



The Law Society
of England and Wales

The Situation of Women in the Justice System in Afghanistan

10 February 2024

Written Submission to the Gender Apartheid Inquiry

Introduction

On 15 August 2021, the Taliban took control of Kabul, and, on 6 September 2021, declared complete territorial control over Afghanistan. In the Taliban's first press conference after taking control of Kabul, spokesperson Zaihullah Mujahid stated that the Taliban were "committed to the rights of women within the framework of Sharia" and that the group would not discriminate against women.¹

Since then, the Taliban have sought to effectively ban all women, including women lawyers, prosecutors, and judges, from participating in the legal system. Lawyers, prosecutors, judges, and other actors who worked in the legal system prior to the Taliban takeover, especially women, face serious and continuing threats to their lives. This submission focuses on the following:

- Exclusion of Women Lawyers, Prosecutors and Judges
- Systemic Persecution of Lawyers, Prosecutors and Judges
- Access to Justice for Women

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,² which supports legal professionals worldwide who are hindered in carrying out their profession because of the cases they work on or clients they represent.

Exclusion of Women Lawyers, Prosecutors and Judges

Lawyers

On 22 November 2021, the Taliban's Ministry of Justice (MoJ) issued a decree that abolished the Afghanistan Independent Bar Association (AIBA), which oversaw the licensing and regulation of lawyers, and 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 available only to men.³ Male lawyers seeking to renew their license must pass an oral examination, which tests the lawyer's religious knowledge.⁴

Women are excluded from taking qualifying examinations, renewing their licenses, or appearing in court,⁵ despite comprising a quarter of lawyers.⁶ The Taliban have not yet issued a single license for a female lawyer. Female lawyers have been told to wait for a

¹ Al Jazeera, *Transcript of Taliban's first news conference in Kabul*, [Transcript of Taliban's first news conference in Kabul | Taliban News | Al Jazeera](#).

² The Law Society, *International rule of law*, <https://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk>.

³ 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.

⁴ International Day of the Endangered Lawyer 2023, *The Afghanistan Independent Bar Association relaunches its activities in exile from Brussels*, https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Pressreleases/2023/EN_HR_20230124_PR_0123.pdf.

⁵ 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.

⁶ Middle East Review, *Day of the Endangered Lawyer*, <https://defendlawyers.files.wordpress.com/2023/01/2023-afghanistan-2.pdf>.

decision on whether there would be a possibility of renewing their license or of granting licenses to female lawyers generally.⁷ 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. There are no clear procedures at all, as the Taliban's MoJ has taken no action on this.⁸ Unable to seek renewal of their licenses, women lawyers cannot practice law within the Taliban regime.

Prosecutors

In August 2021, all prosecutors were initially fired, but, by late 2021, a few male prosecutors were being called back to work. In Kabul, new prosecutors were appointed based on their Taliban connections, with most having received a religious education.⁹ No women prosecutors were retained, and none were appointed, despite comprising nearly a quarter of prosecutors.¹⁰

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.¹¹ Subsequently, 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.¹²

Judges

The Taliban dismissed all judges and appointed an all-male cadre of Taliban members educated in madrassahs, schools offering basic religious education, rather than legal training. There is no process for the appointment of judges, rather appointments are often based on "connection and friendships."¹³

The Taliban declared that, in accordance with sharia law and principles, women should not serve as judges.¹⁴ As such, no women judges were retained, and none have been

⁷ International Day of the Endangered Lawyer 2023, *The Afghanistan Independent Bar Association relaunches its activities in exile from Brussels*, https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Pressreleases/2023/EN_HR_20230124_PR_0123.pdf.

⁸ 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.

⁹ 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.

¹⁰ The Intercept, *As the Taliban Hunts Prosecutors, Afghan and U.S. Lawyers Team Up to Bring their Colleagues to Safety*, <https://theintercept.com/2023/08/08/afghan-prosecutors-taliban/>.

¹¹ 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.

¹² Feminist Majority Foundation, *Afghanistan's Judicial System Takes Another Hit as the Taliban Abolishes the Attorney General's Office*, <https://feminist.org/news/afghanistans-judicial-system-takes-another-hit-as-the-taliban-abolishes-the-attorney-generals-office/>.

¹³ 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.

¹⁴ JURIST, *Afghanistan dispatch: 'women's ability to access the court system has been completely wrecked'*, <https://www.jurist.org/news/2023/03/afghanistan-dispatch-womens-ability-to-access-the-court-system-has-been-completely-wrecked/>.

appointed, where there were previously more than 270,¹⁵ comprising over 10% of the bench.¹⁶

In June 2022, the Supreme Leader ordered that muftis (male elders with twenty to twenty-five years of madrassah education) would act as direct advisors to judges.¹⁷ Judges are reportedly largely following the advice of muftis.¹⁸ 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.¹⁹

Court Staff

Court staff were initially told to remain at home, but some male court staff have been recalled to work. These are mostly the judges' clerks (also referred to as "writers"), who take care of court administration, take notes during proceedings, and assist with drafting judges' decisions and decrees. Women who worked for the courts have not been called back to work, but there are some reports that they continue to technically remain on the payroll. One lawyer reported that "even female writers [i.e., clerks] were terminated from the court and instead male ones are hired. All positions are taken by males."²⁰

Systemic Persecution of Lawyers, Prosecutors and Judges

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.²¹ Many of those released were Taliban fighters who had been convicted of serious crimes.²² 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. Reprisals have included death threats, house searches, physical harassment, monitoring and tracking, interrogations of family members, friends

¹⁵ Day of the Endangered Lawyer, *Day of the Endangered Lawyer 24th January 2023 13th Edition – Afghanistan*, <https://drive.google.com/file/d/1OWOZcuDjZWjdN0KiaGcdPBmtnfqcaBg3/view>.

¹⁶ United Nations Human Rights Special Procedures, *UN experts: legal professionals in Afghanistan face extreme risks, need urgent international support*, <https://www.ohchr.org/sites/default/files/documents/issues/ijudiciary/statements/2023-01-17/202301-stm-sr-ijl-sr-afghanistan-day-endangered-lawyer.pdf>.

¹⁷ 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.

¹⁸ United Nations Human Rights Special Procedures, *UN experts: legal professionals in Afghanistan face extreme risks, need urgent international support*, <https://www.ohchr.org/sites/default/files/documents/issues/ijudiciary/statements/2023-01-17/202301-stm-sr-ijl-sr-afghanistan-day-endangered-lawyer.pdf>.

¹⁹ 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.

²⁰ 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.

²¹ Rukshana Media, *At least 40 Afghanistan's former prosecutors killed and wounded in the past two years*, <https://rukshana.com/en/at-least-40-afghanistans-former-prosecutors-killed-and-wounded-in-the-past-two-years>.

²² Jurist, *Afghan Judges Live in Fear as Taliban Reshapes Judiciary*, <https://www.jurist.org/commentary/2023/05/taliban-reshapes-judiciary/>.

and other acquaintances, 'revenge' attacks, summary executions and enforced disappearances.²³

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.²⁴ 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.

Lawyers

Since August 2021, seven lawyers have been killed and 146 lawyers have been arrested or investigated.²⁵ It is reported that at least one female lawyer has been killed and two subjected to torture.²⁶

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.²⁷ Female lawyers also reported receiving threatening phone calls from the Taliban intelligence services. Reports indicate that numerous female lawyers are experiencing serious mental health problems.²⁸

Prosecutors

Since August 2021, 30 prosecutors have been killed and 11 have been injured in attacks. Of these, three women have been killed and four injured.²⁹ There is no information that these cases have been investigated.³⁰

Judges

Since August 2021, there have been reports of arrests, torture, and murder of former judges. In late 2022, a female judge was assassinated.³¹ The Taliban have access to a

²³ International Bar Association, *There and back again: the collapse of the rule of law in Afghanistan*, <https://www.ibanet.org/rule-of-law-Afghanistan>.

²⁴ 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.

²⁵ Day of the Endangered Lawyer, *Day of the Endangered Lawyer 24th January 2023 13th Edition – Afghanistan*, <https://drive.google.com/file/d/1OWQZcuDjZWjdN0KiaGcdPBmtnfqcaBg3/view>.

²⁶ Council of Bars and Law Societies of Europe, *Joint call in support of endangered lawyers in Afghanistan*, https://www.avocatparis.org/sites/bdp/files/2021-11/EN_Call%20endangered%20lawyers%20in%20Afghanistan.pdf.

²⁷ Middle East Review, *Day of the Endangered Lawyer*, <https://defendlawyers.files.wordpress.com/2023/01/2023-afghanistan-2.pdf>.

²⁸ United Nations Human Rights Special Procedures, *UN experts: legal professionals in Afghanistan face extreme risks, need urgent international support*, <https://www.ohchr.org/sites/default/files/documents/issues/ijudiciary/statements/2023-01-17/202301-stm-sr-ijl-sr-afghanistan-day-endangered-lawyer.pdf>.

²⁹ Rukshana Media, *At least 40 Afghanistan's former prosecutors killed and wounded in the past two years*, <https://rukshana.com/en/at-least-40-afghanistans-former-prosecutors-killed-and-wounded-in-the-past-two-years>.

³⁰ United Nations Human Rights Special Procedures, *UN experts: legal professionals in Afghanistan face extreme risks, need urgent international support*, <https://www.ohchr.org/sites/default/files/documents/issues/ijudiciary/statements/2023-01-17/202301-stm-sr-ijl-sr-afghanistan-day-endangered-lawyer.pdf>.

³¹ Day of the Endangered Lawyer, *Day of the Endangered Lawyer 24th January 2023 13th Edition – Afghanistan*, <https://drive.google.com/file/d/1OWQZcuDjZWjdN0KiaGcdPBmtnfqcaBg3/view>.

database containing the judges' phone numbers, addresses, and photos, and information about their families.³²

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.³³

Female judges face increasing violence from family members who accuse them of putting their own lives at risk, 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.³⁴

Access to Justice for Women

The dismantling of the justice system has worked to "the disproportionate disadvantage of women both in limiting their access to justice and reducing their employment."³⁵ 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.³⁶ For instance, in one case, a woman went to court to file a claim against her husband. However, a decision was made by the person in charge of security at the gates of the court that the woman must either live with her husband with dignity or be sent to prison.³⁷

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. In one northern province, it was reported that the lack of a male family member meant that a woman's application would not even be considered by the court, meaning that access to the court for women could only be obtained through a male relative. Testimony of women is not always accepted and, even if it is, it is generally given less weight than the testimony of a man. It has been frequently reported that it would take the testimony of two women to provide the equivalent to that of one man.³⁸

Women in detention have been denied access to lawyers and were not informed of the charges against them or brought before a judge. Women have been detained incommunicado, and their families denied information about their whereabouts. In many cases, instead of a formal trial, their release from detention was contingent on their ability

³² Sowetan Live, *Afghan women judges urge world to help after Taliban death threats*, <https://www.sowetanlive.co.za/news/world/2023-05-02-afghan-women-judges-urge-world-to-help-after-taliban-death-threats/>.

³³ Sowetan Live, *Afghan women judges urge world to help after Taliban death threats*, <https://www.sowetanlive.co.za/news/world/2023-05-02-afghan-women-judges-urge-world-to-help-after-taliban-death-threats/>.

³⁴ Sowetan Live, *Afghan women judges urge world to help after Taliban death threats*, <https://www.sowetanlive.co.za/news/world/2023-05-02-afghan-women-judges-urge-world-to-help-after-taliban-death-threats/>.

³⁵ 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.

³⁶ Jurist, *Lawyers and the Legal Profession Face Extinction in Afghanistan*, <https://www.jurist.org/commentary/2023/01/lawyers-and-the-legal-profession-face-extinction-in-afghanistan/>.

³⁷ Oxford Human Rights Hub, *Violence Against Women: Before and After the Taliban*, <https://ohrh.law.ox.ac.uk/violence-against-women-before-and-after-the-taliban/>.

³⁸ 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.

to call on influential contacts, on paying bribes, or on their willingness to sign “agreements” committing to refraining from protest or speaking publicly of their detention.³⁹

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.⁴⁰ The Taliban have taken steps to reverse or drop previous court cases that upheld women’s rights and protections.⁴¹

Moreover, the absence of a functioning legal system has resulted in an increased reliance on traditional and informal dispute resolution mechanisms, including meetings of tribal jirgas, community elders, muftis, or imams.⁴² These mechanisms lack legal knowledge and safeguards, often fail to respect the rights of women, children, and minorities,⁴³ and often impose arbitrary punishments not consistent with international human rights standards.⁴⁴

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”.

³⁹ International Commission of Jurists, *The Taliban’s War on Women, The Crime Against Humanity of Gender Persecution in Afghanistan*, [The-Talibans-war-on-women-the-crime-against-humanity-of-gender-persecution-in-Afghanistan-FINAL-VERSION.pdf](https://www.icj2.org/wp-content/uploads/2022/09/ICJ2-2022-09-06-FINAL-VERSION.pdf) (icj2.wpenginepowered.com).

⁴⁰ Council of Bars and Law Societies of Europe, *Situation of lawyers in Afghanistan*, https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Afghanistan/2022/EN_HRL_20220906_Afghanistan_Situation-of-lawyers-in-Afghanistan.pdf.

⁴¹ Special Inspector General for Afghanistan Reconstruction, *SIGAR 23-02 Evaluation Report*, <https://www.sigar.mil/pdf/evaluations/SIGAR-23-02-IP.pdf>.

⁴² 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.

⁴³ United Nations Human Rights Special Procedures, *UN experts: legal professionals in Afghanistan face extreme risks, need urgent international support*, <https://www.ohchr.org/sites/default/files/documents/issues/ijudiciary/statements/2023-01-17/202301-stm-sr-ijl-sr-afghanistan-day-endangered-lawyer.pdf>.

⁴⁴ US State Department, *Afghanistan 2022 Human Rights Report*, https://www.state.gov/wp-content/uploads/2023/03/415610_AFGHANISTAN-2022-HUMAN-RIGHTS-REPORT.pdf.