

Afghan Institute for Strategic Studies



**Power, Inequality, and Local Land Conflict in Afghanistan:
A Study of Kabul's Peri-Urban Areas**



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Research Support

This research was generously supported by the Knowledge Management Fund of the Knowledge Platform Security & Rule of Law.



Power, Inequality, and Local Land Conflict in Afghanistan: A Study of Kabul's Peri-Urban Areas

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Publishing No: AISS-P-025-2019

Circulation: 500 Copies

Date Printing: 2019 Kabul

Address: Qala-e-9 Borja, Kart-e-parwan, Kabul Afghanistan

Contact Number: (+93) (20)2232806

ISBN 978-9936-8070-3-7



9 789936 807037

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Acknowledgements

This paper benefitted from the input and suggestions of a number of people. The author is grateful for the review and comments of those below who gave time from their busy schedules to provide their expert feedback:

- **Magnus Marsden**, Director of Sussex Asia Centre, University of Sussex, UK (AISS Academic Advisor)
- **Shoaib Rahimi**, Economic Analyst; Former Director General for Financial Sector Strengthening, Da Afghanistan Bank; Visiting Lecturer (Economics), Kardan University, Afghanistan (Academic reviewer)
- **Zulfiqar Ali Khan**, Executive Vice President, Chief Risk Officer (CRO), Afghanistan International Bank (Academic reviewer)
- **Farhana Rahman**, PhD Researcher, Department of Politics and International Studies, University of Cambridge (Academic reviewer)
- **Siddiqullah Reshtya**, Senior Project Officer, United States Institute of Peace; Legal Advisor, Afghanistan Independent Land Authority (ARAZI) and Attorney General Office (AGO) (Academic reviewer)

Executive Summary

This paper looks into how power hierarchies and structural inequality are often entangled within conflicts over land in Kabul's peri-urban areas. Structural inequalities in Afghanistan create a variety of challenges related to land tenure. While the causes of land conflict in Afghanistan have been studied in the literature, the manner in which power hierarchies play a role in such conflicts has not been adequately explored. Only by understanding these power hierarchies does it become possible to understand the systemic nature of inequality in land-related conflicts.

This study identifies five different power hierarchies that feed inequalities and land-related conflicts:

1. Powerful land grabbers stand largely outside the realm of accountability. Owing to their privileged position in society, they are able to maintain their claim to land despite having obtained it illegally from the government or another private party.
2. Corrupt government officials are able to use their position of authority to extract land benefits at the cost of lay individuals.
3. Community powerbrokers, including Maliks, Wakil Guzars, and Imams, occupy a position of authority as they are viewed by the community as the individuals responsible for arbitrating land disputes, and in the case of the Wakil, serving as the go-between with the government.
4. Within families, various power hierarchies have direct implications in the way land inheritance is allocated between members.

5. A new set of land challenges arises due to the return of Afghans into the country, many of whom find strangers residing on their land. Rather than relying on the government, returnees may be better able to secure their rights through powerbrokers who are aware of the movement of families due to civil unrest and land usage patterns over time, thereby bolstering the authority of these powerbrokers.

By highlighting these hierarchies, it becomes possible to show that attempts at providing formal titles to residents of peri-urban areas do not necessarily alter the underlying power hierarchies. As a result, formal titling may not have its intended effect of significantly reducing land conflict in these areas.

Understanding the various ways in which power drives conflict can help to reduce disputes by making it possible to undertake initiatives that address the underlying inequalities. At the community level, powerbrokers must gain a clearer understanding of the ways in which power hierarchies affect land conflicts and spread information on these hierarchies within their communities. At the level of NGOs and government officials, initiatives that directly address inequalities require greater exploration.

Translation of Terms

ARAZI	Afghanistan Land Authority
<i>Imam</i>	Religious leader of the community, usually leading communal prayers at the local mosque
<i>Malik</i>	Respected elder in the community
<i>Shara'i qabala</i>	formal land title (registered)
<i>Urfi qabala</i>	customary land title (unregistered)
<i>Wakil/Wakil Guzar</i>	Middleman between the local communities and the government; he is elected from the community

1. Introduction

In Afghanistan, a primary source of local conflict is land as it represents one of the principle assets owned by an individual or household. Urban areas have exponentially grown in recent years from the return of Afghans living abroad as well as Afghan refugees in Pakistan and Iran. Furthermore, ongoing internal conflict has forced many individuals out of their native rural areas into the cities. This sudden influx of people into Kabul, the Afghan capital, has caused a rapid expansion of the city's peri-urban areas. The mountains surrounding Kabul, previously uninhabited, are now painted with residential housing, many situated in circuitous locations only accessible by foot.

Land registration in Afghanistan remains highly irregular, as only cities – and only certain areas therein – have been formally surveyed. The government provides registered property deeds (*shara'i qabala*) in surveyed areas; however, in peri-urban areas, land titling remains largely informal. These residents hold ownership through unregistered title (*urfi qabala*), which lack standardization and thus greatly vary from one to another.

Property conflicts may relate to ownership, easements, change in usage, construction, or otherwise. Untenured land is normally divided amongst sons once their father is deceased; conflicts regularly arise between these heirs as well as their children (i.e. second-generation heirs). For refugees returning from neighbouring countries, some have illegally occupied government lands. Other problems stem from individuals crossing over others' land to access the main road. Still other conflicts arise from politically influential people abusing their power to acquire rights in land. Registration could potentially prevent conflicts over land, especially amongst family members claiming inheritance rights.

Furthermore, registration could create economic opportunities by allowing titleholders to access credit by providing a security on their lands.

Despite the strong push by the government and international agencies to have land in Kabul surveyed and registered, many individuals remain outside of the formal titling system. Efforts to promote land registration often fail to account for power structures within society that automatically make the registration process available to some while inaccessible to others.

This paper thus looks into how power hierarchies and structural inequality are often entangled within conflicts over land in Kabul's peri-urban areas. Structural inequalities in Afghanistan create a variety of challenges related to land tenure. Crucially, power structures within society – like patterns of patronage, clientelism, and patriarchy – may constrain the capacity of people to act 'in practice' even when they recognize that acts like registration may be favourable 'in theory'. People inhabit networks of meanings that are shaped by experiences of exclusion, discrimination, marginalization, and violence; these networks define the available options for securing one's best interests. Poor peri-urban residents involved in land disputes may be compelled to collude with existing power structures rather than challenge them.

While the causes of land conflict in Afghanistan have been studied in the literature, the manner in which power hierarchies play a role in such conflicts has not been adequately explored. This paper thus seeks to explicitly highlight some of the hierarchies that arise in the different land conflicts in Kabul's peri-urban areas. Based on interviews with community members and leaders in informal settlements as well as government officials working in the area of land administration, this paper highlights some of the

ways in which power hierarchies and structural inequality shape the behavior of parties to a conflict over land. By showing these hierarchies, it becomes possible to show that attempts at providing formal titles to residents of peri-urban areas does not necessarily alter the underlying power hierarchies. As a result, formal titling may not have its intended effect of significantly reducing land conflict in these areas.

2. Research Method

This project adopts a qualitative research method using interviews with individuals directly involved in land disputes in Kabul. The main target group was residents of Kabul's peri-urban regions since we sought to understand their land-related problems and conflicts and their underlying causes. Our strategy was to interview a small number of individuals to develop a thick understanding of the types of problems people face. The community members interviewed can be divided into two different groups. The first were lay individuals who had either faced a land-related conflict or who had a family member or acquaintance who had faced such problems. A second group consisted of community leaders, including Imams, Maliks, and Wakil Guzars. These individuals are in a position of authority in the community, and thus serve as the focal point whenever a land conflict arises. The interviewees from both of these categories resided throughout Kabul's peri-urban areas, and our researchers travelled into their respective communities to conduct interviews. Security in these areas was okay as we conducted all work during daylight hours. However, we faced two other challenges owing to the time of year. First, interviews were conducted during the winter months, and owing to the unexpectedly heavy snowfall, the interview period extended for an extra six weeks beyond the two months that we initially envisioned. All interviews took place

between December 2018 – March 2019. Second, owing to the short days in the winter months, we not only had less time to conduct interviews but also had to compete with heavy winter traffic as work life throughout the city operates largely within the daylight hours.

A second group of interviewees included government officials, especially those who were members of the Afghanistan Independent Land Authority (ARAZI). These officials were involved in land reforms, and thus it was crucial to have their input. Officials were not only familiar with land dispute matters but were also directly involved in efforts to provide formal titling in the peri-urban parts of the city.

In total, our study consisted of 28 interviews, including 20 community members and 8 members of ARAZI. The community members interviewed included 5 women (all lay persons), 2 Wakils, 2 Maliks, and 2 Imams. The snowballing method was employed to get in contact with interviewees. We worked against selection bias by relying on multiple, unassociated middlemen who helped with introductions, with there being no possibility of collusion.

3. History of Land Ownership in Afghanistan

According to several accounts, land is the primary source of local conflict in Afghanistan.¹ Land is a precious resource both in rural and urban Afghanistan. Historically, a number of government and NGO-sponsored initiatives have attempted to survey land. However, these efforts have been complemented by period of prolonged conflict, emigration and return of residents, and instances of forced resettlement and redistribution. As a result,

¹ Dennys & Zaman (2009)

titling in Afghanistan is incomplete, consisting of a patchwork of systems overlapping with one another.

In 1963, the Department of Land Affairs (AMLAK) and Cadaster Directorates were created under the supervision of the Ministry of Finance, which resulted in the first accurate multi-purpose land inventory. Between 1964 and 1978, these offices made attempts at conducting land surveys, particularly in the rural areas of the country. However, a proper and systematic land survey of the entire country has never taken place. After the Soviet invasion in 1979 and the subsequent civil unrest in the 1980s and 1990s, a significant segment of these documents were destroyed. Furthermore, amongst the documents that we preserved, changes in land tenure over time are not indicated, and many lands have been sold and resold as well as informally partitioned. It is reported that fewer than 30% of immovable properties in urban areas and 10% in rural areas have been registered by state institutions.²

Currently, the government is undertaking initiatives to provide greater formal titling. Presidential Decree No 83 from 2003 put a halt to new surveys without presidential order. In 2010, the Cabinet of Ministers merged AMLAK with the Afghanistan Land Authority (ALA) and the Independent Commission for the Restitution of Illegally Occupied Land, which had been created by Presidential Decree No 638 dated 22 April 2010, naming the resulting organization the Afghanistan Independent Land Authority (ARAZI). The mission of ARAZI is to create a formal land titling regime in Afghanistan, which includes: inventory of state-owned land; land registration through cadastral survey (land survey); land registration through the land rights identification process (*tasfiya*); land transfer and exchange (primarily across

² Alden-Wiley (2013)

government agencies); land leasing to the private sector; and land dispute resolution (land case tracking). One of the immediate challenges that ARAZI needs to address is the lack of human and institutional capacities, given the complexity of the titling process and the challenge of titling vast areas of the country. On 1 December 2018, ARAZI was merged with the Ministry of Urban Development and Housing (MUDH), though reference to the office title of 'ARAZI' continued up until the publication time of this paper.

4. Recent Reform Efforts

The National Land Policy, passed in 2007 and revised in 2017, has the objective to provide guidance on developing legal and institutional frameworks as well as administrative and technical practices. The other laws governing land management are the Land Management Law (2017), which seeks to create a unified land management system with a standardized titling process, and the Law on Land Acquisition (2017), which outlines land expropriation and compensation.

Recent efforts at ARAZI have focused on developing what is known as the "Occupancy Certificate" (OC), as provided by the Regulation on Registration of Urban Informal Properties 2017. The OC is an attempt to provide housing rights to individuals within informally titled areas, which include Kabul's peri-urban regions. The idea behind the OC is to provide property rights to residents in informal areas who have continuously resided in an area of land for 15 years. These individuals would be provided an area of 300 sq. meters at a nominal fee, and, according to members of ARAZI, would then be monitored for a 5-year period to ensure that they are up-keeping the land. ARAZI, with the assistance of UN-Habitat, have targeted 8 cities for this program -

Kabul, Herat, Jalalabad, Kandahar, Mazar-e-Sharif, Nili, Farah and Bamiyan - with the goal of covering 150 000 parcels of land. The goal is for the process of issuing OCs to be complete by 2020. Furthermore, ARAZI is working to institute community-level councils to help arbitrate disputes.³ Currently, one Wakil Guzar may be responsible for up to 2000 households. Under the new system, communities of up to 1250 houses would elect 13 individuals (instead of just one Wakil) who would help deal with land disputes. These councils would then register their decisions with the local court. These efforts at promoting the OC are congruent with the objectives of the UN Habitat's Housing Policy, which seeks to provide all Afghans with affordable housing.⁴ An initial survey of opinions by the Ministry of Urban Development and Land and the World Bank indicates that individuals would be overwhelming in favour of being granted an OC, as it would provide them with formal rights in the land and also mitigate conflicts.⁵ On the part of the government, the OC would be a means of taxing individuals for their land ownership.

Despite this initial optimism by residents with informal titles, a number of concerns still exist regarding its implementation. As the current requirement is that land should have been occupied for 15 years, those who have occupied land for a shorter period would not be eligible for an OC. Moreover, while the first 300 sq.m. would be provided at a nominal price, any land between 300-1000 sq.m. would be sold to the resident at a 'fair price' while land beyond 1000 sq.m. would be repossessed by the state. Since poverty is one of the key challenges for many living in informal settlements, it is unclear what would happen if residents were unable (or unwilling) to pay this amount. Those with more than

³ Discussion with members of ARAZI.

⁴ MULH & UN-Habitat (2018)

⁵ MUDL (2019)

1000 sq.m. would almost certainly oppose obtaining an OC as it would entail losing land. Most importantly, while the OC may provide residents with more certain in land rights, this does not mean disputes would go before the court. Individuals have issues resolved locally due to a variety of reasons, such as government corruption and community efficiency, would not necessarily change with the issuance of the OC. Thus, the OC may simply provide a new opportunity for individuals to redistribute rights informally.

5. Power Relations & Local Land Conflict

The literature has widely documented some of the challenges to titling and land rights in Afghanistan, which include the following:

- *Patchwork of regimes for the existing titled land:* In the past, different government regimes have conducted different surveys, thus issuing different documents. Many of these documents were subsequently destroyed during years of unrest. The documents that remain are incomplete and form a patchwork of entitlements at best.
- *Land grabbing:* Land grabbing by powerful individuals, warlords, government officials, and others has taken place on a large scale throughout the country and continues to take place. The powerful status of these land grabbers makes it very difficult to hold them accountable.
- *Widespread corruption:* Rampant corruption in government institutions and throughout society has provided the opportunity for the issuance of fake documents as well as unfair allocations of land based on patronage relationships.
- *Dysfunctional system for administering land:* Only land that has been surveyed is eligible for a *shara'i* (formal)

deed. There is no process of formalizing informal (*urfi*) land titles at the moment. Furthermore, even *shara'i* deeds have been informally partitioned and resold many times, making it difficult to know who exactly has rights in a given piece of land.

- *Weak legal system to enforce rights:* While the courts are available in theory to parties facing a dispute, lack of proper documentation, corrupt officials, and the lengthy process cause many people to avoid seeking recourse through courts.
- *Lack of available housing:* The surveyed areas of Kabul are both expensive and too limited to provide housing for all of its residents. For this reason, individuals are forced to move to squatter settlements.
- *Rapid urbanization:* The population of Kabul has ballooned from 1.5 million in 2001 to nearly 5 million in 2019, making it one of the fastest growing cities in the world. Amongst the reasons for the increase in size is the return of refugees as well as individuals moving to the city from rural areas in search of work. The city was originally designed for 700,000 people, and thus informal settlements have mushroomed as a result. Issues of drought in many rural areas as well as conflict and instability have also forced people to migrate from the countryside to Kabul.
- *Slow evolving government land policy:* While the government has worked to develop a policy for surveying greater areas of land and providing formal titles in informal settlements, these developments have not been able to keep up with the rapid urbanization and expansion of informal housing in Kabul.

While the causes of land conflicts have been extensively studied in the existing literature on land rights in Afghanistan, what remains to be understood is how these conflicts are entangled with various structural inequalities within society. Because of the systematic barriers faced by certain categories of individuals with society, they are unable to access the available channels that may allow them greater access to rights or resources. Structural barriers are often difficult for individuals to overcome since they relate to entire systems in operations that have been established over long periods of time. As such, individuals within a particular category may find themselves greatly constrained with respect to the avenues available when seeking to resolve a problem. With respect to land conflicts, while various avenues may be available in theory, in reality certain categories of people will be systematically unable to access their rights easily while others will have a much easier ability to do so.

These structural barriers are often the result of hidden power hierarchies that exist among the matrix of individuals whose interests are entangled within a piece of land. Power hierarchies provide certain individuals with better resources and the ability to mobilize those resources in the pursuit of their individual interests. Other individuals have little ability to secure their interests because of their weak position vis-a-vis others around him. Understanding power hierarchies can provide insights on the reasons people pursue certain courses of action but not others.

In the context of a land conflict, decisions on how to deal with the problem are not simply a matter of choosing amongst the available avenues of recourse. Instead, they fundamentally depend on the power hierarchies involved. Parties understand that the hierarchies involved will be as important - if not more important - for the resolution of the matter as the rights held by

the parties involved. Power allows for certain injustices to perpetuate, since resource-rich individuals may be able to bend outcomes in their favour. However, even power hierarchies may have constraining factors. And thus, it is necessary to understand the different type of hierarchies that exist, and their respective limits. Thereafter, it becomes possible to understand how providing formal titling may not address the underlying power hierarchies associated with land conflicts.

The rest of this section will focus on some of the various hierarchies that exist with respect to land in Kabul's peri-urban areas. These hierarchies have been evinced from the comments of the interviewees of this study, all of whom are involved in land conflicts, whether as a party directly affected or as an NGO or government official seeking to implement rules to mitigate conflict.

I. Powerful Land grabbers

The existence of powerful land grabbers is well-known in Afghanistan. Land grabbing is a problem throughout Afghanistan and is widespread throughout Kabul. It consists of individuals claiming a piece of land, often belonging to the government but sometimes belonging to another private individual, as their own. In some cases, what happens is that the land grabber builds a fence around the area that he has claimed as his own, and then uses the land for his personal pleasure. There have not been any clear laws criminalizing land grabbing until only recently, which has allowed for the problem to continue and has left those land grabbers largely unaccountable. The lack of accountability alongside the acute value of the grabbed land has allowed many land grabbers to become very wealthy from their activities, thereby extending their level of influence within society.

Land grabbing includes two different kinds: first is the grabbing of large areas of land by powerful individuals, including parliamentarians, warlords, government officials and tribal leaders; second is the grabbing of a small parcel of land by an individual for personal use. The issue of power hierarchies becomes especially acute in the former case. Powerful land grabbers normally claimed large tracts of land during the period immediately after the collapse of the Taliban while the government was weak and largely dysfunctional, and have been able to amass a fortune from the subsequent increase in value of these lands as the city and country progressed.

Throughout our study, land grabbing was immediately recognized as a source of conflict. One respondent mentioned the following about a land grabber in his area:

Powerful people regularly come to our area and make claims over land and cause disputes. I know many examples of illegal grabbing that have caused huge conflicts, and some people lost their lives. A powerful person bought private property (2000 sq.m.) but after that he grabbed the neighbouring private property (1000 sq.m.) and as well as a piece of governmental land (1000 sq.m.). He built a wall around all of them, and so the final piece of land that he got was double the amount that he paid for. The people tried to complain, but the person was too powerful and no one wanted to get injured. Some people went to the government to get their help, but this landgrabber had many friends in the government, making it impossible to have the issue resolved officially. (lay individual from Karte-Naw)

Many other individuals mentioned similar accounts of land being grabbed by powerful people who fenced off an area and claimed it as their own. In many cases, their land was then sectioned into

pieces and subsequently sold to buyers. The land grabber would create an *urfi* deed for the land in his name, and subsequent buyers would receive an *urfi* deed for their portion of land. One land owner explained this dynamic:

My house is in the southwest of Kabul. I know that it was originally grabbed by a powerful person. He then divided the land and sold it to individuals for their homes. That is why I have an urfi deed. I am not worried about the government taking my land because I did not do anything wrong. I need a place to live. If the government wants to go after the landgrabber, that is their business. (lay individual from Deste-Barchi)

A number of observations are worth noting from these comments on the effect of land grabbing. First, land grabbers are recognized to be part of a powerful elite within the country who have the resources and network of relationships necessary to maintain their claims over the grabbed land. Land grabbers sometime work alongside government officials to ensure that their interests are protected and that they do not face serious consequences for their actions. Thus, land grabbers are able to exploit a privileged position in society, escaping accountability and feeling little fear of sanctioning. Second, owing to this power dynamic, lay individuals are often reluctant to engage in open conflict with land grabbers, the latter of whom are able to levy threats - both real and perceived - against others. Furthermore, the absence of powerful networks on the part of lay individuals makes it difficult to find adequate recourse through official government channels, as these may already be influenced by the networks held by powerful land grabbers. Thus, the power dynamics are not simply a relational affair; rather they also extend to the strength of network ties held by the various parties involved in a potential conflict.

Nonetheless, these land grabbers do not necessarily have a free reign. As will be discussed in a subsequent section of this paper, communities rely on powerbrokers for stable operating dynamics, and these powerbrokers may be able to reject the actions land grabbers in certain cases.

However, just as land grabbing may lead to instability, it may also serve as a source of stability and certainty. Those landowners who purchase land from land grabbers rely on the strength of the latter to maintain their rights to the land. Purchasers are able to benefit from the strong position of the land grabber. Owing to their privileged position in society, purchasers can also feel confident about the strength of their informal title to the apportioned land that they have purchased. Conversely, if an individual were to purchase land that had been the object of dispute by several parties, he may find that these disputes affects his own rights on the land, owing to the fact that no single individual has a near monopoly of control, thereby making purchase from a land grabber more appealing.

In sum, powerful land grabbers may paradoxically help to maintain a level of stability while also being a source of instability. On the one hand, the resources wielded by powerful land grabbers make it difficult to contest their authority. On the other hand, land grabbing provides a sense of stability since buyers of grabbed land benefit from the monopoly of power held by the initial land grabber.

II. Corrupt Officials

Corruption in Afghanistan is widely pervasive, and in certain instances, corrupt government officials play a direct role in exacerbating land conflicts. Officials who find themselves in a position of authority may be inclined to abuse their power for their own personal gain. These officials are able to benefit from privileged information as well as relationships with other in the government that help to mobilize their activities, comparable to the activities of land grabbers.

One respondent explained an instance when a relative who was a government official sought to initiate a land conflict for his own personal benefit:

Once upon a time one of my relative was head of the criminal section of [one of the] districts in Kabul city. From his office, he called someone that he already knew. He asked why that person was letting their neighbor build his house, and the person replied that this land belongs to him and it's his right to build whatever he likes. My cousin said that he was aware that the neighbour rightfully owned the land, but remarked that the intended plot included only a big building without a devoted green area. For this reason, it was necessary to prevent him from building the house and to make a claim against him. The head of the criminal section just wanted to earn money by encouraging a claim over private property. Thousands of cases like this exist in Kabul city. (lay individual from Deste-Barchi)

Put simply by another respondent, “the government officials encourage problems - this way they get money from the problems created.” Creating land problems is a means by which

government officials are able to extract income from others by abusing positions of authority.

At the community level, leaders have also noted the problems they face when interacting with government officials:

During the first year of my work as a Wakil, we had lots of property problems. There was a police station here, and because most of the area was empty, the head of police sold a property in this area to someone and then again to someone else. I remember four persons claiming over one piece of land. It was not their fault; it was the fault of the police who sold land to four people. I and influential persons held meetings for solving such problems. (Wakil from eastern Kabul)

Abuse of power by government officials is particularly noteworthy because it directly and negatively impacts the respect that people have for government institutions. Government officials are encouraged in their behaviour due to the impunity with which they are able to act. Lay individuals are in a weak position vis-à-vis their government counterparts and thus are greatly susceptible to abuse. For this reason, community members may be very reluctant to approach official institutions if they have a land dispute, and powerbrokers also encourage parties to solve their problems at the local level.

III. Powerbrokers – Wakil Guzar, Malik, Imam

One of the defining characteristics of rural communities is the presence of powerbrokers. These powerbrokers are important persons in the community that people rely on in case a problem or dispute arises. The three principle power brokers are the Imam, Wakil Guzar and Malik, whose roles can be defined as follows.

1. Imam - he is the religious head of the community who normally leads the five daily prayers at the mosque. He provides religious classes, particularly to children, and also resolves problems, especially those with a religious component

2. Wakil/Wakil Guzar - he is the middleman between the government and the community. As the community leader, he is generally elected by the community, and then registered by the municipal government. He serves as the go-to person if the community seeks to make requests from the government, or conversely, if the government seeks information about the community or its members.

3. Malik - he is a respected and elder member of his community. Owing to his age, experience, and reputation, people may seek his assistance in the event of a dispute between parties.

The principle distinction between the Malik and Wakil is that Wakil is a government designation whereas Malik is a community designation. The position of Malik is more prevalent in rural areas, whereas the Wakil is more commonly found in urban (and peri-urban) areas. However, these categories remain flexible, and a community may host both. The role of the Imam is somewhat apart from the Wakil and Malik as the Imam focuses on religious affairs. However, all three individuals share the common characteristics that they are generally prominent figures in their communities. Each may be asked to assist in resolving disputes over land, though normally the matter goes to the Wakil or Malik.

The following is a typical land problem that arises within a community:

I can tell you more than ten stories of land conflicts which were referred to me. Someone bought land ten years ago, the owner and seller of land had sold the lot to five persons then

left to Australia. After five years when one of the five persons started building a house, suddenly the four others came and claimed that they bought this area, and thus five persons were claiming over one specific area. The seller got different amounts from each of them. The price of land had increased by then. We decided to sell the land and divide the payment according to their first payment to the real owner.⁶ We made this decision after 20 days or one month and it was our final decision and there was no better way. We have many other cases in this area. (Wakil in Deste-Barchi)

While problems will normally be addressed by the Wakil or Malik, the precise person or persons called upon to help solve the matter may change according to each individual case. As one Wakil explained, the principle goal is to simply resolve the dispute within the community:

We [Imam, Wakil Guzar, elders] are not making the final decision. Rather, first we are looking for the most experienced persons theoretically and practically, and we want them to help us in the particular case. I mean, we do not judge about every problem. There is no specific person. Every case needs different methods. (Imam from Karte-Naw)

Resolving problems is thus viewed as a community affair and may involve the participation of any party that may be able to help provide a final resolution to the matter. In this regard, the Imam has a particularly important role as he is responsible for providing the community with religious training and value. The Friday sermon is a forum that could be used by the Imam to convey information about land rights and fairness between neighbours:

⁶ The calculation was based on each person's percentage out of the total amount paid amongst the five people.

We have a small case of land grabbing and building of a small room. I directly interfered. When people came here on Friday for prayer, I spoke indirectly about issues. (Imam from Karte-Naw)

The Imam went on to give an account of his own case of solving disputes:

One day a person came and told me, Mr. X made a window through my house yard it bothering my family and my wife and daughters can work in the yard freely and they can watch us. I wanted you to solve this. I requested them to come here and I explained Islamic role regarding this problem. Then the problem was solved. (Imam from Arzan Qimat)

Thus, while the Imam's role is to provide religious leadership in the community, this role necessarily entails addressing land disputes. The Imam holds a privileged position of respect and has the role of educating his community on religiously acceptable behaviours. In this regard, the sermon delivered at the weekly Friday prayer provides an opportunity for him to convey values to his community. Furthermore, people continue to have a general level of respect for religion. While they may not always adhere strictly to its principles, an overall sense of constraint due to religion can be felt, as evidenced by the window example.

Powerbrokers have a complicated relationship with the government. All of them recognize the existence of the government and the ultimate role it plays in maintaining a sense of order. Furthermore, since the Wakil traces some of his authority to the state, he has a particular interest in advocating for the role of the state in at least some of the affairs of the community. Land registration is one such affair for which powerbrokers generally recognize the importance of gaining

formal titles if it is possible, since it can help to resolve disputes and by making the rights in the land clear to the parties involved:

I always have told people, we cannot escape from government and law. If we register our lands it has positive effect on security, because most crimes are happening in unregistered areas. (Malik from Kampani)

While the value of formally registered land was recognized by the various powerbrokers, this did not mean that they advocated for individuals to go to the government to resolve their disputes. Powerbrokers and lay individuals alike emphasized that many problems arise when dealing with the government, such as corruption, high fees, unpredictable outcomes, and a drawn out process that could take years. For this reason, powerbrokers advocate for individuals to have their problems dealt with locally. Once resolved at the community level, the government may or may not be informed of the final outcome:

We will talk with the two sides to fix their problem. It can all be done here in the community. When we solve a problem, it will be documented by signatures of both sides and witnesses and will have the stamp of Wakil it and finally its copy will be sent to court. Actually we will only send a copy where they have filed a claim - it might be to the police, court or general attorney. We send it to inform them that we mad decision and both sides agreed. If the problem is not serious, we do not send it. I have to repeat, we sent a copy of our decision to court if one party has made a claim to the court. If they did not make a claim to the court, we do not send copy to the court. (Wakil from Dash-e-Barchi)

Lay community members also emphasized how they would prefer having a matter dealt with locally. Some preferred the simple process as opposed to cumbersome government bureaucracy.

Others remarked how turning to the government was obsolete, since the matter would be referred back to the community in the first instance, or it would attract negative attention, since circumventing the community's elders would be viewed as shameful:

I prefer going to elders and Wakil. There is no legal procedure (lay individual in Deh Mazang)

If we go to government, they will first refer us to community leaders (lay individual in Karte-Naw)

We are living to a traditional society with its own cultures. If a land disputes happen to a place. They trying to solve with elder and it's a shame to claim to the government. (Imam in Karte-Seh)

The relationship between the powerbrokers and government is thus complicated because on the one hand, they advocate that individuals get formal (*shara'i*) deeds for their land but, on the other hand, if a land dispute were to arise, then the issue should be dealt with within the community. The resulting outcome may have impact on the usage of property, which may not be reflected in the property title held by the parties. The ambiguity provided by informal titles is precisely what makes powerbrokers able to resolve issues between parties by exploring potential solutions outside of the formal rules.

Lay individuals themselves also do not view the government as the ideal forum for resolving property disputes. On the one hand, the government bureaucracy is far less appealing than the simplified procedures of community powerbrokers. On the other hand, even those reluctant to use community powerbrokers would be strongly compelled to do so since the government

practice and customary norms all view powerbrokers as the appropriate initial forum for land disputes. Thus, powerbrokers wield significant influence in the allocation of property rights within a community, despite their advocacy that community members acquire formal titles for their property.

IV. Family Dynamics

Inheritance is one of the primary means through which property is transferred from one individual to another. Land is often the most valuable asset that an individual owns. Furthermore, the value of many areas of land in the urban centers have increased in value due to the many Afghans returning to the country as well as people from rural areas moving to the city to escape rural conflicts and to find work. This is particularly true in the peri-urban areas of Kabul, where land is highly sought given the housing shortage.⁷

The overwhelming majority of Afghans are Muslim, and thus people follow the Islamic rules of inheritance. While the rules of distribution are elaborate,⁸ a general rule is that women receive half the apportionment of men. Thus, if a father has one son and one daughter, the son would receive two-thirds of the land while the daughter would receive one-third of the land.

In Afghanistan, the process of distribution is as follows. Once an individual is deceased, the respected elders in his family will be called upon to help distribute the property amongst the children. At this juncture, conflicts sometimes arise. Siblings may not agree on the apportionment of land, as some children may claim greater rights due to having a closer relationship with the

⁷ May & Islam (2008)

⁸ Variations exist in the way Sunni and Shi'a sects distribute inheritance.

deceased or being the eldest child. In other cases, being completely fair proves difficult since even if land is divided evenly, some areas of land may be more valuable than others. In some cases, a failure to reach a consensus will lead to the land being divided and then allocated through a random draw.

Families will initially try to distribute inheritance internally within the family and disputes will be dealt with by family elders:

Families always try to deal with their issues internally. If brothers fight over land, first they will try to solve it in the family. Only if it fails will the community leaders step in. Going to the government brings shame to families since relatives and others will think they are not respected people. (lay female from Karte-Char)

Family members feel strong social pressures to deal with inheritance allocations and disputes without the interference of non-family members, as this helps to preserve the dignity and honour of the family. However, if the problem persists, community leaders may also be brought in to help distribute the property. Sometimes, the community leaders may propose selling the land so that the proceeds may be distributed equally, as explained by one Wakil:

I just solved an inheritance problem and I have to mention I did it with help of the Imam and influential people. After a father past away, his five sons and two daughters were claiming over the remaining house and finally came to us and want our help. We had no more options. We had to sell the house. We distribute money. We solve problems according to urf not sharia or legally (Wakil in Karte-Naw).

A common practice is for several families, particularly the families of male siblings, to live together on the property, whether obtained through inheritance or purchased together. The presence of multiple family members helps create a support network for all those in the household. This arrangement is particularly important given the weak economic conditions in Kabul. However, such arrangements are liable to creating conflicts since each sibling has an interest in securing as much property in his own name:

I claimed on my husband's brothers to pay what my husband [recently deceased] paid money for shared land. [My brother-in-law] does not listen and sometime he even ignores me and tells me that [my husband] had no rights to this land but I have a document that proves that they paid equally for the land. It has taken more than one years since I started claiming my husband part. I do not know what will be decided by the government. (lay female from Karte-Char)

While men and women are given inheritance rights (albeit at different levels) under Islamic law and Afghan law, the widespread practice is that women do not receive their share of inheritance. In most cases, property is divided solely amongst the male children. Women are expected to refrain from claiming their inheritance, as doing so would be considered a shame. In many instances, siblings actively try to prevent women from claiming their inheritance rights.

Let me tell give an example: one person has four children, three sons and one daughter. After he died, the children decided to divide the heritage, and his daughter wanted to claim her rights. This matter created a big problem and confrontation among members. The brothers told her, we are from the same blood, why are you causing problems (Lay individual in Karte-Naw)

Women have difficulties in claiming their rights at the community and government levels. At the community level, women feel that notions of shame and reputation prevent them from being able to realize their rights, as women who claim their rights are viewed negatively. Nonetheless, the economic problems that women face in Kabul have forced many to claim their property rights as a means of survival.

Economically, I am under pressure. If I was in a better situation, I would never demand my part from my brother. However, I need to. My husband is jobless and he was ousted by the government. (lay female from Dehbori)

Intriguing in this statement is that that many women have internalized the belief that refraining from asking for one's right is the optimal state of affairs. It is only due to dire circumstances that deviating from the norm becomes necessary. Faced with potential accusations of impropriety from their community because of their actions, some women choose to circumvent their community and seek recourse directly with the government:

I will go to the government to claim my right because [even though] the government does no work, they at least do not insult me. If I get help form local leader, they do not listen to me. They will call me a bad woman because in Afghan tradition women do not claim their rights. Some women even cannot go out of home without husband or father and brothers 's consent. (lay female from eastern Kabul)

The difficulties that women face in claiming their rights are recognized by both powerbrokers and lay citizens. Ironically, many place the responsibility on women themselves, saying that they should be made more aware of their rights, though failing to recognize that family expectations and community practices may

serve as significant impediments in women being able to claim their land rights.

V. Returnees vs. Incumbents

The return of a significant portion of the Afghan population from neighbouring countries has created new stresses within society, with many returnees finding strangers residing on their properties. This situation has created a new set of tensions between landowners who have been out of the country for a significant period of time and those individuals who have resided in the country during this same period and who require land for their personal livelihood. Tensions are thus common between these two groups of individuals. One Afghan who relocated to Germany in the 1990s laments on the problems she faces in claiming her land rights:

One time my brother came to Kabul from Australia, he went to our house and a poor family living there. They begged him, and so he allowed them to live and keep our house. We trusted them and allowed them to use the house without any verification letter. When I came to Kabul and visited house, At first a woman screamed and told me that she bought this house from Hassan [my brother]. Then I introduced myself as his sister, and she agreed that the house was mine. I wanted to sell our house. One day, two of my neighbours called me and told me to quickly come to the house, as a General bought the house was destroying it. The women sold my house to five different people and fled during the night. One of them was a General. I am trying to find a solution. I do not know the government procedures. I returned back to home after forty years. (lay female from Deste-Barchi)

It is often easier for parties to rely on their local community leadership to be able to ascertain the true owner of property.

Local powerbrokers may be best positioned to confirm the true owners of a particular parcel of land. Whereas government officials are regularly rotating and official documents can readily be forged, powerbrokers have a much longer-standing presence in the community.

A few years ago, we had disputes over housing, as someone left his house and was living in foreign countries and before leaving rented his house to someone else. After, he came back and wanted him to leave the house, the tenant ignored and told him it's mine. When owner of the house complained to government, they made the decision to divide the house between both of them. When I became aware, I interfered because as a Wakil I knew who was the real owner and told them the truth. The tenant was then expelled by police. (Wakil in Karte-Char)

In this instance, the information provided by the Wakil is essential in resolving the issue in favour of the true landowner. It bears mentioning that while the government attempted to resolve the matter, it gave strong deference to the Wakil, and as a final disposition of the matter, the police were even brought in to enforce the Wakil's position. This has the effect of bolstering the status of the Wakil within the community. However, it bears emphasizing that the only reason the tenant was expelled was that he was not a power wielding individual, but rather just a lay individual with limited resources (as opposed to a powerful land grabber). Thus, as explained by the Wakil, this individual was not above the authority of the community.

6. Summarizing Power Hierarchies

The preceding discussion has outlined a number of property issues with the goal of understanding how power dynamics factor into in land management and conflict. The power hierarchies between the various parties play a crucial role in the decisions they make when faced with land-related issues. Only by understanding these power hierarchies does it become possible to understand the systemic nature of inequality in land-related conflicts. In this section, some of these power hierarchies are summarized.

First, powerful land grabbers stand largely outside the realm of accountability. Owing to their privileged position in society, they are able to maintain their claim to land despite having obtained it illegally from the government or another private party. Land grabbers benefit from corruption within the government, and their personal patronage networks often spread deep into public offices, thereby helping them to maintain their control over valuable areas of land. Lay persons would be reluctant to challenge such land grabbers due to the credible threat of violence. Only a strong government that could hold parties – particularly power wielding parties – accountable would address this power imbalance.

Second, corrupt government officials are able to use their position of authority to extract land benefits at the cost of lay individuals. These corrupt practices are particularly pernicious due to the clear abuse of power by the very individuals responsible for working in the public interest. Like in the case of powerful land grabbers, only a more accountable government

and court system would be able to hold such officials accountable.⁹

Third, community powerbrokers, including Maliks, Wakil Guzars, and Imams, are in a special position of authority as they are viewed by the community as the individuals responsible for arbitrating land disputes, and in the case of the Wakil, serving as the go-between with the government. Powerbrokers prefer to have land disputes dealt with locally, and advocate this position to their communities. While these powerbrokers generally speak of the importance of gaining formal titles, they still maintain their ability to resolve disputes informally. Thus, even with the introduction of formal titling through the occupancy certificate, land disputes will likely continue to be resolved informally, generating a new layer of informality on top of the new formal titles. Fostering greater confidence in the courts will require not only improving court efficiency; it requires a shift in mindset amongst community members, a significant number of whom view public offices negatively.

Fourth, within families, various power hierarchies have direct implications in the way land inheritance is allocated between members. This dynamic becomes most evident in the case of women seeking inheritance rights. In many cases, women are denied inheritance rights by brothers, family members, and even community leaders. Addressing such inequality cannot be achieved simply by instituting a formal titling system. Rather, it requires recognition by community members on the rights of

⁹ There is some indication that the judiciary has some ability to deal with such corruption. A recent example is the sentencing of the former head of the Independent Election Commission (IEC) for demanding bribes in 2010 when he served as governor of Herat. See: <https://www.tolonews.com/elections-2019/kabul-court-hands-jail-term-ex-election-commission-chief>

women to claim inherited lands. Such shifts in mindset are slow processes and require not only education but also internalizing those norms, particularly by power wielding family members.

Fifth, a new set of land challenges arises due to the return of Afghans into the country, many of whom find strangers residing on their land. The incompleteness of formal records and lack of information may make it difficult returning families to prove their case in court. Moreover, lack of familiarity with the legal process - and many societal practices - create further challenges for returnees. Returnees may thus be better able to secure their rights through powerbrokers who are aware of the movement of families due to civil unrest and land usage patterns over time. Thus, in the context of returning families, powerbrokers have a particularly important role. While formal titles may assist in providing returnees with clear titles in the land, it may also create problems if such titles were awarded to the adverse possessors. The OC may potentially add a complication if a returnee were to return after 15 years, in which case the adverse possessor may have been able to claim rights in the land.

Source of Hierarchy	Parties	Effect of formal title (such as the occupancy certificate)	Means of alleviating inequality
Land grabbing	<p><i>Powerful land grabbers:</i> their wealth and corrupt networks sustain their control</p> <p><i>Lay individuals:</i> they have little ability to claim rights from land grabbers, but can benefit from</p>	<p>Land grabbers benefit from a weak government system. Titling does not target these land grabbers, and thus they would not be directly affected. Individuals who have acquired land from</p>	<p>Holding land grabbers accountable requires strengthening government institutions, including courts.</p>

	land purchase from such land grabbers.	land grabbers may benefit from more certain land rights.	
Corrupt officials	<i>Corrupt officials:</i> abuse their position of authority to claim rights to land that is not theirs. <i>Lay individuals:</i> have little ability to contest such officials through formal channels but may be able to rely on powerbrokers.	Formal titling will not directly affect the operation of corrupt officials, since titling has no direct impact on government accountability.	Holding corrupt officials accountable requires strengthening government institutions, including courts.
Powerbrokers (Imam, Wakil, Malik)	<i>Powerbrokers:</i> these individuals are relied upon to resolve community disputes, including land disputes. The Wakil also serves as a middleman between the community and the government. <i>Lay individuals:</i> rely upon powerbrokers to have issues resolved.	Formal titling will provide community members with more certain rights on land. However, this does not mean communities will rely more strongly on the state, as powerbrokers have no reason to encourage more reliance on the state and less reliance on themselves.	Powerbrokers discourage community members from going to the government. Thus, powerbrokers themselves along with other community members must slowly develop trust in the government and courts.
Family dynamics	<i>Male elders:</i> control the use and distribution of land. Older members (i.e. an older brother) may claim greater rights. <i>Female members:</i>	Formal titling does not directly affect the way families view internal hierarchies, particularly in the distribution of inheritance.	Community members first need to internalize norms that provide women with inheritance rights.

	may face difficulty in receiving inheritance rights due to traditional and community practices.		
Returnees	<p><i>Returnees:</i> may lack documentation and familiarity with government processes.</p> <p><i>Incumbents:</i> have been residing on grabbed land; some may have created fake titles.</p> <p><i>Powerbrokers:</i> have an awareness of communities, including claims of different families to land.</p>	Formal titles could help returnees, but it could also create challenges if the adverse possessor gains a formal title.	Returnees must have the ability to claim their land against an adverse possessor, even if the latter has gained rights in the land from long and continuous usage.

7. A Way Forward: From Research to Actionable Change

This research has sought to show how power relations factor into the way individuals in Kabul’s peri-urban areas deal with land disputes. Importantly, by looking at the ways in which power hierarchies figure into land conflicts, this study shows how structural inequalities are embedded within these conflicts. The power dynamics have significant implications for attempts to lessen land disputes by providing formal titles to inhabitants of squatter settlements. While formal titling may help to clarify the rights that a party has over a parcel of land, many of the power hierarchies entangled in land disputes would continue to persist, thereby perpetuating structural barriers faced by many

individuals. Thus, beyond formal titling, a number of other initiatives are needed to help address the inequalities that arise with respect to land conflicts.

1. *Tackling government corruption:* While it goes without saying tackling government corruption is important for the society to develop, this is particularly important if officials hope for peri-urban residents to seek recourse to disputes through courts. Tackling corruption may also allow for powerful land grabbers to be eventually held accountable.
2. *Community-led educational trainings:* Communities need greater education on issues such as land rights, the titling process, and the rights of women. Community-led initiatives are the most likely to succeed in changing community practices over time.
3. *Association of powerbrokers:* While powerbrokers have a significant ability to resolve disputes within their community, they have difficulty keeping powerful individuals, including powerful land grabbers, accountable. One means of increasing the authority of powerbrokers in this regard is to explore the notion of associations between powerbrokers in different communities. Associations have an authority beyond just one person, which may be better able to constrain the activities of powerful individuals.
4. *Increasing community-government cooperation:* The channels between communities and the government need to be increased. While the Wakil is one example of cooperation, this role is hardly sufficient. Communities are rarely consulted for projects targeting them (for example, no community leader interviewed was every consulted

about the formation of the occupancy certificate initiative). Greater cooperation is likely to bring out greater dividends.

5. *Strength in informality*: Communities and government officials should find ways to recognize the benefits of informality. The immediate assumption by many that informality is a problem takes away from its ability to flexibly find solutions. Programs that target land conflict should also emphasize the usefulness of informal processes.

I. Facilitating Uptake

Power hierarchies are often difficult to recognize because of their omnipresence in society. This research has sought to bring greater clarity on the manner in which power hierarchies drive inequalities and conflicts regarding land tenure in Afghanistan. This knowledge can help to reduce such disputes by making it possible to undertake initiatives that address the underlying inequalities.

1. *Community level empowerment*: Communities themselves are structured around rigid power hierarchies, where community powerbrokers have a strong influence over community members. Powerbrokers have a clear self-interest in ensuring their continued authority over the community, as their role in solving local land conflicts helps to consolidate their role. At the same time, these powerbrokers are also in a position to bring attention to the various other power dynamics that drive conflict in the community, such as those involving land grabbers, corrupt officials, and family inheritance.

The first step is for powerbrokers to gain a clearer understanding of the ways in which power hierarchies affect land conflicts. Power is tacitly understood by all parties but is often left out of discussions of land allocations. Failure to discuss power hierarchies directly ends up leading to supporting efforts such as formal titling that do little to change the underlying inequalities.

The second step is for powerbrokers to spread information on power hierarchies within their communities. Thus, powerbrokers should receive knowledge on power hierarchies through ‘training of trainers’ forums or similar settings, which would equip them with tools to transfer knowledge to local communities.¹⁰ Trainings at the community level could help introduce members to the notion of power hierarchies as well as techniques for dealing with inequality. Discussions of power could be tied to Islamic religious teachings emphasizing equality, equity, and social justice, for example, as conveyed through the concepts of *zakat* (charity) and *maslaha* (public interest). Furthermore, on a more basic level, the practice of storytelling through a variety of artistic and media practices can help introduce creative approaches to understanding power. Storytelling can help make discourses on power available to people of all ages. Creative expressions of inequality through dance, painting, plays, and otherwise can help to spread knowledge while also consolidating community members.

¹⁰ Accompanying this research paper was a ‘training of trainers’ event, which hosted community powerbrokers as well as NGO and government officials. The goal of this event was to introduce the notion of power hierarchies to stakeholders and to emphasize various ways in which knowledge could be disseminated to local communities.

2. NGOs & government-level efforts: NGOs and government officials occupy a privileged position with respect to land conflict because of their greater access to resources. NGOs have the ability to devise programs (for example, programs that train community members on power structures, storytelling, etc.) by working with local communities. They are also in a position to connect communities with one another, thus introducing the possibility of addressing power hierarchies through intercommunity cooperation. Government officials, such as those at ARAZI, are directly responsible for initiatives such as the OC that seeks to grant formal titles to those who currently hold customary titles; consequently, awareness of how power hierarchies may drive land conflicts can help to reveal the limitations of formal titling, thereby raising the possibility of exploring other initiatives that directly address inequalities.¹¹

II. Ensuring Continuity

As discourses on power hierarchies takes time to be dispersed widely amongst communities, NGOs, civil society actors, and government officials, special effort must be made to sustain initiatives over a sufficiently long period of time, thereby facilitating uptake. One such approach is the ‘training of trainers’ model, which adopts a cascading outlook where knowledge moves from trainers, to training recipients, and ultimately to communities. Another method is training particular individuals within society as ‘resource persons’ who community leaders and local community members can turn to for further engagement with discourses on inequality and land conflicts.¹² Resource

¹¹ The ‘training of trainers’ event associated with this research paper also targeted NGO and government officials, particularly members of ARAZI.

¹² The two assistant researchers who helped in the preparation of this paper also serve as resource persons available to community members, NGOs and

persons help to cultivate local knowledge since these persons are based in the local environment – namely, Kabul’s peri-urban areas – and thus are well situated to continue discussions on inequality and land conflict in their real world instantiations.

government officials seeking further engagement in the discourses on power hierarchies.

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