

BEIJING LAWYERS' APPEAL FOR DIRECT ELECTION

KEEP PACE WITH THE COURSE OF HISTORY, IMPLEMENT LAWYERS ASSOCIATION DIRECT ELECTION: AN APPEAL TO ALL BEIJING LAWYERS, THE MUNICIPAL BUREAU OF JUSTICE, AND THE MUNICIPAL LAWYERS ASSOCIATION¹

To all Beijing lawyers, the Beijing Municipal Bureau of Justice, and the Beijing Municipal Lawyers Association:

According to the *Constitution*, the *Lawyers Law*, and the *Regulations on Social Organization Registration and Management*, lawyers have the right to freedom of association, and the Beijing Lawyers Association (“BLA”) should be a “non-profit social organization voluntarily formed [by all Beijing lawyers] in order to realize common objectives and carry out activities according to its charter.” Facts, however, have shown that the BLA has neither been established nor functioned in accordance with the above legal provisions in the nearly thirty years of its existence. In particular, it has rarely been able to fulfill its fundamental legal obligations to safeguard lawyers’ [right to] practice their profession according to law and protect lawyers’ rights and interests. Many lawyers have voiced their discontent but have been unable to rectify the situation. This is fundamentally because the BLA is not elected by all lawyers; it is, therefore, not accountable to all lawyers. This has to change.

I. Why the current BLA lacks legitimacy.

1. *The BLA has never had a lawful charter or election procedures.*

A charter is the constitution of a social organization. According to the social norms that have come into force according to law and the charter, the BLA charter and election procedures should be approved by all members of the BLA and passed with a two-thirds and simple majority, respectively. The current BLA’s website states that the initial BLA charter was formulated in 1982, and its social organization registration documents include a 1,000-character charter passed by the Beijing Lawyers’ Representatives Congress in 1990. But neither of these two charters was passed by a two-thirds majority vote by all lawyers, and we do not know how they came into being. And since they have never been announced to all the lawyers in Beijing, they ought to be considered invalid. For the same reason, the BLA has never had election procedures passed by a simple majority vote by all lawyers.

2. *Since the Lawyers’ Representatives of the BLA have not been elected by all the lawyers [of the BLA], the president, directors, supervisors, and relevant institutions elected by these “lawyers’ representatives” all lack legitimacy.*

According to a survey, over 90 percent of Beijing lawyers have not participated in any election for the Lawyers’ Representatives, nor have they been notified to participate in such elections. Presently, the majority of the Lawyers’ Representatives in the BLA are directors or partners of law firms, and the majority of those serving as president, directors, or supervisors are partners who earn good incomes from the larger law firms [in Beijing]. Some lawyers said, figuratively speaking, that the current BLA is in reality a “Rich Man’s Club” that serves to increase the influence of its officers and expand their businesses.

1. Cheng Hai [程海] et al., “Shunying lishi chaoliu shixian lüxie zhixuan—zhi quanti Beijing lüshi, shi sifaju, shi lüxie de huyu” [顺应历史潮流实现律协直选——致全体北京律师、市司法局、市律协的呼吁], August 26, 2008, available at http://www.boxun.com/hero/200809/tengb/3_1.shtml.

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II. The current BLA does not represent the rights and interests of all Beijing lawyers.

The BLA has done some good things for lawyers, such as providing professional training, organizing professional discussions, and arranging annual physical examinations. But because the BLA is not elected by Beijing lawyers as a whole, it is not accountable to them, and it has rarely been able to defend lawyers' rights and interests. It even violates the rights and interests of lawyers. For example, if a lawyer, in the course of his work, encounters such common problems as difficulties with the public security, procuratorate, or court, difficulties in seeing a client, or difficulties in collecting evidence, the BLA does not try hard to resolve the problem by negotiating with the departments concerned in a persistent manner. The pleas for help from lawyers who encounter injustice in the course of their work go mostly unheeded. [The BLA] has not issued legal professional opinions on a great number of important social and legal issues. It has done nothing to further develop the profession of Beijing lawyers; it has offered little professional support to young lawyers. It even obstructs lawyers' lawful practice using grounds such as "sensitive cases," and it sets up barriers in the annual lawyer's license renewal for certain lawyers (using such tactics as siding with the partners while intervening in a dispute between a lawyer and the law firm or between a lawyer and the partners). The BLA arbitrarily uses membership fees without authorization from Beijing's lawyers as a whole. The BLA's expenses are not made public or transparent, and lack lawful and effective supervision. The BLA abuses its power in unilaterally setting a high annual fee. Every year, a law firm must pay 10,000 *yuan* [\$1,465] and an individual lawyer must pay 2,500 *yuan* [\$366] (which is more than 10 percent of the annual net income of a novice lawyer). The BLA's annual fees are probably the highest in the country, resulting in unnecessarily large increases in the net assets of the BLA. In 2000, the balance after expenditures was more than 10,000,000 *yuan* [\$1,463,593]; by the end of 2006, net assets reached 116,000,000 *yuan* [\$16,977,680], with more than 63,000,000 *yuan* [\$9,220,636] in cash. The current net assets probably exceed 150,000,000 *yuan* [\$21,953,896]! The BLA is a social organization which must not engage in for-profit activities. So why does it charge such a high membership fee just for saving? The membership fee needs only to guarantee a slight surplus over normal activities. Excessively high membership fees cause the BLA's net assets to increase unnecessarily rapidly and place a great burden on lawyers and law firms.

Moreover, the BLA's directors, supervisors, and president all hold other jobs. And the overwhelming majority of full-time staff members (including the secretary-general) at the BLA are employed by the Municipal Bureau of Justice. The focus of their work has become supervising lawyers, publicly announcing disciplinary measures taken against lawyers, falsely sanctifying the legal profession, and, to a certain extent, defaming the legal profession. Lawyers say that the BLA is a second Bureau of Justice—a vassal of the administrative organ.

III. Keep pace with the course of history, work together to push forward the democratic election of the BLA.

The direct and primary cause of the aforementioned abuses is that BLA's election is controlled by a small number of lawyers and administrative organs. The BLA is not a product of election by all its lawyers and therefore is not accountable to them. Furthermore, the most fundamental cause is that the overwhelming majority of Beijing's lawyers ignore and do not actively assert their own right to vote.

Currently, grass-roots democracy is gradually spreading across the country, with democratic elections

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of village chiefs, neighborhood committees, and landlord committees. The county- and district-level party secretaries in Guizhou Province are also beginning to be competitively elected. However, in the entire country, there is not one lawyers association that has been democratically elected by all the lawyers in its specific area, and not one charter that has been approved by all the lawyers. As lawyers who specialize in legal work and promote the concepts of democracy and the rule of law, we should feel ashamed!

In order to change these backward conditions as soon as possible, catch up with the march of time, exercise the rights of lawyers more effectively, promote the development of the legal profession, and substantially elevate lawyers' function and position in society:

We earnestly appeal:

Beginning with the upcoming election of the BLA to a new term, carry out truly democratic elections. The principal contents are as follows:

1. Directly elect lawyers' representatives, the president, and the chairman of the board of supervisors by a simple majority of the votes of all lawyers, according to BLA election procedures.
2. Pass the BLA charter by a two-thirds majority of all the lawyers. If necessary, it can be ratified retroactively by the Lawyers' Representatives Congress (as consistent with the provision in the *Lawyers Law* that the charter shall be approved by the Lawyers' Representatives Congress).
3. Elect lawyers' representatives who can truly represent the interests of lawyers.
4. The annual membership fee should be approved by a two-thirds majority of the lawyers (and the current membership fee should be reduced by at least 50 percent).

In order to promote a real democratic election of the BLA in the new term, a number of us Beijing lawyers have taken the initiative to team up and, through two months of efforts, draft the first *Election Procedures for the Beijing Lawyers Association (Draft)* (see attached). We ask that all lawyers submit their suggestions for revisions as soon as possible. After we have revised the *Draft Election Procedures* based on your suggestions, we will submit it to all lawyers for a vote, and it should take effect after being approved by a simple majority. If all lawyers vote on these election procedures, we will have established the basic system of democratic elections in the BLA. Dear fellow Beijing lawyers, democracy is not remote—it is right beside you. Do not again ignore [your rights] and wait for them passively. Take action. Exercise your rights, submit your suggestions for revising the draft *Election Procedures*, and cast your sacred vote on the revised draft. We will soon realize our goal!

This mission is unprecedented, and its tasks are arduous. [We] need the participation of more lawyers in publicizing and organizing the democratic election, and in electing lawyers' representatives, directors, supervisors, and the president. We are looking forward to your participation. Please contact us promptly.

At the same time, we appeal to the Beijing Municipal Bureau of Justice and the current BLA: Keep pace with the course of history, and walk together with Beijing's lawyers as a whole. Support, participate in, and jointly organize this democratic election of the BLA, in which Beijing's lawyers have taken the initiative to participate, to bring about a breakthrough in the democratic elections in China's lawyers associations.

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Appellants (Beijing lawyers): Due to time constraints, the first group totals 35 lawyers. We are continuing to collect signatures.

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August 26, 2008

—Translation by Human Rights in China