

## The Law Society of England and Wales

# Stakeholder Submission to the UN Human Rights Council's Universal Periodic Review – AFGHANISTAN

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The Law Society is a professional body representing approximately 200,000 lawyers in England and Wales. Its aims include upholding the independence of the legal profession, the rule of law and human rights around the world. The Law Society was established by Royal Charter (the "Charter of the Society") in 1845 and has consultative status with the Economic and Social Council of the United Nations since 2014. Its activities are established by statute: the Solicitors Act 1974, the Courts and Legal Services Act 1990, the Access to Justice Act 1999, and the Legal Services Act 2007.

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## A. Introduction

1. Information contained in this submission is based on evidence gathered by the Law Society of England and Wales as part of its Lawyers at Risk programme,<sup>1</sup> which supports legal professionals worldwide who are hindered in carrying out their profession because of the cases they work on or clients they represent.
2. Afghanistan underwent its first UPR cycle in 2009, second in 2014, and third in 2019.
3. This submission focuses on the following:
  - (B) Collapse of the Legal System
  - (C) Laws and Regulations Undermining the Independence of the Legal Profession
  - (D) Systemic Persecution of Lawyers, Prosecutors and Judges
  - (E) Recommendations

## B. Collapse of the Legal System

4. On 15 August 2021, the Taliban took control of Kabul, and, on 6 September 2021, declared complete territorial control over Afghanistan. The existing legal system has since been dismantled.
5. The Taliban suspended the 2004 Constitution, which guaranteed the separation of powers and rights of citizens.<sup>2</sup> While a new constitution is under development based on sharia law, it is yet to be adopted.<sup>3</sup>
6. The Supreme Leader announced that the existing laws were no longer valid, and ordered a review of the compliance of existing laws with sharia law.<sup>4</sup> The Taliban reported that 95% of the laws had been reviewed, of which only 5% were found to be incompatible, including the law on the elimination of violence against women,<sup>5</sup> but are yet to formally repeal any laws.<sup>6</sup> Thus, there remains uncertainty as to what laws apply.<sup>7</sup>
7. Afghanistan operates in a legal vacuum constrained only by reference to sharia law.<sup>8</sup> The Taliban have employed one of the most extreme interpretations of sharia that includes capital and corporal punishments.<sup>9</sup> Many of the directives that have been issued by the Taliban constitute limitations on fundamental human rights, including freedom of expression, and freedom of movement.<sup>10</sup>
8. The Taliban appointed its own members as the Minister of Justice, Chief Justice, Attorney General and Members of the Supreme Court, each of whom have religious rather than legal training.<sup>11</sup> The Taliban dissolved the Afghanistan Independent Human Rights Commission and the Ministry of Justice Human Rights Support Department.<sup>12</sup>

### (i) Court System

9. The courts have gradually resumed functioning and are currently operational.<sup>13</sup> However, there is a lack of clear procedure, due process, defined legal standards, and rights protections.<sup>14</sup>
10. The day-to-day operations of the courts remain haphazard and vary greatly between regions.<sup>15</sup> Court schedules and trial procedures are irregular and at the discretion of the individual judge.<sup>16</sup> There are many reports of substantial case delays.<sup>17</sup> Case processing



is reportedly very slow, often due to the lack of training and experience of the new judges.<sup>18</sup>

11. The relevant law to be applied continues to be denoted simply as sharia (Hanafi jurisprudence), leaving to individual judges' discretion the interpretation.<sup>19</sup> The sources of law and procedure currently being used vary widely, with some judges and lawyers continuing to rely on laws from previous Afghan regimes.<sup>20</sup> Lawyers reported that some judges even failed to apply sharia law or simply applied their own beliefs or prejudices.<sup>21</sup> This has resulted in unclear judgments, often without any determinations of law or fact.<sup>22</sup>
12. The right to a fair trial has been undermined, as "criminal defendants were denied the right to a presumption of innocence; be informed promptly of the charges; a fair, timely, and public trial; be present at their trial; communicate with an attorney of their choice; have adequate time and facilities to prepare a defense; receive the free assistance of an interpreter; confront prosecution witnesses and present one's own witnesses and evidence; not be compelled to testify or confess guilt; and appeal."<sup>23</sup>

#### **(ii) Judges**

13. The Taliban dismissed all judges, and appointed Taliban members educated in madrassahs, schools offering basic religious education, rather than legal training.<sup>24</sup> The typical madrassah education follows no specific curriculum or methodology and is not even equivalent to a primary school level of education, as learning to write is not a compulsory element. One lawyer noted that the judges are "mostly not aware of jurisprudence and sharia law".<sup>25</sup>
14. There is no process for the appointment of judges, rather appointments are often based on "connection and friendships."<sup>26</sup> One lawyer noted that the "judges are all people who themselves or their relatives had relations and cooperated with the Taliban in the past."<sup>27</sup>
15. Judges have reportedly been tasked with performing investigative functions, often serving as both investigators and adjudicators in the same case.<sup>28</sup>
16. No women judges were retained, and none have been appointed, where there were previously more than 270,<sup>29</sup> comprising over 10% of the bench.<sup>30</sup> Judges belonging to religious minority groups, mainly Shia Muslims, have also been removed.<sup>31</sup>

#### **(iii) Muftis**

17. In June 2022, the Supreme Leader ordered that muftis (elders with twenty to twenty-five years of madrassah education) would act as direct advisors to judges.<sup>32</sup> Judges are reportedly largely following the advice of muftis.<sup>33</sup> Muftis are performing some functions previously undertaken by prosecutors, including undertaking investigations, interviewing suspects and accused, reviewing cases and recommending findings and punishments to the judge.<sup>34</sup> There are also reports of muftis participating, along with the presiding judge, during court hearings and proceedings.<sup>35</sup>

#### **(iv) Prosecutors**

18. In August 2021, all prosecutors were initially fired, but, by late 2021, a few male prosecutors were being called back to work.<sup>36</sup> In Kabul, new prosecutors were appointed based on their Taliban connections, with most having received a religious education.<sup>37</sup>



19. This trend towards the gradual resumption of the prosecution services was halted in early 2022, when the Supreme Leader ordered that prosecutors cease their operations and refer all pending matters to the courts.<sup>38</sup> Thus, there is no one to assemble investigative files or present them to the court.<sup>39</sup> In many criminal cases, there is no investigative file or only a cursory Taliban police report being presented to the judge.<sup>40</sup>
20. In early 2023, the Taliban abolished the Attorney General's Office, replacing it with the "Directorate of Supervision and Prosecution of Decrees and Orders", which ensures the implementation of the Taliban's orders.<sup>41</sup> The justification provided for this was to avoid bureaucratic delays and streamline the judicial process.<sup>42</sup> However, some reports indicate that the motivation was to enable the Taliban to engage in arbitrary prosecutions without oversight. The investigation, supervision and prosecution of cases has been entrusted to the courts and the Intelligence Directorate.<sup>43</sup>

#### **(v) Access to Justice for Women**

21. Having effectively banned all female lawyers, prosecutors, and judges, the Taliban have seriously restricted access to justice for women. The majority of judicial bodies will reportedly not accept women's petitions.<sup>44</sup> Women may only appear in matters in which they are a party, and in many cases, must then be accompanied to court by a male family member or send a male relative in their place.<sup>45</sup> Testimony of women is not always accepted and, even if it is, it is generally given less weight than the testimony of a man.<sup>46</sup> Lawyers find it difficult to meet with women clients, particularly where the woman is in detention.<sup>47</sup>
22. The Special Prosecutor's Office and Special Court for the Prohibition of Violence against Women and Prohibition of Harassment of Women have been abolished without any replacement.<sup>48</sup> The Taliban have taken steps to reverse or drop previous court cases that upheld women's rights and protections.<sup>49</sup>

#### **(vi) Informal Justice Mechanisms**

23. The absence of a functioning legal system has led to an increased reliance on traditional and informal dispute resolution mechanisms, including meetings of tribal jirgas, community elders, muftis, or imams.<sup>50</sup> These mechanisms lack legal knowledge and safeguards, often fail to respect the rights of women, children, and minorities,<sup>51</sup> and often impose arbitrary punishments not consistent with international human rights standards.<sup>52</sup>

#### **(vi) Arbitrary Arrests, Prolonged Pre-Trial Detention, Torture & Extrajudicial Case Resolution by Police and Security Services**

24. The United Nations Assistance Mission to Afghanistan (UNAMA) reported that the Taliban engaged in arbitrary and prolonged detention,<sup>53</sup> without any prosecutorial or judicial review<sup>54</sup> and with no access to legal representation.<sup>55</sup> There are no legal standards governing the decision to detain and there is no formal mechanism to challenge the detention.<sup>56</sup>
25. The UNAMA reported extrajudicial killings and instances of torture being used on detained persons,<sup>57</sup> with around 800 documented cases of torture and other cruel, inhuman, or degrading treatment or punishment in the period from 1 January 2022 to 31 January 2023.<sup>58</sup>



26. The absence of a functioning legal system has led to a large number of criminal matters being adjudicated directly by the Taliban police and security services without “a defined legal basis”.<sup>59</sup> There are many reported instances of severe extrajudicial remedies being enforced directly by the Taliban police or security services without judicial or even quasi-judicial proceedings.<sup>60</sup> Alleged perpetrators are often detained, sentenced and punished on the same day.<sup>61</sup> The UN Special Rapporteur on Afghanistan noted that “crimes such as theft or assault are often dealt with by security forces”.<sup>62</sup>

### **C. Laws and Regulations Undermining the Independence of the Legal Profession**

#### **(i) Afghanistan Independent Bar Association**

27. The Afghanistan Independent Bar Association (AIBA), established in 2008, oversaw the licensing and regulation of lawyers.<sup>63</sup> On 22 November 2021, the Taliban’s Ministry of Justice (MoJ) issued a decree abolishing the AIBA and merging it into the MoJ.<sup>64</sup>
28. On 23 November 2021, more than fifty armed Taliban members stormed the AIBA’s offices, threatened the employees and members of the bar association and ordered them to leave.<sup>65</sup> The Taliban ordered the verification of all contracts signed by the AIBA and seized the AIBA’s bank accounts and funds.<sup>66</sup> The Taliban also seized the AIBA’s database containing the personal and professional data of over 5,000 lawyers and the AIBA’s staff, including their home addresses, phone numbers, and cases worked on.<sup>67</sup> This highly sensitive information leaves lawyers, prosecutors and judges, and their family members, at risk.
29. On 5 December 2021, the Taliban raided an AIBA news conference, protesting the Taliban takeover and highlighting the importance of the AIBA’s independence, forcing AIBA members to flee.<sup>68</sup>

#### **(ii) Licensing of Lawyers**

30. The decree issued on 22 November 2021 also stated that only Taliban-approved lawyers are permitted to appear before the courts, thereby revoking lawyers’ licenses pending re-examination. The Taliban required lawyers to renew their licenses with the Taliban’s MoJ and adopted procedures for re-licensing,<sup>69</sup> which restrict many former lawyers from obtaining a license.
31. Male lawyers seeking to renew their license must pass an oral examination, which tests the lawyer’s religious knowledge.<sup>70</sup> Lawyers are required to be “honest and loyal to the Islamic Emirate”.<sup>71</sup> In practice, lawyers are also examined on the basis of their past activities.<sup>72</sup> Lawyers previously active in the field of human rights, in criminal cases, or involved with international organisations have been denied a license.<sup>73</sup> Past cooperation or involvement with the Taliban is viewed favourably. Licensed lawyers are also required to sign a letter committing to growing a proper beard and appearing physically in the MoJ to demonstrate this.<sup>74</sup>
32. The Taliban’s control over the licensing of lawyers, particularly given the nature of the licensing criteria, strongly suggests that lawyers will not be knowledgeable and independent. Many current lawyers are reportedly only sharia law graduates with basic madrassah knowledge.

### **(iii) Female Lawyers**

33. Women are excluded from taking their qualifying examinations, renewing their licenses, or appearing in court,<sup>75</sup> despite comprising a quarter of lawyers.<sup>76</sup> The Taliban have not yet issued a single license for a female lawyer.<sup>77</sup> Female lawyers have been told to wait for a decision on whether there would be a possibility of renewing their license or of granting licenses to female lawyers generally.<sup>78</sup> The status of female lawyers remains ambiguous, as there is no actual announced prohibition on women being lawyers or order stating women cannot be re-licensed.<sup>79</sup> There are no clear procedures at all, as the Taliban's MoJ has taken no action on this.<sup>80</sup>

### **(iv) Role of Lawyers**

34. There is no countrywide approach on access to defence counsel.<sup>81</sup> Some reports indicated that, in criminal cases, the presence of a defence lawyer is considered illegal, with defence lawyers sometimes being punished as accomplices. In some courts, the ability of a lawyer to challenge a ruling of the judge is restricted, while, in other courts, the right of a lawyer to conduct cross-examination is reported to be restricted or prohibited.<sup>82</sup>

## **D. Systemic Persecution of Lawyers, Prosecutors and Judges**

35. Lawyers, prosecutors, judges, and other actors who worked in the legal system prior to the Taliban takeover, especially women, have become targets of the Taliban itself and the approximately 36,000 convicted criminals who were freed by the Taliban upon returning to power.<sup>83</sup> Many of those released were Taliban fighters who had been convicted of serious crimes.<sup>84</sup> Given their involvement in cases concerning corruption, narcotics, violence against women, the defence of human rights, national security and anti-terrorism, including those against the Taliban or affiliated groups, legal professionals have faced serious and continuing threats to their lives.<sup>85</sup> Reprisals have included death threats, house searches, physical harassment, monitoring and tracking, interrogations of family members, friends and other acquaintances, 'revenge' attacks, summary executions and enforced disappearances.<sup>86</sup>
36. With their lives and those of their families in danger, many lawyers, prosecutors and judges, and their families, have been forced to flee the country or go into hiding, moving even daily from place to place.<sup>87</sup> Those in hiding have been forced to live in places with limited facilities and in extreme hardship, which has led to a significant mental toll.

### **(i) Lawyers**

37. Since August 2021, 7 lawyers have been killed and 146 lawyers have been arrested or investigated.<sup>88</sup>
38. A number of lawyers are reported to have been detained by the Taliban security agencies, reportedly based on their previous representation of US/NATO contractors or former government officials.<sup>89</sup> In one instance, a lawyer was held in custody for over three days, because his client had previously served in the parliament.<sup>90</sup>
39. Many lawyers are unable to open their practices again out of fear of abuse from the Taliban.<sup>91</sup>
40. Female lawyers have received death threats from former clients and opposing parties, are subjected to routine harassment, have undergone forced marriages, and often cannot



afford basic living necessities.<sup>92</sup> Female lawyers also reported receiving threatening phone calls from the Taliban intelligence services.

**(ii) Prosecutors**

41. Since August 2021, 30 prosecutors have been killed and 11 have been injured in attacks.<sup>93</sup> Of these, three women have been killed and four injured.<sup>94</sup> There is no information that these cases have been investigated. Some prosecutors were found during door-to-door manhunts carried out by the Taliban in the months following the takeover.<sup>95</sup>

**(ii) Judges**

42. Since August 2021, there have been reports of arrests, torture, and murder of former judges. In late 2022, a female judge was assassinated.<sup>96</sup> In May 2023, a former judge was shot dead by unknown gunmen.<sup>97</sup> The Taliban have access to a database containing the judges' phone numbers, addresses, and photos, and information about their families.<sup>98</sup>
43. Judges have reported receiving death threats via phone calls and messages, their former homes being repeatedly raided by Taliban members, and their neighbours being interrogated.<sup>99</sup>
44. Female judges face increasing violence from family members who accuse them of putting their own lives at risk,<sup>100</sup> or due to a lack of income. Chronic stress and depression have left some female judges suicidal, and several have tried to set themselves on fire or take overdoses.<sup>101</sup>

**E. Recommendations**

1. **Ensure that lawyers are able to freely and independently exercise their profession in accordance with Principle 16 of the UN Basic Principles on the Role of Lawyers (hereafter 'UN Basic Principles'), which provides that "[g]overnments shall ensure that lawyers ... are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference."**
2. **Restore the right of women to practise as lawyers, in accordance with Principle 10 of the UN Basic Principles, which prohibits discrimination in licensing on the basis of sex.**
3. **Protect the lives of lawyers, prosecutors, and judges, and adopt and implement measures to guarantee their safety and security, in accordance with Principle 17 of the UN Basic Principles, which provides that "[w]here the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities."**
4. **Ensure that allegations of harassment, torture, murder and other reprisals against lawyers, prosecutors and judges are thoroughly investigated without undue delay, through a transparent and independent process, with appropriate accountability for perpetrators in accordance with international human rights standards.**
5. **Restore the AIBA and its licensing authority, in accordance with Principle 24 of the UN Basic Principles, which provides that bar associations are entitled to "exercise [their] functions without external interference".**



6. **Ensure that legislation and regulation is amended so that admission to the legal profession follows due process with objective and transparent criteria.**

We can provide technical assistance, as needed, to facilitate Afghanistan's compliance with these recommendations, specifically with review of legislation and regulations to bring them into conformity with international human rights standards.

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<sup>2</sup> International Bar Association, *There and back again: the collapse of the rule of law in Afghanistan*, <https://www.ibanet.org/rule-of-law-Afghanistan>.

<sup>3</sup> International Bar Association, *There and back again: the collapse of the rule of law in Afghanistan*, <https://www.ibanet.org/rule-of-law-Afghanistan>.

<sup>4</sup> International Legal Assistance Consortium, *Justice Matters: A Status Report on Afghanistan Since the Taliban Takeover*, [http://ilacnet.org/wp-content/uploads/2023/01/ILAC\\_Afghanistan\\_Report\\_2023-2.pdf](http://ilacnet.org/wp-content/uploads/2023/01/ILAC_Afghanistan_Report_2023-2.pdf).

<sup>5</sup> United Nations Human Rights Office of the High Commissioner, *A/HRC/52/84: Situation of human rights in Afghanistan – Report of the Special Rapporteur on the situation of human rights in Afghanistan*, Richard Bennett, <https://www.ohchr.org/en/documents/country-reports/ahrc5284-situation-human-rights-afghanistan-report-special-rapporteur>.

<sup>6</sup> International Bar Association, *There and back again: the collapse of the rule of law in Afghanistan*, <https://www.ibanet.org/rule-of-law-Afghanistan>.

<sup>7</sup> International Legal Assistance Consortium, *Justice Matters: A Status Report on Afghanistan Since the Taliban Takeover*, [http://ilacnet.org/wp-content/uploads/2023/01/ILAC\\_Afghanistan\\_Report\\_2023-2.pdf](http://ilacnet.org/wp-content/uploads/2023/01/ILAC_Afghanistan_Report_2023-2.pdf).

<sup>8</sup> International Bar Association, *There and back again: the collapse of the rule of law in Afghanistan*, <https://www.ibanet.org/rule-of-law-Afghanistan>.

<sup>9</sup> France 24, *Eye-for-an-eye sharia justice returns to Afghan courts*, <https://www.france24.com/en/live-news/20221221-eye-for-an-eye-sharia-justice-returns-to-afghan-courts>.

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<sup>11</sup> Special Inspector General for Afghanistan Reconstruction, *SIGAR 23-02 Evaluation Report*, <https://www.sigar.mil/pdf/evaluations/SIGAR-23-02-IP.pdf>.

<sup>12</sup> Special Inspector General for Afghanistan Reconstruction, *SIGAR 23-02 Evaluation Report*, <https://www.sigar.mil/pdf/evaluations/SIGAR-23-02-IP.pdf>.

<sup>13</sup> International Legal Assistance Consortium, *Justice Matters: A Status Report on Afghanistan Since the Taliban Takeover*, [http://ilacnet.org/wp-content/uploads/2023/01/ILAC\\_Afghanistan\\_Report\\_2023-2.pdf](http://ilacnet.org/wp-content/uploads/2023/01/ILAC_Afghanistan_Report_2023-2.pdf).

<sup>14</sup> International Legal Assistance Consortium, *Justice Matters: A Status Report on Afghanistan Since the Taliban Takeover*, [http://ilacnet.org/wp-content/uploads/2023/01/ILAC\\_Afghanistan\\_Report\\_2023-2.pdf](http://ilacnet.org/wp-content/uploads/2023/01/ILAC_Afghanistan_Report_2023-2.pdf).

<sup>15</sup> International Legal Assistance Consortium, *Justice Matters: A Status Report on Afghanistan Since the Taliban Takeover*, [http://ilacnet.org/wp-content/uploads/2023/01/ILAC\\_Afghanistan\\_Report\\_2023-2.pdf](http://ilacnet.org/wp-content/uploads/2023/01/ILAC_Afghanistan_Report_2023-2.pdf).

<sup>16</sup> International Legal Assistance Consortium, *Justice Matters: A Status Report on Afghanistan Since the Taliban Takeover*, [http://ilacnet.org/wp-content/uploads/2023/01/ILAC\\_Afghanistan\\_Report\\_2023-2.pdf](http://ilacnet.org/wp-content/uploads/2023/01/ILAC_Afghanistan_Report_2023-2.pdf).

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<sup>23</sup> US State Department, *Afghanistan 2022 Human Rights Report*, [https://www.state.gov/wp-content/uploads/2023/03/415610\\_AFGHANISTAN-2022-HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wp-content/uploads/2023/03/415610_AFGHANISTAN-2022-HUMAN-RIGHTS-REPORT.pdf).

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