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LAND ADMINISTRATION AND MANAGEMENT IN AFGHANISTAN

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INTRODUCTION:

Land administration and management in Afghanistan is governed by an ineffectual and inadequate legal framework. The strict application of existing laws is limited both administratively and judicially. In many respects the situation of land management and use is characterized by informality. While many provisions embodied in existing laws are useful, many other provisions have not been sufficiently adjusted to address the post conflict reality; these provisions require reform. Existing land issues dictate a strong imperative to formulate a new, relevant and workable legal standard. The legal drafting and enactment of any new or amended land laws should be guided by a convincing, clearly established policy.

The Land Policy is the product of a series of consultations with pertinent government officials, communities and other stakeholders.

This policy envisions the maximization of social and economic benefits to the whole of Afghan society based upon the orderly and sustainable use of its most important natural resource-land.

THE LAND POLICY OBJECTIVES:

- Provide every Afghan access to land
- Promote and ensure a secure land tenure system
- Encourage the optimal use of land resources
- Establish an efficient system of land administration
- Ensure that land markets are efficient, equitable, environmentally sound and sustainable to improve productivity and alleviate poverty

THE LAND POLICY PRINCIPLES:

- Ensure a flexible, equitable and transparent policy that serves the diverse interests of the Afghan society.
- Land as a natural resource is fundamental to the livelihoods of its people and must be preserved and protected for future generations.
- All Afghans should have the opportunity to legally access land resources and the right to maximize their social welfare. No individual or group should be barred from ownership.
- Land is the most important resource to assist in achieving the visions and related goals inherent in the Afghan Constitution.
- Institutional coherence and efficiency is a necessary precondition for the achievement of all the above objectives.
- Transparency, accountability and community participation are critical for effective land administration and must be applied at all levels, from communities to the highest levels of government. Local communities must take responsibility and the government must acknowledge its role to serve the people.
- It is the right of every Afghan to pursue a livelihood and he should not bear the burden of any land-related legal impediment on the basis of ethnicity, gender, language, religion or marital status.
- The private sector holds the key to economic growth and is dependent upon the establishment of clearly defined, enforceable and transferable property rights through a legal and efficient institutional framework.
- Land resources should be used for the nation's benefit and efficiency should be promoted through the facilitation of a transparent land market.
- All forms of user rights to land should be formally recognized and be protected by law.
- Information on land ownership and user rights should be generally accessible to the public at designated offices.
- Land ownership and user rights have an economic value which should be transferable or disposable in return for payment or as a gift, bequest, or inheritance.
- The ownership and use of land may be subject to taxation by the Government and its authorized agencies.
- The government shall distribute land ownership and user rights fairly to promote social harmony and protect the poor.

IN ORDER TO ACHIEVE THE VISION AND OBJECTIVES OF THIS LAND POLICY THE FOLLOWING ISSUES ARE IDENTIFIED:

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. Squatting, 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 serious tenure insecurity to 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.

1. Existing land allocation procedures lack equity, transparency and accountability. Land prices have escalated over the past four years and pricing for available housing has skyrocketed far beyond the reach of most urban dwellers. There is a clear need to create and implement strategies to enhance the delivery of land for affordable housing options. Furthermore, access to rural land and to user rights is critical to the sustainability of rural families and pastoralists. Land allocation and rights to use government land often controls the ability of rural families to earn a living. The rural landless are disadvantaged, deprived of community support and unable to accumulate income or capital assets. Land allocation must therefore ensure that families within a community and the rural landless have access to sufficient resources to sustain themselves.
2. Existing land-related laws classify land under a number of different classification systems which are often vague and confusing. In particular the legal definition of state owned land has changed through multiple regimes. A legal system covering state as well as private land should exhibit simplicity and clarity and clearly define public, private, community and state lands.
3. Land grabbing has been one of the most problematic aspects of land management throughout the country. The act of land grabbing is often accompanied, preceded or followed by equally reprehensible acts such as faking deeds and registration of property rights through corrupt practices. Land grabbing also encourages informal property markets. The accompanying unlawful acts complicate the land tenure issues concerning the grabbed land, particularly when the appropriated land was sub-divided and allocated to followers or sold off and developed and lived on by other individuals. In rural areas communal lands have been appropriated by powerful entities resulting in the misuse of public resources to the exclusion of others.

4. Over the last three decades the country has experienced an enormous expansion of informal settlements and unplanned developments in almost all urban areas. Although the development and expansion of informal settlements has manifested itself in a variety of forms, the expansion of informal settlements has often involved the unlawful occupation of land. These unlawful acts are in large measure due to the failure of the formal 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 tenure security, 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 in which 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 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 dependants or family members.
5. The competition for limited resources of pasture in many areas in Afghanistan has adversely affected the economic livelihood of pastoralists and fueled long standing conflicts. The competition over grazing land between pastoralists and settled farmers is a result of ill-conceived historical political agendas, poor land management, lack of an adequate land survey, the non-existence of adequate dispute resolution mechanisms, the near collapse of land adjudication and registration systems, and the lack of strict enforcement of existing laws. The lack of adequate management and control over public owned land has resulted in grabbing of land that was traditionally used by pastoralists as well as settled farmers for grazing livestock herds. The regulation of pasture land is an imperative if it is to be protected from threats to its sustainable use such as illegal grabbing of community lands of neighboring villages, grabbing of rangeland, cultivation of traditional grazing land, or government designation of grazing rights in what have traditionally been considered communal grazing lands. Pastoral ownership is unclear and formal law is ambivalent as to whether pasture lands are state-owned, public or communal.
6. More and more farm workers are landless and are dependent on the landowners for whom they work for their shelter. In many cases poor farmers have mortgaged their land in such a manner that their livelihood and land ownership is at risk. This is particularly true as a result of increased pressure from poppy cultivation. The relationships between landowners and farm workers, tenants, sharecroppers must be improved to ensure equity as well as productivity.
7. Drought, war, land appropriation and increased poppy cultivation have resulted in the concentration of land ownership into the hands of a relatively wealthy small

minority. There are also large numbers of rural families sharecropping land that they formerly owned.

8. Afghanistan's land administration system lacks coordination and efficiency. There is confusion among competing agencies which often vie for preeminence due to ill-defined or overlapping roles and differing agendas. The uncoordinated pursuit of different agendas has led to stalemates and a resultant inability to tackle urgent problems as they arise. There is no formal method of resolution of such conflicts, resulting in inaction when urgent action is required. The overlapping role of multiple ministries and government bodies results in inefficient and uncoordinated land administration and generates conflicts. In particular courts are often responsible for resolving disputes that arise from improperly prepared land ownership documentation prepared and registered by the court.
9. Disputes regarding land are the result of years of conflict, and historical/politically based property allocations which have never been resolved. While many claims relate to private land, others relate to the rights of use or ownership of non-private (public or state owned land). Workable resolutions concerning private claims generally must consider the appropriateness of the return of property to its displaced owner and alternative shelter or some form of compensation to other good faith claimants. However, there is a multiplicity of legal frameworks both formal and informal (customary practices), inconsistency in interpretation and most importantly a lack of any viable enforcement mechanisms. Afghans do not have confidence in the courts to equitably resolve land-related disputes. A feasible and practical dispute resolution approach must acknowledge the value of community-based knowledge. Furthermore, any approach to sustainable dispute resolution must address the historical and underlying grievances associated with how land was acquired, whether by government or individuals.
10. Land management systems have not traditionally assigned priority to environmental issues with regard to the sustainability of natural resources including forest conservation and prevention of desertification. Degradation of land, from overgrazing, lack of flood controls, poor mining techniques, deforestation, to name only a few, has negatively impacted Afghanistan's greatest natural resource. Environmental protection campaigns are most successful when supported and implemented by the general public, however public awareness of environmental issues is negligible.