

# The Stolen Lands of Afghanistan and its People

## The State Land Distribution System

Part 2 of a 3 Part Series



**UNAMA**  
**Rule of Law Unit**  
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## SUMMARY

The second in a series of three reports entitled, “The Stolen Lands of Afghanistan and its People; The State Land Distribution System,” this report focuses on how state lands are distributed. This paper is the result of a desktop review and joint research by the UNAMA Rule of Law Unit (RoL) and the Civil Affairs Unit (CAU) in seven provinces—Kabul, Nangarhar, Kunduz, Balkh, Herat, Gardez, and Kandahar.

The media in Afghanistan and government reports have highlighted the extent of illegally obtained state land, also referred to as land usurpation and land grabbing. The power to distribute state land is an extremely powerful tool for the executive, government officials, and others involved in state land administration and management. Reports of land distributions to the political and economic elite suggest that state land distribution in Afghanistan is employed to reward patronage, solidify political loyalty, and exercise and control power. An evaluation of the existing legal framework, practices, and processes for state land distribution is critical to developing an understanding of how this system works and identifying and addressing challenges to the land distribution system as a whole. This report identifies, assesses, and compares the legal framework and existing land distribution practices, and proposes specific recommendations to address overarching challenges to this system. The scope of this report does not address the economic impact of illegal practices resulting, in part, from vulnerabilities in the land distribution system. The illegal land economy and its role in and effect on the overall economy in Afghanistan will be addressed in Part 3 of this Series.

The findings of the RoL and CAU staff underscore multiple challenges, which include: the lack of an overarching and integrated national policy on state land distribution; material deficiencies in the land distribution legal framework and regulatory scheme; a lack of transparency and oversight of the institutions and government officials involved in land distribution; ineffective subnational governance; and limited desirable state land, including urban, peri-urban, and agricultural land.

Specifically, the existing legal framework establishes insufficient criteria for identifying and prioritizing individuals eligible for land distributions and the type of land for which each is eligible. In addition, the system lacks adequate and reliable mechanisms and processes for distributing state land. While the framework establishes basic mechanisms and institutional responsibilities for distributing state land, it is not fully supported by implementing regulations with specific, detailed countrywide mechanisms and processes, resulting in *ad hoc* implementation. Thus, the workings of institutions, mechanisms, and processes are neither public nor transparent, rendering it difficult to evaluate whether state land distribution complies with the relevant, albeit inadequate, legal framework. Exacerbating this situation is weak subnational governance, with ambiguous and unclear roles and responsibilities.

This lack of transparency, coupled with an insufficient statutory and regulatory framework, provide those involved in land distribution with an opportunity to operate without oversight or accountability, affording the officials involved nearly unbridled discretion to distribute state land for free, or at extremely reduced values, to whomever they prefer.

Further, endemic grabbing of state lands impacts implementation of legitimate state land distribution by limiting desirable state land available for distribution at the same time that demand for land is increasing, particularly in urban and peri-urban areas.

This report recommends that Afghanistan develop an overarching state land distribution policy that identifies, balances, and meets the competing and varying needs of the state for revenue generation, infrastructure, and commercial development, and the needs of its citizens for access to land for residential and business interests. Such a policy would effectively inform and guide establishment of a modern statutory and regulatory framework for state land distribution.

Further, the report recommends modern legislative reform that addresses all types of state land transactions, focusing on specific criteria and prioritization for distributions, specified land classifications, the relationship of classifications to prioritized distributions, and specific mechanisms and processes for valuing and distributing differing types of state land. This report notes the laudable efforts of Arazi in developing guidelines for state land transfer and exchange, land clearance, and land leasing, and recommends incorporating these guidelines as part of a formal and comprehensive land distribution, sale, transfer and lease statutory and regulatory scheme with provisions for countrywide enforcement.

The report also recommends that the specific roles of subnational governance officials in any state land distribution scheme should be clearly delineated in the legal framework, with sufficient oversight mechanisms and accountability for failure to meet specified responsibilities.

Lastly, to further transparency and accountability, all documents related to land transactions, including land commission decisions and executive decrees approving distribution of state land, should be made available voluntarily to the public.

## TABLE OF ABBREVIATIONS, ACRONYMS and TERMS

AISA	Afghanistan Investment Support Agency
Allocation	Term for providing state land to IDPs and RRs
AMLAK	Afghanistan Office of Land Affairs
Arazi	Afghanistan Land Authority
CAU	(UNAMA) Civil Affairs Unit
CoM	Council of Ministers
CR	Central Region
DAIL	Department of Agriculture, Irrigation and Livestock
DDDR	Office of the Directorates of Documents and Deeds Registration
DG	District Governor
Distribution	Providing state land to eligible landless persons under the LML and municipal regulatory land distribution frameworks
Distribution System	The system that includes all types of state land transactions
DoRR	Department of Refugees and Repatriation
DPG	Deputy Provincial Governor
DRRD	Department of Rural Rehabilitation Development
DUDA	Department of Urban Development Affairs
ER	Eastern Region
GDMA	General Directorate of Municipal Affairs
IDLG	Independent Directorate of Local Government
IDPs	Internally Displaced Persons
LAL	Land Acquisition Law
LEL	Land Expropriation Law
LML	Land Management Law
MAIL	Ministry of Agriculture, Irrigation and Livestock
MEC	Independent Joint Anti-Corruption Monitoring and Evaluation Committee
MoCI	Ministry of Commerce and Industry
MoF	Ministry of Finance
MoRR	Ministry of Refugees and Repatriation
MP	Parliamentarian
MRRD	Ministry of Rural Rehabilitation and Development
MUDA	Ministry of Urban Development Affairs
NER	Northeast Region

NR	Northern Region
PG	Provincial Governor
RoL	(UNAMA) Rule of Law
RRs	Returning Refugees
SER	Southeastern Region
SR	Southern Region
UNAMA	United Nations Assistance Mission in Afghanistan
Transfer	Term used for providing state land to ministries or government entities
WJ	Wolesi Jirga

## ECONOMY: BACKGROUND

Executive Order No. 45 (2012) mandated the Ministry of Agriculture, Irrigation and Livestock (MAIL) to prepare a report on land usurpation (colloquially referred to as “land grabbing”).<sup>1</sup> In June 2013, MAIL, with the assistance of the Afghanistan Land Authority, Arazi,<sup>2</sup> issued its report in which it named and categorized 15,000 alleged land grabbers based on the location and amount of land stolen. This report, submitted to the Wolesi Jirga (WJ), was regarded by the WJ and others as incomplete in that it failed to include the names of anyone politically or economically powerful.

The WJ demanded that the report be revised, with a full list prepared within two months. The report was completed but it was not made public. However, in late 2013, MAIL released a report addressing the need for restitution of illegally occupied lands (“MAIL Restitution Report”) and included a summary of those lands, by type, amount, and province that were allegedly contained in the original mandated land usurpation report.<sup>3</sup> The MAIL Restitution Report is helpful in identifying those provinces in which large areas of land have been illegally obtained and the types of land. More important, the report illustrates the rapid growth of unplanned and unapproved housing projects and townships,<sup>4</sup> noting that there are over 355 new housing construction schemes in townships, with illegal projects exceeding 60% of all lands in use for such projects.<sup>5</sup>

In addition to the MAIL Restitution Report, the Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC) issued a report on land usurpation in November 2014.<sup>6</sup> This report is the result of extensive research throughout Afghanistan and provides an overview of the historical and current land administration system, including land surveys, registration, and titling, and examines a number of land transactions. The report assesses land dispute *fora*, examines actions taken to address land usurpation, and closes with specific recommendations that should be implemented by national stakeholders. These reports, allegations, and apparent prioritization of distribution of prime land to government officials illustrate the extent of the illicit land economy.

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<sup>1</sup> See Executive Decree No. 45, art. 27(2) (2012).

<sup>2</sup> Arazi is an independent, government institution responsible for state land administration and management, including clearing and leasing of state land. See Cabinet of Ministers Decision 24 (2009); see also Cabinet of Ministers Decision 23 (2010) (transferring Afghanistan Land Affairs from Minister of Finance to MAIL in 1978, merging Afghanistan Land Affairs with the Independent Commission for the Restitution of Illegally Occupied Land, and renaming it “Arazi”, and transferring land administration and management authority and responsibility to Arazi). See also Exec. Order 11 (2013) (establishing Arazi as independent of MAIL).

<sup>3</sup> See ARAZI, MINISTRY OF AGRICULTURE, IRRIGATION AND LIVESTOCK (MAIL), DRAFT PROPOSAL FOR RESTITUTION OF ILLEGALLY OCCUPIED GOVERNMENT-OWNED AND PRIVATE LANDS ACROSS THE COUNTRY (2013) [hereinafter RESTITUTION REPORT].

<sup>4</sup> See *id.* at B(8) (informing that “at the request of the Parliament’s Special Commission for Inspection of Government Performance, MAIL Kabul municipality and IDLG prepared a consolidated report of legal and unplanned housing projects and illegal residential areas).

<sup>5</sup> See *id.*

<sup>6</sup> See REPORT OF THE PUBLIC INQUIRY INTO LAND USURPATION INDEPENDENT JOINT ANTI-CORRUPTION MONITORING & EVALUATION COMMITTEE (November 2014) (translated from Dari) [hereinafter MEC report].



Afghan media continues to focus on land grabbing, emphasizing the extent of this problem and increasing public knowledge of the impact of these illegal acts. Illegal distribution of state land, a form of land grabbing, has been reported in the media on a recurring basis. Such illegal distribution is alleged to have involved senior officials and the economic elite, both in the decision making process and as beneficiaries of large, valuable areas of land, including entire townships.

## **B. REPORT METHODOLOGY AND SCOPE**

### **1. Background**

This report identifies and assesses the land distribution legal framework and the mechanisms and processes implementing this framework. The report also examines the relationship between national and sub-national stakeholders and specifically addresses how officials at the provincial, municipal and district levels administer land distribution and the legal processes they employ in practice.

### **2. Specific Methodologies and Scope**

UNAMA RoL staff conducted a desktop review of available laws, regulations, and executive decrees to identify and assess the legal framework for state land distribution. Both RoL and CAU also interviewed national and provincial level stakeholders to obtain information about existing practices and the relationship between national and subnational government in land distribution.

UNAMA staff engaged in this research are based in field offices in the central (CR), eastern (ER), northern (NR), northeastern (NER), western (WR), southeastern (SER) and southern regions (SR) of Afghanistan. Each office was provided with process-oriented guidelines to select a province, municipality, and two districts (one rural and one urban) and the existence of developed relationships with subnational governance officials within their area of responsibility.<sup>7</sup> From these, UNAMA staff met local officials, including provincial governors (PGs), deputy provincial governors (DPG), district governors (DG), municipal mayors the courts, Arazi, and land management offices in municipalities, known as the “Muhlkeet.”<sup>8</sup> In addition, CAU and RoL staff reported on meetings with the subnational level of ministries including the Department of Agriculture, Irrigation and Livestock (DAIL), Department of Rural Rehabilitation and Development (DRRD), Department of Refugees and Repatriation (DRR), Department of Urban Development Affairs (DUDA), Department of Finance (Mustofiat), High Office of Oversight and Anti-Corruption (HOOAC), the Kabul ministries of each of these departments, the two houses of parliament, and advisors to the president. Most of the relevant PG offices, DPG

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<sup>7</sup> See *infra* Annex 1 (containing a chart of selected areas).

<sup>8</sup> The Dari word for the land management offices for and in municipalities is “Muhlkeet.” These offices are not part of Arazi, but instead are part of municipal governments and the municipalities pay its employees.

offices, line department officials, and mayoral offices were interviewed; however, few PGs were interviewed because of professed unavailability.

Although staff were instructed to avoid specific enquires about illegal land activities, many of those interviewed voluntarily offered information about cases of illicit land-related activity by power brokers, government officials, members of parliament, and illegally armed groups.

This report does not purport to cover the entire country; rather, it is a qualitative sampling of the processes in selected larger capital municipalities and urban and rural areas in districts (non-municipalities). Of note, some districts and provinces within Afghanistan are inaccessible because of insecurity and were not considered for inclusion in this report.

### **3. Research Issues and Challenges**

Many potentially relevant documents related to state land distribution legal mechanisms and processes, including the roles of and relationships between senior officials, were unavailable. In addition, completed circulars, forms, recommendations, and other written documents, such as executive land decrees, guidelines, internal memorandum, and other materials that might corroborate officials' interview statements regarding land distributions, were publicly unavailable. Thus, in many instances, UNAMA staff were unable to corroborate information provided by senior officials and others who were interviewed.<sup>9</sup> At times, it appeared that those interviewed parroted what they believed to be their responsibilities rather than the actual roles they fulfilled.

In addition to the challenges of corroborating information, some information obtained by UNAMA's field office teams reflects unresolved differences and inconsistencies. Given the contentious nature of land issues and potential motives for those interviewed to provide less than full and accurate information, these inconsistencies are not unexpected and are part of the recorded research.<sup>10</sup> Despite these limitations, the available information and research was sufficient to identify general practices and issues, including institutional vulnerabilities to illegal or improper state land distribution.

## **C. LEGAL FRAMEWORK FOR STATE LAND DISTRIBUTION**

### **1. Brief History**

The current, basic land distribution system is the same as was in effect during the Taliban era. It is reported that during that time, corrupt practices resulted in widespread, illegal distribution of

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<sup>9</sup> Not all information set forth in Section D could be verified as fact; rather, this information was provided to UNAMA from senior officials and, where corroborated, was done so by other officials rather than independent records of the transactions.

<sup>10</sup> It is unclear whether differences or inconsistencies actually exist in practice or if they are the result of incomplete information or misinformation provided by those being interviewed.

state land.<sup>11</sup> As a result, the president issued Executive Decree 99 in 2002, freezing land distribution of specific types of state land.<sup>12</sup> The 2004 Constitution and the Land Management Law of 2008<sup>13</sup> have been interpreted by some as revoking Executive Decree 99; Article 12 of the Constitution provides for the development of necessary measures to distribute “...public estates to deserving citizens in accordance with the provisions of law and within financial possibilities.”<sup>14</sup> Likewise, the LML provides for state land distribution.

From 2003 to 2004, state land distribution was uncoordinated and several subnational government officials were distributing land without coordination or authority.<sup>15</sup> However, with the establishment of the High Commission for Urban Development in 2004, land distribution became more systematized.<sup>16</sup> This Commission was charged with identifying urban state-owned land and coordinating land distribution with the Ministry of Urban Development and Housing.

With the passage of the LML, state land distribution processes began to take shape and coordination mechanisms to crystalize. The establishment of Arazi as the Independent Land Authority in 2013, responsible for identifying and clearing ownership of state land as well as managing the distribution and leasing of such land, has been instrumental in moving toward the centralization of land administration and management. This centralization has contributed to increased coordination and regularization of certain land transactions; however, despite these positive developments, there continue to be significant challenges to the state land distribution legal framework and distribution practices.

## 2. The Legal Framework: The Basics of State Land Distribution

The legal framework for the distribution, transfer, sale and lease of state land in Afghanistan is based on: the Constitution of the Islamic Republic of Afghanistan;<sup>17</sup> LML;<sup>18</sup> Land Expropriation Law (LEL);<sup>19</sup> Municipality Law;<sup>20</sup> executive orders;<sup>21</sup> and the regulations and functions of the Independent Directorate of Local Government (IDLG),<sup>22</sup> Arazi,<sup>23</sup> the Ministry of Urban

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<sup>11</sup> See NORWEGIAN REFUGEE COUNCIL, A GUIDE TO PROPERTY LAW IN AFGHANISTAN 38-39 (2011) [hereinafter NRC GPL].

<sup>12</sup> See Exec. Decree No. 99 (2002) (prohibiting distribution of virgin and arid lands). UNAMA notes that it is not in possession of all executive decrees and additional decrees may have been issued prohibiting the distribution of other types of state land. Further, UNAMA does not vouch for unofficial translations of documents originally in Dari and for which there are no official English translations.

<sup>13</sup> See Land Management Law (OG 958) (2008) [hereinafter LML].

<sup>14</sup> See CONSTITUTION OF THE ISLAMIC REPUBLIC OF AFGHANISTAN, adopted Jan. 3, 2004, art. 14 [hereinafter AFG. CONST.].

<sup>15</sup> See NRC GPL, *supra* note 11, at 37 (identifying Herat, Jalalabad, and Bamyan as examples).

<sup>16</sup> See *id.* at 37-38.

<sup>17</sup> See *e.g.* AFG. CONST. art. 9.

<sup>18</sup> See LML, art. 3(8).

<sup>19</sup> See Land Expropriation Law, (OG 794) (2000, as amended 2005), art. 1 [hereinafter LEL]. This report does not address expropriation issues or the right of landowners whose land was expropriated to receive state lands in exchange for the expropriated land.

<sup>20</sup> See Municipality Law (OG 794) (2000).

<sup>21</sup> See LML, art. 39(2) (requiring an executive order to distribute state lands).

<sup>22</sup> See Executive Decree No. 73, 08/06/1386 (30 August 2007) (establishing IDLG). The 2007 establishment of IDLG does not directly address this Taliban era law, instead in its final clause states “Ministry of Justice and other relevant authorities should

Development (MUDA) and the Ministry of Rural Rehabilitation and Development (MRRD). At the outset, we note that most executive orders and regulations are not publicly promulgated. This report is based on and includes only those readily available decrees and regulations and those referenced in reliable secondary sources.<sup>24</sup> There may be other decrees and regulations that are relevant and applicable.

#### **a. Distribution of Land under the LML: The Basics**

The Constitution of Afghanistan contains several articles relating to state land administration and management. Regarding state land distribution, the Constitution provides that “[t]he President shall not sell or bestow state properties without the provision of the law.”<sup>25</sup> The Constitution further provides for “... distribution of public estates to deserving citizens in accordance with the provisions of law and within financial possibilities.”<sup>26</sup> Although other provisions relate to land, they do not specifically address land distribution.<sup>27</sup>

The LML is the seminal and controlling law on state land management and administration in Afghanistan. The LML defines state land and establishes the basic legal framework for state land distribution, sale, and lease to private persons<sup>28</sup> and transfer to government ministries, including departments and municipalities.<sup>29</sup> The LML establishes eligibility requirements for landless private individuals to receive state land,<sup>30</sup> the types and amounts of state land that may be distributed,<sup>31</sup> and the mechanisms and processes for the distribution and transfer of state land to eligible private individuals<sup>32</sup> and governmental entities, respectively.<sup>33</sup> The LML also provides basic requirements for the sale and leasing of state lands.<sup>34</sup>

State land refers to all land owned by the Government of Afghanistan. Under the LML, state land includes all registered state land<sup>35</sup> and land where individual ownership is not proven.<sup>36</sup> Government land is a category of state land that has been transferred to a governmental entity,

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bring the necessary amendments in the articles of some laws which need to be changed based on the establishment of the new office.”

<sup>23</sup> See *supra* note 2.

<sup>24</sup> A number of land reports reference executive decrees that UNAMA was unable to obtain. When referenced in this report, information about these decrees is noted as derived from a secondary source. UNAMA does not vouch for secondary source information.

<sup>25</sup> See AFG. CONST. art. 66.

<sup>26</sup> *Id.* art. 14.

<sup>27</sup> See, e.g., *id.* art. 9 (providing that mines and other subterranean resources as well as historical relics are considered property of the state).

<sup>28</sup> See LML, art. 34(1) (2008).

<sup>29</sup> See *id.* art. 53.

<sup>30</sup> See *id.* arts. 34-38.

<sup>31</sup> See *id.* arts. 39-49; see also *id.* art. 3.

<sup>32</sup> See *id.* arts. 13-20, 35(1), 39, 49.

<sup>33</sup> See *id.* art. 53.

<sup>34</sup> See *id.* arts. 59-81. The LML also provides criteria and processes for leasing of state lands and for exchanging private land for state land, which are not addressed in this report. See *id.* arts. 54, 55.

<sup>35</sup> See *id.* art. 3(8).

<sup>36</sup> See *id.*

such as a ministry or ministerial department.<sup>37</sup> Although characterized as governmental land, all land transferred to ministries remains state land under Arazi ownership until the land is distributed or sold. In addition, state land transferred to municipalities remains state land owned by Arazi; however, such land is under the custodianship and management of the municipalities.<sup>38</sup> State land may be transferred to municipalities, ministries, and line departments, but the owner of record for all state land remains Arazi.<sup>39</sup> Thus, there is technically no municipal or other level of government ownership.<sup>40</sup>

The LML contains only two priorities for eligibility for distribution of state land to those who are landless: Grade one includes landless farmers who have more family members than others and farmers who had land under cultivation that was expropriated by the state. Grade 2 includes landless farmers and agricultural labourers located within a village or locality in which distributable land exists.

Within these categories priority is given to married applicants. If there are more applicants than land available for distribution, "...the land shall be distributed in the presence of the majority of the eligible persons on the basis of drawing lots."<sup>41</sup>

State land subject to distribution consists of land that is not needed for a state public purpose.<sup>42</sup> State land subject to distribution excludes virgin and arid land<sup>43</sup> (except for to IDPs and RRs, as noted below), land that is part of an urban master plan,<sup>44</sup> forests,<sup>45</sup> pastures,<sup>46</sup> mines,<sup>47</sup> and historical monuments.<sup>48</sup> Virgin and arid land is land that has not been used for farming for five successive years.<sup>49</sup> Virgin and arid land is available for sale and transfer, as set forth in the LML,<sup>50</sup> as well as available for distribution to internally displaced persons (IDPs) and returning

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<sup>37</sup> This distinction is often ignored in reports since all land transferred to ministries or government departments remains state land. *See infra* note 40.

<sup>38</sup> This information was provided to UNAMA by Arazi legal advisors. However, one field interview reported that transferred land could be documented by title deeds in the name of the ministry or municipality, suggesting ownership.

<sup>39</sup> *See*, LML, art 3(8) (defining state land as: "Plot(s) of orchard, irrigated and rain-fed lands, hills, parks, marshy lands, forests, pastures, reed-beds and other lands being registered in the principal book of the government lands. . . Lands, which are deemed public lands, but are not registered in the principal book of government lands [and] Lands in respect of which individual ownership has not been proved legally during settlement.").

<sup>40</sup> All state land is "owned" by Arazi. For ease of reference, land transferred to municipalities is referenced as "municipal land" and land transferred to governmental units is referenced as "government land" even though the Arazi retains ownership of these lands.

<sup>41</sup> *See* LML, art. 44.

<sup>42</sup> *See id.* art. 39(1).

<sup>43</sup> *See id.* arts. 3(11), 3(12).

<sup>44</sup> The Municipality Law (2000) and regulations of the Ministry of Urban Affairs govern land subject to urban master plans.

<sup>45</sup> The Forest Law (2009) governs the management of forests.

<sup>46</sup> The Law on Pasture and Grazing (2000) governs the management of pastures.

<sup>47</sup> The Mining Law (2014) governs mines and mining; however, only limited sections of this law relate to land.

<sup>48</sup> *See* LML, art. 47(1).

<sup>49</sup> *See id.* art. 8(12).

<sup>50</sup> *See id.* arts. 46-49 *See also id.* art. 9 (providing that the Ministry of Agriculture, Animal Husbandry and Food is responsible for identifying appropriate land in high altitude and uncultivable sites); *but see supra* note 2 (transferring these responsibilities to Arazi).

refugees (RRs) under Executive Decree 104.<sup>51</sup> Municipal land that is part of an approved urban master plan is not considered subject to sale under the LML;<sup>52</sup> this land is governed by the Municipality Law and relevant regulations.

Under the LML, state land subject to distribution is divided into seven categories<sup>53</sup> for purposes of determining the maximum amount of land that may be distributed.<sup>54</sup> The maximum amount of land subject to distribution is 100 jeribs, or 20 hectares per recipient.<sup>55</sup> However, the law neither links the seven categories of land to applicant priorities nor provides guidance on distribution of the more sought-after lands within these categories.

Lastly, the LML provides for criminalization of illicit land transactions.<sup>56</sup> However, the related article fails to meet constitutional requirements, thus rendering it ineffective.<sup>57</sup>

The LML is implemented, in part, through guidelines promulgated by Arazi.<sup>58</sup> The basic state land distribution provisions of the LML are supplemented by the Municipality Law and specific regulations that apply to state land transferred to municipalities (“municipal land”). Land in Kabul municipality is governed not only by the LML, but also by regulations specific to this municipality.<sup>59</sup> Thus, the state land distribution scheme differs depending on whether the land is non-municipal land (governed by regulations and procedures promulgated by the LML and Arazi to implement the LML), state land transferred to municipalities other than Kabul municipality (LML, Municipality Law, and regulations applicable to municipalities), or land in Kabul municipality (LML, Municipality Law and regulations applicable to Kabul).

The LML vests all state land management authority in the Afghan Land Affairs (AMLAK) under MAIL, through implementation by DAIL at the subnational level. However, in 2010 the Afghan Land Affairs was merged with the Independent Commission for the Restitution of Illegally

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<sup>51</sup> See Exec. Decree 104 (2005).

<sup>52</sup> See LML, art. 47.

<sup>53</sup> See *id.* art. 40 (setting forth seven categories including: Category one land: (Orchard or vineyard), coefficient (1.00); Category two land: (double crops irrigated), coefficient (0.85); Category three land: (A single crop irrigated land), up to 50 percent of which is cultivated or irrigated annually, coefficient (0.67); Category four land: A single crop irrigated land, up to 50 per cent of which is cultivated or irrigated annually, coefficient (0.40); Category Five land: rain-fed land which is cultivated every other alternate year, coefficient (0.20); Category six land: Rain-fed land, which is cultivated every two alternate years, coefficient (0.15); and Category seven land: Rain-fed land, which is cultivated for more than two alternate years, coefficient (0.10).). The way in which the coefficient was not explained by those interviewed.

<sup>54</sup> See *id.* arts. 40, 42.

<sup>55</sup> See *id.* art. 42(7). For reference, 1 jerib = 2000 square meters/.2 hectare.

<sup>56</sup> See LML, art. 88 (providing that “[a] person who usurps state land, or falsely introduces himself as the landowner, shall be dispossessed and be subject to legal prosecution.”).

<sup>57</sup> See AFG. CONST., art. 27 (failing to meet the requirement to state an offense’s elements and penalties).

<sup>58</sup> This report does not include all regulations and executive decrees. At the time of writing this report, most regulations and executive decrees are not public. The extent of this lack of transparency is highlighted by the inability of some government offices involved in land distribution to identify the laws or regulations governing their activities.

<sup>59</sup> See Regulation for the Distribution and Sales of the Residential, Commercial and High Buildings Plots of Kabul City (OG 794) (2000) [hereinafter Kabul DS Reg.]; Regulation on Implementation of Kabul City Master Plan (OG 975) (2000) [hereinafter Kabul MP Reg.].

Occupied Land, and the resulting organization was renamed “Arazi.”<sup>60</sup> Arazi was established as independent from MAIL in 2013.<sup>61</sup> As a result, state land management and administration responsibilities and authorities vested with AMLAK and MAIL by the LML were transferred to Arazi.<sup>62</sup> Arazi offices are present throughout Afghanistan, with staff and operational costs funded from the national budget. Management of municipal lands, governed by the Municipality law, fall under the responsibility of the Muhlkeet Office in each municipality, which are funded by the relevant municipality.

In addition to the LML, the LEL provides for distribution of like-kind properties in exchange for land appropriated under the LEL. This law is read in conjunction with the LML and is addressed below as a specific situation.

#### **b. Distribution of Rural State Lands to Individuals**

To be eligible for state land distribution, a private person must be a citizen of Afghanistan and over eighteen years of age. In addition, the individual must commit to cultivating or building on the land.<sup>63</sup> Eligible individuals are “graded” into priority grades one and two for land distribution.<sup>64</sup> Married individuals responsible for a family’s livelihood have priority over single people within the same grade.<sup>65</sup> To meet the grading criteria, an individual must be a “landless farmer,”<sup>66</sup> thus establishing an additional requirement for eligibility.<sup>67</sup> A “landless farmer” is “[a] person who does not own land and is an applicant for agricultural activities.”<sup>68</sup>

The LML provides for land settlement commissions at the central<sup>69</sup> and provincial levels.<sup>70</sup> The provincial level commissions are headed by the PG. Commission membership includes a representative from MAIL (now Arazi) as the vice-chairman.<sup>71</sup> The settlement commissions

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<sup>60</sup> See Exec. Decree 220 (2010).

<sup>61</sup> See Council of Ministers Approval Letter 11 (06/03/1392) (2013) (on file with UNAMA RoL Unit) [hereinafter CoM Approval Letter 11] (establishing Arazi as independent and approved by Executive Order Number 220 of 3/4/92 (2013)). See also Exec. Order 638 (2010) (providing authority for CoM action and approval); see also *supra* note 2.

<sup>62</sup> A legal application of the executive decree creating Arazi and setting it as independent results in most MAIL or DAIL responsibilities noted in the LML being transferred to Arazi. These include: (1) acting as co-chair on the LML created settlement commissions (LML commissions) that are responsible for approving land distribution eligibility and making recommendations to the executive for final approval; and (2) making an independent recommendation to the executive on behalf of MAIL (via the LML commissions) regarding all land distributions. Additional responsibilities are set forth in the LML, some of which have been noted previously.

<sup>63</sup> See LML, art. 34(1) (2008).

<sup>64</sup> See *id.* art. 36 (establishing priority grades 1 and 2 as follows: “1- The grade one eligible person: The landless farmer whose family members are more than the others. The landless farmer that his under cultivation land has been possessed by the state for the purpose of public interest.2- The grade two eligible person: The landless farmer and an agricultural labourer of a village and locality at which distributable land exists.”).

<sup>65</sup> See *id.* art. 38.

<sup>66</sup> See *id.* art. 36.

<sup>67</sup> See *id.* art. 36.

<sup>68</sup> *Id.* art. 3(19).

<sup>69</sup> See *id.* art. 19.

<sup>70</sup> See *id.* art. 20.

<sup>71</sup> See *id.*

assist Arazi in meeting its responsibilities under the LML.<sup>72</sup> Specifically, the duties and responsibilities of the settlement commissions as set forth in the LML include determining the grading and priority of an individual,<sup>73</sup> assessing the land tax,<sup>74</sup> and distributing documents and land.<sup>75</sup> In addition, Arazi is responsible for making an independent recommendation to the president regarding land distribution.<sup>76</sup> Only the president can approve state land distributions, for which an executive order is required.<sup>77</sup>

Once a distribution is approved by executive order, the settlement commission issues a distribution and possession certificate.<sup>78</sup> To obtain title to the distributed land, the individual must pay the price determined by the settlement commission and any applicable taxes.<sup>79</sup> If a person makes instalment payments for the assessed cost of the land, title does not transfer until all payments are complete.<sup>80</sup> In addition, the person must take steps to cultivate or build on the land prior to title being issued.<sup>81</sup> Thus, a possession certificate is not tantamount to a deed, as the recipient must take additional steps to vest land ownership as evidenced by a deed.

The civil courts are responsible for issuing title deeds. To date, UNAMA has not located any regulatory or court guidance on this function. The Office of the Directorates of Documents and Deeds Registration (DDDR), which are located in provinces at the appellate court, registers, maintains, and archives deeds.<sup>82</sup> In addition, the DDDR is responsible for reviewing and certifying “. . . deeds prepared by the courts and deeds offices for accuracy of the document, signature and authorization of their providers” and for referring issues to the relevant authorities.<sup>83</sup> The DDDR regulation does not provide regulatory procedures or substantive

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<sup>72</sup> See *id.* art. 13 (providing that the settlement commissions shall carry out the “practical work” of MAIL’s [Arazi’s] land settlement functions”).

<sup>73</sup> See *id.* art. 34(2). See also arts. 13(3), 14, 15, 20 (establishing settlement commissions and setting forth composition, duties and responsibilities).

<sup>74</sup> See *id.* art. 15(2).

<sup>75</sup> See *id.* art. 15(1).

<sup>76</sup> See *id.* art. 39(2).

<sup>77</sup> See *id.* (providing that only the president can approve land distributions). See also art. 46 (providing only the President can authorize individual possession of virgin and arid lands). See also *id.* art. 54 (providing only the President can authorize transfer of state lands to governmental entities); *id.* art 5(2).

<sup>78</sup> See *id.* art. 11 (referencing the distribution and possession certificate as granted by the settlement commission).

<sup>79</sup> See *id.* art. 35(3).

<sup>80</sup> See *id.* art. 10(2). See also *id.* art. 11 (providing that “. . . after payment of land price and upon concluding the agreement in its entirety with the local land management department, the eligible person shall be granted the legal deed through the relevant court.”).

<sup>81</sup> See *id.* art. 35(2) (employing the term “settler” for those receiving a land distribution outside of the location of their normal residence). See also *id.* art. 3(4).

<sup>82</sup> See Organization and Structure of the Courts Law, art. 74 (2013) [hereinafter OSCL] (establishing “within [the] jurisdiction of every court of appeals, directorates for documents and deeds registration. Director and professional members of directorates shall be appointed from among those who possess judicial authority. In provinces and districts where there are no directorates for the registration of documents and deeds, the duties and authority to deal with such issues shall be vested with municipal primary courts and district primary courts. Documents and deeds registration directorates shall have administrative staff and offices and their number shall be determined by the Supreme Court taking into consideration the workload. Duties and authority for the directorates of documents and deeds registration shall be regulated by the relevant legislative document . . .”).

<sup>83</sup> See Regulation on the Operation of the Central Directorate of Documents and Deeds, art. 9 (OG 975) (2009) [hereinafter DDDR REG].



requirements for issuing or registering titles, but rather establishes the organizational structure, objectives, reporting, and coordination requirements of the DDDR.<sup>84</sup>

### **c. Transfer of State Lands to Governmental Entities**

Arazi is responsible under the LML for transfers of state land to ministries.<sup>85</sup> The LML does not set forth specific procedures for the transfer of state lands to ministries or transfers between ministries, but provides only that the transfer of government lands to government organizations and institutions shall take place after the determination of land price in an agreement between the Directorate of Land Management and the user organization or institution after endorsement by MAIL (Arazi) and approval by the president.<sup>86</sup> Although the LML sets forth neither additional requirements for the transfer of state lands to governmental entities nor additional processes to effect such transfers, Arazi has promulgated detailed guidelines for transfer (and exchange) of state lands, as well as the clearing and leasing of state land,<sup>87</sup> including forms.<sup>88</sup>

Unlike state land distributions to landless individuals, state land is not characterized according to type for determining what type or how much land shall be transferred. In addition, governmental institutions do not appear to be prioritized in any specific order for transfers of state land.<sup>89</sup>

### **d. Distribution and Transfer of Municipal Lands: General Provisions**

The distribution and transfer of municipal lands are governed by the Municipality Law (2000), which provides that the municipality is responsible for “[a]llocation of land plots for construction of residential houses, industrial and commercial parks according to the related rule.”<sup>90</sup> The Municipality Law is from the Taliban era and has not yet been revised, although a new law has been drafted. There exists some regulatory guidance applicable to Kabul municipality regarding municipal land transfers. The Independent Directorate of Local Government (IDLG) has advised that some of these regulations are applied countrywide for all municipalities, as provided for in certain regulations and as noted and discussed below.

### **e. Distribution and Transfer of Municipal Lands in Kabul City**

Kabul municipal land is governed by the Regulation for the Distribution and Sales of the Residential and High Buildings Plots of Kabul City of 2000 (Distribution and Sales Regulation)

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<sup>84</sup> *See id.*

<sup>85</sup> This report does not fully examine land transfers between ministries, which are also the responsibility of Arazi and governed by procedures adopted by Arazi to affect these types of transfers.

<sup>86</sup> *See* LML, art. 53. In addition, Arazi advised UNAMA that there is an executive decree requiring payment with regard to the transfer of state lands to government entities.

<sup>87</sup> These are internally developed guidelines and are not regulations approved by the Council of Ministers.

<sup>88</sup> Field reports indicate that Arazi utilizes a number of forms in the transfer process.

<sup>89</sup> UNAMA research located no laws or regulations prioritizing state land transfers to ministries. However, there is evidence of priority being given to the transfer of state lands to the Ministry of Education for distribution to teachers. *See* [http://outlookafghanistan.net/editorialdetail.php?post\\_id=11133](http://outlookafghanistan.net/editorialdetail.php?post_id=11133) (reporting that the president ordered provincial governors to allot land plots to teachers).

<sup>90</sup> *See* Municipality Law, art. 18(2) (2000).

and Regulation on Implementing the Master Plan of 2000 (Master Plan Regulation).<sup>91</sup> The Distribution and Sales Regulation provides for applicability in other provinces with master plans.<sup>92</sup> These regulations are also from the Taliban era and do not appear to have been updated. UNAMA is unaware of any new draft legislation to replace these existing and arguably outdated regulations.

The Distribution and Sales Regulation establishes the requirements for the distribution and sale of residential, commercial, and high-rise lots in accordance with those designations in the Kabul master plan. A person will be placed on the Kabul distribution list if they, their spouse, or their children do not own a house, apartment, or residential land in Kabul city and they complete the required form attesting to these facts.<sup>93</sup> These forms are submitted to the relevant municipality if the person is not employed as a state official; for those employed by the state or municipality, forms are submitted to the respective ministry or department.<sup>94</sup> Forms from those requesting land for commercial purposes or construction of high buildings in Kabul city are submitted to the Kabul municipality.<sup>95</sup>

The Distribution and Sales Regulation establishes a commission, headed by the Kabul mayor, responsible for approving applicants for residential, commercial, and high-rise land.<sup>96</sup> The commission determines who “deserves” land based on length of civil service and time of submission of the application. There is no reference for determining which non-state employees are “deserving.”<sup>97</sup> Once approved, the individual is required to pay for the land; however, there is no requirement that the price be fair or at market value, and there are no provisions for who will establish the price or how the price will be determined.<sup>98</sup> The Distribution and Sale Regulation also provides for cancellation of the distribution and sale of land based on a failure to pay or build within specified timeframes.<sup>99</sup> Although neither regulation references the requirement of presidential approval or an executive decree to distribute land, the LML remains operational. Thus, all land distributions within a municipality require a recommendation from Arazi and a presidential decree to effect the distribution.

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<sup>91</sup> *But see* Exec. Decree 99, *supra* note 12 (suspending implementation of all approved master plans, citing inadequacies as a result of urbanization and the age of the plans). *See also* MINISTRY OF FINANCE, POLICY FOR ENCOURAGING PRIVATE SECTOR INVESTMENT: INVESTMENT POLICY IN TRANSITION PERIOD (2012) [hereinafter INVESTMENT POLICY] (noting that the Private Investment Policy of 2013 purported to suspend the Municipality Law, which would, in effect, suspend those regulations implementing and referenced in that Law, including the Kabul DS Reg and the Kabul MP Reg). The Municipality Law has not and cannot be suspended by a national policy document. In practice, this law and the regulations that have promulgated pursuant to such law remain in effect and operational.

<sup>92</sup> *See* Kabul DS Reg, art. 25(2) (2000).

<sup>93</sup> *See id.* art. 3.

<sup>94</sup> *See id.* art. 4.

<sup>95</sup> *See id.* art. 4(4).

<sup>96</sup> *See id.* art. 6.

<sup>97</sup> *See id.* art. 8.

<sup>98</sup> *See id.* art. 16.

<sup>99</sup> *See id.*

Lastly, the Distribution and Sales Regulation provides that a person who acquires land without authorization is subject to legal punishment. In cases in which an individual has acquired land without authorization or without being entitled to it, the land shall be taken from him/her and the offender shall be subjected to legal punishment.<sup>100</sup> As with a similar provision in the LML, this article fails to effectively criminalize this offense and is not legally cognizable, and thus unenforceable.<sup>101</sup> The RoL Unit’s research has disclosed no criminal prosecutions in Kabul for acquiring land without authorization. Indeed, acquiring land by executive decree that fails to meet the requirements of the law is not considered *per se* “without authorization” and, without further evidence, the person who acquired the land could not be criminally prosecuted under the existing law, even if the law was legally cognizable.<sup>102</sup>

The Master Plan Regulation also sets forth the requirements for construction and the obligations of individuals, institutions, and the implementing units of the Kabul Master Plan. Notably, all changes to master plans require the final approval of the president.<sup>103</sup>

#### **f. Distribution of State and Municipal Land to Returnees and Internally Displaced Persons**

In response to increasing humanitarian needs regarding informal settlements—settlements of IDPs and RRs occupying land that they do not own—the president issued Executive Decree 104 in 2005. This decree established a land allocation scheme (LAS) for the distribution of uncultivated land to qualifying returnees IDPs.<sup>104</sup> “Uncultivated land” is defined as “virgin and arid” land.<sup>105</sup> Decree 104 also provides that “[t]he Ministry of Agriculture, Animal Husbandry and Food [MAIL, now Arazi] is responsible for identifying the appropriate amount of land in high altitude and uncultivated sites and for putting those sites at the disposal of the Ministry of Refugees and Repatriation (MoRR) in Kabul as well as in the provinces . . . ”<sup>106</sup>

A person qualifies for a land allocation if they, their spouse, and minor children do not own a home or land and he/she meets the criteria as an IDP or RR.<sup>107</sup> The decree also established special commissions to distribute state land to qualifying individuals.<sup>108</sup> These commissions operate alongside the settlement commissions established under the LML and are referenced herein as Decree 104 commissions. The price of the land is based on the proposals of the

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<sup>100</sup> See *id.* art. 24.

<sup>101</sup> See LML, ch. 10 (2008).

<sup>102</sup> The exception to this would be the case in which the applicant intentionally perpetrated a fraud or colluded with government officials to obtain what would otherwise be a lawful document. In that case, criminal prosecution would be pursuant to the existing penal code as theft.

<sup>103</sup> *Id.*; but see INVESTMENT POLICY, *supra* note 91 (providing for suspension of the Municipality Law and suggesting that the power to change municipal plans now rests with the Ministry of Commerce and Industry, under the umbrella of the Investment High Council, subject to Council of Ministers approval).

<sup>104</sup> See Exec. Decree 104 (2005).

<sup>105</sup> See, e.g., LML, arts. 45, 64(1), 64 (2), 66(1) (referencing “uncultivated” as virgin and arid).

<sup>106</sup> Exec. Decree 104, *supra* note 51, at art. 9.

<sup>107</sup> See *id.* art. 2.

<sup>108</sup> See *id.* art.7.

commissions in Kabul and the provinces, as approved by the Council of Ministers (CoM).<sup>109</sup> The Decree 104 commissions are responsible for determining beneficiaries, establishing the boundaries of the land identified by MAIL [Arazi], and making decisions with regard to land distribution and establishment of settlements.<sup>110</sup>

The composition and structure of the LML and Decree 104 commissions are similar. Both have a central level commission and empower each province to establish its own commission. Another shared characteristic is the lack of a hierarchical relationship between the central commission and the provincial level commissions. Both sets of commissions—LML<sup>111</sup> and Decree 104<sup>112</sup>—have extensive executive powers. Membership is similar with a bias toward specialized humanitarian membership, including the Ministry of Refugees and Repatriation, for Decree 104 commissions. The LML provincial commissions designate the PG as the chair and Decree 104 the DPG. Neither the LML nor the decree prescribes processes for obtaining final approval and signature of the president, a requirement under the LML.<sup>113</sup>

#### **g. Expropriated Lands and Land Distribution**

The Land Expropriation Law of 2000, amended in 2005, controls the distribution of state land to those whose land has been expropriated by the state. Land needed for a public purpose is subject to expropriation by the state with the CoM's authorization for just compensation,<sup>114</sup> as determined by the CoM.<sup>115</sup> The law does not define public purpose.<sup>116</sup> Remuneration shall be paid for the price of the land (with the exception of lands distributed between 1978-1972);<sup>117</sup> the price of any residential houses, buildings, and other constructions located on the land; and the price of any fruit-bearing or ornamental trees, or other saplings on the land.<sup>118</sup> However, an owner may elect to be provided a plot of similar land in lieu of the price of the land expropriated.<sup>119</sup> If the land distributed to him is of a higher grade, the owner shall pay the difference in value.<sup>120</sup> If damages are incurred in the expropriation process, the amount of remuneration shall be set by a municipal commission established under the LEL.<sup>121</sup>

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<sup>109</sup> *See id.* art. 12.

<sup>110</sup> *See id.* art. 8.

<sup>111</sup> *See* LML, art. 5 (2008) (addressing settlement of landholding areas, distribution of documents and land.)

<sup>112</sup> *See id.* art. 7 (setting forth the commissions' responsibilities to determine beneficiaries, establish the land boundaries identified by MAIL [Arazi], and make appropriate decisions with regard to land distribution and the establishment of settlements).

<sup>113</sup> *See* LML, art. 39(2).

<sup>114</sup> *See* Land Expropriation Law of 2002, as amended 2005, art. 2 [hereinafter LEL].

<sup>115</sup> *See id.* art. 10.

<sup>116</sup> *See id.* art.2, 3.

<sup>117</sup> *See id.* art. 9.

<sup>118</sup> *See id.* art. 8.

<sup>119</sup> *See id.* arts. 13, 14; *see also* art. 1(3) (2005 amendment).

<sup>120</sup> *See id.* art. 14.

<sup>121</sup> *See id.* arts 5, 20.

No mention is made of a commission to be formed outside of a municipality.<sup>122</sup> The law makes no mention of proof of land ownership or interest in land, and this has caused ongoing difficulties in the expropriation of lands for public purpose activities.<sup>123</sup> An updated draft land appropriation law (LAL), replacing the LEL, is currently under review by the government.

#### **h. The Role of Private Investment and Land Distribution**

In 2013, the Ministry of Finance (MoF) issued a Policy for Encouraging the Private Sector: Investment in Transition Period (Investment Policy), which was approved by the CoM.<sup>124</sup> This Investment Policy grants powers relating to state land distribution to the Ministry of Commerce and Industry (MoCI), Afghanistan Investment Support Agency (AISA), and Arazi, as well as granting significant concessions to private investors in support of attracting private sector development and creating sustainable job opportunities. The type of land and concessions is determined by the intended use and includes industrial activities,<sup>125</sup> urban construction,<sup>126</sup> export sector,<sup>127</sup> agricultural sector,<sup>128</sup> and mining.<sup>129</sup>

The policy document notes that implementation “. . . may require some laws and regulations to be amended and modified.”<sup>130</sup> Further, the Investment Policy provides that upon its approval, all necessary amendments to a list of laws shall be “considered automatically approved by the Cabinet and the laws will be sent to the Assembly for further proceedings.”<sup>131</sup> The Investment Policy also lists the amendment or suspension of the Municipality Law in its entirety and certain sections of the Tax Law to implement the Investment Policy.<sup>132</sup>

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<sup>122</sup> The LEL references commission formed in municipalities, but is silent as to commissions for land located outside municipal boundaries.

<sup>123</sup> See, e.g., Ministry of Mines, *Mining for Sustainable Development of Afghanistan: Resettlement Action Plan for 5 Villages at Aynak Copper Mines*, World Bank Project on Sustainable Development of Natural Resources (Jan. 2012) (by Harjot Kaur), available at [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/01/21/000333037\\_20130121140023/Rendered/PDF/RP1381v10Afgha01017020130Box374312B.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/01/21/000333037_20130121140023/Rendered/PDF/RP1381v10Afgha01017020130Box374312B.pdf).

<sup>124</sup> See INVESTMENT POLICY, *supra* note 91.

<sup>125</sup> See *id.* at 6 (authorizing investors to obtain unoccupied state lands for purposes of industrial activities for 1,000 Afghans per one jerib (2000 sq. meters), or about \$36 an acre / \$90 per hectare and including tax exemptions, free electricity, decrease in customs duties, and attractive access to credit. If the land is in industrial parks, the land is free).

<sup>126</sup> See *id.* at 8.

<sup>127</sup> See *id.* at 9 (granting concessions to export investments similar to those applicable to industrial activities).

<sup>128</sup> See *id.* at 11 (authorizing Arazi authority to approve the financial and commercial plans relating to land distribution for farming, and granting Arazi the authority to grant up to 2 jeribs (1 acre) for every \$0.5M investment on a 30 year lease, with no payment due in the first 5 years. Arazi is also given broad authority to lease state land up to 10 jeribs (5 acres 2 ha) for 15 years for small farms without bidding using a single source.).

<sup>129</sup> See *id.* at 12 (exempting mining investors from customs duties and providing for an expedited visa process). Notably, the policy also calls for the establishment of a commercial arbitration system by AISA and the Chamber of Commerce and Industry to resolve disputes. In addition, AISA shall process all permits relating to mining requirements for land. See also Mining Law (2014) (providing for expropriation or leasing of private lands for mining activities).

<sup>130</sup> See INVESTMENT POLICY, *supra* note 91, at 4.

<sup>131</sup> See *id.* at 13.

<sup>132</sup> See *id.* (listing the following laws as requiring amendments/review or reform: Income Tax Law, Customs Law, Tax Regulation, Tax Tariff Regulation, Law on Strengthening, Expediting of Lawful Transfer of Mine and Equipment, Municipality Law).

The operational status of this Investment Policy is unclear; however, there is little evidence that the policy has been or is being implemented.

#### **i. Sale and Lease of State Lands**

State land leasing and sale are addressed by the LML, along with guidelines promulgated by Arazi. The basics of land leasing and sale, both complex transactions, are set forth below.

##### ***Sale of State Land***

“Lands being specified for sale shall be the net property of the State, or shall be virgin and arid lands, and shall not be under State projects, urban master plan, forests, pastures, mines, and historical monuments.”<sup>133</sup> Such land is subject to sale and transfer to individuals, agriculture and livestock institutions and private and joint domestic companies by the MAIL (Arazi) upon auction and subsequent approval by the president.<sup>134</sup> Former possessors are given a right of priority to purchase the land at a just price set by MAIL (Arazi) and approved by the president.<sup>135</sup>

##### ***State Land Leasing***

State land can be leased<sup>136</sup> to individuals, organizations, and to domestic and external private and joint-venture agriculture companies on the basis of an agreement and according to the provisions of the law.<sup>137</sup> Arazi is responsible for managing the leases of state land and ensuring that the requirements of the LML regarding leasing are observed.<sup>138</sup> To attract private investment to establish agriculture, livestock, and farming, Arazi is authorized to lease fertile land for up to 50 years and virgin and arid land up to 90.<sup>139</sup> The use of the land determines the amount of land that may be leased and the final approval authority.<sup>140</sup> The final authority for up to 1,500 jeribs is Arazi; for 1,500 to 5,000 jeribs it is the economic committee; and for land over 5,000 jeribs it is the CoM.<sup>141</sup> In addition, Arazi is authorized to lease land for investment purposes other than for agriculture, livestock, and farming, if the purpose complies with the Private Investment Law.<sup>142</sup> Ministries and departments are also authorized to lease governmental lands under certain specified conditions, including the requirement that the lands

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<sup>133</sup> See LML, art. 47 (2008).

<sup>134</sup> See *id.* art. 46(3).

<sup>135</sup> See *id.* art. 46(4).

<sup>136</sup> See *id.* art. 59(1).

<sup>137</sup> See *id.* art. 64(1).

<sup>138</sup> *But see* INVESTMENT POLICY, *supra* note 91 (providing that the Ministry of Commerce and Industry, under the umbrella of the Investment High Commission, shall develop land distribution policies in support of the Policy, and limiting Arazi’s role to lease lands of up to ten jeribs for 15 years in support of small enterprises such as farms, and seemingly reserving to MAIL the authority for leasing to other food related investors for longer terms).

<sup>139</sup> See LML, art. 64.

<sup>140</sup> See *id.* art 66(1).

<sup>141</sup> See *id.* art. 66 (2).

<sup>142</sup> See *id.* art. 64 (2).

be “relevant landed” properties of the ministry or department.<sup>143</sup> However, these lands may not be leased for more than five years and must be leased by auction.<sup>144</sup>

Arazi has developed leasing guidelines that provide detailed instructions for applications and processing of state land leasing. These guidelines have reduced the required steps to lease state properties and have directly increased revenues from state land leasing.

The relationship between the LML and the Investment Policy referenced above is unclear. From a legal perspective, policies have limited legal status until and unless implemented by law or regulations pursuant to regulatory authority established under law. Further, provisions of the Investment Policy appear to be inconsistent with the LML and Private Investment Law, neither of which is referenced in the Investment Policy’s list of laws that would need to be amended to implement such policy.

#### **j. Issuance of Deeds and Titling**

The Directorate of Documents and Deeds Registration (DDDR) office, established by the Law on Organization and Structure of the Courts of 2012 (OSCL),<sup>145</sup> is sometimes referred to as the “Protected Document Registry” (PDR) or “Secure Registry” at the provincial level where this office operates within the appellate courts’ offices. The DDDR/PDR registers land title deeds<sup>146</sup> and handles active documents and notebook registries for each solar year, including land transactions and court decisions involving land. The DDDR offices established at the provincial level have jurisdiction to maintain and collect documents from the entire province. However, DDDRs have not been established in all provinces; in provinces without a DDDR, the civil court not only issues titles, but also maintains them.

In March, at the end of the Afghan solar year, the DDDR sends all of the documents to the Court Archive Office, a section of DDDR also located in the provincial appellate court, where the deeds are stored. The chief appellate judge and a committee control access to the Court Archive Office. This archive maintains records dating back to 1921, 1299-1300 Afghan solar years, but these records are incomplete.

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<sup>143</sup> See *id.* art. 64(3).

<sup>144</sup> See *id.* arts. 64(3)-(5). *But see* note 128 (authorizing Arazi to distribute certain land for farming without auction to a single source).

<sup>145</sup> See OSCL, art. 74 (2012) (establishing “within [the] jurisdiction of every court of appeals, directorates for documents and deeds registration. Director and professional members of directorates shall be appointed from among those who possess judicial authority. In provinces and districts where there are no directorates for the registration of documents and deeds, the duties and authority to deal with such issues shall be vested with municipal primary courts and district primary courts. Documents and deeds registration directorates shall have administrative staff and offices and their number shall be determined by the Supreme Court taking into consideration the workload. Duties and authority for the directorates of documents and deeds registration shall be regulated by the relevant legislative document . . .”).

<sup>146</sup> See *id.* arts. 29, 55.

Only the courts are authorized to issue land titles. UNAMA was unable to locate any available statutory or regulatory guidance to the courts or other institutions regarding the processes for titling land, and the assessment and collection of fees.

## **D. STATE LAND DISTRIBUTION: UNAMA FIELD OFFICE RESEARCH ON DISTRIBUTION MECHANISMS AND PROCESSES**

### **1. Background**

This section identifies the mechanisms and processes in place in those geographical areas available and identified for FO research. As previously noted, UNAMA staff faced a number of challenges in verifying the information provided to them during interviews with senior government officials and others. The information contained below is not set forth as fact; rather, the information in this section is that which was provided to UNAMA staff as part of the research that was conducted in late 2014.

### **2. State land available for distribution**

The total land in Afghanistan is estimated at 326M jeribs of which about 44.5m jeribs are agricultural lands.<sup>147</sup> Approximately 89% of land in Afghanistan is state land and 11% is held privately.<sup>148</sup> The country is predominantly rural and depends on agriculture for most of the country's generated income. Approximately 1.2m jeribs of land have been usurped over the last ten years.<sup>149</sup> It is unclear what types of land are included in this or if this figure is accurate, as there is an overall lack of reliable data because most of the land in Afghanistan has not been surveyed.

Nonetheless, despite a lack of concrete, disaggregated data, subnational officials interviewed by field staff consistently stated that there is a shortage of available state land. UNAMA was advised by many officials that land grabbing is widespread and there is little to no such state land left to distribute or sell because it had all been grabbed by the Taliban or powerful individuals and had not yet been recovered by the state. Further research disclosed that the lands referenced were desirable state lands, that is, land that could be used for a specific purpose, such as housing in or near a municipal area, farming or commercial development, or because the land was valuable or was potentially valuable. Many field offices provided considerable detail about interviewees' reports of individual power brokers and illegally armed groups gaining control of large areas of land for differing purposes.<sup>150</sup> Those interviewed alleged that key members of the land commissions responsible for distributing land were involved in distributing land illegally.

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<sup>147</sup> See *id.* 1 jerib= 200 square meters/.2 hectare

<sup>148</sup> See MEC Report, *supra* note 6, at 17 (referencing a USAID handbook on land law).

<sup>149</sup> See *id.* at 9.

<sup>150</sup> All field offices reported land usurpation, including usurpation by force and fraud. This report does not focus on land usurpation, except as it relates to the land distribution scheme.



According to several senior subnational officials, many politicians, cabinet officials, members of parliament, local commanders, and businessmen are involved in illegal state land distribution and occupation. Most of the remaining, available state land subject to distribution is non-arable or located in remote areas, rendering it undesirable.

Arazi confirmed that very little state land has been distributed to individuals in the past few years and also confirmed that in certain areas state land is unavailable to distribute because it has been illegally usurped. Arazi has developed guidelines for land clearance, that is, for establishing that land is state land. Over the past few years, Arazi has consistently cleared state land, rendering it available for lease and revenue production. As a result, revenue from state land leasing has increased exponentially. Nonetheless, usurpation and possession of state land by those with no legal, *bona fide* ownership rights remains a significant issue for the country.

### 3. Different Types of Land

In addition to challenges regarding availability of sufficient, available prime state land, it is unclear how and by which department the different types of land are characterized and how these characterizations are related to land distribution. As noted in the legal framework discussion above, all land not privately owned is categorized as state land. Under the LML, not all state land is subject to distribution; for example, arid and virgin land can only be sold or leased in accordance with the existing LML<sup>151</sup> or distributed to IDPs and RRs under Decree 104.<sup>152</sup> Although state land subject to distribution is broken down into seven different categories under the LML, this determines the amount of land that may be distributed, but does not indicate who should receive a particular category of land.

The provincial research paints a far more complex picture of land classification for distribution than that set forth in the LML, with no province aligning with any other or with the LML in their approach.<sup>153</sup> Although nearly all classifications include grades as well as categories, it is unclear how these grades are applied to land distribution.<sup>154</sup>

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<sup>151</sup> There are contradictions and ambiguities between the LML and executive decrees. For example, the LML provides that arid and virgin land can only be sold or leased, not distributed; yet, Decree 104, which predates the LML, is not considered to be superseded by the LML. These and other conflicts with resulting, expedient interpretations create serious impediments to establishing rule of law in Afghanistan. Under all applicable legal theories, executive decrees that are issued prior to passage of a law, and that are in conflict with that law, are superseded and ineffective.

<sup>152</sup> See *supra* note 51.

<sup>153</sup> Interviews with DAIL indicated that land is classified by both category and grade in nearly all areas reporting. In NER and CR, land is classified into three categories and seven grades, the latter three categories and six grades. In NER each category is defined by the numbers of crops per year, with seven grades from best to worst quality. In NR, land is divided into three categories. Balkh Province reported that grading is based upon pre-defined criteria proximity to asphalted roads, utilities and/or any other business or industrial advantages.

<sup>154</sup> These grades are not set forth in any public regulations or regulations that have been made available to UNAMA research staff and are not in the LML. Some grades include proximity to paved roads, proximity to electricity, and proximity to similar types of available services and access.

Although DAIL is responsible for land classification, its role appears to differ by province and district.<sup>155</sup> This is further complicated by the variety of land classification roles and the responsibilities of other departments in addition to DAIL. For instance the Department of Urban Affairs (DUDA) claims no responsibilities in certain areas, whereas in other areas it claims responsibility for identifying the suitability of land for development and other different uses as part of urban master plans and, in others, only urban planning functions.<sup>156</sup> Likewise, the Department of Refugees and Repatriation (DoRR) reports classifying land either under the same scheme as DAIL in any particular area or, in other cases, as arid and virgin as set forth in Decree 104.<sup>157</sup>

#### **4. Mechanisms to Distribute State Land: The Land Commissions**

The Land Management Law (LML), Decree 104, and relevant municipal regulations establish land commissions responsible for land distribution. These laws and regulations also define the membership and responsibilities of the commissions. FO research highlighted that these provincial land commissions exist with a wide variety of titles, chairs, membership, functions, and frequency of meetings (see Annex 2). In addition, FO research identified land commissions established and operating separately under Decree 104 that appeared to be more regularized despite some variations in the chair.<sup>158</sup>

The differing composition and functions of the various provincial land commissions established under the LML illustrated an alarming inconsistency across the board. There were approximately thirteen differently titled land commissions working under the LML in those areas in which research was conducted. In addition, some of these were specialized, including the Price Setting Land Commissions, Townships/Auctions Commissions, and Land Dispute Commissions. A source in one region reported a hybrid commission is responsible for both IDPs and RRS, and for allocating land to teachers. In addition, there are generic commissions with different names, including the Land Settlement Commission, Arazi Commission, and Provincial Land Commission that appear to be processing either or both LML application and IDP/RRS applications for land under Executive Decree 104. Lastly, in one province there is a Land Clearance Commission that is reportedly established by presidential decree to address individual cases.

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<sup>155</sup> WR's interviews reported that DAIL is involved in only rural, pasture and virgin land. SER reported that DAIL's only responsibility was to categorize land between agricultural and non-agricultural. If land is agricultural, it cannot be sold. ER's DAIL reported that land is divided up into urban, forest and park areas and commented that the nomadic Kouchi's do not respect the government's ownership of arid and uncultivated land over which they graze their herds.

<sup>156</sup> DUDA in NR claims no role whatsoever. In NR, DUDA described its responsibility for identifying the suitability of land for development and other different uses as part of urban master plans. WR's DUDA also reported this as this departments' responsibility. In ER, CR and SER, DUDA is solely responsible for urban planning.

<sup>157</sup> The NR echoed a similar categorization of land as reported above by their DAIL colleagues. CR's DRR referred to compliance with the Decree 104 specification of land being only non-agricultural. SER's DRR specified non-agricultural arid desert land. NR's and ER's DRR are involved in identifying land for IDPs and returnees, but do not specify the process or category. WR region reported that its DRR is not involved in identifying state land for these target beneficiaries.

<sup>158</sup> Either the Provincial Governor or Deputy Provincial Governor serves as chair.

The meeting frequency of these land commissions is irregular at best. Surveyed commissions in some provinces have not met for over five years. In at least one area, the decision-making responsibility is being exercised not by any land commission but by the weekly administrative meeting of all line departments under the auspices of the PG.

There is some inconsistency in the membership of municipal land distribution commissions; however, it is unclear whether the Kabul Distribution Regulation has been applied in other municipalities or if land commissions are being established on an *ad hoc* basis with little to no regulatory guidance. There are some reports that suggest that this regulation is being used by most municipalities.

In addition to the above, it appears there are no operating procedures governing the activities of these land commissions.

## 5. Processes to Distribute State Land

### a. Subnational and National Relationships in Land Distribution

In all cases of state land distribution, there is a relationship between provincial government and the executive. FO research indicates that subnational officials understand the requirement for a presidential decree to distribute any type of state land in any location within a province.<sup>159</sup> With the exception of municipal land, the process begins with a recommendation for the distribution of state land (specified or unspecified)<sup>160</sup> by the PG (or DPG in cases of Decree 104 allocations), either acting unilaterally or as the chair of a land related commission. This recommendation is then forwarded in some fashion to the Office of the President. For municipal lands (excepting Kabul), the Independent Directorate of Local Government (IDLG) receives recommendations from the PG that the IDLG<sup>161</sup> then forwards to the president. For land located in Kabul, the Kabul mayor submits a recommendation to the president.

In turn, the president, after coordinating with the CoM, Arazi, and the Ministry of Rural Rehabilitation and Development (MRRD) for non-municipal lands or IDLG<sup>162</sup> and MUDA for municipal lands,<sup>163</sup> approves or rejects the recommendation. Arazi or the Muhlkeet then implement that decision, depending on the location, in coordination with the relevant land commission.

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<sup>159</sup> One report indicated that only the CoM approves or disapproves distribution of state land to private owners and the decision is approved by the president of Afghanistan. It is likely that other reports' failure to mention the role of the CoM is a discrepancy by omission only. Further, the characterization of the CoM taking these decisions may be misplaced given that the same report indicated that the president eventually approves the decision of the CoM.

<sup>160</sup> The request may be for a specific plot of land or may be a general request for land for specific use in a general area.

<sup>161</sup> See Exec. Decree 73 (2007) (granting IDLG the authority to oversee the affairs relating to governors, district governors and their offices as well as the municipalities (except for the Kabul Municipality) and requiring IDLG to report its activities to Office of the President.)

<sup>162</sup> See *id.*

<sup>163</sup> There is some indication that MUDA may be consulted on occasion in municipal land transfers.

### **b. Subnational Processes for Rural Land Distribution**

The process for land distribution under the LML or Decree 104 starts with an application from a landless person seeking land. The requirement to prove landlessness consists of several steps, as land may be registered in any one of up to seven different locations. In addition, many individuals own land that is not registered, allowing for those who own land to successfully apply for provision of land under the LML or municipal requirements (see below).

Officials in the researched provinces stated that there have been few to no applications for land distribution under the LML in recent years. These officials cite a ban on land distribution (Executive Decree 99 in 2002)<sup>164</sup> and a lack of available state land because of illegal usurpation. Land usurpation *writ large* is not the focus of this report and will be examined in the third paper in this series. However, reports of land usurpation through alleged use of the state distribution system are set forth in the body of this report. With only one exception,<sup>165</sup> there are no reported cases of drawing names by lots in situations in which there are more applicants than land available, as required under the LML.

A number of officials recounted land distributions to IDPs and RRs. Several reports included information on the distribution of townships to individuals and to municipalities.

### **c. Subnational Processes for Non-Kabul Municipal Land Distribution**

Although the processes are not identical, there are similarities in the application process for residential land in the municipalities researched. A person applying for residential land must first submit an application to the PG's Office, and the application requires proof that the person owns no land.<sup>166</sup> The PG then signs an order for the petition to proceed and sends this order to the mayor of the municipality. The mayor forwards the order to the AMLAK department, which circulates a form called (roughly) the "Form for Approval of Conditions for Allocation of Township Land" to all municipal districts. This is to ensure that the applicant owns no land in the municipality. It is unclear whether this specific form is used by all municipalities, but nearly all municipalities researched reported the use of a similar document. The form is sent to the land commission that, when it confirms that the applicant owns no land in the municipality, designates the applicant as a "needy person" and, therefore, qualified for a parcel of township land. The designation or name of the commission that distributes land appears to differ among municipalities.

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<sup>164</sup> See Exec. Decree 99, *supra* note 12.

<sup>165</sup> In one region, quotas were allotted for distribution to a specific line department's workers and lots were drawn to distribute the land.

<sup>166</sup> For example, applicants for land in Kunduz are required to collect the approval of each municipality's nahias, equivalent to urban districts, to prove that they do not own a house or land within Kunduz city.

Nearly all municipal land commissions set quotas and qualification systems for available land distribution;<sup>167</sup> however these quota systems are not consistent nationwide and appear to prioritize civil servants' applications. In most, if not all cases, government workers were given preference over non-government workers.<sup>168</sup> In one municipality, only government workers and refugees have received land.<sup>169</sup>

In addition, there is inconsistent reporting from the IDLG about the specifics of the requested land distribution. Thus, it is unclear whether the recommendation to the president relates to the land only or to the specific individuals to whom the land will be distributed.

#### **d. Subnational Processes for Kabul Municipality Land Distribution**

The new master plan for Kabul was approved on 30 May 2013, and is to be implemented over fifteen years. The plan expands the city to include townships previously considered “illegal,” including Deh Sabz, thus legitimizing this usurped, illegal township, as well as others. There are suspicions that the land mafia, that is, those actively engaged in illegally obtaining land for profit, usurped state lands to build these townships or bought property at a very low cost from individuals in anticipation of the increased population and expansion of Kabul city.

The mayor of Kabul was instrumental in increasing the size of the city and its demarcations, including two additional urban districts in 2004 and four additional urban districts in 2005. However, these were not part of the then-existing master plan and it is claimed that the legal process was not followed in creating these districts. It was also reported also that the mayor was pressured by powerful individuals to extend the city to these districts to legitimize illegal townships. The IDLG opposed the creation of the new districts, characterizing them as “illegal,” and the president decided to create a new master plan with clear distinctions between urban and rural districts.

Although limited research indicates that senior officials in Kabul appear to have established the commissions and completed the required paperwork under the applicable Kabul regulations, the system allegedly operates extra-judicially in many cases. The lack of oversight and transparency creates a significant barrier to assessing these allegations. There are numerous reports of land acquisition by misuse of the legal system, including fraudulent property deeds, forged signatures, and the purchase of residential property prior to designation of such lands as commercial—and therefore more valuable—property. All such illegal acts are difficult to detect and successfully

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<sup>167</sup> For example, the municipal commission in Kunduz set a quota for certain population groups, such as invalids and the disabled, teachers and civil servants.

<sup>168</sup> In the case of the Sare Dawra Township in Kunduz, all governmental institutions were given a quota, which they distributed amongst their staff by lottery.

<sup>169</sup> In Herat, the municipal land commission has distributed land to only two categories of people in the last decade—government officials and refugees. The commission distributed 14,000 parcels of land to government officials and around 850 additional parcels to refugees and IDPs.

prosecute even under the best of circumstances.

In addition to allegations of fraudulent schemes to obtain property, several reports suggest that high-ranking officials in Kabul ordered the distribution of land to ineligible, powerful individuals. Although allegations against the mayor of Kabul for distributing townships to two parliamentarians have not been confirmed, repeated reports of corruption in land distribution coupled with a general lack of transparency and oversight suggest vulnerabilities that can, and do, result in such illegal distributions. In addition, it has been reported that it is not possible for an eligible person to receive a plot of land in Kabul without political clout or significant resources for bribes.<sup>170</sup>

#### **e. Transfer of State Land to Ministries and Line Departments**

The research conducted by UNAMA indicates that guidelines promulgated by Arazi regarding state land transfer to ministries and line departments are being followed and forms are being used regularly in most instances. At least one provincial official and the national Arazi staff suggested that Arazi has no direct role and never recommends transfers of state land to ministries. Rather, recommendations are made by the related line ministries that request distribution of government land to their staff. These recommendations are sent to the president, who issues an executive order for distribution. However, at least two other sources indicated that if the provincial Arazi office approves a line request, that office sends the request to the national Arazi office in Kabul, which then forwards the request to the president's office with a recommendation. The CoM reviews the request, determines whether it is acceptable and, if so, decides whether any money and the amount that should be paid by the receiving government department or municipality. The president approves the transfer and this approval is transmitted to the national Arazi office, which further transmits this to the provincial Arazi office.

Although there are indications of some fighting among ministries over land distribution and transfers, very few cases—in fact only one documented case—required formal intervention. However, any irregularities in these processes are not within the scope of this paper, except when related to the distribution of state land to ministries that is later distributed as residential land parcels to employees of those ministries.

#### **f. Transfer of State Land to Municipalities**

The transfer of state land to municipalities is directly tied to the development and approval of city master plans that expand the municipality's borders. As a municipality expands to include former state lands, these lands become subject to taxation by the municipality which, in turn, is responsible for providing municipal services such as water, electricity, and waste disposal. Townships owned and/or built illegally outside the boundaries of the municipality benefit exponentially from being brought within the boundaries of an approved, expanded municipal

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<sup>170</sup> See MEC Report, *supra* note 6, at 27 (highlighting these same findings).

master plan. Thus, the planning involved in expanding a municipality master plan, including identification of available state land to transfer to the municipality, involves social and economic considerations subject to political influence.<sup>171</sup>

Field office research indicates that the process for a municipality to obtain additional state lands begins with the PG making a request to the provincial Arazi office that land be transferred to a municipality for a public purpose such as health, education or a township. When the district level Arazi office receives documents requesting the transfer of state land to a municipality, it starts by surveying the land and manages the process of the transfer, including through the PG's office, MAIL, the president, and completion of the protocol of agreement. Based on these actions, Arazi will complete the Transferring Form and will officially inform the municipality that the land has been transferred to it. Reports from other field offices confirm that if the president approves the transfer, all the physical works in terms of survey, determination of boundaries, prices, and any other action facilitating the approved transfer will be completed by a delegation suggested by Arazi and appointed by the DG. The delegation normally consists of the Cadastre Office, Haj and Endowment, Law Department, Governmental Case Department, and police at the municipality and district level.

When the municipality pays the price of the land (if required), Arazi enters a record in its registration book noting that the land has been transferred. Because of the lack of available public documents, UNAMA was unable to confirm whether land valuations were accurate or whether these financial amounts are actually paid for state land transfers to governmental entities. Of greater concern are reports that state land outside of demarcated municipal boundaries is being distributed to municipalities for further distribution to ineligible people as part of speculative and fraudulent land schemes involving the building of housing projects.<sup>172</sup>

If the land is transferred to a municipality for use as a township, title deeds are issued with respect to each parcel of land only when transferred to an applicant. Thereafter, if the line department requests an official title deed, the request is sent to the court. The court assigns a delegation, including the Finance Department, to confirm the details of the land and obtain the signature of the PG and the head of the provincial Arazi office. The provincial Arazi records are kept in the Arazi office.

#### **g. State Land Sale and Leasing**

Almost all reports commented on a number of sales and leases of state lands for commercial purposes. There was a uniform lack of transparency and clarity regarding these transactions at the provincial and district levels. Arazi is responsible for all state land leasing and provided detailed information at the national level, indicating that these transactions are under direct

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<sup>171</sup> See *infra* 6(d) "Townships." The majority of townships have been built illegally, either on usurped land and/or without government approval. Bringing these townships within municipal borders results in *de facto* legitimacy.

<sup>172</sup> See *id.* for further discussion.

national control. It is unclear whether the leasing guidelines promulgated by Arazi are in fact being followed at the provincial or district levels; however, the very limited information from UNAMA field research indicates some consistency in how these types of transactions are processed.

The PG is the custodian of state lands that are within an approved master plan. An interested person applies to the PG to purchase or lease a particular parcel of land for commercial purposes. The PG then remits the application to the mayor and the municipal engineer to ascertain the parcel's availability for transfer. It is not clear what criteria the mayor and municipal engineer apply to determine qualification for sale or lease once the PG has remitted an application to them; however, if the parcel qualifies, the municipality announces a public auction process which is overseen by a provincial committee or council constituted by several departments, including Arazi, and chaired by the PG or an officer from the PG's Office. Notably, the actual composition of this commission appears to differ in the regions in which research was conducted. In addition, in some of the provinces, the commission is not regularly constituted and appears to convene *ad hoc* at the direction of the PG. UNAMA's research could not confirm the use of auctions for the sale of commercial property; likewise, it was not possible to determine whether, if an auction was employed, the high bidder was provided the opportunity to buy the land for the amount offered.

For state lands that have been earmarked for industrial parks or private sector activity, the intention to transfer is announced publicly and a special committee is established, which allocates the land. Applicants are required to possess a business licence from the Afghan Investment Support Agency and are not permitted to construct residential housing on the land. However, transfer of such land is only on the basis of a lease and not sale. In at least one region, this procedure is reported to have been abused by influential persons who apply for and are allocated land that they are incapable of developing, which they then sell to third parties at a premium. In addition to obtaining land for transfer to third parties, there seems to be a lack of clarity regarding what happens to leased land at the expiration of the lease term.<sup>173</sup> Several field offices reported that those leasing and improving such leased land claimed rights of ownership at the end of the lease period.

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<sup>173</sup> An example of this absence of clarity is a dispute surrounding the return of the Kunduz Hotel to the Kunduz Municipality. According to the mayor, the Kunduz Hotel was constructed by private investors and the lease permitted use of the building for ten years free of rent and charges. At the end of the lease period, the investors were reluctant to return the land and building and contested their contract in court. It appears the court did not rule on the matter and a governance working group meeting held in Kunduz on 25 April 2014 resolved that the private investor must surrender the building to the municipality at the end of lease.



## 6. Special Cases

### a. Internally Displaced Persons and Returning Refugees

Executive Decree 104<sup>174</sup> establishes the eligibility, mechanisms, and processes to allocate state land to IDPs and RRs. Under this presidential decree, Arazi is charged with identifying arid and virgin land subject to distribution under the decree and transfers this land to the MoRR, which is then responsible for distributing this land to IDPs and RRs.

Compared to LML land distributions, a far greater number of plots have been allocated under the Decree 104 land allocation scheme (LAS). Approximately 25% of those who applied for land under Decree 104 were found eligible. Over 60,000 families—nearly 65% of all those found eligible for land allocations—have received land. (See Annex 3 for numbers and locations of Decree 104 land allocations). Despite these generally encouraging numbers, several reports indicate that townships identified for distribution to IDPs and RRs under Decree 104 have been usurped by powerful individuals for development and resale. In at least one instance, it was reported that the PG sold land allocated for IDPs and RRs for personal profit. In other cases, it has been reported that officials distributed land for personal gain or under threat to those who were not eligible. The Decree 104 commission has not convened in one area in over four years, ostensibly because no state land has been made available for allocation as a result of state land grabbing. In their report, the MoRR reported challenges to the Decree 104 LAS based on fraud and orders of high officials to provide land to ineligible persons. Since the PG transfers land deeds on behalf of the state, the PG, in effect, has full control and authority over these IDP and RR land distributions.

### b. Civil Servants and Government Employees

On 20 January 2015, President Ghani stated in a speech to the WJ that he would be providing land to civil servants. He did not mention those eligible for distribution under the current LML, which does not include civil service status in its eligibility provisions. He also made no reference to regulations on municipal land distribution that authorize non-government employees to file applications for land distribution directly with the relevant commission, while government employees file their applications through their respective ministry of employment.

Suspicious that government employees receive preferential treatment for land distribution in municipalities were validated in at least one municipality. Research to date indicates that President Karzai approved the distribution of state land to teachers employed by the Ministry of Education, thus giving preferential treatment to this group of government employees. Numerous media reports highlight continued land distribution priority for teachers.<sup>175</sup> As an illustrative example, Annex 6 contains a listing of such distributions in Kunduz.

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<sup>174</sup> Exec. Decree 104, *supra* note 51.

<sup>175</sup> See *supra* note

### **c. Expropriation**

Although the LEL provides for distribution of property in exchange for land taken by the government for a public purpose, this is a specialized situation not fully addressed in this report. Although there are many challenges to implementing procedures that ensure fair and like-kind exchanges, UNAMA's research did not focus on this area. To date, UNAMA is unaware of any reports of fraud or corruption in the exchange of properties in expropriation cases, although there are clear challenges to enforcing like-kind exchanges or acceptable reimbursement to displaced persons.<sup>176</sup>

Arazi has developed procedures for the exchange of appropriated land. In addition, the Mining Law and other regulations provide for exchanges of property as an option to a land owner whose land has been expropriated. The newly drafted Land Appropriation Law (LAL) specifically addresses exchanges as part of reparations for expropriated lands. However, it is premature to assess the potential effectiveness of the proposed legal framework, including the mechanisms and processes. UNAMA notes that at the time the LAL was being redrafted, the Mining Law was not yet passed; there may be a need to harmonize the draft LAL and the current Mining Law with regard to property exchanges and ensure that the draft LML is consistent with both.

### **d. Townships**

According to subnational officials, to legally establish a township, MUDA enters into an agreement with MAIL for the selected piece of land. Once the agreement is made, it is presented to the CoM for approval. After approval by the COM and the president, the land is distributed at the municipal level and the PG is the seller on behalf of the state.

The urban engineering department, in cooperation with MUDA, prepares a comprehensive township plan that considers all township requirements and divides the land into plots. Based on a request from the mayor, the PG appoints a commission that consists of representatives from the police, PG's office, Provincial Council, urban engineering department, prosecution office, and municipality for the selection of beneficiaries and distribution of land plots. The commissions' compositions differ from case to case. Whenever the individual paid the price of the land and registered with the municipality as the owner of a certain plot, he/she can request a legal deed from the courts that is then registered with the Court Directorate for Documents and Deeds Registration. The land is officially transferred to the owner with the issuance of the deed.

The establishment of illegal townships is referenced in the Restitution and MEC Reports. UNAMA staff research confirms the existence of large numbers of illegal townships and

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<sup>176</sup> See AYNAK REPORT, *supra* note 123. See also Environmental Impact Assessment Law (2008), the Minerals (Mining) Law (2014) and other laws related to like-kind exchanges and resettlement of those whose land has been appropriated, as well as laws relevant to resettlement as a result of natural disasters. See also safeguard policies to which donors and companies agree as part of project agreements as a way of ensuring social welfare agreement and compliance.

provides additional information about the formation and current status of some of these townships.<sup>177</sup> This research generally shows that the majority of townships are “illegal” for a number of reasons: the land was usurped or obtained illegally by fraud, force, or political clout from the owners (private or government); the construction of the township was not approved by the president’s office or the Ministry of Urban Development (MUDA); or the owners failed to meet the ongoing requirements imposed by MUDA.

Specific information about the creation of townships is found in Annex 4. A chart with a partial listing of townships and transfers to individuals and companies is located in Annex 5. It is unclear whether these transfers are legal. However, the specific beneficiaries of certain transfers might suggest that the townships were “sold” in their entirety without following the requirements for sale of commercial property as set forth in the LML and applicable regulations.

Purchasing townships and then selling plots is extremely lucrative and casts suspicion on the legitimacy of the sale of entire townships to individuals. In the case of the Sare Dawra Township in Kunduz province, all governmental institutions were given a quota, which they distributed amongst their staff by lottery. No land was earmarked for non-governmental, landless persons. The price for a land plot of 450m<sup>2</sup> was 5,000 Afghanis equal to about \$100 USD. The low price of plots provided an opportunity for officials to buy multiple plots and derive large profits by reselling them. Allegedly, some high officials took up to 200 land plots and sold them on the open market at up to \$7,000 each, seventy times higher than the governmental price.

In addition to challenges with ensuring that townships are established in accordance with the law and master plans, the “annexation” or incorporation of previously unincorporated, illegal townships pose additional development and legal issues. Often, the municipalities are initially unable to meet their obligation to provide municipal services, despite generating municipal taxes from land owners. This payment of municipal taxes - upon which the municipality depends to provide required services - provides these previous “illegal” owners with a legal right over time to claim legitimate ownership of the land. .

The creation of housing estates within cities and towns is also creating a burgeoning, illegal market for housing. Although the field research disclosed very little information about these types of specific illegal activities, a recent report noted the following:

The most visible evidence of injustice for ordinary Afghans has been in the flourishing creation of housing estates in virtually all towns and cities. These *shahrak*, or little cities as they are known, are private enterprise developments authorised by politicians and governmental officials, often through dubious legal means. This in turn reinforces the idea of affected lands as either government

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<sup>177</sup> The names and locations of certain townships are intentionally omitted.

property or public lands over which the state - not the citizenry - has control despite their customary rights. Although *shahrak* have absorbed a tiny proportion of the national estate . . . , they symbolise the frustrations, ills, and injustices of land governance.<sup>178</sup>

## E. CONCLUSIONS

The state land distribution system is complex and fraught with a number of issues, nearly all arising from the lack of an overarching land distribution policy and the near absence of an integrated, transparent, and accountable land distribution system. This lack of an all-encompassing policy has resulted in an inadequate legal framework; insufficient criteria for provision of land; deficiencies in land categorization and prioritization, including failing to relate categories of land to eligibility priorities; lack of specific processes to establish mechanisms to provide, allocate, lease, or sell land consistently and fairly throughout the country; and ineffective oversight mechanisms to ensure accountability of institutional and subnational governance. Because of this inadequate framework, the distribution system is vulnerable to corruption and misuse, as has been reported repeatedly in interviews conducted by UNAMA staff.

As noted above, the most significant issues arise in the context of distribution to landless persons, IDPs and RRs, and sale of state lands. The transfer of lands between the state and ministries or municipalities and the leasing of state land do not involve the same considerations as moving from state ownership to non-state ownership, and thus, the issues of corruption and misuse of the distribution system are not as frequent or compelling in those instances.<sup>179</sup> In addition to these issues, the distribution system faces severe challenges in failing to incentivize the proper utilization of land in heretofore undesirable areas.

### 1. Varying and Inconsistent Land Distribution Mechanisms

Countrywide, there exist numerous commissions—very few of which are constituted as set forth in the LML, Decree 104, or municipal commissions—rendering state land distributions *ad hoc*, which are subject to the composition and political interplay within each commission. There are no checks and balances applied by any authority to ensure that these commissions are properly constituted and comply with the legal framework. Although it appears that these commissions are operating in some fashion that conforms to bureaucratic processes, it is not clear whether their operations are actually legitimate or only project a patina of legitimacy. As there is such a range of commissions individually tailored to each province and municipality, each operating autonomously, it is reasonable to believe that what appear to be legitimate processes are merely a patina of legitimacy through careful and deliberate use and documentation. Moreover, there are

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<sup>178</sup> Afghanistan Research and Evaluation Unit, *Lands, People, and the State in Afghanistan 2002 – 2012* (2012) at 6.

<sup>179</sup> We note that the exception to this is the practice of transferring state land to a ministry for sale to ministerial or departmental employees.

reports of senior officials distributing multiple plots of land to themselves rather than distributing the land as required under the LML, Decree 104, or municipal regulations. Given reporting that there is little to no desirable state land available, this raises a significant issue about whether state land is being secretly distributed to specific individuals as part of an illicit shadow land economy, with the citizenry ultimately paying the price for this culture of patronage.

## **2. Inadequate Eligibility and Prioritization Requirements**

The criteria and prioritizations for distributing land, established under the LML, Decree 104, and relevant regulations, are extremely basic and thus are inadequate to constrain the arbitrary distribution of state land, allowing for nearly unbridled discretion of those involved in the process to provide land to whomever they see fit. The LML framework sets forth four basic requirements for the distribution of residential land: a person must be a citizen of Afghanistan; over the age of eighteen; own no land; and commit to improving the land. Although rural land is divided into seven categories, the law makes no mention of these in the distribution schemes. For urban areas, there is an additional requirement that the applicant be “deserving” or “worthy.” This is neither defined nor related to a priority scheme. The eligibility criteria are better defined under Decree 104, but are not easily established, creating additional challenges for IDPs and RRs.<sup>180</sup>

In addition, there are no priorities established within eligibility categories for differing types of land. The categories of land set forth in the LML are not related to eligibility or prioritization, only to the amount of land that may be distributed to an individual. In practice, many regions have developed a far more sophisticated scheme for categorizing land, arguably ranging from that which is most to least desirable. However, neither the LML nor any regulatory scheme establishes a relationship between eligibility and the provision of a particular category of land, creating material vulnerabilities in the distribution system itself. This lack of clarity provides an open invitation for officials to distribute the more sought after or valuable land to whomever they choose.

This situation is further exacerbated by practices giving preference to government employees at the expense of non-government employees; a practice that appears to have been endorsed by the government and the president. The existing practice of ministries obtaining land from Arazi for the purpose of providing these lands to the ministries’ employees subverts any existing allocation schemes in which various non-government employee eligible persons, including the landless, and the “worthy,” are competing for state land distribution.

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<sup>180</sup> In addition, Executive Decree 104 notably designates only arid and virgin land as available for distribution to IDPs and RRs; this land is unsuitable and does not meet the needs of IDPs or RRs.

### 3. Limited Subnational Oversight, Transparency and Accountability

The land commissions' control over designating who receives land is subject to limited oversight and accountability. Specific processes for land distribution are lacking in the existing legal framework. Arazi has established guidelines for leases and transfer of state land; however, these are not regulations and have no legal effect. Compliance with guidelines is voluntary. Nonetheless, Arazi exercises a high degree of control and can effectively stop a lease or transfer if the required paperwork is not completed properly, this enforcement is *de facto* and not subject to external review or enforcement. As to distribution to landless persons, IDPs, and RRs, there are limited processes established by the LML and Decree 104 respectively, and no processes yet established by Arazi. Thus, there is effectively no oversight, transparency, or accountability of the chairs (PG, DPG, DG or mayor) and co-chairs (Arazi) of the land committees.

In addition, at the time this report was researched, all PGs had been appointed by President Karzai.<sup>181</sup> Although the IDLG theoretically oversees the PGs, the PGs previously had direct access to the president, the final authority on land distributions. It appears that the IDLG does not supervise provincial or municipal governments' compliance with the limited legal framework applicable to land distributions.

Additional challenges to oversight and the accountability of subnational governance officials arise from the uneven administrative and subnational governance reforms since 2001. The applicable municipality law remains the one promulgated in 2000 by the Taliban that has yet to be updated.<sup>182</sup> The IDLG, established in 2007 by presidential decree,<sup>183</sup> published a report in June 2014 describing in detail the many challenges facing the reform and implementation of municipal governance.<sup>184</sup> Although the IDLG developed a Subnational Governance Policy in 2010 that informs the draft of the updated Municipality Law,<sup>185</sup> the policy has not been implemented through legislation and is being applied without any legislative or regulatory guidance. Thus, the subnational governance legal framework currently does not formally define the roles, authorities, and responsibilities of subnational officials, including PGs, thus rendering accountability extremely difficult from an institutional perspective.

### 4. Limited Availability of State Land for Distribution

Field office research has identified consensus among those interviewed that there is a lack of available, desirable state land because the land has been usurped by powerful or politically connected groups. Although not necessarily titled or registered, the land is not available for distribution until such time as the land is recovered and under the control of the state. Arazi has

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<sup>181</sup> At the time of the final drafting of this report, the president had dismissed all governors and had appointed four new governors.

<sup>182</sup> See Municipality Law (2000).

<sup>183</sup> See Exec. Decree 73, *supra* note 161 (establishing IDLG).

<sup>184</sup> See ABDUL BAQI POPAL, MUNICIPALITIES IN AFGHANISTAN (30 JUNE 2014).

<sup>185</sup> See *id.* at 17.

made significant strides in recovering state lands from those who have illegally taken possession or control, but there remains large areas of state land that are not yet under state control, and thus not available in the practical sense to distribute, sale, lease, or transfer.

There is insufficient data to quantify the extent of this shortage in terms of land categories—for example, the availability of municipal, agricultural, pastoral, arid, and virgin land. This lack of data makes drawing specific conclusions difficult, particularly in light of the restrictions on distribution of different types of land. For instance, Decree 104 only allows arid and virgin land to be allocated to IDPs and RRs.

Of note, the lack of available, desirable land serves the interests of those who have illegally gained access to potentially valuable or prime land and maintain its scarcity, thus increasing the value to those who possess it. As in the case of many illegal townships, the owners are speculating that the value of this less-than-desirable land will increase exponentially if the nearby municipality is expanded to incorporate these townships.

For the benefit and development of the country and its citizens, it is important for there to be clarity and transparency about the overall quantity and type of state land subject to distribution and the quantity and type of the land that has been usurped.

## **F. THE WAY FORWARD**

The objective of a state land distribution scheme is to ensure sufficient designations and distributions of state lands for purposes including infrastructure, state revenue-producing projects, ministerial (governmental) requirements, agriculture, commercial activities, residential needs in urban areas, and humanitarian requirements for adequate shelter for the populace, including vulnerable populations such as IDPs and RRs. Balancing these competing needs against limited suitable land for each function is a critical component of an effective land distribution system and requires a well-developed and overarching land distribution policy as a basis for an effective statutory and regulatory framework.

At the present time, there is no integrated state land distribution policy that addresses the distribution of all types of state land; the full range, priorities, and types of access to land; and the differing needs of the state and various individuals and groups of citizens. The LML, Decree 104, and municipal regulations do not clearly implement any state policy with regard to prioritizing competing interests for specific types and uses of state land and the differing mechanisms and processes that might be appropriate to each. As a result, mechanisms, processes, and results differ throughout the country and are not guided by defined state policies.

An overarching state land distribution policy is the first step to an effective overhaul of the land distribution system in Afghanistan. Such a policy, implemented through integrated statutory and

regulatory reform paves the way for the development of a land distribution legal framework that establishes specific processes that are subject to review for compliance, thus providing a basis for oversight and accountability. Developing an all-encompassing policy for state land distribution requires coordination at the highest levels of all ministries that have a stake in land distribution, particularly those that focus on commercial development or humanitarian needs.

The processes for lease and transfer of state land are becoming clearer and more regularized as a result of Arazi's developing guidelines in these areas. The anecdotal successes of Arazi as a result of leasing and transfer guidelines, which set forth specific steps and requirements, underscore the need for such guidelines within a regulatory framework that also includes processes for sale as well as distribution to vulnerable groups. As with the actions of the commissions, it is difficult to determine if the apparent processing within these guidelines and the resulting successes are indeed fair and legitimate. Nonetheless, there appears to be some compliance as a result of specific processes, and this is a step towards identifying further action that may be successful in effectively implementing a state land distribution policy.

In addition to ensuring proper processes to provide an opportunity to access land on the basis of defined criteria and requirements consistent with an overarching economic and social policy, a state land distribution system must also provide a mechanism to determine the value of the land and enforce payment prior to title being issued in those cases in which payment is required. Such payments not only contribute to state revenue production, but also contribute to a fair land distribution system whereby those obtaining more valuable land pay for this allocation.

Assuming the establishment of an adequate legal and regulatory framework with sufficient criteria and transparency, implementation of such a system requires effective subnational governance, including a capable civil service that is held institutionally accountable. Such accountability can be achieved only through an administrative system that establishes a regulatory framework with appropriate penalties.

Although not fully addressed in this paper, an effective state land distribution system requires the availability of appropriate state land for specific purposes and classes of beneficiaries. It is important to determine whether there is in reality a shortage of available state land and, if so, the means to ensure that state land is recovered from those who illegally possess or control such land. Further, an effective, integrated land administration and management framework, within which the land distribution system should be nested and harmonized, relies on criminal penalties to deter and prevent future land grabbing to preserve available state lands. In addition, civil penalties and remedies are necessary to support recovery, restoration, and restitution of state lands that previously have been illegally distributed, obtained, used, or possessed.



As noted in the first report in this series, illicitly obtaining, possessing, or using land is not effectively criminalized under the current criminal laws in Afghanistan. Further, sophisticated “business” thefts of land accomplished by manipulation of the land distribution system are difficult to investigate and prove; these cases are not always as clear cut as an ex-commander occupying land with his militia. Illicit theft of land through legal processes is especially difficult to prove if the criteria for eligibility and land distribution priorities are insufficient or unclear, or if the cost of the land is not properly assessed, collected, and recorded, as appear to be the current situation. Thus, civil remedies for recovery and restitution are increasingly important to address the current situation. Civil recovery and restitution policies are being developed by Arazi and are in the nascent stage. Once approved, further efforts should be focused on implementation initially through the civil court, with a view toward developing an administrative and regulatory system and establishing administrative land boards.

Lastly, executive and other decrees and orders distributing state land should be made publicly available. Under the newly passed Access to Information Act,<sup>186</sup> these documents can be obtained upon request. Citizen action groups and civil society organizations are the key to moving a land reform agenda forward, and this report recommends engaging with these groups to utilize the Access to Information Act to gain transparency on the land distribution framework and state land distributions.

Unfortunately, addressing only the framework and subnational challenges will not ensure a fair and equitable land distribution system. The illicit business of distributing state lands for personal gain will continue if there is no political will or incentive to develop and implement a policy that renders legal land acquisition reasonable and attractive. Ultimately, the desire to implement a land distribution policy and framework that incentivizes and simplifies legal acquisition of land is critical to combatting illegal usurpation of state lands.

The installation of a new government provides an opportunity to usher in a new sense of dedication to the nation and its people, rather than dedication to personal advancement. Support by the executive to Arazi and other national stakeholders to develop a state land distribution policy and implement effective legislative and regulatory frameworks that attracts legal access to land—coupled with a concurrent agreement to voluntarily disclose all executive decrees distributing land—would be an historic indication that the new government is serious about state land distribution reform and a material step in strengthening land administration and management in Afghanistan.

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<sup>186</sup> See Access to Information Law (2014).

## Annex 1: Table of Research Focus Areas

Region	Province	Municipality (All Provincial Capitals)	District (urban)	District (rural)
CR	Parwan	Charikar	Charikar	Bagram
ER	Nangarhar	Jalalabad	Jalalabad	
NR	Balkh	Mazar-e Sharif	Mazar-e Sharif	Nahri Shahi
NER	Kunduz	Kunduz	Kunduz	
WR	Herat	Herat	Herat	Injil Karukh
SER	Paktya	Gardez	Gardez	
SR	Kandahar	Kandahar	Kandahar	Arghandab Spin Boldak

## Annex 2: LML & Decree 104 Land Commissions by Region & Departments

### Regional Groupings

#### Northern Region

- NR – Land Price Setting Commission only – possibly comes under LML **Mustofiat**
- NR – Arazi Commission – title not specified – assume LML **DAIL**
- NR - Refugees and Returnees Commission – Decree 104 DRR
- NR - Not a member of any land commissions **DUDA**
- NR - Returnees Land Commission – Decree 104 DRRD

#### North Eastern Region

- NER – Land and Price Setting Commission – possibly comes under LML **Mustofiat**
- NER – Not a member of any land commissions **DAIL**
- NER - Refugee and Returns Commission – Decree 104 **DRR**  
Contradicted above below, reported that DAIL, DRRD and DUDA are members
- NER - Not a member of any land commissions **DUDA**

#### Western Region

- WR – Land Settlement Commission – LML **Mustofiat**
- WR – Land Settlement Commission – LML **DAIL**
- WR - Land Distribution Commission – Decree 104 **DRR**  
See above/below, also reported that DAIL are a member.
- WR - Municipality Land Commission – LML **DUDA**  
Returnees Land Commission – Decree 104 **DUDA**  
Arazi Land Settlement Commission – LML **DUDA**  
Anti-Land Grabbing Commission – legal base unknown **DUDA**
- WR - Not a member of any land commissions **DRRD**

#### Eastern Region

- ER – Land Verification Commission – possibly comes under LML **Mustofiat**
- ER – Land Disputes Commission – LML **DAIL**  
Unspecified Land Commission recommending on townships & auctions–LML **DAIL**
- ER - Commission of Land Distribution & Land Related Conflicts Decree104+LML DRR
- ER - Not a member of any land commissions DUDA
- ER - Not a member of any land commissions **DRRD**

#### Central Region

- CR – Claims his department has not been a member for 5 years, reports that routine weekly PGO administrative committee sets land prices – legal base not defined. **Mustofiat**

- CR - Land Clearance Commission – probably LML **DAIL**  
IDPs and Returnees Land Commission – Decree 104 **DAIL**
- CR - Land Commission for Returns – Decree 104 DRR
- CR - Member of Land Commission for Returnees & Teachers Decree 104 & LML **DUDA**
- CR - Teachers Housing Land commission – LML Above DUDA combined DRRD  
Returnees Land commission – Decree 104 DRRD

### **South Eastern Region**

- SER – Reports in principle is a member but this office not attended any in 5 years. **Mustofiat**
- SER - Not a member of any land commission, reported that it categorizes land as  
Either agricultural or non-agricultural. If former, cannot be sold. **DAIL**
- SER - P. Land Commission – Decree 104 not LML deals only with IDPs & Returnees DRR  
Meets irregularly, DUDA has designated responsibilities. DRR
- SER - Not a member of any land commissions **DUDA**
- SER - Provincial Land Commission – assume same as SER’s DRR 104 Comm. DRRD

### **Departmental Groupings**

#### **The Mustofiat Office**

- NR – Land Price Setting Commission only – possibly comes under LML
- NER – Land and Price Setting Commission – possibly comes under LML
- WR – Land Settlement Commission – LML
- ER – Land Verification Commission – possibly comes under LML
- CR – Claims his department has not been a member for 5 years, reports that routine weekly  
PGO administrative committee sets land prices – legal base not defined.
- SER – Reports in principle is a member but this office not attended any in 5 years.

#### **Department of Agriculture Irrigation and Livestock**

- NR – Arazi Commission – title not specified – assume LML
- NER – Not a member of any land commissions
- WR – Land Settlement Commission – LML
- ER – Land Disputes Commission – LML  
Unspecified Land Commission recommending on townships & auctions – LML
- CR - Land Clearance Commission – probably LML  
IDPs and Returnees Land Commission – Decree 104
- SER - Not a member of any land commission, but also reported that it categorizes land as  
Either agricultural or non-agricultural. If the former, it stated that is cannot be sold.

#### **Department of Refugees and Repatriation**

- NR - Refugees and Returnees Commission – Decree 104  
See above/below, also reported that DAIL and DUDA are members

- NER - Refugee and Returns Commission – Decree 104  
See above/below, also reported that DAIL, DRRD and DUDA are members
- WR - Land Distribution Commission – Decree 104  
See above/below, also reported that DAIL are a member.
- ER - Commission of Land Distribution & Land Related Conflicts Decree104+LML
- CR - Land Commission for Returns – Decree 104
- SER - P. Land Commission – Decree 104 not LML deals only with IDPs & Returnees  
Meets irregularly, DUDA has designated responsibilities.

### **Department of Urban Development Affairs**

- NR - Not a member of any land commissions
- NER - Not a member of any land commissions
- WR - Municipality Land Commission – LML  
Returnees Land Commission – Decree 104  
Arazi Land Settlement Commission – LML  
Anti-Land Grabbing Commission – legal base unknown
- ER - Not a member of any land commissions
- CR - Member of Land Commission for Returnees and Teachers Decree104&LML
- SER - Not a member of any land commissions

### **Department of Rural Rehabilitation and Development**

- NR - Returnees Land Commission – Decree 104
- NER - Not a member of any land commissions
- WR - Not a member of any land commissions
- ER - Not a member of any land commissions
- CR - Returnees Land commission – Decree 104  
Teachers Housing Land commission – LML Above DUDA combined
- SER - Provincial Land Commission – assume same as SER’s DoRR 104 Com

### Annex 3: Table of Public Lands Allocated for Construction of Townships for Refugees and Returnees

Total Transferred Land 17200 Jeribs

No	Beneficiating institutions	Land quantity in Jerib	Land Location			Purpose & usage of the land	Remarks
			Village	District	Province		
1	Ministry of Returnees & Refugees	6000	Dashti Asqhalan	Center of Province	Kunduz	Establishment of township for Refugees	Transferred
2	Ministry of Returnees & Refugees	2400	Said ahmad ah	Imam Sahib	Kunduz	Establishment of township for Refugees	Transferred
3	Ministry of Returnees & Refugees	2000	Dashti Aqh Tapa	Qalai Zal	Kunduz	Establishment of township for Refugees	Transferred
4	Ministry of Returnees & Refugees	3000	Khwaja Kaftar	Char Dara	Kunduz	Establishment of township for Refugees	Transferred
5	Ministry of Returnees & Refugees	4000	Said Zaino Agha	Archi	Kunduz	Establishment of township for Refugees	Transferred

## **Annex 4: Sample Townships Cases**

### **Township Case 1:**

Since 2002, over fifteen residential towns have been established in a specific city by private businessmen. Among them, only one is recognized as legal. This town is being administered by the municipality despite that the township lays in an adjacent area. Although all of these townships have been established on lands that are allegedly private land, reports indicate that over 60% of all these residential towns are involved in land disputes. These disputes are mainly over the cost of the land between the current township owners and the former owners of the lands and/or between the owners and the government.

Allegations exist that some of these townships have been seized or usurped from the former owners by ex-commanders with little to no payment. In addition, most of these townships do not have clearance from the President's Office and/or Ministry of Urban Development to develop and build the township, or the clearance has been invalidated at a later stage due to not meeting certain criteria. At least one FO reports that authorization from the President of Afghanistan is required to transfer townships covering multiple plots and larger land areas.

Before the 2012 announcement of international troops' withdrawal from Afghanistan, these townships attracted huge investments and generated some of the biggest property businesses in the area. Local brokers pocketed significant profits by buying and selling plots of lands from hand to hand. Since that time, due to increasing insecurity, elections and transition, these businesses have been facing reductions and closures. Those interested in legally purchasing a lot from a person who legally obtained it is increasingly difficult; many bona fide buyers are buying land from those who have no right to the land. The only document that a common buyer receives when buying land in these townships is a small piece of stamped paper that serves as a receipt and is registered in the township archive system, which has no legal standing. Though all of these townships claim to be legal, most of the land is not "cleared" and ownership has not been established

### **Township Case 2:**

The president ordered the creation of a town in a specific area on 5,000 ha of state land. The land should have been sold by bidding and auction, but was transferred to an influential businessman outright. There are suspicions that the executive was aware of the intended distribution, without legal process, to the recipient.

### **Township Case 3:**

Although state land transfers to companies are required to use the same procedures as transfers to private individuals, private companies bypass these requirements and deal directly with the Arazi department. Technically, if the land is to be designated as a township and a company is

interested in developing the township, it must request that MUDA develop a comprehensive plan of the township. This procedure is not always followed in cases in which a company buys or acquires a township. In the case of township X, the land cost charged was significantly less expensive than in other townships. This is despite the fact that the land will be used for commercial purposes and the companies will derive large profits from reselling of these lands. In this case, the provisions for acquiring commercial land were not followed. The company will either build houses on these lands and sell them to the population or sell the land in plots for the construction of houses. The company will base the price of houses and land plots on supply and demand. In the end, it is the company's responsibility to provide documents to transfer deeds to the plots within the township, as the company is the owner.

#### **Township Cases 4:**

Township X with 95 jeribs of land is owned by Y Company. The company bought the land from MAIL at the rate of 8,000 Afs per jerib and the land was transferred to the company. After launching some services and constructing some infrastructures, the company now sells each land plot (300 m<sup>2</sup>) for \$20,000 to \$30,000. In the remaining part of the township, the company constructed houses for sale, which are priced from \$60,000 to \$90,000. All profits remain with the company.

**Township Case 5:** Township Y with 120 jeribs of land is owned by Z Construction Company. The company bought the land at a rate of 10,000 Afs per jerib from MAIL. This land was recently transferred to the company and the construction just began. Sales of the land plots or plots on which houses have been constructed have not yet begun.

#### **Township Case 6:**

President Daoud Khan created a master plan decree in 1978 for a particular municipality that included a zone for housing and industry in a large tract of land east of the city. In 2005, President Karzai issued a decree allocating a part of that master-planned land for a 10,000 jerib housing development. The mayor requested that the municipal land planning committee make a plat sub-dividing the land and assigning value per square meter. The PG approved this plan. The mayor published the project in the newspaper and media and solicited bids from developers. In 2008, a specific company won the bid, paid the land price, and developed the land. Although the bidding process was not transparent, assuming the bids were properly evaluated, this process for the sale of commercial property appears to basically comply with statutory and regulatory requirements. What is unclear and undisclosed is whether the company provided senior and powerful individuals with land plots for free as part of an unwritten agreement.

#### **Township case 7:**

A new township of 500 jeribs located outside the boundaries of a municipality was transferred to the municipality from the Arazi department at no cost. The beneficiaries of this township were



identified as those whose pasturelands were included in this township (25%), people who had lost their houses due to floods, returnees (around 300 families), civil servants, and other people eligible for distribution. However, the amount of allocated land to the township was not enough to meet the requirements of the township or the people and the DG requested 1,000 jeribs of additional lands to cover these needs. The land transfer to the municipality is now complete, but the distribution of lands has not yet commenced because the municipality has no budget to provide necessary services for the expanded township. According to the DG, they are working on the option of transferring ownership of the township to a private company that will be able to develop the properties and provide proper service. In that instance, the land will not be available for distribution to those identified as needing land but, instead will be sold, thus depriving access to land for those identified as needing land and upon which the request was based. It is expected that plots in this township will cost more than in other townships, and the owner and the company will benefit accordingly.

### Annex 5: Table of Township Distributions (Kunduz)

No	Beneficiaries	Land by Jerib	Land Location			Purpose & usage of the land	Remarks
			Village	District	Province		
1	IDLG (Municipality)	1250	Sari Dawra	Center of Province	Kunduz	Groups A & B township in Sari Dawra	Not transferred
2	IDLG (Municipality)	50000	Dashti Abdan	Imam Sahib	Kunduz	Kunduz New City	No agreement with the Ministry of Agriculture
3	IDLG (Municipality)	2000	Dashti Alchin	Qalai Zal	Kunduz	5000 family Planned township of the Urban Development Ministry	Not Transferred
4	Ministry of Commerce (Carpet maker's Union)	1000	Dashti Alchin	Kunduz center	Kunduz	Carpet makers industrial township	Documents sent for transfer
5	Ministry of Commerce Directorate of Industrial parks)	2000	Dashti Sheermahi	Imam Sahib	Kunduz	Establishment of Industrial parks	transferred
6	Ministry of Commerce (Shir khan Bandar)	1494	Shir khan Bandar	Imam Sahib	Kunduz	Commercial township of Border	Transferred
7	IDLG (Char Dara municipality)	1504	Dashti Khwaja Kaftar	Char Dara	Kunduz	Char Dara district township	Transferred
8	IDLG (Ali Abad municipality)	500	Dashti Qandahari	Ali Abad	Kunduz	Ali Abad district township	Transferred
9	Private Sector (Kunduz Firoz construction Company)	120	Sari Dawra	Center of Province	Kunduz	For the establishment of private township Nazik Mir (sarferaz)	Transferred

## Annex 6: Table of Public Lands Allocated for Construction of Teachers' Townships (Kunduz)

Total transferred Land 3470 jerib

No	Beneficiaries	Land by Jerib	Land Location			Purpose & usage of the land	Remarks
			Village	District	Province		
1	Ministry of Education (Kunduz Department of Education)	680	Dashti Alchin	Center of Province	Kunduz	Establishment of township for Teachers	Transferred
2	Ministry of Education (Kunduz Department of Education)	1000	Said Ahmad Shah	Imam Sahib	Kunduz	Establishment of township for Teachers	Transferred
3	Ministry of Education (Kunduz Department of Education)	320	Dashti Aqh Tapa	Qalai Zal	Kunduz	Establishment of township for Teachers	Transferred
4	Ministry of Education (Kunduz Department of Education)	630	Khwaja Kaftar	Char Dara	Kunduz	Establishment of township for Teachers	Transferred
5	Ministry of Education (Kunduz Department of Education)	360	Said Zaino Agha	Archi	Kunduz	Establishment of township for Teachers	Transferred
6	Ministry of Education (Kunduz Department of Education)	360	Dashti Qhandari	Ali Abad	Kunduz	Establishment of township for Teachers	Transferred
7	Ministry of Education (Kunduz Department of Education)	120		Khana bad	Kunduz	Establishment of township for Teachers	Transferred