The World Bank

Kabul Urban Policy Notes Series n.1

Informal settlement in Kabul

Kabul urban land crisis: A summary of issues and recommendations

1
Introduction

Kabul has experienced massive population growth since the late 1990s. Between 1999 and 2002 the city's population grew at 15% per year and was estimated at approximately 3 million in 2004. Growth will remain at about 5% (about 3% natural growth plus 2% migration) for the next few years. This represents a yearly increase of about 150,000 people or about 20,000 households that will require access to land and services. The key spatial and visual impact of this growth has been the informal development of land and housing.

The majority of Kabul's new migrants are informally housed. While this has prevented an even larger crisis of homelessness, informal development has led to legal and regulatory violations, including violations of property rights and rights of way, and has left insufficient space for infrastructure and social facilities.

These circumstances have presented decision makers with a number of challenging questions:

- Should informal settlements be legalized?
- Can services be delivered under circumstances of unplanned development?
- What processes should be in place to address violations of property rights, thus preventing conflict?
- In what manner should land in Kabul be developed?

This note attempts to answer some of these questions and thus to provide the government of Afghanistan with policy advice on two important aspects of urban land management: (i) development of Kabul using contemporary planning and regulatory tools, focusing on informal settlements and on land development; and (ii) key interventions in property rights with a focus on regularization of tenure in informal settlements and resolution of land disputes.

Development in Kabul would benefit from a new approach. Kabul's main problem is not housing, but access to land and provision of infrastructure. Only 0.5% of Kabul's population is considered homeless, including 10,000 people living in tents and 5,000 living in the ruins of destroyed buildings. Therefore, the key

issue for the government is not providing housing but promoting the legal and regulatory framework for land development and its required infrastructure. Development planning should include discussion of property and tenure rights and the resolution of current and potential disputes over land.

2
Development of land for future expansion and informal settlements

The legal and regulatory framework and infrastructure needs must address not only future housing development, as is required in all cities internationally, but also informal settlements. Key intervention areas in informal settlements include servicing and tenure regularization.

The formulation of a spatial development plan is a crucial first step. Future development will be constrained by the topography of the city, which will necessitate the construction of a ring road and the development of an efficient public transport system. However, infill using expedited development process is, in the short term, the most cost effective solution for future development. About 300,000 people could be accommodated by filling up existing vacant plots at current densities.

Finally, the role of the government as a facilitator of development should be emphasized.

2.1
Informal settlements

Informal settlements now shelter about 80% of Kabul's population, cover 70% of its land area, and represent a private investment in fixed capital of US$2.5 billion (not including land value). Hence, informal settlements are here to stay. The

development discussion should focus on how to service the informal settlements and how to address land tenure within the settlements.

Too often in Afghanistan, the issue of servicing standards has been used as an argument against the formalization of informal settlements. Critics point to the most visible of these settlements—those located on the hilltops—and note that they are typically harder and more costly to service.

However, the vast majority of informal settlements (90.2%) are on land that is considered flat. Consequently, only 9.8% of all informal settlements are particularly difficult to service. In these settlements, services could be upgraded at a slightly lower standard than in flatter lands. This approach has been followed in several countries including South Africa, Brazil, India, and Morocco. In addition, the total or partial demolition of hillside settlements should be discouraged, as they play an extremely important role in poverty reduction by providing housing to poorer residents of Kabul at walking distance from employment centers.

The majority of informal settlements exhibit similar characteristics to planned settlements. Plots are the same size as or larger than those in planned settlements— between 200–300 m^2 and 25–65% coverage of plot area. The informal settlements have 20–28 houses per hectare, which is only slightly denser than the 22 houses per hectare of planned settlements. Houses in informal settlements are also extremely substantial and are built from traditional mud brick, which provides a measure of protection against Kabul's winter. They in no way resemble the informal shacks present in many other developing countries including South Africa and India. Roads in informal settlements are

narrower (4–6 meters) than in formal settlements. However, they are wide enough to give access to houses for residents and emergency vehicles and to act as rights of way for infrastructure. A street hierarchy, which informal settlements currently lack, should be planned.

2.2
Future growth of Kabul

In addition to addressing existing informal settlements, the government should consider the future growth of Kabul.

2.2.1
Directions for growth

Kabul is divided by a north-south running mountain range, which limits the expansion of the city. The two parts of the city communicate only through the center. This topography suggests particular interventions for development:

- The topography creates chronic traffic jams. Linking the northeast and southwestern parts of the city will be difficult, and removing the traffic jams in the city center would probably require—in addition to traffic management measures—the creation of a ring road.

- The topography does, however, make the central business district accessible for most of the city. This accessibility will reinforce, over time, the monocentric character of the city and will make efficient public transport essential for the city's functioning.

- Although the growth of Kabul is constrained by its topography, a new town is not necessary to accommodate the growth of the city in the near to medium term. Preliminary

calculations[1] suggest that infill in the existing built-up areas can accommodate an additional 300,000 persons. Because of cost reasons, development focus on infill before expanding east in the medium term and north in the long term is suggested.

- Infill is also possible because most existing residential development in Kabul—based on the traditional courtyard house—uses land extremely efficiently. Zoning and regulations should allow the extensive construction of courtyard houses.

2.2.2
The role of the government

Given the lack of homelessness in Kabul, the clear evidence of a substantial homeowner building drive, existing financial and technical resource constraints, and international best practice, the government is best suited to act as a facilitator of development rather than as a developer.

It is unlikely that the government will be able to acquire, build, price, and allocate the 20,000 plots per year required to accommodate growth in Kabul. Land development also requires having access to a steady source of income—currently not available in Kabul. Finally, in other countries, there has been evidence of a serious conflict of interest between the government's role as a regulator of markets and its role as a developer. When acting as a developer, governments have tended to act in monopolistic ways. The outcome has been scarcer and more expensive housing, as in Delhi, for example.

Instead of acting as a developer, the

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[1] Based on 2004 data from the Ikonos satellite.

government should focus on releasing land for legal development and building an adequate primary infrastructure network that would accommodate the growth of Kabul in the future.

2.2.3
New land development process

New land development should follow an expedited process. Instead of concentrating its entire effort on the detailed design and development of small areas of land that can cater to a fraction of demand, the government should provide only a basic design in vacant areas in proximity to the built up areas. In these areas, the government should design and mark a basic grid of primary and secondary roads to serve as rights of way. Subsequently, the land should be opened up for settlement. At this stage, the government should prevent encroachments on the new roads. Eventually, after a sufficient number of plots have been delineated and developed, the relevant authority could plan to level and surface the roads and service the area, with some contribution from the residents. The process should occur as a simple land readjustment scheme.

2.2.4
Formulation of a development plan

To allow for immediate action, the spatial framework for the future development of Kabul should be initially formulated through a development plan, rather than a more time-consuming master plan. The development plan should include:

- objectives for urban development;
- brief spatial articulation of such objectives in a zoning map showing the land where the city expansion will take place and what uses and standards are expected in each area;

- a set of land development regulations reflecting (i) market demand, (ii) housing design traditions, and (iii) the affordability of housing for various socioeconomic groups;
- a procedure for quickly providing building permits and land subdivision permits;
- a program to progressively upgrade neighborhood infrastructure and a definition of government, community, and private contractor roles in implementing this program;
- a construction program for a primary infrastructure network supporting the projected expansion of the city and the opening of adjacent areas for development;
- a demographic and spatial framework for provision of social facilities;
- a resource mobilization program based on user fees, impact fees, and, eventually, property taxes.

3
Property rights and tenure

Legalizing the informal settlements and beginning a successful land development process require protection of property rights and land tenure. Updating Kabul's land tenure system with a focus on informal settlements is suggested. However, during the course of tenure regularization, disputes are bound to occur. Consequently, land disputes in Kabul were also examined to formulate recommendations on the resolution of disputes. Surprisingly, formal disputes are not as numerous as expected, but the potential for conflict is increasing. The potential for conflict arises out of two interrelated factors: (1) the insecurity of tenure for informal settlers, and (2) old, overwhelmed, and sometimes corrupt systems of land governance.

3.1
Land tenure

Several dimensions of a tenure regularization program are outlined, including identification of types of tenure and property freedoms, criteria for eligibility, database management of land tenure (by spatial mapping, for example), and methods to administer land tenure. Land tenure bestows various property freedoms and rights. For residential plots, these usually include the freedoms to occupy, use, improve, leverage, alienate, and bequeath the land. A regularization program can target any subset of these freedoms for enhancement.

A tenure regularization program needs to have clear and acceptable criteria for determining eligibility. Criteria can include (1) a cut-off date, (2) geography, (3) topography, (4) proximity to infrastructure, (5) ownership, (6) environmental sustainability, (7) public purpose, and (8) poverty.

The formalization of property claims usually requires some spatial referencing of the parcels of land to which the claims or freedoms apply. To this end, some level of mapping and bounding description (surveying) system is required. The choice of methodology should reflect existing instruments and conditions, including (1) sensitivity analyses of different levels of accuracy, (2) the existence and likelihood of the parcels being linked into a national cadastre and the accuracies required to facilitate that, (3) the end purpose of the mapping, (4) the density of built topographic detail, and (5) the resources that can be devoted to the exercise. The choice of tenure instrument also influences the level of boundary description that is required. Conventional instruments such as freehold and leasehold typically require ground measurement and depiction of boundaries through traditional surveying methods and plotting. For other more basic incremental tenure instruments, plot referencing by way of a unique identifier supported by attribute description of neighboring parcels may suffice.

Once property rights or freedoms are assigned to particular parcels of land through tenure regularization, registration and administration of these rights is necessary. Here, the level of sophistication depends on the instrument of tenure used, the level of detail of the parcel description, and the capacity that can be sustainably assigned to this exercise. Institutionally, models vary from one-stop shops to multiagency variations where surveying and registration functions are separate organizational responsibilities.

Implementation of a tenure regularization program is a complex and multifaceted operation. Given its legal ramifications, consistency of approach is also paramount. Beyond registration and updating of rights, regularization includes mapping, community mobilization and engagement, surveying, and dispute resolution. Moreover, tenure regularization is often one component of a broader program involving complementary upgrades in infrastructure. These other upgrades require expertise in physical planning, engineering, and community participation, among other disciplines.

3.2
Land disputes and resolution mechanisms

The design of a good dispute resolution system requires a through understanding of the sources of conflict.

3.2.1
Sources of conflict in Kabul

The conventional wisdom once was that

Kabul was fraught with conflicts about existing property rights and tenure. However, although formal disputes in Kabul are numerous, they are not as numerous as expected, numbering no more than several thousand per year out of a population of 3 million. Most conflicts pertain to high-value properties, and it is value rather than volume that gives the conflicts issue a high profile. The sources of these conflicts are mainly amongst family members and are often resolved accordingly. Formal property disputes are, therefore, not a major cause of conflict. The potential for conflict remains, but it arises from the chronic insecurity of the massive and still expanding informal settlement sector where de facto property owners number almost one million. It also arises from poor governance or alleged corruption of government officials.

Insecurity of tenure in Kabul primarily takes the form of fear of eviction. The sources of insecurity of tenure vary, and this should be considered in the debate on land tenure. The majority of informal settlers reside on state land, particularly municipal land. This source of insecurity of tenure is easier solved than when the settlements are on private land and insecurity may result from fear of eviction due to wrongful occupancy, inability to pay rising rents to landlords, the need to eventually leave the homes of relatives and friends due to overcrowding, and involuntary expropriation of private properties due to upgrading plans for roads or services. These issues are harder to solve than settlers occupying state land, particularly municipal-owned land, as the municipality does have the legal right to convey tenure. However, it is at this point that issues of corruption and bribery emerge.

A high proportion of formal property disputes are caused or facilitated by poor governance or corruption on the part of civil servants. These problems often reflect the legacy of policies of the conflict period and range from expropriation of urban estates during the communist administration to unconsidered speedy cancellation of both building plot allocation and provisional apartment ownership by the Taliban. The latter practice continued well after December 2001 but was then stopped by the current Mayor. Nevertheless, there are continuing allegations that members of distribution committees, past and present, favor reallocation of plots and apartments to relatives, friends, and themselves.

3.2.2
Resolving conflicts

Several interventions are required to address the issues raised above. These include the design of a land tenure system (already discussed) and the design of a good formal and informal dispute resolution system.

Both a formal and informal dispute resolution system is needed. Formal documentation is uncommon and therefore is not a cause of disputes, and formal titling will not solve all property disputes. In fact, in most neighborhoods, most documentation is informal, either in the form of informal deeds (approximately 30% in sampled gozars) or customary deeds (19–80%) in most gozars.

Consequently, customary norms also provide an accepted platform on which to build accountable and trusted evidencing of ownership. This means that in building the platform for resolving conflicts and providing systems of tenure, a strict conceptual or strategic distinction between formal and informal property dispute resolution is to be avoided. In practice, both formal and informal processes have a

role to play, as determined by a number of complex 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. In any event, official bodies often will direct that the matter is to be resolved locally (as in the case of boundary disputes and right-of-way access) or by local actors (as in inheritance matters). Overall, the interrelationship of formal and informal (or official and community-based) mechanisms is close and usefully upgraded together. Public confidence in achievable justice in the courts is 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 processes. In Sharia, mediation towards reconciliation is invariably the preferred first-line mechanism; and in the Civil Code, local bodies such as shuras and local leaders are advisedly involved.

At the level of formal resolutions, 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. 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. The Court should have professionally planned and executed support and monitoring, which will significantly raise its success rate in ways that the public

identify as honest and fair. Regardless of the number of cases it actually handles, a Court identified as competent will raise public confidence in the state and rule of law. Note however, that the Court is currently accessible primarily to wealthier residents.

Another useful target for public governance reform will be municipal and ministerial commissions with the power to allocate building plots, housing, and apartments, such as the Ministry of Urban Development and Housing and the Kabul Municipality. The important political transformations that have followed the democratic election of the President offer an opportunity for reexamining procedures and players, with transparency firmly in mind. New and more publicly available systems of recordkeeping will be key elements of reform.

At an informal level, local institutions and actors in property dispute resolution are worthy of support. The evidence from a short examination of disputes suggests that localized, community-based mechanisms are both widely operating and indispensable instruments. They serve not only for keeping cases out of the clogged courts, but also for resolving disputes in cheap, available, more peaceful, and lasting ways.

Building upon what exists seems logical and essential. This needs to be accomplished in ways that avoid jeopardizing the advantages of local, grassroots, and essentially informal organizations.

4
Summary and conclusions

The government of Afghanistan faces vast problems and challenges in advancing the management of urban land in Kabul, and

by extension, in other urban areas of the country. Among the challenges are the lack of capacity in the concerned institutions, vested interests that will pursue the maintenance of the status quo, and the myriad of government actors who are currently involved in the management of land.

The primary challenge is modernizing attitudes and behaviors to the way urban land is managed. A move away from centralized urban planning to more dynamic approaches involves careful monitoring of the land and housing market to determine the direction in which urban development should evolve. Also, the economic and social value of existing informal residential settlements should be upheld. Building on these assets to create improved standards of living through the provision of basic infrastructure services is key to development.

Such policy actions should be accompanied by the creation of a more conducive institutional environment to encourage the private sector to both service land and construct economic housing in the city. The institutional environment should include a regulatory system operated at the municipal level that ensures adequate construction quality, and the creation of appropriate systems for secure tenure in informal residential areas.

The overall system of land management must reaffirm informal methods of property rights and dispute resolution. Also, formal court systems should become stronger and more efficient. Standards of transparency and accountability need to be raised for both formal and informal management systems.

The achievement of the reform agenda is a large and complex undertaking that will require resolve by all parties. In the long term, the reforms will serve to make Afghanistan's urban areas better engines of economic growth and healthier places for the growing proportion of the country's population choosing to dwell in cities and towns.