

Land Administration in (Post) Conflict Conditions: The Case of Afghanistan

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ACRONYMS

- ADB Asian Development Bank
- AGCHO Afghan Geodesy and Cartography Head Office
- ANDS Afghanistan National Development Strategy
- AREU Afghanistan Research and Evaluation Unit
- CDC Community Development Council or Shura
- CRA Cooperation for the Reconstruction of Afghanistan
- DFID Department for International Development
- EMG Emerging Markets Group
- FAO Food and Agriculture Organization
- GIS Geographical Information System
- LTERA Land Titling for Economic Restructuring of Afghanistan
- MAI Ministry of Agriculture and Irrigation
- MRRD Ministry of Rehabilitation and Rural Development
- NGO Non Government Organization
- NSP National Solidarity program
- RLAP Rural Land Administration Project
- USAID United State Agency International Development
- WB World Bank

Land Administration in Post-Conflict Conditions: The Case of Afghanistan

1. INTRODUCTION

The fall of the Taliban regime in late 2001 brought a new opportunity for Afghanistan to end years of conflict and embark on a comprehensive program of nation building. A key part of this program is rebuilding an effective land administration institutional system which can provide a framework in which people can live and work, and which will attract or motivate people to invest.

By the term “land administration institutional system” I mean a social group’s working rules about the following:

- 1) how to know who “owns” land and attached constructions;
- 2) what taxes the holders of land owe to the group;
- 3) how land holders should use the land;
- 4) how individuals can get the rights to use the group’s land;
- 5) what people in conflict over uses or ownership of the land should do to resolve their conflicts.

In post-conflict conditions, or as Augustinas and Barry² call “unstable” conditions of any sort, these working rules can become ineffective. Certainly in Afghanistan the force of rules, customary as well as formal, has weakened. This paper provides a brief summary of what has been tried or is being tried to re-establish working rules to guide people in these five areas of land administration in Afghanistan.

1.1 URBAN CONTEXTS:

Rapidly growing metropolitan areas, especially those around Kabul, face serious problems:

1. Massive in-migration of people looking for work, housing and services, putting continuous pressures on urban services and land administration;
2. About 60%-70% of the already resident population living in often miserable informal settlement neighborhoods, presenting growing environmental and social disasters in the making;



² Clarissa Augustinas and M.B. Barry, “Land Management Strategy Formulation in Post Conflict Societies”, 2006

Figure 1: A View of informal Settlements in Kabul

3. Municipal and governmental agencies have limited capability of providing options to these desperate people;
4. Public threats to evict informal settlement occupants by Municipal authorities who are desperate to eliminate the problems of such settlements by eliminating the settlements. Insecurity in the tenure of holders of houses weaken their motivation to make major investments in improving their housing or their neighborhoods.
5. The court based system for preparing, archiving and retrieving property deeds which document rights to land and buildings (mostly in urban contexts) is inefficient and plagued by weak administration.



Figure 2: Court Archive of Property Documents before Reorganization

One project which has been launched to deal with at least some of these issues is the LTERA project funded by USAID. The following objectives have been achieved or are well on their way under this project:

- 1) A Land Working Group has been created under the coordination of the Minister of Justice. That Group has the mandate of formulating relevant, workable legal paradigms for dealing with a variety of property issues affecting land, well attuned to local and national requirements.
- 2) An analysis of the Land Law affecting particularly urban land problems has been done, which has implications for rural land problems as well³.
- 3) A pilot effort to define a methodology for upgrading informal urban settlements has been done in Districts 7 and 13 of Kabul, resulting in preliminary proposals to create a legal basis for regularizing tenure in such contexts⁴.
- 4) A conference has been held to discuss the issues of urban informal settlement upgrading which reached a preliminary consensus concerning that upgrading.
- 5) An analysis has been done of the institutional capabilities of the Ministry of Agriculture, Animal Husbandry and Food through its AMLAK Department to carry out its mandate, including a preliminary proposal for a policy to resolve the issues created by the informal occupation of non-privately owned land in rural communities.
- 6) The deed archiving facilities have been significantly upgraded in 17 of the Provincial Court Archives (Makhzans)⁵ by providing storage cabinets, lighting and project assistance for staff to

³ See Dr. Yohannes Gebremedhin, "Legal Issues in Afghanistan Land Titling and Registration", LTERA, July, 2005

⁴ See Eng. Akram Salam, "Economic Analysis of Community Upgrading Approach for Improving Informal Settlements", CRA, June, 2006 for a preliminary evaluation of community based upgrading done under this project. The World Bank is supporting another urban land oriented project, which has just started.

re-organize the books of deeds according to type, date and district. In the Provinces of Kabul, Ghazni and Paktya the photographing of books of deeds of sale and the creation of a data base for archiving these photos have almost been completed.

1.2 RURAL CONTEXT:

About 70% of Afghan families live in rural areas. Over the past two decades, there has been a significant fall in the quality of life among a large section of the rural population with insecurity of land tenure is one of its basic causes. Some of the major land tenure problems include:

- un-authorized occupation of land (a term that includes “land grabbing” by powerful people and the informal occupation of land for family uses⁵), particularly land that has not been privately owned;
- the overlapping of claims to private, public, government or community land, that is, the situation where two or more people have claims to the same parcel of land, a problem which particularly affects pasture land (see Liz Alden Wily, “Getting to Grips with Pastoral Tenure Issues”, presentation to Pastoralist Conference of Afghanistan, November, 2005.);
- cumbersome procedures for the purchase and sale of private land;
- lack of agreed procedures for the community based effective and sustainable management of public, governmental or community lands;

From a natural resource perspective, the already scarce land resources of the country are being depleted through rapid deforestation. Unsustainable use of fragile lands is rapidly leading to growing desertification, and loss of the land base useable for food production.

Conflicting claims to land have also apparently increased and so has the tendency to solve land disputes by force, falsified documents and other corrupt practices. All of these factors are creating social tensions which militate against efforts to promote national unity. There is an urgent need to agree on a land tenure regularization process which will be seen to be fair, free of coercive elements and which will provide solutions that the vast majority of the rural population can accept.

2. CURRENT MAI POLICY AND STRATEGY CONCERNING PASTURES AND RANGE LAND

The MAI treats rangeland management together with forest management. So, its policies and strategies speak to both types of land use. The vast majority of Afghanistan’s land area is not suited for arable farming. The national cover survey of 1993 (FAO, 1995) classifies 54.6 million hectares (85 percent of the nation) as rangeland and forest land. Within this area, only a small fraction (1.34 million hectares, 2 percent) had a cover of natural forest in 1993, certainly much smaller today. Most of the non-arable land is unimproved pasture, most of which is on steep slopes and shallow soils in mountainous topography.

⁵ See J. David Stanfield, M.Y. Safar, Edmond Leka, and Elton Manoku “Reconstruction of Land Administration in Post Conflict Conditions”, FIG Commission 7 Symposium, Madison, Wisconsin, June, 2005, for a more detailed if somewhat dated discussion of the objectives and activities of the LTERA project pertaining to land titling and registration.

⁶ See Bastiaan Reydon (“Achievements of the Rural Land Tenure Advisor”, LTERA Project, June, 2006, p. 12) where he discusses the various meanings of “grabbing” of government or public land. The distinction between powerful people “grabbing” large areas of land and the informal occupation of land for family use is an important one. The legitimacy of small holder occupations of pasture land is being discussed. The difference in perspective between family holding of land and governmental claims of ownership to the same land is illustrated in the McEwen and Whitty (“Land Tenure”, AREU, 2006) paper, where rural landholders pay what they consider a land tax on land that they “own”, but that same payment is considered by some government officials as rent payments for the use of government land.

Much of forest lands and rangelands is legally defined as public land, held in trust by the State on behalf of the people of Afghanistan. A significant proportion of such lands is also claimed as being “community” owned. Another portion has been converted to agricultural use of individual households or families/clans.

Rangelands and areas of former natural forest occupy virtually all the catchment areas which feed Afghanistan’s most productive agricultural land, the irrigation schemes. Deterioration in upstream land cover through overgrazing and felling of the natural forest has led to reduced infiltration and more rapid run-off. This has disrupted the steady flow of irrigation water which the farmers need to produce good crops. Damaging floods have become more frequent.

The rangelands are grazed by herds under sedentary, seasonal migratory management systems. Access to rangeland has been governed by traditional arrangements and agreements, some of which are supported by documents issued under previous political regimes. As in many pastoral countries, these arrangements have seldom been implemented in a manner which allows herdsmen to manage and invest in rangeland as farmers do in farmland. The key characteristics of most rangelands in Afghanistan are those of a shared resource, in which the quantity and quality of the pasture in any one year is governed primarily by the rainfall and snow in that year. The shared nature of the pasture means there may be little incentive for individual herdsmen to conserve it or invest in it. Indeed, the incentive often is for herdsmen to graze their animals to the maximum extent in the short term, regardless of the impact on the pasture.

2.1 TENURE INSECURITY ON PASTURE LANDS

Alden Wily among others has concluded that rangelands are areas where the most profound insecurity of tenure and access is being experienced. Documenting and coming to local agreement about the ownership of houses, farms and rural shops and business sites is relatively clear. Ownership rules for such properties fairly satisfactorily combine customary and statutory norms. This is *not* the case in respect of commonage and pasture: who exactly owns these lands, or *may* own these lands, is dangerously unclear – and contested (Alden Wiley, *op cit.*, pp 5-6).

This lack of clarity about rights to land provides fertile ground upon which dispute and land grabbing flourishes – and is flourishing. Dispute over the ownership of houses and farms *does* exist in plentiful degree. But disputes surrounding commonage and pasture are *even more numerous*, much more heated, and much more difficult to resolve. Moreover such disputes affect a great deal many more people, and usually whole villages, clans and communities, both settled and nomadic.⁷

2.2 INSTITUTIONAL PROBLEMS

The main administration and management problems that have plagued the Department of Forestry and Range Management of the MAI and its representatives at Provincial level stem from the previous policy of managing the natural forest resource on its own, under Ministerial direction and control. Involvement with people and communities has been negligible. The official emphasis has been on protecting the natural resource, denying access and use to people for the most part, and allowing access on a strictly controlled basis, at least in theory.

It is fair to say that many of the Department staff have become well aware that the policy and practices of direct management of natural forest and pastures are not working, and there is no apparent way in which they could act on their own to stop the continuing depletion of the natural resource base.

⁷ Details on this topic can be found in Alden Wiley, “Looking for Peace on the Pastures”. 2005

Over the last 20 years, the community approach has been shown to work effectively in the fields of natural resource management and forestry in neighboring countries with similar physical and cultural environments – Pakistan, Iran, Nepal, India and Burma are examples.

A cornerstone of the community approach to forestry and range management as it is now emerging in Afghanistan is that people in rural areas will come to value forests, shrublands and pastures in the same way that they presently value good crops and productive herds of domestic animals. In the case of forestry and range resources, the value will come directly as better productive resources, and indirectly as a means of protecting the agricultural environment of the community area from unwanted erosion.

2.3 DEFINITION OF PRESENT GOVERNMENT STRATEGY FOR COMMUNITY BASED MANAGEMENT OF FORESTRY, RANGELAND, AND WILDLIFE

The Government strategy for the management of forestry, range and wildlife is as follows:

The sub-sector partners⁸ shall adopt a community-based approach in forestry, range and wildlife management. This approach shall involve the transfer of effective 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”, MAI, 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 RLAP is contributing to this approach first by helping define a methodology for village shuras and other stakeholders to define who has what right to use what range and forest land during what times of the year. The second level of effort is to support Government in formulation of 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.

The remainder of this paper will describe this community based approach for regularizing rural land relations, particularly pertaining to pasture land.

3. THE RURAL LAND ADMINISTRATION PROJECT

Rural land is extremely varied ecologically and socially. Villages in the arid climate of Afghanistan are generally located along rivers or near to other water sources. The limited amount of cultivated land with access to water is highly valued. At the same time, most of the land area of the country is not so well located, meaning that people have to use that land much less intensively, usually as pastures for sheep and goats. The darker green agricultural land in this photo contrast sharply with the surrounding arid hills and valleys some of which are used seasonally as pastures.

⁸ Sub-sector partners are defined as Central Government, Provincial Administration, the Communities of Afghanistan, and the private sector.



Figure 3: Aerial View of Typical Rural Landscape

The areas of land used for pasture are so large and deficient in grasses, that individuals have not claimed them as private property. Rather, State agencies, communities, families, clans, and nomadic tribes have traditionally organized their use.



Figure 4: A Meeting of a Village Council (Shura)

At the local level, families, clans, and tribes send their representatives to Village Councils, or *shuras*, to discuss who has access to such lands during what months of the year.

In the past, the agreements reached in such meetings were usually verbal, and have at times not adequately recognized the use rights of nomadic groups. Over time and with families uprooted due to conflicts such agreements become more vague and subject to disputes.

Defining a methodology for re-establishing of these agreements is an important objective of the Rural Land Administration Project. This project is being funded by the Asian Development Bank and DFID, and implemented by Scanagri-Terra Institute under the coordination of the Ministry of Agriculture and Irrigation. Terra and Scanagri are working with an Afghan NGO, “Cooperation for the Reconstruction of Afghanistan” using satellite images in consultations with community *shuras* to delineate the boundaries of pastures and re-establish agreements about their use. Annex 1 contains a draft of a “model” pasture land agreement.

While carrying out this community based work, however, the field teams are consulting with community leaders, district officials, and the varying levels of existing land administration about policy priorities, needs for modifications to the legal and regulatory framework, and needs for restructuring of land administration institutions. In essence the RLAP is practical and local in focus, but with the team looking “up” from the villages to define the changes needed in policy, law, regulation, and land administration institutions.

3.1 PURPOSE, ASSUMPTIONS AND COMPONENTS OF RLAP

The **purpose** of the RLAP is to support the Government in formulating a national land policy and in building a related institutional structure for land administration.

The RLAP makes the following assumptions as to the better methods to use in building capacities for formulating national land policy, and for improving the institutional structure for land administration:

- 1) The classical approach in which a comprehensive land policy is developed at the political center, is replaced in the RLAP by a “grass roots” iterative process, directly involving rural land owners and land users throughout the process, aggregating administrative units and government officials up to the Central Government.
- 2) Another critical contributor to good policy in the RLAP is practical ‘learning by doing’ – actually trying out new ways of defining rights in land, new ways of registering those rights, new ways of resolving land conflicts and then entrenching those new constructs and procedures in local agreements and rebuilding of land administration institutions.
- 3) A useful technique for identifying pasture (and forest) land parcels is satellite imagery. Particularly in mountain communities, villagers can rapidly recognize features on such imagery. Concerning acquisition of satellite image for the test site areas, the team has gotten plotted photos, at a scale of 1:5,000 from ISAF, after getting the approximate geographical coordinates of village range lands in the four test sites, and after getting approval of village *shuras* for the project to go forward.
- 3) The RLAP is focusing on the main land tenure issues facing the MAI, which revolve around unauthorized occupation of land, mostly “non-private”, pasture land, and the overlapping claims also affecting these non-private, pasture lands but also privately owned lands.
- 4) Capacity building for land administration is best done by improving the abilities of Afghan public and private sector organizations to perform activities needed by a modernizing land administration system. Translated into practice, the RLAP intends to contract Afghan

organizations for the activities of the project, and work with them to improve their capacities and the capacities of land administration agencies for dealing with rural land administration issues.

5) The RLAP aims at improving the documentation of legitimate claims to rural land. That documentation will be archived in the “community” as well as in the official land administration institutions. The main assumption is that documentation of claims will contribute to greater stability and predictability in land relations. Another assumption is that once the present situation is documented, changes in rights and responsibilities will be recorded so that the documentation will be maintained up-to-date, particularly in the communities.

3.2 LOCAL AGREEMENTS ON LAND USE AND OWNERSHIP

There are three parts to the community agreements about the legitimate users of pasture (and forest) which are being tested in four test sites: 1) delineation of boundaries of pastures and range lands and delineation of blocks of privately held agricultural and housing parcels on satellite images; 2) obtain agreements among all stakeholders about who has what rights to pastures and range lands during what times of the year; 3) involve the land administration agencies (Primary Courts, Cadastre, Amlak, Village Shuras, tribal and kuchi councils) in assisting with the agreements and recording them for future reference⁹.

In some villages where the private holders of land desire to have legally recorded deeds, methods for the delineation of boundaries of private parcels and community identification of the legitimate owners of these parcels will be tested.

The selection of the test sites has involved the MAI, the MRRD (NSP), NGOs, and discussions with candidate village shuras about the purposes and potential benefits of the project for the villages. The project selects its test site villages with the following characteristics:

- with a significant amount of pasture and range land;
- and with well developed shura governance capacities, where the National Solidarity Program has functioned for at least two years under the guidance of the community shura and with the support of an NGO;
- with a medium number of households, not too big or too small,

Out of these candidate villages, a test site is selected where the shuras are willing implement the project. A test site may include more than one village, particularly when boundaries identifying the uses of pastures and range land by neighboring villages.

In villages where there are investments being made by NGOs or by government projects, and where land issues are seen as important, meetings will be held with community members about the purposes of this project and how it will benefit the villages in order to come to an agreement about participating in the project.

All information generated about the participating villages will be donated to the villages for their future use in administering land resources.

3.3 WORKSHOPS – DISCUSSION OF RLAP RESULTS AND PROPOSALS FOR IMPROVEMENT OF LAND ADMINISTRATION

After the test site activities are completed, a discussion with the village participants and with a broader public will be organized to show the results and present propositions on the main issues for which

⁹ These ideas come mainly from Bastiaan Reydon, “Assessment of the Department of Land (Amlak) at the Ministry of Agriculture and Irrigation”, LTERA project, 30 June, 2006, as well as the above cited work by Liz Alden Wily.

information has been gathered: the preparation of draft amendments to policies and programs for the sustainable use of land, the improve access to land information, and the improvement of the institutional framework for land administration and land management at the local level.

Workshops will be held with representatives of the various stakeholders and participants in the project. That workshop will permit the discussion of the following:

- Histories of the test sites
- Lessons learned,
- Recommendations for improvements in the organizational structure, procedures and staff capabilities of Amlak, Cadastre, District and Provincial Appeals Court Judiciary, and Village Shuras, and
- Needed policy, legislation and regulations.

3.4 LAND LAWS AND POLICIES

After the community based agreements on land use and ownership and the workshops on the experiences of the project, it may be beneficial to propose changes in the legal framework and new policies that would help diminish the rural land tenure problems.

3.5 PROPOSAL FOR IMPROVING GOVERNMENT LAND AND PUBLIC LAND MANAGEMENT

With a clear vision of where and how much government land exists from the villages experiences, it is possible to develop government and public land management that would focus on the appropriate allotment of this government land for private and public uses.

3.6 PROPOSAL FOR INSTITUTIONAL LAND ADMINISTRATION REFORM –

After these experiences of the coordination of the institutions involved in land administration, it is possible to make clear propositions of how to redesign the system for its improvement and to in the long run create an integrated Land Administration System.

3.7 CAPACITY BUILDING

Improving the capacity of government agencies to formulate policy and better administer rural land will involve the following RLAP activities:

- 1) Through the GIS/IT contract, four staff from Amlak and four from Cadastre will be trained in the use of the GIS and database software produced under this contract.
- 2) The Ministry's staff involved in Kabul and in Provinces in the work at the community level will gain experience in devising agreements about rights to land and the formulation of policy—legal—procedural and administrative reform options at the appropriate levels of Administration.
- 3) The test site community shuras and related organizations will improve their knowledge and abilities to conduct such work in the future.
- 4) Administrative reforms which are adopted will be accompanied by training programs for people involved in their implementation.

4. LAND ADMINISTRATION

What are the implications of this project for land administration in Afghanistan? Pertaining to the five land administration functions outlined previously, our findings to date can be summarized as follows:

4.1 HOW TO KNOW WHO “OWNS” LAND AND ATTACHED CONSTRUCTION?

In the LTERA project, there has been a two track effort:

- 1) Work with the Supreme Court and Provincial Judges to find ways to make the formal deed preparation, archiving and retrieval system work better for identifying who has what legal interest in properties. Paper records have been rescued and properly archived, and some deeds have been digitally photographed and indexed. In one Province (Ghazni), initial steps have been taken to create a “one-stop-shop” for people wishing to deal in urban properties to be able to do so quicker and at lower cost. A significant although unknown percentage of all transactions in urban areas do not go through the formal deed preparation and archiving process. In some studies in rural areas, over 90% of transactions are done outside of the formal court based system.
- 2) Develop a procedure for community councils in informal settlements to identify the legitimate claims to housing and other urban properties, including an inexpensive and quick way to map the boundaries of properties in identified parts of the city. The agreement of the Mayor for some informal settlements to upgrade their infrastructure, particularly their access streets, is an important recognition of the legitimacy of the settlement, removing the fear of eviction to a large extent.

In the RLAP with its focus on rural villages with all agreements about the legitimate users of pasture/forest lands being verbal, the strategy being explored is for the pasture land written agreements to be archived in the Village Councils, along with the satellite images, but with copies archived in the Amlak a Cadastre.

Similarly, with over 90% of transactions involving privately owned land being described in customary ways, in villages which desire the change, formal title abstracts and parcel maps will be archived in the Village Councils, Amlak and Cadastre in a system parallel to that of the primary courts for formal deeds. As is presently done, when owners wish to formalize their transactions, they can take certificates of the village documentation to the judges for consideration in their application for formally prepared deeds.

4.2 WHAT TAXES DO THE HOLDERS OF LAND OWE TO THE GROUP?

In municipalities, there is a property tax on businesses based on land and improvements to the land. The base is weighted by construction costs. The revenues from the tax support the provision of municipal services. Each city ward office maintains records on each parcel of real estate used for a business, that include the measured square meters of land and the measured square meters of all of the improvements.

In rural communities, a property tax based on the productive potential of the agricultural land exists, but is not presently applied due to recent droughts.

One idea in rural areas is for the village councils to make lists of property owners and users, and devise a contribution from those people to a village infrastructure fund, including support for the local schools. The NSP program has helped create the financial management capabilities of at least some

village councils, and the RLAP is working with Village Councils on developing land records. But the administrative framework for such a land based “contribution” system would have to be worked out.

4.3 HOW LAND HOLDERS SHOULD USE THE LAND

In municipalities, overseeing the construction process is a municipal responsibility.

In rural areas, the RLAP is developing a procedure for local agreements about the legitimate users of pasture land. With the provision of satellite imagery covering most of the land traditionally used by village residents, the base exists for the Village Councils to devise rules for private and public uses of land, although this function has not been a traditional responsibility of Village Councils.

4.4 HOW INDIVIDUALS CAN GET THE RIGHTS TO USE THE GROUP’S LAND

The disposition of municipal land is a contentious topic, although the LTERA project is working on procedures for Community Councils to identify the existing legitimate users of land within their communities.

In rural areas, “public” lands include those which the Government considers as being State owned, and therefore under the management of the Amlak. Public lands also include community or tribally owned lands deriving from past decrees of heads of state.

The recent shift of MAI policy toward more community based management of pasture and forest land could open the opportunity for discussing how the Village Councils could assume the management of community lands and even State lands, including the assignment of use rights and the collection of rents. This development of Village land management capabilities would be assisted by the RLAP’s suggested use of satellite imagery to identify land parcels, and by the development of capabilities of Village Councils to maintain records of agreed users.

4.5 WHAT PEOPLE IN CONFLICT OVER USES OR OWNERSHIP OF THE LAND SHOULD DO TO RESOLVE THEIR CONFLICTS.

The RLAP is offering village stakeholders the opportunity to discuss and define legitimate users of forest and pasture land in written documents. In some instances where past agreements are vague, this procedure should help forestall future conflicts.

But in those instances where conflicts emerge, the customary means for dealing with them, followed by appeals to State institutions when the customary means fail seems to be a reasonable approach. The courts would become relevant when the parties to the conflict decide to get the courts involved.

5. POST SCRIPT: THE PRIVATIZATION OF FOREIGN ASSISTANCE

The years following World War II witnessed the emergence of the United Nations, the dissolution of many aspects of colonialism, and the emphasis on state investments in core industries and infrastructure to move countries into the “development” stream. The assistance of developed countries in this process was often government-to-government, or in the form of people-to-people programs (such as the Peace Corps and exchange programs), or involved voluntary organizations which shifted their post war humanitarian relief efforts to development investments, and even got universities

involved, which encouraged their faculty and students to undertake international development programs.

With the growth of “globalization” of the economy, this public assistance has become significantly privatized in that the foreign development assistance (USAID, EU, IDB, ADB, WB) is to a substantial degree managed by private for-profit companies and non-profit organizations. This privatization of foreign assistance is producing some unfortunate effects, some of which I have witnessed in Afghanistan, particularly the rapid loss of public Afghan support for the international development assistance programs. Afghans cannot avoid seeing the often ostentatious results of such programs--big foreign project compounds, with streets passing them blocked for security reasons, armored SUVs rushing about, foreign restaurants serving only foreigners who ignore local laws and customs, particularly relating to alcohol consumption, much of the financial resources given to foreign companies going to high priced foreign consultants. I admit that not all of these problems come from the privatization of development assistance, but many of them do.

My basic concern is that when the question is posed to the private managers of development assistance as to "what is better to do?", the answer tends to be "what is better for foreign company profits". A recent evaluation of USAID's Anti-Malaria program concluded that only 5% of the funds the Agency provided actually went for anti-malaria resources¹⁰. Another study has shown that both for-profit and not-for-profit organizations are responding in similarly perverse ways to the incentives of competitive contracting and emphasis on immediate results¹¹.

Somehow these distortions have to be interrupted, perhaps by strictly tying company profits to actual development results, by extending the lives of projects, or by more drastically re-thinking the structure of foreign assistance. One direction of this re-thinking is for development assistance to build the capacity for its own administration in the local non-private sector, including local Universities. The foreign assistance funders, be they national or multinational, also could provide much greater support for resisting local pressures for diversion of funds into the benefit of political organizations or the pockets of local warlords or other powerful people. They also could change their fascination with privatization of all aspects of economic and social life and their structural adjustment loans designed for “head first” or “get the policies right” development managed by private foreign organizations, driven by need to maximize foreign management and technical assistance and shift to a local grass roots institution development focus, based on local initiatives.

¹⁰ Roger Bate and Benjamin Schwab, “The Blind Hydra”, American Enterprise Institute Working Paper 108, April, 2005.

¹¹ Alexander Cooley and James Ron, “The NGO Scramble”, *International Security*, Vol 27, No. 1, Summer 2002.

Figure 5: The Privatization of Foreign Assistance

Present model: Private, foreign companies	Results	New Model: Local non-profit organizational development
1. Corporate profits primary concern	1. Illusions of development, especially for disadvantaged	1. Donors derive objectives from local initiatives, driven by disadvantaged sectors
2. Profit tied to use of foreign specialists	2. As much as 75% of development project funds for foreigners	2. Minimum of 75% of donor funds go to local institutions—universities and local non-profits.
3. Corporate goals predominate over development effects	3. Resentment of foreign projects by governments and local organizations. Insurrections	3. Indirect costs of foreign donor partners derived from total direct costs, including a reasonable “oversight” fee for building local non-profits; long term perspective
4. High investments in comfort and security of foreigners.	4. Minimal investments in sustainable local institutions	4. Institution building of non-profit associations, organizations whose primary commitment is to economically, socially and environmentally sustainable development

6. CONCLUSIONS

Our approach to improving the capabilities for land administration through the RLAP emphasizes a series of dual, incremental institution building strategies:

- Community based and tested ideas **combined with** public institutional strengthening, including local community institutions but extending to district and national levels;
- Local NGO **and** public sector cooperation
- Moving land administration responsibilities to Village Councils **while** providing back up, coordination and oversight capabilities in higher levels of public administration.
- Land administration procedures based on incremental improvements of established procedures **combined with** the testing of information-communication technologies for use where appropriate.
- Foreign organization advice to a local NGO **until** no longer needed for the support of public land administration capacity building.
- Develop property information at the village level **only** when the Village Council approves.

ANNEX 1: DRAFT MODEL VILLAGE LAND USE AGREEMENT

Rural Land Administration Project
1385-86 (2006-7)

Agreement Number: _____ Date: _____

Community Agreement on the Uses of a Pasture, Agricultural,
or Forest Land Parcel

1. Location of Village

2. Location of land parcel

Number on map or image: _____

Approximate coordinates of center point: N _____ E _____

Northern Boundary: _____

Southern Boundary: _____

Eastern Boundary: _____

Western Boundary: _____

3. Sketch from map or image

4. Uses of Parcel During Year _____ (pasture, cultivated land, housing, etc., not used):

Use 1:	Dates of Use 1: From ____/____/____ to ____/____/____/	Community Identified Legitimate User (s):	For how many years has User(s) used the parcel? _____	From whom does User need approval to use parcel (Name)?
Use 2:	Dates of Use: From ____/____/____ to ____/____/____/	Community Identified Legitimate User(s):	For how many years has User(s) used the parcel? _____	From whom does User need approval to use parcel (Name)?
Use 3:	Dates of Use 3: From ____/____/____ to ____/____/____/	Community Identified Legitimate User(s):	For how many years has User(s) used the parcel? _____	From whom does User need approval to use parcel (Name)?
Use 4:	Dates of Use 4: From ____/____/____ to ____/____/____/	Community Identified Legitimate User(s):	For how many years has User(s) used the parcel? _____	From whom does User need approval to use parcel (Name)?

5. Date of Community Decision about Legitimate Users: _____ **Location of Documents relevant to Community Decision:** _____

6. Are there any conflicting claims as to the legitimate users of this parcel? Comments: _____

7. COMMENTS ON THE OWNERSHIP OF THE PARCEL

Name(s) of owner(s) recognized by the community	If private owner, the address of owner's residence	Basis for claiming ownership; location of document(s) establishing ownership

8. Are there any conflicting claims as to the ownership of this parcel? Comments: _____

9. - 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:

Obligations of the Users of the Parcel:

We will use the pasture only for grazing animals, We will protect the pasture from converting to agricultural or residential and we will improve our pasture in collaboration with Ministry of Agriculture and other stakeholders

Identification of Participants in Agreement:

Name, Signature and Finger print of boundary

Identifier: _____

Name, Signature and Finger print of recorder of agreement: _____

Name, Signature and Finger print of Head and Members of Shura: _____

Name, Signature and Finger print of Elders and Villagers:

Neighbors' Agreement:

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

Name, Signature and Finger print of Neighbors:

Name, Signature and Finger print of witnesses: