



## USAID COUNTRY PROFILE

### PROPERTY RIGHTS AND RESOURCE GOVERNANCE

# AFGHANISTAN

#### OVERVIEW

Decades of conflict, population displacement within and outside of Afghanistan, changes in national political and economic ideologies, and variable climatic conditions (including drought) have resulted in a complex and unsettled land-ownership and management situation. Land rights are perceived to be highly insecure and disputes are widespread. This instability undermines prospects for the greater investment needed to increase agricultural productivity and enhance economic recovery. This instability also increases the vulnerability of millions of Afghan households to poverty, and the Taliban and others use land disputes to foment general social unrest and conflict.

A new Constitution enacted in 2004 established a legal framework for property rights that safeguards the right of individuals to own property. A 2007 Land Policy addressed bottlenecks in land rights administration and the overlapping authority of institutions, and was followed by the 2008 Law on Managing Land Affairs, which lays out principles of land classification and documentation, governs settlement of land-rights, and encourages commercial investment in state-owned agricultural land with opportunities for long leases. The Ministry of Justice, however, estimates that 90 % of Afghans continue to rely on customary law and local dispute-resolution mechanisms. More than 30 years of conflict have decimated the centuries-old customary land dispute resolution mechanisms. Those systems that are functioning are stressed by the need to manage the layers of competing interests: populations have moved to urban areas to avoid conflict, and populations displaced by earlier conflicts have made efforts to reclaim both rural and urban properties.

The discovery of the extent of the country's mineral resources, with an estimated value of US \$1 trillion, will put more pressure on the land sector. Mineral resources increase the value of land, intensifying the need to resolve competing claims, to secure land rights for local populations (paying particular attention to protecting the rights of the most marginalized members of communities), and to protect against potential negative impacts, such as large-scale land transactions without local involvement.

The United States Government has already provided significant support to the Government of the Islamic Republic of Afghanistan (GIRoA) in its efforts to: (1) restart economic growth, especially in the agricultural sector and through the rehabilitation of irrigable land; (2) develop local institutions capable of meeting the population's health and education needs; and (3) strengthen land tenure security through improvements to the legal framework, the implementation of a country-wide land survey, mapping and registration system, and the regularization of land rights in informal settlements. But economic growth and political stability will not be achieved unless and until the GIRoA removes constraints on access to land (especially urban and irrigated agricultural land), provides functional mechanisms to resolve disputes among competing claimants, and provides tenure security to owners and lessees of land in Afghanistan.

#### KEY ISSUES AND OPPORTUNITIES FOR INTERVENTIONS

- **Continued Harmonization of the Legal Framework Governing Land Rights.** While substantial progress has been made in revising and updating Afghanistan's land law and policy, much of the framework governing land rights and administration remains fragmented, contradictory and, in large measure, unenforceable. While customary law is poorly integrated with formal law and policy, it has social legitimacy because it reflects traditional principles supporting conflict resolution and social cohesion. However, customary law often fails to support the principle of equity and the rights of women or other marginalized populations. *Donor support for the government's efforts to create a comprehensive, harmonized legal framework governing land and natural resources in Afghanistan, with particular attention to the rights of women, ethnic minorities, and displaced populations, will help to maintain progress toward a sustainable system of law and land administration.*

- **Decentralization of Appropriate Land Administration Functions and Support for Disadvantaged Groups in Seeking Services.** A combination of efforts could increase land access for disadvantaged groups, strengthen dispute resolution mechanisms and institutions, and formalize the rights of informal settlers. Formal structures, such as the Special Land Dispute Court and the Amlak Office in the Ministry of Agriculture, Irrigation and Livestock (MAIL) have been tasked with focusing on emerging land issues. The Amlak Office is being absorbed into the new Afghanistan Land Authority. Capacity remains limited, however, and village councils remain active in land administration, following customary rules that are inconsistent with national law and policy. *Donor support could reduce tensions between central and regional authorities with regard to land administration and land rights, and build on strong community-level institutions. Lessons learned from earlier phases of assistance on land titling and tenure security could be more widely shared to assist local authorities in developing best practices for formalizing land rights, resolving disputes, and addressing the underlying causes of insecure tenure and conflict over access to land. Experience with organization of legal aid services to populations needing assistance could make the local dispute resolution processes more effective.*
- **Community-Based Forest Management.** Traditional natural resource management strategies have broken down under years of armed conflict, growing population numbers, the lack of an agreed legal framework and capacity to enforce those rules that do exist. Afghanistan does not have an agency with overall responsibility for natural resources protection. *USAID is one of the few entities focusing on threatened ecosystems in Afghanistan. USAID could potentially further its objectives in biodiversity and economic growth by assisting the government with developing and piloting community-based forest management programs using best practices from Afghanistan and other countries.*

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## SUMMARY

Afghanistan is a country under pressure. Fourteen million Afghans, nearly half the population, are extremely poor or vulnerable to extreme poverty. An estimated 80% of Afghans live in rural areas and are dependent on natural resources for their livelihoods. The country's farmland, pastures, forests, and water resources have suffered from successive years of extreme drought and extended conflict. The population's traditional methods of coping have been undermined by soil degradation, deforestation, and flooding caused by unsustainable land use practices, military action, and chronic insecurity of livelihoods.

Drought, war, and poverty have forced people to migrate into urban areas, often becoming landless in the process. They have been joined by the millions of refugees returning to Afghanistan. More than half of the returning refugees are unable

to return to their place of origin because they have no land or their land has been taken in their absence. In many areas, displacement and disintegration now characterize a society that had historically been defined by networks of reciprocity that guaranteed individual security and social support. Widows, female-headed households, and nomadic communities are the most vulnerable.

The decades of conflict, extended periods of drought, and deterioration of the rural economy have undermined Afghanistan's historically strong centralized institutions and allowed for the rise of regional power structures. Land administration and judicial institutions lack both the capacity and the authority to manage land and natural resource rights. In much of the country, local elites, warlords, and political factions control land and natural resources through a combination of physical force and customary legal regimes that reflect deeply entrenched power structures.

Afghanistan's population faces constraints on access to land, insecurity of tenure, and the depletion of natural resources. The resurgence of the Taliban, continued conflict, and growth of the opium poppy industry have created barriers to development. In many cases, reconstruction and development are taking place in a conflict-management context as opposed to a post-conflict setting.

Within this challenging environment, USAID's Land Titling and Economic Restructuring in Afghanistan (LTERA) Project (2004–2009) supported the government of Afghanistan in its effort to improve land tenure security through improvements to the legal framework, implementation of a pilot land survey, mapping, and registration system, and regularization of land rights in informal settlements. USAID also supported road-building and agricultural projects that assisted the country in doubling its output of legitimate agricultural products in the 2004–2008 period. The agency doubled its funding for agriculture in FY10.

### BOX 1. MACRO INDICATORS

	Year	Score
Population, total	..	..
Population ages 0-14: 15-64: 65+ (% of total)	..	..
Population growth (annual %)	..	..
Rural population (% of total population)	..	..
Population density (people per sq. km)	..	..
Literacy rate, adult total (% of people ages 15 and above)	..	..
Land area: Surface area (sq. km)	2008	652,090: 652,090
Arable land (% of land area)	2005	12.1
Agricultural land (% of land area)	2005	58.3
Permanent cropland (% of land area)	2005	0.2
Irrigated land (% of cropland)	2003	33.8
Forest area (% of land area)	2005	1.3
Nationally protected areas (% of total land area)	2006	0.3
Renewable internal freshwater resources per capita (cubic meters)	..	..
Annual freshwater withdrawals, agriculture: domestic: industry (% of total freshwater withdrawal)	2007	..., 1.8, 0.0
Crop production index (1999-2001 = 100)	2005	129.6
Livestock production index (1999-2001 = 100)	2005	99.7
GDP (current US\$)	2007	10,169,548,111
GDP growth (annual %)	2007	16.2
Agriculture: industry: manufacturing: services, value added (% of GDP)	2007	37.5, 24.9, 15.8, 37.6
Ores and metals exports: imports (% of merchandise exports: imports)	..	..
Aid (% of GNI)	2007	38.8

Source: World Bank, 2009

## I. LAND

### LAND USE

Afghanistan's total land area is 652,090 square kilometers. The population is estimated at 32 million people, with 22% living in urban areas. Of the 78% percent of the population that is rural, roughly 20% are classified as nomadic. An estimated 3.5 million rural Afghans are extremely poor, and another 10.5 million are vulnerable to extreme poverty. The country's total GDP in 2008 was \$10.6 billion, with 32% attributable to agriculture. Services and industry, respectively, represented 42% and 26% of GDP (World Bank 2010; PRB 2007; World Bank 2007).

Afghanistan is a high, arid country, much of which is mountainous or desert. Agricultural land accounts for 58% of the total land area, but only 12% is useable farmland, with the balance pasture land, which supports the country's large nomadic and semi-nomadic population and its livestock. Forests make up 1.3% of the country's total land area. Deforestation is occurring at a rate of 3% per year. Roughly 0.3% of the total land area is designated as protected (World Bank 2009; Groninger 2006; Alden Wiley 2003).

The country's natural resources have suffered from successive years of extreme drought and extended conflict that have undermined the population's traditional coping and mitigation strategies. Demand for fuelwood and unsustainable land use practices such as overgrazing and the cultivation of marginal land have degraded forests and range land and caused deforestation, flooding, water scarcity, and soil degradation (ADB 2002; Denmark 2007).

Land mines, unexploded ordnance, and damaged irrigation systems have left much of the agricultural land vacant or underutilized. An unknown amount of prime agricultural land is used for the cultivation of opium poppies (GIRoA 2008a; World Bank 2007).

### LAND DISTRIBUTION

Afghanistan has more than 40 ethnic groups, the largest of which is the Pashtun (53%), generally residing in the eastern and southern regions. The Tajiks in northeast (17 %) and Turkic groups in northern plains (20%) are the second- and third-largest groups (Ahmad and Wasiq 2004; Alden Wiley 2003).

Land distribution is unequal, a situation that has plagued Afghanistan almost from the beginning of the modern Afghan state. In 1880, the reigning monarch, Abdur Rahman Khan, gave land grants to Pashtuns, who were loyal to the monarchy, as a means to secure the border against Russia and to subdue the local people (especially the Hazaras) through imposition of tribal and feudal serfdoms. The land grants overlaid but did not replace existing localized tribal land relations. Over the next century, many regimes attempted reforms designed to address the inequality in landholdings to some degree. However, the combination of weak legislation, ill-considered resettlement schemes, strong ethnic and tribal ties, and enduring systems of customary tenure limited the reforms' intended impact (Alden Wiley 2003; Gebremedhin 2007).

Beginning in 1963 and with the support of USAID, the government initiated an effort to survey and register the country's land. The project was expensive and time-consuming. By 1977 about 45% of land was surveyed (between 20% and 30% of arable land); no title deeds were issued. The process helped identify government land, and the state put 2.6 million hectares of pasture and barren land under state ownership (Alden Wiley 2003; McEwan and Nolan 2007; Stanfield et al. 2008).

In 1978, responding to the continued inequality in landholdings, the communist government initiated new land reforms that reduced the ceiling for land holdings, allowed the state to seize excess land without paying compensation, provided for free distribution of land to landless and poor households, and banned local usury. The reforms were hatched in an urban setting and unpopular in the rural areas, especially among the conservative religious groups. The alien ideology promoted in the more permissive urban culture clashed with rural traditions, and real change for small famers was slow to arrive. There was inadequate land to redistribute, farmers lost their ability to borrow money to pay for inputs, and the reforms did not address water rights. The government—supported by the Soviet Union—responded to the rural discontent with a campaign of ideological education. The Soviet invasion followed (Allan 2001; Alden Wiley 2003).

Operating under Russian advisers, the Afghan government scaled back reform legislation, crafting exemptions to ceilings and creating new cooperatives rather than acquiring and redistributing ceiling surplus land. The government returned some seized land to large landowners as small farmers fled the rural areas that were under siege by Soviet troops. When the Soviets left Afghanistan in 1989, they left behind a countryside

littered with land mines, half a million destroyed homes, and as many widows. Less than half the arable land in the country was cultivated (Alden Wiley 2003).

<b>BOX 2. LAND TENURE INDICATORS</b>	
	<b>Score</b>
<u>Millennium Challenge Corporation Scorebook, 2009</u>	
– Land Rights and Access (Range 0–1; 1=best)	0.346
<u>International Property Rights Index, 2009</u>	
– Physical Property Rights Score (Range: 0–10; 0=worst)	..
<u>World Economic Forum's Global Competitiveness Index, 2008-2009</u>	
– Property Rights (Range: 1–7; 1=poorly defined/not protected by law)	..
<u>World Economic Forum's Global Competitiveness Index</u>	
– Ease of Access to Loans (Range: 1–7; 1=impossible)	..
<u>International Fund for Agricultural Development, Rural Poverty Report, 2001</u>	
– Gini Concentration of Holdings, 1981-1990 (Range: 0–1; 0=equal distribution)	..
<u>International Fund for Agricultural Development, Rural Sector Performance Assessment, 2007</u>	
– Access to Land, 2007 (Range: 1-6; 1=unsatisfactory access)	2.0
<u>Food and Agricultural Organization: Holdings by Tenure of Holdings</u>	
– Total Number of all Agricultural Holdings, Year	
– Total Area (hectares) of all Agricultural Holdings, Year	
– Total Number of Holdings Owned by Holder; Year	..
– Total Area (hectares) of Holdings Owned by Holder; Year	
– Total Number of Holdings Rented from Another; Year	
– Total Area (hectares) of Holdings Rented from Another; Year	
<u>World Bank Group, Doing Business Survey, 2010</u>	
– Registering Property-Overall World Ranking (Range: 1–183; 1=Best)	164
<u>World Bank Group, World Development Indicators, 2009</u>	
– Registering Property-Number of Procedures	9
– Registering Property-Days Required	250
<u>World Bank Group, World Development Indicators, 1998</u>	
– Percentage of Population with Secure Tenure	..
<u>Heritage Foundation and Wall Street Journal, 2009</u>	
– Index of Economic Freedom-Property Rights (Range 0-100; 0=no private property)	..
<u>Economic Freedom of the World Index, 2008 (2006 data)</u>	
– Legal Structure and Security of Property Rights (Range 0-10;0=lowest degree of economic freedom)	
– Protection of Property Rights (Range 0-10; 0=lowest degree of protection)	..
– Regulatory Restrictions of Sale of Real Property (Range 0-10;0=highest amount of restrictions)	

Following Soviet withdrawal, the Afghan government attempted to revive the rural economy by exchanging land reforms for policies supporting commercial agriculture. The government gave local leaders weapons to help secure the countryside from uprisings by fragmented groups. Religious extremists, warlords, and militias seized land from farmers, invaded and developed state land for cultivation of poppies and other high-value crops, constructed unplanned housing developments, and caused extensive land degradation. In the 1990's, the *mujaheddin* and later the Taliban captured Kabul and proclaimed the country an Islamic state. The Taliban enacted a series of 26 decrees governing the rural sector, including decrees intended to restore land holdings to what they had been in the pre-reform period (Alden Wiley 2003; Allan 2001; Gebremedhin 2007).

When the Afghanistan Transitional Authority took control of the government in 2001–2002, it inherited a legislative framework that, while dominated by Taliban decrees, also included: remnants of decades of legislative efforts to

control land rights; elements of customary tenure systems based on tribal and ethnic ties; and enduring historical patterns of land use. The new government also inherited a skewed pattern of land distribution and high levels of tenure insecurity (Alden Wiley 2003; Maletta 2007; Gebremedhin 2007).

Currently, 5% of farms in Afghanistan are located on 40% of the arable land. Seventy-three percent of farms are less than five hectares. Average farm size is 1.6 hectares. Nationally, 21% of rural households are landless. The poorest households are those headed by women and the landless (Maletta 2007; Alden Wiley 2003; GIRoA 2008a).

Almost 5 million refugees have returned to Afghanistan from Pakistan and Iran since 2002; a majority of these are landless or have returned to find that their land had been taken in their absence. They are often forced to join the growing population that inhabits squatter settlements in urban areas. Of the 2 million more refugees waiting in Pakistan, 90% reportedly have no access to land or housing in Afghanistan (GIRoA 2008a; IDMC 2008; Koser and Schmeidl 2009).

## LEGAL FRAMEWORK

The legal framework governing land rights has been a fragmented collection of laws from a variety of regimes and eras and includes formal (constitutional and civil law), religious and customary law. However, the government is making progress toward creating a cohesive framework. The 2004 Constitution of Afghanistan provides that property shall be safe from violation, no one shall be forbidden from owning and acquiring property except by law, and private property can only be confiscated by legal order. In 2007, the Cabinet of Ministers approved a new Land Policy that allows for the formalization of land rights in informal settlements,

and addresses bottlenecks in land rights administration as well as the overlap in different institutions' authority over questions of land rights (Alden Wiley 2003; GIROA 2004; Gebremedhin 2007; EMG 2010).

The 2008 Law on Managing Land Affairs sets out definitions for various land types and classifications, requirements for land deeds, and principles governing allocations of state land, land leasing, land expropriation, settlement of land rights, and restoration of lands. The law recognizes *Shari'a*, and defers to applicable principles of *Shari'a* in some areas (GIROA 2008b).

Issues that are not covered by the Law on Managing Land Affairs are governed by the country's Civil Code, which in large measure reflects the Hanafi school of Islamic law (*Shari'a*). Islamic law governs when the Civil Code is silent on an issue (Alden Wiley 2003; Gebremedhin 2006).

Customary law dominates in Afghanistan, and the Civil Code recognizes the application of customary law with regard to land rights. The Ministry of Justice estimates that, due to lack of trust and confidence in formal judicial institutions, 90% of Afghans rely solely on customary law. The Constitution is silent on the authority of customary law but prohibits the adoption of laws that are inconsistent with the tenets of Islam. Customary law is in large measure consistent with *Shari'a*, and *Shari'a* permits the practice of customary law so long as it does not interfere with tenets of Islam. Customary law systems vary but share the following characteristics: use of customary village councils (known in Dari as *shura*, or *jirga* in Pashtu) that use mediation and arbitration techniques of dispute resolution; the application of principles of apology and forgiveness; and the concept of restorative justice (McEwan and Whitty 2006; Senier 2006; Alden Wiley 2003).

## TENURE TYPES

Afghanistan's land is vested: (1) individually in private individuals and entities; (2) communally in families, clans, and communities; and (3) in the government (McEwan and Whitty 2006).

**Ownership.** Ownership is the most common tenure type in Afghanistan. Ownership may be based on formal or customary law, and ownership rights can extend to all land classifications. Ownership confers a right of exclusive possession of land, and owners are entitled to use and dispose of land freely. Under the 2008 Law on Managing Land Affairs, all land not proved to be private is deemed to be state land (Gebremedhin 2006; GIROA 2008b).

**Leasehold.** The 2008 Law on Managing Land Affairs permits leasing between private parties, subject to requirements for written leases that describe the land and set forth the agreement of the parties regarding the length of the lease and payment terms. For purposes of attracting investment, the Ministry of Agriculture, Irrigation and Livestock (MAIL) can lease agricultural land to individuals and entities for purposes of agricultural activities for periods up to 50 years for fertile land and 90 years for virgin and arid (i.e., uncultivated) land. The Ministry of Agriculture can lease virgin and arid land for non-agricultural investment purposes with the agreement of other departments and consistent with considerations of land type and proportion. Other ministries and departments can lease land for non-investment purposes for periods up to five years. Leases of private land, which have primarily been governed by customary law, are generally quite brief, often extending only a season. Sharecropping is a common arrangement: the landowner contracts with the sharecropper to cultivate the land, with the parties agreeing to terms regarding the production shares and payment for inputs (GIROA 2008b; McEwan and Whitty 2006; Alden Wiley 2003).

**Agreed Rights of Access.** The Law on Managing Land Affairs provides that pasture land is public property that neither the state nor any individual can possess (except as otherwise provided by *Shari'a*), and which must be kept unoccupied for the public use for activities such as grazing and threshing grounds. Customary law provides that individuals and communities can obtain exclusive or non-exclusive rights of access to government-owned pasture land through customary use and deeds (GIROA 2008b; McEwan and Whitty 2006).

**Occupancy Rights.** In urban areas, landholders in formal settlements generally have formal rights to the land. Occupants of informal settlements, including squatters, usually have some type of informal rights that are based on principles of customary law, the nature of the land, and the means by which the occupants took possession of the land. The 2007 Land Policy permits the regularization of rights to informal settlement holdings, but implementing legislation has yet to be enacted (Gebremedhin 2006; Gebremedhin 2007; World Bank 2005).

**Mortgage.** Formal and customary law recognize two types of land mortgage: one type operates as a debt secured by the land. The second type, which is the most common, is a use mortgage under which the lender takes possession of the land until the borrower repays the debt (McEwan and Whitty 2006).

## SECURING LAND RIGHTS

Land ownership can be acquired through purchase, government land allocation, and transfer of ownership, such as through inheritance. Most people acquire rural land through inheritance transfers, which often precede death. Nomadic or semi-nomadic people may acquire pasture land for grazing their livestock through application to the local authorities stating the need for land, and through the identification of vacant land (*mawat*). Individuals can apply for ownership rights to *mawat* land by showing that no one has ownership rights to the land and that the land is not cultivated or improved, and by agreeing to cultivate or improve the land. Most people acquire urban land through purchase, lease, or squatting (McEwan and Whitty 2006; Alden Wiley 2003; Gebremedhin 2006; World Bank 2005).

The Constitution prohibits foreign individuals from owning immovable property in Afghanistan. Foreign individuals can lease property for the purpose of capital investment (GIRoA 2004).

Afghanistan does not have an adverse possession law. Holders of land rights under customary law cannot obtain ownership simply through the passage of time and exclusive possession of land. The formal law also does not provide a means to formalize informal rights to land or regularize de facto ownership. USAID's LTERA project tested community-based models for formalizing rights informal settlements and legislation governing the formalization of informal rights is anticipated (Gebremedhin 2006; Gebremedhin 2007; EMG 2010).

In general, land rights tend to be highly insecure. In rural areas the key drivers of the insecurity are: (1) a history of inequitable relations within communities with regard to access and rights to land and water; (2) multiple unresolved interests over the same land, including rights of nomads; (3) failure to develop accepted principles governing holdings of non-agricultural land; and (4) continuing violence and disorder, uncontrolled poppy production, warlordism, land invasions, and ethnic disputes. In urban areas, the vast majority of landholdings are informal, often contrary to formal law, and insecure (Alden Wiley 2003; McEwan and Nolan 2007; Beall and Esser 2005; Stanekzai 2008; Denmark 2007; World Bank 2005).

The exodus of Afghans to other countries during decades of conflict has been a significant cause of tenure insecurity. Afghans returning to Afghanistan find their land and houses inhabited by other families and communities. In other cases, changes in government result in loss of rights. The successive monarchies governing Afghanistan from 1880–1973 issued royal decrees supporting the expropriation of land by the Pashtuns. When northern Afghanistan thereafter came under the control of local indigenous commanders, the northern groups forced many Pashtuns out of the northern provinces, even though they had lived in the region for generations. These displaced households were left to migrate south and assert claims to ancestral land they and their families left decades earlier (Allan 2001; IDMC 2008; Koser and Schmeidl 2009).

Afghanistan has a deeds registration system: the basic unit of registration is the deed, evidencing the transaction in land. Registration is a judicial function. Primary court judges have responsibility to draft and archive legal deeds and the Amlak Office (for rural land) and the Municipality (for urban land) certify the identity of the parties (Stanfield et al. 2008; GIRoA 2008b).

Between 20% and 30% of the country's agricultural land was surveyed and a registry created in the 1970s and 80s. At present, less than 10% of rural property and 30% of urban property is covered by legal deeds recorded in the provincial court archives. Those records that are archived are often out of date and inaccurate (McEwan and Nolan 2007; Stanfield et al. 2008).

Through assistance provided by the LTERA project, Afghanistan's formerly cumbersome land registration process was reduced from more than 30 steps to only 4 steps for land and 3 steps for buildings. Under the pre-LTERA registration system procedures could take up to 250 days, but use of the new system reduced that time period to an estimated 64 days, and further efficiencies are anticipated as records are computerized. The transfer tax has also been reduced from 7% to 5% (4% in some circumstances). The process of computerizing land records was underway in 10 provinces in mid-2010, and statistics collected in those offices show a substantial increase in the number of transactions being registered. However, the system is not yet linked to a cadastral or mapping system, and previous estimates suggest up to 95% of transactions are conducted informally and without registration (IBRD 2009; World Bank 2008; Gebremedhin 2006; McEwan and Whitty 2006; May et al. 2008; EMG 2010; Astana, pers. comm.).

Almost all land is registered in the name of the male head of household. In urban settings, female heads of household and widows are increasingly asserting their rights to land, but they are unlikely to try to register their rights formally because the process is time consuming and costly (Grace 2005; Beall and Esser 2005; Alden Wiley 2003).

## INTRA-HOUSEHOLD RIGHTS TO LAND AND GENDER DIFFERENCES

The Constitution provides that women cannot be precluded from owning or acquiring property. Islamic law grants widows one-eighth of the property of the deceased spouse and daughters inherit half the share of land inherited by sons. Despite these formal provisions and customary laws that permit women to own land, few women do. Daughters tend to relinquish their inherited land rights to their brothers, especially at marriage. Widows who inherit land commonly transfer it to their sons' names. In the rare cases where women do retain control of inherited land, they usually have no brothers and are not married, and thus have no means of support. Limited studies suggest fewer than 2% of women own land and most of those women are widows (GIROA 2004; Grace 2004; Alden Wiley 2003; Grace 2005).

BOX 3. LAND AND GENDER INDICATORS		Score
<u>OECD: Measuring Gender In(Equality)—Ownership Rights, 2006</u>		
— Women's Access to Land (to acquire and own land) (Range: 0-1; 0=no discrimination)		..
— Women's Access to Property other than Land (Range: 0-1; 0=no discrimination)		..
— Women's Access to Bank Loans (Range: 0-1; 0=no discrimination)		..
<u>FAO: Holders of Land Classified by Sex, 1993</u>		
— Percentage of Female Holders of Agricultural Land		..

## LAND ADMINISTRATION AND INSTITUTIONS

Primary responsibility for land administration falls on the Department of Amlak (Land) within the Ministry of Agriculture, Irrigation and Livestock (MAIL). The Amlak Office handles land registration in rural and urban areas, and is being absorbed into the new Afghanistan Land Authority (ALA). Initially established as part of the Ministry of Agriculture, Irrigation and Livestock (MAIL), ALA may become an independent government body. ALA's function will be to manage government-owned land in an effort to market that land and generate rents for the national budget. ALA may also exercise policy-making functions with respect to land, and may incorporate some of AGCHO's parcel mapping functions. As of June 2010, its status is still in flux, although a chief executive and staff have been hired and are beginning to function (Anderson pers.comm.; Beall and Esser 2005).

Municipalities have responsibility for land acquisition and land allocation. The Department of Cadastre Survey in the Afghanistan Geodesy and Cartography Head Office (AGCHO) is responsible for land surveys and settlement and maintains land records. The Primary Courts draft deeds and issue orders for the transfer of title (Beall and Esser 2005).

Village councils (*shura*, or *jirga*) are active in local matters, including land issues and disputes. The *shura* system is sometimes criticized as representing the majority political factions and elites at the expense of economically disadvantaged and vulnerable groups. Women are not permitted to be members of the *shura* (Beall and Esser 2005).

The government established a Special Land Dispute Court in 2002 to focus on land issues arising from the return of IDPs, refugees, and squatting, and to bridge customary and formal institutions. The court has been criticized as moving too slowly, not addressing claims against the government, not handling IDP cases, and lacking enforcement provisions (Beall and Esser 2005).

## LAND MARKETS AND INVESTMENTS

The rural land market ranges from nonexistent to vibrant, with the most active markets centered on the limited amount of irrigated land. The urban land market is active and prices are rising as a result of rapid urbanization (McEwan and Whitty 2006; Stanfield et al. 2008).

The process for selling land was streamlined by the government in 2009 to encourage formal registration of land transactions. The number of steps required was reduced, as were the taxes due at the time of sale. While these changes improve and simplify the conveyancing process, and some increase has been seen in the number of transactions, registered titles can be subject to attack by others claiming superior rights in land. (EMG 2010; Gebremedhin 2006; World Bank 2008; Astana, pers. comm.).

Most Afghans transfer land by informal deeds. They rely on oral history and community knowledge for identification and use witnesses for authentication of identity and enforceability of rights. Land owners have been reluctant to formalize their rights with title documents because the process requires excessive time and cost and puts them on the grid for tax payments (McEwan and Nolan 2007).



The growth of the land sales market is constrained by customary law (known as *shafa* rules), which require landowners wishing to sell their land to offer it first to their heirs and second to the neighbors. Only after both groups pass on their right of first refusal can the owner offer the land on the open market (McEwan and Whitty 2006).

With the support of provisions in the 2008 Law on Managing Land Affairs allowing for long leases (50 and 90 years, depending on land type), the Afghanistan Land Authority (ALA) is actively seeking domestic and foreign investors to lease state land for the establishment of agribusinesses and other enterprises. The extent of foreign land leasing is unknown (Harakat 2009; GIRoA 2008b).

#### **COMPULSORY ACQUISITION OF PRIVATE PROPERTY RIGHTS BY GOVERNMENT**

The 2004 Constitution and 2008 Law on Managing Land Affairs authorize the state to acquire private land in accordance with the law. The Land Acquisition Law allows the state to acquire land for the public interest upon paying fair market value. The law does not provide for public consultation regarding the land acquisition and compensation options. The law only grants compensation to those with formal ownership rights, not those with customary ownership or use rights (GIRoA 2004; GIRoA 2008b; Sherkat 2008).

Under the Land Acquisition Law, compensation is based on government rates determined by a legally constituted committee. If the state acquires land and property for a public purpose, the owner shall receive the value of land, the value of residential houses and buildings, and the value of trees and orchards and other assets on land. The value of land is determined by the Council of Ministers based on the recommendation of a committee consisting of: (1) the landlord or person who uses the land or their representatives; (2) the official representative of the agency that needs to acquire the land; (3) a representative of the local municipality; (4) a representative of the Ministry of Finance; and (5) a representative of the Ministry of Justice. The committee also serves as the appellate body that addresses disputes regarding its valuation of property (ADB 2009).

In recent years, the Afghanistan government has exercised its power to expropriate land in order to provide land for infrastructure development, such as roads, schools, weirs, and channels (ADB 2009; GIRoA 2009c).

#### **LAND DISPUTES AND CONFLICTS**

Land disputes are common and often violent. The most pervasive causes of land disputes are: the inability of the formal and informal systems to address the land claims of returning refugees and IDPs; land seizures by elites and warlords; ethnic tension between Pashtun and non-Pashtun interests; the prevalence of fraudulent land documents; absence of agreements over rights to pasture land and forests; inheritance rights to private property; and population pressure in urban areas (McEwan and Nolan 2007; Alden Wily 2004; Patterson 2004; Stanekzai 2008; IDMC 2008; Deschamps and Roe 2009).

Afghanistan's population resolves land disputes primarily through informal mechanisms and institutions. Aggrieved parties take disputes initially to family members, neighbors, and a local notable person or leader. They may also take disputes to a village council (*shura* or *jirga*) or the head of a wider community area. Afghans consider these persons and entities to be more accessible and less expensive, and to have more capacity, than formal institutions. In some areas, nomadic groups and sedentary farmers work out coexistence and shared-use agreements using local forums (Patterson 2004; Alden Wiley 2003; Foley 2004; Deschamps and Roe 2009).

The formal court system has courts at district, municipal, provincial, and national levels, but has limited capacity, is perceived by many to be corrupt, and few consider approaching the formal courts for relief. The government established a Special Land Dispute Court in 2002 to address land disputes in urban and rural areas. The court has been criticized for failing to perform its mandate; the status of its activities is not reported (Alden Wiley 2003; Beall and Esser 2005; Koser and Schmeidl 2009).

#### **KEY LAND ISSUES AND GOVERNMENT INTERVENTIONS**

The government's 2006 National Development Strategy prioritizes rural economic growth through planned investment in infrastructure and inputs for legal farming production and sustainable use of natural resources. The plan references: increasing the amount of arable land and ensuring that the land is distributed to the poor and landless; registering rural land titles; and protecting the rights of small producers. The plan provides that the rights of women will be improved in accordance with Islamic principles (World Bank 2006).

With the support of USAID (through the LTERA Project), the government has undertaken a number of steps toward realization of the National Development Strategy objectives, including improving property rights and restructuring state-owned entities in order to allow land, buildings, and other assets to be transferred to the

private sector for commercial and industrial development. The 2007 land policy (the development of which USAID supported) establishes a framework for land administration and improvement of land tenure security through means such as the regularization of informal settlements and community recognition of property rights. (EMG 2010; USAID 2009b).

The Government owns approximately 6 million hectares of non-arid land and is leasing only about 600 hectares. In 2009, the Ministry of Agriculture created the Afghanistan Land Authority to develop and implement a strategy to lease land for agricultural, agro-processing, and industrial purposes. ALA has been given the responsibility to inventory all government-owned land, establish fair and transparent procedures for its leasing, and set up a one-stop window that reduces application time and bureaucratic steps. The objective of the project is to improve the leasing process and make leasing attractive to domestic and foreign investors (Harakat 2009).

Afghanistan is the world's leading supplier of illicit opiates and is responsible for 90% of the world's production of and trade in opium. The government strategy to reduce opium production and trafficking is focused on the small farmers and landless laborers who are dependent on opium for their livelihoods. These groups require access to land, water, credit, and markets sufficient to provide viable alternatives to work related to poppy production. The government's rural enterprise and infrastructure-development programs are identifying interventions that will address the needs of those populations dependent on poppy production (World Bank 2006; Ward et al. 2008).

### **DONOR INTERVENTIONS**

USAID's 6-year (2004–2009) Land Titling and Economic Restructuring Project in Afghanistan (LTERA) was focused on strengthening the property rights of Afghans through: improvements to the legal framework; development of a country-wide land administration and municipal land registration systems; reorganization of land documents stored at provincial levels and restoration of some seven million legal documents (including 850,000 title deeds); creation of a computerized registry of deeds; design of community-based land dispute resolution procedures; and help revising and updating techniques for surveying and mapping. The project also piloted tenure formalization methodologies in informal settlements in Kabul (Districts 6, 7 and 13), Kunduz, Taloqan, and Mazar-i-Sharif through an incremental, community-based method of upgrading and tenure regularization. A total of roughly 60,000 plots were regularized in the pilot program. LTERA developed a replicable and cost-effective process that integrates the upgrading of basic services with the regularization of tenure and formalization of informal settlements into the municipalities' urban planning processes. USAID's LTERA Project also identified and helped facilitate the restructuring and asset-transfer process for state-owned entities. The FY 2010 Congressional Budget Justification notes that the US will continue to support land administration reform in Afghanistan, but provides no program details (Gebremedhin 2006; USAID 2009a; USAID 2009b; USDOS 2009; EMG 2010).

USAID/LTERA assisted employees of the project to establish a fully registered NGO, the Afghan Land Consulting Organization (ALCO), to carry on the Makzhan reorganization and tenure formalization programs. ALCO will provide community-based land management and reform programs, as well as legal and technical assistance, to vulnerable citizens in defending their property claims before Afghan courts (EMG 2010).

USAID doubled its request for funding for agriculture from FY 2009 to FY 2010 (US \$114 million to US \$235 million), concentrating on projects to reduce farmers' vulnerability to natural disasters and food shortages, improve incomes, and sustain livelihoods. The increased assistance in FY 2010 will allow the U.S. Government to expand significantly the base of farmers benefiting from tools and training to improve their productivity, increase product quality, and secure links with markets. The extent to which the projects include components to address land access and tenure security is unknown (USDOS 2009).

Several other donors are actively assisting Afghanistan with land-related issues. The Asian Development Bank/Department for International Development (ADB/DFID) Rural Lands Administration Project is piloting a system of community-agreed land rights to public land. The Norwegian Refugee Council (NRC) and Afghanistan Research and Evaluation Unit (AREU) developed the Land Conflict Resolution Project, which is piloting community-based extrajudicial approaches to resolving land-tenure disputes in rural communities. This process aims to establish community-recognized rights to land. The FAO/DFID Sustainable Agriculture Livelihoods project (SALEH) is establishing guidelines for community-based management of pastures through legal devolution of custodianship to entitled villagers and stakeholders. The Rural Land Administration Project, which is funded by DFID and ADB, focuses on community consultations to define

rights to rangeland and link the community to the state through community administration of property records (McEwan and Nolan 2007; Stanfield et al. 2008; Foley 2004).

## **2. FRESHWATER (LAKES, RIVERS, GROUNDWATER)**

### **RESOURCE QUANTITY, QUALITY, USE AND DISTRIBUTION**

Afghanistan has variable climactic conditions and is vulnerable to both drought and flooding. Eighty percent of the country's water resources come from snowmelt from the Hindu Kush mountains and are contained in three major watersheds. Many areas of the country are prone to annual flooding, which causes loss of life, farmland, villages, and infrastructure (ADB 2002; Ahmad and Wasiq 2004; ADB 2008).

Afghanistan has internal renewable water resources of 55 cubic kilometers per year. Roughly 85% of water used in Afghanistan is tapped from rivers, with the balance from springs, *karez*s (man-made underground tunnels delivering water by gravity), and dug wells. A limited number of reservoirs are available to store water. Due in large measure to water shortages, only half of the country's arable land is cultivated in a given year. Eleven percent of the country has no water resources (ADB 2002; Ahmad and Wasiq 2004; Aini 2007; FAO 1997).

Country-wide, Afghanistan's water resources are vulnerable to contamination from human waste, dumpsites, and chemicals. Twenty-five percent of the country's available water is considered safe for drinking. Thirty-one percent of households have access to safe drinking water (UNEP 2009; GIRoA 2008a).

Eighty-five percent of all agricultural output is derived from irrigated land. Irrigation has a very low (25%) efficiency rating. Most recent estimates suggest that sufficient groundwater exists for irrigation and water supply in several parts of the country, although, with the advent of diesel wells, a drop in the water table has caused concern. The quality of groundwater varies, with saline water in the north and contaminated water in the urban and peri-urban areas (Alim 2006; McMurray and Tarlock 2005; Ahmad and Wasiq 2004; ADB 2002).

### **LEGAL FRAMEWORK**

Afghanistan's new Water Law became effective in April 2009 and is one component of the country's strategy to integrate its water systems and institutions. The Water Law adopted a river basin approach under which natural river basin boundaries (versus administrative boundaries) govern all aspects of natural resources management and planning (Wegerich 2009; GIRoA 2007b).

Customary law tends to govern the use of water on private land and in private systems, the resolution of conflicts over water, and water resource conservation. Customary law generally governs allocation of water through the *kaerez* system, which is constructed and maintained on a community basis (McMurray and Tarlock 2005).

### **TENURE ISSUES**

The 2009 Water Law reaffirms that water is public property and the government holds management authority over the resource. Water is free, although costs of investment and provision of services can be charged by service providers. The Water Law states that suitable water-use traditions and customs will be considered in fulfilling the rights of water users (Wegerich 2009).

Land ownership (individual and communal) in Afghanistan generally includes rights to surface and ground water, although regional differences exist, and in some areas water rights transfer by separate deed. About 80% of irrigation systems are traditional and managed by local communities. Modern irrigation systems are mostly under state control (ADB 2008; McEwan and Whitty 2006).

The 2009 Water Law provides for management of water resources through river basin agencies and local water-user associations. The Water Law recognizes the existing social water-management system, operated through *mirabs* (water masters), by allowing *mirabs* to serve as members of local associations and water councils (Wegerich 2009).

Land ownership transfers generally include water rights. Water rights are included in village land grants. People may also acquire rights to water through a separate agreement that is independent of land rights. In some areas, wealthier members of a community provide poorer members with access to water. In other areas, lack of strong community leadership over management of water has resulted in conflict among groups over the resource (Klijn 2002; McEwan and Whitty 2006; Ahmad and Wasiq 2004).

Women have limited participation in irrigated agriculture and water management. Access to water depends on the location of the land, social and cultural norms, and operational requirements of the water systems. Women tend to have less access to training, less information, and less freedom to participate in water and other resource programs. When women have rights to land, they are often restricted to use rights that may not include water rights (ADB 2008).

#### **GOVERNMENT ADMINISTRATION AND INSTITUTIONS**

The Ministry of Energy and Water has had de facto responsibility for water resource management, including irrigation canals. The Ministry of Agriculture, Irrigation, and Livestock has had de jure authority for managing irrigation and drainage systems. The Water Law formalizes these roles, assigning the Ministry of Energy and Water overall responsibility for planning, management, and development of water resources, and giving the Ministry of Agriculture, Irrigation and Livestock responsibility for irrigation (Wegerich 2009; Ahmed and Wasiq 2004; ADB 2002; ABD 2008).

Traditionally, water resources are governed at the village level. Each village has a *mirab* who delegates authority to sub-water masters. Water is distributed according to local tradition and agreements between farmers, the *mirab*, and local government. Village elders customarily handle water disputes, applying customary law; residents are generally reluctant to involve local officials for fear of losing control of the result and the resource (McEwan and Whitty 2006).

In some regions, military commanders have taken control of water resources. The exercise of military authority over water undermines local traditional authority and can cause conflict with water users adversely affected by the military decisions (McMurray and Tarlock 2005).

#### **GOVERNMENT REFORMS, INTERVENTIONS AND INVESTMENTS**

Afghanistan's Strategic Policy Framework for the Water Sector, approved by the Supreme Council for Water Affairs Management (SCWAM) in 2006, called for: the revised Water Law; regulations governing water use and irrigation; charter and internal regulations for Water User Associations; a national water supply and sanitation policy; and a hydropower development policy. The strategy has three major components: (1) a plan for integrated water resources management; (2) a river basin approach in which natural boundaries will govern management of water resources; and (3) the division of functions into the Ministry's legal and policy functions, the river basin management's organizational functions, and the operational functions exercised by operators and service providers (GIROA 2007b).

The Ministry of Energy and Water (MEW)'s activities have included: developing training programs to improve capacity within the Ministry; coordinating with other stakeholders in the public sector to reach agreement on how to implement the new administrative structure based on the river basin approach; delineation of sub-basins within each river basin; and reorganization of MEW's headquarters in Kabul. The MEW called for assistance from donors to help strengthen the Ministry's capacity and coordinate donor efforts in the water sector (GIROA 2007b).

#### **DONOR INTERVENTIONS AND INVESTMENTS**

USAID is working with the Department of Irrigation in the Ministry of Agriculture, Irrigation and Livestock (MAIL) on improving irrigation systems, the governance of water resources, and the development of micro-hydropower plants. USAID sponsored a meeting of 50 *mirabs* to facilitate discussion designed to improve collective water use and allow *mirabs* to learn from each other's experiences. USAID is also supporting improvement of irrigation infrastructure (reservoirs, dams, and irrigation canals), and development of micro-hydropower plants that harness the energy of moving water to provide villages with electricity. USAID also supports urban water departments (such as the Mazar Water Supply Department) through its implementing partner, the International City/County Management Association (ICMA), as part of the Afghanistan Water and Sanitation Activity (CAWSA) Project. The project helps water-supply departments provide water to more neighborhoods, improve water quality, and enhance operating efficiency (USDOS 2009; USAID 2010a; USAID 2009c; USAID 2010b).

Several international organizations have worked to improve Afghanistan's water sector. Development of water resources is one of three focal areas for ADB's country partnership strategy for Afghanistan. ADB has helped establish river basin authorities, strengthened irrigation management, and developed new infrastructure. The European Commission has been implementing water projects in northeastern Afghanistan

that include rehabilitation and upgrading of irrigation systems, strengthening community management of irrigation, and creating a river basin agency. The World Bank has funded the rehabilitation and upgrading of irrigation systems throughout the country (ADB 2008).

The Water and Sanitation Programme of the Danish Committee for Aid to Afghan Refugees (DACAAR) has installed more than 36,000 water points in remote districts in 26 of Afghanistan's 34 provinces, benefiting approximately five million people. The program integrates hygiene education and promotion of hygienic sanitation facilities with the installation of improved drinking water systems (DACAAR 2009).

### **3. TREES AND FORESTS**

#### **RESOURCE QUALITY, QUANTITY, USE AND DISTRIBUTION**

Historically, Afghanistan had 3.2 million hectares (5% of total land area) forested in evergreen and deciduous trees. A third of the land was open woodland populated with almond, juniper, and pistachio trees. The decades of conflict and social unrest have steadily reduced Afghanistan's forests as trees were destroyed by military forces, stockpiled by residents, and lost to forest fires. The country's forests now amount to roughly 1.3 million hectares (2% of total land area) (UNEP 2009).

Forests provide households with wood for fuel and construction, land for cultivation and grazing livestock, and forest products such as nuts, tubers, fodder, and fibers. People harvest and sell timber to obtain the money necessary for large cash transactions, such as paying bride price and buying weapons. Women are most severely affected by the loss of forest land because they are commonly responsible for gathering fuel wood (Shimizu and Trudel 2006; Gohar 2003).

Afghanistan's forest areas include one national park (declared in 2009) and five protected areas. Deforestation has accelerated in the last decade, in large measure because of timber-poaching and illegal woodcutting, agriculture and urban encroachment, and ineffective forest management. Natural regeneration is rare as forests become grazing land and drought leads to erosion and flooding. Afghanistan has inadequate institutional support (both formal and traditional) for its forests; in the last 20 years government involvement in conservation has been extremely limited. Afghanistan is losing an estimated 30,000 hectares of forest each year (UNEP 2003; Groninger 2006; ADB 2002; UNEP 2009).

#### **LEGAL FRAMEWORK**

The Constitution obligates the government to take measures necessary to protect and improve the country's forests. The literature carries a presumption that the government owns the country's forest and forest resources, but Afghanistan has no effective legislation identifying forest land tenure, use rights, or institutional authority. Forest management regulations that governed community forest use in the 1970s broke down in the 1980s, and local communities lost forest rights to warlords, traders, and timber barons. New forestry legislation has languished in draft form for years, awaiting clarification of tenure and land use rights of local communities (ADB 2002; UNEP 2003; GIRoA 2007a).

#### **TENURE ISSUES**

Local communities based in or adjacent to forests commonly depend on the forest resources for their livelihoods. Under customary law, local communities have rights to access forest land and use forest resources. In the absence of effective formal law and government management, local communities are presumed to control rights to forest land and forest resources. Some villages successfully manage the resources, with many forming community forest user groups or extending the work of existing village organizations to manage forest access and use for the entire community. In many areas of Afghanistan, however, local elites, warlords, and political factions control the forest land and resources—to the disadvantage of other community members (ADB 2002; Gohar 2003; Shimizu and Trudel 2006).

#### **GOVERNMENT ADMINISTRATION AND INSTITUTIONS**

The Department of Forestry and Range Management in the Ministry of Agriculture, Irrigation and Livestock is responsible for managing the country's forest land. The Department is responsible for the management and protection of the country's natural forests, pasture, national parks and wildlife resources. The Department has 11 directorates and a forestry office in each of the 34 provinces of the country. District-level forest wardens enforced forest regulations in the 1970's, but in most areas forests are now unmanaged. In some areas, NGOs have attempted community-based projects, but their successes have been isolated and no nationwide program exists (Shimizu and Trudel 2006; UNEP 2003; ADB 2002).

## **GOVERNMENT REFORMS, INTERVENTIONS AND INVESTMENTS**

With the assistance of the United Nations Environment Programme (UNEP), the government continues to work on the draft forest law. The draft legislation is founded on community-based management principles and echoes the National Development Strategy, which identified developing community-based management of forests as a desired method to promote sustainable management and prevention of conflict. With donor support, the government has created a biodiversity profile that identifies ecological hotspots. The government declared its first national park in 2009 and is in the process of drafting regulations for the management of protected areas (UNEP 2009; World Bank 2006; Shimizu and Trudel 2006).

## **DONOR INTERVENTIONS AND INVESTMENTS**

USAID funded a natural resource management project to establish private agroforestry businesses and promote community-based natural resource and water management. USAID has also partnered with the Wildlife Conservation Society to conduct assessments and surveys of biologically sensitive areas and develop parks and protected areas (USAID 2009a).

UNEP is providing technical support to the Natural Resources Division of the Ministry of Agriculture, Irrigation and Livestock to assist the Division by increasing capacity to manage protected areas and enforce natural resources legislation, to develop community-based natural resource legislation for the forestry sector, and to assist with the establishment and effective functioning of the Protected Areas Central Management Authority (UNEP 2009).

The Wildlife Conservation Society and Global Partnership for Afghanistan have projects in forests and other biologically sensitive areas. The FAO and DACAAR have partnered to build local capacity to manage forest resources in eastern Afghanistan, through village organizations and women's groups. DACAAR has also developed community forest-management programs that include education of local communities about the forest resources, establishment of forest nurseries, creation of forest plantations, maintenance of forest regeneration plots, and reseeded of pastures (USAID 2009a; Gohar 2003).

## **4. MINERALS**

### **RESOURCE QUANTITY, QUALITY, USE AND DISTRIBUTION**

Afghanistan's untapped mineral resources are estimated to be worth more than \$1 trillion, an amount that dwarfs the country's current economy. An assessment completed in 2010 discovered substantial veins of iron, copper, cobalt, gold, and industrial minerals such as lithium. The country also has significant deposits of gemstones, oil, and natural gas. The mineral resources are scattered throughout the country, with concentrations in the southern and eastern regions and along the border with Pakistan (Risen 2010; Ludington 2007; World Bank 2004; World Bank 2007; Kuo 2007).

War and neglect have led to underproduction of mineral resources, unlicensed operations and smuggling, and untapped energy resources. Unexploded ordnance and land mines in mineral-producing areas deter development. Along the border of Pakistan, warlords and local elites have taken control of and expanded mineral operations (World Bank 2004; Kuo 2007).

Afghanistan's mineral sector has been identified as a significant potential source of growth for the country's economy. Coal, gemstones, and quarry materials are often produced outside the control of the central government and the government has not received royalties for the exploitation of the mineral resources. Almost all of Afghanistan's minerals have been extracted by artisanal and small-scale operations; the country has little experience with commercial mining industry and lacks the mining infrastructure necessary for the exploration and exploitation of the country's mineral resources. The government has recently undertaken efforts to capture the potential for economic growth in the mineral sector by revising the legal framework – including adopting a new Minerals Law in 2010 – to attract private investment and strengthen mining institutions. The discovery of the enormous extent of Afghanistan's mineral resources will put pressure on the country to move quickly to develop the sector. The country will be challenged to make use of its vast mineral wealth in a manner that promotes transparency and ensures that social and environmental objectives are met (Risen 2010; World Bank 2006).

### **LEGAL FRAMEWORK**

The Minerals Law of 2010 governs the ownership, control, prospecting, exploration, exploitation, extraction, marketing, sale, and export of minerals in the territory of Afghanistan. The law provides that all deposits of

minerals on or under Afghanistan or in its water courses are the exclusive property of the state. A surface land interest does not include right to minerals. The Ministry of Mines is authorized to grant mineral rights in accordance with the provisions of the law (GIRoA 2010; Kuo 2007).

The Hydrocarbons Law of 2009, Extraordinary Issue No. 972, was enacted in February 2009. The law regulates exploration and development of gas and oil fields, and establishes the legal framework governing the preservation, utilization, development, and production of oil and gas (GIRoA 2009a).

### **TENURE ISSUES**

Under the Minerals Law, the Ministry of Mines can grant mineral rights to individuals and entities who are Afghanistan citizens or citizens of foreign countries legally entitled to reside or do business in Afghanistan. High-ranking state officials, magistrates, lawyers, members of the armed forces, police, and other public employees cannot hold mineral rights (GIRoA 2010).

Private entities can apply for licenses for exploration for 3-year terms, which can be renewed twice. Licenses for extraction are granted for periods up to 30 years and can be renewed for consecutive 5-year periods until the deposit is exhausted. Extraction licenses require a feasibility study, environmental impact assessment, and environmental management plan that includes a plan for social mitigation (GIRoA 2010).

If certain deposits do not sustain industrial or semi-industrial exploitation, the ministry may grant an authorization for artisanal exploitation. Authorizations for artisanal exploitation are for periods of two years, with potential for renewal (GIRoA 2010).

Parties can lose their rights under the Minerals Law if they fail to pay license fees, fail to abide by the terms of the mineral right granted, or fail to conduct exploration or extraction activities as contracted (GIRoA 2010).

The Hydrocarbons Law 2009 provides that all hydrocarbons are the exclusive property of the State. As the responsible authority, the Ministry of Mines can issue Exploration and Production Sharing Contracts or Service and Production Sharing Contracts that grant the contractor title to a share of extracted hydrocarbons. The state retains rights to the residual share of extracted hydrocarbons. The contractor may take, sell or export his share of produced hydrocarbons, in accordance with the contractual terms (GIRoA 2009a).

### **GOVERNMENT ADMINISTRATION AND INSTITUTIONS**

The Ministry of Mines is responsible for functions relating to mineral exploration, licensing, development, and mining. The Ministry of Mines is obliged to regulate mineral activities in accordance with the 2010 Minerals Law. The Ministry's duties include: formulating and implementing policies (including promoting private-sector investment); proposing to the Council of Ministers the classification, declassification, or reclassification of an area as prohibited for mineral activities; granting, transferring, canceling mineral rights; supervising mineral activities of public entities; and assessing and ensuring the collection of royalties. The Ministry of Mines can engage in exploration and extraction of minerals by itself, through other public entities, or in association with the private sector (GIRoA 2010).

The Minerals Law provides for the establishment of an Inter-Ministerial Commission to monitor bidding processes, approve mining contracts, grant exemptions from surface rent, and approve the royalty rate. Members of the Inter-Ministerial Commission are the Minister of Mines, Minister of Finance, Minister of Economy, Minister of Commerce, Minister of Foreign Affairs, and the President of National Environmental Protection Agency (GIRoA 2010).

The Mining Law establishes a Mining Cadastre within the Ministry of Mines. The cadastre is responsible for assessing fees for the processing of applications for mineral rights, reviewing and processing applications for mineral rights, executing the technical and environmental evaluation of applications for mineral rights, registering mineral rights granted and refused, registering rights terminated, extended, or transferred, registering security interests, and developing Cadastral Survey Maps (GIRoA 2010).

The Mining Law creates an Environmental Protection Department within the Ministry of Mines for the protection of the environment in connection with mining activities. The Environmental Protection Department is responsible for the technical evaluation of mitigation and rehabilitation plans, Environmental Impact Statements, and Environmental Management Plans. The Department also monitors compliance with environmental requirements and cooperates with other state agencies that are responsible for protection of the environment, the social welfare of the local populations, and natural and cultural heritage (GIRoA 2010).

## GOVERNMENT REFORMS, INTERVENTIONS AND INVESTMENTS

The 2010 Minerals Law and 2009 Hydrocarbon Law are components of the government's strategy for reforming the minerals sector and encouraging investment. The developing legislative framework is intended to encourage exploration of the country's mineral resources by providing companies with favorable tax treatment, access to markets, and rights to foreign exchange (GIRoA 2010; GIRoA 2009a; GIRoA 2009b).

## DONOR INTERVENTIONS AND INVESTMENTS

The World Bank, United States Geological Service (USGS), and the British Geological Survey are working with the government on training staff, establishing a new cadastre and cartographic bases, and creating mines inspectorate offices. In 2005–2007, USAID funded a study by the Afghanistan Geological Survey and the USGS to assess the country's non-fuel mineral resources (GIRoA 2009b; Ludington 2007).

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