

Synthesis Paper Series

# Looking for Peace on the Pastures: Rural Land Relations in Afghanistan



Liz Alden Wily



**Afghanistan Research and Evaluation Unit**

December 2004

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## About the Author

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## About the Afghanistan Research and Evaluation Unit (AREU)

The Afghanistan Research and Evaluation Unit (AREU) is an independent research organisation that conducts and facilitates action-oriented research and learning that informs and influences policy and practice. AREU also actively promotes a culture of research and learning by strengthening analytical capacity in Afghanistan and by creating opportunities for analysis and debate. Fundamental to AREU's vision is that its work should improve Afghan lives. AREU was established by the assistance community working in Afghanistan and has a board of directors with representation from donors, UN and multilateral organisations and non-governmental organisations (NGOs).

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Note: This report was initially prepared in early summer 2004. The data analysis used in the report was therefore current at the time of writing, but may not reflect additional analysis of (NRVA) data that may have occurred in the interim.

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## Glossary

Afghani (or Af)	the official Afghan currency (US\$1=45 Afs)
<i>ailoq/sargol</i>	upland pasture
<i>amir</i>	king
<i>amlak</i>	property
<i>arbab</i>	appointed village leader
<i>bazkar</i>	sharecropper, usually a settled community member
<i>bai</i>	landowner, trader, rich man
<i>beg</i>	leader, clan head
<i>char kot</i>	literally “four piles,” sharecropping where farmer gets one quarter of crop
<i>chul</i>	loess dunes
<i>farz</i>	provision of shares, as in Civil Code
<i>firman</i>	state order/decreed
<i>graw, bai jaez</i>	pawning or mortgage
<i>graw-dar</i>	the person to whom land is pawned
<i>gharibkar/charikar</i>	very poor sharecroppers, usually accommodated by landlords
<i>Hannafi</i>	Sunni law/jurisprudence
<i>hizb</i>	party
<i>hoquq</i>	law office, Ministry of Justice
<i>jerib</i>	unit of land measurement; approximately one-fifth of a hectare
<i>jirga</i>	tribal council
<i>kambaghal</i>	destitute/beggar
<i>kargar</i>	labourer/worker
<i>khan</i>	notable, landowner, landlord
<i>khar/hezum</i>	literally thorns or spikes, thorn bushes collected from mountains for fuel
<i>khistmand</i>	tenant sharecropper/“middle peasants” who have farm inputs
<i>lalmi</i>	dryland farming/rain-fed agriculture land
<i>Mahkama-i Morafa'a</i>	provincial appeals court
<i>Mahkama-i Ibtedaia</i>	district primary court
<i>Mahkama-i Tameez</i>	high court
<i>maldar</i>	herd owner
<i>malik</i>	landlord, owner
<i>mantiq</i>	area, ward, territory, cluster of villages with a linked identity
<i>maraka</i>	in Pashtun areas, local council similar to <i>shuras</i>
<i>mard-i kar/muzdakar</i>	landless daily paid workers, often from outside the area
<i>mohallah</i>	area/cluster; used in Uzbek areas
<i>moquofa</i>	charitable gifted lands
<i>mujaheddin</i>	Holy Warriors fighting in <i>jihad</i> , or Holy War
<i>mullah</i>	religious teacher, mosque prayer leader

<i>nimcha bai</i> Northern Alliance	half landlord, able to employ worker/sharecropper coalition of anti-Taliban forces
<i>orfi</i>	customary documents
<i>panj kot</i>	literally “five piles,” sharecropping where farmer gets one fifth of crop
<i>qariya/qeshlaq/deh qawallas</i>	village documents
<i>sarad</i>	literally “cold land,” meaning land fed by springs or highland ponds, neither by rain nor irrigation from rivers
<i>seer</i>	seven kilos of grain
<i>Shari’a</i>	Islamic law
<i>shura</i>	community committee
<i>waqfi</i>	land endowed for religious purposes
<i>watan</i>	home area
<i>wuluswali</i>	district
<i>zamindar/mulkdar/badar</i>	landlord, landowner

Note: The term household is used in this report to refer to what are generally extended households living in a single compound. Several nuclear families and several generations may be members of this household.

Dates: Laws are indicated by their Afghan date. Excepting the Taliban regime, which used the Arabic lunar calendar, Afghanistan follows a solar calendar beginning in 622 AD, the year of the *Hijrat*. The first day of the year coincides with the first day of spring (the month of Hamal) which, except in a leap year, falls on 21 March in the Common Era. The approximate corresponding western date is derived by adding 621 years, two months and 21 days to the Afghan date.

#### Months:

Hamal begins March 21<sup>st</sup>  
 Sawr begins April 21<sup>st</sup>  
 Jawza begins May 22<sup>nd</sup>  
 Saratan begins June 22<sup>nd</sup>  
 Asad begins July 23<sup>rd</sup>  
 Sumbula begins August 23<sup>rd</sup>  
 Mizan begins September 23<sup>rd</sup>  
 Aqrab begins October 23<sup>rd</sup>  
 Qaus begins November 22<sup>nd</sup>  
 Jadi begins December 22<sup>nd</sup>  
 Dawl begins January 21<sup>st</sup>  
 Hut begins February 20<sup>th</sup>



## Executive Summary

This paper draws together findings from three rural field studies in Bamyan, Faryab and Badakhshan Provinces. The first two were rapid appraisal studies but concurred in a main finding that pastureland tenure needs priority attention. The third (commissioned) focal report on pasture issues in Badakhshan built upon in-depth and longitudinal research by its author.

### Land Relations

As in most modernising agrarian states, the rural economy in Afghanistan is a complex mix of on- and off-farm activity and characterised by intra-rural and rural-urban mobility and multiple sources of livelihoods. Despite this, land ownership continues to represent a significant divider between rich and poor. Owning a home in the rural areas is also found to be a critical platform for survival and a factor that has received too little attention to date. Homelessness carries over from generation to generation and itinerant farm labourers are exploited in their dependence upon others for winter shelter. Declared rural homelessness is in the region of 15 percent of the population but is likely much higher when the multitude of (especially female-headed) households living in others' houses is considered. Small herds of small stock are generally the single capital asset of itinerant homeless labourers. Rising cultivation of pastures and privatisation of pastures means loss of access to these and further constrains livelihoods in this sector.

Despite many studies and surveys over the last 50 years, uncertainty as to the exact dimensions of landlessness (and homelessness) remains. This is only partly the result of current fluid post-war circumstances. Regional diversity is extreme, thus limiting the utility of national data. Sampling procedures are often flawed, as a great deal is still not known as to how social units configure themselves. Mechanisms of land access are typically

complex and there is frequently insufficient distinction between lands owned and lands accessed. The fact that rain-fed farms are frequently farmed on a temporary basis adds to difficulties. As a whole, landholding data must still be viewed with caution, even where every attempt has been made to accurately upscale and weight findings.

Land concentration continues to be significant despite conventional wisdom that few large rural estates exist. Polarisation of landed and landless persons is likely going through a period of acceleration at this time, due to unsettled and unregulated circumstances, the effects of drought, rapid capital accumulation in the poppy sector, and rampant land grabbing and arable expansion by elites into areas previously designated as not available for cultivation (pasture). Militant economic elites rather than the traditional landlord class may be the main beneficiaries.

Land mortgaging seems to be less common than expected (less than 2% mortgaging land in or out in 2003), with outright distress sales especially common in the recent past. This has fuelled an active land market in which those who purchase land appear to be existing owners. Conventional wisdom that women cannot and do not own land appears untrue, with the 2003 National Risk and Vulnerability Assessment (NRVA) finding that 56 percent of female-headed households own some land.

### Land Law and Policy

Land relations are primarily regulated by custom, and custom itself is highly influenced by religious law. Much of this is in turn embedded in a formal civil code. There is no lack of statutory national law on land matters, but its utility is limited, due both to difficulties with enforcement and to its unsatisfactory paradigms. Prime among these is the absence of clear legal support for the customary ability

of communities to own land in common, of most importance in respect of pastureland. Since the Bonn conference in late 2001, only a handful of new land decrees have been issued. These relate to the establishment of a dedicated land disputes court and attempts to restore as much public land to government as possible. Much of this land, this paper finds, is more accurately community-owned property (common property), the lack of legal recognition of which has enabled the state to claim such land— and often reallocate it to favoured persons or groups.

Rural land policy is non-existent, although steps have been taken to generate this in the hands of a special commission. For the moment, the outstanding strategy suggested in government documents is towards a classical titling programme. This raises alarming prospects of embedding dubious privatisation of public and common properties, and of entrenching a generally unsatisfactory set of tenurial paradigms. Land disputes are rife, with two-thirds of all cases brought to the normal court system relating to landed property and a recently established dedicated land court additionally swamped. This is so even though many poor (and those wary of ethnic bias) do not go to courts at all. Communal (ethnic) and communal property-related disputes dominate in practice and reflect a simmering “war” over pastures, in which a common trigger is expansion of cultivation into pastureland. Neither the terms of law nor the centralist and court-driven regime of rural land administration in place are competent to resolve these often ethnically heated, and sometimes warlord-abetted disputes.

The three case studies demonstrate the importance of history to understanding current tenure patterns and the problems facing pastures today. This history reaches back specifically to Pashtun land conquest and colonisation in the 1880s effected by Amir Abdur al Rahman, with British encouragement and support, and delivered thereafter up until 1978 in various versions

of Pashtunisation. In the Bamyān study, the rebellious Hazaras found their pastures taken from them and handed over formally to Pashtun nomads (Kuchis), which fuelled today’s bitterness against Kuchis and Hazaras’ refusal to permit Kuchis to return to the pastures. In the Faryab case study, Abdur al Rahman colonised the area with Pashtuns and encouraged these traditional livestock keepers to additionally take up farming. This they did with considerable success, but the Pashtuns also steadily co-opted much of the pasture to the dismay of the non-Pashtun populations in the area. The final case study of the Shiwa pastures in Badakhshan has many elements in common with the first two cases, including the fact that land appropriation was largely to the benefit of non-local persons and especially to the favoured Pashtun tribe – but much less exclusively so than in the other two areas.

### Key Findings and Recommendations

There are three major areas for developing and improving land policy in Afghanistan:

- The outstanding tenure issue facing rural Afghanistan relates to pastures and requires *clear legal and practical support for common property as private, group-owned estates* belonging to specific villages or clusters of villages.
- Related, there is an urgent need for *public land to be redefined as nationally-owned property*, as a residual category beyond local commons, and administered (not owned) by the government of the day.
- Similarly, there is an outstanding need for the *overhaul of current land administration systems*. As a matter of priority, such a system should operate at a community or minimally, district level and be made locally accountable, rather than be accountable to the central state, and which in its procedures for adjudication and recognition of rights

builds directly upon established majority customary norms.

None of these recommendations are achievable through simple declamatory new policy or laws, even should they be enforceable (which in the current environment they are not). For soundness of formulation and to enable essential popular ownership of the reforms, and sustainability, such changes should emerge out of concrete “learning by doing” projects, and expanded incrementally. Given the dangerous and still unresolved nature of so many disputes relating to rights over remote rain-fed and pasturelands, conflict resolution is a priority. A localised pasture-based procedure is described, through which the needed tenurial and administration reforms may at the same time be safely arrived at and implemented. A critical element of this is that disputants themselves arrive at agreed norms, including

definition of viable boundaries between farming and pastoral use on the ground, and the rules through which access will be implemented, regulated, monitored and disputes in the future mediated. What are in effect land use plans for specific pastures will emerge, and within which tenure and access rights can be ordered and agreed. It is these agreements that should be first registered, along with recordation of the boundaries of the pastures referred to. Community-based mechanisms for sustaining agreements (and in which seasonal users are represented) would form the first basis of localised land administration institutional development. New and less partisan supporting district institutional mechanisms could then be incrementally put in place. Such an approach allows for practical progress in resolving conflicts and testing and refining of systems through practice.

## 1. Introduction



Courtesy of WFP

*Land is now on the agenda, but action is slow to get underway*

Studies conducted by the Afghanistan Research and Evaluation Unit (AREU) since 2002<sup>1</sup> consistently demonstrate that landed property issues in Afghanistan are deeply intertwined with both continuing instability and slow recovery and reconstruction, and need to be tackled in direct ways to contribute to lasting peace and progress. Recognition of this has grown within the Transitional Administration and assistance community. Whereas land issues failed to be mentioned in the Tokyo Ministerial Meeting of January 2002, land matters were very much on the

agenda at a regional cooperation meeting held in Bishkek in May 2004 and made a priority under two of six new National Priority Programmes announced in the same month.

Action on the ground is thus far limited. By mid-2004, this prominently included the establishment of a land disputes court for returnee claims. A small project funded by the U.S. Agency for International Development (USAID) has put the property records of the Kabul Court into improved order. The United Nations High Commissioner for Refugees (UNHCR) and the Norwegian Refugee Council among others had initiatives underway assisting refugee returnees to reclaim land

<sup>1</sup> These publications include Liz Alden Wily's *Land Rights in Crisis: Restoring Tenure Security in Afghanistan* (Issues Paper Series, March 2003); *Land and the Constitution* (Briefing Paper Series, November 2003); *Land Relations in Bamyan Province: Findings from a 15 Village Case Study* (Case Study Series, February 2004); *Land Conflict and Peace in Afghanistan* (An AREU Presentation to The World Bank Conference on Land Policy, Washington, March 2004); *Putting Rural Land Registration in Perspective: The Afghanistan Case* (An AREU Presentation to the Federation of Surveyors Commission Conference on Kosovo, Geneva, April 2004); *Land Relations in Faryab Province: Findings from a Field Study of 11 Villages* (Case Study Series, June 2004); and Mervyn Patterson's *The Shiwa Pastures 1978-2003: Land Tenure Changes and Conflicts in Northeastern Badakhshan* (Case Study Series, May 2004).

or housing. Their efforts have been hindered by limited policy guidance, weak rule of law, contradictory state authority and unsettled land relations at large in both the urban and rural sphere. USAID, The World Bank, and UNHCS-Habitat have registration related and settlement proposals in hand, with an urban focus. Little has been advanced in the rural sphere, but with Asian Development Bank support, the Ministry of Agriculture and Animal Husbandry (MAAH) has proposed “land titling” as a priority project, a strategy commented upon in this paper.

In the interim, an important institutional development has taken place in the establishment of an Inter-Ministerial Land Commission, the terms of reference of which will broadly be to devise a National Land Policy. Aside from grappling with the difficult task of producing meaningful policy and supporting legal paradigms, the Commission will need to pay careful attention to the means through which these are arrived at. It will be critical to developed strategies that enable popular adherence to new policies, especially by the poor. These people prominently include those without land or housing, as elaborated in Section 2.

*Development soundness and good governance need to be fundamental concerns of tenure administration*

Reform in property systems is currently widespread around the globe, and there is much to be learnt from these experiences.<sup>2</sup> Some of the more common conclusions that may be drawn refer to the tendency for:

- Especially aid-driven approaches to result in too costly and institutionally burdensome systems;

- Too much top heavy planning to be undertaken without being grounded in practical experience;
- Too ambitious programmes and systems to be designed and to lie unimplemented for years;
- Too critical pursuance of classical titling approaches as the panacea for all tenure-related ills; and
- Too little space made for grievances to be properly heard and addressed.

Dwindling political will is also widely proving problematic, not least because of entrenched elite capture by one sector of society or another. Insufficient popular ownership of changes is proving a particularly strong impediment to change.

All of the above suggest that matters of sound process need to be taken extremely seriously. Dealing safely with people’s land interests is first and foremost a matter of governance and subject to the same requirements of good governance as other processes. Incremental and devolutionary approaches which allow for real participation of landholders at the local level, systems that are straightforward enough for the majority to use and help regulate themselves, and more localised decision-making in even policy planning, are (slowly) emerging as prominent breakthroughs in the face of expensive systems failures. The insecure conditions still facing millions of Afghans in 2004 merely increase the urgency of getting the strategies “right.”

It is on matters of strategy that this synthesis accordingly concentrates. Its focus is the rural sphere. Constraints such as land grabbing opportunism by economic-political or militant elites, and lack of confidence in the courts

<sup>2</sup> For general reviews refer to The World Bank. *Proceedings: Conference on Land Policy, Translating Principles into Action: Lessons and Challenges*. Washington 4-5 March, 2004; The World Bank. *Poverty, Vulnerability and Social Protection*. Human Development Unit, South Asia Region (DRAFT). 2004; Deininger, K. *Land Policies for Growth and Poverty Reduction*. A World Bank Policy Research Report, Washington. 2003; De Janvry and E. Sadoulet (eds). *Access to Land and Land Policy Reforms*. Helsinki: World Institute for Development Economics Research. 2003; FAO. *Land Reform, Land Settlement and Cooperatives*. Issue 2002/2. Rome. 2002; FAO. *Land Reform, Land Settlement and Cooperatives*. Issue 2003/3. Rome. 2003; Toulmin, C. and J. Quan (eds). *Evolving Land Rights, Policy and Tenure in Africa*. London: DFID/IIED/NRI. 2000; and Alden Wily, 2003, op cit.

to rule fairly and/or have their rulings enforced equally afflict both rural and urban spheres. Other factors such as distinctions in the way in which property is acquired and held in rural and urban areas demand different approaches to be effective.

*The findings of field studies and sources of information and data*

This paper brings together findings from three studies: two minor field studies were conducted in Bamyan (13 days in June 2003) and then Faryab (10 days in November 2003) Provinces. Pasture-related issues emerged as a priority issue in both field studies. As a consequence, AREU commissioned a third report, this time relating solely to pastoral issues in north eastern Badakhshan. Unlike the first two rapid reconnaissance studies, the Badakhshan study was founded upon in-depth study of the selected pastures as outlined below.<sup>3</sup>

The resource base of the two minor field studies is similar. In Bamyan, field work was carried out in eight village clusters (*mantiqa*) in the province's seven districts (Appendix A). The selection of communities and interviewees was opportunistic, accessibility and security being main determinants.

In Faryab, interviews were undertaken in 11 villages in six *mantiqa*, in three of the 12-16 districts claimed as belonging to Faryab. Twenty-seven widows in Maimana City were also interviewed (Appendix A). Neither districts nor *mantiqa* were randomly selected, but again chosen for their accessibility and

in this instance, ethnic composition, a relevant factor in land relations.

The resource base of the Badakhshan case is different. The author, Mervyn Patterson, only dealt with pastures and used detailed data and information collected over four summers between 2000 and 2003. This enabled a comprehensive analysis to be made of changing use and rights of the selected study area, the high and rocky pastures of the Shiwa area. These lie between Faizabad and Baharak. Although Shiwa has a spatial cohesion of its own, it falls partly within Baharak District and partly within Sheghnan District. Patterson identified around 200 distinct pastures within 34 distinct areas. Each on average sustains a flock of 800 sheep for a whole summer.

The field studies also make much use of historical resources for background setting. Section 2 of this paper also draws substantially upon past surveys and reports and in particular upon the National Risk and Vulnerability Assessment (NRVA) carried out between July and September 2003. The NRVA provided data from 11,227 households in rural Afghanistan and more general information from 1,800 community and higher level committee meetings. While this represents an extraordinary effort, the resulting data on land holding have limitations, resulting from the complexity of many questions, ambivalent responses, a high level of non-response and data inputting problems. As this paper broadly concludes, thanks to NRVA and other work, we do know a great deal more about land relations – but still not enough.

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<sup>3</sup> The findings of each of the studies are fully reported upon in the AREU Land Case Study Series (see footnote on previous page).

## 2. An Overview of Rural Land Relations

*Attaining an accurate picture of land distribution has always been problematic in Afghanistan, not least because of stark regional diversity, the complexities of separating land access with land ownership, and sampling problems. Nonetheless there is sufficient information, prominently including the recent NRVA exercise of 2003, to confirm that rural landholding is inequitable, with a high rate of landlessness (21-24 percent depending upon analysis) and significant concentration among those who do own land. Farmland remains, however, less unequally distributed than in most Asian states. Nor is the farming economy quite as deeply rooted in contract labour (sharecropping) as conventionally ascribed. Nonetheless, polarisation appears to be continuing apace and possibly making leaps and bounds in current conditions, exacerbating what had always been profound if typical exploitation of farm labour. Rural homelessness could, however, be an equally significant factor in keeping the poor, poor and another area of opportunity for intervention.*

Facts and figures about land ownership are still uncertain, despite a great deal of official surveying. Sampling that doesn't really reflect regional diversity and the complex way in which people access land are the main constraints.

as to how rural society configures itself in respect of land ownership and the implications for wealth and poverty. Predictably, pre-1978 conditions do not always apply today. Continuing movement beyond the norm, land grabbing, poppy production, recent drought and the giving of food and cash aid, are just some factors clouding the picture of land access and ownership, labour relations and levels of land-based dependence. It may also be the case that property relations were incompletely understood or reported upon even prior to the war years. Rural homelessness is a case in point; this has been argely ignored.

(iii) Large discrepancies have characterised land survey data since the 1960s, and continue to do so. Sometimes this is because of geographical specificity as above or possibly political tinkering.<sup>4</sup> More often it stems from the complex way in which land is farmed, within which a single household may own, sharecrop in or out and rent in or out land. Many surveys have paid insufficient attention to the crucial distinction between land *accessed* and land *owned*. At times rain-fed farms have been excluded from calculations, and in some cases with justification: this survey finds that rain-fed farms are often not under ownership, but is held by the community at large. There has also often been a failure to draw the necessary distinction between the house and its surrounds and farmland ownership. Many households classified as land owners in fact own only a few square metres of garden around their houses; this factor alone can dramatically skew figures on ownership.

### 2.1 Land Distribution

Findings relating to rural land relations need to be set against these caveats:

- (i) Regional and even district differences are stark due to complex agro-ecological and historical differences, limiting the utility of national figures.
- (ii) Although studies have been undertaken and continue, a great deal is still not known

<sup>4</sup> Political interference was suspected in the late 1970s-1980s with the startling interpretation of 1968 official figures presented in 1978 that only 12% of the rural population owned land (CSO. *Afghanistan Agriculture in Figures*. Kabul: CSO. 1978). If this referred strictly to individuals, this may in fact have been correct; with the inclusion of immediate family members at an average of five persons per family, this would have raised the proportion of land owners to around 60% of the rural population. Using household figures, Russian figures published in 1981 partly using the same data showed only 30% owned land. Glukhoded 1981 cited by Emadi, H. *State, Revolution, and Superpowers in Afghanistan*. Karachi: Royal Book Company, Karachi. 1997.

(iv) Sampling also regularly produces contradictory figures. Field work reported upon here shows that even immediately adjacent villages may vary dramatically in levels of land ownership because one represents a land owning community and another is a client landless village of the former. In order to gain a correct profile of rural communities, future sampling will advisedly adopt the village cluster or *mantiqa* as the unit, not single villages within the cluster.<sup>5</sup> Temporary residents such as itinerant labourers are also often excluded, and where they are homeless, may not appear in the statistics of any community at all. The existence of female-headed households left in the care of relatives while male heads out-migrate for work also often goes unreported. Different foci upon nuclear families or extended households (much extended in recent years) sharing land also produces different figures, and increasingly suggest that per capita analysis may be a more reliable means of gauging trends in farm size, among other features. Reliable weighting by district and province in the absence of census data limits accuracy of regional trends, even as deriving from the large sample (11,000+ households) of the 2003 NRVA.<sup>6</sup> The choice by the Ministry of Rural Rehabilitation and Development (MRRD) and The World Bank to assess poverty not on the basis of subjectively sampled wealth groups as were surveyed by NRVA, but upon their calorie intake, is proving a helpful innovation but one not yet fully applied to land holding data. Although available NRVA data are reported upon here, further analysis of data is underway in 2004 and in due course will yield instructive results. However, the fact that each analysis thus far produces such divergent figures sounds a warning and tends to suggest that a great

deal more work is needed to find the ideal sampling and weighting frames.

Finally, as often the case, anecdotal evidence sometimes provides more insights as to issues and trends than hard but static data. It is on this basis that the minor field appraisals upon which this analysis mainly draws are considered, in conjunction with hard data as available.

### 2.1.1. The Rural Economy

All farming economies (including pre-capitalist peasant agriculture but more especially commoditised economies) are typically a complex mix of on- and off-farm activity; that is, cultivation and livestock-raising are always complemented by a host of processing, trading and service activity, in both the home and beyond. The role of land ownership becomes especially complicated where the rural economy is significantly based upon contractual labour (and sharecropping in particular), which is the case in Afghanistan. Out-migration to neighbouring villages for farm or other work, to local towns or even outside the province and country, are long-standing and anticipated features. Rural households around the world do their best to maximise income opportunities and these typically take them – especially with the help of education and wealth – into definitively non land-based production and outside the rural sphere. Increasing urbanisation is a world phenomenon as is the return of income or goods to the rural sphere (remittances). Nonetheless, at the end of the day, Afghanistan remains mainly agrarian, with around three-quarters of households living outside cities and towns and the largest share of gross domestic product deriving from the agricultural sector (arable and livestock).<sup>7</sup>

<sup>5</sup> A *mantiqa* or *mohallah* in Uzbek areas typically represents a cluster of related villages or hamlets among whom there are close socio-economic ties, and which often share common properties. While traditionally the Pashtun *watan* (home area) was usually a single village, the notion of inter-related villages and shared commons is well-known today and is believed to broadly apply throughout much of Afghanistan.

<sup>6</sup> The World Bank, 2004 and 2004b, op cit. and MRRD and The World Bank (Ministry of Rural Development and Rehabilitation). *Rural Poverty in Afghanistan: Initial Insights from the NRVA 2003*. February 2004.

<sup>7</sup> Various cited as around 50%, now believed to be rising to 70% when the opium economy is included. TISA/IC (Transitional Islamic State of Afghanistan/International Community). *Securing Afghanistan's Future: Accomplishments and the Strategic Path Forward*. January 2004, and The World Bank, 2004b, op cit.

Even where family members do not directly farm their land, land ownership classically represents a pivotal socio-economic foundation and indicator of living standard, providing a stepping stone to income and opportunities (including off-farm jobs) not typically available to landless families.

As recent studies adopt a more holistic approach to assessing rural livelihoods, the complex nature of rural livelihoods in Afghanistan is better understood.<sup>8</sup> The NRVA 2003 confirms the importance of migration and remittances nation-wide and shows nearly half the population are classifiably “poor” in food consumption terms; while the top 20 percent of the rural population consumes more than seven times the food consumed by the poorest 20 percent.<sup>9</sup> Proportionately fewer people are “poor,” however, when these data are set against findings in other post-conflict states.<sup>10</sup>

AREU’s recently completed longitudinal study of 390 rural households in 21 villages adds to understanding of rural livelihoods.<sup>11</sup> This study found that nearly half the households surveyed had five or more income sources and that the most important source for 54 percent of households was *non*-farm related labour.<sup>12</sup> Because the cash equivalents were not calculated for myriad in-kind labour activities and because neither on-farm nor off-farm activities were aggregated and valued, the conclusion certainly cannot be drawn that rural people depend predominantly upon non-agrarian activities.

Nor is it yet known how far *off*-farm incomes are currently disproportionately high due to drought, the effects of which were still being surveyed in 2002/03, and typically constraining labour investment on-farm. Nor were substantial opportunities for cash/food for work through aid programmes (which may not be a lasting phenomenon) able to be factored out.<sup>13</sup> Nonetheless, the AREU survey does provide an important insight into the characteristically multi-sourced nature of the current rural economy. It also illustrates the complex linkages that exist between on-farm and off-farm activity. This is most easily seen in the time-old choice that surveys face in whether to locate skin and wool-based activities (leather work, carpet making, rug making) as on- or off-farm activities.<sup>14</sup> In this instance, AREU chose to locate these as off-farm, while analyses of the livestock sector’s contribution to the economy include these activities under that heading.

The altogether much larger NRVA 2003 is beginning to throw more light on just how much of the rural sector is farm-based activity. Draft analysis by The World Bank in June-July 2004 showed that just over half of employed individuals work in agriculture (53%) and fairly consistently across food consumption groups.<sup>15</sup> Not surprisingly, those who are self-employed farmers (owner-operators, or owners who hire in labour) do much better out of farming than those who are employed as sharecroppers or labourers. The analysis also confirms that almost half

<sup>8</sup> See Christopolos, I. *Out of Step? Agricultural Policy and Afghan Livelihoods*. Kabul: Afghanistan Research and Evaluation Unit, 2004.

<sup>9</sup> Forty-eight percent of rural households fall below the poverty line in terms of food consumption, rising to 60% in the north-west and west of the country (MRRD and The World Bank, *op cit.*).

<sup>10</sup> For example, Eritrea (71%), Guatemala (75%) and Tajikistan (86%). Refer to MRRD and The World Bank, *op cit.*

<sup>11</sup> Grace, J. and A. Pain. *Rethinking Rural Livelihoods in Afghanistan*. Kabul: Afghanistan Research and Evaluation Unit, July 2004.

<sup>12</sup> Diversification in itself does not correlate consistently with poverty or with other indicators (see The World Bank, 2004b, *op cit.*). As Grace and Pain, indicate, multiple income sources may reflect a desperate search for any work possible where it is episodic and unreliable (coping strategy of the poor) or a conscious asset accumulation strategy (the better off).

<sup>13</sup> World Bank analysis shows 33% of the NRVA sample of 2003 participated in food for work programmes; 19% in cash for work programmes; 13% received relief food and 3% participated in UN, NGO and other programmes (The World Bank, 2004b, *op cit.*).

<sup>14</sup> Similarly, construction work tends to be categorised as off-farm labour although it often prominently includes construction and repair to irrigation ditches. Locating remittances as off-farm sources is also problematic where a mobile farm labour force typically remits returns to family members.

<sup>15</sup> The World Bank, 2004b, *op cit.*

of the rural employed population work in the non-agricultural sector as either self-employed (10%) or as wage earners (36%).<sup>16</sup>

### *Low landholding and poverty correlate*

NRVA data also confirm that poverty correlates strongly with (among other attributes) large families, female-headed households, households with disabled member(s), lack of access to education, lack of high-earning job opportunities, lack of access to infrastructure and services, and lack of capital assets like land and livestock. Clusters of particularly vulnerable rural households are shown in Table 1. It will be noted that returnees and internally displaced persons (IDPs) and rain-fed farmers are better off in respect of cow ownership (Table 2).

Landless and female-headed households do consistently worst.

### *Land shortage is real*

Before looking at how farmland is distributed, it is important to note how limited the resource actually is. Only five percent of Afghanistan is naturally fertile or irrigated and another seven percent is usable for rain-fed farming every two, three or more years.<sup>17</sup> Pastureland is conversely abundant, covering around 45 percent of the total land area or 29 million hectares according to FAO land use analysis in the 1990s. In good months, in good years the range for grazing extends into some part of otherwise barren lands (deserts and mountain tops). The precise hectareage of pasture is therefore unknown, but is clearly the major past and potential area of land

Table 1: Vulnerable Groups in the NRVA 2003 Sample

Most Groups of Vulnerable Households (HH)	% poverty rate	Per capita daily calorie intake	Per capita annual food consumption in cash values (Afghanis)
The average rural HH	48	2,800	5,403
Returnees/IDPs HH	52	2,688	5,369
HH has physically disabled member	58	2,646	4,661
HH is farm labourer	61	2,728	4,754
Landless HH	61	2,532	4,500
Female-headed HH	67	2,657	4,282
HH resides in rain-fed zone	65	2,715	4,386

Data Source: NRVA 2003 as analysed by The World Bank, June 2004.

Table 2: Base Rural Asset Holding by Vulnerable Groups in the NRVA 2003 Sample

Most Groups of Vulnerable Households (HH)	% Owns Some Land	% Owns Irrigated Land	Mean Number of Cows Owned
The average rural HH	76	65	0.7
Returnees/IDPs HH	81	74	0.7
HH has physically disabled member	74	57	0.8
HH head is farm labourer	71	55	0.9
Landless HH	0	0	0.3
Female-headed HH	56	43	0.5
HH resides in rain-fed zone	72	32	1.2

Data Source: NRVA 2003 as analysed by The World Bank, June 2004.

<sup>16</sup> Ibid.

<sup>17</sup> FAO and UNDP. *Provincial Landcover Atlas of Islamic State of Afghanistan, 1999*. Kabul. 1999.

use. In agro-economic terms the country clearly lends itself to pastoral activity with high stock numbers and small stock in particular.<sup>18</sup> A significant sector (1-2 million households) is practising transhumance, moving with their stock between winter and summer pastures on migrations that may take several months (discussed later).

Although there are no reliable data on the exact proportion of households who own livestock, it is generally accepted to be extensive.<sup>19</sup> Perhaps unusually, this extends to the poor and extreme poor. Both the Bamyan and Faryab field studies routinely encountered landless and even homeless labourers who nonetheless own sheep, their only capital asset. This may be the reason for the uneven correlation of small stock numbers by wealth group in the AREU livelihoods study.<sup>20</sup>

Shocks and in particular the recent drought have sent numbers of livestock plummeting to one-third of the levels in 1995,<sup>21</sup> and the poor accordingly suffer most. In Faryab, livestock counts in 1991 and 2002 in the field study villages showed a ten-fold drop and those with few animals are currently stockless.<sup>22</sup> Where Taliban abuses combined with drought, such as in some of the villages in the Bamyan study, livestock was lost even more quickly, as people sold off their last sheep to pay taxes and tithes or bribes to prevent their sons being taken away for military service.<sup>23</sup> In both study areas landless people interviewed consistently aim to own (or regain) sheep ahead of land; the latter

is considered too expensive to purchase despite an active land market.

Social norms may play as great a role in preventing the landless poor from acquiring land as does financial means. Everywhere the studies encountered a view of landless people and especially itinerant labourers as lacking the capacity to own and manage farms of their own. Farming is considered a skill and farmers as artisans. Those who sharecrop with their own tools and oxen are “farmers”; those who have historically

only provided their labour are identified as labourers. Nor do landless people typically have the kinship or other connections that would make them viable purchasers of land in the eyes of larger owners selling land. In all cases of sales recorded in the Bamyan and Faryab studies, land was sold to persons who already owned land and were buying to increase their hectareage. In the Shiwa study, cases of landless persons acquiring pastureland for farming were recorded, but notably these were purchases made from the administration and paid for over time, in the same manner as land was distributed and paid for by landless people during the earlier land reform programmes (1975-1984).<sup>24</sup>

### 2.1.2. Skewed Distribution of Land Ownership

Farming economies in the region are historically founded upon skewed access to resources and exploitation of labour, manifested in characteristically large estates,

Small animal stock is often the only capital asset of the landless.

<sup>18</sup> In 1995 there were 3.6 million cattle and 31 million sheep and goats. This fell to under 20 million sheep and goats in 1998, and to under 5 million in 2002 following the 1999-2001 drought. See Maletta, H. *Crop and Food Supply Assessment Survey 2002: A Preliminary Statistical Report*. Kabul: FAO. August 2002.

<sup>19</sup> Khan, U. and M. Iqbal. *Role and the Size of Livestock Sector in Afghanistan*. Islamabad: The World Bank. 2001; Thomson, E. *Needs Assessment on Feeds, Livestock and Rangelands in Afghanistan*. Syria: International Centre for Agricultural Research in the Dry Areas. 2002; and TISA/IC, op cit.

<sup>20</sup> Grace and Pain, op cit.

<sup>21</sup> In 2002, mean household stock ownership was 1.2 cattle, 2.9 sheep and 2.4 goats (Maletta, op cit.). NRVA data showed diverse ownership of stock, with an average of 0.7 cows per household among its 11,000+ sample in 2003.

<sup>22</sup> Alden Wily, 2004d, op cit.

<sup>23</sup> Alden Wily, 2004a, op cit.

<sup>24</sup> Refer to Alden Wily, 2003a, op cit. for a review of the land reforms.

landlordism and landlessness.<sup>25</sup> In both neighbouring Pakistan and India, for example, over half the rural population is entirely landless.<sup>26</sup> In Bangladesh 52 percent of rural households, and in Nepal, 40 percent of households, own less than 0.5 acre of land (0.2 ha, or 1 *jerib*).<sup>27</sup> Landlessness is much lower in Iran and former Soviet Republics to the north.<sup>28</sup>

### Landlessness

In Afghanistan figures of landlessness have numerous pitfalls in analysis, with an extraordinary range of figures produced over the years.<sup>29</sup> These derive from factors listed earlier, and in particular (i) striking regional variations,<sup>30</sup> (ii) complex distinctions between land actually owned and land farmed, typical of sharecropping and tenancy agro-economies, (iii) the different ways in which irrigated and rain-fed land tend to be owned and farmed, and finally (iv) different sampling strategies.

Regional differences are particularly tangible. Appendix B compares data on landlessness by province in 1968, 2002 and 2003. The first set derives from the registration exercise and must be considered fairly reliable especially given that all members of a surveyed community were included. The second and third derive from the Vulnerability and Analysis Mapping (VAM) unit and NRVA studies. The stark differences between even these two sets illustrate the enormous

difficulties faced in securing the right sampling, weighting and interpretation. The only stable finding that emerges from the diversity in results among the three large scale studies is that regional difference is very real. Although the figures presented must be viewed with caution, landlessness ranged from 9-80% in 1968, 4-64% in 2002 and 6-60% in 2003. Diversity within provinces and indeed districts is just as stark, as illustrated below in the case of 15 districts of Badakhshan.

Sampling even within a small locality is again instructive; in the Faryab and Bamyan studies, landlessness was overall pronounced where

Table 3: Summary of Findings of Land Holding in Badakhshan Province 2001

Category	Range among 15 Districts
% landless	2-59
% small owners	7-57
% medium owners	8-55
% large owners	1-35

Data Sources: SMU 2001.

*mantiqa* populations in their entirety were considered.<sup>31</sup> When single villages were sampled outside that socio-spatial context, rates of landlessness rose or fell sharply, depending upon the nature of the village.<sup>32</sup> Unfortunately, sample sizes of either set were not sufficient to draw strong conclusions, other than to reinforce the observation made

<sup>25</sup> Lastarria-Cornhiel and J. Melmed-Sanjak. *Land Tenancy in Asia, Africa and Latin America: A Look to the Past and a View to the Future*. Working Paper No. 27 Land Tenure Center, University of Wisconsin, Madison, 1999; Dinechin, E. "Translating Principles into Action. The Case of El Salvador" and Bernard, C. "Land in South Asia: A Major Instrument for Social and Economic Transformation" in the World Bank, 2004a, op cit.

<sup>26</sup> Around 85 million people in India are landless and 200 million people own less than half an acre of land, insufficient to live on. In Pakistan 2% of rural households control more than 44% of the land area (Bernard, op cit).

<sup>27</sup> Ibid.

<sup>28</sup> Asian Productivity Organization. *Islamic Republic of Iran's Policy on Land Consolidation and Reforms of Farming Systems*. Impact of Land Utilization Systems on Agricultural Productivity Seminar, Iran, 2000; and Torhonen, M-P. *Land Tenure in Transition: Case Uzbekistan*. FIG XXII International Congress, Washington. 2002.

<sup>29</sup> From 10-88%; refer to Annex D in Alden Wily, 2003a, op cit.

<sup>30</sup> Because of stark regional differences in its sample group and lack of weighting, the AREU Rural Livelihoods Survey correctly eschewed producing an overall proportion of landlessness or concentration, other than to note that this was as predicted, largely found in the poorest wealth groups, and in three of its seven provincial sites, respectively 48 %, 90% and 76% of this group were landless (Grace and Pain, op cit.).

<sup>31</sup> For example, 91% landless in Qala Shaikhi Mantiqa in Shirin Tagao District, Faryab Province and 76.8% in Nargas, Panjao District, Bamyan (Alden Wily, 2004a and 2004b, op cit.).

<sup>32</sup> For example, in Islama Qala Mantiqa in Shirin Tagao District, there were 100% landless households in one village and only 17% landless in another. In Khdak Takhta Mantiqa in Panjao District, one village comprised 92% landless and another no landless. Still another comprised 53% landless when migrant labourers were included (Alden Wily 2004a and 2004d, op cit.).

Table 4: Rural Land Ownership in NRVA 2003

% with:	Q1 (Lowest)	Q2	Q3	Q4	Q5 (Highest)	All Rural
Irrigated land owned	48	61	66	72	76	65
Rain-fed land owned	28	25	24	22	26	25
Either irrigated or rain-fed land owned	60	74	78	83	85	76
Landless	40	26	22	17	15	24

Data Source: NRVA 2003 as analysed by The World Bank, June 2004.

earlier as to the limitations of using individual villages as the basis of survey.

At this stage, perhaps the most reliable overall indicator of landlessness is the NRVA 2003 data, given its sample of over 11,000 households in most provinces combined with its effort to cover all wealth groups.<sup>33</sup> When its results are computed by itemised consumption rates (not wealth indicators), and then weighted accordingly, rural households who are entirely landless represent 24 percent of all households (Table 4). This figure should be held to be *indicative* (pending further analysis of the data) and particularly given the diversity by area. Data made available immediately prior to publishing this report suggest that new analysis of NRVA (assumedly using new weighting procedures) reduces the overall rate of landlessness to 21 percent (and which says as much about the complexities of data analysis as the situation). Neither figure of 21 or 24 percent is in any event especially meaningful, given the extreme regional range of landlessness by area, and which could be further amended should a different sampling frame be adopted in the future.

This overall figure, however, does accord well with the 18 percent of landless

households in the larger sample of 30,000 households surveyed in 1988-1989 by the Swedish Committee for Afghanistan, also in most provinces<sup>34</sup> – a period when many landless families were outside Afghanistan. UNHCR monitoring of returnees suggests that the majority of refugees to Pakistan and Iran were landless when they left and return today landless (Table 5).<sup>35</sup>

Table 5: Farm Land Ownership of Returning Refugees 2002-2004

Period	% do not own land
March-December 2002	46.4
January-December 2003	60.4
January-April 2004	67.0

Data Source: UNHCR, 2004b.

The figures accord less well with those produced by a Soviet researcher in 1981 based upon 420,000 households; this showed that 26 percent of households were landless and another 29 percent near-landless and in urgent need of farmland.<sup>36</sup> Exact figures from arguably the most reliable source from that era, the cadastral survey and registration during 1964-1974 of around half the farmed land area, have never been released, other than the confusing data published in 1978 which showed that only 12 percent of rural

<sup>33</sup> NRVA data for 2002 with a much smaller sample put landlessness at 27% of the rural population with a range by provinces of 8.4 - 77.8%. WFP/VAM. *Afghanistan Countrywide Food Needs Assessment of Rural Settled Populations 2002-2003*. Kabul: WFP Vulnerability Analysis Mapping Unit and Partners. 2003.

<sup>34</sup> SCA (Swedish Committee for Agriculture). *The Agricultural Survey of Afghanistan. Sixth Report 1988 and 1989 Surveys*. Kabul: SCA. 1990.

<sup>35</sup> It may be, however, that landowners tended to return earlier, before UNHCR records on returnee land ownership were initiated.

<sup>36</sup> Glukhoded, V. "Economy of Independent Afghanistan," 1981 as cited by Gupta, B.S. *Afghanistan. Politics, Economics and Society. Revolution, Resistance, Intervention*. London: Frances Pinter (Publishers). 1986.

households owned land *and livestock*,<sup>37</sup> and which led many to conclude that this means that the vast majority own no land at all.<sup>38</sup> Anticipated release of the data of that important and most comprehensive of survey/registration by the Cadastral and Geodesy Department will provide highly useful historical data.

*Large estates*

If landlessness is important at one extreme for assessing distribution, so too is landlordism at the other. The literature on Afghanistan is replete with reference to the feudal or semi-feudal rural economy of Afghanistan, particularly among Hazara and Pashtun tribes. While landlordism certainly still exists in abundance, social relations today appear to lack the beneficial reciprocity between landlord and serf that characterises conventional feudalism. What remains is significant labour exploitation.

The number and vast size of large estates known to have existed in the past have certainly dwindled over the last century, but how far this has continued in recent decades is unknown. The official statistical Survey of Progress for 1967 showed that only 2.2 percent of farmers owned 42 percent of the total cultivated land area.<sup>39</sup> In 1981, the above-mentioned Soviet analysis concluded that 40 percent of all privately held irrigated land was owned by 4.3 percent of rural

households.<sup>40</sup> Another publication showed that 44.4 percent of all cultivated land was owned by 9.0 percent of rural households in the same period.<sup>41</sup> These suggest that large estates/landlords still existed following the reforms. In 2002 a survey among 5,000 landowners (i.e., excluding landless, unlike any of the above) suggested that 50 percent of the land area is owned by 19 percent of farmers. The majority (63%) smallholders share under 16 percent of the total land area.<sup>42</sup>

Provisional analysis of NRVA 2003 data and *without any weighting for proportions in each wealth group and limited cleaning*, does suggest that concentration will be found to still abundantly exist in 2004 (Table 6). At one extreme only 3.7 percent of farmers own more than 10 *jeribs* (2 ha) of irrigated land or rain-fed land. At the other extreme, nearly 72 percent

Although conventional wisdom holds that large estates are few, concentration of arable land in the hands of a small number of people is significant.

Table 6: Distribution of Land Including Landless 2003

Size in <i>Jeribs</i>	Irrigated land owned 2003	% Farmers	Rain-fed land owned 2003	% Farmers
0	2973	35.2	6511	77.1
0-2.5	3078	36.5	587	6.9
2.6-5	1340	15.9	570	6.7
5.1-7.5	373	4.4	185	2.2
7.6-10	339	4.0	283	3.3
10.1-15	133	1.5	141	1.7
15.1-20	66	0.8	58	0.7
20.1-40	56	0.6	70	0.8
40.1-80	40	0.4	21	0.2
80.1-120	25	0.3	10	0.1
120.1-1000	14	0.1	1	0.01
Total	8,437	100	8,437	100

Data Source: NRVA 2003<sup>43</sup>

<sup>37</sup> The famous Table 23 of Afghan Agriculture in Figures in GoA. *Afghan Agriculture in Figures*. Kabul: CSO. 1978.  
<sup>38</sup> See for example Emadi, op cit.  
<sup>39</sup> GoA. *Survey of Progress, Central Statistics Office*. Kabul: GoA. 1968.  
<sup>40</sup> See footnote 36 above.  
<sup>41</sup> Mukherjee, S. 1981 as cited by Gupta, op cit.  
<sup>42</sup> Maletta, op cit.  
<sup>43</sup> Not weighted and largely unchecked base data provided in deliberately limited circulation by MRRD in February 2004.

either own *no* irrigated land or 2.5 *jeribs* or less. Eighty-four percent either own *no* rain-fed land or 2.5 *jeribs* or less. With weighting to ensure the correct proportion of rural poor in the sample, distribution is likely to be even more skewed in favour of relatively few large owners. Table 7 strongly suggests this to be the case. Although it does not include landlessness, concentration among those who do own land is significantly inequitable.

Table 7: Concentration of Land Among Landed 2003

Attribute	Gini Coefficient <sup>44</sup>
Owns irrigated land (excludes landless)	0.57
Owns rain-fed land (excludes landless)	0.52
Owns any land (excludes landless)	0.58

Data Source: NRVA 2003 as analysed by The World Bank 2004.

### Continuing polarisation

Many anecdotal indicators suggest that concentration is continuing to occur in the rural land market, adding to the difficulties being faced by the small and poor farmer. Farmland is scarce, prices high,<sup>45</sup> competition

great, and the land market robust. It is notable that (aside from water and destruction factors closely tied to the 1999-2001 drought and then floods) land purchases outranked other factors in changes in land availability over the year prior to the NRVA 2003 survey (Table 8) and a similar trend was anticipated in the year following (Table 9). Moreover, those who are buying land are the “rich” while most of those selling are poor. This is consistent with anecdotal findings of the surveys which, as noted earlier, found that land purchases were almost entirely by those who already owned land and that those selling land were very small landowners, usually thereby finally entering landlessness (distress sales). These are typical polarising trends.

New arable land is also being acquired through appropriation of commons and public land, as shown in Section 4. Although often at nil acquisition cost, the means to carry this through is limited to elites (social, political, economic and military). Commanders frequently combine these attributes and appear to lead the field in asset capture. Poppy production, while lucrative for all, is equally skewed in its benefits and helping to

Table 8: Reasons for Changes in Land Ownership in 2002 by Food Consumption Quintiles

Changes in land ownership last year are due to: (%)	Q1 (Lowest)	Q2	Q3	Q4	Q5 (Highest)	All Rural
Purchases	4	7	8	6	15	8
Sales	8	7	7	4	5	6
Rent in	2	1	2	1	2	1
Rent out	1	2	2	1	2	1
Mortgage in	0.2	0.3	0.4	0.6	0.0	0.1
Mortgage out	0.3	1	1	0.8	0.8	1
Destruction of land	10	8	12	12	9	10
Water availability changed	63	68	62	72	65	66
Land taken back by returnees	0.1	0.2	0.4	0.3	0.3	0.2
Other	11	5	7	4	3	6

Data Source: NRVA 2003 as analysed by The World Bank, 2004.

<sup>44</sup> In which 0 = perfect equality and 1 = perfect inequality.

<sup>45</sup> Many reports include information on land prices (see Alden Wily, 2003a, op cit.). As these are localised and prices regionally various, it is difficult to know norms. In Faryab at the time of survey in 2003, per *jerib* prime irrigated land was going for \$600 in Khortepa *mantiq*a (but \$1,000 in Qala Shaikhi), flood-fed land for \$300 and rain-fed land for only \$150. All were much higher prices than years previously (Alden Wily, 2004d, op cit.).

Table 9: Anticipated Changes in Farm Land Ownership by Food Consumption Quintiles

Future changes in land ownership next year will be due to: (%)	Q1 (lowest)	Q2	Q3	Q4	Q4 (highest)	All Rural
Purchases	8	8	8	7	11	9
Sales	4	4	3	1	3	3
Rent in	5	4	4	3	3	4
Rent out	2	2	1	1	3	2
Mortgage in	0.2	0.5	0.8	0.9	0.7	1
Mortgage out	0.5	0	1	0.2	0	0.3
Water availability changed	60	64	65	70	66	65
Destruction of land	5	7	6	9	5	6
Loss of land due to conflicts	0.5	0.2	0.3	0.2	0.3	0.3
Land taken back by returnees	2	0.2	0.3	0.3	0.0	0.5
Other	13	11	12	8	8	10

Data Source: NRVA 2003 as analysed by The World Bank, 2004.

drive polarisation in land ownership. Afghanistan's currently high urbanisation rate (with around 30% of the population now believed to be in towns and cities, up on an earlier 20%) suggests that large numbers of people lack either the land and/or means to farm, among other drivers (security, education, income, etc.). Outright land sales by smaller farmers typically soar during great droughts or other pressures.<sup>46</sup> Those who lose their land find it difficult to re-acquire land and tend to end up in cities as unskilled domestic or market labour.

Table 10 confirms the importance of land for farming by poverty group, although suggests

that lack of tools are a much more important constraint for the very poor; this could be explained by an earlier recorded observation from the two minor field studies that the extreme poor do not believe that they will ever have the means of status to acquire farm land, and that therefore having the means (tools) to improve their labour contracts is more realistic.

In summary, all the evidence thus far suggests that a very substantial proportion of the rural community is landless and that that proportion is probably rising.

Table 10: Farming Constraints by Good Consumption Quintiles

Farmers say farming is constrained mainly by lack of these:	Q1 (Lowest)	Q2	Q3	Q4	Q5 (Highest)	All Rural
Irrigation/access to water	24	31	33	35	29	31
Farming tools	37	27	24	20	23	26
Land: Farming land availability	19	18	21	16	15	18
Land: Access due to landmines	0.2	0.1	0.2	0.2	0.1	0.2
Seed	8	10	13	19	20	14
Rainfall	4	5	3	5	6	5
Credit	4	4	2	1	2	3
Fertilisers	3	2	2	3	4	3
Labour	1	1	0	1	1	1
Total	100	100	100	100	100	100

Data Source: NRVA 2003 as analysed by The World Bank, 2004.

<sup>46</sup> Widely documented for the 1969-1972 drought as well as the 1999-2001 drought. For the former, refer to Male, B. *Revolutionary Afghanistan A Reappraisal*. London and Canberra: Groom Helm. 1982.

### 2.1.3. Distinguishing between Land Access and Ownership

#### *Mean farm size*

In smallholder economies the mean farm size will tend to accord with the mean size of land owned. Skewed distribution and corollary hiring in of both labour and land by some (renting, sharecropping, etc.) and ubiquitous land sharing within the extended family, means that in Afghanistan mean farm size and mean size of land owned are likely to diverge strongly.

Data on farm sizes have been so wildly divergent in formal surveys since the 1960s that real mean farm sizes cannot be determined. It is unlikely that the mean farm size of 17.5 *jeribs* in the 1970s has fallen to around 5.0 *jeribs* today.

Perhaps the most reliable figure for land owned is still the national mean of 3.5 ha (17.5 *jeribs*) (irrigated and rain-fed). This arose from the cadastral survey beginning in 1964 in which all plots held by each owner were measured and all farms in each vicinity were covered. Moreover, the area covered in total represented 26 percent of total cultivated land at the time (mainly 1964-1968, but continued in some areas up to 1978).<sup>47</sup>

The 30,000 household survey conducted by the Swedish Committee for Agriculture produced a mean farm size area of five hectares (25 *jeribs*) for 1988-1989.<sup>48</sup> The 2002 survey of 5,000 farmers in 540 villages raises this mean farm size to 6.79 ha (34 *jeribs*).<sup>49</sup> It is not entirely clear how this last sample was structured and it may be that a disproportionate number of medium and large farms were included. Or, the high figure may be an accurate reflection of another trend clearly underway and discussed later – rampant land grabbing and cultivation of pastureland that extend farm sizes for the better-off especially, and raise the mean.

None of these figures accord well with those of the NRVA, which suggest a mean farm size of owned land of only 3.3 *jeribs* irrigated

land and/or 2.2 *jeribs* rain-fed land owned (see below). The main reason is almost certainly different sampling frames, all but the current NRVA 2003 survey applying to extended households.

#### *Access is complex*

The NRVA deals well with the important distinction of not just land accessed, but land of different classes, as shown shortly. On the former, the main routes to land access are renting land belonging to others or farming land belonging to others on a sharecropping basis. There are in addition those who farm as labourers. However, because they are usually paid in kind, the distinction with sharecroppers is not as great as might be assumed. Even the difference between renting and sharecropping is limited given that tenants may also pay for their land access in shares.

The real difference lies in the balance of arrangements made, in the proportion of the share which is agreed will be paid by the owner to the tenant, sharecropper or labourer. In Faryab field studies, shares ranged from one-fifth to one half (Box 1) and a similar picture was attained in Bamyan. One determinant of the share level was as expected: whether the land user would bring more than labour to the arrangement – tools, seeds, plough, oxen and sometimes fertiliser. Another determinant (and which to an extent correlated with the first) was whether the land user needed to be provided accommodation or not. This in turn correlated with locals and strangers, most residents of the village or locality (*mantiqa*) having access to accommodation already. As elaborated later, this renders strangers extra-vulnerable to exploitation; without exception they received the lowest shares. This was found to be so even where some owned their own tools.

<sup>47</sup> Alden Wily, 2003a, op cit. and Safar, Y. *Report on Land Administration*. Kabul. 2004.

<sup>48</sup> SCA, 1990, op cit.

<sup>49</sup> Maletta, op cit.

## Box 1: Land Classes in Faryab

<i>Kambaghal</i> (beggars/ destitutes)	Landless and homeless persons who survive by begging, including many elderly and disabled persons but also some of those who are unable to earn enough from daily paid work to survive.
<i>Mard-i kar/muzdakar</i> (labourer)	Landless (and often homeless) daily paid workers, often from outside the area or even district. They spend their lives moving from village to village in search of work, especially in spring and summer. Typical work includes building walls, houses, digging channels. The mean wage in 2003 was \$2 per day, mostly paid in cash; this is proving attractive to some better-off landless farmers. These labourers may be able to get only a few days of work a month however; known villagers, relatives, sharecroppers, tenants preferred for paid labour.
<i>Gharib kar/Charikar</i> (sharecropper)	Landless (and often homeless) who attach themselves to a landlord as a sharecropper and accommodated by the landlord. Generally receive 20% of the product they plant and harvest. Often strangers, and moved on by the landlord after one or two years. Insecure and exploited.
<i>Baz kar</i> (sharecropper)	Also sharecroppers but distinguished by being usually a settled member of the community and may own accommodation (often share with relatives). Some have small gardens of their own. Work as farmers, often for the same landlord for several years or longer. Receive 25% of the total crop.
<i>Khistmand</i> (tenant)	Sharecropper who receives up to 50% (or at times, more) of the crop in return for providing all inputs (seed, plough, oxen and labour). Usually farms the same plot each year. The tenant may own a small plot of his own. Tenancy is largely confined to “middle peasants” who have the inputs to negotiate the higher share and are better able to risk crop failure; in tenancy the share is fixed irrespective of production (i.e., if the crop fails, the “rent” is still due). Rents are often paid in kind (in <i>seers</i> of wheat), not cash.
<i>Nimcha bai</i> (half landlord)	Middle-sized landowner able to employ a worker or sharecropper. May rent in or sharecrop additional land himself.
<i>Bai/beg/khan</i> (landlord)	Rich landowner (but may also mean rich merchant). <i>Bai</i> and <i>beg</i> are also synonymous terms for important personages. Rarely farms himself but has his properties farmed by tenants and sharecroppers. Often absent, often has businesses additional to farming (e.g., transport, shops).

*Landowners also sharecrop in land*

To add to complications, it cannot be assumed that all land users are landless. Land holdings are generally so small for the majority that they both farm these and sharecrop in other lands. There is considerable anecdotal evidence of intra-class and kin contracting as well and landlord-labourer contracting. In both Bamyan and Faryab, the high levels of absenteeism made the former quite easy. In the Eraq Valley villages of Shibar District in

Bamyan, for example, where no large landlords exist, most land sharecropped in belongs to families or neighbours who had left their equally small fields in search of work. In contrast, most sharecropped in land in Panjao District villages belongs to permanently absentee large landlords, mostly Kuchis. In Shirin Tagao in Faryab, sharecropping by smaller Uzbek landowners or landless on Pashtun and Arab larger farms is very common, the former also frequently still absent.

### *Use and tenure of irrigated and rain-fed land differs significantly*

Farm sizes may also be significantly skewed given that many people farm either irrigated land and/or rain-fed land. The two are not like for like, different not just in productivity and seed levels required (measured usually in *seers*), but also tenurially. Irrigated farms usually have fixed and clear perimeter boundaries. Rain-fed farms rarely have fully fixed boundaries; the remoter, higher and drier the field, the more fluid its boundaries. In many cases virtual shifting cultivation is practised. This sometimes occurs within wider boundaries of an “owned” area but often it does not; rain-fed lands are in short significantly less privatised. This is especially so where cultivable rain-fed land runs into pasture

The fluid nature of upland rain-fed farms, shifting cultivation and communal tenure of many rain-fed land areas complicates assessment of real farm size owned.

and/or has dual purpose. Such areas are regarded usually as common land, which members of the community have access to and may develop for farming – if they have the means to do so. This predisposes development of rain-fed fields by those with oxen and ploughs, seeds and labour (hired or sharecropped). Over time private rights have been established in such areas, but with a good deal less precision (and documentation) than those relating to nearer rain-fed fields, and especially to irrigated or

flood-fed plots within or next to the settlement.

However, there is also scope for the poor who have no irrigated land to access rain-fed land in especially the difficult remoter areas, in their own right. These poor are generally not the extreme poor but those who have the means (labour time, tools, seeds and usually oxen) to develop such land. Patterns of tenure over irrigated and rain-fed lands are accordingly different and best distinguished.

This, the NRVA 2003 questionnaire does, with interesting results, not yet fully analysed.

Table 11 lays out *the size of farms* that takes account of both the different ways land is accessed (owning, renting, share-cropping) and by farm

type (irrigated and rain-fed). It also reviews these by poverty groups in terms of food consumption.

The picture presented is complex:

- Despite complicated access systems, at the end of the day, the mean area of land sharecropped in and especially rented in is significantly less than the average amount of land farmed that is directly owned. This accords well with many (but

Table 11: Farm Size by Access, Type and Wealth

Land accessed in <i>jeribs</i> (0.2 ha)	Q1 (Lowest)	Q2	Q3	Q4	Q5 (Highest)	All Rural
Irrigated land owned	2.1	3.2	3.2	3.3	4.7	3.3
Irrigated land sharecropped	0.4	0.3	0.2	0.2	0.2	0.3
Irrigated land rented in	0.1	0.1	0.1	0.1	0.2	0.1
Irrigated land used for farming	1.2	1.6	1.9	2.5	3.6	2.2
Rain-fed land owned	2.8	1.8	1.9	2.2	2.3	2.2
Rain-fed land sharecropped	0.5	0.3	0.2	0.2	0.2	0.3
Rain-fed land rented in	0.1	0.3	0.2	0.1	0.1	0.1
Rain-fed land used for farming	1.7	1.5	1.5	1.5	1.9	1.6

Data Source: NRVA 2003 as analysed by The World Bank, 2004.

not all) findings of past surveys that the majority of rural households are owner-operators. Figures published in 1970 and 1990 respectively found that 55.2 percent and 78 percent of those who farmed were owner-operators.<sup>50</sup> These rates are much higher than in many other Asian economies where contractual farming by renting or sharecropping is dominant.<sup>51</sup>

- Rain-fed land used for farming is significantly less than irrigated land (a mean of 1.6 *jeribs* compared to 2.2 *jeribs* irrigated land). This is at first surprising given national figures show 3.2 million ha of irrigated land and 4.5 million ha of rain-fed cultivated land.<sup>52</sup> Moreover, expansion in cultivation of rain-fed land is known to have increased over the last decade. The difference may reflect the fact that rain-fed land is often used only once every two or even three and four years, due to low fertility. It is also likely that the timing of NRVA skewed results: the survey was undertaken in 2003 and referred to the last farming season when many farmers were still nervous of drought continuing and reluctant to invest in already risky rain-fed farming. Many also had lost critical assets like oxen, ploughs and seed with which to farm. Moreover, as shown later, the normal rain-fed area planted with cereals averages at the higher level of 3.0 *jeribs*.
- The above does not show the total farm size (rain-fed and irrigated) but it is evident that these farm sizes overall will be significantly less than the mean farm size indicated earlier of 34 *jeribs* in the 2002 survey, 25 *jeribs* in 1988 or even the 17.5 *jeribs* of 1978.<sup>53</sup> Aside from sampling and weighting issues and the above factors in respect of rain-fed land, another explanation may be that *extended* households provided the basis of calculation for earlier studies; this tends to be confirmed by differences in mean household sizes.<sup>54</sup>
- The differences between farm size averages for land owned and land typically cultivated are significant. While owned irrigated land averages 3.3 *jeribs*, land actually farmed falls to 2.2 *jeribs* per farmer. Averagely owned and cultivated rain-fed lands similarly diverge (2.2 *jeribs* and 1.6 *jeribs*). These differences merely confirm/illustrate the fact that some people clearly own a good deal more land than they use at one time, manifest in shifting cultivation. It also confirms the inevitable fact that in a largely non-mechanised farm economy, resource adjustments are made in relation to available labour, water, traction and seeds, thus helping to equalise access, if not ownership.
- Other patterns of relative ownership and access are evident, better presented in the Table 12. While the poor are the ones most using sharecropped in land not belonging to themselves, those who are renting in land are not the poorest, who clearly do not have the assets on which to negotiate a favourable fixed price (in cash or kind) for use of the plot, or to risk being out of pocket if the product is bad due to drought or other exigencies.

<sup>50</sup> GoA. *Survey of Progress*, Central Statistics Office. Kabul: GoA. 1970 and SCA, 1990, op cit.

<sup>51</sup> For example, owner-occupiers in India make up only 15% of farmers, 14% of farmers in Indonesia and 40% of farmers in both Thailand and Bangladesh (Lastarria-Cornhiel and Sanjak-Melmed, op cit.).

<sup>52</sup> FAO/UNDP, op cit.

<sup>53</sup> Unweighted analysis in February 2004 and on uncleaned and incomplete data showed that those with both irrigated and rain-fed land had farms that ranged in average from 2.07 *jeribs* (very poor), to 3.56 (poor) to 6.29 *jeribs* (medium wealth group) (MRRD 2004). These figures also suggest much lower mean farm sizes than previously recorded.

<sup>54</sup> For NRVA 2003 this was 7.5 persons; in the SCA 1988-1989 survey households mainly fell within the 7-12 range but with some households of more than 20 persons. The FAO 2002 survey recorded a mean household size of its respondents of 10-11 persons.

Table 12: Rural Land Ownership in NRVA 2003

Land use and tenure (% with)	Q1 (Lowest)	Q2	Q3	Q4	Q5 (Highest)	All Rural
Irrigated land owned	48	61	66	72	76	65
Irrigated land sharecropped	11	9	7	5	4	7
Irrigated land rented in	2	3	3	3	4	3
Irrigated land used for farming	43	57	61	67	70	60
Rain-fed land owned	28	25	24	22	26	25
Rain-fed land sharecropped	8	5	3	2	3	4
Rain-fed land rented in	1	2	2	1	2	2
Rain-fed land used for farming	28	24	22	19	24	23
Owns either irrigated or rain-fed	60	74	78	83	85	76
Rain-fed <i>jeribs</i> planted cereals	3.7	2.9	2.4	2.5	3.3	3.0

Data Source: NRVA 2003 as analysed by The World Bank, 2004.

Table 12 looks directly at these tenure patterns and confirms the above. In addition, usage by proportions of population is indicated:

- Most people *cultivate* irrigated land (60%). Only a quarter cultivate rain-fed fields (23%).
- Most people *own* some irrigated land (65%). Only a quarter own rain-fed land (25%). Likely reasons are: the fact that rain-fed land often requires ox-ploughing, erratic returns, and risking investments; the difficulties of sufficiently regular access; the co-option of many rain-fed areas by large landlords; and contrary recognition in many others that rain-fed land is communally, not individually, owned.
- Land renting is limited; only three percent rent in irrigated land and fewer rent in rain-fed land (2%). The areas rented in are respectively tiny, as noted above (0.1 *jerib*).
- Sharecropping in land is also limited, largely reflecting the above-mentioned dominance of owner-operators but also the fact that many larger farms are

farmed by hired workers, not those considered sharecroppers (even though both generally gain their rewards in kind). Only seven percent sharecrop in irrigated land and four percent sharecrop in rain-fed land. These are significant figures, for there is a tendency to exaggerate the role of sharecropping in Afghanistan.<sup>55</sup>

- Those who do sharecrop derive predominantly from the poorest group and likely come from that 24 percent of households who are entirely landless.
- Differences in the tenure of irrigated and rain-fed land again appear. While the better off are visibly the main owners of irrigated land, ownership of rain-fed land is more or less equally shared among the very poor and the wealthy (respectively 28% and 26% of the sample). Common ownership of upland rain-fed areas may also be a factor.

## 2.2. Labour Distribution

### 2.2.1. Landlordism

Not everyone involved in farming is a “farmer.” At one extreme are many (and perhaps most) large landlords who do not

<sup>55</sup> And accordingly to underestimate owner-operator or owner-occupier rates; see GoA, 1970, op cit. and SCA, 1990, op cit.

farm themselves at all; they employ others to farm for them and/or are absent from the area, or were never permanently resident in the area. Rent-seeking absentee landlordism is significant. This is frequently the case with Kuchi landlords who have purchased arable lands in the course of visiting the area seasonally. There are a growing number of landlords who are businessmen, often with warlord/commander backgrounds. There are urban employed people (sometimes very well employed) who visit their farms only to collect the year's wheat supply, or who do not visit, but have this sent, in kind or cash equivalents. There are those who own land but live outside Afghanistan. Sometimes they have very little land and sometimes larger lands. All these categories of non-farming land-owners were encountered in the village studies of Bamyan and Faryab (Box 2).

### 2.2.2. The Low Value of Labour

The diversity in contractual labour relations has been shown to be highly diverse, in terms of who contracts who (kin and intra-class as well as inter-class), in the foundations of the arrangement (not just tools, seeds, ploughs

and oxen but skewed to those who own land of their own and houses of their own), and in the rewards (shares, payments).

Save perhaps for tenants/renters who in a good year keep more than 50 percent of wheat and other crops grown (and much less than 50 percent with a poor harvest), the normal share of labourers and sharecroppers of one-fifth to one-third at most does not produce enough wheat to survive on until the next harvest. Bamyan and Faryab farmers reported that the share allows the family to feed itself for only four to seven months, necessitating wheat acquisition to cover the deficit.<sup>56</sup> This wheat is begged or borrowed in small amounts at a time, or purchased on two monthly credit terms from local shopkeepers. Landless labourers with sheep tend to hold these to sell almost entirely to buy wheat (alongside fewer purchases of other subsistence items like paraffin and tea), their small herds recovering just enough to have the same number of stock next year, thus inhibiting accumulation. Sales of non-wheat shares (sesame, barley, melons, etc.) are also made to purchase needed non-food commodities. Some also have to sell off part

#### Box 2: Examples of Absentee Land Owners in One Community<sup>57</sup>

**Kafandaz Village:** A Canadian Afghan visits every two years to see his home place, mainly because his parents are buried there and he feels connected to the area. His farm is small and he does not collect his crop share from his sharecroppers, who are relatives, although "we feed him very well and give him gifts" when he visits. He will never sell the land.

**Ashoor Village:** Two brothers are employed in Shibar and Bamyan and return to collect food shares from two sharecroppers.

**Khoshkak Village:** Three Kuchi families own all the rain-fed farmland and used to visit annually to collect 75-80 percent crop shares. They no longer visit and their tenure is disputed.

**Khoshkak Village:** Some others farm land now belonging to a wealthy businessman in the nearest centre who bought up stock and land at cheap prices during the Taliban period from villagers desperate to have family members released from prison in Kabul, to pay bribes to prevent more family members being taken away, and to pay taxes and tithes. He has never visited his farms but collects 75 percent shares and additional shares in repayment of still outstanding debts.

**Neighbouring Kalo Valley:** An ex-*mujaheddin* and current commander living in Khamard owns large lands in Kalo, farmed by tenants and sharecroppers.

<sup>56</sup> Alden Wily, 2004a and 2004d, op cit.

<sup>57</sup> Eraq Valley, Shibar District, Bamyan Province (Alden Wily, 2004a, op cit.).

of their original wheat share to pay back debts or meet emergency or other important cash purchasing needs, and then later in the year, must beg wheat from others or borrow funds to buy back in wheat (and at higher prices) to feed themselves up until the next harvest and their next in-kind share.<sup>58</sup>

This insufficiency of labour contracts is also reflected in the finding of the AREU rural livelihoods survey that only a quarter of 390 households interviewed over a year obtained more than 50 percent of their grain from farm production.<sup>59</sup> Most were poorer households. This clearly does not mean, however, that the poor are necessarily increasingly independent of the farming sector. While they obviously try to access as many odd jobs off-farm and aid-supported food and cash for work opportunities as possible, farming remains key – and not least for the very poorest who need landlords to access shelter.

A small exception exists which could signal wider slight mobility in share terms in the future. Absentee landlordism, seasonal or otherwise, has long characterised rural production in Afghanistan, even prior to the war. Where absenteeism is now involuntary, such as through instability or inter-ethnic strife (currently most affecting Pashtuns in central and northern regions), those contracted to farm the properties are securing higher shares than in the past even though their inputs remain the same (labour rather than seeds and traction). Male out-migration for work is also a longstanding feature of rural society, but is anecdotally described by villagers as being much higher than prior to 1978, partly because more farmers have

become used to being outside their villages or country. Better-off refugees and IDPs and/or those who have obtained stable jobs outside the rural area are unlikely to return permanently to farm. Labour shortages should in theory help improve terms.

There are also tentative indications that share tendency could be slowly following the classical route towards conversion into cash tenancy arrangements. With uncertainty as to whether the drought was over, some landlords and sharecroppers interviewed in both 2002 and 2003 tried to secure cash

When full-time farm labouring does not meet even subsistence food needs, then labour must be seen to be seriously undervalued.

arrangements where they could – landlords seeking cash rents rather than crop shares, and sharecroppers seeking to be paid in cash, both attempting to remove the uncertainty of the harvest to their own benefit.<sup>60</sup> Some with little land also were offering their land for cash rent (reverse tenancy). Daily paid labour rates in rural areas are currently high, at \$2 in the off-farm sector, due partly to flourishing aid-delivered cash for work opportunities. Competition for labour in poppy growing areas may also be assumed to heighten cash arrangements. Typically however it is likely to be predominantly those with status or bargaining power who are able to benefit; i.e., not landless, asset-less (seeds, oxen, plough) farmers, not homeless households, and in the case of poppy, not those without resin harvesting skills.

Indebtedness in general is integral to contract labour economies and is a constant condition for the poor – and more optionally a condition for the better off.<sup>61</sup> Data collected by NRVA in 2002 showed up to 92 percent and 57 percent of sample populations borrowing

<sup>58</sup> Ibid.

<sup>59</sup> Grace and Pain, op cit.

<sup>60</sup> Alden Wily, 2003a, 2004a and 2004d, op cit.

<sup>61</sup> WFP/VAM, op cit.

respectively cash and wheat. Later surveys show similar trends.<sup>62</sup>

The NRVA 2002 found only four percent of households had some/all of their land under mortgage in 2002 (range of 0-19% by province).<sup>63</sup> Provisional analysis of NRVA 2003 suggests similar relatively low rates. Although translated as “mortgage,” *graw* is a form that is to the full advantage of the creditor and typically taken up out of desperation by the poor, rather than for investment purposes.<sup>64</sup> Loans by the poor are for food purchase or to cover health and other emergency needs, while better off farmers mortgage their land as an aid to asset accumulation (vehicles, shop, goods to sell, tickets overseas, etc.). In addition the former tend to have to mortgage all their land while the latter generally mortgage only one plot of their farm.

There are anecdotal signs that land mortgaging could begin to take on its more typical investment purpose than has been the case in the past. That is, only those who are able to choose when they mortgage their land and have a good chance to repay loans in time (usually two years) will do so, and for investment purposes. Smaller owners may be decreasingly able to mortgage and forced to sell their land outright and for low prices. Respondents in the Bamyan and Faryab field

studies indicated that this had been the case since Taliban times. Pressures to pay taxes or tithes combined with drought gave them no option but to sell their land outright to traders or landlords rather than passing the land over into what they hoped would be temporary ownership. This has continued well after the drought.<sup>65</sup>

### 2.2.3. The Hidden Reality of Rural Homelessness

At the other extreme are those noted earlier as only farm labourers, not considered as (skilled) farmers *per se*. These families fall into the poorest groups. As well as not owning land, they often do not own homes. The NRVA 2003 suggests homelessness could amount to 15 percent of the rural population, as shown in Table 13. In both field study areas it was found that many house tenants are paying “rent” as part of their contractual arrangement with the landlord. It is this provision of accommodation which reduces their share from 25 to 20 percent (one-fourth to one-fifth crop share). Particularly in the Bamyan field study, cases were found where homeless labourers were in effect paying for their accommodation by being required to carry out additional duties almost on demand by the landlord, including periodically transporting goods, being sent to collect extra thorny bushes for winter fodder, or

Table 13: House Ownership by Wealth Group

Home ownership (%)	Q1 (Lowest)	Q2	Q3	Q4	Q5 (Highest)	All Rural
Owned	74	84	86	89	91	85
Rented	3	3	3	2	2	3
Used without paying rent	19	10	6	4	3	8
Nomadic or temporary dwelling	4	3	5	5	4	4

Data Source: NRVA 2003 as analysed by The World Bank, 2004.

<sup>62</sup> Specifically, the AREU longitudinal rural livelihoods household survey (Grace and Pain, op cit.) and provisional analysis of NRVA 2003.

<sup>63</sup> WFP/VAM, op cit.

<sup>64</sup> Mortgaging (*graw*) gives the creditor temporary ownership of the land and he usually re-employs the owner as a sharecropper and thus takes up to two-thirds of the crop in lieu of interest. Should the owner default on repaying the cash loan in time, foreclosure is automatic, depriving the debtor of the opportunity of selling the land on the open market. The value of the loan is usually greatly less than the value of the land and the value of the crop share far exceeds normal interest rates.

<sup>65</sup> Alden Wily, 2004d, op cit.

Table 14: House Ownership of Returning Refugees

Period	% Do Not Own House	% Own House or Rooms	% Owned a house but Destroyed or Damaged
March-December 2002	21.0	79.0	46.4
January-December 2003	34.0	66.0	60.4
January-April 2004	41.0	59.0	67.0

Source: UNHCR, 2004b.

preparing dung cakes for winter fuel. This was particularly so where they owned a few sheep and were dependent upon the landlord for permission to graze their animals along with his herds.

Homelessness could be more important in keeping the poor, poor, and downward polarisation generally. Without a single room of their own, rural labourers are placed at acute disadvantage in negotiating crop shares, and other farm and off-farm labour. It has been many decades since reciprocal feudal-type relations between landlords and peasants have been obtained; the war years and constrained conditions of the present appear to have made landlords less responsible for their workers. Anecdotally in the field study areas, it was found that farm workers are unable to get loans from landlords, unable to get credit from shopkeepers, and were being increasingly charged rent for their rooms/byres more often through increased extraction of their labour. Those with even one room of their own, or accommodation with relatives, reported being better able to resist these demands.

Many of the homeless are itinerant, moving from village to village in search of farm work (and extra odd-jobbing for food or cash, if they can get it). Itinerant workers are not new to the Afghan rural economy, although with relatively little acknowledgement. This may be because there are suggestions in survey findings that while their fathers and grandfathers were also itinerant labourers, those of this generation are remaining with the same landlord for shorter periods, often only one season. Landlords were also found to typically delay agreeing to new work

contracts to their own benefit, the itinerants faced with long winters without shelter and therefore more compliant to unfavourable terms. In interviews with itinerants in both Bamyán and Faryab, the “shame” of being itinerant was remarked, in both cases with reference to wives and daughters being sometimes forced to visit the landlord’s home at night.

The real extent of homelessness (and related landlessness) could be higher than indicated in the NRVA survey above. This is because itinerant labourers are very unevenly considered part of the community and may not have been represented in the poorest groups sampled. There are other non-itinerant homeless who also slip through the cracks in village statistics. This includes the possibly quite significant number of *de jure* poor female-headed households that reside with relatives or friends, and *de facto* female-headed families left in the care of relatives while their husbands and sons migrate for work. Again, exploitation of all kinds was anecdotally commented upon for these groups, by both the women themselves and others. Exploitation also occurs where the male household heads are present; “rent” is paid through their wives and daughters providing cooking, cleaning and laundry services, and their sons, herding duties. UNHCR monitoring shows that up to 41 percent of returning refugees have no accommodation to return to (Table 14).

There is, of course, a new emerging group of itinerant labourers who are comparatively advantaged. This is poppy harvesting labourers, who increasingly move in groups, under contract to larger poppy cultivators.

Their earnings may be substantial given the inflated labour rates paid.<sup>66</sup> These men, often younger and single, vary sharply from the above groups in that they may have homes from whence they come and return to, and do not bring families with them. This group also differs from the larger group of poppy producers and harvesters who voluntarily or otherwise cultivate poppy on part of their small holdings, or as sharecroppers on the land of other people; they garner less benefit both in daily wages or shares and in that they are usually already heavily indebted and sometimes have no choice but to cultivate poppy.<sup>67</sup> With continuation, the pattern of ownership and labour relations could alter significantly, but largely along lines which do not alter current class differentiation; landless are benefiting much less than landed and middle men (often with warlord/military connections), and advantaged labour (homes, or their own small farms) more than homeless labour.<sup>68</sup>

#### 2.2.4. Female Land Ownership

Conventional wisdom that Afghan women are entirely landless is not correct. Certainly custom, and Pashtun custom in particular, does not admit women as equitable landowners any more than it encourages them to actively farm or herd livestock. Nonetheless the Koran and the Koranic-based Civil Code recognise women as entitled to own land in their own right and directs at inheritance that they are included – although inequitably (see Box 3). Moreover, women may inherit from their fathers and their husbands. Inheritance is the main means of land transaction and for women virtually the only route. Few purchase land outright. The field studies found that most villagers acknowledge these *Shari'a* principles and apply them – but usually only in name. Daughters in particular generally hand over their land to their brothers, if not immediately, then after

#### Box 3: Women and the Law

##### SHARI'A LAW

From Chapter 4 of the Koran: The Women (Surah 4 - Al Nisa)

Section 2: Law of Inheritance

God (thus) directs you as regards your children's inheritance: to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance: if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if not children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters) the mother has a sixth. The distribution in all cases is after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by God: and God is All-knowing, All-wise [Art.11].

##### The Civil Code (1975)

The Civil Code (1975) largely draws on Islamic jurisprudence. Articles 1993-2102 of the Code outline the procedures for inheritance. This includes precise provision of shares for all parties (*farz*) including for widows and daughters (Article 2004). Widows are to receive one-eighth of the property, or more (one-fourth) if they are childless. Where there is more than one wife, this proportion is shared among them. Provision for widows is priority. Of the property that remains after taking the due share for the widow(s) (one-eighth), and the share of the parents (one-sixth), daughters will receive one-third of the remaining estate. Sons receive two-thirds. Even if there are five daughters they will receive only one-third of the estate in total. The Civil Law is also clear that wives may inherit from both their husband and members of their natal family (Article 2003).

<sup>66</sup> Up to US\$9.40 a day in central Afghanistan and country average of \$6.77 for lancing and gum collection in 2003, and \$2.69 for unskilled planting, tending labour. UNODC and GoA (United Nations Office on Drugs and Crime and Counter Narcotics Directorate, Government of Afghanistan). *Afghanistan. Farmers' Intentions Survey 2003/2004*. Kabul. 2004.

<sup>67</sup> Ibid.

<sup>68</sup> Goodhand suggests family relations may also be changing with a growing generational divide. Goodhand, J. *Frontiers and Wars: A Study of the Opium Economy in Afghanistan*. Draft. London: University of London. 2003.

a respectable period, within which it is established that the land does rightfully belong to the daughter and should be regarded as a generous gift. Brothers tend to reward their kind sisters with presents at this point and pledges to be always there for them. Widows less routinely hand over their shares to their sons. Instead her land share remains within the family holding or where the widow is not living with her sons, may remain more definitively her own property.

Widows are in particular the core landholding groups among women and even now are seen to acquire land in their own right (particularly in urban areas).<sup>69</sup> Every village has numerous widows following years of war and there is always a handful of women who own houses and farms. They rarely if ever farm these directly although they may influence how the plot is cultivated and by whom. NRVA data tend to confirm that Afghan women do own land, albeit in less measure than men.

Fifty-six percent of female-headed households own land, significantly less than the mean for farm ownership overall (75%).

There is also the reality of family holdings routinely encountered in the Bamyan and Faryab studies. Many – and perhaps most in many areas – rural households perceive the family as landowner, not necessarily the male household head. The AREU longitudinal livelihoods survey echoes this reality, with 31 percent of its sample recording land sharing with females. The notion of family holding is quite widely reflected in the Books of Integrated Ownership and Taxation compiled in the 1970s, although by repute not in legal documents of entitlement where these are prepared or in cadastral records. Within this land sharing context women are shareholders.

More about the effects of land laws and policies are described in the next section.

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<sup>69</sup> See “The Widows of Maimana” in Alden Wily, 2004d, op cit.

### 3. Land Law, Policy and Dispute



Courtesy of Liz Alden Wily

*Modern land law exists in abundance, but aside from its limited real application in recent decades, it is too heavily founded upon imported notions of tenure to satisfactorily capture and support crucial customary norms and opportunities, beneficial to majority poor. Weak legal recognition for common property is particularly damaging to the interests of those with little or no farmland. Rights are being further threatened through a new wave of elite capture which legal paradigms are ill equipped to limit. Modern land administration also falls short systemically in ways that may support majority land relations and follows old-fashioned centralist norms that allow for zero landholder participation in decision-making. Disputes are rife and most dangerously so in respect of remote rain-fed and pastureland resources, where individual versus community, and inter-ethnic interests clash.*

<sup>70</sup> Even where elected parliaments have existed (1964-1978) not all law derived from this source.

#### 3.1. Land Law

The ownership of real property (land and fixed assets like buildings and houses) is regulated by a complex of customary, religious and statutory law. The last has derived as often through dictatorial decree and edict as through parliamentary enactments.<sup>70</sup> Statutory law (or state law) comprises the civil code, land subject laws and the overriding supreme law, the national constitution.

##### 3.1.1. Customary Law

In practice most rural property is acquired, sustained and transferred customarily, with family holding dominant. Save *Pashtunwali*, a Pashtun code of conduct, there is no written customary law and each tribe and even

community sustains and interprets the rules independently. What is customary becomes rule or law mainly only when a conflict arises. As everywhere, customary “law” is distinguished in Afghanistan by the fact that it is upheld only through social and community-based force and has enormous evolutionary potential; what was customary in 1900 may not have been customary in 1960 and what was customary in 1960 may not be customary today. In Afghanistan, custom is greatly influenced by *Shari’a* and the distinction between religious and customary law often difficult to identify.

The distinctions between religious, customary and common land law are blurred.

### 3.1.2. Religious Law

*Shari’a* principles (Islamic law) are locally interpreted when it comes to property matters and widely referred to in both informal and formal dispute resolution. Informal dispute resolution operates at community and higher levels and broadly centres upon *shura* (non-Pashtun) or *maraka* (Pashtun). These are public committees formed for the purpose of dealing with a problem and generally comprising elders.<sup>71</sup> Formal dispute resolution on rural land has traditionally proceeded through district primary courts (*mahkama-i-ibtedaia*) with appeal to provincial courts (*mahkama-i-morafa’a*) and thence to the high court (*mahkama-i-tameez*) but with a special land court now in place (see below).

### 3.1.3. Civil Law

The written Civil Code supposedly embraces common or customary law and is deeply influenced by customary practice, itself deeply influenced by religious law. The

written Civil Code was compiled in the early 1970s and given the status of statute (state law). Its religious basis is arguably strongest. In content it comprises more than 2,000 articles that draw tangibly upon mainly *Hannafi* (Sunni) jurisprudence and its “books of law,” some of which are very old.<sup>72</sup> The

code includes substantial chapters on land inheritance, tenancy, leases, contracts, sales and

mortgages. These subjects reflect the areas where tenure conflicts have traditionally existed and where rulings have accordingly had to be devised. Many of the instructions in the Civil Code are difficult to interpret. The compilation serves as the main sourcebook of courts of second instance (provincial level) and higher. Constitutionally, its provisions must apply before *Shari’a* law is referred to.

### 3.1.4. Statutory Law

The Civil Law is in turn subject to state law. Upwards of 70 rural land statutes exist. This is a complicated body of law, with many decrees simply reissued under a new administration or reflecting amendments without clear repeal of earlier versions. The status of Taliban decrees is especially uncertain and some are referred to by judges as obsolete although they are still legally in force where they comply with the principles established by the Bonn Agreement and the Constitutions of 1964 and now 2004. Each standing law is supposedly under review by the appropriate ministry, a process unevenly underway.

The first real state law on land was passed in 1935 under French and Turkish law

<sup>71</sup> Among Pashtuns, *maraka* that extend to inter-tribe and tribal levels and/or which deal with more serious offences or decision-making are referred to as *jirga*. This term now has a more formal connotation as a selected and sometimes elected national public forum for decision-making such as was formed to debate and approve the new provisional constitution of 2004. For details on the justice system, refer to Wardak, A. *Building a Post-War Justice System in Afghanistan*. Symposium on State Reconstruction and International Engagement in Afghanistan, May-June 2004, Bonn. 2004.

<sup>72</sup> Sunni Muslims comprise approximately 74% of the Afghan population, Shi’a 24% and Ismaili 2%. Shi’a jurisprudence is largely of the Ja’afari school.

## Box 4: Key Original Statutory Legislation on Rural Land

1. Acquisition for public purpose (1935, 2000)
2. Property taxation (1965, 1976)
3. Survey and registration (1965)
4. Distributive reform (1975, 1976, 1979)
5. Acquisition and sale of land (1979)
6. Mortgages (1979)
7. Cooperatives (1979)
8. Pasture (1970)
9. Forests (2000)
10. Poppy production (2000)
11. Restitution (1992, 1999, 2000)
12. Classification of land classes (1965, 2000)
13. Land dispute resolution (2002, 2003)
14. Making land available for investment (2003)
15. Restitution of public lands (2004)

influence and dealt with the important subject of how the state may acquire private property for public needs. A wave of reformist rural land laws was introduced in the 1960s-1970s mainly by President Daoud under the influence of a USAID land survey, registration and titling programme. These laws were starkly refashioned after the communist revolution of 1978 with the issue of the Land Reform and Mortgage Decrees (1978). The Taliban were particularly prolific in decree-making, among which important new subjects appeared such as relating to forestry and classification of lands. Box 4 provides the main subject areas of state property law.

### *Supreme law*

The clearest source of law is constitutional and within which property has been variously addressed since 1923.<sup>73</sup> The new Constitution avoids addressing land issues beyond classical supreme law limitations upon state appropriation of property without payment of compensation, unauthorised entry into private properties, and freedom of settlement anywhere in the country, etc.<sup>74</sup> These principles were already in place in 1964 or

earlier.<sup>75</sup> Virtually the only innovation in 2004 is that foreigners may now lease land (Article 41).

By virtue of omission, it is also of note that only mines, underground resources and archaeological artefacts are definitively made properties of state (Articles 9 and 15). This leaves the door open for clarification as to workable distinctions between land definitively owned by government in its own right as service provider, land owned by the nation, but vested in the government as trustee (State Land, or Public Land), and private land (owned either by individuals or groups – common property). Such essential distinctions are seriously blurred in Afghan law, past and present. Legal distinctions between private, public and religious land have existed since the 1965 Land and Statistics Law but to whom public land belongs (government or the nation) is unclear. Nor has there been any clear legal provision for common property (land owned by groups, such as villages).<sup>76</sup> Like a number of other emergent states this last century, the Afghan administration has steadily accrued more and more land to its own jurisdiction and tenure.

<sup>73</sup> Refer to Alden Wily, 2003a, op cit. Annex G for texts.

<sup>74</sup> Property articles include 9, 14-15, 38-41 and 137-154.

<sup>75</sup> See footnote 73.

<sup>76</sup> Article 5(f) of The Land Survey and Statistics Law 1965 does provide weakly for two or more persons to register land together but this has not been used for this purpose.

### 3.1.5. New Legislation

#### *Resolving refugee/IDP land disputes*

Legal development in the land sphere has been minor since the Bonn Agreement. Only four new decrees have been issued. Two relate to land disputes arising during the absence of owners since 27 April 1978 (i.e., refugees and IDPs). The first established a single Property Disputes Resolution Court in Kabul in 2002, now replaced with a two tier system providing for appeals. The second law also provides two courts, one to deal with disputes within Kabul Province and one for outside Kabul.<sup>77</sup> Cases where government is one of the disputants may not be heard by these courts. This is problematic where government's claim to lands (variously defined as Public Land or Government Land) is elemental to the issue at stake. The performance of the Land Disputes Court is widely criticised for having dealt mainly with claims by wealthy returnees, arriving at doubtful rulings and being unable to enforce its decisions.<sup>78</sup> Even the new ex-Kabul Court appears so far to be dealing with house, shop and business claims rather than those affecting farms or group interests.<sup>79</sup>

#### *Entrenching the state as majority land owner*

Another new decree is designed to facilitate access to property by investors, providing for the definition of surplus land belonging to the state and its transfer and registration at market rates to investors.<sup>80</sup> This law declares "all real property in the possession, custody or use of ministries or other government

organs" as State Land (Article 1). Depending on how Public Land is defined (as owned by the people or by the government), this could render more than 85 percent of the country's land area as State Land/Government Land. A final decree additionally renders to the state any property under its control for more than 37 years.<sup>81</sup> That law also permits the state to use properties "that neither the state nor individuals own" for public welfare (Article 6). Properties that have been distributed by administrations since 1978 may be retained by their occupants in certain conditions (Article 11) while private properties acquired by use of force or threat are to be punished (Article 14). The law begs more questions than it answers. It also repeals an important Taliban Decree which provided a more nuanced subdivision of property classes (see below).<sup>82</sup>

### 3.1.6. The Current Utility of Law

Just how far modern statutory law matters is moot. Even prior to 1978, Wardak observes that the formal justice system through which state laws were administered was "*elitist, corrupt and involved long delays and most Afghans avoided contact with it.*"<sup>83</sup> Most courts do not have access to statutes and many primary courts do not even have copies of the Civil Code 1975 (or the Criminal Code 1976). Most judges rule on the basis of "common sense," custom, and their knowledge of *Shari'a* jurisprudence, usually deeply permeated with customary norms.

The civil administration and the populace at large are unaware of most formal law outside critical dictates which they have felt the

New land laws reflect concern about continuing land conflicts and intentions to secure as much land as possible to the state.

<sup>77</sup> Decree 136 (19/6/1381) 2002 in Gazette 804, now replaced with Decree 89 (9/9/1382) 2003 regarding the creation of a Special Property Disputes Resolution Court.

<sup>78</sup> See Alden Wily, 2003a and 2003b, op cit.

<sup>79</sup> Personal communication, UNHCR 2004.

<sup>80</sup> Legal Decree for Transfer of Government Property (8/1382) 2003.

<sup>81</sup> Article 2, Decree with Regard to Properties (undated).

<sup>82</sup> Edict No. 26 About Land issued in Gazette 788 6/5/1420 (1999). For text see Alden Wily, 2003a, op cit., 123-126.

<sup>83</sup> Wardak, op cit., 1.

effects of, rather than known about or been party to. Commonly encountered examples are unawareness of the statutory illegality of conversion of pasture to arable purposes, and the assumption by pastoral users that their access grants represent full private ownership of the pasture (and a matter not well articulated in the documents they receive).

Enforcement of law is so weak that the value of law is limited at this time. Even when legal provisions are known, corruption in the use and implementation of the law has diminished its social legitimacy. Just as important is widely evident unenforceability of law; the state itself has been at times the main culprit, such as itself converting pastureland to arable use and issuing rights to land without following the specified order of eligible applicants.

### 3.2 Land Policy

Comprehensive land policy has not yet been formulated. Nonetheless, the content of the above and related laws together with development plans do suggest strategic choices. Broadly, these commit to restitution of private properties: a clear purpose of much of the Taliban Edict of 2000 (of uncertain status)<sup>84</sup> and reflected in Karzai's more recent commitment to help refugees regain "land, houses, markets, shops, sarai, apartments, etc."<sup>85</sup> and sought primarily through the courts described above. Recovery of government property is as visibly a prime objective of the administration, although as

Rural land policy development has been slight since Bonn and what exists falls back on the tired notion of titling as panacea to problems.

noted above, with insufficient clarity as to how Government Land is defined.

Planning action around these and other elements is weakly developed in the reconstruction agenda but evolving. In the first National Development Framework (2002) this was mildly expressed as the need "to produce a nationwide land registry and to settle disputes between individuals and groups over land" with the added observation that "such a registry would allow for the use of land as collateral for entrepreneurial activities"<sup>86</sup> – hardly the main concern of the majority poor who borrow against their limited land mainly to feed themselves, let alone to the substantial sector of rural landless and homeless.<sup>87</sup>

The recent Government/International Agency Report prepared for the Berlin Conference refers to property problems, as does the Berlin Declaration (1 April 2004) and its annexed Work Plan of the Afghan Government. The thrust of objectives is again on titling. The relevant annex declares that:

*"The most basic need is to develop a land titling and cadastre system that will start*

*to keep appropriate records of ownership. This system needs to develop an integrated approach, including land use plans and mapping. Land titling will need to take a systematic approach rather than concentrating on technology. Such a system should focus on addressing the underlying issues of tenure security rather than creating another set of records that will be contested. In particular customary*

<sup>84</sup> Law on Agricultural Land, under Decree No. 57 published in Gazette No. 795.

<sup>85</sup> Decree on the Dignified Return of Refugees, No. 297, 13/3/1380 (2002).

<sup>86</sup> GoA, 2002, op cit.

<sup>87</sup> The subsequent National Development Budget (October 2002) and following Public Investment Programme (March 2003) make fleeting reference to "inequalities in access to productive assets" but did give more emphasis to land conflict resolution under the Rule of Law Programme (GoA, 2002 and 2003, op cit.).

*laws will need to be taken into account, while recognising the limitations in terms of both access to technology and human capital in much of the country.*"<sup>88</sup>

This has been confirmed recently in the formalisation of land titling as key tasks in the new list of National Priority Programmes for both urban and rural areas (Ministry of Finance, May 2004). This paper critiques this approach in rural areas later.

### *Policies of the past*

Meanwhile, current land relations definitively do not escape the influences of past land policies, irrespective of whether they were posed as "policies" or not. Summarily, these may be identified as five key strategies:<sup>89</sup>

1. *Pashtunisation* (as it became known) which saw leader after leader since 1884 empower loyal Pashtuns with land rights not equitably available to other ethnic groups (see Section 4).
2. *The establishment of settlement schemes*, to open up dry areas for badly needed new arable land, from the late 1940s. These included the landmark US-funded Helmand Scheme of 1946-1979 which opened up 100,000 ha of land and among whom Pashtuns were the favoured "eligible applicants."<sup>90</sup>
3. *Use of property as a primary basis of taxation*, formally begun in 1931, sound in principle especially in its progressive tax structure from the 1960s but with dues routinely passed onto tenants and sharecroppers, and commons routinely

Policies of the past and Pashtunisation in particular have taken their toll on stable land relations and remain a main source of conflict.

co-opted by those able to pay tax (see below).

4. *Rural land titling*, formally launched in 1963 and through which the state sought to bring all landholding more firmly under its control for mainly taxation purposes. This was encouraged and assisted by a USAID funded cadastral survey and registration programme begun in 1963. Despite immense funding, staff and vehicles, success was limited, with only one-fifth of the land area and one-third of owners of the time registered.<sup>91</sup> Because of the cost, mapping quickly gave way to a simple inventory survey (*survey aajel*) which numbered but did not map plots. Titling as a whole appears to have not avoided pitfalls experienced worldwide in the aid-driven titling mania of the 1960s-1970s, such as the narrowing of family title to individual household (male) heads, land grabbing by larger owners and the state itself through the process and the jeopardising of communal rights. Recording of transactions following first registration has been limited to the wealthy. Nor has the much-pronounced sanctity of title deeds been sustained.
5. *Redistributive land reform*, begun in 1975 with efforts by the First Republic to limit gross inequities in rural land holding, through rigorously progressive taxation on farm size. This took into account the productivity of the hectare, with seven classes of arable land defined in the Land Reform Law 1975 and Land Tax Law 1976. Generous ceilings on land holding were also imposed, above which the state would compulsorily acquire the

<sup>88</sup> TISA/ IC 2004, op cit., Natural Resources Technical Annex, para. 100.

<sup>89</sup> Alden Wily, 2003a, op cit., 39ff.

<sup>90</sup> Majrooh, S.B. and S. Elmi (eds). *The Sovietization of Afghanistan*. Peshawar: Printing Corporation of Frontier Limited. 1986; Cullather, N. "Damming Afghanistan: Modernization in a Buffer State." *The Journal of American History*. September 2002.

<sup>91</sup> See Alden Wily, 2003a, op cit.

excess and redistribute it to landless households (including nomads). This moderate land reform was abandoned by the first Communist regime, which passed the Revolutionary Land Decree in 1978. This sharply lowered the ceiling, did away with compensation and embarked upon vigorous implementation.<sup>92</sup> Resistance to this and sister revolutionary decrees in 1978 relating to limiting the ill-effects of mortgage practice, abolishing dowry and making primary education compulsory, triggered gathering conservative uprising, resulting in Soviet occupation in 1979 to bolster the failing Communist government.<sup>93</sup> The land reform was scaled back during the early 1980s with a growing focus again on opening land claimed by government for distribution and the development of large scale commercial farms, employing landless labour. In 1986 a new decree restored the land ceiling to the level of the 1975 law and was finally done away with in 1991. In total around 700,000 ha of land had been distributed, mainly deriving from land under government control, not private holdings.<sup>94</sup> Benefits to the landless poor are believed to have been limited.<sup>95</sup>

### 3.3. Land Administration

#### 3.3.1. Administrators

The land administration system is ineffective and centralised, and dominated by the courts. No Ministry of Lands has ever been created and administration has been broadly under first, the Ministry of Finance and now respectively MAAH (Amlak Department) and municipal authorities. The main task of both

has been to manage government properties, including distribution of rights to these, including ambivalently-intended sales. In rural areas, by default the Amlak Department supposedly also deals with new registration, undertaken by an inter-ministerial team of verifiers as laid out in the original Survey and Statistics Law of 1965. Amlak also retains copies of the Books of Integrated Land Size and Taxation but appears to do little with these; they were in any event not prepared for administration or regulation purposes but as a basis for tax collection, not yet re-launched, although incipiently intended.

The courts are also formal land administrators to the extent that they carry out registration, verification, signing and related tasks in respect of formal land documents. Court archives effectively serve as land registries. Although fees are kept low, the real costs are considerable and use of court procedures limited to the educated, influential and/or wealthy.

#### 3.3.2. Sources of Evidence of Ownership

Sources of ownership are summarised in Box 5. The founding formal source is tax receipts, used often in rural areas to *establish* ownership over lands, rather than as testimony of legitimate occupancy; that is, receipt holders have frequently argued that their lands must comprise x area because this is the tax they have paid. Conversely, those who have been unable to pay tax or contribute tax to common properties have generally lost tenure. Corruption in the tax collection process on the ground has at times been rife. All these features were observed in the Bamyan and Faryab case study areas.<sup>96</sup>

<sup>92</sup> Details in Alden Wily, 2003a, op cit., 42ff.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid, 47-49.

<sup>95</sup> See Male, op cit.; Roy, O. *Islam and Resistance in Afghanistan*. Cambridge: Cambridge Middle East Library. 1986; Rubin, B. *The Fragmentation of Afghanistan. State Formation and Collapse in the International System*. Oxford University Press. 1995; Usufi, M.Q. "Effects of the War on the Agricultural Situation in Afghanistan" In Majrooh and Elmi (eds). 1986; and Alden Wily, 2003c and 2004a, op cit.

<sup>96</sup> Alden Wily, 2004a and 2004b, op cit.

## Box 5: Sources of Legally Accepted Evidence of Tenure

Customary Documents: (*orfi*) witnessed by relatives, neighbours or local leaders. Include bills of sale and purchase, pawn agreements, wills, subdivision of plots, etc. Limited in description.

Legal Documents (Deeds): (*Wasayeq Shari' a*) copies in Court Registries in the form of:

Qabalaе Qatae:	Land Ownership Deeds
Qabalaе Jayezi:	Warranty Deeds
Wakalat Khat:	Power of Attorney
Taraka Khat:	Distribution of Inherited Property among Heirs
Hasre Werasat:	Identification of Legal Heir
Taqsim Khat:	Division of Property (during lifetime of owner)
Tamlіk Khat:	Letter of Conveyance
Ejara Khat:	Lease Agreement
Wasayat Khat:	Last Will and Testament
Eslah Khat:	Mediation Finding

*Firman*: Land grants by kings and presidents in the form of decrees, legal letters, etc.

The Cadastre: Refers to only one-fifth of the cultivated land area and 30% of owners during 1960-70s. The Register comprises cards indicating owner, how the land was acquired and plot size. Most owners registered as “possible owners” because landlords were often absent or their documents could not be confirmed. Copies in zonal and provincial offices (some destroyed) with a base set in Central Archive in Kabul (Cadastral Department under Afghan Geodesy and Cartography Department, Prime Minister’s Office).

The Books of Integrated Land Size and Progressive Taxation: Carried out between 1971-1978 with higher coverage (5,502 villages) but low accuracy, based upon self-reporting through Declaration Forms (*Ezharnama*) filed by local leaders and landlords, compiled via Districts to Provincial Land Offices under Ministry of Finance (Amlak, now under Ministry of Agriculture). Records often exist at district level with another copy in the Amlak Department. These records include details of grades of land and tax paid. Owners often listed as extended family name only.

Tax Receipts: Property taxation has existed from 1880s, with formalisation in 1930. Records for 1930-1958 are intact in Ministry of Finance archives, thereafter records held at provincial level. These list the family owning the land, the area and tax due. From the outset the larger the land area, the higher the tax paid, at a fixed rate per *jerib* (0.2 ha), with gradations by class of land from 1960s. Annual tax collection ceased in 1978 but restarted briefly by the Taliban. There were also grazing taxes on pasture, receipts of which have been often interpreted as evidence of pastoral ownership, not access rights.

The launching of the cadastral exercise in the 1960s improved the system only to a limited degree, especially in rural areas where coverage was limited. Subsequent compilation of books of ownership over wider areas amounted to rapid appraisal, based upon submissions by government-appointed leaders in the community.

For larger, wealthier owners (landlords), legal documentation of transactions is sought, and for this sector, the courts serve as land deed registries, with thousands of deeds archived. The process is lengthy and expensive; it requires completion of a number of forms, securing no objections from up to five offices,

provision of ID documents, photographs and witnesses, payment of tax at 5-6 percent of the value of the land, etc. While the primitiveness of document management is a bureaucratic concern, the integrity of the system is a greater concern, long considered corruptible, and the records widely corrupted, including widespread production of counterfeit documents. Real adjudication is rarely carried out, relying on selected witnesses, often self selected.

At the community level, owners with medium-sized lands tend to hold locally witnessed evidence of transfers including distribution at inheritance, variously referred to as

customary or *Shari'a* deeds. Such records are rarely held by the majority land-poor smallholders. Finally, there are a large number of land grant deeds, many of which are in the hands of Pashtun nomads and others who have consistently been the main recipient group of such allocations, from the 1880s until the 1970s. The older the document the more limited the land description, with sometimes only the district indicated and the size of the land area granted indicated. In some areas these land grants were renewed during the *jihad* period, such as exemplified in Box 6. Although the land area granted is more specific, the nature of the grant as recording purchase of a use right or the land itself remains unclear.

Thus, while a relatively rich history of land ownership documentation and registration

exists, its reliability and utility is questionable – and save customary records (relatively few) the documents themselves are frequently highly contested. As registrars, the courts cannot provide truly independent assessment.

Written testimony as to land ownership is well developed but vulnerable to corruption. Thus, it holds little of the promised sanctity assumed to arise from registration.

Judges and clerks are deeply implicated in malpractice, with some judges having issued the same title deed three or more

times, either by will or coercion (e.g. from warlords, corrupt officials).<sup>97</sup> Ministers in the current administration have also been implicated.<sup>98</sup>

Nor do any of these sources generate tenure security in their own right, the conventionally attributed sanctity of court and cadastral records notwithstanding. Roots of tenure security currently include political and military might, tribal affiliation and community consensus and within which documentation

#### Box 6: Example of Legal Documents Issued in Shiwa in 1983

*Jamiat-i Islami* Afghanistan  
The General Head Quarters of Mujaheddin in Badakhshan  
Land and Pasture Qawwalla (Document)

In accordance with the land and pasture distribution in Shiwa and due to the decision of the General Commander and the Head of High Military Council of Badakhshan Province (No. 7), land which has the following boundaries -

On the east it meets Dargaw and the area above Dildar Beg's house;

On the west it meets Abdul Wahid, son of Taghai Nasar and Dara-i-Abdar Kalan;

On the north it meets Tigh-i-Silsila Kohi Safid Khaki and Zanjir-I Kaaba; and

On the south it meets the farming land of Shabal Shah and Shah Jamal -

is offered to four Kuchi families from Cahr-dara, Kunduz. The title is offered for 500,000 Afghanis, which is the price of *ailoq*. The mentioned amount has been paid in the presence of the Shiwa delegation.

The current document will be reviewed and approved by the Honorable General Commander of Badakhshan.

Dated 28/4/1372 under signatures of the delegation of Maalim Ismail, Shah Anwar and Mullah Saheb Nazar. Dated 1/6/1372 as correct and signed by Abdul Basir Khalid, General Commander, Badakhshan.

Source: Patterson, 2004.

<sup>97</sup> See Safar, op cit. and D'Hellencourt, N., Rajabov, S., Stanikza, A. and Salam, A. *Preliminary Study of Land Tenure Related Issues in Urban Afghanistan with Special Reference to Kabul City*. Kabul: UN-HABITAT. March 2003 for urban examples and Alden Wily, 2004a, c and 2004d, op cit. for rural examples.

<sup>98</sup> For example, in a report by UN Envoy Kotari, September 2003.

has limited relevance. This is because insecurity today pierces private landholding on these fronts:

- First, through land grabbing by commanders, which does not necessarily target the smallholder, although the poor may be disproportionately affected and least able to resist the effects;
- Second, documentation is all too easily and readily fabricated, rendering customary/community-based consensus important; and
- Third, ethnicity has long been the prime determinant of which properties are most vulnerable. While in the past, vulnerability was the fate of non-Pashtuns, currently Pashtun lands are most vulnerable to coerced sale or appropriation, following widely assumed linkages of Taliban with Pashtuns and rejection of past policies associated with Pashtunisation. This is despite the fact that many properties are in fact the best and most multiply-documented.

Moreover, should restoration of order permit restitution of such properties, this will only be lasting on the basis of community consensus, not on the basis of documented proof of ownership. This is because the most important factor in legitimacy is not paper entitlement but social entitlement. Properties that are locally considered to have been acquired through wrongful official grants, coerced sale or unjust collection of debts are unlikely to be safely restored without community support, the evidence of records notwithstanding. These findings have important implications for strategic approaches to improving tenure security (Section 5).

### 3.4. Land Disputes

#### 3.4.1. Widespread Dispute over Property

A great deal of property is under dispute, although the exact dimensions are difficult

to gauge. Disputes sometimes spill over into violence and represent a stumbling block to peace. With the exception of relatively limited religious lands (*waqf*), all classes of real property are affected; from homes and shops to farms and pastures. Claimants are wide ranging, from widows to farmers to whole communities. Immediate causes of dispute are multiple, from conventional causes (domestic disputes,<sup>99</sup> farm boundary disputes, rent and mortgage disputes) to a plethora of cases concerning alleged wrongful occupation of houses, farms and pastures and conflicting rights over common and public lands.

#### 3.4.2. Refugees and IDPs: A Prominent Group of Disputants

Problems experienced by returning refugees and IDPs in retrieving houses and farms have been so numerous that as noted above an early action of the Interim Administration was to establish a special court to address these, although with less than substantial success (see below). UNHCR has become a notable (although as yet only mildly effective) champion of the need to deal with property issues, besieged as it is with thousands of refugees and IDPs who cannot return to their home areas (mainly because of ethnic problems but also because their houses have been destroyed),<sup>100</sup> or who do not have the expertise, means or confidence to proceed through the courts.<sup>101</sup> Property matters are the most common among the complaints they record.<sup>102</sup>

<sup>99</sup> For example, relating to *inter vivos* subdivision, inheritance and sale of land without consent of family members.

<sup>100</sup> Data collected by UNHCR shows that up to 69% of returnees find their homes damaged or destroyed. UNHCR. *Data on Land Ownership and Housing of Refugees Under Assisted Voluntary Repatriation to Afghanistan*. Kabul. 2004.

<sup>101</sup> UNHCR. *Briefing Notes on Refugees and IDPs in Bamyan Province*. UNHCR Field Office Bamyan, 30 April 2003.

<sup>102</sup> Unfortunately UNHCR does not keep statistics on the nature of complaints submitted, shortly to be remedied.

The Norwegian Refugee Council has been particularly active among a handful of NGOs in dealing with refugee complaints.<sup>103</sup> Most submissions made to its Information and Legal Aid Centres (ILACs) relate to property. For example, 76 percent of the Pul-e-Khumri ILAC cases presented in May 2004 were property related. In Kabul this was 58 percent for the same period, relating to houses, apartments and shops.<sup>104</sup>

### 3.4.3. Farms and Pasture as the Focus of Rural Land Dispute

In rural areas, farmland and pasture rather than houses or other buildings (shops, mills) are the focus of dispute. Among the property cases presented to UNHCR in Faryab in October/November 2003, 53 percent related to pasture, 26 percent to arable farms and only 10 percent to buildings.<sup>105</sup> In the Pul-

#### Box 7: Example of Cases Handled by the Information and Legal Aid Centres (ILACs) of the Norwegian Refugee Council (NRC) in May 2004

##### A community claim

In Balkh Province, NRC was approached by a group of clients representing 600 families or around 8,000 individuals whose land had been occupied by commanders of the 7<sup>th</sup> Army Division of Northern Afghanistan led by General Atta Mohammad (of the *Jamiat* faction, but nominally also part of the National Army). The clients claim to have been allocated the land during the 1980s in the Anteazar Project. Some families received official title deeds while others received a letter from the municipality. People began constructing houses but could not complete these because of the war and instead became refugees in Pakistan or Iran or IDPs in other provinces of Afghanistan. After the fall of the Taliban the people returned to Mazar but found the area occupied by commanders connected to General Atta Mohammad. The returnees first complained unsuccessfully to the Governor of Balkh Province and then requested legal aid from NRC. NRC held a mass meeting with 5,000 of the returnees on 16 May 2004 at which their representatives threatened to forcefully re-occupy the land and begin to reconstruct their homes. NRC advised them not to do this on safety grounds and to instead pursue a mediated solution. On the same day NRC's legal counselors met with General Saboor, Deputy Head of the 7<sup>th</sup> Army. In this meeting, it was agreed that both sides would sit down a day later to discuss the case further. This meeting took place with General Saboor and the commanders who have occupied the land. The latter showed allocation documents. Both sides agreed to request the Governor to hold a special inquiry to determine ownership of the land, involving several departments. On 18 May NRC sent a letter to the Governor to request that an inquiry be established. This is expected to be implemented.

##### An individual claim

An individual client also claims that his land is occupied by three commanders of the 7<sup>th</sup> Army. He claims his father bought 33 *jeribs* of land from the government in 1994. In 1999 he left for Iran and returned to Mazar in 2003. A year later he claims that part of his land was seized by the three commanders. He unsuccessfully complained to a number of provincial bodies before seeking help from NRC. NRC raised this case at the meeting with the Deputy Head of the 7<sup>th</sup> Army, referred to above, and it was agreed to investigate the disputed claim over the land. Two engineers were appointed to measure the size of the land in question and to report back to the authorities. This was agreed by both sides, but when the engineers went to measure the land on 20 May the other party to the dispute failed to attend.

Sources: NRC May 2004 Reports

<sup>103</sup> ILACs received well over 2,000 requests for assistance during 2003 and took up several hundred cases, but with only a 10% resolution rate. The number of cases presented is rising: ILACs registered 207 new legal cases and 831 new information cases in April-May 2004 alone (NRC passim).

<sup>104</sup> NRC. *Report on Information and Legal Advice Project, Afghanistan*. Kabul, May 2004.

<sup>105</sup> UNHCR, 2003a, op cit., and UNHCR. 2003b. *Property Issues in Faryab*. Maimana: UNHCR. October 2003.

e-Khumri case above, 91 percent of property cases concerned pastoral and arable farms; only nine percent involved houses. Box 7 provides examples.

#### 3.4.4. Formal Land Dispute Resolution

In its first six months of operation the dedicated land court, the Land Disputes Court, which only deals with refugee claims, dealt with just over 300 cases.<sup>106</sup> The court operated only in Kabul and the cases concerned Kabul properties, generally those of wealthy returnees. Bias, corruption and other ills were recorded.

There has allegedly been some improvement in court procedure since, and with the right of appeal helpfully now provided by the revised legislation. Nonetheless, most of the cases continue to refer to shops, homes and to other buildings in urban areas in even the second ex-Kabul Court. Data for the courts are contained in Appendix C. In summary, 1,711 cases were received between March 2003-2004, out of which only five percent were solved.

Over half the remaining cases were either rejected by the Court on unspecified grounds or referred to the Ministry of Justice for investigation.

The normal court system also handles land cases where the claimants are not returnees or IDPs. At the local level, District Primary Courts in the study areas consider property cases to comprise around half their case load. In Yakawlang District in Bamyan Province,

The Land Disputes Court is having trouble solving cases or enforcing decisions, and even the normal courts are clogged with land cases.

many of those on file in June 2003 were domestic in nature, alongside a number of claims from returnees that they should receive a share of the crop from those who had been caring for their farms in their absence. Box 8 provides examples.

In Faryab, the Provincial Court reported that three-quarters of its current caseload in November 2003 were property cases. Eighty percent of these had derived from District Courts which had been unable to resolve the cases and appeals had been lodged. The Provincial Court's own record of resolving land cases was zero: "*these days, no matter how you rule, one side is not satisfied.*"<sup>107</sup> Among the cases listed, 61 percent concerned illegal occupation of land; 16 percent involved inheritance, seven percent concerned mortgages and two percent involved land claims made by widows.<sup>108</sup>

In 2002 *only 16 percent* of filed court cases were property related and those recorded fell within traditional categories of land dispute.<sup>109</sup> Most concerned "sales and purchases" (56.5%).

Another 28.5 percent involved conflicts over water rights. Twelve percent related to rents and mortgages. Three percent concerned boundary disputes.<sup>110</sup>

In 2004 Supreme Court records for the period March 2003 to March 2004 showed that *62.4 percent of all cases* were land related. The subjects of disputes are provided in Table 16.<sup>111</sup>

<sup>106</sup> Alden Wily, 2003a, op cit.

<sup>107</sup> Refer to Bamyan Report; Alden Wily, 2004a, op cit.

<sup>108</sup> Refer to Faryab Report; Alden Wily, 2004d, op cit.

<sup>109</sup> These numbered 725 resolved cases with another 132 pending for resolution in the Supreme Court for the period April-October 2002 (Supreme Court 2002).

<sup>110</sup> Based on data supplied by the Supreme Court for the period March-October 2002.

<sup>111</sup> The records reflect land cases in the Primary and Provincial Courts, the Appeal Courts (Kabul Provinces) and the Supreme Court.

## Box 8: Examples of Cases in the Yakawlang Primary Court, Bamyan, June 2003

**Battle Over the *Ailoq***

This battle began with the claim of one village community that its neighbour had entirely co-opted their common land. This area was traditionally used as both pasture and for periodic rain-fed cultivation. The accused village responded that it had bought the area and could turn it entirely into rain-fed farms if it wished. The original village claimed that the payment only referred to a fee for using the area for one year. Three other villages entered the dispute, claiming that they too had traditional rights to use that *ailoq*, these were pasturage rights, but as the other villages were now farming the land, they too should be given space to farm there.

**Re-constructing a Legacy**

A man had lodged a claim for a large area of land which his grandfather had sold. His own father had been a tenant on the land. In the view of the court, the claimant had only brought the case knowing that the current owner had lost the bill of sale when his house was destroyed by the Taliban. He was claiming that his grandfather had never sold the land, just put it under pawn and that he could redeem the outstanding debt. As he was unable to explain why his father had never claimed the land or attempted to redeem the debt if that had been the case, the court rejected his claim. The grandson was now taking his case to the provincial court.

**A Family Affair**

Two sisters had gifted their land to one brother and the brother has been cultivating and harvesting the land. The sisters have died and their sons are trying to reclaim the land, on the grounds that their mothers were forced to gift the land to their brother. The brother produced a customary document, witnessed by the local mullah. The sons claim the mullah remains a close friend of their uncle and his witnessing cannot be trusted. The court could not agree that the mullah was not neutral and found that the mothers had signed the document, and ruled that the land must remain with the brother.

**The Landlord**

A landlord had substantial land, both irrigated and rain-fed, and used this as collateral to take out a loan to participate in a Ministry of Agriculture project. He failed to repay the loan and the Ministry of Agriculture took over the land and put tenants on it. Four villagers in the area have come to court claiming that the land in question was never the landlord's to give and the ministry has no right to take the land now. They claim that the landlord sold the land to them and have produced documents of sale for both irrigated and rain-fed farms. The court has inspected the documents and ruled in their favour.

Table 15: Land Cases in the Courts, March 2003-March 2004

Case Subject Area	Number	%
1 Inheritance	2,499	25.8
2 Land Sales and Purchases	1,898	19.6
3 Wrongful Occupation	2,332	24.0
4 Inheritance (Moveable with Immoveable Property)	279	3.0
5 Houses/Building Sales and Purchases	431	4.4
6 Rents and Mortgages	541	5.6
7 Farm Water Rights (Irrigation)	690	7.1
8 Advance Payments Against Purchases and Sales	85	0.9
9 Awarding Possession	313	3.2
10 Pre-emption <sup>112</sup>	341	3.5
11 Custody over Lands	207	2.1
12 Boundary Disputes	66	0.7
Total	9,682	100

Source: Supreme Court, Kabul, June 2004.

<sup>112</sup>The right of purchasing property before or in preference to other persons.

### 3.4.5. Informal Land Dispute Resolution and Lack of Resolution

Formal court records do not, however, provide a full picture of dispute levels, high though they are. For reasons of fear, futility or lack of means, many land disputes are never brought to court. The poor and very poor do not take their cases outside the community; they do not possess the status, financial means, documents or knowledge to pursue the matter successfully. Even those with means often see little purpose in taking their problem to the court; they complain of ethnic favouritism in decisions, and note the inordinate time involved with the likelihood of continuous challenge and upward appeal to the Supreme Court. Pashtuns in the north for example consider it futile to bring restitution of property claims to Uzbek dominated courts.<sup>113</sup> They are also aware of the high failure rates of the Primary or Provincial Courts to resolve disputes and that even if they win the case, the court and police are likely to be impotent to enforce the decision. Another reason for avoiding the courts is where documentation issued by the court is at the heart of the dispute and the claimant does not believe he will gain a fair or honest hearing. Complaints of court corruption in the field study areas of Faryab and Bamyan were common, and also noted in Human Rights Watch Reports.<sup>114</sup> Nor may a land matter that involves Government Land (or land claimed by government) be presented to the courts but must be submitted to the

Communal cases are the most complex and need community-based resolution to be lasting.

Ministry of Justice's *Hoquq* Department, which limits many pasture cases reaching there.

Some seek to resolve their complaints locally through *shura* or other local mediation means. This is particularly so where the cases are of a more traditional nature (i.e., domestic, boundary, inheritance or mortgage disputes). Others are too afraid of those against whom they are disputing to attempt this; this is quite common where warlords/commanders or their supporters are involved. In Faryab over half the land complaints submitted to UNHCR in 2003 stemmed from actions of commanders.<sup>115</sup> This was similarly so with complaints recorded by Human Rights Watch.<sup>116</sup> Complaints are also lodged with UNAMA offices. The Faryab office estimated that just under half the written petitions it received in 2003 were about land, many with related

human rights abuses (theft of animals, burning of houses, looting, murder, beatings and rape).<sup>117</sup>

While commitment to building a new justice system, ending impunity and reinstating the rule of law are urgent public concerns on paper,<sup>118</sup> change on the ground is limited. Formalising more localised and alternative dispute resolution seems inevitable.<sup>119</sup>

Cases involving individual properties such as houses, shops, and farms, do seem potentially more resolvable than those where communal interests are involved. This was seen for

<sup>113</sup> UNHCR, 2004b, op cit. and Alden Wily, 2004d, op cit.

<sup>114</sup> Human Rights Watch *passim*; Safar, op cit.; HPCR (Harvard Program on Humanitarian Policy and Conflict Research). *Afghan Legal Reform: Challenges and Opportunities*. Boston. 2003; and Mani, R. *Ending Impunity and Building Justice in Afghanistan*. Kabul: Afghanistan Research and Evaluation Unit. 2003.

<sup>115</sup> UNHCR, 2003a and 2003b, op cit.

<sup>116</sup> Human Rights Watch. *Afghanistan. Paying for the Taliban's Crimes: Abuses Against Ethnic Pashtuns in Northern Afghanistan*. April 2002. 14(2c).

<sup>117</sup> Alden Wily, 2004d, op cit.

<sup>118</sup> GoA, 2002 and 2003, op cit; TISA/IA, op cit.; and *Berlin Declaration*. International Afghanistan Conference in Berlin, 31 March - 01 April 2004. 01 April 2004.

<sup>119</sup> Wardak, op cit.

example in Bamyan Province where strong Governor(s) have involved themselves.<sup>120</sup> Even where there is no law and order (such as currently in Faryab Province), and families have fled and fear to return for as long as ethnic tensions and warlordism remain, their tenure over houses (often destroyed) and farms appears respected, with current farmers serving as sharecroppers in the interim, sending or setting aside the owner's share.<sup>121</sup> The much more threatening cases concern communal properties, and where inter-village, government-people, and inter-ethnic conflict conjoin, sometimes inflamed by warlords who promote their own land access interests. Pastures are indisputably at the centre of this gathering storm.

#### 3.4.6. Conflict Over Land May Be Rising

Two years after the fall of the Taliban, property conflict may be increasing. Reasons include:

- Refugee return and rising numbers of persons seeking restitution of homes and farms;
- Dissatisfaction among refugee landless (up to 67%) and homeless (up to 41%)<sup>122</sup> that the administration has been unable to provide persons with homes, resulting in widespread occupation of especially urban public properties;
- Failure of rule of law has encouraged rampant land grabbing and abuse of the system, with commanders emboldened, not chastened;
- The free for all environment has accelerated rather than put a break on arable expansion and has stimulated rather than controlled domestic and intra-village disputes;

- Ethnic cleansing of Pashtuns post-Taliban has produced large numbers of IDPs, many of whom still do not feel safe to return to home farms;
- Strong resistance is being expressed to Pashtun Kuchi hegemony over pastures; and
- Courts are proving less rather than more able to successfully resolve disputes not least because their decisions cannot be enforced.

Many of the above are elaborated in the next chapter.

Analytically, in post-conflict situations it is generally helpful to distinguish between routine and new land disputes. It is also useful to distinguish between those that have arisen through pre-war conditions and those that have arisen as a direct consequence of instability. In Afghanistan, the latter prominently manifest as wrongful occupation of lands through appropriation or forced sales, and corruption of records. While intra-family tensions over land always exist, these tensions have indisputably also been heightened. A new avenue of disorder has been stimulated by poppy production, tending to exaggerate land grabbing and distortions in the land market.<sup>123</sup> Encroachment into public lands such as pasture has been rife. Pre-conflict factors typically include inter-ethnic resentment arising from public policies of land colonisation and Pashtunisation and associated land capture. Although not consciously framed in this manner, conflicts generated from pre-war conditions also stem from public policies relating to the definition of public and private land, and again in rural areas, are centred upon the pastures.

Thus in Afghanistan it is not always easy to separate conflicts in pre- and post-war, given

<sup>120</sup> See Bamyan study; Alden Wily, 2004a, op cit.

<sup>121</sup> See Faryab study; Alden Wily, 2004d, op cit.

<sup>122</sup> UNHCR, 2004b, op cit.

<sup>123</sup> TISA/IA, op cit. and The World Bank, 2004, op cit.

the role instability and anarchy have played in bringing old grievances to the surface. In practice, pre- and post-war conditions are tightly interwoven; even where the warlords/commanders are involved and driven by their own ambitions, they garner ethnic support which in turn frequently builds upon longstanding bitterness as to past treatment of their customary land rights.

This is important, for strategic remedies differ. The former suggests that restitution of properties to owners as of 1978 is the outstanding requirement. This includes the state as owner of vast “public” areas. The latter suggests that some measure of reform in the way property (including contested public property) is organised and accessed may be necessary to secure sustained peace. Both assume a fundamental requirement for the restoration of order and rule of law. Moving forward without that condition poses additional demands; these may perhaps only

be met through incremental and community based approaches, in which people themselves play the major role in securing peace in their land relations.

Finally, it is of note that field studies underwriting this report demonstrated little if any evidence that social inequities *per se* are a driver to current land disputes and conflicts; that is, landlessness, despite its significant dimensions and the suffering and disadvantage exploitation of landless labour causes, does not appear to be a direct driver. Current land conflicts are not class wars. This is interesting given the role that land reform initiatives played in catalysing discontent in the rural areas during 1978-79. For example, mass land invasions by the landless have not occurred at any point since. Beneficiaries still tend to be the better off or powerful. If anything, the poor and landless are less empowered than they were during that time. This is not to say that this situation will continue.

## 4. The Pasture Issue

*Complex elements fuel disputes over pasture. These include the facts that abundant pasture exists in an environment of acute shortage of arable land; that the definition of pasture is ambivalent; and that tenure is deeply tied up with a history of rampant land grabbing by the state and related policies of ethnic favouritism in allocation. In addition, capital transformation over the last century has seen expected strengthening of private versus communal interests; this has been difficult to restrain where the legacy of feudal landlordism remains vibrant and within which the land access rights of the majority have been easy to manipulate. The lack of clear legal support for common property rights and the appropriation of such lands as effectively Government Land (and uncertainties related to the registration of pastureland rights) have also played a part. Finally, the chronic disorder of especially the last decade has unleashed not only bitter ethnic differences as to past land-related injustices but abandonment of many customary and statutory constraints as to land use for environmental stability. The consistent trigger has been increasing cultivation of land previously denoted as pasture, often led by military and economic elites. This precipitates conflicts that are complex, often with overlapping arable-pastoral, settler-nomad, inter-ethnic, intra and inter-community, and people-government interests at stake. In most cases, the poor are losers.*

“Pasture” may be defined as comprising anywhere from 45 to over 70 percent of the total land area.

### 4.1. Defining Pasture

Agro-ecologically, pasture is defined as embracing 45 percent of Afghanistan’s land area or 29 million hectares.<sup>124</sup> Some of this rangeland is also usable for rain-fed farming and has been customarily used in this manner, despite this being illegal under state law. Pasture is also used for collection of thorny plant material (*khar*), crucial for winter fodder. Parts of land classified as barren land (37% of the total land area) are also usable as pasture on a short basis in summer. This includes, for example, some very high gullies which are protected from winds and where fertile soils have collected and which are spring-fed; these are known as *sarad* (cold fields) in Bamyan.

Legal definition of pasture is opaque and potentially extends well beyond the core 45 percent of land area noted above. Pasture was first described in the USAID-facilitated land registration law of 1965 as “*any land used for grazing in the past and present*” (Law on Land Survey and Statistics, 1965, Article 63). Provincial Governors were enjoined to ensure pastures were delimited and to supervise their use (Article 64). The subsequent Law of Pasture Lands (1970) was just as expansive in its capture of potential pastoral areas. Pasture comprised:

*“the plains, hills, mountains, the skirts of the mountains, marshlands, the banks of rivers and forest areas which are covered with grass and other places that grow wild and could be used as fodder for cattle.” (Article 2)*

<sup>124</sup>FAO and UNDP, op cit.

In short, pasture is almost anywhere where potential fodder plants grow.

The above opportunistic definition of pasture has been retained, both in an un-repealed Taliban Law on Pasture (Law on Pasture and Public Lands [2000] under the general Decree 57 on agricultural sector matters) and since, in various proposals for its redraft, mainly deriving from the Ministry of Frontier and Tribal Affairs (and whose constituency is predominantly Kuchi). The current draft (2004) remains effectively unchanged save for a proposal to render all pasture more definitively Government Land. Appendix D provides the texts of key pasture legislation.

Of note is the fact that “conversion of pasture to arable use” has consistently been prohibited in all versions of the law.<sup>125</sup>

#### 4.2. The Ownership of Pasture

The ownership of pasture is just as open-ended – at least superficially. In the 1965 registration law, pasture was held to be un-owned land, “*open to the public*,” available for use on a licensing basis controlled by government, and explicitly not permitted to pass into private ownership (Article 65). Moreover, pasture was noticeably excluded from the description of Government Land in that early law. The 1970 Pasture Law also described pasture as “public property” (Article 3). President Daoud’s short-lived Constitution (1977-1978) defined public property as lands *owned* by the people but *administered* by the state on their behalf (Article 13). This was an important clarification of the lack of practical distinction between Government/State Land and Public Land. By 1987 this distinction had been abandoned; pasture and forests became simply “State Property” (1987 Constitution, Article 20).

Differences between Government/State and National/Public Land fell away.

In tenure terms, a basic distinction between land owned by government and land *held* by government as only trustee for the nation are important. The former permits government to behave like a private owner and includes the right of sale. Land that is more definitively “National Land” or “Public Land” limits the role and powers of the state to fiduciary functions. It may not sell the land outright, either to itself or its agents or to private persons or communities. Many land related problems throughout the developing world have stemmed from governments behaving as landlords in respect of property that is more rightfully either a nationally shared asset or the rightful property of local communities, as local commons.<sup>126</sup>

Afghan constitutional law has done little to elaborate the tenurial nature of pasture. The notion of public property was first defined only in the Fourth Constitution of February 1977. In this, a complex of assets from ports, banks and forests were declared to be “national property” and “*their administration shall belong to the State*” (Article 13). Notably, neither barren land nor pasture land were included. The current Constitution (2004) only designates mines and underground resources as “properties of the state” (Article 9). In addition:

*“Protection, use, management and mode of utilisation of the public properties shall be regulated by law.”* (Article 9)

The latter would imply pasture remains as Public Land but with a now confused distinction between national and public property. The meaning of State, National or Public Lands is not provided.

<sup>125</sup> Articles 64, 65 and 67 of the 1965 Law, Articles 8-11 of the 1970 Law and Article 3 of 2000 Law.

<sup>126</sup> For the Sub-Saharan Africa case, see Alden Wily, L. and S. Mbaya. *Land, people and forests in eastern & southern Africa at the beginning of the 21<sup>st</sup> Century The impact of land relations of the role of communities in forest future*. IUCN, Suisse. 2001.

In practice we need to return to the early Survey and Statistics Law to see how easily the distinction between public and government property blurred. While as recorded above, pasture was declared public property, it was at the same time declared that in addition to wasteland and charitable gifted lands (*moquofa*) and lands “developed by government” any land not registered as *private land* would be registered as Government Land (Article 54).

The government then proceeded from 1965 to survey and register as much land as it was able. Although only eight percent of the total land area of Afghanistan was actually formally surveyed (just over five million ha) this included one-third of the country’s arable land, 20 percent of which was registered as Government Land. Another 1.6 million ha of pasture was registered as private or Government Land.

The primary purpose of the registration law was taxation and subsequently any land for which tax was not paid fell automatically to the state. By the same process, large landlords were able to secure significant tracts of pasture to themselves.

The question of who owns pastureland was irrelevant for a short period following the 1978 Revolution, with the firm inclusion of all pasture under the description of State Property in 1979 (Article 20). That is, any private rights that had been established over pasture were retracted. By 1992 this was reversed to only include “unclaimed pastures” (Article 67). This left many landlords as pasture owners and pasture that had in the past been regarded as local common property, as Government/Public Land. At the same time, from 1979 the *use* of pasture by nomads was guaranteed (Article 24) and the 1990 Constitution provision permitted and encouraged private investment on pastures (Article 20).

### *Attending to common property rights for the first time*

While the Taliban did not introduce a new Constitution *per se*, they were prolific in their issue of edicts. Three very important laws affecting the status of pasture were decreed. The earliest attempted to restore to government lands that had been occupied since 1978 and to reduce those lands that had been allocated with documentation to “public lease” (Law on Land 1996). Another Law on Land under Decree 57 of 2000 revised the 1965 Survey and Statistics Law that defined public property as potentially including pasture “*owned by neither individuals nor government*” leaving an opening for pasture to be owned legally by communities or the nation as a whole (Article 84). The Law on Pasture and Public Lands under the same general Decree 57 updated the Law on Pasture 1970 and refined this innovation, introducing a new distinction between private and public pasture.

As described, private pasture in the Taliban law does not gain status as individual private property, but as local common property as distinct from national common property (Public Land) (Articles 2-4). That is, while “*public pasture may be used by anyone,*” private pasture in the Taliban law may be used only “*by residents of the adjacent communities*” (Article 3). Buying or selling of pasture in either case remains prohibited (Article 6). This Taliban innovation accorded very well with local perceptions in most parts of the country as to traditional status of pastureland in their vicinity.

### *The current legal status of pasture*

The important Karzai Decree with Regard to Properties (2003) effectively if only indirectly retracts the Taliban innovation through rendering all properties which have been under the control of the state for more than 37 years to be “state-related.” In 1966 all

pastures were under the control of the state/government, save those already recognised as individually owned. The 2003 law makes these state properties available for lease through auction and where already occupied, the occupant shall have right of first refusal. This means that those who have established occupancy in pastures during the last 37 years will be the rightful *leaseholder* – if they can pay.

At the same time, the law provides that private property will be recognised should the occupant have valid *Shari'a* or legal documents (Articles 2, 6, 7 and 9). As the third case study later shows, many new occupants of pastures have established legal documents as to their tenure. Prior to 1978, a great number of legal documents of various origins had also been issued (e.g., land grants from kings, allocations by MAAH). Once again, customary common property interests over pastures are not catered for.

Notably, a redraft of the Law on Pasture by the Ministry of Frontier and Tribal Affairs returns to blanket declaration introduced formally during Soviet occupation (1987) that pasture is the property of the state. Access is to be limited to use rights issued by MAAH (Articles 14, 16). At the same time, existing rights granted officially or customarily are to be respected (Article 15). The fact that the informal draft notes that this may include private property rights rather clouds the intention as to whether these

rights are to be held as access or ownership rights.

The upshot of all the above is that unclear legal guidance is provided as to if and how pasture is seen to be owned today (even should the law be enforceable, not currently widely the case). Outside the law, pastoral policy is still in the process of being formulated. In the TISA/IC annex on natural resources prepared for the Berlin Conference of March 30-April 1, 2004, MAAH recognises that tenure issues are at stake and proposes assessment of rangeland resources and tenure arrangements as its short-term strategy, with programmes to upgrade degraded rangeland following in the medium term.<sup>127</sup>

Meanwhile, many and perhaps all pastures fall under competing claims and may secure support from one or other legal provision; as land claimed by individuals, groups, communities and government, or as “public land” – owned by no one and available to all through access rights. The ethnic colouring of these competing claims intensifies disputes, much sharpened by active warlordism, often self-interested but also usually ethnically defined.



Courtesy of Liz Alden Wily

<sup>127</sup> TISA/IC, op cit., Technical Annex on Natural Resources.

### 4.3. The History of Contested Pastoral Rights

To understand pastoral rights one must look at the inter-ethnic history of land relations. Typically, these have inherent tensions, particularly where land uses compete, most clearly the case between settled farmers needing arable land and pasture and pastoralists, needing larger spheres of pasture (uncultivated land). However it is also clear that inter-ethnic tenure relations of today have been very much shaped, or indeed even engineered, by past public policy.

The roots of this lie in the creation of the modern Afghan State, a difficult tribal and territorial confederation in which the dominance of its Pashtun creators has been a source of contestation since.<sup>128</sup> In cursory outline, the modern state began to take shape in the 18th century in the founding of the Durrani Empire, an alliance of Pashtun tribes south of the Hindu Kush mountain range who appointed an *Amir* (king) to coordinate their interests.<sup>129</sup> Then and now Pashtun clans broadly divide into Durrani and Ghilzai tribes, with the former politically dominant. A century later (1892) Amir Abdur al Rahman of Kabul had conquered areas around and beyond the Hindu Kush, broadly reflected in the international boundaries of today.<sup>130</sup> The Iron Amir, as he was known, achieved this only with great brutality and with the encouragement and assistance of the British,

whose interests lay in the creation of a loyal buffer between their Indian colony and expansionist Tsarist Russia.<sup>131</sup> Organised land theft and land colonisation by Pashtuns were to be important tools of the creation of the buffer state.

With a brief Tajik interregnum (1929), Afghanistan was to be ruled by Durrani Pashtun kings up until the establishment of the First Republic in July 1973.<sup>132</sup> This was established by Daoud Khan, himself a cousin to the last king. Following his murder in April 1978, Communist Second and Third Republics were instituted (1978-1992), initially sustained by Soviet occupation (1979-1989). Resistance flourished in the form of mainly ethnically distinct groups (*mujaheddin*), often coloured by religious fundamentalism.<sup>133</sup> Following Soviet departure, an alliance of resistance leaders declared an Islamic State in 1992, within months to be headed by a Tajik religious scholar, Burhanuddin Rabbani.<sup>134</sup> Rabbani remained in power until his ousting from Kabul in September 1996 by the Taliban, a largely Pashtun fundamentalist group established in exile (Pakistan) and led by Mullah Muhammad Omar.<sup>135</sup> With help from Pakistan and Arab fighters funded by Osama bin Laden and other sources, the Taliban eventually secured most of the country by 1998, the first to do so since 1978.

The US-led coalition forces, assisted by primarily non-Pashtun militia, defeated the Taliban in November 2001. Following

<sup>128</sup> Or as Roy op cit. has noted, among many others: "There is no Afghan nation but there is an Afghan State." Also see Allan, N. "Defining People and Place in Afghanistan." In *Post-Soviet Geography and Economics*. 2001; 42(8): 545-560 and "Rethinking Governance in Afghanistan." *Journal of International Affairs*. Spring 2003; 56 (1) for exploration of his thesis that "Afghanistan is a space, not a place."

<sup>129</sup> See Olesen, A. "Islam and Politics in Afghanistan." *Nordic Institute of Asian Studies, Monograph Series*. No. 67 Curzon Press. 1995 for pre-modern organisation and representation.

<sup>130</sup> Lee selects this date to mark the final collapse of the semi-autonomous Uzbek Balkh, for centuries previously the southern appendage of the Chingizid Empire to the north. Lee, J. *The 'Ancient Supremacy': Bukhara, Afghanistan and the Battle for Balkh, 1731-1901*. New York: Brill, Leiden. 1996.

<sup>131</sup> See Lee, 1996, op cit. and Shahrani, M. "State Building and Social Fragmentation in Afghanistan." In *The State, Religion and Ethnic Politics Pakistan, Iran and Afghanistan*. A Banuazizi & M. Weiner (eds). Vanguard. 1987.

<sup>132</sup> See Gregorian, V. *The Emergence of Modern Afghanistan. Politics of Reform and Modernization, 1880-1946*. California: Stanford University Press. 1969; Rubin, op cit.; and Shahrani, op cit.

<sup>133</sup> See Roy, op cit. and Majrooh and Elmi, op cit. for the Soviet period.

<sup>134</sup> Who headed the *Jamiat-i Islami* Party (now the *Hizb-i-Islami* Party), most famed for its military commander, Ahmad Shah Massoud.

<sup>135</sup> See Rashid, A. *Taliban: The Story of the Afghan Warlords*. London: Pan Books. 2000 for rise of Taliban.

agreement among key factions in Bonn, an internationally-defined Interim Administration was put in place, headed by Hamid Karzai, a Pashtun. He leads a Cabinet that

prominently includes Panjshiri Tajik, Kohstani Tajik, Uzbek and Hazara commanders. This has given way as planned to a Transitional Administration and democratic elections in

#### Box 9: Who are the Kuchis?

Kuchis (meaning “to migrate”) own primarily sheep but also take baggage animals with them (camels, horses, donkeys). The proportion of households in all ethnic groups who live primarily by nomadic livestock-keeping has declined over the last century; by need or choice, many are now settled farmers or urban dwellers, or live largely through mobile trading, a traditional speciality of some Kuchi groups. Particularly among Pashtun Kuchis, even those who are now settled may still see themselves and be locally seen as a culturally distinct group, from both neighbouring ethnic groups and/or more traditionally settled peoples. Modern-day Kuchis include those who are:

- Nomadic (without permanent homes, living in tents all year, rarely have fields, annually migrate between winter and summer pastures);
- Semi-nomadic (may have houses, own farms, whole household moves in summer, in tents);
- Semi-sedentary (live in houses in winter, own farms, only part of household moves with livestock); and
- Sedentary (live in villages year round, own stock and may hire shepherds to take stock to summer pastures).

The proportion of Kuchis in the population today is unknown but guessed usually as between 1-2 million persons, or up to eight percent of the population.

The larger majority of Kuchis are Pashtuns. Among Pashtun Kuchis there are distinctions between the Ghilzai Pashtuns of eastern Afghanistan and the Durrani Pashtun nomads of western and northern Afghanistan, often referred to as Kandahari (and who often refer to themselves as *powindahs*). They speak different dialects of Pashto, use distinctive styles of black tents and have different labour practices. Non-Pashtun Kuchi groups who also use black tents include the Baluch and Brahui in the southwest, and Arabs in the east. Intermingled with the Durrani nomads that have settled in northern Afghanistan over the past 120 years are a large number of Persian speaking livestock raisers (*maldars*), most notably Aimaq and Arab clans. Although they engage in long distance migration to summer pastures like Pashtuns, they do not use tents but establish huts in the summer pastures. Turkish speaking pastoralists in the north (Uzbek, Turkmen and Kirghiz) also have huts but do not make long distance migrations.

Seasonal Kuchi migrations tend to divide into longer range and short range movements. Long range migrations are mainly made by Pashtun Kuchis and may take up to three months to reach the summer pasture and three months to return to the winter pasture. The animals are thus pastured in up to three different altitudes. Short range migrations may take one to three weeks and are commonly practised by non-Pashtun Kuchis (Arab, Uzbek, Aimaq, Tajik, etc.) as well as some Pashtuns.

Sources: Barfield 2004, de Weijer 2002.<sup>136</sup>

<sup>136</sup> Also see Glatzer, B. “Processes of Nomadization in West Afghanistan.” in P. C. Salzman (ed) *Contemporary Nomadic and Pastoral Peoples: Asia and the North*. College of William and Mary, Williamsburg. 1981 and “War and Boundaries in Afghanistan: Significance and Relativity of Local and Social Boundaries”. In *Welt des Islams* (Leiden). 2001; 41(3); Tapper, N. “The advent of Pashtun maldars in north-western Afghanistan.” *Bulletin of the School of Oriental and African Studies*, University of London. 1973; XXXVI: 55-79 and *Bartered Brides, Politics and Gender and Marriage in an Afghan Tribal Society*. Cambridge: Cambridge University Press. 1991; Pedersen, G. *Afghan Nomads in Transition: A Century of Change among the Zala Khan Khel*. The Carlsberg Foundation’s Nomad Research Project. London: Thames and Hudson. 1994; Frederiksen, B. *Caravans and Trade in Afghanistan: The Changing Life of the Nomadic Nazarbuz*. Thames and Hudson. 1995; Ferdinand, K. *Preliminary Notes on Hazara Culture*. Historisk-filosofiske Meddelelser bind 37, Nr. 5, Copenhagen. 1959; and Canfield, R.L. *Faction and Conversion in a Plural Society: Religious Alignments in the Hindu Kush*. The University of Michigan - Ann Arbor: Anthropological Press. 1973 and “Ethnic, Regional and Sectarian Alignments in Afghanistan.” In *The State, Religion and Ethnic Politics Pakistan, Iran and Afghanistan*. A. Banuazizi and M. Weiner (eds) Vanguard. 1987.

late 2004 under the terms of a provisional new Constitution (2004), remarked above as little different from the “new democracy” Constitution promulgated by King Zahir Shah 40 years earlier.

Territorial interests classically collided among different tribal and sub-tribal groups in the Pashtun-led conquest of lands and creation of modern Afghanistan and were to produce classical battles over land access, much heightened by what was perceived as favouritism towards the socially, economically, as well as politically, dominant Pashtuns. However, a just as important element was operating in the form of competing land use interests. The nature of Afghanistan lends itself to a natural dominance of pastoral interests, with more or less all tribes depending upon stock to one degree or another. Within all ethnic groups, but most numerous among Pashtuns, livestock-raising was a significant and often dominant means of survival, and achieved through varying degrees of nomadism. Nomad owners (Kuchis) move seasonally to

take advantage of often very remote summer pastures (Map 1). Main areas of winter and summer pasturing are shown in Appendix E (Table 1).

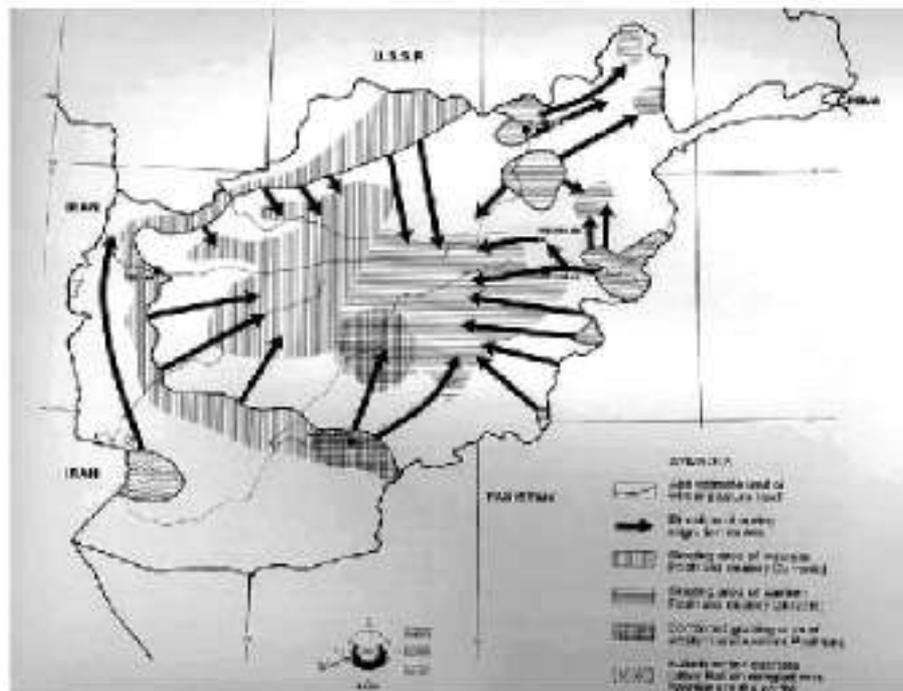
As the control of especially Pashtun “Kuchis” steadily expanded with the help of state support, the clash between pastoral and arable interests became increasingly blurred by ethnic allegiances. How far current battles over pasture are ethnically or land use defined has tended to become integrated.

Below, three cases drawn from the field studies are recounted.

#### 4.4. The Bamyan Case

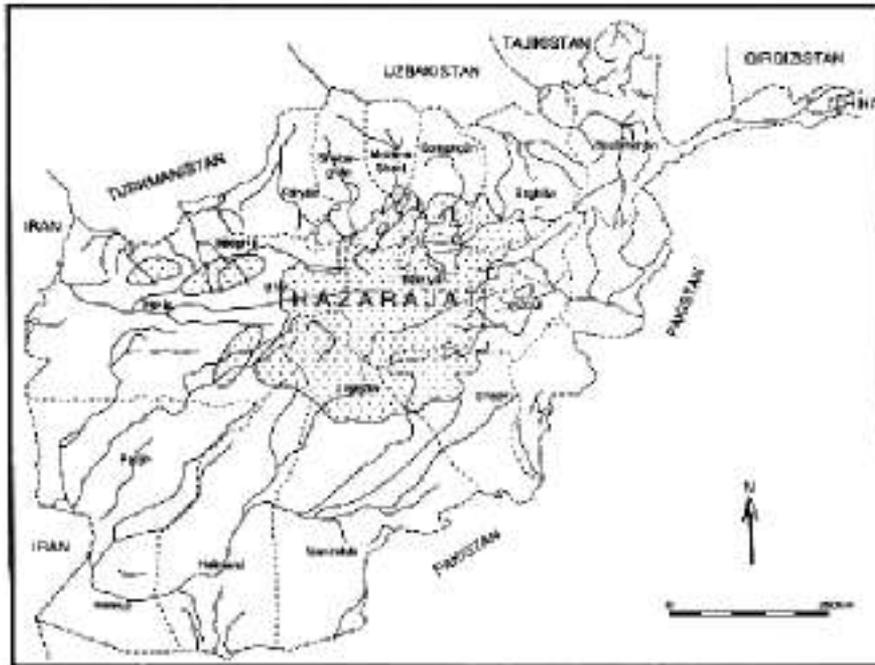
Bamyan Province is the heartland of the area known as Hazarajat and peopled prominently by Hazaras (see Map 2). Although Hazarajat has never existed as a discretely ruled political area or been permitted to have administrative cohesion as a region, it is locally understood to comprise all but two newly-added northern

Map 1. Kuchi Migration Routes



Source: Barfield, 2004

Map 2. The Area of Hazarajat



Source: Mousavi, 1998.

districts of Bamyan Province and 10 districts in six adjacent provinces.<sup>137</sup> As well as having linguistic consanguinity, the eight Hazara tribes are Imami Shi'a, thus distinguishing them from the majority Sunni. Hazarajat is also the home of most of Afghanistan's minority Ismaili Shi'a.<sup>138</sup>

As will be exemplified below in the case of Panjao District in Bamyan Province, the rich pastures of Hazarajat were dominated by Pashtun Kuchi use. Rejection of this has been widespread so that today, many local populations of Hazarajat resist and reject the return of Pashtun Kuchis to "their" areas. In 2003, it was only in Nawur District in Ghazni Province that some Pashtun Kuchis had returned.<sup>139</sup> Table 2 in Appendix E shows the

low use of pastures in 2003 by Kuchis throughout the country, at the rate of 6.2 percent overall. Although stock numbers had been reduced to around a third by the 1999-2001 drought, this poses an enormous constraint to pastoral use, at least by long-distance seasonal users. As their stock recover (already occurring), pressure to return to the summer pastures mounts.

To understand the nature of disputes that rage over Hazarajat pastures, it is necessary to return to the 1880s and the above-mentioned creation of the Afghan State. Up until this period, Hazarajat was ruled by fiercely autonomous local chieftains among whom the Sheikh Ali Hazaras around Bamyan were dominant. Outsiders had periodically ruled or suppressed and oppressed them with heavy taxation and slave raids.<sup>140</sup>

<sup>137</sup> Balkhab in Jowzjan Province, Dar-e-Suf in Samangan Province, Lal-o-Sari Jangal in Ghor Province, Dai Kundi and Sharistan in Uruzgan Province, Malistan, Jaghori and Nawor in Ghazni Province and Behsud I and II in Wardak Province.

<sup>138</sup> The Shi'a or Shi'ites broke from the "orthodox" (Sunni) Muslim community after the death of the 4<sup>th</sup> Khalif, Ali. They recognize Ali and his descendants, whom they call "Imams," as the only legitimate descendants of the Prophet. They are referred to as "twelvers" because they recognise 12 Imams. In contrast, the Ismaili branch of the Shi'a are called "seveners" because they recognize only the first seven Imams and follow their own descent line thereafter, with the Agha Khan their current Imam.

<sup>139</sup> As shown in analysis of District Question B4 of the NRVA 2003.

<sup>140</sup> Ferdinand, *op cit.* and Canfield, 1973, *op cit.*

As the most rebellious of peoples to be subordinated in the Iron Amir's expansionism (and Shi'ites as well), Hazaras faced ruthless invasions and massacres, extortionate taxation (16 taxes introduced in 1880-81 alone), mass enslavement and exile.<sup>141</sup> Although in remoter areas like Panjao District, most arable valleys were to prove only temporarily occupied, the Amir handed over valuable pasture to Ghilzai Pashtun Kuchis to reward them for their role in suppressing the Hazaras.<sup>142</sup> Prior to that time Kuchis had only occasionally ventured into the area and only with the aid of modern rifles, first acquired only a decade or so previously.<sup>143</sup>

### *The pastures of Panjao District*

In Panjao, as elsewhere in Hazarajat, land allocations to Kuchis were made in the form of liberal land grant letters (*firman*) to clan heads, who were delighted to extend the reach of their summer migrations to these new rich pastures.<sup>144</sup> Initial attempts by Hazara notables (*begs*) to prevent their seizure resulted in death and destruction.<sup>145</sup> In 1894 the Iron Amir issued a decree forbidding Hazaras to henceforth use any pastures at all.<sup>146</sup> The pastures remained firmly closed to Hazaras thereafter, a half-hearted attempt in the mid 1920s by the reformist monarch Amanullah to reverse this land theft notwithstanding.<sup>147</sup> Over time the Kuchis were to subdivide their pastoral assets among expanding numbers of clan heads and eventually to trade these among themselves.<sup>148</sup>

Some Kuchi clans were traders as well as pastoralists and the unsophisticated Hazaras

(already profoundly exploited by their own nobles and landlords) found themselves steadily surrendering their stock and land as repayment for debts, sometimes founded upon purchase of a single wad of tobacco or piece of cloth purchased from Kuchis two seasons previously.<sup>149</sup> Many hundreds of families became the client sharecroppers of absentee landlords on what had been their own land. These landlords returned annually to collect the rent or crop shares, uninterested in farming themselves.

The elderly Panjao District Agricultural Officer, himself a Hazara, recalls:

*“Kuchis became very land-hungry during the King's time (1933-1973) and would stop at nothing to get whatever land they could. When it came to big Hazara landowners, they paid for the land. But it was more common for Kuchis to gain the land by carrying goods (tea, ropes, tobacco and cloth) with them. They would sell these to the people on the promise that they would pay later in seers of wheat. They always checked whether the person had animals or land before they gave goods on credit. When they came back at the end of harvest to ask for the seers of wheat, the seers had grown more valuable than early in the year or the year before. This was their way of getting interest. Most people could not pay the full amount, and the Kuchis let them run up the debt until the next year. The debt would grow far, far beyond the value of the piece of cloth they had bought in the first place. After several years the Kuchis would take the sheep belonging to the debtor and if that was not enough, the*

<sup>141</sup> Lee describes forced marches to Kabul in which possibly thousands died and those who arrived were sold in the slave markets (Lee, 1996, op cit., 532).

<sup>142</sup> Mousavi, S. *The Hazaras of Afghanistan. An Historical, Cultural, Economic and Political History*. Surrey: Curzon Press. 1998.

<sup>143</sup> Ferdinand, op cit., 19.

<sup>144</sup> Mousavi, op cit. and Pedersen, op cit.

<sup>145</sup> Mousavi, op cit., 83.

<sup>146</sup> Ibid, 133.

<sup>147</sup> Poullada, L. *Reform and Rebellion in Afghanistan, 1919-1929. King Amanullah's Failure to Modernize a Tribal Society*. Ithaca, New York: Ithaca University Press. 1973.

<sup>148</sup> Pedersen, op cit.

<sup>149</sup> Pedersen, op cit. records how easy they found it to exploit the Hazaras; Kuchis were well armed, well supported by the Pashtun-led government and as traders, had ample leverage “to bring local populations to their knees.”

*land. The land was never valued on its own, but was always assessed at the same value of the debt, whatever it was. So, in the end, people were selling their land for a piece of cloth or a box of tea. This made them angry. Some refused to give up the land and the Kuchis would appeal to the government. The government always took the side of Kuchis and would make the people give up the land and would draw up a document, giving ownership to the Kuchis."*

The numbers of Kuchis who came to Panjao District is not known. Today farmers name eight clans,<sup>150</sup> of between 30 to 100 households as having come regularly to Panjao. On average, each Kuchi family brought 2-300 sheep, 5-10 cattle, 5-10 camels and 8-10 donkeys.<sup>151</sup>

Generally, Kuchis returned annually to the same upper pastures and their leaders were known by name to people in the valley. Poorer Kuchis tended to keep to the upper pastures. Richer Kuchis roamed the valleys, trading and making contracts with farmers to cultivate the farms they now owned, usually on a one-quarter basis. Crop damage complaints and cases abounded, as did claims that Kuchis had stolen local cattle. Hazara interviewees repeatedly expressed resentment of the perceived bias of especially President Daoud towards Kuchis. When tensions rose during the years of the Republic (1973-1978), Kuchis felt emboldened by the support of his administration. They claimed they had been given all of the land that the Hazaras claimed as their rain-fed farming areas and as private or communal pastures.

A handful of richer Hazaras also benefited. Kuchis would lease their accumulating lands

to one larger farmer and he, in turn, would sublet plots to poorer people at one-fifth crop-share (*panj kot*). The main tenant would be responsible for collecting the crop-share due, serving more as bailiff than farmer. By 1975 in addition to virtually the entire pastureland of the district, four of 15 fertile valleys in Panjao were largely owned by absentee Kuchi landlords, and parts of several other valleys.

All aspects of Kuchi-Hazara land relations in Panjao were and remain contested: their claim to the mountain tops and high pastures which Hazaras accept are public, not private pastures of the Kuchis; Kuchi appropriation of lower hillside pastures, which Hazaras claim as their own property and often important reserved lands for rain-fed farming; Kuchi acquisition of existing rain-fed and irrigated fields through coerced payments for debt, "intimidation and trickery;" and the endless cycle of uncontrolled and uncompensated crop damage by the many thousands of stock introduced seasonally into the area, and which Hazaras are convinced was manipulated to encourage surrender of (destroyed) fields to themselves. Conflicts during the 1970s were particularly common and delegations were frequently sent to the district to investigate disputes and violent incidents between Kuchis and Hazaras.

The 1978 revolution came as a relief to the Hazaras of Panjao in that Pashtun Kuchis were not to return for some years. The *jihad* period was to prove very empowering to Hazaras generally who, perhaps for the first time, began to find success challenging the stereotype of themselves as primitive, exploitable, slave-like persons, deeply subordinate to and oppressed by others.<sup>152</sup> Political organisation and solidarity among Hazaras during this period grew by leaps and

Hazaras have taken the opportunity since 1979 to reclaim their pastures and refuse to permit Kuchis to return.

<sup>150</sup> Clans named include: Essa Khail, Bahran Khail, Gorgaka, Hassan Khail, Khwazak, Niazi, Murad Khail and especially Sia Poush.

<sup>151</sup> See Alden Wily, 2004a, op cit. for all details on the Panjao case.

<sup>152</sup> See Mousavi, op cit., Chapters 8 and 9.

bounds, with the forming of political parties.<sup>153</sup>

While in Panjao Hazaras increasingly began to feel they had retaken their pastures, they were less confident in respect of the farmlands. Arrangements were soon made, however, for local Hazaras to collect the crop shares due to the absentee landlords. Farmers say most debts were paid up until around the late 1980s. The departure of the Soviets and the factional fighting that followed meant that Kuchis continued to stay away and Hazara tenants began to rebel against paying crop-shares to these absentee landlords, whose right to the farms they often disputed anyway. Hazaras requested the new government in Panjao District in 1990/91 to legally restore their land to them. A council of mullahs was created by the Akbari Governor to hear each claim. In some cases, the claimants had their lands restored and received documents certifying this to be so. The process was interrupted by the Taliban.

The Taliban did not establish their authority in the area until October 1998, at which point Pashtun Kuchis felt it safe to return.<sup>154</sup> A dominant Kuchi leader, Naim Koochi, was a senior commander with the Taliban and persuaded the leadership that he should be sent to Panjao to disarm the Hazaras. He arrived in May 1999 with a decree to this effect, and an unspecified number of soldiers (some claim 3,000). Valley by valley Naim Koochi systematically disarmed the Hazaras (often larger landlords). At the same time he collected their livestock, crops and documents and set about collecting sharecropping debts of the past 12 years.

Those who had complained to the earlier Council of Mullahs were especially targeted. Their homes, farms and animals were

allegedly simply looted. Some were seriously injured in the process. IOUs were forcibly extracted, itemising the debts that were still owed over and above the animals taken. More land was signed over to the creditors:

*“In some cases, even those who had no relations with Kuchis and owed them nothing had their animals taken. I had animals on the common pasture which the Kuchi soldiers said was their pasture, so they took my animals as payment for using their grass.”<sup>155</sup>*

People complained bitterly to the Panjao District Governor, by this time an Akbari supporter working with the Taliban. He reported the complaints to the Bamyan Provincial Governor, who personally visited Panjao to investigate. Naim Koochi was ordered by Mullah Omar to leave the area with his men within 24 hours. Sharecropping debts were still outstanding from 1989 and many farmers were uncertain of the status of their land.

The Governor established a second commission to hear each case. Those who had paid substantial amounts in the form of animals and cash felt sure they would be permitted to retain their land. This commission was still meeting when the Taliban government fell in late 2001.

Since the Transitional Administration has been in place, the Hazaras have applied to have their cases again heard. No new council has yet been established. One official observed that “if the new government is fair, it will support the people, for everyone knows that many Hazaras have lost their land in a wrong way.” Other Hazaras merely blame themselves for their past weakness:

<sup>153</sup> And eventually the unified party of *Hizb-i Wahdat*, with its headquarters in Bamyan.

<sup>154</sup> The blockade preventing goods entering Panjao lasted from 1996 until October 1998. At that time, the Taliban entered the town and some 30 people were killed. Oxfam staff had evacuated the area in advance, and the Taliban took over their office. When they left, they destroyed or took with them the computers, vehicles and stores. On their return, Oxfam launched a massive food distribution throughout the district. Oxfam was to evacuate the area again ahead of the January 2001 massacre of Yakawlang.

<sup>155</sup> Alden Wily, 2004a, op cit.

*“We are poor and ignorant people and we let the Kuchis exploit us. Who is wrong – the Kuchis for exploiting us, or ourselves for being foolish and ignorant?”*

*“We must never forget that some of the land has been bought legally by the Kuchis and at fair prices. Rich Hazaras did not let the Kuchis take their land for nothing. There are also Kuchis who have exploited the poor year after year. But I believe the Kuchis exploit us no more than the large landlords who have helped themselves to our common pastures.”<sup>156</sup>*

Class war over pastureland also exists, between landlords who claim the pasture as their own and poorer people who hold pasture to be common property.

A further aspect of this conflict needs note. Deep in the Hindu Kush, many districts are characterised by narrow fertile valleys and steep-sided slopes and mountains, whereupon the pasture is located and where cold area summer farming irrigated by mountain springs (*sarad*) has been customarily practised, often at extremely high altitudes. Rain-fed farming (*lalmi*) has customarily been carried out on the nearer reaches of valley slopes, but still some hundreds of feet higher than the valley farms. As the population has grown, and in particular as Kuchis departed Panjao District from 1979, rain-fed cultivation has steadily crept upwards. Soil erosion (generating land slides and avalanches in winter) is not uncommon in Panjao District today. A range of customary conserving practises are in some areas being re-activated (with the encouragement of Oxfam), including wider spacing between rain-fed fields, restriction upon collection of thorny bushes for winter fuel in these bundles, and longer fallow periods.

Farms and pastures for which Naim Koochi and other Kuchis forcibly extracted rent in

1999 include these expansion areas. Kuchis consider all uncultivated land in Panjao as pasture, and all pasture as theirs by virtue of historic grants. Local Hazaras first dispute that just because an area is uncultivated, that it may only be used as pasture. They argue that such lands are dual purpose, and have customarily been used from time to time for rain-fed farming and should be available as needed for rain-fed farming again. In addition, they dispute Kuchi tenure; they claim these as not just territorially, “our land,” but that most of the lower pastures have private owners. This follows convention in the area that a farmer’s property extends from valley bottom to the highest visible ridge above it. Further, they argue, just because they were unable in the past to stop Kuchis grazing these areas, this did not signal acceptance of their claims, only impotence to deal with them.<sup>157</sup>

As if these were not challenges enough, another layer of pastoral conflict exists, this time among the Hazaras themselves. This stems from the highly stratified (and originally feudal) nature of society in Panjao, with each valley originally owned by one noble family and access to which was beneficially granted to the poor as their tenants and sharecroppers only.

Customarily, farmers have been able to gather thorn bushes as fodder for what is frequently their only capital asset – varying numbers of karakul sheep. In addition, it is taken as beneficial right to be able to pasture these few animals along with the very large herds of the landlord. While the poor in Panjao today accept there is no common arable land, they are less willing to accept the frequent claim by landlords in the valleys that only they have rights to the pastures. These are

<sup>156</sup> Ibid.

<sup>157</sup> Or, they say, the other way of knowing the extent of the estate is to note where the shadows fall at sunrise. All those areas in shade are private properties.

areas, the poor say, which landlords controlled but which belong to everyone in the locality (or *mantiqā*); in short, their common property. Like land trustees in many parts of the world, the weight of privatising trends, aided and abetted by western notions of tenure, has facilitated claims by landlords that this land is solely their own. Where landlord and peasant concur is that such pastures belong neither to Kuchis nor to the state; these are not, they say, the private lands of nomads nor the public lands of the government. They belong to “us.” Public land pastures are limited, they argue, to the very high mountain areas, well beyond the village sphere.

For their part, Kuchi land owners and pastoralists point to significant past documentation as evidence of their entitlement. They point out that the grievances of the Hazaras were not originally of their making, but stem from “policy” and observe that they have *locus standi* as the main users of the pasture for almost a century.

Not every pasture in Hazarajat or even Panjao is equally disputed. Those which raise most contestation are pastures which are unusually large, rich, accessible, or which have potential for both arable and pastoral use. The “green lawn” of Ghor Ghorī Valley is such a case and the effects of which have spread to the entire valley. This is elaborated in Box 10.

#### *An alternative view*

Kuchi perceptions as to land rights over Ghor Ghorī Valley predictably differ. As a member of a research team in the 1970s, Gorm Pedersen chose to study the Zala Khan Khel clan, by then a well established trader nomad group in Paktya. By chance, it was to this Kuchi clan that the Iron Amir granted Ghor Ghorī as reward for their support in crushing the Hazaras (1893).<sup>158</sup> The Zala Khan Khel

leader in the 1880s was Qutb-Uddin and to whom the original *firman* was given. This allocation was a full 400 km from the clan’s winter pastures in Paktya (Khost) and greatly extended their summer migration.

During his lifetime, Qutb-Uddin sustained the grazing land grant as the common property of the clan, distributing its use annually to Zala Khan Khel households. On his death, his brother made a permanent distribution of the *firman* grazing grounds “in such a way that consideration was taken to where the various households had their other land and to where they normally had their summer camp and grazing area.”<sup>159</sup> It is not known whether his brother issued documents of subdivision at this time, but local Hazaras speak of more than one *firman* being shown to them as evidence of Kuchi tenure. Pedersen’s account shows no evidence that Kuchis consider the Ghor Ghorī pasture was returned to Hazaras by Habibullah or even the reformer, Amanullah.

Pedersen’s account does, however, amply support Hazara claims that they began to lose more than the Ghor Ghorī pasture to Kuchis through other means. He records how easy the Kuchis found it to exploit the Hazaras. The Zala Khan Khel had arrived from the outset with full government support, were well organised and well armed, and regarded the Hazaras as second-class persons who deserved to be punished for opposing Pashtun dominance. Then and later, lands were often “taken by force and incorporated into the nomads’ summer grazing areas...”<sup>160</sup> Other areas were bought from settled Hazaras. As traders, this particular group of Kuchis had ample leverage to bring local populations to their knees:

*“When after a number of summers the buyer was unable to pay the ever-increasing sum and ended in bottomless*

<sup>158</sup> Pedersen, *op cit.*, 130.

<sup>159</sup> *Ibid*, 130-131.

<sup>160</sup> *Ibid*.

## Box 10. The Ghor Ghori Valley in Panjao District

The Upper and Lower Ghor Ghori Valleys include 38 hamlets and around 400 households. The Upper Valley (Poshti-e-Ghor Ghori) is famous for a magnificent “lawn,” or valley bottom pasture, up to 500 ha in size. Most of the lawn is not farmed due to its waterlogged nature in summer. This lawn and the surrounding pastures and farms on higher ground are largely owned by Kuchis; both irrigated and rain-fed farms in 22 of the 38 settlements are entirely owned by Kuchis (58 percent). Another six farming areas (16 percent) are partially Kuchi-owned. All Kuchi owners are absentee landlords. Only 10 hamlets in the valley have some farms owned by Hazaras (26 percent).

In three randomly selected hamlets of 41 households, only 12 (29 percent) owned farmland. Five of these had inherited land from their father who had acquired the land from a Kuchi in 1979 who wanted to off-load some of his land ahead of the revolutionary land redistribution. All 29 landless households farm for Kuchi absentee owners. Around half had once owned land, but all lost this land through pawning or debts to Kuchis during either the 1950-1978 period or more recently as a consequence of the visit of Naim Koochi and his Taliban soldiers. Some agree they owed crop shares:

*“If I had been given time I could have sold the land for a proper price but they came demanding immediate payment.”*

Many still owe money to Kuchis, both for crop shares they have been accumulating over the years of Kuchi absence but more particularly where they have cultivated land which Kuchis consider pasture and theirs by right.

*“What surprised us is that the Kuchis demanded we pay for the use of the pasture as well as the grain we owed them. They claimed all the pasture was their land. If they saw you had any animals, they made you pay. If you had cultivated rain-fed crops on the pasture, they demanded compensation. They set the compensation at 1,000 seers of wheat, even though that land was not theirs. We know where their pasture is; it is the land which our forefathers sold to them and the hills they have always claimed were given to them but not the lands they are claiming today.”*

The focal point of disputes with Kuchis concerns the ownership of the valley lawn, which serves as pasture for all the valley settlements. Most agree that Abdur al Rahman gave the lawn to Kuchis in 1893. However, they claim that the valley lawn was returned by his son, King Habibullah (1901-1919) as part of the restoration of valley lands to Hazaras freed from prison. They regard the lawn as their common property, divided village by village, parts of which have, however, been appropriated by private families. Some of the Hazara notables to whom land rights were restored by Habibullah sold some parts of the valley lawn to Kuchis during Zahir Shah’s reign (1933-1973).

Kuchis still claim the lawn and lease it to four Hazaras who pay 100 seers of wheat to the Kuchis (around US\$105) and, in turn, levy a fee of 500 Afghanis (US\$10) per year for each animal grazing the lawn. Many refuse to pay these fees. One of those who died defending his land in the valley was the main owner in the hamlet of Rashak. Villagers recalled how one night in 1973 the Kuchis pulled the man from his house, took him to their tents on the higher pastures and killed him. The eldest daughter, two years old at the time, introduced herself thus:

*“This is our land. The Kuchis still claim it but we will never surrender it. I live here with my husband, my sister and her husband and two brothers. We only live to revenge our father. We are waiting for the Kuchis who killed my father to return and we will kill them.”*

In 1999 they did return and Rashak was entirely looted and all their stock taken.

*debt, the nomad would first take over his livestock and later his land. This land would be leased out, in some cases to the former owner, and the nomad would thereafter receive a fixed proportion of the yearly yield. Some of the nomads became very large landowners. In addition to the grazing grounds allotted to them they now also possessed farmlands, which gave a surplus both for consumption in their own household and for further trade. Zala Khan Khel's economy was in an ascending spiral.*"<sup>161</sup>

For many Zala Khan Khel, trade developed in Panjao and related areas of Hazarajat to such an extent that livestock-rearing actually became secondary during King Zahir Shah's reign. A further catalyst was the loss of part of their winter pastures in Paktya with the creation of Pakistan in 1947, rendering the grazing in Ghor Ghor less valuable without those winter pastures.

Nonetheless, Kuchis did not stop visiting Panjao. Poorer Kuchi families, in particular, continued to arrive in the summer and to buy up sheep and goats to sell in Kabul for slaughter.<sup>162</sup> Some developed trading on a small scale and gained a steady income from the lands they had acquired and then leased back to local Hazaras. Wealthier Kuchis were fewer but powerful. They arrived without stock, just to check their farm investments and to collect rents. Some Zala Khan Khel became very prosperous through this activity. Some began to invest in trucks, forming a transport association.<sup>163</sup> Others focused on land acquisition and increased their holdings. Some began to buy up land even further north.<sup>164</sup>

Pedersen records that in the 1970s, when he was researching the clan, trading with Hazaras declined as a result of both the 1971 drought and loss of purchasing power and declining support for their trading as government began to establish permanent bazaars in town centres. He also records that during the early 1980s, some Zala Khan Khel attempted to re-enter Hazarajat, seeking to recover debts from the Hazaras and to do a little trading. They were halted by armed Hazaras who demanded payment for passage and the use of pastures.<sup>165</sup> By 1986, Pedersen found virtually the entire Zala Khan Khel clan in exile in Pakistan, living at 12 different sites.<sup>166</sup> None were raising livestock. Former truck-owning Zala Khan Khel had brought so much wealth into Pakistan that they were able to invest in commerce and the local Peshawar property market.<sup>167</sup> Nonetheless, they were still living in black tents and moving between two sites in Pakistan, in a form of seasonal migration. In 1986 their interest in re-establishing their nomadism was high, but they feared they would be taxed upon entry in Hazarajat and that the Hazaras would not acknowledge the old *firmans* of the Iron Amir, upon which their wealth had been built.<sup>168</sup>

#### 4.5. The Faryab Case

Inter-ethnic land conflicts over most of the north of the country stem from a similar century-old history. However, whereas suppression was the objective in Hazarajat, land colonisation was the objective in the north. This had two impeti; the Durrani Iron Amir had been brought up in the north and badly wanted it to be part of his kingdom. He correctly saw the north as much more

<sup>161</sup> Ibid, 133-4.

<sup>162</sup> Ibid, 96.

<sup>163</sup> Ibid, 96-97.

<sup>164</sup> A first purchase of 1,200 *jeribs* (240 ha) was made by 20 Kuchi households of this clan in 1956 (Ibid, 96).

<sup>165</sup> Ibid, 241.

<sup>166</sup> Ibid, 227.

<sup>167</sup> Ibid, 232.

<sup>168</sup> Ibid, 241.

fertile than the south and dreamed of “a vast cultivated and inhabited granary” that would yield much wealth for the royal purse.<sup>169</sup> British officials helpfully concurred.<sup>170</sup> In addition they contributed to the incorrect notion that the northwest was *terra nullus* following admittedly frequent Turkmen attacks on local mainly Uzbek populations.<sup>171</sup>

Lee provides a detailed account of the political to-ing and fro-ing from the British as they steadily manoevered Abdur al-Rahman towards their own interests.<sup>172</sup> Their chance came in 1885 when Aimaq, who had been dispatched earlier to hold the border area, had been unable to prevent the loss of several thousand square miles of territory and which brought the Russians and British close to war.<sup>173</sup> The British demanded that the Amir replace the Aimaq with more loyal settlers from his own tribe.

Formal Pashtun colonisation was launched on 1 November 1885, largely planned and funded by British advisers.<sup>174</sup> Officially, it was termed “Afghanisation” as Pashtuns were known as Afghans at the time. Within three years around 18,000 Pashtun families were settled in the north.<sup>175</sup> Volunteers were well supported with free land, tools, tax concessions on yields and travel expenses.<sup>176</sup> The strongest were sent to Maimana but colonies spread throughout “Afghan

Turkestan” with concentrations in Baghlan, Balkh and Sar-i Pul.<sup>177</sup> In the event, Durrani Pashtuns were to be outnumbered by Ghilzai Pashtuns as the Iron Amir saw the latter’s dispatch to the north a means of dealing with the recalcitrant Ghilzais in the south.<sup>178</sup>

Abdur al Rahman issued *firman* (letters of land grant) to the new colonists, initially over the expansive lands of the Khanate of Maimana and of related nobles. Clashes with the still many existing local residents arose, especially as they were forced to build shelters for the arrivals, help them with food when drought hit (as it did in the first years) and pay taxes to help cover the costs of the assisted colonisation.<sup>179</sup>

Conditions settled during the 1890s. Pashtuns who had no intention of cultivating also began moving voluntarily into the north, at first seasonally. These Kuchis were thrilled with the potential wealth of the pastures compared to those of their homeland and many eventually remained in the north.<sup>180</sup> Invaluable local karakul sheep were added to their fat-tailed flocks, dramatically boosting values.<sup>181</sup> Leading Pashtun *maldars* (herd owners) flourished and laid claim to ever-increasing areas of pasture and arable lands.<sup>182</sup> Land disputes with local Uzbek and Arab populations multiplied but with Pashtun interests steadfastly supported; the Iron Amir reminded settlers that one of their responsibilities was to establish clearly that

<sup>169</sup>Tapper, 1973, op cit., 55ff.

<sup>170</sup>For example, Yate reported that the “supply of water is far in excess of requirements” while another declared it would only take a few years “to turn these wastelands into a granary to eclipse the Herat Valley” (Tapper, 1973, op cit., 56).

<sup>171</sup>Tapper, 1973, op cit., 55ff.

<sup>172</sup>Lee, 1996, op cit.

<sup>173</sup>The Pandjeh debacle; Tapper, 1973, op cit., 58-60; Lee, 1996, op cit., Chapter Nine and Dupree, 1980, op cit., 421-423.

<sup>174</sup>Lee, 1996, op cit., 421ff and Tapper, 1973, op cit., 59-60.

<sup>175</sup>Lee, 1996, op cit., 484.

<sup>176</sup>Ibid, 480-490.

<sup>177</sup>Tapper, 1973, op cit., 73.

<sup>178</sup>The Ghilzais and other recalcitrant tribes who opposed the Amir tended to be sent to Balkh where there was a strong garrison to overawe them. Some Ghilzais also found a home in the Maimana area between the town and the northern border and in time expanded their occupation. Pashtun Kot is so named because of the predominance of Pashtuns in the district. Durrani Pashtuns such as the Ishaqzais were sent to Badghis and the Murghab frontier with the promise of permanent grassland and pasture; personal communication, J.L. Lee. Also see Tapper, 1973, op cit. for a detailed account of settlement.

<sup>179</sup>Lee, 1996, op cit.

<sup>180</sup>Tapper, 1973, op cit., 71.

<sup>181</sup>Ibid, 78.

<sup>182</sup>Ibid.

they were the dominant and superior ruling race.<sup>183</sup>

Some Kuchis like the Hazarabuz were also quick to take up trading opportunities, encouraged by the expanding settlements and by transit taxes kept low for their benefit. They established “shops” at key points along the Silk Route, like Andkhui and Maimana in modern Faryab Province.<sup>184</sup>

“Afghanisation” or Pashtunisation of the north differed in significant ways from the events in Hazarajat. First, it was not marked by the same genocidal intent in respect of the local Uzbek (and fewer Tajik and Arab) populations and indeed the Iron Amir cleverly used Uzbeks to help suppress Ghilzai rebellions in the south.<sup>185</sup> Second, Pashtun Kuchi occupation was not seasonal but designed to be permanent. As well as retaining large herds, the north became the home of many Kuchis, living in settlements, still referred to today as “Afghania.” Third, although some of the settlers were Rahman supporters,<sup>186</sup> many among the 80,000 or so Ghilzai Pashtun families sent to the north by 1900, did so only under duress, and were, for example, to be among those who unsuccessfully attempted to overthrow the king in 1888.<sup>187</sup> However, like Hazarajat, local Uzbek landlords were impotent to stop the transfer of their lands – in this case including both scarce riverside farming sites as well as pasture. A foundation for bitter inter-ethnic dispute was laid.

### *Entrenchment of ethnic tensions over property: 1901-1978*

The death of Abdur al Rahman in 1901 did not end Pashtun settlement into the north. A report of 1907 records at least 11,000 Pashtun families of Durrani and 9,200 non-Durrani Pashtun families in accessible areas.<sup>188</sup> At least 6,000 were in Faryab Province.<sup>189</sup> By this time, Pashtun ideas of ethnic superiority were well established, “reinforced by government support and by the grant of both formal and informal privileges over the other ethnic groups.”<sup>190</sup> British foreign subsidy and weapons also continued up until the First World War, with the holding of the northern boundary a sustained focus.<sup>191</sup>

Abdur al Rahman’s grandson, the reformist King Amanullah (1919-1929), attempted to limit the worst abuses, including bringing allocation of land rights to settlers under more scrutiny, but his efforts were not lasting.<sup>192</sup> Uzbeks and Tajiks rose in support of the Tajik leader Bacha-i Saqau, who seized the throne in Kabul in 1929 but was ousted following the restoration of the Durrani monarchy by Nadir Shah.<sup>193</sup>

Under Nadir Shah’s rule (1931-1933), Afghanisation/Pashtunisation as a policy was firmly revived and then sustained by his son, King Zahir Shah thereafter.<sup>194</sup> Many thousands of new Pashtun settlers were encouraged to move to Balkh and Faryab Provinces.<sup>195</sup> The

<sup>183</sup> Ibid, 73.

<sup>184</sup> Frederiksen, op cit., 265 and Tapper, 1973, op cit., 71.

<sup>185</sup> Lee, 1996, op cit., 489.

<sup>186</sup> For example, Abdur al-Rahman sent his own Durrani kinsmen to serve as frontier guards/settlers (Tapper, 1991, op cit.)

<sup>187</sup> Lee, 1996, op cit., 495, 507.

<sup>188</sup> Cited by Tapper, 1973, op cit., 73.

<sup>189</sup> Poullada, op cit.; Mousavi, op cit. and Roy, op cit.

<sup>190</sup> Tapper, 1973, op cit., 78.

<sup>191</sup> Roy, op cit., 17. The period is thoroughly covered by Gregorian, op cit., 163ff.

<sup>192</sup> Gregorian, op cit., 227ff and Mousavi, op cit., 94.

<sup>193</sup> Tapper, 1973, op cit., 79.

<sup>194</sup> Ibid and Roy, op cit.

<sup>195</sup> Roy, op cit. and Dupree, op cit., 188.

improvement of trading conditions from the 1920s further stimulated Pashtun Kuchi expansion into the north, where they established dominant rights over areas like Dasht-i-Laili (and Shiwa in Badakhshan, described later). As wealth and social change advanced, many of these Pashtun Kuchis invested in farm land, hiring poorer Uzbeks as sharecroppers, much as was concurrently the case in Hazarajat.<sup>196</sup>

### *Different notions of tenure*

A crucial element of conflict not well understood even today has been that, as in Hazarajat, Pashtun notions and organisation of space and “home area” (*watan*) did not accord well with local paradigms; the latter included a strong sense of local common rights within neighbourhoods (*mantiqā*, or *mohallah* among Uzbek). These operate in respect to both immediate commons and also more remote seasonal pastures, and were accessible to new *mantiqā* residents, including Pashtuns, where they settled. However, such common property pastures were understood (or wilfully interpreted) by the immigrants as either within the generally unspecified terms of land grants or licences they had received, or un-owned lands ripe for privatisation by themselves. These positions were supported by public policy, particularly during the modernisation years of the 1960-70s, which granted, licensed or registered these lands as private pastures accordingly. As noted earlier, no legal space was made for common property. Outbreaks of ethnic violence on the pasture were common.

Related, as also in Hazarajat, a contributing factor to Pashtun tenurial hegemony was the

mid-century emergence of “State Land.” This secured millions of hectares of pasture to the government, who then reallocated these rights to those of their choice, often Pashtun Kuchis. Although technically these entitlements were use rights only, holders treated them as evidence of their outright and exclusive ownership.<sup>197</sup> Grazing taxes paid since the 1930s were another prime indicator of tenure. Both these tax receipts and use rights were embedded as sources of tenure during the 1965-1971 registration exercise in the north, rendering many thousands of hectares of prime pasture in Faryab (and elsewhere) to private individuals. Mainly Pashtuns benefited alongside fewer numbers of wealthy Uzbek and Arab *khans*. Notions of community pasture were in the process severely undercut.

In areas like Faryab where livestock-keeping was as important as cultivation, and transhumance traditionally practiced (by early Arab and Uzbek stock owners as well as by the later Pashtun *maldar*) competition for pasture within and among ethnic groups increased. This was only temporarily relieved by the dramatic drought of 1970-72 and the death of up to 80 percent of herds<sup>198</sup> (to be repeated in 1999-2002). Inter-ethnic tension over land was never far

from the surface, and although already of long standing, Pashtun claims were contested right up until the time of the 1978 Revolution and subsequent Russian occupation (1979-1989).

In Faryab Province this was especially so in the districts of Dawlatabad, Shirin Tagao and Gurziwan, where settled Pashtun communities were numerous and where Pashtun *khans* had been the recipient of estates previously

Given the history of ethnic settlement relations in the north, battles over the pasture today are not surprising.

<sup>196</sup> Frederiksen, op cit.

<sup>197</sup> Ibid.

<sup>198</sup> Male, op cit.

owned by the Amirate of Maimana. One of the first acts of Tajik and Uzbek *mujaheddin* after the arrival of the Soviets was not to attack Communist held Maimana but to expel or execute a number of Pashtun landlords.<sup>199</sup> As in Hazarajat, nomads were widely advised by local *mujaheddin* not to return. Some of the more violent warlords set about appropriating Pashtun homes, lands and livestock and one or two of the more notorious “indulged in killing Pashtuns.”<sup>200</sup>

These events precipitated a cycle of inter-ethnic hatred and violence, in which at different times Uzbeks, Tajiks and Hazaras variously looted and destroyed every village named Afghanistan and were then themselves at the receiving end of this treatment under the Taliban. A further cycle of revenge followed the fall of the Taliban. Between November 2001 and March 2002, virtually every village in the north named Afghanistan was looted and often destroyed.<sup>201</sup> In 2002, 42 percent of all registered IDPs in Afghanistan were from the north.<sup>202</sup> Cases of wrongful appropriation of homes and farms still exist, but because these involve individuals rather than communities, they have a fair chance of resolution, given the right mediation and conditions.

Restoration of homes and farms is slowly occurring voluntarily. Uzbek, Arab or other farmers are cultivating Pashtun estates on behalf of the absentee owners, much as they did in the past but sometimes on better terms.<sup>203</sup>

### *The pastures of Shirin Tagao District*

The situation is a good deal more contested in respect to pastures. A review of pastures in Shirin Tagao District in Faryab Province shows that every one is under heated dispute save the remote, vast and infertile pasture bordering Turkmenistan known as Charmagah Chasma. This is largely accepted by Pashtuns, Uzbeks and Arabs alike as Public Land, but Pashtuns are currently not permitted to go there by local populations.

The status of the equally large Dasht-i-Laili desert (which falls into several districts) is disputed. Local Uzbeks claim this was wrongfully appropriated by the state and allocated to Pashtuns for seasonal use.

Government itself began cultivating Dasht-i-Laili during the Soviet occupation (600 ha).<sup>204</sup> During

the early 1990s, the Uzbek warlord Rasul Pahlawan, whose base was nearby, took over this land for himself and his relatives, forcing some 1,500 people to labour there.<sup>205</sup> His inheritor, the current military leader in the area, an ex-warlord recognised by the Ministry of Defence as an official local commander, has expanded this cultivation “to an area that requires ten tractors to complete ploughing.”<sup>206</sup> A review by FAO in 2003 showed at least 15,600 ha of the desert under cultivation, with loss of topsoil through wind erosion apparent.<sup>207</sup> Pashtun nomads are forbidden entry by local populations.

The indisputable trigger to disputes is expansion of cultivation into pastures.

<sup>199</sup> Ibid.

<sup>200</sup> The case with the Rasul Pahlwan of Faryab Province; Alden Wily, 2004d, op cit.

<sup>201</sup> Cases provided in Alden Wily, 2004d, op cit. Interviewed Uzbeks and Pashtuns acknowledged reciprocal looting over the last years.

<sup>202</sup> Although organised return has been widely facilitated around 5,000 Pashtun families remain outside Faryab Province today. UNHCR. *UNHCR Operation in Afghanistan at a Glance April 2004 Summary Report*. Kabul. 2004.

<sup>203</sup> Alden Wily, 2004d, op cit. and UNHCR, 2003a and 2003b, op cit.

<sup>204</sup> Favre, R. *Grazing Land Encroachment. Joint Helicopter Mission to Dasht-e Laili 25-27 March 2003*. Kabul: FAO. 2003.

<sup>205</sup> “Some died of thirst” (Villager at Turkul-Baluch, cited in Alden Wily, 2004d, op cit.).

<sup>206</sup> Alden Wily, 2004d, op cit.

<sup>207</sup> Favre, op cit., 5.

Every smaller pasture is also under dispute. The Turkul Baluch Ward in the north of Shirin Tagao District serves as example.

### *Turkul Baluch Ward (mantiqa)*

This *mantiqa* comprises just two large peri-urban communities on the edge of Faizabad, the district headquarters. Almost everyone is Uzbek. Land holdings are small, with high proportions of landlessness (estimated 80%).

Less than one percent of those who own land are identified as large owners and their farms are smaller than average in the district. Livestock have always been important for these villagers and Baluch was famed in the past for its large herds. Stock losses were dramatic during the drought, with sheep and goats falling from 11,000 to 600.<sup>208</sup> These losses have helped precipitate the crisis over pastures.

Table 16: The Pastures of Turkul Baluch Mantiqa

Pasture <sup>209</sup>	Claimed Owner	Under Dispute	Cultivation On Pasture
1 Lihab	Privately owned by a Baluch landlord. Used by Baluch villagers.	Yes; both by villagers claiming it as <i>de facto</i> common property and by Pashtuns claiming as within their wider area.	Yes; 400 <i>jeribs</i> and expanding; the source of dispute.
2 Hashbuka	Common property of Baluch village.	No	None
3 Parm bala	Originally private, now held to be common property of Turkul-Baluch since owner deceased.	Yes; internal conflict. Taken to Governor, not solved.	Yes; 120 <i>jeribs</i> by 3 households. The source of dispute.
4 Hikordengan	Turkul-Baluch common property (whole <i>mantiqa</i> )	Yes; claimed by Pashtuns. Also disputed by local people although cultivators recognised as needy because lost land to floods.	Yes; 10 Turkul near-landless households cultivate post-drought although some cultivation pre-drought also.
5 Barra	Turkul common property	Yes; Pashtuns claim as their land.	Yes; only one person from Turco cultivating.
6 Qushai Quldi	Turkul-Baluch common property (whole <i>mantiqa</i> )	Yes; large owner with villagers.	Yes; only one farmer has "broken the rule."
7 Englishka Qeshlaq	Baluch common property	Yes; claimed by Pashtuns.	No; minor cultivation by Pashtuns "far away."
8 Booka	Turkul-Baluch common property (whole <i>mantiqa</i> ).	No; considered a dual rain-fed pasture area.	Yes; half cultivated, but mainly before drought, "long time ago."
9 Arabzayi	Remote, near Astana area.	Yes; Pashtuns claim. Indications that could be public land as claims are for shared use, not just Turkul-Baluch <i>mantiqa</i> .	Yes; Pashtuns began to cultivate during Taliban. Uzbeks also now cultivating.
10 Qojat	Beyond Arabzayi.	Yes; Pashtuns have submitted claim to Governor following Uzbek cultivation.	Yes; 800 <i>jeribs</i> and expanding. Began during Taliban period but now extended by Uzbeks.

<sup>208</sup> InterSoS. *Data on Ethnicity and Livestock Ownership in Khwaja Musa, Khwaja Sabz Posh and Shirin Tagab Districts, Faryab Province*. Kabul: InterSoS. 2003.

<sup>209</sup> Names of pastures recorded phonetically.

Up until the Taliban period, Turkul Baluch villagers had access to ten named pastures, all located to the east of the community extending towards and into Dasht-i Laili. They broadly fall under the name Shai-i-Souf. The status of each is shown in Table 16. Only two are not under ownership dispute. Two are under internal community dispute among Uzbeks. Six are subject to conflicting Pashtun and Uzbek claims that reach back decades. Up until the 1980s Pashtuns dominated these pastures, retracted largely during the 1986-1996 period, briefly restored under the Taliban, and now disputed again. Pashtuns claim fully documented evidence of their tenure. Whilst most prefer that the pastures remain as pasture, some Pashtuns began to cultivate these pastures during the Taliban period, catalysing strong reaction.

There is also dispute among Uzbeks themselves as to who owns the pastures and how far it may be cultivated. Those wanting to cultivate the pastures are not the traditional landless (who have no means to launch cultivation) but the somewhat better off who had land but were forced to sell it due to the drought or who have lost part of their farms to flooding and erosion, itself a likely result of expanding cultivation of the hilly pastures. They also sold their stock during the drought so their need for pasture is currently diminished. Larger owners, those who managed to keep some of their stock, are the keenest to protect the pastures and also feel their tenurial superiority is being challenged by poorer farmers. The very poor are peripheral to the dispute; some possessed sheep in the past and hope to own animals again but in the interim they need the labour opportunities which expansion of arable farming provides. There is general uneasiness, however, that those who open up the pastures for farming will claim the land as their own.

The environmental wisdom of permitting arable conversion is not widely debated even though villagers all along the Tagab River

complain bitterly of the effects of floods caused by hillside erosion. Most regard the pastures as naturally useful for both periodic cultivation and seasonal grazing. Many of the pastures are indeed comprised of the rich soils of the loess dunes (*chul*), long used for rain-fed cultivation. Most people within Turkul Baluch also feel the arable needs of farmers need to be balanced with those of wealthier large livestock-keepers and that compromises among themselves can be reached.

The Lihab pasture is a case in point. This has fallen within the domain of the largest Uzbek landlord in the community for over a century. Like his Pashtun counterparts, his descendants claim they hold legal evidence of tenure. With the sharp decline of their herd since the drought, the family has begun cultivating half the area for wheat and melons, retaining the remainder as pasture, and continuing to allow this to be accessible to all members of the community, as in the past. Those who dispute the right of the owners to farm the pasture query the meaning of their tenure. They argue that although the owner, the family has a customary obligation to share pastures with the historically dependent community – those small farmers, tenants, sharecroppers and workers who live in its shadow. They correctly detect curtailment of these rights or opportunities through conversion to agriculture. Some claim that it is only because the landlord was the main landowner that the pasture was registered under his name in the first instance, during the registration of the 1970s.

Sometimes whole communities along the rivers of Faryab are set against their neighbours in matters of pasture access. Expansion of cultivation, environmental degradation, land grabbing, ethnic resentments and commanderism combine to inflame disputes. Such a case exists some miles south of Turkul Baluch between the Arab *mantīqa* of Qala Shaikhi and the neighbouring Uzbek *mantīqa* of Sara-i Qala.<sup>210</sup>

<sup>210</sup> Which actually now falls in Kwaja Sabz Posh District. See this case in Alden Wily, 2004d, op cit.

The subject of dispute is a *chul* pasture named Kalta Shour some miles to the west, until several years past used relatively peaceably by both communities. The leading Arab landlord family of the first *mantiqa* claims the pasture was Government Land granted by King Amanullah to their grandfather. They claim to have paid tax on the land up until 1978. Under the Taliban, this right was endorsed and a new document issued. Some believe the Arabs may have bribed the Taliban to provide this endorsement. With the fall of the Taliban, powerful Uzbek families from the neighbouring *mantiqa* took their claim for the pasture to the district court, which ruled in its favour. Their interest was to cultivate the pasture, now undertaken. Whereas documents held by the Arab family describe the area as Shour-i-Qarashaikhi, the new document names the area Shour-i-Alaka-i-Maimana. The Arabs dismiss the documentation, claiming that Uzbek courts will always support Uzbek claims. Several members of their family have built huts in the pasture to prevent expansion of more farming.

*“We will fight for this pasture even until we are killed. We have no choice. We cannot rely on government. Even if Karzai himself came here he could do nothing to the commanders. They have the guns and the power over everyone. Junbesh support the district military commander and a leading Junbesh commander for all Faryab is an Uzbek from that mantiqa. We have no hope of getting anything which the Junbesh Uzbeks do not want.”*

They also claim that cultivation of the pasture is ruining the rain-fed fields and even the riverine flood-fed fields.

*“The floods are getting worse and destroying our farms in the valley. The soils fall down the hills and the area is made useless after several seasons. Even the stock owners suffer, for no grasses grow. The bushes get rooted up. When people cultivate the hills we lose the*

*hills and the valley lalmi as the big floods wash our fields away with the soil. Arabs who own a lot of stock are against the hills being cultivated. Uzbeks are the ones extending cultivation. The extension began when we began to sell land to Uzbeks.”*

Abuses have occurred (lootings, beatings, and burning of huts on the pasture). In this and many other cases, courts are trusted to rule fairly. As the Governor of Shirin Tagao observed, *“How may a case be ended when warlords supported by the central administration control the decisions, documents are fabricated, officials are bribed, and the case is to be decided by a judge who was the very one who issued the fake documents in the first place? We cannot help people reach agreement when documents are in the way.”*

#### 4.6. The Badakhshan Case

The third and final example comes from Badakhshan Province and concerns the Shiwa upper pastures (*ailoqs*) which lie in the extreme north-east of the province. These pastures fall partly in Baharak District and partly in Sheghnan District.

Patterson provides a detailed picture of the complex changes in tenure over the Shiwa upper pastures since 1978. These number around 200 in 34 distinct areas. The area is the home place of the Shiwachi, a distinct ethnic Shughni speaking Ismaili group with no direct links with Uzbeks, Tajiks, Arabs, Pashtuns or Larkhabis. Their environment is difficult and they are able to cultivate only one crop annually. They spend much of the summer growing and collecting fodder and fuel plants for the long, harsh winter. These conditions generally compare unfavourably with those of the summer visitors to the pastures, who in addition to owning large flocks of sheep, are able to cultivate two crops annually in their home areas. The Shiwachi themselves traditionally own small

numbers of stock. The pastures have always been important to them for rain-fed cultivation as well as grazing and wild plant collection.

In many respects, the changing status of Shiwachi rights over the Shiwa pastures has been comparable to that of the Hazara and Uzbek populations in the previous two case study areas. In other aspects it is quite different. These will become apparent in the historical summary below.

### 1900-1978

Between 1900 and 1978, the Shiwa *ailoqs* were used for summer grazing mainly by nomads from all four north-eastern provinces, alongside the much fewer stock of the Shiwa residents. The largest visiting stock owners were and remain Arabs and Pashtuns. In 2002-2003 Patterson recorded some 250 flocks amounting to 150,000 sheep. Tajiks and Uzbeks from adjoining areas also use Shiwa for summer grazing, some of whom date their usage back to the 1900s.

It may be assumed that prior to 1880, the Shiwa upper pastures (*ailoqs*) were the *de facto* common property of the Shiwachi if only because they were the main (and possibly only) permanent residents of the wider Shughni area. The period when they themselves arrived in the north-east is not known; it could have been as late as the 19th century. Up until the 20th century Shiwa is known to have been lightly populated. Much of the first settlement and even seasonal use of the area began as a consequence of the disturbances caused by nation-making in the 1880s, as described earlier. Usually those who arrived in the area were displaced from other areas in the north by Kabul-promoted Pashtun occupation. They were of mixed Arab, Larkhabi, Tajik and Uzbek descent.

Pashtun expansion in the north affected the north-east in similar ways to the north-west but with less severity.

During the reign of Nadir Shah (1929-1933) a new wave of Pashtun immigration into the Kunduz area prompted the Kabul administration to formally allocate the Shiwa pastures to individual Pashtun Kuchis as well as to Kunduz Arabs. These allocations were expressed in hand-written documents referred to locally as *Qawwallas*. A second wave of allocations throughout the north-east occurred during the 1940s-1950s, this time by the local Badakhshan Governor.

Although they were not the only recipients of documented allocations, Pashtuns received both the largest and best *ailoqs*, often forcibly displacing non-Pashtun customary users. Occupation was entrenched during the 1950s through the reissue of allocations in more formal *Qawwallas* by the Property Section of the Ministry of Finance (Amlak). These deeds described the boundaries of the named pasture, to whom it was allocated and the numbers of stock which were permitted to graze the pasture.

The term “given a pasture” is used. Legal developments at the time as outlined earlier favouring the treatment of pasture as Government Land, suggest what was being given was access rights, not outright private ownership. On the ground, ownership was assumed. Conflicts between especially Pashtun Kuchis and local Shiwachi were frequent during the 1950s, and despite local administrative support for Shiwachi, some pastures and arable lands remained inaccessible to them.

This continued up until 1978, during which period Pashtun Kuchis exerted considerable economic and political superiority in the Shiwa area, benefiting from the support of the Durrani King Zahir Shah and then his cousin, President Daoud. Local Shiwachi resentment as to restriction upon their arable farming, damage caused to their crops by Kuchi livestock, and their dependence upon Kuchis for goods and loans, and as a market for their own products (wool, local cloth,

livestock) characterised Pashtun Kuchi and non-Kuchi relations in a similar manner as elsewhere. In a word, the Shiwachi, like their counterparts in Bamyan and Faryab, felt exploited and subordinated. Patterson records that intra-Kuchi tensions also flourished, with troops periodically necessarily deployed to keep the peace between Arab and Pashtun Kuchis.

### 1978-1992

During the *jihad* period (1978-1992) Shiwa came under the stable control of a single dominant Tajik *mujaheddin* leader from Yaftal District to the north-west of Shiwa. While not unfavourable to Kuchi use of the pastures, given the revenue it could generate in taxes, the Kuchis themselves began to experience difficulties reaching the Shiwa pastures. They had to pass through numerous spheres of influence, variously exercised by government and different *mujaheddin* commanders, all of whom heavily taxed them. Pashtuns from Baghlan had the longest route of four weeks or more and suffered most as well as enduring losses through government-*mujaheddin* conflicts in their home area, Baghlan. The number of Baghlan Pashtun Kuchis arriving in Shiwa sharply fell. Kunduz Arabs, who normally took 20 days to reach Shiwa, began to take longer by going through less risky routes, but largely continued to summer in Shiwa right up until 1997. Many Pashtun *ailoqs* fell vacant. Some of those belonging to Arabs and Uzbeks fell vacant for the same reasons but were quickly occupied by “new Kuchis” to the area: Arabs, Badakhshis and other Pashtuns (e.g., Mohmand Pashtuns).

Whereas the pre-1978 era is remembered as determinedly pro-Kuchi, the *jihad* administration in the area attempted to be neutral in its formal allocation of rights to nomads, while also trying to accommodate the “just demands” of local Shiwachi for farmland. A local Land Commission was formed to deal with land distribution and use, and this included Shiwachi representatives. Compromises were

encouraged. Previously disallowed cultivation of some *ailoqs* was specifically permitted. Prices for *ailoqs* were high for the poor Shiwachi, and payments were made in instalments. In some cases, Pashtun Kuchis conceded that Shiwachi should be allowed to cultivate *small* areas of the pastures, knowing they could no longer count upon central government support of their interests. For their part, Shiwachi took the opportunity to expand farming into not just the few Kuchi *ailoqs* they were allocated but also into *ailoqs* and other commons they had managed to keep for themselves and which had not previously been farmed. Formal allocations were made in well-elaborated documents, and issued by the *jihad* administration with assurance that these superceded all earlier entitlements.

Some Kuchis also took out new *Qawwallas* for their traditional *ailoqs* as well as for vacant *ailoqs* into which they had expanded, in order to secure these with more modern documentation. Arab Kuchis who had been displaced from the *ailoqs* of northern Badakhshan also took some new *ailoqs*. Taxes continued to be levied on all grazing rights.

### 1992-1997

The post-*jihad* period (1992-1997) saw the Tajik *mujaheddin* leader and others move to Kabul and the emergence of numerous small commanders, more interested in enriching themselves than governing. In Kunduz and Takhar, the winter quarters of many of the Kuchis, conflict between the dominant *Jamiat* and *Jumbesh* factions and sometimes *Hizb-i-Islami* frequently descended into open war. Lawlessness reigned, including stock theft. The number of Pashtun Kuchis visiting Shiwa in summer continued to decline. Dormant Shiwachi-Pashtun conflicts resurfaced, with *ailoqs* taken or retaken by force, by usually new Kuchis or non-local agricultural Tajiks. Even *ailoqs* which Shiwachi had regained from absent Kuchis (particularly Pashtuns) were now appropriated by others, including mainly Tajiks looking for farmland. Absent

long-distance Kuchis were often now co-opted by more local non-Pashtun Kuchis, primarily Tajiks. Expansion of agriculture thrived. Shiwachi found themselves squeezed by both nomads and other cultivators.

1997-2001

The Taliban established uncertain control of Kunduz and part of Takhar during 1997.

Pashtun vs. non-Pashtun relations deteriorated sharply in Shiwa. This coincided with a deterioration of stability in the area. Many in the local Shiwachi elite were murdered. *Ailoqs* were lost, and cultivation reduced, due to onerous taxation or instability. In Takhar, the Taliban adopted a scorched earth policy resulting in widespread destruction and large numbers of people were displaced. The drought of 1999-2001 exacerbated the

#### Box 11: Examples of Land Conflict in Shiwa

##### The Pillaw Pasture: Conflict in Land Use

Pillaw in Shiwa-i Kalan *mantiqa* is a relatively flat and well-watered area useful for both agriculture and pasture and has a history of dispute accordingly. Farming Shiwachi also see it as an example of what they perceive as the inequity of their treatment by Kuchis in the past, and the economic development which is possible if they have access to land. In 1942-1943 an elder from Sheghnan was authorised to settle people in Pillaw and went with at least seven ostensibly landless families. The area was reportedly previously uninhabited. They farmed the area until 1946/1947 when Pashtun Kuchis from Kunduz occupied the area and forcibly expelled them. They petitioned the authorities who ruled in their favour. They attempted to reoccupy the area. The elder was killed and the Pillaw villagers abandoned the area. The area remained under the control of Kunduz Pashtun Kuchis. In the early 1980s landless Shiwachi petitioned the *mujaheddin* for land and between 1981 and 1985 the *jihad* administration sold land to around 30 landless families there. This process occurred while the Kuchis were present, though seemingly in reduced numbers. There were conflicts between the Shiwachi and Kuchis in 1985 and 1986 though both shared the use of the *ailoq*. The Kuchis remained in the area until the late 1980s, when they withdrew. By 2003, 38 Shiwachi families were cultivating 1874 *seers* of land in Pillaw, around one-third of all Shiwachi cultivation. In 2002 the Pashtun Kuchis returned. Relations are tense but co-existent.

##### Nalbar Pasture: Conflicts among Kuchi Users

In the pre-war period, Nalbar *ailoq* was traditionally used by Uzbeks from Takhar and Gortepa Pashtuns and Arabs. The Gortepa Pashtuns claim to still have pre-war documents for part of the area but their authenticity is questioned. Local Shiwachi maintain that the oldest Kuchi users were Uzbeks, followed by Kunduz Arabs and then Gortepa Pashtuns. Uzbeks stopped coming to the pasture relatively early in the *jihad*, as subsequently did numbers of Pashtuns and Arabs. The Arabs claim the *ailoq* was usurped by Jurmis and their access blocked. Other groups of Pashtuns from Kunduz moved in, as did Shughnis. In the late 1990s, and certainly by 1998 and quite conceivably before, Ali Moghuls from Baharak bought the *ailoq* and were present until 2002. In 2001 the Arab who had used the *ailoq* in the early war years returned and staked a claim to the *ailoq* against the Ali Moghuls and a group of Baharak Uzbeks also in the area. Haji Ismail also returned in 2002 and raised his claim against the Ali Moghuls. By 2003 the Ali Moghuls had moved on and both the Pashtuns and the Arabs were in possession of the *ailoq*. The exact relationship between the two is unclear, though the situation has been returned to the pre-war one, to some degree.

Tenure has thus been held by at least six groups – Shughnis, Takhar Uzbeks, Arabs, Pashtuns, Malang Abis and Baharak Uzbeks. The Arabs themselves admit that they are not the original user, and concur with the Shiwachi that the earliest Kuchis were Uzbeks, but maintain that they are the oldest in the present line of (Kuchi) claimants.

Source: Patterson, 2004.

misery. Although small numbers of Arab, Uzbek and Larkhabi Kuchis continued to summer in the Shiwa pastures, this was with difficulty. Ironically it was Pashtun Kuchis who were least able to return to the pastures, feeling uneasy about crossing opposition territory to reach the *ailoqs*. Most Pashtun *ailoqs* (other than those belonging to the Imam Sahib and Takhar Pashtuns) fell vacant. Some of these were taken over and sometimes cultivated by mainly Badakshi Kuchis. Some Shiwachi *ailoqs* were also taken by Badakhshis. Once again local Shiwachi felt squeezed.

The Badakhshan case demonstrates that disputants can arrive at compromise if enabled to do so.

#### 2002-2004

The post-Taliban period, beginning in the summer of 2002, has seen something of a return to the situation of the *jihad* period, with rising numbers of Kuchis of all ethnic groups returning to the pastures. Although not in the area since 2003, Patterson found up until then no cases of newly returning Kuchis displacing Shiwachi, or of returnees being blocked entry.

Some *ailoqs* have passed through as many as six different Kuchi owners since 1978 or oscillated between Shiwachi, Kuchi and Tajik agriculturalists. A number of Shiwachi and lesser numbers of Kuchis are now taking their documents to Faizabad to have them revalidated so as to formalise and defend their tenure.

The situation is not entirely stable. Many claims and counterclaims exist, with traditional rights, pre-war titles, *jihadi* and post-*jihadi* titles at stake. Those *ailoqs* where users have remained fairly stable are mainly where Kuchis were able to continue coming to the pasture throughout the war. Active, potentially violent disputes existed in around 12 of 200 pastures in 2003. Other disputes are simmering, contestants biding their time, rendering what is superficially agreement and compromise, fragile. This is the case

mainly where Shiwachi feel they have been most dispossessed and/or where Kuchis are seen to be promoting their own interests more out of principle than real need, and which cannot be matched with the land needs of the much poorer local Shiwachi farmers.

Where *ailoqs* have been occupied for upwards of two decades, and where pre-war disputes

existed between Shiwachi and Pashtun Kuchis, returnee claims are most contested.

Levels of new cultivation in Shiwa are high; Patterson calculates the net increase to have been around 300 ha or 22 percent above the area of land cultivated in 1978. Not all of this expansion was in pastures held by Kuchis; some of it is in local Shiwachi commons. Patterson suggests that arable expansion could have been much higher but was not, due to these factors:

- Kuchi withdrawal was only partial;
- The local population did not gain political control;
- Access to vacated *ailoqs* was through quasi-legal means and payment, not by appropriation or seizure;
- Local Shiwachi faced competition for arable land from politically stronger neighbouring groups; and
- Many of the vacated *ailoqs* were simply too high and poor in soils to be cultivable.

A complete return of mainly the long-distance Kuchis (largely Pashtuns) is not anticipated, as many have abandoned the lifestyle over the war years. In addition, as Patterson observes, the era of Kuchi hegemony has passed. As also seen in the earlier cases, local and semi-local populations are unlikely to accept again a less equitable distribution of resources that currently pertains. Local Shiwachi requests for arable land is seen to stem more from need than greed. Patterson urges that their quasi-legal entitlement to pastures be confirmed, and that the dual

functionality of many pastures as partially cultivable and seasonally pastured be better recognised.

#### 4.7. Comparing the Cases

Some of the differences between the Shiwa and previous cases from Panjao and Shirin Tagao may be pointed out:

- Involved Kuchis are not only Pashtuns, but from other ethnic groups (Arabs, Tajiks, Uzbeks, Larkhabis);
- The local population did not gain the political clout needed during the jihad period to retake the pastures in their locality, as broadly occurred in the first two cases, albeit often into the hands of local commanders and elites;
- Quasi-legal allocatory mechanisms have featured throughout the war years;
- The arable expansion now occurring appears to have been mainly by poor Shiwachi, not local warlords or elites; and
- While relations between local and seasonal groups are as poor in respects to elsewhere, Pashtun Kuchis are not being denied land access in Shiwa, and compromises are being worked out among the disputants themselves. More isolated

cases of this are occurring in Shirin Tagao, but not Bamyān.

In other respects, the Shiwa case illustrates similar characteristics with the Panjao and Shirin Tagao cases, that is:

- 19th century customary ownership of the pastures was overridden by the strategies of state-making from the 1880s and sanctified with “legal” documents particularly from the 1950s-1970s;
- This appropriation was largely to the benefit of non-local persons and especially to the favoured Pashtun tribe;
- The main thread of contested rights is between local cultivator and non-local seasonal pastoral users;
- Although the focus of resulting tensions is the pastures, the effects spread more widely into arable farmer-pastoralist relations;
- The ethnic aspects of contested land rights are strong and particularly between Pashtuns and non-Pashtuns; and
- Cultivation of lands which pastoralists and the supporting state have designed solely available for pasture have triggered most disputes and remain an important challenge to policy and practical decision-making.

## 5. Finding a Way Forward



Courtesy of Liz Alden Wily

*Attending to disorder in land relations is becoming more crucial with each passing year. Stable, and of necessity, fair land relations are pivotal to securing peace. Land relations are highly inequitable, but classical redistribution is not immediately a viable option. Attention to the housing needs of the extreme poor could offer an important avenue for improving their opportunities. Nor will new farm-based entitlement programmes meet current needs; registration may entrench contested allocations on especially rain-fed and pasture lands. Registration may also entrench unsatisfactory legal norms and decision-making systems. Shared land resources (and especially pastures) rather than individually owned homes and farms should be the first target of attention. Pasture rights are in heated dispute in most areas. Recognition of the limits of rule of law, lack of confidence in systems and documentation is needed in devising strategies. Resolution of pastoral*

*conflicts is unlikely to be achieved through more national dictates, laws, or force at this point. There is considerable potential for progress through launching an approach which enables each pasture to be considered individually and with competing users and claimants directly involved. Pilots towards this should be a priority. In the process, much needed new paradigms for recognising and ordering rights, recording these and providing for their sustained and localised management will be obtainable. The interests of the poor will also be able to be better and more practically attended to. Such a grounded approach accords well with the more general need for new policy and law to be founded upon empirical experience and through genuinely participatory mechanisms. This incremental approach to policy development will be more effective and lasting. It will also provide stronger opportunities to devise more localised and sustainable mechanisms for rural tenure administration.*

## 5.1. General Implications

Many concerns arise from the conditions described in the preceding chapters. Not the least of these is that contested land relations appear to have had a much more profound role in the generation of civil conflict over the last quarter century than international agreements or early planning by the administration appears to acknowledge. More worrying is that slow and uncertain effort to tackle these is helping to sustain conflict. State policies of the past towards land distribution now also appear less benign than construed. The history of conflicts cannot be ignored if resolution is to be lasting.

Strategic implications come to light. It seems the case, for example, that it will be necessary to pay attention to that upper dimension of land relations beyond private rights – territory – at least as it occurs at the local rather than tribal level. By territory at the local level is meant communal rather than private land relations, those interests that stem from community membership, and raise notions of “our land” or “our place.” These are probably the most contentious at this time, and most active in relation to pasture. Achieving local level reconciliation in this area could significantly remove one of the stepping stones to wider strife.

*Returning to the pre-war status quo will not be effective*

The limitations of classical responses to post-conflict land matters are suggested. The standard post-conflict strategy is simply to restore land ownership to those patterns that existed prior to the conflict, using existing land records and conducting confirmatory new registration.<sup>211</sup> Current policy intentions

Conflict over land has helped drive and sustain disorder and is preventing real peace.

in Afghanistan concur with this, with titling indicated as the main proposed action in both rural and urban spheres. Inherent in this is a concern to restore Government Land to its owner (government). But the notion of what constitutes government property is neither clear not acceptable on the ground to the extent that responsible ministries hope or assume and is indeed part of the problem. This interlocks with opaque conceptions as to how pastureland may be best used. Pasture is predominantly conceived of as a shared land asset – owned or ownable by either the national community in general (Public Land) or by a specific local community (common property). Land law in Afghanistan offers a muddled notion of such shared land assets, providing minimally for local common property and conflating Government Land and Public/National Land. A more nuanced approach to such shared land assets is badly needed for moving forward.

*Registration is neither neutral nor useful in these conditions*

Retreat into new formal registration processes will not render the relief needed. Ideas that land order may be restored simply through consolidating and modernising the plethora of documents relating to rights is not realistic, and not just because some of these have been corrupted, duplicated or otherwise manipulated over recent years. The very idea of restoring order in this arena raises alarm; it forgets the deep seated resentment as to that order and how they were among the catalysts to the long years of war and civil war. The history of land rights recordation to date in Afghanistan painfully illustrates that far from being neutral, registration may create rather than record reality, and not

<sup>211</sup> For example, Fitzpatrick, D. *Land Policy in Post-Conflict Circumstances: Some Lessons from East Timor*. Australian National University. 2001 for East Timor, Dinechin, op cit. for El Salvador, and Zimmerman, W. and S. Sovann. “Cambodia: Approaching Land Issues in a Post-Conflict Setting” in The World Bank 2004a for Cambodia.

necessarily with justice or fair practice. While recordation is fundamental to modern land administration, what is recorded and how needs fresh appraisal. Concerns of social justice arise. Restoration of social justice is perhaps only just beginning to be recognised as a precondition to lasting peace, not a luxury that may be attended to at a later date.<sup>212</sup>

*New law, not enforcement of old law, is needed*

Nor is it clear that instruments conventionally used to bring order will have much or good effect. The need for new paradigms and policy and legal instruments is not in doubt. As currently posed, these depend upon an effective reach of bureaucracy for application, integrity of courts to uphold their terms and operational rule of law to enforce decisions. To move forward with success in their absence requires alternative approaches. Nor will it prove fruitful to persevere doggedly with old paradigms without thoughtful assessment of what constitutes sound governance of land relations, and how this may be achieved.

Suggestions for constructively moving forward are listed below.

## 5.2. Major Areas for Moving Forward

### 5.2.1. Acute Disadvantage in the Landholding Sector Needs Reduction

Difficulties with identifying real levels of landlessness were explored in Section 2. It is fair to conclude that landlessness is significant. The fact that landless people perceive an impassable barrier between themselves and the landed is also instructive; this is likely both a prejudice borne of many generations of embedded stratification and a frank appraisal of reality. The poor are generally unable to compete with better off

farmers to acquire land in a flourishing land market and where arable land is profoundly scarce. Where land is potentially available (such as in remote rain-fed/pasture areas), the ability to secure and develop those lands is proportionately limited, for socio-political as well as economic reasons. Polarisation shows signs of continuing within a rural economy where it has been already marked. Without fixed capital assets like land and homes, the very poor lose an important bargaining platform in social and economic terms, not least in labour relations. Moreover, this spills over into off-farm opportunities. Landlessness remains a singular separator of the truly poor from the rest of the community.

### *Redistribution of private lands*

Would land redistribution ameliorate this situation? In current conditions, the answer seems to be “no.” Past reforms, both moderate and revolutionary, failed to be lasting or to make a difference, and instead, helped provoke rebellion among elites. Current weakness in central authority and rule of law do not avail the necessary environment for classical redistributive reform to be seen through. The insufficient extent to which private land is available for redistribution has been moot since the 1980s and will likely be confirmed with final analysis of NRVA 2003 data and subsequent surveys. Bountiful government land, in the form of currently defunct settlement schemes, does, however, exist.

Past experiences showed that provision of land on its own was not enough; reasonable assistance with tools, seeds, oxen and ploughs was needed. Where these benefits were provided as part of resettlement packages, such as in some of the earlier dam-related schemes on Government Land, the benefit was significant, although eventually truncated due to political reasons. How far such schemes included the genuinely landless or those most

<sup>212</sup>Mani, op cit.

interested in making a go of arable expansion, is debatable.<sup>213</sup> In due course, pursuit of carefully planned settlement scheme opportunities founded upon new or rehabilitated water development could prove an effective strategy. Mine clearance, clarification of tenure and a host of other changes are required first. In the meantime, commitment and steady pursuit of the conditions to allow the re-launch of settlement schemes would be desirably kept on the political and development planning agenda.

### *Improving labour shares*

The Bamyan and Faryab studies suggested that improving labour terms could be effective for many. In theory the conditions for this are possibly more favourable than in the past. This is because of suspected likely gradual movement of sharecropping arrangements slowly towards cash contracts, including wider use of daily paid labour on farms and already rising labour payments in the poppy sector. However, it is far from clear that the truly poor will benefit; they are already less able to negotiate the cash contracts already being taken advantage of by those with better leverage. Levers that are relevant and which suggest correlation with slightly better off small farmers include recognised membership of the community as residents, homes of their own (shared or otherwise), kin relations with landlords, possession of tools, oxen and ploughs, or best of all, a small plot of land of their own. For those in the last category, regulation of mortgage conditions could also be helpful, although as this paper suggests, mortgaging is not significant in the rural economy.

Redistribution of private lands has little potential at this point. Allocation of government land with support services does.

Moreover, in-kind contracts are conventionally safer for sharecroppers, as landlords normally share the risk of a bad harvest, although not necessarily equitably.

In any event, the state faces problems in enforcing labour reforms, and to an even greater degree than was experienced with the mortgage reform of 1978, given already two decades of instability and weak authority.

### *Finding housing for the extreme poor*

An important conclusion of previous chapters has related to rural housing and the evidence that a significant group of households lack shelter of their own. This is not simply a humanitarian consideration. Lacking a room of one's own appears to strongly predispose such households to levels of exploitation, disadvantage and inability to accumulate income and capital assets, that is less certainly the fate of other rural poor. This group is probably not as small as even recent surveys suggest, given that many homeless itinerants tend to fall between the cracks as non-permanent family members. Nor has conventional focus upon productive landholding allowed the existence and implications of homelessness to be widely acknowledged.

Help with rural housing could potentially go far in helping this group towards more level ground with other rural farm landless people; entry into formal communities alone could open significant social and economic opportunities – attendance at school, access to food for work and cash for work labour opportunities, assistance with housing materials from UNHCR and NGOs, etc.

<sup>213</sup> Hazaras interviewed who had been beneficiaries of schemes in the north in the 1970s were not landless (Alden Wily, 2004a, op cit.). In respect to the massive early schemes in the south (e.g., Helmand), bias in allocation appears to have been towards Pashtuns, the landless among whom were often pastoralists (Kuchi) Pashtun Kuchis, and less interested in farming than arable counterparts. Their involvement was less to meet their demands for land than to encourage sedentisation of nomads. Refer to Cullather, op cit., Majrooh, op cit., and Usurfi, op cit. Soviet and later schemes tended to offer labour opportunities only, not tenure.

Assessments would need to be made by agencies to gauge just how far provision of housing is a priority for the homeless.

### 5.2.2. Land Conflicts Need More Attention

A main finding of this synthesis is the centrality of land disputes and the fact that these so readily spill over into violent conflict. This observation was made by AREU in its first land assessment and field studies reviewed in this paper consistently suggest that land conflict is hampering peace.

#### *Warlords as catalysts to disputes*

A crucial element of conflict is the role that has been, and is still being, played by warlords/commanders. All too many land disputes have been prompted, led or exacerbated by their role in land grabbing, terrorising or exploitation of farmers. Although their motives appear increasingly to stem from personal economic interest, they tend to garner ethnic support and the effects are being delivered along ethnic lines. Problems and disputes have however also fed upon long-simmering ethnically-shaped grievances as to land access. Because of this land history, warlords/commanders may be as much instrument as cause. In either case, limiting commander-led *land conquest* needs to be higher on the securitisation agenda than currently the case.

#### *Resolving land disputes is a priority*

Understanding what is disputed helps identify what institutionally, legally or otherwise needs to be changed. Resolving disputes is also obviously the priority action. It seems logical to target those that pose most threat to stable land relations overall and to peace. Those that are most dangerous have been found to have a communal and/or ethnic character, affecting whole groups of persons. The land most affected is obviously pastureland.

This is not to say that disputes and conflict over individually held homes, shops and farms in rural areas are not important to resolve; rather, they are less inflammatory and potentially more easily handled through existing judicial and administrative processes; that is, through existing institutions (courts and administrators) and by reference to records. Mediation among individuals is also obviously easier than where whole groups of persons with different stakes in the disputed land are involved.

An important finding of this review is that rain-fed farms are less securely tenured and documented than valley lands and/or irrigated and flood-fed farms. Boundaries are less defined and the nature of the user's right over the land more fluid. This is especially the case where shifting cultivation is practised, such as in the drier, steeper and remoter areas, which cannot sustain more than one or two years of cultivation. In such instances, tenure is much less precisely individualised and may more accurately be interpreted as no more than the right to use the land which is owned by others – generally the whole membership of the community, or where

The disputes that need most immediate attention are communal land disputes.

the area is considered public land, by the state. While those who make most use of the remote rain-fed lands are not the poor but the better off who have means (tools, tractors, seeds, labour), such use does not necessarily constitute establishment of ownership. Over sustained periods, this may come about, but such claims are by no means always recognised by the wider community body – one source of conflict.

Resources like pasture and forests are equally uncertainly tenured and contested. It has been shown that rights to these are disputed among several overlapping sets of persons: settled people and nomads, state, community and *khans*). Even the nature of rights allocated is unclear, and legal supports ambivalent, as shortly elaborated.

### *The ethnic dimension*

The ethnic colouring of conflicts is visible. The central contestation is self-evidently between Pashtuns and non-Pashtuns. This is underlaid by competing land use systems in terms of (long distance) nomad vs. settled arable farmer tensions. Class dimensions are also involved; Pashtun Kuchis in particular have enjoyed longstanding institutional and economic advantages, which have placed them in superior socio-economic positions, currently being challenged through essentially socio-political means. It is no coincidence that Hazaras, Uzbeks and Shiwachi in the case study areas reported upon are often the labourers of Pashtuns in their home areas. In the Faryab case, where many Arab families are also large landlords, it is not surprising that many Uzbeks emphasise the alliances of Arabs with Pashtuns. Large landlords among Uzbeks themselves largely, but not entirely, escape challenge. To a very real degree, ethnic, land use and class elements in especially pastoral conflicts converge.

It has been remarked, however, that land dispute as a whole in the study areas cannot be easily explained by the class divisions that classically mark antagonism and resentment between landowners and landless. Landless people have not, for example, been either the leaders or beneficiaries of land appropriation, whether of houses, irrigated land, rain-fed land, or commons and pastures. Although elements of this appear in the Shiwa pastures in which local poor Shiwachi helped fill the vacuum at different times left by departing Kuchis, beneficiaries were the poor only in comparison to the more advantaged outsiders; this is suggested by the fact that these were people able to procure land, albeit by staggered payments. The truly poor among them – the landless and homeless – were probably few.

Land conflicts are more coloured by inter-ethnic histories than class conflict.

Although difficult to digest, it does have to be concluded that ethnic identity and history has much more to do with current contestation over and competition for land, than class. This is not to say that the poor and very poor are not being ill-affected, as examined shortly. Understanding of the nature and origins of inter-ethnic tension are meanwhile important. Of necessity, strategic planning must account for these histories if the difficulties they have engendered are to be finally set aside.

### *Why is pasture so contested?*

The reasons why pasture attracts most conflict are not difficult to find. In the *first* instance, cultivable land is scarce in Afghanistan. Fertile land has long ago been brought under private tenure and the nature of pasture as often potentially useable for at least occasional cultivation leads logically to encroachment, especially in an unregulated or chaotic environment such as remains the case today.

*Second*, as variously attributed “Public Lands,” pastures represent a form of open access property. Not un-typically, as soon as government authority weakens (the case especially from the late 1980s), these lands are expectedly “up for grabs.”

*Third*, dry pastures are not natural individual properties (unlike fertile and smaller paddocks) and tend to be natural arenas for shared access, by groups or communities. In situations of land shortage, competition for these resources may help dismantle social group cohesion or break down along wealth or ethnic lines.

*Fourth*, pastures have also been the domain where historical inter-ethnic bitterness has had most power over the last half century. Resentment as to the way in which Pashtuns in particular were granted valuable pasture

is all too evident. This was compounded by further resentment that they were able to use their toehold on the pastures to extend their reach into acquisition of scarce irrigated land. That this took place often through involuntary indebtedness, not on a willing seller willing buyer basis, adds to tensions. Still, where Pashtun farmers have lived in the community (such as in Faryab), this has had a tempering effect. In addition, on the whole, Pashtun rights over farmland in the first two case study areas were “grudgingly accepted” by those who farm the land for them. This has not been the case with pastures.

Related and *fifth*, this is because most pastureland has been seen as the property of specific local communities, or with respect to higher, remote pastures in the area, the domain of the broader but still local community (such as the population of a whole valley). The strength of identification of pastures as common properties diminishes as the pastures become more remote and less used. Pastures which are not used at all and include barren mountain tops, where even collectable thorny shrubs do not grow, are the only areas fairly consistently regarded at the local level as “un-owned” land, or as “No Man’s Land.” It is only these areas which are unconditionally accepted locally as part of the state’s denotation of Public Land.

It is not surprising then, that when asked, villagers in both Bamyan and Faryab (and by implication echoed in Shiwa) construe pastures as less everyone’s public land than their public land – in short, their common property. The fact that the state has appropriated these commons and then, to add insult to injury, reallocated them to outsiders is a predictably a source of discontent. To forbid expansion of farming particularly into those pastures considered as less definitively pasture than as potential reserved land that may one day be farmed, has served as a further irritant. While there is little that is unique in the appropriative

behaviour of the Afghan State, acute shortages of farmland in dry Afghanistan, rebellion against a long history of tribal subordination, and socio-political anarchy, have made capture or recapture of the pastures an almost inevitable event.

*Tenure norms affecting pasture are poorly constructed and under challenge*

At all levels it has been shown that the exact meaning of pastoral ownership is unclear. Statutory law is not known locally. It is in any event ambivalent as to the meaning of granted rights as endowing ownership or as endowing an access right only. While the balance of legal meaning is on the latter, the balance of actual practice has been on the former. This has been compounded by official payment to government or other distributors, suggesting land purchase. Most people in the three study areas who hold formal rights over pastureland, assume this means that they are owners of the pasture. This is reinforced by the failure of transfer documents to specify either the term of the right or the conditions upon which it is issued, normal attributes of licences or leases.

There are other unclaritys. One is the extent to which formal allocations respect customary rights, as the law suggests should be the case. It has been shown above that aside from the pronouncements of the Taliban, virtually no legal account at all has been given to commonhold tenure. National law has simply not sufficiently recognised or given legal support to traditional customary common property rights.

Another is the question as to whether government or the national community are the real owner of Public Lands. As the past decade has painfully shown, an acute disadvantage of such uncertainty is that when government authority breaks down, its claims to ownership are weakened. Millions of hectares of property which the administration considers to be its land are now under

occupation, pastures prominently included.<sup>214</sup> It is the recapture of these lands which so preoccupies land law formulation at this time. While force and restoration of order could lead to this result and confirm the *de facto* lack of distinction between Public Lands and Government Lands, the problem remains that this continues to ride roughshod over the customary rights of local communities.

*Polarisation of rights over pasture is also occurring*

An added complexity concerns relative rights among community members to local pastures and how far these are more accurately private pastures or genuinely shared common properties. In the field surveys three positions were encountered:

- The first acknowledges the pasture as being owned by a local landlord family, as part of the domain carved out by the ancestor/s who first settled the area, or as granted to the family by the Iron Amir or his successors. This accepts the named pasture as private property in the conventional individualised sense. Most livestock-rich landlords take this position. Peasant farmers who accept this consider their own access to such pastures to be more privilege than right, born out of the kindness of the landlord, although visibly also paid for in the exploitative labour contract arrangements they are bound to accept at the same time. Much less countenance is given to the claimed private rights of outsiders (nomads) who have been recipient of state grants of pasture at various times, particularly up until 1978. Often this tenure is acknowledged as “legal” but “illegitimate.”
- The second position holds that while the landlord may indeed be the recorded and

referred to owner, his tenure does not exist solely upon his own account but as trustee for the entire community which he heads. He is bound to permit all members of the community, from his own relatives to sharecroppers and workers, to share the use and benefit of local pastures. Holders of this view (and they are many) consider that when *khans/begs/landlords* had their names recorded as owners of local pastures they were securing these not just for themselves but for their communities. Local access is thus a common right, not a privilege.

- The third position holds that local pastures were never privately owned but were the property of the community as a whole, and any landlord or other person who has through registration or other legal processes had these placed under his own name, has done so wrongfully. While landlords have the power (and duty) to defend those pastures against outsiders, villagers say that this should not be interpreted as meaning their rights are superior to those of other members of the community. In addition, it was made clear (particularly in the valleys of Bamyan Province) that this common ownership embraces the weaker and poorer members of the community, including those who may not have the means to use the pasture (livestock).

Pastures in this respect are but an extension of the conditions that exist in respect of uncultivated or erratically cultivated rain-fed areas. Any member of the community may also in principle access those lands by arrangement. In practice, only those with means – ploughs, seed, labour, do so – and through sustained usage establish stronger rights and set in motion inevitable privatisation. It is this transition which is now

<sup>214</sup>For example, in Faryab, MAAH reported that 28,831 ha of government pasture has been invaded. Attempts to recover the forests had been rebuffed, with officials beaten.

so apparently occurring in pasturelands. The precedent for privatisation is abundant, in the direct granting of private rights over pasture by administrations since 1884. Landlords and other interested parties have also gone out of their way (often during the 1960-1970s registration period and especially since) to secure documented claim to these lands.

*The customary and changing use of pastureland needs closer examination*

The role which cultivation of pasture has played in triggering disputes has been frequently remarked. The risk of this occurring is far from new, as evidenced in the firm exhortations in legislation since 1965 that such actions are prohibited. There is little doubt that loss of social and political controls over land use conventions has provided a real excuse and/or opportunity for challenging ethnic and private hegemony over pastures. This loss of control has not only been from the side of government. All three case studies suggest that communities too have allowed or enabled local conventions against cultivation to be transgressed. The Shiwa case provided exact figures on the dramatic extension of farming area that has resulted and quite widely echoed in community *shura* opinions collected by the NRVA 2003 (as shown in Tables 3 and 4 of Appendix E).

Quite aside from who are beneficiaries, rich or poor, Pashtuns, Uzbeks or others, there are frequently negative environmental effects. Customary and/or legal restrictions against farming steep pastures have had rational basis; the disturbance to top soils from cultivation may be seen today to be destroying not just the utility of the land in the future as pasture (and in remarkably few years) but to be impacting negatively upon generally lower arable lands. In the Panjao case this was visible as bare slopes caused

by landslides and from which it will take centuries for those areas to recover. In Shirin Tagao the loosening of hillside soils is being delivered in excessive flooding of riverine floodplains and irrecoverable loss of precious soils down the river. Loss of soils through wind erosion in flatter areas like Dasht-i-Laili was also recorded.

It is important not to over-exaggerate the extent of these effects. Even in the brief survey periods there were as many stable new cultivation areas visible on less steep hillsides as not. *Chul* soils in the north have long been used for rain-fed cultivation and some expansion to remoter areas may well be environmentally viable. The speedy adoption of new local rules to control the worse excesses was also noted in the Panjao case. Scattering cultivation more widely than in the past could be sufficient to limit damage in many cases.

*Pastures have multi-use potential*

More important, the distinction between potential rain-fed lands and pasture is in many instances an artificial construct and

Only by default do some communities retain group ownership over pastures; the law does not recognise common property as group-owned private property.

ignores customary flexibility towards dual use. Just how artificial, was illustrated in the definition of pasture

in the legislation as effectively any land where animals graze. While this is unhelpful as guidance in itself and offers enormous scope for land capture by livestock graziers, it proves equally unhelpful in the associated implication that a rigid distinction needs to be drawn between rain-fed and pasture lands. It was shown earlier how this was given legal force in 1965 through outright prohibition of cultivation in pasture, i.e., in any area which has grazing use (or even potential), a prohibition that has remained in place since.

Three observations on this need to be made: *first*, that the dominance of pastoral over arable interests in this construction is unlikely

to be coincidental with the times, a period much dominated by Pashtun demands. *Second*, nor is it likely coincidental with the introduction of imported land use planning norms integral to the foreign aid driven programmes, and led to the new land laws of this period as well as to mass registration.

*Third*, it remains a fact that for all practical purposes, it is ultimately members of each local community, and not the state or its law, who are in the best position to determine where the most environmentally sound and productively sensible distinction should be drawn between rain-fed cultivation and exclusive pastoral use in their vicinity. Simply to outlaw cultivation on any land which could be used for animals or where plants grow that are useful to animals, is unhelpful at best. Empowering locals to do so will prove effective quite aside from ultimately necessary.

### 5.2.3. Land Administration Needs Reform

Numerous shortfalls in land administration were noted or implied in previous chapters. These have ranged, for example, from the difficulties inherent in having judges serve as their own juries in matters of malfeasance relating to legal documentation, to the loopholes for wrongful land capture by the already wealthy, where tax receipts are used as sole evidence of ownership, to the absence of public adjudication and accountability in registration (largely self-reported) and where transactions may be legalised on the basis of concordance by a handful of (self-selected) witnesses. Less tangible is the absence of accessible formal local level land administration and the effective disempowerment of customary systems of regulation and administration in face of stronger “legal” systems. While typical of the paradigms of 20th century land administration stridently introduced by the aid community from the 1960s, the

disadvantages of overriding, rather than building upon locally exercised mechanisms, have been all too evident with the breakdown in the centralised norms established. One certainty in administrative reform will be the need to provide for localised administration. This will be essential not just for ease of access to the majority but to enhance accountability to landholders.

### *Reassessing the purpose and means of rights recordation*

The central function of land administration systems is to record land transactions. For this to work, first registration of owners has been classically pursued, such as was the purpose of the USAID-funded programme during the 1960-70s. Despite that programme achieving very limited success in rural areas over a decade (and at immense cost), the current administration has returned (again with the encouragement of some donors) to classical registration as the way forward. There is little doubt that recordation of rights in a modern world is ultimately essential, but how these rights are recorded and by whom, and how land rights are defined in the first instance, need a good deal more work than the current administration appears to have devoted to the subject.

As noted earlier, the main justification is as classical: the idea that registration and issue of title deeds (never in fact achieved) will allow landholders to secure formal mortgages. While this works magnificently in developed countries, there is a good deal less evidence that collateralisation follows registration and entitlement in most of the world.<sup>215</sup> More specifically there is evidence to suggest that majority smallholders and those with small and poor homes are rarely able to secure loans from banks, and generally fare better through micro-credit shared accountability schemes. That is, collateralisation is extremely important for the wealthy and the

<sup>215</sup> Refer to Bruce, J. and Migot-Adholla, S. (eds). *Searching for Land Tenure Security in Africa*. Iowa. 1994; Deininger, 2003, op cit.; Alden Wily, 2004e, op cit.; FAO, 2003, op cit. and Toulmin & Quan, op cit.

commercial sector, but of less utility to the majority rural poor. Part of the shortfall for the poor is that they are unable to meet the other requirements of bank loans (e.g., sound business plans). Other reasons include the reality that few financial institutions are willing to make loans to households which could be easily made homeless and destitute at foreclosure. The rapid expansion of micro-credit schemes based upon group responsibility for repayment appears to respond more satisfactorily to their requirements for loans.

There are also practical structural issues surrounding the process of recordation and sustenance of recordation. These relate primarily to locale. Centralised regimes have been shown all too frequently to be unsustainable, unreliable and more than normally vulnerable to corruption.

Three main sets of problems beset a classical titling approach:

- First, in the matter of workability and cost-effectiveness – both Afghanistan's own experiences in rural titling and those of most other developing states proved simply too expensive and time-consuming to put in place, and too expensive and time-consuming to operate and sustain. Many titling regimes have fallen apart, fallen into disuse with limited numbers of transactions after first registration recorded, or fallen into general disuse other than by elites.
- Second, the need is not only to develop a new system but one that mirrors and supports an order in land relations that is accepted. Simply launching mass registration (re-registration) in a desperate hope that this time it will work misses the reality that the order it reflects is frequently ill-aligned with local reality or customary norms. This is particularly so in reference to remote rain-fed land and pastures. Trust in paper entitlement systems is paramount. The capacity of a system to be corrupted clearly limits trust in it or its utility. Trust is even more dramatically limited where the system itself reflects an unaccepted order. Restoring trust in a system involves more than making the records accurate and difficult to fabricate or alter. It relies more importantly upon the grounds upon which rights are issues having social legitimacy and held to be just and fair.
- Third, mass registration (or re-registration) programmes focusing on private house and farm properties is not the priority. Much more important is to bring order (and an accepted order) to off-farm lands and the pastures in particular. This is not least in order to limit rapidly proceeding dispossession of common rights, so important to the poor, over this last useable land sphere. This focus requires development of new norms through which rights over pasture land are defined and administered. These must include new constructs to enable customary distinctions between local common and national public tenure to be admitted into national law, and for the meaning of common property to be also so reconstructed. A route through which appropriate norms may be safely arrived is provided below.

#### 5.2.4. Lessons Can Be Learnt From Elsewhere

As the 21st century opens, upwards of 50 agrarian states around the world are re-examining the means through which rights in land are defined, regulated and especially, administered day to day.<sup>216</sup> Many lessons useful for Afghanistan may be learnt. The common approach of these reforms has been for central government to develop a new national policy (with varying degrees of consultation), then a new supporting land

<sup>216</sup>The World Bank, 2004a, op cit.

law, and then to be concerned with its implementation. Problems have arisen with this process, visible in the reality that all too many new national land policies and land laws lie unimplemented – even where strong rule of law and central government authority abundantly exists.<sup>217</sup> While political will is important, so too, it is being found, is local, popular will. Systems that have been developed without direct involvement of client landholders tend to be institutionally over-expensive, out of reach in their bureaucracy, and largely irrelevant to the greater body of interest holders. That is, the importance of sound process in designing reforms is becoming more and more crucial and not met by conventional centralised planning procedures. This has direct bearing on how rural tenure problems should be addressed in Afghanistan.

A second main thrust of currently emergent reforms in tenure administration in particular similarly deserves brief comment. This relates to increasingly common recognition that for modern rural land administration to work and in ways that consider majority rather than only elite interests, it is crucial that these are established at far more local levels that has been the case in the past, and ideally, at the community level. In addition, to limit costs and heighten participation and the necessary sense of local “ownership” over processes, this means founding new administrative systems upon existing community mechanisms where they exist, and building norms within the capacity of communities at the periphery to exercise and uphold.<sup>218</sup> This on its own suggests significant simplification of increasingly complicated recordation procedures. It also suggests the need to devise mechanisms which greatly increase public participation at the local level and through more

Only local people can decide the right dividing line between rain-fed farmland and pasture.

definitively democratic norms where these do not customarily exist – broadly the case in rural Afghanistan.

It also suggests that ultimately, rural land rights would be administered through a mosaic of multiple micro land administrations. In Afghanistan this would amount to a series of sub-district (or even *mantiqa* committees), designated as Local Land Bodies, each elected and accountable to community constituents to perform agreed recordation and regulation tasks, only some of which (if any) would require formal deeds registration. These bodies would be serviced by a Local Land Administrator, appointed and funded (through minor transaction fees) by the community. In many respects, such institutions would formalise, but also improve and democratise, already widely existing *shuras*, dedicated in this instance to land administration.

Such developments would presuppose the definition of the respective discrete Land Administration Area over which the Local Land Body has authority. It goes without saying that these Community Land Administration Areas would include both spheres of private and shared common property, and even potentially, administration of defined adjacent National Lands, on behalf of the state.

The whole would need to be regulated by supportive legislation, and the various Local Land Administration Bodies technically assisted by District Land Officers. Appeal on decisions could proceed through more formally constituted Village Land Courts and District Land Courts, into the normal court system. The Land Register for each area would exist at the local level and be sustained at the local level. Back-up copies as necessary could be forwarded to a District Register,

<sup>217</sup> Palmer, R. “Lessons from Recent Policy and Implementation Processes” Chapter 14 in Toulmin and Quan (eds). 2000 and Deininger, op cit.

<sup>218</sup> Toulmin and Quan, op cit.; Deininger, op cit.; and Alden Wily, 2003c and 2004e, op cit.

itself established outside the courts. Having been relieved of their duties towards land deeds registration, judges would be better able to serve as neutral arbiters in appeals.

The advantages of this ideal (and likely distant) devolved approach in Afghanistan would ultimately be myriad, in that it would:

- Put in place a land administration system that is fully inclusive of all right holders and rights in the vicinity and on an equal basis – not as currently the case where elites hold legal entitlement and documentation and the majority, weaker evidence, if any;
- Integrate customary/informal and formal regimes into a single and non-conflictual system;
- Provide a framework within which decision-making and procedures could become more fully inclusive of community members (women included);
- Enhance relevance of decisions through being at the immediately local level;
- Operate at very low cost;
- Operate largely through self-reliant (but monitored) systems, improving sustainability;
- Enable land use planning (especially critical in regard to rain-fed farming and pasture issues) to be natural elements of tenure administration, rather than contradictory elements, as currently is the case;
- Enable regulatory procedures to sustain agreed norms and entitlements to be implemented locally, and at very low cost;
- Allow local level land administration to be sustained in conditions where some parts of the country, province or even district are unsettled; and
- Provide a crucial foundation for furthering the longer-term objectives of the administration towards decentralised governance.

Reaching this ideal appears at this point all too distant but would in due course be achievable on an incremental basis, beginning in more secure areas. More immediately, there is one important building block in its own right, which could help lay a much-needed foundation towards more decentralised and improved land governance trends.

### 5.3. Adopting a Strategy

Three basic strategies are suggested by the foregoing:

First – and of most immediate relevance to the newly formed Land Commission –there is an essential need to adopt an investigatory and “learning by doing” approach to new policy and legal development. The temptation to issue big policy statements or new law founded upon the deliberations of central policy makers only is best avoided. While consultative processes with opinion leaders and district and provincial officials will widen policy debate and inputs, it will not yield the extent of fresh and practical innovation needed to properly see through the current crises in land relations. Only on-the-ground piloting, finding practical ways forward with selected communities and in relation to concrete concerns, will provide this. Therefore it is recommended that the process adopted by the Land Commission be firmly towards incremental evolution of new national rural land policy over the coming three to five years. Support funding from the international community should be structured to allow exploratory pilots to be fielded in support of this.

Second – and of most immediate relevance to agencies like UNHCR, UN-HABITAT and supporting NGOs already committed to improving shelter for returning refugees and IDPs – it seems timely to look more concretely

into rural housing development initiatives, and in addition, to extend the reach of these to non-refugee/IDP homeless.<sup>219</sup> Findings in the field suggest that gaining permanent shelter may well make a significant difference to homeless landless, both returnees and others. Finding out more precisely if such people share this view is a logical first step. For the moment it is anticipated that aside from social benefits, home ownership will provide a stepping stone to asset accumulation. Public land areas for housing purposes should be more easily found than for farming needs, and the productive benefit from which requires more complex support. Small rural towns or large villages with residual common or public land will probably provide most viable sites. Large landowners may also be able and willing to provide sites, as necessary compensation for the land. Such schemes could indirectly contribute to asset redistribution. Where the displaced have means, facilitated willing buyer-willing seller arrangements could be sufficient. Where genuinely poor and homeless are targeted, more supportive arrangements will need to be made.

Third – and of most immediate relevance to MAAH and supporting agencies, as well as to policy development – departure from the conventional starting point of the family farm needs to be made. Everything about disorder in land relations in practice and about the structural supports for land relations suggest that new Afghan rural policy and strategy should begin, not end with the commons – that is, the pastures. The reasons for this have been incrementally elaborated throughout this paper. Below, in summary, they are brought together.

### 5.3.1. Prioritisation: Beginning, not Ending, with the Commons

- Pastureland is the focal arena for serious disputes (and sometimes armed conflict)

over rural land at this time – this is because they involve and affect more people than conflicts over houses and farms, inflame ethnic problems and cross-cut unresolved conflicting arable and pastoral land needs.

- This dispute includes the most intractable inter-ethnic land dispute, that between the rights of settled and nomadic peoples and which is aligned to a significant extent by a Pashtuns–non-Pashtuns divide.
- Resolution of pasture issues is urgent. Pressure is already mounting as animal stock numbers recover post-drought and as Kuchis become impatient at widespread refusal to allow them return to many summer pastures.
- Pastures present the most complex tenure planning demands, particularly as relating to: the definition and implications of Public Land; inchoate, unclear or legally unsupported distinctions between private, public and common property; uncertainty as to the nature of pasture rights allocated or purchased; inconsistent or unfair criteria upon which these are allocated; and insufficient nuance in the way in which “pasture” is denoted and viably used.
- In some cases, anarchic expansion of cultivation into the pastures is wrecking environmental damage to pastures and valley lands that needs to be promptly addressed.
- Tackling pastures (and commons in general) holds most promise for building paradigms through which tenure may be better and more sustainably managed. This is because it is of concern to whole communities and opens routes to shared decision-making and formalisation and improvement of localised land management and regulation systems. In short, it may serve as a stepping stone to wider community participation.

<sup>219</sup>This will require agencies or projects whose mandate does not restrict them to serving returnees or IDPs to become involved. However, already some itinerant homeless have argued that they are in effect IDPs because they are unable to live in their chosen or home area, for lack of accommodation, if not because of strife.

- “Pasture” is the last land asset in which the very poor (landless) have a residual right or stake to protect. This deserves support and will also be an important route to their stronger inclusion in land use and tenure related decision-making.
- Tackling common property issues as a matter of priority will also be helpful in facilitating community participation in the management and regulation of local level tenure generally.

### 5.3.2. Implementation: Adopting an Empirical Approach

In taking action on the ground, the first mentioned necessity towards “learning by doing” in order to arrive at fresh and relevant decision-making and administration norms needs to be taken to heart. Again, to bring together the arguments made throughout this paper:

- *Assisting the relevant branches of the administration with practical development through empirical processes must be a priority.* Neither pasture disputes nor disorder in land relations can generally be resolved in safe and lasting ways through force, even if the state has the means to widely effect this. Nor are either courts or administration well equipped at this stage to satisfactorily resolve pasture disputes. As well as lacking public confidence and capacity, judges are bound to rule on the basis of legal documentation (but which is heatedly disputed) and through legal norms that are not accepted. Nor are national declarations such as embedded in policy statements or even new decrees likely to have effect. The administration does not have the innovative policy instruments through which it may make a difference and is in a poor position to formulate these without practical development through empirical processes.
- *To be relevant and lasting, participatory processes are required for conflicts to be founded upon accepted resolution and reconciliation of interests.* That is, resolution cannot be achieved or adhered to without being grounded in localised agreement by involved disputants. Working at the local level, and initially on a pasture by pasture basis, provides an ideal opportunity for compromises to be worked out in trial areas, thence providing a body of experience upon which new strategies may be safely based and replication pursued on the ground.
- *Addressing Kuchi pasture issues at the local level can be useful.* In particular, the Kuchi pasture access issue has not yet been able to be resolved at the national level and is unlikely to be; the stakes at the national level are simply too high. This is not necessarily the case at the local level. A willingness to negotiate with Kuchis known to settled farmers as seasonal users often exists and are in some circumstances already being devised. With careful facilitation, weaker interests can brought equitably to the table, and face to face agreements reached.
- *Simple but tangible land use planning decisions are integral to resolving many of the issues facing pasture use.* This includes, for example, being able to draw up boundaries on the ground between multipurpose, dual purpose (arable/seasonal pastoral use) and single purpose zones (definitively pasture). To be rational, meet with agreement, and to hold, such decisions need to be made on a real case by case basis, at least until such time as satisfactorily flexible models may be drawn up, for other communities to consider and adopt. Developing mechanisms for ensuring that these decisions are sustained and procedures for dealing with breaches devised may logically be defined and put in place by the same actors.

- *Initiatives which seek to have the poor included rarely work where this is not engineered.* Because pasture assets do concern the poor, either as small stock owners or as shareholders in common rights, an ideal opportunity is provided to consciously seek and secure their participation, and consideration of their interests. Means towards this will again be best evolved empirically, in due course given the weight of policy and legal procedure.
- *For rural people, good governance of land resources is a primary concern.* Making this real is more difficult. Good governance suggests evolutionary development towards more localised land tenure administration and regulation. This stems from: the wider demands of democratic and locally inclusive governance; the benefits that derive from “local ownership” of decision-making as compared to coerced obedience to remote directives from centralised administration; the need for government departments to move towards technical advisory and watchdog functions rather than operational roles where they are able; and the need to develop systems of land governance that have high user levels and adherence by being socially legitimate, readily accessible, and cheap to operate, use and sustain. The upshot in a growing number of nations is a steady shift towards development of community-based regimes of land governance in especially rural areas.

In sum, strategically, the handling of pasture interests in localised ways responds to key current demands in tenure governance, bringing together needs related to:

- The management and regulation of land use;
- The development of sound and sustainable systems for *administering* land tenure;
- The need to develop more effective and locally legitimate systems for land dispute

resolution than are currently available in an environment where the capacity of the courts is limited, confidence in the courts is low, and the rule of formal law is weak;

- Recognition that an already over-stretched administration has limited capacity to sponsor meaningful widespread action programmes such as affecting pasture access and use; and
- That development of new paradigms for this will be most soundly arrived at through localised, on the ground “learning by doing” initiatives, from which workable models may be evolved. This will offer the administration practical models to consider for wider application.

The key advantages of a localised approach are that it allows for:

- Those directly affected to be as directly involved;
- Conflict resolution and decision-making towards policy development to be integrated;
- Decisions to be immediately applied;
- Pasture management decisions (including conservation measures) and use regulation to be integrated;
- The local institutions and procedures for sustaining the agreed rules to be put in place; and
- The community itself to become the operational regulator (self-regulation).

In short, the need is not only for conflict resolution, but new rules and a new system for those rules to applied and sustained. Such a strategy represents an *integrated reconciliation and pasture development approach*. In practice, particular care will be needed to avoid co-option of the process by local elites, and for appropriately thorough examination of all claims to be made. This is likely to be time-consuming.

### 5.3.3. Getting “Learning by Doing” off the Ground

Box 12 provides an outline of pilot procedure. This would be against a background in which a cluster of pastures or district(s) are identified as suitable starting points to develop and test community-based pasture management planning and reconciliation. An appropriately small facilitation team, prominently including a MAAH representative, should be formed as pilot implementers. Following preliminary rapid appraisal of pastures, their associated communities, users and disputants, systematic reconciliation and planning procedure could be launched. This would proceed on a pasture by pasture, case by case basis. In each case, the various relevant actors or their representatives would be brought together. The exercise would logically begin and be founded upon shared assessment of the pasture and problem identification. The perimeter of the pasture should be agreed, and its past and current uses recorded. As far as possible, contested documents and events should be set aside, at least for the duration of assessment. A provisional plan of action could be drawn up, including agreed or alternative choices of boundaries between different zones, and in particular, the limits of cultivation. Debate and negotiation as to access could then proceed. Agreement as to who owns the pasture may need to be set aside in favour of consensus among participants as to the access regime; how and when the pasture will be accessed, by whom, through which local reporting procedures and on what conditions. Procedures for handling crop damage claims and fee paying by seasonal users could be among a range of workable points of compromise agreed. Distinctions and agreement on the ground between public and local pasture and between local and private pasture and the meanings of each will be more easily teased out and agreed once such use decisions have been agreed upon.

What in effect would be a pasture management plan for each pasture would be developed, the rules subjected to community-wide approval and public record, and this agreement written and registered with the District Governor’s Office and the court. Creation by participants of a Pasture Management Committee or *land shura* would be a natural institutional corollary. Representation, means of selection, duties and accountability procedures would need to be rigorously worked through, laid out, agreed and signed for. On grounds of proximity, residence and practicality of management action and regulation, these bodies should be primarily comprised of settled members of the community but with seasonal users represented as relevant.

By laying a practical foundation of agreement as to the pattern of acceptable access use and thence rights in the locality, this process offers more than conflict resolution. It attempts to lay the basis for reform in the way in which land rights are articulated, recorded, protected and managed, and crucially, through empowering landholders themselves. Pilot areas could be usefully chosen with corollary demilitarisation efforts in mind. Ideally, administrative and court reforms in at least the posting of untainted staff would also concur. Success would hardly be uniform, but a gathering number of working cases would offer powerful examples.

Just as important, such piloting will also avail the administration with concrete experience as to how far local traditional procedures are able to respond to democratic restructuring, and be put to use as the foundation for locally-managed pasture land administration and land use regulation. This in turn should contribute to more broadly based community-based institution building and operations in rural land management generally, such as development of community-based adjudication, registration and certification of house and farm entitlement, an emerging innovative norm in many agrarian societies.

### Box 12: Outline of an Approach to Pasture-Centred Dispute Resolution and Management Planning

#### Step #1: Provincial Level: Starting Up

Establishing the Facilitation Team, Selection of districts and scheduling  
 Information collection (maps, registration information, conflicts, etc.)  
 Finalisation of approach (development of checklists for each stage of the process, participatory methodology, recording responsibilities, etc.)

#### Step #2: District Level: Establishing the Context

Collect further information on pastures within the District (type, users, conflicts etc.)  
 Potentially add knowledgeable district person to Team  
 Rapid reconnaissance visit of selected pastures, via village leaders  
 Selection of first pasture area for piloting

#### Step #3: Community Level: Launching the First Pilot

Visit all villages/hamlets adjacent to the pasture; broad understanding of interests and problems  
 Select starter village/*mantiq*  
 Meet separately with interest groups and leaders  
 Call community meeting to explain purpose and process  
 Assist community meeting to elect/appoint Local Planning Team to investigate the issues with the Facilitation Team and to report back recommendations  
 Make arrangements for non-local interest groups to send representatives

#### Step #4: On Site Review

Jointly with Local Planning Team visit the pasture and review claimed boundaries, conditions, problems, evidence of cultivation, access and tenure history, grazing use patterns, etc.  
 Draw up action list for follow up contacts needed (e.g., neighbour communities), information to collect and issues to pursue

#### Step #5: Meeting with Contestants

Visit neighbour settled communities with shared or competing interests and land access histories  
 Meet with nomad representatives  
 Add representatives as appropriate to Local Planning Team

#### Step #6: Planning Action

Guide Local Planning Team in identifying the problems and options and facilitate in-Team agreement  
 Draft basic terms of optimal agreement(s) as working reference for debate, including relating to (1) access rights of different interest groups; (2) rules of access and use of the pasture; (3) system for monitoring and regulating agreed rights and rules and (4) system for handling disputes arising

#### Step #7: Community Meetings

Local Planning Team presents its findings and suggestions individually to each participant local community/stakeholder

#### Step #8: Agreement(s) Drafted

Facilitation Team with Local Planning Team draft Agreement(s) (Pasture Access Agreement, Pasture Rules Agreement, Committee Powers, Dispute Resolution Procedure, etc.)  
 Consistency of English and Dari/Pashto versions checked. Disseminated to all disputing parties and/or stakeholders

#### Step #9: Joint Meeting

Provisional Agreement(s) presented by Local Planning Team with assistance of F. Team  
 Debate facilitated and Agreement(s) reached  
 Pasture Management Committee elected/appointed and first meeting scheduled

#### Step #10: Signing Ceremony

Pasture Management Committee responsible for inviting District and Provincial Governors and Court Judges to witness signing of Agreement(s) (likely provisional for five years)  
 Monitoring roles of government agreed

## Appendices

### Appendix A: Field Areas in Bamyan and Faryab Provinces

Table 1: Source Base of Bamyan Minor Field Study

District	Valley and/or <i>Mantiqa</i> Surveyed	Villages	Total Households Surveyed	Persons Directly Interviewed	
Bamyan	Folady	Siya Khar Bolaq	78	12	
		Alibeg	126	10	
		Borghaso	100	11	
Shibar	Bamyan	Dasht-i-Borsinas	100	15	
	Kalo	-	(1,200) <sup>220</sup>	35	
	Eraq	Kafshandaz	42	6	
		Ashoor	22	4	
Panjab	Nargas	Khoshkak	20	11	
		Sara-e-Nargas	16	5	
		Akbar	55	6	
	Gudar	Doni Nayab	30	16	
		Khdak Takhta	Deh Pioetab	83	13
	Ghor Ghor		Kachari	16	15
			Bazaar	12	12
			Joi Hawdz	11	16
			Rashak	18	11
Total	8	15	729 (+1,200)	198	

Table 2: Source Base of Faryab Minor Field Study

District	<i>Mantiqa</i>	Villages	Dominant Ethnicity	Total Households Surveyed	Persons Directly Interviewed
Khwaja Musa	Ortepa	Takhta Bazaar	Arab	99	10
		Arlan	Arab	11	5
Khwaja Sabz Posh	Afghaniya	Kamoozayi	Pashtun	30	2
		Qala-yi Shaikhi	Elbegi Qala-yi Shaikhi Qeshlaq	Arab Arab Uzbek	49 +100 relatives
Shirin Tagao	Islam Qala	Islam Qala	Uzbek	10	16
		Khoja Charkhi	Pashtun	24	10
		IDPs	Pashtun	24	6
	Turkul Baluch	Baluch Turkul	Uzbek Uzbek	23	16
	Gurzad	Gurzad	Uzbek and Arab	30	20
Maimana City			Uzbek	27	27
Total	6	11	6 Uzbek 5 Arab 3 Pashtun	237 (+ 100 relatives)	163

<sup>220</sup> This refers to the estimated total households of the valley, the subject of discussion with 35 representatives. However, the information ascertained was very general, and not backed up with on-site visits to any villages in the valley, and the number is therefore placed in parentheses.

## Appendix B: Landlessness by Region, Debts and Mortgaging

Table 1: Comparing Landlessness in 1967/68, 2002, 2003

Province	Registration Survey 1967/68	NRVA 2002	NRVA 2003
Faryab	53.1	42	24
Hilmand	72.5	34	9
Jawzjan	58.1	30	38
Balkh	50.1	29	23
Nimroz	81.4	29	60
Kandahar	51.5	28	42
Ghor	60.9	27	16
Hirat	9.8	27	22
Sari Pul	No data	26	19
Takhar	59.7	26	9
Baghlan	57.4	25	16
Paktika	No data	24	20
Badakhshan	47.9	24	10
Farah	76.0	21	6
Bamyan	72.9	21	16
Parwan	36.3	18	19
Laghman	70.0	17	6
Samangan	53.0	16	23
Logar	65.1	16	30
Nangarhar	22.2	16	10
Paktiya	20.6	13	31
Kabul	54.5	13	27
Kapisa	50.2	13	27
Wardak	70.5	12	20
Zabul	80.3	12	39
Ghazni	34.1	12	40
Uruzgan	No data	11	12
Nuristan	No data	10	8
Badghis	61.6	10	25
Kunar	69.3	10	6
Kunduz	47.9	6	17
Khost	No	4	6

Sources: Compiled from data given in Table 23, CSO 1978, Annex 8 of WFP 2003,<sup>221</sup> and most recent of several analyses of the NRVA 2003 data provided by MRRD.

<sup>221</sup>The author is grateful to Andrew Pinney for extracting original information from the VAM survey.

Table 2: Average Values of Food and Cash Debts Owed, 2003

Province	Average cash debt owed (kg Wheat)	Average food debt owed (Afghanis)
Badakhshan	3844.55	112.99
Badghis	2023.56	194.12
Baghlan	6000.35	367.16
Balkh	4882.98	261.04
Bamyan	4928.36	79.07
Farah	4281.61	190.63
Faryab	3044.00	128.00
Ghazni	8462.03	117.14
Ghor	2754.17	59.57
Hilmand	7409.93	173.47
Hirat	2313.66	120.00
Jawzjan	4152.63	355.94
Kabul	8147.80	92.63
Kandahar	8965.48	125.00
Kapisa	6309.96	238.82
Khost	7749.56	134.69
Kunar	7486.09	92.50
Kunduz	8803.57	451.39
Laghman	4100.00	78.00
Logar	12448.28	70.00
Nangarhar	7549.50	124.21
Nimroz	9571.43	
Nuristan	5853.39	162.31
Paktika	8552.49	121.25
Paktya	10380.36	115.29
Parwan	6982.04	96.11
Samangan	4322.33	253.81
Sari Pul	2664.71	133.33
Takhar	4682.93	144.23
Uruzgan	6402.78	260.00
Wardak	9967.74	106.80
Zabul	8715.49	58.75
National average	6367.30	161.88

Source: AREU Analysis of NRVA 2003.

NOTES:

Data derives from Male Wealth Groups under NRVA 2003.

Data only analysed and averaged where responses given.

Table 3: Mean and Median Percentages of Households Who Had Land Under Mortgage in 2002

Province	Mean HHs with mortgaged land (%)	Median HHs with mortgaged land (%)
Wardak	19	21
Badakhshan	18	16
Faryab	17	10
Ghor	16	17
Kapisa	13	13
Takhar	13	14
Nangarhar	12	8
Kunar	12	11
Farah	11	11
Logar	10	10
Ghazni	8	3
Balkh	8	8
Laghman	8	7
Paktiya	7	5
Kabul	7	5
Baghlan	6	7
Hirat	5	3
Kunduz	5	5
Bamyan	4	5
Parwan	4	4
Khost	4	1
Paktika	3	0
Badghis	3	3
Sari Pul	3	2
Zabul	3	1
Uruzgan	2	0
Nimroz	2	0
Hilmand	2	0
Jawzjan	1	0
Samangan	1	0
Kandahar	0	0
Nuristan	0	0

Source: Data from WFP/VAM 2003.

NOTE:

Data derives from community *shuras* in NRVA 2002.

## Appendix C: Cases in the Central Land Disputes Court, Kabul, March 21, 2003 - March 20, 2004

FIRST QUARTER							
Type of Case	Last quarter balance	Received Cases	Total Lqb + RC	Solved Cases	Cases referred to Justice	Cases Rejected	Balance
Sales and Purchases	0	32		10	7	0	15
Falsified Documents	0	130		15	2	45	68
Wrongful Occupation	0	320		22	90	30	178
<b>Sub-Total</b>	<b>0</b>	<b>482</b>	<b>482</b>	<b>47</b>	<b>99</b>	<b>75</b>	<b>261</b>
SECOND QUARTER							
Sales and Purchases	15	2		1	8	2	6
Falsified Documents	68	93		4	49	15	93
Wrongful Occupation	178	85		7	59	38	159
<b>Sub-Total</b>	<b>261</b>	<b>180</b>	<b>441</b>	<b>12</b>	<b>116</b>	<b>55</b>	<b>258</b>
THIRD QUARTER							
Sales and Purchases	6	10		7	0	0	9
Falsified Documents	93	13		4	40	31	31
Wrongful Occupation	159	50		5	41	30	133
<b>Sub-Total</b>	<b>258</b>	<b>73</b>	<b>331</b>	<b>16</b>	<b>81</b>	<b>61</b>	<b>173</b>
FOURTH QUARTER							
Sales and Purchase property	9	14		4	7	3	9
Inversions and Trickeries	31	20		2	28	20	1
Occupation	133	250		1	50	223	116
<b>Sub-Total</b>	<b>173</b>	<b>284</b>	<b>457</b>	<b>7</b>	<b>85</b>	<b>246</b>	<b>119</b>
<b>Grand Total</b>			<b>1711</b>	<b>82</b>	<b>381</b>	<b>437</b>	<b>811</b>

## Appendix D: Pasture Legislation

### 1 LAND SURVEY AND STATISTICS LAW 31 JAWSA 1344 (1965)

This first real land law comprised 70 Articles with the aim to “acquire land statistics of the country, to maintain land register and to organize tax affairs.” This was primarily to be through the issue and completion of tax declaration forms. These were to be distributed free to all landowners, and completed in quadruplicate, attested by witnesses and by the chief of the village, returned to the declaration office which would issue a receipt. In addition, cadastral survey and registration of farms was fully provided for. Pasture among other subjects is also covered in Chapter Seven.

#### CHAPTER SEVEN: PASTURE LANDS (GRAZING FIELDS)

##### Article 63:

Lands situated on hills or in valleys or deserts etc which have been grazing fields in the past will remain pasture land. Provincial governors shall direct the delimitation and survey of pastureland within their respective jurisdictions after which survey returns shall be forwarded to the provincial land offices and a copy thereof will be forwarded to the Ministry of Finance. Provincial governors are enjoined to administer and to supervise pasturelands.

##### Article 64:

The conversion of pasture land for agricultural purposes is prohibited under penalty of law. Converted areas shall be forfeited to the State.

##### Article 65:

Pasture lands are open to the public, provided, however that pasture land allocations from governmental agencies heretofore granted shall be recognised and respected. No pastureland shall pass into private ownership. Grazing rights

(licences) are not transferable by the licensees. Pastureland shall not be utilised other than for grazing purposes.

##### Article 66:

All disputes arising around grazing rights shall be decided by the legal courts according to the provisions of the law.

##### Article 67:

Government departments are not authorised to permit the tillage of pasture land for revenue purposes or to convert the same into agricultural land.

### 2 LAW OF PASTURE LANDS, 19 HOOT 1349 (10 March 1970)

#### (1) General Regulations

Article 1: The law has been enacted to protect the pastures and make better use of them.

Article 2: The word “pasture” includes the plains, hills, mountains, the skirts of the mountains, marshlands, the banks of rivers and forest areas which are covered with grass and other plants that grow wild and could be used as grazing areas.

Article 3: The pastures are public property and the people can use them in accordance with the rules of this law.

Article 4: The pasturelands are defined and demarcated by an official team. The Government is required to appoint such a team in every province two months after the promulgation of this law.

Article 5: The disputes arising in connection with the pastures shall be settled according to the rules of the Land and Statistics Law, the Law of Organisation and authorities of the Courts.

#### (2) Maintenance of Pastures

Article 6: Purchase and sale, as well as farm lease, of pasturelands are forbidden.

Article 7: The pastures cannot be sold or leased for agricultural expansion or commercial purposes. Public projects for development are an exception to this rule.

Article 8: The burning of pasturelands is forbidden. In case there is a fire in a pasture, it will be the duty of the neighboring people and government officials to extinguish it.

Article 9: Nobody is allowed to encroach upon the pastures or convert them into cultivable land. If it is proved that someone has converted a pasture into cultivable land before the enforcement of this law, it will be sequestered and recognized as pasture.

Article 10: No one is allowed to destroy the tracks, pens, fords or springs used by grazing animals or utilise them for another purpose.

Article 11: The tracks and pens used by grazing animals but later done away with or utilised for another purpose before the enforcement of this law shall be rehabilitated.

Article 12: The Government will take necessary measures for the protection and enhancement of the pastures.

Article 13: The Government has the right to expropriate the water rights or private springs inside or on the fringes of the pastures in order to protect and enhance the pastures within the framework of the laws.

### (3) Use of Pastures

Article 14: Use rights to pasturelands are restricted to the grazing of animals.

Article 15: Persons will have the right to graze animals on the pastures if they possess official documents or used the

pasture traditionally before the enforcement of this law.

Article 16: New use rights to pasturelands may be granted by the permission of the administrative commission of the province and the Ministry of Agriculture.

Article 17: The right to use pasturelands may not be bought or sold.

Article 18: It is prohibited to graze goats and camels in forest areas.

### (4) Punishments

Article 19: Any person who buys and sells the pasture areas must not only return the land to the Government with the crops thereof, but will also undergo the following punishments per *jerib* (1/5 hectare):

1. Imprisonment of 10 to 20 days
2. Fines of 500 to 1,000 Afghanis

Article 20: Any official who sells or leases a pasture shall be punished according to the law.

Article 21: Any person who encroaches upon pastures or converts them into cultivable land will return the land with the crops thereof to the Government and undergo the following two punishments for each *jerib* occupied:

1. Imprisonment of 20 to 40 days
2. Fines of 1,000 to 2,000 Afghanis

Article 22: Any person who destroys animal pens or uses these for other purposes shall return the crops thus obtained to the Government as well as be treated accordingly to Article 11 of this law. He will also undergo the following two punishments:

1. Imprisonment of 20 to 40 days
2. Fines of 1,000 to 2,000 Afghanis

Article 23: Any person who destroys animal migration trails or uses them for other

purposes, will return the crops thus obtained and be treated according to Article 11. He will also undergo the following two punishments:

1. Imprisonment of 1 to 6 months
2. Fine of 3,000 to 6,000 Afghanis

Article 24: Any person who sets the pasture on fire intentionally will undergo the following two punishments:

1. Imprisonment of 2 to 5 years
2. Fine of 5,000 to 15,000 Afghanis

Article 25: Any person who grazes his goats or camels in the forest areas will be sentenced to a fine of 50 Afghanis for each animal for the first offence and for each subsequent offence the penalty shall be doubled.

#### (5) Miscellaneous Rules

Article 26: The Government is required to create the necessary organisations in order to survey, map, protect and develop pasturelands. The Government will provide enforcement for the implementation of the articles of this law.

Article 27: Matters not clarified in this law shall be dealt with according to the regulations of the Land Survey and Statistics Law.

Article 28: This law shall be effective after publication in the Official Gazette.

### 3 DECREE NO. 182 OF 02.08.1373 (1993) REGARDING THE CESSATION OF CONVERTING PASTURE LANDS TO AGRICULTURE LANDS

The following clauses are approved for making better use of pastures, in order to feed and cherish animals and developing the quality and quantity of animal production that is one of the basic elements of the country's national economy:

- (1) No one can convert areas of pasture to farmland for his personal use.
- (2) Violators of this order will be dealt with and punished.
- (3) Governors of the provinces and especially the governor of Kunduz are responsible to secure and look after pastures in accordance with this law.
- (4) This edict is in effect after being signed and must be published in the official Gazette and other print media.
- (5) After this decree comes into effect, all documents contrary to this decree are cancelled.

Professor Burhanuddin Rabbani  
President of the Islamic State of Afghanistan.

### 4 LAW ON LAND UNDER DECREE NO. 57 Islamic Emirate of Afghanistan Ministry of Justice Issue No. 795, 2000

This law is presented along with other agricultural sector laws under a single Decree No. 57 of 2000, issued in Gazette Number 795. Chapter Nine is relevant to pasture.

#### CHAPTER NINE

##### Area of Maraa and Waqf Land

#### Article 84

Maraa is publicly owned property. Neither an individual nor government may occupy this land but rights to its use may be obtained through Shariat provisions. Maraa is kept unoccupied for public requirements such as pasture graveyards, dumps etc.

#### Article 85

Where a person has occupied maraa, even if the occupation is of longstanding, if it is proven to be maraa, then the land will be taken from him.

#### Article 86

The property or land that becomes waqfi is no longer recognised as private property.

Selling, gifting, giving for occupation or inheriting of waqfi property or land is not permitted.

A property which has been given for waqfi for a specific purpose must be used only for that purpose.

## 5 LAW ON PASTURE AND MARAA Under Taliban Decree 57, Gazette No. 795 of 2000

### General Provisions

#### Article 2:

- (1) All types of land including hills, deserts, mountains, riverbeds, forests that have places where grass grows and supports animals are known as pasture.
- (2) Pasture falls into two classes: (a) private pasture, which includes maraa (local public land)
- (b) public pasture, including barren lands (mawaat), in accordance with sub Article 9 of Article 2 of Law of Land Regulation, and land on the edges of cities and villages.

#### Article 3:

- (1) Pasture may only be used for feeding animals.
- (2) Private pasture may be used by residents of the adjacent communities.
- (3) Public pasture may be used by anyone.

### Chapter Two: About Private Pasture

#### Article 4:

- (1) If a person or government is unable to prove ownership over a private pasture, they may not occupy it as an owner.
- (2) Residents of an area may use the pasture for feeding their animals in accordance with this law.
- (3) The right of using pasture cannot be bought or sold.

#### Article 5:

- (1) The area of pasture must be specified, marked and registered, based on Shariat by a Commission.
- (2) If the pasture area had not been previously described before this law comes into effect, then the council of ministers must appoint a commission for implementing sub-article 1 of this article in every province.

#### Article 6:

Buying, selling and leasing pasture is prohibited.

#### Article 7:

Areas of private pasture are not to be sold or leased for expansion of agricultural activities or any other purposes.

Government development projects for public utility are exempted from this order.

#### Article 8:

The Council of Ministers may pay compensation for farmlands, private springs, channels that are located in or around pasture which is useful for public purpose.

### Chapter Three Public Pasture

#### Article 9:

The mawaat pasture is for public use, and its purchase, sale, or lease may only be undertaken with the permission of the supreme leader.

#### Article 10:

The grazing of goats and camels in pasture found within forests is prohibited in the public interest.

#### Article 11:

The Council of Ministers may take necessary actions in order to secure and improve the pasture.

### Chapter Four Miscellaneous (not translated).

## Appendix E: Data on Access to Pastures from NRVA 2003

Table 1: Identification of Pastures by Province, NRVA 2003

Province	Number of Pastures Indicated				% by Type		
	Summer	Winter	Recent Permanent	Total	Summer	Winter	Recent Permanent
Badghis	0	11	1	12	0.0	91.7	8.3
Farah	5	0	0	5	100.0	0.0	0.0
Faryab	0	0	6	6	0.0	0.0	100.0
Ghazni	32	2	7	41	78.0	4.9	17.1
Ghor	11	5	0	16	68.8	31.3	0.0
Helmand	0	5	9	14	0.0	35.7	64.3
Hirat	6	0	11	17	35.3	0.0	64.7
Kabul	23	0	0	23	100.0	0.0	0.0
Kandahar	0	0	12	12	0.0	0.0	100.0
Kapisa	5	0	0	5	100.0	0.0	0.0
Kunduz	0	5	0	5	0.0	100.0	0.0
Logar	12	0	0	12	100.0	0.0	0.0
Midan	5	0	0	5	100.0	0.0	0.0
Nanagarhar	0	1	0	1	0.0	100.0	0.0
Nangarhar	0	3	0	3	0.0	100.0	0.0
Nimroz	0	0	11	11	0.0	0.0	100.0
Paktika	25	0	3	28	89.3	0.0	10.7
Paktiya	12	0	0	12	100.0	0.0	0.0
Paktya	3	0	0	3	100.0	0.0	0.0
Parwan	7	0	0	7	100.0	0.0	0.0
Saripul	0	0	5	5	0.0	0.0	100.0
Wardak	1	0	0	1	100.0	0.0	0.0
TOTAL	147	32	65	244			
PERCENT					60.2	13.1	26.6

Sources: NRVA 2003 as analysed by AREU.

## NOTES:

Data derives from District Level Survey only.  
Only provinces with recorded data presented.

Table 2: Proportion of Kuchi Groups Using Summer Pastures, 2003

Province	No. of Kuchi Groups Using Zone 5 (Pastures)	Usual No. of Kuchi Groups Using Zone 5 (Pastures)	% Using Pastures 2003
NATIONAL	38	614	6.2
Badakhshan	0	30	0.0
Badghis	1	18	5.6
Baghlan	3	33	9.1
Balkh	0	23	0.0
Bamyan	0	9	0.0
Farah	0	12	0.0
Faryab	1	29	3.4
Ghazni	8	45	17.8
Ghor	3	15	20.0
Hilmand	0	15	0.0
Hirat	1	35	2.9
Jawzjan	3	17	17.6
Kabul	3	27	11.1
Kandahar	0	17	0.0
Kapisa	1	11	9.1
Khost	0	19	0.0
Kunar	0	14	0.0
Kunduz	0	17	0.0
Laghman	0	6	0.0
Logar	2	16	12.5
Nangarhar	0	22	0.0
Nimroz	0	6	0.0
Nuristan	0	8	0.0
Paktika	5	33	15.2
Paktya	4	28	14.3
Parwan	0	16	0.0
Samangan	0	10	0.0
Sari Pul	0	15	0.0
Takhar	3	38	7.9
Uruzgan	0	7	0.0
Wardak	0	14	0.0
Zabul	0	8	0.0

Sources: NRVA 2003 as analysed by AREU.

NOTE:

Data derives from District Level Survey only.

Table 3: Community Opinions as to Change in Access to Pasture Since 1978

Province	Increased	Same	Decreased	Not applicable
National %	21.3	37.1	21.7	19.9
National	394	688	402	369
Badakhshan	14.1	62.4	15.3	8.2
Badghis	14.8	33.3	51.9	0.0
Baghlan	18.5	55.4	6.2	20.0
Balkh	15.5	29.8	21.4	33.3
Bamyan	17.2	27.6	51.7	3.4
Farah	46.0	14.0	10.0	30.0
Faryab	28.0	41.3	8.0	22.7
Ghazni	49.2	32.8	2.5	15.6
Ghor	16.7	27.1	56.3	0.0
Hilmand	32.1	9.0	19.2	39.7
Hirat	14.9	9.6	67.0	8.5
Jawzjan	40.0	15.0	2.5	42.5
Kabul	19.7	52.6	15.8	11.8
Kandahar	6.8	20.3	6.8	66.2
Kapisa	3.3	36.7	26.7	33.3
Khost	8.9	57.1	26.8	7.1
Kunar	17.2	51.7	17.2	13.8
Kunduz	23.5	52.9	5.9	17.6
Laghman	0.0	87.9	12.1	0.0
Logar	18.4	36.8	31.6	13.2
Nangarhar	14.3	20.0	20.0	45.7
Nimroz	0.0	37.1	14.3	48.6
Nuristan	3.8	23.1	73.1	0.0
Paktika	12.9	34.1	45.9	7.1
Paktya	7.2	56.5	26.1	10.1
Parwan	19.7	53.5	7.0	19.7
Samangan	41.7	33.3	2.8	22.2
Sari Pul	50.0	19.0	11.9	19.0
Takhar	36.5	48.1	13.5	1.9
Uruzgan	30.4	56.5	8.7	4.3
Wardak	24.5	55.1	12.2	8.2
Zabul	14.7	38.2	23.5	23.5

Sources: NRVA 2003 as analysed by AREU.

NOTES:

Data is from 1,853 NRVA male *shura* surveys 2003.

although the question referred to “King Zahir Shah’s time” (1973-1978) it is likely that most *shuras* interpreted this as up to the Revolution in 1978.

Table 4: Community Opinions as to Changes in Access to Pasture over the Last Year (2002/03)

Province	Increased	Same	Decreased	No access	Not applicable
National %	3.7	18.1	57.0	3.2	17.9
National	69	336	1057	60	331
Badakhshan	10.6	35.3	44.7	0.0	9.4
Badghis	5.6	3.7	90.7	0.0	0.0
Baghlan	6.2	56.9	16.9	3.1	16.9
Balkh	13.1	21.4	27.4	8.3	29.8
Bamyan	0.0	6.9	89.7	0.0	3.4
Farah	0.0	0.0	90.0	2.0	8.0
Faryab	4.0	38.7	36.0	4.0	17.3
Ghazni	2.5	7.4	68.9	3.3	18.0
Ghor	0.0	8.3	91.7	0.0	0.0
Hilmand	3.8	20.5	34.6	7.7	33.3
Hirat	9.6	10.6	71.3	2.1	6.4
Jawzjan	2.5	12.5	47.5	0.0	37.5
Kabul	2.6	7.9	75.0	2.6	11.8
Kandahar	4.1	21.6	9.5	2.7	62.2
Kapisa	0.0	3.3	63.3	13.3	20.0
Khost	5.4	30.4	57.1	1.8	5.4
Kunar	0.0	6.9	81.0	1.7	10.3
Kunduz	2.9	38.2	32.4	11.8	14.7
Laghman	0.0	66.7	33.3	0.0	0.0
Logar	0.0	7.9	78.9	0.0	13.2
Nangarhar	1.0	9.5	41.0	6.7	41.9
Nimroz	2.9	42.9	8.6	0.0	45.7
Nuristan	0.0	3.8	92.3	0.0	3.8
Paktika	1.2	1.2	90.6	0.0	7.1
Paktya	2.9	13.0	73.9	0.0	10.1
Parwan	0.0	12.7	64.8	2.8	19.7
Samangan	0.0	5.6	69.4	0.0	25.0
Sari Pul	0.0	7.1	66.7	11.9	14.3
Takhar	3.8	34.6	48.1	9.6	3.8
Uruzgan	4.3	0.0	87.0	0.0	8.7
Wardak	0.0	6.1	81.6	4.1	8.2
Zabul	17.6	55.9	0.0	0.0	26.5

Sources: NRVA 2003 as analysed by AREU.

NOTE:

Data derives from 1,853 male *shura* surveys, NRVA 2003.

Table 5: Reduction in Grazing Availability in Zones 4 and 5

Province	% of Districts That Indicate That Grazing Has Reduced In These Zones In Recent Past
National	50.4
Badakhshan	14.3
Badghis	20.0
Baghlan	45.5
Balkh	83.3
Bamyan	
Farah	
Faryab	75.0
Ghazni	88.9
Ghor	50.0
Hilmand	
Hirat	60.0
Jawzjan	100.0
Kabul	66.7
Kandahar	
Kapisa	0.0
Khost	0.0
Kunar	
Kunduz	0.0
Laghman	
Logar	50.0
Nangarhar	
Nimroz	
Nuristan	
Paktika	0.0
Paktya	60.0
Parwan	
Samangan	40.0
Sari Pul	57.1
Takhar	33.3
Uruzgan	
Wardak	
Zabul	

Sources: NRVA 2003 as analysed by AREU.

## NOTE:

Data from District Surveys of NRVA 2003. Sample includes only those districts that have Zones 4 and 5 land in their districts (pasture). Blanks indicate that no Districts in those Provinces have Zones 4 and 5 land. 0.0 means that they have Zones 4 and 5 land but no Districts reported reduction in grazing land in recent past.

Table 6: Reduced Availability of Grazing All Zones

Province	% Districts That Indicate That Grazing Areas Have Declined In General
National (N=279/614)	45.4
Badakhshan	23.3
Badghis	44.4
Baghlan	39.4
Balkh	56.5
Bamyan	33.3
Farah	75.0
Faryab	51.7
Ghazni	60.0
Ghor	33.3
Hilmand	73.3
Hirat	40.0
Jawzjan	70.6
Kabul	33.3
Kandahar	94.1
Kapisa	27.3
Khost	31.6
Kunar	50.0
Kunduz	29.4
Laghman	0.0
Logar	75.0
Nangarhar	59.1
Nimroz	16.7
Nuristan	25.0
Paktika	36.4
Paktya	53.6
Parwan	12.5
Samangan	40.0
Sari Pul	46.7
Takhar	28.9
Uruzgan	71.4
Wardak	50.0
Zabul	62.5

Source: NRVA 2003 as analysed by AREU.

## NOTE:

Data derives from District Survey Level only. The high sample number (614) reflects that some districts were sampled more than once. Only 279 of 614 survey forms responded that grazing had been reduced. Only Laghman did not record a reduction in grazing.

## Abbreviations and Acronyms

AREU	Afghanistan Research and Evaluation Unit
CSO	Central Statistics Office
FAO	United Nations Food and Agriculture Organisation
GoA	Government of Afghanistan
ha	hectares
IDP	internally displaced person
MAAH	Ministry of Agriculture and Animal Husbandry
MRRD	Ministry of Rural Rehabilitation and Development
NRC	Norwegian Refugee Council
NRVA	National Risk and Vulnerability Assessment
SCA	Swedish Committee for Afghanistan
TISA	Transitional Islamic State of Afghanistan
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
USAID	United States Agency for International Development
VAM	Vulnerability Analysis Mapping
WFP	World Food Programme

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Publications from 2002 and 2003 are not listed here.

February 2004	Land Relations in Bamyan Province: Findings from a 15 Village Case Study, by Liz Alden Wily
February 2004	Some Notes on the Livelihoods of the Urban Poor in Kabul, Afghanistan, by Pamela Hunte
March 2004	A Guide to Government in Afghanistan, by AREU and the World Bank
March 2004	Subnational Administration in Afghanistan: Assessment and Recommendations for Action, by AREU and the World Bank
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