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## **The Tribal Security System (Arbakai) in Southeast Afghanistan**

Mohammad Osman Tariq (Eng.)

### **Introduction**

Forms of community policing known as Arbakai<sup>1</sup> have existed in Southeast Afghanistan for centuries, their survival facilitated by the particularly weak state presence in this region. Their existence initially became a matter of controversy during the Security Sector Reform (SSR) process in post-conflict Afghanistan (2001-). This was only exacerbated in 2007-08 when ideas of sponsoring similar militias surfaced within the Afghan government and International Security Assistance Force (ISAF). This paper examines the Arbakai in the light of existing literature about community policing and explores their relationship with the Afghan State.

Limited literature exists on this subject. Thus the author here presents highly original research findings using data collected during interviews, focus group discussions and his own experience working with the Arbakai between 2001 and 2006, after the fall of the Taliban regime. Qualitative open-ended interviews took place with three government officials and seven people from the region – three tribal leaders, two civil society members and two retired regional government officers. The author also distributed a survey questionnaire to nine people from the south-eastern, eastern, central and southern regions.

Underpinning this study lies one question: how can the state security sector engage with the Arbakai? In order to answer this, the paper will first analyse the current situation, and then the context of the region in which the Arbakai are currently active. Following this, the specific failure of the security sector reform will be discussed. Much of the paper is dedicated to explaining how the Arbakai institution works, and how it is distinct from militias and those hired by private security companies. The potential expansion of the system to other regions of Afghanistan will be discussed with a particular focus on the difficulties of introducing a community security system from above and the possible consequences of doing so. In this light, the clash between Pashtunwali, as the legal source for Arbakai, and the civil law adopted by the state will be explored. A case study of the Mangal tribe will be used to illustrate the role of the Arbakai in the counter-insurgency effort.

### **Community Policing in the Afghan context**

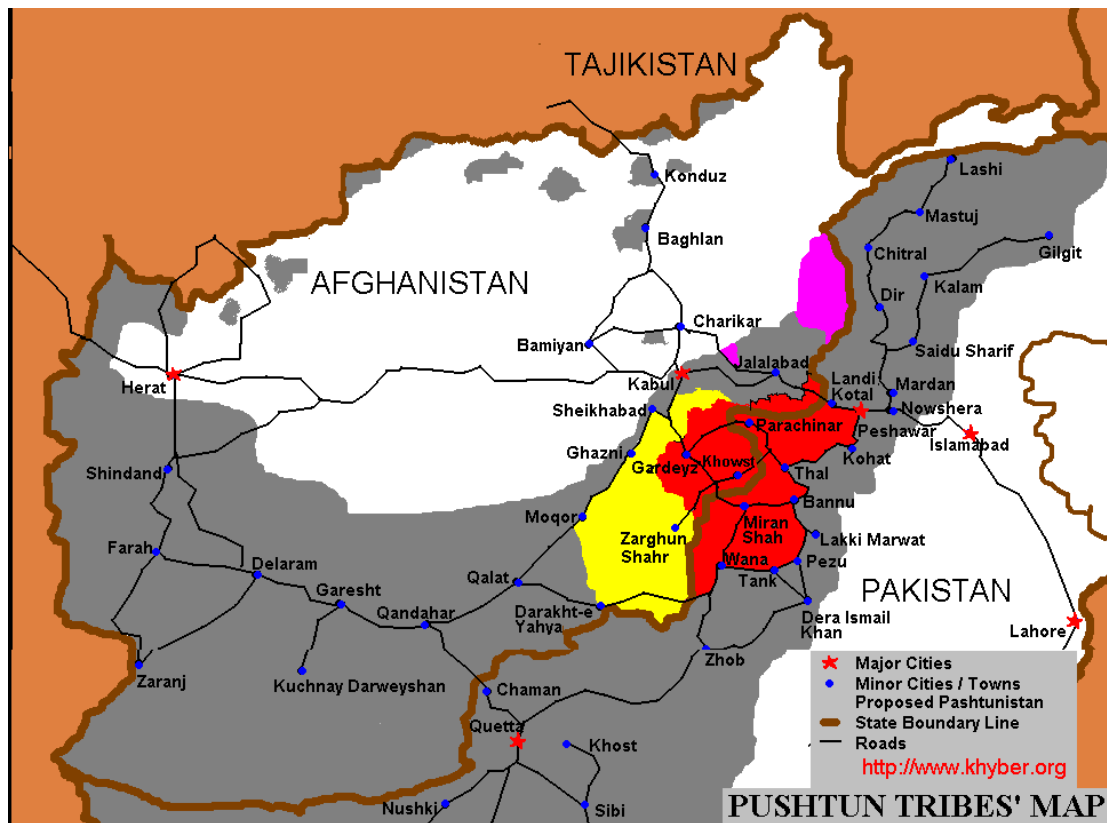
Community policing is a popular concept in the Anglo-Saxon world, which identifies with it as its own form of policing as opposed to the continental model of a more centralised and state-centric police force (Giustozzi forthcoming 2009). Types of community policing are actually common throughout the world in both contemporary and historical contexts. Yet the debate about community policing is substantially different in developed countries than in the developing world. In the latter, it is a way of reducing the cost of policing by engaging communities, therefore pursuing decentralisation based on cost effectiveness (Huda 2006:

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<sup>1</sup> The Arbakai, Arbakai system and Arbakai institution are used synonymously in this paper.

758). In Afghanistan however, the institution of the *Arbakai* is based on the customary tribal code of the Pashtuns (*Pashtunwali*) though this is rarely discussed in related texts.<sup>2</sup>

The *Arbakai* survived in the specific area of Loya Paktia for a number of reasons.<sup>3</sup> First, and primarily, tribal institutions survived there. Due to the mountainous geography of the south-eastern region, tribal structures were never replaced by the state administration (Trives 2006: 3). Second, no real ‘warlordism’ emerged in the ‘Pashtun belt’, especially in the south-east ‘where the balance of power remained much more fluid and tribal leaders maintained a strong influence’ (Giustozzi 2004: 5). In this historical context the status of the tribal system in relation to security is misunderstood, as noted by Sedra: ‘the notion that all traditional security systems have been destroyed, are dysfunctional, or incompatible with international norms and human rights is incorrect’ (2004: 17-18). It is clear that the surviving strength of the tribal structure and their code of conduct – *Pashtunwali* – resulted in these tribes maintaining their own security system as more suitable to their traditions and interests in this region than the state security sector.



- Strong Arbakai Institutions
- Weak Arbakai Institutions
- State established or initiated Arbakai

The security structure of tribes of this region involves using the *Lashkar*, a large number of people gathered by a *Chegha* (call), to defend against a common enemy. This enemy for the most part is an enemy of the country. In addition to this an intelligence department exists, called the *Kishakee* (detection or detectors). These people are responsible for the collection of information about the enemy’s status, which they give to the *Lashkar* or the *Arbakai* to use

<sup>2</sup> For example, Kakar 2007.

<sup>3</sup> See map, p.3.

in planning against the enemy or illegal activity. Finally, the *Arbakai* institution plays the role of the police in tribe, sub-tribe or community areas.

### **General description and social roots of Arbakai**

The Arbakai is a tribal based community policing system grounded in volunteer grassroots initiatives. They differ from those in militia or hired by private security companies. They have greater support and are embedded within the community. In Pashto the derivation of the word 'Arbakai' is 'messenger'. However, with reference to the security system, it is used in the broader context of security enforcement. 'Arbakai' has been defined in many ways by scholars, often imprecisely. For example, Pejcinova describes them thus: 'Arbakai are institutions kindred to local police, consisting of respected community members who wear arms and protect the village' (2007: 3.2.2). A recently published report from the International Legal Foundation (ILF) about customary law in Afghanistan states that the enforcement system used to implement the final decisions of the Jirga is called Arbakai. It describes the past, when 'in ancient Aryan tribes, the Arbakai led groups of warriors in wartime and maintained law and order in peacetime' (ILF 2007: 10). However, the report does not distinguish between *Lashkar* and *Arbakai*, which – as outlined above – have different functions and roles in Pashtun tribes. When describing Arbakai power, the report states that 'they are given considerable immunity in their communities and cannot be harmed or disobeyed. Those who flout these rules are subject to the punishments set by the Arbakai organization' (ILF 2007: 10).

Research for this paper shows a different picture of community relations with the Arbakai. One of the tribal leaders in the region defined the Arbakai as 'a group of voluntary adults who are selected by a special procedure, who carry out the responsibilities to implement the Jirga's decisions, secure the territory of the tribe or the respected community and take action against those who want to perform an illegal act' (Tariq interview 2007). The Arbakai institution conceptually exists, or existed, in different areas but sometimes with a different name. For instance, in FATA it is called Salwishti or Shalagoon and in Kandahar it is known as Paltanai. The difference between these institutions is technical, and will be described later in this paper.

The Arbakai are often understood to be a militia, but there are clear differences between militias and the Arbakai. First, the Arbakai are unpaid. Second, they are not hired by government, a person, or a company. Third, they carry responsibilities which are approved and recognized as the common or public good. The definition of militias can of course vary, but it seems far-fetched to include community-based armed groups. In Southeast Afghanistan, people are very clear about the distinction: being an Arbakai member is considered an honour while belonging to a militia is considered shameful. As Kakar states, honour is one of the Pashtunwali principles (2007: 3). The responsibility of any specific Arbakai differs from one tribe to another though they do have common tasks and duties. These are as follows:

- To implement the Jirga's decisions;
- To maintain law and order;
- To protect and defend borders and boundaries of the tribe or community.

Any of these three general categories may have various subcategories related to what is accepted or recognised as a 'common good' or as a 'threat or challenge for overall security'.

The concepts behind Arbakai power and the extent to which they are autonomous when they are in action are described in the following sections. Several mechanisms create and strengthen their embedded position in society. First, leadership of the institution is collectively accepted. Second, the benefits and interests of all members of the tribe or the community are equally shared. Third, the tribe or community members are equally responsible for all financial

obligations and expenses. These inputs and outputs bring equal status to every member of the society. Furthermore, they create the space for equal participation due to the fair and democratic selection process. Building trust and confidence is crucial to any system whether state or non-state. In the Arbakai system trust is built on three pillars: the practical impartiality of the Arbakai; the communal and/or tribal confidence in the leadership of the Arbakai; and the transparency of every aspect of their work, which is public and observable by all.

### ***Structure***

According to information from interviewees, Arbakai is a three-tier system functioning at the levels of the tribe, the sub-tribe and the community. Within this system, it is decentralised. Every level of the Arbakai is led by its own Jirga, which has financial autonomy and administrative authority within a geographically defined area. Thus, using Conyers and Lerbi's analysis, the Arbakai is a decentralised system based on both geographical and managerial components (Conyers 1999; Larbi 1998). Decentralization is already a characteristic of the Jirga, which has autonomy in the decision making process. The financial and fiscal power of the Jirga is not limited to the collection of money, but includes financial expenditure. They have a responsibility to provide for logistical support to the Arbakai, keeping *Machalga* (to ensure compliance from both sides in a dispute) and paying for insurance, and for the distribution of whatever is gained from winning disputed properties and land.

The Arbakai is responsible for the implementation of law and order based on the decisions made by the Jirga, to whom they are responsible. A higher level Jirga cannot influence decisions made by lower level Jirga except through an appellate system or when the lower level is unable to find the solution. In these cases the Arbakai institution operates in a 'default upward mode' during which 'those problems which cannot be handled effectively at the lower level are transmitted to the next higher level' (McGinnis 1999: 320). This happens when one of the parties to a conflict has not been satisfied by the Jirga's decision. That person or party has the right to appeal to the upper level Jirga to request that the case be revisited. The same structure and power is mirrored by the Arbakai at the upper level. All dimensions of decentralisation are reflected in the Jirga as the leading unit of the Arbakai institution.

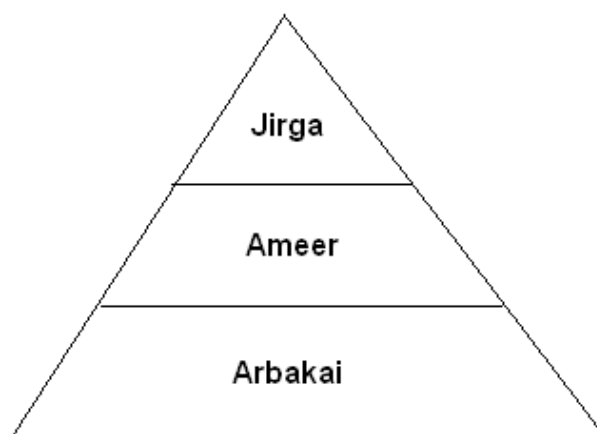
Application to Jirga membership is based upon requisite skills, knowledge and analytical power. Potential members meeting these criteria are then considered for election by tribesmen. It is natural for the community and sub-tribe's members to elect the applicant with the highest qualifications against membership requirements. Jirga membership is therefore merit based and not inherited. Leadership and membership of the Jirga are judged against the person's leadership skills and knowledge about the Pashtunwali codes and its judiciary system, and are regardless of wealth, social standing or gender. Interviews with different people from the region revealed that there are or were women as leaders and members of the tribal council and that their skills, knowledge, judgement and decisions are recognised, in some cases, as more powerful than those of their male counterparts. The respondents mentioned that the background of those women who achieved the title of tribal leaders indicates that they are mostly from non-prominent households within their tribes. This is the natural way for one to demonstrate leadership, decision making and dispute solving skills.

It may be particularly difficult to achieve membership of the Jirga if there is another competing candidate from the same representative area. The number of council members is proportionate to the number of families in the community, small branches in the sub-tribe, and sub-tribes in the tribe. One of the interviewees for this research explained one important point: every

community has representatives in the sub-tribe council and every sub-tribe has their own representative in the tribal council or Jirga.

The Arbakai are organised in such a way that all three tiers are equal but with separate functions and numbers. The person who leads a specific Arbakai is called ‘Ameer’. Ameer is actually an Arabic word meaning leader or commander. This word, when used on a larger scale, refers to a caliph who is the leader of the Islamic Caliphate. When it is used for a group of Mujahideen (holy warriors) it means ‘commander’. This word used in the Arbakai system shows a clear influence of Islamic culture on this system. Its appellation before Islam it is not clear.

Below is the organisational chart of Arbakai and Jirga institutions:



### ***Selection Process of the Arbakai***

An important concept in the tribal system is *Mirah*, which means ‘man’, though not just as a biological entity but man who behaves according to the understanding of Pashtunwali. Man, in this sense, is honest, committed, and transparent in his life and brave enough not to prevaricate against the weak. There are specific *Mirahs* in every extended family, community, sub-tribe and tribe. In addition to *Hasht Nafari*, which will be described later, there is another term inserted in Pashtunwali terminology especially in south-east: *Nowkar*. The table below shows the growing number of *Mirah* and the stable number of *Nowkar* for some tribes in the south-eastern region:

#	Tribe Name	Number of Mirah		Number of Nowkar
		In 1930	In 2001	
1	Khost Centre	48,000	170,000	12,000
2	Mangal	48,000	170,000	12,000
3	Zadran	36,000	135,000	9,000
4	Sabari	12,000	45,000	3,000
5	Tanai	12,000	45,000	3,000
6	Gurbuz	4,000	15,000	1,000

The process of selecting members for a given Arbakai starts by determining the numbers needed at the level where the Arbakai is being created (community, sub-tribe or tribe). Second, the number of Arbakai members needed for the task assigned by the Jirga must be determined. Once those numbers are confirmed, the membership of the Arbakai will be counted in proportion to the whole number of *Nowkars* at every sub-level. For instance, the Tanai tribe, which is located just on the border with Miranshah, the capital town of north Wazirestan, has

four sub-tribes. There is a dispute between the Tanai tribe and the people across the border over the forest located in the mountains between them. The Tanai tribe, to protect and prove its ownership of the forest, decided to mobilise eighty Arbakai on a permanent basis and deploy them in the mountains to protect the forest from the opposing tribe. The contribution of each sub-tribe to the Arbakai force is determined in proportion to its *Mirahs*' number, as described in the table below:

<b>Sub-tribe Name</b>	<b>Number of <i>Mirah</i></b>	<b>Number of <i>Nowkar</i></b>	<b>% of Sub-tribe <i>Mirahs</i> vs. total <i>Mirahs</i> of Tribe</b>	<b>Number of Arbakai members required</b>
Darnoohee	22500	1500	50%	40
Sitkai	7500	500	16.6%	13
Aryozee	7500	500	16.6%	13
Khaabkhill	7500	500	16.6%	13+1 <sup>4</sup>
<b>Total</b>	<b>45000</b>	<b>3000</b>	<b>100%</b>	<b>80</b>

Tasks must be shared equally among all *Mirahs*. Thus rather than calling repeatedly upon the same individuals, the role of Arbakai is rotated. Every extended family in which this system is rooted is aware of those who are on the first duty list of *Mirah*. This method of formation for the Arbakai only happens when there are ordinary tasks, not defence related tasks. For defence, as previously mentioned, the *Lashkar* are gathered through the *Chegha* method. This means a 'common call' is sounded, carried out by playing drums. In this case every adult, both male and female, is required to mobilise.

### ***Operational Procedure and Functions***

As described in the first part of this section, the tasks and functions of the Arbakai can be categorised into three main areas: to implement the decisions of the Jirga; to maintain law and order; and to defend and protect borders and boundaries of the tribe or community. In principle, the first point is also the basis for the other two points, as the Jirga hold responsibility for the oversight of the security and protection of borders and boundaries. However, operational procedure is different for each of these three types of function. Arbakai actions related to disputes can be divided into three types:

- 1) Pre-conflict: The maintenance of law and order entails the prevention of disputes. This is an ordinary and common task for Arbakai and includes watching security and preventing anti-social behaviour and any other activities prohibited by the Jirga's decisions.
- 2) Peacekeeping during disputes and conflicts: If one of the warring parties does not accept the Arbakai as an interposing force, the Arbakai will ask the Jirga for instructions. However, the possibility of such a situation is rare as those who ignore the Arbakai face punishment and destruction of their homes.
- 3) Implementation of the Jirga's decisions: After the Arbakai have secured an area, intervened between the warring parties and informed the Jirga, it is then the responsibility and task of the Jirga to solve the conflict and to make a decision towards ending the dispute and preventing another. The Jirga has its own methodology to deal

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<sup>4</sup> This is rotated between the Khaabkhill and two other sub-tribes.

with disputes and conflicts. Its conflict resolution tends to be deliberately slow, both because of the need to investigate and collect information to understand the real reasons behind the conflict and also to allow the victimised party to calm. This time delay makes it easier for the victims to accept a rational solution. This point was mentioned by all interviewees and emphasised in cases of murder. If the affected party in a murder case is in an emotional state, they will not accept any other solution except punishment by death. It should be noted that there is no death penalty in the Pashtunwali code. The slow nature of the process also allows Jirga members to relay several times between the affected party and perpetrator in order to encourage reconciliation and openness to negotiation.

After the agreement of both sides to give *Waak* (opinion) to the Jirga, each is asked for *Machalga* (Gohar and Yousufzai 2005). The *Machalga* money will then remain with the Jirga so that the Arbakai may enforce the Jirga's decision upon the disputing parties. It is possible for an unsatisfied party to go beyond this Jirga and appeal to a higher Jirga. However, this is an entirely separate issue under the customary law and informal justice system and goes beyond the scope of this paper.

The Arbakai does play a role in the final decision made by the Jirga. The implementation process is faster than the judicial process. Most of the respondents in the interviews emphasised that quick action is one of the distinguishing points in the Arbakai system. This is done in order to satisfy the victimised party, so that there is no further reaction.

The Arbakai is also responsible, in any case, for the securing of the territory of the tribe or community. To this end, the Arbakai constantly check spots in different areas and patrol day and night. In addition to the *Kishakee* (intelligence) system, the Arbakai have the strong support of community members who feel a responsibility to the Arbakai to help and assist through providing information.

### ***Downward and upward accountability mechanisms***

In the Arbakai system there are two mechanisms for accountability, each of which contributes to guaranteeing the sustainability of the system. These mechanisms function both upwards and downwards. Within the former, the Arbakai is accountable to the Jirga, which leads and directs the Arbakai. The Jirga is a collective mechanism, therefore guaranteeing transparency. This allows for Jirga members to supervise the implementation of various tasks by the Arbakai closely and carefully. There is a clear division in responsibilities between the Jirga as a decision making body and the Arbakai as an implementing institution. The Jirga is in charge of managing the Arbakai and has the required autonomy to make decisions and give power to the Arbakai, who have the power to implement, but not to change the decision. This clear distinction of responsibilities makes it easy for the Jirga and the people to monitor the Arbakai to ensure they follow these accountability mechanisms (Lam 1996; Wade 1992; Moore 1989). There are indeed many examples where a Jirga dismissed an Ameer or an Arbakai due to the delayed implementation of a decision or for involvement in corruption. Based on evidence from interviewees belonging to the Tirizai tribe of the Khost province for example, the Arbakai were asked to protect the *Mazarai*<sup>5</sup> when it was growing and not ripe for harvest. However, the Jirga received reports that the Ameer of the Arbakai were selling the *Mazarai* when it was green. The Jirga brought forward eyewitnesses and they dismissed the Ameer, who was subsequently blacklisted and cannot be appointed Ameer or Arbakai again.

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<sup>5</sup> A special plant growing in southeast Afghanistan and it is used to make beds called *Katt*, hats, ropes, and many other things. Thus people make a living using it.



There are also strong downward accountability mechanisms that make the Arbakai system trustable and sustainable. Three dimensions of accountability, explained by Schedler as ‘information, justification, and punishment’, are in place (1999: 17). The decisions made by the Jirga are public and every member of the tribe and community is allowed to attend their meetings. Tribesmen also receive information through their representative in the Jirga. The population are fully aware of the decisions made by the Jirga and know what the Arbakai are expected to implement. Every member of the tribe has the right to ask their leaders and representatives, elected by them to the Jirga, to justify their decision. In a case where an Arbakai performs or acts against what is decided by the Jirga, then this action will be rejected and those Arbakai members who are involved will be blacklisted. The strength of this downward accountability mechanism in the system derives from the fact that equal financial shares are paid for the Arbakai by all members of the tribe and from the equal social status of the members. This equality of share and payment gives equal power to every member of the tribe and the right to speak up when they feel something is wrong. It also provides equal power to their representatives in the decision making process.

### ***Finance and expenditure***

There are different ways through which the Arbakai receive money for their expenditure. First, they receive the money collected by the Jirga whenever an Arbakai mission is planned to implement a Jirga’s decision. The community or tribe members contribute equally. The amount of the money needed for such action will be specified by the Jirga according to the plan made. Second, the Arbakai may use and spend some amount of money received through *Machalga* when one of the involved parties in a dispute did not accept the decision made by the Jirga. This money will not be reimbursed to the refuting party. Third, the Jirga can collect money from people when it becomes necessary to pay insurance to the family of a member who has been killed or has been disabled or disfigured while on duty. Moreover, the dead Arbakai will continue to be counted as a living member of the tribe and community, and thus his family will receive his share. For example, if an Arbakai member died on duty and two years later his tribe won in a case of disputed land, his tribal Jirga would give his family a greater share of the won land than what they would have been entitled to based merely on the number of *Mirah* in that family. Finally, the Arbakai can receive money from fines, collected as punishment from wrongdoers.

### **The Arbakai outside Loya Paktia**

This paper will explore whether the Arbakai can work in other regions of Afghanistan in different contexts. It is important to understand the positive implications possible from the expansion of the Arbakai in other regions, and to assess the performance of attempts already made to adapt the Arbakai in other parts of the country.

The Arbakai were used to maintain law and order in some Afghan refugee camps, including camps number 2, 3, 4 and 5 in the Haripur area of the North West Frontier Province in Pakistan. It is worth noting that the people who lived in these camps were not only people from the south-east. Indeed, the majority of people living in these camps were from other regions of the country, particularly from the northern and north-eastern regions. Respondents explained that when they were living in these refugee camps during the 1980s there was an increase in anti-social behaviour by youths, which affected security. Actions included students playing truant, the increased use of drugs, harassment of girls and women by teenage boys, and theft. Attempts to control security were initiated by various informal groups of people trying to stop such activities. Finally, the elders, teachers and religious scholars agreed to establish a committee called the ‘Reformation Committee or Council’ and under the

supervision of this committee they established an Arbakai system. There were twenty five Arbakai from twenty five mosques who would attend daily to perform their duties under the committee.<sup>6</sup> One of these twenty five was selected as Ameer to lead the group. The group was responsible for patrolling the area day and night. If they found somebody guilty, they handed him over to the committee, which was then responsible for making a decision about the appropriate punishment. The Arbakai had representatives from every cluster of families in a shared mosque. This eliminated the risk of personal rivalries interfering with community policing. Thus when an agreement was reached that collective action was necessary against one found guilty, no one was able to refute the decision, including the relatives. It should be noted that the Pakistani police were not present in the Afghan refugee camps. Therefore there was no structure in those camps responsible for law and order other than this committee. This successful example of the adoption of the Arbakai institution was based upon grassroots initiative, effective and inclusive participation, collective action and collective leadership.

In the eastern region, there are two Arbakai systems which differ from each other: the long-established system of the Shinwari, Mohmand, and Khogyani tribes and the system re-established by the Governor of Kunar Province in 2004. The system in Kunar Province was financed by the government through the Jirga and not through direct payment to the Arbakai members when serving as, for example, militia. The money given by the government was not intended to be used as a salary, but was to cover the expenditures of the Arbakai. The system was influenced by that practiced by the neighbouring tribes of Muhmand, Shinwari and Khogyani. These Arbakai had previously received financial assistance from the government when they were focussing on border protection in the 1960s and 1970s. At that time the Afghan government was concerned with interference from Pakistan. The government handed over a section of state irrigated land for use by the Jirga, from which production profits were to be used to cover Arbakai expenses. The amount of land given ranged from 1,000sqm per small village with one or two Arbakai members to 8,000sqm for bigger groups of Arbakai. This dependence on government handouts can be seen as a weak point for this Arbakai system as it made it vulnerable to the insurgency in Kunar Province. Nevertheless, the system was successful because it was run through its own leadership: the Jirga. It has had some success in maintaining the security of development projects, as well as security on the main roads. As Giplin points out, in such situations the state is just a facilitator and the main security providers are the people (2002). Thus people are more active in these provinces with regard to their own security, compared to those where the state is the main security provider. The state began manipulating security systems from the birth of the Afghan state, from which emerged a deep distrust among the people.

Another example of the existence of the Arbakai outside the south-east region is in the Tagab district of Kapisa province, located north of Kabul. The majority, if not all of the residents are Pashtuns. Reportedly, when the district administrator and chief of police convoked a meeting to discuss the establishment of an Arbakai system, those who attended were not real representatives of the sub-tribes living in the district. Despite this, the decision was made that these non-representative individuals would introduce a number of people to the administrators and chief of police who would then be armed and have responsibility for assisting the government. Most of these people involved in the establishment of this Arbakai were ex-combatants related to the jihadist parties and were included because of their political affiliation. According to the respondents and interviewees from the district, it was not a successful system. The Arbakai themselves were victims of insurgent attacks. When

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<sup>6</sup> Here mosque means the household living close to the mosque and coming to the mosque for worship, this is used to be in a specific geographical area that includes all those clusters of families coming to that mosque.

members of this security force were killed by insurgents, there was no reaction from the people because the Arbakai did not have the full support of the people and the tribes living in the district. Their lack of legitimacy was compounded by the fact that the hierarchical command line of the district level government authority was deeply corrupt. In other words, the security force did not have the backing of a collective decision-making body and of leadership, a Jirga, embedded within the community. Thus the Arbakai lost their impartiality.

An important element of the trust inherent in the Arbakai – community relationship is that the Arbakai should not be used for the political or financial interests of individuals from the tribe or government. If the Arbakai are put in situation where they are not trusted by the whole population, they will be seen as militias rather than Arbakai. In short, the Arbakai system established in the Tagab District of Kapisa Province has the following weaknesses. It was not established using proper procedure, and indeed was implemented through a top-down approach, against the core principles of the Arbakai. It was based on implicit political goals by some local officials and was not embedded in the social fabric of the area, and thus lacked trust and support. Individuals joined it for financial reasons, not to serve their communities. It was not an impartial system and had no autonomy, and finally there was no history of the use of the Arbakai in the area.

The Arbakai system needs to be separated from the political and economic objectives of influential individuals and government authorities. It must be controlled by a representative group that will make collective decisions on the basis of equal and inclusive participation.

### **The potential engagement of a bottom-up security system with state security**

Several roles can be conceived for the Arbakai in the context of the ongoing conflict in Afghanistan. Together with the Jirga, they can act as peacekeepers and brokers, bringing the important actors together to negotiate. Furthermore, these traditional institutions can facilitate sustainable peace through a local approach to solving the conflict, as already highlighted. Alternatively, the Arbakai can be given responsibility for a specific geographical area. Some authors suggest that this could work as long as the Arbakai are integrated into the state security sector (Sedra 2004: 17-18). However, apart from the issues of legitimacy as discussed earlier, integrating the Arbakai into the failed security sector would be counter-productive. In the words of one of tribal leader, ‘governments are coming and going but our system is the same, there is no way for them to change our system’ (Heinrich Boll Foundation 2006). Government officials in the southeast region are enthusiastic about the Arbakai, seeing them as additional assistance in the provision of security and stability. Yet they have no clear idea of how this relationship would work. The chief of police in one of the southeastern provinces articulated this, saying, ‘we want Arbakai to join us as soon as possible because without Arbakai involvement security will not be established in the province’ (Tariq interview 2007). When he was asked to expand on the practical detail of how the Arbakai would integrate with the police, he had no clear proposal. He initially suggested that the Arbakai had to be under the direct supervision of the police, but soon after changed his mind and decided that the Arbakai should have at least one policeman included, as deputy for their *Ameer*. There is clearly a need for more research and discussion on the precise details of *how* integration could take place.

Moreover, some of the traditions practiced by the Arbakai can be understood as violations of international norms and human rights. For example, *Por* and *Bad* involve the exchange of women to the family of a murder victim. However, these actions occur according to the decision of the Jirga rather than being the norm practiced by the Arbakai alone.

The history of the Arbakai, as explained by interviewees in Loya Paktia, shows that tribes started helping the central state from the time of the initial establishment of Afghanistan in 1747. The Arbakai institution was used in local security contexts and for protecting border security, but they would also send their people to support central government and to provide assistance to the *Lashkar* of King Ahmad Shah Durani when he was attacking India. The sending of people to the central government is done through a system called '*Hasht Nafari*' or, in slang, *Ashna Pari*. One *Mirah* was sent from every eight *Mirhas* in Loya Paktia to help the state in fighting within and exterior to its territory. During the time of the Kingdom of Abdul Rahman (1873-1897), the tribes were asked again to help central government by sending one *Mirah* from every four *Mirahs*. Although the Arbakai were involved in local activities that were related to the role of the state, they operated in areas far from the reach of the state. Indeed, it was predominantly the border area where the Arbakai were meant to have responsibility to watch and protect. They played a successful role in this mission and this was one of the reasons that people from the southeast region or Loya Paktia were not obliged to undertake two years of military service.

Throughout different periods in the history of the region, the Jirga has played the role of peace broker and used the Arbakai as peace keeper. The Arbakai played this role at the national level in 1992 when tribal leaders from Loya Paktia made the decision to establish a buffer between warring parties and attempted to end the conflict. The peacekeeping action was successful, but the tribal leaders' attempt to solve the conflict failed. This failure was due to various reasons. First, there was little financial support for this mission. Second, some of the tribal leaders or tribesmen were committed to one of the warring parties and sabotaged the process. Third, the tribal leaders failed to take *Waak* from the leaders of the warring parties, which is a major mistake according to tribal conflict resolution rules and regulations. Finally, there was no UN or international community support to these efforts. This is the conclusion of Mohammad Daud, currently Member of Parliament from the Paktia Province and an *Ameer* of the Arbakai during that mission.

Within the current conflict in Afghanistan, a similar division of responsibilities could be attempted. Thus, the Arbakai could be used as peace keepers and the Jirga could approach the warring parties to negotiate and sit around the peace table. If this were to be the case attention would have to be paid to those weaknesses faced by the Arbakai during their duty as peace keepers in 1992, especially to the lack of financial resources and of international community support. If the Arbakai are tasked with stopping the fighting and allowing the start of peace negotiations, this must be supported by all sides including those at national level and in the local private sector. It must receive political and financial support from organisations such as the OIC and the UN.

Border security has been a core task of the Arbakai during the 19<sup>th</sup> and 20<sup>th</sup> centuries, and one which they were able to successfully perform. In 2002 there was another attempt by tribal leaders from Loya Paktia to make the Arbakai the official border keepers. They approached the government and coalition forces, arguing that the Arbakai would be more useful, cost effective, and sustainable than the border police. In other words, the Arbakai would be able to deal with a geography, culture and social context which they knew well. MP Mohammad Daud from Paktia pointed out that the price of one armoured vehicle, USD 2.5 million, it would be possible for a tribe to secure their area for more than two years. Another example on border security given below, concerning the Tanai, is also relevant here.

The Arbakai have also been involved in counter-insurgency. In late 2006 the Mangal tribe in Loya Paktia made the decision to punish those who tried to conduct insurgency activities in

their region. They were unique in their approach. In the south-eastern region most tribes were confused about the situation in which they found themselves. They could not take a clear position about insurgents and insurgent activities as the relationship between insurgency and the 'war on terror' was a new issue. Tribal leaders had problems analysing it. Insurgency will only be fought if it is recognised as a shared threat to the tribes.

The Mangal tribe declared that any person who conducts insurgency related activities would be banished and his house would be burnt. Thus, the prevention of insurgency was added to the responsibilities of the Arbakai in areas where the Mangal tribe lived and they took this seriously. For example, in the early months of 2007 a person was attempting to place an improvised explosive device intended to blast police vehicles passing through the Musa Khil District of Khost Province. The IED exploded as it was being installed and the insurgent himself was killed. The Jirga still implemented its decision. They burnt the dead man's house and they asked his family to leave the area of the Mangal tribe. The Mangal Jirga also passed a decision to prohibit poppy cultivation, promising to punish those who violated the ban by burning their houses. This was a preventive measure as the southeast region is not a poppy growing region.

As Trives stated, the Arbakai are a two-sided sword that may be used by either government or insurgents (Trives 2005: 3). Therefore, there is a possibility that if the government fails to harness the potential of the Arbakai appropriately, the system may be used to the advantage of the insurgents. The government of Afghanistan needs to make a decision. Based on the arguments presented in this paper, the government of Afghanistan should either:

- 1) Invite the Arbakai system to play an active part in security enforcement in the country or
- 2) At the very least request that the Arbakai remain impartial between the government and insurgents, who are mainly ethnic Pashtuns.

If such steps are not taken the Arbakai could be used against the government, causing central government to become vulnerable to insurgency, especially in the southeast.

### **Challenges to the State and the system**

A system that is established by the people yet at the same time fulfils one of the core functions of the state, in this case security, clearly produces a conflict and potential challenge to the state itself.<sup>7</sup> This conflict with the state grows when all the components needed for state level security, namely the army, intelligence and the police, are part of this parallel system. The Arbakai clearly present this problem, for a number of reasons.

The first reason is related to legitimacy. The Arbakai has an established method of gaining legitimacy through their establishment and acceptance by the people. Yet most government sectors and departments lack this type of support. One reason for this lack of recognition is that the Arbakai system is incompatible with many of the rules and regulations currently practiced by the state police, even where the Arbakai are officially recognised. Yet examples do exist where the Arbakai were recognised and approached by the state for assistance. For example, the Arbakai were asked to assist the security sector during the elections to secure polling stations (Baldauf 2004).

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<sup>7</sup> For further exploration of this theme see Giplin 2002.

When not recognised officially, the Arbakai undermine the state in two ways. First, in those areas where both the Arbakai and state security system operate, people may prefer to go to the Arbakai for their security rather than to the corrupt police system. Studies demonstrate that eighty to ninety percent of people with disputes prefer to rely on customary law rather than on the state judiciary system (Barfield 2007: 21ff). Second, in areas where the reach and power of the state security sector is not present, there is no way for the state to deal with the security of individuals and to provide an accessible judiciary system. Ultimately, for the sake of legitimacy it would be advisable for the state to recognise the Arbakai, even if such a move might be criticised by some non-Pashtun politicians.

Since customary law as a legal system for the Arbakai clashes in many ways with the civil law and Islamic regulations used in the state judiciary system, reform would be needed on both sides to harmonise the systems. However, the more practical issue to be addressed is how to reconcile the successful practices of customary law with the failed judiciary of the state (Barfield 2007: 21ff).

The differing management systems could also pose problems. In Afghanistan, the police and other security sector institutions follow a hierarchical, bureaucratic management system. The Arbakai, on the contrary, are directly controlled by the communities. It will be difficult to reconcile these structures. The Arbakai would lose their *raison d' être* if they were incorporated into the bureaucratic structure. However, the adoption of a community based system by the state security sector seems unlikely.

## Conclusion

It should be clear at this point that the Arbakai function effectively and are a form of participatory governance (Fung and Wright 2003). Not only do they have strong accountability mechanisms, but also a clear division of responsibility exists between different levels. They are financially self-sufficient. The Arbakai can contribute to the general security of the country and it is possible for Arbakai to be engaged with the state security sector while still maintaining its own principles and neutral stance. Such grassroots institutions, if engaging with state security sector, do need 'the creation of formal linkages of responsibility, resources distribution, and communication that connect these units to each other and to super-ordinate, centralized authorities and the use and generation of new state institutions to support and guide these decentered (sic) problem-solving efforts' (Fung and Wright 2003: 15-16). The simplest way for the state to absolve these needs would be to recognise and legitimise the role of the Jirga in managing the Arbakai. The state security sector must establish organisational relations that allow the engagement of the Arbakai through the Jirga. This will also broadly recognise the responsibility of the tribe whilst maintaining the state as facilitator.<sup>8</sup> Given that reform of the ineffective management system currently operated within the state institutions is a general requirement, with or without Arbakai involvement, accepting the potential of the Arbakai could help the reform process.<sup>9</sup>

Expanding the Arbakai system to other parts of the country would entail addressing larger challenges, but as this paper has outlined, it would not be completely impossible. The fact remains that the Arbakai is rooted within social cohesion deriving from tribal unity, which is strongest in the southeast region but not specific or limited to this region. In the case of the refugee camps in Pakistan, where the system succeeded, the initiative came from Zadran

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<sup>8</sup> For more on this topic see Myhill 2004).

<sup>9</sup> As argued in ICG Asia Report 138 2007.

tribesmen, one of the biggest tribes in the southeast. This suggests that to develop the Arbakai, social cohesion and collective decision-making have to be enhanced. In some cases, local Shuras might be used for this purpose. However, in the absence of reform of the state apparatus, this process might not just be impossible but even counter-productive. If so, it could contribute to the final undermining of the Afghan state as it has been known so far.

## Glossary

- Ameer:* Arabic for leader or commander. This term is used extensively in Afghanistan.
- Ashna Pari:* Slang for *Hasht Nafari*
- Chegha:* A call to defend against a common enemy.
- Hasht Nafari:* Literally ‘one of eight’. In practice it refers to the system where one *Mirah* was sent from every eight *Mirhas* in Loya Paktia to help the state fight within and exterior to its territory.
- Jirga:* The tribal council.
- Kishakee:* Literally, ‘detection’ in Pashton. It is used to refer to the ‘intelligence department’ of a tribe.
- Lashkar:* A large number of people gathered by a *Chegha* to defend against a common enemy
- Machalga:* This is the surety given to the *marakachyan* by both sides of the case in dispute, ensuring unconditional compliance of the *maraka's* decision. Usually topaks, Kalashnikovs, cash or ornaments may be given in *machalga*. *Machalga* is forfeited against the side not accepting the *maraka* sentence. Unless *machalga* is given the *maraka* will not be convened. When convened, the *maraka* will ask both sides to pledge orally that the side not accepting the decision will not request return of its *Machalga*.
- Mirah:* A man who abides to Pashtunwali.
- Mujahideen:* Warriors fighting  *Jihad* (holy war).
- Nowkar:* A person subject to the military obligation to serve in the *Arbakai* or in the *Lashkar*.
- Pashtunwali:* The tribal code of the Pashtuns
- Waak:* *Waak* is the opinion given by rival parties to *maraka* or *Jirga* to settle a dispute. When someone gives his *Waak* to a *Maraka* or *Jirga*, it is called *Da waak Maraka* or *Da Waak Jirga*. The sentence of the *Waak Maraka* or *Waak Jirga* is irrevocable and all parties have to obey it. *Waak* is given by both sides of the case under hearing. When someone is persuaded against his own will, it is said (*wak-ye-pradai dai*) i.e. his will belongs to someone else.



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