



Land Titling in Kunduz, Afghanistan

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About the Report

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This report was commissioned by the United States Institute of Peace as part of its project “Land Conflict and Land Dispute Resolution,” funded by the Bureau of International Narcotics and Law Enforcement Affairs at the US Department of State. The field data summarized in this report was used to inform USIP’s programming in Afghanistan, including a pilot project, which began in late 2014, to test means of expanding cooperation between local communities, community dispute resolution mechanisms, and the Afghan land management authority on land registration and management issues. PTRO, supported by USIP, undertook research activities in Kunduz province in order to identify and map land issues affecting the province. This report presents findings in key land issues in Kunduz and identifies past and present land issues affecting communities, popular land dispute resolution and registration mechanisms, and attitudes and perceptions towards government-led initiatives working on land titling and registration.

Summary of Key Findings

PTRO's research into the land rights and titling processes in Kunduz province established a number of key points:

- Inheritance disputes between family members are the most common cause of land disputes in the provincial center and in Imam Sahib and Khan Abad districts.
- Historical land registration processes are prevalent in Kunduz, and the majority of respondents claim to have legal deeds and titles as well as customary documents to verify their ownership of land.
- The majority of land disputes are referred to local elders and shuras; in some instances, the formal courts refer land cases to local elders. An adhoc level of cooperation exists between informal and formal justice providers, with each referring land disputes to the other.
- Although the formal court system has courts at the district, provincial, and national levels, it has limited capacity and is perceived by many to be corrupt, so few people consider approaching the formal courts for relief.
- Formal land registration processes have significantly deteriorated or are nonexistent in Kunduz and traditional disputes resolution mechanisms, such as local shuras, have become the primary forum for resolving land disputes and registering land transfers. Customary land entitlement documents have come to replace formal land ownership documents.
- Most communities strongly prefer to see their existing customary entitlements and documentation formalized in some way through the government to guarantee their land rights under state law.

Methodology

PTRO conducted interviews in the provincial center, Kunduz City, and in two districts, Imam Sahib district and Khan Abad district. Imam Sahib district is located to the north of the province and Khan Abad district is south east of Kunduz City. At the time of research, the districts were identified as the most secure in Kunduz in which to conduct research and program activities.

A survey was used to collect information concerning current and past land issues (including the prevalent sources of disputes); the land-titling situation; past and present work by nongovernmental organizations (NGOs) and government actors; perceptions and attitudes toward the project; and a list of participants who might be viable test cases in a pilot land registration effort in Kunduz.

PTRO designed a qualitative in-depth questionnaire in collaboration with USIP research staff. Sixty-nine interviews were conducted with informal and formal justice actors and landowners or disputants across the three districts.

Respondent Selection

- **Formal justice actors:** Interviews were conducted with key provincial and district-level government officials in the formal judicial system, including formal actors from the district huqooq, district governors, court officials working on land-related cases, and employees from the property registration department.
- **Informal justice actors:** Interviews were conducted with local elders and religious leaders who partake in community-based conflict resolution through local shuras and jirgas.
- **Landowners/disputants:** Landowners were interviewed to find out about key past and present land issues affecting them, mechanisms in place to address land disputes and land registration, and their attitudes toward a pilot land registration project in Kunduz. Researchers worked with trusted local representatives, including elders and religious leaders, to identify landowners/disputants from different communities, forming a representative sample from each district. The majority of interviews were carried out in the district centers, but care was taken to speak to people who lived in outlying communities as well.

The qualitative questionnaire and interview guide is attached as Annex A. PTRO conducted sixty-nine interviews at three research sites (see table 1). The fieldwork was carried out in July 2013 and November 2013.

Table 1: Respondents in Each Location

Location		Number of Respondents		
Province	District	Disputant	Informal Justice Actors	Formal Justice Actors
Kunduz	Kunduz	8	7	7
	Imam Sahib	7	8	7
	Khan Abad	7	11	7
Total		22	26	21

As in many surveys undertaken in insecure and relatively isolated areas of the country, the fieldwork for this research relied heavily on the skill and experience of PTRO staff, both researchers based in Kabul and local facilitators in the research locations. They had to exercise a substantial degree of individual judgment to assess respondents and to collect as representative a sample as possible from the available interviewees.

Past and Present Land Issues in Kunduz

Land rights in Afghanistan are perceived to be highly insecure, and disputes are widespread. Decades of conflict, population displacement, changes in political and economic ideologies, and natural disasters have resulted in a complex land ownership and management system. Instability has increased the vulnerability of households to poverty, and opportunistic individuals often use land disputes to create social unrest and conflict. The lack of a properly functioning land registration system in rural Afghanistan has resulted in an adhoc array of land transactions recorded with private documentation or verbal agreements that do not involve formal justice actors, such as primary court judges, in the preparation and archiving of legal deeds. Because formal and informal justice mechanisms are ill equipped to deal with land claims of returning refugees and internally displaced persons (IDPs), the system contributes to disputes over land.

Kunduz province is, located in northern Afghanistan, borders Tajikistan, and the Amu Darya River. Historically, the region has been important economically, and the province has undergone enormous physical, political, and cultural changes over the last century. Today, the province has a high degree of ethnic diversity stemming from past and present inward migration by Pashtun and Kuchi populations, which has led to land disputes with other groups in the province, including Tajiks, Uzbeks, and Turkmens. A 2009 study conducted in Kunduz province found that land disputes account for more than 50 percent of all local conflicts.¹

Land conflicts across Kunduz have been shaped by land-allocation schemes and resettlement projects undertaken since the 1920s. Furthermore, the historical alienation of Pashtuns from secure land tenure by local non-Pashtun commanders has contributed to land disputes among the Pashtun, Uzbek, and Tajik communities. These disputes in turn have contributed to ethnic polarization and new waves of conflict across the province.

Land ownership maybe acquired through direct purchase, government land allocation schemes, and transfer of ownership, such as through inheritance. Most people in Kunduz acquire their land through historical land allocation schemes and inheritance transfers. Today, the majority of land conflicts are shaped by inheritance disputes among family members, population movements, the return of IDPs and refugees, the illegal occupation of land, and the selling of land by local commanders. Some disputes are longstanding, with landowners/disputants, particularly women claiming inheritance rights from male relatives, finding no resolution within informal or formal justice systems.

Intractable land conflicts are a consequence of weak and inconsistent land management policies. Compounding this problem is the fact that many formal titles held and presented in land dispute

¹L. Devlin, J.Rinck, C.Dennys, &I. Idrees, *Conflict Analysis: Kunduz City, Kunduz Province* (Kabul: CPAU, 2009).

cases are claimed to be fraudulent and very few people hold formal deeds to the land they live on. Claims of land ownership are most often based on informal and customary practices that are not well documented within communities or via formal justice mechanisms. The absence of legitimate documentation has left landowners vulnerable to the appropriation of land by local strongmen; local authorities are unable to effectively manage such conflicts.²

“The government doesn’t have a strong role in organizing and managing land and properties and doesn’t pay attention to local strongmen usurping lands from citizens.” (Malik and head of Shura, Imam Sahib district)

Intractable disputes can escalate into violent crimes, and thus government initiatives to tackle land registration issues in Kunduz are welcomed. The lack of a functioning land registration mechanism has resulted in an ad hoc regulatory system comprising both formal and informal systems: Afghan statutory law, shariah, and customary law. Even though the lack of property rights in Kunduz, and across Afghanistan, has resulted in government attempts to address an enforceable system of ownership rights, such as the Land Management Law in 2008, the issue remains a challenge today. Without a clear legal process and policy addressing the complexities of land rights, land resolution and registration mechanisms are further compounded by corruption, opportunism, and varying levels of insecurity across the province.

“People are keen to register their land rights, as their land documents will become legal and their land value rises also. Land registration is effective for both the government and the people as the people will have legal documents while the government can collect tax for public services.” (Local elder, Khan Abad district)

Familial Land Conflicts

Inheritance disputes between families were cited as the most common type of land dispute across Kunduz, Imam Sahib, and Khan Abad districts: 87 percent of informal and formal justice actors claimed that inheritance disputes between families were the most common cause of land disputes in their communities. A lack of legal and religious knowledge regarding inheritance rights has resulted in family members disputing unclear inheritance deeds, grabbing land, and preventing women from accessing their rights to inheritance. Land disputes can take years to resolve, and longstanding disputes between family members sometimes extend intergenerationally, with heirs disputing each other for years, particularly regarding females being denied their inheritance rights.

Return of Refugees and IDP and Inheritance Conflicts

Inheritance disputes are further complicated by the return of refugees claiming ownership over land that was taken or illegally occupied by settlers and local commanders. For example, a landowner from Imam Sahib fled Kunduz for Pakistan during the civil war; in his absence, a neighbor claimed his land illegally and sold it. The son of the landowner returned to Kunduz, contested the illegal sale and occupation, and reported the dispute to the local shura. Aware of the neighbor’s illegal claims and based on statements from witnesses in the local community, the local shura decided in favor of the son and ordered the land to be returned to the rightful owners. New customary documents were produced and agreed upon by both parties. (Customary documents, provided by local elders and shuras, have become common sources of evidence even as they remain a potential driver of conflict because they are not legally binding under constitutional law.)

²A. McEwen & S. Nolan, *Water Management, Livestock, and the Opium Economy: Options for Land Registration* (Kabul: AREU, 2007).

Informal and formal justice actors agreed that the selling of land by nonowners is a key source of land disputes in Kunduz. Nonowners vary from neighbors seizing empty land and property to grow crops to local powerbrokers and commanders forcibly taking land and selling it.

In Khan Abad district, several elders reported that the years of conflict had resulted in large grabs of government and residential land by local commanders with the support of the Afghan Local Police (ALP) and the local militia groups known as the Arbakai. Because the Arbakai has been integrated into the ALP structure, respondents referred interchangeably to the ALP and Arbakai as posing a security threat to their communities. Particularly in Khan Abad local elders stated that the Arbakai/ALP has become a predominate force in the community and has seized land and property while intimidating local elders in land dispute resolution processes.

“Whenever any case opens in the justice departments, it takes a long time and both sides of the dispute expend more money. From the other side, ALP also usurps the land of these people, who are silent and don’t have power. ALP forces behave badly with people in our district.” (Tribal elder, Kunduz district)

Imam Sahib is a rich and fertile area in Kunduz and has been a site of conflict for Kuchi pastoralists, who have been grazing animals in the area for many years, and a group of Turkmens who hold legal documents stating that the contested land was given to them by authorities more than twenty years ago. Both the Kuchi pastoralists and the Turkmens believe that they are the rightful and legal owners of the land; several survey respondents highlighted the ongoing dispute, which has taken violent turns, with several deaths claimed. This longstanding dispute has adopted an ethnic dynamic, and local elders have made several attempts to resolve this intractable conflict. The lack of adequate documentation remains the major source of contention between the disputing parties. The courts contacted the Property Registration Department (Amlak); however, the lack of proper documents has resulted in further dispute between the claimants.

Inadequate Documentation

All respondents stated that inadequate documentation and land registration processes are a significant cause of conflict in Kunduz. Shariah-approved deeds, inheritance letters, and financial documents such as tax slips or land receipts from the Amlak are the most common forms of documentation used to prove ownership. The Amlak operates in the district and provincial centers, and the majority of respondents were aware of the Amlak and its services. Although the Amlak may be a source of evidence in land disputes, most land deeds and titles have been lost, destroyed, or falsified over the decades. Across the three research sites, the majority of respondents stated that most landowners retained original documents, such as land deeds or tax receipts, although customary documents were more commonly provided to prove ownership in land dispute cases.

The lack of adequate documentation, particularly clearly instructed inheritance records, has left women vulnerable and unable to claim their land rights. Several local elders and landowners highlighted widows, daughters, and sisters were not given their share of inheritance and cases were referred to local elders or government officials to resolve. Yet, many women have faced no problems in claiming their rights and landowners in Kunduz.

Current Practices and Systems for Resolving Land Conflicts: Informal and Formal Justice Systems

In Kunduz, the primary source for conflict resolution is the informal justice system. The majority of respondents stated that local elders, religious leaders, and shuras are responsible for resolving local conflicts. In some cases, particularly in urban centers, land disputes may be referred initially to the formal justice system due to better access to government actors and institutions such as the police and courts; however, in rural areas, local elders and shuras are trusted to arbitrate cases fairly. Due to their social position in the community, local elders and shuras tend to make decisions that are accepted and adhered to by disputants even though they lack the capacity and ability to enforce their decisions. In some cases, local elders and shuras inform disputants that if decisions are not adhered to and conflicts are reignited, they will not intervene again.

The relationship between local elders and shuras and government authorities is relatively positive, with both informal and formal justice actors describing the relationship as cooperative. If elders are unable to resolve dispute, they or the disputant refer the case to the formal justice system. Disputants stated that the government was not effective in managing land disputes and could be uncooperative with informal justice mechanisms due to its vested interests in particular land disputes.

“Some village elders have conflicts with one another or they have prejudices; people are not keen to solve their cases through local elders.” (Government administrator, Khan Abad district)

Landowners/disputants identified the government’s inefficiency as a result of corruption, lack of expertise in land management, and overall lack of power to prevent land seizures by local power brokers. Informal justice actors and disputants repeatedly referred to corruption as the main justification for why they do not report land disputes to formal justice actors and prefer to use local elders to resolve cases. The respondents would welcome improved government transparency and accountability, which could serve as the foundation for preventing land-based conflicts in Kunduz.

Echoing similar concerns, formal justice actors interviewed highlighted corruption as an internal challenge facing Afghanistan’s justice system; in many cases, judges indicated that they informally refer cases to local elders to resolve.

Both formal and informal actors confirmed the general acceptance of elder decisions in the informal system, and several elders stated that they conduct regular dialogue with local judges over difficult land disputes. Although the legitimacy of local elders as conflict resolution arbitrators is widely accepted among community members, several landowners pointed out that local elders and shuras lack the capacity and ability to enforce their decisions and that the risk of conflict arising after a decision is made by a shura is high.

“The informal justice court system is very effective and has direct impact but they do not have the power or authority to enforce their decisions. This means they don’t have executive force. For example, when they announce their decisions, one side of the conflict may not accept the decision, and in such cases they can’t implement the decision, so local elders only facilitate the decision procedure.” (Local elder, Khan Abad district)

The Informal System

Local elders are perceived as the most effective source for resolving land disputes because they are able to resolve disputes quickly. As community members, they are aware of the context, such as family history, surrounding disputes. There is an implicit recognition that, unlike a formal court ruling, a decision made through local community elders and shuras is legitimate and is therefore sustainable, as well as being quicker and less costly than using the government courts.

“We don’t solve the problem through power; we solve it according to customs and shariah. We try our best to solve the conflict in the right way, get full information about the conflicts, and then take a decision. At the end we take acceptance from both sides and if they fight again then they should pay a fine to the shura.” (Local elder, Imam Sabib district)

Disputants bring and register their case with the informal justice system. Registration cases, whether civil or criminal in nature, appear to follow the same process. There can be two routes: the disputants take their case to the district huqooq and then the case is referred to local elders for resolution; or the disputants directly refer the dispute to the local elders. In the first route, elders try to resolve the case and informally inform the court of their decision. If they do not succeed, the case will return to the court for resolution. Land disputes resolved by elders are not formally recognized by the courts system.

When disputants bring a case to local elders, the elders “take authority” from both sides. This is a financial guarantee or security deposit that may be retained if the dispute reemerges after agreement is reached. The elders launch an investigation to establish what transpired; this includes interviewing local community members, reviewing informal and formal land ownership documents, and hearing the disputant’s claims to the contested land. After establishing the facts, the elders make a decision that may include the transfer of land from one party to another or a financial payment; once both disputants have agreed to the decision, the elders verbally announce the decision and give decision letters to the disputants. Customary documents are created by the elders to record any changes in ownership; these documents can be submitted to the formal justice system, such as the district huqooq. If the disputants do not accept a decision made by the elders, the security deposit is retained and the case is referred to the formal system.

Decisions are influenced primarily by Islamic law; however, elements of customary law affect decisions too. There is no consistent methodology for recording decisions. Recording shura decisions is not a consistent practice: several elders stated that they record decisions in writing, while others announce them verbally. When they exist, documents are shared with the disputants and in some cases with government actors, particularly if land disputes reemerge. If disputants are not satisfied with the outcome of an informal decision, then they have the option to appeal the decision and refer their case to the courts.

Investigation into land conflicts can include looking at (or for) relevant documentation and interviewing witnesses. Proof of title or ownership of land mitigates the need for witnesses and investigation; however, the majority of land disputes are between two sides that do not have relevant paperwork.

The Formal System

The formal court system encompasses courts at the district, provincial, and national levels, but it is perceived by many to be corrupt, and few disputants consider approaching the formal courts for

relief. The formal court system has not proved to be an effective forum for resolving land conflicts, and the majority of respondents stated that government employees were under qualified to resolve cases and prone to extorting communities.

“Governmental offices are full of corruption and they misuse their positions. The court, attorney, Amlak, and investigation departments are full of corruption, which creates mistrust between the government and the public.” (District buqooq employee, Khan Abad district)

Formal institutions, such as primary and secondary courts, are inaccessible for many rural landowners, who expressed a preference for resolving disputes within the community. Respondents from urban centers stated that disputes could be referred to formal justice mechanisms because of better access and awareness of the institutions and their capacity to resolve conflicts.

The role of provincial and district authorities in settling land-related conflicts varies. Respondents were generally dissatisfied with the performance of state authorities, citing many instances of corruption. Aware of the challenges facing the formal courts system, several formal justice actors agreed that land conflicts are best resolved by encouraging reconciliation and resolving cases through informal mechanisms, such as local shuras.

Cooperation and Referrals Between Justice Systems

Ad hoc cooperation occurs between informal and formal justice actors; each informally recognizes partnerships with the other. Because the majority of land cases are referred to local elders, elders may consult with local police, legal representatives, and judges in their immediate community. Disputes that cannot be resolved by the elders or claimants dissatisfied with the decision are referred to the courts. Formal justice actors recognize that some disputes are better resolved within the community and often suggest claimants take their disputes to local elders.

“There is visible cooperation and coordination between the formal and informal justice system in our district because mostly when the community leaders and religious leaders can’t solve a case then they refer to the formal justice system for solution and vice versa. In this case, these both systems are effective for conflicts resolution.” (District governor, Imam Sabib district)

There appear to be instances of referring whereby cases that are not solved by local elders are passed to the judiciary, only to be passed back to the elders if the government deems the case more suitable for resolution by the community.

Most participants did not see a conflict between customary law and state law, and the informal working relationships between formal justice actors and traditional dispute resolution mechanisms recognizes and respects shuras as an effective solution in some cases. The linkages, which are adhoc and informal, reduce the potential influence of the state when dealing with land-based conflicts in the local system.

Efforts to Register Land Resolution and Transfers

Land deeds are an assertion of rights and can be supported by a range of legal documentation, locally issued customary documents, and recorded oral testimonies. Land deeds constitute the rights of ownership and are a form of evidence. Several approaches exist for the registration of land, although the principle mechanism is recording and registering deeds or land titles in an official registry.

Most landowners acquire land through inheritance transfers; the majority of respondents stated that customary documents are handed to the heirs directly and that they become the legal landowners. However holders of land rights under customary law cannot obtain ownership simply through the passage of time and exclusive possession of land. For many landowners, particularly returning refugees or IDPs with customary documents, the formal law does not provide a means to formalize informal rights to land or de facto ownership; hence, land rights in Afghanistan are insecure.³

If formal documentation exists, land rights can be registered with Arazi. Once disputes have been resolved in the formal courts, local authorities should be notified of the decision and should formally acknowledge that a decision was made. Ideally, cases are logged in an official registry so that they can be registered and archived in a systematic manner. Additionally, local authorities should keep a written record of how a case was decided, and copies of documents should be handed to the claimants as receipts.

The majority of respondents own documents that may include shariah land deeds, government land titles, financial receipts of land purchases, tax slips, and customary documents. Legally accepted evidence of land tenure includes legal deeds in accordance with shariah and issued by court registration, customary documents (*urfi*) submitted to a government department before 1978, decrees issued by the king, tax receipts issued by the ministry of finance or provincial authorities, cadastral registry cards, and self-declaration forms issued by elders and landlords submitted to the Amlak between 1971 and 1978.

Registering land is a complicated process, further compounded by years of insecurity, corruption, and general confusion regarding taxation, which has resulted in the use of informal mechanisms, such as shuras, to register land transfers. Furthermore, many landowners do not have a strong body of evidence proving land tenure; these landowners may be targeted by local powerbrokers. Lacking evidence of ownership, landowners are unable to refer their cases to the formal court systems and may be victims of land grabs and violence by former mujahedeen commanders as well as by individuals and entire communities.

“Legal documents are valuable assets to people and they easily defend their rights; however, the powerful can illegally claim your land and you cannot do anything against them because if you say something then they will kill you.” (General administrator, Justice Department, Kunduz district)

The Amlak

The Property Registration Department, known as the Amlak, is part of the Ministry of Agriculture, Irrigation, and Livestock and is primarily responsible for land and policy administration.⁴ It is responsible for updating land records, even though it does not register newly purchased land.

Respondents stated that the Amlak is poorly managed. Staff lacks the capacity to amend records, and existing records are poorly archived. Records are incomplete and rely heavily on voluntary declarations made by landowners and cadastre surveys carried out in the mid-1970s.

³C. Deschamps & A.Roe, *Land Conflict In Afghanistan: Building Capacity to Address Vulnerability* (Kabul: AREU, 2009).

⁴*Id.*

Several respondents noted their impression that the Amlak has not registered any new land cases for more than three decades and that land administration procedures are largely nonexistent because the vast majority of transactions and dispute resolutions take place through local elders and shuras. Rural landowners interpret land rights very differently from government officials, who focus on legal documentation as the primary proof of evidence of ownership. The majority of landowners interviewed would like to see existing customary entitlements and documentation formalized to provide protection and prevent land disputes.

Land Transfers

Land transfer via inheritance is the most common form of transfer; changes of ownership should be registered with the Amlak. In these cases, new landowners measure the size of the land—some may invite local elders to witness the measurement—and the geographical coordinates are given to the Amlak to update records. In return, landowners are given an acknowledgement letter.

The land administrator from Imam Sahib stated that many people have kept their original documents, and that the Amlak in Kunduz City has been monitoring officially notified property changes throughout the past decade. Yet, the majority of records are outdated and land divisions through inheritance, mortgaging, or land sales have largely gone unrecorded by official government agencies. Because the Afghan government has stated that it does not accept customary ownership, landowners are apprehensive about approaching government institutions due to fear of government appropriation or redistribution of their land. Many of the documents in the Amlak have been tampered with or falsified; these serve as an additional driver of conflict between claimants. In some cases, landowners have tried to prove ownership using cadastral maps, which must be read with caution.

“Yes we have cadastre, but it’s inactive. The city area has been cadastre in the past. Most of the documents or file have changed or been falsified.” (Local elder, Imam Sahib district)

To mitigate disputes and increase security in Kunduz, it is necessary to establish simple and transparent processes for documenting, recognizing, and registering local land rights at the provincial and the national level.

The Cadastral Map

The lack of an existing framework of land administration records or comprehensive cadastre remains a challenge in establishing robust land registration mechanisms in Afghanistan. Despite the historical precedent for recordkeeping, land records (such as they exist) are dispersed throughout a range of institutions, including the Amlak and various district and provincial authorities. In some areas, the courts are repositories of land administration records. However, the majority of evidence for land ownership in Kunduz comes from customary law documents, witnessed by local elders and shuras. These documents may be shared with the district huqooq or kept as written records within shuras. Other records may take the form of deeds prepared and notarized through the court system; tax receipts or records of payment held by local authorities; or historical land titles from land grants made by kings and former rulers. Further evidence may be found in the records of the cadastre.

The national cadastral survey was initiated in the mid-1960s and was conducted through the late 1970s. During this period, almost 30 percent of agricultural lands were surveyed. In Kunduz province, 20 percent of land was surveyed and the current status of the cadastre in Afghanistan is extremely poor that formal justice respondents deemed it better to start any new survey from

scratch. Half the respondents interviewed were aware of the cadastral mapping process and stated that many people retained their original shariah deeds.

“In the past the cadastral map existed; however, now land is measured in a local way. Property was registered in the past, and approximately 60 percent of people still have legal documents.” (Local elder, Imam Sahib district)

Tax Receipts

During the 1930s, systematic records were established in an effort to formalize property taxation. Tax payment receipts were often abused to establish land ownership rather than to reflect actual ownership.⁵ Although landowners might have tax receipts, there is no clear data on how much tax landowners pay or how regularly they pay taxes in Kunduz. One local elder stated that formal document holders paid 8 percent of the land value in taxes, whereas those with customary documents paid 2 percent in tax.

NGO Programs

No respondent could identify examples of NGOs or a government department setting up initiatives to register customary entitlements. Several respondents highlighted international NGOs that work with refugees and IDPs in obtaining shelter, but there seems to be no specific focus on land titling and registration in these cases. Land dispute resolution and registration processes rest firmly with informal justice actors.

Attitudes about Formal Land Registration

Land rights are determined by a number of intersecting legal frameworks, including constitutional law, religious law, civil law, and customary law, making the regulatory environment exceptionally complex in Afghanistan. Principles maybe contradictory; for example, Islamic law grants daughters and widows the right to inheritance, while Pashtunwali denies it. Informal and formal stakeholders agreed that land rights should be addressed using an Islamic framework that grants inclusive land rights to all people, including women and the poor.

The negative perception of the government and its land management practices has created a lack of trust in formal institutions and their ability to effectively resolve land disputes. Furthermore, the lack of capacity, particularly within the Amlak, to handle land disputes combined with the influence of local powerbrokers has undermined community trust in government initiatives to arbitrate land disputes.

“In the past, the government land division system was good, but now all the government offices are corrupt and do not processes cases quickly.” (Head of district development association, Khan Abad district)

The majority of local elders agreed that the government should be the primary caretaker of land issues, enforce decisions, and prevent intractable land conflicts from becoming a common feature in Kunduz. The head of the primary court in Kunduz center stated that having clear land management and registration procedures would strengthen livelihood options for local farmers and that all land disputes should be resolved via the courts. Although local elders are trusted to arbitrate conflicts, they lack enforceable mechanisms to ensure that disputants adhere to resolutions.

⁵TLO, *Land Based Conflict in Afghanistan: The Case of Paktia* (Kabul: TLO, 2008).

“Land conflict has a direct relation with bigger government plans and policies. The government should create good job opportunities for farmers and they should distribute the land among them fairly.” (Head of primary court, Kunduz district)

Many respondents agreed that a mixture of shariah and constitutional law should be used to resolve land conflicts. Customary practices are perceived as legitimate among communities, and people are more familiar with the processes involved in resolving and registering land disputes with local shuras than with the formal courts that can be marred by delays and corruption.

“Traditional norms have a positive impact on land management issues, as it decreases the expenses over the land conflict. In rural locations, traditional norms are very common among people, especially those that do not trust government because of corruption.” (Local elder, Khan Abad district)

Attitudes about taxation are mixed: some landowners believe taxation is an obstacle in registering land rights due to the lack of information on tax rates and perceived high rates. Some landowners stated that a reduction in tax would encourage people to register their land with the Amlak. Landowners and local elders encouraged the government to implement land-titling initiatives as legitimate and effective methods of tax collection, which would improve social services across the country. Regular tax payments would also contribute to the reduction of disputes because ownership rights would be clearly recorded at the district and national levels through tax receipts.

“Property registration through the government has two benefits; it can be beneficial for the government and for the public as well. Firstly, conflict will decrease and everyone will know their rights; secondly, the government will receive the tax and it will be a good income for the government.” (Local elder, Khan Abad district)

Government-led initiatives to register customary land entitlements would be welcomed by the majority of respondents. Formalized registration procedures and documentation would provide greater land security and prevent conflicts from arising in communities. Landowners expressed concerns that any measures to formally recognize customary entitlements and government land registration procedures work closely with local elders and shuras to ensure that the cost of registering and taxation is not too expensive and to encourage closer communication between government bodies such as the Amlak and local communities.

“Formal documents are more valuable than customary documents because no one can dispute them. Anyone can dispute the customary documents and forcibly take land.” (District governor, Imam Sahib district)

The lack of formal documentation is a concern for landowners, especially smaller landowners, who are vulnerable to land grabs by local powerbrokers. They felt that securing land tenure documents, particularly customary documents, would be a step toward addressing the complexities of land rights in Kunduz.

Conclusion

In Kunduz land conflicts contribute greatly to the bulk of conflicts addressed by both traditional justice mechanisms and formal courts systems. A lack of adequate legal documentation proving land tenure is compounded by the return of refugees and IDPs claiming land and inheritance-based conflicts between families. The poor regulatory framework strengthens local powerbrokers and their

ability to illegally seize land, particularly from landowners with customary land entitlement documents. Respondents agreed that, to mitigate such disputes, formal land registration under the government's auspices is called for.

Despite the fact that the government is not perceived as a source of tenure security, most communities would like to see the existing customary entitlements and documentation formalized through the government. This belief reveals the power of formal over informal land deeds and the desire for regulated and documented land management over a reliance of local community knowledge to determine land boundaries. The existing adhoc relationship between the two legal systems allows disputants to play them off each other, thereby increasing the possibility for intractable conflicts, for example, when a disputant appeals to the formal system when the outcome of the customary one is not in one's favor.

Traditional dispute resolution mechanisms, such shuras, remain the most accessible and popular recourse for landowners. In Kunduz, the majority of land disputes and resolutions are referred to local shuras either by disputants themselves or by formal justice actors that deem a customary solution appropriate. Although an adhoc referral relationship exists between informal and formal actors, there is an implicit appreciation that decisions made through local community elders and shuras hold more legitimacy and are therefore more sustainable, as well as being faster and less costly than the government courts.

Attitudes toward government-led registration initiatives are largely positive, and landowners and local elders value formalized land tenure procedures as a method to reduce conflicts. Although local elders and shuras are respected by their communities, they lack enforceable mechanisms to ensure that disputants adhere to decisions. Furthermore, customary documents are vulnerable to opportunistic individuals seeking to take advantage of a weak government and poor land management policies. Without robust enforcement mechanisms, customary documents are susceptible to pressures from local commanders as violent threats are made against landowners and local elders issuing resolutions. While they are perceived as legitimate forms of ownership documentation among communities, customary documents do not provide legal rights therefore opportunities to formalize and attain government-approved documents would increase land tenure security.

Annex A

Questionnaire: Relevant stakeholders (government officials, local elders, community leaders)

Name:

Age:

Occupation:

Village/City:

Ethnicity/Tribe:

Time/Date of Interview:

Identify key past and present land issues (including prevalent sources of disputes).

1. What land disputes are commonly referred to you for resolution?
2. What were the causes for land disputes? (Please select all that applies)
 - Illegal occupation
 - Inheritance dispute between family members
 - Selling of land by non-owners (e.g. commanders)
 - Conflict over the return of people/IDPs to land previously owned
 - Conflict over communal management of resourcesOther (Please describe)
3. Do you know of any land disputes between different ethnic communities in Kunduz now or in the past? Please describe any cases.
 - a. Have the return of IDPs (Internally Displaced People) affected the number of land disputes in Kunduz? How?
 - b. Are there any high profile land disputes you are aware of in your community? What actors are involved?
 - c. Are any formal justice actors (including the ALP) involved in land disputes in your community?
 - Are you aware of any land disputes related to access to water? Please describe any cases.
4. How do disputants inform you of their case?
 - a. Is there a registration process to submit land disputes?
5. How do you resolve disputes?
6. Are there any specific land disputes that you are dealing with now?
 - a. Who are the claimants?

How will the case be resolved? Provide a brief overview of the land title situation.

1. What is the situation surrounding land registration and ownership in Kunduz
 - a. Are land rights registered in Kunduz? Were they registered in the past?
 - b. Does any significant percentage of the population have legal deeds to their land already?
2. How is land registered in Kunduz?
 - a. Who is it registered with? Which government officials are involved?
 - b. What are the procedures to register land deeds?
 - c. Are there any fees to pay to register land? Are land registrations records open to the public?
3. Are women landholders in your community?
4. Who are the main landowners in your community?
 - a. Are there any cases of land grabbing? If yes, in what areas and which actors are involved?
 - b. Are many inhabited areas technically on 'government' land? If so, what are the main areas where this is likely to pose a problem?
5. What legal systems are commonly used to resolve land-titling issues?
 - a. Are records kept of the outcome? Do government officials have access to these records?
6. How do cultural norms (such as Pastunwali) have an impact on land titling?
7. Are formal dispute mechanisms for land issues effective in resolving disputes? Why?
 - a. Which formal dispute mechanism is best able to help with land conflicts?
8. Are informal dispute mechanisms for land issues effective in resolving disputes? Why?
 - a. Who are the most effective community leaders in solving land conflicts?
9. Do the informal and formal justice systems cooperate on land titling issues?
 - a. If yes, how do they cooperate?

Identify any past work that has been done in these areas by NGOs, by Arazi, by other government actors, or others.

1. What formal systems are in place for managing land ownership in your province?
 - a. Are they effective?
 - b. Who is responsible for managing such systems?
2. In what ways has the Afghan Government supported land management systems in this province?
 - a. Have they been effective in improving land management issues?
3. What is the reputation of formal justice and government actors involved in land titling and registration? Are there issues of corruption?

Identify key formal or informal actors and their likely attitudes towards this project.

1. How do you think land rights and titling should be addressed:
 - a. At a community level;
 - b. At a district level;
 - c. At a national level;
 - d. How do you think land titling and registration can be improved in Kunduz?
2. Do you believe that community members, with land, would be interested in formally registering and titling their land through the government?
 - a. Who do you think formal title and registration of land and property rights would benefit?
 - b. Do you know of community members who would be interested in going through a process to formally register land?
3. What value do you think government documents have in the community? Do you think it will provide more security for land claims?

Questionnaire: Landowners/Disputants

Name:

Age:

Occupation:

Village/City:

Times/ Date of Interview:

Identify key past and present land issues (including prevalent sources of disputes).

1. What past land dispute did you have in your community?
2. What was the cause of the land dispute?
 - Insecurity
 - Illegal occupation
 - Inheritance dispute between family members
 - Selling of land by non-owners (e.g. commanders)
 - Conflict over the return of people/IDPs to land previously owned
 - Conflict over community management of resources (e.g. share-cropping)
 - Other
3. How was the dispute resolved?
 - a. What challenges did you face resolving your dispute?

- b. Were you satisfied with the outcome of the resolution?
 - c. Did you receive any documents after your dispute was resolved?
 - d. Do you have any documents for the land you own? What type of documents are they?
4. Are there any intractable/(longstanding) land issues in your community at present? Please describe any cases.
 5. What are the causes for these land disputes? (Please select all that apply)
 - Insecurity
 - Illegal occupation
 - Inheritance dispute
 - Selling of land by non-owners
 - Conflict over the return of people/IDPs to land previously owned
 - Conflict over community management of resources (e.g. share-cropping)
 - Other
 - If you have a land dispute in your community what conflict resolution body do you take your case to?
 6. Are land disputes referred from informal justice systems to formal justice system?
 - a. If Yes, why?
 - b. To what government actors or body would you take a land dispute if you needed the government's support?

Provide a brief overview of the land title situation.

1. How did you come to own your land?
 - a. What documents do you have verifying that your land is yours?
2. How is land divided in your community? Who divided the land?
3. Are there any groups in your community that have no land rights?
 - a. Why do they not have land rights?
4. Are your land rights registered?
 - a. Who is it registered with?
 - b. How did you register it?
 - c. Are there any fees to pay to register land?
5. Are you aware of any legal frameworks covering your land rights?
 - a. If yes, please describe.
6. Are land registrations records open to the public?
7. Are there any women landholders in your community?
8. Do you know of government laws addressing land rights?
 - a. If Yes, what are they?
9. What legal systems are commonly used to resolve land-titling issues?
10. How do cultural norms (such as Pashtunwali) have an impact on land titling?

Identify any past work that has been done in these areas by NGOs, by Arazi, by other government actors, or others.

1. Do you know of any organizations that have worked on land rights in your area?
2. Are there any land management programs in your area to prevent disputes? What do they do?
3. Do you know of land related laws and government departments working on land issues?
 - a. If Yes, what do they do?
4. Are there any NGO's workings on land rights in your area?
 - a. What do they do?
 - b. Are they successful?

Identify key formal or informal actors and their likely attitudes towards this project.

1. How do you think land rights and titling should be addressed in your community? Are there any stakeholders (informal/formal) who will be challenging to work with?
2. Do you think better working relationships with government bodies will be useful in improving land registration procedures?
3. Would you be interested in having your land registered and titled by the government?
4. What value do you think government documents or titles have for landowners?