

Commons at the Core of Conflict: Looking for Peace in Rural Afghanistan

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Abstract

Afghanistan began its history as a modern state around 1880, bringing a complex of ethnic entities and territories under one umbrella, and, as it was to prove, mainly under the domination of one group. Social and territorial colonization ensued, aided and abetted by the great powers, and of which the war of the last quarter century has been but a watershed. Civil disturbance continues.

This paper argues that a critical driver in past and continuing conflict is contested land rights, and especially those relating to common properties and pasture in particular. Interests and contestation overlap between nomadic and settled groups, arable and livestock farmers, and landowners and landless. The most potent conflict of all is ethnically expressed, deeply embedded in conflicting versions of historical injustice. Recent expansion of cultivation into pastures, often at the hand of warlords with a range of allegiances, has deepened tensions further and brought new issues of environmental degradation to bear. Underlying these conditions a complex conflict in ideas may be discerned, expressed in contradictory perceptions as what constitutes private and public property and local and national commons. The identification of pasture itself is contested. The insufficiencies and political manipulation of public policy and law have significantly fuelled contestation, exacerbated today by continuing limited rule of law or confidence in the courts.

This paper argues that peace is unlikely to be achieved without resolution of these conflicts. It suggests however that conventional routes towards this will be unproductive, such as relying upon development of new national policy and law, launching cadastral entitlement or restoring landholding to patterns immediately existing prior to the war. Instead, in order to advance lasting resolution, local level reconciliation and decision-making will be necessary, and beginning, not ending, with the commons, and pastures in particular. Locally decided systems of access regulation and pasture management may be instituted at the same time. From such an incremental but grounded approach, acceptable and more acceptable and sustainable norms of tenure will arise, and upon which new land legislation may be more safely founded and enforced.

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Introduction

Afghanistan is not at peace. When a third of the country is insecure due to Taliban insurgency, when inter-factional violence sporadically breaks out elsewhere, when half or more of the civil Governors and military Commanders have appointed themselves, when the central Administration is itself factionalised with armed supporters, when courts are corrupted and rule of law often minimal, it is difficult to refer to Afghanistan as a post-conflict State - the hopes, courage and sheer effort of Afghans and supporting aid agencies notwithstanding. Understanding why conflict is continuing is essential. This paper does not attempt this; what it does attempt is to identify the role that land ownership matters are playing in delaying the restoration of peace and governance in Afghanistan. For two features of the situation are clear: first, for many Afghans war and disorder in both the past and present is being primarily felt today in matters of property. Second, a significant number of drivers to conflict stem from conflicts over access and related failures of public policy. Difficulties in tackling these creatively help sustain disorder today.

Land Issues

Unravelling the complexities that constitute modern land relations in rural Afghanistan is difficult. To facilitate this and as background, a cursory profile of the landholding environment is presented –

- Classifiably fertile land is limited in Afghanistan at around 12 percent of the total area;²
- Although not as high as many South Asian states, rural landlessness is significant; recent surveys offer an average of 24 percent of households (rising to 78% in some areas) but there is evidence to suggest that this could be even in reality even higher;³
- Near-landlessness among those who do own land is also high, with most owners holding less than one acre of irrigated land or one hectare of rain fed land, insufficient for meeting the subsistence demands of extended families;⁴
- Despite helpful religious law⁵ around fifty percent of the population (women) are customarily barred from land holding; given the high numbers of widows⁶ and a

² FAO 1999.

³ Vulnerability Assessments with large samples in 2002 and 2003 show respectively 24.7% (WFP 2003) and 23.8% landless (*strictly provisional* figure) (Pinney 2004). However field work by this author suggests that when village clusters or wards (*manteqa*) rather than individual villages within those *manteqa* are selected for survey (and thus allowing commonly found landless client villages to appear), when the nuclear family rather than the extended household is the basis of study, and when the highly significant sector of mobile labour is accounted for, landlessness may rise to three quarters or more of the community (Alden Wily 2004 & forthcoming).

⁴ 56% and 60% respectively (Pinney op cit). It should be noted that 77% of farmers own no rainfed land at all.

⁵ Religious law (Shari'a) and Civil Law 1974 founded on Shari'a provides for widows and daughters to inherit land, although in lesser shares than sons. For legal details refer Alden Wily forthcoming.

⁶ These could number up to one million; Faryab Province for example, one of 32 provinces, claims to have registered 25,000 widows (Alden Wily forthcoming).

large proportion of female-headed households through out-migration of males for work, this has increasingly the ill-effects of constrained land access;⁷

- Although large holdings ('landlords') are conventionally considered few, it remains likely that around 40 percent of arable land is owned by less than 10 percent of the rural population as was found to be the case in 1981;⁸
- Diversity by zone, provinces, districts and even valleys is so great in all matters relating to land distribution that the utility of national figures is limited;⁹
- Up to 36 percent of owners have their land under a form of mortgage that is to the full advantage of creditors¹⁰ and signals desperation rather than economic advancement; most rural land is mortgaged to raise loans for food not investment;
- Indebtedness (outside mortgaging) is very high among especially the landless and land poor, increasingly vulnerability to exploitation by landowners;¹¹
- The stratification of rural society is intense and its socio-cultural mores largely effective in retaining the status quo.¹² Economic gaps between those referred to as landlords, small farmers, and the landless are large and powerful socio-cultural barriers exist especially between those with and without land; this is strongest in respect of homeless/landless mobile farmers who often perceive acquisition of land as not only financially impossible but as getting above their station.¹³ It is unlikely that many of these poorest of the poor were among the classified landless who benefited from the (short-lived) revolutionary land redistributions of 1978-1984.¹⁴ These people are also widely considered as not having the farming skills needed to manage a farm; farming is considered an artisan skill with neither the rich (landlords) nor the poor farm labourers referred to as 'farmers';
- Although an active rural land market exists, this reflects the above with sales largely among those who historically have owned or already own land.¹⁵ Small owners are highly vulnerable to losing their land and houses, especially during drought/famine¹⁶ and war and are unlikely to re-acquire land, deepening polarisation (Box 1 provides an example);
- Less well acknowledged is widespread homelessness with high proportions of rural households relying upon employer landlords, better-off relatives or charity, for accommodation, critically essential during the long harsh winters;¹⁷

⁷ Azarbaijani-Moghaddam 2002.

⁸ Sen Gupta 1986 using Soviet and Indian figures and Emadi 1997 using Soviet and pre-Revolution figures.

⁹ For stark evidence of this see WFP 2003 and Alden Wily 2003a; Appendix D.

¹⁰ In lieu of paying interest on the loan, the creditor takes over ownership, control and use of the farm, and if the debtor defaults on the loan, this temporary ownership becomes permanent, preventing the debtor selling the property on the open market. The value of the property usually far exceeds the value of the loan and the value of the farming the property to the creditor usually far exceeds reasonable interest rates.

¹¹ Up to 92% and 57% of sample populations in 2002 borrowed respectively cash and wheat (WFP op cit; Annex 8).

¹² Although inroads into this in especially urban areas is evident, and also seen to a degree in rural areas; Klijn 2002 gives examples of educated returnees refusing to re-enter feudal relations with landlords.

¹³ Alden Wily 2004.

¹⁴ See Alden Wily 2003a for details of the land reforms during 1960-1984.

¹⁵ Alden Wily 2004 & forthcoming.

¹⁶ Male 1982 describes the effect of the 1969-1972 drought. Loss of land and livestock during the last great drought (1999-2002) has been very widely observed and reported upon by aid agencies.

¹⁷ Alden Wily 2004 & forthcoming.

Box 1: Khoshkak Village in Shibar District, Bamyan Province¹⁸

Khoshkak Village is two hours walk up the mountains above the Eraq Valley. Fertile land is limited and the people are famously poor in the area, but with no landlords and a high proportion of owner-occupiers of tiny plots. Irrigated farming and stock watering depends upon one small stream and dispute annually occurs with Jola village which take water upstream down to its fertile settlement. The single benefit of Khoshkak's isolation was a degree of protection from Soviet soldiers and subsequent inter-factional fighting and looting. This changed dramatically with the arrival of Taliban soldiers who took advantage of the isolation to exploit and abuse the villagers. Whilst those who could, fled, many could not and the villagers returned to find eight men taken to gaol in Kabul, young and old beaten and women raped. Two of the elderly died in prison. Villagers collected as much money as they could to secure the release of the remainder, the standard bribe being around \$1,000 per prisoner. Sheep, cooking utensils, farm tools and houses were sold and farms mortgaged. In the event only three prisoners were released but the creditors still need to be paid. Despite the drought and great hunger, Taliban continued to visit the village, demanding food, taxes, tithes and payments to avoid the men being sent to the frontline. Only 20 of the original 81 households in 1998 remain. Three-quarters of those who owned land and houses have lost those assets and many survive today as beggars and porters in the markets of cities. Of the handful of owners left, one third have their land under mortgage and others have high cash debts still to repay, their land being too small to be attractive to creditors. Much of the village is now owned by landlords and traders from the richer Jola Village.

Box 2: Rural Classes

Kabaghal (beggar, destitute)	Landless and homeless who survive by begging, including many elderly and disabled persons but also some of those unable to earn enough from daily paid work to survive
Murzdakar (labourer)	Landless and homeless daily paid workers, usually from outside the area, move in search of work in summer, clearing irrigation ditches, constructing houses, etc. Wage currently around \$2 per day, mostly paid in cash, proving attractive to better-off landless farmers.
Gharibkar (sharecropper)	Landless and usually homeless who attach themselves to a landlord as a sharecropper and are given accommodation by landlord, staying for 1-3 years. Generally receive one-fifth of the product they plant and harvest.
Bazkar (sharecropper)	Usually a settled member of the community and may have his own accommodation. Works as a farmer, often for the same landlord. Typically receives one-fifth of the total crop.
Kismand (tenant)	Sharecropper who typically receives half the crop in return for providing all inputs (seed, plough, oxen & labour). Usually farms the same plot each year. May own house and even a small plot himself.
Nimcha Bai (landlord)	Middle-sized landowner able to employ a worker/s or sharecropper/s.
Bai/Beg/Khan (large landlord)	Rich land owner or merchant.

¹⁸ Source: Alden Wily 2004.

- A significant group of farmers are traditionally mobile workers without land or homes and who, like their fathers and grandfathers before them, typically move farm to farm every one to several years. Although numerous they often do not appear in village statistics (see Box 2 for overview of rural classes);
- Up to 70 percent of refugees so far returned are landless and homeless,¹⁹ mainly because they/their parents did not own private farms or homes before their departure and sometimes because their properties have been appropriated in the interim.²⁰ Meanwhile the size of their families has usually doubled since their departure;
- Payment to tenants, sharecroppers and farm workers are usually in the form of crop shares, which have remained unchanged over most of the last century and do not represent a fair return for labour input; most shares comprise a one-fifth to one-third return to the cultivator in circumstances where at least a half share is needed to enable the farmer to feed himself and his family for more than six months of the year;²¹
- Survival is uncertain for possibly the majority, even with the added returns of well-entrenched male out-migration for work (to cities, Iran & Pakistan) and local carpet and kilim manufacture, both of which are the preserve of the better-off, the very poor not having the means to travel or acquire material to weave;²²
- Rent-seeking absentee landlordism is rife in many areas and associated with certain ethnic groups, exacerbating tensions (see later);
- Poppy production is soaring,²³ lucrative and attractive to landowners and labour alike but there are suggestions that it may be tearing the social fabric of families and communities, encouraging land grabbing and forced labour (by warlords) and polarising land ownership further.²⁴ Although landless workers earn higher than usual daily paid cash for seasonal work, the benefits are quickly eaten up by the need to buy all their food;
- Public policy and action to bring order to land relations and to redress the most glaring inequities in distribution and mortgaging have been made in the past.²⁵ The former was attempted through the registration efforts of the 1960-1970s. The latter was attempted mainly through creation of dam projects and settlement schemes since the 1940s and through the revolutionary reforms of 1978, and which as well as triggering revolution and Soviet occupation, lasted in diluted form only up to the mid-1980s;²⁶

¹⁹ Around 1.9 million. There have been in addition around half a million *registered* internally displaced persons with a current caseload of around 180,000 persons (UNHCR 2004).

²⁰ UNHCR 2003.

²¹ Alden Wily 2004 & forthcoming. More research into shares is planned by the Afghanistan Research & Evaluation Unit.

²² Out-migration for work was a well-established coping mechanism prior to the 'war' (1979-2001), with towns and cities and Iran and Pakistan the major destinations.

²³ The UN estimated in late 2003 that 80,000 ha of poppy were planted. Although many times higher than production in 2001, this still only accounts for 1% of total irrigated land (7.9 million ha).

²⁴ Very little has been investigated on poppy. Some details in ACBAR 2000, Goodhand 2003.

²⁵ Refer Alden Wily 2003a for details.

²⁶ Some of the less poor erratically continue to retain a degree of benefit from the land reform; particularly civil servants in urban housing developments and those in rural areas who have both been able to hold onto plots allocated out of Government settlement schemes. Benefits to the genuinely landless and poor were limited and diminished promptly with the restoration of excess private properties to owners in 1979-1981.

- A rich history of land ownership documentation and registration exists, extending back to royal land grants from 1880, archived registers of property tax payment from the 1930s, customary records of sales and subdivision at inheritance, a limited exercise of cadastral survey in the 1960s, and wider registration of rural land owners and farm size through self-reporting in the 1970s (see Box 3).²⁷ Court archives in districts and especially provinces hold thousands of land-related deeds. Despite this, formal land records are frequently unreliable; the base information was unreliably collected, transactions since have been erratically recorded, procedures are laborious, expensive and generally only the rich are able to use the system. Procedures and actors are often corrupted with counterfeit deeds common. The land registry itself is a primitive version of document management, unaccountably managed, exacerbating problems;²⁸
- The courts cannot provide truly independent assessment as they effectively serve as registrars; judges and clerks are deeply implicated in malpractice, with some judges having issued the same title deed three or more times, either by will or coercion (e.g. from warlords, corrupt officials).²⁹ It is likely that the most reliable and uncontested documents relating to land ownership are customarily prepared documents in the community, held by owners themselves and witnessed by elders or *shuras* (councils); and –
- There is a plethora of law relating to land; customary and religious, a common law code which includes more than 1,000 articles on property matters³⁰ and a range of parliament-enacted laws and especially presidential decrees.³¹ Inconsistencies among and sometimes within bodies of law are many and incomplete repeal processes means that several versions of similar decrees need referring to. The status of Taliban land decrees has been uncertain given that they accorded broadly with the 1964 Constitution as required by the Bonn Agreement and now the 2004 Constitution but many judges refer to these as suspended. Despite significant encouragement by international advisers, the new Constitution avoided addressing crucial property concerns beyond limited platitudes already in place in 1964.³² New land-related decrees gazetted by the current administration include two on land dispute resolution (see below), one enabling unused Government property to be released for investment³³ and a more general law.³⁴ Whilst these represent such formal land policy as exists, they raise as many questions as answers and leave a host of lands (including pastures) in uncertain status,³⁵ and a host of legal requirements un-provided for.³⁶

²⁷ Refer Alden Wily 2003a for details.

²⁸ USAID has begun a programme to order and improve the Kabul Province Registry.

²⁹ D’Hellencourt et al. 2003, and Alden Wily forthcoming for rural examples.

³⁰ The Civil Law, compiled in 1970s based on common law and Hanafi (Sunni) jurisprudence.

³¹ See list of laws in Alden Wily 2003a; Appendices F, J, H, K.

³² Constitution 2004; Articles 9, 14-15, 38-41 and 137-154.

³³ Legal Decree for Transfer of Government Property 8/1382 (December 2003).

³⁴ Titled ‘Decree with Regard to Properties’ undated but believed to be late 2003.

³⁵ This is especially in reference to the 2003 law, which is insufficiently clear as to the weight of ‘valid shari’a and legal documents’ in respect to properties claimed by the State.

³⁶ Such as clear provision for statutory leases, important to investors, and already given the go-ahead in the new Constitution.

A range of other features that are more fully elaborated in this paper include the following –

- Not only are many transactions from especially the 1990s up until the present disputed, the original allocation or acquisition of the land is contested; this is particularly so in respect of how rainfed lands and pastures have been acquired;
- The formal grounds upon which ‘ownership’ has been defined is often dubious, particularly where payment of tax on the land is considered sufficient evidence, enabling those with means to use large payments to claim ownership of larger lands than locally acknowledged as theirs, and poorer members of communities in particular to lose commons to privatisation through inability to pay tax for those land;³⁷
- The grounds upon which the central State has appropriated around 86 percent of the land area to itself and the means through which it has then allocated rights are also questionable, and contribute significantly to conflicts;
- With State collusion or direction, or through anarchy in more recent years, community commons have been largely privatised;
- Traditional or statutory controls relating to boundaries between arable and pastoral lands have broken down, with rampant encroachment, contestation and environmental degradation;
- Institutions enforcing law and administering justice are both formal and informal³⁸ but only the former is legally acknowledged. In practice, land dispute resolution is in chaos and notorious ethnic bias in rulings alleged, resulting in widespread refusal to use the courts in some areas. A special Land Disputes Court was established in 2002³⁹ but in practice has dealt almost entirely with the claims of the returning wealthy Afghans seeking access to urban properties. Corruption is alleged and enforcement of rulings has been limited and often through unofficial armed means.⁴⁰ A revised courts decree provides for a second court to hear cases from outside Kabul Province, but access to this is expected to be limited, especially by those with little clout or means.⁴¹
- Weak to non-existent rule of the law in many areas renders application or enforcement of law unlikely at this point. This is not least the case because prominent offenders allegedly include some Ministers, military commanders in the districts and provinces and lead officials.⁴² This makes difficult what seems at this point to be the main objective of the Administration - to recover as much Government land as possible - added to which the definition of Government Land is itself in dispute as shortly outlined in respect of pasture.

³⁷ Alden Wily 2004 & forthcoming.

³⁸ Formally, through courts and informally through community or tribally based committees (*shura*, *maraka* and *jirga*); refer Wardak 2003.

³⁹ No. 136 of 2002 Decree on the Establishment of Land and Property Disputes.

⁴⁰ Alden Wily 2003a, 2003b.

⁴¹ Decree 89 Regarding the Creation of a Special Property Disputes Resolution Court, November 2003. This court has recently moved (March 2004) to the northern city of Mazar-i-Sharif to hear cases, dealing mainly again with conflicts over ownership of shops and houses.

⁴² For example in September 2003 UN envoy Kotari publicly named Ministers widely accused of rampant land grabbing in Kabul. Many private rural land appropriations stem from warlords, still in place as official commanders in the army.

Land Conflict

The numbers of land conflicts is not known, although it is known these are numerous and from time to time spill over into violence, evictions, sacking of villages and murder. All types of dispute exist such as those of a domestic nature (inheritance shares, sales and mortgaging) alongside ‘wrongful’ occupation of properties and communal dispute over land use and access rights to commons and public land. Disputes occur within extended families and villages, among villages within localities (*manteqa*), among neighbouring *manteqa*, between government and people, courts and people, warlords/commanders and people, poppy-financed notables and people, mortgagors and mortgagees, landlords and landless, arable and pastoral farmers, settled and seasonal land users, residents and absent displaced persons and refugees. All classes of real property are affected (private houses, shops & farms, public lands, communal lands) save perhaps relatively small religious lands (*waqf*). For reasons of fear, a sense of futility or lack of means, a limited number of cases are taken to the courts, let alone heard to the satisfaction of disputants.⁴³ Complaints are more often submitted to UN representatives but who have limited power to act.⁴⁴

Pasture at the Centre of the Storm

The large number of disputes and the wide extent of displacement and uncertainty tend to obscure patterns in land related conflict. Field review of land relations by this author suggests that in rural areas a distinction needs to be drawn between those involving individuals and mainly relating to houses, shops and farms, and those involving whole sections of the community, and tending to focus upon variously interpreted common properties. It is these latter communal conflicts that engender the greatest heat and risk. This paper focuses upon pasture as perhaps the most widely contested class of land and embodying the dominant ethnic tensions that so deeply divide society at this time. This, and the nature of pasture use itself as an ambivalently private, common or public asset, brings battles over pasture directly into the domain of communal conflict. These may in turn be supported by political/military alliances. Pasture conflicts also reflect other land related problems noted above, including those of a conceptual nature. To illustrate the case, two examples are given; one drawn from Bamyan Province in the mountainous Hindu Kush in the central zone of the country (Panjao District) and one drawn from the far north-eastern province of Faryab (Shirin Tagao District).⁴⁵

What is pasture?

As background it is important to observe that denotation of what constitutes pasture is itself contested. Although agro-economically defined as covering 29 million hectares or 45 percent of the land area⁴⁶ some of this land is potentially useable for rain fed farming and is being put to such use – the trigger for many disputes. It needs to be recalled that arable land is in extremely short supply in Afghanistan. Conversely, with

⁴³ See Alden Wily 2003a, 2004 & forthcoming for cases.

⁴⁴ Although formally limited to addressing concerns of refugees and IDPs, UNHCR has shown most determination to get to grips with property issues, besieged as it is with thousands of refugees and IDPs who cannot return to their home areas. IRC and other NGOs assisting.

⁴⁵ Both draw upon fieldwork by the author; refer respectively Alden Wily 2004 & forthcoming.

⁴⁶ FAO op cit.

development some part of another 24 million hectares of wasteland may also serve as pasture – and does on a short seasonal basis.

Legal definition of pasture potentially extends well beyond the core 29 million hectares above. Pasture was first described in the USAID-encouraged Land Survey and Statistics Law of 1965 as ‘*any land used for grazing in the past and present*’ (Article 63).⁴⁷ The subsequent Law of Pasture Lands 1970 was just as expansive; pasture was ‘*the plains, hills, mountains, the skirts of the mountains, marshlands, the banks of rivers and forest areas which are covered with grass and other places that grow wild and could be used as fodder for cattle*’ (Article 2). This has been retained up until the present, currently in an un-repealed Taliban Law⁴⁸ and an early draft of a proposed new Pastures Law (2003). Conversion of pasture to arable use has consistently been prohibited, widely ignored as shown below.⁴⁹

Who owns pasture?

Although Government Land was defined in the 1965 law, pasture was noticeably excluded from this category. Instead, pasture was held to be un-owned land, ‘open to the public’, available for use on a licensing basis controlled by government, and explicitly not permitted to pass into private ownership (Article 65). The 1970 Pasture Law also described pasture as ‘public property’ (Article 3). President Daoud’s short-lived Constitution (1977) defined public property as lands owned by the people but administered by the State on their behalf (Article 13), helpfully clarifying and formalising the distinction between Government/State Land and Public Land. By 1987 this distinction had been abandoned; pasture and forests became simply ‘State Property’ (1987 Constitution, Article 20).

Constitutional law as it currently stands (2004) does not define Government Land or public property and only designates mines and underground resources as ‘properties of the State’ (Article 9). The law in force on pasture, decreed by Mullah Omar in 2000, introduced an important new distinction between private and public pasture. As described, private pasture does not gain status as individual estates but as local common property as distinct from national common property (Public Land) (Articles 2-4). This distinction is embodied in the provision that whereas public pasture may be used by ‘anyone’, private pasture may be used ‘by residents of the adjacent communities’ (Article 3).⁵⁰ As shown below, this Taliban innovation accords directly with many local perceptions as to distinctions between local and public pasture. Notably, proposals towards a redraft of this law return however to blanket declaration introduced formally during Soviet occupation (1987) that ‘all pasture is the property of the State’. Access is to be limited to use rights, issued by the Ministry of Agriculture (Articles 14, 16) but at the same time, existing rights granted officially or customarily are to be respected (Article 15).

⁴⁷ Provincial Governors were enjoined to ensure pastures were delimited and surveyed and to supervise their use (Article 64).

⁴⁸ Law on Pasture and Public Lands under Decree 57, Gazette 795 (2000).

⁴⁹ Articles 64 & 67 of the 1965 Law on Land Survey and Statistics and in more elaborated form in Articles 8-11 of the 1970 Law of Pasture Lands.

⁵⁰ Buying, selling or leasing of pasture remains prohibited in either sphere (Article 6).

The Panjao Case

In practice at the local level definition and ownership of pasture is complex, as illustrated in Panjao District in Bamyan Province, the heartland of the ancient domain of the Hazara tribe. This complexity has important historical origins. At the risk of putting too simple a gloss upon it, the pasture problems of Hazarajat today stem from the rule of the Pushtun Amir (King), Abdur Rahman (1880-1901); in particular to his British-encouraged and financed campaign to extend Pushtun domination up to the border with Persia and to the Tsarist areas in the north, the output of which was the creation of the modern state of Afghanistan.⁵¹ For the British the objective was simple: to create a buffer for their Indian Empire against feared Tzarist expansion from the north. Accordingly they tolerated (or rather, hid), the extreme terror with which this ‘Great Game’ was played, and the Afghan ‘state’ created.⁵²

As the most rebellious of peoples to be subordinated (and members of the minority Shia sect as well), the Hazara bore the brunt of ruthless invasion and massacres, extortionate taxation (16 taxes introduced in 1880-81 alone), enslavement and exile - and wholesale allocation of their pasture to Pushtun nomads (Kuchi).⁵³ This was effected in royal letters (*ferman*) to Kuchi clan leaders, following an 1894 edict that ‘under no circumstances’ were Hazara in future to use any grazing land.⁵⁴ Although Rahman’s successor (1901-1919) was to re-grant valley land to nobles who had survived imprisonment for ten to twenty years, this restitution did not extend to pastures. These remained accessible only to nomads, a trend only briefly retrenched by his own successor, the reformer King Amanullah (1921-1929).⁵⁵ Following his downfall, ‘Pashtunisation’ steadily entrenched under Nader and Zahir Shah (1929-1973).⁵⁶ This was a period when the State itself, as outlined above, was establishing itself as not just the allocator of, but the owner of all ‘pasture’ and through which this favouritism was exercised. How far rights issued constituted ownership or access rights is uncertain, given different interpretations at the time and since. Kuchi clan leaders themselves tended to sell or subdivide ‘granted areas’ among themselves.⁵⁷

Kuchi were traders as well as pastoralists and the unsophisticated Hazara (already profoundly exploited by their own noble landlords) found themselves steadily giving up their stock and land as repayment for debts, sometimes founded upon purchase of a single wad of tobacco or piece of cloth purchased from Kuchi two seasons earlier.⁵⁸ Hazara in Panjao District consider the 1970s as most harsh in this respect; officials are accused of turning a blind eye or publicly supporting Kuchi intimidation, exploitation and land grabbing. Many hundreds of families became the client sharecroppers of absentee landlords on what had been their own land, the landlords returning annually to collect rent or shares, uninterested in farming themselves. By 1975 in addition to

⁵¹ A much written-about event, but for the most meticulous scholarship on this period, see Lee 1996. See Gregorian 1969 and Rubin 1995 for overviews.

⁵² For accounts from the India Office records of the time, refer Lee op cit.

⁵³ Lee op cit, Mousavi 1998.

⁵⁴ Mousavi op cit.

⁵⁵ Poullada 1973, Mousavi op cit.

⁵⁶ Mousavi op cit, Gregorian op cit.

⁵⁷ Pedersen 1994.

⁵⁸ Pedersen op cit. records how easy they found it to exploit the Hazara; Kuchi were well armed, well supported by the Pushtun-led Government and as traders, had ample leverage ‘to bring local populations to their knees’.

most of the upland grazing area of Panjao District, four of fifteen fertile valleys were almost entirely owned by such Kuchi.⁵⁹

All aspects of Kuchi-Hazara land relations were (and remain) contested; Kuchi claim to the mountain tops and high pastures which Hazara claim as public pastures, Kuchi appropriation of hillside pastures which Hazara claim as their own; Kuchi acquisition of rain fed and irrigated lands through coerced payments for debt, ‘intimidation and trickery’, including the endless cycle of crop damage with the many thousands of stock introduced seasonally into the area, manipulated, the District Agricultural Officer of the time now believes, to encourage surrender of (destroyed) fields to themselves.⁶⁰ The communist revolution of 1978, and the cessation of Kuchi visits, came as a relief to the Hazara of Panjao.⁶¹ At the same time it was to the Kuchi that large Hazara landlords promptly turned to sell off ‘surplus’ land which they feared might be expropriated under the revolutionary land reform of 1978, complicating the picture with what were essentially legal sales.⁶²

Soviet occupation of the area was mild to non-existent and an attempt by Kuchi in the mid eighties to re-enter the area to collect rents on their properties and debts was rebuffed, armed Hazara demanding payment for passage and use of ‘our pastures’.⁶³ Nonetheless willing locals began to serve as bailiffs, sending the returns to Pakistan to where most of the Kuchi had decamped, following Soviet occupation and emerging Mujahiddin resistance. As factional violence receded in the mid 1990s, a council of mullahs was created in the District to consider each claim by Hazara to have their land restored.

This was interrupted by Taliban occupation of the District in October 1998. A dominant Kuchi leader and senior commander of the Taliban persuaded Mullah Omar that he should be sent to Panjao to disarm the Hazara. He arrived in May 1999 with an estimated 3,000 troops and proceeded to systematically strip Hazara tenants and debtors of any land they held, their livestock, crops, documents and household goods and to extract substantial IOUs from those who had nothing to give. Everyone reached was affected; landless farmers with a few sheep were forced to pay fees for having used ‘our (Kuchi) pasture’ over the previous 12 years since rents had been collected. Abuse and murder were committed. Word eventually reached Mullah Omar who ordered his commander to leave.

Again, not surprisingly, the fall of the Taliban (2001), with whom the Kuchi are seen correctly or otherwise to be inextricably linked, was greeted with relief in Panjao. Resistance against their return has continued; attempts by Kuchi to return to the pastures of Hazarajat in general were fiercely resisted in 2002, although rent and crop-shares continue to be sent to the absentee owners of farmland. It is against such a background that Hazara live in fear not just of a return of the Taliban but of

⁵⁹ Alden Wily 2004.

⁶⁰ Ibid.

⁶¹ Although this was also to mark the start of the long years of foreign Soviet occupation (1979-1989), civil war among Mujahiddin groups (1989-1996) and then the Taliban regime (1996-2001), fiercely resisted in this and other Hazara areas until 1998, not least because the Taliban were Pushtun and directly supported by Kuchi.

⁶² Ibid.

⁶³ Pedersen op cit.

Government policies and courts rulings that either recognise the ‘legal documents’ of the Kuchi irrespective of how they were acquired, ‘restore’ land access to the conditions of 1978 and in particular, re-open ‘our pastures’ to ‘public’ use by Kuchi.

A further aspect of this conflict needs note. Deep in the Hindu Kush, Panjao is characterised by narrow fertile valleys and steep-sided slopes and mountains, whereupon the pasture is located but where also cold area summer farming irrigated by mountain springs (*sarad*) was customarily practised in the past and some very high altitudes. Rain fed farming (*lalmi*) has normally been carried out on the nearer reaches of the valley slopes. As population has grown, and in particular as Kuchi departed the area in 1979, rain fed cultivation steadily crept up the slopes. Soil erosion (generating land slides and avalanches in winter) is not uncommon in Panjao today. A range of customary conserving practises are now being re-activated, including longer fallows in the rain fed farm areas, wider spacing between high fields and restriction on collection of thorny bushes for winter fuel in these bunds.

Areas which returning Kuchi forcibly extracted rent on in 1999 included these expansion areas; for they considered all uncultivated land as pasture, and more over, claim this as their own private property. For their part, local Hazara argue that just because an area is uncultivated does not mean that it does not have potential for arable farming and that these areas in any event encompass properties customarily their own; this follows Hazara convention that private farms held by landlords extend from valley bottom to the upper ridge. Further, they argue, just because they were unable in the past to stop Kuchi grazing these areas, this did not signal acceptance of Kuchi claims, only impotence to resist these.

As if these were not challenges enough, another layer of pastoral conflict exists, this time among the Hazara themselves. This stems from the highly stratified (and originally feudal) nature of society in Panjao, with each valley originally owned by one noble family and access to which was granted to the poor as their tenants and sharecroppers only. Customarily, farmers have been able to gather thorn bushes as fodder for what is frequently their only capital asset – small numbers of karakul sheep – and in addition to depasture these on the hills alongside the hundreds of animals of the landlord. Whilst the poor today accept there is no common arable land, they dispute the titular claim of some landlords to areas which they regard as common pasture, available to all members of the local community.⁶⁴ Like land trustees in many parts of the world, the weight of privatising trends, aided and abetted by western notions of tenure, has facilitated claims by landlords that this land is solely their own. Where landlord and peasant concur is that such pastures belong neither to Kuchi nor the State; these are not, they say, the private lands of nomads nor the public lands of the Government. Public land pastures are limited, they insist, to the upper mountains, well beyond the settlement sphere.

For their part, Kuchi land owners and pastoralists correctly point to significant past land grants as evidence of their entitlement, point out that the grievances of the Hazara were not originally of their making but stem from ‘policy’ and observe that they have *locus standi* as the main users of the pasture for now nigh on a century.

⁶⁴ Defined usually in socio-spatial terms as a cluster of villages or *manteqa*

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‘Afghanisation’ as it was known at the time, was also implemented in the north, formally launched as on 1 November 1885, with British persuasion, funds and equipment.⁶⁵ The approach differed in significant ways from Hazarajat. First, it was not marked by the same genocidal intent towards local populations (mainly Uzbek) that had marked relations with Hazara.⁶⁶ Second, Pushtun Kuchi occupation was designed to be permanent, and although it was initially difficult for them to do so, many Kuchi did take up settled agriculture (with the help of grants and tools) as well as retaining large herds. For these Kuchi the north became their home, in settlements referred to locally as simply ‘Afghania’. Third, although some of the settlers were supporters of the Durrani Rahman,⁶⁷ many among the 80,000 or so non-Durrani Pushtun families sent to the north (i.e. Ghilzai Pushtun) did so only under extreme duress.⁶⁸ However, as in Hazarajat, local Uzbek landlords were impotent to stop the transfer of their lands - in this case including both scarce riverside settlement and farming sites as well as pasture. To add insult to injury, they were taxed to support the new settlements.⁶⁹ The foundation for bitter inter-ethnic dispute was laid. In every respect, Pashtunisation in the north was more definitively colonisation.

Nor was this colonisation to end with Rahman’s death in 1901. Periodic waves of coerced and voluntary Pushtun relocation followed and again well supported by the State, right up until the 1970s.⁷⁰ Inequitable class and debt relations similar to those in Hazarajat were well established by the fifties, but with little seasonal relief. Through various means, including extensive usage, many local and remote pastures were registered as the private pastures of Kuchi communities. In addition, Pushtun who remained in the south increasingly extended their seasonal movement into the north, dominating the most valuable pastures, including the magnificent Dasht-i-Laili Desert.⁷¹

A crucial element of conflict not well understood even today has been that, as in Hazarajat, Pushtun notions and organisation of space and ‘home area’ (*watan*) did not accord well with local notions, which included shared rights among neighbourhood residents (*manteqa* or *mohallah* among Uzbek). These operate in respect to both immediate commons and more remote seasonal areas, and were accessible to new *manteqa* residents like Pashtun. Such common property pastures were understood (or wilfully interpreted) by the immigrants as either within the generally unspecified terms of land grants or licences they had received, or un-owned lands ripe for privatisation by themselves. Such positions were well-supported by public policy, particularly during the internationally encouraged modernisation years of the 1960-

⁶⁵ Lee op cit. Historically only Pushtun were referred to as Afghans, although Constitutions since 1964 has explicitly stated this to refer to all citizens.

⁶⁶ And indeed Abdur Rahman cleverly used Uzbeks to help suppress Ghilzai Pushtun rebellions in the south (Lee op cit).

⁶⁷ E.g. Abdur Rahman sent his own Durrani kinsmen to serve as frontier guards/settlers (Tapper 1991).

⁶⁸ And were, for example, to be among those who unsuccessfully attempted to overthrow Abdur Rahman in 1888 (Lee op cit).

⁶⁹ Lee op cit, Tapper op cit.

⁷⁰ Ibid.

⁷¹ Favre 2003, Tapper op cit.

70s, which granted, licensed or registered these lands as private pastures accordingly. Outbreaks of ethnic violence on the pasture were common.

In circumstances of such bitter resource related tensions, one of the first acts of Tajik and Uzbek Mujahiddin in 1979/80 was not to attack the communist held capital of the province (Maimana) but to expel or execute a number of Pashtun Khans.⁷² As in Hazarajat, nomads were also told not to return. A notorious warlord (Pahlwan) who set up his base in Shirin Tagao District in Faryab and into which significant Pushtun settlement had accrued,⁷³ reputedly “indulged in killing Pushtun”, appropriating land and livestock had had these registered as belonging to himself, his family or supporters.⁷⁴ Although murdered himself in 1995, his successor briefly permitted the Taliban to enter the north via Faryab (1996) for alleged payments of millions of dollars.⁷⁵ He then reneged and attacked them, resulting in the capture and murder of what is locally spoken of as ‘thousands’ of Taliban in the Dasht-i-Laili Desert. A reciprocal massacre of ‘thousands’ of Hazara and Uzbek occurred a year later.

Once the Taliban had secured Faryab Province (1998), Pushtun returned and recovered their properties, and allegedly looted and pillaged Uzbek properties in revenge. Needless to say, the cycle of abuse continued after the defeat of Taliban in late 2001. ‘Thousands’ were again said to be captured and taken to what had become the desert graveyard of Dasht-i-Laili.⁷⁶ Irrespective of whether they had supported the Taliban or not Pushtun again fled. Between November 2001 and March 2002, virtually every village in the north named ‘Afghania’ was looted and some destroyed.⁷⁷ In 2003, 42 percent of all registered IDPs in Afghanistan were from the north.⁷⁸

Cases of wrongful appropriation of homes and farms still exist in Shirin Tagao elsewhere but because these involve individuals rather than communities, they have a fair chance of resolution, given appropriate mediation and conditions.⁷⁹ The situation is more complex in respect of pastures. A review of those existing in Shirin Tagao and into which part of the infamous Dasht-i-Laili Desert falls, shows that every pasture is under heated dispute save the remote, vast and infertile pasture bordering Turkmenistan known as Charmagah Chasma. This is accepted by Pushtun, Uzbek and Arabs alike as public land, available to them all on equal terms.⁸⁰ As has been the case in Hazarajat, the catalyst to disputes is expansion of cultivation into the pastures, brought about in this instance with the encouragement of warlords. Formal cultivation of the Dasht-i-Laili Desert itself was in fact begun by Government during the Soviet

⁷² Pers. comm. J. Lee.

⁷³ In Shirin Tagab for example, accounting for 22% of communities in 2003, alongside 45% Uzbek and 26.4% Arab communities. Mixed communities account for the remainder (Alden Wily forthcoming).

⁷⁴ Pers. comm. Governor of Shirin Tagab District.

⁷⁵ Refer Alden Wily forthcoming for overview of the recent socio-political history of Faryab, based upon field work and reports of the UN office in Maimana but as is common in Afghanistan, with diverse versions of fact offered by different actors and local people.

⁷⁶ The number of people who eventually died or were buried in Dasht-i-Laili is not known.

⁷⁷ Cases provided in Alden Wily forthcoming. Interviewed Uzbek and Pashtun acknowledged reciprocal looting over the last years.

⁷⁸ Although organised return has been widely facilitated around 5,000 Pushtun families remain outside Faryab Province today (UNHCR 2004).

⁷⁹ See Alden Wily forthcoming.

⁸⁰ Ibid.

occupation at which time it brought 600 ha under cultivation for its own income benefit. It was this land which the warlord Pahlawan first appropriated. The current military leader in the area, a warlord now awkwardly acknowledged as an ‘official local commander’ has continued to expand from this area so that it now ‘requires ten tractors to complete ploughing’.⁸¹ A review by FAO in 2003 showed at least 1,600 ha of the Desert under cultivation and with loss of topsoil through wind erosion apparent.⁸²

Smaller pastures are similarly affected. The Pushtun of Khoja Charkhi-Afghanian for example estimate that around 1,000 ha of the pasture they claim (Shai-i-Souf) has been put under cultivation in the last three years, by Uzbek in the neighbouring *manteqa* (community area). Needless to say, these people (Turkul Baluch *manteqa*) claim this same land as their own, which Pushtun were ‘permitted to use’. Of the ten pasture areas which this *manteqa* names as falling under its aegis, six are subject to conflicting ethnic claims.

Even those pastures which are not under inter-ethnic dispute are subject to raging internal conflict among Uzbek in the community as to the wisdom of permitting arable conversion (the prohibition of this in law being considered an irrelevant and in any event, unenforceable fact). Many such pastures in this area do indeed comprise the rich soils of the loess dunes (*chul*) and potentially safely sustain periodic rainfed cultivation. The Lilihab pasture is a case in point.⁸³ This has fallen within the domain of the largest Uzbek landlord for several centuries. Like their Pushtun counterparts, the current generation claim ‘legal documents’ testifying their tenure. With the sharp decline of their herd since the drought, the family has cultivated half the area for wheat and melons, retaining the remainder as pasture - accessible to all members of the local community. Those who dispute the right of the owners to farm the pasture query the meaning of this ownership. They argue that although the family may be recognised as the owner, it has an ancient customary obligation to share pastures with their dependents, those small farmers, tenants, sharecroppers and workers who live in their shadow. These landless correctly detect curtailment of these rights through conversion to agriculture.

The same manner of dispute rages with sporadic violence a few miles to the south, between adjacent Arab and Uzbek inhabited *manteqa*, the large landlords of each community using the evidence of ‘legal documents’ acquired from courts under different regimes as proof of ownership. Prior to cultivation being started in the pasture in 1998, each permitted the other grazing access relatively peaceably.⁸⁴ In these and the many other cases in this district, neither government nor courts are trusted to rule fairly. As the (unapproved) Governor of Shirin Tagao District opines “how may a case be ended when warlords supported by the central Administration control the decisions, documents are fabricated, officials are bribed, and the case is to be decided by a judge who was the very authority who issued the fake documents in the first place?”

⁸¹ Cited in Alden Wily forthcoming.

⁸² Favre op cit.

⁸³ Case detailed in Alden Wily forthcoming.

⁸⁴ The Qala Shaikhi-Sara Qala dispute; Alden Wily forthcoming.

Conclusion

First, it may be observed that rural land conflict in Afghanistan has characteristics less unique than echoed quite widely around the world. This is so in the time-old tendency of states to appropriate commons by sleight of law or otherwise, in the effects of capitalising and privatising trends and changing land use, and in the confused notions as to what constitutes common property and the appropriate dividing lines between public and common land, and individual and community rights. Where Afghanistan offers a more particular (if again not unique) case, is the level to which land contestation has become so dangerously overheated and preventing real peace. There are also unusually strong limitations against conventional ways of moving forward. Neither courts nor Government offer the expected haven, given their own roles in generating disputed rights. Nor may retreat into the law itself provide relief, not least because of its confused and contested provisions and widespread inability at this point to enforce its terms.

History matters

It is also evident that troubled land relations in Afghanistan are deeply embedded in a bitter past that still carried an enormous energy of its own; its story and lessons need to be attended to in order to move forward in a lasting way. This suggests that it will be necessary to pay attention to that upper dimension of land relations beyond private rights – territory - at least as it occurs at the local level. By ‘lasting’ is meant not merely laying upon the current chaos yet another patina of order, leaving conflicts unresolved for later activation at likely slight provocation. By territory at the local level is meant communal rather than private land relations, those interests that stem from community membership, and raise notions of ‘our land’, ‘our place’. These, we have seen, are probably the most contentiously in conflict at this time, and this paper has argued, most activated in relation to pasture. Achieving local level ethnic reconciliation in this single domain could significantly remove one of the fuels to wider inter-ethnic strife at this time.

The limits of classical approaches

A common strategy advocated in post-conflict situations is simply to restore land ownership to the conditions that existed prior to the conflict and/or to follow this up with new formal registration of rights.⁸⁵ Although current policy in Afghanistan concurs with this positioning (albeit unimplemented),⁸⁶ this strategy holds particular dangers in Afghanistan in forgetting that deep-seated conflicts as to that land order were one of catalysts to the long years of war. Nor will retreat into new formal registration processes render the relief needed; the history of land rights recordation to date in Afghanistan painfully illustrates that, far from being neutral, registration may create rather than record, reality, and not necessarily with justice or fair practice. Whilst recordation of reality has a critical function to play, what is acceptable reality and how it is determined is the more crucial first consideration.

⁸⁵ Fitzpatrick 2001.

⁸⁶ As suggested by the terms of recent decrees, which focus upon restitution of Government property in particular as outlined earlier.

Adopting a localised approach and which begins with the commons

In these circumstances an incremental, localised and practical approach shows more promise, and one which seeks not to deal with all land problems at once but to directly target the sphere of most contestation in rural areas, the pastures. That is, contrary to convention, there is a need to begin, not end, with the commons, and to make progress from that point. Of necessity this also means achieving this on the ground rather than through new policy and law. Simple land use planning within the context of community areas could be the vehicle, and integrating not only face-to-face reconciliation among disputing parties but decision-making by them as to how future access to the pastures will be regulated and the establishment of simple, community-sustained mechanisms for this.

In such a framework, distinctions and agreement on the ground between public and local pasture and between local and private pastures and the implications for access of each could be more easily teased out and agreed. In effect a simple management plan for each pasture could be formulated, the rules subjected to community-wide approval and public record. Agreement as to the limits of cultivation, procedures for handling crop damage disputes and potentially, fee paying by seasonal users would be prime points of compromise to be reached. Creation of pasture management committees would be a natural corollary, with agreed seasonal users represented to their satisfaction. As desired, active land committees could in due course extend their activity to record the current owners of arable lands, as again publicly agreed and endorsed by the community, and with boundaries described in detail (features singularly missing from existing and often contested land records). Whilst these consensus registers would be provisional-approved legal documents, they would form the basis of a new legal platform of rights recognition, to be formally endorsed by such reformed courts or land administrators as eventually put in place at supra community levels.

By laying a practical foundation of agreement as to the pattern of rights in the locality, this process offers more than conflict resolution. It also attempts to lay the basis for reform in the way in which land rights are articulated, recorded, protected and managed, and crucially, through empowering landholders themselves. Implementation could begin and build incrementally within selected districts, a handful of early pilots providing first guidelines of process. Such areas would ideally be chosen with corollary demilitarisation efforts in mind. Ideally, administrative and court reforms in at least the posting of untainted staff would also occur. Success would hardly be uniform, but a gathering number of working cases could offer powerful example and have the advantage of going well beyond declamatory policy and decrees that have proved too remote to be enforceable and too contradictory, general or one-sided to be of much use or adopted.

The establishment of such community based rural land administration systems is not an idea that land reformers are unfamiliar with today. A growing number of third world land policies and legislation provide for this, although rarely do these offer more than classical adjudication and registration of individual farms and houses, albeit through localised *fora*.⁸⁷ Implementation of such approaches has also been slight thus far, deeply constrained by the contradiction of developing such systems at

⁸⁷ Alden Wily 2003c.

the centre including limited local ownership of processes the kind of over-costing and heavy institution-building that typically stems from paper planning.⁸⁸ The luxuries of vast expenditure, time and inaction that have characterised these and related reforms cannot be afforded in Afghanistan, a case that illustrates so powerfully why such devolutionary approaches do not just have merit in themselves but may be the only practical way forward in conflict situations.

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⁸⁸ Ibid.

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