


OUT OF THE SHADOWS, ONTO THE BENCH: **WOMEN IN** **AFGHANISTAN'S JUSTICE SECTOR**





The International Development Law Organization (IDLO) is an intergovernmental organisation devoted to empowering people and enabling governments to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity.

Front cover image: World Bank_Graham Crouch





IRENE KHAN
Director-General, IDLO

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AFGHANISTAN'S JUSTICE
SECTOR ◀

At the September 2012 United Nations General Assembly, IDLO pledged to undertake a global survey of the role of women in justice institutions. We did so because we believe that the quality of justice women receive cannot improve until and unless there are more of them working as judges, lawyers, prosecutors and investigators.

Given the magnitude of the challenge, and our long-standing commitment to the country, there could be few better places to start than Afghanistan, where IDLO first launched its rule of law program in 2002.

This report is not a crude female headcount, although it contains a wealth of data on the low visibility of women in Afghanistan's justice sector. Nor is it an indictment: it acknowledges and welcomes progress where progress has been made. We appreciate that judicial reform is tough in post-conflict settings, and it has been particularly so in Afghanistan, with its decades of conflict and turmoil.

What our report does is give an overview of the legal underrepresentation of Afghanistan's women; detail the obstacles – social, academic, cultural – that they confront; enjoin the Afghan authorities to press on with their commitment to enhance women's representation in the judiciary and legal profession; and reaffirm that justice for women also means justice by women.

This report is a reminder that the rule of law cannot prevail when one half of society is excluded. Afghanistan's struggle against gender violence, discrimination and marginalization will not be won without greater investment

in Afghan women – in ensuring respect for their rights, in their educational and professional opportunities, and of course, in their role in the judiciary and the legal community.

This report does not provide an off-the-peg solution to what is an enormously complex problem. Our recommendations are based on what we have heard from Afghan women themselves. The issue is not just more international aid – although additional funds are undoubtedly needed to improve and expand girls' education. Some measures do not require much money: reforming curricula, particularly at Shari'a faculties; providing safe transport for women students; instituting affirmative action in law school admissions or scholarships – all of these steps would be relatively quick, inexpensive and highly effective.

Finally, in a traditional society like Afghanistan, it will take time to demolish gender stereotypes. And as our report makes clear, for things to change – dramatically, irreversibly – political will is essential. As Afghanistan prepares for a new phase in its political life, investing in the talent and potential of its female citizens will be crucial.

This report is dedicated to all the Afghan women who are courageously working for justice in their country.



GIAMPAOLO CANTINI

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A MESSAGE FROM THE ITALIAN GOVERNMENT

The last decade has seen the Government of Italy contribute significantly to justice sector reform in Afghanistan. Our country's engagement came as part of international efforts to implement United Nations Security Council Resolution 1378 of 2001, which led to the establishment of a new Afghan Government. Italy has also consistently pursued improvements in the condition of Afghan women and the protection of their rights.

Great attention has been paid – and significant resources invested – by the Italian Development Cooperation to address the development needs of both people and institutions in Afghanistan. Whether through bilateral projects or support to multi-donor programs, Italy has sought to build institutional as well as professional capacity in Afghanistan's justice sector.

Significant progress has been made in strengthening judicial institutions, while improving access to justice and justice delivery. Although much remains to be done, women, as one of the most vulnerable groups in Afghan society, have greatly benefited from this progress.

The establishment of an Independent National Legal Training Center, the enactment of legislation on the Elimination of Violence against Women (EVAW) and the establishment of EVAW units in the Attorney General's Office are important markers of success.

In 2012, confirming Italy's long-term support for the Afghan people, our two Governments signed a comprehensive long-term bilateral partnership agreement in the areas of political, economic, security, development and cultural cooperation, and in the fight against drugs. In June-December of 2013, under the Italian co-Presidency of the Board of Donors of the Justice sector, National Priority Program 5 (Law and Justice for All) was adopted. Co-ordination was meanwhile stepped up between donor countries, international organizations and other actors, and strong relationships established with Afghanistan's Ministry of Justice, Supreme Court and Office of the Attorney General.

As stated by Resolution 64/116 adopted by the General Assembly of the United Nations in 2009, the advancement of the rule of law is essential for sustained economic growth, sustainable development, the eradication of poverty and hunger, and the protection of all human rights and fundamental freedoms. In Afghanistan, as the country prepares to take responsibility for its

own security, it is crucial that women play their full part in the transition process. But despite widespread agreement in principle, there remain significant obstacles to ensuring that women's voices are heard.

IDLO's report on Women's Professional Participation in Afghanistan's Justice Sector: Challenges and Opportunities is therefore extremely timely: it makes clear that the participation of women in Afghanistan's justice sector is essential both for the country's sustainable development and for improving access to justice in general. We are pleased to note that the Afghan Government acknowledges the contribution of women in the field of justice, and is committed to increasing their professional participation as part of its national development strategies.

There is clearly still a long way to go. The focus group discussions with female Shari'a and law students poignantly illustrate the challenges faced by women as they try to access and excel in the legal profession. Not only do women face discrimination in the classroom, they are also disadvantaged in their career progression, and are often forced to drop out of law school or legal employment because of social pressure or family obligations.

For these reasons, the Italian Development Cooperation is proud to support the publication of this report. We strongly believe that if acted upon, its recommendations will help open up the Afghan justice system to women wishing to put their talent in the service of their country.



Image: World Bank_Graham Crouch

EXECUTIVE SUMMARY

Women's Professional Participation in Afghanistan's Justice Sector: Challenges and Opportunities is the first national study following IDLO's gender pledge. Based on a unique participatory methodology and featuring an entirely Afghan-led data collection process, the report has been welcomed by justice actors as the first of its kind in Afghanistan's history and an important contribution to ongoing discussions concerning gender equality, women's rights and women's empowerment. It also comes at an important time: having emerged in 2001 from five years of devastating Taliban rule, Afghanistan is now working hard to rebuild institutions and make them sustainable and responsive to the needs of its men and women.

At the quantitative level, the capacity and service delivery of the justice sector in Afghanistan have progressed since the fall of the Taliban in 2001. Justice institutions nonetheless still struggle to recruit and retain qualified professionals, in particular women legal professionals. As of 2013, women constituted only a fifth of lawyers and fewer than a tenth of judges and prosecutors registered with the Afghanistan Independent Bar Association (AIBA). Afghan women also remain underrepresented as law students, although the number of women enrolled in law schools has increased.

At the substantive level, there are considerable barriers encountered by Afghan women, both in trying to enter the justice sector and in their daily work as legal professionals. Although some of these constraints come from social pressure and traditional stereotypes about women's role in society, others are practical

impediments, including lack of safe transportation to universities, or appropriate accommodation for women to attend compulsory legal training in Kabul. Women often do not have equal access to legal education curricula and professional development opportunities compared to their male counterparts, resulting in a gap between the number of women graduating from Law and Shari'a faculties and the number of women actually employed in the justice sector.

Some of these obstacles to women's participation in the legal profession are complex and not easy to address, such as the ongoing travel risks for women legal professionals, particularly in areas controlled by insurgents. Yet in many cases, some of the barriers identified by female respondents could be readily removed, for instance through the implementation of affirmative action programs or the provision of women-friendly transport and housing for Law and Shari'a faculties. Above all, strategies must address the unique political, cultural and economic dimensions of these barriers, both to tackle deeply entrenched discrimination and to ensure lasting results.

The paucity of professional women in all aspects of the Afghan justice process, from police officers to judges, is one of the factors contributing to the widespread reluctance of many Afghan women to approach the formal justice system and report civil wrongs and criminal acts. Taking measures to address the low levels of professional participation of Afghan women in the justice sector is not simply a matter of equal opportunity and fairness – such measures are also essential to improve the overall accessibility of the Afghan justice system for women.

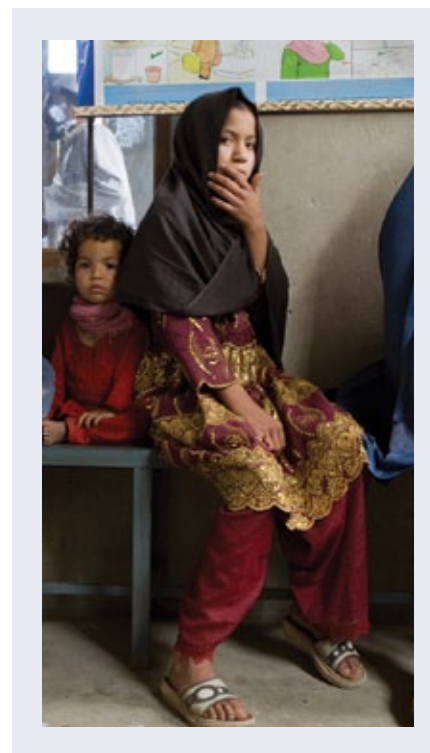


Image: Bill and Melinda Gates Foundation_Kate Holt

➤ WOMEN OFTEN LACK
EQUAL ACCESS TO LEGAL
EDUCATION CURRICULA
AND PROFESSIONAL
DEVELOPMENT ◀

PROGRESS IN EMPOWERING WOMEN TO PARTICIPATE IN THE JUSTICE SECTOR

Following the expulsion of the Taliban regime in 2001, Afghanistan “emerged as a truly devastated State with its human, physical and institutional infrastructure destroyed or severely damaged” and was ranked second to last in the UN Human Development Index.¹ Since then, it has undertaken efforts to rebuild sustainable, responsive institutions that are more inclusive of women. There is still much more to accomplish however, especially in the recruitment of women into the justice sector.

Although the participation of women in the labor force has improved since the fall of the Taliban in 2001, this has taken place mostly in urban areas with better employment opportunities and access to education. In the provinces, where the bulk of the Afghan population resides, far fewer women have (re) joined the labor force. And with their overall labor market participation still quite low – at only 16% in 2011² – this means the majority of Afghan women remain economically dependent on their husbands or families.

The resulting gender gap in Afghanistan’s workforce is particularly evident in the justice sector. Government and UN data from 2008 to 2010 point to single digit percentages of women as lawyers (about 6%), prosecutors (6.4%-9.4%), and judges (4.7%-5.4%). Data from 2013 show that women are still underrepresented, although they have made some gains, particularly in the number of female lawyers and judges (19.3% and 8.4%, respectively).

Afghan women have also made gains in literacy, with the current rate at 22% according to recent estimates.³ But there are still constraints that deter many families from sending their girls to school. These include insurgent attacks on schools and transport routes,



Image: Flickr_J McDowell

high rates of forced and/or underage marriage, and low numbers of female teachers (as cultural traditions often require gender segregation in schools). High rates of illiteracy, combined with lack of access to basic schooling, contribute to lower numbers of women entering universities and pursuing a legal education. As the legal job market becomes more competitive, legal degrees in either Law or Shari’a are increasingly being required as pre-requisites to careers in the justice sector.

In spite of these challenges, the proportion of women graduating from Law and Shari’a faculties has increased in recent years, from 12% of all graduates in 2008-2009 (lunar year) to 18% in 2010-2011.⁴ The Shari’a faculties in particular, with their gender-segregated environments, provide a

great opportunity for many women from traditional families. However, the curriculum taught is not always the same for female and male students, leaving many female graduates under-prepared for their legal careers. In addition, Shari’a schools have almost no female professors, making it difficult for female students to discuss sensitive or controversial law topics.

➤ AFGHAN WOMEN HAVE HIGH ILLITERACY AND LOW SCHOOLING. FEW GO TO UNIVERSITY OR RECEIVE LEGAL EDUCATION ◀

¹ Islamic Republic of Afghanistan, *Afghanistan National Development Strategy 1387 – 1391 (2008-2013)*, 3.

² The World Bank’s definition of labor market participation is ‘all people who supply labor for the production of goods and services during a specified period’: World Bank, *Labor participation rate, total (% of total population ages 15+)*, available at: <http://data.worldbank.org/indicator/SL.TLF.CACT.ZS>.

³ Independent Evaluation Group, World Bank, *Evaluation of World Bank Programs in Afghanistan, 2002-2011*, [2013] 6.

⁴ Data collected from the MOHE in July and August 2013.

WHY DO WOMEN IN JUSTICE MATTER?

The mere presence of women legal professionals does not guarantee that women will obtain justice when they seek it through formal institutions. But it does make the justice sector more approachable for women. A study by the Women and Children Legal Research Foundation (WCLRF) found that the lack of women legal professionals discourages women from coming forward to access the justice system.⁵ This is especially the case when the matter is sensitive, for instance in cases of sexual violence.

The IDLO-supported Elimination of Violence Against Women (EVAW) Units, set up in 2010 to improve awareness, investigation and prosecution of violent crimes against women, underscore the value of having women working in this

sector of law enforcement. The EVAW Units are accessible precisely because they are mainly staffed by women, and this has helped victims from the provinces, who may be skeptical or unaware of the formal justice system, to come and seek justice.

In addition to improving access, increasing women's participation can also ensure that the justice process is fair. A 2013 study on female prisoners in Nangarhar province showed that many women defendants were too ashamed to tell male defense lawyers and prosecutors the full facts about their case, especially in family cases, influencing the outcome of the case and even the severity of the sentence handed down by the court.⁶

> RURAL WOMEN
KNOW VERY LITTLE
ABOUT THE FORMAL
JUSTICE SYSTEM <

Finally, as noted by Afghanistan's National Action Plan for Women 2007-2017 (NAPWA), the low representation of women in the justice sector is an obstacle to the formulation of an appropriate government response to crimes against women, and contributes to women's lack of access to justice.⁷ Without the inclusion of women's perspectives – whether in urban areas, the provinces, or the courtroom – the justice sector cannot serve their needs.

⁵ Women and Children Legal Research Foundation (WCLRF), *Women's access to justice: problems and challenges*, (2008) 28. The WCLRF was established by Afghan women lawyers in 2003.

⁶ Hijratullah Ekhtyar 'Lack of Female Lawyers in Eastern Afghanistan' Institute for War and Peace Reporting, 5 April 2012.

⁷ Government of the Islamic Republic of Afghanistan, *National Action Plan for the Women of Afghanistan 2007-2017* (2008), 14.



Image: IDLO_Paul Hutchings



Image: Unitarian Universalist Service Committee

BARRIERS FACING WOMEN LEGAL PROFESSIONALS

The men and women surveyed for this report highlight a number of barriers facing women legal professionals:

1. Bias against women in the legal profession

While women's rights and opportunities have improved greatly since the fall of the Taliban in 2001, women in the legal profession must contend with gender-based perceptions of their roles and abilities. Societal norms still dictate that women remain in the home for domestic and familial obligations. In the male-dominated legal profession, the capacity to fulfill their job duties is also called into question on the basis of negative gender stereotypes. This creates a bias in the justice sector, with less qualified men being offered legal positions over women candidates.

2. Unequal legal education for men and women, because of unequal curricula and gender dynamics

Some Afghan women are only allowed by their families to enroll in Shari'a faculties because they offer a gender-segregated environment. But in these

institutions they are often taught unequal curricula, both in content and quality, compared with their male counterparts. Consequently, such female students lack the level of skills needed for legal practice after they finish their education, and subsequently only work as teachers in primary school.

In Law faculties, female professors are very much in the minority, and few if any can be found in Shari'a faculties or as full instructors in the stage (internship) training programs, which are a requirement for entering the legal profession. Without female professors, women find it difficult to openly discuss sensitive or controversial points of personal and family law. Having mostly male professors can also mean female students are not given equal respect for their opinions and views in the classroom. Some male professors discourage women from participating in class, by telling them that women are "irrational" or "emotional" and therefore unable to make sensible decisions.⁸ Such comments have negative flow-on consequences for women's confidence to enter the legal profession.

3. Unequal access to educational opportunities and practical legal training

Family, community and safety restrictions significantly affect girls' and women's abilities to access higher education. High rates of forced and underage marriage⁹ reinforce traditional perceptions of women's roles, which are seen as primarily domestic, making families reluctant to allow their daughters, sisters or wives to get an education. In addition, there is still the risk of insurgent attacks on girls' school faculties or school transport routes, including cases of en masse poisoning of girls attending school.

The stage training for recent legal graduates constitutes a requirement for the practice of law, whether in public institutions or private practice. But the location of the program, at the National Legal Training Center (NLTC) on Kabul University campus, excludes many women graduates from attending. Graduates residing outside Kabul must arrange for their own travel and accommodation in order to enroll in the mandatory nine-month program; >

⁸ Data collected by survey in May and June 2010.

⁹ Interviews conducted with Afghan women NGOs in July and August 2013.



Image: UN Photo_Eric Kanalstein



Image: UN Photo_Tim Page

BARRIERS FACING WOMEN LEGAL PROFESSIONALS (Continued)

> those able to do so generally have relatives in Kabul who can house them. But many women (especially unmarried women) are not able to do so, because their families will not allow them to travel to other provinces without a close male relative or legal guardian.

These travel restrictions also mean that most women cannot avail themselves of scholarship opportunities, because these also require them to travel outside their country, hometown or province. For this reason, scholarship awarding agencies may not even consider women applicants because it is assumed that their families will not allow them to take advantage of the opportunity. In addition, many survey respondents believe that scholarships have been mostly awarded to men because they have more personal or political contacts.

4. Lack of social and cultural norms to support women legal professionals

Many women feel that Afghan traditional society still does not see the justice sector as an appropriate profession for them. They also feel they lack decision-making authority, particularly after

marriage, to support their choices to attend school or work outside the home. Even when women succeed in becoming legal professionals, they are overly burdened by family obligations (including childcare), which remain their sole responsibility. Except for some government institutions, most employers do not provide childcare assistance, but still expect their female staff to perform as though they do not have such family obligations. This creates a bias among families and communities towards women working as teachers – which is viewed as part-time work, and thus easier to balance with domestic responsibilities – rather than as legal professionals with public responsibilities.

5. Lack of safety and freedom of movement

Whether due to security concerns or social and familial pressures, the inability of Afghan women to travel alone restricts their access to legal education and the obligatory stage training program. It also prevents them from carrying out professional duties which require them to visit

> SOME AFGHAN WOMEN HAVE NEVER SEEN A FEMALE LEGAL PROFESSIONAL <

prisons and witnesses outside of city centers. Female respondents working in legal aid and women's NGOs cite insecurity as a key reason why they cannot travel to remote districts. This prevents them from speaking with villagers, undertaking legal awareness programs, conducting investigations, interviewing witnesses, and preparing case files and reports. Consequently, women in more remote locations may never meet women who are legal professionals or become aware of their rights under Afghan law. In addition to travel risks, legal aid and defense lawyers frequently experience physical intimidation designed to prevent them from interviewing victims of violence or from sheltering women escaping abusive home situations.



Image: UN Photo_Eric Kanalstein

POLICY RECOMMENDATIONS

1 Improve access to education for women through targeted affirmative action strategies, especially for rural women. Encourage school attendance through dormitories for women and/or safe transportation to educational institutions. The establishment of distance learning centers could improve access to required foundational courses.

2 Take into account special needs of women in education and the justice sector when designing affirmative action and capacity building programs. Specific requirements include, inter alia, increasing security at girls' schools, housing for women in stage training programs, and providing women legal professionals with day care/crèches.

3 Eliminate discrimination in women's higher legal education. Universities should review their legal curricula and recruit more women faculty members to ensure parity between courses provided to male and female students. International scholarships should be earmarked for female Law and Shari'a graduates to offset the preference given to male students with kinship and political connections.

4 Address knowledge gaps for women in their general and legal education. Strategies should include focusing on specific course requirements, such as religious and Arabic classes, or providing professional training programs to improve leadership and communication skills.

5 Promote entry of women into the legal profession. Enhance their career opportunities through affirmative action programs at all levels of the justice sector, and increase awareness of successful women in the justice sector through public awareness campaigns.



Image: UN Photo_Eric Kanenstein

**SIMA SAMAR**

Chairwoman,
Afghan Independent
Human Rights Commission

As Chairperson of the Afghan Independent Human Rights Commission, as the former (first) Minister of Women's Affairs and as a human rights defender, it is a great pleasure for me to read the International Development Law Organization's report *Women's Professional Participation in Afghanistan's Justice Sector: Challenges and Opportunities*.

IDLO's report encapsulates some of the progress we have made in women's rights since the fall of the Taliban, showing that the number of women legal professionals and female law and Sharia students has increased exponentially since 2010. We have clearly come a long way since the Taliban regime, where there were very few academic primary schools for girls, and almost no professional opportunities for women lawyers.

The report also gives me great hope for my country's future. It highlights that young Afghan women (and indeed, men) enter the legal profession for altruistic reasons, to address discrimination, to promote human rights and to contribute

to the country's reconstruction after decades of war. The report is a refreshing example of the enthusiasm and desires of this Afghanistan's younger generation and demonstrates that empowering Afghan women is key to establishing the rule of law, peace and democracy in Afghanistan. The reader is left with little doubt that Afghan women are raising their voices for justice in my country, a country where justice often proves far too elusive.

Yet the report also lucidly documents some of the challenges women legal professionals continue to face in Afghanistan. While some of these challenges are specific to the legal profession, many ring true for all female professionals in Afghanistan. The report shows that we need to tackle long enduring discriminatory social norms that plague Afghan society and hold back women's professional advancement and their human right to participate in political and social life. The issue of forced marriage and child marriage is just one example of how Afghan women are far too often unable to continue their professional life, due to social expectations that mothers cannot and should not work.

While many reports have been produced about Afghanistan in recent years, IDLO's report stands out because it provides some practical suggestions for ways to address some of these challenges and to give women legal professionals the space to succeed professionally. What is important now is that these recommendations are put into practice. As an Afghan woman and human rights activist, I am aware that defending the basic human rights of my country-women is not an easy endeavor. IDLO's report shows that women continue to face risks, threats,

intimidation and discrimination on one hand, and disparaging reactions from a male-dominated society and a prevailing conservative attitude on the other. Yet the report also shows that every female lawyer who joins the ranks of the profession and fights against oppression, every female judge who challenges discrimination, every prosecutor or female police who provides support to a victim of family violence, contributes to a better Afghanistan, an Afghanistan where justice, human rights and equality prevail.

IDLO must be congratulated for bringing increased attention to these women's aspirations and the obstacles they face in pursuing their goals. However this report is not enough. We must act now to translate this important research into concrete outcomes for women legal professionals, especially given what we know about the role women legal professionals play in addressing the barriers women face in accessing justice. I challenge the international community and Afghan government to work together to ensure that the many laws and policy commitments to support women's rights, including the recommendations contained in this report, do not just exist on paper, but that they become a reality, and are practiced on the ground. It is a critical time for concrete and collective action, as Afghanistan begins to take charge of its own security. Afghan women, who continue to be discriminated against, have been striving for a peaceful and decent life in Afghanistan for far too long – they deserve to live with rights and dignity. More importantly women should be recognized, included and supported to have a social justice and democratic Afghanistan. Because injustice for the women in Afghanistan is injustice to women everywhere.



Image: United Nations Development Programme

This report has been the work of a team of researchers, under the supervision of Ilaria Bottiglieri, IDLO's Chief of Research and Learning. IDLO would like to acknowledge the contribution of the Centre for Conflict and Peace Studies (CAPS) to the collection of data and recommendations contained in this report. We are particularly thankful to the many Afghan legal professionals who participated in the data collection process and provided their expert insights. Special thanks go to IDLO's Afghanistan team and to Renee Chartres for her input into the final report. IDLO expresses its gratitude to the Government of the United States of America and the Government of Italy for their financial contribution to this report.

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