

CAN LAW STOP PROSECUTION OF  
AFGHANISTAN'S WOMEN AND GIRLS FOR  
MORAL CRIMES?  
SEARCHING FOR AN EFFECTIVE, PRACTICAL  
LEGAL METHODOLOGY

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*Abstract*

*As a woman working in rule of law in Afghanistan, I was confronted on a daily basis by what it means to be female and the severity of those constraints. This realization began every morning with the choice of what to wear. The daily task of dressing myself in a manner that protected my safety, security, and reputation gave me a tiny glimpse into the lives of Afghan women. I discovered how law is used to reinforce traditional and cultural beliefs and the grave injustices served on Afghanistan's women and girls. I also discovered how vast sums of foreign money and concentrated effort by scores of legal experts aimed at fixing these injustices had made little impact. Out of these experiences grew an intense desire to find a practical and effective method for working on rule of law that would actually yield positive results for my Afghan sisters.*

*This article describes my search and ultimate discovery of the applicability of the world travelling methodology in the Afghan context. World travelling was developed by Law Professor Isabelle Gunning in response to failed attempts to use law to stop female genital mutilation. Gunning argued that the use of law to criminalize harmful cultural practices may actually harm women. Gunning's method gives the practitioner a means to evaluate and develop a practical approach to achieving greater success to stop these*

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*practices. Drawing on my three years of experience in Afghanistan, I apply Gunning's method to the prosecution of Afghan women and girls for moral crimes. I describe how rule of law efforts have been largely unsuccessful and suggest alternatives that may yield better results for future generations of Afghan women and girls.*

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*Introduction: The Search for an Effective Method*

From 2010 to 2014, I lived in Afghanistan. When I share this information, the first question I am asked is whether I was in the military. The inevitable second question is “did you wear a burqa?” There is an automatic assumption that the only reason for an American to be in Afghanistan is to fight the war. The next image is the burqa, and since I am female the assumption is made that I wore one, too.<sup>1</sup>

When I returned to the United States, I struggled to describe my experience and understand my role as an American woman working in Afghanistan. In searching for a framework to conceptualize these ideas, I turned to the writings of legal scholars. I chose law because I am a lawyer and my work in Afghanistan involved supporting the Afghan government to implement the rule of law through training, teaching, mentoring and advising Afghan justice professionals. From the beginning, my search for a legal framework was guided by a need to understand my experience as both an American and a woman. I also wanted to know if there was an effective methodology for working on rule of law in a context so vastly different from what I had known in the United States.

My work in Afghanistan involved a number of different legal issues including juvenile justice, human trafficking, criminal law, and women’s rights. Here, I have chosen to focus on the prosecution and incarceration of women and girls in Afghanistan for moral crimes. I chose this topic because it has been the subject of much public outcry and condemnation. Both the media and international organizations have harshly criticized the practice and used it as a rallying point to justify continued intervention and funding. Various

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<sup>1</sup> In my experience, the burqa is a very specific item particular to Afghanistan. It is floor-length in the back and knee-length in the front with a mesh screen for the eyes. Women in Kabul typically wear one that is light blue in color. It can be seen regularly on the streets and has a long history pre-dating the Taliban. There are many other types of head coverings also worn in Afghanistan. The most typical is a scarf loosely worn over the crown of the head so that the front of the hair shows. There is no law that requires women to wear a burqa or cover their hair in Afghanistan.

international human rights agencies have lobbied the government to stop prosecution of women and girls for moral crimes yet little progress has been made. My research focused on finding a legal methodology that would allow international lawyers working in an international context to engage with local stakeholders to effect positive change on culturally complex and emotionally charged issues.

Part I is a description of my work in Afghanistan and personal observations of prosecution and incarceration of women for moral crimes. Part II is an overview of the rule of law critique and the debate within feminist legal literature of culture versus universal rights. Part III is a description of the *world travelling* methodology. Part IV is the application of this approach in Afghanistan. Part V examines how law has not been effective in stopping violence that leads to prosecution of women and suggests non-law alternatives consistent with the *world travelling* approach. I conclude that *world travelling* provides a practical approach for lawyers working in any cross-cultural context. The assessment of self, perspective, and context is a meaningful, effective, and practical way to find opportunities for strategic intervention in rule of law.

## I. My Work

### A. The Afghanistan Justice Sector Support Project

In November of 2010 I began working as the Juvenile Justice Advisor for the Afghanistan Justice Sector Support Program (JSSP),<sup>2</sup>

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<sup>2</sup> Overview, AFGHANISTAN JUSTICE SECTOR SUPPORT PROGRAM, <http://jsspafghanistan.com/index.php/wwork/sections.html> (last visited May 10, 2016). “The Justice Sector Support Program (JSSP) is a multi-pronged effort to develop and strengthen the capacity of the Afghan criminal justice sector institutions and justice professionals. Through capacity building, technical advice, and direct assistance, JSSP helps the justice institutions and the justice professionals perform their respective roles in delivering fair and effective justice services to the citizens of Afghanistan. In addition to working with justice institutions, JSSP participates on a variety of projects designed to promote access to a fair and effective justice system.” *Id.*

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a U.S. Department of State, International Narcotics and Law Enforcement Bureau program. JSSP was funded by the U.S. government and implemented by Pacific Architects and Engineers (PAE), a government contractor based in Virginia. JSSP began in Afghanistan in 2005 and the contract has been handled by PAE since its inception. The project was initially designed to provide legal training courses to Afghan judges, prosecutors, defense attorneys, and police. Thirty years of war and conflict had taken its toll on the Afghan justice system. Many lawyers and judges did not have the benefit of formal education nor access to legal text or the written law. JSSP held courses that were several weeks in length on core subjects such as constitutional law, criminal law, and criminal procedure. These trainings were conducted in several provinces.<sup>3</sup> Over the years, JSSP expanded to provide technical and administrative support to the Afghan Ministry of Justice (MOJ), the Ministry of Women's Affairs, the Supreme Court, and the Office of the Attorney General. Juvenile Justice was a subdivision of the JSSP Ministry of Justice Assistance Section (MOJAS). MOJ governed the operation of the Juvenile Rehabilitation Centers (JRC) where juveniles accused and convicted of crimes were detained.<sup>4</sup>

*B. An Assessment of Juvenile Justice*

As the first JSSP Justice Advisor dedicated solely to juvenile justice, my first task was to conduct an assessment of the current system and make recommendations for training and advocacy. Over

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<sup>3</sup> See generally, *History of JSSP*, AFGHANISTAN JUSTICE SECTOR SUPPORT PROGRAM, <http://jsspafghanistan.com/index.php/who-we-are/history-of-jssp.html> (last visited May 10, 2016).

<sup>4</sup> The Ministry of Justice Assistance Section (MOJAS) provided support to ten departments in MOJ including the Taqin (responsible for drafting laws), the Huquq (Rights Department), Legal Aid, Government Cases, Property, and Administration and Finance. *Ministry of Justice*, AFGHANISTAN JUSTICE SECTOR SUPPORT PROGRAM, <http://jsspafghanistan.com/index.php/wwork/sections/ministryofjustice.html> (last visited May 10, 2016). In February of 2012, I became MOJAS Section Lead and supervised a team of approximately 30 national and international advisors supporting MOJ.

the course of two months, my team and I interviewed more than fifty juvenile justice stakeholders including judges, prosecutors, defense attorneys, JRC directors and staff, police, parents, and juveniles in detention. We also observed juvenile court proceedings. Through this process I learned of the vast needs of Afghanistan's children and the overall poor condition of the justice system. Juveniles accused of crimes were often not represented by defense attorneys because there were simply not enough defense attorneys in the country to handle their cases. The lack of formal birth registration and use of wrist-bone measurement to determine age allowed for corruption to permeate the system. Adults who wanted lighter sentences and better detention conditions would pay bribes to be classified as juveniles. As with the rest of the justice system, the poor compensation of government employees led to corrupt practices by police, prosecutors, and judges.<sup>5</sup>

The JRCs were either in poor condition or were rented houses that did not have adequate facilities. The Law on the JRCs required that detained juveniles receive education and job training, but there was little funding to provide these services and even when teachers were assigned they did not show up. Nutrition and sanitation were also inadequate. Many JRCs struggled to provide food and the budget per child was deplorably low. Most detained juveniles were given only rice and a small portion of meat each day. Bathroom and washing facilities were lacking. In the Kabul JRC that I visited frequently, the one toilet in each dormitory room was shared by at least 10 male juveniles and they often overflowed with sewage into the boys' sleeping area. From a physical, psychological, and access to justice perspective, the situation was dire. The conditions for female juveniles were even worse. Due to their smaller numbers, there were even fewer resources for education, health, and job training. There were inadequate physical facilities to house them. I even heard of one JRC director who housed the female juveniles in his house and subjected them to sexual abuse. Further compounding

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<sup>5</sup> At the time of this assessment, I was told that defense attorneys employed by Legal Aid were making approximately \$200 USD per month and judges \$500 per month. In contrast, Afghan attorneys employed by JSSP were given an initial salary of \$2,000 USD per month.

the injustice against females was their incarceration for crimes that are not even enumerated in the Afghan penal code: running away and attempted adultery.

C. *Criminal Prosecution of Afghan Women and Girls*

An Afghan woman or girl is usually charged with running away or attempted adultery when she is found outside of her home in the company of a non-relative male. A 2012 Human Rights Watch report explained that criminalization “relies on the assumption that women who run from home put themselves at unacceptably high risk of engaging in zina [adultery] because they become vulnerable and unsupervised away from the family home.”<sup>6</sup> Running away is not an enumerated criminal offense under Afghan law. Judges use Article 130 of the Afghan Constitution to convict women and girls of these crimes.<sup>7</sup> Article 130 states:

In cases under consideration, the courts shall apply provisions of this Constitution as well as other laws. If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner.<sup>8</sup>

Hanafi jurisprudence is one of the four schools of Islamic jurisprudence and the one followed in Afghanistan.<sup>9</sup> As an Islamic Republic, the tenets and principles of the Islamic religion are

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<sup>6</sup> “*I Had to Run Away*”: *The Imprisonment of Women and Girls for Moral Crimes in Afghanistan*, HUMAN RIGHTS WATCH 1, 35 (Mar. 2012), [http://www.hrw.org/sites/default/files/reports/afghanistan0312webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/afghanistan0312webwcover_0.pdf).

<sup>7</sup> The use of Article 130 was explained to me many times by juvenile judges and prosecutors as the basis for conviction in these cases. *See also* “*I Had to Run Away*”, *supra* note 6, at 34-35.

<sup>8</sup> CONSTITUTION OF AFGHANISTAN, Art. 130 (Afg.), *available at* <http://www.refworld.org/docid/404d8a594.html>.

<sup>9</sup> *Overview of Islamic Law*, AFGHANISTAN ANALYST, <http://afghanistan-analyst.org/afghan-law/islamic-law/> (last visited May 10, 2016).

supreme and no Afghan law shall contravene.<sup>10</sup> Therefore, judges use Article 130 as a means to enforce what they believe is Sharia Law.<sup>11</sup>

Adultery is a crime under Articles 426 and 427 of the 1976 Afghan Penal Code; however, the elements are not defined.<sup>12</sup> Under Sharia Law, proof of adultery requires four eyewitnesses to sexual penetration or a confession.<sup>13</sup> Attempt is defined in Article 29 of the Afghan Penal Code and requires the “starting of an act with the intention of committing a felony or misdemeanor.”<sup>14</sup> Similar to the common law concept, “attempt” under Afghan law requires a substantial step toward the commission of the crime. In the Afghan context, a woman in the company of a non-male relative was sufficient. Police and prosecutors then used forced confessions to meet the evidentiary requirements.<sup>15</sup>

During my first month in-country, I attended the trial of a 16 year-old girl who had run away with her 17 year-old boyfriend. The girls’ family had promised her to another man without her consent.<sup>16</sup>

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<sup>10</sup> CONSTITUTION OF AFGHANISTAN, Art. 3 (Afg.), available at <http://www.refworld.org/docid/404d8a594.html>.

<sup>11</sup> Although there is no law that forbids women from being outside of the home in the company of a non-male relative, there is a strong cultural tradition that prohibits this behavior. Juvenile justice practitioners explained that Article 130 allows them to maintain the honor of Afghan women and criminalize this behavior despite the lack of a specific law.

<sup>12</sup> Afghanistan Penal Code, 1976, Art.s 426-27, available at <http://www.refworld.org/docid/4c58395a2.html>.

<sup>13</sup> “*I Had to Run Away*”, *supra* note 6, at 36.

<sup>14</sup> Afghanistan Penal Code, 1976, Art. 29, available at <http://www.refworld.org/docid/4c58395a2.html>.

<sup>15</sup> Parents, juveniles, prosecutors, defense attorneys and even police described forced confessions. *See, e.g., “I Had to Run Away”*, *supra* note 6, at 89-90.

<sup>16</sup> Forced marriage is prohibited under the 2009 Afghanistan Law on the Elimination of Violence Against Women. Law on Elimination of Violence against Women, 2009, Art. 26 (Afg.). Under Islamic Law, both parties must consent to marry in order for the marriage to be valid. *See* Imani Jaafar-Mohammad & Charlie Lehmann, *Women’s Rights in Islam Regarding Marriage and Divorce*, 4 WM. MITCHELL J. L. & PRAC. 3 (Apr. 11, 2011), <https://wmlawandpractice.com/2011/04/11/women%E2%80%99s-rights-in-islam-regarding-marriage-and-divorce/#13>.

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The court found that because this young couple had been alone in each other's company they had intended to commit "*zina*" (sexual intercourse outside of marriage). The girl had been subjected to a pelvic examination and although the results were inconclusive, she was sentenced to eight years of incarceration. The long-term effect of this sentence was catastrophic. This young girl would be forever dishonored and disowned, or even killed by her family upon release.

I soon learned that the majority of the female juveniles detained in Afghanistan's JRCs had been convicted of running away, adultery, or attempted adultery.<sup>17</sup> In a June 2014 appeal on its website to stop these prosecutions, Human Rights Watch estimated

95 percent of girls and 50 percent of women imprisoned in Afghanistan have been accused or convicted of "moral crimes" such as *zina*. Often, the only evidence in these cases was that the women or girls had "run away" from home either to escape domestic violence or an illegal forced marriage, and were then charged with "attempted *zina*," a crime that does not exist in Afghan law.<sup>18</sup>

These girls received long sentences.<sup>19</sup> During detention they received little in the way of education, job training, and health care. Prospects for an independent life post-detention are non-existent. Women in Afghanistan cannot live alone and women who have dishonored their families are left to beg or are used for prostitution. Often the all-female juvenile bench in Kabul would give families the

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<sup>17</sup> MOJ maintained statistics on crimes committed by male and female juveniles. Adultery and attempted adultery were the most common among female juveniles. See also, *Afghanistan: Surge in Women Jailed for "Moral Crimes"*, HUMAN RIGHTS WATCH (May 21, 2013), <https://www.hrw.org/news/2013/05/21/afghanistan-surge-women-jailed-moral-crimes>.

<sup>18</sup> *Afghanistan: End 'Moral Crimes' Prosecutions*, HUMAN RIGHTS WATCH (June 23, 2014), <https://www.hrw.org/news/2014/06/23/afghanistan-end-moral-crimes-prosecutions>.

<sup>19</sup> Under the 1976 Afghan Penal Code, *zina* is punishable by a "long" sentence of five to fifteen years. See "*I Had to Run Away*", *supra* note 6, at 36. Article 39 of the Afghanistan Juvenile Code reduces the maximum sentence for juveniles based on age. See Afghanistan Juvenile Code, Official Gazette No. 846, published 2005/03/23 (1384/01/03 A.P.)

option of marrying the offending couple as a way to avoid detention and ensure a future for the girl.

The number of Afghan females in detention in Kabul and Herat, the two largest cities, was not large—usually only numbering 25 to 30.<sup>20</sup> Medium-size cities such as Jalalabad and Kunduz usually had about 15 Afghan female juveniles.<sup>21</sup> This was in contrast to the male population in Kabul and Herat which usually numbered around 120.<sup>22</sup> Detained juveniles were primarily from families who could not afford to pay bribes to keep their son or daughter out of detention. Despite the relatively low number of girls affected, the lifelong impact of detention was devastating. Unlike the boys who would one day be free and could find work to support themselves, the girls were utterly ruined.<sup>23</sup>

#### *D. Stopping Prosecution of Moral Crimes*

Nothing in PAE's pre-deployment training had prepared me for how to effectively tackle these sensitive cultural and legal issues. I began to talk with Afghan attorneys and other non-governmental organizations (NGOs) about possible strategies. I was especially eager to talk to female juvenile justice professionals as I sensed they would be most empathetic. I was surprised by their view. The all-female bench of the Kabul Appellate and Primary Juvenile Court were strict in their approach. They explained to me that it was their job to uphold societal morals, and that these girls deserved punishment. They also explained that they were saving these girls' lives by sending them to detention as they would otherwise be killed by their families for bringing dishonor. The two female JRC

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<sup>20</sup> This statistic is based on my personal trips to the KJRC from November 2010 through December 2012.

<sup>21</sup> This statistic is based on MOJ records from November 2010 through December 2012.

<sup>22</sup> *Id.*

<sup>23</sup> In Afghanistan, the honor of the family rests on the shoulders of its female members. If a woman dishonors her family and is cast out or sent away (such as to the JRC) she has permanently brought dishonor upon herself and her family.

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Directors in Kabul and Herat were more sympathetic; however, they insisted that these girls knew their actions would bring dishonor and that attempts to be modern would only bring a tragic end.

The Herat JRC Director had taken progressive steps to help some of the girls in her facility by accessing an often ignored provision in the Afghan JRC Law. The law allows for juveniles to serve their sentence in the “open” JRC.<sup>24</sup> The “open” JRC is a day-program where the juvenile spends the day at the center and returns to her family at night. This provides for a “consequence” while maintaining the juvenile’s relationship with her family. Sentencing to the open JRC is dependent on cooperation by the juvenile’s family because they must agree to transport the juvenile to and from the facility each day. For many impoverished families, this is a great hardship as the cost and distance of transportation are insurmountable barriers.<sup>25</sup> In Herat, three female juveniles convicted of moral crimes were serving their sentence in the “open” JRC.<sup>26</sup> My team and I travelled to Herat to meet these girls and their parents. We hoped that by understanding the specifics of these cases and the characteristics of the families we could encourage greater use of the open JRC for girls. Sadly, when we arrived in Herat, the families refused to see us. We were told by the director that the parents were afraid that conversations with us would expose them in the community and place their families in danger.

My team and I continued to develop trainings and look for ways to stop the practice of prosecution and incarceration of girls for running away and attempted adultery. We worked closely on training and advocacy efforts with numerous other organizations including UNICEF, Terre des Hommes, Aschiana, and Save the Children. We

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<sup>24</sup> Law on Juvenile Rehabilitation and Correction Centers, 2009 (Afg.) available at [http://jsspafghanistan.com/images/Laws\\_Regulations/Law%20on%20Juvenile%20Correction%20Center.pdf](http://jsspafghanistan.com/images/Laws_Regulations/Law%20on%20Juvenile%20Correction%20Center.pdf).

<sup>25</sup> UNODC had attempted to increase the use of the open JRC by providing a bus to transport juveniles, but the program never came to fruition. See *Support for Children at the Kabul Open Juvenile Rehabilitation Centre*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, <https://www.unodc.org/afghanistan/en/frontpage/2011/July/support-for-children.html> (last visited May 13, 2016).

<sup>26</sup> This was the number of female juveniles in the Open JRC at the time of my visit in August 2011.

worked diligently on legal arguments to counter accusations of moral crimes against female juveniles. We even invited Kabul's juvenile judges to review the curriculum and provide feedback. Tremendous effort was dedicated not only by my staff but also by other international advisors to combat these practices. International organizations published reports and urged the Afghan government to take action. One Human Rights Watch report documented numerous personal stories of incarcerated women and girls.<sup>27</sup> The report concluded with a series of recommendations to the Afghan government to stop this practice. However, progress remained dubious. All of our collective legal knowledge and well-crafted arguments against criminalization seemed to fall on deaf ears.

## II. Summary Critique of Rule of Law

Rule of law programs generally, and rule of law in Afghanistan, in particular, have been criticized as ineffective, expensive, and imperialistic assertions of the West.<sup>28</sup> Initiatives aimed at improving the status of women in Afghanistan have also been criticized as ineffective and merely an excuse for cultural imperialism by Western nations.<sup>29</sup>

Law Professor Brian Z. Tamanaha argued that rule of law in Afghanistan has had little impact and these projects should be discontinued.<sup>30</sup> Tamanaha suggests that shutting down rule of law projects would have little impact on the country's legal systems.<sup>31</sup> Tamanaha describes how persons with little to no overseas

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<sup>27</sup> "I Had to Run Away", *supra* note 6.

<sup>28</sup> See generally, Cynthia Alkon, *The Flawed U.S. Approach to Rule of Law Development*, 117 PENN. ST. L. REV. 797, 859 (2013).

<sup>29</sup> See Kevin J. Ayotte & Mary E. Husain, *Securing Afghan Women: Neocolonialism, Epistemic Violence, and the Rhetoric of the Veil*, 17(3) NWSA J. 112 (2005); Deniz Kandiyoti, *Between the Hammer and the Anvil: post-conflict reconstruction, Islam and women's rights*, 28(3) THIRD WORLD Q. 503 (2007); Alkon, *supra* note 28.

<sup>30</sup> Brian Z. Tamanaha, *The Primacy of Society and the Failures of Law and Development*, 44 CORNELL INT'L L.J. 209, 216-18 (2011).

<sup>31</sup> *Id.*

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experience are hired for rule of law projects around the world. He accurately describes me and my colleagues as “ambitious, well-meaning lawyers, retired judges, and police officers who travel abroad to implement these programs.”<sup>32</sup> “Unlike the development professionals who dominate many other areas of development aid, many Western rule-of-law aid practitioners have little or no prior experience in developing and transitional societies.”<sup>33</sup> Tamanaha criticizes these legal missionaries for failing to realize that the law itself “might be a part of the problem or that a more effective solution might lie elsewhere.”<sup>34</sup> He argued that rule of law implementers often have “scant awareness of how transplanted law operates, or does not operate, in radically different social and cultural contexts.”<sup>35</sup> Law Professor Cynthia Alkon agrees and suggests that countries such as Afghanistan may not be ready for rule of law assistance.<sup>36</sup> She argues that incompetent attempts will ultimately harm individuals and the development of rule of law.<sup>37</sup>

Other scholars have suggested a more moderate approach that limits rule of law projects to doing what is “good enough.”<sup>38</sup> Sultan Barakat and Gareth Wardell, scholars at the Post-War Reconstruction and Development Unit at the University of York, describe spheres of influence within Afghan society where women yield considerable decision-making and authority.<sup>39</sup> They blame Western unfamiliarity with Afghan culture for the failure to recognize areas of influence and the resulting missed opportunity to work with Afghan women

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<sup>32</sup> *Id.*, at 237 (citing Laure-Hélène Piron, *Time to Learn, Time to Act in Africa*, in *PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE* 275, 294 (Thomas Carothers ed., 2006)).

<sup>33</sup> *Id.* (citing Stephen Golub, *A House Without a Foundation*, in *PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE* 105, 127 (Thomas Carothers ed., 2006)).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Alkon, *supra* note 28, at 859.

<sup>37</sup> *Id.*

<sup>38</sup> Sultan Barakat & Gareth Wardell, *Exploited by Whom? An Alternative Perspective on Humanitarian Assistance to Afghan Women*, 23(5) *THIRD WORLD Q.* 909 (2002).

<sup>39</sup> *Id.*

“to further peace and recovery.”<sup>40</sup> They argue for development efforts that empower Afghan women through traditional roles.<sup>41</sup>

Feminist legal literature, in general, criticizes rule of law initiatives for reinforcing male domination and patriarchy. Feminists argue that rule of law’s “jurisprudential preoccupation with the duty to obey law and the authority of law overlook[s] law’s tendency to validate and facilitate oppression and violence.”<sup>42</sup> Deborah Weissman warns that “old paradigms of colonialism [are] being recreated in the guise of global integration.”<sup>43</sup> Transitional Justice Experts Fionnuala Ni Aoláin and Dr. Michael Hamilton caution that rule of law reform in transitional societies can often result in a “moment of retrenchment,” reasserting systemic inequities that pre-existed the conflict.<sup>44</sup> In addition, rule of law’s emphasis on procedural not substantive reform ignores law’s inherent maleness and discrimination against women.<sup>45</sup> Professor Isaac Kfir describes post-conflict reconstruction as “inevitably a process of re-masculinization.”<sup>46</sup>

The debate between Western feminists and feminists from the developing world is described in the literature as a debate between universalists and cultural relativists. The universalists, or Western feminists, argue that there is a core set of rights that apply to women world-wide. Feminists from the developing nations are described as

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<sup>40</sup> *Id.* at 919.

<sup>41</sup> *Id.*

<sup>42</sup> Eve M. Grina, *Mainstreaming Gender in Rule of Law Initiatives in Post-Conflict Settings*, 17 WM. & MARY J. WOMEN & L. 435, 450 (2011) (quoting Lynne Henderson, *Authoritarianism and the Rule of Law*, 66 IND. L.J. 379, 383 (1991)).

<sup>43</sup> Deborah Weissman, *Rethinking Gender and Human Rights in the Global Political Economy*, GLOBAL-E: A GLOBAL STUD. J., Sept. 9, 2009, <http://global-ejournal.org/2009/09/09/rethinking-gender-and-human-rights-in-the-global-political-economy/>.

<sup>44</sup> Fionnuala Ni Aoláin & Michael Hamilton, *Gender and the Rule of Law in Transitional Societies*, 18 MINN. J. INT’L L. 380, 381 (2009).

<sup>45</sup> *Id.* at 381-82.

<sup>46</sup> Issac Kfir, *Security, Gender, and Post-Conflict Reconstruction: The Need For a “Woman Question” When Engaging in Reconstruction*. 22 TEX. J. WOMEN & L. 71, 111 (2012).

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cultural relativists. They criticize Western feminist ideology as being grounded in Western ideas of equality and justice and failing to reflect the experience of women in the developing world. Law Professor Dianne Otto described the competing perspectives of these two ideologies in her 1997 article *Rethinking the 'Universality' of Human Rights Law*:<sup>47</sup>

In contemporary debates, the “universalists,” who are primarily Northern states, predict that even the slightest “dilution” of universalism will give the green light to tyrannical governments, torturers, and mutilators of women. The universalist position completely denies that the existing universal standards may themselves be culturally specific and allied to dominant regimes of power.<sup>48</sup>

Otto then described the cultural relativist perspective:

The relativist position advances alternative claims to universal Truth that have their foundations in non-European cultural traditions and rejects the current human rights paradigm as oppressive for developing states with different cultures.<sup>49</sup>

Kenyan Jurist Celestine Nyamu described how human rights and development have both attacked culture as either encouraging cultural practices that are seen as harmful to women or as an obstacle to women’s full participation in society.<sup>50</sup> According to Nyamu, both human rights and development groups have adopted what she calls an *abolitionist approach* to stop harmful cultural practices.<sup>51</sup> Nyamu criticized this approach for fostering “accusations of cultural imperialism” and limiting “a holistic understanding of the context in which these practices are embedded” which could lead to better solutions.<sup>52</sup> Nyamu advocated for an approach that allowed for both

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<sup>47</sup> Dianne Otto, *Rethinking the “Universality” of Human Rights Law*, 29 COLUM. HUM. RTS. L. REV. 1, 8 (1997).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Celestine I. Nyamu, *How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?*, 41 HARV. INT’L L.J. 381 (2000).

<sup>51</sup> *Id.* at 392.

<sup>52</sup> *Id.* at 393.

internal discourse and cross-cultural dialogue.<sup>53</sup> This methodology, known as *world travelling*, has been promoted by legal feminists as effective for addressing challenging cultural practices.<sup>54</sup>

### III. *World Travelling*

#### A. *Basic Concepts*

Law Professor Isabelle Gunning articulated a three-step methodology for application of *world travelling* in her 1992 article *Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries*.<sup>55</sup> Gunning built on the concepts of *arrogant perception* and *world travelling* described by other scholars such as Maria Lugones<sup>56</sup>, Chandra Mohanty<sup>57</sup> and Rosa Bradiotti.<sup>58</sup> *Arrogant perception* is the tendency of the observer to view herself as the center of the universe and measure *the Other* according to her own cultural norms and standards.<sup>59</sup> The result is seeing *the Other* and her culture as a lesser form of oneself. The more we see the other culture as different the more distance we perceive and we fail to recognize shared similarities.<sup>60</sup> Gunning emphasized the need to find a balance between independence and interconnectedness.<sup>61</sup> The observer must see *the Other* as separate

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<sup>53</sup> *Id.* at 394.

<sup>54</sup> *Id.* at 394.

<sup>55</sup> Isabelle R. Gunning, *Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 COLUM. HUM. RTS. L. REV. 189 (1991-1992).

<sup>56</sup> Maria Lugones, *Playfulness, World-Traveling and Loving Perception*, 2 HYPATIA 3 (1987).

<sup>57</sup> Chandra Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses*, 61 FEMINIST REV. 333 (1988).

<sup>58</sup> Rosa Braidotti, *The Exile, The Nomad, and The Migrant, Reflections on International Feminism*, 15 WOMEN'S STUD. INT'L F., 7, 10 (1992).

<sup>59</sup> Isabelle Gunning, *supra* note 55.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

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from herself without creating too much distance.<sup>62</sup> Conversely, the perceiver cannot distance herself too much from *the Other* or she will fail to find shared similarities.<sup>63</sup>

*World travelling* is a term used by women of color to describe the experience of adapting their mannerisms and patterns of speech as they move through a variety of social situations in their daily lives.<sup>64</sup> These women learn to speak various languages based on the setting in which they find themselves and the expectations of how that setting expects them to act.<sup>65</sup> “‘Travelling’ is the shift from being one person in one world to a different person in another world. But the difference is part of a coherent whole; one does not act or pose as someone else.”<sup>66</sup> *World travelling* informs the concept of interconnectedness and teaches the practitioner how to identify with similarities while respecting independence.<sup>67</sup> According to Gunning, “recognition of both independence and interconnectedness is essential for cross-cultural understanding.”<sup>68</sup>

Gunning’s method is rooted in feminist philosophy with an emphasis on a multiplicity of perspectives, it cautions against the assumption that one particular view is “the truth.”<sup>69</sup> It also seeks to find a way to respectfully understand cultural practices (even ones we find abhorrent), engage in multicultural dialogue and find “areas of overlap.”<sup>70</sup> Gunning urges advocates to look for a set of valid universal rules that we can embrace without sliding into universalist and imperialist territory.<sup>71</sup> She also cautions against sliding too far to the other extreme where we risk entering a world of shifting morals and ethical confusion.<sup>72</sup>

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*, at 203.

<sup>65</sup> Gunning, *supra* note 55, at 203.

<sup>66</sup> *Id.*

<sup>67</sup> Lugones, *supra* note 56.

<sup>68</sup> Gunning, *supra* note 55, at 204.

<sup>69</sup> *Id.*, at 190.

<sup>70</sup> *Id.*, at 191.

<sup>71</sup> Gunning, *supra* note 55.

<sup>72</sup> *Id.*

*B. A Three Step Methodology*

Gunning gives the legal practitioner a three-step approach for application of *world travelling*.<sup>73</sup> Step one is a thorough examination of one's own historical and social context. In her article on female genital mutilation (FGM), Gunning conducts an historical review of the use of genital surgeries in the U.S.<sup>74</sup> Gunning describes U.S. doctors operating on the genitalia of women to solve mental health problems or to correct the genitalia of babies born with indistinct sex organs.<sup>75</sup> Step one is necessary for finding the right degree of independence.<sup>76</sup> Understanding one's own cultural use of female genital surgeries makes it difficult to harshly criticize the same practice in another culture. Step two is seeing oneself as *the Other* sees you.<sup>77</sup> Here, understanding *world travelling* and how one is perceived in different contexts is critical to understanding how one personally impacts the setting in which she is present.<sup>78</sup> Step three is seeing *the Other* as she sees herself.<sup>79</sup> This requires the practitioner to step inside the shoes of *the Other* and to see her world and her place in it from her perspective.<sup>80</sup> Gunning described two methods for achieving the third step. The first is the examination of a practice in one's own culture that *the Other* would find difficult to understand. The second is to look in careful detail at the complex organic social environment of *the Other* that has produced the culturally challenging practice.<sup>81</sup> In her analysis of FGM, Gunning explored its practice and role in maintaining a complex system of male domination over women.

Gunning then proposed the use of *world travelling* to stop FGM. She argued that attempts to use national legislation had been

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Gunning, *supra* note 55.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

unsuccessful due their perception as an imposition of Western values and imperialistic in nature.<sup>82</sup> Gunning cautioned against the use of law alone to effect social change.<sup>83</sup> She warned that legal reforms may be met with resistance and often lead to a lack of implementation.<sup>84</sup> Additionally, criminalization of cultural practices may result in the unintended consequence of prosecuting the very population you are trying to assist.<sup>85</sup> In the case of FGM, African women performed the surgeries and maintained the practice as a necessary requirement for marriage.<sup>86</sup>

Instead of forcing national legislation, Gunning suggested using universal norms embodied in international human rights treaties as a basis for dialogue around cultural practices.<sup>87</sup> Gunning argued that human rights treaties contain norms that represent a normative consensus.<sup>88</sup> Instead of using universal human rights' norms to criticize or criminalize, Gunning supported their use in organizing productive dialogue. Gunning argued that it is the very weakness of enforcement mechanisms in human rights law that makes it suitable to this methodology. The norms contained in these treaties provide opportunity for feminists to engage in dialogue around cultural practices without punishment, embarrassment, or pressure.<sup>89</sup>

#### IV. *World Travelling in Afghanistan - The Application*

##### A. *Step One: Context*

To begin our application of *world travelling* in Afghanistan, we must first look at our own historical and social context. The

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<sup>82</sup> *Id.*

<sup>83</sup> Gunning, *supra* note 55.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

United States has a history of prosecution and incarceration for moral crimes that exists to this day. According to Law Professor Jonathan Turley, U.S. morality laws date back to the church-based “bawdy courts” of 13th-century England.<sup>90</sup> “In the Colonies, adultery was once a capital crime.”<sup>91</sup> Persons convicted of adultery faced execution or were given a brand on their foreheads (the “Scarlet Letter”).<sup>92</sup> Today, laws prohibiting adultery and fornication still exist. In 2004, the State of Virginia prosecuted former Town Attorney John R. Bushey for a long-term affair with Town Clerk Nellie Mae Hensley. Bushey had been married to another woman throughout the affair. Bushey pled guilty to the charge and was sentenced to 20 hours of community service. Professor Turley noted:

Like 23 other states, Virginia still might prosecute if a husband or wife has consensual sex outside the marriage. Ten states, including Virginia, have anti-fornication statutes as well, prohibiting sex before marriage. Like many fundamentalist Islamic states, the United States uses criminal penalties to police the morality of its citizens.<sup>93</sup>

According to Turley, “[s]ince 1980, adultery cases have been recorded from Alabama to Massachusetts to Pennsylvania. And in 2003, Georgia prosecuted an anti-fornication case.”<sup>94</sup>

Acknowledgement of our own history of prosecution for moral crimes is critical to effectively understand and address this practice in Afghanistan. *World travelling* urges us to reflect on our own historical context and exam bias toward similar practices in other cultures. This reflection reminds the practitioner to set aside arrogant perception and maintain a balance between independence and interconnectedness. It also serves as an important reminder of

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<sup>90</sup> Jonathan Turley, *Of Lust and the Law*, WASH. POST, Sept. 5, 2004, <http://www.washingtonpost.com/wp-dyn/articles/A62581-2004Sep4.html>.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* See also Meredith Bennett-Smith, *Why Do Virginia, 13 Other States Want To Keep Their Anti-Sodomy Laws A Decade After SCOTUS Ban?*, HUFFINGTON POST, May 4, 2015, [http://www.huffingtonpost.com/2013/04/09/virginia-anti-sodomy-laws-supreme-court-ban\\_n\\_3047489.html](http://www.huffingtonpost.com/2013/04/09/virginia-anti-sodomy-laws-supreme-court-ban_n_3047489.html).

law as a tool to maintain societal values and norms.

*B. Step Two: Perception*

The second step is seeing oneself as *the Other* sees you. According to Gunning, “[t]he two most important issues in examining how Westerners are perceived by women in third world nations are imperialism and racism.”<sup>95</sup> Afghanistan’s location on the silk road between Europe and the Far East has long made it a place of conquest. Former empires sought control of Afghanistan in order to control trade routes and, in the case of Great Britain, to maintain a buffer between the Empire and Russian expansion. In the late 1970’s, the United States supplied Afghan rebels with arms to resist occupation by the Soviet Union as part of the Cold War.<sup>96</sup> Soviet withdrawal in 1989 led to a collapse in the Afghan government. The country descended into civil war and in 1995 the Taliban ascended to power. During the civil war, the West largely ignored the plight of Afghan women who suffered gross abuse at the hands of rebel factions who had formerly been supported by the U.S. during the Cold War.<sup>97</sup> Not until September 11, 2001 did the West turn its attention to the country and its women.<sup>98</sup> Over the course of the last 15 years, the U.S. has invested billions of dollars to support stability and fight terrorism in the region. Unfortunately, U.S.-Afghan relations have suffered. Many Afghans view continued U.S. presence as an unjust occupation. Others view Western-supported efforts to improve the status of women as a thinly-veiled disguise for continued imperialism.<sup>99</sup> The Revolutionary Association of Women in Afghanistan harshly criticized the West for supporting former warlords and the Karzai regime who, they believe, undermined advances in women’s rights.<sup>100</sup>

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<sup>95</sup> Gunning, *supra* note 55, at 212.

<sup>96</sup> *See generally*, STEVE COLL, *THE GHOST WARS* (2004).

<sup>97</sup> Kandiyotti, *supra* note 29.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> REVOLUTIONARY ASSOCIATION OF WOMEN IN AFGHANISTAN,

Since 2001, the U.S. government has funded a number of initiatives designed to improve the status of women in Afghanistan, including drafting and implementation of laws to protect women from violence and forced marriage. Other efforts have supported educational and economic opportunities for women.<sup>101</sup> Critics argue that the majority of these efforts are designed to give Afghan women the rights of Western women. Anthropologist Lila Abu-Lughod asked: “[c]an we only free Afghan women to be like us or might we have to recognize that even after ‘liberation’ from the Taliban, they might want different things than we would want for them?”<sup>102</sup> Citing her years of research with women from traditional societies in Egypt, Abu-Lughod could not identify one woman “who has ever expressed envy of U.S. women.”<sup>103</sup> In fact, Abu-Lughod describes Egyptian perception of U.S. women as “bereft of community, vulnerable to sexual violence and social anomie, driven by individual success rather than morality, or strangely disrespectful of God.”<sup>104</sup> It is likely that a survey of Afghan perception of American women would produce a similar description.

### C. Step Three: Seeing Through Her Eyes

The third and final step of Gunning’s method is seeing *the Other* in her own context. This step has two parts. First, one must consider a cultural practice in her own country that *the Other* would find challenging and, second, “to look in careful detail at the organic social environment of *the Other* which has produced the culturally challenging practice being explored.”<sup>105</sup>

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www.rawa.org (last visited May 13, 2016).

<sup>101</sup> See *Advancing the Rights of Women and Girls: Keys to a Better Future for Afghanistan*, U.S. DEP’T OF STATE (Jan. 29, 2010), [http://www.state.gov/s/special\\_rep\\_afghanistan\\_pakistan/2010/136250.htm](http://www.state.gov/s/special_rep_afghanistan_pakistan/2010/136250.htm).

<sup>102</sup> Abu-Lughod, Lila, *Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others*, 104 (3) AMERICAN ANTHROPOLOGIST 783, 787 (2002).

<sup>103</sup> *Id.* at 788.

<sup>104</sup> *Id.*

<sup>105</sup> Gunning, *supra* note 55, at 213.

In the U.S. today, it is becoming increasingly common for women to choose not to marry or have children. Women's ability to support themselves, have control over pregnancy, and a growing societal acceptance have led to a rise in the number of single women. Although pressure still exists for women to marry and have children, there is greater acceptance and freedom to make these choices. From an Afghan perspective, this is unthinkable and almost impossible to understand. In Afghan culture, family is of primary importance. It defines an individual's status and role in society. For all Afghan women, marriage is an inevitable event—a union that will be strategically decided by relatives to cement ethnic and social ties. For most Afghan women, a husband will be chosen for them by their relatives and they will agree with the choice. For some unfortunate women and girls, the marriage will be a transaction in which they are the commodity. Nevertheless, marriage is strongly valued and important in the very social fabric of the country. For most women it ensures economic support in an environment where it is impossible and not safe to work outside of the home without permission from male relatives.

The second part of "Step Three" is an examination of the organic, social environment that has created the culturally challenging practice. As described in Part II, the prosecution and incarceration of women for running away and attempted adultery is a combination of cultural and social practices reinforced by the legal system. As in Gunning's examination of countries where FGM is practiced, the honor and chastity of Afghan women are of utmost value and importance to the family. Afghan women are the embodiment of the family's honor. Any perception of impropriety on the part of a female family member reflects poorly on the entire family. Women or girls who leave home in the company of a non-male relative are bringing dishonor upon the family and must be punished. In reality, these women are victims of the social environment and their acts represent attempts to escape abuse at the hands of family members. The stories of the women documented in the 2012 report by Human Rights Watch describe lives of forced marriages, domestic abuse, forced prostitution, and rape that resulted

in their arrest, prosecution, and incarceration.<sup>106</sup> These women describe lives lacking in power and choice.<sup>107</sup>

## V. *World Travelling as an Effective Method*

### A. *How Law Has Not Worked*

In her application of *world travelling* to stop FGM, Gunning noted the failure of law to effectuate change. In Afghanistan, attempts to use the law to stop criminalization of women and girls for moral crimes backfired dramatically. In 2010, an international NGO decided to seek official clarification from the Afghan Supreme Court on the legality of running away as a crime.<sup>108</sup> The response was troubling. By official letter, the Afghan Supreme Court said that in some instances running away is a crime.<sup>109</sup> The Court explained that if a girl or woman ran away to either the police or to the home of her relatives in response to domestic violence, it would not be considered a crime.<sup>110</sup> Running away for other reasons or to other locations could be considered criminal.<sup>111</sup>

The opinion essentially left Afghan women nowhere to go to escape violence. Running away to the police or to the home of relatives is incredibly dangerous for Afghan women.<sup>112</sup> Police corruption is widespread and women run the risk of being physically or sexually assaulted if apprehended by police.<sup>113</sup> Running away to family is equally problematic. Families are the primary perpetrators

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<sup>106</sup> “*I Had to Run Away*”, *supra* note 6.

<sup>107</sup> *Id.*

<sup>108</sup> Letter from General Administration Directorate of the Judiciary Secretariat of High Council, to the Judicial Research and Studies Department of the Supreme Court of the Islamic Republic of Afghanistan, in reply to document number (799) 1389/5/10 (01/08/2010).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> “*I Had To Run Away*”, *supra* note 6.

<sup>113</sup> *Id.*

of abuse against women, subjecting them to domestic violence, forced marriage, and domestic servitude.

The Afghan Law on the Elimination of Violence against Women (LEVAW) was passed by Presidential Decree in 2009.<sup>114</sup> This law was supposed to stop the practice of forced marriages, protect women from domestic violence, and end prosecution of women for crimes in which they are actually victims. Unfortunately, this law has been met with fierce resistance. LEVAW was signed by President Karzai in August of 2009 while parliament was in recess.<sup>115</sup> Although Article 79 of the Afghan Constitution states that legislative decrees signed by the President have the force of law, many conservative members of parliament contest its validity.<sup>116</sup> For the last six years, there has been continuing battle over LEVAW.<sup>117</sup> International lawyers and NGOs have pushed vigorously for its recognition. Realizing that the law was never going to be fully implemented if it was not formally recognized, female Afghan members of parliament began to lobby in order to present LEVAW for a vote to affirm its status.<sup>118</sup> Unfortunately, the law fell prey to political rivalry and some female members remained silent instead of voting.<sup>119</sup> The law failed to gain the necessary votes in May 2013 suffering another substantial blow.<sup>120</sup> These political battles and the lack of recognition of the law by many Afghan justice professionals has resulted in continued low prosecution rates of violence against women.<sup>121</sup>

### B. *Non-Law Alternatives*

Two influential institutions in Afghan society offer

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<sup>114</sup> Law on Elimination of Violence against Women, *supra* note 16.

<sup>115</sup> Fawzia Koofi, *Where Afghan Law Fails Women*, AL JAZEERA, Jan. 2, 2015, <http://www.aljazeera.com/indepth/opinion/2015/01/where-afghan-law-fails-women-2015119256183362.html>.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

alternatives for improving the lives of women and ending the violence that leads to their prosecution. It is widely-known and accepted that most disputes are solved by community councils referred to as *jirgas* or *shuras*.<sup>122</sup> These councils consist of elderly men of status within the community. The majority of Afghans use these community councils to resolve disputes because they offer a quick resolution, avoid the corrupt courts, and reflect a restorative style of justice important in Afghan society.<sup>123</sup> *Shuras* and *jirgas* continue to be the preferred system for resolving disputes as confirmed by the media and Afghan citizens.<sup>124</sup>

There have been some efforts by the U.S. government to support these traditional dispute resolution mechanisms. One such project funded by the U.S. Agency for International Development provided legal training and education to these councils.<sup>125</sup> The project aimed to educate council members on existing law so that these principles would be incorporated in council decisions. Training emphasized the right of women to be free from violence, women's rights under inheritance law, and the dangers of using "baad" (exchange of a female relative in restitution for murder or other serious offense involving dishonor to the family).

Another influential element of Afghan society and another opportunity for changing cultural practices is the community religious leader or *mullah*.<sup>126</sup> Mullahs have a great deal of influence

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<sup>122</sup> For a detailed and scholarly description see Ali Wardak, *Jirga - A Traditional Mechanism of Conflict Resolution in Afghanistan*, UNPAN (2003), available at <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan017434.pdf>.

<sup>123</sup> Sylvana Sinha, *PeaceBrief 117*, U.S. INST. PEACE (Dec. 21, 2011), <http://www.usip.org/sites/default/files/resources/PB117.pdf>.

<sup>124</sup> *Id.*

<sup>125</sup> While the author was teaching law at the American University of Afghanistan, Checchi consultants working on this project spoke to the students about this project as part of our Law Speaker Series. I attended this lecture as Faculty Advisor and this information is based on that lecture.

<sup>126</sup> Palwasha Kakar, *Engaging Afghan Religious Leaders for Women's Rights*, U.S. INST. PEACE (June 18, 2014), <http://www.usip.org/publications/engaging-afghan-religious-leaders-women-s-rights>.

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at the local level over community relations and practices.<sup>127</sup> They are seen as the ultimate authority on religion and due to the central role of Islam in the life of every Afghan, their guidance is sought on all manner of personal and family issues. In many communities they also serve as the primary educator. The only formal education many Afghan children will ever receive is from their local mullah.<sup>128</sup> The mullah is therefore a key source for disseminating messages about proper treatment of women and children.<sup>129</sup>

Many mullahs lack formal education, and education in Islam and Islamic law, and simply reinforce traditional norms which do not comply with Islamic principle and practice.<sup>130</sup> Women's rights suffer in a disturbing alternative, in which some mullahs preach Wahhabism, the ultra-conservative form of Islam practiced in Saudi Arabia.<sup>131</sup> There have been some initiatives aimed at educating mullahs about the rights of women and children. One such organization, Hagar Afghanistan (a Christian non-profit that provides shelter to victims of human trafficking) conducted a successful training for mullahs on human trafficking.<sup>132</sup> This project was extremely important for raising awareness of trafficking and the plight of victims who often face prosecution for prostitution, running away, and adultery.

Education of community councils and mullahs reflects attempts to work within the culture, engage in dialogue with

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<sup>127</sup> *Id.*

<sup>128</sup> Philippa H. Stewart, *Can Madrassas Help Developing Countries?*, AL JAZEERA, Mar. 13, 2014, <http://www.aljazeera.com/indepth/features/2014/03/can-madrassas-help-developing-countries-20143613421527815.html>.

<sup>129</sup> Kakar, *supra* note 126.

<sup>130</sup> *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*, UNITED NATIONS ASSISTANCE MISSION IN AFGHANISTAN (Dec. 9, 2010), [http://unama.unmissions.org/Portals/UNAMA/Publication/HTP%20REPORT\\_ENG.pdf](http://unama.unmissions.org/Portals/UNAMA/Publication/HTP%20REPORT_ENG.pdf).

<sup>131</sup> Adrian Pabst, *Pakistan Must Confront Wahhabism*, GUARDIAN, Aug. 20, 2009, <http://www.theguardian.com/commentisfree/belief/2009/aug/20/pakistan-wahhabi-islam-sufi-terrorism>.

<sup>132</sup> This information is based on my conversations with the Hagar Afghanistan Country Director in August 2012.

influential community members, and use universal tools for creating change using a *world travelling* approach. These efforts may ultimately produce more positive outcomes for women than those achieved through the passage of law or national legislation.

### *Conclusion*

Lawyers working internationally need a practical method for engaging with local stakeholders on culturally challenging issues. Experience has demonstrated that direct confrontation is ineffective and can often lead to setbacks. Isabelle Gunning's method for application of *world travelling* provides the practitioner with an easy-to-follow, three-step process for working on complex, cultural and legal issues. Emphasis on self-reflection, exploration of perceptions, and understanding the complexity of the organic, social environment allow practitioners to engage in dialogue without judgment. This approach promotes partnership and construction of effective strategic interventions on issues that may initially seem insurmountable.