

**Case Study Series**

**WATER MANAGEMENT,  
LIVESTOCK  
AND THE OPIUM ECONOMY**

**Land Tenure**



**Alec McEwen and Brendan Whitty**

This report is one of seven multi-site case studies undertaken during the first stage of AREU's three-year study "Applied Thematic Research into Water Management, Livestock and the Opium Economy".



Funding for this research  
was provided by the  
European Commission (EC)

June 2006

© 2006 Afghanistan Research and Evaluation Unit. All rights reserved.  
The views and opinions expressed in this report do not necessarily reflect the views of AREU.

## About the Authors

Alec McEwen, Ph.D. is Emeritus Professor of Geomatics Engineering at the University of Calgary in Canada. He specialises in land administration, cadastre, land title registration and inter-jurisdictional boundaries. He has worked in a number of land-related projects in more than 20 developing countries and transitional economies.

Brendan Whitty obtained an LL.B. from University of Edinburgh's Faculty of Law, and an LL.M. from Columbia University School of Law. He has been working in Afghanistan in the development sector for two years.

## About the Afghanistan Research and Evaluation Unit

The Afghanistan Research and Evaluation Unit (AREU) is an independent research organisation that conducts and facilitates action-oriented research and learning aimed at informing and influencing policy and practice. AREU also actively promotes a culture of research and learning by strengthening analytical capacity in Afghanistan and by creating opportunities for analysis and debate. Fundamental to AREU's vision is that its work should improve Afghan lives.

AREU was established by the assistance community working in Afghanistan and has a board of directors with representation from donors, the United Nations, as well as from multilateral organisations and non-governmental organisations (NGOs).

Current funding for AREU is provided by the European Commission (EC), the United Nations Assistance Mission in Afghanistan (UNAMA), the United Nations High Commissioner for Refugees (UNHCR), Stichting Vluchteling and the governments of the United Kingdom, Canada, Denmark (DANIDA), Norway, Switzerland and Sweden. Funding for this study was provided by the EC.

## Acknowledgements

The authors would like to thank Hafeez Monsef, in particular, for sharing his knowledge of Sharia and his able support throughout the research; and also Jahangir Khan and Obaidullah Hidayat. Grateful thanks are also due to the staff of the Norwegian Refugee Council for granting access to their invaluable database of conflicts, especially to Susan Heintz and Rebecca Gang, who facilitated the process.

## Glossary<sup>1</sup>

<i>Amlak</i>	Properties Department <i>of the</i> Ministry of Agriculture, Animal Husbandry and Food
<i>dasht</i>	semi-arid plain
<i>gerawi</i>	a type of mortgage that works like a pawn agreement
<i>jerib</i>	unit of land measurement; 5 <i>jerib</i> = 1 ha (2000 m <sup>2</sup> )
<i>jjirga</i>	village elders
<i>karez</i>	underground, gravity-flowing water channels
<i>khel</i>	clan, sub-tribe of Pashtuns
<i>kuchi</i>	nomad
<i>malik</i>	landlord, village or community leader (Pashto)
<i>maraha</i>	commonly-owned village pasture
<i>qawm</i>	extended family; tribe; clan
<i>shafa</i>	a <i>Sharia</i> requirement creating rights of first refusal, held first by one's relatives, then the neighbours to the plot of land
<i>Sharia</i>	Islamic law
<i>shora</i>	local council, traditional assembly of elders (clan-based, tribal or ethnic), which runs community affairs
<i>waqf</i>	land bestowed as a gift used only for religious or charitable purposes

## Acronyms

ACGHO	Afghanistan Geodesy and Cartography Head Office
I-ANDS	Interim Afghanistan National Development Strategy
ILAC	Information and Legal Aid Centres (operated by the Norwegian Refugee Council)
IDP	internally displaced person
MAAHF	Ministry of Agriculture, Animal Husbandry and Food
NDF	(Afghanistan's) National Development Framework
NRC	Norwegian Refugee Council
SAF	"Securing Afghanistan's Future" (a policy document)

<sup>1</sup> Transliterations in this glossary, as well as in the text, are spelled according to AREU's editorial policy and do not reflect the opinion of the author(s).



## Contents

<b>1.</b>	<b>Introduction and Methodology</b>	<b>1</b>
<b>2.</b>	<b>The Legal Status Quo</b>	<b>2</b>
2.1	Sources of law	2
2.2	A typology of land	2
2.3	A typology of ownership	3
2.4	Matching typologies: ownership of land	4
2.5	Access rights and other “lesser” rights to land	4
	Lease	4
	Sharecropping	5
	Mortgage	5
<b>3.</b>	<b>Current Policy Initiatives</b>	<b>7</b>
3.1	Early edicts consolidating holdings	7
3.2	Government policy initiatives	7
3.3	Current MAAHF Policy	8
	Private land	10
	Communal, public land and water rights	10
	Government land	10
<b>4.</b>	<b>Field Observations from Nangarhar</b>	<b>11</b>
4.1	Hill valley sites: Otarkhel/Khwaga, Sra Qala, Maruf China	11
4.2	Janikhel	15
<b>5.</b>	<b>Field Observations from Kunduz</b>	<b>17</b>
5.1	Rainfed villages: Abdul Nazzar and Alam Bai	17
5.2	Flood plain: Wakil Jangal, Afghan Mazar and Dana Haji	19
<b>6.</b>	<b>Field Observations from Herat</b>	<b>22</b>
6.1	Rainfed villages: Khalifa Rahmat and Sir Zar	22
6.2	River valley site: Tunian Mian Deh	23
6.3	Hillside village: Ghorak	24
<b>7.</b>	<b>Field Observations from Ghazni</b>	<b>26</b>
7.1	River valley villages: Chel Gunbad, Turmai, Qala-i-Naw	26
7.2	Hillside villages: Zala Qala and Pyada Rah	29
<b>8.</b>	<b>Discussion</b>	<b>32</b>
8.1	Patterns of ownership	32
	Formal grants	32
	Subdivision through inheritance	33
8.2	Sale and land markets	34
8.3	Points of weakness in the system	36
8.4	Access rights: private land	39
	Sharecropping	39
	Mortgage	41
8.5	Common/public property	42

Sources of ownership	42
Conflicts over common/public land	43
Community collaboration in common pasture	45
<b>9. Summary of Conclusions</b>	<b>47</b>
<b>10. Recommendations</b>	<b>48</b>
<b>Appendix I: Cadastre</b>	<b>50</b>
The nature and purpose of a cadastre	50
Cadastral survey and land registration in Afghanistan	51
<b>Appendix II: Maps of the Primary Research Sites</b>	<b>54</b>



## 1. Introduction and Methodology

This study was undertaken as part of the initial stage of the Afghanistan Research and Evaluation Unit's applied thematic research project "Water Management, Livestock and the Opium Economy", in cooperation with the Danish Committee for Aid to Afghan Refugees (DACAAR) in Ghazni and Herat, and German Agro Action (GAA) in Nangarhar and Kunduz. This report presents findings from two rounds of field visits conducted between November 2005 and April 2006 at primary research sites in four provinces focusing on the land tenure management systems in place in the communities.

The first round of research was conducted by Alec McEwen, Ph.D. supported by Hafeez Monsef, Obaidullah Hidayat and Jahangir Khan. Visits were conducted in Zala Qala, Pyada Rah, Chel Gunbad and Qala-i-Naw (Ghazni Province), Alam Bai, Afghan Mazar, Dana Haji (Kunduz Province), Khalifa Rahmat, Tunian Mian Deh, Ghorak (Herat Province) and Janikhel (Nangarhar Province). Representatives of the villages of Otarkhel, Khwaga, Sra Qala and Maruf China came from the Achin District and were met in Jalalabad. The second follow-up round was conducted by Brendan Whitty and Hafeez Monsef. Visits were conducted in Tunian Mian Deh (Herat Province), Otarkhel, Sra Qala, Maruf China (Nangarhar Province), Dana Haji, Afghan Mazar, Abdul Nazar, Alam Bai (Kunduz Province) and Chel Gunbad, Turmai and Qala-i-Naw (Ghazni Province).

Additional meetings were conducted with the Norwegian Refugee Council's (NRC) Information and Legal Aid Centre teams, particularly in Pul-i-Khumri and Jalalabad. The NRC also allowed access to their database of cases under conditions of confidentiality.

In all research sites, the teams met with groups of farmers and livestock owners in their communities. Inquiries were made through semi-structured discussions aimed at gaining a better understanding of how land is managed in different circumstances and how the land tenure systems in place tend to structure resource management and farming systems. In the second round of interviews, where possible, one-on-one meetings using the semi-structured format were conducted with farmers as they worked in the fields.

Security posed certain constraints. In the initial round of research it was impossible to visit villages in the Achin District, while in the second round, riots in Herat meant that fieldwork had to be curtailed; Ghazni Pyada Rah and Zala Qala were deemed too insecure.

The paper commences with an outline of the current legislation, and proceeds to look at the current policy landscape, as well as plans on how to take the land tenure system forward. It then presents the findings from the fieldwork in the primary research site. The paper concludes with an analysis and recommendations drawn from the findings.

## 2. The Legal Status Quo

### 2.1 Sources of law

The Constitution of 2004 governs what sources of law may be applied, establishing a simple hierarchy: first, constitutional provisions are to be applied; second, statutory law; third Hanafi jurisprudence.<sup>2</sup> Since few constitutional provisions are relevant to this study at present, statutory law is primarily applied. This should be supported by reference to the Civil Code, which is partly based on Hanafi jurisprudence. In the recent history of Afghanistan, land law has been one of the main vehicles for interventionist government policy, including successive waves of highly politicised Pashtun resettlement followed by the communist redistribution policy (which is generally credited for bringing about the revolution against the People's Democratic Party of Afghanistan and the invasion of the Soviets, heralding 25 years of war). The gazettes are littered with statutes enacting mutually contradictory, overlapping and piecemeal legislation from successive regimes, including the monarchy, the Communist regime, the Mujahidin interregnum, the Taliban and finally, the post-Taliban governments. The present legislation, therefore, comprises an unfortunate mosaic of inconsistent provisions. Identifying the current law is a challenge. What follows is an overview of the current legal context in the ongoing land tenure policy debate.

### 2.2 A typology of land

Before considering the rights that individuals, organisations or the government might hold, it is necessary to briefly address the types of land as classified in the existing law. This is a necessary step because the rules addressing who may own land and in what circumstances vary depending on the type of land under consideration.

Unfortunately, not all land types are defined and this resulted in the extrapolation of a complete typology from the definitions that do exist:

- **Pasture:** Pasture land is defined in a series of statutes. In its most recent treatment, it is described very broadly as: "All types of land, including hills, deserts, mountains, river beds, forests that have places where grass grows and supports animals, are known as pasture".<sup>3</sup> This requires interpretation, since such a definition includes, for example, the grounds of Kabul University, garden lawns and the like. Two possibilities exist. First: the phrase, "grows and supports animals", is taken to refer to traditional practices and such practices are still being used.<sup>4</sup> The alternative is a definition relying on the possible use of the land, and to identify as pasture all land that can graze animals, excluding irrigable and

---

<sup>2</sup> Article 130 of the Constitution states that "when processing cases, the courts apply the provisions of the Constitution and other laws." If there are no such rules available, then the court must decide "within the limits of this Constitution in accord with Hanafi jurisprudence and in a way to serve justice in the best possible manner." The use of customary law arguments without reference to Hanafi jurisprudence may therefore be unconstitutional, although at present such customary practice underpins much of the Civil Code and has provisions closely analogous to Hanafi jurisprudence.

<sup>3</sup> The *Law on Pasture and Maraa*, under Decree 57, Gazette Issue 795 of 2000 (henceforth *LPM 2000*). See Liz Alden Wily, *Looking for Peace on the Pasture: Rural Land Relations in Afghanistan*, December 2004, AREU, p. 44. See also the Law on Land (2000), Decree 57, Gazette Issue 795 of 2000 (henceforth *LL 2000*).

<sup>4</sup> Supported by Article 63 of the *Land Survey and Statistics Law*, 1965 (31 Jawsa 1344); (henceforth *LSSL 1965*).

built-up land.<sup>5</sup> The latter definition has a more appropriate application. It retains the value of an objective agro-ecological descriptor, distinct from using the subjective standard of “traditional community practices” as the basis for the definition.

- **Wilderness:** The same legislation also defines *mawaat* as “unused lands”, which extends to “desert, mountains, hills, rivers, virgin land, barren lands and forests.” Again, an interpreter is confronted with two possibilities: to understand the term “unused” literally, or as “unusable”. Given the pressure on usable land in Afghanistan, it is highly probable that the two are, in practice, synonymous. Further, the term, “potential use”, as the grounding for this definition is deemed more applicable since it provides an objective test compatible with the definition of pasture land.

The above distinctions allow for a more complete typology with the following:

- **Irrigable:** Inferring from the definition of pasture, this type of land must be considered separately from pastoral grazing land.<sup>6</sup> Note again that it is possible to distinguish irrigable from irrigated, with the latter referring to current practices, whereas the former alludes to the potential of the land given current technologies.
- **Cultivable/rainfed:** There exists a band of land which has dual use: while it cannot be irrigated, it provides rainfed agricultural potential. It can also be used for pasture. The law is ambiguous regarding the status of this type of land.

## 2.3 A typology of ownership

Five types of ownership can be identified:

- **Private ownership:** The rules describing the dimensions of the right of ownership may be found in different sections of the Civil Code. The main section<sup>7</sup> deals with the primary rights and duties inherent in ownership, while other sections address additional rights attached to ownership,<sup>8</sup> transfer by sale<sup>9</sup> and by inheritance.<sup>10</sup> Briefly, ownership provides exclusive rights to the property.
- **Government ownership:** closely resembles “private ownership”, with the government taking the stead of the private individual. One major difference must be noted: the transitional administration passed Decree No. 99 in April 2002, which froze future distributions of government land.<sup>11</sup>
- **Public ownership:** Some state land (notably but not exclusively *mawaat*) is held by the government but not in “simple” form in that it is held for “public use”, prompting some to describe the government’s role as that of a trustee, with the beneficiary being the public.<sup>12</sup> In this case, there are

<sup>5</sup> Supported by Article 2 of the *Law of Pasture Lands*, 1970 (19 Hoot 1349); (henceforth LPL 1970).

<sup>6</sup> Article 1991, Civil Code.

<sup>7</sup> Article 1900-1984, “The Civil Law of the Republic of Afghanistan”, (henceforth “Civil Code”).

<sup>8</sup> Civil Code, Art 2293-2323.

<sup>9</sup> Civil Code, Article 1035-1215, considers also other contracts with the effect of transferring ownership (gift, barter).

<sup>10</sup> Civil Code, Art 1993-2102.

<sup>11</sup> Norwegian Refugee Council, *A Guide to Property Law in Afghanistan* (2006) p. 46.

<sup>12</sup> See also ADB 2005 p. 28.

serious limitations on the government's use and rights of access, as well as the powers to sell and grant rights. Thus, *mawaat* is "for public use" and its "purchase, sale or lease may only be authorised undertaken with the permission of the supreme leader".<sup>13</sup>

- **Common ownership:** The leading example of this land is *maraha* land, which can be defined as commonly owned village pasture. Entitlement to grazing rights arises from the criterion of "residence": ownership of a house in a "neighbouring community."<sup>14</sup> In other words, home ownership in the neighbouring communities is a prerequisite to having access rights to land.<sup>15</sup> Such land can only be used for grazing.<sup>16</sup>
- **Waqf ownership:** A private individual is allowed to offer land as a gift, as long as it is used for religious or charitable purposes.<sup>17</sup> Such land is known as *waqf*. Once gifted, its status is fixed; it is dedicated to one purpose and can no longer be transferred.<sup>18</sup>

## 2.4 Matching typologies: ownership of land

The legal provisions and distinctions enumerated above now allows for consideration of what form of ownership is permitted within each land type; which document grants "default" ownership in the absence of a land title; and what other forms of proof may be accepted. Figure 1 illustrates these types.

## 2.5 Access rights and other "lesser" rights to land

The Civil Code deals with this area of the law. This study is primarily concerned with lease, sharecropping and mortgage.

### Lease

Afghan Civil Law recognises two types of lease: one called *heker*, has a term of up to 50 years and pertains to land leased for construction or plantation purposes. The second one, which has a term of up to three years, is a source of concern. It is a hybrid contract with both real and contractual consequences. While it is described as a contract, which does not bind a third party to whom the property is transferred,<sup>19</sup> it does survive the death of the lessor.<sup>20</sup> The lessor is required to make guarantees to the lessee. The Civil Code also deals with leases of agricultural land at specific periods in the cultivation cycle.<sup>21</sup> It specifically notes that such leases are

---

<sup>13</sup> 2000[2], Article 9.

<sup>14</sup> Such rights are incapable of alienation (2000[1], Article 4[3]). Contrast this with Article 15 (1970): "Persons will have the right to graze if they possess official documents or used the pasture traditionally before the enforcement of the law." Article 16 (1970) provides for the following process: "New use rights to pasturelands may be granted by the permission of the administrative commission of the Ministry of Agriculture."

<sup>15</sup> Additional rules on "joint property" (which may be understood as common property) in the Civil Code. Civil Code Article 1935-1950. The rules elaborate decision-making procedures and the exercise of rights to the common property. Some of this is eclipsed by the rule excluding alienation of *maraha* pastureland and placing restrictions on the rights of use (to grazing only), 2000[1], Article 87.

<sup>16</sup> 2000[2] Article 3(1).

<sup>17</sup> Article 86 2000[1]: "The property or land that becomes *waqf* is no longer recognised as private property."

<sup>18</sup> Article 86 2000[1].

<sup>19</sup> Civil Code, Article 1390.

<sup>20</sup> Civil Code, Article 1387.

<sup>21</sup> Civil Code, Article 1399. The rules on ownership of crops and the ability to cultivate differ depending on the season, and most saliently, whether the crop has already been sown.

valid<sup>22</sup> and sets rules for the ownership of crops,<sup>23</sup> the rights to water and access attached to the land. The risk for loss of crop is on the shoulders of the lessee except in the case of flood.<sup>24</sup> The law also deals with the location of risk on destruction of the crop post-harvest.<sup>25</sup>

### **Sharecropping**

The Civil Code classifies sharecropping as a form of lease. It states that a valid sharecropping contract requires the readiness of the land for cultivation, the allocation of responsibilities for the provision of agricultural inputs and labour, the delivery of unsown land to the sharecropper and the determination of what crops are to be grown and the shares of the sharecropper and landlord.<sup>26</sup> The Code continues by elaborating the duties binding both sharecropper and landlord and allocates risk in the event of destruction of the crops. It is interesting to note that sharecropping has effect against third party inheritors of the sharecropped property, at least until harvest. Such contracts therefore have real implications.<sup>27</sup>

### **Mortgage**

As with lease, the Afghan Civil Law recognises two distinct varieties of mortgage. One roughly approximates the Western notion of a debt secured against immovable property,<sup>28</sup> while the other works like a pawn contract (henceforth called *gerawi* mortgage), whereby possession of property is delivered to and remains with the mortgagee (lender) or his agent, such as someone contracted to cultivate the land, until the mortgagor (borrower) pays off the loan.<sup>29</sup> It seems that the mortgagee does not have the power to create subordinate rights over the mortgaged land (such as leasing or sharecropping out). Ownership of the land remains with the mortgagor.

---

<sup>22</sup> Civil Code, Article 1398.

<sup>23</sup> Civil Code, Article 1399-1401.

<sup>24</sup> Civil Code, Article 1404-1405.

<sup>25</sup> Civil Code, Article 1406.

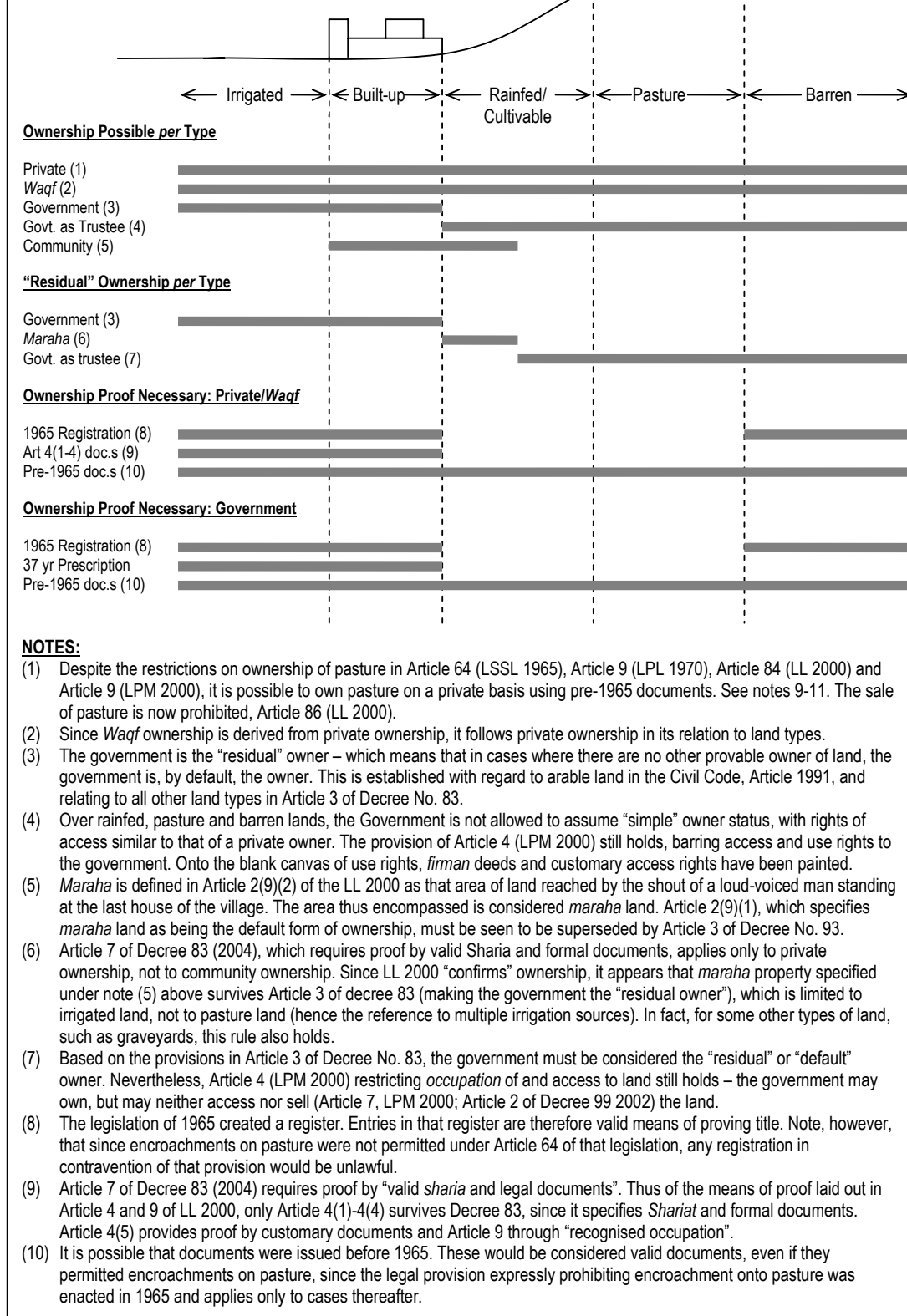
<sup>26</sup> Civil Code, Article 1412.

<sup>27</sup> Civil Code, Article 1416-1431.

<sup>28</sup> Civil Code, Article 1832.

<sup>29</sup> Civil Code Article 1770-1806.

**Figure 1:**  
 Hypothetical half-valley cross-section depicting  
 “bands” of land types and the relationship between  
 land types and ownership types



### 3. Current Policy Initiatives

As the governments in Kabul underwent changes, so did the policies and rules governing land tenure. It is outside the scope of this paper to trace the meanderings of these policies.<sup>30</sup> Instead, it focuses on the post-2001 strategies for land tenure, which have themselves undergone iterations under several major policy documents in the five years since the fall of the Taliban: The various edicts passed by the transitional administrations, the policy paper “Securing Afghanistan’s Future” (SAF) and the Interim Afghanistan National Development Strategy (I-ANDS).

#### 3.1 Early edicts consolidating holdings

The government’s early policy revolved around the consolidation of holdings,<sup>31</sup> a process, which could be seen from two different perspectives. On the one hand, it sought to recognise the legal *status quo* by divining the true legal picture for any plot of land, before seeking to ensure that the legal position is reflected by the location on the ground. On the other hand, the newer edicts passed were designed to secure the ownership of government land and to prevent the disbursement of such land by government actors. Thus:

- Decree 99 of 2002 froze all sales or transfers of government-owned land;
- 2003 saw a stream of edicts<sup>32</sup> striking at the perpetrators of “land grab” and demanding that various organs of the government attempt to recover land that belonged to the government but was no longer in its possession;
- Decree 83 of 2004 introduced rules making government ownership the default form of landholding, in the event that no other holding could be proven; and that land possessed uninterruptedly for a period of 37 years would belong to the government (positive prescription). It also acted against government exploitation of their power to appropriate land.
- The Constitution itself contains articles guaranteeing respect for property and ensuring that state appropriation only occurs in strictly regulated contexts subject to full compensation.<sup>33</sup>

From the perspective of the private individual, therefore, the laws give reason for both optimism and concern: optimism because the thrust is towards restitution of land unlawfully appropriated by power-holders, but concern because the law does not recognise informal positions.

#### 3.2 Government policy initiatives

Government policy has been dominated by a series of documents, drafted by a diverse group of actors from both the government and the international community. The most recent ones, the I-ANDS and Afghan Compact, both resemble and differ from their predecessor SAF:

- **Policy focus:** While SAF dealt with land in the context of the natural resource management technical annex, I-ANDS places it squarely in the context of governance, rule of law and human rights. This may impact on

<sup>30</sup> See Liz Alden Wily for an account *Land Rights in Crisis* p. 50 *et seq.* NRC *Guide* p. 33 *et seq.*

<sup>31</sup> See NRC, *Guide*, p. 55 *et seq.*

<sup>32</sup> Decree No. 17, Decree 3869, Decree 362. See NRC, *Guide* p. 56 *et seq.* for a thorough overview.

<sup>33</sup> Article 40, The Constitution of Afghanistan.

which ministry (for example, Ministry of Justice or Ministry of Agriculture, Animal Husbandry and Food) will assume responsibility and jurisdiction over land tenure issues. The policy documents also reflect a difference in philosophy that their similarity in language tends to hide: SAF placed emphasis on the significance of land law for governance issues and rural social stability, while succeeding documents reflected the focus of international actors on economics and the productive use of resources.<sup>34</sup> The former reflects the earlier edicts passed by post-Taliban interim governments.

- **Institutional responsibility:** SAF (NRM, sub-programme 9) sought to establish an inter-ministerial commission on “land management and titling”, which would propose systems for full implementation by 2015. ANDS has no comparable provision.
- **Constraints:** Pillar 3 of I-ANDS identifies failures in law reform and arbitrary law enforcement as responsible for a lack of productivity and efficiency in the agricultural sector, and a factor driving businesses into the informal sector.<sup>35</sup> SAF, in contrast, talked about failures in land law in the context of conflict and the impact on livelihoods.
- **Land management:** Both SAF and I-ANDS are clear that for a policy to be effective, it requires a “land management and titling system” (SAF), or a “process for registration of land” (I-ANDS). Neither offers further specification.
- **Impact:** Both share similar expectations of the impact of land law reform. They emphasise that “efficient and productive use of land depends on clear and unambiguous titles.”<sup>36</sup> The enforcement of property rights will “favour direct investment”, improve utilisation of land resources and increase tenure security, creating livelihoods and the environment for economic productivity.<sup>37</sup> I-ANDS adds that it will permit property owners to use their property as sources of credit (to “enable the poor to leverage their resources”).<sup>38</sup>
- **Dispute resolution:** Of the two documents, only the I-ANDS couples titling with dispute resolution (although the earlier policy document, the National Development Framework or NDF, also recognised this necessity). This type of provision is absent from the SAF.

### 3.3 Current MAAHF Policy

In July 2005 the Ministry of Agriculture, Animal Husbandry and Food (MAAHF), with assistance from the Asian Development Bank, released a draft policy document entitled, “Land policy and its implementation in Afghanistan” (henceforth, “Land Policy”). Shortly thereafter MAAHF produced its so-called “Master Plan”, which elaborates a comprehensive strategy for achieving a 6 percent annual growth rate in the agricultural sector. Consistent with the I-ANDS the strategy rotates around the

---

<sup>34</sup> The SAF does mention land rights in its Justice Sector reform, whereby land reform is the only private law issue to receive direct attention, and in its Livelihoods and Social Protection Technical Annex, but, significantly, does not address the issue in its “key priorities”, p. 16.

<sup>35</sup> Cf. p 60 and p. 64.

<sup>36</sup> NRM Technical Annex. Para 59, Paras 98-103. p. 33-4.

<sup>37</sup> *Ibid.*

<sup>38</sup> I-ANDS p. 122.



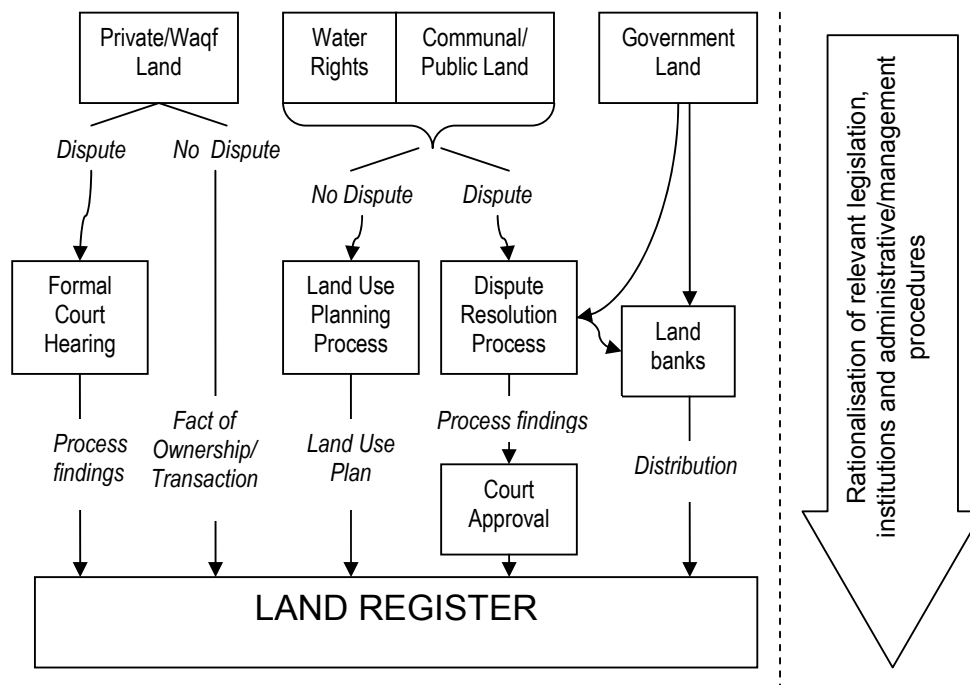
twin processes of land titling and dispute resolution. Both papers, however, include an inordinate amount of detail in this subject. The former paper bills itself as an issues and discussion document, forming no more than a basis for discussion and the starting blocks for a consultative process. While it does not purport to present a “definitive solution”, it fills in considerably more detail than any previous document.

Interpreting the documents, three major processes are proposed:

- Registration of all rights to all five types of land;
- Distribution of government (but not public) land;
- Land use planning, for communal and public land.

The process triggered in any given case depends primarily on the type of land at issue. They are to be accompanied by a rationalisation of the legislation, institutions and administration. Thus, the legislation is to be redrafted under the umbrella of a new land code, taking the place of the myriad pieces of law currently littering the statute books. The processes of transfer of ownership of land (and lesser rights) and the formalities required to prove ownership are to be addressed and streamlined; the allocation of land rights and land types is to be rationalised through the processes shown in Figure 2; and the responsibilities and shape of the institutions which administer all these tasks are to be rationalised. The product is to be a comprehensive cadastral register of all rights of ownership.

*Figure 2: Activities under Land Policy and its Implementation in Afghanistan*



The claims of the communities as to the legal status of a piece of land, rather than any objective legal status, determine which process is triggered. Different institutions may handle each process, although in the end, all processes terminate in the same place – the official assignment of rights gets recorded in the land register.

The MAAHF policy document does not specify to which Ministry the proposed Land Registration Authority would belong, or at what administrative level (district or provincial) the registry would operate.

### **Private land**

Rights to private land would be registered at the transaction stage, in order to provide an incentive for people to register immediately, thereby maintaining the legal landscape's relevance to the real world. Past disputes over private land were characterised by document-based arguments,<sup>39</sup> and thus it is proposed that the formal court system is the appropriate forum to address such issues.

### **Communal, public land and water rights**

When a community claims ownership of a particular area of land or water allocation, two possible processes are triggered. The specific process to be applied depends on whether the claim is under dispute. For claims that are not disputed, a "local land use planning exercise" is put into effect. This process involves a planning unit, made up of district-level officials, consulting with community members in the formulation of a land use plan.<sup>40</sup> When a claim is under dispute, however, the community is engaged more fully. A "land use planning adjudication committee" is formed which includes village elders, officials and other leaders.<sup>41</sup> In both cases rights are allocated, boundaries of land types and classes are drawn, and the outcome of the process (adjudication or planning) is registered.

While it is not specified precisely how the Land Use Committees will be structured, the policy recommendation focuses on district-level land use planning units, despite the tantalising offering in paragraph 76, which notes the desirability "[of] district, provincial and river basin levels". Although the process is consistent with the water law currently at the drafting stage (Anderson notes that the law states water allocations will be fixed during land reform), it is not clear how decisions, duly registered, will tie in with future deliberations at the river basin level.<sup>42</sup>

### **Government land**

Official policy regarding government land has hitherto been characterised by a freeze on land sales, indicating a process of recovery and consolidation. The Master Plan and Land Policy, in contrast, provide for a process of disbursement in order to relieve the severe pressure on land felt in some areas in the country. The Master Plan rehabilitates the notion of settlement schemes whereby government land is disbursed to settlers meeting certain conditions.

---

<sup>39</sup> p. 33-34, Land Policy.

<sup>40</sup> p. 24-26, Land Policy. See also Master plan pp. 222-223, 230.

<sup>41</sup> p. 35, Land Policy.

<sup>42</sup> p. 7 Ian McAllister Anderson, *Irrigation Systems* (2006).

## 4. Field Observations from Nangarhar

### 4.1 Hill valley sites: Otarkhel/Khwaga, Sra Qala, Maruf China

Three of the four villages lie at different points on the Pakhel Wash: Khwaga and Otarkhel upstream, and Sra Qala further downstream. Maruf China lies on the other side of a fold in the land, in a nearby wash. Otarkhel and Khwaga comprise two parts of one settlement, and together with a third such sub-village, make up a *qawm*. Likewise, Sra Qala forms one part of a twin settlement with Landi.

**Private ownership:** The manner in which a landowner obtained his land determines the formality of his holding.

*Acquisition through inheritance:* All villages followed the same pattern with land granted to a single ancestor being subdivided through a process of inheritance. With land passed on through inheritance, properties had been divided and re-divided. While there were claims to the existence of formal documents, nobody claimed actual possession of such documents. Villagers were content to rely on oral history and tradition for the boundaries of each individual's plot. Again, unanimously in each of the three villages, residents clearly stated that they prefer to have formal titles, since they would be useable in formal *fora*, whereas witnesses (which seem to be the cornerstone of the informal system) "might disappear". It was repeatedly noted that they were not willing to bear current expenses (taxes, processing costs) which they considered too high; and were concerned with the process being too corrupt. In Maruf China and Sra Qala it was said that formal deeds were granted to the land, which stated that the land belonged to a common ancestor or common ancestors. In the case of Maruf China, this document defined distinct boundaries (three points, and one physical boundary in the form of a river). In Otarkhel there were reports of a deed granted in the time of Zahir Shah.

*Acquisition through sale:* In each of the three villages, sale of the land would trigger the need for a witnessed informal deed.<sup>43</sup> Several comments brought to light the fact that it was the witnesses to the deed, and their readiness to testify to the validity of the sale, that brought security of title. The precise formalities, and the nature of the rights of first refusal accompanying a sale, differed in the three villages:

- In Otarkhel/Khwaga (the most distant village) the elders claimed that land was never sold to outsiders but neither did they respect the *Sharia shafa* rules whereby neighbours had a right of first refusal.<sup>44</sup> The elders viewed the rules as an unwelcome expression of government policy and centralisation (despite its clear provenance under *Sharia*) and consequently, in practice, they were ignored automatically. Although in the event of a sale, informal documents were prepared, the elders stated that as a corollary to the rejection of *shafa* rules, neither the boundaries nor the neighbours were cited.
- In Sra Qala and Maruf China sales of land require documents, which specify the witnesses, the price of land, the amount of *jeribs*, boundaries and the

<sup>43</sup> In one village, it was mentioned that amongst the *shinwaris* a goat slaughtered by the buyer in the company of witnesses would suffice to bind the witnesses.

<sup>44</sup> *Shafa* means a *Sharia* requirement creating rights of first refusal, which are held first by one's relatives, then the neighbours to the plot of land. There was even a statement to the effect that *shafa* rules were associated with formal government, whereas in Otarkhel they governed their lives in a manner that is "the opposite of the government system". They appeared very proud of their independence and their adherence to customary rules.

neighbours. Processes of sale follow *shafa* rules and occur rarely – in Sra Qala only 4-5 *jeribs* had been sold to outsiders in the past year; in Maruf China, no sale occurred.

**Disputes and dispute resolution:** In all villages minor disputes concerning such matters as water rights (people exceeding their allocation), land boundaries, right of way, occur occasionally over private land and are usually settled by bringing the issue to the village elders or a *jirga*. Some specific examples of disputes were given:

- In the absence of an IDP, a relative using the land would obtain a document from the Taliban and occupy the land. When the IDP returns, the relative refuses to give up the land.
- A family rehabilitates a canal. Another resident (a returnee), who has not contributed to the canal's rehabilitation, wishes to make use of it without sharing the cost.
- One family builds an access road, encroaching on another family's land.
- A youth with newly inherited land oversteps the boundaries of his land. It goes to the elders, who put things right.

Everyone within a village knows their entitlement to land. If no agreement results from the proceedings, the issue is referred to a committee of 15-20 members living in the entire Pakhel Valley, with further reference to the court if it becomes necessary. Going to the District Courts, however, is a last resort because getting disputes resolved by the courts in a just manner is something of a forlorn hope. Several statements were made to the effect that such courts were not immune to corruption.

Other remedies cited included the division of disputed land between the parties, or making one party swear on the *Qur'an* that his contention was accurate. The villagers stated that there were between one and two *jirgas* held every year between them and a different *qawm*.

**Water rights:** In Maruf China and Otarkhel/Khwaga, water rights are attached to land. Thus, if land is sold for building purposes, then the seller retains the water rights. There was anecdotal mention of documents being prepared to this effect. If there is a conflict over water, a third party is brought in to measure water availability. Only Sra Qala, of all the areas visited, stated unequivocally that water rights do not attach to land, and could be sold without deeds. This contradicts all other findings and no reason was given.

**Box 1.** *The procedure for mortgage is governed by Islamic law whereby the mortgagor (borrower) vacates his land and passes it to the mortgagee's (lender's) control. The lender or some other person on his behalf is entitled to use or cultivate the land and retain the crops that are grown on it throughout the term of the mortgage. No form of monetary interest is permitted, the lender's use and enjoyment of the land is regarded as interest equivalent and the borrower remains liable to repay the lender the principal amount that was originally agreed. The document containing the mortgage terms is normally prepared by a local religious scholar or other respected person. During the mortgage period the borrower may migrate to another region or country to earn money to pay the principal. If he dies before the amount owing is repaid, the debt is transferred to his heirs. Although no change of legal ownership results from a mortgage, it is evident that an undischarged mortgage could last for many years or even in perpetuity.*

**Gerawi/Ghana mortgage:** Mortgages are higher in the Achin hill valley sites than in any other sites visited. In Khwaga for example, a very high absolute proportion of the land was mortgaged, although further downstream, this falls away to a still high proportion in Sra Qala and Otarkhel. There was evidence to the effect that during the Taliban clampdown on opium production in 2001, many agricultural families fell seriously into debt and taking on a *gerawi/ghana* became commonplace. Between 2002 and 2004, opium production re-emerged as a main source of income and debts were paid off. This implies that the farmers were allowed to remain and redeem their land.<sup>45</sup> On the other hand, there were reports that some borrowers migrated to Jalalabad or elsewhere to earn money to repay their debt (see Box 1), indicating that not all farmers were allowed to stay and reclaim their land. With the increasing counter narcotics enforcement there are signs that *gerawi/ghana* mortgages may once again be on the rise. One point to remember is that while mortgage is, in general, an indication of poverty, it also implies that the mortgagor (landowner) believes he will be able to repay the debt (otherwise he would simply sell the land). Several factors may be influencing the surge in mortgages, without a parallel surge in land sales. First, land prices in Achin have fallen dramatically. Second, farmers may believe that they can redeem their land through working in the opium economy, perhaps by growing poppy on their remaining land, working as a harvester or even as a sharecropper although the opportunities for this are scant in the Achin District (more on this in the Sharecropping section below).

**Sharecropping:** It was reported that sharecrop arrangements are usually with close relatives, in order to give access to farmers with small or no landholdings. In general, however, the percentage of land held as a sharecropper is low. This can be attributed (as was reported) to the very high value of the land due to the potential poppy yields, and the very heavy population pressure on the land. Inevitably, the owner of the land ends up cultivating it himself.

In Achin, the contractual terms are dominated by 50/50 arrangements (owner/sharecropper), whereby the landowner and the sharecropper either split the inputs 50/50 or, in fewer cases, the sharecropper bears all the costs. Since the quality of the land and soil are not uniform, however, a variety of other share-balances were reported, although occurred less frequently. Contracts with 66/33 and even 80/20 arrangements were reported, and an indication of desperation on the part of the sharecropper, particularly when the crop is labour-heavy poppy. It is only resorted to by those without any capital or alternative income possibilities. The decision of what crop to grow is primarily in the hands of the landowner, but usually occurs in agreement with the sharecropper. As landholdings are small, the most common crop to be sharecropped is opium. It should be noted that opium is a much more labour intensive crop than wheat and places a greater burden on the sharecropper, while at the same time providing a greater potential return. When asked why people do not borrow to provide the inputs, it was said that they could not guarantee a sufficient yield due to the uncertainty from variables, such as water supply and possible eradication.

With a sharecrop contract, risk is shared: the sharecropper and landlord share the costs of the upfront inputs. The “rent” paid to the landlord is indexed to the success of the harvest and, in fact, is a proportion of the harvest. In the past in the case of a natural catastrophe, the sharecropper had to reimburse the owner for the costs of the inputs.

<sup>45</sup> Anthony Fitzherbert, Nangarhar field notes prepared from field visit Nov/Dec 2005.

Sharecropping contracts reflect a patron-client relationship that now involves fewer subsidiary obligations than were imposed in the past. Ten years ago, many landowners required their sharecroppers and tenants to carry out tasks (fetching wood, fodder, etc.), in addition to the primary content of the agreement. This is no longer the case.

**Lease:** Leases of land are typically for a period of up to three years and are based on oral agreement, not a written document. Rent is more commonly payable in kind (denominated in opium or in wheat) rather than in cash, and at a fixed rate. Very few leases in Achin were found (except in Otarkhel, where leases were linked to opium production). This was reported as being attributable to the insufficiency of water, which makes the fixed cost of rent and the need to bear all the costs of the input a much more risky investment. It is worth noting that in lease agreements, tenants are not obliged to pay rent in the event that the land is destroyed, either in the case of natural or manmade disaster, or if the government eradicates poppy fields. In Otarkhel, the larger number of leases was reported as being a result of the extensive migration away from Achin, leading to a large number of absentee landlords.

**Common/public land:** All three of the villages claimed one part of a wider piece of common property, which they shared with neighbouring villages. Thus:

- Otarkhel/Khwaga claims exclusive use of an extensive plot of “common” land, comprising pasture land, a graveyard and a celebration ground (reported to be 100 *jeribs*). According to a long-standing mutual agreement, this land is split between three *khels* into “measured parts”. Together the three *khels* make up the *qawm* (Otarkhel, Pakhel and Thawoskhel, Baburzai). While the land is recognised as belonging to the government (public land), the villagers claim sole access rights. Certainly, although there are *kuchis* to be found further down the valley, it was stated that “they do not try to come this far up”.
- A conflict lingers over this land involving a dispute with a neighbouring tribe, the Mohmand tribe, which has been in existence since the Daoud regime. During the Taliban rule, the government would not support the villagers against the Mohmands and fighting broke out resulting in at least one death. It was stated that after several failed attempts, a *jirga* was held. Boundaries were agreed upon in the presence of the government and a letter was written documenting the resolution of the dispute. There were conflicting reports, however, as to whether all the parties involved accepted this process of resolution.
- The villagers of Maruf China demonstrated strong communal (rather than public) ownership of a pasture, which was delimited in the original deed granted to the common ancestors (two brothers). Perhaps following this division, the pasture itself was divided into two: the lower and upper pastures, to be used by subsets of the community. This definition was clear; no conflicts have arisen from it, and the two sub-pastures are used solely by the communities (except that the *kuchis* have rights of access to the land as well). Earlier, by unanimous decision, the community agreed to give the government a portion of the pasture for a school site.

- Disputes with both neighbouring and nomadic communities were noted. Two disputes over this land arose with neighbouring villages (one of whom, it was claimed, had used the pasture for a graveyard, the other for building purposes). Both disputes were resolved in favour of Maruf China because their deed specified boundaries, whereas the documents of the other villages did not. A problem also arose between the villagers and nomadic *kuchis*, who, during the time of the Taliban, were grazing on the irrigated land. Rights were recognised over pasture, but not over irrigated land. A *jirga* with the participants and with the District Manager was reported to have solved the matter.
- Sra Qala and its twin village Landi share a single defined area of community pasture of about 170 *jeribs*, not all of it in one place. Although the village reports that they have no deed proving ownership, this land is perceived as being solely owned by the village and is shared with no specific portion allocated to a household. In addition, there is an area of government-owned land, containing 84.5 *jeribs*, which the villagers have a right to use for grazing. It is not clear if this is “government” or “public” land. *Kuchis* pass through the village pasture although there were conflicting reports as to whether this represented full grazing rights or only access rights.
- A “commander” from another *qawm* was reported to have moved in and occupied 150 *jeribs* of land on the *dasht*. A supporter of the Taliban, he received a formal document from the government. When the villagers disputed this, they could produce no deed and were unsuccessful. While the dispute was pending before the District Manager at the time this research was conducted, the villagers were not hopeful.

## 4.2 Janikhel

**Private ownership:** Private land ownership derives from a government allocation during the reign of Zahir Shah in the early 1970s. Since the outbreak of war, no transfers were formally registered. Tax receipts are regarded as proof of ownership, and are payable on land over two *jeribs*. The villagers appeared satisfied with the functioning of this informal system, but they expect a more formal system to be reintroduced in the future. Buying and selling land occurs and is undertaken informally in writing before four or five witnesses. The villagers are satisfied with this traditional method and see no need for formal titles except perhaps in the future.

### **Box 2. The Nangarhar Irrigation Scheme**

*The development of the Nangarhar irrigation system was started by the USSR in the late 1950s and was completed in the 1970s. In the course of the development of the irrigation system the Government appropriated sizeable areas of land claimed by the Mohmand, a Pashtun tribe straddling the Pakistan border for the purpose of establishing a series of state farms and plantations of citrus and olives. The villagers still claim the land amounting to approximately 20,000 *jeribs* (4,000 hectares) of pasture and cultivable land reliant on the opportunistic exploitation of rain and flood water. This land was split between them and four additional villages. At the present time the Government land is not really being managed although some of the open arable land is being leased to private individuals to grow wheat and melons. The land remaining in Mohmand possession is provided with a more plentiful and guaranteed supply of irrigation water than was available before the construction of the canal.*

**Disputes and dispute resolution:** Apart from their claim over the state farm land the *maliks* did not admit to any other serious dispute over land or water. Minor land disputes occur from time to time, such as claims of ownership. They are settled by local elders, sometimes with the assistance of elders from other villages. Any unsettled dispute is referred to the court.

**Sharecropping:** Previously the most usual sharecropping arrangement was 66/33 (landowner/sharecropper) with the landowner providing the land and access to water plus all the agricultural inputs – seed, fertilizer and pesticide, as well as the motive power for cultivation and threshing. The sharecropper provides all the labour in return for a 33 percent share of the crop. However, nowadays it is more common for 50/50 arrangements to be agreed upon, whereby the sharecropper shares the cost of the inputs. They explained that this change is due to the fact that there used to be a shortage of potential sharecroppers when the population was smaller, but that there is now a surplus of labour due to the increase in the population and the increased fragmentation of land.

**Lease:** Leases are arranged orally for a term of one to three years, with the rent payable in kind. This makes leasing an attractive prospect, since rent can be paid with opium. During the 1990s, when opium poppy was an important crop in Janikhel, lease agreements were very common. Nowadays, with government pressure to stop leasing and the increase in poppy cultivation, there is less demand for leasehold.

**Mortgage:** Mortgages are common and in accordance with Islamic law. The conditions of the mortgage are contained in a written document signed before witnesses and retained by the lender. The borrower vacates the land and works locally or abroad to earn money for debt repayment. Sometimes a borrower will mortgage only a part of his land or, if his entire land is mortgaged and the lender agrees, he may sell a part of it to raise money to repay the loan. According to one report, a typical mortgage loan is 50,000 Afs for one *jerib*.

**Common/public land:** Before the government constructed the Nangarhar Canal the village had its own communal pasture but now they have none. Their animals graze along the banks of streams.

*Table 1. Sharecropping cost-division*

	Owner	Share-cropper
Land	100 %	
Water	100 %	
Labour		100 %
Seed		100 %
Fertilizer		100 %
Draught		100 %
Yield	25 % 20 % 16 %	75 % 80 % 84 %



## 5. Field Observations from Kunduz

In Kunduz, villages in two districts were visited: Abdul Nazar and Alam Bai, which are on a hilly plateau in Khanabad District, reliant on rainfed land only. Afghan Mazar, Dana Haji and Wakil Jangal are located in the Kunduz River flood plain. The villages from each district will be considered together.

### 5.1 Rainfed villages: Abdul Nazzar and Alam Bai

Both villages are located very close to each other on a hilly plateau, which has no irrigation water whatsoever. Their agriculture is therefore characterised solely by rainfed land. Both villages have access to pasture land.

**Private ownership:** According to the villagers in Abdul Nazar (in statements made in a group meeting), original deeds of ownership were given to four brothers some 80 years ago (see Box 3) and were registered in the *Amlak* Department of the MAAHF. All the villagers were clear that the land was privately owned, not government owned, and they put a great deal of stock on the fact that they hold tax receipts, which they regard as proof of ownership. According to officials in the *Amlak* Department in Kunduz, however, the cultivated land is actually owned by the government and leased to the villagers, who pay rent rather than tax, either in cash or a share of the crops.

*Box 3. Where once there were four brothers, there are now 40 households in Abdul Nazar, but each household derives its title from one of the original four brothers' deeds. Tax is still paid according to the rates attached to the original deeds, and consequently the entire village devolves into four distinct groups. Each group selects an elder to collect the tax due from each household, calculated as a proportion of the original tax amount. No one shirked on this duty, so the villagers claimed.*

**Acquisition through inheritance:** Land obtained through inheritance does not come with a formal document. Only land passed on through sale comes with a deed. All persons addressed said they felt secure in their tenure; they are paying taxes. They consider themselves secure both within the system, given the strength of the oral tradition and the coherence of the communities, and outside of the system. They noted that in the past, during the Taliban regime, they felt less secure, but that the government is now stronger and it is more probable that their rights will be respected.

**Acquisition through sale:** Only through sale are customary deeds created. These specify the price, boundaries, seller, buyer and witnesses. *Shafa* rules apply. While no land had been sold in these villages, "1000 *jeribs*" were reported as having been sold from other villages in packets of 10-20 *jeribs* on the private market (i.e. organically, rather than being linked to land grab-and-sell by a local power holder). In the context of transfer by inheritance, at the point when the land is to be divided between sons, boundaries are set and the process is witnessed by elders, but no deed is made.

**Dispute and dispute resolution:** Several types of conflict were mentioned in the course of the interviews:

- *Boundary disputes:* boundary lines between one family's rainfed plot and neighbouring plots are not well defined, and consequently disputes do arise as when someone ploughs into another person's claim (about 3-5

requiring a resolution process each year during the war, but fewer now according to the reports from two elders).

- *Land appropriation*: One farmer claimed to own 58 *jeribs* before the war, until it was occupied by a local power-holder with whom he could not compete. He lost the land and became a sharecropper on another land.
- *“Invasion of Privacy”*: One member of Alam Bai built a house high on a hillside that overlooked all the other houses in the village. The villagers objected to what they considered to be an invasion of their privacy, and a fight ensued between the house builder and another member of the community, resulting in physical injury. The injured party received monetary compensation and the District Security Officer ruled that the offending house must be allowed to remain.

Such disputes are settled by community elders, although one female resident expressed displeasure at the judgement of the village head in such *shora*. Only if a dispute cannot be settled by local traditional means are they brought before the authorities.

**Sharecropping**: Sharecropping contracts follow the terms in the table. Other arrangements were reported, whereby the sharecropper has 75 percent, 80 percent, or even 84 percent of the yield. Lands in these areas up on the hillsides are of very little value. There is a standard term in the contract that sharecropping agreements last for two years with an enforced rotation: one year wheat, the next some other crop. It was otherwise stated that the sharecropper could choose the crop, sometimes taking advice from the owner (no doubt depending on the nature of power balances).

**Lease**: Leasing contracts are not entered into. The risk of a bad harvest is too great on rainfed land for a tenant to accept all the costs of inputs and a fixed rent, half of which he must pay upfront.

**Mortgage**: Several farmers mentioned *gerawi* mortgage and it seems to play an important part in the village economy – two statements were made to the effect that 25 percent of the households held land under *gerawi* mortgage. There was a variation on the standard *gerawi* contract that existed: the mortgagor (landowner) would sharecrop the land back from the mortgagee (creditor) and provide 1/10 of the yield in addition. This is, of course, a form of interest.

**Access rights**: In situations where a landowner is unable to reach a road or public path without crossing his neighbour’s cultivated land, he must negotiate a right of way across that land and must do no damage to standing crops. Where stubble land remains after harvesting, it appears that any member of the community is free to graze on it.

**Communal/public land**: The original deeds of Abdul Nazar note that the land granted is bounded by pasture land (on certain edges). Both villages have pasture land, used solely by the villagers, but owned by the government. The boundaries of the rainfed land and the pasture are clear (as set out in the original deed). It was mentioned in one place that neighbours of pasture had some claim to the pasture as *shafa*, but the nature of this was not clear and was not pursued. The *Amlak* Department claims that the villagers are eligible to pay rent for the pasture used.

Under the Taliban, conflict over the pasture land arose between other villages, (according to one report, one or two separate incidents required resorting to conflict-resolution mechanisms for a year), but nowadays, much fewer disputes are reported. Abdul Nazar only had one such significant conflict since the war, whereby two recent arrivals built houses on a flat piece of pasture land near the village. The villagers claimed that this was taken to the Head of the Department of Police in Khanabad, who decreed that no more buildings were to be put up.

## 5.2 Flood plain: Wakil Jangal, Afghan Mazar and Dana Haji

**Village layout:** In general, land and water appeared plentiful in the villages in this area; in great abundance, in the case of Dana Haji. Both Wakil Jangal and Dana Haji suffer from serious flooding, with the Kunduz River destroying 45 *jeribs* of irrigated land. Those affected reportedly left for Pakistan, although one person remained and resorted to sharecropping other people's land. Land was more or less evenly distributed and no major landowner in the area was specifically identified.

**Formality of title, security of tenure:** Significant differences in the title and tenure history of the three Qala-i-Zal villages exist:

- *Wakil Jangal:* This was created as a village 45 years ago. The original owners state that they all received separate formal documents. It is not known how many were distributed. At the time of writing, there were three ways to hold land, roughly approximating to three circumstances: those who are granted land or purchased land directly from government (formal); those who buy (informal); those who inherit (usually with no proof of ownership; or on rare occasion, some may be in possession of the father's deed or an informal deed). Wakil Jangal could be viewed as a village at an earlier stage of subdivision than the Achin villages.
- *Dana Haji:* A patch of marsh was granted in the 1920s at the time of Nader Shah (Zahir Shah's father) to four brothers who were authorised to drain and clear the land, construct irrigation channels and farm. These families still have copies of the original title deeds. An additional 40 or 50 *jeribs* were added under a lease from the Government. The familiar process of division by inheritance ensued. It was reported that land was subsequently lost along the river bank as a result of flooding, but the Government granted additional scrubland to clear for agricultural land.
- *Afghan Mazar:* There were inconsistencies in the reports between the villagers: some said the original settlers received formal documents from the governor, others said only informal titles were given. Ownership of the land belonging to a neighbouring village, called Shorarak, is being contested by *kuchis* to whom the land was originally granted, and who have recently returned making

*Box 4. One respondent in Afghan Mazar noted that during the Taliban time, some rich Turkmen who had bought land from Kandaharis – and who had received informal documents thereto – were challenged by the Kandaharis, who claimed that their land title is not valid. The Taliban supported the Kandaharis, allegedly for ethnic reasons. The Turkmen were forced to repurchase their land. Only a certain number of the Turkmen population claimed to have suffered from this alleged injustice and only in cases where the original deed-holders were “unscrupulous”. Under the current government, the villagers feel confident in their title.*

a claim on it. This is a cause for concern to the villagers of Afghan Mazar. Subsequent transfers of land, whether by inheritance or sale, involve no formal documents. The most recent *Amlak* maps dated back to the 1970s.

Satisfaction with the security of tenure differs in Dana Haji and Wakil Jangal, where the villagers were unanimously satisfied with their security of tenure. In Afghan Mazar, however, the respondents said that while they felt confident with the title they held, they would still prefer a formal one. They did confess that obtaining such a title would be far too expensive and far too long a process – four months, in their estimation.

*Amlak Department's Perspective:* The farmers in all three villages state that they pay taxes, which were reported as being indexed to the harvest. Officials from the *Amlak* Department do not think that the farmers own the land. They state that the land under both Afghan Mazar and Dana Haji are held under lease, and that the tax payments made are, in fact, rent payments.

*Acquisition through sale:* In all areas, *shafa* rules apply to sale. Where land passes through sale, informal documents are prepared. Such a document would include details of the boundaries, the identity of the neighbours (including their thumbprints), as well as the buyer's, seller's and the witnesses'.

Across the three villages, there were differences in the activity of the land market:

- In Wakil Jangal there appeared to be a vibrant market for land: half of the farmers interviewed had bought land.
- In Afghan Mazar and Dana Haji, the villagers stated that there were very few sales. When asked why there were more in Wakil Jangal, one elder speculated that it was because the land was productive. There were no reports of people purchasing land from outside the village.

*Acquisition through inheritance:* One point to note is that transfer through inheritance does not necessarily occur on death, or through the execution of a testimony. One farmer interviewed shared a plot of land with his two brothers, although his father had died. They lived in the same house and had not distributed the land yet. Similarly, *urfee* documents may be prepared by “educated” fathers and their land may be split according to the rules of *Sharia* before they die.

**Disputes and dispute resolution:** Neither the villagers of Dana Haji nor Wakil Jangal reported disputes of any significance, but noted that any such disputes would be settled by the elders of the community. Afghan Mazar lies at the bottom of the water system and has problems with four other villages upstream. These disputes sometimes lead to threats to block the water supply to the village. The few internal land disputes that occur are settled in the traditional manner by the *shora*. Any dispute that remains unsettled is taken to the district court for a decision, although government institutions are not trusted in general.

**Sharecropping:** Sharecropping contracts were remarkably similar in all three villages. The only variation was whether the cost of the seed would be split or would burden the sharecropper alone. One point was raised in Afghan Mazar, whereby the migration of labour to Kunduz and Kabul has altered the market in favour of the sharecropper, so that the owner, in some cases, is forced to bear the cost of draught and sometimes even the cost of cleaning the canal. The following contracts were reported:

- 50/50 split of yield, where the sharecropper provides either all or half the seed and fertilizer, and bears all the cost of labour and draught.
- 25/75 split, where the sharecropper provides all the inputs and draught and gets 75 percent of the yield.
- A variation on the former, whereby the yield is divided 40/60 and the sharecropper provides all the inputs.
- 66/33 split, where the land, access to water, seed and fertiliser and motive power for cultivation is provided by the land owner and only the labour by the sharecropper.

**Lease:** Leasing occurred less frequently than sharecropping. Leasing provides 50 percent of the rent upfront, open to negotiation, and rent is paid in kind. Sharecropping was preferred from the perspective of the landowners because it is more lucrative (they noted that in a lease, the tenant could drive the rent right down in negotiation; lease was considered half as valuable). From the sharecroppers' perspective, the downside of leasing includes the requirement that rent must be paid in advance, plus some vague notion that it was un-Islamic. This was difficult to pin down but it appeared to revolve around the non-exclusivity of the arrangement and that other Muslims could use the land (although presumably this extends no further than the owner). Further, sharecropping was held to accrue additional benefits to the owner – sharecroppers perform the task of collecting wood. Elements of a patronage system exist, as well. In Kunduz, leasing is normally a contract by absentee.

**Mortgage:** Few mortgages were reported in any of the three villages.

**Pasture land:** Neither Wakil Jangal nor Dana Haji owned pasture land. There were conflicting reports as to whether the villagers of Afghan Mazar had the right of access to the *dasht-i-abdan* pasture but the question is academic since the villagers had very few livestock and seldom availed themselves of the opportunity it presented.

## 6. Field Observations from Herat

### 6.1 Rainfed villages: Khalifa Rahmat and Sir Zar

**Private ownership:** According to the villagers all irrigated and rainfed cultivated land is considered to be private. Before the Saur (Communist) revolution, there was one family who owned the title deeds for this land, but they sold it to the villagers and now live abroad. Informal documents were made for the sale. When asked whether they would prefer a formal title, the owners said they would, but they are concerned about the expense. In some instances, the cost of formalising an informal title could exceed the value of the land. There is very little buying and selling of land as a result of the drought and few local people have the money. Such a sale would require an informal deed.

Distinct boundaries mark the different sections of the irrigated crop land and also mark the divisions in the rainfed land.

No internal land disputes are said to exist at present. Any such disputes would be settled by the *shora*. If no settlement could be reached in this way, respected individuals from neighbouring communities may be asked to arbitrate. Only as a last resort would they take a case to the Government.

**Sharecropping:** The terms of sharecropping agreements differ according to several factors, notably whether the land is rainfed or irrigated, and, for irrigated land, what the parties are willing to bring to the agreement. For irrigated land, the split is 75/25 (owner/sharecropper) if the owner provides all the inputs; and 33/66 if the sharecropper provides the inputs.

**Lease:** It is reported that there is no leasehold in Khalifa Rahmat. Because of the danger of drought, there is considerable risk of not being able to pay rent, which is customarily in wheat.

**Gerawi mortgage:** Village land is not mortgaged at present, but mortgages under the Islamic system existed in the past. No land in Khalifa Rahmat is mortgaged; because of the high risk of crop failure due to drought, the land is not considered worth mortgaging.

**Communal/government land:** Common land consists of pasture, which is accessible to all landowners. The outer pasture limits are well-defined, by custom but not by formal law, as are the specific areas of pasture used by each owner. Similarly, the boundaries between adjacent villages are defined by custom. This includes some higher upland country, about two hours walk from the villages, used for seasonal grazing for two months in the late spring/early summer.

The villagers reported that *kuchis* periodically graze on the common pasture and that their animals destroy cultivated land. They are discussing this problem with the *kuchis* in an attempt to reach an agreement. Two groups of *kuchis*, both Pushtun speaking, pass through the Khalifa Rahmat range in the spring and autumn on the way to their summer and winter quarters. There can be tension but generally this has been sorted out locally. Disputes have arisen in the past when *kuchis* grazed on the standing crops.

## 6.2 River valley site: Tunian Mian Deh

Tunian Mian Deh is the smallest of four “quarters” of a larger village, Tunian, which is composed of a total of 500 households.

**Documents proving ownership:** In Tunian, land ownership can be split into two. One half is dominated by one large landowner: the sons of Haji Faiz Mohammad Khan, who owns 2,000 *jeribs* (400 hectares). The rest is held by sharecroppers and small landowners with holdings of between three and five *jeribs*. The village showed the now familiar cycle of official title deeds sub-divided through inheritance, and informal deeds triggered by sale. The sons of Haji Faiz Mohammad sharecrop out their land to around 50 sharecroppers and, while they themselves live in Herat, they hire a steward, who manages and oversees the supervisors.

*Box 5. Although women have a right of inheritance it is seldom that they are able to take this up in practice. There are exceptions, however. One woman in Khalifa Rahmat farms the 10 or 12 *jeribs* that she inherited from her father in her own name and with her husband’s agreement with *dehqan*. She keeps her share of the harvest for herself to decide what to do with it. This is a notable exception to the general rule that women lose control of their inheritance. She is considered a heroine (*kharaman*) by the other village women.*

In transfers by sale, *shafa* rules are respected. One customary document was presented, bearing the names of the buyer and seller, neighbours, witnesses (but no signatures were affixed in the document), delineation of boundaries and the amount paid.

The members present at the meeting said they are satisfied with the informal system of landholding. They pay taxes to the government and the land parcels they occupy are included in the cadastre undertaken under the 1965 legislation.

**Disputes and dispute resolution:** The only directly addressed point was that of water disputes. If someone takes more water than his allowance, he will be forced to pay back that amount in the next cycle. If, however, there is an excess in water supply, it ought to be given for free to a neighbour; otherwise it will be lost completely to that portion of the community.

**Sharecropping:** The terms of a sharecropping contract are not standard. First, there is a fundamental split between the *panj-do* system,<sup>46</sup> where the sharecropper contributes inputs to the agreement, and the *bazgar* arrangement, where the owner is expected to provide everything. Within the *panj-do* arrangements, a number of different terms were found:

Shares appear to give different terms. The reason for the first and

**Table 2. Various “Panj-do” Contractual Terms**

Contract cost division	Contract 1		Contract 2		Contract 3	
	Owner	Share-cropper	Owner	Share-cropper	Owner	Share-cropper
Land	100 %		100 %		100 %	
Water	100 %		100 %		100 %	
Labour		100 %		100 %		100 %
Seed		100 %		100 %		100 %
Fertiliser	40 % 50 % 0 %	60 % 50 % 100 %	50 %	50 %		100 %
Draught		100 %	0 % 100 %	100 % 0 %		100 %
Yield	40 %	60 %	50 %	50 %	33 %	66 %

<sup>46</sup> Despite *panj-do* meaning “five-two”, in fact the terms do not signify a 5:2 ratio.

second contract may be attributable to a number of possible factors, including the amount of water available and the value of the land. If a landlord's land has more water, he can command a larger share of the yield. The choice of crop lies with the sharecropper, it was reported, but this is largely illusory since his choice is determined by water availability, and thus invariably double-crops barley and wheat. A sharecrop contract is on a year-to-year basis and can be terminated by the owner of the land. There is no right to roll the contract over. The judgement falls entirely on the owner and there is no recourse for the sharecropper. Sharecropping contracts of up to 20 years were reported among the lands of Haji Faizahmad, but not more than six years among the smaller landowners.

**Leasehold, *Idjareh*:** There is some leasehold usually given by families who are away from the village, for between three and five years. The rent is generally paid in kind in wheat and the tenant is usually referred to as a "*keshtmand*", a somewhat loose term, often used to refer to certain types of sharecroppers. People will only lease their land if they cannot collect the proceeds – i.e. if they are "absentee" landlords.

***Gerawi* mortgage:** Cases of mortgaging land were reported in Tunian, although none were reported during household surveys.

**Communal/government land:** There is a large *dasht*, which is available due to the failure of the Zamanabad Canal (also known, variously, as the Zaman Khan Canal and the Khayrabad Canal) and its irrigated land. While acknowledged to be privately owned land, as part of a large estate, the failure of the Canal has meant that the owner (the sons of Zaman Khan, the original grantee of the estate) does not enforce his exclusive right. The land is open to Khayrabad, as well as to Tunian and Qala-i-Namak, and herds were spotted in all villages. One shepherd interviewed said he was on Tunian land, but nobody else backed him up. An older shepherd claimed that it was Zaman Khan's land. In addition to this expanse of private land, farther into the hills North of the Obeh-Herat road, there are fields into the mountains owned by the government but to which villagers from Tunian have right of access. There is also a small *tepa* or knoll, communally owned by Tunian villagers, with limited capacity to graze animals. None of the people interviewed claimed any conflicts over the pasture. There were indications that if the rangeland of Zaman Khan were to be converted into irrigated land, this would lead to disputes.

### 6.3 Hillside village: Ghorak

**Private ownership:** There was some contradictions between what the villagers claim and what the *Amlak Department* in Herat states. According to the villagers, the land was originally registered in the name of their forefathers, but was subsequently subdivided through inheritance. According to the *Amlak* officials, all the land belongs to the state and the villagers of these three communities have no legal title. The villagers say they are satisfied with informal land tenure and informal land transfer. No internal land disputes were reported. Any such dispute would be dealt with by the *shora*, in some cases with the assistance of elders from the two neighbouring villages, and further, to the district court if the dispute remains unsettled. At present no land market exists, but sales occurred two years ago and were performed in the traditional manner, using elders and witnesses. Water rights are allocated in proportion to the size of and owner's land parcel.



**Mortgage, lease and sharecropping contracts:** According to the first round of household monitoring, no mortgage, lease or sharecropping contracts were drawn. The marginal nature of the agriculture and the minimal value of the land meant that such agreements are very rare. Under the local sharecropping system, the owner provides only the land and receives one-third of the crop. The sharecropper provides the seeds, fertiliser, labour and an oxen or tractor, and does the ploughing, cultivating and harvesting. He receives two-thirds of the crop.

**Common/public land:** The villagers have pasture rights on the village side of the adjacent hill slopes. They claim to have these rights under a formal document issued by the government about 84 years ago. This claim is disputed by *Amlak* officials in Herat, who say that the land belongs to the government. One possibility is that the deed accords access but not ownership rights. The pasturage is shared equally by all the villagers; no part of it is allocated for individual use.

## 7. Field Observations from Ghazni

### 7.1 River valley villages: Chel Gunbad, Turmai, Qala-i-Naw

**Private ownership:** In all three villages the legal landscape was mixed, with people either deriving ownership rights from a formal deed or from tradition, unsupported by documentation. In general, those who obtained ownership by sale had an informal deed, while those who inherited either had no deed, or had a document derived from a formal deed in the family's past.

- *Chel Gunbad:* Roughly half of the farmers claiming ownership also claimed the existence of a formal deed, but nobody could produce a physical copy. The other half claimed no deed. The deeds were granted several generations previously and since then, the land had been divided and subdivided (in some cases, it was claimed more than one hundred years).
- *Turmai:* All landowners interviewed reported that there was a deed somewhere in the family and the deeds appeared to date from at least two generations previously. One landowner said he shared title with five other landowners, but didn't know who held the original deed.
- *Qala-i-Naw:* It was said in the group meeting that around 100 formal deeds exist, each in the name of one individual in the past, the latest being in Zahir Shah's time. The farmers were reluctant to state who actually held the deeds.

Among all villages surveyed, Turmai stands unique in that it was common for brothers to record the appropriation of land by drawing up a witnessed deed. In Qala-i-Naw, only one or two families employed this practice. No one had a deed granted by the government in their own name.

**Payment of taxes:** The villagers of both Qala-i-Naw and Chel Gunbad followed the same practices in the way they paid taxes: those with physical deeds paid the levy, while those who had no deed paid none. The payment of taxes includes those who formed a group and selected an elder to pay the government on behalf of the entire "extended family". Up to 20 or 30 people could be part of one extended family.

**Transfer by sale:** The land market in the villages exhibited quite different profiles, with Turmai displaying a relatively strong land market with anecdotal evidence of three to four households selling their land totalling 30-40 *jeribs*. Chel Gunbad and Qala-i-Naw recorded no such sale. Where a sale did occur, it was transacted in the same manner: the creation of an informal deed. *Shafa* rights of first refusal were respected.

**Dispute Resolution:** None of the villages reported any disputes over private property, but should they arise, they would be settled by the *shora* before going to the courts. In some communities, esteemed elders from neighbouring villages would be called to assist.

**Waqf:** Some hilly land near Chel Gunbad was gifted by informal deed to the mosque as *waqf* land for the purpose of providing winter fuel.

**Sharecropping:** The terms of the sharecropping contract were very similar across the villages, but had certain area-specific differences. The household monitoring

conducted by the research team provided the following breakdown in the terms and prevalence of the different contracts within the three villages:

**Table 3. Sharecropping contract terms in Qala-i-Naw, Turmai and Chel Gunbad**

Village:	QALA-I-NAW		TURMAI		CHEL GUNBAD					
	Owner	Share-cropper	Owner	Share-cropper	Owner	Share-cropper	Owner	Share-cropper	Owner	Share-cropper
Land	100 %		100 %		100 %		100 %		100 %	
Water	100 %		100 %		100 %		100 %		100 %	
Labour		100 %		100 %		100 %		100 %		100 %
Seed	100 %		various	various	100 %		100 %		100 %	
Fertilizer	100 %		various	various	100 %		100 %		100 %	
Draught		100 %	various	various		100 %		100 %	100 %	
Yield	66 %	33 %	66 %	33 %	66 %	33 %	75 %	25 %	66 %	33 %

- It was generally stated that the choice of crop belonged to the owner, but it was also mentioned that this choice is restricted by the common perception that wheat and potatoes are the most lucrative crops, and that thereafter, crop rotation practices limit options. One farmer interviewed described his efforts to convince his landlord that chickpeas would be a more profitable option.
- *Bini Sang*, a neighbouring village to Turmai, was reported to have a different system applied to arable land, whereby the sharecropper provides one-third of the seed and water and all the labour in exchange for his 33 percent share. Likewise, villagers in Chel Gunbad stated that a different contract existed “across the river”, in Wardakh Province, but did not specify the terms.
- In the case of wheat farming in *Turmai*, it was said that the owner has to provide one-third of the seeds, but not for any other crops.
- If orchards are sharecropped in the *Qala-i-Naw* and *Turmai areas*, the arrangement is somewhat different, with the sharecropper providing all the labour for cultivation between the trees, pruning and irrigation for which he receives a 25 percent share in the crop. For apple orchards, the sharecropper receives 25 percent of the crop because the fruits are usually sold unharvested to a trader, whose responsibility it is to pick, pack and transport the fruit. The owner, in addition to providing the orchard and access to water, is also expected to provide any pesticide required.
- In *Qala-i-Naw* and other areas with water scarcity (i.e. poor land), the proportion of the costs of the water/watering would be half for each party.<sup>47</sup>

In general, the sharecropping terms recorded were the traditional arrangements and practices and were non-negotiable.

*Sharecropper-landowner relationship:* It was consistently claimed that sharecroppers are chosen on the basis of their skills and professionalism, as evidenced by past experiences, rather than their relationships or ethnicity. Among the sharecroppers and landlords interviewed in *Qala-i-Naw*, there were cross-ethnicity arrangements,

<sup>47</sup> Water was required at a rate of 6 months at 3 waterings per month – with one hour costing 120 Afs.

whereas in Turmai, all the sharecroppers had some relationship to their landlord. Yet, respondents insisted that the primary criteria for selecting a sharecropper are honesty and professionalism. Sharecropping arrangements, it appeared, accorded no additional benefits to the owner.

**Lease:** Leasing terms are the same across all villages, which were describing the same trajectory of change. In all three villages, rent is moving from payment in wheat towards payment in cash. Leases were contracted in the event that the landlord no longer lived in the village.

**Gerawi mortgage:** While mortgage assumed standard terms, the frequency differed: in Chel Gunbad, mortgage was claimed as being common, whereas in Qala-i-Naw mortgage is uncommon.

**Common/public pasture land:**

*Chel Gunbad:* The villagers perceived ownership of the pasture land differently. According to one story, no deed existed but access rights or ownership rights were held on the basis of tradition. Views varied on whether the government owned the land and the community was just given access; or whether the community held ownership. Another version stated that the Government owned the land originally, but now the villagers are in possession of a deed (the nature of it – ownership or access – is unclear).

- The *kuchis* had a right of passage and this was accepted. No problems were reported, although one veteran sharecropper mentioned that they used to graze among standing crops.
- A dispute reportedly exists with herdsmen from Wardak, who cross over the provincial border with their flocks on the excuse of bringing the herd to one of the springs located on the Chel Gunbad side of the watershed.

*Turmai:* It was generally agreed that the pasture land was government owned, but that the villages around had access to it despite an acknowledged lack of a formal deed. What was less clear was whether this access was unique to a single village and limited to a specific area. Certainly the *kuchis* were recognised to have transit rights. As with Chel Gunbad, during the Taliban's reign, they were a nuisance, grazing their stock in the standing crops with apparent impunity. This has stopped since the new regime and they have had no problems at the present time. There was a dispute over the pasture with a neighbouring village, Deh Darat. This arose because one *qawm* from Turmai wanted to build houses on the pasture (the research team saw the foundations some 10-15 minutes into the hills to the East of the valley). According to one account, they were rightfully stopped by Deh Darat, a neighbouring village. The conflict is still rumbling. This suggests that there are no individual village rights to specific areas of pasture. According to the second account, residents of Deh Darat illegally stopped the villagers and when police were brought in to rectify the matter, they were seen off by 70 armed villagers. Pashtun *kuchis* pass by in the spring and autumn to and from their summer and winter grazing land.

*Qala-i-Naw:* An outstanding conflict exists over the pasture land. It seems that the village has been expanding into this area, which is officially state property and this has given rise to disputes about the illegality of building development on state land. After varying stories from each of the groups, the most coherent explanation is as follows: in the past, seven elders acting as agents for the village collected money

from residents and bought the pasture land from the government. It is not clear if this is access only, or full ownership. They have a deed to this effect, which marks the boundaries of the pasture and bears the signature of these seven representatives. Three years ago, the descendants from these seven families claimed that they owned the deed solely. The seven signatories, they insisted, signed only on their behalf, and not for the entire village. This remains under dispute.

*Qala Azad Khan:* One group from a neighbouring village provided an interesting counterpoint. Their pasture was in the form of non-deeded *maraha* land constituting 250 *jeribs* of property bordering the village, as well as sections of a graveyard, a school and a grazing area. There was a conflict over it with the next village, since this pasture meant a 5 km trek for its residents. *Kuchis* are given transit rights, which are respected and have not led to any problems.

**Common rainfed land:** All three villages stated that rainfed land existed, but displayed a variety of management practices:

- *Chel Gunbad:* The village rainfed land is subject to collaborative village cultivation, although it was disputed whether all the villagers were eligible to engage in the practice or only landowners. The village gets together and decides how much of the rainfed land is to be cultivated. It was reported that 12 *jeribs* were cultivated this year despite the lack of snow/rain. A meeting was held by eligible individuals to establish who will provide which inputs. The meeting addressed the different costs that would be incurred, including the tax to be collected and paid to the government. There were no disputes mentioned with the *kuchis* or with neighbouring communities over the pastures, but that there had been claims on the rainfed land by neighbouring Pashto communities during the time of the Taliban. Such disputes had lapsed, or according to a different report, had been left in the hands of the Wardakhis.
- *Turmai:* Rainfed land is commonly owned and anyone can cultivate. The high cost of draught and inputs, however, renders most individuals ineligible to join a group. Villagers pool their resources, creating groups of three to six people, who carry the costs of cultivating the rainfed land. This year, six such groups were reportedly formed. One farmer commented that while he had done this the previous year, he had not engaged this year because of the small amounts of snow and rain. It was not clear if the rainfed land was government or village owned, although the latter claimed that there was a deed on which tax was paid in the past.
- *Qala-i-Naw:* There was contradictory evidence on the pasture rainfed land. A veteran sharecropper claimed that ploughing over the land used to be permitted and that the practice stopped only when the conflict arose.

## 7.2 Hillside villages: Zala Qala and Pyada Rah

**Private ownership:** Zala Qala and Pyada Rah resemble each other in their “ownership profiles”. In each village, there are residents who claim that their ownership is backed by formal deeds lodged with the government (in Pyada Rah it was estimated at 25 percent; it was less in Zala Qala). There are also villagers holding land without deeds, either formal or informal. Boundaries are usually

marked by natural elements, earth banks or piles of stones. The villagers noted that obtaining a formal title meant engaging in a lengthy procedure and that land with formal titles would be subject to the payment of fees and taxes that may amount to as much as eight percent of the value of the land. Still, many people felt that a formal title provides more security.

Most transfers or divisions of land by inheritance or by sale are arranged traditionally and informally. Most vendors sell their land by the traditional practice of using local witnesses to confirm ownership, and the transfer document is prepared by a respected member of the village and witnessed by four elders. It was even claimed in Pyada Rah that some land is sold formally through a normal court procedure. In

*Box 6. A woman research assistant from DACAAR visited five households in the village (Zala Qala) and found three instances where a woman owned land that she had inherited from her father. A woman landowner loses effective ownership when she marries, for the land then falls under her husband's control. A widow owning land has the right to dispose of it while her children are young, but when her sons become adults she allows them to make decisions concerning the land. Apart from inheritance, a large landowner may give a portion of the land to his daughter, but she is not allowed to dispose of it outside the family. The research assistant, who visited Zala Qala, also went to Pyada Rah where she visited three households and found that one woman there had inherited from her father a piece of land with a valuable 24-hour water right attached to it.*

the case of land sales, neighbours must be given first offer and refusal before strangers from another community.

The villages are very different in the context of their land market. In Pyada Rah, selling land is common and there are instances where land was sold to outsiders. At least four of the village's 21 households migrated to Pyada Rah from other communities. One respondent was a case in point, his father having come from Qara Bagh a generation ago. Zala Qala, in contrast, was reported as having very little land market; most land is transferred by inheritance.

Land disputes are normally settled by the *shora*. If necessary, they may bring respected people from neighbouring villages to arbitrate. Disputes that cannot be settled in this manner are taken to the court.

**Disputes and dispute resolution:** The elders would not admit to there being any serious internal community disputes. However, when questioned about how disputes are settled – whether it be over land, water or other issues – they were clear that this was done traditionally by the elders. Only when all else fails will they take a case to the local administration or judge as this costs money and the results are not always satisfactory.

**Lease:** Leasehold is common in the case of families who have migrated or emigrated and are usually for a period of years. Rent traditionally was paid in kind (wheat at harvest) but given the uncertainty of harvests payment is now more frequently made in cash. The lease document is normally prepared by a local elder, not by the court.

**Sharecropping:** Sharecropping is common. It is usually between relatives or close neighbours. In Zala Qala, the landowner provides the land, access to water rights, seeds and fertiliser and the sharecropper provides labour and draught for cultivation

and threshing. The yield is split 66/33 (owner/sharecropper).<sup>48</sup> Fertiliser is not easy to obtain from Ghazni.

**Gerawi mortgage:** Normal *gerawi* practices are observed, although not frequently. It is a recourse usually for people who need to borrow large sums of money. Demand for mortgage has decreased since the drought with the value of arable land becoming almost worthless.

**Common/public property:** Both Pyada Rah and Zala Qala claim traditional community rights to a specified area of common grazing land in the plains and mountains:

- Villagers from Zala Qala regard the nearby mountains and desert as owned by the government but available to all members of the community for grazing and fodder. In addition to grazing rights, they have rights to collect fuel and hunt.
- Villagers from Pyada Rah claim the year-round grazing rights to a defined area of rangeland surrounding the village, which they say was granted by a governor of Ghazni Province during the time of Zahir Khan.

The experiences of the two villages are very different in the context of pasture land:

- *Kuchis* have the right of passage through the Zala Qala territory while travelling to and from their winter/summer grazing. There is no existing conflict arising from this arrangement. It is avoided through a common understanding that *kuchis* have the right of passage across the pastures, but no rights to graze or settle. The villagers did report that some powerful people have appropriated parts of this common land for their own exclusive use.
- In contrast, Pyada Rah have significant disputes with neighbouring sedentary and nomadic communities. Their most significant external dispute is with a group of 35 *kuchi* families, who, in the summer, graze their flocks on the rangeland claimed by Pyada Rah. As a community, Pyada Rah feels too weak to confront the *kuchis*. Its case is further weakened by its reduced number of flocks as a result of the drought. The villagers are also in conflict with three other settled communities, principally regarding encroaching flocks coming from neighbouring Wardakh.

The presence of land mines covering an area of 70 to 80 *jeribs* is another factor preventing Pyada Rah residents from fully enjoying the benefits of the rainfed land. Flooding has shifted many of these mines from their original position and some of them are easily visible. The village has not yet been able to obtain assistance in clearing the minefield.

<sup>48</sup> This is a heavy arrangement in comparison with other areas in Afghanistan where in the case of 1/3 2/3 shares, the landowner would provide the locomotive power for cultivation (oxen or tractor) in addition to seed, fertiliser, etc.

## 8. Discussion

### 8.1 Patterns of ownership

#### Formal grants

The villagers claimed that they possess ownership documents granted by a governmental body with authority. The most recent of these, however, was in the early 1970s. Since then no land grants have been made. For any given village, there may be one grant given to a single patriarch (Khalifa Rahmat), a grant given by two or more brothers (Maruf China, Abdul Nazar, Dana Haji), or multiple grants given to several people (Janikhel, Wakil Jangal).

**Water rights as factors in “village land”:** Throughout the field visits, references were made to “village land”, defined either as a piece of land under a formal grant, or an area of irrigated land commanding a certain water allocation. Linked to the formal grant are water rights attached to a particular area of land from canal systems; both land and water rights are subject to tax payments.<sup>50</sup> In other words, the area of land cultivated by a village is tied to the size of land originally granted, which determines both tax liabilities and water allocation. It is the practical consideration of water allocation, rather than any respect for legal strictures, which constrains a village to cultivate only within the area of the original granted. Only three villages failed to claim full formal grants (see Table 4), two of which, Pyada Rah and Zala Qala, are either uniquely rainfed or reliant on *karez* and rainfed systems.

*Table 4. Years land grants were issued*

Village	Estimated year of last grant	Number of original grants (claimed) <sup>49</sup>
Khwaga/Otarkhel	1933-73	Unknown
Sra Qala	No deed	
Maruf China	Pre-1933	1 (2 brothers)
Janikhel	1933-73	Multiple
Abdul Nazar	1920-30	4 (4 brothers)
Wakil Jangal	1960-70	Multiple
Afghan Mazar	1940-50	Multiple
Dana Haji	1920-30	4 (4 brothers)
Khalifa Rahmat	1933-73	1
Tunian	1965-75	Multiple
Qala-i-Naw	1933-73	Approx. 100
Turmai	1950-60	Multiple
Chel Gunbad	1900-30	Multiple
Pyada Rah	25 % land under formal grant	
Zala Qala	10 % land under formal grant	

One consequence is that any formalisation of title at a farm/household level must be done with full consideration of water allocations. Farm-level rights to water allocation are tied to the ownership of land and are transferred with the land and consequently, the division of land and water rights at the household/farm level ought to aggregate perfectly to village-level allocations. Care must be taken, however, where land has been sold for the purpose of building land. Water allocations in these circumstances do not follow the land.

**The role of the government:** From the perspective of the community, the government is seen as a threat to their tenure rather than as a source of security. This was expressed in the profile of those villages where tax is paid. Tax is generally paid to shore up a formal document already recognised by the relevant government bodies, chiefly the *Amlak* department. The community does this to cement its

<sup>49</sup> Note that all the information is claimed by the villages; it is not confirmed by the *Amlak* department.

<sup>50</sup> Lee, J. 2006. Water Management Livestock and Opium Economy: *Social Water Management*. Kabul: AREU. *Social Water Management*, p. 4.



position and preclude a government official (acting either within or outside his discretion) from seizing the land. It is a payment for maintenance of security. This occurs at household, as well as village level. Within some villages (e.g. Chel Gunbad), those who pay taxes have a formal deed they can identify, whereas those who do not, have lost track of the formal grant.

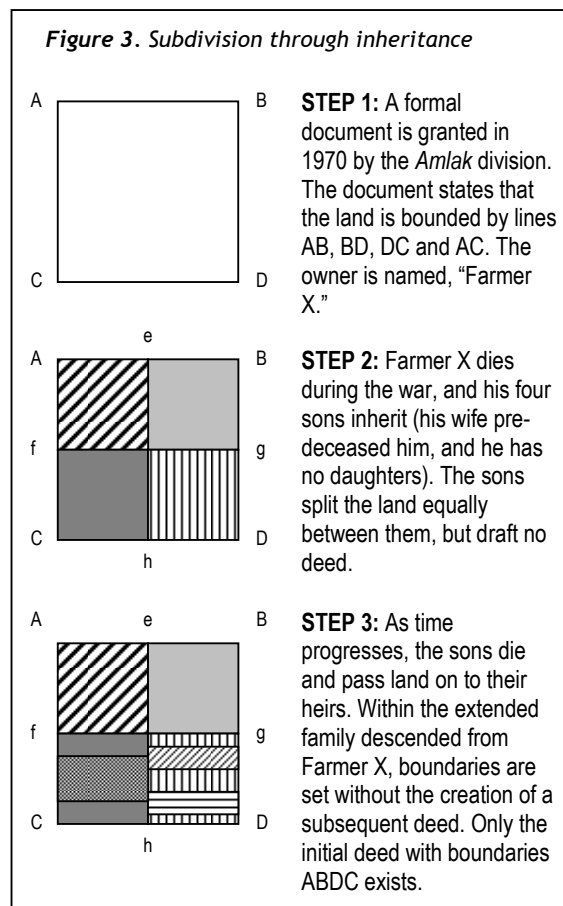
Some additional general points can be made:

- Tax is paid as a protection against the government, rather than to enlist its assistance against others. In Achin, a notoriously independent district where the government has little power, no tax is paid despite the reported appropriation of land by commanders.
- Unfortunately for the communities, the payment of tax does not always help them because of a serious disparity in the way the government and the villages define the purpose of the tax. Several of the communities visited (Abdul Nazar, Alam Bai, Afghan Mazar, Dana Haji, Ghorak) assume that they are paying tax on land that they own, whereas the *Amlak* Department views the payments as rent on a formal lease.
- The communities' perception of a threat from the government is not only due to predatory or corrupt practices by some officials (although this certainly contributes significantly to the lack of confidence in the government), but also as a reflection of the lack of insecurity brought on by the informal nature of land-holdings, often contrary to the formal legal position.

### Subdivision through inheritance

The type of claims to private ownership and the nature of the proofs that were claimed to support such ownership followed identical patterns in almost all the research sites visited. The government issues a land grant. This grant is typically formal, defining boundaries and specifying owners in the body of the deed. It is usually registered with a government entity. As noted, the most recent of these grants occurred in the early 1970s.

This original parcel of land is then broken down through successive rounds of inheritance, as the original owners die and subdivide their plots amongst their heirs (who are defined in the *Sharia*). The transfer to the heirs is rarely documented informally and never formally.



Regardless of the formal legal status of an heir in this position, such an heir invariably claims full ownership, deriving his good title through the original grant and the *Sharia* rules of inheritance. Thus, according to the religious and customary norms, which exist throughout the research sites, such an owner is considered the legitimate owner. The boundaries of his land as regards his fellow inheritors will not be specified in any deed but will become part of the oral tradition of the community. This process of subdivision can be iterated many times, until the land forming the original grant is owned by as many as 40 households, none of which have any formal deed but all of which purport to derive their title from the original deed (see Figure 3).

**Documentation of inheritance:** In a very few cases it appears that on inheritance some individuals with foresight prepare a document, which records the division of the land and the boundaries of the plot. Anecdotal evidence was obtained to the effect that this may be done by the father before death, or by his collective heirs after death. This occurred seldomly, although in one village (Turmai) it was described as being common practice.

**Time of subdivision:** Unlike with common or civil law notions of inheritance, death is not necessarily the significant point in time for the division of someone's estate to his heirs. Thus, a father<sup>51</sup> may divide the land amongst his inheritors formally before he dies, or a group of siblings may share a plot of land for a period of time after the death of their father. Such an approach is possible because of the clarity and rigidity of *Sharia* rules of inheritance, which preclude the discretionary division of an estate by will/testament.

**Tax payment:** How are taxes paid under a formal grant from which several households derive their rights of ownership? In several villages (Alam Bai, Abdul Nazar, Chel Gunbad, Turmai) the process was similar: the descendants of the original owner in whose name the formal deed was granted would select one respected individual among them. His task would be to collect money according to the land size of each individual plot, and to pay this to the government as the agent of all the tax-paying group. This appeared to work smoothly, and there were no reports of free-riding or individuals renegeing on the payment.

## 8.2 Sale and land markets

Broadly speaking, when considering land markets and sales, the villages visited can be divided into three categories, defined by the following characteristics:

- **Marginal agricultural land** (Khalifa Rahmat, Sir Zar, Pyada Rah, Alam Bai, Abdul Nazar, Otarkhel, Khwaga): these villages are defined by extremely marginal agricultural land, often rainfed. The demand for such land is negligible and consequently, there is no land market.
- **Irrigated land, non-existent/narrow market** (Qala-i-Naw, Chel Gunbad, Dana Haji, Maruf China): these villages are defined by a non-existent or narrow land market, where there have been very few sales (measured since 2001).
- **Irrigated land, existing market** (Tunian, Wakil Jangal, Turmai): these villages have a land market, in some cases of some vibrancy.

---

<sup>51</sup> While there were cases of women inheriting and claiming ownership of the land, they were marginal. For ease of language, "father", as used here, refers to landowners, in general.

No apparent reason could be identified why there should be an active land market in the third category and none in the second category (which may in fact be better characterised by a spectrum). The villages are similar: Turmai, for example, falls into the third category and yet is no more than 8 km from Qala-i-Naw and 6 km from Chel Gunbad, which both fall into the second category.

Insofar as they exist, land markets are distorted in important ways. First, as discussed above, the transfer of land is dominated by inheritance which can be taken as being an expression of the cultural importance families attach to their land. Second, *shafa* rules prevent free market sales by instituting rights of first refusal, which accrue to those who would stand to inherit (another expression of the importance of family land).

**Shafa rules:** *Shafa* consist of a stepped set of rights of first refusal which accrue, first, to the heirs of the owner of the land, and second, to the neighbours of the land. With one exception (Khwaga/Otarkhel, in Nangarhar Province) these were respected in every area. This is formally expressed in the requirement that neighbours are specified in all the deeds of transfer. The rights of first refusal work in the following manner: an asking price is set by the owner of the land. If his heirs or neighbours wish to buy the land at this price, then they have the right to do so. If they cannot, then the land is open to anyone to purchase. Some points remain in doubt:

- What happens when the asking price is not met in the open market, and the owner is compelled to lower it: are the *shafa* rights in some way reset?
- What notice must an owner's heirs and neighbours receive that the land is going to be sold? How long must the offer remain open?

Otarkhel/Khwaga was an exception: villagers do not respect *shafa* rules. They view them as a creature of government (albeit they have *Sharia* authority) and are accordingly ignored. Consequently, the neighbours are not cited in transfer deeds.

**Impact of *shafa* rules on free market:** The impact of *shafa* rules on the notion of a "free land market" is difficult to tease out since they interplay with a number of other factors. It is best illustrated in a hypothetical example:

*A farmer, one of "Farmer X's" grandchildren, has inherited a jerib of land. He has a very large family and successive years of failed crops have forced him into debt. The shopkeepers in the local bazaar will no longer offer him credit. His first decision will be whether to sell his land or mortgage it (see below). Assuming he decides to sell the land, he will then be faced with a decision about how much to sell. His decision is to sell half a jerib. The rules demand that he must offer the land for sale first to his heirs, and then to those landowners whose land borders the plot for sale. How significant are these rights? This is dependent on the capacity of the neighbours to pay – if the entire village is mired in poverty, whereby no one can pay the asking price, the rights will be irrelevant. The rights will be most significant where there are large variations in wealth within a village, because it is in this case that a neighbour will be able to purchase the land.*

**The role of mortgage in the land market:** Sales of land are frequently induced by poverty. There may be other reasons for sale, such as the drying up of water sources or, as in Khalifa Rahmat, where a single family sold a large area of marginal land to

emigrate permanently. It is interesting to note the decision making process whether to sell or mortgage one's land. A farmer will choose to mortgage his land if he believes that he will be able to make enough money to pay the loan back. Since mortgage entails the forfeiture of the possession of land, this calculation becomes a function of whether he retains other land, has other productive assets, whether he can earn money either locally or abroad etc. One question to be explored is the extent to which mortgage is used as a means of side-stepping the constraints on sale, a hypothesis particularly relevant where land is extremely valuable, as in Achin District.

**Formalities:** Unlike the case of inheritance, when land is sold there is invariably a deed. The deed will include the name of the buyer, the seller, the amount paid, the boundaries of the land, the neighbours of land (the last being an expression of *shafa* rules, and following their stance on *shafa* rules, the villagers of Otarkhel/Khwaga made it clear that the deed contained no information about neighbours). The deed will be witnessed by respectable individuals in the community.

One point that deserves emphasis is the importance of witnesses in the system. Several comments were made to the effect that the witnesses were the guarantee that the deed was valid, and that if the witnesses were no longer to be found or could not be brought to *jirga* to attest to the validity of the deed, then the deed would lose much of its force.

### 8.3 Points of weakness in the system

**Responses received:** In all the villages, when landowners were asked whether they felt secure and that their ownership would be respected, they stated that they felt confident in their title. When asked, however, whether they would rather have a formal title, they almost invariably stated that they would prefer possession of a formal title. When further asked why they had not already applied for such a deed, they cited a lack of confidence in the current administrative system, the expense and time it would take for a formal application to be processed and the need to pay subsequent taxes. These three reasons ranked differently in different areas.

In the context of village inter-views, it was reported without exception that within the village there were a few conflicts and in such cases, they were solved by the local dispute resolution mechanisms. This blanket

**Box 7.** *The NRC database: The Norwegian Refugee Council (NRC) has seven Information and Legal Aid Centres (ILAC), which provide a legal/information service to clients. All forms of conflict/dispute are accepted as cases, although due to the mandate of the NRC, only cases from refugees or IDPs are accepted. As part of the project, the background information and progress of each case are kept updated on a regular basis through the medium of a database. The NRC provided access to this database, under certain confidentiality limitations. When using the information contained in the database, caution must be exercised on a number of levels:*

- *Each ILAC consists of an office in the centre of a particular Province, which presents accessibility constraints, giving any information a geographical bias. Further, certain areas are not served by the ILACs in any way.*
- *The database is not representative of all disputes, but only those cases, which cannot be resolved by local dispute resolution mechanisms.*
- *Given the case-selection criteria of the NRC's ILAC project, the information must also be taken as being skewed towards cases involving refugees.*

*These limitations and constraints must be kept in mind when considering the information received.*

statement should not be taken at face value, however, since communities are reluctant to discuss openly with a stranger matters which relate to such a sensitive issue as land. Indeed, a very different picture emerged from the NRC's dispute database, which forms the basis for most of the following discussion. The data is drawn from the Provinces of Kunduz/Takhar, Herat, Nangarhar, Bamyán and Faryab.

A very large proportion of the property-related conflicts concerned the ownership of private land (86 percent, n=287). While it is difficult to draw conclusions from absolute numbers of cases (which will not reflect severity of dispute, number of people affected and so on), it is difficult to avoid the conclusion that significant conflicts over private land remain and that local dispute mechanisms are not capable of solving them. Furthermore, it suggests that private land should not necessarily play second fiddle to the commons: both give rise to significant conflicts, although the commons may be more complex, politically charged, severe and difficult to resolve.

*Figure 4. Disputes over ownership  
by actor and by type (n=239)*

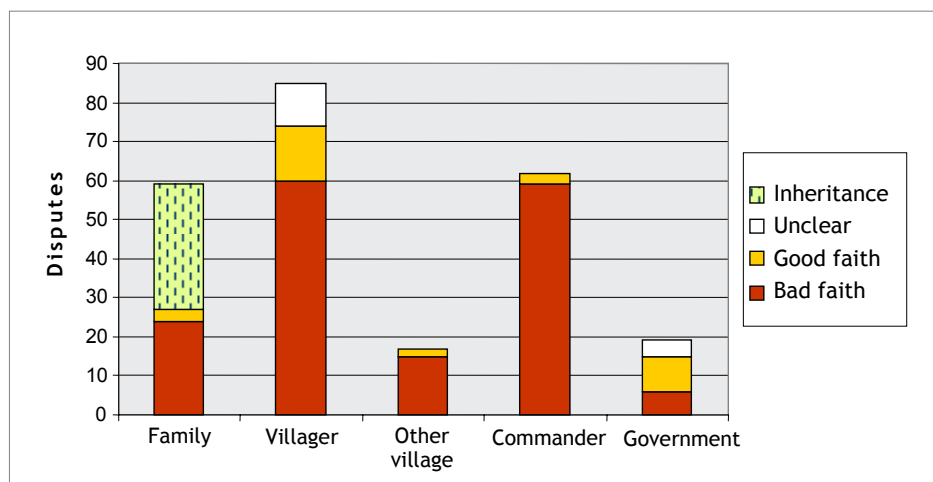


Figure 4 displays a breakdown of disputes over ownership of private land by actor, taken from a sample of the NRC database. It also displays whether the dispute is a genuinely disputed question of “legal fact” (good faith) or an intentional breach of the rules (bad faith). The remaining bands show the percentage affected by inheritance, and the percentage where it is unclear from the NRC's database whether the dispute is in bad faith or good. Clearly, bad faith disputes are pre-eminent in the overall sample, and particularly so when the actors are people from one's own and neighbouring communities, and commanders. The following conclusions can be drawn:

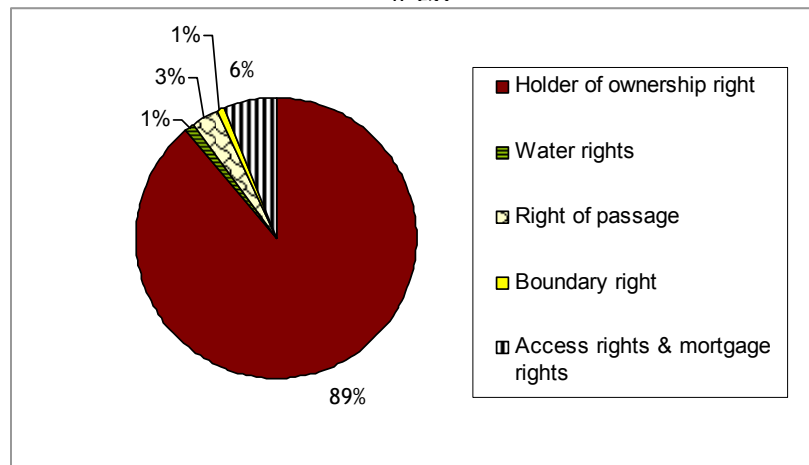
- As to be expected, the appropriation of private land by commanders is a significant problem for communities. The power asymmetries make dispute resolution difficult.
- Less expectedly, there are also significant numbers of unsolved disputes with people within the village, suggesting that local dispute resolution mechanisms are not in fact capable of dealing with questions of ownership within a community, even within families.

- In addition to cases of plain property appropriation, there are also significant disputes within a family over inheritance. Unexpectedly, given the culturally sensitive nature of the issue, a relatively large number reached the NRC's ILACs.

From further analysis of the NRC records, as displayed in Figure 5, the most significant dispute over privately owned land (89 percent) are those that put into question rightful ownership—who has the legitimate landholding? The majority of these cases are simply bad faith appropriations of land by a variety of different actors. Appropriation of possession of a piece of land is often accompanied by forgery of ownership documents. Perhaps what is surprising is that in areas, where boundaries are characterised by physical markings and oral history, boundary disputes were in fact insignificant as a proportion of overall conflicts (a mere one percent). Most cases, it was reported in the course of the field visits, would be solved by local dispute resolution mechanisms.

Figure 5. Nature of disputes over private land

n=239



Conflicting land grants from successive governments played less of a role than was expected in the villages visited. In fact, such a factor was only raised in Tunian, where it was stated that land had been redistributed to certain villagers under the Communist land-distribution policy. Such redistributions were not seen to be legitimate, however, and was said to have been forcibly restored to the original owners during the Mujahidin interregnum (with accompanying comments regarding the unfortunate end that came to those Soviet collaborators who received land). This problem is perhaps more distinct in the case of public/common property.

It is difficult to tell how effective the dispute resolution mechanisms are in the light of the NRC data, given that this only shows the relative frequency of a certain type of problem – not the overall frequency of problems per head of population. Two points may be made:

- It seems likely from our field visits that certain types of problems are liable to be resolved by the local dispute resolution mechanisms: anecdotal evidence on local disputes obtained suggested that boundary disputes were one such type of conflict. Water conflicts, likewise, are subject to robust informal rules.<sup>52</sup>

<sup>52</sup> Lee, J. 2006. *Social Water Management*. Kabul.

- Moreover, the *jirgas'* solution to problems might not reflect restitutionary justice in the western sense, but rather is oriented to resolve the problem and avoid further conflict. Leaving alone the question of *bhad* remedies, there were reports of findings which simply split the disputed land in two, or which found for one party after it had demanded that the other party swear on the Qu'ran to the truth of their version of the facts.

## 8.4 Access rights: private land

In addition to ownership, consistently three forms of rights less than ownership were reported: *gerawi* mortgage, sharecropping and lease. Each fulfils a distinct role in the functioning of the land tenure system, and in each case the terms reflect the function.

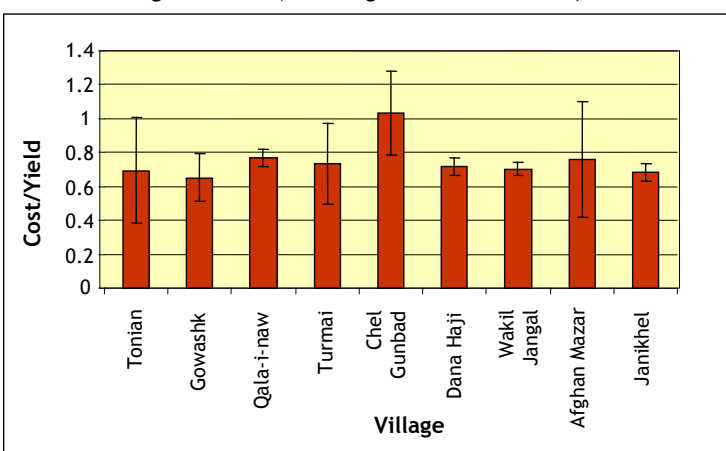
### Sharecropping

Sharecropping is a means for a skilled farmer to access productive land that he does not own, by entering into a form of partnership with the owner. The basic form of sharecropping arrangements was similar throughout the research areas, although there were some significant variations: the owner contracts a sharecropper to cultivate his land. The owner and sharecropper split the cost of the inputs between them according to pre-agreed terms, the sharecropper cultivates the crops, and they both share the harvest, again according to terms established.

More precisely, the contract (always oral) is structured around the following contractual terms:

*Shares of costs and yields:* The provision of six main “inputs” or productive assets are determined by the sharecropping contract. These are land, water, labour, seeds, fertiliser and draught. Yield shares are likewise specified before hand. Rather than the terms being negotiated afresh before each share-cropping contract, there tends to be “village standard terms” whereby a village will have one or more standard terms (see Figure 6). Thus, in some villages, like Qala-i-Naw there is only one contract used in any sharecropping agreement. In others, such as Afghan Mazar, the “standard terms” are much more open to negotiation. It is not possible given the current data to state

Figure 6. Village contract standard terms: proportion of yield against costs (including standard deviation)



why some villages are more flexible, and why others are less so. In the course of the village visits, however, several comments were made suggesting the following factors may be relevant:

- The difference in resource conditions within a village. Thus, in Tunian it was noted that the owner of land with less water would not command such favourable terms as those in more upstream areas.

- A change in conditions causing a change in standard terms. In Afghan Mazar it was stated that the migration of farmers to Kunduz, Kabul or farther afield has reduced the bargaining power of the owner of land, to the extent that in some cases owners have been forced to make concessions in order to attract sharecroppers.

*Reasons for sharecropping:* These are based largely on anecdotal reports and speculation. There were consistent reports across all research sites that the reason a landowner will sharecrop-out some of his land is that he does not have enough labour to cultivate his land himself: if he is too old or infirm to farm the land, for example, or if he is a student or has a full-time job, or if he has too much land to cultivate it all himself. For the sharecropper the reason is the desire to access a productive asset which he has the skills to use. Furthermore, the sharecropper shares the costs of the initial start-up capital and needs and pays no upfront rent – in effect, the risk is shared between the sharecropper and the landlord. Apart from the large landowners who sharecrop, an owner who possesses only a small area of land may choose to migrate to earn wages, leaving a sharecropper to cultivate his property.

*Choice of sharecropper:* While it was said by both sharecroppers and landlords that honesty and professionalism were the sole criteria for selection of a sharecropper, there were conflicting reports as to the extent to which ethnicity and family relations will determine the selection. One might conclude, however, that families are likely to trust the competency and honesty of relatives or members of one's extended *qawm* more than they would a stranger's. In general, however, a sharecropping contract was not perceived as entailing a strong patron-client relationship. There was a certain amount of anecdotal evidence that in the past sharecroppers had to conduct additional tasks, such as the collection of wood, for their landlord, but that these customs had fallen away.

*Term:* Across research sites the term of a sharecropping contract was reported to be a one-season cycle. It was invariably the case that the owner of the land determines whether after the cycle the sharecropper will be retained. The sharecropper has no recourse if dropped; the choice is entirely that of the owner.

*Choice of crop:* The significant difference in contractual terms was found in the choice of crop. In some Provinces (in general it followed Provincial rather than village or District lines) the owner chooses (Ghazni), whereas in others (Herat, Kunduz) the sharecropper has the choice. Two points can be raised, which render the options to be less polar:

- To a large extent “choice” in fact is illusory, in that it is eclipsed by an extremely inflexible perception of which crops will be lucrative. In Ghazni, for example, all the farmers interviewed cited a wheat-potato rotation which admitted no alternative – only one innovative farmer stated that he was having a great deal of difficulty persuading his *wakil* or landlord into cultivating chickpeas, which he stated was likely to be more lucrative.
- Any decision is likely to be a highly consultative process: the sharecropper will not risk the owner's disapproval if he wishes to be retained in the future; and the owner will not force a sharecropper to cultivate a crop he is not confident about.



*Impact of sharecropping on cultivation:* If one accepts that crop choices are relatively inflexible, it appears that there are no serious differences in the way sharecropped land is cultivated, in comparison with land cultivated by the owner. As was reported without exception, the incentives of the sharecropper and the owner to maximise yield and productivity are aligned. One interesting additional point can be made: there was a substantial and uncontradicted body of anecdotal evidence to the effect that sharecroppers farm in accordance with best practices, refusing short-term benefits despite the possibility that the long-term benefits may not be reaped. Thus, for example, sharecroppers followed practices of rotation and non-exhaustive fertiliser use, in the knowledge that they might not be contracted the following year.

### **Lease**

Like sharecropping, lease is a method of gaining access to land. In terms of function, however, it is not viewed in the same way as sharecropping. As with civil law's lease or common law's leasehold, possession of the land is released in exchange for a fixed rent. The tenant may be requested to pay up to six months' rent in advance, and must bear the costs of all the inputs himself. The fixed rent, combined with the need for the tenant to bear all the costs of cultivation, means that the tenant bears the entire risk of a failure in the harvest. Consequently, leases normally occur when the risk he takes is acceptable. Unlike sharecropping contracts, however, the terms of a lease arrangement are negotiable. From the "supply side", a landlord typically seeks to contract a tenant when he emigrates or moves away from the land. The practical requirement of continued supervision in the context of sharecropping precludes it as an option for absentee landlords. This appears to be the defining factor in the presence of lease contracts in a given area, rather than other demand or supply factors (leases occur frequently in villages with a high refugee/IDP population).

### **Mortgage**

The common practice of *gerawi* (mortgage), as the discussion noted earlier, is that the mortgagor gives possession of the land to the mortgagee in exchange for credit. The mortgagee obtains the produce from the land for a specified term (effectively interest). Since the mortgagee gives it back in the same condition as it was received (i.e. at the same seasonal stage of the same crops) the term is measured in units of one year. The mortgagor must repay the loan in full before he can regain possession. Frequently the mortgagee will allow the loan to roll over for another year, rather than demanding his loan back, so that he can continue to reap the benefits of the land. If he should demand repayment, the debtor may be forced to sell his land. In this eventuality, where possible, he will sell to a family member.

*Demand/supply factors:* The reasons for a demand in mortgage break into two categories: the first is to obtain money for a celebration, chiefly a wedding. The second is to service existing short-term debts which have been accrued to purchase household necessities, including food i.e. a desperation loan. In the context of the former, the farmer will only mortgage in the knowledge that he has an alternative source of income, which is often tied to the availability of wage labour or to the fact that the father has daughters whose bride prices will pay for marrying the sons. Research showed that in this context, the farmer often does manage to repay and that by no means is mortgage viewed as sale. Only for the latter is mortgage a matter of desperation and the frequency of this occurrence can be overestimated. In cases of desperation the likelihood of sale is greater. In some instances a person,

who wishes to obtain credit but does not want to vacate his entire property, may mortgage only a part of his land and remain in possession of the remainder.

In terms of the supply of credit, a person provides credit backed by a *gerawi* mortgage largely for personal gain: the creditor expects to get the produce from the land (thereby bypassing the Islamic rule forbidding interest). One consequence of this is that when there is a drought or a ban on poppy that drops the productive value of land, creditors are less likely to provide credit since their “interest” is less. When considering the supply of credit however, one can speculate that another motivation exists: the land market even within a village is not free. Transfers are seldom made outside the family, and one may hypothesise that the supply of credit, backed by *gerawi* mortgage, might be closely tied to attempts to acquire land, bypassing village and family based restrictions as to whom it is permissible to transfer land.

*Limitations to gerawi mortgage:* One reason for land titling specified in the ANDS is the desire to use the property to leverage credit. *Gerawi* mortgage has some serious limitations on its utility in this regard. While the Civil Code makes available a “western” mortgage, no cases of this type of mortgage were encountered. Unlike in Western notions of mortgage, *gerawi* mortgage entails the surrender of what is frequently the only productive asset held by the farmer. The surrender of possession is necessary from the creditors’ perspective since “interest” is prohibited by *Sharia* and for it to be worth providing credit some benefit is necessary. Mortgage is therefore significantly less attractive from the landowner’s perspective as a means of leveraging credit. Furthermore, the terms are much less flexible: the only point of flexibility is the amount of land to be mortgaged and land is not infinitely divisible. Anecdotal evidence exists of mortgagors requesting *less* credit than the area of land might bring, which may be attributed to a limitation on the physical divisibility of their land. Furthermore, there can be no scaling of interest rates on the basis of risk, since interest is forbidden. While *gerawi* as a system is common, it suffers serious drawbacks as a method of using one’s land to raise credit.

## 8.5 Common/public property

### Sources of ownership

A village, or a part of a village, can hold a plot of land in common ownership. In the research sites examined, this occurs in the following ways:

- *Village common ownership, derived from single owner:* this happens when an entire village derives its title from a formal deed which is given in the name of a single individual. In the case of Maruf China, a deed was granted encompassing both irrigated and pasture land. While the irrigated land was parcelled up and divided among the heirs of the original owner through inheritance, the pasture land was left in common ownership, and can now be taken as giving an access right to all those within a village, regardless of whether they are heirs of the original owners.
- *Village common ownership, held by elder(s) as trustee(s):* this happens where a village pools its resources and purchases land through an agent, normally one of their elders. In the case of Qala-i-Naw, seven elders representing the entire village, using funds collected from the entire village, are reported to have purchased a plot of land. This can be

considered as being held in trust by the purchasers on behalf of all the villagers.

- *Village common ownership, maraha land*: The strength of the right is the land's status as *maraha* land. Some villages simply accord this status to a plot of land, usually small, well-defined and very close to the village (the *teppa* in Tunian, for example). The boundaries do not reflect, however, the "loud voice" provision in the Taliban's Law on Land Management (2000), but rather appear to be established according to individually resolved understandings between the neighbouring villages determined by no fixed or abstract rules.

The following rights to public land were also claimed by the communities:

- *Exclusive/non-exclusive rights of access, based on customary usage*: A number of the communities reported that they had a right of access to government-owned pasture land. Such rights might be exclusive or non-exclusive to members of the community, and this appeared to be determined by customary usage in the area.
- *Exclusive/non-exclusive access rights, based on deed*: In some of the villages there were claims to deeds over pasture, which claimed either exclusive or non-exclusive access rights.

The "legal landscape" over public and common land is much more confused than the picture over private land. In many of the villages, those interviewed showed that they were not clear on what they claimed. Often, rights were claimed but the villagers could not specify on what basis that right existed, whether there was a deed, and exactly what the nature of the right was (whether it was exclusive or non-exclusive, for example). Further, the *Amlak* department's version of the legal status of the land was different from the position stated by the community, suggesting that a proportion of the rights claimed (as described above) are in fact leases of government property, and that any regular payments purporting to be taxes are in fact rent payments. It is not clear to what extent the discrepancy is a result of community misconceptions or misunderstandings, and how much it has to do with the desire to represent the situation in a more favourable light to the community.

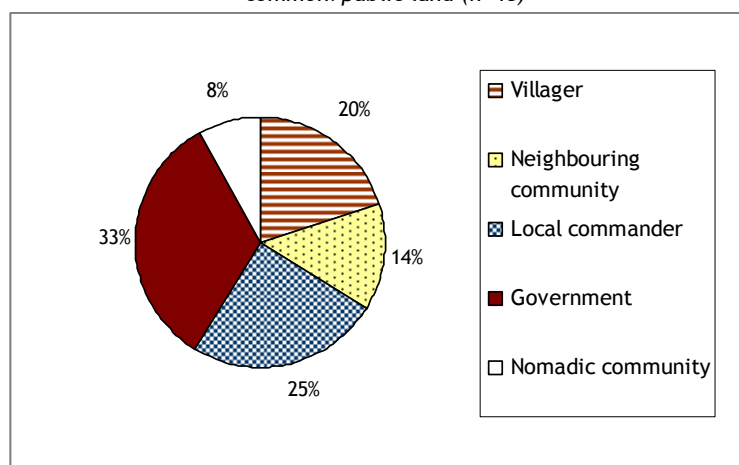
### Conflicts over common/public land

#### Actors in conflict:

Figure 7 shows the breakdown of disputes over common/public land recorded in the NRC database. When interpreted in light of the field visits, the following conclusions can be reached:

- Of the 13 sites visited, eight villages brought up some form

Figure 7. Actors involved in disputes over common/public land (n=48)



of unresolved dispute over pasture land. To the extent that this can be extrapolated to Afghanistan as a whole, this shows that a large proportion of the villages can be taken to be affected by disputes.

- Six of the 13 villages visited expressed an understanding of their tenure situation that is very different from the claims made by the *Amlak* Department of the MAAHF. This is reflected in the NRC information, where the largest proportion of the disputes recorded (33 percent) were with the government.
- Perhaps contrary to expectations, conflicts between neighbouring villages are only 14 percent of the total. One possible reason for this is that the informal dispute resolution mechanisms are tailored to deal with these problems. Thus, in Maruf China, for example, two significant conflicts were resolved with neighbouring villages. The second possibility is that the weaker village simply stopped pursuing the matter. In Chel Gunbad and Otarkhel/Khwaga running problems still persisted even after lengthy *jirga* processes, but the power equilibrium demanded that the weaker village laid down their case. As was noted in the context of private property, the *jirgas* do not “do justice” in the manner of Western legal traditions.
- Even more significantly, it was shown in both the NRC dispute database and the field visits that conflicts between sedentary populations and *kuchis* are, in number at least, a small subsection of the total number of conflicts (eight percent of the NRC numbers, and only one village from the villages studied). One note of caution that needs to be emphasised: the research team’s field visits represent the perspective of the communities alone and do not capture the *kuchis*’ point of view. As borne out by the NRC database, where an important proportion of conflicts were brought by the *kuchis* themselves, the results might indicate that the *kuchis* are losing the struggle for the control of the pastures.
- As might be expected, conflicts with local commanders form a large percentage of the total. Field visits show that conflicts arising from power imbalances are rarely, if ever, resolved.

Figure 8. Nature of disputes over common/public property (n=48)

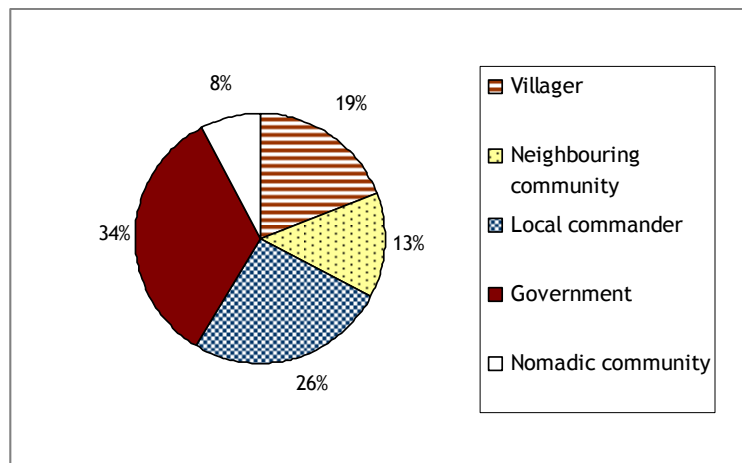
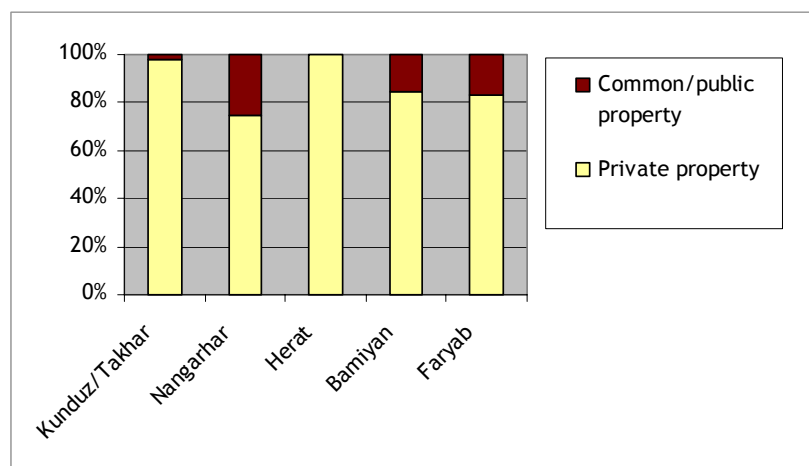


Figure 8 is to be viewed with caution. Of the disputes in the villages visited, some resulted in serious conflicts leading to deaths and injuries; others represented the appropriation of a valuable livelihood asset such as pasture land by a local powerholder, while others still represent a low-level threat to the security of tenure. “Numbers of dispute” can be no more than a broad indicator.

*Type of conflict:* the majority of disputes are over who actually owns the pasture, rather than an encroachment on a situation which is well established. Some of the disputes are between the government and a community, over a legitimate confusion over who owns a particular piece of pasture. A process of delimitation and clarification would therefore mark an important step forward, and might not be politically fraught. The pasture access rights and pasture encroachment, as described by Wily<sup>53</sup> form a lesser but significant subsection of the overall total.

*Regional variation:* while conflicts over public or common property are well documented as being one of the most severe problems for rural communities, they are generally regionally specific. The NRC’s database of cases represents cases which the local dispute resolution mechanisms are unable to solve. Figure 9 shows that in Faryab, Bamiyan and Nangarhar, there are much more significant proportions of unsolvable conflict problems than in Herat or Kunduz/Takhar. This is to be expected given the fraught history of pasture conflict in the former group of Provinces.

**Figure 9.** Conflicts over private compared to common/public property by Province (n=287)



### Community collaboration in common pasture

Several examples of community collaboration over common assets were cited:

- *Common forestland in Nangarhar:* In Khwaga/Otarkhel, it was reported that in recognition of the need to prevent further destruction of a valuable resource, the three *khels* had called a *jirga* with the express purpose of coordinating their efforts to solve the problem. The result was a prohibition of cutting greenwood from the area of forest in the *khel*'s common/exclusive public land. The community went as far as to pool their resources and to hire guards who impose a fine on anyone caught breaking the prohibition. According to reports, the system is continuing to work.

<sup>53</sup> Wily, n. 2, Pastures, p. 40 *et seq.*

- *Rainfed land in Ghazni:* The villagers of Chel Gunbad claimed common ownership of a plot of rainfed land. Whereas in Turmai individual groups of three to six farmers pooled their resources to cultivate an area of rainfed land. In Chel Gunbad a *jirga* was held and the amount of land to be cultivated was decided. Costs were allotted, which included the payment of tax, the labour, inputs and yields to be received. The system was said to function well by all the farmers interviewed.

As shown by these examples (and by the tax-payment practices), communities in Afghanistan are quite able to motivate themselves and institute management practices over common resources, and to do so effectively. Institutions with sufficient authority to override individual interest exist.

---

## 9. Summary of Conclusions

- The owner of private land transferred by inheritance claims title derived from a formal grant issued no more recently than 40 years ago. The land is then subdivided through inheritance and the boundaries are maintained through oral tradition. No landowner interviewed held a formal title; a few were in possession of an informal title.
- Land markets either do not exist or are significantly distorted – first by the massive predominance of transfers through inheritance, and secondly, by the fact that transfers are subject to *shafa* rights of first refusal. This situation is unlikely to change in the short term. One point to note, however, is that land markets in some villages appear to be more vibrant than in others, for reasons which are not immediately apparent.
- Local dispute resolution mechanisms are sufficient to deal with most types of disputes over private land, but significant disputes over who owns the land occurs quite frequently. The large majority of these are “bad-faith” appropriations or inheritance disputes.
- Mortgages are invariably in the *gerawi* form. *Gerawi* mortgage is not an ideal mechanism for using the land to obtain credit (not least because the owner/mortgagor must surrender possession of the land), but is unlikely to be supplanted in the short term.
- A sharecrop contract within a given village tends to be determined by one-three “standard term” contracts with limited negotiability, which are adapted to the village situation. The “share in profits” signified by the percentage share in the yield acts as a strong incentive for the sharecropper to cultivate the land well.
- The government is considered a threat by the villages, rather than a source of security. This is often because the *Amlak* Department and the village understand the legal landscape differently.
- The legal status of public/common property is much more confused than private land, with conflicting land grants, traditional use rights and confused legislation contributing to major dislocation between the government and the community. Disputes over ownership rather than access rights remain the primary source of conflict.
- A relatively large proportion of conflicts with neighbouring villages regarding public/common property are resolved. One may hypothesise that this is linked to the efficacy of the local dispute resolution mechanisms. Relatively few conflicts between *kuchi* and sedentary groups were reported, which might be attributable to the *kuchis*’ loss of the “struggle” over the pasture land in the areas examined.
- Serious conflicts over pasture land which cannot be solved tend to be geographically concentrated, although most villages have at some time a dispute over the common/public land over which they claim rights.

## 10. Recommendations

- ***A deed registry rather than a land title registration system should be instituted in the majority of rural areas.*** It is recommended that in most rural areas a deed registry be adopted, in light of the minimal land market in most rural areas, the fact that disputes are over ownership rather than boundaries, the social familiarity with legal deeds, and the expense and complexity of a cadastral survey. A deed registry would be an easily understood, inexpensive and simple method of solving the main issue: the question of who owns a particular piece of land. In some areas, where there is a more vibrant market (such as urban land), the choice is less clear. The ANDS commits Afghanistan to a process of land registration, but leaves open what form that process must adopt. Distinctly parallel systems may be appropriate for rural and urban land.
- ***A deed registry system should demand metes and bounds descriptions.*** It is recommended that for the purposes of registration, all formal deeds should supplement descriptions by adjoining with metes and bounds descriptions. At present, boundaries are described by the neighbouring plots of land, and sometimes also by metes and bounds descriptions.
- ***The existing cadastral maps and records should be made readily available.*** The maps and records resulting from the 1965-78 cadastral survey are an extremely valuable resource and could be used to support or assist a deeds registry that covers any of the 5,379 villages completed during the survey. The maps in particular should be made readily available to those who need to use them.
- ***Implement a public awareness/educational campaign.*** A public awareness/educational campaign should be implemented to persuade rural Afghans to record land transactions, and particularly transferrals by inheritance. At present, owners only very rarely document land transferred by inheritance, which constitutes the vast majority of privately owned land. Any functioning land registration system must ensure that land transfers through inheritance are recorded; the public would benefit from a public awareness campaign about the process. The costs of registration must be kept to a minimum and the process must be inexpensive and short to encourage registration.
- ***Any land administration system must include a significant adjudication component with two equally important foci: private and common public land.*** The complexity, the number of actors and the severity of public/common land, as opposed to privately owned land suggest that parallel but separate adjudication processes should be applied to those two types of land. In light of current legislation, there will clearly be a great deal of conflict, since the law does not reflect the position on the ground. Where disputes exist, a process of arbitration and negotiation will be necessary.
- ***Limit land taxes.*** It is recommended that after the registration of land, the tax rates attaching to land are maintained at a low level in order to encourage registration and, in the long term, to ensure that the system is more robust.



- ***Leave the rights of lease, mortgage and sharecropping contract as they are.*** These “subordinate” rights are well understood, play complex and specific roles in the rural economy, and they should not be removed from the legislation, nor supplanted by their “western” equivalents. At present, because villages are largely closed systems, it is recommended that no registration requirement be imposed. Since *gerawi* mortgage is not an ideal method of “leveraging land”, the existing parallel alternative in the form of a “Western” mortgage ought to be left in place leaving the choice to the individual.
- ***Limit legislative interventions.*** It is recommended that the Civil Code be modified but that land law should not be removed from it. Rather, parallel legislation addressing land classification and the interests and rights in land classes, other than privately owned land, ought to be passed. Legislation will also be necessary to create a new land administration.

## Appendix I: Cadastre

### The nature and purpose of a cadastre

A cadastre is the systematic compilation in a particular area or jurisdiction of a graphical and textual record that identifies individual land parcels and certain rights or attributes or rights attached to them. It consists of two parts: a parcel index map and a written record or register. The basic building block of a cadastre is the parcel, an expression that signifies a contiguous area of land held by one owner or a group of co-owners. In a parcel-based cadastre each parcel is identified by a unique number, not by the name of its proprietor. To assist in locating a particular parcel its number can be prefixed by its map number, which in turn can be preceded by, for example, the applicable district code and province code. This method is appropriate in situations where mathematical coordinates on a national geodetic network are not available.

Three distinct types of cadastre can be created: legal cadastre, fiscal cadastre and land inventory (economic cadastre). A legal cadastre is concerned only with land ownership and other legal interests in land; it shows which person owns what land and where. The purpose of a fiscal cadastre is to provide information for taxation. A land inventory includes attributes such as soil classification, land use, availability of water supply and environmental factors. In practice a cadastre can be designed to serve more than one purpose.

Cadastral survey projects are ambitious, time-consuming and usually very expensive to undertake. The world offers many examples of such projects that have failed or been only partially successful. The reasons for failure include inappropriate legislation, inadequate institutional infrastructure, insufficient human and financial resources, unsuitable technical procedures and lack of public support.

Yet a cadastral survey provides the geographic foundation for a land registration system, a system that can confer many benefits. Indeed, a land registration system will not operate fully effectively unless it is supported by reliable cadastral maps.

Individual persons benefit from the security given to the registered owner of a land parcel, as well as to the holders of registered lesser interests in that parcel. Because it is based on a reliable cadastral framework, land registration can be expected to reduce, perhaps even eliminate, disputes concerning parcel ownership and boundaries. Registered ownership usually makes it easier to raise development capital than a person without formal title may find it more difficult to obtain. A parcel of land that is registered is more readily marketable than one held under an informal title.

Governments benefit from a land registration system because they require current, dependable land information for a variety of administrative purposes. The maintenance of accurate census records and the collection of payment for public utility services are just two examples where land registration can satisfy the need to know geographic location. Urban and rural planning, and the management and conservation of natural resources will be undertaken more effectively if accurate information concerning land ownership is readily available.

Any society suffers if it experiences pervasive disputes or uncertainties concerning the ownership and extent of its land parcels. The resolution of such problems by litigation is an expensive, lengthy process that many land claimants cannot afford to

pursue. Land registration offers security of tenure and peace of mind to all members of a community. It forms a fundamental part of land administration and good land administration is essential to good government.

## Cadastral survey and land registration in Afghanistan

The first major attempt to conduct a nation-wide cadastral survey and introduce a system of land registration took place under the Land Survey and Statistics Law of 1965, which established a Cadastral Survey Department that is now a part of the Afghanistan Geodesy and Cartography Head Office (AGCHO). The stated purpose of the survey, which continued until 1978 when it was abandoned owing to a change of government policy, was to produce maps showing the size, shape and location of each individual land parcel and to collect information regarding ownership and land utilisation.

At the time when the cadastral survey was discontinued 5,379 villages throughout Afghanistan had been completed, covering 33 percent of Afghanistan's cultivated land. The provinces of Kabul, Khost, Herat and Kandahar received priority, resulting in a completed coverage of 95 percent, 70-75 percent, 85 percent and 90 percent respectively. Local landowners each received a form on which they were required to enter the following information:

- Province and District
- Date
- Parcel Number
- Map Number
- Parcel Size
- Owner's Personal Information (Name, Family Name, ID Number)
- Taxpayer's Personal Information (Name, Family Name)
- Quality of the Land (Orchard, Excellent, Medium, Low, Rain fed)
- Uncultivated Land (Size, Type)
- Comments

It must be emphasized, however, that the cadastral survey did not lead to the establishment of a land registration system or to the issuance of title or any other formal documents for the land parcels included in the survey. Nor did the entry of an owner's name on the form represent an official confirmation of ownership.

Field surveys of villages were undertaken solely by ground methods, using simple equipment that included transits, theodolites, plane tables and measuring tapes. No electronic distance-measurement equipment was used. In only four locations (two in Kabul and two in Kandahar) did the surveyors connect their work mathematically to the national triangulation network. In all other places the village surveys were connected to traverses based on arbitrary local control points, which means that each of them was surveyed independently and they are not geographically related to each other.

Maps produced from the cadastral survey were drawn on stiff opaque paper to scales ranging from 1:2,000 to 1:16,000. Only a few maps of the smallest scale were prepared; most of the others are 1:4,000, 1:6,000 or 1:8,000. The Cadastral Department in Kabul keeps a copy of every cadastral map in that province and

claims to have a complete set. The 16 regional cadastral offices keep only the maps for the provinces in their respective regions, but the Cadastral Department has produced compilations of some of those maps.

Access to cadastral maps, whether in Kabul or elsewhere, is restricted and no one is permitted to inspect them without authorisation from ACGHO. An access fee is payable at the rate ranging from 120 to 900 Afghanis per *jerib*, depending on the quality of the land. Copies of cadastral maps are not available to private persons and may be obtained by other government departments only after they have applied in accordance with the proper protocol. Any such copies are made solely by the Cadastral Department.

Each cadastral map is identified by its number and the name of the village it covers; the number by itself is insufficient because there may be a number three (3), for example, in each of several provinces. Only in the four instances where the survey is connected to the national geodetic framework is it possible to derive approximate grid coordinates for the corners of an individual parcel. In all other locations, grid coordinates are either based on a local origin or are simply not obtainable. According to the Cadastral Department, the plane table sheets and the field notes containing the linear and angular measurements that were prepared during the field survey have not been retained.

Despite the years that have passed since the cadastral maps were made and the related land parcel information collected, those graphical and textual records are still very valuable. They were produced at a great expense of time and resources, which argues for their fullest possible utilisation in rural land administration and development. Much of the ownership information will have altered since the forms were completed, but many of the parcel boundaries are likely to remain as they were at the time of the survey, except where a parcel has been subdivided or where two or more parcels have been consolidated under a single ownership.

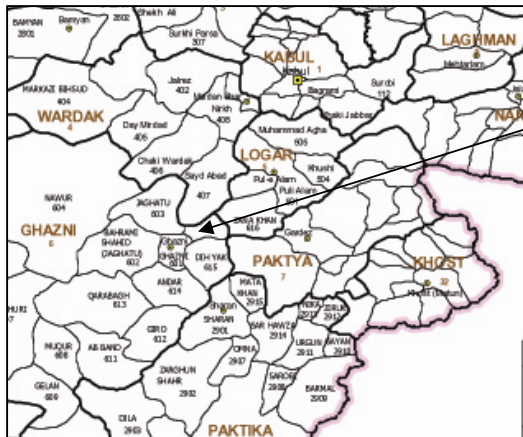
Serious thought should be given to preserving the cadastral records. A first step might be to compile an inventory of the existing texts in both the Cadastral Department and its regional offices, with a view to their computerisation. This work should be carried out in cooperation with the Ministry of Finance, which is responsible for property taxation. An inventory of all the maps held centrally and regionally should also be undertaken and the feasibility of scanning and storing them electronically should be examined.

It must also be pointed out that copies of cadastral records are also kept by the Properties Department (*Amlak*) of the Ministry of Agriculture, in both its Kabul headquarters and its regional offices. These records are incomplete and the maps in particular are in poor condition. The consultant's visits to the *Amlak* offices in Kunduz, Herat and Jalalabad revealed that many of their cadastral maps are rapidly deteriorating as a result of their being stained, crumpled or torn, and stored in inadequate facilities. Yet those maps and their accompanying textual records remain in use because the courts often call upon *Amlak*, as well as the cadastral departmental offices, to assist them in cases involving land ownership or transfer. Other government offices also request such cadastral information from time to time. In Jalalabad the *Amlak* and the Cadastral Department's regional office are located within about 100 metres of each other, yet *Amlak* reports that although in former years it could obtain information from the cadastral office, such information is now unavailable to them without express authorization from AGCHO in Kabul.

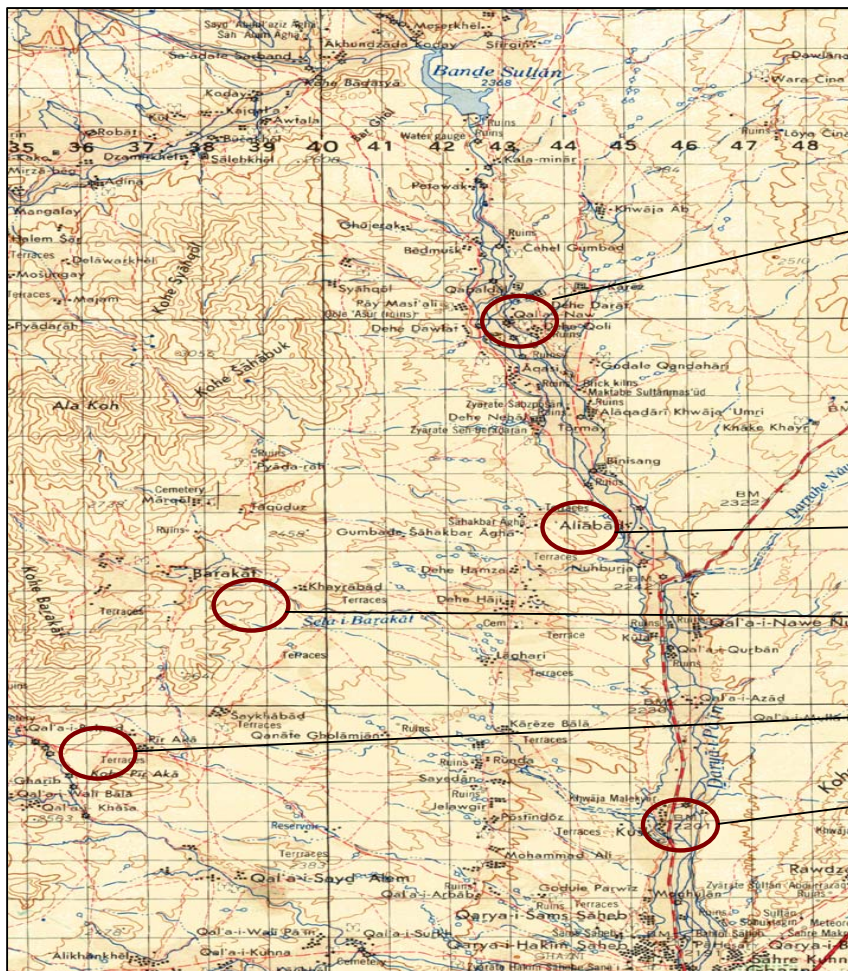
The current restricted access to the maps and land statistics deserves review. Cadastral information should be readily available not only to other government departments but also to any member of the public who wants it, subject to the payment of a reasonable inspection or copying fee. Access to certain confidential information, such as the amount of tax paid by a particular landowner, should remain restricted.

In areas where rural land disputes are rife or where the ownership and boundaries of village pastures are uncertain and require adjudication, it may be advisable to conduct a pilot project to develop procedures and techniques to deal with those problems. The existing cadastral maps and records would contribute significantly to the implementation of any such project.

## Appendix II: Maps of the Primary Research Sites

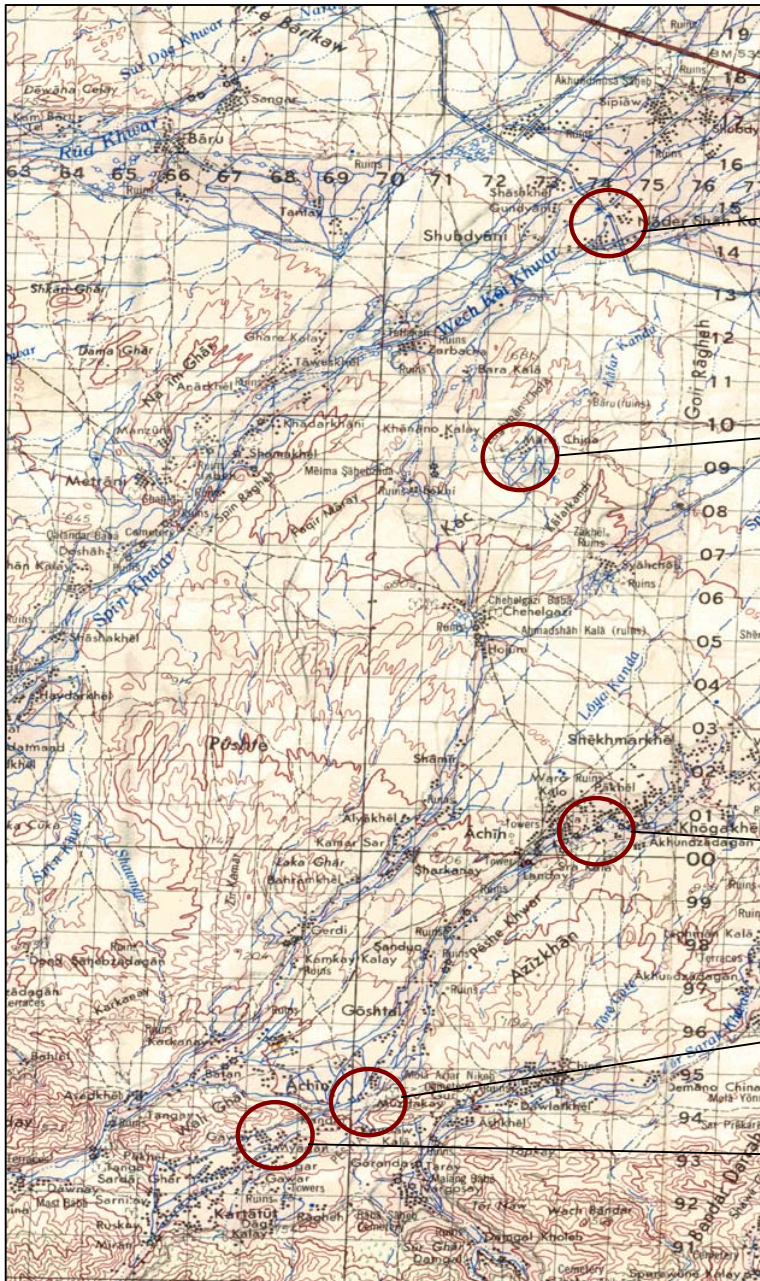


Ghazni Province:  
Khwaja Umari District





Nangarhar Province:  
Achin and Batikot Districts



Janikhel

Maruf China

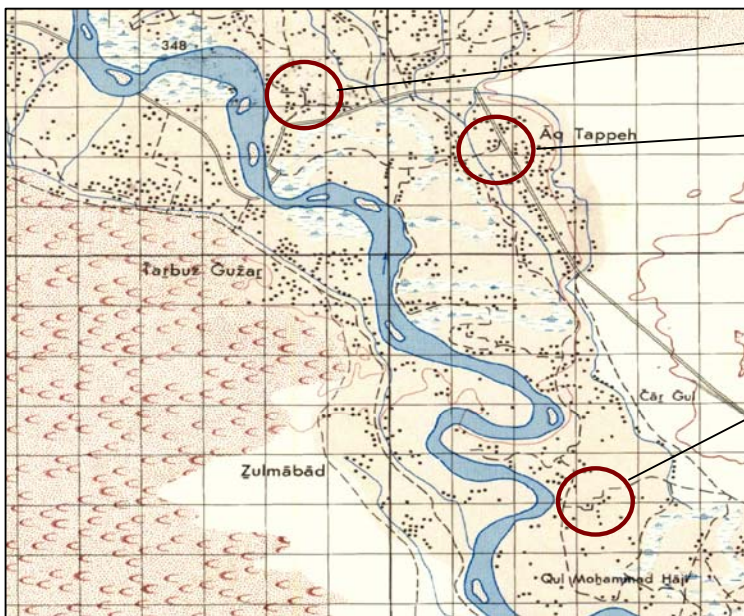
Sra Qala

Otarkhel

Khawaji



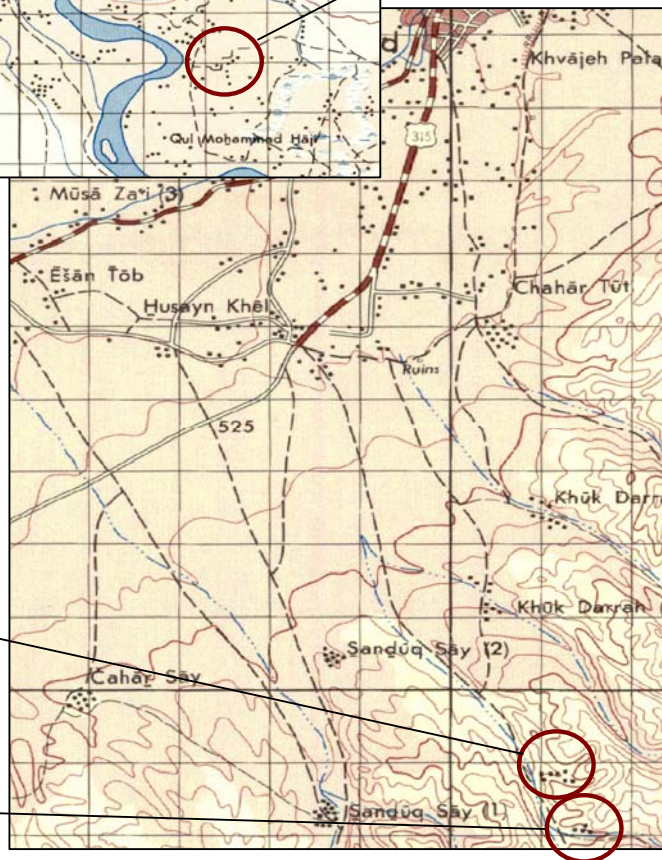
**Kunduz Province:**  
Qala-i-Zal and Khanabad Districts



Dana Haji

Afghan Mazar

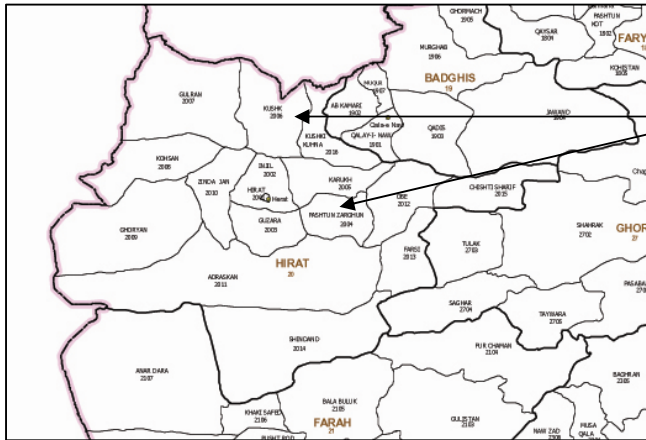
Wakil Jangal



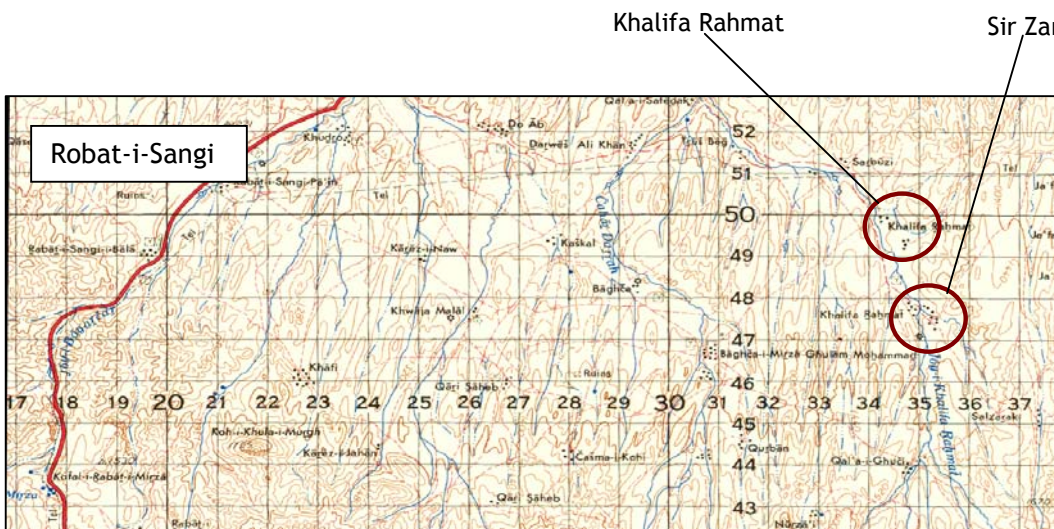
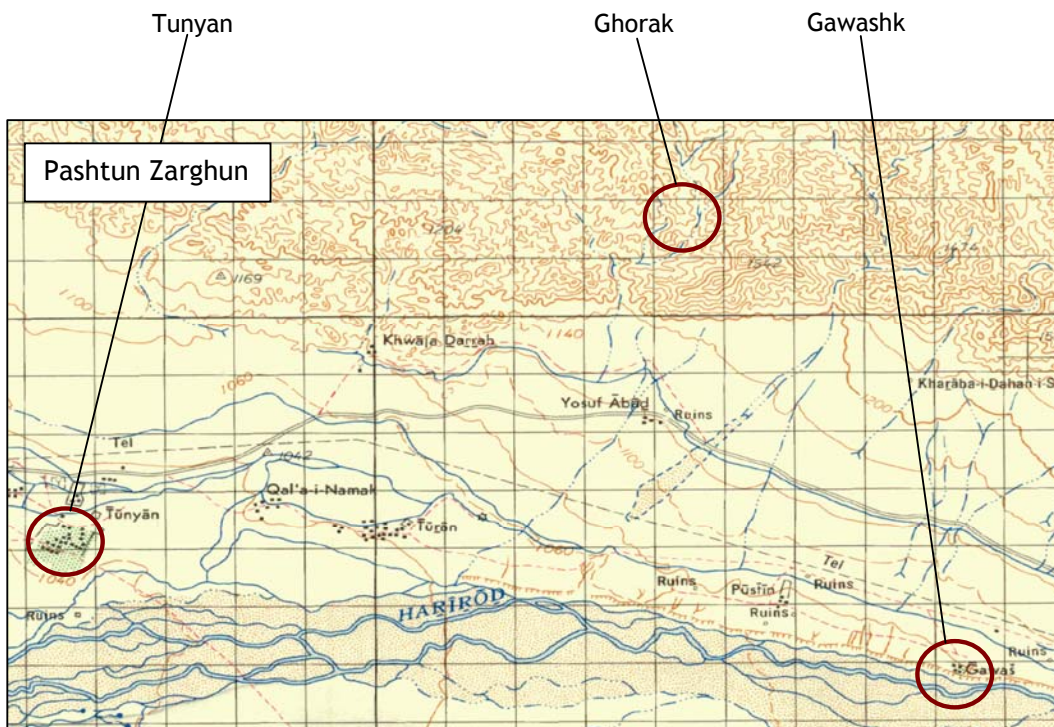
Abdul Nazar

Alam Bai





**Herat Province:**  
 Robat-i-Sangi and  
 Pashtun Zarghun Districts



## References

- Carter, L. and Connor, K. 1989. A Preliminary Investigation of Contemporary Afghan Councils.
- Gebremedhin, Y. 2005. Legal Issues in Afghanistan Land Titling and Registration. Kabul: USAID-LTERA.
- Grace, J. 2005. *Who owns the farm? Rural Women's Access to Land and Livestock*. Kabul: Afghanistan Research and Evaluation Unit (AREU).
- Interim Afghanistan National Development Strategy (I-ANDS), Volume 1.
- International Legal Foundation. 2004. *"The customary laws of Afghanistan."*
- Lee, J. 2006. Water Management Livestock and Opium Economy: Social Water Management. Kabul: AREU.
- Koehler, J. 2005. Conflict processing and the opium poppy economy in Afghanistan. Jalalabad: The Project for Alternative Livelihoods (PAL) in Eastern Afghanistan.
- McAllister Anderson, I. 2006. Water Management Livestock and Opium Economy: Irrigation Systems. Kabul: AREU.
- Ministry of Agriculture, Animal Husbandry and Food; Asian Development Bank. 2005. "Land Policy and its implementation in Afghanistan." Kabul: ADB.
- Norwegian Refugee Council (NRC). 2004. Land and property disputes in Eastern Afghanistan.
- NRC. 2006. Land and Property Disputes in Northern Afghanistan.
- NRC. 2005. A Guide to Property Law in Afghanistan.
- Patterson, M. 2004. The Shiwa Pastures, 1978-2003: Land Tenure Changes and Conflict in Northeastern Badakhshan.
- Reydon, B. 2006. Assessment of the Department of Land Administration and Land Affairs Management of the Ministry of Agriculture and Livestock and Food (Amlak),<sup>[1]</sup> as a land administration and management institution.
- Sait, M. Siraj. 2005. Islamic land law in Afghanistan: Innovative land tools and strategies. Securing Afghanistan's Future, Inc. (SAF), Natural Resource Management Technical Annex.
- Wily, Liz Alden. 2003. Land and the Constitution: Current Land Issues in Afghanistan.
- Ibid.* 2004. Land Relations in Bamyan Province: Findings from a 15 village case study.
- Ibid.* 2004. Land Relations in Faryab Province: Findings from a field study in 11 villages.
- Ibid.* 2003. Land Rights in Crisis: Restoring Tenure Security in Afghanistan.
- Ibid.* 2004. Looking for Peace on the Pastures: Rural Land Relations in Afghanistan.
- Ibid.* 2005. Resolution of Property Rights Disputes in Urban Areas: Rethinking the Orthodoxies.

---

[1] "Amlak" is in fact a word meaning "properties", the plural of "mulk" which means "property" in Arabic. It is therefore not an acronym.

## Recent Publications from AREU

- Oct 2005      *Alternative Livelihoods: Substance or Slogan?* Adam Pain and David Mansfield
- Oct 2005      *Understanding Markets in Afghanistan: A Study of the Market in Petroleum Fuel*, Anna Paterson
- Nov 2005      *Fine-Tuning the NSP: Discussions of Problems and Solutions with Facilitating Partners*, Palwasha Kakar
- Dec 2005      *Household Decision-Making and School Enrolment in Afghanistan: Four Case Studies: Chahar Asyab District, Kabul Province; District 13, Pul-i-Khushk, Kabul City; Nesher Villages, Belcheragh District, Faryab Province; District 2, Kandahar City*, Pamela Hunte
- Dec 2005      *A House Divided? Analysing the 2005 Afghan Elections*, Andrew Wilder
- Dec 2005      *Understanding Markets in Afghanistan: A Study of the Market for Pharmaceuticals*, by Anna Paterson and Asif Karimi
- Jan 2006      *Opium Trading Systems in Helmand and Ghor*, Adam Pain
- Jan 2006      *Afghans in Peshawar: Migration, Settlements and Social Networks*, Collective for Social Science Research
- Jan 2006      *Afghans in Quetta: Settlements, Livelihoods, Support Networks and Cross-Border Linkages*, Collective for Social Science Research
- Jan 2006      *Afghans in Pakistan: Broadening the Focus*, Collective for Social Science Research
- Jan 2006      *Poor, Poorer, Poorest: Urban Livelihoods and Vulnerability in Mazar-i-Sharif*, Stefan Schütte
- Feb 2006      *Dwindling Industry, Growing Poverty: Urban Livelihoods in Pul-e Khumri*, Stefan Schütte
- March 2006    *Looking Beyond the School Walls: Household Decision-Making and School Enrolment in Afghanistan*, Pamela Hunte
- April 2006    *Afghan Returnees from NWFP, Pakistan, to Nangarhar Province*, Gulbadan Habibi
- April 2006    *Searching for Security: Urban Livelihoods in Kabul*, Stefan Schütte
- May 2006      *Gaining Some Ground: Urban Livelihoods in Jalalabad*, Stefan Schütte
- May 2006      *Irrigation Systems*, Ian McAllister Anderson
- May 2006      *Livestock Husbandry*, Anthony Fitzherbert

All AREU publications can be downloaded from [www.areu.org.af](http://www.areu.org.af).  
Hard copies are available at AREU's office in Kabul.

**Afghanistan Research and Evaluation Unit**  
House 142, Street 5 (corner of Flower Street)  
Shahr-e Naw, Kabul, Afghanistan  
phone: +93 (0)79 608 548 email: [areu@areu.org.af](mailto:areu@areu.org.af) website: [www.areu.org.af](http://www.areu.org.af)