

## **Stakeholder Report for the United Nations Universal Periodic Review**

### **Afghanistan: 46<sup>th</sup> session of UPR 4<sup>th</sup> Cycle**

#### **Situation of Lawyers in Afghanistan**

***Submitted by the International Observatory for Lawyers in Danger (OIAD)***

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#### **About the International Observatory for Lawyers in Danger (OIAD)**

The International Observatory for Lawyers in Danger (OIAD) is an initiative founded by the French National Bar Council (CNB), the Italian National Bar Council (CNF), the Spanish National Bar Council (CGAE) and the Paris Bar. Launched in 2016, its aim is to defend lawyers threatened in the practice of their profession and to denounce situations that infringe the rights of the defense. The Observatory is currently supported by almost 50 members, mostly European bar associations, but also bar associations from Turkey, Cameroon, Democratic Republic of the Congo and Mexico.

The Observatory's mandate is to assist lawyers who, in the exercise of their profession, are victims of threats and persecution, and to raise awareness among political stakeholders and civil society of the fundamental role played by lawyers in safeguarding rights and freedoms. To this end, the OIAD intervenes differently depending on the needs of each situation, by activating the available mechanisms: (1) advocacy, through alerts and communications; (2) missions in the field, whether to observe trials involving unjust accusations against colleagues or to carry out prospective missions to ascertain the situation of human rights lawyers in a specific country ; and (3) emergency aids, supporting lawyers in extremely dangerous situations providing financial and legal assistance.

## **I. INTRODUCTION**

1. The precipitous fall of Kabul to the Taliban on 15 August 2021 and the re-establishment of the Taliban government put an end to 20 years of social development and rule of law building, thus leading to the flight of thousands of people from Afghanistan, including many lawyers, judges and prosecutors.
2. Since then, the OIAD has followed with concern the marked deterioration of respect for human rights in Afghanistan, identifying serious threats to human rights lawyers who play a key role in promoting the rule of law. In the course of its work, the OIAD has been able to collect and verify information, including individual testimonies, about the difficulties faced by the legal profession in Afghanistan since the Taliban takeover.
3. This report is submitted in order to contribute, within the framework of the 46th session of the Human Rights Council Universal Periodic Review (4<sup>th</sup> Cycle), to the clarification and understanding of the situation in Afghanistan. The report aims to provide the perspective of the legal profession committed to the defence, protection and promotion of human rights.
4. During the 3<sup>rd</sup> cycle of the Universal Periodic Review in 2019, Afghanistan received 259 recommendations and it supported 236. Although very few of these recommendations addressed the specific situation of lawyers, we highlighted the 8 recommendations<sup>1</sup> regarding the protection of human rights defenders, as we understand to be applicable to lawyers as soon as they are engaged in the defence of human rights. A further 2 recommendations addressed the independent administration of justice and the fair trial. For example, Afghanistan supported a recommendation from Germany to “work towards the establishment of a fair and independent judiciary system that is equipped with adequate resources”<sup>2</sup>.
5. Following the crisis that began with the Taliban takeover, these recommendations have not been implemented at all; instead, lawyers have become the target of persecutions, detentions and threats<sup>3</sup>. The legal practice has not been respected since August 2021, observing a loss of independence of the judiciary of institutions such as the Afghanistan Bar Association, which are subject to the control of the authorities as detailed in the present report.

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<sup>1</sup> Recommendations 136.119 (Estonia), 136.128 (Luxembourg), 136.125 (Lithuania), 136.122 (France), 136.126 (Norway), 136.127 (Republic of Korea), 136.95 (Canada) and 136.120 (Chile).

<sup>2</sup> Recommendation 136.98 (Germany)

<sup>3</sup> For more information see Annexe 1: OIAD’s brochure commemorating the Fall of Kabul.

## II. THE LEGAL PROFESSION UNDER THREAT: THE DECLINE OF THE AIBA

6. Following the withdrawal of American troops from Kabul and the Taliban's return to power in August 2021, **lawyers were immediately targeted by the new regime for having played an active role in defending the human rights of Afghan citizens.** Similarly, **lawyers were immediately threatened by prisoners released by the Taliban** the day after they took control of the country, with many of them facing threats to their physical integrity, personal safety and that of their families. Approximately 30,000 criminals were released from prison, roughly 16,000 of whom posed a direct threat to lawyers, either because they hold their former lawyers responsible for their conviction or because the lawyers, particularly female lawyers, had represented victims in cases in which these prisoners were convicted. According to the Afghanistan Independent Bar Association in exile data, 12,000 of the released prisoners were members of the Taliban army and/or insurgents who were arrested, tried and convicted before August 2021.
7. Afghan lawyers played a key role in promoting the rule of law, respect of human rights and social justice for almost 20 years since the fall of the previous Taliban regime in November 2001. The establishment of the Afghanistan Independent Bar Association (AIBA) in 2008 had previously enabled lawyers to practice with guaranteed protection and equal access to the profession for both men and women. Through its independence, parity in governance and non-governmental and non-political status, the bar association pursued the democratic values of protection of fundamental rights, fair trial and independence of justice.
8. On 22 November 2021, the progress made over the past 20 years was wiped out as the Taliban Ministry of Justice issued a decree stripping AIBA of its independence and ability to license lawyers. **The decree stipulates that only Taliban-approved lawyers will be allowed to appear in court.** This decision was intended to allow the Taliban government not only to control the licensing of lawyers but also to register them, thereby exposing them to major risks of persecution.
9. On 23 November 2021, **AIBA was assaulted by the Taliban forcing the appointment of a new President of the Bar** closely linked to the Taliban Ministry of Justice. As Rohulah Qarizada, AIBA President at the time of the assault, testifies: *"... after taking power, the Taliban eliminated all legal, judicial and human rights organisations, including AIBA. AIBA staff and officials were expelled from their offices in an extremely violent manner both physically and through acts of humiliation. Some were*

*even imprisoned. The Taliban then took control of the offices and had access to all the computers and information concerning the lawyers”<sup>4</sup>.*

10. The takeover of the offices gave the Taliban access to the AIBA database, which included detailed personal information on lawyers' families and clients, thus exposing AIBA lawyers to serious reprisals.

#### **Recommendations:**

- 1) Re-establish a professional and independent lawyers' institution, which represents the interests of the legal profession, guarantees its protection and has the capacity to license lawyers according to objective criteria and compliance with the requirements for the practice of the profession.
- 2) Ensure that the executive body of the Afghan Bar association is freely elected by its members and exercises its functions without external interference.

#### **IV. WORKING AS A LAWYER IN AFGHANISTAN SINCE THE TALIBAN TAKEOVER**

11. The Ministry of Justice announced that Afghan lawyers would be required to recertify under a new qualification process established by the Ministry. From the approximately 6000 lawyers registered with AIBA before the Taliban takeover, about 5600 are still in the country and are required to **pass an exam where the questions are drawn from religious topics** unrelated to legal qualifications. Candidates for certification **will also have to obtain clearance from the Taliban's intelligence agency** regarding any background such as relations with international organisations and the former regime. Ministry of Justice issued licenses only for about 1000 members of Taliban in 2021 and 2022.
12. Thus, access to the legal profession is under strict control of the Taliban government, allowing only its supporters to practice law. The few colleagues who are still practicing are highly stigmatised by the Taliban authorities in trials, exerting pressure on victims not to use the legal defence services of lawyers. Consequences of this are devastating in terms of access to justice and respect for the rights of defense. Lawyers

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<sup>4</sup> Testimony of Rohullah Qarizada in August 2022. For more information see Annexe 1: OIAD's brochure commemorating the Fall of Kabul.

have been continuously persecuted, particularly those who belonged to AIBA or who defended cases of violence against women and girls, as well as cases in which talibans were convicted. There have been at least 12 assassinations, 171 arrests, and serious threats and violent attacks against these lawyers<sup>5</sup>.

**Recommendations:**

- 3) Cease all attacks on Afghan lawyers and protect their lives, adopting and implementing measures to guarantee their safety, security and freedom.
- 4) Ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.
- 5) Ensure that lawyers enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.
- 6) Ensure that lawyers are entitled to freedom of expression and have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights.
- 7) Release all lawyers for legitimately exercising their profession.
- 8) Recognise and value the key role of human rights lawyers in upholding human rights and the rule of law.
- 9) Ensure that all persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
- 10) Ensure an independent judicial system in which lawyers can practice their profession effectively.

**Women deprived of their rights: including the right to exercise**

13. **Women were immediately disenfranchised by the Taliban.** At present, **women are not included in the new qualification process for the legal profession** and are not allowed to enter the Ministry of Justice buildings. The United Nations Security Council adopted Resolution 2681 in April 2023, calling upon the Taliban to “*swiftly*

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<sup>5</sup> Data collected in August 2022. For more information see Annexe 1: OIAD’s brochure commemorating the Fall of Kabul.

*reverse the policies and practices that restrict the enjoyment by women and girls of their human rights and fundamental freedoms including related to their access to education, employment, freedom of movement, and women's full, equal and meaningful participation in public life"<sup>6</sup>.*

14. Many women/female lawyers face death threats because of their work on sensitive children's and women's rights cases, including domestic violence, banning from teaching, forced isolation, and deprivation of employment. These threats have become so serious that many women/female lawyers have been forced to go into hiding, changing their addresses and telephone numbers. According to data provided by AIBAIE<sup>7</sup>, the entire AIBA's women/female members who stranded in Afghanistan under Taliban regime are being held in their homes and unable to engage in legal activities.

**Recommendations: (specifically regarding women)**

- 7) Guarantee women and girls access to education to ensure that they all have access to justice and can assert their rights, according to the UN Security Council Resolution 2681
- 8) In particular, guarantee women's access to higher legal studies to enable them to work in the legal profession.
- 9) According to the UN Security Council Resolution 2681, reinstate all fundamental rights for women, guarantee that women can enjoy their right to work, including the right to work in the legal sector.
- 10) For lawyers in particular, enable women/female lawyers to renew licences freely.
- 11) Re-establish the gender-based violence (GBV) architecture (e.g. the Ending Violence Against Women law, specialized courts, shelters run by women's organizations).
- 12) Reinstatement of the protection of women's rights under the rule of law and within the judicial system.

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<sup>6</sup> S/RES/2681(2023): Security Council resolution 2681 (2023) [on condemning the decision of the Taliban to ban Afghan women from working for the UN in Afghanistan]

<sup>7</sup> The Afghanistan Independent Bar Association in Exile (AIBAIE) has been established abroad with the aim of enabling its members to continue their work in support of lawyers in danger and particularly women lawyers. <https://www.aibaie.org/about>

## **V. AFGHAN LAWYERS IN EXILE**

15. Humanitarian situation in Afghanistan deteriorated since the Taliban takeover in 2021, resulting in [3.25 million people internally displaced today, while more than 2.1 million registered Afghan refugees in Iran and Pakistan](#) . Many of them are lawyers who have fled the country to escape serious threats to their lives and those of their families. According to “AIBA in exile” figures, there are currently over 400 Afghan lawyers in exile. However, the lawyers fled to Pakistan and Iran are under strict mental pressure due to fear of arrest and returning them to Afghanistan, as it happened to few lawyers in Pakistan.
16. The testimonies collected by the Observatory express the reality of the difficulties faced by these lawyers who have been forced into exile. Visa applications and their examination by the competent authorities take several months and many thus find themselves in an irregular situation in Iran or Pakistan, often forced to live on extremely low incomes, which further increases their vulnerability.
17. After the dramatic fall of Kabul and the Taliban’s rapid takeover on 15 August 2021, the leadership members and lawyers of the Afghanistan Independent Bar Association (AIBA) have announced their commitment to continue their activities and reopen the AIBA in exile with the support of the International Bar Association (IBA), Council of Bars and Law Societies of Europe (CCBE), in Brussels. Reopening the AIBA in exile is a way to preserve the identity of the AIBA and their lawyers and maintain the achievements they have made in the last 20 years, while providing services for lawyers, especially women, with the support and cooperation of international partners.
18. AIBAIE is dedicated to working tirelessly to find practical solutions to support its members both inside and outside Afghanistan. This includes active engagement in coordination and collaboration with international organizations, particularly human rights bodies. The goal is to assist and facilitate research and independent investigations, which are crucial for both current and future transitional justice initiatives. The Afghan Bar Association in Exile is committed to being open and responsive to various areas where its cooperation and support may be required. With its central headquarters in Brussels, the organization is also planning to open branches in the United States, Australia, and Canada. This expansion demonstrates its dedication to extending its reach and support to Afghan lawyers and legal professionals globally.

**Recommendations:**

- 13) Ensure that any Afghan lawyer and his or her family wishing to leave the country may do so freely and safely.
- 14) - Helping to implement the goals and activities of research, litigation, protection and human rights of the Afghan Independent Bar Association in exile and supporting the plans and programs of this institution.