



USAID ISSUE BRIEF

LAND TENURE AND PROPERTY RIGHTS IN AFGHANISTAN

DO LTPR CONFLICTS AND GRIEVANCES FOSTER SUPPORT FOR THE TALIBAN?

PROPERTY RIGHTS AND RESOURCE GOVERNANCE BRIEFING PAPER 5

SUMMARY

Local disputes in Afghanistan are related in part to conflicting claims over land and resource rights, including disputes related to resettlement of Internally Displaced Peoples (IDPs) and refugees, conflict over control of pasture and water, and participation in the opium economy. The sale or lease of state-held land by the government subject to counter customary claims is causing tension.

The Afghan Government and international donors are increasingly recognizing the link between land and resource tenure and efforts to bring peace and stability and are supporting some tenure reform activities. However, these initiatives remain limited in scope and size. Further support to land and resource tenure reform can help address root causes of instability in Afghanistan—by expanding to complementary activities or implementing pilot projects addressing specific tenure concerns.

LAND AND CONFLICT IN AFGHANISTAN—THE LINK WITH THE TALIBAN INSURGENCY

Despite the extensive military operations and humanitarian and development assistance from U.S. and other donors, the Taliban insurgency in Afghanistan has grown steadily. Analysts have attributed the recent rise in insurgency to weak governance and the inability of the government to provide basic services to the public, particularly in remote areas (Roggio 2009; Jones 2008). In addition, the government is using statutory law to lease and sell lands, undercutting customary claims to those lands, fueling tension between the state and citizens. The Taliban is filling this void in governance by setting up shadow governments and dispensing Sharia justice, mediating tribal and land disputes, collecting taxes, and recruiting and training fighters (Roggio 2009).

The U.S. government is expanding U.S. military, humanitarian, and development assistance in Afghanistan. Despite 9 years of ongoing military operations and extensive humanitarian and development assistance from the U.S. and other donors, the Taliban insurgency has steadily grown in both extent and intensity. One factor in the rise in strength of the insurgency is

Conflict over land rights and inequitable tenure may foster support for the Taliban in rural areas, undermining U.S. government attempts to create stability and a prosperous Afghanistan. Unaddressed LTPR issues may contribute to disenfranchisement, violent instability, or support for insurgents.

LTPR Interventions in Afghanistan should help bolster the capacity of the central and local governments to administer and adjudicate land rights and support peaceful mediation of land disputes.

- **Support establishment of efficient, accessible, and effective dispute resolution mechanisms**
- **Provide training and expertise in LTPR concepts and issues to Provincial Reconstruction Teams (PRT)**
- **Assist the government in developing a methodology and process for resettlement of IDPs and refugees**
- **Revise government procedures of land sales and leasing to safeguard community rights**

ineffective governance and services in parts of the country. According to testimony before the Senate Armed Services Committee by General David Petraeus, the U.S. commander of military operations in Afghanistan, insurgent successes “correlate directly to the Afghan’s growing disenchantment with their government due to its incapacity to serve the population and due to their doubts regarding the competence and honesty of public officials” (U.S. Congress 2009, 21).

The numerous land tenure and property rights issues, including widespread and chronic conflicts over land, weak or conflicting systems of tenure, and the failure of state and customary dispute mediation mechanisms, reflect the incapacity and corruption of the central government. In the absence of a strong central government, local elites, warlords, and political factions control land and natural resources with intimidation, force, and customary legal regimes that reflect deeply entrenched power structures (Nielsen 2009). In one case, villagers cited the government as a threat to their tenure security and regarded the payment of tax as “protection” money, a means to preclude a government official from seizing their land (McEwan and Whitty 2006).

An estimated 80% of Afghans depend upon agriculture for their livelihoods (FEWSNET 2005). Despite this, a development strategy for poverty eradication and livelihood support that gives “due consideration to land issues...has been slow to emerge in the postwar construction of...Afghanistan” (Sørbø and Strand 2007, 3). The question regarding the potential role of land issues, particularly conflicts over tenure and ownership, in fostering public support for the Taliban is largely unaddressed.

During the first insurgency against the Marxist government and Soviet occupation of the 1980s, popular support for the insurgents was strong, despite the tendency of the Mujahidin to reinforce the existing traditional and inequitable system of land tenure. Gibbs (1986) argues that several characteristics of Afghanistan’s rural population led to its support of an insurgent movement fighting to protect and restore a system of land ownership that was inherently inequitable. These include the strong tradition of patronage and reciprocity whereby landowners provided the peasants with “employment, gifts, assistance in cultivation, protection against intruders, and other services that the government usually failed to provide in rural areas” (ibid 44). In return, peasants supported the status quo. Following its seizure of power in 1978, the Marxist government instituted a land reform and rural debt relief agenda, including redistribution. However, many peasants returned land to previous owners out of respect, due to intimidation, or because they lacked the means to farm it. According to Gibbs, Afghanistan’s conservative rural culture, combined with a strong but divisive sense of ethnic identity, prevented the rise of a unified “peasant” class organized around the issues of land ownership and power.

In the current insurgency, the Taliban is building its rural support either by usurping the role of the central government in administering and adjudicating land tenure issues (such as resettling IDPs or settling land disputes) or by punishing people for cooperation with or receiving benefits from foreign or Afghan government authorities, whether civilian or military. For instance, in one case, insurgents stole compensation payments provided through Provincial Reconstruction Teams (PRT) from people whose land had been used for road construction in Kandahar. According to one farmer:

“The international forces...made a road in our area. The road passed through a lot of people’s personal lands and house walls. People’s trees also needed to be destroyed. The international forces said they would pay for the destruction and for the land. I personally lost the walls of my property and some trees...The PRT gave 10,000 Afghanis to my son for all the damages and land that was used for the road.

Two days after the money was distributed the Taliban came to our village and asked the people who got the money and where the money was.... [one] Taliban stopped me and said, ‘Why did you take the money from the foreigners when they were distributing money...Now you give the money to us.’ ” (AIHRC 2008, 38).

“The Taliban have established shadow governments throughout Afghanistan, with provincial and military leaders appointed to command activities. In January of this year, the Taliban claimed to be in control of more than 70 percent of Afghanistan’s rural areas and to have established shadow governments in 31 of Afghanistan’s 34 provinces” (Roggio 2009).

While anecdotal, it raises questions about potential consequences regarding the government's role in taking private individual or communal land for development. What is the potential for non-cooperation for fear of retribution by the Taliban? Where landowners refuse such compensation, will the government or powerful officials take land for public works by force, thereby fostering resentment?

SELECTED LAND ISSUES AND POTENTIAL FOR INSURGENCY SUPPORT

Three different types of tenure and property rights issues are creating opportunities for Taliban insurgency in Afghanistan. These include: (i) IDP and refugee access to land, and conflicts resulting from overlapping claims made by displaced and local populations, and the state (Tahir 2006; Stankezai 2008); (ii) conflicts over pasture in the central highlands (de Weijer 2002; Wiley 2008; Robinett et al. 2009); and (iii) land tenure in the context of opium production (Stanekzai 2008; Roe 2009).

IDP and refugee return Afghanistan has experienced 25 years of near continual conflict that has caused millions of people to flee from their homes. During their absence, their land and property was often occupied, or bought and sold. As they return home, the displaced people are demanding restitution. Meanwhile, new displacements are taking place because of continued conflict (IDMC 2008).

Many refugees and IDPs have been unable to return due to land and property disputes arising from occupation or reallocation of land by the government (IDMC 2008). A Special Land Disputes Court was established by Presidential Decree in 2002 to grapple with issues of return and restitution of property. However, the government has been unable to address the needs of resettlement or restitution (Koser and Schmeidl 2009; UNHCR 2004b cited in Wiley 2008), and dissatisfaction is widespread among the landless and homeless IDPs and refugees. This dissatisfaction, if left unaddressed, is a potential source of instability. Koser and Schmeidl (2009, 12) suggest that IDPs and refugees who are “poor, unemployed, and feel marginalized... may be associated with urban unrest (e.g., in Kabul in 2006 and in Jalalabad in 2005); the narcotics industry; or cross-border trafficking of people, arms and drugs.” IDPs who feel their needs are not served by their government may be sympathetic toward or “actively support insurgency groups...or at the least provide an easy recruitment ground for the insurgency” (Schmeidl and Maley 2008 in Koser and Schmeidl 2009, 12).

Pastoralist issues A majority of the contemporary pastoralists of Afghanistan are dependent upon the central highlands for summer pasture (de Weijer 2002). The central highlands are marked by a long history of conflicts over grazing rights between ethnic Pashtun and Hazara peoples. Under Abdul Rahman's rule in the late 19th century, the nomadic Pashtun Kuchi gained rights to grazing areas at the expense of the Hazara people residing in this region. Despite periodic attempts at reform, the central government and Kuchi collaboration served mutual interests; Kuchi nomads helped the central government thwart opposition to its rule, and the government granted Kuchi claims to all pastures and allowed them to trade with little or no taxes (Mousavi 1998 in de Weijer 2002, 7).

Under the Taliban, the Kuchi retained rights to summer pastures and water, and were viewed by the Hazara and others as allies and supporters of the Taliban (The Economist 2007). After the fall of the Taliban in 2001, the ethnic Hazara people regained control over high-mountain pasture in Baman and Dayikuendi provinces (de Weijer 2002; Wiley 2008; Robinett et al 2009). In 2006, 2007, and 2008, fighting erupted over the contested land and grazing rights between Hazara people and Pashtun Kuchi nomads during the seasonal movement of the Kuchi herders. Many people were killed and injured, Hazara homes burned, and herds stolen (Stanekzai 2008). Pashtun Kuchi pastoralists, exempt from disarmament requirements, used their weapons against the Hazara. During public protests in 2008, Hazaras demanded a government response and called for the disarmament of the Kuchi herders (Quqnoos 2008 and Haidary 2008 in Wiley 2008). Meanwhile, there is prevailing fear that the Kuchi are being armed by the Taliban (Wiley 2008, 14).

“Counter-narcotics efforts in Afghanistan have largely sought to suppress the extent of poppy cultivation... adopted as a key measure of success in the ‘war against drugs.’ A primary policy goal of [rapidly reducing] cultivation runs the risk of...exposing farming households to severe economic stresses, and exacerbating livelihood insecurity. While short-term reductions in cultivated acreage may be politically expedient, sustainable reductions will depend on the more complex task of addressing the structures of inequality that underlie individual household choices and behavior” (Roe 2009).

Conflicts between the Kuchi nomads and settled Hazaras have been cited as a significant driver of conflict in Wardak (Merkova et al. 2009) and Ghazni (Bergh et al. 2009) provinces. Recent initiatives by the ADB and FAO to strengthen community control and facilitate mediation and negotiation between nomads and settled communities over grazing rights and fees has met with some success in ameliorating conflicts (Wiley 2008).

Opium production Afghanistan produces 90% of the world's heroin, according to the United Nations Office on Drugs and Crime (2007), cited in Sørnbø and Strand (2007). According to Ward et al. (2008), the Taliban is financing its activities through opium production and by encouraging farmers to grow poppy. Studies show that poppy cultivation serves a range of functions in Afghanistan—while landowners grow poppy to maximize monetary incomes, the landless cultivate poppy to access land and agricultural credit (Roe 2009).

McEwan and Whitty (2006) detail the connections between opium production and the underlying tenure system. Opium is a potentially lucrative (if labor-intensive crop) for shareholders that has been widely used in some areas as in-kind payment for land leases. They suggest that indebted leasehold and landowning farmers grow poppy to regain mortgaged lands and pay off debts. Ward et al. (2008) research shows that the small farmers (with landownership of 3.7 acres or less) are the most dependent upon poppy production, and that opium is often poor farmer's only access to credit. Meanwhile, the landless depend highly on the opium economy, providing labor for poppy production through wage labor or sharecropping.

Sørnbø and Strand (2007) note that the 4.8 million refugees returning since 2002 have contributed to the sharp increase in pressure on land and unemployment in Afghanistan, and ultimately the rise in poppy production. They suggest that “the present pattern of landownership, powerful commanders/landowners, and high availability of unemployed young men provide ideal conditions for drug production and warfare” (3). Sørnbø and Strand (2007) and Roe (2009) note that farmers are likely to continue growing poppy in the absence of a comprehensive land tenure reform that provides secure land ownership and access rights and other means of financial credit.

CONCLUSIONS AND RECOMMENDATIONS FOR STRATEGIC INTERVENTIONS

USAID and other donors have supported initiatives (2003–2009) in land policy development, tenure regularization, upgrading of informal urban settlements, and upgrading of land administration systems. Recently the ADB and DFID provided support to the government in formulating the national land policy and in building a related institutional structure for land administration, specifically delineating boundaries of pastures and re-establishing agreements on use, improving procedures for identifying legitimate claims to urban properties and documenting legitimate claims to rural land. UNHABITAT is working to improve the land information systems and shelter construction, including facilitating the release of new land for housing in urban areas. However, such initiatives should be better coordinated to minimize redundant efforts and ensure that efforts are mutually reinforcing and do not conflict. Further support to the land and resource tenure reform can help address root causes of instability in Afghanistan—by expanding to complementary activities, or implementing pilot projects addressing specific tenure concerns. However, care will be needed to ensure that programs also address parallel challenges relating to governance and the rule of law.

Specific illustrative activities may include the following:

- Suspend the leasing and sales by government of any land currently under counterclaim by communities; review and revise procedures to include a process of public input and sufficient time to contest pending land transactions
- Enhance donor coordination, and complementarity in the various Afghan Government and donor supported initiatives
- Support legal reforms including drafting of a comprehensive set of land laws and regulations to implement land policy and related policies and programs
- Support establishment of new or strengthening of existing courts and other dispute resolution institutions

- Support governance reforms that recognize community control of land and facilitate mediation and negotiation between pastoralists and communities over grazing rights
- Assist the government in developing a methodology and process for resettlement of IDPs and refugees that focuses on restitution of and/or compensation for lost land. Support programs that provide government land for permanent resettlement of displaced people.
- Support activities that secure and strengthen access to land for women IDPs, refugees, and women-headed households
- Address underlying tenure and financial issues that promote opium farming, including high land rental costs and risks, high levels of farmer debt, and lack of high-value alternative crops
- Provide land tenure and property rights expertise and training to support the work of PRTs, particularly to address potential claims and takings issues related to acquisition of land for infrastructure projects

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Authors: Peter Giampaoli and Safia Aggarwal, ARD, Inc., January 2010

USAID Technical Officer: Dr. Gregory Myers.