

# Governance and Law



**The Asia Foundation**  
Improving Lives, Expanding Opportunities

The Asia Foundation's Governance and Law Program supports initiatives to build more effective and responsive governance in areas that can expand liberty and justice, accelerate sustainable economic and social development, and reduce violent subnational conflict. In Afghanistan, the Foundation has pioneered projects focused on local and national governance reform, strengthening law and justice, promoting elections and political processes, and supporting peacebuilding efforts. The Foundation works with strategic partners to build capacity, systems, procedures, and policies in key government agencies, including the Office of the President, the Independent Directorate for Local Governance, the Ministry of Foreign Affairs, and the Ministry of Justice.



In Afghanistan, significant progress has been made in improving governance and rule of law. Core institutions have been successfully established under a Constitution that enjoys broad support. Executive structures are in place, despite weaknesses, and significant steps have been made in key service delivery areas, including primary education, health services, and repatriation of refugees. Positive interactions between Afghan citizens and their local governments are essential if Afghan democracy is to thrive, and working with the Independent Directorate for Local Governance, The Asia Foundation bridged the gap between government and community by increasing the resources of provincial governors' offices to respond more effectively to citizens' needs. The judicial system has expanded across Afghanistan, with more courts, judges, prosecutors, and defense lawyers than ever before. Personal and commercial disputes are starting to be resolved in formal courts, and this has led to an increase in investment and the visible growth of private enterprise and new construction in Kabul and several secondary cities.

Despite advances, Afghanistan continues to face significant, persistent, governance and rule-of-law

challenges. While striving to reform, the Afghan government suffers from an underdeveloped policy capacity, high levels of bureaucracy, and a reliance on patronage systems. The Foundation's law programs are based on the premise that a fair and efficient legal system has an important role in advancing broad-based political, social, and economic development. A legal environment founded on the rule of law helps to advance national development, and the Foundation supports initiatives helping Afghans to express their views, advocate for their interests, and seek justice or redress.

## GOVERNANCE

Over the past decade, The Asia Foundation has partnered with Afghan and international counterparts to implement the most critical features of the Bonn Agreement: the emergency loya jirga, the drafting and ratification of a constitution, and national and provincial elections. The Foundation helped to develop and reform key executive institutions, including the President's Chief of Staff Office and the Office of Administrative Affairs, and several government ministries, such as the Office of the State Minister of Parliamentary Affairs, the Ministry of Women's Affairs, the Ministry of Foreign Affairs, and the



## AFGHANISTAN

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Ministry of Agriculture, Irrigation, and Livestock. Responding to government requests, the Foundation provided technical support for the establishment of the Government Media Information Center, the High Office of Oversight, and the Independent Directorate of Local Governance (IDLG). These state-building efforts have been complemented by other programs intended to support the critical role that Afghan civil society organizations, the media, and religious institutions can play in strengthening government accountability and transparency.

### STRATEGIC PRIORITIES

Going forward, The Asia Foundation's governance program supports initiatives that focus on critical needs, with the following four priorities:

- Addressing the core causes of conflict and exclusion;
- Strengthening state institutions and functions;
- Promoting civil society and citizen engagement in increasing government accountability and responsiveness; and
- Defining and developing positive leadership.

### DEMOCRACY AND ELECTIONS

The Asia Foundation has led the way in increasing public awareness of democratic rights, electoral processes, and the role of the Independent Election Commission (IEC) and other election-related bodies. With support from the Australian Government's Department for Foreign Affairs and Trade (DFAT), the Foundation implemented a three-year project called "Public Outreach, Democracy, and Elections" in 2012. The project was aimed at changing Afghan perceptions of the concepts of democracy and governance, particularly the

electoral process and the rights and obligations of Afghans to participate in their country's nascent democracy. In 2014, the Foundation was asked to support the International Election Observation Missions as one of four U.S. government-sponsored election observers.

During the 2014 presidential election, the Foundation, with the support of the Global Peace and Securities Fund of the Canadian government, conducted a series of activities to enhance participation by protecting citizens' democratic rights and improving the transparency of the electoral process. Around 150,000 people across the country received awareness training and materials about the importance of elections and democracy.

The Foundation, in partnership with the Free Election Foundation of Afghanistan (FEFA), identified, trained, and registered approximately 700 female election observers throughout Afghanistan. Cognizant that female access to political participation faces additional challenges, the Foundation's project "Increasing Women's Political Participation and Dialogue Opportunities in Afghanistan," funded by the UK's Department for International Development (DFID), increased the number of female candidate from 60 to 323, conducted 48 networking events, and held training sessions for 780 female provincial council candidates. The training sessions focused on campaign organization skills, resource mobilization, and ways to secure a legitimate support base. The Foundation increased the capacity of female candidates to effectively reach out to their constituents and improve their chances of winning.

## RULE OF LAW

The Asia Foundation's work on the rule of law in Afghanistan began with its support for the Constitutional Drafting Commission in 2003. Since then, it has assisted the Supreme Court in the development of the judicial system, and worked with government ministries and agencies to analyze and implement the Labor Law, including the law's adherence to the standards set forth by the International Labor Organization. Later, the Foundation began working with other partners in the government and civil society on the formulation and language of the Law on Elimination of Violence against Women of 2009. It also worked with the Afghan Women Judges Association to help increase the organization's capacity and raise its profile.

## STRATEGIC PRIORITIES

- Increasing the accountability of judges, prosecutors, and defense lawyers to the public, the government, and each other;
- Supporting access to justice for vulnerable populations by increasing the availability of legal aid and working with the informal justice sector; and
- Developing the legal profession and a private legal services market in Afghanistan.

Accountability is one of the major benefits of the adversarial system that is developing in Afghanistan. Officials who are challenged daily by professional advocates are less likely to engage in abuse, and citizens who are represented by advocates are more confident in availing themselves of the formal justice system. However, there continues to be a danger that the adversarial process will be co-opted by existing institutions and become part of an exploitive system. There is also the risk of creating a rising demand for access to justice and rule of law without the ability to supply it, and thereby causing frustration and disillusionment.

In an attempt to navigate these perils, the Foundation is engaged in a medium-term strategy of working with informal justice providers to better meet the needs of the population, and a long-term strategy of improving the legal education system in Afghanistan. Legal education in Afghanistan is antiquated, divisive, and fails to provide students and legal professionals with the necessary skills to deal with a complex and shifting legal landscape. A legal education system that is less divided between sharia and law, and more focused on competence and ethics, will have wide-ranging impact on the rule of law in Afghanistan.

## LEGAL AID AND EDUCATION

The Legal Aid through Legal Education (LALE) project, supported by the United States Department of State, Bureau of International Narcotics and Law Enforcement Affairs (INL), is designed to draw together all of the rule-of-law strategic priorities into one project. The five-year project substantially

increases the legal aid capacity of Afghanistan by supporting legal advice clinics in Kabul, Balkh, Nangarhar, and Kandahar. These clinics address the needs of vulnerable groups that require services to navigate the justice system of Afghanistan. The clinics also teach future lawyers, prosecutors, and judges how to engage vulnerable populations and serve their needs.

In addition, working with the Ministry of Justice's Legal Aid Department and nongovernmental legal aid providers, The Asia Foundation placed 100 legal aid fellows in 29 provinces in Afghanistan to assist in the delivery of legal aid. The one-year fellowships not only consolidate lessons students have learned in their courses and clinical work, but they also provide graduating students with an entry point into a legal career, strengthen the defense bar, and increase the availability of legal aid. This component not only shepherds students into a legal career, it does so with a focus on service delivery and professional responsibility.

The LALE project also aims to develop the legal profession and private legal services market by working with the Afghanistan Independent Bar Association (AIBA) and the law and *sharia* faculties of six public universities in the provinces of Kabul, Balkh, Nangarhar, Kandahar, Herat, and Kapisa to both create better educated professionals and educate the public on the benefits of using the formal justice system, legal aid, and legal services. There is a general consensus within civil society that greater emphasis on reforming the legal education system, supporting the defense bar, and providing legal assistance to vulnerable populations are some of the best ways to bring about sustainable development.

The Foundation partners with government ministries and local organizations, and is working to meet the needs of the Ministry of Justice (MoJ) and the greater legal aid community in Afghanistan. With support from the World Bank, the Foundation has partnered with Open Society Afghanistan and will work to assess the legal aid landscape of Afghanistan, review the regulatory framework of legal aid, and set forth a medium-term roadmap for the MoJ and the greater legal aid community.

## ACCESS TO JUSTICE

Over the past decade, The Asia Foundation has pioneered projects to protect women's rights within an Islamic framework and increase access to justice for women. The 2015 *A Survey of the Afghan People* found that over 60 percent of Afghans agreed there should be women-only *jirgas* and *shuras* for conflict resolution, an area in which the Foundation already has extensive experience, and which it continues to support. The Foundation's women's empowerment projects train and support both the formal and informal justice systems to deliver better services to Afghan women confronted with violence. Through the Foundation's local partners, we work with the informal justice community to educate communities on violence against

women, family law, and the rights of women under Islamic law and the Constitution.

In addition to conducting training activities, the Foundation has developed innovative outreach tools to promote discussion of women's empowerment. Public service announcements (PSAs), recital pens (pens programmed to read text out loud to those who are illiterate), and media productions have been used to engage a variety of audiences across the country. A unique dimension of public outreach included a call center, promoted through radio PSAs, offering counselling and referrals to more than 1,000 callers a month in 2015.



*The Asia Foundation is a nonprofit international development organization committed to improving lives across a dynamic and developing Asia. Headquartered in San Francisco, The Asia Foundation works through a network of offices in 18 countries and in Washington, DC. Working with public and private partners, the Foundation receives funding from a diverse group of bilateral and multilateral development agencies, foundations, corporations, and individuals.*



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