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Memorandum to: File (000004)

From: Navacelle

**A growing concern for the safety
of lawyers in Afghanistan after the nation's takeover by the Taliban**

1. After the withdrawal of international military forces, the Taliban extensively expanded its territorial control in a military campaign and seized control of Kabul on 15 August 2021, thus disintegrating the Government in place.¹ As the Taliban returns to power, the rule of law and the welfare of Afghanistan justice system workers are once again at great risk.²
2. Under Taliban rule, judges and lawyers, particularly women legal practitioners, are threaten by persecution for being part of the judicial system³ and for having carried out their professional duties under the previous regime.⁴

Endangered lawyers, judges, and prosecutors, especially women legal practitioners

3. Since the fall 2001, Afghanistan promoted and practiced freedoms and rights protected by the rule of law, and lifestyles away from the one imposed by the Taliban. The US, alongside foreign allies, assisted the post-Taliban government in developing a better judicial and prosecution system by training legal practitioners and enhancing the legal educational system.⁵ Parallely,

¹ Report of the Secretary-General on the situation in Afghanistan and its implication for international peace and security, 2 September 2021, General Assembly – Security Assembly, A/76/328–S/2021/759 (“*The situation in Afghanistan remained highly fluid, after a Taliban military offensive took control of provincial capitals and Kabul. The departure of President Ghani and entry of Taliban forces into the capital on 15 August saw the de facto disintegration of the Government.*”).

² Afghanistan: ‘Shocking’ situation raises grave concerns for safety of judges and legal profession, International Bar Association, 1 September 2021 (“*As the Taliban returns to power 20 years after the regime was ousted by US forces, the rule of law and the safety of the legal profession is once again seriously under threat.*”).

³ Afghanistan: ‘Shocking’ situation raises grave concerns for safety of judges and legal profession, International Bar Association, 1 September 2021 (“*‘It’s important to understand the special vulnerability and special risk that these women face,’ [Lord Peter Goldsmith says]. ‘They’re targeted, not just because they are women acting openly as judges, but the idea that they would be actually sitting in judgment over men is an outrage to the Taliban.’*”).

⁴ NY and International Bar Groups Call for Nation-States to ‘Evacuate’ At-Risk Judges and Lawyers from Afghanistan, New York Law Journal, 25 August 2021 (“*About 250 female judges inside Afghanistan, some of whom have previously tried and sentenced Taliban members, are believed to be at particularly grave risk, the bar groups said.*”); Afghan lawyers’ plea to UK: save us from clutches of the Taliban, The Law Society Gazette, 6 September 2021 (“*Lawyers who worked under the previous regime in Afghanistan have told the Gazette directly of the fear they are now living with on a daily basis.*”).

⁵ Afghanistan dispatches: “Now there are no clients for lawyers...”, JURIST, 20 September 2021 (“*Over the last two decades the US, as well as other countries, assisted the government of Afghanistan in developing a better judicial and prosecution system. Personnel involved in this system developed capacity and skills either inside or outside of the country. Additionally, foreign partners assisted the general development of the rule of law through different means, not always an easy task, especially in a country where the rule of gun and the rule of power preceded the rule of law for decades. In particular, judges, prosecutors, and lawyers were trained in and outside of Afghanistan to better perform and run the judicial system of the country.*”).

private contractors and non-profit organisations came into the country and were provided with private law firms' services on local compliance issues.⁶

4. However, local law firms lost their clients as the Afghan government was collapsing to the Taliban. International contractors, non-profit and non-governmental organisations all left the country during the evacuation window⁷, which was closed on 31 August 2021. Local clients are not in need of legal counsel anymore since all judicial institutions are currently shut down.⁸ Law firms, with no clients and no income, had no other choice but to downsize before ultimately closing their doors, and lawyers started to leave the country – legally or illegally⁹.
5. Not all legal practitioners were able to leave the country. Those left stranded behind have been living in hiding, fearing for their lives and the lives of their loved ones.
6. Such is the case for Latifa Sharifi, prominent lawyer dedicated to defending women's rights since 2009, who got stopped at the Kabul airport on 15 August, when trying to leave the country with her family.¹⁰ Ms. Sharifi, who assists women victims of domestic violence and through divorce proceedings, received numerous death threats, forcing her to live and work underground.¹¹

Foreign allies also assisted in the enhancement of Afghanistan's legal education system. Law students were provided with many opportunities to learn and acquire professional skills they could use in the practice of law. A large number of law students got training in different fields of law – they obtained necessary knowledge, competencies, and ethical principles that promoted greater trust in the justice system.”

⁶ Afghanistan dispatches: “Now there are no clients for lawyers...”, JURIST, 20 September 2021 (“*Over the past two decades private legal services firms also developed a lot in Afghanistan. These private firms handled a variety of criminal, civil, and commercial cases on behalf of both public and private person[s] in the country. After US and NATO troops came into Afghanistan some 18,000 contractors started providing services to the US/NATO forces all over the country. These contractors used to hire private law firms to handle local compliance issues. Alongside the US/NATO contractors there were a large number of not-for-profit organizations as well on the ground that employed a considerable number of Afghans. These for-profit and not-for-profit organizations all hired local law firms and consultancy companies to handle their local compliance issues in the country.*”).

⁷ Afghanistan dispatches: “Now there are no clients for lawyers...”, JURIST, 20 September 2021 (“*we received contract suspension notices from our clients, both local and international companies and organizations. US/NATO contractors left first, the international NGOs second, and our local partners last.*”).

⁸ Afghanistan dispatches: “Now there are no clients for lawyers...”, JURIST, 20 September 2021 (“*Now there are no clients for lawyers – not even local clients – because all the matters they had before the courts are either closed and/or will take at least a year or two for them to be resumed.*”).

⁹ Afghanistan dispatches: “Now there are no clients for lawyers...”, JURIST, 20 September 2021 (“*Lawyers left the country using the evacuation process, some left illegally via Iran, Pakistan, Tajikistan, Uzbekistan and other borders, and those who stay see no hope for their future in the country.*”).

¹⁰ AFGHANISTAN: l’avocate Latifa Sharifi, de l’association afghane Hawca qui défend les droits des femmes rejetée à l’aéroport de Kaboul, Observatoire International des Avocats, 20 August 2021 (“*Latifa Sharifi is an Afghan lawyer who has been specialising and advocating for women's rights since 2009. She is a lawyer for Hawca, a historical association of Afghan women. In particular, she assists women victims of domestic violence in divorce proceedings.*”).

¹¹ AFGHANISTAN: l’avocate Latifa Sharifi, de l’association afghane Hawca qui défend les droits des femmes rejetée à l’aéroport de Kaboul, Observatoire International des Avocats, 20 August 2021 (“*The lawyer was reportedly chased while taking her children to school, stones were thrown at the windows of her house and in 2017 she received a blood-stained letter stating "the next one will be written in your son's blood". Latifa Sharifi then had to move and work underground*”).

7. A similar testimony was given over the phone by Sakina Khan (an alias), a practicing lawyer based in Kabul who stayed behind while her children left the country.¹² Without a visa, she is just “*waiting for the Taliban to come any day now and kill [her]*”.¹³ And even if the visa comes through, nothing prevents her from getting shot at if she steps outside her house.¹⁴
8. Prosecutors and judges who, under the previous regime, ruled against and convicted the Taliban are specifically targeted. Farishta, a prosecutor in Afghanistan’s Attorney-General’s office who convicted those who committed rape, murder and domestic violence,¹⁵ is now in danger as Taliban freed hardened criminals and Islamist militants. For instance, she successfully convicted Mohamad Gol for planning a suicide bomb attacks. He was freed. Soon after, he called Farishta telling her that he was seeking revenge.¹⁶ A Prosecutor still living in hiding with his family in Afghanistan gave an identical story.¹⁷
9. The Law Society of England and Wales president reported that, on 18 August 2021, approximately 270 women judges and 170 women lawyers were still in Afghanistan facing great risk.¹⁸

International organisations and Bar associations’ monitoring and support

10. Among others, the Law Society of England and Wales, the International Bar Association, the American National Bar Association of Women Judges, the French Bar association (Conseil National des Barreaux de France), along with the Italian National Lawyer’s Council (Consiglio Nazionale de Forense) and the General Council of Spanish Lawyers (Consejo General de la

¹² ‘Waiting For The Taliban to Kill Me’: Afghan Woman Lawyer from Kabul, The Quint, 17 August 2021 (“*Her five-year-old and seven-year-old daughters have left the country, along with her brother’s family.*”).

¹³ ‘Waiting For The Taliban to Kill Me’: Afghan Woman Lawyer from Kabul, The Quint, 17 August 2021 (“*I am just waiting inside my home...waiting for the Taliban to come any day now and kill me. I have no other choice,*” she said, speaking to *The Quint*, from Kabul.”).

¹⁴ ‘Waiting For The Taliban to Kill Me’: Afghan Woman Lawyer from Kabul, The Quint, 17 August 2021 (“*It will be a miracle if that happens. Even if the visa comes through, how do I get to the airport without getting shot at?*” she asks, bemused.”).

¹⁵ Afghanistan’s female lawyers are on the run from men they prosecuted, BBC News, 6 October 2021 (“[Farishta] became a prosecutor in Afghanistan’s Attorney-General’s office. Part of her job was “prosecuting and getting sentences for those who committed rape, murder and domestic violence”, she told the BBC from a safe house in Afghanistan”).

¹⁶ Afghanistan’s female lawyers are on the run from men they prosecuted, BBC News, 6 October 2021 (“Among those let go by the crusading Taliban was Mohamad Gol, who faced charges of planning suicide bomb attacks. Farishta had painstakingly gathered evidence against Gol and successfully prosecuted him, putting him behind bars for what should have been a 20-year sentence. Days after the Taliban took over Kabul, Mohammed Gol called her, Farishta said. “He said he was coming after me to take revenge, and I cannot hide anywhere.”).

¹⁷ Afghan lawyers’ plea to UK: save us from clutches of the Taliban, The Law Society Gazette, 6 September 2021 (“A prosecutor still living in Afghanistan contacted the Gazette to say he and his family had been living in hiding since the day the Taliban took over his local province. Even before the seizure of power, he had received death threats to his home following the prosecution of Taliban suspects, with the letters stating that no-one would be spared.”).

¹⁸ Legal professionals in Afghanistan must be given safe passage to and settlement in the UK, The Law Society, 18 August 2021, (“We are particularly concerned about the approximately 270 women judges and 170 women lawyers, who are especially likely to be at risk.”).

Abogacia Espanola)¹⁹ are showing their support and are all mobilised to help their Afghan counterparts.

11. The Law Society of England and Wales, the Lawyers' Rights Watch Canada urged the "*immediate establishment of humanitarian corridors for safe evacuation*" before the Special Session of the UN Human Rights Council²⁰.
12. In a joint statement, the Law Society, Bar Council and Bar Human Rights Committee called on the UK government to offer asylum to female judges and ensure that Afghans lawyers, judges are included in the resettlement scheme or Afghan Relocations and Assistance Policy (ARAP). The Government responded positively.²¹
13. The International Academy of Trial Lawyers will sponsor the evacuation of four Afghan lawyers and their families, who face danger from the Taliban due to their work, to the United States pursuant to a program that could temporary entry onto US soil and the opportunity to apply for asylum.²²
14. On a positive note, 26 female judges and lawyers and their families arrived in Athens from Afghanistan on 30 September 2021.²³ And, Latifa Sharifi was designated recipient of the 2021 UIA Rule of Law Award by the UIA Governing Board.²⁴

¹⁹AFGHANISTAN: Les membres de l'OIAD mobilisés pour venir en aide aux avocats et civils en danger, Observatoire International des Avocats, 20 August 2021 ("*The Paris Bar and the Conseil National des Barreaux de France, the Consiglio Nazionale de Forense and the Consejo General de la Abogacia Espanola immediately communicated their solidarity and mobilised to come to the aid of the Afghan colleagues but also to all civilians in danger who request it.*").

²⁰ Oral Statement to the 31st Special Session of the UN Human Rights Council from Lawyers' Rights Watch Canada, the International Bar Association, and The Law Society, NGOs in Special Consultative Status, 24 August 2021 ("*We urge the immediate establishment of humanitarian corridors for safe evacuation. There must be no deportations to Afghanistan; the principle of non-refoulement must be respected.*").

²¹ Fighting for the safety of legal professionals in Afghanistan, The Law Society, 27 August 2021 ("*As the situation in Afghanistan continues to evolve, we have: [...] called on the UK government to ensure that lawyers, judges and those that have worked to safeguard the rule of law are included in the resettlement scheme or Afghan Relocations and Assistance Policy (ARAP) and the government has responded positively – given the critical situation on the ground, we've urged the government to act fast and process applications expeditiously*").

²² Trial lawyer group backs effort to bring Afghan attorneys to U.S., Reuters, 17 September 2021 ("*The International Academy of Trial Lawyers will sponsor a move to bring four Afghan attorneys and their families, who face danger from the Taliban due to their work, to the United States under a program that could grant them temporary entry and the opportunity to apply for asylum. The names of the Afghan attorneys, who are facing threats from the Taliban due to their work in a program supporting democracy in Afghanistan, can't be shared publicly due to the danger they face, according to the academy and nonprofit immigrant justice organization VECINA, which is behind the effort.*").

²³ Women judges and lawyers from Afghanistan arrive in Athens, Ekathimerini, 1 October 2021 ("*Twenty-six female judges and lawyers and their families arrived in Athens from Afghanistan late on Thursday via the Georgian capital of Tbilisi. Their safe transfer to Greece was carried out with the assistance of President Katerina Sakellaropoulou.*").

²⁴ Afghan Lawyer Latifa Sharifi Selected Recipient of the 2021 UIA/LexisNexis Rule of Law Award, International Association of Lawyers, 27 September 2021 ("*With this Award, UIA and LexisNexis recognize Ms. Sharifi's courageous commitment to ensuring effective access to justice to women, a commitment for which she is regrettably in imminent danger of retaliation.*").