdirected.

### 4.1 Class and gender-based injustices dominate

Class and gender-based injustices dominate the findings of the Foundation's study. It presents agonizing details of the miseries regularly faced by the poor and women, and also ways in which their access to recourse is limited. The study also points out impediments faced by citizens who opt to traverse formal and non-formal routes in pursuit of justice. It brings into sharp focus the impact these arduous routes have on them, and also shows how their, often futile, experiences compel their family and friends to face their own vulnerabilities. Expressions of public frustration and the alternatives people are forced to seek as their trust in the justice system erodes merits a separate study.

Locational inequities form another distressing category of injustices. These are linked with ethnic, linguistic and even religious identities, but are also often rooted in issues of access and control over resources. Marginalization caused by unequal access to resources has consistently been decried by thousands of citizens through the nationwide citizen coalition, *Aman Ittehad* (United for Peace), leading to consistent demands for realignment of public priorities, including reducing military spending so that funds are redirected to provide citizens social services and jobs.

The Foundation's analysis of Khyber Pakhtunkhwa's development budget 2011-12, documented in its publication *Money Matters*, presents unambiguous examples of locational injustices. District-wise allocations for development and even resources for relief and rehabilitation of those affected by the devastating 2010 floods provide persuasive evidence of inequitable access to public funds.



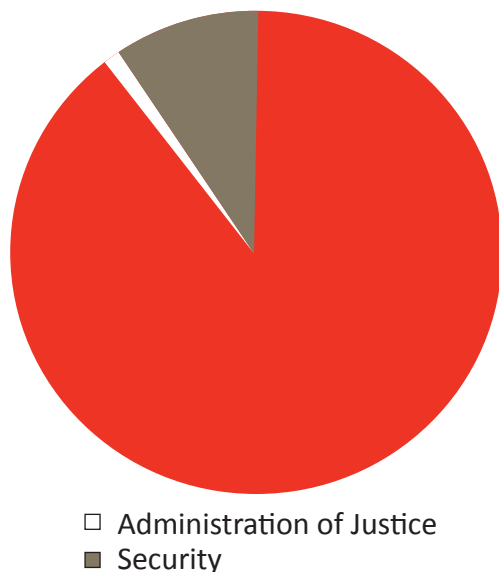
*Paisa Bolta Hai*  
Urdu version of the Foundation's publication *Money Matters*

## 4.2 The executive lacks intent

The state and society are equally blameworthy for this despairing situation. The formal and non-formal justice systems show little empathy, the executive lacks intent and, the society perpetuates, incites, and even celebrates unjust attitudes and actions.

The executive's lack of intent is evident from its allocation of public funds. Out of Khyber Pakhtunkhwa's total budget of Rs.303 billion for FY2012-13, only 1.12 per cent was allocated for the administration of justice, marginally better than 1.08 per cent allocated in FY2011-12. Roughly eight times more was allocated for security under the police, prisons, prosecution departments and emergency response services like Rescue 1122.

Khyber Pakhtunkhwa Budget 2012-13



Equally skewed are priorities assigned to funds for security, as nearly half are for brick and mortar, i.e., construction of high-security and regular prisons, and other buildings. Comparatively low priority appears to be placed to develop the investigative and monitoring capacity of law enforcing agencies, to assist in computerization of records/data, and, improve technical/forensic capacity. Though allocations are extremely low, this sector also suffers from under spending. The revised budget of 2011-12 shows that even meager allocations are not properly used to benefit citizens.

Segregating current and development budgets shows even smaller allocations for administration of justice as a percentage of the total. In 2012-13 a dismal 0.47 per cent was allocated for it of the total development outlay of Rs.97.46 billion.

There is no indication of budget allocations made to support or improve court processes. Computerization of land records, for example, can potentially mitigate or resolve land disputes, which accounted for 32 per cent of total disputes in the Foundation's survey. Despite its strategic relevance and related Supreme Court directives of January 2012, progress on computerization is slow.

## 4.3 Creative investments are required to improve court and non-court systems

Aggrieved citizens seeking relief from courts are compelled to navigate their way through a formidable mesh that is scarcely comprehensible. Lack of information about processes, procedures and protocols add as much to their burden as limited knowledge about rights, redress and remedies. Initiatives that provide paralegal support or promote legal literacy need to be significantly expanded. They must especially reach the poor and women.

Information centers or paralegal assistance can be provided within the court premises or be based in poor urban and rural communities. A district helpline can also be established to provide assistance and information to callers. Generally required by aggrieved citizens, is information related to recourse options, court processes, documentation needs, hiring counsel, estimated costs, and, available legal aid and referrals. Also needed is general information on rights -- as citizens and as consumers. Khyber Pakhtunkhwa's budget for 2012-13 shows comparable efforts only in Malakand through a donor-funded programme which aims to rehabilitate the justice and security systems destroyed during the armed conflict in the area during 2007-09.

The absence of basic infrastructure, especially for women, increases difficulties and discomfort for those interfacing with the court system. Budget allocations are required to provide basic infrastructure like waiting areas, drinking water facilities and toilets. These must be separately available for women and men. Facilities for documentation support, like photocopying and stamp paper, must also be provided at reasonable cost. Khyber Pakhtunkhwa's budget 2012-13 includes funds for new buildings and judicial complexes, but no allocation is apparent for improving infrastructure within existing court premises (*kutcheries*).



The glacial pace of court proceedings often prolong the agony of public engagement with courts. The emphasis laid by the National Judicial Policy on quick disposal is widely criticized for producing injustices or selective justice. The pressure to give early dates simply increases the number of cases to be heard daily. According to court records, the average cause list in Abbottabad stacks about 40 cases per day. In a race to meet targets, cases likely to be disposed are favoured over more complicated ones. Lawyers are overburdened with preparations for multiple cases that may be called on the same day. Litigants are also required to make more visits to court as their case may be included in the cause list – but may not be heard or may make insignificant progress due to lack of available time. More court visits entail more travel costs, which according to the Foundation's survey, constitutes 30 per cent of the overall cost of litigation. The impact on the poor and women is greater as their financial burden increases alongwith the pressure to keep up with the number and pace of appearances. Social impediments make it difficult to travel alone, and arranging a chaperone doubles the cost of travel.

If every judge has a cause list of about 40 cases and works seven hours per day, s/he can humanly give an estimated 10 minutes per case.

Senior lawyer  
Abbottabad



Despite policy initiatives to reduce the perennial *backlog* and *delays*, the caseload of almost every court surpasses human ability of fair disposal. According to the 2010 Annual Report of the National Judicial (Policy Making) Committee, the caseload in the superior and subordinate courts in Khyber Pakhtunkhwa is 197,804.



Many demand an increase in the number of judges to reduce caseload. It is argued that the present ratio in Pakistan of an average of 10 judges for 1 million people compares very poorly with the international standard of 70-110 judges for 1 million people. Applying the same standards to Khyber Pakhtunkhwa would entail increasing its number of judges from the current total of 358 to about 1,750-2,750 judges. But an increase in numbers alone, many contend, is not enough. Procedural improvements, adequate support like judicial officers and staff, and increasing capacity at all levels is equally critical. Moreover, assistance required by the court, like the availability of government officials especially *patwaris* (revenue officers), needs to be provided so that bottlenecks that cause delays are removed.

Investments are also needed in non-court mechanisms. The availability of non-court, or Alternate Dispute Resolution (ADRs), mechanisms such as *jirgas* is beyond doubt. But the effectiveness of *jirgas* as a justice provision mechanism is entirely questionable. State-sponsored ADRs like the *Musalihat Anjumans* introduced under the Local Government Ordinance 2001, or the *Musalihat* Committees operating at the police station level appear more promising. These mechanisms are also vulnerable to influences of power and money and suffer capacity constraints, but are relatively more regulated than the traditional *jirgas*. However, the time appears to have run out for these state-sponsored *projects*. Until pending decisions on local government are taken, these mechanisms may fade away. For any ADR to be effective and fair, it is critical to define their parameters, criteria for selection, and authority. They also need knowledge of the laws and effective monitoring.

Effective use of public budgets must draw lessons from the nearly eight-year experience of the Access to Justice Programme, which was initiated in 2001 and financed through a US\$350 million loan from the Asian Development Bank. Similar efforts in other countries, like Bangladesh's initiative to revamp their village court systems, may also provide useful insights on justice reform.

#### 4.4 Budget priorities: symptoms trump causes

Public perception, confirmed by the Foundation's study, considers fraying social fabric as largely responsible for increased conflicts. 83 per cent responses cited *increased intolerance* and *decreased mutual respect* as reasons for escalating conflicts. These findings reassert the imperative for building and strengthening institutions, and also customs, traditions and practices that enable expression and accommodation of divergent opinions and choices. These call for creative policies and use of public budgets.

Important areas of consequential investment are *sports* and *culture*. The passions sports can stir are often on display during an important international cricket match played by Pakistan. Such an event may leave streets deserted, and it is not unusual to find groups of enthusiasts huddled around a television set. A win by the national team often leads to spontaneous celebrations – with people dancing in the streets and distributing sweets.



Culture is equally special in Pakistan's social fabric. The rich repertoire of poetry and music includes romantic, resistance, and even reverent genres. The diversity of languages and musical instruments help build bridges and overcome differences. Performing and fine arts are also versatile and valued. There is pride in past maestros, and also appreciation of contemporary artistes. Despite the centrality of sports and culture, and their potential to promote understanding, social cohesion and a celebration of diversity, Khyber Pakhtunkhwa's development budget for 2012-13 disappointingly shows a mere 0.47 per cent as cumulative allocation in these sectors.



Legendary poet Ahmad Faraz

Locational inequities indicate that some have more than others, and many have none at all. Half of the entire funds for sports in Khyber Pakhtunkhwa's development budget for FY2012-13 are allocated to three of the 25 districts of the province, while 18 districts do not receive any public resources for sports. A few large stadiums and sports complexes, mostly in urban areas, appear to be preferred over provision of facilities that benefit urban and rural citizens at the town, union council or village levels. Activities that bring people together are largely restricted to funerals, weddings and protests.

The young that constitute about one-third of Pakistan's population, and are also most likely to be influenced by social harmony or discord appear to have priority claim on investments that can end the vicious cycle of injustice breeding anger, revenge and violence. The paltry 0.03 per cent allocated for *youth affairs* provide more evidence of skewed policy priorities. Low levels of investment in the young are even more alarming in the face of fast receding platforms for expression and entertainment. Left to fend for themselves, the youth increasingly rely on social or electronic media for information and amusement. Mostly unmet, are their needs for healthy physical exercise and intellectual growth. Opportunities for girls are even more restricted with socially imposed norms limiting their use of public spaces for entertainment or physical exercise.



## Glossary

<i>Barelvi</i>	A movement of Sufi, Sunni Islam originating in the Indian subcontinent shaped by the writings of Ahmed Raza Khan Barelvi (1856–1921)
<i>Biradari</i>	Clan
<i>Deobandi</i>	A revivalist movement in Sunni Islam inspired by Shah Waliullah (1703-1762), with its name derived from the school Darul Uloom Deoband established in India in 1866
<i>Iftari</i>	Time for breaking a fast
<i>Jirga</i>	Non-court, alternate dispute resolution mechanism often consisting of a group of respected local elders. Sometimes also referred to as <i>panchayat</i>
<i>Junbay ki siyasat</i>	Clan-based politics
<i>Madrassah</i>	Seminaries that generally teach Islamic subjects
<i>Maslak</i>	School of thought
<i>Musalihat Anjuman</i>	A panel comprising of three mediators notified at the union council level by the <i>Insaf</i> (Justice) Committee, constituted under the LGO2001, with a mandate to resolve disputes through mediation, arbitration and reconciliation
<i>Nikhanama</i>	Marriage certificate
<i>Patwari</i>	Revenue official
<i>Ramzan</i>	The ninth month of the Islamic calendar in which Muslims observe fasting
<i>Razi Nama</i>	Agreement between two or more parties involved in a conflict, often mediated by the local police, district administration or <i>jirga</i>

