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Afghanistan: Acquisition of widow status, both social and legal, when husband is missing or presumed dead; impact on a woman's status if a husband reappears after she has remarried; ability to divorce a first husband who has been missing for years (2003 - 2006)

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Context of widowhood in Afghanistan

Without providing specifics, the Institute of War and Peace Reporting (IWPR) reported in 2003 that Afghanistan has one of the highest rates of widowhood worldwide (IWPR 8 Oct. 2003). In May 2006, the International Organization for Migration's (IOM) Kabul office estimated the number of widows in Afghanistan to be over one million (15 May 2006). In the month prior to that, the United Nations Development Fund for Women (UNIFEM) placed the number of "war widows" in the country at more than two million (11 Apr. 2006), with between 30,000 to 50,000 widows residing in the capital, Kabul (UN n.d., 1). Most women are widowed as a result of the more than two decades of conflict in Afghanistan, during which many men were killed or went missing (ibid.; IOM 15 May 2006, 1; IWPR 8 Oct. 2003). Low life expectancy and early marriage in Afghanistan result in women often being widowed in their 20s and 30s (ibid.; UN 15 Feb. 2006, para. 28).

The Justice system and widow status

The justice system in Afghanistan includes the Supreme Court, provincial high courts and district-level courts (UN 15 Feb. 2006, para. 48). In some areas, however, the system is virtually nonexistent as a result of the civil war (ibid.). Where the court system is in operation and the courts can find no constitutional provision for a particular case, the constitution directs them to rule in accordance with Islamic jurisprudence (Afghanistan 3 January 2004, Art. 130; see also ibid. 13 July 2006). For members of the Shia sect of Islam, when the matter cannot be resolved by applying the constitution or other laws, the courts are directed to rule in accordance with the jurisprudence of that sect (ibid. 3 Jan. 2004, Article 131). Information on the waiting period required by Shia Islam before the spouse of a disappeared person could remarry could not be found among the sources consulted by the Research Directorate within time constraints.

IWPR indicates that in September 2003, following consultation with a group of religious scholars, the Supreme Court of Afghanistan ruled that a woman could remarry

if her first husband had been missing for more than four years and was presumed dead (8 Oct. 2003; see also US 8 Mar. 2006, Sec. 5). IWPR points out that the Supreme Court ruling departs from the Hanafi school of Sunni Islam, which stipulates a waiting period of seventy years for wives of the disappeared before they are eligible to remarry, and instead follows the Maliki school of Sunni Islam, which requires a waiting period of four years (8 Oct. 2003).

In an interview with the Research Directorate, Afghanistan's Deputy Minister of Justice explained that through an application to the courts, the wife of a missing husband can obtain a declaration of death certificate (Afghanistan 13 July 2006; Widows for Peace and Democracy 21 June 2006). Thus, she would officially become a widow, and have the right to remarry (IWPR 8 Oct. 2003). In keeping with the Supreme Court decision, proof of the husband's death is not required (*ibid.*).

The Afghan Deputy Minister of Justice explained that when a husband has disappeared, women must rely on the testimony of witnesses, such as neighbours, friends, or their husband's family members, to convince the court of his disappearance (Afghanistan 13 July 2006). Upon obtaining an official declaration of death from the courts, widows are entitled to collect their inheritance, which amounts to one-quarter of their husband's estate if they are childless and one-eighth of the estate if they have children (*ibid.*).

The Coordinator of Widows for Peace and Democracy, an Internet-based network of widow's rights organizations (WRI n.d.), based in England with partner organizations working on widow's rights in Afghanistan, indicated in correspondence with the Research Directorate that Afghan society generally considers it "shameful" to seek a declaration of a husband's death from the courts (Widows for Peace and Democracy 21 June 2006). According to the Coordinator, very few women attempt to obtain a declaration of death as it is seen to tarnish the memory of their missing husband, and others could interpret the attempt to mean that she wishes him dead (*ibid.*).

Following a 2005 fact-finding mission to Afghanistan, the Hamburg-based Max Planck Institute for Foreign Private Law and Private International Law estimated that 90 percent of Afghans had little awareness or understanding of the law (2005, 10). The Institute cited an example where a woman violated the law and Islamic principles by remarrying following the four-year absence of her husband without first having his death officially declared by a court (Max Planck Institute 2005, 10).

According to the United Nations (UN) Special Rapporteur on Violence Against Women, the dominance of informal parallel justice systems in Afghanistan, including Sharia and customary law, undermines the consistent implementation of rules established by the formal justice system and erodes the protection available to women (UN 15 Feb. 2006, para. 33, 34, 37).

Perceptions and consequences of widow remarriage

In correspondence with the Research Directorate, the Head of CARE Canada's widowhood project in Afghanistan explained that cultural obstacles seriously impede women's access to their rights (CARE International 22 June 2006; IWPR 1 Dec. 2005, 2). For example, Afghan society rarely practices divorce because it considers it to be "shameful" (RFE/RL 27 Jan. 2004; CARE International 22 June 2006). Furthermore, it is culturally unacceptable for a man to marry a widow (UN n.d., 1) or for a widow to

remarry (CARE International 22 June 2006). According to the Head of CARE Canada's widowhood project, harassment and "oppression" of widows who remarry comes from society at large, as well as from the first husband's family (ibid.).

Families reportedly prevent their son's wives from remarrying following his disappearance, as it would force them to recognize his death (IWPR 8 Oct. 2003). As well, women who remarry typically lose custody of their children from their first marriage, although CARE states that the constitution provides for children to stay with their mother until the age of seven (CARE International 22 June 2006).

Wives' and widows' relations with the husband's family

In correspondence with the Research Directorate, the Assistant Country Director of CARE International in Afghanistan stated that a widow's well-being depends largely on the goodwill of her missing or deceased husband's family (29 June 2006). However, the number of widows in Afghanistan has reportedly overwhelmed the family infrastructure that would normally care for them in the absence of their husbands (EurasiaNet 11 Apr. 2003; UN n.d., 1), especially in urban areas (ibid., 2).

According to the Representative of Widows for Peace and Democracy, women whose husbands have disappeared are highly vulnerable, as they are perceived to be neither widows, nor wives (21 June 2006). For example, because their husbands are missing but not officially deceased, these women are unable to claim their inheritance from the husband's family, nor do they have the right to reside in the matrimonial home (Widows for Peace and Democracy 21 June 2006). Younger wives of the disappeared are also vulnerable to sexual abuse, rape, forced pregnancy and concubinage by the husband's family and others because they lack a male protector (ibid.).

Because she is considered the property of her husband's family, a widow may be forced into levirate marriage, a practice whereby she is required to marry a close male relative of her late husband (UN 15 Feb. 2006, para. 28). The International Legal Foundation (ILF), a non-profit public defence organization based in New York, and a news article indicate that levirate marriage takes place in Pashtun communities (ILF Sept. 2004, 16; RFE/RL 27 Jan. 2004). The ILF explains in its paper on the customary laws of Afghanistan that if a male relative is not available, the widow is nevertheless barred from marrying outside the husband's tribe (ILF Sept. 2004, 16). If such a marriage outside the tribe occurs, the tribe could charge the new husband with kidnapping and fine him (ibid.).

When missing husbands return

In an interview with the Research Directorate, Afghanistan's Deputy Minister of Justice explained that upon the return of a missing husband, a widow who has succeeded in claiming her inheritance is required to reimburse him (13 July 2006). A woman who has obtained a declaration of death certificate from the courts and has subsequently remarried would not need to obtain a divorce from her first husband if he were to return, and could continue her marriage to her second husband (ibid.). A widow who wishes to terminate her marriage with her second husband must divorce him if she wishes to return to her first husband (ibid.). However, women who succeed in approaching a court with a request for divorce are reportedly met with verbal abuse and discouragement from judges (UN 15 Feb. 2006, para. 50).

According to an Agence France-Presse (AFP) article posted by Women Living Under Muslim Laws (WLUML), an aid worker in Afghanistan stated that women are jailed for seeking to remarry after being widowed (21 Sept. 2004). The United States (US) Department of State indicates that husbands who disappeared did return in some cases, and upon finding their wives remarried, had them imprisoned, sometimes on charges of bigamy (US 8 Mar. 2006, Sec. 5). In practice, local religious committees often resolve such situations, in many cases allowing the woman to remain with her second husband while providing her first husband with compensation, such as another woman in marriage (CARE International 22 June 2006).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

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Oral Sources: The Afghan Independent Human Rights Commission (AIHR), the Afghanistan Rule of Law Project, the International Legal Foundation - Afghanistan, and a professor at the University of London School of Oriental and African Studies (SOAS) did not provide information within the time constraints of this Response.

Internet Sites, including: Amnesty International (AI); *Christian Science Monitor*; Human Rights Watch (HRW); International Organization for Migration (IOM); Revolutionary Association of the Women of Afghanistan (RAWA); United Kingdom (UK) Home Office, Immigration and Nationality Directorate (IND); United Nations (UN) Division for the Advancement of Women (DAW); UN Integrated Regional Information Networks (IRIN); UN Assistance Mission in Afghanistan (UNAMA); United States Library of Congress

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