

2015-06-23

## Fråga-svar

### Afghanistan. Familjestruktur och arv

#### Fråga

Hur ser familjestrukturen ut när make/fader avlidit?

Vem ärver egendomen/marken/huset?

Är det frun eller äldsta sonen?

Kan den avlidne makens familj göra anspråk på marken?

Finns det skillnader i tillvägagångssättet mellan hazarer, pashuner och övriga folkgrupper?

#### Svar

Nedan följer en sammanställning av information/länkar kring dina frågor. Sammanställningen gör inte anspråk på att vara uttömmande. Refererade dokument bör alltid läsas i sitt sammanhang. Observera att informationen/länken är aktuell vid söktillfället men kan ändras över tid.

Organisation for Economic Co-operation and Development, Social Institutions and Gender Index (SIGI) (Odaterad):

Women's right to inheritance in Afghanistan may vary, depending on whether they are determined by religious, statutory or customary law. Based on Islamic jurisprudence and Sharia law, women have the right to inherit both as daughters, and widows. However, divorced women have no right to their husband's property.[27] According to Sharia Law, a daughter inherits half of a son's share.[28]The inheritance rights of the spouses are determined in detail in the Civil Code.[29]Where the deceased wife has no descendants or male descendants of the son, the husband receives half of her estate. If the deceased wife has descendants or male

descendants of her son, the husband receives one-fourth of the estate. On the contrary, the wife receives one-fourth of the estate if the husband leaves no descendants or male descendants of his son, otherwise she is entitled to one-eighth of it. If the wife is irrevocably repudiated and the husband dies during her waiting period, she has the same claim to inheritance as in a valid marriage. [30]

Under customary law, a wife generally does not inherit.[31] 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 their inheritance in the family. Often, if a widow does not remarry into the same family she risks losing her children. [32]

Norwegian Refugee Council/Internal Displacement Monitoring Centre (2014):

In theory, the Afghan legal system guarantees the rights of Afghan women to acquire, hold, use, administer and dispose of land and property. The main legal guarantees of women's HLP rights stem from both *Shari'ah* and the *Shari'ah*-based statutory laws influenced, to an extent, by international human rights law.

*Shari'ah* regards the individuality of women as an important principle and approaches them directly, rather than through male proxies, giving women the legal right to enjoy their property rights independently from their father or husband.<sup>87</sup> *Shari'ah* provisions regarding women's HLP rights are distributed across inter-related fields of family, property, labour and public law.<sup>88</sup> In Afghanistan, there is no separate, comprehensive statutory law governing all aspects of property issues, including that of (displaced) women. Land registration, administration and management is regulated by diverse legal documents, including the Constitution, Civil Law and over 30 land-related laws, presidential decrees, orders and policies. <sup>89</sup>

(s. 43)

### **Inheritance**

Inheritance rules are a central component of *Shari'ah* and one of "the enduring legacies of classical Islamic law".<sup>96</sup> *Shari'ah* never upheld the principle of primogeniture, which provides that only the eldest male child inherits real property, and is used to secure patriarchal social structures and ensure that the land stays within the family.<sup>97</sup> While women's rights to inherit family property were "sometimes honoured in the breach", they endured the centuries-long challenges of Islamic legal discourse, ensuring a solid foundation for women's acquisition of

property.<sup>98</sup> However, the legal standing of women with regard to inheritance rights is not devoid of flaws. Afghan statutory inheritance norms are identical to the *Shari'ah* – especially as to the determination of shares according to gender and degree of relation. The Civil Law is very detailed in this regard, with an entire chapter dedicated to it.<sup>99</sup>  
(s. 45)

In the event of her husband's death, a wife is entitled to:  
- 1/4 if her husband had no living children or male-line grandchildren<sup>102</sup>  
- 1/8 if her husband had living children or grandchildren  
(s. 47)

#### Country of Origin Research and Information (CORI) (2014):

In 2006 *Professor Barfield* reported that customs in the north differed from those of Pashtuns in the south, "In all three provinces people made it clear that their customs differed from those of the Pashtuns in the south. As an elder in Imam Sahib stated, 'Among Pashtuns women cannot inherit anything and the widows are not permitted to re marry except to her husband's brothers. It is totally different with Uzbek and Tajik women. They are allowed to inherit and get married after the death of their husbands'."<sup>16</sup>  
(s. 9)

#### AREU (2013):

The cleavage shows in inheritance, as another example, where the *Shari'ah* recognizes women's rights to inheritance but customary law and culture do not.<sup>274</sup> Further, financial independence and inheritance for women are guaranteed in the Constitution, but not women's participation in the judicial system or their right to free movement, all key elements of women's rights.  
(s. 65)

#### Inheritance law – Articles 1993-2267:

Customary law is also recognised. Inheritance is based on degree of relation to the decedent. In general, female descendants and relatives receive half as much as males. The Civil Code regulates personal life of women through laws on marriage, divorce and inheritance. The law on the marriage portion clearly states a woman's ability to use her marriage-portion as she sees fit, without the need for permission of her husband. The laws on contracts

and other commercial transactions do not specifically mention women, again suggesting women are not commonly considered business people. Inheritance affects a woman's accrual of wealth. Based on Islamic law, the Civil Code is very specific about the degrees of relation one has to the decedent and therefore the proportion to be given as mandatory inheritance. Women receive half the amount men do, which has an impact on a woman's ability to accrue wealth and subsequent economic independence. (s. 121)

The section covering inheritance in the Shiite Personal Status Law is similar to the Civil Law, with the same description of rights to inheritance based on degree of closeness to the deceased. In general, as with the Civil Law, women under the Shiite Personal Status Law are guaranteed a portion of inheritance, but always at most half of what a male relative would receive. Also of note is that a woman cannot inherit immovable property (land or buildings) from her spouse, thus limiting her accrual of wealth. (s.125)

#### Home Office (2013):

The first version of the Shia Personal Status Law (SPSL) was passed in April 2009.

Some prominent Shias praised the law for officially recognizing Shia jurisprudence, and some groups hailed the law for officially recognizing the Shiite minority. However, it was controversial both domestically and internationally for its failure to protect women's rights, specifically to protect women from marital rape. Additional articles of particular concern in the law included polygamy, limits on inheritance rights, limits on the right of self-determination, restricted freedom of movement, guardianship rights, and forced sexual obligations to one's husband. (s. 194)

... Living a limited life, women neither inherit property, appear publicly without a male escort nor expect advanced education. Her identity is linked to a male member of her family, that is, as the wife of (her husband) or the mother of (her eldest son)...  
[62f] (s. 209)

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. (s. 244)

25.46 The same source noted in regard to inheritance:  
\_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.[15] Under customary law, a wife generally does not inherit.[16] 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.' [34b] (Discriminatory family code) (s. 244)

World Bank (2011):

29. (a) Land Ownership. The vast majority of Afghan women do not own land. Societal factors dictate that women should not own property, especially land, although they can inherit land as widows and as children of landowners. Despite national land inheritance laws giving daughters and widows the right to claim land inheritance, many factors discourage such claims, and women and men generally have little awareness of women's property rights (Grace 2005) (s. 12)

UN Assistance Mission in Afghanistan (UNAMA) (2010):

Sharia Law

In addition to the prerequisite of "consent" for a marriage to be valid in Islam, the Holy Koran also clearly states the inheritance rights of a woman from her deceased husband:

1. A wife will get a fourth (1/4) of the total wealth left by husband in case he has no children.

2. She will get an eighth (1/8) of total wealth left by the husband if he has children.

*“And for them a fourth of what you leave, if you have no children; but if you have children, then for them of what you leave an eighth after any bequest they may bequeath, or any debt.”*

(Holy Koran, Al-Nisa, Verse 12) (s. 28)

Rural Development Institute (2009):

Afghanistan has a pluralist legal system. Land rights are governed by customary law, religious law and state law. Customary law (rawaj) governs how land is owned and transacted as established through community practice and adherence by members to group norms. They also govern women’s rights to land. Customary rules are rarely codified and appropriately change with time. Pashtunwali (Pashtun customary law) is one of the more elaborated operating laws, and dominates the norms in many areas. Shariat and custom often conjoin on land matters, except with respect to usury, women’s land rights and common property rights. The former is more liberal — and generally less adhered to because of this.<sup>23</sup> State law includes the civil code, statutory law and supreme or constitutional law. The Civil Code is a written expression of mainly Islamic law principles and includes more than 1,000 directives relating to property. The Code was compiled in the 1970s building in large part on historical treatments of the Hanafi school of Islamic jurisprudence. <sup>24</sup> (s. 25)

Religious law (Shariat or Shar’ia) in its original rules as laid down in the Koran and expressed in many scholarly treatises, may be directly applied when the issue is not covered in the Civil Code. Similarly, the Civil Code is only applied if the issue is not covered in state law. Land cases are officially dealt with in civil courts, which rule on the basis of state, civil and religious law, in uncertain mix and measure. Despite the pluralism, customary law dominates in Afghanistan. While the Constitution is silent on the authority of customary law it prohibits adoption of laws that are inconsistent with the tenets of Islam and the Civil Code recognizes the application of customary law with regard to land rights. Customary law is in large measure consistent with Shari’a, and Shari’a permits the practice of customary law so long as it does not interfere with tenets of Islam. Customary law systems vary between regions and tribes. It is generally understood that those refuse the application of customary law will be condemned by their families and have no real choice to refuse its application.<sup>26</sup> (s. 26)

In Afghanistan as a whole, customs and Islamic rules predominate in questions of inheritance. Despite their intimate relationship with agriculture and the land, in practice Afghan women are typically denied of their legal rights to inheritance and ownership over land or any other immovable property by culture, tradition, and tremendous societal pressure.

While civil law grants women the right to inherit land, few women, especially daughters, inherit in practice.<sup>37</sup> Under Shari'a law women have rights to inherit both as daughters and as widows, however, divorced women enjoy no rights to their husbands' property. 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. <sup>38</sup> (s. 27)

Widows, particularly those living in separate households (i.e. not with other related families), more readily receive their share of the land.<sup>39</sup> Still, these widows often transfer the land into their sons' names to avoid any confusion later on, although they do retain some control over the land. Sons may still consider the land to belong to their mother.<sup>40</sup> In contrast, widows, living in joint households, often do not receive their inheritance share of land because the land has not been divided and all land is shared in the family. While daughters are legally entitled to half their brothers' share of the parental property, under Shari'a law, in practice daughters rarely receive or accept their share of land. This is because it is culturally inappropriate for a woman to own land outright since the expectation is that she is cared for by her husband. Also, they may refuse their share and give it to their brothers out of respect for their brothers and also so that they maintain peaceful relations with brothers who are their social protection in the case of divorce or widowhood. <sup>41</sup> (s. 28)

National Legislative Bodies (2009):

**Article 216:**

A partial disinheritor is:

1. Children or the descendants of the children of the deceased [partially] exclude the parents of the deceased from [their entitlement] of two thirds and one thirds respectively to one sixth each.
2. Children or the descendants of the children of the deceased [partially] exclude the husband of the

deceased from one half [of his entitlement] to one fourth, and the wife of the deceased will be excluded [partially] from one fourth [of her entitlement] to one eighth.

3. Two brothers or one brother with two sisters, or four full sisters or four paternal sisters of the deceased who are Muslims and are born [not a fetus], and their father is alive and they are not disinherited, will cause the reduction of the deceased's mother's share from one third [of her entitlement] to one sixth. The remaining estate shall not be distributed to the mother of the deceased. For example, if the deceased has a daughter in addition to his/her parents, each parent shall get one sixth and the daughter shall get half [of the estate], and the remainder of the estate shall be redistributed, one fourth to the father and one fourth to the daughter. (s. 84)

(13). If heirs of the deceased from the first class are mother and father or one of them with one son or more than one son, or at least one son and one daughter, each of the parents receives one sixth of the estate, and the remaining estate shall be distributed among the children of the deceased based on the principal of one man equals two women. (s. 87)

#### RAND Corporation (2008):

Property ownership is another area where laws may not discriminate against women, but practice and tradition prevent women from taking full advantage of their rights. Afghan secular law and Shari'a law both allow for female property inheritance and ownership. However, the reality is that few women in Afghanistan inherit or own property. The situation varies by ethnic group and region, however, with Tajik women more likely to inherit land than their Uzbek or Pashtun counterparts. In general, women's lack of education and weak social position make it relatively easy to deprive them of their ownership rights. Additionally, the traditional view posits it as somehow disadvantageous for women to exercise their rights to land ownership and puts pressure on them to cede these rights to husbands or male relatives.<sup>32</sup> Thus, women may live on land that might even be legally theirs, but they do not enjoy the rights and benefits of owning that land. The exceptions to this rule are widows, who are more likely to be perceived as owning land, although they are generally still precluded from selling it (a right that passes to sons or other male relatives.) (s. 90)

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Denna sammanställning av information/länkar är baserad på informationsökningar gjorda under en begränsad tid. Den är sammanställd utifrån noggrant utvalda och allmänt tillgängliga informationskällor. Alla använda källor refereras. All information som presenteras, med undantag av obestridda/uppenbara fakta, har dubbelkontrollerats om inget annat anges. Sammanställningen gör inte anspråk på att vara uttömmande och bör inte tillmätas exklusivt bevisvärde i samband med avgörandet av ett enskilt ärende. Informationen i sammanställningen återspeglar inte nödvändigtvis Migrationsverkets officiella ståndpunkt i en viss fråga och det finns ingen avsikt att genom sammanställningen göra politiska ställningstaganden. Refererade dokument bör läsas i sitt sammanhang.

## Källförteckning

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