



15 February 2024

Collapse of the Legal System & Systemic Persecution of Legal Professionals

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1. Collapse of the legal system
 2. Laws and regulations undermining the independence of the legal profession
 3. Systemic persecution of lawyers, prosecutors, and judges



Collapse of the Legal System

- The Taliban suspended the 2004 Constitution and declared existing laws invalid.
- The courts suffer from a lack of defined legal standards, rights protections, due process, and clear procedure.
- The Taliban dismissed all judges and appointed Taliban members educated in madrassahs, schools offering basic religious education, rather than legal training.
- Muftis act as direct advisors to judges, including by undertaking investigations, conducting interviews, and recommending findings and punishments.
- No women judges were retained, and none have been appointed.
- Prosecutors have been ordered to cease their operations and refer all pending matters to the courts, and the Attorney General's Office has been abolished.



Laws and Regulations Undermining the Independence of the Legal Profession

- The Taliban's Ministry of Justice (MoJ) abolished the Afghanistan Independent Bar Association (AIBA), which oversaw the licensing and regulation of lawyers, and merged it into the MoJ.
- Subsequently, Taliban members stormed the AIBA's offices, threatened the employees and members, and ordered them to leave.
- Only Taliban-approved lawyers are permitted to appear before the courts. Those seeking license renewal are tested through an oral examination of religious knowledge.
- Women are excluded from taking their qualifying examinations, renewing their licenses, or appearing in court. The Taliban have not yet issued a single license for a female lawyer.



Recommendations

- Restore the AIBA and its licensing authority, in accordance with Principle 24 of the UN Basic Principles on the Role of Lawyers, which provides that bar associations are entitled to “exercise [their] functions without external interference”.
- Ensure that legislation and regulation is amended so that admission to the legal profession follows due process with objective and transparent criteria.
- Restore the right of women to practise as lawyers, in accordance with Principle 10 of the UN Basic Principles, which prohibits discrimination in licensing on the basis of sex.



Systemic Persecution of Lawyers, Prosecutors and Judges

- Lawyers, prosecutors and judges have faced death threats, house searches, physical harassment, monitoring and tracking, 'revenge' attacks, summary executions and enforced disappearances.
- Many lawyers, prosecutors and judges, and their families, have been forced to flee the country or go into hiding.
- Since August 2021, 7 lawyers have been killed and 146 lawyers have been arrested or investigated, and 30 prosecutors have been killed and 11 injured in attacks.
- Female lawyers, prosecutors, and judges face additional dangers, including increasing violence from family members, undergone forced marriages and often cannot afford basic living necessities.



Recommendations

- Ensure that lawyers are able to freely and independently exercise their profession in accordance with Principle 16 of the UN Basic Principles, which states that “[g]overnments shall ensure that lawyers ... are able to perform all of their professional functions without ... improper interference.”
- Protect the lives of legal professionals and adopt and implement measures to guarantee their safety and security, in accordance with Principle 17 of the UN Basic Principles, which provides that “[w]here the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.”
- Ensure that allegations of reprisals against legal professionals are thoroughly investigated without undue delay, through a transparent and independent process, with appropriate accountability for perpetrators.

