

Stanford Law School

Afghanistan's New Law on the Procedure for Securing Rights*

By [Mehdi J. Hakimi](#)

May 14, 2021



قانون طرز تحصیل حقوق
د حقوقو د تحصیل د ډول قانون

Afghanistan's new *Law on the Procedure for Securing Rights* was recently promulgated in late 2020. The new Law aims to advance a number of important objectives including expediting the process of securing the civil and commercial rights of

* Original citation: Mehdi J. Hakimi, *Afghanistan's New Law on the Procedure for Securing Rights*, Stanford Law School, May 14, 2021, <https://law.stanford.edu/2021/05/14/afghanistans-new-law-on-the-procedure-for-securing-rights/>.

natural and legal persons, encouraging mediation and amicable resolution of disputes, and improving coordination between the Ministry of Justice and other relevant agencies in implementing final court decisions.

The Ministry of Justice (MoJ) is the primary implementing authority. In particular, the MoJ's Hoquq Departments in Kabul and other provinces are mandated with enforcing this Law. Other government departments, legal persons, and natural persons must cooperate with the Hoquq Departments. Generally speaking, the Hoquq Department has the primary jurisdiction over legal petitions. This may change, however, depending on the circumstances (e.g., where the government is a party to the dispute).

The starting point for securing one's rights is drafting and submitting a proper legal petition (*ariza*). The Law provides guidance on that process. The petition must generally be submitted to the Hoquq Department or the court in the defendant's place of residence. There are exceptions to this default rule such as in disputes concerning immovable property or in certain family-related matters (e.g., engagement, separation, or spousal support). The Law defines the "place of residence" differently depending on various factors (e.g., natural or legal person, marital status). The petitioner must pay a registration fee (typically 500 Afs in non-commercial matters) which may be waived under certain circumstances.

In some cases, the enforcement procedures may require the arrest of the defendant. In that situation, the Hoquq Department must explain the petition to the defendant in writing. The defendant, or their representative, must provide their response within three business days, which can be extended in case of a justifiable excuse. The defendant may be required to post a bond or confirm a guarantor prior to being released. Failure to do so may result in referral to the police who must ensure, *inter alia*, the defendant's appearance at the hearing.

The Hoquq Department will aim to resolve the dispute through mediation. If informal dialogue proves successful, the parties will sign the relevant documents—otherwise, the dispute will proceed to formal adjudication.

In proceeding to enforce one's rights, the Hoquq Department will consider various types of documents including judicial rulings, documents issued by government agencies or courts, and customary documents. The Hoquq Department will generally charge a fee for the proceedings, which is typically paid by the debtor. The fee is usually equivalent to two percent of the amount of the collected debt.

The creditor has various statutory means for collecting their judgment. If the debtor is unable to pay the full debt immediately, the Hoquq Department may grant an extended payment period after written agreement of creditor and debtor. Under certain conditions, the debt may also be paid in installments. Where appropriate, the creditor may also secure the debt through freezing the debtor's bank account(s) or through the sale of the debtor's property. In certain cases, the Hoquq Department may also garnish the debtor's wages. The Law, however, requires that the primary needs of the debtor be considered in exercising these options.

The Law also addresses the unlawful occupancy of real property. The vacation of the property from illegal occupancy is conducted pursuant to the owner's request and in accordance with judicial instructions. Upon the Hoquq Department's issuance of the notice to vacate the property, the occupant generally has fifteen days to leave the unit. After the expiration of the lease, the lessee may not occupy the property upon request by the lessor to leave the premise. However, depending on the circumstances, the Law provides flexibility in the case of a lessee's need for shelter. The Law also stipulates particular considerations in dealing with absent lessees.

The Law sets out provisions concerning the mandatory enforcement of final court decisions. The losing party must adhere to the final court decision within fifteen days. Non-compliance will prompt the Hoquq Department to commence the mandatory enforcement proceedings. The Law establishes the Council for Implementing Final Court Decisions. The Council, chaired by the Hoquq Department and composed of various governmental agencies, is primarily responsible for enforcing final court rulings. Any

person who resists or interferes with the Council's enforcement of final judicial decisions will be deemed to be *motamared* and may face legal action.

Where appropriate, the debtor's property will be sold through auction, and the debt shall be repaid through the proceeds of the auction. The Council will oversee the auction proceedings. The debtor, and other parties where appropriate, shall provide complete information to the Hoquq Department regarding the debtor's assets and income. The debtor may participate in the auction and holds priority rights. In the case of multiple creditors, all creditors have equal rights against the debtor's assets subject to any priority rights under the law. When the sale of the debtor's moveable property does not satisfy the judgment, the Hoquq Department, upon the creditor's request, may seek an injunction with respect to the debtor's immovable property. The Law establishes rules for determining the price of the debtor's real property.

The debtor's primary needs, however, will be exempt from judgment collection. In addition, if the debtor is determined to be indigent, the Hoquq Department, upon receiving the relevant documents, shall suspend the recovery of the debt.

The Law outlines additional precautionary measures in the case of final court rulings. The Hoquq Department may adopt further actions such as preventing the transfer or sale of the debtor's assets, prohibiting the alteration of real property, freezing the debtor's bank account(s), and placing the debtor's assets under *hajr*. Where needed, the Hoquq Department will coordinate with the police, municipal agencies, and other authorities in implementing these preventative measures.

The Law also deals with other issues concerning the Hoquq Departments including recruitment, training and professional development, and certain rights and privileges of MoJ employees.

The Law envisages the establishment of a coordination committee to facilitate the enforcement of the aforementioned provisions. The committee, chaired by the Minister

of Justice, will comprise senior representatives from the judiciary, the attorney general's office, the bar association, the Ministry of Interior, and other relevant agencies.

To learn more about this Law or the Afghan legal system more broadly, please visit the Afghanistan Legal Education Project website, <https://law.stanford.edu/alep>.

[Mehdi J. Hakimi](#) is the Executive Director of the Rule of Law Program and Lecturer at Stanford Law School.