



# BRIEFING PAPER

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## Rural Land Relations in Conflict: A Way Forward

### Rural Land Policy

This briefing paper outlines key issues for the development of successful rural land policies and strategies in Afghanistan. It challenges policy makers to adopt localised and participatory approaches to resolving land conflicts in rural areas, beginning with pasture.

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### Overview<sup>1</sup>

The purpose of this AREU briefing paper is to highlight the need for policy makers to adopt localised and participatory approaches to resolve burning land conflicts in rural Afghanistan. It is essential that land policies and strategies that are adopted by the central government are both practically workable and relevant to the majority of rural land families. Approaches to land management in rural Afghanistan that leave decision-making to remote, centralised planning in Kabul, no matter how well financially supported, will not achieve the desired results.

Dealing safely with people's land interests, particularly in agrarian economies, is first and foremost a matter of governance. Reforms in land administration are underway in many developing economies and there is much to be learnt (and eventually share) from these experiences.<sup>2</sup> Policy makers are beginning to heed the need for practical trial experience in resolving land disputes before investing heavily in centralised state responses. Classical titling of land as the solution for all tenure-related ills is also beginning to be challenged, particularly where common properties rather than the family farm is most at risk. In post-conflict countries, the need to address historical roots of land conflict is a lesson that appears to have to be relearned in each case. Devolutionary and simplified approaches to identifying, sustaining and administering land rights, and through regimes in which landholders themselves have a real stake, are emerging as an important vehicle to overcome expensive cadastral systems failures. The need for fresh perspectives on old problems is everywhere echoed as essential to move forward.

An important foundation for new attention to rural land issues in Afghanistan has been laid with the formation of an Inter-Ministerial Land Commission, whose aim will be to devise and support a national land policy. Aside from grappling with the difficult task of facilitating genuinely useful and fair policy, the Commission will need to pay careful attention to the means through which these policies are developed. It will need to create strategies that engender adherence to its rules and norms, and enable real uptake of opportunities, especially by the majority poor. Afghanistan cannot afford any more paper policies that have no public backing.

It is on such matters that this briefing paper concentrates. The paper first provides an overview of rural land ownership, then looks at the crisis over pastures, before

<sup>1</sup> This briefing paper draws on the findings of three rural land case studies researched and published by AREU in 2003/2004. The case studies are: Alden Wily, L. *Land Relations in Bamyan: Findings from a 15 Village Case Study*. Kabul. AREU. 2004; Alden Wily, L. *Land Relations in Faryab Province: Findings from a Field Study in 11 Villages*. Kabul. AREU. 2004; and Patterson, M. *The Shiwa Pastures, 1978-2003: Land Tenure Changes and Conflict in Northeastern Afghanistan*. Kabul. AREU. 2004.

<sup>2</sup> References to reformist experiences outside Afghanistan in this brief are founded primarily upon the following sources: Deininger, K *Land Policy for Growth and Poverty Reduction*. The World Bank. 2003; The World Bank. *Land Policy, Translating Principles into Action: Lessons and Challenges*. Washington. Rural Land Conference March 4-5 2004; FAO. *Land Reform, Land Settlement and Cooperatives 2002/2 and 2003/3*; Alden Wily, L. *Governance and Land Relations: A Review of Decentralization of Land Administration in Africa*. Institute for Environment and Development. 2003.

exploring past land laws and policies. The paper also addresses the negative consequence of landlessness and the even more severe experience of rural homelessness.

A central position of the paper is that the most complex and inflammatory rural land issues in Afghanistan today centre upon the pastures. New legal norms are required to resolve conflicts and to arrive at workable systems for administering rights to pastures. There needs to be legal clarity distinguishing local common properties from remote pastures, which are more appropriately designated the property of the nation as a whole (public land). Creeping wrongful privatisation of essentially common pastureland also needs to be halted. These and related actions can only be properly implemented through localised and participatory approaches. Top-down issuing of more decrees and future land policies, which are not built upon practical learning by doing and localised ownership of the process, will fail. Top-down approaches will only generate classical and highly expensive programmes that in turn will make little difference to the most pressing issues.

This paper also shows how conflicts affecting pastureland impact most negatively upon the landless. As a result of privatisation of the commons, many of the landless are losing the only land rights they possess – their tenure share to common properties and their access right to public lands for de-pasturing stock and collecting herbs and fuel material. This has particularly negative livelihoods consequences for the extreme poor – those who are homeless as well as landless and whose single capital asset is a small flock of sheep.

To move forward effectively in developing rural land policy in Afghanistan, the government and assistance community need to be aware of the key implications of the current state of tenure insecurity and conflict in rural Afghanistan:

- Prioritisation by action and area is going to be essential – nation-wide approaches will be difficult to apply and potentially unsound;
- Formulating new land policy and legislation will not in itself solve problems – there needs to be an evolutionary, learning by doing approach;
- Rule of law institutions are weak, doubling the need for public ownership of decision-making processes over land rights;
- Attending to disorder in land relations is becoming more not less crucial;
- Dangerous conflicts exist over land and resolving these is the obvious starting point;
- History cannot be safely ignored in either conflict resolution or strategic policy developments;
- The current focus upon registration as a route forwards needs reassessment; and
- Landlessness remains as much a problem for agrarian development as in the past but redistribution of private farmland is not a viable remedy.

There are six priority action areas that the government and assistance community should concentrate on in order to target the two outstanding problem areas – chronic landlessness and homelessness, and the ethno-communal crisis of tenure on the pastures:

- Revive settlement schemes, using government land;
- Act to halt privatisation of the pastures;
- Focus on rural housing needs;
- Develop new tenure and land use norms that more accurately support fair land ownership and in particular provide for local common property tenure. Notions of which lands are justifiably public or government property need to be adjusted accordingly;
- Adopt developmentally sound procedures in the formulation of policies and strategies that underwrite programming activities; and
- Begin, not end, with the commons – and the pastures in particular.

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# I. Land Distribution and Ownership: What We Know

## The picture of rural land relations is frustratingly incomplete

Knowledge about the rural domain is probably improving, assisted statistically by the large-scale National Risk Vulnerability Assessments (NRVA)<sup>3</sup> and the longitudinal study of 390 households undertaken by AREU.<sup>4</sup> Nonetheless, a great deal about rural society is still unknown.

Studies over the years have been many but have produced inconsistent findings. Identified causes are instructive in themselves:

- *Unusually strong regional variations*, even within districts, limiting up-scaling of findings.
- *Complex land access systems*, resulting from the limited area of arable land and unequal ownership of that land available.
- *Insufficient rigour in distinguishing between farmland accessed and owned*.
- *The complexities of contract labour economies* in general and especially where remuneration for labour is paid mainly in kind (crop shares), on variant terms and with other benefits is difficult to calculate (e.g., food, accommodation). These arrangements also involve dis-benefits (e.g., child labour, extra services). Nor is “farm labour” always restricted to on-farm activities: construction, repair and transport duties may be required, complicating analysis of farm and off-farm labour roles and returns.
- *Failure to draw rigorous distinction between the house and its surrounds and farmland ownership*. Many people classified as landowners in fact own no more than a tiny garden around their house.
- *Erratic inclusion of rain-fed farms and weakness in distinguishing between these and irrigated and flood-fed land*, often tenured in different ways.

- *Sampling problems*, stemming from many of the above, as well as other causes, such as whether the nuclear or extended household is used as the basis of analysis.

- *Incomplete knowledge* as to how rural society configures itself, for example, de-contextualising individual villages from their wider socio-spatial domain (often wards or *mantiqā*). This skews pictures of landholding as a landless village may exist alongside one with mainly owners. Significant socio-economic groups may also not be captured – most notably female-headed households left in the care of relatives while males out-migrate, and traditionally itinerant labouring families who may simply disappear in statistics, having no home community wherein they might be recorded.

## What we know of land relations, ownership and distribution

Conditions in many rural areas are visibly unsettled for inter-ethnic, factional and other reasons as well as drought that typically increases landlessness through loss of assets, lowers on-farm investment for a period and accelerates search for off-farm cash, food for work or other returns. The NRVA confirms that more or less equal numbers of households in 2003 were working in farm and non-farm work. Agrarian production always includes substantial non-farm activity, but it is unclear how stable this balance will prove in the medium term. While out-migration is a well-established norm, both permanently and to support the rural home, this could be going through a period of expansion at this time. Production and trading patterns are altering through poppy production and impacting upon rural relations in ways not yet fully crystallised or understood.

Plummeting adherence to land use conventions, as later described, are also effecting land relations. A vibrant land market exists, with indications that new purchasers are not only the already landed but businessmen/commanders, investing for the first time in farming.

As a whole, rural society and the land relations that underpin it are in a period of transformation - the broad upshot of which suggests *heightening* inequities.

<sup>3</sup> Findings relating to NRVA 2003 used in this brief derive from MRRD and The World Bank *Rural Poverty in Afghanistan: Initial Insights from the NRVA 2003*. February 2004; personal communication with Andrew Pinney, MRRD (February 2004) and Renos Vakis, the World Bank, July 2004; and AREU analysis.

<sup>4</sup> Grace, J., and Pain, A., *Rethinking Rural Livelihoods in Afghanistan*. Kabul. AREU, July 2004.

### Land ownership remains a main determinant of livelihood

As may be expected, the landless are disadvantaged in changing conditions; NRVA 2003 shows they consume less food than most and do not access their fair share of food for work and cash for work opportunities. AREU land studies suggest poor family members have less opportunity to travel for work, find it more difficult to get loans, send their children to school, or acquire scarce extra-paid jobs on farm (digging channels). They also endure prejudices that work against them being farmers in their own right, should they gain funds to buy land. Owning land opens doors the landless cannot access.

There are a number of summary points that may be made in respect of land ownership:

- **Although less marked than in some Asian states, distribution of land is highly inequitable:** Arable land as a whole is scarce (only seven percent of the total land area) and inequitably distributed. Ownership broadly falls into three categories: landless, smallholders and landlords (distinguished by using additional labour to farm and often not farming themselves at all).

*At least a quarter of all rural households are entirely landless* (and probably many are also homeless). A sample of 420,000 households published in 1981 showed 29 percent were landless.<sup>5</sup> A sample of 30,000 nearly a decade later indicated only 18 percent were landless,<sup>6</sup> (a period when many households were absent and many farmers cultivating lands of kin and friends, with possible conflation of tenure and access). Vulnerability Analysis and Mapping (VAM) data from 2002 put landlessness at 27 percent, with a range by province of 8.4 - 77.8 percent. NRVA 2003 with a larger sample (11,000 plus households) places landlessness at 24 percent, with a similar extreme wide range by province and district. Pakistan and India have twice the proportion of landless households (both at just over 50 percent).<sup>7</sup> Landlessness rises to 35 percent when only irrigated land is considered and to 75 percent when only rain-fed land is considered.

*Concentration of ownership in the hands of a few is abundantly evident.* In 1967 it was calculated that 2.2 percent of farmers owned 42 percent of the total cultivated area,<sup>8</sup> similar to levels in Pakistan, where two percent own 44 percent of total land area. Similar levels were found 15 years later (4.3 percent owning 44.4 percent of all farmland).<sup>9</sup> In 2002, two percent of 5,000 farmers sampled owned 20 percent of the total land area and two-thirds of owners (63%) shared only 16 percent of the total farmlands.<sup>10</sup>

Although rarely included in surveys, it is of note that the largest owner of cultivated land in Afghanistan is the government, owning around 20 percent of all surveyed farmland from 1964 (and excluding substantial pasturelands).<sup>11</sup>

- **Most owner-occupiers are more accurately referred to as land poor:** Given scarce land and skewed distribution, mean farm size is low. The most reliable figure for farm size is still the national mean of 17.5 *jeribs* (3.5 ha) (irrigated and rain-fed). This figure comes from a survey of 26 percent of the total cultivated area and all plots in the areas between 1964 and 1978.<sup>12</sup> This high mean relates to extended households. NRVA 2003 household data shows an average of 3.3 *jeribs* of irrigated land and 2.2 *jeribs* of rain-fed land owned by what are likely nuclear families (mean household size of 7.5 persons).

*Most farmers have too little land to live on, let alone serve as a foundation for other asset accumulation.* Near-landlessness in 1981 was calculated as 29 percent of all households (over and above those with no land at all). Provisional analysis of NRVA 2003 suggests a higher figure today of around 36 percent, using the same measure, less than half an acre (2.5 *jeribs*). These people are often termed owner-occupiers or smallholders, yet they lack sufficient land to produce enough to live on.

- **The extent to which farmers use other people's land may be exaggerated.** Share tenancy (sharecropping) is less pronounced than often assumed (and is at lower rates than for India, Thailand, Indonesia and

<sup>5</sup> Glukhoded, V. "Economy of Independent Afghanistan." *Soviet Sciences Today*. 1981.

<sup>6</sup> Swedish Committee of Agriculture. *The Agricultural Survey of Afghanistan: 1988 and 1989 Surveys*. 1981.

<sup>7</sup> Comparative data from other states given in this brief derive from Lastarria-Cornhiel, S., and Melmed Sanjak, J. *Land Tenancy in Asia, Africa and Latin America: A Look at the Past and a View to the Future*. 1999; Bernhard, C. *Land in South Asia A Major Instrument for Social and Economic Transformation*. the World Bank. 2004; and also from MRRD and World Bank, *ibid*.

<sup>8</sup> Government of Afghanistan. *Survey of Progress 1967-1968*. August 1968.

<sup>9</sup> Glukhoded. *ibid*.

<sup>10</sup> Maletta, H. *Crop and Food Supply Assessment Survey 2002*. FAO. 2002.

<sup>11</sup> Cadastre and Geodesy Department. *Summary of Survey Statistics Provided by Province*, 2002.

<sup>12</sup> Government of Afghanistan. *Afghanistan Agriculture in Figures*. 1978.

Bangladesh).<sup>13</sup> Findings published in 1970 and 1990 found that respectively 55.2 percent and 78 percent of those who farmed were owner-operators. NRVA 2003 data confirms high rates of owner-operators by showing very low rates of renting and sharecropping-in land. Only three percent of farmers sampled by NRVA 2003 rented-in irrigated land and even fewer were renting-in rain-fed land (two percent). More significant, only seven percent were sharecropping-in irrigated land and four percent sharecropping-in rain-fed land.

- **Farm labour remains seriously undervalued and leaves millions in destitution and debt:** For a majority, the returns as paid in crop shares (whether they are referred to as sharecroppers or workers) are insufficient for subsistence, with many in more or less permanent debt. Crop shares are variously pegged at one-fifth to one-third of the crops produced. The average area cultivated by a single farmer or labourer is 2.2 *jeribs* of irrigated land and/or 1.6 *jeribs* of rain-fed land (NRVA 2003). AREU case studies suggest that the return in wheat (and other crops) allows a family to feed itself for only 4-7 months, necessitating acquisition of more wheat (the staple) to cover the deficit. This is predominantly begged, borrowed or purchased on poor credit terms from local shopkeepers. Sales of non-wheat shares (sesame, barley, melons, etc.) are also made to purchase wheat and other needed non-food items.

Signs of exception exist, however, and could signal future mobility in share terms. Absentee landlordism, seasonal or otherwise, has long characterised farming. However, where absenteeism is involuntary, such as through current instability or inter-ethnic strife (currently mostly affecting Pushtun landowners in central and northern regions), those contracted to farm their properties are securing much higher shares than in the past even though their inputs remain the same.

- **A trend towards cash contracts could be underway:** There are also hints that share tenancy could be slowly following the classical route towards cash tenancy arrangements. With uncertainty as to whether the drought was over, both landlords and sharecroppers surveyed in two areas in 2003 tried to secure cash arrangements where they could (landlords seeking cash rents rather than crop shares and sharecroppers seeking their share to be paid in cash). Many with little land also

offered their land for rent (reverse tenancy). Daily paid labour rates in rural areas are currently high at \$2 in the off-farm sector. Competition for labour in poppy growing areas is heightening cash arrangements. Typically, however, it is likely only those with status or bargaining power are able to benefit – not the landless or asset-less (seeds, oxen, plough) nor the homeless in need of shelter.

- **Homelessness could be the bottom-line in keeping people poor:** Without homes of their own, landless families are doubly disadvantaged. They are unable to negotiate favourable labour contracts and for the sake of shelter, especially during winter, may endure excessive levels of exploitation, including providing unpaid domestic and child labour to landlords and “social favours.” It has been many decades since reciprocal feudal relations existed between landlords and peasants, but the war years and the constrained conditions of the present have almost entirely removed responsibility for workers. Anecdotally, while seeing no rise in their crop shares, workers are sometimes now charged rent for their accommodation at harvest or pay this through performance of extra tasks.

Rural homelessness has been under-attended to in the past. NRVA 2003 shows 15 percent of households do not own homes of their own. The exact scale of the rural homeless community is unknown largely because those who are itinerant tend to be an invisible class.

- **Land is still passive capital for most farmers:** Use of land as collateral is limited. In 2002 only four percent of households had their land under mortgage (VAM 2002). Most farms are too small to be attractive to creditors. Nor are the terms of customary mortgaging (*graw*) attractive for investment. They are more typically taken out in desperation (for food or medicines) and, by better-off farmers, for one-off expenditures (bride price, tickets to Pakistan or overseas). The creditor takes temporary ownership of the land and collects interest in the form of two-thirds of the crop where the owner is re-hired as sharecropper. Repayment of the loan is accordingly difficult and an almost sure route to landlessness, particularly as smaller farmers have to mortgage all their land. In times of stress, such as in face of coercive taxing and tithing by the Taliban or drought, very little land was mortgaged but instead sold outright, and for extremely poor prices.

<sup>13</sup> Lastarria-Cornhiel and Melmed-Sanjak. *ibid.*

- **Polarisation in land ownership shows signs of intensification:** Farmland is scarce, prices high, and the market robust and unregulated. It is notable that (aside from water factors directly tied to the 1999-2001 drought) land purchases outranked other causes of change in land availability recorded by the NRVA 2003. However, those who are buying land are the “rich” and those selling, “poor.”

New arable land is also being acquired through appropriation of commons and public land. The means to do this is limited to elites. Commanders frequently combine the socio-political, military and other means to do so and currently lead the field in asset capture. Poppy production, while lucrative for all, is equally skewed in its benefits and is helping to drive polarisation further.

#### **Tenure over rain-fed farms is often misunderstood and in conflict:**

Tenure is not uniformly defined. While houses, gardens and irrigated farms are indisputably held as private property, rain-fed farms are less uniformly so. The remoter the rain-fed field, or the steeper its incline, the less securely it is considered private land. This is especially so where forms of shifting cultivation are practised. For many rural people, rights over such areas are perceived as access rights to community property. In practice, however, it is often those with means that are best able to exploit such land and who are increasingly entrenching their claims to outright ownership. Many large owners/landlords have recorded vast swathes as definitively their own land but of necessity allow poorer farmers in the community to access the land.

## II. Who Owns the Pastures?

Land relations in Afghanistan are most unstable in rain-fed/pasture areas that lie between communities (borderland), while pastureland presents the greatest challenge to tenure policy. It is in this sphere where most tenurial transition is underway and where most systemic problems exist. This is because:

- *The distinction between land suitable for arable and pastoral use is largely administratively decided* and does not always coincide with local perceptions of arable potential or customary dual use land in appropriate areas.
- *Rain-fed land and pasture in borderland areas is weakly tenured and is therefore the focus for land grabbing and expansion*, with high demand for scarce arable land driving the use of pasture for cultivation.
- *The legal definition of pastoral tenure is opaque.* Pasture has been unevenly defined as solely public land, but how far public land is owned by the nation (and only administered by the state) or is the outright property of government, has been unevenly defined and exercised.
- *The type of rights that may accordingly be secured over pastureland are confused;* these have been variously interpreted as no more than use or access rights or as outright ownership. While the balance of legal meaning is on the former, the balance of practice has been on the latter. This is reinforced by substantial payments for allocations, the absence of stated term (years) or conditions for access, and the entrenchment of use rights in legal documents of entitlement.
- *The wholesale legal capture of pasture as public/government land since 1970 rides roughshod over customary precepts of common property and exposes pasture to the ills of open access characteristic of public lands.* Minimal legal or administrative provisions exist for land traditionally conceived as common property (i.e., local community land not national public land) to be recognised and registered as such. Communities have continued to use their pastures only in default or in defiance of other allocations by government. Conflicting understandings as to ownership afflicts the majority of pastures in Afghanistan and is becoming particularly problematic as competition for pastures accelerates.
- *Pasture itself is unsatisfactorily defined as effectively any land that is usable for grazing or fodder collection, including banks of rivers and mountain tops.* Land agro-economically identifiable as pasture embraces 45 percent of land area. Virtually all land with rain-fed farming potential is also potentially grazing land. Much otherwise barren land is also usable for collection of fodder.
- *Insufficient legal or practical account has been taken of the dual or plural nature of land use.* Instead there has been a tendency to favour

the use of land for pastoral purposes. The original legislation of 1965 and 1970, which laid down definitions of pastures, clearly favoured the interests of pastoralists over local communities.

- *Pasture ownership is also confused and in conflict at the local level.* This is due to both a lack of legal support for majority land interests as well as classical trends towards privatisation of the commons. AREU land case studies found three competing conceptions of pasture ownership:
  - o The first acknowledges the pasture as owned by the dominant local landlord, as part of the domain carved out by his ancestors/first settlers or as granted by Amir Abdur Rahman (1880-1901) 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 access to be more privilege than right. Much less countenance is given to the claimed private rights of outsiders (nomads) who have been the recipient of state grants at various times. Their tenure may be recognised as “legal” but “illegitimate.”
  - o The second position holds that while the landlord family may be the recorded owner, the family is only the trustee. The family is bound to permit all members of the community and/or those who depend upon the landlord to share the use and benefit of the pasture. Access is thus a common right, not a privilege.
  - o The third position holds that local pastures were never individually owned but the property of the community as a whole. Any landlord or other person who has secured pasture under his name through registration or other means has done so wrongfully. While landlords as community leaders have the power (and duty) to defend local lands against outsiders, their rights are not superior to those of the community.

In all cases, either by virtue of community membership or dependence, common ownership embraces institutionally weaker and poorer members of the community, including those who may not have the means to use the pasture (livestock) or the tools to use its interspersed cultivable gullies or other areas (rain-fed lands).

Pastures in these respects 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 in principle access these 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 that is now so apparently occurring in pasturelands. The State itself has set a precedent for privatisation 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 after 1990) to secure documented claim to these lands.

#### **Communal and pasture disputes are the most complex and inflammatory**

While disputes over home and farm properties are many, those that are most widespread, involve the most people and most readily spill over into violence, centre upon pastures and the way in which rights to these have been acquired. In addition, it is these disputes that are so dangerously fuelling inter-ethnic and inter-factional tensions. Among property disputes presented to UNHCR in Faryab in 2003, 53 percent related to pasture, 26 percent to arable farms and 10 percent to shops and houses. In the Norwegian Refugee Council Legal Aid Centre in Pul-e-Khumri in mid-2004, 91 percent of cases concerned pasture and some arable farms; only nine percent involved houses. AREU case studies found ownership or access to virtually every pasture in sample districts in Bamyan and Faryab Provinces under dispute. Disputes were much fewer in Badakhshan, largely because significant compromises as to access had been worked out by different local administrations in the past. An indicator of the extreme extent of pasture disputes is provided by NRVA 2003. This showed that local community access to pastures had altered even over the year prior to survey in over 60 percent of cases. Fifty percent of districts with pastures confirmed grazing had declined.

#### **The most intractable land dispute is between settled non-Pushtun and nomadic Pushtun interests and rights over pasture**

A long and often bitter history underwrites these disputes, beginning in 1880s but periodically continuing since. The current effect of this is widespread refusal today by communities within Hazarajat and the north to permit Pushtun nomads to access seasonal pastures. NRVA 2003 confirmed this; Kuchis have not returned to pastures in 19 provinces and in 13 other provinces returns were limited. Overall, Kuchi

seasonal use of pastures had dropped to 6.2 percent of pre-war practice.

The central administration has been unable to resolve the competing demands of Kuckis and local communities because (i) the problems stem from entrenched public policy failures, and these have not been revisited with the level of change required; (ii) local warlordism, alongside widespread antipathy against the association of many Kuchis with Taliban atrocities is further powering disputes; and (iii) many local communities have used the last decade of absence of Kuchis to recapture lost commons and are determined to hold on to these.

### **Expansion of farming into pastureland is the common trigger to disputes**

The expansion of cultivation into lands that Kuchis and other graziers consider pasture, and/or have used in the past, is the indisputable trigger of ethnic dispute over pastures and the related competition for resources by cultivators and pastoralists.

The real extent of expansion of cultivation of pastureland is considerable. A joint FAO/government mission in 2003 found that government and later warlord-supported expansion into one large pasture, Dasht-i-Laili in the north, amounted to at least 16,000 ha. AREU land case studies suggest expansion may extend to up to 50 percent of local and public land pastures. Patterson's more precise survey of 200 Shiwa pastures in Badakhshan showed 22 percent arable expansion.

The environmental effects from this expansion are sometimes considerable, with landslides, flooding, wind erosion and soil loss of different sorts apparent. In other cases it is minor; loess soils in the north-east for example may be more resilient to farming than typically understood. Local communities have also at times been quick to impose restrictions themselves.

### **Expanding cultivation must trigger more workable land use paradigms**

There needs to be clearer formal management of competing arable and grazing needs in environmentally sound ways. Maintenance of outright bans upon all cultivation on pasture both escapes the need to identify what is pasture in more accurate ways and to adopt more nuanced approaches to viable dual and plural use. Given the often patchwork nature of viability, drawing lines between appropriate limits of cultivation and pastoral use (and in ways that will be sustained) is obviously best done on the ground and with those most knowledgeable and affected.

### **Pasture is the only land left to capture**

The reasons why pasture attracts the most conflict are not difficult to find. In the first instance, as variously attributed public lands, they represent a form of open access property. Not surprisingly, as soon as coercive authority systems break down (in this instance government's), pastureland is effectively "up for grabs."

Second, pastures have been the domain where historical inter-ethnic bitterness has had most power over the last half century. Resentment as to the way in which the Pushtuns, in particular, were granted valuable pasture throughout especially Hazarajat and the North is all too evident. This has been compounded further by resentment that Pushtun Kuchis 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 Pushtun farmers (as compared to Pushtun nomads) have settled in the colonised area permanently, this has often had a tempering effect. On the whole, Pushtun rights over farmland are accepted by those who farm the land for them and/or by local communities in general.

This has not been the case with pastures. This is due largely to the perception of pasture as shared local properties, or if very remote from the community, as rightfully national properties (or 'public lands') over which no one local community or ethnic group should have hegemony. Finally, the fact that the state has appropriated commons to its own tenure and then, to add insult to injury, reallocated them to outsiders is predictably a source of discontent.

### **Unpacking the character of these heated disputes is crucial**

Battles over pasture access operate within communities, among neighbouring communities and between tribes. Government as allocator of disputed rights or as claimant of community lands (public lands) is invariably party to the dispute, albeit passively at this time.

To some degree pasture disputes may be satisfactorily analysed as a conflict between two competing land use systems – settled and nomadic peoples; local and seasonal resource users; classes of rich and poor; different factional allegiances; or between ethnic groups. They may also be described as a conflict between customary and statutory rights, or a conflict between private and group interests.

All of the above have weight. In terms of class for example, graziers and Pushtun Kuchis in particular have enjoyed longstanding institutional and economic advantages that have placed them in superior socio-economic positions in relation to pastureland; this advantage is currently being challenged through essentially socio-political means. Nor are the ethnic dimensions of these class relations easy to separate. It is no coincidence that Hazara, Uzbek and Shiwachi in the case study areas are often sharecroppers or labourers on nomad owned farmland that had once been their own, or stock herders on pastures they consider customarily their own.

Land disputes as a whole cannot be easily explained, however, by class divisions 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. Conflicts over pasture may also not simply be put down to warlordism. Commanders have often served as *agit prop*,

leading the way in appropriating local commons or remoter public lands (increasingly for personal gain). Their factional support is already underlain by ethnic allegiances and their land capture delivered along ethnic lines. Support has invariably fed upon the long-simmering tribal land grievances outlined above. Because of this land history, commanders may be as much instruments as causes. In either case, limiting commander-led land conquest needs to be higher on the securitisation agenda than currently is the case. So too, it is important to account for these inter-ethnic histories if the difficulties they have engendered are to be finally set aside.

#### **Balance competing land use demands**

Despite (or because of) the widespread ethnic colouring of disputes, the optimal framework for resolution lies in addressing pastoral conflicts by balancing competing land use demands. Reform to flawed policy and legal paradigms, as relating to the classification of landholding and land use, are also integral instruments for achieving this.

## III. Land Laws and the Need for Change

### **Land law is complex and fails to capture real patterns of tenure**

Land law in Afghanistan is complex, inappropriately arrived at and irrelevant to the rural majority. Nonetheless, it exists in abundance. Aside from customary land law (unwritten) and *Shari'a*, a rich (but sometimes difficult to interpret) *Shari'a*-based civil code exists (1975) with upwards of 1,000 articles on inheritance, domestic land relations, contracts, transfers and mortgaging, etc., reflecting the historical concerns of routine administration. There are also around 50 statutes on rural property matters. This is a confused body of law, with many decrees being simply reissued by a new administration or reflecting amendments without clear repeal of earlier laws. The Taliban were particularly prolific in decree-making, among which important new subjects appeared (e.g. forestry, classification of lands).

So far the Karzai administration has restricted itself to establishing a dedicated court for land dispute resolution, providing for stronger recapture of public lands and outlining routes for investors to access these. Constitutional law has had an important role since 1923 in defining land rights but in its current configuration (2004) noticeably eschews any change on the standard provisions of 1964, other than permitting foreigners to lease land.

#### **BOX A: KEY ORIGINAL STATUTORY LEGISLATION ON RURAL LAND**

- Acquisition for public purpose (1935, 2000)
- Property taxation (1965, 1976)
- Survey and registration (1965)
- Distributive reform (1975, 1976 & 1979)
- Acquisition & sale of land (1979)
- Mortgages (1979)
- Cooperatives (1979)
- Pasture (1970)
- Forests (2000)
- Poppy production (2000)
- Restitution (1992, 1999, 2000)
- Classification of land classes (1965, 2000)
- Land dispute resolution (2002, 2003)
- Making land available for investment (2003)
- Restitution of public lands (2004)

### **The lack of legal constructs for common property is the most serious missing element**

Many legal provisions are insufficient, unsatisfactory or unjust, examples of which have been given earlier. The most important surround poor definition of public and/or government land, its wholesale possession of pastureland and most especially, the absence of constructs for recognition of common property interests (land held in undivided shares by nameable villages or communities). Customary land administration and dispute resolution also lacks legal support.

For most of the population the statutes are of academic interest. Few courts have full access to laws and primary courts often do not have copies of the civil code. Most judges rule on the basis of “common sense” and their knowledge of religious law. The populace at large are unaware of most formal law outside critical dictates that they have felt the effects of rather than known about. Even when known, corruption in use and implementation of law has lowered respect for the law to extreme levels. The state itself has frequently established double standards for example leading the way in cultivating fragile pastures for economic benefit (such as in the vast Dasht-i-Laili in the mid-1980s), issuing rights to land without following the specified order of eligible applicants, and failing to respect customary land rights as required by the law.

### **Land policies of the past have left a bitter legacy**

Certain land policies of the past have left a painful and dangerous legacy. Although a comprehensive national land policy has never been developed, land policies have existed, generally expressed and embedded in legislation as mentioned above. Dominant strategies have included:

- *Use of farmland as a primary basis of taxation* (formally begun in 1931), which was notable for its progressive structure from the outset and especially since 1965. However, these dues were all too frequently passed on to sharecroppers and tenants, and the system lacked transparency, especially during the 1970s, with many large holdings not properly taxed, while others were over-taxed, and many deals made as to farm size.
- *The opening up of arid lands* for much-needed arable land, through immense dams and irrigation projects of which the Helmand scheme was the largest and most costly. Favouritism and corruption in allocation was rife in such projects and the environmental effects broadly negative. These settlement schemes largely gave way to state farms after 1978. These areas constitute large and valuable properties, which could in due course be rehabilitated and put to good use by interested landless farmers.
- *Mass land survey and registration (“titling”)*, which was launched with aid funds in the 1960s at fabulous cost, achieved one-third coverage. Such mapping was largely abandoned by 1971. No farmer received a title deed as planned and no satisfactory system for administering rural land was put in place.
- *Ambitious equity reforms in land distribution*, which began in 1975 and were radicalised in 1978, along with provisions to limit unfair mortgaging, were sound in principle but extremely flawed in delivery. These reforms contributed directly to popular rebellion in 1978 and Soviet occupation.
- *State capture of most of the rural land area as public/government land* and the associated failure to pay compensation for the myriad of customary private rights lost and/or for the reallocation of these lands to non-customary owners.
- Integral to the state capture of land was the overriding policy of Pushtunisation, *ethnic colonisation*, formally begun in 1884 in the north of the country and shortly after in the pastureland of Hazarajat. This continued in waves up until 1978 through various forms of favoured land allocation.

### **Registration processes to date have not been comprehensive, transparent or fair**

The proportion of rural land rights that are evidenced in some form of record is unusually high for developing economies, but largely biased towards significant landholders. Evidence of ownership of houses is minimal but evidence of ownership of farmland and pasture is high. This does not mean that the records are accurate, fairly arrived at, indisputable or include all minor landowners (the land poor).

The main owner-held evidence of ownership is tax receipts (recorded and receipted between 1929-1978 and in some areas again in 1999-2000). Often those who could not pay tax lost their land to the state and those who could pay considerable tax “gained” larger areas than rightfully theirs, often including commons.

Tax payments were used as primary evidence in the land survey and registration exercise of 1964-1971, although owners have no paper evidence of the cadastral register. Over half the owners listed there are unconfirmed for lack of evidence. The farms of around one third of farmers of the time were surveyed and registered. Much wider coverage was made through the preparation of Books of Integrated Ownership and Taxation by the finance ministry during the 1970s and now held by the property department of the agriculture ministry, with copies at district level. Their formulation was based upon self-reporting by community leaders. Many very small owners simply do not appear.

*In none of these exercises have common properties other than central waqf (religious) sites been recorded, often falling by default under landlord names.* Recordation throughout has been by family name vested in the household head, with land owned by distinct members of the family, such as widows or daughters unrecorded. Many khans, notables and clan heads of the historically favoured Pushtuns hold land grant letters especially for pastures, variously issued since 1884, irrespective of their occupancy and customary tenure.

Finally, larger owners and/or those with the means and education to use the system hold so-called "title deeds," more often evidential documents prepared by the courts at transaction (purchase, sale, subdivision *inter vivos*, division at inheritance). Transactions are often legalised on the basis of (self-selected) witnesses. At various times since 1990, groups of existing or new users have sought to entrench occupation with new documentation, sometimes legitimising land wrongfully acquired.

No records are in the public domain. Their scope, accuracy, concurrency and utility is limited. Although powerful in the hands of those with means, court prepared documents are especially suspect with counterfeiting and false testimony widespread.

#### **Tenure security is no longer predicated upon the manner in which the land right is recorded**

The above sources do not generate tenure security in their own right, the conventionally attributed sanctity of "title deeds" notwithstanding. Roots of tenure security currently include political and military might, tribal affiliation and community consensus, within which documentation has limited relevance. This is because insecurity today pierces private landholding on three fronts:

- *First*, through land grabbing by the better off and 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 demonstrably all too easily fabricated, rendering customary/community based consensus important in the future;
- *Third*, ethnicity has long been the prime determinant of which properties are most vulnerable. While in the past, vulnerability was the fate of non-Pushtuns, currently Pushtun

lands are the most vulnerable to coerced sale or appropriation, following widely assumed link between Pushtuns and the Taliban, and rejection of past policies associated with Pushtun colonisation. This is despite the fact that many Pushtun rural properties are in fact the best and most documented.

Should restoration of order permit restitution of such properties, this will only be lasting with community consensus, not on the basis of documented proof of ownership. This is because the most important factor in stable legitimisation is not bureaucratic 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.

#### **Most rural land rights are not formally administered or regulated**

No proactive land administration exists and what is implemented is almost entirely limited to court certification and issue of documents confirming transactions, inheritance etc., or the agricultural ministry allocation of government/public lands on request. Both cater to better-off households. A considerable degree of informal and often verbal witnessing accompanies smaller transactions, following customary norms.

Even within its limited domain, innumerable problems afflict the system of land administration, including corruption and the difficulties involved in courts serving as their own assessors when disputed legal documents are presented.

#### **The lack of formal local land administration**

Less tangible, but with equal ill-effect, is the absence of local level land administration and the effective disempowerment of customary systems of regulation in face of stronger "legal" systems. Centralised legal systems are typical of 20<sup>th</sup> century approaches to land administration, but the disadvantages of overriding rather than building upon locally exercised mechanisms have been all too evident when centralised norms break down, as has been the case in recent decades in Afghanistan.

#### **Disputes over land are rife and increasing**

In 2002 only 16 percent of filed court cases were property related and those recorded fell largely within traditional categories of land dispute (disputes over transactions, water rights, rents and mortgages, inheritance). In 2004, 62.4 percent of all cases were land related. Wrongful occupation provided a prominent new category

of disputes (data kindly provided by the Supreme Court and Land Disputes Court in July 2004). In the six months of operation (2002) the dedicated Land Disputes Court (able to hear only returnee and IDP cases) received 300 cases and resolved around 50 (17 percent), although enforcement of decisions proved problematic. Between March 2003 and March 2004, the court received 1,588 property cases and dealt successfully with only 164 (10 percent), and with enforcement of decisions still problematic. Legal Aid Centres under the Norwegian Refugee Council are seeing a constantly rising number of submissions from refugees and IDPs, in which property cases are dominant (e.g., 76 percent at the Pul-e-Khumri Centre).

Reasons for rising land dispute are partly expected: returnees seeking restitution of occupied houses and farms; and frustration among landless refugees (up to 67 percent) and the homeless (up to 41 percent). Less anticipated has been rampant land grabbing and abuse of allocation and documentation systems, especially by those with factional or political links who are emboldened by the breakdown in rule of law.

#### **Many important cases are not reaching the courts**

Courts are, however, a poor indicator of the dimensions of disputes, as relatively few people bring their complaints to court. Reasons for this include unfamiliarity with procedures, lack of status, means, documents, literacy or knowledge to doggedly pursue the case through the courts, fear of recriminations (especially where warlords/commanders are involved), and lack of confidence that the court will rule without ethnic bias, or fairly where legal documents are concerned. There is also growing awareness of the high failure of the courts to bring cases to resolution or to have their decisions enforced. Nor are many land disputes involving

government land or officials being brought to court. This interlinks with *the main reason why so many disputes do not reach the courts and that they concern whole communities and not individuals*.

As noted earlier, the most complex and inflammatory land disputes are communal in nature and more often than not centre upon disputed rights to borderland rain-fed land and pasture.

#### **The local level has more ability to resolve communal disputes than the centre**

Neither courts nor the administration is well placed to resolve pasture disputes at this time. As well as lacking public confidence and capacity, courts do not have the necessary legal instruments, and are forced to fall back on heatedly disputed documentation and unaccepted legal norms. The administration does not have the policy instruments through which it can make effective breakthroughs – and is in a poor position to develop these without concretely exploring cases and viable options on the ground. Localised and participatory processes involving disputants will in any event be required if reconciliation is to arise out of decision-making, or for decisions to hold beyond the short-term.

The potential for resolution through this route is high. While tribal representatives cannot be seen to concede or compromise at the national level, and local people are unprepared to accept more national dictates as to ‘their’ lands, these same local people show signs of willingness to negotiate face-to-face with those Kuchi known to them, and in respect of specific pastures. Providing the environment for this to take place in sound ways is a priority. In the process Government may develop its more appropriate role as facilitator and gain credibility accordingly.

## **IV. Strategic Issues for Rural Land Policy**

The two major problem areas facing rural land relations and policy development are:

- (i) the high and probably growing proportion of households who are landless and homeless; and
- (ii) the dangerous communal land conflicts, focusing mainly on pasture and greatly exacerbated by inappropriate past policy and shortcomings in law.

General strategic implications from the previous sections are made clearer below.

#### **1. Prioritisation is going to be essential**

A plethora of problems and constraints confront rural landholding. Sorting these out into a reasonable strategic order of importance is necessary. Reforms at the best of times require patience.

## **2. Formulating new land policy and legislation will not in itself solve problems**

While this is so obvious as to be almost tautological, experience from elsewhere suggests the point cannot be made often enough. Looking at 20 land reforms of the last decade in Africa alone, it is striking that in eleven cases promising new national land policies and/or laws have not been followed up with implementation or uptake.<sup>14</sup> Flawed top-down process is largely to blame, closely followed by not-unrelated diminishment of political and administrative will.

## **3. Practical recognition of limited rule of law is needed**

Simply issuing new decrees will have limited effect. Even court decisions cannot presently be expected to be a route forward to social change or improved decisions and norms. Finding ways to constructively alter this through judicial and administrative reform and improved security are critical. Finding ways around these realities in the short to medium term is more important.

## **4. Attending to disorder in land relations is becoming more not less crucial**

Disturbed land relations are ultimately a security issue. Peace cannot be fully achieved without their resolution. Conversely, constructive resolution of land conflict can help deliver peace.

## **5. Dangerous conflicts exist over land and resolving these is the obvious starting point**

The main focus of dispute is not houses or irrigated farms but the shared resources of local commons and public lands, particularly pastures. These disputes are inflammatory because they involve whole communities, are often ethnically aligned, and embody two fundamental issues impeding safe rural land relations: (i) conflict between community and state land rights, as manifested in competing constructs of communal and public/government land; and (ii) mismanaged competition between arable and livestock land economies, in which rain-fed farming is the troubled interface.

## **6. History cannot be safely ignored**

Land conflicts arise not just from current instability but have roots in longstanding inequities at the tribal level and in now rejected public policies that promoted those. Simply reinforcing (or enforcing) those policies and the legal dictates and systems that support them will hardly be productive. In respect of pastures

in particular, a return to conditions of February 1978 is not viable.

## **7. The current focus upon registration as a route forward needs reassessment**

Some donors tend to adopt a knee-jerk response to tenure problems by promoting more and yet more titling, the experiences of the past or the real benefits of which are often illusory. Factors to consider include:

- First, registration/re-registration is focused upon farm properties, and while these are far from conflict free, they are not the priority sphere for action in the short-term. Moreover, such conflicts over individual houses and farm properties are much more easily resolved through existing means and using (improved) document based norms. This is not the case with pastures.
- Second, many private rights have been established over pasture through legal and other means and their logical inclusion in titling will provide the final match to widespread contestation.
- Third, a radical overhaul is needed in the tenurial and related land management paradigms that underwrite land rights and their administration, and this should proceed ahead of any titling programme, irrespective of property classes covered.
- Fourth, even in its own right, dogged pursuance of recordation or re-recordation of rural rights is unviable without a thorough reassessment as to how these will be most safely, fairly, and inclusively secured in a sustainable manner. Arriving at this requires a more empirical approach than classical approaches suggest. Learning from the bottom up is required. In addition, the day to day systems through which paper entitlements will be managed need dramatic overhaul and require an approach that will be incremental and experimental in nature.
- Fifth, much can be learnt from the failed titling initiative in the 1960s, and from the experiences of titling programmes in other countries. Perhaps most immediately crucial is the consistent experience of classical titling being simply too expensive and time-consuming to be easily implemented and then operated once established. Systems frequently lapse into non-use (other than by elites) with few transactions on the registered land being recorded. Corruption tends to enter. Thus, in a situation where investment, capacity and timeliness as well as the need

<sup>14</sup> See footnote 2.

to rigorously prioritise interventions will be crucial, titling appears dangerously like another white elephant. Titling will waste time and resources when more innovative approaches are required that will deliver more viable registration regimes.

- Sixth, thoughtful consideration is needed as to what primarily sustains record-bound land entitlement regimes – trust. The impact of the breakdown in the integrity of the existing recordation system is plain for all to see. However, restoring trust in a system involves more than making the records accurate and difficult to fabricate or alter. Trust is even more dramatically limited where the system exercises an unaccepted order. That is, trust relies upon the allocations of rights and registration being accepted as just and fair. This is again of special relevance to the pasture domain where no amount of titling can remedy structurally flawed paradigms, although it may for a while (and did) paper over them.

#### **8. Redistribution of private farmland is not viable**

Inequity in land holding is clearly as much a feature of landholding today as it was when

both the first republican and then communist governments felt bound to intervene. Conditions for immediate redistributive reform are however not favourable. Reasons include (i) the failed experiences of the radical land reform of 1978-1981; (ii) the absence of necessary strong authority or rule of law to see such reforms through; and (iii) recognition that there is insufficient private land to redistribute to meet needs.

Furthermore, as AREU land surveys found, there is not much appetite at this time for redistribution of landlords' properties among the landless. Also, many do not perceive acquisition of land as the panacea to their ills. For the homeless acquiring houses is given higher priority. For those with homes, tools and oxen to better bargain labour terms are frequently listed. Some who had been allocated land under redistribution programmes did not have the tools or seeds to develop these, or the means to pay demanded tax. Those lands have since reverted to the government. In general, more thoughtful investigation is needed to constructively assist the landless and homeless.

## V. The Way Forward for Rural Land Policy

Six priority actions are proposed that variously target the landless and homeless, and the chronic problems surrounding pastures.

### **1. Revive settlement schemes**

While private estates are likely to be insufficient in number to render redistribution viable, as the largest arable landowner the government does have the resources to distribute (and the duty to do so). Early planning towards this medium term objective should get underway.

Rehabilitation of settlement schemes offers the logical context through which this could be pursued. Organised and assisted schemes help deal with the fact that provision of land on its own to the landless is not enough; that assistance with tools, seeds, oxen and ploughs is also needed on fair terms. Where this was provided as part of resettlement packages in the past, positive benefits followed. More rigorous adherence to targeting the genuinely poor than was the case in the past will be needed. Landless and homeless returnees with an interest to become farmers would be the logical first target group. A helpful attribute of this group is that UNHCR possesses accurate records as to who is and who is not a returnee.

Mine clearance, clarification of tenure of such properties, and a host of other changes are required first. In addition, for lesson learning, rigorous evaluation of past schemes needs to be carried out.

### **2. Act to halt privatisation of the pastures**

There is an urgent need to halt creeping privatisation of the commons which is *inter alia* dispossessing the landless of residual shared property rights.

This can be achieved within broader processes outlined below that clarify on a case by case basis the tenure status of traditionally community used pastures as definitively the private property of the community (common property). This is important to all shareholders in common properties but has added relevance to those who are homeless as well as landless and whose only asset is small stock.

### **3. Focus on rural housing needs**

Shelter requirements traditionally receive inadequate attention in the rural sphere. The exception to this in Afghanistan is in respect to returnees and IDPs. A number of agencies are

gradually moving towards assistance with new permanent shelters in some areas. This needs expanding and developing to encompass the often forgotten local homeless sector, arguably the poorest of the poor.

Aside from the welfare benefit imparted, targeted action to assist the rural homeless will contribute indirectly to dealing with tenure inequities. As concluded earlier, the lack of even the most modest owned shelter predisposes such households to levels of exploitation, disadvantage and inability to accumulate income and capital assets, that is less certainly the fate of other rural landless households. Owning a house in a village will put the homeless household on a more even footing with at least other rural landless. The household may gain status as a formal community member, enhance rights to attend school, and facilitate access to welfare, food for work and cash for work opportunities. Such programmes could also avail limited redistribution within the community given that land sites would need to be acquired on a willing seller willing buyer basis and almost certainly from the largest landlords.

#### **4. Develop new tenure and land use norms**

New norms are needed to move beyond the current quagmire of competing interests and conflicting claims over pastureland and the impossibility of resolving these safely through current paradigms and processes. The outstanding requirement is for customary distinctions between local common and national public tenure to be admitted properly into national law, and for the meaning of common property itself to be appropriately reconstructed in accordance with majority community will. In terms of constructs community lands should equitably exist in law and practice alongside lands appropriately retained as public lands. The meaning of public lands itself needs reconstruction towards definitive national tenure, in which the State operates strictly as trustee, not proprietor.

Clarification of suitable access rights that may be allocated over public lands, and by which bodies, at which levels, and with what terms and conditions, is also required. Similar requirements exist in respect of developing appropriate regimes for community lands, including likely sub-categorisation of village lands, ward lands (*mantiqa* level) and district lands. The further domain for attention relates to the fair and sustainable handling of both legally existing and self-allocated private rights over community and public lands. Exploration and adoption of norms towards rationalised use of pastureland is equally required, for adoption in both public and community spheres.

Particular attention to management of plural access and definition and management of dual arable and grazing use as appropriate, will be needed.

While some progress towards new paradigms may be made on paper and centrally, by far the more instructive route will be through localised trial and learning by doing, such as outlined below.

#### **5. Adopt sound procedures to policy planning and action**

Reference was made at the beginning of this brief to reformist experiences beyond Afghanistan in the rural land sector. Some lessons were articulated. However, if there is a single outstanding common lesson emergent from diverse reforms, it is simply that sound process matters. Sound process in this as in other sectors relates directly to the adoption of democratic approaches, which means adopting localised and participatory process – even in the matter of policy planning. Related, the failures of mass land programming strongly suggests that incremental, learning by doing strategies yield infinitely superior results. This is a particularly crucial requirement for local support for any change in norms and procedures to be taken up and sustained. Mass public consultation programmes on national land policies developed at the centre in other countries have been insufficient to engage the necessary level of local ownership of reform to carry it through. This is so even where conventional instruments of bureaucratic coercion are amply in place.

These lessons have particular importance to the way in which the newly established land commission will operate in fulfilling its mandate to deliver useful new policy and supporting legal and administrative paradigms. It will be relatively simple for this important body, with the aid of consultants, to produce hefty tomes as to the way forward, including substantial backup with survey reports. Such reports, like so many before them, risk being placed on the shelf, the difficulties of implementation simply too onerous to contemplate, without another round of expensive and internationally-driven financing.

It will be considerably more challenging but infinitely more rewarding for the land commission to adopt from the outset an empirical approach. This means tackling priority problems in units of manageable size and practically addressing these through on the ground pilot development. It suggests evolutionary policy development, which is thoroughly rooted in practical and contextually accurate experience. It suggests evolution of

new norms that will have high workability and adoptability. It suggests systems development that will more genuinely build from the bottom up, and in the process more appropriately reconstruct supporting roles of district, provincial and central administrations, and the courts. It suggests systems that will be cost-effective and replicable. It suggests genuine opportunities for more inclusive and socially just regimes of land regulation and administration.

### **6. Begin, not end, with the commons**

Where to start? The obvious focus for such an approach is the pastures, the centre-ground of priority paradigm reform and the prominent arena of contestation.

Why focus on pastures? To recap:

- The situation on the pastures is worsening annually. Imminent recovery of stock numbers following the 1998-2001 drought; gathering discontent on the part of Kuchis as to the continued limitation upon their access to summer pastures in Hazarajat and the north; rising environmental degradation through uncontrolled conversion of fragile pastureland to arable use; and breakdown in state and local mechanisms for regulating pasture tenure and use all signal the need for action.
- Pasture is the one real property asset that directly impacts upon the land rights of the rural poor.
- Pastures bring together urgent policy development needs towards improving systems for management and regulation of land use; reconstructing tenure norms to better and fairer effect; and adopting practical routes towards dispute resolution and in ways where reconciliation is possible.
- Pastures (and indeed forests) provide clearest opportunities for arriving at sound developmental mechanisms for rural land tenure governance. These will be necessarily more localised than is currently the case. This is because of the wider demands of democratic and locally inclusive governance; and the efficacy of local decision-making as compared to remote directives from centralised administration.
- The need for government departments to move towards technical advisory and watchdog roles rather than operational functions in land administration. This is particularly important for land use management. There is a need to develop systems that have high user levels and adherence through being locally accessible, cheap to use and operate. Localised regimes also enable land use decisions to be practically integrated with tenure decisions. Shared rule-making and monitoring of adherence to these is also infinitely easier when elaborated at the most local level. Needless to say, such regimes build in significant part upon customary procedures. Their development is most easily first pursued in respect to shared land resources. This also offers justification and means for much more inclusive procedural norms to be established, the poor and women included.

### **How to move forward?**

Pilot projects inevitably suggest themselves, but these need to be proficiently facilitated. Box B outlines the first stage of a logical procedure for tackling pasture disputes and related requirements for new pasture management and tenure decisions. Under the advised aegis of the new land commission, a series of such pilot developments should begin to be implemented. Such an approach could play a significant role in guiding policy making towards viable new land norms and resolving land conflict in rural Afghanistan.

**BOX B: 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/manteqa
- 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 findings and suggestions individually to each participant 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/Pushtu 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 facilitation 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

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