Proposed Strategy for Implementing the Revised National Land Policy of Afghanistan
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1. Introduction

ARAZI has developed a revised draft National Land Policy, which is expected to be deliberated upon and adopted shortly by the Government. The draft Revised National Land Policy aims to respond to the challenges faced by primary, implementable and crucial issues pertaining to land management and land administration. ARAZI believes that the draft National Land Policy that has been developed through adequate consultative process will provide appropriate guidance to manage and administer land in a coherent, efficient and equitable manner.

However, formulating and adopting a coherent and appropriate national land policy is not conceived as an end in itself but achieving a tool for reforming the land sector and achieving a transparent, accountable, efficient, equitable and efficient land management and land administration system. The key questions of implementation of the land policy pertain to the prioritization and realistically programming of the various measures envisaged by the policy. The measures envisaged by the policy include legislative actions, institutional measures including but not limited to forming a multi-sectoral committee on land use planning, and a host of administrative and technical program activities. Therefore, considering the seriousness of the social, institutional and legal issues related to land, drawing a strategy to facilitate the implementation of the revised national land policy in a coordinated and prioritized manner is imperative.

The successful implementation of the Revised National Land Policy will hinge upon the willingness and capacity of all concerned agencies to collaboratively implement the policy statements that are pertinent to their functions and responsibilities. Furthermore, different government entities have competing land use needs which require coordinated planning. Currently, land management and administration functions involve a number of government agencies with overlapping mandates. To ensure a coordinated and unified land management and to properly handle the paradigm shift envisaged by the draft national land policy in relation to tenure classification and management of public land the adoption of a strategic plan is imperative.

2. Prioritized Implementation of Crucial Policy Issues

The policy statements enshrined in the Draft Revised National Land Policy envisage implementing tools such as legislation or other appropriate administrative or technical measures. These measures will necessarily have to be prioritized in accordance with the dictates of the challenges and possibilities associated with the country’s land management and administration system. Put differently, all efforts that will be made towards implementing the land policy should be conceived as a process that involves a series of serious works on legislative, administrative/institutional, and technical issues rather than an event or few events at which decisions are made at different levels of the government.
2.1. **Legislative Measures Required to Implement the Land Policy**

The fact that the legislative framework for land requires reform is not debatable. Taking into account the complexity of land issues and the plethora of legislation that were proclaimed by successive administrations, reforming the existing legal framework on an incremental basis would have greater chance of success in terms of managing the legislative reform process and implementation of the reformed laws. Nevertheless, as a long term objective, ARAZI, in collaboration with other pertinent authorities, will aim to consolidate all land related laws into a National Land Code.

In accordance with the guidance provided by the revised national land policy, Annex I to this strategy document proposes a priority of order, responsible body and timeline to guide the incremental reforming of the legal framework for land based on the guidance provided by the Draft National Land Policy. The timeline and order of priorities is set by taking practical considerations on what can reasonably be done immediately and as a medium-to-long term objective given the necessary factors required to support implementation of the reformed laws. Moreover, ARAZI and all concerned government bodies must ensure that the National Land Policy provides the overall basis for all legislative reform measures.

According to the Revised National Land Policy, the key legislative measures required are indicated below:

### 2.1.1 Public and State Land Management Law

The draft policy provides guidance that the Government shall develop and proclaim a legislation that adequately provides for an effective institutional structure by which state and public land can be identified, recovered, evaluated for its value and specified use, conserved for designated purposes, distributed, and managed so that they may be utilized on a sustainable basis. In addition, the draft policy proposes an indicative list of rules and principles that should be incorporated in the proposed legislation.

### 2.1.2 Land Registration Law

The Government shall revise the existing registration law to establish clear operational rules and administrative framework for a coherent land registration system. The revised law shall also aim at providing a transparent system whereby property records shall be maintained in a transparent manner. The draft policy indicates some of the crucial issues that should be addressed in developing a land registration law.

### 2.1.3 Land Survey Law

In accordance with the guidance provided by the Revised National Land Policy, it is pivotal that ARAZI prepares a draft Law on Land Survey. The draft land policy provides guidance that the draft law should seek to facilitate the introduction of modern surveying technology into the existing system, rationalize the survey authentication procedures and
ensure that the procedures for demarcation and surveying for settlement purposes are conducted in a manner that is more participatory.

2.1.4 Community Land Management Law

The Draft policy provides guidance that the Government shall legislatively establish clear rules and procedures for the recognition, protection and registration of pastureland or other land owned by specific communities. The policy also underscores that the legislative measure shall envisage participatory processes in identifying and recognizing community ownership.

2.1.5 Urban Planning Legal Framework

The Revised National Land Policy states that the Government shall reform the existing legal framework for urban planning to redefine different levels of plans together with the accompanying roles and responsibilities of respective national and local agencies. The revised policy also provides guidance that revised legislation should provide for various types of development plans. Moreover, the revised policy provides guidance on the practical approach that should be followed in addressing the planning needs in areas that have developed in an unplanned manner.

2.1.6 Land Use Planning in Rural Areas

To address the lack of development control in rural areas, the draft policy provides a policy statement for the enactment of a legislation to guide and govern rural development – including housing and infrastructure development – in a planned manner. Such legislation needs to be designed and enacted with the main objective of preventing inappropriate conversion and misuse of farmland, and protecting the environment.

2.1.7 Legal Framework for Regularizations Schemes

The National Land Policy provides guidance for the development and enactment of appropriate legislation to govern the implementations of unplanned developments regularizations schemes.

2.1.8 Inappropriate Conversion of Agricultural Land

The National Land Policy provides guidance that ARAZI, in consultation with the ministries of Commerce and Industry, Urban Development and Housing and Agriculture, Irrigation and Livestock, shall take the initiative to propose a law to protect the country’s limited supply of fertile land which is fundamental for ensuring the food security of the entire population in general and the survival of those segments of the people whose livelihood depend on agriculture. The law shall aim at addressing the need to completely stop the unplanned acquisition or conversion of irrigable and fertile agricultural land for non-agricultural purposes.
2.1.9 Land Grabbing

The draft policy incorporates a policy statement that requires the Government to enact a law that establishes that any person who appropriates state owned, public, private, or community land shall not be accorded a formal recognition to the grabbed land or any real property build on the land. The revised draft policy also prescribes that the law shall seek to establish that any developer who acquired land from a grabber and subsequently developed it and transferred to other occupiers shall be obliged to pay over to the Government the whole proceeds of the sale of the grabbed land or face sequestration of his assets. Accordingly, the Government is expected to enact a law on land grabbing.

2.1.10 Sectional Title (Condominium) Law

There is no law in Afghanistan that governs situations and protects ownership where persons buy a part or section of a property or building (condominium) although there have been considerable investment in this sector. Therefore, a Sectional Title Law is needed to provide rules and principles to protect the sectional ownership of section owners and also to govern the ownership of the rest of the building that is commonly shared by sectional owners. In accordance with one of the key objectives of the land policy - which is to promote and ensure a secure land tenure system - the proposed law will seek to establish and protect the property rights of section owners by establishing that each section will be individually owned and the commonly shared parts of the building are owned jointly by all sectional owners in the building.

2.1.11 Land Tax Law

There is no property tax law applying to urban land in Afghanistan. The revised national land policy proposes to legislatively introduce progressive taxation system to discourage land grabbing and speculative hoarding of land and to promote productive use of land and equitable land market.

2.2 Main Institutional Measure Envisaged by the Land Policy

The key policy statement enshrined in the draft land policy with respect to the institutional framework for land pertains to land registration functions in the country. The draft National Land Policy provides guidance on how to rationalize the scattered organizational set up for land recording/registration. The uncoordinated land recording functions and responsibilities vested in different governmental entities affect property owners’ security of tenure and often result in multiple claims over one and the same property. This fundamental structural problem that has been sustaining disputes over land claims ought to be addressed as a matter of priority, in accordance with the guidance provided by the land policy.

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functions and responsibilities vested in different governmental entities affect property owners’ security of tenure and often result in multiple claims over one and the same property. This fundamental structural problem that has been sustaining disputes over land claims ought to be addressed as a matter of priority, in accordance with the guidance provided by the National Land Policy.

To ensure smooth and gradual transition of the land registry from the judiciary to ARAZI, the Government should form a committee to facilitate the transition process. The committee is expected to have the mandate to provide oversight for the implementation of the gradual transformation of the administration of the land recording from a judicial to an administrative function.

The formation of this proposed committee requires immediate Government action.

3. Coordinating Land Use Planning

At present, there are a number of government entities dealing with crucial land management issues such as land use planning. These entities, among other things, deal with issues pertaining to land uses for multiple purposes including agriculture, urban development, housing, forestry, livestock, infrastructure, industrialization, and other uses of land. However, there is inadequate coordination mechanism across different sectors with respect to land use planning and public land management. Therefore, in accordance with the guidance provided by the revised land policy, the Government should constitute an inter-governmental consultative body to coordinate and harmonize all competing land use needs of various government bodies and their planning thereof.

The formation of the inter-governmental land use planning coordinating committee should be viewed as an objective that requires immediate Government action.

4. Administrative Aspect of Land Policy Implementation

Implementation of the land policy presupposes an organization capable of executing the policy. Therefore, ARAZI will strive to build a policy implementation supporting capability within its structure. This will involve developing the skills and core technical expertise required to efficiently and timely implement the land policy. ARAZI will also strive to ensure that the policy implementation supporting unit within its structure will have adequate budget to execute its part of the strategy to implement the national land policy. The policy implementation supporting unit will have the following specific responsibilities:

a) Programming the preparation of legislation to be proposed to the Government in accordance with the land policy and in a prioritized manner;

b) Planning public awareness activities with the objective of encouraging stakeholder participation and facilitating community level involvement in the implementation of the land policy;

c) Monitoring progress in implementing the land policy;
d) Act as ARAZI’s focal point in coordinating the activities of intra-governmental activities in regard to implementing the land policy.
<table>
<thead>
<tr>
<th>No</th>
<th>Required Legislation</th>
<th>Order of Priority</th>
<th>Time line</th>
<th>Responsible Body</th>
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<td>2017, 2018, 2019, 2020</td>
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<td>ARAZI, in consultation with MUDH, Kabul Municipality and IDLG</td>
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<td>Law on Land Grabbing</td>
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<td>8</td>
<td>Revise the Law on Land Expropriation</td>
<td>Medium Term Objective <em>(considering the recently enacted decree on expropriation)</em></td>
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