

# Community Rangeland Administration: Focus on Afghanistan

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## Abstract

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

Following the formalization of these agreements among the legitimate users of these pastures, their signing and witnessing by village leaders, and delineation of pasture parcels to which the agreements refer on satellite imagery, these documents are archived in the care of a villager named by the Elders in a safe house or room in the village. Copies are filed with Provincial government land administration institutions.

The Woluswali Pasture Land Specialists of the Ministry of Agriculture, Irrigation and Livestock work with the community pasture managers on designing and implementing pasture improvement plans for each pasture parcel, and review the user agreements for completeness and clarity. The Head of the Woluswali also

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<sup>2</sup> This team was composed of the authors of this paper plus Dr. Stefan Schuette, Prof. Ghulam Naqshban Nasserri, and Najibullah Aazhand. The Rural Land Administration Project (RLAP) also known as “Capacity Building for Land Policy and Administration Reform”, TA 4483-AFG, began in June, 2006 and completed its programmed time period in September, 2007. It was coordinated through the Ministry of Agriculture, Irrigation and Livestock (MoAIL), and supported financially by the Asian Development Bank and the Department for International Development of the UK. Special thanks are due to Dr. Stefan Schuette who provided continual guidance and support to the team, secured the necessary satellite images, did field work in the four test sites, and saw to the proper preparation of numerous reports and presentations. Special thanks are also due to the Ministry staff, including but not limited to Minister Obaidullah Rahmin, Dep. Minister Ghulam Mustafa Jawad, Dep. Min. Eng. M. Sharif, Mr. Hashim Barakzai, Eng. Hazarat Hussain Khaurin, Mr. M.Yakini, Mr. Ghulam Dastagir Sarwari, and Mr. M. Aref,. Eng. Abdul Rauf of Afghan Geodetic and Cartographic Head Office (AGCHO) and his Cadastre Department staff provided intelligent support and guidance to the project. The General Director of Amlak, Eqbal Yousufi, and his staff encouraged and supported the project. The villagers from Dar-e-Kalan, Safar Khan, Sagari and Naw Abad contributed greatly to the development of the ideas in this paper. Inspiration for this paper comes also from the pioneering work of Liz Alden Wily. Despite the contributions of these and other people, there are undoubtedly errors in the paper or expressions of policy options which may be erroneous, and these errors are the responsibility of the drafting authors only. In no way do the proposals or statements in the paper represent the positions of any Government agency in Afghanistan, nor the ADB nor DfID, nor the participating villagers, nor the implementing partners--Scanagri and Terra Institute.

reviews the agreements for completeness and clarity, and verifies that its terms do not infringe on the rights of users from other villages and are in accord with regional development plans.

**Key Words:** *Rangeland, community management, land use agreements, Afghanistan*

# Community Rangeland Administration: Focus on Afghanistan

## 1. Background

Afghanistan has a population estimated to be about 26 million people<sup>3</sup> and a total area of approximately 653,000 sq. km. It is bordered on the north by Turkmenistan, Uzbekistan, and Tajikistan, on the extreme northeast by China, on the east and south by Pakistan, and by Iran on the west. The country is split east to west by the Hindu Kush mountain range, rising in the east to heights of over 24,000 feet. With the exception of the southwest, most of the country is covered by high mountains and is traversed by deep valleys. About 12% of the land area of the country is cultivated. The literacy rate is estimated to be 36%, and the per capita GDP is estimated to be about \$800 per year<sup>4</sup>.

Figure 1: Map of Afghanistan



<sup>3</sup> Afghanistan Web Site. The CIA World Fact Book estimates the population to be closer to 32 million.

<sup>4</sup> <http://www.iaea.org/inis/nkm/nkm/aws/eedrb/data/AF-gdpc.html>

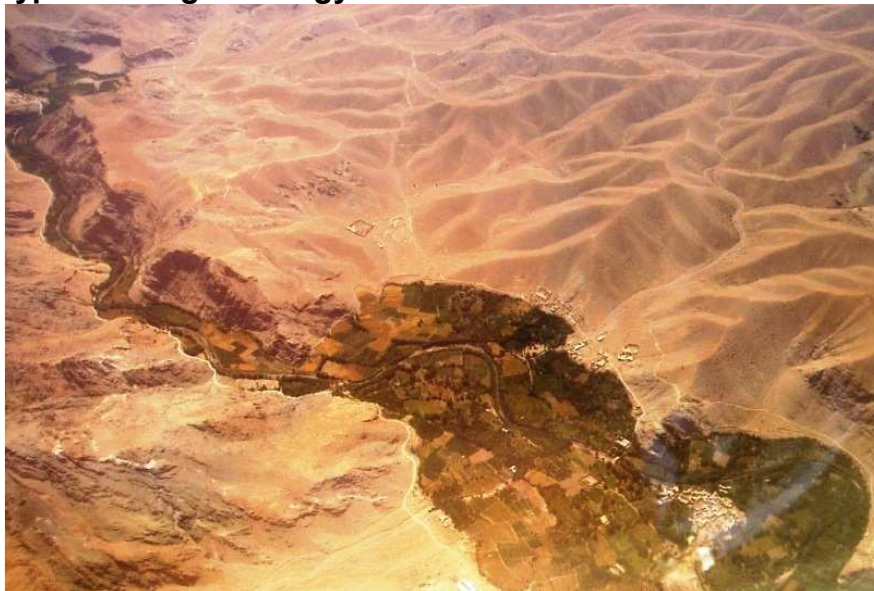
More than five years after the Bonn Agreement, peace cannot be said to have been restored in Afghanistan. The effectiveness of State institutions for improving the lives of Afghans and for making democracy work has not been restored. In most areas of the country, the institutional relations between community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

## **2. Rangelands**

Millions of Afghan rural households – including nomads – depend very heavily on rangeland to survive. Rangeland, however, is legally defined as public land and cannot be privately owned<sup>5</sup>. Families, clans and tribes, as well as nomadic groups use rangeland for feeding livestock, for gathering fuel, as a source of herbs for medicinal and cooking purposes, and as a passage ways for moving livestock from one place to another. Rangelands also represent crucial water catchment systems which supply water for valley settlements and farming. The degradation of such lands can lead to erosion and the drops in the levels of aquifers, negatively affecting cultivated agricultural areas and water sources for urban uses.

Rangelands have, in fact, been deteriorating in recent decades. Many formerly viable rangelands have become virtually barren wastelands. The degradation of rangelands has been accompanied by the conversion of some areas formerly used for pastures into rain-fed agricultural cultivation. This conversion in draught years and in low rainfall areas severely weakens the capability of the land to regenerate a stabilizing plant cover. Figure 2 shows a typical rural ecology, with irrigated agricultural land and housing along the river, and with the lands above the irrigated perimeter being used for rain fed agriculture and pastures.

**Figure 2: Typical Village Ecology**



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<sup>5</sup> The Land Management Law of 2000, article 84(1) provides: “pastures are public property, an individual or the State may not own pasturelands, unless otherwise stipulated by sharia.” Sub-article 2 of article 84 elaborates further by stating that pastures shall be kept unoccupied for the purpose of public needs of the villagers (for cattle grazing, graveyard, threshing ground, etc.) Exactly what the term “private” means, however, is not clear.

An important phenomenon accompanying this degradation of rangelands is the increase in conflicts among farming and livestock dependent families for a decreasing supply of adequate rangeland. As the supply of rangeland declines, and with a constant or increasing demand for areas to pasture livestock, competition for this increasingly scarce resource inevitably results. Evidence suggests that pastures are the principal focus of conflict in Afghanistan because they involve and affect more people than conflicts over farms or houses, often inflaming ethnic problems and cross-cutting with unresolved conflicting arable and pastoral land needs.<sup>6</sup>

A main cause of rangeland degradation and resulting social conflicts is the insecurity with which rural people hold and use rangelands. This tenure insecurity has three dimensions: *first*, a longstanding history of conflict over rights to rangelands among groups of village residents and nomadic groups<sup>7</sup>; *second*, differences of opinion about the preservation of rangeland between farming families with access to agricultural land and families without access to agricultural land but with a dependence on livestock; and *third*, contradictions between governmental agencies (empowered by formal law establishing State ownership of pasture land) and local communities which, by custom and necessity, use the rangelands.

According to the Land Management Law of 2000, the villagers can have the exclusive right of use to their community pastures, which is the pasture area directly surrounding the village. In the 2000 law (Article 9), such community pastures were defined as ‘the area from where the loud voice of someone standing at the edge of the village can still be heard’. Lands used for grazing which are beyond the boundary of the community pasture, are called public pastures.

In the past, village elders and tribal leaders met and agreed about the users of both types of pastures, including in some cases the use rights to public pastures<sup>8</sup>. In other instances of public pastures, anyone can use them at any time. In general the customs and traditions about the uses of community and public pastures are more tentative today than they were prior before the 1980s, that is, rights are often not clear and the confidence people have in exercising these rights is often not high—fertile ground for tenure insecurity.

### **3. New Policy/Strategy for Rangelands**

The Ministry of Agriculture, Irrigation and Livestock (MAIL) introduced a significant new policy/strategy in 2006 when which advocates “*the transfer of effective management responsibilities for forestry and range resources within defined community geographical areas to communities*”. The objective of this community based management of forestry and range resources is to create “*value for*

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<sup>6</sup> See Liz Alden Wily: Looking for peace on the pastures, AREU, Kabul 2004, p. 84

<sup>7</sup>Frauke de Weijer (2003) Pastoralist Vulnerability Study, World Food Program, estimated that “the total number of (semi-)nomads currently lies between 1.5 and 2.0 million, including those that settled recently and possibly temporarily.” p. 6.

<sup>8</sup>Thomas Barfield, “Nomadic Pastoralists in Afghanistan”, Bank Information Center, 2004, pp. 3-4

*community members (both in the form of productive resources – timber, firewood, better pasture, and as means of protecting natural resources from erosion)*<sup>9</sup>.

This policy/strategy formalizes the *de facto* situation in most communities whose residents use rangeland. For decades families, clans and tribes through their elders and leaders have arrived at rules for deciding who has the rights to use particular pasture areas for what times of the year. This *de facto* local management has evolved regardless of the provisions of the formal law that pastures and forests are public and under the authority of State institutions. The theoretical notion has been that the State through its land institutions would manage the publicly owned range lands, but in practice the operational management has been in the hands of villagers and nomadic groups.

A major complication to this *de facto* customary and traditional system of rangeland and forest management has been the turmoil of the past 25 years and the displacement of populations and damages to local leadership structures, leading in many cases to the breakdown of the informal rules governing how communities and families get access to, and use, rangelands. The result in many places is increased insecurity of tenure to rangeland among people whose lives depend on secure access to those resources. The Ministry's new Policy/Strategy for recognizing community based management of rangelands is an initial response to this problem. The State does not have the capacity for managing rangelands which it claims under its ownership. Sporadic attempts to enforce State management of rangelands ironically serves to drive even more wedges between government and communities, and to weaken the local resolves to effectively manage rangelands. Identification and recording of the legitimate community users of rangeland are first steps in the implementation of the new Policy/Strategy<sup>10</sup> which recognizes the responsibilities of communities to manage rangelands.

#### **4. Insecurity of Rangeland Tenure**

The problem of land tenure insecurity<sup>11</sup> in both urban and rural areas in Afghanistan manifests itself in a variety of forms, deriving in some cases from the disruption of customary arrangements concerning access to rangeland due to population displacements, the moving into communities of warlords demanding control over community lands, destruction of documents proving rights to real property, and in other cases having its origins in the extra-legal actions of land acquisition in a context of a weak State, such as land grabbing, acquisition of immovable property

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<sup>9</sup> Ministry of Agriculture, Irrigation and Livestock, "Policy and Strategy for Forest and Rangeland Management Sub-Sector", 2006, p. 2

<sup>10</sup> The new Policy/Strategy for community based management of rangeland (and forests) faces many implementation issues, including the resistance of governmental land management officials. For an analysis of such resistance to the devolution of management to communities in various countries see Graham R. Marshall, "Nesting, Subsidiarity, and Community-Based Environmental Governance Beyond the Local Level", Occasional Paper 2007/01, Institute for Rural Futures, University of New England, Australia, June 2007

<sup>11</sup> Land tenure security is defined as landholders' confidence that neither the State nor other people will interfere with the landholder's possession or use of the land for an extended period of time. (See John Bruce (1998), "Review of Tenure Terminology", Land Tenure Center, University of Wisconsin). Tenure insecurity can be defined as the extent to which holders of land lack such confidence. We discuss below some conditions for reducing the perceptions of insecurity.

from land grabbers through informal market transactions, and improper State allocation of land. Although having different origins, the general situation of land tenure insecurity tends to undermine efficient and equitable use of land for social and productive purposes.

Such perceptions of insecurity can be positively modified when rights to land are made both “legitimate” and “legally valid”. As Camilla Toulmin has observed:

*Secure rights to land and property depend on a combination of two key elements. The rights being claimed must be seen, first, as legitimate by the local population; and second, they must also be ascribed legality by the state*<sup>12</sup>.

The customs and local traditions of Afghan communities provide rules which are often more effective in guiding the everyday lives of people than the laws and regulations emanating from the State’s institutions. In such conditions rights to land may be viewed as legitimate in terms of being locally recognized, as in the customary deeds which describe transactions in land which are not prepared in accordance with legally defined procedures<sup>13</sup>.

Similarly, government officials may issue apparently valid legal documents about rights to land, such as an allotment of land to a land developer despite strong local opposition.

Under such conditions, the rights to land may be legally valid yet not be considered socially legitimate, potentially leading to long-running local conflict.

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

Where the State is weak, as in Afghanistan, and where the popular perception is that wealth and power influence the applications of State defined laws more than do dispassionate legal procedures administered by a transparent bureaucracy, one approach to improving tenure security can be first to define legitimate rights through community consultations about customary rules concerning access to land, and then appeal to institutions of the State for confirmation of the legal validity of these community legitimized rights to land. This approach reverses the usual focus of first establishing State policies, then crafting laws in line with those policies, and then enforcing those laws across the land. The “community first” approach means that rules about the use and improvement of rangelands have to be established in community consultations, community by community. This is an enormous task, but one that is necessary.

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<sup>12</sup> Camilla Toulmin, January 2006, “Securing land rights for the poor in Africa —Key to growth, peace and sustainable development”, International Institute for the Environment and Development, paper prepared for the Commission on the Legal Empowerment of the Poor, p. 4.

<sup>13</sup> See Leon Sheleff (2000), *The Future of Tradition*, London: Frank Cass, for an introduction to the literature on customary law.

Delville<sup>14</sup> suggests that two questions must be answered in these local consultations in order to pull people out of the morass of insecurity, at least as far as reducing land tenure insecurity is concerned:

- What is the nature of the recognized rights to land: is the implicit model one of legally defined private property, or is the model one which starts with locally defined rights and rules?
- Is the system to administer the documentation of these rights capable of ensuring reliable management and be at the service of the general population?

### **5. Community Administration of Rangeland Records about Legitimate Users**

In many countries the answers to both of Delville's questions have focused on applying formal law to adjudicate claims to land through technically trained field teams, in some instances giving a role to community involvement in the adjudication process in the final stages of validating the findings of the field teams<sup>15</sup>. This approach also tends to focus on equipping and training field adjudication teams, and the developing of cadastral agencies for producing accurate parcel maps and the promotion of specialized governmental land registries for administering the legal documents which define property rights. These institutions of cadastre and registry must be equipped and trained to do their jobs properly, extending their services to the community typically through the use of information and communication technologies.

In the Afghan context a "community consultation" approach may be a more feasible way to try and answer both questions about how to establish more secure rights to one type of land, rangeland. To test this hypothesis, a team of land specialists and community organizers was formed in mid 2006 through the Rural Land Administration Project. The team included representatives of the MAIL's Natural Resources Directorate in June, 2006, cadastral survey specialists, community organizers from an Afghan NGO, and two international advisors. This team developed procedures for documenting legitimate rights to communal pasture lands in four test sites<sup>16</sup>:

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<sup>14</sup> Philippe Lavigne Delville (2006), "Registering and Administering Customary Land Rights: PFRs in West Africa", World Bank Conference on Land Policies and Legal Empowerment of the Poor, Washington D.C., p. 2

<sup>15</sup> For a review of the various approaches to land administration, including property records administration, see Tony Burns, Chris Grant, Kevin Nettle, Anne-Marie Brits and Kate Dalrymple (13 November, 2006), "Land Administration Reform: Indicators of Success, Future Challenges", Land Equity Inc.,

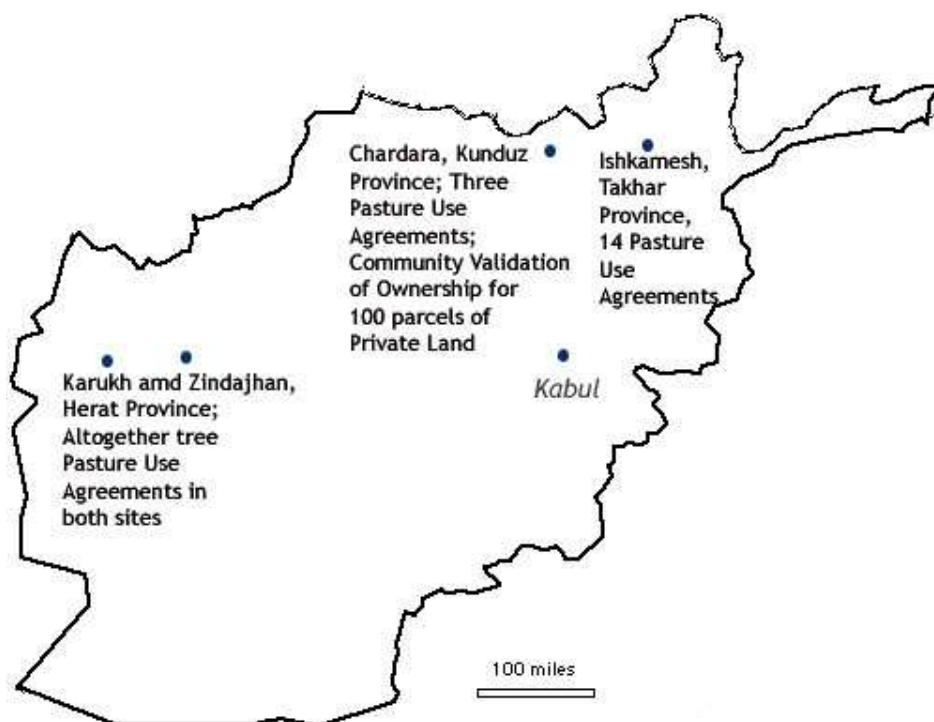
<sup>16</sup> The four test sites were selected through the consideration of several factors: 1) What provinces have a substantial area of rangeland? 2) In which of these provinces is the security situation favorable for doing field work; 3) What villages in those provinces have had three years of experience with the National Solidarity Program of village council strengthening? 4) Out of those villages which ones were recommended by Ministry provincial staff and by NGOs involved in rural development as being relatively well organized? 5) Following meetings with village councils, which ones agreed to participate in the RLAP? A test site included the selected core village plus neighboring villages with rangeland parcels bordering on those used by villagers of the core village.



- 1) Village Dara-e-Kalan in Ishkamish District, Takhar Province, with rain-fed agriculture and 14 separate clan based communal pastures.
- 2) Village Safar Khan in Zindajan District, Herat Province, with irrigated agriculture and limited communal pastures close to the settlement.
- 3) Village Saghari in Karokh District, Herat Province, basically rain-fed agriculture, with communally managed pastures close to the settlement area.
- 4) Village Naw Abad in Chardara District, Kunduz Province, a Kuchi<sup>17</sup> settlement based on irrigated agriculture and large tribally managed pastures close to the settlement and tribally allocated public pastures in the distant mountains.

The short term objective of the team was to improve customary practices for administering rights to land. In particular the effort hypothesized that where a local consensus or near consensus could be crafted together about the rights people have to land and that consensus expressed in written agreements, that local community definition should be the starting point to define rights to land. This community focus, however, does not mean that the governmental agencies or the legal framework are irrelevant. On the contrary, the re-establishment of positive community-state relations is of critical importance. The community can and should be a locus for land administration and management, but a national program has to strengthen the capacities of communities and state agencies to promote and support these efforts for the country to achieve a viable and effective land administration system.

The four sites selected for the field work were located in three northern provinces—Herat, Kunduz and Takhar, as shown in the following figure, which also shows the number of rangeland user agreements produced:



<sup>17</sup> In this paper the terms “Kuchi” and “nomad” are used as having the same meaning.

## 5.1 Rights to Rangeland

The community as a locus of governance concerning land must be supported by the State and a clear legal framework. In the words of the draft Multi-Ministerial Land Policy<sup>18</sup>:

*The regulation of pasture land is an imperative if it is to be protected from threats to its sustainable use such as grabbing of community lands of neighboring villages, grabbing of rangeland, cultivation of traditional grazing land, government designation of grazing rights in what have traditionally been considered communal grazing lands. Pastoral land ownership is unclear and formal law ambivalent as to whether pasture lands are state-owned, public or communal.*

In light of this legal ambivalence about the ownership of rangeland, the field teams avoided using the word “ownership” in the community consultations about rights to rangeland. Rather, the consultations generated community views on who legitimately holds what rights to use particular rangeland parcels during what times of the year. Villagers and Kuchis had no difficulty with this terminology, although reaching consensus often took substantial time, and for some parcels consensus was not possible. The teams explicitly recognized the authority of local people to define these rights in the first instance, based on the Ministry’s new Policy/Strategy for community based management of rangeland (see discussion below), but subject to review and approval by the formal organs of government, particularly the Woluswal<sup>19</sup>. Villagers repeatedly asked for this governmental review and formal approval of their rangeland use agreements.

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

“Obligations of the Users of the Parcel”:

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

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<sup>18</sup> Section 2.2.6, Ministry of Agriculture, Irrigation and Livestock, “POLICY AND STRATEGY FOR THE FORESTRY AND RANGE MANAGEMENT SUB-SECTORS”, Approved by the Economic Committee of the Council of Ministers, 2006.

<sup>19</sup> “Woluswals (district governors) are appointed by the President and represent the Ministry of Interior at the district level. District governors report to the provincial governor and their role is primarily to represent the government at the district level and to coordinate ministry activities. They are also responsible for civil registration of births, deaths and marriages. They may also assist in conflict resolution, through referral to the police or the local shura.” Page 8, World Bank, July, 2007, *Service Delivery and Governance at the Sub-National Level in Afghanistan*.

*parks, roads and other infrastructure for the welfare and promotion of the living standard of the people.*

The meaning of the term “pasture and forest lands are government property” in village discourse is more a recognition of the sovereignty of the state in reference to rangeland and forests, rather than an identification of full rights of ownership<sup>20</sup>. In any case, for the villagers and Kuchis in the four test sites, reaching agreement about who has rights to specific uses of parcels of rangeland during specified times of the year seemed to be the critical issue to be settled in the consultations. Neither government officials nor the villagers considered as relevant a discussion of who holds the right to sell rangeland, which is typically a key right encompassed within the concept of ownership. The clarification and documentation of legitimate users by the community is the critical element, at least for the present time and conditions. Also the “obligations” paragraph of the agreement contains the statement that “with the agreement of the local community”, the government may use rangeland for development projects. This statement gives the community a right to negotiate with the government should government want to use rangeland for other purposes than the pasturing animals by local people. Presumably this right to negotiate includes the possibility for community rangeland management groups to be compensated for community financed improvements in pastures under their management should government wish to acquire those lands for other purposes.

A Pasture Act is being drafted to replace the legislation presently in place, which may clarify or may complicate community-government relations concerning the management of rangelands<sup>21</sup>. At present the rangeland user agreement is a statement by community rangeland users and elders about their understanding of who the legitimate users are. The agreement is not expressly authorized in legislation. However, it is in accord with the draft Land Policy, and with the MAIL’s Policy/Strategy on community based management of rangeland. The Herat and Kunduz Appeals Court Head Judges have reviewed the wording of completed agreements, and they indicated that such documents would have significant legal relevance in their courts, should a dispute be presented to them involving rangelands covered by the agreements. Their normal procedure when village land disputes come to them is to refer the parties involved back to the community elders to get their recommendations. In the case of a dispute involving rangelands with an agreement signed by these very elders, an important step in the resolution of the dispute has already been taken. The field teams following their experiences in the four test sites have also recommended that the Minister authorize rangeland specialists from the Land Resources Department to review rangeland user agreements and indicate on the agreements in writing when they find the agreements to be complete (all the relevant parties have signed) and clearly presented. The “legality” of the rangeland user agreements seems sufficient, but certainly more explicit authorization in law would be useful.

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<sup>20</sup> For more on this distinction between “sovereignty” and “ownership” see Hunud Abia Kadouf, “The traditional Malay Ruler and the Land: Maxwell’s Theory Revisited”, *The Malayan Law Journal*, International Islamic University, Malaysia, 4 April, 1997, pp. cxxi-cxxix.

<sup>21</sup> See Yohannes Gebremedhin (2007) “Land Tenure and Administration in Rural Afghanistan: Legal Aspects”, Project Report 7, Capacity Building for Land Policy and Administration Reform, ADB / DFID, for a comprehensive discussion of pasture related legislation as well as other aspects of the legal framework affecting rural land tenure and administration.

## 5.2 Administration of Property Records

Pertaining to the administration of property records, the field teams posited that a community administration of property records is the place to start searching for answers to the second Delville question as to who controls these records. By “community administration” the field teams meant the actual administration by community people of property records, and not administration by a District office of a central land registry receiving petitions for land information or for recording transactions, nor a District Office sending a team once in a while to communities to gather evidence of transactions.

As in the case of land tenure security, our hypothesis is that people will feel more secure in their documentation of their rights to land when they “own” their land records, that is, when they produce and control access to these records. When this security exists, people invest in the maintenance and usefulness of land records. As Liz Alden Wily states:

“only when land administration and management is fully devolved to the community level... is there likely to be significant success in bringing the majority of land interests under useful and lasting record-centered management....”<sup>22</sup>

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

However, this initial focus on community definition of rights and on community administration of the records which document these rights in the Afghan context does not mean that formal law and the capacities of district and provincial state land agencies can be ignored. The “community consultation” focus must include the views of all community segments about who holds legitimate rights to land and simultaneously strengthen linkages with the formal law and State institutions of land administration to solidify security of tenure for the longer term.

## 5.3 The Community

The definition of the concept “community” is complicated in the Afghan context. Various terms regarding the loci of rural community life exist in Afghanistan, such as *qarya* (often translated as “village”), *qishlāq* (usually meaning “settlement”) and *manteqa* (meaning something like “area”)<sup>24</sup>.

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<sup>22</sup> Alden Wily, Liz (2003). “Governance and Land Relations: A Review of Decentralisation of Land Administration and Management in Africa”, International Institute for Environment and Development, London, abstract page.

<sup>23</sup> Ibid, p. 35.

<sup>24</sup> See Katja Mielke and Conrad Schetter, “Where Is the Village? Local Perceptions and Development Approaches in Kunduz Province”, ASIEN 104 (July 2007), pp. 71-87; Jennifer Brick (2007), “Rural Local Institutions in Afghanistan: The Case of Community Governance”, unpublished manuscript; Nigel J. R. Allan, “Defining Place and People in Afghanistan”, *Post-Soviet Geography and Economics*, 2001, 42, No. 8, pp. 545-560.

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

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

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

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

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<sup>25</sup> Also known as “jirgas” in Pashtun areas, these institutions have played important roles in resolving community, regional or national conflicts or in establishing agreements about general policies. See Ali Wardak (2003) “*Jirgas: A Traditional Mechanism of Conflict Resolution in Afghanistan*”, <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN017434.pdf>

In regard to defining the legitimate users of public pastures<sup>26</sup> whose users come from more than one *qarya* or *qishlaq*, the *manteqa* may become the relevant definition of local community, with the governance structure of a *manteqa shura* or *jirga* called into action under specific conditions.

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

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

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

#### **5.4 Community Consultation**

The focus on “community consultation” for defining legitimate rights to land and for administering the documentation of these rights is not an idea invented by our field teams. The Ministry of Urban Development and the Municipality of Kabul have developed a similar approach for regularizing the tenure of some informal

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<sup>26</sup> See below for a discussion the concepts of community/specific pastures and public pastures.

<sup>27</sup> Jennifer Brick, “The Political Foundations of State-Building and Limited Government in Afghanistan”, paper presented to the 66th Midwest Political Science Association Annual Meeting in Chicago, IL, April 3, 2008

<sup>28</sup> See Mirwais Wardak, Idrees Zaman and Kanishka Nawabi, July, 2007, “The Role and Functions of Religious Civil Society in Afghanistan”, Cooperation for Peace and Unity, Kabul, for a useful discussion of the importance of local and regional religious leaders.

settlements in Kabul<sup>29</sup>. Moreover, the draft Land Policy in reference to land tenure in informal settlements, states in Section 2.2.4:

*The government shall promote land tenure regularization in these areas in collaboration with relevant communities based on standards to be established by law.*

In a review of land registration options for Afghanistan, McEwen and Sharna<sup>30</sup> make the following recommendation:

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

In addition to the community identification of legitimate users of rangelands, there are also important precedents for community administration of property records. In our discussions with many community leaders, the royal acts which allotted land to families at the time of establishment of the communities, have been kept by an *arbab/malik* or by a respected elder of the village. In some villages, the NSP shuras have developed systems of producing and archiving accounting records and notes of council meeting, even though they are often rudimentary.

In other countries, community keeping of land records has also been common, particularly in communities established through settlement programs. For example, the initial settlement of some parts of the United States by white settlers who displaced the native peoples from their lands, was done with the formal adjudication of land rights by the State but without a governmental involvement in the administration of property records, at least initially. Settlers themselves set up organizations to recognize and enforce informally established claims to land<sup>31</sup>. Subsequently, as State institutions began to be established, the preference across the U.S. for the administration of property rights documents, normally without benefit of systematic cadastral surveys of property boundaries, was the multi-purpose local governmental unit (township or county)<sup>32</sup>.

In Norway, while the administration a Land Registry has been done by a specialized government agency, no cadastral surveys were done in rural areas until 1980. New boundaries/parcels were set out in the field by three lay men appointed by the local "sheriff". New boundaries were demarcated using materials found at the spot,

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<sup>29</sup> See USAID Land Titling and Economic Restructuring in Afghanistan, January 2006, "Informal Settlements and Tenure Issues", Kabul.

<sup>30</sup> Alec McEwen and Sharna Nolan (2007), "Options for Land Registration", Afghanistan Research and Evaluation Unity, Working Paper Series, Kabul, p. 23.

<sup>31</sup> See Ilia Murtazashvili (2007) The Political Economy of Private-Order Property Systems: From Informal to Formal Property Rights on the American Frontier, Ph.D. Thesis, University of Wisconsin, Madison.

<sup>32</sup> See David Stanfield (2003) A "Town" Model of Land Registration: The Case of Killingworth, Connecticut", Terra Institute.

crosses in rock/stones etc. Verbal descriptions and rather simple sketches were included in the documents supporting opening a new lot in the Land Register<sup>33</sup>.

In more recent times in the country of Benin, Village Land Tenure Management Committees have been adjudicating title and are administering the resulting property records<sup>34</sup>. In Tanzania, Village Land Committees validate claims to land, and Village Land Registries administer the land records, in coordination with District Land Registries<sup>35</sup>.

## **6. Building Records about Rangeland Tenure**

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

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<sup>33</sup> Personal communication from Helge Onsrud, March, 2007

<sup>34</sup> See Delville op cit, p. 4-5.

<sup>35</sup> Government of Tanzania, *Village Land Act 1999*; s. 8, 54, 58 & *Regulations 61-74 (2001)*

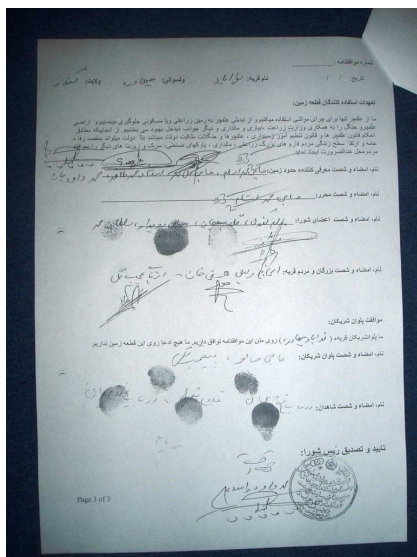


**Figure 3: A Delineated Satellite Image, Scale 1:5,000 showing Pasture Parcels Boundaries**



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

**Figure 4: A Signed Pasture Land Agreement**



For large public pastures which are used by families from two or more villages as well as by nomadic groups and whose users and uses can be defined, a meeting is called of all interested parties and the agreement forged, signed and witnessed as in the cases of the community pastures. In the Naw Abad community, distant public pastures are important to village families and are exclusively used by the two distinctive tribal groups (*Khel*) of Nau Abad village (*Baluch, Ashakehl*). In this instance, the description of these lands was a simple sketch, shown in Figure 2, with two large parcels delineated.

**Figure 5: Two Delineated Public Pasture Areas**



Once the agreements and delineated images are completed, they are made available to the villagers and nomads for examination, finalized typically in a public meeting (*shura/jirga*<sup>36</sup>) or a series of public meetings. Figure 5 shows a group of villagers reviewing a delineated satellite image showing the boundaries of pasture land parcels.

<sup>36</sup>Community councils called “shuras” in the north and “jirgas” mostly in the south.

**Figure 6: Villagers Reviewing Delineated Satellite Image**



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

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

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

See Annex 1 for a brief summary of the methodology for arriving at signed agreements as to the legitimate users of rangeland parcels whose boundaries are described on delineated satellite imagery. The procedures devised by the RLAP for consultations and agreement formalization at the community level can be summarized by the following:

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

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

- Community rangeland agreements and delineated images recorded and maintained in the village where the resident users live, with copies filed with the Regional Cadastre (the delineated image) and with the Provincial Amlak<sup>37</sup>.
- The public pasture agreements and delineated images are recorded in the village designated for that responsibility by the *manteqa jirga*, with copies recorded with the Regional Cadastral Survey and Provincial Amlak(s).
- Once the rangeland agreements have been reviewed and discussed locally, they are reviewed by the Woluswali officials, including Rangeland specialists as well as specialists from the Amlak and Cadastral Survey, monitored and reviewed by the Head of the Woluswali administration.
- Particularly important to the ADAMAP methodology is the preparation of a plan for the improvement of each of the rangeland parcels for which agreements are devised, and the continued interaction of community rangeland users and government officials led by specialists from the Rangelands Department of the Ministry of Agriculture, Irrigation and Livestock (MAIL) for the implementation of such plans.

In four test sites the following outputs pertaining to rangeland agreements have been produced<sup>38</sup>:

- 17 village pasture land signed agreements for 17 pasture parcels, covering approx. 28,210 Jeribs in three villages, and over 110,000 Jeribs in large community pasture and two public pastures in the fourth test site in Kunduz (3 agreements).
- 39 satellite images, ortho-rectified, scale 1:5,000, printed in 4 paper copies, each showing 4.5 km x 4 km on paper images of 84.1 cm x 76.2 cm, with 20 pasture land parcels delineated. In the Kunduz site, satellite images of smaller scale were used to delineate the very large public pasture parcel boundaries.
- The agreements and delineated images showing pasture land parcels are archived in the four test sites, and digital copies are archived with Cadastral Survey Department of the Afghan Geodetic and Cartographic Head Office (AGCHO) in Kabul.

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<sup>37</sup> The Cadastral Survey Department of AGCHO has 16 regional offices which administer cadastral maps produced mainly in the 1960s and 1970s. See M. Yasin Safar and David Stanfield (2007) "Cadastral Survey in Afghanistan", Scanagri/Terra Institute, Capacity Building for Land Policy and Administration Reform, ADB / DFID, TA 4483-AFG. The "Amlak" is the main state land management institution, which also maintains records about the ownership of agricultural land based on a comprehensive survey in the mid 1970s. For details on the structure and operations of the Amlak, see J. David Stanfield and M. Yasin Safar, (2007), "A Study of the General Directorate of Land Management and Amlak of the Ministry of Agriculture, Irrigation and Livestock", Capacity Building for Land Policy and Administration Reform, ADB / DFID, TA 4483-AFG.

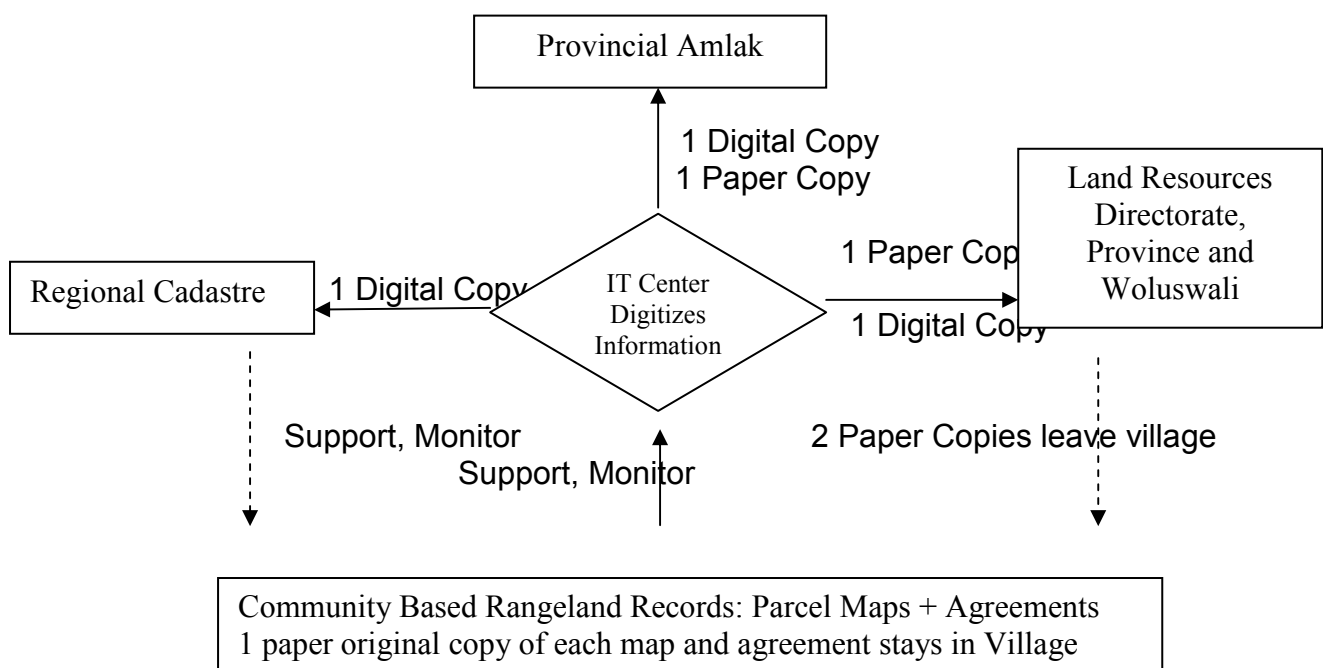
<sup>38</sup> See D. Stanfield, Rural Land Administration Project Brief, 12 August, 2007 and also, Final Report (September, 2007), "Capacity Building for Land Policy and Administration Reform", ADB / DFID, TA 4483-AFG



This community recording and maintaining of records about rights to rangeland land is a new idea in Afghanistan which appears to be well received by villagers, nomadic groups, and many government officials. Further monitoring and adjusting of the ADAMAP procedures to produce and administer these records is certainly to be desired.

Diagram 1 shows a RLAP recommendation about how the rangeland parcel-based information concerning rights and boundaries is generated and archived. The capacities of Amlak, Cadastral Survey, the Land Resources Directorate and Woluswali officials require attention for assuring that they will be able to fulfill their responsibilities in the new property records administration system.

**Diagram 1: Information Flows and Responsibilities for Rangeland Documents**



## 7. Conclusions

In the words of Alden Wily: “Democratisation of land administration and management should be an objective of all countries”<sup>39</sup>. This principle is particularly relevant to Afghanistan as the Afghans try to create a democratic political economy. A corollary of that principle is that the nearer the administration of property records is to landholders, “the more accessible, useable and used, cheaper, speedier and generally more efficient the system will be.” Of course, this hypothesis cannot be carried to the extreme of every hamlet operating its own land registry, or else the system would be inordinately expensive. But particularly in Afghan conditions of State institutional weakness where the institutions of the State are not well connected to the population, re-establishing the confidence of the people in its governing institutions, particularly land governing institutions by making them transparent and observable at the local level, is of fundamental importance.

<sup>39</sup> Alden Wily (op.cit), pp 1-2.

The experiences of the field teams with the local legitimization of rights to pasture lands, a potentially very complicated process, show that community definition of such rights is entirely feasible, relatively simple and normally quickly accomplished. Moreover, village leaders are quite willing to keep those records and they readily commit to updating the agreements when the conditions change and require changes in the written agreements and/or pasture parcel boundaries.

Government agencies are committed to support this community property records crafting and archiving by helping to build the capacities of communities to administer property records, by monitoring their work, by providing backup digital archiving, by providing plotted satellite images, and by assisting with the formulation of rangeland improvement plans. However, to bring this commitment to reality, the capacities of Amlak, Cadastral Survey, Land Resources, and Woluswali Heads to perform these functions have to be strengthened, as does the legal framework.

## **Annex 1: ADAMAP**

### **The ADAMAP methodology for producing and recording community pasture land agreements**

Improving the sustainable productivity of rangeland is an important objective of the agricultural sector. Achieving this objective is not within the sole power of government, but rather requires the thoughtful and dedicated work of the people who use rangeland for their livestock, for fuel, and for medicinal herbs. These are the practical managers of the rangeland, which traditionally has been managed by families, clans, or tribes, and not by private owners.

The past 25 years has seen the destruction of much of the communities' livestock. They do not have security that the rangelands which they once managed continue to be their responsibility. This insecurity leads to low investments in building up the herds, to poor management of the land and to instabilities in rural communities which depend on their livestock based enterprises. Government can help in this regard, but launching a program to identify the legitimate community managers of clearly marked rangeland pastures. Communities also certainly can use the support of government and NGOs, given their relative lack of financial and technical resources and limited labor and severe resource degradation.

So, how can the managers of the rangeland be identified? The MAIL has stated as its policy/strategy for the rangeland sector, that its management must be community based. The field testing of making this strategy practical provides an essential step in implementing this policy through the community identification of the legitimate managers of rangeland.

Also, in that policy/strategy it is clear that the Ministry and NGOs should support and guide the community in its management of the rangeland.

The field teams worked with four communities and with Ministry and NGO staff to develop a methodology with the objective of improving the security by which community groups can manage rangeland. The following steps are proposed to be used in a national program for clarifying community rights and responsibilities:

#### **2,1 Step 1: Ask the community**

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

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

If the community agrees with this proposal, then the next steps can be undertaken. If the community leaders are not interested, then the team moves on to the next target community. The discussion of the proposal may take several visits, and may involve large numbers of people. Even people from neighboring villages may be involved, whose pastures border those of the target community. Agreement and mutual respect is absolutely necessary for proceeding to the next step. Once agreement is reached, the team should visit the rangeland areas, and take some GPS readings of visible landmarks to be able to order the proper satellite imagery.

## 2. Step 2: Delineate rangeland parcel boundaries.

The drawing of the rangeland parcel boundaries requires:

--Getting of the satellite imagery of the proper scale. For very large rangeland parcels, imagery at the scale of 1:50,000 showing the topographic relief is very useful for delineation of parcel boundaries. For smaller parcels, clear imagery at the scale of 1:5,000 is preferable—such as that from the Quickbird satellite. ISAF provided the field teams with such imagery at no cost. But for a large project, arrangements must be made with ISAF well in advance, and the coordinates of the desired coverage areas provided.

--With the imagery, the team returns to the village, and walks the boundaries of the rangeland parcels with village representatives, marking the boundaries on the images using appropriate line symbols. The team at this stage should include one cadastral survey engineer with training in photo interpretation and with training and experience working with villagers on land matters, a community mobilization specialist with some training in photo interpretation, and a pasture specialist from the MAIL. If the community is of a special ethnic/linguist composition, a fourth person from that ethnic/linguist group may be added.

## 3. Step 3: Agreement

The preparation of the community rangeland agreement is the next step. A form is filled out for each parcel. See the model agreement for the community agreement in Annex 2, and the instructions for filling out that agreement in Annex 3. All of the legitimate users of each rangeland parcel for the entire year and for any use of that land (as pasture for livestock of different types, as sources of fuel and herbs, etc) must be recorded in the agreement.



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

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

The agreement must be signed by the users identified on the agreement, by the village elders, *Arbabs/Maliks*, and by members of the village *shura* if there is one. The boundaries must be agreed to and signed by representatives of neighboring tribes, clans, families or villages.

#### 4. Step 4: Meet and Approve

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

A representative of the Pasture Department then comes to the village and examines the agreements and delineated images, using a checklist of factors to verify that the work has been properly done. He leaves a signed checklist attached to each pasture agreement. If there is some problem with the formulation of the agreements or with the delineation of the images, the Pasture Specialist presents a written memo to the Village Elders describing the problem and how to resolve it.

#### 5. Step 5: Archive

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

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

An exact copy of the delineated image is taken to Kabul to be digitized. A paper copy of the delineated image plus a digital copy of each agreement along with a digital copy of the delineated parcel image should be filed with the Central Cadastral Office Archive. Note that a final page of the model agreement is to be used in the future should the stakeholders who signed the agreement originally decide to change its terms. In that case four copies should be made and filed as for the original agreement.

## 6. Step 6: Plan Improvements to Rangelands

A rangeland improvement team then visits the community and discusses with the managers of each rangeland parcel as shown on the agreements how they have been improving the pastures in the past and how they intend to improve them in the future.

In summary, the field teams devised the A-D-A-M-A P method for community based management of rangeland parcels:

**A**sk for community cooperation

**D**elineate the boundaries of rangeland parcels

**A**greements are prepared concerning the legitimate users of the rangeland parcels.

**M**eet, discuss and approve the agreements and delineations

**A**rchive the agreements and delineated images

**P**lan for the improvement of the rangeland parcels