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Afghan Women's Access to Justice: Problems and Challenges

INTRODUCTION

During the past three decades of civil wars in Afghanistan, thousands of Afghans have become deprived of their most basic human rights. There is a plethora of examples of violations of the right to life, and education, the right to be free from torture and humiliating treatments, the right to peace, free speech, and participation in social, political, and economic aspects of life. Among the many human rights concerns gender equality looms large as many Afghan women experience violations of their basic rights in the face of pervasive traditional customs and cultural norms which destabilize women's standing and legitimize violations of women's rights. Although there have been some noticeable achievements in promoting women's rights in the last few years, Afghan women still face serious impediments in realizing their basic rights.

3 | Women's access to justice

Problems and Challenges

Promoting women's rights has been on the agenda of the state building plans in Afghanistan. For instance, gender equality is one of the three pillars of Afghanistan National Development Strategy. Additionally, in 2003, Afghanistan ratified the United Nation's Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As such, the government and a number of non-governmental organizations (NGOs), either national or international, have been engaged in the challenging task of promoting gender equality in the country. Nevertheless, women in Afghanistan face major obstacles in realizing their basic rights.

A fundamental concern regarding gender equality is women's equal access to justice. This research aims at examining Afghan women's access to justice and analyzing the socio-legal obstacles facing women's access to justice. Moreover, a parallel purpose of this research is to discuss the justice system in regards to its accessibility for women and to provide relevant policy recommendations. The outline of this research report is such that in the first section, it provides an overview of the relevant literature concerning the topic of access to justice, followed by a section contextualizing the issue in Afghanistan. The subsequent sections each explores people's perception of women who refer to the justice system and the problems women are facing when seeking justice. However, prior to discussing the findings of the study, relevant literature is reviewed briefly.

Literature Review

Access to justice refers to the ability of people, in particular people from disadvantaged groups to seek legal remedy through formal and informal justice systems consistent with human rights principles. Although, the informal and traditional mechanisms of justice are often more accessible for the disadvantaged people, informal justice systems can be less effective and often violate international human rights standards, such as gender equality, non-discriminatory treatment, and respect for the right to justice on the part of the defendant. Traditional and informal mechanisms of justice are more prevalent in developing countries. While many people rely on the informal justice mechanisms, the formal justice system in some developing countries is also struggling with critical impediments which affect users' perception of the justice system and in turn, has an impact on people's reliance on the formal justice system.

According to the United Nations' Development Office (UNDP)¹ problems such as long delays, failure to provide preventive, timely, non-discriminatory, and just remedies has caused destabilization of the justice system in some developing countries. In addition, barriers like gender bias, failure to protect women, children, and disadvantaged people including those with disability and low levels of literacy are prominent issues that need to be addressed. Other impediments include lack of de facto protection, especially for women, children, and men in prisons or detention

¹ See Access to Justice, Practice note, UNDP, 2004

centres. UNDP also reports that people in many developing countries are facing lack of adequate legal information and limited popular knowledge of their rights and access to legal aid systems. In addition to numerous issues on the demand side, the supply side of justice also demonstrates a series of predicaments such as excessive number of laws, formalistic and expensive legal procedures, and limited public participation in reform programs, and costly legal system.

Access to justice is closely related to human development. There is a strong link between poverty and unsecured access to justice. Poor and marginalized groups more often are deprived of opportunities, access to basic resources, legal representation and information, and having a voice in decision-making processes. Access to justice also requires a democratic governance to provide all citizens regardless of their gender, race, religion, age, class or political views with equal access to justice². The challenge for many developing countries is to ensure availability of adequate legal representation in criminal trials, provision of more informal legal processes such as small claims courts and administrative tribunals, and public legal education.³

Promoting and protecting access to justice is not merely a concern at a national level. Concerns over this issue have been expressed at an

² Parker, Christine. (1999). *Just lawyers: Regulation and access to justice*. Oxford: Oxford University Press

³ Ibid

international level as reflected in the international covenants and treaties. For instance, the International Covenant on the Civil and Political Rights protects the principle of equality before the law, and promotes the presumption of innocence, freedom from arbitrary arrest and the right to a fair and independent tribunal established by law. Equal access to justice will not be possible if the judiciary system is biased. Hence, the Basic Principles on the Independence of the Judiciary requires that the independence of the judiciary be guaranteed by national law. On the other hand, it is assumed the responsibilities of the prosecutors to protect human rights and ensuring due process as stated in the Guidelines on the Role of Prosecutors. While the extent of access to justice differs in different countries, there is virtually no study concerning the topic in the context of Afghanistan. The following section provides a precursor discussion of the topic contextualized in Afghanistan.

An Overview of the Justice System in Afghanistan

This section provides a brief discussion of the justice system and the impediments women are facing in accessing the justice system in the country. The first step towards establishing justice in a country is ensuring the presence of efficient police force. While, police is responsible to secure justice, detect crimes, collect evidence, and litigate the suspects, there should be checks and balances on police's performance. The judicial system is another governmental entity wherein women can plead their cases.

Doubtlessly, the courts play a prominent role within the justice system. Moreover, the Forensic and Legal Medicine as the organization responsible for application of medical science in securing justice in Afghanistan has aimed at two main objectives: a) reducing the number of toxicities and spontaneous deaths and b) fighting against crimes that threaten health and prestige of the human beings. The Forensic and Legal Medicine in Afghanistan is responsible for determining age from the time of insemination to the time of death, crimes and sexual deviations' check-up, and check-up of the injured people in terms of their injury, the mechanism of getting injuries and various other relevant checkups.

Another government entity working towards women's rights and situation in Afghanistan is the Ministry of Women's Affairs (hereafter referred to as MOWA). MOWA is responsible for implementing the policies of the government of Afghanistan in the field of employment, education, health, women's rights, leadership and political participation. Ministry of Women's Affairs is a policy- making government entity rather than a policy executing entity. The Ministry of Women's Affairs allocates legal counsel for those women whose cases have been sent to the judicial authorities, and the judicial authorities share their activities and performance with the ministry from time to time⁴. Furthermore, cases not settled in the Legal Department of the Ministry are sent and handed over to

⁴ Interview with Fawzia Amin, the Director of Legal Department of Ministry of Women's Affairs, dated June 25, 2007

the judicial authorities for their settlement and resolution and then this department undertakes monitoring of the process. As a result, it can be deduced that in spite of that the Ministry of Women's Affairs (in particular the Legal Department of the Ministry) has no legal authority for dispute resolution and it can only reconciliation the women legal cases, but its performance has been efficient in securing justice for Afghan women.

Moreover, the Afghanistan Independent Human Rights Commission (AIHRC), which has been established based on Afghanistan's Constitution, plays a significant role in monitoring and investigating violations of the right to due process and access to justice. The AIHRC especially wields power when the complaints received by this organization indicate derelictions of duties by the governmental organizations. The AIHRC, therefore, steps in and investigates such cases.

While the function and role of different government bodies in regards to women's access to justice has been discussed, it is essential to explore which overarching factors have an impact on women's access to justice. Hence, in this section of the research, factor such as gender, poverty and security which have a critical bearing on women's access to justice will be explored in somewhat more detail.

Traditional Gender Biases and Cultural Values: In Afghanistan, traditional gender biases, cultural values and costumes obstruct the capability of women to put forward legal claims. Strict practices of these traditional norms and values weaken women's

confidence in claiming their rights. While Afghan women's access to justice is limited by traditional practices, the justice system also falls short of promoting a strong commitment to serve the rights, needs, and interests of women. Traditional gender biases and cultural values obstruct the capability of women to take legal actions. Also have an effect on women self-confidence in claiming their rights and interests. The legal system under influence of traditional gender biases fails to respond equally the interests and rights of women.

Poverty: Access to justice is directly associated with poverty. As such, being poor is one of the main factors limiting access to resources and securing one's rights. Most of Afghan women avoid the legal system due to financial reasons. This is while; Afghan women are much more likely than Afghan men to be poor. According the United Nations Development Fund for Women 2007 fact sheet⁵ 48.9% of Afghanistan's population is female; women receive between 50 to 60% of the male wage. There are some 50,000 war widows in Kabul who support an average of 6 dependents. Women's poverty results in extensive violations of their human rights. When women face lack of access to adequate housing, food, or health care,

⁵The fact sheet is available at http://www.unama-afg.org/docs/_UN-Docs/_fact-sheets/07mayUNIFEM-fact-sheet.pdf

their rights are violated⁶. Poverty also leads to physical vulnerability and powerlessness within the society and existing legal system.

Security: Security means freedom from worry and fear of loss of life, honour and property. In the grand picture of things in Afghanistan, an insecure environment discourages investment and reconstruction projects which have direct effect on people's employment opportunities and incomes. Moreover, security has an impact on state building and ensuring authority and the rule of law. On an individual level, in fear of their lives and social disgrace some Afghan women deter from seeking justice. This study explores security issues associated with women's access to justice. The following section provides a detailed account of how this research was conducted and what strategy was used to analyze the data followed by the findings of the research.

⁶ According the UNIFEM 2007 fact sheet , health and educational data are as following:

- One woman dies every 29 minutes in child birth (the second highest maternal mortality rate in the world)
- Only 14.3% of births have skilled attendants present,
- Depending on location, between 30% and 90% of women in rural areas cannot access health care
- The average woman has 6.6 children
- The average life expectancy for women in Afghanistan is 44 years
- 83% of the 50,000 Afghans who die from tuberculosis each year are women
- 48% of women are iron-deficient
- Estimated literacy rate for women stands at 15.8% (for men 31%)
- Boys are twice as likely to complete primary school than girls
- Only 19% of schools are designated as girls schools
- In 29% of educational districts there are no designated girls schools at all
- At primary level there is one girl student for every two boys
- At secondary level there is one girl for every five to six boys

Research Methodology

Study Concept

Women's Access to Justice: Women's access to justice means that the justice system, fairly and without discrimination, ensures women's equal rights and interests. Both formal and non-formal obstacles can prevent women from accessing justice. Commonly, formal barriers include direct obstructions of accessing justice such as; lack of affordable legal representation, abuse of authority, lack of adequate laws and regulations, court backlog, weak enforcement of law, lack of clear laws regarding violence against women, lack of de facto protection, and also lack of legal aid. Informal barriers may include gender discrimination stemming from cultural norms and values.

Method of Data Collection

A combined method of qualitative and quantitative approaches was taken in order to collect the data for the purpose of this research project.

The data for this study were collected via in-depth interviews with men and women in the community, governmental authorities, judicial representatives, judges, and police. The WCLRF survey team administered survey questionnaires among 450 male and 900 female respondents. The questionnaire included closed questions with pre-coded answers. Additionally, the method of focus group with participation of 44 men and women from 4 provinces was used in order to provide a detailed analysis of challenges towards women's access to justice.

Study Sample

The sample included women who refer to the justice system, prosecutors, police, lawyers and legal advisors, experts from the MOWA, Afghanistan Independent Human Rights Commission, women from shelters, experts from the Forensic and Legal Medicine, general public, litigant and defendant women. The geographic sampling represents both urban and rural areas of the country. Special care was taken to ensure that people from different socio-economic, ethnic and cultural backgrounds were included in the sample. The study took place in five provinces, namely, Kabul, Balkh, Badkshshan, Nangarhar, and Parwan.

Data Analysis

The qualitative data was analyzed through a grounded theory approach. For the purpose of analyzing the quantitative data, STATA was used to analyze the correlation between the dependent and independent variables.

Study Limitations

The process of research included some challenges that the research team had to struggle with. For instance, many courts were not able to provide the research team with accurate information about the justice-seeking women. Security was another issue that to a certain degree prolonged the process of data collection in some provinces of the country. Despite these challenges, the research team was able to conduct the research successfully and secure 95% response rate.

FINDINGS

The findings of this study are discussed under specific subtitles. In general, the descriptive statistics are provided regarding accused women and female plaintiffs followed by a discussion regarding the association of these background factors with the crimes these women are accused of, in the case of accused women. Exploring public's perception of justice seeking women is another main section of this study, and in the last part, an account of the issues and challenges facing justice seeking women is provided in somewhat detailed followed by a discussion of policy recommendations.

Descriptive Statistics

The following table provides a general descriptive statistics of background variables for the surveys which were conducted with accused women and female plaintiffs. As Table 1 shows, the majority of both accused women and plaintiff women are between 19 and 31 years old.

Table 1: Descriptive Statistics of Some of the Background Variables

Background Variables	Accused Women		Female Plaintiffs	
	Frequency	Percentage	Frequency	Percentage
Age				
18 & lower	30	29.4%	27	14.8%
19-30 years	48	47.1%	87	47.5%
31-40 years	17	16.7%	40	21.9%
41% over	7	6.9%	29	16%
Total	102	100%	183	100%
Marital Status				
Single	34	33.3%	15	8.5%
Married	68	66.7%	162	91.5%
Total	102	100%	177	100%
Residence				
Urban	58	56.3%	112	62.2%
Rural	45	43.7%	68	37.8%
Total	103	100%	180	100%

Moreover, an overwhelming majority of both accused and plaintiff women are married. The most common residence for the sample of this study has

been urban areas. These background variables, in addition to other factors such as education, will be further expounded upon in this report.

Poverty

Poverty can have a significant impact both on criminal activities and on access to justice. While poverty can have a positive effect on engaging in illegal activities, it also can constrict women's access to justice.

Poverty and Criminal Behaviour: The findings of this study show that the majority of respondents either have no monthly income or their monthly income is very low. According to the following table, 70% of accused women have no monthly income.

Table 2: Monthly Income of Accused Women

Income Categories	Frequencies	Percentage
1-5000	16	16.5%
5001-10000	11	11.3%
More than 10000	2	2.1%
No Income	68	70.1%
Total	97	100%

Lack of a monthly income indicates lack of employment. 60% of women who stated that they have no monthly income are not employed and have no job⁷. Accordingly, employment has a statistically significant association

⁷ Out of 103 respondents, 6 people did not respond to this question.

with the types of criminal behaviour the accused women have been engaged. For instance, 90% of the women accused of adultery have no job, 94% engage in burglary, and 94% of the respondents have been accused of murder. Albeit it cannot be ascertained from this study that lack of employment and low income have a direct effect on criminal behaviour, both income and employment are associated with the types of crimes among accused women.

Table 3: Type of Crime versus Employment

Type of Crime	Jobless	Employed	Total Frequency	Total Percentage
Adultery	90	10	30	100%
Burglary	64.3	35.7	14	100%
Murder	94.1	5.9	17	100%
Run away	91.7	8.3	24	100%
Kidnapping	42.9	57.1	7	100%
Others	88.9	11.1	9	100%

The effect of income and employment can also be observed in women's access to justice. The formal legal systems can be discriminatory and expensive for the poor. This study delineates that poverty constraints accessing justice for economically less able women. Most of the interviewed women in this research had no income to engage lawyers or to facilitate their proper defence or litigation. The following table shows that 71.9% of female plaintiff had no monthly income.

Table 4 : Monthly Income of Female Plaintiffs

Income Categories	Frequencies	Percentage
1-5000	29	16.3%
5001-10000	13	7.3%
More than 10000	8	4.5%
No Income	128	71.9%
Total	178	100%

In fact, 96% of respondents who did not have a lawyer stated that they did not have any monthly income. Additionally, this study also indicates that both female plaintiffs and accused women have been demanded for bribes. Although the rates of bribery (stated as a problem faced by the respondent) were not very high (approximately 8 %), given that an overwhelming majority of women do not have any income, the problem of bribery exacerbates the already-dire situation of these women. Moreover, since men are more likely to have an income and assumed to have money to pay bribes, therefore, in comparison women are more likely to lose cases against men.

Lack of Education

Education plays a pivotal role in raising awareness of women about their rights and the law. In Afghanistan, most of the women are not aware of their rights recognized both by the state law and *Sharia*. In turn arguably, this lack of awareness can cause lack of self-confidence and powerlessness

among female defendants and litigants. According to the findings, 67% of litigant and 70.6% of accused women are have had no formal education. Albeit a cross tabulation of education versus problems faced with the justice system, and the types of crimes did not yield any statistically significant association, the impact of education on women's awareness of the justice system cannot be ruled out.

In addition to the aforementioned factors affecting access to justice, the shortcomings of the justice system at large, can limit women's access to justice.

System's Shortcomings

Long Delays: About 48% of the respondents stated that their case took less than three months to be solved. While 16.7 % stated that their case took up to six months, and 35% stated their it has been more than six months that their cases are under proceedings. In order to protect the right to liberty and freedom from arbitrary arrest or detention, and with the purpose of avoiding violations of fundamental human rights, all forms of detention or imprisonment must be ordered by law and the efficient control of judicial authorities.

It is worth mentioning that consistent with article 35 of Criminal Procedure Code, the time line for the police to hold a person in prison is 48 hours and according to article 15 of Police law this time can not exceed 72

hours, for prosecutor office is 15 days which can be extended to 15 days, for primary and secondary court is 2 months for each and for Supreme Court is 5 months. Moreover, section 3 of article 6 states that if a case has not been finalized during the total time frame provided by the law, the accused person will be released without delay. However, as stated earlier in this section a significant number of respondents stated that their cases took more than six months to be solved, while in some of these cases the respondent was in custody of the police far more than the designated timeline.

Unlawful Detention: According to Article 9 of the Universal Declaration of Human Rights: "No one shall be subjected to arbitrary arrest [or] detention". The research asserts that women in Afghanistan are subject to unlawful detention in the case of running away from home and indebtedness. The recent registered data and figures show that a significant number of detained women have been accused for running away from home⁸. These women have been kept in the detention. Despite the fact that running away from home is not a criminal action based on Afghanistan

⁸ Unusual leaving of a woman accommodation without advanced agreement, permission, or notice to her family.

Penal Code or other related legislations. This is noticeable that most of the women who are running away from home are victims of domestic violence. Moreover, another case which merits mentioning is the issue of women in debt. Afghanistan Constitution stipulates: “indebtedness of any person can not lead to his/her arrest and detention.”⁹ In addition to that the Civil Code states: “if the debtor proves that paying of his/her liability has become impossible out of his/her will, then this liability lapses.” According to the Civil Code, the cases resulting from deals and contracts will be settled in the Civil Court. However, the research confirms that women who are in debt have been detained in the custody unlawfully. While almost 3% of respondents have been detained for being unable to pay their debts.

Lack of Access to Forensic and Legal Medicine: The findings show that there are no Forensic Medicine centres in the provinces of Afghanistan and for that reason most of the forensic medicine-related cases are referred to local medical doctors¹⁰. And since the medical doctors are not professional in the field of forensic medicine they cannot detect and find the causes of crimes, in turn, justice can not be administered properly. This case is making the litigation process more difficult for women in domestic violence. In Kabul city, in spite of the existence of forensic medicine, the performance of forensic medicine office is not sufficient due

⁹ Article 32 of the Constitution and Article 96 of the Civil Code

¹⁰ Interview with the head of court of Badakhshan province, dated June 16, 2007

to the lack of necessary equipments and also lack of cooperation of the relatives of the injured or dead persons with the doctors and staff of the Forensic Medicine¹¹. In addition, lack of female doctors in the Forensic and Legal Medicine is one of the key challenges which women are facing mostly because of Afghan cultural value. Afghan women are culturally more comfortable to being examined in a number of crimes such as adultery, abortion resulting from violence against women by female doctors who are professional in the filed of forensic medicine.

Poor Financial Condition of the Justice System: The process of reforming the justice sector is based on strengthening the political will and providing financial and technical assistance. After decades of war, the justice sector faces stringent financial conditions, and shortage of skilled staff. As stated earlier, some of the respondents have been demanded for bribe by the judicial institutions. The respondents believed that the reason for corruption is the poor financial conditions and low level of salaries of the Justice System staff. However, in order to assert such a claim further research is required on the issue of corruption, a topic beyond the scope of this research. It is clear that demand for bribe is one of the main challenges for women's access to justice in Afghanistan as most of the women are in very poor economical situation to respond the corrupted requirements.

¹¹ Interview with one of the staff of Kabul Forensic Medicine Office, dated June 17,2007

Lack of Female Staff of the Justice System: The number of women who are working in the various legal institutions is very limited and not at all comparable with male staff. Very few women are working in Kabul with the justice system, while in other provinces been studied by this research, female judges, prosecutors, and police are very rare and even there is not even one judge, prosecutor, and police in some of these provinces¹². Small numbers of women are working only in administrative positions in some provinces¹³. The shortage of female staff in the judicial institutions has been considered as one of the main challenges for most of the respondents for to justice. Afghan women, in most cases such as raping, adultery and domestic violence feel more comfortable before female staff.

Lack of Access to Lawyers: A rather interesting finding of this study is that an overwhelming majority of respondents, both accused women and female plaintiffs, did not have any lawyers. Accordingly, 72.7% of plaintiff women and 57.3% of accused women presented their cases to the court in the absence of a lawyer. According to Table 5 and 6, having a lawyer is associated with the province a respondent lives. The highest rates of cases forwarded without a lawyer, in the case of plaintiff women, has been observed in Badakhshan and Balkh. For further details please refer to the following table¹⁴.

¹² Interview with the officials of primary courts of Kabul city and Balkh province

¹³ Interview with one of the accused in detention house of Kabul province, dated April 29, 2007

¹⁴ All the following tabulations reported in this research are at the level of $p < 0.05$.

Table 5. Correlation of Provinces with Legal Aid for Plaintiffs

Provinces	No lawyer	Lawyer	Total Frequencies	Total Percentage
Kabul	59.2	40.8	49	100%
Badakhshan	86.7	13.3	15	100%
Parwan	61.1	38.9	36	100%
Balkh	86.7	13.3	30	100%
Nangarhar	78.3	21.7	46	100%

Likewise, accused women are less likely to have a lawyer if they are living in provinces such as Balkh and Nangarhar. However, in comparison, the majority of accused women living in Kabul had a lawyer to process their cases.

Table 6, Correlation of Provinces with Legal Aid for Accused Women

Provinces	No lawyer	Lawyer	Total Frequencies	Total Percentage
Kabul	37.5	62.5	24	100%
Parwan	72.7	27.3	44	100%
Balkh	31.3	68.8	16	100%
Nangarhar	68.4	31.6	19	100%
Total	57.3	42.7	103	100%

Lack of access to lawyers doubtlessly can lead to violation of women's rights and their inability to defend their cases successfully. According to the Constitution of Afghanistan, Article 31,

“Upon arrest, or to prove truth, every individual can appoint a defence attorney.... In criminal cases, the state shall appoint a defence attorney for the indigent. Confidentiality of conversations, correspondence, and communications between the accused and their attorney shall be secure from any kind of violation. The duties and powers of defence attorneys shall be regulated by law”

Despite the fact that the state is required by law to provide the accused with a defence attorney, as the findings of this study shows the majority of the respondents were not assigned a defence attorney.

Lack of the Necessary Capacity of the Legal Institution Staff: The professional integrity of the justice system is directly connected to the public's perception, satisfaction, and confidence with various legal institutions and judicial officials. The research findings highlight that lack of necessary capacity and professional integrity of the staff of the formal legal institutions has negative impact on women's perception and confidence in seeking justice and referring to the Justice System. The public's perception about the justices system in Afghanistan is rather

negative. A relatively lower percentage of respondents 18.9% and 16.3% stated that the cases referred to courts and the police, respectively, will be solved, while the rest of the respondents do not believe that cases taken to the police or the courts will be absolved.

Moreover, a significant proportion of the respondents, 26.3%, believe that if a case is taken to the court it will be prolonged. The perception that the courts have an unnecessarily long procedure will deter some of the respondents to be supportive of referring one's legal case to a court. In the absence of such an effective system, the alternative is *Jriga*, the traditional and de facto means of settling a legal case. In which case, women are more likely to face discrimination and violation of their rights.

Additionally, the findings of this study point to believes of the public on prevailing corruption in the legal system. Table 7 shows that a significant number of the respondents, 18.5%, believe that women who refer to the courts will be asked for bribes. Moreover, 16.3 % believe that women will be asked for bribes by the police. Perhaps, the most negative impact on avoiding the legal system is exerted by the perception that women will be sexually assaulted if they go to police. According to Table 7, 12.1 % of the respondents believe that women who seek help from the police will be sexually assaulted by the police. Most of the female respondents have declared that lack of trust and confidence about the professional integrity of the judicial officers is the main reason that stops women for taking legal actions.

Therefore, the findings point to a rather negative perception of the justice system among the public. As such, traditional means of justice such as *Jirgas* is an alternative.

Reasons	Frequencies	Percentage
Public rejection	59	9.3%
Fear of Sexual Harassment	81	12.7%
Financial Problems	70	11.0%
Fear of Male members of the family	292	45.9%
Lack of Information	86	13.5%
Length of Procedure/inaccessibility	48	7.5%
Total	636	100%

Traditional Views, Traditional Means of Justice

Afghan society is a traditional society at large. Women's sphere is limited to the precincts of the house and women are socialized to endure life difficulties and be submissive. Although it is always difficult to generalize something about the Afghan society, submissiveness and endurance are virtues cherished from childhood among most Afghan girls. As such, women who raise their concerns and seek justice might not receive support from the community and their families. The findings of this study confirm that the public, in general, does not approve of women who seek justice.

Perception of the public: The findings of this study show that 44% believe that the public perception is in favour of women who refer to courts in order to settle their cases while 56% of the respondents believe that women who seek justice from the courts are viewed negatively in the society. In fact, as Table 8 demonstrates, the majority of respondents believe that women who file complaints against the male members of their families will be referred to as, misbehaving, disgraceful, and even adulterous women.

Women are called:	Frequencies	Percentages
Misbehaving	146	22%
Disgraceful	297	45%
Adulterous	58	9%
Good	52	8%
Don't know	103	16%
Total	656	100%

As indicated in the above table, only 20 % of the respondents either believe that litigant women are viewed “good women” or the respondent does not express any views. An overwhelming majority, 80% report some kind of a negative attitude towards justices seeking women. The finding supports the claim that women who seek justice are not viewed positively among the community and the society at large.

The negative perception against women, who file complaints against the male members of their families, might not be the general perception of women who might seek justice on any other occasion rather than complaining against the male members of the family. Public's perception of justice seeking women varies with the reasons for seeking justice. For instance, when the issue of husband's responsibility to provide for the family is propounded, the majority of the respondents believe that women should react. As the findings reveal, a preponderance of respondents (92%) believe that in cases where the husband refuses to provide for his family, a woman should complain to the court, Jirga, Ministry of Women's Affairs (MoWA) or Afghanistan Independent Human Rights Commission (AIHRC). These findings point to the traditional roles assigned to women and men. Hence, if men do not conform to the role of the breadwinner and provider, women will have the right to file a complaint against them.

Table 9

What should women do when they face major problems such as when the husband does not provide for the family with alimony and food		
Women:	Frequencies	Percentages
Shouldn't do any thing	52	8.0%
File a Complaint	324	50.0%
Take their case to Jirga	141	21.8%
Complain to the MoWA	69	10.6%
Complain to the AIHRC)	62	9.6%
Total	648	100.0%

While 50% of respondents believe that women should file a formal complaint, almost 22% believe that women should take their cases to Jirgas to be solved. The rest of the respondents have the perception that women should take their cases either to the Ministry of Women's affairs or the Afghanistan Independent Human Rights commission. In general, as the findings of this study indicate that only half of the respondents believe that women should take their cases to courts while the other half prefers resorting to other means.

What are the acceptable grounds for filing a complaint? As the findings reveal, 36.6% respondents believe that women can file a complaint when physical violence leads to broken bones. Interestingly enough, only 15.2% of the respondents believe that if physical violence leads to disability, and only 40% believe that in case of rape, women should file a complaint. Moreover, 8.2% of the respondents stated that women should not file a complaint even when physical violence in the household leads to disability for women (for further detailed information please refer to the following table).

Responses	Frequencies	Percentages
violence leading to broken bones	231	36.6
physical violence	29	4.6
Violence leading to disability	96	15.2
all three	224	35.4
Women shouldn't file a complaint	52	8.2
Total	632	100

As it has been discussed in this section, the perception that women should endure violence and difficulties without seeking justice is not unusual among the respondents. One can argue that since the public is not aware of women's rights, they might perceive that women should not seek justice. However, given that the majority of respondents, 67%, have some form of education, one can cast doubt on the assumption that the public is totally unaware of women's rights. The majority of respondents do not view physical violence as the appropriate ground to file a complaint against the culprit. Therefore, in such cases, accessibility of the justice system will not have a significant impact on reducing the rates of domestic physical violence unless women are aware of their rights.

Further indicators of the traditional views of the society are explored via exploring what happens to women who refer to courts in order to solve their legal issues. Respondents gave different views about what happens to women who refer to courts and the police in order to solve their legal issues. The following table shows that 14.2% of the respondents claim that women who refer to courts will be looked down upon in the society. Conversely 24% of the people state that women who seek justice from the police are looked down by the society. (9.1% of the respondents believe that women will be discriminated against in by the courts.

Table: 11

What happens when women go to the court?		
	Frequencies	Percentages
Their cases will be prolonged	171	26.3
Women will be looked down upon	92	14.2
Women will be asked for bribery	120	18.5
Their case will be solved	123	18.9
Women will be discriminated against	59	9.1
Don't know	85	13.1
Total	650	100
What happens to the women who go to the police?		
They will be sexually harrassed	78	12.1
Women will be look down	156	24.2
Women will be asked for bribery	138	21.4
Their case will be solved properly	105	16.3
Don't know	167	25.9
Total	644	100

Traditional Mechanisms for Settling a Case: Referring cases through formal justice institutions (Prosecutor's Offices, and Courts) to traditional mechanisms such as Jirgas is one of the problems that hinder women's equal access to justice, in particular cases which women are involved. The *Jirgas'* performance is not consistent with the rule of law and respect for the human rights as *Jirgas* are mainly based on traditional values and norms. Hence, in Afghanistan where patriarchal norms are ruling, Jirgas can be discriminatory against women and violate women's rights. Examples of violations of women's rights by the verdicts of Jirgas and Marakas (Negotiation Group) in the country are plentiful. According to the findings of this study, 22% of respondents believed that women

should take their case to *Jirgas* instead of courts and the legal system; this is while 37.4% of the respondents state that women in their community refer to *Jirgas* to solve their legal cases.

The view that the de facto system of *Jirgas* and *Marakas* are appropriate means of absolving a legal case has also penetrated the *de jure* judiciary system in the country, albeit, the formal justice system does not recognize *Jirga* as an official and authorized body for dispute resolution. For instance, the results of the in-depth interviews shows that in domestic violence cases—in spite of the fact that physical violence is a criminal action according to the criminal code of the country¹⁵—the court consider the case as family matter and encourage both parties to compromise and reconcile through the *Jirga* or *Maraka* advice. . Considering that fear of further violent caused by male members of the family deters almost 46 % of the women from seeking justice (Please refer to Table 7), courts encouraging women to solve their cases inside the family or through *Jirgas* creates further problems for women. The courts herein, not only prove heedless in performing their duties, but also endanger those women who have sought justice, as women might become subject to further violence and revenge of the family members against whom they ha intended to file complaints.

¹⁵ Chapter Five, Article 407: “ Anyone who intentionally inflicts any injuries on someone else, causes any breaks, or cuts or disability in a part of the body, or causes loss of the senses in someone, is subject to fines and imprisonment for a period of time not less than three years.

ACCUSED WOMEN AND ACCESS TO JUSTICE

This section studies the types of crimes respondents have been accused of, the problems the accused women are experiencing with the justice system. The sample was drawn by interviewing female defendants who are experiencing imprisonment. This produced a sample of 70 respondents.

Types of Crimes: As Table 12 shows the majority of respondents have been accused of adultery. The second and third most frequently mentioned types of accusations are running away, and murder, respectively. It is worth noting that a significant number of women who are running away from home are victims of domestic violence.

In order to provide a better understanding of the nature of these crimes, the following section analyzes the types of crimes respondents are accused of committing and selected background variables. (Two respondents did not answer this question; hence the following table shows 101 instead of 103 respondents).

Table 12: Type of Crimes

Type of Crime	Frequencies	Percentages
Adultery	30	29.7%
Burglary	14	13.9%
Murder	17	16.8%
Run away	24	23.8%
Kidnapping	7	6.9%
Others	9	8.9%
Total	101	100%

Types of Crimes and Background Variables: The types of crimes women have been accused of are associated with a series of background variables. For instance, age is one such factor that has an association with the types of crimes. As Table 13 indicates, the majority of adultery cases are committed by the age group 19-30 years old, while the most common crime among 18 years and lower is running away. Committing murder is the most frequently reported accusation for 31-40 year old women and 41 and over are equally likely to kidnap or murder someone. (The category “Others” includes accusations such as not being able to pay one’s debt, unlawful marriage, and drug trade. Since for each of these accusations the number of observations did not exceed two or three, they have been all collapsed into one category. In due course of this research, these subcategories are discussed separately when necessary)

Table 13 : Correlation of Age and Types of Crimes

Type of Crime	18 & lower	19-30 years	31-40 years	41% over	Total
Adultery	20.7%	43.8%	12.5%	14.3%	30
Burglary	13.8%	12.5%	18.8%	0%	13
Murder	3.5%	14.6%	43.8%	28.6%	17
Run away	55.2%	10.4%	12.5%	14.3%	24
Kidnapping	6.9%	4.2%	6.3%	28.6%	7
Others	0.0%	14.6%	6.3%	14.3%	9
Total Percentage	100%	100%	100%	100%	100

(The above table has a missing response of 3 which has not been indicated in the table)

When it comes to running away from home, the results show that single women are more likely to run away than married women, while married respondents have a much higher likelihood of being accused of murder than single respondents. Other interesting findings shows that married women also have a higher likelihood of committing adultery or being accused of burglary. The following table provides further details.

Table 14: Correlation of Types of Crime and Marital Status

Type of Crime	Single	Married	Total frequencies	Total Percentage
Adultery	33.3%	66.7%	30	100%
Burglary	30.8%	69.2%	13	100%
Murder	11.8%	88.2%	17	100%
Run away	58.3%	41.7%	24	100%
Kidnapping	57.1%	42.9%	7	100%
Others	0%	100%	9	100%

Marital status and age are not the only factors associated with the types of crimes respondents have been accused of. Poverty and economic inability are perhaps another reason why respondents have committed crimes. The following table shows that an overwhelming majority of respondents, 90% who have been accused of adultery are jobless. This trend applies to other accusations such as murder, running away and burglary. Hence, providing jobs and facilitating women's employment might have a positive affect on the rates of crimes committed by women.

Table 15: Type of Crime versus Employment

Type of Crime	Jobless	Employed	Total frequency	Total Percentage
Adultery	90%	10%	30	100%
Burglary	64.3%	35.7%	14	100%
Murder	94.1%	5.9%	17	100%
Run away	91.7%	8.3%	24	100%
Kidnapping	42.9%	57.1%	7	100%
Others	88.9%	11.1%	9	100%

In general, the types of crimes respondents have been accused of committing are associated with employment, age and marital status. Investigating what kinds of problems these women face when they seek justice is another goal of this research.

Problems Facing Accused Women: While 24.3% of respondents state that they did not face any problems, the rest of the respondents (75.7%) reported facing some kind of problem with the police or the judicial system at large. The most frequently reported problems, 21.6%, have been lack of hearing or “believing” women’s stories. On the one hand, since the respondents were accused of committing some kind of crimes, it is always inconvenient to unconditionally accept the accused saying that she has not been heard. On the other hand, it is likely that in the traditional society of Afghanistan women were not “heard” or their stories were not “believed” at the courts or the police offices. Either way, the issue

indicates that women are not satisfied with how the police or the courts have reacted towards them. Moreover, 10.8% of respondents (4 respondents) have stated that they have been sexually assaulted while pursuing their cases. Other problems included accused women being asked for bribery (8.1 of the respondents). Additionally, 5.4% respondents reported unprofessional approach of the police and the justice system in general, to deal with their cases. Delays in processing the cases (16.2%) were also a major problem facing accused women.

PLAINTIFF WOMEN AND THE JUSTICE SYSTEM

The largest category of cases followed by women (over 70 percent) involved civil disputes of some kind while less than 20 percent of cases were based on criminal complaints. Once these women refer to the justice system, like accused women, they face a number of problems which are discussed in the following section.

Problems Facing Female Plaintiffs: As it was discussed earlier in this research, cultural values discourage Afghan women to litigate criminal cases. Moreover, the justice system has a preference to categorize criminal complaints, which are family related matters, as civil disputes.

The findings show that nearly 50% of respondents were not satisfied with how the police handled their case. The main problem with the police was reported physical violence and a long period of time it took the police to

process the case. Respondents also reported that they were asked for bribes. It is important to note that when female justice seekers have refused to bribe as it was demanded, the Police has violated the principle of neutrality and has taken side with the opposite party.¹⁶ Bribery and prolonged process of prosecution are not the only problems the respondents reported. 8.25% of respondents cited sexual harassment by the officials of the justice system.

It is evident from the above that the issues of corruption and sexual harassment are not rare problems in the justice system. These factors will lead to negative views regarding the capacity and integrity of the police among female justice seekers. In turn, women will lose trust in the justice system and will become reluctant to seek help from the system. A rather similar perception of the court system is prevalent among the plaintiff women. Nearly 20% of the interviewed female plaintiffs stated that they did not pursue disputes through the court. More than 30 % of the respondents identified corruption, long delays or indifference to their case as the major problems in Court. In general, respondents further stated that they prefer to bring their cases before the Afghanistan Independent Human Rights Commission and Ministry of Women's Affairs rather than Police and the justice system at large.

¹⁶ Focus group discussion with women at the community level, Nangahar, June,30 ,2007

CONCLUDING REMARKS

As the survey findings confirm, Afghan women's perceptions of the justice system comprises negative impressions and unfulfilled expectations. Most of the beliefs expressed by respondents are supported by the actual experience of women who were either accused of committing crimes or women who sought help from the justice system at large. As noted earlier in this research, the various challenges for the respondents are the formal barriers including lack of affordable legal representation, authorities' abuse, delays in justice system, weak enforcement of laws, lack of remedies provided by law in particular in cases of violence against women, lack of *de jure* protection and lack of legal aid. In general formal barriers include lack of efficiency, accountability and gender equality in the legal system and performance of the Justice institutions. Conversely, the informal barriers mainly include traditional gender bias, cultural perceptions which cause difficulties and challenges for Afghan women regarding access to justice.

The perceptions of Afghan women about the legal system reflects the need for legal reform strategies to secure women rights, needs, and interests in a traditional society where cultural gender biases hinder women's access to justice. In addition, poverty creates more physical vulnerability and powerlessness within the society and the existing legal system. Another main issue is the lack of security in accessing to justice for Afghan women. Security comprises fear from male family member, becoming subject to social sanctions, and fear of sexual harassment by the legal officials are the

main dimensions of security which can affect women's access to justice. For instance, 46% of the respondents state that they did not pursue their cases lest to instigate violence of male members of the family and deteriorate their situation. Additionally, the justice system is not gender sensitive. Lack of gender sensitivity of the legal institutions leads to the failure of the justice system in protecting women's rights and serving justice. This point should be further researched in order to pinpoint the specific shortcomings of the system and underline sectors where reform is needed. As it appears from the results of this study, access to justice up to a large degree prevents referring to jirgas and shoras. The following section provides rather specific suggestions for improvements.

Recommendations and Policy Implications

The recommendations and policy implications discussed in this section are a disposition of key intervention strategies that may be considered by national and international stakeholders in the Afghanistan law reform process.

Raising Awareness:

- The research findings emphasize the critical need for governmental and non- governmental organizations to promote women's understanding of their fundamental rights. The Ministry of Women's Affairs, Afghanistan Independent Human Rights

Commission, and the UN organizations should coordinate and implement awareness raising programs. These programs should address the following:

- a. Raising women's awareness regarding their basic rights as granted by the laws of the state of Afghanistan and the international conventions to which Afghanistan is a party.
- b. Efforts should be made to seek religious leaders and Mullah's support of raising awareness regarding women's rights.
- c. Awareness programmes should be launched through different means of media, radio and TV.
- d. Workshops should be conducted for relevant parties, such as religious leaders—so that they can play an informed and positive role in raising awareness—and for the general public.
- e. Building capacities of the justice system workers including the police in order to create a gender sensitive and support system for women.
- f. Launching a national campaign concerning human rights and specifically women's rights through all means of the media

Preventing Violations of Women's Rights by De Facto and Informal Justice Structures:

- All the criminal and civil cases of women should be addressed by the formal justice system. The informal systems such as Jirga's should be prevented from dealing with women's cases.
- The justice system should take all the necessary measures in order to prevent victimization of women by the traditions, especially prevent women falling victim to "*bad dadan*"
- The traditional verdicts and decisions made by Jirgas should be deemed legible only when they conform to the laws of the country and human rights values.
- Any discrimination based on gender by the Jirgas or any other local structure should be prohibited by the justice system and the violators should be prosecuted accordingly

Ensuring Women's Access to Justice

- The justice system should do all in its power to ensure that courts, as a formal means of justice and women's support, are available for women all over the country
- The justice system should be gender sensitive. In the absence of female police and female attorneys, lawyers and court workers, women might deter from referring to the justice system especially if

the case is sensitive such as rape cases. Therefore, the following should be considered:

- In the long run, women should be encouraged to choose occupations such as, police officers, lawyers, social workers, and attorneys. Relevant outreach programs can be launched through schools and organizations wherein youths gather
 - At the national-level legal aid service should be established by the justice system in cooperation with the law schools in the country and legal aid services should be available to suspects at the time of arrest.
 - Women who are interested in becoming police officers and lawyers should be supported and encouraged
 - Educational programs addressing gender sensitivity and gender equality should be conducted for the justice system employees. These educational programs should also include raising awareness regarding family violence in their curricula.
- Legal aid service and Pro-Bono legal assistance services should be provided to women. Relevant non governmental organizations can play a pivotal role in this regard.
 - Free advice should be offered to female victims of crime suspects at police stations.
 - The legal aid service should be decentralized and administered at different districts of the country

- Women who seek justice should be provided security, suggestively at the shelters. Hence, to prevent fear of violence on the part male members of the family from deterring these women to seek justice
- Family courts should be established all over country to protect women rights in the family- related cases
- The accountability of the judiciary should be enhanced. Efforts should be undertaken to ensure that the judicial institutions are more responsive, efficient and accountable to the public they serve. In particular, steps should be taken to fight against corruption in the justice system.
- Report cards, user surveys should be adopted in order to provide regular analysis of users' satisfaction/dissatisfaction with the justice system. This data will help point out possible solutions for more effective, accountable, and equal legal services.

The Laws

- Since the current laws and regulations of the state are fall short of addressing the issue of violence against women, therefore, the following should be considered:
 - a. the current laws should be modified and adjusted
 - b. In accordance with women's emerging needs and issues, new laws should be formed in order to ensure women's access to

justice. A step towards this aim is supporting the law of eradicating violence against women.

- c. Empowering the MPs to formulate regulations in regards to women's access to justice

Coordination between the Relevant Organizations

- Facilitating the coordination among different bodies within the justice system: Absence or lack of such coordination can lead to further violation of women's rights and unlawful detention of women. Generally, the coordination effort should address:
 - d. Establishing coordination among the police, the attorney general, courts and the prison administration to investigate and deal with women's cases in due time
 - e. Establishing coordination among the relevant human rights organisations—more specifically Afghanistan Human Rights Commission—and the justice structures in order to provide effective and efficient support for women who seek justice
 - f. Establishing coordination among the UN and international organizations and the justice system to investigate areas where there is need of capacity building for the justice system staff concerning women's support

APPENDIX I.

INTERNATIONAL INSTRUMENTS WITH STANDARDS FOR JUSTICE INSTITUTIONS

1- Universal Declaration of Human Rights

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he [or she] has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or

international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

2- International Covenant on Civil and Political Rights (ICCPR)

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) [To not] be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Convention Against Torture (CAT)

Article 1

1. Any Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes

as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

African Charter on Human and Peoples' Rights

Article 7

Every individual shall have the right to have his cause heard. This comprises:

- The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;

- The right to be presumed innocent until proved guilty by a competent court or tribunal;
- The right to defence, including the right to be defended by counsel of his choice;
- The right to be tried within a reasonable time by an impartial court or tribunal.
- No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

American Convention on Human Rights

Article 8

Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offence has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- a. The right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
- b. Prior notification in detail to the accused of the charges against him;
- c. Adequate time and means for the preparation of his defense;
- d. The right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
- e. The inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
- f. The right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
- g. The right not to be compelled to be a witness against himself or to plead guilty; and
- h. The right to appeal the judgment to a higher court.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
4. An accused person acquitted by a non appeal able judgment shall not be subjected to a new trial for the same cause.
5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

European Convention on Human Rights

Article 6

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. Everyone charged with a criminal offence has the following minimum rights: to be informed promptly, in a language

which he understands and in detail, of the nature and cause of the accusation against him; to have adequate time and facilities for the preparation of his defence; to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

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