



# Technical Assistance Consultant's Report

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Project Number: 38221  
September 2007

## Islamic Republic of Afghanistan: Capacity Building in Land Policy and Administration Reform (Cofinanced by the Government of the United Kingdom)

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For Ministry of Agriculture and Animal Husbandry (MAAH)

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**Asian Development Bank**



# Afghanistan

## Capacity Building for Land Policy and Administration Reform

ADB / DFID

TA 4483-AFG

FINAL REPORT

September 2007



in association with



**TERRA INSTITUTE** LTD.

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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
- CRA Cooperation and Reconstruction of Afghanistan
- CRS Catholic Relief Service
- DACAAR Danish Committee for Assistance to Afghan Refugees
- DFID Department for International Development
- EC European Commission
- EMG Emerging Markets Group
- FAO Food and Agriculture Organization
- GAA German Agro Action
- GIS Geographical Information System
- GRSP Ghazni Rural Support Programme
- IARCSC Independent Administrative Reform and Civil Service Commission
- KRBP Kunduz River Basin Programme
- LTERA Land Titling and Economic Restructuring in Afghanistan
- LRD Land Resource Department
- MAIL Ministry of Agriculture, Irrigation and Livestock
- MoF Ministry of Finance
- MoJ Ministry of Justice
- MoUD Ministry of Urban Development
- MC Mercy Corps
- NGA National Geospatial Agency
- NGO Non Government Organization
- NRC Norwegian Refugee Council
- NRM Natural Resource Management
- NSP National Solidarity Program
- PRR Priority Restructuring and Reform
- PAR Public Administration Reform
- RLAP Rural Land Administration Project
- RRD Rural Rehabilitation Department
- SEPAP Second Emergency Public Administration Project
- SDC Swiss Development Corporation
- SSPSRL Support to Strategic Planning for Sustainable Rural Livelihoods
- UNEP United Nations Environment Programme
- USAID United State Agency International Development

# Executive Summary

## Rationale

Rangeland is a massive resource in Afghanistan and a backbone for the livelihoods of a majority among rural households in the country. The pasture resource has been deteriorating in recent decades and many formerly viable rangelands have become virtually barren wastelands. An important social result of this degradation of pastures is the increase in conflicts among farming and livestock dependent families for a decreasing supply of adequate rangeland leading to insecurity with which rural people hold and use rangelands. This tenure insecurity has three dimensions: *first*, a longstanding history of conflict over rights to rangelands among groups of village residents and nomadic groups; *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.

Conflict and tenure insecurity also affect private rural farmlands. Inequity, polarisation and dependency characterise land relations in many parts of the country. But currently there is no clear picture of land ownership. In order to govern land relations and manage land resources more effectively and to achieve increased security of tenure for both private and public lands, clarity is needed and a sound and unanimous documentation of ownership needs to be put into place. Thereby, it is necessary to establish simple and transparent processes for documenting and registering local land rights on a national level - whether held by individuals, kin-groups or wider communities, as is often the case with pastures.

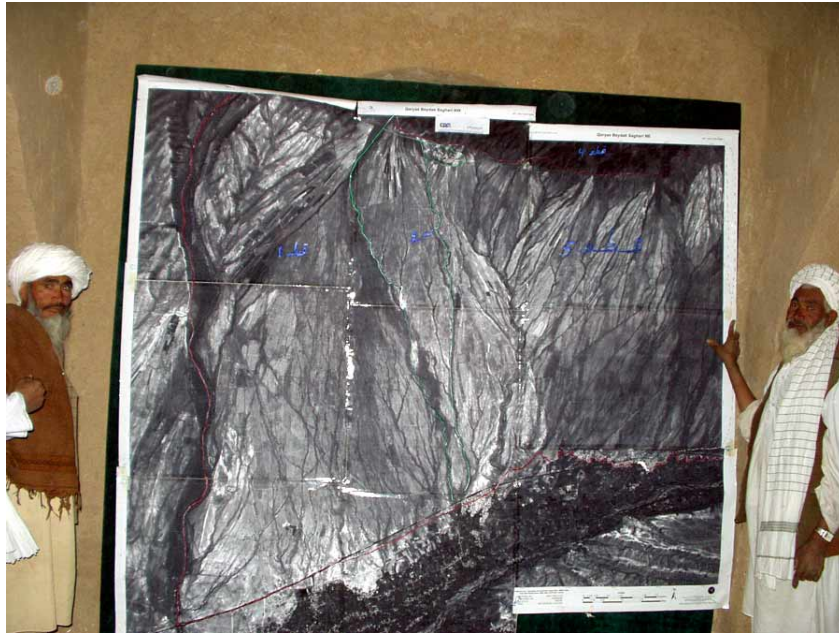
Against this contentious background the TA on '*Capacity Building for Land Policy and Administration Reform*' aimed to support the Government of Afghanistan to begin tackling these problems on multiple fronts and provided five major outputs for the government of Afghanistan.

### Output 1: Method of community consultation for reaching agreements about legitimate users of pastures and forest land devised and tested

The TA has developed and successfully tested in representative areas a model for the administration of community range land agreements administered by village *Shuras*. This approach named ADAMAP builds on traditional Sharia-law arrangements by formalising customary arrangements which have eroded during the periods of disruption. The community rangeland records administration responsibilities include initial recording of herding people (including *Kuchi*) who have traditional rights of access and usage, along with the rangeland parcels which they traditionally use. They include mapping of rangeland parcel boundaries on large scale satellite images. They include preparation of appropriately witnessed agreements by the relevant stakeholders, the delineation of rangeland parcel boundaries on satellite images, and the storage of those agreements and images in village-administered storage cabinets. The objective is to secure these documents and maps and at the same time, to allow ready public access. Rangeland parcel boundaries are digitised and copied into a GIS for incorporation into appropriate spatial data bases and for cross-referencing at levels above the community, district, province, and national levels.

The conclusion, based on the practical experience of the TA is that community administration of rangeland land agreements is feasible, and there are the many advantages to be gained from pursuing it. Under the tested system for community administration of rangeland agreements, government (presently the Rangeland Department and AMLAK of the MAIL and AGCHO under the Presidency) and the communities will develop new and more effective ways to improve rangelands, and to reduce tensions concerning access to range lands. The Village *Shuras* will assume the burden

of day-to-day responsibility for archiving, consulting and modifying when necessary these rangeland agreements, with the Rangeland Department, AMLAK and AGCHO taking on supporting and regulatory roles.



In one test site, the TA also considered the possibility of village *Shura* development and administration of records of villagers' rights to privately held cropland parcels. While the changes arising from greater tenure of security over pasture may be more conspicuous, it has to be admitted that the relative extent to which better land records administration and tenure security over the two types of land - pasture/forest on the one hand, and private farmland on the other - may lead to better land productivity and rural prosperity is almost wholly unknown at the outset. From a practical point of view, it would be difficult to mount for communities and people a land records administration initiative which concerned pasture/forest land and not private farmland. While this view may be logical, there is a cost involved. The inclusion of private farmland in the field boundary plotting process takes longer than for pasture/forest land alone. The TA however provides a test of a simple and inexpensive but also accurate and rapidly implementable procedure for legitimising the claims of private owners to cropland parcels. The process is much quicker than conventional cadastral survey.

## Output 2: Institutional structures and technical capacity for land administration in Afghanistan have been assessed

The TA assessed the Amlak, administratively located in the Ministry of Agriculture, the Cadastral Survey as a sub-department of AGCHO, and the Natural Resource Management Department of the MAIL which assumes important responsibility in rangeland and forest management (Project Reports 3, 4 and 5). The aims were the following:

- To provide a map of the existing institutional structure for land administration
- To provide a picture of the technical and administrative capacity of existing government institutions involved in land policy and administration to carry out their functions, including their training and institutional development needs
- To provide clear recommendations as to how institutional performance can be enhanced and made more effective

Basic features across institutions are the following:

- All land agencies have to cope with a backlog in their mandate activities.
- In various ways, the mandates of each individual institution are out of synch with the community approach. This is probably not surprising, given how little acceptance inside government there is for devolution of power and the assignment of enhanced responsibilities to communities. This goes along with a general resistance inside government towards institutional change.
- As a consequence, all land institutions face a backlog in capacity for the implementation of community based methods, and accordingly any effort to scale up ADAMAP needs sufficient investments in capacity building programmes.
- New terms of reference for staff in all offices need to be devised in order to prepare staff for their new roles as guide, supporter and facilitator of communities in land administration and management.
- Cooperation between land institutions is very limited at best. This however is not very surprising either, when it has yet to be clearly defined what the basis of this cooperation should be. Mandates of different institutions need to be attuned to the community approach and harmonised accordingly.

### Output 3: Action Plan for land administration reform in Afghanistan has been proposed

The action plan has been presented in form of a detailed programme using the logical framework methodology to provide guidance and structure to the government of Afghanistan on how to approach the complex issue of introducing institutional change and to arrive at feasible solutions for the land problems of the country (Project Report 6).

Based on the methodologies which it has developed and tested, the TA team is confident that their application can lead to substantially greater measures of incentive among rural land users in Afghanistan to invest in land and pasture improvements in their own interests. Moreover, they can be applied rapidly which is especially relevant in rural Afghanistan where sustainable solutions are needed without delay.

Building on the results and lessons learned of the TA, the Land Administration and Management Proposal (LAMP) helps to:

- bring to the forefront of discussion the benefits to be gained from pursuing further the methodologies successfully trialled with communities by the TA
- define logically the needs, in relation to rural land, for a reformed land administration institutional framework.
- to provide the government with a detailed way forward to improve land relations in the country
- to ensure that the findings and procedures of the TA are actually taken forward and do not end up unnoticed

A central focus of the LAMP proposal throughout is a change in the capacities, roles and actions of rural communities. By tradition, rural communities have always been involved in land administration and land development in their areas, through the efforts of families, clans and tribes to resolve disputes handled through the *Shura* system. However, a substantial expansion of rural community involvement is foreseen to the point where the rural communities themselves are, in large measure, responsible for planning and implementing land records administration and land improvement.

In order to achieve this and to establish a sustainable partnership between government and communities two main issues need to be addressed:

Firstly, rural communities have to gain substantially strengthened capacities to take on their new roles. They have to become aware of the benefits which are attainable through much greater

involvement, they have to decide they want to do those things and will work to achieve them, and they have to know how to do them - both how to carry out the technical and administrative tasks involved, and how to organise themselves so they can cooperate with local government authorities and representatives, working together towards the greater good of the people and resources in their areas.

Secondly, local and national government authorities have to adopt new roles. The responsibility of government then focuses on its mandate roles - which may be summarised as the creation of a good environment in which the communities may take up and carry out their new planning and implementation roles to the full extent. In the context of rural land, key government roles become (a) the creation of a facilitating and guiding the rural land policy framework, (b) the creation of a legal and fiscal framework for land which encourages sustainable, equitable and productive land uses, (c) the efficient provision of a range of services which have to be done by government (e.g. judicial services, implementation of national standards), and (d) most importantly, the local and national coordination of efforts to improve the land resources and productive uses to which they are put. These things have to be done by government in ways which facilitate to the maximum extent the development and putting into practice of the new roles and responsibilities of the communities described above.

#### **Output 4: Development of a national land policy has been actively supported**

The development of the national land policy in an inter-ministerial working group formally operating under the ANDS and chaired by H.E. Obaidullah Ramin, the Minister of Agriculture, has been a longer-term concerted effort which is ongoing in regard to deciding on its practical implementation. The TA team was partaking in the group's extended discussions over December 2006 and January 2007 to shape the contents of the Land Policy (Annex 5). The resulting policy document has been officially approved and signed by three line ministries (MAIL, MoUD, MoJ) on 24<sup>th</sup> January 2007 and subsequently been forwarded to the Economic Management Committee (EMC) of the Cabinet and was quickly approved by this important government body. Cabinet itself returned the document to the working group for improving the language of the Dari version but did not express any concerns with its contents. Consequently, final approval by cabinet took place on 3<sup>rd</sup> September 2007, just a few days after the formal close down of the TA.

In view of practical implementation of the Land Policy the TA supported the ANDS Land Working Group in setting up technical sub-working groups looking in detail at different elements of the land policy to prioritise activities. Six Groups have been established, working on i) Land Law, ii) Land Registration, iii) Land Dispute and Adjudication, iv) Land Grabbing, v) Informal Settlements, and vi) Rangeland and Forests.

#### **Output 5: Legal framework for land and land administration in Afghanistan has been reviewed and proposals for amendments discussed with line ministries**

With the Land Policy Framework now formally in place, revamping the existing legal framework for land has become among the priorities of the Ministries of Agriculture, Justice and Urban Development. The crucial question now is how to put in place an appropriate land law in conformity with the supreme law of the land and with the land policy. There is unanimous consensus among the key line ministries that the Afghanistan needs a comprehensive legal framework for managing both rural and urban land. Based on this general understanding, the TA based its legal work on the following measures:

- To assist the government of Afghanistan to identify important issues, gaps, deficiencies and inconsistencies in the existing legal framework for rural land.
- To determine the domains of the land law that merit separate treatment but in conformity with the general principles of the comprehensive land law;
- To help preparing a strategy for modifying and consolidating the existing legal framework in accordance with the land policy



- To make comprehensive proposals of modifications that are appropriate to address the identified deficiencies and to fill gaps in the legal framework for rural land in order to synchronise the draft national land policy as the overarching and general set of governmental principles and precepts, and the legal framework governing its implementation

Findings are laid out in [Project Report 7](#).

## Conclusions and Outlook

The five major outputs outlined in this final report and documented in detail in the various Project Reports of the TA jointly contribute to the overall goal of tackling the land problems of Afghanistan and to help restoring tenure security for the rural population of the country. The results and implications of the TA and its LAMP proposal for continuation have been discussed at length with the government partners and widely shared in a series of workshops. Government clearly demanded continuation of the approach and welcomed the LAMP proposal to go ahead with what of what the TA has successfully started. The advisory committee of the MAIL stressed that land is the main problem faced by Afghanistan and they consented that there is high capacity in the community to take on responsibility for land management. Consequently, it was stated that government's responsibility is to use and support such capacity. The LAMP approach is seen as a feasible means in this direction in that it entails the prospects of enabling practical collaboration and partnerships between governmental land institutions and *Shuras* to maintain and update village level land records, thereby providing them with ongoing roles and responsibilities and strengthening their position as a village level institution.

Ultimately, the government formally endorsed the LAMP proposal detailing how to continue the TA approach in a bigger project and the following steps have already been taken:

1. The advisory committee recommended to the Minister of Agriculture to take the LAMP proposal forward and approach the donor community for funding.
2. The Minister subsequently ordered the General Directorate of Natural Resource Management to take immediate action and review the LAMP proposal and then submit it to His Excellency for final approval. This has been done imminently and the LAMP proposal is now endorsed officially by the Ministry.
3. On request of the Minister, H.E. Deputy Minister Ghulam Mustafa Jawad sent a formal letter to ADB Afghanistan Resident Mission specifying the advisory committees' recommendations for taking action and thereby bringing to notice the Ministries' agreement with the LAMP proposal.

# Final Report

## Capacity Building for Land Policy and Administration Reform

### 1. Introduction, Rationale and Policy Linkages

Rangeland is a massive resource in Afghanistan. The national land cover survey of 1993 (FAO 1995) classifies 53.3 million hectares (83 percent of the nation) as rangeland or bare land. Most of the non-arable land is unimproved pasture, most of which is on steep slopes and shallow soils in mountainous topography. Millions of rural households - including nomads - depend on the resource. Pastures provide not only green grazing in spring and summer and dry fodder in winter, but are a main rural source of cooking and heating fuel. They also provide crucial ground cover in water catchment systems for valley settlements and farming.

The pasture resource has been deteriorating in recent decades, losing plant cover through overgrazing and over-harvesting of bushy species for fodder and fuel. This has led to increased soil erosion, reduced infiltration and more rapid run-off. Many formerly viable rangelands have become virtually barren wastelands. The degradation of rangelands has been accompanied by the conversion of some areas formerly used for pastures into rain-fed agricultural cultivation, which in drought years and low rainfall areas destroys the capability of the land to regenerate a stabilising plant cover.

An important social result of this degradation of pastures is the increase in conflicts among farming and livestock dependent families for a decreasing supply of adequate rangeland. A main cause of rangeland degradation and resulting social conflicts is the insecurity with which rural people hold and use rangelands. This tenure insecurity has three dimensions: *first*, a longstanding history of conflict over rights to rangelands among groups of village residents and nomadic groups; *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.

Conflict and tenure insecurity also affect private rural farmlands. Inequity, polarisation and dependency characterise land relations in many parts of the country. But currently there is no clear picture of land ownership. Cadastral survey maps and ownership lists are the best documentation available, but these records are incomplete, covering only a third of private farmland in the country. They are also outdated, with the information stored in those documents between 28 and 41 years old, depending on when an area was surveyed. Subsequent land divisions through inheritance, mortgaging or land sales have very largely gone unrecorded by official land institutions. In order to govern land relations and manage land resources more effectively and to achieve increased security of tenure for both private and public lands, clarity is needed and a sound and unanimous documentation of ownership needs to be put into place. Thereby, it is necessary to establish simple and transparent processes for documenting and registering local land rights on a national level - whether held by individuals, kin-groups or wider communities, as is often the case with pastures.

Against this contentious background the TA on '*Capacity Building for Land Policy and Administration Reform*' aimed to support the Government of Afghanistan to begin tackling these problems on multiple fronts. It developed and tested a community based methodology aiming to start resolving the pressing land problems of Afghanistan and to increase secure of tenure for both sedentary communities and nomadic pastoralists and ultimately to provide incentives for people to invest into improvements for the pasture areas they use.

The TA thereby directly relates to major policy decisions and implementation strategies taken by the Afghan Government over recent years and months:

- The TA is the first technical project which attempts at a practical level to implement the community based policy and strategy for forest and range management of the Ministry of Agriculture, Irrigation and Livestock (MAIL). This policy and strategy envisages providing local communities a central role in the management and administration of natural resources, although the institutional framework at the community level through which the envisioned roles of communities will be performed is not clearly defined. The TA addresses this institutional shortcoming by channelling its activities through the Community Development Councils (CDCs) as the basic institution for local governance in Afghanistan. These councils have been initially elected at the village level under the National Solidarity Program (NSP), and are now officially acknowledged as the local level governance body through the so-called CDC by-law signed and approved by President Hamid Karzai. The TA attempts to go a step beyond this by-law and advocates the empowerment of CDCs as the basic land administration body of the country (see Figure One).
- The TA contributes towards meeting the ANDS benchmarks demanding the development and implementation of a functioning land registration system in rural areas by end 2007. While this benchmark is clearly over-ambitious and the project team already consulted the ANDS to consider a more appropriate revision, the TA is currently the only project practically trying to establish a feasible method to achieve a system of rural land registration that is locally accepted and accountable. The practical results for registration of private rural farmland which the TA piloted in one village (see Section 3.1 for details) prepared a fertile ground that will facilitate the design of any future effort aiming to meet a revised ANDS benchmark for rural land registration.
- While the TA was influential in designing the Draft Land Policy which has been approved by Cabinet on 3<sup>rd</sup> September 2007 (in collaboration with the USAID-funded LTERA Project), it at the same time represents a practical project aiming to implement some of the Land Policies' key elements. Specifically, it addresses the need to implement a system of community-based pasture management and land registration under the supervision and guidance of MAIL by devising and testing a practical system through which this can be achieved. Further, by proposing an Action Plan for land administration reform, the TA directly relates to the stated need of modernising the Afghan land administration system which is currently characterised by overlapping functions and uncoordinated approaches. The Action Plan builds on the experiences and lessons learned over the practical fieldwork.

## 2. Overview on outputs and general approach of the TA

Embedded into these major policy contexts aiming to start tackling the land problems of the country, the TA provided five major outputs to the Government of Afghanistan. These are elaborated upon in some detail in Section 3 of this report and systematically in a number of Project Reports<sup>1</sup>, and are briefly summarised here as follows:

1. *A method of community consultation for reaching agreements about legitimate users of pasture and forest land that has been successfully developed, tested and broadcasted.* This output lies at the heart of the TA and represents a tangible and practically tested achievement through which it is possible to agree on a land tenure regularisation 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. This methodology baptised as 'ADAMAP' (see section 3.1 for details) has been successfully tested in four villages in three Provinces (Herat, Takhar, and Kunduz) in partnership with governmental land institutions, NGOs and local communities.<sup>2</sup> The method focuses on new and sustainable ways through which land rights are articulated,

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<sup>1</sup> This final report provides guidance to seven comprehensive project reports

<sup>2</sup> See also the Interim Report to this TA, where the method has been described in detail

recorded and protected, and facilitates agreement on rules through which access to land will be locally regulated and monitored and disputes mediated. In addition, a method for community validation of private rural lands, and through this a method for a community-based rural land registration system, has been piloted in one village site. Further, the practical results as found in the four pilot villages have been processed digitally into a specific geographic information system (GIS) to be operated by AGCHO as the main government institution dealing with geographic information.

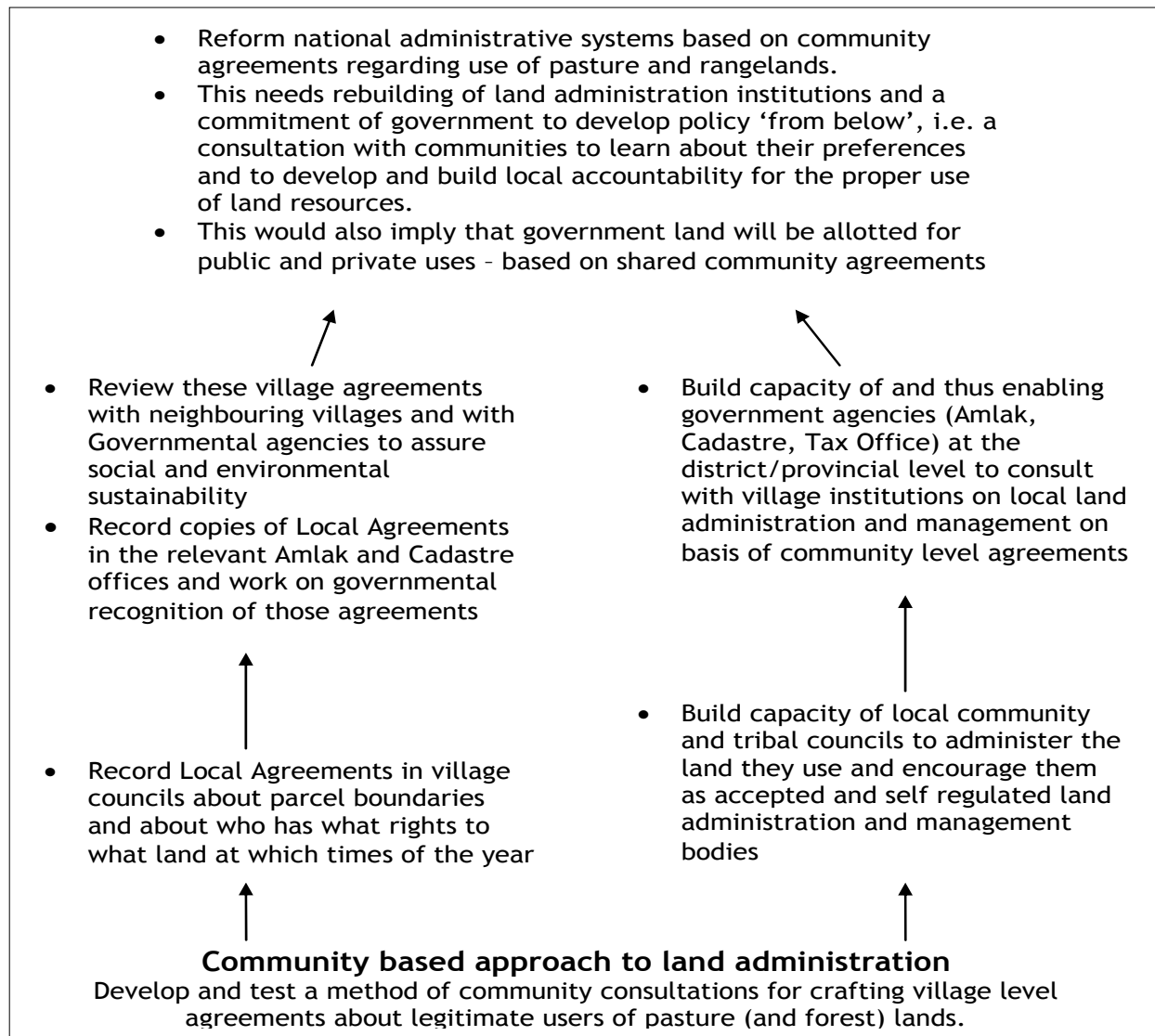
2. *The existing institutional structures and technical capacity for land administration in Afghanistan have been assessed.* Three institutional assessments have been produced by the TA, focusing on the Cadastral Survey Department of AGCHO, the Department of 'Amlak' that is responsible for state land management and affiliated to the MAIL, and the Land Resource Department of the General Directorate of Forestry and Rangeland within MAIL.
3. *An Action Plan for land administration reform in Afghanistan has been proposed.* This action plan has been presented in form of a detailed programme using the logical framework methodology to provide guidance and structure to the government of Afghanistan on how to approach the complex issue of introducing institutional change and to arrive at feasible solutions for the land problems of the country. This approach in some respect goes beyond the original Terms of Reference for the TA that asked to provide a roadmap to unify the Afghan land institutions as is also laid out in the Land Policy for the country. However, given the wealth of positive experiences made over the practical fieldwork in four pilot sites where the community based approach to pasture land administration and management has been introduced the TA team felt the actions proposed in the plan need to go further than this requirement. This is because any Action Plan, such as for reorganising government institutions into a single body for land administration, needs to be supported by a lot of concurrent actions, many of which occurring at the community level. These actions have been brought together in a comprehensive manner in the proposed programme, using a staged approach that elaborates priority actions to be addressed in the initial phases that build up towards achieving a longer term vision aiming to sustainably resolve the land problems of Afghanistan and to improve its natural resource base. As such a detailed path for land administration reform is laid out that has a strong grounding in community approaches, proposing a change of the current system from bottom up and thereby building on the methodology developed by the TA. Thus, rather than focussing on a strategy which deals solely with the changes needed in the institutional structure of certain land offices, the action plan as drafted by the TA team proposes in detail to come up with a comprehensive programme of action to begin tackling the land problems of Afghanistan in a coherent and sustainable manner, based around a longer term vision. Obviously institutional changes are key parts of that process and have been included in a manner which matches the staged approach. This approach has been discussed at length with government partners (Amlak, AGCHO, Cadastre, Land Resource Dept. of the MAIL, Kuchi Directorate, MRRD) individually as well as over a series of round table discussions aiming to arrive at consensus about the longer term vision and the immediate priority steps needed to get a process of institutional change and community based pasture administration and management underway.
4. *The development of a national land policy has been actively supported and widely broadcasted to provincial stakeholders and a strategy for its implementation has been defined.* This drafting and the discussion of a land policy for Afghanistan has been done in partnership with LTERA through facilitation of an inter-ministerial working group, consisting of MAIL, the Ministry of Urban Development (MoUD) and the Ministry of Justice (MoJ) and chaired by the Minister of Agriculture, H.E. Obaidullah Ramin. The Land Policy has been elaborated and discussed at length and in its entirety during numerous extended group meetings and was finally approved and publicly signed by the three line ministries on 24<sup>th</sup> January 2007. Subsequently, the draft has been quickly approved by the Economic Management Council (EMC) in February 2007 of and was formally approved by Cabinet on 3<sup>rd</sup> September 2007. As a statement of intent, the Land Policy refers to the overarching and general set of governmental principles and precepts that serve as a framework through which projects are developed and implemented. A strategic

implementation plan has been devised by the TA and discussed in the inter-ministerial working group, and technical working groups have been established which separately deal with the central issues laid out in the Land Policy and that report to the umbrella group.

5. *The existing legal framework for land and land administration in Afghanistan has been reviewed and proposals for amendments discussed with line ministries and submitted to Ministry of Justice.* This legal assessment takes as its guiding reference the national land policy which outlines the principles for which new laws have to be developed or existing laws amended. Consequently the TA identified the relevant laws pertaining to rural land, and reviewed and analysed them in light of the national land policy. The relevant formal legislation to be assessed and reviewed is however supplemented by a multitude of customary laws and practices and the broad framework of Islamic law. In cases where those practices relate to rural land, they have been incorporated into the legal assessment. The resulting complex structure of formal, customary and Islamic law as it exists now forms the background on which comprehensive proposals for modifications and amendments which are appropriate to address deficiencies and to fill gaps in the formal legal framework have been produced.

For a general overview the following Figure One, already presented in the Interim Report, illustrates the overall approach to land administration and management as advocated by the TA.

Figure 1: A bottom up approach to land management and administration (read from below)



### 3. Outputs of the TA and related activities

This central section of the report provides a detailed account of all activities pursued to arrive at the major outputs of the TA and to achieve its major goals and objectives as specified in the logical framework. The account of activities thereby builds partly on the elaborations already presented in the project's Interim Report that has been submitted in December 2006 and which essentially focused on 'Output One' of this TA. In this Interim Report the methodology for reaching community agreements over user rights to pasture land has already been described in detail, and the experiences, findings and lessons learned from practical fieldwork plus the subsequent village and provincial workshops in three out of the four pilot villages have been portrayed. The additional findings concerning the development and testing of a methodology of community consultation for reaching pasture use agreements documented in this report thus relate chiefly to the work carried out in the fourth pilot site in Chardara District of Kunduz Province. A supplementary focus in this final project report with respect to 'Output One' is directed on the experiences made with testing a community based land registration system in said pilot village.

#### 3.1 Output 1: A method of community consultation for reaching agreements about legitimate users of pasture and forest land is successfully developed, tested and broadcasted

The implementation of a localised methodology for recording user rights to pastures and validating ownership over private lands by means of community consultation follows the overall purpose of the TA that is to protect the rights to pasture land for rural communities and to help restoring tenure security in Afghanistan. It is believed that only by building on the local knowledge of sedentary as well as nomadic communities a legitimate and accountable system of securing user rights to range and forest land can be established, and that the huge task of building a land registration and survey system for Afghanistan will not work without the formal inclusion of local village communities in the process. Building these systems from bottom up, as illustrated in Figure 1 above with respect to rural land administration, will contribute to resolve the pressing land problems of the country and to establish a more trustful and collaborative relationship between the government and its citizens. Importantly, the community focus of the approach advocated by the TA will help ensuring popular ownership of proposed administrative reforms and their maintenance over time and to reach broadly shared and accepted consensus on rights to land and land use.

Consequently, a major focus of the TA has been directed on practical fieldwork in order to move away from centralised top down approaches towards evidence based policy development and institutional change and to test the viability of the devised methodology in four pilot sites located in the West and North of the country respectively. It was deliberately decided to engage in a 'learning by doing' approach to test new methods aiming to help resolving the pressing land tenure problems of Afghanistan. This modus operandi of 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 bears fruit in that for the first time ever in Afghanistan there is now the chance to provide local communities with documentation over their rights to pasture land and thus to enable secure investments in pasture improvement. At the same time, local communities are endowed with the ongoing responsibility to administer and manage the lands they use, thus contributing to the sustainability of local governance structures at the village level.

The iterative and successfully tested approach also provides a sound grounding for addressing broader institutional, legal and policy related issues. For one, the methodology provides a sound base for initiating a community based land administration reform process in Afghanistan (Section

3.3), the detailed outlines of which have been proposed by the TA in form of a programmatic action plan, discussed and endorsed by its governmental partners and documented in a separate report ([Project Report 6](#)). Further, the methodology represents a feasible approach for implementing various features of the draft national land policy of Afghanistan (Section 3.4), informs a process of legal reform (Section 3.5) and is in fact the first move towards practical implementation of the policy and strategy for forest and range management.

### 3.1.1 The project methodology

The methodology of reaching community agreements over the use of pasture land and its field implementation are described in much detail in the separate procedures manual, listed as [Project Report 1](#). For the purpose of this final report the following generic account provides a broad overview of what the TA team called the ADAMAP methodology, where each capital letter of the acronym describes a specific step of the advocated method:

- A**sk for community cooperation
- D**elineate the boundaries of rangeland parcels
- A**greements are prepared concerning the legitimate users of the rangeland parcels.
- M**eeet, discuss and approve the agreements and delineations
- A**rchive the agreements and delineated images
- P**lan for the improvement of the rangeland parcels

#### Step 1: Ask the community

A two person team composed of a cadastral surveyor and a community mobilisation specialist goes to the target community—that is, a village where the residents have significant livestock and use rangeland—and meets with the elders of the village. They take examples of the rangeland agreements and delineated satellite images with them, and explain the goal of their work, which is to help implement the Ministry’s new policy/strategy of community based management of rangeland by providing the management tools to the villagers. These tools include:

- satellite images of the rangeland areas used by village families, which the villagers will use to mark the boundaries of the different rangeland parcels used by villagers;
- assistance to fill out the village agreements as to who are the legitimate users of those rangeland parcels;
- cabinets and folders in which to store the agreements and delineated images;
- assistance with the preparation of rangeland parcel improvement plans.

If the community agrees with this proposal, then the next steps can be undertaken. The discussion of the proposal may take several visits, and may involve large numbers of people. Even people from neighboring villages may be involved, whose pastures border those of the target community. Agreement and mutual respect is absolutely necessary for proceeding to the next step. Once agreement is reached, the team should visit the rangeland areas, and take some GPS readings of visible landmarks to be able to order the proper satellite imagery.

#### 2. Delineate rangeland parcel boundaries.

The drawing of the rangeland parcel boundaries requires:

- Getting of the satellite imagery of the proper scale. For very large rangeland parcels, imagery at the scale of 1:50,000 showing the topographic relief is very useful for delineation of parcel boundaries. For smaller parcels, clear imagery at the scale of 1:5,000 is preferable—such as that from the Quickbird satellite.
- With the imagery, the team returns to the village, and walks the boundaries of the rangeland parcels with village representatives, marking the boundaries on the images using appropriate

line symbols. The team at this stage should include one cadastral survey engineer with training in photo interpretation and with training and experience working with villagers on land matters, a community mobilization specialist with some training in photo interpretation, and a pasture specialist from the MAIL. If the community is of a special ethnic/linguist composition, a fourth person from that ethnic/linguist group may be added.

*Photo 1: Discussing the ADAMAP approach with village representatives in Nau Abad*



### 3. Agreement

The preparation of the village rangeland agreement is the next step. A form is filled out for each parcel (Specimen and Guidelines for filling the community agreements in Annexes 1 and 2). All of the legitimate users of each rangeland parcel for the entire year and for any use of that land (as pasture for livestock of different types, as sources of fuel and herbs, etc) must be recorded in the agreement.

Special care must be taken to include all legitimate users, including nomadic people who may use the land only during specific months of the year. To assure that these people are included in the agreement, the team should coordinate with the representatives of the General Directorate of the Kuchis who have an office in every Province.

The local mullah's, elders, cooperative directors, Arbabs and Maliks should be good sources of information about who use the different pastures, to be sure that all families who depend on the pastures get their interests recorded on the agreements.

The agreement must be signed by the users identified on the agreement, by the village elders, Arbabs/Maliks, and by members of the village *Shura* if there is one. The boundaries must be agreed to and signed by representatives of neighbouring tribes, clans, families or villages. Modifications that may occur in time must be recorded and approved by all parties involved (see Annex 1).

### 4. Meet and Approve

The signed agreements and the delineated images should be put on display at a prominent but secure place in the village, and a *Jirga* convened of all village residents and also notifying absent family members and leaders of nomadic tribes who use the pastures to gather at a specific time and place to discuss the agreements and boundaries of the rangeland parcels.

A representative of the Pasture Department will then come to the village and examine the agreements and delineated images, using a checklist of factors to verify that the work has been properly done. He will leave a signed checklist attached to each pasture agreement. If there is



some problem with the formulation of the agreements or with the delineation of the images, the Pasture Specialist will present a written memo to the Village Elders describing the problem and how to resolve it.

## 5. Archive

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

- One to remain in the village archive
- One to the Provincial Pasture Land Department of the MAIL
- One to the Provincial Amlak archive
- One to the Central Amlak/Cadastral in Kabul.

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

## 6. Plan Improvements to Rangelands

A rangeland improvement team will then visit the community and discuss with the managers of each rangeland parcel as shown on the agreements how they have been improving the pastures in the past and how they intend to improve them in the future. See the guide for the preparation of rangeland parcel improvement plans in Annex 2 of [Project Report 6](#).

These six steps of the ADAMAP approach have been successfully implemented in four pilot villages.

### **3.1.2 Establishing a community based parcel register for private rural land**

A slightly modified method has been applied to test the feasibility of a community based system for certifying the state and private ownership of agricultural land. It was assumed that the community approach to the legitimisation of rights to rangeland also represents a feasible approach to village Shura legitimisation of ownership of agricultural land. Field experience in the village of Nau Abad, Chardara District of Kunduz Province, proved this assumption to be heading in the right direction. In general, the method used for private lands resembles the ADAMAP procedure, except for a different parcel form to be legitimised by the owners and by the village elders through their participation in the process and the signing of the forms (see specimen in Annex 3). As in ADAMAP for rangelands, the agricultural land parcel maps and forms are kept in the village Shura office, as the village's archive of parcel maps and Parcel Specification Forms pertaining to the ownership of agricultural land.

There is no evidence of conflict over private land in Nau Abad, either about a boundary or ownership. There has been very little grabbing of agricultural land parcels in the village by powerful people taking over land of the less powerful. However, there is some concern among village elders that the owners of agricultural land who have left to live somewhere else, and have left the land to a relative to use, could cause problems if the absent owner dies, and a son or daughter returns to the village to reclaim the land and does not know where it is. Records in the village about the ownership of the land and about long term agreements about its users would be very helpful to resolve such cases.

Practically speaking, the field team selected block of 100 privately owned parcels by inspecting some satellite imagery, and verifying that the Cadastral Survey had maps and parcel cards available for those same parcels, but from 30 years ago. A parcel is defined as a piece of land with a clear boundary and whose ownership is constant over the entire area of the parcel. Through consultations with the owners of the 100 parcels, their boundaries have been delineated on high resolution Quickbird satellite imagery plotted at the scale of 1:2000, assigned a unique number,

and ownership and use information noted on a specific parcel specification form for each parcel. Subsidiary users and the names of the sharecroppers or other users have been noted in the appropriate places of the model form.

On the parcel form there also is a place to describe the type of land in the parcel. The purposes of this item are:

- 1) to enable a statistical tabulation of this data for describing the main types of agricultural land for the Ministry's planning purposes; and
- 2) to facilitate the estimation of the value of the parcel derived from its productive potential, in case that some simple "contribution" system is devised in the future for supporting the village Shura's land records management activities. This question has also been used to explore whether villagers can readily classify parcels using the criteria proposed.

To limit the likelihood of unauthorised modifications to the forms or boundaries, the RLAP devised two procedures:

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

The experience with the community based land records management method in Kunduz has been entirely positive. The community welcomed the approach to their generating and managing the archiving of the documentation of state and private agricultural land as much as they did the ADAMAP providing them with formalised documentation on their rights to pasture land.

The community based validation of State and private agricultural lands devised by the RLAP thus can be seen as a first step towards a locally managed land ownership information system that eventually may include all types of lands existing at the village level and that works in cooperation with governmental land institutions to establish simple and transparent processes for documenting and recording local land rights - whether held by individuals, kin-groups or wider communities, as is often the case with pastures.

### **3.1.3 Fieldwork experience and village workshop in Nau Abad Village, Chardara District, Kunduz Province**

Fieldwork in the village of Nau Abad covered the following dimensions:

- Pasture land agreements for community pastures

As in the first three test sites described in the TA Interim Report, pasture land agreements for community pastures used by villagers from Nau Abad have been prepared. These are pastures near to the village and the delineation of boundaries for these pastures has been done through discussions with the villagers, and with the elders and Shuras of any villages neighbouring these pastures as per requirements of the ADAMAP approach.

- Public pasture land agreements

For the large, distant public pastures, the areas used by villagers from Nau Abad have been delineated on larger scale imagery (1:50.000 Landsat, Photo 3). Other pasture areas used by

neighbouring villages or nomadic groups have been noted down, but due to time constraints could not be delineated. Pasture land agreements have thus been produced only for the areas used by Nau Abad villagers. However, the identification of the boundaries of these public pastures used by the people of Nau Abad was facilitated also through discussions with their neighbours to arrive at shared and unanimous agreements.

- Test procedures for recording rights to privately owned agricultural parcels

A section of the privately owned agricultural land of the village has been recorded and the basis for a localised parcel register established.

As in the other sites, fieldwork has been essentially carried out by CRA, the subcontracted local NGO working in collaboration with the TA over all pilots. However, in contrast to the other villages the TA integrated four additional persons recruited from partnering government offices (Amlak, Cadastral Survey, Land Resource Dept.) and an NGO (Mercy Corps) into the field team in Kunduz to build practical capacity for working with the ADAMAP procedures. This extended field based training proved to be very valuable especially for participating government staff and ensured wider outreach of the ideas entrenched in ADAMAP and increased the understanding of its procedures in respective offices. Likewise, for Mercy Corps as an international NGO very much interested in the ADAMAP approach the exercise of six weeks intensive fieldwork in the community will be very much helpful for the implementation of ADAMAP in their own project villages.

**Major findings regarding pasture use of Nau Abad villagers** can be summarised as follows:

- The village consists of two major Kuchi tribes (Baluch, Ashakhel), who jointly use and manage the communal pasture areas
- These tribes also use public pastures located in some distance to the village and far away '*Iloqs*' (summer pastures in high altitudes) in Badakhshan, where about a third of the village population migrates to over the hot summer months
- The basic concept of organising access to and usage of pasture is the '*Yurt*' or '*Mena*'. Literally meaning tent or locale, it refers to a defined geographic area of pasture land that is used by a specific family of herdsman. Understanding the concept of '*Yurt*' is mandatory, as all delineated pasture areas used by Kuchi villagers are further subdivided into those specified areas. Due to time constraints, however, the field teams were not able to delineate boundaries for each '*Yurt*' but stopped after demarcating the boundaries for the bigger and collectively used pasture lands comprising all existing '*Yurts*' belonging to the village of Nau Abad and its two distinctive tribal groups.
- The shape of '*Yurts*' has evolved over time and the location of their boundaries is 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 does influence who is allowed to use the area in question. Villagers made this point clear in relation to the clearly defined '*Yurts*' used in their distant '*Iloqs*' in Badakhshan. As it is, the number of 500 animals serves as the measuring unit, being what is perceived the normal 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 own '*Yurt*' so that its capacity is being exhausted. However, the shape and size of the '*Yurt*' will not alter through this practice and the use-rights are still exclusively assigned to the family in question. The example shows that access is negotiable with the size of a herd being the decisive factor.
- Villagers acknowledged however that boundaries of '*Yurts*' are often contested and that multiple claims may exist, a problem which has been fuelled by refugees sometimes returning after decades and their '*Yurts*' having been taken over by remaining families. The conflicts arising are resolved on the local and customary level by calling in the council of elders to discuss any given issue. As it is, formal institutions are never approached over these issues. With the location of boundaries being determined by oral tradition it is only the elders of a community who can reach an accepted conclusion. Again, the size of a herd serves as a determining factor to assess the righteousness of a claim to a '*Yurt*'. If a claimant does only

possess a small number of animals but has lain claim to a spacious 'Yurt' his case may be deferred. At any rate a 'Jirga' often containing elders of various villages will be summoned to reach a conclusion, which usually is accepted by the competing factions. Villagers did not refer to a case where a conflict over boundaries of 'Yurts' persisted, which demonstrates the effectiveness of these practices of customary law.

- In the view of Kuchi villagers, a 'Yurt' does not only resemble a specified geographic area, but also a systems of rights to pasture land collectively agreed upon between all potential users. Villagers do not claim ownership of the land in question, although in their view the long duration of usage stretching over many generations does resemble something like it. However, rather than talking about ownership people refer to the right of use which they claim to those areas.
- 'Yurts' are embedded in the bigger pasture areas as delineated on satellite imagery by the field team. The bigger parcels both on public and communal pasture areas contain all the 'Yurts' belonging to a specific tribe of nomadic pastoralists. The shape and boundaries of those areas have been collectively agreed upon by villagers of Nau Abad as well as neighbouring villages. A big 'Jirga' of elders from all villages using the public pastures has been summoned by the leaders of Nau Abad village to reach an unanimous agreement on the location of boundaries demarcating areas used by each village and tribal group. It is, in fact, the tribal group (*Khel*) that claims rights of use to a specific parcel of public pasture land rather than the village, which illustrates the modes of social organisation prevalent among nomadic groups in Afghanistan.
- Interestingly, the common pasture of Nau Abad containing their various 'Yurts' is located in quite some distance away, whereas the public pasture used by people living in the huge cluster of villages of which Nau Abad is part lies adjacent to the settlement, thus somewhat reversing the usual pattern of communal and public grazing areas.
- Whereas on the distant common pastures two distinct parcels have been identified (Photo 3) that belong to the two tribal groups occupying Nau Abad and are further subdivided into 'Yurts', the common/public pasture located closely to the village is used collectively by both 'Khels' of the village, but exclusively so in the most fertile period of the year spanning roughly from March to June in each year. This exclusive common parcel used by both village tribes collectively and not further subdivided into 'Yurts'. Other shepherding villagers living in neighbouring settlements have their own distinct parcels for exclusive use over certain seasons, but for the rest of the year all adjoining villages are allowed to use the adjacent pasture areas.

*Photo 2: Pasture Land adjacent to Nau Abad village*



- The distant common pastures are supplied with water for the herds by hired trucks, indicating the relative wealth of villagers in Nau Abad.

- The common pastures and their ‘Yurts’ are also being used by other Kuchi tribes passing through the area in the season, suspect to prior permission by the Nau Abad villagers. People usually do allow other Kuchis to use the area, although under adverse climatic conditions (i.e. drought) restrictions may apply.

**Major findings regarding the use of private agricultural land in Nau Abad can be summarised as follows:**

- The project in Nau Abad site included the delineation of a block of approximately 100 private agricultural land parcel boundaries and the preparation of parcel forms (registers) for each parcel which describe the parcels in terms of their use, and verify the ownership of each parcel on a community basis. This part of the work has been highly appreciated by villagers as well and may serve as an important case for developing a community based land registration system for Afghanistan.
- The field work on this block of parcels has also gone very well using 1:2000 Quickbird images for the delineation of parcel boundaries on the basis of their ownership, and assigning them a unique number. This way, the feasibility of establishing a village based land parcel register that is administered by designated villagers has been successfully demonstrated. There is no evidence of conflict over private land in Nau Abad, either about a boundary or ownership.
- There has been very little grabbing of agricultural land parcels in the village by powerful people taking over land of the less powerful. However, there is some concern among village elders that the owners of agricultural land who have left to live somewhere else, and have left the land to a relative to use, could cause problems if the absent owner dies, and a son or daughter returns to the village to reclaim the land and does not know where it is. Records in the village as advocated by the TA about the ownership of the land and about long term agreements about its users would be very helpful indeed to resolve such cases.

*Photo 3: Fieldwork on community based validation of ownership over private agricultural land in Nau Abad village*





### Village Workshop in Nau Abad, Kunduz (25. June 2007)

- Generally, all villagers expressed great satisfaction with the work done by the field team. People see the benefits this type of work entails and how it can lead to stable land relations both in regard to pasture and private lands as well as to a mutually agreed upon understanding about the use of public lands between communities and the state.
- Especially important for villagers is the preservation of documents stating user rights to pasture and ownership over private land inside the village itself. This allows them to easily tackle land problems that may arise in future and helps them to access land records without investing time and money.
- Proactively, villagers established what they call a 'land administration room' located in the premises of their Shura compounds. Here the delineated imagery is put to public display, and here all records shall be kept for archiving and future reference.
- The work on private land was highly appreciated, as it give additional evidence to the rightful owners of a given parcel in addition to the documentation that may already exist, such as tax receipts from the Amlak Department. For pasture land however such prior documentation never existed before and the community agreements are perceived as an overly important means to formally register user rights to public land.
- People however expressed some concern as well, since they are worried that activities will stop now after the field teams completed their piloting work. They requested the team to do everything in their capacity to convince the government continuing what has been started. Quote from Mohammad Aslam, Head of Shura *'The people of Afghanistan have seen a lot resources wasted on projects which nobody needs. In my opinion, only the NSP program has been very useful to communities. This project on land also is overly useful for us - it 100% benefits communities and will help to solve many problems we have with regard to land - as you know one of the most contentious issues in our country. This type of project needs to be continued, it will help us and also the government to move forward in the right direction'*.
- Likewise, people requested to continue the work the team started on private lands. 100 parcels have been verified on community basis, but there are many more parcels in Nau Abad waiting to be registered by such means. Quote from Daud Assad, Head of Shura: *'We only scratched the surface now - why should we stop here and not continue? We need to cover our entire private land property and preserve the documents in our new land administration office'*
- Villagers also requested to map the boundaries of each 'Yurt' to provide unanimous documentation of the pasture areas they are using, and not only the bigger pasture parcels containing all the 'Yurts' of a given tribal group - a request which needs consideration. Likewise, it was requested that the method applied should be carried out in the distant 'Iloqs' in Badakhshan that are used by different tribal groups.
- Villagers are very confident about the entire process and see themselves not only capable of administering the land they use and own, but also to carry out the method of delineating pasture parcels and producing attendant agreement forms as well as producing a community register of private lands. People feel they have acquired the capacity to carry out the entire process as advocated by the TA and would volunteer to help and teach other villages to record their pasture and private lands as well.
- A concern remains as to the activities of the government - some villagers feel that in spite of documentation the state may obtain the pasture areas that are used by the community to implement whatever projects. This why it has been strongly recommended by villagers that the government recognises the community agreements as legal documents and formally accepted records of user rights to public land.
- Along the same lines, villagers request the government to accept them as an official body for land administration.
- A clause in the agreement form states the responsibility of villagers not to convert pasture land into agricultural use - this is accepted by the village community, and they hope that the government will fulfil its own obligation not to implement any sort of project on communally used pastures without seeking the prior consent of the community as also stated in the said clause.

*Photo 4: Two delineated Pasture areas exclusively used by the two distinctive tribal groups (Khel) of Nau Abad village (Baluch, Ashakehl)*



### **3.1.4 Provincial workshop in Kunduz, 27.June 2007**

After the delineation of parcel boundaries and the village workshop have been completed, a provincial level workshop was held to bring local Amlak, Cadastral and Pasture officials as well as villagers and interested NGOs together for a day's discussion, to introduce them to the ADAMAP approach, to discuss the community based approach and its benefits in general terms, and how government offices need adapt to enable its implementation. Together it was aimed to assess the capacity building needs for institutions to carry out community based land administration and to enable exchange of ideas between all stakeholders involved.

*Photo 5: Explaining the forms for a local parcel register and Eng. Barikzay discussing with participants at the Kunduz workshop*



Participants in the workshop that took place in Kunduz town included the following offices (see also workshop list of attendees in Annex 4):

**Government:**

- Governors office, Amlak, Cadastre, the Rangeland office, the tax office, from the local directorate of the Ministry of Agriculture as well as from the central office in Kabul and from the Ministry of Rural Rehabilitation and Development.

**Civil Society:**

- Representatives from the community *Shura* and delegates from Mercy Corps and CRA for the NGO community.

The workshop commenced with an opening of the Deputy Governor expressing his full support to the ADAMAP effort followed by an explanation of the community approach to tenure regularisation and its rationale and an introduction to the actual field work process by the TA team. Members of the community *Shura* of Nau Abad presented on their land tenure problems, interaction with offices and their perception of the project approach and the benefits it entails. Local land administration agencies then reported on their mandates, the constraints they have to face in carrying it out, but especially on their direct experiences with the ADAMAP methodology. These presentations gave way to discussions on the feasibility of the community based approach and the benefits it entails. The final speaker was Eng. Hashim Barikzay, the General Director of Natural Resource Management in the MAIL, who discussed the ADAMAP approach in the context of the Agricultural Master Plan and assured his directorate's complete commitment to the method. Bringing this high level of government strata into direct discussion with villagers was one of the main achievements of this particular workshop and injected confidence into villagers' perceptions as to the seriousness of the government approaching the issue.

**Major findings from the provincial workshop in Kunduz, 27<sup>th</sup> June 2007**

- There was agreement that the government lacks capability of managing the pastures of the country and the responsibility to do so has to be given to communities
- The need to define a new role for the government as facilitator and supporter of community land administration and management of pastures has been acknowledged
- ADAMAP has been considered as a feasible way to address the problems on pasture in Afghanistan. Its wider implementation into those provinces where security conditions allow has been suggested by representatives from all participating government offices and community members
- ADAMAP however is also seen as a viable means to improve security conditions in the country - by virtue of facilitating equal cooperation between the government and village communities and the gradual building of mutual trust
- ADAMAP has also been described by participants as a viable method to resolve conflicts over land that may exist between communities and the state
- ADAMAP is seen as modern, rapid and low cost activity that gradually should evolve into a nationwide programme
- It was stressed that ADAMAP needs legal recognition and governmental endorsement in order to make it a successful nationwide programme
- Government and community participants alike believe that through ADAMAP communities are likely to be inclined to protect their pastures better and to engage in investments for its improvement
- The increased security of tenure provided through ADAMAP also provides opportunity for the improvement of livestock businesses
- The ideas of ADAMAP need to be supported by improved coordination between the different state land institutions and the definition of new responsibilities to guide the ADAMAP process
- Liaison between government and CDC's with respect to land administration and management needs to be formally established



In the second part of the workshop it was aimed to assess the capacity building needs for land administration institutions to enable them taking on a community focus. Two working groups comprising all participants were formed to discuss the community approach to land and present their findings to the workshop. The overall findings of the provincial workshop are summarised in the box above.

### 3.1.5 Capacity Building for the ADAMAP Methodology

The TA pursued capacity building activities on various levels in order to enhance the understanding of community based land administration both for the government and village communities. These activities were directed to both NGO field staff to enable them testing the ADAMAP approach in the pilot villages and government staff in the different land institutions to make them familiar with the community based methodology advocated by the TA. These activities followed both short and longer term objectives in that it was aimed to educate a set of people in the approach for immediate implementation, and to establish a core of government staff from all partnering offices as 'Trainer of Trainers' in ADAMAP and community consultation that can be made available in the longer run when it comes to an extension of the method as laid out in the LAMP proposal. Likewise, community Shuras were trained in producing and administering their own land records. However, in an extension of ADAMAP as laid out in the LAMP proposal produced by the TA further capacity building activities in governmental land institutions are mandatory to achieve the goal and purpose of the proposed programme. These activities are laid out in detail in Annexes 3 and 6 of Project Report 6.

Over the pilot phase, the following capacity building activities have been accomplished:

- **Training course for field facilitators:** Before field work in the test sites commenced, an eight days training workshop was held in Kabul with candidates for the field facilitator positions, to make the teams familiar with the objectives of the project, with land and tenure issues in general as well as with technical issues about satellite imagery and communication consultation processes. This workshop can be easily reproduced for instance with other interested NGO's aiming to use the methodology and facilitate community validation of land use rights, but also with local government to help and enable them implementing the community based approach. The training materials contain various presentations and role play exercises, assembled as Project Report 2.
- **Field based training:** as indicated above, representatives from key partner offices in the Afghan government (Land resource Dept., Amlak, Cadastral Survey Dept.) joint the fieldwork implementation of the ADAMAP methodology and the community based registration of private land in the 4<sup>th</sup> pilot site in Kunduz. This intensive six-week field training proved to be a very valuable activity and conveyed the ideas and practicalities of ADAMAP to important land institutions. In addition, the field training brought government and communities closer together in an effort for the common good and proved that productive cooperation between the state and its citizens is indeed a feasible opportunity. It also raised awareness in both parties that only by means of such cooperation progress in resolving land problems can be achieved. The experiences of participating government staff were publicly shared in the provincial workshop in Kunduz town.
- **Community consultation over pasture improvement:** the final step of the ADAMAP procedure is planning for the improvement of rangeland parcels. The actual managers of respective parcels have been identified and their names documented in the community agreements, and the TA engaged in recurrent field visits to all pilot sites to discuss possible means of improvement with the target communities. These discussions were accompanied by local and central staff of the Land Resource Department (LRD) of the MAIL to build their capacity in

community consultation and probe into the possibilities of the LRD to assume a supporting role in pasture improvement in collaboration with communities. This essential responsibility is addressed in more detail in Annex 3 of Project Report 6.

- **Training of Trainers in ADAMAP:** In partnership with the DFID-funded SSPSRL program the TA team organised two 10-day training courses for altogether 15 government staff nominated from Amlak, Cadastral Survey Department, AGCHO's GIS section and the Land Resource Department of the MAIL. The SSPSRL already works for a number of years both in MAIL and MRRD as a major capacity building initiative and established the presence of 14 experienced 'Master Trainers' who offer comprehensive training programs for different staff of both ministries educating them to become trainers. Taking advantage of this in-house expertise the TA decided to establish a group of trainers in the ADAMAP methodology. These newly trained Trainers can be made easily available to educate other staff of their respective offices about ADAMAP and its procedures, or in case of AGCHO-staff the set up and maintenance of a related GIS. The training course has been designed in two basic 10-day modules: the first provided the pedagogical and didactic background to run successful training exercises; the second module held with the same participants provided detailed technical training in the ADAMAP-methodology for its wider dissemination among respective offices. Subsequently, selected training participants also took part in the practical implementation of ADAMAP in the pilot villages.
- **GIS training:** The technical details of the GIS component of ADAMAP are explained below (Section 3.1.7). For training purposes the TA facilitated a public-private partnership while bringing Liwal Ltd., a private company with GIS expertise, and AGCHO together to work on the specifically designed GIS. Liwal Company developed the GIS for community based pasture management in consultation with the TA field teams, and subsequently ran training courses at AGCHO to convey detailed procedures how set up and maintain the ADAMAP-GIS. One local GIS expert from the Company assumed his workplace at AGCHO over the period of two months specifically for that purpose. As learning by doing exercise the technical work done in the 4<sup>th</sup> pilot in Kunduz both on pastures and private land has been transferred into the GIS by AGCHO engineers themselves under the supervision of the local expert. In total eight engineers have been trained, three from AGCHO's Department of Metadata, and five from the Department of Mapping and Cartography. In order to run the ADAMAP-GIS it was also necessary to purchase official licenses of the latest GIS software for AGCHO, and the GIS expert also provided training in the new software for the GIS engineers.
- **Training of community Shuras to produce and administer their land records:** The TA has devised and tested several new procedures which are being viewed by villagers as well as government officials as appropriate for the implementation of the new community based pasture (and forest) land management policy and strategy. These procedures include capacity building of CDC's and other villagers in the community use of satellite images to describe pasture parcels by delineating boundaries on the images, community verification through community prepared land agreements as to who are the legitimate users of pasture parcels, what uses they recognize as legitimate, and during what times of the year is feasible. The capacity of village Shuras to use and maintain pasture parcel information in the villages is incipient. In the pilot site in Kunduz villagers acquired the capacity to delineate private agricultural parcels on satellite imagery themselves and to validate and record ownership by filling attendant register forms.

*Photo 6: Pasture area in Karukh District, Herat: the need for improvement is clearly visible, and ADAMAP will provide the incentives to do so*



### 3.1.6 Acquisition of satellite imagery for ADAMAP

The TA continued to rely on the military to provide the satellite imagery for the ADAMAP pilot phase. Both American and German military officers were supportive in providing these crucial tools in print as well as electronic format and in high resolution quality. Cooperation likely can be extended into any future effort of implementing ADAMAP on a larger scale. For this cause the recently signed agreement between the National Geospatial Agency (NGA) based at ISAF and AGCHO will be very valuable. Significant investments into the technical infrastructure of AGCHO are planned, which explicitly includes support with needed licensed satellite imagery. AGCHO thus becomes the intermediary institution to channel access to imagery for ADAMAP, and the capital investments done by the TA in their technical infrastructure and capacities (especially for modern GIS software and training) contribute to this new role for AGCHO. However, the possibilities regarding the acquisition of satellite imagery entailed in the agreement need to be monitored closely to ensure constant supply for an eventual extension of ADAMAP in the frame of a comprehensive programme. Giving the governmental support for the approach to roll out ADAMAP in entire priority districts in priority provinces as laid out in the Land Administration and Management Programme proposal (Project Report 6) the spatial extension of needed images for the initial stages of the programme is clearly defined. Acquiring licensed imagery for those districts with support of NGA and AGCHO is thus the desirable solution, and discussions with both the military and AGCHO revealed that this will be indeed feasible. Thereby, it is advised to follow a two step approach: village areas where ADAMAP is going to be implemented should first be covered with smaller scale imagery to identify the pastures used by respective communities, and in a second step more detailed images need to be acquired for the actual delineation of boundaries. This is because experience from the pilot sites shows that the actual extension of pastures used by any given village can only be determined over fieldwork, and a smaller scale overview is required to be able to determine the actual areas legitimately used by local communities so as to be precise when ordering large scale imagery. Military officers also asserted that high resolution satellite imagery is principally available for the entire country.

It seems obvious that the use of high quality satellite imagery is more cost and time effective when compared to the traditional cadastral survey methods, as carried out in about one third of the villages in Afghanistan up to the year 1978. The advocated methodology using satellite imagery clearly has the great advantage of being rapid and quick to implement, without requiring the great efforts in time and administration of a traditional cadastral survey. This is also true with regard to private land holdings, where boundaries of individual parcels are clearly visible on high resolution satellite imagery and where the ADAMAP method works in a transparent and comprehensible way and involves local landowners in the process. However, the biggest argument is time - given the pressing need to resolve land tenure issues in Afghanistan as quickly as possible, recourse to the traditional methods is clearly not an option. This is also an insight of the higher officials in the Cadastral Survey Department, who keep their important and detailed work of the past in high esteem but nonetheless realise that the time and resources to continue and reassess the work done will not be available. Even when satellite imagery cannot be made available for free with support of the military, and all signs indicate that it would, the associated costs would likely be less expensive than a full cadastral survey with all its geodesic equipment needed and the time intensive mapping procedures attached. It is however not possible here to compare the real costs of a cadastral survey vis-à-vis the acquisition of high resolution satellite images (estimated to cost about 38 US\$ per sq-km in highest resolution but useable for a variety of purposes beyond the ADAMAP methodology), but the insight that modern satellite technology needs to be used for any future mapping efforts in Afghanistan is widespread among all relevant offices in the country. The actual costs of the ADAMAP implementation on pasture and private land per village as well as the indicative budget needed for an extension of the programme as envisaged in the LAMP proposal are estimated in [Annex 9 to Project Report 6](#).

### **3.1.7 Transfer of field data on pastures and private agricultural land into a GIS**

Building a simple digitised Land Information System that renders the field data readily accessible and provides an additional archive of records about user rights to pasture and ownership of agricultural land has been a final activity related to the ADAMAP methodology. This work has been accomplished in partnership with AGCHO and Liwal Ltd., a private IT company based in Kabul.

The hard data collected in the field has been digitised and transferred into an uncomplicated GIS. Satellite imagery containing the boundaries of pasture parcels, and in the case of Kunduz also of agricultural land parcels, has been scanned and the parcel boundaries digitised. Further, the filled and signed agreement documents for each parcel have been digitised and hyperlinked to the parcels they belong to. This simple procedure is at the heart of what has become a very straightforward GIS providing a digital record of the location of parcels and their boundaries along with the agreement documents showing user rights and ownership, accessible with a single mouse click. Naturally, the GIS at this point just reflects the situation prevalent in the four pilot villages, but its design allows for easy extension when needed over an extension.

The initial work for the first three pilot sites in Herat and Takhar Provinces has been accomplished by GIS engineers employed by Liwal Ltd., but delegates from AGCHO joined the work during all its stages. However, the entire field data including the information collected on private land over the final pilot in Kunduz Province was digitised and transferred into the GIS by AGCHO engineers themselves, with mere support of the consultant from the private company hired by the TA to work at AGCHO for the period of two months. In this way AGCHO engineers developed the technical capacity to create and manage the GIS that organises the data created through ADAMAP.

The GIS developed under the TA provides a number of advantages:

- It is easy to use and extend and provides additional security for the land records collected over fieldwork



- It provides easy and efficient organisation and management of the land information data collected through ADAMAP, the original hard copies of which are archived in the villages
- It assures that along with the recordation of hard copies in villages and government land institutions a centralised land information management system is introduced that can be extended gradually, as needs require.
- It has been developed through public-private collaboration which likely helps assuring its sustainable maintenance, extension and probable modifications

AGCHO serves as the central repository and management unit for the digital information collected under the TA and should continue assuming this role over the eventual extension of ADAMAP to different areas of the country. This is for several reasons:

- AGCHO engineers have acquired reasonable expertise in the design and use of a modern GIS, and with its investments in capacity building and latest GIS software the TA contributed significantly to that cause
- AGCHO already is engaged in a successful public-private partnership with Liwal Ltd. and aims to continue cooperating with the private sector
- The institution already is technically well endowed with computers and peripheral devices such as large scanners and plotters. The recently signed memorandum between AGCHO and the NGA however specifies significant additional investments in modern equipment and IT work stations and promises cooperation in the acquisition of satellite images.
- The probable extension of ADAMAP might be able build on this memorandum, as the satellite imagery needed for the wider implementation of ADAMAP can now officially be requested by any government entity through AGCHO and subsequently provided by the NGA
- AGCHO currently is the only governmental institution capable of digitally storing and securing satellite imagery
- AGCHO has acquired the technical expertise to digitally process the delineated imagery produced under ADAMAP showing pasture and agricultural land parcels and hyperlink it to agreement and parcel forms

Photo 7: The village based parcel register for private land as managed in the GIS: each individual parcel is digitised and linked with its parcel form signed by owners and witnesses



In addition to AGCHO as the central repository of digitised data, it is proposed that provincial Cadastral Departments in partnership with the provincial Amlak offices start functioning as provincial digitising centres over an extension of the approach to additional areas of the country (see Annex 6 to [Project Report 6](#)).

### 3.1.8 Findings and lessons learned from ADAMAP implementation in four villages

The practical experience with ADAMAP and its reception by the village communities in the four pilot sites in Kunduz (Chardara District), Takhar (Ishkamesh District), and Herat (Zindajan and Karukh District) Provinces has been entirely positive. Detailed accounts about the fieldwork and its findings in the villages in Herat and Takhar Provinces in the Interim Report to this TA and about Kunduz Province in section 3.1.3 of this Final Report provide ample evidence to the fact that ADAMAP as a community based methodology implemented in partnership with the government and NGOs has the potential to sustainably tackle the land tenure problems affecting Afghanistan (see also the Box below for an overview of findings in Herat and Takhar Provinces described in the interim report to the TA. Findings from Kunduz are lined out in Section 3.1.3 of this report).

#### Some findings from village Fieldwork in Takhar and Herat Provinces

- The *Shuras* are ready to take on responsibility to administer and manage their land after government recognises them as an official body and assigns them the mandate to do so
- The delineated satellite images and local agreements facilitated by the project team are seen as valuable means to achieve security of tenure over pasture lands and are perceived as legal documents under *Sharia* law
- *Shuras* keep images and agreements in the public community building and will maintain those records and in case of any changes modify them
- Dispute mediation and resolution in occasions of conflict over land is overwhelmingly carried out at the village level
- The community *Shura* in the pilot village in Takhar acted as controlling body over pasture already in the past, when per verbal decree they forbid any conversion of grazing land to agricultural use; this decree is followed until today, and it shows the power customarily assigned to this representative body and the potential role it can assume for sustainable conservation of grazing lands
- To provide *Shuras* with an ongoing responsibility it is required that the government moves forward and decides to provide the communities with a clearly defined role for land use management and planning and to facilitate partnerships with existing land institutions.
- As in Takhar, both village *Shuras* in Herat were confident in assuming an ongoing responsibility and to act as principal land management body on the local level
- The mandate to do so needs to be officially given to them by the responsible government agencies
- In addition, *Shuras* demanded from the government to make clear together with them who is responsible for which type of land, so that they can effectively exercise the role of a principal land administration and management body at the local level
- The agreement facilitation process can help bringing conflicts to attention and contribute in solving them. However, in order to be able to do so the agreement forms and delineated satellite images need official recognition.
- Many recorded conflicts involve the government and their resolution would involve a clear demarcation of management responsibilities between communities and government.
- In the past often violent conflict between sedentary *Kuchis* and the villagers of *Beydak Saghari* over the use of pasture needs a shared agreement on user rights to enable resolution and peaceful coexistence. Potentially, the proposed method could work towards conflict resolution and to suggest compromise but would need longer term consultation of involved disputants. At this point of testing the process it was decided not to engage in long term conflict mediation but to note the source and shape of conflicts in the agreement from to bring it to notice of government and NGO agencies with resources for such mediation.

In all four sites community *Shuras* enthusiastically welcomed the ADAMAP approach and were ready to assume responsibility for land administration and management, albeit under formal acceptance of and in partnership with government. In fact, all of them claimed that no other body would be

able to administer their lands. In order to be able to do so they requested official status and recognition by the government beforehand, as well as some support in terms of office space and materials. Generally, villagers were positive toward engaging in partnerships with government.

As such, no major differences in the general perception of ADAMAP have been encountered between pilot villages. In all pilots village communities engaged in discussions with their neighbours to delineate boundaries of the pasture areas they use, thereby attracting desire to extend ADAMAP beyond the immediate pilots to also include the neighbouring villages - a strategy explicitly addressed in the LAMP proposal where extension of the approach will be based on full coverage of target districts. In addition, nomadic pastoralists need to be integrated in the agreement process to receive documentation about their legitimate rights to access pasture areas. However, during ADAMAP implementation in pilot villages work with nomad populations remained somewhat marginal. This happened primarily because in the spring and summer of 2007 the pasture areas covered and delineated in Herat and Takhar were not visited by nomads and the field teams explicitly revisiting the sites in the appropriate season could not facilitate the agreement process. The pilot village in Kunduz itself consisted of nomadic tribes who chose to live a semi-sedentary lifestyle, and in this case facilitation of agreements with trespassing Kuchis has been successful. Given that the nomads of the pilot village seasonally migrate the long way to Badakhshan to use high altitude summer pastures, they explicitly expressed the need to get formalised documentation about their rights to access water points and pasture lands during migration as well as to the grazing areas they traditionally use in the high pastures of Badakhshan. The Department of Kuchi Affairs in Kabul and their dependencies in the Provinces expressed the same need, saying that more formalised rights over pasture and forest land are absolutely critical for nomadic populations.

In principal, inclusion of nomads in the ADAMAP process is not difficult, but needs careful timing to catch pastoralists when they are there. However, sedentary populations know about the seasonal movements of Kuchis and at which times they access the local pastures. In all pilot villages local communities stated that Kuchis have the rights to use village and public pastures and there would be no problem reaching an agreement about time and boundary delineation. Likewise, the provincial Departments of Kuchi Affairs know about the migratory routes and will be a partner in facilitating agreements between settled people and trespassing nomads over the legitimate rights to the use of pasture land. However, Kuchis do not have elected representational bodies such as the community Shuras, so that the council of elders will serve as the partnering institution in the ADAMAP process.

The TA team also developed procedures for working with the village users of rangeland parcels to prepare plans for the improvement of those lands. Many useful ideas emerged from these discussions with villagers in all pilot sites for improving rangeland carrying capacity, including investments that the villagers already intend to make. However, herdsman are unlikely to know all the technical and management options which are open to them under the improved land tenure security. Most herdsman are unfamiliar with the concept of investing in pasture land because they never operated within a tenure regime in which it has been logical to invest. There are many recipes for improved pasture, ranging from rotational grazing through pasture/forestry developments and the planting of fodder crops in pockets of specially favourable rangeland. However, at the outset, herdsman can be expected to know little about such ideas. It is nevertheless vital that herdsman and farmers get away to a rapid start in implementing rangeland improvements, and it is right that outside help from government, companies and NGOs that needs to be provided. If not, it will lead to delays in the addressing of the urgent problem of pasture degradation and erosion in the rural areas. The LAMP proposal prepared by the TA team consequently addresses this need and lays out detailed institutional changes that are necessary to achieve it as well as attendant capacity building means to be implemented in order to work towards sustainable improvements of rangeland areas in Afghanistan.

Findings and lessons learned from the experiences gained over the piloting of the approach are thus manifold. Most important findings include the following:

- The devised and tested method proved to be a feasible and effective tool for asserting user right to pastures and registration of private land
- The Ministry of Agriculture perceives the method as a feasible way to build up a much needed land information system and supports its extension to additional areas, with a view to gradually developing it into a nationwide effort of community based land registration for communally used as well as privately owned land
- Village councils in pilot sites are ready to act as the principal land body and take on responsibility to administer and manage their land, but need prior official government recognition and continuous support to be able to do so
- In order to provide village *Shuras* with an ongoing responsibility the government is required to provide communities with a clearly defined role for land use management and planning and needs to facilitate equal partnerships with existing land institutions
- The government is working on practical ways to recognise the agreement forms and delineated satellite images produced under ADAMAP as officially accepted and archived documents
- The agreement facilitation process can help bringing land conflicts to attention and contribute in solving them by documenting the nature and extent of the conflict and subsequently bringing in complementary projects dealing with dispute resolution. For the long term, however, dispute resolution capacity need best be integrated into the project
- Administrative government institutions in the pilot sites accepted the community based perspective on land management as viable and in the longer term only feasible solution to restore security of tenure in the country
- Facilitation of land agreements with support of NGOs proved to be a workable option and partnerships of NGO's with governmental land agencies need to be established more formally and represent the most promising way to move forward in a concerted effort
- Timing of the agreement facilitation for the use of pasture lands needs careful design in order to integrate nomadic pastoralists into the process
- Villagers are provided with increased security of their tenure, both for private and commonly used land, and conflict potential over the use of common land will likely diminish.
- Security of tenure gives incentive to communities to preserve and improve pasture areas and avoid ecologically hazardous overexploitation
- By involving the government in the agreement facilitation process the often tense relationship between the state and its citizens is likely to improve, as local communities are provided with much demanded official documents clarifying land use and ownership rights
- Village councils are provided with an ongoing role, thereby strengthening their position as a village-level institution with real and ongoing responsibilities as the basic institutional body of land administration in Afghanistan, thereby also offering a future map for the NSP
- For the government the process represents the first steps towards a comprehensive land information and management system that provides clarity about land ownership and land use patterns and will ease agricultural planning.

The advantages of the ADAMAP methodology ultimately resulting in a new system of land administration for Afghanistan may be summarised as follows:

- the new system builds directly on the traditional system, with which people are already familiar
- the new system keeps parcel records in a systematic way at the community base, ensuring ready access to people in the place where it is most frequently needed, both for normal land transactions and in the resolution of land disputes
- the new system using satellite images in the field can be implemented much more rapidly than one which relies on conventional survey and mapping
- the new system provides families, clans and tribes with documentary confirmation of their rights to specific rangelands for certain purposes at defined times of the year. There are provisions for modifying the archived agreements when and if the stakeholders want to change those arrangements. This local consensus about rights to rangeland encourages the holders of those rights to improve the rangelands in the knowledge that their tenure in these lands is



secure. There is potential for use of the agreements as evidence of land access, which lenders could use to justify loans to the herding families involved in land improvements.

- the new system provides herdsmen, many for the very first time, with written documentation of their rights to rangelands to the extent that they will be encouraged to invest in their own improvements on that land. The advantages from the point of view of the individual herdsman are the similar to those for cultivators of agricultural land, (although the situation is somewhat different because most herdsmen have never had any such formal rights at all).
- Therefore, the new system, by providing adequate security of tenure over pasture, reverses the logical responses of herdsmen in the use of pasture. Previously, herdsmen were logically drawn to exploiting the pasture in the short-term, at the conspicuous expense of its long term sustainability. Under the new system, herdsmen have direct interest in improving pasture in the interests of short, medium and long term prosperity. The same advantages apply to forestry for exactly the same reasons.

The conclusion, based on the experience of the TA is that community administration of rangeland land agreements is feasible, and there are the many advantages as listed above to be gained from pursuing it. Under the tested system for community administration of rangeland agreements, government (presently the Rangeland Department and AMLAK of the MAIL and AGCHO under the Presidency) and the communities will develop new and more effective ways to improve rangelands, and to reduce tensions concerning access to range lands. The Village Shuras will assume the burden of day-to-day responsibility for archiving, consulting and modifying when necessary these rangeland agreements, with the Rangeland Department, AMLAK and AGCHO taking on supporting and regulatory roles.

### 3.2 Output 2: The existing institutional structures and technical capacity for land administration in Afghanistan have been assessed

The most important land institutions in Afghanistan are the Amlak, administratively located in the Ministry of Agriculture, and the Cadastral Survey as a sub-department of AGCHO. The natural resource management department of the MAIL assumes important responsibility in rangeland and forest management. Other agencies with fewer responsibilities to land are the Supreme Court where existing title deeds are stored and the Ministry of Finance holding tax papers and some information about land measurements.

From the assessments it is obvious that Afghan land institutions are currently not in a position to exercise a clear regime for administering land rights. Inefficiency, lack of coordination and overlapping responsibilities have been identified as main characteristics of the Afghan land administration system and the issue is phrased as such in the Land Policy which proposes to gradually integrate land administrative functions into a single government body. This major institutional change ultimately will need to be realised in order to ensure efficiency, avoid duplication and better utilise technical knowledge and skills so as to enable the government to overcome the present confusion that exists among competing land agencies and to start effectively managing land in equal partnership with local communities.

The TA in its action plan programme proposed a roadmap that defines incremental institutional reform in a staged approach and suggests initial streamlining of functions along with the extension of the community based approach and the institutional requirements of the ADAMAP procedure, rather than advocating for an immediate major institutional reorganisation. This gradual process of institutional change and the rationale of the advocated approach are outlined in detail in Annexes 3, 5 and 6 to Project Report 6 and Section 3.3 of this final report.

In view of this cause the assessments of three land institutions (Amlak, Cadastral Survey Department of AGCHO, and Land Resource Department of the MAIL) carried out by the TA served a threefold purpose:

- To provide a map of the existing institutional structure for land administration
- To provide a picture of the technical and administrative capacity of existing government institutions involved in land policy and administration to carry out their functions, including their training and institutional development needs
- To provide clear recommendations as to how institutional performance can be enhanced and made more effective

The three detailed assessments specifying organisational and staff structure in the centre and provinces and responsibilities of respective institutions including suggestions for institutional development needs are provided in the Project Reports 3, 4 and 5; those findings are not repeated here.

However, there are common basic features across all institutions that can be summarised as follows:

- All land agencies have to cope with a backlog in their mandate activities.
- In various ways, the mandates of each individual institution are out of synch with the community approach. This is probably not surprising, given how little acceptance inside government there is for devolution of power and the assignment of enhanced responsibilities to communities. This goes along with a general resistance inside government towards institutional change.
- As a consequence, all land institutions face a backlog in capacity for the implementation of community based methods, and accordingly any effort to scale up ADAMAP needs sufficient investments in capacity building programmes.
- New terms of reference for staff in all offices need to be devised in order to prepare staff for their new roles as guide, supporter and facilitator of communities in land administration and management.
- Cooperation between land institutions is very limited at best. This however is not very surprising either, when it has yet to be clearly defined what the basis of this cooperation should be. Mandates of different institutions need to be attuned to the community approach and harmonised accordingly.

Specific measures for institutional reform for Amlak, Cadastre and the Land Resource Department of the MAIL that need going along with the programme proposal produced as Output Three under this TA are outlined in Annexes 5 and 6 to Project Report 6.

### 3.3 Output 3: An Action Plan for land administration reform in Afghanistan has been proposed

The basis of the action plan for land administration reform is grounded in the work and achievements of the TA and essentially refers to the following practical themes:

- Firstly, the TA has developed and successfully tested in representative sites the ADAMAP methodology which allows communities to take on management of their own land administration. The system involves the simple preparation and registration of deeds and maps. In so doing, the TA developed a method of field boundary recording (using large scale satellite images) which eliminates the need for exhaustive time-consuming cadastral survey.
- Secondly, experiences made over the fieldwork conducted under the TA show that communities are very keen to record under their new management systems their customary

rights of access and utilisation to public pasture land. The grazing community members in the pilot sites emphasised that they were tired of disputes over pasture, and the effort to formalise their traditional rights over pasture will be of considerable benefit to them. The same views were expressed by the Kuchi communities the TA worked with - written documents proving their rights of access to pasture are felt as viable means for nomads to improve their tenure security over grazing land.

- Thirdly, in 2004 a clear policy and strategy for community management of natural resources, forestry and range land was approved by government. Since then, however, implementation of that policy and attendant strategies have been held back by the failure of government to practically implement a system within which the forestry and range land lies under the management control of the communities.
- In its work in generating pasture user agreements, the TA gives a convincing illustration - albeit in a limited area, and on a trial basis - that fully developed legal and institutional frameworks do not have to be completely in place before something useful can be done about land and land use in rural areas.

This successful practical experience facilitated through learning by doing links to worldwide debates over the shape of land administration systems in developing and post conflict societies. Over recent years, international attention has been drawn increasingly to the possibilities of progressing improved land administration by building on existing, traditional systems founded in traditional law (e.g. van der Molen 2005, McEwen and Nolan 2007). The case relates to the links between better land administration, greater security of land tenure and the incentive for herding families to invest in land and pasture improvements in their own interests. It rests on the expectation that improved, more formalised land administration systems rooted in and drawing on existing customary arrangements and law have as much, if not more, chance of leading to greater security of land tenure than “imported” systems which tend to feature watertight forms of title (such as ownership) and demand high standards of cadastral survey, mapping and record preparation which take long periods to implement.

Based on the methodologies which it has developed and tested, the TA team is confident that their application can lead to substantially greater measures of incentive among rural land users in Afghanistan to invest in land and pasture improvements in their own interests. Moreover, they can be applied rapidly which is especially relevant in rural Afghanistan where sustainable solutions are needed without delay.

Thus, a vision of a better future takes shape, one in which communities are enjoying the advantage of their formalised systems of land tenure. This vision entails that land disputes are fewer, and that any needed changes in land records are much easier to do because the records are all up to date and are kept in the immediate vicinity. Mechanisms to achieve the vision can also be foreseen - short periods of training (as developed by the TA in the ADAMAP system), followed by a longer period of support from locally stationed government advisers to assist communities consolidate their new land administration regimes.

At the same time, an alternative larger vision becomes possible. Better land administration brings the straightforward advantages above. However, the greatest benefit it brings is in creating greater security of land tenure, thereby generating the incentive for farming and herding families to invest in land and pasture improvements in their own interests. The opportunity arises of assisting rural people not just to organise better land administration for themselves, but to assist them in translating better security of tenure into actions by them to invest in land improvements.

To assist in that process an outline programme with the achievement of the vision as its Purpose has been prepared. This is presented in standard logical framework programme format in Project Report 6 which helps to

- bring to the forefront of discussion the benefits to be gained from pursuing further the methodologies successfully trialled with communities by the TA
- define logically the needs, in relation to rural land, for a reformed land administration institutional framework.
- to provide the government with a detailed way forward to improve land relations in the country
- to ensure that the findings and procedures of the TA are actually taken forward and do not end up unnoticed

### Shaping the action plan in the form of a programme

- (a) It became clear from the beginning that it was going to be easier to progress discussions concerning institutional reform in land administration if there were on the discussion table a sufficiently well-defined, tangible vision of a future involving better land administration in rural areas. The need was for a framework which acted as a guide in the choice of institutional changes to be made, and the priorities to be addressed within a process of gradual institutional change.
- (b) As it happens, the work of the TA gave a good basis for preparing such a vision and framework. The TA trials of community-managed land administration systems which prepare rangeland user agreements had been successful. Limited trials in the community-managed legitimisation of rights to cropland also appeared to have promising potential. Both methods could be carried out substantially more rapidly than by conventional cadastral survey methods. Most importantly, there emerged a clear demand among rural people for greater tenure security through a land administration system managed locally and which is readily accessible. Significantly, this view was echoed at the national level by the Director of the Department of *Kuchi* Affairs.
- (c) In the discussion of the vision, it was possible to develop a broader scope for a better future. Generation and administration of land rights documents at community levels bring benefits in their own right. However, much larger benefits become possible through linking to a framework which also includes communities taking advantage of those rights by improving their lands. This linking gives the incentive among rural herding families, for the first time, to invest in improving the pasture lands over which they have clearer, more formalised rights. The link allows communities (separately and together) to address the urgent problems of low rural land productivity in places where that productivity could be much higher, and a remedying of the resource degradation which is presently so widespread in Afghanistan's rural areas. In sum, the broader vision embraces both better land administration and better land management.
- (d) The government partners chose to develop the vision in the form of an outline of a national Programme. This was done, not because a Programme was required per se. Rather, it was done because the disciplines of Programme preparation require a systematic exploration of all technical, management and institutional themes, and the presentation (and justification) of proposals to those themes within an integrated, implementable package.
- (e) Furthermore, it became clear at a series of meetings with the main partners in the last six weeks of the Project, that government partners are very much pleased with the outcome of the TA and would like to see it continued. They realise the value of its experimental findings, and want to pursue its approaches and methodologies on a wider scale.
- (f) In the event, the responses among the three main institutional partners - MAIL, AGCHO and AMLAK - were very positive. However, there also have been significant differences between institutions.
- (g) In the case of MAIL, an implementation of the vision was seen as a means of deploying in practice its existing policy and strategy for community management of forest and range land. Staff of the responsible institution within MAIL - the Directorate of Natural Resources - and the TA consultant team jointly developed proposals for minor institutional re-structuring and major capacity building within the Directorate which would allow the government to take up its mandate role in supporting and coordinating community management of natural resources in rural areas.

- (h) In the case of AGCHO and AMLAK, the response was different. The two organisations expressed willingness to support the envisaged Programme in specific roles which fall within their own present mandates. They were however not yet ready to discuss amendments to those mandates.
- (i) The development of the Programme (termed a Land Administration and Management Programme - LAMP) was taken to its logical conclusion within the time constraints of the present consultancy input. It is presented in Project Report 6 as a long-term Programme framework, with a plan for immediate action specified in a Programme Stage 1 over a five year period. Proposals for institutional change and capacity building are presented as key components of LAMP Stage 1 - justified, time-bound and budgeted. A discussion of longer-term institutional changes, including scope for the development of a more efficient single national organisation for land administration, is included.
- (j) For ease of reference, the institutional proposals are grouped together under LAMP Stage 1, Output 5, with further background, justification and details in Annexes 3, 5, and 6 to Project Report 6.
- (k) Within the RLAP work programme, it is emphasised that the development of a LAMP proposal has not been an end in itself, but has been a means of focussing attention on institutional changes which are realistic under the present circumstances, and are justifiable in the defined short-term and longer-term futures for better land administration and land management. Furthermore, LAMP is not a mere extension of the methods trialled under the TA. LAMP draws substantially on the positive findings from those trials but the scope of LAMP is much wider, encompassing both land administration and land management. As it happens, the government partners in Afghanistan have at hand at the end of the Project a future programme document which has been substantially discussed and agreed between them, and may be pursued, if they so wish with donors, NGOs and other partners.
- (l) The TA work and the consecutive LAMP approach resulting from the experiences made over the work in pilot villages do rest on the community based approach. It is however realised that the village community is rarely a homogenous entity and that village Shuras are not necessarily democratic institutions characterised by equity and inclusion. Thus far from romanticising the approach as a solution in itself automatically leading to stable and secure land relations both ADAMAP and the LAMP proposal stress the need to establish an institutionalised relationship between communities and relevant government agencies in order to achieve better and sustainable management systems, especially of pasture land. However, the current capacity of government staff to engage in community consultation and shared management responsibility of public resources is very weak at best, and LAMP addresses this shortfall with plans for detailed capacity building activities both in government and local communities (Annexes 3, 5, and 6 of Project Report 6). The critical point is to accept the community management of natural resources as the only feasible solution for longer term sustainability, albeit under support and facilitation of the government. Government needs to assume new roles and responsibilities vis-à-vis communities, to act not as controller but partner of local communities. Institutional reform as proposed in LAMP works towards the establishment of such partnerships, leaving immediate responsibility to communities but under clear supervision of relevant government entities.
- (m) Thus, in terms of developing better government/community relationships, the approaches developed by RLAP for pasture and forest land have two vital positive characteristics. Firstly, they address the reality of the situation, by recognising the traditional system of tenure over pasture and forest land which has been practised for years, and by strengthening that system through the provision of complete records. Secondly, the increased security of tenure makes it in the interests of land users to invest and improve the land. Quite suddenly, the interest of the State and interest of the people - to increase the value, and stop the degradation of forest and pasture land - is one and the same. This could be considered a milestone in the development of new cooperating, mutually beneficial relationships between government and the rural people.

The development of the LAMP was carried out in full working partnership with staff of the key government departments involved. One bigger workshop, three formal group meetings and many individual meetings were held with government partners, donors and other stakeholders. Guidance was sought from, and provided by the Afghanistan National Development Strategy (ANDS) working group on land.

Logistically, the security situation had some impacts on the work. The TA team involved in the programme and institutional work in July and August 2007 dearly wanted to visit representative rural areas, but this was not possible. Concerns about security also led to some disruption of partner meetings in Kabul. It is however considered these problems have not seriously detracted from the coverage and content of the work envisaged.

### **Collaboration with other initiatives on land**

The TA worked in close partnership with various initiatives carried out by other organisations, whose activities and findings also informed the design of the LAMP proposal. In deep collaboration with the USAID funded LTERA project focusing on issues surrounding urban land the TA consulted extensively with the ANDS Land Working Group discussing and finally approving the National Land Policy for Afghanistan.

This policy now formally approved by Cabinet contains the following critical points all addressed by the TA and its LAMP proposal:

- Land be managed as a national resource through a land management system which integrates the formal and informal tenure systems
- Access to land be clarified and secured as part of an integrated natural resource management which springs from local community-based resource management
- Land ownership may be documented through a process of property clarification and certification process conducted at the community level
- Community-based natural resource management strives to ensure environmental protection and usage for all users of public-owned pasture
- Land management and administration ...[leads to]...sustainable development and ensures competent management and maximisation of sustainable economic benefits from the land resource, for the benefit of both the owner and the nation as a whole.
- Alternative dispute resolution processes (arbitration, mediation, conciliation) be promoted at district and community levels
- All land administration functions be consolidated in a single government body, to ensure efficiency
- A consolidated, simplified and local system of land registry be established which is transparent and provides less costly, efficient transfers of property and changes in ownership
- The administration and management of land be conducted through a consolidated, cohesive, transparent and representative land administration body at national and local levels. An institutional framework will be created which streamlines certification and registration operations and provides access to the public. The institution shall include a body entrusted with the authority to determine land allocation in coordination with local communities.

Other governmental, NGO and donor initiatives of relevance for the TA are the following:

1. The Interim Afghanistan National Development Strategy (Volume 1, page 73, item 14) expresses benchmarks for the implementation of government land policy, as follows:

*A fair system for settlement of land disputes will be in place by Jaddi 1386 (end of-2007).  
Registration for rural land will be under way by Jaddi 1386 (end-2007).*

Over five years, LAMP will result in the preparation of 10,800 village land agreements about legitimate holders of rights to pasture land, thereby forming an important part of the ANDS benchmark for a fair system for settlement of land disputes.

Similarly LAMP will record ownership forms and maps for cropland parcels in a village system for recording rights to these lands, a further important part of the ANDS benchmark calling for the “registration for rural land”.

2. LAMP will build on the MRRD/NSP program for building the capacity of village *Shuras* for managing village level programs. LAMP will assist village *Shuras* in the management of pasture land and agricultural and information about rights to these lands.
3. MAIL and FAO, also with DfID support, are operating a SALEH pilot project in Bamyan Province which includes the testing of ways to define local agreements about pasture land tenure and for the sustainable uses of pastures. Close cooperation was maintained between RLAP and SALEH, and may continue between LAMP and SALEH. In spite of slight deviations in methods used, the shared objective of both initiatives is to lay a basis for tackling the huge national problem of the management of pasture and forest lands, visible most acutely in the conflicts over rights to these resources as well as their continuing and serious degradation. There is a basic agreement between the SALEH and TA efforts that community level agreements about the rights to pasture land are of fundamental importance, and that testing out ideas for making such agreements is absolutely necessary as input into the design and implementation of a national program. Materials between projects have been shared and discussions pursued over the entire period of the TA
4. National and international NGO’s working on watershed and rangeland management, such as Mercy Corps and CRS, may cooperate to extend further the ideas of the proposed project for community-based pasture land agreements and their implications for the management of pasture land to other communities within their mandates. Moreover, Mercy Corps is developing a conflict resolution capacity in their field teams, which will be useful to LAMP to help resolve conflicts concerning pasture land which the village *Shuras* are not able to resolve.
5. The USAID-supported PEACE Project through MAIL is working on methods to predict the quality of grazing land, to assist nomadic groups in finding better grazing for their flocks. This approach assumes that the nomads have agreements with local communities to use pasture lands. LAMP will provide those agreements, providing the basis for an easier and sustainable implementation of the PEACE project.
6. The UNEP-supported work to draft a new Pasture Law is currently evolving. Links with LAMP should be maintained in the process.
7. The World Bank and MAIL supported project on land conflict resolution with AREU and based on the work being done by the legal centres of the Norwegian Refugee Council has been a constant partner of the TA. Their work also links with LAMP which will identify and refer to them conflicts concerning pasture land which cannot be resolved by community *Shuras*.
8. The MAIL is committed to implementing its policy/strategy for community based management of forest and rangeland, prepared in 2004. Progress in bringing those policies and strategies in practice was severely hampered by the absence of village land agreements concerning the legitimate users of pasture and forest lands. LAMP resolves this constraint, providing a framework for both proceeding with both processes - the generation of pasture and forest land agreements, and the implementation of land improvements by communities, taking advantage of the better security of tenure which the land agreements provide.



### 3.4 Output 4: The development of a national land policy has been actively supported and widely broadcasted to provincial stakeholders and a strategy for its implementation has been defined.

The development of the national land policy in an inter-ministerial working group formally operating under the ANDS and chaired by H.E. Obaidullah Ramin, the Minister of Agriculture, has been a longer-term concerted effort which is ongoing in regard to deciding on its practical implementation. The TA team was partaking in the group's extended discussions over December 2006 and January 2007 to shape the contents of the Land Policy (Annex 5). The resulting policy document has been officially approved and signed by three line ministries (MAIL, MoUD, MoJ) on 24<sup>th</sup> January 2007 and subsequently been forwarded to the Economic Management Committee (EMC) of the Cabinet and was quickly approved by this important government body. Cabinet itself returned the document to the working group for improving the language of the Dari version but did not express any concerns with its contents. Consequently, final approval by cabinet took place on 3<sup>rd</sup> September 2007, just a few days after the formal close down of the TA.

*Photo 8: The Land Policy is signed publicly on 24<sup>th</sup> January 2007 by H.E. Obaidullah Ramin, Minister of Agriculture, H.E. Mohammad Yousuf Pashtun (Minister of Urban Development), and H.E. Mohammad Qasim Hashimzai (Deputy Minister of Justice)*



The TA however continued collaborating with the land working group after submission of the document in February to take preparatory action towards practical implementation of the land policy. Obviously, ADAMAP itself represents a very practical and important step, but the ANDS group discussed also the need for additional measures to be implemented.

To get the process underway, the ANDS land working group over various meetings decided to install six technical sub-working groups looking in detail at different elements of the land policy and prioritise activities. These individual groups report to the ANDS umbrella group and are asked to come up with feasible solutions in the form of project proposals and practical recommendations for priority actions in need of pursuing in the short term. Many aspects cross-cutting through individual subgroups have in fact been practically addressed by the TA, and the practical results and procedures already discussed in the umbrella group. The actual process of subgroup formation, however, has just been started at the time of closing down the current TA project, so that the



explanations given below with respect to each subgroup essentially refer to the discussions held in the ANDS umbrella group.

The six technical working groups and their priority mandates have been defined as follows:

### **1) Land Law**

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

Thus, it is acknowledged that full attention is required to reviewing and modifying the legal framework to land. The TA is directly contributing to this critical effort by having brought in legal expertise to provide the government with a legal assessment and proposals for amendments (see Section 3.5 and [Project Report 7](#)). The technical group on Land Law has been the first that started working under the chairmanship of the Ministry of Justice and was directly advised in their initial proceedings by members of the TA team.

### **2) Land Registration**

The existing system for recording of rights to immovable property requires for improvement or redesign in many respects. The process for completion of property transfers is very lengthy and very costly primarily due to the involvement of too many agencies in signing off every transaction. Lack of institutional capacity and integrity also contribute to the inefficiency of the system. While some important measures have been taken to improve the documentation of interests in immovable property and the retrieval of recorded property information, there is an urgent need to focus on weighing options for addressing systemic anomalies that can and should be dealt with immediately to improve the existing system. There are also systemic redesign options that need to be considered and decided over a longer time scale.

Practically contributing to the proceedings of this group, the TA came up with a sensible method for the establishment of a local parcel register including an archive of parcel maps for private agricultural land which may in the long run well serve as a valid and feasible means of verifying ownership and leading into a comprehensive nationwide system of community based rural land registration (see details in Section 3.1.2).

### **3) Land Dispute and Adjudication**

#### ***Land Dispute Resolution***

Although the general perception is that property related disputes including multiple claims are widespread both in urban and rural areas, there has been a dearth of factual data on the volume and types of property related disputes. Inappropriate interventions and undue emphasis on dispute settlement, prior to understanding the nature and types of disputes would be counterproductive and likely could result in the creation of disharmony within local communities. In order to put the nature of disputes and dispute settlement mechanisms in both rural and urban settings into proper perspective it is imperative to have an understanding of the overall property related situation in the country. Assessments can be made and lessons drawn from previous or ongoing projects that have focused on this question, such as the current World Bank funded project on community based land dispute resolution carried out by AREU that aims to come up with a workable methodology for land conflict resolution.

On a practical level, it is acknowledged that both regular courts and the Special Court for the Settlement of Property-Related Claims are faced with practical constraints. The regular courts are understaffed and lack resources. Corruption is a serious problem that demands commensurate attention. As a consequence communities do not use the court system primarily due to lack of faith in it and inefficiency, corruption, and inaccessibility have resulted in increased de-legitimation of the judiciary. In a majority of localities in the country, therefore, residents primarily use the informal justice system to resolve disputes that arise within their community, unless the case proves to be beyond the competency of the *Shura* or community elders.

The localised ADAMAP methodology advocated by the TA is not directly about dispute resolution, but facilitating local agreements between communities does potentially help to resolve existing conflicts. However, conflicts encountered for which a local agreement cannot be reached easily are documented in detail by the ADAMAP teams and subsequently referred to institutions and agencies trained in dispute resolution.

### ***Adjudication***

There is no adjudication system in Afghanistan that can respond to the chaotic property rights situation in the country. Property adjudication is the systematic ascertainment or determination of rights and interests in immovable property. An adjudication process has to be designed to clarify 'cloudy' and informal property rights, and to bring most land into the official land rights recording system. An important element of the process is publicity and transparency. This ensures that all interested parties know about and understand the process and make a claim at the appropriate time, and prior to first recording property formally there is adequate opportunity to review and scrutinize all claims and make objections and appeals when appropriate.

It is an established fact from various project including this TA that community elders have accurate information about the circumstances under which residents acquired their property. In fact, local knowledge of community elders and their full cooperation was instrumental in obtaining community cooperation to release existing ownership evidence. The in-depth knowledge of property ownership held at the community level provides a valuable resource to support the establishment of a community based adjudication process. Such a mechanism can serve the following purposes:

- determine the veracity of formal or customary documents;
- determine ownership claims in the event no documentation is available;
- apply formalisation standards to determine legitimate ownership of residents with informal property rights including those who do not hold any document;
- facilitate recording of newly formalized rights to property;
- Provide transparency and raise confidence in the legally recorded property documents.

A community based adjudication process must also involve the recoding of community legitimized legal deeds; this processes can help minimize the number of fraudulent documents in the formal archives of property documents. Re-recording of formal deeds and registration of newly formalized rights will lend credibility and legitimacy to court archives.

For practical purposes, in urban areas a community based adjudication process would best be implemented in informal settlements currently undergoing comprehensive upgrading work with a land tenure component, such as the KURP and the LTERA projects. A gradual implementation will enable the government to deal with the issues of property adjudication at a manageable scale and refine the procedure in accordance with lessons learned from areas upgraded by or at the approval of MUDH and the Municipality.

Likewise, in rural areas the Ministry of Agriculture should agree to launch a wider process for a systemic determination of rights to pasture and forest land, as well as to agricultural land, as has

been successfully piloted by the TA. This would represent a way towards implementation of Paragraph 2.2.7 of the Land Policy:

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

Suggestions as to how this successful experience can be scaled up are provided in the action plan programme prepared by the TA ([Project Report 6](#)).

#### **4) Land Grabbing**

Land grabbing is a serious governance and rule of law issue. It is a pervasive urban as well as rural problem. The land policy draws a clear distinction between land grabbers and needy squatters who informally obtain public land for their immediate household as an important livelihood strategy. There already exists a Government Committee working on solutions to land grabbing issues which consists of higher level staff from Amlak, MoUD, Mol, MoJ and the Cadastral Survey Department. This committee on land grabbing coordinate its works with the Land Working Group.

#### **5) Informal Settlements**

Forced evictions, serious health concerns, insecure tenure, and continued land grabbing, are only a few of the problems related to informal settlements. The land policy provides general guidance for the adoption of an integrated approach to address the problems associated with informal settlements. An integrated approach that addresses the issues of land tenure, planning and basic services would provide positive results in the short-term and long term sustainability. Such an approach can address community identified and prioritized upgrading needs; meet the present and future demand for residential land; provide suitable means to resolve land disputes; regulate land tenure; and prevent further land invasion. This proposal complements existing upgrading initiatives which are underway through ongoing projects by different agencies and can be applied to those areas which are not presently being served.

The existing legal framework is insufficient for formalisation of property rights, it is thus necessary to take appropriate legislative measure. Although the question of property rights can be seen as part of the broader land issue, to avoid delay of process and complications, a special formalisation of informal settlement law should be drafted and enacted. Such a legislative action should be taken as a stabilizing measure that is required to immediately address the chaotic land situation in urban areas. The law should be drafted and enacted with the objective of formalisation of property rights in urban areas. Simultaneously, it should aim to prevent expansion of informal settlement in urban areas and unlawful access to land.

#### **6) Rangeland and Forests**

The ANDS land working group was unanimous to the fact that improved management of rangelands and forests lands is an imperative if these resources are to be protected from threats to its sustainable use such as illegal grabbing of community lands of neighbouring villages, grabbing of rangeland, cultivation of traditional grazing land, and government designation of grazing rights in what have traditionally been considered communal grazing lands. It is believed that the ADAMAP methodology tested and advocated by the TA represents a feasible and straightforward way forward in helping to resolve these issues. Accordingly, the TA team suggested to the Land Working Group looking into the possibility of extending the work piloted in four villages to additional areas of the country, as laid out in detail in the action plan provided as [Project Report 6](#). In fact, this action plan programme produced under TA in partnership with government in essence already

serves as an explicit and comprehensive output of the Rangeland and Forest technical working group and should be brought to the attention of donors as a practical project of implementing Paragraph 2.2.6 of the land 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 land surveying in order to clarify rights to land.*

### 3.5 Output 5: The existing legal framework for land and land administration in Afghanistan has been reviewed and proposals for amendments discussed with line ministries and submitted to Ministry of Justice

The draft Land Policy framework that was recently approved by Cabinet requires corresponding changes in the legal framework for land. As stated in the policy document “*land management in Afghanistan is governed by an ineffectual and inadequate legal framework.*” The inadequacy of the legal framework is one of the main factors responsible for perpetuating informality in land relations.

Since the policy framework is now in place, revamping the existing legal framework for land has become among the priorities of the Ministries of Agriculture, Justice and Urban Development. The crucial question now is how to put in place an appropriate land law in conformity with the supreme law of the land and with the land policy. The land policy implicitly provides guidance that the existing legal framework will form an essential backdrop against which the development of a new law has to emerge. This means the existing legal framework has to be consolidated, fine-tuned and developed in accordance with the land policy and the constitution.<sup>3</sup>

There is also a unanimous consensus among the key line ministries that the Afghanistan needs a comprehensive legal framework for managing both rural and urban land. Based on this general understanding, the TA based its legal work on the following measures:

- To assist the government of Afghanistan to identify important issues, gaps, deficiencies and inconsistencies in the existing legal framework for rural land.
- To determine the domains of the land law that merit separate treatment but in conformity with the general principles of the comprehensive land law;
- To help preparing a strategy for modifying and consolidating the existing legal framework in accordance with the land policy
- To make comprehensive proposals of modifications that are appropriate to address the identified deficiencies and to fill gaps in the legal framework for rural land in order to synchronise the

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<sup>3</sup> To this end the project team produced a comprehensive index of land related laws of Afghanistan (Annex 1 of [Project Report 7](#)) and also came up with an amended translation of the land law, fixing fundamental flaws in basic tenets occurring in prior available versions (Annex 2 of [Project Report 7](#)).

draft national land policy as the overarching and general set of governmental principles and precepts, and the legal framework governing its implementation

The legal team consisting of one international consultant and a national legal adviser based their work on discussions with officials and advisers from the ministries of Agriculture, Justice, and Urban Development as well as judges and counsellors from the court system. In addition, a field trip to Kunduz was used to assess the work of the TA on the ground and to undertake interviews with local community members in a pilot village and provincial government officials on the practices of pasture management as well as village-government relationship with respect to land management.

The detailed findings of the legal assessment are presented in the comprehensive [Project Report 7](#). They can be briefly summarised under the following headings:

- Subsequent to identifying the problem areas and gaps in the existing legal framework, the first important task in the process of drafting land law is to prepare a draft legislation that would serve as a starting point for consultations and debates among key stakeholders. [Project Report 7](#) considers two distinct models for the development of a revised land law. It is recommended that the drafting of a revised land law follows a model that presupposes the formation of two technical drafting groups with separate but complementary responsibilities.
- The legal assessment makes a case for Afghanistan to have an Organic Law that sets out general principles covering all land. This Organic law then would be followed by more detailed primary legislation on a range of topics. The primary advantage of drafting one Organic law is that it can have internal coherence, consistency and comprehensiveness. These other primary laws will distinguish between rural and urban topics but will all have to follow the Organic Law principles. The government will have to decide whether to have two independent laws for both the urban and the rural sides. If this happens, the draft Organic Law can always split up logically into more manageable packages after the drafting is completed in a comprehensive and coherent manner.
- Existing tenets of the land laws that were proclaimed since 1965 with the objective of highlighting the legal culture with respect to land administration in Afghanistan need to be considered in revamping the existing legal framework.
- The existing legal framework for land calls for revision on two main counts: lack of strict enforcement and the existence of gaps and outdated provisions in the legal framework. The lack of strict application of laws is interwoven with issues pertaining to institutional capacity and governance.
- The legal assessment also addresses the legal situation surrounding land administration. It is deduced that in order to remedy the ineffectiveness of the land administrative bodies in a cost effective way and to ensure social acceptance of determinations of property rights, land allocations, public records of immovable property and other land related decisions an active involvement of communities is imperative. In addition, this report makes recommendations on rules and principles that should be incorporated in the revised land law to streamline land administration processes and to harmonize the functions of the various land administrative bodies.
- With regard to land tenure classification the assessment recommends that law should be modified to clarify classification of ownership in clear terms. It would be in line with the reality and the general guidance provided by the land policy to classify ownership of immovable property into state, public, private and community ownership. In addition, the law should clearly provide whether government departments can own land in their own names. If the option for allowing government departments to own land is preferred then the law should clearly prescribe under what conditions government departments can own land and the terms of their ownership and the procedures for selling or otherwise disposing of such government owned land.
- The legal situation concerning proof of ownership for land is characterised by a disparity between law and actual practice. To implement the policy guidance on proof of ownership, recommendation is made that the revised law should consider the existing property rights

regime, which does not always make it easy to categorize ownership typologies in black and white terms. There are gray areas that give rise for legitimate claims. In disputes involving private individuals, as a matter of settled practice, courts consider secondary proof such as Amlak registration, tax records, customary deeds, and local knowledge as basis for proving land rights. This practice should be formalized through a modified land law for the country. The chaotic property rights regime in the country call for establishing a realistic and effective way of re-identifying legitimate and valid right to land.

- Land allocation and land clarification need urgent and unanimous consideration in law. The current land allocation system clearly lacks in appropriate land use planning based on fundamental principles of poverty reduction and human and social developments. A land clarification body attempts to address the chaotic land property rights regime in the country. However, the current law and practice are not appropriate and effective in dealing with this regime. To address the shortcomings of the current legal framework, it is recommended that a revised law should establish clearly defined link and procedures for partnership between community-based land clarification processes and Amlak department to overcome the heavy burden of the land clarification body.
- The cadastre survey law of 1988 calls for the establishment and maintenance of a countrywide rural land registry in Afghanistan, detailing the boundary of every parcel along with the owner, the quality and quantity specifications of every parcel of land, the use of the property, the value of the property, and several other pieces of relevant information. The goal that the law aims to achieve would be extremely useful under normal circumstances. Given the chaotic property rights regime as well as the socio-political instability, it would not be practical, affordable and even desirable at this point to launch a countrywide survey as envisaged in 1988 or 1965. In rural areas, where community elders are likely to know with certainty the history of property rights attached to a given parcel of land, it would be practical to gradually launch a bigger Land Administration and Management Programme that utilises the ADAMAP methodology in large areas of the country, eventually encompassing the whole of Afghanistan. In addition to ensuring legitimacy this community based mechanism would also facilitate a method for the speedy and cost effective determination of rights and boundaries as well as efficient resolution of disputes.
- Unlawful conversion of agricultural land use to other uses is prohibited by law but in practice, there have been conversions of farm lands to housing and pastures to resettlement sites. In most cases such unlawful conversions have been effected by powerful land grabbers and government agencies. Although there is one provision in the Land Management Law of 2000 that prohibits unlawful land use conversion, there is no regulation that set out clear standards and procedures under which conversion would be allowed. The assessment identifies the gap that exists in the legal framework with respect to regulating land conversion. Recommendations are made that a regulation be issued under the revised land law. Further, certain principles that need to be embodied in the regulation are recommended in line with the Ministry of Agriculture's policy/strategy statements and the draft land policy.
- Adjudication of property rights is another contentious issue, and due to destructions of property records in many provinces and rampant fraudulent deeds that have made their way into the formal archives, the property recording system in the nation lacks certainty and public trust. While formalising traditional rights and customary agreements might resolve most frictions and multiple claims over land, the significant changes in property holding in many areas require a process for clarification and certification of claims and agreements. To determine who acquired what right and the circumstances in which that right was acquired and to authoritatively establish and record property rights a workable adjudication procedure is essential. To overcome the challenges of placing heavy administrative burden on the government in dealing with the chaotic property rights situations in rural areas the revised law should provide for the establishment of an adjudication system to systematically determine "who" has "what" right over a given land.
- There is no coherent land registration law in Afghanistan. However, a registration law is needed to establish the operational rules and administrative framework for a land registration system. The assessment highlights important policy issues that ought to be addressed prior to drafting a registration law. Such a registration law should consider a two-tier recording system to

establish a decentralized immovable property recording system. This suggestion is based on the fact that rights over community pastures and farm lands located within village boundaries require a simple, cost effective and easily manageable system, such as the ADAMAP procedure. The records of such properties can be managed and maintained by local communities, in collaboration with district and provincial offices. On the other hand, immovable properties that involve interests that can be transferred for consideration such as vast areas of irrigated lands, orchards, agro-industrial enterprises, state owned immovable properties require formal recording system that would facilitate market transactions, protect buyers and sellers, and promote access to credit.

- Although a new draft pasture law is being prepared, the Law on Pasture and Public Lands proclaimed in 2000 by the Taliban administration technically remains in effect. However, this law is not enforced or complied with in practice. While there are serious factors related to the ecology, governance, and historical claims that contribute to frictions and disputes on pasture, the inadequacy of the legal framework surrounding pasture is also a serious contributing factor to the whole problem.

Four lessons drawn from comparative experiences are of paramount importance to the land law development in Afghanistan.

1. The development of land law must be based upon thorough analyses of the relevant traditional norms, legal culture, and belief system of the people of Afghanistan.
2. The institutional support necessary to implement the law must be taken into account when drafting principles and rules so that the law will not be unusable in practice.
3. The success or failure of any land related reform initiative is usually determined by the local communities' level of acceptance. In turn, the level of acceptance of the local communities to any reform initiative is determined by the level of the local communities' participation in the process of conceptualization of the problems and solutions related to land tenure and administration.
4. Once the Organic Land Law is drafted, regulations and other administrative instruments needed to implement it must follow immediately, lest the law become unusable.

These findings and the attendant recommendations have been discussed with key members of the ANDS land working group and in individual meetings held with higher officials from MoJ, MAIL, and MuDH. The proposals for change also have been presented to and discussed with the advisory committee of the MAIL and the Legislative Department of the MoJ (*Taqneen*). During these discussions it became clear that all relevant government ministries realise the urgency of starting the revision of the legal framework in order to put the National Land Policy on a solid legal basis and make it workable. This becomes even more pressing with the Land Policy now being formally approved by Cabinet, and it can be expected that MoJ will take the TA's legal assessment as its base for pursuing needed legal reform processes. The technical sub working group on land law chaired by the Deputy Minister of Justice will ideally be used as the official body enacting and monitoring legal reform, whose basic responsibility will be to come up with a detailed plan of action specifying modalities and timelines for pursuing the consolidation and reformulation of the current legal framework for land.

## 4. Conclusions and Outlook

The five major outputs outlined in this final report and documented in detail in the various Project Reports of the TA jointly contribute to the overall goal of tackling the land problems of Afghanistan and to help restoring tenure security for the rural population of the country. Looking at the ways how land is currently managed and administered in Afghanistan the TA came up with clear recommendations for improvements. Starting point has been the realisation that many land issues



faced by Afghanistan in general and the widespread deterioration of pastures in particular are essentially a problem of governance:

- Pastures are without clear long term management systems and agreements
- There is no incentive for herdsman to conserve or invest in pasture resources
- Contrarily, the incentive is to graze animals to the maximum extent in the short term regardless of the impact on the pasture

Addressing pasture degradation as a governance problem requires a major policy shift facilitating a transfer of power and responsibilities from central government to communities and enabling people themselves to manage and administer the land they hold and use under support and guidance of the government authorities. This is already laid out in much detail in the Policy and Strategy for Forest and Rangeland Management but so far lacks putting into practice.

However, while local governance structures as set up and facilitated by the NSP under guidance of MRRD have come a long way, albeit facing many problems, and are widely supported by the donor community, the same does not hold true for the policy and strategy for the management of forest and rangeland of the MAIL, which in spite of its official approval two years ago did not yet get off the ground. The TA and particularly its proposal for a comprehensive Land Administration and Management Programme (LAMP - [Project Report 6](#)) attempted to support the government in establishing a system of community based management of pasture resources and thus to implement its own policy and strategy. The approach for arriving at community based land administration and management by testing out practical and straightforward ways to improve tenure security over pasture land and the ways forward advocated by the TA team and lined out in the LAMP proposal have been widely supported by government partners, and the proposals have been discussed at length and ultimately endorsed by the Ministry of Agriculture.

To this end, the TA team organised a series of formal group meetings and workshops with all important government agencies to present findings and ideas and to discuss how best to proceed with what has been accomplished over the pilot phase in order to formalise the transfer of management responsibility of pasture and forest land to local communities. The final of these series of workshops in Kabul also has been attended by representatives of three out of the four pilot village communities who all clearly emphasised the benefits of the ADAMAP approach for their communities and strongly demanded its formal acceptance by government. Members of the advisory committee of the MAIL also participated in the final workshop, as requested by H.E. Minister Obaidullah Ramin who wished to have the LAMP approach endorsed by this consulting body before officially signing on the approach.

Major results out of these workshops and group meetings have been the following:

- Government clearly demanded continuation of the approach and welcomed the LAMP proposal to go ahead with what of what the TA has successfully started.
- It has been stressed that the community agreements are valid documents in a customary sense but do not have a backing in formal law, and it has been requested that this issue needs to be addressed in the proposal for continuation. The LAMP proposal does take this issue into account and stresses the need to facilitate putting into place effective legislation to achieve a land adjudication and recording system which performs its functions in a transparent, cost-effective and efficient manner.
- Principally, all different partner agencies agreed on the LAMP proposal, though to differing degrees. The General Directorate of Natural Resource Management of the MAIL has been very positive and wholeheartedly agreed on the need for institutional change to facilitate community based land resource management. AGCHO and Amlak also supported LAMP, but

were hesitant to readily agree altering their mandates to facilitate community based land management and administration.

- The advisory committee of the MAIL stressed that land is the main problem faced by Afghanistan and they consented that there is high capacity in the community to take on responsibility for land management. Consequently, it was stated that government's responsibility is to use and support such capacity. The LAMP approach is seen as a feasible means in this direction in that it entails the prospects of enabling practical collaboration and partnerships between governmental land institutions and *Shuras* to maintain and update village level land records, thereby providing them with ongoing roles and responsibilities and strengthening their position as a village level institution.
- The advisory committee in its recommendation to the Minister included the condition that in the LAMP proposal, neighboring villages in the same Districts and Provinces need to be included. This has been addressed in the LAMP document, which proposes a District-based approach in which all villages in a given District are incorporated.

The advisory committee finally endorsed the approach and the following steps have already been taken by the Ministry:

4. The committee recommended to the Minister to take the LAMP proposal forward and approach the donor community for funding.
5. The Minister subsequently ordered the General Directorate of Natural Resource Management to take immediate action and review the LAMP proposal and then submit it to His Excellency for final approval. This has been done imminently and the LAMP proposal is now endorsed officially by the Ministry.
6. On request of the Minister, H.E. Deputy Minister Ghulam Mustafa Jawad sent a formal letter to ADB Afghanistan Resident Mission specifying the advisory committees' recommendations for taking action and thereby bringing to notice the Ministries' agreement with the LAMP proposal.

The LAMP proposal being officially approved by the Minister's office it can be expected that the government will quickly and actively seek donor support to carry out the larger Land Administration and Management Programme. The way forward to do so is to request the official donor coordinator of the Ministry to summon a meeting of all funding agencies working with the Ministry to present and discuss LAMP and to seek commitment for contributing to funding activities in order to get the programme off the ground.

The TA teams' discussions with various donors detected a general willingness to do so:

- The World Bank sees potential to link the approach advocated by the TA to a larger CDC consolidation programme. A higher level meeting with the World Bank in Kabul yielded very positive reactions and subsequent discussions between DFID and World Bank explored possibilities of collaboration between donors.
- The Swiss Development Corporation showed interest in contributing with bridging funding before a larger initiative is in place and also UNDP seemed attracted to the approach.

# Annex 1: Community Agreement Form

**1. Location:**

Village:

Woluswali:

Province:

**Agreement Number:** \_\_\_\_ **Date:** \_\_\_\_\_

## **Community Agreement on the Uses of a Pasture or Forest Land Parcel**

- 2. Number on map or image: \_\_\_\_\_
- 3. Approximate area of the parcel based on community estimation: \_\_\_\_\_
- 4. Approximate area of the parcel based on Map/ Image: \_\_\_\_\_
- 5. Area of the parcel based on Calculation: \_\_\_\_\_
- 6. Approximate coordinates of center point: N \_\_\_\_\_ E \_\_\_\_\_
- 7. Boundary of the parcel:

Northern: \_\_\_\_\_

Southern: \_\_\_\_\_

Eastern: \_\_\_\_\_

Western: \_\_\_\_\_

**8. Sketch from map or image**

**9. Uses of Pasture or Forest Parcel by Local Community or Kuchis during Year \_\_\_\_\_**

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

**10. Are there any conflicting claims as to the users of this parcel? Explain:** \_\_\_\_\_

**11. Location of the documents relevant to the community decision:**

A) Type of document: \_\_\_\_\_

B) Registration location: \_\_\_\_\_

**Obligations of the Users of the Parcel:**

We use the pasture only for grazing animals. Pasture may include small areas of trees and shrubs planted to protect the pasture land from erosion. We protect the pasture from 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 the 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.

**Name, Signature and Finger print of boundary Identifier:  
print of recorder of agreement:**

**Name, Signature and Finger**

**Name, Signature and Finger print of Members of Shura:  
print of Elders and Villagers:**

**Name, Signature and Finger**

**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:  
witnesses:**

**Name, Signature and Finger print of**

**Confirmation and certification of Head of Shura:**

MODIFICATIONS TO AGREEMENT:

Description of modification	Date of modification	Signatures of Village Shura, elders, heads of families affected by modification

## Annex 2: Instructions for Filling a Community Pasture Land Agreement

**Agreement Number:** Within a local community, typically a village, one or more agreements can be prepared for parcels of land used as rangeland (or as forests, in cases of forest parcels) which contain the information indicated in this model form. The Agreement Number is assigned sequentially beginning with “1” to each agreement.

**Date:** The day, month and year of the final approval of the agreement by the community.

**Village Name:** The name of the village where most of the users of the pasture parcel live

**Woluswali:** Name of the Woluswali where the village is located.

**Province:** Name of the Province where the Woluswali is located.

The above information is noted on each page used for the agreement so that in case a page becomes separated from the agreement, it can be correctly re-attached.

**1. Directions for arriving at the Village:** Instructions for finding the way to the village from known landmarks and place names.

**2. Number on map or image:** \_\_\_\_\_ An image is used to delineate the boundaries of a specific pasture parcel to which the agreement refers. The number of the parcel as written on the image is noted in this space.

**3. Approximate area of the parcel based on community estimation:** \_\_\_\_\_ Based on discussions with the community concerning the pasture parcel, note their estimation of the area of the parcel, in jeribs or some other measure. Be sure to note the unit of measurement as well as the numerical area.

**4. Approximate coordinates of center point:** N \_\_\_\_\_ E \_\_\_\_\_ Using the image and the coordinates noted there, estimate the coordinates of the center of the pasture parcel being to which this agreement pertains.

**5. Boundary of the parcel:** Note what place or tribe or clan or family is on the Northern, Southern, Eastern and Western boundaries of the parcel of this agreement

**6. Sketch from map or image** Make an approximate sketch of the pasture parcel as it appears on the image.

**7. Uses of Pasture Parcel by Local Community or Kuchis during Year** \_\_\_\_\_

In this table note the year to which the agreement refers.

Then note the following information concerning each use and user:

**Type of Use:** Pasture, gathering fuel, herbs, other

**Dates of Use:** From what date to what date is the parcel used for the specified use.

**Community Identified User:** List the names of all of the users of the parcel during the specified period of time

**For how many years has the User(s) used the parcel?** Note the number of years.

**From whom does the User need approval to use the parcel (name)** List the names of the persons or organizations who give approval.



**8. Are there any conflicting claims as to the users of this parcel? Explain:** Note the nature of any conflicting claims by people or groups to be users of this parcel and explain as clearly as possible the origins and history of each conflicting claim.

**9. Location of the documents relevant to the community decision:**

**Type of document:** Note the type of any document which is relevant to the community decision about the legitimate users of this parcel, such as a royal decree or Ministry permit or other document.

**Registration location:** Note the location of this document.

**Obligations of the Users of the Parcel:**

Be sure that the community leaders understand the following description of the obligations of the users of the pasture parcel subject to this agreement.

*We will use the pasture only for grazing animals. Pasture may include small areas of trees and shrubs planted to protect the pasture land from erosion. We protect the pasture from converting to agricultural or residential uses and we work to improve the productivity of the pasture/forest land parcel, in collaboration with Ministry of Agriculture and other stakeholders. 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.*

**Name, Signature and Finger print of boundary Identifier:**

Note in this space the names, and get the signatures and finger prints of the person(s) who have identified the boundaries of the parcel subject to this agreement.

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

Note in this space the names and get the signatures and finger prints of the person(s) who have prepared this agreement

**Name, Signature and Finger print of Members of Shura:**

Note in this space the names, signatures, and finger prints of the members of the village shura of jirga who approve the contents of this agreement.

**Name, Signature and Finger print of Elders and Villagers:**

Note in this space the names, signatures and finger prints of the village elders, Arbabs, and other respected people who approve the contents of this agreement.

**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.”

Fill in the name of the village from above.

**Name, Signature and Finger print of Neighbors:**

Note in this space the names, signatures and finger prints of the neighbors of the parcel subject to this agreement.

**Name, Signature and Finger print of witnesses:**

Note in this space the names, signatures and finger prints of witnesses to this statement of the neighbors of the parcel subject to this agreement.

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**MODIFICATIONS TO AGREEMENT:**

The last page of the model agreement contains space for the community stake holders in the management of the parcel to adjust to changed conditions in the future. Today's agreement as expressed in the filled out Community Pasture Land Agreement may have to be changed in the future.

If all of the stakeholders agree to change, then they should note:

- the nature of the modification in the agreement which they desire,
- the date of the modification, and
- the names, signatures and fingerprints of the community elders, Shura representatives, and other stakeholders in the management of the parcel.

# Annex 3: Parcel Specification Form

**1. Location:**

Village:

Woluswali:

Province:

**PARCEL SPECIFICATION FORM**

Form Number: \_\_\_\_\_

2. Parcel Number On Map/ Image: \_\_\_\_\_ a. Number of Origin Parcel: \_\_\_\_\_ b. Date: \_\_\_\_\_

**3. Information about the Parcel:**

**Area:**

a. Calculated from Map/Image: Approximately \_\_\_\_\_Jeribs.

b. As described in documents: \_\_\_\_\_Jeribs.

c. As calculated by survey: \_\_\_\_\_Jeribs.

d. Type and Description of documents:

e. Location of survey plan:

f. Type of Land Parcel: \_\_\_\_\_

g. Distance of parcel from market: \_\_\_\_\_ km

h. Bounded by: North: _____ South: _____ East: _____ West: _____
--

**4 - OWNERSHIP OF PARCEL**

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

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

Date of Starting Restriction	Type	Description	Location of Documents Defining Restrictions

Comments:

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

User's

Comments:

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7. Printed name, title and signature of person who prepared the Form:

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

9. Date of certification: \_\_\_\_\_

## Annex 4: List of Participants of the Provincial Workshop in Kunduz

06.04.1386 (27.06.2007)

**Venue:** Meeting Hall of Plant Protection Department, Kunduz Province Agriculture Directorate

No.	Name	Position	Location
1	Maulana Najibullah	Member, Dara-e Kalan <i>Shura</i>	Dara-e Kalan
2	Haji Jan Mohammad	Head, Dara-e Kalan <i>Shura</i>	Dara-e Kalan
3	Nasrullah	Cadastral Survey officer	Kunduz
4	Eng. Hashim. Barikzai	General Director, Directorate of Natural Resource Management	MAIL, Kabul
5	Eng. Nikzad	Director, Agriculture department	Kunduz
6	Waisuddin	Manager, Natural Resources Protection	Kunduz
7	Sayed Jamaluddin	Manager, Forest and Rangeland Dept	Kunduz
8	Mohd Aslam	Head, Shura	Nau Abad
9	Gul Mohammad	Head, Shura	Nau Abad
10	Mohd Daud	Head, Shura	Nau Abad
11	Mohd Taher	Head, Shura	Nau Abad
12	Aqa Mirza	Manager, Cadastral Survey	Kunduz and Baghlan provinces
13	Abdul Latif	Representative, Amlak	Kunduz
14	Eng. Ezmarai	Engineer	CRA
15	A. Karim Niazi	Social worker, Mercy Corps	Kunduz
16	Najibullah	Legal Advisor, Mercy Corps	Kunduz
17	Eng. M. Akram Salam	Director, CRA	Kabul
18	A. Azim	Manger, Income dept	Kunduz Mostofiat
19	Khudaidad Darman	Journalist	Presidential Press Office
20	Mr. Mohammad Taher	Chairman, Provincial <i>Shura</i>	Kunduz
21	Mr. Barkatullah	Member, Forestry dept	Kunduz
22	Mr. Daneshyar	Deputy Governor, Kunduz Province	Kunduz
23	Dr Yohannes Gebhremedin	Legal Adviser, RLAP	Kabul
24	Dr. Stefan Schütte	Team Leader, RLAP	Kabul
25	Eng. Yasin Safar	Land Administration Specialist, RLAP	Kabul
25	Eng Ehsan	Cadastral Survey Specialist, RLAP	Kabul

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## ANNEX 5: DRAFT LAND POLICY OF AFGHANISTAN

Approved by cabinet on 3<sup>rd</sup> September 2007

# جمهوری اسلامی افغانستان Islamic Republic of Afghanistan

## DRAFT LAND POLICY



دلو 1385



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## DRAFT LAND POLICY

### INTRODUCTION

This policy document is the product of a series of consultations with pertinent government officials, communities and other stakeholders. The purpose of this document is to set forth a clearly defined set of issues and policy options that will serve as general guidance to inform the revision and modification of the legal framework for land. Also, under this umbrella policy framework the ministries of Agriculture and Urban Development shall formulate or adjust their strategies and plans of action to tackle challenges pertaining to rural and urban land.

#### 1.1. RATIONALE FOR A LAND POLICY

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

#### 1.2. POLICY VISION

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

#### 1.3. LAND POLICY OBJECTIVES

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

#### 1.4. LAND POLICY PRINCIPLES

- 1.4.1. Ensure a flexible, equitable and transparent policy that serves the diverse interests of the Afghan society.
- 1.4.2 Land as a natural resource is fundamental to the livelihoods of its people and must be preserved and protected for future generations.
- 1.4.3 All Afghans should have the opportunity to legally access land resources and the right to maximize their social welfare. No individual or group should be barred from ownership.
- 1.4.4 Land is the most important resource to assist in achieving the visions and related goals inherent in the Afghan Constitution.
- 1.4.5 Institutional coherence and efficiency is a necessary precondition for the achievement of all the above objectives.
- 1.4.6 Transparency, accountability and community participation are critical for effective land administration and must be applied at all levels, from communities to the highest levels

of government. Local communities must take responsibility and the government must acknowledge its role to serve the people.

- 1.4.7 It is the right of every Afghan to pursue a livelihood and should not bear the burden of any land-related legal impediment on the basis of ethnicity, gender, language, religion or marital status.
- 1.4.8 The private sector holds the key to economic growth and is dependent upon the establishment of clearly defined, enforceable and transferable property rights through a legal and efficient institutional framework.
- 1.4.9 Land resources should be used for the nation's benefit and efficiency should be promoted through the facilitation of a transparent land market.
- 1.4.10 All forms of user rights to land should be formally recognized and be protected by law.
- 1.4.11. Information on land ownership and user rights should be generally accessible to the public at designated offices.
- 1.4.12 Land ownership and user rights have an economic value which should be transferable or disposable in return for payment or as a gift, bequest, or inheritance.
- 1.4.13 The ownership and use of land may be subject to taxation by the Government and its authorized agencies.
- 1.4.14 The government shall distribute land ownership and user rights fairly to promote social harmony and protect the poor.

## **2. POLICY CONTEXT**

In order to achieve the vision and objectives of this land policy the following issues are identified and policies recommended.

### **2.1. LAND TENURE ISSUES AND POLICIES**

#### **2.1.1 Issue: Insecurity of Tenure In Rural and Urban Areas**

The problem of tenure insecurity in both urban and rural areas manifests itself in a variety of forms. Tenure insecurity not only discourages property holders from making an economic investment in their property, but also deprives the market economy of their participation and potential contribution. The ongoing failure of the formal land allocation, adjudication and registration systems has caused uncontrolled informal developments in urban and rural areas. Squatting, land grabbing, acquisition of immovable property from land grabbers through informal market transactions, improper allocation of land, inter alia, have undermined efficient and equitable use of land for social and productive purposes. At the same time, these uncontrolled and informal developments have given rise to serious tenure insecurity to users and owners of land. There are many cases of multiple claims of rightful claimants and a current possessor who acquired or bought the property legitimately and in good faith which must be resolved to ensure peace and stability in the country.

**2.1.1 Policies:**

- It is national policy that the government draws clear distinctions between types of tenure insecurity and provides appropriate legal and administrative solutions for the various forms of insecurities. To resolve the dichotomy of the complex and diverse formal system and informal tenure systems requires a continuum of tenure categories embodied in a legal framework.
- It is national policy that the constitutional guarantees for security of tenure are observed. In consideration of equity and justice issues no one may be deprived of property rights except in accordance with the law, and no law may permit arbitrary and forcible deprivation of property rights. Further, the state must take appropriate legislative and administrative measures to foster conditions which enable citizens to gain access to land on an equitable basis. In particular, there shall be no discrimination with respect to tenure security on the basis of ethnicity, gender, religion and social status.
- It is national policy that all individuals who hold rights to property be afforded the quiet enjoyment to the use and ownership of their properties. All legitimate property rights must be protected by law and framework established to provide appropriate remedies for entitled claimants.
- It is national policy that alternative forms of tenure together with sufficient safeguards, such as private ownership, usufruct, leasehold, communal ownership, be available to agricultural workers, rural and urban dwellers. The availability of these legally enforceable tenure alternatives will ensure more accessibility to secure tenure.
- It is national policy that compensation for the expropriation of ownership or of rights over land as enshrined in the Constitution be strictly enforced by law. Property rights may only be expropriated under defined legal procedures and for defined legal purposes.
- It is national policy that no law may permit arbitrary deprivation of property rights. In the event that the government decides to implement a development project in the interest of the public, the value that the land had prior to the announcement of the expropriation will form the basis for the amount of monetary compensation to the owners of the property.

**2.1.2 Issue: Distribution and Acquisition of land.** Existing land allocation procedures lack equity, transparency and accountability. Land prices have escalated over the past four years and pricing for available housing has skyrocketed far beyond the reach of most urban dwellers. There is a clear need to create and implement strategies to enhance the delivery of land for affordable housing options. Furthermore, access to rural land and to user rights is critical to the sustainability of rural families and pastoralists. At present, land allocation and rights to use government land often controls the ability of rural families to earn a living. The rural landless are disadvantaged, deprived of community support and unable to accumulate income or capital assets. Land allocation must therefore ensure that families within a community and the rural landless have access to sufficient resources to sustain themselves.

**2.1.2 Policy:**

- It is national policy that the government implements an equitable, transparent and clearly defined set of procedures for the allocation of land. Those procedures must ensure transparency and accountability by the allocating authorities and must clearly define the authorities and responsibilities of the allocating authorities and the rights of land applicants. Land allocations must be based upon need and the rural and urban landless will have priority.

**2.2. LAND USE AND LAND MANAGEMENT ISSUES AND POLICIES**

**2.2.1 Issue: Land Classification:** Existing land-related laws classify land under a number of different classification systems which are often vague and confusing. In particular the definition of state owned land has changed through multiple regimes. A land

classification system should exhibit simplicity and clarity and clearly define public, private, community and state lands.

#### **2.2.1 Policy**

- It is national policy that all land be classified as public, private, community or state-owned land and that the definitions of each classification be clearly stated and consistently applied throughout the body of land related laws.

**2.2.2 Issue: Duality of Land Tenure and Land Management.** The land tenure and land management system consists of both formal and informal systems. The informal property market reflects the inadequacies of the formal system and is most often used in lieu of the formal market system. Such duality in a land management system impedes the operation of integrated and efficient management of land as national resource.

#### **2.2.2 Policy**

- It is national policy that land be managed as a national resource through a land management system that does not distinguish on the basis of tenure alone and is based upon an institutional framework which integrates the formal and informal tenure systems.

**2.2.3 Issue: Land Grabbing:** Land grabbing has been one of the most problematic aspects of land management throughout the country. The act of land grabbing is often accompanied, preceded or followed by equally reprehensible acts such as faking deeds and registration of property rights through corrupt practices. Land grabbing also encourages informal property markets. The accompanying unlawful acts complicate the land tenure issues concerning the grabbed land, particularly when the appropriated land was sub-divided and allocated to followers or sold off and developed and lived on by other individuals. In rural areas communal lands have been appropriated by powerful entities resulting in the misuse of public resources to the exclusion of others.

Land grabbing must not in any way be encouraged. However, the range and complexity of cases of land that has been originally appropriated forcefully but later on distributed or sold off to other individuals who have developed the land calls for realistic government measures.

#### **2.2.3 Policies**

- It is a national policy that a management system be built upon the legal and institutional frameworks with the objective to prevent land grabbing in the future and deal with the acts of grab that have happened in the past. This institutional framework will function both at the district, provincial and national levels within the auspices of the ministries of Agriculture and Urban Development in their respective spheres of mandate.

**2.2.4 Issue: Informal and Unplanned Developments.** Over the last three decades the country has experienced an enormous expansion of informal settlements and unplanned developments in almost all urban areas. Although the development and expansion of informal settlements has manifested itself in a variety of forms, the expansion of informal settlements has often involved the unlawful occupation of land. These unlawful acts are in large measure due to the failure of the formal system of land allocation and planning to provide for the needs of the occupiers due to social disruptions. Although uncontrolled developments have provided temporary solutions for many citizens, the uncontrolled development in urban areas has created challenges to land tenure security, land use planning, provision of basic services and protection of the environment. In most urban areas, uncontrolled development has made pre-war prepared Master Plans obsolete. The variety of forms that the issue of informal developments has manifested itself calls for proper classification of the problem. Residential areas formed on government/public lands are of two types. First, there are public lands grabbed by powerful people and sub-divided into smaller plots. These types of land are either distributed or sold off

to others or they are found in the hands of the grabbers. Second, homeless people have built houses on public lands within approved boundaries of urban areas to accommodate themselves and their immediate dependants or family members.

#### **2.2.4 Policies**

- It is national policy that all land development be carried out in accordance with duly approved plans developed by competent authorities in consultation with local communities. Such plans shall consider both the current and future needs of communities. The government shall promote the upgrading of informal settlements in tandem with progressive housing development.
- It is national policy that the legal framework for land distinguishes between cases in which land has been grabbed by powerful people for distribution to followers or sold off for profit, instances where homeless people (squatters) have occupied public land in order to accommodate themselves and their immediate household and instances where individuals or households have built houses on privately owned non-agricultural land.
- It is national policy that residential areas formed on public or government land grabbed by powerful people shall not be covered by upgrading programs promoted by the government and the government shall take appropriate measures to deal with the unlawful occupation in accordance with the law.
- It is national policy that the government shall endeavor to upgrade the basic services of residential areas formed on public land occupied by homeless squatters on habitable land. The relevant municipality in consultation with the Ministry of Urban Development shall determine the habitability of an area taking into account clearly defined environmental and planning criteria and endeavor to integrate settlements formed on habitable land into the planning process of urban areas. Eligible households will be granted residence permit based on status of property right clarification process to be launched by the government.
- It is national policy that the Government gradually upgrades informal settlements formed on privately owned and environmentally tenable land as certified by the Ministry of Urban development and relevant municipality and endeavor to integrate them into the formal planning processes of urban areas. The government shall promote land tenure regularization in these areas in collaboration with relevant communities based on standards to be established by law.
- It is national policy that the status and future plans of informal settlements formed on the surrounding areas of government approved boundaries of urban areas be determined by the ministries of Agriculture and Urban Development.

**2.2.5 Issue: Protection of Property Rights:** There are not in practice any coherent and transparent mechanisms to protect property rights and equitably compensate those who are displaced. Poorly protected property rights have an adverse effect on the climate for private investment and inhibit social and economic development. Arbitrary and forcible eviction and relocation without equitable compensation are the primary manifestations of this problem.

#### **2.2.5 Policy**

- It is a national policy that the national and provincial governments take measures to protect citizens including residents of informal settlements from arbitrary and forcible eviction. Eviction and relocation of unplanned settlement residents shall be undertaken with community involvement only for necessary spatial rearrangement which should take effect in accordance with the interest of the public.
- Compensation for expropriation of rights over land must be provided equitably in accordance with the law.

**2.2.6 Issue: Regulation of Pasture Land:** The competition for limited resources of pasture in many areas in Afghanistan has adversely affected the economic livelihood of pastoralists

and fueled long standing conflicts. The competition over grazing land between pastoralists and settled farmers is a result of ill-conceived historical political agendas, poor land management, lack of adequate land survey, the non-existence of adequate dispute resolution mechanisms, the near collapse of land adjudication and registration systems, and the lack of strict enforcement of existing laws. The lack of adequate management and control over public owned land has resulted in grabbing of land that was traditionally used by pastoralists as well as settled farmers for grazing livestock herds. The regulation of pasture land is an imperative if it is to be protected from threats to its sustainable use such as grabbing of community lands of neighboring villages, grabbing of rangeland, cultivation of traditional grazing land, government designation of grazing rights in what have traditionally been considered communal grazing lands. Pastoral ownership is unclear and formal law ambivalent as to whether pasture lands are state-owned, public or communal.

#### **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.

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

#### **2.2.7 Policy**

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

### **2.3. HUMAN RIGHTS ISSUES**

**2.3.1 Issue: Bias in Land Allocation:** The constitution prohibits any kind of discrimination and privilege between the citizens of Afghanistan and reiterates the principle that women and men have certain rights and duties before the law. Shari'a law and the Civil Code guarantee comprehensive rights of ownership and inheritances of land to both men and women. However, customary practices often dictate that land rights inherited by a woman be given over to male family members. It is important to ensure the embodiment of constitutional rights for all Afghans in land-related practices and law consistent with Islamic law principles.

**2.3.1 Policy:**

- It is national policy that the civil law especially the property law be consistent with the Constitution and relevant principles of Islamic law in the protection of a man's and woman's right to acquire and hold land independently, share equitably as a family member in family owned property, and rights of inheritance.

**2.3.2 Issue: Landless Farmer Workers:** More and more farm workers are landless and are dependent on the landowners for whom they work for their shelter. In many cases poor farmers have mortgaged their land in such a manner that their livelihood and land ownership is at risk. This is particularly true as a result of increased pressure from poppy cultivation. The relationships between landowners and farm workers, tenants, sharecroppers must be improved to ensure equity as well as productivity.

**2.3.2 Policy:**

- It is national policy that the labor terms for farm workers, and tenant/rent and sharecropping agreements as well as the terms by which farmers mortgage their land be closely regulated to ensure that workers and farmers receive an equitable return for their labor.

**3.1 LAND ADMINISTRATION ISSUES AND POLICIES**

**3.1.1 Issue: Land Use.** Drought, war, land appropriation and increased poppy cultivation have resulted in the concentration of land ownership into the hands of a relatively wealthy small minority. There are also large numbers of rural families sharecropping land that they formerly owned.

**3.1.1 Policy:**

- It is national policy that land distribution schemes for productive and economic activities be balanced to evenly serve the competing interest of all segments of society.
- It is national policy to distribute land for housing purposes in accordance with defined procedures. The procedures shall be fair and equitable to all segments of society.

**3.1.2 Issue: Overlapping and Uncoordinated Land Administration System.** Afghanistan's land administration system lacks coordination and efficiency. There is confusion among competing agencies which often vie for preeminence due to ill-defined or overlapping roles and differing agendas. The uncoordinated pursuit of different agendas has led to stalemates and a resultant inability to tackle urgent problems as they arise. There is no formal method of resolution of such conflicts, resulting in inaction when urgent action is required. The overlapping role of multiple ministries and government bodies results in inefficient and uncoordinated land administration and generates conflicts. In particular, courts are often responsible to resolve disputes that arise from improperly prepared land ownership documentation prepared and registered by the court.

**3.1.2 Policies:**

- It is national policy that the administration and management of land be conducted through a consolidated, cohesive, transparent and representative land administration body which possesses the necessary technical and administrative support, both at the national and local level. An institutional framework will be created with the objective to streamline certification and registration operations and provide appropriate access to the public. The institutional framework should include a body entrusted with the authority to determine land allocation in coordination with local communities.
- It is national policy that all land administration functions be gradually consolidated in a single government body to ensure efficiency, avoid duplication and better utilize available technical knowledge and professional skills.



- It is a national policy to gradually and as practical establish within the new land administration body a consolidated, simplified and localized system of land registry that is transparent and accessible to provide less costly, efficient transfers of property, updated changes in ownership, provide greater accountability to landowners and focus the function of the court on the resolution of land-related disputes.

**3.1.3 Issue: The Land Market Does Not Operate to the Benefit of All Citizens.** The demand for land within a private market system derives from people with financial resources and an interest in investing in land. People with limited financial resources find themselves excluded from acquiring land through purchases.

**3.1.3 Policy:**

- It is national policy that the formal land markets operate with transparency, efficiency and equitably to benefit all Afghans. The poor must be able to access land markets and a greater numbers of Afghans must be included in the economy. Access to land markets includes other tenure opportunities such as rentals or leases.

**3.1.4 Issue: Rural Landlessness:** Rural landlessness is pervasive and has a negative effect on the economy and families.

**3.1.4 Policy:**

- It is national policy that in order to reduce rural and urban landlessness and encourage significant investment in agricultural development targeted to landless farmers, a land trust shall be established to allocate state-owned land to the landless.

**3.1.5 Issue: Underutilization and wasteful use of land.** Only a small percentage of state-owned cultivatable land is under lease. The existing land administration and regulative framework supports the underutilization of land.

**3.1.5 Policy:**

- It is national policy that land management and administration is grounded in the principle of sustainable development and ensures competent management and the maximization of sustainable economic benefits from the land resource, for the benefit of both the property owner and the nation as a whole. Appropriate measures shall be instituted to ensure that land resources are being used for the benefit of the nation as a whole, including transparent, accountable management systems and a well-enforced government regulative framework.

**3.1.6 Issue: Foreign direct investment and foreign ownership of land.**

While the constitutional provision that restricts ownership of land by foreigners must be respected, at the same time, there is a need to enhance foreign direct investment by making land available for foreign direct investment.

**3.1.6 Policy:**

- It is national policy as enshrined in the Constitution that foreigners may not own land, and may only obtain property rights to commercial, retail and industrial property, agricultural and residential land in the form of leasehold. Such leases may be for a term of up to but not to exceed 50 years.
- It is national policy that foreign diplomatic missions may obtain rights to immovable property in accordance with the principle of reciprocity.

**3.1.7 Issue: Conversion of Agricultural Land to Urban and Peri-Urban Status.** Large numbers of returnees and internally displaced persons are creating more pressure to convert surrounding agricultural land for urban and peri-urban development. Such conversion not

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only infringes on those whose livelihoods are intricately woven into the land, but lacks any rational integration into the larger urban planning process. Although urban expansion is inevitable and even desirable, Afghanistan's supply of arable land is scarce, and some prime areas are under threat of permanent alienation from urban expansion. Much of the arable land can more appropriately be utilized to ensure its highest and best sustainable use.

**3.1.7 Policy:**

- It is national policy that agricultural land contiguous to peri-urban and urban areas be protected from encroachment by urban development. The nation's limited supply of arable land is fundamental to its long-term future, and is to be protected accordingly. Appropriate measures must be introduced which both protect arable land from unplanned conversion and which supports its sustainability.

**3.1.8 Issue: Land-related Dispute Resolution:** Disputes regarding land are the result of years of conflict, and historical/political based property allocations which have never been resolved. While many claims relate to private land others relate to the rights of use or ownership of non-private (public or state owned land). Workable resolutions concerning private claims generally must consider the appropriateness of the return of property to its displaced owner and alternative shelter or some form of compensation to other good faith claimants. However, there is a multiplicity of legal frameworks both formal and informal (customary practices), inconsistency in interpretation and most importantly a lack of any viable enforcement mechanisms. Afghans do not repose any confidence in the courts to equitably resolve land-related disputes. A feasible and practical dispute resolution approach must acknowledge the value of community-based knowledge. Furthermore, any approach to sustainable dispute resolution must address the historical and underlying grievances associated with how land was acquired whether by government or individuals.

**3.1.8 Policy:**

- It is national policy to restore stability of land ownership through the promotion of alternative dispute resolution processes such as arbitration, mediation and conciliation at a district or community level.
- It is national policy that the relevant laws be amended to provide that land claims shall be barred by period of limitation after the lapse of 37 years.
- Disputes resolved through a community-based dispute resolution process which are not in contravention of the law shall be given full faith and credit by the formal justice sector.

**3.1.9 Issue: Environmental Sustainability.** Land management systems have not traditionally assigned priority to environmental issues with regard to the sustainability of natural resources including forest conservation and prevention of desertification. Degradation of land, from overgrazing, lack of flood controls, poor mining techniques, deforestation, to name only a few has negatively impacted Afghanistan's greatest natural resource. Environmental protection campaigns are most successful when supported and implemented by the general public, however public awareness of environmental issues is negligible.

### 3.1.9 Policy:

- It is national policy that land is a natural resource and fundamental to the livelihoods of our people which shall be protected for present and future generations. Land management issues shall consider the environmental impact in all aspects related to land use, regulation, allocation, resource use and management.
- It is national policy that a campaign of public awareness be initiated to ensure that all citizens develop a level of environmental awareness in order to support and implement environmental protection measures, individually, at the community and national level.

Approved and signed this 24<sup>th</sup> day of January

Obaidallah Ramin  
Minister of Agriculture

Eng. M. Yousef Pashtoon  
Minister of Urban Development

Dr M. Qasim Hashimzai  
D/Minister of Justice

### Land Policy Working Group

Name	Title	Organisation
H.E. Obaidullah Rahmin	Minister of Agriculture	MAIL
H.E. Yousuf Pashtun	Minister of Urban Development	MoUD
Dr. Kasim Hashimzay	Deputy Minister, MoJ	MoJ
Eng Sharif	1 <sup>st</sup> Deputy Minister of Agriculture	MAIL
Dr. Djallalzada	Deputy Minister, MoUD	MoUD
Eng M.H. Barikzai	Director General of Natural Resources	MAIL
Iqbal Yousufi	General Director of Amlak	MAIL
Abdullah Wahidi	Director of Land Distribution, Amlak	MAIL
Ghulam Sarwar Faqiri	Legal Adviser	MAIL
Abdul Ahad Wahid	Director of KURP	MoUD, KURP
Dr. Farooq Bashir	Legal Adviser	MoUD
Dr. Yohannes Gebremedhin	Land Titling Team Leader	USAID/LTERA
Qazi Sayad Mohsin	Legal Adviser	USAID/LTERA
Moh. Yasin Safar	Land Administration Specialist	ADB/Scanagri
Dr. Stefan Schütte	Team Leader	ADB/Scanagri
Mussa Daoud	Businessman	Private Sector

Annex 6: List of Participants in the series of Project Workshops, Kabul, held between 7th and 21<sup>st</sup> August 2007

No	Name	Position
1	H. E. Gulam Mustafa Jawad	Deputy Minister MAIL, Chairman of all meetings
2	Prof. Abdul Qahar Samin	Senior Advisor, MAIL
3	Prof. Atef	Senior Advisor, MAIL
4	Eng Hashim Barikzai	General Director of Natural Resource Management, MAIL
5	Iqbal Yousufi	General Director of Amlak, MAIL
6	Rohullah Yaqini	Director of Land Resources Dept., MAIL
7	Mohammad Arif	Deputy Director, Land Resources Dept., MAIL
8	Nasrullah Bakhtani	Director of Monitoring and Evaluation, MAIL
9	Mohammad Asif Sayar	Deputy Director, Cadastral Survey Dept, AGCHO
10	Mohammad Yousuf	Head of Planning, Cadastral Survey Department, AGCHO
11	Abdul Hai Naser	Director of Land Clarification, Amlak, MAIL
12	Eng. Amir Mohammad Noori	Director of Development Projects, Ministry of Interior
13	Abdul Ghani Ghuriani	Director of Policy and Planning, MAIL
14	Gul Ahmad Hushmand	Deputy Director of Amlak, MAIL
15	Alhaj Jan Mohammad	Head of Shura, Dara-e-Kalan
16	Arbab Abdul Majid	Head of Dara-e-Kalan village
17	Maulawi Sayed Najibullah	Member of Dara-e-Kalan Shura
18	Arbab Haji Abdul Rashid	Head of Safar Khan village
19	Abdul Rasoul	Shura member, Safar Khan village
20	Mudir Mohammad Aslam	Head of Shura, Naw Abad Shura
21	Mohammad Daoud	Head of Shura, Naw Abad village
22	David Stanfield	TERRA Institute
23	Stefan Schütte	Team Leader RLAP
24	Yohannes Gebhremedin	Senior Legal Advisor RLAP
25	Robin James	Land Development Advisor RLAP
26	M.Y.Safar	Land Specialist RLAP
27	Abdul Samad Kamawi	Legal Advisor RLAP
28	Prof. G.N. Naseri	Professor of Agricultural Faculty, Kabul University
29	Eng. Akram Salam	Director of CRA