

LAND TITLE AND TENURE ISSUES IN TRANSITIONAL SHELTER RELIEF PROGRAMS¹

BY

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ABSTRACT

Although land title issues are generally always relevant consideration in housing development programs, these issues are now emerging as major obstacles in the implementation and sustainability of emergency and transitional shelter response programs. Land title and use issues are no longer peripheral issue to be addressed sometime in the future but now must be part of the shelter effort. Adding land issues to the shelter project adds a significant new dimension and level of difficulty which so far has been beyond the shelter program implementer's ability to deal. To help understand the expanded shelter dimension, this paper looks at: the relation of land title and land tenure issues to transition shelter programs; the structure that assures "good title" and tenure; and explores ways in which land tenure issues may be practically addressed in transitional shelter relief programs.

OH! WHAT A TANGLED WEB

In early January 2004, CHF International, as an OFDA implementing partner, undertook a shelter program in Kabul (called the Transitional Urban Support Program (TUSP)) designed to address the short- and long-term physical needs of residents and migrating families (including returnees and IDPs) in Kabul, improve their physical and economic conditions, and lay the foundation for a more lasting, demand-driven shelter assistance strategy. The program targeted 42,000 people (7,000 families) within Kabul. Needless to say land tenure became an issue.

CHF worked in District 7 including the district's informal areas. Informal areas are areas which are not in the Kabul master plan (*circa* 1970), and therefore all settlements in such areas are considered illegal. These areas generally do not receive city services and lack physical infrastructure. Approximately 60 percent of the population of Kabul lives in these "illegal" areas.

Ghada Ajami, the CHF project director nicely summarized the land tenure issues encountered in this project.

The main problems encountered during the project were the lack of proper documentation of land, property ownership and the settlements in the informal areas. We addressed the land property issue through a general meeting with the Wakils

¹ This paper was prepared for the November 4 - 5, 2004, shelterproject.org shelter meeting in Geneva, Switzerland and draws heavily on the Office of the U.S. Foreign Disaster Assistance experience in Afghanistan in 2004.

² Affiliation is for identification only. The views expressed in this paper are those of the author, and do not necessarily reflect the official views of the U.S. Agency for International Development.

(attorneys or representatives and the governor (the head of the district, a kind of mayor) of district 7.

The Wakils insisted that their certification was sufficient to serve as a proof of property ownership because they were from the area and their certification of ownership is based on consultation with and verification by the neighbors of the involved beneficiary. The Governor's concern was that the Wakils might provide false certifications for beneficiaries living in the informal areas. Initially an agreement was reached whereby beneficiaries qualifying for shelter would provide CHF a land ownership certification from their Wakil attested by the governor, or his designee, of district 7.

This process lasted only a few weeks before the governor declared that the municipality would no longer attest any land ownership certifications because some of the Wakils were providing land ownership certifications to properties in informal areas. The governor's concern was that the municipality's attesting sites in informal areas would give these land parcels (and even the area) a formal legal status, an issue that the municipality did not want to be involved in, especially during this period before elections and the uncertainty of how the elections would go.

Discussions on the issues were reopened and after long debates, the municipality again agreed to accept the Wakils certification as the only requirement for proof of ownership if the Wakils promised not to provide certification to informal areas. The Wakils so agreed. However, the system leaked and many families living in the informal areas ended up receiving shelter assistance based on the Wakils' certification.

These snafus did not go undetected. CHF has recently received a complaint letter from the municipality protesting the assistance to families in the informal areas. Our reply was that we based our assistance on the Wakils' land certifications as agreed by the governor.

Some observation made by the project director included:

- (a) Without other interventions, solutions provided to land ownership problems on a project basis are temporary. They last as long as they serve the political (and economical) interest of one party or the other.
- (b) CHF has limited the majority of its shelter construction work to non informal areas. The problem of the informal areas is still not resolved; a high percentage of families qualifying for shelter assistance are located in these areas and a majority of these families are either IDPs or recent returnees.
- (c) Failure to handle the land tenure and recognize the issues of the informal areas does not stop construction. Construction is still going on in these areas with or without aid agency's assistance. There are whole new urban areas mushrooming in the informal areas in Kabul at an incredible speed. This phenomenon can only create worse problems in the future. One unsettling aspect is that families in the informal areas actually paying money for "their" land to someone, and in reality they can be kicked out any time.

- (d) Destroying any construction taking place in the informal areas is not a solution. Stopping construction will just not happen, especially since Kabul at the moment is one of the fastest growing cities on earth.
- (e) Any long range solution will have to involve reform and improvement of the total land management system backed by a set of regulations and policies coming from the related government body, whether the Municipality of Kabul or the Ministry of Urban Development and Housing (MUDH). The local communities' contribution is to put pressure on the government to speed up the process of coming up with solutions to these systemic problems.
- (f) Prior to the elections in the fall of 2004, everyone in the government and the local communities are watching for the results of the presidential elections in Afghanistan. No one is willing to take the initiative of land system reform because they are not sure of the political consequences and don't want to bear the responsibility.

PERSPECTIVE

The perception of shelter and its use as a relief and development tool has been shifting:

- (a) Increasingly, our physical settings are failed or severely dysfunctional social orders (whether communities, districts, regions or states) which we enter because of a crisis -- whether man made (conflict, ineptitude, corruption, etc.) or natural (earthquake, flood, famine, etc.), and our shelter efforts are usually a part of a larger package of needs.
- (b) Our goal is no longer simply to "help out" by providing hit and run humanitarian shelter relief, but rather through our shelter efforts, to be a component part of a concerted effort to bring the failed society from its failed state to a self sustainable level of functionality -- a functionality that will enable these societies to participate in the world community of civilized countries and to adopt democratic principles and market economies. That is, our goal becomes a key part of a nation building effort.
- (c) For nation building efforts to work, we need two dynamics to operate. One dynamic is the long term development enterprise which operates at the top of the rebuilding ladder on a global scale putting in place the frameworks and infrastructures for a functioning society. These global programs, in a sense work, from the top down. The other dynamic is the relief and humanitarian efforts which operate at the bottom of the rebuilding ladder dealing with basic and local humanitarian needs on an almost individual basis. These local programs, in a sense, operate from the bottom up. If all works properly, at some point these two processes meet create the nation building end goal. Relief and development are not isolated sets of activities but must work together at the same time and in the same place. Relief work, and by implication, shelter work, prepares the society to accept the development products as these products come off the assembly line.

- (d) In the realm of shelter, we can no longer take a purely “roof-over-their-head” approach to our shelter relief programs. We must focus on the broader goal of building or re-building the failed or devastated populations being serviced by our shelter program. In this context we must view shelter not as four walls and a roof, but as a development energizer which puts into play all the efficient attributes of shelter while also fulfilling the immediate humanitarian objective of transitional shelter.

SHELTER DYNAMICS AND THE IMPACT OF LAND

As soon as we stop viewing shelter as only “four walls and a roof,” we begin to understand shelter as a complex of influential forces which connect to and impact a whole palette of social ingredients -- politics, economics, security, physical infrastructure development, psycho-social and health, democratization and promotion of government stabilization. All these ingredients are activated, in various degrees, when any shelter program is implemented. Understanding the mix of shelter ingredients at work in any particular shelter program can be daunting at times.

In this paper we look at how the land and land interests affect shelter dynamics and in turn impact the other social ingredients. We then look at what we minimally need to do with land interests to make our shelter programs work. But first, some orientation:

- (a) In the places where land title and tenure³ are issues, we generally find ourselves in a semantic jungle. Afghanistan epitomizes this problem. We need a lexicon that clearly defines the land terms and concepts we will use in the context of our actual program. Our definitions must be specific and once defined, we must all use them consistently or we can never come to closure on issues.
- (b) Shelter and land are bonded. One cannot have a shelter without land. The relationship among the shelter and the land and the shelter occupants is a product of the land system in place (feudalism, communism, collectivism, private ownership, etc.) and governmental stability. Regardless of the land system where we are working, our programs envision a private property system.
- (c) We need to distinguish between the physical thing (the shelter sitting on the land parcel) and property. The physical thing is not property. Property is a concept separate and apart from the physical thing and consists of the legal relationships among people with regard to the physical thing. One can have a physical thing without regard to any other social institution, but there is no property if there is no law. Property and law are born together and tied together. Tenure and title are legal concepts.

³ Title and tenure really come from two different systems. Tenure is a direct result of feudalism. It was the mode or system of holding lands in subordination to some superior. Tenure is not title and title was not really a concept in feudalism. The closest term to title in feudalism would probably be seisin. In the United States we never really had feudalism and the term title became to mean full, independent and fee ownership. But even this last statement is not a completely accurate one. Tenure is not a generally used term in the United States, but when used it is usually equated with “term,” as in the measure of the period of the right to possession. Under most modern legal systems title and possession are two independent concepts and a person can have one without the other. In undeveloped countries this distinction may not hold and the right to possession may in fact equate to ownership.

- (d) As our shelter focus moves toward the more integrated long term approach (a part of nation building), shelter moves from a mere physical thing (four walls and a roof) to a property and a higher plane of functionality. This higher plane brings into play the palette of social ingredients which includes political, economic and land interest issues.
- (e) Land is always political. Who owns land and how it is used are always political questions. This political nature of land is why all transitional shelter programs need to be in cooperation with the local governmental or political officials.
- (f) As our methodologies shift, the societies in which we work also adopt higher expectations -- expectations which are grounded in "nation building" concepts. Consequently, the leaders of the societies in which we work expect shelter in its "transitional" dress. They expect to see the complex of relationships inherent in shelter efforts to manifest themselves in positive outcomes benefiting their society -- they instinctively view shelter efforts as part of a development philosophy.

THE CIVIL LAND SYSTEM

There are two "reform" concepts of interest to us when we talk about land issues. They are: the civil land system and land reform; both have major governmental and political implications and both may be important in a given program. For our purposes we will use the term "**Civil Land System**" to mean the totality of land policies, laws, systems, procedures and methodologies that make a property system work. Table 1 outlines the basic components of a Civil Land System.⁴ Reform of the civil land system is not land reform. Land reform deals with the policies of who is permitted to own land, how land should be distributed among the society and how the government should distribute public lands. We will not cover land reform matters in this paper.⁵

TABLE 1

CIVIL LAND SYSTEM COMPONENTS

COMPONENT	ELEMENTS	SOURCE	COMMENTS
Measurement, mapping, and description	Geodetic standards / Systems of monuments and markers / standards of survey / maintenance of base lines / coordinate systems / plat standards /	Fundamental government policy.	There has to be some standard of measure uniformly applicable throughout the country. Each piece of land is ultimately connected to every other piece of land, so all parcel must be described in the same way.
Legal framework for transactions	conveyance acts / mortgage acts (secured transactions) / utility easement acts / forms of ownership	Enabling laws passed by the	Other topics that could be included are: mineral rights / land trusts / future interests / landlord-tenant / agricultural interests

⁴ There is no single, or right, way to categorize the parts of the civil land system. The one used here was intended to identify the components in such a way as to assist in analyzing the civil land system as it impacts transitional shelter programs and many of our larger development programs.

⁵ This decision does not mean that land reform is not an issue in transitional shelter programs. It very well may be but so far it has not been a debilitating force in the implementation of shelter programs. An example of where this issue could occur is where an agency wants to close a refugee camp and move the refugees to new houses being build on new lands. The decision to give the beneficiaries an interest in the new land is in the first instant a land reform issue. It may later become a land tenure issue.

	acts / authentication acts /	legislative body	
Recordation, public records administration and notice	Categorization / indexing / document storage and retrieval / document numbering / document coding / document imaging / party index / tract index / retrieval fields / public / field offices /	Basic governmental function	A critical component for "notice" and "evidence of title." The operation and use of the public record system must be such that everyone who needs the system can participate in the system.
Land use management	Zoning / building codes / special districts / historic preservation	Exercise of the public health, safety and welfare function	
Eminent domain	Methods of taking / determination of just compensation / methods of payment / procedures / who determines facts / utilities /	One of the sovereign powers	Important that this system be respected by the citizenry. The area goes to the heart of whether the country has a just government. But it is important that the system be efficient so that the government can operate.
Dispute resolution and adjudication	Pleadings / procedures / rules of evidence / fact and law determination / quiet title actions	Judicial branch function	Probably the most critical "service" component of the civil land system, this component lies at the heart of a respected system. This component is involved in all the others, since disputes can arise at any part of the system. The government should use the same system the citizen uses.
Taxation			The recording system ties to the land taxing system and helps to keep openness and fairness.

Clearly a shelter program can not address and ameliorate all the problems in each of these component areas. What we need to do is address only the immediate problems that affect our particular shelter effort while also putting in place the "hooks" to enable the advanced development efforts to mate with and "hook-up" with the efforts of the shelter program.

Table 2 illustrates the transaction steps which must procedurally occur for the components of the civil law system to link together to provide title or tenure security. There are a variety of methods, procedures and authentications which could be used in any specific jurisdiction or types of transaction to assure land security, but the important point is: whatever the system, it must cover all the issue indicated in the table.

BASIC TRANSACTION STEPS

No.	PROCESS	SYSTEM ELEMENTS	RESPONSIBILITY	COMMENTS
1	Land parcel unit is identified	Mapping system, surveys,	Geodesic authority	There must be an agency that is responsible for the infrastructure of mapping and surveying. All lands are identified under this system. There may be a question as to whether a coordinate system is necessary.
2	Grantee finds parcel of land and does a search of its status	All systems are required to work in unison for this process to take place.		The facilitation of this activity is the major purpose of the whole system. It is what we are all looking for.
3	Parties agree to convey a real estate interest	Real estate contract laws	Law making body	All advanced countries have laws relating to contracting for interests in real estate. The purposes are to protect against fraud and to provide some level of uniformity. Special subjects include residential, farm land, commercial.

5	Land parcel unit is legally described	Surveying, platting and mapping systems determine how parcels are uniquely and legally described, and how parcels descriptions relate to one another.		Uniformity, consistency and accuracy of legal descriptions are paramount. Only certain persons are allowed to write legal land descriptions; they are usually licensed land surveyors. However this function is done, the writing of legal descriptions has to be controlled, or merchantability and chaining of title will be tainted.
6	Interest to be conveyed is legally described	Real estate laws; legal system	Combination of law making and legal system	Legal description of the parcel and legal description of the interest in the parcel are two different but equally necessary descriptions. Descriptions of interest present different issues than descriptions of parcels. It is hard to control the writing of interest and it is usually left to the persons who are allowed to write legal conveyances to perform this task correctly. It should be noted that an error here usually puts a cloud on title that affects the parties and not others.
7	Conveyance is drafted	Real estate laws; legal system	Combination of law making and legal system	There needs to be some basic forms or formats for real estate conveyances. Only certain persons are allowed to write legal documents that convey interests in real estate. Usually it is a lawyer. There are minor exceptions, such as personal transaction, but sophisticated systems usually force a lawyer into the process at some point.
8	Conveyance is executed	Real estate conveyance laws	Combination of law making and legal system	There must be formalities of execution and delivery for the transfers to have finality and credibility.
9	Conveyance is authenticated	Real estate conveyance laws	Combination of law making and legal system	Interests in real estate transactions must have some independent form of authentication, since future persons will have to rely on the documented records that the person did what the document purports that they did.
10	Conveyance is file dated and recorded and receipt issued	Government record keeping / public welfare	A government established authority	Critical step in the process. You must have a respected system and record keeper. The system must be open, easy to use and freely accessible to all who need it. This is a government functions that requires detailed processing.
11	Conveyance is numbered, indexed and categorized	Government record keeping / public welfare	A government established authority	The recording process has two functions: one to have public publication of land status; and, two to have a "library" of documents that can be retrievable in terms of the real estate system needs. Therefore, there must be a useable data classification, storage and retrieval system and this requires coding at the time of document capture.
12	Conveyance is imaged original document disposed of	Government record keeping / public welfare	A government established authority	Usually the original document is returned to the grantee and copies are kept in a publicly accessible archive.

DEALING WITH LAND ISSUES IN SHELTER PROGRAMS

Anyone who has dealt with shelter in relief programs knows the complexity and difficulties of these programs. When we add land issues to the mix the problems become compounded for a number of reasons:

- (a) The kinds of social structures to support the civil land system and handle the land title and tenure issues involved in shelter programs are dysfunctional or do not exist.
- (b) Land title and tenure issues are usually central to the long term peace, stability and reconstruction process and therefore are relevant in other activities with possible different priorities. Firm decisions regarding land policy will be hard to generate at the shelter level.
- (c) Civil land system issues cannot be solved at one "minister's" office. Most issues require the participation, cooperation and decisions of a number of offices and officials all of whom may have differing political agenda.

So how do we deal with land issues in shelter? We answer this question with two examples of how the Office of U.S. Foreign Disaster Assistance (OFDA) tried to contend with shelter program land issues in Afghanistan:

- Appendix 1. This example is taken from a program (the tenure linked shelter program) which OFDA tried to develop with the Minister of Urban Development and Housing to provide 2,500 to 5,000 transitional shelters for vulnerable persons in Kabul, Afghanistan. The program was an attempt to take our originally planned shelter program and use it to impact the tenure issue. The proposed project never materialized because OFDA funding for Kabul was withdrawn.
- Appendix 2. This example is taken from the "Master Land Inventory in Kabul for Shelters (MALIKS) Program" proposal which was an OFDA project, in cooperation with the UNDP and the Minister of Urban Development and Housing, to establish an inventory of public lands suitable for tenure based transitional shelter programs in Kabul, Afghanistan.

CONCLUSION

Issues of land title and tenure can no longer be ignored in shelter programs. The failure to address these issues will make a shelter program unsuccessful both as a humanitarian response effort and as the first steps in a broader development program. The practical problem is -- how? We clearly need to work on new theories and methodologies.⁶ In the meantime:

- (a) Land and shelter cannot be separated, unless the only shelter programs we want are erecting tents.
- (b) We must include land tenure issues as a component of our shelter programs and we must include the requisite expertise on our program design and implementation teams.

⁶ Analyzing the development of other land systems may provide understanding and ideas for address the land tenure issues we will encounter in our shelter programs. Appendix 3 is such an analysis comparing the Afghanistan situation to English feudalism.

- (c) As part of the planning for a transitional shelter program, we need to model the civil land system of our shelter program locale and understand the basics of how this system functions. We need to specifically identify the key problem areas most affecting our program and build into our program sufficient strategies to offset the identified deficiencies.
- (d) We need to do only enough to assure that our shelter objectives can be met. Generally we should take an incremental approach and invoke support for anyone who can help. We need to make the tenure as sustainable as possible and follow the “actual” law as close as feasible. Shelter programs are not land programs. The basic problems most encountered will be: bad measurements, no of recordation, and lack of documentary evidence.
- (e) We need to have some working conferences devoted to this subject to help refine our thinking, sharpen our philosophy, identify useful methodologies and create a best practices handbook to address land tenure matters in shelter projects.

APPENDIX 1

TENURED LINKED SHELTER PROGRAM PROPOSAL FOR KABUL AFGHANISTAN

In late 2003 OFDA was preparing to under take some shelter programs in Kabul. It was quickly recognized that land tenure issues were a component of shelter programs which could no longer be ignored. To address this obstacle we decided to augment our planned shelter program and also address a number of important related framework issues which include land tenure security, zoning and planning, surveying and platting and earthquake mitigation. Our focus remained humanitarian shelter needs and we originally planned to construct 2,500 to 5,000 transitional shelters. The shelter recipients should be vulnerable persons who are without land interests and who do not have adequate housing. The basics of the “tenure linked shelter program” are:

- TASK 1.** Working with the Ministry of Urban Development and Housing and Kabul Municipality we will obtain a list of all lands which meet one or more of the following criteria:
- (a) are public and vacant;
 - (b) are public and basically unutilized but may have structures or facilities, whether usable or unusable;
 - (c) are public and partly utilized but have potential for additional uses or different uses;
 - (d) are informal areas being used in whole or in part, for living quarters, whether authorized or unauthorized, private or public; or,
 - (e) private lands that may otherwise meet our needs and maybe reasonably available.
- TASK 2.** Using the listing compiled in Task 1, we would select those tracts of land that could be used, in whole or in part, as potential transitional shelter sites. Once identified, these sites will be field assessed creating an assessment profile containing, as a minimum, the following information:
- (a) its topology;
 - (b) its best uses;
 - (c) its suitability for residential housing; and,
 - (d) its ownership status and potential for merchantable.
- TASK 3.** From the analysis of the results of Task 2, a final list of building sites will be determined and each building tract will be surveyed and plotted on a map of Kabul. If needed a tract may be internally surveyed into subtracts for purposes of identifying, or separating, important characteristics.
- TASK 4.** Once the land suitability issues are under control shelter construction would begin. Shelter construction for the project would be simple, decent and appropriate to the area. Construction would be patterned after the model used

by USAID/OFDA partner Shelter For Life in Baghlan province in response to the 2002 Nahrin. We would follow Sphere guidelines. The construction can be a combination of repair of existing shelters or new construction as the case and situation would warrant.

As part of the project, we would survey and plat each house project area so that each parcel could be uniquely identify and described. We would retain an Afghan land lawyer to help with the land related legal issues.

TASK 5. During the project, we will carry through a capacity building component to:

- (a) assist the Minister of Urban Development and Housing in the identification, assessment, classification and surveying of land for shelter and urban management programs.
- (b) assist the Afghanistan Geodesy and Cartography Head Office (AGCHO), in creating maps, establishing GIS databases and improving its geodesy functions.

APPENDIX 2

TENURED LAND INVENTORY FOR TRANSITIONAL SHELTER PROGRAMS IN KABUL

Realizing that the land tenure issue was stopping shelter programs in Kabul, and in all of Afghanistan to some extent, OFDA designed a land inventory program with the UNDP to establish lands that could fulfill the land tenure needs of transitional shelter programs. With such an inventory shelter implementers can design their shelter programs to tie land tenure and shelter response together to give beneficiaries a secured interest in the shelter.

The basic rudiments of the program were:

The controlling features of the MALIKS Project are:

- TASK 1.** Working with the Ministry of Urban Development and Housing and Kabul Municipality we will obtain a list of all lands which meet one or more of the following criteria:
- (f) are public and vacant;
 - (g) are public and basically unutilized but may have structures or facilities, whether usable or unusable;
 - (h) are public and partly utilized but have potential for additional uses or different uses; and,
 - (i) private lands that may otherwise meet our needs and maybe reasonably available.
- TASK 2.** Working with the Minister of Urban Development and Housing, the City of Kabul and the Afghanistan Geodesic and Cartographic Home Office (in conjunction with AMIS), and using the listing compiled in Task 1, each tract of land will be boundary surveyed and plotted on a map of Kabul. Depending on the specific characteristics of any given tract, the tract may be internally surveyed into subtracts for purposes of identifying, or separating, important characteristics.
- TASK 3.** Each tract of land established through Task 2, will be field assessed to create an assessment profile containing, as a minimum, the following information:
- (d) its topology;
 - (e) its best uses;
 - (f) its suitability for residential housing; and,
 - (g) its ownership status and potential for merchantable title.
- TASK 4.** Using the results of Task 3, all tracts that are candidates for residential shelters will be further review and categorized into three categories: category 1 – highly desirable; category 2 – potentially applicable; and category 3 – not recommended. To the extent necessary category 1 tracts will have additional survey and mapping.

- TASK 5.** The results of the project published in a land catalogue and the land data will be established in a GIS database and maintained at the Afghanistan Geodesy and Cartography Head Office (AGCHO), for use by anyone considering shelter in the City of Kabul.
- TASK 6.** During the project, we will carry through a capacity building component to assist the Minister of Urban Development and Housing in the identification, assessment, classification and surveying of land for shelter programs. The results of this task will be compiled into a handbook for government housing officials.

APPENDIX 3

COMPARISON OF

AFGHANISTAN LAND SYSTEM

TO

ENGLISH FEUDALISM

FEUDALISM	AFGHANISTAN
Feudalism grew out of the chaos of the dark ages. It was precipitated by the collapse of the Holy Roman Empire, invasion and overall economic stagnation.	Afghanistan's land system is a product of a tribal society, brutalized by 25 years of war and is one of the poorest economies in the world. Afghanistan has had 4 separate regimes in the last 50 years.
Feudalism formed under a closed agricultural economy, where land interests were controlled by a few landlords and subsequent interests were in the form of tenures based on servitudes connected to the land.	Few land owners, many tenants. Tenants hold their livelihood in sharecropping, but because the system favors the few land owners sharecroppers, never break loose from their tie to the land.
Political power was rural and based on landownership and dominated by warriors.	Afghanistan still basically has a rural, agricultural economy with warlords holding the balance of political power.
Title passed by ritual rather than formal deeds, because the population was largely illiterate and rules were largely driven by local custom and community knowledge and were often confusing.	Multiple systems with heavy dependence on local custom and a formal system in which few participate. Because of illiteracy most cannot understand the details. Afghanistan has four separate "legal" systems operating.

How did feudalism morph into the civil land system of today – through two major institutional developments: the evolution of statutory law and the rise of precedent setting common law courts. The common law started to put operational structure on the system about the time of the Magna Carta (*Circa* 1250 A.D.). Statutes were developed which systematize the civil land system and also "hand shook" with the developing court (dispute resolution) system.

When we look at the characteristics of the current state of the Afghanistan land we see some parallel with the development of our own land system. So what does the foregoing analysis tell us? It tells us that two Afghan land system areas of reform which should be high on our priority list are:

- (a) implementation of a dispute resolution process to handle the current "person-on-person" claims now, but which will mate with a developing, precedent setting court system.
- (b) develop a statutory land code that will replace the four current "law" systems for all future land activities.

Countermeasures (a) and (b) play off each other. As (a) works it moves the past land transactions into the new statutory system and as adjudication takes place the record refines the developing statutory system.