

CODIFICATION OF WATER RIGHTS AFGHANISTAN

Case study of water rights and water codification of Nimruz province



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Abstract

This report is based on observation of Nimruz province's irrigation and water distribution systems. The contents are derived from interviewing with key stakeholders involved in this regard both from high ranking and low ranking governmental and local people.

For acquiring the necessary information, a questionnaire was used, and different aspect of cases was discussed. The discussion matters included water rights and allocations between communities, possibility of conflict and mechanism for resolving them, social structure within communities, water law and codification/registration, and many other subjects. There was a discussion whether codifying water rights would make a positive impact on water rights and allocation or not. Then, conclusion and final outcomes are recorded here.

In this context, efforts made to summarize and extract the conclusion from statements of interview, and also direct statements are included here.

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QUESTIONNAIRE

Questionnaire

The following questions were asked during interview of stakeholders.

1. The current rights and water allocation within and between communities on the shared water source.
2. The possible tensions and conflicts.
3. How the social structure within the community and the level of the overall water governance in the area after three decades of war have been changed, how conflict solving mechanism changed over three decades of war?
4. The mechanism for resolving the conflict, who is engaged, what is the informal or formal process.
5. How new infrastructure investments will effect on water allocation within the new system in downstream of new system, or dealt with?
6. What the effect has been of the new water law on water rights and allocations in the province?
7. Are water laws/rights registered? And where which office/ministry and location?
8. Whether registering water rights formally in a water right register would make a beneficial contribution? Conflict/un-clarity created by new infrastructure development (the new dams in Nimruz).
9. How the conflicts are there? Their nature, like of volume of water, season of irrigation, downstream upstream tension, thinking by any group that their historical rights violation is now due to new infrastructure, what could be the possible solution, any progress or move up to now in this regards, how, when, in which level?
10. Conflict on spate irrigation flows?
11. Conflict between pastoralists and farmers Nature of water conflict, reason, parties involved.
12. Relation between water conflict and other conflicts.
13. Mechanism for mediation, efforts at resolving it.
14. Role of current codification/ registration of access and use rights, if any. (New Afghan law of 2004/2005 and how it is perceived by local community.
15. Role/ changes with the water laws.

INTERVIEWEES

Interviewees

INTERVIEWED AUTHORITIES

The following authorities and stakeholders were interviewed regarding water matters in Nimruz province in the second trip of reconnaissance research.

GUL AHMAD	MOHAMMAD AKBAR	ABDUL RAHIM MAZLUM
		
Authority in livestock department in ministry of agriculture and livestock	Director of Agriculture and Livestock Ministry	Authority in Supreme Court
HAJI MOHAMMAD NADIR	HAJI ABDUL RAUF	ENGINEER NABI
		
Acting Director of Land Record Authority	Deputy of Development project DDA, and member of people's Shura	Director of Energy and Water Ministry

NIMRUZ PROVINCE

Nimruz province

Nimruz Province is located in south west of Afghanistan with area of 41356 km². Its capital is Zaranj, and the main languages spoken by people here are Pashtu, Balochi, and Dari.

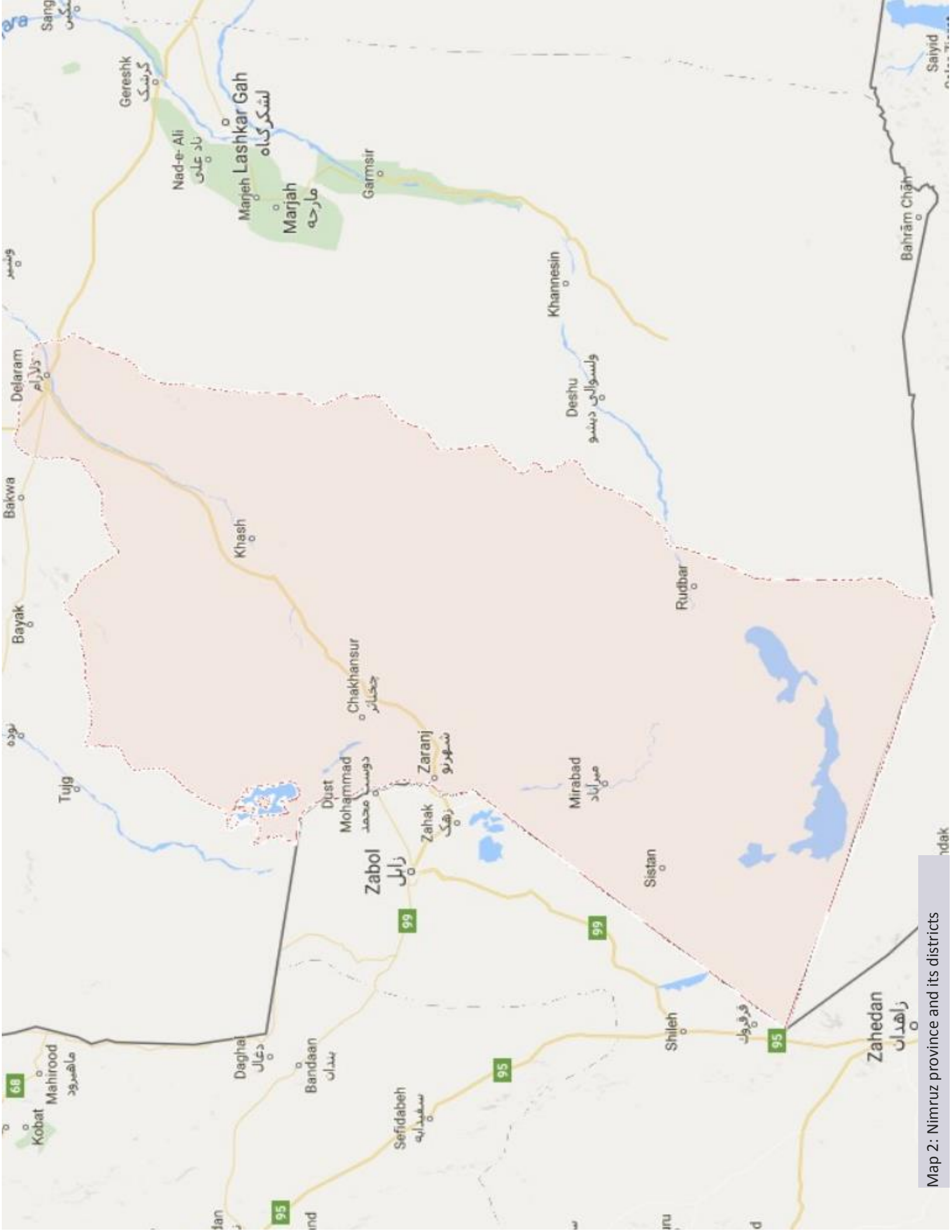
The population of Nimruz Province is approximately 156,600 settled people. There are also many Kuchi nomads who inhabit the province seasonally. The Baloch ethnic group forms majority in the province followed by Pashtun, Brahui, Tajik, Uzbek, and Hazara. The Pashtun tribes are mostly Barakzai and Nurzai. Languages spoken in the province are Pashto, Dari, and Balochi, which is spoken by the Baloch tribes as their mother tongue.

Table 1: districts and their characteristics of Nimruz province

District	Capital	Population	Area	Villages and ethnic groups
Zaranj	Zaranj	49851	755 km ²	242 villages. 44% Baloch, 34% Pashtun, and 22% Tajik
Khash Rod		35381	5,766 km ²	63 villages. 55% Pashtun, 20% Palo, 15% Brahawi, 10% Tajik
Kang		13514	1,250 km ²	119 villages. 60% Pashtun, 25% Baloch, 15% Tajik
Chakhansur	Chakhansur	11165	9,699 km ²	160 villages. Pashtun, Tajik, Baloch and Hazara
Chahar Burjak		8080	21,864 km ²	65 villages. 88% Baloch, 10% Brahawi, 1% Pashtun, and 1% Tajik



Map 1: Location of Nimruz Province in Afghanistan



Map 2: Nimruz province and its districts

Case Study

WATER DISTRIBUTION MECHANISM

According to interviewed people, currently, water is distributed randomly and there is no specific rule to be implied. Farmers of upstream get enough water; yet, downstream farmers do not have much control over water and they just receive the remaining water from upstream water users. However, in the past, it was said Nitra method (a local system which according to that water is distributed between farmers based on their land area) was used for this purpose.

“We used to implement Nitra system based on land area; however, on account of civil wars, majority of people became immigrant and all of systems were eliminated. Currently, we share water based on time, namely hour. We need a serious survey in order to determine people’s agricultural area, and having done so, we can determine the dimensions of gates. For this purpose, we requested neighborhood provinces; yet, they did not reply.” (Nabi, 2016)¹

“Currently, there are gates use for water sharing; however, in the past the Nitra System was used for this purpose. Upstream farmers receive more water and this causes to downstream farmers cannot receive enough water. Sometimes, people of downstream blocks the upstream juis to get water. Government does not have control over water distribution.” (Rauf, 2016)²

“The Nitra system which is based Jerib (a local measurement for land area equal to 2000m²) is not applied here. Despite being in proximity of Helmand River, we are facing water scarcity problems. Additionally, the underground water is salty and cannot be used.” (Mazlum, 2016)³



Figure 1: a canal on downstream which is dry due to shortage of water

¹ Eng. Nabi, Director of Energy and Water Ministry. Personal interview. 20 Aug. 2016

² Haji. Abdul Rauf, Deputy of Development project DDA, and member of people’s Shura, Personal Interview, 18 Aug. 2016

³ Lawyer. Abdul Rahim, Mazlum, Deputy Director of Local Supreme Court. Personal Interview, 16 Aug. 2016

CASE STUDY

“The current system of water distribution is a local method called Nitra. This method is based on area of agricultural area size which means that people receive water proportional to their area of land.

It is responsibility of local branch of Ministry Energy and Water to allocate and distribute water from river up to sub-canals, and the rest which is distribution from sub-canals to Juis is responsibility of Ministry of Agriculture. “ (Ahmad, 2016)⁴

In case of water distribution between Afghanistan and Iran, Afghanistan does not have sufficient control over water, and because of this reason Iran receive water more than he is supposed to receive.

“Majority of Nimruz’s water, approximately 80-85% of it, streams to Iran, and if there be spare water, it comes back to Afghanistan. If there were water, Nimruz could provide wheat for entire Afghanistan due to his vast land of cultivation. Government also does not prevent flow of water to Iran.” (Nadir, 2016)⁵

“We do not have any dam to control and distribute water between Afghanistan and Iran; therefore, Iran receives vast amount of water now, and he created some illegal water canals on stream of Helmand River.” (Nabi, 2016)

“Iran acquires more water than he is supposed to get by law.” (Mazlum, 2016)

CONFLICTS OVER WATER DISTRIBUTION

There are some minor conflicts over water sharing between farmers. However, these conflicts are not extreme and are solved by mirabs⁶. Majority of conflicts are between upstream and downstream water users and farmers on canal level. Upstream water users get the highest benefit from canals and water, but downstream farmers wait until the upstream farmers get sufficient water and then receive water. Therefore, there is not any power to implement Nitra system for water sharing. The ministry of energy and water confessed that they could not implement any rule unless there be some kind of power to support them. Nonetheless,

⁴ Mr. Gul Ahmad, authoritative of livestock in Ministry of Agriculture and Livestock, Personal Interview, 15 Aug, 2016

⁵ Haji. Mohammad Nadir, Acting Director of Land Record Authority. Personal Interview, 17 Aug, 2016

⁶ Selected old person by local people for water distribution who has good judgement and reputation among the people.

CASE STUDY

farmers who have joint Jui⁷s reach to agreement over water sharing and there is no major conflict.

“There are not serious conflicts. When water flows, everyone’s juis is open and receive water. For this reason, people who receive water from downstream cannot acquire enough water in comparison to upstream, and their crops fail to produce the aimed product. In Nimruz, there is not a specific rule or regulation dealing with water sharing, and because of this, people of upstream receive more water than downstream. Even downstream water users sometimes do not have potable water, and women walk through kilometers to receive drinking water.” (Nadir, 2016)

“There has not happened a serious conflict over water sharing.” (Rauf, 2016)



Figure 2: Local method of water sharing in Kang District (water is divided proportional to land area)

⁷ A kind of water stream smaller than canals in size which carries water from canals to agricultural area

CASE STUDY

The problem also is lack of water storing mechanism which causes drought and flood during different seasons.

“On account of not having standard canals, during flooding season we have extra water; yet, on the rest of year we face water shortages. Therefore, downstream areas cannot receive sufficient water which initiates some clashes. However, these clashes are not so serious.” (Mazlum, 2016)

“Water here is usually seasonally, and due to lack of dams, it is used only for the season which water is and on other seasons people face water shortage for both drinking and other purposes. “ (Nabi, 2016)

Conflicts on spate irrigation appears to not extreme and if there be some conflicts, there are solved by people themselves.

“There are some conflicts on amount of water farmers receive, but these are not so serious and are solved immediately.” (Akbar, 2016)

“These people do not conflict over water sharing, since these are relative to each other. They complain about this, if it is solved it is better otherwise they do not conflict over the issues” (Nadir, 2016)

“There is no conflict regarding water sharing from main canal to sub canals.” (Nabi, 2016)

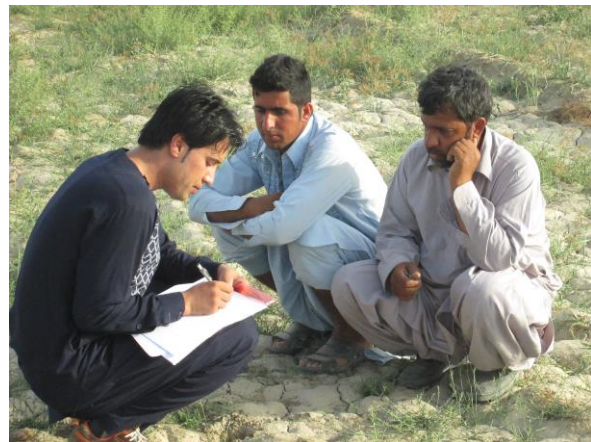


Figure 3: interview with local farmers in Zaranj

On the other hand, there are some conflicts over water allocation between farmers and pastoralists. There is no specific rule to allocate water between farmers and pastoralists, and this created some conflicts. Authorities of ministry of agriculture and livestock and ministry of energy and water judge by their own judgement. In the past due to abundance of water such problems were rare; yet, nowadays, it appears that there are problems to be considered. Even majority of animals died due to scarcity of pasture in recent years.

“In the past, water was abundant and there was no conflict in this case. However, nowadays, there are some conflicts when water is not enough for both purposes. The problem is how water should be allocated for these purposes, and there is no specific law to be implemented. Therefore, conflicts are solved by common sense.” (Akbar, 2016)

CASE STUDY

“There were some conflicts between pastoralists and farmers over water previous years, and



Figure 4: land adjacent to Lashkari Canal which is not cultivated due to being in downstream and high elevation (only a small area of this land was cultivated which was irrigated by water pumps)

pastoralists requested for more water due to their animal death because of water scarcity” (Nadir, 2016)

“There are complaints sometimes, since pastoralists are on downstream and do not receive enough water. Yet, there has not been serious conflicts.” (Rauf, 2016)

“There are some conflicts between pastoralists and farmers, since Lashkari Canal is built for irrigation, but due to long term drought pastoralists also want to use it. We paved the way for them up to 80% to solve their problems.” (Nabi, 2016)

Finally, there is no relation between water sharing conflict and other conflicts, and there is no any major conflict in this province.

“People of here are indigenous who live for long time and have so much in common. Therefore, there is not any serious conflict between them.” (Mazlum, 2016)

CASE STUDY

CHANGES IN WATER GOVERNANCE MECHANISM

There have not been any major changes in water governance and conflict solving mechanism after three decades of civil wars, perhaps except from water scarcity which now seems more than past. In the past, agricultural area was significantly less than today, so there was not water shortage; therefore, there were less conflicts.

“The current system is from a long time ago, and there is no change in conflict solving mechanism and water distribution. During Najib’s presidency, there were water pumps for irrigation, and all charges were paid by government.” (Nadir, 2016)

“The government does not have control on water gates. If the it brings any changes regarding water sharing, the people refuses irresponsibly to get more water. If there be problems, the people themselves solve them. “ (Rauf, 2016)

“During battles, people did not cultivate lands, there was not water. Therefore, the streams (juis) were not used and were dry. After that, for the period of eight years, the Lashkari Canal was also dry after establishment of new government, and it led to diminishment of plants in the area. Throughout war, canal of Charborjak and Chankhansoor were covered and filled with sand. Consequently, there was not any conflict on water right and distribution. “ (Akbar, 2016) (Ahmad, 2016)

“The Ministry of Energy and Water in cooperation with other ministries dealing with water prepared a law named water law. Based on that, heavy duties like dams, canals, and control of border water are related on Ministry of Energy and Water that has responsibility to construct and control them. In lower level, the water distribution on agricultural area is related to Ministry of Agriculture and Livestock.” (Nabi, 2016)

MECHANISM OF CONFLICT SOLVING

Majority of conflicts are solved by local mediators like seniors and mirabs this is an informal method. These mediators are very effective in this case, since they are very familiar with every aspect of conflict and have good judgement. Additionally, they have good reputation among people and other local people accept their judgement.

CASE STUDY

On the other hand, if this method does not work out and conflict is huge, people approach to formal process. In this method, complainer submit a petition to ministry of energy and water, and after that the ministry assign conflict resolving manager to find a solution for that.

Water user associations also were created for conflict mitigation by ministry of energy and water; yet, it was unsuccessful because of farmers lack of interest. According to ministry of energy and water, they tried to attract farmer for this purpose and held some meetings; nevertheless, only a few percentage of farmers participated on such meetings and the meetings were unsuccessful.



Figure 5: interview with Haji Mohammad Nadir (acting director of land record authority)

“Mirabs, who are selected be vote of people, are responsible for resolving conflicts raised on water sharing on site, which is an informal process.

Besides that, people appointed some other member of their community as cashier and secretary to collect money and write the problems when needed.

In formal case, there is a conflict resolving office in local department of MoEW in Nimruz for mitigating and resolving conflicts and tensions.

There is no serious conflict, and conflict raises on instances when land is inherited and separated between inheritors.” (Ahmad, 2016)

“There is a provincial shura⁸ which cannot resolve the conflicts. There should be a mechanism to change current system to Nitra to every one receive their rights, and with this system everyone can receive water. “ (Nadir, 2016)

“The community elders solve the conflicts in presence of representative of Energy and Water Ministry. However, although sometimes the crops failed due to water scarcity, there has been no serious conflicts over water sharing yet.” (Rauf, 2016)

⁸ It is a traditional gathering of people for making a decision and involves elder people to contribute over a decision

CASE STUDY

“Based on water law, we must arrange water user’s associations; nevertheless, unfortunately, people do not participate in such associations. According to law, all of conflicts should be resolved by water users, and in case when the conflict is not solved, they should come to the directorate of Energy and Water. ” (Nabi, 2016)



Figure 6: water sharing from a canal to sub-canals/juis (there is no control gate due farmers agreement in this level of water distribution)

“In formal process, we receive petition and we process it. However, in informal method, people usually request mirabs for mitigation of the issue. In this case, I also sometimes go onsite for this purpose. There are not mostly so serious conflicts to refer them to court.” (Akbar, 2016)

CASE STUDY

EFFECTS OF NEW INFRASTRUCTURE INVESTMENTS ON WATER ALLOCATION

All of interviewed people unanimously agreed that investment on new infrastructure will make a positive impact. The new investment will mitigate current problems of people. The new investment like constructing a dam or canal will decrease the probability of flood and people will face less drought throughout the year. Currently, construction of two huge structures in this province is in progress. Kamal Khan dam and Khab Gah Canal are under construction and these two will to a large extent mitigate people'



Figure 7: siphon at termination of Lashkari Canal which after that the canal joins Helmand River

"It would make 100% positive effect on water allocation. The major issue is that the Nitra system is not implemented. If it is applied, the people from upstream to downstream will get their share of water well, and water reach to downstream. " (Ahmad, 2016)

"There will be positive effects. If the Kamal Khan Dam is constructed and its canals are built, then vast land will be irrigated, and if the system becomes Nitra, everyone will receive water. " (Nadir, 2016)

CASE STUDY

“Surely, new infrastructure would help agriculture on the area. There are areas which do not receive water and cannot be cultivated. Once new structures are built, these lands can be cultivated and planted.” (Mazlum, 2016)

“The new and standard dam and canal will solve people’s problems 100%. By this, everyone receives their proportion of water. “ (Rauf, 2016)

“The Lashkari Canal⁹ is an old canal, and there is a siphon at termination of this canal, which is a new structure. Some of newly constructed streams (juis) are beneficial for people. On account of non-evenly water sharing, upstream farmers acquire more water than downstream. There have been built several structures; yet not enough to solve all problems in this case.” (Akbar, 2016)



Figure 8: control gates over Lashkari Canal which some of them are broken by downstream users to allow water for downstream and also by upstream users to close them and to raise level of water

By development of new infrastructure, the interviewees said that there must be any conflict, since the new infrastructures are built according to wish of people, and people know their capacity and agree to that.

“The new canals and streams lead to problem solving, and facilitates people’s word. For instance, Khwabga Canal, which is being constructed, can irrigate 30000 hectare of land.” (Nadir, 2016)

“If infrastructures are built according to standards and modern, not only they do not create problems but also they help solving problems, and water is not wasted. We do have dam; therefore, during flood

⁹ This a canal which irrigates vast majority of Zaranj and Kang districts of Nimruz province and receives water from Helmand River.

CASE STUDY

we cannot control water and it causes harms. Due to traditional Juis and canals, water is wasted, and if we have standard ones we may not have such problems.” (Mazlum, 2016)

“The new infrastructures are built with people’s agreement; therefore, it resolves problems. The more the new infrastructures are built the more the people’s problems are diminished.” (Rauf, 2016)

“The new structure development would not create any problem. The problem is volume of water sharing between upstream and downstream water users. Downstream users cannot get receive water as much as upstream users get, and implementation of Nitra method would solve this problem.” (Ahmad, 2016)

“No, new structures are usually built by people’s agreement. If a new canal is built, it is capacity is known and people in accordance to that have demand.” (Nabi, 2016)

EFFECTS OF NEW WATER LAW OVER WATER ALLOCATION AND DISTRIBUTION

Despite of existence of law, people seem to use them rarely. One reason behind this issue is illiteracy of farmers which forbid them from use and implementation of laws. Additionally, people use their local and traditional rules in this regard.

“According to law, we created some associations. However, people do not attend such associations. Specially, farmers who receive water from upstream do not participate in these associations. On account of these associations, we could irrigate vast area. In dry seasons, such associations with cooperation of people try to have water in all juis.” (Nabi, 2016)

“There are laws; nonetheless, people do not adhere to them strictly, and are not implemented.” (Rauf, 2016)

“There have been laws regarding water which we use them from establishment of the previous government. These laws are registered on Ministry of Judicial and I do not remember the exact date of their registration.” (Mazlum, 2016)



Figure 9: interview with Abdul Rahim Mazlum (Authority in supreme court)

CASE STUDY

“Water law is separated into two parts. One of them is related to Ministry of Agriculture and the second one is related to Ministry of Energy and Water. Control of main canals, sub-canals, and gates depend on Ministry of Energy and Water, and of streams (juis) depend on Ministry of Agriculture. Irrigation committees are related to Ministry of Agriculture, and water user committees are related to Ministry of Energy and Water.” (Akbar, 2016)

Regarding registration of water law, water law which these stakeholders have on their hands was given to them from capital ministries and these laws are registered in judicial ministry.

“Yes, the water right is registered. The water right is a formal journal, and it was published by order of president of Afghanistan in 2009 which has seven chapters.” (Nabi, 2016)

When the interviewees were asked about whether registering water rights make any changes, they unanimously responded on its positive impact and mentioned its importance and benefits.

“Absolutely yes. Two ministries directorate will recognize their responsibility” (Akbar, 2016)

“Law are built by human, and they are changing day by day, and registering them will help significantly in solving problems.” (Mazlum, 2016)

“Registering water rights will surely make positive effects. According to the law, everyone’s proportion of water will be specified, and based on land area people will receive water. For instance, a farmer who has a 200 jerib¹⁰ of land on upstream gets water for 1000 jerib area, and if a person has 5000 jerie of land on downstream cannot receive water for 2000 jerib area. Therefore, the laws are not implemented.” (Rauf, 2016)

ROLE OF CURRENT CODIFICATION OF ACCESS AND USE RIGHTS, IF ANY. (NEW AFGHAN LAW OF 2004/2005 AND HOW IT IS PERCEIVED BY LOCAL COMMUNITY).

“In Nimruz province, water law is full of conflict. The responsibilities are not separated between two ministries. The law which we use is named water law, and this law is used to some extent. This law is registered in Ministry of Judicial which we received that five to six years ago, which according to this main canals are related to Ministry of Energy and Water, and water streams (juis) are related to Ministry of Agriculture which is the law of 2004/2005. This law has two parts one of them is for Ministry of Energy and Water and another is for Ministry of Agriculture.” (Akbar, 2016)

¹⁰ A measure for land area equal to 2000 m²

CASE STUDY

"The laws are beneficial, and by modernization of cultivation system they will be more efficient. We have law, but unfortunately, people of Afghanistan are illiterate. Informing people by government will be difficult. Additionally, our media are not on the stage to transfer information to distant places. Even literate people do not have awareness." (Mazlum, 2016)

"There is no problem with laws, but the problem is with its implementation. There are problems because of water shortage, and if someone receives water more than their right no one asks about that." (Rauf, 2016)

"In Nimruz, people live with their old culture and demand too much from government. Yet, the laws are changed, and people still demand too much which government cannot afford that." (Nabi, 2016)

Regarding changes in social structure conflict solving mechanism after three decades of war, it was said.

"During three decades of war, canals and gates are destroyed. For instance, the Lashkari Canal is out of function now and we cannot use it. The entire canal needs to be rebuilt for making it operational." (Rauf, 2016)

"There are not any major changes during this period for these cases, except in the past there was not any conflict due availability of sufficient water." (Akbar, 2016)

"There are not any major changes during this period for these cases." (Ahmad, 2016)

"During three decades of war, there has been some changes in conflict resolution. In the past, people themselves resolved their problems. However, due to immigration to neighbor and saying their services, people are now too demanding. It is while, in the past, people themselves take action for canal cleaning and solving their problems, but now, they request these from government."



Figure 10: land area cultivated wheat in Kang District

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