

## ROUND TABLE DISCUSSION BRIEFING PAPER

### *Pressing Challenges and Ways to Ensure the Independence and Security of Lawyers in Tajikistan*

*Dushanbe, 20 June 2023*

#### **I. Background**

In June 2023, the International Commission of Jurists (ICJ) organised a round table discussion in Dushanbe, titled "Pressing Challenges and Ways to Ensure the Independence and Security of Lawyers in Tajikistan".<sup>1</sup> The ICJ, in cooperation with the Regional Office for Central Asia (ROCA) of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Organization for Security and Cooperation in Europe (OSCE), and the Bar Association of the Republic of Tajikistan, brought together legal experts, advocates, and international observers.

The participants of the round table aimed to discuss the challenges lawyers face in Tajikistan, ranging from legislative constraints to practical impediments in their daily work. They attempted to identify solutions and strategies to strengthen the independence of the legal profession in Tajikistan.

The independence of lawyers is not just a local concern but a cornerstone of the rule of law and an independent judiciary.<sup>2</sup> Lawyers serve as a pillar in protecting human rights, challenging injustices and holding those responsible to accountable.<sup>3</sup> Their ability to operate without undue influence or fear of reprisal is fundamental to the proper functioning of any legal system.<sup>4</sup>

This briefing paper aims to encapsulate the insights, challenges, and recommendations discussed, providing ideas for reinforcing the independence and security of lawyers in Tajikistan, as seen by members of the legal profession themselves.

#### **II. Roundtable conclusions and position of the Bar Association**

The participants of the roundtable discussion underscored a widespread concern over safeguarding the independence of lawyers, enhancing transparency and ensuring participation in legislative processes, in accordance with international standards on the role of lawyers. They highlighted the urgency of advocating for collective action and engaging in strategic dialogues with authorities to address these pressing issues. The views expressed during the roundtable discussions reflected a consensus on the need to safeguard the independence of the legal profession, enhance transparency and participatory legislative processes, advocate for collective action, and engage in with relevant authorities. These encompass concerns regarding the potential threats to the independence of lawyers from proposed legislative changes, the imperative for access to legislative processes and information, strategic engagement with authorities, respect of international law and standards and cooperation with international organizations. Additionally, there was a significant

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<sup>1</sup> Tajikistan: Lawyers explore ways to ensure independence and security of the legal profession, <https://www.icj.org/tajikistan-lawyers-explore-ways-to-ensure-independence-and-security-of-the-legal-profession/>.

<sup>2</sup> Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990; The Bangalore Principles of Judicial Conduct 2000, (The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002)

<sup>3</sup> International Covenant on Civil and Political Rights (ICCPR) (1966), Article 14; Basic Principles on the Role of Lawyers.

<sup>4</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (The Declaration on human rights defenders);

focus on the need for reform in forensic medical expertise and legal procedures to ensure fairness, independence, and adherence to international law and standards on the role of lawyers.

#### *The efforts of the Bar Association*

The discussions brought forward several significant points from the participants, focusing on the ongoing and future efforts of the Bar Association. It was noted that the working group has submitted proposals to the Ministry of Justice and now awaiting feedback from the Ministry. The potential negative impacts of legislative changes on the legal profession were discussed, underscoring the need for the Bar Association to develop a strategic response to these new challenges. The suggestion to organize an extraordinary Congress of Lawyers was made, aiming to consolidate a collective viewpoint, establish a clear position, and request the government to reconsider the proposed legislative changes.

#### *Concerns about the independence of lawyers*

A prevailing concern, voiced by numerous participants, was about the significant threats to the independence of lawyers posed by proposed legislative changes. The active discussions and expressed concerns of the Bar Association about "possible threats to the independence of lawyers". The collective opinion was that the independence of the profession is at a critical crossroads, with the potential for legislative changes to undermine the capacity of the legal profession to act independently as Bar Association will be obliged to provide the Qualification Commission with information about their activities, will exercise supervision over the activities of lawyers, will carry out consideration of complaints against them, and collect other data necessary for the Commission's work, including examination of finance related issues.

#### *Access to legislative processes and information*

Several stakeholders, raised concerns about restricted access to the draft law and called for measures to ensure lawyers' access to information related to legislative changes. Indeed, the concern about transparency and access to information regarding legislative changes resonated strongly among participants. It reflected a fundamental demand for inclusivity and openness in the legal reform process: "Access to the draft law is not merely a procedural formality; it is the bedrock of a participatory and transparent legislative process. Ensuring that lawyers have full access to these documents is essential for the integrity of the legal system". The active support for external discussions of the draft law and the proposal to distribute drafts for collecting lawyers' opinions speaks to the need for a more inclusive and participatory reform process. By fostering an environment where discussions on legislative changes are encouraged, lawyers would be empowered to contribute meaningfully to the evolution of Tajikistan's legal framework. Moreover, it is crucial to prioritize involving leaders of territorial bodies to initiate discussions and compile feedback from lawyers at the local level, ensuring an all-inclusive representation of the legal profession in the reform process.

#### *Calls for collective action and advocacy*

The discussions concerned the legal need of the legal profession for a more unified approach to addressing the existing challenges. The proposition to hold an extraordinary Congress of Advocates, coupled with creating a crisis mechanism, emphasised the collective attempt to advocate for the independence of the legal profession. This reflected a shared understanding of the importance of acting as a unified profession to address the challenges, to ensure that lawyers can exercise their profession independently and without fear of retaliation.

#### *Strategy development and dialogue with relevant authorities*

The emphasis on strategy development, was voiced in regard of identifying specific authorities for engagement, underscoring the necessity for a structured approach to advocacy and reform. The emphasis on strategic engagement with authorities and the development of a cohesive strategy to respond to legislative changes highlights a proactive approach. This should be done through identifying key stakeholders and initiating dialogue to influence these legislative reforms.

### *Engagement with International standards and organizations*

A recurring theme throughout the discussions was the importance of ensuring that proposed changes are in line with international standards. The emphasis on international cooperation reflects a consensus on the necessity for international support to uphold the quality and independence of legal profession within Tajikistan. Furthermore, it was stressed that it was essential to cooperate with international organizations on the issue.

### *Forensic Medical Expertise and Legal Procedures*

During the roundtable discussions, a significant focus was placed on the need for reform in the forensic medical expertise available within the legal system of Tajikistan. The introduction of private, non-State forensic services was highlighted as essential to complement the existing State-provided services. This diversification was deemed crucial for enhancing the independence and reliability of forensic analyses, addressing the current limitations that hinder the impartial and independent gathering of forensic evidence. The participants emphasized the deficiencies within the mechanisms for recognizing admissible evidence, advocating for a more active role for lawyers in these processes. It was suggested that through their motions, lawyers could significantly contribute to the development of this procedure.

The potential applicability of the Istanbul Protocol in Tajikistan was discussed, pointing to its importance in standardizing the assessment of torture and ill-treatment. For successful implementation, a shift in the forensic medical examiners' approach to reporting was called for, necessitating methods that more accurately reflect the severity of injuries and the contexts in which they occur. Challenges in the current approach to forensic examinations were underlined, particularly the often ambiguous or unclear diagnoses that leave room for varied interpretations and explanations. Such issues underscore the critical need for reforms that ensure forensic examinations provide definitive, transparent, and comprehensible findings, vital for the effective adjudication of cases involving bodily harm. Moreover, the necessity to improve and adapt psychological tools for court proceedings was recognized.

## **III. Conclusions and recommendations:**

The recommendations formulated at the roundtable provide a structured approach to addressing the challenges above. They emphasize the importance of actively involving lawyers in legislative discussions, developing mechanisms for information dissemination, strengthening the institutional framework to protect the independence of lawyers, engaging with international mechanisms and bodies, improving legal procedures and evidence recognition, addressing barriers to legal representation, utilizing technology and social media, and advocating for specific legislative changes and active advocacy.

### *Calls for a proactive advocacy*

The recommendations made included a call for the implementation of proposed legislative changes and the creation of effective mechanisms for lawyer protection. The emphasis on analyzing legislation to identify and eliminate barriers means a proactive approach to advocacy and a commitment to continuous improvement of the legal framework. The recommendations highlighted the need for the Bar Association to initiate a dialogue with key governmental bodies, such as the legal departments of the Presidential Administration and the Parliament. Additionally, creating a crisis response strategy, including organizing press conferences, drafting open letters, and utilizing other communication methods to articulate the position of the Bar Associations on new amendments, was advised.

### *Strengthening the institutional framework and the independence of lawyers*

Several recommendations focused on enhancing the institutional changes concerning the Bar Association to ensure the independence and security of lawyers. Proposals included establishing the authority for lawyers to appoint expert examination, excluding the Bar Associations from

effective control by the Ministry of Justice, and ensuring that any initiation of criminal cases against lawyers involves the General Prosecutor's Office.

*Promotion of active participation of lawyers and information dissemination*

The necessity of developing systems for prompt dissemination of information regarding changes to the Law on the Bar Association was underscored by multiple recommendations. This includes the creation of online platforms, greater involvement of territorial bodies in discussions, and ensuring lawyers have access to draft laws and proposals. The collective emphasis was made to the critical importance of keeping the legal community well-informed and engaged in legislative processes.

*Engagement with international mechanisms and bodies*

Recommendations highlighted the importance of international cooperation and compliance with international standards, including following procedures set by the Bar Association itself. The suggestion to engage more actively with international organizations to protect the rights of lawyers indicated a recognition of the value of international support in upholding the quality and independence of legal profession in Tajikistan.

*Addressing barriers to legal representation*

Concerns over barriers to representation at both pre-trial and trial stages are evident, with recommendations calling for the provision of lawyers from the moment of detention, ensuring timely responses to complaints, and eliminating practices that undermine the participation of lawyers. The participants underscored the critical need for systemic changes to remove obstacles in legal representation to safeguard the rights of defendants and ensure fairness of court proceedings.