

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	1466
Land:	Afghanistan
Kilde:	Norwegian Refugee Council
Titel:	Resolving HLP Disputes
Udgivet:	Juni 2023
Optaget på baggrundsmaterialet:	29. august 2023



Resolving HLP Disputes

NRC assessment on housing, land, and property disputes in Afghanistan

Between July and November 2022, NRC's Information, Counselling and Legal Assistance (ICLA) programme conducted an assessment on the resolution of Housing, Land and Property (HLP) disputes in Afghanistan. The assessment indicates an overall increase in HLP disputes and shows substantial ambiguity and regional variances in the justice system. Despite notable improvements, including the removal of application fees, and perceived reduction in corruption, overall, the assessment indicates a complex and unpredictable system with women facing a number of challenges, and lack of representation. The unclear national legal framework and poor access to justice for women must be addressed as a matter of urgency to avoid compounding and exacerbating grievances through unresolved HLP disputes.

Background

Afghanistan has been in a legal limbo since the takeover by the de facto authorities (DfA) in August 2021, complicating the context in which Afghans can access justice, claim legal rights and resolve disputes. This has impacted both the formal and informal mechanisms through which people resolve housing, land and property (HLP) disputes. This assessment sought to understand how this context is affecting the ability of Afghans to resolve HLP disputes fairly and effectively.

Legal uncertainty

The takeover by the DfA had a significant impact on Afghan state infrastructure and the justice system. Over one and a half years later, national legislation in Afghanistan remains suspended pending a review that is yet to be completed (Al Jazeera, *The Taliban in government: A grim new reality is settling in*, March 2023). Courts and government departments are operating with various degrees of functionality and procedure, depending on the province. Actors in the informal justice system, including *shura* and

jirga members, and religious leaders, continue to be active, and protection monitoring indicates a high uptake in informal dispute resolution mechanisms (Afghanistan Protection Cluster, *Afghanistan Protection Monitoring Dashboard*, 2022). However, while female informal justice actors are active in some locations, their work is less visible, and in some provinces, they are not active at all. This is part of a broader decline in women's access to justice in Afghanistan, including the exclusion of women working in the formal justice system and government departments, prohibition on women renewing their lawyer licenses, and physical limitations on women accessing justice (including restraints on freedom of movement and *mahram* requirements to access services).

ICLA assessment on HLP disputes

Between July and November 2022, NRC conducted an assessment of the resolution of HLP disputes in Herat, Nangahar, Kandahar and Kabul provinces. The purpose of the assessment was to observe the nature of HLP disputes, and dispute resolution, after August 2021, including household preferences for how to resolve them.

Methodology

For this assessment, NRC conducted two different types of interviews. NRC conducted a household-level questionnaire with female and male heads-of-households identified as having faced or facing a HLP dispute since August 2021. Sample sizes were calculated based on available resources with support of NRC's Monitoring and Evaluation Unit, and participants identified through ICLA teams and stakeholders in the community. Key informant interviews (KII), using primarily qualitative questions, were also conducted with a mixture of stakeholders, including private lawyers, informal justice actors (mostly *shura* and *jirga* members) and some justice actors from the DfA. NRC used the same questionnaire and interview questions across all provinces, and ICLA female and male staff conducted the questionnaires face-to-face with participants.

ICLA senior staff conducted analysis of the data.

The percentage of female respondents varied across the targeted locations due to challenges in identifying women who agreed to be interviewed. This was particularly acute in the household survey in Herat. It was also a challenge to identify female justice actors for KIIs across all locations. No female formal justice actors were identified so only limited formal actors were interviewed.

Main findings

Observed increase in HLP disputes

Justice actors were asked in KIIs if they had observed an increase in HLP disputes since August 2021. Respondents in all locations indicated they had observed an increase. This was attributed to several reasons including largely increased economic problems leading people to try to claim HLP rights, better security to access mechanisms to resolve rights, no application fees in courts, and an increased trust in the court system. In Herat, some justice actors had also observed a number of people who failed in a case under the previous government and had tried to assert their HLP rights again.

The most common types of HLP disputes reported by respondents in the household questionnaire were disputes over land ownership, inheritance disputes, money recovery from land transactions, and disputes with landlords (including threat of eviction).

Provincial-level variance in preferred way to resolve HLP disputes

Preference for whether to resolve disputes in the formal or informal justice system varied depending on the province. In Kabul and Kandahar, more respondents expressed a preference for resolution in the informal justice system. In Kabul, 70% of respondents indicated a preference for the informal system, with the main reason given being time efficiency; and more female respondents

overall preferred the informal dispute resolution.

Conversely, in Herat and Nangahar, respondents indicated a preference for the formal system. In Herat, 83% of respondents, including all women interviewed, stated they preferred the formal justice system, with 66% of overall respondents also indicating that if they faced a HLP dispute in the future, they would lodge an application in the formal system. Respondents mostly indicated that the decision was viewed as more applicable (acceptable).

The assessment showed an observed uptake in the formal system in some provinces compared to under the previous government, despite the challenges outlined below. This could be attributed to the removal of application fees to lodge a case and to less perceived corruption by the community, as noted by some KI respondents. The variance in preference of way in which to resolve disputes across the different provinces could also signal how well various mechanisms are functioning in these particular locations.

Access to justice for women and other groups has shifted

Results from the assessment also highlighted ongoing challenges in Afghanistan's justice system that have impacted access for specific groups. Female lawyers interviewed in Kabul indicated a perceived decrease in HLP disputes since August 2021 (compared to most of the interviewed justice actors) due to a lack of clear process to claim rights. They also complained of a decrease in work available and in the number of female clients, as well as challenges in accessing courts and government departments when assisting clients since August 2021.

In general, lawyers interviewed noted challenges in courts, such as a lack of documented and uniform procedures,

inexperienced judges, and judges mistreating lawyers who were trying to represent clients. One respondent also observed courts not applying former government legislation, which was having a particular impact on specific groups – for example, courts not considering Shiite personal status provisions was causing Shiite women to face problems in family law disputes.

In the household assessment in Kandahar, female respondents remarked that there were no female judges or lawyers working at court, and they would feel safer accessing the formal justice system with female employees and lawyers.

The main observed challenges for women in accessing justice in the informal justice system were barriers and violence from their family members when they were trying to claim their rights, as well as a lack of female representatives. Generally, *shura* and *jirga* members noted they handled a low percentage of cases by female claimants. Unfortunately, some male *shura* members indicated a lack of active female *shura* members generally.



An ICLA staff member interviews an assessment participant in Kandahar city, Kandahar province, October 2022. Photo: NRC

Conclusions

The results from this assessment indicate that justice actors of all types have observed an

increase in HLP disputes that they are being asked to support in resolving. At the same time, this assessment found that community members had varied preferences for justice mechanisms across provinces, potentially due to a range of factors including the functionality of those mechanisms, removal of court fees, and perceived improvements in the court system. While the assessment found women are able to access justice mechanisms and resolve disputes, observations from community members and justice actors highlight extensive challenges faced by women while accessing justice.

Steps should be taken to prioritise providing legal services to communities, particularly women, and training relevant stakeholders, to support people's access to justice. More broadly, steps must be taken to improve the functionality of the Afghan legal system, resolve lack of clarity surrounding national legislation, and ensure representation of women and men actors in the justice system.

NRC recommendations:

- **DfA** should prioritise the national review of legislation and address the unclear national legal framework, and support constructive and fair dispute resolution mechanisms for HLP issues, in both the formal and informal legal systems.
- **DfA** should facilitate access of men and female lawyers to the formal justice system, and allow female lawyers to renew advocate licenses in the Ministry of Justice.
- **NRC ICLA** should provide awareness-raising, counselling, and legal assistance to communities on HLP rights, particularly to women and girls to support them to claim these rights under Sharia.
- **NRC ICLA, other organisations and HLP Taskforce** should provide training for actors in the justice system and other stakeholders, particularly to increase capacity and knowledge related to women's HLP rights and the importance of female representation in the justice system.

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