

# WOMEN'S PROFESSIONAL PARTICIPATION IN AFGHANISTAN'S JUSTICE SECTOR: CHALLENGES AND OPPORTUNITIES



## IDLO Gender Pledge Series

At the High Level Meeting of the 67<sup>th</sup> Session of the United Nations General Assembly (UNGA) on the Rule of Law at the National and International Levels in September 2012, IDLO made the following pledge:

“We pledge to undertake a global survey of the role of women in justice sector institutions and to analyze the legal barriers to women’s access to justice, with a timetable geared to the elaboration of the post-2015 Development Agenda. We will work to ensure that women’s increased participation in the justice system and legal reforms to enhance women’s rights are accorded due priority in that Agenda.”

By drawing attention to the number of women legal professionals in the justice sector, as well as the barriers that women legal professionals face in entering and participating in the sector, IDLO hopes to encourage national governments and the international community to direct more resources and energies towards addressing the unique needs and challenges faced by current and prospective women legal professionals.

IDLO believes that improving women’s ability to work in justice institutions is essential – not only to ensure that women enjoy democratic freedoms and equality of opportunity in the workplace, but also to ensure that the specific interests of women are represented and advanced in justice institutions.

IDLO’s pledge is all the more important as the post-2015 development agenda takes shape. At this critical juncture, the international community has the opportunity to demonstrate its commitment to gender equality, including through the drafting of targets and indicators that amplify women’s voices, leadership and participation in justice institutions.

Front cover image: World Bank\_Graham Crouch





**IRENE KHAN**  
Director-General, IDLO

➤ 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 ◀

**A**t 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**  
Director General,  
Italian Development  
Cooperation,  
Ministry of Foreign Affairs,  
Government of Italy

## A MESSAGE FROM THE ITALIAN GOVERNMENT

**T**he 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 Violence against Women (VAW) 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.

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## ACRONYMS

<b>AIBA</b>	Afghanistan Independent Bar Association	<b>MOWA</b>	Ministry of Women's Affairs
<b>AIHRC</b>	Afghanistan Independent Human Rights Commission	<b>NAPWA</b>	National Action Plan for the Women of Afghanistan
<b>AGO</b>	Attorney General's Office	<b>NJP</b>	National Justice Program
<b>ANDS</b>	Afghanistan National Development Strategy	<b>NLTC</b>	National Legal Training Center
<b>AWJA</b>	Afghanistan Women Judges Association	<b>NJSS</b>	National Justice Sector Strategy
<b>AWN</b>	Afghan Women's Network	<b>SAARC</b>	South Asian Association for Regional Cooperation
<b>CAPS</b>	Centre for Conflict and Peace Studies	<b>SC</b>	Supreme Court
<b>HRW</b>	Human Rights Watch	<b>SPSS</b>	Statistical Package for Social Sciences
<b>IDLO</b>	International Development Law Organization	<b>UN</b>	United Nations
<b>MDGs</b>	Millennium Development Goals	<b>UNAMA</b>	United Nation Assistance Mission in Afghanistan
<b>MOE</b>	Ministry of Education	<b>UNDP</b>	United Nations Development Programme
<b>MOHE</b>	Ministry of Higher Education	<b>UNHDP</b>	United Nations Human Development Report
<b>MOI</b>	Ministry of Interior	<b>UNGA</b>	United Nations General Assembly
<b>MOJ</b>	Ministry of Justice	<b>VAW</b>	Violence Against Women
<b>MOLSA</b>	Ministry of Labor and Social Affairs	<b>WCLRF</b>	Women and Children Legal Research Foundation



# EXECUTIVE SUMMARY AND POLICY RECOMMENDATIONS

# EXECUTIVE SUMMARY

**W**omen's Professional Participation in Afghanistan's Justice Sector: Challenges and Opportunities<sup>1</sup> is the first national study in furtherance of 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.

The report comes at a critical time. Having emerged from five years of Taliban rule in 2001 as a "truly devastated country,"<sup>2</sup> Afghanistan is now working hard to rebuild its institutions and make them sustainable and responsive to the needs of its men and women.

The findings presented in Women's Professional Participation are the result of a data collection process that took place in the Afghan cities of Kabul and Herat in 2010, 2011 and 2013. In order to obtain a rich mix of qualitative and quantitative data, the research methodology involved in-depth interviews, questionnaires and focus group discussions. Statistical data on women's representation in nine key justice entities and educational institutions was also received from relevant ministries. In total, 13 justice and educational institutions and 12 non-governmental and international organizations in Afghanistan contributed to the study's findings.

These findings are highly revealing. At the quantitative level, it emerges that 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 generally, and women legal professionals in particular. In 2013, women constituted 8.4% of judges, 6% of prosecutors and 19.3% of lawyers registered with the Afghanistan Independent Bar Association

(AIBA). By comparison, in 2011 women made up 6.65% of judges in Jordan, while in Iran the ban on women judges has only recently been lifted (although women are not allowed to issue and sign final verdicts).<sup>3</sup> In affluent Kuwait, women constituted 20% of the members of the Bar Association in 2011, only fractionally more than in Afghanistan.<sup>4</sup>

Women's Professional Participation highlights that although Afghan women remain underrepresented as law students, the number of women enrolled in law schools has increased dramatically. According to the Ministry of Higher Education (MOHE), in 2008-2009 women made up 12%, or 105, of the Law and Shari'a faculty graduates across the country. Three years later, in 2011-2012, women constituted 16%, or 247, of the graduating cohort. Further, in focus group discussions both female and male legal professionals interviewed responded positively about the opportunities available to women legal professionals. Women also constituted 17% of all lecturers in Law faculties and 1% of Shari'a university lecturers.

At the substantive level, Women's Professional Participation exposes the considerable obstacles encountered by Afghan women when seeking to enter the justice sector, as well as in their daily work as legal professionals. Although some of these constraints are cultural, including social pressure and negative stereotypes about women's role in society, others are practical impediments, including lack of safe transportation and appropriate accommodation facilities for women to attend law or Shari'a faculties, or compulsory legal training based in Kabul.

The research shows that women often do not have equal access to legal education curricula and professional development opportunities compared to their male counterparts, with direct consequences in terms of entry into the profession and opportunities for career

advancement. IDLO's analysis also points to 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, particularly in high-level leadership positions.

Women's Professional Participation identifies a number of obstacles to women's participation in the legal profession that are complex and not easy to address. For example, ongoing insecurity poses a risk to 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-only transportation facilities to law and Shari'a faculties. What appears to be needed is genuine political will, combined with long-term human and financial investment to address these issues. A holistic, multi-sectoral approach, encompassing the political, cultural and economic dimensions of the barriers identified is also essential, both to tackle deeply entrenched discrimination and to ensure lasting results.

While IDLO's research did not analyze the impact of women legal professionals and judges on the fairness of justice outcomes in Afghanistan, IDLO believes that 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.

Women's Professional Participation suggests that 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. Similarly, the small number of female professionals within the justice sector appears to have negative repercussions for the design and delivery of appropriate policies to address women's access to justice and other public services.

<sup>1</sup> Hereinafter referred to as: *Women's Professional Participation*.

<sup>2</sup> Islamic Republic of Afghanistan, *Afghanistan National Development Strategy 1387 – 1391*, 3 [hereinafter *ANDS*] available at: [http://moj.gov.af/Content/files/Afghanistan\\_National\\_Development\\_Strategy%20ANDS.pdf](http://moj.gov.af/Content/files/Afghanistan_National_Development_Strategy%20ANDS.pdf) (last accessed 12 March 2013)

<sup>3</sup> UNICEF, *MENA Gender Equality Profiles from the Middle East and North Africa Region, 2011*, available at: [http://www.unicef.org/gender/gender\\_62215.html](http://www.unicef.org/gender/gender_62215.html) (last accessed 13 October 2013).

<sup>4</sup> *Ibid.*

## POLICY RECOMMENDATIONS

**T**he findings presented in this report indicate that more must be done to promote women's professional participation in Afghanistan's justice sector. To that end, it is recommended that:

1. The specific needs of women legal professionals are duly taken into account in designing capacity building and technical assistance programs for justice sector professionals.
2. Effective, context-specific strategies are put in place to improve the participation and safety of women in the justice sector. This may include safe housing and transportation facilities, earmarked scholarships, or curricula designed to address women's specific skill requirements, such as religious classes, computer classes or Arabic classes.
3. Opportunities are explored to increase women's interest in joining the legal profession, including through the promotion of positive examples of women in the justice sector.
4. Engagement strategies with all legal education institutions are put in place, to promote non-discriminatory access of women to legal education.
5. Engagement strategies with civil society and professional associations are put in place, to ensure the relevance and sustainability of measures targeting women's professional participation in the justice sector. This may include financial and technical support for women legal and judicial professional associations.

› FOUNDATIONAL COURSES, INTERNET CENTERS, WOMEN'S DORMITORIES AND SECURE TRANSPORTATION WOULD ALL HELP ◀



Image: UN Photo\_Fardin Waezi

### A Targeted Methodology

Women's Professional Participation is the outcome of the first national study undertaken by IDLO in furtherance of its gender pledge at the UNGA. The report features a data-driven qualitative and quantitative assessment of the obstacles women face in participating in the legal and judicial profession, from enrollment in legal education to nomination and appointment to the highest-level legal offices. It highlights the challenges faced by women legal professionals, and recommends possible solutions to enhance women's advancement in the justice sector.

The report's data collection process was entirely Afghan led. Data was collected based on a participatory, locally-based methodology designed to capture women's observations and concerns.

The baseline data collected in 2010 was

revisited and updated in 2011 and 2013. The report features data composed from multiple sources, including a survey assessing 518 legal professionals in Afghanistan's main cities (Kabul and Herat) in June 2010;<sup>5</sup> focus group discussions; statistics provided by official government sources; secondary research into existing studies; and surveys and interviews undertaken in cooperation with the Centre for Conflict and Peace Studies (CAPS), an Afghan research center. The report also integrates findings and observations from the IDLO conference *Challenges and Contributions of Women Legal Professionals*, organized in conjunction with CAPS and the AIBA in Kabul on 5 June 2010, where 150 participants attended to discuss obstacles and opportunities for women legal professionals in Afghanistan.

For the purposes of the report, the term

'justice sector' refers not only to national justice institutions, specifically, the judiciary, the Ministry of Justice (MOJ), the legal department of the Ministry of Women's Affairs (MOWA), the Attorney General's Office (AGO) and the AIBA, but also to educational institutions offering Law and Shari'a degrees and follow-up professional training.

The term 'legal professionals' refers to lawyers, advocates, prosecutors, judges, law professors and legal experts. It does not include police force members, although reference is made to women in the police force to support the study's findings. For all purposes, this study strove to capture data related to women legal professionals in justice sector institutions. In some cases, however, data was only available to reflect women's participation in justice institutions generally, and was not disaggregated by type of employment position.

<sup>5</sup> See Appendix 1 wfor a more detailed analysis of the 2010 research design.



**SECTION ONE:**  
THE CHALLENGE OF  
EMPOWERING WOMEN TO  
PARTICIPATE IN AFGHANISTAN'S  
JUSTICE SECTOR

# THE CHALLENGE OF EMPOWERING WOMEN

**D**ue to a long history of civil war, repressive regimes and occupation, Afghanistan remains one of the world's poorer countries, with alarmingly low human development indicators. 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.<sup>6</sup>

The Afghan Government's National Development Strategy (ANDS) for 1387 – 1391 (2008 – 2013) explains that the Taliban period had particularly devastating consequences for Afghan women:

*With the Taliban dominating the political landscape from 1375 [1996] onwards, Afghanistan had been moving backwards in all aspects. The results of war, the destruction of core institutions of state and a heavily war torn economy led to unrivalled levels of absolute poverty, national ill health, large scale illiteracy and the almost complete disintegration of gender equity.<sup>7</sup>*

While the subsequent years of reconstruction have produced some noteworthy advances, the legacy of three

decades of civil war, ongoing insecurity, lack of coordination in rebuilding efforts, and ineffective governance continue to dominate the Afghan landscape, and color efforts to advance women's status and influence in both the domestic and public spheres.

Although an impressive number of women entered or re-entered the labor force after the fall of the Taliban, in general these improvements have taken place in urban areas, where women enjoy relatively better access to education, legal awareness, and employment opportunities. In the provinces, where the bulk of the Afghan population resides, far fewer women have entered or re-entered the labor force, with the result that the vast majority of women still do not participate in paid economic activities, a situation which leaves them highly dependent on their husbands or families.<sup>8</sup>

As IDLO's research points out, justice institutions still struggle to recruit and retain qualified professionals generally, and women legal professionals in particular. Nationwide in 2013, women constituted only 8.4% of judges, 6% of prosecutors and 19.3% of lawyers registered with the AIBA. They also made up 17% of law lecturers and just 1% of Shari'a lecturers in the country.



Image: UN Photo\_Eric Kanalstein.

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

<sup>6</sup> Islamic Republic of Afghanistan, *Afghanistan National Development Strategy 1387 – 1391 (2008-2013)*, 3 [hereinafter ANDS] available at: [http://moj.gov.af/Content/files/Afghanistan\\_National\\_Development\\_Strategy%20ANDS.pdf](http://moj.gov.af/Content/files/Afghanistan_National_Development_Strategy%20ANDS.pdf) (last accessed 12 March 2013)

<sup>7</sup> Ibid 1.

<sup>8</sup> Ibid 27.

# ADDRESSING WOMEN'S PROFESSIONAL PARTICIPATION IN AFGHANISTAN'S JUSTICE SECTOR: WHY DOES IT MATTER?

**I**t is widely acknowledged that the mere presence of women legal professionals does not automatically equate to an increased ability among women to seek and obtain justice through formal institutions. In fact the idea that women bring “an ethic of care”<sup>9</sup> and have a distinct voice in the performance of their judicial or legal roles has been described as “dangerous and unanswerable,” with the view that such an assertion risks reifying certain ‘feminine’ ideals perceived as unique to women, and fails to account for the significant differences between women themselves, based, for example, on class or ethnicity.<sup>10</sup> Indeed, surveys that have attempted to detect difference between women and male judges struggle to support the claim and often, in fact, negate the assertion.<sup>11</sup> To this end, it is important to accept that no study to date has clearly demonstrated the inherent advantage from a justice perspective of the presence of women legal professionals in the justice sector. This is an obvious limitation of the present study and worth further exploration.

Nonetheless, there is evidence that as a result of Afghanistan's strict gender-segregated social code, the low presence of women as legal professionals – lawyers, prosecutors and judges – has meant that many Afghan women continue to fear, and be intimidated by, the formal justice system, which in turn dissuades them from reporting abuses against them. A major national study of women's access to justice carried out by the Women and Children Legal Research Foundation (WCLRF study) affirms that the lack of female staff in the justice system, whether in Kabul or other provinces, means that women are less likely to come forward to access the justice system.<sup>12</sup> This is especially the case when the matter is sensitive, for instance in cases of sexual violence. In this regard, the WCLRF study notes:

*The shortage of female staff in the judicial institutions has been considered as one of the main challenges for most of the respondents to obtain justice. Afghan women, in most cases victims of crimes such as rap[e], domestic violence or accused of adultery feel more comfortable before female staff.*<sup>13</sup>

The WCLRF study recommends that women who are interested in becoming police officers, attorneys and lawyers are encouraged and supported.<sup>14</sup>

The December 2012 UNAMA Report on the Implementation of the EAW Law (UNAMA report) also underscores the value of increasing the participation of women professionals in the justice sector from an access-to-justice perspective. The UNAMA report observes that in Afghanistan, women victims of violence frequently do not report their situation to law enforcement and judicial institutions due to cultural restraints, social norms and taboos, customary and religious beliefs relegating women to subordinate positions, fear of social stigma, exclusion and, at times, even threat to life.<sup>15</sup> Against this backdrop, the UNAMA report emphasizes that “the role of female police in addressing violence against women complaints cannot be overstated in the context of Afghanistan where women prefer to talk to women on matters pertaining to their personal lives.”<sup>16</sup> Similarly, Human Rights Watch (HRW), expressing its concern about violence against women in Afghanistan, signaled the importance of recruiting and retaining female police officers, especially because “cultural norms mean that Afghan women find it difficult to speak with a non-relative male police officer, particularly in

<sup>9</sup> Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Harvard University Press, 1982).

<sup>10</sup> Dermot Feenan ‘Women Judges: Gendering Judging, Justifying Diversity’ *Journal of Law and Society* (December 2008) 492.

<sup>11</sup> *Ibid* 492.

<sup>12</sup> Women and Children Legal Research Foundation (WCLRF), *Women's access to justice: problems and challenges*, [2008] 28, available at: <http://www.wclrf.org.af/wp-content/uploads/2012/04/Women-Access-To-Justice-Final1.pdf> (last accessed 12 March 2013). The WCLRF was established by Afghan women lawyers in 2003.

<sup>13</sup> *Ibid* 28.

<sup>14</sup> *Ibid* 49.

<sup>15</sup> UNAMA, *Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan*, [December 2012] 24, available at: <http://unama.unmissions.org/LinkClick.aspx?fileticket=Qy9mDiEa5Rw%3d&tabid=12254&language=en-US> (last accessed 25 July 2013).

<sup>16</sup> The UNAMA Report states that according to estimations of the Afghanistan Independent Human Rights Commission office in Paktya, almost 80 per cent of relevant cases of violence against women are not reported to the ANP or the judiciary. *Ibid* 30.

relation to domestic violence or sexual assault.”<sup>17</sup> This instrumentalist rationale for supporting the recruitment of female police officers can be equally applied to other key professions involved in the justice process, given that witnesses will usually also have to discuss details of their matter with prosecutors, defense lawyers and judges.

Consistent with this view, the 2013 Women Peace and Security Research Institute study on the 2009 EAW Law (WPSRI study), records that the IDLO-supported Violence against Women Prosecution Units (VAW Units)<sup>18</sup> are an important entry point for many women victims of violence in Afghanistan, with respondents to the WPSRI study describing the VAW Units as accessible because “they are mainly packed with women.”<sup>19</sup> Almost all respondents signaled that having a woman in charge of the VAW Units was helping victims from far away districts to come and seek justice.<sup>20</sup> This suggests that increasing the number of professional women participating in the administration of justice, especially at the local level, could, at a minimum, contribute to the readiness of women to approach the formal justice system to seek redress for civil or criminal wrongs.

There is also some evidence that the presence of women defense lawyers correlates positively with the fairness of the trial process for women defendants. 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, which might have reduced the severity of the sentence handed down by the court or even provided a legal defense to the charge they were facing. For instance, one women prisoner reported:

*The lack of female judges and lawyers is a big problem...out of a sense of shame we cannot tell men the truth about our cases. Female lawyers and judges would understand the problems facing women better. No matter how much I complained about my mother-in-law's cruelty the male lawyers wouldn't show mercy.*<sup>21</sup>

In the study, the head of the Nangarhar Office of Prosecutions agreed that having female prosecutors question defendants of the same sex would be better for ensuring justice, noting that “many female suspects conceal the truth from male lawyers, particularly in ‘moral’ and family cases. The lawyer does not get the whole story. This also has an impact on the punishment imposed on the defendant.”<sup>22</sup>

IDLO’s focus groups with female law students in 2010 also revealed that women in Afghanistan frequently enter the legal profession for altruistic reasons relating to improving access to justice for women. For example, two recent Shari’a graduates enrolled in the NLTC stage program to prepare for their entry into the profession echoed

the sentiment of many other women interviewed who opted to learn Shari’a and to know about women’s rights in Islam:

*When I was a child, there were many questions about women's rights from the viewpoint of Islam in my mind and because Islam has provisions and rules in every aspect of life, therefore I could find my answers by studying Shari'a. I was interested in Shari'a most and as you know my country is an Islamic one and I wanted to know what are women's rights in Islam and to inform others because our people have a wrong concept of Islam.*

Several other recent graduates in the discussions asserted “law means access to equal rights through justice.” The young women were well aware of the gender imbalance in the profession and, as one explained, “I want to defend my rights and because the number of men is more than women in courts I would like to balance it.” Others took on gender roles more directly:

*Women have always been the low class of society and exposed to violence. I want to struggle against violence and injustice.*

*In our community boys have supremacy over girls; even families consider the wishes of boys and believe that girls should be housewives. I want to change this idea.*

<sup>17</sup> Human Rights Watch, *Submission on the combined initial and second periodic report of Afghanistan to the United Nations Committee on the Elimination of Discrimination against Women (23 June 2013)*, 4, available at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/AFG/INT\\_CEDAW\\_NGO\\_AFG\\_13701\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/AFG/INT_CEDAW_NGO_AFG_13701_E.pdf) (last accessed 24 July 2013).

<sup>18</sup> The first VAW Unit within the Attorney-General's Office was set-up with the support of IDLO in Kabul in March 2010, with the objective of improving awareness, investigation and prosecution of crimes of violence against women and girls. Since then, IDLO's program has expanded to include VAW Units in seven other provinces in Afghanistan. The Afghan Attorney General has remarked that the establishment of the VAW Units is one of the “key achievements of Afghanistan in its new era of progress after 30 years of war.” Italian Ministry of Foreign Affairs (MAE-DGCS) and IDLO, *Supporting the National Justice Sector Strategy of Afghanistan: Improving Security, Legal Rights and Legal Services for the Afghan People Year II, Narrative Report, 1 July 2010 – 31 August 2011*, (2011) 18.

<sup>19</sup> Women Peace and Security Research Institute, *Access to Justice is a Women's Security: A Baseline Study on the Implementation of the Elimination of Violence against Women Law (2009)* (April 2013), 10.

<sup>20</sup> *Ibid* 11.

<sup>21</sup> Hijratullah Ekhtyar ‘Lack of Female Lawyers in Eastern Afghanistan’ Institute for War and Peace Reporting, 5 April 2012, available at: <http://iwpr.net/report-news/lack-female-lawyers-eastern-afghanistan>

<sup>22</sup> *Ibid*.

## ADDRESSING WOMEN'S PROFESSIONAL PARTICIPATION IN AFGHANISTAN'S JUSTICE SECTOR: WHY DOES IT MATTER? (continued)



Image: UN Photo\_Shehzad Noorani

One female prosecutor in Kabul with 15 years of experience at the AGO reinforced the need for more women legal professionals to achieve a more just society:

*We are living in a society in which women face violence, almost daily. In order to provide justice for women and victims, women should be recruited to the justice and judicial sector.*

While potentially self-serving, these sentiments indicate that recruiting women into Afghanistan's legal sector may have positive flow-on effects by addressing the widespread social codes that condone discrimination and violence against women.

It is also important to recognize that increasing the representation of women in the legal profession in Afghanistan can have a positive impact on the development and delivery of justice

policies. For example, Afghanistan's National Action Plan for Women 2007-2017 (NAPWA) laments the "low representation of women in the justice sector" because this is seen *inter alia* as an obstacle to the formulation of a proper government response to crimes against women and women's lack of access to justice:

*Low numbers of women working in the justice sector and in law enforcement bodies mean that women's perspectives are not often included in laws and policies and that Government is unable to appropriately respond to sensitive issues involving women due to lack of female police officers and counselors.<sup>23</sup>*

Increasing the presence of women legal professionals, particularly in national justice ministries such as the MOJ or the AGO, can therefore help ensure that the group-specific interests of women are advanced

when justice policy and regulatory frameworks are developed. However, such measures are only the first step towards addressing gender inequality - a holistic approach, embodied in a substantive mainstreaming agenda, is required to ensure that women are empowered to meaningfully participate in the formulation and drafting of justice sector policies.<sup>24</sup>

Finally, it is worth noting that improving women's professional participation in Afghanistan's justice sector is an important step towards achieving women's equality, democracy and the rule of law. As the UN Committee on the Convention on the Elimination of Discrimination against Women expressed in its General Recommendation No 23 on Article 7 of the CEDAW:<sup>25</sup>

*Policies developed and decisions made by men alone reflect only part of human experience and potential. The just and effective organization of society demands the inclusion and participation of all its members.*

*Societies in which women are excluded from public life and decision-making cannot be described as democratic. The concept of democracy will have real and dynamic meaning and lasting effect only when political decision-making is shared by women and men and takes equal account of the interests of both. The examination of States parties' reports shows that where there is full and equal participation of women in public life and decision-making, the implementation of their rights and compliance with the Convention improves.<sup>26</sup>*

<sup>23</sup> Government of the Islamic Republic of Afghanistan, *National Action Plan for the Women of Afghanistan 2007-2017* (2008), 14, [hereinafter NAPWA], available at: <http://mowa.gov.af/en/page/6686> (last accessed 12 March 2013).

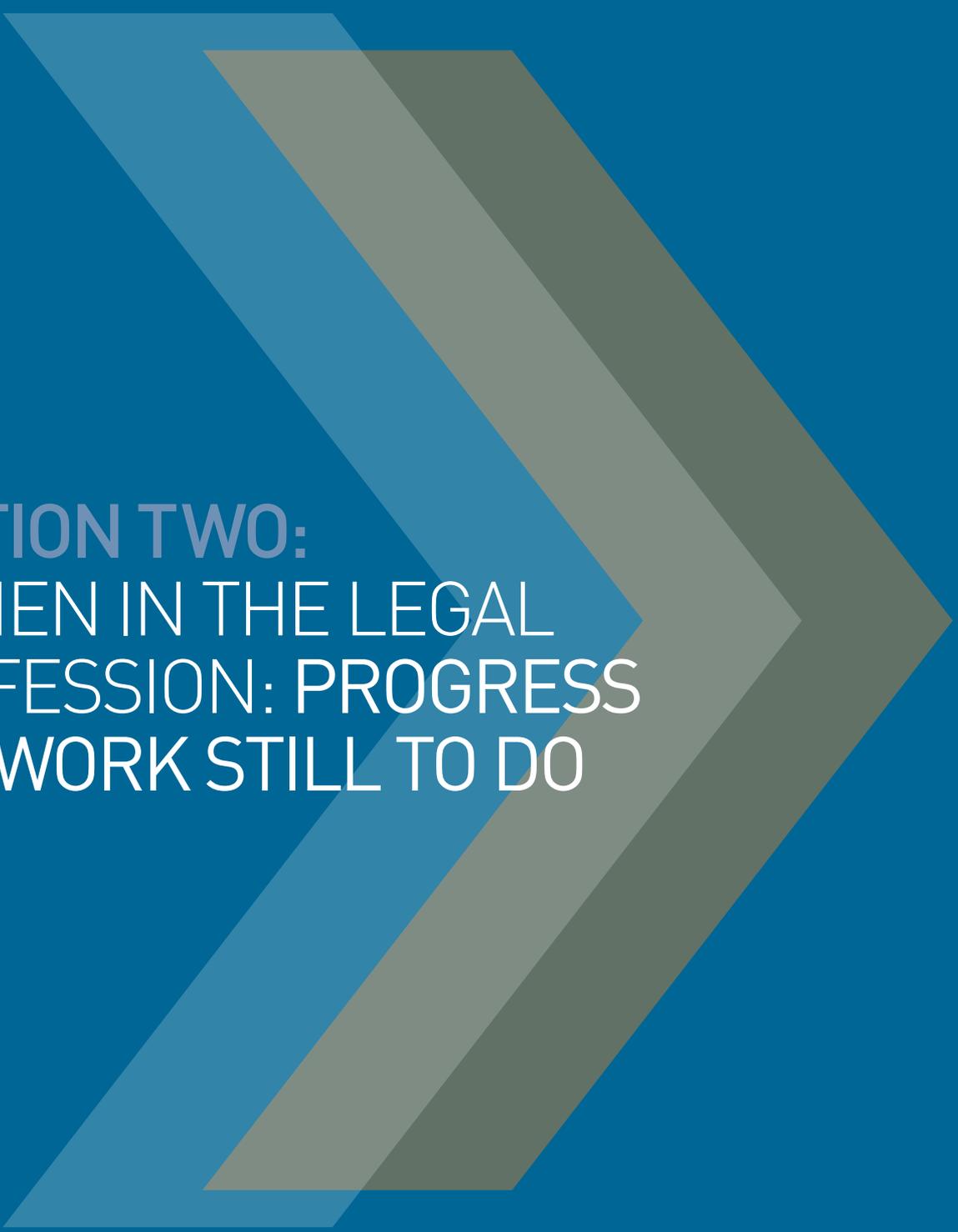
<sup>24</sup> For discussion on Afghanistan's affirmative action program, see Anna Wordsworth, 'Moving into the mainstream: integrating gender in Afghanistan's National Policy,' *Working Paper Series, Afghanistan Research and Evaluation Unit (AREU)* (February 2008), available at: <http://www.areu.org.af/Uploads/EditionPdfs/803E-Moving%20to%20Mainstream-WP-print.pdf> (last accessed 12 October 2013).

<sup>25</sup> *General recommendation 23 refers to political and public life as encompassing the exercise of legislative, judicial, executive and administrative powers and covering all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels; and including civil society, such as public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women's organizations, community-based organizations and other organizations concerned with public and political life (para 5). See Report of the Working Group on the issue of discrimination against women in law and in practice* (19 April 2013), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/132/51/PDF/G1313251.pdf?OpenElement> (last accessed 27 July 2013).

<sup>26</sup> CEDAW Committee, *General Recommendation No. 23* (16th session, 1997), available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom23> (last accessed 24 July 2013)



Image: UN Photo\_Eric Kanalstein



**SECTION TWO:**  
WOMEN IN THE LEGAL  
PROFESSION: PROGRESS  
BUT WORK STILL TO DO

# PROGRESS BUT WORK STILL TO DO

## 1. Women's overall participation in the labor force<sup>27</sup>

In 2011 the World Bank recorded that overall labor market participation in Afghanistan was 49%, with 80% of men and 16% of women over the age of 15 in the labor market.<sup>28</sup> Data gathered in 2013 from the Ministry of Labor and Social Affairs (MOLSA) indicated that the Afghan working age population was around 14 million, approximately half of whom are unemployed. Of the employed, 5.88 million were men and 1.13 million were women.<sup>29</sup>

Following a year-long study, the Afghanistan Research and Evaluation Unit (AREU), recently found that women's representation in the Afghan labor force was disorganized and fractured, with women's work frequently unaccounted for because women were "mostly engaged in unpaid or low-paying labor in insecure and vulnerable jobs, and in an informal and unregulated economy."<sup>30</sup> These conclusions follow the findings of the Afghanistan National Risk and Vulnerability Assessment 2007/2008 (Afghan Vulnerability report)

which recorded that Afghan women who worked held less secure jobs than men and worked fewer hours.<sup>31</sup> According to this report, women's overall share in wage employment in the non-agricultural sector was only 8%, a figure which increased to 44% in the agriculture and livestock sector.<sup>32</sup> There is also considerable discrepancy in the wages men and women receive in Afghanistan. In the agricultural sector, women are paid an average of 54% of the wages paid to men, while in non-farm occupations women earned an average 49% of male wages.<sup>33</sup>

According to the Afghanistan Vulnerability report, there are multiple factors that contribute to the significant gender gap in Afghanistan's workforce:

*Underlying causes are a variety of competing demands and barriers for women, such as their care-taking responsibility for children, elderly and the disabled, frequent pregnancies, household chores, low educational attainment and restricted mobility. These conditions determine the large gender gaps at all age levels. The largest gender gap of 45 percent is found in the age group 40-64.*<sup>34</sup>

Likewise, the majority of female professionals surveyed for this study cited traditional and "tribal" influences, narrow perceptions of gender roles, family restrictions, religion, the urban-rural divide in available resources and the lack of equal access to education, gender discrimination and low security as challenges that undermined women's status and ability to participate in the workforce in Afghanistan.

Interestingly, projects targeting women's economic participation have been shown to be effective in combating discriminatory gender norms. According to AREU, increasing women's economic participation can "result in significant changes in self-perception and ability at levels enough to bring about altered gender roles within the family and the community ... such women are able to contest accepted gendered frames of reference and can cause some alteration in the perception of a woman as a 'dependent'."<sup>35</sup> Presumably the same positive flow-on effects would apply when women are provided with sufficient opportunities to enter, participate and advance in the justice sector.

<sup>27</sup> The Afghanistan National Risk and Vulnerability Assessment 2007/2008 indicated that the overall labor force participation rate of the population aged 16 and over in Afghanistan was 67%, with 47% of working age women in the labor force compared with 80% of working age men. ICON-INSTITUTE, National Risk and Vulnerability Assessment 2007/8: A Profile of Afghanistan, (October 2009), 5 available at: [http://ec.europa.eu/europeaid/where/asia/documents/afgh\\_nrva\\_2007-08\\_full\\_report\\_en.pdf](http://ec.europa.eu/europeaid/where/asia/documents/afgh_nrva_2007-08_full_report_en.pdf) (last accessed 12 March 2013).

<sup>28</sup> 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> (last accessed 26 July 2013); World Bank, Labor participation rate, male (% of male population ages 15+), available at: <http://data.worldbank.org/indicator/SL.TLF.CACT.MA.ZS> (last accessed 26 July 2013); World Bank, Labor participation rate, female (% of female population ages 15+), available at: <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS> (last accessed 26 July 2013).

<sup>29</sup> Data collected from the MOLSA in July and August 2013.

<sup>30</sup> Lena Ganesh, 'Women's Economic Empowerment in Afghanistan: Creating Spaces and Enabling the Environment', Afghanistan Research and Evaluation Unit (August 2013) 2, available at: <http://www.areu.org.af/Uploads/EditionPdfs/policynote.pdf> (last accessed 10 October 2013)

<sup>31</sup> ICON-INSTITUTE, National Risk and Vulnerability Assessment 2007/8: A Profile of Afghanistan, (October 2009), 5 available at: [http://ec.europa.eu/europeaid/where/asia/documents/afgh\\_nrva\\_2007-08\\_full\\_report\\_en.pdf](http://ec.europa.eu/europeaid/where/asia/documents/afgh_nrva_2007-08_full_report_en.pdf) (last accessed 12 March 2013).

<sup>32</sup> Ibid 32.

<sup>33</sup> UNIFEM, Factsheet: Afghanistan (2010).

<sup>34</sup> ICON-INSTITUTE, National Risk and Vulnerability Assessment 2007/8: A Profile of Afghanistan, (October 2009) 5.

<sup>35</sup> Lena Ganesh, 'Women's Economic Empowerment in Afghanistan: Creating Spaces and Enabling the Environment', Afghanistan Research and Evaluation Unit (August 2013) 2.

## WOMEN IN THE LEGAL PROFESSION: PROGRESS BUT WORK STILL TO DO (continued)

Apart from the inherent value of gender equality, discussed above, increasing the participation of women in the economy is also integral to Afghanistan's sustainable development.<sup>36</sup> According to the 2012 World Bank Development Report:

*Gender equality can have large impacts on productivity. Women now represent more than 40 percent of the global labor force, 43 percent of the agricultural workforce, and more than half of the world's university students. For an economy to be functioning at its potential, women's skills and talents should be engaged in activities that make the best use of those abilities.*<sup>37</sup>

The low participation of women in the formal economy is therefore a significant untapped potential that Afghanistan can ill afford. This has also been recognized by the Afghan people themselves. In the 2012 Asia Foundation survey of the Afghan people (Asia Foundation survey), lack of job opportunities was the second most cited problem facing women in their area, according to both male and female respondents.<sup>38</sup>

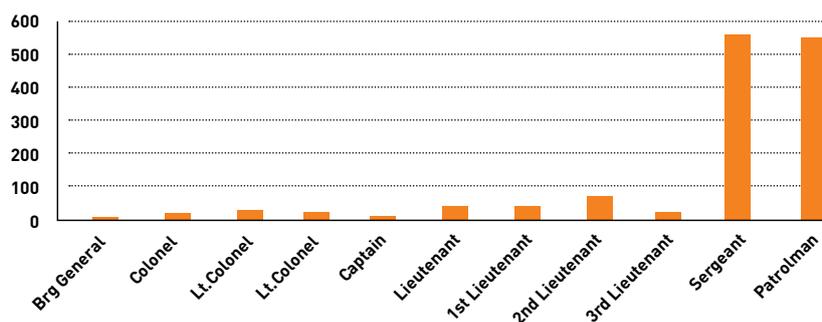
### Women in the police force

The number of women in the Afghan National Police (ANP) has steadily increased in the past few years. According to baseline gender statistics provided by MOWA in 2008 there were only 275 (0.4%) female police personnel in the country as of July 2007. By rank, women police constituted only 0.5% of officers, 2.0% of sergeants, and 0.1% of soldiers.<sup>39</sup> By the end of 2011, according to the UNDP, the total number of Afghan

policewomen countrywide was 1313.<sup>40</sup>

More recent data provided by MOWA and MOI, based on the Afghan lunar calendar, indicates that 1350 women were recruited in 2012, with the MOI putting the total number of policewomen in Afghanistan in July 2013 at 2200.<sup>42</sup> To note, the MOI's strategy calls for a corps of 5,000 women police officers by 2014, an ambitious target given existing numbers.<sup>43</sup>

Ranking of Female Police in the ANP in 2011<sup>41</sup>



<sup>36</sup> See, for example, 2012 APEC Women and the Economy Forum, Outcome Statement 'Gender equality is smart economics, as it enhances an economy's productivity, improves development outcomes for the next generation, and makes institutions more representative' (June 2012), available at: [http://www.apec.org/meeting-papers/ministerial-statements/women/2012\\_women.aspx](http://www.apec.org/meeting-papers/ministerial-statements/women/2012_women.aspx) (last accessed 12 March 2013); APEC 'Women are vital to power economic growth, says US Secretary of State Clinton', News Release (16 September 2011) available at: [http://www.apec.org/Press/News-Releases/2011/0916\\_wes.aspx](http://www.apec.org/Press/News-Releases/2011/0916_wes.aspx) (last accessed 23 July 2013).

<sup>37</sup> World Bank, World Development Report 2012: Gender Equality and Development—Overview, available at: <http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-1315936231894/Overview-English.pdf> (last accessed 26 July 2013).

<sup>38</sup> The Asia Foundation, Afghanistan in 2012: A Survey of the Afghan People, [2012] [hereinafter Asia Foundation survey], 157, available at: <http://asiafoundation.org/country/afghanistan/2012-poll.php> (last accessed 14 July 2013).

<sup>39</sup> Ministry of Women's Affairs (MOWA), Women and Men in Afghanistan: Baseline Statistics on Gender (2008), 13, available at: [http://www.peacewomen.org/assets/file/Resources/Government/mowa\\_genderstat\\_2008.pdf](http://www.peacewomen.org/assets/file/Resources/Government/mowa_genderstat_2008.pdf) (last accessed 12 March 2013).

<sup>40</sup> UNDP Afghanistan, Law and Order Trust Fund for Afghanistan (LOTFA)- VI-Annual Progress Report (2011), 3, available at: [http://www.undp.org.af/Projects/Reports%202012/LOTFA/00061104\\_Final%20LOTFA%20APR%202011.pdf](http://www.undp.org.af/Projects/Reports%202012/LOTFA/00061104_Final%20LOTFA%20APR%202011.pdf) (last accessed 13 March 2013). Note: MOI and MOWA report their annual figures based on the lunar calendar, which means that the year-end is around February or March in 2011. UNDP on the other hand, applies the Gregorian calendar, which means that the year-end is December 31st 2011. This difference in calculation explains why the UNDP reported a much higher number of female police officers than MOI and MOWA.

<sup>41</sup> *Ibid.*, 20.

<sup>42</sup> Data collected from the MOI in July and August 2013.

<sup>43</sup> UNAMA, A Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan, (December 2012), 30.

Factors that keep female police numbers low include general police reputation, systemic obstacles in the work environment, Afghan culture and the reluctance of families to allow female members to join the force.<sup>44</sup> As the Afghanistan Human Development Report cautioned in 2007, women police officers suffer from bias and discrimination, including “performing minor support roles to policemen, and male-defined organizational and rank structures, policies and standards, trainings, and promotions systems.”<sup>45</sup>

The latest report by the UNAMA on violence against women cites women’s low literacy, lack of security, lack of childcare facilities, threats and fear of retaliation by anti-government elements, and allegations of widespread sexual harassment of women within the police as obstacles to females.<sup>46</sup> HRW similarly observes that the lack of women-only toilets and changing facilities, and systematic failure to address allegations of sexual assault and harassment by male police officers, dissuade women from entering and

remaining in the police force.<sup>47</sup> The assassination of high-profile police Lieutenant Islam Bibi by gunmen in Helmand province in July 2013 is evidence of the particular security challenges facing female police officers in Afghanistan.

## 2. Gender gap in the justice sector

The gender gap in Afghanistan’s workforce is particularly evident in the justice sector. While publically available data from government and UN sources differed on the overall numbers and women’s ratio of legal professionals, all data from 2008 to 2010 pointed to single digit percentages of women as lawyers<sup>48</sup>

(about 6%), prosecutors (6.4%-9.4%), and judges (4.7%-5.4%).

In 2010, according to UNIFEM (now UN Women) women constituted 6.1% (or 76) of 1241 lawyers, 6.4% (or 35) of the 546 prosecutors, and 4.7% (or 73) of the 1547 sitting judges in Afghanistan. In the same year women held 6.8% (or 90) of the 1325 filled posts in the MOJ, including both professional and administrative staff.<sup>49</sup> A UNAMA fact sheet on women and girls in Afghanistan from 2009 provides somewhat different numbers, recording that 9.4% of prosecutors are women.<sup>50</sup> Baseline statistics from MOWA are provided in the table on below.

**Table 1. Representation of women in the justice sector according to the Ministry of Women’s Affairs (2008)<sup>51</sup>**

Position	Female		Male		Total
	No	%	No	%	
Judges	73	4.7	1474	95.3	1547
Attorneys (Lawyers)	76	6.1	1165	93.9	1241
Prosecutors	35	6.4	511	93.6	546

<sup>44</sup> UNDP (Afghanistan), *Law and Order Trust Fund for Afghanistan*, 19.

<sup>45</sup> Center for Policy and Human Development, Kabul University and UNDP, *Afghanistan Human Development Report 2007: Bridging Modernity and Tradition – the Rule of Law and the Search for Justice*, 83, available at: <http://hdr.undp.org/en/reports/nationalreports/asiathepacific/afghanistan/name,3408,en.html> (last accessed 12 March 2013).

<sup>46</sup> UNAMA, *A Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan*, (December 2012), 30.

<sup>47</sup> Human Rights Watch, *Submission on the combined initial and second periodic report of Afghanistan to the United Nations Committee on the Elimination of Discrimination against Women* (23 June 2013), 4, available at [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/AFG/INT\\_CEDAW\\_NGO\\_AFG\\_13701\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/AFG/INT_CEDAW_NGO_AFG_13701_E.pdf) (last accessed 24 July 2013).

<sup>48</sup> This report uses the term ‘lawyers’ rather than attorneys or advocates. ‘Lawyers’ when used in this report describes all professionals working in the government, private or not-for-profit sector who have undertaken the stage and have or need to be registered with the AIBA. The term does not include prosecutors.

<sup>49</sup> UNIFEM Factsheet: *Afghanistan (2010)*. While these statistics indicate a total of 1787 lawyers nationwide, the National Justice Sector Strategy (NJSS) reports that the Attorney General Office has 2,500 lawyers countrywide. NJSS, *Islamic Republic of Afghanistan National Development Strategy: National Justice Sector Strategy 1387-1391 (2007/07-2013/13) (2008)*, [hereinafter NJSS] available at: <http://moj.gov.af/Content/files/National%20Justice%20Sector%20Strategy%20NJSS%20-%20English.PDF> (last accessed 12 March 2013), 17. This discrepancy may be due to differing definitions of “lawyers” and “prosecutors” (e.g. investigating police officers may be termed as “prosecutors”), or because some of these posts remain unfilled.

<sup>50</sup> United Nations Assistance Mission in Afghanistan (UNAMA), *Factsheet on the situation of women and girls in Afghanistan (November 2009)* available at: [http://www.humansecuritygateway.com/documents/UNAMA\\_Afghanistan\\_WomenAndGirls\\_November2009.pdf](http://www.humansecuritygateway.com/documents/UNAMA_Afghanistan_WomenAndGirls_November2009.pdf) (last accessed 12 March 2013).

<sup>51</sup> Ministry of Women’s Affairs (MOWA), *Women and Men in Afghanistan: Baseline Statistics on Gender (2008)*, 14, available at: [http://www.peacewomen.org/assets/file/Resources/Government/mowa\\_genderstat\\_2008.pdf](http://www.peacewomen.org/assets/file/Resources/Government/mowa_genderstat_2008.pdf) (last accessed 12 March 2013).

## WOMEN IN THE LEGAL PROFESSION: PROGRESS BUT WORK STILL TO DO (continued)

To gain a clearer understanding of the number of women participating in the justice sector, the IDLO-led study collected sex-disaggregated data in May-June 2010, October-December 2011, and July-August 2013.

The 2010 and 2011 phases of the research involved focus group discussions and the distribution of a survey to key national justice institutions, NGOs and universities in Herat and Kabul. In many instances during the 2010 and 2011 phases, justice institutions lacked detailed sex-disaggregated data, despite the ANDS framework requiring that government institutions' regular reports include such data, as well as gender sensitive indicators and information concerning gender related performance.<sup>52</sup>

During the most recent phases of research in July and August 2013, the study obtained information through face-to-face interviews with representatives from the Supreme Court, MOJ, AGO, Ministry of Higher Education (MOHE), Ministry of Education (MOE), National Legal Training Centre (NLTC), MOWA, MOI, MOLSA and, where relevant, their provincial level counterparts in Herat. This phase also included interviews with representatives of two universities, and women's rights NGOs. In 2013 the availability of sex disaggregated data was much more substantial than in 2010 and 2011, although some concerns remain

about its reliability (see section on the methodology for 2013 in Appendix 1).

Overall, the statistical data gathered from 2010-2013 from various governmental institutions reveals that the wide disparities in the number of male and female legal professionals evidenced between 2008 and 2010 persist, albeit with some meaningful gains. In particular, there have been steady increases in the number of female lawyers and judges.

Nationwide, in 2010 women constituted 7.2% of judges, 16% of lawyers registered with the AIBA and 10% of prosecutors. By 2013 these percentages had increased in two of these sectors, with women making up 8.4% of judges, and 19.3% of lawyers respectively. By contrast, in 2013 women constituted 6% of prosecutors, representing a significant drop since 2010. Nonetheless, between 2010 and 2013, the absolute numbers of women

increased in all three sectors.

In legal education, the relative number of women Law and Shari'a graduates remained relatively constant. In the 2010 graduating year, women made up 17% of graduates of Law and Shari'a faculties, a figure which dropped to 16% in the 2012 graduating year. As with women legal professionals, the absolute number of female graduates increased significantly.

The following sections provide more specific details of the findings of the study.

### Women in the judiciary

There has been a very small but steady increase in the number of women judges nationwide, from about 4.7% in 2008<sup>53</sup> to 8.4% in 2013.<sup>54</sup> According to Supreme Court figures submitted to IDLO in June 2010,<sup>55</sup> of a total of 1652 judges nationwide, 1533 were men and 119 women (7.2%).<sup>56</sup>

**Table 2. Women judges nationwide: 2010-2013<sup>57</sup>**

Year	All Judges	Women Judges
2013	1819	153 (8.4%)
2012	1807	139 (7.7%)
2011	2400	148 (6.1%)
2010	1652	119 (7.2%)

<sup>52</sup> See NAPWA.

<sup>53</sup> Ministry of Women's Affairs (MOWA), *Women and Men in Afghanistan: Baseline Statistics on Gender (2008)*, 14, available at: [http://www.peacewomen.org/assets/file/Resources/Government/mowa\\_genderstat\\_2008.pdf](http://www.peacewomen.org/assets/file/Resources/Government/mowa_genderstat_2008.pdf) (last accessed 12 March 2013).

<sup>54</sup> Data collected from the Supreme Court Data in July and August 2013.

<sup>55</sup> Data collected from the Supreme Court in May and June 2010.

<sup>56</sup> The number of actual judges falls short of the Supreme Court's official staffing plan (*tashkil*), which provides for about 2216 judges. Moreover, the UNAMA and UNDP, *Provincial Justice Coordination Mechanism Report* states that "[t]he proportion of vacant posts (around 40 per cent) thus appears to be higher than the proportion of courts not operating." The report adds that: "The security situation, poor infrastructure and inadequate living conditions, among other causes, result in judges and prosecutors working at locations other than those to which they were assigned. These are what are known as *khidmati* positions. Judges may be assigned to other courts or to work in administrative positions, mostly, it is believed, in Kabul. In Kandahar, for example, it is understood that the number officially assigned under the *tashkil* is around 90, while the number of judges actually working there appears to be seven or eight." UNAMA and UNDP, *Provincial Justice Coordination Mechanism, Overview of Assistance to the Justice System in the Provinces of Afghanistan (December 2009)*, available at: <https://ronna-afghan.harmonieweb.org/Lists/Submitted%20Content/Attachments/37/PJCM%20Overview%20Assistance%20in%20Provinces%20Dec%2009.pdf> (last accessed 13 March 2013)

<sup>57</sup> Data collected from the Supreme Court in July and August 2013. It should be noted that the 2013 data contradicts data presented at the most recent meeting of the Afghanistan Women Judges Association (AWJA) in September 2013, where the percentage of female judges was said to be 10% nationwide. UNAMA Multimedia, '2nd Annual National Conference of the Afghan Women Judges Association: 3 September 2013', available at: <http://www.flickr.com/photos/unama/9659932365/> (last accessed 10 October 2013). The AWJA was established in 2003 by Judge Marzia Basel and is currently operative, in spite of ongoing difficulties with certification and security issues. In the first phase of research undertaken for this report in 2010, Judge Basel recounted the remarkable growth in membership – at first only 35 women judges.

Data collected between October and December 2011 showed that although there had been an increase in the absolute number of women judges (148 nationwide), the number of male judges also increased, so that the percentage of female judges at that time dropped (to 6.1%). By August 2013 the percentage of female judges surpassed 2010 levels, with women constituting 8.4% of all judges. In the same period, the absolute number of women judges also increased marginally, to 153.<sup>58</sup>

#### Where are women judges working?

Data obtained from the Supreme Court in November of 2011 indicated that of 2400 judges, 148 were female. These female judges were working in Kabul (82); Herat (4); Balkh (5); Baghlan (3); Paktika (17); Farah (14); Badghis (2); Nimroz (2); Ghazni (1), Faryab (3); Takhar (3); Urozgan (3); Zabul (3); Nuristan (1); Daikundi (2); Helmand (1); and Kapisa (1).

More recent information provided by the Supreme Court in 2013 is provided in the table shown to the right.

Information from the 2013 Afghan Women Judges Association (AWJA) annual meeting revealed that due to security problems and social stigma, female judges only actually worked in five provinces of Afghanistan – Kabul, Balkh, Herat, Takhar and Baghlan, in 2013.<sup>64</sup> As Table 3 evidences, the overwhelming majority of women judges worked in Kabul in 2013.

**Table 3. Female and male judges by province: 2013<sup>60</sup>**

Province	Total Positions	M	F	Total filled positions	Total vacant positions
Supreme Court	119	86	12 <sup>61</sup>	98	21
Kabul Appeal Court	266	03	58	261	5
Nangarhar	122	105	0	105	17
Balkh	104	89	8	97	7
Kandahar	98	41	3	44	54
Herat	104	93	4	97	7
Kunduz	80	61	0	61	19
Paktya	56	38	2	40	16
Parwan	47	42	0	42	5
Baghlan	62	51	2	53	9
Ghazni	74	43	9	52	22
Jawzjan	50	33	1	34	16
Helmand	59	29	4	33	26
Farah	50	30	5	35	15
Faryab	62	33	5	38	24
Badakhshan	101	97	0	97	4
Kapisa	38	35	0	35	3
Wardak	44	35	0	35	9
Logar	38	31	0	31	7
Laghman	32	29	0	29	3
Nimroz	32	13	2	15	17
Ghor	47	31	1	32	15
Badghis	35	25	4	29	6
Sar e Pul	38	29	0	29	9
Samangan	38	31	0	31	7
Bamyan	44	33	0	33	11
Takhar	68	61	0	61	7
Kunar	59	37	0	7	22
Khost	56	31	0	31	25
Paktika	68	30	10	40	28
Zabul	47	15	8	23	24
Urozgan	35	20	1	21	14
Nooristan	41	24	6	30	11
Panjsher	38	5	0	35	3
Daikundi	44	22	7	29	15
<b>Total</b>	<b>2296</b>	<b>1641</b>	<b>152<sup>62</sup></b>	<b>1793<sup>63</sup></b>	<b>503</b>

<sup>58</sup> Data collected from the Supreme Court in May and June 2010, November 2011 and July and August 2013. Note: the 'All Judges' column refers to judge positions that were filled, rather than allocated positions on the Supreme Court Staffing Plan (tashkil).

<sup>59</sup> Given the significant deviation of this figure from previous and subsequent years, 2400 likely constitutes the number of judges on the Supreme Court Staffing Plan (tashkil), rather than positions that were actually filled in 2011.

<sup>60</sup> Data collected from the Supreme Court in July and August 2013.

<sup>61</sup> According to the Supreme Court, this refers to the women who are working in different divisions inside the Supreme Court compound headquarters in Kabul. It does not refer to the High Judicial Council of Supreme Court that comprises nine members, all of them men.

<sup>62</sup> The General Secretariat of Supreme Court supplied this table. However according to the Human Resources Department of the Supreme Court, women actually held 153 of the 1819 filled positions, as provided in Table 2. The figure of 152 was also cited in an interview with the NGO, Afghan Women's Network (AWN).

<sup>63</sup> The General Secretariat of Supreme Court supplied this table. However according to the Human Resources Department of the Supreme Court, there are 1819 filled judgeship positions. The cause of this discrepancy may lie in the fact that the Supreme Court has no electronic logs, which may lead to differences in data.

<sup>64</sup> UNAMA Multimedia, '2nd Annual National Conference of the Afghan Women Judges Association: 3 September 2013'. The Afghan Women Judges Association currently has 186 members.

## WOMEN IN THE LEGAL PROFESSION: PROGRESS BUT WORK STILL TO DO (continued)

There was considerable diversity in the courts where women judges were hearing cases compared to pre-2010 years, when they were primarily sitting in the Family Courts. When this research was conducted in November 2011, women judges were working as judicial advisors and judicial staff at the Supreme Court (16); Family Courts (6); Juvenile Courts (14); Kabul Criminal Divisions (5); Kabul Civil Divisions (8); Kabul Commercial Courts (2); Traffic Divisions (7); Public Security Divisions (13); Public Rights Divisions (8); Corruption Courts (3); and Counter Narcotics Courts (3).<sup>65</sup>

The diversification in the type of courts where female judges are assigned suggests that there is perhaps less controversy now than in the past over whether, under Islamic law, women can be appointed as judges and can preside over certain criminal cases such as Hudud and Qisas.<sup>66</sup>

The small yet steady increase of women in the judiciary in 2013 could be attributed to more women graduating

from Law and Shari'a faculties and enrolling for the judicial stage program required for entry into the judiciary. Like the legal stage for lawyers and prosecutors, this training is only offered in Kabul. In the 2005-2006 judicial stage, women accounted for just 12 out of 170 students who graduated from the judicial stage.<sup>67</sup> By contrast, in the 2012-2013 year there were 25 women graduates. There were also 42 women enrolled in the 2013-2014 judicial stage. According to officials at the Supreme Court, women enrolled in the program were mostly recruited from offices under the Supreme Court. Overall since the program began, a total of 77 women have undergone the judicial stage.<sup>68</sup>

Despite an increase in the absolute number of women in the judiciary and significant diversification in the matters over which they presided, there were still very few women in top judgeship positions in 2013. Of note, according to data provided by the Supreme Court, the vast majority of women judges were still in primary and juvenile courts, with 118 out of 370 primary and juvenile courts

staffed women judges (or 32%). Six out of 364 district courts<sup>69</sup> were headed by women judges by women judges (or 1.6%) and four of the 34 appeal courts.

At the time of writing there had never been a woman judge appointed to the High Council of the Supreme Court of Afghanistan.<sup>70</sup> In 2013 there were nine female legal advisors in the Supreme Court, the highest position following a judgeship, and two women working as Judicial Auditors in the Supreme Court.<sup>71</sup> Women judges also headed the Juvenile and Family Courts and an eminent woman law professor, and Member of Parliament, Mahbooba Hoquqmal, served as the sole woman on the Constitutional Oversight Committee.

In 2013, amidst rumors of several vacancies on the High Council of the Supreme Court, women's groups, including the Women's Committee of the ALBA, the Women's Affairs Committee of the National Assembly<sup>72</sup> and the Afghan Women's Network, called for the appointment of a women judge.<sup>73</sup>

<sup>65</sup> The Supreme Court, General Administration of Judiciary (November 2011). The courts where the remaining female judges were working were not available.

<sup>66</sup> The international network, Sisters in Islam provide the following explanation about women as judges in Islam: "There is no specific and direct injunction in the Qur'an and Sunnah concerning this matter [of having women as judges]. There are only conflicting opinions of the jurists. Verses 4:58 and 5:42 talk about the need for judges to conduct themselves with justice and equity in deciding between two disputing parties. No distinction is made between man and woman judges. Sura al Imran 3:104 enjoin both men and women to do good and prevent evil. Imam Hanifah supports the appointment of women as judges in all cases, except hudud and qisas cases. He disqualifies the appointment of women as judges in hudud and qisas cases because traditional historical syariah as constructed by the founding jurists of Islam disqualifies women as witnesses in such cases. Imam Shafii, Malik and Hanbali do not support the appointment of women as judges based on an interpretation of Surah An-Nisa 4:34 which talks about men having responsibility over women. The traditional interpretation of this verse that men have authority over women is now widely challenged. The alternative interpretation is that the verse intends to establish a responsibility of men for the protection and maintenance of women in a restricted social context. Biologically, only women can bear the future generations of Muslims. The Qur'an creates a harmonious balance in society by establishing a functional responsibility for males to facilitate this biological function of females. This verse does not give men inherent superiority or authority over women. It establishes mutual responsibility in society. Responsibility is not superiority. Even though men are responsible for women in this restricted context, the verse is not intended to mean that women cannot handle their own affairs, control themselves or become leaders, whether among women, men and women or even of nations, as has been assumed." Sisters in Islam, 'Women as Judges' (Media Statement, 23 June, 1999) available at: <http://www.sistersinislam.org.my/comment.php?comment.news.278> (last accessed 13 March 2013). For some dissenting views see Fawzia Ihsan and Shafia Veqar, 'A Matter of Judgment' Afghanistan Today, 4 January 2012, available at: <http://www.afghanistan-today.org/helper/articleprint.php?id=196> (last accessed 28 August 2013).

<sup>67</sup> The Supreme Court, General Administration of Judiciary (November 2011).

<sup>68</sup> Data collected in August 2013 from the Supreme Court.

<sup>69</sup> There is a district court in every district of all provinces, however, bigger cities such as Kabul, Herat, Mazar Sharif, Kandahar, and Nangrahar have more district courts than the actual number of districts.

<sup>70</sup> Supreme Court of Afghanistan, available at: <http://supremecourt.gov.af/en/page/614/619> (last accessed August 2013); David Cortright and Kristen Wall, *Afghan Women Speak: Enhancing Security and Human Rights in Afghanistan*, University of Notre Dame, Kroc Institute for International Peace Studies (August 2012), available at: [http://kroc.nd.edu/sites/default/files/Afghan\\_Women\\_Speak.pdf](http://kroc.nd.edu/sites/default/files/Afghan_Women_Speak.pdf) (last accessed 10 August 2013)

<sup>71</sup> Data collected from the Supreme Court in July and August 2013. Data concerning the 12th professional female employee was not provided.

<sup>72</sup> Fawzia Ihsan and Shafia Veqar 'A Matter of Judgment' Afghanistan Today, 4 January 2012, available at: <http://www.afghanistan-today.org/article/?id=196#>

<sup>73</sup> See for example, 'Karzai asked to appoint female judge in apex court' Pajhwok News, 2 January 2013, available at: <http://www.pajhwok.com/en/2013/01/02/karzai-asked-appoint-female-judge-apex-court> (last accessed August 2013). See also Interview with AWN, 31 July 2013.

### Women prosecutors in the Attorney General's Office

The AGO oversees the investigation and prosecution of crime. It has offices at the central level in Kabul, as well as in all 34 provinces and in 365 prosecutorial districts.<sup>74</sup> The Official Staffing plan (tashkil) separates the number of professional staff (the equivalent of prosecutors) into three categories:

- (i) Central AGO, including four zones
- (ii) Kabul Region and the Appeals Prosecution Office
- (iii) Provinces (other than Kabul)

Despite difficulties in obtaining baseline statistics, it appears that more women have joined the ranks of prosecutors at the AGO, albeit with a small decrease in 2013. MOWA's 2008 baseline statistics provided that there were 35 female prosecutors (6.4%).<sup>75</sup> According to the AGO records cited in Afghanistan's 2007 Human Development Report, the total number of female "technical employees" in the prosecution service throughout Afghanistan was 74.<sup>76</sup> A 2009 UNAMA fact sheet on women in the justice sector stated that there were 103 women prosecutors.<sup>77</sup>

Data collected by IDLO in 2011 indicated that there were 113 prosecutors out of a total of 1845 at the AGO (6.1% of all prosecutors). In this period, the vast majority of women prosecutors were employed in the Kabul Region and Appeals' Prosecutors Office and AGO central office (82). As shown in the table below, women constituted 15.7% of all prosecutors in Kabul.

In the provinces outside of Kabul there were 31 women prosecutors in 2011. Women constituted just 2.3% of all prosecutors in the provinces.<sup>79</sup>

**Table 4. Kabul Region/Appeals Prosecution Office and Central AGO employees: 2011-2012 tashkil<sup>78</sup>**

Province	Employees			
	Professional Male	Professional Female	Admin Male	Admin Female
Central AGO including 4 Zones	384	80	245	92
Kabul region and the Appeals Prosecution Office	55	2	28	4
<b>Total</b>	<b>439</b>	<b>42</b>	<b>273</b>	<b>96</b>

**Table 5. Male and female employees of the AGO in provinces other than Kabul: 2011-2012 tashkil<sup>80</sup>**

Province	Employees			
	Professional Male	Professional Female	Admin Male	Admin Female
Herat	54	23	23	1
Kandahar	41	4	4	0
Balkh	57	20	20	8
Nangarhar	74	26	26	0
Baghlan	49	18	18	1
Jawzjan	38	15	15	1
Faryab	44	13	13	3
Farah	40	7	7	0
Helmand	38	7	7	1
Ghazni	50	13	13	3
Paktia	38	12	12	2
Laghman	27	15	15	0
Kunar	46	17	17	0
Nuristan	33	12	12	3
Panjshir	31	12	12	0
Bamyan	31	12	12	0
Daikundi	33	17	17	1
SariPul	31	13	13	0
Badghis	29	13	13	0
Ghor	37	12	12	1
Nimroz	27	12	12	0
Parwan	40	18	18	0
Kunduz	33	21	21	0
Takhar	53	20	20	0
Badakhshan	69	9	9	8
Samangan	30	12	12	1
Uruzgan	22	12	12	0
Zabul	38	12	12	2
Paktia	53	12	12	0
Wardak	35	12	12	0
Logar	31	15	15	0
Khost	41	13	13	1
Kapisa	31	12	12	0
<b>Total</b>	<b>1293</b>	<b>314</b>	<b>49</b>	<b>37</b>

<sup>74</sup> The number of prosecutorial districts is not the same as the number of court districts. UNAMA and UNDP, *Provincial Justice Coordination Mechanism, Overview of Assistance to the Justice System in the Provinces of Afghanistan (December 2009)*, 5.

<sup>75</sup> MOWA, *Women and Men in Afghanistan: Baseline Statistics on Gender (2008)*. Note: this data may be limited to the Kabul area prosecution offices.

<sup>76</sup> *Afghanistan Human Development Report 2007*, 79-80. The report recommends that to address the low numbers of women in the justice sector and "[t]o correct this historical imbalance, affirmative action is needed to ensure greater participation of women in the Afghan judiciary and other rule of law institutions." *Ibid*, 58.

<sup>77</sup> UNAMA *Factsheet on the situation of women and girls in Afghanistan (November 2009)*.

<sup>78</sup> *Ibid*.

<sup>79</sup> Data collected from AGO in November 2011.

<sup>80</sup> *Ibid*.

## WOMEN IN THE LEGAL PROFESSION: PROGRESS BUT WORK STILL TO DO (continued)

In 2013, there was a slight increase in the absolute number of women prosecutors, to 120, while the relative number of prosecutors marginally declined, to 6% of all prosecutors. In the Kabul Region/ Appeals' Prosecutors Office and the AGO central office combined there was a decrease to 79 women prosecutors (with women constituting 14.7% of all prosecutors in Kabul).

By contrast, in the provinces outside of Kabul there was an increase of ten female prosecutors, (from 31 to 41) making women prosecutors 2.8% of all prosecutors in the provinces in 2013.

In 2013 the Herat Prosecution Office had 92 employees (prosecutors and administrative staff).<sup>83</sup> Three of the five female prosecutors working in the office had a bachelor's degree, while the other two were high-school graduates.<sup>84</sup>

The relative higher representation of women as prosecutors at the appellate level compared with women judges may be due to greater social acceptance of women working within a governmental institution and as appeals prosecutors, dealing nearly exclusively with paper submissions, thus avoiding any need for field investigation or contact with accused or witnesses. Moreover, many women prosecutors served in such a capacity before the Taliban rule and returned to their posts after 2001.

### Where are the women prosecutors working?

In 2013 no woman had ever served as Attorney General of Afghanistan. Of the 34 provinces, only the Herat Prosecution Office was led by a woman. Woman prosecutors also headed the VAW Unit in five provinces.<sup>85</sup> The Afghan Women's Network had been advocating for the allocation of one of the five Deputy AGO positions to go to a woman, and had

**Table 6. Kabul region / Appeals Prosecution office and Central AGO employees: 2012-2013 tashkil<sup>81</sup>**

Province	Employees			
	Professional Male	Professional Female	Admin Male	Admin Female
Central AGO including 4 Zones	401	77	240	82
Kabul region and the Appeals Prosecution Office	55	2	27	4
<b>Total</b>	<b>456</b>	<b>79</b>	<b>267</b>	<b>86</b>

**Table 7. Male and female employees of the AGO in provinces other than Kabul: 2012-2013 tashkil<sup>82</sup>**

Province	Employees			
	Professional Male	Professional Female	Admin Male	Admin Female
Herat	62	5	23	2
Kandahar	61	2	18	1
Balkh	59	5	16	9
Nangarhar	77	0	26	0
Baghlan	46	1	20	0
Jawzjan	39	1	15	1
Faryab	48	1	17	3
Farah	41	0	15	0
Helmand	46	1	7	1
Ghazni	53	3	19	0
Paktya	42	3	12	2
Laghman	29	0	15	0
Kunar	47	0	17	1
Nuristan	31	2	12	3
Panjsher	35	0	11	1
Bamyan	35	0	12	0
Daikundi	36	2	17	1
Sar I Pul	31	2	15	2
Badghis	28	0	13	0
Ghor	36	2	12	1
Nimroz	36	3	12	1
Parwan	40	0	20	0
Kunduz	37	0	21	0
Takhar	53	0	20	0
Badakhshan	77	1	11	8
Samangan	33	0	14	4
Urozgan	29	1	12	1
Zabul	38	1	12	2
Paktika	63	2	11	0
Wardak	35	0	11	0
Logar	31	0	15	0
Khost	40	3	13	1
Kapisa	31	0	12	0
<b>Total</b>	<b>1425</b>	<b>41</b>	<b>496</b>	<b>45</b>

<sup>81</sup> Data collected from the AGO in July and August 2013.

<sup>82</sup> Ibid.

<sup>83</sup> Data collected from the Herat Prosecution Office in July and August 2013.

<sup>84</sup> Ibid.

<sup>85</sup> Qudsia Niazi, heads the VAW Unit. She formerly served as the head of Appeals Prosecution Central Office in Kabul. Outside of Kabul, Fawzia Hamidi leads the VAW Unit in Balkh, Marya Mahanyar the VAW Unit in Herat and Shah Gul the VAW Unit in Badakhshan.

**Table 8. Female lawyers by province: 2013<sup>90</sup>**

Province	Female Lawyers
Badakhshan	1
Badghis	0
Baghlan	1
Balkh	42
Bamyan	0
Dykundi	1
Farah	1
Faryab	3
Ghazni	1
Ghor	0
Helmand	0
Herat	101
Jawzjan	4
Kandahar	1
Kabul	141
Kapisa	3
Khost	1
Kunar	0
Kunduz	5
Logar	0
Laghman	0
Maidan Wardak	0
Nemroz	1
Nangarhar	19
Paktia	0
Paktika	0
Panjsher	0
Parwan	2
Samangan	0
Sar e Pul	0
Takhar	7
<b>Total</b>	<b>335 (19.3%)</b>

Since then, there has been considerable growth in the absolute and relative proportion of female lawyers. In 2011 the AIBA registered 212 female “defense lawyers,”<sup>87</sup> making women 18.4% of the total lawyers registered with the AIBA.

There were 335 female lawyers out of a total of 1738 lawyers registered with the AIBA in 2013, with the result that women constituted 19.3% of lawyers in Afghanistan.<sup>88</sup>

As is shown in the table to left, the vast majority of female lawyers were in Kabul and Herat. According to the Herat branch of the AIBA, Herat is the second most active province after Kabul in terms of women’s professional participation in the justice sector.<sup>89</sup> To note, in 13 provinces, there were no female lawyers at all.

Despite overall low numbers, most respondents to the survey distributed in 2010 expressed positive feelings about the growth of women lawyers. One lawyer and former judge observed, “In 2002, if a woman had a legal problem she could not get a woman defense lawyer. Now they are here and some have their own private offices.”<sup>91</sup>



Image: Flickr\_J McDowell

**Table 9. Female professionals by MOJ Department: 2010<sup>93</sup>**

MOJ Departments	Female Professionals
Taqnin/Legislative Department	16
Legal Aid Department	4
Government Cases Department Kabul Center	1
Government Cases Department Kabul Province	4
Huquq Department	3
<b>Total</b>	<b>28</b>

presented a list of four possible qualified candidates to the President.<sup>86</sup>

### Women lawyers

MOWA’s baseline statistics provided that there were 76 females out of a total of 1241 lawyers in Afghanistan in 2008. That would count women as 6.1% of the total lawyers nationwide.

### Women in the Ministry of Justice

In 2010 women constituted 16% of professional staff in the MOJ in Kabul (27 women compared with 145 males), although their numbers dropped to 2% when considering MOJ offices nationwide, with only one female professional working in the province.<sup>92</sup> In 2011 of the 155 professional staff in

Kabul, 28 were female (or 18%). There was an increase to three female professional staff members in the provinces.<sup>94</sup> There was a meaningful increase in the number of women legal professionals working in the MOJ in 2013, from 28 female professionals in 2011 to 37 in 2013.

<sup>86</sup> Interview with the Afghan Women’s Network in July 2013.

<sup>87</sup> According to the Kabul AIBA all advocates, whatever their specialty, must be registered with the AIBA, which was founded in 2008. When the AIBA registers a lawyer, their preferred term is “defense lawyer” irrespective of the kind of law practiced after registration. This means that advocates, lawyers or defense attorneys or any other sub discipline are generically described as “defense lawyer”. The only exception is prosecutors, who are not included in this generic term. Data collected from the Kabul AIBA in July and August 2013.

<sup>88</sup> Ibid.

<sup>89</sup> Data collected from the Herat AIBA in July and August 2013.

<sup>90</sup> Data collected from the Kabul AIBA in July and August 2013.

<sup>91</sup> Ms Marzia Basel, former judge, 2010 Focus Group Discussions.

<sup>92</sup> Data collected from the MOJ in May and June 2010.

<sup>93</sup> Ibid.

<sup>94</sup> Data collected from the MOJ in November 2011.

## WOMEN IN THE LEGAL PROFESSION: PROGRESS BUT WORK STILL TO DO (continued)

**Table 10. Female professionals by MOJ Department: 2013<sup>95</sup>**

MOJ Departments	Female Professionals
Taqnin/Legislative Department	18
Legal Aid Department	10
Government Cases Department Kabul Center	3
Government Cases Department Kabul Province	1
Huquq Department	5
<b>Total</b>	<b>37</b>

Overall, there were 1667 employees of the MOJ nationwide in 2013 (professional and administrative staff). In Kabul there were 89 female employees to 369 male employees (19%). Of these, three were grade 2 (Head of Department), six were grade 3, (Deputy Head of Department), 26 were grade 4 and the rest grade were 5 or 6. Of those women professionals working in Kabul, 25 had bachelor's degrees, while the vast majority had no postsecondary education [58].<sup>96</sup>

In the provinces there were 29 female employees at the MOJ compared to 1180 male employees (2.4%). Of these 29 women, eight held a bachelor's degree in Law, one held a two-year college degree, and the remaining 20 had no



Image: Bill and Melinda Gates Foundation\_Kate Holt

tertiary education. Also, 13 were engaged in legal services and the other 16 in administrative work.<sup>97</sup>

At the Herat Provincial Level there were 105 total employees (professional and administrative staff) of which 13 were women. Of those 13, seven worked in the legal section.<sup>98</sup>

### Women in the legal department of the Ministry of Women's Affairs

MOWA's legal (*Huquq*) department deals primarily with civil and family law matters. Perhaps not surprisingly given MOWA's mandate, women professionals held higher positions compared to the male staff in MOWA, as well as in comparison to women in other ministries,

<sup>95</sup> Ibid.

<sup>96</sup> Data collected from the MOJ in July and August 2013.

<sup>97</sup> Of the total 29 women in the provinces working under the MOJ: 4 are in Herat (2 in legal and 2 in reform centers), 4 in Balkh (2 in legal and 2 in reform centers), 1 in Nangrahar (reform center), 5 in Badakhshan (1 in legal and 4 in administration), 1 in Kunduz (legal), 1 in Parwan (legal aid), 2 in Jozjan (both in administration), 2 in Faryab (1 in legal and 1 administration), 2 in Ghazni (both in legal), 1 in Bamyan (admin), 1 in Nimroz (legal), 2 in Sar I Pul (1 in legal and 1 in administration), and 3 in Daikundi (2 in legal and 1 in administration): Ibid.

<sup>98</sup> Data collected from the Herat provincial-level MOJ in August 2013. Note: these figures are higher than the figures provided by the central office of MOJ in Kabul, which stated that only four women worked at the Herat MOJ office.

such as the MOJ and MOI. Women at MOWA's legal department in Kabul occupied key posts in 2013, including Director, Deputy Director, Legal Advisor, Head of Supervision and Evaluation, Head of Huquq Support, and Head of Research and Research Assistant.

Overall, in 2013 there were 15 lawyers in MOWA, including the Deputy Minister. Interviews with MOWA revealed that there were 11 lawyers in the legal department. This is a noticeable decrease from 2010, when the legal department had a staff of 20.<sup>99</sup> In the Herat Provincial Level MOWA office there were 25 staff members in 2013, 15 female and 10 male. There were also two female lawyers employed, whose positions were funded by international NGOs.<sup>100</sup>

### Women in legal education institutions (i) Women's literacy and access to education

Despite the existence of a constitutional right to education, a 2005 national survey estimated that only 28% of the population in Afghanistan could read.<sup>101</sup> Disaggregated by gender, this reveals that 18% of females and 36% of males were able to read in 2005, a female to male ratio of 0.5.<sup>102</sup>

More recent estimates from a 2013 World Bank external evaluation and a Central Statistics Organization-UNICEF

Female literacy rates by province (2007):<sup>103</sup>



analysis suggest that the female literacy rate has increased to 22%. While a sign of progress, this remains a low percentage, given the extensive investment in education for Afghan women over the last decade.<sup>104</sup>

Data collected from the MOE in 2013 showed promising change in regards to access to education for girls. In the academic year 2012-2013, 10.6 million children were enrolled in primary school, high school and vocational training schools across the country. Of this number, girls comprised 42% or 4.6 million. Girls also made up 16% of professional and vocational school students, 15% of students enrolled in Islamic studies and 39%

of students in evening teacher training centers in the 2012-2013 academic year.<sup>105</sup>

Notwithstanding this progress, there remain a host of factors that deter many families from sending their girls to school, first and foremost the unstable security situation. In addition to the considerable risk of an insurgent attack on girl school faculties or on school transport routes, there have been cases of en masse poisoning of girls attending school.<sup>106</sup> Other factors that hinder girls' access to education are high rates of forced and underage marriage,<sup>107</sup> and the low numbers of female teachers, which makes meeting the needs of Afghan girls all but impossible due to historic and cultural rules regarding intermingling of the genders.<sup>108</sup>

<sup>99</sup> Interview with MOWA staff in August 2013.

<sup>100</sup> Data collected from the Herat Provincial Level MOWA in August 2013.

<sup>101</sup> ANDS, 115.

<sup>102</sup> Ibid.

<sup>103</sup> ICON-INSTITUTE, *National Risk and Vulnerability Assessment 2007/8: A Profile of Afghanistan*, (October 2009), 13.

<sup>104</sup> Independent Evaluation Group, World Bank, *Evaluation of World Bank Programs in Afghanistan, 2002-2011*, (2013) 6 available at: [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/07/18/000445729\\_20130718144718/Rendered/PDF/796170PUB0978000Box377374B00PUBLIC0.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/07/18/000445729_20130718144718/Rendered/PDF/796170PUB0978000Box377374B00PUBLIC0.pdf) (last accessed 28 July 2013); *Afghanistan Multiple Indicator Cluster Survey 2010-2011: Final Report*. Kabul: Central Statistics Organization (CSO) and UNICEF, 110, available at: <http://cso.gov.af/Content/files/AMICS.pdf> (last accessed 29 July 2013). The latter study only surveyed women, so there is no comparative data for men. Notably in 2011, UNICEF estimated that adult literacy (15+ years) was at 39%, and female adult literacy (15+ years) was at 13%. Factsheet: Afghanistan Country Office, Education (November 2011), available at: [http://www.unicef.org/infobycountry/files/ACQ\\_Education\\_Factsheet\\_-\\_November\\_2011\\_.pdf](http://www.unicef.org/infobycountry/files/ACQ_Education_Factsheet_-_November_2011_.pdf)

<sup>105</sup> Data collected from the MOE in July and August 2013. According to the MOE, a 'school' includes elementary, middle, high schools, madrasas, quranic schools, fiqh, and professional, technical and teacher training schools. It excludes universities and private schools.

<sup>106</sup> For example, nearly 77 girls were hospitalized and another 20 fell ill in June 2013 in Faryab and Sar-i-Pul provinces following suspected poisonous gas attacks on two girls' schools, while 80 girls at the Islam Qala girls' school were subjected to a poison gas attack in May 2013. Qutbuddin Kohi and Zabihullah Ihsas, '97 schoolgirls poisoned in Faryab, Sar-i-pul, Pajhwok' *Afghan News*, June 2, 2013, available at: <http://www.pajhwok.com/en/2013/06/02/97-schoolgirls-poisoned-faryab-sar-i-pul> (last accessed 27 July 2013).

<sup>107</sup> Interviews conducted with Afghan women NGOs in July and August 2013.

<sup>108</sup> See *Afghan Women and Kids Education and Necessities and International Human Rights Law Society of the Indiana University Robert H. McKinney School of Law, 'UN CEDAW Shadow Report' [July 2013]* available at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/AFG/INT\\_CEDAW\\_NGO\\_AFG\\_14232\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/AFG/INT_CEDAW_NGO_AFG_14232_E.pdf) (last accessed 27 July 2013).

## WOMEN IN THE LEGAL PROFESSION: PROGRESS BUT WORK STILL TO DO (continued)

Interestingly, most Afghans view women's lack of education and illiteracy as a substantial problem. Almost one third of all respondents (29%) in the Asia Foundation survey identified lack of education and/or illiteracy as the biggest problem faced by women in their area.<sup>109</sup> In an opposite trend from the survey's previous year, a slightly higher proportion of respondents in rural (29%) than urban (27%) areas saw this as the biggest problem faced by women. Lack of education and illiteracy were also identified in all regions as the biggest problem by around one quarter to half of respondents (25-44%), with the exception of the southwest areas, where it was cited by only 17% of respondents.<sup>110</sup>

### (ii) Women in higher legal education

Girls and women continue to experience momentous educational disadvantages in Afghanistan. Higher rates of illiteracy and lack of access to basic schooling contribute to lower numbers of women entering universities and opting for legal education. While historically a university degree was not required for individuals to serve as judges and other legal professionals, increasingly, a degree in either Law or Shari'a is a pre-requisite to enter an increasingly competitive legal field. A degree from a Shari'a faculty and knowledge in Islamic

jurisprudence is often preferred for appointments to the judiciary.

Women continue to grapple with family and community restrictions, conservative interpretations of women's role as mothers, travel restrictions to attend universities away from home, lesser access to education and weaker academic grounding, as is discussed in further detail below.

In urban centers where literacy rates are higher, universities are available and gender roles are more progressive, women and girls are more likely to avail themselves of higher education opportunities. By contrast, rural inhabitants are less likely to pursue higher education in the legal sector, partly because of more conservative perceptions of women's roles and responsibilities in rural areas.

Another explanation proffered in the 2010 interviews was that rural women do not enter the justice sector in part because they know very little about the formal justice system. This view is highly persuasive, given that justice institutions are frequently inoperative (or operate inconsistently) in vast parts of the country and there are few legal awareness programs that reach rural communities.<sup>111</sup> The lack of access to female legal

practitioners and women-specific institutions among rural communities also goes a long way in explaining the perception among rural communities that the formal legal system is corrupt and unjust, and not an institution that women should approach, either as claimants or professionals.<sup>112</sup>

### National figures

According to the MOHE there were 17 public, or government, institutions of higher education nationwide in 2013, including four specialized universities in Kabul. Six of the universities had Law and Shari'a faculties (in Balkh, Herat, Kabul, Kapisa, Khost, and Nangarhar), and two others (in Takhar and Kandahar) had only a Shari'a faculty.<sup>113</sup> Since 2003, there has also been a mushrooming of private institutions, many of which often include law faculties, such as Kateb University, the Ashrafi Institute of Higher Education and Ghalib University.

Statistical data provided by the MOHE illustrates that in the lunar year 2008-2009, women consisted of 105 of 878 graduates of Law and Shari'a faculties in six provinces across the country (or 12% of all graduates). From 2009-2010, the proportion increased meaningfully to 17%, and then only marginally to 18% in the 2010-2011 graduate cohort. In 2011-2012, women graduates dropped back to 16%. Nonetheless, the absolute number of female graduates continued to rise, from 222 in 2010-2011 to 247 in 2011-2012.<sup>114</sup>

## ➤ RURAL WOMEN KNOW VERY LITTLE ABOUT THE FORMAL JUSTICE SYSTEM ◀

<sup>109</sup> The Asia Foundation, *Afghanistan in 2012: A Survey of the Afghan People*, (2012) 10.

<sup>110</sup> *Ibid*, 157.

<sup>111</sup> Data collected from survey respondents in May and June 2010. This perception is supported by secondary sources. For example, MOWA's Department of Women's Affairs (DOWA) branches in rural areas have been described as 'grossly underfunded', providing 'limited assistance to women.' David Cortright and Kristen Wall, *Afghan Women Speak: Enhancing Security and Human Rights in Afghanistan*, University of Notre Dame, Kroc Institute for International Peace Studies (August 2012), 12-13, available at: [http://kroc.nd.edu/sites/default/files/Afghan\\_Women\\_Speak.pdf](http://kroc.nd.edu/sites/default/files/Afghan_Women_Speak.pdf) (last accessed 21 August 2013)

<sup>112</sup> This view is supported by the Asia Foundation survey: "Respondents were also asked if there is an organization, institution or authority in their area where women can go to have their problem(s) resolved. Less than one in five respondents (19%) say such an organization exists, while over three quarters (77%) say there is no such organization in their area. Four percent say they don't know. There is no major difference between male (18%) and female (20%) respondents' answers to this question. More urban respondents (27%) than rural respondents (16%) could identify an organization, institution or authority that helps women." The Asia Foundation, *Afghanistan in 2012: A Survey of the Afghan People*, (2012) 159.

<sup>113</sup> MOHE, 'Higher Education Governmental Organs', available at: <http://www.mohe.gov.af/?lang=en&p=gov> (last accessed 26 August 2013)

<sup>114</sup> Data collected from the MOHE in July and August 2013.

**Table 11. Public university Law and Shari'a faculty graduates: 2009-2012<sup>115</sup>**

Year	2009-2010			2010-2011			2011-2012			Total		Grand Total
Department	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	
Law	404	60	464	467	78	545	566	100	666	1437	238	1675
Shari's	520	79	267	534	144	678	723	147	870	1777	425	2202
<b>Total</b>	<b>924</b>	<b>194</b>	<b>1118</b>	<b>1001</b>	<b>222</b>	<b>1223</b>	<b>1289</b>	<b>247</b>	<b>1536</b>	<b>3214</b>	<b>663</b>	<b>3877</b>

**Table 12. Law and Shari'a enrolments in public universities across the country by sex and class: 2013<sup>117</sup>**

Year	First Year			Second Year			Third Year			Forth Year			Fifth Year			Total		
Department	Male	Female	Total	Male	Female	Total	Male	Female	Total									
Law	2014	323	2337	1209	186	1395	774	129	903	748	156	904	84	2	86	4829	796	5625
Shari's	2047	269	2316	1007	144	1151	650	111	761	652	74	726	0	0	0	4356	598	4954
<b>Total</b>	<b>4061</b>	<b>592</b>	<b>4653</b>	<b>2216</b>	<b>330</b>	<b>2546</b>	<b>1424</b>	<b>240</b>	<b>1664</b>	<b>1400</b>	<b>230</b>	<b>1630</b>	<b>84</b>	<b>2</b>	<b>86</b>	<b>9185</b>	<b>1394</b>	<b>10579</b>

As Table 12 shows, there were 1394 female students enrolled in Law and Shari'a public faculties across the country in 2013, out of a total number of 10579 students. In 2013 female students therefore constituted 13.2% of all enrolled Law and Shari'a public faculty students.<sup>116</sup>

Perhaps unsurprisingly, the MOHE data indicated higher enrollment rates of women in urban than in rural areas. The southern region is also underrepresented in terms of both Law and Shari'a students. Plagued by lingering insecurity and instability, the southern region's only public university, Kandahar University, opened a Shari'a faculty only in recent years. While there is also a reference to a Law and Political Science Faculty on the university's website, it is unclear if this has been operationalized.<sup>118</sup> More detail is provided below concerning enrollments in the Law and Shari'a faculties in Kabul and Herat.

### Kabul

Following a jump in female enrollments in 2009 – to 44% and 37.5% women in the Kabul University Law and Shari'a faculties respectively – the absolute numbers of women have considerably increased in Kabul, although their relative percentages have declined.<sup>119</sup> In reverse of the trends documented in Herat, in 2010 more women were enrolled in the Shari'a faculty (115) than in the Law faculty (65).

While the total number of women in the Law faculty was only 65 in 2010, this represented more than a doubling in

female enrollments from 2009.<sup>120</sup>

In 2013 there were 633 female students enrolled in the Shari'a faculty (45% of all students) compared to 304 in the Law faculty (18% of all students). Despite this absolute increase in numbers from 2010, the female percentage of overall enrolments in the Law faculty actually fell for the Law faculty (from 26% in 2010). By contrast, the numbers of females enrolled in the Shari'a faculty increased (from 37% in 2010).<sup>121</sup> This clearly demonstrates that women continued to be more drawn to the Shari'a faculty than the Law faculty in Kabul.

**Table 13. Enrollments in Kabul University Law and Shari'a faculty: 2009-2012<sup>122</sup>**

Year	Shari'a Women	Men	Law Women	Men
2008-2009	26 / 21.5%	95	16 / 14%	95
2009-2010	61 / 44%	77	34 / 37.8%	56
2010-2011	115 / 37%	192	65 / 26%	184
2011-2012	Unavailable	Unavailable	Unavailable	Unavailable
2012-2013	633 / 45%	768	304 / 18%	1391

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*

<sup>118</sup> According to the following sources Kandahar University opened a Shari'a law faculty in 2008: Afghanistan Ministry of Higher Education, Higher Education Governmental Organs: Kandahar University <http://www.mohe.gov.af/?lang=en&p=gov&nid=36>; Kandahar University, Introduction <http://kan.edu.af/en/page/740> and, Thailand Press Release, AIT inks MoU to assist Afghanistan's Kandahar University (2013) Asian Institute of Technology <http://www.ait.ac.th/news-and-events/2013/ait-in-the-news/jan/ait-inks-mou-to-assist-afghanistan2013s-kandahar-university/#.Ului-oanq3V>. All sites were last accessed 14 October 2013.

<sup>119</sup> This reflects the increasing number of overall student populations in the Law and Shari'a faculties, and not necessarily a decline in the number of women enrolments.

<sup>120</sup> Data collected from Kabul University in May and June 2010.

<sup>121</sup> Data collected from the MOHE in July and August 2013.

<sup>122</sup> *Ibid.*

## WOMEN IN THE LEGAL PROFESSION: PROGRESS BUT WORK STILL TO DO (continued)

In the latest available data of graduates from Kabul Shari'a and Law faculties (concerning the 2012 graduating year) of a total of 517 graduates, 144 were female (28%). This represented a small increase from the previous year, where 125 women graduated out of a total of 466 graduates (27%).<sup>123</sup>

### Herat

In the urban center of Herat, there have been substantive increases in female enrollment since 2010. In 2010 the Herat Shari'a faculty had 32 female students enrolled and 113 male students (22%). By 2013 the number of enrolled female students had climbed to 65, with male students increasing to 193 (or 25%). The latest available figures concerning Shari'a graduates from Herat University as of 2012, count 60 females out of a total 250 graduates (or 24%).<sup>124</sup>

In the Herat Law faculty, there were 67 female law students in 2010 (or 27.5%), a number that decreased to 58 students in 2013, albeit against an overall proportionate increase to 34% of the total students enrolled. In 2012, of the 97 graduates from the Law faculty, 22 were female (or 22.7%).<sup>125</sup>

It seems unusual that in socially conservative Herat more women continued to opt to enroll in the Law faculty rather than the sex-segregated Shari'a faculty. Overall low female enrollment in the Shari'a faculty could be explained by the fact that the Herat Shari'a faculty generally receives students from madrasas<sup>126</sup> or who have taken the Concord University entrance test. As there were no madrasas for women prior to 2013, women had few possibilities of entering the faculty. It is therefore likely that from 2014, female enrollments in the Shari'a faculty will increase.<sup>127</sup>

Further in-depth interviews conducted at Herat University with female students in the Law and Shari'a faculties revealed that female students preferred the law faculty because female students in the Shari'a faculty did not receive the same comprehensive Shari'a curriculum as their male counterparts. Respondents lamented that this unequal curriculum prevented them from gaining the skills and knowledge necessary to become scholars of Shari'a after completion of their undergraduate degree.<sup>128</sup>

Since 2010 when these interviews were conducted, the Shari'a curriculum at Herat University has changed and female students have been able sit the same exams and have the same course credits as the male students.<sup>129</sup> It is important to recognize, however, that this has only been the case at select Shari'a faculties, usually universities with strong ties to the international

### Female Law Student Excels

*"Without this program, I would have never dreamed of one day going to the United States to represent my school and my country in front of the whole world!" Mursal Shirzad, fourth year law student at Kabul University's Shari'a faculty.*

Mursal Shirzad, an 18-year-old law student at the Kabul University's Shari'a faculty, and four of her classmates embarked on a journey to compete in the Philip C. Jessup International Moot Court 2011 Competition held in Washington, D.C. Like many other things in her life, earning the right to represent Afghanistan at a prestigious international competition did not come easy. After months of difficult practice and coaching, and support from USAID, Shirzad and her teammates participated in a five-day competition against four other student teams from the faculties of Law and Shari'a at Al Biruni, Balkh, Herat and Nangarhar universities and were awarded the national championship title and the right to represent Afghanistan in Washington. Newly returned from her week competing in Washington, D.C. Shirzad commented that "Jessup was not just a competition. It was a blending of cultures, a chance for young people from more than 80 countries to exchange experiences and life stories. We talked about our classes, our friends and our families." The competition itself was rigorous. "Our team had only 14 books to use for our research on international law, while other countries had entire law libraries at their disposal," said Shirzad. She is most grateful for the confidence she acquired as a moot court debater and for her newfound expertise. "I now know more about international law than I know about national law. This knowledge will help me build a career as a human rights defender in Afghanistan," said Shirzad.

USAID, 'Afghan Female Law Student Rules' 10 November 2011, available at: [http://afghanistan.usaid.gov/en/USAID/Article/2426/Afghan\\_Female\\_Law\\_Student\\_Rules](http://afghanistan.usaid.gov/en/USAID/Article/2426/Afghan_Female_Law_Student_Rules)

<sup>123</sup> *Ibid.*

<sup>124</sup> *Interviews with Herat University in July and August 2013.*

<sup>125</sup> *Ibid.*

<sup>126</sup> *Students at madrasas have an entirely religious education, with the possibility of a few additional courses in languages or social work, although this depends entirely on the individual madrasa (not all madrasas are the same). The core of all madrasas programs is the overwhelming emphasis on Islamic studies. Students graduating from Madrasa schools are thus typically restricted to studying Shari'a law in university and nothing else, with very few exceptions.*

<sup>127</sup> *Interviews with Herat University in July and August 2013.*

<sup>128</sup> *Focus Group Discussions in May and June 2010.*

<sup>129</sup> *Interviews with Herat University in July and August 2013.*

donor community, and which therefore face more pressure to reform curriculum standards. Standardization has not occurred in every Shari'a faculty in Afghanistan, and women continue to receive an unequal curriculum in such contexts. Further, in 2013, the Herat Shari'a faculty was made up of 15 classes, with four of these female-only and no mixed classes. By contrast, men and women sat in the same classes at the Law faculty in Herat.<sup>130</sup>

### (iii) Women as law professors

In 2010 women accounted for 13% of lecturers in the Law and Shari'a faculties of Kabul and Herat combined.<sup>131</sup> However, few if any women served as lecturers in the Shari'a faculties. Specifically, only one woman served as a member in the Shari'a faculty (out of 27 members) at Herat University and no women worked at the Shari'a faculty at Kabul University. In 2010 the Law faculties in Kabul, Herat and Herat Universities all had some female faculty members. At the Law faculty of Herat University 35.7% of lecturers were women, while at the Kabul University Law faculty nearly 30% of professors were women.<sup>132</sup>

By 2013 women accounted for 7.1% of lecturers in the Law and Shari'a faculties nationally. As in 2010, women were far more represented in Law faculties than in Shari'a faculties, constituting 17% of overall lecturers in Law faculties and just over 1% of lecturers in Shari'a faculties.<sup>134</sup>

In the Herat University Shari'a faculty there were two female lecturers in 2013, while there were still no female lecturers at the Kabul University Shari'a faculty.

<sup>130</sup> *Ibid.*

<sup>131</sup> Data collected from Kabul, Herat and Herat Universities in May and June 2010.

<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid.*

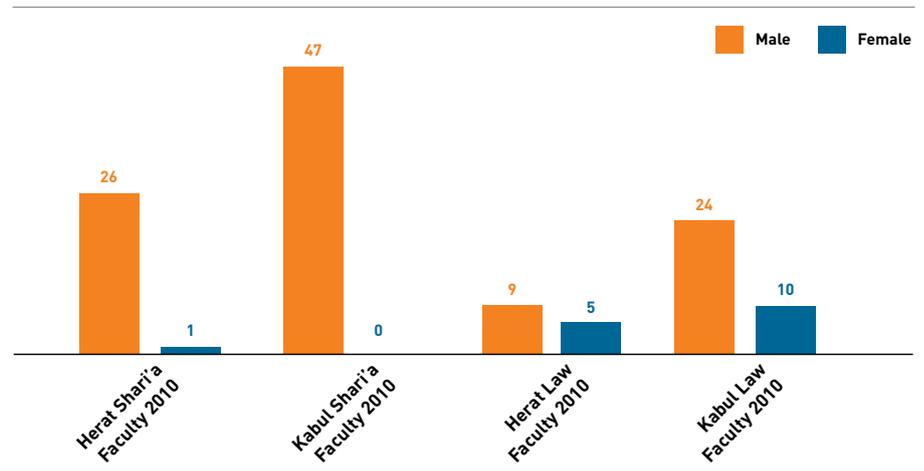
<sup>134</sup> Data collected from the MOHE in July and August 2013.

<sup>135</sup> Data concerning Kabul University was collected from the MOHE in July and August 2013. Data concerning Herat University was collected from interviews with Herat University in July and August 2013

<sup>136</sup> *Ibid.*

<sup>137</sup> The NLTC was a government institution that received financial and technical support from donors, including the Italian and US governments. In 2011, the NLTC lost its independent status and was brought under Kabul University. There are students from across the country and from the provinces; however, the majority of the students in the NLTC are from Kabul University.

**Gender Ratio in Shari'a and Law faculties in Herat and Kabul in 2010<sup>133</sup>**



**Table 14. Total number of public university Law and Shari'a teachers, sex and faculty disaggregated: 2012-2013<sup>136</sup>**

	Male	Female	Total
Law	109	22	131
Shari'a	216	3	219
<b>Total</b>	<b>225</b>	<b>25</b>	<b>350</b>

By contrast there were six female lecturers at Herat University Law faculty and 10 at the Kabul University law faculty. In Kabul, female lecturers in the law faculty therefore remained at the same levels as 2010, against an overall increase in male lecturers.<sup>135</sup>

### (iv) Women in the legal stage training

Established by presidential decree on June 9, 2007, the NLTC provides practical legal training and skills for practitioners and aims to 'even out' the knowledge gaps of new graduates,

regardless of whether they graduated from Law or Shari'a faculties, or which university they attended.<sup>137</sup> Since 2011 the NLTC has been part of Kabul University. New graduates of Law or Shari'a must participate in a nine month legal training at the NLTC, followed by a final exam, before they are allowed to begin practicing law. In addition, some of the prosecutors employed at the AGO and the Legal Aid Department staff at the MOJ are also required to complete an in-service stage at the NLTC to keep their posts or to advance in their departments.

## WOMEN IN THE LEGAL PROFESSION: PROGRESS BUT WORK STILL TO DO (continued)

In 2013 the NLTC did not offer any courses outside Kabul. But in recent years, it has sent its lecturers to the provinces to teach in programs sponsored by various Afghan and international NGOs. Overall, however, because of its location, the majority of students at the NLTC have been from Kabul University.<sup>138</sup>

In 2013 there were 17 trainers at the NLTC who conduct the stage training, although only 13 worked at the center. Out of this number, three were females. Two female trainers resigned in 2013, but four new female candidates who had recently passed the stage exam were employed to join the NLTC as trainers.<sup>139</sup>

The NLTC opened its doors on August 27, 2008.<sup>140</sup> By August 2013, the NLTC had concluded four rounds of stage training and was undertaking another.

In the first stage (2009–2010) women represented 20% of the 700 applicants to the stage program and 19% of those that were enrolled (37). Of the 81 students who graduated from this first stage course, 10 were women (12%). This suggests that nearly half dropped out of the program during the training. During the first stage, on average, women tended to score higher in the exam than their male counterparts.<sup>141</sup>

For the second stage program (2010–2011), fewer people took the exam, but of these, 62 (18.1%) were women. Women made up 24% of those who enrolled in the second round of the stage training (52). From this cohort only 17 women graduated out of a total of 67 overall graduates (25%). Again, the NLTC indicated that a significant number of the 35 women who did not graduate dropped out.<sup>142</sup>

**Table 15. Statistical information on the activities of the National Legal Training Center: 2009–2012<sup>145</sup>**

2009–2010: Graduates of the Law and Shari'a faculties			
	Total Number	Gender	
Number enrolled	196	Female	37
		Male	159
Number of graduates	196	Female	10
		Male	71
2010–2011: Graduates of the Law and Shari'a faculties			
Total Number	Gender		
Number of participants	219	Female	52
		Male	167
Number of graduates	67	Female	17
		Male	50
2010–2011: Prosecutors nominated by the Attorney General Office			
Total Number	Gender		
Number of participants	69	Female	3
		Male	66
Number of graduates	58	Female	3
		Male	55
2011–2012: Defense lawyers nominated by the Independent Bar Association (AIBA)			
Total Number	Gender		
Number of participants	48	Female	2
		Male	46
Number of graduates	18	Female	0
		Male	18
2011–2012: Joint Training for prosecutors, defense lawyers and graduates of Law and Shari'a faculties at Kabul University			
Total Number	Gender		
Number of participants	210	Female	39
		Male	171
Number of graduates	121	Female	23
		Male	98
2012–2013: Joint Training for prosecutors, defense lawyers from AIBA, Employees of the MOJ and graduates of Law and Shari'a faculties at Kabul University			
Total Number	Gender		
Number of participants	235	Female	60
		Male	175
Number of graduates	166	Female	48
		Male	118

<sup>138</sup> Interviews with the NLTC in July and August 2013.

<sup>139</sup> *Ibid.*

<sup>140</sup> The NLTC became the NLTC after it was merged with Kabul University by Presidential Letter in June 2011.

<sup>141</sup> Interviews with the NLTC in July and August 2013.

<sup>142</sup> *Ibid.*

<sup>143</sup> *Ibid.*

**Table 15. Statistical information on the activities of the National Legal Training Center: 2009-2012 (continued)**

2013-2014: Joint Training for prosecutors, defense lawyers from AIBA, employees of the MOJ, and graduates of Law and Shari'a faculties at Kabul University

Total Number	Gender	
Number of participants	216	Female 47 Male 169
Number of graduates	TRAINING IN PROGRESS	TRAINING IN PROGRESS
<b>Number of graduates 2009-2012</b>		
Total Number	Gender	
Number of participants	511	Female 101 Male 410



Image: World Bank\_Graham Crouch

In the same period, of the 69 in-service legal staff from the AGO who received supplemental stage training only 3 (or 4%) were women. Unlike previous rounds, all of these women graduated from the training program.<sup>143</sup>

In the third stage (2011-2012), a lower number of females enrolled in the program (41) and just over half of these graduated (23).<sup>144</sup> Women therefore made up 17% of overall graduates of the program for this period, a noteworthy drop from the previous year (where, apart from the AGO training, 25% of the graduates were female).

During the more recent completed round of training (2012-2013), there was a small increase in the number of female students enrolled (from 41 in 2011 to 60 in 2012) and who graduated from the program (48). Women represented 26% of students enrolled and 29% of the students who graduated.

There was a small decline in the number of women enrolled in 2013-2014 (47). Overall, the information supplied by the NLTC in 2013 indicated that women constituted approximately 20% of all graduates of the NLTC in the four training rounds that have taken place between 2009 and 2012.

#### **(v) Women in the judicial stage training**

The judicial stage is run by the Supreme Court and is compulsory to become a judge. According to baseline MOWA statistics, of the 170 students who completed the 2005 – 2006 judicial stage, only 12 were women. By the 2009-2010 graduating cohort, of the 140 students who graduated, 25 were female.<sup>146</sup> In the last six years of the program, each class has regularly included a significant number of women graduates, the majority of whom have consistently ranked at the top of their graduating class.<sup>147</sup>

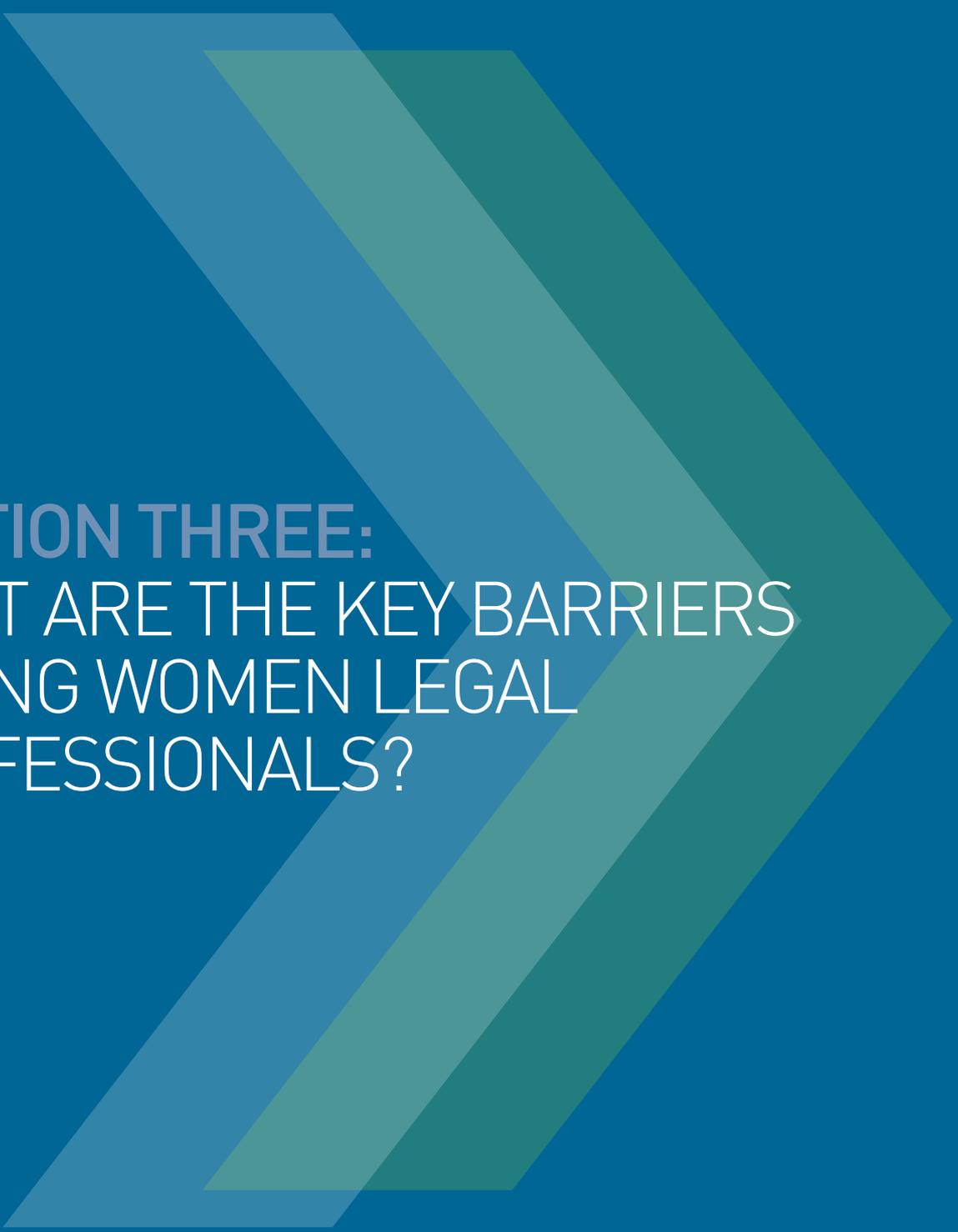
<sup>143</sup> Ibid.

<sup>144</sup> This combines the figures from the stage for defense lawyers nominated by the AIBA and from the joint training for prosecutors, defense lawyers and graduates of Law and Shari'a faculties.

<sup>145</sup> Data collected from the NLTC in July and August 2013.

<sup>146</sup> Data collected from Judge Zuhul Nesari, graduate of the judicial stage in 2010.

<sup>147</sup> USAID, '150 Afghan Women Judges form Professional Association' 18 July 2012, available at: [http://afghanistan.usaid.gov/en/USAID/Article/2766/150\\_Afghan\\_Women\\_Judges\\_Form\\_Professional\\_Association](http://afghanistan.usaid.gov/en/USAID/Article/2766/150_Afghan_Women_Judges_Form_Professional_Association)



**SECTION THREE:**  
WHAT ARE THE KEY BARRIERS  
FACING WOMEN LEGAL  
PROFESSIONALS?

# WHAT ARE THE KEY BARRIERS FACING WOMEN LEGAL PROFESSIONALS?

**B**ased on the extensive data gathered from 518 male and female legal professionals in 2010, several themes emerged concerning the barriers facing women legal professionals. While these findings are not always surprising, they are backed by a sizable sample of respondents, providing credible data to assist in the design of initiatives targeting the increased participation of women in the legal sector.

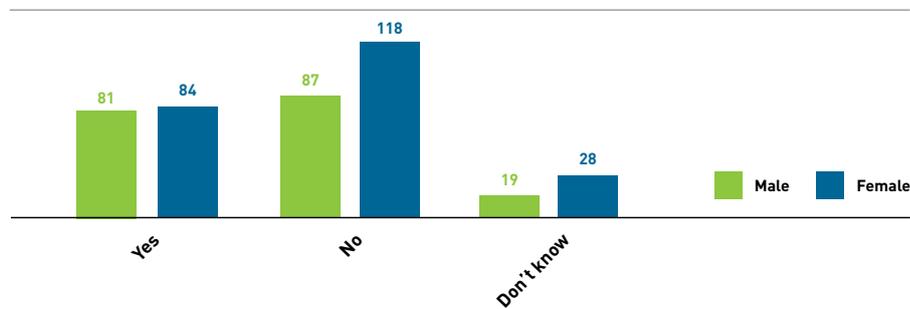
## Lack of access to job market and professional opportunities

Overall, while most legal professionals surveyed asserted that women’s rights, access and opportunities have improved greatly since the fall of the Taliban in 2001, they still cited numerous obstacles that prevent the improvement of women’s access to higher education and to the legal workforce.

Most respondents highlighted gender blindness regarding access to opportunities in the justice sector and merit, but cited lingering challenges for women in the legal profession, including negative perceptions of women’s ability. The majority of legal professionals interviewed believe that overall legal education, jobs, and job promotion are equally available to men and women. When asked whether men and women have the same job opportunities in the justice sector more respondents answered “no” (205) compared to “yes” (165). However, out of the total respondents to this question slightly less than half (49%) disagreed with the notion of equal job opportunities, though women accounted for 58% of those who believed in this inequality.

When students of Law and Shari’a were asked whether they believed that men and women had the same job

Do men and women have the same job opportunities in the justice sector? (by gender)



Do men and women have the same job opportunities in the justice sector? (by profession)

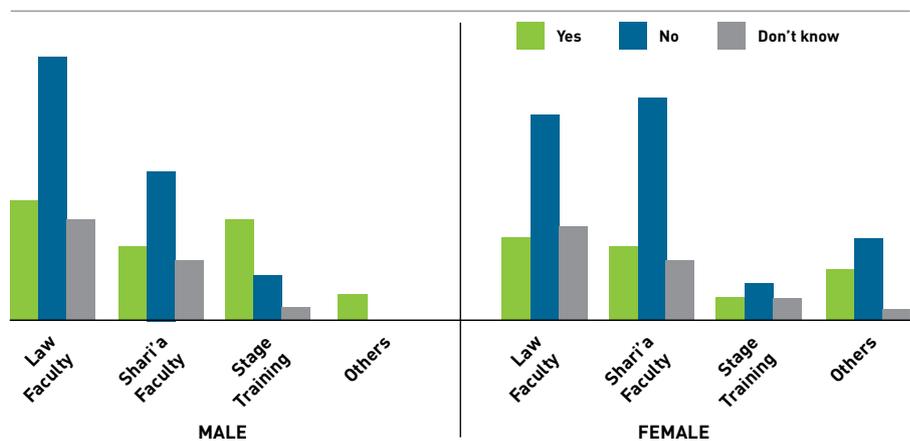


Table 16. Perceptions of obstacles women face when working in the justice sector

I believe that women face obstacles when working in the justice sector.			
Male agree	38%	Female agree	62%

opportunities in the justice sector, most male and female students stated that women did not have the same job opportunities. Women students explained that they believed employers gave preference to male candidates and treated women candidates as a second choice. They stated that due to sex discrimination, women were not recruited, and less qualified men were offered the positions. Most women students participating

in a focus group with female students in the Shari’a faculty in Herat University supported the statement that “female students do not have the same job opportunities because the law is not properly implemented and there is no justice.”

While respondents cited lingering obstacles for women in the profession, only 38% of men compared with 62% of women believed this to be true.

## WHAT ARE THE KEY BARRIERS FACING WOMEN LEGAL PROFESSIONALS? (continued)

Of the respondents who felt women face obstacles in the legal sector, most attributed these to:

- sexist attitudes and double standards;
- family and societal perceptions which maintain that women's place is in the house taking care of children and the household; and
- lack of security for women legal professionals to travel outside city centers in order to visit witnesses and/or prisons.

Some respondents also highlighted the use of threats and intimidation in the legal sector as an impeding factor for female legal professionals. Female legal professionals related that women prosecutors and lawyers face "problems and threats from criminals, people in high positions, and warlords."<sup>148</sup>

While some obstacles affect society as a whole –lack of security, inconsistent application of the rule of law, and corruption–respondents also cited numerous gender-specific challenges. These included expectations related to family responsibilities, perceptions of women as "less intelligent," "weak," "emotional," "irrational," and at the same time "very kind" and thus less likely to issue harsh judgments. Respondents also cited concerns about women working in a male-dominated environment or associating with "criminals." One woman judge explained that when she became a judge, the male judges told her "your votes will be counted only as half."<sup>149</sup>

About 30% of questionnaire respondents also cited "sex-discriminatory attitudes



Image: UN Photo\_Eskinder Debebe

and double standards" as impediments for women legal professionals. For example, a male law student from Kateb University stated:

*There is no difference in the level of access to both male and female in regards to the law and the Afghan constitution. However, the problem exists because of the false traditions and customs that exist in the Afghan society and impede women from having access to education.*

Surveys of women in the AGO and the MOJ also suggest that women legal professionals working in these institutions experience more gender-based discrimination in hiring and promotions than women working in other government ministries.<sup>150</sup>

The attitude expressed by both men and women legal professionals that only merit counts, rather than gender-specific sensitivities, must

be understood against the backdrop of civil service reform and related institutional overhaul of professional human resources. The over-reliance on professional experience and educational qualifications means that women cannot count the years of forced inactivity under the Taliban towards their tally of professional experience. This suggests that affirmative action or gender sensitive criteria should be put in place in the selection for a position.

### Lack of respect from colleagues and superiors

Slightly more than half (53%) of the 452 male and female respondents agreed that women who choose to work in the justice sector receive the same level of respect as their male colleagues, compared with nearly 29% who disagreed. Taking out the number of respondents who did not respond to this question, the ratio of those who assert women legal professionals are equally respected rises to 65%. However, when analyzed by gender, 69.4% of women felt that women did not receive the same level of respect in the justice sector. Thus, even as more women continue to join the legal workforce, they do so while still harboring perceptions of unequal treatment.

Overall, nearly half of all respondents agreed that women legal professionals are well-respected, and their views and work valued. Yet of those who disagreed, approximately 77% were women. During a focus group with women judges in Kabul in May 2010, all participants felt that "our views and opinions are not respected". The Chief Prosecutor in Herat articulated the need for respect for women in legal positions, especially those of authority:

➤ WOMEN ARE SEEN AS 'LESS INTELLIGENT,' 'WEAK,' AND TOO 'KIND' TO ISSUE HARSH JUDGMENTS ◀

<sup>148</sup> Data collected by survey in May and June 2010.

<sup>149</sup> Ibid.

<sup>150</sup> Ibid.

For Afghan women in judicial bodies the culture does not tolerate for women to be judges to issue convictions, or for women prosecutors asking for arrests, or conducting interrogations. It is painful for the men to accept women as their boss or director. Women's posts should be respected. A criminal is brought to an office and the director is a woman. If the staff of that office cannot tolerate that [the woman being the director], how can the criminal tolerate it?<sup>151</sup>

Initially, most respondents indicated that male and female legal professionals enjoyed similar treatment, opportunities, and pay for comparable work. However, more nuanced questions revealed that many legal professionals themselves believed victims and defendants preferred male over female legal professionals.

For instance, nearly 60% of questionnaire respondents agreed that victims of crime prefer male over female prosecutors to handle their case. Likewise, nearly half of respondents believed that the accused would also prefer male over female prosecutors to handle their cases. Of those who believed this preference for male legal professionals was a substantial challenge, 63-64% were women legal professionals. The most common explanation for this preference was a belief that "male prosecutors are considered more qualified and competent." Another reason cited was that male prosecutors were perhaps more likely to take bribes to resolve the case. Those who believed women legal professionals were preferred explained that women were more empathic, less likely to take bribes, and more likely to follow up on the case.

More than half of respondents (55.4%) believed women and men

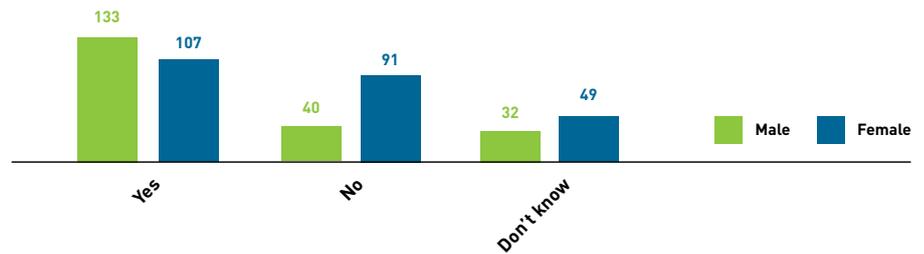
**Table 17. Respect for women working in the justice sector**

I believe the views and opinions of women working within the justice sector are valued and respected.			
Male disagree	23%	Female disagree	77%

**Table 18. Gender preference for prosecutors**

Victims of crimes prefer male over female prosecutors to handle their case.			
Male agree	36%	Female agree	44%
The accused equally prefer male over female prosecutors to handle the case.			
Male agree	37%	Female agree	43%

**Are women who choose to work in the justice sector treated equally as their male counterparts?**



legal professionals had equal access to clients, especially if detained, and received equal treatment when appearing before judicial and administrative bodies. However, among those who disagreed, nearly 70% were women. This suggests that women continue to feel, or are, marginalized by their inability to fully advocate on behalf of their clients.

**Lack of equality in legal education**

Law students and faculty members constituted nearly half of all survey respondents. 244 of the respondents (123 women and 121 men) were students from the Law and Shari'a faculties in the public universities of Herat and Kabul, and from the private

university, Kateb, located in Kabul.

As discussed above in the section on women's representation in educational institutions, women's enrollment, while steadily increasing, remains well below their overall numbers in the Afghan population. For example, as illustrated above, statistical data provided by the MOHE illustrates that in the lunar year 2008-2009, a mere 12% of all Law and Shari'a graduates were women. From 2009-2010 the proportion increased meaningfully to 17%, and then only marginally to 18% in the 2010-2011 graduating cohort. By 2011-2012, women graduates had dropped back to 16%, although their absolute numbers continued to rise.<sup>152</sup>

<sup>151</sup> Challenges and Contributions of Women in the Legal Professional – Key Findings and Recommendations conference, June 5, 2010, Safi Landmark Hotel, Kabul, Afghanistan.

<sup>152</sup> Data collected from the MOHE in July and August 2013.

## WHAT ARE THE KEY BARRIERS FACING WOMEN LEGAL PROFESSIONALS? (continued)

With the notable exception of Herat, more women tend to enroll in Shari'a faculties than in Law faculties. This is attributed largely to the availability of separate classes for women, which makes such education more acceptable to some families.

The majority of female students surveyed said that they had faced at various times obstacles in pursuing their legal education. Common challenges expressed included family and community restrictions, lack of female faculty members in the Shari'a faculties in both Kabul and Herat, unequal Shari'a curriculum for female students, lack of support for women's education and security concerns.

Three main thematic obstacles specific to women's success in legal and Shari'a education emerge from this study: (i) unequal access to legal education (ii) unequal legal education; among women and men – in objectives, content and quality; and (iii) unequal access to practical legal education and educational opportunities (stages and study abroad scholarships).

### (i) Women have unequal access to legal education

Gender biases in the family and at the community level continue to restrict women in receiving an education, a phenomenon particularly pronounced in rural Afghanistan. This was a recurring concern cited by the majority of female students in the Law and Shari'a faculties in Kabul and Herat Universities. About 71 female students from the Law and Shari'a faculties, compared to 48 male students, felt that women were not treated the same as men by their families and/or communities when they

## WOMEN LACK EQUAL ACCESS TO LEGAL EDUCATION CURRICULA OR PROFESSIONAL DEVELOPMENT

decided to enter the legal profession. While most respondents stated that men and women had equal access to legal education, they commented that for many women this was more in theory than in practice. One recurring issue was that families and communities often discourage women's education generally, and their legal education in particular, because of the view that a woman's primary, if not exclusive role, is as a wife and mother. This attitude was particularly pronounced in rural communities.

Family and community restrictions greatly affect girls' and women's ability to access higher education, and most respondents ranked this as the greatest challenge in enhancing women's participation in the legal sector. As discussed above, the systematic exclusion of girls from education under the Taliban and lingering disparities in current girls' school enrollment, particularly in rural areas, minimize the numbers of women who qualify to enter Law and Shari'a faculties.

Female students from both Herat and Kabul Universities emphasized that Afghan communities are primarily conservative and traditional, and the attitudes and perceptions of women within these structures present obstacles for them. They cited the impact of early marriages, traditional codes of honor and religious perceptions of women's roles, resulting in reluctance by families to allow their daughters, sisters or wives to get education. Focus group discussions with women students

suggested that most of the families did not allow the female members of their family to go out of their house. This was because women were seen as the guarantors of the household's honor, and if they were seen outside the house, other community members would "disgrace" that family in the community. Female students in a focus group held in the Shari'a faculty at Herat University stated that the lack of awareness of women's rights allowed for such traditions, cultures and norms to limit women's access and participation in the education and justice sector.

Women respondents cited a "male-dominated society" and "gender discrimination" as significant hurdles for female students to entering Law and Shari'a faculties. A female prosecutor of Herat province echoed the students' sentiment, explaining that:

*Problems for women start with the family. Girls are denied education, have limitations placed on them, they cannot go to classes. They must go home to cook, to help. They must not make noise so that their brothers can study.<sup>153</sup>*

In response to whether men and women were treated equally by their families and communities when they decide to get a legal education or enter the legal profession, she responded that "in some fanatic and men-ruling families and communities, it is not tolerable for a woman to study law, and become either prosecutor or judge."<sup>154</sup>

<sup>153</sup> Challenges and Contributions of Women in the Legal Professional – Key Findings and Recommendations conference, June 5, 2010.

<sup>154</sup> Ibid.

Female respondents also mentioned that their ideas were not valued in the household and that when they expressed their ideas they were threatened by certain family members. A recent law graduate enrolled in the stage program recognized the existence of negative gender stereotypes, but was determined to use her law degree for change:

*In our community boys have supremacy on girls; even families consider the wishes of boys and believe that girls should be housewives. I want to change this idea.*

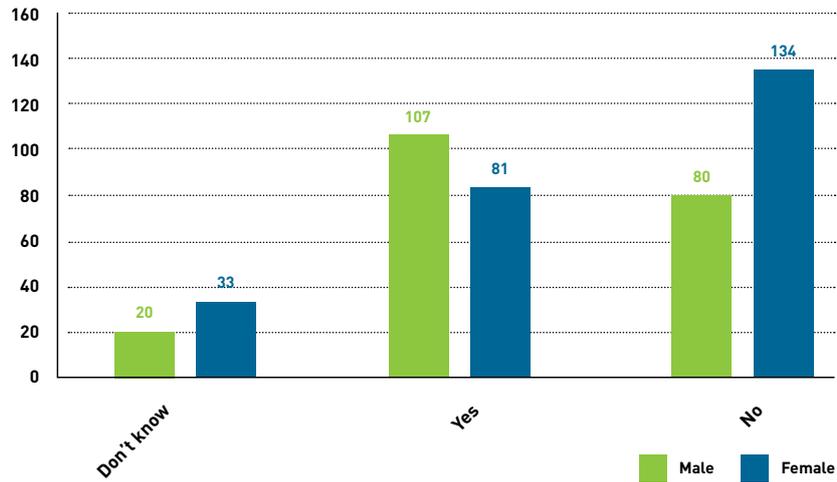
Even with supportive families – without which women would be unable to pursue their legal education – community and general actual and perceived social pressures remain roadblocks. For example, a woman student, from the Law faculty at Kateb University, stated:

*Families treat the men and women the same when they enter legal education or legal profession, however it is the community that holds the perception that females are an inferior class in society and should not enter the legal sector.*

More male students believed that families and communities treated men and women equally who entered legal education or who served as legal professionals, with an equal number of male law students who agreed and disagreed with the question. In contrast, a majority (66%) of female students from both the Law and Shari’a faculties responded that they did not receive equal treatment from their families and communities.

Responses to the same question posed to all legal professionals surveyed

**Men and women who enter legal education are treated the same by their family and community**



– students as well as practitioners – replicate the students’ sentiment. Nearly half (47%), or 214 of 455 respondents believe that men and women who enter legal education are not treated equally by their family and community. Yet 41% (188) believe that they do receive equal treatment. As with the students, more women than men highlighted unequal treatment; women made up 63% of those who acknowledged the unequal treatment by family and community, men made up 57% of those who believed that the treatment was equal.

**(ii) Unequal legal education for men and women**

Women students, primarily those in the Shari’a faculties of Kabul and Herat, complained bitterly that their education was inferior to that of their male counterparts. Their sex-separated education – which may put their families at ease and permit them to enroll in the faculty – also means unequal curriculum, content and quality, including gender stereotyping in the classroom and lack of female professors with whom to openly discuss “sensitive or controversial” points of

## WHAT ARE THE KEY BARRIERS FACING WOMEN LEGAL PROFESSIONALS? (continued)

personal and family law. Such realities and perceptions about the quality of women's legal education may contribute to lingering negative perceptions of women legal professionals. Women students in Shari'a faculties stated that they did not receive the same comprehensive Shari'a curriculum as their male counterparts. Women Shari'a students consider the unequal curriculum an obstacle to entering the legal profession, and complain that often they can only work as teachers in primary schools. The reason cited for the abbreviated curriculum, excluding jurisprudence, is that Islam prohibits women from serving as judges.

According to one focus group participant from the Shari'a faculty, Kabul University:

*There is a difference in the curriculum of male and female students, and when we graduate we can only be teachers not lawyers, because we are not taught subjects pertaining to law. We ourselves try to get access to the law subjects and get access to the law.*

Out of 104 questionnaire respondents, approximately 60% asserted that women and men legal professionals had equal knowledge and skills to practice law upon graduation from legal education. The majority (57%) of them were women (36 compared with 27).

Nonetheless, the majority of female Shari'a students related that because they were not taught the same legal courses as their male counterparts, they lacked the level of skills needed for legal practice after they finished their education. The students added that this unequal curriculum would lead to many women being passed over for recruitment into the justice sector.<sup>155</sup> This inequality has also led female

### **Different Shari'a curriculum: Kabul University**

*The Kabul University's Shari'a faculty 2007 (1386) curriculum for the four years differs by sex: a curriculum for male students and an abbreviated curriculum for female students. Males are required to complete 286 hours over the four years with an average of 36 hours per semester, while women only complete 260 hours, or an average of 32.5 hours per semester. This is a difference of nearly an entire full semester or 6.5 classes that women are "spared." The classes offered exclusively for men include introduction to [statutory] law, law of obligations, governance in Islam, history of Islamic legislation, principles of issuing fatwas, Quranic studies, rhetoric, and a monograph seminar. Women are given more recitation classes, multiple Islamic philosophy classes, and an extra pedagogy class – presumably to better prepare them for their roles as teachers, rather than lawyers. Regrettably, there has been no evaluation of whether the sex-segregated classes are taught on an equal basis, but such evaluation may be key to future curriculum reform in Shari'a faculties.*

students to feel less confident. As observed by one female student at the Shari'a faculty in Herat:

*Boys can be confident in their profession because they have all the required qualifications, but girls don't. There is a big difference between male and female students, and it is that we are not taught the same subjects taught to male students.*

Some Shari'a students in Herat felt strongly that men and women were not treated equally by the faculty. They cited the imposed strict dress code for women only, the code of conduct, the painted lower window panes in the classroom to obstruct those outside from being able to see the women seated in the classroom, and the sex-segregated library hours and inability to study together with men. All of these differences and restrictions combined to make women feel insecure about their abilities and the quality of their legal education, and consequently their career prospects.

Given that Shari'a faculties are sex-segregated, some respondents explained that families are more

comfortable sending daughters to a Shari'a faculty rather than a Law faculty. For example, in 2010, the Kabul Shari'a faculty had 115 women enrolled, compared with 65 women in the Law faculty. However, an ironic reverse trend was identified in more socially conservative Herat, where 35 women were enrolled in the Shari'a faculty, whereas 149 women attend the Law faculty. In both locations, women law students expressed much greater optimism about their own legal careers and prospects, than women Shari'a students, who at times felt disadvantaged by their incomplete training.

### **Female faculty members**

Women Shari'a students were also highly critical of the absence of female faculty members in the Shari'a faculty. Female students complained that they were unable to raise certain legal issues with male faculty members, including basic questions about family, personal status and sexual crimes, thus undermining their depth of legal knowledge and understanding.

As discussed above, few if any women serve as professors in the Shari'a faculties, or as full instructors with the

<sup>155</sup> It is important to recognize that this situation has changed at Herat University and some other universities in recent years, as discussed above. In Herat's Shari'a faculty, female students now sit the same exams and have the same course credits as the male students (Interviews with Herat University in July and August 2013).

stage training programs, such as the NLTC. Currently, no women professors are teaching at the Shari'a faculty in Kabul, and only two women are in the Shari'a faculty in Herat, although the Law faculties in Kabul, Herat and Herat Universities all have female faculty members.

Among the reasons cited in 2010 for the unavailability of female Shari'a instructors is the lack of qualified women with sufficient Arabic language skills. "When we ask for female professors, the faculty tell us that female graduates of Shari'a do not know Arabic so we cannot hire them," stated a focus group participant from the Shari'a faculty at the Kabul University. However, students claim that some of their male instructors likewise lack such language skills.

**Class dynamics**

When students were surveyed about the level of comfort they felt in the classroom taught by a male or female professor, the overall response gathered from female students was that they felt comfortable with either gender. However, figures for female students in the Shari'a faculty show that they would predominantly prefer female professors, with whom they feel more open to engage in discussions.

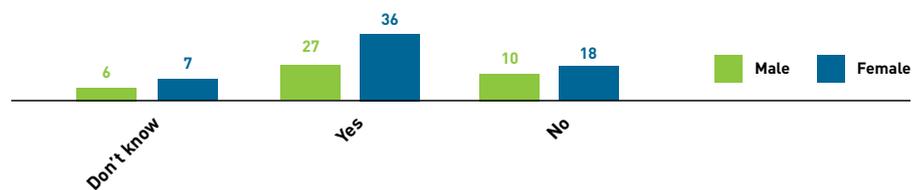
Some women students also expressed concerns about not being accorded equal respect and having their opinions and views undervalued in the classroom. During a focus group discussion with female Shari'a students at Herat University, female students related that their professors discouraged them from participating in class by telling them that women were "irrational" and "emotional" and therefore unable to make sensible decisions.

A female Shari'a student in Herat University expressed her classmates' reluctance to participate in class in a focus group discussion:

**Table 19. Opportunity to participate in class**

Do men and women receive equal attention and opportunity to participate in class / in staff meetings?				
	Yes	No	Don't know	Total
Female	128	39	47	214
Male	87	18	48	153

**Men and women legal professionals attain equal knowledge and skills and can enforce laws after they finish their education**



**> SHARI'A PROFESSORS DESCRIBE WOMEN AS 'IRRATIONAL' AND 'EMOTIONAL' <**

*Female students do not have the courage to refuse the arguments of the professors because the management of the department made female students discouraged, therefore, they do not dare to respond.*

As with the general tendency by the legal professionals surveyed to paint a picture of gender equality in the profession, nearly 60% of men and women legal professionals stated that men and women received equal attention and opportunity to participate in the class or in staff meetings. However, significantly more respondents of equal numbers of men and women (95 or 26%) indicated they "don't know" if that is case, whereas 15.5% believed that such equality did not exist. Women accounted for 70% of those who did not agree that men and women received equal attention and opportunity in the class or the office.

Overall, anecdotal evidence suggests that gender stereotypes continue to

adversely affect classroom dynamics, especially where there are no female faculty members. This fact, combined with a less comprehensive Shari'a curriculum, indicates that women law students receive an unequal legal education of questionable quality and depth, and are denied opportunities to excel and develop their personal and professional self-confidence.

**(iii) Women have unequal access to practical legal education and educational opportunities**

**Stages**

As discussed above, the stage training for recent graduates constitutes a requirement for the practice of law, whether in public justice institutions, or as private lawyers. However, at present these stage courses are only available at the NLTC, located on Kabul University campus. There are no other stage facilities in other provinces, although steps have been taken by NGOs to bring trainers to the provinces.

# WHAT ARE THE KEY BARRIERS FACING WOMEN LEGAL PROFESSIONALS? (continued)

Since the program is mandatory, women and men graduates of Law and Shari'a who reside outside Kabul must arrange for their accommodation and expenses to allow them to enroll in the nine-month program (provided they pass the stage entrance exam). Those able to do so generally have relatives in Kabul who house them during the stage period. Because of a combination of lack of local educational facilities and travel difficulties due to societal and family pressures, women are often excluded from the mandatory stage program based in Kabul. Unmarried women graduates come under particular scrutiny, as their families will likely prohibit them to travel or live outside of the family unit prior to marriage.

Reflecting this reality, more women than men respondents stated that they did not apply to the stage training after completion of their degree in Law or Shari'a because the training facility was located in Kabul. In large part due to the stage program only being available there, women's enrollment in the program remains low, though it has increased over the past cycles of the stage program. During the first stage program 2009-2010, women made up 11.1% of those who passed the exam, and 10% of those enrolled in the stage program. Of the 10 women who participated in the focus group discussions who had completed the first stage course, three had graduated from Herat University and were able to arrange housing with relatives, which allowed them to study in Kabul.

Women judges interviewed in Herat stated that they were unable to



Image: World Bank\_Graham Crouch

participate in the judicial stage or other legal trainings as it would require them to travel. Many women are restricted from travelling far from their homes in Afghanistan because of the widespread practice of prohibiting women from travelling to other provinces without a mahram.<sup>156</sup> Donors and national justice institutions involved with the stage programs have been in discussions regarding possible expansions of stage programs to Herat, and possibly other provincial centers in the near future. Additionally, donors and relevant justice institutions are considering the provision of hostel accommodations for female

stage participants from the provinces, who could then access the stage at the NLTC.

### Scholarships

While government and private scholarship opportunities for higher legal education exist, unlike men, most women cannot avail themselves of these opportunities as they are often unable to travel outside the country or their hometown or province unaccompanied. Further, many women respondents complain that men tend to receive such opportunities due to bribes, kinship, political or "boys' network" affiliation

<sup>156</sup> 'Mahram' refers to a close male relative, predominantly an immediate family member, or legal guardian.

with the program administrators or key officials within the MOHE. Respondents believed that scholarships were mostly awarded to “men, based on their personal contacts and at times, bribes”. Other respondents felt that the awarding agencies giving the scholarship did not consider women because they assumed that their families would not permit them to take advantage of the opportunity and that the scholarship would be seen as “going to waste.” About half of respondents (50.58%; 53 female and 50 male) who work as advocates, legal aid providers, and NGO staff related that women legal professionals did not have the same opportunities as their male colleagues to pursue higher education in a foreign country. Only 42.44% of those respondents (33 female and 42 male) said, “men and women have equal access to government and other grants for higher education.” It is notable that since this survey was undertaken, a number of donors have initiated programs aimed at expanding the access of Afghan women lawyers and students to foreign education systems.<sup>157</sup>

In addition to families’ concerns about women travelling abroad, unaccompanied by a male mahram (and scholarships do not cover such a possibility), many women are expected to remain close to home as primary caretakers of families and households.<sup>158</sup>

Nonetheless, respondents suggested that scholarships to study in Muslim countries where proper facilities exist for women-only accommodations could be acceptable to families and

**Table 20. Social pressure and negative gender stereotypes**

Do you believe that certain customs and traditions in your community prevent women from working in the legal profession?			
Factors	Male	Female	Overall
Conservative traditions	28.17%	49.11%	77.28%
Prevalence of male-dominated views	4.08%	5.58%	9.66%
Negative gender stereotypes	4.37%	3.68%	8.05%
Differences between south and north cultures in the country	1.5%	3.33%	4.83%
<b>Total</b>	<b>38.12%</b>	<b>61.7%</b>	<b>99.82%</b>

## › INTERNATIONAL SCHOLARSHIPS SHOULD GO TO WOMEN – IDEALLY IN PAIRS, FOR SAFETY AND SUPPORT ◀

communities who are worried about the reputations of their daughters and wives being potentially tainted by a prolonged, unsupervised absence.

### **Lack of social and cultural norms to support women legal professionals (i) Negative “customs” and “traditions” prevent women entering the legal profession**

Even though overall most respondents claimed that women had equal access to jobs and opportunities in the legal sector, an overwhelming majority (87.8%) believed that “certain customs

and traditions in [their] community prevent women from working in the legal profession.” Women accounted for 61% (116) of the 195 of 212 who responded in the affirmative to that question. Most respondents indicated “conservative traditions” (often referred to as “religious traditions”) as the reason for this (about 77%), while nearly one fifth (18%) cited male-dominated views and negative gender stereotypes. Many also pointed to a rural-urban divide in such attitudes, with cities harboring more progressive attitudes about women’s education and professional work.

Most respondents stressed that such local “customs and traditions” run counter to, and in fact “pervert” Shari’a law and Islam’s general protections for women’s basic rights in family and public life. Despite living in the capital, slightly more Kabul-based respondents (51%) than Herat-based

<sup>157</sup> For example, see the program *Public-Private Partnership for Justice Reform*, initiated by the US Department of State, which assists Afghan legal professionals to undertake a *Masters of Laws* in US law schools. Three of the ten participants in 2011 were female. US State Department *Public-Private Partnership for Justice Reform in Afghanistan*, 21 November 2011, available at: <http://www.state.gov/r/pa/prs/ps/2011/11/177593.htm>

<sup>158</sup> See, for example, comments concerning the reaction of male relatives to a female scholarship student travelling alone to America for further legal studies. Erika Aguilar *‘2 Afghan attorneys in SoCal defy social barriers and fight for women’s rights’* Southern California Public Radio, 12 October 2012, available at: <http://www.scpr.org/programs/take-two/2012/10/12/28820/two-afghan-attorneys-defy-social-barriers-and-figh/>

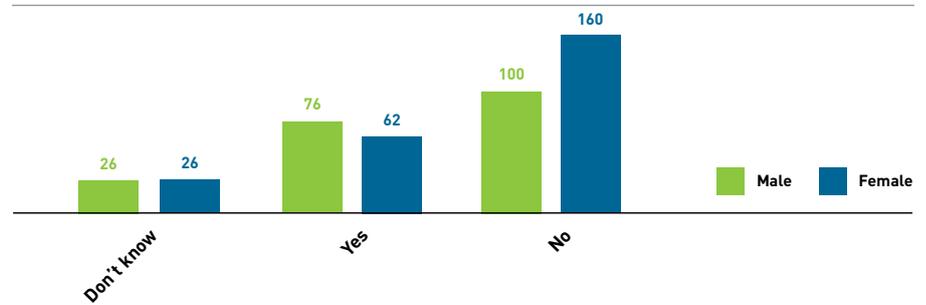
## WHAT ARE THE KEY BARRIERS FACING WOMEN LEGAL PROFESSIONALS? (continued)

respondents (49%) cited the influence of conservative customs as an obstacle to women entering the profession. This could be attributed to urban perceptions of the situation in rural areas, where most consider women's rights highly repressed.

As discussed above, almost half of all legal professionals surveyed (47%) agreed that women legal professionals are not treated the same as their male counterparts by family and community. Of those who highlighted this inequality in treatment, 62% were women and 38% men. The most frequently cited reason for unequal treatments was that "society... prohibits us from pursuing legal studies and entering the legal profession because they do not see the justice sector as an appropriate profession for women."

The majority of female respondents also pointed to an individual loss of decision-making authority, particularly after marriage, when the husband or in-laws tend to become the overarching authority in the woman's life. This includes decisions regarding school, university, or work outside the house. Many of the women legal professionals interviewed overcame the challenge of lingering negative perceptions in some communities by relying on strong family support. Of the 41% who believed families and communities treated men and female legal professional the same way, the majority related that their families supported their decision to enter the legal field, and it was societal perceptions of gender roles that hindered them.

Do family obligations affect equally women's and men's ability to work as legal professionals?



### (iii) Family obligations hinder women's ability to work as legal professionals

Most respondents (260, or 58% of 450) agreed that men's and women's ability to work as legal professionals is not equally affected by their family obligations. Women made up 61.5% of those who agreed. Approximately 30% disagreed, over half of whom (55%) were men. The question of gender equality in taking care of the family yielded the most unambiguous reply. Most interviewees were in fact puzzled by the question, assuming only one answer – "it is the woman's responsibility" – would be appropriate.

While family obligations, including childcare, remain the sole responsibility of women, some government institutions have made accommodations to female staff. For example, the AGO in Central Kabul and the MOJ have childcare centers on their premises, and provide for transportation for all employees. Other ministries providing day care include MOWA. Nonetheless, even women prosecutors in Kabul have expressed concerns about the uneven burden on professional women. One senior woman prosecutor captured this common sentiment:

*Because most of the men believe that women's job is to take care of children... children's responsibilities fall on women. And that's against women's rights.*

The head of a Prosecution Unit in Kabul elaborated the subsequent challenges of such gender-based assumptions:

*If women cannot perform their official duties, then their supervisor says, "Women should stay at home and not work outside the home." There is no cooperation or assistance in official work. For example, a woman who couldn't work because of a sickness of her child would be angrily treated by her supervisor.*

Finally, the Chief Prosecutor in Herat explained that families and communities feel more comfortable with women as teachers, who can better balance work and family, rather than legal professionals with public responsibilities.

*[Teaching] is like part time work, with 3 months off. But ...women can be directors and good mothers Those male directors were raised and nourished by mothers. So women internalize that being a teacher is the best thing for me. But women can*

➤ ALTHOUGH MORE WOMEN ARE JOINING THE LEGAL WORKFORCE, PERCEPTIONS OF UNEQUAL TREATMENT PERSIST ◀

*work in any profession...they can be good police-persons, prosecutors, judges.*<sup>159</sup>

Clearly the provision of day care or crèches for employees and staff is a noteworthy benefit to women working in any capacity in government offices. Further, the provision of day care/ kindergartens is mandatory for employers pursuant to the Labor Law of Afghanistan (2007).<sup>160</sup>

### (iii) Violations of women's rights impact on women's ability to enter the legal profession

One of the greatest challenges for women entering the legal profession cited by respondents was ongoing violations of women's basic rights. The Afghan Constitution, in addition to a multitude of laws and policies, declares the centrality of gender equality, yet these provisions are often ignored by certain communities or individuals, as well as by governmental entities themselves.

#### Lack of freedom of movement

##### (i) Travel limitations restrict women legal professionals

Whether due to security concerns, social and familial pressures, or perceived religious principles, women's inability to travel unaccompanied was cited as an important factor restricting women's access to legal education and training programs, and at times a factor in their ability to carry out their professional duties. Many respondents (53%, or 199 out of 373) recognized that men and women do not have the same ability to travel and speak to witnesses, to conduct investigations, and to prepare cases. Of the 273 NGO legal aid staff surveyed in Kabul and Herat, 37% (55



Image: Unitarian Universalist Service Committee

male and 47 female respondents) said they could travel to remote districts, and 44% (58 male and 63 female) were unable to travel in the current situation.

Social pressure is often reinforced by religious guidance about unaccompanied travel. In late May 2010, the Herat Religious Council issued a fatwa banning women from travelling without a father, brother, or other approved escort because unaccompanied travel "raises questions about the woman's piety".<sup>161</sup> Although such pronouncements are not legally binding, the Council urged the government to implement this "guidance". The deputy head of the Council also stated that while he supports education for women, women who study abroad without taking approved mahrams with them are acting against Islam.<sup>162</sup> More recently,

in June 2013, clerics in a region of Baghlan province, north of Kabul, barred women from leaving home without a male chaperone and shut down beauty parlors.<sup>163</sup>

During the conference *Challenges and Contributions of Women Legal Professionals* in June 2010, women legal professionals in attendance discussed this fatwa with apparent disapproval. For example, the Chief Prosecutor of Herat province remarked at the Conference "regarding the fatwa and Islamic scholars talking about restrictions on travel for women without mahrams, we who work, we are brave and we deserve respect."<sup>164</sup> She further noted that such sentiments increase the need for the required stage training for recent graduates to be available in the provinces.

<sup>159</sup> *Challenges and Contributions of Women in the Legal Professional – Key Findings and Recommendations conference, June 5, 2010*

<sup>160</sup> Article 154.

<sup>161</sup> 'Clerics Impose Restrictions on Women's Travel' *Afghanistan Times*, 26 May 2010

<sup>162</sup> *Ibid.*

<sup>163</sup> 'High Profile Attacks on Women in Afghanistan Undermine Rights Campaign' *New York Times*, 13 August 2013.

<sup>164</sup> *Challenges and Contributions of Women in the Legal Professional – Key Findings and Recommendations conference, June 5, 2010*

## WHAT ARE THE KEY BARRIERS FACING WOMEN LEGAL PROFESSIONALS? (continued)

More than half of the respondents claimed that both men and women were fully capable of utilizing all means made available to them by law to prepare cases. Yet most female legal professionals cited insecurity as a factor that impeded their ability to travel to remote districts. They explained that fear for their physical security was a primary concern, and that “women legal professionals are unable to travel to remote areas without being accompanied by a male colleague or relative.”

In particular, women working in legal aid and women's NGOs cited insecurity as the reason they did not travel to remote districts to speak with villagers, promote awareness programs, conduct investigations, interview witnesses, and prepare case files and reports. Women legal professionals interviewed in Herat city related that on several occasions they were unable to travel outside the city without a male colleague or relative, and sometimes at all, due to security concerns. The recent assassination of the most senior female policewoman in Helmand Province, Lieutenant Islam Bibi, as well as a string of attacks on female government officials, suggest the situation is getting worse for prominent women in Afghanistan.<sup>165</sup>

Finally, because of the lack of security and safe access, most legal aid NGOs and professional legal organizations limit their activities to major urban centers. Consequently, women in more remote locations may never meet women who are legal professionals, or become aware of legal rights/laws, which are the instruments that can

### > INSECURITY, FORCED MARRIAGE AND CULTURAL TABOOS MEAN GIRLS' EDUCATIONAL NEEDS ARE NOT MET <

protect and empower them and their communities. Likewise, women who must remain in these regions cannot access justice or secure jobs with organizations that are unwilling or unable to operate there.

#### (ii) Threats, intimidation and corruption hinder women legal professionals

One of the key problems that NGO workers and legal aid professionals noted as serious hindrances in their ability to perform their duties were instances of threats and intimidations from officials and militants/insurgents. Intimidation prevents legal aid and defense lawyers from interviewing victims of violence, and prevents defense lawyers from accusing specific personalities of having committed a crime. Some NGO and legal aid staff stated that threats against them were designed to intimidate them from sending women who escaped abusive home situations to NGO-run shelters.

Female legal aid staff, defense lawyers, and NGO workers in Kabul (21 or 52.5%) and in Herat (19 or 47.5%) also indicated that they received threats from various sources. Lawyers with the Humanitarian Assistance for the Women and Children of Afghanistan (HAWCA), a Herat-based legal aid NGO for victims of violence, including sexual violence,

domestic abuse and burning, were singled out as facing more intimidation and threats than other legal aid organizations.<sup>166</sup>

In addition, prosecutors faced pressure from the accused or their families trying to sway them to reduce or drop the charges in exchange for bribes or threats. Women prosecutors have related that their practice and the general perception is that women prosecutors are less likely to be affected by offers of bribes to enlarge or drop cases. As the head of the VAW Unit in the Attorney General's Office explained “Female clients [victims] prefer to have female prosecutors for prosecuting their cases, because they are not involved in corruption.”<sup>167</sup>

Reflecting a general weakness in the legal system, a considerable number of male legal professionals also complained of insecurity and intimidations from warlords and high-ranking government officials. Male legal aid staff, NGOs, and defense lawyers in Kabul (17 or 53% of respondents) and in Herat (15 or 47%) related that they regularly faced intimidation. One possible explanation for intimidation against male legal professionals in Kabul could be their involvement in high-profile cases.

<sup>165</sup> 'High Profile Attacks on Women in Afghanistan Undermine Rights Campaign' *New York Times*, 13 August 2013.

<sup>166</sup> HAWCA also maintain an office and shelter in Kabul and in other provinces.

<sup>167</sup> Data collected from the VAW Unit in May and June 2010.



Image: United Nations Development Programme



**SECTION FOUR:**  
ADDRESSING THE OBSTACLES:  
WHAT CAN BE DONE TO SUPPORT  
WOMEN'S PARTICIPATION IN  
THE JUSTICE SECTOR?

# WHAT CAN BE DONE TO SUPPORT WOMEN'S PARTICIPATION IN THE JUSTICE SECTOR?

**W**hile there has been significant progress in the professional participation of women in Afghanistan's justice sector, IDLO's research shows more needs to be done to encourage participation and remove cultural and structural barriers to participation. Afghan women continue to encounter substantial obstacles, both in entering the legal profession and in their daily work in the profession. Although some of these constraints are cultural, including social pressure and negative stereotypes about women's role in society, others are structural, such as lack of safe transportation and appropriate accommodation facilities for women to attend law or Shari'a faculties or compulsory legal training based in Kabul.

Women's Professional Participation shows that women often do not have equal access to legal education curricula and professional development opportunities as compared to their male counterparts, with direct consequences in terms of entry into the profession and opportunities for career advancement. IDLO's research also points to a gap between the number of women graduating from Law and Shari'a faculties and those actually employed in the justice sector, particularly in high-level leadership positions. The research indicates high dropout rates of girls in legal education facilities.

To overcome these obstacles and improve the ability of women to participate in Afghanistan's justice sector, participants in IDLO's research identified a number of measures to be considered, including the following:

## Improve access to education for girls

Improving girls' access to education is critical for increasing women's professional participation in the justice sector. Without access to basic education, women and girls will continue to be excluded from advancing to institutions of higher education and from entering the formal employment sector, including the legal sector. Improved access to education for girls could be achieved, for example, through increasing the number of girls' schools. In 2013, only 14% of schools, or 2,286 schools out of a total of 14,391 schools across the country, were girls-only.<sup>168</sup> In a situation where gender segregation has been the rule, addressing prejudices concerning the schooling of girls, improving girls' security in the school context, and increasing the number of girls-only schools, could bring about a direct improvement to girls' access to education, and later, to the legal profession.

Efforts to improve women's access to education must also take into account the disparities between urban and rural women. Women's Professional Participation shows that rural women are less likely than their urban counterparts to seek higher education in the legal sector or pursue legal careers, due to lower literacy rates and more conservative attitudes. To address this discrepancy, universities should institute a targeted policy of affirmative action, aimed at women from low-income and rural areas, who have been historically disadvantaged in terms of access to education.<sup>169</sup>

Women's access to higher education may also be improved by providing



Image: IDLO\_Paul Hutchings

women with access to key foundational courses to address knowledge gaps that may have resulted from years of expulsion from public life under the Taliban regime. Access to foundational courses could be provided through online and distance learning, for example by setting up internet centers in district towns, a method that has proven successful in terms of educating rural women in the past. The setting up of female dormitories is also recommended to improve women's attendance to the mandatory legal and judicial stage in Kabul and to ensure that rural parents are not dissuaded from sending their daughters to large cities for higher legal education. There should also be secure transportation to and from educational institutions for female students, especially in relatively insecure areas, and where female students are unable to afford or access private transportation.

## UNIVERSITIES SHOULD BRING IN AFFIRMATIVE ACTION FOR RURAL WOMEN

<sup>168</sup> Data collected from the MOE in July and August 2013.

<sup>169</sup> Interview with Afghan Women's Network in July 2013. While there is some evidence that women studying at university are supported through 'grace marks' in their exams, there is no sign of significant positive discrimination. A number of interviewees credited 'grace marks' as a small but important step to help women compete with their male counterparts, although further studies would have to be undertaken to support this assertion.

## ADDRESSING THE OBSTACLES: WHAT CAN BE DONE TO SUPPORT WOMEN'S PARTICIPATION IN THE JUSTICE SECTOR? (continued)

### Tackle discrimination in women's higher legal education

Women's Professional Participation indicates that women frequently face discrimination in access to higher legal education. For example, they do not always receive the same curriculum as their male counterparts, and while opportunities to study abroad are generally gender neutral, in practice women are rarely able to take advantage of these. Gender stereotyping by male lecturers and the negative consequences that the absence of female teachers have on learning outcomes were also raised as concerns in focus group discussions.

To address discrimination, a comprehensive review of the legal curriculum provided to men and women in Shari'a faculties should be undertaken, with the aim to remove any differences between courses offered to men and women. Universities should also increase the recruitment and promotion of women faculty members in law and Shari'a faculties, as well as the number of women in NLTC and judicial stage training. Respondents also stressed the importance of having legal education institutions encouraging girls to participate in class by introducing a teaching policy concerning gender stereotyping and respect for students, with penalties for violation and a free complaint service for students.

To improve access to any scholarships opportunities abroad, existing international scholarships should be earmarked for female law and Shari'a graduates, to avoid traditional preference for men with kinship and political connections. Sending at least two women together would allow them to serve as each other's escort and roommate.



Image: Mohamed Somji

### Expand access to practical training and capacity building opportunities

Although Women's Professional Participation identifies lack of access to education as one of the key obstacles to women's participation in the judicial system, Afghan women have often criticized the emphasis of the international community and the government on the sheer numbers of girls in schools and universities, rather than on the quality of education women receive and their preparation for professional life. It has been noted that the lower quality of girls' education contributes to the risk of unemployment many girls face after university.<sup>170</sup> According to the AWN, the government frequently cites the low number of qualified and educated women as the main reason for their inability to fill high-level leadership positions.<sup>171</sup> Interviews conducted for the IDLO study provide some support for this view, with interviewees noting that some women struggle to pass the entrance exams for the judicial and legal stage. A former judge commented that

the judicial stage itself is an obstacle to women as the entrance exam addresses highly technical Shari'a issues. This is because women graduating from the Law faculties generally do not have access to the comprehensive Shari'a curricula, while women in the Shari'a faculties are not always exposed to the same curriculum as their male counterparts.<sup>172</sup>

Strategies to equip women with the same skills as their male counterparts to enter and excel in the legal sector following graduation from university should include capacity-building programs specifically targeting women graduates and legal professionals, to enhance knowledge, skills and expertise, and to build professional networks. The interviewees for this study revealed that courses of particular relevance where female students are generally disadvantaged are: religious classes, especially for judges who rule based on Shari'a law; leadership, management, negotiation and communication skills, computer skills; and English and Arabic language classes. These programs should be available at the local and provincial levels, taking into account the specific security needs of female participants, such as safe housing and adequate transportation. Again, the possibility of online education through female-only internet rooms should be explored.

IDLO's research also shows that the lack of availability of the legal and judicial stage – a compulsory training to become a lawyer – for students in the provinces is a major disadvantage for female students. While men may face difficulties traveling to Kabul for such training, women are less likely to be granted permission to travel and live in Kabul. The inaccessibility of the

<sup>170</sup> Women prosecutors interviewed by IDLO count the Taliban "forced hiatus" years toward their years of experience as prosecutors, a critical issue for seniority and retirement status, though perhaps problematic in the absence of corresponding capacity building and professional development to compensate for the years they were excluded from practice.

<sup>171</sup> Interview with Afghan Women's Network in July 2013.

<sup>172</sup> Judge Marzia Basel, Conference Challenges and Contributions of Women Legal Professionals 5 June 2010, Safi Landmark Hotel, Kabul, Afghanistan.

stage program to women graduates exacerbates the gap between university graduation rates and women's participation in the legal profession. The NLTC stage programs for recent Law and Shari'a graduates and judicial stage training for prospective judges would need to be expanded to the provinces or, as discussed above, provided through distant learning.

### Promote entry into the legal profession and career opportunities

Women's Professional Participation overwhelmingly demonstrates that high rates of university enrollment do not lead to equally high rates of women being employed in the justice sector. Hundreds of women have graduated from Law and Shari'a faculties since the end of the Taliban rule in 2001, yet the proportion of women professional participants in the justice sector remains below 10%.<sup>173</sup> This gap is further evidenced by the fact that while female students do graduate every year from the Law and Shari'a faculties of Nangarhar state university and Ariana private university, Nangarhar province in 2012 had no female prosecutors, judges or defense attorneys,<sup>174</sup> a scenario that was replicated in other provinces of Afghanistan. By contrast, women teachers and civil servants working for the MOLSA currently constitute between 43% of the total employees nationwide and 45% of official employees in the Kabul office.<sup>175</sup> This small gender gap shows that certain professions are currently more acceptable or welcoming to women, such as teaching.

IDLO research also points to high dropout rates among female law and Shari'a students, during both university and the legal stage. This research did not specifically address the reasons for which female students were



Image: IDLO\_Paul Hutchings

abandoning their studies and failing to enter the profession, although some key factors were highlighted in the interviews and focus group discussions. These included high rates of early and forced marriage, prohibition of women working outside the home and women's perceived childrearing responsibilities. In particular, the practice of marrying young women off to older men, and women's responsibilities for domestic duties, featured prominently throughout the interviews.

The public promotion of women's participation in the legal sector, especially by religious scholars and government representatives, therefore emerged as one of the key factors that could support the removal of the obstacles and stereotypes mentioned above. Respondents also mentioned the dissemination of examples of successful women in the justice sector through television and radio broadcasts, alongside broader strategies aimed at breaking down gender stereotypes. Other critical steps

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

identified by respondents included proper enforcement of the EAW law by police and justice providers in cases of forced or underage marriages, and more intense leadership by key societal actors. In the immediate term, given that child-bearing responsibilities were cited as one of the reasons for women to drop out of the profession or not pursue legal training, the retention of female legal practitioners could be further aided by the establishment of on-site childcare centers for children and dependents of employees, as provided for in the 2007 Labor Law.

The study also points to the impact of the country's slow economy and low wages on the recruitment and retention of female legal professionals. A number of government representatives interviewed in 2013 stated that the low wages offered in the public sector were a significant hurdle to recruit women, noting that the few women with legal qualifications were often enticed to work for NGOs that pay higher salaries.<sup>176</sup> To address women's participation in the

<sup>173</sup> *Afghanistan Human Development Report 2007*, 58.

<sup>174</sup> Hijratullah Ekhtyar 'Lack of Female Lawyers in Eastern Afghanistan' Institute for War and Peace Reporting, 5 April 2012, available at: <http://iwpr.net/report-news/lack-female-lawyers-eastern-afghanistan>

<sup>175</sup> Data collected from the MOLSA in July and August 2013.

<sup>176</sup> Interviews conducted with government officials in July and August 2013.

## ADDRESSING THE OBSTACLES: WHAT CAN BE DONE TO SUPPORT WOMEN'S PARTICIPATION IN THE JUSTICE SECTOR? (continued)

public justice sector, wages should be increased and pay parity ensured for women and men legal professionals. Another factor that featured prominently in the interviews was the disproportion between supply and demand of legal jobs. The relatively small job market disproportionately affects women, due to perceptions among employers that women's core responsibilities are at home and perceptions that women are less competent than men to perform legal tasks.

Many respondents also revealed widespread gender bias among employers and a general impression of there being a "boys' network" in hiring and promotion within the legal sector. This is despite the fact that the National Justice Sector Strategy (NJSS) and the National Justice Program (NJP) provide a target of at least 30% women in justice sector staff<sup>177</sup> and in university faculties of law, political science and Shari'a,<sup>178</sup> consistent with the targets contained in the NAPWA.<sup>179</sup>

Ongoing discrimination in the employment and treatment of female legal professionals suggests there is a need to raise awareness in the legal sector of the merit-based hiring, promotion and salary system set up by the Independent Administrative Reform and Civil Service Commission, as well as of the provisions of the 2007 Labor Law and its prohibitions against such discrimination. Important measures to improve awareness could



Image: UN Photo\_Eric Kanalstein

include providing a summary of the key provisions of the Civil Service Law to all new and current government employees,<sup>180</sup> developing institutional policies on sexual harassment and appropriate behavior in the workplace, and the adoption of non-discriminatory procedures for hiring and professional advancement, which should include the explicit prohibition of the verbal and attitudinal de-legitimization of women's academic degrees and achievements. In addition to support for the Independent Administrative Reform and Civil Service Commission, the Civil Service Appeals Board should also be provided with sufficient resources to perform its function. In turn, this

would allow women legal professionals working in the government sector to effectively raise complaints related to breach of equality, harassment and discrimination in the workplace. More generally, the NJSS cites affirmative action programs by the Supreme Court, the MOJ, the AGO, and the MOHE, including a special stage for women judges, prosecutors, lawyers, and special remedial training programs as steps necessary to increase women's participation in the justice sector.<sup>181</sup>

Respondents noted that the slow progress in the implementation of the NJSS 30% policy means that more decisive and targeted measures are

<sup>177</sup> Islamic Republic of Afghanistan Afghan National Justice Programme (24 March 2008), [hereinafter NJP], Goal 2, NJP Part 2, row A.2.1. Available at: <http://moj.gov.af/Content/files/National%20Justice%20Progra%20NJP.pdf> (last accessed 12 March 2013). The NJP is intended to be the implementing mechanism of the NJSS: "the NJS and NJP are intended to be complementary and interdependent. The NJSS is divided into high level objectives, and broad strategies for reaching them....the NJSS, has been written without specific guidance on the implementation of these strategies. This NJP is therefore designed as the implementation mechanism of the NJSS. This document identifies objectives and outputs associated with each of the expected outcomes articulated in the NJSS, and establishes mechanisms that will allow the Government and donors to define specific projects designed to achieve the outcomes." NJSS, Xi.

<sup>178</sup> Ibid, Goal 2, NJP citing the ANDS Part 2 row C.1.8. This aligns with the ANDS pillar on good governance, justice and rule of law sector which tasks the Ministry of Justice (MOJ) and the Ministry of Higher Education (MOHE) with attracting and increasing the percentage of female students and staff in universities to "at least 30 percent." ANDS, 199.

<sup>179</sup> The NAPWA calls for a minimum 30% increase in participation of women in the justice sector and law enforcement bodies: NAPWA, 41-42.

<sup>180</sup> The Civil Service Law provides that government posts should be filled on merit and competency and sets out a reform commission and sets out other requirements for transparent and fair hiring.

<sup>181</sup> NJSS, 33.

# APPENDIX 1: STUDY METHODOLOGY

required. For example, it was noted that there have been few efforts to monitor and evaluate progress in the NJSS and NJP commitments, pointing to the fact that progress will not be achieved without a national and unified monitoring system to collect and update both quantitative and qualitative data on the hiring, retention and promotion of female legal professionals.

## Address security and protection of women legal professionals

Women's Professional Participation shows that once women enter the legal profession, they face numerous risks in performing their professional responsibilities. Interviews with Supreme Court representatives in 2013 reveal that while the number of women employed in Supreme Court offices has increased, many provinces still lack women's professional presence because of insecurity.<sup>182</sup> Evidence of this is found in UNAMA's latest report on the protection of civilians: it cites four attacks on courthouses and judicial and prosecution staff during the first six months of 2013, which killed 57 and injured 145, including judges, prosecutors, legal and clerical staff.<sup>183</sup> Women lawyers are also at risk. Most interviewees in 2013 agreed that the cases of kidnapping and intimidation against women lawyers and prosecutors had worsened over the last three years. Strategies need to be devised to protect women legal professionals from such risks.

<sup>182</sup> Data Collected in August 2013 from the Supreme Court.

<sup>183</sup> 'High Profile Attacks on Women in Afghanistan Undermine Rights Campaign' *New York Times*, 13 August 2013.

## Study Methodology 2010

**U**nder the guidance and with the support of IDLO, CAPS collected data in Kabul and Herat provinces on the representation of women in the justice sector, the obstacles and challenges they face, and the perceptions of women legal professionals by both men and women in the field in 2010. The research included both qualitative and quantitative research instruments designed in line with local sensitivities. CAPS compiled a comprehensive database of interviews, questionnaires, and focus groups intended to identify the challenges and impediments to enhancing the participation of women in the legal sector, including government institutions and ministries, public universities and stage centers, defense lawyers, legal aid organizations and non-governmental organizations (NGOs).

The sample size for the quantitative survey included:

- a questionnaire distributed among the legal professionals, law and Shari'a students, stage students, and professional institutions;
- focus groups with selected women and men from these categories; and
- in-depth interviews with key informants from all categories.

The survey was limited to government justice institutions, professional associations, non-governmental organizations providing legal aid, and legal education facilities (both Law and Shari'a faculties in public and private universities) in Kabul and Herat provinces. Additionally, statistical data segregated by gender was compiled from 11 institutions, including statistical data for their Herat branches.

Survey Participants	
<b>Justice institutions</b>	<b>Professional Associations</b>
Supreme Court	Afghanistan Independent Bar Association*
Office of the Attorney General	Independent National Legal Training Centre*
Ministry of Justice	Afghan Women's Judges Association
<b>Educational Facilities</b>	<b>Legal Aid NGOs</b>
INLTC/NLTC	Legal Aid Organization of Afghanistan
Kabul University	International Legal Foundation
Kabul University	Legal Aid Center for Female Victims of Violence
Herat University	IDLO - Herat division
<b>Related institutions</b>	<b>Other organizations</b>
Ministry of Labor and Social Affairs	Women and Children Legal Research Foundation
Ministry of Women's Affairs	International Legal Foundation
Ministry of Interior	Legal Aid Center for Female Victims of Violence
Afghan Independent Human Rights Commission (AIHRC)	IDLO - Herat division

## APPENDIX 1: STUDY METHODOLOGY (continued)

### Survey sample

CAPS surveyed 518 respondents (291 women; 227 men) from 23 institutions in Kabul and Herat provinces combined. A total of 203 in-depth interviews, 189 questionnaires, and 18 focus groups were conducted, using an equally distributed survey approach. As a result, CAPS was able to carry out the survey with an almost equal number of women and men respondents. The respondents selected for the in-depth interviews and questionnaires were a combination of both men and women from different positions and divisions of the aforementioned institutions. The focus groups were disaggregated by sex.

CAPS and IDLO jointly devised a questionnaire of open and closed ended questions to assess the obstacles that women face in entering and remaining in the justice sector.

### Research limitations

The project was allocated two months to carry out the survey instruments, code, and analyze results. The abbreviated timeline did not allow for pretesting research instruments. In addition, since respondents could choose to skip questions, the data set contains missing values.

Difficulties in accessing baseline statistics about women in the sector were compounded by incomplete or missing sex-disaggregated statistical information provided by government agencies and national legal institutions. Therefore, in most cases, statistical data gathered from government agencies on the number of women staff in their offices did not yield countrywide data.

The research took place in Kabul and Herat, ensuring that the data collected primarily reflected the challenges and opportunities facing urban professionals.<sup>184</sup> Given that this study did not focus on the challenges faced by rural women, family and societal perceptions of women's roles

<sup>184</sup> The exception to this is that much of the statistical data gathered from government agencies on the representation of men and women in the legal sector was national in scope. It should also be recognized that many legal professionals move to Kabul and Herat from other provinces for work or study opportunities.

Survey Respondents			
<b>Respondents Qualitative (In-depth Interviews)</b>	<b>Kabul</b>	<b>Herat</b>	<b>Total</b>
Female	63	48	<b>111</b>
Male	42	50	<b>92</b>
<b>Respondents Qualitative (Focus Groups)</b>	<b>Kabul</b>	<b>Herat</b>	<b>Total</b>
Female	46	35	<b>81</b>
Male	14	31	<b>45</b>
<b>Respondents Qualitative (Questionnaires)</b>	<b>Kabul</b>	<b>Herat</b>	<b>Total</b>
Female	44	55	<b>99</b>
Male	45	45	<b>90</b>

in rural environments should be taken into account in designing programs and initiatives to increase women's participation in the legal sector.

### Gender-sensitive research approach

The research instruments designed for this survey and their administration followed a gender-sensitive research approach.

In some situations and areas of Afghanistan, women may only be allowed to be interviewed by female interviewers, or may require prior approval of a male guardian. Given that the women targeted were educated and professional women and that the research took place in the urban centers of Kabul and Herat, the research team did not encounter such limitations on access. Nonetheless, women facilitators conducted the all-female focus groups, and whenever possible conducted the interviews with the key female interviewees, and vice versa for the all-male focus groups and interviewees.

The data gathering process was entirely Afghan-led. A senior researcher at CAPS reviewed translated material to ensure that definitions, categories and terminologies remained consistent and

accurate. This was an important part of the process to standardize the final study in line with international norms. Two Afghan data enumerators were utilized for this phase — one was a trained field researcher with extensive prior expertise, and the other was a trainee who accompanied the first and was monitored and mentored with hands-on training throughout the data collection process.

## APPENDIX 2: GLOSSARY

**Huquq:** Law or, when referred to a department, a legal department

**Mahram:** Male relative or guardian

**Saranwal:** Prosecutor

**Saranwali:** Attorney General

**Satanman:** Constable or Patrol Sergeant

**Shari'a:** Islamic Jurisprudence

**Stage:** Practical Legal Training

**Star Paswal:** Senior Sergeant

**Sunnati:** Religious or conservative

**Talemat:** General Islamic Law course



**SIMA SAMAR**  
Chairwoman,  
Afghan Independent  
Human Rights Commission

**A**s 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.

#### ACKNOWLEDGEMENTS

This report has been the work of a team of researchers, under the supervision of Ilaria Bottigliero, 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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**Published by:** International Development Law Organization (IDLO)  
Viale Vaticano, 106 00165 | Rome | Italy  
Tel: +39 06 40403200 | Fax: +39 06 40403232 | Web: [www.idlo.int](http://www.idlo.int) | Email: [idlo@idlo.int](mailto:idlo@idlo.int) | Twitter: @IDLONews

**United Nations Permanent Representation**  
Uganda House | 336 East 45th Street | 11th floor | New York | New York 10017 | USA  
Tel: +1 212 867 9707 | Fax: +1 212 867 9719

**Publishing Consultant:** Medauras Global LLC, Washington, DC | [www.medauras.com](http://www.medauras.com)

**Report Design & Art Direction:** Christian Gilliam [christian@cgcreate.co.uk](mailto:christian@cgcreate.co.uk)

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ISBN number: 978-88-96155-13-4