

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

by

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Abstract:

Nearly all of the pastures in Afghanistan are officially owned by the State, but used by families, clans, or tribes, including nomadic groups who herd sheep, goats, cattle and camels across semi-arid lands. Under the traditional informal arrangements which have existed for the use of these lands, differences of opinion about use rights can emerge. Also with security of tenure not assured, the users are not motivated to invest in the improvement of these lands. To address these issues procedures have been developed to draft agreements among the village leaders and elders as well as leaders of nomadic groups as to who are the legitimate users of pasture parcels.

Following the formalization of these agreements among the legitimate users of these pastures, their signing and witnessing by village leaders, and delineation of pasture 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.

The District Governors and the Pasture Land Specialists of the Ministry of Agriculture, Irrigation and Livestock review the community crafted agreements as to the legitimate users of rangelands, and then work with the community identified pasture managers on designing and implementing pasture improvement plans for each pasture parcel

1. Introduction

Afghanistan has a population estimated to be about 26 million people¹ and a total area of approximately 653,000 km². It is bordered on the north by Turkmenistan, Uzbekistan, and Tajikistan, on the extreme northeast by China, on the east and south by Pakistan, and by Iran on the west. The country is split east to west by the Hindu Kush mountain range, rising in the east to heights of over 24,000 feet. With the exception of the southwest, most of the country is covered by high mountains and is traversed by deep valleys. About 12 percent of the land area of the country is cultivated. The literacy rate is estimated to be 36 percent, and the per capita GDP is estimated to be about \$800 per year².

More than five years after the Bonn Agreement, peace cannot be said to have been restored in Afghanistan. The effectiveness of State institutions for improving the lives of Afghans and for making democracy work has not been restored. In most areas of the country, the institutional relations between community and State are borderline

¹ Afghanistan Web Site. The CIA World Fact Book estimates the population to be closer to 32 million.

² <http://www.iaea.org/inisnkm/nkm/aws/eedrb/data/AF-gdpc.html>

dysfunctional if not hostile. The State building efforts since the overthrow of the Taliban regime in 2001-2002 have focused in the main on national elections, national parliamentary legislation, and executive administration, but to date have not been successful. Rather than such a top down approach, a community based development strategy should be explored as the cornerstone of efforts to rebuild community-State relations. One component of such a strategy could be the community based administration of rangeland user records described in this chapter.

The information presented in this study comes from the efforts of a Rural Land Administration Project (RLAP) team which functioned between June 2006 and September 2007. That team included representatives of the Ministry of Agriculture, Irrigation and Land (MAIL) from the MAIL's Natural Resources Directorate, as well as cadastral survey specialists, community organizers from an Afghan NGO (Cooperation for the Reconstruction of Afghanistan), and two international advisors. This team developed procedures in four test sites for documenting and archiving legitimate rights to communal pasture lands and the incorporation of these documents into governmental agencies³.

Millions of Afghan rural households – including nomads – depend very heavily on rangeland⁴ to survive. Rangeland, however, is legally defined as public land and cannot be privately owned⁵. Families, clans and tribes, as well as nomadic groups, use rangeland for feeding livestock, for gathering fuel, as a source of herbs for medicinal and cooking purposes, and as a passage way for moving livestock from one place to another. Rangelands also represent crucial water catchment systems, which supply water for valley settlements and farming. The degradation of such lands can lead to erosion and drops in the levels of aquifers, negatively affecting cultivated agricultural areas and water sources for urban uses.

Rangelands have been deteriorating in recent decades. Many formerly viable rangelands have become virtually barren wastelands. The degradation of rangelands has also been accompanied by the conversion of some areas formerly used for pastures into rain-fed agricultural cultivation. This conversion in drought years and in low rainfall areas severely weakens the capability of the land to regenerate a stabilizing plant cover. Figure 1 shows a typical rural ecology, with irrigated agricultural land and housing along the river, and with the lands above the irrigated perimeter being used for rain fed agriculture and pastures.

³ For a detailed discussion of the results of this effort, see Asian Development Bank, Final Report, September, 2007, which can be found at: www.terrainstitute.org

⁴ The English terms "pastures", "rangeland" and "pasture land" are translations of the same Farsi term used in various English language documents, and are used interchangeably in this chapter. People use such lands for grazing of livestock, gathering of fuelwood, house and fence making materials, and medicinal herbs.

⁵ The Land Management Law of 2008, Article 82 (1) basically repeats Article 84 (1) in the Land Management Law of 2000, and neither is clear: "(1) Pastures are virgin and arid lands, on which state and individual possession has not been proved legally and they are deemed public property. An individual or the Emirate (State) can not possess pasture lands, unless otherwise stipulated by the *Shari'a*." A Pasture Law approved in 1971 which holds in Article 3, "Pasture land is owned by the government and people can use it in accordance with provisions of this law" seems to be the operative principle for most government officials.

Figure 1: Typical Village Ecology



An important phenomenon accompanying the degradation of rangelands is the increase in conflicts among farming and livestock dependent families for a decreasing supply of adequate rangeland. As the supply of rangeland declines, and with a constant or increasing demand for areas to pasture livestock, competition for this increasingly scarce resource inevitably results. Evidence suggests that pastures are the principal focus of conflict in Afghanistan because they involve and affect more people than conflicts over farms or urban housing, often inflaming ethnic problems and cross-cutting with unresolved conflicting arable and pastoral land needs (Wiley 2004).

A main cause of rangeland degradation and resulting social problems is the web of conflicts about how rural people hold and use rangelands. This web has three dimensions: *first*, a longstanding history of conflict over rights to rangelands among groups of village residents and nomadic groups⁶; *second*, differences of opinion about the preservation of rangeland between farming families with access to agricultural land and families without access to agricultural land but with a dependence on livestock; and *third*, contradictions between governmental agencies (empowered by formal law establishing State ownership of pasture land) and local communities which, by custom and necessity, use the rangelands.

According to the Land Management Law of 2000, the villagers can have the exclusive right of use to their community pastures, which is the pasture area directly surrounding the village. In the 2000 law (Article 9), such community pastures were defined as ‘the

⁶Frauke de Weijer estimated that “the total number of (semi-)nomads currently lies between 1.5 and 2.0 million, including those that settled recently and possibly temporarily.” p. 6.

area from where the loud voice of someone standing at the edge of the village can still be heard'. Lands used principally for grazing which are beyond the boundary of the community pasture, are called public pastures.

In the past, village elders and tribal leaders met and agreed about the users of both types of pastures (Barfield 2004). In some instances of public pastures, anyone can use them at any time. In general the customs and traditions about the uses of community and public pastures are more tentative today than they were prior to the 1980s, that is, rights are often not clear and the confidence people have in exercising these rights is often not high—which is fertile ground for social conflicts.

2. New Government Policy/Strategy for Rangelands

The Ministry of Agriculture, Irrigation and Livestock (MAIL) introduced a significant new policy/strategy in 2006, which advocates *“the transfer of effective management responsibilities for forestry and range resources within defined community geographical areas to communities”*. The objective of this community based management of forestry and range resources is to create *“value for community members (both in the form of productive resources – timber, firewood, better pasture, and as means of protecting natural resources from erosion)”*.⁷

This policy/strategy formalizes the de facto situation in most communities whose residents use rangeland. For decades, families, clans and tribes through their elders and leaders have arrived at rules for deciding who has the rights to use particular pasture areas for what times of the year. This local administration of rights to rangelands has evolved regardless of the provisions of the formal law that pastures and forests are State owned and under the authority of State institutions. The theoretical notion has been that the State through its land management and administration⁸ institutions would decide who could use State owned rangelands, would monitor their use and sanction unauthorized use, and would administer the records pertaining to rangeland. However, in practice the decisions about who uses rangeland and how they use rangeland have been negotiated among clans, families and nomadic families at the local level. Under such de facto arrangements, there have been verbal agreements arrived at through often extended discussions among elders and other community leaders.

⁷ Ministry of Agriculture, Irrigation and Livestock, “Policy and Strategy for Forest and Rangeland Management Sub-Sector”, 2006, p. 2

⁸ In this study we use the term “land management” to mean the actions taken by the owners of the land, the persons or organizations with rights to the use land and to enjoy the benefits produced from that use. By the term “land administration” we refer to the activities of governance structures and associated private individuals pertaining to assembling and making available information about the ownership, use and value of land. Land administration functions include the “identification of landholdings, confirming boundaries, certifying rights, and recording transactions and inheritances” (Bruce and Knox, p. 1362). Land administration entities provide services to land managers and to land regulators, taxation agencies, public utilities, as well as developers. See also UN Economic Council for Europe, 1996. See also the FIG elaboration of a land management paradigm (Enmark, 2005), as distinct from land management.

A major complication to this *de facto* traditional system of rangeland and forest management has been the turmoil of the past 25 years and the resulting displacement of populations and damage to local leadership structures. The emergence of local warlords using the threat of force to influence local people has led in many cases to the breakdown of the informal rules governing how communities and families get access to, and use, rangelands. Another complicating factor has been the sporadic attempts of governmental representatives to assert their legal authority over the use of rangelands, also with the threat of the use of force to influence local people. The result in many places is increased insecurity of tenure among people whose lives depend on secure access to these resources.

The Ministry of Agriculture's new Policy/Strategy for recognizing community based management of rangelands is an initial response to this problem. The State does not have the capacity for managing rangelands or for maintaining records about the use and conditions of rangeland, which it claims to own under legal provisions for State ownership of rangelands.

Sporadic attempts to enforce State management of rangelands ironically frequently serve to drive even more wedges between government and communities, and to weaken the local resolves to effectively manage rangelands. Identification and recording of the legitimate community users of rangeland are first steps in the implementation of the new Policy/Strategy⁹ which recognizes the responsibilities of communities to manage rangelands.

This MAIL policy/strategy of 2006 has been updated and incorporated into the National Land Policy prepared by a multi-ministerial commission in early 2007¹⁰:

⁹ The new Policy/Strategy for a community based management paradigm of rangeland (and forests) faces many implementation issues, including the resistance of governmental land management officials. For an analysis of such resistance to the devolution of management to communities in various countries see Marshall, 2007 and Bruce and Knox, 2009. Even at the highest political levels in Afghanistan and also within the donor community, there are few leaders committed to a community based land management paradigm without a clear specification of the responsibilities of communities and higher levels of government and the capacities of each to make such a paradigm work. This study is a step toward that specification.

¹⁰ Islamic Republic of Afghanistan, "Draft Land Policy", Section 2.2.6, January, 2007.

Section 2.2.6: Issue: Regulation of Pasture Land

Section 2.2.6: Policy

- It is a national policy that access to land resources be clarified and secured as part of an integrated natural resource management which springs from local community based resource management. Such community based resource management must be conducted under the strict supervision and guidance of the Ministry of Agriculture.
- It is national policy that community-based natural resource management strives to ensure environmental protection and usage for all public owned pasture users.
- It is national policy that the resolution to complex issues of ownership and access rights to pasture lands be examined at the provincial level and traditional use rights of settled farmers and pastoralists established and respected.
- It is national policy that the Ministry of Agriculture reactivates land surveying in order to clarify rights to land.

The Ministry of Urban Development and the Municipality of Kabul have developed a similar community based approach for regularizing the tenure of some informal settlements in Kabul as part of the upgrading of those settlements¹¹.

In a review of land registration options for Afghanistan, McEwen and Sharna¹² 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.

There are also important historical precedents for community administration of property records. The royal acts, which allotted land to families at the time of establishment of the communities, have typically been kept by an *arbab/malik* or by a respected elder of the village in their village homes¹³. Most of the 20,000 villages incorporated in the National Solidarity Program (NSP)¹⁴ the NSP Community Development Councils. have developed systems of producing and archiving accounting records and notes of council meetings, even though they are often rudimentary¹⁵.

¹¹ See USAID Land Titling and Economic Restructuring in Afghanistan, January 2006.

¹² McEwen and Nolan, p. 23.

¹³ From discussions with community leaders in the RLAP test sites.

¹⁴ The NSP is a nation wide effort begun in 2003 through the Ministry of Rural Rehabilitation and Development to target the needs of rural communities by employing community-driven development, delivered through a collaborative partnership, encompassing central government, local and international non-governmental organizations (NGOs), and the communities – represented by specially devised Community Development Councils (CDCs). See Bakar, 2006.

¹⁵ See Barakat, 2006

The problem of land tenure insecurity¹⁶ derives from the disruption of customary arrangements concerning access to land due to population displacements, warlords demanding control over community lands, destruction of documents proving rights to real property, and land acquisition by influential individuals in the context of a weak State. Such actions include outright land grabbing, acquisition of immovable property from land grabbers through informal market transactions, and improper State allocation of land. Under these conditions, land holders perceive their rights to land to be tentative and insecure,

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 state¹⁷.

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 in the customary deeds. These describe transactions in land, but are not prepared in accordance with legally defined procedures¹⁸.

Similarly, government officials may issue apparently valid legal documents about rights to land, such as an allotment of land to a land developer, despite strong local opposition. Under such conditions, the rights to land may be legally valid yet not be considered socially legitimate, a situation potentially leading to long-running local conflict.

Improving the security with which people have rights to rangeland should result from having those land rights be both “legitimate” and “legally valid”. But how can the country move toward that situation?

The State is weak in Afghanistan. The popular perception is that wealth and power influence the creation and application of State defined laws more than do dispassionate legal procedures administered by a transparent bureaucracy. Under these conditions, an approach to improving rangeland tenure security can be first to define legitimate rights through community consultations about customary rules concerning access to rangeland, and then appeal to institutions of the State for confirmation of the legal

¹⁶Land 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 Bruce). Tenure insecurity can be defined as the extent to which holders of land lack such confidence. Some conditions for reducing the perceptions of insecurity are discussed in the text.

¹⁷Toulmin, p. 4.

¹⁸ See Sheleff for an introduction to the literature on customary law.

validity of these community legitimized rights to land. This approach reverses the usual focus of first establishing State policies, then crafting laws in line with those policies, and then enforcing those laws across the land. The “community first” approach means that rules about the use and improvement of rangelands have to be established in community consultations, community by community.

Delville¹⁹ suggests that two questions must be answered in these local consultations in order to pull people out of the morass of insecurity; at least as far as reducing land tenure insecurity is concerned:

- 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?

The clarification of legitimate rights to rangeland through community consultations requires additional steps to confirm these rights through State review of the local decisions to verify that community claims to rangeland do not conflict with neighboring community claims. There should also be clear procedures defined in law for community decision making to avoid the illegitimate grabbing of land by powerful individuals or families within communities. This dual focus on documenting legitimate and legal rights to rangeland should have the added benefit of re-constructing the relations of community and State around the administration of rights to rangeland. This is an enormous task, but one that is necessary and appropriate to Afghan conditions.

3. Community Administration of Records

In many countries the answers to both of Delville’s questions have focused on applying formal law to adjudicate claims to 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 teams²⁰. 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.

In the Afghan context a “community consultation” approach may be a more feasible way

¹⁹ Delville p. 2

²⁰ For a review of the various approaches to land administration, including property records administration, see Burns et. al.

to try and answer both questions about how to establish more secure rights to at least one type of land, rangeland. Community based preparation of agreements and the administration of these agreements about legitimate users of rangeland could encourage their use and maintenance, and could strengthen the security with which these users hold and manage the land. Such a system is hypothesized to be speedier and generally more efficient²¹ than a solely government administered system.

Such a system also already has some support from the Judiciary. The RLAP field teams presented examples of rangeland user agreements to Provincial Appeals Court Judges in Kunduz and Herat. In both Provinces the judges concluded that the agreements would have great value should disputes be presented to their courts pertaining to the lands covered by the agreements. In both Provinces, appeals court judges observed that their present procedure is to refer disputes among villagers concerning land back to the village elders for their opinion on the dispute. The signed agreements represent evidence already gathered of these opinions. .

Pertaining to the administration of property records, the RLAP field teams worked with community leaders to negotiate consensus as to the legitimate users of rangeland, including community families and nomads, the documentation of these agreements validated by the signatures of family and clan leaders and *arbabs*, and the archiving of these agreements in a secure place in the villages under the supervision of a trusted person. Community administration meant the actual administration by community people of property records, and not administration solely by 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.

This community based administration should function, but it requires training and technical support. As in the case of land tenure security, people should feel more secure in the 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....”²²

Wily describes this approach as the “*empowerment of people at the local level to manage their land relations themselves*”²³.

²¹Wily (2003), pp 1-2.

²² Wily (2003). abstract page.

²³ Ibid, p. 35.

Bruce and Knox (2009) observe in their review of community based land administration experiences in the African context:

...community-based and user-friendly means of recording land rights which allow land administration to be managed at community level, taking advantage of the community's remarkable collective memory of things having to do with land but providing written record.

Community consultations are about who the community leaders recognize as the legitimate users of rangeland. This method is at once a recognition of the customary means for identifying these users, and an improvement on this custom through making the user agreements written and signed by family heads and community elders and prestigious persons, accompanied by community rangeland parcel boundary delineations, and at least procedural support from the Judiciary and local governmental entities (District Woluswals and the Provincial Cadastral Service).

3.1 The Community

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 the village (*qarya*), the settlement (*qishlaq*), and the area (*manteqa*).

None of these concepts have a standard administrative definition in that the most local unit of local government defined in Afghanistan is the District (*Woluswali*), which contains many *qarya*, *qishlaq* and perhaps even *manteqa*. The Woluswali has a Head²⁴ and Council, and its municipal center normally contains offices of national level ministries and agencies.

Despite not having administrative designation, there are traditional institutional structures of *qarya* and *qishlaq* that the RLAP field teams used to focus “community consultations” about rangeland and agricultural land rights. Of basic importance is the formation of *qarya* or *qishlaq* “shuras” (local councils) from time to time, which traditionally are composed of family or clan elders, typically to resolve conflicts of one sort or another²⁵. Moreover, the National Solidarity Program (NSP) launched in 2002 has stimulated the formation of Community Development Councils to administer infrastructure grants at the local level for settlements or villages. These NSP councils encompass approximately 25-300 families, and are more formally constituted than the traditional community shura.

²⁴ ²⁴ “*Woluswals* (District Governors) are appointed by the President and represent the Ministry of Interior at the district level. District Governors report to the provincial governor and their role is primarily to represent the government at the district level and to coordinate ministry activities. They are also responsible for civil registration of births, deaths and marriages. They may also assist in conflict resolution, through referral to the police or the local *shura*.” See World Bank, 2007, Page 8.

²⁵ 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 Wardak, 2003.

In at least some Kuchi communities, the basic concept of organizing access to and usage of pasture is the 'Yurt'. Literally referring to a round dwelling place constructed of portable materials, in Kuchi communities like that of Naw Abad this term also refers to a defined geographic area of rangeland that is used by a specific family of herdsman. In the Kuchi village of Naw Abad, the shape of these geographic 'Yurts' evolves over time, and the location of their boundaries is established through family consultations, and orally transferred from generation to generation. Originally, the size of each 'Yurt' is determined by the size of an individual herd. The number of animals belonging to a specific user also influences who is allowed to use the area in question. The number of 500 animals is the standard size of a herd. In a given year, one herdsman family may not be able to acquire that number of animals and thus will allow some related family to use the grazing area of their 'Yurt' so that its capacity is being used. However, the shape and size of the 'Yurt' does not usually change significantly through this practice, and the use-rights are still exclusively assigned to the family in question.

In the view of Kuchis of Naw Abad, a 'Yurt' is not only a specified geographic area, but also an essential element in a system of rights to pasture land collectively agreed upon between all potential Kuchi community users. Villagers do not claim ownership of the land in question, although in their view the long duration of well defined usage stretching over many generations does give them strong rights to control access to that land. Rather than talking about pasture land ownership, Kuchi families refer to the right of use which they claim to those areas. But since a *yurt's* geographical space can change depending on size of herd, rainfall, stage in the family cycle, the Naw Abad community did not wish to delineate existing *yurt* boundaries, but rather the boundaries of the family/clan rangelands, containing several yurts.

In regard to defining the legitimate users of public pastures²⁶ whose users come from more than one *qarya* or *qishlaq*, the *manteqa* may become the relevant definition of local community, with the governance structure of a *manteqa shura* or *jirga* called into action under specific conditions.

Another community institution revolves around the person identified as the *arbab*²⁷. *Arbabs*, also known as *maliks* in some regions, are respected villagers who are educated and have the political and social skills needed to deal with government agencies and other outside organizations about the needs of villages. Villagers also consult with these individuals for advice when disputes arise which cannot be resolved by the parties to the disputes or their families. An *arbab/malik* may serve more than one village. Their services are usually remunerated by villagers usually at the time of harvest, in the form and amount as defined in each village by the elders of the village, including contributions from each family. The *arbab/malik* typically has an official stamp to use for validating documents which he prepares. One result of this role is that *arbabs/maliks* often keep community records, such as royal land grants and other written documents pertaining to community activities.

²⁶ Subsequently in the text we discuss the concepts of community/specific pastures and public pastures.

²⁷ See Brick for a more complete discussion.

Since *arbabs/maliks* tend to be powerful people in the community, often from large landholding families, it seems likely that communities choose someone with economic or social power to represent them at least in part because such people could get governmental officials to listen to them. Whatever the case may be, as time passes, the position is either inherited or a new *arbab/malik* is re-appointed through community consensus.

The field teams defined a community as a settlement with a locally known name which had participated in the NSP and had a functioning NSP Community Development Council (CDC), although this CDC served only as an initial point of contact in order to identify the heads of families and clans and other influential people in the community who had the respect of the various village factions. This group of influential people, which the field team called a “rangeland consultative council” were the interlocutors of the RLAP field teams in order to reach consensus about legitimate rights to rangelands. Typically the community also had the services of an *arbab* (since the test sites were in the north and west of the country), although the function of linking the community with outside agencies also is frequently done by an influential *mullah*,²⁸ or by the head of a local cooperative. These individuals were also included in the “rangeland consultative council” with which the field teams worked to produce the agreements about legitimate users of rangelands.

Households that did not have their own livestock did not participate in this rangeland council, except when they had special knowledge of traditional usage, or when they were caring for livestock owned by others. In two of the test sites, there was a tribe or group which had been settled by a previous regime on lands near the target village. In one case, the “new group” was allowed to pasture their animals on some rangeland also used by the village families, but were not allowed to have agricultural land, only working as laborers. In that village the four main clan heads agreed to note in the legitimate user agreements the arrangements made with the “outsiders”. In the second site, all that was agreed was that certain pastures were used exclusively by the settled group, but with lingering determination by the original villagers to one day recover “their lands”. While the user agreements cannot be expected to overcome deep resentments, they can function for a time to calm expectations, and can always be changed should conditions change.

The task of the RLAP field team was to forge a consensus among existing community leaders about the boundaries of rangelands used by community families, and to document those leaders’ opinions about the legitimate users of those rangelands, and not the planning for the actual use of these lands. This planning exercise is to occur at a later stage, and could involve the community action planning methods used in urban areas. In terms of gender roles, the field teams’ community mobilizer had experience in urban informal settlements with organizing men’s community planning councils initially separate from women’s planning councils to ensure that women’s opinions were

²⁸ See Wardak, et. al, 2007, for a useful discussion of the importance of local and regional religious leaders.

adequately heard. However, in this exercise the RLAP field teams accepted family decisions on who should participate in the rangeland councils for the forging of community agreements about the legitimate family users of rangeland.

3.2 Community Consultations to Identify Legitimate Users of Rangeland

The hypothesis of this study is that where a local consensus or near consensus can be crafted about who are the legitimate users of rangeland at different times of the year, and if that consensus is expressed in written agreements, that local community agreement should be the starting point to define rights to 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. The community can and should be a locus for land administration and management, but a national program has to strengthen the capacities of communities and state agencies to promote and support these efforts for the country to achieve a viable and effective land administration system.

The hypothesis can be divided into five parts:

- 1) Community consultations can produce agreements as to the legitimate users of rangeland at various times of the year,
- 2) These agreements can be based on satellite imagery for delineating rangeland parcels used by community members;
- 3) These signed agreements and delineated imagery, which allow for changes from year to year, can be archived and administered in communities;
- 4) Governmental representatives can review the agreements as to their preparation according to regulations and can maintain back-up copies in District or Provincial offices, and
- 5) Governmental agencies and NGOs can use these agreements to identify families with legitimate use rights in order to work with them to improve the management of rangelands.

To develop and test these ideas, the RLAP team consulted with a variety of organizations in Afghanistan with community development experience or with an interest in supporting such efforts²⁹. A RLAP team of land specialists and community organizers was formed in mid-2006 through the Rural Land Administration Project of the Ministry of Agriculture, Irrigation and Land. The RLAP was financially supported by the Asian Development Bank, and logistically supported by an international NGO—Mercy Corps—which had a watershed management improvement program in some of the RLAP areas of interest. RLAP also received significant support from International

²⁹ See Scanagri/Terra Institute, July, 2006, Sections 2.3 through 2.6 for a discussion of these institutional consultations.

Security Assistance Force (ISAF) in the form of plotted satellite imagery at a scale of 1:5,000 to 1:50,000³⁰ showing the rangeland parcels used by community families.

The project team included Ministerial rangeland specialists, cadastral survey specialists including Provincial AGCHO staff where appropriate, community organizers from an Afghan NGO—Cooperation for the Reconstruction of Afghanistan, and two international advisors. This team developed procedures for documenting legitimate rights to communal pasture lands through agreements among community leaders in four test sites, focusing on these four target villages³¹, and the incorporation of these records into governmental agencies:

- 1) Village Dara-e-Kalan in Ishkamish District, Takhar Province, with rain-fed agriculture and 14 separate clan based communal pastures and limited use by Kuchis.
- 2) Village Safar Khan in Zindajan District, Herat Province, with irrigated agriculture and limited communal pastures close to the settlement with annual Kuchi use.
- 3) Village Saghari in Karokh District, Herat Province, basically rain-fed agriculture, with communally managed pastures (rarely used by Kuchis) close to the settlement area.
- 4) Village Naw Abad in Chardara District, Kunduz Province, a Kuchi³² settlement based on irrigated agriculture and large tribally managed pastures close to the settlement and tribally allocated public pastures in the distant mountains.

The four sites selected for the field work are shown in Figure 2, which also shows the number of rangeland user agreements produced in each site. By “site” we mean a target village and the rangelands used by its residents. The target villages were selected through consultations with MAIL provincial staff, with NGOs working to implement the National Solidarity Program’s Community Development Councils in each major village, and with other donor supported community development programs active in the RLAP areas. The villages selected had demonstrated during the previous two years an organizational capacity to make collective decisions³³. In addition to the target

³⁰ ISAF accessed Quickbird satellite imagery, for plotting the images on paper sheets of 84.1 cm x 76.2 cm, using coordinates which the RLAP team and village elders gathered using GPS units from site visits to rangelands. ISAF also plotted image maps which were tested to delineate smaller rangeland parcels and even agricultural parcels in the Kuchi settlement, at a scale of 1:5,000.

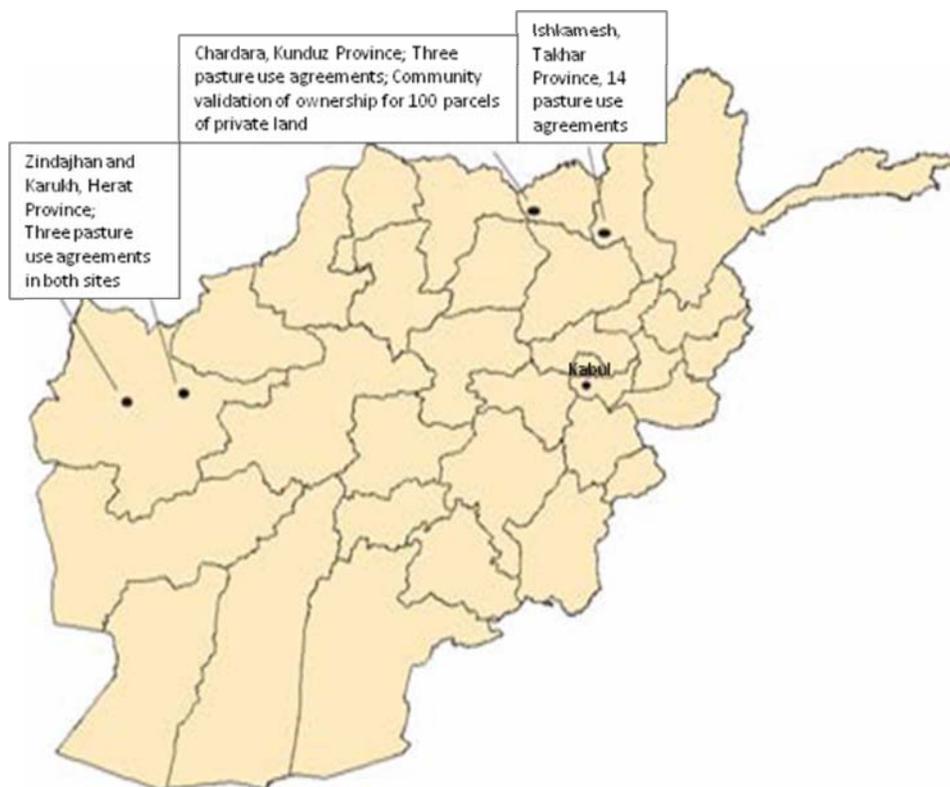
³¹ The four test sites were selected through the consideration of several factors: 1) What provinces have a substantial area of rangeland? 2) In which of these provinces is the security situation favorable for doing field work? 3) What villages in those provinces have had three years of experience with the National Solidarity Program of village council strengthening? 4) Out of those villages which ones were recommended by Ministry provincial staff and by NGOs involved in rural development as being relatively well organized? 5) Following meetings with village councils, which ones agreed to participate in the RLAP? A test site included the selected core village plus neighboring villages with rangeland parcels bordering on those used by villagers of the core village.

³² In this paper the terms “Kuchi” and “nomad” are used as having the same meaning.

³³ The time constraints on the RLAP did not allow time for building this local capacity. At the same time, the RLAP did not insist on the villages using the NSP CDCs, but allowed village leaders to set up a special committee for defining the legitimate users of rangeland, if they so desired.

villages, the “sites” included neighboring villages which the RLAP teams consulted about the boundaries of community used rangeland.

Figure 2: Locations of Program Sites



3.3 Community Rights to Rangeland

In light of the legal ambivalence about the ownership of rangeland, the field teams avoided using the word “ownership” in the community consultations. Rather, the consultations generated community views on who legitimately holds what rights to use particular rangeland parcels during what times of the year. Villagers and Kuchis had no difficulty with this terminology, although reaching consensus about legitimate users often took substantial time, and for some parcels consensus was not possible. The RLAP teams explicitly recognized the authority of local people to define these rights in the first instance, based on the Ministry’s new Policy/Strategy for community based management of rangeland, but subject to review and approval by the formal organs of

government, particularly the Woluswal. Villagers repeatedly asked for this governmental review and formal approval of their rangeland use agreements³⁴..

To protect the interests of the State in rangelands, the Ministry insisted on inserting the following paragraph into the rangeland user agreements, which was discussed and accepted in all community consultations without explicit objections from either the villagers or Kuchis:

“Obligations of the Users of the Parcel”:

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

The meaning of the phrase “pasture and forest lands are government property” in village discourse is more a recognition of the sovereignty of the State in reference to rangeland and forests, rather than an identification of State ownership³⁵ with all of the rights normally included in “ownership” of land, such as the right to sell or to develop.

In any case, for the villagers and Kuchis in the four test sites, reaching agreements about who has rights to specific uses of parcels of rangeland during specified times of the year seemed to be the critical issue to be settled in the consultations. Neither government officials nor the villagers considered as relevant a discussion of who holds the unilateral right to sell rangeland or develop it for other uses, which are typically rights encompassed within the concept of ownership. The clarification and documentation of legitimate users by the community is the critical element, at least for the present time and conditions. Also the “obligations” paragraph of the agreement contains the statement about governmental investments that may be done “with the agreement of the local community”. This statement gives the community a right to negotiate with the government should government want to use rangeland for other

³⁴ This study involved team members who were experienced in the mobilization of communities for the upgrading of informal settlements in Kabul. They were highly skilled in finding ways to motivate people to work together on complicated and at times contentious issues in that urban context. Their community mobilization skills were complimented by those of cadastral land survey specialists with years of experience dealing with land tenure issues in rural villages. The definition of boundaries of community pastures was comparatively easy to agree upon, once the neighboring villagers joined the discussions. Agreeing upon the legitimate users of each rangeland parcel took more time, and for some parcels disputes remained even after 2 month community discussions. Those parcels without agreements were identified on the images and a report prepared as to the nature of the remaining disputes. There were only two such parcels in the four test sites. Special mediation efforts were planned for these remaining disputes, but the time limitations on the present study did not permit dedication of resources to this longer term mediation effort.

³⁵ For more on this distinction between “sovereignty” and “ownership” see Kadouf, cxxi-cxxix.

purposes than the pasturing of animals by local people. Presumably, this right to negotiate includes the possibility for community rangeland management groups to be compensated for community financed improvements in pastures under their management, should the government wish to acquire those lands for other purposes.

A Pasture Act is being drafted to replace the legislation presently in place, which may clarify or may complicate community-government relations concerning the management of rangelands³⁶. At present, the rangeland user agreement is a statement by community rangeland users and village elders about their understanding of who the legitimate users are. The agreement is not expressly authorized in legislation. However, it is in accord with the draft Land Policy, and with the MAIL's Policy/Strategy on community based management of rangeland. Moreover, the Herat and Kunduz Appeals Court Head Judges have reviewed the wording of completed agreements, and they indicated that such documents would have significant legal relevance in their courts, should a dispute be presented to them involving rangelands covered by the agreements. Their normal procedure when village land disputes come to them is to refer the parties involved back to the community elders to get their recommendations. In the case of a dispute involving rangelands with an agreement signed by these very elders, an important step in the resolution of the dispute has already been taken.

The field teams have also recommended that the Minister authorize rangeland specialists from the Land Resources Department to review rangeland user agreements and indicate on the agreements in writing when they find the agreements to be complete (all the relevant parties have signed) and clearly presented. The "legality" of the rangeland user agreements seems sufficient, but certainly more explicit authorization in law would be useful.

The local mullahs often participated in the crafting of the user agreements. Another source of "legality" for the agreements could be their consideration by religious leaders in each Province. In Kunduz, there is a functioning council of religious scholars (*Shura-e-Ulama*) () which could consider the "legality" of the agreements, especially since the majority of religious leaders in Kunduz expressed that they are constructively engaged in the effort to rebuild the country³⁷. In other Provinces, however, the *Shura-e-Ulama* may be largely defunct. The RLAP field teams considered that the Provincial Appeals Court Judges who were consulted represented the views of the *Shura-e-Ulama*, but in future efforts it would be helpful to consult them directly.

3.4 Other Experiences with Community as the Origin of Legitimate Rights to Land

In other countries, community keeping of land records has also been common, particularly in communities established through settlement programs. For example, the initial settlement of some parts of the United States by white settlers, who displaced the native peoples from their lands, was done with the formal adjudication of land rights by

³⁶ See Gebremedhin for a comprehensive discussion of pasture related legislation as well as other aspects of the legal framework affecting rural land tenure and administration.

³⁷ See Wardak, et. al., 2007

the State but without a governmental involvement in the administration of property records, at least initially. Settlers themselves set up organizations to recognize and enforce informally established claims to land³⁸. Subsequently, as State institutions began to be established, the preference across the U.S. for the administration of property rights documents, normally without benefit of systematic cadastral surveys of property boundaries, was the multi-purpose local governmental unit (township or county)³⁹.

In Norway, while the administration of a Land Registry has been done by a specialized government agency, no cadastral surveys were done in rural areas until 1980. New boundaries/parcels were set out in the field by three lay men appointed by the local "sheriff". New boundaries were demarcated using materials found at the spot, crosses in rock/stones, etc. Verbal descriptions and rather simple sketches were included in the documents supporting opening a new lot in the Land Register⁴⁰.

In more recent times in the country of Benin, Village Land Tenure Management Committees have been adjudicating title and are administering the resulting property records⁴¹. In Tanzania, Village Land Committees validate claims to land, and Village Land Registries administer the land records, in coordination with District Land Registries⁴². In Mozambique, communities present claims to the government for the lands that they have traditionally used, and apply for a certification from government as to the community having legal rights to such lands⁴³.

4. Building Records about Rangeland Tenure

To deal with tenure insecurity on rangelands, the field teams designed a simple system for getting local stakeholders to agree about the legitimate users of community and public pasture lands, write down the agreements, delineate boundaries of the pasture parcels on satellite imagery, and develop plans for improving their productivity. Figure 3 shows a portion of a satellite image on which the boundaries of forest and pasture parcel boundaries have been delineated.

³⁸ See Murtazashvili.

³⁹ See Stanfield (2003).

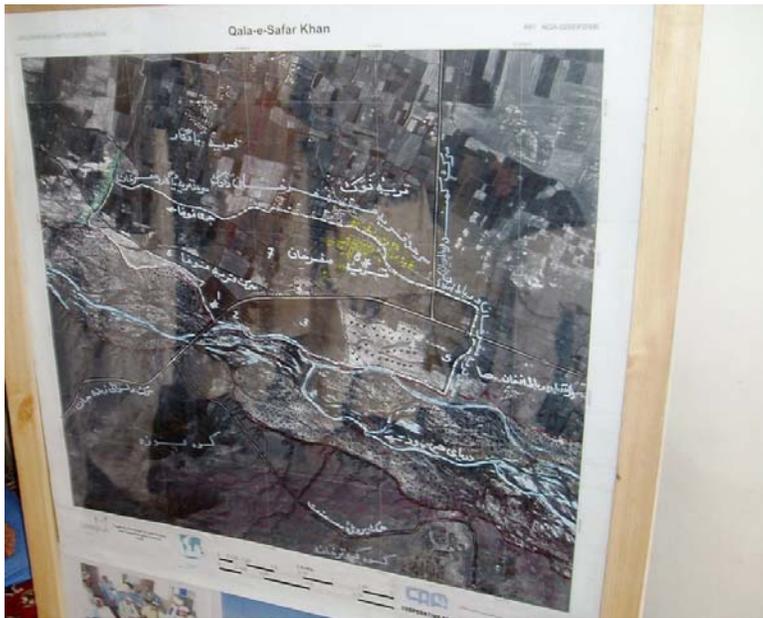
⁴⁰ Personal communication from Helge Onsrud, March, 2007

⁴¹ See Delville op cit, p. 4-5.

⁴² Government of Tanzania.

⁴³ Norfolk and Tanner, 2007.

Figure 3: A Satellite Image with Pasture Parcels Boundaries



Scale 1:5,000

Where it is possible to reach agreements about legitimate rights to pastures, representatives of the families, clans, and tribes who are parties to the agreements sign the written agreements, along with the village elders, *arbabs*, *mulas*, and other respected local people who also sign as witnesses⁴⁴. Figure 4 shows the signature page of one such pasture land agreement.

⁴⁴ The content of the standard agreement form, and instructions for completing the form, are found in the Asian Development Bank, Final Report, 2007.

Figure 4: A Signed Pasture Land Agreement



For large public pastures used by families from two or more villages as well as by nomadic groups where users and uses can be defined, a meeting is called of all interested parties and the agreement forged, signed and witnessed as in the cases of the community pastures. In the Nau Abad community, distant public pastures are important to village families and are exclusively used by the two distinctive tribal groups (*Khel*) of Nau Abad village (*Baluch, Ashakehl*). In this instance, the description of these lands was a simple sketch, shown in Figure 5, with two large parcels delineated.

Figure 5 : Two Delineated Public Pasture Areas



Once the agreements and delineated images are completed, they are made available to the villagers and nomads for examination, to be finalized typically in a public meeting (*shura/jirga*⁴⁵) or a series of public meetings. Figure 6 shows a group of villagers reviewing a delineated satellite image showing the boundaries of pasture land parcels.

Figure 6: Villagers Reviewing Delineated Satellite Image



These pasture land agreements and parcel boundaries on images are “recorded” in the villages where the families which use the rangeland parcels reside. Typically, the village elders appoint an individual to be responsible for storing the agreements and images, a Village Recording Secretary (VRS). The VRS uses simple cabinets, which are placed in a secure room designated by the village elders. In one village of the RLAP the records were given to the headmaster of the village school for safekeeping.

If no agreements are possible or even desired about an identified area of rangeland, that situation is noted on the “summary rangeland situation” report for the village.

One suggestion for coordinating the use of large public pastures is for a management committee to be formed from the representatives of the main stakeholders for each public pasture to enforce the agreement and to oversee the efforts to improve the productivity of the public pasture. Another suggestion is for the preparation of the agreement to be subject to a *shura/jirga*, and any enforcement of the agreement and improvement plan, or resolution of disputes to be handled by elders and if needed by reconvening the *shura/jirga*.

⁴⁵Community councils are called “shuras” in the north and “jirgas” mostly in the south.

The procedures devised by the RLAP for consultations and agreement formalization about the legitimate users of rangeland at the community level (called ADAMAP⁴⁶) can be summarized by the following:

Ask for community cooperation

Delineate the boundaries of rangeland parcels

Agreements are prepared concerning the legitimate users of the rangeland parcels.

Meet, discuss and approve the agreements and delineations

Archive the agreements and delineated images

Plan for the improvement of the rangeland parcels

The field tests yielded evidence that a national rangeland program with the following features is desirable and feasible:

--Community rangeland agreements and delineated images recorded and maintained in the village where the resident users live, with copies filed with the Regional Cadastre (the delineated image) and with the Provincial Amlak⁴⁷.

--The public pasture agreements and delineated images are recorded in the village designated for that responsibility by the *manteqa jirga*, with copies recorded with the Regional Cadastral Survey and Provincial Amlak(s).

--Once the rangeland agreements have been reviewed and discussed locally, they are reviewed by the Woluswali officials, including Rangeland specialists as well as specialists from the Amlak and Cadastral Survey, monitored and reviewed by the Head of the Woluswali administration.

--Particularly important to the ADAMAP methodology is the preparation of a plan for the improvement of each of the rangeland parcels for which agreements are devised, and the continued interaction of community rangeland users and government officials led by specialists from the Rangelands Department of the Ministry of Agriculture, Irrigation and Livestock (MAIL) for the implementation of such plans.

In four test sites the following outputs pertaining to rangeland legitimate user agreements have been produced⁴⁸:

- o 17 village pasture land signed agreements for 17 pasture parcels, covering approx. 28,210 Jeribs (5,642 hectares) in three villages, and over 110,000 Jeribs (in a large

⁴⁶ See Asian Development Bank/ Department for International Development, for a description of the ADAMAP methodology for arriving at signed agreements as to the legitimate users of parcels whose boundaries are described on delineated satellite imagery.

⁴⁷ The Cadastral Survey Department of AGCHO has 16 regional offices which administer cadastral maps produced mainly in the 1960s and 1970s. See Safar and Stanfield (2007). The "Amlak" is the main state land management institution, which also maintains records about the ownership of agricultural land based on a comprehensive survey in the mid 1970s. For details on the structure and operations of the Amlak, see Stanfield and Safar (2007).

⁴⁸ See Stanfield (August, 2007), and also Asian Development Bank, Final Report, op. cit. for more details concerning the four test sites and the outputs produced by the project.

Kuchi community pasture and two public pastures in the fourth test site in Kunduz (3 agreements)⁴⁹.

- 39 satellite images, ortho-rectified, scale 1:5,000 and 1:50,000, printed in 4 paper copies, each showing 4.5 km x 4 km on paper images of 84.1 cm x 76.2 cm, with 20 pasture land parcels delineated. In the Kunduz site, satellite images of smaller scale were used to delineate the very large public pasture parcel boundaries.
- The agreements and delineated images showing pasture land parcels are archived in the four test sites, and copies are archived with Cadastral Survey Department of the Afghan Geodetic and Cartographic Head Office (AGCHO) in Kabul.

In addition to the agreements and delineated imagery, another important output was the introduction of the community based rangeland administration concepts and procedures to villagers, Kuchi leaders, Provincial and District AMLAK and Rangeland specialists, and MAIL staff. In KABUL, Department Heads in the MAIL, the Minister and his advisors, and the implementers of other rangeland improvement programs were introduced to the same concepts and procedures. This introduction was done through workshops in each Province and in Kabul, where villagers, District and Provincial officials, and representatives of NGOs met and discussed the achievements and implications of community based administration of rangelands.

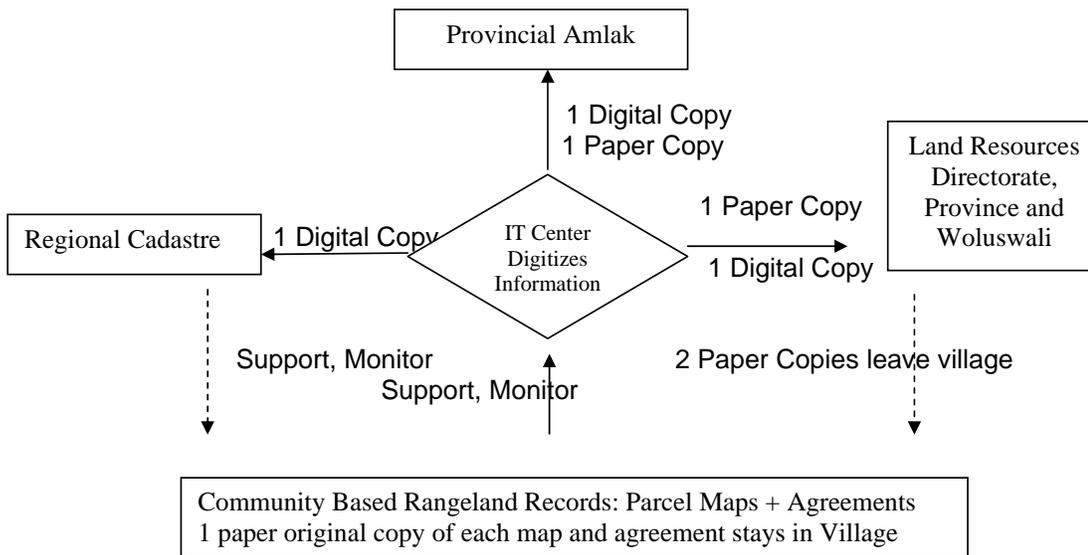
While this community recording and maintaining of records about rights to rangeland is a new idea in Afghanistan, it appears to be well received by villagers, nomadic groups, and many government officials. Further monitoring and adjusting of the ADAMAP procedures to produce and administer these records is certainly needed to fit this concept into the expectations of villagers and governmental officials.

Figure 7 shows a RLAP recommendation about how the rangeland parcel-based information concerning rights and boundaries is generated and archived. The capacities of Amlak, Cadastral Survey, the Land Resources Directorate and Woluswali officials require attention for assuring that they will be able to fulfill their responsibilities in a significant modification of the property records administration system.

This experience with community based rangeland administration could be extended to a more general community based land records system being introduced into the existing land records administration system, including agricultural land parcels and other types of parcels in villages. In one of the test sites, after the community leaders had seen and understood the procedures for producing community agreements as to the legitimate users of rangeland, they spontaneously asked the RLAP team to help include agricultural land parcels into their records system. That idea is more fully developed in Stanfield et. al., 2010 forthcoming.

⁴⁹ The RLAP field team in the five months of field work, used a budget of US\$348,000 for the regional and Kabul workshops, the preparation of training manuals for the field team and for the ADAMAP procedures, in addition to the five month field work needed to produce these 20 agreements covering 27,642 hectares. A more adequate estimate of future costs of a program of this sort is contained in Scanagri/Terra, 2007

Figure 27: Information Flows and Responsibilities for Rangeland Documents



5. Conclusions

The ADAMAP procedure for producing and archiving community approved agreements about the legitimate users of rangeland has proven popular in the four test sites, with community residents and with Kuchi seasonal users of rangelands. Community based administration of these records seems feasible, at least in the four sites of the study.

Not every settlement can operate its own rangeland use agreements registry, or else the system would be inordinately expensive, so the geographic definition of “community” has to be negotiated in each case. The administration of this community based system should be more effective in avoiding conflicts and misunderstandings, since traditional leaders in villages have the authority for confirming legitimate users that governmental officials do not have.

The setting up of this community based rangeland administration system will involve as many as 20,000 villages, and will require good organization, sizeable budget, and policy directives to Provincial judges and governmental agencies to support such an effort. Under Afghan conditions, where the institutions of the State are not well connected to the population, re-establishing the confidence of the people in its governing institutions and re-defining the roles of government to be supportive of the legitimate land users are fundamental to peace building. Special and often relatively costly efforts for the re-linking of community and State, in particular concerning property rights, will be

necessary at least for a period of years. Making the record of rights to land transparent and observable at the community level is of fundamental importance and an area where government could re-define its societal roles with cooperative villagers. While District staff in the MAIL and Woluswali offices were quite supportive of the community administration idea, there is undoubtedly resistance to such an approach among staff and high officials in Provincial and Kabul government agencies. Exploring the roots of such resistance and dealing with legitimate issues for the more extensive implementation of this model will be essential, as has been observed in other situations where central administrative authority has been devolved to local authorities⁵⁰

The experiences of the field teams with the local legitimization of rights to pasture lands, a potentially very complicated process, show that 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 they readily commit to updating the agreements when the conditions change and require changes in the written agreements and/or pasture parcel boundaries.

Despite the positive results of this experiment showing how community-state relations can be rebuilt, village by village, district by district around the administration of rangeland records, any extension of the community based rangeland administration approach will require additional testing and careful monitoring:

- The ADAMAP methodology starts with “asking” community leaders whether they want to participate in the program. All communities contacted by the RLAP teams were positive, although in some cases only following extensive explanation. There may be communities which would not agree. A procedure is needed for continued dialogue with such communities.
- Further testing is needed of methodologies suitable for community land administration, such as refining the role of ‘Village Recording Secretaries’ designated by the community council assembled for this rangeland exercise, who shall be responsible for the management and archiving of delineated satellite images and rangeland parcel forms and who need training in the procedures for maintaining and updating records about legitimate users of rangeland parcels and maps of those parcels.
- Questions remain 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.
- There are many governance issues which need consideration before the rolling out of a large community based land administration program. Central government officials in Kabul are very suspicious of a community oriented program, despite the relative successes of the NSP program. Changing these perceptions will require concerted efforts at dealing with legitimate concerns.

⁵⁰ Marshal, 2007; Bruce and Knox, 2009

- The means for incorporating Kuchi input into the rangeland agreements have to be refined to fit with their seasonal presence in villages.
- The mobilization of community consultations about legitimate rights to land has to find ways of incorporating the various community segments, and not be limited to the input from just the heads of families with the largest herds of livestock.
- The capacities of Amlak, Cadastral Survey, Land Resources, and *Woluswali* Heads to perform new functions of supporting community land administration have to be strengthened. People in these government agencies have to be convinced to support this community rangeland user agreements initiative by helping to build the capacities of communities to administer these records, by monitoring their work, by providing backup digital archiving, by providing plotted satellite images, and by assisting with the formulation and implementation of rangeland improvement plans.
- A fundamental need is for a more supportive formal legal framework, although the RLAP showed that a program that operates in alignment with *shar'ia* law and custom is quite acceptable at least among Provincial judges and community leaders.

The conclusions of this study are cautiously optimistic, but conditioned on continuing efforts to resolve several complex issues. Nonetheless, a proposal has been prepared for expanding this study into a multi-province project, called the Land Administration and Management Program (LAMP)⁵¹.

⁵¹ See Scanagri/Terra Institute, 2007, for a proposed program description, including an estimated five year budget.

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