

How to recognize national lands (natural resources) and exceptions (non-national resources): objection methods and authorities

Cómo reconocer las tierras nacionales (recursos naturales) y las excepciones (recursos no nacionales): métodos de objeción y autoridades

Como reconhecer terras nacionais (recursos naturais) e exceções (recursos não nacionais): métodos de objeção e autoridades

Arash Bineshian¹

Received: July 26th, 2023

Accepted: August 8th, 2023

Available: December 20th, 2023

Cómo citar este artículo:

Arash Bineshian. *How to recognize national lands (natural resources) and exceptions (non-national resources): objection methods and authorities*. DIXI, vol. 26, n°. 1, enero-junio 2024, 1-25.

DOI: <https://doi.org/10.16925/2357-5891.2024.01.02>

Research article. <https://doi.org/10.16925/2357-5891.2024.01.02>

¹ MSc. degree in Private Law. Law Department, Islamic Azad University, Tehran, Iran.

E-mail: shahcheshme@gmail.com; arash.bineshian@acmail.ir



Abstract

The principles of natural resources include recognition, governance, protection, and exploitation of natural resources, among which recognition is the most important. Any enforcement of sovereignty over national lands requires the implementation of a legal recognition process. So, recognizing national lands and exceptions is of great importance. In other words, recognizing national lands and exceptions is the first step in protecting these lands and preventing their waste and change of use. Each country's natural resources and environment do not belong only to it, but to all the people of the world. In this way, the destruction of national lands does not only mean the deterioration of a part of that country's capital, but also the destruction of a part of the natural resources and environment of the planet and the wealth of the whole world. Unfortunately, most developing countries have a full-scale war against natural resources and the environment. The author is concerned not only about the preservation of natural resources and the environment in Iran, but also about the whole world. Governments should be forced to preserve, restore and develop natural resources and the environment by using practical international tools, and there is no other choice but to force.

Keywords: Competent authorities, exceptions, national lands, non-national lands, objection.

Resumen

Los principios de los recursos naturales incluyen el reconocimiento, la gobernanza, la protección y la explotación de los recursos naturales, entre los cuales el reconocimiento es el más importante. Cualquier aplicación de la soberanía sobre las tierras nacionales requiere la puesta en marcha de un proceso de reconocimiento legal. Por lo tanto, reconocer las tierras nacionales y las excepciones es de gran importancia. En otras palabras, reconocer las tierras nacionales y las excepciones es el primer paso para proteger estas tierras e impedir su despilfarro y cambio de uso. Los recursos naturales y el medio ambiente de cada país no le pertenecen sólo a él, sino a todos los pueblos del mundo. De este modo, la destrucción de tierras nacionales no sólo significa el deterioro de una parte del capital de ese país, sino también la destrucción de una parte de los recursos naturales y del medio ambiente del planeta y de la riqueza del mundo entero. Desgraciadamente, la mayoría de los países en desarrollo están en plena guerra contra los recursos naturales y el medio ambiente. Al autor no sólo le preocupa la preservación de los recursos naturales y el medio ambiente en Irán, sino en todo el mundo. Hay que obligar a los gobiernos a preservar, restaurar y desarrollar los recursos naturales y el medio ambiente utilizando herramientas internacionales prácticas, y no hay más remedio que obligar.

Palabras clave: autoridades competentes, excepciones, tierras nacionales, tierras no nacionales, objeción.

Resumo

Os princípios dos recursos naturais incluem reconhecimento, governança, proteção e exploração dos recursos naturais, entre os quais o reconhecimento é o mais importante. Qualquer aplicação de soberania sobre terras nacionais exige a implementação de um processo de reconhecimento legal. Portanto, o reconhecimento das terras nacionais e das exceções é de grande importância. Em outras palavras, o reconhecimento das terras nacionais e das exceções é o primeiro passo para proteger essas terras e evitar seu desperdício e mudança de uso. Os recursos naturais e o meio ambiente de cada país não pertencem somente a ele, mas a todas as pessoas do mundo. Dessa forma, a destruição de terras nacionais não significa apenas a deterioração de uma parte do capital desse país, mas também a destruição de uma parte dos recursos naturais e do meio ambiente do planeta e da riqueza do mundo inteiro. Infelizmente, a maioria dos países em desenvolvimento tem uma guerra em grande escala contra os recursos naturais e o meio ambiente. O autor está preocupado não apenas com a preservação dos recursos naturais e do meio ambiente no Irã, mas também com o mundo inteiro. Os

governos devem ser forçados a preservar, restaurar e desenvolver os recursos naturais e o meio ambiente usando ferramentas internacionais práticas, e não há outra opção a não ser forçar.

Palavras-chave: Autoridades competentes, exceções, terras nacionais, terras não nacionais, objeção.

I. INTRODUCTION

The competent authority to hear the objections received concerning the recognition of national lands and exceptions has been changed many times since the approval of the Nationalization of the Country Forests Act of 1963. A Commission to hear people's objections to the recognition was foreseen for the first time¹ in the Executive Regulations of the Nationalization of the Country Forests Act. The Commission, made up of the head of the province's agriculture department, the forest superintendent, and the forest superintendent agent, issued final and binding decisions according to the opinion of most members. After the Law on Protection and Exploitation of Forests and Meadows was approved², this law was assigned to the authorities for hearing objections. The above law stipulates that the objector must submit his/her objection within three months after the notification of the recognition document or publication of the recognition notification.

A Commission consisting of the governor, the chief justice, the chief registrar, the head of the agriculture department, the head of the local forest department, or their representatives was appointed as the authority to hear the objections. The opinion of the majority of the members of the Commission³ on the Law on Protection and Exploitation of Forests and Meadows was final and binding. Hearing the objections of individuals to the decisions of the Commission⁴ in terms of violation of laws and regulations, or opposition to them, was entrusted to the Court of Administrative Justice after the law's approval on the Court of Administrative Justice in 1981.

One of the critical environmental challenges in Iran is the destruction, change of use, and appropriation of renewable natural resources, and the area of forests and meadows is decreasing daily. The problems and shortcomings of legislation aggravate this, non-compliance with technical regulations and non-implementation of protocols, conventions, and policies communicated by the United Nations Environment Assembly (UNEA), the International Union for Conservation of Nature (IUCN), etc. So, the legal community needs a comprehensive study of natural resource rights. This

1 Ali Hujjati. *NATURAL RESOURCES LAW*. Behnami Publishing. (2013).

2 Ahmad Shams. *LEGAL SYSTEM OF A PUBLIC LAND*. Dadgostar Publishing. (2011). Pag. 70.

3 *Id.*

4 *Id.*

study investigates how to recognize national lands and exceptions, objection methods and authorities, and its challenges and solutions by looking at the historical development of the Nationalization of the Country Forests Act.

II. PROBLEM STATEMENT

The Nationalization of the Country Forests Act was approved in 1963 to preserve the environment and prevent the destruction and appropriation of national lands that belong to the next generations. According to Hujjati Ali⁵ the law of all forests, meadows, natural groves, and forest lands of the country are part of the public property and belong to the government even if the people took possession of it before the mentioned date and obtained the title deed. The forest refers to trees that have grown naturally without human intervention. Meadow means the vegetation cover created naturally without human intervention and is prone to grazing by livestock. These lands have exceptions, including the area and surroundings of facilities and rural houses, agricultural lands, and gardens adjacent to national lands, whose creation and possession date back to before the act's approval date, *i.e.*, 1963-01-17.

2.1 The Concept of Lands and Exceptions

According to⁶ the Nationalization of the Country Forests Act, all forests, meadows, natural groves, and forest lands of the country are included in the national lands, and all the things that are not included in the national lands are called exceptions. In this way, the examples of exceptions specified by the legislator in the relevant laws are as follows:

- Although the forest stands surrounded by agricultural lands located in the forest lands of the northern plains of the country and within the scope of title deeds of individuals are not subject⁷ of above legal approval, their exploitation is subject to the general provisions of the Law on Protection and Exploitation of Forests and Meadows.
- Rural facilities and houses, agricultural lands, and gardens located within the boundaries of the title deeds of forests and meadows, which were built

5 Ali Hujjati, *supra*, note 1.

6 *Id.* Pag. 229.

7 *Id.*

until the date of approval of the Nationalization of the Country Forests Act, will not be subject of this law⁸.

- Law on Protection and Exploitation of Forests and Meadows specifies that⁹ this decision includes forest lands and natural groves as well, and that the area of the grounds, buildings, and facilities in national resources that were built before the approval of the Nationalization of the Country Forests Act will be considered to be twenty times the area of the building. Concerning this paragraph, the recognition agent must ensure that the above buildings and facilities were established before the date of approval of the Nationalization of the Country Forests Act, and that the buildings built after the act's approval date are not included in the exceptions.
- Non-forested meadows that were allocated to individuals according to the Land Reform Act approved in 1962, and forested meadows that are included in the scope of arable properties on the date of approval of this act or later, according to title deeds with the final decisions of judicial courts or board of directors, will not be subject to the provisions of this law. According to Article 64 of the Law on Protection and Exploitation of Forests and Meadows¹⁰, the area of the meadows mentioned in this paragraph will be up to twice that of arable lands, fallow lands, orchards, and greenhouses. Although the cases mentioned in this paragraph are seen as exceptions, and the private property of individuals is not lost, the owner can only use these meadows for livestock grazing and have no right to convert or change them. The owner's proprietorship will be lost if violating this provision without obtaining permission from the legal authorities.

2.2 Historical Course

After the enforcement of the Nationalization of the Country Forests Act, the Law on Protection and Exploitation of Forests and Meadows was approved in 1967, which was more complete than the Nationalization of the Country Forests Act, and the method of exploitation of forests, meadows, and financial charges, as well as the method of transfer and exceptions were foreseen in it. The Ministry of Agriculture Jihad was entrusted with enforcing the mentioned law, and each city's Department of Natural Resources and Watershed Management Organization was responsible for its

8 *Id.*

9 *Id.* Pag. 289.

10 *Id.*

enforcement as one of the sub-branches of the Ministry of Agriculture Jihad. This way, the agents visited the place and recorded their opinion on the recognition document.

The Department of Natural Resources and Watershed Management Organization officially declared it a forest or a meadow if the visited place was recognized as a forest or a meadow. They took action to possess, announce, register proprietorship, and cancel the deeds of the previous owner and obtain a new deed in the name of the government. The legislator specified the authorities to hear the objections of individuals and the government because the nationalization of land would cause harm to individuals, agents would make mistakes in recognition, and the rights of individuals or the government would be violated. Those who object to nationalization must prove that the claimed land had a history of restoration, cultivation, etc., before the date of approval of the Nationalization of the Country Forests Act.

The authorities for hearing objections throughout Iran's history include the Court of Administrative Justice¹¹, the Commission on the Single General Court¹², and the particular branches of the Court. Besides, the authorities of the first instance to hear the current objections are the Commission on the Single¹³ and the particular branches of the Court. Although the special branches of the provincial Court were the only authorities to hear objections in a short time, the legislator renewed the previous procedure and retained the jurisdiction of the Commission¹⁴ in the first hearing of objections to the recognition document in 2015.

The Commission on the Executive Regulations of the Nationalization of the Country Forests¹⁵ law was the first authority to hear objections to recognizing national lands in this historic course. Suppose the Natural Resources and Watershed Management Organization or the interested party objects to the recognition by the forester. In that case, the objection will be raised and heard in a Commission composed of the head of the province's agriculture department, the forest superintendent, and the forest superintendent agent.

The objections to Article 20 of the Executive Regulations of the Nationalization of the Country Forests Act¹⁶, including the finality of its decisions and the administrative composition of the three members of the Commission, caused the legislator to approve Article 56 of the Law on Protection and Exploitation of Forests and Meadows

11 *Id.* Pag. 229; Ahmad Shams, *supra*, note 2. Pag. 70.

12 Ismael Aghajanlou. *NATURAL RESOURCES: LAW AND REGULATION*. Majd Publication. (2014). Pag. 317.

13 *Id.*

14 *Id.*

15 Ali Hujjati, *supra*, note 1. Pag. 229.

16 *Id.*

in 1967¹⁷. The members of the Commission are the chief justice¹⁸, the head of the Real Estate Registration Organization of Iran, the governor, and two people from the Natural Resources and Watershed Management Organization (the chief of the organization and his representative).

The decisions of this Commission could be objected to in the Court of Administrative Justice in 1981. The legislator approved a single law¹⁹ on the settlement of disputed lands subject of the Law on Protection and Exploitation of Forests²⁰ and Meadows in 1988 to solve the problems of the Commission²¹ and the defects, as mentioned earlier, after clarifying the weaknesses of the Commission's proceedings and the composition of its constituent members, as well as the recognition of some of the notes of the said law as illegal, following Decision No. 2650 of 1988 of the Guardian Council.

Accordingly, the Commission²² consisting of the head of the Ministry of Agriculture Jihad, the head of the Department of Natural Resources and Watershed Management Organization, a member of the Ministry of Agriculture Jihad, a member of the Land Transfer Board, a judge, and two people from the Islamic Council of the Village or local tribes, as the case may be, was established. It was the first instance's authority for objections to the recognition of national lands and exceptions and the authority for appeals to the decisions of the Commission²³. The board's decisions can be objected to in the public court with no deadline.

The legislator approved the Law on Increasing the Productivity of the Agricultural Sector and Natural Resources on 2010-07-14, after 23 years of activity of the Commission²⁴ and the revelation of the flaws and problems of the Commission. According to Note 1²⁵, all objections to the Nationalization of the Country Forests Act and the recognition of national lands form exceptions will be heard in the particular branches of the General Court of the provincial capital for one year from the approval, *i.e.*, from 2010-07-14 to 2011-07-14.

17 Ahmad Shams, *supra*, note 2. Pag. 70.

18 *Id.*

19 Ismael Aghajanlou, *supra*, note 12.

20 Ahmad Shams, *supra*, note 2. Pag. 70.

21 *Id.*

22 Ismael Aghajanlou, *supra*, note 12.

23 Ahmad Shams, *supra*, note 2. Pag. 70.

24 Ismael Aghajanlou, *supra*, note 12.

25 *Id.* Pag. 319.

The authority of the Commission was then retained, and the one-year deadline of Note 1, Article 9²⁶ of the law mentioned above was extended to five years, *i.e.*, until 2015-07-14, according to the Law on Removing Barriers to Competitive Production and Improving the Financial System of the Country dated 2015-04-21. All issues concerning the nationalization of forests and pastures, the recognition of national lands and exceptions, and the objections received will be heard in the particular branches of the General Court of the provincial capital from this date onwards.

2.3 Competent Authorities to Recognize Exceptions

Recognizing national lands and exceptions was placed on the forester for the first time in Article 20 of the Nationalization of the Country Forests Act, approved in 1963²⁷. However, the interested parties and the Natural Resources and Watershed Management Organization could object to the forester's decision, and the objections received were heard by a Commission consisting of the head of the province's agriculture department, the forest superintendent, and the forest superintendent agent.

The recognition of national lands and exceptions was the responsibility of the Natural Resources and Watershed Management Organization after the approval of Article 56 of the Law on Protection and Exploitation of Forests and Meadows, amended in 1969²⁸. After the Natural Resources and Watershed Management Organization was dissolved, its duties were delegated to the Ministry of Agriculture Jihad. The ministry created the Natural Resources and Watershed Management Organization to perform its task of recognizing national lands, and the recognition was assigned to this organization.

Preservation, restoration, expansion, and exploitation of natural resources were entrusted to the Ministry of Jihad Sazandegi according to the Law on Separation of Duties of the Ministries of Agriculture and Jihad Sazandegi. This was emphasized by Article 2 of the Law on the Conservation and Protection of Natural Resources and Forest Reserves of the Country²⁹. According to the recognition of national resources and exceptions subject to Article 2 of the Nationalization of the Country Forests Act is the responsibility of the Ministry of Jihad Sazandegi³⁰.

26 *Id.*

27 Ali Hujjati, *supra*, note 1. Pag. 234.

28 Ahmad Shams, *supra*, note 2. Pag. 70.

29 *Id.* Pag. 97.

30 *Id.*

The registration offices are obliged to issue the title deed in the name of the government of the Islamic Republic of Iran after the expiry of the prescribed deadline if there is no objection, according to the notice from the Ministry of Jihad Sazandegi six months after a written warning or an advertisement through a widely circulated newspaper, one of the local newspapers, and other usual and appropriate local means.

The Executive Regulations of the Law on Separation of Duties of the Ministries of Agriculture and Jihad Sazandegi stipulates that the Ministry of Jihad Sazandegi must carry out measures concerning recognition through the Natural Resources and Watershed Management Organization. The technical and land audit committee of the natural resources departments of the provinces is currently in charge of recognizing national lands and exceptions. The committee prepares the recognition document after the legal formalities of the nationality of the property³¹.

2.3.1 Commission³²

An authority to hear the objections of individuals and the Natural Resources and Watershed Management Organization to recognize the forester was foreseen for the first time in Article 20 of the Executive Regulations of the Nationalization of the Country Forests Act³³, approved in 1963. The Commission consisted of the province's agriculture department head, the forest superintendent, and the forest superintendent agent. The decisions of the Commission were final and binding according to the majority's opinion. The procedure in the Commission³⁴ was one-stage. There was no specific deadline for objecting to the forester's recognition.

2.3.2 Commission³⁵

The shortcomings of the Commission³⁶ prompted the legislator to establish rules and regulations for hearing people's objections to the recognition of the forester in Article 56 of the Law on Protection and Exploitation of Forests and Meadows approved in 1967³⁷. It was briefly known as the Commission³⁸ in which a three-month deadline

31 *Id.* Pag. 59.

32 Ali Hujjati, *supra*, note 1. Pag. 234.

33 *Id.*

34 *Id.*

35 Ahmad Shams, *supra*, note 2. Pag. 70.

36 Ali Hujjati, *supra*, note 1. Pag. 234.

37 Ahmad Shams, *supra*, note 2. Pag. 70.

38 *Id.*

was set for objection. Individuals had the right to object within three months after the written warning or notice from the Natural Resources and Watershed Management Organization. The members of the Commission³⁹ were:

- the governor,
- the chief justice,
- the head of the Real Estate Registration Organization of Iran, and
- two people from the Natural Resources and Watershed Management Organization.

Shams Ahmad⁴⁰ stipulated that the Commission should hear the objection and make a decision within three months. Like the Commission⁴¹, the decisions issued by the Commission on Article 56 were final and binding. Although Article 56 of the Law on Protection and Exploitation of Forests and Meadows, approved on 1967-08-16⁴², had innovations compared to the Executive Regulations of the Nationalization of the Country Forests Act⁴³, it still needs to eliminate the shortcomings. So, the legislator amended Article 56 of the Law on Protection and Exploitation of Forests and Meadows on 1969-04-15⁴⁴.

In this way, the deadline for objecting to the recognition was reduced from three months to one month, the number of Commission members was reduced from five to three, and only the members were limited to the governor, the chief justice, and the head of local natural resources departments. If there was an objection to a part of the national resources, the Natural Resources and Watershed Management Organization had the authority to request the Commission⁴⁵ to comment on the entire area and license plate without observing the objection deadline.

The authority of the Commission to comment on the entire license plate and the declared area caused the issuance of general decisions in the Commission⁴⁶. New authorities were given to the Commission⁴⁷ in Paragraph C, note 1⁴⁸. According to

39 *Id.*

40 *Id.*

41 Ali Hujjati, *supra*, note 1. Pag. 234.

42 Ahmad Shams, *supra*, note 2. Pag. 70.

43 Ali Hujjati, *supra*, note 1. Pag. 234.

44 Ahmad Shams, *supra*, note 2. Pag. 70.

45 *Id.*

46 *Id.*

47 *Id.*

48 *Id.*

this paragraph, the Commission was obliged to issue an order to remove the possession of national resources at the request of the Natural Resources and Watershed Management Organization if a place is considered national based on the forester's final opinion⁴⁹.

2.3.3 The Court of Administrative Justice

Hearing people's objections to the decisions of the Commission⁵⁰ in terms of violation of laws and regulations or opposition to them was placed in the jurisdiction of the Court of Administrative Justice, according to Paragraph 2 of Article 11 of the Law on the Court of Administrative Justice approved in 1981⁵¹. The rush of objectors to the Court of Administrative Justice led to the accumulation of hundreds of cases there.

Many objectors objected to the enforcement⁵² and the decisions of the relevant Commissions in terms of substance. For example, they claimed that the land subject to the object was agricultural, had a history of cultivation and restoration, and was not national. While the proceedings in the court were formal and did not respond to the objections of the objectors, the Court of Administrative Justice examined several issues in the formal proceedings, such as whether the forester signed the recognition document. Were the specifications of the license plate recorded in the recognition document? Were the forester's opinions published through an advertisement?

2.3.4 Disputed Land Settlement Board

The inability of the Court of Administrative Justice to hear the large volume of objections and opinions of the Guardian Council caused the legislator to form a board under the Law on Settlement of Disputed Lands⁵³, subject to the enforcement of Article 56 of the Law on Protection and Exploitation of Forests and Meadows approved on 1988-09-13⁵⁴. Issuing the decision in the Board was entrusted to the judge, following the objection of the Guardian Council. The number of members of the Board increased to seven⁵⁵. It should be noted that the board becomes official with the presence of at least five out of seven members.

49 Ismael Aghajanlou, *supra*, note 12. Pag. 387.

50 Ahmad Shams, *supra*, note 2. Pag. 70.

51 Ismael Aghajanlou, *supra*, note 12. Pag. 323.

52 Ahmad Shams, *supra*, note 2. Pag. 70.

53 *Id.* Pag. 150.

54 Ismael Aghajanlou, *supra*, note 12. Pag. 96.

55 Ahmad Shams, *supra*, note 2. Pag. 150.

The members are the head of the Ministry of Agriculture Jihad, the head of the Department of Natural Resources and Watershed Management Organization, a member of the Ministry of Agriculture Jihad, a member of the Land Transfer Board, a judge, and two people from the Islamic Council of the Village or local tribes, as the case may be. No deadline was set for objection and hearing in the board in the Single Article of the Law on Settlement of Disputed Lands⁵⁶.

The interested parties of the objection to enforcing the provisions⁵⁷ of the Law on Protection and Exploitation of Forests and Meadows are specified in the Single Article. These people are farmers who own cultivated lands and owners of gardens and facilities. The executive regulations of the mentioned law were revised several times⁵⁸.

2.3.5 General Courts

According to unanimous Decision No. 665 of the General Board of the Supreme Court of Iran, dated 2004-04-06, and the Law on Settlement of Disputed Lands⁵⁹ and its amendment, the public court of the place where the property is located is responsible for hearing the objections of the people to the decisions issued by the judge of the Disputed Land Settlement Board. It can then be appealed to the court of appeals of the same province⁶⁰.

2.3.6 Special Branch in the Center

According to Note 1⁶¹ of the Law on Increasing the Productivity of the Agricultural Sector and Natural Resources approved in 2010, interested parties whose objections have not been heard before by the competent administrative and judicial authorities can object against the enforcement of the regulations within one year from the entry into force of the law in the Board⁶². Individuals do not have the right to refer to the Board after the expiry of the mentioned period and must refer to the particular branch in the center.

⁵⁶ *Id.*

⁵⁷ Ismael Aghajanlou, *supra*, note 12. Pag. 96.

⁵⁸ *Id.* Pag. 387.

⁵⁹ Ismael Aghajanlou, *supra*, note 12. Pag. 96.

⁶⁰ Ali Hujjati, *supra*, note 1. Pag. 61.

⁶¹ Ismael Aghajanlou, *supra*, note 12. Pag. 212.

⁶² Ahmad Shams, *supra*, note 2. Pag. 150.

The law came into force on 2010-09-02. In this way, individuals had a deadline to submit their objections to the Single Article Board until 2011-09-02⁶³. Otherwise, they had to go to a particular branch in the center. Branch 1050 of the Tehran General Court was established to hear the subject of the objection to Note 1⁶⁴ of the Law on Increasing the Productivity of the Agricultural Sector and Natural Resources by the order of the chief justice. Many objectors from all over the country were sent to the particular branch in Tehran.

The chief justice extended the word center to the province center by interpreting it. One of the constraints of Note 1⁶⁵ on Increasing the Productivity of the Agricultural Sector and Natural Resources is that competent administrative and judicial authorities have yet to hear the objections of interested parties. In other words, the jurisdiction of the particular branch covers those recognitions that any administrative or judicial authority has not heard.

After some time, the legislator extended the deadline from one to five years in the Law on Increasing the Productivity of the Agricultural Sector and Natural Resources in Paragraph 1⁶⁶ of the Law on Removing Barriers to Competitive Production and Improving the Financial System of the Country, dated 2015-04-21, during a strange and unusual action.

This law specifies that the extension of one year in Note 1⁶⁷ to five years was amended after the approval of this law, and that the aerial photos of 1967 are also considered acceptable documents. Even this law needed to be enforced correctly and uniformly in the country, and some Commissions ignored it and refused to accept objections⁶⁸. The Commissions now only accept the objection of the Natural Resources and Watershed Management Organization to the recognition document. This is objected to by some jurists, because the Commission⁶⁹ has become the exclusive authority to hear the objection of the Natural Resources Department.

63 *Id.*

64 Ismael Aghajanlou, *supra*, note 12. Pag. 212.

65 *Id.*

66 *Id.* Pag. 320.

67 *Id.* Pag. 212.

68 Ahmad Shams, *supra*, note 2. Pag. 150.

69 *Id.*

2.4 Legal Formalities to Recognize National Lands and Exceptions

2.4.1 Duties of the Recognition Agent

The first action of the recognition agent is to visit the location of the property and directly observe it. The following steps are filing a case for each property, inquiring the authorities, studying the registered case, and researching local informants about the condition of the visited area, the area of the property, and the history of the standing property. The recognition agent must state the construction date of the property with the reasons in his/her visit report. One of the recognition agent's most important actions is to draw the property's plan subject to recognition. If the area has registration records, the recognition agent must follow the registration plan.

Otherwise, the recognition agent will determine the natural limits of the place by taking into account the natural features, the limits of the adjacent license plates, and inquiries from the informants, the local Islamic Council, and other relevant authorities and will record them in the minutes of the meeting. If the plan of the visited area cannot be prepared, the recognition agent must draw a sketch. The agent's recognition is crystallized in a form called "recognition document". In addition to including a report of preliminary measures in the recognition document, the recognition agent must state his/her opinion on whether the whole or part of the property is national or an exception by mentioning its area at the end of the recognition document.

2.4.2 Technical Indicators of Recognition of National Lands and Exceptions

A. Remote Sensing Instruments

- a) Aerial photos are among the most significant proofs of claim in lawsuits concerning natural resources. The legislator even considered the aerial photos of 1967 as acceptable documents⁷⁰ in the Law on Removing Barriers to Competitive Production and Improving the Country's Financial System, approved in 2015. The first collection of aerial photos of Iran was prepared by an American company on the scale of 50000:1 and 55000:1 between 1955 and 1957. The two official and executive authorities for aerial photography in Iran are the Armed Forces Geographical Organization and

⁷⁰ Ismael Aghajanlou, *supra*, note 12. Pag. 187.

the Iran National Cartographic Center. Aerial photos are vital because they recognize the type of forest and trees, calculate the volume of timber harvesting in a specific forest area, and determine the ranges to be afforested, pasture vegetation, forest tree cover, desert phenomena, forest and pasture soil, exceptions, etc.

- b) Satellite images and information: The spatial accuracy of aerial photos is several pixels because the classification of phenomena and their separation in aerial photos is done manually, but the spatial accuracy of satellite images is one pixel. A device called a “stereoscope” is used to see aerial photos. However, no unique device is needed to see the land features and phenomena in satellite images, and they can be recognized with the naked eye due to their high resolution. Judges lead experts to interpret aerial photos, because many were taken before and after Iran’s nationalization of forests and meadows. There are no satellite images from the 1950s and 1960s in Iran.

B. Natural Factors

The five leading indicators of recognition are climate, reliefs, forest vegetation, pasture vegetation, and soil. The factors determining a region’s climate are average rainfall, temperature, humidity, solar radiation, wind speed and intensity, and phenomena such as fog, frost, and lightning-related storms. The reliefs, especially changes in height, direction, and slopes, affect many environmental factors, such as the diversity of vegetation and the creation of different plant communities and ecosystems. In general, altitude is one of the factors limiting the spread of forest trees. Vegetation can be classified by altitude.

2.4.3 Publication of Recognition Notice

The legislator considers the notification of the recognition document to the interested parties through the publication of the recognition notice in the form of a written warning or an advertisement through a widely circulated newspaper, one of the local newspapers, and other usual and appropriate local means part of the legal formalities of recognition⁷¹ in the Law on the Conservation and Protection of Natural Resources and Forest Reserves of the Country approved in 1992, and also in Notes 1 and 2 of the Executive Regulations of the mentioned law approved in 1993.

⁷¹ Ali Hujjati, *supra*, note 1. Pag. 289.

According to Note 17² of the mentioned executive regulation, the recognition notice is posted by law enforcement officers in the streets and public places where the property is located in addition to publishing the recognition notice in the above ways for the information of residents. In the recognition notice, the name and location of the property, and, if it has registration details, the number of the registration district's central and subsidiary license plates and the boundaries and total area of the recognized area are specified while determining the area of exceptions and national resources. The place of acceptance of objections and the result of non-objection must also be stated in the recognition notice⁷³.

2.4.4 Interested Parties Objecting to the Recognition of National Lands and Exceptions

The interested parties of the objection are not listed in Article 20⁷⁴ of the Executive Regulations of the Law on the Nationalization of the Country Forests Act approved in 1963, neither in Article 56 of the Law on Protection and Exploitation of Forests and Meadows amended in 1969⁷⁵ and its executive regulations. However, they are specified in the the Low on Settlement of Disputed Lands approved in 1988.

A. *The Farmers Who Own Cultivated Lands*

Farmers who own cultivated land are defined as people who have been assigned cultivated land or are listed as farmers who own cultivated land in the relevant statistics based on the laws and regulations of land reforms. One of the defects of the land reform title deeds that caused many disputes is that the transfer of cultivated lands was done way without mapping typically, and the property boundaries needed to be fully known.

B. *Owners*

Some of the executive regulations of the Law on Settlement of Disputed Lands were amended on 1991-04-22⁷⁶. For example, the definition of owners of gardens and

72 *Id.* Pag. 291.

73 Ali Hujjati, *supra*, note 1. Pag. 29.

74 *Id.* Pag. 234.

75 Ahmad Shams, *supra*, note 2. Pag. 70.

76 *Id.* Pag. 150.

facilities was clarified in Paragraph 2⁷⁷. The said administrative regulation was revised again on 1993-01-10. Paragraph 2 defines the owners as those who own agricultural lands or properties with a title deed or a certificate from the Real Estate Registration Organization of Iran verifying the ownership or agreeing on the final decisions issued by the courts on the date of approval of the Nationalization of the Country Forests Act.

The above definition gave rise to many interpretations among experts. The Court of Administrative Justice recognized it as illegal and annulled it. The regulations for enforcing the Single Article of the Law on Settlement of Disputed Lands were amended for the third time on 1994-10-08⁷⁸. However, as mentioned above, the amendment did not consider the decision of the Court of Administrative Justice that Paragraph 2⁷⁹ was annulled and defined the owners in the same way as before. This definition was also annulled according to Decree No. 83 dated 2002-05-26 of the General Board of the Court of Administrative Justice.

The term “owners” was defined with changes in the fourth and most recent regulations for enforcing the Law on Settlement of Disputed Lands approved on 2011-12-28. Paragraph 2⁸⁰ of the mentioned regulation defines owners as natural or legal persons who are recognized as owners according to the three stages of land reform laws and regulations, demesne law, the Law on Temporary Cultivation, the certificate of the Real Estate Registration Organization of Iran indicating ownership, registration laws, Civil Procedure Code, or final judicial decisions. One of the notable points of the regulation is that constraints such as “registration laws” and “civil procedure code” were added to the definition of owners. In this way, it considers proof of claim contained in the Civil Procedure Code, such as witness testimony and local investigation, sufficient to consider the objector as an interested party and accept it in the Secretariat of the Commission⁸¹.

C. Owners of Gardens and Facilities

They are natural and legal persons who claim ownership of gardens and facilities, according to the documents mentioned in Paragraph 2.

77 Ali Hujjati, *supra*, note 1. Pag. 234

78 Ahmad Shams, *supra*, note 2. Pag. 150.

79 Ali Hujjati, *supra*, note 1. Pag. 234.

80 *Id.*

81 Ahmad Shams, *supra*, note 2. Pag. 80-91.

D. Government Organizations and Institutions

The objection of the government organizations was considered as the objection of interested parties⁸² of the Executive Regulations of Article 56 of the Law on Protection and Exploitation of Forests and Meadows in 1975⁸³. Government organizations and institutions were also considered to be interested in objecting to the provisions⁸⁴ in Note 3⁸⁵.

E. Interested Parties in the Courts

The interested parties are those who referred to the Commission on the Single Article for Settlement of Disputed Lands⁸⁶ in the past and now want to object to the decisions of this quasi-judicial body in the courts. As mentioned earlier, only those persons present in the initial proceedings before the Commission are considered to be interested parties in such lawsuits. One of the characteristics of the interested parties in the particular branch is that competent administrative and judicial authorities should have heard their objections in the past.

According to the Advisory Opinion No. 1636/7, dated 2012-10-30, of the Legal Department of the Judiciary on the term "interested parties" in Note 1⁸⁷ of the Law on Increasing the Productivity of the Agricultural Sector and Natural Resources approved in 2010, the interested parties are those who object and file a lawsuit against the recognition of natural resources and exceptions⁸⁸ of the Nationalization of the Country Forests Act, claiming ownership and as a proper claimant. They must prove that their property is not a forest or meadow and must provide proof of their ownership, which can also be an average bill of sale.

2.4 5 Lawsuit

A. Type of Lawsuit (Relief)

The Commissions⁸⁹ and the Board only have the authority to hear the type of land⁹⁰. So, they need the authority to enter into the discussion of ownership. The legislator

82 Ali Hujjati, *supra*, note 1. Pag. 246.

83 Ahmad Shams, *supra*, note 2. Pag. 70.

84 *Id.*

85 Ismael Aghajanlou, *supra*, note 12. Pag. 103.

86 Ahmad Shams, *supra*, note 2. Pag. 150.

87 Ismael Aghajanlou, *supra*, note 12. Pag. 212.

88 Ali Hujjati, *supra*, note 1. Pag. 229.

89 *Id.* Pag. 234; Ahmad Shams, *supra*, note 2. Pag. 70.

90 Ahmad Shams, *supra*, note 2. Pag. 150.

has put the objection to the recognition and verification of ownership under the jurisdiction of the particular branch in Note 1⁹¹ of the Law on Increasing the Productivity of the Agricultural Sector and Natural Resources.

B. The Cost of Proceedings, Financial or Non-Financial Lawsuit

Such a lawsuit is considered non-financial according to the unanimous Decision No. 609, dated 1996-10-24, of the General Board of the Supreme Court of Iran. Advisory Opinion No. 2264/7, dated 1998-07-01, of the Legal Department of the Judiciary declared the objection to the decision of the Board as non-financial as well⁹².

According to Article 28 of the Law on Permanent Provisions of Country Development Programs approved on 2017-01-29⁹³, the Natural Resources and Watershed Management Organization, the Land Affairs Organization Of Iran, the Department of Environment, the Endowment and Charity Organization, and the Iran Ministry of Roads & Urban Development are exempted from paying the court fees, depending on the case, after the approval of the highest authority of the relevant body to remove the possession of the state, national, and endowment lands⁹⁴.

If the interested parties in the particular branch of the province's capital raise a claim against the recognition and proof of ownership, it is considered financial.

C. The Deadline to File a Lawsuit

One of the features of claims for recognition of national lands and exceptions is that objections of individuals are not bound by a deadline and can be heard at any time. Objections in the Commission⁹⁵ of the Executive Regulations of the Nationalization of the Country Forests Act approved in 1984 were not bound by a deadline. A three-month deadline was foreseen for objections after the Law on Protection and Exploitation of Forests and Meadows was approved in 1968⁹⁶. The objection deadline was reduced to one month with the amendment in 1970⁹⁷. The Guardian Council found Law on

91 Ismael Aghajanlou, *supra*, note 12. Pag. 212.

92 Ahmad Shams, *supra*, note 2. Pag. 150.

93 Ismael Aghajanlou, *supra*, note 12. Pag. 277.

94 Ali Hujjati, *supra*, note 1. Pag. 35.

95 *Id.* Pag. 234.

96 Ismael Aghajanlou, *supra*, note 12. Pag. 390.

97 Ahmad Shams, *supra*, note 2. Pag. 70.

Protection and Exploitation of Forests and Meadows, approved in 1990, against legal standards in its opinion dated 1984-10-10 under Paragraph C of Note 1⁹⁸.

According to this opinion, since the adoption of legal, judicial decision is the responsibility of competent judicial authorities⁹⁹ and foresees the membership of one judge, it is contrary to legal standards because: 1) it does not consider the judge's decision to be independently valid and has made the decision of the majority, which lacks legal validity, a standard; and 2) it is contrary to legal standards under Paragraph C of Note 1, which stipulates that recognition by the Natural Resources and Watershed Management Organization can be enforced if there is no objection within the specified deadline.

The objection to the recognition was expected to be bound by the deadline due to the role of the judge in issuing the decision in the Commission¹⁰⁰ with the approval of the Law on Settlement of Disputed Lands approved on 1988-09-13. However, this did not happen and no deadline was set in this law. The Guardian Council once again found the deadline¹⁰¹ of the amendment to the Law on Protection and Exploitation of Forests and Meadows to be against legal standards, according to Opinion No. 2650 dated 1988-10-26. Amendment¹⁰² of the mentioned law considers limiting the deadline for accepting the objection of interested parties to one month against the legal standards and invalidates it.

The objection to the recognition was not bound by the deadline with the approval¹⁰³ of the Law on the Conservation and Protection of Natural Resources and Forest Reserves of the Country approved on 1992-09-27. However, a six-month deadline was foreseen for issuing the title deed¹⁰⁴ in the Law on the Country's Conservation and Protection of Natural Resources and Forest Reserves. Article 9 of the Law on Increasing the Productivity of the Agricultural Sector and Natural Resources, approved in 2010, did not consider the objection to the recognition to be bound by the deadline¹⁰⁵.

98 *Id.*

99 *Id.*

100 *Id.* Pag. 150.

101 Ismael Aghajanlou, *supra*, note 12. Pag. 390.

102 *Id.*

103 Ali Hujjati, *supra*, note 1. Pag. 291.

104 *Id.*

105 *Id.* Pag. 75.

III. CONCLUSION

Not only the lack of laws, the uncertainty of recognition, and the encroachment of profiteers on national lands, but also the lack of scientific and efficient management in the preservation, restoration and development of natural resources today, causes the deterioration of natural resources. In recent decades, this has been confirmed by destroying thousands of hectares of national lands. The incompetence of management in the preservation, restoration, and development of natural resource lands, has led to the failure to fully implement rehabilitation and development operations, such as afforestation, desertification, watershed management, soil erosion, etc., as well as the failure to fully implement conservation operations, such as preventing tree cutting, overgrazing, security, firefighting, preventing encroachment, removing aggressive encroachments, etc. So, a scientific and efficient management system should be established.

Thousands of hectares of national lands are owned by natural and legal persons by the Ministry of Agriculture Jihad and its subordinate organizations. However, firstly, the acquisition of national lands is against principles 45 and 50 of the Constitution¹⁰⁶ and the Nationalization of the Country Forests Act to some extent. Secondly, land transfer rules have many shortcomings and are always subject to abuse¹⁰⁷. Thus, thousands of hectares of national resources have been destroyed and acquired by natural and legal persons by implementing incomplete and contrary rules and instructions. Those national lands that are removed from the natural resources due to the objection against the recognition are insignificant compared to the enormous volume of transfers made by the government. The transfer of national lands should be stopped immediately.

The government and parliament need to be more efficient in enacting desirable laws and implementing them to preserve, restore, and develop natural resources and the environment. Effective cultural action has yet to be taken to improve the level of knowledge and awareness of the public. Furthermore, some have made abuse of natural resources and the environment their job and means of livelihood due to livelihood problems. Genuine interests are mostly destroyed and appropriated due to profit-seeking, cultural poverty, and lack of awareness. The government and parliament should increase public knowledge and awareness of the importance of preserving, reviving,

106 Jahangir Mansour. *THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN*. Duran Tehran Publications. (2022).

107 Ali Hujjati, *supra*, note 1. Pag. 36.

and developing natural resources and the environment by approving and implementing detailed programs for livelihood change and effective cultural programs¹⁰⁸.

The Council for the Protection of Public Rights was formed in 2004. The members of the Council are high-ranking officials of the executive and judiciary. The Council is responsible for protecting national and state lands and the country's natural resources. However, the above goals have yet to be achieved despite the existence of the Council for the Protection of Public Rights. The government and parliament have not only failed to fully fulfill their legal duties in preserving and reviving natural resources, but still need to remember the development of natural resources. They should put the enforcement of protocols, conventions, and policies communicated by the UNEA, IUCN, etc., on the agenda and align the relevant laws with the decisions, experiences, and scientific opinions of international organizations in addition to amending and strictly enforcing domestic laws to prevent the destruction and deterioration of natural resources¹⁰⁹.

IV. RECOMMENDATIONS

Iran has an area of about 165 million hectares, of which about 140 million hectares are national and state lands. Therefore, entrusting the recognition to one person (forester) has problems, because data analysis is needed in several specialized areas to achieve correct and reliable recognition. So, the possession of all specialized knowledge by one person is doubtful. This is confirmed by the issuance of the incomplete and wrong recognition document and the large volume of objections to the right. Therefore, the recognition should be entrusted to a group of experts and engineers in natural resources, registration, mapping, soil science, interpretation of aerial photos, etc.

The need for a deadline to object to the recognition certificate is a fundamental problem of the current laws. In other words, the recognition can be objected to with no deadline. Only the decisions issued by the particular branches have a deadline for objection in compliance with the rules of the Civil Procedure Code. The deadlines for protest and the certainty of the recognition became illegal and void after the Islamic Revolution of Iran, and based on the jurisprudential opinions of the Guardian Council. The author argues that the legislator has exaggerated in this regard.

Although the recognition document is always objectionable in current regulations, the recognition cannot be considered final. This has negative consequences,

¹⁰⁸ Ismael Aghajanjou, *supra*, note 12. Pag. 317.

¹⁰⁹ *Id.* Pag. 318.

such as: the impossibility of long-term planning, the risk of investments made with the permission of the government in national lands, the constant weakening of the government's ownership, the invalidity of official documents, the use of the resources of the Natural Resources and Watershed Management Organization to respond to objections, frequent amendment of documents instead of protecting national capitals, wasting time and resources of the Real Estate Registration Organization of Iran, abuse by profiteers and opportunists, failure to complete recognition and audit operations, and deterioration and destruction of natural resources and the environment.

The recognition and audit of natural resource lands started with the approval of the Nationalization of the Country Forests Act and has continued and has yet to be completed in the past 60 years, despite many efforts and spending much money. According to the Natural Resources and Watershed Management Organization, about 140 million hectares of national lands have been recognized. Cadastral deeds have been issued for about 113 million hectares until the end of 2021. Assuming the accuracy of the mentioned statistics, the recognitions made are still subject to cancellation. The main goal of the legislator should be the certainty of the past recognitions and the determination of a limited deadline for protesting the new recognitions.

Proceedings in the Board are not public¹¹⁰. Since this regulation is against the principle, the legislator should review it. Another criterion that the legislator neglected in formulating the Commission on the procedures is the need to guarantee the impartiality of the hearing authority¹¹¹. For example, recusation of the judge based on legal evidence, banning the employment of members in government organizations or offices, and easy and free access to court decisions, laws, administrative regulations, and the Commission¹¹² procedures are not foreseen in the regulations. Moreover, it is felt necessary to have a permanent member from the local forester, a member from the community or association of pastoralists, and a member from the association of official experts in the Commission. It is concluded that the observance of the principles of fair procedures in the Commission¹¹³ needs to follow the goals and perspectives of the progressive legal system.

Constitution stipulates that the judiciary is the authority to hear people's general complaints¹¹⁴. Since substantive proceedings are not acceptable in progressive legal systems, and unique authorities may face other issues such as registration regulations,

110 Ahmad Shams, *supra*, note 2. Pag. 150.

111 *Id.*

112 *Id.*

113 *Id.*

114 Jahangir Mansour, *supra*, note 106.

interference of license plates, ownership claims, or claims by the third party when hearing, special administrative or quasi-judicial authorities do not have the necessary competence and expertise and cannot hear objections.

Due to the problems of the particular branches in the provincial centers, such as the distance from the cities where the property is located, travel expenses, and excessive concentration of cases in these branches, assigning one or more limited branches in the provincial centers to hear objections and refer cases to one or more branches is wrong. So, the public court has complete facilities for proceedings due to having general jurisdiction. However, objections to the recognition must be heard in the general court of the first instance of the cities for several reasons. Proposing the approval of a complete set of regulations in this regard seems optimistic due to the weakness of the parliament in correct legislation. Thus, correcting and clarifying the ambiguities of the relevant laws can be effective.

Unfortunately, some of the natural resources of the Earth are being destroyed. Since natural resources belong to future generations and all the people of the world, all governments and international organizations should help Iran preserve, revive, and develop natural resources and the environment.

V. REFERENCES

Abbas Basiri. PROPERTY AND LAND USE RIGHTS. Jangle Publications. (2022).

Ahmad Shams. LEGAL SYSTEM OF A PUBLIC LAND. Dadgostar Publishing. (2011).

Ahmad Shams. LEGAL REGIME OF PUBLIC LANDS. 5th edition. Dadgostar Publishing. (2013).

Ali Hujjati. NATURAL RESOURCES LAW. Behnami Publishing. (2013).

Amin Shafiee. LEGAL INVESTIGATION OF ENVIRONMENTAL CRIMES AND RELATED TO NATURAL RESOURCES. Ghanoonyar Publications. (2020).

Bahrami Dariush. LAND REGISTRATION LAW IN IRAN. Mizan Publishing. (2012).

Ghodrat Amouzade Mahdiraji. DISTINGUISHING NATIONAL LANDS FROM EXCEPTIONS. Majd Publications. (2022).

Gholamreza Kamyar. REGISTRATION LAW AND THE LAW OF URBANIZATION. 5th edition. Majd Publications. (2013).

- Goodarz Eftekhari Jahromi, Mostafa Elsan. CIVIL PROCEDURE. VOLUME 1. Durandishan Publications. (2015).
- Hassan Zahedi. *Financial and Non-Financial Lawsuits*. THE JUDICIAL LAW JOURNAL, no. 37. 2001.
- Ismael Aghajanolou. NATURAL RESOURCES: LAW AND REGULATION. Majd Publication. (2014).
- Jahangir Mansour. THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN. Duran Tehran Publications. (2022).
- Mohammad Emami, Kourosh Ostvar Sangari. ADMINISTRATIVE LAW. VOLUME. 1. 16th edition. Mizan Publishing. (2013).
- Mohammad Mosavi Moghadam. CHANGE OF USE, ANALYSIS AND CRITICISM OF JUDICIAL PROCEDURE AND THE LAW OF PRESERVATION OF AGRICULTURAL LANDS AND GARDENS. Hoghogheemrooz Publications. (2020).
- Saeed Darabi. NATURAL RESOURCES LAW. Shell Publications. (2021).