



USAID | **AFGHANISTAN**
FROM THE AMERICAN PEOPLE

LANDREFORM IN AFGHANISTAN (THE LARA PROJECT)

Follow-On Notes on the Legal Aspect of Urban
Planning in Afghanistan
May 2013

May 2013

This publication was produced for review by the United States Agency for International Development .It was prepared by Tetra Tech ARD.

This report was prepared for the United States Agency for International Development under Contract No.306-C-00-11-00514-00, Land Reform in Afghanistan

Principal Contacts: Nigel Thomson
Senior Technical Advisor/Manager
ARD, Inc.
Burlington, VT
Tel. +1802 658-3890
Nigel.Thomson@tetrattech.com

Gwendolyn C. Caggiano
Project Manager
ARD, Inc.
Kabul, Afghanistan
Tel. +93 (0)798 275 837
Gwendolyn.Caggiano@Lara-af.com

Justin T. Holl, Jr | Chief of Party
Chief of Party
ARD, Inc.
Kabul, Afghanistan
Tel. +93(0)78 583 2874
justin.holl@tetrattech.com
justin.holl@lara-af.com

Implemented by:

Tetra Tech ARD
159 Bank Street, Suite 300
Burlington, Vermont
ard@tetrattech.com

LAND REFORM IN AFGHANISTAN (THE LARA PROJECT)

Follow-On Notes on the Legal Aspect of
Urban Planning in Afghanistan

May 2013

By: Yohannes Gebremedhin
Legal Consultant
LARA/USAID

DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government

Table of Contents

PREFACE 1
ACRONYMS AND ABBREVIATIONS 3
1. ROUNDTABLE MEETING..... 4
2. FOLLOW-ON MEETINGS WITH RELEVANT MUDA OFFICIALS 5
3. CONCLUSION 6

PREFACE

The United States Agency for International Development (USAID) Land Reform in Afghanistan Project (LARA Project) is managed by Tetra Tech ARD under USAID Contract No. 306-C-00-11-00514-00, with implementation assistance from its partners Tetra Tech DPK, International Land Systems (ILS), Development & Training Services Inc. (dTS), and Landesa (formerly the Rural Development Institute).

LARA project's primary government partners are MAIL/Arazi (formerly the Afghan Land Agency), the Ministry of Urban Development Affairs (MUDA), the Independent Directorate of Local Governance (IDLG), as well as the Supreme Court and selected local municipalities.

The purpose of the LARA project is to develop a robust, enduring, and Afghan-owned and-managed land market framework that encourages investment and productivity growth, resolves/mitigates land-based conflict, and builds confidence in government's legitimacy, thereby enhancing stability in Afghan society.

The Project continues USAID/Afghanistan's support for land reform and land rights strengthening that began through the earlier LTERA Project. The LARA project currently comprises an 18-month Base Period and an 18-month Option Period, with a contract amount of \$41.8 million. The LARA project is designed to contribute to USAID's AO and Afghanistan National Development Strategy. Three influences will help shape The LARA project's contributions to this Objective: (1) the foundations provided by the former USAID Land Tenure and Economic Restructuring in Afghanistan (LTERA) project that provides a starting point and methods that can be adapted; (2) USAID/Afghanistan management objectives including Afghanization and conflict mitigation; and (3) the following major LARA project objectives:

- Improve property rights delivery (land administration and formalization);
- Enable all citizens (women, minorities, and vulnerable populations) to exercise their rights through public information awareness (PIA);
- Strengthen land dispute resolution processes to reduce conflict and promote peace and stability;
- Promote economic development through clear and enforceable property rights, PIA, land rights delivery, and land dispute resolution; and
- Strengthen institutional, policy, and legal reform to secure property rights for Afghan citizens;
- Provide assistance in the cross cutting areas of gender, training, PIA, and private sector development. These objectives are supported by three components that provide the overarching structure for Programming activities and tasks in the work-plan areas follows:

1. **“Informal Settlements & Formalization”**- Support MUDA, AGCHO, IDLG, and the Municipality of Jalalabad with informal settlements upgrading, formalization, cadastral mapping, laws for urban planning and land use regulation, and training in planning and enforcement. Also, this project strengthens tenure security by supporting the Supreme Court and communities with rights formalization and informal dispute resolution.

2. “**Legal Framework**”- Provide limited assistance to MAIL/Arazi to identify, manage, lease, and obtain revenue from Afghan government lands and provide targeted technical assistance.
3. “**Capacity Building**”- Build capacity of public (AGCHO, MAIL/Arazi, IDLG, MUDA, Supreme Court) and private sector land service providers to improve and streamline land tenure processes to Afghan private and public sectors.

ACRONYMS AND ABBREVIATIONS

AGCHO	Afghan Geodesy and Cartography Head Office
AO	Assistance Objective
MAIL/ARAZI	Afghanistan Land Authority
DUDA	Department of Urban Development Affairs
GIRoA	Government Islamic Republic of Afghanistan
GDMA	General Directorate of Municipal Affairs
IDLG	Independent Directorate of Local Governance
LARA	Land Reform in Afghanistan
MAIL	Ministry of Agriculture, Irrigation, and Livestock
MUDA	Ministry of Urban Development Affairs
PIA	Public Information Awareness
USG	United States Government
USAID	United States Agency for International Development

1. ROUNDTABLE MEETING

The Consultant's Terms of Reference required that the consultant follows up on proposed improvements to the legal framework for urban planning in Afghanistan. The Consultant was instructed to touch base with stakeholders that were consulted for preparing USAID's 2012 reports "*The Legal Aspects of Urban Planning in Afghanistan*" and "*Designing a Legal Framework for Urban Planning in Afghanistan: Guidance Report*". Further, the consultant was required to organize roundtable discussions on the possible follow-up of the proposed recommendations. To fully satisfy the objectives of this requirement the consultant acted at two levels: 1) In collaboration with the Senior Technical Adviser to the President, the consultant organized a roundtable discussion that was participated by senior urban planners and advisers from the Ministry of Urban Development Affairs (MUDA) and the Independent Board of Kabul New City Development, Dehsabz-Barikab City Development Authority (DCDA); 2) Held discussions with the Director of Urban Planning at MUDA.

An informal roundtable consultative meeting was held on the 27th of March 2013 at the office of H.E. Engineer Pashtun, Senior Technical Adviser to the President. Present at the meeting were: H.E. Engineer Pashtun, Dr Said Sharif Hossainy, MUDA, Senior Technical Adviser, Dr Abdul Nemat, MUDA, Adviser, Engineer M. Nadir Omar, DCDA, Director of Infrastructure Division, and Dr Yohannes Gebremedhin, LARA/USAID Legal Consultant.

The roundtable meeting focused on the main deficiencies and gaps in the existing legal framework for urban planning and discussed the legislative challenges and proposed solutions in regard to the main issues including institutional arrangements, types and contents of development plans, procedures for preparation, revision and approval of development plans. The meeting also discussed the disparity between the law and the practice and agreed on the need to shift from the current approach of trying to address such issues administratively or politically to dealing with them legislatively. The roundtable meeting was useful in terms of building consensus amongst key urban planners and pertinent officials' on critical issues pertaining to the legal aspects of urban planning and processes for legislative reform.

Engineer Pashtun opened the meeting by giving brief explanation on the purpose of the consultative meeting. At the onset he reminded the participants that the main problem of the urban sector is not only lack of adequate policy or legislation but also lack of strict enforcement of and non-observance of existing laws and policies. He also explained that impunity such as in instances of land grabbing affects all developments in general and urban development in particular. He further explained to the participants the mandates and activities of the two commissions that were formed recently by virtue of a presidential decree to deal with land grabbing related issues. At the end of his opening remarks, he reminded the participants that he organized the meeting to seize the opportunity of the consultant's presence in Kabul to follow-on the discussion the informal working group had on issues relating to urban planning. He then asked the Consultant to explain his recent report on the legal aspects of urban planning in Afghanistan.

The consultant explained the main deficiencies and gaps in the existing legal framework for urban planning and discussed the legislative challenges and proposed solutions in regard to the main issues including institutional arrangements, types and contents of development plans, procedures for preparation, revision and approval of development plans. He also explained the disparity between the law and the practice and the need to shift from the current approach of trying to address such issues administratively or politically to dealing with them legislatively.

Dr Nemat gave practical example in relation to the inadequacy of the existing laws that are relevant to urban planning. He then went on to explain that MUDA has been preparing different types of

development plans including regional plans, provincial plans and master plans based on authority evolved from practice rather than one derived from the law. He explained how he was instrumental in starting the preparations of regional plans. He informed the participants that there is a draft regulation that has yet to be approved by the government. And he advised the participants that it would be important to check the draft provisions of the regulation against the recommendations made by the recent report that the consultant prepared for LARA/USAID. He also explained the issues surrounding approval of development plans. He suggested that any future law should clarify what type of development plan should be approved and by whom.

Engineer Nadir Omar emphasized that the insufficiency of the law is an obstacle to properly manage urban planning related matters. He also stressed that the responsibilities of all relevant entities should be clearly defined. He further underlined that lack of coordination between the different relevant authorities and lack of awareness of planning issues cause problems. At the end of his talk, Engineer Nadir Omar suggested that reducing the report on the legal aspects of urban planning in Afghanistan into a single or two pages table would facilitate discussions among professionals and officials.

The participants also discussed on how to continue working together on issues pertaining to urban planning. On this, it was agreed that the group – including those who attended the previous meeting – will work as an informal and independent group to influence the views on urban planning related matters.

2. FOLLOW-ON MEETINGS WITH RELEVANT MUDA OFFICIALS

Aside from holding the roundtable meeting, a related follow-on activity conducted by the consultant was holding discussions with Engineer Ahmad Shah Hemat, the Director of Urban Planning at MUDA, and with the Head of the Directorate of National Building Codes and Regulations, MUDA. The Director of Urban Planning at MUDA praised the technical assistance provided by LARA in relation to the legal aspects of urban planning in Afghanistan. In addition to praising the usefulness of the reports prepared on the legal aspects of urban planning in Afghanistan, Engineer Hemat commented that the presentations and the consultative meetings that preceded the preparation of the reports provoked him and his team to think more seriously on key legal issues relating to urban planning. Consequently, he said, MUDA has addressed the issue of coordination with municipalities in relation to preparing and implementing development plans by signing a memorandum of understanding with IDLG/GDMA. Pending legal reform, MUDA (in collaboration with the Independent Administrative Reform and Civil Service Commission) has also recently simplified its procedures for: 1) formalization of private and public townships; 2) supervision of the development of detail plans for approved townships; 3) preparation of township detail plan by the private sector.

In the meeting that the consultant held with Engineer Mohammad Sharif Dahyan, the Head of the National Building Codes and Regulations Directorate, Engineer Dahyan confirmed that the Directorate has recently drafted a Law on Urban Planning and Housing. The draft law is currently being examined by the Legislative Department at the Ministry of Justice.

The proposed law consists of five chapters and twenty one articles. Chapter one consists of general provisions including the basis for the issuance of the proposed law and the objectives of the proposed law. Chapter two of the proposed law deals with the organization, duties and responsibilities of MUDA, and the proposed High Commission for Urban Development and Housing. Chapter Three pertains to construction violations and penalty. Chapter four embodies provisions on housing. Chapter five contains miscellaneous provisions, which deal with budget and issuing regulations, manuals and guidelines. The proposed law provides for various types of development plans including comprehensive national plan, master plan, detail plan and strategic plan.

As legislative instrument for urban planning - viewed from both domestic law and comparative law perspectives - the provisions of the proposed law can be characterized as scanty. The draft law clearly falls short from addressing key institutional and legal challenges relating to urban planning. Due to weak or ineffective cross-departmental communication within MUDA, at the time of the meeting, the Head of the Directorate of the National Building Codes and Regulations was not aware of the reports on the legal aspects of urban planning that were prepared by LARA in 2012.

3. CONCLUSION

This consultancy has identified key deficiencies and gaps in the existing legal framework for urban planning and has also provided recommendations on the way forward. Moreover, through a series of consultative sessions, workshops and “legal clinics”, the consultancy has made significant contribution in terms of enhancing the knowledge of those who are directly and indirectly involved in dealing with urban planning issues in Afghanistan.

With due attention to the recommendations and suggestions set forth in the reports produced by this consultancy, it should be possible to develop an appropriate legal framework for urban planning in Afghanistan. Although MUDA has recently made positive moves to address issues pertaining to urban planning, given the lack of adequate legal capacity, an appropriate technical assistance is needed to facilitate the development of an appropriate legal framework for urban planning.

U.S. Agency for International Development

1300 Pennsylvania Avenue, NW

Washington, DC 20523

Tel: (202) 712-0000

Fax: (202) 216-3524

www.usaid.gov