NEGOTIATING CHANGE: Recognizing the Role of Customary Laws for Sustainable Livelihoods and Development in Gilgit-Baltistan

Sultan Abbas
Aziz Ali Dad

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HEINRICH BÖLL STIFTUNG

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Negotiating the Change: Recognizing the Role of Customary Laws for Sustainable Livelihood and Development in Gilgit-Baltistan

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Authors: Sultan Abbas & Aziz Ali Dad
Editor: Saleem Khilji
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About the Authors

Sultan Abbas, Karimabad, Hunza

Sultan Abbas holds a graduate degree in politics from London School of Economics. He has also studied at University of Karachi, and Institute of Ismaili Studies in London. Currently, he is teaching social sciences at Karakoram International University in Gilgit. He was a research fellow at the University of Oregon in the United States where he conducted research on international environmental governance issues, delivered lectures to the students, and presented papers in a number of conferences. With years of experience in international development, he has been involved in the governance of community institutions. He is an avid social media activist and writes for local blogs and newspapers.

Aziz Ali Dad, Gilgit

Aziz Ali Dad did his MSc in Philosophy of Social Sciences from London School of Economics. Currently, he works for Aga Khan Rural Support Programme (AKRSP) as Specialist, Knowledge Management and Communications. He is a regular columnist of daily The News. In addition, he regularly contributes to daily Dawn, weekly The Friday Times as well as some research journals. He has delivered lectures on culture, politics, arts, and literature in national and international conferences and universities. With interests in philosophy, identity politics, culture and issues of Gilgit-Baltistan, he is noted for his pioneering works in understanding conflict dynamics in Gilgit-Baltistan. He served as a Crossroads Asia Research Associate at Zentrum Orient Moderner in Berlin, Germany.

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**Glossary**

**Asthama:** To decide, and to adjudicate the pleas for justice

**Baldasaro:** It is a form of primitive slavery yet less severe and absolute - a certain group of people were required to undertake maintenance work of the community property, including cleaning of water channels annually, or undertaking the Tham (ruler's private works).

**Berune Line:** An area outside the boundary of a defined village whether in a settled or unsettled area

**Bismillah:** It is an Arabic word which means 'in the name of Allah (God).

**Bowaltarz:** Someone who is tasked with the management of horses, donkeys, camels, cows, yaks (mountain bull) and other higher livestock - a Bowaltarz would implement established laws in relation to grazing rights and related matters, water-channel management, etc.

**Chokidars:** Security guard

**Dana Sis:** Local intellectuals, who were often consulted by the rulers on matters of social justice, and to address affairs of the state- a Dana Sis would distinguish himself by engaging the people around him in delicate matters of indigenous knowledge about natural resources, history and politics. These people were also the traditional knowledge-bearers in various sectors of economy, politics, history, and culture.

**Dala:** Irrigation channels which transport water from glacier sources to the agricultural fields. In some villages such as Baltit in Central Hunza, Dala is interchangeably used with Goche’l.

**Darago:** The special officer who monitors the water channels and supervises their operation.

**Das:** It comprises the vast annexilated tracts of land, which are unclaimed in unsettled areas, but at some places, the community intends to have ownership right on the plea of its presence in the area.

**Goche’l:** Irrigation channels

**Heting:** It is a situation in high winter when all the land is opened for free grazing.

**Huyeltarz/Paynlo:** The livestock herder at lower level. Huyeltarzi was a profession adopted by unemployed or those belonging to lower classes or with little leverage in the society.

**Jangoin:** It is a privileged position accorded to a select group of people, who have contributed extraordinary services to the princely kingdom- such a person would get an annual wheat measuring one Hiper (2 kilograms of wheat or any resource paid as a tax to the state or the ruler) from a certain number of households.

**Jarpa:** An instantaneous fine imposed by a state authority usually by a Yarpa, even a Trangfa would impose a Jarpa for transgression of law or non-compliance or violation of any established code.

**Jirga:** A tribal council

**Khalsa land:** State-owned land

**Khudai:** Brushshaki-Urdu dictionary defines Khudai as a charity in the name of God. The dictionary was produced by Karachi University, in 2006.

**Maraka:** In Burushaski speaking areas across Hunza Gilgit districts, Maraka is the alternate of Jirga.

**Mir:** Mir is derived from the Arabic word ‘emir’ meaning prince or ruler. It is a title used for the rulers of the former princely states of Hunza and Nagar.

**Nullah:** It is a local word used for drain or a small stream.

**Numberdar:** A local person charged with political management, security, social conflict issues, dispensation of justice, and other matters pertaining to local society- Numberdar system was introduced following the abdication of princely states and integration of these formerly independent areas into the constitutional frameworks of the Government of Pakistan.
Phari: It is a water tank owned by every Khun (a small settlement) across Hunza-Nagar for storing irrigation water.

Raja: The title Raja can be used as an alternative to Mir. Some rulers outside Hunza-Nagar styled themselves as Raja.

Rajaki: A form of collective work, which the community would undertake to preserve not only natural resources but also to undertake the Mir's works.

Shamilat/Shamilat Deh: A piece of land which is used for the benefit of the village community or any part of the land used for the common purpose of the village.

Tehsildars/Naib Tehsildars: These are civil servants appointed by provincial government. They work under the civil district administration and take on a variety of responsibilities, including matters pertaining to land, water, and natural resource management.

Trangfa: A key member of the ruling elite whose responsibility was to collect taxes for the local ruler, dispense justice by adjudicating matters, provide advisory services to the local crown, help people around conflict resolution, identify recruits for military purposes besides initiating, monitoring and executing local development programs, i.e. settlements, new plantation, and related agricultural activities, and security matters.

Uyum: It is a title for members of society who have distinguished themselves in any field and are recognized by the princely court. Uyums being honorable people are entitled for various privileges determined instantaneously.

Wazir: A minister, but the functional meaning of Wazir is that of a person who is second to Mir (ruler) in terms of authority and privileges. In formerly princely states, there used to be one Wazir and unlike modern interpretation of Wazir the traditional definition stems from the Persian tradition where Wazir is seen as a sage, who advises the rulers in matters of statecraft and society.

Yarpa: It is a legal expert and a check on the powers of Trangfa, a kind of an appellate procedure, judicial pleas and a repository of laws- Yarpa would make sure this knowledge is transferred to the next generation through rigorous apprenticeship. Yarpa would also fix fines for non-compliance called Jarpa.

Yatkoïn: A man who would execute and implement water distribution laws.

Zamindar: Land-owner
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<thead>
<tr>
<th>Acronym</th>
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<tr>
<td>AKRSP</td>
<td>Aga Khan Rural Support Program</td>
</tr>
<tr>
<td>GBEPA</td>
<td>Gilgit-Baltistan Environmental Protection Agency</td>
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<tr>
<td>GB</td>
<td>Gilgit-Baltistan</td>
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<tr>
<td>IUCN</td>
<td>International Union for Conservation of Nature</td>
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<td>KIU</td>
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<td>National Assembly</td>
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Executive Summary

This study analyses the role of customary laws in the provision of sustainable livelihoods to the people of Gilgit-Baltistan. Taking cue from views of local communities, the study takes stock of the interplay of customary laws with local communities, who have over the centuries evolved and internalized these laws to make them part and parcel of their culture. Hence, the paper looks at the customary laws as part of the life of local communities. However, the coterminous existence of customary laws along with modern laws has given birth to a complicated situation where the local communities’ rights have lost in limbo.

Most of the valleys in Gilgit-Baltistan are ruled by customary laws. This proved conducive to local communities to manage their affairs related to land, pastures, water, minerals and community assets. The paper maps major customary laws governing resource management in Gilgit-Baltistan. In terms of land, it provides historical overview of land laws under the rule of Mirs (ruler) during the colonial and post-colonial period. Also, it discusses typologies of land tenure in Gilgit-Baltistan. Typologies include: private land, Khalsa land (or state-owned land), Shamilat (or community lands), and pasture lands.

The theme of water is dealt in detail. Water management is the most sophisticated and elaborate system in traditional mode of governance with clearly defined roles and responsibilities. It encompasses both individuals and tribes, hence is closely linked with the livelihood of people. It is found that except major towns water is still managed through customary laws in villages, particularly non-settled ones in Gilgit-Baltistan. An attempt is made to document the use of water, rights holders, laws, management and adaptation to changed times.

The section on livestock documents the process of implementation of laws related to grazing rights, pasture distribution, penalties, and roles and responsibilities. Special attention is paid to analyse patterns of herding in different sessions during the whole year. It is noticed that the practice of keeping herds of livestock diminished during the last few decades, yet many customary laws are still in practice.

Under the theme of biodiversity, the study covers the themes of forests, timber and wildlife. Since forests are scarce in Hunza and Nagar, mostly people utilize them as pastures during summer. For fuel and construction purpose, people use dead woods in orchards and poplar trees respectively. Most of the community-owned forests are managed by tribal councils. Like forests, wildlife under the customary laws is treated as a part of pastures; the rights given to the subjects on pastures accompanied rights over the usage of wildlife within. The study also sheds light on the sacred position of wildlife in the traditional worldview that was prevalent in Gilgit-Baltistan, and how the rules stem from this worldview and influence people’s attitude towards wildlife.

Though, the local rulers (Rajas/Mirs) exercised full power and authority over the mineral resources in their domains, they received no significant benefits out of it except for the gold sifted from river water by the nomads. There were no separate rules or regulations for minerals found from nullahs/pastures; rights on pasture included all resources therein.

It is felt that many of the customary practices prevalent in Gilgit-Baltistan contain many of the broad elements existing in statutory laws. This research shows that the ideas of justice, equity, accountability, fairness and respect for gender are integrated into conceptions of customary laws. One common feature across all customary systems is the immense emphasis on restorative justice. Modern conceptions of retributive justice as practiced by contemporary nation-states and in Pakistan are less important than the restoration of honor of the individual transgressor and preservation of community harmony. The liminal status of Gilgit-Baltistan has direct bearing over the practice of customary laws and its clash with modern laws.

This study reveals the liminal or unclear status of Gilgit-Baltistan and enables governments to regulate and rule the region through different policies and procedures. As a result, Gilgit-Baltistan presents a case where the land is regulated through anomalous and paradoxical laws cohabiting the same space and time in the region. To overcome the contradictions within the existing system, it is suggested that the customary laws should be formalized so that communities of Gilgit-Baltistan might be able to keep the communal spirit alive.
1. Introduction and Context

This study provides us with an understanding of the nature of customary laws in Gilgit-Baltistan focusing on Hunza and Nagar districts. Besides, the study highlights the sustainable use of natural resources and their management with a view to embed some of the robust laws into regional and national legal frameworks. An attempt has been made to identify the similarities between customary laws and statutory laws, which could complement national legislation. Furthermore, the study has suggested some ways to fill the gaps where required.

Customary laws stood the test of time and enabled communities to successfully manage and use natural resources which were, in turn, their critical sources of livelihood. Under the current scenario of climate change, population explosion, increased social mobility, and commercialization of traditional yet subsistence economic activities are putting new strains on the limited natural resources of Gilgit-Baltistan.

In this situation, utilizing and updating customary laws is an important approach to sustainably use and conserve biodiversity and natural resources such as water and soil impacted by climate change, mega development projects, and other factors upsetting the centuries-old co-existence between man and nature.

The entire region of what is today Gilgit-Baltistan was in fact a cluster of several princely kingdoms, largely isolated from each other with limited communication among them, despite the rulers often intermarried and exchanged gifts. Before 1840, some of these tribal kingdoms such as Chilas, Tangir and Darell used to practice a tribal code where local elders would take all critical decisions even though the local ruler called Raja would have a voice in the decision-making. However, it was mainly the elders and their consensus on all issues that mattered. On the contrary, the remaining regions had the absolute authority of the king whose words were final and what he spoke was the law even though he was also assisted, advised and guided by courtiers and an elaborate network of Dana Sis.

Gilgit-Baltistan is rich in natural resources. The mighty mountains of Karakoram have been the primary sources of water for the Indus river, which irrigates the southern regions of Pakistan. Until recently, the inhabitants of Gilgit-Baltistan were isolated from the outer world due to which they were not fully aware about the importance of their natural resources as well as the dependency of other parts of the country on them. It is due to the fact that local communities deemed natural resources as their property and within the indigenous framework of knowledge and governance structure that they managed to carve out livelihoods for themselves. Khan and Hunzai (2000, p.135) claim:

Irrigation system and management systems of the region [sic Gilgit-Baltistan] have been developed through centuries of trial and error, in relative isolation from the outside world. In the absence of outside knowledge and inputs, local systems were built incrementally.

It is only after the integration of the region into the newly-independent state of Pakistan that the natural resources of these mountainous regions have become part of the wider political economy of the country.

Over the centuries, the communities living in relative isolation from each other and the world around evolved elaborate and often complex regimes of governance and natural resource management. The intricate systems of governance putting pressure on the community rather than the individual with a value system preferring community life over individual freedom evolved a situation whereby these communities were successful in managing their affairs without any external help.

Recent socio-economic and political changes as well as rapid shifts in the traditional structures that held up customary laws of these communities are fading. As these communities were integrated into modern nation-states following the end of colonialism in the second half of the twentieth century, some customary laws are defunct or they have been overridden by modern national legislation and contemporary governance mechanisms. Yet in many areas, local practices in resource management are enforced through rules, beliefs and taboos that form a part of their customary laws, as they continued to survive despite severe exogenous pressures.

The local people developed elaborate knowledge and understanding as to how best to remain in a harmonious relationship with the natural environment. This was absolutely important in the context that they were trapped in the valleys below the mountains and had nowhere to go should any of the critical natural resource deplete or vanish. Therefore, harmonization with nature and a sense of utilizing resources in a sustainable fashion was built into the systems of local laws and governance. Local people, especially belonging to older generations, are knowledge bearers around local fauna and flora, medicinal plants, mineral resources, ecosystems and natural phenomena such as disasters, landslides, rains, earthquakes, etc. Among the mountainous communities of Hunza and Nagar, water management forms an integral part of local culture that evolved in a harsh environment and reflects the social and communal structures (Kreutzmann 2011).
Under the conditions of shifting economic roles and reduced dependence on nature for livelihood, many of the traditional structures have been either abandoned or weakened. They are further weakened in the wake of big investments and modern development projects such as infrastructure, as external regulations were applied in blatant disregard to local practices. In a feat of modernization, this knowledge was widely neglected in the early decades of development. In recent years, the circumstantial failure of these externally induced programs has stimulated awareness for the understanding of local conditions and traditions (ibid). This situation of weakening of the local practices is likely to aggravate in Gilgit-Baltistan in the coming years as the expansion of Karakoram Highway, and investments from neighboring countries and related projects are likely to encroach on local land, water, forests and other resources.

In this backdrop, this study will analyze the local regimes of natural resource management by mapping established customary laws in Hunza and Nagar districts of Gilgit-Baltistan. The importance of this study arises from the realization that the available information about cultural and socio-economic foundations is quite limited (Kreutzmann 2000). These customary laws can, in turn, be utilized for successful land tenure regimes, conservation efforts, and sustainable development initiatives as the way forward.

2. Methodology

For the study, qualitative tools were used to collect data through primary and secondary sources. Details are given below:

- **In-depth interviews** were conducted with the select community members and key informants from Hunza and Nagar districts. The selection criteria included experts on the customary laws and those having influence in the continued utilization and imposition of traditional regimes and natural resource governance structures.

- **Focus Group Discussions** were held with elders, youths, women, and social activists in the two districts.

- **A survey was conducted through structured questionnaires.** These questionnaires were randomly distributed among people in four carefully identified villages of Hunza and Nagar districts. These villages were: Hoper in Nagar district, and Shimshal, Baltit and Hini in Hunza district.

3. Traditional Structures of Governance

3.1 A Profile of Hunza and Nagar districts

Hunza is a remote yet serene valley located in the North of Pakistan. Snowcapped towering mountains surround the alluvial plains and bowl-shaped deep villages. Dotted along the feet of these mountains are sites for many of the hardworking rural poor communities. The valley was governed by the Ayasho dynasty (Dani 2007) in a remarkably long unbroken chain of kingship inheritance stretching over nine centuries. The Ayasho rulers were able to persist in holding power due to their negotiated partnerships with local aristocrats, feudal class and a relatively fair sense of justice (Biddulph 2001). The recently restored 700-year old Baltit Fort, which served as the seat of government, is a living testament to the greatness of this dynasty where some of the written local customary laws are proudly displayed as artefacts for the posterity to remember and reflect.

Like many of the over 500 princely kingdoms of the Indian subcontinent, Hunza was subdued by the British colonialists after a short yet brutal military engagement in 1892 in Nilt area wherein a British army officer was shot dead by a sharp shooter from Hunza side. With almost legendary proportions, this Anglo-Hunza war is still remembered with great enthusiasm by the locals, but the arrival of the British properly opened up this otherwise isolated mountain hamlet to the world.

After the battle of Nilt, the British installed and reinstated the local ruler or *Mir* on the condition that he would accept the British sovereignty over his territory and pay an annual tax to the central government which the newly-installed *Mir* willingly acceded to. The part of the British colonial package contained a set of laws that had to be followed in letter and spirit in relation to dispute resolution and control over land tenure and natural resources. In the following sections of this study, an attempt will be made to reflect on some of these laws and customary practices.

While a series of local rulers established their rule over the territory in the next few decades after British influence, the socio-economic profile of this recluse kingdom started changing gradually as the British encouraged the rulers to initiate a number of reforms aimed at bringing the traditional agriculture-based economy in sync with the modern techniques and improved farming methods. New settlements using new technologies were developed under the patronage of the late Mir Nazeem Khan of Hunza (Khan & Hunzai 2000, p.135).

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1 Authors have interviewed local notables and 'Dana Sis' (local intellectual) across the region.
In this connection, the opening of new water channels in the early period of the twentieth century brought about significant shifts in both the social and economic roles of its inhabitants due to improved economic conditions as well as the rise of new settlements inside and outside Hunza thus giving rise to new methods of governance and control.

3.2 Geographic and linguistic diversity in Hunza

Spreading over a 15 square kilometer area, the Hunza region is divided into three distinct regions where three different languages are spoken. The upper Hunza region called Gojal has a population inhabited by the Wakhi speaking people along with a sizable number of Burushaski speaking people from central Hunza. The lower or western region called Shinaki is inhabited by Shina speaking people while central Hunza is dominated by the Brushe people. According to Buddrus (2006), 70 per cent of the population in Hunza speaks Burushaski language followed by 19.2, 12.3 and less than 2.0 per cent Wakhi, Shina, and Domaaki speakers respectively.

According to Kreutzmann (2006) a majority of habitations are to be found high above the hazard-prone flood plains and comprise the valued settlement zones of the valleys. The weather patterns in Hunza valley are dry cool temperate with extreme winters.

3.3 Social and family life

With the expansion of agriculture in the early twentieth century and newly-available arable land created through the opening of new water channels and improved irrigation methods, the opportunities for working in the fields increased enormously. Both men and women had to be then fully engaged in production for an ever-growing population. In this context, both men and women worked all daylong in the fields while watering, tilling, grazing, and raising animals besides related agricultural activities. Such collaborative working facilitated a well-defined gender role in Hunza society (Hunza 2013). Men and women working side by side resulted in further collaboration in other areas of social life. In contrast to other tribal societies, women were not subjugated or seen differently. Women took full charge and responsibility of household affairs, participated in the social life, and even leveraged their status to participate in politics and decision-making. Though there were no women rulers or governors that are noteworthy, women played an important role from behind.

Within the confines of household, traditionally women played an equally important role as the society was horizontally organized recognizing the importance of each other. Nonetheless, women felt a variety of socio-cultural pressures, structural barriers (AKRSP 2014) and threats owing to poverty, inheritance, and other matters. As a result, incidents of suicide had happened frequently though not very common during this period of transition.

A resident American scholar, Clark (1956, p. 59), who spent months researching social life in early twentieth century Hunza, writes:

Women in Hunza commit suicide oftener than men. There are no frequent wife-beatings in Hunza that one sees in China, nor is there much infidelity.

The women were expected to perform the household chores, weed the fields, and help in harvest; a fair division of labor, as their small barren houses required little attention. The men ploughed, planted, irrigated and harvested, climbed the mountains in search of firewood, and tended the flocks.

Though Hunza women did not undergo overwork, brutality, or roving husbands, they are regarded as intellectually inferior. The traditional gender division of labor largely related to on farm activities has changed over the years mainly as a consequence to the changes in the economic situation of the area. Women who were involved in traditional activities (fuel wood collection, crop and livestock production) are now being increasingly involved in petty commodity production and employment (Ali 1997, p.21).

With the fall of the then princely kingdom and opening of the Karakoram Highway in the 1970s, the Hunza society was connected with the wider region in Gilgit-Baltistan and indeed beyond. The major event in the modern history of Hunza was the abolition of the state of Hunza by the then Prime Minister of Pakistan Zulfikar Ali Bhutto on September 24, 1974 (Hunza 2013). This has ruptured the continuity of traditional systems of governance. This epochal event opened the hitherto isolation of Hunza and Nagar to modernization, market forces, laws and change in lifestyle. Moreover, this transformational opening up was further enhanced by the influx of international and domestic tourists to the region as well as the inroads made by international development organizations specifically the AKRSP. An overall effect of these changes resulted in the cultivation of pro-development attitudes in the Hunza community as well as a focus around girls’ education.

Today, Hunza society is defined by high literacy rates in the region, a progressive mentality rooted in good education, equal opportunities for both boys and girls. The progressive attitudes and an approach to social development resulted in the migration of young men and women to southern parts of Pakistan in pursuit of higher education, employment and business. When many of these ‘migrants’ returned to their homeland after completing their education, they brought with them new values and ideas and grafted them on to their traditions thus creating some sort of imbalance with the similar regions with similar historical and cultural experiences. Benz (2013, p.131) is of the view that:
The comparatively rapid educational expansion in the area has resulted in inter- and intra-generational educational disparities, which are reflected in unequal personal education levels within multi-generation households and in family genealogies.

The Nagar Valley situated just across the river in Hunza is therefore, a remarkably different society in comparison to Hunza in all indicators of social life even though economically both regions are not much different in terms of income and other economic indicators, yet vastly different in matters of social and cultural life, for example Hunza has predominantly Ismaili community whereas Nagar has a twelver Shia population majority. However both these districts as well as other princely states, and settled and unsettled areas of Gilgit-Baltistan uniformly share similar customary laws around natural resource governance, which will be discussed at length in the later parts of the study.

4. The Independence of Northern Areas and Accession to Pakistan

In the mid-second half of the 19th century, the region came under the control of the maharajas of Kashmir and the British through a series of conquests. However, part of what is today Gilgit areas in the north, known as Gilgit Agency at that time, was administered by the British under a lease from 1935 to 1st August 1947. It was because the British wanted to secure the frontier part from the possible Soviet invasion, as they did not rely on the Kashmiri ruler.

After the 1st of August 1947, the area again came under the control of Government of Jammu and Kashmir and a Governor, Ghansara Singh, along with some administrative officers, was sent to Gilgit. On the eve of partition between India and Pakistan, the Gilgit Scouts – a local paramilitary force created by the British decades ago – showed its opposition to the new ruler and eventually formed a “Revolutionary Council”. The Gilgit Scouts was then led by a British man, Major Brown, who was posted there by the Kashmir government and who played an important role in the events. The Scouts lacked a coherent programme but local and external factors allowed the officers to wrest power from the dominating forces and eventually declared Gilgit the Independent Republic of Gilgit on 1st November 1947. These Scouts became the leaders of Jang-e-Azadi Gilgit (the Independence Movement of Gilgit). In the power vacuum created in the context of the partition, they initially asserted their own authority in the agency. Finally, after 17 days, these leaders relinquished their powers and a Pakistan Political Agent was sent to Gilgit to formalize the region’s accession to Pakistan (Dani 2007).

In the post-independence period, the Pakistani government followed the British policy of allowing local kings to rule their respective principalities. It allowed enough space for local Rajas to wield their power within their areas without affecting the overall administrative arrangements of the federal government. The then Prime Minister Zulfikar Ali Bhutto abolished the princely states between 1972 and 1974 and introduced a new administrative setup.

Since then, Gilgit-Baltistan, originally named the Northern Areas, has been administered by Pakistan and began to open gradual regional political participation, although it has not formally been integrated into the state as an independent province. The reason behind this is the region’s connection to the Kashmir dispute, following the United Nations (UN) resolution and Pakistan’s position that allowed its declaration as disputed part of Kashmir. At present, the region is administered through the Gilgit-Baltistan Empowerment and Self-Governance Order 2009, an act of the executive power albeit, not approved by the National Assembly (NA).


There were different customary laws in Gilgit-Baltistan to manage the local resources which will be discussed one by one in the following discourse.

- Land
- Water
- Livestock
- Biodiversity and commons
- Minerals and other natural resources

5.1 Land

Some of the progressive values that underpin local development perspectives of the region include the following concerns. Any planning, without involving and convincing ‘the have’ and focusing on ‘the have-nots’ may undermine the pro-poor aspect of development. With a promise of the equitable distribution of dividends, all segments may be brought together for a greater good. While ensuring security of tenure and title for such community lands, it is necessary to understand that although such rights do find a mention in the land records yet targeting the poorest households and securing them legal titles remains a challenging prospect.
Land is viewed as a major natural resource in Gilgit-Baltistan as the traditional subsistence economy was entirely dependent on agricultural products. Though modernization has vastly improved the ability of the people of Gilgit-Baltistan to diversify their economic activities, the burgeoning population, global food price inflation, and the potential of cash crops have brought land back to the center stage.

Importantly, less than three per cent of the total landmass of Gilgit-Baltistan is fit for agriculture and settlement purposes while the rest is occupied by mountains, glaciers, lakes, rivers, and just inaccessible plains called "Das". In government’s understanding, the Gilgit-Baltistan land falls into the following four categories.

(i) Private land
(ii) Khalsa land or state-owned land
(iii) Community lands (Shamilat)
(iv) Pasture lands

The land tenure has been evolved and developed as a mosaic of formal and informal patterns of exchange and engagement. Although various exercises to prepare land records have been made since 1887 to bring lands in the formal fold, a larger part has remained unsettled till today. Major portions in the districts of Gilgit, Astore, Skardu and Khaplu have been settled while Hunza, Ghizer, and Diamer districts are still unsettled.

In 1978-1979, Nautore’s Rules were introduced, by the then Ministry of Kashmir Affairs & Northern Areas, Pakistan to draw a line between the Khalsa and private lands. Lack of land records, weaker implementation regime and selective or targeted application of these rules resulted in sheer chaos, mismanagement and conflicts among local communities (Bhatti, Ali 2016).

Khalsa lands were distributed amongst the individuals, communities and other claimants either through court decisions, or communal decisions.

Interestingly, though in official land revenue records, Khalsa lands still exist as state property, its every patch has its own suitors and claimants. The situation was exacerbated with the settlement operation in areas undergoing urbanization, such as Gilgit, Aliabad and other town municipalities where attempts were made to remove the subtle difference between the Khalsa, Shamilat and private land.

In such a situation, with an exceptional history of governance and land ownership, it has become important to study and find practical and legal solutions that ease and secure ownership and tenure to lands in Gilgit-Baltistan. If future land related litigations are to be avoided, there must be a deeper examination and research into the exceptional history and practical solutions to land tenure and ownership as well as in terms of grazing, cultivating and water rights.

5.1.1. Typologies of land tenure in Gilgit-Baltistan

(i) Private lands: Farmland usually falls under private ownership. Most owners of farmland use their land for agricultural farming and animal breeding. However, they set aside a part of their holding for the purposes of growing grass or raising firewood. In Gilgit-Baltistan, private lands comprise those lands which are properly and legally owned by individuals or families who, in turn, enjoy exclusive rights of use (Bhatti, Ali 2016). In settled areas, such rights are recognized through the notation or an entry in Records-of-Rights (RoR). This private land could have been acquired as hereditary, by sale, gift or otherwise. A good proof of such a title can be fard (copy of entry in periodical record) or mutation. In unsettled areas, these rights are being regulated by customary rules.

(ii) Khalsa lands: Some portions of land in Pakistan are called state-owned or “Crown” land. This means that its ownership or legal entitlement is vested in the government. The government means the federal, provincial or local government. Though local governments do not have much land in their name, normally they have provincial governments’ land under their control or use.

Khalsa lands are essentially government lands, which have been mentioned in the category of Khalsa land in official revenue records in settled or unsettled areas of former princely states, political districts and agency of Chillas and Darel/Tangir. It includes areas, which had never been under the possession of anybody or had not been allotted to any community or a Zamindar (land-owner). It also includes all such Burune Line, meaning areas outside the boundary of a defined village whether in a settled or unsettled area (IUCN 2004).

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2 Settled Land refers to settlement operation, which provides “The very basis for the preparation of the records of rights is the settlement operation, which has been continuously carried out since the mid-eighteenth century. Land settlement is a vast operation conducted by several experienced, full time officials of the Revenue Department under a Settlement Officer who is equal in rank to a Deputy Commissioner or District Collectors. Settlement Operations are conducted at one time in one District and sometimes only in one Tehsil. During settlement operations, the powers of the Collector, which are ordinarily exercised by the Deputy Commissioner/District Officer (Revenue), are transferred to the Settlement Officer (A GUIDE ON LAND AND PROPERTY RIGHTS IN PAKISTAN, 2011, UN Habitat, page 9), whereas unsettled land refers to those areas where the land administration is not very regular.

3 Nautore lands are defined to include land that has never been in the possession of or allotted to any community or landowner, or which lies outside the boundaries of a village. (A Guide on Land and Property Rights in Pakistan, 2011, UN Habitat, IUCN, p.39).

4 Records-of-Rights (RoR) is a term used to refer to formal land records of a village maintained by the local government or administration. The RoR register contains name of owners, area of land, shares of owners and other rights.
(iii) Community lands: Community lands are the lands whose allocation and use is decided under customary laws. A key feature of such lands is that they are used with a wide variation in customs. An entire group of people defining itself along family, tribal and even regional contexts owns and has the privilege to use community lands.

All types of their use is subject to general approval and consensus of all or at least nominated representatives of that community. Development and social transformation initiatives have always sought to actively engage the entire community to enable them utilize these lands for broader benefit.

If not properly taken on board, serious opposition may emerge from within the community and thwart the prospects of any development for the poor segments of society. It has been a customary rule in Gilgit-Baltistan that all segments of community get equitable share in the rights related to common lands. From a pro-poor perspective of development, it would be a challenge how to target the poor portion of that community.

(iv) Pasture lands: The terms, Shamilat or Shamilat Deh, are universally acknowledged in Pakistan to denote village common land. The best translation of Shamilat in English language would be “Common Land” or “Community Land”. There is a broad range of lands under the rubric of Khalsa lands with some grazing rights and the privileges for its general use by neighboring communities. In the case of some pasture lands, more than one community may have grazing rights, thus sharing the right to use designated pasture lands according to the customary laws.

The management of these Shamilat pastures is carried out by traditional community governance mechanisms. Some of these high altitude lands are also managed by the Departments of Agriculture and Forest in Gilgit-Baltistan. However, the existence of traditional laws in the absence of traditional authority of the Mir or princely ruler has led to various outcomes in the management of Shamilat pasture lands. Recourse to modern judicial systems has not successfully resolved the conflicts in various unsettled areas of Hunza and Nagar. A long-standing land dispute between the villages of Gulmit and Shishkhat, between Mayoorn and Khanabad with Hussainabad over Bayes Das in Shinaki Hunza are some of such examples of this.

The communities of Shimshal valley have successfully used the courts to contest the expropriation of pastures for the Khunjerab National Park by the federal government (Hong 2012, p.12). Sometimes, enforcement of modern laws in unsettled areas leads to exploitation of natural resources as happened in case of Khunjerab community opposition to new plans. Because the community feared that the new management plans would make further inroads into their customary use of the area.

In 1990, at least seven Wakhi villages that shared the grazing rights in Khunjerab plateau filed a petition against the government plans to declare the area a protected one (Knudsen 1999). Knudsen cites Ghalapan, Morkhun, Jamalabad, Gircha, Sarthees, Nazimabad and Sust involved in the conflict over rights on Khunjerab plateau. Commenting on the complicated conflict between Wakhi community with government and intra village conflicts, Knudsen (1999, p.6) writes:

To complicate the matter, some individuals from other villages enjoy grazing rights on the Khunjerab plateau. These rights were granted to them by the former feudal ruler (Mir) of Hunza known as “Mir-shepherds”. They continued to contest for their grazing privileges. Although strongly opposed to the Khunjerab National Park, Shimshalis do not have grazing rights on the Khunjerab plateau.

5.1.2. Established legal and institutional frameworks outside customary laws for land management

With a view to integrate, recognize and improve customary laws around land management, it is essential to take stock of the existing institutional and legal arrangements prevalent in the region and find similarities to streamline those practices and identify gaps for a possible debate, legislative action, and reconciliation.

Unlike other provinces and settled areas of the country, the prevailing legal system in Gilgit-Baltistan is essentially a patchwork and not a result of consistent evolution. The mix of various laws and systems has aggravated the situation, created legal ambiguity and surfaced conflicts within the communities in its aftermath.

In order to address the snags and loopholes in a complicated system, flexible but sophisticated solutions need to be introduced. However, such initiatives have not been taken seriously at the legislative level and have mostly been managed according to administrative needs where the perspective of local communities is normally ignored.

This conflicting situation is potentially becoming serious with the launch of mega projects like the expansion of Karakoram Highway and other infrastructure projects. Appropriate compensations for the loss of communal and private lands in the process of infrastructure development are missing. Instead, many see these losses as being an appropriation of communal and private lands by the state itself (Correspondent 2016). Moreover, many of the existing laws have been simply extended from neighboring provinces without keeping in view the local conditions - the pitfall of consistent failure of the application of the law and issues of capacity in terms of both implementation and compliance thus threaten to create conflict that can be resolved if application of law recognizes customary rules (Shigri 2017).
a) **Legal Framework:** The system of land tenures and titles in Gilgit-Baltistan comprises colonial laws augmented and refined by Pakistani laws. It is governed by Land Revenue Act 1967, Land Revenue Rules 1968, Land Acquisition Act 1894, and other laws enumerated in the list of extended laws in Gilgit-Baltistan.

b) **Land Records System:** Land records are prepared, updated and regulated under the guidelines and legal stipulations as provided in Douei’s Settlement Manual, Land Records Manual, Land Revenue Act 1967, and Land Revenue Rules 1968.

c) **Dispute Resolution Mechanism:** For this purpose, there are three kinds of streams available in Gilgit-Baltistan;

(i) **Jirga System:** Matters pertaining to land disputes, ownership claims and grazing rights are referred to local Jirga; whose constitution and level depends upon the severity of problem vis-a-vis area, tribal fabric and sensitivity. While Jirga system is strong in Diamer, Astore and Baltistan regions, the same process called *Maraka* is held in Burushaski speaking lands across Hunza-Nagar and Ghizer districts.

(ii) **Civil Courts:** With the introduction of the Gilgit-Baltistan Self Governance Order of 2009, the scope and work of civil courts has been expanded enormously. Though most cases of land disputes are resolved and addressed by local instruments of reconciliation and adjudication, they are often settled through civil courts for definitive settlements. And the civil courts are legally empowered and their decisions are enforceable through the state structures.

(iii) **Revenue Courts:** These courts are established under the Land Revenue Act, 1967. Unfortunately, revenue courts could not be made functional in Gilgit-Baltistan as per the spirit of the Act as established in other parts of the country. Causes which may be attributed to its ineffectiveness are lack of revenue record, unsettled areas, untrained presiding officers, etc.

Land acquisition by outsiders is largely discouraged and restricted especially in the unsettled areas of Hunza-Nagar, Ghizer and parts of Astore and Baltistan. If an outsider is interested in acquiring land then it has to be approved by the headman, *Numbardar*, *Trangfa* (local chief). Individual transactions for land are also allowed but require the oversight of *Trangfa* and approval from the seller’s tribe. The basic unit of political organization in both Hunza and Nagar is the village community. Each village was under the charge of a *Trangfa*, or village headman, who was accountable to the *Wazir*. The *Trangfa* oversaw the everyday affairs of their villages and adjudicated minor disputes (Sidky 2009).

Women and widows can own land but they cannot pass this land on to their new families upon marriage unless agreed by the tribal authorities.

An outsider can apply for land acquisition but the rigorous approval process requires that the *Trangfa* or *Numbardar* must ascertain the applicant’s background in terms of his character, family, and the applicant’s criminal record.6

Most of the participants in the Focus Group Discussions organized for the study said that the outside investors, who apparently came to the region with the intention to mingle with the community, showed their

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5 Authors’ Interview with the local notables and community representatives during the study (2017)

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Table 1: Comparison of appellate forums

<table>
<thead>
<tr>
<th>Court of first hearing/ institution of cases</th>
<th>Civil Courts</th>
<th>Revenue Courts in Gilgit-Baltistan</th>
<th>Revenue Courts in Punjab</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Civil Judge</strong></td>
<td>District Collector</td>
<td>Naib Tehsildar/ Tehsildar</td>
<td></td>
</tr>
<tr>
<td><strong>Additional Civil Judge</strong></td>
<td>-</td>
<td>Assistant Commissioner</td>
<td></td>
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<tr>
<td><strong>District &amp; Sessions Judge</strong></td>
<td>-</td>
<td>District Coordination Officer</td>
<td></td>
</tr>
<tr>
<td><strong>Chief Court of Gilgit-Baltistan</strong></td>
<td>-</td>
<td>Commissioner</td>
<td></td>
</tr>
<tr>
<td><strong>Supreme Appellate Court of Gilgit-Baltistan</strong></td>
<td>Chief Secretary/ Revenue Commissioner through Law Department</td>
<td>Board of Revenue (BoR)</td>
<td></td>
</tr>
</tbody>
</table>

true colors over time. These outsiders encroached their lands, water, and mineral resources for commercial purposes. The local communities suspect the motives of outsiders. They view outsiders and their motives driven by commercial objectives.

Under present circumstances of rapid change, the local communities consider land acquisition by outsiders (either through direct purchase or other ways) a serious threat, both to their traditional lifestyle as well as to their ways of exploitation of natural resources because they do not see modern settlers as contributing to the progress of their society.

A member of Gilgit-Baltistan Legislative Assembly from Hunza (on technocrat seat), Rani Atiqa Ghazanfer (personal communication, December 2016) during a conversation with the author said:

One of the great virtues of Hunza people is that they seldom trade in land, which has ensured the continuity of a unique culture in the entire region. With more economic liberalization and pursuit of unbridled profit, there remains a threat to the local population for being exploited in the hands of outsiders, therefore, policies should be devised to manage such situations.

5.2 Water

Water, by its nature, is very adaptive under changing hydrologic and socio-economic conditions. For the mountain communities, water was a scarce resource, which is becoming ironically even more so, as population growth and increased demand for water is putting new pressures on this key ecological resource. The village headmen also arbitraged disputes over the allocation of water, and were in charge of appointing Darago (the special officers) who monitored the water channels and supervised their proper operation.

Water was traditionally considered an important natural resource, as it is critical for local agriculture and livelihood. The Karakoram-Himalayan mountain ranges of Gilgit-Baltistan hold the 'most extensive ice cover outside high latitudes' (Kreutzmann 2011, p.529). Hill (2014) claims:

It seems peculiar, and is perhaps exceptionally significant that in the high elevation desert landscapes of the Karakoram and neighboring mountain regions, irrigation systems continue to be successfully managed despite the pressures brought to bear on local communities.

The water resource management and governance is so essential that the indigenous and highly sophisticated decentralized irrigation systems form the basis of communal life, which in turn, shapes and structures broader social conflicts, determines power relations and cultural outcomes (Kreutzmann 2011). Apart from the technological infrastructure for water transportation, valley communities developed a social infrastructure, institutions and rules to ensure that water is fairly distributed for agricultural needs. Though the institutions in Hunza and Nagar are almost identical, there is a difference in management systems based on the availability of water and size of villages. Most of the customary laws that prevailed in the past are still effective in most parts as communities currently manage water rights, and limited resources through the spectrum of different water rights and organizational rules (Kreutzmann 2006).

These sophisticated techniques and social frameworks prevalent across Gilgit-Baltistan are usually undocumented and governance is carried out through knowledge holders and local notables who possessively and rigorously guard their knowledge systems and memory. This privileged knowledge is transported or passed on from one generation to another through oral traditions, which, in turn, is modified and appropriated as the knowledge is transmitted.

Confusions that arise from oral knowledge of rules and norms are frequently resolved by convening a local Jirga called upon by authorities and powerful stakeholders. Through recurring conflict resolution and consensus building, new rules evolve and continue to clarify traditional practices so that these practices might address changing contexts and remain relevant and flexible.

Traditional patterns of water management strategies across Gilgit-Baltistan evolved from an adaptation to harsh mountainous and environmental conditions. These patterns are altering with increased modernization, shifting away from agriculture, putting socio-economic pressures on local resources and enhancing relations between high lands and lowlands; all of these are drivers that disrupt traditional patterns of natural resource use.

According to Sidky (2009), agriculture constitutes Hunza’s main economic activity, and arable land is the principal source of wealth.

Most of the aqueducts and water channels have been built over hundreds of years by local rulers deploying local engineering, local labour and technique. The water is brought down through these channels and in early March special ceremonies are held to open these water channels for water transportation. The ritual of Khudai or celebration by appealing to divine intervention on behalf of the communities is the first hallowed ritual in the beginning of the year. Former Manager of Baltit Heritage Trust in Central Hunza, Hoor Shah (personal communication 2017) said that members of the community gather at a sacred space allocated for this purpose. They take their breakfast
consisting of bread and tea before recitation from the Holy Qur’an, and then reaffirm their commitment to the customary practices as given below:

5.2.1. Use of water and right holders

a) Irrigation water and drinking water sources will be protected and washing clothes and other forms of defilement will be strictly prohibited, monitored and enforced. Womenfolk whose usual responsibility was to wash clothes would pursue this activity at designated places. Non-compliance would result in punishments and imposition of fines which would be in most cases one kilogram of butter, or 10 kilogram of wheat.

b) With the migration of livestock for grazing in the high alpine pastures and animals moving through the village and its water courses, the water routes will be avoided while transporting livestock to pastures.

c) Every household will send one male representative for the community work or Rajaki (work done under forced labor conditions), for cleaning the water channel, blasting off rocks, and make necessary arrangements to clear the water channel. Non-compliance would result in severe punishment and imposition of fines determined by the community elders. In case of absence of a male relative, the punishment could be as severe as non-availability of water throughout the season to a mild reprimand. In this connection, special care and attention will be paid to single women and widows. A close male relative or even distant tribal cousin would take the burden for the women.

d) Cleaning and clearing of the water channels is the responsibility of those land owners from whose lands these channels pass through. Non-compliance would result in the imposition of fines ranging from one bull (or its equivalent) to 1 kilogram of butter to be collected by the Yarpa.

e) The contract of Yatkoín will be extended and if necessary a new Yatkoín will be appointed on the basis of his past years’ performance. Every household would pay 1/4 kilogram of wheat as remuneration to the Yatkoín.

f) Depending on the number of households and their landholdings, a time slot will be allocated for everyone. If one’s turn for access to water is foregone, he will not be able to water his fields or lands and he will have to wait for his next turn. In the meanwhile, if someone tries to ‘steal’ water, then a fine will be imposed. For example, stringent rules have been devised in communities where water is scarce or erratic particularly under conditions of shifting climate. An example of such a settlement is Hindi, a village near the Karakoram Highway. Here each household is allowed water to flow through their private property for a matter of a mere 3.5 hours per turn.

g) Under customary laws, the idea to establish a specific time and route for irrigation purposes is of a greater value. The water channels in this regard are mostly Shamilat Deh, hence a committee maintains a record in respect of turn by turn irrigation of lands.

5.2.2. Rights of women and widows around water

One of the salient features of customary law practices in the districts of Hunza and Nagar with some variations in other parts of Gilgit-Baltistan being practiced is the privilege provided to women who are unmarried, widowed, or whose husbands are not available on ‘location’ for work or other purposes. In Hunza, the community has strong practices of providing protection to women’s rights in terms of water and giving them preferential treatment for agricultural purposes.

5.2.3. Water for irrigation purposes

Located on a mountainous terrain, the soil of Hunza and Nagar doesn’t allow assimilation of water under the land’s surface thus lacks significant underground aquifers that could support subsistence of agriculture. As a result, the people had to rely on an elaborate irrigation system of gravity-fed water channels - Goche’/Khul/Dala (Burushaski word for irrigation channels).

The primary sources of irrigational water are glaciers, snow-fields and springs (rarely rivers). Water from these sources are drawn into Nullahs (drains) and lifted to villages through channels Dala/ Yup/Goche’. These channels are sub-divided into smaller ones to make water accessibility easier. Every traditional Khuns (a small settlement) has Pharis (irrigation water storage reservoirs). Similarly, almost every clan owns a gulk, i.e. a reservoir for water storage. Yatkoín was the lead authority to regulate water related matters such as execution and implementation of water distribution laws, conflict resolution, and resource management. Yatkoín also extended his advisory services to the local ruler. Equally important are the Trangsas/Numbardars in water management assisted by a Jirga system explicitly formed to tackle water related issues. Water is distributed via Vari/Bari system so that every piece of land might get a certain amount of water for a certain period of time.

A participant, during a Focus Group Discussion in Nasirabad, said:

Our turn for water comes after 45 days and it lasts for 3 to 5 hours. It is an ancient tradition and it will never change.

Every village/clan or family has to wait for its turn. For instance, in Hunza, areas like Ganish, Hyderabad, Ailabad, and Karimabad get water turn by turn starting with the oldest settlement. During water shortages, specifically in spring, old lands and settlements are given priority over new settlements. Likewise, water is distributed to the agricultural land first followed by orchards and finally Das. A participant, during a Focus Group Discussion with elderly members of the village in Nasirabad, said:
By purchasing land here, you cannot get separate rights for water. Whosoever sold you the land, you might partake his water share. There was a person who bought his water turn for Rs 6,100.

At places with water scarcity such as Nasirabad, the new settlers have to buy water rights from the Jirga. While in other regions where water is plentiful, new owners of lands would systematically get water rights by simply joining the locals in the Rajaki-Communal work. An elderly participant, during a Focus Group Discussion at Shimshal, said:

We are all successors of one grandfather. Later, we were divided into three tribes. At that time water was provided to every clan for one day. Now-a-days there is an abandance of water, therefore, water turn is not an issue.

Traditionally, Yatkoins (Water Sterwards) helped in implementing laws pertaining to water management. Yatkoins was a permament job and they were selected by Numberdars/Trangfas. Their duties included developing a distribution schedule for the villages and households, defining timeframe for each water turn, and making sure that the schedule is strictly followed. In return to their services, Yatkoins received 2.5 kilograms of grains twice a year (once wheat and once maize) from every household in the village. Today, they have been replaced, in some regions, by Chokidars (security guard), who are the government employees.

The rules and water rights were observed rigorously across Hunza and Nagar. Penalties would be imposed upon violators of common regulations, e.g. stealing water, irrigating lands other than the fix turn, etc. Commonly termed as Jarpa in both valleys, these penalties varied in degree. An elderly participant, during a Focus Group Discussion in Nasirabad, said:

Anyone who steals water will be penalised.

Historically, a sheep or goat was taken from the household for stealing water or committing other misappropriations. For higher degrees of violations, the Jirga had the right to take anything of its choice from the household (even trees). Today, the fine is paid in cash.

The glacial waters used for irrigation and household purposes in villages bring with it heavy load silt during the irrigation seasons, i.e. late springs and summers. Continuous deposits of silt in water channels reduce water pressure. It is therefore imperative to clear water channels from silt before the start of irrigation each year. Each village has its own system of channel repairing and cleaning called as Rajaki. In central Hunza and few parts of Nagar, each household is responsible to clear the segment of channels which passes through its land even if it is not irrigating their lands. In other parts, every household must share in the form of labour for such repair and maintenance. Rajaki is regulated by Jirga led by Trangfa/Namadar. A participant during a Focus Group Discussion at Hoper, said:

During the reign of king, people used to refrain themselves from stealing water. Likewise, if anyone had not followed the rules pertaining to cleaning of streams in front of their lands, he was charged with fines and punishment.

The participation in Rajaki is acknowledged only if an adult male from a household participates. No household was exempted from Rajaki except for widows with no adult son or in case of sickness. Women, old-aged men, and children were exempted from this task. However, in Nagar's principality, the women could also participate in Rajaki in the absence of their husbands. The failure in participation would lead to a penalty equivalent to wages of labor required for the task. Today, most households pay money to the Jirga to commence Rajaki. The disputes over water were settled through Astham led by Trangfas/Numbardars more in a discretionary way rather in retributary manner. In extreme cases of conflict, Wazirs would intervene to resolve the disputes. The Rajai/Mir had ultimate powers to take any decision regarding water management and rights.

5.3 Livestock

Livestock has been a primary source of livelihood in Hunza and Nagar. Animals provided communities with essential meat, wool, hair, leather and manure. In summer, all the animals were taken to open pastures located upstream in the high altitude alpine pastures except for few who were kept for milking. These pastures were divided among the clans in central Hunza and Nagar whereas, in lower and upper Hunza, they were divided among the villages.

At times, people or lineages near to royal house enjoyed more pasture resources than others since they were distributed by Mirs/Rajas. Bowalitarz, who served as an assistant to Mir/Rajas, implemented the laws related to livestock management like grazing rights, pasture distribution, penalties, etc. An elderly participant, during a Focus Group Discussion at Hoper, said:

Till 15th May every year, we take our cattle above the settlement. Then in June we take them to pastures. After that we take them to highest pastures and hand over cattle to shepherds.

Professional livestock wardens, locally called Huyeltarz/Payano, would take herds of each village to the pastures during the summers for grazing. In few villages, one male from each household for certain period of time would accompany the Huyeltarz/Payano. In Wakhi speaking areas particularly, and in more widespread areas specifically, women migrate up to the alpine pastures together with the livestock and serve as shepherds all through the summer season. A certain number of Huyeltarz/Payano were also provided by the
Mirs/Rajas in regions where the royals owned livestock. An elderly participant, during a Focus Group Discussion at Shimshal, said:

In the times of Mir, one shepherd was provided by him while two were provided by the community.

The service charges of Huyeltar/Payanlo varied from region to region. In lower and central Hunza, the livestock warden would collect the entire yield that comes from animals, including butter and wool. On return, he would give only a 1.25 kilogram butter pack to the owner of milking goats. An elderly participant, during a Focus Group Discussion at Hoper, said:

If an animal produces four kilograms of milk (daily) then two kilograms of butter is levied tax (per month), and if it produces two kilograms of milk then one kilogram of butter, and if it produces one kilogram of milk then half kilogram of butter will have to be given.

Whereas in Nagar, the yield was distributed among the owner and Huyeltar/Payanlo depending upon the quantity produced. Huyeltar/Payanlo received half of the produce whereas rest was given to the owner. During the summer season, the Huyeltar/Payanlo took full care of animals in his charge, protecting them from predators and shifting them to new grazing lands. If an animal dies of illness or in accident, the Huyeltar/Payanlo sent meat of this animal to the owner while keeping his own share.

The heifers and oxen were left free in the pastures, where they would graze and reproduce. Cows were given more intensive care as compared to other animals, and were kept in grazing fields more proximate to shepherd huts.

The limited produce from confined cultivatable areas was a precious asset in agrarian society of Hunza and Nagar. In summer, animal grazing in lower valleys was prohibited to reduce threat to standing crops. In such incidents where animals caused damage to the crops, the owner was fined equivalent to the loss. These penalties were set by the Nabberdars/Trangfas. An elderly participant, during a Focus Group Discussion with elderly at Hoper, said:

When the ploughing season ends, the cattle are brought down (from the pastures). However, goats are barred to keep in villages because they destroy fruit trees. That's why, every household participates in herding of goats turn by turn and the sheperds return the cattle to their respective owners at the end of September.

Another important reason to send livestock to the pastures during cultivation seasons is the limited supply of fodder. The livestock were brought back to villages after harvesting in a systematic manner; the sheep are the first, followed by cows and cattle, and finally goats, which pose threat to fruit trees. However, free grazing or Heling was allowed in lower valleys during winters. Strict rules are observed regarding livestock management and animal rights. An unattended animal would call for a penalty or punishment from the one who was responsible for upholding customary laws at behest of the Mir.

In the last few decades, the trend of keeping huge herds of livestock diminished yet many of these laws remain in practice and are observed.

5.4 Biodiversity and commons

a) Forests: The principalities of Hunza and Nagar lack dense timber forests except for small and widely scattered stands of high altitude juniper. Like other resources, the Mirs/Rajas claimed their sole right of ownership of these resources. While claiming rights of ownership, these local rulers granted the communal or collective rights to clans/villages for the usage of forests. In most cases, the pasture rights accompanied rights over the forests since there was no distinction between these contiguously located natural resources. The village or clan having right over the pastures had the right over the timber resources found in the pastures. These forests offered wood primarily for fueling and cooking. In some cases packaging material was extracted from birch trees in the shape of birch bark.

In parts of Nagar, a Jirga appointed two or three persons to protect pastures from outsiders and monitor grazing patterns. An outsider using these resources had to pay in kind or else he would face penalties. Trangfas/Nabberdars served as overseers to the process and regular information was provided to the ruler via Wazirs.

In Hunza, the forests are found at high altitudes deep inside Nullahs (drains) and most of them are inaccessible. People prefer to plant their own poplar trees for use as timber. Sometimes, people go to the pastures to collect fuel wood for winters. However, they prefer fallen wood because of the sacred nature of juniper in traditional mythology, which is protected through a sacred association. In summers, people mostly relied on wild shrubs growing at lower altitudes for fuel.

b) Wildlife: Wildlife has played an important role in the socio-economic life of people of Hunza and Nagar. It had been a source of food and subsistence in the past, and is a source of economic returns now. People would hunt ibex for the food and would hunt leopards to save their cattle. Like forests, the wildlife was treated as a part of the pasture; the rights given to the subject on pastures accompanied rights over the usage of wildlife within. Each clan/village
resources

Despite the abundance of mineral resources, mining was not widespread in ancient Hunza and Nagar. Archeological evidence suggests that the principalities lacked sufficient technology for mining and other such endeavors. Also, people remained predominantly engaged in subsistence activities in a hostile and unpredictable environment. An elderly participant, at a Focus Group Discussion at Hoper, said:

Earlier, there was no such system, and people used to extract sulphur water but didn’t know about its medicinal value. This water was meant only for the king.

Sometimes, Rajas/Mirs would ask for certain minerals for ceremonial or medicinal use. In the absence of skilled miners, hunters with the knowledge of Nullahs/pastures undertook such tasks. Bada Nagay or Salageet (a mineral wax) and Danschit (Sulphur) were most pursued minerals due to their medicinal value. Seasonally, groups of nomadic gold-washers used to camp along the Hunza River, famous for gold dust, to procure gold.

As with other natural resources, the Rajas/Mirs exercised full power and authority over the mineral resources in their domains, but received no significant benefits out of it except for the gold procured by nomadic sonaywals (gold-panners). In return, the Rajas/Mirs would give livestock/grain and in rare cases land. Gold extraction required special directions and permissions from the Rajas/Mirs. There were no separate rules or regulations for minerals in Nullahs/pastures; rights on pasture included all resources therein.

People in both principalities of Hunza and Nagar associated minerals with supernatural beings like other resources and considered them as gifts from the supernatural world. Shamans, who held quasi-religious status across Gilgit-Baltistan during pre-modern times, would identify the location of minerals inside the mountains on the occasions when minerals were sought. It was customary to keep the location of a mine and mining activity secret. Before starting the mining process, an animal would be slaughtered as a good omen and to praise the supernatural. Also, common was ancestral worship to seek help in valued tasks. If a party would find any precious stone, it was customary that they would share the discovered material among all members and immediately slaughter an animal for good luck.

In northern Pakistan, common resources were divided among tribes and lineage groups by the rulers (Mirs) where the communities established traditional management systems and customary laws to regulate their rights and access to resources in a manner that was effective in terms of management at local level (Khan & Haque 2001).

5.5 Minerals and other natural
6. Similarities and Dissimilarities between Laws

Customary laws practiced across Gilgit-Baltistan are an important local institution, deeply intertwined with local culture, values, belief systems and livelihoods. This highly evolved and adaptable local institution must not be easily or summarily dismissed by statutory systems emanating from legislation at the national or even at the state level.

Notwithstanding this challenge, traditional practices are not without shortcomings and must be examined and reformed where they conflict with the universally accepted conceptions of human rights.

Customary laws are orally transmitted and have a long history of practice and precedence. As such they are not cast in stone and continue to be adapted according to context and circumstances. It is important to note that the forces that enable customary law to adapt and change under new conditions are driven by both internal demands and external forces.

Many of the customary practices prevalent in Gilgit-Baltistan contain many of the broad elements existing in statutory laws. This research shows that the ideas of justice, equity, accountability, fairness and respect for gender are integrated into the conceptions of customary laws. Moreover, moral principles befitting local socio-economic conditions have also colored many of these laws and principles.

There are some sticking points in relation to issues of equity and benefits as customary laws are framed around family control and tribal affiliations therefore these laws are not uniformly applicable across a broad spectrum of the society in current contexts.

Customary laws across Gilgit-Baltistan have a large degree of similarities, especially while considering and defining what is a crime, offense or transgression. Commonalities differ more starkly when appropriate punishments are defined for non-compliance.

One common feature across all customary systems is the immense emphasis on restorative justice. Modern conceptions of restorative justice as practiced by contemporary nation-states and in Pakistan are less important than the restoration of honor of the individual transgressor and preservation of community harmony.

After centuries of isolation, Hunza and Nagar were formally connected to the rest of the world with the opening of Karakoram Highway in 1978. This allowed assimilation and integration of global political, economic and social cultures into a traditional society shifting it from agro-pastoralism to information age. This rapid transition has altered worldviews and whole edifice of the society. Traditional authorities are losing powers; customary laws are becoming continuously irrelevant and myths meaningless with the advent of modernity. Social organization was formerly based on kinship and blood relations. Today, organic solidarity is the prime source of societal integration shattering tribal beliefs and values. The perception, knowledge and control of customary laws, institutions and authorities are changing with changing ideas and ideals.

The local rulers, i.e. Mirs/Rajas, custodians, enactors and enforcers of customary laws, have lost their authorities and supremacies. The new democratic institutions have endorsed fresh laws, brought in new enactment and enforcing authorities and institutions. Although, the Trangfas/Numbardars still have a role in local transactions, dispute settlements and community issues, their powers have shrunk significantly. Statutory laws and courts have replaced Astham and weakened the control and influence of traditional authorities. Orders like Jangoin, Bowaltarz, Baldasaro and Uyum had either ceased to exist or they had been replaced with new positions.

For water management, the Jirga system exists in almost every part of Hunza and Nagar, but its mechanisms have been transformed. Rather than being part of a voluntary Jirga, people prefer to pay instead for outsourced services.

Hydrology is no more a domain of a traditional Yatkoins, but a specialized job of an engineer. Rajakis (collective work) remains still relevant and in practice but the majority relies on hiring specialized labor to undertake this task. The heredity and ownership of land continues to run in patrilineal lineages however, people consult state institutions to register such transfers and settle issues today. The rights of pastures rest with the tribes/villages, but new laws and institutions govern as regulatory authorities.

With the exceptional investments and attainment of literacy in Gilgit-Baltistan, people are more inclined towards education and white-collar jobs. The traditional reliance on livestock and agriculture has decreased with new employment and income earning opportunity. Laws and authorities associated with agriculture and livestock management are becoming irrelevant with each passing day.

Education has enhanced the understanding of local natural resources and communities recognize their worth. Yet, the traditional worldview that respected natural environment as sacred has diminished; today people take natural resources as commodities to be exploited with a real danger of depletion and over exploitation.

While dealing with rights and laws of lands and natural resources, it is important to keep in mind the
liminal position of the region in the overall political structure of Pakistan. It is the liminality or unclear status that enables governments to regulate and rule the region through different policies and procedures. A comparative case study of Hunza and Diamer illustrates the situation well wherein the former—both traditional and modern—leaderships are divested of their power whereas in the latter traditional tribal council still retains the power.

Hong (2012), a Canadian scholar of law, provides a detailed analysis of liminality of the region, and contradictory policies of the government, which deprive local communities of their traditional rights on lands and natural resources. She cites an example of the region’s constitutional liminality and how it inhibits communities to take initiatives for development and business. Constitutional liminality inhibits communities like Chipursan from obtaining public and private investment to develop natural resource industries (ibid). It may be noted that Chipursan is a valley located on the political borders of Pakistan and neighboring countries.

The federal government asserts that since Gilgit-Baltistan is part of the disputed territory of Jammu and Kashmir, it cannot invest in the region without unfairly prejudicing the outcome of the territorial dispute with India. This seems inconsistent with the government’s involvement in other parts of Gilgit-Baltistan, including Diamer, where Pakistan has recently laid the foundation stone of a multi-billion dollar project, the Diamer-Bhasha Dam. These inconsistencies merit a constructive public debate both in Gilgit-Baltistan and at the state level.

The federal government has repeatedly prohibited foreign companies from operating in the region, even those who are collaborating with the Chipursan Mining Company or other groups in the valley. The Legislative Assembly also imposed a ban on gemstone mining and exportation of precious stones from the region, even though it is uncertain whether this power falls within federal jurisdiction (Hong 2012).
THE CASE STUDY OF DIAMER BHASHA DAM

Although the state manages issues related to land through a combination of modern and traditional laws, the Diamer district and its surrounding valleys, including Goharabad, Chilas, Tangir and Darel are still out of the ambit of the state because they are managed by a powerful council of elders or tribal council.

The institution of a tribal council stems from the history of those regions, which unlike principalities of Gilgit-Baltistan, were ‘acephalous’ that is areas having no leader or chief. The elders of Chilas have retained their rights on land and natural resources through an agreement with the Government of Pakistan in 1952. So far, the government has not interfered with internal matters of the districts. However, the official strategy has changed as a result of the mega project of Diamer-Bhasha Dam. The acquisition of land from locals for the construction of the dam was done by negotiating with local communities. So far, the government has paid Rs54 billion to the affected people of Diamer-Bhasha Dam.

However, if we consider a similar case of Karakoram Highway construction in the 1970s and its impact on local land ownership, we see a different behavior by the government. No compensation was paid to Hunza communities for the land taken over for the construction of the Karakoram Highway.

The reason for the two different processes for two mega projects can be explained in two ways. First the stakes to the nationals involved in the construction of the Diamer-Bhasha dam are too high to antagonize local communities of Diamer district. The clear national benefits that accrue from hydroelectric power generation in energy starved Pakistan compelled the government to adopt a reconciliatory path. Additionally, since the government is seeking funds from international donor agencies, it is bound to comply with international rules and norms.

Whereas in case of Hunza, during the construction of the Karakoram Highway, stakes at the time of its construction were not so obviously implicated for the rest of the nation; thus perhaps the stakes were not so high in the socio-political context of that time. Second, the tribal council in Diamer district wields enormous power in society, and they are the ones who are entrusted with authority to represent their respective tribe for negotiation. On the other hand, the power of traditional authorities in Hunza has diminished under the influence of modernization and grafting of modern laws over traditional ones. In Hunza, the elected representatives’ power is restricted because of the liminality of the region within the political arrangements in Pakistan. So, both the traditional and modern leaders have lost power in this transition between a traditional principality and a newly-formed territory within Pakistan. This 20th century transition in governance norms provided an opening or a vacuum of responsibility for the state to encroach into lands traditionally owned by the locals.
7. Conclusion and Recommendations

After extensive interactions with local communities comprising elders and experts on the customary laws, this study seeks to demonstrate that customary laws are practiced and implemented in the same way as the statutory laws of the government.

One of the sticking points, however, is the concept of communal lands, or collective ownership as opposed to private property. The communities living in Gilgit-Baltistan have fiercely protected their communal property, even they have been compensated in the process of land acquisition for the construction of Diamer Bhasha Dam. The government had considered the land acquisition a strategic investment despite receiving no financial assistance from the World Bank, Asian Development Bank, and other international multilaterals. This large-scale and massive land acquisition has set a positive precedent among communities living in non-settled and Rajgiri areas with claims over vast tracts of communal land.

Another difference is largely tied around gendered differentiation and privileges accorded to specific clan members, family networks, and other socially-influential groups.

There may be some sticking points when it comes to differentiated role of women in certain matters, but customary laws can be easily incorporated into local or regional legal frameworks.

The Gilgit-Baltistan Governance Order of 2009 reasonably empowers the legislative assembly to take on and legislate in a number of areas, including natural resource management barring some critical resources such as materials used in producing nuclear energy and other strategic natural resources.

Transforming customary laws, in turn, doesn’t mean absorbing them into statutory instruments thereby erasing them from the collective memory of the local communities.

As they have provided robust structures and glued the traditional governance mechanisms, they still resonate in the local communities and are widely respected.

Therefore, it is recommended that a systematic reform approach should be adopted to slowly and progressively incorporate some of the customary laws which directly supplement the Gilgit-Baltistan Governance Order. Moreover, a broad cross-section of the local communities supports the idea that some

| Table 2: An interface between customary and statutory laws |
|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| **Conflict**                    | **Land**                        | **Water**                       | **Biodiversity & Livestock**    | **Minerals**                   |
| Community lands                 | Community ownership of rivers, mountains, forests | Control of water around specific tribes, families and individuals | The Jungle or community owned mountain forests | Some minerals such as Aquamarine protected in Nagar area |
| The idea of land acquisition by outsiders | Women cannot inherit land | Celebration of rituals The roles and responsibilities of Yatkoin | Community management of livestock | - |
| **Potential Conflict**          | **Khalsa lands**                |                                | **Community**                   |
| Grazing rights                  | Pastures and their uses         |                                | management of livestock         |
| Women and widows’ ownership rights of land |                                |                                |                                |
| **No-conflict**                 | **Private lands**               | **Water channel management**    |                                |
| Lands approved by Trangfa or Numberdar for outsiders purchase | Turn by turn water availability |                                |                                |

Source: Prepared by the authors after conducting in-depth interviews with locals

Negotiating Change: Recognizing the Role of Customary Laws for Sustainable Livelihoods and Development in Gilgit-Baltistan
customary laws, which enable communities to earn a legitimate livelihood, should be given privileged status along with statutory laws, i.e. they should be formally recognized by the state.

In fact, further research might reveal that in giving weightage to effective customary laws, Pakistan may better conform to some of its international commitments ratified under various international agreements and commitments. For example, United Nations Environment Program (UNEP) treaties recognizing the rights of indigenous people and other international legal instruments to which Pakistan is a party can fulfill its commitments by honoring some of these customary laws. In this connection, this study presents the following recommendations to address lacunae in the relationship between customary laws and statutory laws.

- Water, land, and energy nexus has not been properly explored in Gilgit-Baltistan, therefore, intra-provincial policy and dialogue should be initiated to develop a holistic picture of this relationship. A better understanding of this nexus will inform robust policy making and legislative processes.

- Civil society and community-based institutions have flourished over the last two decades taking charge of local development initiatives and in many ways displacing the traditional structures of governance and collective labor work or Rajak. As told by respondents, in the research area a large cross section of the population is satisfied from the work of these community-based organizations. In the light of this perception, it is recommended that the clusters of community-based organizations should be formed to develop and synthesize policy making at Union Council levels which would, in turn, feed into the district and provincial level dialogue and discussion.

- Resource equity was built into the customary law practices. A structured regime tied around families, and tribes was largely acceptable to a broad range of people and local rulers, i.e. Mirs or Rajas who, in turn, successfully maintained their writ for hundreds of years. Efforts should be made to recover some of the traditional structures, especially as they pertain to natural resource management, and these be given legitimacy through local government initiatives.

- Religion plays an important role in the social lives of the communities living across Gilgit-Baltistan. Most respondents started talking while reciting Bismillah, usually uttered in the beginning of any work, and they referred to natural resources as gifts from God which must be valued and respected as such. Aga Yahya, a local elder from Nagar valley, forcefully alluded to a Qur’anic injunction whereby it has been mentioned that resources should be utilized in a balanced fashion without exploiting and plundering the gifts from God. In this connection, promotion of values aimed at protecting the nature
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### Annexure 1: List of Interviewees

<table>
<thead>
<tr>
<th>Name</th>
<th>Designation</th>
<th>Affiliation</th>
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<tr>
<td>Shehzad Ali Shigri</td>
<td>Director</td>
<td>Gilgit-Baltistan Environmental Protection Agency (GBEPA)</td>
</tr>
<tr>
<td>Sultan Madad</td>
<td>Numberdar</td>
<td>Numberdar of Barataling tribe</td>
</tr>
<tr>
<td>Brig. (retd) Hisamullah Beg</td>
<td>-</td>
<td>A civil society activist</td>
</tr>
<tr>
<td>Hoor Shah</td>
<td>Former Manager</td>
<td>Baltit Heritage Trust</td>
</tr>
<tr>
<td>Ghulam Raza</td>
<td>Head, Department of Environmental Sciences</td>
<td>Karakoram International University (KIU)</td>
</tr>
<tr>
<td>Shahnawar Khan</td>
<td>Numberdar of Diramiting tribe and a local notable from Hunza</td>
<td>-</td>
</tr>
<tr>
<td>Jehanzeb Murad</td>
<td>An expert on Social Ecology</td>
<td>-</td>
</tr>
<tr>
<td>Syed Yahya Shah</td>
<td>A notable from Nagar</td>
<td>-</td>
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<tr>
<td>Sherbaz Bercha</td>
<td>A local historian</td>
<td>-</td>
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<tr>
<td>Mujahid A. Shah</td>
<td>A social activist from Nagar</td>
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