

**Islamic Republic of Afghanistan**

**Ministry of Justice**

**Official Gazette**

# **The Advocates' Law**

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**Decree of the President**  
**Of the Islamic Republic of Afghanistan**  
**Concerning**  
**The Enforcement of Advocates Law**

No: 111

Dated: 25/11/2007

Article One:

Based on Part 16 of Article 64 and Article 100 of the Constitution of the Islamic Republic of Afghanistan, I endorse the Advocates' Law which has been passed by a Joint Committee of both houses of the National Assembly and consists of 5 chapters and 44 articles.

Article Two:

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.

Article Three:

1. By enforcement of this law, 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 is responsible for the preparation of the organizational structure and budget of the Legal Aid Department, in accordance with the present needs, and for submitting it for processing.

Article four:

Until the establishment of the independent Association of Advocates, the affairs related to advocates shall be regulated by Ministry of Justice in accordance with the law of advocates, published in Official Gazette # 786, in 1420 [Lunar Calendar].

Article Five:

This Decree, together with the Advocates' Law shall be published 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**

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

#### **Article 4: Administration**

- (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 is 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 valid bachelor’s degree in Law or *Sharia* (Islamic Law); or a higher degree from Afghanistan or any other country, after evaluation and approval by the Ministry of Higher Education;
  - (iv) Shall have successfully passed the stage 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 Madrassa (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 cases related to foreign natural or legal persons 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: Restrictions 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* (with the consent of the University) and legal aid providers.
- (2) Any person convicted of a felony or expelled from the office duty 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 personal details 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 introduce 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, in both criminal and civil cases.
- (2) To participate in 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 and by mutual agreement.
- (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: Advocate's Contract**

- (1) The rights and obligations of an advocate and the client 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 advocacy 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 receiving and returning any documents 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 defend at least three criminal cases in each year, free of charge, upon confirmation of the Ministry of Justice.
- (16) To defend the code of conduct as provided for in the Association's 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 with 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: Sign and Stamp**

- (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 an advocate with the utmost honesty and righteousness, and shall keep its confidentiality, respect and observe the provisions of the holy religion of Islam, the Constitution and other legislation of the 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 during judicial proceedings, the sample of which shall be determined by Association.

#### **Article 21: Restrictions on Transfer of Privileges**

An advocate shall not transfer the complaint, defense statement, minutes, power of attorney, stamp or other privileges belonging to his/her law office to someone else, either temporarily or permanently. Executing the administrative affairs of a law office shall be an exception to this provision.

#### **Article 22: Restrictions on Representation**

- (1) After suspension, resignation 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 a 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 Four 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 for 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, neglects 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 through court.

### **Article 29: Restrictions 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 Five**

### **Miscellaneous Provisions**

#### **Article 30: Funding Sources for the Advocates' Association**

The Association may raise funds through any of the following:

- Membership fees.
- License fees.
- Donations by individuals and charity organizations.
- Sale of publications.
- Financial support by the government.
- Fees for research and training programs
- Financial support by international organizations
- Movable and immovable 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 a copy of the registration document shall be forwarded to the Ministry of Finance.
- (2) Founders, members of the General Assembly, 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: Obligations of the Bar Association**

- (1) When an advocate dies, the Bar Association is obliged to return all the documents to the clients related to him/her under the supervision of a panel without any delay and to obtain a receipt.
- (2) Where an advocate is dismissed, the issue shall be reported by the Bar Association to the relevant judicial and justice organs.

**Article 34: 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 (up to one third removed), grandmother, brother, nephew, sister 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 Power of Attorney.

**Article 35: Appointment of Advocate by Power of Attorney**

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.

- (1) 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 36: 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 37: 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 38: Legal Status of the Association**

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.

**Article 39: 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 40: Restriction 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 41: Mutual Cooperation with other Bar Associations**

The Association may have mutual cooperation with other similar associations abroad.

**Article 42: Publication, Logo and Stamp**

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

**Article 43: Abolishment of the Association without the Order of an Authorized Court**

The Association cannot be abolished without the order of an authorized court

**Article 44: 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.