Unpacking the complexities of water conflicts resolution processes in Afghanistan

• The need to understand water-related conflicts and their resolution process

Over the past few decades, research in Afghanistan has paid a great deal of attention to justice and dispute-resolution processes related to civil and criminal issues. However, studies focusing more specifically on water-related conflicts have been extremely limited and anecdotal.

Water has been mentioned as a "major source of conflict"[1] in Afghanistan. However, studies that have touched on the issue have mainly been limited to surveys that have failed to provide substantial findings on either the nature of these so-called "water conflicts", the way local institutions frame water-management rules or the complexity of the social processes necessary for their resolution.

In 2013, an AREU research paper attempted to fill this gap. It focused specifically on water rights and the resolution of conflicts related to water sharing at different hydraulic and social levels within the Sari-Pul sub-basin in northwestern Afghanistan. Based on eight case studies, it described how local actors and institutions engage in resolving water-related conflicts, with a particular focus on the different decision-making processes and choices involved.

The findings presented below provide a basis for a critical discussion of the implications for water-sector reform undertaken by the GIRoA during the past decade.

• Understanding actors, organisations and decision-making during the resolution of water-related conflicts

Different conflicts at different levels require the mobilisation of different actors and organisations

Evidence from the case studies highlights the fact that there are no fixed and formalised procedures when it comes to mobilising actors in resolving water-related conflicts, whether at the level of individual plots or in inter-provincial disputes. In fact, different conflicts at different levels require the mobilisation of different actors and organisations. The vast majority of conflicts within the lower levels of the canal system are dealt with by the community-based institutional actors specifically related to water management (i.e. saatchi and mirabs), and if necessary by general village institutions. In general, conflicts are not taken outside this social space, since doing so is seen as reflecting negatively on the community and its leadership. At this level, the footprint of local government institutions—such as the Water Management Department (WMD) or the Department of Agriculture, Irrigation and Livestock—is almost non-existent.

A much broader range of actors and institutions are mobilised to resolve conflicts occurring at a higher hydraulic level of the river or canal network. This includes local government officials, state representatives such as provincial governors, provincial-level elected bodies, national political figures and in rare cases the formal judicial system. At this level, mobilising external actors is not seen as a problem, but as the next legitimate next step in the process, should informal meetings among elders from both parties have failed to resolve the dispute.

Different conflicts at different levels are associated with different types of decision-making processes and norms

Different conflicts at different levels are also associated with different types of decision-making processes and norms. At lower levels, where resolution processes are embedded within village and mirab institutions, there is a preference for consensual and informal decisions. At higher levels, where most significant conflicts take place, modes of decision-making vary between consensual decisions on the one hand, and the mobilisation of power vested in single individuals on the other. In the latter case, decision-making follows the principle of *ekhtyar*, a conflict-resolution principle in which disputants grant sole resolution authority to deadlock breakers. Preferences for each mode may vary as the decision-making process progresses.

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1   M. Waldman, "Community Peacebuilding in Afghanistan: The Case for a National Strategy" (Oxford: Oxfam International, 2008); The Asia Foundation, "Afghanistan in 2011: A Survey of the Afghan People" (Kabul: The Asia Foundation, 2011).

The importance of complementarity among actors

The general rule that emerges from the research is that no single actor or organisation has, on its own, the ability or the legitimacy to resolve water-related conflicts. Even when powerful deadlock breakers manage to put an end to a conflict, their involvement may only be successful when facilitated and legitimised by provincial governors. In turn, provincial governors may be requested to facilitate and legitimise both the processes and outcomes of conflict resolutions, but they are not normally directly involved in enforcing final decisions. Similarly, the local WMD usually does not play the role of deadlock breaker, but is still considered a legitimate actor in contributing to the process, for example by providing technical or logistical support. The successful (or otherwise) resolution of higher-level conflicts depends on how different actors articulate and coordinate their efforts.

Personal attributes and capacity matter more than labels

The research makes it clear that resolution of water-related conflicts does not respond well to formal institutional arrangements. External actors mobilised to break deadlocks in a conflict resolution process are selected more for their personal attributes and capacities than for their organisational or institutional affiliations. One should therefore be cautious about associating certain organisations and institutions (e.g. provincial councils, CDC, mirabs) with well-defined and commonly assumed attributes related to conflict resolution.

Deadlock breakers are also picked on the basis of their understanding of the broad social and political dimensions of the conflict rather than the specific, water-related "rules of the game". Their experience in previous conflict resolution processes and the extent and variety of their support networks are critical to their legitimacy among the parties involved in the conflict. Also critical is the extent of their social capital within these communities.

Actors' understanding of political and social contexts matters more than their grasp of specific water-sharing rules:

Understanding the factors that prompt key actors to take specific actions and decisions in resolving water-related conflicts requires going beyond technical questions of water management to examine their wider social and political repercussions. In most cases, the main concern of the actors involved in conflict resolution is to limit further possible escalation or the broadening of conflict rather than the strict application of water rights. In this regard, the political interests of local power holders or national political figures who shape the outcome of the conflict resolution process may also drive decisions, which may lead in certain cases to obvious violations of water rights.

• Discussing policy implications

The findings of this case study raise questions that go beyond the Sar-i-Pul sub-basin, regarding the relevance of the water governance model proposed by the GIRoA in the 2009 Water Law.

Ill-adapted structure and composition of new institutions?

As indicated in Table 1, the sub-basin agency/sub-basin council (SBA/SBC) model for decision-making over water management at a sub-basin level is in stark contrast with current local practices.

Existing practices on conflict resolution	SBA/SBC Model
Decision-making power vested in individuals based on personal characteristics instead of institutional affiliations	Dichotomous distribution of roles: (SBC/Water users as decision-makers) vs (SBA/Government as technical advisor)
Flexibility and adaptability when it comes to mobilising the actors involved in settling conflicts	One-size-fits-all composition of actors, adopting the standard IWRM logic of representation based on water-use categories and/or institutions.

On the one hand, the SBC model promotes a fixed, one-size-fits-all composition of actors, adopting the standard integrated water resources management (IWRM) logic of representation based on water-use categories. This rigid composition is not representative of current practices, where the involvement of different actors and organisations in supporting conflict resolution is flexible and adaptive, depending on the type, level and socio-political context of the conflict. Current practices are thus more responsive to local context and the specific dynamics of each conflict. The risk with a fixed structure is that it may not include actors who have the legitimacy and authority to make conflict-resolution decisions that will be accepted by all parties.

This raises questions over whether the fixed composition of the SBA/SBC model can be adapted to a situation where each conflict may demand the involvement of different actors who may not be in the SBC.

What role for the Provincial Governor?

The SBC/SBA model also makes a clear distinction between water users as decision-makers within the SBC, and local government actors as technical advisors within the SBA. This does not reflect practices on the ground. In terms of decision-making for conflict resolution, the question is whether the distinction between water users as decision-makers and government representatives as technical facilitators would work better compared to the current practices that blur the lines between water users, government representatives, elected officials and political leaders.

In addition, the model does not clearly outline the role of provincial governors, PC members, MPs or political leaders. However, the research demonstrates that while these actors do not fit the profile of SBA/SBC members as defined by the law, their involvement in conflict resolution is critical in practice.

Is the principle of ekhtyar in line with the ideals of the water law?

The proposed SBA/SBC structure is also likely to clash with the widely observed decision-making principle of *ekhtyar*. At a basic level, actors with the legitimacy to invoke *ekhtyar* may not be eligible to sit on the SBC. More broadly, the principle itself runs counter to the participatory paradigm of the water law, which aims to put water users in the driving seat when it comes to decision-making, while confining other actors to the role of advisors. The new organisational structure is unlikely to sit well with current key deadlock-breakers, who often stand to gain significant social and political capital through their involvement as final decision-makers in resolution processes.

Is the MEW credible as an ultimate conflict resolution actor?

In relation to dispute resolution, the law allocates final responsibility to the Ministry of Energy and Water (MEW). The research shows that local power-holders tend to avoid relying on Kabul in order to prevent external political leaders "stepping on their turf." In this context, the choice of the MEW as the ultimate conflict resolution actor may not be perceived as politically neutral. In basins and sub-basins such as Sar-i-Pul, where political leaders tend to distance themselves from Kabul, the application of this regulation is therefore likely to be resisted or ignored.

In addition, in cases such as Sar-i-Pul, the local-level MEW (i.e. the WMD) has not had much legitimacy in the post-2001 period. In particular, it lacks the kind of long-established social capital that would allow it to serve as a legitimate and effective deadlock-breaker. If it wants to achieve this status, the MEW will have to devote significant effort to developing its long-term image as a reliable service provider. In the meantime, water users are likely to continue mobilising actors who have the power and legitimacy to break deadlocks in a conflict.

Overall, these arguments suggest that the relevance and legitimacy of the new SBA/SBC model proposed in the 2009 Water Law may be challenged. Consequently, there is a risk that the new instuitional arrangements may be bypassed, as illustrated in previous AREU research (see Thomas et al., 2012).

- **The need for a participatory review of the model and its added value**

As it stands, there is little evidence that the new policy model would improve on existing practices, and it could even prove to be counter-productive. It is important that the GIRoA realises that the good water-governance concepts that shape the water sector reform in Afghanistan do not emerge from existing regional and local practices in Afghanistan.

As it tries to implement its model on the ground, the GIRoA would be well-advised to make efforts to facilitate a participatory assessment of current procedures of conflict resolution according to criteria such as participation, transparency, decentralisation of decision-making, devolution of decision-making power to water users and other (Western) ideals embodied in the Afghan Water Law. This should help evaluate whether local actors believe that alternative procedures for conflict resolution would be better than current practices. If this is the case, new procedures should be defined through an inclusive process. However, if water users see no need to change current procedures, the SBA/SBC model has little chance of establishing itself as a legitimate or useful alternative to the status quo.

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