



Recommended Strategy
for Conflict Resolution
of Competing High Pasture Claims
of Settled and Nomadic Communities
in Afghanistan

United Nations Environment Programme





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Glossary

Central highlands	the mountainous region of central Afghanistan
Community	hamlet, village or village cluster
Community based pasture management	used here to refer to an integrated approach to enabling a rural community to clarify pasture tenure through inter-community conflict resolution and agreement and to set up and operate a community directed management system for rehabilitating and sustainably using the pasture
Hazara	the cluster of groups with a shared language, history and culture living within Hazarajat
Hazarajat	the central area of Afghanistan today largely bounded by the central highlands and foothills
Hindu Kush	a main mountain range of the central highlands and often used to refer to the whole highlands area
Koh-i-Baba	a main mountain range of the central highlands running east to west and providing the boundary between Bamyan and Yakawlang Districts to the north (Bamyan Province) and Panjab and Behsud Districts to the south (Wardak Province)
Kuchi	nomadic pastoralists used mainly in reference to those of Pashtun ethnicity
Nomad	a mobile livestock keeper, including short, medium and long range seasonal movements between winter and summer pastures
Pasture	a named area of rangeland used specifically for grazing
Rangeland	an agro-ecological category of land, generally semi-arid and used mainly for green grazing but also available for wildlife, fodder harvesting and other uses
Transhumance	short-distance seasonal migration of people and animals, practised by some nomads and also settled populations

Acronyms Used

AREU	Afghanistan Research and Evaluation Unit
CBPM	Community Based Pasture Management
CBNRM	Community Based Natural Resource Management
FAO	Food and Agricultural Organization of the United Nations
MAIL	Ministry of Agriculture, Irrigation and Livestock
NRC	Norwegian Refugee Council
RLAP	Rural Land Administration Project
SALEH	Sustainable Agricultural Livelihoods in Eastern Hazarajat Project
SDO	Sanayee Development Organization
UNAMA	United Nations Assistance Mission in Afghanistan
UNEP	United Nations Environment Programme

Dari Terms Used

Alafchar	rangeland
Aylak	Hazara summer camp area on high pastures
Aighal/aygal	Traditional Hazara practice of reserving degraded pasture for three to seven years against grazing and bush/grass harvesting
Baayer	barren land
Bikr	virgin, uncultivated or arid land
Butar	shrubs collected in Hazarajat for winter fodder or fuel
Beg	a Hazara leader and/or landlord
Cabal	pasture grasses
Charagah	pasture
Firman	deed or ownership or access right
Jerib	one fifth of a hectare
Jihad	religious war
Lalmi	rainfed farming
Maldar	livestock keeper including nomads when not referred to as Kuchi
Maraa	pasture
Mawaat	barren or arid land
Qurut	dried yoghurt curds made in summer for winter consumption
Shura/Jirga	Traditional community councils or meetings

Introduction

1 Purpose

The objective of this document is to lay out a possible road map through which conflicts between settled populations and nomads over access to summer pastures may begin to be resolved. It does not attempt to resolve the conflict but to lay out factors which need to be taken into account and to suggest a workable process.

The overall goal is to advance peace and sustainable pasture utilization, impeded by these conflicts.

2 Audience

The road-map is prepared for all stakeholders including settled and nomadic communities themselves and their traditional and political representatives. Three sets of actors are particularly targeted -

- a) the Presidential Commission established in 2007 to resolve the Kuchi-Hazara dispute over pasture lands;

- b) the Ministry of Agriculture, Irrigation and Agriculture (MAIL) which holds responsibility for the sound use and management of pastureland; and

- c) UNAMA, donors and project actors like UNEP and FAO which are contributing directly to new strategic approaches for the longer-term safety of the resource.

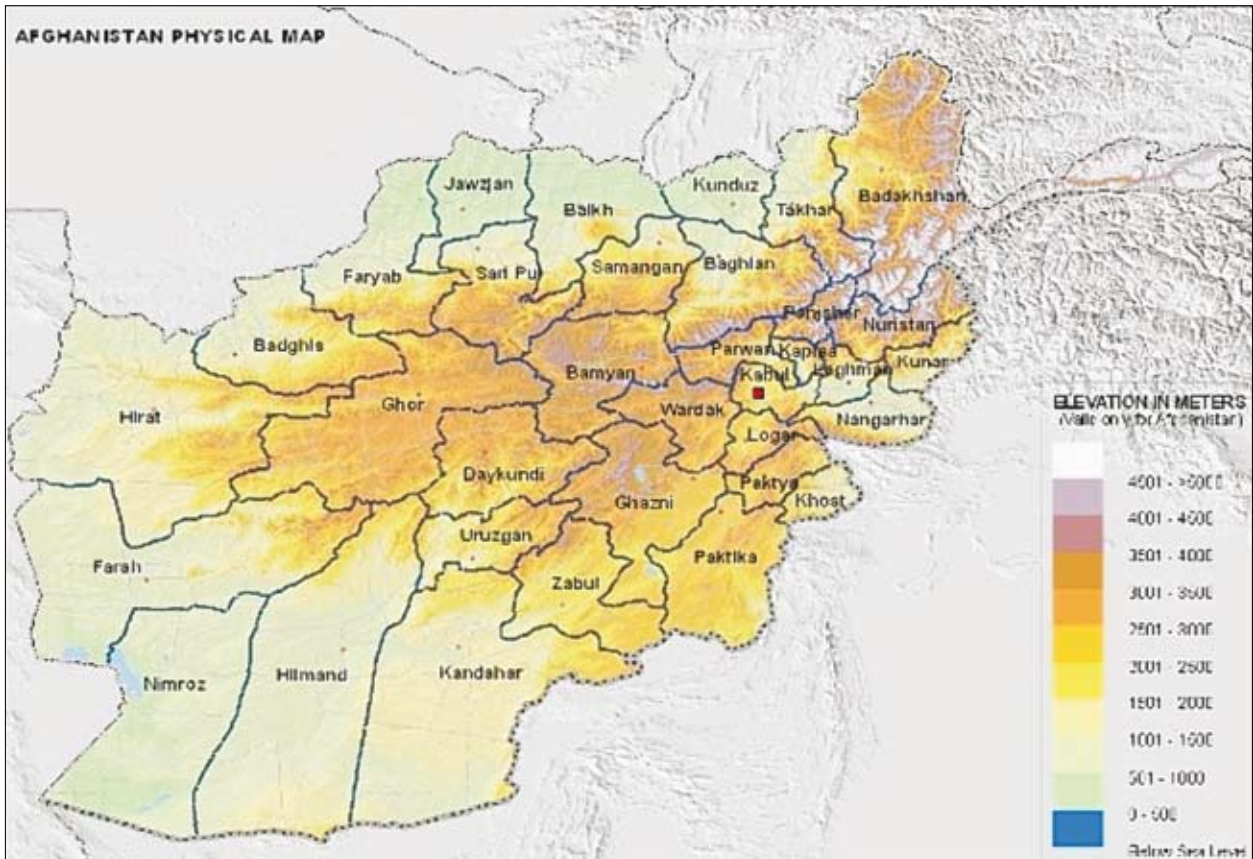
3 Focus

The focus of this strategy is the pastures (or 'rangelands') of Afghanistan. The terms pasture, pastureland and rangeland are used interchangeably.

Pastureland is a substantial but fragile and dangerously degraded resource. Its future is put into further jeopardy by continuing conflict as to rights of access. Conflicts exist at several levels and among different stakeholders.

The most dangerous is the most longstanding conflict; a conflict of interest between nomadic and settled populations. Dispute between settled and nomadic

Figure 1: Showing Elevation and Administrative Provinces in Afghanistan



people over access to pasture is common around the world (Box 1). The relationship tends to need constant negotiation and adjustment. This need increases as pastures come under pressure from population and stock growth and a reduction in area as a result of expanding cultivation and settlement.

Contestation over who owns and may use pastures has a long history in Afghanistan. This is most intense in the Pashtun/ non-Pashtun context. This reflects the fact that the history of Kuchi (Pashtun nomads) access to pasture in the central highlands is quite recent in the context of their very long history of land use in the region. Up until a century ago, most Kuchi were using Pakistan as a major

grazing zone, and did not venture into this central zone or areas north of it.

The effects of Pashtun/ non-Pashtun competition for pasture have been most dramatic in the central highlands (often termed the Hindu Kush, named after one of the main mountain ranges). This central mountain region of Afghanistan is historically known by many as Hazarajat, the homeland of the Hazara tribes. Two centuries ago Hazarajat extended well beyond the central highlands covering much of the area eastwards to Ghazni and southwards to Kandahar. Modern Hazarajat is firmly centred on Bamyan Province today, extending into adjacent areas of Day Kundi, Ghor, Samangan, Maidan Wardak and Ghazni Provinces.

Box 1: Nomads around the world

There are 25-30 million nomadic pastoralists in the world today. Most live within the driest areas of the world as shown in Figure 2. The northern half of Africa, the Middle East and Central Asia are the main zones. Well-known examples of nomadic pastoralists include the Bedouin throughout the Middle East, the nomads of Iran, the Kuchi of Afghanistan, the Fulani and Tuareg of the Sahel, the Nuer, Shilluk and Dinka of Sudan, the Turkic nomads of Central Asia (Kazakhs, Kyrgyz, Nogais, Washqai, Turkmen and Yoruk) and the Tibetans of Tibetan China. In addition pastoralists extend into adjacent less dry regions, such as the Masai who move with their animals in northern Tanzania in Africa, the Sami who move with their reindeer in northern Scandinavia, and nomads using areas in Mongolia, Inner Mongolia (China) and dry parts of Russia.

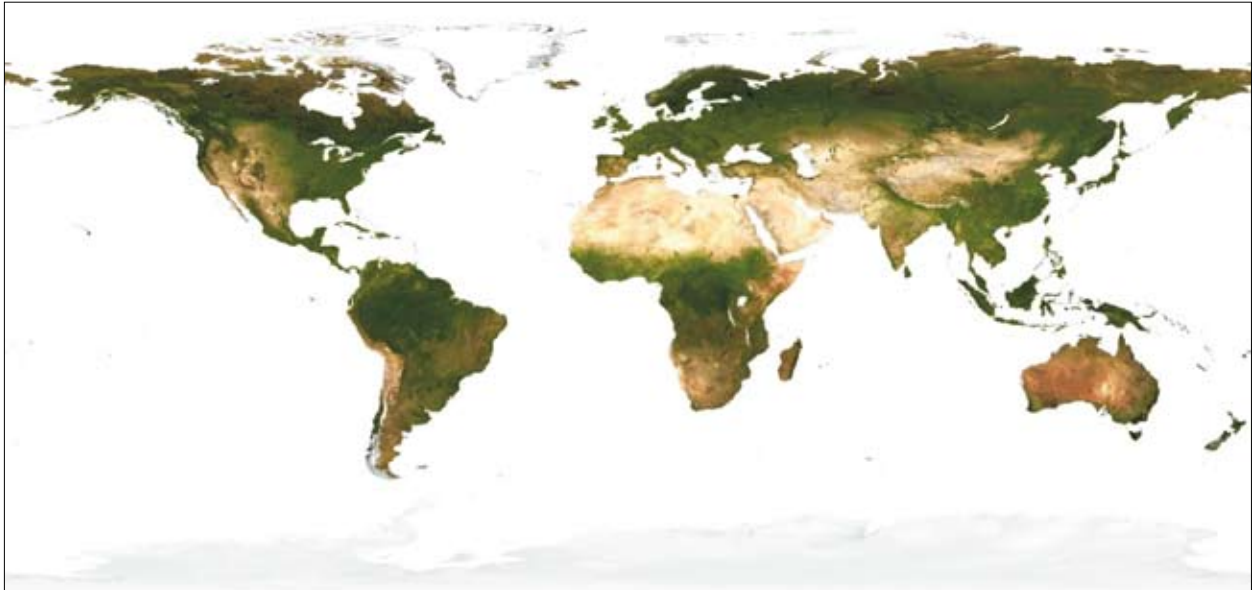
Nomadic pastoralists do not move randomly; they move in regular patterns during the year between warm and cold areas or between dry and wet seasons. Modern pastoralists often identify one of their main pasturing areas as their home area, and many nomads now also cultivate. How far nomads move varies widely.

Nomadic pastoralism is usually a highly sophisticated adaptation to arid or semi-arid areas where water is scarce and farming difficult and is widely respected as sustainable, with nomads moving out of an area before overgrazing can occur. The nomadic pastoral way of life is ancient and embodies a strong set of socio-economic and cultural norms centred upon the mobile life and the centrality of animals to survival. Although many settle, just as many prefer to retain a mobile life, or return to this even after several generations of being settled. For example, there has been a resurgence of nomadic pastoralism following the break-up of the Soviet Union (e.g. Kyrgyzstan). Coerced settlement has not been successful and can result in starvation and deprive a national economy of a critical animal-based economy (e.g. livestock numbers in Kazakhstan fell by three quarters following forced collectivisation in the early 20th century and saw 1.5 million deaths from famine).

Despite steady loss of rangeland areas for nomads, the mobile pastoral economy is proving robust as a lifestyle, as well as highly adaptable. It is not expected to disappear in the way in which hunter-gatherer socio-economies have been lost. Mobile schools and human and animal health services are a common development.

In reviewing all nomadic pastoralists in Africa, the Overseas Development Group of East Anglia University identified these main trends: Gradual process, over 50 years, of movement of pastoralists southwards in the Sahel with strong trend towards sedentisation (e.g. in Ivory Coast; northern Nigeria, Burkina Faso); increased availability of modern weapons since the mid-1980s (e.g. Afar in Ethiopia, Turkana & Somali in Kenya, Kuria in Tanzania, all Somali pastoralists); increased population pressure (e.g. Afar in Ethiopia; Fulani & Hausa in Niger); farmer encroachment on traditional pastoral lands (e.g. Mouride cultivators expanding into Fulani pastoralist areas in Senegal; Fulani & Hausa in Niger); the overall economic crisis, and macro-economic factors (e.g. clear in north Cameroon); climate change (e.g. clear in north Cameroon and Niger) and privatisation of land (e.g. clear in Sudan and Morocco). There are also clear trends, especially in Sudan and Chad, of Governments appropriating both pastoral and sedentary pasture areas, increasing pressure on residual rangelands. Similar trends may be seen in the Middle East and Central Asia.

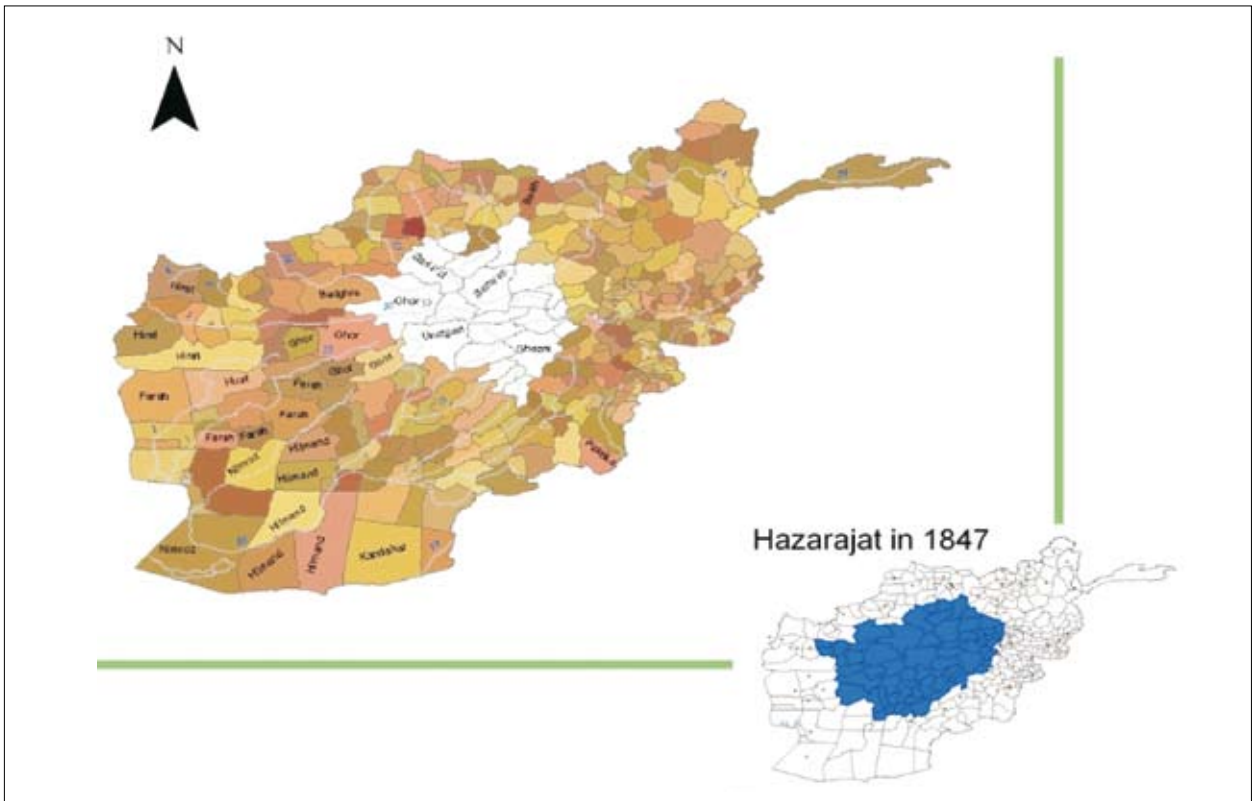
Figure 2: Main Arid Zones of the World, the Home of Most Nomadic Pastoralists



The protagonists today in the pasture rights conflict are settled Hazara and Kuchi seeking to migrate into Hazarajat to access summer grazing. They seek this on the basis of permits which have allowed them to do so since the 1890s, curtailed during the troubled conflict years of 1979-2001. In attempting to restart this migration to highland summer pastures, tens of people have been killed and thousands displaced

by resulting violent conflict. This has occurred especially in the spring pasture areas in Maidan Wardak Province (Behsud District). As frustrations, fear and tension rise, this threatens to descend into violent inter-tribal conflict. Already at the time of writing (June 2009) some Hazara are said to have constructed a front-line to limit Kuchi entry into Hazara areas of Wardak Province adjoining Bamyan Province.

Figure 3: Hazarajat Past and Present. Source: UNEP



4 Strategy

This strategy focuses on this conflict issue. Quick-fix solutions are difficult to find given the long history of the conflict and embedded positions on both sides around it. Nonetheless, every effort must be made to contain the dispute. Immediate paths are suggested. Lasting resolution will ultimately depend upon strategic changes and practical adjustments in the way in which pastures are owned, controlled and used. Medium and longer term strategies are therefore also elaborated.

5 Sources

5.1 International experience

Disputed claims by nomads and settled people to pastures are not unique to Afghanistan and have been a key driver in civil wars in countries like Sudan, Somalia and Ethiopia. More routine disputes between nomads and sedentary populations in grazing zones exist in countries which have not gone to war with themselves, prominently in the Sahel, Eastern Africa and in central Asia. The strategy brings experience of cases to bear (see later).

5.2 Local research

Nor has post-conflict Afghanistan ignored the issue. Research in 2002-2003 by the Afghanistan Research and Evaluation Unit (AREU), an agency sponsored by both government and donor agencies, warned early on that a plethora of conflicts around land and housing ownership existed and were escalating in the post-conflict environment.¹ It identified the most difficult to address, and yet potentially most explosive, to be the conflict between settled and nomadic peoples as to ownership and access of high pasturelands.² Useful case studies from Bamyan, Faryab and Badakhshan Provinces were provided.³ Examples are given in Annexes C and D.

5.3 Post-conflict reassessment of policies

Government ministries have become increasingly concerned at growing tensions between Hazara and Kuchi over pasture access. By late 2003, moves were made to modernise the systems through which natural resources are governed, with a view

to reducing conflicts and degradation. The results thus far have been a *Policy and Strategy for Forest and Rangeland Management (2006)* (together with a plan in the Ministry of Agriculture which includes a focus on the issue),⁴ a new *National Land Policy (2007)* which specifically includes attention to pasture tenure, and a new *Rangeland Law (2008)* still in iterative draft. A revision to the early 1965 land law has also been enacted (July 2008).

Together these establish parameters for ownership, access, use and management of pasturelands. These parameters themselves will in due course be enhanced and adjusted as a result of findings from application of successful conflict resolution over pasture rights and specifically as relating to the nomad/settled peoples relationship.

5.4 Learning from the ground-up

Practical initiatives have contributed to the above evolutionary process and to this suggested road map.

Trial conflict resolution

AREU began to look around for ways it could develop and test the process of community-based reconciliation proposed.⁵ With World Bank funding, it joined hands with the Ministry of Agriculture and the Norwegian Refugee Council (NRC) to trial this. Implementation was delayed and funds limited, with only five cases of natural resource conflict resolution documented. Only one of these concerned pastures.⁶

Latterly, the project produced a paper on the Behsud Hazara-Kuchi conflict following interviews with actors in Kabul (i.e. not through conflict resolution in the field). A strategy for the short-term was recommended as listed in Annex I. The strategy is reviewed in Part II.

The Nawur initiative

Earlier, under the aegis of USAID's RAMP programme located in the Ministry of Agriculture, an initiative brought some 40 Kuchi representatives together in November 2005 and out of which arose clear demand for assistance to resolve conflicts over summer pastures.⁷ This conference was important for indicating where Kuchi elders might be willing to compromise. This occurred in a typical pattern:

publicly Kuchi representatives were insistent on their ownership of central highland pastures. In smaller private meetings, key elders indicated that they were willing to acknowledge Hazara ownership of pastures in the highlands so long as they were granted seasonal access.⁸

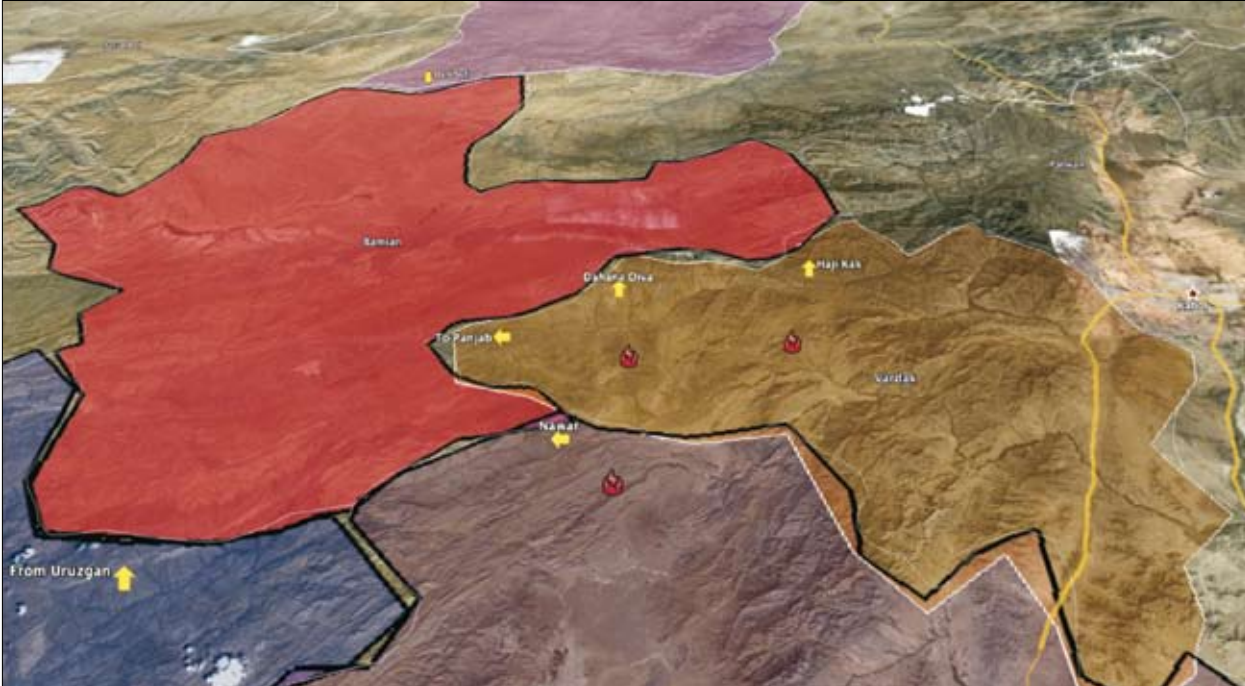
One of the more contested among eleven identified large pastures was selected for trial learning by doing. This was Nawur Pasture.⁹ Nawur Pasture directly borders Bamyan Province and has a long and troubled history of contestation, indicative of the wider area and the wider issue embracing all of Hazarajat (Box 2). It is part of a complex of like pastures extending into Behsud I and II (Maidan Wardak Province) and Jaghuri and Nawur Districts (Ghazni Province) (Figure 4). The area provides significant pastures for thousands of local stock owners. Nawur is especially valuable as it contains wetlands. It has been used in the past by Kuchi for spring and autumn transit grazing as they made their way to higher altitude pastures in Bamyan, Ghor and Uruzghan Provinces.

Provisional guidelines were prepared in late 2005 and the decision made to begin in Nawur District.¹⁰ An inter-ministerial mission (Agriculture, Frontiers and Tribal Affairs,¹¹ Rural Rehabilitation

and Development) held meetings between Kuchi and Hazara leaders.¹² Provincial authorities actively facilitated. UNAMA played an observer role. Good progress was made in early 2006 but was halted by the sponsoring USAID programme due to a rise in insecurity in Ghazni Province. By then a draft protocol of agreement had been prepared but was never presented to the participants (Annex A).

In practice, there were signs that Hazara wanted much more time to consider their internal arrangements and positions as to Kuchi re-entry before negotiation and agreement with them could be entertained.¹³ Another concern repeatedly raised by Hazara in 2006 was fear that Kuchi would bring Taliban influence and support with them, and peace in the district would be destroyed.¹⁴ Nonetheless, those facilitating found scope for potential agreement. This was not least signalled in the fact that Hazara showed they were not entirely against the re-entry of Kuchi. In particular, Hazara representatives acknowledged that those Kuchi who owned farms in the area could not be rightly deprived of these and that this farm ownership also assured them some rights to the associated pastures. The experience has proved useful for subsequent mediation by Government with the support of UNAMA, following inflammation of the dispute during 2007 and 2008.

Figure 4: Eastern Hazarajat Showing Main Kuchi Migration Routes to Bamyan Province and Sites of Clashes since 2006 (temporary map: to be amended to indicate (Dasht-i-Gola, Nawur), Dasht-i-Kotob and Kajab Valley etc). Source: UNEP



Box 2: Nawur pasture

Dasht Nawur is one of Afghanistan's largest pastures, comprising around 600 sq km and at elevations of up to 3,350 m. The pasture represents a unique ecological zone containing wetlands which are an important breeding ground for a variety of waterfowl and wader species.

Dasht-i-Nawur had a special socio-political history as the most westerly point to which Pashtun Kuchi ventured prior to Amir Abd' al Rahman's conquest of the central highlands, which began in the late 1880s. His royal chronicler recorded that up to the year 1303 (1885/86) '*Kuchi did not take their animals further than the pastures of Behsud, Nahwaur and Sedasta of Jaghuri*' (Ferdinand 2006 after Fayz Mohammad, 1914/15). As visitors, Kuchi paid grazing fees to the local Mohammad Khwaja Hazara.

The Amir himself took over part of this vast pasture for the horses and camels of his army during the 1880s. So many conflicts arose between his army and the Kuchi on the one hand, and the Kuchi and the Hazara on the other, that in 1890/91 Abd' al Rahman ordered that a stone wall be built across the pasture, as the line across which no Kuchi was to cross ('Determination of the boundary between the Afghan Kuchi and the Hazaras of Malestan', Fayz Mohammad, 1914/15, Vol. III: 925 ff as cited in Ferdinand 2006). The Kuchi did not obey this. This roused the King's ire. In any event, a year or so later these Kuchi were among those enthusiastically responding to the King's call for Jihad against the Shia Hazara in these areas and deeper into the highlands.

Current disputes in the Behsud, Jaghuri and Wardak districts between Kuchi and Hazara have their origins in these events. What they argue was dispossession of their traditional domains was concretely put into law in 1894 through issue of land grants (*firman*) to Kuchi on a tribal basis. Respective grants covered the entire central highlands including the foothills where Nawur and related pastures are found.

From the 1920s Kuchi nomads were ordered to permit local Hazara to access some pasture around their settlements. Acknowledgement of Hazara *rights* were limited to the Pashtun custom that land within hailing distance of the last house in the settlement belongs to that settlement and which broadly constitute private (landlord) grazing. By the 1960s, Kuchi were allowing local Hazara to use wider areas beyond these village pastures, although under limiting conditions and often at their whim.

During the conflict years of 1979-2001 wealthy armed Kuchi continued to pasture at Nawur even when access to inner Hazarajat (Bamyan) was constrained. Meanwhile local Hazara were able to expand their flocks and expand their fields in Nawur. This ended under the Taliban who strongly supported Kuchi control of the Wardak – Ghazni areas and were said to have ignored appeals by Hazara that Kuchi stock were destroying their crops. Conflict between Hazara and Kuchi grew with periodic incidents of human abuse. With the fall of the Taliban in 2001 Hazara throughout the area refused to allow any Kuchi to return to the pastures. Tensions reoccurred especially after the return to the area by a notorious Taliban Kuchi commander. Several Kuchi and Hazara were killed in Behsud to the North in 2004. The Ministry of Frontiers and Tribal Affairs brokered an agreement to allow Kuchi return to Nawur District. The agreement was endorsed by ten local Hazara and nine Kuchi representatives (De Weijer, 2006a). This fell apart a month later when a condition was broken relating to the agreed exclusion of the Daftani Kuchi who had been involved in alleged extortion in the area. Relations remain constrained in the area until the present, notwithstanding a renewed effort at agreement in early 2006, described above. At the time information was collected with listed 21 different Kuchi groups using different parts of the Nawur District and pastures. They derived from these clans: Daftani, Maryani, Mirzai, Kharoti, Adnar, Wali Khel, Niazaei, Latian, Jawri, Lializai, Adil Wal, Nah Khel and Mol Khel. By then Kuchi had bought many jeribs of farmland in the villages of Zabzak-o-Bator, Awar Nawur and Tabila.

In 2006 Kuchi leaders claimed to the visiting Kuchi-Hazara conflict resolution mission to Nawur that they hold 114 documents relating to the pastures of Nawur (De Weijer, 2006a). One notable clarified that most relate to farm lands and agreed that some Kuchi groups had no *firman* for pastures, using the pastures on the basis that they were Government Land. In his case Hazara had given his clan the right to use the Bator mountain pasture instead of paying compensation for the murder of his father some decades earlier (Gul Mohammad Kuchi, April 2006).

Sources: Ferdinand, 2006, De Weijer, 2006a, 2006b, Ibrahimi, 2009, Gul Mohammad Kuchi, 2004, UNAMA, 2004

Training for making peace

Another USAID-funded initiative mandated to research nomadic livestock systems and drought preparedness, the PEACE programme, took the opportunity to hold peace-building workshops with Hazara and Kuchi representatives in March-April 2008.¹⁵ These involved around 40 Hazara representatives from Bamyan, Wardak, Ghor and Ghazni and around 40 Kuchi representatives from Khost, Nangarhar, Paktika, Paktia and Wardak, deriving from tribes anxious to re-enter Hazarajat for summer grazing and some of whose members now own significant farm holdings in Hazarajat. The intention of the meeting was not to directly tackle the disputes, but for representatives to learn skills for calmly addressing these. This was found to be useful, particularly in affording Hazara and Kuchi representatives an opportunity to meet face to face. Further meetings were held later in 2008 with other groups of representatives. Out of these meetings five Kuchi and five Hazara have been selected as Peace Builders, who have returned to their communities to disseminate the need for peaceful negotiation.¹⁶

Integrating conflict resolution with pasture conservation

The main source of findings around which this strategy is built derives from the work of FAO's SALEH programme operating in Bamyan Province. This is because this is the only initiative thus far which purposively sets out to remove pasture related conflicts on the ground. This is the Community Based Pasture Management programme (CBPM) begun in June 2006 but due to end in 2009.

The founding strategy of the initiative is to use the establishment of CBPM as the trigger and main practical output for systematically resolving inter-community disputes among settled communities as to ownership and control of local pastures. The NGO Solidarities played an important contributing role in 2007.¹⁷ The project has worked thus far with around 70 communities in three districts and brought around 100,000 ha of pasture under working community management.¹⁸ Annex F provides guidelines developed on the basis of the experience.

One building block of the approach was recognition, endorsed by the Nawur experience,

that Hazara need time to sort out their internal conflicts over pasture rights before negotiation with Kuchi may be satisfactorily entered into. Helping settled communities in Bamyan Province deal with outsider rights, claims and interests (and as involving other outsiders as well as incoming Kuchi) is nonetheless a critical element of the approach developed.

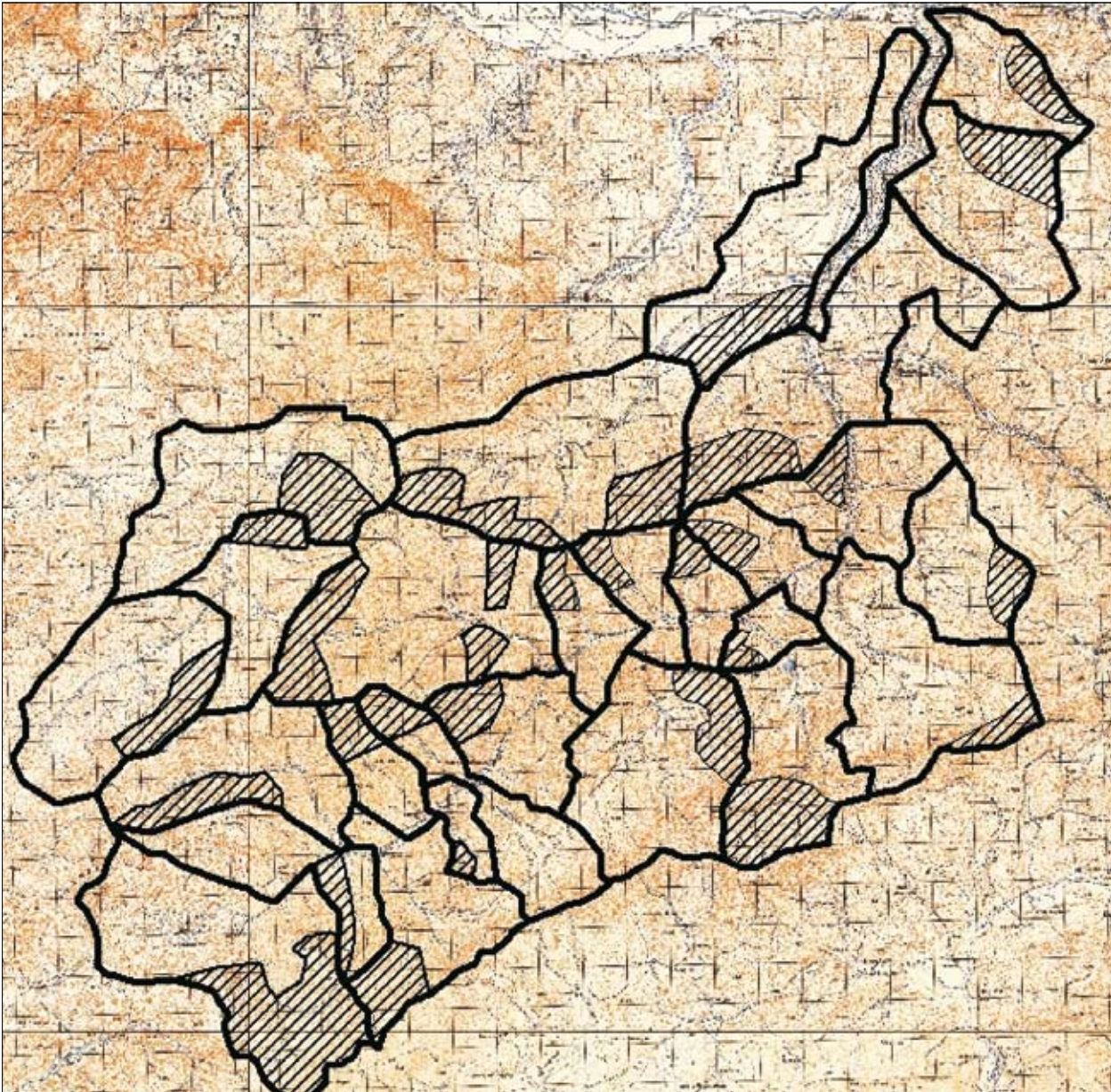
Figure 5 shows example of delineation of community Pastures and Protected Areas within one SALEH CBPM Pilot Area in Yakawlang District in Bamyan. Agreed boundaries of each Community Pasture in the Sya Dara area of Koh-i-Baba Range and hatched areas within each marking the area set aside by each community for rehabilitation (Community Protected Areas [*aighal*]), are shown.

Given that few Kuchi have returned to Bamyan Province (with one recent exception) the guidelines on this particular matter are yet to be tested.¹⁹ A host of lessons have however been gained from the local situation resulting in clearly emergent policy recommendations, the fleshing out of Government's new strategy for community based resource management, and as contribution to the terms of proposed new rangeland legislation (see later).

Reinforcing a community based approach through land registration

In 2006 the SALEH initiative also encouraged ADB to reshape its interest to assist Government to restart rural land registration along lines which looks to *community based* registration, and explicitly as including communal pastoral assets. This was tested by the Capacity Building for Land Policy and Administration Reform Project (RLAP) under the Ministry of Agriculture.²⁰ Trials were undertaken in four villages in three provinces (Kunduz, Takhar and Herat). These mainly focused on registering 17 pasture land agreements. These were not contested cases and the project focused upon the process of recording *agreed* rights. Procedures for recording these are similar to those developed by the SALEH approach (Annex G). Like the FAO SALEH initiative, the RLAP exercise endorsed the need to make provision for registrable rights to collective resources like forests and pastures, taken up in new national land policy (2007).

Figure 5: Example of delineation of community Pastures and Protected Areas within one SALEH CBPM Pilot Area in Yakawlang District in Bamyan. Source: Solidarites



Two key differences between the SALEH and RLAP initiatives are –

- (i) that the SALEH approach looks to recognition of customary collective land rights as property rights of land ownership and treats seasonal rights by outsiders as access rights which must be accounted for. In contrast RLAP proposes an approach which records all rights without differentiation and retaining the land itself as government property; and
- (ii) the SALEH approach nests clarification of land rights and their registration and establishment

of community based pasture management as a single integrated process.

In other ways the approaches are similar and make locally-based pasture rights adjudication among neighbouring communities their shared foundation.

Thematically all the above initiatives have common goals and, helpfully, fairly similar approaches. In addition, all have been implemented in direct association with the Government of Afghanistan and/or under the direct aegis of the Ministry of Agriculture. Lessons from these initiatives are given in Part II.

Part I Background

1 The resource

Pastures are an immense but threatened resource of Afghanistan

Up to 70% of Afghanistan is used for green grazing or for harvested fodder for livestock. This includes the 29 million ha classified as pasture (*maraa*, or 'rangeland', *alafchar*) which constitutes 45% of the total land area (FAO, 1999). [Figure 6]. It also includes some areas which are technically defined as wastelands (*mawaaf*) due to their rocky or other inhospitable nature. Wastelands comprised 37% of the total land area in the early 1990s but through degradation, may have expanded since. Harsh climate and altitude means that only part of these resources are accessible or usable all year. As well as providing livelihood, the pastures support Afghanistan's 41 meso-watersheds and thence human settlements and farming systems.

Pasture in its broadest sense extends from valley bottom paddocks to drier hillsides to small or large

plateaus within mountain ranges and the steep mountainsides themselves. Over 300 pastures are distinctly named and identifiable. There are around 30 large pastures of between 50 and 200 sq km.²¹ Settled and nomadic rural Afghans are both deeply dependent upon pastureland for their livelihood. Among settled people, especially within Hazarajat, where altitude prevents more than one crop a year being produced, access to high pastures in summer is even more important.

2 Highland pasture use

2.1 Kuchi Migration

For Kuchi, pastures broadly divide into summer and winter pastures. Most summer pastures are sub-alpine or alpine steppe land (60%). The majority of summer pastures are accordingly located in the central highlands. Others are found in the mountainous north west of the country (Badakhshan), not covered in this paper. Large winter pastures are in the warmer and lower altitude south and east, the main home areas of Pashtun Kuchi. Some Kuchi refer to these winter pastures as their home areas.

Figure 6: Land Cover Classification in Afghanistan

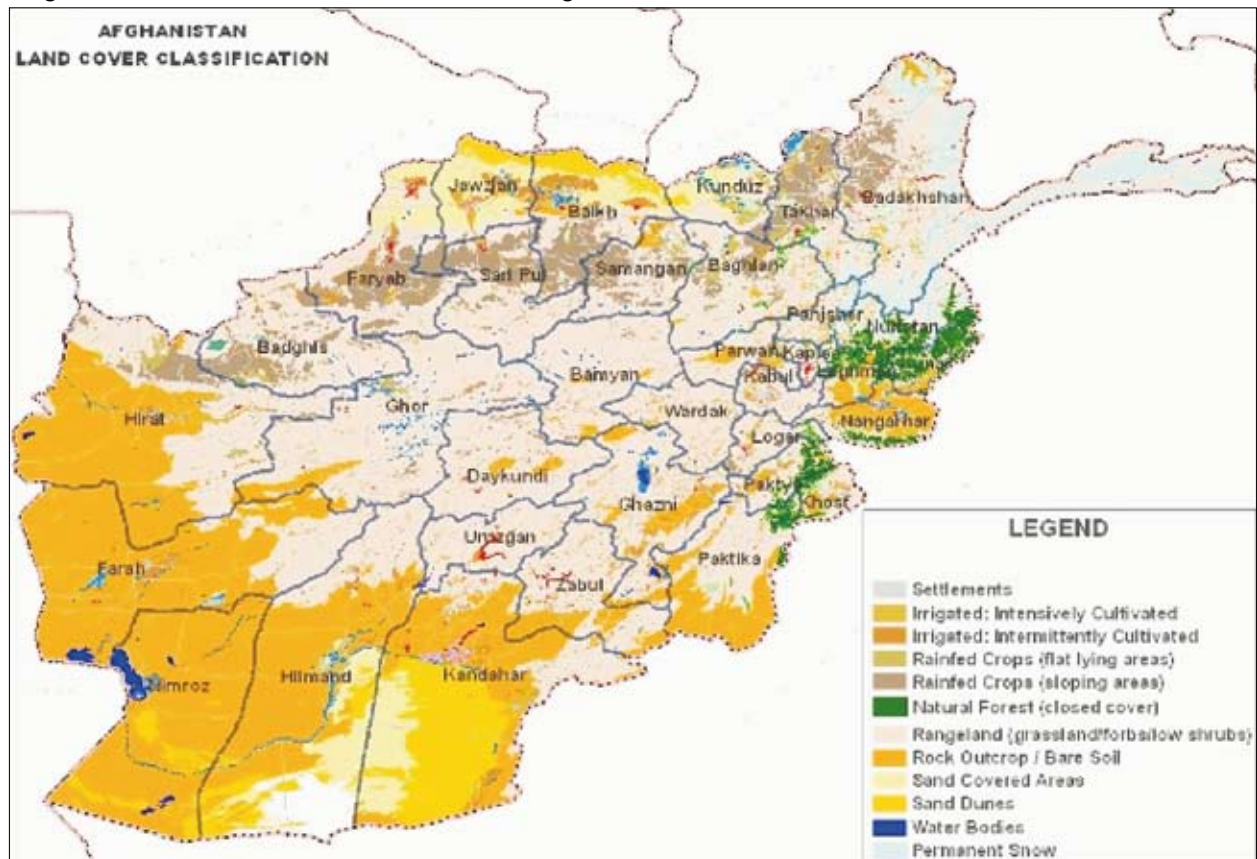
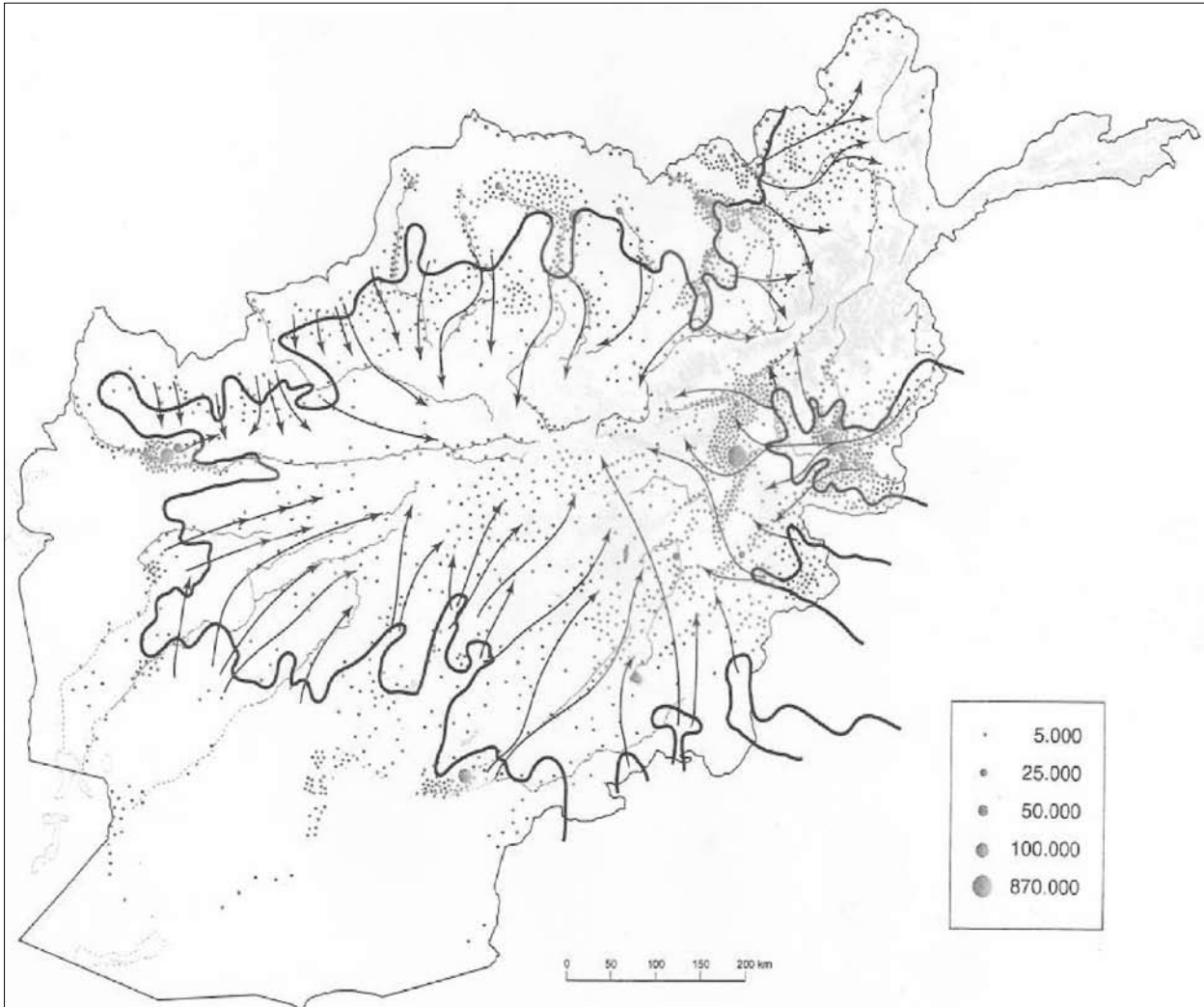


Figure 7: Broad division between winter and summer pastures as defined by nomads with migration to summer pastures in the central highlands shown. Source: Ferdinand, 2006



Like many of their number who settled in the north, southern Kuchi generally move to the central highlands in summer to take advantage of the grasses which grow there after the snow-melt, and while their home pastures are very dry [Figure 7]. Summer is the time they fatten their animals. Kuchi begin their migration to the highlands in spring (February and March) taking anywhere up to ten weeks to reach their destination, grazing their animals on pastures along the way. In spring they are mainly in the lower foothills of the central highlands. They enter the higher mountains during May or June and remain until August, making the trek home during early autumn (September to November).

The Kuchi population numbered around 240,000 households in 2003 (2.42 million people) or around 6.4 percent of the population. The vast majority are ethnically Pashtun.²² The term Kuchi is in fact so

associated with this tribe that nomads from other tribes prefer to refer to themselves as *maldars*, not Kuchi.²³

Among the Pashtun Kuchi there are distinctions between the Ghilzai of eastern and southern Afghanistan and Durrani Pashtun nomads, many of the former settling in the north from the 1890s.²⁴

Today fewer Kuchi migrate with their animals than before the war, with 15% fully sedentary in towns and cities in 2003 (36,500 households).²⁵ Another 33% (80,000 households) continue to migrate, but shorter distances, often within the same province or even district. A significant number of households in the short-migration group do not migrate at all. Nonetheless over half continue to migrate or seek to migrate (52% - 1.2 million people or 124,727 households identified as long-range nomads in 2005). In absolute numbers this groups comprises more people than the total Kuchi population before the war.²⁶

Figure 8: Kuchi Summer Locations. Source De Weijer 2005a

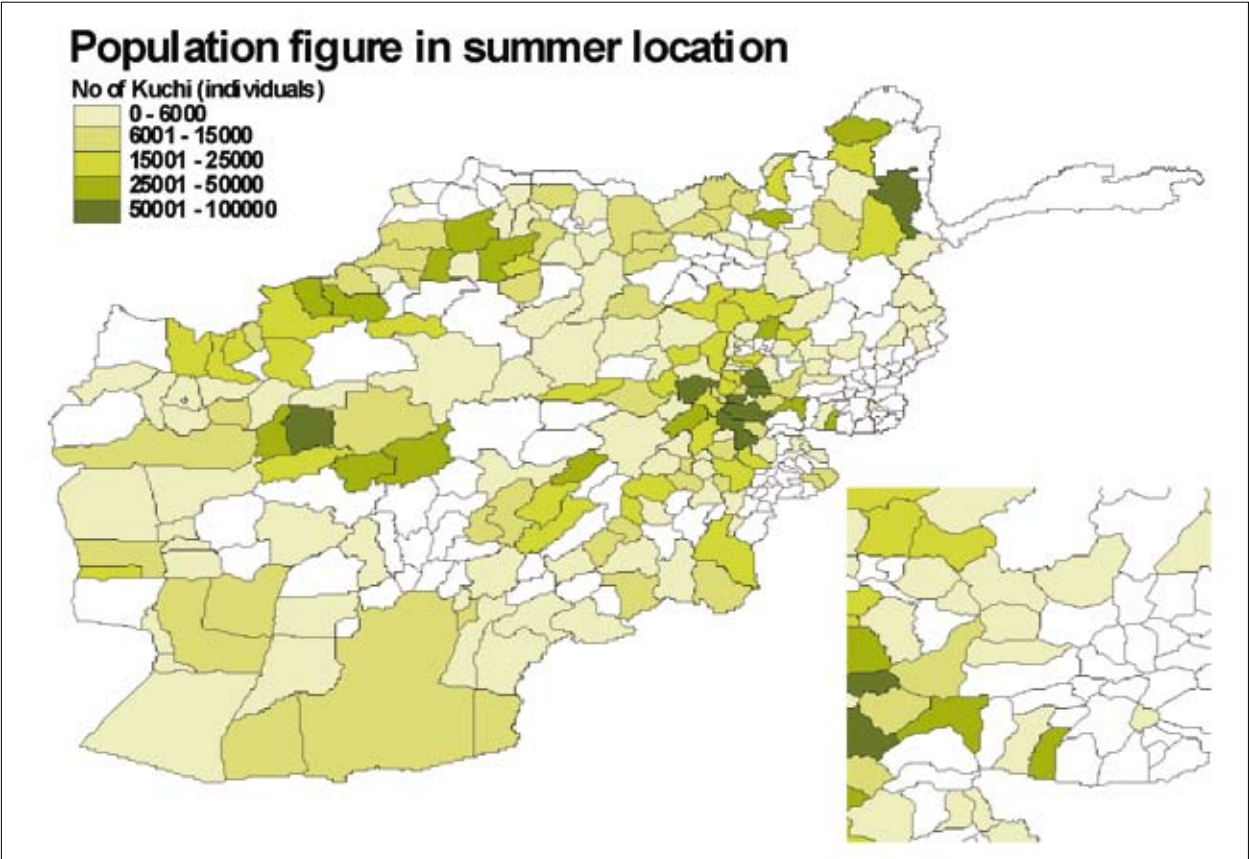
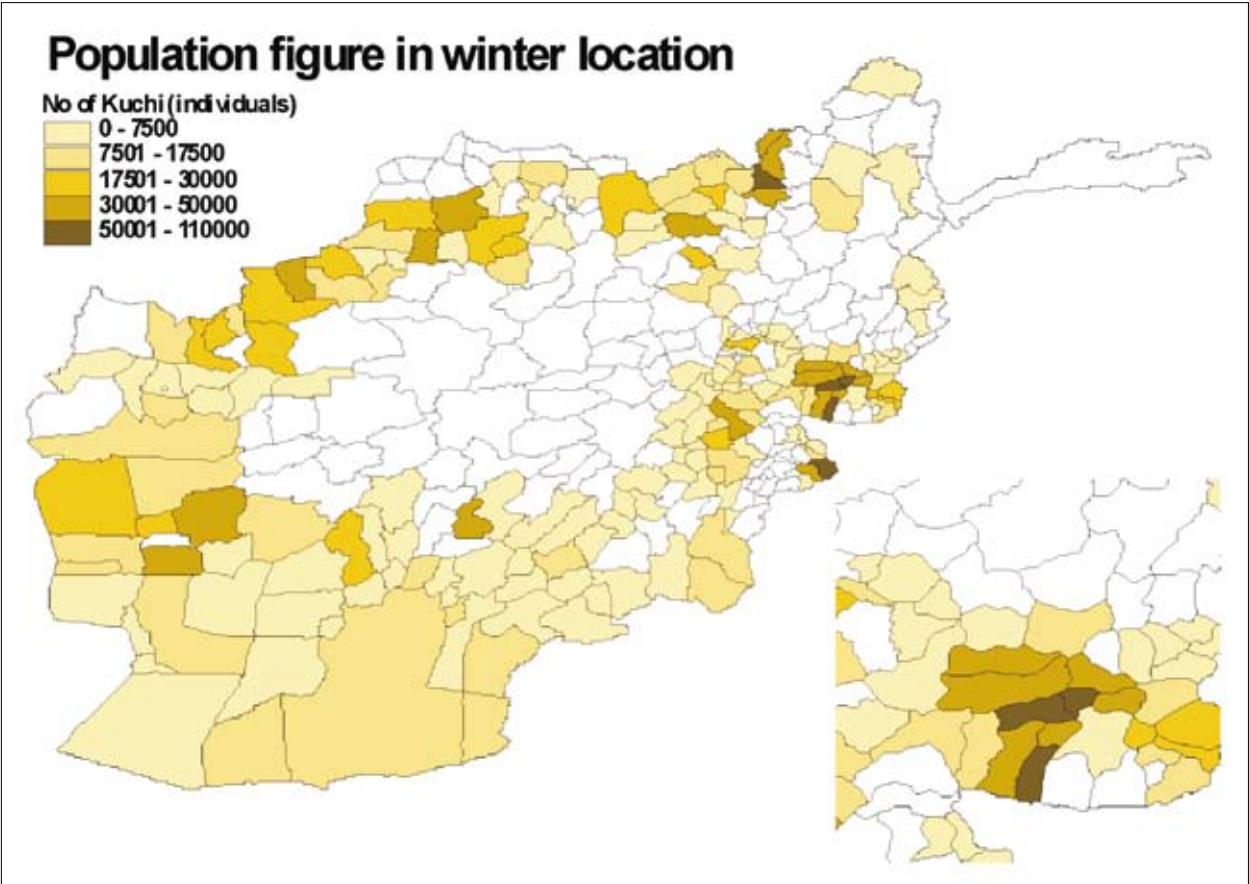


Figure 9: Kuchi Winter Locations. Source De Weijer 2005b



In 2005, among the 124,000 Kuchi households who wanted to migrate, 41% reported to a national survey that they were unable to do so or at least unable to move to their *preferred* summer area (51,000 Kuchi households).²⁷ This was due to frustrated access to pastures in Faryab, Saripul, Ghor, Bamyan, Wardak and Ghazni – all but Faryab being within the central highlands/Hazarajat.

The main reasons cited by Kuchi were (i) the attitude of local commanders (41%), (ii) the attitude of resident populations (17%), and (iii) the loss of pasture through conversion of those pastures or parts thereof to farmland (13%). Of note is that only 7% complained that their traditional summer pastures had been usurped by local people or commanders, suggesting the issue was seen in 2005 as more a matter of access than conflicting tenure. Another 6% complained of being taxed for using the pasture, and 2% recorded that the migration route was closed.²⁸

There were also conflicts over the use of local water sources and damage to local people's crops. For local people the benefits of Kuchi stock fertilising their fields after harvest were outweighed by the presence of Kuchi stock competing for pasture and water and interfering with crop production. Overall 37% of Kuchi in the survey stated that they had conflicts of one kind or another with local populations regarding access to summer pasturage.

By no means are all migrating Kuchi entirely dependent upon livestock keeping. Many have permanent homes in the winter areas. Sixteen percent additionally own farmland in summer areas. Usually these Kuchi are semi-settled. Around 9,000 migrating Kuchi own farmland in Hazarajat.²⁹ In fact this group average farms which are larger than the average for settled populations in those areas (12.7 *jeribs* compared to 7.6 *jeribs*).

Migrating Kuchi mainly own sheep but also take many animals for transport (donkeys, horses and camels). In the past Kuchi have owned over 90% of the national smallstock herd, but this has fallen, partly due to drought and partly due to constrained access.³⁰

2.2 Hazara Transhumance

Hazara also depend upon moving their animals during the year, although in a much more localised

transhumance which sees them migrate strictly within customary domains. What this means is that in many cases Hazara simply move up and down the mountains which rise above their valley settlements.

Due to the bitterness of winter, Hazara keep their animals inside their homes for up to four months (November to February) and bring them inside at night for another three months (March to May). Animals are fed fodder collected from the high pastures the previous summer to which is added crop residue, willow and poplar leaves and some planted fodder crops (mainly alfalfa). In spring these animals graze on lowland pastures in the valley and on nearer hillsides. This is always limited because of the proximity of cultivation and competition for scarce land for farming. National survey in the 1990s found that the area of irrigated land in Bamyan, for example, was one half the national averages for irrigated land area, rainfed farms one seventh the national average, and arable land overall one quarter the national average.³¹

By around May/June sheep and goats are taken to the high pastures to graze. They are followed by cattle and horses a month later as the summer warms up. Every village has its own mountain location area, usually directly above the settlement. There they settle themselves for one to four months, depending upon altitude. During this period they live in tents or stone enclosures at sites known as *aylaks*. Some of the family remains at home to care for cows and now to enable children to attend school. Those who move to the *aylaks* spend much time preparing the dried yoghurt curds essential for winter (*qurut*) and collecting fodder and around 30 donkey loads (2,000 kg) of thorny bushes per household, also essential for winter heating and cooking. In addition, some high altitude rainfed farming is practised ('cold farming'). Most rainfed farming (*almi*) continues to be practised at medium or lower altitudes.

SALEH/FAO data shows that around half of all families in one district in Bamyan moved themselves and their animals to the *aylaks* in 2006.³² This transhumance has been anciently practised in the region. The system is mirrored in areas further north, where similar advantage is taken of the remoter pasture areas belonging customarily to each Uzbek or Turkmen village, valley cluster or sometimes to the entire tribal community.³³

3 Degradation

In temperature and terrain, the high summer pastures of Hazarajat (above 2,000 m.) are both magnificent and hostile. They are characterised by thorny shrubs (*butar*), forbs (small bushes growing close to the ground, often soft-leaved annuals), and perennial and annual grasses (*cabal*). Woody *Artemisia* species dominate. There is some scientific speculation (and some claims in living memory) that *Artemisia* has replaced squat juniper and cedar woodlands in relatively recent times in parts of the central highlands.³⁴

There is general local and scientific agreement that the ratio between palatable grasses to unpalatable thorny bushes is now skewed in comparison to the situation half a century past. Local populations identify growing numbers of grasses and forbs which have disappeared altogether, are difficult to find, or have dramatically declined in size.³⁵ Nonetheless, up to 30 species are still cited as annually collected for winter fodder, along with six main shrubs used for winter fuel, and around 20 species noted as useful wild foods or medicines.³⁶

The signs of degradation in the central highlands are everywhere. These manifest as low to no plant cover, truncated shrubs and forage, hardened or eroded soils, gullies and landslides.³⁷ Avalanches have risen in number each decade. And as snow-melt rushes too quickly down bare hillsides, more soil is removed and floods sweep away irrigation channels and fields in the valleys. Not surprisingly, deep rooted shrub cover is noted by communities as especially important.³⁸

These effects are not confined to the central highlands; the same features of degradation are apparent for example in the famous loess dunes of northern Afghanistan.³⁹ Barren lands which were once rangelands are visible around towns and large settlements. Sometimes the only plant seen in summer is the bright green aromatic herb *Hormalena* sp. (*espan*), inedible to stock.

The trilogy of evils – over-grazing, over-cutting, over-cultivation

The *immediate* reasons for the deteriorating pastures are well-known: over-grazing, including premature grazing preventing seed-setting, over-harvesting for winter fodder and fuel, and the expansion of rain-fed farming reducing pasture area.

None of these factors are new. Rain fed cultivation has been pursued for centuries, both in mountainous Hazarajat and in the north beyond the central highlands.⁴⁰ Nor has the dividing line between land useable for grazing and land useable for rainfed farming ever been sharp. The royal chronicler, Fayz Mohammad, recorded that already at the turn of the century a major source of dispute was 'cultivation of the pastures'.⁴¹ With population growth, cultivation and thence dispute has expanded. FAO and Government surveys were pointing out expanding farming and over-harvesting of shrubs as the cause of dangerous degradation well before the period of conflict.⁴² Commercial harvesting had also become a problem by the 1970s, truckers transporting five ton loads of pasture bushes for sale as fuel in towns. Donkey numbers rose, to bring these loads down from the pastures. Accessible pastures, especially Shaidon, Shibatoo and Khamaneil in Bamyan, were degraded.

Most of the blame for this expansion of cultivation lies with settled populations. However it was observed in the 1970s that Kuchi from the south were leaving their winter pastures earlier and earlier each year. This was as a consequence of pressure upon their home areas from expanding irrigation schemes, and private farming, usually by wealthier Pashtun or settling nomads.⁴³ In Hazarajat growing accessibility and wealth of Kuchi traders and transporters contributed to the commercialization of the trade in pasture bushes.⁴⁴

The drivers: rising population, farmland needs and stock numbers

The problem, as always, is in matters of degree. Hard data on viable stocking rates are difficult to find, and in any event vary by area. Livestock numbers steadily rose through the 1960s and 1970s and, while numbers fell during the war, these returned to 1978 levels in 1995/96.⁴⁵ Numbers fell again due to severe drought during 1999 to 2004. Numbers are officially still down today at 21.6 million animals.⁴⁶

However the balance of species has changed; cattle and goats have risen by 27% and 18% respectively over the last decade while numbers of sheep – the main stock of nomads – has fallen by 43%. Constrained access to summer pastures by nomads is without doubt a main factor. Nationwide surveys in 2003 and 2005 recorded that 45.5%

of nomads stated that their access to summer pastures was 'much reduced' both during and following the war.⁴⁷ Sedentisation, as either cause or result, is also keeping numbers of stock down.

Human population has doubled since 1978, despite massive displacement during the war and still incomplete return to rural areas. While urbanization is rapid,⁴⁸ 79% of the population still live outside towns and absorb 70% of the labour force.

More households mean not just more animals, but more cutting of pasture shrubs for winter fuel. Obviously woody species are favoured for fuel and grasses for fodder.⁴⁹ Analysis of average off-take in Bamyan Province found that this currently amounts to an astounding 21.6 tons per ha, in high steppe

conditions where even one tenth this off-take is considered unsustainable.⁵⁰

More households also means expanding rainfed farming as families try to feed themselves. Given the scarcity of irrigable land in the highlands, a tiny minority of farmers are self-sufficient in wheat.⁵¹

Livestock keeping and therefore the rangeland resource remains of utmost importance to rural livelihood – of both settled and nomadic communities - and thence the national economy.⁵² Meat, milk, ghee, dried curds, leather products and wool, all of which may be sold, often keep the household alive. Even the poorest rural families benefit. An estimated 24% of the population have no farmland of their own but who nonetheless usually own a few sheep and goats, their only capital asset.⁵³



Camels herd grazing in Dasht-i-Nawur district, Ghazni Province

4 Coming into conflict

As section 5 will show, festering conflict between settled people and nomads is long-standing. Other pressures, as outlined above, exacerbate tensions. There is probably not a pasture in the country which is not subject to conflict to one degree or another.

Pressure on winter pastures is exacerbating tensions around summer pastures

It is significant that this affects not just the summer pastures but those used by Kuchi in winter, and including pastures over which Pashtun are in control. For example, Kuchi complain today that their winter pasture of Dasht Sadmish in Chamtal District of Balkh is being seriously encroached, as are the winter pastures of Dasht Kalan Koder in Hazrat Sultan District in Samangan, Dasht Sagai in Mohmand Dara District of Nangarhar, Dasht Gambiri and Marwandi in Qarghay District in Langman, Zari Dasht in Maywand in Kandahar and Sang Gulan in Washer District in Helmand.⁵⁴ Moreover in some of these winter pastures the crop of choice is poppy, adding to tensions. Sometimes the protagonists on both sides are Kuchi but pursuing different livelihood paths. In 2004-2005 the Ministry of Frontiers and Tribal Affairs mediated in a number of such pasture access disputes.⁵⁵ In 2003 the most dramatic loss of pasture access reported to NRVA was in the southern provinces of Helmand, Kandahar, Farah, Zabul and Uruzghan.⁵⁶ Insecurity due to war in the south and east add to the urgency with which Kuchi seek to regain access to the central highlands.

The immediate trigger – closure of the highlands to Kuchi

Kuchi access to the central highlands has been constrained since 1979. Anti-Pashtun sentiment in central and northern Afghanistan was such that one of the first acts of civil war by Uzbek and Turkmen communities in the north was allegedly to (often brutally) evict Pashtun settlers and recapture the pastures.⁵⁷ In other areas Kuchi continued to erratically access the pastures, such as in Shiwa in Badakhshan (see Annex C).

Hazara in the central highlands would take longer to re-establish customary control of the pastures, and around which commanders and militias dominated. From the mid 1980s, no Kuchi was

permitted to enter Bamyan Province or northern Ghor, save for a brief year under the Taliban.⁵⁸

As described in the case of Ghor Ghor Pasture, this saw heavily-armed Kuchi Taliban enter Panjab and Warras Districts in 1999 and forcibly extract 15 or more years of rent from those who were farming Kuchi-owned farmlands – and also from those found to be using the meadow pastures (see Annex D). Animals and farms were taken, homes destroyed and many injured and at least one person killed. Alarmed at the violence, Mullah Omar himself ordered the Taleb Kuchi to leave the area, and pledged to establish a commission to review Hazara grievances.

In Ghazni and Maidan Wardak, Kuchi access to pastures under the Taliban was assured. Local Hazara reported to the 2006 government mediation team that they if they had not felt aggrieved before by the domination and violence of the Kuchi, the Taliban era was the tipping point; violence against Hazara was claimed as frequent, people were killed and a sharp rise in Kuchi acquisition of farmland was seen during this period. This was much like as had occurred much earlier deeper into the highlands, in Bamyan Province.⁵⁹ After the demise of the Taliban, Kuchi, by then closely associated with the Taliban by many Hazara, were made unwelcome.

The tragedy of public lands

The use and management of the summer pastures also altered over the 1978-2001 period. Local farmers in the highlands, long prevented from using the pastures for rain fed cultivation, expanded into these. Communities began to compete with each other for access to high altitude pastures on the grounds that as 'pasture belongs to Government', then it is free for all.

Local commanders after the departure of the Russians added to the problem by resettling returnees on some of the lower pastures, multiplying settlements. Shortage of pastureland, fodder and fuel were chronic. Distinctions began to arise between those communities which restored recaptured pastures to customary village or valley-based control in an orderly manner, and those where customary norms battled with encroaching elites, commanders and officials. Often the difference was simply whether

or not the area previously had been dominated by *Kuchi*, these having strongest justification as now 'free for all' resources.

5 The current crisis

Nawur District in Ghazni and the three western districts of Behsud I, Behsud II and Day Mirdad Districts in Maidan Wardak Province are inhabited mainly by Hazara (refer Figure 5). A local *Kuchi* authority records that following the revolution of 1978/79, President Taraki forbade *Kuchi* to use these areas. This changed under the regimes of Karmal, Najeeb and Rabani during the 1980s and early 1990s as better-off *Kuchi* managed to pay off local commanders and enter Nawur and related areas.⁶⁰ These *Kuchi* had many weapons. Gul Mohammad *Kuchi* and a fellow group of *Kuchi* noted in 2006 that poorer *Kuchi* had not used these areas as they had no arms and feared attacks by the Hazara. Under the first year of the Taliban (1996) almost no *Kuchi* tried to access Nawur or related areas. In 1997 Hazara leaders in Kabul were ordered to facilitate *Kuchi* access and those holding *firman* (titles) could return to the foothill pastures. Crop damage incidents were the main recurrent dispute, and Hazara complained that they were unable to get compensation from armed *Kuchi* stock owners. Hazara in the Nawur negotiations during 2006 reported growing tension and resentment during the Taliban era. Following the Bonn Agreement in December 2001 they took the opportunity to again forbid *Kuchi* to enter Nawur and Behsud pastures.

Initially this was of less concern to *Kuchi* who had lost most of their stock during the drought of 1998-2002. Bamyán summer pastures had also remained closed to *Kuchi* throughout most of the Taliban era. Having provided significant numbers of recruits for the Taliban under the leadership of a notorious *Kuchi* Taliban commander, the nomads were also less inclined to push their case publicly. This was the same commander accused by Hazara of committing atrocities against them in several areas of Hazarajat, including Panjab District.

Kuchi interest to return to the Hazarajat spring and summer pastures returned in 2004, and with this the restart of incidents. Not coincidentally, this followed the release of the notorious commander and his brother by the American forces which had detained

them due to suspected links with Al Qaeda. They returned to live in Wardak Province.

In June 2004 UNAMA reported incidents at Qala-e-Khushk on the border with Jaghatoo District (Ghazni Province), Dasht-e-Gola and Mirazar in Kajab. Local Hazara reluctance to share water with arriving *Kuchi* was cited as the trigger of violence by some and the heavy arming of *Kuchi* as the cause by others. UNAMA observed that some *Kuchi* were heavily armed (June 14, 2004). In meetings with UNAMA the District Governor of Behsud II identified and named a group of 'irresponsible *Kuchi*' (*Ghair-e-Masool*) as deliberately provoking incidents, led by the above former Taliban commanders and who had been sighted in the Dasht-e-Gola area. The District Governor of Behsud II also reported that there were responsible *Kuchi* in the area living in Behsud I where they own farms and where they live peacefully with the majority local Hazara and that they were unhappy with the activities of their fellow *Kuchis*.⁶¹ In June 2004 the District Governor of Behsud II ordered *Kuchi* without farms in the vicinity to leave the area. They complied but returned even more heavily armed several days later. A *Kuchi* was killed on 9 June 2004 in Dasht-e-Gola and two Hazara killed on June 10th.⁶²

The investigating UNAMA team found that around 150 *Kuchi* households had moved with their flocks into the area. In Kajab Village four Hazara were wounded and one killed. Hazara reported that the attacking *Kuchi* had raised the Taliban white flag and said they considered this proof that these *Kuchi* were being backed by the Taliban.⁶³ The Chief of Police reported that *Kuchi* had built rifle pits on the hilltops, that there were around 70-80 armed *Kuchi* in the area, including *Kuchi* women.⁶⁴ A meeting called by UNAMA with *Kuchi* leaders recorded these leaders saying that they had offered Hazara payment to use their water resources, but had been rebuffed. The *Kuchi* admitted to UNAMA that they owned no farms in the area but felt they had the right to use Government pastures which do not belong to Hazara. Hazara were claiming much of the Government pasture as their traditional pastures.⁶⁵

Tension and incidents throughout the foothill areas increased through the warm seasons of 2005 and 2006, always with the same themes; a dispute of ownership of the pastures and water sources lying immediately beyond village-adjacent paddocks.

In June 2007, arriving Kuchi took the opportunity to raise the Taliban flag in Behsud. It remains unclear how far this was expression of a genuine adherence to the Taliban cause or designed to provoke fear in the local settled community. In the resulting fracas, thirteen Hazara were killed, tens wounded, hundreds of Hazara homes burnt and thousands forced to flee the area.⁶⁶ Eighty Afghan National Police (ANP) were deployed to Behsud II. Two hundred Afghanistan National Army (ANA) soldiers accompanied by the French ISAF were sent to Behsud I. Although the ANP managed to prevent further damage, violence continued in Behsud I. Only the onset of winter saw Kuchi leave, coinciding with a Presidential Order that they do so.

Spring 2008 opened badly with Hazara marching through Kabul in late March accusing Kuchi of taking their pastures.⁶⁷ Hazara MPs also accused the President of favouring Kuchi in a bid to win votes in the 2009 election.⁶⁸ This was followed by declamation by a Kuchi MP that Kuchi alone are true owners of Afghanistan's land and calling other tribes 'immigrants'.⁶⁹ Following a walk-out by offended non-Pashtun, Parliament was closed. Knowing the ire of the MP was directed to themselves rather than Uzbek and Tajik, Hazara took to the streets, demanding that Government and the international forces in Afghanistan protect their lands from Kuchi armed invasion. They also demanded that the Kuchi be disarmed. Unlike other groups Kuchi had been permitted to retain arms supposedly for protection against wild animals during their migrations.⁷⁰

Fighting broke out again in June 2008, affecting a larger area in Behsud. Kuchi again burned Hazara houses and hundreds again fled.⁷¹ Thousands of school students were expelled and threatened with collective slaughter should the schools re-open. Kuchi also forcibly closed the District Administration Office of Behsud and health posts. Road blocks were set up. Taliban flags were again raised.⁷² Soldiers and national police were again dispatched. Attacks on Hazara continued well into August 2008, in increasingly remote areas.

President Karzai issued another directive in September 2008 that the Kuchi leave, which again they did given the onset of winter. Karzai also established a *Presidential Commission for Resolving*

Land Disputes involving Kuchis and Settled People. Its work has periodically been facilitated by UNAMA. Despite immense efforts and meetings with the Hazara and Kuchi leaders, the Commission has been unable to achieve concrete results. At one point it was proposed that ten MPs from each side resolve the situation. There have been increasing calls for Government to settle the Kuchi, a solution publicly favoured by the President. During spring and summer 2009 there has been repeated threats by Kuchi and Hazara, a significant amount of alleged arming by both sides, and even some evidence that Hazara have established a front-line of trenches in the Behsud area beyond which no Kuchi will be permitted to pass. ISAF forces admit to handing out food to Kuchi moving into Day Mirdad District from the south-east in a bid to discourage them from moving further into Wardak Province.⁷³ Rumours abound that President Karzai has ordered that Kuchi be paid not to attempt to move into the central highlands to avoid conflicts during the crucial Presidential election year, but these have not been substantiated.

There is little doubt that the Kuchi-Hazara dispute has already reached a dangerous level. Already in 2008 political leaders were voicing concern that civil war could begin in areas which have so far not been directly involved in the fight against Taliban insurgents.⁷⁴ Hazara leaders meeting in June, and again in July 2008, condemned Kuchi incursions, reiterated their ownership of the pastures of Hazarajat and urged Government and the international community to disarm the Kuchi.⁷⁵ Accusations that the Kuchi are being directly armed by the Taliban (or even the Pakistan intelligence forces) are rife. On their side, Kuchi accuse Hazara of looking to Iran for assistance, Hazara sharing the Shia faith with Iranians. Hazara acknowledge they need to arm themselves to protect against anticipated new attacks by Kuchi this year, but deny Iran is assisting. AREU and NRC considered the rumours sufficiently strong that Iranian clerics were rousing sentiments against Kuchi in Wardak Province that it recommended judicious deportation of these actors should they be identified.⁷⁶ In Hazara dominated press, the term Hazaristan is being revived to refer to Hazarajat. Reference has also been made in these articles to the national liberation movements underway in Baluchistan and Kurdistan, driven by comparable inter-ethnic struggles over land.

6 Looking to the roots of the conflict

The conflict has origins in typical territorial expansionism, and which at different times in different places on all continents has been led by pastoralists or settled people.

Both Kuchi and Hazara have their own versions of history. Nonetheless there is a significant overlap in their recording of events; it is in the interpretation of these events that most variance occurs. Below the timeline is presented as neutrally as possible.

If expansionism is the normal basis of conflicts between settled and nomadic peoples, in the case of Afghanistan this took sharpest form with the creation of the modern state. This began in the 18th century. By 1815 Hazarajat was still being described by travelling British emissaries as reaching as far west of Ghorat (Herat), beyond Ghazni in the east including areas around Kabul, and as far south as Kandahar.⁷⁷ Annex H records one description which has its origins in these records. Nonetheless, like Uzbek in Balkh to the north, Hazara tribes in

1885 lived largely autonomously of the Pashtun Federation. Remoter tribes often did not even pay tribute to the Pashtun Amir until the 1880s.

Under the leadership of an Amir appointed to coordinate their interests, Pashtun pastoral expansion moved steadily northwards during the 19th century. By 1885 Hazarajat had shrunk to the central highlands and surrounding foothill areas. As noted earlier this covered all of Bamyan Province, northwards to Saripul and Samangan, and inclusive of Ghor and Day Kundi to the south and parts of Maidan Wardak and Ghazni to the south-west (Figure 4). This remains the area usually referred to as Hazarajat today.

This changed with the interference of the British who encouraged Amir Abd' al Rahman to fully conquer the area right up to the Amu Darya River in the far north, to serve as a buffer between British India (which embraced Pakistan at the time) and Tsarist Russia, rapidly expanding southwards.⁷⁸ With funds, military advisers and thousands of muzzle-loaders from the British the Iron Amir swiftly did so. Consolidation of the northern border was the



Typical Kuchi settlement found around the rangelands in Dasht-i-Nawur, district, Ghazni Province

priority; coerced colonisation by Ghilzai Pashtun was the instrument. The first 8,000 Ghilzai from the south arrived in 1894, to be followed by wave after wave, although each time with less persuasion or bribes of assistance to settle necessary.⁷⁹ Local Uzbek, Turkmen and Tajik populations found themselves squeezed for arable and pasture land by the expanding 'Afghania' settlements.

The situation was more severe for the Shia Hazara of the central highlands. Initially some powerful Hazara leaders aligned with the Amir.⁸⁰ This changed within a year or two as the Amir's army and administration penetrated right to the valley level in the persons of Afghan *maliks* and following atrocities and enforcement of multiple taxes. In response, more or less all Hazara leaders drew together in armed rebellion in 1891. Furious, the Amir issued an *esheha* calling Afghans to arms in the spring of 1892 to root out the irreligious (Shia) Hazara. His memoirs record that 30,000 to 40,000 responded to this call to *jihad*. These prominently included Admadzai and Mohmand Kuchi.⁸¹ Following their success in 1894, the Amir sent a new order to his governors in Uruzghan, Ishkarabad, Malestan, Yakawlang, Bamyān, Behsud, Gezab, Khamard, Saighan and Ghazni. This declared that

' ... those pastures in which up till now the animals and cattle of Hazara people were grazing and those people who were benefiting from and were living on animal husbandry, hence forward they shall be obstructed and prevented from doing so. They must not use the pastures for the fodder of their animals and must consider all the pastures, whether small or big, as state property (*haq-i-daulat damand*)' (Fayz Mohammad, 1914/15 Official Chronicle, Volume III: 986).

Under the guiding hand of one Qazi Yaqub Ali, most of Hazarajat was then distributed among especially the Mohmand and Admadzai Kuchi. With leather-inscribed land grants (*firman*) in hand, Kuchi clans began to enter the mountains to enjoy the rich summer grazing which had underwritten the Hazara economy for centuries. By doing so the Kuchi abandoned their more characteristic migrations southwards through Pakistan towards India. As noted in Box 2, until that time Kuchi had not ventured further west than Behsud and Dasht-i-Nawur Pasture on the eastern outskirts of

the highlands, where they paid grazing fees to the local Hazara in acknowledgement that this was their land.

Kuchi possession of the pastures was disastrous for the Hazara. The Amir's records acknowledged as much, in recording that within a few years the Hazara were 'without livelihood'.⁸² Their plight lessened somewhat when they were permitted to farm again, Kuchi having shown little interest in cultivating the valleys or settling in the region over winter.⁸³

Despite being banned from owning horses or weapons, Hazara uprisings occurred in 1903, 1908, 1909 and 1914. Each rebellion was followed by deportation of Hazara *begs* (feudal landlords, usually leaders in a valley) followed by distribution of their lands to Kuchi.⁸⁴ A new wave of oppression is said to have taken place under Nader Shah during the 1920s in the time he was War Minister and before he became King (1929), with a flurry of new *firman* issued to Kuchi.

His more liberal successor, King Amanullah, recalled the *firman* issued to Kuchi in Hazarajat and reissued these in 1927/28, restricting Kuchi tenure to the highest pastures.⁸⁵ Reviewing some of the Kuchi *firman* in the 1970s, Fredericksen 1995 and Pedersen 1994 remark that the *taksimnana* (documents) issued at that time were clear that local Hazara rights to farmlands and lower pastures were not to be disturbed.

While it was important for Hazara to formally retrieve valley lands, this had the effect of confining them to the valleys whereas previously many settlements had been at higher levels, nearer to the high pastures used in summer. Moreover these events broke the notion of territories, of each community having its natural socio-spatial domain which included all pasturelands from the valley floor to the highest points above, alpine ridges marking the boundaries between each valley community.

Technically, Amanullah's Commission also laid the foundation for all pastureland to be conceived as un-owned land or public land but, in practice, government land.⁸⁶ The idea that pastures customarily had owners was thereby further suppressed. In accordance with the law, both Hazara and Kuchi now used pastureland only

by the benevolence of the State. This made little difference to Kuchi who continued to treat the high pastures as their private property. It also made little real difference to Hazara who remained deprived of their traditional high pastures, central to their livelihood.

In any event, Amir Amanullah's multi-ethnic policy did not last long. Under successive rulers (1929-1978) Pashtunisation became a formal state objective, affording visiting Kuchi to Hazarajat added dominance as the proxies of Government through a range of direct and more subtle mechanisms.⁸⁷

During this era the Kuchi themselves came under pressure in the east. This culminated in the partition of India and creation of Pakistan in 1947. This cut Kuchi off from using areas in these countries for winter grazing. The ensuing decades saw border controls into Pakistan become ever more limiting. This concentrated wintering of animals in the east and south of Afghanistan. This was established as the norm by the inter-State crisis which erupted in 1961-1963.⁸⁸ However some groups of Kuchi continue until today to move across the Pakistan border in winter.

These mid 20th century pressures increased Kuchi determination to hold onto summer pasture areas in the central highlands. The pressures also triggered changes in their economy. By the 1950s this was expanding its base to include vibrant trading. Some Kuchi clans gave up pastoralism altogether, concentrating on trade and transport businesses. They also invested in valley farming lands, including for speculation (to sell on to fellow Kuchi at a profit). Large amounts of land in Hazarajat and the north were bought during this period and subsequently farmed on an absentee landlord basis; Hazaras served as tenants paying rent in the form of crop shares.⁸⁹ Rising sheep prices and the benefits of being able to use the central highlands also saw Kuchi wealth as a whole increase in the mid 20th century period.⁹⁰

Ferdinand's Danish research team on nomadism from the 1950s observed the effects upon Hazara.⁹¹ Many wealthy Kuchi ceased to visit Hazarajat themselves or only moved as far as Logar, where they had acquired large areas of land. Others went into the highlands on their behalf

with an increasing objective to buy irrigable land. This was easy and cheap to do; the naive and needy Hazara became quickly indebted through small purchases made from Kuchi traders. By the 1970s, for example, all but one or two valleys in Panjab District of Bamyān had *Kuchi* owners and five of thirteen valleys were almost entirely owned by *Kuchi*. In these areas Kuchi controlled both the high pastures and hillside and valley pastures where these existed.⁹² These farm land purchases continue until today.

In other areas *Kuchi* were tolerated, especially where they permitted local populations to access the pastures and/or collect fodder and fuel for winter. This was the case in parts of Yakawlang District. This included Khamaneil Pasture which became a main spring and autumn gathering place for Kuchi on their way to and from other areas. It was also the case in Band-e-Petab where Kuchi, arriving from the north, acknowledged Hazara ownership of the pasture and paid grazing fees (*sara falee*) in the form of 'sheep and sweets'. This is a practice which Kuchi adopt among themselves when using each other's areas.⁹³

7 The legal status of pastureland and rights

As the Kuchi population grew over the 20th century, the original *firman* were sub-divided in transfers to the next generation, or sold or leased to other Kuchi groups. The distinction between high and lower pastures consolidated. This would be further entrenched in law. From 1960, Zahir Shah's Government was advised by USAID to modernise the property registration and taxation system. To this end Government set out to map and title the entire country as either private or public land.⁹⁴ In the event, the exercise had covered less than 10% of the country by 1978. Half that area was registered as family-owned farmland. Most of the remainder was pasture. This was registered as Government Land, in accordance with the new registration and land tax law of 1965.

7.1 Nationalisation of the customary collective property

Overall, the trend since the introduction of westernised laws since the 1960s has been to nationalise the pasture resource. This was

achieved through a convention widely used at the time and promoted by donor agencies in developing countries. This relies upon a single distinction between private and non-private land. This conceives the former as existing only as individual or family owned estates, that is, excluding resources which are private properties owned in undivided shares by all members of a group or community (collective or common property). Naturally collective land assets like pastures, forests and wetlands are most affected.

Such lands therefore become ownerless ('public land'). As the state is trustee of these presumed un-owned areas, provision in the 1960s and 1970s under donor guidance was usually made to record these as Government Land. In practice the state becomes more owner than trustee. This becomes the de facto or observed law as Government gives itself controlling powers over these lands.

This is precisely the trend seen in regard to pastures in Afghanistan. The *Land Survey and Statistics Law, 1965*, one of the early western-fashioned laws to be introduced, described pastures as public property, but (along with wasteland, charitable gifted land (*moquofa*) and lands which have been developed by Government) to be registered as Government Land (Article 54).

The only pasturelands exempted from this were those for which documented evidence of ownership, including royal decrees and other legal deeds of ownership and evidence of tax receipts are presented (Articles 32 & 43). Significantly, 'affidavits of common usage' were also eligible as evidence of private ownership. In practice this was ignored in the registration process, particularly if the owners did not or could not pay tax on these lands.

7.2 Pasture Law

The subsequent *Pasture Law, 1970* furthered nationalisation. Rights to pasture became strictly rights of use of public property/Government Land, and which could not be leased or sold – except by Government for commercial or public purposes (Articles 3, 6, 7 & 16). Rights were established on the basis of official documents – but again, significantly, also if the holders had 'used the pasture traditionally before the enforcement of

this law' (Article 15). While today this suggests an important opening for communal rights to be acknowledged, this was not so at the time, settled populations being firmly restricted to lower and village-adjacent pastures whilst Kuchi had entitlements and/or now a history of use of the higher pastures.

Reissue of both the Land Survey and Statistics Law and the Pasture Law would be made several times under subsequent administrations during the war years, and then by the Taliban. Changes were not significant, except for at the hand of the Taliban Emirate which took the opportunity of amending the Pasture Law. Relevant text is reproduced in Annex B.

The most critical amendment was to draw a firm distinction between private and public pasture. This served to re-entrench the distinction between low and high pastures and between the rights of settled and nomadic users. This was achieved by describing private pastures as including community land and only able to be used by residents of the adjacent communities (Article 3). In contrast, public pasture 'may be used by anyone'.

The status of Taliban-amended laws remains uncertain, although under the terms of the Bonn Agreement these remain as the law in force as they do not contradict the 1964 Constitution or the current 2004 Constitution. The latter does not specify pastureland as public property but by implication confirms this, by stating that 'public lands and properties as well as natural resources shall be regulated by law' (Article Nine) (Annex B). Officials tend to refer to the 1970 law. The question of which law is in force is in any event moot as pasture law is currently under concrete revision, as described below.

7.3 Land law as affecting pastures

In the interim President Karzai has enacted other legislation which has the effect of strengthening the hold of the government over non-private lands, and establishes public lands as State Land or Government Land.

First, in June 2002 he issued a law to prohibit occupation or sale of unoccupied or uncultivated lands, declaring these to be State property.⁹⁵

This was directed to commanders establishing mechanized farming in the north on plains pastures. A year later, he amended the above *Land Management Law 2000* to reinforce Government's ability to lease public land, again assumed as State land, to individuals (up to 50 ha) and to companies (up to 1,000 ha).⁹⁶ This was geared to encourage commercial investment. A further decree in 2003 developed this, designed to help investors to obtain land by providing for Government to lease surplus land under its control to investors, including to foreigners.⁹⁷ In the process, the law declares State Land to be '*all real property in the possession, custody or use of Ministries or other Government organs*' (Article 1). Depending upon the interpretation this could include all pastures, suggesting at the time that these might be available for lease, but more recently clarified (see below).

In the interim a further decree on Immovable Property in 2003⁹⁸ rendered to the State any property that has been under its control for more than 37 years (i.e. 1966) (Article 2). It permits the State to use properties 'that neither the State nor individuals own' for public welfare (Article 6).⁹⁹ Properties which have been distributed by administrations since 1978 may be retained by their occupants in certain conditions (Article 11) whilst owners of properties acquired through force or threat are to be dispossessed of that land and punished (Article 14). Government may lease by auction lands which are not shown to be private properties. Where occupied, the occupant shall have right of first refusal, but presumably will have to pay for the lease.

This law reiterates that private property will be recognized should the occupant have valid *shari'a* or court-endorsed documents (Articles 2, 6, 7 & 9). Given that it is largely only pastoralists who hold grants or other deeds relating to pastureland outside immediate village areas, this reinforces the pre-war status quo.

7.4 Current land law affecting pastureland

In 2008 the President, during a parliamentary recess period, promulgated a further revision to the *Land Management Law*. Overall there has been very little alteration to the 95 articles of this law since its first enactment in 1965, excepting its version as the Taliban Emirate Decree on Land 2000 mentioned above. On 31 July 2008 the

Official Gazette (No. 958) issued a new *Law on Managing Land Affairs* but which fails to repeal all previous versions of the law.

A careful reading of relevant chapters of the law suggests the main objective of the amendments was again to enable non-private lands to be readily available to investors. Despite new definitions of grazing, pasture, barren, arid and virgin lands and a new stated objective of the law to clarify the distinctions, the extent to which pasture is protected from government auction to investors remains unclear. This is because definitions of government land, grazing land, rangelands, virgin, barren and arid lands overlap. Virgin and arid lands are to be made available for auction but pasture is not. However, most high pasture is virgin land (uncultivated) and arid.

Moreover the law's definition of pasture (grazing land) is confusing. This suggests that pasture may be limited to village-adjacent areas, in its retention of the Pashtun customary norm that community pasture extends only as far as a loud voice may carry. This obviously excludes the vast majority of lands used for grazing, the higher and often quite remote pastures to which both settled and nomadic communities migrate in summer. Annex B provides relevant extracts from the law.

These substantive concerns are increased by the procedural problems associated with the issue of this law. First, it would appear that the law has not been approved by parliament and is accordingly unevenly considered to be in force. Second, some claim that no technical ministry was consulted and least of all the Ministry of Agriculture which has oversight for both land and pasture matters. This could explain why the new law takes no note at all of new pastureland policy, the draft rangeland law, nor even new national land policy. As shortly shown these provide rather different conceptions on the tenure of pasturelands and the way in which these assets are defined and registered. The opportunity to modify the law still in theory exists though, given that parliament will review it in due course.

Finally, the new Environment Law (2007) has bearing upon pastures.¹⁰⁰ This provides support for community based pasture management and for this to be based upon the traditions of the community. 'Every person shall have the right

to legally use natural resources in accordance with customary traditions and practices which encourage community based sustainable natural resource management' (Article 7.1).

7.5 Emerging new policy and law

There are several new instruments in place or in draft with direct bearing upon the status of future pasturelands and by implication upon the settled/nomadic relationship. These instruments are new national land policy, new rangeland management policy and most important in due course, drafting towards a new pasture/rangeland law. Key provisions in these three documents are summarised in Annex B.

Broadly, the two policies and draft law share recognition that (i) pasture may be possessed by individuals or communities; (ii) make it possible for a community based adjudicatory process to be instituted for these rights to be registered; and (iii) target communities as the source of future pasture management. In consequence, the role of Government shifts from a possessory and all-controlling position to one of regulator and as the technical adviser, facilitator and watchdog of community-led management. These strategies are firmly rooted in international best practice in land tenure and natural resource management.

The more recent land policy and especially emergent new rangeland law have also taken account of local trial experience with new paradigms, particularly as emerging from FAO's Bamyam programme of integrated pasture tenure and management developments. By late 2006 that project's experience in the field was able to flesh out a strategy for community based pasture management, building upon the outline policy and strategy of Government for Forest and Range Management. The FAO SALEH programme also identified practical legal requirements. Summaries of both documents are provided in Annex F along with a listing of stages towards practically implementing community based pasture management.

7.6 National Land Policy

Although flawed in its iteration (including an absence of any public consultation), the inter-

ministerial drafting committee for the *National Land Policy* made a conscious attempt to absorb the findings of the FAO piloting as affecting pastures and findings of the ADB rural land registration piloting, also building upon the new *Forest and Range Management Policy* (2006) (see Annex B).

The Policy accordingly endorses the importance of resolving ownership and access conflicts around pasturelands and directs that this occur on a localised basis. An integrated tenure and land resource management approach is to be pursued in the form of community-based pasture management.

Critically, the land policy introduces two new classes of land, community and state-owned land, in addition to private and public land. Provision for state land is to allow clearer distinction between public and government land. Community land is designed to encompass traditionally collectively-owned lands. New law is to provide procedures for recognizing traditional property rights affirmed by local knowledge (Annex B).

7.7 Rangeland Policy

These policies accord with new rangeland management policy and the practical parameters amplified by the FAO project's Guidelines for community based pasture management (Annex B and Annex F). The national strategy and practical guidelines reinforce the need to draw distinctions between community and public pasture lands in fair and lasting ways; the last being areas to which should sufficient grazing exist, migrating Kuchi should have regulated access.

Experience in the FAO/SALEH implementing programme shows that once traditional and formerly suppressed rights of settled communities are taken into account, the areas remaining as viably designated as public pastures are more limited than in the past. Not just Kuchi but any outsiders to the area will have to negotiate access rights with customarily-owning communities. An overriding constraint to all pasture use is the declining size and health of pastures and the need to limit stock numbers and off-take of bushes for winter fodder and fuel accordingly. This needs to be decided on a case by case basis.

7.8 Draft New Pasture Law

All the above are finding their way into drafts towards a new pasture law (*Rangeland Law*, Version 7.5 June 2008). The draft law makes its purposes -

'to recognize and formalize the custodianship, management and use rights of communities and other users, to establish a legal framework 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' (Article 1, Draft 7.5, 12 June 2008).

As thus far drafted, the law provides for private, community and public pastures as used in both summer and winter and the procedure for delimitation of each (Annex B). Private pastures are defined as rangeland directly attached to settlements and belonging customarily or by documentation to a specific household or household cluster.

Every District is to identify which pastures, if any, are public pastures, where these endure a history of

overlapping rights by settled people and nomadic pastoralists and are acknowledged locally as public property. Transit corridors with encampments are also to be defined along with conditions of use. Management of community and public pastures, including regulation of use and responsibility for rehabilitation will be handed over to communities in accordance with criteria laid out in the law (Community Custodians).

Nomads with demonstrated historical use of the pasture over at least 50 years are to be granted access by Community Custodians where condition permits. Where access is denied, the affected nomads may appeal to the District Governor who is bound to call a meeting of representatives of the Custodian and nomads, and should compromise fail to be reached, a Commission will be appointed by the President to resolve the issue, and whose decision shall be final and in force for a state period to be no less than ten years.

The law is however still very much in iterative draft.



Highland pastures (aylaks) in Koh-i-Baba, Bamiyan Province

Part II Strategy

Part I aimed to lay out sufficient background for the drivers in the conflict between settled and nomadic people over highland pastures to understand the broad context. In the process it aimed to expose potential paths for resolution.

Section 1 and 2 below bring these closer by identifying the breadth of the dispute in terms of grievances expressed and the narrowing the route to resolution by listing lessons learned from experience thus far in tackling pasture access disputes.

This then allows concluding principles and parameters to be laid out and an action plan to be proposed. These constitute a proposed 'road map' for stakeholders to consider for removal of grievances over the longer term, as well as enabling the sustainable future of the resource to be secured.

1 Grievances

Below the most common and consistently expressed grievances are listed, as derived from studies and project initiatives reviewed in Part I. The liberty is taken of putting these into their own words.

On the part of nomadic pastoralists -

- We have formal documents to prove we are the owners of pastures. The high pastures belong to us.
- Government must uphold our documents or break the law, for the documents were given out legally by Kings and Governments.
- Some of us have paid good money for pastures. If these are taken away from us, then we have to get our money back.
- Pasture is public land and free for anyone to use, if they apply. Hazara don't want to pay any taxes so they don't apply.
- Hazara got back the valleys and low pastures, and we respect their right to farm, but they must respect our right to the high pastures.
- Hazara are stopping us even visiting our farms in the highlands so we can't collect rent from our tenants.

- Hazara are not just wrongfully using our pastures, they are cultivating them and destroying our water sources.
- Hazara are also destroying the pasture by cutting too many bushes and leaving the ground bare so grasses cannot grow. We never did that and if we use the pastures again we will not allow that to happen. Hazara are not like pastoralists; they do not understand pasture.
- The problem with Hazara is that they have too many animals now.
- Hazara do not understand that nomadic pastoralism is our rightful way of life and good for the pastures.
- Hazara now charge fees for using pasture. This is wrong. Only Government can charge fees.
- Hazara are being manipulated by politicians and big people. The worst are their commanders and political leaders.

On the part of settled people –

- We were wrongfully dispossessed of our customary lands and, now that we have it back, we are not about to surrender it again to the wrongful occupants for all those years.
- Kuchi did not just take our land, they took our livelihood. We became destitute. This will happen again if we lose the high pastures. We will lose our animals which we depend upon, just like Kuchi. Kuchi think they are the only people who need animals and have a right to have animals. Our farmlands are too small and cold to survive from cultivation alone. Already many Hazara have to leave the land and go to the cities to survive.
- The pastures are not big enough to share. Our populations have grown too much to have outsiders freely use these, whether they are other Hazara or Kuchi.
- Allowing Kuchi to enter the pastures again will also bring back the old oppressions we suffered under the Pashtun Kings and the Kuchi.

- Kuchi are still allowed to carry arms whereas we gave ours up under DDR. This makes them dangerous. We will be forced to arm ourselves in defence.
- Kuchi have changed. Some of them are not the old families or their descendants. They are people we don't know, from clans we don't know.
- We cannot accept documents of pasture ownership as valid. All they do is show where Pashtun Kings and President gave out our high pastures to Kuchi.
- Kuchi who own farms in our districts use this as an excuse to bring back their animals to the pastures.
- When Kuchi pass through our areas, they take our local grazing and water. Their animals damage our crops, even when they make agreements not to. It is hard to get compensation from Kuchi.
- Kuchi don't understand our farming needs. For years we were stopped from farming beyond the valleys, and could not feed ourselves. Even

though we took the opportunity to expand our farms as soon as we could, we still can't feed ourselves, as the number of households has multiplied.

- Permanent settlement of Kuchi is the only solution. It is Government's duty to find them places to settle.
- Not all Kuchi are bad but they are being manipulated today by one or two bad leaders who want the pasture for themselves and their livestock businesses. These people don't even walk with animals anymore.

Main points of interest in the above are -

- a. Kuchi and Hazara accuse each other of being manipulated by politicians, and one or two persons hinting that not all ordinary Kuchi and Hazara feel the same way as these spokesmen or leaders;
- b. Both parties clearly need the pasture for livelihood; and
- c. Contradictions and conflicts appear to exist in determining how the pastures are owned.



Typical agriculture setting in low Jawakar Valley, Bamiyan Province

2 Lessons learned

International and especially local experiences suggest the limits of compromise and routes of compromise.

2.1 International experience

There is significant experience in tackling settled/nomad conflicts and ominously, increasingly where these have contributed to civil war, such as in Sudan, Ethiopia and Somalia. The following general lessons build upon these cases and from areas such as the Sahel and Central Asia where the settled people/nomadic pastoralist conflict more or less constantly presents itself.¹⁰¹

1. The issue does not easily get resolved 'once and for all'. Tension and the threat of conflict between settled farmers and pastoralists will always be present as pastoral resources come under rising pressure. That is, *even where agreements have been most solidly secured, these need periodic intensive renegotiation.*
2. The most common flashpoints for dispute are damage to crops of settled farmers and *de facto* cooption of local water sources by pastoralists. Expansion of farming into areas previously used for grazing is a uniform underlying issue. *Limitation upon farm expansion and regulation of stock watering are usually essential elements of solution.*
3. On the whole nomadic pastoralists appear to be better armed with weapons than settled populations. This in itself can trigger efforts by settled communities to obtain weapons. *Attention to weapon control is necessary for lasting peace.*
4. *Often the conflict cannot be resolved in a lasting manner without resolving the situation in the 'home' areas of the nomadic pastoralists.* Pressures being placed on a migration area/ with settled people are often driven from behind; loss of pasture area in their wet season or winter area increases nomad demands on dry season or summer areas. The origins of the losses are various but frequently include actions by governments, including appropriation of those lands for other purposes or interests as well as less purposive expansion of farming and settlements. As a result nomads often stay longer in summer areas, penetrate more deeply into those zones, or make new demands on local settled populations. Some nomads may feel compelled to remain in those areas with their animals. Settled people tend to regard this as colonisation in one form or another.
5. *Territorial issues are always central to the conflict ('our land' or 'our area')* and may have a history of disputed colonisation and occupation by one group or the other. Resolution is rarely achieved without acknowledgement of territorial claim. Just as frequently, national land ownership norms overlay these and conflict with the local sense of territoriality. *The meaning and status of customary rights is usually the key rights issue at stake.* Clarification and adjustment of rights is normally a central element of lasting resolution. In practical terms, often a viable route to solution is for nomads to recognise they are not owners but seasonal right holders, and as such, are subject to local rules of use.
6. *Resolution cannot be made for disputing parties. They must reach agreement themselves.* No amount of enforced or engineered agreements by Governments or outsiders will hold for long so long as the immediately disputing parties have not fully and consciously reached agreement themselves. Time is usually required for this to be genuine.
7. Ethicising, centralising or politicising the conflict makes lasting resolution almost impossible. This is because it raises the stakes beyond the range of workable solutions. Politicians find it difficult to compromise for fear that this will be taken as giving in and letting down their people. They also often have a different agenda to ordinary people caught in the conflict. *A bottom-up approach is more effective, localised agreements in reference to specific resources providing building blocks to compromise.*
8. Settled/nomadic disputes as to pasture rights and access frequently descend into armed conflict and even war. This is because the issue reaches deeply into the fundamentals of agrarian society, control over resources for livelihood. *Resolution must be viewed as a priority peace initiative.*

2.2 Local experience

Local experience in Afghanistan echoes most of the above.

Summarised below are main findings, lessons or indicators for routes of resolution arising out the initiatives listed as sources of guidance in the Introduction.¹⁰²

Lessons from peace-building exercises in 2008 and 2009

The peace-building workshops sponsored by the PEACE project and implemented by the national NGO, Sanyae Development Organization, in March-April 2008 showed that peace-building does have an important role to play. Most (but not all) participants felt more willing to negotiate than previously following the workshops. They were pleased to have sat down directly with their counterparts to hear their views. There were also signs that they were better able to see each other as Afghan brothers competing naturally for scarce resources.¹⁰³ These findings were echoed in subsequent workshops in 2009.

At the same time the workshop evaluations suggest limited shift in their positions. Positively, there was

general agreement by both Kuchi and Hazara that –

- (i) Kuchi have legitimate needs to feed their animals in summer;
- (ii) There is room for compromise;
- (iii) The conflict must be resolved at local levels;
- (iv) Mediation is necessary, and mediators must be neutral honest persons;
- (v) The conflict is being escalated by third parties who have personal or political interests in mind; and
- (vi) Government should guarantee their respective land rights.

Lessons from Nawur mediation in 2006

Although insecurity prevented completion of this initiative, records of the process expressed suggest the following findings¹⁰⁴ –

- (i) There is scope for compromise as to the farms which Kuchi own in Hazarajat. Hazara do not dispute Kuchi farm ownership in the foothill districts and, as long as agreement can be reached over pastures, they will not prevent access to farms;



Participants in a Kuchi-Hazara peacebuilding workshop organised by the PEACE project (Texas A&M University) and Sanayee Development Organization

- (ii) A certain amount of cultivation of nearer pastures is acceptable to many Kuchi in recognition of settled people's needs;
- (iii) The fact that many Kuchi are loyal to Taliban and bring insecurity into the area has exaggerated the conflict;
- (iv) Both sides need to recognize that the pasture resource is now limited given population numbers and water is also a problem in these areas;
- (v) Atrocities of the past including kidnappings and killings have to be resolved and compensated for and reconciliation achieved before rights to pasture can be discussed;
- (vi) Weapons control needs to underlie the agreement;
- (vii) The principle of community pastures just being immediately around the village needs to be reviewed. The legal and traditional view of these being limited to lands within shouting distance of settlements is considered ludicrous and unjust by Hazara and is a major source of conflict;
- (viii) No agreement can be lasting unless *justice* is seen to be done;
- (ix) Settled people need time to clarify disputes as to which community customarily controls which pasture before they will willingly negotiate with Kuchi as to their interests; and
- (x) Dominant leaders including national politicians and government officials often have such strong views and agendas that they prevent local people compromising. Both local Kuchi and Hazara were clear as to the persons they most rejected as leading the discussions.

In addition, the multi-sector mediation team concluded that -

- a. No progress would be made in Nawur without localising the negotiations to village level and involving those directly using or claiming the pasture;
- b. Hazara and Kuchi leaders need to empower local representatives to negotiate and reach

agreement and key leaders must agree to not interfere with the process and support the agreements reached; and

- c. Strong central government support for the process is critical.

Lessons from piloting community based registration involving pastures in 2007

In terms of conflict resolution between settled people and nomads, the ADB Capacity Building for Land Policy and Administration Reform project does not contribute, for the project appears to have selected areas known to not be afflicted with seasonal entry or locally contested relations between sedentary farmers and mobile pastoralists. This enabled the project to focus upon its primary task of testing how local agreements and parcel boundaries may be formalised and *registered*. The lack of contention enabled it to avoid unpacking the relative weight or legitimacy of settled and nomadic rights to use a pasture.

In contrast this became the most important instrument of resolution in the FAO SALEH exercises below, where contestation as to rights were found to be widespread even within the settled community and a main driver of degradation.

Lessons from community based pasture management 2006-2009

Lessons from FAO's SALEH initiative have been many and reported upon at length.¹⁰⁵ This project has been the most sustained initiative of relevance to this strategy and is therefore reported upon most fully. Pertinent findings include –

- (i) There is no genuine public (un-owned) pastureland in Bamyan Province. Every hectare of pasture falls within the customary domain of one or other village, cluster, or clan.
- (ii) There are usually one or two pastures within a district which are referred to as public lands due their entrenched past history over the last century as open access areas and because they were in the past the pastures most dominated by Kuchi. Often these are large and quite remote from settlements. Some belong not to specific villages or village

clusters by to whole clans (the case with Band-e-Petab in the far north of Yakawland District).

- (iii) There is a natural distinction between private pasture and community pasture. The former comprises paddocks and meadows and pastures next to settlements. These private pastures generally belong to the dominant landlord family in the village, but may also be used by its client households for pasture, but not for shrub cutting or fodder collection for winter.
- (iv) By custom and in practice, community owned pastures are not limited to areas immediately adjoining settlements (such as suggested by Taliban and new land law). Community pastures extend to the top of the highest ridges and include all high pastures above each valley settlements. Often these community pastures are remote and certainly far beyond the sound of a human voice calling from the edge of the settlement. In fact they are far enough for Hazara to remove themselves and their animals to summer encampments (aylaks) between May and August. In some cases it takes three days to reach the aylak of that village.
- (v) *Per household* area of cultivation does not in fact appear to have increased despite the acknowledged expansion in rainfed farming in many (but by no means all) areas used only for grazing before the war. This is largely because of the multiplication of farming households. Field research shows there is also more widespread fallowing of rainfed fields, permitted by expansion.¹⁰⁶ The overall rise in rainfed farming but no clear rise for many families, may also reflect the fact that only some households have expanded rainfed farming into the pastures. These are the wealthiest who have the plough power to do so. There are also cases of power-holders and commanders employing poor families to work for them to enable expansion.¹⁰⁷
- (vi) At the same time Hazara in Bamyān Province do not deny there has been overall expansion. This is now a conscious concern. In Yakawlang and Panjab Districts, there is evidence of voluntary imposition of limitations on opening new rainfed fields and even cases of abandoning rainfed fields on steep slopes. Some communities now frown upon farming at the aylaks (summer camps).
- (vii) Communities show incapacity to manage pasture where its ownership is contested. Dispute is among neighbouring communities, not individual households, although the claims of the dominant landlord household are usually integral to the dispute. The subject of dispute is which community has rights over which pasture and the associated boundaries. FAO/SALEH found that this usually stems from the legacy of open access inherent in declaring all pastureland public. In all districts this seems to have been most destructive in respect of those pastures which have an entrenched history as public lands theoretically open to all but dominated in the past by Kuchi. That is, pastures which have never been claimed and/or used by Kuchi tend to be more easily accepted in the local areas as the property of one named hamlet or village.
- (viii) In FAO/SALEH practice the key route in successful resolution between communities as to community pasture ownership has been by drawing a distinction between the customary community *owner* and other long-term *users*. This translates normally as 'insiders' and 'outsiders' as non-owner users are always from another village. The decision gives the former the controlling powers over the pasture. It is accepted that this home owner of the pasture may make rules and non-village users must obey those rules. In almost all cases the outsiders claiming use rights derive from neighbouring villages, not far removed from the area.¹⁰⁸
- (ix) This 'outsider' issue is therefore not confined to Kuchi. Kuchi are at the extreme in terms of those who are seen as needing to negotiate rather than assume access.
- (x) The only case where Kuchi have successfully returned to Bamyān Province is where they acknowledged they are not owners but applicant users and paid grazing fees in 2008 to use Band-e-Petab pasture owned by local

clans. As shown in Annex D, this may however have more to do with the fact that the pasture in question is extremely large and that the Kuchi in question are Shia.¹⁰⁹

- (xi) Once conflicts are resolved, communities show an extraordinary will and ability to bring the pasture under control towards rehabilitation and sustainable use. This includes substantial sacrifices especially regarding harvesting of grass and bushes, expansion of rainfed farms and closure of areas to all grazing and harvesting. Annex E provides a list of the commonest Rules now being enforced by more and more villages. Figure 7 provides an example of where communities set aside part of their pasture for rehabilitation.
- (xii) Many of the instruments which have been adopted by FAO/SALEH pilot communities are traditional measures in Hazarajat, abandoned during the occupation of the pastures by Kuchi and the dismantling of community controls in the face of nationalisation of the pastures.
- (xiii) Where mediation fails in resolving pasture rights issues, it is generally because of the contrary forces of leading notables, officials or past power-holders ('commanders') with armed force at their disposal and personal interests to protect.
- (xiv) Provincial Government authority has lacked sufficient conviction or autonomy to limit these forces. District level support to communities has been stronger but ultimately depends upon provincial back-up which has not been forthcoming. Progress by FAO/SALEH has been significantly constrained by weak central and provincial support.
- (xv) Kuchi relationships in Bamyan Province are mixed. These range from amicable to hateful; main determinants are local sensibilities as to how known Kuchi treated Hazara in the past (e.g. see Annex D), and how far Hazara access to traditional high pastures was constrained.
- (xvi) Majority opinion is that no Kuchi should re-enter Bamyan Province unless by the express permission of the local pasture owners and on terms and conditions agreed.

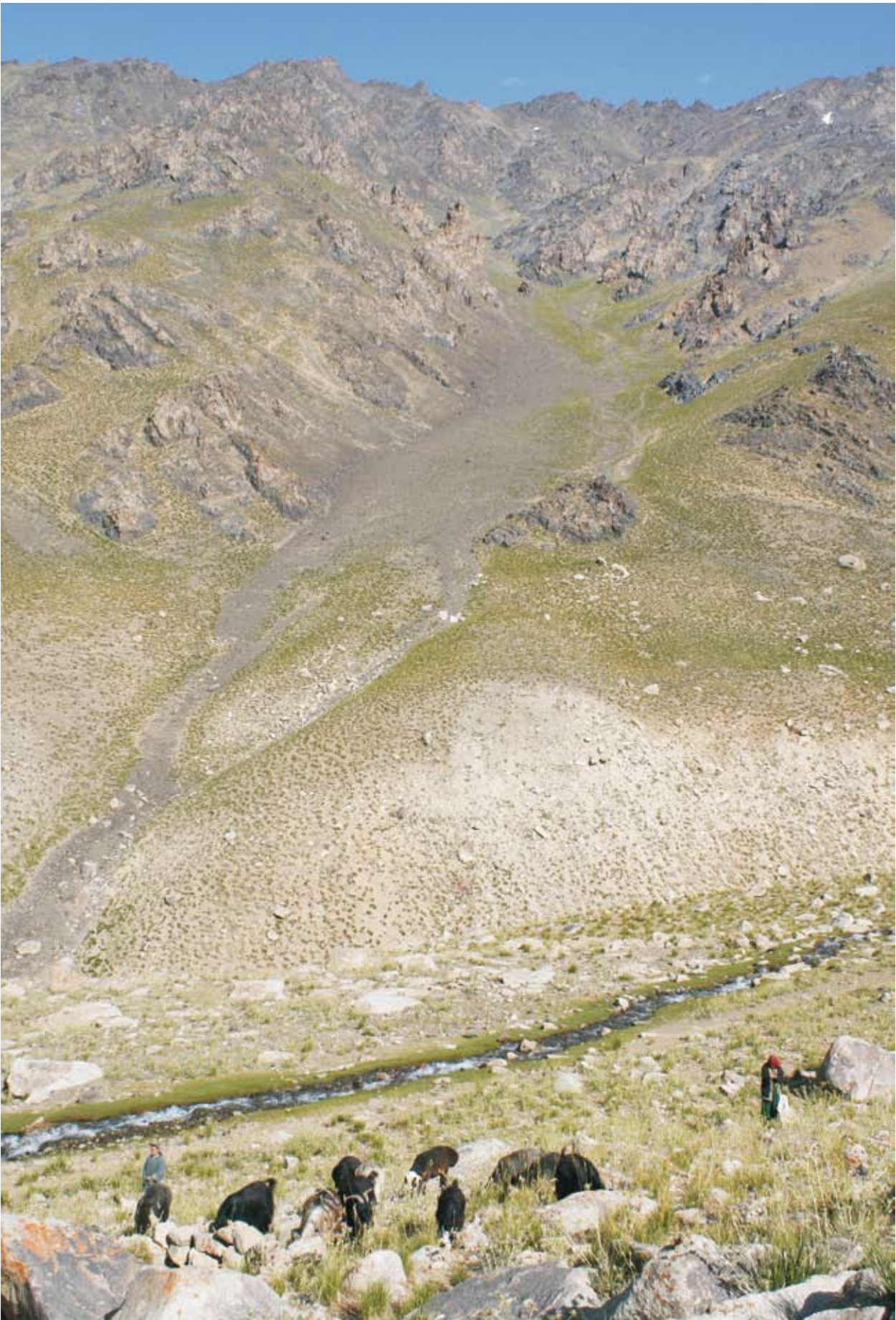
(xvii) On a carrying capacity basis, a large number of community pastures are unable to sustain increased use by any outsiders to the immediately local area, whether they are Kuchi or Hazara.

Lessons from the north

As research projects have shown,¹¹⁰ a number of pastures to which Kuchi migrate in summer are also found north of the central highlands.

Concerns between settled and nomadic people are similar, and particularly as pertaining between Pashtun Kuchi and local non-Pashtun populations of various tribes. The reasons why the settled/nomad conflict does not manifest quite so urgently as in Hazarajat at this time are instructive:

- (i) Often Pashtun Kuchi settled in the north, whilst those allocated land in cold and high Hazarajat did not do so, migrating to the highlands for summer grazing only. In the north most Kuchi became settled agro-pastoralists. In fact some better-off Pashtun have been at the forefront of expanding farming into pastures.¹¹¹
- (ii) Much of the migration to the north and within the north is short to medium range migration.
- (iii) The history of Pashtun colonisation of the north was without the religious and social bitterness which marked the conquest of the Shia Hazara in the 1890s and embraced by Pashtunisation up until the civil conflict years from 1979.
- (iv) Although Pashtun Kuchi dominated and controlled the pastures in the north, they did not exclude local users; the loss of equitable high pasture access has been central to Hazara grievance.
- (v) The gentler aspect of pastures in the north (with exceptions in the mountainous north-east) lends the northern pastures a more tolerable dual purpose as rainfed farmland and grazing land. In contrast, rainfed farming in Hazarajat has often extended into fragile steep and alpine areas, creating obvious soil erosion, landslides and avalanches in winter, as well as degradation.



Grazing practices by Kuchi in the high valleys of Bamiyan Province

- (vi) Pashtun Kuchis are not the only nomadic pastoralists in the north, although they are the majority. Many of the most aggressive conflicts over pasture rights are *among* nomadic groups, migrating into the same areas (e.g. Shiwa).¹¹²
- (vii) Documentation and transfer of rights has been vibrant among these groups with some pastures falling under up to five different owners over the last 50 years.
- (viii) In some areas settled populations (e.g. some Shegnan in Shiwa) obtained documented entitlement to some pastures in their own right. This was due to supportive policies in some areas during the *jihadi* years. While there are cases of documented acknowledgement that a certain community is the holder of a certain pasture, this has not been the norm in Bamyan Province, evolving only when two communities argued fiercely over this issue during the 1980s and 1990s.¹¹³
- (ix) There are areas in the north where Pashtun Kuchi remained throughout the civil conflict years. Even some medium-range and long-range Kuchi from outside the north (moving from the south) managed to reach the summer pastures at times during the war years (1978-2001).¹¹⁴ At the same time, support for Pashtun Kuchi fell during this period, affording settled people and non-Pashtun nomads space to secure rights. This redressed some of the imbalances both before and since Taliban rule. In contrast, Hazara entirely recaptured the pastures in the 1980s and the territory overall, providing a territorial foundation on which to deny wholesale re-entry of Kuchi.

Lessons from AREU/NRC conflict mediation in 2007-2008

To recap, AREU with NRC piloted dispute resolution interventions in five villages in five provinces. As only one test case involved pasture, the lessons are limited. That case was topical however. It concerned disputed use of a 400 ha pasture by a small number of nomadic households migrating into the area which contained several sedentary villages (Paryan District, Panjshir). The matter was resolved through reviving and adjusting a longstanding lapsed agreement. This had broken down due to increased arable and stock pressure on the pasture. The main lessons are that -

- (i) Conflicts may be inflamed through the dominance of one individual; stratagems are needed to pre-empt this by ensuring wider inclusion of stakeholders; and
- (ii) Documents produced as evidence are not always relevant to the dispute and may be misused or even fake; community-mediated agreements are preferable.

The Interim Report (2007) lists these procedural lessons learned from all five pilots –

- 1) There are accessible indicators to determine whether a dispute should be taken to the formal court system or addressed through informal local mediation.
- 2) As circumstances change, it is advantageous to switch approaches rather than stick with the originally chosen route.
- 3) Preparatory advocacy and oversight are essential to increase the performance of the court system.
- 4) Preparation, information and oversight definitely increase the effectiveness of informal adjudication mechanisms.
- 5) All stakeholders should be drawn into dispute resolution to legitimise and enforce the outcome.
- 6) Some disputes may not be resolvable through existing formal or informal methods and require administrative action and/or political advocacy up to the national level.
- 7) Community based agreements are best sustained by some form of official endorsement to guarantee them.
- 8) Mediated agreements may require some form of incentive to all parties to draw them into the negotiation.

In 2009 AREU decided that it had paid insufficient attention to pasture disputes and set out to examine the active dispute in Behsud between Kuchi and Hazara. The agency was unable to reach the field and had to settle for information obtained from political and other senior actors in Kabul. Despite this, AREU felt confident to offer precise and firm recommendations for resolving the Behsud conflict.¹¹⁵

Towards this, AREU records allegations that the Presidential Commission charged with resolving the dispute, the Afghan National Army and the Government are all pro-Kuchi. It records claims that a Government minister used government funds to help the Kuchi restock so that they could restart migration to Hazarajat, and judges this to be provocative. It records an allegation that Government rebuffed an offer by Iran to pay for the settlement of Kuchi in their home winter grazing areas. AREU also records allegations that Hazara are being provided with weapons by Iran and encouraged to resist Kuchi arrival by militant Iranian clerics in the area. AREU also concludes that there is a strong demand by Kuchi for assistance to settle, implying that this is the wish of the majority. It also records a claim that Hazara are not ill-disposed to those Kuchi who own farmland in Behsud but that they now demand that these owners live there all round. AREU notes that Kuchi say that Hazara are refusing to pay farm rents which are due to these Kuchi absentee landlords.

While the allegations recorded by AREU may or may not be true, there is little doubt that the temperature of the dispute in Behsud is rising sharply. The conclusion of AREU is that 'conversation between the parties is now impossible'. Accordingly AREU advised that the conflict may now only be resolved through a political decision –

'This therefore is the paradox of Behsud and by extension Kuchi-Hazara conflicts. Conflict prevention this year is purely a political decision while simultaneous stringent depoliticization is required to defuse the underlying tensions that are likely to result in a flare-up of the conflict this or subsequent summers' (AREU 2009).

AREU therefore proceeds along these lines, adopting a top-down and central solution to the conflict (the interventions are listed in Annex I). The immediate action plan comprised these proposals -

- (i) To enact a law on the matter, mainly notable for pledging to review pastoral entitlement deeds (*firman*) relevant to the area;
- (ii) To deploy squads of police in 2009 to keep the peace in any area in the central highlands;
- (iii) To reassure donor nations and ISAF that no repeat of the events of the last three summers will be tolerated by the Government;

(iv) To assess cost of damages to people and property in 2007 and 2008 and pay compensation should allegations that Minister Ahadi provided grants to enable Kuchi to purchase stock to resume migration were found to be true, in response to political divisions within the Hazara political leadership, and

(v) To deport Iranian clerics found in the area.

For the medium term AREU advises that the above examination of land grants to Kuchi go ahead, that an assessment be undertaken of the contribution of the Kuchi pastoral economy to the national economy, and that areas be earmarked for Kuchi wishing to settle down. Significant emphasis is placed upon helping livestock owners to access markets for their products and for Kuchi to be informed through satellite imagery developments under the USAID-funded PEACE programme where the best grazing may be found.

3 Parameters

Drawing upon the preceding section together with background details provided in Part I, the following are proposed as operating parameters, or the path within which action needs to proceed -

1 The militancy now surrounding the dispute changes the routes for viable action

It cannot be safely asserted that either Iranian or Taliban interests direct events in the south-eastern foothills of the central highlands (Behsud and Nawur Districts). What is fairly certain is that the dispute in these areas is now militarised. Several key actors including the Presidential Commission, UNAMA and PRT/ISAF confirm that weapons abound in the area and that hilltop and front line positions are in place. Insecurity in north western Ghazni and western Maidan Wardak Provinces is such that it is not possible for international actors and even most national NGOs to visit the area.

This changes the framework within which action may be taken. However this is not necessarily grounds for reverting to a political or legal approach as solution.

On the contrary, the reality must be faced that investment towards a high level political solution has yielded precisely no result (despite the best intentions of key actors including the Presidential

Commission). Moreover, precious time has been lost at precisely that point when on-the-ground negotiations in the field were essential.

The question must also be asked as how strategically sound it is to avoid the realities of militarisation in the Behsud/Ghazni area in the hope that high level political agreement will resolve that problem in due course.

Instead it is here concluded that demilitarising the situation is imperative. This means acting promptly and with sufficient force to remove every weapon from the hands of both Kuchi and Hazara in the Behsud and north-western Ghazni zones. This must be undertaken in an even-handed way; there is little to be gained by deported suspected Iranian clerics without tackling the equivalent reality regarding key Kuchi actors (including at least one known leading Taliban commander of the past known to be active in the area since 2004).

It also means a serious rethink of the current strategy of in effect increasing availability of arms in Wardak Province through its inclusion in the Afghan Public Protection Forces programme, designed to empower communities to manage local security.

2 History matters. The conflict over pasture rights will not be resolved without attention to the power of historical grievance

At the same time the issue goes beyond ending violence and limiting Talibanisation or respondent militarisation or other sources of escalation. It also extends beyond the simple question of access to the high pastures.

Strategically, the issue poses a direct challenge to good governance, to modernisation of development strategy, to the saving of threatened resources, to honouring rights in land, to achieving rational and fair arrangements for agricultural and nomadic pastoral livelihood to proceed.

The outstanding legal demand is *not* to re-impose old law but to find a much fairer, workable and sustainable new set of legal arrangements which may assure resolution of the historical grievances driving this dispute on and on for more than a century.

At the heart of this is the need to pay much more serious attention to the collective customary land rights of settled populations and reconsideration of the legal position that all pasture belongs to

Government and that community access can only be guaranteed to the extent of the sound of the human voice standing on the edge of a settlement.

3 The realities of limiting circumstances have to be managed

There may be no illusions that the path ahead is fraught. There is little in the security or political environment in Afghanistan at this time to suggest that finding a workable way through will be easy. Access to the troubled south-eastern central highlands is difficult. Weapons abound. Presidential and parliamentary elections in 2009 and 2010 suggest a host of competing promises, none of which may in the event be seen through and/or be able to be seen through. Self-interest and manipulation have undeniable presence at this time.

The courts offer limited avenue for redress. On the one hand, there remain continuing doubt as their capacity, accessibility to the poor, and their integrity and lack of bias when they are accessed.¹¹⁶

District and provincial governments remain uncertain as to their powers to act – and experience some difficulty in countering unbridled self-interest by power-holders or commander-like mobilisation by other individuals. Despite several years of decentralising strategies (primarily driven by the Ministry of Rural Rehabilitation and Development) the meaning of devolved governance is not well understood by all officials; this continues to handicap the empowerment of ordinary communities which is ultimately required to see democratic process through.

There are also realities surrounding positions of government actors which need to be taken into account. The centrality of the issue around the status of customary land rights is one around which even the most experienced government officers appear to be having difficulty in acknowledging. Indeed, it is probably because they are so entrenched in pursuing pre-civil war norms that entertainment of legal land tenure reform comes so uneasily to some key officials.

4 Lasting resolution can be made only by disputants themselves

The risk of centrally-engineered solutions is that they risk falling into to ethnicism on the one

hand, or awkward over-generality, on the other, constraining delivery on best intentions. Although also unintentional, the risk may be highest when ethnically-aligned politicians take over the process; in practice, they may have too much at stake to allow themselves to be seen to compromise. This is already the experience over the last couple of years in the handling of the Behsud dispute. Even key mediators at the central level (UNAMA, Presidential Commission) have found their hands tied when having to work through top-level political actors and opinion leaders.

The fact is that even with goodwill it is difficult for politicians, officials or other central or assisting actors to make decisions on this matter which will be lasting. Their more proper role is to support, rather than lead; to engineer the right environment for disputants at the local level to meet together, to support their negotiations and in ways which are vigilant to fair process and practical solutions. Solutions by high level actors will probably always be doomed to over-generalisation in such matters, and an inability to access the local level nuances which can make the difference to success or failure.

Changing gear, roles and process is therefore necessary.

5 Localised and community based approaches offer the best option for success

Logically the direction for changing gear, roles and process is to reach down to the most local level.

There are several reasons for this. Although there are strong grounds for having shared basic principles (see later), there are variations area to area which make a single uniform solution inappropriate. A *pasture-by-pasture* focus enables the affected parties to meet directly with each other, and to arrive at decisions in reference to specific pastures.

Better, this includes opportunity for shared on-the-ground assessment of these and through which a realistic, if for many disappointing, profile of what is and isn't possible is able to be obtained. Localised discussion also provides a fairer chance for poorer households to be included – and *aggressive power-holders to be excluded*.

A pasture-by-pasture focus does not mean working blindly outside an overall set of objectives and time-

line. It does mean focusing action on what is real and practical, nested within overall objectives.

6 The founding conundrums need to be acknowledged rather than avoided; this itself leads directly to compromises

The conundrums are threefold -

- a. Both parties have *rights* to the high pastures of the central highlands which need to be accounted for
- b. Both Kuchi and Hazara *need* the high pastures to survive
- c. The pastures themselves are in such a condition and extent that *changed strategies around access* are needed.

In more detail:

- Kuchi have 100 years of established priority *right* (in *legal* terms) to summer high pastures of central Afghanistan (Hazarajat) and for which many received written access entitlements in 1928/29 and since, including by purchase
- Kuchi also *need* the high pastures for pasturing their animals in summer
- Settled Hazara have a historic right (in a land rights and territorial sense) to Hazarajat as a whole inclusive of the high pastures, based upon ancient territorial claim and customary distribution of ownership, control and use on a community by community basis; just because they were involuntarily deprived of these land rights around 100 years past does not lessen their claim
- Hazara need the high pastures: and not just for summer grazing but as the source of fodder for their animals over the long and bitter winter months whereas nomads return to warmer grasslands. In addition, the high pastures provide the woody fuel every rural family needs to survive the winter. High pastures are integral to their livelihood.

7 While documents cannot be left at the door, neither may they alone decide.

This also means getting to grips with the *driving conundrum in resolution process* -

- In normal circumstances recourse to the law and courts should be both the route to resolution and accord sufficient justice to end contestation and conflict, and rule of law sufficient to see these decisions *upheld in practice*. Should disputants produce legal evidence in the form of documented rights and entitlements and found to be legally acquired, this should be the deciding factor.
- *The circumstances are not normal*. As is usually the case, the experience of civil war brought festering wounds of perceived injustice to the surface and crystallised demands. Those aggrieved, in this case Hazara, demand nothing less than complete overhaul to the legal norms which they understand as causing and then sustaining injustice. For them, the *upholding of documented entitlements* granted or since acquired by Kuchi, represents the *upholding of injustice*.
- Those who enjoyed the privileges of those legal norms equally insist upon return to pre-war business as usual in the way pastures are understood to be owned, governed and used, in the name of upholding legally acquired rights. Their main concern is that rule of law be sufficient to ensure the courts and government enforce their rulings.

The upshot is that a *nuanced approach to documented tenure is required*. Distinctions between pasturelands granted and pasturelands voluntarily sold and purchased by Kuchi may have to be drawn.

Agreements voluntarily made by local and migrating communities present a more viable foundation of documentation upon which to proceed, through reassessing these and reaching compromises as to their (now needed) revised terms.

Reparation may also need to be considered for those Kuchi for whom return to the central highlands is simply impossible, due to the condition of the pastures which they once used and/or the level of local use which is now instituted.

8 Reform in the way land rights are conceived and secured is essential

The above reflects fundamental structural elements in the conflict which cannot be left unaddressed. By this, what is meant is the conflicting way in which each party conceives rights as manifest in a conflict between titled and untitled right, which may also be phrases as between introduced and customary regimes, or between state law and people's land law regimes.

To this extent the conflict is as much a people-State conflict as a conflict between ethnicities, histories and different systems of land use. This refers again to the legal paradigms which have become embedded over the 20th century and which need re-evaluation –and likely reform.

9 The realities of resource stress must be central to resolution

Pastureland is limited. As shown earlier, even well before the war when Kuchi access was assured, pasture loss and degradation were problematic; to some extent Kuchi were only able to benefit from the high pastures to the extent they did because they had the means to exclude or limit access by local populations.

Whatever decision is made, the carrying capacity of each pasture in terms of stock numbers and harvesting of its flora, use of its water and its ability to sustain cultivation all have to be taken into account. The reality is that, to survive, a large portion of the pasture resource needs closure over the short to medium term to *all* use and establishment of rotational grazing and harvesting systems.

The limitations of the resource both constrain and help: they help to the extent of opening up the practical necessity for compromise. Both sets of users (Kuchi and settled communities) are perfectly able to see the trends in the pastures. Even if they are unwilling to admit the limitations publicly (and are discouraged from doing so by their city representatives or agitators), both groups, if given half the chance, can see changes in use and access need to be made.

The critical trigger or environment to this is being able to conduct shared assessment of the actual pastures at dispute. Decisions made in Kabul or Provincial headquarters prevent this crucial event.



Shrub and bush collection in Afghanistan's rangeland for household energy needs

10 The changing nature of livestock keeping needs to be considered

The fact that growing pressure on pasture is not limited to the central highlands needs to be observed. There are many examples of winter pastures used by Kuchi in the south and east which are becoming places of permanent settlement and/or controlled by better-off Kuchi or associated Pashtun elites, and for farming purposes.¹¹⁷ These losses are being transferred to the summer pastures in the form of yet more anxious demand for access.

At the same time, because access to summer and winter pastures for Kuchi have to be tuned with each other, those most demanding of access are not necessarily poorer Kuchi, but those with significant control of winter pastures. This is reflected in the common complaint of Hazara today that those demanding access are not always the same or descendant Kuchi from the past, but include herdsmen working for urban Kuchi businessmen investing in livestock, and who have limited association with those pastures. Many in this leading group have, in the words of both poorer Kuchi and Hazara, 'never walked with animals'. They truck in their herds.

In turn livestock-keeping in Hazarajat is becoming more commercial, a number of larger owners and notables bringing animals to remoter pastures with which they have no customary association. Some of these persons also truck in animals to pastures which are vehicle-accessible.

On either count, there is a strong risk of genuinely poorer groups and households being excluded and decisions endorsing elite capture rather than equity. Vigilance is needed to prevent this occurring.

11 Coerced settlement of nomads is not a feasible solution

Sedentization is the common trend among pastoralists worldwide and may be expected to continue, including in Afghanistan. Already during the 1950s better-off Kuchi were diversifying their sources of income and becoming agro-pastoral with permanent houses and farms.¹¹⁸ Today many seek education and health care, not easily found in a nomadic lifestyle. Many wealthy Kuchi following the war have not returned to migration. Very poor Kuchi without livestock also tend to settle.

Officials and settled people take this as a hopeful sign that Kuchi will settle altogether. They urge Government to hasten the process by providing settlement areas. This includes some prominent Kuchi spokesmen.¹¹⁹ This has echoes of the past. Sedentisation of nomads was the official policy from the 1960s. Settlement schemes in arid zones and land reform redistribution initiatives in the 1970s always declared Kuchi to be the priority beneficiaries, in a bid to get them to settle and in claims that they represented the poorest sector of society.¹²⁰ This has obviously been unsuccessful.¹²¹

Failure is not surprising. Global experience with coerced sedentisation of pastoral nomads has been limited and often not lasting. As Glatzer (1981) and others researchers have observed, Kuchi do tend to re-sedentise in times of stress or need. As shown in Box 1 earlier, experiences in central Asian states suggest that re-activation of migration also occurred, even after long periods of settlement. De Weijer (2007) argues that in line with international experience of adaptations among nomads, migration with stock will remain both an important socio-economic specialisation for a significant number of Kuchi, and in many fragile eco-systems, is the optimal livestock keeping regime.

Figures from WFP/NRVA assessments suggest that a substantial group of Kuchi determinedly migrate or attempt to do so and will continue to persevere in the achievement of their ancient lifestyle for as long as possible. For cultural, social and economic reasons this is viable and to be supported. Moreover, given population growth this group (c. 1.2 million) is around the number of all Kuchi prior to the civil war.

Nonetheless, there are sectors within the Kuchi community who do want to settle. De Weijer's own studies suggest as much.¹²² State provision of settlements areas will be helpful to these groups. Kuchi have shown they are able to settle if they so wish; this has been the case in the many waves of self-driven migration to the north of the country during the first half of the 20th century. This does not mean that they abandon livestock keeping, nor even do they abandon seasonal migration. However, this becomes more short and medium range, and becomes more and more like the transhumance to specific areas which is so characteristic of Hazara and other agro-pastoral patterns of livestock keeping.

The obvious conclusion is that those who wish to settle should be assisted to do so whilst those who do not wish to settle should not be so forced.

12 Ending all cultivation on the pastures is unrealistic

There are circumstances where cultivating land previously used only for grazing and accordingly designated as rangeland is viable. Expansion of agriculture is inevitable in a country where only 12% of land is cultivated (or, according to more recent expertise, more likely 10%).¹²³

Moreover the technical and legal definitions of pasture are opaque and will always be difficult to exactly define. At times barren lands are viable for short term grazing. In other cases lands deemed technically or legally to be pasturage are viable for rainfed farming.

The issue is more about finding a balance between farming and livestock keeping and keeping the former out of pastures where it is degrading that drawing strict lines. Patterson (2004) produces a strong argument that in Shiwa, for example, the terrain and soils of many aylaks are suited to cultivation. Even within the high mountain ranges of Bamyan and Ghor there are plateau areas which are suitable for short term cultivation. This does not mean pasture areas are uniformly accessible or suitable for mechanised farming; the dust-bowl that now marks some tractor farmed areas of even level Dasht-i-Laili Pasture illustrate this well.¹²⁴

13 Resolution of the conflict cannot be made in isolation from other affecting conditions

Procedurally the conflict between Hazara and Kuchi or settled/nomadic economies in general cannot be resolved in isolation from –

- (i) other more local conflicts as to access and especially between neighbouring communities and between these communities and less local users;
- (ii) the need to reform legal paradigms around pasture ownership which are unjust, out-dated for modern requirements, and a source of founding bitterness;
- (iii) the realities of pasture capacity, the level of use which a pasture may withstand on a continuing basis; or

(iv) the absence of workable management regimes which result in continuing conservation failure.

14 Even emergency resolution needs to be founded on workable paradigms for the longer term

To be lasting, immediate action in spring and summer 2009 cannot rely upon police, military or local militia force. Resolution also needs to avoid setting precedents which obstruct future resolution. Therefore, although accelerated, proposed actions in Section 4 use the same guiding principles and processes as recommended for systematic resolution.

15 A trial approach will be helpful

In all cases an iterative approach to resolution is necessary, enabling learning by doing and progressive refinement of strategies.

In the most pressing of cases, it will also be productive to encourage contestants to at least try out solutions for a specified limited period, in knowledge that this may be re-negotiated and re-set along a different path in the event of failure or shortfall.

16 Compromise is essential – and possible

Awarding rights to the complete favour of either Hazara or Kuchi will only be an invitation to deepen strife. Both sides need to see that justice is done. Concessions need to be made by both settled and nomadic groups.

Realistically, the bottom line is that *some* pastures in the central highlands need to be available to Kuchi and *some* pastures are rightly closed to their use.

Experience in sites around the country show that given the right circumstances, settled and nomadic groups are able to reach compromises, make agreements, and sustain these, albeit with periodic re-negotiation always necessary.¹²⁵

The common lesson in all these cases is that this may only be achieved on a *case by case* basis and which is *directly negotiated by the concerned disputants themselves*.

Glimmers of light towards compromise exist in signs that –

- a. There is shared anxiety to resolve the conflict once and for all
- b. There is some acknowledgement that both the agro-pastoral and nomadic pastoral economies have genuine high pasture requirements and that one cannot be sacrificed entirely to the other
- c. There is slowly growing awareness that the interests of 'big men' on both sides may not best serve the interests of the majority poor Kuchi and poor Hazara
- d. Local settled populations in especially Bamyan Province are willing to limit damaging expansion of agriculture into pasture lands
- e. There is rising awareness within communities and government that settled communities cannot be expected to regulate access or begin on-farm tree planting in a sustainable manner under duress; that they need to be properly empowered to do so; and that this rests in turn upon recognition of their customary rights to control those local high pastures
- f. While most pastures are customarily owned by specific communities there remain one or two areas in each district which are more realistically retained as public lands and that Kuchi use could potentially be directed (and limited) to these areas
- g. The main impediment to Kuchi return stems more from non-local Hazara elites seeking to use these pastures for themselves, than from the local customary owning communities
- h. More and more Hazara recognise that at the end of the day they may have to sacrifice access to some pastures in each district in order to find lasting peace with Pashtun
- i. There is similar rising recognition among some Kuchi that they will never be able to return to the central highlands in quite the same manner or degree as in the past and that to do so will restart another 100 years of dispute with local populations, and
- j. There is some recognition that it is not in the interests of political leaders or some leading 'big men' to bring these opportunities for compromise to the table and that this will only occur through going around and beyond these actors.

17 A policy path has already been laid down through which resolution may legally move

As Part I showed, the post-conflict Administration has not been unmindful of the need for a fresh approach to help take Afghanistan out of the quagmire of contested land relations.

New Forest and Pasture Management Strategy (2006) and new National Land Policy (2007) set the stage for what should be over time a radical overhaul. These share a common modernisation approach that is helpful to resolving the settled/nomadic conflict over rights and consistent with the road-map being laid out here.

To recap, a key provision of the National Land Policy is the introduction of a new class of *community land*, alongside private, public and state land. Both policies look to community based pasture management as the framework for localised conflict resolution and establishment of workable control over pastures. These paradigms are finding their way into new pasture legislation (Rangeland Law, Draft 7.4, June 2008). While its content is far from finalised let alone enacted, proposed prescriptions include -

- a. Access and use regulation is to be as localised as possible with Government retaining oversight. The definition of which local community manages which pasture is to be in accordance with intra-community agreement and delineation of registrable boundaries to empower management and increase accountability.
- b. Community rights to regulate access and use of the pasture resource will be sustained for so long as the community succeeds in activating rehabilitation and sustainable utilisation.¹²⁶
- c. After a century of suppression and demise, local customary rights to pasturelands are to be legally acknowledged as far as reasonably possible.
- d. Rights of nomads are also to be respected as legitimate *seasonal access rights*, with customary owners bound to give consideration to these and district communities bound to designate at least one significant public pasture for Kuchi use, and
- e. Demonstrated longstanding historical use rather than documentation is to be a key

determinant of eligible nomads to help limit newcomer outsiders from within or beyond the district or province claiming access rights. This includes verbal testimony and district records which do not amount to title deeds.

It has also been explained that these paradigms are far from embedded in official thinking at this point. Even with the Ministry of Agriculture, the lead actor, there are officials (and advisers) who fear and resent any recognition of collective customary interests as amounting to property rights. They also urge the retention of all pasture as Government Land, exhibiting a strong faith in Government's ability to be entirely neutral and efficient in delivering access rights. This capacity is not borne out by the history of use allocation over the last century.

Further constraints to delivery on the above paradigms exist in an apparent distinct drive on the part of some key actors and advisers towards making as much Government Land as possible available for foreign investment enterprise. While excellent in principle, the uncertainties as to how much of the land to be made available falls within customarily owned domains renders this push potentially dangerous – and certainly provocative.¹²⁷

4 Recommended process

4.1 Operating Principles

The above suggests these working principles –

1. Work from the outset **from and at the community level** to resolve disputes, engaging only those Kuchi which have direct claims to the specific pasture or pasture cluster;
2. Abandon hopes of a **nation-wide solution engineered at the centre** and avoid investing time and expertise in this in the knowledge that it may -
 - a. exacerbate inter-ethnic divisions, and
 - b. invite politicisation of the crisis which will in turn delay resolve as this sharply increases the risk of the conflict only being solvable through winners and losers, and in the extreme, by Taliban victory or successful suppression;

3. **Make disarmament a priority:** do away with contradictory strategies as to weapons in the Behsud and Ghazni areas and act promptly to de-arm all contestants in western Behsud;
4. Restructure central support **towards providing the political space to enable communities to directly negotiate with each other;**
5. Be as rigorous as possible as to the **genuine neutrality of mediating parties.** This probably means excluding Hazara or Kuchi in these roles;
6. Be rigorous as to **representation on the part of disputants** to exclude free-riders with their own agenda or provocateurs;
7. From the outset make **compromise the watchword of negotiations;** aim for win-win resolution (with compromises on both sides). Avoid at all costs a winner-loser scenario along Hazara/Kuchi lines. Some degree of loss will be involved but this will be better aligned along class than ethnic lines; by this is meant that some larger and commercial stock owners on both sides may have to sacrifice their ambitions to access large areas of summer pasture;
8. Ensure that the process makes space and time for settled communities **to clarify disputes among themselves as to respective customary custodianship** of specific pastures or parts of pastures; recognize this as a **practical necessity** even though it is time-consuming;
9. Recognise that for each spring pasture in the foothills a sister summer pasture in Bamyan and Ghor Provinces is also at stake; this means the need to arrange early on in the process **for customary right-holders of those Bamyan or Ghor pastures to participate in negotiations.** Once again, this is inconvenient but indispensable;
10. Recognise that many areas once available to Kuchi cannot be available today, given that these are not even sufficient to support even subsistence agro-pastoral needs of immediately local communities. This means making it explicit that alternative areas may be the only areas available; or that some Kuchi may be unable to return at all and may have to be compensated in other ways;
11. Related to the above, pursue a parallel programme of (i) enabling those Kuchi who wish to settle to be able to do so with assurance of security of tenure; and (ii) an active programme of assisting Kuchi to secure common property rights over their winter grazing areas, as a secure and potentially longer term base for stock-raising;
12. Be vigilant as to the different interests of commercial stock-raisers in both the Hazara and Kuchi communities and adopt a clear strategy which makes the interests of the majority poor in both camps the priority determinant of resolution strategies;
13. Accept that old conceptions of community pastures and public pastures need to be and will be adjusted in the process of resolution, and
14. Nest conflict resolution in an integrated bottom-up community based pasture management approach, telescoping its steps as necessary in emergency cases – that is, in the Behsud and Nawur areas.

4.2 Context

The above are nested in five contexts:-

1. The adoption of a community based approach to pasture security and management
2. The need to telescope this for the Behsud/ Nawur area without jeopardising consistency with the longer term and wider approach
3. The need to reform pasture ownership paradigms
4. The need to advance parallel programmes, and
5. The need to be flexible as to solution.

These are elaborated below.

4.2.1 Community based pasture management as the vehicle for conflict resolution

The proposed framework for helping settled and nomadic people resolve differences over summer pasture access is community based pasture management (CBPM).

This is already adopted as strategy into new national land policy and range management policy, and further embedded in the draft Rangeland Law.



Rangelands in Bamiyan province

As also elaborated earlier, the approach has also been practically fleshed out and tested in Bamyan Province since 2006. The result is that already more than 50 communities in three districts have resolved inter-community disputes as to respective customary rights to specific high pasture areas above their valley settlements, agreed the boundaries of these defined Community Pastures and bringing these under active regulation towards rehabilitation and sustainable use. This is led by appointed Pasture Councils. The process has not been without setbacks but with significant learning success, entered now into Step by Step Guidelines, with potential national application (outline in Annex F).

Getting to grips with the Kuchi element

In respect of community relations with outsiders, and past visiting Kuchi in particular, the process clarifies if and where any outsider use of any kind can be borne without the immediately local communities again being deprived of their customary rights.

It also concretely defines in the local area the distinction between private pastures directly attached to settlements, community pastures belonging to the entire community, and residual remoter pastures which have potential as areas which Kuchi could viably apply to use.

Not surprisingly, the last turn out to be few, but are large.

The CBPM approach integrates policy reform on several fronts –

- *range management policy* in its core commitment to a bottom-up and community based system of pasture regulation, protection and management;
- *land policy* in its parallel commitment to a modern, devolved system of land registration; and
- *conflict resolution* undertaken at the local level and in respect of concrete assets.

In these, the role of government and courts is reconstructed as supportive of community based and stakeholder decisions.

In the case of land reform policy, CBPM provides simple procedures for registering decisions and agreements relevant to pasture rights and management. As noted earlier these are echoed in formal registration piloting (ADB's RLAP project) which looked to how local agreements can be mapped and registered in the most formal way, including copies being sent to the cadastre.

Local empowerment opens the door to compromise

The fundamental condition which CBPM promotes and builds upon is stakeholder and ordinary citizen empowerment.

This includes empowerment to make decisions and which is nested within a process of resolving often longstanding local conflicts as to rights to different pastures.

Once these conflicts are resolved and each community feels more in control of its respective pasture area, it is much easier for them to address outsider claims. In cases where this has not been done (e.g. Nawur pilot) negotiations come to a halt because the Hazara are divided among themselves as to even their own respective rights. Therefore an important procedural element involves helping local populations to clarify contested rights internal to the area ahead of *negotiation with outsiders, including Kuchi*.

The case of Band-e-Petab in Bamyan Province has been recorded earlier as example. Hazara were open to consider Kuchi applications to use the north of the pasture only once they had agreed among themselves its status and their rights to respective areas (by clan in this instance), and not least of all, who then had the right to negotiate with Kuchi. They had also come to decisions ahead of negotiation as to conservation requirements on the pasture. In practice, this allowed one large pasture area to be occupied by some 400-500 Kuchi families in 2008, under conditions which are indicative: the Kuchi acknowledged the area belongs to Hazara and that their own rights are those of seasonal access only, and for which they paid grazing fees; they were to keep their animals away from Hazara stock to limit introduction of disease (this failed) and were to keep within the area designated and not interfere with rainfed farms. Nor could they truck in their animals or truck

out fodder and bush fuel. While relations were soured as a consequence of stock mortality due to introduced disease, the result in summer 2009 is likely to be more strongly imposed conditions including compensation for lost animals, rather than refusal to allow any re-entry at all.¹²⁸

The above suggests that room for practical compromise exists on the ground when local communities are empowered and feel their rights are being respected and are accepted as the controlling authority of pastures within their domains.

The content of compromise

Concretely, with this condition achieved, it is not difficult to imagine these kind of adjustments being possible on a broader front in the central highlands, including the following, which have arisen out of the experiences of the SALEH and other smaller initiatives -

Acceptance by nomads that -

- (i) That the high pastures are an integral element of local community lands as variously defined on a village, valley cluster or tribal basis
- (ii) That the pasture rights they hold are rights of seasonal access, not ownership and which have to be negotiated with local communities, acknowledged as custodians
- (iii) That being Kuchi does not entitle them to automatic access; that only those with a history of longstanding pre-war use to a particular pasture/s are eligible applicants
- (iv) That many pastures previously used by Kuchi may no longer be viably accessed being even insufficient for the most local communities
- (v) That even where pastures do have potential for shared use with nomads, settled communities with historical customary rights to those pastures have the right to lay down reasonable rules of access and use, and that these need to be adhered to
- (vi) That priority use will have to be given to poor Kuchi, excluding those looking for pasture for the purposes of commercial livestock production, and

- (vii) That nomads need to bring their threatened winter pastures under working community based conservation management – and have the right to demand active assistance towards this.

And acceptance by settled communities that -

- (i) They need to find a workable balance between farming and grazing
- (ii) For reasons of space and environment safety, further expansion of farming into the pasturelands must be halted
- (iii) New expansion (since 1980) may have to be abandoned in steep and other vulnerable areas
- (iv) They need to impose upon themselves strict quotas limiting excessive off-take of pasture flora and act to prevent outsiders exploiting these resources
- (v) Sale of pasture flora has to stop altogether
- (vi) Large livestock owners who do not derive from the local area or have a substantial history of access to it may have to surrender their short-migration use of pastures not local to their home areas, in some cases to make way for very poor Kuchi with historical rights of access to use those areas, and
- (vii) At least one or two significant areas of pasture in each province need to be made available to nomadic pastoralists.

4.2.2 Telescoping the process in urgent cases

Establishing CBPM is time-consuming and must of necessity be telescoped and actively facilitated in urgent cases. Urgent cases at the moment mean the pastures in Behsud and northern Ghazni districts. Illustrative adjustments will be -

- a) It is imperative at this point to find several early negotiated successes upon which to raise confidence that the problem is resolvable, in the Behsud and Ghazni areas. This means that the mediation team has to identify starting cases which are considered in the local area to be less heatedly contested. This information

is not difficult to find out; the need is to find it out and not start randomly in the Behsud and Ghazni areas;

- b) That Hazara may have to set aside internal disagreements as to who customarily owns which part of the pasture and act jointly in order to resolve the Kuchi access dispute. This does not mean that this important issue is set aside permanently. Alternatively, Hazara might be given a fixed time limit by which to agree which village customarily owns which pasture and will accordingly negotiate in its regard;¹²⁹
- c) It makes sense to enable local Hazara to define the areas which in the past were used by Kuchi, to name those families, and their home areas, and to explain what agreements if any were made or existed with those Kuchi. In normal CBPM circumstances, this step would take place later, once the community has brought the area under management. This action must be done promptly in urgent cases. The information can be very helpful in guiding Hazara themselves as to who they need to deal with, and to clarifying who therefore need to be seen as outsiders to the problem. General complaints that Kuchi claimants are 'not the same' are not enough; Hazara need to be specific;
- d) It also makes sense for Hazara communities to be assisted to rapidly assess the pasture condition and scope ahead of Kuchi involvement, to gain an idea among themselves as to how far there is or is not scope for joint use. Again, this does not mean this is the end of the matter, but is an important clarifying step for Hazara, without which they may feel too uniformly defensive and ill-equipped to allow any non-local use;
- e) A parallel exercise should be that Kuchi are invited to list and document their claims, indicating household heads and fathers, clan names and winter locations, and to produce any documents which indicate the arrangements of the past. Whether these families own farm lands in the areas should also be indicated. They should also indicate the usual times and sites where they arrive and transit to the pastures and to where

they traditionally moved for summer grazing, including Bamyan and Ghor Provinces. Numbers of stock should also be indicated, and who will herd these and how they propose they be transported (walking or by lorry);

- f) Each side should also prepare a clear list of conditions which they would prefer to see along with a clear list of compromises they will be willing to make;
- g) In order to keep representation down to those genuinely party to the dispute, and to keep numbers down, it is suggested that a rigorous participation assessment be made with mediators before the two parties meet together. Participant representatives will have to demonstrate convincingly that they or their fathers used the pasture in question and this needs to be supported by other Kuchi and the Hazara from the local area;
- h) Before the subject is even broached, two critical exercises must be carried out:
 - (i) concerted peace building exercises, including role-playing in which Kuchi are required to present the Hazara position and vice versa, and
 - (ii) joint Hazara-Kuchi assessment of the concerned pasture as to its condition, problems and rehabilitation and regulation requirements. This must include a local estimation by the joint group on carrying capacity in terms of stock. Experience shows that close examination of the resource tends to trigger recognition that the resource is genuinely limited in size and condition and that reduction in numbers and use is inevitable. On the side of the Kuchi, this can for example, help them to limit free-riders in their claims, those without a past history of use of the area. For local communities the need to halt further expansion of farmland and to rein in excessive harvesting are brought gravely home.
- i) Armed support to local negotiations may be needed in at least the first few cases of mediated local level agreement;
- j) Definition of responsibility for enforcement

of agreed decisions and pasture use rules must be undertaken, including establishment of a provisional Pasture Council by the custodian local community, and definition of arrangements through which Kuchi opinions will be heard and integrated;

- k) Procedures for conflict resolution as relating to breaking of the rules, crop damage or other grievance must also be laid out;
- l) Should agreement be reached, then signed agreement for a one season trial, to be reviewed by representatives from both sides and by a neutral external mission;
- m) Where inner Hazarajat pastures are involved (such as where a Kuchi clan wishes to use a Behsud pasture only as a transit to summer pastures with Bamyan Province), then the two parties must be assisted to ensure that those affected Hazara are invited to participate;
- n) In cases where no agreement can be reached, then the mediators should put the issue on hold and proceed to a next pasture case.

Many 'ifs' are apparent in the above process –

A big 'if' begins with determination as to whether the concerned pastures in the area can even withstand additional stock over and above existing usage.

There is also likely to be initial refusal by Kuchi representatives to negotiate for access to pastures they consider rightfully granted to themselves.

Keeping participation to workable numbers of people is always problematic as is keeping out notables and interlocutors who do not belong to the community, but nonetheless must be rigorously pursued. Finding the right balance between involving sufficient representatives to be inclusive and yet not having too many people in a negotiation meeting to make results possible is tricky but must be a conscious objective.¹³⁰

There are also complications in these foothill cases due to the fact that many of the most contested pastures are only transit pastures to inner Hazarajat. Ideally, this requires a chain of custody approach, in which *all* affected parties to the last pasture of destination are party to decision-making. This will become easier as communities within Bamyan and Ghor clarify the limits of their community pastures and

the extent to which these and residual public pastures are assessed locally as viably open to Kuchi use. In the interim, refusal by inner Hazarajat to receive Kuchi migration sharply increases the stress on foothill spring/autumn pastures. Settled communities in Behsud and Ghazni are rightly concerned that Kuchi may end up spending all summer in these areas, should access be granted. Every effort needs to be made to bring Inner Hazarajat actors into the negotiations.

4.2.3 Reforming legal paradigms of pasture ownership

Meanwhile, reform in the legal provisions relating to pasture ownership and access need reform. Community pastures currently refers to small settlement adjacent areas, within hailing distance of the houses.

It is this paradigm which is at the heart of the Kuchi-Hazara dispute. As shown earlier, Government has already advanced shifts in policy and proposed law which will enable a community pasture to be defined in much more expansive terms and to include high pastures as relevant. This does not mean that public pastures will be done away with. It does mean that many areas considered by Kuchi as public lands are not longer so conceived. Government needs to make it publicly clear that over time adjustments in the location of public pastures will occur.

There is also a strategic requirement for Government to begin to clarify its uncertain position as to whether priority should be given to poorer users of pastures or to commercial livestock farmers (from both communities). This strategy strongly recommends that poorer households on both sides of the divide are given priority in the immediate future.

However, it is highly likely that those with most voice among respectively Hazara and Kuchi are wealthy members setting about to develop commercial stock-raising. Difficulties can be expected. Recognising that neither Hazara nor Kuchi interests are necessarily homogenous is a first step to bringing this issue to the surface in negotiation.

4.2.4 The need to advance parallel programmes

These have been touched upon above –

- 1) The need to focus fairly promptly on opportunities for Kuchi to become settled agro-pastoral farmers if they wish, and

- 2) The need to closely review the situation in winter areas and assist Kuchi to also secure their customary rights in these areas, against rising uncontrolled capture of these pastures by private interests and expanding urban and farming settlement.

4.2.5 The need to be flexible as to resolution

The bottom line in the Hazara Kuchi pasture conflict is that some pastures will not be available to pastoral nomads now, or will be available only with limitations and new terms.

Local communities will also need to change the way in which they use and regulate access, even where their customary rights are confirmed.

In cases where a Kuchi group have well-established rights which cannot easily now be exercised, two key alternatives need to be considered and provided for in the process of negotiations –

- (i) That alternative areas are found for these groups to graze their animals. It is possible for example that those Kuchi who were granted Koh-i-Baba pastures in the past and which are now over-used, degraded and unable to sustain even local use, might be redirected to the Band-e-Petab pasture in northern Yakawlang Province; and
- (ii) Where this is not acceptable or feasible, that these Kuchi are compensated for their loss of legal rights; this may be in the form of cash or provision of arable land, outside these areas.

5 Programme requirements

Implementation of the above strategy has obvious financial and technical requirements and which need to be met as quickly as possible.

5.1 Immediate Requirements

It is recommended that (not surprisingly) the focus in 2009 be upon the Behsud/Nawor areas (western Ghazni and Maidan Wardak Provinces) and that –

Disarmament in these areas is immediately undertaken

This includes –

- a) Removing all arms and weapons from these areas;

- b) Reconsideration with ISAF of the current strategy of arming community actors in the name of public security;
 - c) That key provocateurs on both sides be deported from the area; and
 - d) That armed PRT, Police, ANA and/or ISAF patrols throughout the area be initiated.
- 1) Current initiatives towards reaching agreement on the conflict at highest political and ethnic representation levels are abandoned in favour of a community by community approach.**

This means for example that the Presidential Commission redirect its valiant efforts over the last two years of attempting to bring political and other ethnic leaders to resolution and instead limits its ambitions to ensuring the right political environment for a bottom-up approach. That is, the Commission should work to persuade these leaders that they are *not* being asked to find a resolution themselves but are being asked to support a pasture by pasture resolution, and to inform their followers accordingly.

2) Fielding of Practical Case by Case Mediation:

The supporting international community be requested to act immediately to see that a fully-supported, professional and technically equipped **Mediation Team** be formed, supported and dispatched to the area. This means -

- a) A team comprising an expert peace building and conflict resolution expert, a rangeland expert, and an organization facilitator;
- b) The Team should be fielded under the supervisory aegis of the Ministry of Agriculture, in consultation with the Presidential Commission;
- c) It should comprise no Hazara or Pashtun Kuchi OR if may comprise one experienced Hazara and one experienced Kuchi, both known to have the capacity to adopt neutral positions;
- d) The Team should be technically supported by international experts; their function will be to guide the Team in
 - (i) adoption of a workable CBPM approach and which is designed to clarify internal

Hazara disputes, demarcate Community Pastures, establish Use Rules, set up a working Pasture Management Council with Kuchi representation as relevant;

- (ii) to strategise with the Team as to how to go about negotiation and the various options which may be viably considered;
 - (iii) to assist in identification of the easier or more likely resolvable pasture sites, in order to set positive precedents;
 - (iv) to be clear as to procedure towards resolution;
 - (v) to be fully trained in peace building techniques to preface and manage dispute resolution meetings, etc.
- (e) The Team and its technical back up should also consider preparing a very clear strategy for public consumption, with fliers on this sent to every village in the Behsud/Ghazni areas affected and to relevant Kuchi leaders (those affected by the dispute).
- (f) The Team should be supported by a local NGO with experience in community level negotiation.
- (g) The Team will need to be provided with full security back-up, even following disarmament and especially as this process is likely to be on-going at the same time.
- (h) The Team should be constructed in such a way that it incrementally involves other persons who will be trained on the job for undertaking parallel mediation and able to replicate the approach developed in other areas.
- (i) The Team should report directly to a MAIL/ Presidential Commission coordinating team with other high level and international organization, UNAMA and ISAF support, and the function of which will be to rigorously assess progress and problems and to make suggestions accordingly.

3) Adoption of a CBPM Approach as the Framework within which Mediation is Nested:

It may be unclear that the above is not dealing only with mediation. The entire body of these

recommendations are founded upon the conclusion that the most productive home for resolving the Kuchi Hazara disputes lies in nesting this in the community based pasture management approach elaborated in different sections of this paper.

This means for example that the Mediation Team is not only seeking to help affected communities and nomads reach agreement as to access, but to root this in decisions involving –

- a) How Community Pastures are defined in the area and recordation and registration of their boundaries
- b) The establishment of Access and Use Rules to which all users agree
- c) The establishment of a working Pasture Management system for that pasture.

4) Rapid Reconnaissance of Kuchi Interests:

As outlined in the previous section, the CBPM approach needs to adopt a community by community, pasture by pasture approach and therefore uses local settled Hazara communities as its anchor. Kuchi with claims in those areas are introduced to negotiation on this basis.

At the same time, to both balance this orientation and to obtain critical information from the non-Hazara side, the programme should field an immediate clan by clan assessment of claims by affected Kuchi. This is not designed to involve all Kuchi in the country, only those who are directly involved or affected by the Behsud/Ghazni access disputes and related issues of access to Inner Hazarajat.

The subjects to be covered include accounting with Kuchi as to precisely what their claims amount to in regard to which pastures in these areas, through precisely which routes and involving which stopping pasturing and watering places, and with numbers and species of stock indicated. The grounds upon which families claim past use needs to be concretely demonstrated.

This exercise must also include information as to constraints facing winter pastures, and the assessment of Kuchi themselves as to how these should be dealt with. This should include explication of the principles of community based pasture management as being applied in highland pastures.

In discussing options, Kuchi participation must be structured to include all classes of affected Kuchi. Alternatives should be offered and discussed, including opportunities to settle, to be granted farmland/housing, to begin using alternative pastures, or to be financially compensated, should all be discussed.

5) Rapid Reconnaissance of Pasture Conditions in Central Highlands:

This involves an immediate summer 2009 district by district assessment throughout the central highlands as to exactly where Kuchi pastured their animals on a longstanding basis before the civil war, their numbers, origins, clan names etc., and the use and condition of those pastures at this time.

The object of this exercise is to identify on a strictly provisional basis which – if any – pastures in Hazarajat may potentially withstand reactivated Kuchi use, and if so, on what likely conditions.

5.2 Medium Term Requirements

These comprise –

1) Immediate planning and institution of CBPM as a priority approach throughout the Central Highlands and indeed nationally.

This is because this approach –

- a) Provides a localised medium through which contested pasture rights may be ordered and moved out of conflict
- b) Provides an integration framework through which pasture access regulation and rehabilitation measures may be sustainably established
- c) Provides the framework through which future outsider interests including those of nomadic pastoralists may be negotiated.

Donors need to be encouraged to fund projects on a province by province basis as necessary, as a crucial peace-making initiative and to place pasture governance on a workable footing.

2) Prompt review of the winter pasture situation with nomadic pastoralists:

This needs to be focused on those winter pastures which are relevant to the migration of Kuchi clans to central highland pastures.

The activity needs to preface and be actively followed up with CBPM developments such as relevant for the summer pastures.

It is likely that security problems will limit how far this exercise may be applied.

3) Continued pursuit of new legal paradigms:

This is already well-advanced but has come to a halt in 2008-09. A critical lesson from the process is that had piloting of inter-communal and state-people conflicts over pasture ownership and regulation systems *not* been attempted, then the current draft law would have been a good deal less nuanced and probably unworkable.

Learning by doing needs to continue to ensure new paradigms specifically on the settled/nomad land rights issue are workable, fully attuned to local realities, and in practice fair. Without these grounded attributes new law is meaningless, especially in an environment of uncertain rule of law.

Specifically on the settled/nomad dispute, the current draft lays out paradigms and procedures which can be practically tested ahead of finalisation (and which are fully in line with proposals made here). This makes introduction of new pasture law a good deal slower but in the long run, much more likely to be applied and adopted in practice. With these virtues, rule of law itself is more liable to be enhanced (in this respect, rule of pasture law).

4) Development of Concrete Plans for Kuchi Settlement:

This depends directly on review with Kuchi as to their real interest in this, and assuming this is confirmed, then a participatory planning approach.

5) Capacity building within Government for Conflict Resolution over Natural Resources:

Several administrative bodies exist or are planned to exist in respect of Kuchi matters. There is already a Kuchi Unit under the President's Office, but which

shows little sign of being actively involved in resolving the Hazara Kuchi pasture rights conflict. There are also proposals for a Kuchi Unit in the Ministry of Agriculture (but the terms of reference for which curiously do not include conflict resolution capacity building).

There are many INGOs and projects which are focused upon the livelihood needs of Kuchi and on measures needed to advance nomadic pastoralism as a viable enterprise. These are

beyond the remit of this paper and are accordingly not even mentioned here.

Meanwhile what does appear to be missing is an institutional foundation for pursuing natural resource conflict resolution over the medium to longer term. This is needed, and necessarily integrated into the Ministry of Agriculture's plan of action for advancing devolved approaches to pasture regulation and management.

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ANNEX A

Draft protocol proposed by the mediation team in respect of Nawor pasture, 2006

DRAFT Protocol

According to the decisions made by the jirga held at Ghazni City on 19th – 20th of April, 2006, the following protocol will regulate the access of the Kuchi to Nawur District based upon the articles laid out below:

- 1) All people involved shall endeavour to re-establish the good relations that used to exist between the Kuchi and the sedentary communities in Nawur district.
- 2) Both the sedentary communities and the Kuchi communities have the right to use the pastures in Nawur district.
- 3) Representatives from the sedentary communities and representatives of those Kuchi communities that used Nawur district in the past shall come to a mutual agreement on the precise conditions of use of the pasture in accordance with the provisions of this protocol.
- 4) In accordance with the Law on Pasture and Mar'aa (under decree 57 of 2000), the local communities have the exclusive right of use of the community pastures (mar'aa).¹³¹ Community pastures are the pastures that are immediately bordering the villages, and until more specific negotiations on the precise location of the boundary has taken place (refer article 5), the boundary of the community pasture will be specified according to customary practice; 'where the loud voice of a person who stands at the edge of a village can still be heard marks where the community pasture boundary ends'. The area beyond the community pasture boundary is defined as public pasture and no-one holds exclusive rights to this pastures; it may be used by all, Kuchi and sedentary communities, in accordance with the terms of this protocol.
- 5) More specific negotiations between the communities on the boundaries of the community pastures, on specific user rights, and on specific conditions of land use will take precedence over the provisions of article 4.
- 6) Any agreement reached between the representatives of the Kuchi and the sedentary communities in terms of this protocol must be complied with by all members of these communities, and the representatives of the Kuchi and sedentary communities shall ensure that this occurs.
- 7) Those who violate the agreement shall be held responsible as individuals; the tribe shall not be held responsible for the actions of individuals, unless the elders of the tribe fail to cooperate and identify the individuals in question, in which case the tribe shall be held responsible.
- 8) Individual criminal cases that have occurred in the past shall be addressed through the judicial system and shall not be taken into account in the implementation of this protocol. Issues related to access to land and water are a matter of community responsibility, and do need to be addressed as a part of the implementation of this protocol
- 9) Kuchi will only be allowed to enter into Nawur district under a weapons control mechanism.
- 10) For the implementation of this protocol and the regulation of access to the pasture, two commissions will be established; a Provincial Commission and a Local Commission. The signing of this protocol is an 'in principle agreement' for the Kuchi to enter Nawur district. Before entering Nawur, the Kuchi tribes shall send a delegation to the Provincial Commission to receive specific permission for that

(sub-) tribe for their particular pasture area for that particular year. If there are any outstanding points of negotiations for their specific area, the Provincial Commission must refer the matter to the relevant Local Commission, which must resolve the issues in question before the Kuchi of that (sub-) tribe are allowed to enter Nawur district.

- 11) The above article is applicable both for those Kuchi that use the Nawur pastures as a seasonal pasture and for those only passing through Nawur district.
- 12) By signing the Letters of Authority that are annexed to this Protocol, the members of the Kuchi and sedentary communities agree to submit to the jurisdiction of the court in the event of a dispute regarding the interpretation or implementation of this Protocol that cannot be resolved by the Provincial Commission, and in the event of breaches or infringements of the protocol by individual members of either community, and that the decision of the court shall be regarded as a final binding decision.
- 13) The contents of this Protocol may be varied by the [majority/ unanimous] written consent of the Parties, after a process of negotiation involving all Parties.
- 14) This protocol shall come into effect on the date of signature by all Parties mentioned below.

To be signed by: Governor, Chief of Police, Prosecutor, Provincial Council (Head and deputy-head of the Council), Provincial director of MFTA (and/or the independent Kuchi department), Provincial director of MRRD, Provincial director of MAAHF, District Commissioner Nawur, Local Commission members.

Annex I: Terms of Reference Provincial Commission

- 1) The Provincial Commission will have the following representation:
 - a) one seat for the governor
 - b) one seat for the Chief of Police
 - c) one seat for the Prosecutor
 - d) two seats for the Provincial Council (Head and deputy-head of the Council)
 - e) one seat for the Provincial director of MFTA
 - f) one seat for the Provincial director of MRRD
 - g) one seat for the Provincial director of MAAHF
 - h) two vacant seats for the representatives of the Local Commission (one from the sedentary communities and one Kuchi)
- 2) The roles of the Provincial Commission are:
 - a) to endorse the protocol
 - b) to issue permission to delegations of Kuchi (sub-) tribes wanting to use Nawur as a seasonal pasture
 - c) to issue permission to delegations of Kuchi (sub-) tribes wanting to pass through Nawur district.
 - d) to assume responsibility for the implementation of the protocol and to ensure that violations of the protocol will be punished through the judicial system.
 - e) to mediate between parties when problems occur that the Local Commission is unable to solve.
- 3) The Provincial Commission is not a standing Committee, but will be called when required. Any of the members can call for a meeting when deemed necessary.

- 4) At a minimum the Provincial Commission shall meet on a daily basis during the third and fourth week after Nawroz to receive delegations of Kuchi (sub-) tribes; once during the middle of the summer season (this sentence is also missed in Dari translation, or did we leave this out on purpose?); and once at the end of the summer before the departure of the Kuchi from Nawur district.
- 5) Each Local Commission will elect two representatives from the district in question for *ad hoc* representation on the Provincial Commission (one from the sedentary and one from the Kuchi communities). The Provincial Commission will call the two representatives of a particular district to occupy these seats when an issue related to that particular district is under discussion.

Annex II: Terms of Reference Local Commission

- 1) The Local Commission will consist of the District Commissioner as the chairperson, 6 representatives of the Kuchi communities and 6 representatives of the sedentary communities. Users of all the 6 sub-divisions of Nawur district need to be represented in the Local Commission, both from the Kuchi communities as from the sedentary communities.
- 2) The elders that hold customary decision-making powers of the sedentary and Kuchi communities will each sign a letter of authority mandating their respective representatives to represent their communities on the relevant Local Commission, thus lending authority to the selected members of the Local Commission. (Tom, this is one way of putting it. I forgot what we agreed upon; did we want to take it out altogether?)
- 3) The roles of the Local Commission are:
 - a) to endorse the protocol
 - b) to elect the two representatives of the Local Commission to occupy the vacant seats of the Provincial Commission
 - c) to identify outstanding points of negotiations for a particular area that require to be resolved before the Kuchi can enter into that particular area, and relay this information to the Provincial Commission
 - d) to resolve the outstanding issues as a matter of priority, so that the Kuchi can enter into those areas as well, taking into account local traditions and practices which are equitable and which promote and encourage community-based sustainable natural resource management.
 - e) to mediate between parties when conflicts or incidents occur during the presence of the Kuchi in the district.
 - f) to refer breaches of this protocol to the Provincial Commission for prosecution in terms of the law.
 - g) to refer issues to the Provincial Commission that the Local Commission itself cannot resolve.
- 4) The Local Commission is not a standing Committee, but will be called when required. Any of the members can call for a meeting when deemed necessary.
- 5) At a minimum the Local Commission will meet once before Nawroz, to identify outstanding points of negotiation for the coming summer season, and relay this information to the Provincial Commission. The third and fourth week after Nawroz the Local Commission shall sit together on a daily basis to resolve any outstanding issues, or for a longer period as long as there are outstanding issues.

ANNEX B

Extracts from selected laws relating to the status of pasture rights

Relevant land & property articles of the Afghanistan Constitution 2004

Article Six:

The state shall create a prosperous and progressive society based on social justice, preservation of human dignity, protection of human rights, realization of democracy, attainment of national unity as well as equality between all peoples and tribes and balanced development of all areas of the country.

Article Seven:

The United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights shall be respected.

Article Nine:

Mines and other subterranean resources as well as historic relics shall be the property of the state. Protection, management and proper utilization of public lands and properties as well as natural resources shall be regulated by law.

Article Fourteen:

To develop agriculture and animal husbandry, improve economic, social and living conditions of farmers, herders and settlers as well as improve the nomads' livelihood, the state, within its financial means, shall design and implement effective programmes.

To provide housing and distribute public estates to deserving citizens, the state shall adopt necessary measures in accordance with the provisions of the law within financial possibilities.

Article Forty:

Property shall be safe from violation.

No one shall be forbidden from owning property and acquiring it, unless limited by the provisions of law.

No one's property shall be confiscated without the order of the law and decision of an authoritative court.

Appropriation of private property shall be legally permitted only for the sake of public interest, and in exchange for prior and just compensation.

Search and disclosure of private property shall be carried out in accordance with provisions of the law.

Extracts from law on pasture and public land 2000 [as issued under Decree 57 of Gazette Issue No. 795 of 2000]

Article 2

(1) All types of land including hills, deserts, mountains, riverbeds, forests, that have places where grass grows and supports animals are known as pasture.

(2) Pasture falls into two classes:

(a) private pasture including community land

(b) public pasture, including barren and degraded land (*kharah*) or unused lands (*matroka*) and land on the edges of cities and villages.

Article 3

- (1) Pasture may only be used for feeding animals.
- (2) Private pasture may be used by residents of the adjacent communities.
- (3) Public pasture may be used by anyone.

Chapter Two: Private Pasture

Article 4

- (1) If a person or government is unable to prove ownership over a private pasture, they may not occupy it as an owner.
- (2) Residents of an area may use the pasture for feeding their animals in accordance with this law.
- (3) The right of using pasture cannot be bought or sold.

Article 5

- (1) The area of pasture must be specified, marked and registered, based on Shari'a by a Commission.
- (2) If the pasture area had not been previously described before this law comes into effect, then the council of ministers must appoint a commission for implementing sub-article 1 of this article in every province.

Article 6

Buying, selling and leasing pasture is prohibited.

Article 7

- (1) Areas of private pasture are not to be sold or leased for expansion of agricultural activities or any other purposes.
- (2) Government development projects for public utility are exempted from this order.

Article 8

The Council of Ministers may pay compensation for farmlands, private springs, channels that are located in or around pasture which is useful for public purpose.

Chapter Three: Public Pasture

Article 9

Public pasture is for public use, and its purchase, sale or lease may only be undertaken with the permission of the Supreme Leader.

Article 10

Grazing of goats and camels in pasture found within forests is prohibited in the public interest.

Article 11

The Council of Ministers may take necessary actions in order to secure and improve the pasture.

Current land law affecting the status of pasturelands

Extract from Law on Managing Land Affairs, 31 July 2008, Official Gazette, No. 958

Article 2: Objectives

The law's objectives are as follows –

- (4) Segregation of government, individual, virgin, arid, pasture (grazing) and endowed lands
- (8) Provision of adequate and broad private sector participation in the landholding sphere ...

Article 3: Terms

Private land: plot or plots of land belonging to individuals or non-government legal entities.

Government land:

- (a) Plot or plots of orchard, irrigated land, rainfed land, hills, parks, marshy lands, forests, pastures, reed beds and other lands being registered in the principle book of Government Lands
- (b) Lands which are deemed public lands but are not registered in the principle book of Government Lands
- (c) Lands in respect of which individual ownership has not been proved legally during settlement.

Grazing (maraa) (waste) lands (pastures, harvesting grounds and abandoned lands):

- (a) Grazing lands are those virgin and arid lands in respect to which government or individual's ownership has not been proved legally.
- (b) If a person having a loud voice and standing at the last home of a village or town calls loudly, this land up to the place where the sound of the loud voice is heard is considered to be grazing land.

Virgin Land (Mawat): (also used bibr (virgin) and baayer (barren or wastelands):

The land which has never been brought under cultivation.

Arid land (bibr, baayer):

Land which under normal conditions has not been cultivated for a period of five successive years and which can be brought under cultivation after improvement or construction of a new irrigation system.

Article 46: Sale and transfer of virgin and arid lands

- (1) No person may possess virgin and arid lands unless authorised by the President of the Islamic Republic of Afghanistan.
- (2) Where a person arbitrarily possesses the properties (uncultivated lands) and authorisation by the President of the Islamic Republic of Afghanistan does not exist, such properties are not deemed to be private. Permission of actual permission is only by authority of the President.
- (3) Selling or virgin and arid lands to individuals, agricultural and livestock institutions, private and joint foreign and domestic companies by the Ministry of Agriculture, Irrigation and Livestock shall take place on the basis of auction, after being approved by the President of the Islamic Republic of Afghanistan.
- (4) Virgin and arid lands shall be put at the disposal of the buyer after going through legal formalities against a just price by the Ministry of agriculture, Irrigation and Livestock. The former possessor shall be granted the priority right.
- (5) The price of virgin and arid lands shall be determined upon considering the price of lands located next to it, on site by a Commission of Evaluation and Land Disposal, comprised of representatives of the ministries of Agriculture, Irrigation and Livestock, Mines, and Finance, as well as the representatives of the Historical Monuments Department of the Ministry of Information and Culture and the Geodesy and Cartography Department. The price determined shall be submitted for confirmation by the Council of Ministers and for approval by the President of the Islamic Republic of Afghanistan.
- (6) Payment for virgin and arid (uncultivated) land shall be obtained by in five equal instalments within five years effective from the land distribution date.

Article 47: Determination of criteria for land sale

- (1) Lands being specified for sale shall be the net property of the State or shall be virgin and arid lands and shall not be under State projects, urban master plans or be forests, pastures, mines and historical monuments.

(2) Evaluation of virgin and arid land (uncultivated) before distribution shall be conducted by a technical delegation composed of the representatives laid down in clause (5) of article 46, in order to acquire the following goals –

(a) To be capable of constructions and cultivation;

(b) Subject to a survey of the area

(c) Identification and classification of water sources and the potential for deep well drilling

(d) Information on the rights of those on lands adjoining the area especially in regard to water rights

(e) The requirements for rehabilitation or construction of catchment dams.

Chapter 9: Pastures (*Maraa*) and Endowed Lands

Article 82:

Pastures are virgin and arid lands on which state and individual possession has not been proved legally and they are deemed public property. An individual or the State can not possess pasture lands unless otherwise stipulated by Shari'a.

Pastures shall be kept unoccupied for the public purposes of local communities.

Article 83:

Where a person possesses pasture land however long his possession might be, where the land is legally confirmed to be pasture land, the person shall be dispossessed and the pasture land shall no longer remain under his possession.

Extracts from policy and strategy for forest and range management sub sector 2005 [endorsed by Cabinet in 2006]

1.2 The sub-sector partners shall adopt a community based approach to forestry, range and wildlife management. This approach shall involve the transfer of effective management responsibilities for forestry and range resources within defined community geographical areas to communities in a manner which (i) creates value for community members (both in the form of productive resources – timber, firewood, better pastures, and as a means of protecting natural resources from erosion), and (ii) develops within communities the capacities to organize, operate and sustain the improved measures with a minimum of support from outside.

1.3 A community focus

In planning and implementation ... the objective shall be the development of community capacities to discuss and decide upon the improved land uses to be implemented ...

1.4 The system for people to have rights to use the resources

Government shall devise and implement specific policies, strategies, legislation and practices for allocating user rights over forest land, rangeland and wildlife terrain to communities. These shall be founded upon participatory action and processes ... They shall include mechanisms for reconciling land disputes....

Government in conjunctions with communities shall issue land use rights contracts in a fair and transparent manner and which as far as possible confirms tradition agreed forms of access to land uses.

Communities shall develop elected committees for the management of land user rights Government shall put in place legislation and regulations which allow the elected community committees to generate and expend funds in their own names.

2.4 Allocation of grazing lands to communities

The sub-sector partners shall work together to create and develop community grazing areas for individual communities. In areas of traditional shared grazing, community leaders shall be encouraged (with facilitating help from other partners) to agree a fair division of the formerly shared rangeland into individual community grazing areas or divisions within those areas, taking account of previous usage, differences in range quality and access to water. Regional community representatives and Provincial administration shall intervene and facilitate the resolution of any difficulties in reaching agreement between communities.

4.1 Communities

The communities have the function of organizing and implementing community forestry and community range management on their own community lands in an essential independent manner. Their roles are:

Creation of committees for the planning and organization of implementation

Discussion and decision making concerning local strategies for community forestry, range management and other land uses ...

4.3 Provincial Administration

The strategic roles of Provincial Administration include Implementation of allocate of land user rights over forest and range lands and Mediation and arbitration in special areas.

Articles relevant to pasture tenure in the national land policy 2007

It is national policy that all land be classified as public, private community or state-owned land and that the definitions of each classification be cleared state and consistently applied through the body of land related laws (2.2.1)

The policy acknowledges that there are problems relating to pasture tenure –

The competition for limited resources of pasture in many areas of Afghanistan has adversely affected the economic livelihood of pastoralists and fuelled longstanding conflicts. The competition over grazing land between pastoralists and settled farmers is a result of ill-conceived historical political agendas, poor land management, lack of adequate land survey, the non-existence of adequate dispute resolution mechanisms, the near collapse of land adjudication and registration systems, and the lack of strict enforcement of existing laws. The lack of adequate management and control over public owned land has resulted in grabbing of land that was traditionally used by pastoralists as well as settled farmers for grazing livestock herds. The regulation of pasture land is an imperative if it is to be protected from threats to its sustainable use such as grabbing of community lands of neighbouring villages, grabbing of rangeland, cultivation of traditional grazing land, government designation of grazing rights in what have traditionally been considered communal grazing lands. Pastoral ownership is unclear and formal law ambivalent as to whether pastures lands are state-owned, public or communal. (NLP 2007: 2.2.6).

It therefore declares -

It is national policy that access to land resources be clarified and secured as part of an integrated natural resource management which springs from local community based resource management. Such community based resource management must be conducted under the strict supervision and guidance of the Ministry of Agriculture.

It is national policy that community-based natural resource management strives to ensure environmental protection and usage for all users of public owned pasture.

It is national policy that the resolution of complex issues of ownership and access rights to pasture land be examined at the provincial level and tradition use rights of settled farmers and pastoralists established and respected.

It is national policy that the Ministry of Agriculture reactivates land surveying in order to clarify rights to land (Policy No. 2.2.6).

The Policy seeks to have all land classified as public, private, community or state owned land (Policy 2.2.1).

It also seeks to transform the process of recognising tenure –

It is national policy that land ownership may be documented through a process of property clarification and certification process conducted at the community level.

It is national policy that recognition be given to customary documentation and legitimate traditional property rights affirmed by local knowledge, in accordance with a law to be issued to govern the regularization of property rights (Policy No. 2.2.7).

The Policy also seeks to see that –

Disputes resolved through a community-based dispute resolution process which are not in contravention of the law shall be given full faith and credit by the formal justice sector (Policy 3.1.8).

Key provisions of the draft rangeland law (Version 7.5, 12 June 2008)

The objectives of the law include recognizing and formalizing the custodianship, management and use rights of communities and other users in regard to rangeland resources (Article 1.1)

A Custodian is defined as a community that is considered to be the legal possessor and long-term manager of the rangeland (pasture) (Article 3 (4)).

Private rangeland comprises a rangeland attached to a settlement which is agreed in the local area as belonging to an individual, a household or a cluster of households related by kinship (Article 3 (11)). A community rangeland (or community pasture) is a rangeland which is agreed in the local area as belonging to a particular community whether it is adjacent to the community's settlement or a long distance from it and whether used year round or seasonally (Article 3 (3)). A public rangeland is a rangeland that is unable to be categorised as a community rangeland due to a long history of established use by communities and nomadic pastoralists who do not reside in the area (Article 3 (12)).

No community or public pastures may be sold (Article 7) and conversion of rangeland to another use is not permitted, without provincial Department of Rangeland approval (Article 6).

The law lays out the procedure through which every pasture will be brought under the management responsibility and powers of local owners or communities, as the lawful custodians (Chapter Five). This depends upon (i) neighbouring communities agreeing in writing (i) that the rangeland belongs to that community and (ii) to a detailed description of the boundary in writing together with a simple local knowledge map of the area; (iii) the community preparing a simple management plan for the pasture including the rules by which access to the pasture will be governed and (iv) establishing a Community Rangeland Council to serve as the rangeland manager on behalf of the community (Article 12). Custodianship will in all cases be through issue of a Letter of Custodianship (Article 15) and to speed up the process, made the responsibility of the Provincial officer in charge of rangelands (Article 25). The Provincial Office is also to maintain a register of Letters of Custodianship, open to the public (Article 15).

Wherever possible, public rangelands are to be defined as district rangelands (Article 17). Public rangelands are to also be brought under community custodianship by those communities living directly adjacent to it. These communities are to resident within the district where the pasture is located (Article 20). In the case of public pastures their custodianship does not infer the right of possession or ownership (Article 18).

A significant part of the law is devoted to addressing the access rights of nomadic pastoralists. These are defined as seasonal access rights (Article 22). Nomads may negotiate access directly with the designated local community Custodians of a public pasture, or through the District Governor. Where access rights are denied, the Custodian, District Governor or Provincial Officer of the Department of Rangeland must invite the affected nomads to hear the reasons, and every attempt at compromise must be made. On an exceptional basis, a special commission may be formed to address the issue and its findings submitted to the Office of the President. Although possessors of private and community pastures may charge fees for access, no fees may be charged for use of public pastures, although nomads and other users may make contributions towards management costs to the Custodian.

The proposed law obliges the Government and the Courts to recognize community and custodial rights and agreements in granting, clarifying or registering land rights under any present or future law deal with national land tenure (Article 35).

ANNEX C

Examples of settled-nomad relations in the pastures in the North

Shah-I-Souf pasture, Faryab province (Source: Alden Wily, 2004f)

This pasture falls within Shirin Tagao District of Faryab Province, an Uzbek area. Livestock has always been important to the area and the Turkul-Baluch area has been famed in the past for its large herds. These animals are pastured in spring and summer at Dasht Shai-i-Souf which falls between Faizabad and the larger Dasht-i-Laili. Shai-i-Souf comprises ten distinct pastures or summer aylaks. In a review carried out in April-May 2004, Alden Wily found that only two of the ten pastures were not under ownership dispute. Two are under internal community dispute among Uzbeks. Six are subject to conflicting Pashtun and Uzbek claims that reach back decades. Up until the 1980s Pashtun dominated these pastures. This retracted during the 1986-1996 period when the area came under Uzbek warlords. Pashtun regained hegemony under the Taliban, now again retracted. Pashtun claim fully documented evidence of their tenure. Some Pashtun began to cultivate these pastures during the Taliban period, catalyzing strong reaction.

There is also dispute among Uzbek themselves as to who owns the pastures and how far it may be cultivated. That cultivation has expanded greatly since 1990 is not in doubt; this amounts to nearly 2,000 jeribs in Shai-i-Souf. Only two of the ten pastures have no cultivation. Those wanting to cultivate the pastures are not the traditional landless but better-off who had land but were forced to sell it due to the drought or who have lost part of their farms to flooding and erosion, itself a result of expanding cultivation of the hilly pastures. They also sold their stock during the drought so their need for pasture is currently diminished. Larger owners, those who managed to keep some of their stock, are the keenest to protect the pastures and who also feel their superiority is being challenged by poorer farmers. The very poor are peripheral to the dispute; some possessed sheep in the past and hope to own animals again but in the interim they need the labour opportunities which expansion of arable farming provides.

The wisdom of permitting arable conversion is not widely debated even though villagers all along the Tagab River complain bitterly of the effects of floods caused by hillside erosion. Most regard the pastures as useful for both periodic cultivation and seasonal grazing. Many pastures comprise the rich soils of the loess dunes (*chul*), long used for rain fed cultivation. Most people believe the arable needs of farmers need to be balanced with those of wealthier large livestock-keepers and that compromises among themselves can be reached. They have more difficulty reaching compromise with Pashtuns but most of whom have still not returned.

The Lihab pasture is a case in point. This has fallen within the domain of the largest Uzbek landlord in the community for over a century. Like his Pashtun counterparts, his descendants claim they hold legal evidence of tenure. With the sharp decline of their herd since the drought, the family has begun cultivating half the area for wheat and melons, retaining the remainder as pasture, and continuing to allow this to be accessible to all members of the community, as in the past. Those who dispute the right of the owners to farm the pasture query the meaning of their tenure. They argue that although he is the owner, the landlord has a customary obligation to share pastures with the historically dependent community, those small farmers, tenants, sharecroppers and workers who live in its shadow. They correctly detect curtailment of these rights through conversion to agriculture. Some claim that it is only because the landlord was the main landowner that the pasture was registered under his name in the first instance, during the registration of the 1970s. Their names should have been included.

Dasht-i-Laili pasture, Faryab province
(Sources: Favre, 2003, Alden Wily, 2004d, De Weijer, 2005a)

Dasht-i-Laili covers some thousands of hectares and overlaps the administrative provinces of Faryab and Jawzjan. Geographically, it lies between the Turkestan desert of the north and the loess hills of the south. Like all northern and central pastures it traditionally supported summer grazing and provision of fodder and woody fuel for winter for local populations. However, because its altitude is lower than the central mountainous region, Dasht-i-Laili may be grazed from late winter to end summer.

During the 1950s Dasht-i-Laili was allocated to Pashtun livestock owners. They came from the local area and further afar. Local Uzbeks resented the loss of this precious customary estate. Government itself began to cultivate the pasture during the Soviet occupation (600 ha). After the Russians left, the Uzbek warlord Rasul Pahlawan, whose base was nearby, took over this land for himself and his relatives, forcing some 1,500 people to labour there. Some died of thirst, reported Turkul-Baluch villagers. His inheritor of local power, a former warlord recognized by the early Karzai Administration as an official local commander, expanded this cultivation 'to an area that requires ten tractors to complete ploughing'.

A review by FAO in 2003 identified 15,600 ha of Dasht-i-Laili was under cultivation that year, 75% with wheat. The mission found wind and sand erosion and marked soil erosion on 85% of the cultivated farms. It was noted that the area is especially vulnerable through its location immediately south and east of the Turkmen Desert. Most of the farming was mechanized. No water reservoirs had been constructed, and the water available is saline. Salinity is increasing due to an open caste salt mine at Andkhai on the north-western edge of the pasture.

Customary rights to Dasht-i-Laili include the local adjacent populations, mainly Uzbek and some Arabs from both Jawzjan and Faryab Provinces. These have been overlaid by entitlements to Pashtun at various stages over the last 70 years. Largely since 2002 and fall of Taliban, local rights have been retrieved, with refusal to allow Pashtun to use the pasture. Some Pashtun were local, having settled as farmers in the area under the programme of colonization by Abdul al Rahman in the 1890s. Others cross through Dasht-i-Laili on their way the southern central highlands in summer. Many semi-nomadic Kuchi use Dasht-i-Laili: de Weijer reported in 2003 that 50% of Kuchi in Jawzjan, 20% in Faryab and 50% in Saripul are settled in the north, owning houses and farmland.

The Shiwa pastures, Badakhshan province
(Source: Alden Wily, 2004f summarising the work of Patterson, 2004)

Shiwa covers some 200 aylaks in around 34 distinct territories or mantiqa in the north-east of Badakhshan Province. These pastures fall partly in Baharak District and partly in Sheghnan District. The area is the home place of the Shiwachi, a distinct ethnic Shughni speaking Ismaili group with no direct links with Uzbeks, Tajiks, Arabs, Pushtuns or Larkhabis. Their environment is difficult and they are able to cultivate only one crop annually. Like Hazara they spend much of the summer growing and collecting fodder and fuel plants for the long, harsh winter. These conditions compare unfavourably with those of the summer visitors to the pastures, who in addition to owning large flocks of sheep, are able to cultivate two crops annually in their home areas. The Shiwachi themselves traditionally own small numbers of stock. The pastures have always been important to them for rainfed cultivation as well as grazing and wild plant collection for fodder and fuel.

Since Pashtun control of the areas under the Iron Amir (1880-1901) the Shiwa *ailoqs* were used for summer grazing by nomads from all four north-eastern provinces, alongside the much fewer stock of the Shiwa residents. The largest visiting stock owners were and remain Arabs and Pushtuns. In 2002-2003 Patterson recorded some 250 flocks amounting to 150,000 sheep. Tajiks and Uzbeks from adjoining areas also use Shiwa for summer grazing, some of whom also date their usage back to the 1900s.

Prior to 1880 the Shiwa high pastures were the common property of the Shiwachi if only by virtue of the fact that they were the sole residents of the Sheghni area. New settlement and seasonal use began with the upheavals of the 1880s. Displaced Arab, Karkhabi, Tajik and Uzbek began to settle there. During the reign of Nadir Shah (1929-1933) a new wave of Pashtun immigration into the Kunduz area prompted Kabul to formally allocate the Shiwa pastures to individual Pashtun Kuchi as well as to Kunduz Arabs. These allocations were expressed in hand-written documents known locally as *Qawwallas*. A second wave of allocations throughout the north-east occurred during the 1940s-1950s, this time by the local Badakhshan Governor, again mainly to Pashtuns. Many allocations forcibly displaced Shiwachi and other non-Pashtuns. Their control of the area was entrenched in the 1950s through the reissue of grants in more formal *Qawwallas* by the Property Section of the Ministry of Finance (Amlak). These deeds described the boundaries of the named pasture, to whom it was allocated and the numbers of stock which were permitted to graze the pasture. Conflicts between Pashtun Kuchi and local Shiwachi were frequent during the 1950s and despite local administrative support for Shiwachi, some pastures and arable lands remained inaccessible to them.

This continued up until 1978 with full support of the Pashtun Administration. The relationship of local Shiwachi with Kuchi was characterised by resentment as to restriction upon their arable farming, damage caused to their crops by Kuchi livestock, and their dependence upon Kuchi for goods and loans, and as a market for their own products (wool, local cloth, livestock). Like their counterparts elsewhere in the north and the central highlands, the Shiwachi felt exploited and subordinated. Patterson records that intra-Kuchi tensions also flourished, with troops periodically necessarily deployed to keep the peace between Arab and Pashtun Kuchi.

During the Jihad period (1978-1992) Shiwa came under the stable control of a single dominant Tajik Mujahiddin leader. Whilst not unfavourable to Kuchi use of the pastures, given the revenue it could generate in taxes, the Kuchi themselves began to experience difficulties reaching the Shiwa pastures. They had to pass through numerous spheres of influence, variously exercised by Government and different Mujahiddin commanders, all of whom heavily taxed them. Pashtuns from Baghlan had the longest route of four weeks of more and suffered most as well as enduring losses through Government-Mujahiddin conflicts in their home area, Baghlan. The number of Baghlan Pashtun Kuchi arriving in Shiwa sharply fell. Kunduz Arabs, who normally took 20 days to reach Shiwa, began to take longer by going through less risky routes, but largely continued to summer in Shiwa right up until 1997. Many Pashtun *ailoqs* fell vacant. Some of those belonging to Arabs and Uzbeks fell vacant for the same reasons but were quickly occupied by "new Kuchi" to the area; Arabs, Badakhshis and other Pushtuns (e.g. Mohmand Pushtuns).

Whereas the pre-1978 era is remembered as determinedly pro-Kuchi, the Jihad Administration in the area attempted to be neutral in its formal allocation of rights to nomads, whilst also trying to accommodate the 'just demands' of local Shiwachi for farmland. A local Land Commission was formed to deal with land distribution and use, and this included Shiwachi representatives. Compromises were encouraged. Previously disallowed cultivation of some *ailoqs* was specifically permitted. Prices for *ailoqs* were high for the poor Shiwachi, and payments were made in instalments. In some cases, Pashtun Kuchis conceded that Shiwachi should be allowed to cultivate *small* areas of the pastures, knowing they could no longer count upon central Government support for their interests. For their part, Shiwachi took the opportunity to expand farming into not just the few Kuchi *ailoqs* they were allocated but also into *ailoqs* and other commons they had managed to keep for themselves and which had not previously been farmed. Formal allocations were made in well-elaborated documents, and issued by the Jihad Administration with assurance that these superseded all earlier entitlements.

Some Kuchi also took out new *Qawwallas* for their traditional *ailoqs* as well as for vacant *ailoqs* into which they had expanded, in order to secure these with more modern documentation. Arab Kuchi who had been displaced from the *ailoqs* of northern Badakhshan also took some new *ailoqs*. Taxes continued to be levied on all grazing rights.

The post-Jihad period (1992-1996) saw the Tajik Muhahiddin leader and others move to Kabul and the emergence of numerous small commanders, more interested in enriching themselves than governing. In Kunduz and Takhar, the winter quarters of many of the Kuchis, conflict between the dominant Jamiat and Jumbesh factions and sometimes Hizb-i-Islami frequently descended into open war. Lawlessness reigned, including stock theft. The number of Pashtun Kuchis visiting Shiwa in summer continued to decline. Dormant Shiwachi-Pashtun conflicts resurfaced with *ailoqs* taken or retaken by force, by usually new Kuchi or non-local agricultural Tajiks. Even *ailoqs* which Shiwachi had regained from absent Kuchi (particularly Pashtuns) were now appropriated by others, including by mainly Tajiks looking for farmland. Expansion of agriculture thrived. Shiwachi found themselves squeezed by both nomads and other cultivators.

The Taliban established uncertain control of Kunduz and part of Takhar during 1997. Pashtun- non-Pashtun relations deteriorated sharply in Shiwa. Many in the local Shiwachi elite were murdered. *Ailoqs* were lost, and cultivation reduced, due to onerous taxation or instability. In Takhar, the Taliban adopted a scorched earth policy resulting in widespread destruction and large numbers of people were displaced. The drought of 1999-2001 exacerbated the misery. Although small numbers of Arab, Uzbek and Larkhabi Kuchi continued to summer in the Shiwa pastures, this was with difficulty. Ironically it was Pashtun Kuchi who were least able to return to the pastures, feeling uneasy being seen to cross opposition territory to reach the *ailoqs*. Most Pashtun *ailoqs* (other than those belonging to the Imam Sahib and Takhar Pashtuns) fell vacant. Some of these were taken over and sometimes cultivated by mainly Badakhshan Kuchis. Some Shiwachi *ailoqs* were also taken by Badakhshis. Once again local Shiwachi felt squeezed.

The post-Taliban period, beginning in the summer of 2002, saw a steady return to the situation of the Jihad period, with rising numbers of Kuchis of all ethnic groups returning to the pastures. No cases of Kuchi being stopped from entering the area were recorded. The situation is not stable. Between 1978 and 2003 some pastures had had up to five or six owners.

Many claims and counterclaims exist, with traditional rights, pre-war title, *jihadi* and post-*jihadi* title at stake. Those *ailoqs* where users have remained fairly stable are mainly where Kuchis were able to continue coming to the pasture throughout the war. Active, potentially violent disputes existed in 12 of 200 pastures in 2003. Other disputes were simmering, contestants biding their time, rendering what is superficially agreement and compromise, fragile. This is the case mainly where Shiwachi feel they have been most dispossessed and/or where Kuchi are seen to be promoting their own interests more out of principle than real need, and which cannot be matched with the land needs of the much poorer local Shiwachi farmers. The most contested *ailoqs* are those where disputes have existed for some decades between local Shiwachi and Pashtun Kuchi.

Levels of new cultivation in Shiwa are high; Patterson calculates the net increase to have been around 300 hectares or 22 percent above the area of land cultivated in 1978. Not all of this expansion was in pastures held by Kuchi; some of it is in local Shiwachi commons. Patterson suggests that arable expansion could have been much higher but was not, due to these factors: (i) Kuchi withdrawal was only partial; (ii) the local population did not gain political control; (iii) access to vacated *ailoqs* was through quasi-legal means and payment, not by appropriation or seizure; (iv) local Shiwachi faced competition for arable land from politically stronger neighbouring groups; and (v) many of the vacated *ailoqs* were simply too high and poor in soils to be cultivable.

A complete return of mainly the long-distance Kuchis (largely Pashtuns) is not anticipated, as many have abandoned the lifestyle over the war years. In addition, local and semi-local populations are unlikely to accept again a less equitable distribution of resources that currently pertains. Local Shiwachi need for arable land is seen to stem more from need than greed. The dual functionality of many pastures as partially cultivatable and seasonally pastured better recognised.

ANNEX D

Examples of Hazara-Kuchi relations in Bamyan province before the civil war

Surkhi pasture access, Bamyan province (Source: Alden Wily, 2006a)

Surkhi Village lies near the end of the Nurka Valley, a branch of the large Sya Dara River Valley in Yakawlang District. Surkhi shares the valley with six other villages. They and the valley represent a naturally distinct territory including the high altitude pastures above the valley. There is almost no pasture at all in the valley which is narrow and has steep sides. Irrigation land is also scarce with some families only owning rainfed fields on the steep hillsides. These are cultivated annually without fallow due to scarcity. The area is above 3,000m and yields are low. Surkhi is extremely poor – but it has been even poorer.

Surkhi comprises 27 households of whom five are landless but serve as shepherds, workers and sharecroppers and own one or two sheep and goats. Total stock ownership is under 200 sheep and goats, 50 cows and 10 donkeys, or an average of 7.4 sheep and 1.8 cows per household. Almost all this stock has been acquired since 1979. This marked the cessation of Kuchi occupation of high pasture above the valley, effectively the only pasture. The animals live indoors from late October until early May when the snow melts. The animals stay on the upper hills for one month and then are moved to the high pasture at the end of May until early September. The *aylak* is called Charkosh and is part of the Samokol area on the upper areas of the Koh-i-Baba range, fully occupied by Kuchi, especially from the 1950s. All seven villages use Charkosh and share its ownership. Another several hundred families belonging to the valley remain in Iran or in cities as they have no place in the valley to build houses, no land and own no livestock.

During the summer some family members remain at home to care for children or milk the cows which do not go to the *aylak* and to tend the hillside rainfed farms. Men spend much of the time cutting and carrying high pasture shrubs and grasses back to the village for winter fodder and fuel; with only 10 donkeys in the village, this is a slow process as each cow requires at least 25 donkey loads of straw and fodder to get through the winter and each sheep requires four loads. Drought this year (2006) is limiting rainfed wheat yields. Last year they were able to hold off until December to sell sheep to buy wheat but this year they will sell most of their animals in September.

Charkosh aylak was taken over by force by Khadaeir Khel Pashtun nomads (Kuchi) during the 1950s. They prevented the Nurka Hazara using the pasture. When the residents complained, officials supported the nomads. They were 10 households and came with around four thousand sheep, 100 camels, 200 goats, and 20 cattle. They were armed and aggressive. Without the pasture the Nurka villagers had to sell their stock (mostly to the Kuchi). They lost wool, milk, meat, yoghurt, manure for winter fuel (*chalmar*) and the farm. Some even gave their farms to the Kuchi in the 1970s drought for food. These families have never returned after the war. Five Surkhi families held onto donkeys to carry hillside bushes for winter fuel. During the 1950s to 1980s people were so poor that they begged for *qurut* (dried yoghurt curds) from families in the main Sya Dara Valley who still had their pastures where the Kuchi did not go.

Nurka Valley regained access to Charkosh from 1979. Since then most families in the valley reacquired stock and built up flocks until the 2002 drought when numbers fell to half. Even some landless families got sheep. The community is determined never to lose the high pasture again. It is small and cannot sustain more stock – currently around the same number as the Kuchi flocks – several thousand sheep and goats, belonging to 200 households along the valley.

The Ghor Ghor Meadows, Bamyan Province
(Source: Alden Wily 2004f, Pedersen 1994, Ibrahimi 2009.)

Ghor Ghor Pasture is located in northern Panjab District. The Upper and Lower Ghor Ghor Valleys include 38 hamlets and around 400 households. The Upper Valley (Poshti-e-Ghor Ghor) is famous for a magnificent meadow or valley bottom pasture, up to 1,000 hectares in size. The nearest comparison is Chaman to the west of Nayak, the capital town of the Yakawlang District and which was only returned to Hazara in 1932.

Most of Ghor Ghor is not farmed due to its waterlogged nature in summer. The meadow and surrounding pastures and farms on higher ground are largely owned by Kuchi; both irrigated and rainfed farms in 22 of the 38 settlements are entirely owned by Kuchi (58 percent). Another six farming areas (16 percent) are partially Kuchi-owned. All Kuchi owners are absentee landlords. Only ten hamlets in the valley have some farms owned by Hazara (26 percent).

In three randomly selected hamlets of 41 households only 12 households (29 percent) own farmland. Five of these had inherited land from their father who had acquired the land from a Kuchi in 1979 who wanted to off-load some of his land ahead of the revolutionary land redistribution. All 29 landless households farm for Kuchi absentee owners. Around half had once owned land, but all lost this land through pawning or debts to Kuchi during either the 1950-1978 period or more recently as a consequence of the visit of 'Na'iem Koochi' as he is locally known and his Taliban soldiers. Some agree they owed crop shares -

"If I had been given time I could have sold the land for a proper price but they came demanding immediate payment."

Many still owe money to Kuchi, both for crop shares they have been accumulating over the years of Kuchi absence but more particularly where they have cultivated land which Kuchi consider pasture and theirs by right.

"What surprised us is that the Kuchi demanded we pay for the use of the pasture as well as the grain we owed them. They claimed all the pasture was their land. If they saw you had any animals, they made you pay. If you had cultivated rain-fed crops on the pasture, they demanded compensation. They set the compensation at 1,000 seers of wheat, even though that land was not theirs. We know where their pasture is; it is the land which our forefathers sold to them and the hills they have always claimed were given to them but not the lands they are claiming today".

The focal point of disputes with Kuchi concerns the ownership of the valley meadow, which serve as pasture for all the valley settlements. Most agree that Abd' all Rahman gave the meadow to Kuchi in 1893/94. However, they claim the valley lawn was returned by his son, King Habibullah (1901-1919) as part of the restoration of valley lands to Hazara freed from prison. They regard the meadow and surrounding hillsides as their common property, divided village by village, parts of which have, however, been appropriated by private families. Some of the Hazara notables to whom land rights were restored by Habibullah sold on some parts of the valley lawn to Kuchi during Zahir Shah's reign (1933-1973). Today the resident Hazara acknowledge that many farming lands are owned by Kuchi and that Kuchi accordingly have rights to some of the meadow but not the meadow in its entirety.

Kuchi still claim the meadow and lease it to four Hazara who in 2003 were paying 100 seers of wheat to the Kuchi (around US\$105) and, in turn, levy a fee of 500 Afghanis (US\$10) per year for each animal grazing the lawn. Many refuse to pay these fees. One of those who died defending his land in the valley was the main owner in the hamlet of Rashak. Villagers recalled how one night in 1973 the Kuchi pulled the man from his house, took him to their tents on the higher pastures and killed him.

In 1999 they did return and Rashak was entirely looted and all their stock taken.

The 1978 revolution had come as a relief to the Hazara of Panjab in that Pashtun Kuchi were not to return for some years. Political organization and solidarity among Hazara tribes during this period grew by leaps and bounds and saw formation of political parties. The Jihad period was especially empowering to Hazara generally who began to find success challenging the stereotype of themselves as primitive, exploitable, slave-like persons (Mousavi, 1998).

Hazara took the opportunity of the war years to reclaim their pastures and refuse to permit Kuchi to return. They were less confident about occupying Kuchi farmlands. Kuchi soon made arrangements for local Hazara to collect the crop-shares. Most debts were paid up until the late 1980s. The departure of the Soviets and the factional fighting that followed, meant that Kuchi continued to stay away and Hazara tenants began to rebel against paying crop-shares to these absentee landlords. However the ownership of some of these farms by Kuchi was hotly contested. Hazara requested the new Government in Panjab District in 1990/91 to legally restore their land to them. A council of mullahs was created by the Akbari Governor to hear each claim. In some cases, the claimants had their lands restored and received documents certifying this to be so. The process was interrupted by the Taliban.

Ibrahimi explores the revisiting of sectarianism by the Taliban as had been seen a hundred years earlier at the hands of the Iron Amir. He reports on a Decree No. 11 issued by Mullah Omar in spring 1997 and which he had been shown in 2006 even though the Decree was never made public and apparently released by the Taliban intelligence department in Kandahar. Ibrahimi reports: 'The Decree addressed Kuchi leaders and describes the Hazaras as the religious and historical enemy of the Pashtuns. It urges them to mobilize under the leadership of Mullah Na'iem Kochi in a bid to reassert their historical role in the Hazarajat and to gradual force its inhabitants to evacuate their lands. It calls for strictly military measures to disown Hazaras from their lands, a complete economic embargo on the region, the destruction of Mongolic historical remains and the stated intention to forcibly occupy Hazara lands' (Ibrahimi, 2009).

The Taliban did not establish their authority in the area until October 1998, at which point Pashtun Kuchi felt it safe to return. Na'iem Kochi, a Pashtun nomad of some standing, organized hundreds of his tribesmen into the Taliban Army. He arrived in Panjab in May 1999 with a decree to this effect, and an unspecified number of soldiers. Valley by valley the Kuchi systematically disarmed the Hazara. At the same time he collected their livestock, crops and documents and set about collecting sharecropping debts of the past 12 years.

Those who had complained to the earlier Council of Mullahs were especially targeted. Their homes, farms and animals were looted and then burned. Many were injured and some killed. IOUs were forcibly extracted, itemizing the debts that were still owed over and above the animals taken. More land was signed over to the creditors –

"Even those who had no relations with Kuchi and owed them nothing had their animals taken. I had animals on the pasture which the Kuchi soldiers said was their pasture, so they took my animals as payment for using their grass."

People complained bitterly to the District Governor, by this time an Akbari supporter working with the Taliban. He reported the complaints to the Bamyán Provincial Governor who personally visited Panjab to investigate. The Kuchi leader was ordered by Mullah Omar to leave the area with his men within 24 hours. He left on June 17, 1999. Sharecropping debts were still outstanding from 1989 and many farmers were uncertain of the status of their land.

The Governor established a second commission to hear each case. Those who had paid substantial amounts in the form of animals and cash, felt sure they would be permitted to retain their land. This commission was still meeting when the Taliban government fell in late 2001 and has not since reconvened. Kuchi now try to sell these lands to local Hazara but with little success, holding that many of these farms were unfairly taken.

The Kuchi Perspective

Kuchi perceptions as to land rights over Ghor Ghor Valley predictably differ. As member of a research team in the 1970s, Gorm Pedersen (1994) chose to study the Zala Khan Khel clan, by then a well established trader nomad group in Paktia. By chance, it was to this Kuchi clan that the Iron Amir granted Ghor Ghor as reward for their support in crushing the Hazara (1893). The Zala Khan Khel leader in the 1880s was Qutb-Uddin and to whom the original *firman* was given. This allocation was a full 400 km from the clan's winter pastures in Paktia (Khost) and greatly extended their summer migration. Pedersen records –

"However, the advantages of the new area outweighed the disadvantage of the long migration. For it provided not merely better grazing grounds, it gave admission to a new trading area. Hazarajat was a virgin market which had been hitherto almost inaccessible to outsiders and therefore unexploited by outside merchants... exploitation was at first sporadic, but with the establishment of the first nomad summer-bazaar in Kerman around 1919 trade began to boom" (Pedersen 1994: 132).

During his lifetime, Qutb-Uddin sustained the grazing land grant as the common property of the clan, distributing its use annually to Zala Khan Khel households. On his death, his brother made a permanent distribution of the *firman* grazing grounds 'in such a way that consideration was taken to where the various households had their other land and to where they normally had their summer camp and grazing area' (ibid;130-31). It is not known whether his brother issued documents of sub-division at this time, but local Hazara speak of more than one *firman* being shown to them as evidence of Kuchi tenure. Pedersen's account shows no evidence that Kuchi consider the Ghor Ghor pasture was returned to Hazara by Habibullah or even the reformer, Amanullah.

Pedersen's account does, however, amply support Hazara claims that they began to lose more than the Ghor Ghor pasture to Kuchi through other means. He records how easy the Kuchi found it to exploit the Hazara. The Zala Khan Khel had arrived from the outset 'with full government support, were well organised and well armed, and regarded the Hazara as second-class persons who deserved to be punished for opposing Pashtun dominance'. Then and later, lands were often 'taken by force and incorporated into the nomads' summer grazing areas '. Other areas were bought from settled Hazara. As traders, Kuchi had ample leverage to bring local populations to their knees –

'When after a number of summers the buyer was unable to pay the ever-increasing sum and ended in bottomless debt, the nomad would first take over his livestock and later his land. This land would be leased out, in some cases to the former owner, and the nomad would thereafter receive a fixed proportion of the yearly yield. Some of the nomads became very large landowners ... In addition to the grazing grounds allotted to them they now also possessed farmlands, which gave a surplus both for consumption in their own household and for further trade ... Zala Khan Khel's economy was in an ascending spiral' (Pedersen 1994: 133-34).

For wealthier Zala Khan Khel, trade developed in Panjab and related areas of Hazarajat to the extent that livestock-rearing was secondary during King Zahir Shah's reign. A further catalyst to trade rather than migrate with stock was the loss of part of their winter pastures in Paktia through the creation of Pakistan in 1947. This also rendered the summer grazing less valuable.

Nonetheless, Kuchi did not stop visiting Panjab. Poorer Kuchi families, in particular, continued to arrive in the summer and to buy up sheep and goats to sell in Kabul for slaughter (ibid; 96). Some developed trading on a small scale and gained a steady income from the lands they had acquired and then leased back to local Hazara. Wealthier Kuchi were fewer but powerful. They arrived without stock, just to check their farm investments and to collect rents. Some Zala Khan Khel became prosperous through this activity. Some began to invest in trucks, forming a transport association (ibid; 96-97). Others focused on land acquisition and increased their holdings. Some began to buy up land even further north, with a first purchase of 240 ha in Balkh made by the Zala Khan Khel in 1956.

Pedersen records that Kuchi trading in Bamyan declined during the 1970s following the drought and competition with Government bazaars in town centres. Following the Russian invasion, some Zala Khan Khel attempted to re-enter Hazarajat in the early 1980s but were halted by armed Hazara who demanded payment for passage and the use of pastures. By 1986, Pedersen found virtually the entire Zala Khan Khel clan in exile in Pakistan, living at 12 different sites. None were then raising livestock. Former truck-owning Zala Khan Khel had brought so much wealth into Pakistan that they were able to invest in commerce and the local Peshawar property market (ibid; 132). Nonetheless, they were still living in black tents and moving between two sites in Pakistan, in a form of seasonal migration. In 1986 when Pedersen met with them, their interest in re-establishing their nomadism was high, but they feared they would be taxed upon entry in Hazarajat and that the Hazara would not acknowledge the old *firman*s of the Iron Amir, upon which their wealth had been built (ibid; 241).

Band-i-Petab pasture, Bamyan province **(Sources: Alden Wily, 2006a and 2008b)**

At an estimated 2,000 sq km Band-i-Petab is one of the largest pastures in the country. It is high at 3,300 to 4,000 m and only useable for three to four months a year. Some of the Kuchi who had been settled in northern Afghanistan were given one large pasture in the north of Band-i-Petab known as Darra Bide or 'Willow Valley'. These Kuchi are Asdar na Har or Khalili Kuchi, living in Shulgar and Balkh. By the 1970s around 50 households would move south to Darra Bide. Around 15 households moved further south into central Band-i-Petab (named Suguloc) where they encountered Yakawlang Hazara; they negotiated access to six pastures in that zone; Ashdakohar, Bandicharasma, Alitobar, Gurihol, Hamashish and Navilashka. Relations were amicable.

This was due partly to their low numbers in a vast pasture, partly to the fact that these Kuchi were (unusually) Shia Muslims like the Hazara, but mainly due to their acknowledgement of that Yakawlang Hazara owned the pasture by bringing presents and paying grazing fees to the leaders. In addition, these Kuchi at no time attempted to buy Hazara farmland in the valleys south of Band-i-Petab, removing a major thorn of contested relations. None of these Kuchi ever tried to move into the richer and lower southern third of Band-i-Petab where Yakawlang Hazara located their aylaks. The exception was a Kuchi clan which came from the east into Band-i-Petab, bringing camels. They were Shahbaz Kuchi from Jalalabad and Kandahar. Like the Khalili Kuchi "they did not disturb the local owners, paid fees for their camels and which did not compete with our sheep for the same forage, eating bushes that we collect only for fuel".

It is significant that these Kuchi are the only groups which are today permitted to enter Bamyan Province. They arrived in June 2008 from the north to Band-e-Petab seeking to access the pastures. This was agreed on the basis that they acknowledge they are not the pasture owners but seasonal users. This they have been willing to do. Leaders negotiated access with the local customary owners, who in this instance are variously three different Hazara clans (Qaum Aba, Takhana and Sadat) each owning one part of the vast Band-i-Petab Pasture. The Kuchi paid grazing fees through summer 2008 as acknowledgement of their visitor status. Relations remains amicable throughout the summer, but were soured over animal health. The Kuchi introduced animal diseases into the area, bitterly resented by the customary owning Hazara, who lost a lot of animals accordingly by the end of summer 2008. There have also been complaints that not enough ordinary Hazara belonging to the owner tribes were consulted as to whether or not these Kuchi should have been permitted right of entry.

Khamaneil pasture, Bamyan province **Sources: Alden Wily, 2006a & 2008b**

Khamaneil is an undulating plateau pasture of around 50 sq km and border in the north by another large pasture, Dasht-i-Hojur, and the north-east by the Shaidon and Shibatoo Pastures. Khamaneil is located just inside the boundary which Yakawlang District shares with Bamyan Central District to the east. The district

boundary, as is customary in Hazarajat and elsewhere in Afghanistan, is defined as a natural ridge, in this case by the summit of a long north-south ridge and along which a road ran. Although never surveyed, this was consistently marked on map as the administrative boundary. This was also based logically upon the historical boundary between Yakawlang and Bamyān Hazara tribes.

At 3,200-3,600m, Khamaneil is lower than the high aylaks of the Koh-i-Baba Range to the south and accordingly may be grazed between April and October. The terrain is plateau-like, undulating in the north, bounded by a ring of hills, and comprises a series of low hills. The valleys in-between are not deep but are fertile and contain water, making the area attractive for summer grazing.

Khamaneil is also traversed east-west by a major road, the main road from Bamyān city to Yakawlang centre. This is part of the ancient trade route from Kabul to Herat. The area has always been highly accessible and visible. Recently, some outsider stock-owners have even trucked in their animals to Khamaneil for the summer. Much history has occurred along this road including caravan raiding and tribute extortion of travellers by local Hazara. One marker is Gabre Afghan, a hill that marks the eastern boundary on the road; it was on this hilltop that a Kuchi were slaughtered by local Hazara during the Iron Amir's war against the irreligious Hazara in 1892-94.

Khamaneil as Kuchi transit pasture

Prior to 1980 the main users were Kuchi. They came from the east and south of Afghanistan, taking three or more weeks to reach Khamaneil. Local people mention Taraki, Kadar Khel and Manduzi as main Kuchi clans. For these and other Kuchi Khamaneil was a spring and summer staging post to and from their personal pastures further west and south in the province (and one even built a hotel for wealthier Kuchi to stay and eat in). Only a few families would remain throughout the summer, but at one time or another, several hundred flocks would be on the pasture, owned by those moving through and resting their animals for some days. Several non-Kuchi outsiders also had rights to the use the pasture, most notably a wealthy Sadebat family resident in Bamyān. They kept their *aylaks* (camps) quite separate from the Kuchi.

The Kuchi did not claim to own the pasture as was the case in respect of the high *aylak* areas of Koh-i-Baba or other places where they spent the crucial summer months. Villagers report that Kuchi considered Khamaneil to be public area but also acknowledged that it was 'Hazara land'. "They brought presents". They did exert considerable control over the pasture's use, reportedly limiting lorries cutting bushes and always limiting local bush-cutting. They were 'fierce and armed' and kept outsiders out. The Passeria community to the south of the pasture claims to have had fair relations with the Kuchi as "the Kuchi acknowledged our rights and let us bring our small flocks. We could not cut bushes from Khamaneil; Kuchi were very strict about that. They would chase cutters away, shouting and waving their guns. We had fewer animals then and they kept away from our farms so we had no special grievance with the Kuchi".

Replacing Kuchi with Other Outsiders

The Passeria people *have* come to hold a grievance with the eight Qaranatoo villages on the Bamyān Central side of the boundary ridge. This community eventually took the departure of Kuchi and government control over Khamaneil as the opportunity to move into the pasture; in the sense of establishing *aylaks* along its boundary ridge and into some of the Khamaneil valleys below. This gradually began from the late 1980s and accelerated with peace in 2001. They did this with the backing of a strong warlord (now a senior police officer) from the Shaidon-Qaranatoo area, and who also encouraged his own people (Shaidon) to begin occupying in summer the even larger Dasht-i-Hojur Pasture directly to the north of Khamaneil. Relations between Qaranatoo and Passeria had never been strong but this soured them further, exacerbated by incidents of violence by henchmen of the notables against the self-evidently poorer Passeria villagers. This was to an extent that some Passeria people no longer felt safe establishing camps in the pasture.

For the Passeria people one outside occupier was being replaced with another. Not only were Qaranatoo people 'taking over our traditional pastures', they were accused of being deeply involved in the over-extraction of bushes and peat for sale as fuel acknowledged as destroying Khamaneil. "This is not their land. They do not even belong to the Yakawlang Sadat tribe" argued the Passeria people. Moreover, with the backing of the warlord, "they use force to prevent our access. Our herders are terrorised".

On their part, the Qaranatoo claimed that Khamaneil had always been public land and that they have as much right as Passeria to use it. They acknowledge that only two of the eight villages of Qaranatoo used the pasture before the war, and this was in the part belonging to Kuprok. Their main grievance was with the one settlement within the pasture, a hamlet of one extended family which claimed it had been granted the right to settle in the most valuable valley of Khamaneil (the water and peat-rich Kham Abtoo) by the Taliban administration in 1996/97. They held a letter to this effect. This hamlet had also indulged in peat cutting and sale as well as establishing valley farming. Qaranatoo leaders wanted this hamlet removed, on this basis, but additionally, it was clear, because they wanted the valley for their own farming.

Meanwhile, the 1990s but especially since the ending of conflict in December 2001 had seen a steady rise in the use of Khamaneil by wealthy outsiders. This included the largest stock owner in the district, who began to bring his animals to Khamaneil in 2003, from Deh Surkh, two hours west by road. By 2005, he was using lorries to bring the cattle in, trekking the smallstock flock of around 500 animals by road. Several wealthy families from beyond Bamyan City had also begun to bring flocks. All these people took the view that as the Kuchi would not be coming back, it was their right to take their place.

Therefore all the classical ingredients of competing interests impeding resource conservation were in place in 2006 and rooted in questions of 'rights', to whom the pasture belongs, and power, who are most able to pursue their interests. A main tension was between whether the pasture should be located as a customarily-owned property or a public un-owned resource; if the former, then which community had most rights. If the latter, then how could rapidly-establishing open access be regulated? This became a main focus of the early initiative of SALEH in the area. The results would lead to acknowledgement among local Hazara that 'some' of their historical pastures are today best sustained as public pastures, but ideally owned by the district community, not the nation, and not Government.

ANNEX E

The twenty commonest rules in community based pasture management in Bamyan province (Source: Lety 2007 and Alden Wily 2008a.)

1. Only members of the community may use the pasture for grazing or shrub cutting, unless a special arrangement is made with the community such as when there is a drought and animals are dying or when only some places have water.
2. No uprooting of shrubs or grasses. They may be only cut above ground.
3. No shrub or grass may be cut within five metres of a spring or from slopes which are steep.
4. No shrub may be cut within three metres of another shrub of the same species.
5. Two to five species are usually listed as not being allowed to be used at all because they are becoming scarce through over use.
6. No cutting of bushes or grasses in flower or seed unless the seed has been collected.
7. No bushes may be sold, except to disabled persons in the village.
8. No household may carry more than x donkey loads of bushes or grasses for fuel or fodder (varies between 15 and 25).
9. No new rainfed farms may be opened on the pasture and plots on steep slopes must be abandoned.
10. Mountain alfalfa should be intercropped with wheat on rainfed fields.
11. Part of the field must be fallowed to allow bushes to grow up again (*dokash*).
12. The unfarmed spaces between rainfed plots must be five metres.
13. No person or animals may enter *aighals*; parts of the pasture CLOSED for recovery.
14. No new summer camps (*aylaks*) may be made on the pasture.
15. No lorry may enter the pasture (Khamaneil and related areas).
16. Every household must collect one bag of seeds and bring these to the Seed Officer.
17. Every person must report illegal use to the Guard or to someone on the Council.
18. Someone from the Council must be on the pasture at all times when others are there (*aylaks*). This can include the Guard (*neghaban*).
19. Every household must plant at least 20 poplar or other saplings or tree seedlings on farm every year.
20. Poor people are to be allowed to graze animals on community pastures and cut fodder like landlords.

ANNEX F

FAO/SALEH recommended principles for national pasture management (Source: The Bamyān SALEH Programme (FAO for MAIL) 2006)

1. **A community based approach to rangeland future:** All pasture is to be brought under community based pasture management (CBPM).
2. **A changing role for Government:** Government's role will formally change from de facto owner-manager to facilitator, technical adviser, regulator, supervising mediator, and monitoring watchdog of local pasture ownership and management.
3. **Removing the founding impediment to sustainable pastures: confused and contested rights:** Rangeland strategy must make ownership conflicts over pastures a key task; pastures cannot be rehabilitated without communities being sure of their rights.
4. **Government needs to make it clear it is not the owner of pasture: classes: three classes of pasture need to be provided for: privately owned pastures, community owned pastures and public pastures.** The last should be understood as belonging to district or provincial communities wherever possible.
5. **Public Pastures should be a residual category: only defined where private or community ownership cannot be satisfactorily agreed.** Even these pastures should be subject to community based management.
6. **Every pasture in Afghanistan should have a designated Custodian:** A Custodian is a lawful manager. Sometimes (in the case of Private and Community Pastures) the Custodian will be the recognised owner. In the case of Public Pastures, the Custodian will be the pasture-adjacent communities within the district where the pasture is located and which hold the strongest customary claim to the pasture.
7. **Custodianship should be recognised and formalised in a Letter of Custodianship on a case by case basis:** this should be dependent upon the community demonstrating with documented evidence that –
 - a) All disputes as to the boundary of the Pasture have been resolved and its authority over the described pasture is locally acknowledged (as signed by neighbouring communities)
 - b) It has established a working Pasture Council to manage the pasture on the community's behalf
 - c) It has devised workable Use Rules, a Protection Plan (i.e. guarding, if needed) and a Rehabilitation Plan (e.g. areas protected against any grazing or harvesting for specific periods, reseeded) endorsed by the District Rangeland Officer as viable.
8. **Rights – with Responsibility:** By agreeing to Custodianship, private owners and communities commit to bring the pasture under rehabilitated and sustainable use regulation and may lose the powers of regulating access and use should they fail to make progress.
9. **Custodians need to be properly empowered as Managers.** They must have the power to regulate access and use, to enforce the Use Rules, the power to fine offenders and the power to set aside parts of the pasture against any grazing or bush cutting.
10. **Pastures under CBPM fall into two classes although Custodial powers over both are the same:** Pastures under private or community ownership may be simply referred to as Private or Community

Pastures. Where a community is a Custodian of part or all of a Public Pasture, the area under its jurisdiction may be referred to as a Community Management Area.

11. **Obligations towards those seeking access vary by pasture class:** Owner-Custodians of Private and Community Pastures are *not* obliged to accept user requests from non-local communities who do not live immediately adjacent to the pasture. Custodians of District Pastures (i.e. Public Pastures) *are* obliged to provide transit use or summer access to those nomadic pastoralists who are able to demonstrate longstanding access of 50 years or more whether on a continuous basis or not. Nomads may apply directly to local Custodians of pastures where they have had longstanding use in the past or apply through District or Provincial authorities through procedures which will be laid out in law. Provision for appeal is also to be provided.
12. **Sometimes providing access to outsiders will not be possible:** The only condition under which access may be refused is where more than 50% of the pasture has been brought under protection against grazing and bush harvesting to allow for rehabilitation.
13. **CBPM is designed for national mass uptake:** Therefore it is low-cost, able to be self-driven by communities themselves with the help of radio, brochure and workshop guidance, and is founded entirely upon what communities can feasibly do. It cannot be made dependent upon technical innovations or costly developments like gas or oil purchase for cooking and heating in rural areas. NGOs and other agencies should be invited to facilitate to hasten replication. Guidelines should be issued as Administrative Guidelines under the upcoming Rangeland Law.

FAO/SALEH recommended legal provisions to support community based pasture management (Source: The Bamyan SALEH Programme (FAO/MAIL), December 2006.)

1. Legal provision for three classes of pasture is needed: private pastures, community pastures and public pastures.
2. Public pastures should be a *residual* category as public pastures will be vulnerable to open access problems as in the past, and adopted only where it is impossible to identify a private or community owner.
3. 'Public' needs clarification as the property of people, not government. In line with democratic devolution public pasture should refer to a pasture owned either by a provincial community or by a district community as appropriate.
4. The new government strategy that all pastures will be managed at the most local level possible should be fully entrenched in law. This includes public pastures; their management should be divested to pasture-adjacent communities, designated as lawful Custodians.
5. Government's role in pasture management should be refined as Facilitator and Monitor, assisting communities to bring pastures under sound management and retaining the power to intervene where they fail to adhere to their own management plans approved by provincial and district agricultural departments. All government powers over pastures such as in issuing Letters of Custodianship should be devolved to district or provincial levels.
6. All pasture (private, community and public) should be legally subject to conservation requirements, including but not limited to existing sanctions against sale of pasture or further conversion into farmland.
7. The procedure for recognising pastures as under local ownership and/or management should be as simple as possible, delivered by issue of a Letter of Custodianship by the District or Provincial Agriculture office. Issue should be conditional upon the Custodian having secured complete agreement as to its right to be custodian, establishment of a working Pasture Council to manage the pasture,

and declamation of Pasture Rules to limit unsustainable use. A simple action plan for rehabilitating degraded areas of the pasture should also be encouraged. The law should make it clear that issue of a Letter of Custodianship carries with it recognition of ownership where the concerned pasture is a Private or Community Pasture.

8. In line with modern governance norms, management authority must include the right of Custodians to limit uses and user by outsiders, to lay down rules and be able to legally enforce these and to have their decisions upheld by the courts when challenged.
9. Local communities must be given the opportunity to clarify their tenure and access arrangements to a pasture prior to consideration of outsider rights, including those of nomads.
10. To resolve conflicts and regulate pasture use in fair and sustainable ways, new pasture law needs to order pasture rights in these ways:
 - a) Draw clear distinction between pasture owners and users from which descend respectively the right to control and regulate the pasture and the right to use the pasture, as agreed by the owner.
 - b) The interests of nomads to use spring and summer pastures outside their winter home areas should be treated as seasonal access rights.
 - c) Winter home areas may be classified as Community Pastures owned by respective Kuchi tribes or clans as appropriate.
 - d) Local customary rights should take precedence over allocations to those pastures made in the past by Government without consultation or support of the customary owners.
 - e) First priority for access belongs to the customary owner of the pasture, whether a household or community.
 - f) Second priority for access belongs to communities living immediately adjacent to the pasture but do not claim to be its customary owner.
 - g) Third priority for access should belong to those nomads who are able to demonstrate longstanding use of a pasture prior the war.
 - h) Fourth priority for access should belong to individuals from within the district where the pasture is located but who do not live next to the pasture and whose applications would be considered on a case by case basis.
 - i) Fifth priority for access should belong to individuals from the same province.
 - j) Pasture owners and custodians are obliged to hear the requests of those seeking access but are not obliged to accept these where the pasture is shown to be able to sustain other than immediately local use.
 - k) In general all non-local use of a pasture should be avoided until such time as the owner/custodian and district administration can confirm the pasture is sufficiently rehabilitated to bear use over and above local primary and secondary user access.

Table 1 Outline of FAO/SALEH process towards community based pasture management¹³²

STAGES & Steps	ACTIVITIES	FOR EXAMPLE...
STAGE I	GETTING PREPARED	
1	Knowing the Prerequisites	No good starting if you are not planning to operate in the area for less than two years
2	Setting up the Facilitation Team	Technical skills can be brought in as needed
3	Working with Government	Get a District or Provincial Officer on the Team
4	Getting Equipped	Transport is essential, maps are very helpful
5	Choosing the Target Area	Starting on easier cases gives a quick start
STAGE II	LEARNING ENOUGH TO BEGIN	
1	Going through the Right Channels	If a Community Development Council exists, use it
2	Talking to the Right Informants	Make sure you do not work only with the rich or powerful
3	Reconnaissance	Find out just as much as you need to know to confirm this is the right place to start
4	Being Prepared for Contradictions	Know that many pastures are contested – whatever villagers first say
STAGE III	UNDERSTANDING THE PASTURE	
1	A village by village approach	Follow existing local socio-spatial arrangements
2	Introducing CBPM	Explaining what CBPM is to villagers and what the Facilitation Team can and cannot do for villagers
3	Make a Sketch Map	This can be fun and is a good start to a participatory approach
4	Ask the Right Questions	There is a lot to find out – but take your time; you don't have to learn everything in one meeting
STAGE IV	SEEING THE PASTURE ITSELF	
1	Forming a Review Team from the village	Everything is clearer when you are standing on the pasture; don't sit in the settlement
2	What to look for	Oh, they forgot to tell you that half the pasture is now farmed?
3	Helping villagers draw conclusions	Help them make a practical list of what is important
STAGE V	DECIDING WHAT TO DO NEXT	
1	Digesting findings	How conflicted is the ownership and use of the pasture?
2	Answering difficult questions	Understanding that ownership and access are two different rights with different powers
3	Deciding strategy	Helping the community to set up a Pasture Council, make Pasture Rules - or sort out conflicts over rights & boundaries first?
STAGE VI	HELPING VILLAGERS SET UP THE PASTURE MANAGEMENT SYSTEM	
1	Who should decide?	At this stage, try to involve as many adults as possible (community meeting)
2	Forming the Pasture Council	Getting down to business with a small and active group: each members should have a special job, like being Seed Officer or Rainfed Farming Officer
3	Making the Rules	Keep these realistic and enforceable by the community
4	Deciding the Protection System	Do they need a Guard on the pasture?
5	Acting to Repair the Pasture	From repairing gullies in small pastures to setting aside degraded areas against grazing or shrub cutting
6	Taking Pressure off the Pasture	Time to plant more poplars and fodder species?
7	Making a Simple Management Plan	Help the Council make an Action List for Year 1
STAGE VII	HELPING RESOLVE ACCESS & BOUNDARY CONFLICTS	
1	Deciding the Strategy	Deal with the whole complex of pastures, or just one at a time?
2	Bringing Communities Together	Large meetings or small?
3	Listening to Representatives	Let them have their say ...
4	Making a Timetable for Negotiation	Setting some targets – keep them clear and realistic
5	Establishing Ground Rules	How disputants need to behave to each other; introduce your peace building exercises here
6	Keeping Track of Local Meetings	Keeping the pressure on for resolution
7	Providing Informal Mediation	Helping out when the going gets tough
8	Moving to Formal Mediation	Bringing the Governor in
9	Learning to Let Go	Moving on if they cannot agree
STAGE VIII	ON-SITE BOUNDARY AGREEMENT	
1	Getting Prepared	Agreeing boundaries on site takes time & energy You may need to redo the peace building exercises once you are all gathered at the boundary areas
2	Boundary Guidelines	How to agree the boundary line
3	Recording Agreement	How to make sure it is properly recorded
4	Making a Map	Sketch it - or take GPS readings for later
5	Handling the Record	Keeping Agriculture and the District Governor informed
6	Reporting back to the Community	Everyone needs to know what was agreed – including women
STAGE IX	LAYING THE BASIS FOR MONITORING	
1	Deciding What Needs Monitoring & Who Should Do it	Keeping it low-tech and sustainable
2	Using the Information Collected	Have the number of donkey loads of shrubs per household been reduced?
3	Establishing Blind Transects	Is the pasture coverage and quality really improving?
4	Monitoring Social Effects	Has CBPM helped the community in other ways?
STAGE X	FACILITATING IMPLEMENTATION	
1	The Role of the Facilitation Team	To encourage, watch, help and step in as needed
2	Zoning the Pasture	For protection and use
3	Guarding the Pasture	Keeping offences down
4	Collecting Seeds	From the pasture to replant
5	Reseeding	Scattering the collected seeds – but where?
6	Dealing with Rainfed Farming	Limiting expansion, closing down too steep plots
7	Encouraging tree planting	But leaving this up to self-driven decisions
8	Trouble-shooting	Of course there are always problems: can the Facilitator help?
STAGE XI	MAPPING THE PASTURES	
1	Showing boundaries on digital maps	Make use of those GPS readings now!
2	Making sure Custodians get copies	This is their pasture after all
STAGE XII	FORMALIZING CUSTODIANSHIP	
1	Meeting the Requirements	No conflicts over ownership or rights?
2	Checking up on the Ground	Any evidence that CBPM is active?
3	Understanding the Differences	Custodianship on Public Pastures endows management control only; it does not imply ownership
4	Formalizing District Pastures	The Public pasture of the district or provincial community?
5	Issuing Letter of Custodianship	Making it official – but with conditions!
STAGE XIII	HELPING CUSTODIANS DEAL WITH PRESSURE	
1	Ordering Rights of Access	Not everyone can access every pasture
2	Nomads and their Rights	Nomads with longstanding history of access have the right to access Public Pasture
3	Reviewing Applications	The terms can be negotiated and they must follow Rules
4	Facilitating Negotiations	Helping it work
STAGE XIV	SHARING EXPERIENCES & MOVING FORWARD	
1	Bringing Custodians Together	CBPM Custodians have a lot to say to each other
2	Compiling Lessons Learned	Mistakes are always made at first – we know to understand these to learn from them
3	Documenting the Process in Useful Ways	Any funds to film successes, to record experiences?
4	Holding Local Workshops	Get 'best practice' villages to help show the way to others
5	Bringing Lessons & Progress to the National Table	The wider the experience around the country, the more can be learned and the more rooted CBPM can become

An outline of stage XIII: Helping the Pasture Council deal with outsiders

Pastures are under great pressure from growing populations and needs and competition for access is fierce. Even owners of Private Pastures experience pressures from local families to access the pasture for grazing and shrub-cutting. In general owner-custodians of Private and Community Pastures will be able to regulate access, through specification of consultation, compromise and specific Rules.

Pressures are greater and more complex in respect of Public Pastures. This Stage guides local Custodians of Public Pasture in how they may respond to pressures.

Principles

These basic principles apply, and are already embedded in *draft* national pasture law.

1. 'Outsiders' refers to any pasture user or group of users which is not a member of the household or community recognized as the lawful custodian of the pasture. This includes both communities local to the area and those who live in other districts or provinces and who may or may not be nomadic pastoralists.
2. Individual or community owners of Private Pastures and Community Pastures are *not* obliged to allow access to outsiders, should such restriction be necessary in order to bring use of the pasture down to sustainable levels.
3. Communities which are recognized as lawful Custodians Public Pastures *are* obliged to receive, consider and respond to all applications to use the pasture, whether sent to them directly or through the office of Agriculture or the District Governor.
4. Custodians of Public Pastures are obliged to give positive consideration to applications from users who are able to demonstrate or are locally acknowledged as having exercised fifty or more years of access to the pasture, whether on a continuous basis or not.
5. 'Positive consideration' means that the Custodian of a Public Pasture must do its best to permit the access requested as far as is reasonably possible without jeopardizing the condition of the pasture.

In such case, the user will be obliged –

- to use the pasture strictly in accordance with Rules as have been established by the Custodian and in no manner which may contribute to the degradation of the pasture, and
 - to not enter the pasture with animals or establish camps until such time as written permission from the Custodian has been granted, a copy of the Rules provided, read and signed by the user, and the location of any camps to be established agreed.
7. The condition of Public Pastures is often severely degraded at this time. Limitation on access will be necessary in the short to medium term in many cases.
 8. In considering applications, the Custodian should give priority to those applicants which have the longest established history of use of the pasture. Within this group, those residing directly adjacent to the pasture but who are not the recognized Custodian should have priority access, followed by nomadic pastoralists.
 9. In case there should be doubt, these principles concerning the interests of nomadic pastoralists should be noted –
 - Nomadic pastoralists may negotiate directly with owners of Private and Community Pastures and may be refused access or may reach agreement as to the terms of access on a case by case basis

- The right of nomadic pastoralists to access Public Pastures is assured in respect to those pastures where they have a history of longstanding access
- Depending upon the condition of the pasture and its adjudged carrying capacity, immediate access may be denied or modified in terms of numbers stock they are permitted to bring with them to that pasture
- Access is dependent upon agreement with the Pasture Custodian or with the DAO in consultation with the District Governor where no provisional or formalized Custodian has been identified.

10. Nomadic pastoralists or other users of longstanding may appeal against the decision of the Custodian, DAO or Governor by applying to the Provincial Officer in charge of Pastures, and who shall be obliged to call a meeting of equal numbers of representatives to consider the appeal and arrive at a final decision.

As Facilitator and working closely with both DAO and PRO –

- you will need to assist communities which have received applications from outsiders decide how to respond
- You may also be in a position to facilitate negotiations, and
- You may need to help Custodians deal with illegal entry and use.

Dealing with Illegal Entry and Use

- Illegal entry and use is where either a member of the Custodian community or an outsider breaks the Rules or enters and uses the pasture without permission of the Pasture Council.
- Most Custodians will find it relatively easy to deal with wrongdoing by their own members.
- Through discussion with elders or Councils of neighbouring communities, Custodians should also be able to establish effective precedents for dealing with members of those communities who encroach on their area. Over time this will be reciprocal as each community takes control of its own area.
- Most difficulty is likely to be experienced in regard to outsiders and particularly as affecting Public Pastures over which communities are provisional Custodians. Once custodianship is formalized and therefore has the unequivocal support of Government, problems should decline.
- Piloting shows that the commonest breaches by outsiders on Public Pastures are –
 - Cutting shrubs and grasses for sale, including transporting these by lorry
 - Bringing flocks onto the pasture without permission
 - Establishing summer camps (*aylaks*) without permission.

Where offenders fail to halt their activity, threaten force or refuse to pay fines, the Custodian needs to report this to the DAO, District Governor and if the outsider comes from another district, the PRO.

As Facilitator, you can usefully encourage these offices to take action and help them to do so as necessary, including in providing transport to those officers or the Police to inspect the damage, and actively keeping track of the case, should it be taken to the court. You may also assist the Custodian to provide the Police and the Court with the Rules and explanation of CBPM.

Piloting shows that it is important that wrongful entry and use must be addressed from the outset. Failure to successfully take action emboldens wrongful users.

ANNEX G

The proposed procedure for formalizing pasture agreements as tested by RLAP in 2006 (Source: Stanfield and Safar, 2007)

The procedures devised by the RLAP for consultations and agreement formalization at the community level is summarized as ADAMAP or -

Ask for community cooperation

Delineate the boundaries of rangeland parcels

Agreements are prepared concerning the legitimate users of the rangeland parcels.

Meet, discuss and approve the agreements and delineations

Archive the agreements and delineated images

Plan for the improvement of the rangeland parcels

Step 1: Ask the community

A two person team composed of a cadastral surveyor and a community mobilization specialist goes to the target community—that is, a village where the residents have significant livestock and use rangeland—and meets with the elders of the village. They take examples of the rangeland agreements and delineated satellite images with them, and explain the goal of their work, which is to help implement the Ministry's new policy/strategy of community based management of rangeland by providing the management tools to the villagers. These tools include:

- 1) satellite images of the rangeland areas used by village families, which the villagers will use to mark the boundaries of the different rangeland parcels used by villagers;
- 2) assistance to fill out the village agreements as to who are the legitimate users of those rangeland parcels;
- 3) cabinets and folders in which to store the agreements and delineated images.
- 4) assistance with the preparation of rangeland parcel improvement plans.

If the community agrees with this proposal, then the next steps can be undertaken. If the community leaders are not interested, then the team moves on to the next target community. The discussion of the proposal may take several visits, and may involve large numbers of people. Even people from neighbouring villages may be involved where their pastures border those of the target community. Agreement and mutual respect is absolutely necessary for proceeding to the next step. Once agreement is reached, the team should visit the rangeland areas, and take some GPS readings of visible landmarks to be able to order the proper satellite imagery.

Step 2: Delineate rangeland parcel boundaries

The drawing of the rangeland parcel boundaries requires:

--Getting of the satellite imagery of the proper scale. For very large rangeland parcels, imagery at the scale of 1:50,000 showing the topographic relief is very useful for delineation of parcel boundaries. For smaller parcels, clear imagery at the scale of 1:5,000 is preferable—such as that from the Quick bird satellite. ISAF provided the field teams with such imagery at no cost. But for a large project, arrangements must be made with ISAF well in advance, and the coordinates of the desired coverage areas provided.

--With the imagery, the team returns to the village, and walks the boundaries of the rangeland parcels with village representatives, marking the boundaries on the images using appropriate line symbols. The team at this stage should include one cadastral survey engineer with training in photo interpretation and with training and experience working with villagers on land matters, a community mobilization specialist with some training in photo interpretation, and a pasture specialist from the MAIL. If the community is of a special ethnic/linguist composition, a fourth person from that ethnic/linguist group may be added.

Step 3: Agreement

The preparation of the community rangeland agreement is the next step. A form is filled out for each parcel. See the model agreement for the community agreement in Annex 2, and the instructions for filling out that agreement in Annex 3. All of the legitimate users of each rangeland parcel for the entire year and for any use of that land (as pasture for livestock of different types, as sources of fuel and herbs, etc) must be recorded in the agreement.

Special care must be taken to include all legitimate users, including nomadic people who may use the land only during specific months of the year. To assure that these people are included in the agreement, the team should coordinate with the representatives of the General Directorate of the Kuchis who have an office in every Province.

The local mullah's, elders, cooperative directors, *Arbabs* and *Maliks* should be good sources of information about who use the different pastures, to be sure that all families who depend on the pastures get their interests recorded on the agreements.

The agreement must be signed by the users identified on the agreement, by the village elders, *Arbabs/Maliks*, and by members of the village *shura* if there is one. The boundaries must be agreed to and signed by representatives of neighbouring tribes, clans, families or villages.

Step 4: Meet and Approve

The signed agreements and the delineated images should be put on display at a prominent but secure place in the village, and a *shura* convened of all village residents and also notifying absent family members and leaders of nomadic tribes who use the pastures to gather at a specific time and place to discuss the agreements and boundaries of the rangeland parcels.

A representative of the Pasture Department will then come to the village and examine the agreements and delineated images, using a checklist of factors to verify that the work has been properly done. He will leave a signed checklist attached to each pasture agreement. If there is some problem with the formulation of the agreements or with the delineation of the images, the Pasture Specialist will present a written memo to the Village Elders describing the problem and how to resolve it.

Step 5: Archive

Only after there is general approval to the final versions of the agreements and to the delineated parcel boundaries, then two other identical agreements should be prepared for each rangeland parcel, giving a total of four identical, signed agreements for each parcel:

- One to remain in the village archive
- One to the Provincial Pasture Land Department of the MAIL
- One to the Provincial Amlak archive
- One to the Central Amlak/Cadastre in Kabul.

An exact copy of the delineated image will be prepared to be taken to Kabul to be digitized. A paper copy of the delineated image plus a digital copy of each agreement along with a digital copy of the delineated parcel image should be filed with the Central Cadastral Office Archive. Note that a final page of the model agreement is to be used in the future should the stakeholders who signed the agreement originally decide to change its terms. In that case four copies should be made and filed as for the original agreement.

Step 6: Plan Improvements to Rangelands

A rangeland improvement team will then visit the community and discuss with the managers of each rangeland parcel as shown on the agreements how they have been improving the pastures in the past and how they intend to improve them in the future.

ANNEX H

The area of Hazarajat in 1880

(Extracted from Ferdinand 2006 after Temirkhanov 1980: 37-9)

“Until the 1880s, the Hazaras were autonomous and in full control of all areas in Hazarajat. The Pashtuns had not yet found their way into these areas and the central Government in Kabul had not yet succeeded in bringing the Hazaras under its rule.

Hazarajat, which lies mostly to the west and northwest of Kabul, included, before 1880 –

Ghazni, Qallat-e Ghalzayi, areas of Balkh, Andarab and the border regions of Herat.

The north-eastern most boundary of Hazarajat lay at a Pass situated 20 km south of Mazar-e Sharif, continued southwards along the river of Dar Gaz past the forests of Boyna Qara, and onwards to Aq Kaprak, Qarah Kashan and Danda Shikan Passes, where it joined the Shorkhab and Siah Khah.

From there it stretched eastwards towards Hajar and Iurak villages, passing the Ghorband river and joining the Doab; then south again towards the Qotandar Pass and the village of Zay Mooni, where it turned westwards towards Sia Khar, and onwards Jalriz, Surkh Sang, Jau Qol and Gardan-e Divar-e Nia villages.

And finally, in a south easterly direction past the village of Nanagai Shanba, Shorkh Sang, Sar-e Khavat, Bal Qara, Shamulto and Bonan Passes reaching the village of Allah-o Akbar.

From there it stretched 26 km west of Ghazni along the foot of the mountains running along the Ghazni-Qandahar road, to the proximity of Qandahar.

The southern boundary of the Hazarajat began at Maidan, passing Qalla-e Asiah and Moqor and continuing along the Nakhorb river to Shah-e Mashhad. Then westwards through Badan Mazar, Band-e Kotal-e Tahiry, Morgahabi Charmistan, Mian Joy, Ay Kalan, Tan-e Morgh, Chakaloo, Lokorma, Band-e zarb, Bagram and Paya Koh, passing the village of Ziarat-e Jaji and continuing along the mountain ranges on the way down to Tagab Khor, through a Pass in the proximity of Zard Bed, where it turned northwards.

On the west the boundary began at Band Barmah, near Sia Lur village, stretching westwards past Tulok, Mah Gol, Polaristan, Sia Lak, Qalla, Tekman Koh, Shahinak, Janoor, Chil Chava villages up to Khair Khanak.

From there, it stretched along the Morghab river to a point 20 kms short of Bala Morghab, then through Band-e Turkistan Pass and along to the village of Bookan.

In the north, the Hazarajat included Qalla-e Wali, Char Shinia, Qalla-e Nau Dara, Tukul, Dahan Dara and Bol Chiragh, turning up northwesterly through Kawolian and Dor Day villages and up to a point 20 km south of Sari Pol, and along to the neighbourhood of Khaja Qoroom, Bal Qorom and Tanga-e Koh”.

ANNEX I

Recommended interventions by AREU for resolving the Behsud Hazara Kuchi conflict (Source: AREU, 2009.)

Immediate action for 2009

1. President must issue a law to –
 - a) Declare that no resumption of hostilities in Behsud will be tolerated
 - b) Kuchi to be allowed corridor access
 - c) No arms to be carried and those breaking the law to be arrested
 - d) Head tax on all animals to be paid by Kuchi transiting Behsud and Jalriz Valley
 - e) Hazara to be reminded that farmlands owned by Kuchi must be accessible to them
 - f) Establishing district *shuras* comprising Kuchis and Hazaras in Wardak and Bamyan Provinces
 - g) Constitutional commitment to assist Kuchi to settle to be reinforced
 - h) Kuchi land entitlements in Hazarajat to be re-examined and including possibility of reparation if cancelled
 - i) Assurance to Hazara that these are interim measures until a ruling made regarding the validity of Kuchi usufruct claims
2. Deployment of flying squads to Central Highlands
3. Donors and ISAF to be reassured that no violence as per 2006-08 will occur in 2009
4. Presidential Commission on the matter to calculate damage values resulting from the 2006-08 violence, and if former Minister found to have financed restocking of Kuchi, State to pay compensation and reparation
5. Deportation of Iranian clerics in Hazarajat if assertion regarding their presence is found to be true.

Medium term action (3 Years)

1. Distinguished Panel to be convened to decide action on firman granting pastoral use rights during Abdur Rahman's reign, with valid claims to be exercisable under livestock numbers limitations, results to be publically announced within two years
2. The role and contribution of the Kuchi pastoral economy to be calculated by Ministry of Agriculture (MAIL) with Department of Kuchi Affairs, ranging from meat, milk, skins, wool, pelts and value added including carpets and leather goods
3. PEACE project assessments of optimal summer pasture areas for Kuchi to visit to be disseminated to Kuchi
4. Kuchi choosing to remain in winter locations to be assisted with more heat tolerant species
5. Iranian experiences with locally managed agreements and enforcement to be examined.

Longer term action

1. Land to be allocated in traditional winter pasture areas or where there is uncontested space for Kuchi to those Kuchi who want to settle to do so
2. Provide settled Kuchi with significant extension support for fodder crop production
3. Develop non-flood irrigation technologies for settling Kuchi
4. Market facilitation for livestock products, and continuance of satellite imaging to advise Kuchi of where to go to find optimal summer pasturage.

Endontes

- 1 Alden Wily, 2002. It would be incorrect not to acknowledge that the consultant has been party to many of the initiatives herein described, as relating to both Hazara and Kuchi.
- 2 Alden Wily, 2003a.
- 3 Respectively Alden Wily, 2004a, 2004d and Patterson, 2004.
- 4 The Ministry of Agriculture's National Agricultural Development Framework April 2009 includes specific attention to the sedentary/nomads pasture conflict, the establishment of a special Kuchi Policy Unit and a strong commitment to community based pasture management.
- 5 Alden Wily, 2004e and 2004f.
- 6 AREU & NRC, 2007.
- 7 De Weijer, 2005b.
- 8 Alden Wily, 2005a.
- 9 These eleven included five pastures used by Kuchi during winter and which also endure dispute with settled people, such as Ang Gulan (Tapa Washer) in Helmand, Sari Dasht in Kandahar and Marwandi in Laghman Provinces; see Mehri, 2006.
- 10 Alden Wily, 2005b.
- 11 In 2006 Kuchi matters were brought under an Independent Department for Kuchi Affairs under the Office of the President.
- 12 Reported on by De Weijer, 2006a & 2006b.
- 13 Pers comm. De Weijer, May 2006.
- 14 De Weijer, 2006b.
- 15 Peace Project, 2008a, 2008b & 2008c.
- 16 At the time of final editing of this paper (June 2009) the eight day workshops have not been reported upon. However it is known from personal communication with both the Peace programme and the NGO facilitator, the Sanayee Development Organization, that good progress is being made, these ten peace builders or peace ambassadors reporting monthly to the Presidential Commission mandated to resolve the Hazara-Kuchi pasture dispute.
- 17 Lety, 2007.
- 18 Alden Wily, 2008a.
- 19 A summary of that particular Guideline is included in Annex F.
- 20 ADB, 2004, Stanfield and Safar, 2007, Stanfield et al. 2008.
- 21 For example: Dasht Gambiri and Marwandi in Laghman Province, Shiwa in Badakhshan, Dasht Shahi Souf (Faryab), Nawur (Wardak and Ghazni), Band-e-Petab (Bamyan) and Sang Gulan in Helmand.
- 22 Including nomads among Aimaq, Beluchi and Arab communities and lesser numbers among Tajik and Uzbek tribes.
- 23 De Weijer, 2007.
- 24 On Kuchi see Barfield 2004, Glatzer, 1981, 2001, Tapper 1973, 1991, Pedersen 1994, Frederiksen 1995, Ferdinand 1959, 2006, Canfield 1973, 1987 and for most up-to-date information, De Weijer, 2007.

- 25 De Weijer, 2005a.
- 26 The last comprehensive census before the war reported one million nomads (1974) and with less comprehensive data the Central Statistics Survey Report for 1979 reported 800,000 nomads. The Statistical Yearbook 2007 gives the total population of Afghanistan as 24.1 million including 1.5 million nomads or 6.4%.
- 27 De Weijer, 2005a. Also refer to Annex E in Alden Wily 2004f, which provides pasture access data from NRVA 2003. Significantly, the most constrained pasture access was to winter pastures in the south of the country.
- 28 Unspecified other reason were given by 14%.
- 29 Particularly in Wardak (6,110 households), Ghazni (1,130 households), Ghor (592 hh) and Bamyan (380 hh) (De Weijer, 2005a).
- 30 De Weijer, 2007.
- 31 FAO, 1999.
- 32 Alden Wily,2006a.
- 33 Tapper, 1973, Lee, 1996, Alden Wily, 2004d, Patterson, 2004.
- 34 Larsson, 1978, van der Zon and Sayer, 1981, Thieme (undated) but doubted by Bedunah, 2007.
- 35 Alden Wily 2006a, Lety 2007, Bedunah 2006, 2007.
- 36 Assady, 2007.
- 37 Bedunah, 2007, 2008, 2009.
- 38 Alden Wily, 2004a and 2006a.
- 39 Alden Wily 2004d.
- 40 Ferdinand 2006, Gawecki 1980, Tapper 1973, Patterson 2004.
- 41 Ferdinand 2006, after Mohammad Vol. III, 1925-26.
- 42 CSO 1972, 1978, Larsson 1978.
- 43 Van der Zon and Sayer, 1981, Bedunah 2006.
- 44 Ferdinand 1959, 2006, Pedersen 1994, Frederiksen 1995.
- 45 CSO 2007, Fitzherbert 2006.
- 46 CSO 2007.
- 47 WFP, 2003, MRRD &CSO, 2005.
- 48 Kabul grew 17% a year between 1999 and 2004 to three million people and urban growth overall still at 5% in 2004 (World Bank, 2005).
- 49 The most used fuel shrubs are Acantholimon, Acanthophyllum, Artemisia, Cousinia, Astralagus and Ephedra.
- 50 Alden Wily, 2008b, Bedunah, 2007.
- 51 Maletta, 2007.
- 52 Estimated as around 53 percent of GDP excluding poppy production, or to the annual value of US\$ 4.6 billion (MoAIL Master Plan, 2005).
- 53 Alden Wily, 2004f.
- 54 Mehri, 2006.

- 55 As reported to the Pastoralists Conference by the Ministry in November 2005.
- 56 WFP, 2003.
- 57 Male, 1982.
- 58 An excellent and up-to-date source for the changing relations of Hazara during the conflict years of 1979-2001 is provided in Ibrahim, 2009.
- 59 De Weijer, 2006a and 2006b.
- 60 Information from Gul Mohammad Kuchi as provided to the Nawur Facilitation Team in 2006.
- 61 UNAMA, 2004.
- 62 UNAMA, 2004.
- 63 UNAMA, 2004.
- 64 UNAMA, 2004.
- 65 UNAMA, 2004.
- 66 Daily Outlook, June 2007.
- 67 AFP, 31 March 2008.
- 68 Quqnoos, 14 April 2008.
- 69 Daily Outlook, April 2008.
- 70 Quqnoos, April 2008, Haidary, 2008.
- 71 UNAMA, 2008a, UNHCR, 2008.
- 72 Daily Outlook, June 24 2008.
- 73 Daily Outlook in Afghanistan Newspaper, June 22 2009, by Abbas Daiyar.
- 74 Hazara Times, July 10 2008.
- 75 UNAMA 2008a, 2008b.
- 76 AREU & NRC 2009.
- 77 A more detailed and documented history is provided in Alden Wily 2008b. Also see Dupree 1980, Gregorian 1969, Lee 1996, Tapper 1973, Mousavi 1998, Frederiksen 1995, Pedersen 1994, Ibrahim, 2009 and Ferdinand, 2006.
- 78 One of the best sources of information for the Great Game as affecting central and northern Afghanistan is Lee, 1996 who used British East India Company records of the 19th century as a main source of his researches.
- 79 Lee 1996 is a crucial historical source for these statements.
- 80 Ibrahim, 2009, covers this well, based on records of the time.
- 81 All researchers concur that religion was a critical element throughout in the suppression of the Hazara. Ibrahim, 2009 provides a provocative case for a parallel jihadi attitude to Hazara by both the Amir and Taliban a century later.
- 82 An estimated 100,000 Hazara were killed, imprisoned or fled, large numbers moving into Czarist Russia, Iran and British India – especially to Quetta where a large Hazara community remains today (Ferdinand, 2006, Ibrahim, 2009).
- 83 Meanwhile Hazara were being legally sold as slaves, upon which the Amir levied a lucrative tax. The killing of Hazara as non-believing Shia was impliedly acceptable well into the 1950s according to historians (e.g. Dupree, 1980 and Gregorian, 1969).

- 84 Mousavi, 1998 after Temirkhanov, 1980.
- 85 Under a Commission led by Mohammad Yaqub Uzbek who travelled place to place reissuing firman (Ferdinand, 2006 after Fayz Mohammad 1914/15 and Kakar, 1973).
- 86 Previously, Amir Abd' al Rahman had declared pastures in Hazarajat to be state or government property but in issuing the firman had handed over these lands as private estates to the Kuchi families.
- 87 For example, Mousavi 1998 describes the 1946 tax on animals levied in the form of cooking oil (Roghan-Katta Pav) designed to force Hazara to either sell or abandon their lands to make way for Pashtun Kuchi settlement – but abandoned after a rebellion led by Ibrahim Beg.
- 88 De Weijer, 2007.
- 89 Lee, 1996, Pedersen, 1994.
- 90 Barfield, 1981.
- 91 Ferdinand, 2006.
- 92 See Ferdinand, 1959, Pedersen, 1994 and Alden Wily, 2004a.
- 93 Poorer Kuchi also acquire grazing as the guests of the better-off (hamsaya) if they are only a few families (Barfield 1981, De Weijer, 2007).
- 94 Alden Wily, 2003a, 2008b, Stanfield and Safar, 2007.
- 95 Decree Limiting Distribution of State Owned Virgin and Barren Lands, Decree 99, issued in 2002, published in the Official Gazette on 18 June 2003.
- 96 Decree 2003 Amending Article 69 of Land Law of 2000 (Official Gazette 595).
- 97 Legal Decree for Transfer of Government Property 2003, Decree 8/1382 (2003).
- 98 Presidential Decree on Immovable Property, No. 83 of 18.8.1382 or 9 November 2003, published in the Official Gazette #816, 5 January 2004.
- 99 A more recent law enables Government to take land to resettle refugees - Decree No. 104, 2005 About Distribution of Land Plots for Purpose of Shelter to Repatriates and IDPs.
- 100 Official Gazette No. 912, dated 25 January 2007.
- 101 There is a mass of literature on pastoralists; e.g. see FAO's overview at <http://www.fao.org/docrep/005/y2647e/y2647e02.htm> and IIED's Haramata Journal on Pastoralists in Ethiopia, Cenesta and IIED on pastoralists in Iran and Wang Xiaoyi, 2007 for pastoralist issues in Inner Mongolia. For conflicts between settled people and pastoralists see for example: Ikeya and Fratkin, 2005, Egeimi et al., 2003, Affolter, 2004 and Seddon and Sumberg, 1997. Also see Alden Wily, 2005c for a strategic approach to resolving the nomad/settled peoples conflict in central Sudan.
- 102 Unfortunately, perhaps the most critical initiative – that of the Presidential Commission in 2007-09 - is a political initiative and reported lessons are not available.
- 103 As derived from PEACE project records of baseline surveys and records of workshops (PEACE passim).
- 104 As derived from De Weijer, 2006a & 2006b.
- 105 Alden Wily, 2006a, 2006b, 2007, 2008a and 2008b.
- 106 It should be noted that NRVA surveys in 2003 and 2005 imply this is the case nationally as did the winter surveys of 2002, reported on by Maletta, 2007.
- 107 This is even more common in the north, such as reported for Faryab (Alden Wily, 2004d).

- 108 In one case in the Sya Dara pilot area, claimants derived from the other side of the valley, which is considered unusual; see Lety, 2007.
- 109 See Band-e-Petab Pasture in Annex D.
- 110 Patterson, 2004, Alden Wily, 2004a.
- 111 See cases of this in Faryab Province, Alden Wily, 2004a.
- 112 The careful and long term research of Patterson, 2004 is an indispensable evidential source of the history of Shiwa pastures. Unfortunately an update on the situation after 2004 is not readily available.
- 113 See Alden Wily, 2008b for a documented case of this in respect of some Koh-i-Baba pastures in Yakawlang District.
- 114 Again, the critical resource for this is Patterson, 2004 in respect of Badakhshan's Shiwa pastures.
- 115 AREU, 2009.
- 116 HPCR, 2003, Mani, 2003, Wardak, 2004, Waldman, 2008, AREU &NRC, 2008, El Saman, 2009.
- 117 Cases in point observed in Khost, Paktika and Paktya among others, and where local people dispute the right of rich Kuchi (many with relatives or themselves selves from Middle East) settling on the ailoqs they previously used seasonally (De Weijer, 2003).
- 118 Pedersen, 1994, Ferdinand, 1959, 2006.
- 119 See AREU, 2009.
- 120 Alden Wily, 2003b.
- 121 It also goes against the evidence of economics in which landless and stockless workers for large landlords, which may number up to 25% of the rural population, are much more likely to be poorer; this was finally taken on board in the 1979 Land Reform Law.
- 122 To recap, in her survey in the IDP camp of Zhare Dasht in 2004 De Weijer found that over half Kuchi IDPs had no intention of returning to a migratory life (De Weijer, 2005). The main reason then and in a wider survey a year later was lack of livestock, followed by an interest in an alternative, settled lifestyle with other sources of income. Only 2% responded that the attitude of local people in the summer grazing areas was a reason to abandon migration.
- 123 Maletta, 2007.
- 124 Favre, 2003.
- 125 Mehri, 2005a, 2005b and 2005c, Barfield, 2004, Patterson, 2004, AREU & NRC, 2007, Stanfield et al., 2008, Alden Wily, 2008a, 2008b.
- 126 Community based pasture management in SALEH in Bamyan has shown this is possible so long as the community is properly empowered to regulate and supported in its actions.
- 127 In this regard, the fate of customary properties in agrarian states in the face of the state-to-state land allocations for biofuel and foodstuff production needs to be kept in mind. Moreover two governments have recently fallen over the last six months in consequence of public anger at the allocation of community lands to outsiders; the coup in Madagascar in March 2009 was partly driven by the allocation of 1.3 million ha of customary commons to Daewoo and the resignation of the President Garcia in Peru, as a result of resentment by indigenous peoples of allocation of their lands to investors. See Grain, 2008, von Braun & Meinzen-Dick, 2009 and Cotula et al., 2009.
- 128 There are indications that the arrangement was negotiated with a limited number of community leaders arousing discontent among ordinary shareholders of the Band-e-Petab Pasture but this has not been confirmed.

- 129 These areas refer to pasturelands beyond the confines of settlement adjacent pastures which are more or less agreed by both Hazara and Kuchi alike; it refers to public pasture lands over which Hazara communities have customary claims and around which the Hazara-Kuchi dispute is centred.
- 130 SALEH' CBPM has found that meetings of more than 20 representatives on any issue make decision-making difficult. The earlier short and aborted Nawur pilot also found that inattention to representation and too many people hindered rather than helped negotiation.
- 131 Author's note: observe that this customary Pashtun provision (but not a Hazara provision) is excluded from current draft law as too limiting as to what constitutes a Community Pasture.
- 132 The full Guidelines are available from PuspaRaj.Khanal@fao.org or Belinda.Bowling@unep.ch or lizaldenwily@gmail.com

Further information

Further technical information may be obtained from the UNEP Post-Conflict and Disaster Management Branch website: <http://www.unep.org/conflictsanddisasters/>

