

## Briefing

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This brief is based on the findings from the case study, "Women in the Formal Justice System: An Assessment", as part of the NAP 1325 Monitor project, funded by the Swedish International Development Cooperation Agency (Sida).

Data for this case study were collected through key informant interviews and focus group discussions in five provinces, including Kabul (where the majority of women in the judiciary serve), Balkh and Herat (where fewer female judges serve), and the more socially and religiously conservative provinces of Kandahar and Nangarhar (where there are currently no female judges).

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## Women in the Formal Justice System: An Assessment

### Background

Strengthening the formal justice system in Afghanistan has been one of the key priorities of reconstruction efforts since 2001. The formal justice system, based on a mix of international laws and sharia provisions, is comprised of the general courts, special courts, the Attorney General's Office (AGO), the Ministry of Justice (MoJ) and the police.

### Key Findings

The number of women in the formal justice system as judges and prosecutors has increased substantially since 2014.

The increase is attributed to positive changes in the public's perception of working women, women's increased access to education, improvements in laws and policies in favor of women, continuous advocacy by civil society, and efforts by the Government of Afghanistan to fulfill its commitments to international treaties, ensuring gender equality in the governance process.

Efforts to fulfill commitment to United Nations Security Council Resolution 1325, related resolutions on Women, Peace and Security and the resultant National Action Plan to implement UNSCR 1325 (NAP 1325) are said to have contributed to the public's acceptance of women working in the formal justice system.

The High Council of Supreme Court has prioritized the recruitment of female applicants with the Justice Action Plan aiming to increase women's presence in the judiciary from 17 to 20 percent by 2022.

The Ministry of Women's Affairs (MoWA) is implementing the second phase of the National Action Plan for Women of Afghanistan (NAPWA-II), focusing on women's broad presence in governance, especially in the formal justice system.

Similarly, the Independent Administrative Reform and Civil Services Commission (IARCSC) gives female applicants five additional score points in the entrance examinations as a means to increase the number of female staff in the formal justice system.

Government and non-government institutions work collectively to provide tailor-made trainings for justice professionals. The Attorney General's Office provides periodic 7-10 day long training modules for justice officials with support from IDLO, GiZ, GSSP, and UNDP.

Afghanistan Independent Human Rights Commission (AIHRC) delivers trainings to the prosecutors on the Penal Code, women's rights treaties, national and international conventions, and other laws on a regular basis.

Despite these efforts, there are significant shortages of female justice officials. For example, in Herat there are shortages in the Special Prosecutor's Office for EAW, Family Response Units, Family Courts and Appellate Courts. Similarly, there are no female judges in Kandahar and Nangarhar provinces. There are, however, three female prosecutors in the Kandahar Appellate Court who serve as temporary prosecutors.

By and large, women in the formal justice system face the same general challenges as men. These include insecurity, intervention by powerful figures in legal proceedings, nepotism in the appointment process, lack of public trust in the formal justice system, lack of public knowledge about the workings of the justice system, corruption, and direct threats by AOGs.

Women face additional challenges due to cultural and family restrictions, lack of earmarked positions for women, lower qualifications than men, and insufficient opportunities for professional training. Once appointed, women also face various forms of harassment in the workplace.

There is overwhelming evidence of opposition to women acting as judges based on religious considerations. However, this opposition is not applied to women becoming prosecutors and attorneys.

Those who believe that women should serve in the judiciary are of the opinion that traditional justice system is gaining momentum, especially in rural areas, where women's rights are not equitably reserved.

Women's presence in the formal justice system is believed to result in adequately addressing cases of violence against women since survivors of domestic violence are much comfortable in sharing their cases with female justice officials. It is also believed that the risk of sexual exploitation of the victims of domestic violence or rape will be at a minimum.

The use of the traditional justice is likely to continue, however. This is due to the belief that the formal justice system is complicated, lengthy in process and vulnerable to corruption.

In contrast, the traditional justice system is swift and straightforward. As a result, women are reportedly willing to refer their cases to the traditional justice despite the fact that the traditional justice system is mostly made up of men with little or no interest in women's equal rights.

The following recommendations will ensure meaningful participation of women as judges and justice officials, and their increased trust in the formal justice system:

## Recommendations

1. Maintain multi-agency efforts in capacity building and awareness raising programming.
2. Ensure security and safety of female justice officials, especially in the less secure provinces and districts.
3. Provide attractive scholarship opportunities for women from remote areas to attend formal education and training programs in provincial centers and Kabul.
4. Initiate exchange programs for Afghan female and male justice officials with other Muslim countries such as Turkey and Indonesia, so that Afghan justice officials learn from the experiences of their peers and witness the working conditions for female justice officials and the working relationship between male and female justice officials.
5. Devise concrete measures to prevent intervention from powerful figures and warlords in the prosecution of cases by the formal justice sector.
6. Provide safe working environment for female justice officials and put procedures in place to prevent workplace harassment.
7. Put in place mechanisms, such as monitoring or oversight committees, to prevent corruption and sexual exploitation of female clients of the formal justice sector.
8. Provide workplace ethics training for all justice officials, particularly male employees, to prevent gender discrimination and workplace harassment.
9. Facilitate dialogues among religious scholars of Sunni and Shia Islam in Afghanistan, so that they can reach a consensus over women's presence in the judiciary, particularly on the issue of female judges.