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WOMEN'S ACCESS TO PROPERTY IN AFGHANISTAN

Law, Enforcement and Barriers

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Harakat is an independent, not-for-profit, Afghan-managed organisation that aims to improve Afghanistan's business environment.



QARA Consulting, Inc. is a professional consulting firm based in Kabul. Our firm is owned and run by young Afghans who have international standard education and experiences. We leverage our unique blend of traditional Afghan upbringing, local and international exposure and community ties to generate valuable insights and develop innovative and enterprising solutions.

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1. Introduction:

The state of women's property ownership in Afghanistan has two diverging dimensions: legal guarantees to rights of ownership against the reality of a lack of access to property. Despite Afghan laws granting women the right to access and own property, demanding those rights often results in their social expulsion or being threatened with divorce. In business, where property is a source of capital and translates into status and identity, Afghan women are vulnerable due to the male-dominated social context in which they live. As a result of this lack of property ownership, Afghan women have limited access to capital and credit, which in turn restricts the growth of their entrepreneurship. This research investigates the legal and the social dimension of Afghan women's property rights and their access to property in Afghanistan, with a particular focus on businesswomen.

Undertaking research on property laws for women is a timely endeavour, as Afghanistan is witnessing the early phase of women's entry into the formal business sector. This research, supported by Harakat, is a step towards informing the debate on property rights and the effective enforcement of laws. Our research entailed in-depth interviews with businesswomen and women's rights activists, as well as law and gender specialists. This report presents recommendations based on our analysis of the findings. The recommendations are geared towards helping reduce barriers to women's property ownership in Afghanistan and, by extension, enabling the establishment and growth of female-owned enterprises.

Some of the key findings of our report highlight the issues of law enforcement, as well as the social and institutional barriers to accessing property. First, research showed that traditional notions about women's property ownership severely limit women's access to their legal right to property. In addition, structural issues of insecurity, illiteracy, low female employment and a weak and ineffective judicial system impose further constraints on women's access to property. Absence of awareness of laws, a lack of physical access to legal documents, and prohibitive law enforcement mechanisms all prevent women from claiming property and winning disputes. Our findings also shed light on the importance of legal infrastructures and systems such as a universal marriage registry and its potential for improving women's property ownership.

The intent of this research is to offer practical recommendations to improve women's access to property. We believe that lowering taxes on women-owned property, the property transfer tax in particular, could be an important step towards encouraging women's property ownership and formal registration. We are also convinced that the enforcement of a universal marriage registry, counter-intuitive as it may be, will positively impact women's access to property. Additionally, it is our understanding that increasing businesswomen's awareness and knowledge of their legal rights will reduce social and structural discrimination against women. Furthermore, raising their legal knowledge and capacity will enable and empower women to claim their right to property in courts and *shuras*. Finally, increasing the accessibility of law enforcement mechanisms and adjusting them to become women-friendly will invite their use by women, and it will allow courts to properly address a wide set of legal disputes, including property, involving women.

2. Research Methodology:

We conducted our research in three phases: a review of existing Afghan laws, desk-research on women's property ownership laws and conditions in three Muslim countries, and fieldwork involving interviews with businesswomen and other relevant actors in six of Afghanistan's provinces. We referred to both primary and secondary sources for our research. To set the context for our field work, we conducted extensive library and internet-based research on the existing literature on business and legal structures in Afghanistan. To respond to the research question¹ regarding already existent legal provisions and property laws, we reviewed the present-day laws of Afghanistan and identified the gaps in literature. We also completed an archival study of past constitutions, civil codes, and family codes in order to create a comprehensive background for understanding the current legal provisions.

To substantiate the research, guide the research design and gain a comparative perspective, we studied the legal structures and business environment of three Muslim countries: Pakistan, Morocco and Indonesia. We chose Morocco because it enjoys one of the most progressive family laws among Islamic countries. Indonesia has a vibrant business community and was thus a valuable case-study of increasing participation of women in entrepreneurship. We chose Pakistan because of its similar level of development regarding gender issues with Afghanistan and common social and cultural obstacles to women's participation in business. The comparative research assisted us in identifying potential problem areas for women's property rights in developing world context. In addition, we have integrated the lessons drawn from the experiences of these countries within the report.² To address the question about the on the ground reality of women's access to property, we conducted fieldwork in the provincial centres of Kabul, Parwan, Nangarhar, Bamiyan, Herat, and Balkh.

Overall, we conducted 42 interviews with businesswomen, rights activists, relevant government officials and legal officers, legal advisors and gender specialists.³ While these numbers may not seem representative of the larger population of businesswomen in Afghanistan, we believe that our selection process enabled us to interview an information-rich sample. We used a non-probability, purposeful sampling method to identify all our respondents. Our objective was not to gather a representative number of interviews, but to seek opinions and insights that were representative and relevant for our research. To that end, we designed a qualitative questionnaire used for interviewing in accordance with the key research questions. We also supplemented the interviews with several site visits to factories and firms owned by the enterprising women that were interviewed.

The businesswomen whom we interviewed for this research were involved in several small and medium enterprises (SMEs) in the following industries: fishing, carpet weaving, silk production, jewellery, candle making, painting, tailoring and handicrafts. In each province, we included at least one businesswoman as our interviewee. The highest number of businesswomen interviewed per province was from Herat, where we had detailed interviews with six entrepreneurs.

We deem it necessary to highlight that we encountered several constraints in our research. While these did not affect the quality of our analysis, we believe it is crucial to appreciate these obstacles in order to better plan future research on similar topics. First, lack of reliable national

¹ Appendix 1

² The country profiles are part of the appendix

³ For a list of interviewees refer to appendix 3

statistics on women's property ownership in Afghanistan prevented us from drawing a comprehensive comparison between Afghanistan and other countries. Also, due to the short timeframe for the research and security-related mobility restrictions, our interviews were conducted only in provincial centres. Thus, they do not address the specific challenges of rural women in running a business or gaining access to property. In addition, our respondents were mainly women who had already established businesses and/or who were activists; thus, the findings are representative mostly of businesswomen and experts rather than common Afghan women. Nonetheless, we believe that our research and findings are a promising start and can be used as a baseline for future research that may be wider and more demographically diverse in scope.

Validity and Reliability of Our Findings

We believe that our neutrality and consistency in the research processes makes this study and its findings dependable and worth taking seriously. To ensure a high degree of reliability and validity in our findings, we made sure we were consistent with our instrument (qualitative interview questions) and methodology across all interviews. We informed each interviewee beforehand of the objectives of the interview. We are certain that all interviews represent data and insights that are of the utmost genuineness. We recognize that respondents highlighting obstacles within Afghanistan's social context overwhelm the findings of this report.

3. Background and Context

3.1: Challenges for Afghan Businesswoman



Being an Afghan businesswoman usually means few resources and many challenges.

Entrepreneurship is a new career option for Afghan women. Traditionally, women participated in the informal economy, where they assisted in the production of marketable products such as carpets and dried fruits. Rarely, however, were they the direct sellers of products, and almost never did they keep any profits. Gradually, in the past nine years, women's business activities have become more organized, and a category of businesswomen has officially been recognized by both the Afghan state and the donor community.

Women's "empowerment" and economic independence has been part of the process of reconstruction and development in Afghanistan. In this context, women-run businesses have gained some attention and support, and several initiatives have been implemented to increase women's public presence and economic independence. Some of the specific initiatives aiming to increase the number of businesswomen are the Goldman Sachs "10,000 Women"⁴ initiative, and the inclusion of positive prejudice provisions within U.S. military and civilian procurement guidelines (Gutcher, 2009). To organize and support Afghan businesswomen, several women's organizations and groups have also emerged in the past nine years such as Afghan Women in Business, Afghan Women's Business Council and Afghan Women's Business Federation (AWBF), the umbrella organizations for Afghan businesswomen (USAID, Fact Sheet, 2010).

Despite these initiatives and support structures, Afghan businesswomen face numerous challenges on a daily basis. In the Afghan context, men are presumed to be the providers for families

and owners of the property. Women, on the other hand, are expected to remain in the domestic sphere. As a result, female entrepreneurs must bend social norms and face social ostracism when establishing businesses. For women who do overcome social stigmas and enter business, lack of security and access to credit and other resources all impede the growth of their businesses. The de facto inability to own property is also a major constraint for aspiring entrepreneur women or those already in the market.

Due to social stigmas regarding women's mobility and work outside of the home, as well as limitations on their interaction with men, many families do not support women's engagement in business. During our research, several businesswomen recounted first-hand experiences of the family and community pressures they faced, especially in the early phase of their careers as businesswomen. Women's ownership and claim to property is also influenced by these social stigmas; the fear of isolation, divorce and community exclusion prevents them from claiming their property in court and/or requesting ownership of their houses or other property that they share with their husbands.

Women who are currently running businesses have to some extent overcome these social stigmas, but their growth still faces numerous challenges resulting from structural problems specific to women in Afghanistan. Security—although a problem for male entrepreneurs too—was one of the main obstacles identified by the businesswomen and experts we interviewed; they simply do not feel secure travelling for their business and/or transporting their products. Thus, in addition to the common restrictions regarding women's mobility, perceived or real insecurity on the roads further impedes business growth.

The issues of lack of knowledge, familiarity and experience in relation to both the legal system and operating a business was repeatedly highlighted. Without legal awareness and a familiarity with legal structures, women become hesitant to claim property rights and address violations of those rights. Additionally, a shortage of business skills becomes preventative to women expanding their businesses to their true potential. Since business is a very new career path for most Afghan women, they require capacity building in essential business skills such as marketing and branding, customer services, as well as advice and support regarding the production process.

The problem that businesswomen voiced most vocally, and which is most relevant to this report, was their lack of access to credit, capital and property. Poverty is a widespread issue in Afghanistan, and it is particularly acute in the case of women who often own close to nothing. Without access to property, women are often unable to present collateral for credit. Access to loans and other forms of financial support from extended family and friends is also difficult for women due to their inability to use traditional male social networks.

Another challenge for Afghan businesswomen is the lack of *alternative* support structures. A few national support associations have been established, including the AWBF whose mission is to provide awareness and support for businesswomen, but not all businesswomen we interviewed are aware of or have access to them. Without effective national support networks, whether they be governmental or non-governmental, women are left unsupported in property disputes. They are also unable to compete with their male counterparts who benefit from and rely on an age-old tradition of business and the support of many networks, including government bodies. In conclusion, pending strong and effective support networks, women's access to property, markets and their general competitiveness will continue to be severely limited.

Due to lack of access to resources and support networks, several businesswomen hinted that they might join the non-profit sector in order to sustain their careers. This is an illustration of the

fact that the lines between for-profit and non-profit are very blurred in Afghanistan, and only a few “businesses” might actually be sustainable in the absence of support. Part of the reason for this blurring of lines between for-profit and non-profit is the fact that most Afghan businesswomen do not register their businesses. For instance, out of 19 businesswomen interviewed, only 2 had registered their businesses, and for them the incentive was participation in international exhibitions representing their profession. The 17 remaining businesswomen did not perceive any advantages in following the bureaucratic procedures to register their businesses. Also, since many female entrepreneurs have either been swayed or inspired by foreign donor initiatives, the process of entering the market has seldom been usual and organic. Not being registered as business subsequently provides them with the flexibility to shift to non-profit sector, if they perceive they will receive more support in that area.

Despite these contextual challenges being common across all 6 provinces, there were some province-specific details that are worth mentioning, as they reflect the diversity of challenges and also the varying level of women’s awareness and access. Balkh and Herat were two provinces where most of the businesswomen we interviewed had not initiated their businesses themselves but, rather, had taken up businesses belonging to their fathers or husbands. Businesswomen in Kabul, Herat and Mazar were more well-known among the civil society and were more well-connected with each other, compared to Parwan and Bamyan. The awareness of legal procedures and business environment was highest among businesswomen in Herat and they were more vocal about law enforcement issues. Respondents in Jalalabad discussed the issues of intimidating and offensive behaviour towards women in government offices. Lack of assets, initial capital and other forms of financial support, as well as access to markets was brought up mainly by women in Bamyan.

3.2: Property Rights On Paper: Afghan Women and Property Laws

Afghanistan does not have an independent, specific law dedicated to all aspects of property ownership. Laws regulating property ownership, merchandise, taxing and inheritance are articles in different legal documents including the Afghanistan constitution, civil code and land laws. In this section, we will highlight the different elements of property rights for Afghan women, as articulated in relevant legal documents.

The current Afghanistan Constitution grants property rights to all citizens. Approved in 2004 and influenced by Universal Human Rights Declaration, it bans any discrimination between citizens of Afghanistan and grants equal rights and duties before law to all citizens, regardless of gender (Constitution 2004: Article Twenty-Two). The constitution also makes property immune from invasion and allows every Afghan citizen to acquire and use property within the limits of law (Constitution: Article Forty). Specific details on ownership of property and property disputes are not included in the constitution.

In case of property or any other legal dispute, the courts are required to first rely on the relevant provisions of the constitution. If the specific case is not addressed therein, civil code is the second reference, and it takes precedence over religious and customary laws. In principle then, property disputes would be resolved according to the civil code [*Qanoon-e-madani*], which was written and approved in 1977 - earlier than the current constitution - and has not been updated since. The section on property laws, volume four of the code, is the largest section in civil code, and it discusses property rights, the ownership and sale of property, inheritance and settlement of property disputes. Specifically, for the purpose of this research, sections five, six, sev-

en and eight on family, marriage and dissolution of marriage also raise issues related to women's property rights.

While civil code is the law that deals most extensively with property rights, it is limited/exclusive in application because it is based on the *Hanafi* sect of Islam, which only applies to *Sunni* Muslims. The only other religious group mentioned in the constitution in relation to its jurisprudence is the *Shia* population. According to 2004 constitution, in legal cases where both parties are Shia, courts are required to apply Shia jurisprudence (Constitution: Article One Hundred Thirty and Article one Hundred Thirty One). The Shia population is also the only group with an official and independent personal law: the Shia Personal Status Law. Approved in 2009, it is dedicated to family and personal matters. Legislation regarding property is discussed in Chapter 2 on family, specifically sections five and six on marriage and Chapter 3, Section 1 on will and inheritance. Other religious minorities such as the *Ismaili* sect, *Hindus* and *Sikhs*, do not have independent laws and, in practice, fall under civil code and/or refer to customary law. That said, the current constitution of Afghanistan recognizes religious minorities and their right to practice their religious rituals (Constitution: Article two). It is not clear, however, if issues such as inheritance and marriage rights are considered rituals, and the issue of legal disputes is not addressed.

The civil code recognizes a woman's right to own and sell property. In Islam and in Afghan laws, a woman's property is hers only, and her husband and other male and female relatives have no right to interfere for as long as the woman is alive. A woman can sell her property out of her own free will, and she can donate it, if she chooses to do so. A woman may obtain property through marriage, inheritance or its purchase with her own income.

Marriage is one of the main opportunities for most women to take ownership of property, since the woman is allocated a *mehr*, or dowry, in the form of money or property. *Mehr* is an essential part of any marriage contract and is a gift of money, land or other property, demanded by the bride and given or promised by the husband. It is one of the most essential rights of women in Islam and is mentioned in Quran. Its aim is to provide women with financial stability in case of divorce and/or death of the husband, but is also a gift of goodwill from husband to his wife. Provisions regarding *mehr* are very strict in Islam. *Mehr* should be mentioned in a marriage contract and is the property of wife without condition. She may independently exercise ownership power over this property (Civil Code 1997: Article One Hundred and Ten), and she cannot legally be compelled to place any part of her *mehr* at the disposal of her husband or any other person (Civil Code: Article One Hundred and Fourteen). *Mehr* gives the wife her ownership rights, and the value is negotiated between the two families. There are two kinds of *Mehr*. Part of *Mehr* can be immediately given (*mahr e mo'ajjal*) and/or part of it can be given at a later time (*mahr e mowajal*), as per the wife's demand. If a divorce occurs at the request of the husband, the wife can claim her *Mehr* fully.

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

Inheritance is another source of property for women. Women can inherit both as wives and as daughters. Female children can inherit half of the property designated for male children but can inherit more if the parents declare so in the will and/or if they have no brothers. Widows receive one-eighth of the property of their husbands or one-fourth if they have no children. Marriage registry would also facilitate women's claim to property as inheritance.

Another means of gaining property is through a woman's own income. In Islam, the man is responsible for providing food, suitable shelter and other financial support for the family. A woman's income is entirely her own; she can choose to not spend it on her family and instead purchase property.

As described above, Afghan women can legally gain property through marriage and inheritance, as well as purchase it with their own money. In theory, these avenues of access to property should lead to women's land ownership, thereby making them more capable of starting small to medium-sized businesses. But the on the ground reality is very different than the legal guarantees. Most women do not know about their right to *mebr* or do not feel the need to claim it since their husbands are the main providers for the family. Additionally, in inheritance, brothers often receive all of the property. This is largely due to two factors: first, families are influenced by the belief/reasoning that sons are the ones who protect parents in their old age; second, women marry *out* of the family and, therefore, are expected to fully rely on their husband for maintenance. Finally, our investigation illustrated that of the very small percentage of urban women who possess income-generating jobs, most spend their income on the maintenance of their families or give it to their husbands, rather than keep it for themselves or invest in property. Thus, despite having the legal right to property, women actually have minimal access to property in Afghanistan as a result of social and cultural demands and pressures.

3.3 Afghan Businesswomen and the Reality of Access to Property

“My grandfather distributed all his property among his sons and did not grant any right to property to his daughters. Brothers were told to take care of their sisters. When one of my aunts claimed her right from her brothers, all her siblings ended their relationship with her”

Rukhshan,

Businesswoman from Herat.

Despite their daring and proclaimed “success” (Lemmon 2011; Stys 2010; Gutcher 2009), Afghan businesswomen are similar to the majority of ordinary Afghan women when it comes to property ownership: they rarely possess property of their own. Businesswomen start with little investment, and even then it usually belongs to their husbands or fathers. Their property is solely their products and perhaps some machinery. Hardly ever do they own houses, land or even cars. The exception to this is a small circle of Afghan women from previously privileged backgrounds or with dual citizenships, for instance Afghan-American women, who may have inherited or own extensive property. The businesswomen we interviewed, who are part of a more representative group, run small or medium enterprises, and their capital or investment is often no more than 5000 US dollars. In their case, usually the male family members own the property and are supporting the enterprise financially. Several businesswomen pointed to the fact that they had to even lease their shops under their husband's name.

Statistics on women's land ownership and involvement in business in Afghanistan is either non-existent or very limited. Earlier studies regarding property ownership have been conducted in no more than three provinces and do not offer reliable statistics. However, reports estimate women's land ownership as minimal (Barakat & Wardell 2001 as quoted in Hutcher, Meggiolaro, & Ferrer 2005 ; Grace 2005). Women active in agriculture are estimated to be 35% (Hutcher, Meggiolaro, & Ferrer 2005), but very few of these women actually own land.

Businesswomen's limited property ownership relates to the larger issue of women's lack of access to property in Afghanistan. This lack of access to property is mainly due to dominance of traditional societal structures. Since women are traditionally not seen as the providers for the family, owning property is considered a luxury for them. Pakistan, Afghanistan's neighboring country, despite its longer history of stability and wider literacy of women and men, has a similar situation. Similar to Afghanistan, in Pakistan, "the rights to property and equality" are granted in laws, but hardly ever implemented (Mumtaz and Noshirwani 3). In reality, customary practice almost always mandates that a woman relinquish her rights to immovable property to male family members. Furthermore, mutual marital property is not recognized by Pakistani law, as there is no concept of co-ownership (SDPI 2008). Therefore, women have no claim to any property acquired during marriage in case of divorce, and this is essentially the same in Afghanistan. As in Pakistan, lack of structures and functioning systems also contribute to women's lack of access to property; since the only mechanism through which a woman can claim property in case of divorce is if she can prove that she contributed towards the purchase of the property with money – which is almost impossible for most women (SDPI 2008).

4. Access And Enforcement: Barriers To Women's Access To Property In Afghanistan

4.1 Access

There are several layers of barriers to the Afghan public's access to laws and legal institutions. To start from the most basic problem, physical access to "laws" is a challenge - even in provincial centers. Lack of public libraries and/or legal departments where ordinary citizens could find and read copies of laws makes access difficult. Even when the departments are in place, they do not necessarily have copies of all of the laws available. While it might be possible to get a copy of the constitution, it is harder to gain access to more specialized legal documents, such as civil code or business and procurement laws. Also, since the majority of Afghans are uneducated and the laws are written in a complicated language, even if they are available, they are not accessible to majority. The problem of illiteracy prevents online access as well. Recently, some ministries have begun to provide information on their websites. Even this is not easily accessible for businesswomen, most of whom are likely to be not literate (or computer literate and may not have access to internet). Also the basic problem of not knowing where to look for the laws was almost universal among our interviewees.

Women's access is not only limited to laws but also to law enforcement mechanisms. Our respondents insisted that going to a court is considered embarrassing for a woman, and she is threatened with expulsion from her family and community if she does access the legal structures. For instance, one interviewee recounted a case where a woman was threatened with divorce upon requesting her justified right to property from her husband through a court. Additionally, when legal organizations and the courts are not friendly towards women and women-related issues, businesswomen are less likely to turn to them for help. In Afghanistan, business-

women perceive courts and the legal officers who work in them as hostile and unsympathetic towards women, and this perception often hinders women from filing legal disputes or claiming property.

4.2: Law Enforcement

The gap between written laws and local realities is massive in Afghanistan. Law enforcement in Afghanistan suffers general problems that relate to both women and men. Lack of qualified judges, mistrust towards official legal structures, widespread corruption and inefficiency of the legal institutions are all major enforcement issues. There is often a vacuum of presence or massive mistrust and suspicion towards official legal structures. This is partly due to long, costly (due to corruption and bribes) and complicated legal and bureaucratic procedures. This general mistrust was displayed from all of our interviewees not involved in legal structures themselves.

Due to mistrust of the system, as well as a tendency by the public to avoid paying taxes and dues, people tend to refer to “informal” law enforcement mechanisms when handling property (and other legal) disputes. Customary law is applied using informal influences such as village and community elders, as well as *Shuras*. Either way, the customary law and the enforcing powers are usually biased against women and lack female representation. Customary law relies on traditional structures that impose women’s confinement to home and condemn her public engagement and economic independence. One of our respondents suggested that if customary law were fair to women, women would prefer it over official legal structures, since customary law enforcement is quicker and less expensive. This is perhaps how customary law functions in Indonesia, where the customary laws are unbiased towards women’s property ownership. In theory, religion informs inheritance laws in Indonesia. For Muslims, *shari’a* is supposed to be applied. For non-Muslims, the Civil Code of Indonesia stipulates equal inheritances (ADB 29). However, a study shows that most people on the island of Java (where 2/3 of the population lives) practice the Javanese custom of equal inheritance for both women and men - regardless of religion, since that is the traditional way for thousands of years (Brown 640). Afghan traditions are slightly less approving of women’s property ownership, however.

In the case of Afghanistan, even if women disregarded the general perceptions about the legal system and also managed to ignore customary law, the formal Afghan legal structure itself is generally biased against them. Legal officers routinely permit and practice gender discrimination. One of our interviewees in Jalalabad pointed out that government officials interact with women with suspicion. As a result, women are not motivated to seek legal support because they are mistreated by the law officers themselves; this problem stems from the public’s general condemnation of women’s public presence and engagement outside of the home. Insufficient female presence in legal structures and organizations is another discouraging factor. In such a highly segregated context, women generally feel more comfortable discussing their problems with other women, rather than male officials.

5. RECOMMENDATIONS

Recommendations of businesswomen and other actors interviewed fall into three categories: a) recommendations regarding institutional changes required for improving businesswomen’s access to property b) recommendations regarding the law and legal framework and c) recommendations regarding law enforcement mechanisms. A substantial part of the recommendations

address lack of social awareness and support for women, law and legal enforcement mechanisms. When we asked our interviewees for suggestions, an overwhelming amount of recommendations proposed increasing attention and financial support for businesswomen, since not all of those recommendations were relevant to this paper, we have tried to include the ones that propose practical steps regarding improving women's access to property, directly and indirectly.

Some of these recommendations, if implemented, will improve women's awareness about their rights and might enhance the law enforcement mechanisms to make them capable of protecting them. In addition, the experiences of other countries indicate that women's education, their increasing presence in the market and their active struggle for law reform are the determining factors in improving their access to property; some of these strategies may be adopted in Afghanistan in order to improve women's ability to obtain property.

5.1 Recommended Institutional Changes and Improvements

1. Lower the Property Transfer Tax for Women: One of the main recommendations, which would make a real difference if implemented, was to lower or abolish property taxes for businesswomen in order to encourage property ownership of women. Lowering property taxes for female owners will create an incentive for families to recognize women's justified right to property, and stimulate a process of property registration for females. During the course of our research, we learned that there was a joint effort by the Ministry of Women Affairs (MoWA) and the Afghanistan Chamber of Commerce and Industries (ACCI) to eliminate or reduce business taxes for female entrepreneurs. That effort did not have any impact as it was formulated in the form of an official request [*Paishnebad*] that the Ministry of Finance rejected arguing tax laws do not allow for positive or negative discriminations. Restarting the process, with a more focused and targeted objective of reducing property transfer tax for women is likely to yield results, especially if it is done through mobilization of female entrepreneurs, MoWA, ACCI and other advocacy groups. Reducing the property transfer tax is crucial as it will incentivize registering property under the name of women, as opposed to the more common practice of even women property owners registering their property under the name of their male relatives.
2. Make Universal Marriage Registration Mandatory: The practice of registering marriages (and by extension property transferred to women through the contract in the form of *Mehr* and inheritance from husband), if institutionalized will formalize women's promised but seldom delivered access to property. Introducing incentives for marriage registration and universalizing the system would benefit the overall property ownership situation in Afghanistan, particularly regarding women, as highlighted earlier in the report. In other countries, such as the U.S., officially married couples are provided with different sets of incentives, including but not limited to a different tax bracket. A more thorough research is required to identify how universal marriage registration can be incentivized, with a focus on how institutional changes could invite or make mandatory the registration of marriages.

5.2 Recommended Awareness Campaign and Trainings on the Legal Framework

1. Provide Legal Awareness Trainings: Several of the businesswomen we talked to, particularly businesswomen in Parwan and Mazar, had little or no awareness of the laws regarding business and/or property and saw this as a main impairment regarding their access to property. Thus, the main request coming from them was for trainings to increase their understanding of the legal procedures related to business. As mentioned earlier, many

businesses are not registered due to lack of incentives. If basic training about legal procedures and the protections which the law offers is pushed to currently active entrepreneurs, it could have the dual effect of creating needed legal knowledge among women, as well as enlarging the presence of female entrepreneurs in the formal economy. Further more, one of the main barriers to law enforcement is the fact that women, for several reasons discussed earlier, do not know about and do not use the official law enforcement mechanisms. Compulsory legal training for businesswomen and introducing financial incentives to encourage them to familiarize themselves with the official legal structures is an effective step towards raising awareness and confidence.

2. **Compile Property Related Laws and Regulations in One Booklet:** Where there was some awareness, the general perception toward the written laws was positive. Our interviewees mostly claimed that the property rights of women were provided for in the constitution, Sharia and civil law - but the real challenge was law enforcement. In response to a particular question about introducing specific property laws, the majority of our respondents stated that they do not see a need for it and/or even find it problematic. Based on our assessment, while drafting and legislating an independent law may not be entirely effective, accumulating all the articles regarding property from different legal documents and publishing them as a booklet will be immensely helpful. This is due to the fact that the main problem is not lack of clarity regarding property rights, but lack of access to the sources and references. *[Once a property law booklet is compiled and published, a public discourse on property laws might follow, depending on women's demands and expectations from the laws, which can lead to legal reforms to further facilitate access to property for women. Legal reforms intended to improve women's access to property have passed in several Islamic countries, as a consequence of women's increasing presence in business and their activism. In Morocco in 2004, a new Code of Personal Status was passed as a result of the Moroccan feminist movement, women's increased participation in the workforce, and programs of economic and political liberalization spearheaded by King Mohammed VI (Naciri) . The new Code helped women's ownership of land and property become a reality. The changes in law, followed the changes in real lives of women and their increased participation in the workforce. In Afghanistan, one of the recommendations in this regard was granting equal entitlement to property of husband to the wife at the time of marriage. This legal step proved immensely effective in Indonesia where The Marriage Law of 1974, designated women as co-owners of all property acquired during marriage (Brown 637).]*

5.3 Recommendations Regarding Law Enforcement Mechanisms

3. **Help Increase the Number of Female Law Enforcement Officials:** Weak, ineffective and biased law enforcement mechanisms were identified as the main challenge by our respondents. It was repeatedly stated that laws are “never” enforced in Afghanistan. As discussed earlier, the general populace displayed mistrust towards courts, legal officers and official legal procedures. Improving the judiciary system was the main recommendation. Several practical steps were suggested to facilitate this process of reform and improvement. Increasing women's presence and activism in law enforcing structures and institutions was one of the main recommendations. It was claimed that having more women judges and lawyers will influence and enhance legal enforcement, especially those related to women's property rights. Administrative reforms to reduce unnecessary bureaucracy in legal structures would be another effective step to improve the legal services.
4. **Institute Customer Services and Ethical Behavior Trainings for Legal Officials:** Another serious concern raised by women was the discriminatory attitude towards women using the legal system. Changing the legal culture and behavior to accommodate and understand women would make legal institutions more accessible for women and improve law enforcement. This issue can be addressed with holding behavior trainings for legal offic-

ers and including behavior and customer service training in law and religious study faculty curriculum.

5.4 General Recommendations

1. Create Support Hubs/Resources for Businesswomen: Providing support and educating women about existing resources were other main recommendations coming from the businesswomen. As mentioned earlier, most businesswomen do not know about the relevant support networks which exist. Improving the outreach capacity of support networks such as AWBF and/or establishing a new network could dramatically improve women's business skills, access to markets and their self-confidence. One of the mechanisms to improve the effectiveness of these resources for businesswomen is to raise awareness about their existence and services through MoWA departments across the country. A need assessment targeting businesswomen could guide these support structures about women's specific needs in different areas of business. An enhanced support mechanism could also be used to introduce other programs such as microcredit initiatives or the promotion of business/marriage registration.

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Appendixes

Appendix 1. Research Questions

1. What are the existing property laws for women?

a. How does Afghanistan compare with other Islamic countries in property laws for women?

b. What have been the main recent reforms to the laws, if any?

2. How are the laws enforced if at all?

a. What is on the ground reality of women's land or other property ownership?

b. Where do women refer to for property disputes in case of divorce and inheritance?

c. What are the main obstacles for enforcing the current laws/regulations?

3. How can the law enforcement structures/procedures become more accessible to women?

a. What are the recommended improvements to facilitate women's access to property?

Appendix 2. List of interviewees

Appendix Table 1: List of interviewees and their organizations

Province	AIHRC	NRC	MOWA/ women activist	Business	Lawyer/ Attorney Officer	Court	AKF/UN	Provincial Council	Total inter- viewees
Kabul	2	1	3	1	2				9
Parwan	0	0	0	3	1				4
Nangarhar	0	0	1	4					5
Bamyan	1	0	1	2		1	2	1	8
Mazar	0	1	2	4					7
Herat	1	0	0	6			2		9
Total	4	2	7	20	3	1	4	1	42

Appendix 3. Qualitative Questionnaire

a. General questions (both for women rights activists and businesswomen)

- What are your thoughts on women's property rights in Afghanistan?
- What do you think of women in business? Or what is your view about female owned businesses? What should we know about women in business?
- In what ways do you think the existing laws and legal structures impede/facilitate women's presence in business?

- How accessible are the written laws to the public both in terms of physical access and accessibility in terms of language/comprehensiveness?
- How familiar are you with the *Huqoq* department and other MOJ structures in your province? Can you comment on their effectiveness? (provinces)

b. Questions for women rights activists/ female/women’s lawyers

- 1- Have you encountered any case of legal dispute regarding property where women were involved? What are some of the challenges for women in such disputes?
- 2- Do you think the existence of an independent property law necessary? If so, what mechanisms do you propose to ensure women’s representation in drafting of this law?
- 3- Is there an active effort to change/modify family laws and other laws regarding women? If so, what are the prospects for these reforms?
- 4- What are some other legal structures that particularly influence businesswomen?
- 5- To which authorities do people (in your province) refer for their legal disputes?
- 6- To what extent are the law enforcement mechanisms (judges, courts, police) present, accessible and effective in your province?
- 7- What are some of the main challenges to law enforcement , if any?
- 8- To what extent are customary laws prevalent in your province and what is women’s place in customary laws?

C. Questions for businesswomen

- 1- What legal entities (if any) do you engage with as a businesswoman? What has your experience with these entities been so far?
- 2- What do you think is the significance of property laws for businesswomen?
- 3- Has your property grown over the past couple of years ? if yes, have you had to turn to any specific mechanisms to protect your property?
- 4- Have you witnessed/been part of a property dispute?
- 5- Do you have confidence in the current legal and institutional frameworks meant to protect property rights of women?
- 6- Who/which entity would you refer to first in case of a property dispute, why?
- 7- What changes would you like to see in legal structures overall and regarding property laws specifically?
- 8- What legal reform do you suggest to enhance the business environment for women?

Appendix 4: Comparative Analysis: Indonesia, Morocco and Pakistan

a. Indonesia Country Brief

I. Legal Influences and Structure

Indonesia is the world’s fourth most populous country, consisting of around 240 million people (World Factbook). It has the world’s fifth largest labor force and is the 16th largest economy, with women comprising 38% of its labor force. It is a republic, and its legal framework is fairly complicated due to its ethnic/religious diversity.

Indonesia's legal system is influenced by three legal traditions: civil, religious, and customary (*adat*) (ADB 27). Indonesia's civil law is the legacy of colonialism. The Dutch were present in Indonesia for approximately 350 years until Indonesia gained full independence in 1949. As a result, Indonesia's legal system is modeled after the Roman-Dutch tradition (ADB 27). However, it is heavily influenced by both customary and religious law. It has been estimated that there are as many as 300 ethnic groups in Indonesia, so customary laws are abundant and diverse (Indonesian embassy's website). Recently, Indonesia has promoted a decentralization of their government, instead moving towards increased regional autonomy and application of *adat*. Finally, over 85% of the population in Indonesia is Muslim, so Islamic law heavily influences the legal system. In fact, there are four judicial branches in Indonesia: religious (*shari'a*), general, military and administrative (Emory University Law School). *Shari'a* courts have jurisdiction over civil cases (including property rights and marriage) between Muslim citizens. The Compilation of Islamic law, a single document compiled in 1991, is the reference for religious courts.

II. Women's Property Rights in the Law and in Practice

Constitutionally, Indonesia provides women with secure land rights. Article 28H reads, "every person shall have the right to own personal property." Women's property rights are additionally regulated by a variety of Indonesian laws. The Basic Agrarian Law of 1960 states "every Indonesia citizen, man or woman, has equal opportunity to obtain a certain right on land." This is done by registering land in one's name and obtaining a title (ADB 29). However, the majority of land goes completely unregistered. According to Jennifer Brown's study of property ownership in Indonesia, only 25% of land has been registered (642). Of that quarter, 30% is registered in the names of females and is usually inherited land; the remaining 65% is registered under males (ADB 17). Indonesia has made little to no effort in educating the public, specifically women, about the importance of legally registering property.

The Marriage Law of 1974, applied to all Indonesia citizens, provides for the protection of women's property during marriage. Article 35 of the law designates women as co-owners of all property acquired during marriage (Brown 637). Additionally, property possessed prior to the marriage remains hers, as well as any gifts or inheritance she receives (Brown 637). In order for joint property to be sold, it requires the consent of both partners, as laid out in Article 36 (FAO). Finally, the law enables couples to draw up a prenuptial agreement pertaining to property rights (Brown 638). According to Jennifer Brown's study, these marital property rights are clearly understood and followed by the majority of Indonesians. However, as already stated, very little property is ever registered. Jointly registered property (either spouses or siblings) constitutes only 5% of registered land (ADB 17). The complete lack of joint registration on behalf of married couples can be attributed to two things. First, most do not know that land can be registered in more than one person's name (Brown 645). The second is a result of Indonesian customs, which recognize and accept the customary practice of marital co-ownership (FAO). As a result, most men and women say they do not feel the need to jointly register land (FAO). Presumably, this could leave women vulnerable, but it appears that Indonesian customs sufficiently protect women's marital property (Brown 647). Finally, in the case of divorce, the Marriage Law states that property is divided according to the spouses' "respective laws" (religious, customary, or civil – couple choose) (Brown 640). Divorce is not prevalent in Indonesia, but Brown's study shows that property is equally divided in practice (Brown 641).

In theory, religion informs inheritance laws in Indonesia. For Muslims, *shari'a* is supposed to be applied. According to Islamic law, daughters receive ½ of any sons' inheritances, and widows receive less than widowers. For non-Muslims, the Civil Code of Indonesia stipulates equal inheritances (ADB 29). However, Brown's study shows most people on the island of Java (where 2/3 of the population lives) practice the Javanese custom of equal inheritance - regardless of religion (Brown 640). However, some traditional groups in rural Indonesia do favor male heirs (OECD-SIGI). Nevertheless, it is clear how Indonesia's diversity influences the practice of its laws.

III. Women and Work

Article 27 of the Constitution guarantees women the right to work. As stated, 38% of Indonesia's labor force is female (World Bank). 40% of women are employed in agriculture, 14% in manufacturing, 22% in wholesale and retail, and 14% in services (Klaveren, Tidjens, Hughie-Willaims, and Martin). According to studies, women entrepreneurship has been experiencing growth since the 1980's when Indonesia experienced rapid economic growth (FAO). There are not many statistics on female-owned businesses available (they do not have female/male numbers), however, according to statistics available from the manufacturing industry, 29% of small to medium enterprises are owned by women (Tambunan, 36). Furthermore, numbers show that the larger the businesses, the less female participation there is (Tambunan, 36). This would suggest that most women entrepreneurs are found in the micro to small enterprise sector, where capital investment is minimal, there is easy entry and exit, and no expertise is required. Tambunan seems to confirm this in his study which found that only 32% of micro to small enterprises are female owned, mostly in a.) trade, hotels, restaurants (38%) and b.) manufacturing (38%) (Tambunan 22-23).

A few last things: one is the rising phenomenon in Indonesia of women being pulled back from the public sphere, often in the name of "religion." After the transition from Suharto's government to democracy, there has been a movement towards "decentralization." This is the product of Suharto's bureaucratic rule being enforced for many years; simply put, it is a backlash. Since 2001, the emphasis has been on regional autonomy, which is meant to revive *adat* in the hopes that customary law will promote efficiency and resolve any local conflicts according to accepted customs (Noerdin 181-182). However, the unintended consequence of this has been the restriction of women's rights in some areas of Indonesia where forms of very strict Islam are practiced. This should be an interesting trend to watch. Finally, another topic which went fairly unmentioned in the discussion of female employment which I thought should be noted is the migration of Indonesia women to other countries in search of work. In fact, in a period of ten years, almost 2 million women migrated (ADB 69).

b. Morocco Country Brief

Morocco is a constitutional monarchy and possesses a dual legal system consisting of courts based largely on French and Spanish civil law tradition, and personal law courts founded on Jewish and Islamic religious law (The World Factbook). French and Spanish influence is the result of colonial rule by both countries in Morocco and the BMENA region, with Morocco having gained independence from France in 1956. There are four levels of courts in Morocco: *Sadad*, regional, courts of appeal, and the Supreme Court (Emory University School of Law). The courts of first instance, *Sadad*, are further broken down into 1.) *Shari'a*, 2.) Rabbinical (Jewish personal law for Jewish citizens), 3.) Civil, commercial and administrative, and 4.) criminal sections (POGAR). The courts which are of interest to this brief are *Shari'a*, as they adjudicate on matters of personal law (i.e. marriage, property inheritance, divorce) for all Muslim citizens through the application of the Malikite jurisprudence, or *fiqh* (POGAR).

As far as property rights are concerned, Article 15 of the Moroccan constitution guarantees all citizens the right of property, thereby allowing women to own and manage their own land and private property (Sadiqi 13). Although technically guaranteed in the constitution, much of the recent progress in laws regulating women's property rights, best exemplified in 2004's Code of Personal Status, can be attributed to a few factors: the Moroccan feminist movements, women's increased participation in the workforce, and programs of economic and political liberalization spearheaded by King Mohammed VI (Naciri).

As is often the case in freedom movements, women played an integral part in Morocco's struggle for independence, believing that their participation would lead to greater rights and liberties for their gender once independence had been won. However, this was not to be the case, and the *Moudawana* (Code of Personal Status) that was implemented two years after independence severely curtailed the rights of women in both the domestic and public sphere. Women were essentially relegated to the home and service of their family, while men were responsible for economically supporting wives and children (Alpert 28); the result was women were essentially denied the right to work, albeit indirectly. As the *Moudawana* was based on Malikite *fiqh*, women's calls to reform the code fell on deaf ears for years to come.

It was not until the 1980's, when women's organizations and NGO's finally became active players in Morocco's civil society, that their voices began to be heard. The reason that women's groups started to assume significance is partly the result of the financial crisis that hit Morocco in the late 1970's and early 1980's. As a result of rising urbanization, higher costs of living, and the aforementioned economic crisis, women began to enter the workforce in greater numbers in order to help support their families (Alpert 43). Female participation in the economy became necessary and, thus, grew to be accepted (Katulis 17).

Women's new roles in the economic sphere emboldened them, while also allowing for the launch of the modern feminist movement in Morocco to take place in the mid-1980's (Alpert 54). Its focus was largely on the *Moudawana* which was deemed the prime offender in discrimination against women (Sadiqi 2). The movement faced opposition from Islamist groups and more traditional sects of society, which tended to think that women in the workforce took jobs away

from men. However, through the use of media, the forging of an alliance with the government (who sought to weaken Islamist tendencies in the country), publications which made references to the *Quran* and *abadiths* (thereby appropriating the religious angle which their Islamist opponents used against them), and many years of persistence the women's movement eventually succeeded in bringing truly significant changes to the old, discriminatory *Moudawana*. Announced by King Mohammed in 2003 and adopted in February 2004, the reformed *Moudawana* secured important rights for women, including those concerning property.

The new *Moudawana* gives both men and women equal authority in the home and eliminates the notion that a woman's place in society is the home. Besides establishing other codes that protect and empower women, it also directly addresses property rights. Article 29 stipulates, "the dowry is the woman's property to use as she wishes" (Moroccan Family Code). Article 34 establishes that all possessions a woman brings into a marriage are (and solely remain) her property, while Article 49 specifies that a husband and wife may draw up an agreement that, "defines the conditions for management and use of property acquired during the marriage" (OECD - SIGI). However, the *Moudawana* is still based on Islamic principles, and thus inheritance laws (the way in which women principally come to access property) are religious in nature; the Quran clearly lays out inheritance laws, and it is the case that daughters inherit only half the share of sons. As far as the employment of women is concerned, Article 13 of the Moroccan constitution states, "all citizens shall have equal rights in seeking education and employment" (Constitution of Morocco, 1996). The new labor code which took effect under King Mohammed VI's rule in 2003 aims to reinforce this principle for women by emphasizing "equality in the workplace with regard to employment and salaries" (Naciri). Thus, the Constitution, *Moudawana*, and new labor code all nobly aim to promote and reinforce the equality of women in all aspects of society. Progress has been made, although some barriers remain.

Notably, women's participation in the workforce has increased from single digits in the 1970's to 28.7% as of 2008 (World Bank). According to the International Finance Corporation's Gender Entrepreneurship Markets (GEM) Country Brief on Morocco, women owners of businesses represent 0.5% of total female employment and comprise 10% of all enterprises. This, however, does not take the micro enterprise sector into account (IFC-GEM 2005). In fact, the Moroccan government has launched a number of micro-credit initiatives aimed towards women, and it is estimated by MasterCard that women may own up to 15,700 Small and Medium Enterprises (SMEs). The government realized that a major obstacle to female entrepreneurship was their lack of access to credit (only 12% of women use bank loans due to their lack of collateral, instead often receiving capital from family members) and made it a point to address the issue (Naciri). Its concentrated efforts have paid off, and women-owned SMEs have shown a remarkable growth rate in Morocco. In fact, the Social Institution's and Gender Index report remarks that "Morocco has become a pioneer in this area, and hundreds of thousands of women have benefited from these programmes." According to the GEM report, 37% of women-owned SMEs are in the services sector, while trade constitutes 31% and industry 21%.

In the regular labor force, the agricultural and fishing industries are the dominant industries for women, employing 52.4% of working women as of 2007 (Naciri). Outside of agriculture, women tend to work in low-status positions such as secretaries and domestic servants. Wage disparities are significant, despite equal pay being guaranteed in Morocco's labor code. It is

estimated that women receive 30- 40% less pay than their male counterparts, while only receiving 50% of the guaranteed minimum wage (Naciri).

Additional hurdles remain in women's property rights and employment. However, most of these are related to social norms and conservatism, rather than government laws and codes. For instance, in rural areas, basic rights such as being able to leave the home and travel freely remain a very real limitation (Katulis 9). These sorts of social forces affect women's ability to obtain and keep gainful employment. Also, despite all citizens being guaranteed an education, illiteracy rates among women are as high as 60% (Naciri). Illiteracy affects Moroccan women's abilities to assert their inheritance and equal pay rights, as well as the type of work in which they are employed. Furthermore, in rural areas, females routinely give up whatever land they inherit to male relatives. As Fatima Sadiqi writes in her Freedom House report on Morocco, "ongoing societal influences of patriarchy, tradition, illiteracy, and ignorance may prevent women" from asserting their rights. Furthermore, the new laws and codes are virtually unknown in rural areas and even to an extent in urban areas – which of course begs the question of how enforcement is possible if women are unaware of their own rights (Sadiqi, 10). Despite these issues, great headway in women's property rights and employment has been made in Morocco - though more work remains to be done.

c. Pakistan Country Brief

Pakistan is a federal Islamic republic whose legal system is informed by English common law and Islam (Emory University School of Law). English common law is the result of British rule in Pakistan, which ended in 1947. British civil law is most evident in the application of commercial law, while religion is used to adjudicate personal law (Emory University School of Law). Women's property rights are clearly defined on paper (though, limited in equality), but customary practices rule Pakistan and its women.

Article 23 of the Constitution establishes, "every citizen shall have the right to acquire, hold and dispose of property, and article 25 (1) affirms all citizens are equal before the law (Constitution of the Islamic Republic of Pakistan). Thus, "the rights to property and equality" are provided for both men and women on paper (Mumtaz and Noshirwani 3). Despite their rights, a household survey conducted by the International Centre for Research on Women "found that women owned less than 3 percent of the land" in Pakistan (OECD-SIGI). This is because Pakistan is a patriarchal society with discriminatory inheritance customs.

Personal law governs property acquired via inheritance; as 95% of the population is Muslim (75% Sunni, 20% Shi'a), the appropriate distribution of property is applied according to the West Pakistan Muslim Personal Law Act 1962 (Mumtaz and Noshirwani 4). Although women do not receive equal shares as men, they are guaranteed the right to inherit property. However, customary practice almost always mandates that a woman relinquish her rights to immovable property to male family members. Furthermore, mutual marital property is not recognized by Pakistani law, as there is no concept of co-ownership (SDPI 2008). Therefore, women have no claim to any property acquired during marriage during a divorce. The only exception to this is if a woman can prove that she contributed towards the purchase of the property with money – which is almost impossible for most women (SDPI 2008). Furthermore, if a woman initiates divorce, she relinquishes any property obtained via her dowry (SDPI 2008). Finally, marriage and divorce among Hindus and Zoroastrians is mainly handled outside of the courts and according to their own personal laws (SDPI 2008). Christians are governed by the Christian Marriage Act of 1872 and Divorce Act of 1869 (SDPI 2008). On a rare occasion, a religious minority's case will be heard in the Family Courts, as its jurisdiction is not exclusive to Muslims (SDPI 2008).

To better understand women's property rights, one must understand the context of property distribution in Pakistan: "40 percent of land is owned by 2.5 percent of households" (Mumtaz and Noshirwani 1). Attempts to redistribute land have failed, and over 40% of rural populations remain landless (USAID). In addition, much of Pakistan's land is mountain and desert (USAID). As a result, property becomes even more valuable for the non-elite, and women become a main target for exclusion from owning property. There are a few ways in which women are denied their rights to own land.

First, women are discriminated against by their families, due to belief that sons stay and provide for their families, whereas women do not (World Bank, 22). As a result, there is the desire for property to remain under the control of men – sons/brothers; in fact, "social pressures are so strong that women are alienated by their own family" if they do not relinquish their land to male family members (Mumtaz and Noshirwani 9). As women often rely on their birth family, specifically their brothers, in times of economic and personal (divorce, illness, etc.) hardship,

women fear compromising family relations (Mumtaz and Noshirwani 9). To appease their families and secure future support, women often forfeit inheritance shares (Mumtaz and Noshirwani 9). Violence is also used to coerce females into relinquishing any claims to their inheritance (Mumtaz and Noshirwani 11). Another custom used to usurp female property is the practice of *haq bakhshtwana* – though it is not prevalent due to its extreme nature (Mumtaz and Noshirwani 9). Literally meaning to “give up rights,” females are “either never married, or married to the Quran...in order to prevent property [leaving] the family” (Mumtaz and Noshirwani 9). Rather than grant women their own land, custom permits women’s use of communal property for “grazing and gathering needs” (Mumtaz and Noshirwani 6). These “usufructuary” rights are unregulated but practiced throughout all of Pakistan. These rights do not come remotely close to granting women ownership of the land and only allows them to use it for the purposes of survival.

Women’s lack of knowledge about their rights and the law can be attributed to low education levels. Although almost all women know they are allowed to inherit property, *very* few are aware of how much or how records are kept (Mumtaz and Noshirwani 10). Furthermore, lack of access to courts is a large contributing factor. The costs of bringing a case to court (transportation, lawyers, fees) are extremely prohibitive, even though Courts often strongly uphold women’s rights to inherit property (Mumtaz and Noshirwani 10). At the same time however, little is done by the State to prevent women from relinquishing their property at the time it is happening. In fact, Courts routinely uphold female forfeiture of property and dowry (SDPI 2008).

The custom of *purdah* (essentially the separation of the sexes) that is practiced in Pakistan is a large reason behind women’s lack of education, employment, and general participation in society. It limits women’s mobility because they are not allowed or encouraged (due to societal views that being out alone reflects poorly on the woman’s honor) to leave the house. This makes obtaining a secondary education difficult if there is not a school within close distance. It also makes for segregated and limited transportation, where women have far fewer allocated spots than men. *Purdah* also limits employment opportunities, since their labor market is generally limited to nearby jobs (World Bank 2005). As a result, women tend to work in job sectors that have limited interaction with men. As of 2008, women’s labor force participation rate (LPR) in Pakistan was 21.8%, although this varies according to location (World Bank). The LPR is twice as high in rural areas (30%) as it is in urban settings (World Bank 2005). Female employment is concentrated in 1.) agriculture and 2.) community, social and personal services (IFC-GEM 2007).

“Female entrepreneurship in Pakistan is amongst the lowest in the world” (IFC-GEM 2007). As of 2002, only 0.3% of employers were female. However, recent data is extremely limited, and it seems that female entrepreneurship is making decent gains. This is perhaps due to recent government initiatives aimed at giving women access to micro-credit (ILO 2003). For instance, the Pakistan Poverty Alleviation Fund, Rural Support Programs, the Khushali Bank, and the First Women Bank Limited have all targeted women in their lending efforts (ILO 2003). Still, only about 20-25% of all borrowers are women (IFC-GEM 2007). Finally, in a study conducted on women-owned businesses, it was determined that the majority of women start businesses in 1.) the textile and apparel industries, 2.) education and health fields, and 3.) boutiques and parlors (ILO 2003).

