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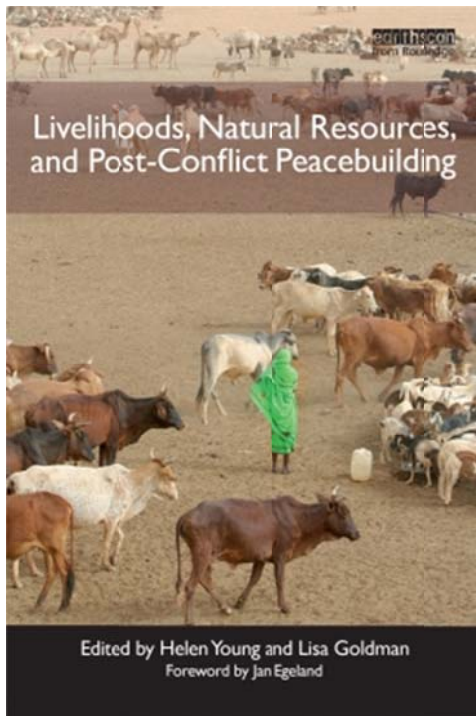
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Resolving Natural Resource Conflicts to Help Prevent War: A Case from Afghanistan

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Resolving natural resource conflicts to help prevent war: A case from Afghanistan

Liz Alden Wily

History is replete with civil wars driven in part or in full by disputes over rights to natural resources critical to local livelihoods (Richards 2005; Rosset, Patel, and Courville 2006; Pantuliano 2009). A common land grievance in agrarian societies is that governments fail to grant legal recognition of customary land rights as having the force of real property rights (Alden Wily 2008c, 2009). Governments and other authorities have often treated customary lands—particularly unfarmed communal assets such as pastures—as unowned or public and have been predisposed to award them to other-than-customary users, generating serious grievances and conflicts.

For many generations, Afghanistan has witnessed serious conflicts over rights to access pasturelands in general and to those of the central highlands in particular. For some time, the pasturelands of the central highlands have been disputed variously as the property of the Pashtun nomads known as Kuchi and of local, settled Hazara communities who claim the region as their ancient homeland, called Hazarajat. Unresolved, this dispute tends to manifest in violence each spring as Kuchi attempt to reenter Hazarajat for summer grazing. Increased Taliban and Pashtun support of the Kuchi now threatens to bring the conflict onto an open war footing.

This chapter reviews attempts to resolve the pasturelands conflict since the signing of the Bonn Agreement in 2001, which ended the last formal Taliban regime. The chapter has six major parts: (1) a summary outlining the historical origins of the central highlands pastures dispute; (2) a discussion of the official handling of the dispute in recent years, including iterative learning on the ground; (3) an analysis of key lessons learned, lessons that helped in the building of a new strategy and an action plan for resolution; (4) an overview of steps taken in preparation for implementation of the new strategy; (5) a discussion of the strategy's influence on field-level development projects and legislative amendments;

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and (6) an examination of the applicability of lessons learned in Afghanistan, including the need to take seriously the contesting of land rights in post-conflict reconstruction.

BACKGROUND

Afghanistan is a high, dry country where only approximately 12 percent of the land is cultivable, including 7 percent rainfed land and 5 percent irrigated land (USAID, n.d.; World Bank 2011). Between 45 and 80 percent of the country is used for pasturing animals (de Weijer 2005), mostly smallstock (small livestock) that provides the wool and mohair needed to make carpets and rugs—the manufacturing of which is an important source of livelihoods for many. Even the poorest benefit from livestock raising, as landless tenants and workers use community pastures to sustain a few smallstock, their only capital asset.

Agrarian dependence on livestock is particularly pronounced in the central highlands, where long, snowy winters prevent production of more than one wheat crop annually. Historically, local Hazara tribes have been agropastoralists who practice transhumance, moving livestock from valleys to alpine grasslands every summer (Gawecki 1980). The high pastures also provide the woody shrubs needed for fuel to keep valley settlements and livestock warm in winter.

Around the turn of the twentieth century, Kuchi nomads began depending on the central highlands for summer pasturing (Glatzer 1981; Pedersen 1994;

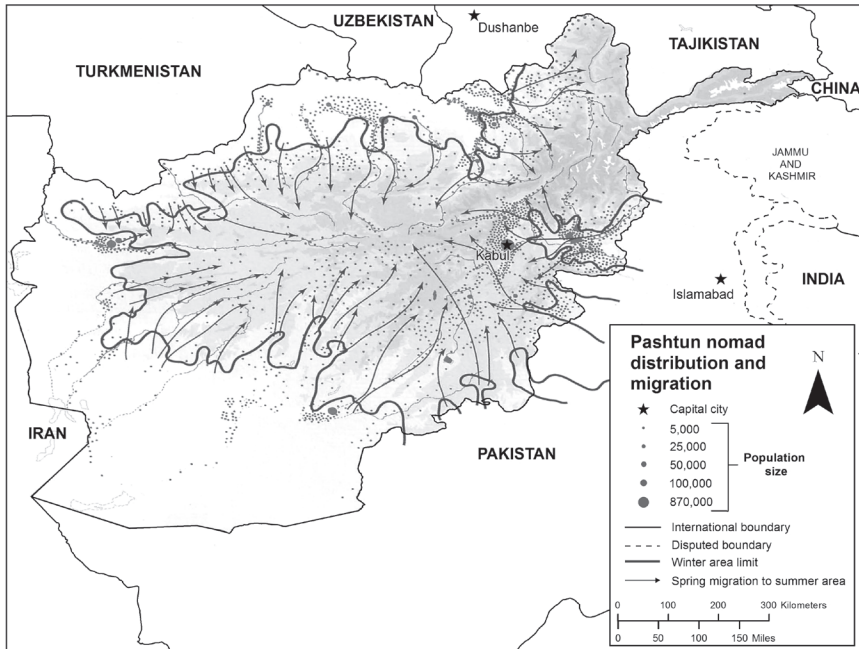


Figure 1. Pashtun nomad distribution and migration

Source: Ferdinand (2006).

Frederiksen 1995; Ferdinand 2006; and de Weijer 2007).¹ Figure 1 illustrates their migration to the central highlands, which begins in spring. The Kuchi travel mainly from the south and east, where a high concentration of Kuchi maintain winter home pastures. While a slightly higher number of Kuchi families migrate today than in the 1970s, a lower proportion of the overall Kuchi population migrates long distances than in the past. Instead, the wealthiest and poorest among them (15 percent) mainly pursue other livelihoods in cities and towns. Another 33 percent migrate only short distances with their livestock (Foschini 2013). Those who continue to carry out long migrations to the central highlands face fierce resistance from local Hazara and generally do not get beyond foothill districts. This is because the Hazara used the turmoil of the civil war years (1978–2001) to recapture their customary ownership and control of the highland pastures, and they now do their utmost to retain the pastures as their exclusive property.

¹ There are 2.4 million nomadic people in Afghanistan, just under 7 percent of the total population (de Weijer 2007). Most are Pashtun Kuchi, and the balance are smaller numbers of non-Pashtun Aimaq, Beluch, and Arab pastoralists. Although *Kuchi* means “nomad,” it tends to be used to refer only to Pashtun nomads. Spellings of *Kuchi* vary and include *Kochi* and *Koochi*. This is common with spellings in Afghanistan; for example, *Nawur*, referred to later in the chapter, is sometimes spelled *Nawor*.

The roots of the Kuchi and Hazara conflict

For a millenium or more, Hazarajat, the home of loosely aligned Hazara tribes, encompassed most of central Afghanistan, though the territory was much reduced by Pashtun encroachment from the south and the east during the nineteenth century (see figure 2). In the 1880s, Great Britain—fearing that czarist Russian expansion from the north would jeopardize its Indian empire (including what is now Pakistan)—armed the Pashtun emir, Abdur Rahman, and paid him to colonize all areas west and north of Kabul. The result was the establishment of the buffer state of Afghanistan in 1893 (Gregorian 1969; Lee 1996). Although the north fell fairly easily, the highland Hazara were resistant, so the emir armed 30,000 Kuchi to crush them and kill their leaders. As a reward, the British handed over the rich pastures of alpine Hazarajat to Kuchi leaders in 1894, with each entitlement inscribed in vellum deeds (*firman*). The Kuchi were then able to abandon their more characteristic summer migration southward through what is now Pakistan toward present-day India (Ferdinand 2006).

Nomad possession of the pastures was predictably disastrous for settled Hazara, who were now unable to graze animals and were left “without livelihood,” in the words of Fayz Mohammad, the emir’s own chronicler (Ferdinand 2006). Through 1919, an estimated 100,000 Hazara fled or were killed or imprisoned



Figure 2. Hazarajat, past and present

Sources: Ferdinand (2006), Mousavi (1998), and author’s field experience.

(Mousavi 1998). Respite came in the 1920s under the more benign rule of Emir Amanullah, who stripped the Kuchi of their land deeds and reissued grants that limited them to the highest pastures, reserving lower pastures for local Hazara. This did not make much difference to the Hazara, who still lacked access to the precious alpine pastures essential to livestock keeping. Beginning in the 1930s, Amanullah's successors explicitly favored Pashtun interests over those of the Hazara and other non-Pashtun tribes. Kuchi dominance of the pastures was restored and greatly expanded (Canfield 1986; Pedersen 1994). Livestock numbers soared with the wealth of highland grazing, and some clans abandoned pastoralism altogether in favor of trade and transport businesses and acquisition of whole valleys of scarce farmland from desperately poor and indebted Hazara (Frederiksen 1995; Pedersen 1994). Local grievances were exacerbated as the Hazara often worked as employees or tenant farmers of the Kuchi.

Legal declarations, in 1965 and 1970, that all pasturelands were public land (or state property) under the control of the government changed little, particularly because the laws permitted the government to grant rights of unlimited term to these lands (Alden Wily 2003b). Entitlements continued to be issued, subdivided, and traded (Patterson 2004). The government itself established a number of commercial farming and settlement schemes, absorbing large areas of prime pasture, particularly in the north (Favre 2003).

Civil war (1978–2001)

Festering fury at the suppression of customary land rights at the hands of the Pashtuns quickly surfaced with civil war and the Soviet occupation of 1979–1989. One of the first actions of the Uzbeks in the north was to retake farm and grazing lands that had been forcibly occupied by Pashtun settlers (Male 1982). Armed militias in Hazarajat more slowly resecured control of the pastures that had historically belonged to Hazara, but had been out of their reach since 1894.

Although Kuchi access was almost nonexistent in the 1980s, the Kuchi regained access to some areas with the establishment of Taliban rule (1996–2001). This was especially so in the eastern foothill regions of Nawur and Behsud (in Wardak and Ghazni provinces, respectively), where wealthy Kuchi began to buy yet more farmland from poor Hazara communities, partly to secure associated grazing lands (de Weijer 2007). Access to the heartland Hazarajat province of Bamyan was more limited, except in 1998, when leading Kuchi members of the Taliban terrorized communities in Panjab District (Alden Wily 2004a). For the most part, Hazara in Bamyan Province were firmly in control of the pastures and had enjoyed two decades of autonomous agropastoralism and growth in their livestock numbers. "Without Kuchi, our livelihood has been restored," one Hazara reported.²

² Personal communication with author, 2003.

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Problems, beyond those associated with securing access to the pastures, were rampant. For example, the pasture resource—which was already observed as degraded in previous decades (Larsson 1978)—was even more degraded by the end of the Taliban era in December 2001. This resulted in acute shortages of grazing and grasses as well as shrubs to supply winter fodder and household fuel (Alden Wily 2003b). Additionally, conflicts among valleys and villages over customary ownership of high pastures were common, especially in areas where local warlords had taken control during the civil war and Taliban years.

After the fall of the Taliban regime, the reaction of the interim government, led by Hamid Karzai, was simply to restore order to pre-civil war (1978) conditions. Amendments made by the Taliban in 2000 to the Pasture Law of 1970 were dismissed, and firm state control of all pastures actively advocated.

Despite having almost no field staff and having only limited authority outside Kabul, the Ministry of Agriculture determined that only firm government control (and de facto ownership) of the pastures could halt expansion of rainfed farming into pasturelands.³ The Ministry of Finance was most interested in offering pastures for lease to local and, especially, foreign investors. The Ministry of Tribal and Border Affairs (nicknamed “the Kuchi ministry” and replaced in 2004 by the Department of Kuchi Affairs under the Office of the President) wanted to restore highland pastures to Kuchi control. For all three ministries, the objective was reinforced state ownership and limitation of local access to conditional use rights (Alden Wily 2008b).

There was not much support for this policy outside the Pashtun Kuchi community. The view among many non-Pashtun in the north and Hazara in the central highlands was that they had not fought the long war and liberated themselves and their natural resources from Pashtun domination only to see that domination reinstated. Meanwhile, as Kuchi livestock numbers began to recover from the severe drought of 1999–2001, Kuchi leaders agitated for recognition of Kuchi as the pastures’ only true owners. Anxiety grew, particularly among the Hazara (Alden Wily 2003a).

LOOKING FOR A WAY FORWARD (2002–2009)

The positions of international donors were mixed. Initially, leading agencies such as the World Bank, the Asian Development Bank (ADB), and the U.S. Agency for International Development (USAID) assumed that rural tenure issues could be resolved with reinstatement of the titling programs that had been interrupted

³ The ministry responsible for agriculture has had numerous names since 2002: Ministry of Agriculture and Livestock (2002–2004); Ministry of Agriculture and Animal Husbandry (2004–2005); Ministry of Agriculture, Animal Husbandry and Food (2004–2006); Ministry of Agriculture and Irrigation (2006); and Ministry of Agriculture, Irrigation and Livestock (2006–present) (Banzet et al. 2007). In this chapter, *Ministry of Agriculture* refers to the relevant ministry for the time period being discussed.

by the civil war and that, where undertaken, had registered wastelands and pasturelands as government property. Field research conducted by this author and others for the Afghanistan Research and Evaluation Unit (AREU) between 2002 and 2004 concluded otherwise; these researchers argued that reinstatement of titling programs would inflame already vibrant local resistance to either Pashtun or state capture of pastures (Alden Wily 2003b, 2004b; Patterson 2004). Various parties advised that new land tenure principles, including acknowledgment of customary land interests, should be embedded in the new national constitution (Alden Wily 2003a). This recommendation was rejected, as was contrary advice that the new constitution establish pasturelands as government property.⁴

Meanwhile, tensions between Hazara and Kuchi were on the rise. In the spring of 2004, some Hazara were killed as Kuchi nomads attempted to reenter the area with their livestock. Still struggling to resettle some 4 million refugees in the wake of the civil war, the UN High Commissioner for Refugees reported that immense resistance to the return of Pashtun to non-Pashtun areas continued (UNHCR 2004). As pasture-access disputes multiplied in their caseload for assisted mediation, the Norwegian Refugee Council pressed for “the war over pastures” to be addressed (NRC 2004). Increasingly, aid agencies and the Afghan government recognized that continuing to deny customary communal rights to such lands was no longer safe. A new way forward was needed. AREU led the way in advocating an iterative approach to the development of new legal norms for the ownership of pastures and other rural lands that was founded on field research and piloting (Alden Wily 2008b). This was broadly accepted.

Nevertheless, new policies and laws were still being made, largely entrenching the status quo in natural resource ownership. The government launched an interministerial land policy–development process to reevaluate all land and property policies; simultaneously, the Afghan cabinet continued to issue decrees treating pasturelands and other unregistered properties as, in effect, government property.⁵ Meanwhile, the United Nations Environment Programme (UNEP), in association with international conservation agencies, worked with the Ministry of Agriculture to produce the Policy and Strategy for Forest and Rangeland Management Sub-Sector in 2006, the new Environment Law in 2007, and a draft Forest Law. While the first of these in particular advocated a community-based approach to forest and pasture management, it made reference to the challenging issue of forest or pasture ownership, thereby implying these would remain the property of government.

⁴ Only mines and underground resources were recorded as state property (Constitution of Afghanistan, art. 9, 2004).

⁵ See, for example, the Decree Limiting Distribution of State Owned Virgin and Barren Lands (No. 99/1381, published June 2003); the Decree for Transfer of Government Property (No. 8/1382, published December 2003); the Presidential Decree on Immovable Property, 2003 (No. 83/1382, published January 2004); and the Decree Amending Article 69 of Land Law of 2000 (published 2006).

Field pilot projects

While new laws were being drafted, the Ministry of Agriculture also began to support practical learning by doing through field projects to guide new legal and policy paradigms of natural resource tenure and governance. The main focus was on the highly contested pastures of Hazarajat. The first initiative followed a 2005 conference with Kuchi leaders, organized by a USAID-funded pastoral program, during which Kuchi moderates indicated a willingness to recognize summer pastures as owned by local communities, as long as these communities guaranteed Kuchi seasonal access (de Weijer 2005). Guidelines for a first field pilot were then drafted with this option in mind (Alden Wily 2005).

Launched in 2006 under the aegis of the Ministry of Agriculture, this first field pilot focused on Nawur Pasture (also known as Nawor), a major locality that had been under dispute for over a century due to its position as a main gateway to the central highlands; its size (600 square kilometers) and largely level terrain; and its water resources, abundant enough to support large herds (de Weijer 2006). The project's first goal was for government and UN representatives, accompanied by technical assistants, to engage local Hazara and Kuchi nomads in discussion about pasture access. This team made good progress until advancing Taliban activity brought discussions to a halt. By then, however, a draft protocol was under consideration by local and nomadic groups. It appeared that while local Hazara were willing to agree that Kuchi should not be deprived of access to highland farms they owned, negotiation of pasture access could not proceed until Hazara communities clarified the boundaries of each village's pasture area and jointly determined which residual areas they would let Kuchi use (de Weijer 2006). As earlier AREU studies had revealed, local Hazara communities were in conflict about pasture rights not only with Kuchi nomads but also among themselves.

This finding reinforced the objectives of a second, larger piloting process subsequently launched in Bamyan Province under the aegis of a community-based pasture management program called SALEH (Sustainable Agricultural Livelihoods in Eastern Hazarajat), which was funded by the Food and Agriculture Organization of the United Nations (FAO) and ran from 2006 to 2008. Its objective was to help Hazara villages to clarify their respective jurisdictions over alpine rangelands and, in the process, to establish regulations to operationally limit the land degradation that was exacerbating intracommunal disputes. The project also was intended to develop a procedure for entrenching local entitlement to these communal properties (Alden Wily 2006b). Shortly afterward, an ADB-funded pilot project outside of Hazarajat took up the latter objective because it found resolving communal tenure issues more pressing than focusing on mechanisms for registering communal properties (Stanfield et al. 2008). Both projects operated in areas free of immediate conflict with nomadic pastoral claimants.

For two years the SALEH project worked with seventy village clusters in three districts and, following resolution of intervillage boundary disputes, brought

more than 100,000 hectares of high pasture under working community management and established tested guidelines for the procedure to be applied nationally (Alden Wily 2008a, 2008b). Among other things, the project demonstrated the need to distinguish among near-village pastures that are privately owned by large landlords; larger community pastures extending to uppermost ridges; and a limited number of very large high, remote pastures shared in summer by several valley communities. Assured of their primacy over substantial areas, Hazara were willing, in principle, to allow Kuchi access to some parts of these larger clan assets, albeit on agreed terms. This concept was put into practice only once. In the summer of 2008, 4,000 Pashtun Kuchi nomads moved their livestock into the 3,000-square-kilometer Band-e-Petab Pasture of northern Bamyān Province. It was a special case for several reasons: although these Kuchi were Pashtun, they came from the north and uncommonly, therefore, shared Shiism with the Hazara; they had never claimed to own Band-e-Petab; and they were used to paying grazing fees to Hazara clan leaders. Even so, after Hazara and Kuchi tensions became a national issue later that year, these Kuchi did not attempt to return to Band-e-Petab in 2009 and have not done so since.

Toward new tenure law for pastures

Because the SALEH project was conducted under the aegis of the Ministry of Agriculture, its findings could be and were fed directly to policy-making entities, including the high-level Inter-Ministerial Land Policy Committee (Alden Wily 2006a; Gebremedhin 2007). Although the government subsequently failed to adopt all of SALEH's recommendations, it did issue the National Land Policy in 2007 that, for the first time, allowed community lands to be considered a category of landholding. Specifically, the policy provided for registration of lands held under customary norms to be registered on the basis of documentation that was used customarily and of verbal confirmation by neighboring households or communities. Ownership of pastures was to be defined through community-level procedures such as those developed by the SALEH and ADB projects and laid out as simple guidelines (Alden Wily 2008a; Stanfield et al. 2008).

The SALEH project's findings significantly influenced the strategy of the draft Rangeland Law, written during 2007 and 2008 with technical guidance from UNEP. A main shift that occurred during drafting involved the terminology of ownership of pastures (or rangelands).⁶ *Ownership*, in early drafts, was changed to *custodianship*, and the meaning of *custodianship* changed from "ownership" to "lawful possession and long-term management authority." In the law's current iteration, its purpose is "to recognize and formalize the custodianship, management and use rights of communities and other users, to establish a legal framework

⁶ *Rangeland* and *pasture* or *pastureland* are used interchangeably in documents in Afghanistan.

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for bringing all rangelands under community custodianship” and “to define the regulatory, advisory and mediating role of the Government of Afghanistan in relation to pastures” (art. 1).⁷

Although hardly radical, these proposed legal objectives represent a major departure from the paradigms that have prevailed since the promulgation of the Pasture Law in 1970 and that have rendered all pastures a strictly public asset in law, owned and controlled by the government alone, which may dispose of those pastures at will to whom it wills. There is still no acknowledgment that pastures are often the customary property of communities, but at least acknowledgment of the customary possession of and right to control certain pastures is now provided for in the draft law.

The creation of three classes of pastures—private, community, and public—will be practically helpful. Instead of public pastures being the only class of pastures, if the draft law is enacted, the designation “public pastures” will become a residual category, applying only to pastures that “are unable to be categorised as community pastures, due to their long history of established use by communities and nomadic pastoralists who do not reside in the area” (art. 2(12)). And even these pastures will be subject to local community-based management.

Where nomads like Pashtun Kuchi are able to demonstrate a long history of seasonal access to such pastures, the draft law directs that they will receive assistance to negotiate access with local communities. Only when local negotiations and district and provincial mediation fail will Kuchi be able to appeal to a presidentially appointed commission that will decide the matter (art. 22).

Taking stock

That policy makers could draft a rangeland law without it mimicking contested laws and policies of the past suggests that, after many years of debate inside and outside the government, Afghan disputes over pasture rights are well on their way to resolution. However, the situation was and remains more complex than that. Among many Hazara, retention of any traditional pastureland as public property continues to be an alarming proposition, not least because their most valuable pastures are those most likely to be identified as public, and it is those that they most likely would be coerced into sharing with Kuchi. Some Kuchi representatives resent their interests being made secondary, but they also acknowledge that they will regain at least some of their former (pre-1978) access to the central highlands (UNEP 2009). Yet other Kuchi representatives continue to press for recognition of their royal entitlement to high pastures, a call that has now been taken up with violent stridency by one or two powerful clan leaders.

Meanwhile, some officials still find it difficult to envision a future in which the government does not own and control pasturelands. This variously reflects

⁷ Despite periodic redrafting of the Rangeland Law that continues up to the time of this writing, its purpose has remained the same.

fear of loss of rental opportunities; persistent conservatism within which devolution and democratization in any form struggles to take root; and a conviction that when interethnic contestation occurs, government must take control. These reactions were evident in the process of drafting a clear provision recognizing that many pastures are, by custom and current practice, the customary property of rural communities. In essential ways, the draft Rangeland Law is at odds with the principles laid out in the National Land Policy approved in 2007. Significantly, even with continuing amendments to limit community ownership of pastures, the Rangeland Law has not yet reached parliament. It is now nine years since a new rangeland law was proposed.

Characteristic orthodoxies contribute to the likelihood that the government will recapture its former roles vis-à-vis substantial pastures. These orthodoxies include beliefs that the state is the safest owner and guardian of degradable natural resources; that the state has the personnel and financial means to guard and regulate every pasture; and that the state will not be as vulnerable as it was in the past to rampant self-interest on the part of some officials and politicians. Most important, perhaps, is characteristic discomfort with the notion that collective assets are ownable and registrable as real property.

Such orthodox positions resonate with conservative Afghan officials. For example, in 2009, the Ministry of Justice returned a draft Forest Law to the Ministry of Agriculture because the ministry considered it too radical, even though the draft law shied away from providing for community ownership of forests or any hint that forests could, by custom, be considered already owned and not state property. At most the draft Forest Law provided for communities to be involved in management. A more potent factor strengthening the government's reluctance to surrender rights to communities is the government's wish to be able to freely lease rangelands to investors. Thus, for example, in July 2008, the Law on Managing Land Affairs was amended mainly with this purpose in mind, establishing without doubt that these lands are under the state's authority.⁸ This too contradicts the principles laid out in the 2007 National Land Policy.

Worsening conflicts between Hazara and Kuchi

While these contradictions in policy and law stymie change, conflicts between Hazara and Kuchi continue to multiply. Since 2007, Kuchi have taken to raising Taliban flags in incidents that mainly involve the killing of Hazara, the burning of hundreds of Hazara homes, and displacement of thousands of Hazara (*Daily Outlook* 2007, 2008). The spring of 2008 opened badly when a Kuchi member of parliament declared that only Pashtun are true Afghans and owners of pastures. As a consequence, Hazara took to the streets to demand that the Afghan army and coalition forces protect their lands from armed Kuchi invasion (UNAMA

⁸ Law on Managing Land Affairs, July 2008, as published in Gazette No. 958.

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2008). Hazara also expressed bitterness over the fact that Kuchi remained the only tribal group still exempt from disarmament (*Hazaristan Times* 2008).

In the spring of 2009, Hazara constructed trenches at strategic entry points to the central highlands amid evidence that Taliban were arming Kuchi and rumors of Iranian support for Hazara (Milich 2009; UNAMA 2009). Afghan National Army soldiers and Afghan police forces were deployed to the conflict areas, and a U.S. military mountain unit was positioned in Wardak Province, immediately to the east of the troubled zone. That summer, the U.S. force pursued its own strategy by handing out provisions and water to Kuchi encampments in an effort to discourage Kuchi movement to Hazara front lines and open warfare.

Just the year before, President Karzai had created the Commission for Resolving Land Disputes Involving Kuchis and Settled People, which was technically supported by the United Nations Assistance Mission in Afghanistan (UNAMA). However, by the summer of 2009, the commission's chair acknowledged that no progress had been made despite repeated meetings between high-level Kuchi and Hazara representatives, including Afghanistan's vice president, a Hazara. Escalation of the conflict was only preempted by the onset of winter and the return of Kuchi to their warmer home areas in the south and east of the country. Heightened tensions and the Taliban's involvement in the conflict suggested, however, that open violence would recur the following spring when armed Kuchi would again attempt to enter Hazarajat with their livestock.

TOWARD A NEW APPROACH (2009–2010)

In light of the worsening situation, UNEP took the initiative to help the Ministry of Agriculture adopt a more grassroots approach to resolution of the pasturelands conflict. It funded this author to help the ministry devise a plan of action focusing on the violence-torn eastern entry points to the central highlands. The plan was formally adopted by the ministry, supported by UNAMA and the president's resolution commission, and implemented, starting in 2010 (MAIL 2009; UNEP 2009).

Guided by five parameters and eleven working principles, the plan's central strategic goal was the adoption of a community-based and pasture-specific approach to resolution. Several of the plan's important general features are noted below.

Maximizing opportunity for compromise

The most salient feature was that it was necessary to cease attempts to help top Kuchi and Hazara politicians and leaders agree, given their demonstrated reluctance to be seen as compromisers by their respective ethnic communities. High-level agreements face other challenges as well, including the difficulty of engineering compromises specific enough to fit local needs for practical, workable solutions. For example, blanket decisions were not feasible when it came to whether or not

Kuchi owned the alpine pastures or whether or not they were permitted to use these pastures at a time when population growth, expansion of cultivation into pasturelands, and worsening degradation of remaining pastureland have curtailed even the most modest local Hazara grazing activity. In addition, failure to achieve high-level, national agreement implied to some that the pasture conflict was irresolvable, increasing anxieties and entrenching positions along all-or-nothing lines.

Localization to limit self-seeking and violence

A more localized approach to resolution often allows for the considerable, positive, and useful social familiarity between Hazara and Kuchi to be brought to bear. Not all Hazara-Kuchi relations over the last century have been antagonistic, but more positive relations have been difficult to pursue as long as power brokers on both sides find it advantageous for the dispute to continue or even escalate. These power brokers include Kuchi and Hazara with no historical ties to the areas involved, some of whom have ambitions that are more economic than political. For example, some have used the dispute to secure large swaths of highland pasture for commercial livestock-fattening ventures.

Accordingly, the plan laid out a procedure that enabled only descendants of Kuchi families who could demonstrate a history of long-standing, seasonal use of specific pastures prior to 1978 to be party to negotiations. Included in the procedure was identification of families by Kuchi and Hazara communities alike and vetting of claims against registered Kuchi entitlements and transfers. The process sought to distinguish Kuchi claims that are based solely on acquisition of farmlands in Hazarajat from claims based on specific grants or purchases of pasturelands.

A more localized approach was intended to make it easier to tackle disarmament through deployment of Afghan National Security forces in areas subject to facilitated negotiation, as well as deportation of known provocateurs on both sides. Coalition forces agreed in principle to assist as necessary.

Opening the way for practical and diverse resolution

On-site consultation by disputing parties worked to enable joint Kuchi and Hazara assessments of the condition and scope of the particular pastures in dispute. Technically proficient facilitators were provided. These assessments were preceded by rapid reconnaissance in each main district to broadly rank pasture condition; eliminate pastures that, by location and size, were obviously private or village-adjacent domains; assess local acceptance of renewed Kuchi access; and identify alternative areas (in main districts) for possible redirection of accepted Kuchi claims. Of necessity, alternative districts included inner Hazarajat, to which Kuchi have sought to migrate.

In addition, agreements were reached through and locked into pasture-specific regulations, including measures for rehabilitation, and Kuchi access was

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conditioned on participation in and compliance with these regulations (as well as other developed and apparent plans and rules).

Distinguishing between what is legal and what is just

The plan's approach aimed to overcome a founding procedural conundrum in the dispute: the Kuchi have held legal entitlements to land estates customarily held by Hazara, but the Hazara have never accepted these grants as rightful. Under these circumstances, most facilitating parties, including the government, have accepted that recourse to legal evidence of Kuchi ownership is insufficient for resolution. While on-site, face-to-face negotiations aimed to limit this deadlock, tangible arrangements were offered in which, for example, the parties could acknowledge local Hazara as the customary owners of the given pasture but also recognize Kuchi claims to the right of viable, seasonal access—a right to be upheld where locational, social, and environmental factors in the area indicate that this is possible. Where agreement on such modifications was not possible—or where environmental and other factors would make Kuchi access impractical—reparation was considered in exchange for a decision by Kuchi clans to surrender past rights.

In addition, practical assistance was provided to Kuchi who wished to settle permanently in their home areas to the east and south. Such voluntary sedentization has been pronounced since the end of the civil war (de Weijer 2007; Milich 2009).

PREPARING FOR IMPLEMENTATION

Expert technical and mediation facilitation is essential to success, along with funding. As a sign of commitment, the government of Afghanistan pledged to use its own budget to cover implementation costs and to engage local and international nongovernmental organizations (NGOs) known to be skilled in peacebuilding and negotiation. In addition, UNEP committed to making senior technical advisers available.

Backup actions included (1) steps to help Kuchi bring their winter pastures in the south and east under community-based jurisdiction and management to address encroachment, not the least of which was by fellow nonpastoral Pashtun seeking to expand poppy production; (2) encouraging the government to move forward with finalization and enactment of the Rangeland Law; (3) building upon the success of pilot cases of local adoption of pasture rehabilitation as amply launched under the FAO-funded SALEH project; and (4) national programming and funding searches to put community-based pasture management on a wider footing, working in an increasing number of provinces beyond those in the central highlands.

Leading up to the implementation, continued insecurity, uncertain safe access to key areas, and Talibanization of Kuchi pastoralist communities presented

complications that overlaid more chronic political turmoil and governance problems. And once implementation was underway, it was still difficult to secure a speedy resolution to the long and bitter contestation between settled and pastoral communities over pasture rights.

Already handicapped by weak rule of law, the government suffers from chronic indecision at all levels when it comes to contentious subjects, and that can put even the smallest achievement at risk. The seminal SALEH pilot project regularly confronted such indecision, which was sometimes compounded by the personal interests of officials. This occurred, for example, when senior regional officials refused to endorse the decisions of local community pasture managers to limit open-ended access by nonlocal livestock owners to heavily degraded pastures for fear that this would limit the officials' own ability to send their large herds of animals to those areas. Nor would the officials follow up on charging lorry owners for taking out large loads of pasture bushes for sale as fuel to urban restaurants, even when it became clear who owned the lorries and when they were given all the details by the community pasture managers (Alden Wily 2008b). Such experiences greatly diminished community will to protect public pastures exposed to these issues, but they also hardened communities' resolve that as many pastures as possible would, one way or another, be recognized as their own communal property.

Of course, local communities are not uniformly steadfast in their handling of natural resource tenure disputes. At times, prior to implementation, inter-village competition—usually aided by the continued influence of former warlords, some of whom hold powerful government positions—thwarted progress. Fortunately, both the SALEH and ADB-funded pilot projects midwived an equal if not greater counterbalancing experience, helping communities to reach some difficult compromises. With its longer time frame, the SALEH project showed that this kind of progress can be sustained and even replicated by neighboring communities enduring comparable conflict and natural resource competition (UNEP 2009).

IMPLEMENTATION AND BEYOND

The various considerations outlined in this chapter were consolidated in a strategy for resolving conflicting claims to high pasturelands (UNEP 2009). After the strategy was delivered to Afghanistan's Office of the President, it was used as a general reference in programming preparation. However, the ambitious, integrated strategy was not implemented as envisioned. The strategy has nonetheless been influential in the design and implementation of field-level development projects in Afghanistan. Recommendations outlined in the plan informed several projects in addressing conflict by promoting community-based dispute resolution, as well as the national program for reintegration of former combatants. In addition, the methodologies and modalities established through the process documented in this chapter to help secure community land rights and the analytical

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framework to recognize community land claims has influenced related land policies (RRI et al. 2013; Alden Wily 2012, 2013). Three projects illustrate how the ideas and approaches articulated in the strategy have been manifested in the design and implementation of natural resource–related projects in Afghanistan: Solidarités International’s community mapping efforts in Bamyan Province; the Afghanistan Pastoral Engagement, Adaptation, and Capacity Enhancement (PEACE) project; and the Afghanistan Peace and Reintegration Programme (APRP).

Using the tested guidelines developed by the SALEH pilot project, which ran from 2006 to 2008, several international and local NGOs have continued to assist rural communities to map and secure high pastures under their jurisdiction. One such example is Solidarités International. Solidarités International has assisted over one hundred villages in Bamyan Province to bring 800 square kilometers of pasturelands under community control (Solidarités International 2013; Alden Wily 2013a).

The PEACE project presented an innovative approach to resolve community-level land conflicts (USAID 2013). PEACE offered a training workshop on conflict resolution and peacebuilding strategies for select Kuchi and Hazara community members. After the training, five leaders from each community were selected to act as so-called “Peace Ambassadors.” These peace ambassadors shared their learning with other community members, sought support for peaceful resolutions, and worked with other peace ambassadors to reach their goals (Jacobs et al. 2009). With the help of the peace ambassadors, the project has facilitated resolution of over 2,300 local conflicts (USAID 2013).

The APRP is a UN initiative to reintegrate former combatants back into civilian life. Through the APRP, over 7,000 former combatants have renounced violence, received livelihoods assistance, and undergone reintegration (UNDP n.d.). Reintegration projects, such as vocational training, reforestation, fruit orchards, and irrigation, have provided necessary skills and job opportunities for over 1,000 former insurgents and benefited over 15,000 community members.

Newly proposed amendments to two principal land laws evidence the strategy’s impact on national land policies. Enormous strides have been made in the content of the basic land law of Afghanistan, the Land Management Law. Revisions to this long-standing law were proposed in 2012 that introduced, for the first time, community land as a lawful class of landholding (Alden Wily 2012, 2013a).⁹ Equally important are the amendments to the Land Expropriation Law being recommended by the Afghan Land Authority (Alden Wily 2013b). Current drafts propose that compensation for the subsistence value of rangelands be paid to communities when their local pastures are lawfully taken for public purposes, including mine developments (Alden Wily 2013b).

⁹ The Ministry of Justice has not yet forwarded, as of March 2014, the proposed changes to parliament.

LESSONS LEARNED

Amid the hard and negative experiences, positive lessons have been learned. Most relate to the utility of adopting community-based approaches to policy and practical natural resource problems, and to the necessity of pursuing—sooner rather than later—an integrated approach to resource conflicts, tenure reform, and environmental and resource governance concerns.

Using experiential learning to move forward

More specifically, the utility of adopting practical piloting as a means to move debates forward in positive and workable directions has been demonstrated by the experiences in Afghanistan. Piloting has proved its value in many ways, including the following:

- It has helped to overcome highly charged political and ethnic contestation that has not readily responded to resolution at the national level.
- It has enabled wary or conservative officials to be directly exposed to new possibilities and, when they participate in trial developments themselves, to gain formal ownership of the process.
- It has provided an opportunity to set practical precedents, which can become a force for change.
- It has offered concrete opportunities for at least some communities to have direct input into the development of new approaches to long-standing conflicts. This is critical not only for workability, but also for public ownership of shifting policy and legal paradigms and for improved understanding of the implications of change for local livelihoods.
- It has opened a range of potential routes to resolve standing disputes over natural resources through work with real situations and new sets of actors—not just community leaders, politicians, and officials, but also ordinary people most directly affected by the dispute.
- It has demonstrated repeatedly that ordinary communities have the capacity to compromise and act, helping to overcome deadlocks unresolvable at the national level, when communities are given the incentive and opportunity and when there is an absence of political constraints.
- It urges planners to create community-specific solutions instead of relying on generalized policies and strategies.
- It has afforded opportunities to test and learn from new approaches in what will usually be much-changed circumstances.
- It has enabled national policy makers to acknowledge, capture, and consider diverse circumstances in several parts of the country when they are making decisions.
- It has helped policy makers to view changes in selected areas as models and first cases, especially in matters where incremental implementation will always be the necessary mode of operation.

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- It has enabled progress in situations where continued warfare or conflicts elsewhere in the country severely hinder such progress at a more comprehensive, national level.

Although such benefits broadly apply to most contested resource access situations, being able to shift the examination of the issues down to the field level is doubly important in countries like Afghanistan, where the rule of law is weak; where, in the absence of popular ownership, legal dictates are less than meaningful and are subject to manipulation; where people's experience with leading social change is limited; and where, because whole parts of the country are cut off from working governance, self-reliance has enormous potential to thrive, largely out of necessity.

As experienced in Afghanistan, it is not easy for a highly centralized government to eschew the conventional route of developing policies and new legal paradigms in the corridors of power and bureaucracy first. If grounded piloting is to take the lead, characterizing or constructing such projects as learning-by-doing research can be helpful—as was the case with the FAO- and ADB-supported projects. It is also important to place these activities under the aegis of the government.

Of course, reformation of policies and laws continues to be essential, and a lack of experiential learning can greatly handicap the workability and acceptability of new policies and laws. Learning-by-doing approaches are slowly but increasingly proving to be a sound way forward, even in nonconflicted societies such as Tanzania (Alden Wily 2008c). In the case of Afghanistan, if more orthodox intentions had been sustained, the likely result would have been reinstatement of pre-war pastoral policies and yet more death and destruction. It is a subjective but not casually drawn conclusion that opening opportunities through grounded piloting for structural review of old paradigms has done (and will continue to do) much to keep Afghanistan's pastoral conflict from falling into unbridled intertribal warfare.

The need to reach the nub of what is contested

Identifying exactly what needs reform is a complex but necessary process. The Kuchi and Hazara conflict over the pastures has obvious ethnic and religious dimensions that each side continues to use to give identity to and build solidarity around their respective claims. While one cannot discount these dimensions, they cannot be allowed to divert attention from the need to address other underlying and potent drivers of the conflict. Failure to effectively address conflict drivers will result in their rising up again and again as instruments of civil disorder.

It is often the case in agrarian conflicts that reform of the pattern of land relations cannot be avoided. Usually the root conflict has less to do with differences in ethnicity or religion, or even with competing land use systems, and more to do with property rights. Governmental administrations and international advisers often shy away from this recurring lesson. Even if they did not, the

reality is that issues of territorial dominion and, more specifically, of customary communal ownership of collective land assets cannot sustainably be manipulated and downgraded at the will of the state. Livelihood relationships with land are too tightly dependent, and convictions around what is “our land” and what are “our rights” too deeply held, to allow lasting subordination to the state’s will.

As the many conflicts around indigenous rights in Latin America and especially in Africa illustrate, persistent inattention to chronic dispossession can engender violence and even civil war, especially where reallocation of lost lands is seen as unfair (Pantuliano 2009). On a practical level, as the SALEH project was quick to point out, reluctance to recognize that customary rights amount to ownership removes an opportunity to use the distinction between ownership and access rights as a mechanism through which bitter conflicts between settled and nomadic peoples might be resolved (Alden Wily 2006a).

Helping government understand its role in natural resource conflicts

An associated general lesson is that governments are unwise to dismiss natural resource disputes as merely matters of interethnic or interclass resolve. As is so often the case, the Afghanistan pasture dispute has potent roots in the national policies and laws that the government has pursued. But what government makes, government can unmake. Accordingly, an important potential remedy lies in working closely with government policy makers, including through experiential learning, to expose them to the positive potential of different paradigms.

Certain positions are remarkably common: for example, policy makers often perceive themselves to be best situated as beneficial landlords of lands perceived by one party or another as wrongfully taken. Yet a more modern perception limits government to the role of regulator (Alden Wily 2009). With each passing decade, a shift in paradigms with respect to valuable natural resources becomes more important, and alarmingly so, for the current global land grab is having a deep effect on the natural resource rights of thousands of communities in several Asian states, and of the rural poor in as many as eighteen African economies (Görge et al. 2009; Unruh and Williams 2013). Nearly every circumstance involves legal but questionably legitimate government ownership of local communal natural resources, including important forest and rangeland resources. Early indications are that yet more natural resource-based conflicts may arise, mainly between people and their governments, as to the legitimacy of the law (Alden Wily 2010). As slow but progressing change in Afghanistan illustrates, the law is not always right, and it may also need to change.

Time is of the essence

This chapter has noted many constraints to progress. In the circumstances that have prevailed in Afghanistan, it is tempting for the government and aid agencies to put pasturelands conflict matters aside until war is over, rule of law is restored,

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and good governance is achieved. Realistically, that could be a very long-term undertaking, yet failure to act now would ignore the role natural resource conflicts play in misgovernance and in interethnic and political contestation and thereby ignore the potential that resolution of such conflicts has for bringing about sustainable peace. Efforts to resolve Afghanistan's pasturelands conflict are necessary to achieve a sustainable peace, for establishment of clear and fair rights to pastures remains of major concern to virtually all of Afghanistan's rural populations.

In the case of Afghanistan, delay in resolving the pasturelands conflict has proved dangerous so far, but it is hoped it will not be fatal. The government's weak response to date has been unavoidable, in part. Time is required for an administration, particularly one slow to change, to take ownership of such issues while a host of other demands press in. Yet, UN and bilateral agencies have also contributed to delays by investing only low levels of technical and financial assistance toward a solution.

Urgency to act in Afghanistan continues to increase, and action must get under way before Taliban or other insurgents more fully grasp that the pasturelands dispute can be a powerful social problem for them to resolve in ways that could return the country to more widespread and violent warfare. Once again, the power of contested rights to natural resources to engender conflict—both intertribal and between the state and its people—has been demonstrated. And once again, this requires fundamental paradigm changes to remove the thorns that drive contestation, as well as degradation and loss of precious natural resources.

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