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Community-State Administration of Private Property Records in Rural Afghanistan

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Community-State Administration of Private Property Records in Rural Afghanistan

1. Introduction

1.1 Re-Building of the Afghan State

Many observers have concluded that Afghanistan is a “failed state”², which Rothberg defines as a state consumed by internal violence and which cease “delivering positive political goods to their inhabitants...their governments lose credibility, and the continuing nature of the particular nation-state itself becomes questionable and illegitimate in the hearts and minds of its citizens”³. Certainly Afghanistan demonstrates many of these features.

When dealing with state-failure, state-building would seem to be the proper strategy for Afghanistan.

The state-building approach assumes the necessity of centralized or statist solutions to provide public goods in failed states. One of the key assumptions in the state-building literature is that state governance institutions must be created from “whole cloth missing state capabilities and institutions”⁴. The state building approach focuses on creating institutions and building capabilities which are absent in the failed state, beginning at the national level with national elections, national Constitution formulation, putting in place national government policies for the encouragement of a capitalist economy and multi-party political system for the country as a whole.

The state-failure and state-building perspective in Afghanistan assumes that the country has few if any effective political institutions at the national, regional, and community levels of the society.

This state-failure view of Afghanistan misses some important strengths of the country⁵. In Afghanistan, as in many weak states, allocation of political and economic resources takes place in the absence of an effective centralized system of government⁶. In the absence of a strong central government, decision-making and political and economic governance do take place, they just may take place without consent of the central government. Economic and political activity

² Donini, Antonio, Norah Niland, Karin Wermester, and Sippi, 2004, Nation-Building Unraveled?: Aid, Peace and Justice in Afghanistan, Kumarian Press, Inc.

³ Rothberg, Robert I., 2004, The Failure and Collapse of Nation-States: Breakdown, Prevention, and Repair, Princeton, NJ: Princeton University Press.

⁴ Fukuyama, Francis, 2004, State-Building: Governance and World Order in the 21st Century, Cornell University Press.

⁵ Jennifer Brick, 2008, develops this point in “The Political Foundations of State-Building and Limited Government in Afghanistan”, paper presented to the 66th Midwest Political Science Association Annual Meeting in Chicago, IL - April 3-6, 2008.

⁶Bardhan, Pranab K., 2005, Scarcity, Conflicts, and Cooperation: Essays in the Political, MIT Press.

does not simply grind to a halt because the government cannot or does not provide adequate underpinning of the law. Groups and individuals⁷ have much to gain by providing alternative institutions of governance, particularly at the community level.

The definition of the concept “community” is complicated in the Afghan context. Various terms regarding the loci of rural community life exist in Afghanistan, such as *qarya* (often translated as “village”), *qishlāq* (usually meaning “settlement”) and *manteqa* (meaning something like “area”)⁸.

A key figure in community governance in Afghanistan is the malik, known in some regions of the country as arbab, qaryadar, nomayenda, kalantar or khan. These people are community-based leaders, who are arguably the most important members of the Afghan national political system, although they do not hold formal political office⁹. In Afghanistan a typical village leader is a “self-made man who achieve[s] their position through personality, not age or genealogical position...they create unity out of difference, or restore a previous unity...they are patrons, acting on behalf of trusting clients, but use their own initiative in action, risking their followers’ disapproval; they speak to government as representatives rather than delegates”. The term malik or khan or arbab does not refer to a local State employed official; it is a descriptive title for those who achieve positions of influence in tribal or local governance institutions and politics¹⁰.

A complement to the roles of the local maliks are the *qarya* or *qishlaq* “shuras” (local councils) which convene from time to time in local communities and at times in regional gatherings. These shuras traditionally are composed of family or clan elders, and typically meet to resolve conflicts of one sort or another¹¹.

Local institutions—maliks and shuras-- in Afghanistan have periodically organized to express opposition to a centralizing state¹². In 1991 Saikal and Maley argued that “given the difficulty of building a strong central state capable of restraining the impulses of powerful social groups, a ‘consociational’ system has the best prospect of providing a degree of order and stability in the long-run”¹³. Shahrani argues that Afghan communities are so resilient and so coordinated against central government transgressions that the result is a weak centralized government. Given this

⁷ Dixit, Avinash K., 2004, *Lawlessness and Economics: Alternative Modes of Governance*, Princeton University Press.

⁸ See Katja Mielke and Conrad Schetter, 2007, “Where Is the Village? Local Perceptions and Development Approaches in Kunduz Province”, *ASIEN* 104 (July 2007), pp. 71-87; Jennifer Brick (2007), “Rural Local Institutions in Afghanistan: The Case of Community Governance”, unpublished manuscript; Nigel J. R. Allan, “Defining Place and People in Afghanistan”, *Post-Soviet Geography and Economics*, 2001, 42, No. 8, pp. 545-560.

⁹ Nojumi, Neamatollah, 2002, *The Rise of the Taliban in Afghanistan: Mass Mobilization, Civil War, and*, Macmillan, p. 5)

¹⁰ Hager, Rob, 1983, “State, Tribe and Empire in Afghan Inter-Polity Relations”, New York: St. Martin’s Press, p. 94.

¹¹ Also known as “jirgas” in Pashtun areas, these institutions have played important roles in resolving community, regional or national conflicts or in establishing agreements about general policies. See Ali Wardak (2003) “*Jirgas: A Traditional Mechanism of Conflict Resolution in Afghanistan*”, <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN017434.pdf>

¹² See Brick, 2008, *op. cit.* for a summary of the history of these contradictions.

¹³ Saikal, Amin and William Maley, 1991, *Regime Change in Afghanistan: Foreign Intervention and the Politics of Legitimacy*. Bathurst, N.S.W.: Crawford House Press. p. 6.

condition, the only way to build a strong Afghanistan would be through the recognition of community strengths by the central State government. Future governments should build upon communities as the basic unit of government, rather than an afterthought of central-state based public administration:

“[Afghanistan] must choose to build...[the] national state on the proven strengths of ...‘civil society’, the powerful self-governing community structures that have reemerged as part of the ...most recent struggles against Communist...A national government must be committed to...guaranteeing the constitutional rights of community self-governance at the local, district, provincial, and regional levels throughout the country -that is, allowing local communities to run their own local civil, judicial, security and educational administrations by themselves...in other words for the people’s rights both to elect representatives for legislation...Creating a national administrative structure to ensure a uniform implementation of new constitutional laws by local self-governing authorities throughout the country....central government.”¹⁴

1.2 Administration of Rural Property Records

This search for a new ‘consociational’ system linking State and local communities occurs in various sectors. In this paper we describe an attempt at defining this new way of linking community to the state which emerged in reference to the administration of property records for rural lands. The Rural Land Administration Project (RLAP) which was carried out in 2006-2007 posited that a community administration of property records supported by State institutions is a strategy appropriate to present Afghan conditions which also can contribute to long term rebuilding of State-community relations. By “community administration” the RLAP team means the actual administration by local people of property records, and not a District office of a central land registry receiving petitions for land information or for recording transactions, nor a District Office sending a team once in a while to communities to gather evidence of transactions.

The immediate hypothesis is that people will feel more secure in their documentation of their rights to land when they “own” their land records, that is, when they produce and control access to these records. When this security exists, people invest in the maintenance and usefulness of land records. As Liz Alden Wily states:

“only when land administration and management is fully devolved to the community level... is there likely to be significant success in bringing the majority of land interests under useful and lasting record-centered management...”¹⁵

Wily describes this approach as the “*empowerment of people at the local level to manage their land relations themselves*”¹⁶.

¹⁴Shahrani, M. Nazif. 1998. “The Future of the State and the Structure of Community Governance in Afghanistan.” In Fundamentalism Reborn?: Afghanistan and the Taliban, 212-242, New York: NYU Press. , pp. 240-41

¹⁵ Alden Wily, Liz (2003). “Governance and Land Relations: A Review of Decentralisation of Land Administration and Management in Africa”, International Institute for Environment and Development, London, abstract page.

¹⁶ Ibid, p. 35.

However, this initial focus on community definition of rights and on community administration of the records which document these rights in the Afghan context does not mean that formal law and the capacities of district and provincial state land agencies can or should be ignored. The “community consultation” focus must include the views of all community segments about who holds legitimate rights to land and simultaneously strengthen linkages with the formal law and State institutions of land administration to solidify security of tenure for the longer term.

2. Rural Land in Afghanistan¹⁷

Afghanistan has a total land mass of 64.9 million hectares, of which 7.8 million hectares are classified for agricultural use. A total of 3.3 million hectares of the agricultural land are potentially irrigated. Approximately one half of the usable agriculture land is under cultivation.

The agricultural sector continues to be a primary source of the nation’s GNP. This sector continues to provide the largest number of jobs and is essential to the economic development of the country. Its growth will be an important factor in the reduction of absolute and relative poverty (Master Plan 2005).

Accurate land use statistics for Afghanistan are difficult to come by. A 1993 land cover analysis shown in Table 1 below, indicates that in that year approximately 12% of the total land area of the country was available for cultivated agriculture, although this estimate is certainly not accurate for the present agricultural land area being used now, after two decades of conflict and ten years of drought.

¹⁷ This section is drawn from J. David Stanfield, “A Study of the General Directorate of Land Management and Amlak of the Ministry of Agriculture, Irrigation and Livestock”, Project Report No. 4, Capacity Building for Land Policy and Administration Reform Project, ADB / DFID, TA 4483-AFG, August, 2007

Table 1 - Land Cover Categories and Areas (1993)

Land Cover	Area		%
	Hectares (000)	Jeribs ¹⁸ (000)	
Agricultural Land – irrigated	3,302.00	16,510	5.1
Agricultural Land - rain-fed	4,517.70	22,590	7
Total Agriculture Land	7,819.70	39,100	12
<i>Urban</i>	29.5	148	0
<i>Forests and woodland</i>	1,700.00	8,500	2.6
<i>Rangeland</i>	29,176.70	145,884	44.9
<i>Barren land</i>	24,067.00	120,335	37.1
<i>Marsh land</i>	417.6	2,088	0.6
<i>Water bodies</i>	248.2	1,241	0.4
<i>Snow covered areas</i>	1,463.10	7,316	2.3
Total Non-Agriculture Land	57,102.10	285,510	88
Total Area	64,922	324,610	100

Sources: FAO, 1999, *Provincial Land Cover Atlas of the Islamic State of Afghanistan*, FAO Project AFG 90/002 and Liz Alden Wily (2003) *Land Rights in Crises*, AREU, Kabul

3. A Short History¹⁹ of Rural Land Administration

In Afghanistan the institutional recording of the rights to real property has been severely damaged by the 25 years of turmoil and institutional instability. There is a serious disconnect between communities and the State, in particular concerning the administration of property rights. Less than 10% of rural properties and fewer than 30% of urban properties are covered by legal deeds which are legally recorded in the Provincial Court Archives.

This section briefly describes the institutional instability of land administration during the past 40 years, although the court based system for preparing and archiving legally recognized deeds to land has operated throughout this period. In rural villages most people carry out transactions involving rights to privately owned agricultural land through customary deeds (locally prepared agreements) or through verbal agreements.

Rural land administration and management have been part of the Afghan government's activities since the formation of the State. This chapter provides a brief overview of how these functions

¹⁸ 1 hectare = 5 jeribs

¹⁹ This history is based on interviews with specialists and on the following publications: i) Public Administration Service (1972) "Final Report on the Land Inventory Project of Afghanistan. Chicago. USA; ii) Liz Wily (2003) *Land Rights in Crises*, AREU. Kabul; iii) Connor Foley (2005), *A Guide to Property Law in Afghanistan*. UNHCR, NRC, Pakistan; and "A Brief History of the Amlak" (2005) by Abdul Hai Nasser, head of Land Clarification Department of the Amlak.

have evolved within the Amlak, how the Amlak was created, and how its mission has changed over the years.

From the founding of the modern Afghan State, the governments of Afghanistan have recorded information about the ownership of land for the purpose of collecting tax, tithing and other obligations, which were the main components of the State revenues in the early decades of the State. Also, the registration of transactions for purchase, sale, mortgage, patrimony, endowment, and lease of land and the involvement of the state in the use of publicly owned lands were common in the previous eras as well, which reflects the presence of an administration dealing with land affairs, in the framework of the governments of those times²⁰.

Some hundred years ago, there existed an office attached to the Prime Ministry, called *Daftayre Amlak*, which was solely devoted to keeping records of government's arable land and the processes of their use and transactions²¹.

Recent decades have seen important changes and instability in the administration of rural lands, yet also a certain resilience in maintaining certain procedures:

1339-1341 [1960-62]

During the Monarchy of 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; 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 who were assigned with preparing the sketches for land surface measurement for the calculation and collection of property taxes.

In these same years, 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 parcels²².

1342-1344 [1963-65]

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 1344 (1965). That law also established the structure and mandate of the Cadastral Survey Directorate in the

²⁰ From "A Brief History Of the Amlak (Property) and Land Management Affairs Deputy Ministry in the Ministry of Agriculture, Livestock and Foodstuffs", prepared by Abdul Hai Nasser, Head of Land Clarification, Amlak, 15/08/1384 (2005)

²¹ Personal communication from Eng. Nemaytullah Safi, March, 2007.

²² See below for a discussion of the Cadastral Survey.

Ministry of Finance, as part of its *Amlak* Department, which absorbed the Directorate of Land Surveying.

In 1343 and 1344 [1964, 1965], The *Amlak* Department of the Ministry of Finance became a relatively independent administration as an independent entity in the budget. It was named “The Administrative Unit for *Amlak* [property] and Residence” and operated under the supervision of [and reporting to] the Minister of Finance. However, the supervision of that unit was transferred to the Ministry of Interior and vice versa several times .i.e. the unit would be supervised by the Ministry of Finance for some periods of time, while it reported to the Ministry of Interior at other times. This instability continued until 1349 [1970] when the administrative organs comprising the unit were divided into two parts: The *Amlak* department, which reported to the Ministry of Finance, and the Residence and Relocated Persons Department that reported to the Ministry of Interior.

In 1342 [1963] the Ministry of Finance and USAID agreed on a program to improve the registration of rights to immovable property (primarily agricultural land) in Afghanistan through the newly created Land Inventory Program and Cadastral Survey Organization (USAID/Cadastral Survey). The program provided the funds and technical assistance to create a Cadastre infrastructure and defined in law a new process for registering rights to land²³. The proposed new parcel based land registration system described in a new law, was a proposal to make the registration of rights an administrative process, and not one of the duties of the Primary Court Judges who had been preparing deeds, archiving them and verifying ownership in cases of sales since the late 1200s [early 1900s].

1345-1353 [1966-74]

From 1343 to 1350 [1964 to 1971] the Cadastral Survey School prepared 645 recent graduates who provided the technical manpower to implement the field surveying until 1357 [1978]²⁴, and who have continued to maintain the cadastral records until today.

But this effort was part of the new land registration system that has never been completely installed. The Courts have continued their function of preparing deeds of transactions, separate from the *Amlak*/Cadaster. Actually a hybrid system emerged, where the *Amlak* offices have archived the original ownership books (initially from the cadastral surveys, and later from a new survey of agricultural landownership done in 1355-56 [1976/77]). They also maintain what is called the “Basic Book”. The original book, with the information about rural land ownership from the 1350s [mid-1970s], is not modified, while in the Basic Book would be noted rural property transactions. And the registration in this book was only done when the deals were finished, that is, when the court issued the new deed. In field trips during 2006, this system was found to be functioning relatively well in some district offices of *Amlak*, such as in the Bagrami District of Kabul, and in the Ghazni Provincial Office. But in Provincial offices visited the officers mostly said that they needed to be updated. In summary, the system that is functioning

²³ For more details on the origins of this cadastral survey, see M.Y. Safar and Dr. J. David Stanfield, *Cadastral Survey in Afghanistan*, prepared for the Capacity Building for Land Policy and Administration Reform Project, ADB / DFID, TA 4483-AFG

²⁴ Public Administration Service (1972:6)

today is one where the seller, after beginning the process of sale at a Primary Court, has to go to the *Amlak* to certify his/her ownership of the property to be sold. It is remarkable that the system is so resilient that it is still functioning relatively well in some places although less well in others. This resilience is, however, a faint reflection of the robust *Amlak* of the years prior to 1358 [1979].

The organizational structure of the *Amlak* continued until 1349 [1970] when the administrative organs comprising the unit were divided into two parts: The *Amlak* department, which reported to the Ministry of Finance, and the Residence and Relocated Persons Department that reported to the Ministry of Interior. It was in that same period that the Cadastral Survey Department was transferred to Afghan Geodetic and Cartographic Head Office (AGCHO) under the office of the Prime Minister. As a result of this re-structuring of the Cadastral Survey, cadastre maps are no longer directly accessible to *Amlak* officials.

1354-56 [1975-77]

In the era of President Da'ud's government, the *Amlak* Department of the Ministry of Finance further developed, beginning in 1354 [1975] in preparation for the implementation of the new laws for land reform and progressive tax, and was renamed as "The Administration for Land Reforms", which operated within the Ministry of Finance, but had an organizational structure equivalent to that of a Ministry. One of the new organization's objectives was to implement the new Land Registration system, which was to be created through a systematic cadastral survey and adjudication of title. Another function was to improve the agricultural land tax system and a third was to develop resettlements programs²⁵.

To implement the plans for progressive land taxation and for an ambitious land reform program, extensive information about the holding of agricultural land was required as was a more developed administrative structure. Staff from other agencies, such as the administrative agencies related to agriculture and cadastre began to be absorbed into the newly renamed *Amlak*, the Administration for Land Reform, to facilitate better implementation of both initiatives, but especially for the land reform program.

Accurate and complete information about agricultural land also became of high priority. Progressive taxation required information about the amount of land owned and its productive class. For the pending land reform program, the *Amlak* was to determine a threshold for the amount of land a family may own, and would then expropriate any lands exceeding the threshold against payment of money [to the owner]. Determining how much land a family actually owned was done through a massive effort at getting people to declare to the *Amlak* how much land they owned. Approximately 800,000 land owner declaration forms were prepared in a relatively short amount of time. Cadastral Survey data was not necessarily used in this effort. The lands acquired above the allowed threshold were to be distributed to landless farmers, who were to pay the price of the land determined to compensate the prior owners.

1357-1370 [1978-91]

²⁵ In northern regions the government was engaged in a program of Pashtunisation which expropriated land from non-Pashtuns that exceeded the statutory amount which was then given to Pashtun settlers.

Following the death of Da'ud in early 1357 (1978) and the establishment of the "Second Republic", the Land Reform Administration was transferred to the Ministry of Agriculture whose name was changed to the Ministry of Agriculture and Land Reform²⁶. The confiscations of land were expected to increase dramatically, an effort which became actively opposed by many sectors of Afghanistan.

At that time, the Administration for Land Reform was promoted to being an agency headed by a Deputy Minister to head the again renamed "*Amlak* and Organization of Land Affairs", which was under the direct supervision of the Ministry of Agriculture.

This was a peak period for *Amlak* with thousands of employees and 360 vehicles. Provincial and district offices were established to carry out the land reform program. *Amlak*'s survey data provided the basis for tax collection and the redistribution of land of confiscated from large landowners. It is estimated that 238,895 families were settled on 3,696,896 jeribs of land confiscated from previous owners without compensation under the land reform program. Teams of *Amlak*, court and cadastre officials reportedly worked efficiently issuing non-transferable certificates of ownership²⁷. With that new mandate, the Provincial offices of *Amlak* retained significant political power at the local level.

The land reform program is often cited as one of the primary reasons for the increasing dislike of the government at the time. *Amlak* officials and new landowners were murdered reputedly at the hands of landowners whose land had been confiscated. After the invasion of the Soviet Army in 1979, the *Amlak* began to lose its political power, although its structure and personnel stayed mostly unchanged until 1991.

1370-1384 [1991-2005]

Each subsequent governmental regime from Najibullah to the Taliban called for the return of land expropriated during the communist period to the previous owners. After 1991, *Amlak* lost some of its power, money, staff, and investments. The employees who remained continued to maintain the private ownership records and the management of some leases of government land, as well as assisted with conflict resolution at the direction of the President.

The position of Deputy Minister heading the *Amlak* lasted until 1385 (2006), when the *Amlak* was converted into a General Directorate of the Ministry of Agriculture with the head of the *Amlak* being designated as General Director, with the same rank as other General Directorates in the Ministry of Agriculture, Irrigation and Livestock.

²⁶ The main slogan of the Communist Regime at the time was: "every family should have a roof and a piece of land" and the AMLAK was responsible for the second part.

²⁷ In some regions some beneficiaries of the Land Reform who obtained certificates of allotment transferred them to heirs and others were able to conduct such transactions at the courts, by-passing the restrictions on engaging in transactions with land reform land. In 1988 a new Cadastral Survey Law was approved, but not implemented.

4. Rural Land Statistics

Today, the *Amlak*'s information archive concerning private land ownership, although incomplete and out-of-date, comprises the most recent inventory of rural land ownership claims with some updating of ownership information when transactions are done formally. This archive is used to resolve disputes involving State land and to confirm the ownership claims of people who want to sell rural land, prior to the preparation and recording of a transfer deed at the Primary Court. The inventory of self declared owners also provides the Ministry of Finance with information for assessing land taxes.

The *Amlak* has during many years been the main information source for Judges to verify the ownership of agricultural land whose owners wish to sell or otherwise transfer to another person, through reference to the *Amlak* ledgers of land owners in villages created from the declarations of 1354-6 (1975-6). The data from the Cadastral Survey are not normally referenced in this transaction process, although that data are used to investigate ownership and boundaries in cases of conflicts over those aspects of land relations. The very ambitious cadastral survey effort now housed in AGCHO represents another source of rural land information, and was carried out mostly in 1964-78, but with some additional surveying done after 1978. The Cadastral Survey has been able to survey, as shown in Table 2, about 1/3 of the agriculture land (12.9 million jeribs of land and 1.3 million plots of private and public land), and a significant amount of pasture land. The total effort included the identification and mapping of approximately 1,333,700 parcels with 548,800 owners organized into 5,500 tax units (composed of one or more villages) with parcel boundaries drawn on 30,000 map sheets. Annex 4 provides a description of the land surveyed during 1964-1978 on a province by province basis.

Table 2 – Total Land Area and Area Surveyed

ITEM	Surveyed Area		Total Area	
	Jeribs (000)	Hectares (000)	Hectares (000)	Surveyed area as % of Total
Private Agricultural Land	10,432	2,086	6,058	34.4%
<i>Irrigated land</i>	<i>6,840</i>	<i>1,368</i>	<i>2,892</i>	<i>47.3</i>
<i>Rain-fed land</i>	<i>3,592</i>	<i>718</i>	<i>3,166</i>	<i>22.7</i>
Government Agricultural Land	2,503	501	1,762	28.4
<i>Irrigated land</i>	<i>968</i>	<i>194</i>	<i>410</i>	<i>47.3</i>
<i>Rain-fed land</i>	<i>1,535</i>	<i>307</i>	<i>1,352</i>	<i>22.7</i>
Total Agricultural Land	12,935	2,587	7,820	33.1
<i>Irrigated</i>		<i>1562</i>	<i>3,302*²⁸</i>	<i>47.3</i>
<i>Rain-fed</i>		<i>1025</i>	<i>4,518*</i>	<i>22.7</i>
Total Non-Agricultural Land	13,041	2,609	57,102	4.6
<i>Barren / desert</i>	<i>4,718</i>	<i>944</i>	<i>24,067</i>	<i>3.9</i>
<i>Range land</i>	<i>8,323</i>	<i>1,665</i>	<i>29,177</i>	<i>5.7</i>
<i>Forests and woodlands</i>			<i>1,700</i>	<i>0</i>
<i>Other (urban, marsh, water, snow covered)</i>			<i>2,158</i>	<i>0</i>
Total Land	25,976	5,196	64,922	8

(Source: AGCHO²⁹, FAO Web Site, Wiley (2003))

We arrived at the highlighted estimates in three stages: 1) we took the estimates in Wiley (2003) of the total irrigated and rain-fed land areas, and the estimates from AGCHO about the total surveyed irrigated and rain-fed land to arrive at the percentages of total irrigated and rain-fed land which has been surveyed; 2) in order to arrive at the estimates of irrigated agricultural land, private and state, we applied the estimate of 47.3% of total surveyed land to be irrigated to the estimates of irrigated land having been surveyed under both private and state ownership; 3) to estimate the amount rain-fed land, we applied the 22.7% estimate of total surveyed rain-fed land to derive estimates of that type of land in private and state ownership.

5. Rural Land Tenure Insecurity

²⁸ *These figures are from Wiley, 2003, Appendix C. The irrigated total also includes orchards, vineyards and garden areas. Note: The italicized figures in the table are extrapolated.

²⁹ AGCHO information from 2002 was provided to Bastiaan Reydon who presented his tabulation in "Assessment of the Department of Land Administration and Land Affairs Management". LTERA Project Report, Kabul, June 30, 2006

The problem of land tenure insecurity³⁰ in both urban and rural areas in Afghanistan manifests itself in a variety of forms, deriving in some cases from destruction of documents proving rights to real property, and in other cases having its origins in the extra-legal actions of land acquisition in a context of a weak State, such as transactions carried out without following the legal requirements as well as land grabbing, acquisition of immovable property from land grabbers through informal market transactions, and improper State allocation of land. Although having different origins, the general situation of land tenure insecurity tends to undermine efficient and equitable use of land for social and productive purposes.

The State's institutions which were created prior to the latest conflict period for the protection of rights to land were centered on the Judiciary, in that primary court judges have traditionally had the responsibility of preparing and archiving legal deeds.

Other institutions must certify as to the identity of the owners of transacted properties—the *Amlak* for rural properties and Municipalities for urban ones--and the payment of different transfer fees, but Judges or their Clerks actually write the deeds. Copies of all deeds are kept in the Provincial Court Archives³¹. As for many governmental institutions, however, the judiciary and other agencies which administer property ownership information are weak, beginning with extreme disorder in the archiving of property documents (see Figure 1).

Figure 1: Property Documents in a Court Archive



³⁰Land tenure security is defined as landholders' confidence that neither the State nor other people will interfere with the landholder's possession or use of the land for an extended period of time. (See John Bruce (1998), "Review of Tenure Terminology", Land Tenure Center, University of Wisconsin). Tenure insecurity can be defined as the extent to which holders of land lack such confidence. We discuss below some conditions for reducing the perceptions of insecurity.

³¹ See David Stanfield, Jonathan Reed and M. Yasin Safar (2005), "Description of Procedures for Producing Legal Deeds to Record Property Transactions in Afghanistan", USAID LTERA Project, Kabul.

Despite efforts to re-organize the key property documents in the archives, the costs of going through the formal requirements of recording transaction documents are high in terms of the time and money required for effecting transactions.

The web of people and agencies centered around the judiciary and involved in the conduct of transactions is complicated and costly to those who want to complete a transaction in a legal way. For these and other reasons estimates are that fewer than 10% of rural properties³² and fewer than 30% of urban properties³³ are actually covered by court prepared deeds. Most people simply do not use the formal institutional structure for preparing and archiving deeds which should document the acquisition of property rights through transactions of various sorts.

Not having a court prepared and archived deed, however, does not mean that people who engage in informal transactions without court prepared deeds are completely without tenure security. People acquire rights to properties through private arrangements among individuals, families and tribes. Some acquisitions involve privately drafted documents called “customary deeds”, which are written transfer agreements witnessed by locally respected people, but kept by the parties to the transaction and not recorded in any government office. Other transactions are carried out through verbal agreements, witnessed and remembered by family members and respected elders.

Transactions in rural areas are not daily occurrences in most villages, since land markets are generally not very active, and those which do occur are usually among family members who respect even verbal agreements, particularly when they refer to inheritances or intra-family or intra-tribal transaction.

The recording of documents defining rights to real properties in public registries becomes important when there may be multiple claimants to the same land and where land markets become more dynamic. Properties without documentation as to the holders of legitimate rights to them in such conditions produce varying degrees of insecurity of tenure. Where tenure insecurity is seriously felt, it not only can discourage property holders from making an economic investment in their properties, but can also deprive the market economy and democratic institutions of their participation and potential contributions to the peaceful development of the country.

Perceptions of insecurity can be positively modified when rights to land are made both “legitimate” and “legally valid”. As Camilla Toulmin has observed:

*Secure rights to land and property depend on a combination of two key elements. The rights being claimed must be seen, first, as legitimate by the local population; and second, they must also be ascribed legality by the state*³⁴.

³² Alec McEwen and Brendan Whitty (2006), “Land Tenure”, AREU, Kabul.

³³ USAID Land Titling and Economic Restructuring in Afghanistan (January, 2006) “Informal Settlements and Land Tenure Issues: Report on Pilot Project Kabul District # 7”, Kabul.

³⁴ Camilla Toulmin, January 2006, “Securing land rights for the poor in Africa —Key to growth, peace and sustainable development”, International Institute for the Environment and Development, paper prepared for the Commission on the Legal Empowerment of the Poor, p. 4.

The customs and local traditions of Afghan communities provide rules which are often more effective in guiding the everyday lives of people than the laws and regulations emanating from the State's institutions. In such conditions rights to land may be viewed as legitimate in terms of being locally recognized, as in the customary deeds which describe transactions in land which are not prepared in accordance with legally defined procedures³⁵. Similarly, government officials may issue apparently valid documents about rights to land, such as an allotment of land to a land developer despite strong local opposition. In such a case, the rights may be legally valid yet not considered socially legitimate, potentially leading to long-running local conflict.

Bringing about the conditions for land rights to be legitimate and legally valid—which is another way of interpreting the all important normalization of community-State relations—is of critical importance for the development of the country.

Delville³⁶ suggests that two questions must be answered to reduce land tenure insecurity:

- What is the nature of the recognized rights to land: is the implicit model one of legally defined private property, or is the model one which starts with locally defined rights and rules?
- Is the system to administer the documentation of these rights capable of ensuring reliable management and be at the service of the general population?

6. Community administration of property records for agricultural land

In many countries the answers to both of Delville's questions have focused on applying formal law to adjudicate claims to land, including privately held agricultural land, through technically trained field teams, in some instances giving a role to community involvement in the adjudication process in the final stages of validating the findings of the field teams³⁷. This approach also tends to focus on equipping and training field adjudication teams, and the developing of cadastral agencies for producing accurate parcel maps and the promotion of specialized governmental land registries for administering the legal documents which define property rights. These institutions of cadastre and registry must be equipped and trained to do their jobs properly, extending their services to the community typically through the use of information and communication technologies.

The RLAP team began very tentatively, with the expectation that at least in some rural Afghan villages, the private holders of agricultural land as well as housing and commercial parcels could be interested in documenting their rights in ways which could be recognized as legally valid by State institutions. Furthermore, we expected that their interest could be substantially increased if

³⁵ See Leon Sheleff (2000), **The Future of Tradition**, London: Frank Cass, for an introduction to the literature on customary law.

³⁶ Philippe Lavigne Delville (2006), "Registering and Administering Customary Land Rights: PFRs in West Africa", World Bank Conference on Land Policies and Legal Empowerment of the Poor, Washington D.C., p. 2

³⁷ For a review of the various approaches to land administration, including property records administration, see Tony Burns, Chris Grant, Kevin Nettle, Anne-Marie Brits and Kate Dalrymple (13 November, 2006), "Land Administration Reform: Indicators of Success, Future Challenges", Land Equity Inc.,

such documentation remains in the village and accessible to the local people, and under their control.

In the Afghan context a “community consultation” approach may be a more feasible way to try to answer both of Delville’s questions about how to establish more secure land rights. As a step toward testing this approach, the Rural Land Administration Project (RLAP) was launched in June, 2006 primarily focusing on community consultations to define legitimate rights to rangeland³⁸.

The RLAP developed procedures for documenting legitimate rights to communal pasture lands in four test sites, but in one test site (Naw Abad, in Kunduz Province), the field team worked with community elders and leaders upon their invitation to reach local consensus about the legitimate holders of private ownership rights to agricultural land.

The village of Naw Abad in Chardara District, Kunduz Province, is a Kuchi³⁹ settlement based on irrigated agriculture and on large tribally managed pastures close to the settlement as well as tribally allocated public pastures in the distant mountains. Village leaders were initially interested in working with the RLAP to document the legitimate rights of use of pasture lands, but then saw the relevance of the methodology used for pastures to the clarification of private rights to agriculture, housing and commercial parcels. This community interest in documenting property interests in agricultural land came in part from the difficulties experienced by some families in the recent past with returning migrants or their children or grandchildren, who claimed land in Naw Abad being used for many years by other people.

Both in situations of communal pastures and privately owned agricultural land, the project aimed to improve customary practices for administering rights to land. In particular the RLAP hypothesized that where a local consensus could be crafted about the rights people have to rangeland and agricultural land, such a local community definition should be the starting point to define rights to all land. This community focus, however, does not mean that the governmental agencies or the legal framework are irrelevant. On the contrary, the re-establishment of positive community-state relations is of critical importance for the stable and resilient administration of property rights. This paper focuses on the community as a locus for rural land administration and management. However, a national program has to strengthen the capacities of communities and state agencies to carry out these functions for the country to achieve a viable and effective governance system.

The community as a locus of governance concerning land ideally should be supported by the State through a clear policy and legal framework. The central government expressions of formal law are lacking concerning the community as the locus of land rights. However, at least a partial policy framework for such an approach is provided by the Multi-Ministerial Land Policy⁴⁰:

³⁸ For a description of the rangeland focused work, see J. David Stanfield, Yasin Safar and Akram Salam, “Community Rangeland Administration: Focus on Afghanistan”, paper prepared for the biennial congress of the International Association for the Study of the Commons (IASC), Cheltenham, U.K. July 14--18, 2008.

³⁹ In this paper the terms “Kuchi” and “nomad” are used as having the same meaning.

⁴⁰ Islamic Republic of Afghanistan, *Draft Land Policy*, January, 2007.

2.2.7 Issue: Proof of Rights to Land: *In most cases, proof of land rights is based upon tax records, Amlak registration, customary deeds, formal deeds and local knowledge. Some formal deeds are suspect or fraudulent; in some areas registered deeds have been destroyed during the years of conflict. Under such a chaotic property rights situation, it is imperative for the government to establish a realistic and effective method of property clarification process. Best practices and the reality in the country inform that community-based property adjudication processes that utilize local knowledge can be effective vehicle to re-identify local ownership.*

2.2.7 Policy

- *It is a national policy that land ownership may be documented through a process of property clarification and certification process conducted at the community level.*
- *It is a national policy that recognition be given to customary documentation and legitimate traditional property rights affirmed by local knowledge, in accordance with a law to be issued to govern the regularization of property rights.*

The private ownership of agricultural land denotes certain rights of the holders, including but not limited to the right to exclusive use of a specific parcel or parcels of land; the right to use and enjoy the fruits of the land; the right to give the land to heirs; the right to sell the land or otherwise transfer ownership to another person. For most agricultural land which is claimed to be privately owned, while legally valid documentation may be absent, there are reportedly few conflicts about ownership or about the boundaries of such land parcels⁴¹. As mentioned above, however, most such properties are not covered by a legally prescribed deed. Should owners want to sell or mortgage such properties, and should the potential buyer or lender want a legal deed, the transaction would not be easy to undertake.

7. The Community in the RLAP

The RLAP defined a community as a settlement with a locally known name and a served by functioning council or *shura*. Traditionally village councils include village elders as representatives of the main families/clans of the village, and meet only when the elders agree that there is a need to meet. While the Constitution calls for the creation of elected village councils, six years after independence there have been no such elections, although the Ministry of Rural Development and Reconstruction has sponsored the organization of councils for the administration of funds to install needed infrastructure through the National Solidarity Program. The RLAP selected villages for the development and testing of community based land administration which had experience with an NSP *shura* for at least two years.

Typically each of the selected communities also had the services of an *Arbab* (since the test sites were in the North), although the function of linking the community with outside agencies also is frequently done by an influential *mullah*,⁴² or head of a local cooperative.

⁴¹ See Alec McEwen and Brendan Whitty (2006), "Land Tenure", Case Study Series, Afghanistan Research and Evaluation Unit, Kabul.

⁴² See Mirwais Wardak, Idrees Zaman and Kanishka Nawabi, July, 2007, "The Role and Functions of Religious Civil Society in Afghanistan", Cooperation for Peace and Unity, Kabul, for a useful discussion of the importance of local and regional religious leaders.

The focus on “community consultation” for defining legitimate rights to land and for administering the documentation of these rights is not an idea invented by the RLAP. The Ministry of Urban Development and the Municipality of Kabul have developed a similar approach for regularizing the tenure of some informal settlements in Kabul⁴³. The draft Land Policy in reference to land tenure in informal settlements, states in Section 2.2.4: “The government shall promote land tenure regularization in these areas in collaboration with relevant communities based on standards to be established by law”. In a review of land registration options for Afghanistan, McEwen and Sharna⁴⁴ make the following recommendation:

Any future system for land registration should be rooted at the community level. The system will be able to draw upon community knowledge, practical understanding of local issues, and tried and tested (if sometimes imperfect) systems to resolve disputes. By directly engaging the community, the system will be viewed as transparent, equitable and legitimate. Also, implementation costs can be kept to a minimum and public access to records will be improved

In other countries, similar ideas are being tested. For example, in Benin, Village Land Tenure Management Committees have been adjudicating title and are administering the resulting property records⁴⁵. In Tanzania, Village Land Committees validate claims to land, and Village Land Registries administer the land records, in coordination with District Land Registries⁴⁶.

8. Legitimizing rights to agricultural, housing and commercial parcels in villages

Through the RLAP, discussions were held on the viability of the community approach for the documentation of legitimate rights to privately owned agricultural land and housing parcels in villages, and the recording of rights to such parcels in community land records files. Procedures for this activity were developed upon invitation by the Naw Abad Village *Shura*, after the village leaders saw the benefits of the work done to record agreements about the legitimate users of rangelands.

A method was developed, called ADAMAP⁴⁷, which produces a parcel specification form for each agricultural land parcel, usually privately owned. This method involved the following main steps:

⁴³ See USAID Land Titling and Economic Restructuring in Afghanistan, January 2006, “Informal Settlements and Tenure Issues”, Kabul.

⁴⁴ Alec McEwen and Sharna Nolan (2007), “Options for Land Registration”, Afghanistan Research and Evaluation Unity, Working Paper Series, Kabul, p. 23.

⁴⁵ See Delville op cit, p. 4-5.

⁴⁶ Government of Tanzania, *Village Land Act 1999*; s. 8, 54, 58 & *Regulations 61-74 (2001)*

⁴⁷ See Annex 1 for a brief summary of the ADAMAP methodology for arriving at signed agreements as to the legitimate users of parcels whose boundaries are described on delineated satellite imagery.

Ask for community cooperation

Delineate the boundaries of privately held parcels

Agreements are prepared concerning the legitimate users of the privately held parcels.

Meet, discuss and approve the agreements and delineations

Archive the agreements and delineated images

Prepare for the continual updating and secure archiving of property records.

In some instances agricultural land parcels are State owned, and are also be described by parcel specification forms. Annex 4 shows the format of the agricultural, housing and commercial land parcel specification form, and Annex 5 contains the instructions for filling in that form and for delineating privately owned parcel boundaries.

Using the ADAMAP methodology the village team which prepares the parcel specification forms, simultaneously delineates the boundaries of parcels to which the forms refer, and gives them unique identification numbers. Figure 6 shows a satellite image, plotted at a scale of 1:2,000 being used for delineating irrigated agricultural land parcels in the village of Naw Abad. Each form produced by the field team in consultations with the owners or their representatives, is reviewed by a group of village elders who sign each form when in agreement with its contents.

Figure 2: Satellite Image Used to Delineate Ag Land Parcels



The field team selected a block of 100 privately owned parcels by inspecting satellite imagery. Prior to doing the field work, the team verified that the Cadastral Survey had maps and parcel cards available for those same parcels, albeit from 30 years earlier. Through consultations with the owners of the 100 parcels, their boundaries have been delineated on high resolution Quickbird satellite imagery plotted at the scale of 1:2,000. They were assigned a unique number, and ownership and use information were noted on a specific parcel specification form for each

parcel. Subsidiary users and the names of the sharecroppers or other users were noted in the appropriate places of the model form.

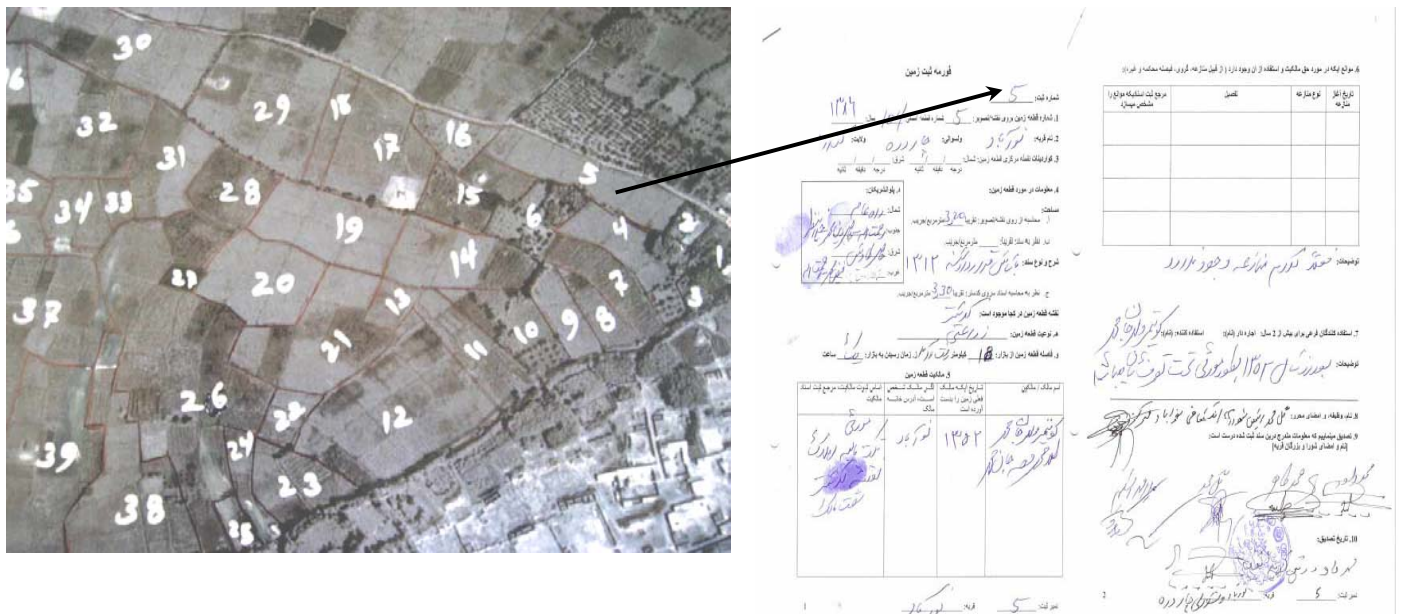
To limit the likelihood of unauthorized modifications to the forms or boundaries, two procedures were devised:

- 1) There should be a log book, listing all forms in sequential order with basic information about each parcel, including the ownership. Any subsequent modification of a form must be authorized by the *Shura*, and so indicated on the forms and in the log book.
- 2) The delineated parcel maps are digitized, and the forms are digitally photographed. Subsequently these digital records are combined into a simple GIS and archived in an appropriate governmental agency.

The experience with the community based land records management method in Kunduz was quite positive. The community welcomed the approach to their generating and managing the archive of documents pertaining to private (and in some instances State) agricultural land.

However, due to the limited testing of methodologies for cropland during the pilots, any extension of the approach will require additional piloting to develop further amended methodologies suitable for ownership of croplands. This includes the role of 'Village Recording Secretaries' designated by the community council, who shall be responsible for the management and archiving of delineated satellite images and parcel forms and who need training in the procedures for maintaining and updating cropland ownership records and maps. Also, questions pertaining to the amount of review needed of the field teams' work on boundary delineation and parcel register forms and how to control unauthorized changing of parcel records need to be addressed further. Finally, ownership and boundaries of state-owned cropland parcels needs to be done unanimously to assure proper recording.

Figure 3: The village-based parcel register for private agricultural land



Shura members from Naw Abad asked for the satellite imagery covering the remaining agricultural land parcels of the village, 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 village⁴⁸.

9. State Involvement in Rural Property Records Administration

Our search for a community based administration of property records is in part a recognition of the incapacity of the central State to install a State bureaucratic administration of property records, as was last seriously attempted in the 1960s through the ambitious cadastral survey. This incapacity in turn is rooted in the lessons learned from the Communist—Muhajadeen—Taliban failed efforts to establish a strong central state. Communities will not accept such a model. Moreover, local communities have developed governance capabilities as a matter of survival. In the words of Nazif Shahrani:

“In the name of creating national unity, the state under its various long-and short lived regimes, systematically undermined the identity and local autonomy of distinct ethnic and sectarian communities. In response, the local communities saw the state as the main source of their oppression and they devised complex social mechanisms to insulate themselves from direct contact with government agents and agencies...Local communities isolated themselves from corrupt government officials by creating community-based parallel power structures (that is, a strong Sharia-governed civil society) to resolve internal problems locally through their own trusted leaders, both religious and secular. It was indeed, these trusted local figures who emerged during the anti-Soviet jihad as the leaders and commanders of many local resistant units across the country (Shahrani 1998, 230)

The brief experiences of the RLAP showed at least in some local communities there is a great interest, commitment and capacity for implementing the local land records administration model, as one aspect of a vibrant community based governance system. To respond to these interests, procedures reported in this paper have been developed to draft agreements among the landholders, village leaders and elders as to who are the legitimate owners of agricultural land, as well as house and commercial plots of land in villages.

Following the formalization of these agreements among these various groups, their signing and witnessing by village leaders, and delineation of private parcels to which the agreements refer on satellite imagery, these documents are archived in the care of a villager named by the Elders in a safe house or room in the village. Copies are filed with Provincial government land administration institutions.

⁴⁸The paper by McEwen/Nolan paper offers some useful suggestions for this private parcel tenure recording. Alec McEwen and Sharna Nolan, Op.Cit.

This experience is an example of community self-governing capacities which in small ways accumulated across the country can form the basis for the rebuilding of Afghanistan. Again in the words of Shahrani:

...we must chose to build our future national state on the proven strengths of our “civil society”, the powerful self-governing community structures that have re-emerged as part of the blessings of our nations’ most recent struggles.... (p. 240)

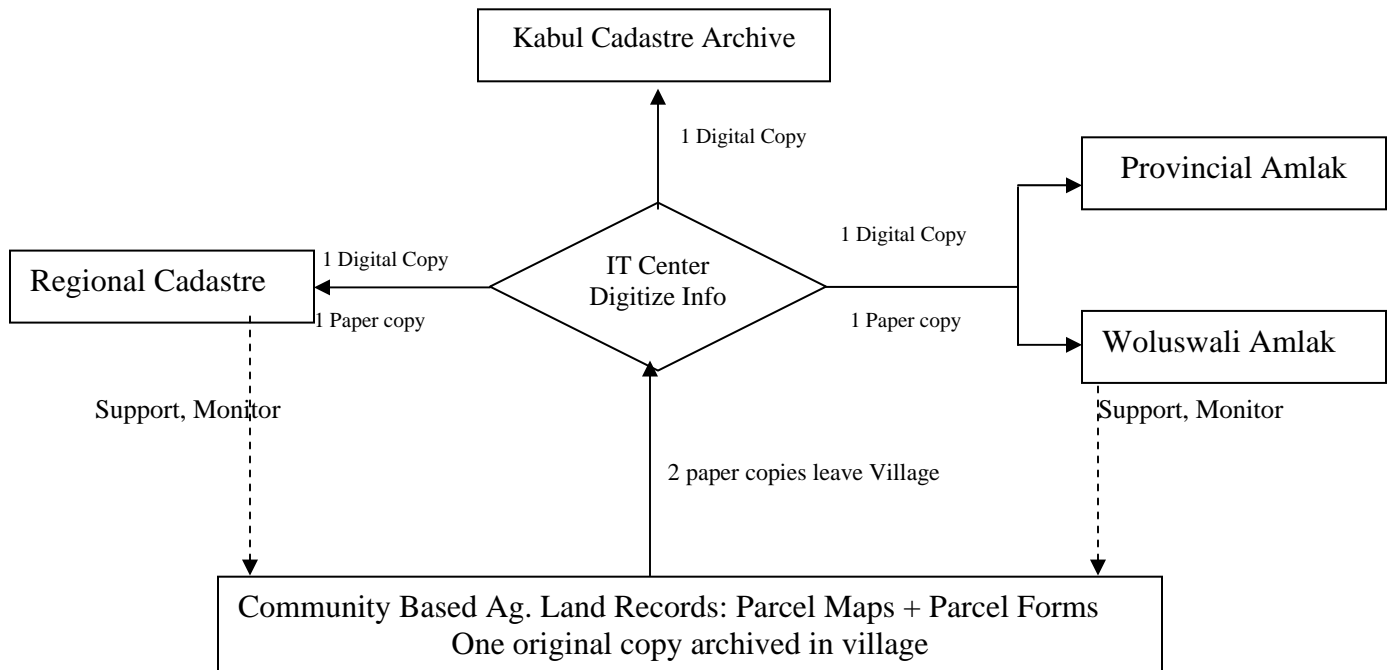
To this point in time, the contributions of the State to the community based property records administration are mostly theoretical, since they have not been seriously tested in practice. As far as the Judicial preparation and archiving of deeds, Judges consult with the Amlak for rural property ownership certification. It is conceivable that Judges could consult with communities for such certification in the future, for the few instances of people who go to Judges to conduct transactions.

A second linkage with the State bureaucracy could be its offering of an archival service to safeguard copies of community prepared property rights documentation.

A third linkage could be technical assistance to communities as they conduct the documentation of legitimate private and state ownership claims—to help assure the validity of the information collected and its presentation in a more or less standard format.

Diagram 1 shows the RLAP proposed information flows for the production and archiving of private land parcel specification forms and maps, with the initiative held by communities but with monitoring, capacity building, supervision and archiving functions being carried out by governmental agencies. Their capacities for carrying out these functions have to be strengthened.

Diagram 1: Information Flows for Private Land Forms and Maps



A fourth linkage is the assembly of information about community land uses and approximate values. On the parcel form, there is also a place to describe the type of land in the parcel. The purposes of this item are:

- 1) to enable a statistical tabulation of this data for describing the main types of agricultural land for MAIL’s planning purposes; and
- 2) to coordinate the estimation of the value of the parcel derived from its productive potential. This will be used in cases where some simple “contribution” system is devised in the future for supporting the village *Shura*’s land records management activities. This question has also been used to explore whether villagers can readily classify parcels using the criteria proposed.

10. Conclusions

In the words of Alden Wily: “Democratisation of land administration and management should be an objective of all countries”⁴⁹. This principle is particularly relevant to Afghanistan as the Afghans try to create a democratic political economy. A corollary of that principle is that the nearer the administration of property records is to landholders, “the more accessible, useable and used, cheaper, speedier and generally more efficient the system will be.” Of course, this hypothesis cannot be carried to the extreme of every hamlet operating its own land registry, or

⁴⁹ Alden Wily (op.cit), pp 1-2.

else the system would be inordinately expensive. But particularly in Afghan conditions of State institutional weakness where the institutions of the State are not well connected to the population, re-establishing the confidence of the people in its governing institutions, particularly land governing institutions by making them transparent and observable at the local level, is of fundamental importance.

The experiences of the RLAP with the local legitimization of rights to pasture lands has shown that a potentially very complicated process can with local consultations be handled relatively simply and quickly. The community definition of such rights is entirely feasible, relatively simple and normally quickly accomplished. Moreover, village leaders are quite willing to keep those records and commit to updating the agreements when the conditions change requiring changes.

Taking that experience another step and applying the same principles of community legitimization of property rights to privately owned agricultural land showed that the generation of property records at the community level is not only feasible but that village elders are willing to do much of the work themselves, using the training, technical support, satellite imagery and parcel specification forms provided to them. Part of this enthusiasm at the local level is the awareness by village elders that they retain the records that they produce and are responsible for updating them as changes in rights or boundaries occur.

Government agencies can support this community dual property records focus by helping to build the capacities of communities to administer property records, monitoring their work, providing backup digital archiving, providing plotted satellite images, and assistance with the formulation of rangeland improvement plans. The capacities of Amlak, Cadastral Survey, Land Resources, and Woluswali (District) Heads to perform these functions have to be strengthened, as does the legal framework.

Annex 1: ADAMAP—Private Parcels

The ADAMAP methodology for producing and recording documentation of private rights to rural land parcels.

2.1 Step 1: Ask the community

A two person team composed of a cadastral surveyor and a community mobilization specialist goes to the target community—that is, a village where the residents have hold and use agricultural land—and meets with the elders of the village. They take examples of the work done to establish evidence of the legitimate holders of rights to agricultural land in other villages and explain the goal of their work, which is to help villages provide accurate information to the residents about who are the owners of agricultural land by providing certain tools to the villagers. These tools include:

- 1) satellite images of the rangeland areas used by village families, which the villagers will use to mark the boundaries of the different rangeland parcels used by villagers;
- 2) assistance to fill out the village agreements as to who are the legitimate holders of agricultural land, as well as house and commercial parcels;
- 3) cabinets and folders in which to store the agreements and delineated images.
- 4) assistance with the training of village personnel in the administration and updating of information concerning the privately held land parcels..

If the community agrees with this proposal, then the next steps can be undertaken. If the community leaders are not interested, then the team moves on to the next target community. The discussion of the proposal may take several visits, and may involve large numbers of people. Even people from neighboring villages may be involved, in order to conduct comparable activities in all neighboring villages, with the purpose at some point in the future of consolidating the administration of property records of several neighboring villages in one place, perhaps the Woluswali. Agreement and mutual respect is absolutely necessary for proceeding to the next step. Once agreement is reached, the team should visit the agricultural and village settlement areas, and take some GPS readings of visible landmarks to be able to order the proper satellite imagery.

2. Step 2: Delineate privately held parcel boundaries.

The drawing of the privately held parcel boundaries requires:

--Getting of the satellite imagery of the proper scale. Clear imagery at the scale of 1:5,000 usually adequate for agricultural land parcels, although sketches at larger scales may be necessary for housing and commercial properties. ISAF is building the capacity of AGCHO to provide imagery at various scales; arrangements must be made with ISAF

and AGCHO well in advance of the needs of field teams, and the coordinates of the desired coverage areas provided.

--With the imagery, the team returns to the village, and walks the boundaries of the privately held 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 cadastral specialist from the regional Cadastral Survey. If the community is of a special ethnic/linguist composition, a fourth person from that ethnic/linguist group may be added.

3. Step 3: Agreement

The preparation of the community private parcel specification form is the next step. A form is filled out for each parcel. See the model form in Annex 2, and the instructions for filling out that form in Annex 3. All of the legitimate holders of rights to the agricultural and housing/commercial parcels must be recorded in the form.

The local mullah's, elders, cooperative directors, Arbabs and Maliks should be good sources of information about who are the holders of private rights to parcels.

The agreement must be signed by the holders of private rights identified on the form, 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 neighboring landholders.

4. Step 4: Meet and Approve

The signed forms and the delineated images should be put on display at a prominent but secure place in the village, and a shura convened of all village residents and also notifying absent family members to gather at a specific time and place to discuss the specification forms and boundaries of the privately held parcels.

A representative of the Cadastre will then come to the village and examine the specification forms 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 preparation of the forms or with the delineation of the images, errors will be corrected. For those problems which cannot be corrected easily, the Cadastral Specialist will present a written memo to the Village Elders and Woluswal describing the problem and how to resolve it.

5. Step 5: Archive

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

One to remain in the village archive
One to the landholder
One to the Woluswali Amlak
One to the Provincial Cadastre

Digital copies will be sent to the Kabul Cadastral Archive, the Provincial Amlak, Provincial Cadastre.

An exact copy of the delineated images showing parcel boundaries and numbers will be prepared to be taken to Kabul to be digitized. A paper copy of the delineated image plus a digital copy of each specification form along with a digital copy of the delineated parcel image should be filed with the Central Cadastral Office Archive.

6. Step 6: Prepare village and Woluswali capacities for administering property records, particularly their updating once the specification forms and delineated images are initially completed.

A records administration improvement team will then visit the communities within each Woluswali to help improve the administration of the property records, including the back up of updates as they occur in the paper and digital archives.

In summary, the RLAP devised the A-D-A-M-A P method for community based administration of property records for agricultural and housing/commercial parcels:

*A*sk for community cooperation

*D*elineate the boundaries of rangeland parcels

*A*greements are prepared concerning the legitimate users of the rangeland parcels.

*M*eat, discuss and approve the agreements and delineations

*A*rchive the agreements and delineated images

*P*repare for the continual updating of property records at the village, Woluswali and Provincial and Central levels.

Annex 4: Private Parcel Specification Form-Revised

1. Location:

a. Village: _____; b. Woluswali: _____ c. Province: _____

2. Form Number: _____

a. Parcel Number On Map/ Image: _____ b. Number of Origin Parcel: _____ c. Date: _____

3. Information about the Parcel:

Area:

a. Calculated from Map/Image: Approximately _____ Jeribs.

b. As described in documents: _____ Jeribs.

c. As calculated by survey: _____ Jeribs.

Uses of Land Parcel—according to farmer	Area in each use (Jeribs)
e. Garden	
f. Orchard	
g. Irrigated, water available throughout the growing season,	
h. Irrigated, water available only sporadically;	
i. Rain-fed, produces a crop every year	
j. Rain-fed, produces a crop every year, but very low yield	
k. Rain-fed, must leave fallow every other year	
l. Other ag. use (specify)	
m. Not used for agriculture (specify)	

d. Bounded by:

North: _____

South: _____

East: _____

West: _____

Total Area _____

l. Distance of parcel from market: _____ km

4 - OWNERSHIP OF PARCEL

Owner(s)Name(s) and Father's Name(s)	Date present owner acquired land	If private owner, the address of owner's residence	Basis for proving ownership, and location of documents establishing ownership

5 - RESTRICTIONS ON OWNERSHIP AND USES, SUCH AS CONFLICTING CLAIMS, MORTGAGES, COURT DECISIONS, OTHER RESTRICTIONS:

Date of Starting Restriction	Type	Description	Location of Documents Defining Restrictions

Comments:

6. Subsidiary users for more than 2 years: Renter's Name:
Name:

User's

Comments:

7. Printed name(s), title and signature(s) of person(s) who provided the information for the Form:

8. We certify that the information in this Form is correct:
[Names, signatures of Village Shura and Elders]

9. Date of certification: _____

Annex 5: Instructions for Privately Owned Parcel

8 August, 2007

Instructions for Completing the Parcel Specification Form

The objective of this Form is to record information certified as correct by a village shura and elders, concerning each parcel of rural land, including land used for agriculture, housing and other rural uses. A separate Model Form is to be used for recording information about the users of pasture and forest land parcels.

Each parcel in a village should be given a unique number by a land surveyor with its boundaries and number shown on a map or image. If more than one printed image or map sheet is required for describing the land parcels in a village, the surveyor will also assign each image or map a unique number. The parcels within each printed image or map sheet will be unique. A parcel number within a village will take the form:

[Image/map sheet number] – Parcel Number within the image/map sheet]

For example, in a village where two images are required to describe all parcels in the village, a parcel number “2-41” would mean Image Number 2, and parcel 41 on that image.

A Form is prepared for each parcel, with the following information:

1. Village Name, etc. Write in the name of the village, the name of the Woluswali, and the name of the Province where the parcel is located.

2. Form Number: Within each village, a unique Form Number will be assigned sequentially to each form as they are prepared. Initially this Form Number will be the same as the Parcel Number. But there may be instances of new Forms being prepared for existing parcels, and the new forms should have unique numbers for proper archiving.

2a. Parcel Number. A Surveyor will assign the parcel numbers.

2b. Number of parent parcel: After the initial preparation of a Form, it is possible that the parcel is divided into two or more pieces, because of inheritance or some other reason, or an owner may buy a neighboring parcel and combine them into one new parcel. If these changes in the shape and area of a parcel occurs, the “parent” parcel Form will be cancelled, but kept in the archives, and two or more sub-parcels will be created and new Parcel numbers assigned by the Shura Secretary. In this section, the number of the Parent Parcel will be noted as reference, and the date that the subdivision or union is recorded.

3. Information about the Parcel

Area:

a. The area of the parcel as calculated by the surveyor from the map or image, in jeribs. If any other measurement unit is used, note what unit.

b. The area of the parcel as described in any documents which may exist describing the parcel, in square meters or jeribs. Describe also the location of the document.

c. The area of the parcel as calculated by an approved and professionally done land survey, in jeribs. Describe the location of the land survey plan.

d. Bounded by:.. Note the names of the neighboring owners, or a description of what borders a parcel (such as road, or river, etc)

Uses of land in the parcel:

From the farmer get the area devoted to each use in a particular parcel. If a use is not on the list, specify that use and its area.

e.garden,

f.orchard,

g.irrigated, water available throughout the growing season,

h. irrigated, water available only sporadically;

i. rainfed, produces a crop every year

j. rainfed, produces a crop every year, but very low yield

k. rainfed, must leave fallow every other year

l. Other ag use (specify)

m. Other non-ag use (specify)

If there is a house or other type of building on the parcel, describe the dimensions of the building.

If there is more than one type of land in the parcel, describe the approximate area of land in each type. For example, if the parcel contains a 4 meters x 6 meters house and a garden of 6 meters x 8 meters, there would be noted “24 square meters—house” in the building section, and “48 square meters” in “garden” section.

n. Total area. Add up the areas given by the owner/user/informant for each use. Should be close to the total area shown previously. If not, re-do the interview.

o. Distance of parcel from the market. Indicate the approximate distance in kilometers of the parcel from the nearest place where production of the parcel is normally sold.

4. Ownership of the Parcel

a. Note the names and fathers' names of the owner or owners. If the land is owned by the community, note the name of the community and clearly state “community owned”. If the land is owned by the State or by a State Enterprise, clearly note “State” or “State Enterprise” and give the name of the State Enterprise. If the land is owned by a Ministry, note the Name of the Ministry.

b. For privately owned land, also note the date that the present owner or owners acquired the land.

c. The address of the owner's residence

d. The basis for proving ownership, such as purchase or inheritance, and the location of any documents giving evidence about ownership (such as the specific number of a title deed in a Court Makhzan, etc.)

5. Restrictions

- a. In this section note any conflicting claims, court decisions, shura decisions, mortgages or other conditions which limit the right of the owner to transfer ownership to another person.
- b. In the “type” column give a brief name for the restriction, but explain more in the
- c. Description column and also provide information about the location of any documents pertaining to the restriction.
- d. In the comments section, explain fully the nature of the restriction if not already explained in the table.

7. Subsidiary users.

A “subsidiary user” of the parcel is any person or company which is using the parcel with or without the permission of the owner. Distinguish between “subsidiary users” who have a rental or sharecropping arrangement with the owner and those who simply occupy and use the parcel with or without the permission of the owner but provide no payment of rent or share of the crop to the owner.

If there is an easement on the land, note that fact and describe who holds the right to the easement

Use the comments section to explain more fully the nature of the subsidiary use.

8. Print the name, title and get the signature of the person who provided the information to complete the Form. Indicate whether this person was the owner, or representative of the owner.
9. Note the names and signatures or thumb prints of the village shura members and elders who sign to certify that the information in the register is correct.
10. Date of the certification of the Form. Note the date when the Shura/elders certified that the information in the Form is correct.

During the first to years of the LAMP, further testing and procedure development are required to answer the following questions:

1. Is the format of the Parcel Specification Form adequate? Are the questions properly phrased? Are the uses of the information clear and justified, including use in rapid area appraisals for property taxation, and statistical reporting needs of the MOAIL and CSO?
2. Should the Parcel Specification Forms and delineated parcel boundaries include all rural land in the villages, including housing, commercial, community services (schools, clinics, graveyards, roads, mosques, etc)?
3. What review is necessary of field teams work on boundary delineation and parcel register forms?
4. How can unauthorized changing of parcel records be controlled?
5. How can security of original records be assured?
6. What training and supervision of the Recording Secretaries and village shuras are necessary?

7. How can changes in ownership and boundaries be done in authorized ways, including updating of digital archives?
8. How can ownership and boundaries of State owned agricultural parcels be done to assure proper recording?
9. How can issuance of certificates of ownership be done by Village Shuras for successful presentation to Judiciary for preparation of title deeds?