



Law Council
OF AUSTRALIA



Human Rights
Institute

United Nations Human Rights Council 53rd Session

**Agenda Item 3: Interactive Dialogue with the Special Rapporteur
on the independence of judges and lawyers**

Oral Statement

26 June 2023

The Law Council of Australia and the International Bar Association's Human Rights Institute condemn the Taliban's dismantling of Afghanistan's independent legal system, contempt for the independence of judges and lawyers, and exclusion of women from legal education, practice and the judiciary, violating obligations under international law.¹

By dissolving the Afghanistan Independent Bar Association² and appropriating its database, the Taliban has constrained the free and independent exercise of the legal profession, and exposed lawyers – particularly women – to intimidation and reprisals. De facto authorities have failed to meet their duties to protect judges, prosecutors and lawyers from reprisals, and investigate and ensure accountability where they occur.³

We hold serious concerns regarding Afghanistan's de facto system, characterised by the arbitrary application of laws and systemic violations of international fair trial standards.⁴ Hundreds of judges and prosecutors have been dismissed, and replaced with religious clerics who lack the qualifications and expertise their office requires.⁵

We thank the Special Rapporteur for her attention to this situation, encourage her to liaise with the Afghanistan Independent Bar Association In Exile,⁶ and urge the international community to provide protection, safe passage and support for judges, prosecutors and lawyers at risk.

Statement delivered by Mr Luke Murphy, President of the Law Council of Australia.

¹ *International Covenant on Civil and Political Rights (ICCPR)* 999 UNTS 171 (entered into force 23 March 1976) Articles 2, 3, 14, 26; *Convention on the Elimination of Discrimination Against Women (CEDAW)*, 1249 UNTS 13 (entered into force 3 September 1981) Articles 3, 7, 10, 11, 15.

² The Afghanistan Independent Bar Association (**AIBA**) was subsumed within the de facto Ministry of Justice in November 2021, which seized control of the AIBA premises and database, nullified existing licenses to practise and permitted only male lawyers to reapply for licenses and sit a new bar examination.

³ ICCPR Art 6. The obligation to protect the right to life includes the duties to implement a proper legal framework to prevent the arbitrary deprivation of life, respond to reasonably foreseeable threats to life, and investigate and ensure accountability for extrajudicial killing whenever it occurs. See Human Rights Committee, General Comment No. 36, CCPR/C/GC/36 para 7; *Minnesota Protocol on the Investigation of Potentially Unlawful Death* (2016), para 9(c); Human Rights Committee, General Comment No. 31, paras 15,18; *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147; *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1.

⁴ Mahir Hazim, 'Going Back to Zero: How the Afghan Legal and Judicial System is Collapsing Under the Taliban Regime', *The Jurist*, (7 March 2022) <<https://www.jurist.org/commentary/2022/03/mahir-hazim-afghan-legal-judicial-system-collapsing-taliban-regime/>>.

⁵ *Basic Principles on the Independence of the Judiciary* para 10. See Muzhgan Wahaj, *There and back again: the collapse of the rule of law in Afghanistan* (28 April 2023) <<https://www.ibanet.org/rule-of-law-Afghanistan>>

⁶ In January 2023, leaders and members of the former AIBA opened the Afghanistan Independent Bar Association in exile (**AIBAIE**) with the support of the International Bar Association and the Council of Bars and Law Societies of Europe (**CCBE**).