



*Informal settlement in Kabul*

## What are the sources of conflict in urban land tenure?

Formal property disputes in Kabul are numerous, but not as numerous as expected. Most formal conflicts pertain to high-value properties on private lands, and it is value rather than volume that gives the conflicts issue a high profile. Nevertheless, the potential for significant conflict remains, and it arises from the insecurity of tenure and fear of bulldozing faced by 2.44 million people in the large and expanding sector of informal settlements. However, insecurity differs depending on the kind of title a settler holds. Settlers on unplanned lands typically have customary deeds, some of which have been regularized or benefit from the “blind eye” of the government. Settlers living on grabbed lands (termed illegal) are the majority; they do not have any titles and are more vulnerable to eviction. Potential for conflict also arises from poor governance in the allocation or cancellation of building plots and state apartments. The government should support a pro-poor strategy of regularization to address insecurity of tenure for Kabul’s informal settlers, starting with those on unplanned lands. Also, both formal and informal mechanisms of dispute resolution (see Policy Note 5 and 6 of this series) should be reinforced to tackle the potential conflicts emerging over land tenure.

### 1

#### *Formal property disputes and private lands*

##### *Context and volume*

Since 2001, formal property disputes in Kabul have been numerous, but not as numerous as might be expected. Several thousand disputes have been presented for formal resolution—a tiny number in a city of around three million. Most of these disputes pertain to private lands in formal areas. Eighty-six per cent of all cases mediated by the Norwegian Refugee Council (NRC) in Kabul dealt with properties in private lands, and 69% were in serviced areas.

Formal property disputes are the privilege of the rich. The more valuable the property, the more vulnerable it is to wrongful occupancy. Hence, most conflicts pertain to high-value properties, and it is value rather than volume that gives the conflicts issue a high profile. Conflicts over real property also exist in the much larger sector of houses and premises owned by middle- and low-income population, but are mainly among family members or relate to conventional boundary and similar issues. Resolution is broadly contained within the household and the related informal social domain (neighborhood).

The Special Land Disputes Court is the mechanism established to address property disputes over private lands resulting from the return of migrants and internally displaced persons (IDPs) to Kabul (see Policy Note 5 of this series for further discussion).

*Types and causes of formal property disputes relating to private lands*

The types of conflicts emerging over privately owned lands mostly relate to the contestation of property ownership, and to corruption and counterfeiting of documents on the part of government officials and private persons, respectively.

*a) Contested ownership of properties*

The issue for most private lands is the contested ownership of property. This particularly affects refugees and the number of these disputes is likely to grow as more refugees return to Afghanistan. Voluntary return records collected by UNCHR show that 39% of refugees formally assisted in returning to Afghanistan (86,270 families) owned homes or lands. For these families, the most common case of dispute is finding their home, apartment, or building plot occupied by another who may be third or more in the line of owners. In fact, 69% of all property cases in the Special Land Disputes Court (see Table 1) and 71% of the cases mediated by the NRC in Kabul deal with wrongful occupation, that is, disputed ownership of occupant of the property. However, this represents only a quarter of all property cases nationally (see Table 2).

Valuable properties are the most vulnerable to wrongful occupancy, subsequent transfer by both state and private parties, and eventual dispute as to its ownership. In formal disputes over

Types of Disputes	No.	%
Disputed Ownership at Sale or Purchase	88	5
Disputed Ownership through Falsification of Documents or other "Inversions and Trickeries"	448	26
Wrongful Occupation (Disputed Ownership of Occupant of the Property)	1,175	69
<b>Total</b>	<b>1,711</b>	<b>100</b>

Source: After Alden Wily 2004b, based on data provided by the Special Land Disputes Court, December 2004. Note: Most of the cases relate to Kabul City and environs.

private properties, disputants are more often wealthier individuals and the properties at issue include houses, apartments, shops, and urban and periurban gardens and farms.

Wrongful occupancy or other disputes relating to ownership are not limited to persons unknown to each other. Intrafamily disputes are also common and account for 36% of all NRC cases, compared with 29% of inheritance and preemption cases in courts nationally (see Table 2).

Types of Disputes	No.	%
Inheritance of Property (Ownership issue)	2,499	25.8
Wrongful Occupation (Ownership issue)	2,332	24.0
Land Sales & Purchases (Ownership issue)	1,898	19.6
Farm Water Rights (Irrigation)	690	7.1
Rents & Mortgages	541	5.6
Houses/Building Sales & Purchases (Process)	431	4.4
Preemption (right to purchase ahead of others)	341	3.5
Awarding Possession	313	3.2
Inheritance (Moveable with Immovable Property)	279	3.0
Custody over Lands	207	2.1
Advance Payments Against Purchases & Sales	85	0.9
Boundary Disputes	66	0.7
<b>Total</b>	<b>9,682</b>	<b>100</b>

Source: From Alden Wily 2004b, based on data provided by the Supreme Court, Kabul June 2004.

*b) Governance issues in land tenure*

Governance issues and claimant malfeasance reportedly lie at the heart of many formal property disputes. Judges in the Special Land Disputes Court have reported many cases where relatives or private persons have allegedly falsified both documents and identifies. Claimants have pretended to be returnees, heirs of absentee or deceased persons, or acting on behalf of absentees, and have claimed to hold notarized power of attorney. Police, municipality, and ministry officials are allegedly involved, either directly or by being bribed to collude. This is substantiated by NRC’s data, which shows that more than one fifth of all cases are reported to involve blatant or subtle corruption by officials (see Table 3).

Table 3: Actors in Disputes Mediated by Norwegian Refugee Council	
Categories	%
Cases involving land grabbing	13
Cases involving disputes with government officials, people from political parties, or Court judges	16
Cases of alleged corruption, e.g. involving bribery by municipality or Court	7
Cases resulting from eviction by municipality for development projects	13
Unclear/mixed/client has not returned or case not concluded	15
No officials involved: cases involve two personal parties or family members	36
<b>Total</b>	<b>100</b>

Source: From Beall & Esser 2005, based on information provided by NRC for 2004

Notwithstanding the relatively few formal disputes, given the magnitude of Kabul’s informal settlements, the potential for significant contestation over property in Kabul is enormous, and it is mostly linked to insecurity of tenure of informal settlers and to governance-related issues.

2

*Conflicts relating to informal settlements*

All informal settlers in Kabul face insecurity of tenure and live in fear of the

bulldozer. However, their experience differs according to their status as illegal or unplanned settlers. Beyond potential conflicts that could emerge from their informal status, intracommunity and private disputes over rights of way and other similar issues are also abundant in informal areas.

*Informal settlements and insecurity of tenure*

*a) Fear of the bulldozer*

Eighty percent of Kabul’s population (2.44 million) who have constructed or purchased homes in unplanned or illegal settlements are in different ways contravening the law and therefore can potentially be subject to removal. A de facto policy of regularization exists, particularly since 2003, and informal areas falling within the Master Plan have already been accepted as available for upgrading (see Policy Note 2 of this series). The authorities have also turned a blind eye to many settlements outside the Master Plan residential areas. Despite the regularization trend, in the still-unregulated environment officials can evict by using technically legal but unjust procedures. The best known example of bulldozing of housing was the village of Shirpur, on government land, in 2003. Regularization of Kabul’s informal settlements according to the criteria specified in Policy Note 2 of this series is a promising way to address fear of eviction and bulldozing concerns.

*b) Tenure conflicts*

While all informal settlers have insecurity of tenure, settlers living on grabbed lands belonging to the state are more vulnerable than those in unplanned settlements. Many unplanned settlers own customary deeds countersigned by a wakil-e gozar

(community representative), which are valid proof of ownership in Afghanistan and hence provide some security of tenure. In addition to the de facto policy of regularization, the government has recognized that informal settlers living in former rural villages have ownership of houses, shops, and land on which they exist. These lands typically lack services and are less susceptible to wrongful occupation; in addition, they belong to relatively stable monoethnic communities that are subject to fewer property disputes.

Kabul's informal settlers are mostly found on state lands and are termed illegal. Illegal settlements have arisen either through planned invasions or through families individually taking over public land to build their houses. Unfortunately, the former case does account for the bulk of the expansions onto government land since 2001. Encouraged by inflated housing prices, warlords have allegedly been the major actors in planned public land invasions. For illegal settlers, insecurity of tenure stems from the nonexistence of any legal or customary deed to back their properties since wakil-e gozars do not endorse their transactions. A great potential for conflict over tenure both with the state and between neighbors exists in these settlements. The conflicts could emerge if the government was to trace and prosecute the culprits of these invasions. In many instances warlord-provided land or housing was bought by intermediary individuals not needing a house but rather profiting from reselling the land. As recommended in Policy Note 2, the government's priority should be to make a distinction between the warlord, who engineered the invasion of the land, and the current owner-occupier who has invested in the property, and rule accordingly.

Unfortunately, these invasions have also led to potential conflict between old and new members of neighborhoods. Those protesting against construction—including elders, wakil-e gozar, district police, and municipality officials—have often been threatened or bribed. Community-based dispute resolution mechanisms offer a plausible option for overcoming such disputes (see Policy Note 5 of this series).

### *Intracommunity conflicts*

In all sampled gozars where informal settlements have arisen since 1978, and especially since 2001, there are many disputes over issues other than tenure. Family-home related matters are abundant in informal settlements, such as one house invading the privacy of another, footpaths being ruined with waste disposal, and snows being cleared from one compound to another. While comparatively minor, these disputes generate a great deal of heat and argument as to boundaries. The wakil-e gozar and local mosque councils play an important role in resolving such conflicts whenever they are called to do so. Such community-based mechanisms of dispute resolution should be encouraged (see Policy Note 5 of this series).

### **3**

#### *Conflicts relating to state-allocated lands*

A smaller but still significant potential for conflict stems from governance issues in relation to the past wrongful or nepotistic allocation of land. Such issues apply to an estimated 15,000 apartments in the Macrorayan Estates.

##### *a) Allocation of land by the municipality*

Historically, one of the powers and responsibilities of Kabul Municipality has been to acquire private property at open market rates and reallocate it to enable

poorer households to have access to land within formally planned areas (projects). Since the Mujahiddin period (1992–96) municipal officials estimate that a minimum of 26,000 plots have been paid for and allocated on land that the municipality is yet to purchase or develop. According to one official the real number could be double this figure. Often the allocated plots are located on private land, or plots are already built up and inhabited. The ways these plots have been formally acquired are reportedly heavily tainted with what current officials now say was outright corruption. In addition to the fees lost to applicants, bribes often had to be paid, doubling or tripling real costs. The cancellation of building plots, which is another legal power of the municipality, has allegedly been used at times in an unjustified way. Needless to say, these practices produce plenty of fuel for heated disputes between the existing owner of the land and the allocatees, who may proceed to construct a house on the private land.

Since March 2004 both practices have stopped and the current Mayor has resolved around 5,000 of an estimated 14,000 disputed plots through purchase of other land and reallocation. Such efforts should be supported.

#### *b) Acquisition of government-built apartments*

Similarly to land allocations, since the 1960s the government has constructed houses mainly for civil servants and other disadvantaged groups such as war widows. The Ministry of Urban Development and Housing has constructed and allocated an estimated 15,000 apartments, mainly in the Macrorayan Estates (around 11,000 apartments in four developments). Conflicts related to government-constructed apartments include cases where provisional ownership has been

formally cancelled and the apartment reallocated in an unfair or nepotistic way. One official estimated that upwards of 80% of reallocations even since 2002 were unfair, with queue-jumping and favoritism rife. Other cases have involved powerful persons, including Mujahiddin leaders from 1993-2004, who have coerced or intimidated tenants and owners and evicted them, or taken over empty apartments. It is of concern that some of these cases appear to have been “regularized” by ministry officials or by the courts. Similar to the wrongful allocation of land by the municipality, nepotistic award and cancellation of apartments has the potential to produce significant property disputes in the Macrorayan Estates.

#### *4*

#### *Governance and policy changes*

Significant policy changes have been instituted since 2003 with the aim of improving governance. The most notable change has been the de facto restraint (with periodic lapses) upon eviction. Possibly a million or more poorer people might have benefited from the blind eye turned to the new occupation or purchase of houses on government land. Unfortunately, the benefit has been many times greater for elites, including militia commanders who, during the 2002–04 period, grabbed and sold public lands.

In terms of dispute resolution and much-needed restoration to rule of law, how to regularize the occupancy of the needy majority and at the same time manage the further allocation and development of new land is a challenge for the new government. (See Policy Note 2 for recommendations on an expedited land development process.)

A policy of the post-Bonn Administration relating to urban tenure has been to restore control over government lands and limit revived post-Taliban allocation of these by officials. The freeze upon sales of new building plots by the municipality (Decree No. 99, 4.2.1381—2002) was important and mostly has been followed by the new leadership in the municipality since March 2004, but not by individuals who continued to develop government land right up until the end of 2004. However, the government needs to address allocation of state lands (recommendations on this are given in Policy Note 2 of this series.)

Liberalization of the land market has been attempted. Investors can legally access surplus government land for approved developments (Decree No.89 of 8 1382—2001). Decree No. 134 of 2 Sumbula 1381 (2002) in Gazette 803 permits foreign investors to lease land for up to 30 years. However, these measures need to be accompanied by a clear legal and regulatory framework that guarantees tenure and development decisions that steer future growth and investments in infrastructure.

## 5

### *Conclusions*

The nature of land disputes and conflicts in Kabul points to a series of required interventions. These are mentioned briefly here, but are further outlined in Policy Notes 5 and 6. To address insecurity of tenure, the regularization of Kabul's informal settlements is the most promising route. Regularization is not a significant shift from the current de facto policy. Following the selection criteria displayed in Policy Note 2, a pro-poor regularization strategy should be developed. On state lands, this would mean that whereas poorer households should be given the opportunity to secure formal ownership of

their homes, land grabbers and speculators should be prosecuted.

Analysis of the potential sources of conflict shows that the regularization process itself may trigger multiple disputes that will need to be carefully managed. Family members may battle for valuable entitlement, neighbors will frequently argue about ill-planned boundaries and who should surrender footage for public access, and those who have bought plots or houses from land developers may find themselves facing claims that they have not fully discharged their debts. In some disputes, formal resolution systems work best; in others, informal mechanisms are better (see Policy Note 5 of this series). Consequently, any dispute resolution system should be flexible enough to contain both informal to formal resolution mechanisms. Fortunately, both currently exist in Kabul and need to be supported. At the formal level, the Special Land Disputes Court has been the primary way that disputes of ownership, particularly relating to formal lands, have been resolved. At the informal level, many disputes are efficiently being resolved through the community, the mosque, and the *wakil-e gozar*. Finally, both Kabul Municipality and the Ministry of Urban Development and Housing should review existing allocations policies and systems and implement checks and balances to ensure good governance.

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