



AFGHANISTAN

FOOD SECURITY AND LAND GOVERNANCE FACTSHEET

Abstract 1

1 Policy and legislation 1

 1.1 Regulatory Land Governance Framework 1

 1.2 Land Tenure Forms 2

 1.3 Institutional land governance framework 2

 1.4 Gender 3

 1.5 Foreign Direct Investment 4

 1.6 Land grabbing 4

2 Integrated Water Management 4

 2.1 Policy framework 4

 2.1.1 Institutional framework 4

3 Realities on the ground 5

4 Resources and other information 5

 4.1 National Policy agenda 2012-2015 5

 4.2 Donor support 6

 4.3 Civil society organizations 6

 4.4 References 6

Abstract¹

Customary tenure systems, partly based on religious law, are the most relevant in rural areas. Protection of rights is weak. Insecurity over land and water rights hampers investments in food production and in irrigation. Reform of land policy is ongoing but slow and land administration capacity remains weak and mostly improved in urban areas. Women can inherit land but few hold on to the land. The skewed distribution of land and the impunity of land grabbing by the local elite are sources of frustration.

1 Policy and legislation

1.1 Regulatory Land Governance Framework

The land policy was approved in 2007 and new land laws in 2008. However, the current legal framework still has remnants of past land rights reforms. Moreover, although customary law is important and has social legitimacy, it remains poorly integrated with formal law and policy (Alden Wiley 2003; Allan 2001; Gebremedhin 2007).

The government of Afghanistan is working towards creating a cohesive legal framework for land tenure, by revising and updating land law. Inheritance is covered by the Civil Code, which reflects Islamic law (Shari'a) (Alden Wiley 2003; Gebremedhin 2006).

Law	Content
The 2004	Provides that property shall be safe from violation, no one shall be

¹ This country factsheet was prepared under auspices of LANDac –The IS academy on land governance- and compiled by the Royal Tropical Institute (KIT - Martijn ter Heegde, Thea Hilhorst and Nicholas Porchet) at the request of the Ministry of Foreign Affairs – The Netherlands. Contact: t.hilhorst@kit.nl

Constitution of Afghanistan	forbidden from owning and acquiring property except by law, and private property can only be confiscated by legal order
The 2007 Land Policy	Allows for the formalization of land rights in informal settlements, and addresses bottlenecks in land rights administration as well as the overlap in different institutions' authority over questions of land rights
The 2008 Law on Managing Land Affairs	Sets out definitions for various land types and classifications, requirements for land deeds, and principles governing allocations of state land, land leasing, land expropriation, settlement of land rights, and restoration of lands. The law recognizes Shari'a.

1.2 Land Tenure Forms

Afghanistan's land is vested: (1) individually in private individuals and entities; (2) communally in families, clans, (3) communities –generally pasture; and (4) in the government. Under the 2008 Law on Managing Land Affairs, all land not proved to be private is deemed to be state land.

There is a high degree of inconsistency among the various legal classifications of types of ownership. The Civil Code, Law on Land Management, Presidential Decrees, Agricultural Master Plan and Sharia all classify land differently.

In Afghanistan land ownership can be acquired through purchase, government land allocation, and transfer of ownership, such as through inheritance, which is the most important. Many farmers are tenants and sharecroppers.

To acquire pasture land for grazing their livestock, nomadic or semi-nomadic people may approach local authorities for vacant land (*mawat*). For an individual application for ownership rights to *mawat* land one needs to show that no one has ownership rights, the land is not cultivated or improved, and agree to cultivate or improve the land (McEwan and Whitty 2006; Alden Wiley 2003; Gebremedhin 2006; World Bank 2005). War and drought have caused traditional land management practices to break down, leading to insecure and unclear land rights that promote unsustainable use of pasture (DfID, 2007)

Ownership	Most common tenure type; may be based on formal or customary law, and ownership rights can extend to all land classifications.
Leasehold	Leasing is permitted between private parties, subject to requirements for written leases that describe the land and set forth the agreement of the parties regarding the length of the lease and payment terms (2008 law).
Agreed Rights of Access (pasture land, threshing grounds)	Pasture land is public property that neither the state nor any individual can possess (except as otherwise provided by Shari'a), and which must be kept unoccupied for the public use for activities such as grazing and threshing grounds (2008 Law). Customary law and deeds provides that individuals and communities can obtain exclusive or non-exclusive rights of access to government-owned pasture land

(GIRoA 2004, GIRoA 2008; McEwan and Whitty 2006; Gebremedhin 2006)

1.3 Institutional land governance framework

In 1964, the state created AMLAK, a department supervised directly by the Ministry of Finance, to collect land taxes. AMLAK surveyed about 80 % of the properties to charge taxes, but most landowners under-declared their amount of land. The Cadastral process was modernized between 1976 and 1974 with help of USAID but only 30 % of agricultural land

was surveyed. Moreover, the Court system did not take part in the process, which was therefore not legal. Consequently, the surveyed properties (private, common, government) in the cadastre are not formally registered (Reynold, 2006).

The communist regime that came to power in 1978 declared a radical land reform, passing by the creation of state owned industries and agricultural enterprises with support of AMLAK (which transferred to the Ministry of Agriculture and Land Reform). The aim was to settle 340,000 families, with certificate of ownership, for which the government expropriated land, from large landowners (more than 6 ha) and those that had not declared the right amount of land in the last 1964 survey. The land expropriation was one of the drivers behind the fight against the communist system, resulting in the withdrawing of the soviets in 1986, but war continued until 2001. At the end of the 1980s about half of the fields were no longer cultivated and many people had fled to town or abroad. Although all the new regimes (Najibullah, Rabani and Taliban) made important changes in the laws and the Land Tenure Policies, most of them were not implemented. Reconstruction of institutions related to land tenure started only in 2001 (Reynold, 2006).

Currently, all land administration and registration (rural and urban) is the responsibility of the Department of land (*Amlak*). Since 2010, *Amlak* is part of the new Afghanistan Land Authority (ALA) within the Ministry of Agriculture, Irrigation and Livestock (MAIL). In the future ALA may become an independent government body, which will also be charged with managing government-owned land and their marketing to generate rents for the national budget (Anderson 2010; Beall and Esser 2005).

Afghanistan has a deeds registration system². Less than 10% of rural property and 30% of urban property is covered by legal deeds. However, archived deeds are often out of date and inaccurate (McEwan and Nolan 2007; Stanfield et al. 2008). In urban areas, the land registration process in Afghanistan has recently been reformed (assisted by USAID), resulting in a reduction of the process from more than 30 steps to only 4 while the length of the process went down from an average of 250 days to 64 days, and the transfer tax is reduced from 7% to 5% of the value.

Whereas, municipalities have responsibility for land acquisition and land allocation, village councils (called *shura* or *jirga*) are also active in land issues and disputes settlement. The *shura* system is criticized for not representing the interests of economically disadvantaged and vulnerable groups. Women are not permitted to be members of the *shura* (Beall and Esser 2005).

1.4 Gender

The Constitution states that women cannot be precluded from owning or acquiring property and Islamic law grants widows one-eighth of the property of the deceased spouse; daughters inherit half the share of land inherited by sons. Despite these formal and customary provisions few women own land. Daughters tend to relinquish their inherited land rights to their brothers, especially at marriage. Widows who inherit land commonly transfer it to their sons' names. Studies suggest that about 2% of women own land, mostly widows (GIROA 2004; Grace 2004; Alden Wiley 2003; Grace 2005). When registered, most land is in the name of the male head of household. Though in urban settings women are more assertive about their rights to land,

² The difference between a deeds registration and the Torrens systems is that the former involves registration of instruments while the latter involves registration of title. Moreover, though a register of who owned what land and "a chain of title" is maintained, it can be challenged in the courts at any time. The limits of the deeds-registration system is that transfers of land are slow, expensive, and often unable to create certain title.

they do not register their rights formally because they consider the process as too time consuming and costly (Grace 2005; Beall and Esser 2005; Alden Wiley 2003).

1.5 Foreign Direct Investment

The Afghanistan constitution prohibits foreign individuals from owning immovable property in Afghanistan. Foreign individuals can lease property for the purpose of capital investment (GIRoA 2004).

1.6 Land grabbing

“Land grabbing” of state land and even private land is regularly denounced in the press. Actors involved are local “strong men” and the elite, and indicate that the “rule of law” is weak.

2 Integrated Water Management

2.1 Policy framework

Eighty percent of the country’s water resources come from snowmelt from the Hindu Kush Mountains and are contained in three major watersheds. Annual flooding is a problem for many areas of the country (ADB 2002; ADB 2008). Irrigated farming is important and responsible for a significant part of water consumption. Irrigation infrastructure has been heavily neglected during the past decades of conflict, resulting in low water use efficiency (USAID, 2010).

Law	Content
The 2009 Water Law	One component of the country’s strategy to integrate its water systems and institutions. Provides the basic framework for the sector and enumerates ministerial responsibilities. Based on best practice for integrated water resources management (IWRM) Adopts a river basin approach under which natural river basin boundaries (versus administrative boundaries) govern all aspects of natural resources management and planning

(Wegerich 2009; GIRoA 2007b).

2.1.1 Institutional framework

The Ministry of Energy and Water has overall responsibility for planning, management, and development of water resources. The Ministry of Agriculture, Irrigation and Livestock is responsible for managing irrigation and drainage systems (Wegerich 2009; Ahmed and Wasiq 2004; ADB 2002; ABD 2008).

The 2009 Water Law also establishes River Basin Agencies (RBAs) and River Basin Councils under the Ministry of Energy and Water (MEW). The five RBAs established under MEW provide a decentralized management structure and are to create basin master plans to guide basins development and management. The transition to RBAs and their full implementation will require a new approach and new skills for MEW.

Customary law often governs the use of water on private land and in private systems, and also supports the resolution of conflicts over water, and water resource conservation. Water governance has traditionally been dealt with at the village level. One example is the kaerez system for the allocation of water, which is constructed and maintained on a community basis (McMurray and Tarlock 2005). The key actor at the village level is the *mirab* who delegates authority to sub-water masters. Agreements between farmers, the *mirab*, and local government determine the distribution of water. The handling of water disputes and the application of customary law rests with village elders (McEwan and Whitty 2006). However, in

some regions, military commanders have taken control of water resources (McMurray and Tarlock 2005).

Forests management is important to prevent flooding. Forests are suffering from a breakdown in management regulations. Forest rights are insecure. New forestry legislation is too clarify tenure and land use rights of local communities, but has not moved beyond the draft phase (ADB 2002; UNEP 2003; GIRoA 2007a). The Department of Forestry and Range Management in the Ministry of Agriculture, Irrigation and Livestock is responsible for the management and protection of the country's natural forests, pasture, national parks and wildlife resources (Shimizu and Trudel 2006; UNEP 2003; ADB 2002).

3 Realities on the ground

In rural areas **land rights are often highly insecure**. Drivers of the insecurity are: (1) a history of inequitable relations within communities with regard to access and rights to land and water; (2) multiple unresolved interests over the same land, including rights of nomads; (3) failure to develop accepted principles governing holdings of non-agricultural land; and (4) continuing violence and disorder, uncontrolled poppy production, warlordism, land invasions, and ethnic disputes (Alden Wily 2003; McEwan and Nolan 2007; Beall and Esser 2005; Stanekzai 2008; Denmark 2007; World Bank 2005). Actions that are required are the provision of decentralized and deconcentrated services for land and water governance; the integration of customary practices in formal frameworks and strengthening of conflict resolution mechanisms.

Land disputes are common and often violent; among the most common causes of land disputes are: the inability to address the land claims of returning refugees and IDPs; land seizures by elites and warlords; ethnic tension between Pashtun and non-Pashtun interests; the prevalence of fraudulent land documents; absence of agreements over rights to pasture land and forests and inheritance rights to private property (McEwan and Nolan 2007; Alden Wily 2004; Patterson 2004; Stanekzai 2008; IDMC 2008; Deschamps and Roe 2009).

Informal mechanisms and institutions are essential for the **resolution of land disputes**. Thus aggrieved parties can take disputes to family members, neighbors, and a local notable person or leader, or approach a village council (*shura* or *jirga*) or the head of a wider community area.

The **cohabitation of nomadic groups and sedentary farmers** can sometimes be worked out in local forums (Patterson 2004; Alden Wiley 2003; Foley 2004; Deschamps and Roe 2009).

The formal court system has limited capacity, and is seen by many to be corrupt. The Special Land Dispute Court established by government a in has been criticized for failing to perform its mandate; the status of its activities is not reported (Alden Wiley 2003; Beall and Esser 2005; Koser and Schmeidl 2009).

The issues **of IDPs and refugees** are significant, and the government has established a Special Land Dispute Court in 2002 to focus on land issues arising from the return of IDPs, refugees, and squatting, and to bridge customary and formal institutions. Despite intentions criticism against the court has mounted; in particular for moving too slowly, not addressing claims against the government, not handling IDP cases, and lacking enforcement provisions (Beall and Esser 2005).

4 Resources and other information

4.1 National Policy agenda 2012-2015

- Boost investment into agriculture and increase the amount of arable land under cultivation
- Redistributing land to landless farmers and land registration
- Strengthen capacity at all levels

4.2 Donor support

- Several donors are actively assisting Afghanistan with land-related issues. USAID has major projects in the sector (e.g. "land titling and economic restructuring in Afghanistan" (LTERA) from 2004 to 2009); the Asian Development Bank and Department for International Development (ADB/DFID) are piloting a system of community-agreed land rights to public land. Other support is coming from The Norwegian Refugee Council (NRC), the Afghanistan Research and Evaluation Unit (AREU), the FAO/DFID Sustainable Agriculture Livelihoods project and the DFID and ADB Rural Land Administration Project (McEwan and Nolan 2007; Stanfield et al. 2008; Foley 2004).
- There is support from donors towards the creation of a comprehensive, harmonized legal framework governing land and natural resources in Afghanistan, with particular attention to the rights of women, ethnic minorities, and displaced populations.
- In the field of water the Asian Development Bank, the European Commission and USAID are all been active.

4.3 Civil society organizations

The International Land Coalition and Asia Land Watch have no members in Afghanistan

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