

## **Bolch Award Keynote Address**

**Justice Susan Glazebrook<sup>1</sup>**

### **Introduction**

I am honoured to be here this evening, with my colleagues, to accept this prestigious award on behalf of the International Association of Women Judges, or IAWJ for short.<sup>2</sup> At the IAWJ we are very proud of our over 30 year history of supporting women judges and of our education programs which have been designed to promote and sustain the rule of law, gender equality and access to justice.<sup>3</sup>

At the same time, we are saddened to see the rising global threats to the rule of law and to its very important component, the independence of the judiciary. Where the Rule of Law is weak or non-existent, the quest for sustainable development and human rights more generally is compromised and the adverse effects are heightened for women and other vulnerable groups in society.<sup>4</sup>

As Carl Bolch Jr has said “people themselves don’t seem to change that much, but their prosperity, their society, their situations change drastically depending on the strength of the legal framework”. And, to quote Susan Bass Bolch, “if you promote and defend the rule of law, you won’t have to fix a broken society.”<sup>5</sup>

That brings me to Afghanistan.

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<sup>1</sup> Judge of Te Kōti Mana Nui o Aotearoa/Supreme Court of New Zealand and President of the International Association of Women Judges (IAWJ).

<sup>2</sup> The Bolch Prize for the Rule of Law is awarded annually to an individual or organization who has demonstrated extraordinary dedication to the rule of law and advancing rule of law principles around the world: see Duke University “Bolch Prize for the Rule of Law” <[www.judicialstudies.duke.edu/bolchprize](http://www.judicialstudies.duke.edu/bolchprize)>. A link to this acceptance speech given on 1 March 2023 can be found on the Duke University’s School of Law YouTube channel: <<https://www.youtube.com/watch?v=IKG3Db-8Pco>>.

<sup>3</sup> See <[www.iawj.org](http://www.iawj.org)> for more information. For a history of the IAWJ and its programmes, see Arline Pacht and Susan Glazebrook (eds) *The IAWJ: Twenty-Five years of Judging for Equality* (2016). See also Susan Glazebrook “A history of International Association of Women Judges programmes – then and now” (paper presented to International Association of Women Judges Canadian Chapter/Association Internationale des Femmes Judges Chapitre Canadien conference, Yellowknife, 20-23 June 2022) available on the Courts of New Zealand website: <[www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz)>.

<sup>4</sup> United Nations “What is the Rule of Law” United Nations <[www.un.org](http://www.un.org)>.

<sup>5</sup> Duke University “Meet Carl Bolch Jr and Susan Bass Bolch” (press release, 16 April 2018).

## **The Taliban reach Kabul**

The 15th of August 2021 is a date indelibly imprinted on my memory. It was the day the Taliban reached Kabul.

Our small Afghan support committee, which was formed after the IAWJ biennial conference in May 2021 to support our Afghan colleagues, had been following the Taliban advance with horror. We still remembered the previous Taliban regime and were highly sceptical of assurances of a new and modern Taliban. We were desperately worried about our Afghan colleagues and friends who had already sacrificed so much in their dedication to the rule of law.

We knew that the idea of women as judges was anathema to the Taliban. We knew too that the Taliban would view the Afghan judges as hostile agents of western powers. Many of the courts they sat on were new courts, designed to deal with terrorism, organised crime and violence against women.

Soon a whole other threat became apparent, as reports came through of the prisons being emptied of even the worst criminals and terrorists, many of whom had been sentenced by our women colleagues. As well as the systemic threat from the Taliban, this meant the added danger from individuals out for revenge.

The Afghan women judges were no strangers to danger. They had long been living and working in conditions of insecurity, with the ever present risk of terrorist and revenge attacks. Two of the women judges were gunned down by unknown assailants in January 2021 on their way to work. Their deaths were a major tragedy for their families, their loved ones and their colleagues, both in Afghanistan and globally. But this was more than a private tragedy. The killings were part of an orchestrated campaign targeting public figures who were working towards a more equal and inclusive Afghanistan. Women leaders were especially targeted in an effort to intimidate not only women holding public office but women generally.<sup>6</sup>

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<sup>6</sup> International Association of Women Judges “Killings of Women Judges in Afghanistan – Statement of the IAWJ” (press release, 25 February 2021) available on <[www.nzbar.org.nz](http://www.nzbar.org.nz)>.

Despite these dangers, when we talked to the Afghan women judges even as late as July 2021, they were determined to continue to dedicate themselves to their work as judges, to the rule of law and to the country they loved.<sup>7</sup> These women judges went into work each day not knowing if they would return home to their families in the evening. Their courage is beyond belief.

All they asked of us at that stage in July was to publicise their security situation to the world and to provide assistance with educational programs.

But the position of the women judges became totally untenable when the Taliban reached Kabul just one month later.<sup>8</sup> Fearing for their safety and no longer able to work, most had gone into hiding.

And none too soon. The house of one of the judges was totally trashed by Taliban members searching for her. When they could not find her they contented themselves with shooting the family dog. The judge is absolutely convinced that, if she had still been in her home, they would have shot her and her family.

Faced with many other similar accounts of mortal danger, our Afghan support committee was left with no choice but to try and assist our colleagues and friends to get to safety. It was not part of our normal role as judges or as IAWJ leaders. We were well out of our comfort zone but the values the IAWJ espouses would have seemed empty indeed if we were not prepared to live by them.

The story of our IAWJ support committee's rescue effort is in three stages: before the final withdrawal of foreign troops, followed by a period of air evacuations and the current period where rescue is becoming more and more difficult while the danger escalates.

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<sup>7</sup> In July 2021 the IAWJ committee members had attended (virtually) a meeting of the Afghan Women Judges Association (AWJA) in Kabul. The AWJA is an affiliated association of the IAWJ. The meeting was facilitated by the Max Planck Foundation for International Peace and the Rule of Law: see <[www. https://www.mpfpr.de](https://www.mpfpr.de)>.

<sup>8</sup> See International Association of Women Judges "Official IAWJ Statement on the Current Situation in Afghanistan" (press release, 16 August 2021), International Association of Women Judges "Joint IAJ and IAWJ Statement on the Current Situation in Afghanistan" (press release, 20 September 2021) and International Association of Women Judges "30 September 2022 Attack on Education Centre in Kabul" (press release, October 2022).

## **Before foreign troop withdrawal**

Once the Taliban had taken Kabul, the only option was to secure places on official evacuation flights. We thought, naively as it turns out, that the obvious dangers the women judges were facing and the important role they had played in democracy building would guarantee them and their families a place on these evacuation flights. We could not have been more wrong.

We tried very hard during this period to get the judges on the official flights. We engaged in extensive advocacy efforts, speaking to international media as much as we could to raise awareness about the plight of the women judges. We prepared endless lists for officials, and contacted governments all over the world in an attempt to get assistance. But with very limited success.

We only managed to get some 30 of the 250 Afghan women judges out of the country during this time. Most of the places we secured were on Polish military aircraft after a tremendous advocacy effort from a lawyer in Poland who had read about the plight of the women judges and contacted us with an offer of assistance.

Even for those judges who were allocated a place on official evacuation flights, actually getting to the airport required determination, luck and fortitude. The journey on average took 30 hours, through searing heat, armed checkpoints and immense crushes of people, with little food and water, and often with young children. Just before the airport entrance, the judges had to wade through what had become a sewer. Many had to turn back.

Our committee members and our wonderful interpreters, were there with the judges every step of the way to the airport entry gates: encouraging them, giving them directions and helping them connect with the soldiers at the gates. As our committee members live in different time zones, this meant that there was always someone awake and available via a 24 hour Zoom. However, in reality, we all got very little sleep during this time, anxious as we were to ensure that our sister judges made it out safely.

The courage, persistence and often luck needed to get into the airport was something no one should have to endure, least of all women and children.

## **Second stage**

Once the foreign troops officially left Afghanistan at the end of August 2021, there were very few remaining official evacuation options. Civil society was left with the enormous burden of organising rescues for those who had not yet been able to escape. To be frank, it is a matter of great international shame that so many people, and in particular so many women, who had worked so hard for democracy and human rights in Afghanistan, were abandoned in this way.

Our IAWJ committee had to partner with other non-governmental organisations, including the International Bar Association,<sup>9</sup> the Australian Section of International Commission of Jurists Australia (ASICJ) and Jewish Humanitarian Response,<sup>10</sup> to try and organise evacuations of the remaining judges and their families. We are incredibly grateful for the assistance we received.

During this second stage, evacuations were through chartered planes. This was an enormously expensive exercise and a logistical nightmare but it was significantly more successful than the first phase. With our partners, we managed to arrange the evacuation of some 130 judges and their families.

This phase came to an abrupt end when we had a failed evacuation flight. The judges and their families were at the airport with their boarding passes when the Taliban stepped in and arrested a number of the judges and their families, ostensibly because they did not have valid passports. It was a very long night before the detained passengers were released.

## **Third stage**

So we are now in the third stage.

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<sup>9</sup> Through the International Bar Association's Human Rights Institute (IBAHRI): for more information see <[www.ibanet.org](http://www.ibanet.org)>.

<sup>10</sup> Jewish Humanitarian Response: [www.jhr.ngo](http://www.jhr.ngo).

We still have some 54 judges and their families in hiding and at risk in Afghanistan. The focus is on the painstaking task of getting one family out at a time and at the moment largely overland – when the borders are open.

There they face long waits (possibly up to two years) before being processed for final destinations – we are hoping mostly to the United States. Conditions are very basic for them in these transit countries as there are limited funds. And the situation in those countries themselves is not secure.

And all this comes at a time when the conditions in Afghanistan are deteriorating and the danger to women judges escalating. The Taliban have been conducting systematic searches in the main centres. So far none of our judges have been killed or identified as Government workers but we wake every morning fearful that today will bring the news we have all been dreading.

As if this were not bad enough, restrictions on women generally are tightening every day and impacting every facet of their daily lives.

Girls have been banned from attending secondary school and women banned from universities.<sup>11</sup> Women are forbidden from travelling more than 72 kms without a male chaperone, are no longer eligible to apply for a driver's licence and have been told to stay at home unless absolutely necessary.<sup>12</sup> If they do leave the house, they must wear full body and face coverings.<sup>13</sup> There has recently been a ban on women working in NGOs which will have a major effect on humanitarian aid.<sup>14</sup>

In general, the Taliban regime has little respect for the rule of law and human rights. There have been reports of arbitrary detention, torture, extrajudicial killings, as well as

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<sup>11</sup> Amnesty International *Death in Slow Motion: Women and Girls Under Taliban Rule* (2022) at 5. See also Belquis Ahmadi and Matthew Parkes "After a Year of Taliban Rule, Advances for Afghan Women and Youth Have All but Evaporated" United States Institute of Peace (25 August 2022) <[www.usip.org](http://www.usip.org)>.

<sup>12</sup> *Death in Slow Motion*, above n 11, at 33.

<sup>13</sup> At 37. The general effect is that women have been forced out of the workforce: Hamed Ahmadi "My Hope Died Forever": Taliban Restrictions are Forcing Afghan Women Out of the Workforce" Huffington Post (21 August 2022) <[www.huffpost.com](http://www.huffpost.com)>.

<sup>14</sup> Patrick Wintour "UN tries to resolve Afghanistan aid crisis after women banned from working at NGOs" *The Guardian* (online ed, London, 29 December 2022) and United Nations "Afghanistan: Humanitarians await guidelines on women's role in aid operations" (press release, 30 January 2023).

the return of public whippings.<sup>15</sup> Human rights activists, former government workers and journalists have been particularly targeted.<sup>16</sup> Terrorist attacks by other groups are increasing.<sup>17</sup> And the threat of civil war looms.<sup>18</sup>

As if all this was not bad enough, the people of Afghanistan are also suffering because of natural disasters and the dire economic situation.<sup>19</sup> Extreme poverty is forcing families to make desperate choices in an effort to beat off starvation, including sending children as young as three or four to work and selling their young daughters into marriage in exchange for dowries.<sup>20</sup>

### **Where to now?**

So, where does this leave our IAWJ Afghan support committee? While we have achieved a lot since August 2021 and we keep reminding ourselves that to save a life is to save the world, the fact remains that it is not enough for us. It will never be enough until all the women judges and their families are out of Afghanistan and safe in new, permanent homes. We made a promise that no one would get left behind and we intend to do our very best to keep that promise. Heartbreakingly it is becoming more and more difficult to fulfil.

I should say too that we are very conscious that there are other groups at risk in Afghanistan but we are a very small group of volunteers and cannot help everyone. We are a women judges group and we felt an obligation to our sister judges, particularly because of our history with them as long term members of the IAWJ.

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<sup>15</sup> Pamela Constable “Public execution, whippings in Afghanistan mark revival of Taliban punishments” *The Washington Post* (online ed, Washington DC, 9 December 2022).

<sup>16</sup> Aljazeera “Taliban killed dozens of former Afghan officers: UN report” Aljazeera (31 January 2022) <[www.aljazeera.com](http://www.aljazeera.com)>.

<sup>17</sup> See, for example, the attack against Hazara girls attending school: International Association of Women Judges “30 September 2022 Attack on Education Centre in Kabul” International Association of Women Judges <[www.iawj.org](http://www.iawj.org)>.

<sup>18</sup> Carter Malkasian “Is Afghanistan’s Long Civil War Really Over” *Foreign Affairs* (online ed, New York, 13 September 2022) and Council on Foreign Relations “Instability in Afghanistan” Council on Foreign Relations (19 October 2022) <[www.cfr.org](http://www.cfr.org)>.

<sup>19</sup> United Nations “Afghanistan still a grave humanitarian crisis, senior aid official says” (press release, 28 February 2023) and International Committee of the Red Cross “Humanitarian crisis in Afghanistan” International Committee of the Red Cross <[www.icrc.org](http://www.icrc.org)>.

<sup>20</sup> Zahra Joya “‘No escape’ for Afghan girls forced out of education and into early marriage” *The Guardian* (online ed, London, 9 February 2023).

We are also very conscious, as are the Afghan women judges themselves, of the tragic loss to Afghanistan of so many educated people who would have been able to do so much for their country. But of course they did not have a choice – they had to leave to save their lives and the lives of their families.

### **Life after Afghanistan**

It is also worth remembering that helping the judges to escape Afghanistan is just the first step. As I have already mentioned most of the judges, after they leave Afghanistan, face long waits in transit destinations. This is especially hard for children and young persons deprived of education during this period. Currently we have 52 judges still in transit countries.

But even for the 148 judges in final destinations, life will not be easy. These judges have lost the careers they worked so hard for and have become refugees in countries where usually they do not speak the language. They will face years of retraining and many are seriously traumatised. Most are also desperately worried about family members and colleagues left behind in Afghanistan.

But they are determined and courageous women and will no doubt make a huge contribution to the countries lucky enough to host them. And hopefully one day they will be able to celebrate the return of the rule of law to Afghanistan.<sup>21</sup>

### **Lessons learned**

I briefly mention some of the lessons we have learned throughout this experience. First the power of modern communication, including encryption, which has enabled us to keep in contact with the Afghan judges safely. Second the power of information. Through our database we have access to full information on all our judges that can be provided to those helping with evacuations and to national authorities. Third, the importance of international networks to coordinate efforts. The fourth lesson is from Justice Mona Lynch, describing our early 24 hour zoom days, and it is to “never underestimate the power of a group of determined old women in their pyjamas.”

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<sup>21</sup> See an initiative of lawyers in exile aimed at working towards restoring the rule of law: Afghanistan Independent Bar Association <[www.namati.org](http://www.namati.org)>.

The final lesson relates to both the importance of but also the fragility of the rule of law. It can be compromised suddenly and completely as in Afghanistan but it can also be compromised by stealth and by stages. We must be ever vigilant and protective.

And just to be clear, as is obvious from what I said earlier, I am talking about what is commonly called the thick concept of the rule of law whereby, alongside procedurally focussed requirements, related to the manner in which laws are promulgated and ensuring that nobody is above the law, there are substantive requirements including the protection and promotion of human rights, an independent judiciary, respect for international law and access to justice.<sup>22</sup> Without these substantive requirements, the rule of law would be sterile indeed.

### **Acknowledgments**

And now some acknowledgments. To my fellow committee members, Justice Mona Lynch, and Judges Robyn Tupman, Patricia Whalen and Vanessa Ruiz, who are here this evening and to Judges Anisa Dhanji and Gloria Poyatos Matos, who could not be with us. It has been an honour and a privilege to work with you. Thanks also to the IAWJ's executive director, Christie Jones, and the IAWJ board for their support. Thanks to those who maintain our database and to our wonderful interpreters and in particular Farah Arjang who is also here this evening.

And thanks to our IAWJ members who donated so generously and of course to all our funders and partners. I would like to mention especially Caroline Marks, Huma Rashid and Simina Quorishi from Jewish Humanitarian Response who are here this evening and also acknowledge Marc Brody and the indomitable Rabbi Zvi Boyarsky.

I also mention the hard working and dedicated group of pro bono lawyers around the world who advise the IAWJ and who have been assisting our judges with immigration issues and in particular Fried Frank<sup>23</sup> and DLA Piper,<sup>24</sup> as well as the judges from our various IAWJ affiliated national associations who have been assisting with

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<sup>22</sup> For more on the “thick” Rule of Law see Tom Bingham *The Rule of Law* (London, Penguin Books, 2010) at 67. I also discuss these concepts in Susan Glazebrook “The Rule of Law: Guiding Principle or Catchphrase” (2021) Waikato L Rev 2.

<sup>23</sup> <[www.friedfrank.com](http://www.friedfrank.com)>.

<sup>24</sup> <[www.dlapiper.com](http://www.dlapiper.com)>.

resettlement. I mention in particular Judge Lisa Walsh for her work setting up the legal network.

Finally, thanks to Carl and Susan Bolch and to the Bolch Institute for their important work to promote the rule of law in these troubling and unstable times and my sincere thanks again for recognising the work of the IAWJ and especially its work in Afghanistan through this prize.

But I need to finish by making it clear that the real heroines of this story are the Afghan women judges. I am in awe of their courage, their dignity and their resilience.

I pay tribute to them.