

3.4: The Afghan Prosecutor

Summary

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.

Introduction

Prosecutors have the authority to discover, investigate, and prosecute crimes.¹ Their actions are governed by a number of laws including the Law on the Structure and Authority of the Attorney Generals' Office (AGO Law),² the Interim Criminal Procedure Code (ICPC),³ and the Code of Conduct and Professional Standards for Prosecutors of the Attorney Generals' Office for the Islamic Republic of Afghanistan (Code of Conduct).⁴ To ensure the proper investigation and processing of a criminal case, prosecutors must collaborate with the police. To that end, the Attorney Generals' Office (AGO) and the Ministry of Interior (MOI) are creating Standard Operating Procedures (SOPs) for use by police and prosecutors. Recently, the Afghanistan Prosecutors' Association (APA) was established in part to provide the opportunity for the advancement of the prosecutors' professional knowledge and to protect the rights of its members.⁵ This chapter examines the types of prosecutors and their duties under the law as well as their relationship with the police, the role of the APA, and major challenges facing prosecutors. On February 23, 2014, a new Criminal Procedure Code (CPC) was signed into law. A copy of the CPC was not available at the time of this writing. The new CPC may result in changes to the role of an Afghan Prosecutor.

¹ 2004 Constitution of Afghanistan (translated by Sayed Shafi Rahel for the Secretariat of the Constitutional Commission)(hereinafter Constitution), Art. 134:

http://supremecourt.gov.af/Content/Media/Documents/constitution2004_english3012201016726844.pdf

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 Interim Criminal Procedure Code, Official Gazette No. 820, published 2004/02/25 (1382/12/06 A.P.)(hereinafter ICPC). Available on the Afghan Attorney General's Office website: <http://ago.gov.af/en/documents>; or <http://www.asianlii.org/af/legis/laws/icc175/>. A new CPC was signed into law on February 23, 2014.

⁴ Code of Conduct and Professional Standards for Prosecutors of the Attorney Generals' Office for the Islamic Republic of Afghanistan (AUG. 2009). See Appendix B.

⁵ Afghanistan Prosecutors' Association Charter (hereinafter APA Charter), Article 8. See Appendix C.

Types of Prosecutors

The AGO Law sets forth the main duties and responsibilities of prosecutors as follows:⁶

1. General investigation of all types of crimes, initiation of charges and trial against the accused individual(s) in court.
2. Monitor criminal investigation process and enforcement of final decisions of the courts and detention centers.

To manage its obligations, the AGO is structured into four Departments headed by Deputy Attorney Generals (DAGs), and several Directorates as discussed in Chapter 2.1. Prosecutors are classified as 1) investigating prosecutors; 2) judicial prosecutors; and 3) monitoring prosecutors.⁷ Each type of prosecutor is further charged with specific duties.

Investigating Prosecutors

Investigating prosecutors' authority is outlined in Article 13 of the AGO Law.⁸ In general, investigating prosecutors are tasked with investigating a reported crime. If a crime is reported by the police the investigating prosecutor must:⁹

- Sanction, revoke or modify the police actions of arrest, interrogation and/or investigation;
- Interrogate the arrestee within 48 hours of receiving custody;
- Collect all relevant evidence – incriminating and exonerating;
- Dismiss or file an indictment with the court within 30 days from arrest.

Investigating prosecutors also have the authority to order arrests and seize evidence, direct the work of the police, and to detain or release a suspect from custody.¹⁰

Article 13, Duty and Authority of the Criminal Investigation Prosecution Office¹¹

1) The Criminal Investigation Prosecution Office shall have the following duty and authority:

1. Investigate criminal cases upon the receipt of a discovery notice from competent entities, receipt of information on occurrence of crime or in the event there is evidence on the occurrence of a crime.

⁶ AGO Law, *supra* note 2, Art. 3.

⁷ See AGO Law, *supra* note 2, Articles 13, 14 and 15.

⁸ *Ibid*, Art. 13.

⁹ *Ibid*; see also Chapter 3.2: The Process of a Criminal Justice Case for a discussion on the timeframe for a criminal case.

¹⁰ *Ibid*.

¹¹ *Ibid*.

2. Collect incriminating evidence and determine whether to attribute a crime to a suspect.
3. Demand additional documentation and evidence related to the crime and/or to identify the offender from competent discovery entities; and issue orders on how to collect evidence and provide necessary guidance to complete investigations or trial proceedings.
4. Request search warrants from competent courts to search or temporarily close houses and other private buildings according to the law.
5. Demand expert opinion and necessary guidance or assign another expert in cases of protest against the initial expert or the expert opinion.
6. Issue warrant for summons or arrests, detain and arrest suspects or accused, or cancel the warrants or order the release of detainees according to the law.
7. Request extensions of detention of accused from authorized courts according to the law.
8. Return the discovery notice in cases which are against the law.
9. Issue orders to prosecute the accused according to the law.
10. Cancel the prosecution of accused or suspects, issue orders to not file a case or dismiss the criminal case according to the law.
11. Make determinations regarding property seized related to the crime or as a result of the crime according to the law.
12. Make determinations to freeze or confiscate the property of the accused in financial corruption and other crimes which require confiscation, or return of property or compensation of loss; or request the court to do the same according to the law.
13. Issue orders to release the accused from detention with or without bail, or take other precautionary measures according to the law.
14. Make recommendations to the court to suspend the employment of the accused government officials if the investigation is disrupted.
15. Observe the rights of suspects and accused individuals according to the Constitution and other applicable laws.
16. Execute any other duties and responsibilities according to the law.

2) The investigative prosecutor shall be duty bound to obtain the approval of respective director of the prosecution office for parts 7-8-9-10-11-12-13 of paragraph (1) of this article.

Judicial Prosecutors

Judicial prosecutors are tasked with prosecuting a case in court.¹² Article 14 of the AGO Law, set forth below, sets forth the duties and responsibilities of judicial prosecutors. Judicial prosecutors are divided into primary court prosecutors, appellate court prosecutors, and Supreme Court prosecutors.¹³ The primary court prosecutor is responsible for the case during the primary court trial.¹⁴ The appellate court prosecutor is responsible for filing a timely appeal of the primary court decision if necessary and trying the case at the appellate level.¹⁵ The Supreme Court prosecutor is responsible for handling a case at the Supreme Court level.¹⁶ See Appendix A.

Article 14, Duty and Authority of the Prosecution Office for the Judiciary¹⁷

The Prosecution Office for the Judiciary shall have the following duty and authority:

1. Inspect investigation papers and charge sheets and analyze the results and decisions of the respective prosecution office for the prosecution of the accused according to the law.
2. Issue release orders for the accused according to the law.
3. Confirm the decisions and results of the investigation contained in the indictment, or reject the decisions and results and provide necessary guidance to correct deficiencies.
4. Inform interested parties of the time and place of trial sessions.
5. Take part in trial sessions in order to provide explanations and defend indictments before the court.
6. Discuss and analyze issues which are raised during case proceedings at court.
7. Approve or protest the decisions and orders of the court.
8. Inform detention centers of the decisions, orders or verdict of the court regarding the fate of the accused in detention.
9. Inform police entities of court definite orders and verdicts sentencing an accused to custodial punishment when the accused is not in detention or has been released from detention.
10. Execute any other duty and authority in accordance with the law.

¹² Ibid, Art. 14.

¹³ Ibid, Articles 6, 18, 21, & 27; See Chapter 2.1 for a discussion of the structure of the court system.

¹⁴ See Chapter 3.2 for an overview of the process of a criminal court case in Afghanistan.

¹⁵ AGO Law, supra note 2, Art. 21.

¹⁶ Ibid, Art. 18.

¹⁷ Ibid, Art. 14.

Monitoring Prosecutors

The previous AGO Law provide for a Department of General Monitoring responsible for overseeing compliance with the law by government agencies, quasi-governmental agencies, political parties, social organizations and some private organizations.¹⁸ The current governing AGO Law provides for a Prosecution Office for Investigation and Enforcement of Decisions, which retains some monitoring duties, but “may not monitor other affairs related to ministries or government institutions.”¹⁹ The term “monitoring prosecutors” is retained in this chapter to identify prosecutors within the Prosecution Office for Investigation and Enforcement of Decisions.

Article 15, Duty and the Authority of the Prosecution Office for Investigation and Enforcement of Decisions²⁰

- 1) The Prosecution Office for Investigation and Enforcement of Decisions shall have the following duty and authority:
 1. Supervise the legality of activities at the investigative institutions.
 2. Monitor the implementation and enforcement of court decisions in criminal cases.
 3. Monitor prisons and detention centers in order to ensure the observation of provisions of the law concerning persons in custody, detention and prison, and confined children.
 4. Hear complaints and receive requests made by persons in custody, detention and prison, and confined children.
 5. Prevent illegal arrests and detentions and imprisonment beyond the legal time period.
 6. Monitor the observance of hygiene, food supplies and human rights at custody centers, detention centers, prisons and juvenile rehabilitation centers; and order the transfer of ill detainees, prisoners and children, based on circumstances, to medical centers outside the mentioned places, in accordance with relevant legislative documents.
 7. Release prisoners in a timely manner upon completion of their confinement period or the forgiveness of their punishment.

¹⁸ See The Law on the Structure and Authority of the Attorney Generals’ Office of 1991, Official Gazette No. 738 (April 1991), Art. 22. URL link available on Lexadin (Afghanistan): <http://www.lexadin.nl/wlg/legis/nofr/oeur/lxweafg.htm>.

¹⁹ AGO Law, *supra* note 2, Art. 15.

²⁰ *Ibid.*

2) The prosecution office may not monitor other affairs related to ministries or government institutions, except Article 3(2) of this law. [Article 3(2): Monitor criminal investigation process and enforcement of final decisions of the courts and detention centers.]

MOI-AGO Standard Operating Procedures

As discussed above, investigating prosecutors are charged with sanctioning, revoking or modifying the actions of police related to arrest, interrogation and investigation.²¹ Investigating prosecutors also have the authority to order arrest, seize evidence and collaborate with the police on an investigation.²² The AGO and the MOI have been working on Standard Operating Procedures (SOPs) that will allow for more efficient and effective application of the law and collaboration between police and prosecutors. The SOPs also help clarify the duties and responsibilities of the two institutions; for example the duty of the police to “discover” crime beyond the 72 hour timeframe under the supervision of a prosecutor. (See SOP No. 11 below).

The SOPs were developed by a Commission comprised of members from the AGO and MOI. The MOI-AGO Commission prepared 12 draft SOPs. Seven SOPs were adopted by the MOI-AGO Commission, however, those were set aside when the Commission reached an impasse and stopped meeting. In April 2011, the Commission was re-activated with new members. The Commission began reviewing the SOPs for approval and adoption, but stated approval is on a preliminary basis only and final approval will follow the passing of the new Criminal Procedure Code to minimize the need to redraft or amend the SOPs. The title and stated purpose of each *draft* SOP is provided below.

MOI-AGO DRAFT STANDARD OPERATING PROCEDURES²³

1. “Procedure for Saranwal to Notify Police of Indictments, Arrest Warrants, Court Orders and Verdicts”

Purpose: The Saranwal must notify the Police of: the prosecutorial decision to accept for prosecution, decline prosecution, or return file to the Police for additional investigation on cases submitted by the Police, the issuance of arrest warrants, and orders and verdicts of the courts. In the absence of this communication, the Police are unable to determine whether their work is meeting the legal standards required by the courts. Proper communication between the Saranwal and the Police leads to higher standards of professionalism and more effective law enforcement.

²¹ ICPC, *supra* note 3, Art. 33. See also Chapter 3.2.

²² *Ibid.*

²³ Draft SOPs provided by DOS INL/JSSP.

2. “Service of Process for Notifications and Summonses”

Purpose: The service of process of notifications and summonses on suspects by Police is authorized pursuant to Article 17 of the ICPC and Article 13 of the Police Law. Documenting service of process by Police and the immediate notification of the Saranwal is essential to the quick, efficient dispensation of justice through the court system.

3. “Procedure for Police to Notify Saranwal of Crimes Within 24 Hours of Knowledge”

Purpose: Article 21 of the Interim Criminal [Procedure] Code for Courts (ICPC) requires the Police to notify the Saranwal within 24 hours of becoming aware of the commission of a crime.

4. “Advisement of Rights”

Purpose: The Afghanistan Constitution and the Interim Criminal [Procedure] Code for Courts (ICPC) guarantees suspects and accused persons of enumerated rights. Article 5, Subsection Seven 7 of the ICPC requires the Police and Saranwal to inform suspects and accused persons of their rights before interrogation and at the time of arrest.

Pursuant to the ICPC, Article 5, a person is considered a suspect when in any stage of the investigation the commission of a crime is attributed to him. A person is considered an accused when an act of indictment has been enacted by the Saranwal pursuant to Paragraph 4 of Article 39 of the ICPC.

5. “Securing Crime Scenes”

Purpose: Crimes scenes where serious crimes have occurred must be preserved from disturbance and contamination to prevent destruction and loss of evidence, and the introduction of items unrelated to the crime.

6. “Reasonable Grounds to Arrest”

Purpose: Requiring a police officer or prosecutor to have reasonable grounds in order to arrest an individual ensures that arrests are made based upon reliable evidence in a fair and just manner.

7. “Police Release of Individuals Thought to be Innocent”

Purpose: Police sometimes determine that a suspect whom they have arrested for a crime is not guilty in the first 72 hours after arrest. Individuals should not be detained whom the police do not believe committed a crime.

8. “Police Reports: Necessary Information”

Purpose: Police reports must contain essential information to ensure accuracy and allow the prosecutor and defense attorney to investigate the facts.

9. “Police and Prosecutor Telephone Coordination”

Purpose: Cooperation between police and prosecutors is essential to ensure that investigations are conducted properly and with the best chance of identifying and arresting individuals guilty of crimes.

10. “Evidence Chain of Custody”

Purpose: The proper handling of evidence is necessary in order to ensure that evidence introduced at trial is reliable and accurate. Further, such procedures prevent corrupt activities on the part of police and prosecutors.

11. “Police and Prosecutor Coordination on Investigations: Agreements on meaning of terms and roles of Police and Prosecutors”

Purpose: Police and Prosecutors should cooperate and communicate at all levels of the criminal investigation process. This includes from the discovery of the crime by the police all the way up until the completion of the investigation by the prosecutor. Police often have more resources to conduct investigations, and so should work with prosecutors to continue investigation of crimes until such investigation is sufficiently complete.

Agreement on meaning of term: “Discovery” of crime is the duty of police. “Discovery” of crime means the following: 1) Obtaining knowledge that a crime has been committed; and 2) obtaining facts and evidence showing the guilt of the perpetrator under the guidance of the prosecutor. Therefore, police can continue their constitutional duty to “discover” crime even after 72 hours have passed after their arrest of a suspect, under the guidance of a prosecutor. Further, they can participate in uncovering facts and evidence about a crime under the guidance of a prosecutor even when no one has yet been arrested.

12. “Police presence during trials”

Purpose: The presence of Police during trials is provided in Article 53(3)(d) of the ICPC. During the first hearing, after a presentation of the case made by the Primary Saranwal, the judicial police officers who have conducted the investigations report their activities to the Court. The presence of the police officers side by side with the Saranwal is also essential in case the latter needs prompt assistance or information regarding the investigations or otherwise the judge decides to hear them on the evidence gathered. The presence of Police provides a means of help for the Saranwal during the trial and does not affect in any manner his/her authority and responsibility to prosecute crimes.

Code of Conduct and Professional Standards for Prosecutors of the Attorney Generals’ Office for the Islamic Republic of Afghanistan

The Prosecutors’ Code of Conduct sets the professional standards and norms for all prosecutors. Prosecutors are required to “exercise the highest standards of integrity and care.”²⁴ The Code of Conduct integrates the legal duties and cultural norms of Afghanistan with the ethical standards set by the International Association of Prosecutors (IAP). The Code of Conduct reinforces the obligation of prosecutors to remain independent, impartial and fair. It should be noted that the Code of Conduct’s requirement to report undue influence from parties related to a particular case is not backed by a complimentary law in the general criminal code to ensure that allegations of interference are investigated and prosecuted.

The Code of Conduct reiterates the Constitutional and statutory obligations to protect human rights and the rights of the suspect and accused. The Code also requires prosecutors to “maintain a commitment to continuous legal development and training.”²⁵ The Code of Conduct is enforced through an internal disciplinary mechanism, which establishes a process for investigation, adjudication and appeal. A copy of the Code of Conduct is provided in Appendix B.

²⁴ Code of Conduct, *supra* note 4, para. 7.

²⁵ *Ibid*, para. 9.

Afghanistan Prosecutors' Association

In October 2009, the General Assembly of the Afghanistan Prosecutors' Association (APA) approved the association's charter.²⁶ The APA "is a social, independent, non-governmental, non-political and nonprofit Association with the aims to bring together the prosecutors from around the country to voluntarily work for the fulfillment of the duties and responsibilities stated in this charter."²⁷ The APA was established with the aim of:²⁸

1. Protecting the peace and the rule of law in the country.
2. Protecting the democracy and social justice.
3. Providing the opportunity for the advancement of the prosecutors' professional knowledge and awareness by conducting conferences, seminars, educational and training courses.
4. Providing the opportunity for the enforcement of law in the Attorney General's office and the society.
5. Establishing and extending friendly relationship and bilateral or multilateral cooperation with other related national and international organizations.
6. Participating actively in the enforcement of the enacted laws in the country and other international legislative or legal documents; providing legal awareness about the illegal production, importation and trafficking of narcotics.
7. Defending and protecting the rights of the members of the association.
8. Exchanging legal and professional experiences and information with other related organizations in order to acquire legal and professional knowledge in different fields.

The APA is headed by a president, two vice presidents and a secretary, each elected for no more than two three-year terms.²⁹ The General Assembly is composed of all APA members, which meets annually and is the "highest decision making authority of the Association."³⁰ The Executive Board meets bi-monthly and is tasked with executing the decisions of the General Assembly as well as overseeing the Association's management and administrative responsibilities.³¹ The APA also has seven standing committees: 1) Executive Committee; Support and Protection Committee; 3) Cultural and Foreign Relations Committee; 4) Administrative and Financial Committee; 5) Committee for Protecting the Rights of Women and Children; 6) Monitoring and Evaluation Committee; and 7) Committee for Human Rights and International Conventions.³²

²⁶ APA Charter, *supra* note 5, Art. 30 (approved 27 Aqrab 1388).

²⁷ *Ibid*, Art. 2.

²⁸ *Ibid*, Art. 8.

²⁹ *Ibid*, Articles 23 and 24.

³⁰ *Ibid*, Art. 10.

³¹ *Ibid*, Art. 11.

³² *Ibid*, Articles 13-20.

Membership is open to any prosecutor in the AGO who has either a degree in Law or *Shari'a*, or is a graduate from an Islamic school with the equivalent of a Bachelor's degree, or graduated from the police academy criminal school, or has a minimum of 10 years of professional experience in the AGO.³³ In addition, members must be of good moral character, may not be convicted of a felony or crimes against humanity, must not be "lacking political or civil rights," must be committed to the protection of the nation's interest, and must present a written application.³⁴ Membership costs a one-time admission fee of 100 Afghani (approximately US \$2.00) and a monthly membership fee of 50 Afghani (approximately US \$1.00).³⁵ Appendix C provides a copy of the contents of the APA Charter.

Major Challenges

One of the major challenges facing prosecutors in Afghanistan is low salaries. Prosecutors remain one of the lowest paid judicial units in Afghanistan. The monthly salaries for prosecutors range from US \$60 for an entry-level position to US \$90, with the average salary around US \$86 a month.³⁶ This is in contrast to the monthly salaries of judges that range from US \$400-\$900 a month.³⁷ AGO employee wages rank fourth from the bottom of all Government of Afghanistan ministries and agencies. Low salaries are considered one of the primary factors contributing to corruption in the judicial system.³⁸ One Afghan prosecutor stated, "The people in my unit, for example, have been known to take a bribe for passing a case on for a simple signature. But I'm in charge of eleven units, and everyone makes so little money in my division that at some point something is bound to slip by."³⁹

In 2003, President Karzai ordered the reform of the public sector's human resource management and administration through Priority Reform and Restructuring (PRR) and Pay & Grading (P&G) Reform.⁴⁰ The Independent Administration Reform Civil Service Commission (IARCSC) is the responsible agency for PRR and P&G Reform throughout the Afghan Government. PRR and P&G Reform are the mechanisms used by the IARCSC to assist each Afghan ministry in establishing transparent and accountable processes for recruitment, transfer and termination of government employees. The process evaluates and sets job descriptions, with accompanying

³³ Ibid, Art. 21.

³⁴ Ibid.

³⁵ Ibid, Art. 25.

³⁶ See International Crisis Group, *Reforming Afghanistan's Broken Judiciary*, Asia Report No 195, November 17, 2010 (hereinafter *Reforming Afghanistan's Broken Judiciary*), p. 24:

[http://www.crisisgroup.org/~media/Files/asia/south-asia/afghanistan/195%20Reforming%20Afghanistans%20Broken%20Judiciary.ashx](http://www.crisisgroup.org/~/media/Files/asia/south-asia/afghanistan/195%20Reforming%20Afghanistans%20Broken%20Judiciary.ashx). Anecdotal evidence of prosecutors' salary provided by DOS INL/JSSP.

³⁷ Ibid.

³⁸ Ibid, p. 25.

³⁹ Ibid, pp. 25-26.

⁴⁰ See Presidential Decree No. 810 (Aug. 2010).

qualifications, for each position/grade and establishes permanent salary scales for the different positions/grade.

One of the key aspects of PRR and P&G Reform for the AGO is the immediate increase in prosecutors' salaries. PRR raises all AGO employees' salaries, depending on their grade, up to 12,000 Afghani per month (approximately US \$250).⁴¹ P&G Reform and the new Civil Servants Law raise salaries up to 32,000 Afghani per month (approximately US \$660).⁴² Exceptional staff may qualify for super scale salaries up to 100,000 Afghani per month (approximately US \$2,070).⁴³

For a variety of reasons, the PRR and P&G Reform process was not implemented in the AGO until after the appointment of Attorney General Aloko in May 2008.⁴⁴ The Civil Service Commission approved the AGO's PRR and P&G Reform application in April 2009.⁴⁵ Typically, PRR is completed before P&G Reform is initiated. The IARCSC, however, allowed the AGO to combine the two process due to the delay in initiating reform.⁴⁶ The AGO subsequently requested prosecutors be exempt from the PRR process maintaining that they are not civil servants, but are independent. The argument is grounded in part on the exemption provided to judges, who have been categorized as independent and not civil servants and have been exempted from the PRR process. The AGO's position also appeared partially based on the fact that a majority of the prosecutors would not meet the minimum job qualifications set forth in the PRR grading criteria.⁴⁷ The IARCSC rejected the AGO's request for exemption and the decision was appealed. In July 2011, the Supreme Court agreed with the AGO confirming that prosecutors are exempt from PRR, but administrative personnel assigned to the AGO are subject to the process.⁴⁸ In September 2011, the AGO and the Ministry of Finance reached an agreement on base salaries for five categories covering all prosecutors ranging from 20,000 Afghani to 45,000 Afghani (US \$450 - \$950), excluding cadre pay.⁴⁹ Cadre pay will be used to supplement increased base salaries according to seniority and experience.⁵⁰ In December 2011, the Council of Ministers approved a pay and grading reform package for the AGO.⁵¹ The reform package does not, however, retain the PRR requirements for salary increases, promotion, retention or

⁴¹ DOS INL/JSSP Memorandum: *A Brief History of PRR in the AGO*.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ DOS INL/JSSP Report: *Plan to Implement Restructuring within the Attorney Generals' Office to Reflect Current Structure* (May 2011), p. 3.

⁴⁸ DOS INL/JSSP Weekly Report, July 9-15, 2011.

⁴⁹ DOS INL/JSSP Weekly Report, September 17-23, 2011.

⁵⁰ Ibid; see also DOS INL/JSSP Weekly Report, July 16-22, 2011.

⁵¹ See Report of the UN Secretary-General, *The Situation in Afghanistan and its Implications for International Peace and Security*, A/66/728, S/2012/13, 5 March 2012, p. 22:

<http://unama.unmissions.org/Portals/UNAMA/SG%20Reports/SG%20Report%20to%20the%20Security%20Council-March%202012.pdf>.

recruitment to be linked to performance goals beyond what is currently in place at the AGO, which consists of an evaluation form.⁵² The AGO has taken the position that they do not need a policy manual or similar supporting aid to make decisions on the progression of individual staff.⁵³

Other major challenges facing prosecutors include the lack of personnel and undue influence in cases. The official billeting, known as the *tashkil*, does not meet the needs of the AGO. There are qualifying graduates of the *Stage* that cannot be hired because the *tashkil* does not support additional personnel. Another complicating factor is the fact that increasing the *tashkil* necessarily requires increasing the annual budget for the AGO. And as discussed above, the pay and grading reform process has been on-going since 2003. Interference in cases by influential persons also remains an issue. Prosecutors report undue influence by leadership in the AGO, the Presidential Office, Parliamentarians, and other powerful individuals.⁵⁴

Lastly, insecurity impacts the ability of prosecutors to work. “Insecurity in the provinces [] has driven large numbers of prosecutors and judges to move to Kabul or other urban centres. Judges and prosecutors report they are constantly under threat from local powerbrokers or even more influential national figures, and several have said they need better security.”⁵⁵ In the summer of 2010, the chief prosecutor in Kandahar reported that 85 per cent of his prosecutors lived outside of the province.⁵⁶ Similarly, out of the 12 assigned prosecutors in Wardak only two were reported as actually working in the area.⁵⁷

⁵² DOS INL/JSSP Spot Report on Pay & Grading at the AGO, May 23, 2012. In contrast PRR/P&G is supported by a comprehensive four volume policy manual.

⁵³ Ibid.

⁵⁴ See *Reforming Afghanistan’s Broken Judiciary*, *supra* note 36, pp. 25-26.

⁵⁵ Ibid, p. 24.

⁵⁶ Ibid.

⁵⁷ Ibid.

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
- The Law on Structure and Authority of the Attorney General's Office. Official Gazette, Issue No. 1117, 7 October 2013.
- Interim Criminal Procedure Code, Official Gazette No. 820, published 2004/02/25 (1382/12/06 A.P.). Available on the Afghan Attorney General's Office website: <http://ago.gov.af/en/documents>; or <http://www.asianlii.org/af/legis/laws/icc175/>. A new CPC was signed into law on February 23, 2014.
- Code of Conduct and Professional Standards for Prosecutors of the Attorney Generals' Office for the Islamic Republic of Afghanistan (AUG. 2009). Provided by DOS INL/JSSP.
- Afghanistan Prosecutors' Association Charter (October 2009). Provided by DOS INL/JSSP.

Articles

- 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

- INL/JSSP Report: *Monitoring Department of the Office of the Attorney General*.
- INL/JSSP Powerpoint: *Afghanistan Case Management System*, August 1, 2010. Available on HarmonieWeb Afghanistan Rule of Law Worksite: <https://www.harmonieweb.org>.
- INL/JSSP Memorandum: *Status of MOI-AGO Commission and Standard Operating Procedures*, 29 May 2011.
- INL/JSSP Memorandum: *A Brief History of PRR in the AGO*.

Appendix A: AGO LAW⁵⁸

Article 18, Duty and Authority of the Supreme Court Prosecution Office

The Supreme Court Prosecution Office shall have the following duty and authority:

1. Make or refuse to make cassation appeals according to the law.
2. Protest the decisions of appellate courts in accordance with the law.
3. Track cases in the cassation appeals process and reconsideration by the Supreme Court.
4. Provide information and explanation to verbal or written inquiries from division members or respective advisers.
5. Perform any other duties assigned by the Attorney General according to the law.

Article 21, Duty and Authority of the Appellate Prosecution Office

1. The Appellate Prosecution Offices shall execute the duty and authority contained in articles 14, 15 and 16 of this law within their respective provincial jurisdiction as following, unless it is otherwise stipulated in the law.⁵⁹
2. Monitor the activities of the investigative entities at the primary prosecution offices at the respective regions.
3. Monitor the legality of activities of each office at the provincial level.
4. Confirm or reject the decisions and orders of primary courts according to the law.
5. Make or refuse to make appeals of primary court decisions according to the law.
6. Track case proceedings during the appeals process.
7. Make demands to detain the accused who has been released, to extend the detention period during court proceedings, or to protest the release of the accused when the court has requested the extension of the detention period.
8. Make demands to take precautions to ensure the enforcement of punishments including financial measures to collect fine.
9. Accept or reject appellate court decisions and orders according to the law.

Article 27, Duty and Authority of the Primary Prosecution Office

Primary prosecution offices shall perform and execute all of the duty and authority of the sections within their jurisdiction, except for when the law provides jurisdiction to the appellate prosecutor or central directorates.

⁵⁸ AGO Law, *supra* note 2, Articles 18, 21 and 27.

⁵⁹ Article 16 sets forth duties and responsibilities related to study and research.

Appendix B:

Code of Conduct and Professional Standards for Prosecutors of the Attorney General's Office for the Islamic Republic of Afghanistan

General Principles

1. Prosecutors are required to have a good understanding of their role in society, and their function in the criminal justice system.¹
2. Prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.²
3. Recruitment and promotion of prosecutors shall be based on objective factors including professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures. The principles and criteria for recruitment and promotion of prosecutors shall be openly communicated to all applicants and post holders and utilised as part of any recruitment or promotion process within the Attorney General's Office.³
4. Prosecutors shall recognise the importance of religious and customary practices within the Islamic Republic of Afghanistan, and shall give respectful consideration to them in accordance with the proper application of the law.⁴

1 Article 134 of the Constitution of the Islamic Republic of Afghanistan (the Constitution) states that the Attorney General's Office (AGO) be "independent in its performance", implying responsibility for professional standards. Articles 12 & 19 to 27 of the Law on the Structure and Authority of the Attorney General's Office (AGO Law) covers the duties and authorities of prosecutors. This paragraph also reflects Article 1.1 of the original 2006 JSSP draft. Also general requirement of Article 1.1 & Article 2 of JSSP Draft D. Refers to Article 1 of International Association of Prosecutors (IAP) Standards.

2 Article 41(4) of the AGO Law stipulates prosecutors' qualifications. This paragraph reflects Articles 1.8 & 1.10 of the original draft, with the inclusion of professional qualification. Article 1 IAP Standards refers. Also Articles 1 & 2 of UN Guidelines on the Role of Prosecutors (UN Guidelines).

3 Article 47 of the AGO Law requires performance to be a consideration in promotion. This paragraph reflects Article 1.10 of the original 2006 JSSP Draft and Articles 2 & 7 of UN Guidelines. Refers to Article 6 of IAP Standards.

4 See Articles 2 & 3 of the Constitution. This paragraph also reflects Articles 1.1 & 1.2 of the original draft and Article 3 of the Constitution of the Islamic Republic of Afghanistan (the Constitution). Also pertinent to Article 1.1.1 of JSSP Draft D.

5. Prosecutors shall demonstrate the commitment of the Islamic Republic of Afghanistan to international conventions and standards for criminal justice, and will act in accordance with those standards.⁵

6. Prosecutors shall at all times conduct themselves professionally, maintaining the honour and dignity of their profession, always upholding and acting in accordance with the law in both professional and private life, and consistent with the rules and ethics of their profession.⁶

7. Prosecutors shall, in the conduct of their work, exercise the highest standards of integrity and care and as a diligent professional, be hardworking and industrious, attentive to professional demands, presentable, punctual and professional in official engagements and respectful of colleagues within the justice system. Prosecutors shall be objective and fair in all their professional duties, including directing investigations, evaluating evidence and assisting in court hearings. The professional prosecutor shall demonstrate commitment to maintaining a well informed appreciation of relevant legal developments.⁷

8. Prosecutors shall perform their duties without fear, favour or prejudice, and will commit to the following:⁸

(a) Fulfilling their obligations impartially, avoiding any form of discrimination through race, ethnicity, tribal affiliation, language, religion, political affiliation or gender.⁹

(b) Being unaffected by individual or sectional interests and public or media pressures, acting only to implement the law for the benefit of the citizens of the Islamic Republic of Afghanistan.¹⁰

(c) Taking account of all the evidence gathered in the investigation of a case, regardless of whether it incriminates or exonerates a suspect or accused, upholding the presumption of innocence in favour of the suspect or accused, as provided by Article 25 of the Constitution of the Islamic Republic of Afghanistan.¹¹

⁵ This paragraph reflects Articles I.3 & II.A.2.c of the 2006 draft. Also Articles 1.1.7 & 1.2.4 of JSSP Draft D. Also Articles 2(b) & 12 of UN Guidelines.

⁶ This paragraph reflects Article I.10 of the 2006 draft. Also Articles 1, 2 & 3 of JSSP Draft D deal with particulars of this requirement. Refers to Article 1 of IAP Standards. Also Articles 1 & 3 of UN Guidelines.

⁷ This paragraph reflects Articles I.9 & II.A.1 of the 2006 draft. Also Articles 1, 2 & 3 of JSSP Draft D deal with particulars of this requirement. Refers to Articles 1 & 2 of IAP Standards. Also Articles 1 & 12 of UN Guidelines.

⁸ This sub paragraph reflects Article I.10 of the 2006 draft. Also Articles 1.2.1, 1.2.7 & 2.2.1 of JSSP Draft D. Refers to Article 3 of IAP Standards. Also Article 4 UN Guidelines.

⁹ See Article 22 of the Constitution. This sub paragraph also reflects Articles I.5 & II.A.9.d of the 2006 draft. Refers to Article 3 of IAP Standards. Also Article 13(a) UN Guidelines.

¹⁰ See **Article 22 of the Constitution**. This sub paragraph also reflects Article II.A.9.e of the 2006 draft. Refers to Article 3 of IAP Standards. Also Articles 13(a) & (b) UN Guidelines.

¹¹ See **Articles 24, 25, 26 & 27 of the Constitution. These principles are further endorsed by the Interim Criminal Code for Courts (ICPC) at Article 23**. This sub paragraph also reflects paragraph I.14 of the 2006 draft. Also specifically reflects Article 2.2.2 of JSSP Draft D. Refers to Articles 3 & 4 of IAP Standards. Also Article 13(b) UN Guidelines.

(d) Ensuring, in accordance with the laws of the Islamic Republic of Afghanistan, that all necessary and reasonable enquiries are made in the course of an investigation or prosecution, and the result of such enquiries disclosed to the defence in accordance with the law, whether it incriminates or exonerates the suspect or accused.¹²

(e) Always searching for the truth to assist the court in achieving justice between the community, the victim and the accused in accordance with the law.¹³

(f) Disqualify themselves from participating in any prosecution in which there is a conflict of interest. A conflict of interest will arise when the prosecutor is unable to act impartially. Such prosecutions and/or conflict of interest include, but are not limited to, instances where the prosecutor has an actual bias or prejudice concerning an accused, complainant or witness, or the prosecutor, or a member of the prosecutor's family, or friend, has an interest in the outcome of a prosecution.¹⁴

(g) In all the above instances, the prosecutor has an obligation to bring to the attention of the (Director/Chief?) any circumstances which might reasonably lead a member of the public or party having an interest in a case to perceive any conflict of interest or lack of impartiality on the part of the prosecutor.

Specific Rules of Conduct

Prosecutorial Activities

9. Prosecutors shall maintain a commitment to continuous legal development and training.¹⁵

10. Prosecutors shall respect and apply:

(a) The professional principles and ethical duties of their office as set forth in this code.

(b) Legal safeguards and protection for suspects, accused, victims of crime and witnesses.¹⁶

(c) Standards for the protection of human rights and freedoms as provided in international conventions and agreements to which the Islamic Republic of Afghanistan is signatory.

(d) Effective, clearly applied, consistent and accountable work practices in their management and conduct and oversight of investigations and prosecutions.¹⁷

¹² See Articles 24, 25, 26, 27 & 31 of the Constitution. Further endorsement is found at Articles 40 & 43 ICPC. Also Article 1.14 of 2006 draft. Again also reflects Article 2.2.2 of JSSP Draft D with additional provision for disclosure to defence. Refers to Article 4.3 of IAP Standards.

¹³ See Article 27 of the Constitution. Again see Article 23 of ICPC. Also Article 1.14 of 2006 draft. Also Articles 2.2.2 & 2.2.7 of JSSP Draft D. Refers to Article 3 of IAP Standards.

¹⁴ See Article 134 of the Constitution, and note need to preserve independence of performance of AGO. Article 10 ICPC directly refers. This sub paragraph also reflects Articles I.13 & II.4 of the original draft. Also Article 2.2.10 of JSSP Draft D (and by inference Article 4.4).

¹⁵ This paragraph reflects Articles 1.7, 2.4 & 2.2.3 of JSSP Draft D. Reference Article 1 of IAP Standards.

¹⁶ See ICPC Articles 4, 5, 6, 7, 9, 10, 12, 15, 16, 18, 19, 20, 38, 40, 43, 55, 65, 82, 91 & 92 for prescribed rights of the suspect, accused or convicted.

¹⁷ This paragraph reflects Article II.A.2 of the 2006 draft. Also Articles 1, 2 and with specific reference to paragraph (d) Article 5 of JSSP Draft D. Also Articles 11, 12 & 13 of UN Guidelines.

11. In compliance with article 8(f) of this code, any prosecutor who becomes aware of a conflict of interest in the conduct of any investigation or prosecution, or any other circumstance that could raise doubts over the prosecutor's impartiality or the public perception of impartiality, must report such at the earliest possible opportunity to the Chief Prosecutor (Rais). A decision shall then be taken by the Chief Prosecutor as to whether that prosecutor retains conduct of the case. 18

12. During the conduct of any investigation or prosecution, prosecutors shall neither seek nor accept any instructions or informal directions that may, in any way, influence the conduct of the case from any authority or person other than more senior prosecutors within the office of the Attorney General for the Islamic Republic of Afghanistan. Any attempt by an officer from another agency or government department to so instruct, direct or influence a prosecutor in the conduct of an investigation or prosecution shall be reported by the prosecutor to the Department of Office Overseeing Discovery and Investigative Agencies in the Attorney General's Office at the earliest opportunity.¹⁹

13. Prosecutors shall not seek, nor accept if offered, any payment or gift or preference or advantage from any party in a case, or any agent of a party in a case, or any other third party, in consideration of any part of the prosecutors role or duty in a case. A prosecutor found to have accepted such a benefit will be punished both by law, and under the provisions of this code of ethics.²⁰

14 Prosecutors should be entitled to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.²¹

15. Equally, prosecutors shall respect the roles and responsibilities of other justice sector agencies, including judges, defence attorneys and police officers, and will not improperly hinder or influence their functions.²²

16. In their relationship with police, prosecutors shall:

(a) Where the applicable law requires prosecutors to direct criminal investigations and allows prosecutors to instruct law enforcement agencies to undertake specific actions, give clear instructions to the police with a view to an effective investigation of the case. This function is of particular significance in investigations where the direction and scope of investigative actions is complex.

18 Note compliance with need for independence of performance as at Article 134 of the Constitution. This paragraph also reflects Article II.4 of the 2006 draft. Also Article 2.2.10 of JSSP Draft D. Reference Article 3 of IAP Standards.

19 Preservation of Article 134 of the Constitution and cited independence of performance. This paragraph also reflects Article II.5 of the 2006 draft. Also Article 2.9 of JSSP Draft D. Reference Article 6 of IAP Standards. Note Articles 4, 11 & 15 UN Guidelines.

20 Again preservation of independence under Article 134 of the Constitution. This paragraph also reflects the provisions of the Penal Code 1976 (Articles 254 – 256) under current law, and any other anti-corruption legislation. Also incorporates Article 2.9 of JSSP Draft D.

21 Exemplifies independence of Article 134 of the Constitution. Chapters 3 & 5 of ICPC sets out the prosecutor/police relationship. Also Article 6 of IAP Standards refers.

22 This paragraph reflects Article II.A.6 of the 2006 draft. Also Articles 1.2.2 & 3.3.1 of JSSP Draft D. Article 20 UN Guidelines refers.

(b) Prosecutors shall decide on their own investigative actions, independent of or in addition to any actions taken by the police in detecting an alleged crime. This may include inspecting a crime scene and interviewing the suspect and significant witnesses during an investigation.

(c) Prosecutors shall work with the police to ensure that evidence collected during investigation is developed and cases are based on evidence that is reliable, has been lawfully obtained and may be used by the courts in deciding a case.

(d) Prosecutors have a duty to avoid unnecessary investigations into irrelevant issues and shall not initiate an investigation unless there is a reasonable suspicion of a crime having been committed based upon evidence.

(e) Prosecutors shall clearly record the actions that they authorise, and the decisions that they make on a case to enable any future inspection of the prosecution process.

(f) Prosecutors have a duty to ensure that any police officers or government officials shall be reported to the competent authorities for prosecution or disciplinary proceedings if they have used unlawful methods in obtaining evidence, or in the course of interrogation. Such methods shall include torture, cruel, inhuman or degrading treatment or other abuses of human rights. Prosecutors shall not rely upon illegally obtained evidence to support a prosecution, and will only proceed to court if the remaining legally obtained evidence is sufficient to prosecute.

(g) If after a case has been referred to court it is discovered that evidence has been illegally obtained, prosecutors have a duty to inform the court of such information. Prosecutors should only seek to prosecute the case further if there is sufficient, legally obtained evidence.²³

17. Prosecutors shall be obliged to respect the dignity and integrity of judges and defence attorneys, as well as fellow prosecutors. Prosecutors shall refrain from inappropriate conduct or making inappropriate comments or intimidatory or inflammatory remarks to the judge, defence attorneys or other court users.²⁴

Personal Activities

18. Prosecutors shall not use their position, nor privileged information received as part of their professional duties, for their own personal gain, or to gain benefits for others.²⁵

²³ See Articles 29 & 30 of the Constitution, and chapters 3,5,6 & 7 of ICPC. Article 19 of the AGO Law defines the role of the prosecutor following the discovery phase of the investigative process. This provision is particularly applicable to acts of torture and inhuman and degrading treatment on the part of the state. This set of provisions also reflects Article 8 including sub paragraphs (a) to (e) inclusive of the 2006 draft. Also Article 3.6 of JSSP Draft D. Reference Article 4.2 & 4.2(b) of IAP Standards. Also Articles 10 to 16 UN Guidelines refer.

²⁴ This paragraph reflects the provisions of Article II.A.7 of the 2006 draft. Also deals with matters covered in Article 3 of JSSP Draft D. Also Articles 2.6 & 2.9 of JSSP Draft D. Also Article 20 UN Guidelines.

²⁵ This paragraph reflects Article II.B.2 of the 2006 draft. Also Articles 2.6 & 2.9 of JSSP Draft D. Note Article 13(c) UN Guidelines.

19. Prosecutors shall not belong to any organisations that bring into question the values and impartiality that inform the prosecutors professional conduct, and that would undermine public confidence in impartial and fair prosecutions. Nor shall a prosecutor be engaged in business, commercial or social activities that adversely affect the prosecutor's impartiality, interfere with the proper performance of prosecutorial duties, exploit the position of the prosecutor or involve the prosecutor in activities likely to lead to a conflict of interest.²⁶

20. Prosecutors shall be required to register with the Archive of the Inventories of Prosecutors at the Attorney Generals Office details of any business or financial interests held in accordance with law, to be processed in compliance with the Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy. A financial interest includes personal property such as bonds, land, houses and motor vehicles or any items of significant value, as well as other material such as bank and financial statements or any gifts or transfers of ownership to another or others of property of significant value. Such disclosure shall be complied with within any timescale required by the High Office of Oversight.²⁷

The Disciplinary Procedure

21. The Attorney Generals Office has the authority to ensure compliance with this Code of Ethics and Conduct. The Attorney General's Office has a responsibility to receive and investigate complaints made against Prosecutors in a professional and diligent manner, equally bound by the requirements of this Code of Ethics and Conduct. All complaints into the professional conduct of a Prosecutor will be submitted to a more senior Prosecutor or to the Attorney General's Office to be the subject of disciplinary investigation.²⁸

22. Allegations of breach of this Code of Ethics and Conduct, as well as appeals by Prosecutors against disciplinary action taken against them by their supervisory officers under the law, will be adjudicated upon in the first instance by the Dispute Settlement Commission of the Attorney General's Office. The Dispute Settlement Commission of the Attorney General's Office will comprise a panel of three members, all to be at Rais level.

²⁶ Note rights to freedom of expression and association in Articles 34 & 35 of the Constitution. This should not bar membership of an Afghan Prosecutors Association in particular (see provisions for the Disciplinary Procedure below). Article 6 of the AGO Law prohibits membership of political parties. This paragraph also reflects Articles I.7, I.11 & II.B.3 of the 2006 draft. Also encompasses Article 4.3 of JSSP Draft D. Note qualification in Article 8 UN Guidelines.

²⁷ **Articles 24 to 31 of the Constitution apply equally to prosecutors subject to this Code as to any other citizens of Afghanistan. Article 52 of the AGO Law requires prosecutors be disciplined "...in accordance to the provisions of legislative documents."** This paragraph also reflects Article II.B.5 of the 2006 draft. Also Article 4.5 of JSSP Draft D. It is to be noted that, at the time of writing, the law proposed to establish a "High Office of Oversight for the Implementation of the Anti-Administrative Corruption Strategy" (HOO) intends to introduce a regime for the declaration of wealth and assets by those in public office.

²⁸ **Articles 26 & 27 of the AGO Law define the mechanism for monitoring performance.** This Article also reflects Articles II.D.1 & II.D.4 of the 2006 draft. The HOO is also charged with a duty to refer corruption matters to the AGO, including prosecutors (Article 13(1) of the proposed Law on Overseeing the Implementation of the Anti-Administrative Corruption Strategy" (HOO Law).

Any Prosecutor against whom a complaint has been filed, has the right to be present when the Dispute Settlement Commission considers the matter and make representations to the panel. It is also the right of any Prosecutors being adjudicated upon by any tribunal in this process to represent themselves, instruct a lawyer to deal with the process on their behalf, or seek advice and assistance from a professional association representing their interests.²⁹

23. The adjudication of complaints by the Disputes Settlement Commission of the Attorney General's Office shall be thorough expeditious and fair hearings, based on the principles contained in this Code of Ethics and Conduct. The purpose of adjudications will be to discipline those Prosecutors found to have acted outside of the range of proper professional standards, and shall refer to all the evidence arising from the investigation into the Prosecutors' conduct as well as the information given to the panel, in arriving at a decision.

24. The Dispute Settlement Commission of the Attorney General's Office will decide whether an allegation is proved or not. If the allegation is not proved, the Prosecutor will continue to conduct professional duties untainted by that allegation. Where a Prosecutor is found to be at fault the Dispute Settlement Commission of the Attorney General's Office shall consider the particular circumstances under which the violations of professional conduct have been committed, the situation of the prosecutor when resorting to the violation as well as the prosecutor's service record, general conduct and behaviour.

25. Any disciplinary action imposed by the Dispute Settlement Commission of the Attorney General's Office will be imposed only after an explanation has been given by the Prosecutor as to the conduct, in accordance with law. Only one punishment will be applied in each case of violation against the Code. Each punishment will be issued in writing to the prosecutor having been registered by the High Council of the Attorney General's Office and recorded in the prosecutor's record of service (with the exception of an informal warning (advice or suggestion) which is not so recorded). The Attorney General will also be formally informed of any finding against a Prosecutor.

26. Disciplinary findings of fault shall be sanctioned by the Dispute Settlement Commission of the Attorney General's Office of Service through the following ascending penalties;

- An informal warning (advice or suggestion to modify conduct).
- The imposition of a formal warning.
- Deduction of salary.
- Transfer to another posting.
- Dismissal from post/abrogation of contract.³⁰

²⁹ This paragraph reflects Article II.D.2 of the 2006 draft. Note Articles 21 & 22 UN Guidelines.

27. There is a right of appeal against the decision of the Dispute Settlement Commission of the Attorney General's Office to the High Council of the Attorney Generals Office. The High Council of the Attorney General's Office shall sit as a tribunal of three or five, comprising eligible officers of the Attorney General's Office (Rais level or above). Members of the High Council of the Attorney General's Office shall have no conflict of interest through prior involvement in a matter before the tribunal, through involvement in the matter of the complaint or through involvement in previous adjudication of the complaint. The High Council of the Attorney General's Office shall employ the same principles and standards as those required of the Dispute Settlement Commission of the Attorney General's Office in determining appeals. There is further appeal to the Civil Service Appeals Board. Further appeal lies in referring a case to court. Appeal to court against a decision of the Civil Service Appeals Board is available to either party.³¹ Alternatively, should evidence following a finding against a Prosecutor be discovered at a later date, exonerating that Prosecutor of the action for which a penalty was imposed, the High Office of the Attorney General's Office will be under a duty to formally review the finding and provide restitution of position and of the reputation of the Prosecutor, expunging any inappropriate record that arose from the erroneous punishment.

28. Any breach of discipline which results in criminal proceedings, will be dealt with through the criminal process prior to any adjudication by the High Council of Service. During the course of any criminal procedure the duties of a prosecutor will be as prescribed by relevant labour legislation. Any findings of the relevant departments of the Attorney General's Office will be available to the criminal investigation as well as to the High Council of the Attorney General's Office and subsequent tribunals if called upon. Following the outcome of criminal proceedings the High Court of the Attorney General's Office will consider any complaint of professional misconduct against the prosecutor, adjudicating on the basis of all available evidence.³²

30 Ascending scale of penalties is in accordance with the Articles 95 of the Labour Code and Article 31 of the Civil Servants Law which provides that for repeated, general disciplinary offences, the punishments are to be dispensed in sequence, save for provisions of Article 101 of the Labour Code. Currently the Civil Servants Law does not apply to the AGO, but will come into effect upon implementation of PRR. This is reasonably anticipated in advance of this Code coming into effect hence it's inclusion here. Otherwise the 1999 Government Employees Law applies. This paragraph reflects Article II.D.3 of the 2006 draft, in addition to the legislation cited therein.

31 There is provision for this line of appeal in Article 29 (3) in the Civil Servants Law (see footnote 31 above). Note requirement for "independent review" in Article 21 UN Guidelines.

32 Article 51 of the AGO Law provides that "Prosecutors and interrogators shall be prosecuted the same as other persons in accordance to the provisions of law." Paragraphs 25 & 26 reflect Article II.D.7 of the 2006 draft With reference to the role of prosecutors, provisions include Articles 254 to 289 of the Penal Code, which deal in turn with bribery, embezzlement & treachery, misbehaviour of public officials, theft & destruction of public documents and improperly influencing public officials. Also note the provisions of Article 13(1) of the proposed HOO Law.

Appendix C:

Afghanistan Prosecutors' Association (APA) Charter October 2009

Table of Contents

Chapter One: General Provision	2
Chapter Two: Aims	2
Chapter Three: Organizational Structure	3
Chapter Four: Membership Conditions	7
Chapter Five: Election Procedure for the President, Vice President and Secretary	7
Chapter Six: Association's Finance Affairs	8
Chapter Seven: Conditions for the Dissolution of the Association	8
Chapter Eight: Miscellaneous provisions	9

Chapter One

General Provision

Article 1: This draft charter of Afghanistan Prosecutors Association was constituted in the light of article 35th of the constitution and in accordance with the article 2nd of the Law on Social Organizations in order to explain the aims, duties and organizational structure of this association.

Article 2: Afghanistan Prosecutors Association is a social, independent, non-governmental, non-political and nonprofit Association that aims to bring together the prosecutors from around the country to voluntarily work for the fulfillment of the duties and responsibilities stated in this charter.

Article 3: the main office of the Afghanistan Prosecutors Association is in Kabul, the capital of Afghanistan and it can open its sub offices in the provinces as well.

Article 4: Afghanistan prosecutors Association will carry out its duties with adherence to the fundamentals of Islam, the Afghanistan Constitution, the international Human Rights Declarations, the International Conventions and the provisions stated in this charter.

Article 5: Afghanistan prosecutors Association has one seal, a stamp with () millimeter diameter, a flag with blue color and a membership identity card which will be determined by the General Assembly.

Article 6: the overall prosecutors Association is called the Association in this charter.

Article 7:

Chapter Two

Aims

Article 8: This Association is operating for the following proposes:

1. Protecting the peace and the rule of law in the country.
2. Protecting the democracy and social justice.
3. Providing the opportunity for the advancement of the prosecutors' professional knowledge and awareness by conducting conferences, seminars, educational and training courses.
4. Providing the opportunity for the enforcement of law in the Attorney General's office and the society.

5. Establishing and extending friendly relationship and bilateral or multilateral cooperation with other related national and international organizations.
6. Participating actively in the enforcement of the enacted laws in the country and other international legislative or legal documents; providing legal awareness about the illegal production, importation and trafficking of narcotics.
7. Defending and protecting the rights of the members of the association.
8. Exchanging legal and professional experiences and information with other related organizations in order to acquire legal and professional knowledge in different fields.

Chapter three

Organizational Structure

Article 9: The Association has the following organizational structures;

1. General Assembly;
2. Board of Directors/Executive Board;
 1. Committees.

Article 10: The General Assembly is the highest decision making authority of the Association and is composed of all association members. The ordinary meetings of the General Assembly shall be held every year but in extraordinary circumstances, the executive board would call for the general meeting. General assembly has the following authorities and duties:

1. The ratification and amendment of the Association's charter;
2. The election or dismissal of the president, the vice presidents and the secretary;
3. Determining and approving the Association's main activities;
4. Approving the seal, flag, the admission and the membership fees;
5. Approving the date and venue for the annual meetings of the Association;
6. Approving the annual budget of the association;
7. Determining duration of the president's office and other organs' of the association.

Article 11: Executive Board is an active body of the Association which meets twice in a month and has the following authorities:

1. Executing the decisions of the General Assembly;
2. Taking in and evaluating the reports of the committees;
3. Determining the admission and membership fees;
4. Making decisions and executing them in order to coordinate the relationships of the Association with the other related national and international organizations;
5. Making proposal about the dismissal of the Association's president, vice presidents and secretary if violated provision of charter with two third of the vote to the General Assembly;
6. Approving the expenditures based on request of the financial committee;
7. Approving the internal procedures of the committees.

Article 12: Duties and Authorities of the president:

- 1- Leading and organizing overall affairs of the association;
- 2- Control and supervision of activities of the committees;
- 3- Approval or refusal of reports of the committees;
- 4- Providing guidance, recommendation, admonition of the association's members in certain instances;
- 5- Approval of fund after it is approved by the executive committee;
- 6- Defending rights of members in reasonable and lawful instance;
- 7- Monitor implementation of provisions of the Charter;
- 8- Establishing relations with Prosecutors Association of other countries;
- 9- Approving determination of those in need of assistance after they are introduced by the executive committee;
- 10- Controlling assets of the association;
- 11- Solving problems and difficulties of members of the association arising from duty, and consulting leadership council of the Attorney General's Office;
- 12- And other tasks as stipulated in the Charter,

Article 13: The association is composed of the following committees:

1. Executive Committee;
2. Support and Protection Committee;
3. Cultural and Foreign Relations Committee;
4. Administrative and Financial Committees;
5. Committee for Protecting the Rights of Women and Children;
6. Monitoring and Evaluation Committee;
7. Committee for Human Rights and International Conventions,

If needed, other committees can be created as well.

Article 14: The support and Protection Committee

A. This committee is comprised of six members:

1. The head of the committee;
2. The members of the committee are five.

B. Duties of the Support and Protection Committee:

1. Assessing the incoming complaints to the Association;
2. Presenting specific comments and proposals to address and follow up the problem/s;
3. Presenting report to the president of the Association.

Article 15: Cultural and Foreign Relations Committee

A. This committee is comprised of six members:

1. The head of the committee;
 2. The members of the committee are five.
- B. Duties of the Cultural and Foreign Relations Committee:**
1. Maintaining cultural and legal relations with other related national and international organizations;
 2. Preparing and conducting seminars, workshops, conferences, courses and interviews both in the national and international levels;
 3. Publishing and issuing legal information in order to raise the awareness of the public;
 4. Presenting report to the president of the association.

Article 16: Administrative and Financial Committees

A. The Administrative and Financial Committees are comprised of four members:

1. The head of the committee;
 2. Members of the committee are three.
- B. Duties of the Administrative and financial Committees:**
1. Coordination of financial and economic assistance from national or international sources;
 2. Coordination of administrative and transportation affairs of the Association;
 3. Monitoring the administrative and financial affairs of the Association;
 4. Verify the expenditure documents and request fund from the executive committee.
 5. Opening an specific bank account in a trusted bank.
 6. Issuance of cash cheque (Check) in specified instances, after approval of executive committee and (sign) the president of APA.

Article 17: Committee for Protecting the Rights of Women and Children

A. The Committee is comprised of six members:

1. The head of the committee;
 2. Members of the committee are five.
- B. Duties of the committee for protecting the Rights Women and Children:**
1. Timely investigation of women and children prisoners;
 2. Assessment of incoming complaints, following up on them;
 3. Presenting comments, proposals and helpful mentors about the restitution of the women and children rights and the ways to prevent the violation of their rights.
 4. Presenting effective comments and proposals about the elimination of violence against women and children;
 5. Presenting reports to the President of the association.

Article 18: Monitoring and Evaluation Committee

A. This committee is comprised of four members:

1. The head of the committee;

2. Members of the committee are three.

B. Duties of the Monitoring and Evaluation Committee:

1. Monitoring and evaluating the executions and performances of the other committees;
2. Monitoring and evaluating the enforcement of the articles in this charter;
3. Monitoring and evaluating the enforcement of the instructions issued by the President or the General Assembly of the association;
4. Presenting comments and proposals about the affairs related to the Association;
5. Presenting report to the President of the Association.

Article 19: Committee for Human Rights, International Conventions

A. This committee is comprised of four members:

1. The head of the committee;
2. Members of the committee are three.

B. Duties of the Committee for Human Rights, International Conventions and Transitional Justice:

1. Overseeing and assessing the incoming complaints about any violation of human rights;
2. Presenting comments, proposals and helpful mentors about the accurate implementation of international declaration of human rights;
3. Presenting comments and proposals about the correspondence of the enforced internal laws with the international human rights declaration and the international conventions that Afghanistan is a member to;
4. Presenting comments and proposals about the prosecution and trailing of the human rights violators.
5. Presenting report to the Resident of the Association.

Article 20: Committee for the Study and Evaluation of the Enforced Laws of the Country

A. This committee is comprised of four members:

1. The head of the committee;
2. Members of the committee are three.

B. Duties of the Committee for the Study and Evaluation of the Enforced Laws of the Country:

1. Studying the laws and presenting comments and proposals to the Association;
2. Presenting comments and proposals about the correspondence of the enforced laws of the country with the internationally accepted treaties;
3. Mutual efforts about the manner of enforcing the laws in practice;
4. Presenting report to the President of the Association.

Chapter Four

Membership Conditions

Article 21: Any professional member of Attorney General Office, who has reached the age of eighteen and meet the conditions set out below, can get membership of this Association:

1. A bachelor's Degree, Master's Degree or PhD from the school of law or Sharia that is from the universities in Afghanistan or abroad;
2. The graduates or senior Islamic Schools that are equivalent of Bachelor's Degree;
3. The graduates Criminal Schools of the Police Academy;
4. If they do not have Bachelor's Degree, period of service of at least ten continues years in professional in Attorney General Office
5. Not lacking political or civil rights;
6. Not committed or being convicted of any felonious crimes or crimes against humanities;
7. Committed to the protection of nation's interest respecting the recognized customs of the Afghan people and having an acceptable moral behavior with good fame;
8. Presenting written application for the membership of the APA.

Article 22: The membership of a member of the Association can be dismissed in any of the following conditions:

1. Presenting written and voluntary letter for the renouncement of the association's membership;
2. member/s of this Association has/have acted in the violation of the articles of this charter;
3. In case not paying his/her membership fee for more than three months.

Chapter five

Election Procedure for the President, Vice President and Secretary

Article 23: The appointment of the president, vice president, secretary, and heads of the committees is based on election and every member of the Association can be candidate to these posts.

A. The appointment of the Association's President: The President of the Prosecutors' Association will be appointed under the following conditions:

- In addition to meeting the requirements of article 20 of this charter, he/she shall be an active member of the Attorney General Office and not be head of an independent departments
- At least 10 years of service in professional departments, and possess a good reputation.

B. Election Procedure for the President of the Association:

- Voting will be free, independent and secret.
- The President of the Association will be elected by winning the majority vote of the Association members for period of (3) years.
- The President of the Association cannot be a candidate to this post after serving two terms.
- In case of the president's death, absence/disappearance or affected with an incurable disease which would prevent him/her from carrying his/her duties, the first Vice Presidents will preside during the three months which the General Assembly will be held.

Article 24: Election of the Voice Presidents and Secretary

- Election Procedure for the Vice Presidents and Secretary is according to the President election procedure.

- Vice Presidents and the secretary cannot nominate themselves in these posts more than two terms. In case of the Vice Presidents; Secretary and heads of the committees' absence, another member of the Association will be appointed temporarily by the president to carry on the duties.

Chapter Six

Association's Finance Affairs

Article 25: the Association will be funded through these sources:

- A. Payment of 100 Afs admission fee (one time) and 50 Afs monthly membership fees;
- B. Financial assistance of real and national and international personalities;
- C. The amount earned as the income of the cultural activities and publications;
- D. Other donations for the Association.

Chapter Seven

Conditions for the Dissolution of the Association

Article 26:

1. The Association can be abolished by the decision of the general assembly and the majority votes.
2. In case of the association's dissolution, the admission fee and the membership fee of the members will not returned.
3. In case of the General league's approval of the association's dissolution, the property of the Association will be officially transferred to the government budget.

Chapter Eight

Miscellaneous provisions

Article 27: The cash assets of the Association will be used in the following cases:

1. For achieving the aims and fundamental lines of the Association.
2. For the assistance of the needy and eligible members of the Association when identified by the committees mentioned in articles 11 and 16 of this charter.
3. For providing the basic needs of the Association.

Article 28: Honorable membership could be granted to national natural or legal personalities.

Article 29: The foreign national can request for the honorable membership of the association through the related authorities.

Article 30: This charter which is consisting of 8 chapters and 30 articles has been approved with the unanimous votes of the General Assembly and it is applicable from 27 Aqrab 1388.