

May 2014

## Enhancing security of land tenure for IDPs

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**The case of Maslakh in western Afghanistan is an example of translating Afghanistan's new IDP Policy into reality. If successful the project will ensure security of land tenure for IDPs in urban settings and set a precedent for local integration of IDPs across Afghanistan, a highly contentious and politicised issue thus far.**

Rapid urbanisation trends in Afghanistan mirror their global counterparts. IDPs in Afghanistan are also increasingly taking refuge in cities whether on a short- or longer-term basis in search of security, greater access to public services, livelihood opportunities and kinship networks or social ties. The rate of urbanisation in Afghanistan is 5% per annum, one of the highest in the world. One of the manifestations of this rapid urbanisation is the growth of informal settlements; in Kabul approximately 70% of the population is living in informal neighbourhoods.

Urban IDP families across Afghanistan live in precarious conditions. A World Bank/ UNHCR study conducted in three urban areas of Afghanistan<sup>1</sup> found that urban IDPs were more vulnerable and worse off than the non-displaced urban poor, and were particularly likely to be unemployed, to lack access to proper housing, and to be food insecure. Only one-third of those surveyed had access to electricity, adequate water supplies and sanitation facilities.

One of the issues addressed in Afghanistan's new National Policy on Internal Displacement (IDP Policy) is the Right to Adequate Housing and Access to Land (Article 7.1.3). The policy emphasises that one of the greatest obstacles facing IDPs in Afghanistan in their search for adequate housing is the lack of access to land and security of tenure – which forces IDPs to live in informal settlements where they are at risk of forced eviction and harassment. The IDP Policy enjoins the government to identify available land, make clear arrangements with the respective land owners and hosting communities, and provide emergency and transitional shelters for homeless IDPs, if necessary with assistance

from the humanitarian community. The policy urges the government to a) take measures to ensure that IDPs in informal settlements are permitted to upgrade their accommodation to meet the internationally agreed Sphere standards<sup>2</sup> for emergency shelter, b) explore community-level initiatives to lend, rent or sell land in areas where IDPs have settled and c) identify other options which would grant IDPs security of tenure including *usufruct*<sup>3</sup> schemes.

Land is highly contested in Afghanistan and land conflicts are the most prevalent type of conflict. Multiple and contested claims to land have historical roots or arise from disputes over inheritance. Population growth, the return of large numbers of refugees and illegal and/or secondary occupation of housing and land have all added to the problems. Resolving such disputes is complicated by the simultaneous operation in Afghanistan of customary law, sharia law and state law, with the last having significant omissions regarding both urban and rural land issues.

Some of the common land issues in Afghanistan include: land grabbing by powerful elites/warlords; land disputes between Kuchi nomads and settled villagers; dispute over how far 'un-owned' lands actually are un-owned; the distinction between national public property and what is considered local 'common' property; and multiple claims to land, especially those involving powerful commanders and warlords who use land as a means of political patronage. Security of tenure of high-value urban land is even more politicised and many mayors or political parties have highly polarised attitudes. Ethnicity is clearly a factor in many situations, with local authorities afraid that incoming people from other ethnic

groups may change the demographic, and hence the political, balance of the area.

### **Maslakh and other informal settlements in Herat**

Maslakh IDP settlement is situated in the suburbs of Herat City, and was the largest camp for IDPs inside Afghanistan and among the largest in the world, once home to more than 350,000 IDPs. By the beginning of 2002 the population of Maslakh was estimated to be 120,000 people. In late 2002 large-scale aid distribution, particularly of food, began to be phased out in line with the planned return process<sup>4</sup> and the camp was officially closed in 2005. Subsequently the government adopted different approaches in engaging with the residents of this settlement, sometimes allowing and at other times denying them the IDP status which was key to them having access to humanitarian aid or services.

Apart from Maslakh there are currently four other informal settlements hosting IDPs in Herat: Shaidayee, Minaret and Firqa inside the Herat city limits and Kamarkala on the outskirts. Current population data suggests that Maslakh hosts 3,648 families (17,933 people), Minaret 581 families (2,950 people) and Shaidayee 2,188 families (10,431 people). Maslakh is located 13km outside Herat city limits on land owned by the Afghanistan Land Authority (ARAZI) while Minaret and Shaidayee are located within the city limits, the former on land owned by the Ministry of Interior and the latter on municipal land. IDPs in Minaret, Shaidayee and Maslakh have all received eviction notices and over the years have lobbied to be allocated land or to be allowed to stay where they are.

The IDPs in Shaidayee even approached President Karzai who agreed to move them away from the main road to a vacant piece of land close to the mountains in Shaidayee. However, due to high-tension electricity cables in the area and lack of water the IDPs have not been able to relocate to this site. The IDPs remain extremely vulnerable, with very low incomes and very limited access to infrastructure and services. With no access to

land or durable shelter and lacking security of land tenure, they have no hope of breaking free of the cycle of exclusion and poverty.

Till early 2013 the authorities had not considered these IDPs as permanent citizens of Herat but the IDP Policy consultations seem to have brought some slight changes in attitude among the political elite who now recognise that these IDPs will not return to their places of origin. The only durable solution for them is local integration, and at last the government is showing some willingness to accept upgrading and regularisation of the Maslakh settlement – a major breakthrough.

The question arises as to how different Maslakh settlement is from other Land Allocation Scheme (LAS) sites in Afghanistan. LAS sites are areas of land divided into plots designated to be given or sold to beneficiaries (notably refugee returnees or IDPs) as specified in Presidential Decree 104. The scheme was introduced in 2005 by the government to mitigate the negative impact of land and housing scarcity for refugee returnees. The LAS sites are in various provinces and under the overall administration of the Ministry of Refugees and Repatriation (MORR). However, the scheme has been widely criticised, for a number of reasons.

In general, LAS site occupancy is fairly low and there are allegations that LAS plots have been allocated not to families who need them but to people speculating on land. Furthermore, LAS sites are all located at some distance from cities, which necessitates the provision of basic services (water, schools, clinics, etc) and livelihood opportunities; they are therefore heavily dependent on external financial support and, ultimately, unsustainable. (In Herat the LAS site, Sadat, is located on the main road to Iran over 30km to the west of Herat City with no livelihood opportunities nearby – and feels like a ghost town.) Additionally, MORR has until recently focused on refugee returnees and not IDPs for allocation of these sites, and even now IDPs are asked to apply for LAS

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IOM/Marc Petzoldt

Dismantling shelters in Maslakh IDP camp, Herat City, western Afghanistan.

sites in their places of origin rather than in the cities where they are currently living.

The fundamental challenge is to provide IDP families with security of land tenure in an economically viable and suitable location, incrementally upgrading these areas through the provision of basic services and infrastructure. Maslakh has the advantage of being located outside the developed area of Herat City but not too far from employment opportunities. Furthermore, it is sited on public/state land, thereby reducing the chances of local political opposition. In addition there is enough suitable land in Maslakh to accommodate the IDP families currently living in Minaret and Shaidayee as well. The central location of Minaret and the strategic position of Shaidayee camp along a major road are prohibiting factors for the regularisation and upgrading due to the high value of land.

Currently, a joint UN-Habitat/UNHCR project aims to respond to the urgent needs of IDP families living in Maslakh settlement through de facto formalisation of the settlement and by providing basic services (initially, water and shelter, and other facilities later) and

support for livelihood opportunities, with Sphere minimum standards as a starting point. Considering the politically sensitive nature of this issue, the agencies planned this project in close cooperation with the Governor and Municipality of Herat, the Independent Directorate of Local Governance, MoRR, the Ministry of Urban Development Affairs, the Ministry of Agriculture, Irrigation and Livestock, and the Afghanistan Land Authority. UN-Habitat has maintained discussions with both provincial and national government actors to explore possibilities of land tenure security options for Maslakh IDPs, including *usufruct*, occupancy documents, individual land titles or other kinds of land titles. It is hoped that the government will accept one of these options.

### Recommendations

In order to continue making progress towards achieving durable solutions for IDPs in Afghanistan, the following are needed – specifically for Maslakh but also more broadly:

- regular profiling surveys in informal settlements across Afghanistan to help inform government discussions around durable solutions and regularisation<sup>5</sup>

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- land tenure security plans, including details of roll-out of basic service provision
- transparent eligibility criteria established in coordination with MORR and with the Governor and the Municipality of Herat for allocation of land for the IDPs in Maslakh
- more land parcels (on suitable locations i.e. within the city limits or on the fringes of cities) to be made available for IDPs and other low-income families (in Herat and in other provinces)
- consultation with IDP inhabitants at both planning and implementation stages, for example through UN-Habitat's proposed Community Development Councils involving both men and women<sup>6</sup>
- relocation to be offered, with necessary support and incentives, as part of the policy solution package available for IDPs in informal settlements.

It is to be hoped that Maslakh can be a model for other locations in Afghanistan facing similar challenges. Most importantly this should encourage political elites and other power brokers to start considering IDPs not only as citizens but also as assets

for their communities. The structural reasons leading to displacement remain in place in Afghanistan today and therefore it is even more critical that the international community maintains its focus on durable solutions for protracted IDPs and its engagement with national and local government to achieve them.

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1. World Bank/UNHCR (May 2011) *Research study on IDPs in urban settings – Afghanistan*

<http://tinyurl.com/WB-UNHCR-Afghanistan-May2011>

2. The Sphere Handbook presents a set of common principles and universal minimum standards for the delivery of quality humanitarian response. The minimum standards cover four primary life-saving areas of humanitarian aid: water supply, sanitation and hygiene promotion; food security and nutrition; shelter, settlement and non-food items; and health action. [www.sphereproject.org/handbook/](http://www.sphereproject.org/handbook/)

3. The right of one individual to use and enjoy the property of another, provided its substance is neither impaired nor altered.

4. Displaced people in Maslakh were given until September 2004 to register for the return process, which was to end by spring 2005.

5. UN-Habitat/UNHCR (forthcoming 2014) *Local Integration of IDP families in Herat, Afghanistan: Phase 1a - Household and property survey and planning*.

6. [www.unhabitat.org/content.asp?cid=4896&catid=245&typeid=13](http://www.unhabitat.org/content.asp?cid=4896&catid=245&typeid=13)