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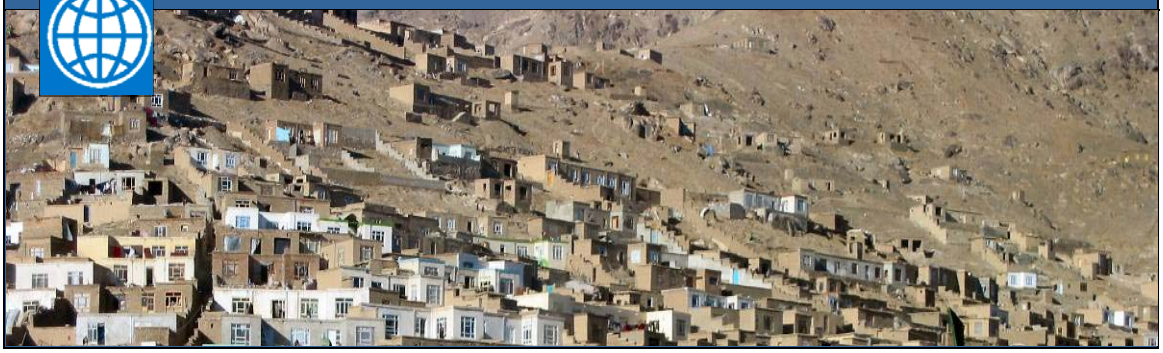

Informal settlement in Kabul

Conflicts over property rights and resolution of disputes in Kabul: Conclusions

This note presents policy recommendations on mechanisms to address land tenure and land dispute resolution in urban Afghanistan. Currently, formal disputes are numerous but they are not as numerous as could be expected. Nevertheless, the potential for significant conflict over property, particularly during a regularization policy, remains mainly due to the chronic insecurity of tenure and corresponding fear of bulldozing endured by Kabul's informal settlers. Supporting a pro-poor strategy and proceeding to regularization is the most promising way forward. Both formal and informal mechanisms have an essential role to play in land disputes resolution. Given the magnitude of Kabul's informal settlements, community-based mechanisms need to be supported and they are an efficient way of addressing existing and potential conflicts. Customary norms provide an excellent platform upon which to build accountable, reliable and trusted systems of evidencing. The Special Land Disputes Court, mostly dealing with disputes over private lands, needs to reformed to improve its performance, capacity and accountability. Finally, basic good governance measures need to be implemented in the public agencies involved in property transactions.

1
Policy messages

Property conflicts and insecurity of tenure need to be treated separately[i].

Formal disputes have been shown to be relatively limited and largely the preserve of the better-off, given the nature and location of properties that tend to be involved and the time and costs involved in pursuing justice through formal means, and especially the courts. In contrast, chronic insecurity of occupancy is tangibly the fate of the majority. In Kabul this primarily takes the form of fear of eviction, largely because homes and shops have been constructed over the last 15 years on government land without the formal permission of the government or on unplanned land. Regularization of informal settlements through private entitlement exercises is the most promising route forward. Regularization criteria based on location of the settlement, mode of plot acquisition, income group and time of the settlement need to be developed (see Policy Note 2 of this series). However, the regularization process itself may trigger multiple disputes and will need to be carefully managed.

A pro-poor strategy should underlie regularization of informal settlements.

While poorer households should be given the opportunity to secure formal ownership of their homes on government land, the country's laws and sanctions should be applied to those who originally appropriated government land to make money out of plot and house sales.

A strict conceptual or strategic distinction between formal and informal property dispute resolution is to be avoided.

In practice, both formal and informal processes are essential foci of action. There are no grounds for supporting the improvement of one form of dispute resolution over the other. Both have a role to play, determined by a complex set of factors such as the nature of the case, its location and resolvability. Some disputes are simply unsuitable for community-based interventions while many others are unnecessarily brought to officialdom or the courts—and which bodies would, in any event, direct that the matter be resolved locally (e.g., boundary disputes, right of way access) or by local actors (e.g., inheritance matters). In other respects, the nature of the case is not at issue, but the extent to which satisfaction and enforcement may be secured. Disputes that are first sought to be resolved at local level may eventually end up in the courts. Overall, the interrelationship of the formal and informal (or official and community-based) mechanisms is close and usefully upgraded together. Public confidence in achievable justice in the courts is in practice an important backdrop to successful community-level dispute resolution.

The realities of the interrelationship are already entrenched in policy and guiding legislation. Sharia, the Civil Code and the Civil Procedures Code as well as relevant state laws share an emphasis upon procedures which in practice blur the distinctions of formal and informal process. In the first instance, mediation toward reconciliation is invariably the preferred first-line mechanism and in the second, local bodies such as shuras and local leaders are advisedly involved. Long-standing acknowledgement of the existence and authority of local shuras permeates public process in all spheres. Under the new Constitution justice will be delivered into more formally instituted elected local governments at village/neighborhood and district levels (Article 140). Meanwhile, the Judicial Commission has begun drafting a 'Peace Councils Law.' Although this began life as a mechanism to formalize local shuras in their dispute resolution roles, the current version of the proposed law restricts these to district and provincial levels and with membership that includes elected persons from formal institutions—Hoquq, Saranwali and the Court itself (Article 15). The stated objectives of these new institutions are to assist reconciliation among the disputants, to assist courts to settle disputes through peaceful means and 'to reduce waste of time and the wandering and distress of disputing parties' (Article 1). The members of these jirgas would be unpaid (Article 19). They would assist disputants to reconcile their differences, taking into consideration local norms, human rights, laws and Islamic values (Article 7). While the proposal is still a draft it could represent a significant link between formal and informal spheres of dispute resolution.

Improving court procedures, performance and public accountability in the handling of disputes will be an essential step not just for dealing swiftly and fairly with existing disputes but for limiting the rising number of new disputes. Formal litigation is currently the preserve of the better-off, mainly because of the type of properties involved, and likely to remain so. The logical target for both procedural and governance support is the Special Land

Disputes Court, which is a manageable and usefully discrete unit with which to begin reform and accountability. Professionally planned and executed support and monitoring that significantly raise its success rate, and in ways the public identify as honest and fair, will have an impact on public confidence in the state and rule of law that far outweighs the number of cases it actually handles. Depending upon performance, consideration could usefully be given to widen its mandate and incrementally, its jurisdiction, to embrace all property disputes cases that involve disputes over property rights, not just those affecting returnees.

An additional useful target for public governance reform will be those municipal and ministerial commissions that have the power to allocate building plots, housing and apartments. The important political transformations currently taking place, launched with the democratic election of the president, offer an important window of opportunity for re-examining procedures and players, with transparency firmly in mind. New and more publicly available systems of record-keeping will be key elements of reform.

Local institutions and actors in property dispute resolution are worthy of support.

The evidence from this short examination of disputes suggests that localized, community-based mechanisms are both widely operating and indispensable instruments for not just keeping cases out of the over-clogged courts but also for resolving disputes in affordable, more peaceful and lasting ways. Building upon what exists seems logical and essential. This needs to be accomplished in ways that avoid their formalization to an extent that jeopardizes the very advantages of being local, at the grassroots and essentially informal.

Lack of formal documentation of title as compared to informal deeds is not the cause of disputes, and formal titling will not on its own resolve or eliminate property disputes. Those with most security of tenure seem to be not those who necessarily hold legal deeds of ownership but those living in middle- to low-income properties in older, unplanned (unserviced) but established settlements in the city. An essential factor in this is that first, most have acquired and still sustain their rights customarily (customary deeds of inheritance or purchase) and second and related, live in socially intact environments, in which local leadership and respect for local norms and social sanction systems are effective. In contrast, although it is the appeal of more valuable properties that has engendered possible corruption of process and forging of documents, and thence dispute, the promised sanctity of title deeds (legal deeds) has not been broadly upheld. There are few grounds at this point for claiming that issue of legal deeds is indispensable to security. There are, however, grounds for claiming that security of tenure is primarily premised on local cohesion and social stability.

Customary norms provide an excellent platform upon which to build accountable, reliable and trusted systems of evidencing ownership and which will be more readily available to the mass of urban owners.

A large percentage of informal city-dwellers are living today on government land and therefore have no legal security of tenure (by customary evidence or rightful acquisition or otherwise). It does not necessarily follow that this security may only be granted through acquisition of court-prepared deeds. Practically speaking, the scope for advancing cheaper and more localized community-based systems for the issue and maintenance of

evidence is very high. Such a system could build upon the existing customary traditions of evidencing. An essential feature of its modernization would be to retain the center of evidencing at the local, community level and involving community actors. This could not only heighten reliability and accountability of records but enable thousands of families to secure their occupancy cheaply and in relatively short periods.

2 Suggestions for action

In broad terms, the rise in property disputes in Kabul reflects the weak rule of law in the post-conflict state and insufficient supply of organized and legitimate shelter to meet the needs of thousands upon thousands of homeless families. General requirements to limit property disputes include actions to:

- **Address further informal occupation of government land in the city;**
- **Regularize existing occupancy as swiftly as possible, in at least those areas where environmental damage is not excessive;**
- **Strengthen the practice and raise the legal status and support for informal machinery for resolving disputes;**
- **Support and reform the judiciary in ways that dramatically speed up the resolution of property disputes and public confidence in decisions;**
- **Encourage provision of autonomous legal aid services;**
- **Reform policies and procedures in the public sector;**
- **Impose new transparency measures that reduce corruption and collusion on the part of decision-makers in the property and housing sector, including formal procedures for routine accounting in the public domain.**

In short, most requirements to bring order and justice to property relations in the city are necessarily basic good governance measures. Only with such changes will public confidence in the state and the rule of (property) law have a chance to be restored. The government is not in a position to pursue all desirable interventions simultaneously, but even a limited number of modest but solid interventions will lay a foundation for incremental improvement. The following are suggested as priority actions.

Target the Special Land Disputes Court for concentrated improvement and expansion

The concept of a court with special responsibilities is sound and, given the proliferation of property disputes, a concerted focus to improve the performance, capacity and accountability of the Special Land Disputes Court is an appropriate first target for reform. Among others, these actions should be considered:

- **The expansion of the remit of Special Land Disputes Court to allow it to handle all property disputes relating to claims of wrongful possession or ownership, not just those deriving from refugees or internally displaced persons (IDPs) who have lost properties in their absence;**
- **The expansion of its service to the community through establishment of staffed branches in different zones of the country;**
- **The appointment of more senior judges in the Kabul Province Court to allow the ten assisting judges to form three separate teams/courts to speed up review and rulings;**
- **Provision of more clerical support to speed up investigation, review and preparation of cases;**

- **Provision of transport (and for ex-Kabul cases, per diems) to enable judges to hear cases in situ including taking testimony from neighbors;**
- **Implementation of the Presidential Directive that the Ministry of Interior provide the Court with a Special Police unit, made accountable for identifying and bringing summoned defendants to court and enforcing rulings;**
- **Extension of the statutory time within which a case must be heard from two to three months;**
- **Provision of training courses for judges to ensure they are at the very least fully familiar with the legislation beyond the Religious Rules and Regulations, including the Civil Procedures Code and all land-related state laws and upgrade their skills in the collection, recording and analysis of evidence.**

The above recommendations should be strengthened with a Public Accountability Plan. Such a plan would:

- **Require judges to account for failure to resolve submitted disputes within the stipulated time; suspend judges who have failed to do so in a stipulated number of cases within each quarter; maintain complete records of proceedings, and make these available on request to an established Monitoring Unit which establishes an agreed system for collecting and recording evidence;**
- **Oblige the Court to make full text of decisions available to the public on request;**
- **Oblige the Court to prepare and publish a Code of Practice for the Court available to every district office and post it outside every branch of the Special Land Disputes Court, and include public information of how attempts to collect fees or bribes or other complaints are to be reported;**
- **Require the Chief Justice to establish a Monitoring Process to spot-check performance of the Court and to publish an Annual Progress Report in the public press.**

Help limit the number of disputes entering the Court, through providing public and practical support to informal mechanisms

- **This would be best launched and tested in selected districts and would target Wakil-e-Gozars, Mosque Councils and other informal institutions like committees formed at the community level. This could occur in conjunction with establishing new localized land administration procedures that may be piloted in upgrading schemes or where informal settlements are regularized.**
- **Establishment of new permanent institutions may not be advisable as these may require unsustainable support and/or encourage rent-seeking by the members. However, articulation of clear procedures that community members, committees and leaders may adopt to maximize fair resolution of conflicts will help raise the status and authority of informal mechanisms. Training in basic legal principles and mediation and reconciliation process would be helpful. Manuals could be developed for this. Public guidance could be more widely given through radio, television and press. Simple systems for the recording and reporting of reconciliation or decisions should be developed and consideration given to straightforward means through which such decisions may gain the weight of law.**
- **Development should also be continued to find the right forms for already proposed district-level jirgas or peace**

councils, which have the potential to integrate community and formal mechanisms, and to further limit the introduction of cases into the courts.

Assist the new post-election leadership and staffing of the Ministry of Urban Development and Housing to take action to tighten up and monitor allocation of housing to disallow any individual to acquire more than one government-built or Municipality- allocated housing plot, by:

- **Establishing independent review capacity of the plot and apartment records of the Municipality and Maintenance Department (MOUD) with systematic expropriation pursued of those who were allocated more than one such asset;**
- **Providing the Shelter Department of MOUH with computer assistance to computerize each and every Block Register Books, which are currently updated manually. This will enable owners to be quickly identified and those who own (or whose wives or families own) more than one apartment to be identified;**
- **The establishment of publicly accountable procedures and reporting of the decisions of such allocation authorities, as well as the decisions of internal complaints commissions in the Municipality and Ministry;**
- **Systematic investigation and prosecution of officials found to have acted corruptly since December 2001 with respect to apartment and building plot allocations, and public land appropriation and developments.**
- **In the long term, move toward the privatization of government-built housing by selling off to willing buyers, thus shifting responsibility of maintenance to owners and generating a supply of capital to invest in servicing urban land.**

3 Endnotes

[i] It will also be important to see that they function in a complimentary fashion. If they clash, it will cause more insecurity. Sporadic titling, especially if carried out by institutions subject to corruption, can be a major source of insecurity for those without clear legal rights to occupy land. The informal users in a state of "suspended tenure insecurity" often find it becomes real and urgent when someone turns up with a legal deed from a court or land registry.

This policy note is based on the document prepared by the South Asia Energy and Infrastructure Unit at the World Bank, *Kabul: Urban Land in Crisis, A Policy Note*, September 2005, based on research conducted in January 2005.