

AFGHAN INDEPENDENT BAR ASSOCIATION

RULE OF LAW TOOLKIT



AIBA

Provided by the Independent Afghan
Bar Association to help promote
the Rule of Law in Afghanistan



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This toolkit is provided by the Independent Afghan Bar Association to its members to help its attorneys promote awareness of the rule of law in Afghanistan.

As a member of the AIBA, you play a crucial role in holding the Government of the Islamic Republic of Afghanistan accountable to the constitution and spreading awareness and adherence to the rule of law amongst the citizens of Afghanistan.

Using the items in this toolkit as a starting point, you can, through your creativity and knowledge, help to educate the citizens of Afghanistan on the rule of law and build awareness about why it is important to their daily lives. One lawyer can make a difference. Imagine the difference all the lawyers of the Afghan Bar Association can make.

It is my vision that each attorney registered with the Afghan Bar Association will conduct legal awareness training in their home villages and in the location of their law practice. It is our civic and moral responsibility to ensure that our Afghanistan becomes a nation that represents and upholds the rule of law so that all Afghan citizens are treated fairly and equally.

**Rohullah Qarizada
President, Independent Bar
Association of Afghanistan**

FACT SHEET

Government:

Form of Government: Afghanistan is a Islamic Republic. A republic is a form of government in which supreme power resides in a body of citizens that are entitled to vote and is exercised by elected officers and representatives responsible to them and governing according to law.

President: President Hamid Karzai is the current President of the Islamic Republic of Afghanistan.

National Assembly: the Lower House and the Upper House – were elected in September 2005, along with provincial councils in all 34 provinces.

Structure: At the national level there are three branches that form the foundation of the government; the Executive Branch, the Legislative Branch, and the Judicial Branch. Other entities such as ministries, the Afghan national security forces (military and police) and commissions also carry out government obligations.

The Loya Jirga: The Loya Jirga is a traditional gathering of leaders from around the country who come together to debate and vote on important social and political issues that affect Afghanistan.

Constitution:

In December 2003 a Loya Jirga approved the Constitution. In January 2004, the Islamic Republic of Afghanistan adopted a new Constitution. It was signed shortly thereafter, thus marking the beginning of the Islamic Republic of Afghanistan.

Justice System

The Judicial Branch and the courts are an important part of the overall Afghanistan Justice System. Other organizations include the Attorney General's Office, and the Ministry of Justice.

Independent Afghan Bar Association:

Please place information here

TALKING POINTS

Consider holding a meeting with citizens and key leaders in a district or village. This is an opportunity for you get your name out to the local population and help Afghans understand the rule of law.

General discussion points:

How do you define the rule of law?

The rule of law, in its most basic form, is the principle that no one is above the law. The rule follows logically from the idea that truth, and therefore law, is based upon fundamental principles which can be discovered, but which cannot be created through an act of will.

What is a lawyer's role in the rule of law?

A lawyer is sometimes referred to as an attorney at law or a counselor. This is a person who has spent many years learning about the law and has obtained a license to practice law. As an officer of the court, it is the lawyer's responsibility to establish a relationship of trust and confidence with their client and represent the client to the best of the lawyer's ability.

What is the public's responsibility in the rule of law?

According to article 5 of the penal code: ignorance of provisions of the law shall not be deemed as an excuse. Therefore, it is to public to know about their rights, obligations and re-

sponsibilities towards their government and as well as themselves in order to be more protected by applicable law/s in the society.

What is our government's responsibility in the rule of law?

According to the article 22 of the Afghanistan constitution: Any kind of discrimination and privileges between the citizens of Afghanistan are prohibited.

The citizens of Afghanistan-whether man or woman-have equal rights and duties before the law. Based on aforementioned article government responsibilities to launching public awareness, providing information regarding public rights, obligations and responsibilities, defend its citizen rights in national and international community, provide transparent and accountable government and access to justice for all.

How does our justice system uphold the rule of law?

What are the challenges to the rule of law in this country/province/district?

Some challenges are insecurity, corruption, long time process for the cases, injustices, inequality, unprofessionalism, existence of distance between people and government, illiteracy, poverty, existence of illegal and irresponsible armed group.

How can we deal with these challenges?

Educating the public, report violations, etc...

FREQUENTLY ASKED QUESTIONS

The following questions may be asked by citizens of Afghanistan. A basic answer is provided but think about how you will answer these questions if asked. These questions can be used as a starting point for discussions in schools and meetings with local citizens.

What does “rule of law” mean?

Rule of Law is the principle that there is no group or individual above the law and that everyone should be treated alike by the law (e.g. no difference regarding race, religion ... and I would add income as well).

Why is the rule of law important?

The rule of law ensures all members of our society are subject to the same set of laws and the consistent enforcement of these laws.

What does the constitution mean to the rule of law?

The constitution is the foundation for the rule of law. It outlines the rights and responsibilities of the Afghan people and the Afghan government.

Why should I use the formal justice system?

The formal justice system is the law of the land and produces consistent fair results. By using the formal justice system, you have the weight of national law behind the outcome.

What are my options to resolve a dispute?

For civil cases, a citizen can use the Huquq, or file a case in the district court, provincial court, or even the Supreme Court.

For criminal cases, a citizen can file a case with the prosecutor’s office if an offense has been committed against them, or if a person is accused of a crime they can speak to an AIBA attorney

Why should I use a lawyer?

A lawyer has been trained in the law and has the experience to protect your rights and interests.

How do I find a lawyer?

Contact the Independent Afghan Bar Association at 93 (0) 799 72 14 69

What if I cant afford a lawyer?

The constitution guarantees a lawyer for every accused in a criminal case if you cannot afford one. The AIBA will provide a lawyer for you free of charge. Every AIBA lawyer must represent three criminal accused every year free of charge.

What if a judge is corrupt?

Report this to the Afghan Bar Association and they will work with the court to resolve the situation.

FREQUENTLY ASKED QUESTIONS

What is the structure of our justice system?

At the top is the Supreme Court, next are the Provincial Appellate courts, at the lowest level are the district primary courts

What is due process?

Due Process is the principle that a person has a right to receive notice, and be heard in an orderly proceeding in order to protect his or her rights

Why should the law apply equally to everyone?

All people are equal and should be treated equally.

Why shouldn't I take the law into my own hands?

People who take the law into their own hands usurp the authority of the government and actually become criminals themselves.

What are some examples of corruption?

Embezzlement, bribery, theft, blackmail

How does the justice sector deal with corruption?

An allegation of corruption is investigated and if substantiated is dealt with by the appropriate ministry. Citizens can help this process by reporting corrupt officials to the head of the appropriate ministry.

SPEAKING TO A CLASSROOM

As a lawyer, you have the ability to share your knowledge and inspire students by providing a better understanding of the rule of law. You are a role model for the future leaders of Afghanistan.

Steps to take to speak with a group of students:

1. Choose a school and grade level. This can be a school where your children or a friend's children attend, your old alma mater, or just a school in your neighborhood.
2. Contact the principal or other administrator about arranging a speaking engagement. Ask about any special civics programs that your talk on the rule of law would complement.
3. Meet with the teacher to discuss your presentation and to determine what materials, if any, should be provided ahead of time for student preparation.
4. Outline your presentation. Discussion ideas and additional online resources are included in this toolkit.
5. Follow up after your presentation with a thank you to the

teacher and the class. Be willing to answer any further questions from the students.

Ways to promote the rule of law to students:

Discuss why and how you became an attorney.

Describe what your role is as an attorney.

Ask the students why they have classroom rules and why those rules are important.

Explain how the constitution is the rule for the country.

Discuss why the law is important to everyday life.

Discuss the court system

Discuss individual rights that are guaranteed by the constitution and why they are important.

Talk about corruption and why it is bad.

SAMPLE SPEECH

A sample speech can be used in meetings with local citizens, businessmen, students, or in the media. The speech below is a starting point to develop your own speech about the rule of law. Incorporate your experiences as a lawyer to explain the rule of law and its importance to the everyday lives of Afghans.

When I say “the rule of law,” what does that mean to you? Does it mean obeying the law? Or ruling with laws? Or does it mean that we are protected by laws? The rule of law encompasses all of those things. It is the idea that a government should be rooted in laws for the common good and that its citizens’ rights are protected from encroachment by the government. At its heart, the rule of law keeps our government — and society — from descending into tyranny or chaos. Our understanding today of the rule of law is based upon this country’s founding. We hold several key ideals dear, not least of which are freedom, justice, and equality, as established by our Constitution. By holding true to the rule of law and remaining vigilant against the people and institutions that try to undermine the rule of law our country will become stronger and more prosperous.

It means that laws are promulgated by a proper legislature who is representative of the Afghan people because it has been elected by the Afghan people. It means that citizens may not be prosecuted and incarcerated for acts that are not against the law. It means that laws and individual rights are applied uniformly to all citizens of Afghanistan.

As a lawyer, my role is to defend and protect the rights and liberties of individuals in a justice system that allows for due process, right to counsel, judicial independence, etc. It is my duty to advocate for those that are accused of crimes so that they may receive a fair hearing before their peers. It is my duty to defend a person or organization that I might not personally like because, regardless of my personal feelings, that person or organization shares the same rights under the law as you or I do. It is my duty to aid those that otherwise could not afford legal counsel. The lawyers in this country work hard every day to uphold the rule of law by protecting and defending your rights and seeking that justice is served.

RULE OF LAW RESOURCES

General/Legal

<http://www.afghanistantranslation.com/>

<http://www.supremecourt.gov.af/>

<http://www.moj.gov.af>

Government

<http://www.president.gov.af/>

<http://www.afhangovernment.com/>

<http://ands.gov.af>

<http://moj.gov.af>

<http://ago.gov.af>