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# **LAND REFORM IN AFGHANISTAN (LARA)**

## **Institutional Assessment**

**17 April 2012**

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### **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.

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# ACRONYMS AND ABBREVIATIONS

AGCHO	Afghan Geodesy and Cartographic Head Office
AIMS	Afghanistan Information Management Services
AMLAK	Land Management General Directorate of MAIL
ANDS	Afghanistan National Development Strategy 1387 – 1391 (2008 – 2013)
DFID	United Kingdom Department for International Development
DUDA	Directorate of Urban Development Affairs
GDMA	General Directorate of Municipal Affairs
GIRoA	Government of the Islamic Republic of Afghanistan
IDLG	Independent Directorate of Local Governance
LIS	Land Information System
MAI	Ministry of Agriculture, Irrigation and Livestock
MoCIT	Ministry of Communication and Information Technology
MoF	Ministry of Finance
MoJ	Ministry of Justice
MoIA	Ministry of Interior Affairs
MUDA	Ministry of Urban Development Affairs
<i>Tasfia</i>	Land Rights Identification Process
USAID	United States Agency for International Development

# PREFACE

The United States Agency for International Development (USAID) Land Reform in Afghanistan Project (LARA) 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, Thomson Reuters, Development & Training Services Inc (dTS), and Landesa (formerly the Rural Development Institute). LARA's primary government partners are 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 Work Plan, however, contemplates a single project term ending in January 2014.

LARA is designed to contribute to USAID's AO and Afghanistan National Development Strategy. Three influences will help shape LARA'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 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;
- Strengthen institutional, policy, and legal reform to secure property rights for Afghan citizens; and
- Provide assistance in the cross-cutting areas of gender, training, PIA, and private sector development.

These objectives are supported by four components that provide the over-arching structure for programming activities and tasks in the work plan are as 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 (related to SOW Activities 1 & 2).
2. **“Strengthen Land Tenure Security”** - Strengthen tenure security by supporting the Supreme Court and communities with rights formalization and informal dispute resolution (related to SOW Activities 3, 4 & 5).

3. **“Legal Framework”** - Provide limited assistance to ARAZI to identify, manage, lease, and obtain revenue from Afghan government lands and provide targeted technical assistance (related to SOW Activities 6 & 7).
4. **“Capacity Building”** - Build capacity of public (AGCHO, ARAZI, IDLG, MUDA, Supreme Court) and private sector service providers to improve and streamline land tenure processes to Afghan private and public sectors (related to SOW Activity 8).

# INTRODUCTION

The land administration institutions in Afghanistan continue the historical purpose for land management, which has been to increase the revenues of government. Land inventories, land identification and settlement, land transfer and exchange between government agencies, leasing of government land, dispute resolution, and “registration” are all primarily directed toward this end. Even discussions of increasing investment are geared toward increasing government revenues. The Land Management Law and the Law on Survey, Verification, and Registration are formulated and structured for this purpose. Increasing government revenue is an important element for the management of land administration, but not the only objective.

Well administered land resources contribute to productivity, economic development, political and cultural stability, health, community and family cohesion, and the overall prosperity of the nation. The private sector is instrumental in realizing these objectives where the legal and administrative framework for land administration support secure private land tenure and allow and encourage market land transactions. Secure private land tenure allows a person to make his or her own long term decisions regarding the use of the land and derive a valuable economic benefit from its use.

The governmental land administration institutions in Afghanistan are not well structured to encourage private sector development. This is, in part, attributable to the concern for increasing government revenues and the realignment of institutions over decades. In addition, policy considerations to remedy displacement, land usurpation, and to provide for equitable redistribution of land weaken security of tenure and have led to the necessary emphasis on identifying land parcels, settling claims to the land, and creating a record of the existing rights to land. This results in the establishment of committees and commissions represented by the various governmental organizations at the central level as well as at the provincial level, with concurrent and often conflicting responsibilities in an effort to settle the use and management of land parcels. Land records are also not well organized. Various governmental organizations are charged with establishing land records and there is little or no coordination among them. The result has compromised the cohesion among institutions that is required for good land governance.

In addition, the governmental organizations operate as quasi-private institutions that “own” the governmental land within their respective jurisdictions. This can be seen, for example, in the land transfer and exchange functions of ARAZI that is responsible for transferring land to other governmental organizations where this has been deemed appropriate. At a recent workshop on amendments to the Land Management Law, for example, a member of the Ministry of Finance suggested that ARAZI transfer all municipal land within its jurisdiction to the Ministry of Finance<sup>1</sup>, which has established its own land and property department and is reputedly drafting its own land management legislation. These governmental institutions operate with an autonomy geared to the increase and maintenance of their own influence and control over land issues, rather than operating with an integration directed at the public weal. Each new attempt at developing a legislative framework for land management is only politically viable if the interests of these separate governmental units are recognized.

Thus, the current institutions are a palimpsest of decades of shifting authorities and land policies with remnants of old institutions recognizable in the new. Land issues are always fundamental, but the unique history in Afghanistan makes public sector land administration particularly complicated. Functions, authorities and

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<sup>1</sup>It is unclear from the legislation whether or not ARAZI has jurisdiction over any land within municipal boundaries.

powers of land administration always reflect political, institutional, financial, and personal interests and have a national as well as local import.

Public sector agencies such as ARAZI, MUDA, AGCHO, and IDLG are in the nascent stages of developing the organizational and technical capacity to manage, plan, and administer the land resources of Afghanistan. The judicial arm of the State also has a role in land reform, administering title deeds and other land records, as well as exercising the normal adjudicatory role of the courts in the country. Although there has been much written about the agencies, a consolidated and focused analysis of the institutional framework, management structures, human resources, capabilities and the needs of each agency, and the interaction among the agencies is needed.

This assessment looks at the following institutions:

- ARAZI,
- AGCHO (Cadastral Department),
- MUDA,
- IDLG,
- Supreme Court (Central Makhzan), and
- Jalalabad based branches of the above mentioned institutions.

This document identifies the primary duties, personnel and organizational structure, and procedures to clarify gaps and overlaps in authority and anomalies in the organization and implementation of public land related functions to the extent that information has been available. The assessment looks at each institution with reference to the LARA Project work plan and offers findings and recommendations that may assist in integrating functions within and across agencies. The assessment also formulates assistance for not only the administration of land resources, but in securing adequate and appropriate services for the citizens.

# CHAPTER I: ARAZI

## Background

The GIRoA has been engaged in land administration, primarily as a means of collecting taxes, since the early 1900's and this activity has historically been the responsibility of the Ministry of Interior Affairs and the Ministry of Finance respectively, subsequently transferred to the Ministry of Agriculture, Irrigation and Livestock (MAIL). There continues to be a presumption that the tax rolls contain the names of the true owners of the land, and this has been codified in the Land Management Law of 2008.

Attempts to improve the accuracy of the tax rolls and increase tax revenues from time to time, by relying on voluntary declarations by landowners (Land Declaration Law of 1960), met with little, if any, success leading to additional attempts to improve revenue generation. In 1963 Amlak (Land Affairs) and Cadastre Directorates were created under the supervision of the Ministry of Finance resulting in the first accurate multi-purpose land inventory. However, this land inventory did not involve the document registration of the courts. In 1973 the Cadastre was separated from the Ministry of Finance and merged into the Afghan Geodetic & Cartographic Head Office (AGCHO) leaving Amlak without direct access to cadastre maps.

Land reform was assigned to Amlak, which completed a survey and collected information regarding 800,000 landowners and established new land quality classifications. Amlak was transferred from the Ministry of Finance to the MAIL in 1978, and thereafter, under Soviet influence, land reform focused on expropriation of large land holdings and redistribution to poor and homeless persons, which was generally unpopular. In 1991 land reform came to a halt and Amlak lost most of its personnel and support. Nevertheless, Amlak Department had limited operation until it was merged in 2010 with the Afghan Land Authority (ALA) which had been created in 2009 within MAIL. The merged organization was named ARAZI.

## Legal and Governance Framework

In 2009 ALA was created within the MAIL to act as a one-stop-shop for leasing government land to the private sector in order to improve land use and increase revenues for the government. On 31 August 2009, the Cabinet of Ministers by decision #24 followed by Decision of the Cabinet of Ministers #23, dated August 2010, merged Amlak with the Independent Commission for the Restitution of Illegally Occupied Land, which had been created by Presidential Decree # 638 dated 22 April 2010, and ALA, naming the resulting organization ARAZI and consolidating more than 900 Amlak employees with 337 offices spread across all 34 provinces. These offices are located in the capital of each province and most of the rural districts.

ARAZI was granted all the authority and the responsibilities of Amlak, ALA, and the Independent Commission for the Restitution of Illegally Occupied Land and has a primary role in carrying out many of the directives of the Land Management Law<sup>2</sup>. It has responsibilities in the areas of:

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<sup>2</sup> The Land Management Law of 2008 was enacted prior to the creation of ARAZI, and, therefore, does not assign specific tasks to this organization.

1. Land Inventory,
2. Land Registration through the land rights identification process,
3. Land Rights Identification and settlement of rights (*Tasfia*<sup>3</sup>),
4. Land Transfer and Exchange (primarily to other divisions of government),
5. Land Leasing to the private sector,
6. Land Dispute Resolution (due to the merger of the Independent Commission for Illegal Occupied Land with ARAZI).

The Land Management Law of 2008 delegates the authority to administer government and public land to MAIL and Amlak was responsible for this administration. Currently ARAZI is largely responsible for carrying out this mandate. Thus, ARAZI only concerns itself with issues for government and public land that is not within the jurisdiction of municipalities. Through the *Tasfia* process ARAZI is registering government and private land. In creating a land inventory, ARAZI asserts a right to survey all of Afghanistan to a resolution of 10 meters in order to ascertain the extent of government land. However, this surveying function appears to be assigned to AGCHO by Article 16 of the Land Management Law.

The main responsibilities of ARAZI, a mixture of various scopes of authority and responsibilities, presents opportunities for discord between government agencies given the broad and vague interpretations and developing practices under the concept of land management within the country.

## Management Model and Organizational Structures

ARAZI is governed by MAIL and also a Board of Management that includes representatives of several ministries and independent departments of the government. The specific makeup of the Board includes:

1. MAIL, Board Chair,
2. MoF, member
3. MoI, member
4. MoJ, member
5. MUDA, member
6. AGCHO, member
7. IDLG, member and the
8. Anti-Corruption High Commission.

The Board is the governing body that oversees policies and plans of ARAZI, ensures that the General Director is appropriately following land strategies and policies, and appropriately managing the organization. The Board also maintains general supervision of the functions and activities of ARAZI reporting to MAIL, which, in turn, reports

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<sup>3</sup> “*Tasfia* is the process of identifying and specifying government, public, and private lands, as a result of which all the specifications of land such as location, taxation, type of ownership, and water rights are identified”. Presentation made by the Acting Director of ARAZI, Mr. Haroon Zareef, for ISAF/NATO, Embassies, and the International Community on October 16, 2011.

directly to the President of Afghanistan. In actuality, whether or not the Board is carrying out any of these functions is questionable. The Land Management Law (2008) creates a Central Commission, and Provincial Commissions<sup>4</sup>, but does not define clearly the duties and responsibilities of these commissions, nor their duties vis-à-vis MAIL and the Board of ARAZI. The resulting institutional, procedural, and reporting uncertainty, leads to poor land management and administration. This confused state of affairs extends not only to those who must deal with ARAZI, but extends to those operating within the institutions themselves.

The Director General and the Deputy Director General are appointed by the Minister of MAIL, after approval by the President, as the top executives of the organization. They have the authority and responsibility for supervising and providing leadership in developing strategies and plans to implement the vision, mission and goals of ARAZI as determined by the Board. In addition to the design and control of ARAZI products and services, and overseeing their promotion, quality and delivery, the Director General and the Deputy Director General are ultimately accountable for the systems and procedures for the daily operations of the main Directorates of ARAZI to ensure the efficiency, transparency and effective delivery of client services.

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**<sup>4</sup>The central commission for land management**

**Article 19:**

(1) In order to render better cooperation and to provide technical and administrative support to implementation of field activities as well as to overcome problems on the spot, the land management commission shall be created in the center with the following composition:

1. Minister of agriculture, irrigation and livestock, as chairman.
2. Head of general land management department, as vice-chairman.
3. Representative of the Supreme Court, as member.
4. President of promotion & and propagation department of ministry of agriculture, irrigation and livestock, as member.
5. President of water management of the ministry of water & energy, as member.
6. President of general department of geodesy and cartography, as member.
7. President of revenues of the ministry of finance, as member.

(2) The central commission of land settlement shall call its meeting once in each quarter of the year, and if necessary, shall call more meetings.

**Establishment of provincial commission**

**Article 20:**

(1) For better management of field activities of land settlement, and for overcoming the problems resulting from implementation of land settlement activities, the commission shall be formed in provinces with the following composition:

1. The governor, as chairman.
2. Head of agriculture, irrigation and livestock department, as vice-chairman.
3. Head of appeal court, as member.
4. Mustofee, as member.
5. Head of energy & water, as member.
6. Head of department of geodesy and cartography, as member.
7. Head of land management department, as secretary-cum-member.

(2) The commission stipulated in the clause (1) of the present article shall call its meeting once a month, and if necessary, shall hold its meeting more than once.

The main Directorates of ARAZI are:

- Directorate of Land Inventory and Survey,
- Directorate of Land Lease and Enforcement,
- Directorate of Land Rights Identification “*Tasfia*” and Planning,
- Directorate of Land Dispute Resolution,
- Directorate of Administrative Operations, and
- Directorate of Communications and Media.

The Director General and Deputy Director General monitor internal audit mechanisms in order to take appropriate action where there is deviation from ARAZI plans and strategies at national and provincial levels, and exercise administrative control over the annual budget, human resources, salaries, and communications. All communication letters and all financial and other administrative documents must be signed by the Director General.

Each Directorate of ARAZI is managed by a director, so that in Kabul, in addition to the Director General and Deputy Director General, there is a:

- Director of Land Inventory and Survey,
- Director of Land Lease and Enforcement,
- Director of Land Rights Identification “*Tasfia*” and Planning
- Director of Land Dispute Resolution,
- Directorate of Administrative Operations, and
- Director of Communications and Media.

Each of the 34 provinces, in turn, has a Provincial Manager. All the heads of Directorates report to the Director General and Deputy Director General of ARAZI. Provincial managers report to the Director General and Deputy Director General of ARAZI, but the procedure for doing so is not well established. Consequently, sometimes the provincial managers report to the directors of Directorates at the main Kabul office, and sometimes they report through the Provincial Agriculture Directors of MAIL to ARAZI or sometimes to MAIL and through MAIL to ARAZI. Reporting mechanisms for provincial managers of ARAZI should be clarified and procedures defined.

In the year 2011 the management of ARAZI has been disrupted by resignations of several key persons in the management structure. The Director General resigned in June and the Deputy Director General resigned in September 2011. Between June and September 2011 the Director of Land Inventory and Survey, the Director of Communications and Media, the Director of Document Verification, and the primary legal specialist from the Directorate of Land Rights Identification and Planning all departed ARAZI.

## General Findings Concerning ARAZI

ARAZI is a new organization that has not yet proven its sustainability as the main positions are filled by contractors of Harakat<sup>5</sup>. There is tension and in some cases in-fighting between the main office and regional offices. In its first year of existence ARAZI received significant support through the payment of salaries by Harakat. This funding was scheduled to terminate in December 2011 and there appeared little likelihood that there would be additional funding under the program.

The sustainability of ARAZI depends on the willingness of the GIRoA to fund ARAZI in the absence of the Harakat funding, and that would require public expenditure legislation.

The civil servant employees of ARAZI are paid according to the GIRoA standard salary scale. Civil servant employees of ARAZI submit attendance reports to the MAIL HR department on a monthly basis and are subject to MAIL HR department policies and procedures.

There are tensions in the administration of ARAZI caused by overlapping functions within ARAZI, byzantine organization, and nebulous reporting responsibilities<sup>6</sup>. This includes reporting by provincial departments of ARAZI and reporting by ARAZI to MAIL, the Central Commission on Land Settlement, and the Provincial Commissions on Land Settlement, and the Board of Directors of ARAZI.

There is a serious concern that in the main office as well as in the regions ARAZI lacks the capacity and the personnel to carry out all the functions it has defined for itself.

## General Recommendations Concerning ARAZI

It is essential that there be a clear legal statement of the ARAZI mandate and clarification of its role regarding surveying, dispute resolution, land registration, and its relation to other governmental institutions. This should include an explicit directive regarding its jurisdiction over municipal and other types of land.

The express functions of the Board of Directors of ARAZI should be clarified and the Board should regularly meet to execute its functions.

A reform and reorganization of ARAZI should be developed with specific, discrete definitions of ARAZI's functions vis-à-vis the various committees and commissions currently set up within the legal framework for land reform with suggested procedures for operating within this context.

The Director General of ARAZI should officially develop and recommend this restructuring of ARAZI to eliminate units that duplicate functions more properly the activity of other agencies or ministries of the GIRoA.

The objective of the restructuring is to enable ARAZI to integrate with other land reform agencies and manage its overall affairs in accordance to GIRoA strategies.

The internal structure of ARAZI should be streamlined to eliminate overlapping responsibilities, and to properly establish ARAZI as a separate organization within MAIL with self-contained capabilities.

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<sup>5</sup> Harakat is an independent, Afghan managed NGO. <http://www.harakat.af/>, accessed December 20, 2011. Its project with ARAZI is funded by DfID and ends in December 2011.

<sup>6</sup> A contributing factor is the names for some of the positions in the Land Management Law (2008) which preceded the creation of ARAZI. The designations in that law are not the same as the names of the Directorates assigned by ARAZI.

ARAZI must present these recommendations to the Board of Directors of ARAZI so that the Board can then decide on the merits of initiating the restructuring and reform process.

The majority of ARAZI's work is being done in the provinces and districts. Linkages need to be strengthened between the ARAZI central office and the provincial offices.

Reporting mechanisms for provincial managers of ARAZI should be clarified and reporting procedures defined.

## Directorate of Land Inventory and Survey

### Primary Duties

A principle demand of ARAZI is to advise the government with regard to how much land exists for each different class of land in Afghanistan and where that land is located. Accordingly, the Directorate of Land Inventory and Survey has been assigned the role of classifying over 800,000 hectares (8,000 sq. km) of land during the next 10 years, with the specific goal of identifying areas that are undisputed and not already occupied and are available for potential lease to Afghan citizens and businesses. In addition ARAZI is required to grant land to landless people as well as gain revenue through the collection of land taxes. So the land inventory is important for several different purposes. However the mapping of urban/rural commercial and municipal land, although possibly within the powers of ARAZI, has been excluded from the land inventory of governmental land, and there have been averments by members of ARAZI that ARAZI does not control these lands.

The Directorate is to work with other government agencies, including local governments with the objective of establishing a nationwide inventory of all lands, particularly to identify and inventory government and public lands available for the land leasing program to be established pursuant to the Land Management Law (2008). The Directorate is to develop standardized technical procedures to commence the work of inventorying the land and make the information available to other government agencies that are in need of this information.

The inventory is to proceed with a phased approach in recognition of the fact that this is a long term undertaking. The first phase of the inventory is to concentrate on land that is currently under lease with the government and less challenging land, free from disputes, that is unoccupied and not in use. Land with endorsement from provincial and district governmental offices and communities with governmental property rights will also be among the priorities. Other priorities include irrigated lands and lands for which land lease applications have been received over the past decade. ARAZI recognizes that the completion of the land inventory may require a decade or more to complete<sup>7</sup>.

### Personnel and Organizational Structure

The Strategic Plan for ARAZI dated June 21, 2011 notes that land inventorying requires technical professionals in the fields of mapping, GIS, engineering, and topography at both the central and the provincial level. This Directorate has departments of survey quality and assurance, land records, GIS/MIS, as well as an office of administration.

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<sup>7</sup>ARAZI Strategic Plan 2009-2014, dated June 21, 2010 p. 29.

There are 23 positions in this directorate. At the time of this report the positions of Director, GIS/MIS Senior Officer, and 2 MIS Officers are vacant. The 2 GIS Mapping Officers are contracted from Harakat, as are the Survey Quality and Assurance Officer and 5 Land Surveyors. The other positions are filled by government employees.

## Procedure

ARAZI proposes to use remotely sensed imagery in conjunction with Geographic Information Systems (GIS), spatial data sets and computer analysis techniques to achieve the required results in the given timeframe. The imagery can come from a variety of sources such as aircraft-borne sensors and satellites. High-resolution (25cm) commercial imagery is expected to become increasingly available during the next 1 to 2 years and the ISAF Buckeye10cm imagery is already available. In addition to the imagery, there is a need for a good digital terrain model (DTM) and soil mapping dataset. The Directorate has a 30 meter DTM and is expecting to get a better resolution DTM soon from the World View imagery product. However, they still do not have a soil map to use, which makes accurate land suitability analysis difficult to achieve.

The proposed ARAZI method for surveying these land parcels is to use high-resolution imagery and GPS where possible, rather than conducting field surveys with electronic Total Station equipment. The problem with the latter approach is that it is more time consuming, more expensive and poses a greater security threat to field staff. So the use of imagery to define land parcels is a reasonable approach, and while its positional accuracy might be less than that which could be achieved using traditional field survey techniques, it is considered appropriate given the relatively low value of the land concerned.

However, the biggest disadvantage of the high resolution imagery approach is that a national land inventory campaign could well cost \$50-\$100 million over 10 years. However, the biggest disadvantage of the high resolution imagery approach is that a national land inventory campaign could well cost \$50-\$100 million over 10 years. The expected annual cost of imagery to ARAZI will be very high and whether or not ARAZI can afford these costs and has the technical capacity to process the imagery is an open question. Added to the imagery costs are other costs associated with a nationwide inventory campaign including the fieldwork, the IT and office infrastructure, outreach, and other related costs.

To date, the proposed land inventory method has not been tested to assess its effectiveness or reliability, so a pilot project is presently being conducted that will specifically evaluate:

- the proposed procedures for image classification of different land types; and
- the accuracy of the proposed method for surveying land parcel boundaries.

The pilot will focus on sites that are stable, have the potential for agricultural land use and have no known land disputes. The 125,000 jirib project (comprising an 80,000 jirib area plus a further 45,000 jiribs divided among six different areas) will only contain raw, undeveloped government land, in order to prevent any possibility of usurpation. The pilot had been expected to be completed by December 2011, but this deadline was not met. Although ARAZI has ambitious plans it just doesn't have the capacity or the resources to meet its own deadlines.

A virtual graticule of parcels will be created using the imagery and GIS, with parcel areas being chosen depending on the particular land class and suitability. GPS test points will then be used to enable comparison between the parcel corner coordinates derived through the office computer procedures and those calculated from the more accurate field survey methods.

The use of remote sensing and computer software to classify very large areas of land in a short time frame is quite valid and sensible. It is also quite commonly used for this purpose around the world. In addition, the proposed cadastral survey method, which will be based on high resolution imagery instead of traditional field surveys, is also a valid technique and is, in fact, now being used in many less-developed countries for low-cost rural land formalization programs.

There are, however, important conditions to be stated here, which are, first, that any such cadastral survey should have the approval of the official state cadastral surveying authority, AGCHO. This is a legal obligation hinted at in Article 16 of the Land Management Law (2008) and the Law on Land Survey, Verification, and Registration (1976) and, as such, must be respected. This issue needs to be clarified in amendments to the Land Management Law with explicit direction. Second, if ARAZI does receive the necessary permission from AGCHO to undertake the cadastral surveys, then the resultant digital map files must be shared with AGCHO so that it can preserve its responsibility for being the official custodian of cadastral map data for the country.

The issue is in actuality more complicated. The Law on Survey, Verification, and Registration (1976) states in Article 11 that “[t]he cadastral survey shall be carried out by the Department of Cadastral Survey”, but Article 36 and 37 of this law indicate that “relevant administrations” may conduct surveys upon agreement with the “cartographic administration”. ARAZI is very much in need of cadastral information, but has indicated that AGCHO requires payment for cadastral information, and the cost for the information regarding individual parcels can be quite costly and in many cases exceeds the value of the land for which the information is needed. The suggestion has been made by members of ARAZI that, since both ARAZI and AGCHO are government institutions, the cadastral information should be furnished to ARAZI free of charge. Article 16 of the Land Management Law (2008) supports this position<sup>8</sup>.

Alternatively, ARAZI suggests in its Strategic Plan 2009-2014 that AGCHO be merged with ARAZI<sup>9</sup>. This is a political issue that may not be realistic.

## Findings

The Land Management Law and the Law on Survey, Verification, and Registration indicate that AGCHO is responsible for surveying, but the latter law indicates that “relevant administrations” can undertake certain surveys with the agreement of the cartographic department. Whether or not AGCHO would agree to ARAZI performing surveys is an open question.

The vision of ARAZI’s GIS & Land Inventory for a National Data Centre to act as the single portal for all GIRoA land related information and functions, where all agencies would have their data stored on the central database for the information to be shared with all other relevant agencies is unrealistic, and a more manageable plan needs to be developed.

## Recommendations

It is important that the land inventory be classified into public and private and to maintain two separate land databases.

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<sup>8</sup> Article 16 states (1) Cadastre team of the general department of Geodesy & Cartography is obligated to accomplish the following tasks, **free of charge...** (Emphasis added).

<sup>9</sup> ARAZI Strategic Plan 2009-2014 dated June 21, 2010, p. 26.

The land inventory pilot project will require effective collaboration with other GIROA agencies such as AGCHO and the Ministry of Mines to assist in ground surveys and provision of soil maps used in the classification process.

Closer coordination with AGGHO is essential to carry out the land inventory and the two institutions must develop a plan together for completing the land inventory.

ARAZI should engage with other GIROA agencies involved in land functions, and develop formal memoranda of understanding for effective collaboration and data sharing, whether it is through automated IT applications or the existing manual environment.

A more practical and realistic strategy must be developed within ARAZI for effectively integrating and managing its internal IT operations and business functions.

## Directorate of Land Rights Identification “*Tasfia*” and Planning

### Primary Duties

The Land Rights Identification “*Tasfia*” and Planning Directorate has been established within ARAZI, as member of the land settlement commission, to carry out the duties and obligations set out for land settlement in Article 15 of the Land Management Law. These are listed as:

- 1. Settlement of landholding areas, distribution of document (sic) and land.*
- 2. Determining the limits, category<sup>10</sup>, water rights and tax of the land.*
- 3. Determining and segregation of individual, state, as well as grazing, endowed, virgin and arid lands, jungles and so forth.*
- 4. Referring the disputes and lawsuits related to grazing, endowed, virgin and arid lands, jungles and so forth to the competent authorities.*
- 5. Registration of land settlement conclusions in the relevant book.*
- 6. Referring the conclusions of land settlement for registration in the principal books of properties (Amlak) and local tax as well as preparing legal document in the relevant court.*
- 7. Restoration of previously illegally-distributed land to the owner, or to his legal inheritors.*
- 8. Sending performance report to the relevant provincial land management department and to the central land management organization.*
- 9. Other duties for the purpose of enforcement of provisions of the present law that are assigned by Ministry of Agriculture, Irrigation and Livestock.*

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<sup>10</sup> There are seven categories of land according to Article 40 of the Land Management Law (2008); orchard or vineyard, double crops (sic) irrigated, two categories of single crop irrigated differentiated by coefficient, rain fed land cultivated every other year, rain fed land cultivated every two years, and “Rain-fed land, which is cultivated for more than two alternate years, coefficient (0.10)”.

Article 13 of the Land Management Law (2008) assigns the technical and administrative aspects of “*Tasfia*” to MAIL<sup>11</sup> and it is important to point out the preparation of the inventory and “*Tasfia*” are interrelated. It is unlikely that the land inventory can be completed prior to identifying land rights. This points to the centrality of land rights identification among the key responsibilities of ARAZI and the importance of the Directorate of Land Rights Identification “*Tasfia*” and Planning. It is anticipated that some of the parcels identified during the settlement process will involve disputed and controversial land, and yet since the adoption of Presidential Decree # 83 “*Tasfia*” has been suspended throughout the country notwithstanding Article 23 of the Land Management Law, which suggests that attempts should be made to resolve disputes during the settlement process.

## Personnel and Organizational Structure

There are 70 employees of Land Rights Identification “*Tasfia*” and Planning Directorate and all except the head, who is a Harakat contractor, are civil servants. Out of 70 employees, 45 of them are distributed among 15 commissions, each commission comprised of 3 representatives from this directorate. The following positions are shown in organizational chart of this Directorate:

- Head of Directorate of Land Rights Identification “*Tasfia*” and Planning
  - Director of Land Categorization and Land Lease
    - Categorization Officer
    - Land Planning Officer
    - Land Management Officer
    - Land Lease Officer
      - Categorization Assistant
      - Land Planning Assistant
      - Land Lease Assistant
      - Land Cost Estimation Assistant
  - Director of Clearance
    - General Officer of Clearance
    - Public Relation Officer
      - Clearance Officer
      - Admin Officer (Clearance)
  - Director of Research & Policy
    - Research Officer
      - Library Assistant
  - Director of Land Transfer & Exchange

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<sup>11</sup> Note that the Land Management Law (2008) differentiates between the “land settlement commission” (Article 14) and a central “land management commission” (Article 19).

- Transfer & Exchange Officer
- Distribution Officer
- Expropriation Officer
  - Transfer Assistant
  - Exchange Assistant
  - Expropriation Assistant
- Executive Officer
  - Computer Operator

## Procedure

The core objective of the Land Rights Identification “*Tasfia*” and Planning Directorate is to identify the real owners of governmental, public, and private land and prepare governmental land for leasing, distribution, transfer, exchange, zoning and other purposes. There have been three procedures developed by this directorate to better implement its duties and responsibilities:

- Land Rights Identification Procedure,
- Land Transfer Procedure, and
- Land Exchange Procedure.

The first two procedures have been approved and the latter is being considered.

MAIL is responsible through ARAZI for conducting the process of Land Rights Identification and providing technical and administrative support, but the actual work is carried out by the Land Rights Identification Committee which is composed of several members from various governmental institutions. The following are represented in the Land Rights Identification Committee:

5. Representative of Land Rights Identification Directorate of ARAZI, as chairman,
6. Representative of Land Rights Identification Directorate of ARAZI, as member,
7. Representative of Admin Directorate of ARAZI, as member,
8. Representative of Ministry of Finance, as member,
9. Representative of Ministry of Energy and Water, as member,
10. Representative of AGCHO – Cadastral Department, as member,
11. Representative of Propagation Department of MAIL, as member.

The obligations and powers of this Committee are clearly stipulated in Article 15 of the Land Management Law as:

1. Rights identification of plots, distribution of ownership documents and also distribution of land,
2. Determining the boundaries, category and water rights and taxes of the land,

3. Determining and differentiating between individual, government, pasture, endowed, virgin, arid, forest and other lands,
4. Referring of disputes and claims relating to grazing, endowed, virgin, arid, forest and other lands to the relevant authority,
5. Registration of results after clearance into the relevant book,
6. Referring results of land clearance to be registered in the property and tax books for the preparation of Title Deeds in the relevant court,
7. Restitution to the owner or to his Sharia inheritors of lands that were distributed against Sharia and legislation,
8. Sending activity reports to the relevant provincial land management offices and to the central land management office, and
9. Other duties for better implementation of the provisions of this law which shall be assigned by the Ministry of Agriculture, Irrigation and Livestock.

In addition, there are central and provincial commissions to facilitate the land rights identification process. The central commission is chaired by the Minister of MAIL and the provincial Commission is chaired by the governor of each province. The exact responsibilities and authority of these commissions are unclear.

## Land Management & Administration IT

The Directorate of Land Inventory and Survey is currently introducing modern technology and methodologies for its operations. ARAZI has engaged a local IT company, Afghanistan Information Management Systems (AIMS), to assist in conducting a pilot project for the inventory, classification and parcelization of 25,000 ha; 16,000ha in Mazar and 9,000 ha Herat. This is the first step toward ARAZI inventorying and classifying 800,000 ha across Afghanistan in the next ten years.

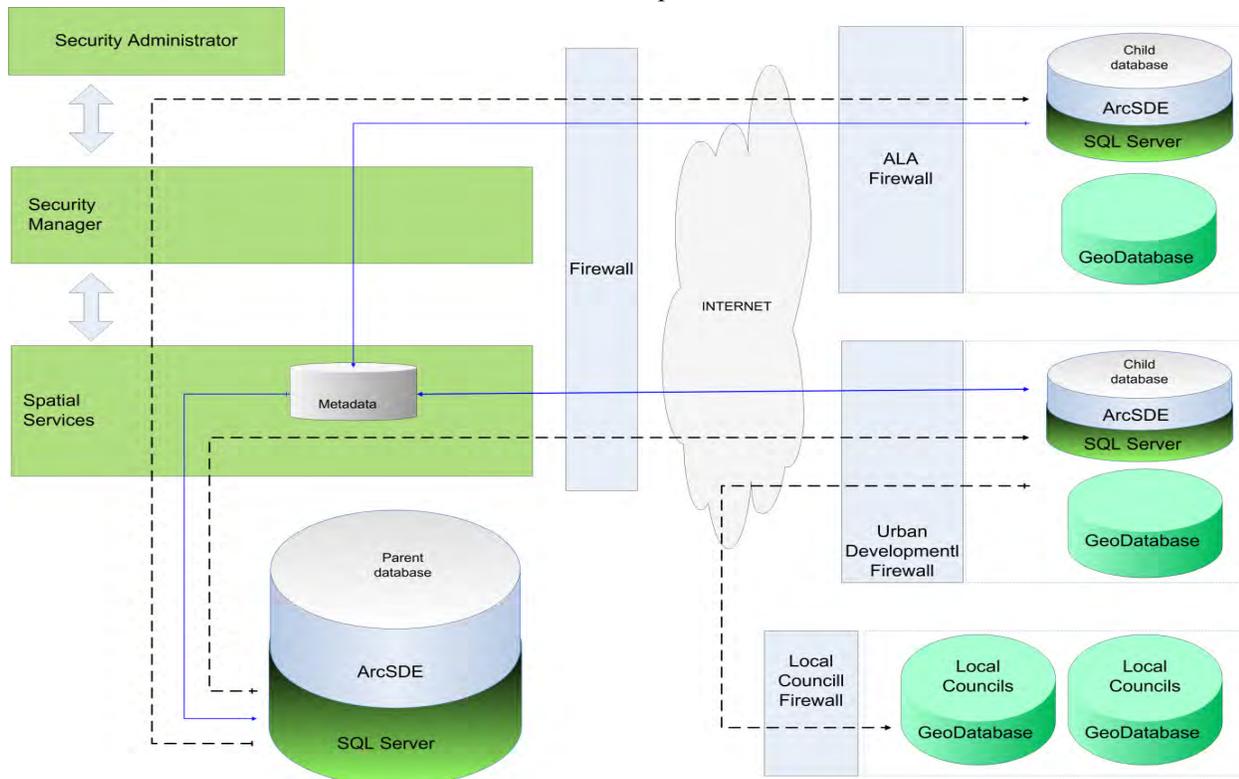
Very High Resolution (VHR) satellite imagery has been ordered covering the proposed pilot sites, which consists of a patchwork of small sites as opposed to single larger unoccupied areas. This is due to the unavailability of large unoccupied areas of what ARAZI considers to be state owned land in these provinces.

Esri GIS-based cadastral data management licenses (server and desktop) appropriate for the scale of the pilot have been purchased, along with back file conversion software. The server licenses for these applications will reside on the AIMS server infrastructure until ARAZI'S own server is in place. The contract between ARAZI and AIMS for this project is funded by DFID via Harakat.

The proposed land classification methodology will require ARAZI staff to be trained in conducting classification through a combination of remote sensing imagery and validation through onsite visits. This experience does not currently exist within ARAZI'S team of three local GIS staff.

At the center of ARAZI's plans for completing this inventory is what it refers to as a National Data Centre, which is being supported by DFID via Harakat. Based on centralized systems and network architecture, this solution is reliant on a fiber-optic backbone between Kabul and the five Regional ARAZI offices that it plans to establish in the coming years. For the sake of communications infrastructure redundancy, there will be a back-up connection provided by WiMAX or VSAT to link these offices.

ARAZI has indicated that in addition to its own back-ups, data would also be backed up to a central server in the MoCIT, and a yet to be identified provider of back up services to “the cloud.” Savings on license fees and hardware procurements are expected to come from the proposed systems architecture that relies on the use of virtual clients at the user level, which would be connected to the central production server.



*Indicative Architecture for Single GoIRA GIS/LIS Portal (source: Clive Swan - ARAZI, 2011)*

The vision of ARAZI’s GIS & Land Inventory Consultant is for the National Data Centre to act as the single portal for all GIROA land related information and functions. All agencies would have their data stored on the central database for the information to be shared with all other relevant agencies.

Hard copy books are currently used in carrying out functions associated with this department, and no indication of future plans related to IT usage has been provided by ARAZI.

## Findings

ARAZI Land Rights Identification and Planning Directorate:

- Lacks a responsive and workable system with an efficient and effective road map,
- Lacks a precise system for assessment of land rights identification documents, reporting, and monitoring,
- Lacks needed cooperation and coordination with the line institutions,
- Lacks working facilities,
- Lacks professional capacity in both its headquarters and regional offices, and

- Lacks unambiguous authority to make the types of decisions necessary to carry out its mandate.

The Directorate has proven unable to handle land clearance without unnecessary delay and burdensome bureaucracy. Moreover, Presidential Decree # 83 has stopped the land clearance, *Tasfia*, process altogether.

ARAZI suffers significantly from not having a clear IT Strategic Plan in place for the agency as a whole, let alone for individual agencies. This can be attributed, in part, to a lack of an IT Director to oversee IT for the entire agency. This has resulted in a “silo effect” where individual departments develop their own database applications that are predominantly static in that they are filled with data at the completion of processes such as leasing, registration, and *Tasfia*, rather than being used effectively as a tool from beginning to end for each process. The Organizational Strategic Plan for ARAZI envisages the creation of an IT Unit that would lead to greater integration and synergies of systems between departments, but this does not appear to be operating effectively.

The Directorates, with the exception of the Directorate of Land Inventory and Survey, have not linked their database applications with spatial information (i.e. GIS maps), despite all ARAZI functions revolving around real property objects (i.e. plots/land parcels). The use of MS Access as the DB engine for these systems in each directorate also raises concerns about security and scalability. The Land Inventory pilot is however using SQL Server, which should serve as the basis for DB operations across ARAZI.

DFID/Harakat has been generous in its support to ARAZI’s establishment of IT infrastructure. However, the initial focus on supporting the inventory/classification and creation of the data center could have been directed to its core business and revenue generating functioning, land leasing. DFID/Harakat is also supporting the establishment of ARAZI’S new offices with furniture and additional IT equipment but specifics on this have not yet been provided to LARA. This list of proposed procurements is going to be important in order to avoid potential duplication of IT procurements in particular.

There are certain obstacles, above all the tensions between AGCHO and ARAZI. Creating a hub will require political support, finalizing the appropriate legal framework, cooperation between the institutions, and agreeing on the technical specifics. A central hub may just be impossible. Another problem is that well trained ARAZI personnel have a tendency to leave for more lucrative positions after having been trained. It has been suggested that ARAZI put certain conditions in employment contracts prior to training in an attempt to keep these employees.

## Recommendations

It is essential that ARAZI establish an inclusive legal framework related to land rights identification and clarification prevent conflict of interest with the other line institutions.

In addition, ARAZI should convince the Board of Directors to enhance collaboration and coordination among the relevant institutions, particularly with the AGCHO. This would provide coordination of proof of ownership status and production of cadastral maps with the land rights identification process.

ARAZI needs support to improve the capability of the Land Rights Identification Directorate staff. Supplementary training related to land rights identification is needed, and this should extend to land transfer and land exchange as well. The technical staff would also benefit from training improving its technical capabilities.

In addition, the Land Rights Identification Directorate also needs proper equipment associated with their work processes. This would increase productivity in the land rights identification process.

ARAZI clearly lacks the financial means to carry out its mandate. ARAZI's senior management should explore appropriate, alternative financial support mechanisms.

Presidential Decree # 83 should be amended to allow the land survey and the *Tasfia* process.

ARAZI's provincial staffs are not engaged in the *Tasfia* process. Procedures should be amended to give the provincial staff a greater role in the land rights identification process.

It is strongly recommended that ARAZI rethink its current proposal for establishing a centralized IT system, associated with a National Data Centre. The merging and sharing of data among all agencies engaged in land reform is a long term endeavor that should extend over a period from 5 to 10 years. , Given the technical, institutional and political constraints that currently exist within Afghanistan this is not something that ARAZI can complete in the short term.

For ARAZI's own IT supported operations, it is recommended that an alternative systems and network architecture be developed that is less reliant on permanent connections between Kabul and outlying offices. This in particular is an area where LARA has the ability to provide advice and demonstrate the application of appropriate IT for ARAZI's operations in the current environment, while ensuring scalability and flexibility to adapt to increased workloads, and improved communications infrastructure in the future.

## Directorate of Land Lease and Enforcement

### Primary Duties

Central to the objectives of ARAZI is the leasing of government land. ARAZI articulates its creation and purpose as follows:

*In September 2010, the Ministry of Agriculture created the Afghanistan Land Authority (ARAZI), to develop and implement a strategy to lease land for agricultural, agro-processing, and industrial purposes. ARAZI has been given the responsibility that after inventorying all government-owned land, establish (sic) fair and transparent procedures for its leasing, and set up a one-stop window that makes leasing attractive to both domestic and foreign investors<sup>12</sup>.*

The work of this unit of ARAZI includes the establishment of standardized, efficient and transparent land tender and lease procedures to improve access to governmental lands for the private and public sectors and increase government revenue<sup>13</sup> by providing investors with a simple, transparent service to lease government land through a 'one-stop-shop.' ARAZI's goal is to offer more than 25,000ha per year for lease for agricultural and commercial purposes. Among the seven different kinds of land under management of the GIRoA, four kinds of lands will be integrated in the land inventory to be offered for leasing (rain fed lands, irrigated lands, non-cultivated lands, and non-agricultural lands). The remaining three (including forest, pastures and state developed farms) will not initially be part of the lease offer and will be kept under custody of MAIL for the time being.

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<sup>12</sup> [http://www.arazi.gov.af/index.php?option=com\\_content&view=article&id=76&Itemid=70](http://www.arazi.gov.af/index.php?option=com_content&view=article&id=76&Itemid=70), accessed October 17, 2011 at 16:50.

<sup>13</sup> The scopes of work for the Department of Land Lease, the Department of Land Rights Identification and Planning, and the Department of Dispute Resolution were taken from a presentation made by the Acting Director of ARAZI, Mr. Haroon Zareef, for ISAF/NATO, Embassies, and the International Community on October 16, 2011.

The Directorate is responsible for managing and enforcing the leases over government land in addition to new land tenders, including the management and enforcement of leases that were implemented prior to ARAZI's creation, which amounted to 1067 signed leases.

## Personnel and Organizational Structure

Under the management of the Director are units for a general land tender planning officer, a marketing officer, director for implementing leases and contracts, an executive officer, and a customer services officer. The marketing officer and the customer services officer each have one assistant, and the general land tender planning officer has two assistant tender planning officers. The Lease and Contract Implementing Unit has a lease and contracts officer and assistant, a contract database officer, and a contract implementation officer. The contract implementing officer has 3 assistants. In all there are 18 employees in the Directorate of Land Lease and Enforcement.

There is at least one representative of this Directorate in each of the 34 provinces and more in certain provinces. It is estimated that there are about 50 provincial representatives all together. The leasing program, however, remains centralized where the provincial offices function as a reception and service desk. Leasing decisions are made in the Kabul headquarters. This is necessary to maintain a high level of accountability and minimize local influences on the lease process.

## Procedure

The first task of ARAZI is to survey all of Afghanistan to a resolution of 10 meters in order to ascertain what public land is available for the leasing program.

The leasing program involves:

1. Identifying unregistered government land that is available for lease;
2. Entering this land into a so-called "Lease Register" at ARAZI; and
3. Making the land available for the leasing.

The Lease Directorate prepares a list identifying leasable land and the list is then reviewed for approval by the Directors of the main Directorates and the General Director of ARAZI. Land lease tenders are then prepared for the land that has been approved for lease.

As of October 2011 the leasing department has entered into 200 contracts for 27,000 jiribs, which has generated \$US 4.7 million to the general budget of the GIRA. There are 500 lease contracts in process. As these lease transactions are completed they are entered into a database created and maintained by the Directorate of Land Lease and Enforcement, which it calls a "lease registry".

Land registration in market economies is generally the function of one agency and all other agencies and the public have convenient access to the information for "title examinations". The local Makhzans have deed information and, as the legal registry, should also have all other title information, including leases. Ideally title to government land would be registered in the name of the government as owner, and when ARAZI enters into a lease agreement this should also be registered where other legal title information is registered. However, none of the leases for government land will be entered into the registry at local Makhzans until all the land in Afghanistan has been surveyed and included in the land inventory.

In order to manage all contracts accurately and effectively a lease contract database is being developed which reflects both a virtual and physical lease contract maintenance system. It involves creating a self-operating contract system, with minimum human intervention that keeps a high level of security and confidentiality and is easily updatable. The virtual contract database will include an integrated automatic alert notification system, interfaced with the organization Management Information System, and will provide key notifications to the Directorate of Land Lease and Lease Enforcement Department or other relevant departments about contractual deadlines. The use of IT for managing the department's leasing contract operations has been quite limited to date with leases initially being entered into MS Excel, which has now been replaced with data being entered into a MS Access based lease database. The current role of the lease database is to act as an inventory mechanism only. The database is not linked to a GIS, nor is this application used in managing the workflows of the department for receiving applications, generate lease documents, analyzing lease payment status, and linking to maps. However, the Director of the Leasing Department indicates a desire to further expand the functionality of the system to link with the GIS/LIS.

Hard copy books are currently used in carrying out the<sup>14</sup>functions lease registration, although ARAZI has indicated a desire to automate the tasks associated with this division.

ARAZI states in its Strategy of June 2010 that the leasing program includes a range of anti-corruption measures, starting with public information regarding land tenders and land leases, and including standardized procedures, reporting mechanisms, financial autonomy for remuneration of staff, and regular audits. In the evaluation process for lease applications parcels have a fixed price, so that applicants for the same parcel compete on the basis of the proposed use, factoring in the social and economic impact.

## Findings

In the year since ARAZI has been established, two important modifications to procedures have been achieved: 1) the reduction of steps required for leasing public land, and 2) development of new leasing procedures.

The leasing procedures, in general, are adequate. There are safeguards in place that protect the public from overreaching on the part of ARAZI, but more information is required to determine whether or not the public is satisfied with the process and the fairness of the leasing program.

ARAZI is implementing anti-corruption methods to reduce the possibility of governmental fraud. Unless there is governmental collusion at the national level as well as at the provincial level, it would seem that the procedures might operate fairly. There are, however, reports that some auctions have been less than arm's length, but there is no specific information about these transactions.

Land valuation in general is assigned to a valuation department under the Directorate of Land Rights Identification. This department has been established, but staff positions are vacant. ARAZI lacks the funds to carry out land valuation.

Generally there is no statutory basis for land valuation for lease purposes, though a procedure has been developed by ARAZI and has been approved by the Minister of MAIL, valid for one year. There is no long term solution for

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<sup>14</sup> This is ARAZI's database as explained in the section on the Directorate of Land Lease and Enforcement.

appraising land for lease purposes. The Land Management Law suggests that land valuation should be based upon the income approach leasing purposes<sup>15</sup>.

## Recommendations

Government and public land should be registered where other legal title documents such as private transactions are registered in order to start to build a system that can be used by the public to properly examine title to support private transactions.

There is a need for proper land valuation procedures to insure fair value of the real estate for the various activities assigned to ARAZI. Fair and market oriented land value would improve the land management process, reduce unfair valuation, provide better control of starting auction prices, and reduce opportunities for corruption.

Land valuation for leasing purposes should be based upon data collected and should not be limited to the income method. Fair market value can be determined in a variety of ways including the value of comparable land transactions or capitalization of income approach. ARAZI needs to increase its capacity for carrying out land valuation.

## Directorate of Land Dispute Resolution

### Primary Duties

The Directorate of Land Dispute Resolution was established during the merger of Amlak, ALA, and the Independent Commission for the Restitution of Illegally Occupied Land in 2010. It has responsibilities in the resolution of land disputes between individuals (and the government where governmental lands are at issue), prevent land grabbing, restore and protect governmental lands, and reduce land disputes between individuals and the government. This is a completely new function for ARAZI that was not a function of any of its predecessors. The Directorate itself doesn't resolve land disputes, for it lacks the power and authority to do so, but rather assesses cases referred by provincial authorities, courts and other related government agencies. The Qazayaa-e-Dawlat (government cases directorate) at the Ministry of Justice is an important institution providing legal representation to the government in cases involving government land.

The Directorate facilitates resolution of land disputes by analyzing the issues regarding the dispute, developing a clear and deep understanding of the causes of the conflict, the nature of the dispute and any special characteristics of disagreement. Particular attention is paid to the parties involved, their positions, attitudes, behavior, interests, needs and motivations, and their relationship with each other. The parties are encouraged to convene with the intent that they resolve their contentions by themselves. The Directorate attempts intervention as early as possible, often pre-conflict, to defuse serious conflicts and prevent escalation.

After assessment of the cases, the directorate refers them to the related judicial directorate with recommendations for settling the dispute. The directorate is eager to have a special enforcement group in each province not only to enforce decisions regarding land disputes, but to protect the governmental lands.

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<sup>15</sup>Articles 72 together with Article 77 of the Land Management Law suggest that the value for the purposes of setting rent is based upon anticipated production (income) of the parcel. For the lease of State land the production of adjoining parcels is relevant. Article 46 (5) also suggests that the value of adjoining land would be relevant (though Article 46 does not involve lease).

## Personnel and Organizational Structure

The Directorate of Land Dispute Resolution is divided into units for government land protection, monitoring and document analysis, affairs and implementation of decisions, and the executive unit. In addition to the managers of these units, the government land protection unit employs one land protection specialist. The monitoring and document analysis unit engages two cadastral specialists and a monitoring specialist. The affairs and implementation of decisions unit enlists two specialists in affairs of justice, and the executive unit has two reporting and database officers. Hence there are 13 persons in this directorate.

Currently 5 out of the 13 technical personnel have been appointed by the ministry on the basis of their previous work experience in related fields. The remaining 8 positions have been announced, but are yet to be filled.

The positions that have been filled are:

- Head of Land Dispute Resolution Directorate,
- Director of Government Land Protection,
- Director of Affairs and Implementing of Decisions,
- Director of Monitoring and Analysis of Documents, and
- Executive Officer

The positions that need to be filled are:

- Land Protection Specialist
- 2 Specialists of Affairs of Justice
- 2 Cadastral Specialists
- 1 Monitoring Specialist, and
- 2 Report and Database Officers.

The current technical staff have been selected based on their previous work in MAIL regarding land disputes and related land administration experience. For the vacant positions the minimum required qualification is a bachelor degree in law as the incumbents will have to deal with land related legal issues and will be intimately involved with the courts, *huquq*, and other judicial offices.

The Director engages in strategic and implementation planning for each unit and monitors the units as well as the cooperation of related institutions, provincial entities, and villagers. A chief concern for the Director is land that has been illegally acquired and occupied. The Director is also responsible for forwarding recommendations to the court. In order to make a fair procedural work plan in alignment with the Afghan legal code, a team comprised of several senior personnel of ARAZI worked together with the Directorate to prepare a draft procedural work plan. The draft procedural work plan has been submitted to the minister of MAIL for his review, but approval is still pending.

## Procedure

The government land protection unit is primarily concerned with protecting government land from illegal settlement by land grabbers, and restitution of land to rightful owners, including the government, where illegal occupation has occurred. The unit monitors land that has been officially identified as government land in order to prevent unauthorized occupation and settlement. This unit works closely with the judicial institutions to protect government land.

The affairs and implementation of decisions unit prepares analyses of civil cases involving land disputes, identifies parties, compiles documents, assists in resolving disputes, and coordinates with the courts and other judicial institutions in enforcing decisions.

The monitoring and analysis team, examines documents, joins the issues, provides legal rationale for resolving disputes, appoints decision making delegations for assisting in resolving conflicts in disputed areas, and designates cases for referral to the courts and enforcement agencies. The unit refers contested cases to the Director with recommendations for a decision.

The executive office, as in all other directorates, is responsible for preparing all internal and external correspondence, dissemination of case determinations and recommendations, communicates decrees and orders of the directorate to other institutions having a role in the dispute resolution process, keeps all files in both a hard and soft copy filing system, and prepares reports for the Directorate.

Approximately 700 cases of various types have been referred to the Directorate since its establishment, but due to the complexities of particular cases, insufficient personnel, and time consuming processes, the specialists have been unable to keep up with the workload. The Directorate admits that given the current human and financial resources, it may be very difficult, if not impossible, for the Directorate to fulfill its mandate, even with the good working relationships and cooperation it has benefitted from with other relevant governmental entities.

The procedural work plan awaiting approval of the Minister of MAIL proposes the establishment of village, district and provincial level Dispute Resolution Commissions to reduce the workload of the Directorate in assisting with dispute resolution within the villages, districts and provinces. These commissions would be given authority to review cases of disputants and recommend decisions.

## Finding

The dispute resolution function of ARAZI duplicates the work of other agencies and institutions. It is questionable whether this activity is needed at all.

The dispute resolution directorate does not have any specific written operating procedure. The only legal basis for this Directorate is the decision of the Cabinet of Ministers when it was issued for the merger of the Independent Commission for the Restitution of Illegal Occupied Land.

ARAZI is having difficulties filling positions in this Directorate and maintaining the staff to engage in an activity that may not be necessary.

## Recommendations

ARAZI should consider eliminating this activity, since it duplicates work of other agencies, and ARAZI does not have the personnel or the resources to engage in this activity.

Instead, conversion of this directorate to case management and legal analysis would be helpful and avoid any confusion from involvement of ARAZI in dispute resolution.

Establishment of land case management and legal analysis units at the provincial level to address local land disputes and to reduce the workload of the directorate main office is recommended.

Establish enforcement and protection groups in each province with help and coordination of MoIA, since the enforcement of decisions remains a significant challenge with regard to land related disputes.

Initiate better safety, security and transparency regarding the duties of Directorate personnel to allow employees of the directorate to carry out their duties without threat from local power groups and individuals, including warlords, who appear to play a significant role in land usurpation.

Establish special courts for land related disputes between people and the government. These courts would reduce the current work load of the courts of general jurisdiction and reduce the time it takes for the resolution of land disputes.

## Directorate of Administrative Operations

### Primary Duties

The main purpose of the Directorate of Operations and Communications is to ensure proper, timely and efficient services to each technical directorate of ARAZI so that it can properly function.

### Personnel and Organizational Structure

The ARAZI Department of Operations has the following units:

- Finance,
- Human Resources,
- Logistics and Procurement,
- Information Technology,
- Transport and Security, and Archiving.

The finance unit ensures that proper financial tasks are carried out and documented in accordance with internal procedures of public administration and ARAZI financial policies and procedures. The expectation is that bookkeeping, closing periods, financial reports and other financial activities are well documented and accurate. Note, however, that ARAZI does not have any provincial staff in the regions and all the financial affairs in the regions are managed by the regional finance staff of MAIL. This ARAZI unit has 3 staff in the central office,

including the head and deputy head of the unit, all of whom are contracted staff of Harakat. No civil servants have been employed as of October 2011 in this unit. The finance unit of ARAZI is not involved in budgeting either for salaries and administrative staff, nor development, which are the two types of budgets prepared by the government. All budget development is conducted by MAIL. The unit is not involved in the collection of revenue from lease contracts.

The Human Resources Unit assumes responsibility for the recruitment and leaves process according to the specific needs of each department and ensures that all ARAZI HR policies and procedures are applied. The standard recruitment processes established by the GIROA for all civil servant employees are also applied by the HR unit. ARAZI submits attendance reports for its civil servant employees to the MAIL HR department on a monthly basis in the head office, but in the provincial offices attendance records are submitted to the provincial directorate of MAIL. As in some other units of ARAZI, there are two types of staff in this unit; (1) civil servant and (2) contracted from Harakat. The HR unit is also responsible for providing administrative assistance for all Harakat funded employees.

The civil servant employees are on the payroll of MAIL and are paid in accordance with the GIROA standard salary scale through the HR department of MAIL. The employees contracted for ARAZI by Harakat are paid by Harakat. Most ministries and departments have been engaged in reforming and restructuring their cadre of civil servants, but ARAZI has not begun civil servant reforms and there is no indication that it will.

The Logistics and Procurement Unit establishes and implements efficient and cost effective logistics and procurement procedures in line with ARAZI and the GIROA's policies and procedures. This unit is responsible for proper maintenance and support of the main office, regional offices and personnel. These include clean office space and installations, food supply, messenger services, and an adequate space for public reception at headquarters. The 2 staff members of this unit are both contracted by Harakat with no civil service assistance.

The Information Technology unit ensures that all ARAZI IT policies and procedures are followed and that the proper CIT infrastructure and information is available to all ARAZI personnel. The unit is responsible for implementing and monitoring all Security IT policies and procedures for electronic documents and communications. Installation and maintenance of servers, software and IT equipment for all ARAZI offices are also the responsibility of this unit. There is no IT staff in the provinces for ARAZI and this unit does not have any direct and/or indirect connection with the provincial offices. Most of the provincial officials lack internet and computer equipment. There is a single person responsible for this unit, who is contracted by Harakat.

The Transport and Security unit makes sure that security policies and procedures are in place and complied with at the main office and in the provincial offices. Security clearances for ARAZI personnel during field trips are issued, and the unit provides security for personnel resolving land lease disputes with the customers. Close relationships with relevant national and international security organizations are maintained and management and personnel are regularly informed regarding security issues. This unit also provides transportation for ARAZI personnel for travel in the course of official business. There are 6 staff members of this unit, 1 of whom is contracted by Harakat.

The unit for archiving/maintenance keeps a standardized and accurate data management and archive system for the data produced within ARAZI. This data is archived and access to the data is restricted to relevant personnel. This unit has 10 government employees and 2 members contracted by Harakat.

The entire Directorate of Operations of ARAZI will no longer be in place once Harakat funding is ended in December 2011.

## Findings

ARAZI provincial civil service employees continue to work under the structure of provincial departments of MAIL despite the Presidential Decree stating that Amlak employees should be subsumed by ARAZI, and there are no clear terms of reference for each employee.

In the recent GIROA approved structure there is no Operation Department to manage the financial, administrative and personnel affairs of ARAZI. However, Harakat had established the Directorate of Operations and Communication in ARAZI through its own funding. Consequently, none of ARAZI's employees is involved in the budget process with GIROA. Furthermore, from HR point of view, ARAZI exercises no direct control over civil servants, because the civil servants are managed by the HR department of MAIL.

Overall ARAZI appears to have little or no independent funding source from the GIROA general budget or otherwise to effectively continue its activities when Harakat support ends.

## Recommendations

The Directorate of Administrative Operations and Communications should have direct control over its civil servants.

This Directorate, absent Harakat funding, is subject to the same financing constraints as set out in the General Recommendations for ARAZI above, and clearly needs to develop a viable funding source.

## Directorate of Communications and Media

### Primary Duties

According to the ARAZI Communications Strategy, the Directorate of Communication and Media objective is to manage the internal and external communications regarding public information, marketing the land lease service, accountability to the citizens of Afghanistan, reporting to donors and sponsors. This Directorate should strengthen the team building process by facilitating effective internal communications and related products. The goal of the Directorate is to influence and win active support for reform from key decision makers and promote ARAZI to customers by clarifying and providing a full range of land reform benefits, and disseminating information regarding these benefits.

### Personnel and Organizational Structure

The Directorate of Communication and Media reports to the Director General of ARAZI and did consist of a Director and Deputy Director, but because of the impending loss of Harakat funds, the Director has resigned. The Deputy Director is presently Acting Director and one more person has been added as staff.

### Procedure

ARAZI's public launch and information campaign is based on the Communications Strategy. In Phase I of the communication strategy, branding manual, and other communication materials were completed. In phase II, a

national information and outreach campaign will take place before commencement of operations. The intention is to widely inform the Afghan population about ARAZI's responsibilities and services. This campaign will be based on the communication strategy developed in phase I. The campaign will include a website, TV spots, radio spots, brochures, billboards, and other outreach mechanisms. The Communications Strategy will be a key element in establishing the confidence in and the sustainability of ARAZI and will assist ARAZI in achieving its strategic goals and objectives.

## Findings

As one of the key but sometimes overlooked departments within ARAZI, the Directorate of Communication and Media is integral to the success of the organization. The citizens need to know and understand the processes and procedures of land leasing, and other benefits of the Afghanistan land reform program.

The land reform will not be successful in Afghanistan unless the beneficiaries have knowledge of the policy, laws, structures, and procedures for implementing land reform, and recognize the societal benefits that participation entails.

The Directorate of Communication and Media currently has the support and funding to succeed, but only in Kabul and surrounding areas. The Directorate is well equipped with computers, internet service, and cameras. The department, however, is totally funded by Harakat, and its future is uncertain should this funding terminate.

The detailed strategy is not being implemented on account of insufficient resources.

## Recommendations

The Directorate of Communication and Media should be supported if land reform through ARAZI is to be successful and sustainable.

It is extremely vital to build up relations between the main office and the regions to ensure effective communication between throughout the country.

Communication units should be established in all provincial offices or at least in regional offices of ARAZI for the purpose of public education and awareness.

## ARAZI Jalalabad Office

### Primary Duties

The main goals of the ARAZI office in Jalalabad are to increase revenue, solve land conflicts, improve property activities and implement decisions from the court and the main office in Kabul. In the past year the ARAZI office has leased approximately 633 jiribs of land (127 ha), collected revenue worth 5,040,533 AFA, recovered usurped land amounting to 9,600 jiribs (1920 ha), registered 96 new deeds, sent over 2,100 response letters to other agencies regarding land issues, and measured 6,830 jiribs (1366 ha) of land using in-house technical staff.

## Personnel and Organizational Structure

With respect to leasing, ARAZI has about 15 staff working on the leasing process in the Eastern Provinces and is currently in the process of preparing 23 leases for 1,770 jiribs (354 ha) of land. ARAZI has already leased two parcels for a total of 600 jiribs (120 ha) and another 6 leases have been completed and sent to the ARAZI main office for approval. The leases are usually for agricultural purposes.

ARAZI has 52 staff in the Eastern provinces or approximately two staff in each District. In the Jalalabad office there are 4 ARAZI departments: Administration, Land lease, Survey, and Land Identification. The land registry section has 2 staff and in a typical day they process legal deeds issued by the court.

## Procedure

The procedure for land registration is that people come to the ARAZI land registry office to inform the office of a transaction that has occurred and which has been registered with the Court (they bring an official letter from the Court for this purpose). There is an average of 10-12 of these transaction registrations a day, as many as 25-30 transactions on a busy day. It is not unusual for a land parcel to be subject to transactions 2 to 3 times per year. There is no fee for registering land transactions with ARAZI, and the Director of the office personally signs all register documents.

With regard to the importance of legal deeds, there is a tendency for land owners in urban areas to have a much stronger desire for a legally recognized deed as a result of the high value of the land. This is not necessarily the case in rural areas, where land prices are much lower and legal deeds are often avoided to avoid paying more in land taxes. Unofficial customary deeds are considered more useful for rural land.

ARAZI is involved in land disputes and a key area for dispute is where a person's land has been taken unlawfully. Another common form of land controversy arises between districts where there are no specified boundaries and a decision has to be made regarding which district a particular parcel of land belongs. ARAZI personnel do work sometimes with the local AGCHO office when there is a difficult dispute and assistance is required.

The question of how land subdivisions are handled yields an interesting answer. In essence there are no maps prepared and there is simply a deed written to the effect that one person has sold, for example, the eastern part of his parcel containing 10 jiribs to someone else. The deed would show that the new owner of the eastern part of the original parcel now has as his abutting neighbors those owners who originally existed on the north, east and south of the parcel, plus the person who sold him the land as the neighbor to the west. While this may seem reasonable in principle, in reality it is an approach that does not deal well with complex subdivisions that occur in the real world. Nor does it provide any guidance at all on the actual shape of the boundary between the two newly subdivided parcels.

## Recommendations

In terms of the IT facilities available in the ARAZI office, they have two desktop computers and one laptop computer for preparing letters and other administrative documents associated with the registration process. The ARAZI staff stated that the needs of the Jalalabad main office and 21 District offices were:

- A simpler land leasing system,

- Technical training in basic computing skills (the number to be trained is unknown),
- A computer system for handling their registration processes,
- Internet connectivity for the Jalalabad office,
- A printer and a document scanner,
- 5 x PCs for the Jalalabad office,
- 27 x laptop computers for the Districts,
- 1 x photocopier machine,
- 30 x staplers, 30 hole punches and ball point pens',
- 50 x desks and 50 x chairs,
- 500 x document folders, plus shelves and cupboards for the registry archive,
- 53 x motorcycles for transport around the Provinces,
- 3 x bicycles.

# CHAPTER II

## AGCHO

### Primary Duties

The Afghan Geodesy and Cartography Head Office (AGCHO) is an independent body that conducts geodetic, cartographic and cadastral survey and mapping activities throughout the country. Prior to 1963, no organization existed to provide exact measurement statistics of agricultural land in Afghanistan. There was only a small section with the title of Technical Land Measurement that was working out of the Ministry of Finance for the purpose of solving land tenure problems, and using simple survey instruments to create land parcel maps. This section was not able to meet the pressing need for: (1) gathering exact statistics about rural lands; (2) handling land transfer documents; and (3) managing land tax affairs in Afghanistan. Accordingly, the first cadastral survey school was established in Kandahar in 1963 with USAID support. Over the next eight years, over 640 students graduated from the school and a new era began for cadastral surveying in Afghanistan. Officially, the Cadastral Survey Department commenced in 1966 and by 1977 it had surveyed approximately 34% of the government and private land in the country. Because of the difficulties during the next 25 years, the work of the Cadastral Survey Department slowed considerably, but there are strong signs again of a renewed focus by the Department to proudly return to the critical role it once previously in the development of Afghanistan.

### Legal and Governance Framework

AGCHO operates under the mandate of the “Geodesy and Cartography General Department Act” (1983), as amended by Presidential Decree (2007)<sup>16</sup>. This creates AGCHO as “the central organ to carry out and expand geodesic [sic], cartographic and cadastral affairs”. The Act prescribes detailed related tasks and functions, states its organizational structure which is headed by a General Director, states among other things that AGCHO is the sole governmental body responsible for preparation, printing and duplication of topographical maps, aerial photos, photo plans and preparation of coordinates on the country level, and specifies that Ministries and NGOs may not provide such services without AGCHO’s confirmation<sup>17</sup>. This legislative delegation to AGCHO of responsibility for all survey and mapping is consistent with international best practice. Indeed, such responsibility is rarely, if ever, assigned to either semi-government or private organizations because of the importance of having survey and mapping under government control. This is, in fact, in line with many other countries in the region where access to government mapping and imagery products is firmly controlled – usually for security reasons. This does not mean that AGCHO is the only body which can carry out survey and mapping activity – and many other agencies and NGOs do so – however they all require the official authorization of AGCHO prior to commencing their work<sup>18</sup>.

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<sup>16</sup> Decree of the President dated 01/11/1385 (21/01/2007) Serial No.: 911, Modification of Supplement 1, Geodesy & Cartography General Department Act, published in Official Gazette # 525, dated 15/11/1361 (04/02/1983).

<sup>17</sup> Article 5 of Presidential Decree No. 911 dated 01/11/1385 (January 21, 2007).

<sup>18</sup> Id. Article 2.

With regard to cadastral functions, accurate survey and mapping are important for establishing land rights, conducting land transactions, resolving land related disputes, and ensuring security of tenure in general. Thus, cadastral survey and mapping must be done expertly, efficiently and using consistent methods. For that to happen, both surveying and mapping should be supervised by a body with technical capability and centralized control over all survey and mapping in the country.

The body that has been assigned this task is the Department of Cadastre within AGCHO, and in the case of other agencies and NGOs that wish to undertake cadastral surveys, AGCHO is required to gain permission from the President for the surveys to commence. Cadastral surveyors in Afghanistan have operated for 35 years under the “Law of Land Survey, Verification and Registration (1976)” as amended in 1988. However, there are no legislative regulations or technical standards guiding cadastral surveyors when making their surveys. Another area which has legal impact on AGCHO’s cadastral survey mandate is in the current Land Management Law (2008), whereby AGCHO has a key role to play in providing the settlement commissions with cadastral survey and mapping expertise and support<sup>19</sup>.

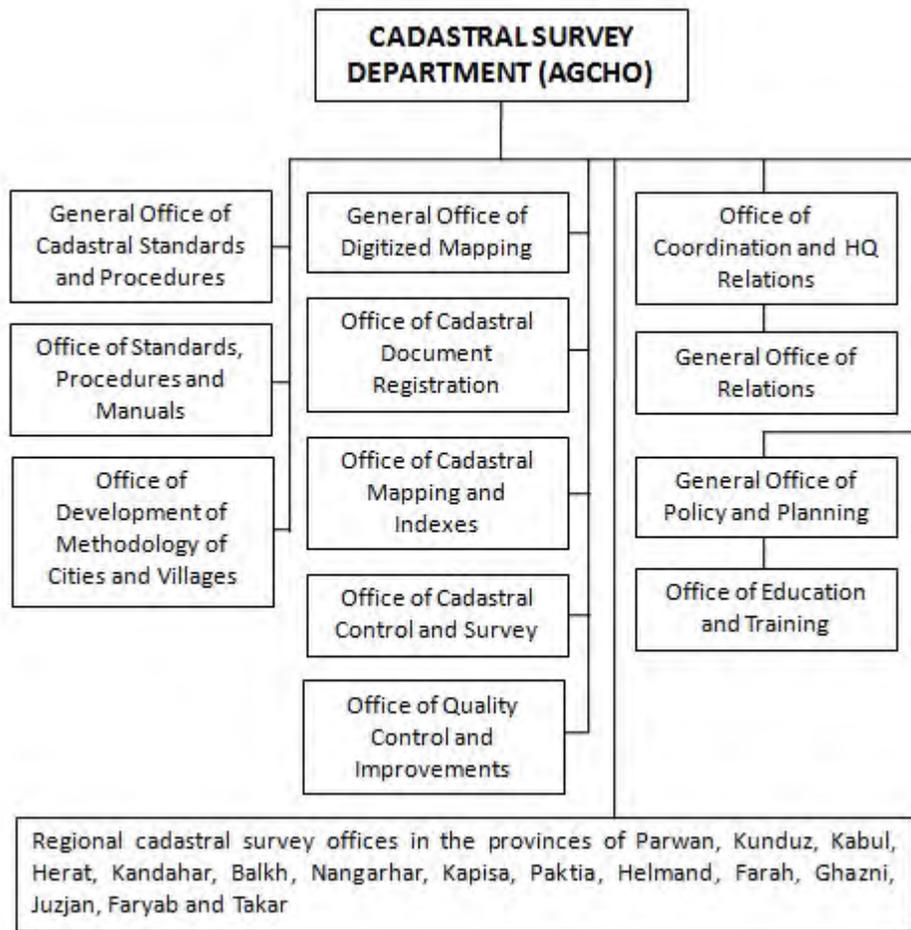
## Personnel and Organizational Structure

The Department of Cadastre has approximately 350 total staff (230 technical and 120 support staff) located at its head office in Kabul and throughout its 15 regional offices. The current requirement in order to become a cadastral surveyor is to first hold a 4-year degree. This degree is most commonly obtained from the Department of Engineering Geodesy at Kabul Polytechnic University, although many of the older staff had their training at the Cadastral Survey School in Kandahar in the 1960s and 70s. Current graduates are required to undertake a two-year cadastral survey program at the AGCHO Training Institute (a Ministry of Education technical training center located in Kabul). Here they train alongside students who are studying surveying at the sub-professional level for future employment with AGCHO. The annual output of graduates in geodesy at Kabul Polytechnic University is about 40, while the annual output of cadastral survey technicians from the AGCHO Training Institute is about 50.

This extra two years study in addition to the four years of tertiary education taken already is not unusual compared to the rest of the world where many countries, such as Australia and Canada, have a similar post-graduate training requirement (usually through a system of licensing examinations) before a person is finally qualified to undertake cadastral surveys.

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<sup>19</sup> Land Management Law (2008), Article 13(2) and Article 16.



In terms of staffing, 30 years ago the organization and its personnel were all quite young, but the difficulties of the war years have meant that the organization has aged both technologically and in terms of its human capital. The result is that most of the department personnel have retired or are approaching retirement age very soon.

## Systems and Procedures

The early years of the Cadastral Survey Department between 1966-73 resulted in the identification and mapping of 1,333,700 parcels involving 548,800 land owners located in 5,500 tax units and drawn on 30,000 separate map sheets. Today the Department carries out a range of field survey functions primarily throughout the warmer seasons of the year, before the survey teams move back into their offices for the winter months. Some surveys are small and may only involve a single parcel, while others relate to large government development projects throughout the country.

For example, the government wants to build a ‘sharak’ (or township) for the Kuchi people in Logar Province and organizations such as MAIL, MUDA, AGCHO, Finance, Public Works and Energy and Water are all involved in the project. The Cadastral Survey Department has been using one team over the past six months to survey 63,000 jiribs (12,600 hectare) of land for the new township. Similarly, another cadastral survey team has been working on a large project in Kapisa Province where they are using satellite imagery in the Hisa-e-Awal Kohistan District (just

north of Bagram air base) to perform cadastral parcel identification. Because the imagery being used in the Hisa-e-Awal Kohistan District is relatively old (2004), the Department believes it could put three teams into the field next year if it had up-to-date 1-meter resolution imagery for the project site. So it is quite clear that the Department is prepared to embrace new technologies and adapt to changing technological environments.

Nationally, in the past year, the Cadastral Survey Department has surveyed approximately 130,000 jiribs (26,000 hectare) of land for major projects involving 60-70 technical survey staff. These projects were located in:

- Logar Province for mining and development purposes;
- Balkh Province for land conflict resolution and development purposes;
- Herat province for land conflict resolution and development purposes, and the survey has been continuing for the past three years;
- Faryab province for land conflict resolution and dam construction;
- Bameyan province for two road construction projects and for the band-e-Amer area reservation;
- Panjsher province for land conflict resolution;
- Kapisa province for a new city development project;
- Baghlan province for land conflict resolution.

Similarly, last year in Nangarhar Province, cadastral surveys were performed for over 81,000 parcels with a total area of 273,000 jiribs (54,600 hectare). Sometimes the municipalities will ask AGCHO to undertake specific parcel surveys related to land ownership, although they also ask for surveys to be made of much larger settlement areas.

The Cadastral Survey Department has 30 electronic Total Stations, numerous old Transits that should have been discarded 40 years ago and only 10 vehicles for 330 staff. Forty years ago the situation was completely different when it had over 650 cadastral staff and 200 vehicles, and even when the Russians came in the 1980s they delivered several hundred vehicles to AGCHO.

Typically, the cadastral surveys are performed using Total Stations (which electronically measure angles and distances), although the Department would like to make much greater use of GPS and satellite imagery for its field work. This is important in remote areas where land values might not justify highly accurate, but expensive, survey techniques. These new techniques also to reduce the security risk to field crews by requiring them to spend less time in the field. Another problem with the use of Total Stations is the lack of office computers and suitable field-to-office software that would permit a much easier flow of data from the raw observations through to a nation-wide digital cadastral mapping system. If satellite imagery and GPS were available for their operations, the cadastral survey staff around the country would still require computers, software and training to use the new survey techniques on offer.

At the same time, there is a problem with using survey-grade GPS by the Cadastral Survey teams because the Continually Operating Reference System (CORS) that is maintained by the Geodesy Department in AGCHO is not functional. So other Departments cannot make full use of the data the system transmits which allows GPS users to get centimeter accuracy results while they are out in the field.

During the cadastral surveys the teams measure and map the boundaries of the parcels, typically demarcated by solid walls, and calculate the parcel area in jiribs. The ownership details, together with the class and type of land are also recorded, for example, whether the land is irrigated or unirrigated, private or government, its class on a 1-5 scale, and for unirrigated land its type - such as pasture, forest, services, industrial or residential.

Currently the cadastral records consist of hand written parcel indexes and hand drawn cadastral maps for each village or project and these are all in hardcopy format. The cadastral maps are typically drawn at a scale of 1:2000 and then redrawn at other scales such as 1:4000 and 1:8000. Cadastral surveys in rural areas are typically performed using the closed traversing method at an accuracy of 1:2,000 to 1:5,000, but there are still no written technical specifications in force. In addition, copies are hand-made of all maps arising from the work of the provincial offices which are sent to the cadastral head office in Kabul. The Cadastral Survey Department fully understands the limitations of this process and has a strong desire to computerize its operations and records through technologies such as GIS.

## Competency Development and Human Resources

The Cadastral Survey Department has an exciting long-term vision to increase its total personnel number to 1800 technical and support staff, so that it can establish cadastral survey offices in all districts of the country. This growth in the Department is important, because if the Settlement Commissions under the Land Management Law are successful, then the question to be posed is “How will AGCHO support the commissions with cadastral functions as required by law?” This is a substantial issue as although there are only about 30 commissions in place now, in the 1970s when this scheme commenced there were over 300 commissions in force around Afghanistan – with each one requiring cadastral surveying and mapping input to the land grant process.

The issue of human growth of the Department has already started to be addressed and in the past year 30 young graduate cadastral surveyors have been recruited to not only bring youth to the Department but also to bring in the people who can and will embrace the new technologies that will come to the department. To support this growth and to act as mentors to these young surveyors, 30 retired surveyors have been brought back on a 12-month contract to work with them – especially in the sensitive area of working with village elders and community officials when implementing their survey tasks.

The Department’s offices in Kabul consist of a single two-storey office in reasonable condition plus the archive room in the basement of an adjoining building. Extra office space is likely to be available soon when the National Security Directorate (NSD) moves out of a building next to the Department’s head office. The basement archive, however, is not suitable for its purpose and requires: (1) appropriate environmental controls and cleanliness suitable for records storage; (2) repairs to a wall that was damaged in the civil war about 15 years ago; and (3) proper partitioning and shelf storage for the records.

In most cases, the provincial offices of the Cadastral Survey Department are owned by AGCHO, however they are currently forced to lease office space in Herat, Paktiya, Juzjan and Farah provinces – even though they have their own land suitable to build on in three of these provinces. In the Jalalabad office they have a very good two-storey building less than 10 years old, but the major problem there is an unreliable power supply and the Department would prefer to install solar power which is widely used in Nangarhar due to the sunny, hot climate.

## Findings

There are no legislative regulations or technical standards guiding cadastral surveyors when making their surveys.

What is lacking in Afghanistan is a formal licensing system and a means of regulating both the private and government sector cadastral surveyors to ensure that standards are followed and their professional development grows as technology changes. In addition, there are no documented minimum survey standards for them to follow and this is a weakness of the system.

There is a problem with using survey-grade GPS by the Cadastral Survey teams because the Continually Operating Reference System (CORS) that is maintained by the Geodesy Department in AGCHO is not functional.

Because the imagery being used in the Hisa-e-Awal Kohistan District is relatively old (2004), the Department believes it could put three teams into the field next year if it had up-to-date 1-meter resolution imagery for the project site. So it is quite clear that the Department is prepared to embrace new technologies and adapt to changing technological environments.

If satellite imagery and GPS were available for their operations, the cadastral survey staff around the country would still require computers, software and training to use the new survey techniques on offer.

Most of the department personnel have retired or are approaching retirement age very soon.

The Cadastral Survey Department seeks to reach out more to young people to pursue a career in cadastral surveying.

AGCHO would like to see more funding provided to pay for stipends to help pay the living costs of final semester surveying students from the AGCHO Training Institute and Kabul Polytechnic University. Many of these students live away from home in various regions of the country receiving practical, hands-on training that helps reinforce their commitment to the profession as a career.

Significantly, there is no professional society for any form of land surveyors (cadastral, engineering, and geodetic) in Afghanistan. A professional society could enforce standards of training and ethics within the profession and promote a better understanding of members' responsibilities within the communities.

## Recommendations

Amend the Geodesy and Cartography Act to state explicitly that AGCHO is the sole body with general authority to conduct cadastral survey and mapping in Afghanistan; that other bodies or organizations may do so only with AGCHO's approval and supervision; and that AGCHO's authority extends to all urban as well as rural land.

Either amend the Geodesy and Cartography Act, or enact a new law, for the purpose of specifying and improving the level of technical expertise in cadastral surveying in Afghanistan. Such amendments would state the procedure and requirements for licensing cadastral surveyors and would direct and empower AGCHO to issue detailed supporting regulations. The regulations would include the technical specifications and standards to be followed by cadastral surveyors, and would state rules for controlling the accuracy, requirements and procedures necessary for conducting cadastral surveys.

# AGCHO Eastern Regional Office (Jalalabad)

## Primary Duties

The Eastern Regional Office of AGCHO located in Jalalabad conducts surveys, prepares cadastral maps, topographical maps and keeps property records for the ministries, governmental agencies, and other organizations in the eastern region. In the fall of 2011 three technical personnel were in the field performing cadastral surveys as part of a land exchange program for villagers who lost portions of their land when it was expropriated for a new provincial road. However, there were no other cadastral surveys being undertaken due to the risky security environment. If it were safer to conduct surveys, the AGCHO office would continue to survey the 75% of the region that is still not surveyed.

Apart from the technical work, a key role of the AGCHO surveyors is to communicate with the villagers through the local District Officers – and the villagers do not always agree with the purpose of a cadastral survey. For example, for a tax survey the people do not like to declare how much land they have as it may have been underestimated and their resultant tax bill will rise after the survey.

Customary deeds are normal in Jalalabad and recognized as valid under Sharia law. The records that are kept by AGCHO in the eastern regional office refer to such *urfi* contracts. They are mostly used where they can be traced back to a legitimate title registered with the courts. For example, where a father of a large registered parcel would like to give land to his sons; this is accomplished with customary deeds that, however, relate back to the title registered with the courts (usually the father's title).

## Procedure

The records are collected by the cadastral survey team while they are mapping the land parcels in the field. These village property files are then recorded in two ways: (1) as loose-leaf books indexed according to ownership (that is, all parcels owned by each person in a village are listed together); and (2) by parcel number within the village (that is, all individual parcels in a village are listed with the owner's details and area). The names in the first book are not organized alphabetically or in any other fashion. There is simply a first page or two that lists all the names in the village in a random order and contains references to where the further information can be found in the book

Each village's property records are cross-referenced to a set of hand-drafted cadastral maps (about 500mm square) on which the properties are shown. There may be many maps making up a village set, and while they are originally plotted at a scale of 1:2000 they are subsequently redrawn by hand to other scales such as 1:4000 and 1:8000. In addition, a duplicate copy is drawn of each map and sent to the Head office in Kabul. No digital technology is used in either the plan preparation or property file recording processes, yet it would be a relatively easy process to modernize these key tasks in the AGCHO office and bring it into line with international best practice.

In terms of accommodation, AGCHO is the legal owner of its regional office building which is a 2 storey, PRT-constructed brick/cement block building, less than 10 years old, with ten rooms on each floor capable of accommodating 4-6 people each. The 21 staff in the regional office are made up of 16 technical personnel and 5 administrative personnel. All staff are located on the ground floor and the top floor is completely empty.

The land parcel records and maps for each village in each district are stored in metal lockers. There is no atmosphere control in the archive and so it is subject to very high humidity in the monsoon season. There is no backup of these vital cadastral records and they could easily be destroyed by fire or floods.

The technical survey equipment consists of plane tables and tripods, large wooden staves for tacheometry observations, an old Russian theodolite, and a very old transit with a built-in compass for orientating field surveys on magnetic north. There was one Trimble M3 Total Station, about 10 years old, which is considered to be the only modern item of equipment in the office. However, the total station is only used for the most accurate surveys and it was stated that it can in fact be dangerous to take modern equipment like that in the field as it attracts Taliban attention. In a building on the top floor there was a Leica 1200 GPS receiver which is one of the Continuously Operating Reference Stations (CORS) points in the non-functioning AGCHO network. In terms of IT, there was only one old desktop computer in the entire office, but it was not operating and was placed in storage.

## Recommendations

The following needs were identified by the AGCHO Eastern Regional Office:

- A solar power electricity system (the office has no reliable power source);
- 4 x desktop PCs and two Laptop computers for technical and administrative use;
- The technical uses of the computers would be for field-to-office survey data transfer;
- Training for six people in GIS and total station field-to-office software;
- Training for six people in basic IT (computers, MS Office and the Internet)
- 1 x A1 plotter;
- 1 x flat bed or drum scanner (A1) for digitizing the hand-drawn plans;
- 1 x differential survey-grade GPS receiver;
- 3 x drafting tables and stools;
- Camping equipment such as tents, sleeping bags, camp stoves for when cadastral survey staff are living away from home and camping overnight in local District offices;
- 6 x air conditioning units for the ten office rooms used downstairs;
- Fans for 10 rooms;
- The office requires repainting;
- The office requires finding to reposition the main entrance from the narrow side road to the main road at the front of the building;
- Connection to the internet for communications purposes
- 2 x survey vehicles

# CHAPTER III

## MUDA

### Background

The 34 provinces of Afghanistan have experienced rapid growth in their cities, districts and sub-districts and have encountered the concomitant need for decent, available, affordable housing, services, and amenities permitting contemporary standards of living. The growing pre-eminence of cities, imparting educational advantages, economic opportunities, and protection from harm, requires an urban infrastructure to ensure the health, safety and welfare of the citizens of Afghanistan. Urban administration must inure to the benefit of the community and provide services such as power, water, sanitary installations, communications, police and fire protection, road maintenance, educational programs, health services, and other facilities needed for a functioning society. Unfortunately, the cities have been unable to match the required services with the growth.

The problems are not the government's entire making, but the potential solutions are entrusted to its care. The Ministry of Urban Development Affairs is one of the organs responsible for preparing appropriate policies, programs and projects and coordinating, monitoring and assessing projects in the urban sector. It reports back to donors, the Ministry of Finance, and the Cabinet of Ministers.

Historically, the Ministry of Public Works was responsible for city planning across Afghanistan until 1964. In that year, the Central Authority for Housing and Town Planning was established and assigned the task of city planning. Ten years later, the responsibility for planning in the city of Kabul was assumed by Kabul Municipality while the Central Authority for Housing and Town Planning retained responsibility for urban planning in other towns and cities and for water supply in Kabul. In the mid-1980s, the task for urban planning outside Kabul was given to a parastatal project design and formulation enterprise (PAMA<sup>20</sup>) that was also given the responsibility for the design of public buildings for other line Ministries. The directorate of PAMA was merged into a new Ministry of Urban Development and Housing (MUDH) in 2001, which was renamed as the Ministry of Urban Development (MoUD) in 2003 to reflect its shifting role as “enabler” rather than the former “provider” of housing. In 2009, the Ministry assumed the name of the Ministry of Urban Development Affairs to reflect its broader role in the urban sector.

Urban planning practice in Afghanistan continues to be largely influenced by the legacy of top-down master planning developed 30 to 40 years ago. The Master Plans that were prepared in the 1960s and 1970s by teams of Afghan civil engineers with technical assistance from Soviet and Eastern European advisors were primarily aimed at arranging and bringing order to urban space, planning for infrastructure investments, and regulating physical urban growth. Apart from the fact that reactive ‘planning by enforcement’ was difficult in the volatile political environment that prevailed in the decades following the fall of the regime sustained by the Soviets, the sheer scale of urban population growth soon rendered the plans irrelevant. Many of these centralized Master Plans failed to

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<sup>20</sup> Association of Project Development Institute. See Articles of Association of Project Development Institute (Pama) of the Ministry of Public Works, Official Gazette No. 798.

achieve their objectives, in part because they could not keep pace with migration into urban areas, and partly because implementation of these plans was unfunded. Inevitably these plans have not proved effective to guide urban growth<sup>21</sup>. These obsolete plans and approaches are unlikely to be useful in guiding future development, being too ambitious, too cumbersome to prepare, and largely unaffordable<sup>22</sup>.

In the last 10 years, despite genuine efforts by MUDA officials to review the Master Plans, progress has been very slow. With a projected annual population increase of 5 %, the backlog of urban investments, and the rising socio-economic disparities, local authorities have come to the conclusion that an alternative process to that of Master Plans needs to be developed for cities in Afghanistan.

While the Master Plans developed in the 1970s have been dismissed by westerners as ideologically and procedurally outdated relics, they remain the only reference for municipal officials throughout the country, even though development rarely conforms to the plans. In recognition of the irrelevancy of official planning tools, a Presidential decree in 2002 suspended the Master Plans in Kabul, Kandahar, Herat, Mazar-i-Sharif, Baghlan, Kunduz, Ghazni, and Khost until the Ministry could prepare new plans. It was envisaged that these new plans would, once approved by the statutory authorities, be implemented by the respective municipalities. The intention was to initiate a process that addressed the ground realities, while developing a series of definitive references for future public and private investments. Far from resulting in an overhaul of urban planning processes, however, the suspension of the Master Plans created a planning vacuum, which official institutions have since struggled to fill.

Until today, expectations have been unfulfilled and tensions between governmental organizations both centrally and locally are evident. This situation has been exacerbated by the absence of a coherent national urban policy, as well as serious gaps and inconsistencies in the legislative framework, with existing national and municipal laws failing to effectively frame clear responsibilities, urban policies, or address physical planning issues. The physical consequence of this legislative, policy, and planning vacuum, is largely uncontrolled public and private construction on an *ad hoc* basis in the rapidly growing urban centers. In many cases, this unplanned growth and resulting urban sprawl jeopardize the rational expansion of towns and cities and compromise the government's ability to extend basic services or repair of infrastructure that are already overstretched by the burgeoning urban population, apart from consuming valuable agricultural land.

In addition to urban policy and planning, MUDA has several responsibilities including the preparation of national codes for the urban sector, urban management, housing design, construction of public buildings, urban upgrading, defining large infrastructure works, and safeguarding Afghanistan's urban heritage.

MUDA has from time to time stated its basic strategy, and a fairly well drafted strategy has been articulated in the ANDS. Nevertheless, the statements that have been made from time to time regarding policy, strategy, and responsibilities are rarely expressed in the same manner from report to report, and the variations that have occurred leave one wondering what exactly is MUDA's current role in urban planning and work with the municipalities<sup>23</sup>.

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<sup>21</sup> Note that the gap between the master plans and reality has never been properly assessed.

<sup>22</sup> Ministry of Urban Development Strategy for ANDS, 21 April, 2007.

<sup>23</sup> This is discussed below with regard to the relationship between MUDA and the IDLG.

## Legal and Governance Framework

According to the Afghanistan National Development Strategy, MUDA should focus on policy, programs and legislation<sup>24</sup>, while the municipalities are seen as primarily implementing partners. This is in line with the worldwide shift from government led projects to the development of enabling sector strategies. In 2004/5 MUDA appeared to have shed its direct responsibilities for the construction, maintenance and management of housing, but despite this change in policy, MUDA is still involved in designing social housing and site and service projects for selected categories of civil servants. These projects are funded through MUDA's Development Budget and are implemented by parastatal construction companies<sup>25</sup>.

According to MUDA its main management duties are:

4. Making, approving and implementing National Urban Policy,
5. Preparing plans for the regional development strategy for all the zones,
6. Preparing urban and regional plans for major urban areas,
7. Strengthening the capacity of municipalities,
8. Improving revenue and capacity building programs in thirty four provinces and major cities,
9. Urban development plans, including plans for infrastructure investments made in twenty five major cities, and
10. Institutional capacity supported by educational plans, institutional reforms for effective governance in the country's thirty four provinces and major cities<sup>26</sup>.

MUDA has made an effort to address urban sector development strategically by focusing on: a) strengthening urban governance, finance, and management, b) improving access to developed land, securing tenure and furnishing housing, and c) improving infrastructure and services. As spelled out by the ANDS, MUDA is, in principle, committed to the devolution of urban management to municipalities and districts, retaining its policy guidance role. But this transfer of powers has proven easier said than done, requiring the development of new values, skills and capacities, not to mention political will.

Master plans are generally prepared and revised (when and if they are prepared or revised) by MUDA, but there is no clear legislative framework prescribing procedures for planning, allowing enforcement of plans and providing for consultation and input from interested constituencies and the public. In terms of its supporting legal framework, MUDA finds itself in a comparatively weaker position than other institutions operating in the field of development. This is particularly striking considering its potential guiding role in a country that is among the fastest urbanizing countries in Asia. Despite support from several implementing agencies and multi- and bi-lateral donors, MUDA has yet to produce a national urban policy, a factor that is seriously crippling effectiveness in this sector.

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<sup>24</sup> Part, if not all, of this responsibility has been assigned to IDLG, which was established by Presidential Decree in 2007.

<sup>25</sup> Parastatal construction companies were very active during the 1960-80s and were responsible, for example, for the construction of the prefabricated MicroRayon blocks in Kabul during the Soviet regime.

<sup>26</sup> Ministry of Urban Development Affairs website, <http://muda.gov.af/en/page/1888>, accessed March 15, 2012.

Article 141 of the 2004 Constitution states in pertinent part:

*To administer city affairs, municipalities shall be established. The mayor and members of municipal councils shall be elected through free, general, secret and direct elections. Matters related to municipalities shall be regulated by law.*

*The state shall adopt necessary measures for housing and the distribution of public estates to deserving citizens in accordance within its financial resources and the law.*

The Municipal Law of 2000 in Article 5 has a few general and imprecise provisions on the preparation and implementation of urban zoning plans including master plans.

*Article 5:*

*(1) Within the scope of their operations, the municipalities shall be in possession of their respective urban master plans.*

*(2) The departments of Central Engineering and Urban Planning as well as their relevant branches shall prepare and modify master plans in cooperation and consultation with the municipalities and shall be implemented by the municipality after being confirmed by the Council of Ministers and approved by the head of the Islamic Emirate of Afghanistan.*

*(3) Responsibility to supervise implementation of the master plan shall rest with the master plan designing department as well as with the concerned municipality.*

The Municipal Law lists the main responsibilities of the municipalities and district branches in Chapter 4 in a very general order of importance referring to laws, rules and regulations. Whether rules and regulations have been drafted and passed regarding the responsibilities and powers is not clear. The law also refers often to relevant departments within the municipalities, suggesting that there is an organizational structure that includes the relevant departments. Article 20, for example, states:

*Police, educational, city transport, water & power supply, urban development, housing and all other relevant departments shall render their cooperation to the respective municipality in implementing the city master plan and other public utilities and shall pave the way for the implementation of its plans.*

Notice that the municipalities are relegated to implementing the city master plan the provenance of which is not mentioned, but which pursuant to Article 5 should be prepared by the “departments of Central Engineering and Urban Planning”.

Article 3 (1) of the Municipal Law of 2000 states that Kabul Municipality is part of the national government and Article 6 states that the Mayor will be appointed by the Head of the Emirate<sup>27</sup>.

The organizational structure of the municipalities and budgets for each municipality are prepared by the mayor with review by the Ministry of Finance and confirmation of the Administrative Council and shall be submitted to the

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<sup>27</sup> Now the GIRoA

Council of Ministers “for completion of formalities”<sup>28</sup>. The budget shall be reflected in the budget of the GIRoA<sup>29</sup>. Municipal revenues belong to the municipality<sup>30</sup>.

The municipalities are supposed to receive part of their budget from the national operations budget to use in providing services and the municipality should have a high be able to control the use of these funds.

Beyond MUDA, the other public institutions that play a key role in the urban sector include: 1) Ministry of the Interior (MoI) responsible for local government and municipal administration, 2) Ministry of Finance (MoF) responsible for revenue disbursement and budgetary control, 3) Ministry of Justice responsible for municipal land and planning law; 4) Ministry of Public Works, 4) sectoral ministries of Health, Education, Water, Industry, Youth, Women’s Affairs, 5) IDLG/GDMA, responsible for provincial and municipal governments, and the 6) Ministry for Refugees and Repatriation (MoRR). MUDA’s responsibilities and priorities in the urban sector clearly overlap with those of these other governmental organizations. There should be positive synergies between these agencies, were it not for legislative uncertainties and political rivalries.

Major gaps in the legal and regulatory framework include:

- the lack of an updated municipal law<sup>31</sup>,
- legislation or regulations defining responsibility for urban planning,
- a Land Management Law that fails to explicitly define the ownership of urban land and urban land management and development responsibilities,
- lack of a unified land registration system that applies to all land,
- a Kabul Municipal Act that recognizes the role of MUDA as a facilitator organization and requires Kabul Municipality to implement National Urban Policy.

## Management Model and Organizational Structures

MUDA is directed by the Minister to whom a Legal Advisor, Technical Advisor, Chief of staff, Deputy Director of Urban Affairs, Deputy of Construction Affairs, and Deputy of Administration and Finance report. There are three main directorates; Directorate of Policy and Plan, Directorate of Monitoring and Evaluation, and Directorate of Internal Audit<sup>32</sup>.

The Deputy of Urban Affairs heads the:

- Directorate of Urban (sic),
- Directorate of Improvement,
- Directorate of Urban Heritage and Historic Cities,
- Directorate of Water Supply, Canalization and Environmental Services, and
- Directorate of Regional Plan (sic).

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<sup>28</sup> Article 10 of the Municipal Law of 2000.

<sup>29</sup> *Id.*

<sup>30</sup> Article 12 of the Municipal Law.

<sup>31</sup> A draft Municipal Law has been prepared in 2011, but it has not yet been adopted as law.

<sup>32</sup> The following structure has been taken from the Ministry of Urban Development Affairs of the Islamic Republic of Afghanistan website organizational chart at <http://muda.gov.af/en/page/1886>, accessed March 17, 2012.

Under the Deputy of Construction Affairs one finds the:

- Directorate of Housing Affairs,
- Directorate of Service Engineer (Maintenance),
- Directorate of Infrastructure and Technical Design, and
- Directorate of the National Building Regulations and Codes.

Subordinate to the Deputy of Administration and Finance are the:

- Directorate of Public Management and the Provinces,
- Directorate of Public Information and Communications,
- Directorate of Finance and Procurement,
- Directorate of Property and Housing,
- Directorate of Office,
- Directorate of Human Resources,
- Department of Provincial Communication, and
- Department of Gender.

Within this structure are architects, engineers, lawyers, and other specialists accountable for:

- urban policy development,
- planning for Kabul, planning for provinces, surveys, and roads,
- environmental issues and preparation of building, mechanical, electrical, and structural codes specific to Afghanistan's context,
- water supply, canalization and water sources,
- the historic preservation and urban planning of Afghanistan's historic cities,
- the design of buildings for the public and private sectors (architectural and structural design and cost estimates),
- design of houses for the approved townships by government,
- buildings for private and governmental sectors,
- Preparing plans for the regional development strategy for all the zones.

MUDA also prepares and implements projects, including housing projects that are funded under a development budget.

The administration has responsibility for hiring of staff, salaries, supplements for the ministry and capacity building.

MUDA has its head office in Kabul and seven zonal offices in Kandahar, Jalalabad, Herat, Khost, Bamiyan, Mazar-i Sharif and Kunduz, respectively

## Human Resource and Competency Development

MUDA employs roughly two-thirds of its staff in the head office and one-third in its offices in the seven zones. Most of MUDA's technical staff is in the Directorate of Building & Construction (with Departments of Architecture and Engineering) and the Directorate of Urban Development. Until a few years ago, the latter had

some 45 professionals in the Planning Department, with only two having formal planning qualifications. Staff could be transferred to other directorates with a likely downsizing of the Building & Construction Directorate.

A 2009 needs assessment identified the need for 16 additional experts<sup>33</sup> to be embedded each directorate in order to be able to carry out the tasks assigned, and especially for policy in urban water supply, urban physical design, building design, urban survey work with GIS and total stations, finance planning in field of residential design, building code development, and communication. The budget request resulting from the assessment was not approved by the MoF.

Because the budget is recognized as the central tool for addressing government priorities and policy implementation, Program Budgeting (asking ministries to align their activities and outputs) attempts to link public expenditure with ANDS priorities.<sup>34</sup>

Yearly budget requests submitted to the MoF are not defended adequately and consequently are routinely turned down, in part due to former poor management structure. A problem at the national level is that there is an ordinary budget and a development budget. The latter is only available to certain Directorates and only for certain types of projects. The two budgets are not well coordinated within MUDA, so that it can adequately complete all of its required activities. The MoF has not been willing to adequately fund MUDA. MUDA staff comment that MUDA does not need money, but needs proper management of staff and resources. Like many other governmental institutions the salaries offered are not competitive with private sector salaries, making it difficult to recruit and retain professionals and other staff. There is a two-tiered system with contracted staff earning sometimes as much as 10 times what permanent staff are paid, which can cause resentment among colleagues and serves as a disincentive for some to produce.

## Systems and Procedures

High demand for urban housing, the displacement of many from the rural population as a result of war and drought, the improved prospects of employment, the relocation and repatriation of citizens who had left during conflict years, and other causes, have led to an unprecedented growth in the cities of Afghanistan. Rigorous and inflexible building regulations modeled upon ideal standards stemming from the days of master planning and more generous funding have guaranteed that housing standards have not been met. Residential districts within municipalities have consequently arisen that neither comply with existing planning nor meet normal standards of decency and habitability. In these informal settlements expected and desired urban services and infrastructure do not exist or are sporadically distributed. Burdensome, incomprehensible, inaccessible, and corrupted administration has destroyed the faith that residents should have in their municipal government and led to self-help methods for adapting to the urban living environment. Allocation of land parcels is highly sought, but attempts for legal recognition of the areas or an individual parcel is often unsuccessful. Many seeking to legitimize rights in the areas that they live have their pursuit of land rights either ignored or turned down based upon non-compliance with laws, plans, codes, or lack of permits. The insecurity of land rights is a disincentive to private improvement of these areas and public assistance has thus far proven unrealistic and unattainable. Experience reveals that a wide-spread culture of corruption influences the degree to which the residents of informal settlements can expect assistance in obtaining land documentation or gaining access to the urban services that they deserve. There is also an evolving phenomenon of

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<sup>333333</sup> Administrative and Finance, Information and Communication, Technology, Bill of Quantity, Urban Planning, Urban Transportation, Building Designer, GIS and Total Station, Physical Urban Designer, Urban Survey, Urban Building, Finance Planning and Field of Residential, Design, Policy Maker within Urban Water Supply, Building Code, and Press.

<sup>34</sup> National Budget of the Islamic Republic of Afghanistan 1389, p. 37.

land speculation in anticipation of development that drives up land prices and thwarts the implementation of rational land use planning.

The Afghanistan National Development Strategy recognizes that to improve living and working conditions in urban areas security of tenure is a primary concern. This is especially the case in informal settlements.

*If informal settlements are recognized and provided with tenure security, they are more willing to invest their own financial and other resources in improving the community and their houses. Moreover, they can use the title as collateral. Security of tenure may include formal and informal arrangements, from full land title to customary rights. Although the tenure legalization approach is popular, it is also possible to regularize without any policy intervention to legalize tenure. The regularization strategy focuses on physical interventions, such as infrastructure, amenities provision, and health and education services<sup>35</sup>.*

After having drafted a first “White Paper on Tenure Security and Community Based Upgrading in Kabul” with the support of the USAID/LTERA Project in 2006, and with guidance from a set of “Thematic Papers for the Preparation of Afghanistan’s National Urban Upgrading Policy” prepared by UN-HABITAT, a steering committee drafted an “Informal Urban Settlement Upgrading Policy – Land Tenure and Legal Issues” in 2009. However, efforts to implement the ambitious 2009 policy objectives have been disappointing and the Informal Urban Settlement Steering Committee appears to have been disbanded. The growth of informal settlements in all cities of Afghanistan is a clear indication of the failure of the existing planning mechanisms.

MUDA recognizes that these informal urban settlements need services, that the administrative mechanisms are ineffective, that despite the lack of recognized documentation these areas need to be acknowledged and incorporated into an appropriate planning process, and upgrading aid must be extended to them. With significant assistance from the Kabul Urban Development Project strategies are under development. It remains to be seen whether the Ministry has the will and the resources to move from the preparation of position papers to achieving success on the ground.

## Findings

Planners in both MUDA and the Kabul municipality view planning as a "graphic design" rather than a strategic exercise. For these planners, the "picture," and not the reality on the ground, is the end product. Most of the staff assigned to do planning in MUDA and the Kabul municipality are structural or civil engineers or urban designers.

Base maps are weak and urban surveys are understood as topographical surveys rather than devices for environmental, socio-economic, and planning response to needs.

The overlapping responsibilities and lack of coordination has often resulted in jurisdictional and policy conflicts between MUDA other governmental agencies, and municipalities.

Legal capacity needs are not properly identified or addressed and expertise probably needs to be brought from outside Afghanistan to build the necessary capacity.

While very important, the improvement to the existing urban development legal framework is not given the appropriate political support and there is more focus on regulatory codes and regulations than on drafting an enabling legal framework.

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<sup>35</sup> ANDS p. 103

A poor relationship between MUDA and Kabul Municipality exists, exacerbated by the implementation of upgrading works by the Ministry through donor programs, which the Municipality sees as its own responsibility<sup>36</sup>.

Regarding the governance and management of MUDA's own staff assert that corruption is a problem.

Urban planning departments have been created in some municipalities, but resources for staffing are limited and those staff that do exist are badly in need of training.

MUDA staff do not necessarily work in coordination with their local DUDA departments.

Planning departments are strong on design but weak on urban planning and need specially trained urban planners.

Human resources units and training are not able to respond to departmental needs for technical specialists.

Training is still largely requested for AutoCAD, GIS and other technology rather than for needed training in more theoretical spheres such as strategic urban planning. There is an overreliance on donors to make up for poor field management.

Conventional outreach approaches, for example top-down official letters as opposed to more proactive consultation and coordination, are limiting MUDA's staff outreach towards municipal counterparts and community representatives and contribute to a poor information base.

There is poor public participation in city planning and data collection, including strategic urban planning, because there is no consultation. It appears that MUDA does not have the staff and other resources necessary to involve the public at significant levels.

Strategic Plans are endorsed and implemented only after internal consultation rather than discussed with the wider public.

The institution has not yet embraced IT systems that can lessen the administrative burden on staff and improve information sharing between departments. This encompasses the approval/rejection of planning applications, the setup of a GIS data repository, the online sharing of training resources and the mainstreaming of efficient communication and information sharing tools (e.g. emails, intranet, online databases).

The planning department does reach out to the community but there is no proper community participation, because there is little or no authority for the community to exact changes.

There is private and commercial investment in the communities that could be channeled into improving and managing communities in the municipalities were there an effective government and municipal presence.

## Recommendations

MUDA adopt an enabling role in the urban sector, prioritizing the drafting of national policies for urban upgrading and housing that address current development needs.

Legislation, the regulatory framework, procedures, and governance practices need reform to ensure that urban residents have more of a role in how towns and cities are planned and managed. The process of drafting Strategic Municipal Action Plans (SMAPs) in coordination with GDMA and municipalities can ensure a more inclusive participatory practice.

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<sup>36</sup> E.g. Kabul Urban Reconstruction Project (KURP).

Improve and systematize the information base on urban development trends by acquiring geo-referenced data from all stakeholders and implementing partners.

The Municipal Law of 2000 needs to be repealed and replaced with a new law that is consistent with the Constitution and that more appropriately regulates policy and planning, development, implementation, local governance, monitoring and evaluation, and compliance.

Budget justifications should be in line with the Afghanistan National Development Strategy, setting out the objectives, the priorities, expected results, and the benefits to the government, both central and local, the residents, and society as a whole. This includes the alignment and better allocation of the operating budget with the development budget.

## **Independent Directorate of Local Governance/General Directorate of Municipal Affairs**

### **Background**

The Independent Directorate of Local Governance (IDLG) was established by Presidential Decree on 30 August 2007 to guide policy development and implementation of municipal administration, including defining the laws, rules, and regulations governing municipal revenue generation and resource management<sup>37</sup>.

The Afghanistan national strategy more narrowly specifies what is expected from the IDLG. Among its responsibilities are:

1. to develop a sub-national governance policy,
2. to increase people's participation in sub national governance,
3. to empower the provincial councils,
4. to introduce laws on district councils, municipal councils and village councils,
5. to hold regular elections of district councils, municipal councils, mayors and village councils,
6. to reform public administration and build capacity of the public work force at the sub national level, and
7. to institutionalize provincial planning and budgeting.

IDLG has laid out its own approach to achieving the targets specified, through a strategy to ensure that the framework for sub-national governance in Afghanistan upholds the principles of good governance, to establish and strengthen government institutions at the sub-national level, to create opportunities for citizens to participate in governance at the local level, and to ensure that sub-national governance institutions play an active part in

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<sup>37</sup> National Budget of the Islamic Republic of Afghanistan, p. 66.

facilitating the delivery of national programs. This strategy is articulated in IDLG’s Strategic Work Plan and Strategic Framework<sup>38</sup>.

IDLG will shift the focus to include more urban planning at the community and municipal level as well as the provincial level. The local communities under the IDLG approach are expected to identify and prioritize local needs calling on input from local government entities, the community and the private sector and these will then be reflected in planning at the national level<sup>39</sup>. This is a different approach than that of MUDA which has up until now concentrated on a top down planning approach. As IDLG takes over more and more of the responsibility for planning and implementation, the inconsistencies in policy approaches of IDLG and MUDA may cause an unwelcome discord between the two national planning institutions.

IDLG is expected to prepare legislation to support delegating planning to the provincial and municipal governments. This will, at a minimum, require amendment of the current Municipal Law of 2000 that seems to indicate that plans should be prepared at the national level in consultation with the local governments<sup>40</sup>. This will also include appropriate enabling legislation for District Councils, Municipal Councils, and Village Councils<sup>41</sup>.

In 2011 a draft Municipal Law was prepared, but has yet to be enacted, that stipulates that the local municipalities perform their activities under the management of IDLG and the provincial authority. Articles 12 (22) and (23) of the draft provide that the municipalities prepare strategic and detailed plans and present them to Ministry of Urban Affairs<sup>42</sup> for processing and approval. Implementation of the strategic plans is up to the municipality.

## Legal and Governance Framework

In 2000 when the current Municipal Law was adopted IDLG didn’t exist. A draft law is currently being worked on that spells out IDLG’s role regarding the municipalities. Articles of the draft law state:

### *Article 75*

*The Independent Directorate for Local Governance (IDLG) is liable to perform the following obligations through municipal affairs general directorate:*

- 1. Supervise, lead and monitor the local municipalities’ practices.*
- 2. Coordination with ministries and central government departments to accomplish municipals’ duties.*
- 3. Lead policy development and enact laws related to local municipalities based on requirements and requests of the citizen.*

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<sup>38</sup> Website of the Independent Directorate of Local Governance, [http://www.idlg.gov.af/IDLG/index.php?option=com\\_content&view=article&id=9&Itemid=162&lang=en](http://www.idlg.gov.af/IDLG/index.php?option=com_content&view=article&id=9&Itemid=162&lang=en), accessed March 26, 2012.

<sup>39</sup> Subnational Governance Policy, IDLG, 2010. p. 27 *et seq.*

<sup>40</sup> Article 5 of the Municipal Law of 2000.

<sup>41</sup> ANDS 2008 – 2013, p. 195.

<sup>42</sup> The names of institutions are never consistently recited in legislation, regulations, or documents. There is an assumption that this is MUDA. This may simply be a translation problem.

4. *Capacity building of municipal councils and other local municipal offices.*
5. *Establish a unified reporting system and evaluation of performances for local municipalities.*

*Article 76*

*The Independent Directorate for Local Governance (IDLG) develops the annual reports about the municipal available out come and sends it to the presidency and parliament (Shura-e- Milli).*

*Article 77*

*The Independent Directorate for Local Governance (IDLG) provides the ground for capacity building of municipal council's members and municipal offices staff through practicing learning programs in Afghanistan local governance Academy.*

As has been pointed out there is a conflict between the roles of IDLG and MUDA. The draft of Municipal attempts to reconcile the differences by providing that:

*Article 78*

*The Ministry of Urban Development Affairs through general department of municipal affairs of Independent Directorate for Local Governance (IDLG) cooperate municipalities in the following aspects:*

1. *Develop policies, city development programs and strategic (master plan) and detailed plans.*
2. *Support the municipalities in implementation and maintenance of city development programs.*
3. *Assist municipalities in developing master plans and provide facilities for carrying out short and long terms city development programs.*
4. *Support municipalities regarding socio- economic development for balanced development in the city level in their related geographical boundary.*
5. *Cooperation and joint efforts, share experiences and local municipalities' capacity building.*
6. *Enrich the local municipalities informative achieves and banks.*

Since according to the draft law both MUDA and IDLG are responsible for formulating urban policy the overlapping responsibilities are not resolved by the draft. The Sub-national Governance Policy 2010 prepared by IDLG perpetuates the ambiguity regarding national policy by stating that MUDA will develop national policies, guidelines and programs, while IDLG will lead the development of policy and legislation on municipal governance as well as coordinate with the Ministries, Agencies, High Offices and Commissions of the Government to implement policy<sup>43</sup>.

Article 79 the anticipated draft Municipal Law calls for the Ministry of Finance to put the required development budget at the disposal of the local municipalities to supplement their municipal budgets so that the municipalities have the resources “to offer city public services”. The Ministry of Finance together with the IDLG will develop a

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<sup>43</sup> Sub-national Governance Policy 2010, IDLG, p. 230.

formula that will equitably and transparently allocate budgetary resources to the local municipalities in proportion to their requirements for approved programs.

## Management Model and Organizational Structure

IDLG is headed by a General Director who reports to the President and Parliament<sup>44</sup>. The organizational structure of IDLG has not been clarified, but it does include the General Directorate of Municipal Affairs (GDMA) that is responsible for overseeing, managing and regulating the affairs of all municipalities of Afghanistan, except Kabul<sup>45</sup>. GDMA is headed by a General Director and has five departments<sup>46</sup>:

- Department of Administrative and Financial Affairs,
- Department of Urban Services,
- Department of Strategic Planning and Urban Development,
- Department of Economic Development,
- Department of Policy for Revenue.

## Systems and Procedures

The IDLG and MUDA are currently developing a new Municipal Law to bring the municipal legislation in line with the Constitution of Afghanistan, which was adopted in 2004 and envisions municipal organization and activities that are not consistent with the Municipal Law of 2000. The IDLG is currently working out procedures that will apply to national policy, and provincial and municipal governance. In this regard, it is important to point out that in 2011 there has been an attempt by IDLG and MUDA to clearly delineate the responsibilities of each through the endorsement of a Memorandum of Understanding detailing respective roles, opportunities for collaboration, and assignment of technical tasks. Importantly, both organizations recognize that:

*Lack of coordination on policy making, planning, decision making, instruction and supervision, among entities involved in urban affairs, has been one of the main challenges the country's urban management is facing.*

The memorandum then details the responsibilities of the organizations as follows:

*Considering the above mentioned points, Ministry of Urban Development Affairs is in the position of policy making and coordinating urban affairs, developing and managing infrastructures affairs, securing and approving regulations, rules and principles of urban different aspects in the country (sic).*

*Independent Directorate of Local Governance is in the position of executor and implementer, in other words, executive in charge of the cities though municipalities in all provinces. Studies, researches, design, planning and implementing the projects with the supervision and monitoring will not succeed unless these two entities reach to an understanding and agreement in all aspects.*

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<sup>44</sup> Article 76 of the draft Municipal Law of 2011.

<sup>45</sup> IDLG website, <http://www.gdma.idlg.gov.af/>, accessed April 1, 2012.

<sup>46</sup> [http://www.gdma.idlg.gov.af/index.php?option=com\\_content&view=article&id=59&Itemid=71&lang=en](http://www.gdma.idlg.gov.af/index.php?option=com_content&view=article&id=59&Itemid=71&lang=en), accessed April 1, 2012.

*The positive and effective signs of this technical agreement and cooperation have to vividly be seen in various cities of the country.*

*This agreement has been formally agreed upon with the presence of top level management of both parties. Emphasis is made on explanation of some important parts.*

*1. The basic needs of urban affairs such as studies, researches, surveys, planning, design, implantation (sic) and monitoring in all provinces of the country will be carried out with mutual agreement and coordination between the parties and their related sections;*

*2. The concerned municipality shall pay Ministry of Urban Development Affairs the costs of provided services in developing plans, maps, and researches.*

*3. The implementation process of the projects between these two entities shall be completed as follows: technical need of projects implementation in the provinces, considering the scientific standards, is a must which after approval of the ministry's authority, will be sent to the local governance office after evaluation and confirmation of whom it is sent to Ministry of Urban Development Affairs for further action. The projects performances are completed and finalized through joint expertise meetings after which it is again sent though IDLG to the related province for implementation. Implementation of any projects by other local organizations shall not be evaluated.*

*4. Studies, preparing and development of strategic plans of urban development which now a day is common in the world, carries the benefits of poverty eradication, better usage of urban lands, preventing lands usurp, settlement crisis decrease, identification of the areas of urban development, etc. Afghanistan cities do need to have such strategic plans which are the priority of these two entities.*

*5. Based on the provinces' request, capacity building workshops, identification, establishment and conducting empowering, technical and execution trainings for the parties' personnel shall be decided by the joint committee of the parties.*

*6. After expertise meetings, MUDA directors and mayors of all provinces have to act with full agreement on overall urban affairs (developing projects, development plans, and executive decisions);*

*7. To further enrich MUDA/Municipality Affairs Department's archive, a copy of finalized documentation including studies and researches, plans, maps, photos, etc. have to be given over to this department;*

*8. In working affairs, MUDA shall contact municipalities through IDLG only;*

*9. The master plan of five main cities (Herat, Mazar-e-sharif, Kandahar, Kunduz, Jalalabad) can be reviewed and amended in coordination with IDLG.*

This document represents the thoughts of both IDLG and MUDA regarding their respective functions and follows the trend in shifting urban planning toward the local authorities, authorizing them to develop strategic plans for secondary cities<sup>47</sup>. Despite the fact that in the opinion of some ministerial officials<sup>48</sup> this document lacks legal

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<sup>47</sup> Kabul is under the jurisdiction of the Kabul Municipality and the Kabul Mayor enjoys total independence.

<sup>48</sup> Opinions expressed during the SWOT Analysis meetings conducted by the LARA Project in December 2011.

validity and is far too shallow to be enforced, it represents a good faith effort to overcome discord. Such collaboration is essential if revenues from land, traffic and other user fees are to be efficiently and effectively collected and put to constructive use in the urban sector for infrastructure maintenance and civil service salaries.

## Findings

The responsibilities between MUDA and IDLG for developing national urban policy are unclear and need to be specifically reconciled.

The planning for urban centers must be based upon current data, which in most municipalities does not exist.

There is a shortage of technical staff and over-dependency on embedded or contracted advisors funded by donor agencies.

Evidence of capacity-building efforts geared towards developing a dynamic, transparent and proactive environment and management structure is apparent. Monthly technical meetings are organized to coordinate donors and implementing agencies' investments.

Despite a substantial increase in municipal revenues throughout the country, financial budgeting and proposals writing remain weak. These are often rejected by MoF.

GDMA aspires to a future when city planning responsibilities are progressively delegated to the municipal authorities.

Evidence of provincial authorities interfering with municipal decision-making structures and processes is an obstacle to local capacity growth.

GDMA and municipalities exhibit efforts to improve staff's familiarity of IT and systems throughout.

## Recommendations

Improve the technical capacity of staff to oversee the drafting of city plans, detailed plans and SMAPs – whether produced by Municipalities, donor agencies or the private sector.

Improve the legal framework supporting an optimal coordination and subdivision of tasks between GDMA and MUDA/DUDA.

Work closely with MUDA to develop enabling regulatory frameworks for urban development standards.

Mainstream IT systems in all municipalities and Nahia offices to improve the registration of properties, screening process of building applications, payment of taxes and fees, the digitization of survey data, development control, sale of land, expropriation and compensation.

## Jalalabad Municipality

The city of Jalalabad stresses that MUDA and IDLG exercise regulatory authority over the municipality. The city has been expanding through its informal areas over the years because people progressively moved out of dangerous areas during the different conflicts and sought refuge in the city. The various government and legal land processes were not able to move quickly enough to accommodate the influx of people and informal

settlement began. The city has had a detailed Master Plan since 1970, which clearly shows residential and commercial areas. The plan is paper based and too out of date to be of current use.

The informal settlements are being taxed, but the city has not followed up the legal processes to allow the residents to receive title deeds for their occupation of public land. Formalization of land tenure in the informal settlements is not a priority for the municipality, but the city would like to formalize certain areas where the land issues are not controversial. However, this will require the approval and assistance of agencies such as IDLG, MAIL and MUDA. The city would also like to clear the 'land grabbers' away as well as expand beyond its present boundaries in an orderly manner. The city has trouble controlling illegal construction within the city for lack of staff and inadequate policing powers and personnel.

Municipality has good professional staff, many with diplomas in various fields of engineering, but the city could use more professionals. In addition, the staff would benefit by instruction in leadership and contemporary management techniques. There are problems with active managers in every department and some of the staff including ranking managers have been hired on the basis of personal relationships or mafia influence rather than on professional qualifications and competence.

The accommodations for the city offices are very basic and the technology available is modest. There is a need in the city for engineering equipment such as computers, plotters and Total Stations, as well internet access. The lack of vehicles is mentioned as a constraint on the activities of the cities, which is a complaint that is common to many governmental agencies.

Citizen Awareness Committees have been established with donor assistance and meet once a month to seek community opinions, needs and priorities. The committees involve the elders and community leaders, and are run by a full-time coordinator contracted with donor funds.

## **Directorate of Urban Development Affairs in Jalalabad**

DUDA in Jalalabad has been directed by the President to plan and mark out a proposed new township of about 2,000 parcels (for residential, religious and commercial purposes) located along a main road. The land set aside for a township is not occupied or in dispute and parcels are intended for sale to migrant settlers from Pakistan, registered with the Afghan Ministry of Migration, under a government land distribution program. Only when all the land in the new township has been sold will the whole project be formally transferred to the local municipality, a process that can take 5-10 years to be completed. The territory is regularly policed and unauthorized occupation of these parcels will not be tolerated.

DUDA engineers have begun the work using a theodolite, with steel spikes placed at the parcel corners and white lime to mark the boundary lines on the ground. Interestingly, AGCHO is not involved in this project. The ten engineers in the office routinely conduct field mapping surveys in conjunction with their planning activities and a year ago one such survey team was attacked about 15km from Jalalabad with their total survey station being destroyed and one staff member wounded. Security and safety is essential for the engineers to conduct surveys in the field.

A major problem for the office is the lack of a reliable, external power supply that can be used when the city's electricity supply fails. The DUDA office already has one small generator that can power a PC, but if two or three PCs are connected then the generator overloads. Unlike other agencies, where the cost of generator fuel is

prohibitive, this is not an issue for DUDA. Instead their core requirement is for a more reliable and powerful generator than the one they now operate.

Although AutoCad software is used in the office, there is a need to create digital versions of many old hardcopy plans that are either stored within the Jalalabad office or else come from the Ministry (MUDA) offices in Kabul.

In terms of IT, the office currently has the following equipment:

- 9 PCs that are running AutoCad and MS Office software;
- Most of the PCs have 20/40 Gb hard disk drives and 512 Mb RAM, although four PCs have 128 Mb, 256 Mb, 1 Gb and 2 Gb RAM respectively;
- 7 of these PCs are for the 10 engineers;
- 1 x HP DesignJet 500 24” color plotter.

DUDA perceives its needs to be:

- 1 x electricity generator (high priority);
- 1 x Total Station (high priority);
- 1 x A3 color printer;
- 1 x scanner for documents up to A0 size;
- Internet connectivity for the office;
- Field-to-Office software for the Total Station.

As to training 6 staff need introductory IT instruction in Windows operating system, transfer of Total Station data to AutoCad GIS, MS Office and the internet, while 12 staff need introductory training in both AutoCad and GIS.

## CHAPTER IV

### Courts

#### Background<sup>49</sup>

In 1964 Afghanistan adopted a modern Constitution which contained a division of powers, including an independent judiciary headed by the Supreme Court. Primary Courts were the courts of general jurisdiction, and Provincial Courts were established with appellate jurisdiction over decisions of the primary courts<sup>50</sup>. The Supreme Court was also vested with administrative powers regulating the organization and functioning of the judiciary with

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<sup>49</sup>Moschtoghi., Ramin, Max Planck Manual on the Organization and Jurisdiction of the Afghan Courts: Afghan Court Organization and its Compliance with the Constitution and International Law, Amended 3rd Edition, 2009 is the source of the background material on the courts.

<sup>50</sup> The Provincial Courts also had primary jurisdiction in certain types of cases that are not relevant for this discussion including crimes of government officials with the scope of their employment, press offences, smuggling and other offences, tax claims, and in cases involving the election of parliament and municipal or provincial council.

the power to recommend judicial appointments and to supervise the civil servants and administrative employees of the judiciary at all levels.

With the ouster of the Taliban in 2001 an Afghan Constitutional Commission was established to deliberate on a new Constitution for the country in consultation with people.

## Legal and Governance Framework

The current Constitution came into effect on 26 January 2004. This Constitution of 2004 generally follows the principles established in the Constitution of 1964. Article 116 of the Constitution of 2004 states:

*The judiciary shall be comprised of one Supreme Court, Courts of Appeal as well as Primary Courts whose organization and authority shall be regulated by law.*

The Supreme Court is not only the highest court of Afghanistan, but also regulates the appointment, dismissal, promotion, retirement, rewards and punishments of the administrative personnel of the judiciary, which are otherwise subject to the laws related to civil servants and other administrative staff of the state<sup>51</sup>. The Constitution also requires that the Supreme Court establish an Office of General Administration of the Judiciary.

Following the adoption of the Constitution, a Law on Organization and Jurisdiction of Courts was enacted in 2005 to manage the affairs of the judiciary and specify its powers and duties. This law specifies that there is an Appeal Court at the center of each province and a Primary Court in each district of the province as well as in the center of each province. There is a Head of the Central Provincial Primary Court to lead and manage the judicial and administrative activities of its subordinate courts.

The Supreme Court shall have the duty, among others, to propose the establishment of courts and legal document registration directorates. Article 55 states:

*(1) In the structure of every Court of Appeals, there shall be established Directorates of Documents and Deeds Registration (DDDR). There shall be a head in charge of a directorate and shall lead and manage the activities of the directorate.*

*(2) The head and professional members of the Directorate of Documents and Deeds Registration shall be appointed from among the judges who have judicial authority.*

*(3) In the districts where there is no such directorate for legal documents registration, the district courts shall have the authority to perform these duties.*

*(4) Duties and powers of the Directorates of Documents and Deeds Registration shall be regulated through special legislation.*

The budgets for the judiciary are prepared by the Supreme Court in consultation with the Government and are presented by the National Assembly as part of the state budget. The budget for the judiciary is implemented by the Supreme Court.

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<sup>51</sup> Constitution of Afghanistan, Article 124.

The Law on Organization and Jurisdiction of Courts has been supplemented by a Regulation on Operation of Central Department of Deeds and Document Registration of the Supreme Court dated March 5, 2009, which establishes a Central Department of Deed and Document Registration.

Article 5 of the regulation states that:

*Central Department of Deeds shall perform to realize the following objectives:*

*Generalizing new technology, benefiting from experience of other nations in maintaining documents, secured records and regulating storage of official deeds.*

*Securing relation of Supreme Court with entities of document and deed registration with regard to improvement of their work.*

*Providing supervision over deed and document registration*

*Benefiting from modern standards in securing system of documents and establishing necessary transparency and acceleration in processing documents.*

*Accession with organizations of neighboring Islamic nations and providing access for visits to their similar entities.*

## Management Model and Organizational Structure

The Judiciary is composed of a Supreme Court located in Kabul with jurisdiction throughout the country, one Appeal Court in each province located at the center of each province, and Primary Courts in each administrative district of the provinces and in the center of each province.

There are 15 administrative districts of Kabul, 12 police districts, and 22 municipal districts. Prior to 2009 there was a Primary Court for each municipal district in Kabul, but now four zones serve the municipal districts and there is a Primary Court for each zone. There is one Appeal Court serving Kabul.

The Directorates of Documents and Deeds Registration keep the land documents and other records in Makhzans<sup>52</sup>. Each Directorate of Documents and Deeds Registration is responsible for the issuance of land title documents in its respective region. Kabul itself has four zones, as has been pointed out, and hence four Provincial Directorates of Documents and Deeds Registration.

There are 21 types of land related records<sup>53</sup>, but 8 types that are essential for determining title to parcels. These are:

- Qabala Qatai (Irrevocable Title Deed),
- Qabala Jaizi (Revocable Title Deed),
- Qabala Masooli,
- Qabala Dawlati,

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<sup>52</sup> Makhzan is the Arabic word for archive and is used in both Dari and Pashto for the records archives of the courts.

<sup>53</sup> Land Record Modernization Project (LRMP-II), Makhzans' Assessment Report, Harakat/Supreme Court (February 29, 2012) p.26

- Ibra Khat (Wavier of Title made by a party before the court),
- Tamlik Khat (Deed of Gift),
- Taraka Khat (Deed of Distribution *per stirpes*, and
- Taqsim Khat (Deed of Distribution *per capita*).

The Central Department of Deeds and Document Registration of the Supreme Court is located in Kabul and each provincial Directorate is required to send copies of all of its land related documents annually. This is the official central Makhzan. However, due to space and personnel limitations in the Central Department, many of the provincial Directorates do not send copies their land documents to the Central Department of Deeds and Document Registration.

The Central Department of Deed and Document Registration officially certifies the accuracy of documents on request of the Ministry of Foreign Affairs and other government agencies and document owners based upon the deeds prepared by “the courts and deeds offices”<sup>54</sup>. There is a question whether this precludes the provincial repositories of the documents from officially certifying their accuracy.

Heads of the Primary Courts and Directorates of Documents and Deeds Registration report on their activities to the Court of Appeals. As a mechanism to authenticate acts the Supreme Court, Courts of Appeal, Primary Courts, Special Courts, General Administration Directorate of the Judiciary, and Directorates of Documents and Deeds Registration all have special stamps. The Ministry of Interior and other security authorities are duty bound to secure and protect judges, respective offices, and courthouses. Finally, all judges of the courts and authorities in charge of the Directorate of Documents and Deeds Registration must register their movable and immovable property before assuming their responsibilities.

## Procedure

To transfer land ownership and to enter into other types of land and real estate transactions, after agreement between the parties, which for transfer of title might be a seller and a buyer, but could be an heir attempting to register title, the interested parties must apply to the Provincial Directorate of Documents and Deeds Registration by submitting a so-called Circular Form to obtain a title deed. The Circular Form is dated, requires information identifying the parties, specifies the size of the parcel, and contains information regarding the parcels adjoining on the east, west, north and south. The Circular Form states the number and date of the registered deed of the seller<sup>55</sup>, and a statement that it is being sold to the buyer (identifying the buyer) and for how much. The Circular Form is signed by the seller and concludes with a statement “This form is referred to the relevant offices to process the Title Deeds (space for title deed number ) according to the regulations” followed by the signature of a judge of the court authenticated by the official stamp of the court. The registered deed of the seller is verified in the Directorate of Documents and Deeds Registration makhzan before the Circular Form is signed by the Director/Judge<sup>56</sup>.

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<sup>54</sup> Regulation on Operation of Central Department of Deeds and Document Registration of the Supreme Court dated March 5, 2009, Article 9.

<sup>55</sup> There may not be a registered deed for customary title is commonly accepted. Presumably urfi contracts can be submitted that ultimately refer to a registered title deed. Otherwise, a different procedure may be required to obtain a title deed such as a court proceeding or a certification through the *Tasfia* process called for in the Land Management Law.

<sup>56</sup> Doing Business 2012: Economic Profile Afghanistan, <http://www.doingbusiness.org>, World Bank, p.46.

On the second page of the Circular Form are spaces for:

- Amlak of MAIL or Property Department of Municipality,
- Department of Tax or Revenue Section of Municipality,
- Irrigation Department for water rights,
- Acknowledgment of the municipality for having project (housing project) in the area and information about the expropriation or lack of thereof,
- Comments of the Valuation Committee, and
- Comments of the Cadastral Committee based on having cadastral map and area.

This suggests that in order for a buyer to obtain a title deed from the court, the Circular Form must wend its way through at least these six government agencies prior to final signing by the court. The Human Resource Directorate certifies the signatures of the “local and provincial (regional) *Mustofiat* staff”<sup>57</sup>. The applicant carries the Circular Form from agency to agency.

If this bureaucratic maze were not enough of a disincentive to register land, several payments must also be made throughout this process. The property office of the municipality (*Milkiat-ha*) charges 1% of the value of the property, the Revenues and Collection office of the Mustofiat (Ministry of Finance Provincial Revenue Department) charges 1%, and to the *Makama* 3% for property valued in excess of AFN 1 million, otherwise 2% is paid. In addition, once registered the owner can easily be faced with land tax bills from year to year<sup>58</sup>. The owner is required to have the title deed entered in appropriate books for tax purposes within a year<sup>59</sup>.

Once the applicant has carried and submitted the Circular Form to the required governmental agencies, obtained all the required governmental signatures and notations, and paid all of the required fees, the applicant returns to the court with the Circular Form and the payment receipts. A clerk prepares a new title deed in duplicate, and the particulars of the deed are scrutinized by the judge<sup>60</sup>, who if satisfied that all is in order, signs both of the title deeds prepared by the clerk. All documents are supposed to be forwarded to the central Makhzan in Kabul every year, but due to lack of space and personnel in the Kabul central Makhzan not all documents are available there.

Currently there is no universally accepted format for the Circular Form in Afghanistan and the following was true as of April 2011:

*There are different types of circular forms currently used in different provinces of the country for property registration and transfer from one legal or real person to another. The circular forms are as follows<sup>61</sup>:*

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>61</sup> A glance at Registering and Transferring Property in Afghanistan (Short Term Plan, April 2011), Registering Property Working Group, p. 9

1. ***The circular form was developed on 26 September 2007 involving the Supreme Court, Ministry of Finance, Ministry of Agriculture Irrigation and Livestock, Afghanistan Geodesy and Cartography Head Office (AGCHO) and Kabul Municipality. This is the circular form that the MAIL believes is as final version and enforced at MAIL. This form requires six steps/procedures for property transfer. The AGCHO confirmed this form as valid and accept form(see Annex 2)***
2. ***The circular form that is prepared with the help of USAID/LTERA, this form is prepared in 2007 and circulated through Supreme Court to provincial courts to be used for property transfer process, however even after some minor modifications made by Supreme Court in late 2009 but some provincial courts still use this form. The form suggests 4 steps/procedures for land and 3 steps/procedures for transfer of house (developed properties) (see Annex 3)***
3. ***The circular form that is currently used in Kabul province plus some other provinces this forms is updated in late 2009 (the date is not known) this circular form suggests 5 steps/procedures for property transfer. (see Annex 4)***
4. ***Interestingly the Supreme Court has developed a new Circular form in April 2011 and is yet to be distributed to the provincial courts to be used. The April 2011 circular form suggests 4 steps/procedures for property transfer from one legal or real person to another. (See Annex 4). This circular form has shortened the process and would be officially submitted to the provincial courts hopefully in May 2011<sup>62</sup>.***

## Findings

Afghanistan has long maintained land title documents in the Provincial Primary Courts<sup>63</sup>. The system is a paper system, but can easily be maintained electronically. It is neither a pure deeds system, nor a title system, but has aspects of both<sup>64</sup>.

Title deeds are issued by the court and presumably are not issued unless the person that is seeking registration of ownership can validate the claim of title. This has aspects of an adjudicated title system, i.e. a registration system.

On the other hand, the deeds are tracked by reference to earlier deeds and not by particular parcel. This makes the system function somewhat like a deeds system<sup>65</sup>. The market requirements will require that not only ownership be formalized, but also the entire bundle of outstanding rights that affect a parcel of land.

Transfer of land rights is a lengthy, expensive process involving multiple government offices to register the transfer.

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<sup>62</sup> “So the circular form developed on 26 Sep. 2007 and certified by all different players is the most valid and legally accepted property transfer circular form in the country”, *Id*.

<sup>63</sup> Under current law the Directorates of Documents and Deeds Registration within the Provincial Appeals Courts.

<sup>64</sup> For the difference between deeds systems and registration systems see Holl, Rabley, Monacelli, and Ewan, *The Earthen Vessel: Land Records in the United States*, <http://grm.thomsonreuters.com/our-knowledge/2011/07/2011/12/2011/12/white-paper-the-earthen-vessel-land-records-in-the-united-states/>, accessed April 12, 2012.

<sup>65</sup> Although, it needs to be confirmed, a judge most likely only checks to see that the next previous deed has been properly registered in the name of the grantor (or that his/her title can be traced to a legitimately registered deed where the grantor claims title based upon urfi contracts). In other words, it is unlikely that the judge runs a chain of title to an appropriate root of title, as would be necessary were this a deeds system.

As a consequence of various changes, intermissions, and renewals of a functioning government, land records have been lost or destroyed in some cases, in other cases forged. There are allegations that during certain periods of unrest land records have been specifically targeted for destruction.

The *Tasfia* process is in the nature of initial land title adjudication and operates as a basis for the court to issue a title deed.

The courts have been criticized for inefficiency and possible corruption.

Personnel of the Directorates of Documents and Deeds Registration at the provincial level need significant training regarding technical issues, as well as instruction regarding international best practices.

This has compromised the reliability of land records, particularly in the minds of citizens, who will never be satisfied until some remedy is applied to the uncertainties in the maintenance of the land records.

Because of the significant disincentives to registration of land documents (tedious, time consuming and expensive) people are satisfied with the system for customary deeds based upon community recognition. This compromises the formal record system.

## Recommendations

Since the *Tasfia* process set out in the Land Management Law is in the nature of a first adjudication required for conversion to a title registration system, the legal framework for registration should be consolidated in a stand-alone land registration law that contains legal protections and safeguards to provide security of tenure. A registration system is recommended, because of past and present concerns regarding forgeries and other perpetrated frauds.

Procedures within the provincial courts should be simplified to conform to international best practices along one-stop-shop principles.

A reduction in fees would encourage legal deeds registration with the courts.

The documents should be indexed by both name and by parcel so that title information for a particular parcel can be easily found. Modern registries are organized by parcel first, but also contain name indices.

## Jalalabad Makhzan

The court Makhzan in Jalalabad operates according to the procedures for the issuance of title deeds generally. Upon application for a title deed the data at the Makhzan is checked and the Circular Form is sent to either ARAZI or the Municipality to check, depending upon the location of the land in question. A major problem for the court involves lost documents, in which case the matter is investigated by a court appointed lawyer who must visit the village of the person concerned and verify the claim of ownership of land. Where there are two different competing deeds for the same parcel of land at the court registry, the court will accept the more recent deed as being more accurate, but this is a rare occurrence.

The Makhzan consists of two separate rooms at the court. The first room contains paper documents that have been registered with the Makhzan. There are about a dozen relatively new cabinets that contain these documents and the cabinets are labelled with USAID stickers. The cabinets hold the document books (*kundas*). The documents are seemingly well organized and where reference to a title deed is given, it can be found in less than a minute. The

same is true for previous deeds in a chain, since each title deed contains the number of the next previous deed. The documents, except for some tattering along the edges, are in relatively decent shape. None of the documents are indexed by name or by parcel. To find a document with regard to a particular parcel one must have a document number for the title deed. The wooden door to the room is bolted and locked with a padlock, and further secured by a metal grid that is also padlocked. No one except a judge has access to the room.

The other room is equipped with a computer, a digital camera and camera stand for photocopying documents, and an HP printer located on a long table against one of the walls. There was a computer on the floor in the corner that appeared not to be in use. The system on the computer is an archive based upon conversion software developed by EMG, built on MS Access. Staff in the office were not properly trained for entering new records, and have not entered any additional records since April 2010, despite an average of 10-15 new transactions per week occurring. The assistance provided to date has also only focused on converting land deeds and not the other types of documents affecting land and real estate. This represents 8-10% of all records that the Appeals Court would like to have in their system.

The security of the DB as it stands is essentially non-existent. This lack of security has already become known to the public and there have been a few cases of attempted fraud using the computer register. This has resulted in a lack of trust in the information contained in the register, and it must also be said that the fact that the company responsible for creating the register now has a copy of the register after the contract has finished, is highly irregular.

The Access DB system has several drawbacks:

- The size of Access DBs is restricted to 2GB. This means the system will not be able to scale to cover all additional records. The existing DB in Jalalabad is probably already facing some size constraints given that it contains records for 58,000 deeds and 130,000 people, which is linked to 123,000 images.
- Security raises problems other than opportunities for fraud and corruption. Records can be selected and deleted or changed, even though the data has been indexed. The court should be concerned about the fact that ALCO (an NGO) has retained a copy of the DB for records that legally require the issuance of a court order for them to be accessed. This creates significant opportunities for fraud, corruption and other security related risks for owners. ALCO is obviously able to use this copy of the archive for commercial purposes, as well, given that they pitch title examination as one of their services.
- Conflicts can arise for multiple users working against the same DB. In Jalalabad they have installed copies of the DB on two computers, which introduces the likelihood that conflict versions of the DB will reside on separate computers. This would be avoided if a client server approach was introduced.
- English presently is the only interface language. This creates the need for court staff to know some English when using the system, despite entering data in Pashto. Most deeds are written in Dari.

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