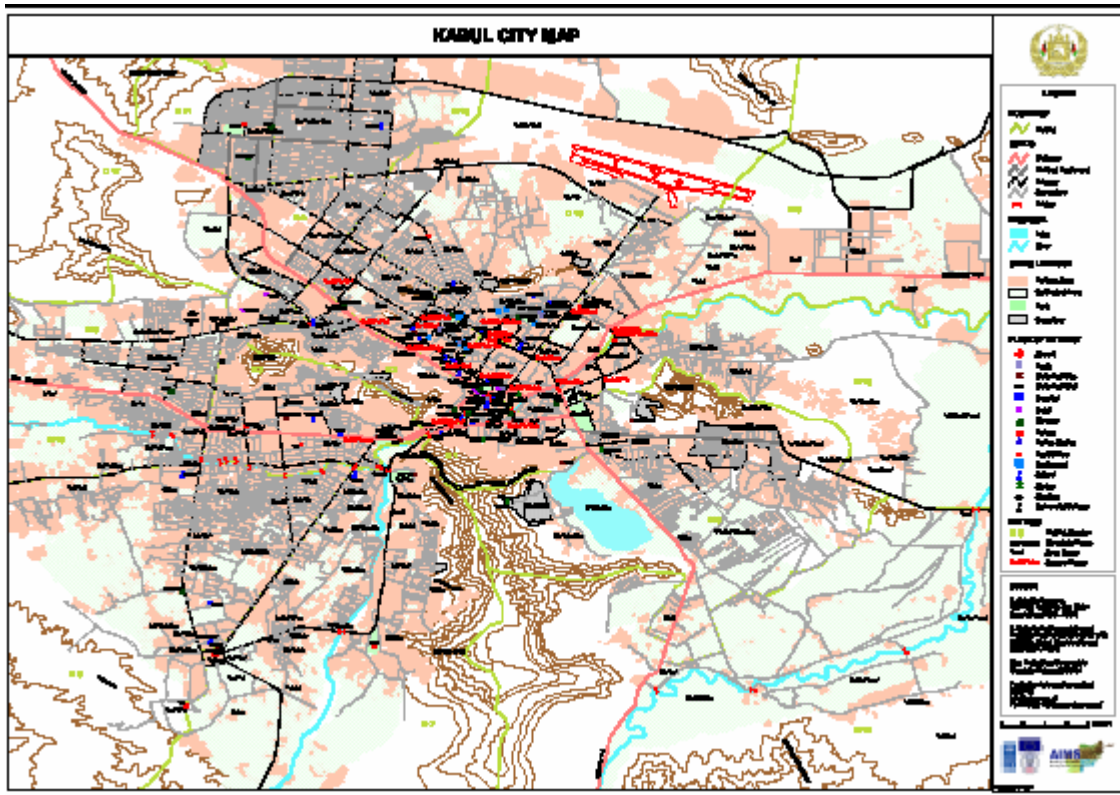




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Preliminary Assessment of Informal Settlements in Kabul City



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Introduction

During the first three months of the project the Land Titling team focused on conducting preliminary assessment of informal settlements in Kabul city. The assessment focused mainly on the nature of physical infrastructure, ongoing intervention, mode of inhabitants' land acquisition, community organization, and community cohesion. This assessment was necessary because it was essential for the team to study and classify the different types of occupants of informal settlement houses before adopting an approach to tackle the challenges of carrying out the team's tasks of attempting to improve tenure security in areas where there is none. A second reason was to obtain basic information that was necessary to frame criteria for selecting pilot areas.

The preliminary study was divided into two stages. The first stage was meant to get a cursory understanding of most, if not all, informal settlements in Kabul. The methodology that the team used during this stage comprised: interviews with knowledgeable people, district offices, judges of different levels of courts, municipality officials, MUDH advisors, UN-HABITAT staff, and members of neighborhood communities. Among the key outputs of such interviews were to gain good understanding of the different types of occupations of informal houses that are prevalent in the city and also to measure the level of tenure insecurity that is felt by inhabitants of informal settlements. The team also conducted desk research to understand existing legal framework that pertains to property rights.

During the second stage of conducting the preliminary assessment, the team narrowed down its areas of focus. The team focused on district 1, district 3, district 6, district 7, district 8, and district 13. Conducting a deeper assessment of these areas was necessary for selecting the project's pilot areas for the first year. The assessment was conducted through interviews with community members, members of neighborhood organizations, district officials, judges of district courts, and relevant NGOs and international organizations. This phase of the team's assessment enabled us:

- 1) to classify the different types of tenure issues that prevail in different informal settlements,
- 2) to understand the existence or non-existence of governmental response or non-governmental intervention in regard to issues of tenure insecurity,
- 3) to understand the level of cooperation that the project can obtain from the district offices that are responsible for administering the informal settlements,
- 4) to understand the level of cooperation that the project can receive from the target communities, and
- 5) To understand the feasibility of developing and testing a method by which to improve tenure security in informal areas in an integrated way.

The land titling component of the project involves several activities, including rationalization or improving of legal and administrative procedures, mapping and

surveying, reorganization of data management and record-keeping. The land titling part of the project aims at improving tenure security in areas where there exists a cloudy legal situation or tenure security is lacking. In the Afghan context, achieving this goal is going to be a huge task. Over the long years of armed conflict, the collapse of the land administration system has given rise to complex problems pertaining to property rights. Thus, focusing on a pilot area is the most practical approach for the project.

Based on the general understanding of the situation that we gained from our assessment of the above mentioned districts and the criteria that we subsequently determined for pilot selection, the Titling Team has selected two neighborhoods in District 7. A third pilot would have been a neighborhood in District 6. The obvious advantage for working in one neighborhood in district 6 would have been the existence of an already organized community development council that has been engaged in ongoing upgrading of physical infrastructure project. However, the third pilot was selected as a compromise between the project and the Municipality of Kabul. In our first meeting with the Mayor of Kabul, the Mayor suggested that we start our work in District 13 and the project had to give weight to the political will that is relevant to our pilot selection.

Given the complexity of the legal, administrative, and technical issues in the implementation of the land titling component, the project will develop, test, and implement strategies to resolve titling issues in select pilot areas. These strategies will be designed in a way that they will have wider applicability throughout Afghanistan. Although the focus of the Titling Team is on the pilot areas, simultaneously, it is imperative that a methodical and systematic study be conducted in other districts in Kabul and other provinces so that the project will be able to frame a method which will have a wider applicability in solving the tenure problem in urban Afghanistan. Blending the pilot approach with a wider assessment approach will thus enable the project to propose more appropriate solutions to the varied legal situations of informal settlers.

Due to the varied nature of the legal situations that exist in informal settlements, it is difficult to contemplate a one-fit-for-all type of standard solution to the different legal situations. There may be a need for a legislative measure that treats the cases of legitimate de facto owners, land grabbers, those who bought land from land grabbers in good or bad faith, the squatters and others in a different but coherently justified manner.

I. Emergence and growth of informal settlement in Kabul: an Overview

The causes and adverse outcomes of informal settlements in Kabul manifest themselves in a variety of ways. A series of social disruptions in the country led to waves of displacement and migration. While the recent war that took place from 1978 - 2001 caused waves of rural-urban migration, the emergence of informal settlement dates back to the early history of the city. However, the breakdown of social order caused by the war led to the growth of illegal urban settlement in the capital city to the level where it is at the present. The collapse or inability of the formal sector to provide the public with land or houses was one of the main factors that contributed to the growth of informal settlements in Kabul.

The turmoil that ensued from the war enormously impacted individual as well as collective property and human rights. The new urban settlers' mode of land acquisition has surfaced in varied ways. While some of the settlers of informal areas built houses on land they bought from "traditional owners", others invaded public land to build houses. Still other powerful elements grabbed large areas of land and redistributed them for their personal gain. In all cases, there has been a risk of either eviction or violence or both involved.

At the moment, the informal settlements in Kabul accommodate about sixty-five percent of the city's estimated population of 3.6 million. While it is not difficult to understand the causes that led to the emergence and growth of informal settlements in Kabul, considering the social, political, physical and legal implications of informal urban settlements require a thorough study and deep understanding of related issues. This report provides basic information and preliminary analysis of the social, political, and legal implications of informal settlements. On the legal plane, the issues of property rights, especially titling will be emphasized. It will also discuss governmental as well as non-governmental efforts to dealing with informal settlements and bring them to the legal frame.

II. Definition and Typology of Informal Settlements in Kabul

Illegal settlements have been defined differently by different scholars and practitioners in the field. In the context of Kabul, informal settlements are houses built (a) in violation of the master plan of Kabul, and (b) without meeting formal requirements for access to land. In official circles, the informal settlements in Kabul are often divided broadly into two categories: (1) those settlements built before the eruption of the last armed conflict in Afghanistan in 1978, and (2) settlements with houses built after the eruption of the last armed conflict in the country.

In the context of addressing tenure issues in informal settlements the above classification is of little help because it totally disregards the varying legal sub-divisions of occupants of informal properties. Therefore, classifying settlements with respect to tenure arrangements is imperative for appropriately addressing the specific land tenure problems that are prevalent in different types of informal settlements. Based on the mode of land acquisition, four broad types of informal settlement can be identified in the unplanned areas of Kabul: squatter settlements on public lands; settlements where most houses were built on privately owned land; settlements where most houses were built on grabbed land or land bought from land grabbers; and settlements where there is a murky legal situation.

1. Squatter Settlements

The relative physical security that Kabul offered during the long years of armed conflict induced many internally displaced persons to encroach upon public land and build homes, mostly on the hillsides that run through parts of the city. While once these hills were almost bare, they have grown into informal settlements and are accommodating

thousands of households. Moreover, in other plain areas many returnees and internally displaced people have lately built houses on readily available public land without meeting the requirements for lawful access to land. This category of squatters settled in different parts of Kabul mainly in search of better opportunity and access to better social services.

Squatter settlements are by far the most prevalent type of informal settlements in Kabul. Almost all squatter settlements in Kabul have occurred on public lands. According to the Civil Code of Afghanistan, public land constitutes any land that is not privately owned by individuals and land that is allocated for public utility (Art 481). Article 482 of specifically describes public property as: 1) movable and immovable property of the state, 2) movable and immovable property of legal persons, 3) movable and immovable properties which have been allocated for public interests, and 4) movable and immovable properties that are recognized as public property as provided by law.

The legal status of squatters may be examined in relation to the concept of *zameen bayer*¹ or barren land, which is embodied in the Afghan legal system. Pursuant to article 1992 of the Civil Code, barren land that has no owner shall be deemed to be the property of those who have acquired it based on government permission. The person who makes use of the land shall be considered the owner. However, government permission for the acquisition is *sine qua non* for acquiring ownership right over the property. Otherwise, any squatted upon unused public land would not qualify as barren land.

2. Informal houses built on de facto private land

Informal houses built on de facto *privately-owned land* constitute a significant portion of dwellings in the unplanned areas of the city. But what do we mean by privately-owned land? According to article 7 of the 2003 Presidential Decree of the Transitional Islamic State of Afghanistan Issue No 83, private lands are lands on which ownership of individuals have been proven legally. According to this article, private property shall be proven by valid legal document. Similarly article 481 of the Civil Code defines private property as property owned by individuals.

In this report, the terms private property and privately-owned land are loosely used to denote *de facto* and *de jure* individual ownership of immovable property. Strictly speaking, de facto owners would be more appropriately referred to as ‘adverse possessors.’ Nevertheless, in this report, the term privately-owned land means all areas of land that are claimed by individuals based on customary deed, traditional ownership, or formal ownership. A preliminary survey of informal settlements in Kabul discloses that significant number of settlers in the plain areas of the city’s informal settlements hold customary deeds for their property. Settlers who hold customary deeds for their property are people who acquired *de facto* ownership of their land through purchase from customary or traditional owners of land. The customary or traditional owners of land are the organic owners of land that were part of villages later urbanized and formed part of the city.

¹ In Dari, *Zameen Bayer* literally means uncultivated or unutilized land.

3. Settlements on grabbed land or land distributed by land grabbers

Grabbing of private and public land is a phenomenon that is intricately linked to the history of the country's conflict. This phenomenon has become one of the worst and complex social, legal, and political problems surrounding property right. According to many accounts, the problem of appropriation of large areas of land by powerful armed men is a phenomenon that emerged after the fall of the communist government in 1992. The land grabbers have appropriated land not only to build houses for themselves but also to distribute the land they grabbed for consideration. Unlike ordinary squatters land grabbers normally appropriate a large size of land that is way larger than they need to build a personal house to accommodate their own family.

As it stands now, the question of land grabbing appears to be primarily a political problem. Disarming of armed militias is required before addressing this problem in any meaningful way. This in turn will presuppose consolidation of state power and political will on the part of the government to protect public land from land grabbers. Any legislative measure that aims at addressing the question of land appropriation should be accompanied or preceded by the aforementioned requirements.

There are a series of laws issued to prohibit grabbing of land. Article 24 of Chapter III of the Decree on Distribution and Sale of Land (OG No, 794 of 25/6/1421 (2000) provides that any appropriated state land shall be restituted and the perpetrator punished in accordance with the rules of sharia. Moreover, the Decree on Housing Affairs (OG No, 794 of 25/6/1421 (2000) prohibits the usurpation of state land. According to article 13 of this decree – which was issued by the Taliban – the perpetrator shall be criminally prosecuted in the sharia court. Although the legislative status of these decrees is not clear, there is a recent decree that provides the prohibition of appropriating state land.²

4. Occupants with murky legal situation

Occupants of houses with cloudy legal situation can be broadly divided into two categories. The first category constitutes *de facto* owners of property who have bought land or house from legal owners but did not fulfill required legal formalities to formalize ownership. The transaction was legal but the legal formalities required to obtain legal deed from the competent court were not followed through. The current procedure is perceived by many Afghans lengthy, too costly, and riddled with corrupt practices. One or several of these reasons cause people to go around the legal process.

For example, high transaction taxes discourage people from meeting the legal requirements. In the process of property conveyance, the buyer and/or seller – depending on their agreement – will have to pay 1% of the estimated value of the property to the Revenue Collection Office of the Ministry of Finance (*mustofiat*), 5% transfer tax to the district court (or 6% when the value of the property is estimated to exceed one million Afghani), and 1% to the Municipality. These taxes are widely regarded as exorbitant and

² Decree of Hamid Karzai the President of TISA on identification of grabbed state land in Deh Sabz Wuloswali of Kabul province and registering to urban project for the distribution to homeless people (22/4/1383 – (12/07/2004).

unfair. Therefore, it is not uncommon that a buyer and seller of a property to conclude a customary sales agreement to avoid paying taxes and fees associated with property transaction.

Corruption is another factor that discourages both buyers and sellers of property from meeting the legal formality of property conveyance. Unlawful fees that are associated with the web of administrative and judicial processes of property transfer are as equally discouraging as the high legal transaction costs of formal sales of land and houses in the city. Besides the legal and unlawful exorbitant costs of transaction, the inefficient court system and bureaucracy make the transfer process too lengthy for buyers and sellers to follow the formal property transfer procedure.

Traditional norms also dictate the mode of property transaction opted for by a buyer and seller. In many instances, buyers and sellers conclude customary agreements based on good faith and traditional norm and disregard the need to formalize the sales transaction in a competent court. Many Afghans perceive that customary deed suffices to prove ownership of their property, especially when the original owner hold formal document.

The second category of occupants of property with cloudy legal status constitutes traditional owners of land. These are individuals who inherited land that their ascendants occupied for more than fifty years. Most of these areas of land were originally located in villages that were later urbanized and incorporated in the city. The original owners were either individuals who received land grants from the king of the time or others who were the original settlers of the land or their survivors who peacefully occupied the land for many generations. The original owners of these areas of land were organic who legitimately settled at the time.

However, because of drought, series of social changes, urbanization and influence of market forces, the agricultural land that belonged to these villages were informally sold and transformed into urban settlements. Some of the former owners of these village lands held formal deeds. However, a large area of land that was owned based on a legal title deed was sub-divided into many plots and sold or resold to many individuals. Many of the purchasers of these lands hold customary deed.

III. Physical and Social problems

The physical and social problems that accompany informal settlements are extraordinarily challenging to the inhabitants of these areas. The unplanned nature and proximity of the houses to each other create problems relating to footpath and access to road. Essential services such as water and electricity are either underprovided or not provided at all in informal settlements in Kabul. Especially, the lack of water services in informal settlements that are located on the hillsides of the city cause extreme hardships to the inhabitants. Inhabitants of these areas have to buy water at exorbitant price from the plain areas and carry it to their homes through the difficult terrain of the hillsides. Sewage services are lacking in all informal settlements in Kabul. The environment

including shallow wells used for drinking water is polluted by human waste, which threatens the health of residents of informal settlements.

IV. Preliminary Assessment of Informal Settlements: Five Case Studies

1. District 7

Historically, District 7 has its origins on farming communities. The district is located in the southern part of the city. It borders to the north with districts 1 and 3 and the Kabul River, to the east with districts 1, 8, and 20, to the south with district 20, and to the west with district 6. District 7 covers an area of 32.8 square kilometers.

The original settlement area in this district is the area customarily known as the Char-Dehi, which literally means four great villages. According to neighborhood elders, many decades back, most parts of Char-Dehi were covered by forests. The area was also sanctuary to many species of wild life. Many of the original settlers of the Char-Dehi initially came from different parts of the country and foreign lands. Some of the areas are still named after the roots of the original settlers. For example, the area that the Hindus settled in is still known as Indaki, which is shortened overtime from the original name Hindooki.

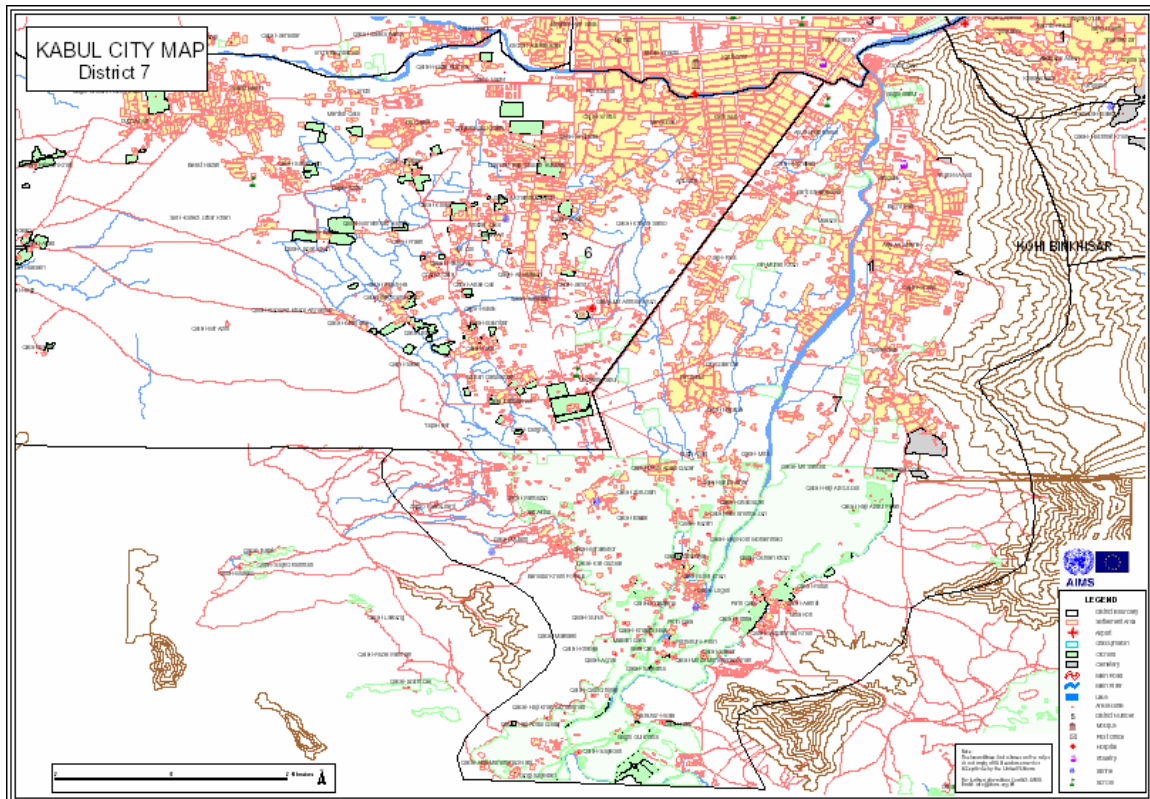
According to long time inhabitants of this district there has been human settlement in this district for at least 150 years. Almost all the houses are unplanned. Two neighborhoods (CDC number 1 and CDC number 2), which are selected as the project's pilot areas, can provide examples of the conditions of informal settlements in this district. CDC number 1 is located between Jangalak Road and Waisal Abad Road. CDC number two is located between Chelstone road and Itifahaq and Sangi mosques.

At present there are a total of 456 houses in the two neighborhoods, consisting of 214 in CDC number 1 and 242 in CDC number 2. The total areas of CDC number 1 and CDC number 2 are approximately 175,000 square meters and 225,000 square meters respectively. Most of the houses in these neighborhoods were built on de facto privately-owned land. The majority of the current inhabitants bought their land from the heirs of the original settlers of the area who are considered as traditional owners of the land in the settlement areas. While most of the households in these communities hold customary deed for their immovable properties, very few claim to have legal titles.

There are organized community development councils (both men and women *shuras*) that have been working on community development activities. These CDCs were initially mobilized and organized through the help of UN-HABITAT. The *shuras* have been instrumental in working with UN-HABITAT to improve the physical infrastructure of the areas. In collaboration with UN-HABITAT they have been working to improve the communities' access to roads and footpaths since these improvements were ranked highest by the *shuras*. They have also constructed culverts and side-ditches. While the communities have already accomplished significant upgrading of physical infrastructure,

they still face lack of essential services such as potable water, electricity, and sewage systems.

There were instances where upgrading of physical infrastructure such as footpaths and roads, the unplanned nature and proximity of the houses to each other required readjustment of individual boundaries. The communities were able to persuade individual owners to give up part of their land for the common good of the community. The *shuras* were instrumental in persuading individual owners of land to give up part of their holding to the extent necessary to improve footpaths or road access.



2. District 13

The district was officially established in 2003. The district, which is located in the western part of the city, borders to the north with Chamcha-Must River, District 6 in the East, Kofi Qurugh in the south and west. The district covers an area of 46.6 square kilometers. There is no census for the population of the district. However, about 10,000 household are registered in the district office.

About 100 years ago, there were very few houses in the district. The area was originally inhabited by the extended families of few notables such as Sultan Jahn, Ghonai, Malik Yonus, Rais Jabar Khan, Ghulam Nabi Khan. The descendants of these original settlers still inhabit parts of the district. During the last forty years, a large number of people from the central part of Afghanistan settled in the district. Low cost of land, tribal or religious

affiliation, and better opportunities in the city were among the main factors that attracted the later group to settle in the district.

During the Taliban very few people lived in the district. Most of the current inhabitants fled Afghanistan for neighboring countries in search of safe haven. After the new government came to power, many former refugees, mainly from the Hazara ethnic group, returned to the district and bought land from individuals. Most bought land from customary owners. Others returned to the houses that they abandoned during the war.

Most people who have settled in the district hold customary deeds because they built houses on land that they bought from individuals. Others who inherited immovable property from their ascendants do not have any kind of document to prove their ownership. Only approximately 2% of the inhabitants hold legal deed for their property. The houses were built in unplanned fashion. The builders of the houses gave no attention to essential housing infrastructure, such as sewage system, roads etc.

Like in all other informal settlements in the city, basic services are lacking in the district. According to the President of the district, the main problems of the area's inhabitants are lack of potable water, waste disposal and treatment, lack of access to health care and educational facilities, poor access to roads, and lack of children play ground. Children and women bear the brunt of the problems relating to lack of basic services. For example, there is no maternity care facility in the area. Nor is there any playground for children or the youth in the area.

The area that we have identified as our pilot in the district is located in the area that is locally known as Deh-Qabil. The settlement is at least fifty years old. Originally the area was inhabited by agriculturist settlers. There were also members of the *Kuchis* (nomads) who were granted large areas of land to settle in the area. The descendants of the original settlers are still residing in the area. There are also other settlers in the area who have built houses on land that they bought from the original settlers. According to the district 13 office, most owners of the houses hold customary deeds.

There has not been any intervention to upgrade the physical infrastructure of the district. There has not been any governmental or non-governmental response to improve tenure insecurity in the district either.

3. District 8

People with diverse ethnic backgrounds inhabit district 8. About 45% of the districts residents are Pashtuns, 35% Tajik, and the rest come from the Hazara, Turkman, Uzbek and other ethnic groups. The district, which consists of 22 neighborhoods, is located in southeastern part of Kabul. It has an area of 48.7 square kilometers. The district is bordered with District 16 and 1 to the north, with District 22 to the east, with 22 and 20 to the south, and with District 7 to the west. The district's population is approximately 215,000.

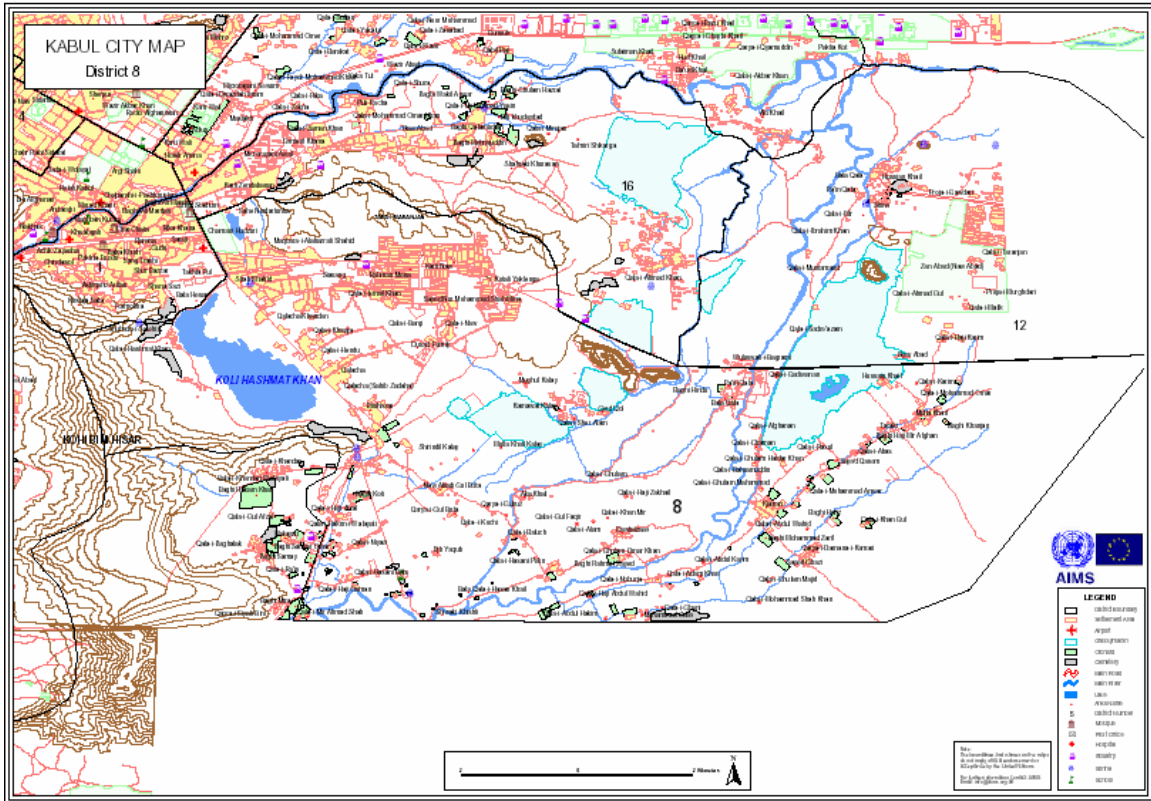
Most houses are structurally unplanned and legally informal. While about 9390 houses are formally built, about 16,360 houses are considered informal. The formal houses were mostly built about 30 years back. Most of the informal houses are located in the hillsides of Dasto-Khail, Tapa-e-Logariha, and Tapa-e-Said Noor Mohamadsha Mina. The main social and physical problems of the people are related to lack of paved or graveled roads, streets, and lanes, potable water, sewage, and ditches.

Contrasting processes shaped the informal settlements in the district. The construction of informal houses in the district began in 1968. Initially, construction of houses in the district's informal settlements took a gradual and step-by-step process. At the onset, the settlers of informal areas started to live in tents. Gradually, most of the settlers constructed one or two rooms. Finally, most built surrounding walls for their houses at a later time.

On the hillsides of Said Noor Mohammad Sha Mina and Zeri Makhzan, from 1984 to 1988, hundreds of people appropriated public land and built houses. However, most of the informal houses at the slopes of the mountains were built during the reign of President Najibullah. In 1992, many people fled their provinces of origin in pursuit of safe haven in Kabul and settled at the slopes of the mountains in the district. Credible accounts indicate that the government of Dr Najibullah tacitly encouraged the informal construction of houses on the slopes of the mountains in the district. The government's tacit encouragement was based on political reasons. First, the government was interested in attracting residents of areas controlled by the Mujahedeen to the capital with the aim of drying up the pool of potential recruits of the opposition. Second, the government regarded these settlers as vehicles of political support. Most of the heads of household joined the government's civil service hierarchies.

The invasion of public land in this area intensified in 2001 when powerful armed men invaded a large area of land including a 1000 square meters area of land that belonged to the Ministry of Defense. The practice of land grabbing by powerful individuals resurfaced on a massive scale in 2003 and 2004. In the northern part of Said Noor Mohammad Sha-Mina's road about 900 houses were built. This time around the purpose of appropriating public land and building of houses took a different dimension. The land grabbers built houses to sell them through the informal real estate market.

The type of property right document that the households in this district hold varies. Most of the people who live in the formal area hold formal deeds. For example, in the Qala-Cha area there about 1200 principal households and out of this about 85% hold formal deed for their property. The remaining principal households either have customary deed or no document at all. In the area of Shohadahi-Saliheen there are about 1300 houses and 60% of the owners have formal deeds. The rest have no document to support their ownership. In the areas of Bini-Hesar and the Juma Khan there are about 1100 and 700 houses respectively. The people in the informal settlements on the hillsides do not have any document for their houses.



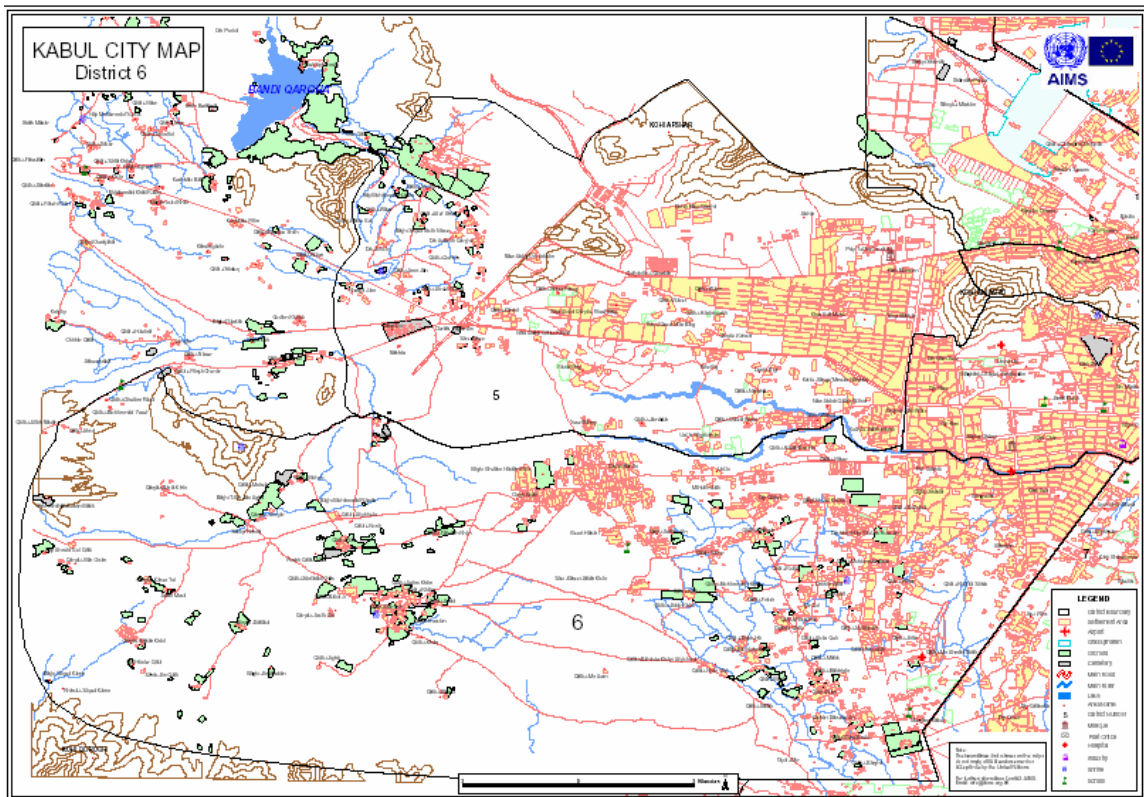
4. District 6

District 6, which has an area of about 48.7 square kilometers, is located in the South Western part of Kabul. The district borders with Chamcha Must River to the north, to the east with Darul Aman Road and with District 7, to the south with Tapa-i-Tajbeg and Kohi Qurokh and with District 13 to the west. The settlement history of the district dates back at least to 1919, when King Amanullah came to power. The first settlement was formed by migrants from other provinces who came to Kabul for various reasons. These first settlers formed farming communities in the district. Over the last fifty-five years, new settlers continued to build houses mainly on land bought from the original settlers.

More people started to settle in the district starting from 1978 due to political crisis that prevailed in different parts of the country and the relative security that Kabul offered. The construction of informal houses mainly on land bought from private individuals persisted until the Taliban came to power. During the Taliban the construction of informal houses subsided.

However, after the fall of the Taliban many people from other provinces and returnees from other countries squatted on public land and settled on the hillsides located in the district. The causes for this massive settlement varied from one case to another. However, most squatters came to Kabul in search of better opportunity and better access to basic services such as health care facility, and schools for their children.

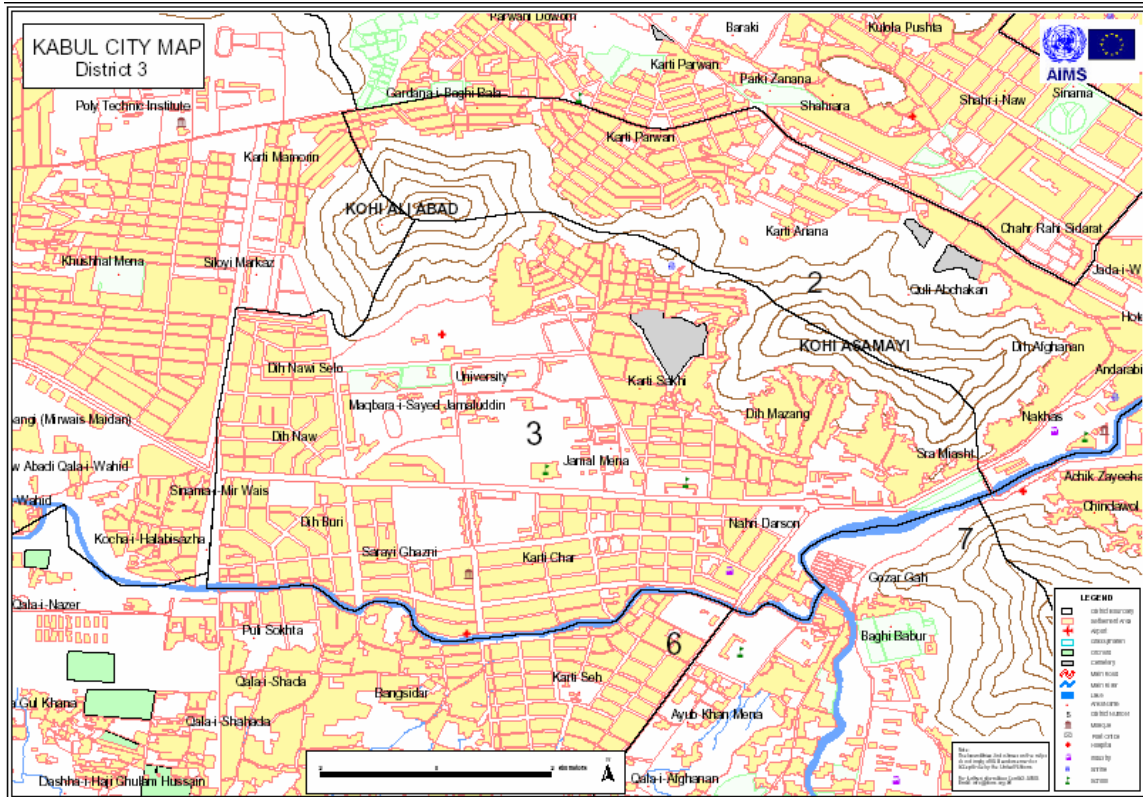
The residential areas in district 6 consist of both formal and informal settlements. While the formal houses, which are located in Karta-e-Say, constitute about 20% of all settlements in the district, 80% of the houses are informal. Most of the people in the formal settlement bought their land either from the Municipality or from individual owners. This category of owners has formal deed for their property. While very few owners of property in the informal settlements have obtained formal deeds through the competent district court, most of the principal households in the informal settlements hold customary deed. Still there are few others who do not have any document for their property.



5. District 3

District 3 is composed of formal and informal settlements. Formal settlements emerged in the district about 85 years ago. Formal urban residential houses were initially encouraged in this area by King Amanullah Khan's administration. Subsequently, formal settlements were expanded during King Zahir's era. During those times, the Municipality of Kabul distributed land primarily to people who did not own any house. At the same time, traditional owners of land were also allowed to convert their agricultural land into urban land and sell it. Engineers of Kabul Municipality provided assistance to such people to prepare detailed plan of their land before disposing it for construction of residential houses.

Informal settlements emerged in the district about the same time when formal settlements emerged. Around 1920 some people started to build houses on the hillsides located in the district. Since then, there have been instances of constructing informal houses without the permission of pertinent authorities. However, it was after 1992, especially after the fall of the Taliban and establishment of the current government, that most of the informal houses have been built.



V. Pilot areas

The land titling component of the LTERA project involves several activities, including rationalization or improving of legal and administrative procedures of property titling, mapping and surveying of buildings, streets and paths, and at a later stage of property boundaries, reorganization of data management and record-keeping. The land titling part of the project aims at improving tenure security in areas where there exists a cloudy legal situation or tenure security is lacking. In the Afghan context, achieving this goal will be a huge task. Over the long years of armed conflict, the collapse of the land management system gave rise to complex problems pertaining to property ownership and land titling.

Given the complexity of the legal, administrative, and technical issues in the implementation of the land titling component, the project will develop, test, and implement strategies to resolve titling issues in select pilot areas. These strategies will be designed in a way that they will have wider applicability throughout Afghanistan.

According to criteria that were determined for selecting pilot areas, the titling team in consultation with the mapping team has selected two neighborhoods in district 7, i.e., CDC 1 and CDC 2, and a pilot area in the *Deh-Qabil* area of district 13. According to the criteria that we set for selecting pilot areas, the pilot area in which the Project would implement its objectives during the first year should have the following illustrative characteristics:

- The competent government authorities approve the project to work in the particular pilot area;
- The pilot area is suitable to address tenure problems in a way that social cohesion and community participation are sufficiently promoted during the implementation of the project objectives;
- The pilot area is suitable to address the issues of tenure insecurity and upgrading of physical infrastructure in an integrated fashion because a community based program for upgrading physical infrastructure is or will be in place in the pilot area;
- There is a cooperative district office that supports the projects efforts for improving tenure security in the pilot area;
- There is an already organized community development council that supports the project's objectives for improving tenure insecurity in the pilot area;
- There is not a substantial number of potential land disputes that involve the question of land grabbing by powerful people; and
- There is existing information on large scale maps (cadastral and topographic) for the pilot area.

1. District 7 (CDC numbers 1 and 2)

A. Approval of competent government authorities.

The municipality and the Presidents of districts 7 have approved our titling project. The fact that we have been able to build political will and support of the relevant authorities to work in district 7 is one of the most important points that we considered in proposing the selection of two neighborhoods in this district. We have been discussing and establishing close relationship with the district office, CDC No 1 and CDC No 2, UN-HABITAT relevant staff, and the district court of district 7. This effort has been successful.

B. Promotion of social cohesion and community participation

In post conflict or war-torn societies, the existence or non-existence of community cohesion can be a determinative factor for the success or failure of titling project such as ours. As stated earlier, community participation is essential for the successful implementation of our project. Community cohesion is a sine qua non for meaningful and effective community participation. Under the Afghan circumstance, the community cohesion in the two neighborhoods is impressive.



Men and Women Shuras in CDC- 1& 2, pilot project in District-7

C. Integrating the issues of tenure and basic services

This criterion has direct link with the method of addressing titling issues in the pilot areas that the project has to adapt. Generally speaking, there are two competing approaches of regularization/legalization. The first approach emphasizes the granting of ownership titles at an entire settlement level. This approach should be weighed against existing legal framework, government policy, and the views of the relevant major actors within the government. Moreover, the condition of the target settlements physical infrastructure should be taken into account. In settlements where basic services are lacking, this approach may adversely affect community cohesion and social links, and cause displacement processes through market eviction.

The second approach emphasizes on improving the security of tenure. Although not excluded, granting of full ownership title does not come as a priority. These approach favors addressing the questions of tenure insecurity and problems emanating from the lack of essential services in an integrated fashion. In regard to tenure issues, the approach advances the method of step-by-step improving of tenure security, which can eventually lead to full legalization of property rights. The primary challenge, according to this method, is to work for protective legal and administrative measures against forced eviction.

In the two neighborhoods that we have selected as our pilots, there is lack of basic services. There is lack of sewage system, potable water and electricity. Most of the houses are built in close proximity and thus improving footpaths and road access might require readjustment of boundaries. This in turn requires negotiations and compromises between the community and individuals with a right over a given property. Addressing the tenure insecurity issue with the issue of physical infrastructure in an integrated manner will be imperative under the circumstances of these pilot areas. It will be advantageous for the Project to collaborate with the *shuras*, NGOs and UN-HABITAT to address the issues of tenure and basic services in an integrated mode and based on community action planning.

D. Existence of cooperative district office

We have established a good working relationship with the President and engineers of the district office. These officials understand and support our project.

E. Existence of organized community councils

Both neighborhoods have organized community development councils with good track records.

F. The question of land grabbing

According to the preliminary survey that the titling team has conducted thus far, the question of land grabbing is non-existent in both CDC's.

G. Information on maps

There are old cadastral maps for both pilot areas. According to the mapping team, we can start working with the mapping information that we have at hand.

2. District 13 (*Deh-Qabil* area)

A. *Approval of competent government authorities.*

The Municipality and the President of district 13 have approved our titling project. The initial idea was to start working in neighborhoods that UN-Habitat has been working in, although we also made preliminary assessments outside these areas. The obvious advantage for developing and testing methods of improving tenure security in the districts 6, 7, and 8 is that we would be able to work with already mobilized and organized communities. This is very important for carrying out all the components of the titling work.

Nevertheless, the overriding factor that we considered in selecting a pilot in district 13 was the municipality's suggestion that we select a pilot in District 13. Selecting a pilot

area in this district was instrumental in obtaining approval for all our pilots. UN-HABITAT has not worked in this District.

B. Promotion of social cohesion and community participation

Although district 13 is dominantly inhabited by people who belong to one ethnic group, the *Deh-Qabil* area in which our pilot is located is inhabited by people from different ethnic groups. According to the district office, there is a harmonious relationship between the members of the different ethnic groups. There is a good potential for promoting social cohesion and community participation in the area.

C. Integrating the issues of tenure and basic services

In addressing the tenure issue in the area working in partnership with communities is imperative. It is also imperative that the Project addresses the tenure issue in conjunction with the problem of basic services in an integrated way. The area that we have selected as a pilot lacks essential services such as sewage system, electricity and potable water. The physical infrastructure is in a very poor condition. Thus addressing the issues of tenure and basic services in an integrating way is a realistic approach for improving tenure security in this area because it would facilitate the integration of the informal area into the sphere of the formal planning of the city.

The team has proposed to partner with a local NGO that would help mobilize and organize community development council. The NGO would also be responsible for working with the community to address the issue of basic services or physical infrastructure. The team has identified a local NGO with solid experience in working with communities to upgrade physical infrastructure.

D. Existence of cooperative district office

We have established a good working relationship with the President of the district office and his colleagues.

E. Existence of organized community councils

There is no organized community council in the area. There has not been any intervention to help mobilize the community to address issues of tenure or physical infrastructure. However, many residents of district 13 are aware of the community works that the Community Development Councils in the adjacent District 6 have been undertaking. This would make it easier to organize community councils who would partner with the project in addressing the tenure issues in their communities.

F. The question of land grabbing

According to the preliminary survey conducted by the titling team, the question of land grabbing is non-existent in the *Deh-Qabil* area.

G. Information on maps

There is no cadastral map for the pilot area. However, according to the mapping team, we can start working with the mapping information that we have at hand.

VI. Government Policy or Strategy

The government has not yet coherently articulated its policy on urban settlements. Under the current system, designing policy on urban development and housing is the responsibility of the Ministry of Urban Development and Housing. Implementing the policies adopted by the MUDH is the functional sphere of the Municipalities. However, this division of responsibilities does not appear to be strictly observed. The Municipality asserts its power of adopting policies on urban development causing *de facto* overlap of responsibility with the MUDH. Regarding informal settlements, it appears that there are contradictory policies adopted by the two government organs.

According to the National Urban Program Consolidated Strategy document prepared by MUDH on August 29, 2004, the National Urban Program will focus on six sub-programs to achieve the vision of the Ministry with respect to urban development. One of the six sub-programs mentioned in the document is community based upgrading of conditions of households inhabiting in informal areas. The document emphasizes community-based upgrading of infrastructure and services in informal settlements. This policy was on several occasions confirmed to us by several officials and advisors of the MUDH.

However, there are diverse and opposing views regarding informal settlements within the Municipality of Kabul. Several heads of department in the Municipality echo the MUDH's policy of upgrading the physical infrastructure and services in informal settlements. In our discussion with Mr. Ali Hassan, the President of Property Department, he informed us that he is a member of the *supreme commission for developing city plan*, which was operating under the supervision of the Ministry of Urban Development and Housing. He said that during the last few months the *commission* and the Government have placed the question of informal settlement on top of their agenda. According to him, the general view at the moment is not to demolish houses located in informal settlements but to find ways to address the property rights of the residents. He said demolishing houses in informal settlements is not an option because the city does not have the resources to relocate a significant portion of the city's residents. However, it appears that the Municipality and other concerned authorities have not yet formed clear views as to *how* to address the issue of tenure security in informal settlements.

Mr. Ali Hassan's view is shared by Mr. Khalili, the Vice President of Afghanistan who is also the former Chairman of the Supreme Commission on Urban Development. In a discussion with the Vice President, he said that his Commission has strived to alleviate the problems of basic services in informal areas inhabited by the poor. According to the Vice President, the Commission tried to address the acute housing problems that have been prevalent in many urban areas in Afghanistan. He said that the Commission

proposed detail urban development plans for Kabul and other major cities. The Vice President believes that the Master Plan of Kabul that envisaged a population of 1.8 million can not be responsive to current needs of the cities' inhabitants. Further, he said that his Commission tried to address the question of land grabbing and fraudulent property deeds. However, the Vice President lamented that the government could do very little to implement the Commission's plan and proposal because of other crucial priorities and financial constraints.

However, the Mayor of Kabul does not generally endorse the MUDH's policy of community-based upgrading of services and physical infrastructure in unplanned areas of the city. In a meeting we had with the Mayor, he said that the city must develop in a planned fashion. The Mayor seems to regard the issue of informal settlement as mere technical or developmental question of urban planning. He believes in a greater amount of intervention and investment by the state in constructing infrastructure – roads, electricity, water services, and sewer systems. Although his policy is not clearly articulated in any government policy document, he is clearly operating in favor of orderly and controlled urbanization model. However, the economic and social feasibility of his vision of urban development may be questionable given the current reality of urban settlement in the city and the financial capacity of the country.

Regarding the question of tenure insecurity in informal settlements, there is no clearly defined national policy at the government level. The two most relevant government bodies – the MUDH and the Municipality of Kabul – do not have coherent and consistent views within and between themselves. There are divergent views in the two government bodies. Even within MUDH, which tends to accept informal settlements as part of the reality in the city, there is no clear policy with respect to the tenure issue. The views of high ranking advisors and officials on the tenure issue are divergent. For example, according to one Advisor of the MUDH, the question of tenure security in urban areas falls outside the functional domain of his Ministry. Another official, however, described the policy of the MUDH as “unclear and in the process of being shaped.” The question of tenure is not mentioned in any official document of the Municipality. However, from our discussion with the Mayor of Kabul it appears that he considers informal settlements as temporary phenomenon that should eventually give way to houses and infrastructure to be constructed according to city plan.

VII. Recognition of Property Rights in Informal Settlements

A mosaic of de facto - and to a very limited extent de jure - recognition of occupancy rights exist in informal settlements in Kabul. The main sources of property rights recognition are: 1) community, and 2) state.

1. Community Recognition

Community recognition provides sense of security in settlements formed in the plain areas of the city before the eruption of the war. Most of these settlements are composed of residents who hold customary deeds. In such neighborhoods de facto ownership or

adverse possession, inheritance, sale, and rental is recognized by communities. There is a collective sense of legitimate occupancy of property that is not found in the recently formed informal settlements.

There is some empirical evidence that mutual recognition of property rights, to a certain extent, mitigates the social and economic problems that normally accompany informal settlements. The problems posed by the informal nature of the settlements are minimal compared to the settlements on the mountains sides of the city and other areas where there is a huge question of land grabbing. De facto owners of informal houses in such neighborhoods seem to have less difficulty to sell or rent their houses. Ironically, informality lowers the transaction costs of rental or sale of houses either. The inability to gain access to credit is not of major importance because the facility for formal loans whether for business expansion or home improvement is virtually non-existent. In any case, formal loans would have been unattractive to many residents of informal settlements since the nature of their earning is largely sporadic.

At a social level, community recognition of property rights reduces the threat of property invasion posed by other potential settlers. Although the potential threat of eviction by the Municipality is always at the back of the informal settler's mind, it is not necessary for adult members of households to stay at home in order to prevent violent invasion of their property by other individuals. In this respect, community recognition serves as the sole safety net.

The argument that lack of formal recognition of property rights discourages investment does not seem to be valid, at least, at the collective neighborhood level. There is empirical evidence that communities in informal settlements in District 6, 7 and 8 were encouraged by UN-HABITAT to make investments on the improvement of physical infrastructure in order to make their neighborhood more habitable. In turn, the collective improvement of physical infrastructure has encouraged individual investment on home improvement.

Nevertheless, community recognition does not give sufficient tenure security to the informal settler. Most informal settlers live with the constant fear of eviction by the Municipality. There is a widely held perception among informal settlement residents that the Municipality has the plan to develop grand-scale infrastructure in unplanned or informal areas, which will require demolishing of large areas of informal settlements.

2. State Recognition

The question of recognition of informal settlements by the state is not always clear and straight forward due to unclear and divergent views floating in relevant government bodies and the non-existence of a coherent policy. State recognition of informal settlements can be broadly divided into two parts. The first may be labeled as administrative or political recognition. Necessarily, the government, through its district offices, administers the informal settlements in the city, although the services provided to these settlements lack consistency. The second type of recognition pertains to formal

recognition of property rights in informal settlements. When it comes to the question of property rights, the government's level of recognition mirrors its incoherent policy.

VIII. Legal documents and Municipality plan that constrain formalization of ownership

The legal framework that is relevant to defining how and what measures can be taken to resolve the problem of tenure insecurity in urban areas can at best be described as incomplete or unclear. The legal framework and political strategy for formalizing property ownership in unplanned areas as well as the legal framework for land adjudication are in a state of flux.

The Constitution of the Islamic Republic of Afghanistan embodies few articles pertaining to property rights. Article 14 of Chapter 1 of the Constitution provides that the state shall take necessary measures to provide housing and land to eligible citizens in accordance with the law. The provision conditions the implementation of this provision on the financial capacity of the state. This Constitutional provision remains a dead wood for two main reasons. First, as it stands now, there is no enabling law that mandates or encourages relevant authorities to formalize informal ownership of immovable property. Second, the financial capacity of the state makes it very difficult to provide housing to all citizens who are in need of decent shelter. However, this Constitutional provision cannot be construed in any way to prohibit the government from adopting an equitable housing and land management policy that takes into account the rights of adverse possessors who have peacefully and legitimately occupied land for a long period of time.

There is however a recent law that constrains efforts directed at formalizing de facto ownerships that are supported by non-formal evidence. Pursuant to article 7 of the 2004 Presidential Decree on Land, ownership of private property may only be proven by legal documents. This law supersedes all previous laws relevant to proving ownership of property rights. Although it is difficult to presume that all customary deeds are legitimate, providing that all ownership of private property can only be established by producing legal deed disregards the reality of existing regime of property ownership. It is a widely known fact that many people are holding fraudulently made customary deeds but this fact should not completely destroy the validity and weight of customary deeds. What appears practical is to establish a standard by which customary deeds could be authenticated under certain conditions.

It is not only legislative documents that are deemed to potentially constrain the regularization or legalization of undocumented property rights. The master plan of Kabul is also a document that constrains the formalization of informal houses. The first Master Plan of Kabul was developed in 1964 with the help of experts from the former Soviet Union. The Master Plan envisaged a population of 800,000 inhabiting in an area covering 23,780 hectares. The first Plan was revised again by experts from the Soviet Union in collaboration with the UNESCO. The revised Master Plan envisaged a city of 1.4

million, covering an area of 29,900 hectares. The third Master Plan was that envisaged a population of two-million was developed in 1978. According to this Master Plan the city would cover an area of 32,330 hectares.

The Municipality's plan was that 1.6 million would live in high rise apartment buildings and the balance of the population in 1-2 story buildings. Some residential areas such as those in Shari Naw, Wazir Akhbar Khan, Qala-e-Fathulah, and Kart-e-Say were to be demolished and 20-25 story buildings built on these areas. About 70 % of the roads envisaged by the Master Plan were constructed. However, due to political problems the implementation of the Master Plan was disrupted. But in the minds of some high ranking Municipality officials and technocrats the master plan and other detailed urban plans that were prepared before 1978 have to be implemented in order to bring the city at a par with other modern cities. This view however fails to consider existing reality including the unavailability of necessary resources needed to solve existing urban settlement problems through housing projects.

In accordance to the third Master Plan, the Municipality of Kabul, in collaboration with the former housing agency (PAMA Institute), planned to prepare a detailed neighborhood plans for residential quarters, commercial centers, and public buildings to meet the needs of the residents of the city. At that time, the municipality's policy was in as much as possible to minimize the need for demolishing of houses in informal settlements in the process of implementing the Master Plan. The Municipality's guideline favored the upgrading of physical infrastructure in informal settlements. However, this plan did not see the light of the day. Subsequently, the Municipality of Kabul has on several instances decided to prepare a core plan for the city. However, there has not been any plan that addresses existing reality of the city. Nevertheless, there is still the tendency to adhere to the Master Plan of the city.

IX. Intervention History

Prior to the preparation of the first Master Plan, unplanned or informal settlement was not regarded as a problematic phenomenon. The first urbanization wisdom for the capital was rooted on the ideas transferred by advisors from the former Soviet Union. In the late 1960s and 1970s different administrations of the country adopted a technocratic project-oriented housing delivery approach. This approach was inspired by a notion that promoted a mass production of Soviet style housing and other low cost public housing. The approach envisaged the demolishing of substandard informal housing and relocation of inhabitants of these areas to designated sites.

Based on a project known as Microrayon, from 1965 – 1987 a large number of building complexes consisting of 8306 apartments were built on a size of 587,715 square meter land. There were also other similar housing projects such as the Sharara residential project, Tahiya-e-Maskan Blocks, Sarandoi (Sharaki) Blocks, Hawaii (air force) Blocks, and the Qargha residential project. A considerable number of apartments were constructed according to the plans of these housing projects. The apartment complexes were built primarily with the objective of providing affordable housing to government

employees who did not own homes. Accordingly, the apartments were distributed to government employees. The apartments were initially rented to government employees. However, later on government policy changed to sell the apartments to eligible government employees on the basis of long term loan that was scheduled to be paid in forty years.

On the economic plane, the rationale behind the advisors plan was that constructing Soviet style low cost houses was the most economically feasible way of solving the urban housing problem in Afghanistan. The Soviet advisors and their local counterparts also aimed at reengineering of social relationship. Accordingly, they advanced the idea of accommodating a large number of households in high rise buildings in order to foster social cohesion and cooperativeness. For example, they prepared a detailed plan to demolish most of the houses located in the affluent areas of Wazir Akbar Khan, Shari-Naw, Qala-e-Fatullah, and Karti-Say. The Soviet advisors and their Afghan counterparts planned to demolish and replace the modern but individualistic dwelling houses with high rise apartments in order to achieve their professed aim of enhanced and more egalitarian social relationship. Thus, the project-oriented housing delivery approach was largely inspired by ideological consideration.

Although some of the housing projects were successfully implemented, other detailed urban plans largely failed to materialize mainly due to social unrest and financial constraints. The Ayub Khan Residential Project provides a good example of a project that came to a halt because of war and financial constraint. The project also provides an example of the Municipalities adherence to the Master Plan and other detailed urban plans that were prepared several decades back in spite of the completely changed reality of urban settlement.

The Ayub Khan project was conceived by the Municipality of Kabul in 1978. The detailed plan of the project was prepared for the area that borders in the east with Deh Murad Khan Road, from west with Darul Amam Road, from the North by Chamcha Must River, and from the south by Darul Amahn Road and Chehlsutoon. The detailed plan for this project covered about 488 hectares of land. The project contained an ambitious specification. Out of the 488 hectares land 226.6 was allocated for residential houses. The remaining specification was as follows:

- Roads and footpaths 66.3 hectares,
- Area for schools 66.3 hectares,
- Cultural and public utilities about 24.3 hectares,
- Kindergarten about 3 hectares,
- Mosque about 1.5 hectares,
- City saloon about 0.9 hectares,
- Public bath about 0.9 hectares,
- Greenery about 28.5 hectares,
- Public park about 14.9 hectares,
- Small parks for residential area about 11.6 hectares, and
- Administration center and central park about 22 hectares.

According to the project's detailed plan, about 81,772 families would settle in this area. However, the implementation of this project has been overtaken by reality-changing events. Over the last two decades, many people built houses and settled in the area. At the moment, save for 6.5 hectares that have been reserved for the construction of a maternity hospital, the project's area has been turned into informal settlement. Although demolishing the houses and implementing of the project appear to be economically too onerous and socially impractical, the Municipality to-date maintains the project as its current plan.

Regarding the issue of tenure insecurity, direct intervention and response on the part of non-governmental or governmental organizations have been virtually non-existent. However, in 2004 UN-HABITAT took the initiative to facilitate communication between the Municipality and some communities in district 6, 7, and 8 to register de facto owners of property on service tax register. Accordingly 6000 de facto homeowners in district 7 registered to receive *safai* tax documents from the Municipality. The district office of the Municipality has issued *kitab-chai safai* (sanitation tax book) to most of the residents.

The aim of this initiative was to persuade the Municipality to provide services to these communities. However, this initiative has not produced the desired level of result in terms of improving tenure security. Psychologically, the 'kitab-chai safai' seems to have created more fear of eviction than security because of a disclaimer written at the bottom of the book that the issuance of the document does not in any way indicate the Municipality's recognition of the informal houses. Further, the perception among the members of these communities is that the Municipality has not reciprocated the payment of sanitation taxes by providing basic sanitation services. Although financial constraint may be attributable to the Municipalities failure to provide essential services in these areas, the dominant and unfavorable view prevailing at the Municipality against upgrading of the conditions of informal settlement is also a factor that often comes into play.

X. Improving tenure security in informal settlements: Competing approaches

Any response to tenure insecurity should take into account the reality on the ground. The nature of informal settlements, the local political setting, necessary spatial arrangements, and the needs and ideas of the communities concerned are among the most important factors that need to be considered.

There are two main competing approaches to improving tenure security in informal settlements. The first approach emphasizes on immediate granting of property titles to de facto owners houses in informal settlements. This approach might be valid in certain circumstances, especially in the relatively affluent and planned areas of Kabul. However, the diverse nature of informal settlements, unavailability of compatible legal and regulatory framework, and insufficiency of human and financial resources to regularize tenure on a large scale make this approach infeasible in the context of Kabul.

The second approach emphasizes on improving the security of tenure on a step-by-step basis. Awarding of the unconditioned ownership of properties is not the exclusive goal; although it is not excluded when appropriate. This approach favors dealing with the issues of tenure insecurity and problems springing from lack of essential services or poor or non-existent physical infrastructure in an integrated way. With respect to tenure issues, the approach advances the method of step-by-step improving of tenure security aiming at achieving the highest property right. According to this approach, the first challenge is to work for protective legal and administrative measures against forced eviction and addressing issues pertaining to environmental concerns and urban planning.

In the case of Kabul, it would be essential to consider the following questions prior to suggesting any method of improving or formalizing tenure. First, when settlements are formalized, does the method provide or at least encourage for the re-organization of the spatial arrangements of the settlement for the development of public services such as drainage, potable water, electricity, roads, and sewage? Does the method prevent future land grabbing by powerful individuals or groups and also encourage the rule of law? Does the approach lower property transaction costs and also increase the value of the property for the individual acquiring the title? Does the measure prevent settlement in environment unsuitable for human habitation? Any method of formalization that does not answer these and other questions relevant to access to credit, investment, and employment opportunities would have a perverse effect.

To appropriately answer the above questions, an in depth study of the nature of and problems caused by informal settlements are imperative. However, from the preliminary study that we have conducted so far, the following arguments can be advanced in favor of a step-by-step integrated method of tenure improvement.

1. Most houses in informal settlements are built in close proximity to each other. Therefore, working on spatial rearrangement prior to formalizing property rights in informal settlements is therefore imperative. Spatial rearrangement can have two interrelated benefits. First, in most neighborhoods where houses are built close to each other, reorganization of spaces become necessary to widen footpath, construct drainage or road. Spatial rearrangement is best handled through intra-community negotiations. Such negotiations are much easier when community members are collectively involved in an effort to formalize their property rights. Second, spatial rearrangement helps to give informal settlements some semblance of a plan which in turn would help to persuade the city municipality to incorporate the neighborhood into its master plan for the city. Pushing for immediate award of freehold titles would adversely affect community cohesion which is important for effective negotiations for special arrangement. Experience shows that formal owners tend to be more reluctant to give up part of their land for the good of the community
2. As indicated earlier, the question of tenure insecurity in informal settlements manifests itself in a variety of ways. The crux of the tenure problem in most informal settlements and the recent history of the country's conflict and shifting social and

power relations are interwoven into each other. As a result of displacement and migration caused by war, there are a significant number of cases where properties that belong to people who fled their homes in pursuit of safe haven in foreign lands were grabbed by others. In most cases the grabbers managed to fraudulently hold either customary or formal deed to prove ownership of the property. Advancing the argument for immediate and across the board award of titles to all occupants of houses in informal settlement at status quo would be counterproductive in terms of resolving outstanding property related disputes. The success or failure of any tenure formalization effort may be determined by the complexity of prevalent types of potential or actual disputes and the effectiveness or ineffectiveness of the mechanisms available to resolve them. In the case of Kabul, there is not a functioning dispute resolution mechanism that has the capacity to effectively tackle the complex types of disputes pertaining to property rights. Given this reality, the step-by-step integrated method would facilitate coordination with any effort directed at putting in place a functioning dispute resolution mechanism that supports formalization of property rights because the approach would enable the government to clarify property rights in gradual and methodical way. The types of disputes prevalent in informal settlements will be discussed separately in this report.

3. Immediate award of title in accordance with predetermined standards may produce land pressure that might result in processes of market eviction. A step-by-step regularization of tenure however would provide communities the opportunity to gradually consolidate their settlements. In the process of regularizing tenure, communities will have the time and opportunity to upgrade the quality of services in their neighborhood. Further, the approach would allow time for both the communities and the Municipal government to consider the question of habitability and the capacity of the city in terms of providing basic services. In districts 7 and 13 working with the communities would enable to facilitate the proper identification of legitimate right-holders, and establishing of appropriate dispute resolution mechanism within communities.

XI. Types of property disputes that are prevalent in Kabul city

As said earlier, the success or failure of any tenure formalization effort may be determined by the complexity of prevalent types of potential or actual disputes and the effectiveness or ineffectiveness of the mechanisms available to resolve them. Land disputes are rampant in Kabul. The relative peace that has reigned after the fall of the Taliban enabled many former refugees and internally displaced people to return back to Kabul. Many returnees fled their homes during the war. Upon return, many discovered that their property rights have been infringed. Corruption, inefficient judicial system, and collapse of government institutions have been the main causes for property disputes. Following is a summary of the prevalent types of property related disputes in the city including in informal settlements.

1. Due to various reasons there is a widespread problem relating to multiple claims of the same plot of land or house. Multiple claims of the same property are mainly

generated as a result of two different scenarios: 1) the same plot of land was allocated to several individuals either by one administration or several administrations; 2) illegal land sales to multiple individuals which is caused due to lack of a functioning land information and record system.

2. Increase in the value of land, which is caused by high market pressures, has also been a source of conflict. During the war, many property transactions took place without strictly following legal procedures. The value of real property has skyrocketed during the last few years causing change of mind on the part of many sellers. Especially when a property that was co-owned by more than one person was sold by only one person without any formal consent from the other joint owners, the sellers find a leeway to challenge the transaction made on account of lack of explicit consent of an interested party.
3. There are property related disputes arising between family members. Siblings who were living together as members of a single family before they left their parents house return back with families of their own. The returnee family members often clash with a member of the family who maintained the property in their absence. In most instances, this type of dispute is handled within the extended family.
4. Non-observance of Municipality regulation by would be legitimate owners of land is another cause for widespread type of dispute in the city. According to current Municipality regulation, a person would obtain a clearance for the highest property right after completion of 50% of the building. In some instances, individuals sell the land allocated to them without complying with this regulation. In such scenarios, a property that could have been owned based on a formal deed would turn into a property that is not formally recognized by the state. When the person who acquired the property in good faith demands for formal deed, a dispute arises due to the legal impossibility of the situation.
5. Fraudulently obtained property deeds also muddy the legal situation of many properties. In some instances, relatives or friends who were asked to look after a given property have fraudulently managed to hold formal or customary deeds. In other instances, individuals who have invaded other person's property have fraudulently produced customary or formal deeds. Corruption and the destruction and disorganized nature of the registration system complicate cases involving fraudulently acquired deeds.

XII. Conclusion and Plan of Action

The problems surrounding property rights in Kabul ought to be seen within the broader urban development framework and justice system. At present, there is no coherent and clear policy on urban land management. The old Master Plan can not be responsive to existing reality and problems. Available dispute resolution

forums are not effective. It is therefore important that the government develops a strategy that characterizes:

1. Drastic reform of the formal land delivery system.
2. Formalizing of property rights and progressive improvement of physical infrastructure. This will require the development of a strategy to have a development plan that takes into account the current reality of the city as opposed to adhering to the outdated Master Plan.
3. Developing of zoning map indicating areas for future expansion of the city.
4. Reform of existing property adjudication system

Plan of Action:

1. Pilot Phase. During Year One of the project the Titling Team will focus its work on three select pilot neighborhoods. The following are the planned activities of the team in the pilot areas.

- a. Legal investigation of the pilot neighborhoods

The legal status of the land where all informal houses are built on will be documented to establish the kind of rights that each de facto property owner holds. This process will be handled in collaboration with community development councils. The legal investigation of the pilot neighborhoods is important to craft policy, legal foundation, and processes of regularization of informal tenure. Further, clarifying tenure through community participation will help in an effort to create new or validate old property records. Clarification of property rights at the pilot level would also help the project to understand the various sources of property claims that are prevalent in informal settlements. Further, this aspect of the Team's work will enable the project to better understand the land market: formal and informal title transfer procedures and processes, taxes related to property and transfer, and roles of various actors. This understanding will be useful in trying to rationalize the legal and administrative titling procedures.

- b. Structured data collecting system

One of the challenging problems that the project's effort at regularization or legalization of informal houses has confronted is the dearth of systematic data on land tenure status. Under the current property record keeping system, there is no accounting of the legal status of the informally settled properties and spatial identification of the settled areas. Due to lack of such information, data on tenure status has to be obtained from the communities and individual occupants through field surveys and interviews. To facilitate the collection of necessary data from our pilot areas in district 7, the Titling Team is in the process of establishing a local

site office in one of our pilot neighborhoods in District 7. The data will be collected in collaboration with community members.

c. Partnership with CRA

In District 13, the Land Titling Team has proposed to work in collaboration with a local NGO - CRA. The reason for working in partnership with a local NGO is twofold. First, it is essential that we partner with a local entity that will help the project in mobilizing communities as well as addressing basic issues relating to social and physical problems in each of our pilot neighborhoods. This is essential in order to garner full community participation in and support for our effort. Also, this will enable us to address the tenure problem in a more appropriate and integrated manner. The second aspect of our partnership relates to local capacity building. The question of tenure insecurity has been an area that has been shunned by governmental and non-governmental organizations. There is virtually no local capacity that can deal with tenure issues. While the primary objective is to obtain necessary help from the NGO so that we develop and test an appropriate method of addressing the tenure issue, the team also intends to involve the local NGO in its tenure related works. This will aim at building the capacity of the NGO to deal with problems of informal settlement in the future in an integrated way.

d. Providing legal assistance to residents

The project has identified prevalent types of potential or actual types of property related disputes. Further, the project has determined actionable types of disputes where the project can provide legal assistance. The project is in the process of identifying residents who qualify for legal assistance.

e. Consensus building

Consensus building on the question of tenure improvement of informal settlements has been an important aspect of the team's work. In a situation where there are divergent views at the government level but no explicit policy, it is imperative that the team engages relevant officials and stakeholders in order to gradually build consensus. Although the team has thus far made satisfactory progress in this regard, this work will continue throughout the pilot phase.

f. Conference

In November of 2005, the project will organize a conference on the question of tenure insecurity in informal settlements. This conference will be participated by relevant government bodies, international organizations, members of communities, and other stakeholders. The output of the conference will be incorporated or considered, as appropriate, in drafting a working document for the regularization of property rights in informal settlements and other areas where tenure security is lacking.

2. Strategic Plan

The project will aim at influencing overall urban development policy with the ultimate aim of clarifying property rights and improving tenure security. To achieve this goal the project will continue to engage relevant authorities and other stakeholders in policy discussions.