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Some Problems of Land Registration in the Helmand-Arghandab Region

This memo is in response to your request for a brief outline of the problems associated with land registration in the Helmand, as they also relate to the Shamalan Project.

1. In the English translation of the Shamalan decree there is an arrangement by which farmers may lose a portion of their present holdings based on the difference between registered land for tax purposes and the combined holdings recorded in the cadastral survey (pp. 18, 21, 24). The difference, not clearly defined as to which should be larger, is referred to as "excess land", and the assumption is probably that cadastral records would be larger. If the total land (owned and excess) is between 20 and 50 jeribs, 10% of the excess becomes government property. Larger amounts apparently lose increasingly higher percentages of the excess land to the government although this is not spelled out in the English translation of the decree. Amounts of less than 20 jeribs will be recorded and taxes will begin to be paid on excess land; no less. From this we can see that farmers who have much more land recorded by the Cadastral Survey than that on which they pay taxes are in a position to lose sizeable amounts. This situation might have come about by understatement of original holdings for tax purposes or by the gradual edging over into government land, later to be recorded by the cadastral survey. Numerous farmers mentioned, in passing, the unofficial "fee" they were required to pay the cadastral teams to get their land recorded. There were variations recorded according to the wishes of the farmer. In some cases, for example, men recorded part of their land in their own names and other parts in those of their sons. This was done, apparently, before the Shamalan Decree and therefore must have resulted from other motivations. There have been verbal hints from farmers of a fear of some form of land reform being instituted by government which would lead to loss of land owned.

2. There are numerous disagreements between farmers on land ownership stemming from inheritance patterns, sales, leasing, and the gran system of lending money in exchange for the use of fields (long term). Many such disagreements, like feud situations, remain dormant for years with one or the other party in possession of the field. As occasion arises to gain an advantage, a move will be made by one of the parties. Those involved are

hesitant to take their claims to court because, as noted before, the uncertainties of court justice are normally tempered by bribe; once an official decision is made, one party is bound to lose its position of argument; and village communities generally prefer to maintain their disagreements within the group, and certainly not involve the government. Clearing titles in the process of land consolidation would subject the farmers to these uncertainties.

3. Closely related to the above, but on a more general level, direct involvement with the government is always a situation of uncertainty. The normal processes of registration or any other official paperwork requires unofficial payment to officials. These payments are expected and accepted as part of the system by both government and farmers but if there is no real advantage to come of the process, what is the point? Further, with the basic lack of trust on the part of the farmers, not without cause, they hesitate to willingly involve the basis of their livelihood, their farm land, in such uncertainty.

4. The government in general and HAVA in particular are reluctant to press land registration too aggressively since as a fait accompli the greyish areas of contested land claimed by both landowners and government would be finally resolved, removing a source of unofficial income to government officials who can claim payment from landlords where either no clear claim is available or it is publically accepted that the extra land farmed by a landlord is officially government.

5. Land registration as a knotty problem to resolve can be best understood as failing within two distinctive characteristics of the present social milieu in Afghanistan: to maintain the status quo, and avoid excessive legislation that may legalize away sources of income for petty government officials.