



Day of the Endangered Lawyer 24th January 2023 13th edition – AFGHANISTAN

A. Introduction:

Since 2010, the International Day of the Endangered Lawyer has been observed on 24 January in cities, countries, and continents around the globe.

This date was chosen as the annual International Day of the Endangered Lawyer because on 24 January 1977, four lawyers and a co-worker were murdered at their address at Calle Atocha 55 in Madrid, an event that came to be known as the Massacre of Atocha.

Each year, the International Day is organised by the Coalition for the Endangered Lawyer, a network of national and international organisations and bar associations.

The purpose of this International Day is to draw the attention of government officials, international institutions, civil society, the media and the general public to the plight of lawyers in a particular focus country, to raise awareness about the threats the lawyers in that country face in the exercise of their profession.

In previous years, the Day has been dedicated to countries including Colombia (2022 and 2014), Azerbaijan (2021), Pakistan (2020), Turkey (2019 and 2012), Egypt (2018), China (2017), Honduras (2016), the Philippines (2015), Basque Country/Spain ¹(2013), and Iran (2010).

This year, the International Day of the Endangered Lawyer focusses on Afghanistan. As set forth below, the situation confronting Afghan lawyers today is extremely dire. This report first outlines the applicable legal framework, highlighting the United Nations Basic Principles on the Role of Lawyers. Next, the report describes the situation of the justice system and the Bar in Afghanistan. It then illustrates the situation of lawyers and legal professionals through profiles of a number of individuals at risk. It also underscores the responsibility of other States regarding the calls for help coming from Afghan lawyers. Finally, the report makes demands and recommendations in order to improve the situation of Afghan lawyers in Afghanistan and elsewhere around the world.²

¹ CCBE, UIA-IROL, l'Ordre français des avocats du barreau de Bruxelles and l'Institut des Droits de l'homme du Barreau de Bruxelles did not support the Day in 2013 when it focused on Spain/the Basque Country. The signing of this report does not change in anyway their position on this issue

² As the name of the International Day of the Endangered Lawyer connotes, the observance of the annual occasion historically has focussed solely on the situation of lawyers. In light of the unique circumstances prevailing in Afghanistan, however, this year's report also includes certain references to Afghan prosecutors and



B. Applicable legal framework:

International law expressly recognizes the unique role that lawyers play in any society. Because lawyers serve as the guardians of justice for all, international law accords lawyers special protections.³

For example, the United Nations Basic Principles on the Role of Lawyers provide that “[l]awyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.”⁴ In other words, clients’ positions and causes are not to be attributed to their counsel. The U.N. Basic Principles also provide that governments are to “ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.”⁵ In addition, “[w]here the security of lawyers is threatened as a result of discharging their functions,” the U.N. Basic Principles state that the

judges, who generally face the same risks and challenges that Afghan lawyers face – and in some respects are at even greater risk.

³ See generally United Nations Basic Principles on the Role of Lawyers (7 Sept. 1990), <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>; cf. United Nations Basic Principles on the Independence of the Judiciary (6 Sept. 1985), <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>; United Nations Guidelines on the Role of Prosecutors (7 Sept. 1990), <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors>; United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (9 Dec. 1998) (“U.N. Declaration on Human Rights Defenders”), <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individuals-groups-and>.

In addition to the special rights and protections to which they are entitled, lawyers – like all people – are endowed with the rights set forth in the Universal Declaration of Human Rights. See Universal Declaration of Human Rights (10 Dec. 1948), <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english>. Under the Universal Declaration, all people have the right to a “fair and public hearing” in both civil and criminal matters (Article 10), which presupposes access to a lawyer, an independent legal profession, and an independent judiciary. The Universal Declaration also recognizes the rights of all to “freedom of opinion and expression” (Article 19) and “freedom of assembly and association” (Article 20). In addition, the Universal Declaration sets forth “the right to work, [and] to free choice of employment” (Article 23(1)), as well as “the right to a standard of living adequate for the health and well-being of himself and of his family” (Article 25(1)). Further, the Universal Declaration establishes that “[e]veryone has the right to leave any country, including his own” (Article 13(2)). Lastly, with respect to the enumerated rights, the Universal Declaration expressly prohibits discrimination on the basis of, *inter alia*, “sex, . . . religion, political or other opinion, [and] national or social origin” (Article 2). The plight of Afghan lawyers implicates each of these fundamental rights, among others.

⁴ See U.N. Basic Principles on the Role of Lawyers, Principle 18.

⁵ See U.N. Basic Principles on the Role of Lawyers, Principle 16.



lawyers “shall be adequately safeguarded by the authorities.”⁶ Further, the U.N. Basic Principles prohibit discrimination in lawyer licencing based on criteria such as sex, ethnic origin, religion and “political or other opinion.”⁷ And the U.N. Basic Principles prescribe that governments are to ensure that “access to lawyers [is] provided for all persons within their territory.”⁸

The U.N. Basic Principles explicitly recognize the “vital role” that bar associations play, “protecting [bar] members from persecution and improper restrictions and infringements.”⁹ The U.N. Basic Principles also underscore lawyers’ rights of “freedom of expression, belief, association and assembly,”¹⁰ and specifically state that bar associations must be permitted to “exercise [their] functions without external interference.”¹¹

As all lawyers everywhere, the lawyers of Afghanistan are entitled to all of these rights and protections.

C. Overview of the justice system and the bar in Afghanistan:

By 2001, several decades of war and other conflict had decimated the infrastructure of Afghanistan. The legal and judicial systems were not spared. However, after the Taliban regime fell in November 2001, a wide range of programmes were implemented to increase staffing and to reconstruct, reform and modernize the Afghan government, including the courts, as well as the legal profession.¹²

⁶ See U.N. Basic Principles on the Role of Lawyers, Principle 17.

⁷ See U.N. Basic Principles on the Role of Lawyers, Principle 10.

⁸ See U.N. Basic Principles on the Role of Lawyers, Principle 2.

⁹ See U.N. Basic Principles on the Role of Lawyers, Preamble.

¹⁰ See U.N. Basic Principles on the Role of Lawyers, Principle 23.

¹¹ See U.N. Basic Principles on the Role of Lawyers, Principle 24(1).

¹² See Going Back to Zero: How the Afghan Legal and Judicial System is Collapsing Under the Taliban Regime (Jurist, 7 March 2022) (reporting that, in the two decades preceding the Taliban’s August 2021 takeover, “[t]he international community and the United States spent billions of dollars on rebuilding the Afghan legal and judicial system and improving the rule of law and governance”), <https://www.jurist.org/commentary/2022/03/mahir-hazim-afghan-legal-judicial-system-collapsing-taliban-regime/>; Eye-for-an-eye sharia justice returns to Afghan courts (France 24/Agence France-Presse, 21 Dec. 2022) (explaining that “[h]undreds of millions of dollars were spent building a new judicial system after the Taliban were overthrown in 2001 – a combination of Islamic and secular law, with qualified prosecutors, defence lawyers and judges”), <https://www.france24.com/en/live-news/20221221-eye-for-an-eye-sharia-justice-returns-to-afghan-courts>.



Before 2001, the law, the judge and the jury consisted of a single entity based on religion, known as a mullah (religious cleric).¹³ The new system implemented following the fall of the Taliban separated law from religion (Shari'a), and separated the judiciary from the clergy or the tribal jerga – *i.e.*, the judgement of local elders.

The Afghanistan Independent Bar Association (“AIBA”) was established in 2008 under Afghanistan’s Advocates Law. With more than 6,000 members (including roughly 1,500 women), the AIBA oversaw the licensing and regulation of lawyers, promoted excellence and equal opportunity in the legal profession, trained future lawyers, and advanced the rule of law and social justice. The AIBA has established itself as an independent institution furthering fundamental rights, due process, judicial independence, the rule of law, and democratic values. Since its founding and despite cultural, social and economic constraints, the AIBA has been able to promote the role of women defence lawyers and has advocated in the area of social justice, notably in the defence of victims’ rights in cases of violence against women and children.¹⁴

Other post-2001 investments in the justice system included the development of a trained, independent judiciary, including (for the first time) more than 270 women judges. Similarly, extensive training was provided for prosecutors. Their ranks also were diversified to include approximately 400 women.¹⁵

¹³ See, e.g., Judge, Jury, and Executioner: Taliban Brings Afghanistan’s Justice System Under Its Thumb (RadioFreeEurope/RadioLiberty, 1 Dec. 2021) (reporting that “[d]uring its brutal rule of Afghanistan from 1996 to 2001, Taliban courts used their tribal interpretations of Shari’a law under the Hanafi school of jurisprudence to prescribe extreme public punishments”), <https://www.rferl.org/a/taliban-afghanistan-justice-system/31588972.html>.

¹⁴ Important Information on the Afghan Independent Bar Association (AIBA), ‘733-Afghan-Independent-Bar-Association.Pdf, <https://krim.dk/kommenteret-lovsamling/straffesager/straffepoces/733-afghan-independent-bar-association.pdf>; see also Statement of the New York City Bar Association re: the Taliban Takeover of the Afghanistan Independent Bar Association (New York City Bar Association, 6 May 2022) (and sources cited there), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/taliban-takeover-of-afghanistan-independent-bar-association>; Taliban’s ‘Injustice’: Women Lawyers and Judges Forced to Beg for Food (Khaama Press News Agency, 24 Nov. 2022), <https://www.khaama.com/talibans-injustice-women-lawyers-and-judges-forced-to-beg-for-food-47885/>.

¹⁵ See, e.g., Training and Transition for Afghanistan’s Justice Professionals (International Development Law Organization (“IDLO”), 2020) (reporting on IDLO’s Justice Training Transition Program, launched in 2013 – “one of the largest and most comprehensive criminal justice training programs implemented in Afghanistan” – which “delivered around 400 legal training courses to over 9,000 participants across all 34 of Afghanistan’s provinces,” in addition to “over 23,000 hours of one-on-one coaching to around 2,300 legal professionals”), <https://www.idlo.int/fr/news/highlights/training-and-transition-afghanistans-justice-professionals>; Afghan Women Who Once Presided Over Abuse Cases Now Fear for Their Lives (New York Times, 22 Oct. 2021) (reporting that, before the August 2021 Taliban takeover, more than 270 women judges served in the Afghan courts), <https://www.nytimes.com/2021/10/21/world/asia/afghan-judges-women-taliban.html>; Gunmen Assassinate 2 Female Afghan Judges in Kabul (Voice of America News, 17 Jan. 2021) (reporting that, as of January 2021, there were nearly 400 women prosecutors in Afghanistan), <https://www.voanews.com/a/south-central-asia-gunmen-assassinate-2-female-afghan-judges-kabul/6200838.html>.



The fall of the Afghan government in August 2021 erased two decades of progress almost overnight. The country's entire judicial system has essentially collapsed. The laws on the books as of August 2021, including Afghanistan's 2004 Constitution, have been deprived of all effect. Now, the principles of Shari'a are applied; and many of the directives issued by the *de facto* government constitute limitations on fundamental human rights, including freedom of press and expression, freedom of movement, and freedom of privacy.¹⁶ In addition, approximately 2,000 judges were dismissed by the new regime. Most of the new judges that have been appointed by the Taliban have reportedly obtained their qualification in religious rather than secular legal institutions.¹⁷

Judges and prosecutors who served in the Afghan government prior to the August 2021 takeover, as well as Afghan lawyers, face reprisal at the hands of both the Taliban itself and the thousands of convicted criminals who were freed when the Taliban flung open the doors of prisons across the country as it swept into power.¹⁸ Members of the Taliban hold their former

Approximately 55 women judges remain in Afghanistan at this time. *See* Information on file with the Coalition.

¹⁶ UNAMA, Human Rights in Afghanistan: 15 August - 15 June 2022 (U.N. Assistance Mission in Afghanistan, 20 July 2022), p. 40, <https://afghanistan.un.org/en/191313-human-rights-afghanistan-15-august-2021-15-june-2022>; *see also, e.g.*, Eye-for-an-eye sharia justice returns to Afghan courts (France 24/Agence France-Presse, 21 Dec. 2022), <https://www.france24.com/en/live-news/20221221-eye-for-an-eye-sharia-justice-returns-to-afghan-courts>.

¹⁷ UNAMA, Human Rights in Afghanistan: 15 August - 15 June 2022 (U.N. Assistance Mission in Afghanistan, 20 July 2022), p. 35, <https://afghanistan.un.org/en/191313-human-rights-afghanistan-15-august-2021-15-june-2022>; *see also* Going Back to Zero: How the Afghan Legal and Judicial System is Collapsing Under the Taliban Regime (Jurist, 7 March 2022) (reporting on the Taliban's dismissal of approximately 2,000 judges), <https://www.jurist.org/commentary/2022/03/mahir-hazim-afghan-legal-judicial-system-collapsing-taliban-regime/>; Collapse of Afghanistan's Judiciary as Over 2,000 Prosecutors Fired (Afghanistan International, 18 July 2022) (reporting that the Taliban fired 2,000-2,500 prosecutors across Afghanistan), <https://www.afintl.com/en/202207185576>.

¹⁸ Re: the Taliban's release of inmates from prisons across Afghanistan as it swept to power in August 2021, *see, e.g.*, 2021 Country Reports on Human Rights Practices: Afghanistan, p. 9 (U.S. Department of State, 12 April 2022) (reporting, *inter alia*: "Dozens of prisoners escaped a Baghdis central prison in July [2021] when the Taliban breached the province's capital city. The Taliban reportedly paid off prison employees to facilitate the escape of inmates. An estimated 5,000 Taliban militants were imprisoned in provincial capitals before the Taliban took over in July and August, all of whom were released by August 15. In addition to their own imprisoned fighters, the Taliban released thousands more from prisons like Parwan and Pul-e-Charkhi, including members of ISIS-K and al-Qa'ida."), https://www.state.gov/wp-content/uploads/2022/03/313615_AFGHANISTAN-2021-HUMAN-RIGHTS-REPORT.pdf.

Even prior to the August 2021 takeover, Afghan legal professionals were frequently targeted for assassination by the Taliban and other insurgent forces. *See, e.g.*, Statement of New York City Bar Association Condemning Continuing Assassinations of Prosecutors, Judges, and Court Staff in Afghanistan (New York City Bar Association, 7 April 2020) (and sources cited there), <https://www.nycbar.org/media-listing/media/detail/city-bar-condemns-assassinations-of-prosecutors-judges-and-court-staff-in-afghanistan>.

In one particularly brazen attack in late January 2021, two Afghan women judges were murdered in cold blood, in broad daylight on the streets of Kabul as they were *en route* to work at the Afghan Supreme Court. A third woman judge and their driver were also injured in the attack. *See, e.g.*, Gunmen Assassinate 2 Female Afghan Judges in Kabul (Voice of America News, 17 Jan. 2021), <https://www.voanews.com/a/south-central->



defence lawyers, judges, or prosecutors responsible for their convictions. In addition, Taliban members target lawyers, especially women lawyers, for representing victims in cases where the Taliban members were convicted. Lawyers are also being persecuted by the *de facto* authorities because of their past efforts to protect the rule of law by ensuring access to justice for fellow citizens, especially women, and protecting their fundamental rights and freedoms. With their lives and those of their families in grave danger, many Afghan judges and prosecutors, as well as lawyers, male and female, were forced either to flee the country or to go into hiding.¹⁹

[asia_gunmen-assassinate-2-female-afghan-judges-kabul/6200838.html](https://www.theguardian.com/world/2021/jan/17/two-female-judges-shot-dead-in-kabul-as-wave-of-killings-continues); Two female judges shot dead in Kabul as wave of killings continues (The Guardian, 17 Jan. 2021), <https://www.theguardian.com/world/2021/jan/17/two-female-judges-shot-dead-in-kabul-as-wave-of-killings-continues>; Afghanistan Conflict: Two Women Judges shot dead in Kabul (Australian Association of Women Judges, reprinted 17 Aug. 2021) (identifying the two victims of assassination as Judge Fazia Herawi and Judge Qadria Yashini), <https://www.aawj.org/afghanistan-conflict-two-women-judges-shot-dead-in-kabul/>; *see also, e.g.*, Afghan judge killed in Jalalabad, third court official in a month (Al Jazeera, 3 Feb. 2021) (reporting on the 3 February 2021 assassination of Judge Hafizullah in Jalalabad), <https://www.aljazeera.com/news/2021/2/3/afghan-judge-shot-dead-in-jalalabad-ambush>; Leaving Afghanistan (Judicature International, Fall/Winter 2021-2022) (stating that, in early August 2021, two men were murdered by the Taliban when it was discovered that the two were judges), <https://judicature.duke.edu/articles/leaving-afghanistan/>.

In an earlier high-profile event, at least 20 people were killed and 41 injured in a February 2017 suicide bomb attack on the Supreme Court, which targeted a bus transporting judicial personnel. The attack was timed for the end of the workday, to maximize the carnage. *See, e.g.*, Afghanistan: UN condemns deadly suicide attack in Kabul near Supreme Court (UN News, 7 Feb. 2017), <https://news.un.org/en/story/2017/02/551052>; Dozens killed in suicide blast at Afghanistan's supreme court (The Guardian, 7 Feb. 2017), <https://www.theguardian.com/world/2017/feb/07/dozens-killed-in-suicide-blast-at-afghanistans-supreme-court>.

¹⁹ Because of their occupations, all judges and prosecutors serving at the time of the August 2021 takeover – whether male or female – are in the cross-hairs of the Taliban and the prison inmates that the Taliban freed. However, the gender of women judges and women prosecutors puts them doubly at risk, facing an even greater degree of danger than their male counterparts. It is anathema to the Taliban that a woman would sit in judgement of a man, as these women have. *See generally, e.g.*, Interactive dialogue on the U.N. High Commissioner's report on Afghanistan (U.N. High Commissioner for Human Rights, 7 March 2022) (quoting the U.N. High Commissioner as stating that “the safety of Afghan judges, prosecutors and lawyers . . . , particularly women legal professionals,” is a matter of “acute concern”), <https://www.ohchr.org/en/statements/2022/03/interactive-dialogue-high-commissioners-report-afghanistan>; Human Rights Council Holds Urgent Debate on the Human Rights of Women and Girls in Afghanistan (Office of the U.N. High Commissioner for Human Rights, 1 July 2022) (quoting the U.N. High Commissioner referring specifically to “attacks on women . . . judges, lawyers and prosecutors”), <https://www.ohchr.org/en/press-releases/2022/07/human-rights-council-holds-urgent-debate-human-rights-women-and-girls>; Tweet (U.N. Special Rapporteur on the Independence of Judges and Lawyers/Tweet, 15 Aug. 2021 12:53 PM) (stating that “women judges represent what the Taliban does not want women to do or be”), <https://twitter.com/UNIndepJudges/status/1426950094771802115> Leaving Afghanistan (Judicature International, Fall/Winter 2021-2022) (explaining that, while judges in general are at risk from the Taliban, judges who are women are at even greater risk because “[t]he Taliban believe women judges are forbidden by . . . Islam”), <https://judicature.duke.edu/articles/leaving-afghanistan/>; Afghan Women Who Once Presided Over Abuse Cases Now Fear for Their Lives (New York Times, 22 Oct. 2021) (quoting the President of the International Association of Women Judges: “Women judging men is anathema to the Taliban”), <https://www.nytimes.com/2021/10/21/world/asia/afghan-judges-women-taliban.html>.



On 22 November 2021, the Taliban’s Ministry of Justice issued a decree depriving the AIBA of its independence, including its authority to grant licences to lawyers.²⁰ One day after the decree was issued, Taliban forces stormed the AIBA’s headquarters in Kabul, threatening its employees and members with violence and ordering them to leave the premises. The Taliban gained access to the AIBA’s databases including data on over 2,500 lawyers and non-lawyer employees. These records contained lawyers’ ID information, the names of family members, home addresses, and phone numbers, as well as information on cases handled and lawyers’ affiliations with government and international organizations, in addition to information on prosecutors and judges. The Taliban also seized control of the AIBA’s bank accounts and funds. Since then, the AIBA was forced to cease its operations in the country and was placed under the control of the *de facto* Taliban Ministry of Justice.

Using the information garnered from the databases that it seized, the Taliban targeted lawyers who had previously worked on “sensitive” cases (*e.g.*, cases involving the defence of human rights, including women’s rights, and other similar matters).

According to AIBA²¹, 7 lawyers have been killed since the dissolution of AIBA and 146 lawyers have been arrested or investigated. Many of their colleagues felt compelled to flee the country or to begin living in hiding, together with their families, to attempt to evade the *de facto* authorities.

The decree of 22 November 2021 also stated that only Taliban-approved lawyers are allowed to appear before the courts. Thus, former AIBA-registered lawyers are required to obtain a new licence, fulfilling a set of criteria devised by the *de facto* Ministry of Justice. In practice, lawyers are examined on the basis of their past activities and their understanding of Shari’a principles. Those who were previously active in the field of human rights, even remotely, or who had relationships with international organisations are automatically denied a license and are therefore no longer permitted to practice. Further, although before the fall to the Taliban, women had counted for 25% of the AIBA’s members, to date the Taliban has granted licences only to men. As a result, the vast majority of lawyers who were legitimately registered with the AIBA have now been banned from practicing law and are without clear future plans.

²⁰ UNAMA, Human Rights in Afghanistan: 15 August - 15 June 2022 (U.N. Assistance Mission in Afghanistan, 20 July 2022), p. 35, <https://afghanistan.un.org/en/191313-human-rights-afghanistan-15-august-2021-15-june-2022>; Statement of the New York City Bar Association re: the Taliban Takeover of the Afghanistan Independent Bar Association (New York City Bar Association, 6 May 2022) (and sources cited there), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/taliban-takeover-of-afghanistan-independent-bar-association>; 2021 Country Reports on Human Rights Practices: Afghanistan, p. 17 (U.S. Department of State, 12 April 2022), https://www.state.gov/wp-content/uploads/2022/03/313615_AFGHANISTAN-2021-HUMAN-RIGHTS-REPORT.pdf.

²¹ The statistics mentioned above are approximate considering the impossibility to get accurate reports and data from inside the country due to security problems and the control of the database by the Taliban.



Women lawyers are being specifically targeted, making their daily survival a challenge. Every woman lawyer in Afghanistan who attempts to work is under constant threat, including other legal professionals such as women judges and prosecutors. Rights of women, including lawyers, are progressively restricted to none, leaving them in an untenable situation.

The Taliban takeover of Afghanistan has brought devastating changes for the legal profession and the administration of justice in the country.²² Many lawyers with the means to leave the country have done so – though many of those continue to languish in difficult living conditions in temporary locations, awaiting permanent resettlement, and may still be in danger.²³ Even

²² The Taliban's takeover of the AIBA has grave and profound consequences for the integrity of the administration of justice in Afghanistan. The Taliban Ministry of Justice's control over the licencing of lawyers, particularly given the nature of the licencing criteria that have been announced, seem to indicate that lawyers are no longer independent advocates for their clients, but, rather, agents of the (Taliban) state. No one can serve two masters. Afghans' access to independent legal advice and representation – and to justice – are thus now a relic of the past. *See, e.g.*, Statement of the New York City Bar Association re: the Taliban Takeover of the Afghanistan Independent Bar Association (New York City Bar Association, 6 May 2022), nn.21-23 & related text (and sources cited there), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/taliban-takeover-of-afghanistan-independent-bar-association>.

Even more fundamentally, as summarized above, the ranks of Afghan lawyers have been severely depleted by the new licencing requirements imposed by the Taliban, by the wholesale exclusion of women from the legal profession, and by the exodus of lawyers fleeing the country. This obviously has extreme consequences for the availability of legal services for the public. *See* Universal Declaration of Human Rights, Art. 10 (setting forth the right of all people to “a fair and public hearing” in both civil and criminal matters, presupposing the availability of legal counsel), <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english>; U.N. Basic Principles on the Role of Lawyers, Principle 2 (stating that governments are to ensure that “access to lawyers [is] provided for all persons within their territory”), <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>; *see also, e.g.*, Female Lawyers Tolerate Poverty with Empty Food Tables and Life Threats (Hasht-E Subh, 30 Oct. 2022) (highlighting in particular the impact of the exclusion of women from the profession and quoting Afghan women lawyers stating that it “has made women’s access to justice difficult and even impossible,” that “preventing female defense lawyers from working prevents [women] them from pursuing legal and criminal cases,” and that “[p]rohibiting the activities of female defense lawyers has . . . deprived accused women of their fundamental rights”), <https://8am.media/eng/female-lawyers-tolerate-poverty-with-empty-food-tables-and-life-threats/>; *cf.* Aid Groups Pause Work in Afghanistan After Nation’s Women Are Banned (Wall Street Journal, 25 Dec. 2022) (explaining, in a similar context, that “traditional [Afghan] culture means that [women and children] can only be reached by female workers”), <https://www.wsj.com/articles/aid-groups-pause-work-in-afghanistan-after-nations-women-are-banned-11671980007>.

²³ *See, e.g.*, Former Afghan lawyer fears for her life in Pakistan (video) (Deutsche Welle, 1 Oct. 2022) (highlighting plight of former prosecutor Haseeba Noori, who fled Afghanistan for Pakistan and now awaits resettlement, living in Islamabad “without any job or financial assistance” and fears that her life is still in danger from those whom she prosecuted), <https://dw.com/en/former-afghan-lawyer-fears-for-her-life-in-pakistan/video-63283169>.

The former Chief Justice of Afghanistan (October 2014-August 2021), Sayed Yosuf Halim, passed away in mid-October 2022, after languishing for more than a year in a refugee camp in the United Arab Emirates awaiting resettlement in the United States. *See* Tweet (Afghan Evacuation/Twitter, 17 Oct. 2022 12:45 p.m.); *see also* 6,500 Afghans evacuated to UAE still stuck in limbo awaiting U.S. resettlement (CBS News, 9 Aug. 2022), <https://www.cbsnews.com/news/afghanistan-refugees-united-arab-emirates-us-resettlement/>.



those who have reached permanent resettlement destinations generally need much greater support and assistance than they are receiving.

Lawyers who remain in Afghanistan no longer have the independence which is essential in a society governed by the rule of law. Many are now barred from the practise of law and have no way to support themselves and their families.²⁴ And many are in hiding, forced to live in places with limited facilities, in extreme hardship conditions. Their only hope is to be able to leave the country. Unfortunately, their pleas for help too often fall on deaf ears.

D. Lawyers in danger:

The select cases below concretely illustrate the very real challenges and risks that Afghan lawyers face.²⁵

1. Z M:

Z M is a defence lawyer who previously worked as a translator for NATO. Z M handled sensitive cases, including human rights cases and cases related to violence against women, as well as cases against members of the Taliban.

²⁴ See, e.g., Taliban's 'Injustice'; Women Lawyers and Judges Forced to Beg for Food (Khaama Press News Agency, 24 Nov. 2022) (quoting tweet by U.S. Special Envoy for Afghan Women, Girls, and Human Rights in Afghanistan Rina Amiri: "Now women are sidelined from practicing law & many women judges & lawyers are forced to beg for food for their children rather than use their skills"; slamming the Taliban, saying "Such injustice."), <https://www.khaama.com/talibans-injustice-women-lawyers-and-judges-forced-to-beg-for-food-47885/>; Female Lawyers Tolerate Poverty with Empty Food Tables and Life Threats (Hasht-E Subh, 30 Oct. 2022) (interviewing a number of Afghan women lawyers still in Afghanistan, reporting that "[h]undreds of female defense lawyers in the country are in a state of destitution and are not allowed to work," while their lives remain in danger from former clients and ex-prison inmates freed by the Taliban; quoting one lawyer, for example, as stating that "[she] can't even afford a packet of powdered milk for [her] child," while poverty "forced [another lawyer] to marry immediately and against her will"; quoting another lawyer as stating that she has "been threatened by the Taliban many times"; and another lawyer lamented that, although she was formerly the breadwinner for her relatives, she has now "become a threat to the life of [her] family"), <https://8am.media/eng/female-lawyers-tolerate-poverty-with-empty-food-tables-and-life-threats/>.

²⁵ As noted above, Afghan prosecutors and judges are in certain respects in even greater danger than lawyers; and those prosecutors and judges who are women are in the greatest jeopardy.

Judge S A – a woman judge who was still in Afghanistan – was recently assassinated in cold blood. Her parents found her lifeless body. See Information on file with the Coalition. See also, e.g., Collapse of Afghanistan's Judiciary as Over 2,000 Prosecutors Fired (Afghanistan International, 18 July 2022) (reporting, *inter alia*, that "at least 26 prosecutors [had] been killed" as of mid-July 2022), <https://www.afintl.com/en/202207185576>.

Except as otherwise indicated, the information in this section of the report was provided by leaders of the Afghanistan Independent Bar Association and is on file with the Coalition. To protect their safety and that of their families, most of the individuals who are profiled are identified only by their initials.



In one case, Z M represented a woman seeking to divorce a Taliban militant imprisoned in Bagram. After the Taliban released the prisoners at Bagram, Z M's client called him to warn him that her ex-husband was searching for him, presumably to retaliate. The ex-husband went to Z M's office, but, fortunately, Z M already had left.

After 15 August 2021, Z M tried to fly from the city of Kabul to a safe place, but he could not enter the airport, which was heavily fortified.²⁶ He eventually managed to escape the country but is not yet in a safe location.

²⁶ Like Z M, many Afghans at risk who sought to flee the country in the immediate aftermath of the Taliban takeover were not successful. In the days between 15 August and 31 August, Kabul erupted in pandemonium as desperate Afghans frantically tried to leave Afghanistan. With the borders largely sealed and the city encircled by the Taliban, tens of thousands of Afghans sought to make their way to Kabul's Hamid Karzai International Airport to attempt to get on a flight out – especially those who had worked for the Afghan government and the so-called “collaborators” who had supported the work of the U.S. and other foreign governments. However, while U.S. and coalition forces secured the airport itself, all streets and roads were controlled by the Taliban. Frequent Taliban checkpoints rendered passage to the airport a harrowing process, requiring people to navigate a gauntlet that left even those who were successful dehydrated, exhausted, traumatized, and, in many cases, injured, either by Taliban fighters or U.S. soldiers.

The scene at the airport itself was sheer chaos. The mayhem soon turned deadly, with seven people killed, including several who clung to the landing gear of a departing U.S. military transport plane before plunging to their deaths, and others who were crushed in stampedes at the airport's Abbey Gate, one of the main entrances to the airport. Day by day, casualties continued to mount – victims of gunshots, trampling, suffocation, and heart attacks. Repeatedly flights had to be halted as crowds stormed runways. The U.S. Embassy warned its citizens to stay away from the airport unless specifically instructed otherwise, citing risks of attack by Islamic State militants operating in Afghanistan.

Outside the airport was a sea of humanity. Taliban soldiers wielded ropes, whips, sticks, rifle butts, hose, and plastic pipe, and fired shots into the air, in crude attempts at crowd control. Coalition forces stood guard atop massive concrete barriers topped with razor wire, controlling access to the airport. Masses of anxious Afghans surged up against the barriers, waving their documents in the air, seeking to attract the attention of the armed soldiers in a bid to gain admission to the airport. Accessing one of the gates required desperate Afghans to wade through raw sewage, carrying children in their arms and balancing precious personal belongings high above their heads. Some people tried to scale the concrete barriers surrounding the airport. And, in some of the most heartbreaking images of the evacuation, families hoisted young children over the barriers and the razor wire to foreign soldiers, in the hopes that the young ones might escape to safety, even if the rest of the family did not.

Those fortunate enough to make it into the airport were confronted with confusing instructions and a days-long wait inside the terminal, as well as evacuation flights departing with empty seats. In the chaos, families often became separated, with members of the same family being sent to different countries. As the days wore on, kilometres of land near the airport began to resemble makeshift refugee camps as increasingly desperate Afghans continued to mass, exposed to dust and blistering heat, and sometimes left without food and water. Then, on 26 August, two massive explosions occurred – the first just outside the airport's Abbey Gate, and the second at the nearby Baron Hotel, which was being used by British and Canadian forces as a muster point for Afghans approved for evacuation flights. The two blasts left 13 U.S. troops and at least 169 Afghans dead, with hundreds more seriously wounded.

While states generally focussed on evacuating their own nationals and Embassy staff, *ad hoc* volunteer operations mobilized around the globe, laboring 24/7 in heroic efforts to rescue others at risk, including Afghan judges, prosecutors, and lawyers, particularly women. Ultimately, more than 122,000 people were evacuated between 15 August and 31 August, in one of the largest airlifts in history. But tens of thousands more –



2. A M A:

A M A, a member of the AIBA, provided legal aid services. Notably, in one case he represented a client accused of murder who was acquitted. A M A's life was threatened by the murder victim's family, which has ties to the Taliban. Due to the cases that he has handled and his role in the AIBA, A M A is now being chased by the Taliban. On one occasion, armed Taliban went to his former home to search for him; and he fell while being ambushed but managed to escape.

3. A S S:

A S S is a defence lawyer and a member of the AIBA. He was active in various sensitive political cases, practising commercial and criminal law. Following the release by the Taliban of many prisoners who seek revenge against the lawyers involved in their cases, A S S and his family have received anonymous phone calls and death threats. They have therefore been forced into hiding.

4. H B:

H B, a member of the AIBA, handled various types of civil, family and criminal cases, including cases of violence against women, children and foreign nationals. He has been the target of explicit death threats from terrorist groups, including the Taliban, and is now forced to hide, changing locations regularly to save his life.

5. Mrs M W:

M W is a member of the AIBA who has practiced law in various disciplines including family law. She also worked as a legal advisor in one of the institutions for human rights and women's

including many who are highly vulnerable to Taliban retribution, such as Afghan lawyers like Z M – were left behind.

See generally, e.g., Judges from around the world work to save female Afghan colleagues amid waning hope (Washington Post, 28 Aug. 2021), https://www.washingtonpost.com/local/afghan-women-judges-rescue/2021/08/28/ccd94798-075c-11ec-a654-900a78538242_story.html; Afghanistan: Danger lies on Kabul's airport road to freedom (BBC News, 19 Aug. 2021) (including a map of the airport, main roads, and environs), <https://www.bbc.com/news/world-asia-58271517>; Chaos on the runway: Kabul airport mobbed as Afghans make desperate dash to exit (Times of Israel/Agence France-Presse, 16 Aug. 2021), <https://www.timesofisrael.com/chaos-on-the-runway-kabul-airport-mobbed-as-afghans-make-desperate-dash-to-exit/>; Chaos spreads outside Kabul's airport as the Taliban try to control crowds. (New York Times, 18 Aug. 2021), <https://www.nytimes.com/2021/08/18/world/asia/kabul-airport-taliban-afghanistan.html>; 7 Afghans die amid chaos at Kabul airport as U.S. orders airlines to assist with airlifts (Los Angeles Times, 22 Aug. 2021), <https://www.latimes.com/world-nation/story/2021-08-22/7-afghans-killed-amid-chaos-at-kabul-airport-british-military-says>; 'Dead people were everywhere': Carnage and chaos at Kabul airport (Washington Post, 27 Aug. 2021), https://www.washingtonpost.com/world/asia_pacific/kabul-airport-afghanistan-isisk/2021/08/26/69466456-0674-11ec-b3c4-c462b1edcfc8_story.html.



rights. Because she has represented victims of very serious domestic violence, M W has been threatened with death and was forced to leave her home.

6. M J Q:

M J Q was a defence lawyer and a member of the AIBA. His law practise involved criminal cases, civil cases, cases of violence against women, and cases of internal and external security. Even before the Taliban takeover, M J Q was attacked twice, in 2018 and 2020. Following the Taliban's release of prisoners who now seek revenge, he can no longer live safely at home.

7. M S N:

M S N has defended the legal rights of victims of violence (including violence against women and children), as well as cases involving charges of corruption. He has also represented individuals accused of crimes against internal and external security. He has been threatened several times by relatives of the opposing parties in cases that he has handled. Further, he has received death threats from former clients who were convicted and who refuse to accept the verdict of the court.

In addition, in several cases where M S N represented wives of members of the Taliban who were seeking to divorce their husbands, the Taliban threatened M S N with retribution. Due to the dangers, M S N was forced to leave his home. He now resides in an undisclosed location, with his wife and their young daughter.

8. S M S:

S M S was a defence lawyer specialising in criminal law. In one case, S M S was assigned to defend an individual accused of being a member of the Taliban. His client was convicted and deemed S M S responsible for the conviction. After the Taliban freed his former client from prison, the former client called S M S to inform him that he wants revenge. S M S fled for his safety. However, his ex-client is now an active member of the Taliban and is still searching for S M S and his family.

9. Mrs M D:

M D was a defence lawyer and human rights activist in Kabul and a member of the AIBA. She has handled many cases of violence against women, including, for example, cases of forced marriage and honour killings. As a result, her life and the lives of her family members are now in great peril. Moreover, quite apart from the danger that she faces as a woman lawyer, her everyday life as a woman – like all Afghan women – is extremely difficult. She cannot work, and, indeed, cannot even leave her home without a male chaperone.



10. Mrs Zohra KOHI:

Mrs Zohra KOHI was a defence lawyer and a member of the Committee for the Elimination of Violence against Women and Children.

She used to visit the female jail in pol-e-Charkhi and was warned by local Taliban not to drive anymore.

In 2015, she represented a mother whose son had been murdered by his father-in-law and brother-in-law. The father-in-law had fled and the brother-in-law was released through guarantee. She received a threat letter from the fleeing murderer every week until the verdict.

In 2016, she represented a woman whose house had been seized by the mafia. The mafia threatened her and tried to kidnap her. Her brother and her cousin had to escort her to work in order to avoid any other attempt.

In 2021, she represented a woman whose daughter had been killed by her husband, under the pretext that she wasn't a virgin. The Taliban conquered Kabul and the perpetrator couldn't be arrested. She received threatening calls from him and from an ex-detainee of Bagram jail.

She managed to leave the country and lives now in Spain.

11. Mrs Masiha FAYEZ

As a lawyer, she worked in the field of human rights and women's rights and helped to promote access to justice for survivors of gender-based violence. She was also an adviser in different committees in charge of reforming the law.

On the 15 August 2021, she was in Kabul and was told that the Taliban had opened the gate of Polcharkhi prison. She saw several prisoners on the street, wearing prison uniforms. She reached the airport but couldn't get a place on a plane. Her son and her suffer from metal health issues due to the incidents they witnessed.

Fortunately, she was able to leave Afghanistan in September but her family received threats as a consequence.

She's now living in Germany with her husband and children but she still faces different challenges:

- Language is one of the big barriers
- Despite the fact that she has a Master degree in Law and 19 years of work experience, her degree is not recognised in Germany
- Landlords don't easily rent houses to refugees without a job



E. Legal professionals in danger:

1. Mumtaz SHERZAI:

On 15 July 2022, Mumtaz Sherzai went missing from his home in the city of Khost, in Khost province in southeast Afghanistan. He was a law professor at Khost University and a former prosecutor for the National Directorate of Security. The following day, on 16 July, his remains were discovered near the Khost province airport. His bruised and bloodied body bore obvious signs of beatings and severe torture, presumed to be his cause of death. He was survived by his wife and three-year-old daughter, and was the sole breadwinner for his extended family.²⁷

2. Faizullah JALAL:

In one of the most recent high-profile cases involving the persecution of an Afghan legal professional, the Taliban arrested Faizullah Jalal, a prominent professor of law and political science at Kabul University who has been a highly-vocal critic of the Taliban on Afghan TV and in other public fora. When the professor was arrested at his home on 8 January 2022, the international community was seized with fear for his life. His release by the Taliban, unharmed, mere days later has been attributed to the swift worldwide condemnation of the Taliban's actions. Absent that global outcry, the professor might well have met a very different fate.²⁸

3. Mrs Freshta KARIMI:

Since 2002, Freshta Karimi has devoted her career to improving access to justice and promoting women's and children's rights in Afghanistan. In 2006, she co-founded the NGO Da Qanoon Ghushonky ("DQG") specifically to combat violence against Afghan women and to increase public awareness of the law in communities at the district and provincial levels, through the publication of a variety of popular legal awareness materials.

²⁷ See Statement Condemning the Murder of Mumtaz Sherzai in Afghanistan and Calling on the International Community to Demand Taliban Compliance with International Law (New York City Bar Association, 4 Aug. 2022) (and sources cited there), <https://www.nycbar.org/media-listing/media/detail/condemning-murder-of-mumtaz-sherzai-in-taliban-afghanistan>; Collapse of Afghanistan's Judiciary as Over 2,000 Prosecutors Fired (Afghanistan International, 18 July 2022), <https://www.afintl.com/en/202207185576>.

²⁸ See Statement of the New York City Bar Association re: the Taliban Takeover of the Afghanistan Independent Bar Association (New York City Bar Association, 6 May 2022), n.13 (and sources cited there), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/taliban-takeover-of-afghanistan-independent-bar-association>.



In just the first eight years of DQG’s existence, DQG lawyers handled more than 24,000 criminal and family law cases. Today, DQG continues to provide legal aid services for women, children and men in 16 provinces across Afghanistan.

The events of August 2021 forced Mrs Karimi to leave Afghanistan and find refuge in Canada. In September 2021, she was awarded the prestigious Ludovic Trarieux International Human Rights Prize.²⁹

F. Denial of international protection for persecuted Afghan lawyers:

Since Afghanistan fell to the Taliban in August 2021, thousands of Afghans have been evacuated from Afghanistan and resettled in other countries.³⁰ However, bar associations and other national and international organisations continue to receive frequent desperate calls from Afghan lawyers who remain trapped in Afghanistan or are in neighboring countries expressing urgent and genuine fear of persecution and imminent risk to their lives due to their previous professional activities. Further, for those who were evacuated or managed to flee and apply for international protection, the specific needs of Afghan lawyers and other legal professionals need to be addressed for their effective international protection and integration into their new homelands.³¹ Supporting these Afghan lawyers who have devoted decades – and risked their

²⁹ “The 26th International Human Rights “Ludovic-Trarieux” Prize 2021 awarded on 28th September, 2021 to Freshta Karimi, <http://www.ludovictarrieux.org/uk-page3.callplt2021.htm>

³⁰ Joint Statement on Afghanistan (signed by more than 100 countries pledged to accept Afghans fleeing Afghanistan after the U.S. military withdrawal from the country, committing to respect and facilitate the safe and orderly departure of Afghans who wish to leave the country) (U.S. Department of State, 15 Aug. 2021), <https://www.state.gov/joint-statement-on-afghanistan/> and Statement on the Situation in Afghanistan (Council of the European Union, 31 Aug. 2021), <https://www.consilium.europa.eu/en/press/press-releases/2021/08/31/statement-on-the-situation-in-afghanistan/>.

³¹ Former judge and legal adviser to the Afghan Ministry of Justice Mohammad Ashraf Rasooli, who had a role in developing the 2004 Afghan Constitution, is now facing eviction with his family, including his three grandchildren, after being evacuated to Greece in October 2021. See ‘Destitution is almost inevitable’: Afghan refugees in Greece left homeless by failed system (The Guardian, 30 Nov. 2022), <https://www.theguardian.com/global-development/2022/nov/30/destitution-is-almost-inevitable-afghan-refugees-in-greece-left-homeless-by-failed-system>; see generally, e.g., The Evacuation of Afghanistan Never Ended (, 30 Aug. 2022) (reporting that “A year after the last U.S. military flights left, some Afghans who are vulnerable to retribution from the Taliban are being resettled in the U.S. But others are stuck in third-party countries, and many remain trapped in Afghanistan, at great risk.”), <https://www.newyorker.com/news/daily-comment/the-evacuation-of-afghanistan-never-ended>; Scores of lawyers work to gain temporary legal status for 250 female judges in Afghanistan (ABA Journal, 23 Dec. 2021) (quoting Afghan Judge Maryam Helal, then in Greece on a 60-day visa: “We do not have food, clothes and a suitable place [to live]. We do not have access to medical services.”), <https://www.abajournal.com/news/article/scores-of-lawyers-work-to-gain-temporary-legal-status-for-250-female-judges-in-afghanistan>.



lives – to build democracy and the rule of law in Afghanistan, to the benefit of the rest of the world, is a moral obligation.³²

Despite the calls of many in the international community, States are applying practices to prevent Afghans from arriving in Europe and to limit protection for Afghan asylum seekers.³³ In particular, Afghan asylum seekers, including lawyers and their families, are subjected to violence at the borders, to “pushbacks,” and to denial of individualized international protection needs.³⁴ Even where they manage to arrive in Europe and apply for asylum, their cases are often

³² See generally, e.g., Letter to U.S. President Biden & Members of U.S. Congress from State Legislators in the U.S. (emphasizing that “[t]hroughout the 20-year war in Afghanistan, the U.S. made sweeping promises and helped secure important gains in the realms of human rights and democracy in partnership with [its] brave Afghan allies,” that the U.S.’s “Afghan allies have been integral to the U.S. mission,” and that the U.S. has “a moral responsibility to protect those at risk due to [the U.S.’s] withdrawal” from Afghanistan), https://secure.everyaction.com/0a5-cR80Cnob_H_9kTFO2; Moral obligation and our Afghan allies: A military mom’s perspective (The Hill, 25 Sept. 2022) (highlighting “the moral obligation to follow through on . . . promises and provide pathways to permanent residence for those . . . brought [to the United States], and to help those . . . left behind,” and underscoring that fulfilling such promises is a matter of national security), <https://thehill.com/opinion/national-security/3660055-moral-obligation-and-our-afghan-allies-a-military-moms-perspective/>; DOD Official Discusses ‘Moral Obligation’ to Help Those in Afghanistan Who Helped U.S. (DOD News/U.S. Department of Defense, 20 May 2021) (recognizing “a moral obligation to help those that have helped [the U.S. and its allies]”), <https://www.defense.gov/News/News-Stories/Article/Article/2626344/dod-official-discusses-moral-obligation-to-help-those-in-afghanistan-who-helped/>.

³³ Unwelcome Refugees: Afghans Continue to Face Pushback and Deportation (Mixed Migration Centre, 25 May 2022), <https://mixedmigration.org/articles/unwelcome-refugees-afghans-continue-to-face-pushback-and-deportation/>; see also, e.g., The Evacuation of Afghanistan Never Ended (The New Yorker, 30 Aug. 2022) (summarizing legal pathways for Afghans who seek to resettle in the U.S., noting that “[n]ot one [of those legal pathways] is working like it should,” and contrasting U.S. treatment of Afghans with U.S. treatment of Ukrainians), <https://www.newyorker.com/news/daily-comment/the-evacuation-of-afghanistan-never-ended>; U.S. is accused of a double standard when it comes to Afghan and Ukrainian refugees (National Public Radio, 6 July 2022), <https://www.npr.org/2022/07/06/1109965531/u-s-is-accused-of-a-double-standard-when-it-comes-to-afghan-and-ukrainian-refugee>; Refugees from Ukraine and Afghanistan treated differently, charity warns (BBC News, 1 Aug. 2022), <https://www.bbc.com/news/uk-england-wiltshire-62334985>; Germany Treating Afghan, Ukrainian Refugees Differently, Afghans Say (Voice of America News, 18 Aug. 2022), <https://www.voanews.com/a/germany-treating-afghan-ukrainian-refugees-differently-afghans-say-6707920.html>; ‘Night and day’: Lawyers say Canada offers more support to Ukrainian refugees than Afghans (CTV News, 29 March 2022), <https://www.ctvnews.ca/canada/night-and-day-lawyers-say-canada-offers-more-support-to-ukrainian-refugees-than-afghans-1.5831685>; Afghan refugees feel they have been cast aside in favour of Ukrainian refugees (The New Arab, 29 June 2022), <https://www.newarab.com/features/ukraine-causes-afghan-refugees-fall-worlds-favour>.

³⁴ “Their Faces Were Covered”: Greece’s Use of Migrants as Police Auxiliaries in Pushbacks (Human Rights Watch, 7 April 2022), <https://www.hrw.org/report/2022/04/07/their-faces-were-covered/greeces-use-migrants-police-auxiliaries-pushbacks> and Greece: Pushbacks Face Renewed International, Legal, Political, and Public Scrutiny, Turkey Conducts Large-Scale Returns, Coast Guard Seeks to Purchase Surveillance Software (European Council on Refugees and Exiles, 25 Feb. 2022), <https://ecre.org/greece-pushbacks-face-renewed-international-legal-political-and-public-scrutiny-turkey-conducts-large-scale-returns-coast-guard-seeks-to-purchase-surveillance-software/>.



rejected as inadmissible under the notion of the “safe third country clause.”³⁵ The most significant example involves Greece, which designated Turkey as a safe third country for all Afghans seeking protection in the European Union,³⁶ while Turkey increased deportations of Afghans to Afghanistan.³⁷

G. Recommendations:

The undersigned organisations make the following recommendations:³⁸

1. The *de facto* authorities in Afghanistan must comply with the United Nations Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, from 27 August to 7 September 1990.³⁹
2. The *de facto* authorities in Afghanistan must restore the independence and integrity of the country’s justice system to its status as of 15 August 2021, including restoring the Afghanistan Independent Bar Association (“AIBA”) and, in particular, the AIBA’s licencing authority, in accordance with, *inter alia*, the U.N. Basic Principles on the Role of Lawyers, including

³⁵ Joint civil society statement: One year after the country’s takeover by the Taliban – How did Europe welcome Afghans in need of protection? (51 civil society organisations, 9 Sept. 2022), https://www.gcr.gr/media/k2/attachments/Joint_civil_society_statement_One_year_after_the_countrys_takeover_by_the_Taliban%E2%80%93How_did_Europe_welcome_Afghans_in_need_of_protection.pdf.

³⁶ Living in Limbo: The Impact of Greece’s Safe Third Country Policy on Afghan Asylum Seekers (Just Security, 10 Nov. 2021), <https://www.justsecurity.org/79134/living-in-limbo-the-impact-of-greeces-safe-third-country-policy-on-afghan-asylum-seekers/> and Greece deems Turkey “safe”, but refugees are not: The substantive examination of asylum applications is the only safe solution for refugees (ReliefWeb/U.N. Office for the Coordination of Humanitarian Affairs, 15 June 2021), <https://reliefweb.int/report/greece/greece-deems-turkey-safe-refugees-are-not-substantive-examination-asylum-applications>.

³⁷ “No One Asked Me Why I Left Afghanistan”: Pushbacks and Deportations of Afghans from Turkey (Human Rights Watch, 18 Nov. 2022), <https://www.hrw.org/report/2022/11/18/no-one-asked-me-why-i-left-afghanistan/pushbacks-and-deportations-afghans-turkey>; Joint Third Party Intervention of European Association of Lawyers for Democracy and World Human Rights (ELDH), European Democratic Lawyers (EDL), Association of Lawyers for Freedom (ÖHD), and Progressive Lawyers’ Association (ÇHD) before European Court of Human Rights (25 June 2022), http://www.aeud.org/2022/07/before-the-european-court-of-human-rights/?fbclid=IwAR1Fa9E6W2Vp7v6Xgblg6A8L-fl6Iwu52ganP-H0nZpz4YxEeFaDoK65B5Y#_ftn69; and Turkey: “Refugees from Afghanistan handed over to Taliban by force” (BIA News Desk, 19 April 2022), <https://m.bianet.org/english/migration/260665-turkey-refugees-from-afghanistan-handed-over-to-taliban-by-force>.

³⁸ Although these Demands and recommendations are framed in terms of Afghan lawyers, they apply with equal force to Afghan prosecutors and judges.

³⁹ United Nations Basic Principles on the Role of Lawyers (7 Sept. 1990), <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>.



Principle 24, which provides that bar associations are entitled to “exercise [their] functions without external interference.”⁴⁰

3. The *de facto* authorities in Afghanistan must restore the right of women to practice as lawyers in Afghanistan, in accordance with Principle 10 of the U.N. Basic Principles on the Role of Lawyers, which prohibits discrimination in licencing on the basis of, *inter alia*, sex.

4. The *de facto* authorities in Afghanistan must urgently address the increase in attacks on Afghan lawyers and guarantee their right to the free and independent exercise of their profession, particularly in accordance with Principle 16 of the U.N. Basic Principles on the Role of Lawyers, which charges that “[g]overnments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”

5. The *de facto* authorities in Afghanistan must urgently protect the lives of Afghan lawyers and adopt and implement measures to guarantee their safety, security and freedom in accordance with Principle 17 of the U.N. Basic Principles on the Role of Lawyers, which states that “[w]here the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.”

6. The *de facto* authorities in Afghanistan must cease the stigmatisation of Afghan lawyers involved in sensitive cases, in accordance with the U.N. Basic Principles on the Role of Lawyers. In particular, Principle 18 provides that “[l]awyers shall not be identified with their clients or their clients’ causes”; and Principle 23 states, in relevant part, that “[l]awyers like other citizens are entitled to freedom of expression, belief, association and assembly,” including “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 . . . , without suffering professional restrictions.”

7. The *de facto* authorities in Afghanistan must permit Afghan lawyers and their families to freely and safely leave the country, if they wish to do so.

8. The international community, in their diplomatic efforts toward the *de facto* authorities in Afghanistan, are urged to ensure the maintenance of a free and independent legal profession, in order to safeguard fundamental rights, including women’s rights, the independence and integrity of the administration of justice, and the rule of law.

⁴⁰ See, e.g., Afghanistan: UN human rights experts warn of bleak future without massive turnaround (Office of the U.N. High Commissioner for Human Rights, 12 Aug. 2022) (calling on the *de facto* authorities to immediately reinstate bar associations), <https://www.ohchr.org/en/taxonomy/term/942>.



9. The European Union and its Member States, together with the United States and the international community as a whole, are urged to leverage their relations with the *de facto* authorities in Afghanistan to press them to accord to Afghan lawyers all rights and protections to which the lawyers are entitled, in accordance with the *de facto* authorities' international obligations.

10. The international community, including, *inter alia*, the European Union and its Member States, as well as the United States, is called upon to grant asylum to Afghan lawyers who are at risk in Afghanistan and who seek international protection.

11. The international community is urged to take all necessary measures to ensure that the lawyers at risk who remain in Afghanistan can safely leave the country.⁴¹

In particular:

- To immediately implement evacuation and resettlement programmes for Afghan lawyers remaining in Afghanistan or located in neighboring countries.⁴²
- To ensure respect for the principle of non-refoulement at all times.
- To make humanitarian visas available to enable Afghan lawyers in need to access international protection legally and safely.
- To ensure that all States suspend deportations and summary returns of Afghan nationals to Afghanistan or third states.
- To ensure that all States thoroughly investigate allegations of ill-treatment of Afghan nationals, especially in the States' border regions and in removal centers in their territories.

⁴¹ See Interview: After Fleeing the Taliban, a Women's Rights Defender Mourns the Loss of Afghanistan, Urges Action to Save the Country's Lawyers (Jurist, 12 May 2022) (quoting Afghan lawyer's plea: "Advocates inside Afghanistan are under threat and their lives are in imminent danger. Help them leave Afghanistan."), <https://www.jurist.org/features/2022/05/12/interview-after-fleeing-the-taliban-a-womens-rights-defender-mourns-the-loss-of-afghanistan-urges-action-to-save-the-countrys-lawyers/>; Letter to U.S. Secretary of State Antony Blinken from ABA President Reginald M. Turner (American Bar Association, 23 Sept. 2021) (urging the U.S. government to continue to evacuate at-risk Afghan nationals and to prioritize Afghan lawyers and judges, especially women), https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/aba-presidential-letter-re-afghan-judges-9-22-21.pdf.

⁴² See Interview: After Fleeing the Taliban, a Women's Rights Defender Mourns the Loss of Afghanistan, Urges Action to Save the Country's Lawyers (Jurist, 12 May 2022) (quoting Afghan lawyer's plea: "[A]ttorneys that have made it out of Afghanistan are often left to fester in refugee camps for far too long, which poses a threat to anyone's mental health. Help them get out of these refugee camps and into destination countries."), <https://www.jurist.org/features/2022/05/12/interview-after-fleeing-the-taliban-a-womens-rights-defender-mourns-the-loss-of-afghanistan-urges-action-to-save-the-countrys-lawyers/>.



- To halt “pushbacks” of Afghans from all States’ territories to third States, especially when the third States send the Afghans back to Afghanistan.

12. States, and, more generally, the international community, are urged to design and implement resettlement policies and programmes to allow Afghan lawyers to make the best possible use of their specialized legal training and experience from Afghanistan in their new employment.⁴³

13. The United Nations and other international institutions – including, in particular, the U.N. High Commissioner for Human Rights, the U.N. Special Rapporteur on the situation of human rights in Afghanistan, the U.N. Special Rapporteur on the independence of judges and lawyers, the U.N. Special Rapporteur on the situation of human rights defenders, the U.N. Special Rapporteur on violence against women and girls, the U.N. Working Group on discrimination against women and girls, and the U.N. Secretary-General’s Personal Envoy on Afghanistan and Regional Issues – are asked to redouble their focus on the plight of Afghan lawyers and to press

⁴³ See Interview: After Fleeing the Taliban, a Women’s Rights Defender Mourns the Loss of Afghanistan, Urges Action to Save the Country’s Lawyers (Jurist, 12 May 2022) (quoting Afghan lawyer’s plea: “Those attorneys who have . . . arrived in destination countries so often find themselves unemployed, and thus unable to provide for themselves and their families. . . . Help them find work.”), <https://www.jurist.org/features/2022/05/12/interview-after-fleeing-the-taliban-a-womens-rights-defender-mourns-the-loss-of-afghanistan-urges-action-to-save-the-countrys-lawyers/>.

Some bar associations and other organisations are already providing some such support for Afghan legal professionals. See, e.g., ABA project aims to help Afghan legal professionals establish themselves in the United States (ABA Journal, 23 Aug. 2022) (describing Afghan Resettlement Project Task Force’s pilot project, an American Bar Association programme designed to assist Afghan legal professionals in obtaining appropriate employment in the United States in a legal/justice sector setting, by providing, *inter alia*, training in English as a second language, scholarships to attend law school and for licencing exam preparation courses, as well as employment counseling and placement services and other similar support), <https://www.abajournal.com/web/article/aba-project-aims-to-provide-afghan-legal-professionals-with-tuition-and-expenses-for-llm-programs>.

However, the demand for such services far outstrips the available supply given the limited *pro bono* resources of bar associations and similar organisations. To be effective, states must make such support for Afghan legal professionals a state priority. See generally, e.g., Message from Chief Judge Janet DiFiore (New York State Courts, 28 March 2022) (announcing New York state courts’ establishment of innovative new program titled “Judges for Career Opportunities for Refugees” (“J-Corp”), which places Afghan legal professionals in full-time, paid “analyst” positions in New York state courts for a 12-month period), <https://www.nycourts.gov/whatsnew/pdf/Mar28-CJ-Message2022.pdf>; An Attorney Flees the Taliban and Finds Support in New York’s J-COR Program (New York State Bar Association, 23 Dec. 2022), <https://nysba.org/an-attorney-flees-the-taliban-and-finds-support-in-new-yorks-j-cor-program/>; Resolution In Support of Assisting the Resettlement of Afghanistan’s Women Judges and Other Vulnerable Justice System Refugees (U.S. Conference of Chief Justices, 3 Nov. 2021) (urging all U.S. state court systems “to cooperate and work closely with the United States Department of State, where possible, to identify employment opportunities [in the courts] for Afghan refugees who worked in their country’s justice system” and encouraging “the National Center for State Courts to create an Afghan Justice Sector Clearinghouse to facilitate the efforts of the United States to resettle . . . Afghan women judges and justice system refugees”), https://ccj.ncsc.org/_data/assets/pdf_file/0021/70446/CCJ-Resolution-1-Afghani-Women-Judges.pdf



the *de facto* authorities to comply with the U.N. Basic Principles on the Role of Lawyers and all applicable legal standards.

14. States, and, more generally, the international community, including the AIBA's sister bar associations⁴⁴ and law societies of the world, are urged to design and implement creative, affirmative measures to support the continued existence of the Afghanistan Independent Bar Association, including its operations in exile.⁴⁵

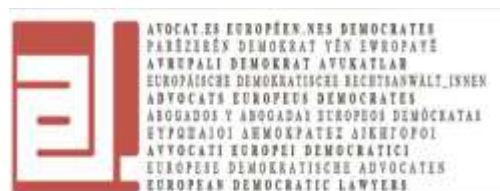
15. Bar associations and law societies around the globe are called upon to closely monitor and report on the situation of Afghan lawyers and to take all possible actions to support those who are in need, wherever they may be located.

16. Journalists and the international media are encouraged to investigate and report on the situation of Afghan lawyers, to bring pressure to bear on the *de facto* authorities and to focus public attention worldwide on the vital role that Afghan lawyers have played and the grave risks that they now face.

FOUNDATION



Foundation Day of the Endangered Lawyer



European Democratic Lawyers

⁴⁴ For example, the Brussels Bar is offering its help to the AIBA in exile

⁴⁵ See Statement of the New York City Bar Association re: the Taliban Takeover of the Afghanistan Independent Bar Association (New York City Bar Association, 6 May 2022), n.30 & related text (and sources cited there), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/taliban-takeover-of-afghanistan-independent-bar-association>; Practicing Law under the Taliban's Afghanistan (Afghanistan Independent Bar Association ("AIBA"), 2022) (appeal for support by AIBA President Ruhullah Qarizada, referring to plans to "establish AIBA in exile in near future for the aim of sustaining activities, protection of AIBA independency, and to support those members [whose] life are under threats"), https://www.nzbar.org.nz/sites/default/files/uploaded-content/website-content/afghanistan_-_some_good_news_and_an_appeal_by_the_president_of_the_afghanistan_independent_bar_association.pdf.



European Association of Lawyers for Democracy & Human Rights

UIA-IROL (the Institute for the Rule of Law of the International Association of Lawyers)



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Barreau de Paris

INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

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International Association of People's Lawyers

International Bar Association's Human Rights Institute



The New York City Bar Association

European Criminal Bar Association



Ordre Français des avocats du Barreau de Bruxelles

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International Association of Women Judges

Fédération des Barreaux d'Europe

The International Association of Women Judges



The National Association of Women Judges