

## Female Access to Justice

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Females have in Afghanistan long experienced difficulties directly accessing any kind of justice institution, be it formal or informal. Females in most instances completely depend on a male relative to represent them where and when they need access to justice institutions and the likely recourse for females seeking justice is to the informal sector. Disputes primarily include family and inheritance issues, but there are also instances where criminal cases involve women, primarily as victims, often of rape and kidnapping. These cases might, due to their complexity, be brought to the formal justice system. This type of case can be highly influenced by the social stigma placed upon the victims, and are more often than not left unsolved and/or never brought to any kind of justice.

An example of how females view their possibilities when needing to access justice is demonstrated by the following case;

Makki, from the Band-2 area of Polkhmori district, Baghlan, had over a long period of time been abused by her husband. The reason behind the abuse was said to be the stress he was suffering due to his inability to provide for the family, as he was unemployed. The female Justice Support Worker in Baghlan knew about Makki's problems and informed her about the upcoming Broad Based Education workshops (BBE) run by CPAU. These workshops, delivered to both males and females, provide legal awareness in areas including conflict resolution, criminal law, family and inheritance law and the rights of females to access justice, and how females have a part to play in the justice system. Makki, who was prevented from visiting her father's house as her husband was afraid she would complain of the abuse, asked for permission to visit her brother for a few days, and was allowed to do so. She planned her visit in such a way that she would be able to travel to Pul-e-Khumri and attend the BBE workshops. She attended the BBE workshops and discussed her situation with the other female participants and heard their experiences of abusive relationships.

After attending the BBE workshops, Makki realized that what she had long considered normal behavior was in fact illegal and an abuse of her rights, and she determined that her husband's actions were no longer acceptable. She returned home and talked to her husband about what she had learned and about the local Peace Council. Makki's husband's behavior changed dramatically after this. He became afraid that the local Peace Council would invite him to one of their meetings to resolve the dispute, and this would have been a very shameful experience. He no longer abuses Makki or takes out his frustration at being homeless on his family. Simply by increasing Makki's awareness of her legal options, empowered her to confront her husband, and this confrontation was enough to make him reconsider his actions and put an end to his abusive behavior.

Makki's situation is common in Baghlan and across Afghanistan, many women are unaware of their rights and accept their husband's behavior and abuse. When basic legal awareness

and education increases, there is often a change in behavior among women, and their tolerance of abuse decreases.

A further telling example of a women's ability to access justice, or rather inability, is the following case from Faryab;

In the village of Oncheh Arlat a female named Dor Taj got married six years ago. For the last two years of this marriage she had no contact with her husband and was instead living with her brothers and was being supported financially by them. Her husband had a drug problem that had, from the beginning of their marriage, caused domestic problems as he was unable to support his wife. During the first four years of the marriage he was able to provide some money for the basic needs of Dor Taj, while during the last two years he was unable to provide anything at all. She approached the Hoqooq in Faryab to get assistance in receiving some money from her husband so she would not be so completely dependent on her brothers. They, in turn, referred the case to the local Peace Council. About 30% of the civil cases brought to the Hoqooq are immediately transferred back to the informal justice system. This is especially true for family disputes. The Hoqooq argued that the informal justice system was a more suitable forum to resolve this type of case since they have more experience, and are able to resolve cases without any additional enforcement (besides social pressure). In this particular case the Peace Council informed the husband of the responsibilities placed upon him, respecting his wife, when they were married. They advised the parties that a continued dispute would have a negative impact on both their children as well as the community as a whole. The husband accepted the settlement whereby he had to provide his wife with the money he should have provided her during the first four years of their marriage. Since he did not have any contact with her during the last two years he did not have to pay any money for this period of time. At this point in time, the two are divorced and have no contact with each other. Dor Taj continues to live with, and is supported financially by, her brothers.

People can be reluctant to approach the formal justice system with family disputes, partially because these types of cases are seen as highly private and partially because the formal justice system is perceived as being unable to resolve this type of case. Referring a case of this type to the formal system would also indicate to the other members of the community that there is a lack of trust toward the local elders or that they are perceived as corrupt (want money or goods as compensation for resolving cases) and this is disrespectful. When a family dispute erupts, ordinarily immediate family members try to solve it. If they are unable to do so influential local leaders/elders may be asked to lend their council and facilitate a reconciliation. If they are also unable to resolve the dispute, it might then be referred to the local informal system, be that Peace council, Jirga, or Shura. Very rarely, in cases such as the two mentioned above, are domestic disputes referred to the formal justice system, which in turn often refer the case directly back to the local informal justice system.

The inability of females to access the justice systems due to a lack of security and deep social stigma, has created a situation wherein they are more or less dependent on male relatives to represent them in any kind of judicial hearing. In some areas female Peace councils have been established and have been received in a positive manner by both female and male

community members. Some community members express their dislike of the committees because of their views on female community engagement outside of the home. There are also some cases of males, whose wife, sister or other female relative wanted to become active in the female dispute resolution institutions, not accepting this due to his own prominent role within the community.

Females do have difficulties accessing justice institutions, but can find ways, either through representatives or through female dispute resolution actors, to be able to resolve their disputes and receive justice. It is also important to realize the effect of an improved level of education and basic rights knowledge, and the confidence this gives women to re-consider their positions and what should or should not be acceptable in them.