

3.1: Legal Education and Training in Afghanistan

Summary

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 National Legal Training Center, as well as the role of the Afghan Independent Bar Association.

Introduction

The law in Afghanistan sets forth certain criteria that individuals must meet in order to practice law in the country. Judges are governed by the Law of the Organization and Authority of the Courts of the Islamic Republic of Afghanistan (Law on Courts).¹ Prosecutors are governed by the Law on Structure and Authority of the Attorney General's Office (AGO Law).² All other advocates in Afghanistan are governed by The Advocates' Law.³ This chapter reviews the governing criteria set forth in these laws for legal professionals in Afghanistan and touches upon the licensure role of the Afghan Independent Bar Association (AIBA). It also provides an overview of the *Stage* programs administered by the National Legal Training Center (NLTC) and the Supreme Court.

Governing Criteria for Judges

To qualify to be a judge in Afghanistan, candidates must meet the following requirements:⁴

1. Upon appointment as judge, hold the citizenship of the Islamic Republic of Afghanistan for at least 10 years.
2. Not being convicted of any crimes or intentional misdemeanor by absolute and final decision of an authorized court.
3. Hold a bachelor's (B.A.) degree from any faculties of law or *Shari'a* or above it or holds a diploma of Religious Studies from an officially recognized center or equivalent.

¹ Law of the Organization and Authority of the Courts of the Islamic Republic of Afghanistan, Official Gazette No. 1109, 19 June 2013 (1392/4/9) (translation provided by UNAMA)(hereinafter Law on Courts).

² The Law on Structure and Authority of the Attorney General's Office, Official Gazette, Issue No. 1117, 7 October 2013)(hereinafter AGO Law).

³ The Advocates' Law, Official Gazette No. 934 (Dec. 17, 2007), Art. 7(1): http://www.aiba.af/pdf/advocates_by-laws.pdf.

⁴ Law on Courts, *supra* note 1, Art. 81(1).

4. Not have any epidemic illness or disability which impedes a judge performance of duties.
5. At least completed the age of 23 years upon appointment.
6. Have passed the practical *stage* of judicial training course successfully.

The minimum educational standard for a judge is a Bachelor's degree in Law or *Shari'a*. A diploma in Religious Studies from a recognized *madrassa* is permitted to substitute for a Bachelor's degree. All candidates must also pass a training program known as the *Stage*, which is discussed in a separate section below. Judges appointed before the passage of the Law on Courts (October 2013), however, are exempt from passing the *Stage*.⁵

The current Supreme Court *tashkil* (official billeting) provides for a total of 2,296 judges.⁶ Taking into account the vacancies, there are 1,849 sitting judges.⁷ In 2006, the Supreme Court reported only about one-third of the then 1,415 sitting judges met the higher education qualifications.⁸ In a 2010 report on Afghanistan's judicial system, the International Crisis Group reported:⁹

In 2007, some 47 per cent of judges did not hold bachelor's degrees or the equivalent; 14 per cent are high school graduates. Since no new assessment of judges' qualifications has since been published, it is unclear what impact funding for increased training and education for judges has had overall. Anecdotal accounts suggest that substantial numbers of judges still lack the education and legal training to do their jobs properly. Not surprisingly, in areas of the south and east where instability and insecurity are worst, many judges have little or no qualifications at all. In Uruzgan province, for example, not one of the seven working judges has a university degree.

Assessments of judges' qualifications are difficult because statistical data on the judiciary is inconsistent. Information provided is tailored to the specific requests and the time that

⁵ Ibid, Art. 81(3).

⁶ Information provided by the International Development Law Organization (IDLO), February 2014.

⁷ Ibid.

⁸ United Nations, General Assembly and Security Council, Report to the Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security*, A/61/326-S/2006/727, September 11, 2006, p. 11: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/492/46/PDF/N0649246.pdf?OpenElement>

⁹ International Crisis Group, *Reforming Afghanistan's Broken Judiciary*, Asia Report N° 195, November 17, 2010 (hereinafter *Reforming Afghanistan's Broken Judiciary*), p. 23: <http://www.crisisgroup.org/~/media/Files/asia/south-asia/afghanistan/195%20Reforming%20Afghanistans%20Broken%20Judiciary.ashx>. In 2007, 43% of judges had a Bachelor's degree in *Shari'a* Law, 12% in Law, and 8% in some other faculty; 16% were graduates of a *Madrassa*, 6% finished Grade 14, 14% completed High School (Grade 12) and 1% completed Primary School. See *Justice in Afghanistan: Rebuilding Judicial Competence After the Generation of War*, by Livingston Armytage, Heidelberg Journal of International Law Vol. 67, 2007, (hereinafter *Rebuilding Judicial Competence*) p. 191: http://www.mpil.de/shared/data/pdf/armytage-justice_in_afghanistan.pdf.

the request is made. Often international organizations will report different statistics within the same time frame. The most recent information provides that of the 1,849 sitting judges, 1,028 hold bachelor's degrees; however, the breakdown between law, *Shari'a*, or another field of study is not indicated.¹⁰ Eight judges hold a master's degree and three judges hold a doctorate degree (fields unknown).¹¹ The remaining 810 judges received private (non-official) education (14) or graduated from a madrassa (796).¹²

Governing Criteria for Prosecutors

Prosecutors are required to meet similar educational standards as set forth for judges.

Prosecutors must have a Bachelor's degree in either Law or *Shari'a*.¹³ Article 28 of the AGO Law states the following qualifications for a prosecutor:¹⁴

1. Be a citizen of Afghanistan
2. Hold at least a bachelor's degree from the Faculty of Law or *Shari'a*
3. Should not have been deprived of civil rights as a result of a criminal conviction
4. Should not be a member of a political party
5. Should not have been convicted of corruption, intentional misdemeanor or felony crimes
6. Should not be addicted to narcotics
7. Have completed the prosecution, judiciary or legal education center *stage* course, or have completed three years of work experience in judicial or legislative entities.
8. Obtained 24 years of age.

The AGO reports that out of 2,086 prosecutors, 52 percent hold a Bachelor's degree in either Law or *Shari'a*.¹⁵ An additional six percent are reported as holding a Bachelor's degree in another field.¹⁶ Forty-one percent have high school diplomas, and the remaining one percent have less than a twelfth grade education.¹⁷ "Anecdotal accounts and published research suggest that education levels are far lower; the percentage of prosecutors with university degrees is extremely low in a number of economically deprived provinces."¹⁸ If the education level of prosecutors is broken down by prosecutors in Kabul and prosecutors in the provinces, 51 percent

¹⁰ Information provided by IDLO, February 2014.

¹¹ Ibid.

¹² Ibid.

¹³ The former AGO Law allowed prosecutors to hold a degree from a religious school (*madrassa*).

¹⁴ AGO Law, *supra* note 2, Art. 28(1).

¹⁵ Statistical information provided by DOS INL/JSSP.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ *Reforming Afghanistan's Broken Judiciary*, *supra* note 9, p. 23.

of the prosecutors in the provinces have a high school diploma.¹⁹ A Kabul based prosecutor observed:²⁰

Nowadays people get their positions through political connections. You have people in the attorney general's office with a seventh or eighth grade education in positions as high-level prosecutors. Meanwhile, you have young prosecutors who have graduated from university and completed the *stage* training course, earning \$75 a month. They can't survive on that and there's little chance they'll be promoted without using connections so they leave. We need to change things so young graduates stay in their jobs.

Prosecutors are also required to complete a *Stage* program, however, prosecutors with three years of work experience in "judicial or legislative entities" are exempt from the *Stage* requirement.²¹ The AGO, the Ministry of Justice (MOJ), and the AIBA have all agreed upon a unified curriculum for the *Stage*, which is administered by the National Legal Training Center. The *Stage* program is discussed in a separate section below. Although not required by law, continuing legal education for prosecutors is one of the responsibilities adopted by the Afghanistan Prosecutors' Association (APA).²² Continuing legal education is provided through seminars, workshops, conferences, and courses for prosecutors.²³

Governing Criteria for Advocates

All other attorneys in Afghanistan are governed by the Advocates' Law.²⁴ Similar to the educational standards set forth for judges and prosecutors, Advocates are required to have a degree in Law or *Shari'a*. An exception for individuals with a diploma from an official *madrassa* is permitted as long as other qualifications are met. Advocates must also pass the *Stage*, although an exception is allowed for individuals with three years' experience.

¹⁹ Statistical information provided by DOS INL/JSSP.

²⁰ See *Reforming Afghanistan's Broken Judiciary*, *supra* note 9, p. 20; interview with senior Afghan prosecutor, Kabul, 20 June 2010. See Chapter 3.4 for a discussion of pay and grading related to prosecutors.

²¹ AGO Law, *supra* note 2, Art. 28(1)(7).

²² The Afghanistan Prosecutors' Association (APA) was formed in October 2009. See Chapter 3.4 for an overview of the APA. A copy of the APA Charter is provided as an appendix in Chapter 3.4.

²³ Afghanistan Prosecutors' Association Charter, Art. 15(B); See *ibid*.

²⁴ Advocates' Law, *supra* note 3.

The Advocates' Law states:²⁵

Article 6

(1) To practice law in Afghanistan a person must comply with the following requirements:

- (i) Shall be a citizen of Afghanistan;
- (ii) Shall not have been convicted of a criminal offense;
- (iii) Shall have a valid bachelor's degree in Law or *Shari'a* (Islamic Law); or a higher degree from Afghanistan or any other country, after evaluation and approval by the Ministry of Higher Education;
- (iv) Shall have successfully passed the training course and obtained certification in accordance with the By-Laws of the [Afghan Independent Bar] Association. However, a person who has worked for three years as a member of the judiciary, prosecutor's office or the Ministry of Justice is not subjected to the Association's training course requirement.

(2) A graduate from an official *Madrasah* (religious school) or its equivalent may practice as an advocate only when, in addition to fulfillment of paragraphs

(1)(i), (ii) & (iv) of this Article, he/she has completed three years of practical work under the supervision of a licensed advocate.

The Advocates' Law allows an advocate without a license to represent family members:²⁶

(1) To be able to defend and represent the rights of a relative - such as a father, grandfather [up to one third removed], children, mother (up to one third removed), grandmother, brother, nephew, sister niece, spouse, aunts, uncles, and their blood children up to third removed, father in law, brother in law and mother in law - or a partner in a partnership the advocate shall not be obliged to hold a valid license to practice.

(2) For the purposes of clause 1, advocates shall be appointed by Islamic legal authorization.

The Afghanistan Interim Criminal Procedure Code (ICPC) states that a suspect or accused may use the assistance of "an educated person having some knowledge of legal issues" if there is an insufficient number of defense counsel with a degree in Law or *Shari'a*.²⁷ It is understood that the ICPC provision in this regard is superseded by the

²⁵ Ibid, Art. 6.

²⁶ Ibid, Art. 34.

²⁷ Interim Criminal Procedure Code, Official Gazette No. 820, published 2004/02/25 (1382/12/06 A.P.), Article 96. Available on the Afghan Attorney General's Office website: <http://ago.gov.af/en/documents>; or <http://www.asianlii.org/af/legis/laws/icc175/>.

Advocates' Law. A new Criminal Procedure Code (CPC) was signed into law on February 23, 2014. A copy of the CPC was not available at the time of this writing; however, a draft version of the CPC defines a "legal representative" as a "defense lawyer, legal aid provider, custodian and legal guardian."²⁸ In practice, representatives without degrees in Law or *Shari'a* continue to act as advocates.

The AIBA is the responsible organization for licensure of individuals who meet the requirements set forth in the Advocates' Law.²⁹ A recent assessment, however, identified problems with the licensure process:³⁰

The Advocates' Law and AIBA By-Laws are inconsistent with the current practice of re-issuing licenses to individuals who do not meet the mandatory educational standard. Article 39 of the Advocates' Law allows licensure of lawyers practicing prior to its adoption but specifies that renewal is available only to those who meet the requirements of the law and the AIBA By-Laws. AIBA By-Laws Article 30 only references Advocates' Law Article 6 in defining membership requirements.

The Association currently licenses legal aid providers who had licenses issued by the MOJ and were practicing at the time of the adoption of the Advocates' Law. Of the 1,000 members of AIBA, several hundred do not have the minimum required education and have been re-issued licenses. These legal aid providers are experienced and AIBA continues to reissue licenses based on the reality that there are too few lawyers to help indigent people suspected or accused of crimes, and these providers are more useful than no representation.

In addition to its licensure authority, the AIBA also provides continuing legal education (CLE) and training programs.³¹ There is no legal requirement for justice professionals to attend any type of CLE and there is no national program available. The AIBA, however, notifies members and encourages them to participate in available educational opportunities.³² The AIBA maintains a roster of programs, participants, and sponsors.³³ As of February 2014, 2,139 advocates are registered members of the AIBA.³⁴

²⁸ Final Draft Criminal Procedure Code (CPC), Art. 4(18). Translation provided by DOS INL/JSSP, 11 March 2012.

²⁹ Advocates' Law, *supra* note 3, Articles 4(1) and 8(1). Additional information on the AIBA is available in Chapter 3.5.

³⁰ DOS INL/JSSP Report: *Assessment of the Afghan Independent Bar Association* (hereinafter *Assessment of the AIBA*), May 16, 2011, p. 11 (emphasis added).

³¹ *Ibid.*, p. 13.

³² *Ibid.*

³³ *Ibid.*

³⁴ Information provided by DOS INL/JSSP.

Afghanistan Universities - Law and *Shari'a* Faculties

As established in the previous section and with the noted exceptions, a Bachelor's degree in either Law or *Shari'a* is set as the minimum educational standard for legal professionals in Afghanistan. The Ministry of Higher Education's website recognizes six universities that have both a Law Faculty as well as a *Shari'a* Faculty including: Kabul University, Balkh University, Nangahar University, Herat University, Khost University and Al Biruni University in Kapisa.³⁵ The U.S. Agency for International Development (USAID) has identified the following additional faculties of *Shari'a*: Takhar University; Kunar University; Kandahar University; and Paktia University.³⁶ Lastly, Kunduz University has a Law Faculty.³⁷

As expected, the Law Faculty courses concentrate on the formal justice system and State enacted laws while the *Shari'a* Faculty classes focus more on Islamic jurisprudence.³⁸ "It is generally agreed that these courses are archaic, excessively theoretical, provide a weak and uneven foundation to meet the current community needs for judges, and require substantial modernization and restructuring. The pedagogy is mainly restricted to lecturing students on substantive aspects of *Sharia* or statutory law, and there are critical shortcomings in the development of core professional skills of legal research, analysis and reasoning. Moreover, the lack of uniformity in curricula creates immense unevenness as entry qualifications for [...] the stage."³⁹

In 2008, a National Curriculum Conference was held that resulted in professors from seven universities agreeing upon 11 courses that would make up a common core curriculum for both Law and *Shari'a* faculty students.⁴⁰ Those agreed upon common courses include:⁴¹

1. Introduction to Law
2. Constitutional Law
3. Human Rights
4. Principles of *Fiqh*^[42]
5. Criminal Law

³⁵ See Afghanistan Ministry of Higher Education, Government Universities (accessed February 10, 2014): <http://mohe.afghanistan.af/en/page/304>.

³⁶ Information provided by the USAID RLS-Formal Program, October 2011. USAID's RLS-Formal program works with all of the universities except Paktia and Aryana. In 2010, a Presidential order required Paktia University and Aryana University to merge; a process that was to be carried out in the 2011 academic year. Unconfirmed reports claim Ghazni and Bamiyan Universities have established *Shari'a* faculties.

³⁷ USAID reports Kunduz University as having only a law faculty. DOS INL/JSSP, however, identified both law and *Shari'a* faculties at Kunduz University.

³⁸ See *Rebuilding Judicial Competence*, *supra* note 9, p. 192.

³⁹ *Ibid.*

⁴⁰ See Key Conclusions of the National Conference on Afghan Universities Law and Sharia faculties' Core Curriculum and Quality Legal Education, January 5, 2008, Afghanistan Legal Documents Exchange Center: <http://afghantranslation.chechiconsulting.com>.

⁴¹ *Ibid.*

⁴² Classic schools of Islamic jurisprudence (*fiqh*).

- a. General Criminal Law
- b. Special Criminal Law
- c. Islamic Criminal Law
- d. Criminalistics
- e. Criminology
- f. Forensics
- g. Penology
6. Criminal Procedure
7. Civil Law/Civil Code
 - i. Obligations
 - ii. Family Law
 - iii. Property Law
 - iv. Inheritance
8. Civil Procedure
9. Commercial Law
10. Commercial Procedure
11. Professional Responsibility and Ethics for Lawyers

In 2010, the Chief Justice of the Supreme Court acknowledged the need to overhaul the Law and *Shari'a* faculties stating:⁴³

We have students who spend time in these classes and come out with no real background. After four years, they graduate and they know nothing. They don't know what the law is or what is required of them. The judges in the courts have not read the books or the laws they just apply the articles without interpretation.

In support of implementing the 11 agreed upon common courses, Working Groups have been established to develop 20 core curriculum text books.⁴⁴ The *Shari'a* faculties have reportedly developed a unified *Shari'a* curriculum.⁴⁵ In May 2013, a Legal Education Symposium was held with representatives from all of the Law and *Shari'a* faculties, governmental and non-

⁴³ *Reforming Afghanistan's Broken Judiciary*, *supra* note 9, pp. 23-24; ICG interview, Abdul Salam Azimi, Chief Justice, Supreme Court, 10 July 2010.

⁴⁴Information provided by the USAID RLS-Formal Program, October 2011. There are 11 Working Groups – one for each agreed upon topic. USAID RLS-Formal Program is supporting the Working Groups and the development of the text books. By April 2011, eight of the core textbooks were completed. No updated information was available at the time of this writing. Completed textbooks include: Introduction to Law; Constitutional Law; Commercial Law; Family Law; Forensic Medicine; General Criminal Law (two volumes); Penology; Commercial Procedure; and Inheritance Law. The remaining core curriculum textbooks include: Human Rights Law; Professional Responsibility and Ethics for Lawyers; Principles of *Fiqah*; Civil Procedure; Property Law; Obligation Law; Criminal Procedure; Criminology; Islamic Criminal Law; Criminalistics; and Special Crime Law.

⁴⁵ See USAID Afghanistan, Press Release, Afghan Law Schools Improve Legal Education and Services, July 30, 2011: <http://www.usaid.gov/afghanistan/news-information/press-releases/afghan-law-schools-improve-legal-education-and-services>.

governmental institutions, as well as international donor organizations.⁴⁶ The Ministry of Higher Education “asked each Law faculty to develop recommendations for a unified curriculum. The Law faculties prepared their inputs and presented them to the curriculum advisory committee which consolidated those recommendations into a single suggested curriculum.”⁴⁷ The Ministry of Higher Education and the Law faculties are working to finalize the uniform curriculum. Until a uniform curriculum containing core content for both Law and *Shari’a* faculties is fully developed and implemented, discrepancies will remain in the legal education students receive. The Supreme Court and the INLTC have attempted to build a common foundation for graduates of either Law or *Shari’a* through the *Stage* programs.⁴⁸

The Stage

Judges, prosecutors, and advocates are all required to pass a training course known as the *Stage*, with the above noted exceptions. The MOJ, AGO, and AIBA have agreed to a uniform curriculum for the *Stage*, which is administered by the NLTC, formerly the Independent National Legal Training Center (INLTC). The INLTC was established by Presidential Decree in 2007 as an independent state institution “to significantly raise the standards of legal professionalism and the Rule of Law in Afghanistan by providing continuing legal training and education, thus enhancing the knowledge, ethics and abilities of legal practitioners.”⁴⁹ The INLTC became the NLTC and officially part of Kabul University in June 2011.

The NLTC conducts the *Stage* as well as shorter continuing legal education classes, seminars, conferences, and workshops for legal professionals.⁵⁰ The *Stage* is divided into two semesters, each four and half months, for a total of nine months of training.⁵¹ The courses are intended to provide a common foundation for graduates of law and *Shari’a* faculty as well as practical training exercises.⁵² A list of the original INLTC first semester topics can be found in Appendix A.⁵³ An updated list of the NLTC curriculum was not available at the time of this writing. At

⁴⁶ See USAID Afghanistan, Press Release, Officials Unite to Chart A New Course For Legal Education in Afghanistan, May 12, 2013: <http://www.usaid.gov/afghanistan/news-information/press-releases/officials-unite-chart-new-course-legal-education>.

⁴⁷ USAID Afghanistan, Rule of Law Stabilization – Formal Component, Monthly Report, November 1 – November 31, 2013 (hereinafter USAID RLS-F Nov. 2013 Report), p. 11. PDF link available from “legal education Afghanistan” search on USAID Afghanistan website: <http://www.usaid.gov/afghanistan>.

⁴⁸ Information on the Independent National Legal Training Center (INLTC) provided by the INLTC website in June 2012 (<http://inltc.af/training.htm>). The site is no longer operational; see also *Reforming Afghanistan’s Broken Judiciary*, *supra* note 9, pp. 23-24.

⁴⁹ INLTC Mission: <http://inltc.af/ourmision-inltc.htm> (originally accessed June 2009; site no longer operating); see also Presidential Decree No. 1564, dated 09 June 2007.

⁵⁰ Information provided by DOS INL/JSSP February 2014.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.* The INLTC website also provided a list of topics along with a description of the second semester courses, but only in Dari.

the conclusion of the nine month program, students must pass an examination.⁵⁴ Upon successfully passing the exam, and assuming all other requirements are satisfied, graduates qualify for jobs with the Ministry of Justice or the Attorney General’s Office, and licensing by the AIBA. An assessment in 2011, however, revealed that Universities were graduating more Law and *Shari’a* faculty students than the *Stage* could admit.⁵⁵ As a result, the AIBA was issuing licenses *prior* to students graduating from the *Stage* course.⁵⁶ The NLTC currently trains approximately 200 lawyers a year (per *Stage*) – 50 from the AGO; 50 from the AIBA; 25 from the MOJ/Legal Aid; and the additional 75 are recruited by the NLTC.⁵⁷

The Supreme Court has elected to continue to implement its own *Stage* program for judicial candidates separate and apart from the NLTC. The judicial *Stage* is a two year program divided into three trimesters – theoretical lessons, substantive laws, and practical hands-on exercises - and is administered by the Supreme Court’s Research and Studies Department.⁵⁸ A complete list of the judicial *Stage* classes can be found in Appendix B. The Supreme Court also administers an Administrative *Stage* program, which “supports professional training for court administrators in order to ensure effective and efficient justice delivery for citizens utilizing Afghanistan’s courts.”⁵⁹ The Administrative *Stage* inaugural class, comprising 28 male and two female students, took their final exam in November 2013.⁶⁰ A new judicial education center is under construction with funding from the World Bank, which is intended “to house the Judicial and Administrative *Stage* programs by this coming summer [2014].”⁶¹

The judicial *Stage* commenced in 1968 to conform to the requirements of the 1964 Afghan Constitution. Twenty-one judicial *Stage* programs were held between 1968 and 1995. In 1996, the program was terminated and no training was provided to newly hired judges. In 2004, the Afghan Interim Government reinstated the *Stage*.⁶² In 2007, it was reported that less than 60%

⁵⁴ Ibid.

⁵⁵ *Assessment of the AIBA*, *supra* note 30, p. 12.

⁵⁶ Ibid.

⁵⁷ Information provided by DOS INL/JSSP February 2014.

⁵⁸ *Activities and Achievements of the Supreme Court from 1385-1389 (2006-2010) on Rule of Law and the Judiciary* (hereinafter *Supreme Court Activities and Achievements*), pp. 54-57. The judicial *Stage* was extended in 2010 from a one year program to a two year program; *see also* The Supreme Court of the Islamic Republic of Afghanistan, Departments, Research and Studies Department: <http://supremecourt.gov.af/en/page/638>. *See also* Department of State, INL/JSSP Report: *Judicial Training Assessment, Supreme Court, Government of the Islamic Republic of Afghanistan* (hereinafter, *Judicial Training Assessment*), April 28, 2011, p. 6. In 2011, the first trimester was underwritten by the Max Planck Institute for Comparative Public Law and International Law (now Max Planck Foundation); the second trimester was underwritten by the Institut International Pour les Etudes Comparatives.

⁵⁹ USAID RLS-F Nov. 2013 Report, *supra* note 47, p. 6.

⁶⁰ Ibid. For more information, a copy of the Administrative *Stage* Evaluation or the Administrative *Stage* report can be requested from USAID.

⁶¹ Ibid, p. 2.

⁶² The first re-instated *Stage* program for new judges began on September 24, 2005 with 170 graduates including 12 women (118 from the *Shari’a* Faculty of the University of Kabul, 29 from *Madrassas* and 23 from the Law and Political Science Faculty of the University of Kabul). United Nations, General Assembly and Security Council, Report to the Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security*:

of all judges had completed the *Stage* program and of the nearly 700 judges appointed by President Karzai, less than 200 had completed the *Stage*.⁶³ According to the Supreme Court, since the programs reinstatement 715 *Stage* graduates have been appointed to the judiciary and 250 individuals were participating in the 27th and 28th *Stage* program.⁶⁴ The Supreme Court has more recently reported 122 graduates from the 27th *Stage* program would be appointed to a judgeship in the near future.⁶⁵ In September 2013, 115 participants graduated from the 28th *Stage* program.⁶⁶ The 29th *Stage* program is currently on-going with 216 participants.⁶⁷

During the Kabul Conference, the Supreme Court made establishing a Judicial Education Center to support the *Stage* for all judges (new graduates as well as judges who have not attended the *Stage*) a priority.⁶⁸ The Judicial Education Center is currently under construction with funding from the World Bank.

International Support for Legal Trainings

Concerns regarding the level of education and training for justice professionals in Afghanistan are well known. The international community's support for legal education in Afghanistan spans the continuum of learning needs from university study (both Law and *Shari'a* faculties), through *Stage* support, to support for continuing legal education via donor supported training programs.⁶⁹

University Study

USAID, through its Rule of Law Stabilization Program - Formal Justice Sector Component (RLS-Formal) seeks to increase the capacity of law schools through curriculum development and interactive teaching methodologies.⁷⁰ USAID was actively involved in the National Curriculum

Emergency International Assistance for Peace, Normalcy, and Reconstruction of War-Stricken Afghanistan, A/60.712-S/2006/145, March 7, 2006, p. 7: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/260/77/PDF/N0626077.pdf?OpenElement>.

⁶³ *Rebuilding Judicial Competence*, *supra* note 9, p. 191.

⁶⁴ Supreme Court of Afghanistan Special Bulletin Vol. 15 (20 Jan. 2011), p. 10: http://supremecourt.gov.af/Content/files/bulletin_Vol15.pdf. 1,183 individuals took the 28th judicial *stage* entrance exam. 701 candidates hold degrees in *Shari'a* law; 131 hold law degrees; and 351 graduated from a *madrassa*. 151 candidates were female. The breakdown of candidates accepted into the *Stage* program is unknown. See Supreme Court of Afghanistan Special Bulletin Vol. 11 (20 Sept. 2011), p. 8: http://supremecourt.gov.af/Content/files/bulletin_Vol11.pdf.

⁶⁵ Information provided by USAID-RLS-Formal Program, June 2012.

⁶⁶ USAID Afghanistan, Press Release, 115 New Judges to Enter Afghan Judiciary, 19 September 2013: <http://www.usaid.gov/afghanistan/news-information/press-releases/115-new-judges-enter-afghan-judiciary>.

⁶⁷ Information provided by IDLO, February 2014.

⁶⁸ Supreme Court of Afghanistan Special Bulletin Vol. 15 (20 Jan. 2011), p.12: http://supremecourt.gov.af/Content/files/bulletin_Vol15.pdf

⁶⁹ See Chapter 1.3 for a broad overview of the major rule of law programs of the various U.S. agencies in Afghanistan. See Chapter 1.4 for an overview of the major international organizations involved in rule of law related development in Afghanistan.

⁷⁰ USAID Afghanistan, Rule of Law Stabilization Program – Formal Justice Sector Component, Fact Sheet, December 2012 (hereinafter USAID RLS-F Fact Sheet):

Conference and Legal Education Symposium discussed above and continues to support Law and *Shari'a* faculties to implement a unified curriculum. USAID also promotes “the use of practical legal education methodologies in the law faculties, including clinical legal education and moot court programs.”⁷¹ Specifically, USAID supports the legal clinics operating in Al Biruni, Balkh, Herat, Kabul (two clinics), and Nangarhar Universities.⁷²

The U.S. Department of State Bureau of International Narcotics and Law Enforcement Affairs (INL) funds the University of Washington’s Legal Educators Support Program—Afghanistan (LESPA), which supports joint legal research projects and clinical education in Afghanistan.⁷³ INL also funds Stanford University’s Afghanistan Legal Education Project (ALEP), which develops and delivers English-language legal textbooks and law classes to undergraduate American University of Afghanistan (AUAF) students.⁷⁴ ALEP also worked with AUAF to start the University’s first ever degree-granting bachelor of law program. Global Rights, with support from INL, provides practical legal education and fellowships to law and *Shari'a* students at Afghan public universities.⁷⁵ Top students in each course are eligible for a one year full-time fellowship at an Afghan ministry or nongovernmental organization. Moreover, INL’s Public-Private Partnership for Justice Reform in Afghanistan supports the Herat University Rule of Law and Human Rights Center.⁷⁶

The International Legal Foundation – Afghanistan (ILF-A) has established legal aid clinics at the Universities in Herat, Jalalabad, Kabul, and Mazar-e-Sharif.⁷⁷ The Open Society Institute also supports clinical legal education at Herat University.

Graduate level legal education is supported by INL through LESPA to provide LLM and Ph.D. programs to law professors from Afghanistan’s public universities, as well as to provide exposure to clinical education and to promote legal research and writing.⁷⁸ The Public-Private Partnership provides scholarships to top Afghan attorneys to pursue LLM degrees in the United States.⁷⁹ In addition, INL supports the International Association of Women Judges, which

<http://www.usaid.gov/sites/default/files/documents/1871/Fact%20Sheet%20Rule%20of%20Law%20Stabilization%20-%20Dec%202012%20-%20FINAL.pdf>.

⁷¹ Ibid. For example, USAID supports the Jessup Moot Court Competition and Media Law Moot Court competitions in Afghanistan.

⁷² See USAID Afghanistan, Press Release, Afghanistan Universities Inaugurate Legal Clinics Programs, 17 October 2012: <http://www.usaid.gov/afghanistan/news-information/press-releases/afghanistan-universities-inaugurate-legal-clinic>.

⁷³ See The University of Washington’s Legal Educators Support Program—Afghanistan: <http://www.law.washington.edu/AsianLaw/Research/Projects/AfghanEducators.aspx>.

⁷⁴ See Stanford University’s Afghanistan Legal Education Project: <http://alep.stanford.edu/>.

⁷⁵ See Global Rights Afghanistan: http://www.globalrights.org/site/PageServer?pagename=www_asia_afghanistan.

⁷⁶ Information provided by INL/AP, February 2014.

⁷⁷ ILF Our Programs ILF-Afghanistan (accessed January 29, 2014): <http://theilf.org/our-programs/ilf-afghanistan>.

⁷⁸ See The University of Washington’s Legal Educators Support Program—Afghanistan: <http://www.law.washington.edu/AsianLaw/Research/Projects/AfghanEducators.aspx>.

⁷⁹ See The Public-Private Partnership for Justice Reform in Afghanistan: <http://www.afghanppp.org/home/afghan-llm-scholarship>

provides an educational exchange program for female judges along with computer and English training.⁸⁰

Stage

The NLTC *Stage* program reports its desire to be self-sufficient and is not currently receiving support from the international community.⁸¹ The United Nations Development Programme's (UNDP's) Justice and Human Rights in Afghanistan (JHRA) Program Phase II, however, includes establishing regional NLTCs in Balkh, Herat, and Nangarhar.⁸²

The judicial *Stage* program has been supported by a number of international donors including the Max Planck Institute for Comparative Public Law and International Law (now Max Planck Foundation) and the Institut International Pour les Etudes Comparatives. Currently, USAID RLS-Formal, the French Embassy, the International Development Law Organization (IDLO), and the Hamida Barmacki Organization are working with the Supreme Court leadership “in developing a strategic plan to ensure the sustainability and high quality of the judicial training program as donor support, particularly financial support, diminishes.”⁸³

Continuing Legal Education

Currently, the Afghan government does not have the institutional structures in place to support continuing legal education (CLE). Training for practitioners—investigators, prosecutors, defense attorneys, and judges—has been provided by the international community. IDLO's Justice Training Transition Program (JTTP), supported by INL, provides “nationwide criminal justice training and mentoring for prosecutors, judges, defense attorneys and criminal investigators.”⁸⁴ USAID's RLS-Formal also provides specialized training programs to Afghan judges.⁸⁵

The United Nations Office on Drugs and Crime (UNODC) provides legal training to justice actors.⁸⁶ With a focus on drugs and crime, UNODC has developed several manuals on anti-corruption, human trafficking, juvenile justice, organized crime, and prison reform; many of the

⁸⁰ See The International Association of Women Judges: <http://www.iawj.org/NewsJuly182012AWJAre-launched.html>

⁸¹ Information provided by DOS INL/JSSP February 2014. The INLTC received substantial international support from the U.S., Italy, the European Union Police Mission in Afghanistan (EUPOL), and the International Development Law Organization (IDLO).

⁸² See UNDP Jobs: http://jobs.undp.org/cj_view_job.cfm?cur_job_id=39390. For information on UNDP's JHRA program, see Chapter 1.4: The International Community and Rule of Law Implementers in Afghanistan.

⁸³ USAID RLS-F Nov. 2013 Report, *supra* note 47, p. 6.

⁸⁴ *Ibid.*

⁸⁵ See USAID RLS-F Fact Sheet, *supra* note 70.

⁸⁶ See UNODC Afghanistan, Country Programme Criminal Justice: <http://www.unodc.org/afghanistan/en/criminal-justice.html>.

manuals can be downloaded from the UNODC website under the Country Programmes' Sub-Program links.⁸⁷

The European Union Police Mission in Afghanistan (EUPOL Afghanistan) provides several CLE type trainings including advanced trainings to prosecutors on crime scene management, forensics, and interview techniques;⁸⁸ trainings for prosecutors from the National Security Directorate (NDS) on investigative techniques, laws and legal procedures;⁸⁹ and training for the Ministry of Interior's regional anti-corruption teams and the Anti-Corruption Unit of the Attorney General's Office.⁹⁰

Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) provides legal trainings for police, judges, and the Ministry of Justice huquq staff.⁹¹ GIZ in partnership with EUPOL and the Ministry of Interior compiled the "*Basics of Afghan Law and Criminal Justice: A Manual for the Afghan Police and Legal Professionals*."⁹²

Training Resources/Databases

The years of support for legal reform in Afghanistan has produced a fair amount of training and educational material. Attempts have been made to consolidate Afghanistan rule of law documents by various organizations. For example, the IDLO has a "ROL Projects and Initiations" database⁹³ and the United Nations Rule of Law (UNROL) office is creating an umbrella database for all of its ROL material.⁹⁴ More targeted to Afghanistan, the U.S. Institute for Peace (USIP) has developed the International Network to Promote the Rule of Law (INPROL),⁹⁵ The Afghanistan Research and Evaluation Unit (AREU) has developed an

⁸⁷ Publications related to the Criminal Justice Programme can be found at (accessed January 29, 2014): <http://www.unodc.org/afghanistan/en/publications-and-reports/relevant-docs-related-to-sp3.html>.

⁸⁸ EUPOL Afghanistan, Rule of Law Component (accessed January 29, 2014): <http://81.17.241.206/?q=node/9>; See EUPOL - Serving Afghanistan: Online Bi-weekly Newsletter 09/10: http://www.eupol-afg.eu/pdf/EUPOL-Serving_Afghanistan_09_10.pdf; see also EU Police Mission in Afghanistan, EUPOL Afghanistan Factsheet, October 2013: http://www.eupol-afg.eu/sites/default/files/FACTSHEET%20EUPOL%20Afghanistan_EN_October2013_Kabul.pdf. The Coordination of Police and Prosecutor (CoPP) training is a Dutch-funded project. See Chapter 1.4 for more information on EUPOL's rule of law programs.

⁸⁹ EUPOL - Serving Afghanistan: Online Bi-weekly Newsletter 05/11: http://www.eupol-afg.eu/pdf/EUPOL-Serving%20Afghanistan%2005_11.pdf

⁹⁰ EUPOL Afghanistan, Rule of Law Component (accessed January 29, 2014): <http://81.17.241.206/?q=node/9>.

⁹¹ See GIZ, Promotion of the Rule of Law in Afghanistan (2003-2017), More Rights and Security for All Afghans (accessed January 29, 2014): <http://www.giz.de/en/worldwide/14663.html>.

⁹² The manual is available online at: <http://www.auswaertiges-amt.de/cae/servlet/contentblob/343976/publicationFile/3727/Polizei-Legal-Manual.pdf>; and also at http://www.inprol.org/files/GTZBasicsofAfghanLaw_Eng.pdf.

⁹³ See IDLO Rule of Law Projects and Initiations (accessed June 20, 2012): <http://www.idlo.int/english/Resources/ROL/projectandiniziatives/Pages/home.aspx>. This database maps out ROL related projects worldwide since 2004 and provides URL links where available. Information can be searched by donor, implementer, country, region, project type, year and keywords.

⁹⁴ See UN Rule of Law (accessed June 20, 2012): http://www.unrol.org/article.aspx?article_id=2

⁹⁵ USIP Enhancing the Rule of Law (accessed June 20, 2012): <http://www.usip.org/node/7405#rol>.

expansive Afghanistan digital library,⁹⁶ and USAID supports the Afghanistan Legal Document Exchange Center (ALDEC),⁹⁷ and the Combined Joint Inter-Agency Task Force 435 (CJIATF-435) created an Afghanistan Rule of Law Worksite.⁹⁸ Using these resources and others, a list of available training and educational material was compiled and can be found in Chapter 3.7. Because training and educational material is constantly being developed, the list is not intended to be an exhaustive list of available material, but rather a starting point for available resources.

⁹⁶ Afghanistan Research and Evaluation Unit:

<http://www.areu.org.af/ContentDetails.aspx?ContentId=1&ParentId=1>. AREU currently receives core funds from the government of Denmark, Finland, Norway, Sweden, Switzerland and the United Kingdom. Specific projects have been funded by the Foundation of the Open Society Institute Afghanistan (FOSIA), the Asian Foundation (TAF), the European Commission (EC) and the International Development Research Center (IDRC).

⁹⁷ Afghanistan Legal Document Exchange Center (ALDEC): <http://afghantranslation.chechiconsulting.com/>

⁹⁸ The CJIATF-435 supported Afghanistan ROL Worksite was previously housed on HarmonieWeb: <https://www.harmonieweb.org/>. The worksite has since been reportedly moved to All Partners Access Network (APAN), however, at the time of this writing the documents could not be accessed on APAN: <https://community.apan.org/default.aspx>.

Resources

- 2004 Constitution of Afghanistan (Translated by Sayed Shafi Rahel for the Secretariat of the Constitutional Commission):
http://supremecourt.gov.af/Content/Media/Documents/constitution2004_english3012201016726844.pdf
- Law of the Organization and Authority of the Courts of the Islamic Republic of Afghanistan, Official Gazette No. 1109, 19 June 2013 (1392/4/9) (translation provided by UNAMA).
- The Law on Structure and Authority of the Attorney General's Office, Official Gazette, Issue No. 1117, 7 October 2013.
- *Activities and Achievements of the Supreme Court from 1385-1389 (2006-2010) on Rule of Law and the Judiciary.*
- Islamic Republic of Afghanistan, Decree No. 111, Nov. 25, 2007:
http://www.aiba.af/pdf/advocates_by-laws.pdf.
- Advocates' Law, Official Gazette No. 934, Dec. 17, 2007:
http://www.aiba.af/pdf/advocates_by-laws.pdf .
- United Nations, General Assembly and Security Council, Report to the Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security*, A/61/326-S/2006/727, September 11, 2006: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/492/46/PDF/N0649246.pdf?OpenElement>
- United Nations, General Assembly and Security Council, Report to the Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security: Emergency International Assistance for Peace, Normalcy, and Reconstruction of War-Stricken Afghanistan*, A/60.712-S/2006/145, March 7, 2006: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/260/77/PDF/N0626077.pdf?OpenElement>
- International Crisis Group, *Reforming Afghanistan's Broken Judiciary*, Asia Report No 195, November 17, 2010: <http://www.crisisgroup.org/~media/Files/asia/south-asia/afghanistan/195%20Reforming%20Afghanistans%20Broken%20Judiciary.ashx>
- Justice in Afghanistan: Rebuilding Judicial Competence After the Generation of War, by Livingston Armytage, Heidelberg Journal of International Law Vol. 67, 2007:
http://www.mpil.de/shared/data/pdf/armytage-justice_in_afghanistan.pdf

DOS INL/JSSP Reports

- Judicial Training Assessment, April 28, 2011
- Assessment of the Afghan Independent Bar Association, May 16, 2011

Web Resources

- Supreme Court : <http://supremecourt.gov.af/en>
- Ministry Of Justice: <http://moj.gov.af/en>
- Attorney General's Office: <http://ago.gov.af/en>
- Ministry of Higher Education: <http://www.mohe.gov.af/?lang=en&p=home>
- Afghanistan Independent Bar Association (AIBA): <http://www.aiba.af/>
- International Development Law Organization (IDLO) Rule of Law Projects and Initiations:
<http://www.idlo.int/english/Resources/ROL/projectandiniziatives/Pages/home.aspx>.
- United Nations Rule of Law: http://www.unrol.org/article.aspx?article_id=2
- U.S. Institute for Peace (USIP), Goals in Afghanistan, Enhancing the Rule of Law:
<http://www.usip.org/node/7405#rol>.
- Afghanistan Research and Evaluation Unit (AREU):
<http://www.areu.org.af/ContentDetails.aspx?ContentId=1&ParentId=1>.
- Afghanistan Legal Document Exchange Center (ALDEC):
<http://afghantranslation.checciconsulting.com/>
- Afghanistan Rule of Law Worksite on HarmonieWeb (<https://www.harmonieweb.org>) transferred to All Partners Access Network (APAN):
<https://community.apan.org/default.aspx>.

Appendix A

INLTC *Stage First Semester Topics*⁹⁹

1. Criminal action and its practical criteria
2. Civil action and its practical criteria
3. Commercial action and its practical criteria
4. Arbitration and mediation
5. Legal writing (method of writing and identification of *Shari'a* based deeds)
6. Criminology
7. Forensic medicine
8. Defense lawyers' defending methods
9. Obtaining rights
10. Legislative drafting.

⁹⁹ INLTC, Curriculum, First Semester Curriculum (June 2012).

Appendix B

Supreme Court Judicial Stage Curriculum¹⁰⁰

Judicial Stage Curriculum	
Theoretical Lessons	
Laws	Constitution of the Islamic Republic of Afghanistan
	The Law on the Organization and Jurisdiction of Courts
	Civil Law in Four Volumes
	Criminal Law
	Commercial Guidelines
	The Law of Principles of Civil Trials
	The Law of Principles of Commercial Trials
	Criminal Execution Law, Temporary Execution Law with Annexes and Amendments.
	The Traffic Law
Subjects	Criminalistics
	Rights of Inheritance
	Criminology
	Guideline of Deeds and Registrations
	Rules of a Fair Trial
	Work Ethics in the Courts based on the Judicial Code of Conduct
	The Method of Writing Civil Decisions
	The Method of Writing Criminal Decisions
The Method of Writing Commercial Decisions	
Second Part: Conferences, Lectures, and Seminars	
Laws	Counter-Narcotics Law
	Internal and External Security Threats Law
	Law of Proceedings of Children Violations
	The Government Cases Law and Training Doctrine
	The Law on Obtaining Rights
	The Law on the Organization and Authority of the Attorney General's Office
	The Registration Law of Commercial Documents and Signs
	The Products' Law
	The Smuggling Blockage Law
	Military Criminal Law
	The Advocate's Law
	The Land Management Law
The Labor Law	
Training Manuals	Training Manual for Preparing Documentation
	Training Manual for Documentation Mistakes
	Training Manual for Refinement of Witnesses (what is this??)
	Training Manual on Guardianship

¹⁰⁰ *Supreme Court Activities and Achievements*, supra note 58, pp. 106-109.

Second Part: Conferences, Lectures, and Seminars Continued	
Subjects	Quranic Verses of Order
	Hadiths of Order
	Judicial Views
	Judicial Rules
	Judicial Statistics
	Judicial Surface and Reports
	World and Islamic Declaration of Human Rights
	International Conventions
	International Criminal Law
	Principle of Rights and Legal Sciences
	Legal Terms
	Rights and Obligations
	General and Personal Conditions of Claims
	Orders, Limits, and Death Sentence
	Conditions of witnesses and the manner of doing it
Third Part: Practical component of the Judicial Stage	
Practical Work	Conducting Mock Trials
	Court visits and participating in Judicial meetings
	Study of decisions, preparing reports, and writing decisions under the supervision of a judge.
	Visit a forensic medicine office and study forensic medicine.
	Visit Ministry of Interior (MOI) Offices and learn about fingerprinting, and other criminal issues.
	Visit and learn about prisons and detention centers.
	Visit and learn about interrogation and other issues from the Attorney General's Office.