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WATER MANAGEMENT, LIVESTOCK AND THE OPIUM ECONOMY
Options for Land Registration

Alec McEwen and Sharna Nolan

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About the Authors

Alec McEwen, Ph.D. is Emeritus Professor of Geomatics Engineering at the University of Calgary in Canada. He specialises in land administration, cadastre, land title registration and inter-jurisdictional boundaries. He has worked in a number of land-related projects in more than 20 developing countries and transitional economies.

Sharna Nolan is Research Support Officer for the Water, Opium and Livestock project and the Rural Land Conflict Resolution project at the Afghanistan Research and Evaluation Unit. Previously she designed and conducted field work in social and agronomy studies in Mongolia, China, and Australia.

About the Afghanistan Research and Evaluation Unit

The Afghanistan Research and Evaluation Unit (AREU) is an independent research organisation headquartered in Kabul. AREU's mission is to conduct high-quality research that informs and influences policy and practice. AREU also actively promotes a culture of research and learning by strengthening analytical capacity in Afghanistan and facilitating reflection and debate. Fundamental to AREU's vision is that its work should improve Afghan lives.

Acknowledgements

See Appendix IV for a list of informants and interviewees.

Contents

Glossary

Amlak	Properties Department of the Ministry of Agriculture, Animal Husbandry and Food
cadastre	a graphical and textual record that identifies individual land parcels and certain rights or attributes or rights attached to them
firman	decree of law or proclamation
jerib	unit of land measurement; 5 jerib = 1 ha (2000 m2)
Makhzans	provincial archives
orthophoto	an aerial photograph that has been geometrically corrected so that the scale of the photograph is uniform, meaning that the photo can be considered equivalent to a map
shura	local council, traditional assembly of elders (clan-based, tribal or ethnic), which runs community affairs
urfi	customary law

Acronyms

ACGHO	Afghanistan Geodesy and Cartography Head Office
AREU	Afghanistan Research and Evaluation Unit
DACAAR	Danish Committee for Aid to Afghan Refugees
GAA	German Agro Action
GIS	Geographic Information System
GoA	Government of Afghanistan
GPS	Global Positioning System
I-ANDS	Interim Afghanistan National Development Strategy
IDP	internally displaced person
MAAHF	Ministry of Agriculture, Animal Husbandry and Food

1. Introduction

This study was undertaken for Afghanistan Research and Evaluation Unit's (AREU) under the auspices of the EC-funded project "Applied Thematic Research into Water Management, Livestock and the Opium Economy" (WOL).

The principal objective of the WOL project is to enhance the sustainability of Afghan rural livelihoods by providing policy makers with clear and accurate information on the use, management and role of natural resources within the rural economy, with a specific focus on water, opium and livestock. It is undertaken in cooperation with the Danish Committee for Aid to Afghan Refugees (DACAAR) in Ghazni and Herat, and German Agro Action (GAA) in Nangarhar and Kunduz. The research is expected to provide evidence-based directions and recommendations for improving the effectiveness of agricultural policy and rural programming. This research objective builds upon a recognized lack of understanding about the way in which rural livelihoods are constructed and respond to change. The project has the additional objective of engaging the participation of major stakeholders (key ministries and other national institutions), and building their capacity through ongoing training and active collaboration in project activities, as well as through the provision of real time information about rural resources and resource use conditions.

This study builds directly upon field research undertaken during the first year of the project and subsequently published as an AREU report in June 2006.[1] As the Government of Afghanistan adopted a new Draft Land Policy in January 2007, and as strategies are being devised to achieve land registration benchmarks within the interim Afghanistan National Development Strategy (I-ANDS), the current paper moves the focus of study toward policy. It addresses the challenge of recording information on the ownership of and other legal interests in rural land, identifies and discusses the major issues that will influence land registration in the Afghan context, and sets out a strategy for piloting a system of land registration.

The consultant undertook research for this study during the second half of September 2006. Due to the limited time of the assignment and in view of the consultant's prior field visits, activities were confined to Kabul (see Appendix IV for a list of persons and organisations interviewed).

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[1] McEwen and Whitty, 2006.

2.   Context

2.1   Problems arising from the lack of land registration

There is an absence of a properly functioning system for land registration in rural Afghanistan. This is obvious from the lack of public use of the legally prescribed system: 95% of the land transactions in villages are carried out through the use of private documentation or even verbal agreements, not involving a Primary Court Judge in the preparation and archiving of legal deeds. The lack of a functioning system contributes to the following problems:

- There occur large numbers of disputes over land, as formal and informal adjudication procedures are ill-equipped to deal with the land claims of returning refugees or internally displaced persons (IDPs). Compounding this problem is the fact that many formal titles presented in land dispute cases are claimed by either party to be fraudulent.

- Multiple, conflicting titles and deeds exist for land of high value but is practically non-existent for other types of land. From previous work, it appears that very few village residents hold a formal deed to the land they occupy.[2] Most claims of land ownership are based on informal or customary practices, and few of them are well documented.

- The absence of officially recognized rights of tenure leave individuals and rural communities vulnerable to their land being illegally appropriated or utilized, thus contributing to social and civil instability.

- Lack of clear land rights and poor tenure security affect the management of lands and their productive potential, raising the twin possibilities of resource degradation and livelihood insecurity. Land tenure insecurity may thus be linked with other forms of rural vulnerability.

2.2   Current government policy

In January 2007, a new Draft Land Policy was approved for submission to the cabinet. This policy sets out principles and targets for the governance of land and rights of tenure. Stated goals include the establishment of a unified system of land administration, simplified systems for land allocation and transfer, and a system of property rights adjudication that functions at a community level. This policy clearly highlights the need for an effective mechanism for recording claims, adjudicating title and administering records. These needs are also defined in the I-ANDS, which expresses the government's policy as follows:

> *A fair system for settlement of land disputes will be in place by Jaddi 1386 (end-2007). Registration for rural land will be under way by Jaddi 1386 (end-2007).*[3]

The purpose of this paper is to discuss theoretical concepts of land registration, to describe the different registration systems that are available, to consider the factors and conditions that will influence the design of an appropriate land registration system for rural Afghanistan, and to suggest how that system could be adopted and implemented.

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[2] McEwen and Whitty, 2006.
[3] Interim Afghanistan National Development Strategy (I-ANDS) vol. 1, p. 73, item 14.

3.   The Purposes of Land Registration

The main objectives of land registration are to protect property rights, facilitate transactions in land, and enable land to be used as collateral for a loan (mortgage). A system of land registration identifies each individual land parcel and provides either evidence or confirmation that the person named in the register has specified property rights to that parcel.

Land registration should be simple, reliable, prompt, affordable and well suited to the society it serves. The experience of a number of countries shows that attempts to introduce a land registration system will be unsuccessful unless that system is supported by appropriate legislation and institutions, and unless there are sufficient financial and human resources for its implementation and maintenance. Most important is that members of the public accept the system, because if they do not use the system it will never achieve its full potential.

A uniform, integrated system of land registration confers many benefits. For the individual it offers security of tenure, a reduced likelihood of ownership or boundary disputes, simpler and less costly land transactions, greater access to credit, and increased market value. For the government administration it represents a major component of a land information system, assists in land-use planning and development, improves the land market, stimulates investment, and creates a basis for land taxation. For a society it can help to promote the peaceful, orderly and wise utilization of the national land resources.

From a poverty alleviation perspective, land registration is considered an effective way of empowering the rural poor.[4] Specifically, studies have suggested that land registration may provide benefits such as:

- Greater access to credit: Access to credit and mortgages, translating to more incentives to invest in farm inputs, innovation and non-farm small business enterprises, leading to improved agricultural productivity and income.[5]

- Higher land values: Evidence from Asia suggests that the formalization of a land sales market can increase the demand for and value of titled land over untitled land.

- More capital: By taking away the need to invest resources into defending ownership or access rights, capital can be reinvested into the household. Moreover, younger household members may be freed to off-farm work and contribute to household income through remittances.

- Secure land rental markets: If a land rental market can be created, households can choose to rent all or part of their land to more productive users. For the landlord, renting land can create an opportunity to seek off-farm work, whereas for the tenant there is an opportunity to increase productivity and consignments for urban markets.[6]

- Insurance against shocks: Households can mortgage, rent or sell all or part of their lands in the event of a crisis or immediate need for cash.[7]

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[4] FAO, 2002; WB, 2003; OCED, 2004.
[5] Deininger et al., 2006.
[6] Williamson, 2000.
[7] FAO, 2003.

- A more powerful position: Land rights may make people less vulnerable to exploitation by more powerful groups and give people a voice at local levels.[8]

From the broader perspective of society as a whole, land registration offers additional advantages. These include:

- Peaceful relationships: As reported by the OCED "Conflicts and rebel movements thrive in territories where the state has no control. If a property rights system, fairly 'controlled' by the state, is in place, the ensuing relationship between the citizen and the state tends to make it harder for rebels to recruit fighters or obtain land".[9]

- Economic development: By promoting a secure and legally stable investment environment, a proper land registration system would contribute to Afghanistan's economic development. Job creation is likely if investments occur in the non-farm sector.[10]

- Natural resource management: Private ownership allows communities to plan for environment outcomes at a community level. The determination and demarcation of boundaries for private and community owned land leads to better land use and water management of cultivated land. Experience from other countries show that where farmers with higher levels of ownership were less likely to engage in destructive farming practices than farmers with insecure land tenure.

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[8] van Asperen and Zevenbergen, 2006.
[9] OCED, 2004: 36.
[10] Deininger et al., 2006.

4.   Forms of Land Registration

Several possible approaches exist for the registration of land, although the principal mechanisms all derive from the recording and archiving of either deeds or land titles. The Afghan government, in order to achieve the goals set out in the new Draft Land Policy and the I-ANDS, has to consider which approaches to registration would effectively suit its needs and capacity in the near, medium and longer terms. A full representation of these approaches and their legal significance lies beyond the scope of the current work, but the major differences are presented here.

4.1   Deeds recording

In its rudimentary form, a deeds registry is simply a public repository of claims to land. Essentially, a deed is no more than an assertion of rights, which may be supported by diverse legal documentation, locally-issued customary documents or even recorded oral testimony. A deed itself does not necessarily constitute the rights it purports to embody; rather it is a form of evidence. Although a deed can be assumed to constitute a right to land, this assumption may be rebutted by other forms of evidence.

Deeds recording is the acceptance and archiving of documents pertaining to transactions or interests involving land. While a recorded deed is evidence that a particular transaction has taken place it is no proof that the concerned parties have the legal right to carry out the transaction, nor does the act of recording validate the claim or transfer of ownership. Under systems of deed recording, documents presented for entry are normally accepted at face value and are not subject to detailed technical scrutiny by registrars. If an accurate survey plan is not available to accompany the document that is submitted to the registry, boundary descriptions may define parcels by citing adjoining owners or properties or landmarks, or by metes and bounds (bearings and distances). Hand-held global positioning systems (GPS) or other satellite technology, which can produce the mathematical coordinates of land parcel boundary corners, may offer a cheap and practical alternative.

While simple, cheap to administer, and adaptable to many different conditions, simple deeds recording systems have several shortcomings. It may offer insufficient information to clearly identify the area and extent of claimed lands, and thus lead to uncertainties in conveyances and transfers. For similar reasons it may lack clarity for resource planning or fiscal purposes. Furthermore, since a deed does not necessarily constitute a legal title, individual proprietors may be restricted in their ability to use the land as collateral for loans or access to finance.

Compared to land title registration, however, deeds recording can be relatively quick to set up, and cheap and simple to administer. Deeds registries are favoured by some administrations because they are less costly to establish and operate than land title offices. Furthermore, the recording fees charged by deeds recording offices can yield substantial revenues.

A registry of deeds can be transformed into a registry of land titles when the underlying cadastral survey framework has been completed and an effective system of adjudication is established to settle disputes over land ownership or boundaries of land parcels.

4.2   Title registration

Registration under a land titles system — such as the Torrens system used in Australia, New Zealand and Canada — is authentication of the ownership of, or legal interest in, a parcel of land. The act of registration confirms transactions that confer, affect or terminate that ownership or interest. The register itself is considered conclusive proof of land title and the rights it affirms are considered indefeasible. The Torrens system does not admit any off-record evidence, alternative or historical claims against a registered title, aside from certain statutory exceptions known as overriding interests (such as the state's right of expropriation or seizure for unpaid taxes).

A land title registration system must be underpinned by an accurate cadastre (record) that includes an index map portraying each parcel in its shape, size and relationship to adjoining parcels. Each parcel is identified by a unique number, rather than by its proprietor's name (which will change from time to time and may involve uncertainty of identity). Modern title-based administrative systems are almost always computerized, integrating spatial and title data pertaining to each parcel of registered land. Title records are usually centrally held by the state or a provincial authority but may be viewed or accessed at multiple levels, depending on the technology used. This type of technically efficient land administration can facilitate easy access to information, effective property markets, accurate assessment of individual land holdings for taxation purposes and ready proof of ownership for proprietors. Because of these benefits, many jurisdictions have moved to or are moving toward title-based systems of land administration.

However, these systems require not only a stable land policy framework (including an efficient adjudication service), but a comprehensive cadastral survey and high levels of technical expertise and infrastructure to manage the information. Even in politically stable and technologically advanced countries, laying the foundation for title registration systems is expensive and time consuming.

4.3   Hybrid systems

Some land registration systems include features of both deeds recording and title registration; these may be classified as hybrid systems. For example, the land title registration system used in the United Kingdom (England and Wales) utilizes large-scale ordnance survey maps to portray parcels. Parcel boundaries are defined by the enclosing physical features, such as hedgerows or fences; boundary dimensions are not shown on the maps. Another example is the Indian Lands Registry in Canada, a deeds recording system supported by cadastral plans that are prepared from field surveys and show accurate parcel boundary measurements. In other countries (such as Trinidad and Tobago), deeds recording and land title registration systems operate in parallel. Within such systems, deeds can be transformed to title if the owner wishes and the necessary procedure is followed.

The choice of land registration system generally reflects local conditions and the needs and capacity of the implementing authority for land administration. In Afghanistan, the legacy of three decades of conflict is of particular significance for land registration planning. Post-conflict environments may be considered as a special category for the formulation of land administration strategies.[11]

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[11] Augustinius and Barry, 2006.

5. Land Registration in Post-Conflict Environments

A useful point of departure for developing recommendations for a land registration process in Afghanistan is to consider the lessons and experiences of land administration initiatives in comparable post-conflict situations.[12] Internationally, the formalization of land rights is often viewed as an important step toward post-conflict stabilization, so it is often supported within the context of reconstruction efforts. Experiences of land administration initiatives can be drawn from a range of countries in central and southern Africa, in the Balkans as well as in parts of Asia. Given that conditions vary among post-conflict countries, there are of course limitations to the lessons that can be applied in the Afghan context. This discussion begins with summary reviews and outcomes of some recent post-conflict land registration initiatives around the world.

5.1 Cambodia

With the final collapse of the Khmer Rouge during the 1990s, Cambodia was left with a dysfunctional land administration system where the pattern of land parcels had been destroyed and collectivized. There had been massive internal displacement of population and the landscape was scattered with mines and munitions.

In 1992, there was an attempt at sporadic registration of land through provincial cadastral offices, but the process was highly bureaucratic and weakened by a lack of human resources and supporting cadastral plans. Only proprietors with residential or high value properties went to the effort of registration, so the approach failed.

With international support — from Finland, Germany, France, the World Bank and the Asian Development Bank — planning began in 1995 for a land administration system based upon a new Land Law (eventually passed in 2001). The "first registration" approach is community-based, and in the absence of legal documentation it draws upon the collection and adjudication of diverse forms of documentary evidence as well as oral testimony and claims. Government land registration officers work in close cooperation with community elders and chiefs to systematically determine the ownership and boundaries of land parcels and then facilitate the community adjudication of rival claims. Because boundaries are not marked physically, various methods are used to determine their location, including GPS data which can later be entered in to a Geographic Information System.

Under a pilot scheme, 40,000 parcels of land had been systematically adjudicated by 2004. Registration cost per parcel averaged US$15. Project advocates anticipate registration of a million new titles in the first five years of the project. The Cambodian case suggests that a systematic "first registration" can be successful, if it engages community participation.[13]

5.2 Uganda

Civil war and the abuses by the Idi Amin regime during 1971-86 resulted in catastrophic human losses, and continuing armed conflict has left 1.6 million displaced people in the north. In the past two decades, however, considerable progress has been made toward stabilization of the country.

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[12] Wily, 2003; ADB, 2004.
[13] Torhonen and Palmer, 2004.

A new Land Act in 1998 committed Uganda to a course of private ownership, whereby for most land, rights would be vested in identifiable owners. This effort included land held under customary rights, which was previously considered state land. Registration of land was planned to be undertaken at the community level, using officials working with community leaders and elders. Customary ownership was to be given statutory recognition through the awarding of "Customary Ownership Certificates" and subsequent transfers were to be recorded locally with a responsible chief. Under the planned registration there was to be no general land survey, but a demarcation of boundaries and a record of the names of traditional owners.

Customary certificates were seen as a step toward the final goal of a title registration system, such as the Torrens system. The provisions of the Land Act allow for upgrading certificates to title once accurate field surveys have been completed and other criteria have been met. Owing to lack of financial and technical capacity, it had been concluded that full titling would be an unattainable goal in the short term. Conversion of certificates to titles was planned to be sporadic with costs borne by land owners.

In practice, the initiative has run into difficulties, as institutional development has not kept pace with policy. With few resources to implement the land law, very few Customary Ownership Certificates have yet been issued. However, while there are risks that wealthy land owners may be principal beneficiaries of the option to convert certificates to full title, the Ugandan system has been described as highly innovative.[14]

5.3   Palestine

Until the 1967 Israeli invasion, land transactions and registration in the West Bank and Gaza were governed under a 1952 Land Law. Only 25-30% of the West Bank was registered before systematic registration was interrupted. Registration continues sporadically but the process is complicated and expensive, with the result that many landowners now hold land informally or under insecure terms.

In 2005, the Palestinian Authority initiated a new land titling project, the West Bank and Gaza Land Administration Project, with support from Finland and the World Bank. The project claims to adopt an "innovative and adaptive" approach, combining policy formulation, institutional development and the piloting of land registration. However, in practice the planned action will be fairly conventional. Registration will be based upon a comprehensive cadastral survey undertaken by private surveyors and parcel demarcation (utilizing available orthophoto maps). An adjudication facility through the public courts will be developed. The land registration process is planned as a systematic activity and aimed at the granting of legal title.[15]

It is too early to determine the success of this approach. Owing to continuing political difficulties in the Palestinian territories, almost no progress has yet been made toward the ambitious goals set by the project. Furthermore, the context of registration in Palestine may be considered unusual because the overall area to be registered is relatively small and a high proportion is high-value horticultural or residential land.

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[14] Deininger et al., 2006(a).
[15] Attallah et al., 2006.

5.4   Vietnam

The communist state of Vietnam was unified in 1976 after three decades of independence wars characterized by heavy casualties, indiscriminate destruction and severe contamination of the landscape. Despite this devastation, Vietnam has made rapid economic gains since the conflict ended, including a growing openness to market-based economics.

In Vietnam, all land is deemed the property of the people and is managed by the state. The state does not recognize private ownership; instead it allocates rights of use to individual farmers.

Systematic land registration began in 1993 with a Land Law that set out "rights of use" which include rights of exchange, transfer, lease, sub-lease and inheritance. Further rights has subsequently been added to the extent that "Land Tenure Certificates" are now claimed to protect users' rights in much the same way as title under the Torrens system.[16] However, in Vietnam, land titles are not adjudicated and then registered to individuals or collectives, but allocated by the state. Allocation is determined centrally by state land-use plans.

Allocation of Land Tenure Certificates has progressed very rapidly and systematically since the process began. In some regions up to 84% of land has now been allocated and registered, but progress has been uneven, with most registration completed in agricultural lands. Registration in remoter forested areas has been slower. There is evidence that land registration has successfully stimulated the land market, with some investors starting to consolidate multiple parcels through purchases. The process of state allocation has encountered difficulties in areas where land rights were previously held under customary systems.

5.5   Mozambique

Mozambique was marred by conflict through the 1980s and early 1990s, leaving the rural economy shattered, many farms abandoned and the countryside strewn with mines and munitions.

In 1995, a new land law was drafted with the intention of securing existing land rights while creating conditions for investment and stimulating land markets. Constitutionally, all land in Mozambique is the property of the state, but the new land law specifically recognizes and formalizes customary land rights alongside statutory rights. The law also established a process for community-based land registration which began implementation in 1997. In Mozambique, land registration occurs at the communal level (only the outer boundaries of the community land is delimited and registered). This registration process is facilitated by NGOs working with community leaders and elders.

Within community lands, tenure rights and management practices continue to be subject to customary law. Studies have demonstrated that the registration of community lands has not necessarily deterred external investors. Furthermore, although the registration of private titles is also possible under the land law, this has been very rare in customary areas, indicating a sense of improved tenure security.[17] An additional advantage of community land registration is its comparatively low cost, as only the outer boundaries of community land need to be surveyed.

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[16] Nhu et al., 2006.
[17] Chilundo et al., 2005.

Overall progress on land registration has been slow, because there is only funding for four community delimitations each year. In some communities internal conflicts have continued and need to be resolved through customary law. Nevertheless, despite the relatively slow rate of implementation, Mozambique has been identified as having successfully integrated state and customary law.[18]

5.6   East Timor

In 1999, conflict following independence from Indonesia destroyed 70% of physical infrastructure in East Timor and displaced approximately 75% of the population. There was widespread abandonment and destruction of property and official records. All land title offices were completely burnt and destroyed. At the time, much of the land was unregistered and governed by customary law.

With the return of displaced populations, the United Nations Transitional Authority for East Timor (UNTAET) created a policy of allocating abandoned properties to returnees for periods from between three months to five years. For three years, UNTAET failed to establish any form of lands registry or framework to settle competing claims to land and continued to allocate "abandoned" lands to returnees, thus exacerbating problems and confusion.

The Lands Administration Project was launched in 2003 with assistance from Australia. The project has precipitated efforts to formulate a comprehensive land policy and is initiating a process of land registration. Registration will be conducted sporadically at first, and alleged title holders are being invited to register. Title documents issued by Portuguese or Indonesian colonial administrations are being considered as evidence, not proof, to support applications. Oral testimony and customary evidence will also be considered where they exist.

At present the final legal status for registered titles is undecided. This is because the prerequisites for an effective Torrens system — such as political stability and absence of corruption —do not yet exist in East Timor. For this reason a system of deeds registration has been proposed as an intermediate step to land titling.[19]

Parallel to the registration of claims, efforts are commencing to define cadastral boundaries and parcels using orthophoto maps. These efforts are being delayed by lack of technical capacity. Estimates suggest that it will take at least 10-15 years to establish a full system of land administration. Given the deteriorating state of land relations, there is a clear need for some provisional mechanism to be initiated in the interim (Williamson et al 2006).

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[18] van Asperen and Zevenbergen, 2006.
[19] Fitzpatrick, 2002.

5.7   Summary observations

An overview of approaches to post conflict land registration is given in Table 1.

Table 1: Comparative approaches to land registration post conflict

Country	Ownership		Implementation		Evidence		Adjudication		Recording	
	State	Private	Sporadic	Systematic	Informal	Formal	Community	State	Low tech	Hi tech
Rwanda		✔	✔		✔		✔		✔	
Cambodia		✔		✔	✔		✔		✔	
Sudan	✔		✔		✔			✔	✔	
Mozambique	✔			✔	✔		✔		✔	
Uganda		✔		✔	✔		✔		✔	
Kosovo		✔								✔
Palestine		✔		✔		✔		✔		✔
Vietnam	✔			✔		✔		✔		✔
East Timor		✔	✔		✔			✔		✔

Ownership: Whether all land is deemed the property of the state or whether private ownership is possible.

Implementation: Whether registration is conducted sporadically or systematically.

Evidence: Whether informal and customary evidence is admissible to support claims.

Adjudication: Whether the adjudication of claims occurs at the community level or is undertaken by the state.

Recording: Whether land records are built up through a computerized cadastre.

Several general observations can be made:

- In most examples of post-conflict land registration, the process is necessarily facilitated by the establishment of an overarching land policy and an associated legislative framework to support the initiative. Where an appropriate institutional structure is not first set in place, the program will be ineffective.

- States must initially determine whether their land administration system will be rooted in private or state ownership of lands. The question is essentially ideological, but in a majority of cases states have opted to vest land ownership rights in the individual person.

- There is a tendency toward systematic (state driven) registration of land where resources allow. Sporadic registration, although unsystematic and often protracted, may be favoured where the state does not have the financial or technical resources for systematic implementation.

- Nearly all jurisdictions now admit deeds based on customary law, documents and oral testimony in addition to legal documents as evidence to substantiate land claims. This facilitates a convergence of statutory and traditional rights and is seen to strengthen the legitimacy of the land registration process. Adjudication

processes can be either led by the state or undertaken by community leaders with state facilitation.

- While some jurisdictions have opted for a computerized cadastre-based registry from the outset, others have started with low-tech forms of records due to a lack of resources or technical capacity. Land registration has been delayed in some of the states that have chosen to establish computerized registries.

- Most jurisdictions aim to develop a system that will ultimately confer legal title upon land holders. However, due to political instability, problems of implementation and lack of resources, some governments have commenced with a preliminary registration of claims as an interim and achievable first step. As well as paving the way towards land titling, preliminary registration documents can serve to support property markets.

5.8   Lessons for post-conflict land registration

Drawing on experiences worldwide, researchers and land administration officials have begun to arrive at some guiding principles for approaching land registration in post-conflict settings. Principally, it is argued that post-conflict land registration needs to be as much about equity and social justice as accurately recording and managing land records.[20]

Conventional approaches to developing land administration tend to focus on the "hard system" components, such as cadastre, surveying, boundary delimitation and demarcation, formal adjudication and information management. However, land administration professionals have recently argued that under complex and fluid post-conflict conditions, "soft system" components of land administration require the greatest attention in the early stages.[21] Accordingly, emphasis should be placed on achieving social, political and economic stability through legitimate land registration, reconciliation and good governance. Adjudication should be incremental, transparent, and participatory and take place at a community level.

Furthermore, it is recommended that land administration should initially limit itself to the registration of some form of provisional or qualified titles (such as deeds), which remain open to challenge until they later become eligible for transformation to absolute titles after a specified period of time. Indeed, Zevenberg and van der Molen state explicitly that they "do not consider a post-conflict period a good time to introduce title registration."[22]

The whole process of land administration, from policy formulation to community-level implementation, should be under constant review, adaptation and improvement. In this way, when the time is reached for a final issue or confirmation of title, the risk of injustice will have been diminished and the system will have gained acceptance and credibility in the eyes of stakeholders.
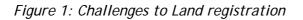
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[20] Molen and Lemmen, 2004.
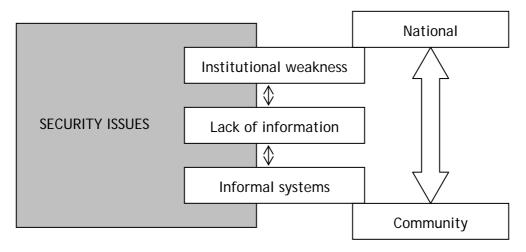[21] Augustinus and Barry, 2006.
[22] Zevenberg and van der Molen, 2004: 1.

6. Challenges for Land Registration in Afghanistan

Examining land registration processes in different post-conflict contexts highlights the diversity of approaches taken. While key principles such as the need for legitimacy and social equity are universally valid, how best to apply them in any particular national context depends on a broad range of factors. These include the type and attributes of the land resources in question; the social, governance and legal frameworks within which land registration is to take place; and the political will and resources available. A careful examination of the Afghan context is therefore necessary in developing nationally appropriate tools and mechanisms for registering rural land.

Land issues have in recent years gained significance in Afghanistan. Studies have been undertaken that provide both empirical and theoretical perspectives on aspects of Afghan land tenure, administration and policy at different levels. The present report uses the findings of these studies, in combination with direct field observations and discussions with stakeholders, to highlight some of the key challenges to land registration in Afghanistan. For the purposes of this discussion, the principal challenges that any land registration process will have to overcome fall into four categories: 1) institutional weakness, 2) lack of an existing information base, 3) general insecurity, and 4) the entrenchment of informal systems. Conceptually, these challenges are situated on an axis beginning at the community level and ending at the national level, but they remain closely interlinked (Figure 1).

Figure 1: Challenges to Land registration

6.1 Government institutional weakness

Although Afghanistan has a long history of recording land ownership, the current institutional structure for rural land administration is very weak. Technically, the primary responsibility for land administration falls to the Department of *Amlak* at the Ministry of Agriculture and Irrigation. Other state institutions are also involved, including the Geodesy and Cartography Head Office, the Ministry of Justice, the Ministry of Rural Rehabilitation and Development as well as provincial and district authorities. In reality, the Department of *Amlak* and the Geodesy and Cartography

Office have been largely inactive for decades, and have been very poorly resourced, both at national and provincial levels. Visits to provincial offices show that *Amlak* records have not been updated for many years and staff currently have no capacity to do so. Existing records are poorly archived and in some cases are deteriorating through mismanagement. In many instances, insufficient resources exist even for staff to travel outside of provincial offices. Some staff members at the Geodesy and Cartography Office have been trained in survey methods of 30 years ago, such as the plane table, but there is very limited understanding of modern digital surveying and data management techniques. Extensive cash investment, training and capacity building would be required before these departments could resume roles in an effective centralised land administration.

Attempts at coordination among stakeholders through the establishment of an inter-ministerial Land Commission have been fraught with delays and frustrations. At present the Land Commission exists in name only, with minimal capacity and resources and has effectively been superseded by the more active Land Policy Working Group within the Afghanistan National Development Strategy (ANDS) process. There is clear recognition of the need to clarify roles and strengthen institutional arrangements for land administration.[23]

Some existing policy and discussion documents envisage the future establishment of a new land administrative body which would centrally assume functions from the various departments, agencies and bodies that currently hold responsibilities for various aspects of land administration. The establishment of such an agency would represent a challenge in itself, however.

6.2 Policy and legislative framework

Plans for land registration in Afghanistan must take into account the legislative framework currently structuring land administration. A new Draft Land Policy was agreed upon by the ANDS Land Policy Working Group in January 2007, and is progressing toward approval by cabinet. Until this policy is fully understood throughout government agencies, and the legislative and other tools for its implementation are in place, any effort to register land will be severely constrained. Most stakeholders stipulate that meaningful land registration will not be possible until a sound policy and legislative framework can be developed.

Afghanistan's complex political history leaves a legacy of multiple legal frameworks, decrees and statutes overlain by successive regimes. These different sources of law are in many cases inconsistent, piecemeal and in some cases contradictory, allowing different persons to make competing claims to the same land. Compounding this problem is the current absence of effective state mechanisms for resolving such disputes. Evidence suggests that public confidence in adjudication through the government court system is extremely low, owing to concerns over corruption and ethnic biases. The Inter-Ministerial Land Commission conceded that:

> *Land relations in Afghanistan have been governed by a number of legal frameworks and these frameworks have been interpreted differently. Thus consistency in the interpretation of land relations is a problem and tends to undermine the credibility of the legal system.*[24]

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[23] Inter-Ministerial Working Group, 2004.
[24] Inter-Ministerial Working Group, 2004: 2.

A clear synthesis of this situation and its implications was given in the June 2006 AREU report by McEwen and Whitty.[25]

The absence of a clear land policy framework has been conducive to growing inequities in ownership, insecurity of tenure, asymmetries in the distribution of land among groups, land grabbing and corruption.[26] Wealthy, influential and powerful groups are best placed to exploit legal ambiguities, thus exacerbating inequities. These current realities need to be recognised in designing an appropriate approach to land registration.

Some argue that the current weakness of the land administration framework in Afghanistan suggests the need for a community-based system of land registration, allowing for maximum community accountability and building upon strong local traditions of entitlements to land.[27] Under the existing legislative framework, however, it may be very difficult to clearly and conclusively establish the ownership rights necessary to grant and register formal titles.

The prospect for comprehensive titling of rural land will remain limited until a credible land policy is in place, supported by appropriate legislation and an equitable mechanism for adjudication of conflicting property claims (including the resources for their implementation).

6.3   Land administration information

Efforts to initiate a registration of rural land in Afghanistan will be hampered by the lack of an existing framework of land administration records or a comprehensive cadastre. Despite the historical precedent for record-keeping, land records (such as they exist) are today dispersed throughout a range of institutions, including the *Amlak* department, the Department of Cadastral Survey at the Geodesy and Cartography Head Office and various provincial and district authorities.[28] In some areas, the courts have served as repositories of land administration records, with thousands of deeds deposited in their provincial archives (*Makhzans*). Even if it were possible to collate available land records, they take a variety of different forms.

Evidence for land ownership may come from customary law (*urfi*) documents, witnessed by neighbours or local leaders. Records may also take the form of deeds, prepared and notarized through the court system. Some land holders claim land rights from land grants made by kings or former rulers; these may be documented as legal letters, decrees or *firman*. Still further evidence may be found in the records of the cadastre: However, most entries in the cadastre were recorded as "unconfirmed" as title could not be established. Other evidence includes records compiled for taxation purposes during the 1970s, which are even less reliable as they were based on a system of unsubstantiated self-reporting.[29] A significant proportion of farmers interviewed during recent fieldwork cited tax receipts held in their possession (and records of payment held by the authorities) as evidence of land ownership.[30]

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[25] McEwen and Whitty, 2006.
[26] ADB, 2004.
[27] Wily, 2003.
[28] ADB, 2004.
[29] Wily, 2004.
[30] McEwen and Whitty, 2006.

The national cadastral survey was initiated in the mid 1960s and it progressed for nearly 30 years until was discontinued by the Taliban. During this period almost 30% of agricultural lands were surveyed.[31] Survey methods were simple and coverage focused upon areas surrounding major provincial capitals, notably Kabul, Kandahar and Herat. All cadastral information was produced in analogue formats: Maps were drawn to a variety of scales and, except in very few locations, the surveyed areas were not connected mathematically to the national triangulation network, meaning that they cannot be geographically related to each other.[32] In practice, the value of this cadastre to land administration (even in coverage areas) was still further limited because where land parcels were recorded, land ownership or title could not be conclusively ascertained.

The current status of the cadastre in Afghanistan is so poor that it has been deemed better to start any new survey from scratch, rather than update existing information.[33] However, while ownership information will probably have altered since the time of the last survey, it is likely that parcel boundaries may have remained as they were, except where a parcel has been subdivided or where adjoining parcels have been consolidated by transfer. Consequently, existing cadastral information (in some areas of coverage) may have potential future utility.

The task of undertaking a comprehensive cadastral survey of lands would be an enormous challenge in terms of time and resources: The Cadastral Department have indicated that they have no idea of how long a national survey would take to complete, but that its duration would more likely be measured in decades than in years. The first three years alone (the only ones that have been budgeted) would require close to US$ 2 million.[34]

Given the many other priorities and resource constraints faced by the Afghan government, in the absence of a clear land policy framework or effective mechanism for adjudication and determination of title, there appears quite pointless to initiate another costly survey.

6.4   Customary and informal systems

Owing to unclear, overlapping or contradictory edicts and frequent revision of statutory laws, there exists no effective and easily accessible system for the registration of property or recording of land transfers in Afghanistan. Since a substantial proportion of rural land has changed hands from the original owners (through inheritance and other transactions), most rural Afghans do not hold formally recognized title to their lands.

While wealthier and more influential landowners have effectively utilized the court system as land registries, notarizing and depositing thousands of diverse deeds of record and transfer,[35] the majority of rural Afghans instead regulate land ownership through customary systems.[36] This was clearly evidenced through field studies (11 rural villages in four provinces) undertaken for the June 2006 AREU report on land tenure. By and large, these communities reported that their customary system of managing and recording land rights was effective and provided them with a feeling

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[31] AGCHO, 2003.
[32] McEwen and Whitty, 2006.
[33] AGCHO, 2003.
[34] AGCHO, 2003.
[35] Wily, 2004.
[36] ADB, 2004.

of tenure security. Utilizing these systems, sales of land (usually within the community) are evidenced by informal deeds, signed by witnesses. Transfers through inheritance are often not documented except occasionally with an informal deed or notations on the original deed. To a large extent, villagers rely on oral histories and local community knowledge to determine boundary location. Dispute resolution at a community level by elders or local councils was reported to be largely effective, although some contradictory evidence does exist.[37] The perceived major attractions and benefits of the informal system are accessibility, simplicity, low cost and the confidence. The widely held perception that government officials, including court judges, are corrupt also causes people to use informal rather than formal systems.

Informal land relations in Afghanistan have been described as highly complex and often inequitable.[38] Through a variety of informal land-use transactions such as mortgage and sharecropping arrangements, the informal system sustains significant numbers of absentee land owners and categories of landless tenants. Evidence further suggests that while customary systems may provide a strong foundation for land management, under some situations it may potentially favour elites, specific gender, age or ethnic groups.[39]

Paradoxically, in many communities the government is currently perceived as a threat to tenure, rather than as a source of tenure security. Rural landholders often interpret land rights very differently from officials at the *Amlak* and other government departments. Nevertheless, most rural communities would like to see their existing customary entitlements and documentation formalized in some way to offer them greater protection.

Any future process of land registration would have to recognize these distinctive features of land relations in rural Afghanistan. Although social and legal complexities present further challenges to land registration, there is some utility in the mechanisms that allow communities effectively to manage land rights. Examining Afghan customary land relations, it appears that community-based tenure management is fairly functional. These systems are cheap, simple and rooted in community values; accessibility and local control is perceived to guarantee the integrity of both land records and the system itself.

6.5   Stability and security issues

In Afghanistan, security concerns permeate all aspects of policy making, governance and community land management. Accordingly, any land registration process will need to take into account the prevailing instability at multiple levels.

At the national level, the lack of physical security, the central government's limited reach, and the weakness of the rule of law dominate many aspects of the political agenda. Consequently, despite expressed commitments to community empowerment, rural planning has been accused of leaning toward prescription, centralisation and top-down approaches. Chronic weakness and political unreliability in provincial and sub-provincial governance structures may further exacerbate this trend, resulting in a Kabul-centric political landscape.

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[37] McEwen and Whitty, 2006.
[38] Wily, 2003.
[39] ADB, 2004(a).

The collection and collation of evidence for land ownership will need to overcome a range of problems symptomatic of the current political and security situation in Afghanistan. In addition to the physical destruction of provincial archives during the last decades of conflict, the management of archives in courts and other repositories has been described as deeply corrupt and subject to malpractice. A particular problem has been the production and use of fraudulent deeds (often produced to support acts of illegal appropriation or legally untenable positions). These will undoubtedly complicate the process of ascertaining rightful land entitlements.

The widespread cultivation of illicit crops (primarily opium poppy) also raises important challenges. Research has indicated that control of land and water resources for the cultivation of high value crops may be a contributing factor to the incidence of rural conflict, worsening uncertainty and sensitivity surrounding the ownership of land.[40] To compound this, the illegality of the crop and community fear of eradication or official censure may further hinder the progress of any registration process.

Prospects for land registration in Afghanistan must be placed within the more general context of localized political violence, public insecurity, and indeterminate rule of formal law. While these conditions are not unique to Afghanistan among post-conflict states, they constitute important factors which will influence any land registration initiative.

Particularly over the last decade, warlords and powerful individuals have undertaken the illegal appropriation of both public and private lands on a large scale. In some cases this has been done especially for the cultivation of poppy. Data shows that warlords are among the most common precipitants of land conflict.[41] In the absence of regulatory mechanisms, however, disputes over land ownership are not merely the result of land grabbing by warlords, but also stem from individual opportunism at all levels.

Some three million Afghans displaced by war have returned since 2001, and others continue to do so. This results in a deluge of claims for land now under occupation or use by others. Returnee claims constitute a large proportion of all disputes over private rural land ownership. Indicatively, disputes over private land in villages overwhelmingly concern rights to the entire parcel, rather than disputes over boundaries. The continuing stream of returnees (and other categories of absentee ownership) means that it will be very difficult to ascertain when all claims to a parcel have actually been received. Indeed, the likelihood for the foreseeable future would be a steady turnover of new challenges to current land occupancy.

The current lawlessness and power asymmetries characteristic of the Afghan rural landscape present major challenges for governance structures. While some argue that current conditions of instability pose almost insurmountable obstacles to the registration of land and strengthening of tenure security, others argue that stability and security is unlikely to be achieved until an equitable and effective mechanism of land administration is developed and implemented.[42]

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[40] Koehler, 2005.
[41] McEwen and Whitty, 2006.
[42] Wily, 2003.

7.   A Workable Approach to Land Registration in Afghanistan

There are many obstacles on the path to successful land registration in Afghanistan. Nonetheless, by building on the experiences of other post-conflict countries and an understanding of the Afghan context, it is possible to begin drawing out some preliminary guidelines to inform the development of land registration approaches.

- **An incremental, phased implementation:** Because of the complex and shifting political, legal and social landscapes in Afghanistan, a measured and cautious approach to introducing registration is necessary. Attempting the legal titling of land before appropriate institutional frameworks and adjudication mechanisms are in place, or before land occupancy has begun to stabilize, carries clear risks.

- **Learning by doing:** It is inevitable that many lessons will be learned and understanding will improve through piloting and testing approaches, both with landholders and official stakeholders. Such actions should draw upon feedback from stakeholders and remain adaptive. A measured approach to implementation will best allow continuing improvement.

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

- **Archiving and maintenance of records:** It will be necessary to improve the physical storage environment of records (and ultimately the entering of records into computer databases), and to make records more accessible to users to ensure they can be easily updated. Ideally, land holders should be able to access and update records locally, which would also help ensure transparency. Duplicate copies of records stored at multiple locations can also reduce the risk of tampering, fraud and loss.

- **Starting low-tech:** A new cadastral survey utilizing the latest technologies is wholly desirable and necessary for an effective system of land registration and titling. However, to build the necessary technical capacity to undertake such a survey would take years, possibly decades. Therefore, preliminary and pilot registration activities should utilize existing cadastral information, metes and bounds descriptions, and perhaps GPS data.

- **Preliminary registration of claims:** Until a comprehensive land policy framework emerges (including an adjudication system), a possible starting point is a preliminary registry. This would entail collating land claims evidence of all types, including oral testimony and witnessed statements according to customary law, in the form of a standardized registry for land parcels. A large proportion of these evidentiary documents would be valid and uncontested and therefore might ultimately be tantamount to title, but some would need to be subject to adjudication. A registry of this type would constitute an important first step toward the recognition of legal titles.

8. Toward Land Registration in Rural Afghanistan

Although a land title registration system — derived from a land titling project with its expensive and lengthy components of investigation, adjudication, surveying and mapping — may be appropriate for urban centres or other areas where land is valuable and has an active market, it does not appear appropriate in rural Afghanistan. During field visits to villages in 2005, it was found that most transfers of land ownership arise from inheritance, not from transactions between buyer and seller. Nor are the loans secured by village mortgages normally obtained for land development; they are commonly used for other expenses, such as a bride price.

For these reasons, and given experience in post conflict land administration elsewhere, deeds recording could initially be the land administration system most appropriate to the needs of villagers and government alike. To be most effective, this system could be supported by some form of mapping that enables each land parcel to be correctly shown with respect to its size, shape and location, without the need to display parcel dimensions or areas.

A deeds recording system could be introduced in rural Afghanistan step by step, in accordance with a predetermined priority and as the necessary resources for implementation became available. The establishment of such a system would not interfere with the present method of obtaining or transferring a formal title. Any person, whether or not his or her land lay inside or outside a deeds recording area, would still be free to use the present formal system if they chose to do so. Ultimately, following an appropriate period of time and through a determined system of adjudication, a legal title could be issued.

8.1 Utility of deeds recording

In the short to medium term, a deeds based system could fulfil many of the needs of both land holders and government:

- Deeds recording would register and formalize the claims of individuals to land and include the potential for this registration to be transferred to legal title over time.

- Individuals with recorded interests in land would be offered some level of protection against illegal appropriation or other infringement of those interests.

- Deeds recording would enable individuals to formally record the transfer of their interests in a parcel of land through sale or gift.

- Deeds recording would provide the government with a comprehensive inventory of individual land holdings and usage for land management purposes

- Deeds recording would provide the government with a comprehensive inventory of individual land holdings for taxation purposes.

- A deeds registry is a potential source of revenue: A fee can be charged for the recording or transfers of property rights and interests.

- Deeds recording and land record certificates can help stimulate the rural land market (to the extent that they are likely to develop in rural Afghanistan).

- As a repository of evidence supporting claims of rights to or interests in land, a deeds registry would be an important step toward final adjudication and granting of title (if this is desirable in the longer term).

- The process of managing deeds recording at a local level would, through community participation, help to build legitimacy for land administration

8.2   A parcel-based deeds recording system

A land parcel is a spatial surface of land with a defined shape, size and location, owned privately, collectively or by the state, or held in trust by the state for use by members of the public. Modern land registration systems are parcel-based, not owner-based, though cross-referencing between owner's name and parcel number is possible. Thus, an owner holding three pieces of land in one village holds three separate parcels, not just one.

Different owners may have the same name, so it is not always easy to know which person owns which parcel of land. Even a national ID card is not necessarily proof of identity, for some persons fraudulently obtain two or more such cards under different names.

As one person may own more than one parcel in the same village or elsewhere, it is necessary to know exactly which of those parcels is affected by a proposed land transaction. Owners change but the parcel remains unchanged, except in a situation where the parcel is subdivided into two or more parcels or is consolidated with one or more adjoining parcels into a single ownership.

9. A Pilot Deeds Recording System for Rural Afghanistan

Before embarking on the implementation of a pilot deeds recording system it will be necessary to ensure that it is undertaken under appropriate executive or legislative authority. As it is the government's stated intention to establish rural land registration, a proposed pilot project would be consistent with that objective. Nonetheless, the Ministry of Justice should be consulted to find out what (if any) authority would be required, such as cabinet approval or an act of the legislature.

The pilot project should be overseen by a working group consisting of interested ministries and government agencies, including for example *Amlak*, Ministry of Rural Rehabilitation and Development, Ministry of Agriculture, Ministry of Finance, Ministry of Justice, Ministry of Energy and Water, the Cadastral Department of the Afghanistan Geodesy and Cartography Head Office (AGCHO). Important stakeholders would also be the Land Policy Working Group within the ANDS process and sub-groups on Land Administration. One of those agencies, perhaps the Ministry of Agriculture, should take the lead in implementing the project. It is probable that in the first instance the pilot deeds registries would need to be carried out under expert supervision.

The proposed pilot registration exercise — perhaps conducted in several villages — would not only be a testing opportunity for achieving the best design for a deeds recording system; it would also serve as a training exercise for government staff. Upon receiving this training, these staff persons could be subsequently engaged in extending the system to other districts and provinces, if that becomes feasible and desirable. The establishment of the pilot registries would probably need to occur within the context of an externally funded project. A list of suggested training content to be delivered to government staff working on the pilot deeds registration project is given in Appendix III.

A project team and leader would need to be appointed by the oversight group to undertake the field work. The members of the team should receive training in the collection and recording of field data, interviewing techniques and the basic elements of field surveying. A simple manual register should be designed for the purpose of recording the transactions affecting each parcel.

For the purposes of piloting a system of deeds registration, it would be necessary to select at least two villages where the local community can be reasonably expected to support such a system. It would be most important that the village residents be actively involved in the project and that they fully understand its purpose.

It would also be necessary to allay any fears or suspicion that the proposed recording system could lead to government seizure of land if the owner cannot show evidence of formal or customary title. Some villagers may also see the recording of their land as the first step towards increased property tax; thus it is not uncommon to find people who do not want other people to know what land they own or how they acquired it. A series of meetings would have to be arranged with the villagers to explain the process and persuade them of the benefits to be derived from the recording system.

In choosing the pilot area or areas, advice on which villages are most likely to accept and participate in the pilot deeds recording project should be sought from informed authorities, such as *Amlak* and the Ministry of Rural Rehabilitation and Development.

Claims to land within the village should include the recording of all forms of evidence, including documents and the statements of witnesses to transactions. Oral statements should be reduced to writing, signed or marked and witnessed.

It is important that the approach to pilot deeds recording be incremental and adaptive. At each stage, progress should be reviewed by both stakeholders and staff through workshops or discussions to ascertain whether any improvements could be introduced. At the national level, the progress of deeds recording pilot projects would be overseen by the Land Policy Working Group, and this body should determine how the approach could be beneficially modified as recording continues, thus creating a system of feedback and continuous improvement (see Figure 2).
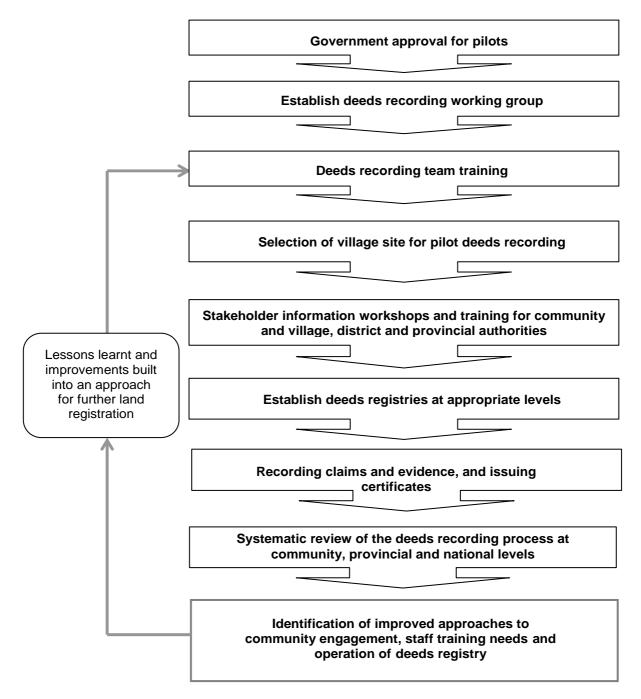
Figure 2: Steps to introducing pilot recording of deeds

9.1   Cadastral mapping

Because of the expense and time required to complete a new cadastral survey, the proposed pilot project should make use of the resources that are most readily available. It would be advisable to select pilot villages from among the 5,379 villages mapped during the cadastral survey undertaken during the 1960s and 1970s. Although many of the ownership records compiled as a part of that survey are no longer current, many of the parcel boundaries are either unchanged or the changes can be indicated and noted on a copy of the original map. The cooperation of the Cadastral Department would be needed to obtain a copy of the cadastral maps that cover the pilot project areas.

While it would be an advantage to tie deeds recording to existing cadastral maps, it is also possible to undertake a preliminary form of recording without them, as has occurred in several other countries. Such systems do not require precise descriptions of the size and shape of each land parcel, yet its relationship to adjoining parcels should be obtained wherever possible. Some systems do not even require a graphical depiction of the parcel itself, even though that is desirable. In such situations, parcel boundaries are usually described in deeds either by metes and bounds or by adjoiners. A metes and bounds description starts at an identifiable corner of the parcel, describes each side of the parcel consecutively in terms of its length and direction and mentions any bound, such as a tree or stream that represents a boundary end. A description by adjoiners also starts at one corner of the parcel and each parcel boundary is described in terms of the name of the adjoining parcel or its proprietor. Deed descriptions of this kind are widespread in rural Afghanistan.

A more sophisticated alternative to the use of traditional surveying equipment to produce metes and bounds descriptions would be to track the boundaries of a parcel (or record the location of boundary landmarks) using a hand-held GPS device. This would produce accurate data at low cost that can ultimately be transferred into a GIS-based cadastral system, when this finally becomes available.

9.2   Parcel index map

Where cadastral maps are available for the villages selected for pilot deeds recording, these can be utilized to underpin the registry. The information recorded on the registry index map is very simple.

The map will show each parcel in its correct shape, location and relationship to adjoining parcels. Each of these parcels will be identified by its own unique parcel number. Beyond this information, there is no need to show boundary measurements or the type of physical demarcation.

A conventional (paper) index map showing cadastral parcels should be of no greater scale than is sufficient to show the required detail. If the scale is too large, paper is wasted; if it is too small, then it may be difficult or impossible to read the information. For rural areas, a map scale of 1:5,000 is normally suitable. At that scale, a square-shaped parcel containing an area of one *jerib* measures approximately 44.2 metres along each side. On the map, each side would be almost 9 millimetres. That scale would probably be just large enough to print the parcel number within the parcel limits. However, a smaller parcel containing for example 0.5 *jerib* would be difficult to portray clearly at that scale.

In the absence of a registry index map, metes and bounds descriptions or GPS coordinates can alternatively be recorded into the parcel register and overlaid (digitally or physically) on to a suitable survey map when this becomes available.

9.3   Implementation approach

A deeds recording system will not operate satisfactorily unless the records are complete and kept up to date. This is particularly important for pilot registration sites, in order to demonstrate the utility of the register once it is complete and operational. For this reason, systematic recording is to be preferred over a system where owners and holders of other land interests are free to sporadically register their documents. As an incentive to record, one possibility would be to waive the fee for the initial recording of information relating to each land parcel, and to apply a reasonable fee for all subsequent recorded transactions affecting that parcel.

However, it is important that land owners and others fully understand the benefits and prudence of recording voluntarily the rights and interests they have in a particular land parcel. All land parcels in a deeds recording area, whether privately owned, village common pasture, government land, or public land, should be numbered and recorded.

9.4   Parcel register and parcel files

The parcel register, containing a separate page for each parcel, should consist of a number of columns showing the names of the parties to a transaction affecting the parcel, the date of the transaction, the type of transaction (such as sale or mortgage) and the date the transaction was recorded. A specimen page of the Parcel Register is given in Appendix I.

The project team should note and record any disputes that come to their attention but should not attempt to settle them. This can be done by entering words such as "ownership in dispute" or "boundary with Parcel no. xxx in dispute" on the parcel page. Once these disputes are settled the parcel pages can be amended accordingly.

A separate file for each parcel should contain a copy of all the available documents relating to the initial claim of ownership to the parcel and a copy of each document that supports every subsequent transaction affecting the parcel. Original documents submitted by owners and other persons in support of their claims should be returned to them as soon as the documents have been photocopied or photographed and recorded.

It is essential to keep the deeds register in a secure place, as free as possible from the risk of fire or water damage. At least one back-up copy of the register should also be maintained, preferably stored on a computerized system (see below).

9.5   The land record

Land rights and interests that are entered into a deeds recording system are evidence, not proof, of title — though in many instances that evidence may be sufficiently strong to amount to proof. Since many owners prefer to have their own personal documentary evidence of their recorded rights, each recorded owner should be issued a simple certificate containing the following information:

- Name, national ID number, and address of the recorded owner(s)

- Parcel number and cadastral map number

- Name of village, district and province

- Legal interests affecting the parcel:

  1. Mortgage (giving name, address and ID number of the mortgagee (lender)

  2. Lease (giving name, address and ID number of the lessee (tenant)

  3. Servitude (giving name, address ID number and parcel number that benefits from or is burdened by the servitude)

- A signed statement by the recording officer that the certificate containing the above information was issued to the recorded owner on the specified date

A specimen Land Record Certificate his given in Appendix II.

9.6   Operating and maintaining the deeds recording system

Initially, the deeds recording system may have to consist of a manual register, with a transfer to a computerized system as soon as the necessary resources and trained personnel are available. There may be a temptation to centralize deeds recording to achieve greater efficiency of operation, but owners and others will be reluctant to use the system if travelling to the deeds recording office to record a transaction means a long and inconvenient journey. Furthermore, as is apparent in other countries, administrating and maintaining the registry locally will add to its credibility and transparency. It is strongly recommended that village authorities and elders — the *shura,* Community Development Council or some other locally-based institution — play a role in the management of the register.

However, it serves the interests of all parties for duplicate copies of the register to be held in multiple locations. This will not alone improve security against damage, loss or falsification of records but will improve its accessibility at all levels. It is recommended that the village copy of the registry be considered the master (at least until such a time until the whole system can be computerized).

The responsibility for operating and maintaining the deeds recording system should rest with one or more of the following authorities:

- Village authority only

- District (*Amlak*) with village cooperation

- Province (Cartographic department) with district and village cooperation

Regardless of which authority is responsible for operation and maintenance, the records of the deeds recording system should be accessible by government ministries, and by members of the public upon payment of a reasonable search fee. The deeds recording personnel must be given appropriate training and must be provided with the necessary office space, archives, equipment and financial resources.

9.7   Congruency with current policy and practice

It is significant that the recommendation to establish pilot deeds registries at several village sites is wholly consistent not only with government policy, but with broader efforts by donor-supported programs working on issues of rural land tenure security. A brief overview of land rural tenure related actions in Afghanistan is given below:

Draft Land Policy (GoA)

The Draft Land Policy has been developed through an inter-ministerial working group and encompasses most of the land policy aspirations of Afghanistan. Specifically:

- The Land Policy emphasizes the need for improving tenure security in rural Afghanistan (2.1.1).

- The Land Policy states that land rights should be determined by a community-based adjudication process that should recognize customary entitlements (2.2.6).

- The Policy states that an institutional framework should be developed for streamlining the certification and registration of land, with due access be given to the public (3.1.2).

The I-ANDS Land Administration Benchmark (GoA)

The I-ANDS benchmark declares that:

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

- Registration for rural land will be under way by Jaddi 1386 (end-2007).

Rural Land Administration Project (ADB/DFID)

The Rural Lands Administration Project (RLAP) is currently piloting a system of recording community-agreed land rights to public land through the collection of documentary evidence, oral testimony and negotiated agreements within communities. Significantly RLAP is also working with community *shuras* and customary institutions, encouraging them to play a growing role in local land administration. RLAP also proposes the archiving of notarized land agreements at the community level as well as the transfer and management of records at higher levels of government. The RLAP project proposes to provide training for government employees to enable them to extend the process of recording land agreements more widely.

Land Conflict Resolution Project (WB/MAIL)

The Land Conflict Resolution Project, implemented by AREU in cooperation with the Norwegian Refugee Council, has recently commenced piloting a series of community-based extra-judicial approaches to resolving disputes over land tenure in rural communities. The pilot projects will include a range of land related disputes including those over private land and those over common property. The outcome of these dispute resolution processes will be a community recognized right of tenure (or other form of interest) in land for any given land parcel. This right or interest will be recorded through some form of witnessed agreement certificate or

document. It is envisaged that the Land Conflict Resolution Project will work closely with the RLAP, both in terms of developing the final land use agreements and in providing training and capacity for government staff.

Sustainable Agricultural Livelihoods in Eastern Hazarajat (FAO/DFID)

The Sustainable Agricultural Livelihoods in Eastern Hazarajat (SALEH) project seeks to establish new guidelines for the community-based management of pastures through a legal devolution of custodianship to entitled villagers (and other stakeholders in their use). The project recommends registration of pasture rights held at individual, village, community or district levels, using simple extra-judicial methods. It also emphasizes the importance of recognizing customary rights of access to pasture in determining and recording entitlements.

The proposal for piloting community-based and administered deeds recording as a step toward adjudicating legal title is fully consistent with the wider range of land administration related projects and policies currently under way. The premise of community empowerment and simple, extra-judicial registration is common to most of these approaches and it is easy to envisage the development of common repositories for diverse types land administration documentation evolving at appropriate levels. Community-based deeds recording would be particularly complementary to the work of the RLAP project, which is already investigating the possibility of registering interests in private rural land. Implementation of a pilot deeds registry, independent of a full cadastral survey, would be consistent with the I-ANDS land registration benchmark.

10. Conclusion

The recent completion of the Draft National Land Policy takes Afghanistan an important step closer to effective land administration. However, beyond the general statement of principles for land management, there is a need to identify practical and appropriate steps to achieve these national policy goals and I-ANDS land administration benchmarks. At present, there appear to be very few options. Leaving things as they are would fail to alleviate the existing problems, while embarking directly on a national rural land titling project, supposing it could ever be justified, would take millions of dollars and many years to accomplish. Therefore, a deeds recording system as described in this paper is a realistic intermediate option.

The implementation of a pilot deeds recording project would test the methods employed and obtain the reaction of villagers in the pilot areas to a deeds recording system. It would also indicate whether such a system should be extended to other areas, and if so, what changes should be made to the system in light of the pilot project results. It must be emphasized that undertaking the proposed pilot project would not require the alteration of existing land laws. If the project proves successful and a deeds recording system for rural Afghanistan is adopted by the government, appropriate legislation (such as a Deeds Recording Law), would be required to bring the system into force.

A pilot deeds recording project could be reasonably inexpensive by using simple techniques for collecting and recording land ownership and other land rights in rural Afghanistan. In the event that the government is unable to find the necessary resources, it is possible that a donor organization would be willing to provide funds for the pilot project.

Appendix I: Specimen Parcel Register Page

PARCEL REGISTER

(Parcel Number, Map Number, name of Village, District, Province)

Date of Transaction	Type of Transaction								Date Transaction Recorded
	Sale		Inheritance		Lease		Mortgage		
	Seller	Buyer	Testator	Beneficiaries	Lessor	Lessee	Lender	Borrower	Other (Servitude, sharecropping, etc.)	

Appendix II: Specimen Land Record Certificate

LAND RECORD CERTIFICATE

This is to certify that (insert name, ID number, address) has recorded evidence of ownership of (insert Parcel number, map number) in (insert name of village, district, province).

Evidence of the following encumbrances is also recorded against (insert Parcel number):

Lease: (insert name of lessee)

Mortgage: (insert name of lender)

Servitude: (insert number of parcel that benefits from or is burdened by the right-of-way or other type of servitude)

The information contained in this certificate is valid only at the date of issue. For subsequent recorded transactions affecting the parcel please refer to the Parcel Register in the Deeds Recording Office at (insert location).

Issued at: (insert name and location of the Deeds Recording Office)

Issued by: (insert name and title of Deeds Recording Officer)

Signature:

Date of issue:

Appendix III: Training Requirements

Outline training prospectus for GoA implementation team

The implementation of pilot land registries at selected villages would necessarily involve training of appropriate staff from stakeholder GoA institutions in the key skills and knowledge required to implement this form of land registration. Syllabus content should include the following:

- Afghan land policy and law

- Introduction to and use of cadastre

- Principles of land title registration and deeds recording

- Practice of deeds recording and issuing certificates

- Community engagement techniques for introduction of a deeds recording system

- Training and capacity building of community for deeds recording

- Collecting and documenting oral testimony

- Management and storage of deed records

- Use of GPS and other appropriate surveying technology

- Writing and recording metes bounds descriptions

- Linking village based registries to district and provincial *Amlak* offices

- Principles for transfer of registry-based information into a computerized land information system

Appendix IV: Informants and interviews

Persons interviewed in Kabul

Name	Title
Cullen, Greg	Team Leader, Perennial Horticulture Development Project
da Cruz, Fernando	Urban Profiling and Planning Advisor, UN-HABITAT
Fernando, Nihal	Senior Development Specialist, The World Bank
Gebremedhin, Y.	Land Titling Team Leader and Legal Adviser, Emerging Markets Group, USAID Land Titling and Economic Restructuring in Afghanistan (LTERA) Project
Hernandez, Andre	Land Titling Component Manager, Emerging Markets Group, USAID Land Titling and Economic Restructuring in Afghanistan (LTERA) Project
Jawad, Ghulam M.	Technical Deputy Minister, Ministry of Agriculture & Irrigation
Khan, Alhaj Nazar M.	Deputy Head, Cadastral Department, AGCHO
Leslie, Jolyon	Chief Executive Officer, The Aga Khan Trust for Culture
Maassen, Gregory F.	Chief of Party, Emerging Markets Group, USAID Land Titling and Economic Restructuring in Afghanistan (LTERA) Project
Naser, Abdul Hai	Director, Land Clarification Department, Amlak, Ministry of Agriculture
Rahmatzai, Hyatullah	Assistant Protection Officer, UNCHR Field Office
Safar, Mohammad Y.	Land Administration Specialist, Ministry of Agriculture
Stanfield, J. David	Terra Institute, Interim Team Leader, ADB Capacity Building for Land Policy and Administration Reform
Wahidi, Abdul H.	CNTF & Strategy Director, Ministry of Counter Narcotics
Yaqeen, Zohurullah	Head of Cadastral Department, AGCHO
Weeks, Herschel	Team Leader, Asian Development Bank Technical Assistance to Afghanistan, Capacity Building for Policy Reform
Yosufe, Aqbal	Director General, Property Department (Amlak), Ministry of Agriculture

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