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Challenges in the Legal Framework for Land and Property Registration in Nangarhar, Afghanistan

Safiullah Samadzai ^{1*}, Abdul Basit Abid ², Abdul Qayum Mullakhail ³

¹⁻³ LLM Nangarhar University, Afghanistan

* Corresponding Author: **Safiullah Samadzai**

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Abstract

This study explores the challenges of land and property registration in Nangarhar, Afghanistan, from legal, administrative, and social perspectives. Despite the importance of a robust land registration system for legal certainty and economic growth, ongoing conflict and institutional weaknesses have rendered it largely ineffective, leading to an increase in property disputes and reliance on informal legal mechanisms.

The research aims to identify the gaps between the legal framework and its practical application, particularly the impact of legal pluralism. A mixed-methods approach was utilized, including legal analysis and semi-structured interviews with 15 legal scholars. Findings reveal that, while the property registration framework theoretically protects rights, practical issues such as weak administrative capacity, lack of transparency, lengthy processes, high costs, and corruption hinder effective enforcement. Consequently, individuals often turn to customary documentation and local agreements, which are seen as faster and more credible.

The research highlights that legal pluralism significantly undermines the efficacy of formal registration. It contributes to the discourse on the rule of law, emphasizing the need for transparency, stronger institutions, and social legitimacy. Recommendations include simplifying the legal framework, enhancing the registration agency's capacity, expanding digital registration, and integrating customary systems. In conclusion, the challenges of property registration in Nangarhar require not only legal reforms but also administrative improvements and better coordination between formal and informal systems.

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1. Introduction

Land and property are regarded as fundamental pillars of a modern rule of law, economic growth, social justice, and sustainable peace. Clear, secure, and legally guaranteed property rights play a crucial role in ensuring the economic security of individuals, bolstering investment, enhancing production, supporting urban development, stabilizing agriculture, and preventing conflict. International legal and development studies indicate that a systematic, transparent, and reliable land and property registration system is a paramount indicator of the rule of law, good governance, and social trust. Conversely, a weak, fragmented, and opaque registration system exacerbates land disputes, corruption, the informal economy, political instability, and social inequality.

In conflict-affected and post-conflict countries, such as Afghanistan, issues related to land and property registration extend beyond mere technical or administrative concerns; they encompass profound legal, historical, social, and political dimensions. Land is intrinsically tied to concepts of power, identity, wealth, and political influence.

Afghanistan epitomizes these challenges, where decades of war, political instability, forced migration, persistent institutional weaknesses, and the overarching influence of customary and traditional legal frameworks have severely impeded the land and property registration process. Consequently, the widespread prevalence of informal ownership, escalating land disputes, ambiguous property rights, and the stark divide between legal theory and practical application have emerged as critical issues within the Afghan legal system.

Although Afghanistan's land law and accompanying civil law provisions, along with land registration regulations, theoretically establish a formal legal framework for determining ownership, they face significant practical challenges due to the prevailing reality of legal pluralism. This pluralism sees formal state law, customary practices, ethnic traditions, and informal arrangements established during conflicts competing for relevance. Such conditions engender conceptual contradictions among laws, ambiguities in interpretation, uncertainties regarding the legal status of informal and customary documents, weak enforcement mechanisms, and limited enforcement capacity. This situation results in a pronounced disconnect between the "Law on the Books" and the "Law in Action," a phenomenon that Afghan legal scholars have characterized as a confluence of legal existence and practical absence.

Nangarhar province, one of Afghanistan's most economically and strategically significant regions, exhibits particular vulnerability to urban expansion, population pressure, cross-border trade, the return of refugees, unregulated urbanization, and sudden surges in land values. It encapsulates a concentrated manifestation of Afghanistan's overarching challenges related to land and property registration. The widespread reliance on customary land titles, the lack of clear demarcation between state and private lands, the inadequate technical and human capacity of registration agencies, along with corruption and cumbersome processes, have generated considerable legal threats to property rights. Consequently, land disputes have evolved into a persistent source of social insecurity, judicial conflict, economic stagnation, and societal mistrust. Although numerous Afghan scholars and legal experts, including Professor Mohammad Hassan Kakar, Abdul Qadir Kamel, Sediqullah Rishtin, and Fazal-ur-Rahman Attaei, have engaged in significant scholarly discourse concerning the critical issues surrounding property rights, land, customary practices, and the legal system within Afghanistan. Nonetheless, there remains a notable lack of comprehensive, field-based analytical studies focusing on the legal framework governing land and property registration, specifically at the provincial level of Nangarhar. This gap represents an essential area for scholarly inquiry as well as practical policy development.

This study seeks to address this deficiency by employing a combined methodology that incorporates legal analysis alongside thematic analysis. It aims to conduct a thorough and critical examination of the existing laws, regulations, and legal principles prevalent in Afghanistan. Concurrently, the study will analyze the practical experiences, perceptions, and challenges faced by various stakeholders, including institutions, legal practitioners, judicial personnel, and the general populace of Nangarhar province. The objective is to elucidate how factors such as legal deficiencies, administrative inefficiencies, social realities, and customary practices collectively contribute to the ineffectiveness of the

land and property registration system.

Ultimately, this research will provide scientifically grounded and practical recommendations aimed at legal reform, enhancement of administrative capabilities, improved coordination among institutions, and the promotion of evidence-based policymaking. These recommendations aspire to align Afghanistan's land registration framework more closely with international standards, the experiences of post-conflict state-building, and the objectives of sustainable development, thereby fostering a sustainable, equitable, and transparent mechanism for the protection of property rights.

2. Method

This study employs a multidisciplinary mixed-methods approach to investigate the challenges in the legal framework governing land and property registration in Afghanistan, focusing on Nangarhar province. It seeks to clarify the relationship between legal texts and their practical implementation. The procedure for this study is as follows:

2.1. Problem formulation

At this stage, the author determines the problems he wants to solve. This part involves a Legal Analysis (Doctrinal Legal Research), critically assessing Afghan land law, relevant civil law materials, and registration regulations. This analysis identifies legal deficiencies, internal contradictions, and implementation limitations while establishing a framework to evaluate the law's effectiveness and the status of informal documentation.

2.2. Literature search

The second part consists of a qualitative field investigation, featuring semi-structured interviews with 15 experienced lawyers on land and property rights. The interview questions were developed based on the legal analysis to explore discrepancies between legal frameworks and practical enforcement.

2.3. Data evaluation

The study's reliability is enhanced by methodological triangulation and expert consultations, while ethical standards, including participant consent and confidentiality, are upheld. Although the convenience sampling method may limit generalizability, this approach provides valuable insights for legal reform and policy development.

2.4. Data analysis and interpretation

Data from the interviews underwent thematic analysis, aligning identified themes with the legal analysis to highlight convergence and divergence between law and practice.

3. Results and Discussion

3.1. Results

The findings of this study, which are derived from a comprehensive and reciprocal analysis of Doctrinal Legal Analysis and Thematic Analysis, clearly indicate that the challenges associated with land and property registration in Nangarhar province are not merely accidental or administrative shortcomings. Rather, they represent a systematic legal failure emerging from a profound inconsistency between the legal framework, its implementation mechanisms, and societal acceptance. The legal analysis reveals that, although the legal framework for land and property registration in Afghanistan ostensibly

establishes principles concerning ownership, document registration, and dispute resolution, it fundamentally suffers from three critical deficiencies: first, the conceptual ambiguity of the law's provisions and the imprecise or incomplete definitions of key terminologies; second, the absence of clear, uniform, and binding standards for the implementation by registration agencies; and third, the silence or insufficient treatment of the legal status of informal documents and customary property. These deficiencies have resulted in the law becoming a source of instability, rather than legal certainty, as various institutions and officials can interpret the law at their discretion.

The outcomes of the thematic analysis strongly corroborate this legal assessment in practice. A detailed examination of interviews with fifteen legal scholars indicates that the registration system engenders a sense of danger, uncertainty, and conflict among individuals, instead of fostering legal security. A recurring and central theme identified was that the registration process lacks transparency, predictability, and legal certainty; participants consistently noted that even individuals possessing legal documents do not view the final determinations of the registration authority as conclusive. This clearly illustrates the existence of a significant law-practice gap. Furthermore, the results of the interviews suggest that corruption, political and social influences, and inadequate professional capacity have transformed the registration process from one governed by legal principles to a transactional mechanism.

The integrated analysis of both methods reveals that the difficulties surrounding land registration in Nangarhar arise from the unregulated practice of legal pluralism. As indicated by the legal analysis, the formal law endeavors to monopolize property rights; however, the thematic analysis reveals that customary systems, jirgas, and local decisions possess greater legitimacy and influence among the populace than the formal legal framework. This situation not only undermines the formal registration system but also raises questions regarding the legitimacy of state legal authority. Participants specifically emphasized that individuals pursue formal registration only when compelled to do so, motivated not by confidence in the law, but by fears of administrative pressure or legal repercussions.

From an analytical perspective, the results of this study demonstrate that the primary source of insecurity concerning property rights is not the absence of law, but the lack of credibility in its implementation. This credibility is contingent upon the interaction of three factors: (1) the weak structure of legal texts, (2) the limited institutional capacity of registration agencies, and (3) the low level of legal trust among the populace. The results of the thematic analysis further indicate that the absence of legal awareness reflects not only a challenge for the citizens but also a symptom of a failed relationship with the state, as the law engenders a sense of ambiguity, cost, and conflict rather than security. In conclusion, this study scientifically establishes that the issues related to land and property registration in the context of Nangarhar constitute a structural legal crisis, rather than a technical or ancillary issue. Until the law is effectively implemented in accordance with social realities, administrative capabilities, and the existence of customary systems, the registration mechanism will continue to catalyze conflict rather than a means of resolution. This conclusion embodies the fundamental scholarly contribution of the study, as it not only elucidates the problem but also

underscores the necessity for a paradigm shift in legal reform.

4. Discussion

The problems with land and property registration in Nangarhar province are a clear example of the lack of rule of law, administrative capacity, and social trust in Afghanistan. The legal analysis of this study shows that the legal foundations for property registration exist in the law, but the lack of enforcement mechanisms, the ambiguity of the legal provisions, and the lack of transparency in the administration undermine the practical implementation of the law. At the same time, the results of the thematic analysis, which was compiled based on interviews with 15 legal scholars, indicate that the gap between law and practice is not only due to the shortcomings of legal texts, but also due to social trust, administrative corruption, and the existence of informal legal systems. These findings provide important conclusions about the effectiveness of the law in light of Afghanistan's legal pluralism and the theory of state legitimacy (Benda-Beckmann, 2001; Ewick & Silbey, 1998)^[2, 4].

The most important conclusions of this study are as follows: First, there is a deep gap between law and practice; Although the law has clear principles for property registration, the lack of administrative capacity, transparency, and broad discretion of interpretation by staff in terms of implementation leads to a lack of legal certainty. Second, the widespread use of informal legal mechanisms (jirgas, local agreements, customary documents) is due to low trust in formal registration and weak administration. Third, the lack of professional staff, information systems, and document management in the registration agency fails to establish people's rights. Fourth, the lack of legal awareness and social trust is exacerbated by the length, cost, and lack of transparency of the registration process, and people turn to informal mechanisms instead of formal registration. Interviews with 15 legal scholars provide strong evidence for these findings. Interview participants clearly stated that the registration process is difficult and non-transparent for people, and that registration staff have broad discretion in interpreting the law, which leads to corruption and the possibility of misinterpretation. They also noted that the formal registration process is long and expensive for people, and that informal mechanisms (jirgas, family agreements) are more reliant on family and ethnic structures.

These results can be analyzed in light of the theories of the rule of law and legal pluralism. In the theory of the rule of law, law is effective only when state institutions can implement it, and the people have faith in the law. In Nangarhar, the lack of administrative capacity, lack of transparency, and low legal awareness of the people are the reasons for the weak rule of law. At the same time, the theory of legal pluralism suggests that informal systems also exist in a society alongside formal law; in Afghanistan, due to conflict, instability, and the weakness of the state, these informal systems have been strengthened, and people turn to customary mechanisms instead of the formal system (Benda-Beckmann, 2001)^[2].

Evidence from 15 interviews suggests that people do not go through the formal registration process because it is long, expensive, and non-transparent; whereas jirga and local agreements are quick, cheap, and accepted by the community. This situation is indicative of the lack of legitimacy of the law and the weakness of state services, and thus, the law remains only on paper (Ewick & Silbey, 1998)^[4].

This study is consistent with the findings of international and regional studies, but also offers some important innovations. The economic importance of transparency and legal certainty in property registration has been emphasized in the World Bank, FAO, and international studies on land governance; our study confirms these findings, but it also shows that the problem of property registration in conflict-affected communities is not only economic, but also has a deep legal-social dimension (World Bank, 2019; FAO, 2020)^[19, 11].

Alden Wily and McEwen's studies in Afghanistan focus on legal pluralism and the role of customary systems; this study reinforces this view in the specific context of Nangarhar, showing that informal systems are a product of the failure of formal law (Alden Wily, 2011; McEwen, 2015)^[9, 15].

Rasteen's (2018) and Sarwari (2017) findings on corruption, poor record management, and lack of transparency in registration are also consistent with this study's findings, but this study presents these issues as reality in the context of Nangarhar province through the experiences of 15 legal scholars^[16, 17].

This study provides new empirical evidence for the theories of the rule of law and legal pluralism. It shows that law is effective not only through the power of the state, but also through social legitimacy and transparent mechanisms of enforcement. The study also highlights the distinction between "the text of the law" and "the practice of the law" as a key concept (Ewick & Silbey, 1998)^[4].

The study has a clear message for policymakers: registration reforms should be carried out along three axes:

1. Simplifying the law and establishing clear standards for interpretation;
2. Building administrative capacity (training, information systems, transparency, accountability);
3. Creating a legal framework for the legitimate integration of customary systems.

If these reforms are implemented, formal registration will become a real tool for legal protection and dispute resolution for the people, not just a paper-based administrative process (World Bank, 2019; Sarwari, 2017)^[19, 17].

The study is based on interviews with 15 lawyers selected through convenience sampling. This limits the generalizability of the results, as the views of the general public, local leaders, and other registry staff were not directly included. Also, due to time and security constraints, some specific conflicts (e.g., women's property, refugee issues) were not explored in depth.

Future research could use the following approaches to explore this issue more broadly:

- Obtaining generalizable results using a quantitative survey and a large sample size;
- Incorporating the experiences of the general public, women, refugees, and local leaders;
- Comparative research with other provinces (e.g., Helmand, Kandahar, Balkh);
- Analyzing the legal, technical, and social impacts of digital registration;
- Testing legal models for integrating customary and formal systems.

Overall, this study analyzes the land and property registration problem in Nangarhar within the context of the crisis in Afghanistan's legal system and argues that property rights are a reflection of the quality of the relationship between law, society, and the state. The scholarly value of this study lies in its integration of legal and thematic analysis, which explains the problem of registration in a comprehensive, critical, and innovative framework. This study offers important lessons in land governance not only for Afghanistan but also for post-conflict societies, which are of considerable value for international legal studies.

5. Conclusion

The legal problem of land and property registration in Nangarhar province provides a profound picture of Afghanistan's failure to build a legal state, lack of administrative transparency, and low social trust. This study, through the combined use of legal analysis and thematic analysis, draws on interview evidence from 15 legal scholars to identify the deep gap between the text of the law and practice. According to the legal analysis, the necessary principles and mechanisms for property registration are present in the law, but the results of the thematic analysis show that the overall state of law implementation is incapable of creating legal certainty due to the weak structure of the state administration, lack of transparency, and low legal awareness (World Bank, 2017; FAO, 2018)^[8, 5]. This finding is consistent with the theory of legal pluralism, which states that there is a combination of cooperation and competition between formal law and customary systems in Afghanistan (Benda-Beckmann, 2001)^[2].

The 15 interviewees clearly stated that the registration process is inaccessible to the public due to its length, high fees, technical shortcomings in document registration, and corruption. In particular, several participants described the process as "painful" and "unproductive," as the slowness of document verification, mapping, and clerical procedures at the registration office leads people to assert their rights through local assemblies, family agreements, and informal documents instead of the registration process. This reality suggests that the formal registration system is not a credible alternative to the needs of people's lives due to its lack of legitimacy. An important new finding of this study is that the relationship between formal and informal systems in Nangarhar is not simply one of competition, but rather the proliferation of customary mechanisms as a "second formal" system, a consequence of the weakness of the formal system and the low level of legal awareness among the people. The evidence from 15 interviews also suggests that the choice of customary systems is a result of "hard life circumstances": people lack easy access to formal registration due to conflict, displacement, and loss of documentation, so they rely on family and tribal agreements to establish their ownership. This finding is consistent with research by McEwen (2017) and Alden Wily (2012)^[7, 1], but in the specific political and social context of Nangarhar, it offers a new and nuanced perspective that the failure of formal registration is also influenced by security and social pressures. Theoretically, this study provides new empirical evidence for the theories of

the rule of law and legal pluralism, as it shows that law is effective not only through state power and legal text, but also through social legitimacy, transparent implementation, and increased legal awareness. Also, the gap between the text of the law and practice is consistent with Ewick and Silbey's (1998) "public life of law" theory, which states that law acquires meaning in real life through people's experiences and the performance of the administration^[4]. The results of this study confirm that the success of law reform lies not only in improving the substance but also in the means of implementing mechanisms, institutional capacity, and building social trust. This study has three important practical recommendations for policymakers: first, simplifying the law and establishing clear standards for interpretation, to reduce the potential for administrative discretion and corruption. Second, building the capacity of the registration authority (training, information systems, transparency, and accountability) to improve the quality of law enforcement and public trust. third, creating a legal framework for the legitimate integration of customary systems, since the widespread use of customary systems in Nangarhar is due to the weakness of formal registration and the need for it; in the case of legitimate integration of these systems, a more practical and socially acceptable framework for resolving disputes and establishing ownership can be created (Haller, 2012; Benda-Beckmann, 2001)^[6, 2]. Although the methodology of this study is based on interviews with 15 lawyers (convenience sampling), which limits its generalizability, it provides important evidence about the real situation of registration problems in the specific context of Nangarhar province. Despite this limitation, this study provides a clear direction for future research: future studies could conduct a broader survey using a quantitative survey and a larger sample size to obtain generalizable results, include the experiences of the general public, women, refugees, and local leaders, and conduct a comparative analysis with other provinces. In addition, in-depth analysis of the legal, technical, and social impacts of digital registration are important topic for future research (Creswell & Plano Clark, 2018)^[3]. Overall, this study describes the problem of property registration in conflict-affected communities in Afghanistan in terms of its legal, social, and administrative dimensions and constitutes a fundamental source of practical and theoretical recommendations for strengthening the rule of law. The importance of this study lies in its integration of legal analysis and thematic analysis to describe the registration problem in a comprehensive, critical, and innovative framework and provide clear ways for policymakers and legal practitioners to address this problem.

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The findings aim to serve as a valuable reference for legal reforms and policy development, particularly in Afghanistan

and post-conflict societies, with hopes of rebuilding trust between legal frameworks, administrative bodies, and society.

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