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Stuck in the mud

Urban displacement and tenure security
in Kabul's informal settlements

Mohammad Abdoh, Anna Hirsch-Holland

Background paper to the main report

Stuck in the Mud

Urban Displacement and Tenure Security in Kabul's Informal Settlements

Mohammad Abdoh and Anna Hirsch-Holland, Norwegian Refugee Council



Photo 1: One of the informal settlements included in this study. NRC/Enayatullah Azad

EXECUTIVE SUMMARY

This paper seeks to deepen our understanding of the barriers to achieving tenure security¹ and durable solutions for displaced persons living in informal settlements of Kabul. Using a case study analysis of three settlements, the study explores how local power dynamics and interests of influential individuals prolong displacement and its disadvantaging effects, by perpetuating tenure insecurity and frustrating change. This is demonstrated quite clearly by the comparison between the sites explored in this study. In one out of the three sites residents have managed to purchase land with a written document proving their ownership, while in the other two sites residents have little or no tenure security. The research finds a stark difference between these sites: in the former, the residents have been able to build permanent structures, set up a school for their children, and plan for the future; in the latter, the residents are living day-by-day in fear of eviction, prevented from upgrading their shelters, and not enrolling their children in school on the assumption that they may have to leave any day. Without any tenure agreement, residents cannot understand how long they can stay, and live in daily fear of becoming homeless. Tenure security is not just

¹ The Sphere Handbook definition of Security of Tenure is: “is an integral part of the right to adequate housing. It guarantees legal protection against forced eviction, harassment and other threats and enables people to live in their home in security, peace and dignity.” For the purpose of this paper, tenure security is understood to mean that people *feel* safe and do not fear eviction, i.e. they are “secure enough”, even in the absence of full legal protection.

about the ability to meet physical needs (e.g. adequate shelter), but also for psychological peace of mind and a sense of stability to make plans and move on with life.

Unfortunately, the situation of the displaced families living in the second two sites is most typical among the informal settlements of Kabul. This is due in large part to weaknesses of the policy and legal frameworks that are meant to promote durable solutions for the displaced who live in informal settlements – whether by formalising their stay where they are currently living (entailing regularisation of land occupancy, upgrading of settlements, and provision of services), or through relocation to allocated state land. The weakness of the frameworks (and the institutions trying to execute them) allows those who have no interest in seeing them implemented to exploit the ambiguities in the system for their private gain. This gain includes earning substantial income from charging rent to informal settlement residents, speculatively protecting land for potential real estate development or grabbing land from others (including the state) who may hold a claim to it. As such, displaced persons living in informal settlements continue to live under the threat of eviction, and in sub-standard shelter conditions that threaten their life chances and weaken their prospects of becoming economically self-sufficient and productive. They have few of their basic rights upheld, and remain in a perpetual state of displacement, woefully far from any durable solution.

INTRODUCTION AND CONTEXT

In Kabul there are at least 55 informal settlements, ranging in size from dozens to hundreds of dwellings, and accommodating some 55,819 internally displaced people and refugee returnees² in mainly tents or mud brick and tarpaulin shelters. According to a February 2018 multi-agency profiling exercise led by the Kabul Informal Settlements Taskforce (KIS Taskforce)³, 43% of Kabul’s informal settlement residents live in tents, and 44% in mud-brick dwellings. There is significant variety between the settlements not only in terms of size, but also in terms of culture and ethnic composition of inhabitants, length of existence (from 2 to 20 years⁴), and nature of the land ownership on which settlements are located. Besides this variety, there are also two common traits present across almost all these sites: the poor physical conditions of the shelters and infrastructure, and the insecure tenure of the residents. There are many well-intentioned attempts by NGOs, UN agencies, civil society groups, and Afghan civil servants to find solutions to the poor conditions and protracted displacement of the families living in Kabul’s informal settlements, including: programmes to improve shelters and dig wells, provision of education and recreational activities for displaced out-of-school children, and the development of policy frameworks to integrate or resettle displaced households. However, these efforts continue to be thwarted, and displaced families remain stuck in protracted states of displacement, far from a durable solution – a way out of their displacement situation.

A review of the policy context alone is relevant but insufficient for understanding the bottlenecks in achieving tenure security and durable solutions for displaced persons (including IDPs and refugee returnees) living in informal settlements. While a number of potentially game-changing policies and papers have been drafted and (in some cases) approved to upgrade informal settlements (in terms of the physical infrastructure and shelters) or relocate displaced persons, local and national authorities appear unable or unsuccessful in the implementation of such policies. For example, in 2013 the Informal Settlements Upgrading Policy was launched by the Ministry of Urban Development and the Independent Directorate of

² Kabul Informal Settlements Task Force, *Kabul Informal Settlement Profiling*, 2018. Note: the profiling only considered informal settlements accommodating primarily IDPs and refugee returnees, and this is what is referenced by the term ‘informal settlements’ in this paper. However, there are also other ‘informal settlements’ in Kabul, which constitute any area of land which is inhabited informally (without permission), and which is either (a) within a Master Plan area, (b) built after the Master Plan was adopted, or (c) violates the Master Plan in some way (as per the draft Informal Settlements Upgrading Policy). There are larger and more dispersed settlements which accommodate a mixture of host community and protracted IDPs, are generally located on the outskirts of Kabul city, and older than the settlements hosting displaced families within the city. These informal settlements are not included in this study.

³ The Kabul Informal Settlements (KIS) Task Force was formed in 2010, and comprises 15 UN agencies and NGOs. By working collaboratively, the KIS Task Force aims to coordinate and streamline its members’ interventions in Kabul’s informal settlements.

⁴ The KIS Taskforce profiling found that families had been living in these sites for an average of 5.7 years.

Local Governance (IDLG), aiming to upgrade areas in major cities through a combination of tenure regularisation and infrastructure provision and improvement. However, despite receiving technical approval by the Government, the policy has never been presented to Cabinet for approval.⁵ Similarly, the Ministry of Urban Development drafted a White Paper on Tenure Security and Community-Based Upgrading in Kabul in 2006, proposing spatial planning and management; principles and norms for land use; land titling and legislative measures to improve tenure security; and upgrading programmes to improve the existing situation in informal settlements. However, the Government never endorsed the White Paper, and local authorities continue to block many development initiatives that involve upgrading shelters and infrastructure in Kabul's informal settlements.⁶

In addition, the Presidential Decree 305 on land allocation commits to finding and assigning state-owned land to displaced persons (IDPs and returnees), including those currently residing in inner-city informal settlements; however, despite being approved by the president in August 2018, so far no one has been relocated to allocated land under the Decree. Officials from both the Afghanistan Land Authority (ARAZI) and the Central Region Independent Development Authority (CRIDA) confirmed plans to establish townships around Kabul city for refugee returnees, IDPs, and families of martyrs, including those currently residing in informal settlements within the city. Indeed, the focal point from ARAZI suggested that while regularisation of the larger and more dispersed 'informal settlements' located on the outskirts of Kabul city is currently taking place (by issuing occupancy certificates to those who have built permanent homes in the settlements and have lived there for at least 15 years) the same would not apply for the mud-brick and tented settlements hosting displaced families within the city, who would "absolutely be moved".⁷ While all these mentioned initiatives promise 'on paper' to achieve durable solutions for IDPs and returnees, we need to dig deeper and look at the underlying power dynamics and political interests that frustrate and prolong attempts to implement such initiatives.

This paper looks in depth at the status of land ownership and tenure security in three informal settlements in order to understand how these power dynamics and interests intersect to prolong displacement in inadequate and insecure conditions. This qualitative analysis demonstrates that displaced families living in informal settlements live at the mercy of the actual or purported landowners who are renting, selling, or lending land to IDPs and returnees; these landowners exploit the vulnerabilities of displaced families and the weaknesses of legal frameworks in order to further their own interests at the expense of those who have little choice but to accept the conditions forced upon them. Informal settlement residents are denied assurances that they can stay in the sites, prevented from building sustainable shelters and infrastructure, and excluded from municipal services which are frequently not extended to informal settlements. They can end up bearing the brunt of complex competitions for land between local powerbrokers including politicians, businessmen, and local authorities – all of whom can be found vying for influence and real estate opportunities. For example, land grabbing is a recognized problem in Afghanistan, which, according to the 2017 UN Habitat Afghanistan Housing Profile: "is lucrative and [...] not only widespread and closely connected to corruption and dislocation of people, but also creates economic, social, and political instability". The Afghanistan Land Authority (ARAZI) estimates that more than 1.2 million jeribs (240,000 hectares) of land has been grabbed since 2001, which has given rise to a multitude of forged land documents within the court deed registry, as well as through the government land distribution schemes. This has compromised the legitimacy of the state land management system.⁸

Informal settlements can thereby be used to protect business interests on disputed land, to the detriment of displaced families' true tenure security and access to durable solutions. This is not just a problem for the displaced persons residing in the three settlements studied here; the complexities of ambiguous land ownership, power dynamics, and private interests unpacked in this study are indicative of the profound

⁵ UN-Habitat, Afghanistan Housing Profile, 2017, p.27, <https://unhabitat.org/books/afghanistan-housing-profile/>

⁶ UN-Habitat, Afghanistan Housing Profile, 2017, p.28, <https://unhabitat.org/books/afghanistan-housing-profile/>

⁷ ARAZI key informant, interviewed by the authors in October 2018

⁸ UN Habitat 2017 Housing Profile, pp.78-79

challenges that continue to undermine attempts to devise and implement adequate structural changes that would allow durable solutions for displaced families living in Kabul's informal settlements.

RESEARCH OBJECTIVES AND METHODOLOGY

This research employs a mixed method approach of qualitative and quantitative data, to enable comparative case study analysis. Cases of three informal settlements in Kabul were selected for the study, each one with different tenure security characteristics. The research team has collected qualitative data (using key informant interviews, focus group discussions, and observation) from these sites, exploring different perspectives – both from the residents themselves, but also the landowners, government officials, and host communities in the vicinity of the sites. The case study analysis is complemented by an analysis of the raw data collected during a recent KIS Taskforce profiling exercise in the informal settlements. The Norwegian Refugee Council's (NRC) *Camp Management* (CM) and *Information, Counselling, and Legal Assistance* (ICLA) programmes in Afghanistan have provided a platform for this research.

Research objectives

The study seeks to understand how tenure insecurity and differing local political and economic interests impact and prolong displacement in Kabul. Specifically, the study seeks to answer the following questions:

- What types of tenure agreements exist between displaced people and landowners in Kabul's informal settlements, and how do displaced people understand these agreements?
- What effect does tenure insecurity have on displaced persons' abilities to obtain durable solutions?
- Why is tenure security so hard to achieve, and how do landowners (private or public) use informal settlements to further their own interests?

Research tools and informants

NRC's Camp Management Specialist and ICLA Adviser designed three tools to obtain information from three types of informant (displaced persons residing in informal settlements; purported landlords of informal settlements; relevant authorities). In addition, the research team conducted non-structured interviews with host community members living in the vicinity of the sites included in this study. The table below summarises the qualitative data collected using these tools, and the tools themselves are included in Annex 1.

<i>Tool</i>	<i>Number of sessions/interviews held</i>	<i>Number of informants consulted</i>
Focus Group Discussion with displaced persons living in informal settlements	8	68
Key Informant Interview with landlords	3	3
Key Informant Interview with authorities	4	8
Other key informants (e.g. neighbouring host community)	2	2
<i>Totals</i>	<i>17</i>	<i>81</i>

Table 1: Summary of informants consulted in the research.

The research team responsible for field data collection was comprised of fourteen individuals: seven male and seven female NRC staff. They worked in pairs, one a legal expert from the ICLA team and one an Outreach Team member from the Camp Management programme.

The authors also interviewed key informants from the government authorities including District Governors, Municipality staff, Afghanistan Land Authority officials, and a focal point from the Central Region Independent Development Authority (CRIDA), as well the acting landlords of all three sites. In addition, the research team interviewed NRC Shelter and ICLA experts.



Photo 2: NRC research team members are accompanied in one of the informal settlements by an displaced community representative. NRC/Enayatullah Azad

The selected sites

The research team selected three sites, each with different types of tenure agreements and ownership claims, to enable a comparative analysis. The local names of the sites are not stated in this paper, in order to protect the residents who were consulted during this study.

Site 1

Around 200 Afghan refugee families (roughly 1,200 individuals) returning from Pakistan (where they were living as refugees) established this site in Gharabaq district of Kabul province in 2016. The families are originally from Logar province, having lived in Pashawar, Pakistan for 35 years where they lived in an informal camp before they felt forced to return to Afghanistan in 2016. The families first returned to their original province, Logar, but were forced to move again to their current location due to insecurity, lack of employment opportunities, and inadequate access to public services including education. This site is quite distinct from the others selected for this study because (a) it is on the outskirts of the city, and (b) the residents have (at least to their knowledge) managed to purchase the land from the landowner.

Site 2

The settlement was established in 2014 by Afghan refugees returning from Iran and Pakistan, as well as some internal conflict-displaced families mainly from Nangarhar, Paktika, and Laghman. According to the community representative of the site, 150 families (around 900 individuals) live at the site, though data from the KIS Taskforce profiling found 268 households. The ownership of this land is contested between the residents who claim it is government land and two private individuals claiming to be the owners.

Site 3

This settlement was established in 2009 by displaced families fleeing conflict in Afghanistan, mainly from Nangahar and Laghman provinces. The settlement consists of many smaller sites in very close proximity to each other, in total accommodating 394 families. This study focused on one smaller site within the larger settlement, accommodating around 62 families (around 400 people). There is not a clear understanding of who owns the land, and different local host community members claim ownership and management rights of the land – including charging of rent.

Other sources consulted for the research

- Raw data from the KIS Taskforce Informal Settlements profiling exercise, comprising household data collected in early 2018 from 10,472 households across 55 informal settlements.⁹
- NRC site visits and observations through its Camp Management project (since June 2018) and Shelter projects (since January 2018).
- Other secondary sources as quoted in footnote references
- Bilateral meetings with key informants at the Afghanistan Land Authority ('ARAZI') and Central Region Independent Development Authority ('CRIDA').

FINDINGS

Types and knowledge of tenure agreements existing between displaced persons and landowners in Kabul's informal settlements

There are three key issues to unpack in exploring this question. First, the understanding among residents about who the in fact land belongs to; this study has found that confirming land ownership is complex, to say the least. Second, residents' understanding of the types of tenure arrangements that they have. And finally, the actual "proof" or other indication that residents have to show that they have this arrangement – this could be a verbal agreement for example.

An analysis of the KIS Taskforce profiling data¹⁰ reveals residents' limited knowledge about settlement land ownership. In only six sites did all residents agree on who owned the land; in 19 out of 55 sites (35% of sites), fewer than three quarters of residents were able to agree on who the landowner was. In nearly one quarter of all sites, an average of 45% of residents could not identify the landowner.

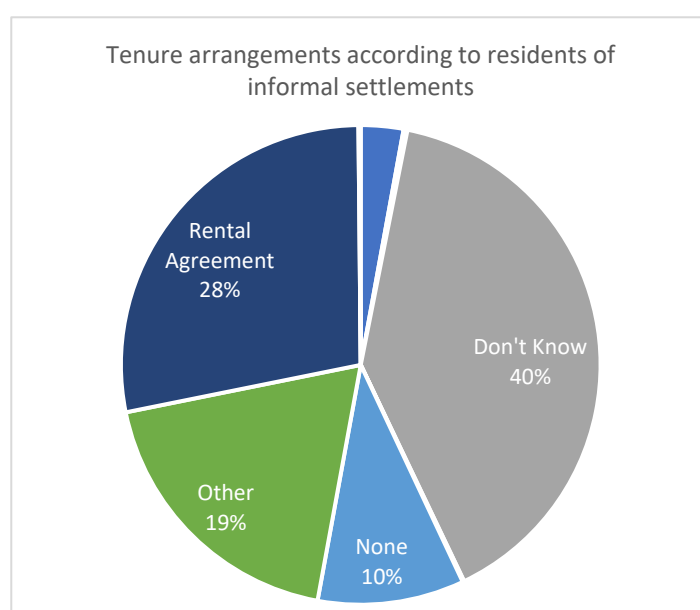


Figure 2: Tenure documents according to residents of informal settlements

Regarding understanding of their tenure agreement, 40% of all respondents in the survey responded "I don't know" to the question regarding tenure agreements for the land they occupy; in two sites, 99% of residents did not know. Only three per cent of residents overall said there was a customary tenure agreement, and fewer than one per cent had a deed by court or letter from the government. Regarding the "proof" or documentation of agreements, the data reveals that residents living in the same site have substantially different tenure documents. In only three sites do all the residents report to have the same tenure document, and in 39 out of 55 sites (71% of sites), fewer than three quarters of residents agree on the tenure document they have. Either this means that there are different agreements for different families living in the same sites, or the residents have a poor understanding of what agreements (if any) exist. Either way, the clear lack of understanding among residents about their tenure situation and rights is a concern and likely contributes to their insecurity of tenure.

The settlements selected for this study each have a different tenure situation. In **Site 1**, the residents claim to have purchased the land from a landowner who had proof of his ownership, and they are still paying for the land in instalments. These residents asserted the importance of having the ownership document to

⁹ At the time of writing, the report to document and analyse the complete findings of this profiling was still being finalised by the Kabul Informal Settlements Taskforce.

¹⁰ Kabul Informal Settlements Task Force, Kabul Informal Settlement Profiling, 2018

avoid eviction in the future, and report that it is something they had to push the landowner to provide.¹¹ That said, they also reported that women's names are not included on the deeds. The women report that this is because "it's a kind of shame for a man to include a woman's name on the document", while the men say that even though they did not include the women's names, they did not prevent this, and would be willing to include their names in the future if there was a need. It is worth noting that most official documents in Afghanistan, including birth certificates, do not include wives' or mothers' names. So far, the residents of this site have not received any eviction threats. However, a discussion with the local authorities reveals an ambiguity about the true landownership – the authorities claim that the land was 'grabbed' by a member of the host community who then purported to have the ownership rights that allowed him to sell it to the displaced community. This key informant suggested that the settlement residents did not have a secure tenure, and that they could therefore face eviction.

In **Site 2**, the residents consulted in FGDs report to be staying free of charge, having settled on the land without seeking permission, and not knowing who the real landowner was, and as such having no tenure agreement. However, these residents are clearly not representative of the whole site, since 34% of the 268 households living in the site claim to have a rental agreement, which would suggest they are paying rent. Male residents consulted in this study had apparently approached the Ministry of Refugees and Repatriation (MoRR) to try and obtain a tenure agreement – if not for this land, then for another land if it could be allocated – but this was without success. However, according to the residents, two different men have approached the site in recent months (around July 2018), and claimed that they are the land owners. These men have threatened the residents with eviction within two months, due to plans to develop the site. They warned the residents not to develop the site themselves, since they would soon be evicted. The residents subsequently filed a complaint with the Ministry of Refugees and Repatriation (MoRR), which referred them to the State Ministry for Parliamentary Affairs to settle the dispute. According to the displaced community's representative, this Ministry did a brief check of ownership documents of the alleged land owners, and then informed them that the documents were credible and that the residents should vacate the land. However, the situation is unclear, since nearly 80% of residents consulted through the KIS Task Force profiling believe that the land is government land. Moreover, the Ministry of Parliamentary Affairs that apparently confirmed the ownership documents is not a mandated body to confirm such documents – this would normally be the responsibility of the Courts or ARAZI.

In **Site 3** the residents consulted in NRC’s research said they are paying rent to a number of different men (between \$4.5 and \$9 per household per month) who claim to own different parts of the land, but none of them knew of any written tenure agreement. They have not asked for a written agreement, but they agree that it would be important to have one. Meanwhile, the KIS Taskforce Profiling exercise – which surveyed all residents at the time of data collection – found that 54% of residents in the wider settlement¹² had a “rental agreement”, while 18% had “customary tenure”, 26% did not know, and one per cent claimed to have a letter from the government. The residents consulted in the NRC research described one of their landlords as “a tough and rigid man. He visits us every month, right at the last day of the month, to collect the rent. If someone delays the payment, he gets angry. In the past, he sometimes demolished walls surrounding shelters because the rent was delayed”. The male residents believe that the alleged landowner does not have documents to prove his ownership, and that he has illegally appropriated the land: “we think he is a land grabber”. The research team was able to speak to one of the landlords, who



Figure 3: Displaced children in one of the informal settlements. NRC/Enayatullah Azad

claimed he was the rightful owner, and that he had the documents to prove this.¹³ He confirmed that there was no written or verbal agreement with the residents, and that they had spontaneously settled on the land.

Effect of tenure insecurity on displaced persons’ abilities to obtain durable solutions

Durable solutions here are understood according to the IASC and UN OCHA definitions (Framework on Durable Solutions and Guiding Principles, respectively)¹⁴ and the Government of Afghanistan National IDP

¹² Noting that the site featured in this research is one small site among a cluster of small sites in a wider settlement

¹³ Though he refused to show them without NRC presenting a letter from the municipality ordering him to do so.

¹⁴ IASC Framework on Durable Solutions for IDPs: https://www.brookings.edu/wp-content/uploads/2016/06/04_durable_solutions.pdf; OCHA Guiding Principles on Internal Displacement, <http://www.internal-displacement.org/sites/default/files/publications/documents/199808-training-OCHA-guiding-principles-Eng2.pdf>

Policy.¹⁵ According to these frameworks there are three types of solution: to formalise their stay where they are currently living (by providing services and improving tenure security), moving to another location, or going back to their place of origin. For the case studies explored here, a tiny minority of respondents felt able to return to their place of origin, the majority preferring local integration or moving to another location. For these options to be considered ‘durable’, they must also be informed and voluntary, and in either location they must no longer be in need of specific assistance and protection deriving from their displacement, and be able to enjoy their rights without discrimination on account of their displacement. There are eight criteria for durable solutions according to the IASC framework, of which five are particularly relevant to those living in informal settlements: an adequate standard of living; ability to sustain a livelihood for the household; feeling safe and secure (including with regards to housing); access to housing, land and property; and access to personal and other documentation (including tenure documents, for example).¹⁶ It is with this understanding of ‘durable solutions’ that the research question is explored.

Inability to obtain reliable tenure agreements due to ambiguities in, and lack of institutional controls and systems for, determining land ownership

The ambiguity in Sites 2 and 3 over the true landowner makes it challenging for residents to push for a tenancy agreement, and keeps them at indefinite risk of eviction and/or destruction of their homes. For example, in Site 3, the representative of the smaller site included in this study, as well as the women residents consulted, all report that there are four different men claiming to be the landowners for this one piece of land. These men sometimes fight among themselves over who should collect the rent, and have even attempted to demolish some of the shelters during these disputes. Male residents of the site who were consulted in this study, as well as host community members living nearby, disagree about who the landowner is. The local community members believe that different parts of the land are owned by four landowners: the government, a construction company, a brother of a parliament member, and other private individuals. Residents referred to powerful local men who have ‘grabbed’ the land, which was originally state land.

In Sites 1 and 2, there are also some suspicions among informants of this research that land grabbing has taken place. For example, in Site 2, the residents consulted in this study report that they have recently been approached by two individuals claiming to own the land, and their ownership has apparently been confirmed (unusually quickly according to normal standards) by the State Ministry for Parliamentary Affairs, which would not normally be involved in confirming land ownership or resolving land disputes. Despite the claims of these individuals claiming to own the land, 80% of the site residents believe that the land is government-owned,¹⁷ and a discussion with the Afghanistan Land Authority confirmed that the “vast majority” of inner-city land in Kabul accommodating displaced persons is indeed state-owned land. This raises questions as to the legitimacy of the document produced by the claimed landowners, and in the confirmation process itself. Informants for this study suggest that the manner in which the documents were confirmed points to a connection between the purported land owners and the authorities who proved the veracity of their ownership documents in order to legitimise a possible land grab; however, it is important to note that the authors of this study could not confirm this suspicion.

Residents of Site 1 – who possess customary tenure documents following purchase of the land from the purported land owner – nevertheless continue to face tenure insecurity due to the ongoing ambiguity over the land’s true ownership. For example, the residents have had a dispute with someone other than the mentioned vendor, who also claimed he owned the land and holds the title deeds to it. This is against a background of an existing land dispute between the alleged landowner who sold the land to the current residents, and local authority members who claim it is state land that has been grabbed. Key informants

¹⁵ Government of Afghanistan, National Policy on Internally Displaced Persons, November 2013: [http://morr.gov.af/Content/files/National%20IDP%20Policy%20-%20FINAL%20-%20English\(1\).pdf](http://morr.gov.af/Content/files/National%20IDP%20Policy%20-%20FINAL%20-%20English(1).pdf)

¹⁶ The full criteria for durable solutions, according to the IASC framework are: safety, security and freedom of movement; adequate standard of living; employment and livelihoods; housing, land and property; personal and other documentation; family reunification; participation in public affairs; and effective remedies

¹⁷ According to their responses given in the survey conducted as part of the KIS Profiling Exercise, 2018

from these authorities told NRC that they had recaptured 700 Jeribs of state land from land grabbers in the same district, and that they had already introduced the alleged landowner to the Attorney General's Office. The key informant stated that the residents may therefore face eviction in the future, underlining how an unresolved land dispute perpetuates tenure insecurity, even when residents have purchased land in good faith transactions.

Inability to build adequate shelters and infrastructure

As will be explored further in sections below, landlords often have an interest in developing the land on which displaced persons are living, and this will typically prevent the settlements residents from building adequate housing or infrastructure. This is the case for Sites 2 and 3; for example, in Site 3, residents bring drinking water from 1km away due to the landlord's barring construction of water points (something that NGOs are willing to do if they have the permission). This means that, despite having resided in this location for three years, the residents continue to live in conditions that do not even meet the Sphere Minimum Standards for emergencies.¹⁸ According to the KIS Taskforce profiling exercise, more than 52% of households residing in the settlements listed water supply as a key priority, and 83% stated that access to permanent housing is one of their key development priorities. However, without the money to find alternative land (and with poor prospects of being allocated land by the government), and with the security situation preventing any return home, the residents remain stuck in a site where they cannot build adequate housing and basic infrastructure.

Regardless of the land ownership, the research shows that for settlements within the city, residents are forbidden if not by the landlord then by the government from building permanent shelters. For example, in Site 3 the male residents report that the landowner forbids them from upgrading their shelters (and indeed, once demolished a shelter that had been upgraded), while the female residents report that it is the 'local police station' that has forbidden them from upgrading their shelters. Either way, it leaves the residents in a precarious living situation, especially during the winter when they are unable to protect themselves from the elements. Moreover, NRC's Camp Management programme has faced impediments from local authorities when trying to implement some basic site improvement works in informal settlements. For example, in one case NRC sought permission to construct grey water drainage channels, but this was rejected by local authority officials – not on the basis that such improvements would physically impede future development of the land, but due to the fact that the upgrades would make conditions more tolerable for the settlement residents making them more willing to stay and harder to remove.

¹⁸ E.g. maximum distance to a water point: 500 metres; and with regards to latrines the Standards require that "people have adequate, appropriate and acceptable toilets to allow rapid, safe and secure access at all times". The Sphere Handbook, 2018 Edition, p.115



Figure 4: Men in one of the informal settlements fixing extra tarpaulins to the roof of their shelter, ahead of the winter rain and snow. NRC/Enayatullah Azad

The situation is different for the residents of Site 1, which is on the outskirts of the city and has been purchased by the residents. Due to their ownership of the land (at least in the eyes of the land seller), they are able to build permanent shelters and infrastructure in the site, and to receive support from NGOs to make improvements. For example, they have managed to obtain a school building and teachers, and a water network.

Eviction threats and inability to relocate

This study has found that many residents of informal settlements have no form of tenure agreement; and those that do have either statutory or customary agreements are living on disputed land. Overall this means that they are insecure and many are facing eviction threats. In two out of the three sites of this study, residents have been threatened with eviction, often multiple times. These eviction threats arise primarily because of the landowners' plans for future development of the sites, which is also why there is no interest on the part of landowners to issue written (or even verbal) tenure agreements – they want to maintain the freedom and flexibility to evict residents at their will.¹⁹ It is worth noting that, according to the KIS Taskforce profiling exercise, just 41% of all settlement residents living in tents have any kind of tenure agreement, compared to 85% of those living in brick or concrete dwellings. This suggests a correlation between ability of displaced persons to construct permanent or semi-permanent dwellings, and their tenure security. Regardless of the direction of causation, this is an important link since it shows the interconnection between some of the key criteria for durable solutions, namely: safety and security; adequate standard of living; housing, land and property; and personal and other documentation.

Despite their insecurity of tenure and inability to build sustainable homes and lives for themselves in their current locations, displaced persons residing in these settlements do not plan to move to another location unless they are allocated land by a third party because they fear they would not be able to find somewhere that is also free or low-cost, and has access to livelihoods. In the KIS Taskforce's profiling exercise, 55% of respondents said they would not be willing/able to pay for land and 32% said they would only pay up to 10,000 AFN (around \$130). Almost 49% listed 'land allocation' as one of their key priorities; moreover, 38%

¹⁹ Although Afghanistan is a party to the ICESCR, which prohibits forced eviction (see OHCHR fact sheet 25), in reality the Afghan laws and policies that establish procedures and guidelines for evictions provide minimum protection for tenants, especially for IDPs.

of respondents wanted to be given land that allows them to integrate into the local area, while 32% wanted to be allocated land in another location.

The difference between Site 1 (where residents have managed to purchase land) and the other two sites is stark – while in Site 1 the residents have been able to build permanent structures, set up a school for their children, and plan for the future, the residents of Sites 2 and 3 are living day-by-day in fear of eviction, prevented from upgrading their shelters, and not enrolling their children in school on the assumption that they may have to leave any day – despite the fact that more than half of persons (55%) surveyed in the KIS Taskforce assessment listed schools as one of their key development priorities. The women in Site 2 stated that they would like to have a formal tenure agreement so that they would thereby be able to “present [the document] to anyone and no one can harm us, and we can live in peace. We can send our children to school and we can work to build our life.” The men agreed with the women about the importance of having a tenure agreement, linking it to longer term planning, “so we can understand how long we would stay here, and this will impact on our decisions whether to invest here or not”. Having been recently threatened with eviction, the residents are afraid: “We don’t have any other home and we will become homeless if the landlord evicts us”. These quotes demonstrate the critical importance of having tenure security not just for the ability to meet physical needs (e.g. adequate shelter), but also for psychological peace of mind and a sense of stability to move on with life. The KIS Taskforce profiling results support this finding – with 58% of households reporting that safety and security is one of their priorities for a durable solution.

How and why landowners are using informal settlements to further their own interests

Income from rent

Monthly rent from informal settlement residents in some cases would be enough to serve as a disincentive to developing land. For the settlements investigated in this study, a few residents stay for free or for a low rent, but in most settlements the monthly rent for each family ranges between \$20 and \$30.²⁰ The average number of households per settlement, according to the KIS Taskforce profiling, was 190, so on average one landowner could generate approximately \$57,000 of rental income per year.

Even if the rent charged in Site 3 is significantly lower than this, the residents have suggested that the landlords’ main interest in having them stay there is to generate revenue from charging rent. The female residents acknowledge that the rent is low, and attribute this to the fact that the site has no facilities or infrastructure by way of water and electricity, the shelters are sub-standard, and (according to women), the landlord “has no ability to build anything else”. With a population of 64 households in just one small part of the wider settlement, and an average rent of \$6.75 per household per month, the rent generated by this section of the settlement each month would be around \$450, or \$5,400 per year – while less than what other landlords may be generating, this is still not an insignificant amount considering that Afghanistan’s GNI was just \$508 per capita in 2016.²¹ That said, one of the landlords from the site interviewed for this study claimed that “we do not need the money, we would prefer that the residents left the site” – citing “social and security problems” that they bring. He felt that the only reason the families were staying on this land was because of the aid provided by international organisations,²² and he expressed a hope that the police, local municipality, and displaced community representatives would intervene and facilitate an eviction. He even claimed that the representatives had agreed to vacate the site after two to three months, however the representative and two other residents from the site consulted in this study denied any discussion or agreement of such with either the purported landlord or any government department. These residents claim that the landlord has threatened to evict those that do not pay their rent, indicating that he relies on or at least profits from the rental income, and therefore does not want to allow any precedent of families not paying their dues.

²⁰ According to NRC Shelter staff interviewed for this study.

²¹ World Bank, <https://data.worldbank.org/?locations=AF-XM>.

²² This seems unlikely, since humanitarian aid in these sites is extremely limited, in part by the unwillingness of landowners and authorities to allow their interventions.

Keeping displaced persons on the land to ‘protect’ it against competing claims by other landowners or for infrastructure development

Undeveloped land which is being set aside for development is either private with the documentation to prove it, or government land which has been ‘grabbed’ by potential developers. For lawfully obtained and owned private land, development would seem to be a clear preference over allowing creation of an informal settlement, it is therefore a puzzle as to why landowners might accept to have displaced families on their land rather than developing it. Besides the incentive of generating income from rent (as discussed above), additional informants consulted in this research²³ suggest a few possibilities, including the fact that the landlord does not have the financial ability to develop the land yet, or that he is out of the country or city and thus has no interest in development for the time-being. In these cases, the landowner may therefore prefer to keep the displaced families on the land to ‘protect’ it from being grabbed by anyone else in the meantime.²⁴ This may well be the case for Site 2, where residents reported that after having been on the site for four years without being approached by any alleged landowner, two men (brothers) came to the site in August 2018, claiming ownership. They said they planned to build parking or apartments, and therefore asked the residents not to build anything else on the land, and to be ready to vacate the site in October 2018.²⁵ While the residents do not yet have any clear information on what will happen, the claimed landowners have apparently stipulated that the residents can stay for free for another two to three years until a development project starts. In the meantime, the residents are forced to live in insecurity – not knowing when they will be evicted. For the landlord, it remains in his interest to keep the displaced families on his land in order to ‘protect’ it, but at the same time this means that he prevents them from making any kind of permanent upgrades or infrastructure.

If the land is disputed, and the landowner cannot truly prove his ownership, he may also be using the presence of displaced families on the site to protect and further claim the land for himself. The government does not have a good inventory of state land, and this gives private individuals the opportunity to ‘grab’ the land by allowing displaced families to occupy it for rent. These ‘land grabbers’ prefer to keep the displaced persons on the land, since trying to develop it would expose them to authorities who may then recapture the land and even take legal action against the land grabber – unless the claimed landowners are themselves connected to authorities who could pass a blind eye over the ambiguous land ownership and/or be persuaded to accept dubious land claims. This scenario is indicated by cases where confirmation of land ownership is given by authorities or administrative bodies other than those who are officially mandated to confirm land ownership (e.g. ARAZI) and settle land disputes (the Courts). In Site 2, the Ministry of Parliamentary Affairs briefly checked the documents presented by the claimed landowners, and told the site residents they were valid. The residents reported to NRC that they felt suspicious at the speed with which the verification was done, and indeed it is concerning that it was done by a government department that is irrelevant to confirming land ownership issues.

In other cases, where the land is contested between two private parties, or between a private individual and government, then one party may prevent any land upgrades while the land ownership remains ambiguous. This could be the case in Site 3, where the interviewed landowner claimed that he wanted to construct shops and apartments on the land, yet continues to allow the displaced families to stay while collecting a small rent from them. He is one of four men who purport to own the land (all are trying to collect rent from residents), and presented himself to the residents as the owner after their former landlord died, but he does not have the documents to prove ownership. To complicate matters further, the police (according to residents) are also preventing any upgrade of the shelters in the site, suggesting that it is not in fact privately owned land, but state land over which the police would have jurisdiction. What is more, if the landowner were to allow the displaced families in the site to upgrade their shelters, he could charge

²³ NRC Shelter staff.

²⁴ Another possibility is that the landlord does indeed own the land, but bought it using illegally acquired wealth (e.g. from bribe, smuggling drugs, money laundering); so he may want to lower his profile to avoid being caught by police, and therefore prefers not to develop his land which would require him to apply for water, electricity, and other utilities and thereby involve making himself known to the authorities during presentation of his ownership documents.

²⁵ At the time of writing, 5th November 2018, the residents had not been evicted.

significantly more rent. The fact that he is not doing this, and has instead spoken about his wish to develop the land, suggests that he benefits from the presence of these families since it prevents others from claiming the land until such a time that he is able to ‘prove’ his ownership and develop the land himself. This is also corroborated by statements made by local host community informants, who claim that some private individuals have grabbed the land and keep the displaced families there to protect it: “It is a win-win situation, i.e. displaced families pay less, and the landowners get their land protected.”

Other reasons that landlords profit from displaced persons

In one of the sites,²⁶ male residents reported that they have been asked to vote for the landlord’s favoured candidate in elections, otherwise he would evict them from the site. In the same site, the women consulted in this study spoke of how the landowner attracts humanitarian assistance to the settlement so as to divert part or all of that assistance for his personal use, or simply to reclaim later (e.g. when residents have vacated the site). For example, some in the site claimed that one of the alleged landlords built a fence around a well that was dug by an NGO, so that he can keep it for his private use. In another site, where the landowner permitted residents to build a well, the residents suspected that this was only for the landlord’s own interest, e.g. to increase the value of his land, and “because one day we will leave this area and then wells will remain for him.”

CONCLUSIONS

The displaced community representatives of Site 2 and Site 3 both reported that they and their community would willingly move to another site within Kabul if they could be assured of tenure security, be able to build proper shelters, and be located close enough to the city for work opportunities without having to spend all their pay on the commute. These comments confirm the gulf between the displaced persons’ current conditions, and the right to durable solutions guaranteed under Government of Afghanistan policy²⁷ and international law.²⁸ The case studies explored in this research reveal a complex story of land ownership and private interests, which has led to complete lack of tenure security for displaced Afghans living in informal settlements of Kabul, coupled with an inability to build adequate shelters and infrastructure to create a safe and adequate living environment that meets even emergency Sphere standards let alone a dignified durable solution, or rather ‘a way out of their displacement situation’.

Specifically, the case studies illustrate how private individuals may further their own interests by exploiting both displaced persons, and the ambiguities, complexities, and weaknesses of the Afghan legal framework for determining land ownership. With little support from host community or authorities for the presence of displaced communities in their neighbourhoods, the self-proclaimed landowners have often remained unchallenged (and in some cases even supported) in their practices. Landlords have largely avoided creating any formal tenure agreements with IDPs, other than verbal orders to them not to build any permanent dwellings or infrastructure on the land. Meanwhile, they are able to use the presence of IDPs to protect the land until such a time as they are willing to develop it, and to prevent others (including authorities) from claiming ownership in the meantime. At the same time, they are able to earn a tidy income from the rent charged to settlement residents, and to benefit from NGO-built infrastructure or other assistance they are able syphon off the vulnerable residents, all while also generating votes for their favoured political candidates.

In all three sites, it is likely that a number of different powerful stakeholders have been involved in land grabbing. In this complex situation, it is of course the already vulnerable displaced Afghans who are hurt the most, from paying bribes to police when first arriving on a piece of land,²⁹ to paying monthly rent to

²⁶ Not specified here, so as to protect the residents.

²⁷ E.g. National IDP Policy of Afghanistan, p. 49, [http://morr.gov.af/Content/files/National%20IDP%20Policy%20-%20FINAL%20-%20English\(1\).pdf](http://morr.gov.af/Content/files/National%20IDP%20Policy%20-%20FINAL%20-%20English(1).pdf); Afghanistan Land Policy; Occupancy Certificate Regulation.

²⁸ IASC Guiding Framework on Durable Solutions for IDPs, UN Guiding Principles on Internal Displacement.

²⁹ In Site 3, residents consulted in the research said that newly arriving families have to pay the police to get permission to erect their tents. The amount varies, but can be up to 1,000 AFN (around \$13.25) per tent.

self-proclaimed land owners, while living under sub-standard shelters because of refusal by the 'land owners' for any sort of upgrading, thereby allowing them to protect the land they have grabbed before finally forcing an eviction that is simply the start of another cycle of displacement.

The imbalance of power between on the one hand the landowners and authorities supporting them, and on the other hand the displaced families, makes it all but impossible for the latter to challenge the claimed land ownership of the former, or to obtain any kind of tenure security and durable solutions to their displacement. The weaknesses and complexities of the legal and policy framework around land management in urban centres of Afghanistan only serves to reinforce this power imbalance. The elites (whether politicians, government officials, or unscrupulous land developers) are able to manipulate and exploit the weaknesses and complexities of the system for their own benefit,³⁰ while vulnerable displaced persons remain in the dark as to the legal systems and policies that are meant to protect them, rendering them unable to claim their rights. Instead, they remain stuck in displacement, protected only by mud.

RECOMMENDATIONS

Advocacy and the national policy framework

- Inter-governmental and non-governmental organisations need to undertake stronger local advocacy, combined with technical support and programmes, to ensure the Government of Afghanistan approves and implements domestic policy (such as those mentioned below) in favour of durable solutions.
- As enshrined in the Occupancy Certificate Regulation and Afghanistan Land Policy, the government of Afghanistan, in particular the Afghanistan Land Authority (ARAZI), needs to put in place measures to ensure that inhabitants of informal settlements access security of tenure documents to the land/houses they occupy.
- As provided by the Afghanistan Land Policy, the Government of Afghanistan should put in place plans to promote and upgrade the basic services in the displaced persons' informal settlements, and/or to allow development and humanitarian actors to do so – even if this is only temporary or semi-permanent measures until such a time that displaced families can be (voluntarily) resettled.
- Capacity building trainings on IDP policy and HLP rights of the displaced people should be provided for government authorities, in particular Municipalities, MoRR, and the Land Authority, to ensure their ability to implement relevant policies.
- For timely and proactive advocacy, the Afghanistan Housing, Land, and Property Taskforce should put in place a forced eviction monitoring system to collect, analyse and disseminate information on forced eviction cases.

Programme implementation for durable solutions

- NGOs building infrastructure in informal settlements such as water wells, school, shelters, and latrines should conduct a more thorough stakeholder analysis and due diligence exercises to ensure that they deal with the real owner of the land, or at least are able to understand the complex power dynamics and land issues pertaining to their sites of intervention. For example, they would need to identify any building regulations (such as prohibition on permanent shelters) in order to ensure that programmes do not put beneficiaries at risk of eviction through upgrades.
- NGOs implementing housing programmes should encourage their beneficiaries to constitute tenancy agreements between parties to ensure security of tenure, and in particular such programmes should aim at enhancing women's security of tenure, i.e. sensitizing men on the importance of including their wife's names into the tenure documents.

³⁰ Jo Beall and Daniel Esser, 'Shaping Urban Futures: Challenges to Governing and Managing Afghan Cities', p.1.

- Capacity building and awareness raising programs should be offered to displaced women and men, and owners of the informal settlements where land is private, on HLP rights, security of tenure, tenancy rights, and the importance of documenting tenancy agreements. This capacity building may be provided through community governance structures (such as those implemented through NRC's Camp Management Programme) in order to strengthen the community's ability to organise and advocate for themselves.
- An 'Occupancy Free-of-Charge' model for durable shelter programming could be piloted as a way to improve shelter standards and tenure security for displaced people, regularise income for landowners, and expand and improve relevant rental stock in Kabul. This approach involves providing upgrades to shelters (in kind or through cash grants) on an agreement with the owners that they will thereby accept free-of-charge occupancy for vulnerable families during a defined period of time. The approach should be combined with a livelihoods programme that earns the beneficiaries an income that would allow them to pay rent after the Occupancy Free of Charge period is over.

Further research

- Further study should be conducted into the institutional and political bottlenecks preventing the endorsement and implementation of key policy documents mentioned above – this could help to inform a more targeted advocacy strategy for overcoming these bottlenecks.
- Exploration of how and the extent to which displaced families already are, or could be further, empowered to negotiate for improved tenure security, through their direct engagement with landowners, private business, and authorities.

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ABOUT THE AUTHORS

Mohammad Abdoh is one of NRC's ICLA Advisers in Afghanistan, specializing in Housing, Land, and Property rights. He has a Masters in Law and Jurisprudence from Salam University, and previously worked with War Child Holland.

Anna Hirsch-Holland is NRC's Camp Management Specialist based in Afghanistan. She has previously worked with NRC in Lebanon and Iraq, and before that with International Medical Corps in Turkey and British Red Cross in London. She holds a Masters in International Relations from the University of Oxford.