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A STEP BY STEP PROVISIONAL GUIDELINE TOWARDS COMMUNITY BASED PASTURE MANAGEMENT & INTEGRATED TENURE DEVELOPMENT

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**A STEP BY STEP
PROVISIONAL GUIDELINE
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The described approach is designed to lead to incrementally-implemented community based pasture management and within which process longstanding unclarity or contestation as to ownership and access rights are resolved to the satisfaction of all interest holders.

During the piloting and learning by doing phase of the approach, appropriate innovative tenure constructs and procedures will be arrived at, tested and refined. These will provide the foundation upon which stakeholders in the pasture bring the resource under improved regulation and management.

Following sufficient testing, mainly scheduled for 2006, the procedure should enter national rural land policy as a procedure to be widely adopted, with relevant principles and constructs accordingly embedded in new land law.

Several agencies and contexts will usefully be involved in funding and facilitating the piloting and refinement of the approach. The founding actor throughout however must be the Ministry for Agriculture, given its responsibilities in both natural resource management and policy development. All piloting therefore should proceed under its aegis.

SUMMARY OF STAGES & STEPS

STAGE I	GETTING PREPARED <ol style="list-style-type: none"> 1. Conduct survey to identify target pasture 2. Form Facilitation Team 3. Secure Support of Ministry of Agriculture 4. Collect basic information and tools
STAGE II	BEGINNING THE WORK <ol style="list-style-type: none"> 1. Introduce the process to local administration 2. Collect background information 3. Establish the itinerary & timetable
STAGE III	HEARING FROM STAKEHOLDERS <ol style="list-style-type: none"> 1. Listen and learn 2. Keep documents in perspective 3. Facilitate, not dictate 4. Structure the programme efficiently 5. Focus information collection 6. Visit the pasture areas referred to 7. Ensure that participants understand next steps
STAGE IV	FACILITATING NEGOTIATION <ol style="list-style-type: none"> 1. Team review of findings 2. Keep the authorities on board 3. Form the local Review & Planning Team 4. Facilitate negotiation and decision-making 5. Plan how to move ahead
STAGE V	SECURING CONSENSUS <ol style="list-style-type: none"> 1. Draft clear statement of recommendations 2. Arrange public meetings 3. Reach agreement 4. Prepare Final Agreement Form 5. Final agreement 6. Signing Ceremony 7. Provisionally register Agreement
STAGE VI	SUPPORTING IMPLEMENTATION <ol style="list-style-type: none"> 1. Form the Pasture Council 2. Assist the Council to make a Plan of Action 3. Produce maps of the pasture 4. Assist Council to Register the Agreement & Plan
STAGE VII	DOCUMENTATION & FIRST MONITORING <ol style="list-style-type: none"> 1. Document the process 2. Monitor early progress 3. Discuss winter area issues with pastoral groups

Table 1: Provisional Timing for Piloting the Approach

	STAGE	Duration in Weeks	MARCH				APRIL				MAY				JUNE			
I	Getting Prepared	2		x	X													
II	Beginning the Work	2				x	X											
III	Hearing from Stakeholders	2						x	X									
IV	Facilitating Negotiation	3								x	x	X						
V	Securing Consensus	2										x	X					
VI	Supporting Implementation	3												x	x			
VII	Documentation & First Monitoring	2														x	x	
		16																

Table 2: Participating Actors for Piloting the Approach

	FACILITATION TEAM	WEEKS	MARCH				APRIL				MAY				JUNE			
1	Tenure Specialist						x	x	x	x	x	x	x	x	x	X		X
2	Pastoral Adviser		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	X
3	Range Management Specialist							X	x	x	X							X
4	Ministry Ag. Representative				x	x	x	x	x	x	x	x	x	x	x	x	x	X
5	Provincial or District Rep.				x	x	x	x	x	x	x	x	x	x	x	x	X	
	LOCAL TEAM									x	x	x	x	x	x	x		

INTRODUCTION

1. This is a preliminary Guideline for Facilitation. A detailed Guideline as to viable process will be prepared following pilot implementation. The first pilot towards this is scheduled as a four-month initiative for implementation in the spring of 2006. Further testing under other pilot environments should continue in other areas and circumstances. Experience from the first pilot and subsequent initiatives will be fed directly into the new rural land policy development process being spearheaded by the Ministry of Agriculture, Animal Husbandry and Food (Land Commission/Rural Land Working Group). In due course, agreed new norms and procedures will be embedded in new rural land policy and law.
2. The approach described herein provides the natural entry point into a community based approach to rural land tenure and land use regulation and management

generally. It is this principle which needs early entrenchment in national rural land policy and which piloting will elaborate.

3. The purpose of piloting is not only to arrive at workable new tenure arrangements to satisfactorily resolve contested ownership and access relations on the pasture but to test the integral approach of bringing these resources under more localised and effective management. Facilitated community based land use planning is a critical tool in the process described. Most of the conflicts and conundrums facing communities and state can be satisfactorily unpacked and resolved in the context of the procedure. This ranges from matters such as the status of customary tenure and customary common property rights in particular to how public, private and government classes of land are defined, to how land rights are protected, land uses defined and regulated, including conservation practices and management regimes for vulnerable resources.
3. This approach does not seek to embrace all matters of rural landholding and management (such as affecting the farm and settlements). It targets the rural land domain considered the most problematic and contested, and which should strategically be the starting point of reform. This is the pastures. Nonetheless, the paradigms and procedures described below provide an ideal foundation for subsequent extension of community based processes to embrace all facets of rural landholding and management within the relevant socio-spatial domain (village, settlement, ward, manteqa etc).
4. Nor does this approach at this stage target all pastures in Afghanistan. Its focus in this first stage is upon pastures generally located in the northern half of Afghanistan, in and around and beyond the Hindu Kush. This is because it is these pastures where overlapping and contradictory interests by settled people and nomads is most acutely felt and where legal classification of rural land classes by tenure and type has proved most unsatisfactory (private, public and government land, and pasture, farmland and wasteland). These are the pastures where local communities and pastoral groups have historically vied for access, where customary and statutory principles and procedure most blatantly contradict and where the powers and role of Government as owner and administrator are also most tangibly in need of reform. Assisting all three parties to concretely arrive at new and more workable arrangements in respect of specific estates (pastures) is the objective of this exercise.
5. Access by pastoralists to some of these pastures they have customarily used during the last century during spring and summer is currently denied by settled communities. The approach described below is built around circumstances where settled communities are agreeable to renegotiate pastoral access. Nonetheless, many of the steps described herein are equally applicable to the former cases, given that members of settled communities also need to clarify their internal land relations in respect of the pastures and the way in which these are accessed, used and regulated. Moreover, through concretely defining if and where their customary domains begin and end, residual public lands will be better identified. It is expected that at this point, a growing number of local communities will feel more confident and willing to entertain renewed seasonal access by pastoral groups in especially those adjacent public domains, albeit on new terms and conditions.
6. Complex, contradictory and contested conditions afflict the pastures of Afghanistan. In broad terms political, class and inter-ethnic conflict builds directly upon (a) classical contestation between settled and nomad peoples over resources and often

corollary arable and pastoral interests and (b) founding failures or shortfalls in 20th century national land policy. More specifically problem areas include -

- i. Contradictory custom and statute relating to the scope and ownership of pasture
 - ii. Uncertainty in the possession and powers of the State over pasture designated as public land
 - iii. Antagonism between settled and nomadic communities as to the ownership and use of pastures, built upon a history of land policies which have failed to sufficiently recognise and protect local tenure interests in proximate pastures
 - iv. A more general absence of modern tenure constructs through which ownership and access relations may be properly expressed and rooted
 - v. Changing use of lands previously designated as pasture through expanding cultivation
 - vi. The absence of modern pasture governance norms which allow for locally based and accountable regulation and management of access and use, and
 - vii. Commander and elite capture of pastoral resources in some areas to the disbenefit of both traditional local and seasonal users.
7. Whilst most of the above have existed for many decades, ill-effects have been held in check by effective Government authority and rule of law. Restitution of strong authority and rule of law are highly desirable but on their own will not resolve the confused and constrained land relations on the pastures. This will only be achieved through a thorough reconstruction of viable land relations on the pasture and related pasture management norms.
8. The objective of the approach described below is to achieve this, not through theoretical consideration, or borrowing of reforms from elsewhere, but through practical local exploration and testing of new constructs and processes by selected target communities. This practical and participatory approach has these benefits –
- i. It forces resulting decisions, norms and procedures to be simple rather than sophisticated and cheap and easy to implement; participants will not accept or adopt expensive or complex solutions they cannot control;
 - ii. Public ownership of the decisions and norms will be high, not possible when decisions are handed down from the centre;
 - iii. Empowerment towards local authority and responsibility for the pastures will be directly enhanced;
 - iv. The opportunity for disputants to deal with each other directly to arrive at practical solutions will better able documents to be set aside and compromises to be made; and
 - v. The workability and sustainability of agreements can be practically tested.
9. The approach has does not deal narrowly with the ownership of pasture. In the process of unpacking overlapping or conflicting interests in pastureland, it also does the following –
- i. Resolves disputes over the pasture, often bitter and sometimes violent
 - ii. Integrates land ownership and land use planning and management interests

- iii. Puts a tangible institutional foundation in place for future regulation and management of the pasture (and which may be used to also regulate and manage forest and other assets as associated with the pasture)
 - iv. Enables management to be decentralised to the community/user level, greatly enhancing efficiency and accountability
 - v. Enables Government to reconstruct its role as facilitator, adviser and watchdog of good practice
 - vi. Draws a much-needed distinction between ownership and access interests, enabling contesting parties to arrive at more workable modus operandi
 - vii. Clarifies the existence and nature of community pastures (common property) and provides for this if appropriate
 - viii. Facilitates the emergence of practical rules and practices limiting environmentally degrading expansion of cultivation or other uses of pastureland.
10. The expectation is that this approach will in due course be entrenched as the normal procedure through which contested access and poor management of pastoral resources are overcome. Piloting of the approach is essential, both to test its validity and to refine emergent paradigms.

One trial is insufficient for this testing. It is expected that up to five pilots will need to be fielded. Each will operate in slightly different circumstances and accordingly attend to slightly different requirements.

11. A final note on terminology: the use of 'community' in this Guideline may refer generally to all persons who have an ownership and/or use interest in the pasture under review – both those who have used the pasture seasonally and members of settled local communities. Where distinction is necessary, the former are referred to as 'pastoral groups' and the latter as 'settled communities'.

STAGE I GETTING PREPARED

STEP 1

CONDUCT SURVEY TO IDENTIFY THE TARGET PASTURE

- 1.1 Should the pilot site not have already been determined, these basic criteria should be applied to identify this -
- i. A safe area to work in
 - ii. Local commanders have not pledged to prevent seasonal use of the pasture by pastoralists and do not exercise total control over local community decisions
 - iii. Settled villagers are willing to review ownership, access and use of adjacent pastures and to include consideration of seasonal access by pastoralists
 - iv. Pastoralist groups with past access are willing to negotiate with settled communities as to seasonal access
 - v. Poppy production on the pasture is limited or does not exist.
- 1.2 The size of the pasture could also be a factor. Beginning in a small pasture and which may be addressed in its totality is ideal. This will not however commonly be the case.

The Team will have to select one part of the pasture to focus the pilot on, once in the area (Stage II).

- 1.3 To find out this and other information listed above the surveyor should ensure that one third of villages adjacent to the pasture are visited and meet with –
- i. At least some members of community shuras
 - ii. At least some members of the Pastoralist Shura in the District if one exists
 - iii. The Provincial Governor and District Head
 - iv. Provincial and District heads of Ministry of Agriculture, and as necessary
 - v. Meet with the MP, local notables or commanders.
- 1.4 The survey may be conducted informally, with information as to intentions kept short and clear –
- i. Government is interested to see the status of pastures clarified to both end conflicts and to bring pastures under clearer, more local and more effective management
 - ii. Government wants to do this with the people to whom the pasture most matters: local communities and seasonal users
 - iii. It is looking for a suitable place to start this process
 - iv. The main criterion is that all those involved need to be willing to look at the access and management of the pasture with fresh eyes, to meet with each other even where there has been a history of conflict, and to be prepared to reach agreements among themselves
 - v. Experts from outside Government will assist in the process.
- 1.5 The surveyor will also need to establish optimal timing for implementing the exercise. S/he therefore needs to find out at which time is –
- the area fully accessible
 - the pasture itself accessible, and
 - seasonal user groups (pastoralists) in the area and therefore able to participate fully in the review and negotiation stages.

STEP 2 FORM FACILITATION TEAM

- 2.1 Particularly in the piloting stages of this approach (rather than in replication) the Team must include –
- (a) An expert **LAND TENURE ADVISER** as Chief Facilitator
This is necessary to guide both the Team members and local participants towards new tenure norms and procedures that will resolve conflicts and meet requirements. Knowledge and experience will be required in these areas in particular –
 - i. How ownership and access rights may be clarified and separated as necessary
 - ii. Customary common property rights are best constructed
 - iii. Rights that are understood by their holders as private property rights may be reconstructed as necessary

- iv. Mechanisms for devolving authority over pasture access and use to local community or user levels in workable ways (community based tenure management)
- v. The current classification of all pasture as public land may be clarified and balanced with local and user interests without loss of critical functions of State over these domains.

The Land Tenure Adviser may be recruited to the Team on a short-term basis, required in particular in Stages III and IV.

(b) FACILITATOR

The Land Tenure Adviser is also responsible for training a counterpart Facilitator (national) to lead in follow up and replication processes. That person - or two persons where an external counterpart adviser (e.g. Pastoral Adviser) is part of the Team - should have maturity and experience in rural development and empowerment. S/he need not have specific facilitation skills or tenure knowledge as this will gradually be acquired during the piloting process. The individual must however be selected with his/her availability to follow up developments and replicate the approach elsewhere in mind.

(c) GOVERNMENT REPRESENTATIVE

This individual could derive from the Ministry of Agriculture, Animal Husbandry and Food (MAAH) or be appointed by it. The same requirement applies that this representative be available in the future to follow through in the pilot case (or cases) or in replication. This person should be senior in the Administration, carry authority and be committed to the process. S/he should have substantial field experience.

Once the site is selected and work begins a Government representative from the province and/or district will be added to the Team. This person will likely derive from the MAAH.

(d) RANGE MANAGEMENT SPECIALIST

The services of this individual will be on short-term basis, invited to accompany the Team in those exercises which involve direct review of the pasture condition. S/he will be responsible for offering technical advice to the Team and participants as to how pasture condition may be sustained or improved. It is likely that assessment of damage to the pasture through cultivation will be a focus in this first phase.

2.2 TEAM LEADERSHIP

Leadership of the Team needs to be established. The Leader must be a Team Member who is either a national and/or has a stable base in-country as a technical adviser or in other capacity. In the event that the Leader is not a national, the senior Ministry of Agriculture representative (see below) will serve as direct counterpart to that person.

2.3 A 'COMMISSION'

With the blessing of the Minister, the Team may be referred to in the field as a Commission. This will heighten its credibility locally. This will also facilitate review of documents and records by the Team, if necessary.

2.4 TRANSLATION

During the piloting of this approach, it is likely that several Team members will not be Afghans, special expert having been sought. In this case it is imperative that the Team

have access to a highly competent translator. Misunderstandings due to insufficient language expertise cannot be afforded.

STEP 3

SECURE SUPPORT OF MINISTRY OF AGRICULTURE

- 3.1 The support of the Ministry for this approach is essential. This is because -**
- i. The authority of the Team as Government-endorsed will be important to participants**
 - ii. The main purpose of the exercise is to identify or devise solutions to conflict over pasture access and use that will be taken into the broader policy and law making process, to be spearheaded by the Land Commission/Rural Land Working Group under the Ministry**
 - iii. The Team may require ready access to the Books of Ownership and Land Use maintained by the Land Administration Department (Amlak) to examine how those records reflect tenure in the subject pasture**
 - iv. The Team may require introduction to the Geodetic Cadastre Agency and other bodies at some point**
 - v. The Team will require formal introduction to the Provincial and District Administration**
 - vi. Political blessing for the exercise is required from the Minister of Agriculture, in charge of land matters.**
- 3.2 Specifically, the Minister and Ministry needs to be apprised of the fact that the exercise will be futile if it cannot agree that –**
- i. The selected representative on the Team is operating on its behalf and should have the authority along with the Team in general, to consider and approve whatever compromise agreements are arrived at by the disputing parties**
 - ii. That while it shall maintain full authority to review, comment upon and recommend in relation to the decisions and agreements reached by the participants, the Ministry will not unduly interfere or obstruct their implementation**
 - iii. It is likely to be the case that new agreements may override documented tenure and access in respect of that pasture**
 - iv. That the decisions relating to regulation and management agreed by those disputants may require the Ministry to surrender some part of its past authority over that pasture to the local community and associated seasonal users, albeit conditional upon their protection of the pasture against degradation; and**
 - v. That dependent upon demonstrated sustainability and success of the new norms agreed to, that these will be taken fully into account in the process of development new national rural land policy and administration.**
- 3.3 The Team should also ensure it consults with the Ministry of Frontiers and Tribal Affairs, which holds a mandate relevant to pastoral groups.**
- 3.4 Contact with the Ministry of Rural Rehabilitation and Development (MRRD) should also be made to secure its support.**
- 3.5 All of the above should take place within the context of the sitting Rural Land Commission/Rural Land Working Group.**

- 3.6 On its part, the Team should pledge to this Commission that it will report regularly to it on findings and recommendations.

STEP 4

COLLECT BASIC INFORMATION & TOOLS

- 4.1 The Team Leader will be responsible for –
- i. Collecting demographic data on the settled communities surrounding the pasture
 - ii. Collecting up-to-date maps of the area at largest scale possible and including land cover and settlement, and
 - iii. Establishing the transport and security arrangements.
- 4.2 The Team Leader and Facilitator will also be responsible for taking the necessary steps to allow mapping of the pasture and sub-areas and related information as agreed through the process. This includes –
- i. Arranging purchase of at least one GPS and familiarising the Team with its use
 - ii. Procuring the necessary mapping programme to enable the GPS data to be directly downloaded onto relevant maps, or making arrangements with a relevant technical officer or agency to receive such information and to deliver resulting maps on the Team's behalf.
- 4.3 The Government representative on the Team will be responsible for informing the Provincial Governor, District Governor, Kuchi Shura and other identified key contact persons of the expected date of arrival in the area. These persons will have been identified during the survey stage above.

NOTE: The steps listed above may take place in any order or be undertaken concurrently depending upon what is convenient or logical.

<p>STAGE II BEGINNING THE WORK</p>
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STEP 1

INTRODUCE THE PROCESS TO THE LOCAL ADMINISTRATION

- 1.1 The Team will visit the Provincial Governor and the Provincial Agricultural Officer. The purpose of these visits will be to –
- i. Brief those persons on the proposed process, objectives, timing and anticipated outputs
 - ii. Secure their support
 - iii. Agree at which points the Team will report back to these officials, and
 - iv. Discuss, agree and appoint a suitable person from the Administration to serve on the Team ('Local Representative').

STEP 2**COLLECT FIRST-LINE LOCAL INFORMATION**

- 2.1 The Team will report to the District Governor and District Agricultural Officer. If not already provided in the person of the Local Representative, the Team will request identification of a knowledgeable person to guide the team in the area. This may be the District Agricultural Officer himself or one of his staff.
- 2.1 The Local Representative will be responsible for organising meetings with other officials, the Member of Parliament, local leaders/members of the District Shura, members of the Pastoralists Shura (if it exists) and any other relevant informed persons who may be able to provide useful information on the history, ownership, access and use of the subject pasture. CHECKLIST I below provides a checklist of the information to be secured.

**CHECKLIST 1
BACKGROUND INFORMATION ON THE TARGET PASTURE**

- Confirmation of exactly which settled villages border the pasture
- General information on the history of these villages (old or new)
- Their inter-associations as distinct clusters
- The extent of local livestock keeping today and in the past
- Understanding of the history of the ownership, occupation and use of the pasture
- How access to the pasture is traditionally determined and regulated
- Problems as relating to the pasture as perceived by settled population
- The existence, roles and powers of the commanders in respect of the pastures
- The history of cultivation of the pasture if this has taken place
- Identification of pastoralist groups have in the past accessed the pasture Which (clan name, leader, number of families, place of origin)
- Subdivision of the pasture into sub-areas of ownership or use, if relevant
- The timing of seasonal use
- Numbers of pastoralist animals which traditionally used the pasture or parts thereof
- History of pastoralist access: began when, through what arrangements
- History of conflict over access: when, why and how is it manifested today
- The way in which the pasture is sub-divided by pastoralists among themselves
- The mechanisms for making and reviewing these decisions
- Points of consultation between pastoralists and settled communities
- Names and positions of notable persons, opinion-leaders, shura leaders in each community (settled and seasonal)

STEP 3**UNDERSTAND THE PASTURE**

- 3.1 Some pastures are very large and it will not be viable for the Team to address it all at one time. In these circumstances it will be necessary for the Team to identify one part of the pasture to implement the pilot.
- 3.2 This area should have a socio-spatial logic of its own. In these cases, information on the sub-division of the pasture (as included in the checklist above) will have special important. This sub-division will be defined in several ways, such as –

- i. Natural subdivisions which may arise through different ecological zones
 - ii. Natural subdivision arising from geography, such as where tops of ridges representing boundaries among different parts of the overall pasture
 - iii. Logical subdivisions from the standpoint of surrounding communities, in which each group of communities tends in practice to use and exercise customary domain over separate areas, that are proximate to their settlements
 - iv. Purposive customary norms which define the greater pasture in certain ways, with perhaps two zones, near and far, used at different times for different purposes
 - v. Subdivision of the pasture by seasonal visitors, who have traditionally made arrangements among themselves to share out their access to limit overstocking in one area, and
 - vi. Administrative distinctions, such as relating to sub-district areas.
- 3.3 It is likely that subdivisions by some or even most of the above will be consistent. The residential social community will almost certainly have established domains distinctive to themselves that have natural subdivisions as well as distance as a basis. Pastoralists may have followed these same subdivisions, linking their use areas with particular zones and/or identification by settled community.
- 3.4 This information may be collected at district level but will need to be double-checked during review (Stage III). However the purpose here is to identify a pilot area on the pasture that has a workable logic of its own.

STEP 4 ESTABLISH THE ITINERARY AND TIMETABLE

- 4.1 The Team will then prepare its plan for visiting every community associated with that part of the pasture and every pastoral group which is known to have interests in that area (and see point 2 in next Stage).
- 4.2 The general objective (and a main factor in focusing upon sub-parts of a very large pasture as necessary) is for the Team to be able to visit each and every community. In exceptional circumstances and where time is limited, this may not be possible. In such cases the Team should aim to cover no less than half the settled communities and seasonal user groups in its initial review (Stage III). Representatives from those communities and groups not covered may be invited to join the negotiation process (Stage IV).
- 4.3 The Local Representative and/or local Guide should ensure that it has the names of key contact persons in every settled community and mobile group and where they may be found.
- 4.4 The Team should prepare a statement in Dari and Pashtu which succinctly describes the purpose of the pilot, how it will be conducted and lays out clearly how the contact person should ensure that all sub-sectors of the community or group are fully informed

and invited to participate. This short statement may be taken by the Guide to local leaders.

STAGE III HEARING FROM STAKEHOLDERS

STEP 1 LISTEN AND LEARN

- 1.1 This Stage is when the real work begins. The objective is to hear directly from those who have tenure interests in the pasture. Many of these interests overlap each other today and some directly conflict or contradict each other. Unpacking these interests and re-ordering them in a way that is acceptable to the majority of holders is the objective of the negotiation (Stage IV). At this Stage, the Team is educating itself, not offering opinions.
- 1.2 First, the Facilitation Team needs to fully understand the origins and nature of the rights of claims presented. It also needs to understand what is happening to the pasture itself. These are the objectives of this Stage.
- 1.3 'Tenure interests' include rights of ownership, access and dominion. Dominion refers to those interests that stem from living in the area and considering the pasture as part of 'our land', or 'our place'. Not all of those who share rights of dominion actively use or have been allocated rights to the pasture. They will be concerned however to see the pasture retained intact and to be used beneficially.
- 1.4 Tenure interests will be found to be rooted in either custom or formal systems and regulated accordingly. Customary interests may be broadly referred to those that arise through community mechanisms. They are granted or recognised, and sustain validity simply because community consensus agrees to their existence. However, the Team will need to be aware that customary rights will not necessarily be limited to those held by members of settled communities. Seasonal users may hold rights of ownership or access which have their origins in agreements, sales or grants made by members of the settled community.
- 1.5 Formal interests refer to those which are today expressed and sustained through Government systems. This may occur in the form of information found in Government Registers of one kind or another (Taxation Records, Registers held by Amlak Department, the Cadastral Register, Court Records). Many of these interests have origins as customary rights. Others have been directly allocated by Government bodies at one time or another. Members of both settled communities and seasonal groups will hold a range of formal land interests. Those of local communities will be fewer as most records of settled persons refer to farm and house lands. Records as to ownership of the pasture may be expressed designated simply as community land. Or, various landlords may be registered the pasture in their own names. Or, the pasture may not be registered at all.
- 1.6 It will be seen from the above that there is no simple divide between customary and non-customary rights, unrecorded and recorded rights. Nor is it correct to divide these rights as customary and legal rights. Both have a legal basis: the one under customary law or religious law, the other under statutory law (acts or edicts made by

Administrations). It will therefore be easiest for the Team to simply refer to all claims as ‘interests’ that need to be considered. This does not include of course interests or claims which are shown to have no legitimacy or support in customary, religious or formal law.

STEP 2

KEEP DOCUMENTS IN PERSPECTIVE

- 2.1 The Team will be quickly inundated with not just opinions but documents, their owners using these to illustrate their claims or positions. Documents cannot be ignored altogether. However the Team needs to keep their function in context and needs to help holders also keep the documents in proportion. This is because documents cannot be relied upon for the solutions: they have not done so in the past and are often the trigger to disputes – which the Team now wants to resolve.
- 2.2 There are five reasons why the Team should endeavour as far as possible to facilitate solutions and agreements which are *not* founded upon examination of documents or formally registered interests:
- i. Legitimate interests that need to be considered are not always registered, formally recorded or even described in written documents.¹ This is particularly so in respect of common properties – those lands which are held in undivided shares by a group of persons or whole communities.
 - ii. Afghanistan law does not protect only formally registered or allocated rights. On the contrary statutes from 1965 acknowledge the existence of customary interests, most of which are unwritten and unregistered in respect of pasture. It would be illegal and unjust to only consider evidence of ownership or derivative rights that are presented in the form of formal documentation or court records.
 - iii. Much of the contestation relating to pastures stems from the contradictory evidence of rights provided by documents on the one hand and unwritten interests on the other. Formally allocated rights often overlap and directly conflict with unwritten and mainly customary rights. No progress may be made by relying only on records: deadlock exists because of this currently and deadlock will remain if only documents are taken as the basis of decision.
 - iv. Some documents are in any event counterfeit. Or they are insufficiently detailed as to description of areas allocated, the nature of the rights allocated, their term, and the basis of the allocation, to be useful.
 - v. The objective of this exercise is to enable all claimants or interest-holders to set aside their documents and come to new agreements as to the nature and exercise of rights to the pasture. It is consensus that must be strived for and made the basis

¹ This approach is concerned to facilitate resolution of ‘legitimate’ interests, which may or may not be also legalised interests. Legitimate means that the claimed right or interest has majority social support as valid. Although legal in the sense of having official issue or documentation, some registered rights have insufficient legitimacy to be sustained: the wider community of interest-holders may not rate them as worth upholding, at least in their current form. It should not be assumed that all pastoralist rights are illegitimate: members of settled communities may concur that pastoralists should have access to pastures but not under current arrangements which derive from biased policies of the past which they cannot support; they may be prepared to accept pastoral use as limited access rights, regulated in part by themselves. Pastoralists in turn may be prepared to acknowledge local ownership of the pasture, provided they may be granted stable seasonal access. Local community members may not consider documented entitlements which elites among their midst have secured over the pasture, even if these are court-registered. This would be because they also do not consider these rights to have been legitimately obtained or to be just.

of the ordering of interests. Although this consensus and the precise details of each decision will be recorded and in due course registered, it is the consensus itself that will determine the decision.

STEP 3

FACILITATE NOT DICTATE

3.1 The manner in which this participatory review is conducted is critical.

The Team must be and present itself as –

- i. Rigorously neutral**
- ii. Open to new paradigms, setting aside embedded conventions (such as ‘all land belongs to Government’, ‘documents carry more weight than undocumented interests’, ‘poor people have no interests in pasture if they don’t own livestock’) that inhibit resolution of the conflicts**
- iii. Willing to hear equally from contesting parties**
- iv. Holding authority to facilitate decisions**
- v. Patient of constructive thoughts, and impatient of aggression**
- vi. Capable of sorting fact from fiction**
- vii. Operating as a genuine team, unified in its approach, and**
- viii. Totally committed to helping the interest-holders to find practical solutions themselves, serving as facilitator not decision-maker.**

3.2 The Team should –

- i. Encourage interviewees to offer constructive suggestions, not just complaints**
- ii. Ensure that tempers are kept cool, including abandoning discussions which become overheated**
- iii. Double-check information repeatedly, asking the same question from a range of sources**
- iv. Ensure that the day’s discussion is fully documented (Team members could take responsibility for this on different days)**
- v. Guard against asking and receiving information only from stronger or wealthier participants and leaders, being vigilant to involve obviously poorer persons in the community including the landless, tenants and workers**
- vi. Endeavour to meet in at least half the cases with women representatives, and**
- vii. Adopt empowerment techniques, consistently encouraging stakeholders to say how they will support solutions, encouraging participants to loosen their dependence upon Government for decision-making and action.**

STEP 4

STRUCTURE THE PROGRAMME EFFICIENTLY

4.1 It is suggested that the Team work with settled communities and seasonal visitors (pastoral groups) separately. Representatives will be brought together in Stage IV.

4.2 The Team may begin with either settled or seasonal communities, or ideally inter-mix the two so that neither group feels favoured.

- 4.3 The Team should develop a routine which enables communities or groups to have at least one day's warning of the Team's arrival. The Local Representative and/or Guide should be responsible for this, sending messages to identified leaders. This communication should ensure that the addressee is clear as to the purpose of the visit and understands the importance of informing the entire community. The written statement should also be left with the contact person (see Stage II.2 above).
- 4.4 The Team should find out from the outset of entry into a community how it defines itself socially and spatially and with what composite hamlets/villages, to ensure that a cross section of representatives is included (e.g. including members of satellite workers hamlets, not just landlord villages).
- 4.5 The Contact Person in the community or group should be asked to indicate exactly where the Team should present itself, and who will be present at the time. The Contact Person and Team Guide/Local Representative should agree a provisional timetable of meetings.
- 4.6 The number of meetings and participants will vary widely. Among distinct pastoral groups, a single meeting may be sufficient with all or most families attending, including women.

In settlements, the Team may find it more constructive to meet with different interest groups separately; meeting alone with the main landlord families, the traditional Community Shura and the modern Community Shura if it has different membership, a group of permanently resident tenants and workers, livestock owners, and women. Experience will quickly guide the Team as to the most productive arrangement.

Where communities are many it may be most efficient to meet with selected representatives altogether.

STEP 5 FOCUS INFORMATION COLLECTION

- 5.1 Time with each community will be limited and needs to focus as tightly as possible upon the pasture. The following Boxes provide subjects and examples to structure the meetings. The focus will be different in settlements and pastoral camps.
- 5.2 Administration of a rigorous questionnaire should be avoided at all costs. This is not a survey but a process of bringing to light enough information to found constructive reassessment and planning and to lay the basis for negotiation among contesting parties if and as needed. These contestants may be settled-nomad groups and/or may be different sectors within the settled community itself. The Team needs to gather enough information know better where constraints and opportunities lie. Participants need to clarify their own positions and begin to bring their understanding into a common arena.
- 5.3 Although questions are listed below as triggers, discussion mode should be sought. The Team should hear out those who have useful information to impart. It should take note of –
- i. Contradictory facts presented
 - ii. Differences in opinion by wealth and position in the community
 - iii. Differences between livestock owners and those without livestock

- iv. Differences between those who are cultivating the pasture and those who are not
 - v. How community members order the different forms of pasture ownership and how these conflict
 - vi. Types of pasture that are/are not accepted as belonging to Government or 'Public Land'
 - vii. Local definition of tenure: do these constitute ownership of the resource of just rights to use it
 - viii. Local views as to the composition of pastoralists rights to enter and use the pasture during spring and/or summer
 - ix. How far attitudes towards settled persons of pastoralist origin are different from those towards seasonal pastoralists
 - x. How far the issues associated with pastoralists have more to do with their acquisition of farmland than their use of the pasture
 - xi. Points of possible compromise.
- 5.4 The Team should also note which persons during the discussions present themselves and their views in ways that could be helpful to the negotiation stage and the extent to which they appear to have the confidence of the wider community.

STEP 6

VISIT THE PASTURE AREAS REFERRED TO

- 6.1 Information is generally easier to obtain, and generally more accurate when it is obtained in smaller groups and on-site. Therefore the Team will need to be opportunistic as to how much of the above information is collected in meetings and how much is obtained on the pasture.

It is important that the Team does not spend so much time in group meetings or interviews in villages that it runs out of time to visit the pasture itself.

- 6.2 If pastoral groups are already located on the pasture, it will be easy for the group to elaborate exactly where it currently and in the past grazed animals. Where the pastoral group has been disallowed entry into the pasture, then this exercise will have to await until the negotiation stage.
- 6.3 In the case of settled communities, the Team will have to agree with representatives as to who exactly will take them to the pasture areas being referred to. A cross-section of interest holders should be included, but the group kept small.

CHECKLIST 2 PASTURE INFORMATION TO BE GATHERED IN SETTLEMENTS

DEFINITION OF THE PASTURE

- How does the community define 'pasture'?
- What is the local name for pasture and are there different names for different types of pasture or different names for areas under different use or ownership?
- Where exactly are these pastures? Describe.

TENURE

- How are these areas owned? Who exactly are the owners?
- If there are private owners, how did they acquire the land? How much pasture do they own?

- If there are community owners, what does 'community ownership' mean: all members of the community have an equal share, or just some sections of the community?
- If you own no livestock, do you own a share in the community pasture?
- If you are a short term worker on farms in the community and own sheep, may you take your animals freely to the pasture?
- Is private, community or other ownership documented or registered somewhere? If so, when did this occur?
- Is this ownership accepted by Government?
- Is there pasture beyond the community pasture which is owned by other communities or by Government? How is this pasture named, and how is it different from community pasture or private pasture?
- Is there a difference between owning the pasture and having the right to use the pasture?
- Do pastoralists own any of the pasture? When did they get this ownership?
- Do pastoralists claim ownership of the pasture or just the right to use it in the spring/summer?
- How do you see the rights of the pastoralists: to own the pasture, or just to use it?
- When exactly do they come and how long do they stay? How many animals do they bring?
- Do pastoralists own any other lands in this area? How did they acquire these?

REGULATION & MANAGEMENT

- How are community and other pasture defined as different on the ground?
- Does everyone in the community know where the private pastures/community/public pastures are? How are the boundaries known?
- How do individuals or families access the pasture: do they have to ask permission, and if so, who from? If so, what happens if you help yourself to pasture without getting permission?
- Are the people who give permission today the same people who gave permission in the past?
- How may pasture be used: only for grazing animals or for other uses?
- How are those uses allocated? May anyone help themselves to the pasture to collect (fuel bushes, fodder, other)?
- What role does Government have in regulation and allocation of this pasture?
- How has that role changed: was it different before the War (1979)?
- What are the traditional rules about owning and using the pasture?
- How have these changed and why?
- What used to happen if the rules were broken?
- What happens today?
- Does anyone have to pay to take their animals to the pasture?
- When pastoralists come to this area with their animals, who do they come to see in the community? Do they have to get permission from the local community or local leaders?
- Do pastoralists have to pay to use the pasture?
- How has the system changed?
- Are their rules for the pastoralist to follow?
- What happens when rules are broken?

USES & USERS

- Who in this community never uses the pasture? Why not?
- Who are the main users of the pasture today (from the community)?
- How are they using the pasture?
- Has the size of the pasture changed over the years? How? Why?
- How has the condition of the pasture changed and why?
- How has the use of the pasture changed and why?

CULTIVATION

- Is cultivation being undertaken on the pasture? Who exactly is cultivating?
- Was this cultivation practised in the past or is it new?
- How did cultivation of the pasture begin? Why did it not happen before?
- If the pasture is community land, did the community give permission?
- Once people establish fields on the pasture, does this mean that they now own that land?
- Do people want the pasture to stay as pasture or to be turned into farms?
- What land should never be turned into farms? Why?
- What has been the effect of cultivating the pasture?

PROBLEMS

- What are the problems facing the pasture today?
- How can these be resolved?
- Are you willing to talk with pastoralists directly about the problems on the pasture?
- How can commanders or others who are cultivating the pasture be stopped? Should they be stopped?
- Who should speak for the community in negotiations?

**CHECKLIST 3
PASTURE INFORMATION TO BE GATHERED IN PASTORAL CAMPS**

HISTORY OF ACCESS

- In what groupings (e.g. clans) is the pasture used today and in the past?
- Numbers of groups and families within each group?
- Estimates of animals?
- The history of access?
- How has access changed or been limited and why?

USE OF THE PASTURE

- How do the visitors share the pasture among themselves?
- What are the origins of this arrangement?
- How has it changed over time and why?
- How is it managed today?
- Which group has which precise area and for how long?
- Do you base your camps in the same site annually?
- How many times do you move camp within the pasture?
- Do you need permission to move your camp? If so, who from?

NATURE OF RIGHTS

- If your right to the pasture is an access right, how did this come about?
- Does the right have to be renewed annually?
- Where, how and are fees paid, and if so to who?
- Can you arrive and use the pasture without permission?
- If not, who gets the permit? Who is the permit issued to?
- How long is the right for? Are months, years and area specified?
- Are there any conditions or rules attached?
- Do you have to get permission from local communities? Why?
- Who exactly do you go to in the community to get permission? Why?
- Are fees paid to communities? To who exactly?
- Once access is granted, is this accepted by local communities?
- If not, why not? What happens?
- If communities grant you rights, what does this allow you to do on the pasture?
- Does each community have its own area of the pasture?
- How do they divide the pasture among themselves?
- Is there a distinction between local pastures and pastures which you access?
- How did this distinction come about?
- Who decides where the line between community and other pasture lies?
- Is the line the same every year?
- Do you and community members use the same pasture?
- Do you use the pasture in different ways?
- Are local rights and your rights to the pasture different? How?
- Are the same community members grazing the pasture every year?

- Who do you deal with in the community in deciding about pasture areas?
- Does each hamlet/village/valley/manteqa have its own part of the pasture?
- Who in the local community makes decisions about this?
- What disputes with local people arise on the pastures?
- How are these dealt with?
- What disputes arise with local people off the pastures?
- How are these dealt with?
- What are the current disputes with local communities?
- (If claims to be owner) how did this ownership come about?
- Who exactly is the owner: individual, clan head, all families etc?
- Which is the area you own? Is this written down? Are there boundaries?
- What does ownership allow you to do on the pasture?
- Could you visit the pasture at any time, cultivate it, build on it, sell it?

THE CONDITION OF THE PASTURE

- Has the size of the pasture changed over time? Why?
- Has the condition of the pasture changed over time? Why?
- What should be done to restore the pasture?
- What rules should be made?
- Who should make the rules?
- How can they be upheld?
- Can you work with communities to make and held rules?
- Who should do that from the pastoral communities?
- What can you offer communities?

6.4 Even should most or all of the information listed above is obtained in meetings, the information needs to be cross-checked on the pasture itself and new information added. This new information relates to the need to –

- i. Link the information given with precise areas of the pasture. During discussion the Team should repeatedly ask discussants to name areas they refer to. These now need to be identified on the ground
- ii. Know the real condition of the pasture [with particular attention to overgrazing, degradation due to past or current cultivation and/or establishment of hamlets within the pasture]
- iii. See areas of cultivation and/or other changing use and its history, with identification of farms which are unusually large, mechanised, and/or established as private estates
- iv. See existing lines, or the potential for lines to be drawn between areas of viable cultivation and grazing and their logical basis (e.g. ridges, gullies, soils, slope, etc)
- v. See the logic of existing, or potential for, boundaries between community owned and used pastures and public land pastures, with rights owned or accessed by non-community as well as local stock owners; and
- vi. See the existence and logic of any boundaries that separate the pasture of one hamlet/village/manteqa or other socio-spatial grouping with that of its neighbours.

6.5 The Team could take GPS readings of especially existing and potential boundaries at this point. However, this may be best undertaken during the negotiation stage that follows, when there will be full community representation on the one hand to decide intra-community issues and full representation of pastoral/seasonal users.

- 6.6 **NOTE:** It may be the case that the Team does not have the time to visit the pasture at this stage, or is only able to visit the pasture associated with some of the settled communities and pastoral groups. This will be largely determined by the size of the pasture and the number of settled communities involved.

STEP 7

BE CLEAR WITH PARTICIPANTS AS TO NEXT STEPS

- 7.1 At the end of each meeting, the Team should ensure that participants understand next steps – and their support for this process secured. The most important point is that the Facilitation Team will not make decisions itself but will assist local representatives from all parties concerned to come together and make decisions. This will not be possible if hundreds of persons are involved so each community should select a representative to be part of that ‘Local Team’. The agreements of the Local Team will not be final: these will first be brought back to all communities (settled and pastoral) to consider.
- 7.2 Accordingly, the participants should be invited to suggest persons whom they think will be suitable. The meetings will be opportunities for the Facilitation Team itself to identify suitable candidates.
- 7.3 Before hearing names, the Team should emphasise that these individuals need to be –
- *First and foremost, appointed not because they will rigidly support on the case of the their communities but because those communities know them as wise persons who will be able to listen to others and balance conflicting interests and have the confidence to judge when compromises are the only way forward. That is, these Local Team members must be problem-solvers.*
- 7.4 They will also be -
- Well respected in the community, but not necessarily current or traditional leaders
 - Knowledgeable about the pasture
 - Willing to listen to others and to compromise
 - Able to physically visit the pastures.
- 7.5 The members of the meeting also need to indicate that they agree with the procedure being suggested.
- 7.6 The names of suggested or confirmed persons should be taken. The Team should have already decided what a reasonable limit to representatives from any one area or group should be. The Team should however warn each meeting that if numbers end up being too many, not all will be able to participate, as the discussion stage must be kept to manageable levels.

STAGE IV FACILITATING RESOLUTION

STEP 1**TEAM REVIEW OF FINDINGS**

- 1.1 The Facilitation Team needs to take one or two full days to consider the findings of the review and to plan its strategy in bringing the parties together.
- 1.2 This review could begin with each Team member presenting his or her individual conclusions on the situation.
- 1.3 Shared understanding within the Team should be sought on these points –
 - i. Main findings and their implications
 - ii. Common ground among different interest groups in respect of the ownership, access and use of the pasture
 - iii. Common ground in respect of the changing condition, use and requirements of the resource itself
 - iv. Points of contention in the above, distinguishing between those that are internal to the settled community, those where the contestation is specifically between settled people and pastoralists and those where Government is the other party
 - v. Ordering of those points of disagreement that are most critical to resolve and/or which have to be resolved first
 - vi. Assessment of the willingness of each party to compromise
 - vii. Key common positions from which discussion could begin
 - viii. Other routes or opportunities for possible compromise
 - ix. Assessment of interest and capacity to bring the pasture under local regulation and use management
 - x. Assessment of how far local communities are willing to involve seasonal users in decision-making
 - xi. Practicality and openings for local institution building for such powers and responsibilities
 - xii. Relative interest in pasture protection and improvement interventions, and
 - xiii. Representatives who should be involved in further discussions.
- 1.4 The Land Tenure Adviser should specifically contribute to the above discussion by laying out options for reconstructing ownership and access rights in ways that would accord better with reality and open routes for compromise. This should include consideration of the following avenues (among others that will arise during the review process) -
 - i. The physical viability, acceptability and impact of drawing clear boundaries between community-owned and non-local pastures
 - And within the above, either restricting access by community members and non-local persons to respective areas, or
 - Limiting non-local access to community pastures but permitting local access to both community and non-local pastures, by permit or other arrangement

- ii. The acceptability by pastoralists of acknowledging community ownership of the entire pasture and with their own rights defined as seasonal access rights only

And within which, pastoralists would either

- be guaranteed access under certain conditions and rules, or
- able to negotiate access annually with the owners

- iii. Sidestepping of issues of relative ownership and access through –

- a. entrenchment/restatement of the de facto policy in which
 - the national community owns the entire pasture
 - Government has complete authority over allocation of use
 - all persons seeking to use the pasture, local or non-local must apply for permits through the same mechanism and on payment of same fees, or
- b. by setting these aside in favour of a devolved authority and management regime in which use matters and regulation of users is the main intervention. In this scenario, the focus of action would be solely upon development of a Pasture Management Council made up of both local and seasonal users, mandated by both parties to make and uphold access and other decisions.

- 1.5 The Pastoral and/or Range Management Adviser should specifically contribute assessment of actions needed in relation to –

- i. the conservation of the pasture
- ii. management of cultivation
- iii. interventions to improve the quality of the pasture
- iv. other relevant resources, notably water and forests.

- 1.6 The Team should then draw up its strategy. This will comprise –

- i. Identification of location (or locations) where representatives will be brought together to debate and agree
- ii. How much of this will be conducted on the pasture itself
- iii. Identification of preferred representatives in this process
- iv. The list of conclusions that will be presented to the representatives as a starting point
- v. The matters on which decisions will be sought
- vi. The actions that will need to be taken to implement agreements.

- 1.7 The Local Representative should ensure that all settled and pastoral communities are informed who has been selected on the basis of their own recommendations to be part of the local decision-making team and where they should meet and when.

STEP 2 KEEP THE AUTHORITIES ON BOARD

- 2.1 The Team or Team Leader should report back progress to the District and Provincial Authorities. A summary of progress thus far should be informally presented, along with the proposed strategy.
- 2.2 The Team should invite a representative from at least the District level but ideally also the Provincial level, to accompany the Team during the next phase. This is because Government participation and witnessing of agreements arrived at is important for sustaining the agreement and for indicating Government's own willingness to compromise where its own role and powers are affected.

STEP 3 FORM THE LOCAL REVIEW & PLANNING TEAM

- 3.1 The Local Team will be formed at the first meeting of those who have been invited (or appointed by their communities) to be part of the negotiations.
- 3.2 Local Team members should be advised that –
 - i. This is a unique opportunity for them to overcome a century of dispute or dissatisfaction as to how the pasture is owned, accessed, used and managed. This is their chance to resolve this problem once and for all.
 - ii. They have been mandated by their community members to work this through on their behalf and to come to provisional agreement with all other interested parties. The three sets of parties are settled communities, pastoralists and Government.
 - iii. However, these representatives must again be reminded that they were not recommended (or should not have been recommended) by their communities because they are the most vocal and immovable in protecting those interests but because they were adjudged to be mature and fair persons who can listen to several points of view and find compromise ways forward that have the best chance of being balanced and fair to all parties.
 - iv. Final decision-making will lie in the hands of community members themselves. The job of the Local Team is to arrive at the solutions that all Local Team members believe could work for everyone, with compromises made on all sides. The Facilitation Team will help them reach amicable agreement. Once the Local Team members have decided on a course of action, then they will put this to their respective communities (Stage V).
 - v. It will be waste of time if members of the Local Team come to the discussions with bitterness in their hearts. They have been selected to represent their communities as wise people and people who can be trusted to be fair and open in their thinking.
 - vi. No progress can be made without compromises. Every party to the issue – farmers, pastoralists and government itself – will have to make compromises.
 - vii. Members of the Local Team must be prepared for the fact that discussions may take some time. It will also be necessary for them to visit the concerned pasture areas.

**STEP 4
FACILITATE NEGOTIATION**

- 4.1** *Most of the negotiation should take place on the pasture itself.* This will make it a great deal easier for Local Team participants to focus upon and arrive at the key practical decisions such as –
- i.** agreeing exactly where inter-community boundaries on the pasture should be positioned
 - ii.** agreeing exactly where the boundaries between the Community Pasture and Public Pasture should be positioned, if this is one of the solutions arrived at
 - iii.** agreeing where cultivation has visibly been detrimental to the soils and should be abandoned, and
 - iv.** agreeing where the limitations of cultivation in general should be positioned [this may be necessary in both the Community and Public Pastures].
- 4.2** However, the first meeting of the Local Team will likely be in one of the villages on the edge of the pasture and at which the Local Team is formed and its composition finalised.
- 4.3** The meeting can begin with a summary of findings, presented by the Facilitation Team Leader. Discussion of these can follow, with participants rigorously encouraged to offer constructive comments or ideas.
- 4.4** Checklist 4 provides a list of questions that need to be answered by the Local Team. This is not necessarily a complete list but covers the main likely issues that will arise in respect of all cases where the approach is adopted. The final list will alter to an extent depending upon the circumstances of each pasture.
- 4.5** It will be observed that many of these questions are ‘leading’ both in the sense of identifying focal points and in the sense of suggesting directions where thinking could go to solve these issues. This is deliberate. The role of the Facilitation Team is to help the Local Team clarify what the issues are and possible solutions to consider. For this they need to have a vision of how developmentally and environmentally sound ownership, use and management of the pasture could proceed. They need to be able to impart this vision to the Local Team for its consideration. The Local Team may well reject this vision and choose to resolve the matters their communities are contesting over through different solutions. This is their prerogative.
- 4.6** The vision inherently imparted in the Checklist of questions below builds upon these core principles: -
- i.** That the way forward will involve all interested parties making compromises – including Government
 - ii.** That conflict between settled communities and pastoral groups local and non-local groups (usually settled and pastoral) lies at the core of most problems to be addressed and removing or limiting the contradictions between their respective interests is essential to resolution

- iii. That exploitation of pastoral resources by better-off members of communities to the dis-benefit of the majority poor is another focal trend that needs address
- iv. That a new system of defining pasture will be necessary and that while cultivation may be viable in some circumstances, restriction of cultivation will be necessary in respect of most parts of a pasture, for reasons of environmental and sustainable land use
- v. That the principle of bringing governance to the most local level possible is fully applicable in respect of the pastures; the more users are involved in decision-making and the more locally these decisions can be made, the more possible it will be for these decisions to be applied and made transparent and accountable
- vi. That new tenure norms will need to be established to arrive at workable solutions, but often building upon the common sense in which customary norms are usually rooted; the most important will be to take better account of customary existence of community owned pastures, and
- vii. That the 'best' decisions – in the sense of being practical, fair and able to be enforced by the public, not just law enforcers – are those which affected persons make themselves.

**CHECKLIST 4
DECISIONS THAT NEED TO BE MADE AT THE LOCAL LEVEL**

THE PASTURE

- Defining exactly where the target pasture overall begins and ends

PUBLIC PASTURE

1. DEFINITION

- Whether any parts of the pasture should continue to be classified as Public Pasture
- *Where agreed to exist –*
- Definition of exactly where this begins and ends and how its boundaries may be publicly known without demarcation (i.e. using natural features)
- Definition of who is the root owner of the Public Pasture: the Government or the national community?
- What powers should Government have over this particular Public Pasture?

2. GOVERNANCE

- What is meant by 'Government' in respect of this particular Public Pasture? Does this mean Government at the District level, the Provincial level or the national level? What is the sensible level for authority over the Public Pasture to be exercised? Who exactly at the chosen level should hold this authority and be responsible for wise decision-making? How will that person or persons make decisions? Who will they consult? Will they consult those who have traditionally used that pasture – members of the settled community and seasonal users? If so, how will they do this?

- How will the use and users of the Public Pasture be determined? On what basis? Will every user have to get a permit? Who from? Where from? And will a fee have to be paid? Can poor people such as landless farmers who only have a few sheep to their name pay this fee? Is it fair to exclude them?

Community Based Resource Management

- Would it be wisest and most practical for Government to hand over the decision-making and management of the Public Pasture to those who are agreed to be its regular users, such as in the form of a Pasture Management Council? If so, how would representation on that Council be fairly attained so that all user groups are represented? If a local Council is agreed as the most effective route for management, should this governing Council include Government as well as user representatives?
- And how would that Council make decisions? How would its decisions be monitored to make sure they were fair and sensible decisions? Who would these decisions have to be accountable to – those who regularly use the pasture or Government, or both? How would this accountability have to operate? And *when* would the Council make these decisions - at the beginning of each season for using the Public Pasture? And *where* would it make these decisions - at a particular site on the edge of the Pasture?
- What powers would that Council have and what decisions would it be expected to make and uphold? Would these include decisions about how many animals would be allowed every year on the pasture? Would users have to report first to the Council before they use the Public Pasture? Would the Council have the power to make rules and to fine persons who break the rules? How would this work?
- What would happen when the person or group breaking the rules refused to pay the fine or denies the offence? To whom would the Council turn? And what decisions should that person or body be empowered to make?

3. USES

- What are reasonable uses of the area agreed to be Public Pasture? Should it be rigorously restricted to just grazing of livestock?
- Or should people also be allowed to collect dry bushes for winter fuel or fodder? If so, which people should be allowed to do this? Should there be rules about how bushes are cut for fodder and fuel and where they may do this? Should they have to get a permit for this from the Pasture Council/Government?
- Should anyone be allowed to build a permanent house on the pasture, sink a well, cultivate a field or cut trees?
- If not, what should now happen to those boreholes and fields that have been wrongly developed on the Pasture?

4. USERS

- Who should be allowed to use the Public Pasture? Should it be open to anyone at all to use, coming from anywhere, at any time? Or should access to this particular Public Pasture be limited to those pastoralists who have been coming to use this Pasture through most of the 20th century? Or should they and members of settled communities along the edge of the pasture be permitted to use this Pasture?
- Should these users be registered? Should this be one of the functions of the Pasture Council?
- If there are patches of private ownership within the area now to be referred to as Public Pasture, what should happen to these private properties? Should the owners have to give up their lands and just be given use rights like everyone else? Or should these areas remain as islands within the Public Pasture? Should they be allowed to continue treating those areas as their private lands but restricted to pastoral use (grazing animals)?

COMMUNITY PASTURES

1. OWNERSHIP

- **What is a Community Pasture? How is it defined and who exactly is the owner: all members of the community or just the landlords, or just those with livestock to make use of the pasture?**
- **What is meant by the 'community' in respect of the Pasture? Does this mean all people of one tribal group, even if they live 100 miles away? Or does it mean only those people who live in villages which are next to the Pasture?**
- **If this community includes many different villages or village clusters around the Pasture, do they own the Pasture altogether, or on a cluster by cluster or village by village basis?**
- **If the latter is the case, where are the boundaries lying between the Pasture of each of these communities? How are they defined and known?**
- **If the Community Pasture is owned traditionally by all people living in a valley, is it practical for them to share the ownership of the Pasture? Would it be more convenient for management to now subdivide the Pasture among different clusters or even villages in the valley? What would be the advantages of this and the disadvantages?**
- **Who does 'community' include? Does this mean every member of the community or every adult member of the community? Does this include women? Does this include landless families in the community? Does 'community' include those who have no livestock to use on the Community Pasture? Does 'community' include workers who stay temporarily in the community - or are they just users, not shareholders?**
- **If landlords or other powerful persons in the community claim to own the Community Pasture, what do they base this on? Can they be persuaded to give up those claims in favour of wider community interests? If they cannot be persuaded, can they agree to allow 'their' pasture to be used by all members of the community as if it were Community Land?**
- **Are there areas of the Community Pasture that have been bought and sold? How did this come about? Was it legal in custom? How does the Local Team think this problem should be resolved? Should the Private Owners be asked to surrender these parcels in favour of wider community interests?**

2. GOVERNANCE

- **How should the Community Pasture be managed? What decisions about the Community Pasture need to be made?**
- **Do these decisions include rules about who may use the pasture, when and what for?**
- **Who should make these decisions?**
- **If a Community Pasture Council is the right framework, how should this be formed? Should members of the Council be elected or appointed? How many members should there be? On what basis should they members – representing different hamlets or villages or representing different groups of interest-holders? Who should appoint or elect the Council members? Should this include only livestock owners, or only existing community leaders/shura or the whole community of adults? Should women have a chance to vote or appoint members?**
- **If a Council is the right way forward, what should be its powers and responsibilities? Should it have powers to make rules without having these approved by community members?**

- How often should the Council meet? Should it always meet on the pasture? How often should it inspect the pasture to see if the rules are being followed or to follow up on complaints? Should Council members take turns checking up on the pasture?
- What should happen when the Council finds someone has broken the rules? How many people are needed to deal with the issue? What should happen when a Council member himself breaks the rules? What should be his punishment?
- Should the Council keep records? What records are important?
- Should the Council report progress and problems to the District Authorities? What help should the District Authorities provide?
- Are there any conditions when the District or Provincial Authorities should be able to step in and interfere with the work of the Council?

3. USES

- What should people be allowed to do on the Community Pasture? Should farming, building or any other activity other than grazing be allowed?
- Should there be limitations upon any one use?
- Should the Community Pasture be subdivided into parts, so that one area can rest whilst the other is used?
- Are there any sites on the Pasture that should not be grazed at all?

4. USERS

- Who should be allowed to use the Community Pasture? Should use be restricted to only community members? Are there any community members who should not be allowed to use the pasture? Why?
- Should use of the Community Pasture be free? Should any fees be charged? Should a ceiling be placed upon the number of animals allowed on the pasture? Should people with very large herds have to pay to use the pasture for those animals which are above the ceiling?
- Should all users be required to inform the Council when they want to use the pasture? What would be the benefits of this? Who in the Council should they tell: should one Member be the person to report to? What should they tell the Member: how long they will be on the Pasture and with how many animals?
- Should pastoralists be permitted to use the Community Pasture? If so, on what conditions? For how long, where, with how many animals, and reporting to whom?
- When disputes arise among people who use the pasture, how should these be settled?

BOUNDARIES

- If the Pasture is to be divided into Community and Public Land Pastures, where should the boundary between the two lie? Should it be marked and if so, how?
- If the Community Pasture is really several Community Pastures, each belonging to a different village, cluster or community, how should the boundaries between each be identified and agreed? Should each Community Pasture have its own rules and rule-makers (the Council)? Should the rules be the same or could each Council have different rules for its own Pasture?

- If it is agreed that some parts of the Community Pasture now belong to individuals, how should these Private Pastures be demarcated? What responsibilities does the owner have? Should he also be allowed to use the Community Pasture?

NEW RULES AND SYSTEMS

- How should the new decisions about the Pasture be formalised? Should all the decisions and rules be written down and witnessed? Who should witness these? Should they be registered – and if so, at which level, District or Province and in which Office?
- Should registration of these agreements and new rules cancel out any old agreements, entitlements and rules?
- What is needed to ensure that everyone who has past interests but now agrees to put these aside, will abide by the new rights, systems and rules?

IMPROVING THE PASTURE

- What actions need to be taken in both the Public and Community Pastures to improve the quality of pasture? Will halting cultivation be enough? Will limitation of stock numbers be needed? Should rotational grazing be considered? What other measures should be adopted?

- 4.7 Using the above checklist as a guide, the Facilitation Team will be able to guide discussion in an orderly fashion.
- 4.8 Prior to final decision-making on any subject, the Facilitation Team should ensure that all members of the Local Team have had their say and agree to the recommendation. Every attempt should be made to reach consensus. A united front on the part of the Local Team will be extremely helpful when presenting the Recommendations to community members. Provision must be allowed however for one or two members of the Team to abstain or register their disagreement. It is suggested that where more than 10 percent of Members do not agree, then the matter should be set aside to be tackled later, and discussion begin on another topic.
- 4.9 The role of the Government participants is important. The Government members of the Facilitation Team are wearing two hats: facilitator/mediator and interested party. Up until this Stage, their role has been largely the former. In this discussion, their own ability to adopt a fresh and neutral role as to Government interests must come to the fore. They will need to listen carefully to the arguments and able to accept adjustments to Government's role, powers and even ownership of the particular Pasture, where this seems reasonable.
- 4.10 The Facilitation Team is responsible for recording all discussion, agreements and decisions.
- 4.11 When decisions are made on the Pasture about boundaries, the Facilitation Team will also take GPS readings of the boundary that is agreed. It will sketch the areas and indicate named sites along the boundary as Waypoints. The Team is also responsible for ensuring that a detailed description of each boundary agreed is recorded, and read back to the participating Local Team and amended as necessary until all

participating Local Team members are agreed that the description is accurate and sufficiently detailed for users to know where the boundary lies.

STEP 5

PLAN HOW TO MOVE FORWARD

- 5.1 At the end of this exercise, the Facilitation Team needs to evaluate progress and determine if it should continue in current mode. This will only arise where a significant number of core issues have failed to be resolved by the interested parties.

In this event, members of the Facilitation Team should decide among themselves what further action or routes should be tried. It should then present this plan to the District and Provincial Authorities, and secure their input.

- 5.2 In most cases it is expected that most issues will be agreed through the above process but with one or two matters left outstanding. The Facilitation Team should decide whether the latter are of such consequence that no progress can be made until they are resolved. In this instance, it should plan to return to take up the matter at a later date.
- 5.3 Where all or most issues have been agreed within the Local Team, and those that remain unresolved are of either stand-alone or not priority importance, then the Facilitation Team should proceed to the next Stage.
- 5.4 In this event the Team will follow up its report to Government Authorities by requesting their presence at the next Stage, to add formality to what should be final community-wide agreement on the future tenure and use of the target Pasture.

<p>STAGE V SECURING COMMUNITY-WIDE SUPPORT</p>
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STEP 1

DRAFT CLEAR STATEMENT OF RECOMMENDATIONS

- 1.1 The Local Team and Facilitation Team should lay down in writing exactly what has been concluded and what recommendations have been agreed. This should be presented in extremely clear and simple language in Dari and Pashtu. The document should be kept precise. It should also be clearly stated in the document that the recommendations are dependent upon community and group member support. Dates of meetings where decisions will be finally made should be listed, together with times and places. It should be made clear that all interested persons, including women and landless persons, who belong to the listed communities or groups, are invited to attend.
- 1.2 The advantage of doing this in writing is that the same information will be given to everyone. The process will also help Local Team members clarify exactly what is intended in their own minds, and will ensure that every Team member is 'on the same page'.

STEP 2 ARRANGE PUBLIC MEETINGS

- 2.1** As part of the above, the number of meetings and places need to be agreed. Their purpose is to enable ALL adults in the pasture-adjacent communities and ALL adults in relevant pastoral groups to have the opportunity to hear what the Local Team is recommending, to be able to comment, and to be part of final decision-making.
- 2.2** Although this would ideally take place in a single public meeting, this will not often be possible given the number of communities and distances involved. The Local and Facilitation Team will have to agree to a minimum of meetings which are relatively accessible to most communities and groups. Separate meetings in each case with women may be required in settled communities.
- 2.3** The Teams will also have to agree how decisions made at each meeting will be aggregated into a final agreement process. A practical way for this is for selected representatives from each meeting to be appointed to represent those meetings at a single final General Meeting. This process should also be laid out elaborated in the information document to be distributed in each concerned community. People who attend public meetings must know beforehand that at the end of each of these, a formal representative to the final agreement meeting will be appointed. The Facilitation Team should also be clear in its mind beforehand as to the procedure through which the representative will be appointed (most likely through a show of hands).
- 2.4** Each Local Team member should take responsibility for ensuring that this information and the time and place of relevant meeting is provided to the relevant communities and groups.
- 2.5** The Local Organizer of the Facilitation Team should ensure that the District and Provincial authorities are also kept well informed and a representative specifically invited to attend these meetings and at the very least, to participate in the final General Meeting.

STEP 3 REACH AGREEMENT

- 3.1** The Facilitation Team will serve as facilitators only to these meetings. The Local Team will run the meetings, presenting findings, conclusions and recommendations to each of the public meetings.
- 3.2** Speech mode should be avoided, with ample time provided for active participant discussion.
- 3.2** The Facilitation Team will call for questions and either answer itself or ask the Local Team members to respond as appropriate.
- 3.4** These meetings should not be rushed. Participants will need time to clarify and absorb the recommendations.
- 3.5** If there is clear indication of emerging support, the Facilitation Team should close the meeting by asking participants if they agree to each Recommendation made by the

Local Team, with each Recommendation being considered separately. A show of hands for both Yes and No should be requested in each case. Where more than 60 percent of the meeting participants confirm support, this should be held to be approval.

- 3.6 On Recommendations where is majority disapproval, the matter should be held over for subsequent discussion by the final General Meeting.
- 3.7 Where there is clearly little support in the public meeting for *any* of the Recommendations, then it may be wise for the Facilitation Team to suggest that participants take time to think about the issues, and for another meeting to be held at a later date. Organizing this meeting will be the responsibility of the relevant Local Team member.
- 3.8 In all cases, suggestions for modifications made by majority participants should be recorded and brought to the final General Meeting.
- 3.9 Except in the case under point 7 above, the meeting should not end without specific persons being appointed in the meeting to participate in the final General Meeting.

STEP 4

PREPARE FINAL AGREEMENT FORM

- 4.1 In due course when this community based negotiation and planning process is entrenched, forms in which new agreements, procedures and norms may be expressed will be in formal written form. During the piloting stage these will be hand-written documents.
- 4.2 These Agreements should have large sections of space to allow the following information may be recorded -
 - i. A list of the participating communities and pastoral groups
 - ii. A list of representatives for each of the above
 - iii. Agreed decisions
 - iv. Under each recorded decision, record of
 - v. The actions that will be taken, with time-line, to implement the decision
 - vi. The person or body which has agreed to be primarily responsible for ensuring the decision is applied and upheld
 - vii. The person or body to whom a complaint may be made
 - viii. The Agreement document will also indicate how often and to whom the relevant persons or body will report progress and problems to the District Authority, and
 - ix. Any other matter which has arisen as needing to be entrenched in writing and signed off.
- 4.3 The Agreement will in effect represent a Pasture Management Plan. This is likely to cover a relatively short first trial period, of around three years. During this time, the identified Government Contact Persons (see below) will be responsible for monitoring progress.

STEP 5

FINAL AGREEMENT

- 5.1 The purpose of this meeting is to finalise what has been agreed in a formal manner. This meeting should not be held until the Facilitation Team is confident that the greater majority of sub-meetings have indicated support for most or all of the Recommendations. This meeting is also an opportunity for finalisation of action plans to implement each Recommendation (see below).
- 5.2 This Final Agreement Meeting should comprise of all appointed formal representatives and the general public. Each representative should be introduced to the Meeting and the number of meetings and participants observed.
- 5.2 The invited Provincial representative should inform the meeting of the historic nature of the day, his and Government support for the process and his pleasure that the interested parties have themselves arrived at new solutions to old problem concerning the Pasture.
- 5.3 Either the chairperson of the Local Team or the Facilitation Team Leader should read out each Recommendation and state how each meeting voted on it, together with any modifications that were suggested or requested by that meeting.
- 5.4 Depending upon their nature and inter-linkage, comment on each should proceed separately, with – ideally – each being finally approved.
- 5.5 This Final Agreement Meeting will not have been uncalled unless most pre-meetings agreed to the important Recommendations. Those matters that remain un-agreed by more than 25 percent of the pre-meetings may also be reintroduced in this forum and re-discussed. If agreement is reached, then this should also be recorded, but with the caveat that the matter was not sufficiently agreed in the pre-meetings and will need further confirmation.
- 5.6 It is highly likely that time during the pre-meetings did not allow sufficient discussion for practical implementation planning. This should be undertaken following approval of each Recommendation. The Facilitation Team should make suggestions as to the essential steps required. If these are agreed to, then the meeting should identify a proposed time-line for these actions to be taken and identify exactly who will be responsible for mobilising this.
- 5.7 A likely foundation action agreed will be to create a Pasture Council to make and enforce rules relating to the pasture and to be responsible for decision-making and management generally. As noted below it will be speedier and efficient for appointment of this Council to take place in this same meeting (see Stage VI).
- 5.8 Both the Council and the Agreement will be treated as provisional, to be in force for a trial short term period (three years is suggested). Should monitoring show that the Agreement is able to hold and those party to the Agreement are able to implement agreed actions points, then the Agreement and related institutional arrangements will be formally entrenched (final registration). This will include the formalization of the role of the Pasture Council as the lawful management authority over the Pasture.
- 5.9 **THE AGREEMENT AS PASTURE MANAGEMENT PLAN**

As outlined in the next Stage, much of what is agreed could be articulated in the form of a *Pasture Management Plan*. Therefore what the participant interest holders would

be agreeing to and signing off on would be a 'plan of action' for the Pasture. This will detail relevant boundaries, users, uses, management system and points of action that have to be implemented over the three year period.

STEP 6 SIGNING CEREMONY

- 6.1 The entire document (whether in the form of an Agreement or in the form of a Pasture Management Plan) should be read out to the meeting.
- 6.2 This will be followed by a signing ceremony. Each official representative should be invited to sign or thumb-print his consent at the end of the document. The Local Team and the Facilitation Team should also sign. The final signatory should be the senior Government representative.
- 6.3 The Government representative should close the meeting saying that he expects to see the agreed actions implemented and that he looks forward to the arrival of the Chairperson (or co-chairs) of the new Pasture Council to formally register the Agreement at the District/Provincial Amlak Office (to be decided).

STAGE VI SUPPORT IMPLEMENTATION

STEP 1 FORM THE PASTURE COUNCIL

- 1.1 Whether a committee or council in charge of the pasture is established will be up to the Local Team and those they represent. It is highly likely that such a focus will be necessary – even in those circumstances where pastoralists have not been involved in the review and planning for pasture ownership, use and management.

Where it is agreed that a distinction should be drawn and formalised between a Community Pasture and a Public Pasture, the Local Team may decide to recommend that each area has its own council. Where community pastureland is subdivided among several communities, they too should have their own management systems and councils.

The foundation of all these councils will however be similar in terms of composition, procedures, powers, responsibilities and accountability. Suggestions towards this are given below in reference to a single potential committee or council.

- 1.2 The establishment of a Pasture Council will ideally be undertaken at the end of the above final agreement meeting. Key actors are present, this will save time and keep up momentum, especially when the new members agreed to take certain steps within an agreed time-frame.

Time may not permit formation of the Council however. Or participants may feel the right constituents for this are not present. In this event, at the very least participants in

the above agreement meeting must agree exactly when, where and how the Pasture Council will be formed.

1.3 FUNCTIONS

It is suggested that these are the general functions of the Council –

- i. To act not upon its own behalf but strictly upon the behalf of the community and/or pastoral groups and be accountable to them, through a system of pre-season use and post-season use reporting to public meetings
- ii. To maintain peace on the pastures
- iii. To take all actions needed to protect and conserve the pasture against degrading uses
- iv. To make rules as necessary for all agreed pasture users to observe
- v. To be responsible for, and set up systems for, ensuring that the rules are followed
- vi. To serve as a focus for hearing complaints relating to the use of the pasture and to make proper and speedy arrangements for these to be addressed, or disputes between two or more parties to be heard
- vii. To be constituted and accountable to the pasture constituency as agreed
- viii. To report to Government and specifically to the designated Ministry of Agriculture District representative on progress and problems encountered and how these are being resolved
- ix. To be formally recognised as the legal local authority over the subject Pasture *on a trial basis* and to be consulted by Government or other outside interested parties on all matters relating to the Pasture.

1.4 FORMATION

- i. Although it is preferable for such bodies to be elected (and by private ballot) this may not be acceptable or practical. This does need to be explored however, during the review and planning process as noted under Checklist 4.
- ii. A likely route for fair if not directly elected representation will be through the sub-meeting processes described above (Stage V: 2.3) at which each public meeting designates a representative to attend the final Agreement Meeting).
- iii. There will be too many representatives at this meeting for all to be included in the Council. Therefore they must elect from among themselves those persons who should be on the Council. Members of the Local Team should also be eligible. Those who have attended as formal representatives who remain outside the Council may be referred to as ‘The Contact Group’ to be those first contacted when the Council needs wider consultation on an issue.
- iv. It is suggested that the following be considered –

- a) Every main community and pastoral group should be represented in the Council
- b) The chair should be elected from among and by the new members. Depending upon how relations have evolved during the shared review and planning process, it may be necessary for this position to be held by two Co-Chairs: one deriving from the local community side and one from the pastoral groups. Alternatively, it may be decided sufficient to make the latter pastoral representative a Deputy Chair.
- c) Ideally, each of those elected (and prior to this, each of those sent as representatives to the Final Agreement Meeting) should be -
 - Fully familiar with the pasture itself
 - Respected in the community or group as a wise and impartial decision-maker
 - A person of total integrity
 - If from a pastoral group, a person who regularly visits and uses the pasture during the spring/summer season and if a local community representative, a person who resides full-time in the area (i.e. not absent working in a city)
 - Not necessarily a livestock owner
 - Not necessarily an existing local elder or leader
 - Not necessarily literate
 - Not necessarily able-bodied.
- d) However, at least two or three of the Councillors must be must be literate and at least half of the Councillors must be fully able-bodied, able to perform Pasture inspections and planning as necessary.
- e) Whether or not women are included on the Pasture Council will be up to constituent communities and pastoral groups. Pasture condition, ownership and use may not be an issue that women have special interest in. Ideally at least two women will be made members of the Council, one from the local community side and one from the pastoral group side.
- f) Following election by Councillors of their Chairperson, the Councillors may need to consider appointing a Treasurer should user fee payments and fine payments be part of the Pasture Management Regime which the Council wants to establish.
- g) The Councillors will also need to consider electing a Secretary from among themselves to be charged with keeping Minutes of all Council Meetings, and sub-Meetings held to address a particular issue. This person must obviously be fully literate. S/he could also be made responsible for ensuring that the Government contact person receives at least twice a year a written report on progress and problems.

1.5 GOVERNMENT REPRESENTATION

- a. At the Final Meeting it should also be decided whether or not a Government representative is a formal member of the Council. This should not be necessary in respect of a Pasture Council accorded status as a fully community owned and managed Pasture. It may be useful in respect of a Council established to manage a Public Pasture.
- b. The Government representatives on the Facilitation Team and the seconded additional local Government representatives will have views on this matter. They should however refrain from making a decision on this until such time as the Team

is fully familiar with the particular circumstances and requirements and not offer an opinion until the Final Agreement Meeting.

- c. It is generally advised that Government not be formally represented on any Council but should serve as the Technical Adviser, Monitor and Watchdog. This means that the District, Provincial or other identified person should serve as the first contact point when an issue needs to be brought to Government, or for bi-annual reporting. It also means that the designated Government Contact Person should keep in touch with the Pasture Council (quarterly) and at least once a year should inspect the Pasture itself (ideally during the pasture use season) and more times if necessary. He should be available to assist in the mediation of disputes or to advise as needed on any question or rule on pasture planning or implementation. By being outside the Council, the Government Office may retain neutrality.
- d. It should also be agreed as to how often this Government Contact Person in turn must report to higher levels.

STEP 2

ASSIST THE COUNCIL TO MAKE A PLAN OF ACTION

- 2.1 The key responsibility of the Council is to put into effect the basic points or principles entrenched in the Final Agreement. If the Agreement has not already been framed as a Management Plan for the subject Pasture (or Pastures), then the Facilitation Team will need to assist the Council to do this at this point – as and if required: some Councils may wish to do this task entirely on their own.
- 2.2 As suggested earlier, the Pasture Management Plan should be conceived of as a short term plan in the first instance, covering a period of around three years only. This may be regarded as a trial period, both for the terms of the Agreement and for the ability of the Council to perform as Pasture Manager.
- 2.2 The Plan should be a short clear document including information on matters as outlined in Checklist 5 as well as others that arise in the particular case.

CHECKLIST 5 MATTERS THAT SHOULD BE COVERED IN A SHORT-TERM PASTURE MANAGEMENT PLAN

OBJECTIVES

The agreed aims of the Agreement/Management Plan

THE PASTURE

Description of the Pasture with its boundaries and condition described

- The tenure status of the Pasture (at the very least defining this as a community owned or nationally-owned pasture as relevant)
- As relevant, detailed description in particular of any boundary agreed to lie between a Community and Public Pasture

- As relevant, detailed description of any distinct spheres of management, if it is decided to manage the Pasture in sub-parts
- As relevant, any special points or zones of the Pasture which have special tenure, use or other considerations or where special actions must be implemented
- As relevant, the limitations of cultivations within the community or public property
- All actions that may need to be taken in reference to the entrenchment of those boundaries, including –
 How all persons in the vicinity will be informed of where the boundaries lie
 How the boundaries will be marked, if demarcation is agreed
 The exact implications of each bounded area: what may and may not be undertaken and by whom in those zones

USERS & USES

- Identification of accepted users or user groups of the Pasture, by zone as above as necessary
- Accepted uses of the Pasture, by zone or sub-area as necessary
- An explicit list of banned uses of the Pasture
- An explicit list of uses that may be undertaken, but only following certain rules (e.g. how bushes may be harvested as winter fodder and fuel)

MANAGEMENT

- Specifying how often the Pasture Council will meet and where Councillors may be found at which times for reporting of problems or complaints
- How complaints will be handled by the Council and with what degree of consultation with the communities or groups of the parties involved
- How disputes or complaints which the Council is unable to resolve will be dealt with; establishing as necessary a special Shura for this or identifying which existing dispute resolution machinery will be involved
- How any complaint against the Pasture Council in general and any member in particular will be handled
- Specification of exactly how the Council will be accountable to the constituency (members of the settled communities and pastoral groups)

REGULATIONS

- A complete list of basic rules that were agreed as part of the Final Agreement; for example decisions relating to cultivation on the pasture
- Elaboration on any Rule so long as this does not contradict the spirit of the Agreement
- The procedures through which rules will be made widely known to all interest holders
- The procedure for making new Pasture Rules, ensuring that these are acceptable to the majority constituency (those community and pastoral group members whom the Council represents) and where the Pasture is a Public Pasture, the procedure for this being vetted by the Government Contact Person

- If agreed as necessary, how local community members will notify the Pasture Council of intended use, and how pastoral groups will notify the Council of their arrival, numbers of families, number of stock and location on the Pasture
- Listing of any fees to be charged, for what purposes, to whom the fees are to be paid, with what form of receipts, and where the income is to be deposited and how it is to be used by the Pasture Council²
- Any rules associated with areas of forest or water sources on the Pasture and/or associated with the Pasture and which have been agreed by the parties to be logically under the management of the Pasture Council
- All sanctions that will be applied for each rule that is broken, who will determine the level of the fine, in what form will the fine be payable and how will the fine be deposited, to whom and with what regime of public accountability

ACTION PLAN

- All actions that the Pasture Council will take over the first, second and third year of the Trial Period to implement the Agreement; this will include such matters as –
- Demarcation of boundaries if this is agreed as necessary (e.g. a line beyond which no cultivation may take place)
- Reduction in corridor tracks to water to minimise degradation
- Inspections of the Pasture, defining who and how on the Council will be responsible for this and how often this should take place
- Establishment of an autonomous system for hearing disputes concerning the pasture which the Council is unable to resolve, and
- The procedure for reporting to the Pasture constituency – all those members of the settled communities and pastoral groups acknowledged as shareholders or stakeholders.

STEP 3

PRODUCE MAPS OF THE PASTURE

- 3.1 During the review, planning and agreement Stages (III, IV & V) the Facilitation Team will have taken GPS readings of significant sites and agreed boundaries. This information together with associated names, now have to be put on maps and copies returned to the Pasture Council. The Council in turn will attach copies of these maps to documentation for registration.

STEP 4

ASSIST COUNCIL TO REGISTER THE AGREEMENT & PLAN

² Experience with community based natural resource management suggests that any rule or intervention which leads to income generation must be extremely carefully planned and monitored. It is usual for new resource management committees to avoid any rules which involve the collection and expenditure of income during at least early or trial periods, in order to consolidate management systems without exposing Councillors to easy opportunities to abuse their power or be corrupt.

- 4.1 Once the Pasture Council has made the above Agreement, elaborated its plan of action (Management Plan) and received maps of the pasture and relevant boundaries, it will be ready to submit these to Government for registration.
- 4.2 Whether this will take place at district or provincial level will be determined in consultation with those authorities. Registration will likely be at the Amlak (Land Administration Department) of the Ministry of Agriculture, although this will be determined. In early pilot cases, the Governor will usefully be involved.
- 4.3 Registration should be *provisional* at this stage. This is because the parties to the Agreement need to demonstrate that they are able to sustain what they have agreed. The Pasture Council also needs to demonstrate that it has the capacity to implement its mandate, and in a fair and transparent manner.
- 4.4 Two matters should be registered –
 - The Agreement, laying out the accepted tenure status of the pasture and its users and uses
 - The Pasture Council, registered as the lawful management authority of the Pasture.
- 4.5 Indicated at registration will be the fact that these arrangements are provisional for a three year period. Prior to the ending of that period, the Provincial Administration will carry out a review. This will likely be undertaken by a representative of the Governor's Office with a representative of the Ministry of Agriculture.

<p>STAGE VII DOCUMENTATION & FIRST MONITORING</p>

STEP 1
DOCUMENT THE PROCESS

- 1.1 The Facilitation Team is responsible for ensuring that the process actually followed is fully documented. This is critical in the piloting phase of this approach. The Team will be in a position to critique this Guideline and make concrete suggestions as to the changes that are required. Particular attention should be paid to noting how much time is required for each Stage and where short-cuts may be viable to limit facilitation time input or two Stage compressed into one Stage. It is quite possible for example that it is fully practical for the review, planning and agreement stages to be more fully integrated. Much time could be saved by phrasing the Agreement from the outset as a Pasture Management Plan. Issues over which there has been a significant failure to agree should be carefully described, reasons analysed and ways to go around this in the future, suggested. Logistical, manpower and other needs not sufficiently accounted for should be identified and remedies suggested for further trials. Follow-up requirements even in the most successful of cases should be laid out.
- 1.2 Institutionalisation of the process should also be given early consideration. The Facilitation Team should lay out exactly what will be required in terms of manpower and systems from especially within the Ministry of Agriculture in order to (i) carry out more pilot trials of this approach and (ii) to be able to replicate the process more widely and establish it as a required procedure towards tenure clarification and management development on the pastures.

- 1.3 The Land Tenure Adviser should hold particular responsibility for defining in detail the precise implications for future national land policy and law. This information will be added to and refined over several pilot exercises implementing this approach (BOX 1). Once paradigms and procedures are consolidated, clear guidelines drafted, and training on these imparted to selected facilitators within the selected institutional framework (e.g. a pastoral unit within the Ministry of Agriculture?), the need for expert advisory land tenure input will not be required.
- 1.4 The Range Management Adviser should similarly take responsibility for assessing range productivity and technical management requirements arising out of his/her participation in the initial piloting of this approach. The Adviser should identify –
- ii. Important indicators for Facilitation and Local Teams to assess
 - iii. Decisions which must be made, together with options
 - iv. Desirable but not essential decisions that could be made, and
 - v. Interventions that could be viably considered, either immediately or in the medium to longer term towards improving the quality of the pasture.

BOX 1
KEY AREAS FOR NEW PASTURE-RELATED PARADIGMS

1. DECENTRALIZATION OF DETERMINATION OF PASTURELAND

Policy and legal instruction that definition of pastureland is a matter left to community and user levels, acting on guidance provided by Government. These actors should additionally be able to determine what are and are not viable uses of designated pastureland.

2. PROVISION FOR CUSTOMARY COMMONS TO BE REGISTRABLE GROUP-OWNED PRIVATE PROPERTY

Customary commonage requires legal entrenchment as a registrable private property right, the owner being an aggregate of community members who are equitable shareholders, holding the estate in undivided shares. Ideally, registration of these properties as private, group-owned property, should be contingent upon preparation and demonstrated trial implementation of a fair, workable and environmentally sound management system. Legal provision for provisional and final registration will be useful.

3. PROVISION FOR PASTURE DOMAINS AS DISCRETELY MANAGED ENTITIES

Introduction of a new construct of Public and Community Pasture Domains with a view to these being precisely mapped as discrete estates and brought under the regulation of local Pasture Committees/Councils. Public Pasture Domains would remain under the root title of the State (Public Land) but with management of the Domain formally devolved to the Council, pending satisfactory evidence of the following:

- agreements among customary users as to access right-holders;
- agreement as to the system for regulating sustainable use and management of the Pasture that will be followed;
- agreement as to the precise perimeter boundary of the Domain;
- establishment of the Pasture Domain Council in an equitable and fair manner, ensuring that agreed user communities and groups are properly represented, and in agreement as to how often, where they will meet, and their powers of administration and responsibility laid out and agreed;
- demonstrated successful decision-making and implementation by the Council through formal monitoring at the end of a specified trial period;
- a viable system for resolving disputes arising with either members of the user groups or among them, or with outsiders;

4. PASTURE COUNCILS TO BE RECOGNISED AS LAWFUL LOCAL LAND MANAGEMENT AUTHORITIES

Legal provision for the recognition of Pasture Domain Councils as the lawful Management Authority, with ample procedural provision for their powers, responsibilities and accountability to meet good governance requirements, and with the right of Government specified as to when it may intervene where the system is failing.

5. CLEARER LEGAL DISTINCTION BETWEEN OWNERSHIP AND ACCESS RIGHTS

Clear legal distinction between sets of ownership rights to pasture and sets of seasonal access rights, with sufficient protection of the latter.

STEP 2 FIRST MONITORING

- 2.1 Some members of the Facilitation Team should be responsible for visiting the target Pasture before the area becomes inaccessible due to winter. The purpose of this visit will obviously be to assess –
- how well the Agreement among the different parties is holding up
 - how effective the Pasture Council is proving to be
 - how much of the action plan has been implemented
 - local community and pastoral group support for the process.
- 2.2 A visit should also be made to the district and provincial authorities to ascertain their opinions on progress, and to find out whether the Government Contact Person has been maintaining regular contact with the Pasture Council, and aiding it as necessary, as agreed.

STEP 3 DISCUSSING WINTER PASTURE ISSUES WITH PASTORAL GROUPS

- 3.1 The process described herein relates specifically to pastures in the northern half of Afghanistan and which, from the standpoint of pastoral groups, tend to be used only in spring and summer. Meanwhile it is known that these same groups have very insecure tenure in their home, winter areas.
- 3.2 The Facilitation Team should take this early opportunity to meet with the pastoral groups prior to their departure for the winter areas, and to discuss with them if and how they will attempt to address their tenure constraints in those areas. By this point those groups should have gained a great deal of knowledge and experience as to modern co-management of pasture areas and ways in which to compromise with settled communities and the ever-increasing demands of cultivation.