



Afghan Independent Bar Association

Afghan Independent Bar Association:

Progress Report

March to June 2009

This report covers the term from March 2009 to the middle of June 2009. This report will provide updates on program areas addressed in the progress report covering Sept 2008 to February 2009. Additionally, this report will provide new insight on emerging program activities and priorities, and will outline where the project should be headed over the coming period.

Between September 2008 and February 2009, the primary objectives of the AIBA were to:

- (i) to facilitate the establishment of a central AIBA office premises in Kabul, including the identification and furnishing of an appropriate compound;
- (ii) to build the capacity of AIBA leadership and office personnel through daily consultation, trainings and study tours;
- (iii) to develop and implement all necessary procedures for a fully and accountably functioning bar association.

By June 2009, these objectives have largely completed. Between March and June 2009, there has been a considerable shift in AIBA activities to substantive program activities. Operating procedures have been standardized, additional staff have been recruited, reporting requirements are in place, over 400 advocates have been registered, and advocacy and media outreach activities are well underway. While challenges remain and much progress is yet to be made, after only ten months time, the AIBA is a fully

functional, transparent and effective justice sector institution promoting and protecting the rights of defense attorneys in Afghanistan.

1. Establishment of an Office Premises

1.1. Premises

The AIBA office is fully established. The office is well equipped and has proven to be an ideal location, which is easy to find and offers a great deal of parking and meeting space. The library is now also fully established in a comfortable space within the office; couches and meeting tables have made this a popular area for visitors and AIBA leadership. Progress is also being made on a database of library books, which was the initiative of the Database Clerk. Legal reference materials continue to be contributed to AIBA by USAID/ARoLP, which AIBA has begun distributing to registered defense attorneys, NGOs and other members of the justice sector.

1.2. Staffing

The AIBA has experienced two terminations and two new hires over the last quarter.

From the beginning, relationships between the first Executive Director (ED) and other members of the AIBA were exceedingly difficult. The ED seemed to be uninterested in the success of the AIBA and was generally obstructionist and erratic, suspected of various forms of corruption and was often threatening to AIBA staff and members who were not his supporters. Following a thorough investigation by the President and other members of the Leadership Council, enough evidence was gathered to support removal of the ED for non-performance and significant violations of the AIBA By-Laws and Code of Conduct. In April 2009, the overwhelming majority of the Leadership Council decided to remove the Executive Director under article 34 of the AIBA By-Laws.

The courage and professionalism displayed throughout this experience by the AIBA staff and leadership was remarkable. More broadly, this removal was a strong positive example of consequences in the work place for the wider justice sector and proof of the

AIBA's commitment to transparency and accountability. Productivity and morale increased dramatically immediately following the removal.

Although the AIBA By-Laws require that the Executive Director is elected by the General Assembly, in the circumstances, the Leadership Council approved the recruitment of an Executive Director (Acting) through a committee headed by the President. The "Acting" designation shall remain in place until such time as the recruitment can be validated through an amendment to the By-Laws and ratification by the General Assembly.

By the end of May, a new Executive Director, Ms. Zulfia Zalmai, had been successfully recruited according to AIBA recruitment procedures. Ms. Zalmai, is a graduate of the Law Faculty of Kabul University, but has been managing legal aid and other humanitarian projects for the last several years. She is highly organized, dedicated, hard-working and creative. In her first month, she has created filing systems for office correspondence, AIBA leadership decisions, and human resources; Ms. Zalmai will be focusing on staff supervision and support over her first few months. She will also be arranging and participating in office management, finance and computer software related trainings, which will be made available to the AIBA President and relevant staff. While Ms. Zalmai is qualified in her own right, it is also a benefit to the AIBA and its members to have a woman in this post. Ideally, she will create a more welcome atmosphere for female advocates such that they may contribute more significantly to AIBA activities.

One license clerk was also terminated during the reporting period. Although rumors persisted for some months, conclusive evidence of this clerk's corruption was only uncovered in March. This evidence included statements of AIBA members describing bribe requests, missing licensing fees, falsified documentation, complaints of tax evasion against registered advocates by the Ministry of Finance, and the discovery of blank licenses that had been signed before being filled. The clerk was officially terminated by the President in March 2009.

Following the departure of the license clerk, a decision was taken to recruit an Executive Secretary to provide limited translation (of emails, for example), draft correspondence, maintain files, arrange meetings on behalf of the President and Executive Director and assist in licensing as necessary. The most qualified candidate for this post was also a woman, who is performing well in her first month.

The Database Clerk, License Clerk, Finance Assistant, guards, cook and cleaner continue to perform well and have developed into a cohesive team. The next steps for staff management will be to conduct objective setting with each staff member according to their job description, provide monitoring and capacity building as appropriate, and conduct yearly performance appraisals. These are tasks which have been prioritized for the Executive Director in her first months.

2. Capacity Building of AIBA Leadership and Staff

2.1. Code of Conduct

The Code of Conduct was officially approved in January 2009. It was decided that the Code of Conduct should be published along with the final version of By-laws and the Advocates' Law, as a complete AIBA reference set. Once the documents were finalized and formatted, funding was identified to support the costs of 1000 copies (USAID/ARoLP), which were delivered by the end of May. The US Army's Command Emergency Response Program (CERP) has also committed to providing funds for 2500 additional copies; final arrangements are in process for this installment.

Every advocate who comes for registration now receives a copy of the publication. A dissemination plan for advocates outside of Kabul city, national and international stakeholders across the country is now in progress by the Executive Director. It is hoped that a cohesive dissemination program will take place in the coming months, in the meantime, copies are available upon request at the AIBA office in Kabul.

Trainings on legal ethics and a textbook on Professional Responsibility based on the AIBA Code of Conduct are also in development through coordination with UNODC and ARoLP respectively. Once these are finalized, trainings will begin on legal ethics through coordination with partners across the country.

2.2. Internal trainings

English classes are ongoing at least three times a week for the AIBA President. Additional English training will be made available to the new Executive Director. Other trainings planned for the coming months include basic accounts, financial reporting and monitoring for the President, Executive Director and Finance Assistant, and in office management for all AIBA office staff. A computer tutor will also be recruited to come approximately three hours a week to tutor staff in Microsoft office, internet usage, and other needs as identified.

2.3. Study Tours

The AIBA has been approached by the Italian Bar Association, which will support costs for a study tour for 5 AIBA leadership members and staff to the Italian Bar Association's offices in Rome. The study tour will focus on organizational management, strategic planning, accounting issues, promoting the concept of independence and defense attorney rights, application of ethical standards and disciplinary mechanisms, development of pro bono and continuing legal education programs and regional expansion. The tour will likely take place in September 2009.

3. Coordination with Partners

One of the priorities for the past quarter has been to improve collaboration between the AIBA and national and international justice sector stakeholders on matters of importance to the defense attorney community.

3.1. Council of Detention Centers

In April 2009, the President received permanent membership on the Council of Detention Centers and the Council of the Juvenile Rehabilitation and Education Center to represent the interests of defense attorneys. Persistent problems in accessing clients at all levels of detention in Afghanistan extend from lack of awareness of the role of defense attorneys among justice sector officials as well as a lack of trust in defense attorneys after decades on non-regulation. The President's involvement in these committees is essential to ensure that awareness is raised about the AIBA's role to regulate the practice of law by defense attorneys and the rights of defense attorneys and their clients.

The President has distributed a photo identification list of AIBA registered defense attorneys for dissemination to detention facilities across the country. In this way, detention center staff can verify the identity of defense attorneys and thereby grant them access and fair treatment under the law. These lists will be updated and re-circulated monthly; this list can also be made available to partners upon request.

3.2. National Security Directorate (NDS)

Issues of access and intimidation of defense attorneys are particularly problematic with regard to clients held by NDS, due to the sensitive nature of claims against individuals in NDS custody. For this reason, special attention must be given to building the relationship between the AIBA and the NDS as increased dialogue will ease access for defense attorneys as well as abate NDS concerns. With international support, the AIBA President will be meeting with officials from NDS to provide them with a photo identification list of registered defense attorneys and to open channels of communication.

3.3. Counter Narcotics Justice Center (CNJC)

The Counter Narcotics Justice Center (CNJC) is a recently established institution which houses offices of the AG, the judiciary, and a dedicated Counter Narcotics Court. For the past several months, defense attorneys have been lodging complaints with the AIBA regarding issues of access at the CNJC. Specifically, defense attorneys were concerned that they were receiving differential treatment from judges and prosecutors, including

body searches and confiscation of all personal items, and that police escort within the facility was compromising defense attorneys' freedom of movement and client confidentiality. The AIBA President has met with US and British mentors to prosecutors and judges within the CNJC to explain the issue and work on solutions. The AIBA learned that differential treatment was due to the issuing of security badges to prosecutors and judges working in the CNJC following in depth screening. Discussions have been initiated for development of a similar system for defense attorneys. Efforts will also be made to secure a seat for the President in bi-monthly coordination meetings among CNJC stakeholders. In the meantime, armed with a clear understanding the circumstances, the President will explain the circumstances and generate patience among defense attorneys working in the CNJC.

3.4. medica mondiale

The AIBA recognizes that female attorneys face particular difficulties while providing legal aid in Afghanistan. One of the AIBA's objectives is to support female attorneys in their work and to provide a forum for discussion on the challenges they face, strategies for improving conditions, conducting public awareness, and building a mechanism for direct advocacy action where necessary. The AIBA has met with female lawyers from medica mondiale to hear first hand the challenges they face; medica has agreed to submit regular detailed reports to AIBA on these challenges in the future. The AIBA will therefore have a complete record of instances of discrimination, intimidation and lack of access, which the President can take action on as required. It is hoped that this level of coordination will lead to the creation of a women's sub-committee in the near future.

3.5. Access to Justice Working Group

AIBA is now a regular participant in the UNAMA-coordinated Legal Aid and Access to Justice working group. Through this meeting, the President has secured unanimous support among the justice sector institutions for the role and rights of defense attorneys in accessing their clients and being present in all phases of the judicial process. Future working group meetings will focus on how to provide increased access and better treatment for defense attorneys across the sector.

3.6. Afghanistan Case Management System

Through their AGO Assistance section, JSSP has been working to develop a case management system for all criminal cases in Afghanistan. The AIBA will work with JSSP to contribute necessary data on defense attorneys for cases in the system. AIBA also plans to link its database to the ACMS so that information on defense attorneys can be readily accessible for proper case management.

3.7. INLTC Board

In April 2009, the AIBA signed an MoU with representatives from the MoJ, AGO, and INLTC which ensures that the INLTC stage is accredited for purposes of admission to the AIBA. The first INLTC stage began in May 2009 and will run through January 2010. Currently 200 new graduates interested in becoming defense attorneys and 50 defense attorneys who were registered to practice by the MoJ are attending the first INLTC stage course. It is hoped that the program is successful and continues to expand to allow for training of higher numbers of young and existing defense attorneys. The President remains an active member of the INLTC Board, which meets weekly to discuss progress and make required decisions as the program develops.

3.8. Legal Aid Board

The AIBA Vice President has been attending weekly Legal Aid Board meetings at the Ministry of Justice. After several months of effort, the Legal Aid Board has passed its operating guidelines. It is hoped that this will lead to implementation of legal aid department program priorities in the near future, although it is anticipated to take some time before the delivery of legal aid services are effectively systematized in Afghanistan.

4. Coordination Priorities over the coming months

4.1. Supreme Court Coordination Committee

Like in other facilities, ensuring consistent access for defense attorneys to proceedings in the Supreme Court remains a challenge. The President has discussed this issue at length

with the Ministry of Justice, which has assured that the AIBA will have a seat on the Supreme Court Coordination Committee when it is constituted in the near future.

4.2. Counter-Terrorism Related Detention Working Group

OSI NY has recruited a consultant to investigate and report on circumstances surrounding terrorism-related detention in Afghanistan. This consultant will also have the mandate to coordinate a working group of stakeholders closely connected to this issue, including the AIBA, various legal aid NGOs, and relevant officials. The AIBA has already expressed its commitment to serve as the coordinating body for this group, and will remain in close contact with OSI to ensure that this working group is successfully established.

4.3. Continuing Legal Education Working Group

OSI in Kabul has recently begun an initiative to coordinate the development of a Continuing Legal Education (CLE) working group. Trainings for legal professionals have been offered by a range of national and international organizations in Afghanistan since 2001. With the advent of the AIBA, the priority is now to coordinate existing and future legal education activities through the AIBA with the goal of developing a sustainable, standardized and cohesive CLE program. This would ensure that the appropriate advocates were identified for the trainings, prevent duplication, and provide a coordinated mechanism for monitoring impact. A coordinated CLE effort would also AIBA to regulate and monitor its members' CLE requirements, which is an organizational priority for the coming years. This working group remains in the concept stage, and will be further developed through coordination between the President and OSI Kabul staff.

5. Advocacy Activities

A primary function of the AIBA is to protect and promote the rights of advocates to defend their clients according to the laws of Afghanistan, and to protect the rights of Afghan citizens to receive adequate defense under the law. Since the operational procedures of the AIBA are now fully functional, the AIBA has been able to start

fulfilling the advocacy obligations inherent in its mandate. In the past few months, AIBA has held two press conferences on matters of significance to the justice sector.

The first was in support of a defense attorney who had been detained for questioning by the NDS. The defense attorney community was concerned that this attorney's right to defend any client without facing intimidation had been breached and that elements of the detention were unlawful. The AIBA orchestrated a press conference to request the attorney's immediate release and to draw attention to the constitutional provisions guaranteeing the right to practice law freely and independently. A press release was immediately disseminated among national and international stakeholders. The attorney was subsequently released and this effort has led to the coordination opportunities between AIBA and NDS discussed above.

The second AIBA press conference, which was broadcast widely on national television, advocated for the release of an Afghan minor who remains in Guantanamo Bay. The AIBA President met with the detainee's US military appointed advocate, facilitated meetings with high level officials, and drafted a letter demanding the detainee's return to Afghanistan and proper treatment under national and international obligations. The AGO and Supreme Court are currently looking in to the matter and the President remains in contact with the US-based advocate to enable further collaboration as needed.

The AIBA realizes the significance of this advocacy role on behalf of Afghan defense attorneys. This is a program component that will continue to be prioritized henceforth.

6. Other AIBA Activities

6.1. Regional Expansion / Regional Registration Drive

Across Afghanistan, still very little is known about the AIBA, its mandate and activities to date. Even within the justice sector in Kabul, there is still lack of clarity about the role and functions of this new institution; it is easy to conclude that in the far provinces and rural areas, knowledge of the AIBA is even more limited. This lack of awareness detracts

from the legitimacy of the organization and prevents the AIBA from achieving its most prioritized objective: improving the performance and perceptions of defense attorneys across the country. Over the coming months and into the next few years, the AIBA will therefore focus on increasing activities in the regional centers (including licensing for those who cannot travel), implementing outreach and awareness-raising activities through various media resources, organizing a mechanism for focal points in the regions to channel defense attorney concerns from the provinces to the President and Executive Director, and the eventual opening of two new offices in the next two years. Ideally, regional expansion will continue gradually over the coming years until defense attorneys have access to the AIBA in each regional center and select provinces.

In the coming months, the AIBA will be recruiting a Program Officer to take the lead on these program activities. Funds have also been made available to support public awareness and outreach activities in the regional centers over the coming year, while proposals for long-term funding in the future include support for the establishment of AIBA offices in the regional centers.

6.2. Radio Show

Through the support of the United States' Command Emergency Response Program (CERP), the AIBA has been given a year's worth of radio recording and airtime on Internews network. Internews broadcasts to affiliate stations across the country, and will provide the AIBA with 30 minutes of peak radio time per week. The radio show will ensure that essential information about the AIBA, its activities, licensing process, partners and members, programs and advocacy perspectives is disseminated country-wide, both to justice professionals and ordinary Afghans.

6.3. Website

The first draft of the AIBA website has been completed and is in the process of revision. In the coming months, the AIBA website will be finalized and online. The AIBA website will be available in Dari, Pashto and English and will include: information on the AIBA mandate and objectives, AIBA By-Laws, Code of Conduct and the Advocates' Law,

AIBA reports, licensing procedures, data on registered advocates, training materials, news items, contact lists of AIBA staff and leadership members, information on disciplinary procedures, links to partner organizations and a photo gallery. The website will allow for further awareness-raising regarding the AIBA as well as increased access to up to date information on AIBA activities among all stakeholders.

6.4. Weekly Advocates' Meeting

Recently, the President has undertaken a new outreach initiative to improve coordination between the AIBA leadership and its members. Each week, the President and Executive Director invite a group of defense attorneys to the AIBA office to discuss the issues related to that particular group; groups have been invited from the different legal aid organizations, female attorneys, and private attorneys specializing in various aspects of the law. This initiative has generated meaningful perspective for the AIBA leadership, based on the detailed and personal concerns of AIBA members. Additionally, inviting groups of attorneys to the office on a regular basis has shown the AIBA to be accessible and interested in the concerns of all members. Ideally, this will result in the formation of sub-committees over time.

6.5. Database

Since the recruitment of the Database Clerk last March, much progress has been made on the implementation of this component. To date, over 100 questionnaires have been completed and entered in to the system; completion of the database form is now a requirement for all advocates as part of the licensing process. Collected data includes demographic, educational, employment, legal specialty, training experience and licensing information on each registered advocate. The data collection form has also been posted online on Afghanistantranslation.com so that advocates who are applying remotely can send the completed data form along with the other required documents.

Data on registered advocates that includes names and contact numbers is also available and update monthly, along with a table showing registered advocates to date by gender,

province and license type (new or renewal). This data is posted on the AIBA section of afghanistantranslation.com and will be available on the AIBA website.

7. Challenges

Like other projects focused on improving rule of law and justice sector performance in Afghanistan, the Afghan Independent Bar Association faces extensive challenges in accomplishing program objectives. Rule of law remains weak in Afghanistan after over thirty years of conflict, capacity levels throughout the justice sector are low, and the institution of an independent bar association is itself a new concept in the country.

Over the first ten months of the AIBA's life as an Afghan justice sector institution, financial and logistical challenges have been resolved for the most part as procedures have been developed and systematized, and regular monitoring has ensured accountability. Remaining challenges are managerial and substantive. The AIBA still has a long way to go in resolving the balance of authority within and between the Leadership Council and the Executive Board; likewise, much work must be done to improve working relationships across the justice sector for effective coordination and problem-solving. Another major challenge is getting the Monitoring Board organized in such a way that it can effectively investigate and issue penalties for violations of the Code of Conduct. It is hoped that as AIBA becomes a more accepted member of justice sector institutions and the AIBA leadership becomes more confident and skilled, the problems of coordination will ebb over time.

8. Priorities for upcoming period

The main priorities over the coming period are as follows:

- (i) Implementation of in depth staff supervision and support to ensure that job descriptions are respected and that staff objectives are set and performance effectively monitored;

- (ii) Public outreach on the AIBA mandate and activities to increase legitimacy and confidence among throughout the justice sector and wider Afghan public;
- (iii) Registration drive in the provinces, including public awareness campaign;
- (iv) Ongoing implementation of coordination mechanisms and advocacy strategy;
- (v) Finalizations of a website and newsletter;
- (vi) Wide dissemination of Code of Conduct, By-Laws and Advocates' Law;
- (vii) Development of training materials on Code of Conduct, legal ethics;
- (viii) Further development and implementation of disciplinary mechanisms;
- (ix) Coordinated development of a Continuing Legal Education program;
- (x) Development of pro bono case mechanism in coordination with the MoJ Legal Aid Department;
- (xi) Further implementation of database, increased information sharing with relevant stakeholders;
- (xii) Appointment of sub-committees focused on substantive issues, such as gender violence, legal services for women, child protection, etc;
- (xiii) Ongoing capacity building of Executive Director on organizational management;
- (xiv) Continued liaising with national and international stakeholders to best coordinate justice sector development.