



# BRIEF NO. 2: LEGAL AND JUSTICE SYSTEM CHANGES AND IMPLICATIONS FOR GENDER EQUALITY AND WOMEN'S RIGHTS IN AFGHANISTAN

UN WOMEN THEMATIC BRIEFING SERIES



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# ABOUT THE THEMATIC BRIEFING SERIES

UN Women is generating a Thematic Briefing Series to analyse the gender dynamics of pressing themes facing Afghanistan. These briefings weave subnational and regional elements into thematic concerns – including media restrictions, legal and justice system changes, and profile gender equality and women’s rights issues. The Thematic Briefing Series aims to provide United Nations (UN) personnel, officials from other multilateral institutions, donor representatives, and international non-governmental organization (INGO) counterparts with rigorous gender-sensitive analysis and suggestions for action.

*This Thematic Brief was finalized before November 2022 when Afghanistan’s Supreme Leader ordered judges to fully enforce aspects of Islamic law that include public executions, stoning, floggings and the amputation of limbs for thieves. Since November 2022 to date (15 December 2022), the Taliban have been implementing a series of public punishments across the country, including running their first public execution since the August 2021 take-over on 8 December 2022 in Farah province. This thematic brief does not analyse these developments as it was finalized before November 2022.*

## Key topics of the Thematic Briefing No. 2

- Changes to the legal and justice systems.
- De facto authorities’ approach to justice and legal frameworks.
- Roles and presence of women in legal systems.
- Implications of inaccessible or inequitable legal and justice processes for women and girls.



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# SUMMARY

- Since 2001, there has been considerable effort – and donor investment – to strengthen transparent, accountable, equitable, and non-discriminatory **legal and justice systems** and support the rule of law in Afghanistan, including a strong emphasis on building a gender-responsive system.
- Following the Taliban (hereinafter ‘the de facto authorities’) takeover on 15 August 2021, there is a lack of clarity on applicable legal frameworks and **the justice system has become largely dysfunctional**. Application and enforcement of existing laws, Islamic Law and de facto decrees is unclear and arbitrary, and varies vastly across the country in accordance with the individual viewpoints of de facto leaders. Despite significant variations, one pattern is clear: **Safeguards, transparency and oversight are lacking**.
- The de facto authorities have indicated that the legal framework is being reviewed for compliance with Islamic Law. The 2004 Constitution has been suspended. Consequently, there is currently **no floor of minimum human rights guarantees** even though Afghanistan is a state party to numerous international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
- While incremental progress was made prior to August 2021 to advance **access to justice for women and girls** in Afghanistan, there has been **an observable and swift backslide**. Institutions and infrastructure supporting the legal rights of women, such as legal aid and shelters, have been largely dismantled. Former judges, lawyers, prosecutors and court staff have been sidelined and almost entirely replaced by male former Taliban fighters and madrasa graduates, who do not necessarily hold academic legal education or judicial qualifications. Institutions ensuring fair trials and monitoring bodies have been abolished, with no functioning replacements established.
- **Broader gender-specific restrictions** related to freedom of movement and access to education and work are also seriously impacting the legal sector. Highly skilled, experienced, and educated Afghan women are being eliminated from the legal profession, because of the wider set of restrictions targeting women. Women and girls are restricted from easily accessing legal institutions and lawyers outside of the control of their male relatives.
- A **lack of female lawyers** limits access to justice for women and girls. Those who have suffered transgression may go unrepresented by a qualified advocate, without the professional guidance of a woman, and consequently have no voice in any legal process. Women and girls are also increasingly restricted from accessing legal institutions and lawyers outside of the control of their male relatives.
- Taken together, the rights of women and girls, as well as their physical safety and mental well-being, have been quickly and severely eroded. These developments set the framework for a **significant level of ongoing gender-based human rights violations**.





*Photo: © UN Women/ Sayed Habib Bidel*

## Methodology

This Thematic Briefing draws on a comprehensive desk review of available secondary data and analysis, key informant interviews and focus group discussions with Afghans inside and outside of the country, as well as with international actors. Analysis and data sources from the 2021 Gender-Responsive Conflict Analysis prepared for the UN Country Team are also utilized.

Each Briefing is peer reviewed by a mixture of Afghan and international experts on both the topic at hand and gender equality more broadly. For security reasons, individuals involved in primary data collection – interviews and focus group discussions – are not named. The time frame for analysis focuses on developments from 15 August 2021 to September 2022.

# 1 LEGAL AND JUSTICE SYSTEM IN AFGHANISTAN (2001 TO 2021)



## Part 1: Legal and justice system in Afghanistan (2001 to 2021)

Increased participation and representation of women in the legal system, as well as **improvements to the legal architecture underpinning women's rights and access** to services, was a decisive focus of Afghan and international actors during the past two decades. Afghan women leaders – from parliamentarians to civil society leaders – invested heavily in efforts to transform the male-dominated legal sector, and there was a concerted effort to increase women's access to justice more broadly. The inclusion of gender-sensitive provisions in the 2004 Constitution and women's participation in the drafting process – although consistently below 30 per cent – were modest, but notable nonetheless. Gender equality (article 22) and women's right to education and to work (articles 43, 44, and 48) are enshrined in the 2004 Constitution.

Through the **2009 Law on Elimination of Violence Against Women (EVAW)**, several institutions aimed at ending violence against women and increasing women's access to justice emerged, including gender sensitive mandates for the Attorney General's Office and the Supreme Court. These mandates resulted in the **appointment of 242 specialized EVAW prosecutors across government departments, 300 female judges, 800 defence lawyers, and the work of Family Response Units (FRUs)** in all 34 provinces.<sup>1</sup> The de facto authorities downsized the Attorney General's office on the Elimination of Violence against Women, renaming it and refocusing its objectives. The new name is the "Attorney General's Office on protection of women's rights from a Sharia perspective", indicating a shift away from recognition of violence against women as an issue requiring dedicated resources and structures, and laws such as the Law

on the Elimination of Violence Against Women. Nevertheless, in 2014 it was estimated that only 10 per cent of judges were women,<sup>2</sup> a figure that remained largely consistent until the Taliban seizure of power in August 2021.<sup>3</sup> The Afghanistan Independent Human Rights Commission (AIHRC), established in 2002, also played a key role in promoting, protecting and monitoring women's rights, publishing several reports on violence against women.<sup>4</sup>

**The reach of the formal justice system** varies significantly across the country, and prior to 15 August 2021, it had proven **weak, corrupt and ineffective in many communities**.<sup>5</sup> In rural areas, communities continue to rely on **informal justice mechanisms** – *shuras, jirgas and jalasas*<sup>6</sup> – to settle civil and sometimes criminal disputes using Islamic

1 UNAMA (United Nations Assistance Mission in Afghanistan), OHCHR (Office of the United Nations High Commissioner for Human Rights). 2020. [In Search of Justice for Crimes of Violence Against Women and Girls](#). December 2020. Kabul: UNAMA.

2 GNWP (Global Network of Women Peacebuilders). 2014. [UN Security Council Resolution 1325: Civil Society Monitoring Report 2014](#). New York: GNWP.

3 De Lauri, A. 2020. "Women Judges in Afghanistan: An Interview with Anisa Rasooli." CMI Insight. Bergen: CMI (Chr. Michelsen Institute).

4 AIHRC (Afghanistan Independent Human Rights Commission). 2017. [Situation of Women Employed in Defense and Security Sectors](#). Kabul: AIHRC; AIHRC. 2020. [Report on Violence Against Women in Afghanistan \(the first 10 months of 2020\)](#). 26 November 2020. Kabul: AIHRC.

5 UNAMA, OHCHR. 2020. [In Search of Justice for Crimes of Violence Against Women and Girls](#). 7 December 2020; UNAMA, OHCHR. 2009. *Arbitrary Detention in Afghanistan: A Call For Action*. Kabul: UNAMA; Gaston, E., Sarwari, A. and A. Strand. 2013. [Lessons Learned on Traditional Dispute Resolution in Afghanistan](#), p. 43. USIP (United States Institute of Peace). Building Peace no. 3. June 2013. Washington D.C.: USIP.

6 Shura refers, predominantly in non-Pashtun areas, to permanent and quasi-permanent consultative councils; the term jirga is usually used to refer to such an informal justice mechanism in predominantly Pashtun areas or an ad hoc assembly of traditional leaders gathered to address a specific dispute; and jalasa refers to a village council, and in some areas is used in the same way as shura: Coburn, N and J. Dempsey. 2010. *Informal Dispute Resolution in Afghanistan*. August 2010. Washington D.C.: USIP; AREU (Afghanistan Research and Evaluation Unit). 2020. [The A-to-Z Guide to Assistance in Afghanistan](#).

and customary laws.<sup>7</sup> Interaction across formal and informal justice systems is, however, fluid and the two systems never operate in an entirely mutually exclusive manner. The reliance on informal systems was also a distinct characteristic of the justice sector prior to August 2021. These informal mechanisms were heavily relied upon over the past 20 years to provide timely, culturally acceptable, and accessible dispute resolution for many Afghans, particularly in Taliban-controlled areas, where courts did not operate. Decisions, however, were often not aligned with human rights norms and standards; and at times reinforced community inequities or power imbalances, resulting in rights violations, particularly against marginalized groups, including women, children, and sexual, gender, ethnic and religious minorities.<sup>8</sup>

While women were present in the judiciary prior to the Taliban takeover, their presence was not, and could not be expected to fully address the adverse

impacts the justice system had on women. For example, **redress was not consistently provided by the justice system** to women and girl survivors of violence. A 2020 report outlines numerous reported rape cases being assessed by justice actors as cases of consensual extramarital sexual relations (*zina*), instances of EAW institutions registering crimes of violence against women and girls as so-called ‘moral crimes’ such as ‘running away’ or *zina*, and so-called ‘honour killings’ continuing to occur and resulting in a much lower rate of conviction than murder cases.<sup>9</sup>

However, there was also the infrastructure and legal system in place to challenge these failings and provide institutional support for women and girls to seek justice. In other words, **while the system was inadequate, it provided an important framework and set of standards** that enabled Afghan women to continuously advocate for its improvement.

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7 AREU. [The A-to-Z Guide: To Assistance in Afghanistan, Fourteenth edition, 2020.](#)

8 Ibid. Gaston, E., Sarwari, A. and A. Strand. 2013. [Lessons Learned.](#)

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9 UNAMA, OHCHR. [In Search of Justice for Crimes of Violence Against Women and Girls.](#)

2

SHIFTS IN MEDIA  
SINCE AUGUST 2021”  
TO “SHIFTS IN LEGAL  
SECTOR SINCE  
AUGUST 2021

## Part 2: Shifts since August 2021

### Rule of law

The **lack of an agreed upon and respected legal framework** colours all discussions about the status and future of Afghanistan's legal and justice system. The de facto authorities are reportedly in the process of reviewing the previous legislation to ensure its compliance with Islamic Law and traditional Afghan values, indicating that they may consult with international Islamic scholars before concluding the review process.<sup>10</sup> The de facto Minister of Justice (MoJ) placed this legal review under the authority of a committee led by the de facto Deputy Minister of the MoJ and, on 7 April 2022, instructed that the process be expedited.<sup>11</sup>

There have also been indications that the de facto authorities **may temporarily revert to the 1964 Constitution**, although this was never officially confirmed.<sup>12</sup> The de facto authorities have stated that where articles of the 2004 Constitution are not in conflict with Islamic Law, they will remain in use.<sup>13</sup> It is unclear whether a new constitution will emerge from this process. Under the rule of the first Islamic Emirate (1996-2001), a constitution was drafted but not adopted, possibly due to, as is claimed by some analysts, a preference to avoid formalizing a political and legal system.<sup>14</sup> **There is no evidence of (nor commitment to) women's participation in the de facto authorities' current drafting and review process** – and any such participation is unlikely, given the total absence of women within the leadership and ranks of the de facto authorities.

There is also no indication on whether existing 2004 constitutional provisions and laws on women's rights and gender equality will be incorporated into any new framework.<sup>15</sup> Similarly, no commitment to apply standards set out in the CEDAW – ratified by Afghanistan in 2003 – in any new constitutional process has been issued. This review process, therefore, is highly likely to exclude and marginalise women, their rights, and contributions.

The de facto authorities have stated their commitment to upholding **women's rights within the framework of Islamic Law and Afghan culture**. On 3 December 2021, they issued a decree on women's rights, setting out rules governing family law issues – banning forced marriage of women, prohibiting the practice of *baad*<sup>16</sup> and granting inheritance rights to widows.<sup>17</sup> UNAMA has documented instances where the 3 December decree is not being enforced, presenting information that the de facto authorities are making decisions that uphold forced marriage and deny women's choice to select a partner.<sup>18</sup> However, decrees issued since December 2021 – the mahram requirement for travel beyond 72 kilometres (26 December 2021) and international travel (27 February 2022), gender segregation in parks (27 March 2022), Islamic hijab decree (7 May 2022) – have severely restricted rather than protected women's rights.<sup>19</sup> It is unclear how

10 Interview with female UNAMA official, 26 April 2022.

11 UNGA (United Nations General Assembly). 2022. [Report of the Secretary-General on the situation in Afghanistan and its implications for international peace and security](#), p. 3. A/76/862-S/2022/485, 15 June 2022.

12 Patel, M. 2021. "Explained: The Taliban plan to 'temporarily' adopt parts of the 1964 constitution; what it could mean." The Indian Express. Explained, 30 September 2021.

13 Ibrahim, A. 2021. "Explainer: The Taliban and Islamic law in Afghanistan." Al Jazeera. News, 23 August 2021.

14 Rahimi, H. 2022. "Afghanistan's laws and legal institutions under the Taliban." Melbourne Asia Review, 10, 6 June 2022.

15 While women were able to assert influence in the 2001 Bonn Process, this was limited by significant obstacles and impediments: IPTI (Inclusive Peace & Transition Initiative). 2019. [Women in Peace & Transition Processes: \[Afghanistan, 2001\] BONN AGREEMENT 2001](#). Case Studies Series, December 2019.

16 The practice of giving away girls to settle disputes is used to end conflicts over serious crimes. See UNAMA, OHCHR. 2010. [Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan](#). Kabul: UNAMA. December 2010.

17 HRC (Human Rights Council). 2022. Situation of human rights in Afghanistan: Report of the United Nations High Commissioner for Human Rights, p. 8. A/HRC/49/24, 4 March 2022.

18 UNAMA. 2022. [Human Rights in Afghanistan: 15 August 2021 – 15 June 2022](#). July 2022. See page 31.

19 Ibid. See page 32.

these discordant policies will translate in any new or revised legal framework. The Hanafi school of Islamic jurisprudence – the preferred school of thought in Afghanistan, considered authoritative by the Taliban – provides precedents for women’s rights, founded on the understanding of intellectual parity between men and women.<sup>20</sup> Within the Hanafi tradition, enshrining women’s rights within constitutional and legal frameworks is critical to establishing a foundation against the arbitrary enforcement of restrictive cultural and religious norms.<sup>21</sup> The use of non-legislative decrees in this way enables the de facto authorities to impose discriminatory rules targeting women without any scrutiny.

Since 15 August 2021, the de facto authorities have **published documents outlining various rules and recommendations**, although their legal status is currently unclear. None of these documents have been published in the official gazette – as per the previous legislative process – and new procedures for enacting legislation or issuing legal documents have not been specified by the de facto authorities.<sup>22</sup> Most documents outline prohibited acts, yet many do not indicate the consequences of violations.<sup>23</sup> Across the different parts of Afghanistan, the de facto authorities have taken vastly different approaches to interpreting and implementing rules – with some ignoring them completely. The ambiguity around the legal system and the status of laws and justice processes do not create an enabling environment for women’s rights, as the lack of clarity only increases individual interpretation of policies and procedures (by mainly men) in an environment marked by gender inequality in all spheres of life.

20 Emon, A.M., Rume A. and A.S. Chaudry. 2020. *Governing Afghanistan with the Taliban. A guide for negotiators*. Vancouver: Rockledge Research; Khan, H. 2015. [Islamic Law, Customary Law, and Afghan Informal Justice](#). USIP Special Report, March 2015. Washington D.C.: USIP.

21 Interview with female UNAMA official working on Rule of Law, 26 April 2022.

22 Jurist. 2022. [“Afghanistan dispatch: the Taliban want to replace the conventional banking system with Islamic banking.”](#) News, 20 March 2022.

23 Qaane, E. 2022. [Regime Change, Economic Decline and No Legal Protection: What has happened to the Afghan media?](#) Afghanistan

## Judiciary

### *Judicial personnel*

**The judicial system remains operational**, although former judges, prosecutors and defence lawyers have largely been excluded from the de facto authorities’ legal institutions. Women face double exclusion – based on their gender and role in the judicial system under the former Government of the Islamic Republic of Afghanistan (GoIRA). Courts are operating at varying levels – with limited capacity, skills, expertise and resources. Consequently informal justice is increasingly relied upon, often out of necessity. Many former judicial personnel are considered by the de facto authorities to be corrupt.<sup>24</sup>

Some legal professionals – especially high-profile women – have either fled the country or are in hiding, as they fear retribution from the de facto authorities or former prisoners, including released Taliban prisoners, on whose cases they worked or deliberated.<sup>25</sup> There have been **reports of threats and intimidation against lawyers, judges and prosecutors**.<sup>26</sup> Women face two-layers of threat: for being a women holding a public role that is perceived as transgressing socially accepted roles for women, and for holding a public role under the former GoIRA.

**Most newly appointed judges lack legal training**, judicial or investigative experience, and many are reportedly illiterate.<sup>27</sup> The role of prosecutors and lawyers is not well understood by these judges. Reportedly lawyers have been barred from courts and detention centres, a prosecutor being incarcerated for relying on what the judge deemed to be an invalid law, and both prosecutors and lawyers being banned from advocating in the courtroom.<sup>28</sup>

24 Interview with female UNAMA official, 26 April 2022.

25 HRC. 2022. *Situation of human rights*, p. 13

26 Ibid., p. 13

27 UNGA. 2022. [Report of the Secretary-General](#).

28 Written exchange with female legal experts in Afghanistan, 6 June 2022; comments made during focus group discussion, 28 June 2022.



**Staffing of the judiciary has shifted away from merit-based criteria** and standards around knowledge and expertise. The de facto Supreme Court and the de facto MoJ have been working to standardize the accreditation of lawyers and employment criteria for judges and de facto MoJ staff, indicating an intention to establish a more structured and centralized approach to justice. The criteria themselves, however, would mean in practice that appointments would be given to former Taliban fighters, primarily due to their loyalty to the group, rather than expertise in Islamic jurisprudence or law.

An example of this preferential approach to justice staffing can be seen in the hiring criteria for de facto MoJ staff, which state that officials should have Islamic knowledge, be faithful to the Taliban's values and principles, have not worked for the GoIRA, and have taken part in the war during the past two decades.<sup>29</sup> This creates **significant long-term obstacles to a competent, representative, fair, and impartial legal system** – where women will continue to be locked out of the process, as they are unlikely to meet the above-mentioned criteria.

The 'depopulation' of the country's women decision-makers, judges, lawyers, and thought leaders, in various roles, reinforces male dominance, and a lack of women's representation, consequently contributing to **a lack of access to justice for women**. Cases against women or brought by women are often both complex and sensitive. Women initiating divorce, child custody or gender-based violence (GBV) cases face the risk of being charged with so-called 'moral crimes', leading to the involvement of a complex combination of family and criminal law. A highly qualified advocate and access to support services is required to navigate these cases and the entrenched social and cultural challenges they present.

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29 Jurist. 2021 "[Afghanistan dispatches: new Taliban justice ministry rules severely restrict hiring of legal officials.](#)" News, 25 November 2021.

A lack of female judges and few female lawyers and prosecutors, in a context where gender segregation and inequality are the norm – and actively enforced in all spheres of life – creates significant impediments to accessing justice. In this context where women are expected to remain silent, **the presence and professional guidance of a woman is vital** to give women a voice at every stage of the legal process. In situations of male violence against women, engaging female police officers and lawyers can increase the likelihood of reporting and foster a willingness to go against social pressures, which often push women to resolve disputes informally and prioritize reconciliation.<sup>30</sup> The lived experiences of female lawyers and, critically, judges can also reduce gender bias in the outcomes of formal justice processes.

**Women are not formally excluded from working in the justice system** under the de facto authorities. In fact, Hanafi jurisprudence clearly allows women to work as lawyers and judges.<sup>31</sup> Nevertheless, similar to other sectors, **social pressures from families and communities, practical barriers, security concerns and ethical considerations** around working with the de facto authorities all play a part in keeping women out of this sector.<sup>32</sup> Reports suggest that some women remain working in prisons and police stations,<sup>33</sup> in civil society organizations, and as lawyers.<sup>34</sup>

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30 UN Women, UNDP (United Nations Development Programme), United Nations Office on drugs and Crime (UNODC), United Nations High Commissioner for Refugees (UNHCR). 2018. [A Practitioner's Toolkit on Women's Access to Justice Programming](#), p. 87. New York: UN (United Nations).

31 Emon, A.M., Rume A. and A.S. Chaudry. 2020. Governing Afghanistan.

32 Interview with female UNAMA official working on Rule of Law, 26 April 2022.

33 Ibid.

34 Written exchange with female legal experts in Afghanistan, 6 June 2022.

There are, however, **significant barriers to women fully realising their roles** – restrictions on freedom of movement and requirements of *mahram*<sup>35</sup> make it difficult to appear in public, travel independently to see clients, meet male counterparts, or appear in court. Women in the legal sector report that law licenses for women lawyers are being nullified, not being renewed and women lawyers are no longer able to take bar exams.<sup>36</sup> The de facto MoJ has made it clear that they do not see a use for women judges (notwithstanding that many women judges have fled the country since August 2021).<sup>37</sup> This decision by the de facto authorities is not consistent with the Hanafi school of Islamic jurisprudence, which clearly provides for women to act as judges.<sup>38</sup>

### Judicial institutions

**Personal and relational power overrides the official judicial hierarchy.** Although this had precedents under the GoIRA (as well as a deeper history), personal relationships and networks have become increasingly important given the lack of high-level direction, transparency, or safeguards in place for procedure, oversight, and judicial appointments. The hierarchical premises of jurisdiction, precedence, and appeal work to promote consistency, due process, fairness, and proportionality in judicial systems is also lacking.

In Afghanistan there is a **lack of independence and impartiality of courts**. An example of this dynamic is a primary court judge having more political power than an appeals court judge, leaving the appeals court judge unable to rule on the primary court judge's opinion.<sup>39</sup> Safeguards are not in place to assure that gender or other inequalities do not occur in the courts in violation of fair trial rights. **A lack of transparency** in this context almost inevitably means that the rights of individuals from

marginalized groups, such as women, ethnic and religious minorities, are less likely to be realized and their access to justice curtailed.

Existing governance and **legal institutions are being dismantled**. The Afghan Independent Human Rights Commission (AIHRC) was officially dissolved on 4 May 2022 (effective 21 March 2022), along with the Oversight of the Implementation of the Constitution Commission and the secretariats of the upper and lower houses of parliament.<sup>40</sup> The de facto MoJ took control of the Afghanistan Independent Bar Association (AIBA), replacing it with a de facto Internal Directorate of Defence Lawyers.<sup>41</sup> The replacement removes a key safeguard that ensured the independence of lawyers from the state and promoted professional standards. Moreover, this action undermines fair trial procedures, including the right to impartial and competent legal assistance for people accused of crimes by the de facto authorities. The existing lawyer's union is the only body still functional and independent, albeit with few resources to operate.

Due to underrepresentation of women in the legal sector, **the Afghanistan Union of Lawyers is inherently male dominated**. The leadership and vision of the union is yet to be clarified. Prior to the dissolution of the AIBA, the union had largely operated in its shadow. The de facto MoJ envisages the establishment of a lawyers' association, which could assist the defending of lawyers' rights and interests. However, it is unclear whether such a lawyer's association will be free to allowed to operate independently. Civil society legal aid providers – despite being hampered by an exodus of its leadership and limited funding – currently play a critical role in advancing the independence of the legal profession and attempting to represent indigent clients in court.

35 A close male relative acting as a guardian to escort women in public spaces.

36 Issued raise in consultations undertaken by UN Women Afghanistan in August 2022.

37 Interview with male Afghan legal expert, 4 May 2022.

38 Emon, A.M., Rumea A. and A.S. Chaudry. 2020. Governing Afghanistan.

39 Interview with male Afghan legal expert, 4 May 2022.

40 UNGA. 2022. [Report of the Secretary-General](#), p. 2.

41 To date, the de facto MoJ has not provided an English description of the newly formed Directorate. Synovitz, R. 2021. [“Judge, Jury, And Executioner: Taliban Brings Afghanistan’s Justice System Under Its Thumb.”](#) Gandhara. Human Rights, 1 December 2021.



*Photo:* © UN Women/ Sayed Habib Bidel

While lawyers with currently valid licences are authorized to continue practicing, they **face obstacles in renewing licences and accessing clients** at courts and detention facilities. In August 2021, around 3,000 lawyers had active licences to practice – some 700 of which were female lawyers (or 23 per cent).<sup>42</sup> Reports differ on whether lawyers can practice with their existing licences until a new certification process is finalized; some lawyers suggest they cannot take on new cases with an invalid licence.<sup>43</sup> The roll-out of this new certification process is ongoing, and the de facto MoJ has committed to speeding it up. A committee has been formed and reportedly began to issue licences based on interviews in which questions focused on religious practice and the ability to recite and interpret the Quran.<sup>44</sup> This development spurred significant push-back from lawyers, and a lack of resources and capacity reportedly led to the process being temporarily suspended. Since

then, the lawyer's union has successfully petitioned the de facto MoJ to add two of its lawyers to the committee (originally consisting of five lawyers) which will oversee accreditation.<sup>45</sup>

**The new certification process is not yet finalized,** although expectations indicate that it will not change significantly.<sup>46</sup> Until this new process is in place, conflicting evidence exists regarding whether lawyers will be able to continue practicing once their licences expire. The de facto MoJ recently stated that they will renew the licences of current lawyers, although this has not yet been done.<sup>47</sup> Reports suggest that women lawyers are not being allowed to enter the de facto MoJ building, and so currently cannot follow up on their licences. This barrier will impact the ability of women to practice and erases them from the legal sector, further entrenching the pre-existing male dominance of the legal sector.<sup>48</sup>

42 Interview with male Afghan legal expert, 4 May 2022.

43 Comment made during focus group discussion, 26 June 2022.

44 Interview with male Afghan legal expert, 4 May 2022.

45 Ibid.

46 Ibid.

47 Ibid.

48 Written exchange with female legal experts in Afghanistan, 6 June 2022.

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## Perspectives from Afghan women in the legal sector

On 26 and 28 June 2022, two focus group discussions (bringing together a total of 16 participants) were held virtually, involving women who have worked as prosecutors, lawyers or judges in Afghanistan over the past 20 years. All focus group participants still resided in Afghanistan at the time of the sessions. Like many others in the previous 20 years, these women received internationally supported higher education and legal training to build the expertise and skills needed to work in various state institutions.

Many of these women became the breadwinners for their families, as a direct result of their ascension into various legal professions. One participant noted with frustration:

*“I am the breadwinner and I have been home doing nothing for 11 months. I don’t have any income-generating activities, we haven’t been able to defend our thesis, schools are closed, we go and stand in front of universities, but we cannot go in. We don’t know what crime we have committed.”*

During focus group discussions, the participants reflected on their current situation. Lamenting the current situation, one participant noted: “[T]he most important thing is that this [de facto] government should agree that women have rights.” Yet, these former judges and prosecutors are not allowed back into their offices, defence lawyers cannot update their licences despite continuing to pay the associated taxes, and none among them can complete a simple administrative task without a *mahram*. Instead, these former prosecutors, judges, and lawyers remain at home doing domestic chores. During focus group discussions, many participants reported an increase in suicide among educated women.

Participants also observed that, to date, the actions of the de facto authorities suggest an intentional dehumanization of women and concerted, coherent efforts to make women disappear from the legal sector. The de facto authorities use the legal and justice system as a tool to support Taliban principles. Issues around gender equality in the legal system are viewed by the de facto authorities through this lens, resulting in systematic actions that appear to be intended to cause the women involved to feel humiliated – such as female lawyers signing attendance in the parking lot outside their office as they are blocked from entering the building, or women seeking divorce being offered a Taliban soldier as a new husband during proceedings.

Participants also noted that women are being intimidated and blamed for filing complaints. Unsurprisingly, female lawyers report that no violence against women complaints have been filed. One participant called on the international community to take the lead on advocating for women working in the legal and justice sector: “The international community needs to support us, because otherwise no one else has the courage to oppose them.”

While engagement with the de facto authorities on these issues was encouraged by most discussion participants, it remains problematic for women in the legal sector. The de facto authorities do not recognize the expertise and value of women in this sector, appearing to maintain a worldview that challenges their very personhood. Nevertheless, building trust with the de facto authorities is understood as an important way for female lawyers, judges, and prosecutors to make headway in regaining access to the legal system and putting their expertise to use. Possibilities for negotiation and engagement were, however, recognized by women lawyers during discussions as contingent on the international community maintaining its refusal to recognize the de facto authorities.

## Recommendations

The recommendations below reflect the views of women participants who contributed to discussions:

- **Continue international programming around women's access to and inclusion in the legal and justice system**, particularly as national organizations face significant challenges in navigating the restrictive political environment and accessing funds. Such initiatives should not be restricted to the capital but also be implemented in the provinces.
- **Deploy financial support to target employment opportunities for women in the legal sector**, with funds managed directly by Afghan women.
- **Undertake broad and pragmatic initiatives** to remove the range of obstacles facing women in the legal sector in Afghanistan, by ensuring the extension of female lawyers' licences, access to free legal aid for women, and awareness-raising for women on accessing the legal system, among other areas. Initiatives could also consider carrying out trust-building exercises between women lawyers, judges and prosecutors and the de facto authorities.

## Informal justice

For many centuries, **informal justice mechanisms have been the preferred method of dispute resolution among many Afghan communities.**

Despite international investment over the past 20 years, the formal justice system has remained flawed. While the informal justice can, in some instances, resolve disputes faster and with less expense, there is a significant risk of harm for women and girls, particularly in GBV cases, where pathways for a survivor-centred and do no harm approach are severely limited. The informal justice system does not have safeguards in place to guarantee fair processes (from interviews and evidence collection to trials, the right to legal

representation, proportionate sentencing, appeals, and various other areas) and can reinforce power imbalances and inequities – particularly for women and other minorities.<sup>49</sup>

Such settings also deprive individuals of fundamental due process protections, especially because they **lack written laws and/or procedures.** Informal justice tends to focus on restorative justice – prioritizing community reconciliation and social norms over individual rights. This largely

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49 USAID (United States Agency for International Development). 2019. [Non-State Justice system Programming: A Practitioner's Guide](#). Washington D.C.: USAID.



results in decisions reflecting and reinforcing local cultural norms and customs, which, in the Afghanistan context, are deeply embedded in patriarchal traditions.

These norms often instil **male dominance at the expense of women's rights** and are often harmful or oppressive to vulnerable or marginalized individuals, including women and ethnic and religious minorities. Those presiding over, or influencing these informal dispute resolution mechanisms in Afghanistan, are mostly men, selected for their existing political power and influence within the community. This means that these same vulnerable and marginalized groups are unlikely to have a place in the informal decision-making process established to preside over cases. The requirement of a women to use a *mahram* also compounds this issue. This dynamic of male-dominance has in the past resulted in rights violations.<sup>50</sup> In GBV cases, informal justice mechanisms create an ideal setting to maintain and reinforce an abuser's ongoing power and control over a survivor. Given the evidence around the male-dominated composition of the de facto authorities' justice system, may arise in the context of the de facto authorities' justice system, as well.

## Sharia courts

According to some reports, courts (often referred to as "extrajudicial courts" or Taliban courts") that use sharia law are being used across Afghanistan. These courts were used before August 2021 in areas under Taliban control, especially in areas where it was hard for communities to access the formal court system.<sup>51</sup> Now, some of those courts are becoming more prominent and appear to be part of the strategy to shift legal decision-making to a sharia legal system. In these courts, sharia books are used and muftis that have religious education act as the judges. For civil law matters, the sharia courts are now using as the primary source<sup>52</sup> the Al-Majalla Al Ahkam Al Adaliyyah

(Ottoman Courts Manual (Hanafi))<sup>53</sup> but how the code is being adapted for use is not yet clear.<sup>54</sup> For civil matters, the use of the Turkish Ottoman code sets out sharia principles to be used in areas of law such as inheritance/trusts, property/trespass contracts/pledges, financial/debts and court procedure. The overall impact on women is that it excludes them from the process as they cannot be present in proceedings and there can be differing applications of principles as each mullah has the authority under sharia to determine how to apply the principle in that case.

## Military courts

The de facto authorities have established their own military courts at the provincial level<sup>55</sup> with jurisdiction to enforce a code of conduct over their own security personnel.<sup>56</sup> The de facto military courts aim is to control the behavior of their members in and outside the battlefield and to differentiate their fighters from those who were posing as Taliban but were mere criminals. Though it is reported that these courts do in fact exist, it appears they are not completely operational, as no decisions have been issued. Crimes such as extrajudicial killings, reprisal killings and forced disappearances of the Afghan National Defence and Security Forces (ANDSF) are occurring but are not being brought to these military courts. Of note, a general amnesty was announced for those ANDSF forces of the GoIRA, but in a number of circumstances they have been targets of the new regime. The military courts that were operating previously under GoIRA, established under article 122 of the Constitution<sup>57</sup> and the Law on Formation and Jurisdiction of Military Court (2018) have not been disbanded yet.

50 [Gaston, E., Sarwari, A. and A. Strand. 2013. Lessons Learned on Traditional Dispute resolution in Afghanistan.](#)

51 [The Taliban's Sharia Justice System in Afghanistan Is Flawed.](#) Foreign Policy. 28 October 2021.

52 In the past, Afghan civil laws were the primary source, though the Ottoman code served as a secondary source.

53 For more information on the Al- Majalla Al Ahkam Al Adaliyyah/The Ottoman Courts Manual (Hanafi), see [here](#).

54 Information gathered from contact who has completed a field visit for Afghan Analysts Network in September 2022.

55 There was a press release from the Taliban early on that established the courts and indicated that they would establish a code of conduct to manage the behaviour of their forces. This code of conduct is not yet available on any official site.

56 Security personnel in this context means Taliban security forces.

57 The Constitution of the Islamic Republic of Afghanistan, 2004

## Regional snapshots

### Increase in informal justice

Although informal justice mechanisms were utilised before the Taliban takeover, a study indicates that the number of conflicts resolved by informal justice in 2021 increased across almost every province of Afghanistan.<sup>58</sup> Many longstanding property-related disputes have been reportedly resolved through such informal mechanisms. As of 18 May 2022, the de facto authorities have established new provincial *shuras*, comprised of Islamic scholars and tribal elders in 10 provinces in the **Western Region** (Badghis, Farah, Herat), **Central Highland** (Ghor), **Southern Region** (Kandahar, Nimroz, Zabul), **South Eastern Region** (Paktika), **Capital Region** (Panjshir), and **Northern Region** (Samangan).<sup>59</sup> Gender disaggregated data on women's representation in these bodies is largely unavailable. These *shuras* are required to implement Islamic Law, resolve local disputes, oversee the activities of provincial administrations (under the guidance of the de facto Ministry of Hajj and Religious Affairs), and build trust between the de facto authorities and the public.

Given that the informal systems are male dominated, a risk remains that mechanisms like “shuras” could entrench or justify the marginalisation of women and violation of women who come before them. Noting that in most of the **Southern Region** (Helmand, Kandahar, Uruzgan provinces) and one province in the **North Eastern Region** (Baghlan), communities gravitate towards using informal justice, rather than formal justice mechanism

There are indications that de facto authorities are rolling back gains in the **Northern Region** have changed the leadership in these informal bodies. For example, in Balkh province, the de facto authorities replaced some village leaders allegedly due to poor performance, and in Faryab, some *shura* members were accused of corruption in aid distribution and removed from their posts.<sup>60</sup>

### Women's representation in informal justice

In March 2022, women members of *shuras* and *jirgas* were reportedly active in at least one province in each region, except for **Central Highland**, **North Eastern Region**, and **Eastern Region**.<sup>61</sup> It is unclear whether this remains the case, as regulations have since tightened to further restrict women's participation in public life. Despite their minimal presence, the proportion of active women members certainly did not reach the threshold – 30 per cent –

58 IOM (International Organization for Migration). 2021. [Afghanistan – Baseline Mobility and Community Based Needs Assessment: Summary Results \(January–March 2021\)](#) Displacement Tracking Matrix (DTM), CBNA R12; IOM. 2022. [Baseline Mobility and Community Based Needs Assessment: Summary Results \(November – December 2021\)](#). DTM, CBNA R14.

59 UNGA. 2021. [Report of the Secretary General](#), p. 3.

60 Written exchange with female Rule of Law expert in Afghanistan, 20 May 2022.

61 Capital (Kabul), South Eastern (Khost), Southern (Kandahar), Western (Herat), Northern (Balkh and Faryab); written exchange with female Rule of Law expert in Afghanistan, 20 May 2022.

required to exert meaningful influence over proceedings.<sup>62</sup>

In the **Western, Eastern and North Eastern Regions** (Badghis, Nangahar, Kunar and Kunduz provinces), women are still members of the informal justice system, but are reportedly not playing an active role.<sup>63</sup> Prior to August 2021, all-women shuras were also active in many provinces, making it easier for women to share issues and obtain support to navigate male-dominated legal and justice structures.<sup>64</sup> As the separation of Afghan men and women is increasingly enforced, a re-establishment of all-women shuras could potentially provide some temporary relief around access to justice for women.

## Hybrid justice

In the **Northern Region**, while over 80 per cent of conflicts in Faryab province are mediated through informal justice mechanisms, use of the formal justice system generally remains high across the region.<sup>65</sup> The reason for the high number of conflicts being mediated in this way in Faryab may be due to a hybrid approach applied in one district of the province, where courts were reportedly referring cases to shura and jirga to resolve disputes, after which the judge would review the decision and issue an official document.<sup>66</sup>

While a hybrid justice setting is the reality in many areas of Afghanistan, it also heightens the potential for retraumatization, especially when women are shuttled back and forth between informal and formal systems with little resolution and access to comprehensive support systems (most women-led civil society organizations report significant operational challenges, meaning that they are unable to run services targeting survivors of violence in the way that occurred under GoIRA rule).<sup>67</sup>

## Forced evictions

There is evidence of forced evictions, both carried out in general exercises of power not targeted at specific groups, and appearing to specifically target Hazara Shia communities and people associated with the former government. These evictions have been facilitated (or at least have gone unimpeded) by the de facto authorities, with some land allegedly being redistributed to Taliban fighters and supporters as compensation for their service or loyalty.<sup>68</sup>

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62 The threshold of 30 per cent is globally agreed as the minimum target for quotas seeking to accelerate the participation and influence of historically marginalized groups. More information on gender quotas [here](#).

63 Written exchange with female Rule of Law expert in Afghanistan, 20 May 2022.

64 Interview with female Afghan women's rights activist, 10 May 2022.

65 IOM. 2022. [Baseline Mobility](#).

66 Written exchange with female Rule of Law expert in Afghanistan, 20 May 2022.

67 GiHA (Afghanistan Gender in Humanitarian Action). 2022. [Research on Challenges, Barriers and Opportunities for Women-led CSOs in the Afghanistan's Humanitarian Crisis](#). GiHA Working Group. Final Report, 30 March 2022. Kabul: GiHA.

68 Ibid; HRW (Human Rights Watch). 2021. ["Afghanistan: Taliban Forcibly Evict Minority Shia."](#) News, 22 October 2021.

Human Rights Watch reported in 2021 that the largest displacements took place in the **Southern Region** and the **Central Highland**, in the neighbouring provinces of Uruzgan and Daikundi, where the Taliban evicted at least 2,800 Hazara residents in September of that year.<sup>69</sup> Evictions were reportedly also widespread across the **Northern Region**, (Balkh, Sar-i-Pul, Jawzjan provinces), **North Eastern Region** (Takhar province), **Southern Region** (Helmand and Kandahar provinces), **Central Highland** (Bamiyan province), and the **Capital Region** (Kabul province).<sup>70</sup>

Moreover, a UN group of experts noted the increased risk of exploitation for women and girls in these situations, including in regard to human trafficking, child and forced marriage, sexual exploitation and forced labour.<sup>71</sup> There are reports that, following media attention, some of these forced evictions were reportedly overturned by courts in January and February 2022, with families being allowed to return to their properties. It is unclear whether all have returned to date.<sup>72</sup>

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69 OCHA (United Nations Office for the Coordination of Humanitarian Affairs). 2021. [Afghanistan: Weekly Humanitarian Update \(20 – 26 September 2021\)](#).

70 HRC. 2022. Situation of human rights, p. 12

71 OHCHR. 2022. [“Afghanistan: Taliban attempting to steadily erase women and girls from public life - UN experts.”](#) Press Releases, 17 January 2022.

72 HRC. 2022. Situation of human rights, p. 12; HRW. 2021. [“Afghanistan: Taliban Forcibly Evict.”](#)

## Women's access to justice

Beyond the significant obstacles in the informal and formal justice system, the **broader restrictions on women's rights** – especially limits on freedom of movement – make it almost impossible for women and girls to access justice. Severe restrictions on women's freedom of movement and the right to work leave them dependent on male relatives, both financially and simply to leave the house to access a lawyer, the de facto courts, or a de facto government department. This situation severely limits women's ability to exercise any legal rights. It is particularly problematic in cases which challenge social norms and may be deemed as undesirable by male relatives. As is common in Afghanistan, women are culturally expected to remain silent about male violence towards them or resolve it within the family, forcing women and girls experiencing violence at the hands of a male, typically their husband or a close relative, to remain in situations where they are at risk.

The increase in access to justice for women over the past 20 years was in large part attributed to the appointment of 300 women as judges, 242 specialized ERAW prosecutors, 800 female defence lawyers, as well as the emergence of **ERAW institutions** like the Family Response Units and civil society organizations that worked in all 34 provinces to end violence against women.<sup>73</sup> While the gains of the past 20 years did not reach every corner of the country, and it was estimated that only 10 per cent of judges were women, there was a framework, institutions and processes by which women could access justice and demand more of their government in this area. Much of this

progress that was achieved has nonetheless been reversed since the de facto authorities took power. The Ministry for Women's Affairs (MoWA) and the AIHRC have been abolished. Indeed, the de facto Ministry for Propagation of Virtue and Prevention of Vice (MPVPV) has taken over the office building that formerly housed the MoWA. Institutions aimed at ending violence against women – like FRUs, specialized ERAW courts and prosecution offices – are neither currently operational nor the subject of plans to reopen in 2022.<sup>74</sup>

**Civil society has also been decimated.** Nearly all Women's Protection Centers (WPCs) offering safe shelter to GBV survivors and legal support for child custody and divorce cases have been closed since August 2021. These WPCs have also been targeted by the de facto authorities. Several WPCs reported that their assets were seized and the women and children residing on location forced to reintegrate into their communities or move to other locations.<sup>75</sup> While some community-based service centres are gradually opening, largely as a result of local advocacy with the de facto authorities, the previous growing eco-system that once sought to prevent and tackle violence against women has quickly evaporated. In addition, many women-led **civil society organizations providing women with access to justice have had to suspend operations** due to administrative, security and mobility constraints and/or lost funding, particularly grassroots women's rights organizations that had been providing essential specialist services to women and girls.<sup>76</sup> In addition, many women and men who worked on these issues have fled the country, leaving a vacuum in leadership, skills, and knowledge.<sup>77</sup>

73 Sarabi, H. 2018. UNSC Briefing on Afghanistan by Habiba Sarabi (Deputy Chair to High Peace Council & Senior Adviser on Women to the Chief Executive of Islamic Republic of Afghanistan). 8 March 2018.

74 Interview with female UNAMA official working on Rule of Law, 26 April 2022.

75 Email exchange with United Nations official working on violence against women, 19 June 2022.

76 GiHA. 2022. [Research on Challenges](#).

77 HRC. 2022. Situation of human rights, p. 9.



Issues facing women around divorce, child custody, GBV, and criminal prosecution often requires a referral to other institutions active on these specific issues. However, **there are reports that cases of family law and violence against women are being diverted to informal justice mechanisms**, the deficits of which have been discussed above.<sup>78</sup> Further, there are reports that women and girls who are survivors of rape or other forms of GBV, or even those seeking a divorce under family law, are being arrested and prosecuted for ‘moral crimes’<sup>79</sup> One female lawyer noted: “[W]hen a woman is being oppressed, she cannot go to the criminal courts. When they do, the courts blame women for not being good human beings.”

There is, however, evidence that **legal outcomes differ according to the type of case**. Examples of this dynamic include child custody and forced marriage cases in some districts resulting in outcomes that are more favourable to the women involved. Gender-based violence cases are different as women are more likely to be sentenced after bringing the complaint forward.<sup>80</sup> These complex situations require a seasoned lawyer trained in the provision of gender-sensitive legal aid and able to facilitate links with a wide range of support services.

Since January 2022, **cases of violence against women have been taken on primarily by the informal justice system**. Between 15 August 2021 and 15 July 2022, UNAMA received 87 reports of violence against women and girls (including murder, rape, suicide, forced marriages, assault and battery, and two cases of honour killing), none of which were processed through the formal justice system.<sup>81</sup> There is, however, some evidence to

suggest that, although the level(s) of women’s access to formal justice cannot be compared to those seen before August 2021, the formal justice system is beginning to take on some cases of violence against women. Prosecutors have recently taken on some local criminal investigations; including violence against women cases, in certain regions.<sup>82</sup>

According to the de facto authorities, **in some areas the civil divisions of de facto ordinary courts are handling GBV cases**, with many of these cases being referred to mediation or other informal justice mechanisms.<sup>83</sup> In most other cases, following instructions by the de facto Supreme Court, investigations are only being conducted by the de facto police and de facto judges – presumably to speed up court proceedings, which puts the independence and impartiality of criminal cases at risk.<sup>84</sup>

Even in this restrictive environment, some non-government and civil society organizations continue to run **initiatives aimed at preventing and responding to GBV**. Reports suggest that some national civil society organizations are engaging de facto governors on these issues with some success, by framing GBV within religious and cultural norms, and undertaking careful negotiations.<sup>85</sup> Although de facto Governors in some provinces are more open to women’s needs and services, they often require the approval of the central authorities in Kabul before allowing NGOs to operate. There is also evidence to suggest that there is greater openness to these issues in provinces in the north and west of Afghanistan, where more interventions around women’s empowerment took place over the past 20 years.<sup>86</sup> This pre-existing foundation of a women’s movement and some degree of public sensitization to these issues appears to be key in supporting future GBV work.

78 Interview with female UNAMA official, 26 April 2022.

79 Written exchange with female legal experts in Afghanistan, 6 June 2022.

80 Internal survey of UN agency partners, 2022.

81 UNAMA notes significant underreporting of GBV. Cases registered at hospital have halved in number since the de facto authorities took control. This could be due to women’s limited freedom of movement, the absence of mechanisms for protection or redress, and the current insecure environment for women: UNAMA. 2022. [Human Rights in Afghanistan: 15 August 2021 – 15 June 2022](#). July 2022.

82 Interview with female UNAMA official, 26 April 2022.

83 Ibid.

84 Ibid.

85 Interview with female Afghan women’s rights activist, 10 May 2022.

86 Ibid.

## Law enforcement

The lack of clarity around which laws are applicable, combined with a new, untrained and sometimes rogue de facto police force, has meant that **law enforcement is arbitrary and ad hoc, and abuses of power are regularly reported**. Some of the laws that former Taliban fighters have been expected to enforce since August 2021 are fundamentally inconsistent with the values and norms espoused by their leadership over successive decades. The de facto leadership is also struggling to keep in line foot soldiers with newly gained authority, which demonstrates both the schism within the group and issues around command and control. With this lack of control over new recruits and inconsistency in understanding of the rules, navigating law enforcement is dangerous for civilians, particularly women, ethnic and religious minorities, whom have long been targeted by the Taliban.

**The de facto authorities issued a decree in November 2021** to attempt to stop acts of abuse of power and arbitrary justice across Afghanistan.<sup>87</sup> This decree framed this issue as infiltrators acting to harm the image of the group, and was accompanied by the creation of a **de facto Purging Commission**, which as of 21 February 2022 had purportedly dismissed more than 4,000 members of the de facto security forces and jailed “many of them”.<sup>88</sup> These security personnel were allegedly dismissed for violating orders, misusing public funds, committing arbitrary operations and summary executions, and cooperating with the Islamic State in Iraq and the Levant-Khorasan (ISIL-K).<sup>89</sup> Those purged were seemingly all men, as no women appear to have stayed in (or rejoined) the security forces.

87 Latifi, A.M. 2021. [“Afghanistan: Taliban leader warns of infiltrators.”](#) Al Jazeera. News, 4 November 2021; Jurist. 2021. [“Afghanistan dispatches: Taliban reintroduce public shaming as criminal punishment.”](#) News, 17 November 2021.

88 Lalzoy, N. 2021. [“Taliban bans arbitrary operations and courts.”](#) The Khaama Press News Agency. 13 November 2021; Erfanyar, A.S. 2022. [“4,350 undesired persons expelled from forces ranks: Mufti Hakimi.”](#) Pajhwok. 21 February 2022.

89 TOLONews. 2021. [6pm News- 12 November 2021.](#)

## Extrajudicial killings

Instances of this form of killing – as well as cruel, inhumane and degrading treatment – have reportedly been carried out against individuals contravening rules and directives from the de facto MPVPV. Between 1 January and 22 May 2022, the United Nations Assistance Mission in Afghanistan (UNAMA) reported **at least seven extrajudicial killings** (five women, two men) for allegedly committing the ‘moral crime’ of extramarital relations.<sup>90</sup> Women and girls who face punishment for ‘moral crimes’ are often fleeing abuse, or forced or underage marriage.<sup>91</sup> Such cases were already an issue prior to August 2021. However, due to the issuance of rules and directives silencing women, and the dismantling of shelters and legal infrastructure for women’s protection, these specific killings send a clear message to stop women and girls from seeking protection and justice abuse cases.<sup>92</sup>

90 UNGA. 2021. [Report of the Secretary-General](#), p. 7.

91 HRW. 2012. [“I Had To Run Away”: The Imprisonment of Women and Girls for “Moral Crimes” in Afghanistan.](#) Report, 28 March 2012.

92 For more information on extra-judicial killings, see: UNAMA. [Human Rights in Afghanistan](#). Marcolini, B., Sohail, S. and A. Stockton. 2022. [“The Taliban Promised Them Amnesty. Then They Executed Them.”](#) The New York Times. Opinion, 12 April 2022. DIS (Danish Immigration Service). 2021. [Afghanistan: Recent events](#), p. 23. Country of Origin Information (COI) Brief Report, December 2021. Næstved: DIS. UNGA. [The situation in Afghanistan and its implications for international peace and security: Report of the Secretary General](#). 7.

# 3

KEY

RECOMMENDATIONS

AND RESOURCE LIST



Photo: © UN Women/ Sayed Habib Bidel

## Key gender-sensitive questions to consider in programming and funding support

1. What possibilities are there to support the lawyers' union (or an independent lawyers' association) and civil society legal aid providers to promote women and girls' access to justice and greater inclusion of women in the legal profession?
2. How can the perspectives of female legal professionals be elevated in decision-making on strategies to address the rights of women to return to work, and create a space for them to come together to receive training, support, resources and encouragement to pursue their profession?
3. Can online training courses be offered safely and securely to legal professionals, inside and outside of the country, on gender-inclusive legal systems and processes compatible with Islamic Law?
4. What kind of legal infrastructure is needed to support a survivor-centred response to GBV cases?

## Key recommendations

1. **Advocate for legal aid support by women lawyers**, including their ability to safely work. Advocacy efforts can be anchored within broader efforts to ensure the full return of women to work, across all sectors. Listen to the recommendations of Afghan women working in the legal sector to ensure their priorities shape all advocacy efforts.
2. **Invest in re-establishing a working system of referrals** to support Afghan women dealing with issues around family law, GBV, criminal prosecution, and protection. Shelters, health care and other service support remains crucial to providing safe, sustainable outcomes.
3. **Support the re-establishment of all-women shuras and advocate for the meaningful participation of women in informal justice mechanisms** to provide an entry point for Afghan women to access justice and find support in navigating male-dominated formal and informal justice pathways.
4. **Support civil society legal aid service providers** that can provide legal representation to women and girls in conflict with the law and with other legal needs, and that can employ women lawyers.
5. **Include women as equal partners in the planning, design and implementation of programming**, in a safe and respectful way that fully supports, reimburses and tangibly benefits women participants and allows them to enact meaningful change in this area.
6. **Provide flexible funding support to women-led civil society organizations** so that they can navigate a complex political and security environment, enabling them to adapt services and programming aimed at preventing and responding to violence against women and girls.
7. **Ensure that all data collected related to the legal sector, including reports on targeted killings, is disaggregated by gender**. Access to gender disaggregated data is needed to identify and understand the specific challenges and opportunities in establishing a gender-sensitive legal system and access to justice for all Afghans.

## Resource list

- Emon, A.M., Rume A. and A.S. Chaudry. 2020. *Governing Afghanistan with the Taliban. A guide for negotiators*. Rockledge Research.
- Haines, R. and T. O'Neil. 2018. [Putting gender in political economy analysis: Why it matters and how to do it](#). Briefing note. Gender and Development Network.
- UN Women, UNDP, UNODC, UNHCR. 2018. [A Practitioner's Toolkit on Women's Access to Justice Programming](#).
- UNAMA, OHCHR. 2020. [In Search of Justice for Crimes of Violence Against Women and Girls](#).
- UNODC. 2020. [Gender Brief for UNODC Staff: Mainstreaming gender in Justice projects](#).



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