



# Can community-based land adjudication and registration improve household land tenure security? Evidence from Afghanistan



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## ABSTRACT

Unlike in many developing contexts, land title regularization and registration projects in Afghanistan have for the most part eschewed judicial adjudication and recording of title for those landholders with customary tenures or otherwise without legally recognized rights to land. Rather, the pilot land titling and registration projects in the country have been community-based, the defining feature of which is recording of community consensus regarding who in the community holds what rights to what land, buildings, water, trees, and commons, with some recognition by a governmental entity such as a municipal or government agency, but not as a result of judicial adjudication and registration processes. We call these initiatives Community-Based Land Adjudication and Registration, or CBLAR. We show that CBLAR is more appropriate than legal titling in the Afghan context but that the success of these initiatives in improving household land tenure security depends on the quality of customary governance and on investment in public goods such as roads, schools, lending institutions, administrative capacity of local governments, and forums to resolve disputes that overwhelm communities. More generally, CBLAR promises to improve household land tenure security in post-conflict settings when it is implemented in the appropriate context and with the appropriate support from the state and international donors.

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## 1. Introduction

Our research considers the question of whether community-based efforts to identify legitimate users of land in Afghanistan have improved household land tenure security. Unlike in many developing contexts, the pilot land title regularization and registration projects in Afghanistan have for the most part eschewed judicial adjudication and recording of title for those landholders with customary tenures or otherwise without legally recognized rights to land. Rather, the pilot land titling and registration projects in the country have been community-based, the defining feature of which is recording of community consensus regarding who in the community holds what rights to what land, buildings, water, trees, and commons, with some recognition by a governmental entity such as a municipal or government agency, but not as a result of judicial adjudication and registration processes. We call these initiatives based upon community-based registration of rights Community-Based Land Adjudication and Registration, or CBLAR.

In contrast with land registration, which refers to official, legally prescribed recording of rights to land or *tasfiya*, a legally defined procedure for official adjudication and legal registration of rights to land (MEC, 2014, pp. 21–22), CBLAR produces community-based registration of rights. For example, the UN-Habitat Municipal Governance Support Program (MGSP) eschews legal tiling in favor of recording property ownership and issuing a *safayi* certificate, which in the Afghan context is a property tax document. *Safayi* is not a proof of property ownership but rather a community-based recording of ownership that the municipality can then use to collect taxes that increases the ability of the municipality to provide public goods (UN-Habitat, 2015a).

Land reform in Afghanistan is motivated by the belief that property insecurity in rural and urban contexts contributes to economic vulnerability, conflict, and underinvestment in public infrastructure (Alden Wily, 2013; Foley, 2009; Malkasian, 2013; MEC, 2014; Stanfield et al., 2013). CBLAR has been implemented to improve tenure security in three distinct contexts since 2003 through a series of pilot projects. The first context includes several informal urban settlements in need of infrastructure upgrading. The second context includes various rural communities for which settled communities and nomadic peoples claim rights to communal pastures. The third context includes efforts to resolve conflict in communities

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that have experienced land conflicts deriving from inheritances, boundary issues, and tribal jurisdictions. Although the Afghan government has a formal process for registration of land ownership (tasfiya) in the Land Management Law (which was issued by a presidential decree in 2008 and has been amended many times since), it is ad hoc and currently cannot be launched on even a regional scale. Our empirical focus is therefore on these CBLAR pilot projects.

Our analysis of each context shows that CBLAR is more appropriate than legal titling as a method to identify legitimate users of land in a community. CBLAR acknowledges limits in the ability of the central government and municipalities to formalize property rights through tasfiya or a judicial process, recognizes that formal adjudication often provides the state with opportunities for land grabbing, and reduces the costs of identification of legitimate users of land by working through informal governance organizations that are often viewed as more legitimate and administratively competent than courts and government agencies. However, our research also finds that the experience with CBLAR in Afghanistan is most likely to be successful when such projects are implemented in the context of competent, reliable, and legitimate systems of customary governance, and its impact on reducing vulnerability improved by embedding such projects in a broader context of investment in public goods such as roads, schools, access to credit, and capacity of local governments to resolve land disputes.

This paper is organized as follows. Section 2 provides a conceptual framework that clarifies under what conditions both legal titling and CBLAR are expected to improve household land tenure security. Section 3 uses evidence from fieldwork in over thirty rural villages and from a nationally representative survey to contrast the formal and customary systems of governance in Afghanistan. Section 4 considers the three contexts in which CBLAR has been implemented in Afghanistan since 2003. Section 5 concludes.

## 2. Legal titling, CBLAR, and household tenure security

The International Federation of Surveyors (FIG) defines land registration as the official recording of legally recognized interests in land. From a legal perspective, FIG distinguishes between two types of land registration: deed registration and registration of title. For deed registration, documents filed in the registry are evidence of ownership. Deed registration can generally be implemented more quickly and with less expense than title registration. For registration of title, the register itself serves as the primary evidence of ownership. Title registration is more complex because it includes examination of documents and cadastral plans, yet it promises greater tenure security and more reliable information. In addition, users do not have to search old deeds to determine ownership because the title register standardizes and streamlines such information (The International Federation of Surveyors, 2015).

Legal titling may be part of land registration projects in contexts where the rights of landholders are not recorded in a deeds or title registry. Such adjudication seeks to bring landholding into the registry through a legal process, with the results of such adjudication recorded in the official land registry. This type of registration system, which is sometimes referred to as first registration, surveys and records ownership prior to issuing certificates as proof of ownership. First registration can bring customary, religious, and other landholding norms into a single national system of ownership controlled by the state, as well as doubling as a list of taxpayers (Alden Wily, 2003a). Registration in this manner promises to improve security of land tenure, access to credit, and productivity of land (Arruñada and Garupa, 2005).

One of the main economic justifications for legal titling in the developing world is the finding that countries with a very long history of private property rights tend to be wealthier (Acemoglu

et al., 2002; North, 1981; North and Thomas, 1973; Sokoloff and Engerman, 2000). Some are optimistic that poor countries can improve prospects for economic development by replicating the process of the emergence of private property institutions that occurred in Western Europe and North America. For example, (De Soto's, 2000) defense of legal titling in the developing world is based on the presumption that legal recognition of the land claims made by squatters on government-owned frontier land in the nineteenth century in the United States spurred the growth of capitalism in the country and that developing countries can mimic that process.<sup>1</sup> In the policy realm, legal titling is a longstanding component of Western-led efforts to improve development prospects (Easterly, 2006; Rodrik, 2008).

Despite its popularity, many studies question whether legal titling actually improves household land tenure security. Legal titling can undermine household land tenure security for women because they are often excluded from judicial adjudication of property rights (Agarwal, 1994; Tripp, 2004). Legal titling also tends to generate land grievances because formalization of land ownership is inherently redistributive (Boone, 2013). In addition, although some studies find that legal titling increases investment in land or public infrastructure (Field, 2005; Galiani and Schargrodsky, 2010), others find that people are no more likely to perceive that their land tenure is secure after the state assigns them a legal title (Benjaminson et al., 2009; Brasselle et al., 2002; Bromley, 2009; Sjaastad and Bromley, 2000, 1997).

The underlying reason why legal titling may not improve household land tenure security is because property rights are political constructs that depend for their effectiveness on the willingness and capacity of the government to grant and enforce them (Bromley, 2006; Sened, 1997). The political nature of a property right requires consideration of the broader context of governance within which property rights are specified and enforced (Deininger and Feder, 2009). Several dimensions of governance are likely to influence whether legal titling will improve household land tenure security.

First, state capacity influences whether legal titling improves household land tenure. State capacity refers to the ability of the government to implement and enforce public policies (Fukuyama, 2013). In order for legal titling to improve household land tenure security, the state must have sufficient capacity to register land ownership (Arruñada, 2014, 2012), enforce ownership (Fitzpatrick, 2006), and resolve conflicts over land (Blattman et al., 2014; Murtazashvili and Murtazashvili, 2016a,b).

Second, the extent of constraints on political decision-makers influences the consequences of legal titling. Political constraints determine the credibility of the state's promise to respect private property rights (Haber et al., 2003; North and Weingast, 1989; Riker and Weimer, 1993). Legal titling is unlikely to improve household land tenure security unless political institutions constrain politicians to respect the property rights that are embodied in legal titles. This feature of governance is especially important in weak states because politicians in such contexts are often unable to commit credibly to their promises of institutional reform (Coyne and Boettke, 2009; Flores and Nooruddin, 2012).

<sup>1</sup> There are a number of institutional factors besides legal recognition of squatters' presumptive rights to ownership that explain why the United States is a very wealthy country, including a favorable constitutional structure (Mittal et al., 2011), a rational and orderly system to record land ownership in frontier regions (Libecap et al., 2010), and the fact that the federal government planned to transfer its vast stock of public land to settlers through land auctions (Murtazashvili, 2013). The notion that legal titling unlocked capitalism in the United States neglects the broader constitutional, legal, and ideological context within which the government recognized the land claims made by squatters.

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