

Case Study, Afghanistan
“Land Problems in the Context of Sustainable Repatriation
in the Easter Region”

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Discussion Paper

Land Problems in the context of sustainable repatriation in the Eastern Region

I. INTRODUCTION

Assessing the sustainability of return of refugees requires an analysis of several interrelated and complex issues. Thus, UNHCR has carried out returnee monitoring, district profiling and other information gathering exercises. Through the process, it is found that one of the key issues identified as being a key obstacle to sustainable return/reintegration is the insecurity of land tenure, land related problems, particularly landless and land disputes. The importance of addressing the issue of land in the context of the voluntary repatriation has been recognized by UNHCR and its Guidelines on Voluntary Repatriation which indicate that “UNHCR must attempt to protect the interests and legitimate rights of returnees with regards to access to land (which may not necessarily mean ownership) through contacts with central and local authorities as well as with traditional leaders who in many countries have a recognized land allocation function at the community level”.

It is clear that the entrenched land – related problems can only be overcome through an integrated approach, in which the authorities play a key role and that other UN agencies and missions (particularly UNAMA) can support effectively in a co-ordinated manner. In this line, this paper outlines the land problems encountered by returnees in the Eastern region in efforts to facilitate a joint and concerted action among different actors (e.g. provincial authorities, UN agencies and NGOs) involved in the land issues with the purpose of a) providing input for policy formulation at the national level; and b) generating ideas and insights into how local initiatives (e.g. the strengthening of relevant provincial authorities, community based arbitration; and land management systems) might be developed.

II. DIMENSION OF THE PROBLEMS

No comprehensive assessment of the dimension of landlessness in the Eastern region including the number of landless refugees in Pakistan has been undertaken so far. However, data obtained from the 2002 Voluntary Repatriation Forms (VRFs) indicate that less than 30% of the returnees to Afghanistan claimed to own their own land. Within that figure, the percentage owning more than 1.5 hectares of irrigated land—the minimum amount required for subsistence cereal farming—was much lower. Of greater concern are the difficulties facing landless returnees (who appear to be the majority) that have little or no access to land under viable share cropping arrangements or no alternative employment opportunities. This is of particular concern in Nangarhar and Laghman due to population growth, destruction of agricultural infrastructure, and the complexity of tribal interests in the local economy¹.

UNHCR Sub-Office Jalalabad (SOJ) has from its part tried to obtain an idea of the magnitude of the problem among returnees. SOJ embarked upon an assessment based on the rejection rates of the shelter assessment teams in the East (particularly Nangarhar province). It examined specifically the figures of those rejected for UNHCR shelter project due to lack of land ownership and who otherwise

¹ Ewen Macleod, Comments on Draft Discussion Paper, UNHCR Geneva, April 21, 2003, p. 1.

would have been eligible. The rates varied widely from one district to another, ranging from 1.7%-64.7%. (see Annex 1)

It is safe to assume that the actual problem is bigger than what these figures represent. This reasoning is based on the following: It is clear from the annex, that the majority of the families that were rejected for shelter projects, had been rejected due to absence from their village. In other words, they had left their Voluntary Repatriation Forms behind with relatives and family members, but were physically not present in the village. Rejection due to absence figured as high as 30-60%. It is very likely that a large number of those who left their areas of origin upon return were landless, as they would be the first to seek employment opportunities outside the village.

Land Disputes

Disputes experienced by returnees over land can be divided mainly into three -categories:

Individual disputes: This is not surprising as the 23 year conflict in Afghanistan has led many people to leave behind their property without formal arrangements while finding refuge in Iran and Pakistan. They are common and have led to the breakout of heavy fighting in some occasions, leading to the killing of members on both sides.

Forceful occupation by commanders: This exists across the board in virtually all provinces of the Eastern region. Victims have often complained to the authorities, who have been unable to help them, due to the influence of the occupier.

Disputes among Tribes and villages: Several examples exist in that respect, which have led to serious instability in the area and sometimes internal displacement. The severity of the conflict is perpetrated by the support that some influential figures provide to one of the sides, which leads to the stalling of a peaceful resolution of the conflict.

The effective redress of these disputes has been hampered by several factors:

Unclear ownership: In a meeting with the head of the Imlak office in Jalalabad, UNHCR was informed that the registration books of immovable property had been destroyed; damaged, or are missing. Other problems concern the ease with which different documents can be forged; and widespread corruption.

Undefined legal system and weak existing enforcement/policing system: The existing legal system on land has been handicapped by the constant fighting and a historic lack of a regime capable of managing land rights in Afghanistan. Formal land reform attempted by the State since 1880 have systematically failed². In addition, land law itself remains unclear and vague, with “vast gaps and loopholes³”. Where the law exists, courts have been found to lack copies of the relevant laws, civil

² According to Liz Wiley, Afghanistan had adopted four strategies during the period of 1880-2001, which are: 1) Pashtunization policy that sought to settle Pashtuns in non-Pashtu territory; 2) Settlement policy associated with dam and irrigation projects; 3) Recordation policies that aim at extending State control to over land and clarifying land ownership. (Liz Wiley. Land Rights in Crisis: Restoring Tenure Security in Afghanistan, Afghan Research and Evaluation Unit (AREU), Kabul, March 2003, p. 4).

³ Wiley, *ibid*.

codes and statutes, in addition to the lack of adequate training that enables the judiciary to fulfil its functions.

III. IMPLICATIONS FOR UNHCR

The land-related problems have affected UNHCR ability to fulfil its mandate to ensure sustainable return particularly in the following ways:

- It has rendered the implementation of the Article 5 of the Decree on Dignified Return of Refugees, promulgated by the President of the Interim Afghan Government in December 2001 difficult. This Article states that: “The recovery of movable and immovable properties such as land, houses, markets, shops, sarai, apartments and etc. will be effected through relevant legal organs”.
- Landlessness of returnees has increased their state of poverty and vulnerability upon return and consequently exacerbated the problem of migration from their rural areas of origin to urban areas to seek job opportunities. This further compounds the already existing problems in the cities resulting from urbanization (e.g. congestion of the poor/vulnerable in uninhabitable places). By protecting and increasing the access to key natural resources such as land, opportunities in the countryside are improved, which represents a key for economic and social stability.
- One of UNHCR’s largest reintegration activities in the Eastern region is the shelter component. The main objective of this activity is “to support the neediest returnees rebuild their homes at their place of origin”. Meanwhile, one prerequisite to qualify for the UNHCR funded shelter assistance is that the returnee family must provide evidence of land or property ownership. As a result, and given that the largest category of vulnerable groups are landless, it has been difficult to reconcile the intended objective of the shelter projects with the reality on the ground.

IV. OBSTACLES TO SUSTAINABLE RETURN: CASE STUDIES

Kacha Gari Refugees

In early February 2003, SOJ was contacted by the representatives of Kacha Gari Refugee Camp in Pakistan. This camp was established in 1979/1980 and is strategically located (close to Karkhano market of Jamrud/Khyber agency). The camp currently hosts a population of 13,186 families (around 59,220 individuals). Towards the end of last year, the residents of this camp were issued an eviction notice, as the Peshawar Development Authority, to whom this land belongs, intends to use this land for other purposes.

According to the elders, there are 300 landless families from Sukhrod district, and 450 landless families from various parts in Nangarhar province. This is not an accurate estimation and the number of landless families that will proceed to Nangarhar may very well be higher. All in all however, it is estimated that 50% of the total number of refugees are landless (Some elders suggested in a recent meeting that a total of 6,000 families from the whole camp were landless).

This notice expired on 16 April, 2003, though UNHCR has been informed the deadline has been informally extended without the knowledge of the refugees until mid July. Refugee representatives tried in vain to obtain permission from the Pakistani authorities to extend the deadline by one year in order to find a solution to their problem and reconstruct their houses in Afghanistan. They have also shuttled between Kabul and Nangarhar seeking the assistance of the Afghan government, particularly

on land allocation for the landless, as such allocation can only be undertaken by the central authorities in Kabul.

The intentions of the refugees upon the demolishing of the camp remains unclear. In a visit that SOJ staff conducted to Peshawar during 1- 4 April, the refugees indicated that the majority of the camp residents would move to the urban and tribal areas of Peshawar. In a recent visit to Nangarhar however, the representatives seemed to indicate that the majority of the refugees would repatriate to Afghanistan. UNHCR Sub-Office Peshawar (SOP) has however most recently confirmed that the majority of the refugees would relocate to the new camps, particularly Chalman camp. (It would seem that the situation is still volatile and far from determined, and SOJ will continue to monitor it closely).

With regards to the response of the authorities, the Governor of Nangarhar indicated that he would settle the Katcha Gari returnees in Dawlat Zai township. At the last inter-agency meeting of 7 April, he also requested the UN agencies to help him with this scheme. It is worth mentioning at this point, that the Governor of Nangarhar had indicated on several occasions his plan to settle landless returnees who are originally from Kama and Besud in Gamberi desert and those returnees coming from Sukhrod and Khogiani districts in Shaikh Mesrei township scheme.

Kashmund Returnees

In June 2002, 350 Pashai families arrived from Pakistan. These families are originally from a mountainous village called Kashmund, Khewa district in Laghman province. They had gone to Pakistan during the Russian bombardment and were forced to leave Pakistan as a result of the wave of mass arrests of Afghan refugees in Rawalpindi. Many of them had been told by the Pakistani police that they had to leave. Returnees were not able to proceed to Kashmund, due to the lack of water, shelter, and income opportunities there. As such, they first proceeded to Samarkhel IDP camp, but then scattered in various districts, most notably Khewa. While in displacement, this group of returnees have added the pressure on the scarce water resources in the IDP camp, and have used their well-known ties affluent figures in the East to harass the population. Their situation is a classic example of returnees who have been forced to live in IDP like situations, and of the chain of problems that displacement upon return can cause.

The Governor of Nangarhar, has indicated his intention of resettling this group of returnees in Gamberi desert. This is a piece of alleged government owned land, that lies in between Nangarhar and Laghman, and constitutes the site of a potential township program that the provincial authorities have been planning for some time. The plots of land will be allocated for housing purposes only, and will not be used for irrigation. As such, any residing families will continue to have to seek means of livelihood in the cities or the neighboring rural areas. The authorities have further indicated that they are intending to divert the Khaz Kunar river into this desert.

According to the site plan, 5,591 plots will be made available in the Nangarhar part of Gamberi. The target beneficiaries are⁴:

- Landless and homeless inhabitants of Khewa district (not only returnees) with priority given to the latter.
- Landless and homeless persons from Khewa who are still refugees in Pakistan.
- Homeless and landless persons living in the nearby districts of Behsud and Dare Noor.

⁴ This information was provided by the Sub - Governor of Khewa in a meeting that took place with the head of SOJ on 5 November, 2002.

According to the Sub – Governor of Khewa, the project is expected to be financed with tax is collected from those who will benefit from the land allocation. The authorities informed SOJ that some 4,000 had been selected from Khewa, Kashmund, Behsud, Samarkhel, Jalalabad and Peshawar. 95% of these are reportedly refugees and IDPs while the remaining 5% are neither. Once again, the provincial authorities have requested the UN to support their efforts.

Girdi Gaus

In September 2002, UNAMA and UNHCR received reports that around 600 houses had been burnt in an inter-tribal conflict that had erupted in the village of Girdi Gaus in Mohamendara district. The village is inhabited by two tribes:

- The **Utmanzai tribe** who were living in houses located to the South of Torkham road. They ran a trucking and transport business in the area. The Utmanzais constitute 600 families of which 100 families had returned from Pakistan during 2002 and further 2,400 persons are still in exile.
- The **Sarghani tribe**, who lived on the Northern side. They constitute around 2,500 families, of which also 100 families returned from Pakistan this year and further 1,000 families are still in exile.

The conflict concerns the area to the South of the road. Both sides provided conflicting accounts on the origin of the conflict: The Sarghani tribe has accused the Utmanzai of encroaching upon this land while they were in exile, while the Utmanzais claim that they had been on this land all along.

On the night of 18 September 2002, the Sarghanis reportedly burnt down the houses of the Utmanzais. The security forces intervened swiftly, separating the two sides, and arresting members of the Sarghanis (who were subsequently released). Though the presence of the security is preventing further violence, there does not appear to be any realistic prospects for an imminent resolution of the conflict.

UNHCR and UNAMA had approached the authorities (Department for Tribal Affairs and Deputy Governor) several times to encourage them to take active steps to mediate the conflict. It became clear however that this issue does not feature as one of the priorities of the authorities.

It is worth mentioning that the case had been submitted to the provincial court of Jalalabad. The decision of the court remains unclear, as UNAMA/UNHCR was told of conflicting decisions depending on the source of information. The case has eventually been referred to the Supreme Court in Kabul, where it has been pending for a minimum of four years. Both sides claim to own property documents confirming their entitlement to the disputed land. Furthermore, the authorities had intervened with a proposal to set up a jirga. It was reported however that the Utmanzais had not agreed to the proposed make-up of the jirga, and as such the efforts have come to a halt.

Though the origins of the conflict go back a long time, it had remained dormant for many years. The increased number of returns to the village has directly resulted in the eruption of armed conflict, serving as a reminder that with the return of refugees, competition over land will increase with destabilizing effects.

V. OBSERVATIONS AND RECOMMENDATIONS

Capacity Building

There is an urgent need to enhance the skills of the judges -most notably district courts, on both the central and provincial level. Workshops and discussions should be organized to provide training on the substantive and procedural aspects of the Afghan law, particularly that dealing with property. In that respect, several local actors, such as the newly established Afghan Lawyer's Association could be helpful.

Information collection,/sharing and advocacy

- Agencies are encouraged to document the impact that landlessness and land disputes is having on their own activities (not only in the context of returnees and IDPs), and the ways in which they have so far responded to these challenges.
- Prior to co-ordinating on this front, agencies are encouraged to discuss and agree on i) the precise objectives of the data collection ii) which information should be shared with which provincial and central authorities iii) the mechanics of sharing and documenting this information.

It is particularly pertinent at this point to document the responsibilities and activities of various government departments that are involved in managing the land tenure and addressing land related disputes

- This information should be regularly shared with those concerned. Based on the information collected, agencies are also encouraged to flag the seriousness of this issue to their head offices, so that they may also take up appropriate actions at their level.

Landlessness

- UNHCR needs to gain a better picture of the assets of Afghan refugees in Pakistan, and of their coping mechanism upon return (particularly those who are landless).
- The legality of the land allocations that the provincial authorities undertake in Gamberi and other schemes is still questionable, especially in light of the recently issued presidential decree freezing land allocation. Land can only be allocated through the approval of the central authorities. As such, even though the Gamberi township scheme has received the blessing of the Defense Minister, it still does not validate the allocation in front of the law. SOJ was informed that the Cabinet is currently debating a new draft law addressing the seizure of government land by individuals, and also the possibility of allowing for the allocation of land to returnees.
- If such a new law is to be promulgated, allowing for the legitimate allocation of land, the international donor community may wish to consider playing a more proactive role in assisting the authorities in adopting the "right" approach particularly in developing township projects for the landless and homeless. It could for example assist the central authorities in devising clearer policies, and subsequently also assist the provincial and central authorities in devising clearer and more equitable beneficiary selection criteria
- UN Agencies may wish to examine possible concrete contributions (e.g. schools, clinics, shelter, wells and irrigation system) that they can realistically pledge to enable such townships to be sustainable, once they are satisfied with the selection of beneficiaries. It is certain that the UN Agencies will not be able to address all needs, and as such, there is a need to devise common standards for prioritization. Also, where need is acute, but can not be met, UN agencies may wish to explore interventions by other actors, to fill the gap. The provincial planning process to be

launched under the National Area-based Development Programme, managed by MRRD and funded by UNDP may prove to be a useful framework within which the needs and development of these townships can be assessed.

Land Disputes

- Given the widespread phenomena, it is recommended that Agencies focus on those disputes that have serious implications on the security of the area, could or have resulted in large displacement, and that affect a large number of persons. In other words, attention at this point should be paid to the inter-village and tribal disputes rather than individual disputes.
- Due to the existing weak legal system, Afghans have relied heavily on the traditional dispute resolution mechanisms or jirgas. Not only are these more familiar to the average Afghans but have also proven to be more effective and successful in addressing all kinds of problems including land disputes. Where they have failed, it has been largely due to the interference by an outside party in the process and as a result the imposition of terms and conditions that may not be acceptable to one party.
- One way to empower the existing land dispute mechanisms is by enhancing the transparency of the decision-making process. As such, Agencies could recommend to the provincial authorities the establishment of a consultative or “steering” committee, representing government bodies who are directly involved in land-related issues (such as Ministry of Justice, Ministry of Agriculture, Tribal Affairs, Security, etc). This committee will constitute a forum for “regulating” the assignment of tasks among different government bodies, and the delegation of responsibilities, rather than enforcing decision. It is hoped that UNAMA and other interested agencies will be able to attend these meetings as observers, and will hopefully be able to better understand and facilitate the role that each government body plays in a land-related dispute and the dynamics of interaction among them. It is recommended that agencies form a working group to draft a detailed proposal outlining the objectives and advantages of such a set-up (with detailed terms of reference, proposed members, including external and additional expertise) In addition, a focal point would need to be identified, who would closely work with the provincial authorities in order to advise and assist them on the day to day arrangements of managing such a committee and its undertaking.

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