



Afghanistan:

a step closer to an independent national bar association

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Trying to establish a bar association in a country that has no words for 'bar association' and 'rule of law' was never going to be easy, but significant progress has been made.

On 30 May 2007, the lower house of the Afghan Parliament, the Wolesi Jirga, passed the Advocates' Law (the Law), which establishes a national bar association to lead and regulate the activities of lawyers. Significantly, the Wolesi Jirga considered that the bar association should be an independent, non-governmental organisation (NGO). This success is viewed by many as a turning point for the Afghan legal profession. The Law will now go to the senate, the Mascherano Jirga, for approval.

Background to the project

The passing of the Law brings the IBA project to establish an independent Afghan Bar Association a step closer to fruition. The IBA has been based in Afghanistan since 2004 in a project funded by the Swedish Ministry of Foreign Affairs through the International Legal Assistance Consortium and is considered to be the leading voice in the establishment of the bar association.

The early stages of the project involved raising awareness of the concept of a bar association among Afghan lawyers and government institutions. This was made necessary by the fact that nothing similar had ever existed in Afghanistan and made more challenging by the lack of direct translation of terms such as 'bar association' and 'rule of law' from English to Dari.

At a conference organised by the IBA in Kabul in 2005, the aim of which was to encourage debate on the need to establish a bar association to meet the needs of Afghan legal professionals, the overwhelming consensus of the participants, who included Afghan lawyers, judges, academics, law students, national and international NGOs, UN agencies and

international donors, was in favour of the establishment of an independent national bar association.

Following the conference, the IBA submitted a position paper to the Ministry of Justice outlining 12 basic principles for the proper functioning of a bar association and incorporating the conference participants' consensus views on each of these principles. The IBA was then invited by the Ministry of Justice to provide technical assistance to its legislative drafting department, the Taqin, in its drafting of the Advocates' Law, and to facilitate the consultation process. The Advocates' Law was approved by the Cabinet and submitted to the Parliament at the beginning of 2007.

Working with the Afghan Parliament

The Afghan Parliament is only in its second year of existence and as a nascent institution its capacity is limited. Its procedure is not yet fully developed and the parliamentary agenda varies from day to day, owing in part to the unstable security situation in many parts of the country. It is also in the peculiar situation of being a parliament without political parties – candidates were not allowed to declare party affiliations on the ballot paper.

On arrival in Kabul in January 2007, as the IBA's third legal specialist to Afghanistan, I was faced with the immediate task of ensuring the legislation was given a high level of priority on the parliamentary agenda. This would be challenging given its unpredictable nature, the current lack of clear lobbying channels and the backlog of some 50 other draft laws due for scrutiny. Further, it would be critical to ensure that parliamentarians, particularly those within the committees charged with proposing amendments to the Law, understood the

concept of an independent bar association.

First, a good working relationship with the Secretariat had to be established. This was achieved through frequent meetings and telephone conversations, and aided by the fact that its Secretary-General is a lawyer who appreciated the importance of the Advocates' Law. Consequently, the Secretariat played a key role in advocating for the Law. It was also therefore possible to disseminate briefings and explanatory notes to parliamentarians through the Secretariat and to have access to and advise the key parliamentary committees.

Secondly, owing to the constantly changing nature of the parliamentary agenda, it was important to ensure that there were strong channels of communication between the Secretariat and the Ministry. To this end I acted essentially as a conduit, updating both institutions on the latest developments and advising them where appropriate to contact each other.

Finally, it was necessary to identify parliamentarians who would be receptive to the IBA and the need to include the Law early on the Parliament's agenda. Through networking with Afghan NGOs and civil society, it was possible to meet and engage with influential parliamentarians who would play a prominent role in advocating for the Law not only within internal parliamentary meetings but also in the plenary session. This proved to be extremely effective and prevented the Law and the establishment of the bar association from being perceived by the Parliament as something imposed on it by the international community.

The Advocates' Law was the fifth law out of 52 to be passed this year by the Wolesi Jirga.

Advocates' Law and the need for an independent Afghan Bar Association

The Advocates' Law is essentially an enabling Act, which provides for the establishment of the independent Afghan Bar Association and sets out basic provisions for accreditation and licensing requirements, the rights and duties of advocates and disciplinary procedures. The Law also provides for the substantive provisions relating to the association's organisational structure, accreditation requirements, electoral procedures and the code of professional conduct, to be introduced through its by-laws. The Law will come into force three months after its enactment, following which the first General Assembly meeting of the association will be called where the by-laws will be voted on and the director and the executive board will be elected.

In Afghanistan there are no more than

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250 lawyers, all of whom are registered with the Ministry of Justice. At present, the vast majority of defendants go unrepresented in the court system.¹ Entry requirements into the profession are not very stringent and there is no regulation, disciplinary body or provision for continuing legal education.² After 20 years of war, the capacity of the justice institutions is weak and public confidence in the legal system and the rule of law low.

Afghanistan therefore needs a bar association that is independent, promotes the professional interests of lawyers, advances training and continuing legal education for the profession, upholds and maintains professional standards and ethics, regulates entry into the profession and is an advocate for the rule of law and human rights. It will also encourage more graduates to enter the profession and therefore help generate more lawyers for Afghanistan. The bar association will also work in partnership with other organisations on initiatives aimed at improving access to justice.

The independent Afghan Bar Association will therefore protect the public, as well as members of the legal profession. This will help restore public confidence in the law and in the work of lawyers. ☒

Notes

- 1 For example, there are 10,577 individuals in Afghan prisons and detention centres.
- 2 Article 5(b) of the Law for Organising Affairs of Defence Attorneys 1972 requires a degree from the Law or Sharia Faculty or a diploma from an official Sharia Madrassa.

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