

Collaborative Implementation of Master Plans in Afghanistan's Context Considering Land Readjustment as Case Study

Ahmad Javid Habib, Tetsuo Kidokoro

Abstract—There is an increasing demand for developing urban land to provide better living conditions for all citizens in Afghanistan. Most of the development will involve the acquisition of land. And the current land acquisition method practiced by central government is expropriation, which is a cash-based transaction method that imposes heavy fiscal burden on local municipalities and central government, and it does not protect ownership rights and social equity of landowners besides it relocates the urban poor to remote areas with limited access to jobs and public services. The questionnaire analysis, backed by observations of different case studies in countries where land readjustment is used as a collaborative land development tool indicates that the method plays a key role in valuing landowners' rights, giving other community members and stakeholders the opportunity to collaboratively implement urban development projects. The practice of the method is reducing the heavy fiscal burden on the local and central governments and is a better option to deal with the current development challenges in Afghanistan.

Keywords—Collaboration, land readjustment, master plan, expropriation.

I. INTRODUCTION

THERE has been a growing concern about the current increasing level of urbanization and urban population that have tremendously pressured urban land development not only in Afghanistan but also in many developing countries. Rapid population growth from high rates of natural increase and rural-to urban migration has generated a high rate of consumption of urban land [1]. While supply of urban land is limited, most of this urban growth takes place by conversion of urban-fringe lands from rural to urban uses. The urban-fringe areas are typically subjected to the problems of fragmentation of land holdings, scattered land and building development, inefficient land use, poor subdivision layouts, extreme land speculation and informal land distribution markets [2]. And seeing the current situation of the government of Afghanistan in terms of its capabilities dealing with supply of planned urban land and other urban facilities, the government is not able enough to provide adequate supply of planned urban land including infrastructure and public facilities in order to efficiently respond to the demand of rapid urban growth in some big cities such as Kabul, Kandahar, Herat, Jalalabad, Mazar, and so on [3]. The currently applied

land development method which is land expropriation by government is not an effective method to integrate urban development and through the current applied method the planning authorizes often distribute benefits inequitably to merely some landowners. In the lack of equitable and efficient land development policies, land markets are becoming blockages in the development process thus exacerbating urban problems and quality of urban environment [4], [5]. This research explores such critical problems of urban land development and the analysis are drawn based on research conducted in Dehsabaz area where a new city is going to be developed — as well as on interviews with informants from Afghanistan's ministries, Kabul Municipality, international development agencies and local and international nongovernmental organizations (NGOs) involved in urban programs and projects. Land readjustment as one of the policy instruments and as collaborative land development tool is analyzed to find out how the method can be used to reduce these problems and assure an adequate land supply in the urban-fringe areas.

II. CURRENT LAND DEVELOPMENT TOOL IN AFGHANISTAN

The urban land development technique exercised in Afghanistan is land expropriation or compulsory land acquisition which is exercised by municipalities. In the context of Afghanistan's law land expropriation refers to the state compulsorily nationalizing land that is in the possession of landowners for public interests. Its legal features are: (a) land expropriation is an act of compulsorily expropriating land ownership, and is an extremely special case of property rights changes. Government, as the entity of expropriation, gets land ownership from landowners by way of administrative orders, and the latter has no other choice but to yield; (b) land expropriation is conditional on strict regulatory requirements. Based on Afghanistan's laws and legislations, expropriation must strictly follow legal procedures, which are only targeted at the development of public interest, and are kept away from any commercial purpose. The government should pay fair and reasonable compensation to the landowners whose land is expropriated.

For the first time in 1935 Afghanistan enacted a law, according to which land could be expropriated for public interests. All the regulations and articles of that law were later added to the Constitution of 1964, 1977, 1987 and 1990. According to the Constitution of 2004 Article 40:

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No person's property shall be confiscated except within the provisions of law and the order of an authorized court.

Expropriation of personal property is permitted only for securing public interest, in return for prior and just compensation according to law.

The current land expropriation law was enacted in 2002, which deals with the practice of expropriation, its certain basic procedures and compensation related matters. Under the expropriation law of 2002 land is expropriated for public interests with the approval of the Council of Ministers in exchange for fair compensations. Based on the law if part of a land parcel is expropriated and the remaining non-expropriated part cannot be used efficiently by the landowner then the whole parcel should be expropriated. Usually before exercising land expropriation on a parcel of land the exercising municipality carries out the preliminary and exploratory investigations on land. It is also the responsibility of the exercising staff of land expropriation of the municipality to get the agreement of the landowner for fixing the date concerning the exploratory work and if they fail to get the agreement of the landowners, then the issue is referred to the mayor to solve it. During the exercise of land expropriation all the building related damages are compensated by the exercising municipality.

According to the current land development method's regulations the exercising municipality should establish a committee consisting of the municipality staff, landowners whose land is expropriated, representatives from the Ministry of Finance and Ministry of Justice, who will all together determine the compensation for the expropriated land. Landowners should be notified three months in advance before the municipality exercise land expropriation and the municipality should also let them know about the compensation which will be provided by the municipality. Based on the expropriation law if some landowners do not show up during the three-month time provided, the expropriating municipality can expropriate the chosen area. The compensation process should be completed three months prior to the implementation of the project. Once all the landowners in the area are compensated then the municipality can start the implementation of the project. Based on the law of expropriation if the land is already cultivated before expropriation and later even when the compensation process is finished and the ownership of the land is transferred to the municipality, the municipality should give time for the farmers to harvest the land unless there is the necessity for urgent development of the land.

Under the law of land expropriation Article 8 the following compensations should be provided to the landowners whose land is expropriated:

1. *The price of the expropriated land.*
2. *The price of any expropriated residential houses or other buildings located on the land.*
3. *The price of any fruitful trees, greenery or other plants on the land.*

All the above three types of compensations are carried out by different institutions. For example, the compensation of the land is carried out by the Council of Ministries, the price of expropriated houses and other buildings located on the land is determined by the committee established by the municipality and the price of any fruitful trees, greenery or other plants on the land is determined by the municipality and the Ministry of Agriculture. In most of the cases the compensation is in the form of physical property such as, giving land to landowners in one of the governmental urban projects. And in some cases the compensation is the amount of money which is equal to the value of the land based on market price. However, there is no compensation for those who have developed the state land neither for the building nor for the land.

In an interview related to compensation with one of the Kabul Municipality staff, according to his sayings the compensation is determined as followings:

1. If the plot is in planned area and the owner have legal deeds, in such case the owner will be compensated both for land and construction cost of the house.
2. If a plot (a piece of land) is on agricultural land which is bought by the owner and the landowner have legal deeds, in such case the landowner will be compensated only for land but not for construction cost of the house on his land.
3. If a plot and a house is illegally situated on government land in case of expropriation the owner will be compensated neither for land nor for the construction cost of the house, which is the for squatting.

The above explanation on the current method of land development reveals that the method is based on the oppressive and top-down land development methods that are practiced by authoritarian ruling governments, where landowners' interests and consensus is never part of the process.

III. PROPOSED COLLABORATIVE LAND DEVELOPMENT METHOD

Land readjustment which is also known as land pooling, Land re-assembly, land consolidation, plot reconstitution and Yu-Hung Hong call it instigated property exchange in his book [6]. It is an important land development method and is applicable in variety of situations. The method is being implemented by many countries for example Japan, Indonesia, South Korea, Germany and many others [7], [8].

Archer (1987) defines land readjustment as following "Land readjustment is a technique whereby a group of neighboring landowners in an urban-fringe area are combined in a partnership for the unified planning, servicing and subdivision of their land with the project costs and benefits being shared between the landowners" [9]. The basic model of land readjustment is shown in Fig. 1.

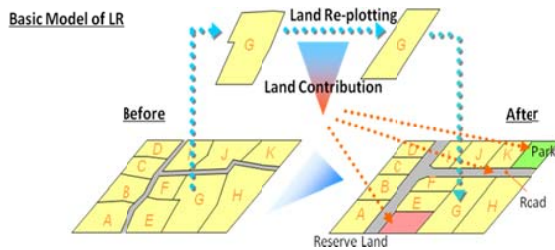


Fig. 1 Basic Model of Land Readjustment

The land readjustment technique unifies the fragmented landholdings in a designated project area and makes it easy for better area planning and design, besides it provides well planned urban facilities and efficient infrastructure [10]. One of the major benefits of this method is that it is almost a self-financing land development method, which reduces public sector financial burdens and reduces unnecessary bureaucratic issues that can be caused by some other urban land development methods like compulsory land purchase or expropriation [11], [12]. In fact, land readjustment is a recommended land development method for governments whose financial resources are insufficient to develop urban land, provide public facilities and finance infrastructure costs [13]. One of the other major benefits of land readjustment is that it is a collaborative land development method [14]. The method not only involves planners and governmental institutions' officials but it gives other stakeholders the opportunity to participate in the implementation process of plans such as landowners, lease holders, private sector, NGOs, community members, etc. and usually projects that are designed and planned through public participation are easily acceptable by the community, also the collaborative planned projects are easier to be implemented than projects implemented through compulsory land purchase or expropriation.

IV. ANALYSIS AND RESULTS

The analysis of this research is drawn qualitatively through unstructured interviews with landowners in the chosen case study area and with some urban planning officials, also the main factors of collaborative land development method have been analyzed within the Afghan society. In order to find out the essence of collaborative land development method by landowners in Afghan society and the following characteristics of the society have been analyzed.

- Social and cultural background of the society
- Mutual trust among people in the community
- General Perception of landowners about collaborative development
- General economic development in society
- Current urbanization pressure
- Risk perception
- Land property issue

The above mentioned characteristics of a society play a key role in carrying out a cooperative land development method,

so every one of them is analyzed separately that is not included in this paper because of the limitation of pages.

After interviewing 15 landowners and knowing their responses and complains, 11 landowners gave affirmative answers towards accepting such a method while 4 other landowners were still not confident enough whether to say yes or no. The general knowledge of land readjustment method that it will be jointly implemented both by help of landowners and the public body was clear to majority of landowners and they said it would be great if they are involved in decision making process of developing their land. The response analysis of landowners reveals that most of the landowners accepted the method to be implemented for the development of their land.

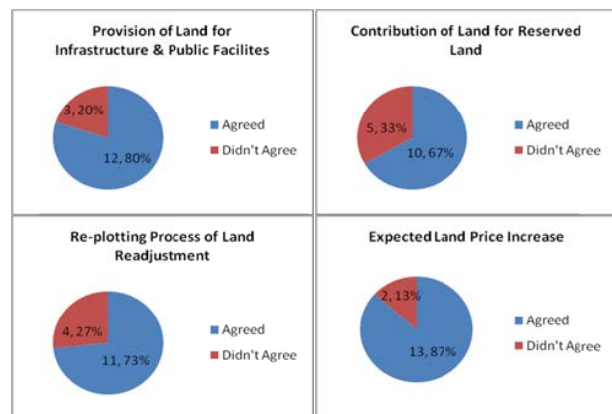


Fig. 2 Landowners' response analysis

V. HOW TO CONVINCE LANDOWNERS

From the analysis of various literatures, it has been clarified that landowners are the most important stakeholders in land readjustment method and their participation in the initiation and implantation process of the method is a one of the key principles of land readjustment method. Therefore, most effort should be put on convincing them to cooperatively carry out the method. In order to do that, the implementing body of land readjustment should draw the interest of landowners into the method by explaining them about the land readjustment method, help them understand how the method works and let them know how the method will benefit their current and future land values and how the method will provide their existing community with all necessary urban services. Landowners will be easily convinced when they realize how they will be benefited and how less they will be affected and how their existing community will be improved by exercising the method, so while explaining the method to them, most of the efforts should be put on those principles of land readjustment that are linked to benefits and losses of landowners such as land value increase after the project and re-plotting process.

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