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LAND REFORM IN AFGHANISTAN (THE LARA PROJECT)

Evaluation of Legislation Affecting Women's Access to Land and
Recommendations for Improving Women's Access to Land
Rights in Afghanistan

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Evaluation of Legislation Affecting Women's Access to
Land and
Recommendations for Improving Women's Access to
Land Rights in Afghanistan

ACRONYMS AND ABBREVIATIONS

AGCHO	Afghan Geodesy and Cartography Head Office
ANDS	Afghanistan National Development Strategy
Arazi	Formerly the Afghan Land Authority (ALA)
AREU	Afghanistan Research and Evaluation Unit
dTS	Development & Training Services, Inc.
EVAW Law	Elimination of Violence against Women Law
GIRoA	Government of the Islamic Republic of Afghanistan
IDLG	Independent Directorate of Local Governance
ILS	International Land Systems
IARCSC	Independent Administrative Reform and Civil Service Commission
Jirga	Assembly of Tribal Leaders
LARA	Land Reform in Afghanistan (LARA) project
LTERA	Land Titling and Economic Restructuring in Afghanistan Project (USAID)
MCIT	Ministry of Communication and Information Technology
MOE	Ministry of Education
MOHRA	Ministry of Hajj and Religious Affairs
MOI	Ministry of Interiors
MOIC	Ministry of Information and Culture
MOJ	Ministry of Justice
MOWA	Ministry of Women's Affairs
MUDA	Ministry of Urban Development Affairs
NAPWA	National Action Plan for the Women of Afghanistan
NGO	Nongovernment Organization
NRC	Norwegian Refugee Council
PIA	Public Information and Awareness
Shura	Council of Elders
UN	United Nations
UNDP	United Nations Development Programme

UNESCO United Nations Education, Scientific, and Cultural Organization
UNODC United Nations Office on Drugs and Crime
UN Women United Nations Entity for Gender Equality and the Empowerment of women (formerly UNIFEM)
USAID United States Agency for International Development

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EXECUTIVE SUMMARY

A key task under the LARA Work Plan is to evaluate current legislation affecting women's access to land and to assist in legal reforms aimed at increasing women's access to land in Afghanistan. To that aim, this report serves as an assessment of the legal, institutional, and socio-cultural constraints that impact a woman's right to inherit, own, or control land in Afghanistan. This report also seeks to identify feasible legal and program interventions that broaden women's land, ownership, and inheritance rights, including legal reforms, advocacy, training, and empowerment.

This evaluation is based primarily on desk research conducted by the LARA gender team. Qualitative data was gathered from the reviewed documents and analyzed to provide a general assessment of the legal, institutional, and socio-cultural constraints that impact women's rights to inherit, own, or control land in Afghanistan. The findings of this evaluation are meant to serve illustratively to inform future initiatives aimed at promoting and strengthening women's right to inherit, own, or control land in Afghanistan.

Ensuring that women's rights to land are protected and strengthened requires an understanding of women's current legal and customary rights in order to develop appropriate interventions to better promote women's land rights. In Afghanistan land, housing, and property rights are primarily regulated by the Afghan Civil Code, the Afghan Law on the Procedure for Obtaining Rights and various statutory decrees. Under the Afghan Civil Code all Afghan men and women may own and acquire property, unless limited by the law. However, in practice it appears that women rarely own land in Afghanistan, and if they do, their ownership is circumscribed by customary practices.

In order to successfully promote women's access to land rights, it is important to follow a comprehensive, multifaceted approach. Though it is important to draft amendments to legislation aimed at promoting women's legal rights, it is also important to evaluate the existing national laws and develop interventions that would support the application of the current laws. In Afghanistan, where the government has declared a particular interest in the promotion of women's legal rights and the formal laws guaranteeing women's ownership rights to land are fairly strong, it is important to identify avenues by which those laws may be better applied. Below are some recommendations that should be considered.

A. Strengthen Application of Existing Laws Impacting Women's Land Ownership Rights

1. Develop public awareness campaigns and related interventions aimed at informing both men and women of their land rights under Afghan national law
2. Design and implement appropriate trainings for various stakeholders and beneficiaries
3. Increase coordination and collaboration efforts with appropriate stakeholders and partners
4. Increase coordination efforts with relevant government agencies
5. Promote changes to rules and procedures related to relevant formal laws

6. Specific recommendations for procedural changes related to the documentation of important life events impacting land, property and ownership laws
7. Increase inclusion of women in decision making processes
8. Strengthen mechanisms to ensure current laws are properly enforced
9. Conduct assessment regarding, and design appropriate interventions to counteract, impact of corruption in government agencies, adjudicatory bodies, and enforcement organizations on women's access to land and property rights
10. Set up legal aid clinics to provide legal advice regarding women's ownership rights to local communities

B. Amending Legislation to Improve Women's Access to Ownership Rights

1. Conduct a thorough review of all laws related to land, property and ownership rights as well as family and personal laws (enshrined in the Afghan Civil Code) governing important life events impacting ownership rights such as marriage, inheritance, land sales, divorce, and death.
2. Utilize a gender sensitive approach to amending legislation. Involve women and men trained in gender sensitive methods to review the relevant laws for their impact on women and men.
3. Hold round table discussions in project areas with women who will be impacted, conduct trainings on the existing laws, and seek their input on how the laws could be made better to help them in securing and strengthening their ownership rights.
4. Work closely with civil society groups experienced in legislative reform and advocacy in order to develop a comprehensive strategy for obtaining the necessary political support for legislative amendments.
5. Work closely with Parliamentary groups in the lower house and upper house of Parliament to advocate for the approval of proposed legislative amendments.
6. Specific amendments to Afghan Civil Code Article 37, requiring all birth and deaths to be officially recorded.
7. Specific amendments to Afghan Civil Code Article 61, requiring all marriages to be officially recorded.
8. Specific amendments to the EAW Law Article 33, adding a monetary, compensatory element.
9. Specific amendments to the Afghan Law on the Procedure for Obtaining Rights, Articles 6, 12, and 37.

BACKGROUND

The United States Agency for International Development (USAID) Land Reform in Afghanistan Project (the LARA Project) is managed by Tetra Tech ARD under USAID Contract No. 306-C-00-11-00514-00, with implementation assistance from its partners Tetra Tech DPK, International Land Systems (ILS), Development & Training Services Inc. (dTS), and Landesa (formerly the Rural Development Institute). The LARA Project's primary government partners are Arazi (Afghan Land Authority), Afghan Geodesy and Cartography Head Office (AGCHO), Ministry of Urban Development Affairs (MUDA), Independent Directorate of Local Governance (IDLG), as well as the Supreme Court and selected local municipalities.

The purpose of the LARA Project is to develop a robust, enduring, and Afghan-owned and-managed land market framework that encourages investment and productivity growth, resolves/mitigates land-based conflict, and builds confidence in government's legitimacy, thereby enhancing stability in Afghan society.

The LARA Project continues USAID/Afghanistan's support for land reform and land rights strengthening that began through the earlier LTERA Project. The LARA Project currently comprises an 18-month Base Period and a possible 18-month Option Period, with a total contract amount of \$41.8 million. While this document also includes activities and tasks under the Option Period, the current Work Plan that we operate under contemplates only the 18-month Base Period, ending on July 31, 2012.

The LARA Project is designed to contribute to USAID's AO and Afghanistan National Development Strategy. Three influences will help shape the LARA Project's contributions to this Objective: (1) the foundations provided by the former USAID Land Tenure and Economic Restructuring in Afghanistan (LTERA) project that provides a starting point and methods that can be adapted; (2) USAID/Afghanistan management objectives including Afghanization and conflict mitigation; and (3) the following major Project objectives:

1. Improve property rights delivery (land administration and formalization);
2. Enable all citizens (women, minorities, and vulnerable populations) to exercise their rights through public information awareness (PIA);
3. Strengthen land dispute resolution processes in order to reduce conflict and promote peace and stability;
4. Promote economic development through clear and enforceable property rights, PIA, land rights delivery, land dispute resolution;
5. Strengthen institutional, policy, and legal reform to secure property rights for Afghan citizens;
6. Provide assistance in the crosscutting areas of gender, training, PIA, and private sector development.

These objectives are supported by three components that provide the over-arching structure for programming activities and tasks in the work plan are as follows:

1. "Strengthen Land Tenure Security through Formalization and Upgrading of Informal Settlements"— Support MUDA, Supreme Court, AGCHO, IDLG, Arazi, Communities and the Municipality of Jalalabad with informal settlements upgrading, formalization, cadastral mapping, women's inheritance and land rights law, community based dispute resolution, laws for urban

planning and land use regulation, and training in planning and enforcement (related to SOW Activities 1, 2, 3, 4 & 5).

2. “Legal Framework”—Provide limited assistance to Arazi to identify, manage, lease, and obtain revenue from Afghan government lands and provide targeted technical assistance (related to SOW Activities 6 & 7).
3. “Capacity Building”—Build capacity of public (AGCHO, Arazi, IDLG, MUDA, Supreme Court) and private sector service providers to improve and streamline land tenure processes to Afghan private and public sectors (related to SOW Activity 8).

A key task under the LARA Work Plan is to evaluate current legislation affecting women’s access to land and to assist in legal reforms aimed at increasing women’s access to land in Afghanistan. To that aim, this report serves as an assessment of the legal, institutional, and socio-cultural constraints that impact a woman’s right to inherit, own, or control land in Afghanistan. This report also seeks to identify feasible legal and program interventions that broaden women’s land, ownership, and inheritance rights, including legal reforms, advocacy, training, and empowerment.

METHODOLOGY

This evaluation is based primarily on desk research conducted by the LARA gender team. Documents reviewed include, but are not limited to:

1. LARA project documents;
2. Official laws regarding ownership, land, and property rights, and related matters (including laws related to marriage and family matters) in Afghanistan;
3. Relevant reports related to women's land and property rights in Afghanistan (including discussions of various customary practices in Afghanistan) and;
4. Relevant reports documenting best practices in promoting women's land rights internationally¹.

Qualitative data was gathered from the reviewed documents and analyzed to provide a general assessment of the legal, institutional, and socio-cultural constraints that impact women's rights to inherit, own, or control land in Afghanistan. However, it should be noted that the findings of this evaluation are not exhaustive and are meant to serve illustratively to inform future initiatives aimed at promoting and strengthening women's right to inherit, own, or control land in Afghanistan.

Specifically, this report focuses on providing an overview of the legal guarantees currently in place in Afghanistan supporting women's access to land, the challenges and obstacles related to that access, the opportunities to implement existing legislation, as well as the roles and responsibilities of various government actors in implementing such legislation. With regards to formal Afghan laws, this report seeks to identify gaps in the current laws and provide various recommendations for amendment of laws to better promote women's rights to ownership and increased access to land. Additionally, this reports draws on international and Afghanistan-specific best practices to formulate additional recommendations for initiatives to support women's increased access to land rights.

¹ A list of all documents reviewed can be found in Annex A of this report.

IMPORTANCE OF WOMEN'S LAND RIGHTS TO THE DEVELOPMENT OF AFGHANISTAN

It has been well established that gender discrimination is related to lower per capita income, life expectancy, and literacy.²The problem of gender inequity is particularly prevalent in the land rights context due to the deep cultural bias against women and the political ramifications of dealing with this sensitive issue. Women may not fully participate in the benefits afforded to members of a household if they do not share secure, formal, or customarily recognized property rights over land or housing. Secure land rights for women are an important development issue because land rights impact intra-household decision making, income pooling, and household acquisitions. Secure land rights are critical for women, particularly when the household breaks down for reasons of war, migration, divorce, illness, and death.

Not only is land a source of food and a base for income generating activities, land rights can elevate the status of the rights holder in the eyes of family members and the community. Land rights can create a sense of self-worth in the owner and give them options they would not have as a landless member of society. Ensuring that women have equitable rights to land acknowledges their worth, helps break down perceptions of inequality within households and communities, and reduces their dependence on men for survival.³ Additionally, women's right to property directly impacts her and her family's health, nutrition, and financial wellbeing.

Secure land rights for women are important for poverty reduction not only because of women's many roles within the household (i.e. as food producers, cooks, and nurturers, etc.) but also because of their broader roles in household management. Female-headed households can benefit enormously from the security, status, and income-earning opportunities that secure rights to even a small plot of land can provide.⁴Women's control over land assets enhances household welfare, women's cash incomes and spending on food, children's health and education.

Secure land rights for both women and men help to promote sustainable economic development. When women have secure rights to their land, they are better able to provide for their family's needs, especially those of their children. Studies show that when women have secure rights to land, family nutrition and health improves, women may be less likely to be victims of domestic violence, children are more likely to receive an education and stay in school longer, women may have better access to microcredit, and women's participation in household decision making increases.⁵

² See e.g. Hausmann, R., L. D. Tyson, and S. Zahidi, *The Global Gender Gap Report 2006*, World Economic Forum, Geneva, Switzerland (2006).

³ See RDI, *Women's Inheritance Rights to Land and Property in South Asia: A Study of Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka*, RDI for the World Justice Project, (2009), available at http://www.landesia.org/wp-content/uploads/2011/01/RDI_Report_WJF_Womens_Inheritance_Six_South_Asian_Countries_December_2009.pdf, last visited May 21, 2012.

⁴ See USAID/LTERA project, *Gender Integration in Afghanistan*, Cardno Emerging Markets available at <http://www.cardnoem.com/Services.aspx?ServiceID=733165c3-79c9-411c-96c3-dab8bb4488dc&Article=Gender+Integration+in+Afghanistan>, last visited May 25, 2012.

⁵ See Landesa Center for Women's Land Rights, *Why Women's Land Rights*, 2011-2012, available at <http://www.landesia.org/women-and-land>, last visited May, 16, 2012.

Legal or social restrictions that prevent women from owning or inheriting land have a direct and detrimental impact on their ability to contribute to the overall development of the country. Land ownership confers direct economic benefits as a key input into agricultural production, as a source of income from rental or sale, and as collateral for credit that can be used for either consumption or investment purposes. However, women may not fully participate in these benefits as members of a household if they do not share formal property rights over the land. Only ownership can ensure that women have access to, and control over, land-based earnings. Formal rights to land for women can have an impact on intra-household decision-making, income pooling, and women's overall role in the household economy.⁶

Further, women's gender roles make them central stakeholders in improving the situation of poor communities. Women landowners, as providers, are educators, responsible for health, water and sanitation, and nutrition. Their involvement can help facilitate planning results that are more comprehensive in the long run. The returns of a gender focus are extremely high given that investing in the participation of women represents no significant additional cost to that of investing in community participation.

The Government of Afghanistan (GIROA) recognizes women's access to land rights as an important national developmental goal and has stated a commitment to improving legislation in order to ensure women's rights to inheritance in the Afghanistan National Development Strategy (ANDS).⁷ Loss of women's inheritance entitlements to male relatives and denial of their property rights prevents women from using collateral and limits access to loans for creating employment opportunities. Therefore, GIROA welcomes policies that introduce measures to enforce women's rights to inheritance.⁸

Land is highly valued economic capital, especially in an agricultural economy like Afghanistan. The loss of women's inheritance entitlements to male relatives upon the death of the husband is one reason why very few women own land, a factor that reinforces the economic vulnerability and dependency of women, especially those who are heads of households.⁹

Although Afghan women are often contributors to the household economy, through agriculture, livestock management, handicrafts, involvement in small and medium enterprises, and civil service, their contributions are often non-monetized, hugely underpaid or undervalued. Many women who earn an income are not permitted to control their earnings.¹⁰ One of the stated goals of the National Action Plan for Women of Afghanistan (NAPWA) is to create an enabling social and economic environment that is conducive to the full development and realization of women's economic potential. One of the ways in which NAPWA hopes to accomplish this goal is by promoting the use of a gender sensitive legislative and regulatory framework in the drafting and amendment of inheritance, property, and labor laws.¹¹

⁶ See The World Bank, *Gender Issues and Best Practices in Land Administration Projects*, The World Bank, (2005) (hereinafter referred to as "World Bank Best Practices Report"), available at http://siteresources.worldbank.org/INTARD/Resources/Gender_land_fulltxt.pdf, last visited May, 2, 2012.

⁷ *Afghanistan National Development Strategy: A Strategy for Security, Governance, Economic Growth and Poverty Reduction (2008-2013)*, Islamic Republic of Afghanistan, (hereinafter referred to as "ANDS") p. 141.

⁸ Id at p. 127.

⁹ *National Action Plan for the Women of Afghanistan: The Government's Main Vehicle for Implementing Policies and Commitments to Advance the Status of Women (1007-2017)*, Islamic Republic of Afghanistan, (hereinafter referred to as "NAPWA"), p. 9.

¹⁰ Id. at p. 62.

¹¹ Id.

Combating the many obstacles faced by Afghan women, obstacles related to restricted mobility, loss of women's inheritance entitlements to male relatives, and denial of their property rights, is crucial to the promotion of increased standards of living and poverty alleviation in Afghanistan. Denial of land, property, and inheritance rights makes women more vulnerable to poverty and therefore impedes the national development goal of reducing and alleviating poverty for the entire country.

WOMEN'S LEGAL RIGHTS TO OWN, INHERIT, AND CONTROL LAND IN AFGHANISTAN

Ensuring that women's rights to land are protected and strengthened requires an understanding of women's current legal and customary rights in order to develop appropriate interventions to better promote women's land rights. Understanding various customary practices in relation to women's land rights is important for developing successful interventions as many practices may be harmful to women's access and such practices need to be factored into the design of appropriate interventions so that they may be properly addressed. Though this report does not focus on customary rights, it does touch upon important differences between formal laws and the actual customary practices, which often time contravene the formal rights of women under Afghan law. Customs or traditions connected to intra-household relationships are not easily changed; however, LARA seeks to operate with a clear understanding of the existing cultural framework in attempting to impact a substantive improvement in women's access to land rights in the project areas.

In Afghanistan land, housing, and property rights are primarily regulated by the Afghan Civil Code, the Afghan Law on the Procedure for Obtaining Rights, and various statutory decrees. Under the Afghan Civil Code, protection, management, and use of, natural resources is regulated by law and all Afghan men and women may own and acquire property, unless limited by the law.¹²

Under the Afghan Civil Code, both women and men may own and transact in land. However, in practice it appears that women rarely own land in Afghanistan, and if they do, their ownership is circumscribed by customary practices.¹³

The Afghan Civil Code contains detailed provisions with respect to land and property rights, including but not limited to civil status, residence, family, marriage, children's rights, wills and inheritance, contracts, loans, ownership documents and forms of proof, mortgages, land, and property rights. The Afghan Civil Codes' Articles on property rights range from guidance on handling contracts and mortgages to rights of possession, joint rights, inheritance rights, procedures for leasing, purchase, rent and sale of property.¹⁴

¹²The Civil Law of the Republic of Afghanistan (hereinafter referred to as the "Afghan Civil Code"), 1977, unofficial English translation available at <http://www.asianlii.org/af/legis/laws/clotroacogn353p1977010513551015a650/>, last visited May 25, 2012.

¹³ See Landesa, *LARA Gender Assessment: Legal Framework for Women's Property Rights, Field Findings from Jalalabad, and Recommendations for Possible Interventions* (hereinafter referred to as "LARA Gender Assessment"), USAID/LARA Project, (2012). It is not within the scope of this report to provide a detailed account of the development of land laws in Afghanistan, however, for a more thorough discussion of the development of the Afghan Legal structure and, specifically, the development of Afghan laws related to land and ownership please see LARA Gender Assessment.

¹⁴ See Afghan Civil Code, *supra* n. 12.

Under Afghan law, the judiciary is charged with both arbitrating disputes and acting as officers of land administration.¹⁵ In addition, an independent Special Property Disputes Resolution Court was created by Presidential decree to deal with property disputes concerning returnees.¹⁶ This court was established in 2002 and is tasked with “looking after returned refugees in Afghanistan and addressing their complaints, as to hasten the process of resolving property disputes.”¹⁷

A number of successive regimes have attempted land reform in Afghanistan. However, land reform has been controversial in the recent past as state appropriation and past reforms have resulted in an estimated 86% of the land area of the country technically belonging to the state, although much of that land is not under actual State control.¹⁸

Another challenge with regards to establishing land rights in Afghanistan is the fact that there are multiple land ownership documents in Afghanistan, a consequence of the pluralistic legal system, the different land reform policies pursued by different regimes, and the absence of the rule of law in recent history. It can therefore be very difficult to determine the legitimate owners of land and property.

Though many landholders do not have any actual land related documents, those that do still face challenges, as even official documents are not regarded as fully reliable, let alone customary or unofficial documentation.¹⁹ For women the challenge is double as it is very unlikely that any documentation will include women’s names therefore, any activity that uses documents to validate or verify land rights alone runs the risk of disenfranchising women. Under customary practices in certain areas of Afghanistan, women are generally denied the right to own land.²⁰

With respect to Afghanistan’s official laws, the Afghan Constitution includes some of the strongest language of any national constitution regarding the upholding of Afghan citizen’s equal rights and the prohibition against discrimination of any citizens, including women. For example, Article 22 of the Afghan Constitution clearly states,

Any kind of discrimination and privilege between the citizens of Afghanistan are prohibited. The citizens of Afghanistan – whether man or woman – have equal rights and duties before the law.

¹⁵Conor Foley, *A Guide to Property Law in Afghanistan*, First Edition, 2005, for Norwegian Refugee Council and UNHCR (hereinafter NRC) at p. 17.

¹⁶ Decree 89 of the Head of the Transitional Islamic State of Afghanistan, Regarding the Creation of a Special Property Disputes Resolution Court, Date: 1382/9/9 (30 November 2003).

¹⁷ Id.

¹⁸Wily, L.A., *Rural Land Conflict and Peace in Afghanistan*, AREU, Kabul, (February 2004).

¹⁹ See LARA Gender Assessment, p. 13.

²⁰ See LARA Gender Assessment, p. 14-15 and field assessment responses.

Similarly, Afghanistan's Civil Code contains strong language in support of women's civil rights in certain matters including marriage, inheritance, and property rights.

However, formal law that requires gender equity in property rights is mostly ineffective in the face of customary practices that do not recognize equitable property rights for men and women.²¹ For example, under the Afghan Civil Code both women and men may own and transact in land, however, in practice, women rarely own land, and if they do, their ownership is circumscribed by customary practices.²²

MAHR RIGHTS

A principal mechanism by which women are to acquire ownership rights to land and property in Afghanistan is through *mahr*. *Mahr* refers to the "marriage-portion" of property fixed by marriage negotiations, defined in the marriage contract, and given by the groom to the bride as a gift upon marriage.²³ *Mahr* is the right of a bride under the Afghan Civil Code and no marriage is valid without the establishment of *mahr*.²⁴ Articles 98-114 of the Afghan Civil Code explain the rules related to *mahr*. The Afghan Civil Code clearly states that a wife shall be entitled to a specified *mahr*.²⁵ Even if the *mahr* is not determined at the time of marriage, it is still necessary and must be paid.²⁶ Though no time frame is specified in the Afghan Civil Code, if a bride's *mahr* is not paid at the time of marriage, it is regarded as a debt during and after the life of the wife. The *mahr* becomes payable to the heirs of the wife if it has not been paid to the wife by the occasion of her death.²⁷ *Mahr* is the right of the wife and is considered her property. A wife has the right to exercise any ownership power over her *mahr*.²⁸

Marriage registration is the main vehicle by which a woman's *mahr* is guaranteed. Article 61 of the Afghan Civil Code elaborates,

(1) Marriage contract shall be registered in the official marriage deed by the respective office and shall be prepared in three copies. The original shall be kept with the respective office and the two copies shall be supplied to the concluding parties. After having been registered, the marriage deed shall be brought to the notice of the identification Registration office as provide under Article 46 of this law.

²¹ See World Bank Best Practice Report, 2005.

²² See LARA Gender Assessment.

²³ See *Mahr* in "Encyclopedia of Islam and the Muslim World," edited by Richard C. Martin, vol. 1, MacMillan Reference USA, Thompson Gale, 2004, p. 424.

²⁴ See Afghan Civil Code, Articles 98-114.

²⁵ See Afghan Civil Code, Article 99.

²⁶ *Id.*

²⁷ Afghan Civil Code, article 114

²⁸ See Afghan Civil Code, Article 110.

(2) Where the registration of marriage contract is not possible in this way, it shall be affected by other way envisaged for registration of official documents.

Though the Afghan Civil Code relies on marriage registration to officially document *mahr* rights, in practice marriages are rarely officially registered. In fact, the main form of documentation is a simple written statement undertaken by the officiant presiding over the marriage ceremony, which lists the names of the bride and groom, their proxies, and their witnesses.²⁹ This unofficial document may or may not contain information about the *mahr*.³⁰ The unofficial document is usually given to the groom only and copies are not recorded elsewhere or registered, thus diminishing the potential protection for women, which may come from a registered marriage contract.

Official marriage registration entails filling out paperwork with the registration offices or primary courts in the provinces or local districts, wherever available. Marriage registrations documented by an officiant, or religious leader, are regarded as unofficial and courts do not recognize such registrations as proof of marriage. An official and legally binding marriage document can only be obtained by applying to the courts or to the corresponding office for registration.³¹ In the past twenty years, most marriages have not been registered, due to the breakdown of administrative structures.

The Afghan Civil Code contains many articles pertaining to the regulation of *mahr* rights. Article 69 regulates *mahr* in the case of polygamous marriages. Article 69 establishes that in polygamous marriages, *mahr* is guaranteed for each wife, each wife is entitled to negotiate, obtain, and control her separate *mahr*. Article 69 of the Afghan Civil Codes states that, “[w]here a person marries two women, each shall be entitled to equal and separate marriage portions.”

Articles 98-114 of the Afghan Civil Code deal specifically with the regulation of *mahr* rights. Article 98 establishes that *mahr* is a right of a wife upon marriage, and becomes due with consummation of the marriage,

The payment of marriage portion shall become imperative with copulation, full privacy between the couple and with the death of one of the spouses even though it may have taken place before the copulation or full privacy between the spouses.

Article 99 guarantees the wife entitlement to the payment of *mahr*. Even if the *mahr* is not determined at the time of the marriage ceremony, or during the marriage, it is still necessary to establish and pay a *mahr* equivalent to a bride’s relative or family member,

²⁹ Landesa Gender Assessment, page 16.

³⁰ See Rights and Democracy, *Marriage Registration and the Marriage Certificate*, International Centre for Human Rights and Democratic Development, available at <http://www.dd-rd.ca/afghanistan/pdf/Rights&Democracy-Nikahnama.pdf>. Last visited on May 21, 2012.

³¹ See *Id.*

The wife shall be entitled to specified marriage portion. If the marriage portion is not determined during the conclusion of marriage and/or it is negated, the payment of accustomed to marriage portion shall become necessary.

Article 103 of the Civil Code specifies that no one but the wife has the right to waive the *mahr*, even in cases in which the bride has not attained the legal age of marriage (16 for girls as stated in Article 70 of the Civil Code), her father or guardian does not have the right to waive the *mahr*,

- (1) A mature woman has attained legal marriage age can, by her own consent, waive all or part of the marriage-portion left unpaid by the husband.
- (2) The father of the wife, who has not attained the age provided in Article (70) of this law, can in no way waive the marriage-portion payable by the husband.

Article 113 reinforces that only the wife has the right to control the *mahr* by specifying that “[t]he father cannot give, totally or partially, his daughter’s marriage-portion as gift”.

Further, Article 114 alludes to the purpose of *mahr* as being for the benefit of the wife by specifying that, “[t]he wife cannot place all or part of her marriage-portion at the disposal of the husband or any other person.” Even if “the wife dies before acquiring all her marriage-portion, her heirs can demand from the husband the marriage-portion and in case of the death of the husband, they can demand it from his heirs.”

If the husband refuses to provide the wife her due *mahr*, the wife can bring a claim in court for the determination and payment of her *mahr* as detailed in Article 104,

Where a woman has given discretion to her husband to fix the marriage-portion and where the marriage-portion has not been specified she can demand the husband to determine her marriage portion after or prior to the copulation. The husband shall be obliged to fix her marriage-portion. In case of refusal, the wife can demand from the authoritative court to fix the marriage-portion.

Leaving no question as to the ownership of *mahr*, Article 110 definitively states that, the “marriage-portion shall be considered the property of the wife. She can exercise any ownership power over her marriage-portion.”

As for the amount of the *mahr*, Article 101(2) states that “[i]f the marriage-portion is not determined clearly, the custom of the locality shall be resorted to.” However, the husband must determine some amount of *mahr*, and presumably is not permitted to argue that the custom of his community does not include a *mahr*, as Article 104 affirms that the husband is obliged to “fix [the wife’s] marriage-portion” and “[i]n the case of refusal, the wife can demand from the authoritative court to fix the marriage-portion.” In other words, a *mahr* is obligatory for a valid marriage under the Afghan Civil Code, and no

local custom or practice can be used to negate the determination and payment of *mahr* and the wife is instructed to turn to the courts in any disputes regarding her *mahr*.

WOMEN'S INHERITANCE RIGHTS

Inheritance is another vehicle by which women are able to acquire land and property under the formal laws of Afghanistan. Women, depending on their position as mother, daughter, wife or sister, are entitled to inheritance in their relatives' *matruka*, the remainder of inheritance after costs of funeral and debts have been paid.

Article 90 of the Afghan Civil Code confirms women's rights to her husband's property upon marriage. A "complete and binding marriage shall create all the rights and obligations for the spouses such as maintenance of wife, right to inheritance, obligation to prove their lineage and to avoid prohibited acts."

A woman is also entitled to inheritance rights under the Afghan Civil Code irrespective of her role as a wife. Article 2004 of the Afghan Civil Code confirms a woman's right to inheritance depending on her role as a family member of a deceased with property remaining at death. Article 2004 states,

Farz is the specific share of the heir in the patrimony and in inheritance the share of those entitled to *Farz* shall be given prior to others. Those entitled to *Farz* are father, grand and great grand-father, half-brother on the mother's side, half-sister on the mother's side, husband, wife, daughter or daughters of daughter, or daughters of son, or daughters thereof, sister, father, sister, mother of grandfather.³²

With regards to a wife's inheritance rights, even in the case of conditional divorce, Article 2007 of the Afghan Civil Code states,

(2) Wife, even though conditionally divorced, when the husband dies prior to the expiration of the divorce period, or wives, when lacking children, or male offspring even though of descending order, shall receive one fourth of the patrimony, and in case children or male offspring, even though of descending order, exist shall be entitled to one eighth of the patrimony.

With regards to the inheritance rights of daughters, Article 2008 of the Afghan Civil Code states that, in accordance with the provision of Article 2019 of the law, daughters shall be entitled to inheritance as follows,

³²Farz is the Farsi version of the Arabic word "fardh" which is translated to mean "obligatory" in English.

(1) One daughter shall be entitled to half of inheritance of patrimony; two or more shall be entitled to two thirds.

(2) Daughters of son, when there is no daughter, then daughter of son of ascending order, shall be entitled to inheritance prescribed in above section. In presence of son, one or more, in case of existence of daughter of daughter or daughter of son of ascending order, are entitled to one sixth of the patrimony.

With regards to the inheritance rights of sisters, Article 2009 of the Afghan Civil Code states that, in accordance with the provisions of articles 2019 and 2020 of the law, sisters of the deceased shall be entitled to inheritance as follows,

(1) One sister receives half and two or more shall receive two thirds of the patrimony.

(2) In case of non-existence of sister, half-sisters the father's side shall receive the portions prescribed the above section, and in case one sister does exist, they receive one sixth of the patrimony, regardless of if there is one or more half-sisters on the father's side."

Additionally, other newly enacted laws, such as the Elimination of Violence against Women Law (EVAW Law) seek to reinforce women's rights to property and land. The EVAW Law also attempts to specify penalties for offenses in violation of specified women's rights, including the prevention of women from accessing their inheritance rights. In treating the prevention of a woman from accessing her inheritance rights as a crime, the EVAW Law seeks to go a step further than the Afghan Civil Code by stipulating penalties in an attempt to both punish and deter future offenders and thereby strengthen the enforcement mechanism available to ensure women's rights to their inheritance.

Article 33 of the EVAW Law determines a penalty for persons preventing a woman from "accessing and owning her achieved inheritance" by allowing a "short-term jail [sentence], not more than one month" be placed on the offender.

Further, Article 34 of the EVAW Law proposes a possible jail sentence of up to three months for any person wrongfully seizing a woman's property or preventing her from owning it. Article 34 also states that the woman whose property rights have been taken "shall receive the full rights to her property."

The Afghan Law on Procedure for Obtaining Rights of 1999³³ also touches upon women's property rights by requiring Police forces to support women by notifying authorities of the husband's failure to pay alimony or *mahr* due to the wife. Article 6, clause 2 of the Afghan Law on the Procedure for Obtaining Rights states,

³³Afghanistan's Law on the Procedure for Obtaining Rights (Hoqooq) 1999, unofficial English translation available at <http://www.asianlii.org/af/legis/laws/lotpforogn786p1999080514200422a719/>.

When receiving alimony and maintenance of marriage, the complainer (wife) is not bound to return to the residence of the complained against. In such cases, the local legal office is inclined to officially inform the husband's residential area legal office.

CHALLENGES IMPEDING WOMEN'S ACCESS TO *MAHR*, INHERITANCE, AND LAND IN AFGHANISTAN

There are many challenges Afghan women face in attempting to access the property rights due to them under the law. From customary practices stigmatizing women's ownership of property to a lack of awareness by the general public of the property rights guaranteed to women under Afghan law, many of the challenges faced by women are interrelated. For instance, limited awareness of laws governing women's property ownership coupled with weak rule of law leads to a heavier reliance on customary practices to govern property rights issues.

Additionally weak adjudicatory and enforcement mechanisms mean that women's rights under Afghan law, including their property and land rights, and their rights to inheritance, are often not upheld in Afghanistan. In some marriages, the wife's *mahr* is given to the families of the bride, or the bride or her family may "forgive" the *mahr* by re-gifting it to the husband or the husband's family. Such practices are in opposition to the Afghan Civil Code, which prohibits such a practice and explicitly requires that the *mahr* be given directly to the bride and be under the bride's ownership control. In other cases, women's inheritance rights are completely denied by prohibiting women from being present during, and taking part of, inheritance proceedings. In still other cases, women may not even be aware of their rights to *mahr* upon marriage, or to inheritance upon the death of a relative and may never even seek to claim their due right.

Listed below are some of the major challenges faced by women in accessing their property rights. The challenges have been divided into 1) challenges women face in attempting to access property rights guaranteed to them under the law and 2) challenges preventing women from attempting to access those rights in the first place.

Though some of the challenges may be interrelated, it is important to delineate the distinction between challenges preventing women's access (factors in opposition to women's direct actions) and challenges that prevent women from attempting access in the first place (factors influencing women's direct actions) as much of the data from secondary sources and the LARA field assessment conducted in Jalalabad by the LARA Gender team and supporting local organizations, suggests that there is a considerable amount of self-selection by women in not attempting to access the rights that are guaranteed them under the law. It is important to tackle these challenges head on in designing interventions to promote women's access to ownership rights. Otherwise, the interventions, even if designed to increase women's access, will have no great impact if women continue to self-select themselves out of the process.

CHALLENGES WOMEN FACE IN ATTEMPTING TO ACCESS THEIR PROPERTY RIGHTS

One of the most detrimental and lasting consequences of Afghanistan's three decades of war has been the erosion of the rule of law in the country. Efforts have been made to strengthen rule of law in Afghanistan, however, the legal system in much of the country continues to be weak and ineffective. Nevertheless, larger cities such as Herat, Mazar-e-Sharif, and Jalalabad have a greater supply of trained and semi-

trained legal professionals and also have a greater capacity for training more legal professionals due to the greater presence of universities, private educational facilities, and other organizations conducting trainings. These larger urban areas also have a greater ability to implement interventions increasing women's access to courts and government offices responsible for administering land rights. Conversely, more rural and remote areas have a dearth of such resources and are at a greater disadvantage in implementing such interventions.

Though there are varying degrees of capacity between cities and rural areas, with rural areas often overlooked in legal development interventions, many of the same challenges related to weak adjudicatory infrastructure, training needs of legal professionals, low levels of women legal professionals, low level of knowledge regarding official laws, and other capacity issues permeates legal structures in both rural and urban areas of Afghanistan.

The erosion of formal legal structures has led to a greater reliance on customary practices in most of the country. Such reliance on customary practices in turn works to further weaken the awareness of, reliance on, and use of the formal legal system thereby resulting in lack of awareness and misinformation of existing formal laws. Weak and ineffectual rule of law leads to increased challenges for women attempting to access their land rights.

One of the main challenges women face in attempting to secure their property rights is the fact that the legal registration process for important life events, such as birth, death, marriage and divorce, is either inaccessible or too difficult to navigate for many women and men. Therefore, many women do not have proper documentation or registrations related to marriage, divorce, and death. Without written documentation, women are unable to establish that they in fact have the rights they are claiming. For instance, when marriages are not formally registered, and no marriage documentation exists, it is very difficult for a woman to establish what her *mahr* rights are and to subsequently seek to have those rights enforced. Similarly, when death records are nonexistent, a woman is put at a distinct disadvantage of proving her relation to the deceased and in turn, her inheritance rights upon death.

A second major challenge women face in attempting to access land rights is closely related to weak rule of law in the country, limited awareness regarding Afghanistan's laws governing inheritance, property, and land rights. Not only do many women not know the formal laws governing their rights to land, but many Afghan men do not know of the formal laws either. Many men and women have a vague idea that there are inheritance and *mahr* rights for women but very few know the exact rights due under Afghanistan's formal laws.³⁴ Although Afghan women are entitled to their full rights of ownership, inheritance, and *mahr* under the Afghan Civil Code, lack of awareness about governing laws coupled with illiteracy and a heavy reliance on traditional and customary practices, which are often diametrically opposed to codified laws, have created serious challenges for women to access their rights of ownership and inheritance. In addition to lack of awareness of the official laws, lack of awareness of legal procedures for accessing rights guaranteed by the official laws also works to prevent women from securing their land rights.

³⁴ See LARA Gender Assessment.

Customs and traditions disfavoring women's ownership of property present another challenge to women attempting to access their land rights. Sometimes customary practices are entirely opposed to both formal Afghan laws governing property rights, as well as religious principals upon which many mistakenly believe the customary practices are based.³⁵ Accepting and enforcing customs and traditions at a societal level also encourages the prevention of women from accessing their land rights, this becomes a particularly serious issue when it comes to inheritance, ownership, and *mahr* as women feel ashamed to demand their rights both from immediate and distant family in an attempt to preserve the family relations. It is also considered shameful for women at times to participate in sales, lease, and purchase of property, make decision about their land, and participate in assigning their *mahr*.

Another issue related to weak rule of law in Afghanistan is corruption, which can prevent women from successfully accessing their rights of inheritance, ownership and *mahr*. Though there is a dearth of quantitative information on the impact of corruption on women in Afghanistan, a 2010 UNODC study on corruption in Afghanistan found that 39% of women interviewed reported having to pay bribes to access government services to expedite administrative procedures.³⁶ Corruption is a huge problem for Afghans in general in attempting to access their legal rights, including their rights to land.³⁷ Though corruption in Afghanistan is widespread, its impacts on women may be more acute as Afghan women, as a group, are generally more vulnerable, poorer, and limited in their access to resources, than men. There is growing evidence that corruption disproportionately impacts poor women and girls, particularly in their access to essential public services, justice, and security and in their capacity to engage in public decision-making.³⁸

Low levels of capacity in assisting women with their land and property rights issues, also has a great impact on women's access to their land rights. From low numbers of women employees in government offices, to limited skills of existing personnel in interacting with and assisting women, to knowledge about the substantive law regarding women's ownership rights, often times women attempting to seek legal assistance are not provided with adequate support. In order to access their land and property rights, women need to interact with, and seek the assistance of certain government institutions. Women attempting to interact with government officials and bureaucracy who may not be adequately trained in addressing issues of concern to women, often experience discriminatory practices which either discourage them or frustrate their efforts to access their legal rights. Additionally, a limited supply of women bureaucrats and government officials adversely impacts women seeking their rights who may not be comfortable or familiar interacting with male officials. Further, time-consuming procedures and perceived gender discriminatory attitudes in governmental institutions act to discourage women from relying on, or even accessing the legal system.

Low levels of women's participation in resolution of local property disputes through local dispute resolution mechanisms, such as shuras and jirgas, adds another challenge to women attempting to secure

³⁵ See LARA Gender Assessment, field responses.

³⁶ See Bisogno, Enrico, Anna Alvazzi del Frate, and Philip Davis *Corruption in Afghanistan, Bribery as Reported by the Victims*, UNODC, (2010), available at http://reliefweb.int/sites/reliefweb.int/files/resources/577201250BF1CA26C12576B00052AFB5-Full_Report.pdf. (last visited May 29, 2012).

³⁷ See e.g., *Id.*; ANDS(2011); Checchi and Company Inc., *Assessment of Corruption in Afghanistan*, USAID (March 2009); Liz A. Wily, *Land Rights in Crisis: Restoring Tenure Security in Afghanistan*, AREU (March 2003).

³⁸ See, Hossain, Naomi, Celestine NyamuMusembi, and Jessica Hughes, *Corruption, Accountability, and Gender: Understanding the Connections*, UNDP (2010).

their land rights. Though in certain areas of the country there are women-only councils and in other areas local councils include women as members, on the whole, local councils are dominated by men. Due to the absence of judiciary and legal institutions in the majority of the country, time-consuming procedures, and weak rule of law in remote areas, disputes are usually referred to local councils in rural areas. The absence, or limited inclusion, of women in such adjudicatory mechanisms prevents them from meaningful participation in dispute resolution even in cases where the agenda of such councils concerns women's land and property rights.

Low literacy levels amongst women also add to the many challenges they face in attempting to secure their ownership rights. Low levels of literacy impacts women adversely in many ways and has been correlated with lower income, health, and other development indicators.³⁹ Illiteracy prohibits women from accessing deeds, titling, registration, wills, and other written instruments necessary in establishing their ownership rights. Additionally, illiteracy prevents women from learning of their legal rights and following the formal procedures necessary to assert those rights.

Mechanisms related to enforcing women's land rights can also be weak and often discriminatory of women. The country's police force is the primary mechanism by which the country's laws are enforced, including laws related to land and property ownership. In addition to problems such as corruption and inadequate capacity, local police forces are often unaware of how to deal with disputes involving women and require training in gaining the correct skills. Similarly, the low levels of women in the police force works to further impede the police's ability to deal with, and subsequently enforce, laws in support of women's land rights.

CHALLENGES PREVENTING WOMEN FROM ATTEMPTING TO ACCESS THEIR LAND RIGHTS

In addition to the challenges that women face in attempting to access their land rights, there is an additional set of challenges which women take into consideration in deciding not to attempt accessing their land rights at all, even when they know that they may be entitled to ownership rights. Though many of the challenges are interrelated, it is important to point out that there are distinct challenges which, in essence, women consider in deciding to take themselves out of the playing field altogether.

For example, as explained above, women who do not have official documentation of important life events as required by law, such as marriage registrations and death certificates, may be discouraged from even contacting the local authorities responsible for administering land rights, let alone attempting to go through the formal procedures of obtaining rights which might be under dispute. Often times, women have gathered enough knowledge of the legal system to know that official documentation is required to secure land rights, and without actually possessing such documentation, they will chose not to pursue

³⁹ See e.g., *Literacy Initiative for Empowerment 2006-2015*, UNESCO Institute for Lifelong Learning (2007) available at <http://unesdoc.unesco.org/images/0015/001529/152921e.pdf>, last visited on May 25, 2012.

their rights.⁴⁰ For example, there seems to be a general understanding that some form of documentation is compulsory in the event of a dispute regarding *mahr* or inheritance, and women who do not have access to such documentation will perceive the lack as too great of a hurdle to overcome.⁴¹ An official marriage certificate, which mentions the *mahr*, is used to prove the woman's claim. The absence of such documents has proven to be a huge challenge, often prohibiting women from attempting to seek justice at all.

A second major challenge, which often results in women not attempting to secure their land rights, is a lack of trust in the judicial system of Afghanistan. Belief that it would be impossible for them to obtain their lawful rights, absence of trust in the mechanisms for obtaining their rights and in the mechanisms of enforcement, prohibits women from attempting to adjudicate their potential claims.

Another major challenge women face in asserting their rights as landowners is lack of physical access to the land that they technically own. For instance, when land or property is purchased or gifted as *mahr*, inheritance, or a gift, the woman usually does not physically receive it and even if she does, she possesses no real control over it. All legal transactions, including registration, sale and rent, are carried out by the man in the family, which in turn, results in the woman having no access to her own land due to lack of legal documents bearing her name.⁴²

Economic dependence on men is another reason women may choose not to pursue their land rights. In the majority of Afghan households, women are economically dependent on men, be it their fathers, husbands, brothers, sons, or other male family members. The majority of women are not able to take part in income-generating activities that may provide a separate income for them. Women who take part in income-generation activities become more confident and start to participate in decision making within the household.⁴³ Similarly, economic dependence on the men of the family also works to prevent women from making decisions about pursuing their inheritance and *mahr* rights that will benefit them at the cost of creating friction with the men in the family. Women often decide not to pursue claims that would benefit them directly if at the expense of the men in the family in order to maintain the status quo as they depend on the men of the family to provide for them financially.

A related challenge is the cultural stigma around women asserting their claims to land and property at the expense of men in the family. Due to a variety of factors, including culture, tradition, misperceptions about religion, gender roles, and intra-household dynamics, both Afghan women and men have articulated a sense of shame or stigma associated with women who may choose to assert their land rights.⁴⁴ For instance, of the interviews conducted by LARA during the Gender Assessment of the project area in Jalalabad, many women and men point to shame associated with women asserting their ownership rights. Many women and men indicate a sense of obligation on the part of the woman to relinquish her land and

⁴⁰ See LARA Gender Assessment.

⁴¹ *Id.*

⁴² This problem has been documented in many other countries as well. See e.g., World Bank Best Practices Report (2005).

⁴³ *Id.*

⁴⁴ See LARA Gender Assessment, field responses; see also, *Who Owns the Farm?*, AREU.

property to male members of the family who then administer and manage the land.⁴⁵ Similarly, many women are expected to relinquish or “gift” their *mahr* to their husbands upon marriage.

Despite the myriad challenges, the biggest discouragement to women’s attempts to access their ownership rights in general, and land ownership specifically, seems to be cultural attitudes that prevent people from accepting women as landowners. Qualitative data gathered during previous field assessments, coupled with a review of available research, indicate numerous instances in which property purchased by the wife is not considered the wife’s property.⁴⁶ In fact, many times marriage is considered as a way to transfer the woman’s property into the husband’s name.

⁴⁵ *Id.*

⁴⁶ *Id.*

BEST PRACTICES AND APPROPRIATE EXAMPLES FROM OTHER COUNTRIES

From a review of successful land reform and administration interventions implemented in various countries, it is clear that designing interventions that increase access of women to land rights requires a multifaceted approach. Though the amendment of legislation to promote gender equity is an important first step, strong laws themselves are not enough to ensure women increased access to land. The environment must be conducive for the application of the language of the law. Therefore, in addition to the promotion of women's land rights through legislative amendments, it is also important to address related issues such as cultural practices related to land and property ownership, amend legislative rules and procedures, and increase awareness of existing rights through trainings, education, and advocacy strategies.

UNDERSTANDING AND ADDRESSING CULTURAL PRACTICES

One underlying lesson from the various land rights projects reviewed is that before any interventions are designed, including amending legislation, a thorough understanding of cultural practices related to land and property right is needed. Formal laws requiring gender equity in property rights are mostly ineffective in the face of customary practices that do not recognize equitable property rights for men and women.⁴⁷ Cultural prohibitions against women's ownership or use of land are often more powerful than written law. In fact, cultural and customary practices may determine which formal rights to land a woman may freely exercise.

Though development projects are generally not able to make significant differences to cultural norms, land projects may influence those practices that deal with inheritance and property rights when they are supported by strong formal laws. The degree of influence a project can have on cultural norms is also dependent on the particular cultural practice in question, the degree of training and communication the project engages in, the project's chosen methodologies, the degree of funding, and the strength of the formal law.⁴⁸

In addition to cultural practices, women's societal status, community-based roles and responsibilities, and family roles and responsibilities, including marriage practices, must all be taken into account in designing successful land rights interventions so that projects recognize and accommodate the different socio-cultural factors affecting gender differentiated land rights in each community in which they work.⁴⁹

⁴⁷ World Bank Best Practices (2005), p. 41.

⁴⁸ ARD, Inc., *Study on Women and Property Rights: Project Best Practices*, USAID (2006), (hereinafter referred to as "USAID Best Practices Report") available at http://pdf.usaid.gov/pdf_docs/PNADJ420.pdf, last visited on May 25, 2012.

⁴⁹ See *Id.*

LEGISLATIVE AMENDMENTS TOPROMOTE GENDER EQUALITY

Amending existing formal laws can be instrumental in creating an opening for women's land rights. Strong laws promoting equitable land rights for women and men can go a long way to signal a country's commitment to increasing access of women to their land and property rights. Additionally, formal laws guaranteeing land rights for women can be used to counteract certain cultural practices, which are opposed to the formal laws through education, training and awareness as well as increased legal assistance to women seeking their land rights. For land legislation to be inclusive of both men and women, at a minimum it must explicitly recognize women's and men's equal rights to land, meaning both men and women must have the same right to access the land that is rightfully theirs under the law.

In the drafting of legislation impacting land and property rights, it is important to consider the exact language of the legislation in relation to gender. For example, it is better to refer to a head of household and not make the assumption that the head of household is male. On the other hand, in many countries the cultural or traditional interpretation of gender-neutral terms (like "head of household") assumes the male rather than the female occupies that role. Therefore, for land legislation to be inclusive of both men and women, it must explicitly recognize women and men's equal rights to land.

Encouraging a gender sensitive approach in legislative amendments is an important way to ensure that issues of concern to women are adequately addressed in any amendments. A World Bank funded titling project in Laos, included a women's rights group knowledgeable about issues of concern to women and cultural practices impeding women's access to land. The women's rights group in turn advocated using gender-sensitive approach to amending legislation.⁵⁰ A gender-sensitive approach to legislation entails reviewing and analyzing legislation with regards to what impact it will have on both men and women.

Another key finding is that land legislation may conflict with family, personal or other laws, and therefore related legislation must be reviewed for its impact on women. Family law is rarely considered as part of land administration projects, and yet family law has a major impact on women's right to use or own property.⁵¹

A key lesson learned is that passing legislation that improves women's land rights is important, but is not sufficient in making actual changes to women's real access to their land rights. Changes in attitude and practice must accompany legislative amendments for any real and lasting change to occur.

⁵⁰ USAID Best Practices (2006), at p. 20.

⁵¹ World Bank Best Practices (2005), at p. 41.

AMENDING LEGISLATIVE RULES AND PROCEDURES

Beyond amendments in the formal law, the changes that will have the biggest impact on women's access to land rights will be changes to the regulations and procedures informing the application of the law. In Azerbaijan, the National Land Reform Law called for land distribution but did not include procedural specifics on how land should be distributed. Through a World Bank project that developed a specific procedure requiring that both men and women receive land, the procedural changes resulted in a gender equitable distribution. Although Azerbaijan comes out of the Soviet system of collective farming, its customary practices discouraged gender equity and women did not receive land under the country's customary marital property and inheritance laws. Yet, the formal law, which was not amended, was applied distributing land to both men and women due to the procedural safeguards enacted by the World Bank project advocating gender equitable distribution of land.

In amending regulations and procedures related to land rights issues, consideration should be given to the following issues:

1. Whether men and women are guaranteed equal participation in the adjudication process.
2. Whether the leadership of the land agency and related offices is held responsible for nondiscriminatory practices with regard to gender.
3. What documents are required by the regulations for proof of ownership? Are these documents readily available to both men and women, and are they expensive to acquire?
4. Whether the regulations require that the field for the owner's name on the legal form include all owners if the land is held in common ownership. Do the regulations require proof of marriage, i.e. marriage registration?
5. Whether the regulations require written consent for transfer of property held in common ownership. Are there guidelines for how to determine whether land is held in common ownership by operation of law, even if it is registered in only one name?
6. Whether the regulations deal with polygamy.
7. Whether the regulations deal with illiteracy.
8. Whether there are any requirements for public notice of sale or transfer of land.
9. The disputes adjudication process. Where are disputes adjudicated, what is required for a dispute to be heard?
10. How the issues of money, time, and literacy influence the dispute resolution process.

In Bolivia, a World Bank land administration project found that rural women often did not possess official identity documents. In order to title women, the project worked with local officials to facilitate the issuance of identity documents to women. These personal identity documents are very valuable to women since they are now able to participate in other activities such as requesting credit and governance processes such as voting.⁵²

⁵² USAID Best Practices Report (2006), at p. 10.

LISTENING TO WOMEN'S VOICES

Designing appropriate land rights interventions aimed at increasing women's access to ownership rights requires listening to women to fully understand what legal rights and issues are most important to them. A successful strategy will include the knowledge and concerns of local women in the design of the intervention. It is particularly important to be cognizant of the ways in which women are included and their concerns are addressed. This can be done through qualitative interviews with potential beneficiaries or involving local women in pre-project research or in the initial stages of the design.

It is also important to be aware of customary practices that may negatively influence the success of a project in incorporating women due to the lack of female organizations and ability of women to meet together. In some countries, women's inferior status means that they need permission to meet with other women, or that they are simply not allowed to attend meetings or trainings outside of the home. It is important to develop strong communication with the local community in order to gain their trust and permission in working with the women of the area. Including women's rights advocates and local NGOs that serve women should also be considered.⁵³

Projects that incorporate the knowledge and concerns of local women in the design phase have had impressive results.⁵⁴

AWARENESS, TRAINING, AND EDUCATION

In many instances, land projects that include women and strive for gender equity are dealing with cultural change. Though changing culture and customary norms is hard, it is possible that if norms related to women's land rights do not change in the broader society, some of the ground gained from legislative amendments and procedural changes will not be realized. The best way to encourage changing attitudes supportive of women's access to land and property rights is through public education of both men and women relative to the importance of women having increased access to land rights.⁵⁵

Training and educating both beneficiaries and staff on the specific issue of women's land rights is also an important part of a successful strategy for including women in project implementation. Trainings must address cultural norms, should include women and men (though perhaps not at the same time, depending on country context), should meaningfully include women in project activities, and must accurately identify all different types of property rights and the holders of those property rights within a household.⁵⁶

⁵³ Id. at p. 14.

⁵⁴ Id.

⁵⁵ World Bank Best Practices (2005), at p. 41.

⁵⁶ See USAID Best Practices Report (2006).

Project staff in Bolivia were trained to explicitly include women landholders, particularly wives, in the adjudication process; this measure increased the number of women titleholders. Similarly, in the land-titling component of another World Bank funded project in Honduras, gender specialists were able to quickly discern that women were not being titled, and the project took measures to actively encourage families to include wives as titleholders. The area titled by the project included more women than any other area in Honduras. Project assessments and focus group discussions in Bolivia and Honduras indicated that gender-sensitive procedures and gender training resulted in women informed of their property rights, and a more secure sense of their ownership rights.⁵⁷

Additionally, it is important to design trainings that are appropriate for the local area in which the project will be implemented. With regards to the substance of the trainings, discussion with local women leaders should assist in designing appropriate trainings. In many cases, trainings held for women and men separately will yield more female involvement and better two-way communication between the trainers and local women. On the other hand, some trainings that include both men and women may also be necessary. The trainings will need to address the cultural norms that create opposition to women's land rights. Where different cultural practices occur in different regions, the trainings should be adjusted to fit the local community or they will not be successful.

Similarly, it is important to take skill levels of the trainings' targeted beneficiaries into consideration in the design of successful trainings. The literacy level, language skills, cultural context, and other relevant factors need to be used in the design of trainings. For example, in Bolivia, the project staff prepared audio-visual information materials in local languages for different geographical areas, this was an important innovation for rural women who were illiterate and did not speak the dominant language.⁵⁸ Honduras was very effective in titling wives, in spite of strong inheritance and marital property practices that excluded women, because the project held gender trainings for project staff, government titling staff, beneficiary population, and local authorities. They also reviewed Honduras titling procedures to make them more accessible to and inclusive of women.⁵⁹

It is also crucial to develop appropriate trainings for project staff and implementers. Project implementers and local populations may ignore legislation that mandates equal rights for women during actual implementation due to their reliance on cultural practices. However, projects that have a clear gender strategy for implementation of its components and include gender training for staff and beneficiaries do provide their staff with incentive and motivation for including women in on-the-ground implementation. Gender training in Honduras improved acceptance of women's rights among local authorities and the project staff.⁶⁰

Ultimately, the most successful strategy for including women in project implementation seems to be training and educating both beneficiaries and staff on the specific issue of women's land rights.

⁵⁷ Id.

⁵⁸ Id. at p. 12.

⁵⁹ Id.

⁶⁰ Id. at p. 9.

Taking the above best practices in mind, the four main recommendations that should be applied in land rights projects in relation to legislation and gender equity include⁶¹:

1. In the planning stage of the project, do qualitative and legal research related to family laws that affect women's property rights and their relationship to customary land law to understand how a titling or privatization project will affect women.
2. Solicit women's input into necessary changes in legislation, especially related to family or personal laws.
3. Include women who are knowledgeable about women and property rights in legislative working groups.
4. Have respect for local culture, custom, and religion.

To not adequately consider gender is almost always to discriminate against women in land projects, "[t]hose projects that consider and plan for gender differences in land projects from the beginning are better able to include women in the project and treat women equally."⁶²

⁶¹ World Bank Best Practices (2005), at p. 42.

⁶² USAID Best Practices Report (2006), at p. 14.

OPPORTUNITIES FOR STRENGTHENING WOMEN'S ACCESS TO OWNERSHIP RIGHTS

Though women in Afghanistan face many challenges in accessing their land rights, it is important to recognize that there are real and substantive opportunities for overcoming those challenges and improving the environment for Afghan women to more readily assert their ownership rights. This section briefly discusses some openings for Afghan women to better assert their ownership rights.

1. GIRoA's stated commitment to gender equality and improving the access of Afghan women to land rights is important in establishing a strong basis upon which to build successful interventions promoting women's ownership rights. Both the ANDS and NAPWA clearly state GIRoA's commitment to strengthening Afghan women's access to land rights through legislative amendments, better application of existing laws, and other targeted initiative.⁶³
2. In addition to GIRoA's stated commitment to women's land rights, the official laws of Afghanistan are supportive of women's access to land rights. Formal laws, though not sufficient for the promotion of women's land rights, are important in developing a strong foundation for a comprehensive strategy to increase Afghan women's access to land rights. Formal laws are also very important in counteracting some of the cultural practices that are prohibitive of women's ownership rights. Though development projects are generally able to make little difference to cultural norms, land projects may influence those practices that deal with inheritance and property rights when they are supported by strong formal laws.
3. The fact that Afghanistan's formal laws supporting women's ownership rights are derived from religious legal principals also allows for a powerful opportunity to challenge and counteract some of the cultural practices preventing women from accessing their due ownership rights. In Afghanistan, religion is often viewed as superseding cultural practices. Many Afghans actually follow cultural practices because they believe the practices to be derived from religion. Correcting misperceptions about the inconsistencies between cultural practices prohibiting women from accessing ownership rights, and religious principals supporting women's ownership rights, will go a long way in diminishing the importance and usage of cultural practices preventing women from accessing their due ownership rights to land.
4. Many of the challenges women face in attempting to access their land rights are related to stigma and cultural attitudes of their communities. Such attitudes must be challenged through a multifaceted approach. An important component to any such strategy would be presenting factual information on the potential benefits to individuals (both men and women), households, communities, and the nation as a whole deriving from the promotion of women's access to land rights. The potential change in attitudes is a real opportunity to improve women's access to land rights as such changes to societal attitudes can occur quite rapidly once the benefits of such changes are realized.
5. Local leaders and local councils have a tremendous amount of influence on the daily life of community members, particularly with regards to the subject of land disputes which often are adjudicated by local councils. Data gathered from field assessments shows that certain village leaders and council members are open to working for the promotion of women's rights to land. Therefore, collaboration efforts with local councils afford an important opportunity to promote and strengthen women's access to land rights. Working with local leaders and councils in developing awareness campaigns and trainings will help strengthen the impact of such initiatives.
6. There are many rule of law and legal reform initiatives currently underway in the country. There is a real opportunity to coordinate and collaborate with these other initiatives in an attempt to

⁶³ See e.g., ANDS p. 141, NAPWA, p. 9 supra fn. 7 and 9.

promote and advance the cause of increasing women's access to land rights. Such coordination and collaboration will ensure a more meaningful impact on initiatives aimed at strengthening women's access to ownership rights as well as an opportunity to better share resources, knowledge, and lessons learned.

7. There are many technological developments happening in Afghanistan, which may assist initiatives to promote women's access to ownership rights. For example, the use of information technology and computerized mechanisms is becoming more common throughout Afghanistan. Radio access is prevalent in the country and even the most remote villages often have radio access. Using appropriate technologies to address challenges with the documentation and recording of major life events impacting land rights, such as marriage, birth, death, and divorce can be very helpful in overcoming some challenges women face in attempting to access their legal rights.
8. There is a real opportunity to improve the lives of women and their households by improving women's access to land rights. Through a comprehensive strategy to increase women's access to land rights, there is an opportunity to impact the overall development of the country by reducing poverty throughout the country.

RECOMMENDATIONS TO STRENGTHEN APPLICATION OF EXISTING LAWS IMPACTING WOMEN'S OWNERSHIP RIGHTS

In order to successfully promote women's access to land rights, it is important to have a comprehensive, multifaceted approach. Though it is important to draft amendments to legislation aimed at promoting women's legal rights, it is also important to evaluate the existing national laws and develop interventions that would support the application of the current laws. In Afghanistan, where the government has declared a particular interest in the promotion of women's legal rights and the formal laws guaranteeing women's ownership rights to land are fairly strong, it is important to identify avenues by which those laws may be better applied. Below are some recommendations that should be considered.

1. DEVELOP PUBLIC AWARENESS CAMPAIGNS AND RELATED INTERVENTIONS AIMED AT INFORMING BOTH MEN AND WOMEN OF THEIR LAND RIGHTS UNDER AFGHAN NATIONAL LAW

To combat the use of customary practices that contradict formal laws governing land rights, it is important to develop a comprehensive awareness campaign aimed at informing the public, both women and men, of existing formal laws regarding women's land rights. Limited awareness regarding existing national laws is a massive challenge to rule of law and in turn to women accessing their ownership rights. It is therefore recommended that interventions be designed to strengthen women and men's understanding and knowledge regarding women's rights to inheritance, mahr, and ownership.

Such public awareness interventions need to take many factors into consideration including literacy levels, access to rural and remote populations, breadth and scope of the campaign, methods of communicating with both men and women, and other variables related to the targeted audience. It is recommended that such awareness interventions be designed with input from local women and women's rights groups who have the requisite knowledge regarding how best to target women generally left out of such processes who, coincidentally, will benefit most greatly from such initiatives.

Inclusion of local leaders, women leaders, women's advocacy groups, provincial councils, local councils, schools, youth associations and other civil society groups in designing appropriate interventions can lead to more appropriate, and therefore beneficial, interventions promoting women's access to land ownership rights.

As part of any awareness campaign, it is important to develop a comprehensive strategy for educating the Afghan public about discrepancies between customary practices and formal laws governing women's land rights. To this aim, it is important to engage and include well-respected scholars, local leaders, local councils, women's rights organizations, local women and men, and other relevant stakeholders.

Similarly, in order for any real change to be made to existing land ownership practices, it is critical to inform the Afghan public of the benefits to individuals, households, and the country as a whole stemming from women's increased access to land rights. International best practices have shown that, where men and women, particularly men, realize the benefits to the household, and in turn to themselves, of initiatives aimed at promoting women's legal rights, they are more willing to allow their wives to participate in such initiatives.

Video and audio media outlets, as well as other technological platforms such as internet and mobile communications, should be utilized in targeting the general public. In addition, broadcast of interviews with local leaders and other influential voices speaking about the inheritance, *mahr* and ownership rights of women can be very important in helping challenge and change current attitudes about women's access to land and property rights.

Other initiatives to promote public awareness include the production of documentaries on issues relating to women's access to inheritance and ownership, development and publication of radio programs, visual materials, posters, brochures and information sheets on women's inheritance and ownership rights.

Additionally, it is recommended that the Ministry of Justice, and other relevant government bodies, create simplified handbooks regarding inheritance, land, and property rights and such handbooks should be distributed to public. Such handbooks should be developed for use by men and women, be prepared with regards to literacy utilizing visuals and local languages, and be appropriate for the community targeted. Such handbooks should be developed with input from local populations, including women, to ensure they are appropriate and useful.

2. DESIGN AND IMPLEMENT APPROPRIATE TRAININGS FOR VARIOUS STAKEHOLDERS AND BENEFICIARIES.

In order to promote the use and application of existing laws guaranteeing women's ownership rights to land, it is important to develop trainings for stakeholders at different levels in order to ensure they are educated in how best to assist in the application of the laws, with regards to men and women.

Trainings for Government Institutions involved in Administering Land Rights

It is very important to develop trainings for government institutions involved in land rights issues in order to educate government officials both on the existing formal laws guaranteeing women's ownership rights as well as on how to best work and interact with men and women when dealing with land rights issues. For example, officials who are not adequately trained in how to interact with women seeking land rights, as opposed to men, may inadvertently alienate and discourage women from even attempting to secure their land rights by seeking governmental assistance. Women who have bad experiences dealing with government officials are likely to be discouraged and not pursue further attempts to access their due rights. It is important to train even government institutions on those formal laws to ensure that they do not rely on customary practices instead when dealing with land and property rights issues, this is

particularly important in rural areas and other areas localities not well connected to national structures which may lack resources, expertise, and even knowledge of the formal laws.

TRAININGS FOR LOCAL LEADERS AND LOCAL COUNCILS

Similarly, it is important to develop appropriate trainings for local leaders and councils on how best to address women's land concerns through local councils. In developing trainings for local councils, it is important to consider both their interaction with and ability to address women's concerns as well as their substantive knowledge about existing official laws governing land rights. Where appropriate, it is important to discourage reliance on customary practices and promote use of formal laws and formal legal mechanisms when dealing with land rights issues. It is particularly important to focus on trainings to ensure women are part of the dispute resolution process.

Providing legal training and capacity building especially in women's inheritance, *mahr*, and ownership rights to the members of local councils involved in matters resolving disputes related to land and property ownership can prove pivotal in allowing women access to their inheritance and ownership rights.

TRAININGS FOR LOCAL WOMEN AND MEN

Arguably the most important group of stakeholders that need appropriate training are the local populations being targeted by LARA. It is important to develop appropriate trainings for both men and women on women's access to land rights, the benefits of such access, the procedures for access, the challenges they may face, and how to overcome those challenges.

It is important to train both men and women community members so that men are well informed on the process and the resulting benefits conferred to them and their households from supporting women's access to land rights. There can be a backlash against the project and the women participants if men are viewed as being left out of the process or being detrimentally impacted by changes in laws seeking to promote women's rights. It is important to include a strong component whereby men are trained to understand the beneficial impact to the entire household and to themselves in particular, of women's empowerment and access to their land rights.

It will likely be appropriate to have separate trainings for women, specific trainings on how to advocate for, and access, their rights to land and property. Many women may not be allowed to attend such trainings unless the local leadership and their male relatives are supportive of such trainings. LARA must work with local leaders and councils to ensure women will be allowed to participate and that they will not suffer backlash or retribution for their participation. It is also important to be cognizant of any perceptions of bias, which may arise from women-only trainings.

Specific trainings for women should be conducted on their land rights under Afghan law, the government institutions responsible for administering land rights and how to access them, procedural requirements related to accessing land rights, seeking legal assistance, accessing local councils, accessing local advocacy groups, and other related issues. Information generally helps women feel more confident about the process and may encourage greater pressure on their parts to enforce their land rights

Trainings for men regarding women's access to land rights should include information on the benefits of women's land rights to the entire household as well as specific information on how male family members can be supportive of their female family members.

TRAININGS FOR LEGAL PROFESSIONALS

In coordination with rule of law and judicial sector reform programs, land rights trainings should be developed for female judges and lawyers as well as female government employees to staff institutions charged with administering land rights. Training and placing female members of the judiciary in courts and promoting women leaders in government institutions dealing with land and property rights issues will encourage women to increase their trust of legal and judiciary institutions for the purposes of dispute resolution or registration of ownership, inheritance and *mahr* documents. It should be noted that trainings of legal professionals should be structured around job functions and should be compromised mainly of on-the-job trainings rather than workshop style trainings.

3. INCREASE COORDINATION AND COLLABORATION EFFORTS WITH APPROPRIATE STAKEHOLDERS AND PARTNERS.

In addition to joint trainings, LARA coordination and collaboration around advocacy efforts and public awareness campaigns can help improve the impact and reach of land and property rights awareness initiatives. Coordination of roundtables and gatherings with the participation of relevant stakeholders and partners such as law enforcement agencies, civil society representatives, religious and tribal elders, women, and legislators will reinforce efforts to better promote women's rights to land and property. Such coordination among relevant stakeholders will also promote better implementation of existing laws.

Further, LARA can work to increase coordination and collaboration efforts with governmental bodies, including relevant ministries, on developing better systems to promote access to land and property rights for women. For example, the Ministry of Communication and Information Technology is charged with overseeing the development of E-Government in the country, LARA can work with them to design e-government interventions that would assist women in accessing their land rights under the law.

In addition to the coordination and collaboration efforts LARA engages in, it can play an important role in facilitating better coordination and collaboration between other important stakeholders such as the government and civil society organizations. Though donor project based interventions are an important first step in promoting women's access to land and property rights, for a lasting change to occur, the issue must be championed by local interests. Civil society organization committed to improving women's access to their land and property rights must play a critical role in working with government institutions to enact necessary reforms promoting women's increased access to their economic rights. Such interactions between civil society groups and government institutions can be facilitated by LARA through various methods including workshops, roundtables, and one-on-one consultations.

4. SPECIFIC COORDINATION EFFORTS WITH RELEVANT GOVERNMENT AGENCIES

Ministry of Justice

It is important to coordinate interventions involving trainings, public awareness campaigns, legislative amendments, legislative procedural changes, and other relevant interventions with the Ministry of Justice (MOJ), which is the main government body responsible for the dissemination of information about the laws of Afghanistan.

Ministry of Hajj and Religious Affairs

One of the most important and influential agencies in dissemination of information and messages is the Ministry of Hajj and Religious Affairs (MOHRA). MOHRA commands a massive audience base and is generally well regarded in the entire country. Coordinating with and developing interventions in conjunction with MOHRA ensures that dissemination of information regarding women's access to inheritance, *mahr*, and ownership rights will have the maximum impact on raising the public's awareness.

However, due to the influence and power of this Ministry in shaping the public's perceptions about various rights, it is important to engage in close consultations, also involving women's advocacy groups and other civil society organizations, in order to come to a strong consensus about the promotion of women's ownership rights before undertaking any joint initiatives.

Ministry of Women's Affairs

MOWA can serve a number of important functions by acting as a bridge between government and civil society organizations advocating for land and property rights, helping design appropriate advocacy and awareness campaigns, including the design of specific materials and programs, and know your rights trainings, help in connecting LARA to local departments of MOWA (DOWAs) in rural areas, and providing expertise in gender mainstreaming in government agencies.

MOWA could assist with gender sensitive legislation initiatives by acting as a bridge to parliament. Additionally, MOWA could assist in establishing a specific working group or commission to improve women's access to *mahr*, inheritance, and ownership rights, comprised of governmental and non-governmental organizations. This working group could play an umbrella role and focus on legislation, budgeting, and allocation of further resources for improvement of women's access to inheritance, *mahr* and ownership rights.

Ministry of Education

The Ministry of Education can play an important role in awareness rising and capacity building. MOE can be effective in promoting long-term change in the opinions and attitudes of the public by increasing focus on women's ownership rights under Afghan law as part of the curriculum taught in public schools. MOE can create a teaching module including topics of ownership rights under the Civil Code, particularly focusing on women's ownership rights. Particular focus should be given to women's inheritance and *mahr* rights.

Ministry of Information and Culture

MOIC should be consulted in the design of media campaigns aimed at increasing the public's knowledge of women's ownership rights. Development and broadcast of awareness programs through radio and television and development of documentaries on women's inheritance and ownership rights can all go a long way to inform the public about both the formal laws of Afghanistan as well as the benefits of those laws and the procedures to follow in accessing those laws.

Ministry of Interior

The EVAW Law has tasked the MOI and the National Police with responding to cases of violence against women. The EVAW law considers preventing women from access their ownership rights as 'violence'. Furthermore, the Civil Procedure Code has tasked the police with assisting victims with access to relevant legal departments. Therefore, the MOI is legally bound to assist in the enforcement of laws related to women's access to inheritance, *mahr*, and ownership rights.

Conversely, corruption and gender discrimination by police forces is often given as one of the challenges preventing women from contacting the legal and judiciary institutions for assistance in enforcing their ownership rights. MOI can assist efforts to promote women's access to ownership rights by increasing professionally trained staff in the police structure, training and capacity building for police in women's ownership rights, and gender sensitivity training. MOI can also encourage the recruitment and training of capable female police officers.

Independent Administrative Reform and Civil Service Commission

The Independent Administrative Reform and Civil Service Commission (IARCSC), is the main governmental body responsible for hiring government employees. In line with the Millennium Development Goals, NAPWA, and its own stated gender policy, the IARCSC can make a positive impact on all organs of the government by employing positive gender discrimination policy during recruitment. Particular attention should be placed on the recruitment of female judges, legislators and advocates in legal departments, judiciary and legal institutions to encourage women's interaction with said organizations for registration of documents and access to their rights. Further, providing increased job opportunities to women will assist and facilitate income generation for women and enable them to purchase and own property and land through land sales.

5. PROMOTE CHANGES TO RULES AND PROCEDURES RELATED TO RELEVANT FORMAL LAWS.

A particularly important lesson learned for improving the application of existing formal laws is the development of rules and procedures conducive to the implementation of existing land and property rights laws. For example, the procedure governing Afghan Civil Code's requirement of official marriage registration can be amended or expanded to include alternate ways of registering marriages. Changes to procedures governing documentation of land ownership and important life events related such as birth, death, marriage and divorce, and identification cards could be a very important intervention in

Afghanistan as such changes would lead to a direct increase in the number of women having official documentation needed to access land and property rights.

Additionally, obtaining official documentation will have many of other beneficial impacts such as assisting women in accessing government services, becoming more aware of the bureaucratic system, increasing women's awareness of outside resources, linking women to other women, improving sense of self and opportunities open to women, improving confidence of women in system and in their own rights, exposing women to new and useful opportunities.

Procedural changes should take into consideration issues limiting access of women to their land rights, such as illiteracy. Developing techniques to deal with illiteracy can lead to a better application of existing laws. For example, changing title registration procedures to allow the use of pictures or fingerprints instead of signatures to identify people on documents will increase the ability of women to title their land.

A gender sensitive approach should be used to conduct a thorough review and analysis of rules and procedures related to land, property, ownership, inheritance, and related family laws (such as marriage) in order to determine which procedures need amending. For example, procedures related to titling, marriage registration, inheritance, divorce, and land sales should be reviewed. All procedures should be reviewed for their impact on men and women and should be amended if found to have disparate impact.

6. SPECIFIC RECOMMENDATIONS FOR PROCEDURAL CHANGES RELATED TO THE DOCUMENTATION OF IMPORTANT LIFE EVENTS IMPACTING LAND, PROPERTY AND OWNERSHIP LAWS.

Changing procedural rules to better facilitate registration of important life events can have a particularly large impact on increasing women's access to their land, property, and ownership rights. The following is suggested to encourage marriage registration and better enforcement of the law:

- Mandatory registration of birth, marriage, divorce, and death
- Identifying the relevant organization for registering birth, marriage, divorce, and death, while also publishing information about the said organization, processes and procedures.
- Train and increase number of employees in MOJ, family courts, and related government offices to better facilitate registration of birth, marriage (including documentation of *mahr*), divorce and death.
- Work with MOJ to provide authority to marriage officiants, possibly through a certification process authorizing officiants within local communities to have the authority to register marriages.
- Develop interventions to simplify the official marriage registration system and reduce corruption and red tape to further encourage the public to register their marriages.
- Develop awareness campaigns informing of existing regulations in regards to *mahr*, as well as benefits and importance of registration of marriages.

7. INCREASING INCLUSION OF WOMEN IN DECISION MAKING PROCESSES

Increased inclusion of women in decision-making processes is necessary to ensure that issues of concern to women are being adequately considered and addressed. For instance, including women in the reviews of procedural issues related to ownership rights will lead to a greater likelihood that issues of concern to women will be addressed in the reviews and subsequent recommended changes.

It is key that a variety of women's voices be included in the process including women legislators and parliamentarians, women lawyers and legal professionals trained in Afghan land and property law, relevant scholars, women's rights advocates, civil society organizations, and women beneficiaries.

It is particularly important to ensure women's participation and inclusion in local dispute resolution institutions. Local councils are often favored over official adjudicatory bodies such as local courts because they are seen to streamline the time-consuming governmental procedures and resolve disputes at the local level by people most knowledgeable about the local context. Inclusion of women in such councils to address access to ownership, inheritance and mahr issues would ensure that their views, which are often overlooked and not considered by male council members, could be more thoroughly addressed.

Additionally, it is important to increase the numbers and expertise of women in official adjudicatory bodies, such as courts handling land rights issues and as part of legislation amendment interventions to ensure that a gender sensitive approach is followed in the review, analysis, and amendment of any laws and legal procedures. To the extent that such women experts are in short supply, it is important to coordinate with law schools and other legal training bodies to train women legal professionals, lawyers, judges, and policy specialists in Afghan land, property, and ownership laws impacting women.

8. STRENGTHENING MECHANISMS TO ENSURE CURRENT LAWS ARE PROPERLY ENFORCED.

In addition to recommendations targeting the application of existing laws, it is also important to look at enforcement mechanisms currently in place to ensure that the existing laws are actually enforced.

Weak law enforcement is a fundamental challenge and is often a twofold problem which is perpetuated both by the public and their limited knowledge of inheritance, *mahr*, and ownership rights of women as well as the enforcement agencies of the government that do not implement many of the official laws due to limited resources, limited knowledge and training, and insufficient commitment to enforcement.

The issue of enforcement is a difficult one to address and requires a multifaceted, coordinated approach. However, accountability of law enforcement and government agencies may go a long way in their willingness to engage in enforcement. Additionally, it is recommended that trainings be developed on various enforcement mechanisms. Interventions should consider various issues such as the publicizing of government's failure in enforcement, holding abusers accountable through media coverage and public outrage, working with women parliamentarians and women leaders in government to highlight enforcement mechanisms, supporting watchdog groups or assisting to create watchdog groups to monitor government enforcement, training enforcement bodies (police, woles wali, etc. on women's land rights), training local councils on how to better enforce women's land rights, training and employing women staff

members in institutions responsible for enforcement of land rights issues and property disputes and settlements.

9. CONDUCT ASSESSMENT REGARDING, AND DESIGN APPROPRIATE INTERVENTIONS TO COUNTERACT, IMPACT OF CORRUPTION IN GOVERNMENT AGENCIES, ADJUDICATORY BODIES, AND ENFORCEMENT ORGANIZATIONS ON WOMEN'S ACCESS TO LAND AND PROPERTY RIGHTS.

Additionally, the issue of corruption, which is very complex and multi-faceted, has not been adequately examined in relation to its impact on women's access of legal rights in Afghanistan. However, corruption is a huge obstacle to the access of rights and government services in general as it exacerbates the enforcement dilemma in that government bodies responsible for adjudication, providing services, or enforcing rights may not carry out their responsibilities without the payment of bribes and favors.

It is recommended that the impact of corruption on women's access to land and property rights be more fully examined. Assessing the impact of corruption on women's access to their ownership rights will assist in designing appropriate interventions to better address this issue. It is recommended that an assessment be conducted in LARA project implementation areas both researching the types of corruption (i.e. payments of bribes, gifts, and other favors, practice of nepotism, etc.) which women encounter as well as their responses to the corruption, the institutions participating in the corruption, and soliciting women's suggestions for counteracting corrupt practices in their local communities.

10. SET UP LEGAL AID CLINICS TO PROVIDE LEGAL ADVICE REGARDING WOMEN'S OWNERSHIP RIGHTS TO LOCAL COMMUNITIES.

It is recommended that legal aid clinics be set up in LARA project sites and local communities to provide information and legal advice regarding women's rights to land and property under Afghan law. Legal aid centers should be staffed with women lawyers and legal aid professionals trained in land and property rights as well as in advocating on behalf of women.

It is crucial to solicit the advice and assistance of local women, women's rights groups, legal professionals, local leaders, and local councils in the design and implementation of the legal aid clinics in order to ensure the clinics are appropriate, useful, and supportive of local women.

Particular attention should be paid to the location of such clinics ensuring that the clinics are accessible to women, are in safe locations, are vetted through local councils and community leaders, and are well staffed in order to ensure they are useful to local women.

RECOMMENDATIONS FOR AMENDING LEGISLATION TO STRENGTHEN WOMEN'S ACCESS TO OWNERSHIP RIGHTS

Legislative reform can be a necessary step to increasing women's rights to ownership however legislative reform by itself often makes little difference to the majority of women if supporting interventions, like those discussed above, are not considered. Additionally, legislative change must be accompanied by legal education and legal aid for both women and men.

Although women's inheritance and ownership rights have been enshrined in Afghanistan's Civil Code, it is important to conduct a thorough review and analysis of the existing laws and enact amendments, which will improve and strengthen the laws to better promote women's access to ownership rights. The following recommendations are meant as general guidance for amending existing legislation related to land, property, and other ownership rights issues with an aim of identifying general issues to be considered during an in-depth review, which must be conducted by Afghan legal specialists experienced in the drafting of laws.

The following are some general recommendations to keep in mind in undertaking legislative amendments to increase women's access to ownership rights.

1. Conduct a thorough review of all laws related to land, property and ownership rights as well as family and personal laws, enshrined in the Civil Code, governing important life events impacting ownership rights such as marriage, inheritance, land sales, divorce, death.
 - a. Specific attention should be paid to reviewing and analyzing the Land Management Law for its application and impact in relation to women's rights to access land.
2. Utilize a gender sensitive approach to amending legislation. Involve women and men trained in gender sensitive methods to review the relevant laws for their impact on women and men. Even laws that may seem gender neutral on their face may actually have a gender discriminatory impact based on the interpretation of the language. It is important to involve experts trained in both drafting legislation and gender issues to review the laws appropriately.
3. It is crucial to involve the voices of women impacted in any initiatives to amend laws seeking to promote women's land rights. It would be beneficial to hold round table discussions in project areas with women who will be impacted, conduct trainings on the existing laws, and seek their input on how the laws could be made better to help them in securing and strengthening their ownership rights. Such roundtables, or workshops, could be facilitated by a gender and land rights specialist who will already have a good understanding of the relevant formal laws and customary practices and who can help facilitate a useful session by guiding and informing women on the substantive laws while also taking their suggestions into consideration in the drafting of legislation amendments. It is crucial to have the participation of the women that will be impacted by the land rights amendments in order to formulate the most useful amendments possible.
4. Work closely with civil society groups experienced in legislative reform and advocacy in order to develop a comprehensive strategy for obtaining the necessary political support for legislative amendments.
5. Work closely with Parliamentary groups in the lower house and upper house of Parliament to advocate for the approval of proposed legislative amendments.

Further, without having conducted a thorough gender sensitive review of all Afghan laws related to women's access to land, property, and ownership rights and keeping in mind real constraints to conducting legislative amendment, including the very real political constraints impacting such amendments, some specific recommended amendments to existing legislation reviewed include:

AFGHAN CIVIL CODE:

It is recommended that Article 37 of the Afghan Civil Code be amended such that the form of the article is changed from optional to compulsory. As Article 37 currently stand, birth and death certificates are not compulsory. By requiring all births and deaths to be officially registered, all heirs including wives, daughters, sisters, and other female heirs, can be identified and present during the inheritance distribution, which ensures the women know of, and are better able to access their inheritance accordingly.

It is recommended that Article 61 of the Civil Code also be amended such that the requirement for an official marriage registration is changed from optional to compulsory. Compulsory registration of all marriage certificates will also result in official registration of the *mahr* amount, which will be recorded and available for inspection should any disputes arise about the *mahr*. Women will be able to cite to the official marriage registration should any disputes arise related to the payment or non-payment of *mahr*s well as in cases of inheritance flowing from the husband upon his and even in cases of separation or divorce.

ELIMINATION OF VIOLENCE AGAINST WOMEN LAW:

With regards to the EVAW Law, Article 33 prescribes a one-month jail sentence for any person refusing to pay a wife's *mahr*. It is recommended that, a monetary penalty should be added to which the offender would be subject. Where a jail sentence would not serve much benefit to the wife, and may actually be a deterrent for her to bring a claim against her husband, monetary compensation would be a benefit to the wife and be an increased incentive for claiming her *mahr*.

LAW ON THE PROCEDURE FOR OBTAINING RIGHTS:

Article 6.2 of the Afghan Law on the Procedure for Obtaining Rights, states:

“When receiving alimony and maintenance of marriage, the complainer (wife) is not bound to return to the residence of the complained against. In such cases, the local legal office is inclined to officially inform the husband's residential area legal office”.

It is also recommended that article 6.2 be amended to include *mahr* or marriage portion, in addition to alimony and maintenance of marriage, under the list of items that the wife/complainer can demand of her husband and not be bound to return to the residence of the husband/complained against.

Article 12 states, “all debtors shall bear equal rights against the debt holder's properties, unless otherwise stated by law”.

It is recommended that Article 12 be amended such that the wife seeking *mahr* shall be given priority over other debtors. *Mahr* is a fundamental right of all wives and is a debt, which must be paid in life or death in order for a marriage contract to be legitimate. As the *mahr* obligation is such a fundamental obligation on the part of a husband, any *mahr* debts should be considered for payment first before the payment of other debts. The remaining debt should be paid after paying the wife's *mahr*.

CONCLUSION

Strengthening the application and enforcement of laws related to women's access to land rights is crucial for Afghanistan. Women's increased access to land rights will not only benefit them individually, but will also benefit their households, their communities, and the country as a whole. Afghan women who own land will be able to participate more effectively in family and community decision making, will be able to better utilize resources for themselves and their families, and will be better able to contribute to the development of the country.

Though Afghan women are not restricted from buying and trading land and property, the main vehicles by which Afghan women gain access to land are inheritance and *mahr*. The Afghan Civil Code contains strong guarantees of both inheritance rights as well as *mahr* rights but those rights are often not applied and not enforced. In order to increase women's access to land rightfully due them under the law, it is imperative that the existing laws related to inheritance and *mahr*, be applied and enforced more comprehensively.

Legislative amendment, though necessary in certain contexts, may not be the most appropriate intervention for Afghanistan. The laws related to women's access to land are based on accepted religious principals and have been long enshrined in the Afghan Civil Code; amending such legislation is bound to be an uphill battle.

The existing laws related to women's land rights provide a strong foundation upon which to build interventions for strengthening the application of those existing laws. Amending and, where needed, better detailing the regulations and procedures related to those laws, will go a long way in increasing women's actual access to land. Strengthening official documentation of birth, death, marriage, and divorce will enable women to have official documentation with which to prove their claims to land. Strengthening titling procedures, including joint titling, of land will also aid women with official documentation for adjudication of claims.

Ultimately, in order for Afghan women to better access the land rights due to them under the law, they need the support of their families, communities, and the Afghan public. LARA can play a very important role in increasing that support by working with local communities to realize the real benefits of women's access to land. By raising the awareness of women as well as men stakeholders and potential supporters, local councils and local leaders, and the general public, about women's rights to land, the principals underlying those rights, and the negative impact of customary practices, LARA will help in breaking

down negative attitudes about women's ownership of land and property rights and expanding the opportunities for ownership available to women.

U.S. Agency for International Development

1300 Pennsylvania Avenue, NW

Washington, DC20523

Tel: (202) 712-0000

Fax: (202) 216-3524

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