



## THE CHALLENGES OF FORMULATING A LAND POLICY IN A POST CONFLICT CONTEXT: THE CASE OF AFGHANISTAN

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**ABSTRACT:** The manner in which land is managed and administered directly impacts peace-building efforts in post-conflict environments. In most post-conflict environments land-related frictions are rife. The situation of property rights is often chaotic. Tenure insecurity, inequitable land distribution and landlessness are often serious social and economic concerns, particularly to the poor and vulnerable. Land-related government institutions are often not able to adequately deal with the post-conflict reality. Such reality demands an appropriate land policy to provide guidance. Focusing on the experience of Afghanistan, this paper provides an introduction to the importance and challenges of formulating and implementing land policy in post-conflict environments for UNDP field staff. Although, this paper is not, and cannot be, a template for land policy in all post-conflict situations, there are basic principles that may be adapted in other post-conflict situations.

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## **1 INTRODUCTION**

In most post-conflict societies, land is often not only a key productive asset but also a source of identity and social status (Gebremedhin 2004). However, conflict and social unrest tend to tear apart the formal and traditional fabrics that hold land administration and management institutions and norms intact. Poor and vulnerable segments of society tend to find themselves disadvantaged with respect to access to land. Disputes and frictions over land are often rampant as a result of the disorders of conflict. Solving, or at least ameliorating, such multi-faceted problems require clear vision, principles and tools to guide legislative, institutional and technical measures. This is, in other words, a plea for a holistic approach that combines the legal, economic, social and political aspects of land policy, which includes participative resource distribution, resource management, and resource administration.

The notion of 'governance' is often used differently by different people. The term is sometimes used in connection with market efficiency, i.e. ensuring transparency, accountability, and the rule of law to make "markets work more efficiently, rather than, for example, making governments more accountable to their citizens" (McAuslan 1997: 27). Such market-centred conception of governance risks mishandling land-related issues in transitional societies in general and in post-conflict societies in particular.

Most of the typical land-related issues that arise in post-conflict contexts such as land grabbing, multiple claims over the same property, fraudulent deeds, inequitable land distribution, conflicts over pastureland, and massive informal property rights tend to have direct bearings on peace, stability and social harmony. To deal with such problems, ensuring not only efficient but also equitable and accountable land governance is imperative.

Beyond and below land laws, land administration and management expose issues related to entrenched social norms, conflicts, and chaotic, hybrid and informal property rights that affect peoples' livelihoods. The implications of this type of land relations for conceptions of justice and peace-building are profound. Indeed, post-conflict societies are often faced with problematic social developments and land-related conflicts that render existing legal framework deficient. Comparative experience suggests that the gaps and deficiencies that are identified in a post-conflict legal framework are best addressed when guided by an appropriately formulated land policy.

## **2 LAND POLICY IN POST CONFLICT: FORMULATION AND IMPLEMENTATION CHALLENGES**

In post-conflict contexts, the process of formulating a land policy should accommodate the needs and interests of a diverse group of key players within a given society. This process can hardly be easy and smooth. Due to the transitional nature of post-conflict societies, implementing a land policy tends to be harder than articulating the policy on paper.

The greatest challenge in the implementation phase is adopting a broad strategy that can be agreed upon by all stakeholders. To avoid confusion and misallocation of resources, a single governmental strategy ought to aim at controlling and directing the complex, interrelated but often uncoordinated activities of several government agencies, international organizations and some local NGOs. The strategic plan should consider how to tackle governance-related challenges.

### **3 PRINCIPLES UNDERLYING LAND POLICY IN POST CONFLICT ENVIRONMENT**

Consequences of conflict usually manifest themselves as complex and multi-dimensional problems. Conflicts often result in immense human, social, economic and environmental destruction, which impact the way society orders land relations. Land administration infrastructures and services tend to be adversely affected by political disturbance, bloodshed, massive migration and internal displacement.

Therefore, it is imperative that the principles underlying a post-conflict land policy are multi-dimensional and match the multi-faceted nature of land administration issues. The interests of different segments of society, including the poor and vulnerable, should be considered and balanced equitably in order to address causes and consequences of conflict.

#### **3.1 EQUITY AND EFFICIENCY**

In the context of land administration, there is no universally applicable reason to favour efficiency over equity, or vice versa. Only after careful examination of a particular society's reality and history one can rationally assert that the dictates of efficiency, which often denote markets and economic growth, are of greater importance than equity, or vice versa. Land market efficiency is often put on top of the donor community agenda to promote an environment conducive for foreign investment. However, land market efficiency can only be achieved through an accountable, just, transparent, and efficient land management and administration system.

Ensuring such land administration system in a post-conflict situation requires a predictable legal system and a legal framework that clearly defines and scrupulously enforces property rights. At the same time, it requires a land policy that strikes a delicate balance between efficiency and equitable solutions to land-related problems, which are, in many respects, unique to post-conflict environments.

Reconciling market mechanisms with social equity is particularly important in post-conflict environments. A land policy that creates an appropriate balance between efficiency and equity can be an essential tool to deal with actual and potential disputes over land before they develop or recede to full-blown social conflict.

#### **3.2 BUILDING PEACE**

The underlying principle of a post-conflict land policy must be that it is socially and politically relevant and responds to crucial issues such as informal settlements, multiple claims over pastureland, land grabbing, land distribution, adjudication and dispute resolutions mechanism. Put differently, the land policy must have the potential to direct society towards equitable socio-economic development and rational resource management, while addressing grievances that may have resulted in previous conflict or would, if left unaddressed, trigger new conflict.

### **4 DONORS' APPROACHES TO LAND POLICY FORMULATION AND IMPLEMENTATION IN POST CONFLICT ENVIRONMENT**

Approaches to land policy development, particularly in the developing world, have been evolving over the last half-a-century or so. A drastic shift of approaches to formulating land policy took place around the turn of the last century. Major donors and multilateral organizations started to recognize that land policy reform must be formulated in tune with the reality on the ground and consider the needs of different segments of society, especially the poor and vulner-

able. For example, the European Union's Land Policy Guidelines state that in societies that "have experienced armed conflict, civil war, and major displacement of populations, fair and just handling of land tenure questions will often be a central component of any reconstruction exercise, both to maintain the peace and provide conditions under which economic growth can be re-established" (EU Task Force on Land Tenure 2004: 6-7).

Publications of other major donors such as the World Bank, USAID, DFID and SIDA echo important elements of the conceptions contained in the EU guidelines. That land policy can serve as a crucial tool for sustainable and equitable development, peace-building, and rational land resources management is a common assertion in the approaches of these major donors. In recent years, major donors have disseminated publications that promote a participatory approach to land policy development and encourage readiness to suit local circumstances (See Deiniger 2003; USAID 2005; DFID 2007; SIDA 2007). The new trend is encouraging and contrast with ideologically or politically driven policy development interventions of the Cold War era. However, commitment of adequate resources and development of comprehensive, coordinated and realistic strategic plans remain serious donor challenges in many post-conflict environments.

## 5 THE CASE OF AFGHANISTAN

### 5.1 OVERVIEW OF THE PROBLEM

The complexity and magnitude of land-related problems in post-Taliban Afghanistan have been daunting. Land disputes and social frictions are widespread. Millions of property deeds were destroyed or kept in very poor conditions as a result of the Mujaheddin fratricidal that took place in the 90s. Multiple claims over the same immovable property – based on legal and customary deeds of varying legitimacy – present complex legal problems. About 70 percent of the urban population lives in informal settlements. The inhabitants of informal settlements lack tenure security (see Gebremedhin 2005). Landlessness is a serious problem in rural parts of Afghanistan, where approximately 18 million people out of the country's estimated total population of 32 million live. Roughly 30-35% of Afghanistan's rural population was estimated to be landless or near landless by the end of the 1990's and signs indicate that this figure has been rising since (Wily 2003, referring to Rubin 1997). Furthermore, most farmers and nomads that have access to land, do so under conditions of dubious legality and insecurity, e.g. less than 10 % of rural properties are covered by court prepared deeds (USAID 2006). Unresolved problems of governance, *inter alia*, allow for land grabbing by powerful elements of society in both urban and rural areas. Land allocation for resettlement of former refugees and internally displaced persons is another huge challenge, as their abandoned lands have often been occupied by others.<sup>1</sup>

To deal with the above problems, the government of Afghanistan and the donor community sought to draft a new land policy. The objective of formulating this land policy was to provide general principles that would guide the legislative and administrative measures necessary to ensure efficient, equitable and secure land administration and tenure arrangements, thereby serving diverse interests within Afghan society. The policy holds, *inter alia*, provisions that promote secure land tenure, especially for the urban and rural poor, an efficient system of land administration, equitable land distribution and efficient land markets, and equitable and environmentally sustainable land use to improve productivity and alleviate poverty. Importantly, the land policy envisages a practical move towards devolving the administration, clarification, and certification of tenure to the community level.

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<sup>1</sup> Between 1979 and 1992, over 6 million Afghans, that is, more than a fifth of Afghanistan's population, left the country in pursuit of safe haven. Significant number of Afghans was internally displaced. Around 5 million Afghans returned home after the collapse of the Taliban administration.

## 5.2 THE IMPORTANCE OF A REVISED LAND LAW

Land administration and management in Afghanistan is governed by an insufficient legal framework that consists of layers of *sharia*, customary and state laws. The administrative practice is often inconsistent, unpredictable and riddled with rent-seeking. Informality is one of the defining characteristics of land relations in the country. The post-conflict reality in the country calls for a pragmatic and equitable legal paradigm to inform a coherent legislation on land.

## 5.3 THE IMPORTANCE OF A LAND POLICY

As mentioned above, beyond a land law, land policy is an imperative for peace and development, as it addresses the resources and institutional requirements needed for the law to be respected, protected and fulfilled. A land policy would, furthermore, have to uphold the principles of peace building, efficiency and equity. The Afghan case illustrates some of the challenges of land policy in terms of formulation, implementation and inclusion. The recent story of land policy development in Afghanistan, furthermore, gives insight into how to deal with issues of efficiency and equity as well as issues of participation.

## 5.4 CHALLENGES IN LAND POLICY FORMULATION PROCESS

The following sections provide an overview of the steps that were taken to arrive at a new land policy in Afghanistan.

### 5.4.1 General Context

The issue of land has been at the centre of the country's contemporary history of social change and conflict. The roots of the contemporary conflict date back to the overthrow of President Daoud's Government in April 1978 by a leftist clique, later punctuated by the Soviet invasion of Afghanistan.<sup>2</sup> At the heart of the socio-economic agenda of the group that overthrew President Daoud's government (and formed what is now known as the 'communist government') was land reform. The communist government of President Taraki proclaimed Decree No. 8 that envisaged the redistribution of surplus and excess land to landless peasants, agricultural labourers and needy nomads.<sup>3</sup>

Subsequently, the issue of land resurfaced in connection with the last communist government's endeavour to reconcile with the Mujahideen. The last communist government led by Dr Najibullah attempted to legislatively reverse some of the most significant underlying principles of land tenure embodied in the laws proclaimed by his predecessor communist governments to attune them with the principles of Islam and the Afghan traditions. Notably, the government raised the ceiling of land ownership up to 20 hectares. Dr Najibullah's policy reversal was driven by his interest to make political compromises with the Mujahideen and their supporters as his government came to realize that land had all along been at the centre of the conflict. However, Dr Najibullah's land reform proved too little and too late for the Mujahideen leaders.

After defeating the Soviets and subsequently the last communist government of Afghanistan, the short-lived Mujahideen government of President Rabanni issued a decree that purported to return the land that was redistributed after the communist 'Saur Revolution' to former owners. Due to a security lapse and continued armed conflict, however, the decree was practically ineffective. In the end, the chaotic security situation that the Mujahideen fratricidal bred, led to massive land grabs, unlawful occupation of public land and expansion of informal settlements.

<sup>2</sup> President Daoud himself came to power through a *coup d'etat* in 1973.

<sup>3</sup> Decree no. 8 defined surplus land as land held in excess of the area owned based on valid document. Pursuant to Decree No. 8 of the Supreme Revolutionary Council Regarding Land issued in November 1978, excess land meant any category of land in excess of the limit that any person was allowed to own.

The emergence of the Taliban in 1996 appeared to provide some order with respect to land management and administration, which can be attributed to the Taliban's strict enforcement practices. The Taliban proclaimed a Land Management Law that was essentially a reformulation of the laws and practices that prevailed during the rule of President Daoud. The two major land laws that are currently in force, i.e. the Land Management Law of 2000 and the Law on Pasture of 2000, were inherited from the Taliban administration.

Informality and chaos have characterized the situation of land management after the fall of the Taliban regime in 2001. The lack of strict application and inadequacy of existing laws to govern the post-conflict reality have led to land grabbing and multiple claims to pastureland by settled farmers and nomadic communities. These issues have been important but delicate for the government and the public. Informal occupation of public land at a massive scale is another major problem that calls for a just and pragmatic solution. However, a combination of complex factors such as fragile security, endemic governmental corruption, culture of impunity upheld by the powerful and wealthy, and inadequate intervention by the government's development partners continue to fuel arbitrariness and chaotic handling of land affairs.

#### *5.4.2 Forming a Land Policy Working Group*

In response to a request from the Ministry of Justice a Land Working Group – initially known as Land Advisory Group – was formed in June 2005, to serve as an international advisory body to the Minister of Justice on land-related issues. The Ministry of Justice sought the help of its international development partners to form the advisory body after the Cabinet mandated it to lead the process of developing a government policy and strategy to deal with land-related issues. After a conference in London, the Land Working Group, which is composed of government officials and foreign and local experts, was mandated to integrate the activities of all national and international agencies working on land-related issues, in accordance with the benchmarks of the Afghan Compact. Theoretically, the Ministry of Agriculture assumed the lead role to oversee the activities of the Land Working Group. However, the Ministries of Justice and Urban Development have been fully collaborating with the Ministry of Agriculture in overseeing the activities of the Land Working Group. The three ministries have assigned officials and experts who have been participating as members of the Working Group.

At the time when the process of establishing a Land Working Group started in 2005, determining a rational institutional base agreed upon by all stakeholders was a critical challenge due to overlapping responsibilities between the Ministries of Justice and Agriculture. The overlap of responsibilities between the two Ministries became unduly complicated because of divergent donor support and interest. Ensuring coherent and harmonized donor support proved to be more challenging and time-consuming than building consensus amongst relevant government ministries to work towards a unified Land Working Group. Although the Land Working Group was instrumental in formulating land policy, achieving a reasonably coordinated and better-resourced donor-government effort and devising a clear 'road map' to implement the land policy remained a challenge.

#### *5.4.3 Preparing a Draft Land Policy Following a Consultative Approach*

The manner in which the policy process was handled was as important as the contents of the policy itself. Targeted consultations with a broad range of sectors, urban and rural communities, government officials from different levels, and non-governmental experts and stakeholders were conducted. These consultations aimed to achieve a broad consensus in the hope that this consensus would later help facilitate rational reconciliation of diverse interests and views of different groups. The consultations also aimed to give legitimacy to the evolving draft policy. They also aimed to give a large number of people the sense that they were given the opportunity to

participate in the overall process. The draft policy document served as a basis for well structured discussions and debates, which saved time and resources.

The preparation of and debate over the first land policy draft occurred within a complex political and social context. The policy document dealt with sensitive and complicated issues such as land grabbing by powerful elements of the Afghan society, formalization of the property rights of irregular occupants of public land, and administration of conflicting interests over pasturelands. Land allocation was another delicate issue that brought matters of equity and efficiency to the surface. The ideas of giving official recognition to customary property rights, regularizing informal property rights under certain circumstances, and establishing a community based adjudication process were particularly contentious.

With some notable exceptions, central government officials initially held strong views against regularizing informal property rights and deconcentrating authority over land and decision making. Reconciling the conventional views of public officials and other elite actors on the one hand and the views of ordinary Afghans such as informal settlement dwellers, poor farmers and pastoralist groups on the other hand, proved a daunting undertaking. The clash between ideas and principles drawn from best practices and concerns emanating from hang-ups based on personal/group experiences of the Afghan conflict and its aftermath was also a factor that compounded the challenge of forging consensus in the process of formulating the land policy. To move the policy process ahead, international development partners influenced the thinking of government officials in two important ways.

First, development partners facilitated meaningful communication between communities and the government, organized study tours and conferences and engaged with relevant government officials. These proved instrumental in creating an effective lobby for community-based and devolved land administration and regularization of informal property rights. Secondly, development partners funded community-based projects and programmes for informal settlement upgrading and property rights clarification and certification. Experiences gained and lessons learned from these activities have helped to shape policies in favour of formalizing tenure and community-based adjudication processes, both in urban and rural settings.

## **5.5 POLICY VISION AND OBJECTIVES**

The core vision of the Afghan land policy is to maximize social and economic benefits for all segments of the society based upon the orderly and sustainable use of land. As reflected in the land policy, the following rather ambitious but realistically achievable objectives motivated the drafters of the land policy and relevant policy-makers:

- Provide every Afghan access to land;
- Promote and ensure a secure land tenure system;
- Encourage the optimal use of land resources;
- Establish an efficient system of land administration; and
- Ensure that land markets are efficient, equitable, environmentally sound and sustainable to improve productivity and alleviate poverty.

## **5.6 PRINCIPLES OF LAND POLICY FORMULATION**

The core principles that guided the development of the Afghan land policy are consistent with the elements of good governance, i.e. transparency, equity, accountability, efficiency, respect for the rule of law and community participation. These principles were instrumental in guiding the formulation of the land policy in a way that struck a delicate balance between the oft-competing interests of efficiency and equity. The definitions of principles outlined in the land policy can be summarized as follows:

- *Transparency, accountability, equity, and community participation:* The land policy aims at ensuring a flexible, equitable and transparent policy that serves the diverse interests of the Afghan society. Also the policy states as its guiding development principle that transparency, accountability and community participation are critical for effective land administration and must be applied at all levels, from communities to the highest levels of government. Local communities must take responsibility and the government must acknowledge its role to serve the people.
- *Efficiency:* The land policy states that institutional coherence and efficiency are necessary preconditions for the achievement of the objectives of the land policy. Moreover, among the stated principles of the land policy development is the recognition that the private sector holds the key to economic development and that it is dependent upon the establishment of clearly defined, enforceable and transferable property rights through a legal and efficient institutional framework.

### **5.7 PROCESS OF ADOPTION BY THE GOVERNMENT**

The draft land policy was officially approved by three line ministries, i.e. the ministries of Agriculture, Justice and Urban Development, in January 2007. Soon after, it was submitted for further deliberations to the Economic Committee of the Council of Ministers. The relevance of the national land policy to the reality on the ground and the fact that it was approved by key ministries was of inestimable value in terms of facilitating speedy approval by the Economic Committee of the Cabinet. As a last step the document was thoroughly discussed, debated and adopted by the full cabinet chaired by the President of the country.

### **5.8 THE IMPLEMENTATION CHALLENGE**

By adopting a national land policy, the government of the Islamic Republic of Afghanistan has changed its outlook regarding land management and administration. Among the major shifts in policy are that the government has expressed recognition of the futility of its former eviction and resettlement oriented *de facto* policy concerning informal settlements in urban areas and its centralized bureaucratic practices in dealing with issues of ownership and access to land resources in rural areas. The national land policy heralded, *inter alia*, the government's decision to regularize informal property rights under certain circumstances; to put in place equitable and transparent land allocation procedures; and to promote the constitution of community based land resource management and adjudication systems to complement the conduct of land management and administration through a coherent, consolidated, and transparent land administration body, as envisaged by the land policy.

However, old practices of land management and administration, including the non-transparent procedures of land allocation, arbitrary evictions of informal settlement residents, and ambivalence in dealing with crucial issues such as land grabbing and pastureland, persist. Insufficient and incoherent legal frameworks continue to govern land administration and land management in Afghanistan. Also the enforcement of the existing laws continues to be haphazard and discriminatory, which often gives way to informality in dealing with land relations. The Government has yet to take affirmative actions towards implementing the National Land Policy if these problems are to be tackled in any meaningful way.

The inexistence of institutional capacity and prevailing security issues only partially explain the apparent reluctance of the government to take positive steps towards implementing the new land policy. A combination of various factors stalls the implementation process. The main factor is that decision-making continues to be very much centralized and most politicians do not seem to be interested in changing the *status quo* due to personal or group interest. The manoeuvring

and defensive politics experienced during the policy formulation and adoption process has been carried to the stage of policy implementation. Government officials who opposed approval and those who half-heartedly supported the adoption of some of the liberal policies – particularly policies that are in favour of regularizing informal property rights and establishing community based adjudication and land resources management systems – continue to stall the implementation process by their inaction or by twisting the objectives of the policy framework.

The lack of adequate civil society and private sector pressure is another factor. The sustainability of meaningful involvement of community structures, promoted by a partnership of international development advisers and some elements of the government, has been adversely affected by high turnover of international development consultants and frequent changes at the local government and municipality level where most of the government-community interaction occurs. In retrospect, it has become apparent that the focused and, to a large extent, indirect and donor-driven nature of community involvement in the policy formulation process has contributed to the lack of political pressure on the government to act affirmatively to push the implementation process in the right direction.

To translate the land policy into effective action after its approval, the Land Working Group submitted a broad strategy laying down the critical land management issues and the immediate and medium term actions that should be taken to solve, or at least control the problems of land administration and management in the country. The essential next step would be for the lead ministries and other stakeholders to debate, refine, and adopt the strategic plan. To be effective, the proposed or any other future strategic plan, agreed upon by the government and donors, should include the allocation of responsibilities and resources, performance indicators, and targets and timelines. These should revolve around the following three pillars:

**Legislative:** The existing legal framework has to be consolidated, fine-tuned and developed in accordance with the land policy and the constitution. It would be most rational that the existing legal framework will form an important backdrop against which the development of a new legal framework for land has to emerge. Building on the existing legal framework requires identifying antiquated provisions and principles, deficiencies and gaps in the law and revamping them as necessary.

**Governance:** Most of the critical land issues in the country are inextricably linked with general issues of governance and rule of law. Extra-legal phenomena such as unlawful occupation of public land at a massive scale, conflicting claims over pastureland, unjust allocation of land by public authorities and land grabbing by powerful elements are examples of land-related issues that stretch beyond management by legal adaptations into the broader sphere of governance. Such issues require: 1) decisive and tactful dealing with behaviours that undermine the rule of law and the interests of the disadvantaged segments over land and 2) establishing a decentralized land management and administration system that allows urban and rural communities to participate in decision-making and land administration.

That the land policy was a product of significant consultations is an encouraging step that signifies a move away from a centralized decision-making process to a community-based and devolved land administration system. For example, community-based planning, budgeting and monitoring are essential to implement the holistic/integrated approach adopted in the land policy in dealing with informal settlements through tenure regulations, neighbourhood planning and basic service provision. The main challenge to achieving a decentralized decision making process and devolved land administration system is to overcome the reluctance of public authorities to move beyond allowing popular consultations in the process of formulating policy and start allowing community-based planning, budgeting, monitoring and actual implementation of plans of action. Increasing pressure exerted from international development partners and civil

society, both at urban settlement and village levels, on decision-making processes is crucial to ensure more meaningful grassroots decision making.

Institutional/Operational: In the short term, it is essential to deal with immediate institutional and legislative problems. The medium to long term objective ought to be to build up streamlined and coordinated institutions through allocating necessary human and material resources as well as training. Adopting genuine participatory approaches in defining short, medium and long term objectives, benchmarks, targets and indicators is imperative to produce plans that mirror the wishes and needs of communities, particularly those that are poor and vulnerable.

## **6 THE ROLE OF RELEVANT GOVERNMENT AGENCIES AND DONORS**

While there has been some progress in Afghanistan over the last few years, particularly in formulating land policy and developing community-based methodologies to deal with issues associated with informal settlements and pasturelands, there remain a number of serious deficiencies in current approaches. First, the conceptualization, design and implementation of donors' programmatic interventions primarily aim at commercialization of land in order to encourage investors and lack a balanced and equitable strategic vision. Second, there appears to be a lack of donor commitment to address the obvious tension between the priorities of the different segments of society and limited capacity of implementing partners to manage these. This is exacerbated by rigid plans that show distortions of priorities as a result of unrealistic time-horizons. Some targets and timelines have been agreed upon by the government and the donor community within the framework of the Afghan Compact. These are arguably overtaken by time and weak capacity to deliver in the short-term, and therefore require a revision of existing plans.

The coordination of programmatic donor interventions requires more attention in order for them to contribute to the strategic plan designed to implement the recently adopted land policy. At a more technical level, land institutions have yet to build their capacity to initiate or lead a process of redesigning existing systems that are not responsive to the post-war reality in the country such as existing immovable property recording and adjudication systems.

The present donor strategy in Afghanistan is not adequate to facilitate a long-term equitable solution to land-related problems. Apparently, the present *ad hoc* and uncoordinated donor-government activities are not, to a desirable level, addressing the legitimate expectations and interests of the different segments of the Afghan society. Donors and other international development partners are failing to provide the resources required to effectively and equitably deal with land-related problems. A good indicator is that the donor community has yet to seriously engage the government on the need to devise a comprehensive strategic plan to implement the land policy. Doing so, of course, will require revisiting the existing minimalist donor approach designed to produce quick results and adopt a better-resourced peace-building and poverty-reduction-oriented strategy designed primarily to build institutions and systems.

## **7 ENGAGING MEANINGFULLY WITH SOCIETAL VOICES/ACTORS**

Formulating and adopting policies, as it is the case in most other countries, is the functional domain of the Afghan government. However, in line with international best practices and current trends, consultations with representatives of both rural and urban communities were part of the policy design process. The strategy adopted by the Land Working Group was to undertake targeted consultations with representatives and members of different grassroots structures and other stakeholders, as well as draw lessons learnt from pilot projects such as those related to informal settlements, land disputes and access rights to community and public pastures. This

strategy was effective in terms of gathering constructive feedback and ensuring that the voices of the grassroots and other stakeholders were heard in a timely and meaningful fashion.

Given the controversial and political nature of land-related issues in Afghanistan, it is understandable that the Government preferred focused consultations as opposed to mass consultations to avoid provoking social unrest over sensitive issues. Moreover, mass consultations on land policy issues would be less effective in terms of gathering constructive feedback than targeted consultations through thorough field investigations and pilot testing of innovative methods to resolve crucial issues.

The most crucial urban and rural land problems related to customary rights, urban squatting, pastureland, and land disputes were handled in accordance with the experiences gained and lessons learnt through pilot projects implemented on the basis of an inclusive and community based participatory approach. Although these projects were costly, time-consuming and controversial, they were instrumental in facilitating constructive communications and debates between communities and relevant government officials. While public consultations during the policy formulation process were focused, and to some extent indirect, the policy's handling of informal property rights, land distribution, pastureland and other delicate land management/administration issues was, to a considerable extent, informed by the views and demands of urban squatters, pastoralists, poor farmers, customary right holders, representatives of various urban and rural community structures, and entrepreneurs.

Undoubtedly, however, the focused and indirect nature of participation of local communities and other non-governmental local stakeholders has contributed to the lack of societal pressure on the government to bring the implementation process on track. In turn, the lack of grassroots and private sector pressure has made the whole implementation process an intergovernmental bargaining phenomenon and left the government and its main development partners to adopt a 'top-down' technocratic approach to resolving land related problems. It is, therefore, essential that a tripartite partnership between community representatives, governments and donors is conceived and structured not only for the purposes of ensuring targeted consultation during the land policy formulation process but also to ensure sustained and substantive participation in implementing the land policy.

## **8 CONCLUSION: TOWARDS A BALANCED POLICY OUTLOOK**

In post-conflict environments land policies must primarily aim at promoting the interests of peace and stability. Fair resolution of the causes of conflict, coupled with economic growth and equitable access to natural resources are essential ingredients of peace building. To promote peace and stability, it is important to have a good grasp of the underlying causes of conflicts, historical inequities with respect to access to land, and present land-related problems.

Any agenda for land policy reform ought to be guided by clearly articulated principles of policy development. Policy solutions should remove institutional overlap for land policy development, ensure that the support of international development partners does not contradict with the framework decided upon by the government, and ensure a reasonable level of targeted public consultations. The Afghan case shows that doing all this is not a smooth exercise. The Afghan policy-making exercise resulted in a comprehensive national land policy agreed upon by all relevant public agencies and through consultative processes. However, more work needs to be done to ensure sustained community participation and to properly support the Land Working Group to bring the project experiences and inputs from international development partners into a coherent and prioritized strategy to implement the land policy.

In most post-conflict countries policy formulation and implementation require strong donor support and firm political will from governments. Under such conditions, the guiding principles for policy development and implementation may have result from close collaboration between governments and interested donors. Guiding principles should, *inter alia*, envisage the formation of a multi-stakeholder body like the Land Policy Reform Working Group in Afghanistan, which is composed of government officials, local experts, representatives of the private sector, representatives of identifiable community structures and qualified advisors from international organizations.

It is essential that both the government and donors resist the temptation of quickly formulating a land policy and demonstrate their commitment to participatory policy-making processes. Hasty policy development – without proper investigation of the issues and the appropriate level of consultations – may result in a document that will be impossible to implement, unacceptable to the public and unresponsive to post-conflict social divisions and disturbances.

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