**POLICY ON UPGARDING OF INFORMAL SETTLEMENTS IN AFGHANISTAN**

**JULY 2013**

**THIS POLICY IS AIMED TO ACHIEVE IN SIX YEARS**

**Preamble**

It is widely acknowledged that significant proportion of the urban population of Afghanistan is currently residing in property which has not been formally registered or that falls outside the formally planned parts of urban areas. At a time of unprecedented urban growth, this poses a significant challenge to the authorities mandated to guide and manage urban development. As things stand, these authorities do not formally recognize informal settlements as part of the urban fabric which has resulted in a significant disconnect between the ‘formal city’ and the reality on the ground. As a consequence, despite the fact that they are home to a significant (and growing) proportion of urban inhabitants, informal settlements do not receive adequate development attention whether in the form of orderly upgrading or the provision of meaningful interventions aimed at improving living conditions.

This lack of investment in basic services has an adverse impact on the social and economic development of those inhabiting informal settlements. Although there is little accurate baseline data on urban communities, it is clear that poor sanitation and unsafe water supplies affect the wellbeing of many households, especially those in areas where the extension of basic services is ruled out due to their informal status. Although a good number of residents of these settlements are legitimate occupiers, they have no security of tenure and no means by which to regularize and register their property rights. At the same time, the existing situation deprives municipalities of substantial potential for enhancing their revenue that could be collected for provision of services in informal settlements.

Over the last decade, an erratic application of development controls, along with ambiguity in the official position with respect to upgrading of informal settlements, has exacerbated the sense of insecurity within informal settlements, even though this seems not to have prevented significant expansion in their extent in most urban centers. At the same time, small scale physical infrastructure upgrading and tenure improvement projects have been implemented in consultation with pertinent municipalities and in partnership with the resident communities, thus demonstrating the potential of incremental upgrading in certain circumstances.

Despite this experience, municipalities and other relevant government agencies continue to undertake or allow such upgrading initiatives on an ad hoc basis, without a coherent policy framework or legislation. This document aims to provide policy guidance, so that informal settlements can be properly integrated into the urban landscape, and residents realize their true potential through private investment in property and infrastructure.

According to the USAID Thematic Report on Land Dispute Resolution referenced below, almost 70%[[1]](#footnote-1) of Afghan population is living in unregistered and informal urban real estate settlement.

Considering the above mentioned percentage about the unregistered and informal settlement, it is not normally feasible to abolish them all and redesign and restructure the whole, thus, in some areas, it is highly required to undertake the upgrading schemes according to the developed upgrading policy and procedures.

Upgrading:

# CHAPTER ONE

**Purpose**

The purpose of this policy is to set forth a clearly defined set of issues and policy statements that will serve as general guidance to inform administrative and legislative measures that need to be taken by the Government to officially recognize, upgrade, and, as appropriate, regularize informal settlements. Moreover, under this policy framework, the Ministry of Urban Development Affairs, IDLG/GDMA, Kabul Municipality and other municipalities shall formulate or adjust their strategies and plans of action to tackle challenges pertaining to informal settlements.

1. **Policy Objectives**

The objectives of this policy framework are the following:

1. Enabling the upgrading of basic services in informal settlements;
2. Promote the Improvement of tenure security along the continuum of property rights principle;
3. Laying the ground for processes that would allow for adjudication and recording of rights to immovable property in informal settlements;
4. Facilitate the identification of appropriate level of planning standards in informal settlements;
5. Enable municipalities to enhance their revenue through betterment levies upon delivery of basic municipal services;
6. Facilitate regularization of informal settlements in an orderly manner;
7. Promote key stakeholders’ coordination and engagement.
8. **Policy Principles**

The underlying principles of the general guidance provided by this policy framework are the following:

1. Upgrading of informal settlements shall contribute to the integration of informal settlements into the urban fabric;
2. Upgrading programs shall promote holistic, integrated and locally appropriate development of informal settlements, with minimum or no disruption of livelihoods and existing community structures and networks;
3. Partnership between pertinent government authorities and community members is vital to ensure mobilization of local resources and the design of locally appropriate solutions.
4. **Scope of the policy**
5. This policy shall be applicable to informal settlements:
6. Where landless squatters have occupied State-owned land;
7. Where the majority of the inhabitants formally or informally (customarily) own the land;

Provided such settlements are on environmentally tenable land as certified by the Ministry of Urban Development Affairs.

1. It is essential that clear distinction be drawn between situations in which land has been grabbed by powerful interests for distribution to a specific group or sold off speculatively for profit and instances where homeless squatters have occupied State-owned land to accommodate themselves as a last resort. Informal settlements that have been on land grabbed for speculation by powerful interest shall be dealt with by separate policy and legislative framework.

**NB. Option 2 is to omit sub-provision (2). Omitting sub-provision 2 would include informal settlements inhabited by people who acquired occupancy from land grabbers. However, this may have the undesirable effect of encouraging further land grabbing. This needs to be considered prudently.**

1. Informal settlement on agriculture land shall not be upgraded for the latter is not legally allowed for settlement.
2. Tasfia (Land Right Identification) shall take place prior to any informal settlement upgrading activity.
3. Guidelines and procedures for the implementation of this policy may be developed by the relative stakeholders after the policy is approved.
4. This policy may be subject to review after each 5 years.
5. **Integrated response to problems of informal settlements**

**Issue:** Informal settlements pose a variety of challenges. Primary among these is a lack of access to basic services, tenure insecurity and exclusion from official development plans. It is therefore vital for the government to deal with the question of informal settlements in a holistic manner, by promoting an integrated approach that enables upgrading of basic services in parallel with enhancement of tenure security, while ensuring environmentally sustainable land use. Such an approach would also facilitate the integration of informal settlements in the formal urban planning process.

## CHAPTER TWO

**Policy Statement:**

Laws, regulations, administrative procedures and plans pertaining to informal settlements shall aim at upgrading of basic services, incremental improvement of tenure security, and gradual incorporation of informal settlements into urban development plans in an integrated and equitable manner.

1. **Institutional responsibilities**

**Issue:** The prevailing institutional arrangement for urban planning and management, especially with respect to informal settlements lack clarity and coordination. While moves have recently been made to clarify and re-define specific official roles and responsibilities of government agencies, there remain outstanding issues with respect to formulating policy, planning, and implementation, which remain unresolved.

**Policy Statements:**

1. **Designing upgrading programs**

Except for Kabul city, MUDA, in consultation with residents or occupants of the area selected for upgrading and the municipality within whose jurisdiction the proposed scheme is situated(or most closely contiguous) is responsible for designing upgrading measures in accordance with the spirit of this policy and any pertinent legislation.

1. **Implementing upgrading programs**

Except for Kabul city, municipalities, under the direction of GDMA, shall be responsible for the implementation upgrading projects, but may delegate the whole or any part of the implementation of such scheme to the District municipalities where the upgrading area is situated or to which it is most closely contiguous.

1. **Monitoring upgrading programs**

To ensure proper implementation of upgrading policy in targeted areas where the upgrading schemes are being implemented, MUDA, GDMA, relevant Municipalities and respected communities representative as a joined team shall monitor the upgrading activities so that to be in compliance with the relevant legislations and policies.

1. **Upgrading of basic services**

Notwithstanding the policy statements above, except for upgrading of access to water supply, projects for upgrading of basic services shall be carried out by relevant municipalities in partnership with target communities and when appropriate with private or public utility providers.

1. **Transformation**

After the upgrading programs and basic services are implemented, the informal settlements will be transformed into a new shape and the respective residents will have access to schools, clinics, parks etc and also get use of water sanitation, drainage, streets and etcetera with the support and cooperation of the relevant entities.

1. **Formulating and designing regularization schemes**

It is essential that municipalities, in partnership with informal settlement communities, formulate and implement schemes for regularization of property rights.

1. **Tenure regularization**

**Issue:** There is no procedure by which to regularize the property rights of citizens who have occupied land in informal settlements. Given the extent of such settlements within the urban landscape, it is essential that ways are found to provide some form of official recognition of informal property rights held through long, peaceful and continuous occupation of land, in order to redress inequity in land occupation in urban areas.

**Policy Statements:**

1. The principle of adverse possession as defined in this policy will be applied in accordance with the principles of Islamic jurisprudence to redress problems created by the lack of effective land use management in the country. The application of this principle to all current occupation or *de facto* ownership of residences will provide the basis to determine which land occupation or ownership is legitimate and which is not.
2. The principle of adverse possession shall not apply in cases where land has been occupied by force or where continued occupation is not in the public interest, for example, where it is environmentally unsound or unsafe to continue to occupy land.
3. In this policy document the term ‘adverse possession ‘represents a legal concept that enables a person to acquire a legal right to a land if he maintains a peaceful, open, actual and continuous possession of it, to the exclusion of the real owner and others, for a prescribed amount of time.
4. **Upgrading of basic services**

**Issue**: There is wide disparity in access to service between urban communities, which can in part be addressed by investments in upgrading of existing structures/systems, or through provisions of new services. Many of the service-poor areas lie outside the remit of the ‘master plan’ and are therefore not officially eligible for investments in upgrading.

**Policy Statements:**

1. The primary objective of urban upgrading is to address the needs of communities identified as ’service-poor’ i.e. without access to safe water, functioning drains, adequate household sanitation, electricity or where there is no reliable waste collection or pedestrian/vehicular access is difficult for residents.
2. Where upgrading is technically feasible and deemed cost-effective, all informal settlements that fall within the scope of this policy document will be deemed to be eligible for such investments.
3. **Land Use Planning**

**Issue:** There are no standards by which to incorporate informal settlements into the process of urban planning. This presents a challenge both in land use planning and in efforts to protect the physical environment.

**Policy Statements:**

1. Where appropriate and cost effective, appropriate technical standards for infrastructure provision will be developed and agreements to spatial readjustment deemed necessary for service provision be sought with community representatives of the target community.
2. Any informal settlement upgrading project must promote coordinated working relationship between the relevant municipality (and its district office), and the concerned community in relation to any appropriate planning standards that may be applicable to an informal settlement eligible for upgrading.
3. A revised or new urban planning law should consider incorporating provisions that promote appropriate and locally specific planning standards for declared regularization areas. Planning instruments must aim at preserving existing layout in unplanned areas, unless there are compelling interests that warrant planning alterations to the existing layout. Such compelling reasons would include creating adequate vehicular access to parcels, either by establishing a new road, right of way, or widening an existing road.
4. In accordance with the National Land Policy, a revised or new law should incorporate a provision that strikes a balance between promoting necessary spatial readjustment to improve access roads and the need to do so with no or minimal physical, social or livelihood disruption in the areas selected for regularization. To this effect, a revised or new urban planning law should realistically deal with enforcement of land planning control, thereby excluding unplanned areas on which a scheme of regularization is declared from the existing enforcement of land planning control provisions.
5. **Community participation**

**Issue:** Planners, engineers and municipal officials often perceive upgrading of informal settlement as mere technical and legal issue. However, relevant experience suggests that the success of implementing any upgrading scheme is to a large extent determined by the level of community participation.

**Policy Statement:**

It is vital that upgrading of informal settlement schemes address tenure security, planning and upgrading of basic services issues from the perspective of the needs of the community, while conforming to the relevant official policies and legislation. Such schemes shall allow community participation, specifically with respect to identifying and prioritizing basic upgrading needs, creating community or neighborhood land use plan, resolving land-related disputes, negotiating spatial re-arrangements, identifying and demarcating property boundaries, and determining and recording property rights.

### CHAPTER THREE

1. **Relocation**

**Issue:** Upgrading of informal settlements may involve the relocating of existing households as a last resort for compelling public policy reasons such as in instances where continued occupation of public land is environmentally unsafe or to implement appropriate planning standards as indicated in this policy document.

**Policy Statement:**

1. In cases where continued occupation of land is deemed to be against public interest, the occupants of such land will be protected from eviction until such time as the relevant authorities are able to allocate alternative land, ideallyas close as possible to their existing location.
2. Anti-eviction law will be proclaimed to protect people from arbitrary eviction or eviction without suitable relocation and resettlement options.
3. **Verification & Determination of property rights**

**Issue:** Regularization of informal property rights presupposes clarification and settlement of rights. Past experience suggest that conflicting claims over the same property are not a rare occurrence in informal settlements. Such conflicting claims must be settled through an effective and just mechanism when implementing a regularization scheme.

**Policy Statement:**

Claims of property rights will be verified and determined by the relative Tasfia (Land Right Identification) team with close collaboration of relative community regularization schemes in which the relative Tasfia team collects the required data and information and applies the prevalent legal principles and norms pertaining to proof of rights to land and the principle of adverse possession to determine whether residents legitimately occupy or own the land that they claim. If such claims of property rights may not be verified and determined by the Tasfia team and community, it shall be referred to relative court for final decision.

1. **Dispute resolution**

**Issue:** Certain types of land-related disputes are common in informal settlements, and are usually resolved through informal means, in the absence of an effective or affordable formal dispute resolution system for low-income inhabitants of informal settlements.

**Policy Statement:**

Disputes over boundaries, inheritance and other interpersonal disputes regarding rights to immovable property should be resolved by Tasfia (Land Right Identification) team with the close cooperation of community-based dispute resolution mechanism when Tasfia takes place therein. If such disputes may not be resolved by the previous, then shall be referred to the competent court for final decision.

1. **Recording of property rights**

**Issue:** Implementing regularization schemes require a suitable land records system which recognizes the need to distinguish between the formal and participatory land management processes. Such a system is essential for the collection of land records data required for upgrading and regularization schemes as well as in terms of improving the tenure security of the inhabitants of informal settlements.

**Policy Statements:**

1. Community based and simplified land recording system will be established in each local area declared for a regularization scheme. Property rights shall be registered after duly elected and authorized community representative body in each of such local area has gathered information, assessed and confirmed the legitimacy of each resident’s claim of right of occupation or ownership in accordance with the principle of adverse possession and legal principles and norms pertaining to proof of right to property. Community based land record system shall be absolutely consistent with Tasfia team record and data collection.
2. The data to be collected by the Tasfia team with close cooperation of community representative body will include identification of boundaries of each parcel of land recorded on adequate mapping, together with details of the occupier, and proof of right of ownership or alternatively proof of the occupier having met the requirements for ownership under the principle of adverse possession.
3. To ensure accessibility, accountability and transparency of the land records, it is a national policy to promote partnership between the Tasfia team of Arazi, communities and local municipal authorities in keeping and maintaining the land records. The land records kept by the Tasfia team, communities and the local municipal authorities shall be linked to each other and reflect the same data.
4. **Land taxation**

**Issue:** Past experiences in Afghanistan suggest that informal settlement upgrading schemes that were funded by donors covered the initial provision of basic services and land tenure related expenses but did not reserve funding for maintaining the upgraded services and updating land-related records. While it may not always be feasible to design an upgrading scheme that envisages maintenance costs to be recovered from levying taxes, betterment levies on individuals or group of individuals on demarcated land boundaries of an upgraded area can serve as a means to enhance the revenue base of the local municipality as well as to ensure community connection and participation to maintenance of services.

**Policy Statement:**

Pertinent government authorities shall use betterment levies and/or sanitation tax (*safayee)* concessions to encourage informal settlement dwellers to regularize their rights to land. Sanitation taxation shall primarily be used to provide finance for land development and for the provision and maintenance of local services and land records.

1. **Selection of Settlements for Regularization Schemes**

**Issue:** Upgrading programs for informal settlements should be designed and implemented in a fair, transparent and equitable manner. Criteria for the inclusion of settlements into upgrading programs can serve as a tool to achieve fairness and transparency in the design and implementation of upgrading programs on a phased basis.

**Policy Statements:**

1. It is vital that vulnerability, deficiency in service delivery, land tenure and use, existence of community organization or harmony, suitability for human habitation in terms of environmental tenability and conditions for improvement and maintenance of basic services shall be the key factors to be considered in determining criteria for selecting or prioritizing upgrading of informal settlements.
2. Informal settlements formed on informally held private land and on State-owned land occupied by needy squatters and have been in existence for a period exceeding fifteen years shall be selected as priority for implementing schemes of land tenure regularization and upgrading of basic services, in so far as the areas are deemed to be habitable.
3. MUDA, in consultation with IDLG/GDMA and Kabul Municipality, shall issue guidelines for selection and prioritization criteria for upgrading and regularization of informal settlements.

Annex:

Informal Settlement Upgrading: Selection Criteria Guidelines

In accordance, with the draft policy for regularization/upgrading of informal settlements, MUDA in consultation with IDLG/GDMA and Kabul Municipality, hereby issues the following selection and prioritization guidelines for upgrading informal settlements.

These guidelines may not be applicable in their totality by all informal settlements that are eligible for implementing upgrading and regularization schemes. In such events, the relevant municipality may weigh the relevance and trade-off of these guidelines in the context of the local reality.

1. Vulnerability consideration

Addressing the needs of settlements where the majority of the inhabitants are critically poor as evaluated by socio-economic indicators will rate high in determining priority settlements for upgrading. Settlements with undeveloped connection to urban infrastructure networks and inadequate social services making dwellers more deserving of assistance

1. Land use considerations

Informal settlements developed in areas that are earmarked for large infrastructure of city-wide interest or allocated for housing development for predetermined beneficiary group and encroached by other people will not be eligible for upgrading or tenure regularization.

1. Land Tenure consideration

Informal settlements formed on land that is *de facto* privately owned by the settlers or land belonging to the state or other public entities shall be selected prior to those formed on grabbed land which was owned by communities or individuals, which might face legal challenges and thus cause delay in implementation.

1. Environmental risk

Informal settlements located in areas that are susceptible for natural hazard such as flooding or landslides will not be included in upgrading or regularization schemes.

1. Topography of settlement

Topographical conditions may determine the technical as well as financial feasibility of upgrading the basic services of a given informal settlement. Upgrading of basic services in settlements formed on plain areas will be given priority as they are likely to be more feasible than upgrading of settlements formed on complicated mountain sides.

1. Community organization

Settlements with well-established community organizations and social networks are expected to facilitate consultations and negotiations compared to those situations where there is weak cohesion, implying more complications and potentially more disputes.

1. Proximity to trunk infrastructure:

Informal settlements located close by existing spare capacity of trunk infrastructure will be given priority since upgrading investments will be more cost effective.

Definitions

In this policy, unless the context otherwise requires: Adverse possession means the acquisition of a legal right to land, through peaceful, open, actual and continuous possession of a land, to the exclusion of the real owner and others, for a period prescribed by law. Continuum of property rights means range of land rights which occupy a continuum from complete illegality to the highest form of formal tenure.

* Informal settlements means unauthorized or unplanned settlements consisting of houses built on unlawfully or informally occupied land.
* Land grab means usurpation of land by powerful interests for distribution to a specific group or for disposing off speculatively for profit.
* Recording of property rights means recording in a register the property rights in land.
* Squatter means a person who occupies land to satisfy his shelter needs without meeting legal requirements.
* Tenure Regularization means giving formal recognition to informally held tenure.
* Tenure security means right to land held without risk of loss and for a long period of time.
* Unplanned settlement means informal settlement.
1. https://www.cimicweb.org/cmo/afg/Documents/Governance/Afghanistan\_Land\_Dispute\_Resolution. [↑](#footnote-ref-1)