Women I admire: The courage of my sister judges from Afghanistan

The Honourable Justice Anne Molloy

In the summer of 2021, the Taliban took control of Afghanistan. At that point, there were approximately 270 women judges in Afghanistan, at various levels of courts. From the moment the Taliban seized power, all these women were out of a job and all their lives were in danger. Most, but not all, escaped to safe countries. Canada agreed to accept 40 of them, and 24 of those families are now in Ontario. This article presents a thumbnail sketch of what these women went through, how they are faring in Canada, and what lies ahead.

A brief historical review is important to set the context. After the collapse of the monarchy in 1973, the people of Afghanistan became embroiled in instability and bitter conflict. By 1974, the Taliban had seized control of most of the country. During this period of Taliban occupation, the country was known for its inhumane and degrading treatment of women.[1] Following the terrorist attacks on September 11, 2001, the United States initiated a special operation in Afghanistan that contained but did not eliminate the Taliban. In the period between 2002 and 2021, when the Taliban was not in control, Afghanistan made progress in gender equality in many ways. For example, women had been largely excluded from the labour market, but by 2019 the labour force participation rate of females had increased to 22 percent. Women had been excluded from political decision-making but by 2020, 27 percent of the seats in the national parliament were held by women, ranking Afghanistan 81st of 197 countries, with progress on local councils hampered by cultural, historical, and ideological obstacles. Girls and women had not attended schools and entire generations of girls and women were illiterate, but by 2021 girls and young women made great strides in education. The gross enrolment rate for girls in primary education was zero in 2001 and 83 percent in 2021, with similar increases in secondary levels of education. By 2021, the enrolment rate at post-secondary institutions was low for both men and women at only 5 percent of women and 15 percent of men, but those numbers constituted a significant improvement over 2001.[2]

The judicial system in Afghanistan is an inquisitorial one, unlike the adversary system with which we are familiar in Canada and other common law jurisdictions. Afghanistan has a written legal code which is applied, unless it is contrary to the "tenets and provisions of Islam," in which case the Qur'an will prevail.[3] Typically, even at the trial level, judges sit in panels of three.



In Afghanistan, it is not necessary to have experience as a lawyer before being appointed as a judge. Anyone who has a degree in Islamic or sharia law can elect to take an additional two-year program of judicial training and then apply to serve as a judge. This factor, combined with the fact that women could not begin to be educated until 2001, resulted in women judges in Afghanistan being younger than we might expect. The age range of the Afghan women judges in Ontario is 30 to 42. These women benefited from the enormous improvement in the introduction of civil society shepherded by the coalition of countries that encouraged the establishment of democratic institutions. The Afghan women judges in Ontario were in the 5 percent who attended university and had acquired a bachelor's degree in sharia law or Islamic law. A few of them had obtained a master's degree.

Notwithstanding these enormous gains, women in Afghanistan faced many obstacles. In particular, women in positions of power traditionally occupied only by men were often resented and sometimes attacked. In January 2021, two Afghan women who were judges on the Supreme Court were shot dead in Kabul on their way to work. That event sent a critical message to the Afghan women judges that they were in increased jeopardy as violence escalated incidental to the withdrawal of Western troops from Afghanistan early in 2021. There was already an active chapter of the International Association of Women Judges (IAWJ) in Afghanistan. Many Afghan judges reached out to their IAWJ colleagues in other countries, triggering a monumental outpouring of support.

On August 15, 2021, the Taliban took control of Kabul. One of their first acts in power was to release members of the Taliban from prison, many of whom had been sent to jail by women judges for a wide range of crimes, including murder. With these criminals on the loose, all the women judges were in imminent danger; some of them and their family members were directly threatened. The IAWJ, along with a number of other international organizations, sprang into action. Over the course of the next few months, the IAWJ was actively involved in the extraction of these women and their families from Afghanistan. They were transported to safe havens, and the search began for countries that would give them a new home.

The Canadian government agreed to receive 40 Afghan women judges and their families as government assisted refugees. In Ontario, the first Afghan woman judge and her family arrived in May 2022, and there are now 24 families, with the possibility that a few more may arrive. Two families are in Ottawa; one in each of Oshawa, Kitchener, Guelph, and Hamilton; five in Mississauga; and 13 in Toronto. Most of the Afghan women judges have husbands. Some have been accompanied by adult family members. There are approximately 45 children, four of whom were born in Canada, and approximately 50 adults. Many of those adults had been professionals – including not only judges but also prosecutors, interpreters, engineers, and physicians.

These families became permanent residents on arrival. They are entitled to financial assistance for 12 months and ongoing access to healthcare, schools, and English language assessment and training.

At the time of writing, it has been a year since most of the Afghan women judges and their families arrived in Ontario. My involvement started in March 2022 when the National Support Committee of the Canadian chapter of the IAWJ began planning how to welcome and support these families. We thought then that the newcomers would be spread across the country. I was to be responsible for the organization efforts in Ontario. Little did we know then that 24 of the 37 families would settle in Ontario, almost all of them in or close to Toronto. Women judges in Ontario stepped up in significant numbers to individually mentor and support their sister judges from Afghanistan, many of them becoming like actual sisters. My relationship with these Afghan women has been more distant since my role was organizational, but at the same time more all-encompassing. The lives and experiences of these women are varied, but there are some transcending themes: great intellect; extraordinary courage; and unfailing warmth and kindness. It has been my great privilege to meet and assist them in their adjustment to Canada. I am humbled by the depth of their commitment to equality for women and what it has cost them. The personal stories of these amazing women are both inspiring and tragic. For purposes of this article, I have focused on three women: Judge Muzghan Adib, Judge Hamida Froozanfar, and Judge Samira Nemati. At the time of the Taliban takeover in 2021 Judge Adib had been working as a judge in family court for one year, and before that had been a criminal court judge for three years; Judge Froozanfar had been a criminal court judge for six years; and Judge Nemati had served four years as a judge in a special court dealing with crimes of violence against women.

Early years, education, and work as judges

The mothers of all three women had never had careers outside the traditional roles of wife and mother but were described as being intelligent and educated. There were many siblings in each family. Notably, all three women had fathers who were well-educated professionals and who strongly supported the right of their daughters to be educated.

Judge Samira Nemati grew up in Afghanistan's Faryab Province, where her father was a doctor. As a young girl, she was not permitted to attend school until the Taliban rule ended in 2001. She recalled that as a child she had watched an American movie in which a woman played the role of a defence lawyer. Fascinated, she asked her father if this was possible for her when she grew up, and he told her it was. From then on, she was determined to enter a career in law, even though there had only ever been one or two women lawyers in the whole province. After completing high school, she entered law school, graduating in 2013. At that point, there were approximately 40 judges in her home province, all of them male. After working for a short period with an organization providing legal support and assistance to women who had been victims of violence, she decided to enter the judicial-training program. She completed the two-year program in 2017 and, at her request, was appointed to a special court in Faryab Province devoted to hearing cases in which women had been victims of violence. She was the first and only female judge in Faryab Province for the four years she served as a judge there.

The Afghanistan Supreme Court had determined that criminal trials dealing with violence against women should, where possible, be heard by women judges, which is why the special court Judge Nemati sat on had been created. Normally, judges would sit in panels of three. However, because she was the only woman judge in her province, she investigated and decided all the cases herself, sitting alone. Those cases included harassment, assault (sometimes leading to suicide), sexual assault of women and girls (including girls as young as eight or nine years old), and murder. The workload must have been crippling in terms of its magnitude and its content. Judge Nemati told me that she decided hundreds of cases of this nature, but that she found the murders of women and the sexual assault of young girls the most difficult to deal with. However, she reported that her role as a woman judge was important, since many affected women could not easily talk to a male judge about what happened to them, and some traditional families would not permit their female family members to describe such things to a man.

She explained quite simply, "I loved my job. It was my dream. It was my duty."

Judge Muzghan Adib was born in Afghanistan, but when she was four years old, her entire family (two parents and seven children) moved to Pakistan to escape the strictures of Taliban rule. Her father was highly educated and a senior member of the previous government in Afghanistan. The family returned to Afghanistan in 2001, when Judge Adib was in Grade 4, and she completed school there. Her father continued with his career in government until his retirement in 2006. Judge Adib was inspired to attend law school by a male family member who was a judge and whom she greatly respected. She completed her four-year law degree and then worked for a few years at the Supreme Court in an administrative role – maintaining the data base and collecting and preparing documents for the use of the judges in making their decisions. In 2015 she entered the two-year training course for judges. That same year she married a military prosecutor, and their first child was born a year later. Her first judicial posting was to the Primary Criminal Court in Kapisa Province. She told me that she was one of seven women appointed to the court at that time, and that they were the first women judges on that court. While working there, she was living in Kabul with her large extended family and commuting to the courthouse in Kapisa, a drive of about one and one-quarter hours. She described the first year of that experience as being "horrible" because men refused to accept women in such positions. However, she felt she eventually earned the respect of her male colleagues. She also felt encouraged by many women in the community who told her how thankful they were that women were doing this work.

Judge Adib's second child was born while she was sitting on the criminal court. She had three months paid leave after the birth of her second child and then returned to work while members of her extended family cared for the children and supported her so she could work outside the home. After telling me about her maternity leave, she paused to note the irony of it. When she had her children, the law in Afghanistan provided working women with three months fully paid maternity leave, not just for judges but for all working women. She noted, "Today, there are no working women in any field, and there are no schools for girls." She added wryly, "They have even closed all the hair salons."

As a judge on the Primary Criminal Court, Judge Adib, as part of a three-judge panel, presided over a wide range of criminal cases from minor thefts to serious assaults and including murder. She recalled one particularly troubling case in which a Taliban leader had been charged with a murder dating back 10 years. Many of the judges on her court did not want to sit on the case, but she agreed to take it on when asked to do so by her chief justice. The brutal crime included murdering the head of a family, raping his wife, and then marrying her. Other Afghan judges I spoke to have also described this shocking practice in the previous regime, in which a woman who had been raped was pressured by her family to marry her rapist because she would be considered "damaged" and unmarriageable to anyone else. Judge Adib and her two colleagues convicted the accused of murder and sentenced him to 30 years in prison. He would have been one of the Taliban leaders later released when the Taliban took back control of Afghanistan in 2021.

After three years as a judge in the Primary Criminal Court in Kapisa, Judge Adib transferred to the family court in Balkh Province. She and her husband and two children moved there, to a home in Mazar-e-Sharif. Judge Adib's work on the family court included divorce, child and spousal support, and child custody cases.

Judge Hamida Froozanfar grew up in Kabul, the oldest of nine children in her family, seven of them girls. She had already started school when the Taliban took control of Kabul for the first time in 1996. Her father was a university professor and both he and Judge Froozanfar's mother possessed a love of learning and literature. When the Taliban moved into Kabul, her father moved the family north so that the girls could be educated. When the Taliban took northern Afghanistan, the whole family moved to Pakistan, returning in 2001 when the Taliban was ousted. Judge Froozanfar was 12 years old at the time. She described returning to school in a "whirl of excitement." The girls' schools had been torn down by the Taliban, but that did not stop the girls. "We studied on a burning sand floor. There were no buildings. No desks. No chairs. What was important for us was to study, so that we could move ahead." While in high school, Judge Froozanfar was interested in working in radio and television and took a course in journalism. She applied to a local television station for a job, hoping to be a news reader but expecting a job in children's programming. To her delight, she was hired to be a news anchor for an evening news program running at 5:30 each night. When she started that job, she was still a teenager and in school; she continued that job for five years. On graduating from high school, she headed for law school, keeping her job as a news anchor at night while attending school during the day. Judge Froozanfar told me that she knew from the start that she wanted to be a judge. She said, "I saw a society where women did not know anything about their rights and were persistently victims of domestic violence. I decided to be a judge and to work to change this." She went straight from law school to the two-year judge's training course and was then appointed to the Primary Court, Criminal Division, in Kabul, a position she held for six years, right up to August 15, 2021, when the Taliban took Kabul.

While at law school, Judge Froozanfar married a colleague she met through her work in television. He was a sound engineer. Their first child was born while she was completing her judge's training program. She chuckled, "I was still recovering from the C-section on the day I was sworn in as a judge." She took the baby to work with her. He was cared for at the daycare in the courthouse, and she breastfed him during breaks. Three years later, their second child (a girl) was born. When her daughter was a few months old, Judge Froozanfar returned to work and her daughter went with her, attending the daycare in the courthouse. Judge Froozanfar also had considerable assistance from family members, particularly her husband's mother, in looking after the children. She and her husband lived with her husband's extended family, which was the norm. As a judge on the Primary Criminal Court, Judge Froozanfar (as part of a panel of three judges) presided over typical criminal trials such as theft, kidnapping, assault, and murder. Many of the accused were members of the Taliban. Most lawyers

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and judges have cases in their careers that they carry with them forever. I asked Judge Froozanfar if that was true for her. She told me about a case where a man was charged with murder as part of an organized crime ring. Essentially, he was an assassin for hire. He was convicted and sentenced to 30 years' imprisonment. However, it was this man's circumstances that make the case memorable. He had been very poor, struggling to earn a living by selling used clothing. He could not make enough money to feed his family. When he was first approached by the criminal organization to work for them, he refused. However, he eventually relented and would murder people for the organization, sometimes for as little as the equivalent of ten or twenty dollars. The criminal organization would approach people and ask if they had an enemy they wanted to kill. If that person named someone, the organization would go to the intended victim and tell him that if he paid more they would kill the first man who had ordered the hit. In this case, the accused murdered both the man who had ordered the first hit and his 12-year-old son. Judge Froozanfar had no difficulty with the verdict or sentence but carried with her the underlying tragedy of the impact of poverty on so many lives.

Astoundingly, while working full time in one of the most demanding and stress-ridden jobs imaginable, and with two very small children, Judge Froozanfar completed a two-year master's degree at Kabul University, graduating in 2019.

Safety and security

Even at the best of times, working as a woman judge in Afghanistan was a demonstration of courage. Judge Adib told me that while she was working in Kapisa there had already been security concerns and that in various parts of the country judges, both men and women, had been attacked in their cars, travelling to court. Some were killed. Judge Adib was all too aware of the danger. She told me, "Every day when I went to Kapisa, I did not expect to come home." Still, she continued to work. In her final year as a judge, those concerns intensified. There were many threats on the lives of judges, which would be communicated to them by their security staff. Judge Adib was also acutely aware of the two women judges who had been killed by a terrorist attack on their way to work in January 2021. She had previously worked with one of them. I asked her what kind of toll that took. She said, "Sometimes we talked about it among ourselves. But we all just went to work. Nobody quit for that reason." However, by July 2021, the war was all around them in Balkh Province. On August 8, Judge Adib took her children back to her family home in Kabul believing they would be safe there. Her husband stayed behind in Balkh. She stated, "Back then, I never thought the Taliban would take power in Kabul. But then on August 15, 2021, Kabul fell. That day, our dreams died."

Judge Nemati had similar experiences. As the only woman judge in the province, she became known in the community. She said that some educated and intellectual people were highly supportive of her being a judge, but that she faced much opposition, particularly from accused persons who appeared before her charged with crimes of violence against women. She said that many of these men, some of them Taliban, threatened to kill her. There were security officers at the courthouse for the protection of the judges, but the problem of getting to and from the courthouse safely was a challenge. When I asked Judge Nemati about the impact of the two women judges killed in Kabul in January 2021, she told me she had stopped using her personal car to get to work since she was too readily identifiable. Instead, she travelled by rickshaw. At first I thought we were having a language problem – she could not have meant "rickshaw." However, she was quite clear. She took a rickshaw, a three-wheeled bicycle pulling a passenger wagon. She used a different route and a different driver every day and wore a full burqa so that she could not be recognized, changing into her judicial attire after she was inside the courthouse. I think I must have appeared to be shocked by this revelation, as she then further explained to me, "I loved my job. It was my duty to be there on time every day. Even on the day when the Taliban took control of Faryab, I had gone to do my duty that morning. When I went to the court, there was no one. That day was difficult for me and I came home like a dead body. I lost all my dreams in one day." When the Taliban took control of Afghanistan, all prisoners were released, including many Judge Nemati had sent to jail. She was threatened. It was no longer safe to live in her own house. She and her husband went into hiding.

Like her judicial colleagues, Judge Froozanfar was aware of the danger in fulfilling her duties as a woman judge in Kabul, but nevertheless continued to do her job, day after day, notwithstanding the difficulties and security concerns. In the fall of 2022, I travelled with Judge Froozanfar and another Afghan judge to a conference in Ottawa for international judges. The two judges were to be speakers, with me moderating. In preparation, I asked Judge Froozanfar to describe the psychological impact that the murder of the two women judges in Kabul had on her. She looked at me calmly and said with steel in her voice, "It made me more determined." Recently, Judge Froozanfar told me about the most frightening experience she had as a judge. She was sitting in court when a large explosion occurred right in front of the courthouse. Terrorists had exploded a bomb at a building 50 feet across the street, and some shooting was going on outside. Judge Froozanfar's infant daughter was in the daycare just inside the front door of the courthouse. Court security officers directed all the judges to stay in place toward the rear of the building while they went to the front to get the children. There was concern that the terrorists might enter the courthouse and try to kill the judges. Ignoring those security instructions, Judge Froozanfar and several other women judges raced to the front of the building and snatched up their children. She described this as a "very bad day," when she feared she would actually be killed.

The escape from Afghanistan

The stories about the Afghan women judges and their families escaping from Afghanistan is the stuff of which movies are made. Their journeys were fraught with danger and involved multiple safe houses, frequent moves to unknown locations under the dark of night, cover stories in case they were intercepted, and the trust of strangers to deliver them to the next stage of their journey without betrayal. Various international groups were involved, but front and centre among them was the International Association of Women Judges. All three of these women judges were assisted by the

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IAWJ to safeguard their documents, get them to safe locations, and then get them out of Afghanistan by various routes and eventually into Greece. The channel of communication was constant – open at all hours of the day and night.

On the day the Taliban took Kabul, Judge Froozanfar went to the university where she had obtained her master's degree. She did not have the documentation to prove she had completed the degree and was determined she would not leave until she had it. She said her mother was calling her on her cellphone every 10 minutes to be sure she was safe and to urge her to leave. Having obtained her documentation, Judge Froozanfar headed for her mother's home, where her husband and children were waiting. She saw people running through the streets in panic. She recalls seeing students at a music school destroying their instruments to avoid being identified as musicians, given that playing music was forbidden by the Taliban. Judge Froozanfar and her husband took photographs of all their documentation, including their marriage licence, identification, judicial credentials, and academic degrees, and emailed them to the IAWJ. Then they abandoned their documents and started their flight. She and her husband left their home with their two children (then aged six and three) and stayed at a different location every night, until the IAWJ had arranged safe passage for them. A seriously complicating factor was that Judge Froozanfar was pregnant with her third child and knew she would need a C-section, as had been required for her other two children. The C-section had been scheduled in Kabul for the 37th week of her pregnancy. She was at 35 weeks when she and her family fled Kabul. She was not supposed to fly, but she had to. Fortunately, she made it to Greece before she went into labour and was able to get to a hospital in time for the C-section and the delivery of Mohammed, a healthy and beautiful boy. The family arrived in Canada on June 22, 2022. Little Mohammed, barely a year old and still being breastfed, went with us to the conference in Ottawa – an utterly enchanting and happy child.

Judge Adib and her family also moved around Afghanistan waiting for word from the IAWJ about how they would get out of the country. Eventually, they received a call at one in the morning giving them a rendezvous location. They travelled by bus to Mazar-e-Sharif, a city in which the family had previously lived while Judge Adib was serving on the family court and her husband was the chief military prosecutor. She said everyone was given a cover story in case they were stopped. Some people pretended to be on their way to a wedding in Balkh Province. Her family's story was simply that they were going home after visiting Kabul. The bus was stopped and searched by the Taliban – a terrifying experience – but they were not delayed further. On arrival at their supposed destination, they did not go to their home but were taken to a safe house and a few days later moved out of the country. They left Mazar-e-Sharif with only the clothes they were wearing. After several months in Greece, Judge Adib's family finally obtained their visas to enter Canada. They landed in Toronto on May 25, 2022, and were the first of the families to arrive in Ontario.

Judge Nemati and her husband were also assisted by the IAWJ to escape from Afghanistan. Somebody drove them to Mazar-e-Sharif, where they were able to board a plane for Greece. They left all their identification behind, and Judge Nemati disguised herself in a burqa. They stayed in Greece for many months until finally arriving in Canada on June 15, 2022.

Resettlement in Canada

All three women, as is common among the Afghan judges, have been unfailingly gracious in expressing their gratitude to the IAWJ for getting them and their immediate families out of danger and to their Canadian sister judges, who have helped smooth their transition in Canada. This process, however, has not been easy. Understandably, all of them are worried about their family members left behind in Afghanistan. They are regularly in touch with their families and tell them things are going well here. But the reality of their new lives is that they miss their extended families and struggle with the limited resources available, the cost and scarcity of housing, and the lack of jobs. Having achieved so much in their lives, they now find themselves starting again from zero.

With Canadian refugee settlement workers and resources stretched to the breaking point, the Canadian partner judges stepped in to help their Afghan sisters in myriad ways – filling out forms and applications, searching for housing, moving, finding furniture and clothing, and accessing community resources. The Afghan Women's Organization has been another extremely valuable resource in supporting their transition. However, the financial assistance provided by the Canadian government under the refugee program was limited to 12 months and for these families has either run out or is about to run out. They now face important transitions away from federal assistance and must decide whether their English language proficiency enables them to obtain employment other than minimum wage survival jobs; whether they should devote their energy to improving their language skills, provided that financial assistance can be made available through Ontario Works or an assortment of student loans, scholarships, and grants along with daycare; and whether, for those with language skills that make them eligible, to explore post-secondary education at universities or colleges.

After spending months cooped up with their children in a hotel room near the airport, both Judge Adib and Judge Froozanfar were finally able to move into modest apartments in Toronto. They are feeling more settled. Judge Nemati and her husband have resettled in Guelph, where they knew some people who were originally from Afghanistan but have been in Canada for 20 years.

All the Afghan judges, including the three I interviewed for this article, are diligently studying English, and some are going to community college to pursue a more advanced program for academic English. Those with children ruefully report how quickly the youngsters have advanced in their mastery of the English language. As Judge Froozanfar laughed, "Even my two-year-old speaks better English than I do." Not quite true, as her English skills have advanced considerably in the time I have known her, but I know what she means: the children have simply soaked up the language, as is so often the case with new immigrants. For the adults, it is much more difficult.

Those with children have been able to make friends here through the kids' schools and after-school activities. Judge Adib commented on what a welcoming country Canada is to people from so many different parts of the world. She now includes among her friends a woman from Somalia, another from Sudan, and another from Pakistan, all of whom she met at the park through her children. The judges also expressed some relief that the Canadian winter is not as brutal as they had heard it would be. I, and others, have explained that their first winter was milder than usual, but they remain optimistic.

All three women aspire to attend university in Canada as soon as their English language skills permit. At this point, they hope to go to law school or perhaps to train as paralegals. A national committee of retired judges and academics is looking at academic options for them. Others in Ontario are exploring ways to support the aspirations of these families, including arranging access to advanced English language education as a gateway to other opportunities.

Judge Adib and her husband made an agreement that the first one to get a job would support the family while the other went to school, and then they would switch. He was the first to find employment, working initially in a meat-packing company. Meanwhile, he was accepted into an accreditation program to be a licensed security guard, based largely on his experience with the police and military as a military prosecutor in Afghanistan. He successfully completed that course and is now looking for work while at the same time studying English. As soon as her English skills permit, Judge Adib will be off to university.

Judge Froozanfar and her husband are both enrolled in advanced English training at a community college. After that, they hope to pursue further education and career options. Childcare will be difficult. As is the case with almost all the families, they were accustomed to living in extended family arrangements, with lots of helping hands to care for children while their mothers worked.

At the time of writing, Judge Nemati is immersed in an English as a Second Language summer school program. Her husband, an engineer, is working as a machine operator for a company that makes auto parts. Both hope to pursue their education and careers when they have better English skills.

In sum, the Afghan judges and their families are happy to be here and grateful to be in a safe place. Notwithstanding the significant financial challenges they face, all look forward to a future where they can have meaningful careers and where their children can flourish. They are brave, intelligent, and determined. I am confident they will succeed.

Notes

1. CESifo Forum. 23 (January 2022), 7.
2. *Ibid*, 58–59.
3. Siavash Rahbari, "From Normative Pluralism to a Unified Legal System in Afghanistan?" *Asian Journal of Law and Society 5*, no. 2 (October 2, 2018): 289; The Constitution of the Islamic Republic of Afghanistan, Article 3.

