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Stock-taking of lessons learned from interventions in Afghan land management and administration, 2003-2014

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The observations made in this report are those of the author, and do not represent the World Bank nor any of the agencies which implemented the pilot projects reviewed. The author is responsible for any errors which may appear.

The author has at times directly quoted from project reports without attributing the quotes in order to respect the reports' authors while not interrupting the flow of this presentation. These descriptions are not assessed for validity, except in cases where other reports present assessments, in which case the quotations are identified.

Acronyms, Terminology and Acknowledgements

Acronyms

ADB	Asian Development Bank
AGCHO	Afghan Geodesy and Cartography Head Office
AIMS	Afghanistan Information Management Systems
ALCO	Afghan Land Consulting Organization
ALRMIS	Arazi Land Records Management Information System
Arazi	Independent Afghanistan Land Authority
CAP	Community Action Plan
CBDR	Community-based Dispute Resolution
CBPM	Community Based Pasture Management
CDC	Community Development Council
CDMS	Cadastral Data Management System
CMA	Community Management Area in a Public Pasture
CPAU	Cooperation for Peace and Unity, an NGO
CRA	Cooperation for Reconstruction of Afghanistan, an NGO
DFID	United Kingdom's Department for International Development
DAO	District Agricultural Office
DLRRM	Directorate of Land Resources and Rangeland Management
DoR	Department of Rangeland, Ministry of Agriculture
DRACS	Deeds Registry Archive Conversion System
FAO	Food and Agricultural Organization, UN
GIRoA	Government Islamic Republic of Afghanistan
GIS	Geographic Information System
GCS	Government Court System
GPS	Geographic Positioning System
GRM	Government Revenue Management
Harakat	Afghan Investment Climate Facility Organization
IDP	Internally Displaced Person
IDK	Independent Department of Kuchi (Province)
IGDK	Independent General Directorate of Kuchi
IT	Information Technology
KURP	Kabul Urban Reconstruction Governance
ILS	International Land Systems
LAL	Land Acquisition Law
LARA	Land Reform in Afghanistan
LML	Land Management Law
LRMP	Land Records Modernization Project
LTERA	Land Tenure and Economic Restructuring in Afghanistan
MAIL	Ministry of Agriculture, Irrigation, and Livestock
MOJ	Ministry of Justice
NGA	National Geospatial Agency

NRC	Norwegian Refugee Council
PA	Peace Ambassador
PIA	Public Information Awareness
PTRO	Peace Training and Research Organization, an NGO
RAMP-UP	Regional Afghan Municipalities Program for Urban Populations
RLAP Project	Asian Development Bank's Rural Land Administration
SALEH	Sustainable Agricultural Livelihoods in Eastern Hazarajat
SDK	Software Development Kit
SDO	Sanayee Development Organization, an NGO
TLO	The Liaison Office, an NGO
USIP	United States Institute for Peace, Independent, Federally (US) funded organization
USAID	United States Agency for International Development

Terminology

The term “nomad” may mean one who moves seasonally and between well-defined territories but in common usage is more often understood as one who roams about. The Kuchi, Afghanistan’s largest “nomadic” group, generally fit the former description and are thus more aptly described as “transhumant”: persons whose primary livelihood activity is the seasonal movement of livestock between mountain and lowland pastures. Although Kuchi are increasingly adopting non-transhumant lifestyles or transhumant lifestyles that also include other economic activities, the term Kuchi in this study is used to mean a transhumant group¹.

Urban land administrative units

Gozar: the smallest urban land administrative unit; a gozar contains a minimum of 500 families; smallest unit of land for administrative purposes ; *gozars* are neighborhoods (UN-Habitat's *Preliminary Study of Land Tenure Related to Issues in Urban Afghanistan with Special Reference to Kabul City*, Nouchine d'Hellencourt et al., p. 9)

Municipal district (*nahiya*): An urban land administrative unit comprised of 7-45 gozars. A municipality is divided into municipal districts called *nahiya* in Dari. Kabul City has recently created several new districts to bring its total number of districts to 22.

Municipality (*shahr dari* in Dari and *sharwali* in Pashto): The urban land administrative unit that comprises the provincial center of each province. A municipality lies inside of a provincial district; provincial municipalities (*sharwali welayat*)--each province, in principle, contains one such municipality (A *Guide to the Government of Afghanistan*, Anne Evans, et al. Afghanistan Research and Evaluation Unit, 2004, p. 8)

Rural land administrative units

Village (*qarya*): The smallest rural land administrative unit ; There are approximately 35,500 villages in Afghanistan (UN-Habitat's *Preliminary Study of Land Tenure Related to Issues in Urban Afghanistan with Special Reference to Kabul City*, Nouchine d'Hellencourt et al., p. 7)

Provincial district (*woluswali*): The major rural land administrative unit. Several provincial districts comprise a province, excluding the provincial center (municipality). Some individuals refer to a provincial district as a sub-province; there are 345 *woluswali* in Afghanistan (UN-Habitat's *Preliminary Study of Land Tenure Related to Issues in Urban Afghanistan with Special Reference to Kabul City*, Nouchine d'Hellencourt et al., p. 7)

DISTINCTION BETWEEN MUNICIPAL DISTRICTS (*NAHIYA*) AND PROVINCIAL DISTRICTS (*WOLUSWALI*)

Using the term “district” in English can lead to confusion because one may be referring to municipal or provincial districts, which are different types of administrative units and have different names in Dari. Municipal Districts are called *Nahiya* while Provincial Districts are called *Woluswali*. Municipal districts, unlike provincial districts, have some limited autonomy in budget execution and in budget preparation. Municipalities obtain some of their operational budgets from revenues that they collect.

AGRICULTURAL VS. MUNICIPAL LAND

PROPERTY OFFICES: AGRICULTURAL PROPERTY OFFICE (*AMLAK*) AND MUNICIPAL PROPERTY

¹ From Deschamps and Roe, 2009, p. 8

OFFICES (*MELKIAT-HA*—plural form)

AGRICULTURAL LAND AND AMLAKS: Land that the government classifies as agricultural land has traditionally been under the administrative jurisdiction of the Ministry of Agriculture, Irrigation and Livestock (MAIL) through a General Directorate of Land Management known as AMLAK. On 31 August 2009², the Cabinet of Ministers by decision #24 followed by Decision of the Cabinet of Ministers #23, dated August 2010, merged AMLAK with the Independent Commission for the Restitution of Illegally Occupied Land, which had been created by Presidential Decree # 638 dated 22 April 2010, and ALA (created for the leasing of State lands in 2009), naming the resulting organization ARAZI³ and consolidating more than 900 AMLAK employees with 337 offices spread across all 34 provinces. These offices are located in the capital of each province and in most of the rural districts.

ARAZI was granted all the authority and the responsibilities of AMLAK, ALA, and the Independent Commission for the Restitution of Illegally Occupied Land and has a primary role in carrying out many of the directives of the Land Management Law of 2008. ARAZI was part of the Ministry of Agriculture, Irrigation and Livestock (MAIL) until by Presidential Decree, Resolution Nr. 11 dated 27 May 2013 (1392/3/6), ARAZI was announced as Afghanistan's Independent Land Authority. At the same time, the Cadastral Survey Department of the Afghanistan Geology and Cartography High Office (AGCHO) was merged with ARAZI for better coordination of land related activities and services, with all structure and service transferred to ARAZI.

ARAZI currently has responsibilities in the areas of:

1. State-Owned Land inventory and Management;
2. Land registration through the land rights identification process (Tasfiya);
3. Land Registration through Cadastral Survey Process (Land Survey);
4. Land transfer and exchange (Land distribution, primarily to other divisions of government);
5. Land Data Management and services;
6. Land leasing to the private sector; and
7. Land dispute resolution (Land case tracking).

In this paper, we at times refer to the Provincial and District offices of ARAZI as AMLAKs, since that name has so long been used for the agency responsible for agricultural land. *Amlak* offices have ownership information and maps of the area under their jurisdiction. Some *Amlaks* have maps from the cadastral survey done several decades ago. *Amlaks* also have other maps and sketches locating property boundaries. Some of these maps are at the parcel level. An important function of *Amlaks* is their maintenance of books containing lists of land parcels and their owners.

MUNICIPAL LAND AND MELKIAT-HA: Land that the government classifies as municipal land is under the administrative jurisdiction of a municipality. A municipal property office, called a "*Melkiat*" (singular form), is located in each municipal district (*nahiya*). Municipal districts *Melkiat-ha* are under the administrative jurisdiction of the *Nahiya* Presidents in the larger cities, but can also be under the direct administration of the Municipal Mayor. Like *Amlaks*, *Melkiat-ha* have maps,

² From Peikar, 2014

³ The institution is the Afghan Independent Land Authority, but is called "Arazi" which is a Turkish word for land, which derives from the Arabic "ard" and "aradi", meaning land.

some parcel sketches, and information on ownership of urban land parcels usually with buildings on them.

MINISTERIAL LAND: Many ministries other than the Ministry of Agriculture have jurisdiction over areas of land. Each of these ministries has its own *Amlak* or property office where information about land administered by a Ministry is stored.

CONFUSION REGARDING THE TERM “AMLAK:” The word “*Amlak*” has two meanings, which can cause confusion. Strictly translated, an “*Amlak*” is a property office (“*Amlak*” means property in Dari). It can refer to any property office of any Ministry, referring to the property of that Ministry or municipality. The term is often used, however, to refer specifically to the agricultural land property office in the Ministry of Agriculture, now a part of ARAZI. We use the terms ARAZI/*Amlak* and *Melkiat* when specifically referring to a agricultural land or municipal land offices respectively.

AGRICULTURAL LAND WITHIN MUNICIPAL DISTRICTS

The classification of land as “agricultural” within the municipal limits of cities, Kabul especially, also can be confusing. The population of Kabul in the 1950s was around 250,000⁴. The current population of Kabul is estimated at around 3-3.5 million⁵. Much of the land now within Kabul City boundaries was farmland in previous decades and still may still be classified by the government as agricultural land within municipal limits. In these cases people engaging in transactions involving such land would record changes in ownership with ARAZI as documented through deeds prepared by the District (*Nahiya*) Judge.

Many of Kabul City’s municipal *Nahiya*, for example, are mosaics of land classified as agricultural and municipal (or non-agricultural).

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Eng. Yasin Safar inspired and directed much of the work done in the pilots on rehabilitation of the Courts’ Archives and on building the capacities of AGCHO and the Cadastral Survey Department. He was the field director of the RLAP, author of many papers on Afghan land tenure and has served as land tenure advisor to numerous research and action project in Afghanistan.

Eng. Akram Salam has kept working on empowering people to deal with the problems of urban informal settlements and showing the way forward for future efforts to resolve these issues.

The intellectual foundations of the study derive primarily from the work of Liz Alden Wiley. Her work motivated much of the practical implementation of the pilots on community based pasture management and the other pilots analyzed in this study which adopted the community based strategies for registration of informal land rights and for the resolution of conflicts. She also greatly improved the contents of Chapter 4 on Community Based Pasture Land Management, although she is not responsible for any errors which have crept into that or any other Chapter.

⁴ According to Professor Brishna, an Afghan architect

⁵ An estimate from the Mayor of Kabul.

Yohannes Gebremedhin's work on land tenure aspects of urban informal settlement upgrading as well as his advice on the National Land Policy and the draft Policy for Urban Informal Settlement Upgrading provide another foundation for this study.

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Executive Summary of Lessons Learned from Afghan Land Administration Projects, 2003-14

The evolution of Afghanistan echoes the evolution of how its people relate to each other concerning the use and enjoyment of its land. Since the Bonn agreements in December 2001 a series of land administration projects have been launched, most since 2003 to assist Afghanistan in the administration of land resources as part of the effort to re-establish permanent governmental institutions.

The capacity of Afghanistan institutions to carry out land administration functions has been challenged by decades of conflict. Nonetheless, the energies, creativity and customs of Afghans have kept some aspects of land administration functioning in the thousands of rural communities and urban neighborhoods. Building on this local resilience, many of the land administration projects undertaken since 2004 have a “community” focus, for helping to rebuild the country’s land administration institutions from the grassroots up.

The study is an assessment of land administration projects which have had practical components -- what worked, and what did not work so well in energizing community based land administration and re-connecting government with civil society for the security and prosperity of the Afghan people.

The four land administration themes and the pilot projects which have been implemented since 2003 are:

- 1) Rehabilitation of property documents in Provincial Court archives, and their digitization;
 - LTERA (Land Titling and Economic Restructuring in Afghanistan) 2004-2009, supported by USAID
 - LARA (Land Reform in Afghanistan), 2009-2014, supported by USAID
 - ALCO (Afghan Land Consulting Organization), supported by Harakat, 2009-2010
 - Harakat, Afghanistan Investment Climate Facility Organization, 2013
- 2) Upgrading of tenure and infrastructure in informal settlements
 - UB-HABITAT Informal Settlement Upgrading, 2003-2014
 - LTERA, 2004-2009
 - LARA, 2009-2014
 - Cooperation for the Reconstruction of Afghanistan (CRA), Small Upgrading Project, 2013-2014
- 3) Community based pasture land administration
 - Rural Land Administration Project (RLAP), 2006-2007
 - Sustainable Agricultural Livelihoods in Eastern Hazarajat (SALEH) 2005-2008
- 4) Resolution of land related conflicts

- Norwegian Refugee Council “Land and Property: Challenges for Returnees and IDPs in Afghanistan” 2009.
 - ,
- Land Conflict Project, AREU, 2006-2009
- The University of California-Davis PEACE Project in cooperation with the Sayardee Development Organization, final phase on pasture land dispute resolution involving herder and village leaders and the Independent Directorate of Kuchi Affairs, supported by USAID, 2006-2012
- The USIP/Arazi sponsored pilot 2013-2015 to help strengthen Arazi’s capacities to resolve and to help avoid conflicts over land.

The following are some of the main challenges facing the four aspects of land administration dealt with in the pilot projects

1. Land Registration

LTERA, LARA and Harakat projects have physically rehabilitated 34 provincial makhzans (archives of court documents, including over one million definitive title deeds for immovable properties. These projects have also helped digitize over 500,000 definitive title deeds archived in 22 provincial makhzans

Challenges:

- a. Verify the status of the physical upgrading in 34 provincial makhzans;
- b. Verify the usability and actual use of the digital deed data bases in each Province;
- c. Assess the capacities of the Provincial Makhzans and Primary Court Judges to use the LARA provided software;
- d. Use the digitized deeds data base to identify potentially fraudulent transactions in the past and protect against the incorporation of new but fraudulent title deeds in the court archives;
- e. Introduce Cadastral Territorial Units (tax areas) into maps of rural and urban land areas and into the use of courts and other land administration entities;
- f. Regularize the preparation, archiving and querying of customary deeds, perhaps through Arazi;
- g. Actually implement changes in Judicial procedures for accepting a wider range of evidence attesting to de facto and customary property rights for the issuance of Definitive Deeds.
- h. Re-define in strong policy, law and procedures for recording with Arazi the community legitimizations of private, community, state and even tribal rights and obligations involving land (See Chapter 5 for constraints on this role for Arazi).

2. Upgrading of Urban Informal Settlements

Returning refugees and heightened rural-urban migration have overwhelmed establish urban development planning and development institutions. Families need shelter, so thousands

have built homes mostly in peri-urban areas collectively representing billions of dollars of private investment without official approval or water, waste disposal, power, transportation, education, health or security infrastructure.

Challenges:

- a) Municipalities need policies and institutional capacities for deciding which informal settlements should be upgraded and incorporated into the municipal development plans.
- b) Upgrading of infrastructure and upgrading of rights of families to their homes requires resources, often substantial resources. The UN-Habitat community based upgrading model has proved useful in several contexts, but lack of resources remain a serious constraint. How can communities control both upgrading processes and contribute resources? Where will supplementary resources come from and how will such resources be managed?
- c) Does The CRA small project approach offer useful ideas for stimulating community self help in future informal settlement upgrading and for formalization of tenure efforts even in rural areas?
- d) Can the procedures for mapping and identifying legitimate rights to informal settlement housing and businesses feed into Municipal sanitation tax collection, and thereby also inform Arazi and Judicial official documentation of these rights?

3. Community Based Pasture Land Administration/Management

The two pilot projects (SALEH and RLAP) demonstrated the viability of community based pasture land management, including the community documentation of rights to pastures, including nomadic rights, identified on maps and in agreement with neighboring communities.

The extension of these positive pilot experiences to a significant number of pastures under community based management faces a number of questions:

- a) Should the RLAP experiences be considered in the finalization of the draft Rangeland Law? RLAP procedures did not require new legislation, did not propose new organizational structures at the community level (relying on existing CDCs) and considered nomad customary users of pastures to be on an equal standing as community customary users. The lack of a legal framework supporting community based pasture management inhibited governmental official approval of community pasture land agreements.
- b) Both SALEH and RLAP relied on non-governmental funding for mobilizing communities to engage in new behaviors and relationships for the identification of rights and obligations in reference to pastures. Resources, financial and technical, will be needed for the launching of a program to encourage community based pasture management.
- c) A program for community based pasture management would require the close collaboration of pasture land specialists from the MAIL and land administration specialists from Arazi. Specialists from both institutions will need sanctioned procedures and training in these procedures as well as clear responsibilities of each institution for program implementation and for the incorporation of the program in

ongoing activities. Who will be in charge?

- d) A CBRM program will be new to communities and nomadic groups, meaning that buy-in and capacity building for both will be needed, which requires resources from program budgets and staff. Government? NGOs?
- e) A CBPM program will require fundamental changes in behaviors and relationships within and between communities, and between communities and the State. Can a program monitoring scheme be devised which captures real and lasting changes in behaviors and relationships rather than just counting outputs in order to facilitate needed changes in program activities?

4. Land Conflicts

Peacebuilding in Afghanistan requires that attention be paid to dealing with land disputes, which are contributors to instability and insecurity constraining the equitable and sustainable development of the country.

Disputes over land often fester and multiply because both the formal State mechanisms and informal community based mechanisms for land conflict resolution and enforcement have suffered from decades of conflict.

Challenges:

- The NRC inspired projects for conflict resolution involve program support for Information and Legal Assistance Centers (ILACs), run by Afghan attorneys and judges with legal education and training, many of whom have served in the government judiciary in the past. These legally experienced people have proved adept at crafting durable agreements resolving land conflicts. Does Afghanistan have the resources and the institutional home for managing these ILACs?
- The ILAC methods for conflict resolution, however, could be built into all development programs involving land. Might the High Council for Land and Water insist on this inclusion of proven methods of conflict resolution in all foreign funded projects and in all governmental development programs involving land?
- The PEACE project focused on Kuchi-community conflicts over land, with particular success claimed for the training and launching of Peace Ambassadors to fashion agreements among the parties in conflict. This effort was supported by the President, but resources came from USAID. A program which builds the capacities of the Independent Directorate for Kuchis with the encouragement of local dialogues among Kuchi and community leaders would need resources and an institutional home, perhaps the President?
- The USIP project with Arazi for the registration of resolved land conflicts underscored need for legal mandate for Arazi to undertake this function.
- As for the role of Arazi in precluding land conflicts through the formalization of customary tenures, without legal changes, the threats to communities of state confiscation of untitled land would make Arazi-Shura (traditional dispute resolution community councils) collaborations for the recording of customary rights highly problematic.

6. General Conclusions

There are some common issues which emerged in the reviewed pilots:

- a) The ways that people relate to the land and to each other are more often governed by custom than by governmental policies and laws. The pilots attempt to bridge the gap between community customs and state formalities by recognizing the resilience of customary institutions. At the same time, links between the State and communities are necessary for the future stability and prosperity of the Afghan people.
- b) Bringing change to governmental institutions and the legal framework pertaining to land is a slow process, complicated by the inertia of carrying out past mandates with priorities other than dealing with land issues;
- c) The pilot projects introduced interesting and useful ideas and procedures, but were almost uniformly unsuccessful in getting governmental buy-in, at least in the short term. Part of the reason for this failure has been the lack of governmental commitment to resolving land administration and management issues as a precondition to the positive evolution of the country;
- d) The mostly foreign funded projects have not been oriented, coordinated or monitored, neither by government nor by civil society. This inattention has precluded governmental and civil society from learning from pilot experiences, and in particular has not produced the needed changes in governmental policies, laws, procedures and institutional structure.
- e) The complicated nature of land administration projects has led their designers and funders to retreat from insisting that the projects define changes in behaviors and relationships which form the core of the national development process. Instead, project monitoring focuses solely on verifying quantitative outputs. Government and donors who agree on the need for the development of Afghanistan require more effective monitoring methods to capture constraints in time to change project procedures to better contribute to the development of the country.
- f) Two institutional decisions are of fundamental importance for future land administration projects: 1) how to define the roles of the Judiciary and Arazi in the documentation of rights to land--formal and customary--individual, community (and tribal) and state; and 2) how to protect against land grabbing and still enable the formalization of customary rights for those with legitimate customary rights.

Stock-taking of lessons learned from interventions in land management and administration, 2003-14

Chapter 1: Introduction

1. Background

Successive Afghan governments have been engaged in land administration, primarily as a means of collecting taxes and bestowing favors on tribal groups and individuals, since the late 19th century. Historically, the land administration institutions in Afghanistan were largely established to increase the revenues of government. Land inventories, land identification and settlement, land transfer and exchange between government agencies, leasing of government land, dispute resolution, and “registration” are still directed toward this end, with other justifications emerging from time to time. The Ministry of Finance and later on also Ministry of Interior have been key institutions in this process. With the PDPA government in 1978, Ministry of Agriculture’s Amlak⁶ became key for a land reallocation program (Land Reform). The Amlak was elevated to a General Directorate and retained this status within MAIL until mid-2013, when Afghanistan’s Independent Land Authority (Arazi) was established.

The evolution of Afghanistan echoes the evolution of how its people relate to each other concerning to use and enjoyment of its land. Since the Bonn agreements in December 2001 governmental reorganizations and series of land administration projects have been launched to assist Afghanistan in the administration of land, most beginning in earnest in 2003.

Afghanistan’s current National Land Policy was approved by Cabinet in September 2007. However, the main land related laws are still not aligned with the National Land Policy, nor are they supported by proper regulatory frameworks. In addition, the limited and outdated land cadaster (covering only around one-third of total land) and land registration plus the prevalence of customary ownership claims, traditional usufruct rights, and communal land rights pose substantial problems for resolving conflicts and disputes and normalizing relations among communities and the State concerning land. As a result, access to land is currently seen as one of the major constraints for private and public investments across all sectors. Agricultural development and rangeland rehabilitation as well as the orderly development of the nation’s cities are severely hampered by the lack of clear land tenure rules, customary and formal, within a coherent land administration system.

In August 2009, the Council of Ministers merged Amlak with Afghan Land Authority and the Independent Commission for the Restitution of Illegally Occupied Land, creating Arazi as a national and independent land authority. By this merger, Arazi absorbed more than 337 Amlak offices with some 900 staff across all 34 provinces. These offices are located in provincial capitals and in most rural district centers. At the same time, the Cadastral Survey Department of the Afghanistan Geology and Cartography Head Office (AGCHO) was merged with Arazi for better coordination of cadastral mapping and related activities and services, with all cadastre structure and

⁶ For a history of MAIL’s Amlak and some recommendations for its rebuilding, see David Stanfield (2007) “A Study of the General Directorate of Land Management and Amlak of the Ministry of Agriculture, Irrigation and Livestock”, Report 4 of the ADB/DfID Capacity Building for Land Policy and Administration Reform project.

service obligations transferred to Arazi.

The Afghan government and a few donors have piloted approaches to tackle the issues plaguing the land administration system, the main ones having to do with land registration, community based rangeland administration, informal settlement upgrading and land disputes.

Objective of this study:

The objective of this study is to take stock of projects since 2003 which have attempted to identify useful old and new ideas for improving land administration, that is, to identify viable approaches and consolidate lessons learned.

Methods:

The stock-taking is based on the review of existing material, reports and other documentation of the various initiatives (mainly donor funded, but in some cases also government funded and implemented) in land management and administration, including land related dispute resolution.

This stocktaking is NOT an evaluation of different initiatives, since by its very nature this study is restricted to capture what the projects set out to do and then to present the projects' self-reported accomplishments and shortcomings. The descriptions of projects in this stocktaking mostly represent what the project managers say about their projects, and do not reflect an independent assessment of the performance of any given project. This study has not involved field work or consultations to verify or to systematically cross-check data. Where independent project evaluations have been done or in instances where the project managers have reflected on project achievements, these observations have been included in the study.

Definitions:

Land Tenure

“Land tenure” refers to the relations of the land holder/user with the land. “Tenure is the relationship, whether legally or customarily defined, among people as individuals or groups, with respect to land and associated natural resources. Rules of tenure define how property rights in land are to be allocated within societies. Land tenure systems determine who can use what resources for how long, and under what conditions.” (FAO, Thesaurus, 2003)

Land Management

The term "land management" refers to the activities of the holders of land (private and public) who wish to derive some benefit from the land according to their values. For example, a farmer could manage land to produce food or fiber. A municipality might want to upgrade a city's infrastructure.

Land Administration

Land administration, following the UNECE (1996) definition and extended in the Social Tenure Domain Model (FIG, 2010), is "a system for recording land ownership, land values,

land use and other land-related data is an indispensable tool for a market economy to work properly, as well as for sustainable management of land resources." Perhaps a bit oversimplified, we can say that a land administration entity provides information to land managers and others with interests in land. Land administration includes the provision of information concerning the registered rights to land, the resolution of conflicts over land as well as land use planning, assessment of value, and provision of information about land resources.

2. Scope of Stock Taking

This stock taking of interventions in land management and administration in Afghanistan starts with identifying those interventions. This identification is done by consulting with people in government, academia, consulting entities, and donor agencies who have worked on testing concepts and methods for improving land administration, public land management, and land related dispute resolution in Afghanistan since 2004.

Proposals for improving the security of property rights through a more effective administration of land generally fall into one of two strategic visions: 1) improve the formal land registration system institutions in terms of their efficiency (cost of access in time and money) and reliability (minimizing the recording of fraudulent documents) to offer legal security of tenure to all people who engage in land transactions, or 2) involve communities in the incorporation of customary deeds and holdings with other documents or with community supported possession into an institutional structure, such as a District or Village/Goza recording office with verification, supervision and archival back up provided by Provincial offices.

Chapter 2 deals primarily with the first strategy, the improvement of the formal land registration institutions.

Chapters 3 and 4 explore aspects of the second registration strategy in the context of upgrading informal settlements and recording of customary rights to rangeland, both based on community based legitimization of customary rights. In a sense these pilots invert the hierarchy of property law often cited in legal analyses:

Constitution
Laws, Civil Code
Shar'ia Law
Customary Rules

Where property is concerned, customary law becomes of primary importance. The Civil Code specifies, 'In regard to rights of possession and ownership and other objective rights, the law of the locality shall be applicable where the property is located.' The Code further states, 'What is proved by time, until no reason to the contrary exists, shall be valid'⁷. In practice, the weakening of the Courts' abilities to apply formal and Shari'a Law has produced even greater reliance on customary law, which in community use has an advantages of being more accessible, less vulnerable to corruption and, in any case, is based in Shari'a Law.

⁷ Civil Law of Afghanistan, Articles 3 and 26. See discussion in NRC, "A Guide to Property Law in Afghanistan", 2011, Chapter 6

The pilots discussed in Chapters 3 and 4 present experiences on this “inversion” of the hierarchy of law.

Chapter 5 explores how customary law institutions of shuras/jergas interact with formal governmental institutions for resolving land conflicts.

The following interventions explored in these chapters have been identified:

Chapter 2: Land Registration--Assistance to Judiciary for administration of deeds and to Cadastral Survey for description of property boundaries for transactions, plus the registration and surveying of informal tenures in informal settlements for initial registration of immovable properties:

- Land Tenure and Economic Restructuring in Afghanistan (LTERA), had a component dealing with title deed storage and retrieval, as well as strengthening of the country’s mapping capacities, and a component testing the methods of informal tenure regularization in informal urban settlements and their effects. Supported by USAID, 2004-2009.
- Land Reform in Afghanistan (LARA) also supported by USAID 2011-2014, had a segment on strengthening capacities of the Judiciary to administer deeds, mostly introduction of deed archive administration software, continuation of LTERA Judiciary assistance in administering deeds, supported by USAID; this project also provided assistance to Cadastral Survey for developing procedures for cadastral surveying in urban areas.
- Harakat Land Records Modernization Project through ALCO continued during 2009 and 2010 the LTERA initiated rehabilitation of Provincial Court archives and the digitization of Judicial deeds.

Chapter 3: Regularization of tenure in urban informal settlements

- LTERA segment dealing with regularization of informal settlements, supported by USAID, 2004-2009.
- Land Reform in Afghanistan (LARA), the informal settlement segment, dealing with land use planning, security of possession by private holders, supported by USAID, 2011-2014.
- Informal Settlement Regularization, supported by UNHABITAT, 2003-2014
- LARA segment on strengthening land administration capacities of AGCHO, MUDA, Independent Directorate of Local Government, 2011-2014
- Cooperation for the Reconstruction of Afghanistan, Small Upgrading Project Model, 2013-2014, with support of Asian Coalition for Community Action.

Chapter 4: Community Based Pasture Land Administration:

- Afghanistan Capacity Building for Land Policy and Administration (RLAP), 2006-2007 focused on community based pasture land records administration linked to District government, Cadastral Survey, Arazi and the Judiciary, supported by ADB/DfID.
- SALEH project for community based rangeland administration including pasture land related conflict resolution, supported by FAO, 2006-2008.
- Community Based Pasture Management, supported by Solidarites, 2006-2008

Chapter 5: Land conflict management

- Land Conflict and Returning Refugees Project, supported by the Norwegian Refugee Council (NRC), 2006-2009.
- Land Dispute Resolution, supported by Norwegian Refugee Council, MAIL, and World Bank, November, 2006 through April, 2009.
- The UC Davis PEACE Project, final phase on pasture land dispute resolution involving herder and village leaders and the Independent General Directorate of Kuchi, supported by USAID July, 2006 through October, 2012.
- A project to strengthen ARAZI capacities for resolution of land conflicts and registration of outcomes, supported by U.S. Institute for Peace, 2013-2015.

The topic of gender equity is considered as a cross cutting theme considered in all of the above mentioned separate themes.

This stocktaking has produced an assembly of publications in digital form about the above mentioned projects, as well as publications on the problems which the projects attempted to address. The difficulty in finding much of this material for this stocktaking speaks to the need for Afghanistan to capture and organize land administration related studies, particularly those produced by projects which end and their publications often cease to be available.

Chapter 2: Land Registration in Afghanistan: Strategic Visions and Accomplishments 2003-2014

1. Background

Land administration, following the UNECE (1996) definition, is "a system for recording land ownership, land values, land use and other land-related data [and] is an indispensable tool for a market economy to work properly, as well as for sustainable management of land resources."

This study deals principally with one part of the Afghan land administration system, the recording of land ownership resulting from transactions which we refer to as the land registration sub-system. The District and Provincial Courts are central to this process of recording rights resulting from transactions.

This study does not include an assessment of "first registration" of privatized property rights by authorized entities, that is, the entities responsible for recognizing of private property rights by the State either to individuals who apply for a property right or to groups of beneficiaries as part of multiple property settlement projects. Arazi usually is the focus of such privatization of agricultural land, while municipalities are the focus for the privatization of urban land.

Nor does the study deal with State recognition of private property rights claimed by landholders as derived from long, pacific "adverse possession" or some other basis (which are sorted out through the "land clarification" process described in the Land Management Law of 2008).

There are relatively few such State "first registration" situations (for example 6 per month in Balkh and one in three years in Yakawlang District⁸). In any case the issuance of settlement grants and/or the decisions from land clarification processes are (or should be) recorded in the District Courts through a specific document (such as a Definitive Deed (qabalae qatae) or other official document (such as a Decision/Ruling or *Falsala Khat*) which documents the origins of State recognized private ownership of the affected parcel of land.

We do include in this Chapter a discussion of the USAID funded LARA project as one example of moving toward the formalization of title through the assembly of information on the de facto holders of properties in informal settlements to justify a Municipal issuance of Sanitation Tax booklets in the names of the land holders. Such "evidence" of a claim to the land can contribute in the future to the holder's application for recognition of ownership rights presented to the Courts.

Courts are central to formal land registration in Afghanistan

The Courts prepare, archive, and provide access to deeds documenting a variety of transactions involving land, rural and urban. The Courts are a primary institution contacted by people wishing to carry out formal transactions, in order to verify that the person selling a property is the owner who has the documented legal right to transfer ownership. The Courts are also the last institution involved in transaction process through the issuance and archiving of the appropriate deed documenting the transaction. Courts also archive other types of legal documents, as shown in Annex 2.

The Courts are not alone in documenting and validating property transactions. The Cadastral Survey produces or causes to produce geographical descriptions of land parcel boundaries, rural or

⁸ ASI report on the process of first registration of private property rights in two Afghan Districts.

urban under certain conditions (when authorized by the President). Arazi is notified when transactions involve rural land properties to verify ownership and to update its rural land ownership records for potential tax collection), while Municipal Property Offices are notified to verify ownership of urban land parcels and to facilitate urban Sanitation (property) tax collections. District and Provincial Finance Offices are notified of transactions to update their records as to who pays property taxes and to collect the transaction fee.

Together these institutions form the core of formal land registration. That system operates to prepare, archive and retrieve legal documents pertaining to property rights. Land registration should have very good accessibility for the public, including the poor and disadvantaged, and should have a very high degree of integrity. By “very good accessibility,” we mean that the time and expenses needed to get information into and out of the system are low⁹. By “very high degree of integrity” we mean that the evidence archived in the system concerning to who is the true owner of properties is legally and factually accurate¹⁰.

It is the case, however, that the proportion of transactions which occur in Afghanistan through the Courts, Arazi, Municipalities and Finance Offices is relatively small--around 10% in rural areas and maybe reaching 30% of all transactions in some urban areas. Most people document their transfers of property rights through customary deeds or other private documents witnessed by local respected leaders, and kept by the parties.

Proposals for improving the security of property rights generally fall into one of two strategic visions: 1) improve the formal land registration system institutions in terms of their efficiency (cost of access in time and money) and reliability (minimizing the recording of fraudulent documents) to offer legal security of tenure to all people who engage in land transactions, or 2) bring the customary deeds and procedures for their preparation as well as undocumented transfers into an institutional structure, such as a District or Village/Gozar recording office with verification, supervision and archival back up provided by Provincial offices.

The projects included in this study have piloted activities following one or the other of these strategic visions, and sometimes aspects of both, but with a particular bent toward community involvement in defining rights to immovable properties. The paper provides an overall assessment of the challenges facing the land registration in Afghanistan in 2003, and then outlines needed Specific Solutions for meeting these challenges. The third component of the paper is to describe the progress made in implementing these Specific Solutions since 2003 to help outline what next steps might be usefully considered.

The assessment is based on the following:

⁹ Following Wily, 2004, an essential condition for accessibility is geographic, with the principle being a “localized land administration” both in the sense of the people using the registration system should be close to the system’s offices and in the sense of local people being involved in keeping the registration system functioning. This approach also was used in the ASI 2011 project, although they had the objective of facilitating local access and more efficient business practices and did not deal with the thorny issue of recovering the integrity of the registration system, nor did the ASI consider the Judiciary’s role in the preparation and archiving of deeds of transactions, only Arazi and the Municipalities’ Land Departments.

¹⁰ The World Bank’s Land Governance Assessment Framework stresses registration system accessibility and low cost; but in Afghanistan the integrity of the information in the archives is at least of equal concern (see Independent Joint Anti-Corruption Monitoring and Evaluation Committee, 2014)

Adam Smith Institute, “Governance Accountability Program: Component 3—Analytical/Final Report”, August 2011, for the World Bank, Kabul.

Independent Joint Anti-Corruption Monitoring and Evaluation Committee, “Report of the Public Inquiry into Land Ururpation”, 2014

Peikar, Jawad, Historic and Current Institutional Developments in Land Sector, WB Paper, 2014

Stanfield, Reed, Safar, 2005, Description of Legal Procedures for Producing Legal Deeds to Record Property Transactions in Afghanistan”

Stanfield, “A Study of the General Directorate of Land Management and Amlak”, 2007

Stanfield, “A Strategic Plan for Improving Property Records Registration”, 2007

Safar and Stanfield, “Cadastral Survey in Afghanistan”, 2007

McEwen and Nolan, AREU, Land Registration in Afghanistan, 2007

Wily, 2004, “Putting Rural Land Registration in Perspective”

Wily, 2013, “Land People and the State”

Information about investments made since 2003 in the land registration sub-system comes from:

LTERA (Land Titling and Economic Restructuring in Afghanistan)

“Evaluation of the LTERA project” by ARD in 2006

“Project Completion Report 2004-2009”

“Pilot Project for Informal Settlement Upgrading”, 2005

LARA (Land Reform in Afghanistan) 2011-2014

“Mid term Evaluation Report”—2013

“Jalalabad Informal Settlements-Cadstral surveying”, 2012

“Annual Report-2013”, ARD for USAID

“Annual Report-2014”, ARD for USAID

“Final Evaluation”, Nov 2014

Justin Hall, “Legal Provisions for Activities in the Nature of Cadastral Surveys”, 2012

“Final Report, 2015”

“Cadastral Surveying and Mapping”, 2014

“Legal Aspects of Urban Planning in Afghanistan”, 2012

“End of Assignment Report” (Draft Informal Settlement Policy), 2013

“Informal Settlement Upgrading Manual”, 2013

ALCO (Afghan Land Consulting Organization),

“End of Project Status Report”, 4 Dec, 2010

“List of Reorganization, Rehabilitation and Computerization of Provincial Court Makhzans, 2003-2014”

Harakat Annual Report, 2013

1.1 Some History

Before the 1960’s the governments of Afghanistan recorded information about the ownership of land for the purpose of collecting taxes, tithing and other obligations, which were the main components of the State revenues in the early decades of the State using traditional method called professional measurement (*Masahat-e-fanni*).

The registration of documents describing transactions for purchase, sale, mortgage, patrimony, endowment, and lease of land was common in the previous eras as well, which reflects the presence of land administration agencies within the framework of the governments of those times.

During the Monarchy by His Majesty Mohammad Zahir Shah in the early 1340s (1960s), the Amlak Department was officially established within the Ministry of Finance to handle the government's interests in land. This Amlak Department was composed of a Directorate of State Properties which was to manage State owned land, plus a Directorate for Private Properties for recording the allocating of State land into private ownership. A Directorate for Land surveying was also created which was conventionally called the [directorate of] land measurers which was assigned with preparing the sketches for land surface measurement for the calculation and collection of property taxes.

In the early 1970s the Amlak Department was substantially expanded to administer the land reform program, and to update property taxation collection capacities, which involved the collection of self declared ownership rights of over 800,000 owners. Neither the Cadastral Survey nor the Judiciary was involved in this effort.

In the 1960s, a decision was made to conduct the first nation-wide Cadastral Survey, the comprehensive mapping of land parcels and the gathering of information about the probable ownership of each of the mapped parcels. This parcel mapping was to be the basis of a new system of land registration as well as an inventory of land resources for property taxation and program planning of various governmental sectors as described and regulated in the Land Survey and Statistics Law of 1965. That law also established the structure and mandate of the Cadastral Survey Directorate in the Ministry of Finance, as part of its Amlak Department, which absorbed the Directorate of Land Surveying.

From 1965 to 1978 about 30 percent of irrigated agricultural land was surveyed by Cadastral Survey of Afghanistan in almost all provinces. Most of the Cadastral Survey documents in Provincial offices were destroyed during the past 25 years. Fortunately survey maps and supporting documentation stored in the central Cadastral Archive are safe and could be used for resolving questions about property rights in irrigated agricultural land. There have been sporadic efforts at cadastral surveying since 1978, but without adding significantly to the total land covered by a cadastral survey.

The Judiciary has not recognized the importance of the Cadastral Survey for identifying properties more precisely and systematically than the traditional verbal descriptions used by Judges. Few operational linkages have been established between the Judicial deeds preparation and archiving system and the Cadastral Survey.

After 1978 and 1979 many of the landlords left the country and fled for neighboring countries. The government taxation of immovable properties¹¹ almost stopped. Most of the people left their goods and assets because of the conflict. In some of the cities and villages because of bombardment, houses and official archives of deeds were burned and the people lost their legal documents. Loss of the documents amplified conflicts among the people even within families. In some places there is no documentation that a certain property belongs to a person. For example in Kandahar Appeal Court Documents Storage over 90% of the official documents were burned in the

¹¹ Land registration is more precisely stated as immovable property registration, since land as well as buildings and other permanently attached assets, such as trees, are sometimes transacted separately.

time of Democratic Republic of Afghanistan, This past destruction of legal documents continues to be a major problem at the present time.

Although not precisely known, the rights to fewer than 10% of rural properties and fewer than 30% of urban properties are actually documented by court prepared deeds.

In summary, political and economic turmoil for the past 50 years in Afghanistan has led to the institutional fragmentation of responsibilities for the registration of property rights (Judiciary, Cadastral Survey, Amlak/Arazi, Municipalities Property Departments). This situation is further inflamed by the use of fraudulent documents or unrecorded documents of transactions, or the outright usurpation of land, publicly or privately owned previously.

Customary, religious and state laws governing land ownership are challenged, are difficult to enforce and in any event, are insufficiently developed to meet the demands of the present situation. There is a need to develop secure land rights in the future. Private and state agriculture and barren lands have been grabbed or informally occupied by powerful people in urban and rural areas. Weak rule of law and administration centralization is one of the main challenges in land registration and other aspects of land administration. Securing the land can and should play a vital role in nation building.

1.2 Land Administration Units and Terminology in Afghanistan

Terminology used in Afghanistan to describe land administration agencies and their mandates can be confusing. See the Terminology section above for some definitions.

2. Role of Primary and Appeals Courts in Deed Preparation Process

PRIMARY AND APPEALS COURTS

There is a Primary Court in most municipal and provincial districts. There is an Appeals Court in each Provincial capital city. Each Appeals Court has an archive, *Makhzan*, which is a storage area usually within the same building as the Appeals Court, for the long-term storage for all legal documents prepared by the courts within a Province.

LEGAL RECORDING OF A PROPERTY SALES AND THE PREPARATION OF NEW DEEDS BEGIN AND END IN A PRIMARY COURT

The first step in preparing a new deed is an application by the seller presented to the Judge of the Primary Court which has jurisdiction over the lands wherein the property is located. The seller applies to the Court for evidence confirming that he (she or they) is the legal owner of the property to be sold. Typically this confirmation involves getting a copy of the deed whereby the seller acquired the property or a certification from the Judge heading the Makhzan that the deed exists and that the seller has the rights to sell the property. The seller's deed should show the geographic location of the property, which the buyer should confirm through visits to the Amlak or Melkiat office. The buyer is traditionally responsible for paying a tax amounting to a percentage of the value of the property to the District Internal Revenue Dept, and another transfer tax, which is a percentage of the value of the property, both deposited to the account of the Primary Court. The

value of the property is determined by a commission with variable composition, depending on the type of property.

Once these procedures are completed in the District where the property is located, confirmed by a receipt for the payment of the tax to the account of the Primary Court, the seller and buyer return to the Judge of the Primary Court. If the Judge of the Primary Court is satisfied that the applicant has completed all the steps in the process of completing a property sale as documented by signatures on the Circular Form (provided by the Primary Court Judge to the seller when the application for a transaction is completed¹²), and has paid all the necessary taxes and fees, then the judge orders his clerk to prepare two copies of a deed of sale, transferring ownership from the seller to the buyer. The court gives one copy of the deed to the buyer and retains the court's copy of the deed in a *konda* (defined as "a book for official records") in the primary court. When a *konda* contains 100 completed legal documents, as well as other forms in addition to the deeds themselves stapled to the deeds, the Judge sends the *Konda* to the *makhzan* for storage.

Steps to be completed by the buyer and seller, beginning with a petition from the Seller to the Primary Court¹³ are summarized in Figure 1:

¹² See Annex 1 for a Circular Form used in Kandahar Courts.

¹³ Design of the diagram provided by Eng. Y. Safar. The World Bank's "Doing Business in Afghanistan, 2014" identifies another step, the confirmation of identity of parties at a Human Resources Directorate, which is probably correct for Kabul but could not be verified. In practice the steps vary for urban and rural properties, and among Provinces.

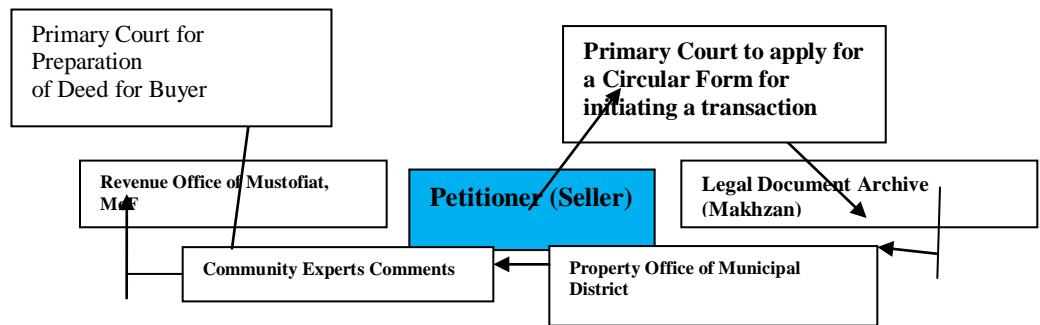


FIGURE 1: TYPICAL STEPS IN AN URBAN LAND TRANSACTION

3. Constraints and Solutions

The system for recording of rights to land and buildings in Afghanistan has suffered from serious inadequacies:

3.1 High Costs of Access to Court Archives

Rumors abound about significant bribes being common in the Courts, and particularly to get Makhzan functionaries to extract copies of property deeds from the Makhzans and to record the deeds when completed. The disorder in the archives has been a contributing factor to the abilities of functionaries to extract “special processing fees” from the general public to get access to the deeds stored in the Makhzans.

Moreover, the complexity of the transaction process also contributes to these irregularities, as does the lack of oversight of the actions of Judges and Court employees. The result is high transaction costs if the parties to a transaction want to follow the formal rules for protecting the integrity of the archives, and get court approved documents as well as the formal recording of these documents in the courts’ archives.

Specific Solutions: 1) Rehabilitate Provincial Court Makhzans by organizing the bound document volumes in safe and clean environments, and index all deeds by names of grantors and grantees, geographic place name where located, type of deed, type of property, or other aspects of the deeds as deemed useful for the Courts and the general public; 2) Computerize the indices; 3) Scan the deeds into digital archives, starting with the areas of highest property values; 4) Provide archive search-only authorization to the general public through computerized indices; 5) Introduce accounting and budgeting into Primary Courts, with technology costs of higher efficiency covered from fees.

3.2 Some Fraudulent Deeds are Getting into Makhzans

Despite the protections in formal procedures required by the Courts, the deed preparation and recording processes are vulnerable to unlawful actions resulting in the depositing of fraudulent deeds in the Makhzans.

The MEC reports that individuals who have access to the repository (Makhzan) have been bribed or pressured to remove records from the storage. MEC also reports that, in multiple cases, sheets of the registry are torn from the registration books, destroyed, or in some cases are replaced with forged pages. Another simple practice is the substitution of deeds at the repository, or changing records in the Arazi or Municipal Properties Department, to replace the names of land owners, which reportedly occurs through bribery or threat. Sources indicate that the Primary Court also frequently encounters fake documents. Court officials reported to the MEC that the authenticity of signatures, seals, and other aspects of documents are often in question. Also officials report that when powers of attorney are acquired, the holder of such a document can easily present bribed witnesses from local agencies to testify in his favor. Furthermore, forgery of inheritance succession certificates is done through courts in the provinces and districts and are difficult for the Supreme Court to detect.

For property transactions, usually three people, the Makhzan Storekeeper, the Clerk and sometimes the Chief of the Makhzan, participate in the search for the deed whereby the potential seller of a property became the owner of that property. In essence, these three people have to agree that the deed establishing the seller's ownership is sufficient proof of that ownership. It should be difficult for anyone to introduce fraudulent deeds into the Makhzan, or to modify an existing deed after it was been deposited in the archives. They would have to pay special processing fees to three people.

Somehow, in spite of these precautions, such payments appear to happen frequently.

Speeding up the procedures of documenting transactions is one objective of such payments. However, a more serious problem for the integrity of the archives is the payment of money to facilitate the introduction of fraudulent information and false documents into the archives. If the archives cannot be trusted to produce clear evidence of the rights that people hold to property, the entire purpose of the archives is compromised.

Specific Solutions: 1) One response to this problem is to introduce more oversight of the actions of the employees and managers of the Courts and Makhzans; 2) Another response would be to store the digital copies of paper deeds outside of the control of the Makhzan managers or staff, and use them for spot checking of the paper deed archives; 3) A third approach could be to use the digital archives to check the chain of title for all transactions which come to the court¹⁴; 4) A fourth could be the verification of all deeds resulting from judicial decisions of disputing claimants (a common technique used to generate a formal deed inappropriately¹⁵).

3.3 Unclear Drafting of Deeds

The problem of achieving archive integrity is not limited to the ways that the archives are administered. Deeds describe the transfer of property rights from one party to another, which must be described by putting words on paper.

¹⁴ Each digital deed file has the i.d. number of the deed of the seller, the name(s) of the seller, and the city or village name where the property is located. These data from the buyer's deed should match the same data from the seller's deed. If not, something is wrong. Unfortunately neither LTERA nor LARA tested the feasibility of this approach to tagging potentially fraudulent deeds.

¹⁵ See the Independent Joint Anti-Corruption Monitoring and Evaluation Committee's "Report of the Public Inquiry into Land Usurpation", Nov., 2014 for a description of this technique for creating fraudulent ownership deeds. A search of the digital archives could be made to tag and check these potentially fraudulent deeds. Again, neither LTERA nor LARA tested the feasibility of this idea.

Even a casual review of the recorded deeds demonstrates several problems with the integrity of the archives. First, the deeds are written very poorly by hand, or as one person remarked, very probably written by a person holding a pen between his toes, to account for the unclear writing. Second, traditionally the terminology used in the text of the deed is typically a mixture of Dari or Pashto, and Arabic. People literate in Dari or Pashto may not be able to read and readily understand the Arabic words. If the deed can be found, people must be able to read it. Making such a simple act difficult increases the likelihood that errors are not found and the intent of the parties incorrectly described.

Specific Solutions: 1) Standardize the structure of deeds; 2) Introduce word processing capacities, including printers, a trustworthy power supply into the Provincial Courts; 3) Introduce supervision and incentives for court employees to reward high quality work;

3.4 Verifying the Identity of the Parties to a Transaction Has Some Weaknesses

Another issue is the establishment of the identity of the parties to a transaction (sale, inheritance, mortgage, gifts, land patents). In the present system, such identity is established through multiple proofs of ownership:

- The names of the grantees (buyers) and grantors (sellers), their father's name, their grandfather's name, their tribe, and residences;
- The Identification Card Number of both grantee and grantor;
- The fingerprints of the grantor and grantee;
- Photographs of the grantor and grantee;
- Names, photographs, and fingerprints of two or three witnesses who testify that they know the grantor and grantee;
- Names, photographs and fingerprints of two other witnesses who testify that they know the other witnesses and vouch for their character.

This multi-layered method of establishment of identity of the parties is apparently quite strongly entrenched into the Court procedures, probably for very good reasons. The lengths to which the courts go to establish the identity of the parties indicate that accurate identity is in fact hard to establish. Part of the problem comes from the different family and ethnic customs for naming of children. Another problem comes from the ease by which a person can get an identification card. The multiple mechanisms used to establish identity is an attempt to overcome the apparent weakness of any single way to establish identity.

Moreover, if there is a dispute about identity, the fingerprints of the seller on the deed have to be verified. Other claimants to a disputed property can challenge the fingerprints on a deed by getting the Criminal Technique Office of the Ministry of Interior to compare the prints on the deed with the prints of the seller. This office can conclude that they are not identical, thereby throwing into question the validity of the entire deed. Such a decision is open to influence from one or other of the parties to the transaction. Perhaps the fear of such complications is greater than their actual frequency.

A second aspect of the identity problem is the difficulty in using name fields in the Grantor-Grantee index. Many people have the same name.

Specific Solutions: 1) Improve the capacities of the Ministry of Interior's identity establishment procedures; 2) Incorporate biometric identity techniques and technologies into Court procedures; 3) Standardize identity determination information to include name, date of birth, and place of birth for people engaging in public interactions with public agencies.

3.5 Lack of geographically based property location descriptions

The descriptions of properties in deeds, formal and customary, presently describe the boundaries of urban properties usually by reference to the names of the neighboring owners or by reference to street addresses of some sort. This method of property location description is cheap and reliable in most urban Afghan contexts, since in the formally laid out settlements when people get an allocation of land from the Municipality, they immediately put in the foundations for a surrounding wall, and construct the wall soon after. However, in situations where informal settlements have sprung up sometimes chaotically outside of the formal Municipal land allocation process, walls may be constructed and property boundaries defined on land usurped from other owners, or infringing on neighboring properties or on public rights of way, parks and required public services like schools and clinics. In such fluid situations the use of neighbor based property location descriptions may be less useful.

In rural contexts, where the ownership of cultivated fields without walls is concerned, using the "neighbors' names" method of property location description may also have disadvantages. To provide more precise property location descriptions, a cadastral survey and mapping effort was launched in the 60s and 70s. Cadastral surveying and mapping achieved approximately 30% coverage of the cultivated agricultural land of the country. Subsequent cadastral mapping has covered very limited rural areas. Due to the passage of time since the cadastral mapping was done, it is likely that these maps do not describe present boundaries or ownership, and in any case mapping contains very few of the valuable urban properties which comprise most of the properties being transacted.

While a valuable information source, the age of this mapping and its limited coverage do not provide a sufficiently accurate mechanism for describing properties, and, in any case, Judges do not use such map based information in the deeds to identify the location of properties.

Property taxation also suffers from the lack of map based property location descriptions, since the mass appraisal of properties and the administration of tax collections usually work better when based in property boundary maps.

Finally, not having properties defined graphically and linked with the legal information on the deeds precludes the use of this information in the planning and implementation of infrastructure improvement projects.

Specific Solutions: 1) Create a geographic framework of the country's administrative boundaries, down to the Municipal Districts and rural Villages which would be considered "Cadastral Units" containing many properties. 2) Convince Primary Court Judges to use these Cadastral Units to describe the geographic location of properties being transacted. 3) For properties which require a cadastral survey, locate them geographically within a CU; 4) for property subdivisions within a CU,

require cadastral surveys; 5) where justified by the value of properties and/or the desires of owners, conduct systematic cadastral surveys over an entire CU; 6) Develop legislation to do the above, including extending cadastral concepts and procedures to urbanized properties.

3.6 Misalignment of Transaction Fees and Property Taxes

The financing of government services comes at least partially a) from the Sanitation Tax (a yearly tax paid by property owners, mostly businesses in Kabul) in municipalities which varies among municipalities, but is very low and not generally collected, and b) from revenue generated from taxes and fees collected when there are transfers of properties from sellers to buyers.

Where the property tax (in municipalities called the Sanitation tax) is low and/or not efficiently collected, the government relies on the taxes and fees collected from transactions involving real estate, such as sales, etc. which in 2006 were relatively high in comparison with other countries. Government reduced these transaction taxes substantially in recent years across the board, without increasing the revenues from the Sanitation Tax, putting municipal finances in even greater deficit. Admittedly people do not like to pay yearly property taxes, and prefer to keep them low. When they sell a property however, they capture values which in some land markets are artificially high due to speculation and limited housing construction. So, there is justification for asking people to pay significant transaction taxes at the moment of sale, if they do not pay property taxes or if property taxes are very low.

With these taxes on property transactions, which are collected at the moment of transaction, there are two reactions from the general public: 1) negotiate with the assessors to set property values at much less than market values, and complete the transaction according to the formal rules; or 2) avoid the formal rules entirely and conduct the transaction as a private contract, with the option later of bringing the private contract into the formal system and pay the tax owed later. The result is an ineffective property taxation system, which generates low revenues while people expend large sums in acquiring properties. Another result is the deterioration of the Court archives, due to the large proportion of transactions which are not recorded there.

So, the Specific Solution is to reduce transaction taxes in Districts when the Districts are able to identify and collect higher annual property taxes.

3.7 Fragmentation of information about rights to land

As shown in Figure 1, the potential seller of an urban property has to involve at least four agencies: a Primary Court Judge and Clerk, Provincial Court Archive, Property Office of the Municipal District where the property is located, a set of community experts for assessing the monetary value of the property, the Revenue Office of the Min. of Finance, and a return to the Primary Court. For some types of properties other agencies may be involved, such as 1) the Microrayon Facilities office for condominium complexes to verify that no maintenance debts exist, or 2) Arazi if the land is classified as agricultural, or 3) the Cadastral Survey in case a subdivision is envisioned requiring a new parcel survey.

Some recording of rights to land and building is presently carried out by various Property (*Amlak*) offices in various agencies, the main ones being Arazi and the Municipalities. Many Ministries have Property Units within them for the management of properties, which are the responsibility of

the Ministries. While the law requires the recording of original allotments of land done by such offices, and any subsequent transactions, with the Judges and their Provincial Makhzans, the difficulties and costs of such recording and the lack of information in the general public about the importance of such recording have constrained these actions. The original allotment documentation and those subsequent transactions which the landholders bring to the attention of these offices may be in the Ministerial Property Offices, but are frequently not recorded in the Judiciary's Makhzans. Moreover, many transactions carried out in rural villages are witnessed and documented locally, and the documentations, when they exist, are not recorded in any Court Makhzan or Arazi's Property Office. Finally, there is an unknown proportion of transactions which are carried out through private contracts kept by the parties to the transactions, and not recorded in any office or registry. In Kabul city, it is estimated that 60% of the housing units and other constructions are "informal", that is, they do not meet the criteria established in law for ownership being legal so that a legal transaction is not possible. But these properties change hands like other properties, despite their uncertain legal status. So it is likely that at least 60% of the sales and inheritances which occur are not recorded anywhere other than in the homes and offices of the parties to the transactions, which are not accessible to the general public.

In essence recording of changes in rights to immovable properties has become highly fragmented. Such fragmentation makes it very confusing and costly for people to engage in transactions, and opens the door to corruption and fraudulent transactions.

Specific solution: One stop shop?

A "one-stop-shop" which contains access to the various entities involved in a transaction in a single office can encourage people to bring transactions in to be recorded is at least part of the solution to this fragmentation of recording functions. A single office could provide registered information about who holds what rights to land to the general public engaged in transactions and mortgaging of land.

Substantial political will would have to be exercised to merge the functions of several governmental land administration agencies, and would be extremely difficult to incorporate the Judicial deeds preparation and archiving function.

To computerize all land administration functions and then link the various offices through a single data base seems an impossible dream under present Afghan conditions. Since a computerized system would probably be centralized, the danger could arise of it defeating the objective of making land registration services accessible to the general public throughout the country.

A "one stop shop" strategy could, however, be a guiding principle, at least to assure compatible and interlinked data about the nature of claims to land and about the property location descriptions. In the meantime practical measures are needed to overcome at least some of the fragmentation which presently plagues the land registration system.

The LTERA Project did attempt to form a One-Stop-Shop for providing land registration services in Ghanzni. The project formed a working group to develop an integrated land registration system for the Ghazni Municipality in January 2006 with representatives of the Ghazni Municipality, *Amlak*, Cadastre, Appeals Court and the *Mustofiat* (the tax office of the Ministry of Finance); No action was taken by that group.

Conclusion: Too much has to be done to upgrade the various agencies involved in transactions before discussions about a land registration one-stop shop can begin.

Specific solutions: 1) Work with the Judiciary and Provincial/District/Municipal authorities on the elaboration of a system for recording, archiving and making accessible customary deeds at as local a level as possible. The Judicial Reform Commission in 2004 drafted legislation for creating a Customary Deed registration procedure and institution; 2) Work with the Judiciary on implementing existing law and orders for using various forms of evidence as to ownership of immovable properties, especially in settled informal settlements and other “hot spots”, resulting in the judicial issuance of Definitive Deeds or the validation of Customary Deeds.

3.8 Conclusions

In summary, the existing system for recording rights to immovable properties and for describing their locations has several positive features. Notwithstanding these positive features, the system is plagued by a significant disorder in the document archives. Organizing these paper deed archives and preserving the deeds through digital backup archives will be a major improvement in the system. However, these improvements will not be sufficient to correct the major problems of the existing system.

The recently formed High Council on Land and Water might serve to “re-engineering” the present system. The phases and funding needs of this re-engineering should be encapsulated into some sort of Immovable Property Registration Action Plan so that over a period of years the investments can be made in an additive manner, resulting the desired efficient, accessible and trustworthy property rights recording system.

4. Accomplishments since 2003 for Improving Access to Trustworthy Court Archives

4.1 LTERA

4.1.1 Rehabilitating Land Records in Provincial Court Archives

Afghanistan’s land administration infrastructure was nearly destroyed during two decades of war, destruction, and instability. As a result, its land records, including property deeds and transfer deeds, were frequently eaten by mice, burned, left to decay, or destroyed completely.

In the Provincial Makhzans, scribes and clerks help with the preparation of deeds and their archiving, as well as with searching for archived deeds needed to verify that the potential sellers of properties are documented owners. This work is done with simple technology of pencils, pens, glue, staples. People who work in the Makhzans have to be of the confidence of the Judges since they are the only people allowed to enter the archives (Figure 1).

Despite their poor physical conditions, the Judiciary has standardized the formats of deeds. The deeds are written on a two page, pre-printed form (one of 100 such pages, bound into a “kunda”—a bound volume), with a permanent copy remaining in the Kunda and a copy cut

from the form but prepared by hand at the same time as the other original. The information in the deed on the buyer, seller, land location, and witnesses is in pre-defined places on the deed—an improvement on the usual deed registry in most countries using this structure where the length of the deed is only limited by the timeless prose of the preparing attorney or notary.

Figure 1: Scribe Examining a Definitive Title Deed



Once the two originals of the deed are prepared, usually in a Primary (District) Court, a clerk enters the names of the grantor (seller), grantee (buyer), date of transaction, type of deed, and other information from the deed into a log book, one line for each deed. This index is used to locate the deed when needed in the future. There is no “tract” index, that is, no defined geographic area within which the property being transacted is located which would help locate deeds when only the approximate location is known, or when the name of the owner is known but not the date when that owner was the grantee in a previous deed.

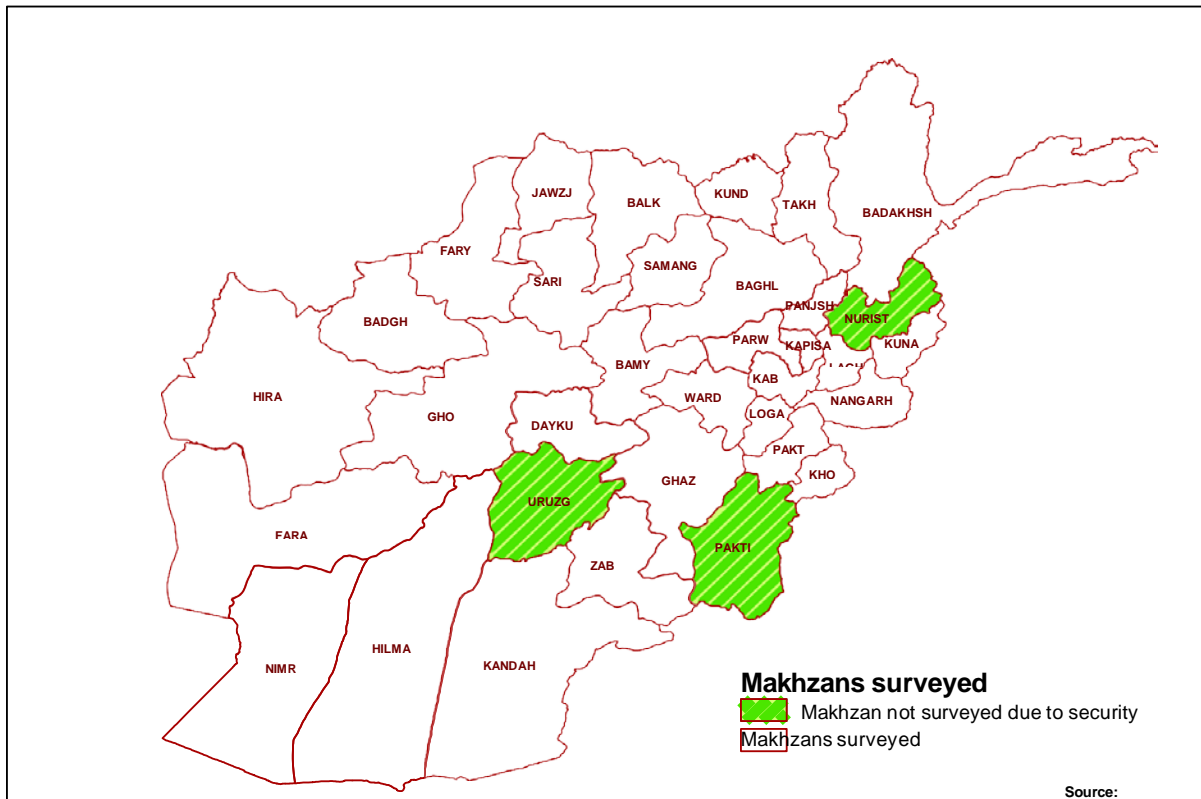
It was obvious when LTERA began that this system could be made to work better almost immediately, by organizing the Kundas by date, in accessible metal cabinets, repairing the torn pages of the deeds, and re-attaching extra pages where they have been torn off. This is the work of “rehabilitation”.

But the archives are vulnerable to fire, rodents, deterioration of paper volumes with age, and the disorder resulting from decades of chaos which have affected the society in general, and has seeped into the very resilient Judicial archives. To deal with these challenges, a plan for creating digital archives was launched.

LTERA proposed to the Judiciary that the Makhzans be physically rehabilitated, starting with the Kabul Provincial Makhzan, a task first undertaken personally by Eng. Yasin Safar in 2002-2004 with the support of the US Embassy through a contract with the consulting firm Ronco. Eng. Safar subsequently worked with LTERA for a period of time, and he convinced the Judges that a group of young people hired by a foreign company could be trusted to do the same work that he had started in previous years mostly on his own.

In late 2004, the LTERA project began refurbishing the *Makhzans* (provincial court archivess). In 2006 with the methodology for rehabilitation tested in the Kabul Makhzan and with the support of the Supreme Court, LTERA sent Makhzan assessment teams to each Province to determine the conditions of the Makhzans in each Province, so that a workplan could be prepared for the needs to rehabilitate each Makhzan. In 2006 there were just three provinces (see Figure 2) which the project managers and the Court advised against sending teams for security reasons: Nuristan, Uruzgan and Paktika.

Figure 2: Makhzans Surveyed in 2006 to Determine Conditions



As of September 29, 2009, reorganization teams in face masks and gloves had cleaned, restored and reorganized close to seven million legal documents of which 1,077,000 were definitive transfer deeds (title deeds). See Figure 2 for the Provinces affected by this LTERA work.

LTERA provided metal storage cabinets to courts in 21 Provincial Makhzans to preserve the documents. The locking metal cabinets in the *Makhzans* contain restored bound volumes of documents, or *kondas*, that have been reorganized to provide easy access for court officials and the public.

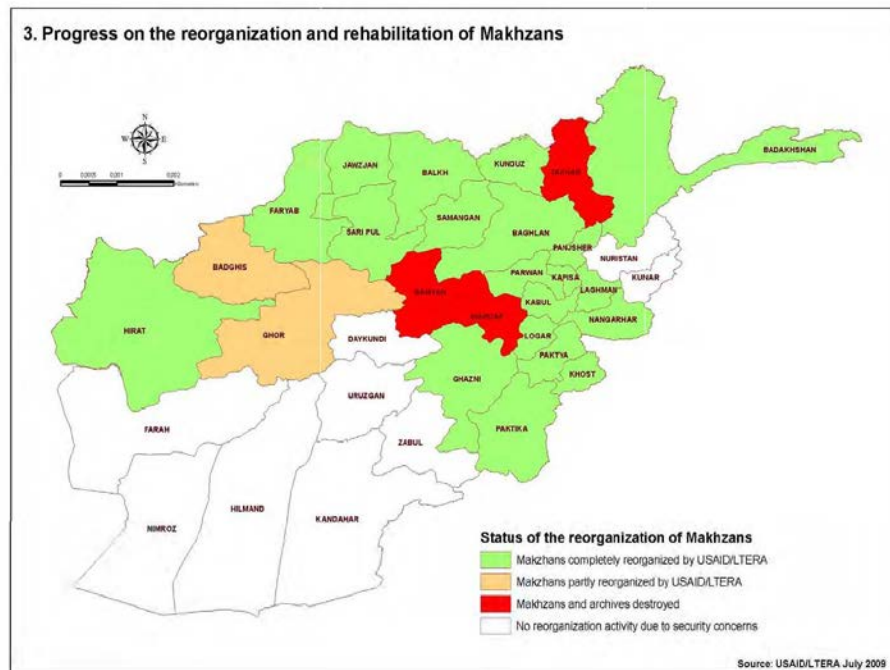


4.1.2 Achievements in Restoring Court Registries

In the years between 2005 and September, 2009 the LTERA project carried out the following:

- Worked with 22 provincial *Makhzans* and reorganized close to 7 million legal documents, including 1,077,000 title deeds, representing over 80% of the total number of title deeds registered with courts in Afghanistan;
- Trained and certified 100 *Makhzan* judges and staff in the use and maintenance of the new deed registration system for property transfer deeds;
- Advised on the reduction of the property transfer tax from 7-8% to 4-5%. The proposal was enacted by Parliament in February 2009 and signed by President Karzai in March 2009;
- Advised on reducing the number of steps involved in the registration of immovable property transfers from more than thirty steps down to four steps for land and three steps for buildings.

Figure 3: Physical Rehabilitation of Makhzans by LTERA—July 2009



4.1.3 Introduction of Information Technology into Existing Deed Archives

After the deed reorganization and Makhzan space rehabilitation was undertaken, the task started of convincing the Judges that information technology could dramatically improve both the operational efficiency of the Courts by making their archives accessible almost instantaneously, and the security of the archives by storing the deeds digitally. For people who had never seen a computer or used a CD, such a proposal seemed preposterous, at first. One day a LTERA team met with the Kabul Provincial Judge head of the Makhzan and his Kabul Judicial colleagues with a laptop and a box of high density CDs, including one which had a copy of a Kunda's deeds in digital form. The team showed the Judges how a computer could produce an image of a real deed at the touch of a few keys. The team then said that the small box of high density CDs could contain all of the deeds stored in the entire basement of the Kabul Provincial Courts. Of course the Judges were doubtful that the team told the truth, but the seed had been sown, and their trust in Eng. Safar was so deep, that they eventually approved the digitization of the Kabul deeds—digital copies and a digital index. Subsequently they approved a plan to rehabilitate all of the Provincial Makhzans and digitize the title deeds at first, and eventually the entire legal document contents of all archives.

This approach permitted the Courts to continue operating manually, using established procedures but with rehabilitated Makhzans, while the digitization proceeded. It remains to be seen whether the Judges will actually use the computerized indices, but they see no problem with having digital back-up copies in case of some disaster.

A database was developed to electronically store information first from the digital copies of title deeds (Definitive Deeds--qabelae qatae) as distinct from temporary deeds meaning basically Mortgages, and other property related deeds. Title deeds represent approximately 10% of the total number of the more than 6 million legal documents in the Makhzans that have been restored by the LTERA project throughout Afghanistan. Information used to index the title deeds includes a reference number, the District in which the property is located, type of property, transfer dates and the names of buyers and sellers (often pictures of parties are included). The title deeds do not contain a precise property location description, but usually refer to the village or neighborhood where the property is located and include the names of the neighbors.

The title deeds were digitized using an eight mega pixel digital camera. Scanners were not used because of the poor quality of the paper of the deeds. The deeds are also in Kundas which makes the scanning of the deeds impracticable. Using cameras makes a Makhzan less dependent on electricity and complicated computer equipment, the process of digitizing is faster, less complicated and more efficient as well.

Once all pages of a title deed were photographed, the image was entered into the deeds-database, created temporarily in Access. Indexing information on the deed was entered in the database and images of deeds linked to the indexed information. With the system, a Judge easily could find information related to a property and produce a copy of the deed.

For LTERA, a Makhzan was reported as “computerized” when all of the Title Deeds had been digitally copied and the selected data from each deed was entered into the Index data base, and when the deed and data were linked in an ArcInfo information system.

Once the deeds database had been populated, property ownership for agricultural properties could eventually be linked to information in the cadastre. The LTERA project introduced new technology to digitize 30,000 cadastral maps that, once entered into the system, could be linked to the property information in the deeds-database (existing deeds do not contain precise information on the location and boundaries of the property). See Figures 3 and 4 for the data entry structure.

The LTERA project’s pilot initiatives in Districts #7 and #13 in Kabul, and in Ghazni municipality piloted the implementation of an integrated Land Information System that combined information from the deeds-database with information from a map based property location description similar to the rural cadastre.

Figure 3: Screen Prints of the Deeds Database

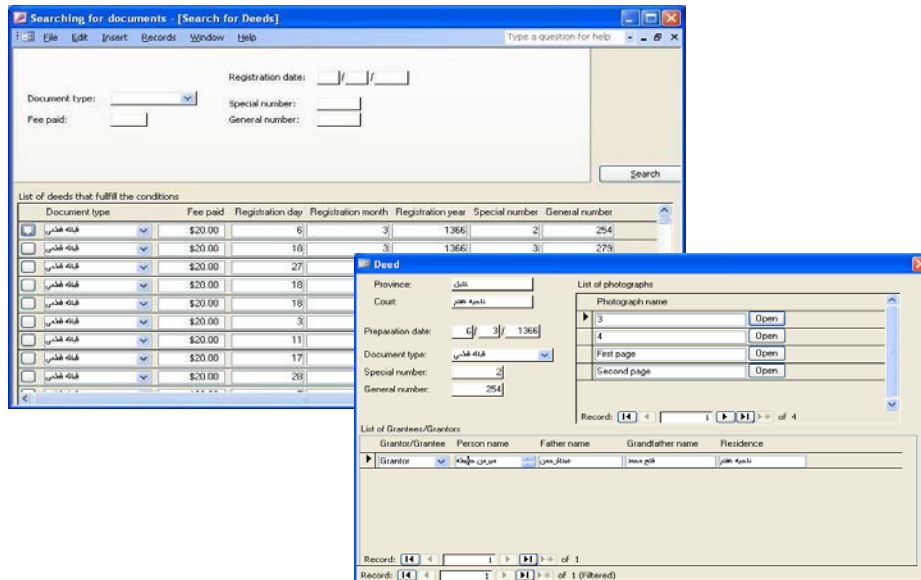
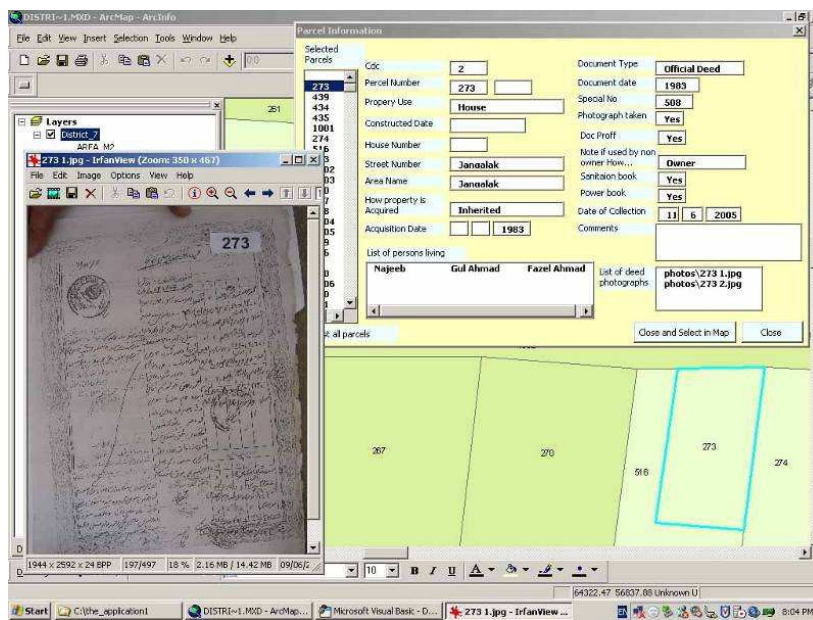


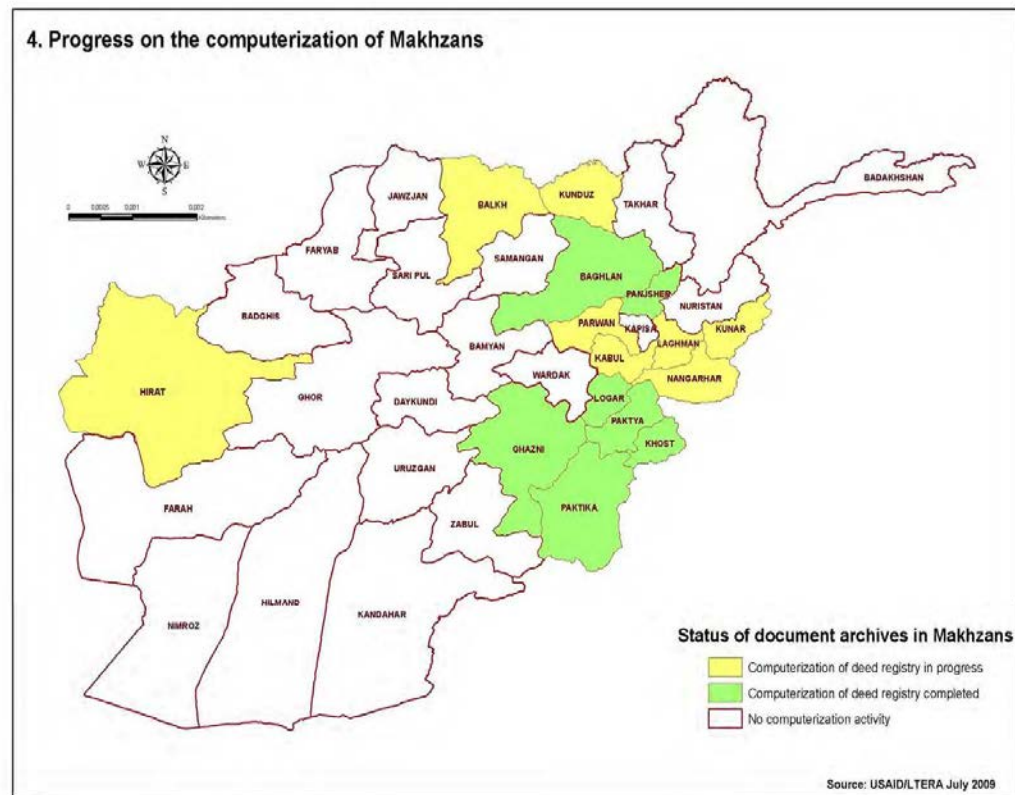
Figure 4: Screen Prints of the Land Information System Linked to the Deeds Database



Digitization Achievements by LTERA 2004-2009

- Developed and implemented a cost-effective methodology for the digitization of property transfer deeds. The system was installed and transfer deeds incorporated into a Makhzan data base in 7 *Makhzans* and the data base was in process of creation in another 8 *Makhzans*. In all 15 *Makhzans*, see Figure 5, training of court staff was begun with the Kabul staff most advanced in abilities for using the computerized data base for daily use and updating;

Figure 5: LTERA—Building a Digital Deed Data Base



THE IMPORTANCE OF TRAINING AND TECHNOLOGY

Court staff was often not aware of digital cameras, photocopiers, computers, printers and their potential. To ensure the Courts would use the system, LTERA's training programs worked with staff in the Makhzans for a few months normally under the supervision of the Head of the Makhzan and a Judge. New data entry necessitated a very strict quality control procedure for the information to be stored, because of its legal value.

A control process was defined with the Judges and quality control of the stored information was supposedly reviewed with the Judges of the Appeal Court

Appropriate technology

LTERA tried to adapt technology to the conditions in Afghanistan, i.e., dealing with bound deed volumes with torn and fragile pages, with stapled documents attached,

access allowed only to Makhzan staff and judges unfamiliar with information technologies which could appear to threaten their jobs, intermittent electrical service, dusty office conditions, lack of repair and maintenance expertise for IT.

The project opted to rehabilitate the Makhzans existing legal document storage space and repair the documents themselves instead of moving directly to digitization and IT. Makhzan staff and judges saw immediate improvement to their work environments work efficiency as well as improved public opinions of the Courts.

For producing digital copies of deeds, the project used digital cameras which did not require dismantling of the bound volumes or the purchase of expensive scanners. See Figure 6.

Figure 6: LTERA Staff Digitizing Title Deeds using Digital Camera



USING SOLAR SYSTEMS

The working conditions were and still are generally difficult in most provinces. Electricity was often not available in the regions. To overcome this obstacle, the LTERA project placed a \$1,200 BP Solar System in Gardez and Ghazni. These cost-effective systems were a good alternative to generators and provided sufficient electricity to power a laptop computer, a printer, a few light bulbs and a charger for the digital camera. A laptop was used since they can run on batteries, which provides the Courts greater flexibility to use the system when the power grid is off.

LTERA produced the outputs shown in Table 1 concerning the upgrading of the land registration system based in the Provincial Court Archives through September, 2009:

Table 1: LTERA
Outputs

PROVINCES	Deed Restoration Activities	Deed Computerization Activities	Town Planning Activities (households)	Deed Formalization Activities (document of rights)
Badakhshan	16,300			
Baghlan	32,600	32,600		
Balkh	108,700	78,400	10,000	3,000
Faryab	41,600			
Ghazni	44,800	16,800		
Heart	58,800	36,193		
Jawzjan	35,600			
Kabul	290,000	171,505	90,000	53,000
Kapisa	17,400			
Khost*				
Kunduz	58,700	25,600	3,000	1,800
Laghman**				
Logar	17,900	5,000		
Nangarhar	101,900	58,700		
Nuristan**				
Paktya	12,800	12,800		
Paktika*				
Panjshir	3,300	2,500		
Parwan	74,900	56,900		
Samangan	30,200			
Sar-e-Pol	12,000			
Takhar			3,000	300
Total Makhzans	957,500	496,998		
Amlak – All prov.	119,500	119,500		
TOTAL	1,077,000	616,498	106,000	58,100

Source: LTERA Completion Report, 2009

4.1.4 The Development of a Municipal Land Registration Application

These data gathering techniques generated a staggering number of data points in various formats – e.g., raster, vector and text formats – which needed to be stored, edited, linked, updated and visualized.

To support this process, LTERA developed a Municipal Land Registration Application, a software application that is being used by municipal district

offices that have worked with LTERA as part of its tenure formalization programs. The basic functions of the Municipal Land Registration Application are to:

- ▲ Inventory the boundaries and use of property parcels located within the district;
- ▲ Register property claims after they had been clarified by the *shuras* (community councils);
- ▲ Deliver certificates of registration to holders of registered properties;
- ▲ Record new easements or encumbrances affecting registered properties;
- ▲ Record subdivisions and/or transactions of registered properties;
- ▲ Keep track of the clarification progress for properties not yet registered; and
- ▲ Monitor land use changes that are occurring in the district and the compliance of those changes with zoning laws.

Beyond these registration functions, the Municipal Land Registration Application could improve the land administration of municipal districts beyond the life of the LTERA project, notably by increasing tax revenues through the identification of tax payers, the valuation of properties and the delivery of building permits in compliance with zoning laws.

This LTERA approach, however, did not produce legally acceptable decisions as to the ownership and other rights to the properties in the informal settlements which could be recorded with the Nahiya (urban district) Courts. The project did:

- demonstrate a community based methodology for physical and legal upgrading of informal settlements in Kabul (Districts 6, 7, and 13), as well as in informal settlements in Mazar-i-Sharif, Kunduz and Taloqan;
- develop an appropriate use of mapping and IT technology for planning and describing the upgrading informal settlements;
- negotiate with Municipal authorities to agree to the upgrading of streets, housing numbering, and drainage which provided informal settlement residents with de facto Municipal recognition of their rights and an assurance that they would not be evicted;
- provide Municipalities with property level data about claims of ownership which increased Municipal abilities to collect the Sanitation Tax.
- develop recommendations for the possessors of land in informal settlements to apply to the Courts for recognition of their property claims based on adverse possession.

However, the project did not integrate the pilot methodologies into the Municipal land management procedures. When the project ended, the information systems and the upgrading “lessons learned” tended to fade away. The community development plans for Districts 6, 7 and 13 of Kabul may have been incorporated into the revision of the Kabul Master Plan led by the World Bank KURP project and JICA's Greater Kabul Metropolitan Area initiative. The plans for the other upgraded settlements were approved by the respective Municipalities providing for some security to the

residents against eviction, but it is not clear that the Municipalities planning units actually kept the settlement plans in archives accessible if needed in the future, nor is it clear that any subsequent actual upgrading work was done.

Nor did the project result in decisions about the ownership claims of informal settlement residents which could be recorded in the Nahiya courts. The project instead left the legalization of property claims up to the individual residents to pursue via the presentation of adverse possession claims to the courts.

Shortly after completing the Municipal Land Registration Application, LTERA ended, and the data from household surveys, parcel mapping, data bases and the Municipal Land Registration Application from the Kabul, Mazar-iSharif, Kunduz, Taloqan and Ghazni pilots dropped from sight. The follow-on LARA project did not continue working with these Municipalities on building this data into their operational procedures.

The LARA project did continue with technical support to the rehabilitation of Makhzans, and the copying and digitizing of title deeds begun under LTERA. This previous work was added to by the ALCO project funded by Harakat. The LARA project provided for the migration of these deed related data bases into the Deed Registration and Conversion System (DRACS). Notwithstanding the likely disuse of the informal settlement data, the important and real physical upgrading that LTERA helped accomplish in one District is an important benefit for the present and future lives of the residents of the informal settlements affected by LTERA (see Chapter 3).

Figure 8: Screenshot of MLRA developed by LTERA

Screenshot of the Municipal Land Registration Application



4.2 Land Records Modernization Project—ALCO/Harakat (2009-2010)

The rehabilitation and computerization of Makhzans begun by the previous projects passed in 2009 to the responsibility of a group of 55 ex-LTERA staff who formed an Afghan organization, Afghan Land Consulting Organization, ALCO. ALCO, with funding from Harakat, continued the Makhzan rehabilitation and computerization work started under LTERA, focussing on the creating the digital deed data base to back up the re-organized Makhzan paper based transaction deeds and other court documents.

Sponsored by the Harakat Foundation, ALCO received funding to implement the Land Records Modernisation Project (LRMP) on 5 October, 2009 for one year (budget: AFA 36,548,828 = US\$761,434) to improve tenure security through the registration of property rights by:

- Assisting the Supreme Court with completing the computerization of archived property deeds in Afghanistan;
- Extending the current computer-based deed registration system to include the registration of mortgages;
- Maintaining a secured computer-based central registry of property deeds which protects investors from fraudulent transactions, competing claims, and forced eviction leading to financial loss; and
- Enhancing the confidence of the public in the formal court registration system and increasing revenues generated from property transactions.

Achievements as of the end of 2010:

Activity # 1: ALCO Digitized 10 Provincial deed registries by scanning and indexing 270,553 property deeds (qabala-e-qatae and qabala-e-dawlati) not computerized as part of LTERA (Kabul, Nangarhar, Balkh, Kunduz, Herat, Parwan, Baghlan, Ghazni, Panjshir, and Logar), plus 64,239 land records from the AMLAK archives, and 10,992 land records from the Kabul Municipality archives, for a total of 345,784 deeds or land records.

The Project also included the computerization of 25,544 mortgage deeds (qabala-e-jaizi) at Kabul Makhzan.

Activity #2: Provision of IT to Provincial Makhzans

A package of IT equipment (computer, printer, etc) was provided to 12 of the Provincial Makhzans rehabilitated by LTERA, Baghlan, Balkh, Hirat, Kabul, Kunar, Kunduz, Laghman, Logar, Nangahar, Paktia, Panjsher, Parwan

Activity #3: Enriched the technical archive of Land Registration Department (AMLAK) and Kabul Municipality

The project helped the AMLAK General Department of Ministry of Agriculture in scanning of

some 64,239 out of an estimated 1,074,354 AMLAK land records throughout the country. There were many land books shortages and discrepancies between central archive at Amlak Department and provincial archive which was a trouble for land owners to have access to land records. The Amalk personal with the help of the project decided to check the discrepancies and bring all missing land books from provinces to central archive as well as sending copy of the land books from central archive to the provinces where the land books were destroyed due to the past conflict in the country. This process facilitates the enrichment of both central land archives of Amlak Department provincial Amlak offices. At this end, the land owners were not obligated anymore to travel to Kabul from provinces to get official confirmation of their property records and paying transportation and accommodation costs. With the assistance of the LRMP, the Central Archive of Amlak Department scanned all the 1124 land books from all provinces of the country and saved the data in the computer.

The project also assisted the Kabul Municipality with the computerization of 10,992 Municipal land records.

Activity #4: Assess feasibility of rehabilitating 13 Makhzans not rehabilitated by LTERA (Wardak, Bamyan, Kunar, Takhar, Kandahar, Zabul, Badghis, Nimroz, Farah, Daikundi, Ghor, Helmand and Uruzgan)

Nuristan apparently was not touched by LTERA, nor assessed by ALCO.

Activity #5: Training of Court Staff

ALCO provided on job training for some 49 government staff members in connection with deed computerization process and developed Dari, Bashto and English versions of a training manual for future reference.

4.3 LARA (Land Reform in Afghanistan) (2011-2014)

After the ending of the USAID funded LTERA project, USAID brought in another consulting firm, TetraTech, under a new project, Land Reform in Afghanistan, or LARA (total funding of approximately US\$41 million) to extend some of the LTERA activities and develop new ones

4.3.1 Land Registration through the Courts

Importantly LARA did continue to work with ALCO and the Supreme Court and Provincial Judges on re-designing the deed digital archive data base, a Deeds Registry Archive Conversion System (DRACS), which would digitize existing documents. A delayed signing of the Project Implementation Letter (PIL) made it difficult for LARA to work with the courts until September, 2012. By that date ALCO was well along with the computerization of the remaining title deeds in the 22 Makhzans using methods and software defined under LTERA.

LARA, the Courts and ALCO opted for scanning of deeds instead of photographing them. Another decision was made to use a package of trademarked software, *Open Title*¹⁶ owned by a partner¹⁶ of the implementing consulting firm, to replace Access

¹⁶ Thompson Reuters provided the software and the LARA project provide the company's expertise for

and ArcInfo which LTERA had introduced, to index each deed and link the deed images with the textual information in the deed index. So, the training of Court staff under LTERA and ALCO for the computerization of title deeds had to be updated to enable them to use the Deeds Registry Archive Conversion System (DRACS) software and procedures. A private company hired by Harakat to do the computerization using DRACS instead of ALCO was not able to do the work.

The LARA Project Systems Analyst team started early in January 2012 to conduct a Business Area Analysis (BAA) regarding the existing procedures for registering paper-based land transactions. At the same time, Harakat, with DFID funding, began designs for a new project, LRMP II, to create electronic copies of deeds and other property records, and agreed to coordinate with the LARA Project. Harakat's plans called for upgrading (i.e., physical infrastructure) of the Appeals Court makhzans in 11 provinces and in Kabul as well as to scan and index deeds and other property records. LARA coordinated with Harakat to design and implement LRMP II.

A Dari Alpha version of DRACS was released on February 7, 2013. This was completed after analyzing each one of the types of the Courts' land documents that would be archived in the DRACS system. The final version of the software with a module for importing legacy data from USAID LTERA and LRMP, cleaning the data and archiving it in the DRACS system was installed by September 18, 2013.

In order to implement the Harakat LRMP II, pursuant to additional hardware specifications provided by the LARA Project, Harakat procured 11 servers for the provincial makhzans along with 15 desktops to be used for the digitalization of existing land documents at the court makhzans.

As part of the user acceptance training, staff of the Supreme Court were instructed in the use of LARA software for incorporating deeds into the digital data bases (GRM Registry Backfile). Feedback from the Court representatives resulted in an updated and customized version of the DRACS. Upon installation of a final configuration of DRACS, the LARA capacity building team organized five days of training for DRACS which took place from October 19 to October 23, 2013 for Court makhzan personnel from Kabul, Nangarhar, Balkh, Herat, Paktia, Parwan, Logar, Kunduz, Baghlan, Panjshir, and Laghman provinces. The training was conducted by an expert from LARA Subcontractor, Thomson Reuters, and included training in all aspects of the DRACS module for digitizing existing deeds. Full training materials were distributed to each of the participants. The training consisted of theoretical and hands-on sessions so that the participants were prepared to use the DRACS software for the digitization of land title documents archived in the makhzans. It was anticipated that the Harakat digitalization subcontractor would also attend the training, but the contract was not in place.

training staff in the use of Open Title. It appears that the Courts do not have indefinite rights to this trademarked software, so they may have to pay licensing fees periodically. LTERA had used Access, an open source software, on a temporary basis for entering the indexing data, and incorporated that data with digitally copied deeds into an ArcInfo information system, with ArcInfo donated to the Courts. LARA experts and the Supreme Court determined that that the LTERA recommended software packages were not adequate and that they should use Thomson Reuters *Open Title*, which USAID approved to be acquired by the LARA project using USAID funds.

Harakat then entered into a subcontract for digitalization of Court records in December 2013 with a private Afghan company named Hawk Vision, which proved unable to use the software. Eventually, in August 2014, Thomson Reuters agreed with the Supreme Court to provide new DRACS licenses (the others apparently having been lost) so that the digitization activities could be completed.

5. Summary of Project Achievements for Deed Archive Rehabilitation and Computerization through 2014

According to ALCO's reports, the three projects made significant progress in reorganizing the deed archives in all 34 Provincial Makhzans, in rehabilitating the storage ambience for these archives and in computerization of the title deeds (See Figure 9).

Figure 9: Rehabilitation Work by Project for the 34 Provincial Makhzans

S.N	Province	RONCO	LTERA-Rehab of Archives	LTERA-Computerization of Deeds	ALCO-IT Equip., Computerization	ALCO Assessment and Rehab??
1	Kabul					
2	Kandahar					
3	Helmand					
4	Herat					
5	Balkh					
6	Jawzjan					
7	Baghlan					
8	Nangarhar					
9	Paktiya					
10	Faryab					
11	Farah					
12	Ghazni					
13	Parwan					
14	Badakhshan					
15	Ghor					
16	Bamyan					
17	Urozgan					
18	Takhar					
19	Logar					
20	Wardak					
21	Zabul					
22	Badghis					
23	Samangan					
24	Kunduz					
25	Laghman*					
26	Kunar					
27	Nimroz					
28	Kapisa					
29	Paktika**					
30	Daikundi					
31	Sar-i-Pul					
32	Panjsher					
33	Nuristan*					
34	Khost**					

Source: ALCO, "List of Reorganizations...", 2014

Note: The rehabilitation archives, reorganization of Definitive Deeds, and the computerization of these Definitive Deeds has been done by three implementing projects: RONCO(USAID), LTERA(USAID) and ALCO (Harakat). The percentage of the needed work actually done varies from Province to Province. An assessment is needed to prepare a plan to continue this valuable work and to maintain the archives, the conditions of the Kondas and documents, and the data bases.

*Property deeds for Laghman and Nuristan are registered in Nangarhar court (Jalalabad)

**Property deeds for Khost and Paktika are registered in the Paktia court (Gardez).

LTERA rehabilitated 20 Provincial Makhzans (including those temporarily housed in neighboring Provinces): Badakhshan, Kunduz, Balkh, Jawzjan, Faryab, Hirat, Sri Pul, Bamangan, Baghlan, Panjsher, Parwan, Kapisa, Laghman, Kabul, Nangarhar, Logar, Paktya, Ghazni, Khost, and Paktika, and began rehabilitation in Baghdis and Ghor Provincial Makhzans. In those 22 Makhzans, the project reorganized and rehabilitated approximately 1 million Definitive Deeds stored in the archives.

LTERA completed the computerization of the deed archives (digital copying of the Definitive Deeds linked to a textual index) in Baghlan, Panjsher, Logar, Paktya, Khos, Ghazni and Paktika Provinces, and partially completed the computerization process by project end in Kunar, Laghman, Nangakhar, Kabul, Parwan, Balkh, Kunduz, and Hirat Provinces.

LTERA's computerized about half of the archived Definitive Deeds in the 22 rehabilitated Makhzans.(See Table 1)

ALCO computerized approximately 270,000 more of the Definitive Deeds in these Makhzans, leaving about 200,000 more such deeds to be computerized.

Apparently neither LTERA nor ALCO worked on computerization of deeds in 19 Makhzans.

Using provincial population data, we estimate that there are approximately 512,000 Definitive Deeds remaining to be computerized in the 34 Provinces (See Table 2).

ALCO also computerized about 22,000 Mortgage Deeds during its one year project. But we lack data to estimate the total number of property transaction related deeds, including Mortgage Deeds, remain to be computerized.

Both LTERA and ALCO digitized property documents for other agencies, Arazi and the Kabul Municipality. It is unclear what purpose was served by this work, and what kinds of documents were digitized. A substantial number were involved-- almost 200,000.

Table 2: Deeds Affected by LTERA, ALCO and LARA

PROVINCES	Population -2006	Deed Restoration Activities	Deed Computerization Activities-LTERA	Deed Computerization-ALCO (not available by Province)	Total Deeds remaining to be computerized
Badakhshan	805500	16,300			
Baghlan	762500	32,600	32,600		
Balkh	1073000	108,700	78,400		
Faryab	840400	41,600			
Ghazni	1040100	44,800	16,800		
Heart	1544800	58,800	36,193		
Jawzjan	452000	35,600			
Kabul	3071600	290,000	171,505		
Kapisa	374500	17,400			
Khost*	487400				
Kunduz	833300	58,700	25,600		
Laghman**	378100				
Logar	332400	17,900	5,000		
Nangarhar	1261900	101,900	58,700		
Nuristan**	125700				
Paktya	467500	12,800	12,800		
Paktika*	369100				
Panjshir	130400	3,300	2,500		
Parwan	560800	74,900	56,900		
Samangan	327700	30,200			
Sar-e-Pol	472700	12,000			
Takhar	827500				
Total 22 Makhzans	16,538,900	957,500	496,998	270,553	189,949
Deeds/capita =	0.057894				
Total in 15 remain	5,559,000	321,832			321,832
Total remaining					511,781
Amlak - All provinces docs.		119,500	119,500	64,239	
Municipality of Kabul-Property Docs				10,992	
TOTAL		1,398,832	616,498	345,784	

Source: Provincial population estimates from the Central Statistics Office web site, 2006 figures; Estimates of deeds rehabilitated and computerized come from LTERA, "Completion Report, 2004-2009", Estimates of deeds computerized by ALCO comes from ALCO, "End of Project Report-Land Records Modernization Project", 2010

6. INVESTMENTS IN PROPERTY LOCATION INFORMATION

Another key component of land registration is the location of the properties being registered. How have the projects improved this aspect?

6.1 LTERA (2004-2009)

Aside from the demonstrations of how digital technologies could be used for mapping of informal settlement properties and linking property boundary maps with data about each property, LTERA made several investments in infrastructure for future property location information, particularly cadastral mapping activities.

6.1.1 Modernizing Cadastral Survey and Mapping Standards

Survey and mapping standards in Afghanistan were developed in the 1960s. The old standards served to do an immense amount of cadastral surveying, but do not deal with the latest developments in the field of survey and mapping.

From 2007 to 2009, LTERA helped with the modernization of these standards to improve property/cadastral survey and mapping. The revised standards focused on the following aspects:

- ▲ Cadastral data modelling;
- ▲ Geodetic datum and map projection;
- ▲ Data capture and documentation;
- ▲ Absolute and relative accuracy;
- ▲ Quality control procedures; and
- ▲ Instrumentation and monumentation.

The survey and mapping standards were adopted by the four municipalities involved in LTERA's tenure formalization activities as well as by the Ministry of Finance and the project's privatization component for the survey and mapping of properties held by State Owned Enterprises.

A coordinated effort to enact the standards was also undertaken with key organizations involved in survey and mapping works in Afghanistan – notably AIMS, AGCHO, the US Geological Survey (USGS) and the US National and GeoIntelligence Agency (NGA) – with a view to incorporate these standards within the broader scope of the Afghanistan's National Spatial Data Infrastructure (NSDI).

6.1.2 Advanced Educational Programs at Kabul Polytechnic University

LTERA implemented a comprehensive educational program on GIS and survey and mapping techniques at Kabul Polytechnic University (KPU) in 2007 and 2008. The curriculum was managed by the University in 2009 with limited LTERA supervision.

The curriculum focuses on advanced land survey and mapping tools and consists of five modules and two hundred hours of lectures and practical sessions for the Survey Department of Kabul Polytechnic University.

6.1.3 Establishing Geodetic Control Markers

An accurate geodetic network is important for Afghanistan's national parcel based mapping system and the positioning of property parcel boundaries at municipal and national levels. A geodetic network is defined as a set of points on the ground throughout the country. These points have coordinates with a precision of a few centimeters and are used as reference stations to determine accurate coordinates of administrative unit boundaries and of property parcel boundaries.

From July to September 2006, an assessment of the Afghan National Geodetic Network, established by triangulation in the early 1980s, was undertaken by LTERA and AGCHO. Following the assessment, a new geodetic network (WGS84) was established using post-processed differential GPS techniques in 2008.

6.1.4 Introducing a Cost-Effective Method to Produce Ortho-Rectified Photo Maps

Most property in Afghanistan has never been surveyed. A majority of landowners do not hold legally recognized deeds to their property, but rather have customary land deeds with poorly defined property descriptions. The lack of clear boundaries is a significant factor in the pervasive, bitter and often fatal land disputes prevalent in the country.

Years of war and civil strife prevented the introduction of modern survey and mapping technology by which boundaries can be easily determined.

Land ownership supported by appropriate documentation including clear property descriptions is essential to the reduction of land disputes and the development of the private sector.

In 2005 LTERA introduced the use of digital cameras for producing aerial photos of informal settlements from a small open door in the floor of a helicopter.

LTERA's approach to securing land tenure rights in urban informal settlements relied on community-based mechanisms for surveying, documenting, arbitrating and recording property rights claimed by residents of informal settlements.



**Ahmadullah Anees,
Aerial Photography
Team Member at the
Afghan Geodesic and
Cartography Head Office
in a helicopter mapping**

Instead of relying on traditional parcel surveying techniques, or on commercially produced aerial photos or difficult to get satellite images of appropriate scale to produce maps of urban properties, the project produced ortho-photos of informal settlements' property boundaries LTERA by flying in a helicopter over the settlements and photographing them with a high quality digital camera. The project worked with AGCHO to process the images into ortho-photo maps. These maps were then used by field teams to delineate property boundaries in defined informal settlement neighborhoods, most of which corresponded to the physical boundaries visible in the photos. These maps were also used with neighbourhood councils to plan for physical upgrading and then, when agreed by the neighbourhoods, to number each property (producing parcel index maps) and gather data to establish claims to the properties through household surveys and consultations concerning the legal weight of documents which the residents possessed. These processes were piloted initially in Districts 7 and 13 of the Kabul Municipality producing parcel index maps.

Figure 10: Overlap of digital photo and Parcel Map for District 7 Settlement

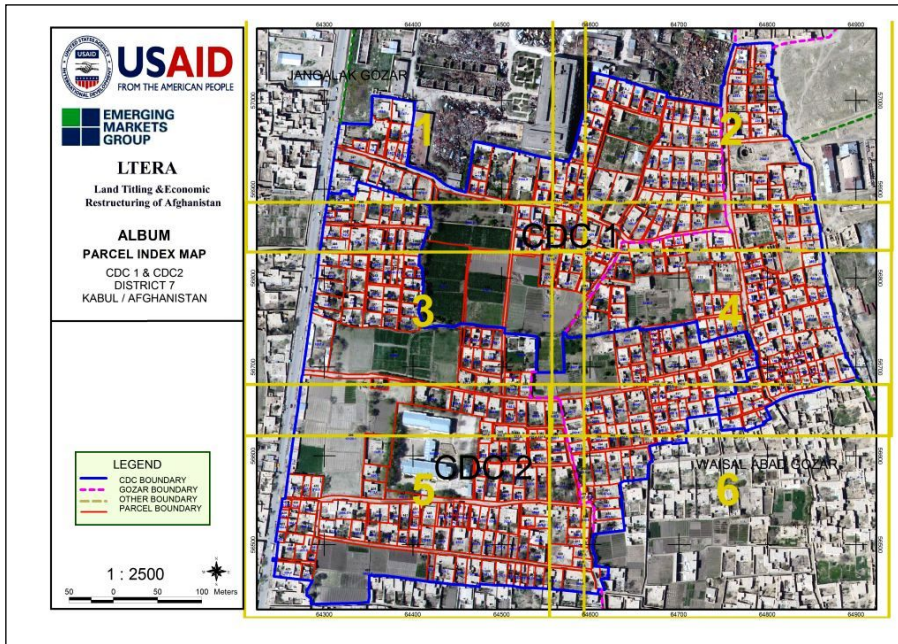
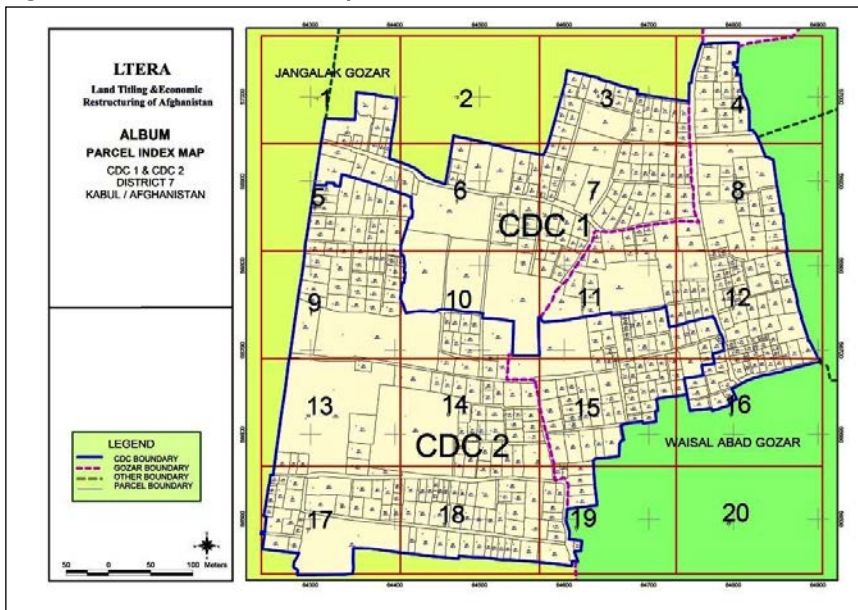


Figure 11: Parcel Index Map Produced for District 7 Settlement



In 2006, LTERA organized a two month specialized aerial photography training program and developed a methodology for ortho-referencing aerial pictures. This ortho-rectification process was tested in the city of Ghazni. The results of the program included:

- ▲ The acquisition of more than 600 aerial pictures covering the entire city of Ghazni;
- ▲ The establishment of 50 Ground Control Points (GCP) using differential GPS techniques; and
- ▲ The rectification of aerial pictures based on the GCP established using ArcGIS.

In 2007, the ortho-rectified pictures served as a basis for the production of the first cadastral atlas of Ghazni city.

6.1.5 Reviving Topographical and Cadastral Surveys

In cooperation with AGCHO, LTERA helped renovate the Cadastral Department of Kabul and Ghazni with a view to reviving property survey operations in Afghanistan.

LTERA provided computer and office equipment as well as training to more than 20 cadastral surveyors. In 2006, the project delivered three training sessions in Kabul and Ghazni, including:

- ▲ A training program on total stations;
- ▲ Training on Geographical Information Systems; and
- ▲ Training on survey-grade GPS.

In late 2006, a work plan to digitize existing cadastral archives and revive cadastral survey operations was jointly developed by LTERA and the Cadastral Department. This work plan was partly implemented in Ghazni where a preliminary cadastral atlas of the city was produced in partnership with the Cadastral Department and the Ghazni Municipality.

In 2008, LTERA assisted AGCHO and the Cadastral Department in developing a licensing scheme offering private surveyors the opportunity to conduct survey and mapping work in Afghanistan under the control of AGCHO. The initiative was presented to the First Vice President in October 2008 but not implemented.

6.2 LARA (2011-2014)

LARA has contributed to improving the infrastructure for providing property location information:

AGCHO Jalalabad Office

The upgrading of the provincial office of AGCHO in Jalalabad started in November 2012 and was completed by the end of February 2013. The improvements included repairs, interior and exterior wall painting, the construction of a security fence around the premises, upgrading of the electrical system and the installation of a new photovoltaic system on the roof as an auxiliary power source for the whole building.

AGCHO Cadastre Department in Kabul

Physical refurbishment to the AGCHO Cadastral Department was necessary to improve conditions in archive storage space and in order to enhance the office working space in Kabul.

The AGCHO refurbishment work consisted of repairs to windows and doors, installation of a wall partitions (wood and masonry), tiling of bathrooms and kitchen, plumbing, electrical wiring, upgrading of LAN networks, replacing old plastering with new, painting interior and exteriors walls, roof insulation, and improvement of the parking area.

The renovation of AGCHO Cadastre in Kabul was completed and its opening ceremony took place in mid-December 2013.

.AGCHO Training Institute

LARA improvements to the AGCHO Training Institute included classroom refurbishment, upgrading of the electrical systems, improvement of the kitchen facilities, a new septic tank, and a parking area were provided to the AGCHO Training Institute. The refurbishment was completed in the summer of 2013.

Kabul Polytechnic

Kabul Polytechnic refurbishment was completed during the summer of 2013 and included modernizing the computer room, painting of the classroom, installation of electrical works, renovation of the bathrooms and installation of wooden parquet floors. This provided an environment conducive to learning and complemented the provision of technical books by LARA. It is essential that the students be provided with facilities and learning tools to be able to use modern technology for land management systems and be able to apply their education to the land reform issues in Afghanistan.

By March 2012, LARA's GIS Specialist had digitized 100% of Jalalabad city (within its municipal boundaries), using 10 cm Buckeye aerial imagery received from the USG in October 2011. The digitization comprised approximately 16,300 parcels. The approval by the municipal government of all of the city maps of the Districts marked the first time in city's history that the six nahia had finite and consensual boundaries. This important achievement significantly simplifies the development of city planning.

The new maps identified land use, main facilities, road networks, and drainage systems. GIS-based Multi Cadastre software revealed a densely built urban environment just outside the official city limits.

Meanwhile, the Project scanned and digitized the entire archives of the Municipal Construction

Department. The digital information was integrated into the city's high-resolution digital system set up by LARA. In the process, the project planners discovered the earliest land use plan produced for Araban, tracing it back forty years. This cartographic information was entered into the Community Action Plan developed for the informal settlement of Araban (see above), as an important exhibit in the development of a new planning regulation for the settlement. The newly acquired historic data, fully digitized in September 2012, could be used to integrate the informal settlement of Araban into the formal city plan, if that possibility is encouraged.

Two IT system / data entry operators scanned all the detailed area plans (*plan-e-tafsily*) in the Municipality of Jalalabad. In total 32 documents were digitized. The project team identified all of the property logbooks where the Municipality kept all the data it registered in reference to ownership and real estate transactions.

All informal settlements within Jalalabad municipal boundaries (17 areas) were mapped and digitized using ArcGIS software. Outputs were submitted to MUDA and Jalalabad Municipality. In mid-December 2012, two of the LARA Project Interns started to digitize parcels outside the Municipal boundaries. This provided a valuable base map for MUDA, MAIL, GDMA and Jalalabad Municipality. It also provided local authorities the ability to visualize the rapid growth of informal settlements so that it might take appropriate measures to protect the fertile land and water resources that constitute the main asset of the agricultural economy of the Nangarhar region.

There were two distinct mapping interventions conducted during the LARA Project. The first was ancillary to its urban planning activities. The second was the mapping of the informal settlements of Araban and Campoona as part of the cadastral survey/formalization activities.

While the LARA Project subcontracted with a private land surveying company, Geo Planning, to undertake survey activities in the Araban and Campoona informal settlements, it became aware that the laws of Afghanistan specify that cadastral surveys can only be completed by AGCHO Cadastral Survey Department. Therefore, it was necessary to obtain a Presidential Decree authorizing this LARA Project activity. President Karzai issued Presidential Decree No. 1063 dated 1392/2/6 (May 6, 2013) directing "a well-known company and surveyors from AGCHO" to survey the informal settlements of Araban and Campoona. The Decree was directed to the Cadaster Department in Nangarhar Province by the General Director of AGCHO. This allowed the private surveying company, under the direction of AGCHO and its provincial department to conduct the cadastral survey in Jalalabad.

On March 27, 2013 the subcontractor, Geo Planning, together with the LARA Project team conducted a workshop regarding AGCHO Surveying Procedures and prepared a Cadastral Survey Work Plan and established the approaches to complete the field survey data. The LARA Project cadastral survey created an inventory of land parcels in the informal settlements of Araban and Campoona.

The joint teams identified "property clusters" for undertaking the cadastral survey in a systematic fashion. Geo Planning mobilized to Campoona and established both technical and community support teams. The LARA Project settlement upgrading and

formalization component manager, with the senior Cadastre Specialist, provided the Geo Planning with appropriate procedures to establish control points using modern technology so that each parcel in the communities could be identified, located using GPS equipment, to create digital portfolios tagged to each parcel.

Parcel maps of both informal settlements were displayed on digital orthophoto maps from 2007, but many parcels needed to be identified on the ground and included in the cadastral fabric, because of the urbanization that has taken place since that year. All identified parcels were digitized, numbered and prepared in (ESRI) Shape file format (.shp) to enable the data to be imported into GIS mapping software. The data was entered at the Municipality in its Dari language OpenTitle software. Municipal staff were trained to create folios for each parcel linking land tenure data regarding a parcel with the corresponding cadastral information (geo-referencing). Data was gathered for parcels between 2008 and 2010 which were recorded in UNDP/ASGP property records forms.

All information gathered during the cadastral survey was posted prominently in the communities as part of the community verification exercise. A large format color map of the settlements along with a page for each of the parcels in a particular cluster were posted and a representative from Geo Planning was available to assist residents in finding their parcels with reference to obvious landmarks on the large format map. Geo Planning also helped residents find the appropriate land tenure data for each parcel. The posting of the information continued for 14 days so that community residents could note any errors in the data and request corrections. At the end of the 14 day period it was assumed that the community has acquiesced to the correctness of data in the municipal database.

The cadastral survey for both informal settlements was completed in September 2013 having identified 2780 parcels and linked the cadastral coordinates of each parcel with current land tenure information. This data was recorded in an electronic property book at the municipality of Jalalabad. Safayee Tax Books were issued and distributed for all the parcels identified during the survey.

According to LARA much of this land tenure data is new data never before recorded with any government institution in Afghanistan, except the LTERA and UNHabitat programs had helped Municipalities to do similar things for several years.

Of the 2780 parcels identified in the two informal settlements, 1478 of the occupants of the land parcels were able to provide variety of evidence to support their ownership claims to the property. Based on the survey data 190 of the property owners were able to provide Legal Deed (Sharayee Qabala), 445 of the properties were able to provide Customary Deed (Urfi Qabala) and 843 of the properties were able to provide other documents Tarif/Bank Awiz. Furthermore, 210 properties claimed that they had documents but were not able to provide them during the survey. But there were 1092 of the property owners who still had no ownership documents. The LARA Project also recorded the length of occupancy (many more than 40 years, some less than a year) with corroboration through testimonials of the neighbors for every parcel. All the data gathered was entered into OpenTitle software at the municipality and was tested for accuracy and completeness.

The rights formalization model applied by LARA demonstrated an approach for municipalities in Afghanistan to rapidly advance land tenure formalization in informal settlements and provide a method for regularizing outdated or non-existent municipal land records. This is not only critical for organizing the local government records, but it is also

extremely important for residents of informal settlements to make a public record of their rights. This exercise was quite similar to that done by LTERA on a larger scale five years earlier, and is probably similar to what UN-Habitat has been doing since 2003 although information is not available to make this comparison.

New ownership documents, like under LTERA and UN-Habitat were not issued under the LARA Project. This is because the legal and administrative mechanisms were not available during the project period. Arazi plans to develop this capability in the future. It will also require additional coordination with the Supreme Court and the Provincial Makhzans. Nevertheless, as noted above, the occupation of the surveyed properties has been recorded by the Municipality and can form the basis of possible ownership documentation in the future. Proposed amendments to the LML will also likely strengthen land rights claims.

Thomson Reuters Software Analysts and Training Coordinators worked alongside colleagues from RAMP-UP, UN-HABITAT and UNDP/ASGP and established formats and procedures for the setup of an IT system for the Jalalabad municipal property books. The data fields and categories of land of the manual forms that had been in use in Jalalabad and Kandahar were integrated in the OpenTitle™ template developed by Thomson Reuters. All parcels identified during the cadastral survey were entered into the municipal database and tested for quality control and quality assurance.

The LARA Project supplied a range of modern surveying equipment to the AGCHO Cadastral Office, along with an on-site surveying training through a short-term technical advisor. This surveying equipment for AGCHO was transferred to the cadaster department and training on the use of the equipment for staff from the AGCHO cadastral department both from Kabul and from the provinces was completed. (Whether the equipment was provided in a timely manner and whether the training was sufficiently practical may be debated—see the Final Evaluation of the LARA Project).

The LARA Project also provided assistance to educational institutions with equipment and training so that students can adapt and use the new technologies going forward for the surveying of parcels and preparing land inventories. LARA identified detailed IT and equipment requirements for Kabul University, Kabul Polytechnic and AGCHO Training Institute to address surveying, mapping and technical training needs for their University and vocational-level students. The same was undertaken for AGCHO Cadastral Department offices in Kabul and Jalalabad.

GRM Cadastre software provided by LARA was installed and tested at the AGCHO cadastre department in 2013-4. The software not only allows the creation of parcels for a cadastral fabric, but also creates audit logs of all inputs, allows for productivity reports, can be coordinated with ALRMIS at Arazi and with the data accumulated by the court makhzans in Kabul and the provinces. It is a key objective of this project that data from AGCHO Cadaster, Arazi, the Municipality, and the Courts be able to be exchanged among these land administration agencies. With such a common IT platform land resources can be more efficiently managed and in the future the public can easily get the information it needs to support private transactions in land.

It is important to note that on May 27, 2013, the Cabinet approved the merger of AGCHO Cadastre into Arazi and promoted Arazi to the status of an “Independent Authority” and directed the Ministry of Finance, Ministry of Administrative Affairs, the Secretariat of Council of Ministers, and the Independent Agency of Geodesy and Cartography to take

actions regarding budget transfer of the former AGCHO Cadastre Department to Arazi. H.E, the Minister of MAIL commented that the promotion of Arazi to an Independent Authority with resulting merging of the AGCHO Cadastre Department was recognition of Arazi's technical achievements toward land reform. In practice, however, the AGCHO Cadastre merger into Arazi has been slow and incomplete. The merger at such a late time in the LARA Project's term (then scheduled to finish in January 2014) meant, that there could be no integration of the software installed in Arazi and the Cadastral software.

AGCHO AND CADASTRAL SURVEY LAWS

The LARA legal team, as part of the support to legislative and regulatory reforms, took part in weekly meetings with AGCHO and advocated for modernization of the laws of Afghanistan governing the surveying of land parcels. A joint technical committee was established to review the current surveying laws and suggest changes where necessary. The legal objectives for the law and the role of AGCHO were spelled out in detail. AGCHO's overall authority was organized and expanded and its main activities, particularly with regard to supervision and field work, were set out.

In March 2013, the first drafts of the AGCHO and Cadastre Laws were officially submitted to AGCHO management. The LARA Project also engaged an Afghan expert in modern technical standards and procedures for surveying to assist with the drafts. The draft allows for the private sector to engage in cadastral surveying under AGCHO supervision. Moreover, the draft laws set standards in accordance with the use of modern surveying equipment such as GPS units and guide the preparation of maps using GIS software. It is not clear whether this work built on that done previously under the LTERA project.

As mentioned above, however, the AGCHO Cadastral Department was merged into Arazi, in May 2013 which necessitated revision of the laws to cover the institutional change. Many of the provisions can then become part of a separate chapter of draft amendments to the LML.

7. Conclusions Concerning Land Registration Improvements Made under LTERA and LARA and Still Needed

7.1 Property Transaction Document Administration

The LTERA (2004-2009) and Harakat (2009-2014) projects have worked with the Supreme Court to rehabilitate all 34 of the Provincial Court Archives (Makhzans). This rehabilitation improved the physical spaces of the archives and the cabinets to store the bound volumes of deeds and other court documents, in addition to repair of the bound volumes of documents and their proper numbering and organization on the shelves. Nearly 7 million court archived documents have been salvaged and reorganized, with special attention being paid to 957,500 title deeds (more exactly termed "definitive deeds" to distinguish the transfers they describe from mortgages, which are termed "temporary deeds").

With this rehabilitation, the Judges and their clerks can more easily and quickly consult with the archives to verify ownership or other interests in immovable properties acquired in the past through deeds of transfer prepared by Primary Court Judges. With the

rehabilitated archives, the Judges can also more easily and quickly prepare new deeds of transfer as required by participants in private-private and State-private transactions, and thereby verify ownership of immovable properties for future transactions (sales, inheritances, gifts, mortgages, etc).

While doing this physical rehabilitation, LTERA, LARA (2011-2014) and Harakat supported the digitization of just the title deeds (not all court documents found in the archives), meaning the digital copying of the title deeds along with indexing information for each deed. Approximately half of the title deeds were digitized under LTERA, with another 270,000 title deeds digitized by ALCO under contract with Harakat through 2010.

This digital information was initially stored in an Access/ArcInfo data base, but under LARA a software more adapted to use in land registries was introduced, with the intention of migrating the older digital data into the new software.

The court prepared title deeds do not typically refer to survey plans to describe the location and boundaries of immovable properties, except where a transaction involves a rural village property surveyed by the Cadastral Survey Department. Judges use street addresses for urban properties and village names for rural ones to generally locate the properties, but also include in the deeds the names of the bordering owners.

The LARA team probably reflecting Government policy divergencies seemed to be of two minds about the administration of property transaction documents: 1) support the traditional Court administered deed preparation and deed archiving; or 2) move the recording of transactions to Arazi, now that the Cadastral Survey is administratively located in Arazi.

The main danger is that the needed legal and procedural changes are being inserted into the long list of amendments to the Land Management Law, may become too complicated for passage. Meanwhile, the needed fixing of the customary deed preparation, archiving and querying is not being done. Nor are the fixes being done to the Judicial procedures for accepting wider range of evidence attesting to de facto and customary property rights for the issuance of Definitive Deeds. Nor is legislation being considered for the definition of Cadastral Units.

LARA introduced to the Courts a software package for the digitization of existing archives of the various legal documents having to do with immovable property, its DRACS system. Court staff in some Provinces have been trained in its use, although actual experience has not begun. However, it is not clear whether or when the digitization work remaining after LTERA and ALCO's efforts will be completed, or in what Provinces is there a backlog of Definitive Deeds to digitize. Nor is it clear in what Provinces have the LTERA/ALCO produced title deed data bases been migrated to DRACS, or in what Provinces are the Court staff using LARA provided software to locate needed archived deeds or to archive newly prepared deeds. It seems likely that a substantial effort is still needed complete the digitization of existing archives and to support the Provincial Makhzans in using software for the two processes of querying digital archives and entering new deeds as they are prepared. It would be a good idea to assess the factual status of this rehabilitation and computerization work in the very near future.

Another challenge is with the digitization of deeds into a functioning data base. While the introduction of Open Title package into the Provincial Makhzans may theoretically be

a good idea, the process is in mid stream, but the technical support has departed. Such work will likely not proceed without a major champion with funds and knowledge. It is probable that without this support, the digitizing work will fade away.

That interruption will leave the Makhzans with new cabinets and reordered Kondas, which is certainly a major contribution. But even for this to be claimed as an achievement an assessment is needed to verify that the rehabilitation allegedly done with LTERA and ALCO support is actually complete and acceptable, and is being maintained.

7.2 Information about the Location of Immovable Properties

Envisioning the intent of the Afghans to complete the Cadastral Survey begun in 1965 but mostly suspended in 1978, the LTERA and LARA projects have also invested in equipping and training a new generation of cadastral surveyors and have advised on the preparation of new cadastral legislation providing for surveys in urban areas as well as rural areas, using modern technologies.

The reliance on the strategy of making the cadaster applicable to all land parcels, urban and rural, is theoretically a good idea, but implementation will be very costly and time consuming. What is needed is a stepwise strategy stretched over several years. An intermediate step should be the establishment of the boundaries of Cadastral Territorial Units accompanied by a commitment from Judges to use them to locate the properties involved in the deeds that they prepare. All of the transactions in each Cadastral Unit would be available for searching by hand if need be to locate all deeds pertaining to a particular property and help avoid fraudulent transactions.

A second best intermediate step would be for Judges to at least include in all deeds the address of the properties involved in the deeds that they prepare.

The tendency of both LTERA and LARA to consider the cadastral survey as the key spatial component in a computerized system may be illusory in the short run in a country which has developed a physical document based property administration system of remarkable resilience. Certainly moving into the digital age will happen, but over a long period of time. During this conversion, many useful improvements to the existing deed administration system can be undertaken.

In order to retain the investments already made in the deeds administration and cadastral survey, the regulatory framework issues mentioned above deserve serious consideration, and while that is going on, the salvaging of the deed data bases and the training of Judges and their clerks in their use are of great importance.

Annex 1: Circular Form Used by the Provincial and Primary Courts in Jalalabad, 2013
Circular Form to sell properties (Buildings)

Date & No.	Name	Father's	Grand	Number,	Original Resident			Current resident		
					Village	District	Province	Village	District	Province
Information of										
Information of										
Four boundaries and specifications of the Land										
<p>I, the applicant, want to sell my property which is (a House/Garden or any other) located at () that has the square meters of (), the four side information of the mentioned property is as follow:</p> <p>The north is attached to: The south is attached to: The west is attached to: The east is attached to:</p> <p>With its all related documents that no one else have the rights for, for the amount of () AFS, which half of this amount is equal to () AFS on the mentioned client, I hope your honorable to give instructions on the relevant offices to prepare the title-deed.</p> <p>Signature of the seller</p> <p>Finger-print of the buyer</p>										

Verification by Appeals Court (Deeds registration Unit)								
Verification of the property by District and Property Department of Municipality								
The comments of the informers on quality, surface and price equivalent to the current rate in fixing the price is not needed in costing the property.								
Comments of Study and Mapping Department if one of the 4 sides is connected to the public properties.								
Mustofiat Incomes								
Mustofiat receipts								
<p>This form is referred to the relevant offices to process the title deeds () according to the legislations.</p> <p>Signature of the Judge</p> <p>Nangarhar Court</p>								

Annex 2: Types of Court Prepared Property Related Deeds and Other Documents

No	Name of the Document	English Translation	Property Related
1	<i>Ebra Khat</i>	Waiver	Yes
2	<i>Eflas Khat</i>	Certificate of Bankruptcy	No
3	<i>Khat Ejara</i>	Lease Agreement	Yes
4	<i>Eqrar Khat</i>	Affidavit	Yes
5	<i>Eslah Khat</i>	Amicable resolution of a claim by the parties for a court order, which is itself a kind of affidavit	No
6	<i>Faisala Khat</i>	Decision / Ruling	Yes
7	<i>Hasre Werasat</i>	Document specifying legal heirs	No
8	<i>Hujat Kha</i>	Promissory note	No
9	<i>Khula khat</i>	Divorce granted at the request of a woman subject to approval of husband	No
10	<i>Musanna Khat</i>	Certified Duplicate / Certified Copy	Yes
11	<i>Nafaqa Khat</i>	Child support / Alimony	No
12	<i>Nekah Khat</i>	Marriage License	No
13	<i>Qabalaе Qataе</i>	Title Deed [conclusive document of ownership]*	Yes
14	<i>Qabalaе Jayеzi</i>	Deed of Mortgage	Yes
15	<i>Qarardad Khat</i>	Letter of Contract	No
16	<i>Qayim Khat</i>	Legal Tutorship	No
17	<i>Raseed Khat</i>	Record of Receipt	No
18	<i>Reza Nama</i>	Letter of satisfaction	No
19	<i>Shugoon Nama</i>	Hindu's Marriage License	No
20	<i>Surat-e-Hal Jazaie</i>	Registration of Criminal Pleading / Complaint	No
21	<i>Surat-e-Hal Huqooqi</i>	Registration of Civil Pleading / Complaint	No
22	<i>Talaq Khat</i>	Divorce Decree	No
23	<i>Tamlik Khat</i>	Letter of conveyance of property	Yes
24	<i>Taqsim Khat</i>	Deed specifying division of property	Yes
25	<i>Taraka Khat</i>	Distribution of inherited property among the heirs	Yes
26	<i>Wakalat Khat</i>	Power of Attorney	Yes
27	<i>Wasayat Khat</i>	Testament	Yes
28	<i>Zamanat Khat</i>	Surety / Letter of Guarantee	No

*Includes private transactions and State-to-private transactions; Source ALCO

Chapter 3: Land Issues in Informal Settlement Upgrading

The pilot projects which are examined in this Chapter include:

1. LTERA (2004-2009)
 - LTERA, “Informal Settlements and Land Tenure Issues—Report on Pilot Project District 7”, January, 2006
 - LTERA, “Project Completion Report (2004-2009), September, 2009
 - Ministry of Urban Development, “Informal Settlement Upgrading Policy-Land Tenure and Legal Issues”, 2009
2. LARA (2011-2014)
 - TetraTech, “Land Reform in Afghanistan”, Final Report, 2015
 - Anna Soave, “Informal Settlements Upgrading Handbook”, March, 2013
 - Yohannes Gebremedhin, “Legal Aspects of Urban Planning in Afghanistan: Recommendations Report”, September, 2012
 - Yohannes Gebremedhin, “End of Assignment Report—Draft Upgrading Informal Settlements Policy”, May, 2013
 - Yohannes Gebremedhin, “Follow-on Notes on the Legal Aspect of Urban Planning in Afghanistan”, May, 2013
 - GeoPlanning Survey and Design Company, “Cadastral Surveying and Mapping-Jalalaabad”, Summer, 2013
 - Odell, Malcolm, et. al., “LARA Mid-Term Evaluation”, March, 2013
 - Decker, Allen, et. al., “Final Performance Evaluation”, November-December, 2014
3. UN-Habitat (2003-2014)
 - UN-Habitat, “Incremental Regularization of Informal Settlements: The UN-Habitat Approach, the Case of Kandahar”, 2009
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1. Background

Since the fall of Taliban regime, the massive inflow of more than 5 million refugees has increased the overall population of Afghanistan by 20 percent, with some regions having been affected more severely than others.

Kabul currently is estimated to have a population of over five million, almost doubling since 2000, and has an annual population growth rate of around 5 per cent. This rapid population growth of Kabul is likely to continue for the next decade with the metropolitan area reaching about 6.5 million by the year 2025. This trend is creating serious housing, environmental problems like water shortage, and contamination of groundwater, traffic overcrowding, and air pollution. Returnees and rural-urban migration are causing further increase of mainly low-income population in Kabul City, which creates a pressure on existing basic services and infrastructure in especially the informal settlements and an economic challenge to provide decent jobs for this growing population many of them with limited basic education and skills.

Most of the in-migrants are settled in urban areas because many lived in urban conditions when they were refugee in neighbor countries or were rural residents and perceive urban areas as offering a higher level of security and a better quality of life.

In fact, nearly a quarter of Afghanistan's populations, about 7.25 million people, now live in urban areas.

Accelerating urbanization pressure and ineffective land use development control are today among the most serious challenges faced by the local authorities, frustrated by their inability to guide urban expansion, protect fertile agricultural areas, plan appropriate infrastructure investments, provide affordable housing and ultimately encourage equitable economic growth.

- Planning efforts are being systematically undermined by the enduring presence of significant areas within official municipal districts whose land ownership and occupation status are either uncertain or in breach of the law;
- the unchecked growth of unplanned settlements and speculative development are outside municipal boundaries on both private and governmental land.
- Government authorities consider the non-compliance of informal settlements with the plans a reason to refuse the provision of services to those areas and a basis for a possible eviction – but above all officials are reluctant to condone illegality that would stimulate further squatting and land grabbing¹⁷.
- This municipal frustration with informal settlements at times boils over into forced removal of their inhabitants.

Poor urban health and security services and absence of basic infrastructure with high vulnerability to natural disaster are common in most informal settlements which have emerged in Kabul and other cities since 2001. Complicating such conditions is the fear which inhabitants have of eviction or relocation as well as fear of conflicts with other claimants to the land where their homes are constructed.

¹⁷ Soave, Anna "Informal Settlements Upgrading Handbook", March, 2013, p. vi

1.1 Informal and Unplanned Developments

The massive influx of people in a short period of time has overwhelmed the capacities of municipalities and land developers to provide housing and urban infrastructure in an orderly way.

Although the development and expansion of informal settlements have manifested themselves in a variety of forms, the expansion of informal settlements has almost always involved some variant of unlawful occupation of land. These unlawful acts are in large measure due to the failure of the formal, legal system of land allocation and planning to provide for the needs of the occupiers due to social disruptions. Although uncontrolled developments have provided temporary solutions for many citizens, the uncontrolled development in urban areas has created challenges to land use planning, provision of basic services and protection of the environment. In most urban areas, uncontrolled development has made pre-war prepared Master Plans obsolete.

The variety of forms that the issue of informal developments has manifested itself calls for proper classification of the problem. Residential areas formed on government/public lands are of two types. First, there are public lands grabbed by powerful people and sub-divided into smaller plots. These types of land are either distributed or sold off to others or they are found in the hands of the grabbers. Second, homeless people have built houses on public lands within approved boundaries of urban areas to accommodate themselves and their immediate dependents or family members.

1.2 Insecurity of Tenure in Informal Settlements

The problem of tenure insecurity in both urban and rural areas manifests itself in a variety of forms. Tenure insecurity not only discourages property holders from making an economic investment in their property, but also deprives the market economy of their participation and potential contribution. The ongoing failure of the formal land allocation, adjudication and registration systems has caused uncontrolled informal developments in urban and rural areas. Informal settlements being outside the legal, formal processes of urban development are often threatened to be demolished, which produces fear and uncertainty in minds of all of those living in such settlements—a collective form of tenure insecurity.

Squatting on government and private land, land grabbing, acquisition of immovable property from land grabbers through informal market transactions, improper allocation of land, inter alia, have undermined efficient and equitable use of land for social and productive purposes. At the same time, these uncontrolled and informal developments have given rise to conflicts involving occupiers of land and other claimants, government or private. Such situations produce serious tenure insecurity for users and owners of land. There are many cases of multiple claims of rightful claimants and a current possessor who acquired or bought the property legitimately and in good faith which must be resolved to ensure peace and stability in the country. Such conflicts and uncertainties periodically affect selected settlement land holders—an individual form of tenure insecurity.

Figure 1¹⁸ shows the formal and informal settlement land tenure patterns within the Jalalabad municipal boundaries and outside of those boundaries. The variety of land tenure situations influence the design and implementation of programs for improving the lives of people living in urbanized Jalalabad and how people respond to such programs.

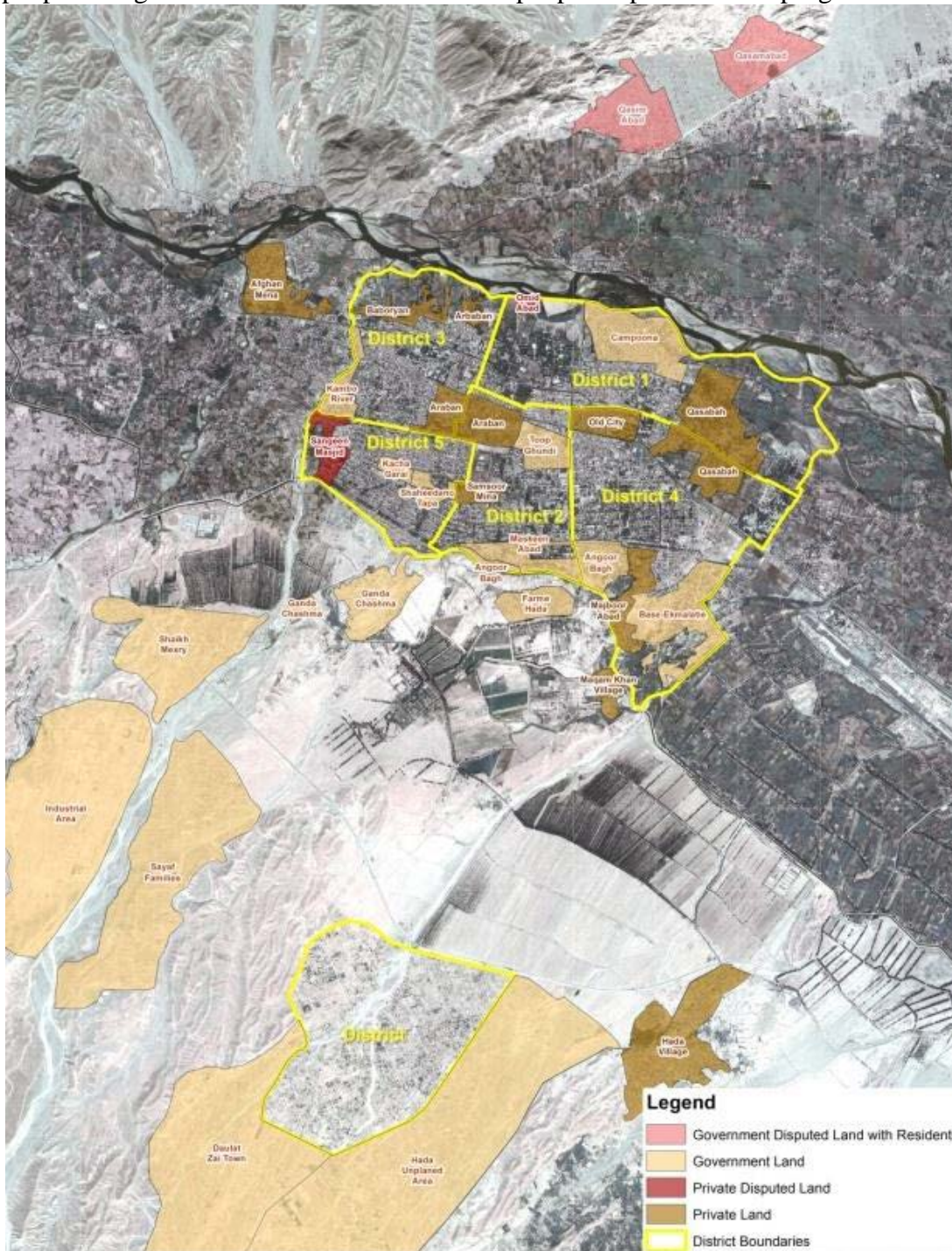


Figure 1: Map of informal settlements in Jalalabad, categorized according to their known land ownership status, 2011

¹⁸ From Soave, 2013.

Comparison of two types of settlements in urban communities

Formal Settlements	Informal settlements
<p>1. Land sold by municipality directly to people or through private sector</p> <p>2. Land parcels for housing located within boundaries of the city master plan</p> <p>3. Construction of the houses done in official agreement of the city municipality</p> <p>4. House owner received official deed from city municipality, and doesn't have any worry about house being confiscated</p> <p>5. Municipality is responsible to provide urban services and proper infrastructure.</p> <p>6. City electricity department is responsible to provide city electricity for the households and collect cost of the consumed electricity</p> <p>7. City water department is responsible to provide piped water net-work for households and collect cost of consumed water</p> <p>8. Municipality is responsible for collection and disposal of solid waste and collects annual sanitation tax (safahie tax)</p> <p>9. If municipality demolishes the house according to an updated city plan, Municipality will pay cost of the constructed building and provides land in other part of the city to convince the owner of the house</p>	<p>1a. Most of the flat lands of the informal settlements are on private agricultural land, grabbed or acquired legally, but people paid for land and built houses on it.</p> <p>1b. Hillside land of the informal settlements was and is government land poor families built houses without any official agreement of the government.</p> <p>2. Lands of the informal settlements are physically outside of city land use plan or developed without Municipal approval.</p> <p>3. Construction of houses done by people according to their needs</p> <p>4. House owners do not have any official ownership deed from city municipality so they fear city will demolish their houses .</p> <p>5. Municipality does not accept any responsibility to provide urban services or basic infrastructure for informal settlements</p> <p>6. According to municipality, city electricity services should not provide electricity, but they often do provide electricity for most of the informal settlements because they pay and it is income for the Municipality.</p> <p>7. Most of the flat areas the house holds get water from their domestic shallow wells; in hillside settlements the families receive their water from households located at lower parts of the hillside or public water taps or pays for water suppliers.</p> <p>8. The households do not pay annual sanitation tax (safahie tax) because municipality did not give them the right to have safahie book. In some hillsides households pay a little money by the name of Tajahee tax due to land occupation, but is not common in informal settlements of the hillsides</p> <p>9. If municipality demolishes the houses for implementation of a new plan, municipality will only give them land in another part of the city. The owner does not receive cost the constructed building.</p>

2. Upgrading of informal settlements

“It is national policy that residential areas formed on public or government land grabbed by powerful people shall not be covered by upgrading programs promoted by the government and the government shall take appropriate measures to deal with the unlawful occupation in accordance with the law”.

In January 2005, the Kabul Municipality’s coverage area increased from 18 to 22 urban districts which includes around 570 *gozars* or neighborhoods of which approximately 400 are unplanned or informal settlements.

Upgrading of Informal Settlements is not simply construction of roads and drainage canals; it involves political, economic, social, and security issues, and it can help establish and maintain peace. In short it is everything for poor people of the informal settlements. A main component of the upgrading work is dealing with land issues at times under conditions where access to land is a strong political tool used by armed people in the last two decades.

If a municipality provides infrastructure and services only for part of the city which is called formal settlements and not provide for majority parts of the city which is called informal settlements, it is social discrimination and marginalization of a big part of the city.

Private investment in housing in informal settlements was estimated in 2004 at approximately \$1.3 billion in Kabul City¹⁹. It is people’s wealth and at the same time it is part of national wealth. How is it possible to ignore people’s investments and talk about demolishing of their houses?

If government does not pay attention to the housing, tenure security and infrastructure problems lived by poor communities, it creates mistrust and a gap between people of informal settlements and government. Growing mistrust and gap between government and people is reason for alarm and can foretell an insecure situation in the future. As mentioned 70% population of Kabul city is living in informal settlements. It is almost same in the other major cities of Afghanistan too. By solving tenure security and infrastructure problems of informal settlements the security situation throughout the country also improves.

2.1 Upgrading of Basic Infrastructure and Land Tenure in Informal Settlements (LTERA 2004-Sept, 2009)

The LTERA project included a pilot project to test community-based methodology of upgrading and tenure regularization.

2.1.1 Providing Land Tenure Security in Afghanistan

¹⁹ Bertaud, Alain, 2005, “Kabul Urban Development: Current City Structure, Spatial Issues and Recommendations on Urban Planning”, report for the World Bank, p 2

LTERA piloted tenure formalization methodologies in Kabul (Districts 6, 7 and 13), Kunduz, Taloqan and Mazar-i-Sharif to upgrade community infrastructure and tenure security in informal settlements. The teams developed processes that integrate to varying degrees the upgrading of basic services with the regularization of tenure and formalization of informal settlements into the municipalities' urban planning processes.

2.1.2 A Community-Based Approach to Tenure Regularization

Land tenure regularization has generally failed where methodologies have not sufficiently taken into consideration the local reality of informal settlements and the importance of community-based dispute resolution and planning. Successful tenure formalization is directly linked with the upgrading of informal settlements and requires the participation of all stakeholders – the community residents, the public, and the government – in resolving disputes and formalizing settlements.

In recognizing the importance of community support systems in the formalization of informal settlements, LTERA initially selected two Community Development Councils in 2004 that were established by UN-HABITAT in two *gozars* (neighborhoods) in District 7 and one in District 13 in Kabul. This decision was based, among other criteria, on the existence of previously established *shuras* (community councils) and the willingness of residents and the municipality to participate in the program. Although the *shuras* were involved in previous upgrading projects in their residential areas, the issue of tenure security had not been addressed in Kabul prior to the LTERA program.

In 2006, the tenure formalization programs in Kabul entered the second phase with the opening of an office in the Darulaman section of Kabul, located close to Districts 6, 7, and 13, and the launch of a larger scale tenure formalization program. The programs were managed primarily by Afghan experts and paved the way to replication of the successful programs in selected urban areas in selected Northern provinces and more districts in Kabul.

In 2007, LTERA's formalization programs were expanded in Kabul and, in 2008 and 2009, introduced in Taloqan, Kunduz and Mazar-i-Sharif. As part of its empowerment goals, all tenure formalization programs were managed solely by Afghan staff who were trained in Phase II to take up leadership positions in Phase III of the project.

2.1.3 Objectives and Strategies of the Programs in Kabul

The objective of the programs in Districts 6, 7 and 13 in Kabul was to test strategies that support a cost-effective methodology to improve tenure security in informal settlements that can be applied in urban areas elsewhere in Afghanistan. The methodology was developed based on the assumption that the integration of tenure security with the upgrading of basic services is likely to improve community cohesion and lessen fear of displacement through eviction. The experience in Kabul was to provide evidence that similar programs can be successfully implemented

in other urban areas, and when adapted to the reality on the ground, in rural areas as well, when the following approach is taken:

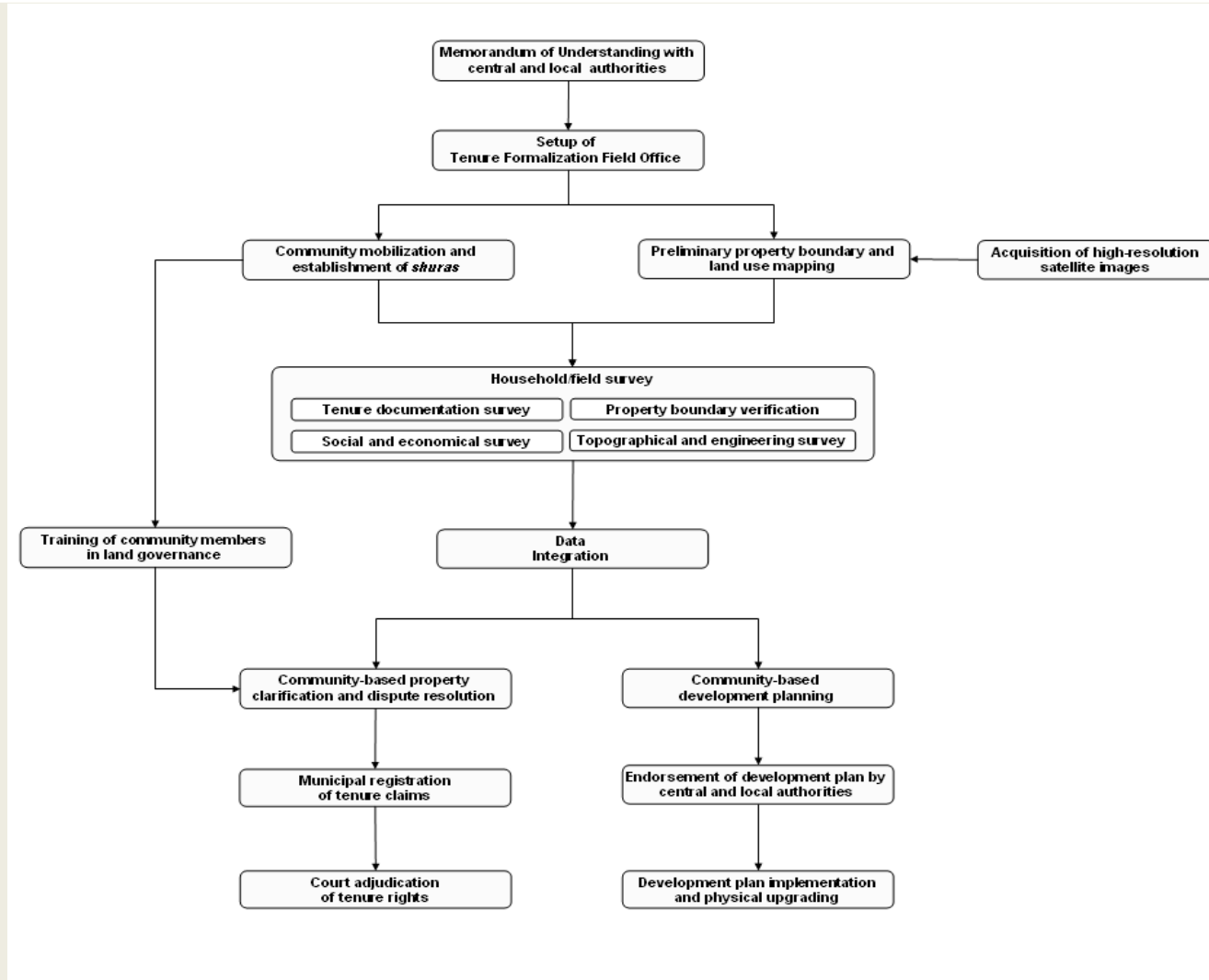
2.1.4 Approach

LTERA's approach to the regularization of informal settlements was as follows:

- ▲ **MoUs:** Ensure ownership of the program through Memorandums of Understanding with local governments and line ministries;
- ▲ **Support System:** Embed an office in the community and ensure that Afghan talent manages the day-to-day running of the program with limited guidance and supervision of an expatriate expert;
- ▲ **Community Mobilization and Ownership:** Identify or establish representative community structures in *gozars* and mobilize residents in support of the program;
- ▲ **Training:** Organize training programs for LTERA staff, communities and other counterparts on tenure formalization, mapping, etc.;
- ▲ **GIS/Mapping:** Prepare topographical maps for urban areas using rectified aerial photography and Google Earth Professional images;
- ▲ **Field Surveys:** Undertake door-to-door property surveys to collect tenure and titling information, undertake preliminary identification of property boundaries, undertake sample household socio-economic surveys and establish benchmarks for future monitoring and evaluation;
- ▲ **Adjudication:** Facilitate a community-based property adjudication and dispute resolution process ensuring the full participation of women;
- ▲ **Planning:** Develop spatial development plans for urban areas which identify the future road network, future land use, and informal areas which should be earmarked for upgrading with the participation of communities, for approval by municipal authorities; and
- ▲ **Physical Upgrading:** Facilitate the implementation of infrastructure upgrading projects prioritized by the needs expressed by the community. USAID and the consulting firm, EMG, however, resisted this activity of actual physical upgrading, except in one of the Kabul settlements. The intention apparently was to explore what community investments from their own resources could be encouraged by lessening fear from eviction and by providing documented evidence of possession of the land to lessen the fear of conflict with others over the possession of the land.



LTERA formalization methodology



2.1.5 LTERA'S EXPERIENCE REGULARIZING INFORMAL SETTLEMENTS IN DISTRICT 7 IN KABUL

LTERA's first small scale pilot program started in District 7 in 2005 and involved two communities, composed of 517 residential lots. The pilot successfully tested methodologies for: community action planning for infrastructure and tenure upgrading, surveying communities; mapping and demarcation of boundaries; property surveys; household surveys; property adjudication; and the provision of legal counseling regarding property issues.

The team prepared a proposal to replicate and scale-up these activities, and prepared a detailed Land Information System (LIS) for the rest of the district, comprising 24 *gozars* and an estimated population of 222,000 on 18,500 residential lots.

LTERA undertook a preliminary study in August 2006 to identify the economic benefits arising from the first phase of the upgrading and tenure formalization program in District 7 which took place in those neighborhoods.

The study showed a significant impact approximately nine months after the planning and tenure status upgrading was completed in terms of increased business activity and housing construction. Interviews with community leaders and residents also showed that people's perception of tenure security had improved significantly since the implementation of the project. In summary:

- ▲ **More Construction:** Forty-six houses had either been reconstructed or extended in the pilot area in the year following the implementation of the project. This represented 9% of all houses in the area. Forty-five of these houses were constructed of brick and concrete which required substantially greater investment than mud. Only one house was constructed with mud;
- ▲ **More Businesses:** The number of businesses increased from 117 to 126, an increase of 7% since a previous survey was undertaken in November 2005;
- ▲ **Increased Prices of Vacant Land:** Although house prices appeared to have stabilized and in some instances had decreased in value, the price of vacant land increased by as much as 50% since the project started. There were fewer houses on the market than before the project started. There were also fewer properties for rent, and rental prices increased by an average of 30% over a period of one year. Property agents reported that more homeowners were staying in their own properties as a result of a perception of greater security and a reduced likelihood that their houses would be demolished by the Municipality;
- ▲ **More Tenure Security:** All 30 residents interviewed were aware of LTERA's tenure formalization project. Twenty-nine out of the thirty respondents reported that they felt more secure as a result of the project and believed that the area would in the future be incorporated into the City Plan. Three respondents noted the fact that roads and drains had been constructed in the project area. Only one respondent reported that he did not feel more secure as a result of the project and that the Municipality eventually would demolish the area; and

- ▲ **Positive Impact on Community Development:** *Shura* and community leaders involved in the property adjudication process reiterated their support for the project and confirmed that the project led to improved perception of security and increased economic activity in their communities.

Similar results were observed in Kabul Districts 6 and 13, where LTERA expanded its activities from October 2007 through July 2009. In these districts, LTERA:

- ▲ Helped establish 56 *shuras* in Kabul – through a community-based election process;
- ▲ Surveyed, mapped and clarified property rights – both formal and informal – of 54,000 households; and
- ▲ Resolved over 1,400 land disputes within informal settlements of southwest Kabul through community-based dispute resolution committees.

2.1.6 LTERA'S EXPERIENCE UPGRADING INFORMAL SETTLEMENTS IN DEH QABEL GOZAR, KABUL

In order to provide visible evidence of improving community living standards as well as the implementation of land tenure formalization process in Kabul, LTERA implemented through a contract with the Afghan NGO Cooperation for the Reconstruction of Afghanistan (CRA), a street upgrading plan in the neighborhood of Deh Qabel in District 13 aimed at increasing accessibility to land parcels, contributing to better infrastructure among the spatial patterns within the *gozar* and enhancing the perception of tenure security within the community.

Upgrading activities took place from December 2005 through June 2006 in close coordination with the *gozar's shura*. LTERA through CRA surfaced 26 streets with plain cement concrete and improved drainage structures servicing 12 hectares of informal settlements and more than 200 households. As of January 2007, the following could be concluded:

- ▲ **Significant Support for Community Mobilization:** The design and implementation of upgrading projects have helped mobilize communities on land tenure issues and to illustrate the positive and tangible impact of tenure formalization on the *gozar's* infrastructure;
- ▲ **Significant Contribution by the Community:** The in-kind and cash contribution of the community to the upgrading works was the equivalent of \$24,000, equivalent to 30% of the LTERA contribution of \$80,000 for direct upgrading costs (materials and labor). This amount was expected to increase in the future as further upgrading works were being implemented by the community in adjacent streets without LTERA's assistance;
- ▲ **Greater Economic Development:** Compared to non-upgraded neighborhoods, the profits of local shopkeepers increased due to greater accessibility. Some shopkeepers reported an increase in profits of 100% after the streets were surfaced. In addition:
 - ▲ The value of land increased by 10 to 15% compared to the initial land market in Deh Qabel and the land markets of adjacent neighborhoods; and
 - ▲ The quality and durability of construction improved significantly. As a

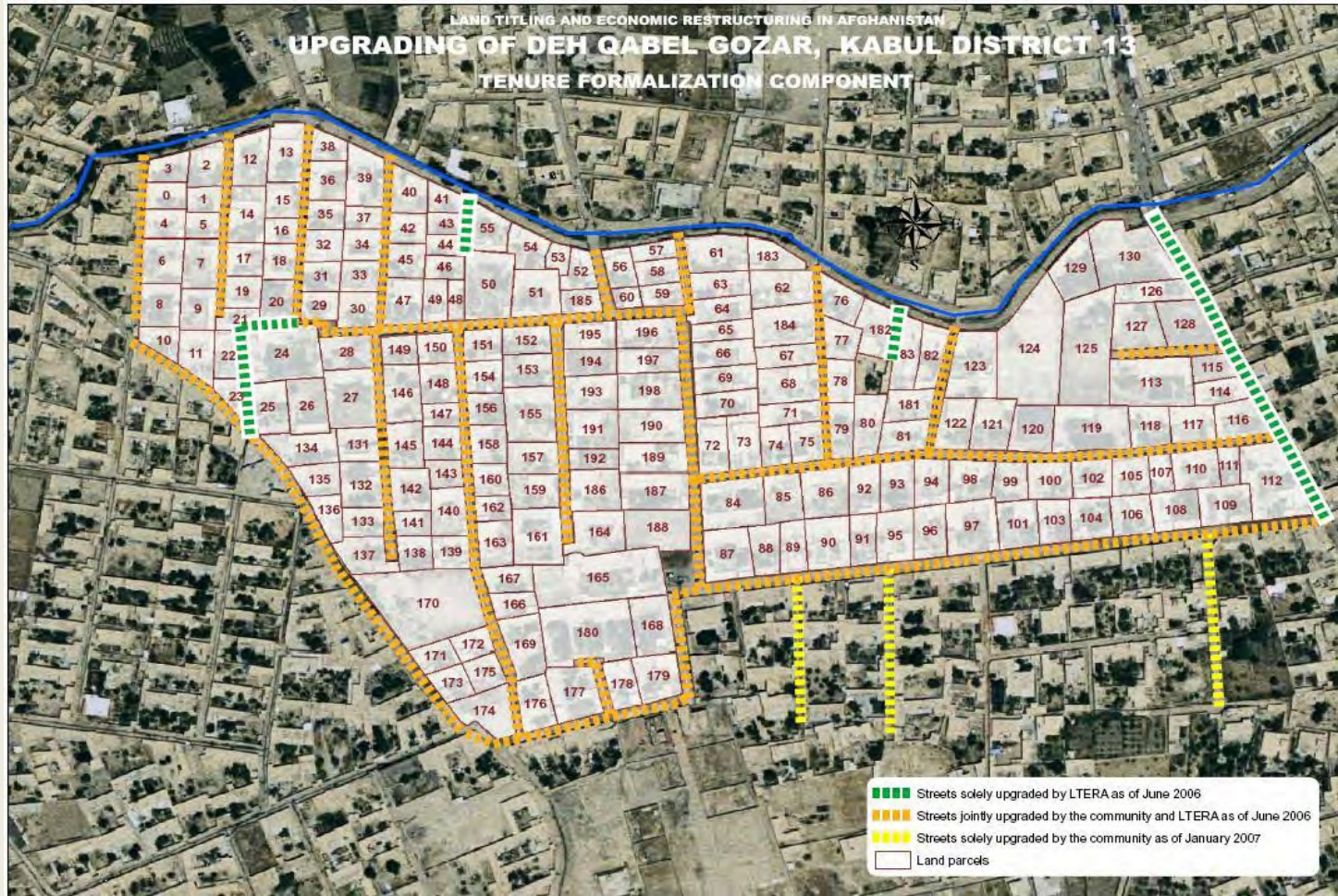
consequence of perceived tenure security, brick and concrete construction replaced traditional mud construction in houses and buildings in the upgraded areas.

- ▲ **Short Time Frame:** Establishing a community-based structure for the tenure formalization program takes up to one year; the physical upgrading work could be finalized within eight months. Therefore, it is feasible to successfully implement upgrading and tenure formalization programs within two years.

A Panoramic Picture of District 13: The street on the left was renovated by LTERA as part of a pilot program to test the feasibility of cost-effective and sustainable Tenure Formalization Programs. The street on the right reflects the state of an adjacent road before LTERA's efforts



In-kind and cash contributions of the community in District 13 were \$24,000, equivalent to 30% of the LTERA contribution of \$80,000 for direct upgrading costs (materials and labor). This amount is expected to increase as further upgrading is undertaken by the community on adjacent streets without LTERA assistance. The surfacing of three streets (in yellow) exemplifies this positive development. LTERA upgraded five streets (in Green) with only in-kind contributions from the community



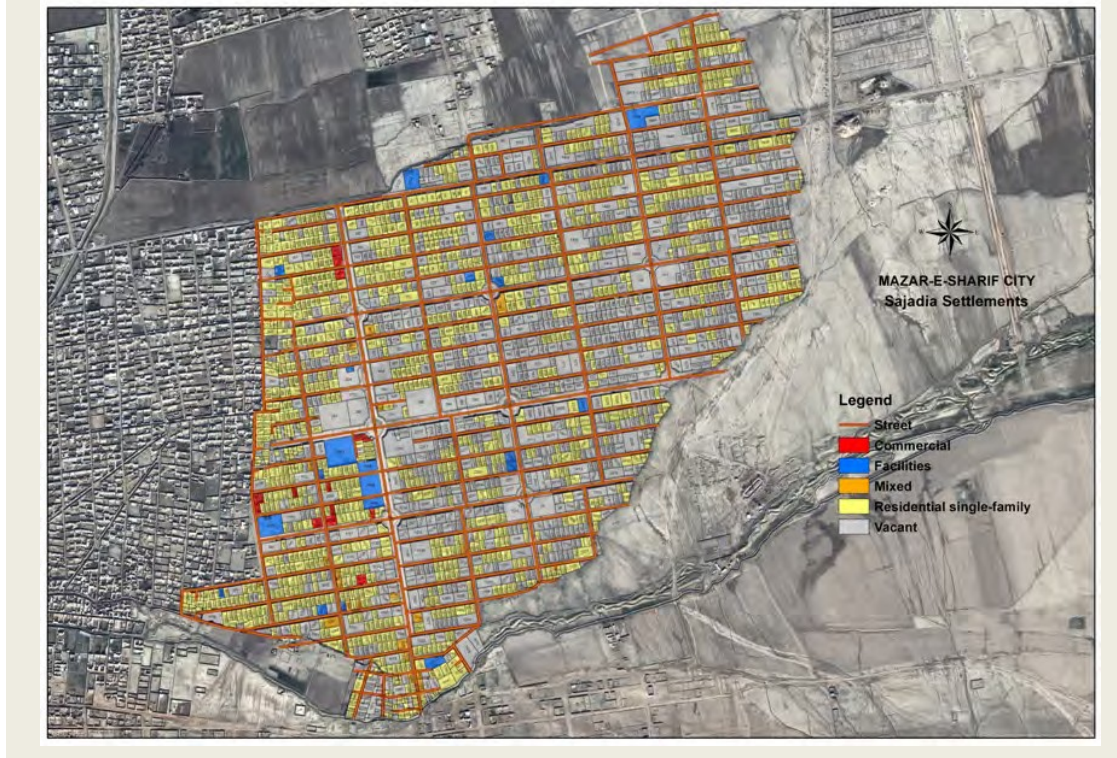
2.1.7 LTERA'S EXPERIENCE REGULARIZING INFORMAL SETTLEMENTS IN MAZAR-I-SHARIF

In Mazar-i-Sharif, LTERA concentrated its efforts on the informal settlement of Sajadia located in the southeastern part of Mazar-i-Sharif, in Municipal District 10. The program in Sajadia illustrates how tenure insecurity within allegedly grabbed areas can undermine the economic development and how formalization of such areas can be approached in Afghanistan.

The area of Sajadia covers about 1,100 *jeribs* of land (1 *jerib* = 2000 square meters) and consists of 3,000 houses. The area, historically privately owned, was allegedly grabbed in 1992 by a local warlord while the alleged legitimate owner had left the country. The area was then subdivided into lots and sold to the people who purchased the lots in good faith.

In 2003, heirs of the alleged owner returned to Afghanistan and filed a claim with the Court of Mazar-i-Sharif which ruled in favor of the heirs and ordered that the land be restituted. Since then, the members of Sajadia community have opposed the implementation of this order.

Figure 2: The Sajadia settlement



The dispute resolution and formalization process started in February 2008 and ended in July 2009. Figure 2 shows the property map and street networks of the Sajadia settlement in Mazar -iSharif. The experience of LTERA in Mazar-i-Sharif demonstrated the following:

- ▲ **Mediation is Key to Solving Land Issues:** Courts alone have proven ineffective in solving issues related to allegedly grabbed land, partly because they consider residents on grabbed land as offenders and not as victims. Mediation by community elders among all parties involved with a focus on creating mutually satisfying solutions through dialogue has proven to be an effective conflict resolution method;

- ▲ **Formalization Increases the Value of Land:** Over the last 25 years, land market prices within Sajadia have been at 25% of the real market price – typically between \$1,000 and \$4,000 for a 600 m² lot - because the land dispute has driven potential buyers away from the area. The community’s rationale for accepting a resolution that compensates the alleged real owner is based on a belief that the transfer of ownership rights to the community will increase the value of land well beyond its historical value;
- ▲ **Formalization Increases Private Investment in Housing:** The hope that land tenure will be secured in Sajadia has boosted private investments in housing: the number of houses with private water wells has increased from 129 in May 2008 to 356 houses in May 2009;
- ▲ **Formalization Revives Public Investment Projects:** Initially earmarked by the Municipality of Mazar-i-Sharif as the 11th District of Mazar-i- Sharif and a thriving residential and business area, Sajadia had evolved into an under-serviced and isolated settlement offering few opportunities to its residents as a result of the land dispute. The land dispute resolution process has revived former investment projects from the Municipality that were intended to be submitted to the Provincial Development Council.

2.1.8 LTERA’S EXPERIENCE FORMALIZING INFORMAL SETTLEMENTS IN KUNDUZ

The informal settlements of Rustaqabad and Faizabad in Kunduz offer two examples of squatted governmental land. The formalization process started in February 2008 and ended in July 2009.

The informal settlements of Faizabad and Rustaqabad in Kunduz were established in 2002 and currently consist of 1,800 houses. Unlike many other informal settlements, Faizabad and Rustaqabad have access to roads, water and electricity



Lessons learned from the LTERA experience in Kunduz include:

- **The Importance of Community Leadership:** Unlike other LTERA tenure formalization areas, the settlement of Rustaqabad had an existing *shura* in place and strong community leadership. The *shura* approached the municipality of Kunduz and the Ministry of Urban Development in 2007 - before the LTERA program started - with a view to formalize tenure rights of Rustaqabad residents and to prepare a community development plan. This community leadership has been a key factor in facilitating the formalization process.
- **The Importance of *de facto* Recognition:** Most tenure formalization programs focus on *de jure* recognition of tenure rights within informal settlements, that is to say, the regularization of rights through a formal legal process. The project in the Rustaqabad and Faizabad

settlements illustrated how *de facto* recognition of rights can also have a positive impact on the livelihoods of Afghan citizens;

During the period 2005-2009, the Municipality of Kunduz implemented a series of measures to improve the perceived tenure security among the residents. For example, the Municipality developed and implemented a street addressing system within these settlements and started collecting sanitation taxes. The Municipality also encouraged national and international NGOs to implement community-based development projects such as drilling public fountains and setting up a youth center;

Even though this municipal policy did not lead to a formal registration of tenure rights (legal deeds prepared by the Nahiya Courts), it had some practical effects: the community started investing in property and provided most of the capital investment necessary for supplying water and electricity to the area. Residents reported that, though Rustaqabad is an informal settlement, the level of services within the settlement equaled that of average levels of service available in the formal parts of Kunduz.

- **The Positive Impact of Formalization on Municipal Finance:** The Municipality of Kunduz immediately realized the opportunity offered by the tenure formalization program to improve its public finance through the sales of government land and the collection of sanitation taxes.

With the support of LTERA, the Municipality established a property registry indicating the size and location of each property within the informal settlements, aimed at optimizing tax calculation and recovery. The formalization of Rustaqabad and Faizabad settlements in Kunduz was expected to generate an estimated \$540,000 for 2009-2010 plus an additional \$21,000 annually.

The Informal settlements of Rostaqabad and Faizabad in Kunduz



2.1.9 LTERA'S EXPERIENCE FORMALIZING INFORMAL SETTLEMENTS IN TALOQAN

Gullahi Baghi Zakhera is a small informal settlement located in the northwestern part of Taloqan. The settlement has been developing since 1989 and consists of approximately 300 houses.

The area was private rural land which was informally subdivided and developed in violation of the existing master plan. The process for formalizing Gullahi Baghi Zakhera settlement was initiated at the end of 2008 by the Municipality of Taloqan with LTERA's support.

The Informal settlement of Gullahi Baghi Zakhera in Taloqan



The experience of LTERA in Taloqan demonstrated that:

- ▶ **Women's Participation Increases Community Involvement:** The project benefited from broad support of the community thanks to the critical role played by women during the community mobilization process. This is largely due to the fact that women played an important role articulating the needs of their communities and their direct involvement in the programs;
- ▶ **Community-Based Adjudication is a Viable Alternative to Formal Adjudication:** Many residents of informal settlements are reluctant to resort to courts to resolve land disputes. The formal judiciary system is commonly seen as intimidating, slow and expensive, and decisions made by judges are perceived by

many people as unfair or unenforceable. In Taloqan, the *shuras* met the expectations of the citizens in terms of affordability, equity and enforceability of decisions. Since most land disputes were internal to the community – disputes among neighbors or among family members – decisions made by community elders were more likely to be accepted than judicial decisions;

- ▲ **Municipal Registration of Property Claims as a Step toward Adjudication of Property Rights in the Formal Courts:** Some 70% of the residents in Taloqan do not have a recorded deed of their land. The Municipality repeatedly reported this lack of records as a major bottleneck undermining its capacity to administer the city in an efficient manner: it limited its ability to collect taxes, to deliver building permits and to prioritize municipal services.

By developing a mechanism for collecting, clarifying, validating and recording information on property claims, LTERA assisted the Taloqan Municipality in removing this bottleneck. The registration of clarified property claims with the Municipality can be seen as a first level of *de facto* recognition of residents of informal settlements and their inclusion into the formal municipal economy.

2.1.10 PREPARING COMMUNITY-BASED DEVELOPMENT PLANS

Unclear and inappropriate urban planning standards and top-down urban planning procedures often contribute to tenure insecurity, since government authorities consider non-compliance with outdated and rigid urban plans as a basis for eviction of residents of informal urban settlements and a reason to refuse the provision of services to those areas.

Afghan urban planning standards and practices often disregard existing land use patterns, ignore communities' expectations, and call for land-intensive development that often requires the eviction of large numbers of occupants of informal urban settlements without requiring government efforts to resettle them.

Within the pilot areas of Kabul, Mazar-i-Sharif, Kunduz and Taloqan, LTERA utilized a flexible, decentralized, community-based approach to urban planning which has reduced tenure insecurity and improved social inclusion of residents of informal urban settlements. Using clear construction standards that accommodate a wide range of construction techniques (especially those used in informal urban settlements) and building the institutional capacity to administer these standards has enhanced tenure security, public safety and trust in the respective municipalities.

While community development plans were approved for Kabul and Kunduz, the plans for Mazar-i-Sharif and Taloqan were still under review as of project end (September 29, 2009). The community development plans for Districts 6, 7 and 13 of Kabul were incorporated into the revision of the Kabul Master Plan led by the World Bank KURP project and JICA's Greater Kabul Metropolitan Area initiative.

Achievements of LTERA with the Formalization of Informal Settlements

- ▲ Developed and implemented a large scale, cost-effective and sustainable methodology, based on experience gained in pilot program areas, by which informal
-

settlements can be brought into the formal urban planning process;

- ▲ Assisted Kabul Municipality and the Ministry of Urban Development in the process of working with *shuras* and the development of a land policy for integrating informal settlements in the urban planning;
- ▲ Formed 58 *shuras* in Districts 6, 7 and 13 of Kabul, as well as Kunduz, Mazar-i-Sharif and Taloqan, and initiated community mobilization to implement an upgrading program, conducted property surveys and initiated a community-based adjudication process with the formation of 108 Property Clarification Boards;
- ▲ Assessed the feasibility of replicating tenure formalization programs in urban areas throughout the country; and
- ▲ Assured women's participation in community-based decision-making and field surveying.

Throughout its implementation, LTERA worked with communities in various types of informal settlements. Table 1 below summarizes LTERA's formalization strategies in pilot areas:

Table 1: LARA Formalization of Tenure

Pilot Area	Type of Informal Land	Number of Houses Formalized	Formalization Strategy
Kabul Districts 6, 7 and 13	Private land subdivided and developed in violation of the Master Plan	53,000 houses	<ul style="list-style-type: none"> Community-based property clarification Municipal registration of ownership claims Revision of the Master Plan Court adjudication of ownership rights based on quiet possession Preparation of a community development plan
Mazar-i-Sharif – District 10 Sajadia settlement	Private land grabbed and illegally sold	3,000 houses	<ul style="list-style-type: none"> Court arbitration Compensation of legitimate owners Court registration of ownership transfer rights
Kunduz – Rustaqabad and Faizabad settlement	Government land squatted and developed without a Master Plan	1,800 houses	<ul style="list-style-type: none"> Community-based property clarification Municipal registration of occupancy rights Preparation of a community development plan Sale of government land Court registration of ownership transfer rights
Taloqan – Gullahi Baghi Zakhera settlement	Private land subdivided and developed in violation of the Master Plan	300 houses	<ul style="list-style-type: none"> Community-based property clarification Municipal registration of ownership claims Revision of the Master Plan Court adjudication of ownership rights based on quiet possession

3. Small, Community Based Projects for Upgrading of Basic Infrastructure in Informal Settlements (CRA 2013-4)

Physical upgrading of roads and drainages in Deh-Qadil neighborhood in 2005 -6 by CRA, was funded by LTERA/USAID and was completed in one year. In that project the community learned how to identify and prioritize their pressing needs, how to plan a project and how to implement it. At the same time it was good learning process for the municipal district office. The objectives, and outputs are explained in detail in the above section under LTERA.

Subsequently the PD&C (Planning, Design and Contract Management) package II of Kabul Urban Reconstruction Project was also implemented by CRA. Coverage of the contracted upgraded area was 196 hectare land and upgrading components were construction of drainages, construction of road, upgrade and extension of city water supply net-works, improvement of domestic latrine, collection and disposal of solid waste through a community managed system. The project covered two hillside informal neighborhoods in District 3, and 6 and one flat area of informal settlements in District 2 of Kabul city.

After experiencing the limits of an engineering approach to a large upgrading effort, CRA subsequently secured funding from the Asian Coalition for Community Action (ACCA) for a Community Based Small Upgrading Project implemented in 2013-2014 to develop and demonstrate an alternative model.

The target locations for small upgrading projects were poor communities of informal settlements in urban communities. The first and most obvious purpose of small projects is to allow communities to make a few much-needed improvements in their settlements. This upgrading program started with the physical community work on small but concrete projects implemented by the people themselves. But carrying out of these small projects was just a starting point for the real transformation which the small projects have been explicitly conceived as a tool to ignite a transformation in which poor and marginalized communities in a neighborhood wake up and find their own power to analyze their situation, determine what they need, design a solution and succeed in carrying out that solution with their own hands.

These small projects got community people into a lively, collective process in which they changed from being the ones who wait for someone else to bring them development, to the ones who do things themselves.

Each project cost was limited to a maximum of only US\$ 3,000. In this model, upgrading was a process of poor communities' actions and net-working for betterment/improvement of their living condition and their environment, with small capital inputs from an external donor.

Objectives:

- To facilitate for community consultation and joint decision making
- To train low income communities of the informal settlements regarding how to identify, prioritize, and solve their problems by their own action and with limited resources
- To encourage low income communities to work with local authorities and advocate for their needs and rights
- To encourage poor communities to establish local saving system

Project partners

1. local community saving groups
2. city municipality
3. CRA (cooperation for Reconstruction of Afghanistan)

The project was implemented in 2013-14 in seven cities: Kabul, Jalalabad, Charikar, Pole-Khumri, Eybak, Mazar and Sheberghan.

3.1 Project main activities and achievements:

Through Community Action Planning workshops the small project priority need was identified in each community. The men's saving groups took full responsibility for supervision and implementation of the small projects. All small projects were implemented by local communities under supervision of their community saving group. The Municipality also did monitoring of implementation in the smaller cities. Before payment of each installment CRA's monitoring group went to the project site and monitored quality and quantity of the work done. Table 2 shows inputs and outputs of the small upgrading project:

Table 2: CRA Small Scale Upgrading Projects

City	No. of communities	No. of Small Upgrading	Beneficiaries (House Holds)	ACCA Contribution	Community Contribution
Kabul	9	10	4010	29,000	13,432
Charikar	3	06	0544	15,000	3,531
Jalalabad	3	05	0875	15,000	5,389
Pole Khomri	4	04	0362	10,000	2,138
Eybak	3	04	0197	10,000	1,530
Mazar-e	3	04	0135	10,000	1,685
Sheberghan	3	04	0116	10,000	1,620
Total	28	37	6239 HHs or 44450 people	89,000 USD	26,325 USD

3.2 Formation of Saving Groups

a. women saving groups

In Afghanistan most women do not want to be members of mixed gender saving groups. First, they are usually not allowed by their families; and second, in mixed gender saving groups the women usually lose their rights to decision making since they have to obey decisions made by men. Women feel comfortable to speak and engage in discussions in a group of women. So, the mobilization of the community to take on the small scale upgrading project worked with separate men's and women's groups

The management team of the women saving group consists of head of group, cashier, treasurer and three monitors; also each saving group nominated two women for the City Saving committee. Table 3 shows figures about women saving groups:

Table 3: Women’s Savings Groups in CRA’s Small Scale Upgrading Project

City	No. of women Saving group	No. of women	Date saving started	Saving per month (\$)	Amount saved (\$)
1. Kabul	5	135	July 2012	0.4	2400
2. Charikar	2	82	Aug 2012	0.3	543
3. Jalalabad	2	78	Dec 2013	0.4	480
4. Pole-Khumri	3	87	Dec 2013	0.4	520
5. Mazar-e-Sharif	2	46	Oct, 2014	0.45	60
6. Eybak	1	27	Nov 2014	0.5	67
7. Sheberghan	3	48	Oct 2014	0.3	68
7 CITIES	18	503			4138

b. Men’s saving groups

In Afghanistan according to popular culture men are formally responsible for upgrading activities. The Men’s Saving Group met at the end of each month. Besides discussion about problems, needs and other social issues also they collected money for their saving box. The men’s saving group spent the saved money for providing services, upgrading activities, and to give loans to their members. In total 28 men saving groups were established, one per community.

3.3 City Development/upgrading Committee

Each men’s saving group elected two persons as their authorized representative to be member of the City Upgrading Committee. The City Upgrading Committee was accountable to the city’s poor communities, while also linking the municipality and other organizations for urban services and upgrading needs (Table 4)

Table 4: Community Organization Involved in Small Scale Upgrading Effort

City	No. of communities/city covered by ACCA	No. of Rep./community	No. of City Upgrading Committee members Per city
Kabul	9	2	18
Charikar	3	2	6
Jalalabad	3	2	6
Pol-e Khumri	4	2	6
Eybak	3	2	6
Mazar-e Sharif	3	2	6
Sheberghan	3	2	6
Total	28 communities		54 men

In total 54 people were members of national committee. One city upgrading committees was formed in each city.

3.4 City Saving Committee

Each women's and men's saving group elected two of their members for the City Saving Committee. Each city had its saving committee, but because of cultural limitations women especially poor women could not participate at the social activities as may be needed and as they wanted. Commitment, hard work and time are needed to change the existing situation and encourage women of the poor communities to give voice for their rights.

3.5 Exchange visits

Linking of communities from around the city and among cities engaged in small upgrading projects was important for supporting community initiatives.

a. Exchange visit in the city

In each city three communities covered by ACCA small projects, the community activists managed site visits among their three communities.

b. Exchange visits between cities- National

It is a strong need for the poor communities to manage exchange visits to know each other, learn from knowledge and experience of each other, and to work harder for change of their living condition, improve their economic situation, and to have better life. We have seen the benefit of exchange visits in this example:

When CRA's monitoring team went to Charikar City for monitoring of the road construction project, the team reported poor quality of the work. CRA's technical advisor discussed the issue with elders and met with the head of the municipal district office. They jointly decided to stop project activities for two days. Community upgrading Committee of Charikar city and head of municipal district office in coordination to Charikar City Mayor went to Jalalabad city for one day for site visit and exchange of knowledge and experiences. When the Charikar team returned back from Jalalabad they restarted their work with more attention and good quality. This was a big change because they saw a good job being done in other poor communities and discussed projects directly with the people of the communities face to face.

Exchange visits between cities can build trust and peace. Different people with different languages, different ethnicities with backgrounds of conflict came together and talk in friendly and frank manner. Then they did joint site visits to the implemented small projects. Encouraged by what they saw they used positive words about the work in each community.

One of the women expressed her feeling after the exchange visit: "it is my first time that I have I visited Charikar city and it is first time I got out of my city (Kabul City). Really I enjoyed talking with women of this city and now I don't feel alone because we have many poor women like us at this city and maybe in other cities too."

In total, seven exchange visits took place between City Upgrading Committees (men) and City Saving Committees (women) of 4 cities (Kabul, Charikar, Jalalabad, and pole Khumri cities).

c. Visit in the region

ACCA/ACHR and SPARK organizations facilitated the CRA to organize a group to go India in July, 2014 (Mumbai) and visit saving system of the poor communities in Mumbai. CRA sponsored a team of 6 people (Mrs. Marzia from Kabul, Mr. Sami from Kabul, Mss. Wagma from Parwan, Mr. Shirin Agha from Pole Khomri, Mr. Maqsoom and Akram from CRA). In Mumbai the host organization provided in town transportation, tasty lunches, site visits and community meetings for four days. The team visited their saving groups and one day joint site work, housing projects, and community managed public latrines.



3.6 City conference

After completion of the small projects and other ACCA activities in each city, the city committees organized a city conference. Sometime this conference took place in one of the community implemented ACCA projects, and sometimes it took place at the city center. Participants of the city conference were members of community saving groups (men and women), community people including women, CRA representatives, municipality representatives and some other government people invited by the communities.

Agenda of the meeting was: opening by one of community elder or representative of municipality, each community presented their project outputs, impacts and financial reports. A CRA representative presented objectives of the ACCA program.

In some cities it was not possible to have both genders at the same meeting. All women saving groups could not participate at the conference, only their representatives.

Such an encounter underlines community accountability and transparency. In our project, the updating conference/completion ceremony took place in 4 cities and 3 more for three new cities were planned in the near future.

3.7 Problems and challenges

Lack of security and shortage of funds was main problem for implementation of ACCA small projects and activities in 2013 and 2014.

Women of the saving groups mentioned “how can we save money without having any source of income?”

3.8 Lessons learned

Community implementation of small upgrading projects paid close attention to project quality and quantity of work. Communities implemented the projects with lower costs in a shorter time periods than the large, top-down engineering approach for infrastructure upgrading. It was a good learning process for poor people.

People of the seven cities have been very happy with implementation of small projects. Now many poor communities send their representatives to municipality and request small upgrading projects.

One of the local man in Eybak city said; “this project is not just a small upgrading project this is a wake up program for poor communities”.

3.9 Suggestions

Women saving groups in Pole Khumri city suggested literacy courses plus short- term courses to build on knowledge of the women about sanitation to protect their children.

Some of the women saving groups dropped out of the saving activities. At a meeting one of the women said “I do not have income to save from my income; the bread-winner of our family is unskilled daily wage labor at the local market; most of days he comes home without money. I want a job to feed my family and save part of it. Now I can’t look at the faces of my children.”

The other women said “please change name of the women saving group to men saving group because it is men’s money that we are saving”

A capacity development program is needed for poor communities;

- The short-term capacity development program could include topics like: how to improve family latrine to protect your family; how to improve your kitchen to be clean and more comfortable for women; how to protect you source of drinking water; how to make natural fertilizer from your kitchen refuse organic material; how to grow vegetable- fruit trees in the house compound; what is poor housing?, what is upgrading? How to improve sanitation and protect the poor families from diseases which damage health and economic situation.
-

- Vocational education about masonry and carpentry to pave the way for housing and upgrading
- Short-term courses can be from one week to one month. At the end of the informal education program successful students should receive certificates.

National trainers can be trained in one of partner country. The certificate should be provided by ACHR of Thailand for students who successfully complete the course.

Training materials should be provided by one of partner country

After implementation of 2-3 years of a training program, on the basis of the lessons learned a learning center can be established for formal education especially for the poorer people.

The objective of the learning center should be the gradual development of the poorer informal settlements. All students of the learning center should be young people from poorer communities. And the learning center should take leadership of upgrading and housing activities of the urban poor communities.

- Economic support for the urban poor communities should be provided through skill development and income generation projects which supports saving system, sanitation, upgrading and housing.

3.10 Impact of ACCA small projects on urban poor communities.

In Afghanistan the CRA implementation of small projects was a big challenge at the beginning because other donors funded millions of dollars for upgrading projects. When we started implementation of small projects we explained the available project budget to people in a community meeting. They told us “you are not doing upgrading--you are joking with us”, and they refused. It took three months to identify three neighborhoods willing to agree to implementation of small projects.

Big projects certainly change the face of the neighborhood, but they do not change the minds of the people. After implementation of the first small project in each city we had many candidate communities for implementation of small projects. With implementation of small projects community ownership, community accountability and transparency, community relations and community voluntarisms were much improved and the projects had significant impacts on people.

A good example is in Eybak city: the men’s saving group paid from their own savings for skilled and unskilled labors and tools. They spent ACCA project money only for purchasing of construction material.

4. Upgrading of Basic Infrastructure in Informal Settlements (UN-HABITAT 2014)

UN-Habitat implemented simultaneously two sets of upgrading projects during 2012-2014. The first group of upgrading projects was implemented in the informal settlements funded by EC and EU under different titles. The main objective of the projects was reintegration of IDPs and returnees in major cities of Afghanistan.

The second group of the upgrading projects implemented in the formal settlements under different titles like KSP1, KSP2 and so on.

The last project implemented by UN-HABITAT in the informal settlements is:

Project title - Local Integration of Vulnerable and Excluded Uprooted People (LIVE-UP) in Afghanistan

Overall objective of the project is, contribute to the reintegration of uprooted Afghans (IDPs and Returnees) in Afghanistan

Specific objective of the project is improved living conditions of uprooted Afghans (IDPs and returnees) and their host communities

Expected results

- Result 1: Returnees, IDP and extreme vulnerable households in selected urban neighborhoods in Kabul, Jalalabad and Herat have improved access to basic services, infrastructure and adequate housing.
- Result 2: Residents of peril-urban returnee/ IDP settlements (in Herat, Jalalabad and IDP areas in Kabul) have improved tenure security, access to basic services and shelter.
- Result 3: Municipalities, Provinces, ILDG, ARAZI, Community Base Organizations (CBOs) and communities have improved capacity, coordination and commitment to local integration of areas with a high-percentage of IDPs, returnees or other vulnerable households.

Activities:

- Activity 1 - Forty five (45) Community Development Councils (CDCs) and ten (10) mixed-gender Gozar Assemblies (GAs) mobilized, established and functioning.
 - Activity 2 - 45 Community Action Plans (CAP) and ten (10) Gozar Assembly (GA) action plans prepared with, and approved by, the Municipality.
 - Activity 3 - Priority basic infrastructure and services delivered at community level in 45 newly established CDCs and 10 Gozar Assemblies with support of Municipality.
 - Activity 4 – Preparation of sanitation tax certificates for the documentation of possession of the land and constructions once the physical upgrading is completed.
-

Basic infrastructure and/or other identified needs were delivered in accordance with the priorities of the communities, as articulated in the Community Action Plans (CAPs). Community priorities were road and footpath upgrading and related storm drainage works, potable water, solid waste management, and improved shelter.

Each CDC received roughly the same funding (with a maximum of 70,000 USD for each CDC) of block grant funds. GAs receive grants up to 100,000USD for larger infrastructure and service projects. The communities and the municipality were expected to contribute to the projects – either through labour, staff time, and/or the provision of office space. Funds transfer and monitoring and oversight followed UN-Habitat's proven community contracting method.

5. Upgrading of Basic Infrastructure in Informal Settlements through LARA (2012-2014)

In this USAID funded project's informal settlement component, following the experiences of LTERA project, 21 informal settlements with population of approximately 174,000 people were identified by Jalalabad municipality as part of their administrative districts.

Based on agreed upgrading and formalization selection criteria, the Deputy Mayor of Jalalabad suggested Araban and Campoona as the two sites where the LARA Project would undertake upgrading and formalization work. The Araban settlement is on private land, while Campoona is a settlement developed on government land.

The LARA Project's primary government partners were Arazi (the Afghan Land Authority), the Ministry of Urban Development Affairs (MUDA), the Independent Directorate of Local Governance (IDLG), and the Afghan Geodesy and Cartography Head Office (AGCHO), as well as the Supreme Court and the Municipality of Jalalabad.

LARA Project objectives were:

1. Improve property rights delivery (land administration and formalization).
2. Enable all citizens (women, minorities, and vulnerable populations) to exercise their rights through public information awareness (PIA).
3. Strengthen land dispute resolution processes to reduce conflict and promote peace and stability.
4. Promote economic development through clear and enforceable property rights, PIA, land rights delivery, and land dispute resolution.
5. Strengthen institutional, policy, and legal reform to secure property rights for Afghan citizens.
6. Provide assistance in the crosscutting areas of gender, training, PIA, and private sector development.

These objectives were supported by the following three components that provided the overarching structure for programming activities and tasks in the work plan:

1. Informal Settlements and Formalization. Support MUDA, AGCHO, the IDLG, and the Municipality of Jalalabad with informal settlements upgrading, formalization, cadastral mapping, laws for urban planning and land use regulation, and training in planning and

enforcement. Also, strengthen tenure security by supporting the Supreme Court and communities with rights formalization and informal dispute resolution.

2. Legal Framework. Provide limited assistance to Arazi to identify, manage, lease, and obtain revenue from Afghan government lands and provide targeted technical assistance.
3. Capacity Building. Build capacity of public (AGCHO, Arazi, IDLG, MUDA, Supreme Court) and private sector service providers to improve and streamline land tenure processes to Afghan private and public sectors.

As in the case of the previously USAID supported LTERA project involving informal settlement upgrading work, the LARA project also was primarily interested in planning and formalization of individual and settlement informal tenures, not in physical upgrading. However, in its last stage LARA did finance street paving and drainage canals in the two informal settlements in Jalalabad.

Almost 3000 land claims officially were recorded in Jalalabad informal settlements and tax books issued to the occupants by the municipality; the percentages of properties paying safayee (sanitation) tax varied widely, ranging from a low of 3% to a high of 30%.

LTERA and LARA combined produced over 60,000 property related documents in their informal settlement upgrading pilot projects, with their use being to provide the municipalities with property data for improving the collection of the annual Sanitation Tax for improving revenues for the Municipalities. See Table 5.

While these title relevant documents from informal settlements did not have the standing of a Judicial Definitive Deed, they could be quite useful for the households to make a claim of ownership at some point in the future based on sufficiently long adverse possession. Plus those tax data when added to the Municipal approvals for the physical upgrading provide even greater security to the almost 110,000 informal settlement landholders in the seven pilot informal settlements involved in the two projects. (Table 5)

Table 5: LTERA and LARA Informal Settlement Formalization of Tenure Activities

PROVINCES	Informal Settlement Pilots			
	Town Planning Activities (households involved)- LTERA	Town Planning Activities (households involved)- LARA	Formalization of title claims documents- LTERA	Formalization of title claims documents- LARA
Badakhshan				
Baghlan				
Balkh	10,000		3,000	
Faryab				
Ghazni				
Heart				
Jawzjan				
Kabul	90,000		53,000	
Kapisa				
Khost*				
Kunduz	3,000		1,800	
Laghman**				
Logar				
Nangarhar		3,455		2,780
Nuristan**				
Paktya				
Paktika*				
Panjshir				
Parwan				
Samangan				
Sar-e-Pol				
Takhar	3,000		300	
TOTAL	106,000	3,455	58,100	2,780
Source: LTERA and LARA Final Reports				

A key new provision of the proposed amendments to the 2008 Land Management Law (LML) is the registration of customary deeds at Arazi. After five years and after proper notice and no

objection, the rights expressed in the customary deeds will be entitled to formalization and Arazi will send an appropriate directive to the proper court makhzan to issue formal title. The expectation is that 85% of rural and urban parcels could be formalized with this simple procedure.

The draft proposals for amendment of the LML and the procedures contain more transparent and detailed provisions for land clearance (tasfia) which it is expected will speed up the land clearance and identification process. After the land clearance process the result must be registered in Arazi's Principal Book for the registration of private lands.

The proposed draft amendments to the LML also called for the registration of Municipal land at Arazi, which is a step toward establishing a unified system of land registration bearing in the mind the unifying concept of Afghan Land Information System (AfLIS). Currently, however, responsibility for the registration of formal deeds rests with the Supreme Court, which seems unlikely to support a change in the near future.

6. Common Points Among Implementers of Informal Settlement Upgrading Projects

The first upgrading project implemented by UN-HABITAT in 2003 was funded by EC and covered 30 Neighborhoods in District 6, 7 and 8 in Kabul City. Lalith Lankatilleke was head of UN-Habitat and qualified implementer and trainer of upgrading projects in Sri Lanka, he trained project manager of the EC project regarding how to manage CAP (Community Action Planning) workshops and how to implement upgrading projects which initially did not deal with tenure insecurities, only physical upgrading.

After CRA's team had been trained by Habitat's project manager, CRA implemented the one LTERA upgrading project involving both physical upgrading and tenure upgrading, mostly following UN-Habitat upgrading guidelines.

As TetraTech (LARA) mentioned in its project final report "The project continues the foundations provided by the former USAID LTERA project that provides a starting point and methods".

Because of this UNHABITAT based implementation method, all upgrading projects implemented by different organizations has been basically similar, except some do physical upgrading, some do formalization of tenure through documentation of rights, and some do both.

Some of the common points are;

- All organizations are working through local communities and the Community representative system CDC for both genders.
 - They have provided training for the established CDCs
 - All organizations are working in coordination with district municipality and community CDCs
-

- They managed CAP workshop for two or three days
- Upgrading projects have been implemented by local people under supervision of their male CDC
- When tenure is considered, sanitation tax booklets and their registration with Municipalities provided the documentation of possession of land and buildings for their inhabitants and tax revenues for the Municipalities.
- All implementers used their own logos and got ownership of the project.
- None of the organizations successfully worked for sustainability of the community councils; they usually used the established community councils as a tool for implementation of their projects.
- Women councils have been established, but women usually have not had important roles during implementation of the upgrading activities. Women empowerment has tended to be a show to accomplish donor requirements and most of the implementing organizations did not consider cultural requirements during implementation of the upgrading projects.
- As far as informal settlement residents were concerned in most of the USAID funded projects, all they experienced individually was the issuance of sanitation books although they did benefit from de facto commitment from the municipalities to not demolish their settlements.
- The CRA small upgrading project model as implemented showed what could be done to actually improve people's lives with limited outside funding, although to date CRA has not built community-municipal relations around the sanitation tax, and thereby also has not done much to improve the security of individual household tenure.
- UN-Habitat has consistently combined both physical and tenure upgrading (sanitation tax) through community action planning techniques in collaboration with municipalities.

7. Comments for Improving Informal Settlement Upgrading

1. Community-Municipal Relations.

Upgrading of informal settlements can contribute to the integration of informal settlements into the urban fabric and create security of tenure. However in some cities and upgrading projects such as the recent upgrading activities done in Kabul City only basic infrastructure improved mainly roads and drainages, but integration of communities into the urban fabric has not happened.

2. Documented Tenure Security.

With existing corruption it may not be easy to provide ownership deeds for each qualified owner; it takes time and involvement of related ministries and parliament, also the

municipality does not have the system and the resources to do it. But it is possible to register specifications of the land parcel and coordinate with municipality to provide safahes (sanitation) book for each household to collect annual safahes tax as UN-Habitat did in Kandahar and as LARA did in Jalalabad.

There are three advantages with providing a safahes book for each land parcel:

- a. It is a document of possession of the land and creates security for the owner of the land parcel. Such documentation would be useful in the future if government /municipalities wish to provide ownership deeds for each project documented and mapped land parcels, registered with the Municipality. Once specifications exist to recognize legally these documents, there will be no need to invest time and resources on this activity.
 - b. On annual bases municipalities will have income from sanitation tax (safahes tax) from informal settlements, and
 - c. Each Municipality receives sanitation tax from each household, so the municipality has to provide sanitation services for them. By official involvement of municipality in providing services for informal settlements, it helps with the quality of life which people experience and is an indirect message to the people of the informal settlements that they are secure and slowly are becoming connected with overall urban development.
3. Comprehensive criteria for prioritization of the informal settlements for upgrading.

While a draft policy for upgrading informal settlements exists, it has not been acted on. Municipalities should invite all experienced organizations, social activists, community leaders for a workshop for designing a sustainable system to be implemented by all.

4. Community Development Councils.

Typically, each upgrading organization has formed a local community council, or use an already formed council. They typically have sent lists of the established local councils to the municipal district office. The district office receives the list and puts it in a file-- that is all. Next day another organization comes and follows the same path because the implementing organizations want to implement their projects, not to support a sustainable system of community representative governance to support the municipality. This duplication of work at the local level occurs because all organizations want to produce their project outputs and are often not held accountable for outcomes, impacts and sustainability. Solution: Municipalities should invite all experienced organizations, social activists, community leaders for a workshop and design a sustainable system to be implemented by all. And donors should do evaluation of outcome, impact and sustainability of their funded projects.

5. Coordination

There is a lack of proper communication and coordination among implementers of the upgrading projects in informal settlements. Each organization keeps their information

within their offices because they collected the information and produced the documents so they feel ownership.

Many organizations are implementing upgrading projects, but they do not have any information about each other. Everyone talks about 70% lands of Kabul city occupied by informal settlements, but nobody knows the percentages of the informal settlements upgraded. Different organizations have been working for years on upgrading projects and millions of Dollars have been spent. To this day Afghan government and municipalities do not have exact data and information from upgraded informal settlements.

Solution: Donors and Afghan governmental and NGO organizations should build capacity of the municipalities of the five major cities of Afghanistan regarding creating a data base system, collection and shearing of the information and mapping. If government or municipalities are not involved in this process it is not sustainable. For a beginning to building community awareness all information regarding upgrading can be posted on municipality website

Municipalities should take leadership and secretariat of the coordination meetings and manage regular coordination meetings at the municipality meeting hall.

6. Financing of upgrading

Community saving and loan system should be establish for community mobilization and sustainability of the upgrading activities.

Saving is the first layer in building community's self-help capacity. Then when a community's saving system has brought them together, built their confidence, their management skills, their collective strength, and their own internal funds, they are ready for the second layer, which is the development fund. The job of the development fund is to pump additional resources into people's finance system (through loans or grants). This extra financial resource greatly expands people's space to create, to develop and to negotiate. It allows them to speed up and scale up their problem solving initiatives and to push beyond the limited capacity of their internal savings. When people's financial resources grow from the ground (community) up in this manner, people can begin to think for themselves what they would like to do, and then do it.

The poorer people living in informal settlements are marginalized and they do not use their own powers and abilities. When people do not believe in their own power instead of taking action for change they complain to government for this or that "favor". So we have to work on a system to empower the people, make them stronger and encourage them to believe in their own power to take action for positive change, to change their neighborhood and their lives on their own and by their own hands.

To start upgrading of informal settlements like this will be sustainable and communities will feel ownership of the upgrading process, and it is very transparent.

Through community upgrading system like the one described, donors will have direct access to local communities for monitoring and fund will directly go to the community's financial system. Such an approach reduces the need to follow many steps to reach to the real beneficiaries of the project. The project doors will also be closed to corruption.

Community based upgrading minimizes the existing gap between people and government and avoids misunderstandings because the system is very transparent and brings peace and stability in the major cities

7. Modifying municipalities' aversion to upgrading of informal settlements

Municipalities are under pressure from settlements and international communities regarding upgrading of informal settlements and also financially they are not able to demolish the informal settlements. At the same time, municipalities resist upgrading of what they consider "illegal" settlements outside of the orderly Municipal development planning processes.

Solution: Organizational restructuring of the municipality is a strong need because the existing structure is not responding to the existing needs. In the structure of the municipality a General Directorate of Informal Settlements should be established to work for land security and upgrading of informal settlements.

8. Overcoming Institutional Constraints

Because of lack of low cost housing for low income families in the city, informal settlements are a solution to the housing problem for low income people of the big cities.

Implemented upgrading projects in the informal settlements of the cities by different organizations have improved infrastructure like road, drainage, water sanitation and have also improved environment and heightened security of tenure. At the same time they provided good opportunities for short term employment for poor people. But the projects have not been able to meet the needs for upgrading of informal settlement infrastructures nor have they solved the problem of providing deserving households with legally recognized security of tenure.

8.1 Pre-conditions for upgrading of informal settlements

1. First of all there should be political willingness from government side to solve the existing problem of informal settlements and include it in the city plans.
 2. Mandates of the city and district municipalities should be revised and accordingly new structure of the municipalities should be devised. A new position of General Directorate of Informal settlements should be created to be focal point and responsible for formalization and upgrading of the informal settlements.
 3. Government should work to approve the draft policy for upgrading of Informal settlements, with special reference to a policy for housing on hillside informal settlements
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4. Government should start construction of low-cost housing project with support of international communities for low income people in the main cities and obviate the need for expansion of informal settlements.
5. Formation of a national steering committee from authorized representatives of the related government institutions, municipalities, communities and donors. The steering committee should be trained regarding upgrading and formalization of informal settlements;
6. Preparation of satellite images of the informal settlements;
7. Delineation of boundaries of the informal settlements on the satellite images;
8. Division and mapping of the informal settlements into Gozars of approximately one thousand households (land parcels)
9. Municipal definition of priorities for upgrading of each Gozar of informal settlements according to prepared criteria
10. Community CDCs should be established under leadership of municipality for each Gozar
11. Comprehensive Base Line Survey of each Gozar is required before starting any activity at the Gozar,

8.2 Capacity Building

12. For exchanging knowledge, experience and sharing resources, active communication and coordination should be created among CDCs and people of different Gozars. Such linkages of communities will also have direct impacts on minimizing cost of the projects.
13. Updated financial and technical reports of the upgrading projects should be uploaded on municipality website for community awareness, and regular round table discussion organized through TV for rapid responses to people's questions.
14. On annual bases Upgrading Seminars should be managed in Kabul city for national and international people involved in implementation of upgrading projects for exchange of knowledge
15. The upgrading program should be designed for minimum 10 years because with short term upgrading projects it is not possible to solve big problem of informal settlements in five major cities of Afghanistan.
16. Capacity building program for government partners and implementers should be very important activity of the upgrading program
17. Since upgrading projects should be supervised and implemented through community centers in each Gozar, capacities of these centers for fulfilling these functions need substantial attention.
18. Donors should be involved closely in the project and support Afghanization of the upgrading projects. The Municipality's to be established Informal Settlements Directorate should take overall management of the upgrading program. The

steering committee would be responsible to direct the program. Elected and registered CDCs will supervise and local communities will be implementers of the upgrading projects.

19. International organizations can take co-responsibility for monitoring, capacity building, financial management and procurement of the projects.
20. Addressing (house number, street number, and road name) is very strongly needed for informal settlements and should be one of the main component of the upgrading projects.



Chapter 4: Review of Community Based Rangeland Administration/Management Pilot Projects

The projects reviewed are:

1. Afghanistan Capacity Building for Land Policy and Administration (RLAP)²⁰, focused in 2006-2007 on community based pasture land records administration and pasture improvement, supported by ADB/DfID.
2. SALEH project for community based land management, 2003-2009 in Bamyan, supported by FAO²¹
3. Community Based Pasture Management, based on the FAO SALEH methods, in Yakawlang District of Bamyan Province in 2007-2013, and supported by Solidarites²²

The stock taking exercise focuses on viable approaches and lessons learned from these pilot interventions involving community based land administration.²³

1. Introduction

Most of Afghanistan's population of 24 million people are poor (53% below the defined poverty line), illiterate (72%) and have a low life expectancy (43 years)²⁴. The land base for irrigable and rainfed farming represents 5-7% of the land area. Livestock keeping using extensive pastures underpin the agricultural economy and provides around 15% of the agricultural GDP²⁵. Highland pastures also support Afghanistan's 41 meso-watersheds and thence human settlements and farming systems.

²⁰ "Capacity Building for Land Policy and Administration Reform", ADB/DfID, TA 4483, Final Report, Scanagri/Terra Institute, September, 2007, describes the RLAP community based land administration pilot activities.

²¹ Liz Alden Wily, "The Pasture Story—Trying to get it right in Afghanistan: The SALEH Experience", Sustainable Agricultural Livelihood Project in Eastern Hazarajat (SALEH)", FAO, August, 2008; Also by Liz Alden Wily, "SALEH Guidelines for Facilitators: Helping Communities to Bring Rangelands Under Conservation Management", July, 2008

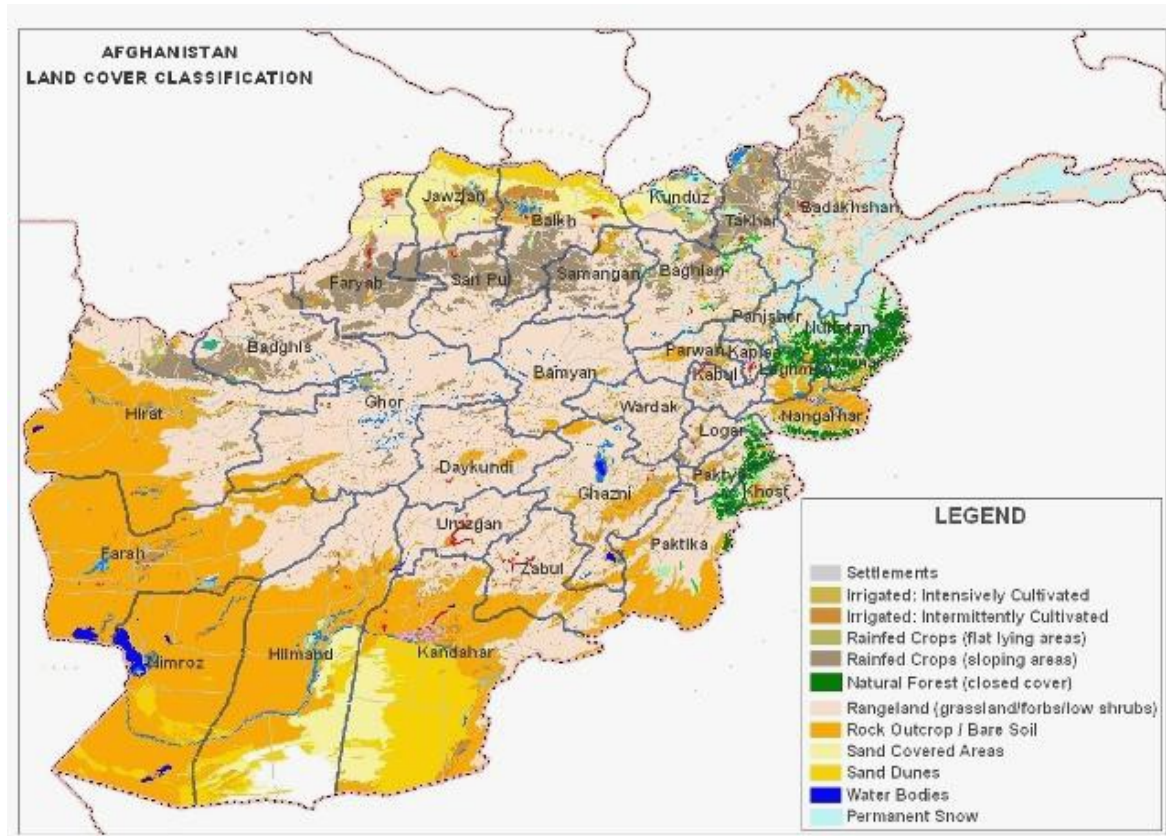
²² Solidarites, "Seven Years of Community Based Pasture Management in Yakawlang District 2007-2013", power point presentation, Sept, 2013; also see section of Wily, op.cit, on Solidarites work.

²³ All of the pilots also included efforts to improve the management of pasture lands, which can influence the continued exercise of rights to pasture land.

²⁴ UNDP Human Development Report Afghanistan 2007/2008.

²⁵ World Bank, 2014, "Islamic Republic of Afghanistan Agricultural Sector Review", p.xiv

Figure 1: Land Use in Afghanistan



Source: Wily, "The Pasture Story", 2008, p. 11

Up to 70% of Afghanistan is used for grazing or harvested fodder for livestock. This includes the 29 million hectares classified as pasture (or rangeland, *alafchar*), which constitutes 45% of the total land area.²⁶ Additional pasturage is available in some areas technically defined as wastelands (*mawat*) (37% of the country). Both settled and nomadic households are dependent upon pastureland for their livelihood.

Many formerly viable rangelands have become virtually barren wastelands. The degradation of rangelands has been accompanied by the conversion of some areas formerly used for pastures into rain-fed agricultural cultivation. This conversion in draught years and in low rainfall areas reduces the capability of the land to regenerate a stabilising plant cover.

Adding to these problems of degradation and loss of rangeland and a rural population in continuing need for pastures for their livestock, is the breakdown of the rules governing how communities and families get access to, and use pasture lands. Over many years communities and nomadic groups have negotiated about who uses pasture lands, for what purposes at what times of the year. By law the State claims the ownership of such lands. Provincial officials desire an active role in local rangeland uses, but in practice have limited positive influence. The

²⁶ From Wily, "The Pasture Story", 2008: Over half the area of 14 of 32 provinces in 1993 was defined as rangeland (FAO 1999). Eleven provinces contained more than one million ha of pasture. Badakhshan, Ghor, Herat and Uruzghan contained over two million ha.

disorder of recent years has weakened both customary and legal rules about pasture land management.

The result of these trends is that the most numerous and problematic conflicts in rural communities are over rural land use and ownership concerning pasture lands, including tensions among communities and governmental officials.

The pilot projects deal with rights to pasture land and the conflicts which have resulted in part at least, from the weakening of community and governmental rules governing rights to pastures over the past years of disruptions affecting Afghanistan and their implications for sustainable management of fragile rangelands.

2. Goal and Objectives of the pilot projects.

2.1 Goal and Objectives of the RLAP

The goal of the pilot project on Capacity Building for Land Policy and Administration Reform (RLAP) was to help improve rural community pasture land tenure security in Afghanistan with the hypothesis that with improved security of community pasture land tenure, local investments in rehabilitating deteriorated pastures would increase. The project was implemented during one year, from August, 2006 through August, 2007, coordinated through the Ministry of Agriculture, Irrigation and Livestock, funded by the ADB and DFID, and implemented by Scanagri and Terra Institute, in collaboration with Cooperation for the Reconstruction of Afghanistan (CRA)--an Afghan NGO.

The starting point of the RLAP was the realisation that many land issues faced by Afghanistan in general and the widespread deterioration of pastures in particular are essentially a problem of governance:

- Pastures are without clear long term management systems and agreements among the users of pastures about their rights of access and use.
- Without security of rights which local people view as legitimate, there is no incentive for herdsman to conserve or invest in pasture resources
- Contrarily, with insecure or contested rights, the incentive is to graze animals to the maximum extent in the short term regardless of the impact on the pasture
- Establishing secure, locally legitimated rights to pastures is required to improve the long term, sustainable management of pastures.

The RLAP aimed at devising and testing concepts and methods for community based definition of legitimate rights to pastures and their registration involving community, District and National land registration institutions. The community based approach which locates the identification of legitimate rights to land in local communities and the registration of those rights in communities, deviates from the traditional concepts and methods, which locate the definition of rights to land solely under State sovereignty, and the registration of those rights in State agencies.

RLAP was primarily based on the challenges enunciated in 2004 by Wily:

“... the search for peace and acceptable tenure are inextricably linked and unlikely to be well-served by rigid perseverance with bureaucratic procedure, the resulting illusion of increased order notwithstanding. A fresh approach is required and which is able to absorb the lessons of local history on the one hand, and able to work around the realities posed by limited rule of law or confidence in the courts to uphold rights fairly.

To this end a community based approach is suggested. This would facilitate trial establishment of locally run mechanisms for resolving conflicts over pasture with all concerned actors and establishing community based land ownership regulation and management. Atypically, the approach would need to begin, not end, with common rather than individually-held properties like the farm and house. For it is the commons– and mainly pastures – which generate the most contentious and inflammatory communal conflicts at this time. It also in relation to pasture that state, common and private interests so heatedly battle for space and meaning and require unpacking and reordering towards more acceptable norms, and where the current legal paradigm in which Government positions itself as owner of all pasture, is contested. Face-to-face reconciliation in respect of specific pastures could begin by setting aside the question as to who owns pasture with a focus upon rationalising the use, access and regulation of the pasture, and towards establishing the mechanisms for sustaining the norms agreed. It is these agreements and procedures (or rights and rules) that would first be recorded, laying the foundation for a local *land access register* and locally- administered *land governance system* in respect of pastures and other non- individually used or held estates. Such pilot developments, targeting a systematic range of disputed pastures, will provide practical building blocks towards the definition of new rural land policy and law. This will include clarification of workable distinctions between state, private and common properties, and workable procedures for localised land administration in general. Genuinely local ownership of the process and subsequent institutional developments, will greatly advance the workability and sustainability of new tenure administration.”²⁷

Addressing pasture degradation as a governance problem requires a major policy shift facilitating a transfer of power and responsibilities from central government attempts to manage rangelands to communities and enabling communities to participate effectively in the management and administration of the land they hold and use under support and guidance of the government authorities. This shift is already laid out in much detail in the National Land Policy and Strategy for Forest and Rangeland Management but still lacks governmental commitment to putting the strategy into practice.

2.2 Goal and Objectives of SALEH (Sustainable Agricultural Livelihoods in Eastern Hazarajat Project)

The SALEH project, 2003-2009, was designed and implemented by FAO in conjunction with MAIL. It was funded by the UK Department for International Development (DFID) until 2007 with additional funds from NZAID over the last two years. SALEH operated in four districts of Bamyán Province--Waras, Panjab, Yakawlang and Shib. Primarily it worked through Farmer Based Organizations (FBOs) which it helped villagers to establish. These are guided by twelve project Community Liaison Officers (CLOs). Until mid 2006 SALEH activities focused on farms, assisting in such areas as improved fruit tree and potato seed storage. It also began a successful farmer literacy programme, working with both men’s and women’s groups.

²⁷ Wily, Liz Alden, 2004, “Putting Rural Land Registration in Perspective: The Afghan Case”, paper presented to the FIG Symposium on Land Administration in Post Conflict Areas”, United Nations, Geneva.

The Community Based Pasture Management (CBPM) component became a key component of the SALEH programme in 2006. Due to the insecurities of holding rangelands farm families often found it difficult to make long term investments in fruit trees, potato seed storage, improving literacy. The task of CBRM within SALEH was to place the rangeland resource in Afghanistan on a stable and democratically governed footing, working from the grassroots. In this way, many of those rangelands at risk of loss may be brought under sustainable use regulation. The approach integrates six objectives (the six ‘Cs’): Conflict resolution, Conservation, Community based development process, and also addresses Customary land rights and especially the Clarification and entrenchment of Collective property norms.

CBPM aims to contribute to more general goals of Peace, Justice, Conservation and Empowerment of ordinary Afghans as more in control of their own livelihoods and the resources these are founded upon.

2.3 Solidarités

The NGO, Solidarités, during the years 2007-2013 expanded the scope of FAO’s SALEH program into 22 communities in Yakawlang District of Bamyan Province. The objective of Solidarites was to strengthen the livelihoods of Yakawlang people by improving their pastures. Communities can manage and improve their pastures only if their ownership is clearly defined, through the Community Based Pasture Management program as designed and tested by FAO’s SALEH project. The cornerstone of Solidarites’ CBPM methodology is mapping the customary pasture areas of each community.

2.4 Evolution of Projects

RLAP began as a community based land administration innovation to sort out rights to pasture land parcels and record a copy of the pasture land legitimate user agreements in each community, with copies also recorded with Arazi, Provincial Pasture Land Department of MAIL and the Cadastral Survey. RLAP included a component to engineer plans for improving the community users’ management of the more securely held pastures, but did not implement those plans as part of the project.

SALEH began as a community based livelihood improvement project through improving the productivity of rangelands through Farmer Community Organizations, and added the component for improving the community based management and administration (CBPM) for pasture land parcels. Solidarites basically extended the same concepts and procedures for CBPM to 22 villages. For the remainder of this pilot project review, we will consider the effort by Solidarites to be within the SALEH framework, and will not consider Solidarites separately.

3. Legal Bases and Innovations of the Pilot Projects

RLAP and SALEH/Solidarites operated under the Land Management Law of 2000, which had the following articles which reference “pastures”:

Article 2: Following are the terms with the meanings they stand for in the present law

8. Emirate (State) lands:

- 1. Plot (s) of orchard, irrigated and rain-fed lands, hills, parks, marshy lands, forests, pastures, reed-beds and other lands being registered in the principal book of the Emirate lands.*
- 2. Lands, which are deemed public lands, but are not registered in the principal book of Emirate (State) lands.*
- 3. Lands in respect of which individual ownership has not been proved legally during settlement.*

9. Grazing (derelict) lands:

- 1. Grazing (derelict) lands are those lands in respect of which Emirate (State) or individual ownership cannot be proved legally (?).*
- 2. Where a person having a loud voice screams with full strength from the last house of a village or a town, the distance up to which his scream is heard, shall be deemed grazing (derelict) land.*

Article 84:

- (1) Pastures are public property. An individual or the Emirate (State) cannot possess pasture lands, unless otherwise stipulated by the Shari'a.*
- (2) Pastures shall be kept unoccupied for the sake of public requirements of the villagers (for cattle grazing, graveyard, threshing ground, etc.).*

Article 85:

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

These provisions of the LML (2000) define pastures as public property for the common use of villagers and discourages their private or even State possession.

The LML (2000) is consistent with the MAIL strategy for the community based management of forestry, range and wildlife which by early 2006 had been expressed as follows:

The sub-sector partners²⁸ shall adopt a community-based approach in forestry, range and wildlife management. This approach shall involve the transfer of effective

²⁸ Sub-sector partners are defined as Central Government, Provincial Administration, the Communities of

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 pasture, and as means of protecting natural resources from erosion), and (ii) develops within communities the capacities to organise, operate and sustain the improved measures with a minimum of support from outside. (From “Policy and Strategy for the Forestry and Range Management Sectors”, MAIL, 2006)

This definition of Ministerial strategy is a major departure from past practice and philosophy. The core new idea is that communities will in the future exercise effective management responsibilities for forestry and range resources within defined community geographical areas.

The Inter-Ministerial Land Working Group which was developing a National Land Policy in 2006-2007 with input from a variety of sources, including tenure and legal experts from RLAP and SALEH expressed National governmental policy concerning pasture land in the following terms:

- *It is a 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 public owned pasture users.*
- *It is national policy that the resolution to complex issues of ownership and access rights to pasture lands be examined at the provincial level and traditional use rights of settled farmers and pastoralists established and respected.*
- *It is national policy that the Ministry of Agriculture reactivates land surveying land surveying in order to clarify rights to land.*

3.1 “Legitimate Users” under RLAP versus “Owners” under SALEH

Interpreting Afghan law translated to English is fraught with difficulties. But a cursory reading of the above LML (2000) articles referencing “pastures” indicates that the term “community defined legitimate users” as used in the RLAP at least is acceptable within the framework of that law.

The RLAP’s use of the term “legitimate users of pasture land” was subject to analysis in the Amlak and MAIL. Ministry officials in Kabul and in the Provinces seemed satisfied that the pilot was not doing anything illegal by asking community leaders, including nomadic leaders, about the legitimate users of identified pasture parcels.

Community leaders and elders in the four pilot sites seemed satisfied that the community definitions of legitimate user rights to identified pastures would encourage the holders of those locally recognized legitimate rights make investments into improvement of pastures and to sanction those who degrade pastures. A major contribution to this village view of the value of

Afghanistan, and the private sector.

the pasture agreements was RLAP's leaving the original versions of the agreements and the original delineated satellite images in the village in the possession of a Village Council designated Village Recording Secretary.

In addition, two Provincial Judges (in Kunduz and Herat) were consulted as to the legal value of the signed pasture land agreements. They both said that should a conflict arise about access to a pasture such an agreement would have substantial weight in their deliberations about the conflict.

RLAP also left some pasture land agreements in limbo, in cases where community leaders could not agree about who held what legitimate rights. The pasture land draft agreement in such cases documented the nature of any disputes or lack of clarity and parties to any dispute, with the option of inviting mediators to assist with constructing such consensus at a later time.

FAO's SALEH project in Bamyan Province has argued that governmental reluctance to recognize customary rights as amounting to ownership and the RLAP producing documented legitimate user rights to pastures both fail to come to grips with the strategic utility of drawing distinctions between ownership and access rights as a route to resolving the bitter settled people-nomad conflicts, and which so tangibly aligns along ethnic lines.

Wily reports that field investigations in Hazarajat (i.e. Hazara) found that communities will not settle for 'use rights'. Because they had their lands so blatantly stolen from the 1880s, this no doubt heightened their awareness of possession/tenure. While they accept that Kuchi (not all, but those with whom since early 18th century they accepted as seasonal visitors) have seasonal access rights, they do not accept that Kuchi – or Government-- owns their lands, no matter what the laws say. The situation where government claims ownership of pasture land and communities compete for rights on an equal playing field (among local communities and among settled communities and seasonal users) is highly difficult to sustain without incredibly rigorous external enforcement - the case in Afghanistan during the 1920s-1970s, but not thereafter.

Additionally, on intra-community grounds in Hazarajat, there were bitter complaints, that everything was ruined by Government taking ownership of the pastures. Communities or elite families within communities with most animals opportunistically claimed that 'all pastures belong to Government so we can go anywhere' – producing the classic open access problems created by removing possession and use of the land from local level control.

In these conditions, developing legal protections of settler community ownership of the pastures, with the right to exclude others from using them unless under agreement with the community owners is a strongly held view. SALEH found that local people in Hazarajat will not accept any other tenure arrangement than ownership of two types of pastures: private pastures and community pastures.

SALEH distinguishes private pastures as those pastures *directly attached* to farmlands and owned either by individual households or small villages which comprise related households. They are usually small. Ownership of these areas is usually implied in both customary and legal

documents. Although the owner may permit others to use the rangeland his ownership is generally not disputed²⁹.

A second type of rangeland which is customarily owned is community rangelands. Such pastures tend to be larger, higher and more from the settlement. Often it is on such rangelands that temporary camps are established in summer and to which families and animals move (*Aylaks*). The customary owner may be one village or a cluster of adjacent villages. Sometimes all villages in a valley may own a high rangeland jointly. Occasionally, an even larger group of villages spanning several valleys may own the rangeland, but usually divides *access* on the rangeland into different areas. These rangelands are rarely documented as owned by the community.³⁰

Public rangelands are “fewer in number but sometimes very large. They tend to be found in the boundary zones of two districts or two provinces. Although customary ownership of these rangelands by adjacent communities is common, the use history of these rangelands makes it necessary to keep these as Public Rangelands. The main determinant is for how long outsiders from the local area have been using the rangeland. This usually includes nomadic pastoralists. It is in these areas where the need of nomads to access spring and summer grazing will be met”³¹.

RLAP did not find it necessary to distinguish types of pastures. The question always was to define who the legitimate users of the pasture are, regardless of type.

Also, the RLAP field teams did not encounter bitter nomad-settler conflicts over pasture land in the four RLAP pilot sites in Herat, Kunduz and Takhar Provinces. The RLAP field experiences, including cases with nomadic groups being recognized as legitimate users, apparently met with acceptance in the pilot communities.

Perhaps the SALEH approach to establishing private and community ownership of pastures is appropriate where there are bitter and long lasting disputes between nomads and settlers.

It is certainly the case that the amendments to the LML and the draft version of the Rangeland Law may extend the notion of private and community ownership of at least some pastures to all regions of the country. If these concepts become law, then the concept of “legitimate user” developed under RLAP may have to be adapted.

3.2 Protection of Legitimate Users’ Rights

Under existing law, the use of “legitimate user” to structure community governance of pastures is at least theoretically possible. In conditions of moderate to low enmity it may be productive for settlers and nomads in addition to neighboring communities to avoid talking about who “owns” particular pastures. Rather the approach would be what was done under RLAP, that is, stimulate discussions about who, in the eyes of the settlers and seasonal users of pasture have legitimate rights to use what pastures for what purposes during what times of the year. Ask who owns a particular pasture, and immediately the discussion divides into owners and non-owners, who has the right to enjoy exclusively the use of the land as owners and has the right to require

²⁹ Wily, 2008, Guidelines..., p 1

³⁰ Wily, 2008, Guidelines, p. 2

³¹ Wily, 2008, Guidelines..., p. 2

prior approval of the access of non-owners to pastures. Ask a group who are the legitimate users of the land, and the discussion typically evolves into a consideration of customary use, need, past compromises and de facto arrangements that enable people to get along.

SALEH experienced strong demand from settlers to recognize private and community ownership of pastures in all contexts. The RLAP approach of getting consensus about who has the legitimate rights to what pastures during what times of the year worked for 17 out of 19 pastures involved in the project. For two RLAP pastures, the differences among the users as to who had legitimate rights were severe enough to inhibit them to reach consensus as to who to include in the group of legitimate users.

Government may be willing to accept community definition of the set of legitimate users for identified pasture parcels, as being within MAIL policy and within the guidelines of the National Land Policy. But also, on the possibly negative side, at least some government officials may prefer this option if they have in mind the leasing of pastures for large development projects. If pastures are not community or privately “owned” as SALEH advocates for all but large public pastures, governmental leasing out of such lands to large development projects in disrespect of community needs may be easier.

In the case of RLAP, after reviewing the concepts and procedures presented to MAIL officials in Kabul before going into the field, the Deputy Minister insisted that on each parcel agreement as to its legitimate users, each of the signatories sign a statement of community obligations as follows:

Obligations of the Users of the Parcel:

We use the pasture only for grazing animals. Pasture may include small areas of trees and shrubs planted to protect the pasture land from erosion. We protect the pasture from conversion to agricultural or residential uses and we work to improve the productivity of the pasture/forest land parcel, in collaboration with Ministry of Agriculture and other stakeholders. Since according to the Land Management Law and Pasture Law all pasture and the forest lands are the government’s property, the government may, with the agreement of the local community, establish large agricultural farms, livestock and industrial parks, roads and other infrastructure for the welfare and promotion of the living standard of the people.

Name, Signature and Fingerprint of boundary Identifier:

Name, Signature and Fingerprint of recorder of agreement:

Name, Signature and Fingerprint of Members of Shura:

Name, Signature and Fingerprint of Elders and Villagers:

Neighbours’ Agreement:

“We the neighbours of () village agree on the text of this agreement. We don't have any claim on this parcel of land.”

Name, Signature and Fingerprint of Neighbours: of witnesses:

Name, Signature and Fingerprint

In none of the four test sites did this provision of the pasture agreement prove controversial for the community members and local leaders, as long as all involved were clear that government has to

get community agreement before embarking on any government land development project affecting any pasture parcel with a signed legitimate users agreement. It remains to be seen whether government respects the obligation to negotiate in good faith with communities to secure community agreement of such large development projects.

4. Field Activities of RLAP and SALEH for Community Based Land Management/Administration

Both RLAP and SALEH devised procedures for improving security of pasture land tenure and for rehabilitating deteriorated pasture lands through community consultations about rights to pasture lands.

The work done by Liz Alden Wily³² inspired both initiatives, although there were important differences in the concepts and procedures used in the field by the two initiatives.

4.1 RLAP Concepts and Procedures³³

The RLAP Pilot used community consultations to establish community consensus about **who**, in the opinions of local leaders and community members as well as nomadic family elders, had the **legitimate rights to use what pastures** during **what times of the year** for **what purposes**, including community residents and nomadic groups. This information was recorded on pasture parcel agreements, and witnessed by community leaders' with their signatures or fingerprints.

By "legitimate right" to use pasture land, we refer to the right to land which a person or group may have which by consensus of the village shura (identified initially as the Community Development Council created previously for guiding the State's infrastructure investments) and elders, including nomadic elders, is an established and uncontested right to pasture lands.

A "legitimate right" of an individual or group to land could be considered as a customary right in other contexts, which by tradition and custom in a community is considered correct and acceptable by the community.

By contrast a "valid" right to land was considered as a right described in a document prepared or validated according to written legislation prepared by the State's legislative body and administered by the State's administrative agencies. A "valid" right acquired through force or corruption may not be "legitimate" even when supported by legally valid documentation. However, a "valid" right can also be "legitimate". Ideally these two concepts become equivalent throughout the country, but under present conditions they are not always equivalent in fact. Like the management of land, the sorting out of legitimate rights to land is best centered in the community with efforts made to improve over time, but as quickly as possible, the relations between communities and the State.

³² In particular, Wily, 2004, "Looking for Peace on the Pastures", AREU, Kabul; and Wily, 2004, "Putting Rural Land Registration in Perspective, paper for FIG Symposium on Land Administration in Post Conflict Areas, Geneva.

³³ Most text is taken from Scanagri/Terra Institute, "Final Report for the Capacity Building for Land Policy and Administrative Reform", TA 4483 AFG for the Asian Development Bank/ DfID, Sept., 2007.

In RLAP community consultations, no mention was made of ownership in the definition of legitimate user agreements. In particular no attempt was made to produce documentation of State, private or community “ownership” of pasture lands, or even to discuss or question any documents which were produced by community members.

Also, RLAP made no distinctions about types of pastures. All pastures identified as being legitimately used by community members were subject to the RLAP community consultations to identify and record legitimate users, including other communities and non-community nomadic families.

In the Afghan context, the term “land administration” refers to the activities of a governmental agency for processing and supplying information about the ownership, use and value of the land. Village shuras are not yet considered as governmental agencies. Therefore, the activities outlined above of village shuras concerning land records we refer to as “village or community administration of land records”. Village land records administrative capabilities are built on the investments of the NSP program involving Community Development Councils for strengthening community resource management.

Comments of villagers have indicated that the land records produced by the RLAP, signed agreements among legitimate users plus delineated satellite based maps, document the lack of conflicts among the users. This consensus effectively removes threats to any particular users rights of use, which is part of a sense of tenure security. This security, in turn, should contribute to the willingness of the users to invest in improving the land and water resources and the economy of the villages.

Plans for improving rangeland parcels have been devised through consultations with the village managers of these parcels. The implementation of these plans comprise the “management” aspects of RLAP, and were left to be more developed in an expanded program. Such a program will involve community based land administration and community based land management.

Following are the main activities developed and tested under the RLAP for community based rangeland administration in 2006-2007:

4.1.1 ADAMAP

The definition of legitimate rights to pasture and forest land parcels is composed of consultations with village *Shuras*, elders and other stakeholders and with the support of MAIL and Arazi for this community consultation process. The community based activities include:

- Selection two teams of field facilitators, each team composed of an experienced cadastral surveyor and an experienced community mobilize plus a staff member from the Provincial Pastures Department, under the coordination of a RLAP project manager
 - Training workshop on land issues and project methodologies for fieldwork facilitators
 - Information about the project communicated in Provincial workshops involving MAIL and AGCHO staff as well as NGOs working in the region.
-

- Implementation of a methodology called ADAMAP for community based agreements about the locally defined legitimate users of pasture land in four test sites (in Herat, Kunduz and Takhar Provinces)

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 three person team composed of a project provided cadastral surveyor and a project provided community mobilisation specialist and a MAIL provided rangeland 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 some 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:

- 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;
- assistance to fill out the village agreements as to who are the legitimate users of those rangeland parcels;
- cabinets and folders in which to store the agreements and delineated images;
- assistance with the preparation of rangeland parcel improvement plans.

If the community agrees with this proposal, then the next steps can be undertaken. The discussion of the proposal may take several visits, and may involve large numbers of people. People from neighboring villages are typically also involved, whose 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 acquire the proper satellite imagery.

Step 2: Delineate pasture land parcel boundaries.

The drawing of the pasture 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 Quickbird satellite. The pilot project acquired such satellite imagery from ISAF headquarters in Kabul. In the future AGCHO will provide such imagery, in digital and paper form.

- With the imagery, the team returns to the village, and walks the boundaries of the pasture 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: Agreements prepared

The preparation of the village pasture agreement is the next step. A form is filled out for each parcel. 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 legitimate 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. Modifications that may occur in time must be recorded and approved by all parties involved.

The number and geographical distribution of pasture parcels will influence the time needed for the consultations. In the pilot areas, with an average of about 5 pasture parcels averaging 7,000 jeribs in size, the field team, living in the community or nearby and using local contracted transportation took about one month.

Step 4: Meet and approve agreements and parcel maps

The signed agreements and the delineated images should be put on display for a month at a prominent but secure place in the village, and a *Jirga* 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 pasture land 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.

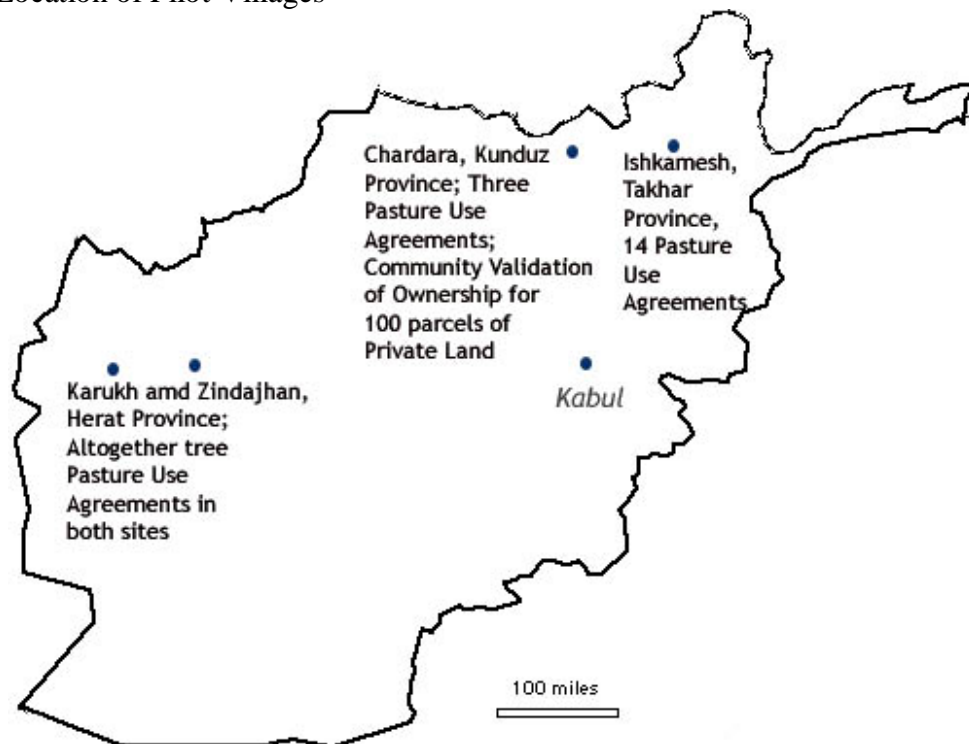
An exact copy of the delineated image will be prepared to be taken to Kabul to be digitized. A paper copy of the delineated image plus a digital copy of each agreement along with a digital copy of the delineated parcel image should be filed with the Central Cadastral Office Archive.

Step 6: Plan Improvements to Rangelands

A rangeland improvement team then visits the community and discusses 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. This improvement plan for each pasture parcel requires the consensus of the legitimate users of the parcel and a commitment to its implementation. If the User Group decides that conditions warrant a Pasture Guard, the group will select and compensate that Guard as well as devise a system of penalties in cases of violations of the improvement plan.

These six steps of the ADAMAP approach have been successfully implemented in four pilot villages in Kunduz, Takhar and Herat Provinces, by two field teams of 3 persons each in about six months.

Figure 2: Location of Pilot Villages



4.1.2 Outputs Produced by RLAP

The following outputs were produced in the year's operation of RLAP (2006-2007)³⁴:

- Four test sites were identified through consultations with Amlak, Cadastre, MAIL, MRRD, local NGO's, and village *Shuras* of candidate villages (Village Dara-e-Kalan in Ishkamesh Woluswali, Takhar Province; Village Beydak Saghari, Karokh Woluswali, Herat Province; Village Safar Khan in Zindajhan Wiluswali, Herat Province; and Village Nau Abad, Chardara Woluswali, Kunduz Province).
- A method of community consultation for reaching agreements about legitimate users of pasture and forest land was successfully developed and tested in four test sites, and refined through community and Provincial workshops.
- A similar method of community consultation was developed for identifying the boundaries of agricultural land parcels and the legitimate rights of the holders of these properties, using Cadastral Survey maps produced 32 years ago, but still quite descriptive of boundaries on the ground but with changes in the presumed owners of these agricultural parcels.

The sites were selected where pastures are critical for the livelihoods of villagers, where there had been a functioning community CDC (Shura) with three years of experience with the NSP, where security concerns were minimal, and where the village *Shuras* agreed to produce village approved agreements about the legitimate rights to pasture land parcels.

³⁴ See Scanagri/Terra Institute, op. cit.

- In four test sites the following outputs were produced:
 - 17 village pasture land signed agreements for 17 pasture parcels, covering approx. 28,210 Jeribs in three villages, and over 110,000 Jeribs in large community pasture and two public pastures in the fourth test site in Kunduz (3 agreements).
 - 39 satellite images, ortho-rectified, scale 1:5,000, printed in 4 paper copies, each showing 4.5 km x 4 km on paper images of 84.1 cm x 76.2 cm, with 20 pasture land parcels delineated. In the Kunduz site, satellite images of smaller scale were used to delineate the very large public pasture parcel boundaries.
 - The agreements and delineated images showing pasture land parcels were archived in the four test sites.
 - In the Kunduz test site, 100 agricultural land parcels were delineated on a satellite image (scale 1:2,000) and parcel forms prepared describing the rights claimed by their owners for these 100 parcels, confirmed by the village elders as being accurate.
 - Shura members asked for the satellite imagery covering the remaining agricultural land parcels of the village of Naw Abad, and blank copies of the parcel forms so that they can complete the file of maps and forms for all of the privately owned agricultural land parcels of the village.

- Capacity building:
 - Two village facilitation teams and Ministry personnel were trained in 2006 through courses and experience on the techniques of producing village pasture land agreements and village verification of the private ownership of agricultural land parcels.
 - Four village *Shuras* fully participated in how to devise pasture land agreements and how to use satellite images to delineate pasture land parcel boundaries.
 - One village Shura participated in the identification of the boundaries of 100 agricultural land parcels on satellite imagery (scale of 1:2,000) and the preparation of parcel forms describing the ownership rights and other features of those 100 parcels.

Public Display of Pasture Parcel Maps in the village mosque of Beydak Saghari



- In the three Provinces (Herat, Kunduz and Takhar) the Ministry policy/strategy for community based management of forests and pastures was more widely appreciated.

- The procedures followed, the discussions held and the conclusions reached at the village and provincial workshops on the Ministry policy/strategy and on the RLAP implementation of some aspects of that policy were documented in the various RLAP publications, conferences and workshops.
- The RLAP provided AGCHO with two licensed copies of ArcInfo 9.2 and 18 AGCHO technicians were trained in its use for processing the satellite imagery and linked agreements and parcel forms. The Afghan company LIWAL, based in Kabul, provided technical backup and training for this investment in AGCHO.
- Fifteen staff of the Land Resource Dept and Amlak of the MAIL, and of the Cadastral Survey Dept and the GIS unit of AGCHO were educated as trainers of others in their organizations concerning the procedures developed and tested by the RLAP for supporting and guiding community based management of land records.

4.1.3 RLAP Technical Activities for Improving Information about Pasture Lands

- Satellite imagery for the test sites was donated by ISAF, and used by village *Shuras* and project field teams for the delineation of pasture and forest land parcels, and agricultural land parcels.
- The delineated images showing rangeland parcel boundaries and the rangeland parcel agreements were archived in the villages and administered by a “recording secretary” selected by the village shura in facilities provided by the community, and with filing cabinets provided by the project.
- A digital copy of the delineated satellite imagery and associated agreements and forms, linked in a GIS by AGCHO was archived by AGCHO in order to provide security to the villagers in case their records are damaged or in case someone tries to change the records without following the proper procedures.
- This digital back-up archive also can be used to information about who the managers of rangeland are at the village level, parcel by parcel, which contributes directly to efforts to improve watershed and rangeland management for the MAIL.

4.1.4 RLAP Governance Activities

The RLAP has significant implications for village governance and for improving the governance services that Woluswali and Provincial governmental agencies provide to villagers, possibly another way to improve the relations between community and the State.

Village Governance:

- In the test site villages, *Shuras* met and delineated pasture parcels on the satellite images, and then arrived at descriptions of who has the legitimate rights of access to and use of the pasture parcels during what times of the year.
 - These descriptions were then prepared as written agreements signed by village leaders which along with the delineated satellite imagery were put on public display in the villages, and reviewed in Provincial Workshops.
-

- Staff from the Provincial Natural Resource Directorate (NRD) of the MAIL reviewed these agreements as to their completeness, particularly whether all stakeholders are represented in them, including Kuchis.
- These Staff also worked with the stakeholders in the pasture agreements to produce plans for improving the carrying capacity of the pasture lands. These plans are kept in the villages shura archives as well as in the NRD for supporting projects aimed at improving range lands.
- The final delineated images and pasture land agreements are archived in a safe location designated by the Village Shuras, under the supervision of a person also authorized by the Village Shura.

The community administration of these records concerning pasture land was well received in the test sites and in the governmental agencies committed to strengthening local capacities for providing such services.

Governmental Agencies:

- Lessons learned from test sites and workshops are needed to be incorporated into drafting of new legislation and administrative rules which will support and regulate the MAIL policy/strategy for community based management of rangeland and forests, and for community management of land records.
- Techniques have been tested for community based identification of legitimate rights to rangeland and for the village recording of local parcel agreements with digital copies archived in Cadastral offices.
- Arazi, AGCHO and Cadastral Survey has been strengthened for fulfilling their critical roles in the RLAP—maintaining accurate and effective agreements and for future provision of needed satellite imagery plotted at the needed scales, processing the digital delineation and agreements in GIS package, archiving the final digital GIS for each village as backup of village paper records.

In summary, RLAP “community based land administration” involved:

- Community consultations for producing consensus about pasture land parcel boundaries and the legitimate rights to use these parcels,
- The secure archiving in a community designated facility (room and cabinets) under the responsible management of a person designated as “recording secretary” of the community.
- The updating of the archived records when conditions or terms of agreements or boundaries of parcels change.
- The archiving of the original records in the appropriate governmental land administration agencies, and the communication of changes made in these records to the appropriate agencies.
- The preparation of pasture improvement plans as the responsibility of the legitimate users who also have the responsibility of assigning and remunerating pasture guards which they decide are needed to enforce the implementation of the plans.

4.2 Concepts and Procedures of SALEH (largely the same for Solidarites) ³⁵

The SALEH began as a project for improving livelihoods of rural people through improving agricultural production techniques. The project expanded in its final years to include a Community Based Pasture Management (CBPM) component which integrated community based land administration and community based land management.

SALEH's CBPM is not very different to those advocated around the world towards community based natural resource management. It is particularly akin to the more advanced versions where recognition that the resource is effectively owned³⁶ by the community places its management decisions on a stronger and more sustainable footing.

4.2.1 SALEH Features

Below, its main recommended and tested characteristics are outlined

1. *Self-reliance*: the foundations of SALEH CBPM are rooted in what communities can realistically do for themselves and recognizes that the key issues confronting them are not technical constraints but issues of self-reliance and empowerment; in the sense of being *permitted* by law, policy and practice to take control and responsibility for the resources which they depend upon, and in organizing themselves to deliver.
2. *Mass application*: From the outset the approach was designed with up-scaling as national practice in mind. Accordingly the approach avoids making local level action dependent upon expensive investments.
3. *Tailored technical objectives*: technically, the approach therefore restricts itself to –
 - o *first*, assisting communities to revive traditional methods of pasture protection and rehabilitation (notably setting aside degraded areas, reseeded and limiting bush cutting);
 - o *second*, assisting these communities to access seeds of pasture species not available locally, through a repayment by equivalent weight of seeds within five years; and
 - o *third*, assisting communities to increase fodder production by intercropping rain-fed wheat with mountain alfalfa.
4. *Avoiding expensive short-cuts*: while successful communities may be rewarded with free improved poplar saplings, the SALEH CBPM approach deliberately avoids making action dependent upon assistance with alternative fuel sources, fuel-saving technologies or tree-planting programmes. Over time local demand will invite

³⁵ Most text is from Liz Alden Wily, "The Pasture Story", August, 2008

³⁶ In the Solidarites communities, establishing custodial rights was the focus instead of outright ownership, due to the interpretations of the LML as providing for State ownership of pasture lands.

these but in ways which will assure genuine adoption.

5. *Focusing on those who are interested:* obviously the approach cannot work in a coercive manner and is therefore structured to be demand-led.
6. *Easy to apply:* institutionally, the approach also seeks to avoid making the process dependent upon high-level external facilitation or mediation services. The Guidelines are *directly* addressed to facilitators and who may be local government officials or working for NGOs already in the area, and designed in such a way that these can be easily imparted in workshops including numerous community representatives (TABLE 5). The foundation of action is a locally-appointed committee (Pasture Council) and the tools at its disposal are as simple: making *rules* around access and *actions* to rehabilitate the pasture, able to be listed in a simple one-two page „*Pasture Management Plan*“. No formal mapping or survey of resources is required. Formalization of the community's authority over the pasture is effected through issue of a simple “*Letter of Custodianship*” by the Provincial Rangelands Officer, first on a three year provisional basis, and then confirmed following demonstrated success.
7. *Simple and cheap procedure:* the conditions for being recognized formally as the Custodian of a pasture are straightforward and entirely do-able by a community: the community must be acknowledged in the local area as the rightful customary owner of the pasture, have established the necessary Pasture Council to administer its access, devised Rules and had these endorsed as viable by the District Agricultural Officer, and reached written agreement with communities which share a boundary with the Community Pasture as to the agreed location of those boundaries, in full description. The community should additionally have demonstrated that it has begun to actively manage the pasture in terms of ensuring the Rules are being followed. Where a dispute abounds over their right to manage (as in Khamaniel) finalization of Custodianship is logically delayed until this is resolved.
8. *Designed to be incrementally applied:* The approach begins with helping an interested community to clarify and entrench its rights to the pasture. This is achieved through consultation with neighbouring communities to confirm local recognition of the community's rights and to agree in writing the exact location of the boundaries it shares with those neighbours. In most respects the community takes over furtherance and maturation of CBPM from this point. A domino effect is also intended; as one community brings its pasture under its proactive management, this encourages or forces neighbours to do likewise.

4.2.1 SALEH Strategy

These strategies underwrite the approach.

Integration of issues: first, the approach does not attempt to address pasture conservation issues separately from tenure issues or separately from devolutionary empowerment issues. Nor does it attempt to resolve pasture disputes in isolate from these concerns. The four are naturally *integrated* through the steps laid out; the community takes planning and action steps to bring the degraded resource under sustainable use management and to reach this point necessarily has to clarify its right to do so as the locally recognized and administratively acknowledged owner of the pasture. In the process conflicts around this must be resolved.

Classifying pastures to enable tailored response: for second, the approach recognizes three classes of pasture to account for different ownership patterns and thence management regimes. These also broadly coincide with the size and/or altitude of the pasture (BOX One).

BOX One
CLASSES OF PASTURE IN THE SALEH APPROACH

Private pastures (*Bakhsh Alafchar*): owned by extended households/hamlets, small pastures directly adjacent to settlements. Ownership is usually not disputed and boundaries are clear and accepted. By custom, owners tend to allow all members of the modern hamlet to graze their animals but limit bush-cutting to themselves. Only owners may clear parts of the pasture for rainfed cultivation.

Community pastures (*Alafchar Shakhzie*): higher pastures, usually owned by a village (often of cluster of hamlets), sometimes by a valley community of five to 18 villages, and more rarely, by a clan or tribe, comprising several valleys of villages. Many community pastures are at high altitude and remote from the valley settlement so that villagers move themselves and their animals there for two to four months in summer (*aylak*). Their size varies widely. The *aylak* camp does not always define the owner as a community pasture may comprise several aylaks/camps. Boundaries of community pastures may be unclear where this has been sub-divided by village or where a long history of shared use complicates clarification.

Public pastures (*Alafchar Ama*): although truly un-owned pastures do not exist, historical treatment of these areas as Government, national or un-owned property, and the existence therefore of a large number of different users, makes it sensible to retain most of these areas as public property. However, the SALEH approach has found it strategically sound to consider such pastures to be District Pastures, to bring management authority and therefore accountability to the most local level possible. Often these pastures are large and are found on provincial or district boundary areas. Should a pasture span two districts or two provinces then it is necessarily sub-divided according to the administrative boundary. In most cases this is defined on the basis of traditional inter-clan or inter-tribal territories.

Distinguishing between ownership and access: Third, it accepts that of necessity *access rights* to a pasture need to be ordered, on the grounds that (a) it is highly unlikely today that all those wanting to use a pasture can possibly be able to do so in the face of rampant degradation, and (b) that such ordering is necessary for disputes to be resolved. The ordering builds upon local practice as to how communities themselves order rights. In the process a distinction is drawn between those who *own* a pasture and those who have customary *access* rights to it or want to use it today. For example it is commonly the case that by tradition an owning community may allow members of another community to use the pasture but in acknowledgement that it does so as a guest of the owner.

Providing for community ownership: The SALEH approach accepts that as by custom, private pastures are the property of households, so too the communities have the powers of ownership – most critically, being able to determine how the pasture is used and who by. This does not mean that these owners do not have to work within the

boundaries of established national policy or legal parameters, such as not being able to sell the pasture – or willfully degrade it.

Access rights need ordering: The ordering of *access rights* becomes most crucial in the case of Public Pastures. Broadly, those who are not the customary owners and accordingly the logical custodians of the pasture but who live directly adjacent to the pasture, should be accorded *first* priority access; those groups which have a longstanding history of past access rights should have *second* priority. Only then should individual livestock holders from within the district, within the province or beyond the province be eligible to apply for access as respectively third and fourth priority applicants.

Through the above ordering of rights, SALEH CBPM provides a workable route forward for dealing with the settled people/nomad rights issue. Nomads who are known in the local area to have used a pasture over a substantial time-frame are accorded priority. However, when the pasture is acknowledged as a Private or Community Pasture the owners are not obliged to provide for their access, although they may do so at will. In the case of those pastures declared to be Public Pastures, the obligation upon the Custodian to consider applications for seasonal use by nomads is binding. In conditions where the pasture is too over-grazed to consider any use additional to local customary owners or custodians, this may be denied.

Sorting Out Local Disputes First: SALEH had always adopted the position that local populations need to sort out their contested local property relations as affecting pastures before they can even be expected to welcome nomads to return. Experience in Nawur Pasture had demonstrated this in 2005 and the SALEH piloting experience confirmed this. This was embedded into the Guidelines and the advised policy and legal approach to clarification and entrenchment of rights.

Recognising communities as the logical conservators of pastures: A further strategic plank of the SALEH CBPM is that customary owners are the logical party at the local level to be identified as formally in charge of the pasture (Custodians). This is straightforward enough in regard to Private and Community Pastures. In regard to Public Pastures two additional conditions are applied; these communities must live directly adjacent to the pasture (usually the case) and second, for administrative ease they must belong to the district within the pasture falls. This issue arose in the case of Khamaniel and is likely to often arise. This does not mean that a community outside the district but adjacent to the pasture (e.g. Qaranatoo community) loses its access rights, only that it cannot be the lawful Custodian as the pasture is necessarily under devolved government supervision – i.e. wherever possible to the district level.

The need for legal force to custodianship: SALEH CBPM works on the principle that it is pointless devolving management authority to communities if they have no real powers to make decisions or have those upheld. The process assumes that their Rules and decisions should have the binding force of law, to be followed by all users, not just those users who are members of their own communities. Their powers should also include the power to fine offenders, or in the case of outsiders, to report these to the Police

and to expect punishment to be meted out.

Custodians can be designated managers or owner/managers: custodianship as a construct in the SALEH CBPM covers both cases where the Custodian is also the owner of the pasture (as in the case of Private and Community Pastures) and where the Custodian has no more than managerial authority, such as in regard to Public Pastures. In cases where the pasture is individually or community-owned, these owners are assisted to formally register the pasture as their property, simply by taking their Letter of Custodianship for registration at the *Amlak* (Property Department) of the Ministry of Agriculture (now *Arazi*). This is not cadastral registration given that the cadastre is yet to be revitalised, and in any event, there is growing anticipation that registration will be devolved to more local (district) levels for registration for community properties and to the village level for in-village record keeping.

Recognising that conflict will occur structuring facilitation around this: bringing pastures under conservation management may be contentious and time-consuming (or not at all, depending upon the case). In broad terms, the smaller and lower the pasture, the less likely its ownership is contested. Any pasture which has a long history of administrative treatment as a public pasture may be expected to arouse contestation during the process of defining how it will be best managed and who by.

4.2.2 SALEH/CBPM Pasture Shura (Councils)

Table 1 provides an overview of the status of CBPM piloting as of July, 2008, an effort which began in 2006.

Some 73 village clusters were involved including 229 villages, some of them small hamlets, others villages in their own right. All the village clusters maintained a Pasture Council (73). Their “election” was far from democratic, in that there was no sign that women had voted or indeed that anyone had actually voted, but rather offered views and consensus had been reached. Poorer households often also did not participate in this process. Early guidelines on this were in most cases quietly ignored, village leaders following traditional practices. This tended to result in Councils including existing leaders, with many of the same actors also contributing to other activities in the community. Elders out-numbered younger members, with a few notable exceptions (e.g. Passeria).

TABLE 1: VILLAGE CLUSTERS INVOLVED IN PILOTING 2006-2008

DISTRICT & SITE	PASTURE CLASS	VILLAGE CLUSTERS DEC. 2006	VILLAGE CLUSTERS JULY 2008	HAMLETS INVOLVED	EST. HH
WARAS	PRIVATE	0	10	26	820
SHIBAR	COMMUNITY	0	9	29	1,032
PANJAB					
Lagzaye	PRIVATE	1	1	3	17
Expansion Areas	PRIVATE	0	12	36	985
YAKAWLANG					
Takhak	COMMUNITY	3	8	35	1,000
Khamaniel	PUBLIC	2	2	(2)*	60
Khamaniel**	COMMUNITY	0	2	11	300
Sumi-Safidek	COMMUNITY	0	7	20	600
Sya Dara	COMMUNITY	0	22	69	2,045
TOTAL		6	73	229	6,859

*In brackets to avoid double counting. ** This does not include the three villages of Sabzael, Qallah Jafar and Karooka Shah which have begun CBPM under their own steam

At the same time, each Pasture Council rigorously ensured every hamlet or neighbourhood in the village was represented. Records were also quite well kept. Councils did report back to community members, through customary channels. Rarely did the CBPM Team secure a genuinely inclusive Community Assembly of every male adult in the community attending.

Herders were generally represented on the Council and over half the Councils deployed one or more Pasture Guards (*negahban, pairadar*). They were usually poor, respected herders with a long tradition of loyalty in the community. Three mechanisms for securing their services were employed: a single guard was hired, paid in food by contributions from wealthiest households (e.g. Sare Tanuk, Sumi Safidek); each household cluster – e.g. six households – took responsibility either in rotation or for a different part of the pasture (e.g. Sabzael); or members of the council themselves did the guarding (e.g. Passeria).

Figure 2: The SALEH CBPM Pilot Areas



One of the most important positions on the Councils was the Seed Officer. His task was to organize the collection of seed from the pasture and then supervise the use of this seed on the selected *aygals*, or closed areas. Reseeding was the most popular element of community management, with every community excited with the results. Initially only some families (e.g. 10% in Sare Tanuk) collected seeds but Pasture Councils see an increase in contribution annually, and believe it is futile to attempt to enforce this.

4.2.3 Pasture Rules

Most communities tackle pasture management in similar ways as shown in the consistency of the Pasture Rules they devised (see below). While this could be partly the result of facilitation, it is in practice more the result of common sense and traditional responses to pasture degradation.

As noted above facilitation and the Guidelines for facilitators were developed through local consultation and evolving trial practice. Save for one early mistake made, SALEH it firmly sought to limit capital investment under the CBPM component; the mistake concerned funding construction of 13 check dams on three major gullies on Lagzaye pasture, and remains the only directly funded input in the component. Seed provision was strictly on a loan basis. Extending this to providing improved poplar saplings would be usefully considered in future.

Although advised not to provide any direct investment to communities to encourage sustainable self-reliance, Solidarites did assist 12 of the 22 Sya Dara communities to construct solar verandas (plastic sheeting on poles) but primarily for demonstration purposes. These proved to definitely reduce the amount of pasture shrubs needed to heat the house in winter but beneficiaries have since complained that they do not have the funds to buy the heavy plastic needed to repair or replace these structures. Coal supplies steadily increased in Yakawlang town and some wealthy households in Sya Dara noted that was helping them reduce their dependence on shrubs for fuel.

One of the most common pasture rules needs mention; reduction of numbers of donkey loads of bushes taken from the pasture, and reduction of stock numbers on the pasture. Neither was ever suggested by the CBPM Teams, in consideration of the unlikelihood of these being enforced. Surprisingly, both are commonly included - and enforced. Similarly, in particularly private pastures including in the first village pilot, Lagzaye, rainfed farming as a whole was entirely halted on two of the three pastures. The community felt the effects of reduced rainfed land but at the same time believed it gained much more from the land as viable pasture than extremely low-yielding rainfed wheat, and which tends to fail one out of three years.

The most uniformly upheld rule concerned the ban on collection of bushes for sale. Villagers feared to be seen selling bushes. In Kalandah village in Panjab for example, the community coerced a group of bush traders to give up the activity; “they now farm like all of us”.

4.3 Solidarites

Solidarites in 2006 was the longest operating NGO in the Province. Over a scant six months during 2007 but with an almost full-time adviser and two full-time national staff, Solidarites achieved marked success in applying the CBPM model developed by SALEH.

The area covered by Solidarites comprised 22 communities with 69 hamlets. A total of 27 pastures were brought under management (several villages having more than one pasture in the high altitude areas). On-site review of the pasture as part of planning followed the Guidelines carefully and was intensive. The stocking rate was identified as reasonable (0.6 shoats and 0.1 cows per ha) but large areas of the pasture were degraded as a result of excessive bush harvesting. Enthusiasm was high and Pasture Councils quickly established. The pasture boundaries were well defined on the ground by streams or gullies and on the whole respected. Community ownership of only three pastures was disputed, one quickly resolved and a second and third still causing rumbling discontent. One of these concerned dissatisfaction with the boundary agreed between two communities. The other related to the claim of a village which is not immediately within the Sya Dara area which claimed a historical right to harvest bushes in the area.

The boundaries of all 27 pastures were quickly agreed, and signed off. Each Community Pasture boundary was located on (Russian 1980s) topographical maps in digital form (Figure 11). Rules were agreed. A guarding system was instituted (*qurghan*, *negabhan*) in some cases on a rotational basis, in others by one person being appointed to the job. *Aygals* (closed areas) were agreed, described and implemented,

with most villages planning to close these for five years. In return for collecting pasture seeds, farmers were assisted with mountain alfalfa seeds (*riskha*) and used these on their rainfed plots on the pasture to boost fertility, reduce loss of soils and provide fodder. Project evaluation by the villages themselves showed high satisfaction, continuation of guarding, and no rise in disputes other than in two cases where people have been found to be harvesting pasture bushes illegally at night. In July 2008 the Community Liaison Officer (CLO) reported that another similar dispute had arisen but was being dealt with.

5. Challenges/issues

5.1 Challenges/issues encountered in the RLAP

The issue of including nomadic pastoralists in the agreement process needs careful consideration. Given the timeframe of the RLAP it is very probable that the field teams were not able to meet with all nomadic groups which use the pastures, so recording grazing or transit rights of nomadic groups was largely left to the sedentary villagers. Although field teams reported villagers quite ready to verify nomadic families as having been traditional users, not consulting directly with migratory families is not an ideal situation, since it might appear in the interest of the sedentary peoples to minimise the rights of the nomadic pastoralists. In order to allow the individual nomadic communities to register an interest in any given village agreement, a field team representative returned to the test sites at the time of the year for likely nomadic presence to try and revisit the agreements made with sedentary communities and to get the consent of nomadic people with the agreement documents governing the rights over distinct parcels of pastures.

The field teams also informed the Provincial Kuchi Directorate representatives to help alert the Kuchi groups who traditionally have access rights in the test sites to review the agreements and assure their proper formulation. For scaling up the project, the issue of recording legitimate nomadic use and access rights needs careful consideration and planning, especially in terms of properly scheduling the agreement process in different areas to physically get the involvement of nomadic groups, and protect their rights of access.

The secure preservation of pasture land agreements, agricultural land parcel forms, and parcel maps in the villages also needs special attention. Measures taken to date include the following procedures:

- A log book listing each agreement and parcel form is kept in the village. This log book provides some assurance that the agreements and forms cannot be easily changed without authorization.
 - The RLAP provided each village shura with cabinets with locks and map storage tubes for the secure archiving of these materials.
 - The RLAP also produced digital copies of these materials which are archived in the regional Cadastral Offices. Unauthorized changes in the documents in the village archives can be detected through examination of these digital copies.
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Additional measures are needed, such as monitoring of the administration of these records and devising procedures for their authorized updating in cases that the community shura and leaders decide on such updating.

Linkages of Community Pasture Land Records with the Judiciary

Consultations with Provincial Judges in Herat and Kunduz about the legal significance of the rangeland legitimate user agreements and parcel forms yielded positive Judge opinions about these documents. Provincial Judges stated that if cases were brought to them about disputes concerning rights to such lands, the agreements about the legitimate users of rangelands, signed by village shura members and elders and other stakeholders, would be given high significance.

It would be desirable to consult more widely with the local religious, academic and community leaders about how to make the community agreements more useful for protecting customary use rights and for helping resolve future disputes.

Linking Communities with Government

A major issue constraining the usefulness of the RLAP is resistance of governmental agencies to incorporating the results of community consultations into the official records concerning rights to pasture lands. In no District of the RLAP pilots was the District Head, Woluswal, willing to sign the legitimate users agreements, perhaps fearing that by his signature he would be indicating approval when he had no such authority.

While the community consultations were within the law since they dealt with identifying “legitimate users of pasture lands” and not the owners of such land, the view that pastures are public property is deeply held and people are suspicious of any non-State recognition of any rights to pastures. The meaning of “legitimate use” has to be discussed and better understood, and how the concept can be employed to document customary, community rights to land in a way which would prove helpful to Judges and land administrators to protect the holders of legitimate use rights as documented in well defined community consultations.

Community leaders walked the boundaries of each pasture parcel and delineated them on Quickbird satellite images at a scale of 1:5000 provided by ISAF in digital and paper form.

In one pilot site in Kunduz, a Kuchi settlement, on the request of community elders, the ADAMAP methods were applied to an area of irrigated agricultural land, divided into 100 privately owned and cadaster surveyed (in 1968) parcels. Due to the significant outmigration of people in recent years, and changes in the possession of these productive parcels, the community elders were sufficiently interested in ADAMAP to offer to extend the exercise themselves to the remaining 300 or so agricultural land parcels in the community, if RLAP would the satellite images (at a scale of 1:2000) and a ream or two of paper for recording the legitimate ownership and use of these parcels.

The original delineated satellite images, the parcel agreements and the log books remained in a Community archive, overseen by a Community Recording Secretary named by the Community Development Council or community elders and leaders.

The field prepared, hand delineated parcel boundaries on printed satellite images were subsequently digitized. These digital image files and along with digitally copied parcel agreements and parcel log books were provided to Provincial Amlak, Provincial Natural Resources Directorate of MAIL and AGCHO archives.

In terms of developing better government/community relationships, the approaches developed by RLAP for pasture and forest land have four positive characteristics:

- First, they address the reality of the situation, by recognising the traditional system of tenure over pasture and forest land which has been practised for years, and by strengthening that system through the provision of witnessed written records about the legitimate users of pasture land.
- Second, Provincial Appeals Court Judges indicated that such documents, signed by community leaders and the legitimate users, would have substantial weight should a conflict be presented to them for Court judgement.
- Third, this increased security of tenure of rangeland users encourages these users to invest and improve the land.
- Fourth, governmental land agency officials (Arazi, Cadastral Survey, MAIL pasture specialists focused on providing services to communities, such as devising pasture rehabilitation plans, advise on management options for pastures when conflicts arise among the legitimate users, technical assistance in the preparation and archiving of community land records, back-up archiving of digital copies of community land records.

Quite suddenly, the interest of the State and interest of the people – to increase the value and stop the degradation of forest and pasture land - became one and the same. This could be considered a milestone in the development of new cooperating, mutually beneficial relationships between government and the rural people.

The RLAP supported the spread of this idea about new government/community partnerships through workshops and through practical demonstrations to officials at the Woluswali, Provincial and Central levels. The RLAP contributed to redefining the way its land institutions work and in formulating rural land policies and programs to resolve major issues relating to pasture lands as well as other rural land tenure issues identified in community consultations. However, RLAP did not succeed in getting system wide buy-in, other than the polite support of officials and technicians. Most telling in this regard was a workshop organized in Kabul where RLAP invited community leaders from the four pilot sites and central Ministry officials to review together the RLAP work. A very short appearance by Ministry officials at the workshop gave the community people the impression that officials had a low opinion of community people and the gave small importance to what the communities had been doing.

In part this failing was due to the RLAP not convincing Arazi (Amlak at the time of the project) or the upper levels of the Ministry to issue orders to the local Arazi and Natural Resources staff to review the pasture boundary maps and legitimate user agreements. RLAP relied on the Provincial and District officials having the flexibility to make such decisions on their own. More

institutional work is needed for the Ministry to provide guidance to staff about how to treat the maps and legitimate user agreements produced by RLAP.

On the positive side, RLAP experiences with community based identification of legitimate users of pastures did feed into the Inter-Ministerial Commission (Chaired by the Minister of MAIL) developing the National Land Policy, resulting in support for community based land administration being expressed in that Policy statement. One NGO, Mercy Corps, assigned its staff to participate in ADAMAP training and in the actual field work with communities. Mercy Corp subsequently joined with CRA and Terra Institute in preparing a project proposal for wider application of ADAMPA, which unfortunately did not survive a change in personnel in Mercy Corps.

5.2 Challenges/issues from SALEH/Solidarites

For a discussion of the challenges which arose during the pilot, see Section 6.2 below on Recommendations from SALEH/Solidarites

6. Recommendations from the Pilots

6.1 Recommendations from RLAP³⁷

Based on the RLAP project achievements, four main recommendations emerged:

1. As support to the MAIL community based management of pastures and forests policy-strategy, the government would be well advised to consider the extension of the ADAMAP procedures to a significant number of Woluswali in a significant number of Provinces.

Since RLAP pilot procedures were not “illegal” under the Land Management Law of 2000, and since the LML of 2008 did not modify the vague provision of the LML of 2000, it seems that ADAMAP would not require changes in law, although governmental orders to Provincial staff would be needed to clarify responsibilities of various offices in implementing ADAMAP. In case the Rangeland Law is approved and in case amendments to LML 2008 are approved affecting rights to pastures, ADAMAP may have to be modified to take advantage of legal improvements and to fit the concept “legitimate users” into any new legal provisions which may be approved.

In any case, following consultations, Government should authorize expressly the strengthening of village level capacities for producing and administering agreements which identify the legitimate users of pastures and forests.

- The training and equipping of Village Recording Secretaries authorized to manage these pasture land agreements and maps,

³⁷ From Scanagri/Terra Institute, “Final Report for the Capacity Building for Land Policy and Administrative Reform”, TA 4483 AFG for the Asian Development Bank/ DfID, Sept., 2007.

- The strengthening of the Provincial ARAZI and Pasture Department staff and offices to be able to handle their new responsibilities for supporting the preparation of user agreements and pasture improvement plans,
- The equipping and training of regional Cadastral Offices and the Central AGCHO office for providing needed satellite imagery as well as processing and archiving delineated satellite images and associated rangeland agreements in digital form.
- The preparation of pasture improvement plans for the rangeland parcels with legitimate user agreements in place.

With these community agreements and improvement plans, Government can launch programs more effectively for the improvement of the carrying capacity of rangelands and begin to rehabilitate forested areas.

2. The current shape of the Afghan land administration system in general, needs to be reformed in support of this initiative. Responsibilities for public land administration and public land management should be concentrated in fewer rather than many different offices, and at the same time responsibilities for recording legitimate user rights to land and managing the records about such rights should be devolved to village councils, supported and guided by the appropriate governmental land administration agencies.

ARAZI would be the natural entity designated for supporting village land records administration, including rangeland records and agricultural land records, and for securing those records and using them for broader land administration programs. ARAZI should be authorized by the highest levels of government to support, guide and archive the results of land records management done by Village Shuras.

The rationale for this community based land administration, both in terms of documentation of legitimate users and in terms of pasture rehabilitation and sustainable use, being in ARAZI is that the government land administration activities are services to the general public, having to do with the documentation of rights to land. These public services require expertise and a public service purpose, client orientation, and service efficiency which attracts the public to the institution offering these services, such as ARAZI.

6.2 Recommendations from SALEH³⁸

6.2.1 Lesson Learning

There was a great deal of lesson learning through the two years of piloting (2006-2008).¹²¹ Some lessons were programmatic or institutional, others instructive as to strategy and process, and others substantive, such as growing understanding through pilot implementation as to how customary rights are ordered (or disordered). Lessons also have bearing upon how donors and institutions support social change. All lessons had (and continue to have) bearing upon development of national land and rangeland policy and supporting law; these were accordingly brought to the attention of participating actors in this process.

³⁸Most text in this section is from Liz Alden Wily, "The Pasture Story", August, 2008

Lesson learning would also be more immediately reflected in changes made to the **Guidelines** for Facilitating Community Based Pasture Management. These went through four iterations, now in final draft (April 2009). An example of change is the telescoping of pasture review, planning and boundary agreement into one event in regard to high altitude pastures; the distances are simply too great to mobilise and support these activities in three or four stages. Not enough guidance was initially given on conflict resolution management. Nor was it recognized initially that space would have to be made for the continuation of public pastures, to cover those pastures which could not be easily recognised as community pastures.

The Guidelines themselves changed from being formulated as a single set applicable to all pastures into two sets; one geared to “in-village pastures” and the other to “ex-village pastures”. In-village pastures referred to those many hundreds of pastures directly attached to the estimated 2,000 villages in the province and which are family-owned pastures attached to settlements. Three factors dictated different treatment: (i) the absence of dispute as to the ownership of these private pastures; (ii) being so small and close by to houses, activities like establishing check dams is viable and given the impact on farms, needed; and (iii) it is in these areas that the interface between rainfed farming expansion and pasturage is most acutely felt, and the former in most need of management.

Additionally, the process for such private pastures has proven so straightforward that much of the work of facilitation may be pursued in a workshop context, attended by a number of different village representatives, and who may leave with one page handouts for each step suggested.

There are good grounds for suggesting that it is in regard to these lower and smaller pastures that most progress may be made and precedent readily established. Sorting out local in-village pastures provides a useful stepping stone for communities to address their high altitude pastures (where a community has both classes).

6.2.2 Lessons of Process

Many other process lessons are familiar to development work but tend to need to be learnt time and again. One is the importance of *taking time to investigate local ownership* and taking time to involve all stakeholders. The project found it quite difficult at times to gain a fully truthful picture of historical and current rights. The Khamaniel pilot, for example, suffered from insufficient survey work by the CLOs ahead of the decision to exclude Qaranatoo as a Pasture Custodian. Too much reliance was placed on information which later transpired to have been too cursorily collected. There were, and remain good reasons why Qaranatoo was excluded as a Custodian, but in lieu of this a well-tested agreement as to their *access rights* should first have been arrived at. prior to agreeing to recognise Kuprok and Passeria as Custodians. This may not have avoided the tensions that followed, but should have been tried.

Time has also shown that pasture tenure disputes take *an enormous amount of facilitation time*, and this should be given freely, with no corners cut. *Authoritative mediation* is also

important. Disputes were shown to be able to ebb and resolve themselves *with time*, even within the short two season lifetime of the initiative. Leaving communities to mull over the issues does not necessarily hasten them to agreement, but is nonetheless important in keeping down the temperature of disputes.

The *domino effect* was also widely seen; the success of one village encouraging others.

The project also found that it takes very little time for activity to become *demand-led*; the issue of pasture degradation and its foundation in uncertain or contested tenure is a matter of grave concern to rural communities and aroused a great deal of interest.

Practically, the project learned (from sometimes unpleasant experience) that meetings need to be kept *as small as possible* and villagers guided – and indeed regulated - as to their choice of spokesmen. Consistency in representatives also proved important; where representatives changed this was always almost unhelpful.

Good governance systems at community level are clearly going to be evolutionary; on the whole, elites (“landlords”) still tend to control meetings. Women, younger and poorer households continue to remain largely outside the decision-making circle. The CBPM component of SALEH has not had success in overcoming this. Future strategy needs to work harder at obviating this.

The project also learned to make its first contact the evolving Community Development Councils and structuring the Pasture Council as subordinate to this. However, this has also had the disadvantage of consolidating rather than widening the group of decision-makers.

Several aspects of the process of establishing CBPM illustrate the high level of ownership over the process which it engenders. Once they get pasture management underway, communities surprise themselves with the level of adherence to rules. Punishments for breaking the rules (usually payment of one lamb) are broadly accepted as fair. Leaders become increasingly confident that they are able to persuade families to change their pasture-related habits, and less coercive. CBPM began to show signs of being a useful prompt to community empowerment and self-reliance. This is seen for example in the capacity to organize guarding, establish closed areas (*aygal*), and ban bush collection for sale. Traditional practices along with traditional mechanisms of social coercion enhance this, as does genuine concern by villagers that the precious pasture resource is at risk of becoming irretrievable wasteland. The initiative also observed that *intra*-community contestation was relatively low or perhaps kept indoors. Community solidarity is visibly very strong, as is the sense of territoriality, or „our land“ .

It was also instructive to find how quickly first-line impact of CBPM can occur. In those areas villages set aside against grazing and cutting in order to see rehabilitation of the resource (*aygals*), increase in ground cover, range of species and height of bushes and plants can be

dramatic in even the first season of closure. Not one village has been disappointed with the effects of *aygal*. The results inspire villages to redouble their efforts.

At the same time, villagers show themselves amply aware that limiting grazing and bush cutting is not sufficient on its own to bring their pasture to optimal condition. The project found communities voluntarily limiting rainfed farming, increasing on-farm fodder production (mountain alfalfa) and planting more poplar saplings on farm for future fuel wood use.

Success clearly breeds success; many of the “impossible” became possible, early doubts giving way. Leaders have found farmers can always find space for tree planting having initially declared there is not an inch of spare land on which to plant another tree. Community members *do* obey rules on the whole. They are able to arrange guarding - having declared that this could only occur with financial assistance. With the notable exception of the Khamaniel pilot, posting guards on the pasture has not engendered conflict as feared and they are able to prevent outsiders from using the pasture, and without arms or other force. Most villagers are also surprised when they find they are able, after all, to resolve quite long and bitter pasture boundary disputes and questions around access.

Nor has provision of alternative energy sources (gas, coal) and fuel-saving and heating technologies proved the prerequisite which many officials initially thought would be necessary for these pilots to take off. On the contrary (and as often found in community based natural resource management processes) it is only upon taking action to conserve and control resource use that the incentive for uptake of these possibilities, most occurs. This has been seen in the prompt which CBPM is giving in Bamyan to boosting to the planting of fuel and fodder species on farm (and to purchase of coal by better off farmers).

6.2.3 Programme Lessons

One of the earliest and continuing lessons learned was simply that the process always takes a great deal more time to see through than anticipated. Plans were constantly revised, generally downwards. A first main cause has been the level of conflict around pasture tenure relations (see below).

However the second was much more significant – and avoidable. This was simply that as an add-on activity to SALEH the component has been frustrated throughout by insufficient logistical, financial and personnel support. None of the staff needed were recruited, neither an expert national team leader or field facilitators. None of the existing SALEH Community Liaison Officers were able to work full time on CBPM. Requests along with terms of reference for a mediation specialist and a rangeland specialist to train the CLOs were also not met. Although one CLO was provided with a GPS, no other field equipment was provided to ease their work. Funds and transport were continually short. The failure to provide the requested interpreter to the visiting technical adviser even during the crucial early review stage, greatly inhibited the speed and accuracy with which crucial information could be collected.

These constraints were compounded by the limited capacity of otherwise highly willing SALEH CLOs to collect data, plan ahead, or indeed to plan at all, and despite best efforts

of both CTAs to resolve this. They did not always inspire confidence in communities particularly in the handling of conflicts in Khamaniel and Takhak. The absence of a full-time expert technical adviser was also an impediment. With only four missions made overall and two of which included limited fieldwork, this proved insufficient to guide the process or train CLOs on the job.

In fact, over all, it is testimony to the importance communities give to the issue that any progress at all was made by this CBPM initiative. Much more could and should have been achieved, with relatively basic programme support. The only real cost is good facilitation and the time and logistical support this needs; this is however pivotal to progress. To skimp on this is self-defeating.

6.2.4 Governance Lessons

As important to progress or frustrated progress are lessons around the role of government in such reform initiatives. Government will to support trial CBPM was strong in principle – but weak in practice, and with negative effect, as the Khamaniel case most illustrates. This is hardly unique to this initiative (nor unique to Afghanistan).

An interesting backdrop to this is the fact that communities do look for strong government to secure clear and firm support for their initiatives. Typically, they demand both autonomy and support. On the part of officials, there is also considerable unevenness in just how far they lay down the law or act upon powers they already amply hold – or are willing to back up community interests. It is instructive to see in fragile post-conflict conditions where rule of law is so ambivalent, just how high the demand for clarity of norms and rule of law really is. Ordinary rural Afghans in Bamyan Province were constantly looking for surety from officialdom. It is one of the paradoxes of effective self-reliance that government back-up is essential, even if this is only delivered in clear communication of support.

Afghanistan as a whole is clearly undergoing a transition in governance norms, and within which the relationship of ordinary communities to the State is yet unstable. Government is visibly struggling in its proclaimed shift towards more devolutionary and democratic norms. CBPM in Bamyan saw this in the ping-pong of shifting responsibility upwards and downwards through the district-provincial- central hierarchy, in particular reference to critical policy issues around Khamaniel. The fact that officialdom is countered in practice to such a degree by non-government power-holders in the personages of one-time warlords or commanders, adds to Government's own uncertainty as to how far its authority can really reach. From either side, ordinary communities are left in limbo and without the supporting environment they need to become decision-makers or conservators in their own right.

For project like CBPM which are integral to devolutionary transformation, there is urgency not so much to achieve sound new *declaratory* law and policy than to see concretely evolve the *institutional mechanisms* through which these are able to be practically delivered. More support towards this is warranted in future efforts, particularly as affecting rangelands designated as Public Pastures under approved local Custodians. It was in Khamaniel for example that the assumed right of a Custodian to limit entry of outsiders was most poorly

supported – by Government itself. This is despite over-arching new policy precisely towards this, as later described.

6.2.5 Getting to Grips with Conflict

Publicly, the outstanding dispute affecting pastures is between settled communities and migrating nomads (Kuchi). However a main lesson from the Bamyan CBPM initiative is that pasture-related dispute within the settled community exists quite widely and can be virulent. However this was not uniformly the case and identifying conditions where conflict over pastures may be expected is important to future approaches.

A great deal of time was spent and lost in tackling inter-community conflict in two of the three first pilots, Takhak and Khamaniel. The two cases do not have a lot in common other than the fact that both, through different causes, have a history of being treated as open access properties until relatively recently. In the case of Takhak this was because people either kept out of Koh-i-Baba because of fear of Kuchi or had too few animals until recent decades to make the definition of “our pasture” such a pressing issue. In the case of Khamaniel this has been because of its century-long designation as a public pasture, at least to Kuchi until 1978, and since 2001 in particular, to the wider Bamyan community. It is clear that Dasht-i-Hojour to the north of Khamaniel will suffer the same degree of conflicted relations among local and not-so-local Hazara when it comes to attempting to bring this expansive resource under conservation management.

It is as important to record that conflict was *not* marked outside these two areas although it did occur. Even right next door to Khamaniel on the west, the villages of Sabzael, Jarookashan and Qalla Jafar, and who have also adopted CBPM, had no boundary disputes among themselves or with Passeria and Kuprok, the custodians of Khamaniel. Nor did all Takhak’s neighbours have disputes. To the west of Takhak, the cluster of Sumi Safidek managed to overcome intra-community and inter-community disputes as did the Sya Dara villages adjoining Takhak to the south. Where the target of CBPM was the small, settlement-adjacent “private pastures” there were largely without persistent conflicts as to rights. This was the case in Panjab, Waras and Shibar.

The conclusion that may be drawn is that pastures are *not* generically disposed to conflict but where these have unclear boundaries, a weak history of entrenchment of local ownership in the past or where they have not been in the hands of the customary owners for many decades (often a century), then dispute may be expected, and may be bitter.

It is not surprising therefore to find that any land that has been treated as public land and/or where Kuchi have been occupiers, will be vulnerable to dispute. In these areas the customary control mechanisms seen in other areas had not grown apace with population and stock pressure, and Hazara were ill-prepared for the sudden availability of resources. Inter-communal land-grabbing results.

Having participated in many inter-community meetings in Takhak and Khamaniel, the Afghan community development adviser in SALEH warned that facilitators have to be constantly aware that communities may fight to the death for access to resources, as it is

incumbent upon their leaders to get the best possible deal for their communities. He also noted that Hazara are so terrified of losing control over their resources again that they were unusually forceful at that time. Pashtun members of the SALEH team were quite often viewed with great suspicion; and sometimes put into words; “have you come to take back the pasture?” demanded some elders of the team member.

Self-interest also plays a role, he adds. The war years taught people to get what they could for themselves.¹²⁴ Or, it might be added, taught them they could get away with this, the bonds of both government and community control broken.

It must also be borne in mind that the Hazara-Kuchi dispute as to the ownership of the high pastures of Hazarajat (the vast majority) hovers in the wings. With each passing year Kuchi demand to re- enter the central highlands grows and increasingly violently so. Confronted with this, the urgency of local communities resolving their inter-communal disputes to be better prepared for addressing this issue just gets more important. SALEH piloting demonstrated that it was strategically correct to set aside any discussion of Kuchi access to summer pastures until local communities have resolved their differences.

An important lesson of the SALEH initiative is simply that disputes need to be less avoided than managed. Some senior officials have been reluctant to endorse CBPM precisely because they fear it will generate conflict. The fact is that these conflicts already exist, are already festering, and need resolve. Further, not all dispute is “bad”. Except where it becomes violent, dispute over “our land” must be seen as an expected effect of a more broadly positive process; the act of a community defining its domain and from whence self-reliance and resource governance stems. Even without CBPM, this process of clarification and ordering is occurring apace, as a result of populations re- establishing order following the war.

Certain practical strategies which have contributed thus far to resolving disputes need mention. These include –

- (i) subdividing the pasture into distinctive Community Management Areas, each adjacent community having its own sphere to control; this worked extremely well in Khamaniel;
- (ii) drawing a distinction between *customary owners* and customary users; usually there is one community with the strongest customary claim to a pasture and other villages are able to accept this so long as their access interests are accepted by the owner or custodian community; and
- (iii) dealing with the claims of remote users by treating these as seasonal access rights which can be negotiated with the Pasture Custodian – once the pasture has recovered sufficiently to bear more than local use.

6.2.6 Clarifying the Nature of Rights to Pastures

A fundamental finding of piloting was in the nature of tenure at community level. It was recorded earlier that an attempt in Takhak in April/May 2007 to set aside questions of “who owns the pasture” in favour of discussions of who has access rights to the pasture

simply did not work. Villagers promptly voiced concern that this was *not* the issue at stake although rights to use the pasture were part of the issue. What was at stake was which community has such strong rights over the pasture that this amounts to ownership, rooted first and foremost in the right to control its access and use.

Customarily, such ownership is clearly distinguished from access rights, which certain non-owners may acquire or be granted, by custom or otherwise. Such persons include poor client households without land within the village, and neighbours who may have access rights to grazing but not to bush or grass cutting, or other outsiders who may have long established rights to cut bushes (usually by an agreement made many years past). These in effect become legitimate access rights, although always subject to conditions and change.

The strength of customary claims over pastureland in general was *much greater than anticipated*. This is despite routine acceptance by communities in initial discussions that “all pasture belongs to Government” (their understanding of “public land”). This orthodoxy has never really been accepted although lip-service is paid to it. As seen in Khamaniel it may also be used at convenience by those in whose interests such an interpretation represents. Therefore there is a constant duality at the community level as to pasture ownership. As so commonly the case in comparable situations around the world, this is aptly defined as a classical contradiction between customary and statutory tenure, or customary and national law.

Definition of the customary owner of pastureland is not complex; this is simply a matter of socio- spatial proximity; the community next to the pasture (and not on the other side of the hill) will as a matter of routine be its customary owner. This includes the very highest and remotest pastures geographically associated with that social community and its settlement.

It is only when government or other forces have interfered with this logic that contrary claims arise. In Takhak for example, this may have occurred as a result of the Governor of Yakawlan sharing out the pastures in that area in 1985, admittedly following a heated communal dispute. A similar confirmation of tenure occurred as far as back as 1932 when disputes as to boundaries within Band-e-Petab led to their formalization under Amir Nader Shah. The fact is that wherever scarce resources are involved, contestation and thence dispute may be expected.

6.2.7 Getting to Grips with the Meaning of Public Pasture

By June 2006 it was clear that there was no public pasture in Bamyan Province in the sense of un- owned land. Every inch of pasture was owned by one or other village, village cluster, clan or tribe according to customary norms (law). Reconstructing these as Community Pastures seemed logical and strategically correct. By November 2006 it was clear that some space for residual “public pasture” still had to be made.

As we have seen earlier, Khamaniel crystallised this conundrum. Even though the area was accepted locally as by tradition community property, its history and the level of contestation over its modern- day access meant that it neither Government nor interested non-customary parties would allow this to occur. The December Report therefore observed –

“Although customarily *all* pastures can be divided into private or community owned pastures there are certain pastures which either (i) have several layers of access rights which need to be addressed over time, or (ii) more commonly, local authorities are reluctant to see alter their status as public lands which outsiders as well as adjacent communities may use. This does not mean however, that the pasture cannot be made subject to community jurisdiction (custodianship); on the contrary localized management is as crucial there as in other pastures but cannot carry with it an intimation of ownership” (PD 2006i).

CBPM strategy has accordingly been shaped around these realities.

6.2.8 Linking Customary Rights, Tribe and Now District Identity

It was also in the context of Khamaniel as a public pasture that administrative boundaries arose as relevant to strategy. Although un-surveyed, district and provincial boundaries are based upon boundaries between tribal territories. These have obvious immense relevance to pastoral tenure. However because these tribal/administrative boundaries have remained un-surveyed and un-gazetted, this has provided ample scope for the manipulation of their location on ground (and in maps) and to amend the boundaries of territories accordingly.

A further relevant fact is that many district and provincial boundaries are surrounded by pasture. This is not surprising given its extent in the country, and given that pastureland will usually surround settlements and their domains.

The need to define boundaries is heightened by the need to bring governance of public pastures (not just community pastures) down to the most local level possible to enable sustained protection and use regulation. It was because of this devolutionary management requirement that the SALEH CBPM initiative found it logical to propose that, while recognition of some pastures as neither owned by communities or households would be necessary, the governance environment for these public estates should also be devolved, to increase accountability and reduce open access politics. The logical culmination of this has been the need to reconstruct even public pasture as essentially District Pastures. This is however not well accepted among those individuals whose interests might therefore be constrained – and for the very reasons the construct is proposed - that it may reduce the scope for free-rider and open access behaviour. Even the most recent of users dislike surrendering access which they have captured.

6.2.9 Custodianship

A basic conclusion of the SALEH piloting was that CBPM is the correct strategy towards pasture management, that there are little grounds for not pursuing this route. This hardly needs elaboration here (not least because it is already policy as later described). An element of this which was better evolved through piloting was the construction of *how* communities would manage and through this, the creation of the construct of custodianship.

Because situations exist where the community may or may not be the customary owner of the pasture (cf. private and community pastures with public pastures), this term usefully

covers both circumstances; where the manager is both owner and manager, and where the manager is only manager of a public resource.

The need to fully empower these custodians (communities at one or other scale, from hamlet to cluster) has been repeatedly experienced in piloting. In summary, the custodian needs to have legal power to make decisions and have these upheld. This means to have their rules recognized as legal rules, which the Ministry of Agriculture and its staff in provinces and districts, Governors, and the Courts *are bound to uphold* when these are challenged by persons breaking the rules. This includes those who do not come from the custodian community itself (i.e. outsiders).

Of course those rules need to be endorsed in the first place, and the Guidelines accordingly provide for this, as now does the *draft* Rangeland Law (see later). Custodianship (and/or pasture ownership) is also always conditional upon conservation management; no pasture may be bought or sold and every custodian has a duty to manage the pasture in sustainable and fair ways.

An important lesson of piloting the SALEH model was the challenges to such a paradigm that occurred. It seems very significant that lack of government support for community custodianship has thus far been limited only to pastures where a range of genuinely outsider interests are at stake, in the sense of deriving from people who are not in any way local to the area. Thus, challenge to the idea of community custodianship arose only in the Khamaniel pilot. This has several implications:

- (i) There are a very large number of pastures which seem widely considered as logically the property or possessory responsibility of local communities; legal space for clear definition of Community Pastures is due;
- (ii) Government support needs to focus upon those communities which are custodians of public pastures; and
- (iii) Designation of public pastures should be kept to a minimum. Pastures treated as public pastures remain the domains where least change is being experienced in pre-war norms, and where the dangers of open access remain most acute.

6.2.10 Strategic Lessons

It may be noted that piloting began *without* the benefit of new policy and law. This was initially constraining when it came to securing official support from the Ministry of Agriculture but could hardly be otherwise given that part of its mandate was to produce experience which could inform the law. It was unfortunate however that the new *Forest and Rangeland Policy* (approved in 2006) was developed autonomously of the SALEH initiative, without any piloting and without the benefit of experiential input from the field. While consistent with the SALEH approach in important ways, there remain significant points of constraint in the outline strategy laid out. Helpfully, the Ministry's drafting of a new law for rangeland/pasture management attempts to remedy these. In the interim, SALEH CBPM drew upon the support of the new Policy as much as it was able.

The SALEH CBPM role in bringing an improved approach into law was active and timely. A paper detailing the legal implications of findings from piloting was prepared in December 2006. This was to prove a significant concretization of issues to be legally addressed (including helping to focus the views of those who did not agree). Drafting for the new law began in early 2007 and was in its seventh draft at the time of July 2008.

Among other points made was the necessity to make space for Community Pastures, law providing thus far only for privately-held (Private Pastures) and public land pasture (Public Pastures). The need to draw distinctions between ownership and access rights was emphasised, as was the ordering of access rights, to limit access when these exceed the capacity of pasture to take more animals. Nomad interests were recommended as best classified as longstanding access rights. The importance of legally entrenching devolution of controlling authority to communities was reiterated, without which little progress, SALEH argued, could be made.

7. A Summary Comparison of RLAP and SALEH Models of CBPM

7.1 Similarities of RLAP and SALEH/CBPM Models

- Both used the notion that community identification of rights to pastures has value.
- Both encouraged community identification of boundaries of pastures used by community members through low cost mapping of each pasture, to which rights defined by communities attach in some way.
- Both incorporated State staff into the exercises of identifying rights to pastures,
- Both secured official "approvals" of the piloted activities.
- Both incorporated the improvement of pastures as a desirable outcome of the community based rights definition exercise. SALEH made pasture improvement a condition of retaining of rights of use of pastures.

7.2 Differences between RLAP and SALEH/CBPM Models

- Rights identified:

The RLAP promoted the idea that local pasture land users should be asked to come to a consensus about who are the **legitimate users** of those pastures, including nomadic users, pasture by pasture, **for what uses and during what times of the year.**

The SALEH/CBPM promoted the idea that Community Pasture Councils identify the private or community **custodian-owners** of private or community pastures and the **custodian-managers** of public pastures. Nomadic users with demonstrated traditional use of the public pastures would be guaranteed seasonal access rights in agreement with sedentary community owners. SALEH/CBPM recorded the rules of access and use of identified pastures as established by Community Pasture Councils. SALEH also recorded community consensus as to pasture parcel boundaries, including neighboring community representatives, in some instances on older topographic maps, and in other instances as word and landmark descriptions.

District authorities would mediate if agreement is not achieved, using procedures in the draft Rangeland Law.

- Rules of use

For RLAP, the **group of legitimate users** would agree on how each legitimate user would use the pastures, including a plan for how the legitimate users will improve the productivity of each pasture.

For SALEH, the **Community Rangeland Council** through consultations arrives at a written statement of rules about pasture management to be the responsibility of the **Custodian** of each pasture.

- Recordation of legitimate uses and plan for pasture improvement

RLAP:

A written document records the consensus as to who are the legitimate users of an identified pasture for what use and for what times of the year in pasture agreements, signed by users and community elders, leaders. The written document on legitimate users and uses refers to a specific pasture area, delineated on a printed satellite image. RLAP delineated pasture boundaries on printed Quickbird satellite images (at a scale of 1:5,000) from ISAF, or on sketched maps for very large pastures, with bordering community leader witnesses signing the delineated parcel as to their acceptance of the boundaries.

The boundaries of the pasture area are established by the legitimate users who in consultation with neighboring communities agree on the pasture boundaries. Neighboring community conformity with boundaries is noted on the delineated image map.

Written agreement and delineated satellite image deposited with a Village Recording Secretary, with copies deposited with the Provincial Amlak, the Provincial Rangeland and Natural Resources Officer of MAIL, and with Provincial Cadastral Survey.

SALEH:

A written document records the rules of use of pasture parcels.

The pasture's boundaries are described verbally or delineated on a map, or on a sketch locating GPS readings at locally recognized landmarks. These agreements and maps/sketches are submitted formally to and agreed to by Rangeland Officer and Amlak Officer.

Solidarites developed boundary documentation procedures based on GPS, successfully used in 20 out of 47 pasture areas.

- Enforcement of rules

RLAP:

Each legitimate user monitors the implementation of the user agreement and improvement plan for each pasture, using discussions and persuasion of violators to correct violations.

Where violations become repeated and significant in the opinion of the group of legitimate users that group can arrange with a local person to be a rangeland guard to monitor the pastures and report violators. Mediation councils can be formed for situations involving legitimate users and violators to find a mutually agreed upon solution, or to take the dispute to the District Judge.

SALEH:

Rangeland Council appoints villagers as Rangeland Guards to patrol the rangeland and report those breaking the rules. For Rangeland Rules approved by Provincial authorities, the Council is empowered by law to levy fines on violators.

- Registration of documents and maps

RLAP created a community capacity to store agreements and images, deposited the originals of the agreements and maps with the community recording secretary, and digital copies with MAIL's Pasture Department, AMLAK and Cadastral Survey of AGCHO (now Arazi).

SALEH/CBPM provided local judges with certificates as to the Custodianship of the pastures, not ownership since the law providing for private and community ownership of pastures has not been approved.

- Pasture management

RLAP: Produced only a plan for improving pastures, devised by the legitimate users, advised by Pasture Specialist from MAIL who had transportation provided by project.

SALEH: Developed a plan for improving pastures with the Pasture Council, and included it in the pasture agreement. Facilitator charged with assisting with implementation plan

- Implementation
-

RLAP:

- Agreements and parcel delineation guided by a team of two people, working together. 1) A community mobilizer experienced with motivating people to meet and discuss pasture and resource use problems and solutions, and 2) a Cadastral Surveyor experienced with mediating land rights discussions.
- First step is training the field team in community based pasture administration, two weeks of classroom discussions combined with practice field trips supervised by Trainer. Then, about one month is spent in consultations in a community to identify pastures used by community members, their legitimate users, and discussions to produce pasture agreements and delineated pasture parcel boundaries, including consultations with neighboring community leaders. This month can be shared with the same process in a neighboring community, perhaps extending the necessary time depending on the number, sizes, and distances of the used pastures. Also included in this month is the confirmation of the Village Recording Secretary, the provision of agreement and map storage cabinets and the designation of a safe place to keep them.
- Return to communities during times when nomadic groups are typically passing through, to get their agreements as to legitimate users of specific pastures.
- During this return trip, discussions occur about how to monitor actual use of pastures, and how to enforce agreements, with the responsibilities defined for the group of legitimate users. Also involve District Pasture Specialist and District Governor in final discussions of each pasture agreement, and secure their signatures on the agreements and boundary delineations.

SALEH:

Identification and training of Facilitators

- Although rangeland expertise is a helpful addition in later stages, no special technical skills are needed to apply these Guidelines. Most Facilitators will be already working in rural areas and familiar with natural resource issues and their degradation.
- The outstanding requirement at this point is not technical but managerial in the sense of communities being empowered and assisted to take action to halt continuing degradation. Facilitators will need to be mature and respected persons and able to guide communities through common sense steps. In early stages these often require communities to work through conflicts over access that have been a powerful impediment to sustainable use.
- Facilitators are advised to first read the Guidelines in full before starting. Flexibility in following the Guidelines is important. For example, there will be times when it is convenient to conduct the rangeland review, assist communities to formally agree rangeland boundaries with neighbours and set up monitoring baselines, all at the same time, even though these are addressed in separate Stages.

The Facilitator then advises on the following activities:

- Formation of Pasture Council
- Identification of three types of pastures and their Custodian-owners and Custodian-managers. Boundaries can be described in words, using landmarks, but written down by Facilitator, or can be done with GPS. Important that some documentation of boundaries is prepared.
- Very important is the order in which pastures are discussed. First identify close-by pastures and their Custodian-owners first, then the more distant Community Pastures and their Community-owners, and finally the Custodian-Managers of the distant and usually large Public Pastures typically involving multiple clans, often hard to get consensus.
- Preparation and implementation of pasture management rules and plans for their improvement
- Written agreements, boundary descriptions and rules as developed for each Custodian must be signed by District Amlak and District Governor.
- Designation of Pasture Guards and definition of monitoring roles and authority
- Monitoring and sanction system agreed to and functioning

7.3 Sustainability of the Pilot Projects

As noted above one NGO, Mercy Corps, committed resources to incorporating ADAMAP into their operations out of their Kunduz office in 2007.

The RLAP team worked with MAIL Officials in Kabul in early 2007 to put together a Concept Paper for a three year, nine provinces capacity building community based land administration, which was signed by the Deputy Minister of MAIL in February, 2007. Subsequently, in May, 2007, the RLAP team with the Dept. of Natural Resources of MAIL prepared a more elaborate project proposal, requested by MAIL, for 200 village clusters, in eight provinces, envisioned primarily as a capacity building effort prior to a nationwide roll-out of the LAMP. The proposal is available on request. The team then prepared in November 2007 a full 90 page Land Administration and Management Project (LAMP) description with budget (available on request).

No subsequent Government or donor actions were taken.

In mid 2015, upon the request of Eng. Yasin Safar who had headed the RLAP field work, the Head of MAIL's Pasture Department in Kabul produced a report on the methods used in the RLAP. He also possessed in his files the RLAP produced digital copies of the pasture agreements, log books, and delineated satellite images.

However, the Ministry had done nothing more after 2007 to replicate RLAP in other Districts, due (according to the Pasture Dept Head) to the very low priority given to pasture within the Ministry.

The Department Head made another point that none of the Pasture Councils created 10 years or so ago under the Pasture Law in effect at that time continued to function after the initial organizational effort. Sustainability of new does has not have a successful track record.

Perhaps due to limited experience in his position, he also said that he had no knowledge or records from the SALEH project.

The SALEH project has had substantial buy-in by various NGOs in Bamyan Province. UNEP, Catholic Relief Services, and AKDN all adopted the approach and the first two in particular are active until the present. A recent email from the Director of UNEP (Andrew Scanlon) does not indicate the number of villages they are working in but says they are looking for money to expand; they have one team working full time in Bamyan District. Catholic Relief Services also wrote recently, saying they are working in 40+ villages in the southern districts of the province. SALEH piloting has been sustained and expanding and is now no longer piloting.

SALEH also had substantial influence over the drafting of a new (V8.0) Rangeland Law which can help establish a new vision and strategy from the political center of the country for community based pasture land administration and management. How to get buy-in in the Provinces, from government officials, community, clan and tribal leaders will be a challenge. Such a foundation is required before embarking on an ambitious Land Administration and Management Program whose overall strategy would be the rebuilding of community-state relations where communities' customary rules of access to and use of pastures would be respected by the State, and where the State would provide technical and administrative support to community based land administration and management.

Chapter 5: Peace Building through Management of Land Conflicts

Projects reviewed are:

- NRC Project, as described in “Land and Property: Challenges for Returnees and IDPs in Afghanistan” (Sheila Reed and Connor Foley, Norwegian Refugee Council, June, 2009).
- LC Project described in Colin Deschamps and Alan Roe, 2009, “Land Conflict in Afghanistan: Building Capacity to Address Vulnerability”, AREU,
- The UC Davis PEACE Project in cooperation with the Sayardee Development Organization, final phase on pasture land dispute resolution involving herder and village leaders and the Independent Directorate of Kuchi Affairs, supported by USAID (Information reported from the Final Report from UC Davis³⁹)
- The USIP/Arazi sponsored pilot described in Erica Gaston and Lillian Dang, “Addressing Land Conflict in Afghanistan”, USIP, Washington, D.C., June 2015; Also used The Liaison Office, 2014, “Major Land Disputes and Land Titling Systems in Khost, Province”; and Fareeda Miah, 2014, “Land Titling in Kunduz”, 2014, Peace Training and Research Organization, Research Report No. 3, USIP, Washington, D.C.

1. Introduction

Conflicts over land refer to overlapping claims to possess and enjoy the same land by different people. Such overlapping claims happen for a variety of reasons, which the MEC⁴⁰ (2014) identify as including:

- settlement policies in specific areas at the end of the 19th century which resulted in the Abdur Rahman’s government awarding of land to a significant number of settlers,
- the settlement of Pashtun farmers and nomads (Kuchis) and land registration policies (the Cadastral Survey which documented individual “probable ownership” of agricultural land and identified public land as being State owned) during the 40 year reign of King Zahir Shah until 1972. During his reign the north and northeast of Afghanistan were deemed to be underpopulated based on the extent of cultivation the land could support. The King resettled primarily Pashtun families from the south and southeast of Afghanistan to these areas to cultivate the land, and to extend his political reach. For generations, these types of distribution projects have resulted in conflicting land grants and multi-party disputes fueled by ethnic differences and struggles for local power.

³⁹ Afghanistan Pastoral Engagement, Adaptation and Capacity Enhancement (PEACE) Project, University of California, Davis, Final Report, January, 2013

⁴⁰ Independent Joint Anti-Corruption Monitoring and Evaluation Committee, November, 2014, Report of the Public Inquiry into Land Usurpation”, Translated from Dari, Chairman: M. Y. Yasin Osmani, Kabul

- the land-reform policy during Daud Khan’s regime 1973-1978, aimed at identifying agricultural land owners who could be taxed through a massive agricultural land ownership inventory,
- land policies imposed during the communist era, 1978-1992⁴¹, involving the governmental confiscation of parts of larger land holdings and distribution of the confiscated land to over 200,000 individual reform beneficiaries;
- the ravages that took place at the time of Mujahedeen, 1992-1996, and Taliban, 1996-2001, when people fearing violence from one or the other side fled and abandoned their lands, and when favored people of one or the other regime grabbed land, or attempted to recover land lost through the land reform and illegitimate grabbing in the past;
- The additional displacements of people following the American/Northern Alliance ejection of the Taliban in 2001 and accompanying land grabbing of powerful people and groups allied with the invading forces or just taking advantage of a power vacuum.
- The entire period following the fall of Daud from 1978 to the present has seen wars, ethnic conflict, and the lack of a unified and strong central government, which is reflected in conflicts over land as the claimants from one period are challenged by claimants from another period or by powerful people simply grabbing land for their own enrichment and that of their followers.

The following real case from the NRC’s legal assistance program⁴² illustrates this “overlapping” of claims to the same land

⁴¹ Land Reform Decree #8 of 1980 declared that any land over 30 jeribs* owned by one person would be expropriated and some redistributed to the poor by the government.

⁴² Norwegian Refugee Council, 2004, “Land and Property Disputes in Eastern Afghanistan”, p. 4-5

The people of Tangi Tokhchci appealed to the Governor, Haji Qadir, over Zalmy Dadek's head, but he told them that there was nothing he could do. The villagers claim that he took copies of their legal documents for reference, but subsequently burnt them. Most of the villagers left the country between 1992 and 1995 and went into exile in Pakistan.

In 1995 the Taliban captured Jalalabad and Zalmy Dadek fled into exile along with most other *Mujahedin* commanders. The people of Tangi Tokhchci returned to Afghanistan and took their case to the Primary Court. The courts had been instructed by the Taliban to no longer apply the 1977 Civil Code, but to instead revert to the *Mujalat ul- Ahkam al- Shari'a*. Nevertheless, the Court ruled that the land belonged to the villagers and they were able to reoccupy their land. In 1996, the villagers claim that Zalmy Dadek's brother returned to Afghanistan and used his influence to persuade the Court to reverse their previous decision and decree that the land belonged to the State. The villagers refused to leave, and four of their elders were again briefly imprisoned. They appealed against the ruling to the Supreme Court and this ruled in their favor in 2001, a few months before the fall of the Taliban regime.

In December 2001, Zalmy Dadek returned from exile, after the fall of the Taliban, and he was appointed Sub Governor of Khawa, a neighboring District to Behsood. Zalmy Dadek again claimed possession of the land of the people of Tangi Tokhchci, this time stating that he had legal documents, proving his ownership of it. The people of the village claim that these documents are forgeries. Despite the ruling of the Supreme Court that the land belonged to the villagers Zalmy Dadek occupied the land.

The villagers appealed to the new Sub Governor of Behsood District to intervene. He referred the case to the Primary Court in 2002. This finally came to a decision in 2003, but, instead of ruling on the case, it referred the case back to the Sub Governor of the District, blocking the villagers from being able to appeal to the Provincial High Court. The Sub Governor's office has since maintained that no further action can be taken unless there is a further order of the Court, while the Court insists that the case is now out of its hands.

Around 20 families of Tangi Tokhchi village are still living in their homes, but are unable to farm. Another 30 families are now living in internal displacement in Jalalabad City or as refugees in Pakistan. The case, therefore, involves about 500 people.

In June 2003, the villagers appealed to Jalalabad ILAC for help in dealing with their case and NRC's legal counselors have had a number of meetings with the court, the Sub Governor's office and Zalmy Dadek. Jalalabad ILAC has attempted to persuade both the courts and the provincial administration to refer the case to the High Court. Attempts have also been made to settle the case by a Jirga. Unfortunately, all of these attempts have been unsuccessful.

NRC's Jalalabad ILAC have examined Zalmy Dadek's documents, which he claims prove that he owns the land, and have consulted the IMLAC land registry. NRC's legal counselors are satisfied that these documents are not legally valid and that the people of Tangi Tokhchi village are the real owners of the land.

NRC basis this opinion on a number of points. As well as possessing valid *Qabalas* the villagers possess a copy of Decree Order No 720 from H.M. King Zahir Shah, which awards the land to them, and copies of the previous court decisions, which also ruled in their favor. In addition to this, they have lived on the land for more than 15 years and so have established a right to ownership under Article 965 of the 1977 Civil Code. Finally, the refusal of the Primary Court and the Sub Governor's office to make a clear decision which would allow the case to be referred to the Provincial High Court violates Article 5 of the Islamic Transitional Authority (ITA) Decree on Dignified Return, issued in December 2001, which states that all moveable and immovable property shall be returned to its rightful owner as determined by the relevant legal organs.

In February 2004, NRC's legal counselors, along with representatives of UNHCR and the UN Assistance Mission in Afghanistan (UNAMA) met the Deputy Governor of Nangarhar province and requested him to intervene directly to ensure that the case was referred to the courts. The case remained unresolved at the time of writing (2004).

2. Purpose, Methods and Findings of the Reed/Connor Study

This study was commissioned by the Norwegian Refugee Council (NRC). The NRC is the only organization in Afghanistan that provides legal aid specializing in land and property disputes specifically targeting refugees, returnees and IDPs. NRC's Information, Counseling and Legal Assistance (ICLA) program operates in eight centers nationwide.

The study focuses on land and property issues particularly as they relate to the situation of returnees and IDPs.

Its intent is to provide practical policy and practice change recommendations for improving access to secure and viable land, property and livelihoods for current and future returnees and IDPs.

The study was conducted from February to March 2009, in Kabul, Nangarhar and Balkh Provinces. The methodology included a document review, discussions with staff of government, NRC and other assistance organizations, and individual and focus group interviews with returnees, IDPs and other citizens.

2.1 The Case Studies

The study features five case studies:

Case One: Occupation of Pasture Land in Bughawi Village, Sar-e-Pul Province.

A clash occurred between subsistence returnee farmers who relied on traditional pastureland for food and income before they fled the country, and another group who took over the pastureland during their absence. This case highlights some of the major obstacles to sustainable return for a broad base of returnees and IDPs.

- Main Points:
 1. The careful documentation of both sides of cases is important;
 2. Mediation may be helpful to allow for fair settlement on the use of the land in order to avoid conflict.

Case Two: Land Allocation Scheme.

Returnees in Andkhoy, Faryab Province, Chamtala, Nangarhar Province, and Mawlana Jalaudin and Qaleen Bafan in Balkh Province, described the process of obtaining plots and the benefits as well as the problems they faced with life in the Land Allocation Scheme (LAS). Comparisons were drawn to returnees who have occupied informal settlements in Nangarhar.

- Main Points:

Presidential Decree 104 stipulates that a beneficiary under the LAS must pay a fee for the land they are awarded; however, a large number of returnees are unable to pay for a plot and thus have not bothered to apply. Those who cannot afford to pay are the most vulnerable, calling into question whether the LAS is targeting those in most need of support. Among those selected, many have difficulty finding funds to pay for the plot. In some cases the plot is purchased for long-term land speculation. Most returnees who have left their plots and shelters have invested significant funds, yet still lack their own place to live.

1. As per Decree 104, the deeding practice is based on award of a temporary document, such as a certificate of eligibility, until a permanent deed is issued after five years.
2. The administration of the titling for the LAS has devolved to the Provincial Departments of Refugees and Repatriation (DoRRs) and the tenure security might be seen as somewhat fragile.
3. Most LAS settlers mistakenly believe that documents they possess indicate their ownership of the plot.
4. In Chamtala LAS in Nangarhar Province, people camped with their community groups and many who have been assigned a plot do not know the location of it.

Case Three: Individuals Claiming Rightful Ownership in Kabul City.

While an Afghan refugee was in Iran, his land was occupied and walled off by an armed and powerful person. The refugee had substantial documentation detailing his ownership. The rights to protection of property and to recover property are clearly stated in national and international legislation, however, intimidation and manipulation by powerful individuals can successfully defy decisions made in both formal and customary justice systems and fracture community support.

Individuals Claiming Rightful Ownership in Kabul City

In one of the longest running cases for NRC's ICLA programme in Kabul Province, NRC's client claims to be the rightful property owner by virtue of purchase of the land by his father. The defendant also claims that he and his sons have inherited the land; both client and defendant are Hazaras. The land is located along the Tank-e-Tell road, District #13 in Kabul City, also considered to be Dasht-e-Barchi town, which has a thriving mobile market and numerous fixed small businesses. Urban property which is adjacent to a major road, or market or other well traveled cosmopolitan area generally grows rapidly in value.

This case fits NRC's definition of a principle case, or one where corruption or extralegal activity prevents the client from receiving a fair process and achieving justice, or where a decision is not being properly enforced. The weakness of the state and especially the judiciary against the defendant who was a commander during one of the conflicts in Afghanistan is highlighted here.

The case was first taken up by NRC in 2004 when the client, who is a returnee from Iran, wished to occupy the property. The client is a driver by occupation, illiterate, and counts 25 dependents. His brother, also a returnee, had been living on the property in a small house, which still stands on the land, when he was involved in a physical conflict with the defendant, who was attempting to forcibly remove him. In 2006, the defendant sealed off the land by means of a 3 meter high wall along the community walking street and locked the only access gate.

The client had pursued his claim through a Jirga in late 2005 which ruled in his favor. The defendant did not accept the decision of the Jirga and the case was subsequently presented to the district court. The defendant did not appear in the court in March of 2006, but presented a document indicating that the land was inherited in 1341 (1962). The client possesses a customary deed (Orofi which is a type of Qubala), testimonials from four neighbors, evidence of payment of a mortgage, a second round of testimonials from neighbors and a last will and testament from his father, now deceased, which stated that he and his brothers would inherit the land.



The follow up on the case by NRC was plagued with numerous delays in the judicial process, including restructuring of the court system in 2007, several rounds of replacement of judges, changing of the location of the court, and new judges requesting additional documentation and evidence. The case was also delayed by the court when the client needed to return to Iran to collect documentation from his brothers who were still refugees there, and when his brothers could not come to Afghanistan to testify. A delegation from Kabul Municipality came to ascertain the dimensions of the land but did not make a decision. In January 2008, the Appeals Court of Kabul ruled in favor of the client but some errors were found and the case was referred back to the civil court.

The community members and neighbors have expressed their solidarity with the client and will support his right to the land; however, not to the detriment of their own lives and property. The client has suffered significant mental stress from the situation and has had to rent accommodations to house his family. In March of 2009, the parties agreed to return to the Jirga for a re-hearing of the case. The Jirga took place on 8 March 2009 on the NRC compound but the defendant again was not present.

Photo credit: S. Reed, March 2009

- Main Points:
 1. This case study demonstrates how the justice system has failed to properly address rights that are guaranteed under law and
 2. It implies the need for a stronger advocacy approach.

Case Four: Widow's Inheritance Rights in Kabul Province. The death of a woman's husband resulted in her eviction from her house by the children from a former marriage of the husband, as they also have inheritance rights upon his death. She refused to accept the decision of a Jirga because it failed to award her full inheritance rights as is her entitlement under the Afghan Civil Code and international law. She continues to fight for her rights in the formal justice system where she has met with more obstacles such as the high turnover of judges and the non-compliance of her husband's children's representative with court procedures. The illiteracy of the client has also constrained her participation in the justice process.

Finding: It is important that customary justice mechanisms are aware of and offer more protection of women's rights as set out in the Afghanistan Constitution and Islam, rather than the application of customary law that might be believed to be based in Shari'a but is not [so based].

Widow's Inheritance Rights in Kabul Province

Islamic law in Afghanistan gives women the right to inherit property and dispose of it in any way, although Shari'a law specifies that male heirs should receive larger shares of an inheritance than female heirs. In practice, decisions made on the basis of customary law in formal courts or through Jirgas may deny the right of women to own property and widows face the possibility of losing their housing, land and property rights upon the death of their husband. Obstacles to women securing their land rights include their restricted level of access to both informal and formal justice systems, the inadequate representation of their rights in the community Shuras and Jirgas and the inability of the formal system to deliver fair and timely decisions.

However, NRC has records of successfully assisting women to realize their right to inherit land through, among other forms of support, helping the clients to maneuver their way through the systems, securing needed documentation and testimonies. The National Action Plan for the Women of Afghanistan (NAPWA) has recommended that legal and judicial systems are reformed to guarantee equality and non-discrimination as enshrined in the Constitution, thereby enabling women to exercise their rights on equal terms with men, including inheritance and property laws.*

NRC's client is a woman of approximately 40 years of age, illiterate, and of Tajik ethnicity. In 2002, she married a widower who had eight children. Her husband died in 2007 and his children have not allowed her to occupy the house that she had lived in with her husband, located in Sub-District #6 of Kabul. The client has suffered serious emotional trauma with the loss of her husband and her eviction from her house. She had to move in with her parents who are quite elderly; her brothers are her sole source of support but she is not guaranteed their support after her parent pass away. Her situation is therefore quite precarious financially.

A Jirga held in May of 2008 awarded her 150,000 afs - approximately US \$3,000 - in compensation for loss of the property. She did not agree with the Jirga decision because as per the Afghanistan Civil Code she should receive an equal share with the other inheritors, her husband's children, from the property. Her Islamic marriage right was not mentioned as a factor in the Jirga decision. The widow applied to NRC in August of 2008 for legal assistance. Another Jirga was arranged but this did not take place due to the resistance of the defendant, a son of the widow's deceased husband.

The defendant claims that the client has accepted the decision of the Jirga, which took into consideration the advice of the Hoquq and also a primary court decision made prior to the Jirga. He also claims that she placed her fingerprint on the documentation of the Jirga decision, but she denies this as she is unable to read the document. The client was advised by the court to reopen her case with the Hoquq and to prepare an official letter for the court for follow-up of the case. A judge ordered the case archives to be obtained from the Hoquq. The defendant did not accept the summons at his home from the police.

In October 2008, the defendant refused to appear in the court and personally offered the client an additional amount of money for restitution but she was not happy with the amount offered. In November 2008, the NRC legal counselor helped the client prepare a claim statement and the judge requested that Kabul Municipality area representative provide verification of the boundaries of the contested property, but this information was not forthcoming. The judge threatened to dismiss the case unless the boundaries are confirmed – the case is thus stalled. The widow is determined with NRC's help to assert her rights.

- Main points::

1. This case highlights the importance of considering the pros and cons of formal and informal justice mechanisms in handling women's inheritance cases or other cases which involve women's rights. Will the client find an acceptable solution in the formal system, given its huge backlog of land cases?
2. It is important that Jirgas responding to customary law and mechanisms are aware of and offer more guarantee of women's rights as found in the Constitution and the Holy Quran.

* The NAPWA is a 10-year plan of action by the Government of Afghanistan to implement its commitments to women constituents. These commitments are provided under the Afghan Constitution as well as international treaties such as the Convention on the Elimination of all forms of Discrimination against Women (CEDAW)

Case 5: Kuchi returnees.

Kuchis⁴³ are a nomadic group of Pashtun origin within Afghanistan that follows traditional migration paths. Some returnee Kuchi families have faced problems upon their return from

⁴³ The Kuchi, Afghanistan's largest "nomadic" group are "transhumant": persons whose primary livelihood activity is the seasonal movement of livestock between mountain and lowland pastures. Although Kuchi are increasingly adopting some non-transhumant lifestyles, the term Kuchi in this paper is used to mean a transhumant group unless otherwise noted. (From Deschamps and Roe, 2009, p. 8)

Pakistan due to community resistance to their occupation or use of adjacent land. In Afghanistan, more generally, there are overlapping claims with varying degrees of historical validity, differing tribal and ethnic acceptance of rights to land, right to return and protection of minorities.

Findings:

- The Kuchi case study highlights advocacy challenges since negotiated settlements cannot be based on privileging one particular ethnic group's right to return over legitimate historical claims to land.
- Policy changes are required which accommodate competing claims according to principles of fairness and sustainability.

Returnee Kuchis in Search of Land in Balkh Province, Sholgara District

Kuchis are tribes of Pashtun nomads identified as one of the most vulnerable populations in the country by UNAMA and provisions have been written into the 2004 Constitution to assist them. Many Kuchis supported the Taliban and suffered a societal back-lash in some areas after the ousting of the Taliban. In May 2008, 173 Kuchi families returned to Sholgara district from North West Frontier Province, Pakistan, where they had been refugees since 1984. They had originally lived around Bahram Gor village which was severely drought affected in 2007-2008 and was distant from local markets. Upon arrival, they camped on land selected for them by their representative and encountered fierce resistance from the surrounding community. There were two main issues: 1) the community did not want to share the available land in the vicinity with the new arrivals; and 2) ethnic and political tensions aggravated the situation as the returnees were Pashto-speaking Kuchis while the community consisted of Hazaras.

The Kuchi returnees sought assistance from the Governor of Balkh to locate a place to settle. They lived in a deplorable situation for several months until a governor-appointed delegation selected a location on government land in Muhajir Qeshlaq. The Kuchis had just relocated when another claimant to this land emerged. Further investigation at the Cadastre Department confirmed that the land where the Kuchis settled was government land while the surrounding agricultural land belonged privately to the Uzbek claimants whose community cultivated it. The Uzbek community was resistant to the Kuchi occupation of the adjacent land since they perceived that the Kuchi might infringe upon the Uzbek-owned agricultural land in the future.



UNHCR had provided advocacy/protection and basic service assistance to the Kuchi families since their return and had planned to assist with durable shelters but has been unable to do so until the land issues are resolved. UNHCR sought advice from NRC lawyers regarding the legal issues and NRC lawyers visited the area. NRC advised not building shelters until plots were allocated and the land issues decided upon. A key concern now is whether disputes or violence could arise if the Uzbeks do not accept the Kuchi presence. Further questions surround the type of tenure security the government intends to provide to the Kuchi. If staying on the land is not feasible for the Kuchi, what are their options? The returnees for the moment are unable to pursue full livelihoods and are dependent on labor migration and migrant remittances. The distance to the water point was too far and UNHCR has allocated two water points for Muhajir Qeshlaq

- Finding:
 1. This case concerns over-lapping claims of varying historical validity. Negotiated settlements cannot be based on privileging one particular ethnic group's 'right to return' over other historical claims.
 2. Aim should instead be to find ways of accommodating competing claims according to principles of 'fairness' and 'sustainability'. A challenge to local and international actors is whether they have sufficient perspective of the totality of land relations to judge this.

Photo credit: UNHCR Mazar e-Sharif

2.2 NRC Legal Assistance Implications⁴⁴:

The reliance on customary documents and mechanisms for land conflict resolution – such as *Shura* and *Jirga* – poses a challenge, but, given the current lack of capacity and widespread corruption that exists within the official system, these bodies are potentially extremely useful mechanisms for settling disputes.

Shura and *Jirga* are products of Afghanistan's patriarchal tribal society, which lays a strong emphasis on solving conflicts 'privately', within the family, village or clan. A *Jirga* is a decision-making forum at which, theoretically, all adult males can participate. A *Shura* is restricted to the elders of a particular community. While *Shura* and *Jirga* claim to base their decisions on principles of Islamic law, their perceptions of what is law is influenced heavily by Afghan tribal traditions.

Since *Shura* and *Jirga* reach decisions by consensus, they tend to try to settle disputes through compromise. This makes them an effective mechanism for conflict resolution. However, they do not always offer the best method of upholding individual rights. Women rarely have any say in their deliberations, and may find their own rights being violated by the settlement reached. Traditionally, it was common to offer a girl from one family to another as part of a settlement as this was seen as a means of uniting two families and also providing the injured party with a potentially valuable source of dowry income.

The informal nature of the proceedings at *Shuras* and *Jirgas* also mean that they are open to manipulation. 'Dispute is a fruitful tree' according to an Afghan proverb and people sometimes exaggerate their claims before going to a *Shura* or *Jirga* in the expectation that they will be expected to bargain down from this position to reach a final settlement. There is also some evidence that powerful commanders have used these mechanisms to legitimize their own actions and to increase their influence in a particular area.

Nevertheless, *Shura* and *Jirga* derive their legitimacy from their perceived ability to settle disputes and both have a long history of resolving land disputes throughout Afghanistan. They can reach decisions much faster than the official courts, are virtually cost-free, are less susceptible to bribery and are accessible to illiterate Afghans.

Afghanistan's legal system is based upon principles of Islamic law and both the courts, on the one hand, and *Shura* and *Jirga*, on the other, formally base their decisions on *Shari'a* law. Although *Shura* and *Jirga* are not officially recognized within the Afghan legal system, judges often instruct two parties to a dispute to first try resolve their differences through this mechanism. If either side is not satisfied with the decision reached by one of these bodies, that person may still pursue their case through the official court system. NRC's counselors, and most Afghan lawyers, therefore, usually attempt to exhaust mediation in this way before bringing a case to court. Given the current lack of a rule of law this is as much due to necessity as choice

Organizing conflict resolution capacities.

- The [NRC] program attempts to use the processes of *jirga* as a means of conflict resolution for returning refugees and internally displaced persons⁴⁵.

⁴⁴ Extracted from Norwegian Refugee Council, 2004, "Land and Property Disputes in Eastern Afghanistan"

⁴⁵ Described in Barfield, Thomas, Neamat Nojumi, J. Alexander Their, "The Clash of Two Goods: State and Non-State

- The NRC has established Information and Legal Assistance Centers (ILACs) in Kabul and another three provinces.
- ILACs are run by Afghan attorneys and judges with legal education and training, many of whom have served in the government judiciary in the past. These legally experienced people have proved adept at crafting durable agreements.
- NRC has a system of filing, evaluation, and investigation of cases and NRC judges and attorneys facilitate the litigants in selecting their representatives to play a third party mediating role.
- The NRC attorneys and judges meet with the local respected individuals who are willing to participate in the *jirga* processes to resolve a dispute. They explain the nature of the case, relevant information, and monitor participation in the meetings as facilitators without any vote.
- During settlement, they provide information and advise parties so as to avoid violations of state law. These facilitators record, and file minutes of the meetings, and produce a document to be kept by the parties once a solution is agreed.
- ILAC's have handled hundreds of disputes, predominantly civil cases, out of which a significant percent have reached out-of-court solutions.

3. Land Conflict (LC) Project⁴⁶

3.1 Objectives and Methods

Funding for the LC Project was provided by the Afghan Ministry of Agriculture, Irrigation and Livestock (MAIL) and co-funded by the World Bank. The project was managed by the Afghanistan Research and Evaluation Unit (AREU) and implemented in partnership with the Norwegian Refugee Council (NRC). Initially envisioned to last eighteen months (November 2006 to April 2008), the project was subsequently extended for an additional twelve months (through to April 2009). The project's overall objective was to help reduce land-related insecurity and vulnerability by strengthening the Afghan government's capacity to resolve or assist in the resolution of land conflict fairly, effectively and legitimately.

Research and evidence from the early stages of the LC project and other projects suggested that it is useful to divide land conflicts into two general categories:

- conflict over land managed by common property regimes, where the conflict tends to be structural and inter-community, and
- conflict over private property, typically triggered by outside disturbances (such as displaced persons or even the Afghan government itself) to village institutions.

Based on the information from the land conflict typology and other sources, the LC Project determined that the majority of land disputes in Afghanistan fall into one or more of five principle categories. They are:

Dispute Resolution in Afghanistan", US Institute of Peace, Washington, D.C., 2013?, p. 28

⁴⁶ This section uses text from Deschamps, Colin and Alan Roe, April, 2009, "Land Conflict in Afghanistan: Building Capacity to Address Vulnerability", AREU, Kabul

1. Conflicts involving the illegal occupation of land by powerful people
2. Conflicts involving inheritance rights to private property
3. Conflicts involving the return of people to land they previously owned
4. Conflicts over private property between established villagers (not returnees, refugees or internally displaced people)
5. Conflicts involving common property resources managed through common property regimes, for instance, certain pastures, forests and water for irrigation

Five pilot cases corresponding to each of these principle categories were selected for further study such that each principal category of rural land-related conflict would be explored, with some of the pilot cases involving aspects of conflict from more than one category. Generally speaking, three cases relating to private property conflicts and two cases relating to conflicts over resources previously managed through a CPR were selected. The pilot cases selected were:

- A land appropriation dispute between two private parties (farmers with families) over 20 *jeribs*⁴⁷ of irrigated land in Kunduz Province.
- An inheritance dispute between a female claimant and two of her brothers over 6.9 *jeribs* of irrigated land and a shop in Herat Province.
- A group displacement dispute in Baghlan Province between communities of different ethnicities (Ismaili and Pashtun) over 630 *jeribs* of rainfed land suitable for irrigation and with family dwellings in Baghlan Province. The land is currently little-used due to the conflict.
- A dispute over canal-water allocation for irrigation between two village groups of different ethnicity in Parwan Province.
- A pasture access dispute between settled villagers and transhumant pastoralists over approximately 2,000 *jeribs* of pastureland, which is increasingly being cultivated by the villagers, in Panjshir Province.

3.2 Good Practice Suggestions:

Approaches that a conflict manager (such as Amlak (Arazi) staff, a respected community member, or a lawyer) may use to help resolve a land conflict differ based on the resolution mechanism used and the particular attributes of a case. Best practice approaches are not meant to be applied blindly. Instead, they are key points to consider when approaching a land conflict. Best practice approaches are presented below, based on the main dispute-resolution categories used in the report: the general court system (GCS), community-based mechanisms (CBMs), and political advocacy.

⁴⁷ A *jerib* in Afghanistan is 2000 square meters or 0.494 acre.

In all cases:

- Conduct detailed interviews with disputants and other relevant individuals to develop a full understanding of the conflict before determining a resolution approach.
- Working with disputants to understand their desired outcome helps focus the selection and course of the resolution mechanism and increases disputant buy-in; similarly, explaining the possible outcomes helps keep expectations realistic.
- Allow disputants to express their concerns to a neutral third party without decision making power to facilitate dialogue between the disputants and those involved in resolution.
- Collecting and verifying required documents can often be an onerous process, but it is necessary to allow the disputants to feel that all relevant information has been duly considered.
- Raising awareness among disputants of their rights helps clarify the expectations of all parties involved.

In the general court system:

- Assist with court procedures by preparing disputant claims, collecting and verifying disputant documentation, and identifying and preparing witnesses.
- Brief officials on applicable civil, sharia and common law to facilitate their accurate implementation.

Through community based mechanisms (CBMs):

- Suggest respected and fair community leaders to represent each side to ensure that disputants' interests are similarly protected.
- Neutral third-party participation in mediation sessions increases efficiency, accountability and transparency.
- Ensure multiple reviews of decisions to guarantee a universal understanding of agreement terms and to promote the durability of the outcomes.
- When possible, registering CBM agreements with the government, usually via the court system, increases the legitimacy of an agreement, improves enforcement and precludes future claims on the same issue.

Regarding political advocacy:

- When meeting officials, the attendance of neutral third parties encourages the relevant authorities to take action as required by law.
- Involving other organizations to advocate according to their experience

increases the effectiveness of advocacy by utilizing existing relationships and areas of expertise.

3.3 Lessons Learned:

The LC Project activities, including the development of the land conflict typology and the investigation of pilot land conflict cases, allowed for the articulation of “lessons learned”. These are recommendations applicable to most categories of land disputes and resolution mechanisms. They are:

- Clear indicators can be identified that determine whether a land dispute may be more appropriately resolved through the general court system, a community-based mechanism or political advocacy.
 - The approach taken to dispute resolution must remain adaptive and flexible to setbacks and changes. As circumstances or stakeholders change it may be advantageous to switch dispute resolution approaches completely.
 - Preparation, advocacy and oversight are essential to increase the performance of the court system.
 - Preparation, information and oversight can build the capacity and effectiveness of community-based adjudication mechanisms.
 - All stakeholders should be given ownership of the dispute resolution process to help legitimate the outcome.
 - Some disputes may not be resolvable through the court system or a community-based mechanism and so require an ad hoc approach that may include administrative action, executive attention and political advocacy up to the national level.
 - Community-based agreements are best sustained by some form of official endorsement to guarantee their outcomes, especially where rule of law is weak.
 - Mediated agreements may require some form of incentive to draw the parties into the negotiation.
 - The selection of mediation and resolution tools should be appropriate to the situation.
 - There is therefore a clear need to engage with government stakeholders from the outset of any conflict-resolution initiative.
 - Supporting both village level institutions and local government is important to achieving lasting resolutions to land conflict and better quality land management in general.
 - Recognize shared “rights of use” rather than “ownership” of common property.
 - National NGOs can help legitimize and support the implementation of agreements.
 - Careful criteria applied to the selection of disputes means there can be a reasonable expectation of a successful resolution
-

4. PEACE Project⁴⁸

The PEACE project began as a livestock production and marketing project with herder groups, but evolved in its final two years into an effort to form Peace Shuras composed of Kuchi and sedentary community representatives to resolve specific conflicts which have emerged.

4.1 Goals and Objectives of PEACE Project

The Peace Project aimed at:

- Reestablishing security and trust between herders and villagers along Kuchi migration routes will provide the best chance to improve sustainable livestock production.
- Resolving conflicts and building peace along these corridors became the main focus of the PEACE Project in the final two and a half years of the project.

PEACE made a commitment to improve government representation of herders and did so by working to improve capacity of the Independent General Directorate of Kuchi (IGDK) staff. This included facilitating IGDK Shuras in 30 Provinces and multiple trainings for all 31 Provincial Directors to improve their skills in communication, report writing, conflict resolution and peace building.

With the assistance of the IGDK, 75 young Kuchi leaders from 20 provinces have participated in a one-- month training course aimed at teaching them to communicate effectively to resolve conflicts as well as to build peace between communities. Some of the participants have already formed Peace Shuras in their Districts that include leaders from all the groups that live there. Others have been developing proposals to conduct conflict resolution and peace building trainings for community members. Youth were targeted for this particular course to create long-term sustainability of the program aimed at reestablishing and maintaining relationships along Kuchi migration corridors.

Elder leaders are important today and the youth leaders will be vital for their communities for many years to come.

4.2 PEACE Project Activities on Conflict Resolution

The PEACE project's approach to conflict resolution was very simple: 1) understand how the Kuchi, as a culture, organize themselves; 2) understand their traditional means of solving problems; and 3) begin to deliver training in ways that incorporate lessons learned from the first two approaches and that facilitates peaceful resolution of conflicts at the community level.

Background. The Kuchi are organized into clans with a clear leadership structure. In 2006, the Independent Directorate of Kuchi Affairs (IDKA) was established. It operates as a governmental quasi--ministry and a representative body of the Kuchi. The IDKA is responsible for addressing all social, economic, and political issues affecting the Kuchi across Afghanistan. This newly formed department has little capacity or capital to really help the Kuchi, particularly the herder majority. The Department has 31 provincial directors; PEACE

⁴⁸ This section uses material from PEACE Project Final Report, 2013.

identified several interested in improving extensive livestock production and gaining conflict resolution skills.

In Afghanistan, *shuras* are the “assemblies of leaders” that Kuchi and other groups use to make decisions, solve problems, and settle disputes. *Shuras* are comprised of the most powerful and respected leaders in a province or district. The *shuras* and traditional decision-making assemblies are estimated to account for more than 80% of conflict-based cases settled throughout Afghanistan (UNDP/Human Development Index 2007).

After understanding the nature of the traditional Kuchi problem-solving context, PEACE began providing training to 26 Kuchi Provincial Directors in 2007. To provide training in local languages, PEACE partnered with the Sanayee Development Organization (SDO), an Afghan NGO experienced in delivering conflict resolution training both Dari and Pashto.

In June 2007, the PEACE/SDO project also began facilitating monthly Kuchi *shuras* in 10 Provinces. Because the Provincial Directors had no budget to hold these meetings, PEACE/SDO project support enabled the peace and negotiation messages to reach more Kuchi leaders. In addition, by supporting these meetings, PEACE/SDO was able to collect information about the Kuchi on a wide range of topics by clan and by season. The PEACE/SDO project began by supporting *shuras* in 13 provinces in collaboration with the IDKA.

The next step in the peace-building and conflict resolution process was to increase the capacity of the Kuchi, at the Provincial level, to resolve conflicts independently. Provincial Directors that demonstrated a commitment to peaceful resolution of conflicts during the *shuras* were asked to select leaders from their provinces for this program. Nine leaders from three provinces participated in one-month long training programs emphasizing conflict resolution strategies and negotiation methods. Since this training, the nine leaders have participated in numerous mediation and conflict resolution exercises, and have worked to develop multi-ethnic Peace *Shuras*. The PEACE/SDO project actively monitored the impact of this training effort through continual feedback. In addition, the same nine Kuchi leaders held their own conflict resolution workshops passing on some of the conflict resolution skills that they had been taught during the month-long training course to 51 additional Kuchi leaders.

As the word spread about the trainings provided by the project, PEACE/SDO began to receive requests for similar trainings, including one directly from President Karzai’s office through his Advisor on Tribal Affairs, Wahidullah Sabawoon. He requested that the project develop trainings aimed at resolving long-standing land disputes between the Kuchi and Hazara communities. In 2008 -2009, the PEACE/SDO project brought together over 300 Kuchi and non-Kuchi leaders from five regions to engage in joint conflict resolution workshops. These activities culminated in a multi-ethnic workshop attended by both Kuchi and Hazara leaders for Wardak and Ghazni Provinces, where fighting between Kuchi and Hazara villagers had been especially intense and often fatal.

Ten “Peace Ambassadors” (P.A.s, i.e., 5 Kuchi and 5 Hazara) were selected to work at the community level to seek common ground and to resolve the Kuchi / Hazara conflicts over access to rangelands in the Hazarijat region (i.e., Besud).

The effectiveness of PEACE project accomplishments are directly related to its partnership with SDO. SDO's ability to deliver peace-building messages within the context and culture of the Afghan people was a critical component in training the Kuchi and other participants. By organizing these peace-building programs at the community level, SDO was also able to strengthen the capacity of community institutions of key district government offices, while promoting and encouraging the building of positive relationships among the actors. Moreover, because SDO focuses programs at the same levels (village and district for the community-based peace building program) both PEACE and SDO have mutually benefited from a partnership enabling efficient use of a research institution with NGO field-based strengths.

Comment:

The PEACE/SDO project's conflict resolution efforts through the Peace Ambassadors apparently expected that the Presidential Tribal Affairs Office would find the resources to keep these Ambassadors functioning after the end of the USAID funding. To find out what the Peace Ambassadors have done after the end of the PEACE project funds, an attempt was made to contact the UC Davis Peace Project Director Montague Demmet and Raz Mohammad Dalili, Exec. Director of SDO, with no success.

4 . 3 Major Findings

- The most significant outcome of the conflict resolution workshops was the mutual qualitative conflict assessments disclosed by the Kuchi and Hazara, in which leaders from both groups identified several critical points of agreement.
- Both Kuchi and Hazara leaders described a substantial governmental role in creating problems of land tenure and use of public rangelands.
- Participants advocated for the Office of Tribal Affairs to the President to become more active in seeking solutions to these problems, and agreed that given 30 years of war, resolution of issues related to land access could not be achieved quickly.
- Both groups shared the sentiment that political leaders do not allow them to settle land access issues at the community level, instead reporting that Kuchi and Hazara government leaders have perpetuated conflicts to further political agendas.
- Regarding their own history of conflict, participants widely agreed that fighting has not helped to solve conflicts, and should therefore be discouraged.
- Despite progress made during the workshops, neither the Kuchi nor Hazara could agree on a definitive solution to their disputes. However, the selection of Peace Ambassadors was a welcomed initial step, as the PAs vowed to transport the dialogue and skills obtained during the workshops to other communities.

Over a period of four months, these PAs returned to their communities to educate community members on workshop conflict resolution and negotiation techniques and to learn about other community-level conflicts within their ethnic group, striving to mediate

and achieve solutions. In total, the 10 PAs organized and participated in over 250 community meetings, with as many as 60 participants per meeting.

Following these community meetings, Kuchi PAs reported that most community members wanted to live together peacefully with the Hazara. Kuchi elders insisted that peace was possible because Kuchi and Hazara had lived together peacefully in the past.

Kuchi PAs reported that younger generations, however, have been greatly influenced by political leaders advocating for armed conflict over land.

Hazara PAs reported that community members recognized the presence of foreigners to help Afghanistan stabilize, and did not want to waste an important opportunity to achieve peace, advocating for immediate pursuit of resolution agreements. Hazara communities expressed concern that if conflicts could not be resolved mutually with the Kuchi, a third party could intervene, causing both groups to lose access to disputed lands. In general, Hazara community members found the meetings informative, and commented that the PAs had accomplished more in four months than the government had accomplished in the last three years.

According to accounts from each of the 10 PAs, contact with the communities was overwhelmingly positive. Unanimously, the PAs reported that members of both the Kuchi and Hazara were happy to learn of attempts to address the conflict issues existing between the groups. While some PAs did report negative sentiments regarding compromises, the PAs agreed that the majority of community members simply wanted to work towards joint resolution.

Following the community meetings, Kuchi and Hazara PAs consented that the resolution of land conflict issues on a case-by-case basis would be the most constructive path forward, with joint conflict resolution commencing through the resolution of less contentious issues for immediate impact and experience. Resolution of greater disputes could naturally follow thereafter. In terms of sustaining the peace process and progress made through the workshops, PAs discussed establishing a neutral provincial-level office where Kuchi and Hazara leaders could mediate land conflict issues, potentially within the Ministry of Agriculture Irrigation and Livestock (MAIL).

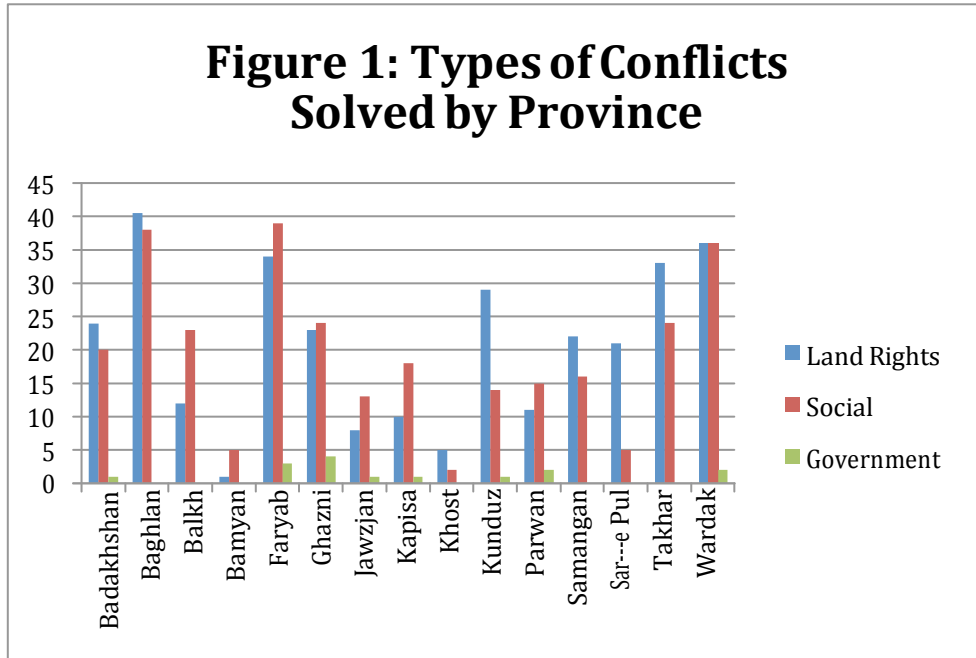
The program started in 2008 with just 10 Peace Ambassadors focused on land issues in Wardak Province. The following year, 52 Peace Ambassadors began work on land conflicts in Faryab, Jawzjan, Sar---e Pul, Balkh, Samangan, Baghlan, Kunduz, Takhar, Badakhshan, Parwan, Kapisa, Khost, Ghazni, Bamyān, and Wardak. This past year, the program has expanded to 75 Peace Ambassadors to work in all the above Provinces as well as Nangarhar, Laghman, and Kabul.

Approximately one-half of the Peace Ambassadors represent villagers and the other half represent extensive livestock producers (Kuchi). The PA's have undergone extensive training in mediation, negotiation, and conflict resolution to build their skills. The training program is implemented by the PEACE project's local partner, Sanayee Development Organization.

Conflicts over migration routes, farm land, rangeland, harvest, water, forest and property are considered land tenure or land access conflicts. The remaining categories are considered social conflicts. Although resolving social issues was not originally in the PAs work plans, these

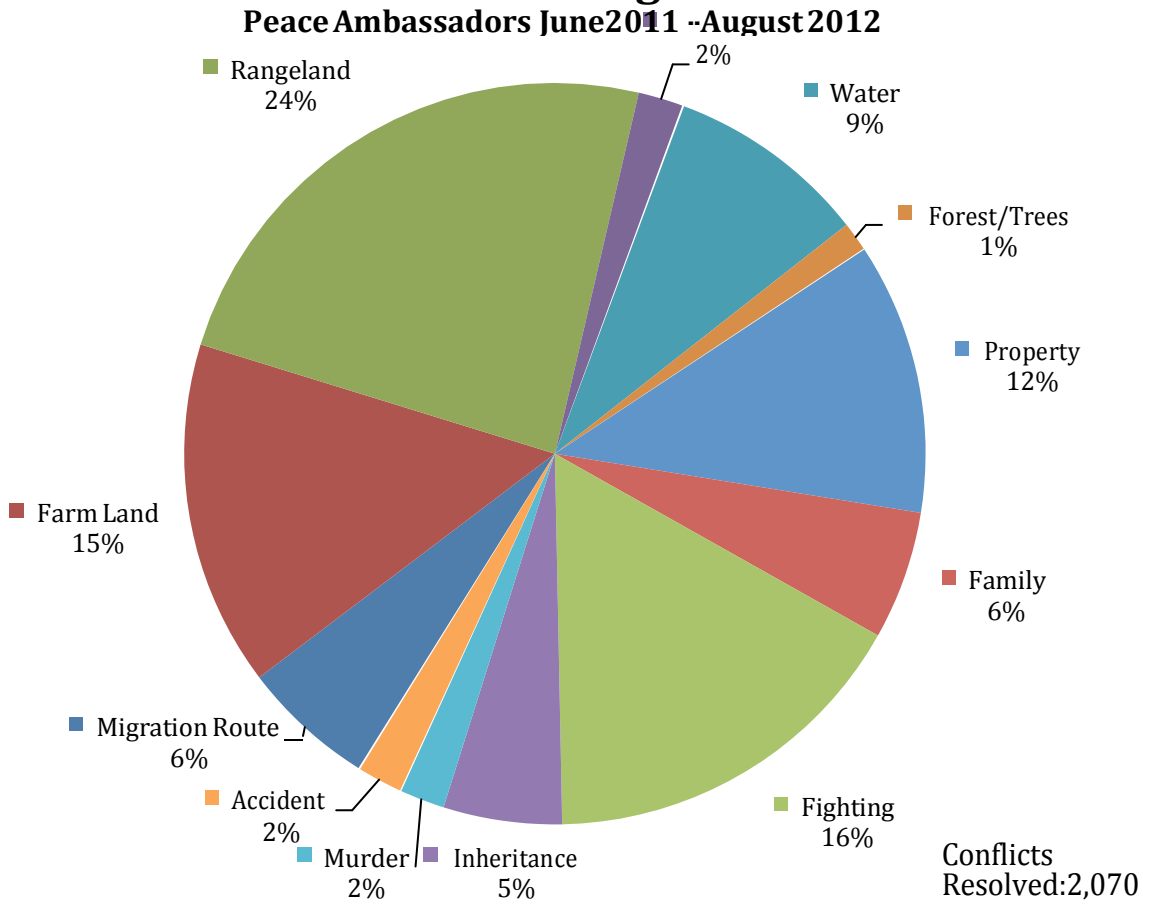
types of conflicts are being solved when communities are specifically requesting the Peace Ambassador’s assistance to resolve them. At the request of the communities, the PAs have been solving family disputes, accidents, and other conflicts. This is an indication of how much the communities trust the Peace Ambassadors for solving problems.

Over the year July 2010-June, 2011 the Peace Ambassadors have helped solve 616 conflicts in total. The types of conflicts solved and where they were solved are presented in Figure 1:



In the following year, July 2011-August, 2012 2,070 conflicts of various types have been addressed and resolved in the 15 Provinces:

Figure 2: Conflicts Resolved by Type and Percentage



4.4 Lessons Learned

The PEACE project through its collaboration with the Sanayee Development Organization (SDO), the Independent General Directorate of Kuchi (IGDK), the Presidential Office of Tribal Affairs and 75 Peace Ambassadors helped resolve over 2,700 disputes, the majority being related to land but also including social conflicts of various sorts.

During the last year of the project, 2012, the Peace Ambassadors reported that the most difficult land conflicts involved stolen public land and any land issue that involves powerful people. Situations where the government or its representatives created the conflict were also cited as some of the most difficult to resolve.

The major constraints to resolving conflict were interference (by government or powerful people), lack of support by the government, no ownership documents and one or both sides not willing to negotiate. Lack of security in the conflict region was also noted as a constraint. The Peace Ambassadors called on the Office of Tribal Affairs to provide more training, increase the number of Peace Ambassadors and raise awareness for both villagers and herders about the program. They also suggested that the PEACE project could organize exchange trips between

provinces and regions to share solutions and conduct more workshops in each Province so local people have access to training. The Peace Ambassadors requested training in rangeland management as well as inheritance, irrigation, forest and other natural resource laws as well as report writing.

Peace Ambassador Methods for Peace Building

The new methods the Peace Ambassadors are learning were different from traditional ways conflicts have been solved. For the Kuchi the traditional way to stop conflicts between two parties involves the selection of representatives. Generally three people represent each party in the dispute. The representatives then, discuss the dispute and come to some solution. Everyone then agrees that the solution reached will be followed. This method of resolving conflicts sometimes works to stop the fighting between parties but doesn't always resolve the issue or to build peace between the two parties. One or both sides may still disagree with the outcome and therefore ill-will persists.

The project asked the PAs to tell PEACE team members what they felt were the most important ways that their trainings helped them to resolve problems more effectively.

- The PAs indicated that they chose a neutral location for solving problems. In the past the meetings were held in the village where the problem had occurred. They are now holding the discussions in a different location or village, somewhere that is neutral to both sides.
- The Peace Ambassadors also pointed out that prior to any discussions or negotiations they have learned that both sides must be prepared. Both sides need to be in the correct state of mind and willing to resolve the conflict before joint discussions begin. This is accomplished by first meeting with each side individually so the conflict can be understood from both perspectives. Understanding both perspectives requires that the PA remain neutral and attempt to clearly understand the primary interests of each party.
- PAs also said that they have learned how to select the correct people to address the conflicts. Instead of bringing together a large group of people for addressing a given issue they have learned to only select the people that appeared open and willing to solve the conflict. They told us that the new methods are less costly monetarily and with respect to time. This was directly related to meeting with only the people willing to solve the conflict instead of inviting a large group of people.
- PAs also mentioned that their communication style has become more effective. They have learned to use language that does not inflame the people participating in the discussions. They mentioned that word selection is critical in discussing the conflict with participants.

Peace Ambassadors sometimes worked with the Government Officials to resolve particularly difficult issues. There was an increase in the number of times the District or Provincial Governors will ask the Peace Ambassadors for help to resolve a particular issue. Peace Ambassadors continued to better bridge the gap between the communities and the government as the program developed further.

When the Peace Ambassadors were asked about what the country needs to solve the most difficult land conflicts, they suggested:

- Support and cooperation from the Afghanistan government is needed;
- Laws should be implemented equally for all people;
- A new land database that retains land documents must be created, and;
- Natural resource laws need to be amended and agreed upon.

The Director of the Independent General Directorate of Kuchi (IGDK) in Kabul also asked his Provincial Directors to work together with the Ministry of Agriculture, Irrigation, and Livestock and Arazi to resolve land conflicts. This was potentially a key step forward for resolving public land conflicts. Although collaboration with MAIL and Arazi did not work well in all Provinces some made progress. MAIL and Arazi were still trying to determine their respective roles in land conflicts, particularly over what is considered public land. It was also apparent that they will need some assistance in developing a transparent and neutral conflict resolution program within MAIL and within Arazi. Once these institutions clarify their roles they could make substantial progress towards resolving land conflicts with the help of IDGK.

The role of the Provincial Kuchi Shura is large as they are mandated to resolve not only conflicts over rangeland issues but also to resolve and guide communities on livelihoods, security, health care, education, and animal care. These offices are understaffed but are learning to work more closely with other government officials to the mutual benefit of all people in their Provinces. Critical to facilitating this effort is continued support for Kuchi Shuras to use computers, write reports and to generally increase their professionalism when it comes to communicating the status of the Kuchi People.

As of the writing of this Chapter (July, 2015), there is no information available about whether the President's Tribal Affairs Office or the IDKA has found funding for supporting the Provincial Kuchi Shura.

4.5 Practical Implications.

The most important outcome of the PEACE conflict resolution initiative was the nomination and training of Peace Ambassadors in achieving relatively rapid impact in the peace process. Peace Ambassadors have proven to be a simple and direct solution to seemingly protracted and difficult issues at the community level, with the interest demonstrated by members of both Kuchi and Hazara in peaceful conflict resolution suggesting that more widespread training is both possible and welcomed.

Given the importance and success of the PA model, it is recommended that other willing PAs should be identified and trained to conduct conflict resolution workshops and to scale-up the program. Training of the trainer programs have been widely successful in rapidly expanding the capacity needed to address technical and social issues, and are well suited for community-level applications.

It is evident, however, that further research addressing conflict between the Kuchi and other groups is needed. While village and Kuchi elders appear to be in agreement that peaceful resolution is possible, greater emphasis should be placed on educating and influencing younger members of these groups. PAs offer an excellent opportunity to reach this demographic, and it is possible that the community Peace Ambassador model could be successfully modified to include a younger set of PAs working directly with young people.

4.5 Challenges/issues from PEACE Project

The biggest challenges to finding solutions to the conflicts among and between Kuchi and Hazara communities and peoples were not their history of bad feelings and violence, but rather the negative role of governments.

The MAIL in Afghanistan seemed poorly prepared for resolving conflicts and more inclined to perpetuate them, at least in some instances, particularly concerning the management of public rangelands. Government officials claim State ownership of rangelands, and intervene in community activities in often negative ways. This difficulty corresponds to similar conclusions communicated by RLAP pilot communities.

Similarly the US Agency for International Development initiated the PEACE project as a technological contribution to livestock management and then had the foresight to evolve the project into helping to deal with land related conflicts which were putting at risk the entire small livestock sector which the Kuchi herders are predominant. Unfortunately over the six year project, USAID placed 24 staff with project management responsibilities. They all were new at the onset, generally not familiar with the PEACE project, usually unfamiliar with the livestock sector in Afghanistan or the Kuchi situation and as soon as they gain knowledge they were gone. Communication with them was a challenge and in six years no USAID staff ever visited the field. Such a structure was not conducive to effective communication and development of a team approach to shared goals. *The Agency must create a structure with more continuity or a process by which historical knowledge of projects is passed along more effectively.* The present system is unfair to Afghans because it is not efficient, unfair to USAID employees because they are given responsibilities for management without the means to gather the knowledge to effectively carryout their responsibilities and to the implementers who have the experiential and technical knowledge but not the access to interact productively with USAID. It appears that the knowledge generated within USAID Kabul has been fading away, with the lack of follow up funding.

5. Arazi Roles in Land Dispute Management (Resolution and Avoidance) (USIP)⁴⁹

Analyses of dispute resolution in Afghanistan mostly agree that the informal, community based shura/Jerga system is critical to dispute resolution, but also that a positive relationship between the state and non-state dispute resolution systems could substantially benefit the citizens of Afghanistan⁵⁰.

The formal system of law in Afghanistan has often proved inadequate to the needs of the country. The courts, judges and prosecutors have relied on the informal system to resolve

⁴⁹ Based mostly on the description of pilot efforts in 2009-2013 to manage land conflict prepared by Erica Gaston and Lillian Dang, 2015, "Addressing Land Conflict in Afghanistan", Special Report, United States Institute for Peace, Washington, D.C. Also incorporates information from TLO, 2014, Land Disputes and Land Titling Systems in Khost Province, USIP; and Peace Training and Research Organization, 2014, "Land Titling in Kunduz, Afghanistan", USIP Research notes No. 3.

⁵⁰ See, for example, Barfield, et. al., 2013?, op. cit.

many disputes. During the past 25 years of war, the formal system has become even less relevant as the power of the central government collapsed.

Therefore, a modus operandi must be worked out such that governmental and non-governmental programs can be implemented to support access to justice by citizens within and between both systems. State capacity should be directed at maximizing the benefits of a widespread informal system with deep roots in society and minimizing its harms – rather than trying to supplant it.

5.1 USIP/Arazi Pilot Conflict Management and Registration Project

USIP pursued a pilot project testing whether greater cooperation between community dispute resolution actors and state land management actors was possible to promote increased formal land registration or title, and—if so—whether increased formal documentation might contribute to reduced land conflict. Since 2002, many Western donors have supported initiatives to formalize land rights and strengthen state land management. This pilot was intended to complement such initiatives. Many efforts to expand land title have been in urban areas, notably those to register and formalize informal settlements. For example, the USAID-funded Land Title and Economic Restructuring Activity project attempted to engage community actors in arbitrating and recording property claims and informal settlements in Kabul, Mazar-e Sharif, Kunduz, and Taloqan. The follow-up USAID-funded Land Reform in Afghanistan project had a similar mandate to engage communities and community dispute resolution with the local government in Jalalabad to identify and grant some formal title to informal or undocumented settlements. UN-Habitat has been working with the Ministry for Urban Development and local authorities in Kandahar to survey and grant title to informal settlements in Kandahar.

Pasture and range land administration issues have also been documented, and possible solutions piloted.⁵¹

In light of these previous pilots of community based land administration, this pilot expanded the focus to include the search for mechanisms for combining community (informal) and governmental (formal) administration of land records concerning rights to land, particularly the registration of rights, which can minimize conflicts over land rights and can help in their resolution should they occur.

Since the 2009 and 2010 reforms designed to centralize land management, Afghanistan's land management has been led by the Afghanistan Independent Land Authority—known as Arazi. Arazi is an independent government agency that reports to the Council of Ministers and has separate national, provincial, and district offices inherited from Arazi's absorption of the former Amlak of the MAIL. In 2013, Arazi also assumed responsibility over cadastral surveys.

Recognizing the prevalence of land disputes, and that these contests were preventing wider registration and government assessment of land, Arazi established a land dispute resolution unit, but it was not well resourced and had limited capacity. Arazi sought ways to connect the unit with communities and to flesh out its mandate and role.

⁵¹ See Chapter 3 of this paper for a comparison of two community based efforts to deal with pasture land tenure.

USIP and Arazi envisioned a joint pilot to test a new set of administrative procedures and processes that would allow Arazi to register land through its dispute resolution office in coordination with local community dispute resolution bodies. In addition to testing Arazi's ability to expand community outreach, the pilot would help identify continuing roadblocks to converting the millions of jeribs of untitled, customarily owned land to full title. Another potential outcome was to gather evidence on whether creation of a temporary title—a way to convert customary ownership to formal title that has proved effective in other countries where communal or customary ownership predominates—might be useful in Afghanistan.

The provinces of Kunduz and Khost were selected because the differences in land conflict and registration dynamics between the two would offer an idea of how the model would apply under differing circumstances. The Peace Training and Research Organization (PTRO) and The Liaison Office (TLO) were chosen to facilitate the USIP-Arazi pilots in Kunduz and Khost, respectively. Both local organizations had experience with dispute resolution research and programming in these provinces. The nongovernmental organizations would work with community elders to identify land disputes that were resolved through community dispute resolution, in which the landowner would be interested in having the land registered or proceeding to full title. They would then work with the local Arazi office to clear and register the tracts of land through the Arazi dispute resolution unit.

5.2 Implementation:

PTRO and TLO conducted the preliminary assessments in the summer and early fall of 2013, examining the conditions of land conflict and land registration in both provinces and identifying potential land dispute test cases for registration. Simultaneously, USIP worked with Arazi's national office to develop Arazi's internal procedures and modalities for registration, and then to train local Arazi staff in Kunduz and Khost on these procedures.

Within Arazi, land conflict cases are to be collected at the district or provincial level and forwarded to national Arazi. There, depending on the nature of the case, they are recorded in one of a series of books. Before this pilot there was no such book for cases brought to Arazi's dispute resolution department, or for registering the outcome of a community dispute resolution process. As part of its technical assistance, USIP worked with Arazi to develop a registration book for these cases. In addition, a training manual on how to use the registration book was prepared, and training was delivered to staff at Khost and Kunduz Arazi offices.

This took far more time than anticipated because it involved not only developing new procedures and templates but also navigating the often-complex interdepartmental politics surrounding land administration in Afghanistan.

An additional challenge was resistance from district and provincial Arazi staff who were unaccustomed to the new procedures and feared that engaging with community dispute resolution might be illegal. In their uncertainty, local Arazi staff frequently sent mixed messages to local community elders and landowners participating in the project, which in itself delayed and frustrated outcomes.

Although many landowners in Kunduz and Khost were interested in the pilot, their enthusiasm for obtaining formal land documentation was allayed by equally serious misgivings and mistrust of

engaging with state actors, or simply the desire to avoid tax liability. Misgivings about government intervention were stronger in Khost. Tribal elders feared that any government interference, whether surveys or registration, would result in government appropriation of what they perceived as tribal land—a justified fear given the lack of recognition of communal land under Afghan land law. Even in Kunduz, where initial willingness among landowners to engage in the process was greater and mixed messages from the local Arazi office were fewer, trust building was critical. PTRO's presence in registration meetings between landowners and Arazi officials was essential because landowners were not confident about approaching Arazi independently.

As a result, only a short period was available for registration, a few weeks between April 2014 and July 2014. This proved a difficult time because it overlapped with the April 2014 presidential election cycle, the beginning of the summer fighting season, and Ramadan. Ultimately, twenty cases were registered in Kunduz and seven in Khost.

Given more time, the number of registered cases would likely have been higher in both provinces, particularly in Khost. Registration of more complex or difficult disputes was not possible given the limited registration period, nor was there time to resolve the dispute within the course of the pilot and then register it, as TLO had initially proposed.

In Khost, TLO initially envisioned establishing a joint adjudication body between tribal elders and Arazi, with tribal elders resolving disputes in accordance with Arazi standards, and Arazi reviewing and recording the results of the resolution. However, joint adjudication was ultimately unworkable, in large part because local Arazi officials were unsure if that degree of cooperation would be permitted under law, even for an exploratory pilot.

During the pilot, TLO identified an additional thirty cases of landowners willing to register but unable to do so because they were unresolved when the pilot closed.

5.3 Establishing Land Ownership Under Afghan Law

Afghan land law does not recognize many forms of communal ownership or use that are customary in Afghanistan. For example, tribes in Khost consider themselves to be the communal owners of large areas of forest, mountain, and desert land, which they have been using for long periods. This conception of ownership is not supported under Afghan law, however.

Thus, trying to refer intertribal disputes over communal lands to Arazi or any state actor offers no value. State actors would have no choice in most cases but to declare the land in question to be state owned. This would likely exacerbate the immediate conflict and set back efforts to broker trust and encourage greater formalization, registration, and taxation of land in that area in the long term.

The availability of formal documentation proving ownership is important even simply to clear land for registration, as this pilot attempted to do, because a 2003 presidential decree stipulates that any land for which there is not definitive proof of other ownership belongs to the state.³⁷ Thus, without documentation, the landowners introduced to the Arazi pilot registration process might have their land declared state land.

The term *land clearance* is interchangeable with *land settlement* by Arazi, whose Land Clearance Directorate is responsible for determining the boundaries, grades, type of land (state or private), and ownership. See Arazi, “An Operational Strategy to Become a Modern Public Land Services Institution” (Kabul: Independent Land Authority of Afghanistan, March 2014), 25⁵², Decree on Immovable Property (Decree no. 83), 2003 (SY 1382), Article 3. also established that government property included any land or buildings that had been under its custody for 37 years. Appeals against this were disallowed (Article 2). Those whose lands had been taken since 1978 for public purposes could not claim compensation (Article 5(2)). Those who had been granted parcels in settlement schemes but for whom the formalities had not been completed and those who had not yet fully paid for those lands were also to lose their lands.” Wily, “Land, People, and the State,” 32–33.

Despite that formal registration and titling has never been widespread, for the most part Afghan law only recognizes land ownership based on formal documents. The gold standard for establishing land ownership is a court-certified deed, ideally supported by copies in court registries. The LML also recognizes other formal documents such as state decrees, tax payment documents, water rights documents, and customary deeds.⁵³

If court records have been destroyed or are otherwise missing, court certification of the original deed must be obtained.³⁹ Additional supporting evidence would be registration in the Basic books, though this is not essential.

In countries where formal land titling has not been prevalent, land and property law frequently permits some way for de facto or customary landowners to gain legal recognition. In Afghanistan, the mechanism is so limited that it excludes most customary ownership.⁵⁴ Under Afghan law, various customary documents can be legally recognized as long as they are written and signed or otherwise marked with fingerprints or stamps by parties to the document. Judges refer to the Civil Code and Civil Procedure Code when interpreting customary documents before looking at other laws⁵⁵. Articles 289–292 of the Civil Procedure Code stipulate the requirements for customary documents.

For customary documents related to land, an additional criterion is required— an original formal land document.

The relevant legal provision is Article 5(5) of the Land Management Law (LML). Under this provision, land ownership transferred via customary documents rather than formal deed is recognized given three criteria: an original valid deed from the seller, the purchaser has a customary deed prepared before 1975, and a declaration form registered with AMLAK by 1978.

In provinces where declaration forms were not distributed or were destroyed, a landowner may confirm the claim by oral testimony of neighbors. Interviews suggest that judges in practice have been more lax on enforcing the narrow date requirements to the letter. This is a positive step given that it would prima

52

<http://www.humanitarianresponse.info/en/operations/afghanistan/document/strategy-arazi-10-march-2014-english>

⁵³ Land Management Law (Decree no. 62, Official Gazette no. 958), July 21, 2008 (SY 1388) [LML 2008].

⁵⁴ Muhammad Arif Hafiz, judge of the Kabul Primary Court Civil Division, interview, April 14, 2015, Kabul.

⁵⁵ Arif Hafiz, interview, April 2015

facie exclude most land transfers for the last three decades, but the requirement for an original valid deed cannot be avoided. Given that only an estimated 30 percent of the country has been mapped, and a smaller portion titled, this effectively invalidates nearly all customary land transfers or acquisitions in which, despite being a bona fide owner of the land, the seller did not have or never had an original formal land document.

Proposed amendments to the LML (as of June, 2015) will remove the date requirements under Article 5(5) but not the requirement that customary land documents be based on an original formal land document. Without removing this criterion, bona fide landowners who have possessed or acquired land through customary practice—that is, without any original formal land document—have no legal avenue to establish legal ownership. Afghan law creates a fundamental catch-22: To establish formal legal ownership based on customary documents, one must already have formal legal ownership as established in an original formal land document.

The other way for those without legally valid land documents to establish ownership is through adverse possession, a legal term of art that essentially grants ownership following physical possession for a (usually statutorily set) number of years. However, adverse possession rights have also been limited by changes to the LML since 2002. The Taliban era land law from 2000 permitted visible occupation of lands and testimony of neighbors to establish ownership when evidence of ownership had been either destroyed or never registered.

Wily provides a translation of key provisions of the Taliban era land law: “Article 4 (5) provides that *urfee* or customary documents are valid where they 1) were certified before 1978; or 2) in cases where the customary document was not certified by 1978 or the certification was destroyed, ‘if there is no dispute concerning the ownership of the land and the purchase and occupation of the land is recognized as valid by the neighbours and the area’s state department, then the document will be accepted as valid.’ In addition, Article 9 provides that farmers with no legal document, for land which has not been registered in the Basic books ‘if no one claims that land and there is sign of structures and agricultural activity, and the neighbors and the local state authorities approve his occupation, then the land may be known as his property’”⁵⁶

However, the 2008 amendments to the LML require occupation for more than thirty-five years (that is, since 1973, the year the amendment was enacted) to establish adverse possession, which must be demonstrated through evidence of construction, testimony of neighbors, and other conditions for that time.

An additional limitation is the 2003 presidential decree that presumes state land ownership in the absence of definitive proof to the contrary. This sets a high bar against adverse possession claims succeeding. If a landowner without formal title or valid customary documentation tried to assert a claim over land based only on the oral testimony of neighbors, it is not clear that they would prevail against presumption of state ownership.

Proposed amendments to the LML 2008 would reduce the occupation time requirement for adverse possession to more than fifteen years before 1979. Although better than thirty-five years, it would still fail to realistically take into account the years of conflict and scale of displacement interrupting normal occupation and tenure patterns in Afghanistan. In many post-conflict contexts, the statutory

⁵⁶ See Law on Land Under Decree no. 57, Taliban Islamic Emirate of Afghanistan Ministry of Justice Issue no. 795, 2000, Chapter II, article 4 (5), article 9. See Liz Alden Wily, *Land Rights in Crisis* (Kabul: AREU, March 2003), appendix K, 112–13.

period to establish adverse possession tends to be shorter (such as five years in Cambodia) to better account for population movements during extended periods of conflict.

This pilot project was not primarily about establishing full legal title, but the limited avenues for recognizing customary ownership were nonetheless a significant bar to expanding any type of engagement between state land management authorities and communities. These legal issues would have to be addressed for any initiative aimed at expanding formal land rights or relations to succeed.

5.4 Conclusions

Land and water are predominant sources of conflict in both provinces, but the nature of conflict differs. In Kunduz, land disputes detected in the pilot project tend to be between individuals, often related to inheritance disputes, conflicts sparked by the return of internally displaced persons and refugees, and the illegal occupation and sale of land by local commanders.⁵⁷

In contrast, in Khost, persistent land conflict tends to be between tribes or between the tribe and the state; individual disputes tend to be resolved within the still somewhat resilient tribal structures.⁵² The majority of persistent and serious disputes are about forested land or previously unsettled land now ripe for development.⁵³ TLO notes that land conflicts are also frequently caused by one tribe or party attempting to “extend the boundaries of the territory it is currently occupying, with communities competing over what they perceive as their legitimate rights over neighboring unexploited—and mainly government-titled—land.”⁵⁴ Such clashes between the tribe and the state are infrequent in more remote areas, where the state has little effective writ, but have become a growing source of conflict in urban areas and peri-urban areas around Khost city.⁵⁵

In Kunduz the nature of disputes was such that state intervention to protect land ownership claims was perceived as beneficial. Militia activities and control have risen dramatically in Kunduz since 2009, and with them so has land grabbing by armed groups and commanders.⁵⁶ Landowners argued that some form of state-recognized legal land registration or title would help protect their rights from land grabs and violence from militia groups or power brokers, who more frequently target those with no formal documentation.⁵⁷ Corruption among and land grabbing by state-affiliated actors is also a major issue in Kunduz. Although legal title is not necessarily foolproof protection against such threats, it is the most compelling proof in the event of land usurpation or corruption.

By contrast, in Khost, because individual disputes were largely resolved relatively well within the tribal system, demand for a government-backed system was scant. Problematic disputes, for which third-party intervention and recognition might have been appropriate and desired, were predominantly intertribal, which were off limits for state intervention. In sum, in Kunduz, community demand matched relatively well with what Arazi could offer, whereas in Khost the disputes demanding intervention were exactly those in which Arazi could not helpfully intervene.

Another reason the pilot may have had more traction in Kunduz than in Khost was the greater availability of documentation and registration records. As noted, the Afghan state made some efforts to

⁵⁷ See Nils Wörmer, “The Networks of Kunduz: A History of Conflict and Their Actors, from 1992 to 2001,” *Afghan Analysts Network*, 7, http://www.swp-berlin.org/fileadmin/contents/products/fachpublikationen/wrm_2012_the_networks_of_Kunduz.pdf

collect and record evidence of land and property ownership in the 1960s and 1970s, even attempting a cadastral map. These efforts had more impact in some areas than in others. Kunduz is one of the provinces where the impact was greater, an estimated 20 percent of its land being surveyed—among the highest in Afghanistan. Voluntary registration of land in the AMLAK Basic books was also more prevalent in Kunduz. As a result, landowners in Kunduz often have some form of formal documentation, whether tax or land receipts from AMLAK, inheritance letters, financial receipts of land purchases, cadastral registry cards, customary documents registered with the AMLAK Department between 1971 and 1978, and even court-issued deeds. This helps explain the easier registration process in Kunduz: Of the twenty test cases identified, only one had no documentation.

By contrast, the state has made virtually no land management effort in Khost. Only an estimated 10 percent of land is documented, and that is typically in tax records or *firmons* (land grants by decree) dating from before 1978, which are of little legal value in the current system. Although past documentation does not always facilitate registration, having something increases the odds of success. That none of the original forty cases identified in Khost featured any meaningful documentation meant that nearly all of them faced a steep evidentiary challenge to establish even basic registration. This seriously limited how far the pilot could be pursued.

The history of engagement in land management in a province was important in terms of not only the availability of formal documentation but also the community's basic awareness and trust in state processes. In Kunduz, half of the respondents were aware of the cadastral mapping process. Many said that if they had a land dispute they would already take it to state actors for recognition, some even specifically mentioning AMLAK. Working with Arazi was thus neither unfamiliar nor particularly intimidating.

In Khost, however, the idea of state engagement with land management was so foreign that TLO had to work much more on outreach and trust building between the community and local Arazi officials to reach even a starting level of engagement. The preliminary TLO study described examples of land titling in Khost under the Karzai government as “virtually nonexistent, or at least unknown.” Almost none of those interviewed were aware of any AMLAK or Arazi role in land management in Khost.

Although not unsurpassable, this factor means that in provinces such as Khost with no past engagement with state land management, it would take far more time and effort to ground projects like the USIP-Arazi pilot.

Although the pilot demonstrated interest in land registration among communities, and some traction in increasing it, its real value is the insight it offers on the challenges and limitations to expanding registration. The model worked notably better in Kunduz than in Khost for two reasons, the nature of land disputes and the baseline level of documentation. However, many more provinces in Afghanistan mirror the situation in Khost in having no prior documentation and significant communal land conflicts.

The solution is not that registration should not be attempted in provinces like Khost, because that would foreclose registration in most of Afghanistan. The solution is instead to reform the legal framework to be more flexible in recognizing community and customary land ownership and use. More fundamentally, the experience of the pilot raises questions about whether any model can encourage

registration unless some of the obstacles to recognition of communal and customary land rights under existing law are first addressed.

The USIP-Arazi pilot tested one small component of the larger challenge of formalizing land rights and improving sustainable dispute resolution. Formalization of uncontested parcels or of informal settlements is a much larger issue. Initiatives designed to address these issues would likely face problems similar to those the pilot faced.

Eventually offering some means for obtaining formal title to all landowners and areas is attractive from a state as well as a community perspective. Greater formalization of property rights might reduce the risk of repeated land disputes, limit land grabbing, protect property owners' individual rights, provide a tax basis, and offer other potential benefits. Because community guarantees of property rights and usage are less and less certain, landowners in Afghanistan are increasingly willing to accept some level of state engagement if it helps protect their rights.

The basic issue is that the law is so narrowly written that, in most cases, the state is a threat rather than a protector of rights. Because customary ownership and long-standing communal ownership or usage rights are not recognized in Afghan land management law, fundamental conflicts between the state and the majority of landowners and tribes are inevitable. These two issues doom any initiative to increase registration and title to failure. Reforming the land law to enable legal recognition of communal land rights would significantly expand the state's ability to productively engage with some of the most common sources of land disputes.

In the short term, two critical legal provisions need to be amended. First, to expand legal recognition for bona fide landowners in possession of customary documents, the requirement under Article 5(5) of the LML that a customary document be based on an original formal land document needs to be removed or revised. The proposed amendment maintains this criteria—requiring proof which tends to have never existed or has been destroyed in the subsequent decades of conflict. The LML needs to consider ways for bona fide customary documents to be legally recognized in the first instance.

Second, to enable bona fide landowners without documentary proof of ownership legal protection, the adverse possession requirements under Article 8 of the 2008 LML need to be revised. The current requirement of thirty-five years of continuous possession or the proposed amended language requiring occupation of more than fifteen years before 1979 is too long a period of occupation to establish title, given that many Afghans became refugees or internally displaced during the country's three decades of civil strife.

In addition to these legal reforms, a full-scale cadastral survey and a comprehensive national land titling and registration program are both essential. Nationwide land titling and registration would be challenging because of both the dissonance between the legal structure and land tenure in practice and of the current limited state capacity. An immediate, short-term priority to enable these long-term goals would be to build the internal capacity of all state actors engaged in land management. One of the most time-consuming but important aspects of this pilot was developing the internal capacity of Arazi. Such efforts must continue and be addressed not only nationally but also at district and provincial levels.

Finally, an important guiding principle for both short-term and long-term goals should be greater receptivity toward community interests and land management solutions that respond to the reality of land tenure. The avenue this pilot pursued was to allow community-based dispute resolution processes to feed into land registration and identification processes. Such a methodology was useful. However, the validity of such processes is still controversial under Afghan law. Working with community elders or shuras on a systematic level would require greater legal and policy development and reform. Land management authorities must identify a way to involve community preferences in any formalization process. Without that, the problems that arise from the current, unregulated system are likely to continue.

6. Lessons Learned about Land Conflicts from the Four Projects

The pilots explored various aspects of land conflicts in Afghanistan:

- The addressing of conflicts experienced by people displaced from their land who subsequently returned (NRC Project)
- Concepts and methods for a mediator of land conflicts to produce positive results (LC Project)
- Development of a cohort of “Peace Ambassadors” for mediating conflicts between Kuchis and settled community members. (PEACE Project)
- Exploration of options for Arazi to be involved with land conflict resolution (USIP project)

6.1 NRC Project for Returning Displaced Persons

Case One: Occupation of Pasture Land in Bughawi Village, Sar-e-Pul Province.

- The careful documentation of both sides of cases is important;
- Mediation may be helpful to allow for fair settlement on the use of the land in order to avoid conflict.

Case Two: Land Allocation Scheme.

- Among those selected [for the LAS], many have difficulty finding funds to pay for the plot. In some cases the plot is purchased for long-term land speculation.
- Most returnees who have left their plots and shelters have invested significant funds, yet still lack their own place to live.
- As per Decree 104, the deeding practice is based on award of a temporary document, such as a certificate of eligibility, until a permanent deed is issued after five years.
- The administration of the titling for the LAS has devolved to the Provincial Departments of Refugees and Repatriation (DoRRs) and the tenure security might be seen as somewhat fragile. Most LAS settlers mistakenly believe that documents they possess indicate their ownership of the plot.
- In Chamtala LAS in Nangarhar Province, people camped with their community groups and many who have been assigned a plot do not know the location of it.

Case Three: Individuals Claiming Rightful Ownership in Kabul City.

- This case study demonstrates how the justice system has failed to properly address rights that are guaranteed under law and
- It implies the need for a stronger advocacy approach.

Case Four: Widow’s Inheritance Rights in Kabul Province.

- It is important that customary justice mechanisms are aware of and offer more protection of women's rights as set out in the Afghanistan Constitution and Islam, rather than the application of customary law that might be believed to be based in Shari'a but is not [so based].

Case 5: Kuchi returnees.

- The Kuchi case study highlights advocacy challenges since negotiated settlements cannot be based on privileging one particular ethnic group's right to return over legitimate historical claims to land.
- Policy changes are required which accommodate competing claims according to principles of fairness and sustainability.

Organizing conflict resolution capacities.

- The [NRC] program attempts to use the processes of *jirga* as a means of conflict resolution for returning refugees and internally displaced persons.
- The NRC has established Information and Legal Assistance Centers (ILACs) in Kabul and another three provinces.
- ILACs are run by Afghan attorneys and judges with legal education and training, many of whom have served in the government judiciary in the past. These legally experienced people have proved adept at crafting durable agreements.
- NRC has a system of filing, evaluation, and investigation of cases and NRC judges and attorneys facilitate the litigants in selecting their representatives to play a third party mediating role.
- The NRC attorneys and judges meet with the local respected individuals who are willing to participate in the *jirga* processes to resolve a dispute. They explain the nature of the case, relevant information, and monitor participation in the meetings as facilitators without any vote.
- During settlement, they provide information and advise parties so as to avoid violations of state law. These facilitators record, and file minutes of the meetings, and produce a document to be kept by the parties once a solution is agreed.
- ILAC's have handled hundreds of disputes, predominantly civil cases, out of which a significant percent have reached out-of-court solutions.

6.2 LC Project

Approaches that a conflict manager (such as Amlak (Arazi) staff, a respected community member, or a lawyer) may use to help resolve a land conflict differ based on the resolution mechanism used and the particular attributes of a case. Best practice approaches are presented below, based on the main dispute-resolution categories used in the report: the general court system (GCS), community-based mechanisms (CBMs), and political advocacy.

In all cases:

- Conduct detailed interviews with disputants and other relevant individuals to develop a full understanding of the conflict before determining a resolution approach.
- Working with disputants to understand their desired outcome helps focus the selection and course of the resolution mechanism and increases disputant buy-in; similarly, explaining the possible outcomes helps keep expectations realistic.
- Allow disputants to express their concerns to a neutral third party without decision making power to facilitate dialogue between the disputants and those involved in resolution.
- Collecting and verifying required documents can often be an onerous process, but it is necessary to allow the disputants to feel that all relevant information has been duly considered.
- Raising awareness among disputants of their rights helps clarify the expectations of all parties involved.

In the general court system:

- Assist with court procedures by preparing disputant claims, collecting and verifying disputant documentation, and identifying and preparing witnesses.
- Brief officials on applicable civil, sharia and common law to facilitate their accurate implementation.

Through community based mechanisms (CBMs):

- Suggest respected and fair community leaders to represent each side to ensure that disputants' interests are similarly protected.
- Neutral third-party participation in mediation sessions increases efficiency, accountability and transparency.
- Ensure multiple reviews of decisions to guarantee a universal understanding of agreement terms and to promote the durability of the outcomes.
- When possible, registering CBM agreements with the government, usually via the court system, increases the legitimacy of an agreement, improves enforcement and precludes future claims on the same issue.
- Community-based agreements are best sustained by some form of official endorsement to guarantee their outcomes, especially where rule of law is weak.
- There is therefore a clear need to engage with government stakeholders from the outset of any conflict-resolution initiative.
- Supporting both village level institutions and local government is important to achieving lasting resolutions to land conflict and better quality land management in general.

- Recognize shared “rights of use” rather than “ownership” of common property.

Regarding political advocacy:

- When meeting officials, the attendance of neutral third parties encourages the relevant authorities to take action as required by law.
- Involving other organizations to advocate according to their experience increases the effectiveness of advocacy by utilizing existing relationships and areas of expertise.

6.3 PEACE Project

The PEACE project’s success derived from its collaboration with the Sanayee Development Organization (SDO), the Independent General Directorate of Kuchi (IGDK), the Presidential Office of Tribal Affairs and 75 Peace Ambassadors.

Peace Ambassador Methods for Peace Building

What were the Peace Ambassadors’ methods for working on Kuchi-Community conflicts?

- The PAs indicated that they now choose a neutral location for solving problems. In the past the meetings were held in the village where the problem had occurred. They held the discussions in a different location or village, somewhere that is neutral to both sides.
 - The Peace Ambassadors also pointed out that prior to any discussions or negotiations they have learned that both sides must be prepared. Both sides need to be in the correct state of mind and willing to resolve the conflict before joint discussions begin. This is accomplished by first meeting with each side individually so the conflict can be understood from both perspectives. Understanding both perspectives requires that the PA remain neutral and attempt to clearly understand the primary interests of each party.
 - PAs also said that they have learned how to select the correct people to address the conflicts. Instead of bringing together a large group of people for addressing a given issue they have learned to only select the people that appeared open and willing to solve the conflict. They told us that the new methods are less costly monetarily and with respect to time. This was directly related to meeting with only the people willing to solve the conflict instead of inviting a large group of people.
 - PAs also mentioned that their communication style has become more effective. They have learned to use language that does not inflame the people participating in the discussions. They mentioned that word selection is critical in discussing the conflict with participants.
 - Peace Ambassadors sometimes worked with the Government Officials to resolve particularly difficult issues. There was an increase in the number of times the District or Provincial Governors will ask the Peace Ambassadors for help to resolve a particular issue. Peace Ambassadors continued to better bridge the gap between the communities and the government as the program developed further.
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- The Director of the Independent General Directorate of Kuchi (IGDK) in Kabul also asked his Provincial Directors to work together with the Ministry of Agriculture, Irrigation, and Livestock and Arazi to resolve land conflicts. This was potentially a key step forward for resolving public land conflicts.
- The role of the Provincial Kuchi Shuras is large as they are mandated to resolve not only conflicts over rangeland issues but also to resolve and guide communities on livelihoods, security, health care, education, and animal care.

6.4 Arazi and Land Conflict Resolution and Land Conflict Avoidance

Some lessons learned from the USIP collaboration with Arazi on this project include the following:

1. Arazi's Procedures for Handling Land Conflicts

Within Arazi, land conflict cases are to be collected at the district or provincial level and forwarded to national Arazi. There, depending on the nature of the case, they are recorded in one of a series of books. Before this pilot there was no such book for cases brought to Arazi's dispute resolution department, or for registering the outcome of a community dispute resolution process.

Innovations from USIP:

- As part of its technical assistance, USIP worked with Arazi to develop a registration book for these cases.
- In addition, a training manual on how to use the registration book was prepared, and training was delivered to staff at Khost and Kunduz Arazi offices.

2. Arazi involvement in Conflict Resolution.

TLO initially envisioned establishing a joint adjudication body between tribal elders and Arazi, with tribal elders resolving disputes in accordance with Arazi standards, and Arazi reviewing and recording the results of the resolution.

However, joint adjudication was ultimately unworkable, in large part because local Arazi officials were unsure if that degree of cooperation would be permitted under law, even for an exploratory pilot.

But even if Arazi officials were willing and legally empowered to help resolve inter-community land disputes, "Afghan land law does not recognize many forms of communal ownership or use that are customary in Afghanistan. For example, tribes in Khost consider themselves to be the communal owners of large areas of forest, mountain, and desert land, which they have been using for long periods. This conception of ownership is not supported under Afghan law, however. Thus, trying to refer intertribal disputes over communal lands to Arazi or any state actor offers no value. State actors would have no choice in most cases but to declare the land in question to be state owned. This would likely exacerbate the immediate conflict and set back efforts to broker trust and encourage greater

formalization, registration, and taxation of land in that area in the long term. (Gaston and Dang 2015, p.).

Conclusion: In the pilot efforts, Arazi Provincial and District staff feared that engaging with community dispute resolution might be illegal combines with community fear that Arazi could claim ownership of land held under community control.

3. Evolving legal bases for Arazi to work with community shuras/jergas on the resolution of land disputes.

The LML of 2008 defines procedures for the clarification of land rights (*tasfeya*) for the purposes of leasing or settling land, and not for helping resolve land disputes or for identifying legal owners.

Wily, 2013: “Discussions of the needed amendments to the LML of 2008 have explored to what extent the procedure of *tasfeya* (identifying land owners and recording the results in legally-binding records) could be restructured to enable communities to conduct first-stage identification themselves. This would facilitate nationwide community level identification and documentation of rights as opposed to the expensive and often resisted formal surveys done by governmental agencies.

The latest draft elaborates adjudication or *tasfeya*⁵⁸ to identify owners better, but the procedure remains structured in a way that makes it impossible to apply. *Tasfeya* is still to be applied on an ad hoc basis, as directed by the President, or as required by donor-funded government projects. It will remain an expensive procedure that responds mainly (and possibly only) to demands for issue of commercial leases or purchases of state or public lands for mining, oil extraction, agricultural enterprises and housing estate developments. In this respect, the proposed amendments do not serve the majority.”⁵⁹

Many if not most major land conflicts involve the extension of community boundaries onto public lands over which the State claims ownership. A long lasting solution to community-State conflicts “cannot be found unless a clear definition of use rights by communities is formulated, and ideally, their de facto ownership over some current government land is recognized.”(TLO, p. 58)

Long-term efforts to settle existing land conflicts and help avoid conflicts in the future especially those around forest and pasture lands, cannot be significantly furthered in isolation from a general policy framework clarifying the status of state land and granting a degree of ownership or usage rights to communities. This process must also be considered in the broader context of land holding as tensions might arise concerning public land which communities have traditionally occupied and worked.(TLO, 2014, p. 53)

⁵⁸ Various referred to in the law clarification, settlement, or land rights identification (Wily, 2013,)

⁵⁹ From Wily, “Land People and the State”, AREU, Feb, 2013, p. 56

However, for land conflicts not involving State-community or community-community conflicts, "...ARAZI can work with Traditional Dispute Resolution providers to facilitate and consensually supervise processes already taking place. In this scenario, traditional norms and processes of dispute resolution are allowed to go forward, or go forward with relatively minor amendments, but with ARAZI providing technical support in the form of mapping and documentation (with the precise content of the support to be negotiated between ARAZI and community leaders)". (TLO, 2014, p. 12)

USIP, however, cautions that even this limited but potentially important involvement of Arazi in documenting TDR successes does not have legal basis authorizing this role for Arazi. That is, Arazi is not empowered to simply accept the results of TDR for establishing private ownership for a disputed property. Even worse, the existing legal requirements for establishing private ownership which would govern Arazi's assessment of the TDR result for a customarily held piece of land are onerous, and even dangerous for the private customary owner. If Arazi examines the bases for the TDR ownership decision and finds the documentation inadequate according to the law's requirements, then Arazi could confiscate the land claiming State ownership of "unowned" land without compensation.

4. If Arazi cannot be involved in direct conflict resolution, can Arazi help forestall future conflicts through offering communities land surveying and private ownership registration?

The TLO concluded from its assessment in Khost, that if the Arazi collaborates with communities through the provision of surveying and registration services when requested by communities to document TDR successes or for other community identified needs... "...then broader land clearance can take place. Here, ARAZI would again collaborate with local leaders to register all land in a given area (e.g., village, *manteqa*), not just land that is subject to a transaction or implicated in a dispute settlement. Although ARAZI will be playing a greater role in this second stage of collaboration, community partnership should remain paramount, and processes of dispute resolution and compensation for lost holdings will become even more crucial to the initiative's success as the land clearance process spreads.(TLO, 2014, p. 12)

The TLO report on its assessment of the feasibility of Arazi offering surveying and registration services states that ...government surveying, registration and eventually titling processes will be accepted **to the extent that government owned lands are clearly defined, boundaries of private lands delimited precisely, records accessible to mediators and, most importantly, communities do not lose significant amounts of land to the state.** A significant drawback continues to be that most major conflicts occur over government land customarily held by tribes who would in no case consider surveying acceptable if it means what they regard as their legitimate ownership is not recognized.(TLO, 2014, p. 45)

To the extent that it is perceived as trustworthy – elders notably bearing in mind the experience of land redistribution under the PDPA as a cautionary tale – a land

survey initiative is reportedly a welcome process to mitigate current disputes and forestall future conflicts. As reported by an elder from Tanai (TLO, 2014, p. 45-46):

The land will have legal documents and this will prevent future conflicts on the land [...] The people are open to government surveying or titling of their lands as it will help in the reduction of land based conflicts in Khost province.⁶⁰

The possibility of tax payment, conceived of as only benefitting the government, presents its own problems. In government controlled areas, however, registration and titling would reportedly be considered acceptable if the income the administration receives from taxes is reinvested in land management benefitting the population, such as by planting nut and olive trees and so generating local income.

Not all communities would be open to the TDR-Arazi model:

In the areas under government control, people are ready for the government to survey or title their land. However, in areas outside of government control, security will be a problem for conducting this kind of survey [...] The government cannot implement surveying or titling in insecure areas, as those areas are mainly controlled by the insurgents. The tribal elders later on will not have the power to defend themselves.⁶¹

However, it would be reductive to consider “government-controlled” districts as overall receptive to government surveys and land registration, while contested district would altogether reject it. The question of receptivity and access is indeed not merely one of distinguishing between districts, but rather needs to be considered on a **community by community basis**. (TLO, 2014, p. 48)

Indeed, given the fact, underlined throughout the report, that most communities customarily hold land which is theoretically state owned, the weight of the evidence indicates that even in areas more accepting of the state, communities would not consider state intervention in surveying acceptable on most land as it would jeopardize their ability to use and control the land. Therefore, even in areas where the government can secure access, community consultation and negotiation is a necessary prerequisite: if, and only if, the mind of the community is put at ease through negotiation and patient consultation, then communities’ oft-stated theoretical acceptance of government land services might in fact be realized. In turn, such consultations, to be effective, will need to rely on the good offices of TDR practitioners themselves.

⁶⁰ Tribal elder from Tani, Focus Groups Discussion, July 17, 2013.

⁶¹ Tribal Elder from Tanai, Focus Groups Discussion, July 17, 2013

Finally, there remains the possibility that land survey and titling, unless undertaken with great care, might very well only fuel more animosity and complicate existing disputes, whether the community is tolerant of government presence or not. An elder from Khost centre underlined that government surveying, if perceived as a means to bring customary communal lands under state control, would “increase conflicts and benefit insurgents. And it will pave the road for armed groups’ propaganda.”⁶² (TLO, 2014, p. 48-49)

Comments:

The USIP cautions against optimistic expectations about community acceptance and support for Arazi offered land survey and registration, unless the legal framework for legally recognizing private ownership claims is substantially modified. Specifically, existing law seems to preclude Arazi’s role as simply recording what the community concludes about private ownership, since that recording of a Shura/Jirga case and decision would not be a full Tasfeya.

The MEC recommends the creation of an independent land registration institution⁶³, with a legal mandate to record documents about land rights which meet minimal drafting requirements. This concept of administrative land registration would put the burden on any potential “grantee” (buyer in a sale transaction) of confirming that the “grantor” (seller in a sale transaction) as having the rights to transfer the property. A combination of legal changes to allow a greater weight to documented decisions of community Shuras/Jirgas about validating rights to land with easier access to Court deed archives could guard against illegal usurpations or other forms of fraud becoming legal. There would be a need for developing capacities for examination of a “chain of title” by competent, accessible and trustworthy people.

Or, at some appropriate time title insurance might be offered to cover any losses incurred from mistakenly approving an invalid chain of title.

If illegal land usurpation by local commanders or other powerful individuals is the problem being addressed by present legal provisions making it difficult for people to establish private ownership, some form of documentation of “illegitimate” title may be conceived to get by these difficult cases.

Converting Arazi’s land survey and registration responsibilities into administrative actions only to record community decisions, and not requiring Tasfeya or some other quasi-judicial review of the ownership claims involved, can facilitate the recording of community decisions. But the role remains to be defined of Judges and their preparation of title deeds which result in socially valued documentation of property ownership. Will Judges accept community declarations of legitimate

⁶² Tribal Elder, Focus Group Discussion, July 15, 2013.

⁶³ “MOJ should give strong consideration to removing administrative functions related to land transfers and registration from the purview of courts and provide corresponding authority to ARAZI – or another suitable organization – to allow the Courts to focus on adjudication”, MEC, 2014, p. 47.

private ownership, even if recorded in Arazi? Will Judges also accept community based Arazi surveying and registration?

Chapter 6: Conclusions from the Afghan Land Administration Projects, 2003-14

The evolution of Afghanistan echoes the evolution of how its people relate to each other concerning the use and enjoyment of its land. Since the Bonn agreements in December 2001 a series of land administration projects have been launched, most since 2003 to assist Afghanistan in the administration of land resources as part of the effort to re-establish permanent governmental institutions.

The capacity of Afghanistan institutions to carry out land administration functions has been challenged by decades of conflict. Nonetheless, the energies, creativity and customs of Afghans have kept some aspects of land administration functioning in the thousands of rural communities and urban neighborhoods. Building on this local resilience, many of the land administration projects undertaken since 2004 have a “community” focus, for helping to rebuild the country’s land administration institutions from the grassroots up.

The study is an assessment of land administration projects which have had practical components --what worked, and what did not work so well in energizing community based land administration and re-connecting government with civil society for the security and prosperity of the Afghan people.

The four land administration themes and the pilot projects which have been implemented since 2003 are:

- 5) Rehabilitation of property documents in Provincial Court archives, and their digitization;
 - LTERA (Land Titling and Economic Restructuring in Afghanistan) 2004-2009, supported by USAID
 - LARA (Land Reform in Afghanistan), 2009-2014, supported by USAID
 - ALCO (Afghan Land Consulting Organization), supported by Harakat, 2009-2010
 - Harakat, Afghanistan Investment Climate Facility Organization, 2013
 - 6) Upgrading of tenure and infrastructure in informal settlements
 - UB-HABITAT Informal Settlement Upgrading, 2003-2014
 - LTERA, 2004-2009
 - LARA, 2009-2014
 - Cooperation for the Reconstruction of Afghanistan (CRA), Small Upgrading Project, 2013-2014
 - 7) Community based pasture land administration
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- Rural Land Administration Project (RLAP), 2006-2007
- Sustainable Agricultural Livelihoods in Eastern Hazarajat (SALEH) 2005-2008

8) Resolution of land related conflicts

- Norwegian Refugee Council “Land and Property: Challenges for Returnees and IDPs in Afghanistan” 2009.
 - ,
- Land Conflict Project, AREU, 2006-2009
- The University of California-Davis PEACE Project in cooperation with the Sayardee Development Organization, final phase on pasture land dispute resolution involving herder and village leaders and the Independent Directorate of Kuchi Affairs, supported by USAID, 2006-2012
- The USIP/Arazi sponsored pilot 2013-2015 to help strengthen Arazi’s capacities to resolve and to help avoid conflicts over land.

The following are some of the main challenges facing the four aspects of land administration dealt with in the pilot projects

5. Land Registration

LTERA, LARA and Harakat projects have physically rehabilitated 34 provincial makhzans (archives of court documents, including over one million definitive title deeds for immovable properties. These projects have also helped digitize over 500,000 definitive title deeds archived in 22 provincial makhzans

Challenges:

- Verify the status of the physical upgrading in 34 provincial makhzans;
- Verify the usability and actual use of the digital deed data bases in each Province;
- Assess the capacities of the Provincial Makhzans and Primary Court Judges to use the LARA provided software;
- Use the digitized deeds data base to identify potentially fraudulent transactions in the past and protect against the incorporation of new but fraudulent title deeds in the court archives;
- Introduce Cadastral Territorial Units (tax areas) into maps of rural and urban land areas and into the use of courts and other land administration entities;
- Regularize the preparation, archiving and querying of customary deeds, perhaps through Arazi;
- Actually implement changes in Judicial procedures for accepting a wider range of evidence attesting to de facto and customary property rights for the issuance of Definitive Deeds.
- Re-define in strong policy, law and procedures for recording with Arazi the community legitimizations of private, community, state and even tribal rights and obligations involving land (See Chapter 5 for constraints on this role for Arazi).

6. Upgrading of Urban Informal Settlements

Returning refugees and heightened rural-urban migration have overwhelmed established urban development planning and development institutions. Families need shelter, so thousands have built homes mostly in peri-urban areas collectively representing billions of dollars of private investment without official approval or water, waste disposal, power, transportation, education, health or security infrastructure.

Challenges:

- e) Municipalities need policies and institutional capacities for deciding which informal settlements should be upgraded and incorporated into the municipal development plans.
- f) Upgrading of infrastructure and upgrading of rights of families to their homes requires resources, often substantial resources. The UN-Habitat community based upgrading model has proved useful in several contexts, but lack of resources remain a serious constraint. How can communities control both upgrading processes and contribute resources? Where will supplementary resources come from and how will such resources be managed?
- g) Does The CRA small project approach offer useful ideas for stimulating community self help in future informal settlement upgrading and for formalization of tenure efforts even in rural areas?
- h) Can the procedures for mapping and identifying legitimate rights to informal settlement housing and businesses feed into Municipal sanitation tax collection, and thereby also inform Arazi and Judicial official documentation of these rights?

7. Community Based Pasture Land Administration/Management

The two pilot projects (SALEH and RLAP) demonstrated the viability of community based pasture land management, including the community documentation of rights to pastures, including nomadic rights, identified on maps and in agreement with neighboring communities.

The extension of these positive pilot experiences to a significant number of pastures under community based management faces a number of questions:

- f) Should the RLAP experiences be considered in the finalization of the draft Rangeland Law? RLAP procedures did not require new legislation, did not propose new organizational structures at the community level (relying on existing CDCs) and considered nomad customary users of pastures to be on an equal standing as community customary users. The lack of a legal framework supporting community based pasture management inhibited governmental official approval of community pasture land agreements.
 - g) Both SALEH and RLAP relied on non-governmental funding for mobilizing communities to engage in new behaviors and relationships for the identification of
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rights and obligations in reference to pastures. Resources, financial and technical, will be needed for the launching of a program to encourage community based pasture management.

- h) A program for community based pasture management would require the close collaboration of pasture land specialists from the MAIL and land administration specialists from Arazi. Specialists from both institutions will need sanctioned procedures and training in these procedures as well as clear responsibilities of each institution for program implementation and for the incorporation of the program in ongoing activities. Who will be in charge?
- i) A CBRM program will be new to communities and nomadic groups, meaning that buy-in and capacity building for both will be needed, which requires resources from program budgets and staff. Government? NGOs?
- j) A CBPM program will require fundamental changes in behaviors and relationships within and between communities, and between communities and the State. Can a program monitoring scheme be devised which captures real and lasting changes in behaviors and relationships rather than just counting outputs in order to facilitate needed changes in program activities?

8. Land Conflicts

Peacebuilding in Afghanistan requires that attention be paid to dealing with land disputes, which are contributors to instability and insecurity constraining the equitable and sustainable development of the country.

Disputes over land often fester and multiply because both the formal State mechanisms and informal community based mechanisms for land conflict resolution and enforcement have suffered from decades of conflict.

Challenges:

- The NRC inspired projects for conflict resolution involve program support for Information and Legal Assistance Centers (ILACs), run by Afghan attorneys and judges with legal education and training, many of whom have served in the government judiciary in the past. These legally experienced people have proved adept at crafting durable agreements resolving land conflicts. Does Afghanistan have the resources and the institutional home for managing these ILACs?
- The ILAC methods for conflict resolution, however, could be built into all development programs involving land. Might the High Council for Land and Water insist on this inclusion of proven methods of conflict resolution in all foreign funded projects and in all governmental development programs involving land?
- The PEACE project focused on Kuchi-community conflicts over land, with particular success claimed for the training and launching of Peace Ambassadors to fashion agreements among the parties in conflict. This effort was supported by the President, but resources came from USAID. A program which builds the capacities of the Independent Directorate for Kuchis with the encouragement of local dialogues among

Kuchi and community leaders would need resources and an institutional home, perhaps the President?

- The USIP project with Arazi for the registration of resolved land conflicts underscored need for legal mandate for Arazi to undertake this function.
- As for the role of Arazi in precluding land conflicts through the formalization of customary tenures, without legal changes, the threats to communities of state confiscation of untitled land would make Arazi-Shura (traditional dispute resolution community councils) collaborations for the recording of customary rights highly problematic.

There are some common issues which emerged in most of the pilots:

- The ways that people relate to the land and to each other are more often governed by custom than by governmental policies and laws. The pilots attempt to bridge the gap between community customs and state formalities by recognizing the resilience of customary institutions. At the same time, links between the State and communities are necessary for the future stability and prosperity of the Afghan people.
 - Bringing change to governmental institutions and the legal framework pertaining to land is a slow process, complicated by the inertia of carrying out past mandates with priorities other than dealing with land issues;
 - The pilot projects introduced interesting and useful ideas and procedures, but were almost uniformly unsuccessful in getting governmental buy-in, at least in the short term. Part of the reason for this failure has been the lack of governmental commitment to resolving land administration and management issues as a precondition to the positive evolution of the country;
 - The mostly foreign funded projects have not been oriented, coordinated or monitored, neither by government nor by civil society. This inattention has precluded governmental and civil society from learning from pilot experiences, and in particular has not produced the needed changes in governmental policies, laws, procedures and institutional structure.
 - The complicated nature of land administration projects has led their designers and funders to retreat from insisting that the projects define changes in behaviors and relationships which form the core of the national development process. Instead, project monitoring focuses solely on verifying quantitative outputs. Government and donors who agree on the need for the development of Afghanistan require more effective monitoring methods to capture constraints in time to change project procedures to better contribute to the development of the country.
 - Two institutional decisions are of fundamental importance for future land administration projects: 1) how to define the roles of the Judiciary and Arazi in the documentation of rights to land—formal or customary—as to the rights of individuals, communities (and tribes) and state; and 2) how to protect against land grabbing and still enable the formalization of customary rights for those with legitimate customary rights.
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