

## Executive Summary

This Issues Paper presents the findings, conclusions and recommendations of the “For Building Capacity to Address Land Related Conflict and Vulnerability in Afghanistan” research project, known in brief as the “LC Project”. Funding for the LC Project was provided by the Afghan Ministry of Agriculture, Irrigation and Livestock (MAIL) with assistance from the World Bank. The LC Project’s overall objective was to help reduce land-related insecurity and vulnerability by strengthening the Afghan government’s capacity to resolve or assist in the resolution of land conflict in a manner that is fair, effective and legitimate.

The effective management of land is critical to Afghanistan’s development. Land tenure, the system by which land is owned and managed, has a significant influence on the agricultural sector, which in turn will be the cornerstone of rural development for the foreseeable future. With the rural population experiencing a higher poverty rate and significantly outnumbering the urban population, the Afghanistan National Development Strategy (ANDS) gives the agricultural sector top priority status.

The Afghan government’s lack of capacity to manage land tenure, a situation most visibly demonstrated by the prevalence and intensity of conflict over land, hinders its ability to effectively plan for rural development. A dearth of land titles—necessary for many land transactions and dispute resolution mechanisms administered by the government—leads most rural landholders to utilise community-based resolution mechanisms. These community-based mechanisms, known as CBMs, are in many instances unable or not permitted to provide parties with documentation acceptable to the government. This perpetuates a reliance on CBMs at the expense of an expansion of government-administered mechanisms.

Effective management of land tenure is inextricably linked to other sectors. For example, as poppy production and the opium economy continue to flourish—notwithstanding commendable progress in

certain areas—many farmers find themselves with insufficient land, or insufficient water for their land, to sustain their families with legal agricultural activities. It is well understood that if they do choose to grow opium poppies, this may have the knock-on effect of funding the insurgency and perpetuating conflict. Similarly, many of the causes of land conflict also underlie other dimensions of Afghanistan’s development context: population growth; repeated intergenerational division of family resources; returnees and internally displaced persons; climate change and its impact on meteorological anomalies such as drought; and corruption, at both a government and community level. A better understanding of these causal factors can also help mitigate land conflict.

Despite all these considerations, the prevention and resolution of land conflict continues to take a back seat to other issues. Management of land conflict is mostly ad hoc, with disputants trying to navigate an unclear web of community-based and government systems, which are themselves often circumvented by influential people or the officials responsible for them.

The large demonstrations in Kabul in mid-2008 over transhumant versus sedentary land rights served as yet another reminder of the need to invest more resources and attention in the prevention and resolution of land conflict. Steps have already been taken in the right direction. Owing to the influx of donor assistance since the overthrow of the Taliban and, to a more limited degree, a realignment of policy by the post-Taliban government, land conflict in Afghanistan is now better resourced than at any time in recent memory. However, although progress has been made, the results remain tenuous and accomplishments incomplete, and there are many reasons for continued investment in the sector.

### Types of land conflict

Land conflict exists in a myriad of forms and results from diverse circumstances. For example, it can take the form of non-violent inheritance disputes

among siblings; ethnicity-based provincial-level conflicts that result in conflict, casualties and significant damage to property and livestock; and group-based land-appropriation that perpetuates inter-community tensions. Each conflict takes place in a unique context composed of various influences, which further complicates efforts to “typify” land conflict.

However, acknowledging the unique nature of each land conflict does not preclude the development of an understanding of the common characteristics of different types of land conflict, nor does it limit the usefulness of such knowledge. With this in mind, a typology of land conflict was developed using data from Norwegian Refugee Council’s Information and Legal Aid Centres. The key findings were:

1. The highest frequency of disputes concern property ownership rights (inheritance and occupation are the most common causes)
2. The majority of disputes concern less than ten jeribs of land (20,000m<sup>2</sup>); however, disputes over the largest areas usually concern common property
3. Most disputes are in “bad faith” (where one party appears to be challenging another party with the aim of illegally acquiring the land), which appear to be more intractable than “good faith” disputes (where both parties feel they are genuinely entitled to the land)
4. Some resources are predisposed to certain types of dispute:
  - Non-mortgaged private land is of highest value and most frequently subject to occupation or inheritance disputes
  - A high proportion of access and boundary disputes concern mortgaged and common property
  - A relatively high proportion of water disputes concern mortgaged land
5. Disputes that challenge land ownership rights generally last longer
6. It is the most vulnerable who tend to pursue disputes collectively; a high proportion of group cases address power asymmetries and are against commanders, the government and other powerful groups
7. In most respects, group cases differ from individually-led cases

Based on the information from the land conflict typology and other sources, the LC Project determined that the majority of land disputes in Afghanistan fall into one or more of five principle categories. They are:

1. Conflicts involving the illegal occupation of land by powerful people
2. Conflicts involving inheritance rights to private property
3. Conflicts involving the return of people to land they previously owned
4. Conflicts over private property between established villagers (not returnees, refugees or internally displaced people)
5. Conflicts involving common property resources managed through common property regimes, for instance certain pastures, forests and water for irrigation

Five pilot cases corresponding to each of these principle categories were selected for further study.

### Best practice approaches for resolution

Approaches that a conflict manager (such as amlak staff, a respected community member, or a lawyer) may use to help resolve a land conflict differ based on the resolution mechanism used and the particular attributes of a case. Best practice approaches are not meant to be applied blindly. Instead, they are

key points to consider when approaching a land conflict. Best practice approaches are presented below, based on the main dispute-resolution categories used in the report: the general court system (GCS), community-based mechanisms (CBMs), and political advocacy.

In all cases:

- Conduct detailed interviews with disputants and other relevant individuals to develop a full understanding of the conflict before determining a resolution approach.
- Working with disputants to understand their desired outcome helps focus the selection and course of the resolution mechanism and increases disputant buy-in; similarly, explaining the possible outcomes helps keep expectations realistic.
- Allow disputants to express their concerns to a neutral third party without decision making power to facilitate dialogue between the disputants and those involved in resolution.
- Collecting and verifying required documents can often be an onerous process, but it is necessary to allow the disputants to feel that all relevant information has been duly considered.
- Raising awareness among disputants of their rights helps clarify the expectations of all parties involved.
- Suggest respected and fair community leaders to represent each side to ensure that disputants' interests are similarly protected.
- Neutral third-party participation in mediation sessions increases efficiency, accountability and transparency.
- Ensure multiple reviews of decisions to guarantee a universal understanding of agreement terms and to promote the durability of the outcomes.
- When possible, registering CBM agreements with the government, usually via the court system, increases the legitimacy of an agreement, improves enforcement and precludes future claims on the same issue.

Regarding political advocacy:

- When meeting officials, the attendance of neutral third parties encourages the relevant authorities to take action as required by law.
- Involving other organisations to advocate according to their experience increases the effectiveness of advocacy by utilising existing relationships and areas of expertise.

## Lessons learned

The LC Project activities, including the development of the land conflict typology and the investigation of pilot land conflict cases, allowed for the articulation of “lessons learned”. These are recommendations applicable to most categories of land disputes and resolution mechanisms. They are:

- Clear indicators can be identified that determine whether a land dispute may be more appropriately resolved through the general court system, a community-based mechanism or political advocacy.

In the general court system:

- Assist with court procedures by preparing disputant claims, collecting and verifying disputant documentation, and identifying and preparing witnesses.
- Brief officials on applicable civil, sharia and common law to facilitate their accurate implementation.

Through community-based mechanisms:

- The approach taken to dispute resolution must remain adaptive and flexible to setbacks and changes. As circumstances or stakeholders change it may be advantageous to switch dispute resolution approaches completely.
- Preparation, advocacy and oversight are essential to increase the performance of the court system.
- Preparation, information and oversight can build the capacity and effectiveness of community-based adjudication mechanisms.
- All stakeholders should be given ownership of the dispute resolution process to help legitimate the outcome.
- Some disputes may not be resolvable through the court system or a community-based mechanism and so require an ad hoc approach that may include administrative action, executive attention and political advocacy up to the national level.
- Community-based agreements are best sustained by some form of official endorsement to guarantee their outcomes, especially where rule of law is weak.
- Mediated agreements may require some form of incentive to draw the parties into the negotiation.
- The selection of mediation and resolution tools should be appropriate to the situation.
- There is therefore a clear need to engage with government stakeholders from the outset of any conflict-resolution initiative.
- Supporting both village level institutions and local government is important to achieving lasting resolutions to land conflict and better quality land management in general.
- Recognise shared “rights of use” rather than “ownership” of common property.
- National NGOs can help legitimise and support the implementation of agreements.
- Careful criteria applied to the selection of disputes means there can be a reasonable expectation of a successful resolution.