

**Decree of the President
Of the Islamic Republic of Afghanistan**

Concerning

The Enforcement of Advocates Law

No:

Dated:

Article One:

I promulgate the Advocates Law which has been approved in the Masherano Jirga (Upper House) session dated, _____, and the Wolesi Jirga session (lower house), dated, _____, of the National Assembly of the Islamic Republic of Afghanistan, in () chapters and () Articles.

Article Two:

- (1) The Ministry of Justice shall be obliged to take necessary measures for establishing an independent Association of Advocates within three months from the enforcement of the Advocates Law.
- (2) The Ministry of Finance shall be obliged to make available necessary funds to the Ministry of Justice for the purpose of implementing paragraph (1) of this Article.

Article Three:

Until the establishment of an independent Association of Advocates, the affairs related to advocates shall be regulated in accordance with the law of advocates, published in Official Gazette # 786, in 1421 [Lunar Calendar].

Article Four:

- (1) The organizational structure and budget of the Legal Aid Department together with the staff thereof shall be separated from the Supreme Court and merged with the Ministry of Justice.
- (2) The Ministry of Justice shall be responsible to prepare the organizational structure and budget of the legal Aid Department, in accordance with the present needs, and shall submit it for processing.

Article Five:

This Decree shall be enforced from the dated of promulgation and shall be published together with the law in the Official Gazette.

Hamid Karzai
President of the
Islamic Republic of Afghanistan

The Advocates' Law

Chapter One

General Provisions

Article 1: Basis

This Law is enacted pursuant to Article (31) of the Constitution to regulate the rights and duties as well as other responsibilities of advocates.

Article 2: The Right to Appoint an Advocate

Every person has the right from the time of arrest to appoint an advocate of his/her choice to defend and represent his/her rights.

Article 3 Legal Aid

(1) Pursuant to Article 31 of the Constitution, the Ministry of Justice shall be obliged to appoint a legal aid provider for indigent persons at any stage of the prosecution.

(2) Procedures for the operation, organization, duties, authorities, and other affairs related to legal aid providers shall be regulated in a separate Regulation.

Article 4: The Association of Advocates

(1) To regulate and lead all activities of advocates, an independent non-governmental Association of Advocates (the Association) shall be established.

(2) The Association shall have a General Assembly, President, Executive Board, and members.

(3) Organization, procedures, membership criteria, code of conduct, and other affairs related to the Association shall be regulated by its By-Laws.

Article 5: Terminologies

For the purposes of this Law, the following terms have the following meaning:

- (1) The term “advocate” means a person who is included in the Roster of practicing advocates and is entitled to defend and represent the rights of his/her client before a court of law, other authoritative tribunals, or initiate judicial proceedings, in accordance with the provisions of the law.
- (2) The term “legal aid provider” means an advocate who is appointed by the Ministry of Justice as a defense attorney for indigents in criminal cases.
- (3) The term “indigent” means any person who cannot afford to pay for a defense attorney in criminal cases.
- (4) The term “license to practice” means a printed document with legal validity, the form and content of which to be determined by the Association.

Chapter Two

Requirements to Practice as an Advocate

Article 6: Entry Requirements for Practicing Law

- (1) To practice law in Afghanistan a person must comply with the following requirements:
 - (i) Shall be a citizen of Afghanistan;
 - (ii) Shall not have been convicted of a criminal offense;

- (iii) Shall have a bachelor's degree in Law or *Sharia* (Islamic Law); or a higher degree from Afghanistan or any other country;
 - (iv) Shall have successfully passed the training course and obtained certification in accordance with the By-Laws of the Association. However, a person who has worked for three years as a member of the judiciary, prosecutor's office or the Ministry of Justice is not subjected to the Association's training course requirement.
- (2) A graduate from an official Madrass (religious school) or its equivalent may practice as an advocate only when, in addition to fulfillment of paragraphs (1)(i), (ii) & (iv) of this Article, he/she has completed three years of practical work under the supervision of a licensed advocate.
- (3) A foreigner may not have a law office in Afghanistan, however subject to the following requirements a foreigner shall be entitled to defend and represent the rights of his/her client in certain cases before a court of law and other authoritative tribunals of the Islamic Republic of Afghanistan:
- (i) he/she shall have permission to stay in Afghanistan;
 - (ii) he/she shall have a license to practice as an advocate from his/her domestic jurisdiction;
 - (iii) he/she shall pay his/her taxes and perform his/her financial duties in accordance with the provisions of the law.

Article 7: Limitations to Practice Law

The following persons are not entitled to practice law as an advocate:

- (1) Judges, prosecutors, military officers, police and national security officers, civil servants and municipality's employees, and members of the national assembly, as well as members of national, provincial and district councils, so long as they are employed as such, except lecturers of the Faculties of Law and *Sharia* who may (with the consent of the University) practice as advocates;

- (2) Any person convicted of a felony or expelled from the office by a court's order;
- (3) Any person who has been prevented from practicing law by a court order.

Article 8: License to Practice

- (1) The Association shall issue a license to practice to any person who meets the requirements set forth in Article 6 of this Law;
- (2) The Association shall be responsible for keeping a Roster of practicing advocates including the address of the advocate as well as the date of issue of his/her license.

Article 9: Introduction of Advocates by the Association

The Association shall in writing notify the relevant authorities of any person included in the Roster of practicing advocates.

Chapter Three

Rights and Duties of Advocates

Article 10: Rights of Advocates

Any person, who holds a license to practice, has the following rights:

- (1) To represent and defend, in accordance with this Law, the rights of his/her client before a court and other authority, both for criminal and civil cases.
- (2) To participate all phases of detection, investigation and trial, by assisting and responding on the behalf of his/her client.
- (3) To obtain information regarding the detection, investigation and trial processes of his/her client and the results.

- (4) To examine documents related to his/her client's civil and criminal lawsuits.
- (5) To visit, interview, correspond and communicate with a client who is being held under custody, detention or in prison, in a secure and confidential environment.
- (6) To provide legal advice to legal and physical persons.
- (7) To be paid a fee by his/her client for the counseling and any other legal services provided in accordance with the internal guidelines of the Association.
- (8) To open a law office.
- (9) To exercise other rights provided for in legislative documents.

Article 11: Protection

The advocate and his/her office shall be protected. Unless the law requires otherwise, no person, including the state, can interfere or oppose the exercise of the profession by the advocate.

Article 12: Contract of Representation

- (1) The rights and obligations of an advocate shall be determined by written contract between both parties in accordance with the relevant provisions provided by the Association's By-laws.
- (2) Three copies of the contract mentioned in clause (1) of this article shall be prepared and a copy handed over to the advocate and to the client. The other copy shall be delivered to the relevant court.

Article 13 Duties of Advocates

Advocates shall have the following duties:

- (1) To maintain client confidentiality.
- (2) To practice law with honesty and sincerity, respecting the dignity of all individuals.

- (3) To respect the orders of a court and/or other authorities.
- (4) To attend court hearings on behalf of his/her client.
- (5) To refrain from providing any kind of legal assistance to competing parties in the case.
- (6) To keep the client's documents and return them once the case is concluded.
- (7) To provide the client with a receipt when issuing and receiving any document from the client.
- (8) To refrain from disseminating information that would harm other advocates.
- (9) To refrain from any action that would cause an undue delay in the investigation and implementation of a court's order.
- (10) To refrain from lending or transferring the name and title of his/her law office to others.
- (11) To inform the competent authorities about any change in the location of his/her office.
- (12) To renew his/her license.
- (13) To pay income taxes in accordance with the law.
- (14) To give reports on their annual income to the Association.
- (15) To take 5% of cases in each year as criminal cases free of charge, upon confirmation of the Ministry of Justice.
- (16) To defend the code of conduct as provided for in the Associations By-Laws.
- (17) To carry out other duties in accordance with the By-Laws of the Association.

Article 14 Requirements to Establish a Law Office

To practice law an advocate shall establish an office in accordance to the following requirements:

- (1) To provide the physical address of his/her law office to the Ministry of Justice and the Association.
- (2) To organize a filing system.
- (3) To keep a registry for clients' documents.
- (4) To keep records of his/her revenues in a separate book.
- (5) To register incoming and outgoing correspondence.

Article 15 Law Offices

- (1) Each law office shall maintain a specific sign that contains the title identified in his/her license.
- (2) A law office shall have a special stamp which shall be prepared upon approval of the Association at the advocate's expenses.

Article 16: The Oath

Upon receipt of the license to practice, an advocate shall take the following oath before the Executive Board of the Association:

“I swear in the name of God Almighty to execute my duty as advocate with utmost honesty and righteousness, and shall keep its confidentiality, respect and observe provisions of the holy religion of Islam, the constitution and other legislation of Islamic Republic of Afghanistan and shall not betray my client.”

Article 17: Appointment of a New Advocate

- (1) Once an advocate is given a power of attorney, if that advocate is unable to fulfill the commitment he/she has made to the client based on a reasonable excuse and with the client's consent, the advocate can introduce another advocate to the client.
- (2) The client can dismiss an advocate at any stage of the investigation or trial.
- (3) In the case of clause (1) and (2) of this Article, both the client and the advocate shall notify the competent authorities.

Article 18: Limitations on Resignation and Notice of Absence

- (1) An Advocate cannot resign from a case within one week before the beginning of any judicial proceeding.

(2) If unable to attend a proceeding due to a reasonable excuse, the advocate shall inform the relevant authority of his/her absence at least one week before the judicial proceeding.

Article 19: Priority of Presence in Criminal Proceedings

If an advocate is scheduled to attend two or more simultaneous judicial proceedings, his/her presence at the criminal proceeding shall take priority, and if he/she has the right of appointment, the advocate may appoint another advocate to attend the non-criminal proceeding. Otherwise, he/she shall be obliged to submit a notice within a week to the relevant court.

Article 20: Uniform of the Advocates

The advocate shall wear a special type of uniform, the sample of which shall be determined by Association.

Article 21: Prohibition on Transfer of Privileges

An advocate shall not transfer the stamp or other privileges belonging to his/her law office to someone else, either temporarily or permanently.

Article 22: Limitations on Representation

- (1) After suspension from or conclusion of a case, an advocate shall not provide legal counsel, legal representation, or act as witness for any competing party in the same case.
- (2) When defending or giving written advice in a case, an advocate shall not serve as witness in the same case.

Article 23: No Rights to Work as an Advocate in Some Courts

If an advocate or his/her spouse has blood or an in-law relationship (up to one third removed) with any judge of a court, he/she shall not work as an advocate in a case before that judge.

Article 24: No Rights to Work as an Advocate in Some Cases

An advocate shall not take a case, for which he/she has previously served as a judge, prosecutor, investigator, arbitrator or technical expert.

Article 25: Notice of Revenues

The Association shall present a quarterly report to the Ministry of Finance on its revenues.

Article 26: Drafting Legal Documents and Papers

Advocates shall draft legal documents and papers as required for the performance of their duties following the format provided by the Association.

Chapter Five

Disciplinary Provisions

Article 27: Hearing Complaints Filed Against an Advocate

(1) Any complaint against an advocate either proposed by a client or other relevant authorities in relation to the fulfillment and performance of the advocate's duties and responsibilities shall be submitted to the Association of Advocates.

(2) When a case is found to be a disciplinary case, the Association may take the following disciplinary measures:

- (i) reprimand.
- (ii) warning.
- (iii) suspension of the advocate and closure of the advocate's office up to one year.
- (iv) ban the advocate from the Roster of Practicing Advocates up to five years.

(3) Disciplinary decisions against advocates shall be notified in writing.

(4) If the case is considered to be a criminal case, the Association may refer it to the Office of the Attorney General.

Article 28: Request for Compensation of Damages

(1) An advocate shall be held responsible if he/she abuses his/her powers, reckless in his/her affairs, or he/she deliberately causes, a loss to his/her client;

(2) If due to a deliberate action of the advocate a client suffers loss, the client may file a case for malpractice and request compensation.

Article 29: Prohibition of Misusing the Name and Privileges of an Advocate by others

Anyone who misuses the name and privileges of an advocate shall be prosecuted according to the provisions of the law.

Chapter Six

Miscellaneous Provisions

Article 30: Funding Sources for the Advocates' Association

The Association may raise funds through any of the following:

- 1) Membership fees.
- 2) License fees.
- 3) A specified percentage approved by the General Assembly from the total amount of the annual revenues of advocates.
- 4) Donations by individuals and charity organizations.
- 5) Sale of publications.
- 6) Financial support by the government.
- 7) Fees for research and training programmes
- 8) Financial support by international organizations.
- 9) Movable and real assets.

Article 31: Use of Assets

The revenues of the Association shall be used only to implement its objectives.

Article 32: Registration of Movable and Immovable Property

- (1) Real and movable assets of the Association shall be registered and copy of the registration document shall be forwarded to the Ministry of Finance.
- (2) Founders, members of the General Council, members of the executive board and other personnel of the Association can not purchase or register the real and movable assets of the Association in their own name or on name of their relatives.

Article 33: The Right to Practice without a License

- (1) To be able to defend and represent the rights of a relative - such as a father, grandfather [up to one third removed], children, mother, grandmother, brother, nephew, niece, spouse, aunts, uncles, and their blood children up to third removed, father in law, brother in law and mother in law - or a partner in a partnership the advocate shall not be obliged to hold a valid license to practice.
- (2) For the purposes of clause 1, advocates shall be appointed by a power of attorney.

Article 34: Appointment of Advocate by Power of Attorney

(1) In civil cases and civil aspects of criminal cases in which rights of individuals are involved, an advocate shall be appointed by a power of attorney.

(2) In criminal cases, the suspect, accused or the legal guardian of a minor can appoint an advocate to defend and represent his/her rights before police offices, prosecutor offices or the courts either by a power of attorney or by the form attached to this Law.

Article 35: The Statute of Limitation for Filing a Complaint Pertaining an Advocate's Fees

The statute of limitations for filing a complaint pertaining to advocate's fees shall be one year. A justifiable excuse shall be an exception to this rule.

Article 36: Security

The Ministry of Interior and other relevant security agencies shall take necessary measures to provide security and protect the premises of the Association of Advocates.

Article 37: Legal Status of the Association

- (1) The Association of Advocates obtains legal status upon approval by the General Assembly, publication of its By-Laws in accordance to the law and upon registration of its Charter with the Ministry of Justice.
- (2) The Bar Association cannot be dissolved without an order from an authorized court.

Article 38: Renewal of the License

The license of those who have been practicing law prior to this Law entering into force can be renewed if the requirements stated in this Law and the By-Laws of the Association are met.

Article 39: Prohibition on Transfer of Advocate's Privileges

The right to practice law shall not be transferred to another individual if his/her legal competence is revoked, or he/she abandons the job or is incapacitated.

Article 40: Affiliation

The Association can be affiliated to other similar associations abroad.

Article 41: Publication, Logo and Stamp

The Association shall have special publications, a logo and a stamp.

Article 42: Effective Date

This Law shall be effective three months after publication in the Official Gazette. After this Law enters into force, the Defense Attorneys Law published in Official Gazette number 786 of the year 1420 (lunar calendar), along with all its annexes and amendments, shall be repealed.