Women and Property Rights

Introduction: Inheritance and Property Rights
While there is no right to land codified in international human rights law, the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), provides for women’s right to own and inherit property without discrimination on the basis of sex. Afghanistan ratified CEDAW in 2003, without reservations. CEDAW (Article 14) also calls for rural women to have equal access to economic opportunities, to credit and loans, social security programs, and to adequate living conditions, including access to housing. Numerous rights are affected by access to land (e.g., housing, food, water, work), and general principles in international law provide protections that relate to access to land (e.g., equality and nondiscrimination in ownership and inheritance). Further, the condition of landlessness threatens the entitlement of several human rights. Access to land and property is important for human development and poverty reduction, but also often necessary for access to numerous economic, social and cultural rights, and as a gateway for many civil and political rights.

Afghan Civil Code
The Afghan Civil Code (sections 289-342 and 1993-2267) governs property rights generally with some 1000 directives related to property, but when it comes to women’s property rights, the statute recognizes customary law, which largely governs women’s access to property and land. In many Muslim-majority countries, inheritance laws and practices are based on Sharia law, which defines the shares that go to each family member. Under a common interpretation of Sharia law, a woman’s share is half that of the man’s (of the same degree), in cases where there is both a male and female heir. However, also under the Afghan Civil Code, and drawn from Sharia, women are entitled to mahr, which should be mentioned in a marriage contract, and is the property of wife, over which she exercises ownership (Civil Code 1997: Article 110), and she cannot legally be compelled to place any part of her mahr at the disposal of her husband or any other person (Civil Code: Article 114). In practice, property rights are largely governed by customary law, which varies from one area to another.

Inheritance
Having a right over inherited property means that a woman can own her property, possess it, manage it and enjoy its income. She has exclusive and absolute rights over her property. Women can only be considered to have waived their rights to inheritance or property if there was informed consent, that is, to have been based on a clear appreciation and understanding of the facts, implications, and future consequences of an action. In order to give informed consent, the individual concerned must have adequate reasoning faculties and be in possession of all relevant facts at the time consent is given.

Mahr
Mahr is a sum of money or other property that a wife is entitled to receive from her husband, unconditionally, in consideration of the marriage. The subject of mahr is covered under Article 98 – 114 of the Afghan Civil Code and Article 34 of the Elimination of Violence Against Women (EVAW) Law. According to the 12th century text, The Hedaya, by jurist Burhan al-Din al-Marghinani, the mahr signifies the contract of a union, accomplished by the performance of marital rites, with a requirement that dower is provided as a signal of respect. Before Islam came to Mecca, the practice of dower was prevalent, although slightly different. Under the Meccan customs, the concept of marriage was a transaction between the woman’s father (or other near male relative) with another man (her husband). The bride was classified as an object to be sold. The right over her body and services was to be bought through this purchase. During this time only some women from among the elite took and kept their dower. However most women were sold as though they were properties to be valued and transacted on the market (Coulson, 1964:14). However, the Quran commanded that the wife alone shall receive the mahr, payable by the husband, indicating a change in the status of the bride as a party to the contract, with legal competence, who could negotiate her terms for entering a marriage. This assignment of rank from an “object” in a consumer market to a “contracting party” changed the way marriage was conceived. Mahr is a debt. Therefore, a widow is entitled (along with other creditors) to have it paid out of his estate, before distribution towards other heirs. In a divorce initiated by a husband, the wife can claim her mahr.

- Courtesy of Natasha Latiff, Femin Ijtihad

Mahr is the basic provision regarding married women’s property rights, but similar to other marriage-related rights and privileges, it is hard to enforce in the Afghanistan context. This is due not only to social stigmas related to taking family issues to the court but also, and more importantly, due to lack of a marriage registry. Although required and encouraged by the government, marriage registration is an unknown process for most Afghans. There is no awareness or incentive to register marriages, and thus, if a woman claims her rights to property upon divorce or after her husband’s death, she may face difficulties without legal documents proving the terms of the marriage.

- Shaharzad Akbar & Taiba Pirzad, Women’s Access to Property in Afghanistan-Law, Enforcement and Barriers (May 2011)
While civil law grants women the right to inherit land, few women, especially daughters, inherit in practice. Under Sharia law, women have rights to inherit both as daughters, sisters, and as widows, and women are also entitled to property rights under Sharia-based law in Afghanistan in the event of a divorce. However, in reality the prevalence of divorce is extremely low, and when divorces do occur, women rarely claim their property rights. Widows are to receive one-eighth of the property or one-fourth if they have no children. Where the marriage was polygamous, this proportion is shared among all the wives. The provision for widows is the priority, however those living in separate households than their family will often transfer the land into their sons’ names. Widows living in shared households may not receive the land if it is not divided and remains shared among the family members.

There are an estimated 1 million Afghan widows. Their average age is 35, and 90% of them have an average of four or more children. Without the protection of a husband, widows suffer from social exclusion in Afghanistan’s patriarchal society. Many widows have no choice but to become beggars.


In addition, there is little awareness or enforcement of codified laws, even among judicial officials. This is particularly the case outside of major urban centres. Tribal law routinely ignores the fact that women are entitled to inherit property and land. Some of the reasons as to why Afghan women are systematically denied their right to inheritance and property include:

• The majority of women are illiterate, and lack information about their rights, including inheritance and property rights;

• If a woman were to ask for her legal inheritance, she may have fears that her family will disown her;

• If a woman asks or seeks to realize her right to inherit, it may go before a shura or other tribal council, often consisting of all male members, and the woman risks discrimination and shaming;

• Women are expected to give their inheritance to their brothers as a way to show devotion to the family, which has become a ‘tradition’, and therefore, an expectation on the part of many families;

• Poverty is a contributing factor in rural areas since families need land for livestock or crops, and it is viewed as important for families to keep the land since sons will cultivate it and daughters get married off, joining other families. Thus women’s land inheritance is not seen as an asset to her birth family;

• Families do not want daughters to give the land to husbands from other tribes, which would cause the males to lose their influence and control of it to outsiders. This is one reason why it is preferred that girls marry cousins in order to keep the property in the family;

• The judicial system does not have a strong track record on protecting women’s rights and existing laws to protect women’s rights are inconsistently applied, with violators rarely held accountable by judicial authorities.

The only solution to this problem is economic development and implementation of law. Women should be guaranteed their rights. Educating girls in a way that they can trust themselves should be one of the priorities of the government so that they will be able to fight for their rights instead of shying away due to the social stigmas attached to speaking up. This might take time but is not impossible. Most women know they have a legal right to inherit property and land but they can’t do anything because they can’t go into war with their own family members and can’t afford to lose their respect in their community.

– Spogmay Waziri Kakar, Pashtun Women’s Viewpoint (2013)

Initiatives to Secure Women’s Property and Inheritance Rights

There are several initiatives now underway in Afghanistan to improve women’s access to their right to own property and inherit.

USAID, along with the Ministry of Women’s Affairs, has launched a national public information and awareness campaign on Afghan women’s rights to inherit and own land and property. The Land Reform in Afghanistan (LARA) program seeks to provide legal education to the general public and convey that women’s land rights are protected by law under the Constitution. According to USAID’s Afghanistan office, the project “promotes access to management and legalization of property ownership, strengthens citizen’s access to land rights, and supports economic development through transparent and applicable ownership rights. LARA also supports policy reform for all citizens while working on gender, training, public awareness and private sector development.”

A recent past initiative was The Women’s Rights Club, a project implemented in 2011 by the Foundation of Solidarity for Justice (FSJ), a group working to raise awareness of women’s rights using references to religious sources such as the Quran and hadiths, and to decrease the stigmatization of women who challenge traditional practices. FSJ reached out to police, high school students, universities and other communities in their awareness-raising efforts. They also challenged the forced marriage of widows to their brothers-in-law which was occurring so that the male’s family retains custody of the couple’s children along with the property of the deceased husband. Typically, women become expelled and dispossessed of the land if they refuse to marry the brother-in-law. There is a lack of support from police and judicial officials, who often encourage the women to withdraw their claims for inheritance.

Website: www cw4wafghan ca

P.O. Box 86016, Calgary, AB T2T 6B7 • Tel: 1 403 244-5825 • email: info@cw4wafghan.ca

Above: A farm in Badakhshan province, Afghanistan
Land Increases Security
According to the UN Food and Agriculture Organization (FAO), up to 70% of Afghans are food insecure, and high food prices have recently pushed millions into high-risk food insecurity. The lack of women’s property ownership has detrimental effects to the overall human security of the population. It reinforces women’s low social status and their vulnerability to poverty. It is also increasingly linked to development-related problems, including the spread of HIV/AIDS, hunger, urbanization, migration, and domestic violence. Women who do not own property are far less likely to take economic risks and to realize their full economic potential.

Entrepreneurship is a new career option for Afghan women. Traditionally, women participated in the informal economy, where they assisted in the production of marketable products such as carpets and dried fruits. Rarely, however, were they the direct sellers of products, and almost never did they keep any profits. Gradually, in the past nine years, women’s business activities have become more organized, and a category of businesswomen has officially been recognized by both the Afghan state and the donor community - Shaharzad Akbar & Taiba Pirzad, Women’s Access to Property in Afghanistan—Law, Enforcement and Barriers (May 2011)

Statistics on women’s land ownership and involvement in business in Afghanistan are limited. However, those reports that do exist estimate women’s land ownership as minimal (Barakat & Wardell 2001 as quoted in Hutcher, Meggiolaro & Ferrer, 2005; Grace 2005). It is estimated that many women are active in the agriculture sector, but very few women actually own land. By owning their home and land, women can directly gain from the benefits and use of the land, generate higher incomes, as well as have a secure place to live. They can use a house or land as collateral for credit during a financial crisis or to invest in a small business or other income-generating venture. This economic stability would increase their independence and empower them to reach greater stability and equality.

Aside from there being something very theoretically important about owning land – the sense of ownership, respect, and pride that it brings – there are very real benefits that result: crops, livestock, economic productivity for the community, leverage for women in divorce or violent relationships, collateral for future loans, a safety net for one’s children, and the list goes on. These are benefits not only for women, but for entire communities and nations, and it’s time to recognize this.

- Gender Across Borders, Failing Women’s Land Rights in Afghanistan and Worldwide (2011)

Land and Property Ownership in Afghanistan
- 5% of farms are located on 40% of arable land
- 73% of farms are less than 5 hectares
- The average farm size is 1.6 hectares
- Farm laborers generally receive 1/5 of the crop as payment; sharecroppers receive up to 1/3 – insufficient to live on
- Well over half the population is below the poverty line
- 21% of rural households are landless and the poorest are headed by women
- The elite minority traditionally own disproportionate areas of the total land – 2.2% of the population owned 19% of the total land area in 2002

Source: Women’s Inheritance Rights to Land and Property in South Asia, RDI/Landesa (2009)