

The Rule of Law in Afghanistan

A Primer for Practitioners: Volume I



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About the Author

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Mrs. Ziems is the author of the Legal Professional Reform Index (LPRI) for the Republic of Azerbaijan (February 2005) and the LPRI for the Republic of Georgia Vol. II (November 2007), both published by the American Bar Association Rule of Law Initiative. In addition, Mrs. Ziems has served as an author and editor for the Organization for Security and Cooperation in Europe (OSCE) Office in Baku on multiple reports and legal analyses papers.

Mrs. Ziems received her Bachelors of Arts degree in government and philosophy from the University of Texas. She holds a Doctorate of Jurisprudence from the University of Houston and is licensed by the State Bar of Texas.

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Introduction

Purpose

The United States Government, the Government of the Islamic Republic of Afghanistan, and the international community increasingly prioritize the rule of law in Afghanistan. These entities view adherence to the rule of law as an essential element to achieving stability in the country and the region. Rule of law development in Afghanistan happens within a framework of several policy instruments established by the Government of Afghanistan, the United Nations Assistance Mission in Afghanistan (UNAMA), and the U.S. government. All rule of law programs are formed based on the framework established by the various policy instruments. It can be challenging for practitioners and policymakers to navigate the numerous policy documents, strategies, programs, and coordination mechanisms.

The Rule of Law in Afghanistan: A Primer for Practitioners (hereafter “Primer”) is designed to provide a practical introduction to rule of law development in Afghanistan, cross-referencing training and educational support material. The Primer seeks to familiarize U.S. personnel with both the framework for rule of law development in Afghanistan as well as Afghanistan’s justice system. In addition, the Primer was developed to help facilitate the distribution of available resources on the rule of law in Afghanistan. The Primer is by no means an exhaustive manual on the rule of law in Afghanistan. The Primer is intended as a first step in compiling information and creating condensed briefings for U.S. practitioners and policymakers working in the rule of law field in Afghanistan.

Overview of Primer

The Primer includes eight volumes outlined below:

- Volume one introduces the structure and organization of the Afghan government and provides an overview of the major policy and legal framework documents, programs, and major coordination mechanisms for rule of law development.
- Volumes two and three outline the justice system in Afghanistan including the sources of law, the role of Afghan justice institutions and justice professionals, and the process of a criminal justice case.
- Volume four examines corruption and efforts to combat corruption.
- Volume five reviews counter-narcotic efforts in the country.
- Volume six provides an overview of the process of a national security case.
- Volume seven examines Afghanistan’s correctional system.
- Lastly, volume eight provides an overview of the Afghan National Police.

Volume One

Preface: This chapter provides an introduction of the structure and function of the Government of the Islamic Republic of Afghanistan.

- A. The Structure and Function of the Government of the Islamic Republic of Afghanistan
- B. An Overview of the Fiscal Structure of the Government
- C. The Legislative Process

Introduction to the Afghanistan Rule of Law Framework. The following chapters discuss the policy and strategic framework in which rule of law development work is conducted in Afghanistan.

1.1: Afghanistan's Rule of Law Policy and Legal Framework Instruments. This chapter introduces the following policy instruments produced by the Government of the Islamic Republic of Afghanistan that govern rule of law development:

- A. Afghanistan National Development Strategy (ANDS)
- B. Afghanistan National Justice Sector Strategy (NJSS)
- C. Afghanistan National Justice Plan (NJP)
- D. ANDS Prioritization and Implementation Plan Mid-2010-Mid2013 (ANDS PIP)
- E. National Priority Program 5: National Program for Law and Justice for All

1.2: Coordination Mechanisms for International Rule of Law Assistance. This chapter introduces the major coordination mechanisms within the Afghanistan rule of law strategy documents for the international community providing rule of law assistance in Afghanistan including:

- A. The ANDS's Joint Coordination & Monitoring Board
- B. The NJSS's Provincial Justice Coordination Mechanism
- C. The NJP Board of Donors
- D. The Afghanistan Reconstruction Trust Fund (ARTF) Governing Structure

1.3: USG Rule of Law Policy Coordination and Agency Programs. This chapter explains the United States Government rule of law policy coordination mechanisms including the U.S. Embassy Coordinating Director for Development and Economic Affairs (CDDEA), the Combined Joint Inter-Agency Task Force-435 (CJIATF-435), and the Interagency Rule of Law Planning and Assistance Office (IROL). The chapter also provides a broad overview of the major rule of law programs of the various U.S. government agencies including the Department of State/Bureau of International Narcotics and Law Enforcement, U.S. Agency for International Development, the Department of Justice, and the Department of Defense.

1.4: The International Community and Rule of Law Implementers in Afghanistan. This chapter introduces the major international organizations involved in rule of law development in Afghanistan and their associated mandates including:

- A. The United Nations Country Team
- B. The North Atlantic Treaty Organization (NATO)-International Security Assistance Force (ISAF)
- C. The European Union
- D. International Non-Governmental Organizations

Volume Two

Afghanistan's Justice System. This volume provides an overview of the justice system in Afghanistan including the country's legal tradition, the role of *Shari'a* law, the hierarchy of laws, traditional dispute resolution mechanisms, and the formal justice institutions.

2.1: Afghanistan's Formal Justice Institutions. This chapter provides an overview of Afghanistan's three main formal state justice institutions and select departments within those institutions including:

- A. The Judiciary
 - a. The Supreme Court
 - b. The Courts of Appeals
 - c. The Primary Courts
- B. The Ministry of Justice
 - a. The *Taqnin* - General Directorate of the Institute for Legislative Drafting and Legal Research (LDD)
 - b. The Legal Aid Department
 - c. The *Huquq*
- C. The Attorney General's Office
 - a. Elimination of Violence Against Women Units

2.2: The Afghan Military Court System. This chapter examines the structure of the Afghanistan Military Court System.

2.3: Informal Dispute Resolution in Afghanistan. This chapter provides an introduction to traditional dispute resolution mechanisms in Afghanistan including information on the Draft Law on Dispute Resolution *Shuras* and *Jirgas*, as well as an overview of U.S. programs supporting the development of informal dispute resolution mechanisms.

2.4: *The Hierarchy of Laws in Afghanistan.* This chapter examines the framework set forth in the Constitution regarding the hierarchy of statutory law, *Shari'a* law, and international law. It also reviews the role of traditional dispute resolution mechanisms and their application of customary law.

2.5: *Legal Traditions and the Afghan Model.* This chapter provides a comparative overview of civil law, common law, and Islamic law legal traditions and examines the Afghan model.

2.6: *Shari'a Law in Afghanistan.* This chapter provides an overview of *Shari'a* law and its role in Afghanistan.

Volume Three

Criminal Justice in Afghanistan. This volume explains the criminal justice process, legal education and training of justice professionals, and the role of justice professionals in Afghanistan.

3.1: *Legal Education and Training in Afghanistan.* This chapter discusses the minimum educational standards for justice professionals in Afghanistan including a Bachelor's degree in Law or *Shari'a*, the *Stage* program conducted by the Supreme Court and the *Stage* program conducted by the National Legal Training Center, as well as the role of the Afghan Independent Bar Association.

3.2: *The Process of a Criminal Justice Case in Afghanistan.* This chapter explains the process of a formal criminal case in Afghanistan from detection and discovery of a crime, to its investigation and prosecution.

3.3: *Case Management Systems.* This chapter provides an overview of the Case Management System (CMS) adopted by the seven Afghan national justice institutions and the Afghanistan Court Administration System (ACAS) adopted by the courts.

3.4: *The Afghan Prosecutor.* This chapter describes the different types of prosecutors in the Afghan Attorney General's Office and their duties under the Law on the Structure and Authority of the Attorney Generals' Office, the Interim Criminal Procedure Code, and the Code of Conduct and Professional Standards for Prosecutors. This chapter outlines the draft Standard Operating Procedures between prosecutors and police and provides an overview of the Afghan Prosecutors' Association. The chapter also addresses the major challenges facing prosecutors including low salaries and the salary reform process.

3.5: *The Afghan Advocate.* This chapter reviews the rights and duties of a defense attorney pursuant to the Advocates’ Law and the Afghanistan Independent Bar Association Code of Conduct. This chapter provides an overview of the right to counsel and the legal aid system. This chapter also addresses some of the major challenges facing defense attorneys.

3.6: *The Afghan Judge.* This chapter explains the role of an Afghan Judge during a criminal trial, including his/her obligation to be independent and impartial, to protect the fundamental rights of Afghans citizens by upholding procedural guarantees, and to make a decision based on the law. This chapter also refers to the Judicial Code of Conduct, which binds all judges in Afghanistan and addresses some of the major challenges judges face.

3.7: *Legal Education and Training Material.* This section provides a list of available Afghanistan rule of law education and training material. Where available, the uniform resource locator (URL) is provided.

Volume Four

Anti-Corruption. This volume addresses corruption in Afghanistan and anti-corruption measures undertaken by the Afghan Government, the U.S. government, and international organizations along with available resources.

4.1: *Defining Corruption in Afghanistan.* This chapter reviews the definition of corruption as presented in the United Nations Convention Against Corruption (UNCAC), and as defined in Afghanistan’s domestic laws, including the Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy, the Penal Code, and the Anti-Money Laundering Law. This chapter also summarizes recent surveys on the public perception of corruption in Afghanistan.

4.2: *Afghanistan’s Anti-Corruption Policy and Legal Framework Instruments and Agencies.* This chapter introduces the policy and legal framework for the Government of Afghanistan’s anti-corruption efforts within the rule of law sector. This chapter provides an outline of strategic anti-corruption goals set forth in the Afghan Compact, the Afghanistan National Development Strategy, and the National Transparency and Accountability Program. This chapter also provides an overview of the Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy and its establishment of the High Office of Oversight and Anti-Corruption (HOO) and the Joint Independent Anti-Corruption Monitoring and Evaluation Committee. Lastly, this chapter reviews the Major Crimes Task Force, the Anti-Corruption Unit of the Attorney General’s Office, and the Anti-Corruption Tribunals established by the Supreme Court.

4.3: *USG Anti-corruption Policy and Programs within the scope of Afghan Justice Sector Assistance.* This chapter provides an overview of the U.S. government anti-corruption efforts within the scope of Afghan justice sector assistance including support to

- A. The High Office of Oversight and Anti-Corruption;
- B. The Major Crimes Task Force;
- C. The Anti-Corruption Unit of the Attorney General’s Office; and
- D. The Anti-Corruption Tribunal.

4.4: UN, ISAF, and EU Support to Afghanistan Anti-Corruption Efforts. This chapter provides an overview of the anti-corruption programs provided by the United Nations, the North Atlantic Treaty Organization-International Security Assistance Force, and the European Union.

4.5: Anti-Corruption Resources. This chapter provides a list of anti-corruption training resources, both Afghanistan specific and general anti-corruption material. This chapter is not intended to be a comprehensive list of available anti-corruption material. Instead, it provides examples of available resources and uniform resource locator (URL) links to major organizations working in the anti-corruption sector. A more comprehensive list of general resources related to corruption has been compiled by the International Network to Promote the Rule of Law (INPROL).

Volume Five

Counternarcotics. This volume discusses counternarcotic efforts in Afghanistan within the criminal justice sector.

5.1: Afghanistan’s Counternarcotics Policy and Legal Framework. This chapter provides an overview of the counternarcotics policy and legal framework adopted by the Government of the Islamic Republic of Afghanistan. It also looks at the interconnection between narcotics, corruption, and insecurity in the country.

5.2: Afghanistan’s Counternarcotics Institutions, Agencies and Activities within the Criminal Justice Sector. This chapter provides an overview of the Government of the Islamic Republic of Afghanistan’s counternarcotics institutions, agencies, and activities supporting counternarcotics efforts within the criminal justice sector including:

- A. The Ministry of Counter Narcotics;
- B. The Ministry of Interior/Counter Narcotics Police of Afghanistan;
- C. The Ministry of Defense/Special Mission Wing;
- D. The Narcotics Tribunal; and
- E. The Criminal Justice Task Force.

5.3: U.S. Counternarcotics Strategy and Support within the scope of Afghan Justice Sector Assistance and Coordination Mechanisms. This chapter provides an overview of the U.S. government’s counternarcotics strategy and support provided to the Afghan Government on

counternarcotics efforts within the scope of justice sector assistance including assistance to the Ministry of Counter Narcotics, the Counter Narcotics Justice Center, and the Ministry of Interior. This chapter also reviews the major coordination mechanisms for counternarcotics efforts including the Afghanistan Threat Finance Cell, the Joint Narcotics Analysis Center, the Interagency Operations Coordinating Center, the Combined Joint Interagency Task Force-Nexus, as well as the Operations Development Working Group, the Strategic Effects Council and Strategic Effects Board.

5.4: *International Counternarcotics Treaties and Enforcement Bodies.* This chapter provides an introduction to the major United Nations' conventions on narcotics and the related oversight and enforcement bodies. It also provides an overview of Afghanistan's status under the conventions and the United Nations' country program to assist Afghanistan in the implementation of its obligations under the international drug control treaties.

5.5: *International and Regional Counternarcotics Initiatives – Afghanistan.* This chapter provides an overview of the international and regional initiatives to combat narcotics trafficking from Afghanistan including:

- A. The United Nations Office on Drugs and Crime's (UNDOC's) Regional Programme for Afghanistan and Neighbouring Countries 2011-2014;
- B. The Paris Pact Initiative;
- C. The Triangular Initiative;
- D. The International Narcotics Control Board Initiatives;
- E. The Central Asian Regional and Information Coordination Centre;
- F. The Global Container Control Programme;
- G. The Northern Route Working Group;
- H. The Central Asia Counternarcotics Initiative;
- I. The Istanbul Process; and
- J. The NATO-Russia Council.

Volume Six

National Security Cases. This volume provides an overview of national security cases in Afghanistan including U.S. and other international support for the proper adjudication of cases.

6.1: National Security Cases in Afghanistan. This chapter identifies the laws governing national security cases and provides an overview of the National Directorate of Security as well as the process of a national security case in Afghanistan.

6.2: U.S. and International Support for National Security Cases in Afghanistan. This chapter provides an overview of U.S. and other international support for proper adjudication of national security cases in Afghanistan.

Volume Seven

Corrections. This volume provides an overview of the organization and structure of Afghanistan's correctional system, Afghanistan's law on prisons and detention centers, and international support to Afghanistan's correctional system along with available resources.

7.1: The Organization and Structure of Afghanistan's Correctional System. This chapter focuses on the organization and structure of Afghanistan's correctional system under the Ministry of Interior including the Supreme Council of Prisons and the General Directorate of Prisons and Detention Centers. In addition, this chapter provides an overview of the Juvenile Rehabilitation Centers under the Ministry of Justice as well as the freedom deprivation facilities operated by the Ministry of Defense and the National Directorate of Security.

7.2: International Standards and Afghanistan's Law on Prisons and Detention Centers. This chapter provides an overview of the standards and obligations set forth by the United Nations for the treatment of prisoners and the management of custody institutions in the context of Afghanistan's Law on Prisons and Detention Centers.

7.3: Challenges facing Afghanistan's Correctional System. This chapter looks at the major challenge of overcrowding facing Afghanistan's correctional system as well as the factors contributing to overcrowding and the consequences of overcrowding.

7.4: International Support to Afghanistan's Correctional System. This chapter provides an overview of the major international programs supporting Afghanistan's correctional system.

7.5: Resources on Afghanistan's Correctional Systems. This chapter provides a list of available education and training material on correctional system, both Afghanistan specific and general material.

Volume Eight

Afghanistan's National Police. This volume discusses the history of Afghanistan's police, the legal and policy framework for the police, the current composition of the Afghanistan National Police, their role in counter-insurgency, and international support for the development of the police force.

8.1: The History of Afghanistan's Police. This chapter provides a brief history of Afghanistan's police from 1935 to the establishment of the Afghan Interim Administration in 2001.

8.2: Legal and Policy Framework of the Afghan National Police. This chapter provides an overview of the legal and policy framework documents for the Afghan National Police including:

- A. The Police Law (2009)
- B. The National Police Strategy: SY1390 – 1395 (2011-2016);
- C. The National Police Plan: SY1392-1393 (2013-2015); and the
- D. Ten-Year Vision for the Afghan National Police: SY1392-1402 (2013-2023).

8.3: The Organization and Structure of the Afghan National Police. This chapter provides an overview of the organization and structure of the Afghan National Police along with a description of the main departments' responsibilities.

8.4: Role of the Afghan National Police in Counter-Insurgency Operations. This chapter discusses the role of the Afghan National Police in counter-insurgency operations.

8.5: International Support to the Afghan National Police. This chapter reviews the major international police assistance missions since 2001 as well as the International Police Coordination Board and the Law and Order Trust Fund.

8.6: Challenges facing Afghanistan's National Police. This chapter looks at the major challenges facing Afghanistan's police force including illiteracy, leadership development, a militarized force, attrition/casualties, corruption, and narcotics.

Development

The Department of State Bureau of International Narcotics and Law Enforcement Affairs' Office of Afghanistan and Pakistan (INL/AP) identified the need for a rule of law guidebook for Afghanistan following a survey of open source resources for Afghanistan rule of law practitioner-oriented training and educational material. The survey was conducted over a two month period in March and April 2011. The survey reviewed over 80 websites and discovered a significant amount of reference and resource material related to legal reform in Afghanistan. The material became more limited, however, when the search was narrowed to Afghanistan rule of law practitioner-oriented training and educational material. Within this more focused area the material was restricted to training material for Afghan professionals or academic legal/policy discussion papers. The survey revealed a gap in the available online resources for basic rule of law training and educational material for internationals unfamiliar with the Afghan justice sector.

In addition, the survey found that the available online resources are scattered on individual organizations' websites and are difficult to locate if an individual is not already familiar with the rule of law organizations involved in Afghanistan. Attempts to consolidate various rule of law material fall short of providing a useful resource for Afghanistan rule of law practitioner-oriented material. The consolidated sites operate as worksites and not searchable databases; or provide a collection of reference material, but not primers for practitioners; or they tend to have a broader rule of law focus and not specifically targeted to Afghanistan justice issues.

Following the survey, INL/AP began developing the Afghanistan Rule of Law Primer for Practitioners with three objectives:

1. create primers on Afghanistan rule of law development for U.S. government practitioners;
2. compile available Afghanistan rule of law resources; and
3. provide access to the information on a publicly accessible, fully searchable database.

Contact

For more information on the Afghanistan Rule of Law Primer for Practitioners please contact INL/AP Justice Team: INL-AP-Justice-DL@state.gov.