

History is made as



After four years of hard work, Afghanistan finally has its own bar association. The IBA's **Alex Wilks** explains how this was achieved.

Between 27 and 30 July 2008, over 450 Afghan lawyers met at the InterContinental Hotel in Kabul to establish an independent national bar association for the first time in Afghanistan. Lawyers came from all over the country, some travelling for days to attend the meeting and sometimes at their own personal risk. Over four days, this inaugural General Assembly of the Independent Afghan Bar Association approved its by-laws and elected its first leadership.

This is an historic moment for the Afghan legal profession. It also represents four years of hard work and cooperation between the Afghan legal profession, the Ministry of Justice, the National Assembly and the international legal community, whose efforts have been led by the IBA.

Background to the project

The IBA has been based in Afghanistan since 2004 on a project to help establish the Independent Afghan Bar Association, funded by the Swedish Ministry of Foreign Affairs through the International Legal Assistance Consortium. Through the excellent work of the two previous IBA legal specialists, Neil Gilmore and Liliana de Marco, and the management of Dr Phillip Tahmindjis, IBA Human Rights Institute Deputy Director, who has supervised the project since its inception, the IBA had become the leading partner to the Ministry of

Justice in the establishment of the association and facilitated the drafting of the enabling legislation, the Advocates' Law.

On my arrival in Kabul at the beginning of 2007 as the third IBA legal specialist, my immediate priority was to ensure the timely passage of the Advocates' Law through the Afghan National Assembly. The Law was passed without significant amendment in December 2007, one of only seven to be passed last year, and came into force in March 2008.¹

According to the Advocates' Law, the Ministry of Justice had an obligation to take the necessary steps to establish the association within three months after entry into force. The Law also provided that the association would gain legal status only after approval of the by-laws by its General Assembly. The next steps were therefore to prepare a draft of the by-laws, and to organise the first General Assembly meeting. In a country still reeling after almost three decades of war, this was always going to be a massive technical and logistical challenge.

Drafting the by-laws and consulting with Afghan lawyers

In spring 2008, the Ministry of Justice selected an ad hoc committee to produce a first draft of the by-laws, to which the IBA was appointed technical adviser. A draft that provided a good framework for the association's organisational structure, disciplinary mechanisms and

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Afghan bar opens



running procedures was produced within a few weeks. However, it was not enough simply to have prepared a set of by-laws that looked good on paper. It was critical to ensure that the draft by-laws reflected the needs of Afghan lawyers; otherwise they would stand little chance of being approved. Afghan lawyers had to have the opportunity to provide their input and therefore it was necessary to organise an extensive consultation process.

Owing to the country's weak infrastructure and a lack of reliable contact information on the ministry's Lawyers' Registry, it was clear that assistance in organising the consultation process was required. It was also evident that Afghan lawyers needed to have practical involvement in the consultation process from the very beginning so that they would have ownership of the by-laws and gain experience in organising such activities for the future.

The IBA coordinated a meeting in Kabul among representatives of the major law offices with offices in the provinces. At this meeting, each law office agreed to circulate the by-laws to each of their own employees. Importantly, they also agreed to circulate the drafts among private advocates in the provinces and divided responsibility for each province between themselves. A by-laws 'package', including the draft by-laws, an explanatory note and a by-laws questionnaire was then circulated in Dari and Pashto. The use of existing lawyers' networks to distribute and collect feedback on the drafts, particularly in remote areas, proved extremely effective. Completed questionnaires representing the views of over 250 lawyers from all over Afghanistan – over half the number of then-registered lawyers – were returned to the ministry and consolidated into a final draft.

The IBA also hosted several roundtable discussions among law offices and private lawyers, which were aimed at providing lawyers with an opportunity to discuss the by-laws with each other and for technical advice to be provided where required. These sessions were extremely well attended and demonstrated the high level of engagement among the Afghan legal profession. The most significant of these meetings was a series of roundtables co-hosted with UNIFEM, whose aim was to discuss the representation of women's issues in the by-laws. The number of female lawyers in Afghanistan is slowly increasing; however, women currently only represent between 10 and 15 per cent of all registered lawyers. Female lawyers face massive challenges and prejudice in their daily work. A written submission was presented to the ministry which successfully advocated inclusion in the by-laws of a minimum quota for women on the leadership and all committees of the association.

Cooperation between the Afghan Ministry of Justice, the international legal community and Afghan lawyers

The organisation of the inaugural General Assembly was a daunting task. In brief, it involved inviting all the registered lawyers in Afghanistan, arranging for their transport and accommodation in Kabul for four days and ensuring the by-laws were approved and the elections proceeded successfully. Further, given the success of the project and the momentum that had been built up over the years,² there was a great deal of expectation from the national and international legal community.

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In April 2008, the ministry presented a strategy document and budget for the organisation of the first General Assembly meeting to national and international stakeholders. The United Nations Office on Drugs and Crime (UNODC) immediately offered to provide the entire budget of the General Assembly. This was a huge step forward for the project, which made the tentative dates for the General Assembly, 27–30 July, suddenly look realistic.

The ministry subsequently established a committee responsible for organising the General Assembly meeting with the IBA continuing its role as technical adviser. It was agreed that the IBA would receive and manage the funds for the General Assembly, which meant that it would also play a central role in administration and logistics. The committee comprised officials from the ministry’s administration, media outreach and technical departments, which were split into working groups to deal with the many different aspects of organising such a massive event. The US State Department Justice Sector Support Programme continued its important support to the project and agreed to provide technical and administrative assistance to the committee through its Policy and Strategy Unit embedded in the Ministry of Justice, which included a number of well-trained and highly motivated Afghans who played an invaluable role in the process.

Perhaps the biggest logistical challenge was to arrange for the transport of those lawyers coming from the provinces. Again, UNODC stepped forward and provided support through its provincial coordinators based in the major regional cities of Kandahar (South), Herat (West), Mazar-i-Sharif (North), Faizabad (North-East) and Jalalabad (East). In collaboration with the IBA and major law offices, these provincial coordinators contacted those registered lawyers in their regions and made the necessary travel arrangements to Kabul. This was a time-consuming and often frustrating process; however, despite the difficulties in arranging what was perhaps the largest-ever movement of lawyers in Afghanistan, it proved highly successful. Over 250 lawyers came by air, coach, minibus and taxi from the provinces – some coming by road through Taliban-controlled areas, not carrying their practising licence for fear of being stopped.

The concept of a bar association is not widely understood in Afghanistan,³ nor is the right to defence or the basic role of a lawyer⁴; therefore media outreach was also extremely important. Several outreach programmes were undertaken on all the major national radio and television stations, including a series of public service announcements, as well as discussions and interviews among lawyers and government officials.

Inaugural General Assembly of the Independent Afghan Bar Association

An unexpectedly high number of Afghan lawyers arrived on the first day of the General Assembly – almost all lawyers on the Registry⁵ – which started amid tight security. After the opening speeches, there was considerable debate as to the procedure for the meeting and who should chair it. (It was eventually agreed that the well-respected Minister of Justice would be the most neutral and authoritative option.) Many lawyers were worried that if one of their own were chosen to lead the meeting it would expose the process to partisanship and delay. Others were worried that the ministry might compromise the future independence of the association if it chaired the meeting. A monitoring committee to oversee the ministry’s running of the meeting was also appointed, comprising independent national and international observers, including the IBA.

The General Assembly then set about the discussion and approval of the draft by-laws. Each chapter of the draft was explained by the minister, followed by an open discussion, which was moderated and summarised by the minister; participants would vote on the contentious issues using green and red cards.

During the first afternoon progress was extremely slow, with participants apparently more concerned with political posturing in anticipation of the elections than discussing the technical points arising from the by-laws. Tempers were high and the meeting began to lose its way. By the end of the first day, only one out of 15 chapters was approved and the success of the meeting looked in jeopardy – without approval of the by-laws there would be no bar association.

However, at the start of the second day, there was a marked change of mood in the General

Assembly. It appeared that the lawyers had realised that they had been provided with a golden opportunity and they were not going to waste this chance through their own internal bickering. The discussion of the by-laws that ensued was fascinating. Many of the tensions that exist within the Afghan legal profession, perhaps reflective of Afghan society as a whole, were being played out – tensions between the older and younger generations of lawyers, between university and madrassa (seminaries) graduates and between male and female lawyers.

Following approval of the by-laws, the elections of the first Leadership Council and Monitoring Board were held. Candidates were asked to present their qualifications on the basis of the newly approved by-laws. Lists were then drawn up and secret voting took place. The whole process was conducted in the meeting hall in full view of the General Assembly. On the third day, votes were still being counted into the early morning with many lawyers staying up all night to assist. This spirit of cooperation and goodwill between the organisers and the lawyers came to characterise the General Assembly meeting as a whole. In particular, many lawyers were impressed and grateful at the lengths to which the Ministry of Justice had gone to ensure the transparency of the elections. On the fourth day, after run-off elections for some of the positions, the leadership was finally elected. After four years of persistence and hard work, and finally after four days of birth pangs, the Independent Afghan Bar Association had been born.

Future optimism

The association will be one of the few bar associations in the world with compulsory pro bono requirements in criminal cases and a quota for women on the leadership and all committees. These requirements were agreed on by Afghan lawyers themselves and demonstrate their commitment to improving access to justice. That so many lawyers attended the inaugural General Assembly meeting and participated so energetically was extremely impressive. The next steps will include establishing the first office and developing the running procedures of the association. There will be many challenges ahead for the fledgling Afghan Bar Association. However, if Afghan lawyers demonstrate the same determination, dynamism and courage that they have so far then this bodes well for the future. The IBA remains committed to supporting the Independent Afghan Bar Association to ensure its success. ☒

Notes

- 1 For more information about the passage of the Advocates' Law through the Afghan National Assembly, see article in previous IBN (2007) 61.
- 2 In his speech to the plenary session of the Rule of Law Conference in Rome, co-hosted by the Governments of Italy and Afghanistan and the United Nations in July 2007, President Karzai stated: 'We are finalising legislation for the creation of an Afghan Bar Association which will help reform the legal profession. With this and many other measures we have laid the crucial foundations for the further development of our judicial system.'
- 3 There is no direct translation of the term 'bar association' from English to Dari.
- 4 Despite the right to defence and legal representation being enshrined in art 31 of the Constitution of Afghanistan 2004.
- 5 Four hundred and sixty-eight out of 581 registered lawyers attended the meeting. In the months before the meeting, the number of registered lawyers increased by almost 30 per cent owing to their interest in attendance.