



Housing, Land and Property Task Force
Afghanistan

A BRIEF GUIDE TO WOMEN'S LAND RIGHTS IN AFGHANISTAN¹



¹ This brief was produced in October 2020. The laws cited in this publication are unofficial English translations; for official legal documents, please refer to published Afghan laws in Pashto and Dari. For more information please contact: Ben Flower, HLP Advisor, UN-Habitat, ben.flower@unhabitat-afg.org; Patricia Kheirallah, Head of Programme, NRC, patricia.kheirallah@nrc.no; Hamidullah Ataee; HLP Advisor, UNHCR, ataee@unhcr.org.

This brief provides information on legal mechanisms to protect the Housing, Land and Property (HLP) rights of women in Afghanistan. The guidance note is not a legal document, but provides information and analysis from the Housing, Land and Property Task Force (HLPTF).

The HLPTF is a sub-cluster of the Protection Cluster, and part of Afghanistan's Humanitarian Country Team. The content of this brief is extracted from UN-Habitat's (forthcoming) Housing, Land and Property Rights Guide.

Land ownership and gender inequality in Afghanistan

Unequal access to land is a major cause of gender inequality in Afghanistan. Though no accurate data exist, the HLPTF estimates that less than 5 per cent of land tenure/ownership documents include the name of a female family member.² Instead, women's relationship to land in Afghanistan is typically secondary – through her relationship with a male owner. Consequently, gender inequitable land rights constitute a major cause of gender-based asset inequality, particularly given that land is often a household's most valuable asset.

Gender inequitable land rights underpin many forms of gender inequality. Any investments made on male owned property that increase its value or income generating potential entrenches the economic marginalisation women. This has implications for humanitarian and development interventions that invest in upgrading housing, or provide agricultural services, such as fertiliser or irrigation. Women's

constraints to obtaining land documents also has implications for their access to social and economic services, such as formal sector bank loans. Inequitable land rights perpetuate deep-rooted cultural models of gender that underpin the socioeconomic exclusion of women. Land is often viewed as more than an economic asset: as a source of cultural prestige and influence. Hence, the exclusion of women from land ownership contributes to their marginalisation in wider cultural and political dialogues, particularly in decision making fora at the household and community level.

Given its social, economic and cultural importance, equitable access to land is key to securing sustainable gains in Afghan women's empowerment. In response, this brief will highlight the legal mechanisms through which women can access land, and discuss how gender equitable laws can be converted to tangible impacts for women's land rights in Afghanistan.

What are the legal frameworks for asserting women's land rights?

While in practice women have insecure land rights in Afghanistan, in principle there are a number of legal frameworks that protect women's land rights, including the 2004 Constitution and various other laws (Table 1). In this regard, Article 22 of the Constitution prohibits discrimination between the citizens of Afghanistan, and declares the principle that women and men both have rights and duties before the law. Another key document is the 1977 Civil Code, which is drawn from

Sharia Law and thus enjoys a high level of cultural as well as legal legitimacy. The Civil Code provides guaranteed rights of ownership and inheritance of land to both men and women. As detailed in Table 1, The Land Management Law, the Occupancy Certificate law (see HLP legal brief 1), and the PD 305 on land allocation (see HLP legal brief 2) also include important components to promote gender equitable land rights.

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This estimate is based on preliminary data from UN-Habitat of 800,000 properties surveyed in Afghanistan's main cities as part of the City for All Programme.

Table 1: Legal provisions for the protection of women's land rights

Constitution 2004
The rights of women in relation to accessing land and securing property rights are guaranteed by the Constitution, specifically:
<ul style="list-style-type: none"> Article 22.1 prohibits discrimination by stipulating that "any kind of discrimination and privilege between the citizens of Afghanistan is prohibited". Article 22.2 declares that: "women and men have certain rights and duties before the law". Article 40.2 declares that: "No one shall be forbidden from acquiring and holding property, unless limited by the provisions of law"³.
Civil Code 1977
The Civil Code of Afghanistan provides comprehensive protection of women's rights, including those relating to land and property:
<ul style="list-style-type: none"> Inheritance: women have the right to land and property according to their fixed share as a mother, wife, sister and daughter; women have the right to file a civil suit, if they do not obtain their inheritance share.⁴ Dowry: (mahar) is the exclusive property right of a wife and she has the absolute right to use it exclusively for her use and benefit without any obligation to share with others⁵. Will: women have the right to execute specific instructions on her movable or immovable property swtailed in a will as per the provision of the law; the will can be verbal or written⁶. Gift: women have the right to gift whole or portion of their property as a gift as per the provision of the Civil Code⁷; and State Land Lease: women have the right to lease state land for various purposes; the duration of the lease can be up to 50 years for non-agriculture purposes and up to 90 years for agricultural purposes⁸.
Land Management Law 2017
The Land Management Law of 2017 recognizes women's land and property rights. The main rights of women provided by the Land Management Law are as follows:
<ul style="list-style-type: none"> A marriage certificate (marriage contract) is a legally valid document to prove women's ownership of land and property if granted to the wife as her dowry⁹. Any Afghan woman meeting the eligibility criteria can apply for land distribution schemes¹⁰. Women have the right sell their land and property and/or their inherited shares¹¹. Women can lease state land for various purposes as per the provisions of the law¹²; and invest on public private partnership models on state land¹³.

3 Afghan Constitution, Article 40.2

4 Civil Code, Article 2001-2004

5 Civil Code Article, 110

6 Civil Code, Articles 2103-2104

7 Civil Code, Articles 1176-1177

8 Land Management Law, Article 70

9 Land Management Law, Article 18.1.1 and 18.1.10

10 Land Management Law, Article 54, for details, see chapter 7 and 8 of the law;

11 Land Management Law, Article 65

12 Land Management Law, Article 70.1

13 Land Management Law, Article 77.1

Regulation on Managing Affairs of Urban Informal Properties 2018 (Occupancy Certificate Law)

Women's land and property rights are protected in the Regulation of Managing the Affairs of Urban Informal Properties as follows:

- Women are eligible for Occupancy Certificate (OC) subject to conditions of eligibility being met¹⁴.
- Women have the right to an equal share of the property documented with an OC, subject to meeting eligibility conditions for the OC¹⁵.
- Women will have their share of inheritance in such properties in the event their husband's death¹⁶.
- Women's names will appear on OC as equal shareholder of the property with their husband¹⁷.
- Women have rights relating to tenancy, either as tenant and/or landlord¹⁸.
- Women are representatives and permanent members of Cadastral Territorial Unit (CTU) committees in urban informal areas¹⁹.
- Women participate in dispute resolution during the OC issuance as member of CTU²⁰.
- Women can invest in public-private partnerships to upgrade property in informal areas²¹.

Presidential Decree No. 305 2018

Presidential Decree 305 of 2018 on land allocation to returnees, internally displaced persons and families of martyrs is the latest law that aims to reintegrate returnees and distribute state land in various provinces of the country. The key women's land and property rights under this decree are as follows:

- Women may be an equal share holder of the property distributed under this decree to returnees or internally displaced persons and their names will appear on the title deed²².
- Women may be a sole owner of the property distributed under this decree to returnees or internally displaced persons.²³

How can women acquire land rights in practice?

The legal frameworks cited in Table 1 detail a range of routes through which women can acquire land rights in principle. This section of the brief will outline some of the main mechanisms through which women can acquire property in practice, and the challenges associated with them.

1. Purchase The 2017 Land Management Law provides that men and women enjoy equal access to property rights (see Table 1). Hence, the law permits women to transact property through sale and purchase. According to Islamic traditions, women are also permitted to retain an income distinct from their husbands, and can do with it as they choose. These facets of Islam and Afghan law should in theory facilitate women's access to housing, land and property. In practice, however, women's role typically is confined to unpaid work in the domestic sphere, and so women have less income to purchase

property than men. Because of this, and other cultural practices that privilege men's participation in property markets, women are far less likely to acquire property through purchase than men.

2. Inheritance Key laws detail women's rights to inherit land; in particular, the Civil Code grants women comprehensive inheritance rights (see Table 1). It should be noted that under Sharia law, a woman's share is half that of the man's in cases where there is both a male and female heir. In practice, however, cultural practices often pressure women to give up her share of inheritance. Daughters tend to relinquish their inherited land rights to their brothers, while widows who inherit land commonly transfer it to their sons or brothers. In the rare cases where women do retain control of inherited land, they usually have no brothers and are not married.

14 Regulation on Managing Affairs of Informal Properties, Article 8.2-3.1.2

15 Regulation on Managing Affairs of Informal Properties, Article 9.7

16 Regulation on Managing Affairs of Informal Properties, Article 9.8

17 Regulation on Managing Affairs of Informal Properties, Article 9.7

18 Civil Code, Article 1322-1323

19 Regulation on Managing Affairs of Informal Properties, Article 6.1

20 Regulation on Managing Affairs of Informal Properties, Article 19

21 Regulation on Managing Affairs of Informal Properties, Article 20.1.2

22 Presidential decree No. 305, Article 13.3

23 Presidential decree No. 305, Article 14

3. Marriage For most Afghan women, marriage becomes an important opportunity to acquire land and property rights. According to the Civil Code, on marriage women are entitled to Mahr (dowry) that she alone can own and use, and which can include rights to land; the details of the Mahr are to be included in a marriage contract. In principle, Mahr is a secure mechanism for women to access land because the concept is applied very strictly in Islam. In addition, the marriage contract with details of the property included as Mahr, provides strong proof of ownership: Article 18 of the Land Management Law lists marriage certificate as proof of ownership – provided the certificate is an official document recorded and registered in court archives. Despite the legal and cultural protections, rights acquired through Mahr are hard to enforce. A key reason is that although required and encouraged by the government, marriage registration is an uncommon process for most Afghans. There is no awareness or incentive to register marriages (apart from some customary forms), and thus, if a woman claims her rights to land/property upon divorce or after her husband's death, she may face difficulties without legal documents proving the terms of the marriage.

4. Land rights registration The vast majority of land in Afghanistan is either undocumented, or documented with customary mechanisms that tend to privilege the property rights of men. Over the past decade, the government has implemented a number of programmes to formalize land ownership by providing eligible households legal property documents. These interventions are an important route for women to obtain legal ownership of land, because they often mainstream gender equity in programme activities. Two of the largest systematic land registration programmes currently operating in Afghanistan are the City for All Programme, and the SHURA Programme; both of these programmes provide a route for women to obtain legal property rights to land. The City for All Programme systematically registers land rights to issue Occupancy Certificates, providing legal recognition of beneficiaries' property rights; a prerequisite of participation in the programme is that property rights are jointly registered in the name of the male and female household heads. To date, City for All has registered 800,000 land parcels across Afghanistan's five largest cities to provide an important mechanism to redress gender inequality. The SHURA programme operationalizes the PD 305 to provide land and housing to IDPs and Returnees in two pilot sites in Kabul and Herat. SHURA also mainstreams gender into programme activities, providing ownership documents to beneficiaries on condition that land and housing is registered in the name of both the man and the woman.