



**Afghanistan – Researched and compiled by the Refugee Documentation Centre of Ireland on 21 February 2013**

**Are women/female children in Afghanistan (Sharia law) expressly excluded from having title to property by law? (in systems where a dual system pertains eg customary/religious and state law perhaps both could be checked?) What are the relevant legal provisions?**

Article Forty of the Constitution of Afghanistan states:

“Property shall be safe from violation.  
No one shall be forbidden from owning property and acquiring it, unless limited by the provisions of law.  
No one's property shall be confiscated without the order of the law and decision of an authoritative court.  
Acquisition of private property shall be legally permitted only for the sake of public interest, and in exchange for prior and just compensation.  
Search and disclosure of private property shall be carried out in accordance with provisions of the law.”  
(Islamic Republic of Afghanistan (3 January 2004) *The Constitution of Afghanistan*)

The entry for Afghanistan in the OECD Social Institutions and Gender Index, in a section headed “Discriminatory Family Code”, states:

“Women’s right to inheritance in Afghanistan may vary, depending on whether they are determined by Islamic and customary law. Under Sharia law, women may inherit from their parents, husbands or children, and, under certain conditions, from other family members. According to Sharia Law, a daughter inherits half of a son's share and a wife is entitled to only 1/8 of her husband's estate. Under customary law, a wife generally does not inherit. The United Nations Mission in Afghanistan reports that widows are particularly poorly treated with respect to inheritance rights, and commonly forced to marry another male in the family to keep her inheritance in the family. Often, if a widow does not remarry into the same family she risks losing her children.”  
(OECD Social Institutions and Gender Index (2012) *Gender Equality in Afghanistan*)

See also section headed “Restricted Resources and Entitlements” which states:

“The 2004 Constitution provides that women cannot be precluded from owning or acquiring property. However, as noted in the Family Code section, discriminatory inheritance practices under customary and Sharia law severely limits women’s access to land. A World Bank report cites a 2004 study of land relations in the Faryab province which shows that women’s land ownership varies depending on ethnic group. For instance, while women from Tajik, Arab, Pashtun and Uzbek groups were unlikely to own land, Leghman female

landowners were common. However, for the most part, women are very unlikely to own land. Women who do own land, either through inheritance as a widow or from the death of a father, tend to surrender the land to a brother or son. Even if a woman owns land on paper, the man usually exercises the actual control of the land.” (ibid)

This section also states:

“Women’s access to property other than land is similarly restricted through discriminatory inheritance practices. In agricultural settings, although men and women spend equal time on agricultural activities, men control expenditure. A 2003 study cited by the World Bank found that livestock was likely to be owned either by the household (i.e. owned jointly between men and women) or by men. Only chickens were specifically reported as being owned exclusively and de facto by women.” (ibid)

A document published by the World Bank in South Asia, in a section headed “Limits on Property Ownership and Decision Making”, states:

“Women’s lack of secure land tenure is another serious impediment to improving the productivity and income of women working in agriculture. While Islamic law grants women the right to inherit family land (generally half of what men have the right to inherit), Afghan women’s awareness of their Islamic rights is very low, and their legal right to inheritance is typically bypassed. When women technically do inherit land, they rarely have control over it, which is a constraint on their active participation in production decisions. Recent survey data suggest that although an average of 30 percent of women claim land ownership, they typically do not make decisions regarding the land and access to land income. Women frequently give up their share of inherited land to brothers as a ‘guarantee’ of continued family support in case of future need, such as in the event of widowhood or divorce. Male family members (usually fathers or husbands) may sell land that falls under the ownership of a woman through marriage or inheritance without involving her in the decision-making process or allowing her to control any income from the sale of the land. Although the de jure position is that women own land, the de facto position is that they rarely exercise their rights related to ownership, even in joint decisions with male family members, primarily because women do not have access to the information, education, and networks at different levels to make such decisions. To act upon these rights is to risk censure and even punishment from family members, as doing so challenges the customary notion of men as the breadwinners and protectors of the patriarchal family, on whom women and children are dependent for livelihood and protection.” (World Bank in South Asia (8 May 2012) *Gender in developing the agriculture and livestock sectors*)

A USAID Afghanistan document states:

“Afghan women can struggle for a lifetime to inherit and retain rights to their family property after the deaths of their husbands or fathers, making them vulnerable to poverty and hunger. The Ministry of Women’s Affairs and USAID launched a national public information campaign on Dec 15, in support of Afghan women’s rights to inherit and own land and property. The campaign aims to raise awareness of the extreme challenges women face when they are unable to own, access, and use land and property rightfully

theirs. The campaign also seeks to provide legal education to the public, explaining that women's land rights are protected under the Constitution of Afghanistan." (USAID Afghanistan (19 December 2012) *Protecting Women's Inheritance Rights*)

Referring to the Elimination of Violence Against Women law, a US Congressional Research Service report, in a section headed "Major Legal Developments", states:

"The optimism that greeted the EAW law was further reduced on March 2, 2012, when the Ulema Council issued a pronouncement saying women should be forced to wear the veil and be forbidden from traveling without a male chaperone. The pronouncement did reiterate support for the rights of women to inherit and own property, and to choose their marital partners. On March 6, 2012, Karzai endorsed the Ulema Council statement." (US Congressional Research Service (30 November 2012) *Afghanistan: Politics, Elections, and Government Performance*, p.59)

This response was prepared after researching publicly accessible information currently available to the Research and Information Unit within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

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