

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	1136
Land:	Afghanistan
Kilde:	Norwegian Refugee Council (NRC)
Titel:	UN Habitat og UN High Commissioner for Refugees. A brief guide on accessing land through Presidential Decree 305 and other government allocation mechanisms
Udgivet:	2. september 2020
Optaget på baggrundsmaterialet:	9. oktober 2020



A brief guide on accessing land through Presidential Decree 305 and other government allocation mechanisms¹



1

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

This brief provides information on legal mechanisms that IDPs, returnees and other tenure insecure groups can use to access land. It focuses on the Presidential Decree 305 and other government-led land allocation mechanisms. This guidance note is not a legal document, but provides information and analysis from

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

Presidential Decree 305 on land allocation²

On August 29th 2018, the Government of the Islamic Republic of Afghanistan (GoIRA) promulgated Presidential Decree 305 (PD 305). The PD 305 provides eligible IDPs and returnees the legal right to apply for land allocations and housing support from the state. Land allocations are made in new settlements (or 'townships'), located on vacant land in peripheral urban areas. Beneficiaries, receive land titles and support to construct durable housing to foment socioeconomic development. The SHURA project, implemented by Government of the Islamic Republic of Afghanistan (GoIRA) with technical support from UN-Habitat, is operationalizing the PD 305 in two pilot sites in Kabul and Herat, with a view to up-scaling nationally in the medium term.

To access state land through PD 305, applicants must provide documentary evidence that they are a returnee or a protracted IDP, as detailed in Articles 16 and 17 (Box 1). To date, protracted IDPs face the greatest challenges registering for land through PD 305: under two per cent of the beneficiaries registered under PD 305 in the Kabul and Herat pilot projects identify as an IDP. A reason for low IDP uptake is the high burden of proof required for IDP applicants: Article 17 requires documents that prove 5 years continuous displacement beginning before August 29th 2013 (i.e. 5 years prior to the promulgation of the law). In response, humanitarian agencies should support IDPs to acquire documents to enable their allocation of land through the decree.

Box 1

Who is eligible to receive land through Presidential Decree 305?

Presidential Decree 305 sets out the following eligibility requirements for returnees and IDPs. The families of Martyrs are automatically eligible for land allocation provided they are on a list of Martyr's families provided by the competent authorities.

Basic Eligibility Criteria - Returnees

Article 16:

Members of returnees' families shall prove their return to Afghanistan by providing one or more of the following documents:

1. Ministry of Refugees and Repatriation's Returnee Certificate;
2. Voluntary Repatriation Form issued by UNHCR;
3. IOM Beneficiary Card; or
4. Any other documentation that proves asylum and return.

Basic Eligibility Criteria - Internally Displaced Persons

Article 17:

The head or heads of a family unit who are internally displaced persons shall prove at least five years' continuous displacement before the date that this Decree entered into force to be entitled to receive state land by providing one or more of the following documents:

1. Ministry of Refugees and Repatriation's Internal Displacement Certificate; or
2. Proof of Assistance Cards from humanitarian agencies.

² This section summarises Sherchan et al. (2018) Improving Access to State Land for Returnees and IDPs in Afghanistan, 2018 World Bank Land and Poverty Conference, Washington D.C.

All members of family units that meet the basic eligibility criteria are subsequently assessed to **determine their combined vulnerability score**. A beneficiary selection consortium will assess family units' vulnerability based on multiple scoring factors including dependency ratio, family composition, income, assets, and current housing conditions. Family units that meet the basic eligibility criteria are eligible to receive land. Priority is given to family units with the highest scores in the vulnerability assessment. The Government together with the relevant beneficiary committee determines which eligible family units receive land parcels. This determination is based on a list of eligible family units, their vulnerability assessment scores, and the number of available land parcels in the relevant land allocation site. The highest scoring family units selected **to receive land parcels and a construction permit**. This permit provides family units with the right to occupy and construct a housing unit on the land parcel in accordance with specific housing standards and regulations. Once the housing units are constructed, family units can apply to Arazi/MUDL for a full title deed for their allocated land parcel. The title deed will include the names of both the male and female heads of the family unit, or in the case of single-headed family, just the respective woman's or man's name.

A key aspect of Presidential Decree 305 is providing appropriate land parcels to support livelihoods. A national land selection committee, chaired by Arazi/MUDL, is responsible for identifying and determining the suitability of land for allocation. The committee determines whether the land meets six core requirements: absence of mines or explosive remnants

of war; close proximity to planned or existing livelihood or employment opportunities; not prohibited from allocation to displaced persons by Afghan law; adequate planned or existing water supplies; no foreseeable risk of extreme hazards; and less than a 15 per cent slope. Land that does not meet all core requirements cannot be allocated by the land selection committee.

Next, the committee determines whether the land meets seven recommended requirements: close proximity to planned or existing health clinics, schools, and an access road; no contamination; sufficient soil quality for constructing housing units; not of cultural, religious, or archaeological significance; and close proximity to locally available building materials for housing construction. If the recommended requirements are not met, land improvement measures will be required to ensure that within a period of three years the recommended requirements are met and the land is suitable for allocation.

State Land Distribution to landless families under the 2017 Land Management Law

In addition to PD 305, the Land Management Law includes mechanisms to enable state land distribution to vulnerable landless and land poor households for agricultural purposes. The law provides details about the eligibility criteria and conditions for land distribution, and the process of application (Box 2)

Box 2

How can state land be accessed through the Land Management Law?

The following Articles of the Land Management Law detail the eligibility for land allocation, the application process and obligations of beneficiaries, and the type and size of land parcel for which they may be eligible:

Article 54 on eligibility

Land can be distributed to individuals who meet the following conditions:

- Afghan citizens;
- at least 18 years old;
- either landless or own no more than a small parcel of land;
- a farmer or agriculture worker, or agricultural contractor; and
- Undertake that he/she or his/her family will cultivate and maintain the land.

Article 55 on application process and obligations of beneficiaries

(i) An applicant who is eligible to receive allocated land must:

- Complete the eligibility form and submit the completed form to the Afghanistan Land Authority within seven working days of receiving the eligibility form.

- An applicant who is allocated land under the land distribution scheme shall immediately start to cultivate the allocated land.
- An applicant who is allocated land under the land distribution scheme shall pay the installments and taxes for the allocated land in accordance with the date set for payment.

(ii) An applicant who is allocated land has no right to, and is prohibited from transferring, such land to a third party.

Articles 59 and 60 on the categorisation and distribution of state land

For distribution purposes, land is categorized in to seven different categories related to its agricultural productivity . The law stipulates that the Grades 1-7 land be distributed to eligible persons as follows :

- Grade 1 land: 5 Jeribs.
- Grade 2 land: 6 Jeribs.
- Grade 3 land: 7.5 Jeribs.
- Grade 4 land: 12.5 Jeribs.
- Grade 5 land: 25 Jeribs.
- Grade 6 land: 33 Jeribs.
- Grade 7 land: 50 Jeribs.

Where the number of eligible persons requiring land exceeds the amount of land available for distribution, the distribution of land shall be determined by public lottery