



Refugee Documentation Centre (Ireland)
LEGAL AID BOARD

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Information on people reclaiming their land or property after returning to Afghanistan, having spent years away from the country.

A report from *Forced Migration Online* states:

“Disputes over land ownership and tenure are major sources of conflict and many returnees have found their land occupied; lacking documentation to prove their ownership, these returnees in turn occupy the land of others.” (Forced Migration Online (September 2009) *Afghanistan: "Repatriation to Afghanistan: durable solution or responsibility shifting?"*)

An *International Crisis Group* report states:

“After years of turmoil, it is extremely difficult to determine who owns what in Afghanistan. Successive governments and warlords have used land to reward their followers; religious and customary law have their own forms of land documentation; title deeds have gone missing or have been forged; and often the same land has been sold repeatedly. Multiple claims to land should therefore come as no surprise as people return.⁵⁰ Disputes are in general dealt with at the village level but returning families often have limited access to justice. In 2003, the government established a special land court to examine the property rights of returnees. This body has only had limited success partly because, in the absence of the rule of law, many of its judgments could not be enforced. District primary courts now hear land dispute cases, but local powerbrokers often influence the proceedings.⁵¹ In 2003, the Norwegian Refugee Council started offering legal advice and representation in Pakistan and Afghanistan to returning refugees and IDPs who claimed their property had been confiscated during their absence. The NRC has, however, relied almost exclusively on communities’ traditional and informal systems of justice such as jirgas (councils of elders) and shuras (councils).⁵² Although such traditional and informal community based mechanisms may resolve some disputes, they do not necessarily uphold individual or even human rights and are also patently discriminatory against women. At best, they should be regarded as only as a transitional system which should be replaced by a formal, nonpoliticised and impartial justice system.” (International Crisis Group (31 August 2009) *Afghanistan: "What Now for Refugees?"*)

A report from the *UN Security Council* states:

“In 2008, some 278,000 registered refugees had returned to Afghanistan and been assisted by UNHCR; 98.5 per cent of them returned from Pakistan. Some 10 per cent of returnees were unable to return to their place of origin due to

insecurity, socio-economic hardships and land disputes. The Afghanistan National Development Strategy sector strategy on refugee returns and internally displaced persons, launched jointly by the Government and UNHCR in November 2008, called for increased investment to support returnee reintegration over the next five years to stabilize population movements." (UN Security Council (10 March 2009) *Afghanistan: "The situation in Afghanistan and its implications for international peace and security [A/63/751?S/2009/135]"*)

A 2008 report from IRIN states:

"Hundreds of Pashtun refugees who have returned from Pakistan to Afghanistan's northeastern Takhar Province say their properties have been seized by local people and militias from other ethnic groups...

About 500 Pashtuns (Afghanistan's largest ethnic group) sheltering in dilapidated government buildings in the Khowaja Bahaudin District in Takhar said they left the area during the war against the Soviets in the 1980s.

On their return from Pakistan, the returnees claimed, they found their lands and houses seized, mostly by Uzbek militias (Uzbeks are the fourth-largest ethnic group).

Their allegations were confirmed by the Ministry of Refugees and Returnees (MoRR).

"Pashtun returnees have been denied access to their own lands and houses in Takhar Province," Shir Mohammad Etibari, the minister, told IRIN in Kabul.

Etibari said Pashtun returnees were also facing ethnicity-related resentments over resettlement in some other northern provinces where mostly Uzbek and Tajiks (the second-largest ethnic group) make up the majority." (IRIN (11 September 2008) *Afghanistan: Ethnic antagonism spurs land disputes in north*)

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This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

Sources Consulted

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Human Rights Watch
Immigration and Refugee Board of Canada
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Refugee Documentation Centre Library
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UNHCR Refworld
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Forced Migration Online