

## Land Disputes – Returnees

Land disputes in general occur frequently in Afghanistan. The financial importance of agricultural land and its control means that these types of cases can be extremely sensitive and prone to conflict. Access to, or ownership of land can be directly linked to the financial wellbeing and/or survival of the owner and his or her family. Displaced populations and migrations have led to a situation where ownership of land can become contested when individuals return to their homes following extended periods of absence. The resulting land disputes are complex and difficult to resolve. In many cases there is a powerbroker involved, and it's these individuals who have taken a particular area of land and control its use. In many cases legal documents are non-existent and issues of 'legal' ownership near impossible to prove in a conventional manner. Often it is a Traditional Dispute Resolution system, that first attempts to resolve these disputes, but if the process takes an overly long time, the case can be referred to the formal justice system. Even then, the formal justice system often encounters difficulties resolving this type of land disputes as the lack of supporting legal documentation makes it hard for a formal court to apply the law, or to come to a mediated agreement. In some cases both sides have supporting documents and one or both of the disputants supporting documents have been forged, which simply further complicates the issue for those trying to resolve it. When powerbrokers are involved in land disputes, the TDR have problems enforcing their decisions upon the disputants due to their lack of enforcement capacity, and their dependency on social pressure. Due to the often-difficult context of these disputes, and the risk of escalation and potential for longevity, there can often be cooperation between the formal and informal justice sectors so as to be able to resolve the dispute.

One such case dealt with by the CPAU Peace Council in the village of Sayed Abad in Dahani Ghori, which did not involve powerbrokers, caused extensive problems and took some time to resolve:

Mobarak Shaw, a former Mujahedin fighter, received an area of land ten years ago from the local commander. The local commander was able to do this thanks to a mandate given to him by the then government. This was done without the provision of supporting legal documents for the transfer of land to a new owner. Mobarak Shaw then emigrated to Iran due to regime change in Afghanistan. Upon his return he found his lands inhabited by a man named Sayed Delbar Shah. This man had in addition to claiming the area of land as his own also built a house on the property.

Neither of the men had any legal documents supporting their claim the land belonged to them. Mobarak Shaw, although without documentation, went to the Pul-e-Khumri Hoqooq department to solve the dispute. As evidence for him being the rightful owner of the property, he brought several witnesses to testify to the fact that he in fact had received the lands over ten years ago. The Hoqooq, due to the lack of formal documentation of ownership, did not want to send the dispute to the court. Instead they referred the case through formal letter to the local Peace Council.

The case was sent to the local Peace Council, rather than a local Jirga, as there were none of the later present within the area. The Peace Council

based their decision on the fact that Mobarak Shaw had witnesses supporting his claim to the lands, and the fact that Sayed Delbar Shah had built a house upon the property. The verdict reached by the Peace Council was that the property would be split equally between the two disputant parties. The disputants were encouraged to accept the decision made by the Peace Council and to agree not to bring up the case in either formal or informal justice institutions in the future. The enforcement mechanisms used for convincing the parties to agree to the settlement was partially the official letter of referral by the Hoqooq and partially the social pressure from the community to resolve the case and to avoid an escalation of the dispute. Both parties signed a formal settlement agreement including a confirmation that the case would not be brought up again. Furthermore, it was clearly stated that if the case were ever brought up again, either within the formal or the informal justice system, it would be rejected.

Although this case did not involve powerbrokers, the dispute was sensitive nonetheless. The financial importance of land combined with a lack of formal documentation adds to this potential for this type of dispute to easily escalate. Worse still, these disputes can last for years, leaving the disputants in an even worse situation than they were in before the dispute was initiated. Since no powerbroker was involved in this case the disputant parties were more likely to be treated equally within the different justice institutions. The presence of powerbrokers would most likely have further complicated the dispute since this person would most likely have had access to greater financial assets and/or armed groups.

When it comes to land disputes, especially involving returnees, a general lack of documentation and property deeds is a major problem. Added to this, the time consuming and costly process of getting documentation of ownership following a settlement, means that oftentimes even following a settlement, no official deeds will be produced and this raises the prospect of further disputes over land in the future as new actors, powerbrokers and returnees enter the picture. Within the uncertain context of Afghanistan, the likelihood of continued migration, a general lack of official documentation of land deeds, and the financial significance of land within the country, the likelihood of the number of land disputes, especially involving returnees, is unlikely to decrease in the near future.