



**Independent Joint Anti-Corruption
Monitoring & Evaluation Committee**

PRESS RELEASE AND BACKGROUNDER

The Unlawful Usurpation of Land by Powerful Interests Remains a Persistent Problem throughout Afghanistan

KABUL, Afghanistan, November 19, 2014 – Released today, MEC's comprehensive report on the usurpation of state and private land demonstrates the significance of the problem for the government and people of Afghanistan. According to statistics compiled by ARAZI, more than 1.2 million jeribs of land have been usurped during the past decade.

Unsurveyed Land Provides Opportunities for Usurpation

Since its establishment, the Directorate of Cadastral Survey (Cadaster) has surveyed and registered only 34% of all Afghan land. The lack of a survey and registration process encompassing the other 66% provides ample opportunities for land usurpation. Moreover, there is currently no comprehensive initiative to survey land in Afghanistan. Specific surveys have been mandated by presidential decrees as a prerequisite for launching various development projects, but several of these could not be carried out due to security and other problems.

Limited GIROA Capacity to Conduct Comprehensive Land Surveys

Cadaster officials have noted that the lack of security and stability throughout the country is one of their biggest challenges, making the survey process impossible to carry out in many parts of the country. Another problem that Cadaster officials mentioned to MEC is the lack of cooperation from land owners during surveying. The lack of cooperation extends to other individuals that have a role in the process, including land shareholders, heads of local councils, and elders in the area. Finally, Cadaster has a very small organizational structure. This problem has caused it to have limited success in conducting larger surveys requiring more employees.

Systemic Vulnerabilities—Especially in the Judicial System

In the process of land registration, there are serious vulnerabilities that have provided opportunities for land usurpation. The land-management system in Afghanistan is generally governed by the courts. Primary and appellate courts play a crucial role in preparing and managing land documents and in deciding land-related cases. But the forging of official deeds by court employees appears to be one of the main methods of land usurpation. The improper occupation of municipal land by governmental organizations, especially by the MOI, is another concern. Additionally, land is also usurped by forging various documents, such as powers of attorney, customary land deeds, and inheritance papers.

Attempts at Reform Have Stagnated

During the last decade, there have been many obstacles to fighting land usurpation and it appears that there was limited political will under the previous administration to prosecute usurpers. A new *Land Management Law* is currently being drafted by MOJ, and the *Land Grabbing Law* was recently passed by the National Assembly, but amendments were made by the former President and it was sent back to the National Assembly for further discussions.



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Complex Bureaucratic Methods of Land Transfers Exacerbate the Problem

Different types of land require different means of conveyance. Examples include:

Land within Kabul Municipality

In Kabul Municipality, whenever the owner of land included in the official map wants to transfer his land, the authorized court is obliged to seek the endorsement of the property office concerning the number of jeribs, the boundaries, and other details prior to the preparation of the transfer documents. Although the seller and buyer may agree on a price, the Municipality appraises the property to ensure that a "fair" market price is paid and to prevent unlawful pricing agreements. A price check is then prepared by the Municipality and a special pricing commission comments on the quality of the property according to the market price. The pricing commission is based in Kabul Municipality and only works on specific days (Sundays and Tuesdays), therefore contacting them can prove challenging.

In addition, government officials are entitled to residential land based on their official status. Ministries employing eligible recipients will refer applications to Kabul Municipality, which has a commission that deals with land issues. The commission verifies the application and determines the land to be allocated.

Agricultural Land

The transfer of agricultural land involves a different set of entities. MAIL is the primary agency involved in land settlement and related issues. Furthermore, the Supreme Court, MAIL, MOF, MOEW, the Department of Geodesy and Cartography, and local authorities all have the responsibility to implement the requirements of the land-settlement procedures, after which, the practical work in the area will be conducted by the land-settlement delegation.

State Land

ARAZI functions as the administrator of state properties and processes land transfers to government entities. Land can only be transferred after an analysis of the relevant documents upon a request by ARAZI to the Office of the President of Afghanistan. The *Land Management Law* outlines the entities involved in the assessment and evaluation of transferable land including ARAZI, the Cadaster Directorate, the MOF, the Ministry of Information and Culture, the Environmental Preservation Office, and the municipalities. Representatives from several of these entities form a Land Evaluation and Handover Commission to verify ownership, grade the quality of the land, and assess the type of soil and its productive potential. The MOF determines the value of the transferable land plot and Cadaster officials provide information about whether the plot has been surveyed.

The government is also entitled to expropriate land when the law recognizes the land as the government's possession. The burden of proof is thus placed on the often under-funded and out-lawyered individual. The clarification of documents is the individual's duty and, if he has no documentation concerning the land he possesses, then the land is regarded as government property.

Corruption

There are reports that the required signatures and documents from various departments of Kabul Municipality are being forged and falsified. Interviewees have reported that the illegal



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collection of money in various ways during the land-distribution processes is widespread. One example is supported by reports of brokers paying bribes to officials who process circular forms to verify a lack of land ownership on behalf of applicants, when in fact the applicant owns land, so that the person can avoid taxes. In addition, cases have been reported where municipal staff have apparently threatened to exchange deeds during the distribution process for less valuable plots if a person did not pay a bribe. Further, multiple sources have indicated to MEC that influential people have received land on the direct order of high-ranking officials, even though they were not legally entitled to receive it. Satisfying influential people, the insufficient tracking of available land, and the existence of widespread corruption appear to be the main causes of the land-usurpation problem.

Ineffective Efforts to Ameliorate the Situation

Impunity and the lack of the rule of law contribute greatly to the land usurpation issue. The MOI, tasked by PD 45, is responsible for collecting information concerning land usurpation. According to the MOI, the Directorate of Discovering Economic Crimes directed all subordinate units in the capital and in the provinces to present lists of usurped lands with the names of usurpers. A report provided by the Directorate indicated that, in total, 1,247,981 jeribs of government and private land have been usurped by 15,831 usurpers in 30 provinces.

The Special Commission of Urban Properties and Townships Usurpation was established in June 2012, pursuant to a Presidential Decree to evaluate urban usurpation and to seek solutions. The Commission is made up of six members led by the Senior Advisor to the President in Construction Affairs. The commission, after visiting 20 provinces, presented its report to the president with specific programs to implement the decree. First, the government should conduct regular awareness campaigns to permanently resolve the process of public and private land usurpation. Second, a special penal code or amendment to the current code should be enacted to intensify punishments for land usurpers. Third, the government should exempt from punishment usurpers who return usurped lands within six months. Fourth, steps should be undertaken to develop a special policy for those who have bought properties from usurpers. Finally, the President should consider issuing a special legislative decree establishing a plan and implement these recommendations.

Since 2001, several international bodies have also been engaged in implementing various programs and reforms in the agricultural sector. International assistance, however, has not been able to help the Afghan government create effective institutions and structures to tackle problems arising from land mismanagement. Instead, foreign assistance was mainly concerned with security problems, failing to recognize the wider negative effects that land- and property-related disputes have on the economic and political situation.

Conclusion

MEC's findings reveal that most private and government land has been usurped by those who have, or have had, a significant presence in the government. Law enforcement agencies have been ineffective in investigating and prosecuting land usurpation. And even when CSOs or the media highlight the problem, the government does not take action.

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