

5.2: Afghanistan's Counternarcotics Institutions, Agencies, and Activities within the Criminal Justice Sector

Summary

This chapter provides an overview of the Government of the Islamic Republic of Afghanistan's counternarcotics institutions, agencies, and activities supporting counternarcotics efforts within the criminal justice sector including:

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

Introduction

In January 2006, the President of the Islamic Republic of Afghanistan, Hamid Karzai, stated:¹

Each phase of Afghanistan's recovery since the December 2001 Bonn Agreement has been characterized by particular dangers and unique opportunities. None of these, however, match the peril posed by the resurgence of the 'opium economy', which grew to unprecedented levels in 2004. As the Bonn Process draws to a close, rather than permanently opening a door to a new era for Afghanistan's development, the opium trade threatens to reverse our accomplishments and drag us back into chaos, criminality and abject poverty.

We therefore have to tackle this problem head-on. There can be no further consolidation of peace until we substantially reduce the cultivation, production, trafficking and consumption of illicit drugs in Afghanistan. It is vital too that our strategy is targeted where it can make the most sustainable impact in the near term. In the immediate future we will therefore reinforce our efforts to target the trafficking network, while at the same [sic] strengthening rural livelihoods, government institutions and drug treatment facilities.

¹ The Islamic Republic of Afghanistan, Ministry of Counter Narcotics, National Drug Control Strategy, An Updated Five-Year Strategy for Tackling the Illicit Drug Problem, Kabul, January 2006 (hereinafter 2006 NDCS), pp. 4-5: <http://mcn.gov.af/Content/files/NDCS.pdf>. A new National Drug Control Strategy (NDCS) was adopted in October 2013, however, at the time of this writing an English copy was not available.

I therefore call upon all Afghans and, specifically, all Ministers, Governors and public officials to open the doors to our future, and reject a return to our tortured past. We must implement this updated [National Drug Control Strategy (NDCS)] and, in so doing, allow our country to maintain its standing as a member of the community of nations, proud, and free of an illicit drugs [sic] economy.

Counternarcotics efforts in Afghanistan range from public awareness, demand reduction, eradication, and alternative livelihoods to international and regional cooperation, institution building, law enforcement, and criminal justice. This chapter focuses on Afghanistan's institutions, agencies, and activities supporting counternarcotics efforts within the criminal justice sector including the Ministry of Counter Narcotics, the Ministry of Interior/Counter Narcotics Police of Afghanistan, the Ministry of Defense/Special Air Mission, the Narcotics Tribunal, and the Criminal Justice Task Force.

The Ministry of Counter Narcotics

The Ministry of Counter Narcotics (MCN) was originally created as the Counter Narcotics Directorate under the National Security Council in 2002.² In 2005, the Directorate was elevated to a ministry.³ The MCN is the lead ministry for coordinating all counternarcotics affairs.⁴ Figure 1 below provides an overview of the organizational structure of the ministry.

A key element of the MCN's mandate is the development of the National Drug Control Strategy.⁵ The MCN is responsible for coordinating and evaluating the implementation of the Counter Narcotics Drug Law (CN Law) and the NDCS.⁶ Pursuant to the CN Law, the MCN's is also responsible for coordinating the NDCS annual budget with the Ministry of Finance and jointly managing and implementing the Counter Narcotics Trust Fund (CNTF) also with the Ministry of Finance.⁷ The CNTF was established in October 2005 to help mobilize and channel funding to the Government of Afghanistan in support of counternarcotics efforts.⁸ The CNTF supports projects related to the NDCS pillars of activity.⁹

² Government of the Islamic Republic of Afghanistan, Ministry of Counter Narcotics, About MCN: <http://mcn.gov.af/en/page/1835>. The Counter Narcotics Directorate was established in October 2002 and become fully operational in January 2003.

³ Ibid.

⁴ The Islamic Republic of Afghanistan, Law on Campaign against Intoxicants, Drugs and their Control, Official Gazette No. 1025, 24 June 2010, English translation prepared by the Criminal Justice Task Force, (hereinafter CN Law), Art. 4.

⁵ See *ibid*, Art. 65(2). See Chapter 5.1: Afghanistan's Counternarcotics Policy and Legal Framework.

⁶ *Ibid*, Art. 4.

⁷ *Ibid*, Art. 65(6).

⁸ See Islamic Republic of Afghanistan, Ministry of Counter Narcotics, United Nations Development Programme, Support to the Counter Narcotics Trust Fund (CNTF) Programme, 2005: http://www.undp.org.af/whoware/undpinafghanistan/Projects/sbgs/Prodocs_SGBS/CNTF_Prodoc_2005.pdf.

⁹ *Ibid*. The MCN coordinates and is responsible for the management and implementation of the CNTF. MCN, About MCN (accessed Feb. 28, 2014): <http://mcn.gov.af/en/page/1835>. The UNDP's administration of the CNTF

Although the MCN is the lead ministry for counternarcotics policies, its key challenge is that it “does not have implementing authorities or agencies and relies on other ministries, primarily the Ministry of Interior [MOI] for enforcement support.”¹⁰ Implementation of counternarcotics law enforcement and criminal justice efforts is through the MOI, the Attorney General’s Office, and the Supreme Court.¹¹ Pursuant to the CN Law, the MCN “may process regulations and set up rules and procedures for better implementation of [the CN Law].”¹²

The CN Law also establishes the central “High Intoxicants and Counter Narcotics Commission” comprising:¹³

- 1- Counter-Narcotics Minister as head,
- 2- Deputy Interior Minister on Counter Narcotics as deputy,
- 3- Deputy Attorney General as member,
- 4- Deputy Finance Minister for Customs, as member,
- 5- Deputy Justice Minister as member,
- 6- Deputy Health Minister as member,
- 7- Deputy Information and Culture Minister as member,
- 8- Deputy Hajj and Endowments Minister as member,
- 9- Deputy Agriculture, Livestock and Food Minister as member,
- 10- Deputy Director of Local Governance Organs as member,
- 11- Deputy National Security Directorate as member

The Commission is tasked with the following duties:¹⁴

- 1- To implement the National Narcotics Control Strategy and its review.
- 2- To take necessary measures for reducing demand of narcotic substances.
- 3- To coordinate activities in order to prevent the cultivation of drugs and their fields eradication.
- 4- To launch advocacy programs for combating narcotics.
- 5- To set the stage for treatment of drug addicts.
- 6- To implement alternative livelihood programs, to ensure their effectiveness, and preparing the base for public active participation.

project ended in December 2010. The European Commission and the United Kingdom became the principal supporters of the CNTF in 2011. See UNDP-Afghanistan, Counter Narcotics Trust Fund Final Report 2011:

http://www.undp.org.af/Projects/Reports%202012/CNTF/45781_CNTF_Final%20Report_2011.pdf.

¹⁰ Congressional Research Services Report for Congress RL32686, Afghanistan: Narcotics and U.S. Policy, by Christopher M. Blanchard, August 12, 2009 (hereinafter CRS Narcotics Report), p. 39:

<http://www.fas.org/sgp/crs/row/RL32686.pdf>.

¹¹ See CN Law, *supra* note 4, Art. 65(3).

¹² *Ibid*, Art. 66.

¹³ *Ibid*, Art. 7.

¹⁴ *Ibid*, Art. 8(1).

- 7- To assign sub-committees for better implementation of the provisions of this law, when required.
- 8- To recommend amendments to the provisions of this law.
- 9- To provide performance reports to the Council of Ministers.

The Commission can establish sub-commissions at the provincial, district, and village level as needed.¹⁵ The Provincial and district level commissions are tasked with similar duties:¹⁶

- 1- To implement the National Narcotics Control Strategy.
- 2- To take necessary measures for reducing demand of narcotic substances.
- 3- To coordinate activities in order to prevent the cultivation of drugs and their field eradication.
- 4- To launch advocacy programs for combating narcotics.
- 5- To take appropriate measures for treatment of drug addicts.
- 6- To implement alternative livelihood programs, to ensure their effectiveness and preparing the base for public active participation.
- 7- To provide recommendation on review of the National Narcotics Control Strategy to the High Counter-Narcotics Commission.
- 8- To provide relevant performance reports to the High Counter-Narcotics Commission.

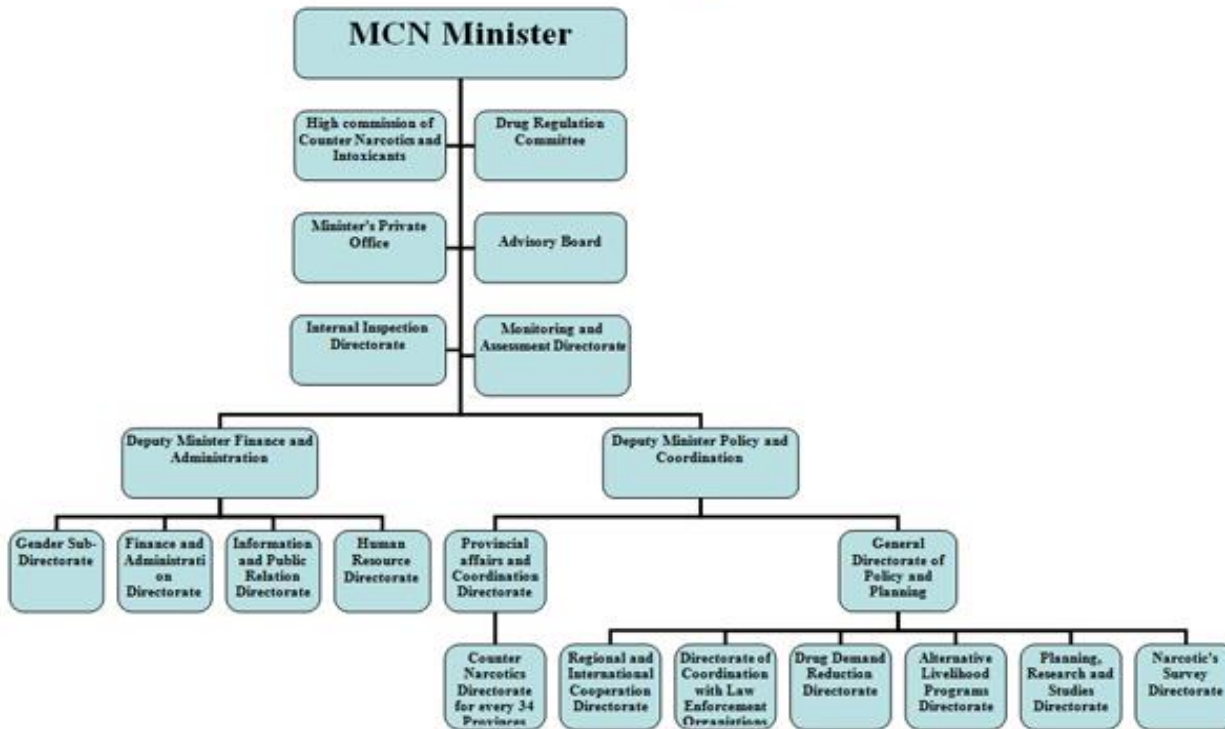
Village level commissions are required to cooperate with the district commissions to achieve the objectives set forth for the provincial and district commissions described above.¹⁷

¹⁵ Ibid, Art. 7(2).

¹⁶ Ibid, Art. 8(2).

¹⁷ Ibid, Art. 8(3).

Ministry of Counter Narcotics Organizational Structure



*Figure 1: Structure of the Ministry of Counter Narcotics.*¹⁸

The Ministry of Interior

“Counternarcotics enforcement activities have been directed from within the Ministry of Interior since 2002.”¹⁹ The CN Law places the authority to “arrest suspects of drug trafficking, intoxicants and seize illegal drugs equipment and substances used in the processing of [] narcotics” with the following law enforcement agencies:²⁰

1. The Counter Narcotics Police of Afghanistan (CNPA);
2. The Special Counter Narcotics Unit and Narcotics Elimination Unit;
3. The Afghan Border Police (ABP) and other police forces;
4. National Directorate of Security (NDS) officials;
5. Customs officials; and
6. The Afghan National Army (ANA).

For all of the law enforcement agencies listed, with the exception of the specialized counter narcotics unit and the CNPA, the seizure of drugs and arrests of traffickers occurs in the course of performing their primary police duties. For example, The ABP carry out traditional border-control tasks, including customs enforcement and counterinsurgency tasks. Counternarcotics

¹⁸ Government of the Islamic Republic of Afghanistan, Ministry of Counter Narcotics, About/Structure: <http://mcn.gov.af/en/page/5156>.

¹⁹ CRS Narcotics Report, *supra* note 10, p. 39.

²⁰ See CN Law, *supra* note 4, Articles 12, 13 and 14.

activities are an aspect of their work, but not the primary activity. The Afghan customs police are a component of the ABP under the MOI. A separate Customs Service department is under the Ministry of Finance (MOF). Customs police and customs personnel are deployed together at key border crossings.²¹ The seizure of drugs and arrests of traffickers occurs in the course of their border/customs protection duties.

The Special Counter Narcotics Unit and the Narcotics Elimination Unit are specialized units within the MOI created specifically for the purpose “of arresting the involved persons in drug trafficking and intoxicants, seizing of illegal drugs and resorting to proportionate force.”²² These units are also empowered to destroy poppy and marijuana fields, intoxicants, and related equipment after taking photos and samples.²³

All of the law enforcement agencies with the authority to arrest suspects of drug trafficking and seize evidence must “immediately hand over the arrested suspects and seized evidence” to the CNPA for investigation.²⁴ The CNPA is the lead law enforcement agency for all counternarcotics offenses.

Counter Narcotics Police of Afghanistan

Established in 2003, the CNPA is a specialized unit within the Afghan National Police (ANP) under the MOI. The CNPA “is responsible for collecting intelligence and investigating punishable activities related to the cultivation, smuggling and illegal production of drugs. It also conducts active detection, eradication operations, and interdiction of the flow of narcotics.”²⁵ The current *tashkil* for the CNPA authorizes 2,570 positions.²⁶ In January 2014, the Special Inspector General for Afghanistan Reconstruction (SIGAR), reported 2,850 personnel were actually assigned to the CNPA.²⁷

²¹ The MOI and the MOF have a memorandum of understanding to allow for joint training.

²² CN Law, *supra* note 4, Art. 13.

²³ *Ibid.* Previous special units including the Afghan Special Narcotics Force (ASNF), also called “Task Force 333,” and The Poppy Eradication Force, which was supported by the ASNF, were disbanded. See Islamic Republic of Afghanistan, Ministry of Counter Narcotics, Anti-Drug Trafficking Policy, Targeting High Value Drug Traffickers and their Networks, May 2012 (hereinafter Anti-Drug Trafficking Policy), p. 60: http://mcn.gov.af/Content/files/LE_En.pdf.

²⁴ CN Law, *supra* note 4, Articles 13(2) and 14(2).

²⁵ Islamic Republic of Afghanistan, Ministry of Interior, Afghan National Police Strategy: <http://moi.gov.af/en/page/5076>.

²⁶ U.S. Department of Defense (DOD), Report Towards Progress and Stability in Afghanistan, November 2013 (hereinafter DOD Report November 2013), p. 97: http://www.defense.gov/pubs/October_1230_Report_Master_Nov7.pdf. In December 2012, the DoD reported the same official CNPA *tashkil*, but reported only 2,180 officers graduated from the CN Training Academy. See DOD Progress Report Toward Security and Stability in Afghanistan, December 2012 (hereinafter DOD Report December 2012), p. 124: http://www.defense.gov/news/1230_Report_final.pdf. The MCN estimates a minimum requirement of 5,000 CNPA officers. See Anti-Drug Trafficking Policy, *supra* note 23, p. 60.

²⁷ U.S. Special Inspector General for Afghanistan Reconstruction (SIGAR), Quarterly Report to the U.S. Congress, January 30, 2014, p. 107: <http://www.sigar.mil/pdf/quarterlyreports/2014Jan30QR.pdf>.

After six weeks of basic ANP training, CNPA officers receive five weeks of specialized counternarcotics training at the Counter Narcotics Training Academy (CNTA) in Kabul.²⁸ The CNTA courses are designed to provide fundamental training on investigation and prosecution of narcotics crimes.²⁹ The CNTA has also established a train-the-trainers program, with support from the United Nations Office on Drugs and Crime (UNODC), in order to develop a cadre of Afghan trainers.³⁰

The CNPA includes provincial CNPA units and several specially vetted units.³¹ After basic training at the CNTA, CNPA officers largely deploy to the provinces where they report to the provincial and district police chiefs.³² “Unfortunately, CNPA officers are frequently assigned duties that are unrelated to counternarcotics.”³³ The provincial CNPA units are perceived as vulnerable to corruption and political interference. The MCN has suggested establishing the CNPA as an independent body, in part, to address these concerns.³⁴ In contrast, the specialized units discussed below receive additional training and are seen as operationally capable.

- 1) **The National Interdiction Unit (NIU).** The NIU is the tactical enforcement arm of the CNPA “conducting interdiction operations, seizures, and serving arrest and search warrants in a high-threat environment.”³⁵ The NIU members receive an additional seven weeks of training on topics ranging from defensive tactics, firearms, surveillance, investigations, interviewing techniques, and helicopter operations. As of February 2012, all of the NIU basic classes were taught by Afghan instructors.³⁶

- 2) **The Sensitive Investigative Unit (SIU).** The SIU is an investigative unit with the mission “to identify significant [drug trafficking organizations] operating in Afghanistan and dismantle them through the Afghan criminal justice system.”³⁷ “SIU officers handle informants, conduct undercover operations, seize evidence, and make arrests.”³⁸ SIU members receive one to two weeks of additional training in Afghanistan and five weeks of

²⁸ U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs (INL), 2012 International Narcotics Control Strategy Paper, March 7, 2012, Afghanistan (hereinafter 2012 INCSR): www.state.gov/j/inl/rls/nrcrpt/2012/vol1/184098.htm. The ANP basic training was formerly eight weeks. See Chapter 5.3 for information on U.S. and international support to the CNTA.

²⁹ DOD Report December 2012, *supra* note 26, p. 126.

³⁰ *Ibid.*

³¹ 2012 INCSR, *supra* note 28 .

³² *Ibid.*

³³ *Ibid.*

³⁴ See Anti-Drug Trafficking Policy, *supra* note 23, p. 15.

³⁵ U.S. Department of Justice, Statement of Thomas M. Harrigan Assistant Administrator and Chief of Operations, Drug Enforcement Administration, Before the Senate Caucus on International Narcotics Control, United States Senate, “Counternarcotics Efforts in Afghanistan,” July 20, 2011 (hereinafter DEA Statement/US Senate Caucus on International Narcotics Control), p.3: http://www.justice.gov/dea/pr/speeches-testimony/2012-2009/110720_herrigan_hearing.PDF.

³⁶ DOD Report December 2012, *supra* note 26, p. 126.

³⁷ DEA Statement/US Senate Caucus on International Narcotics Control, *supra* note 35, p. 3.

³⁸ *Ibid.*, p. 4.

training in the U.S. The SIU has a sub-unit of financial investigators known as the SIU-Financial Investigation Team (SIU-FIT).³⁹ SIU-FIT investigates financial misconduct that maybe providing financial support to insurgent groups. SIU-FIT works with the Afghan Threat Finance Cell, discussed in Subchapter 5.3.

- 3) **Technical Investigative Unit (TIU).** The TIU supports the Afghan Judicialized Telecommunications Intercept Program (JWIP), a wire intercept program approved by President Karzai that provides evidence admissible in Afghanistan, the U.S., and other nations.⁴⁰ The TIU officers “are selected from the SIU based on their technical aptitude for working wire intercepts and conducting analysis....The TIU enables the SIU to target the command and control nodes of major drug trafficking organizations.”⁴¹
- 4) **Intelligence and Investigations Unit (IIU).** The IIU is a vetted covert intelligence unit that conducts judicial wiretap intercepts, undercover operations, and arrests. The NIU, SIU and TIU are supported and trained by the U.S. (discussed in Subchapter 5.3), while the IIU is supported and mentored by the United Kingdom’s Serious Organized Crime Agency (SOCA).
- 5) **Intelligence Fusion Center/Tactical Operations Center (IFC/TOC).** IFC and TOC are intended to transform data provided by the SIU and the IIU into actionable information by developing investigations and identifying targets. The IFC/TOC are intended to be the parallel Afghan capacity to the Afghanistan Threat Finance Cell. The TOC was established “to coordinate daily CNPA activities among the provincial offices, specialized units and the headquarters.”⁴² The TOC “conducts training, develops procedures to fulfill mission requirements, and produces materials to support [counternarcotics] operations.”⁴³ The IFC and TOC were both established with the help of the Interagency Operations Coordinating Center (IOCC), also discussed in Subchapter 5.3.

Updated numbers were not available at the time of this writing, but as of December 2012, there were 520 members of the NIU; 71 members of the SIU; and nine officers in the TIU supported by 200 vetted Afghan civilian linguists.⁴⁴ Operational bases have been established in Helmand,

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Statement for the Record William F. Wechsler Deputy Assistant Secretary of Defense Counternarcotics and Global Threats Before the Senate Caucus on International Narcotics Control “Counternarcotics Efforts in Afghanistan” July 20, 2011 (hereinafter DASD Statement/US Senate Caucus on International Narcotics Control), p. 7: <http://drugcaucus.senate.gov/hearing-7-20-11/DASD%20Wechsler%20Statement%20-%2020%20Jul%202011.pdf>.

⁴³ DOD Report December 2012, *supra* note 26, p. 123.

⁴⁴ Ibid, p. 125. The NIU has an authorized strength of 538; the SUI has an authorized strength of 77. Updated information on staffing was not available at the time of this writing.

Herat, Kabul, Kandahar, and Kunduz.⁴⁵ Updated numbers for the IIU were also not available at the time of this writing, but as of 2010, the IIU reported having 53 members.⁴⁶ The IFC/TOC reported 12 members as of 2011.

The CNPA specialized units coordinate with the Major Crimes Task Force (MCTF) and the TIU conducts all electronic intercepts for the MCTF.⁴⁷ All enforcement operations and intercepts are conducted in accordance with Afghan law.⁴⁸ The U.S. Drug Enforcement Administration (DEA) has reported that the NIU, SIU, and TIU specialized units “have developed to the point where they are operationally capable.”⁴⁹

Ministry of Defense - Afghan Special Mission Wing

The Ministry of Defense (MOD) Afghan National Army Counternarcotics Infantry *kandak* (battalion), created to provide security for eradication efforts has been disbanded. The MOD, however, provides air support for counternarcotics efforts through the Afghan Special Mission Wing (SMW, previously Air Interdiction Unit or AIU).⁵⁰ The SMW’s mission has been expanded to include not only counternarcotics support, but also counterterrorism and other special operations.⁵¹ The SMW was originally under the MOI CNPA, but the unit has been officially transferred and aligned with the Ministry of Defense and the Afghan National Army Special Operations Command.⁵²

Counter Narcotics Tribunal

The CN Law establishes specialized primary and appellate courts of jurisdiction in Kabul known as the Narcotics Tribunal.⁵³ The Narcotics Tribunal has exclusive jurisdiction over the following cases:⁵⁴

- 1- When the amount of heroin, morphine, cocaine or any other derivatives from these substances is 2 kg or more,
- 2- When the quantity of opium or every compound of this substance is 10 kg or more,

⁴⁵ DEA Statement/US Senate Caucus on International Narcotics Control, *supra* note 35, p. 4.

⁴⁶ In 2010, the IIU had an authorized strength of 83.

⁴⁷ DEA Statement/US Senate Caucus on International Narcotics Control, *supra* note 35, p. 9. See Chapter 4.2: Afghanistan’s Anti-Corruption Policy and Legal Framework Instruments and Agencies, for an overview of the Major Crimes Task Force (MCTF); see also Chapter 4.3: U.S. Support to Anti-Corruption Efforts within the scope of Afghan Justice Sector Assistance, for information on U.S. support to the MCTF.

⁴⁸ DEA Statement/US Senate Caucus on International Narcotics Control, *supra* note 35, pp. 3-4.

⁴⁹ *Ibid*, p. 7.

⁵⁰ *Ibid*, p. 12; see also DOD Report December 2012, *supra* note 26, p. 125.

⁵¹ DOD Report December 2012, *supra* note 26, p. 125.

⁵² Update provided by INL/AP February 2012.

⁵³ CN Law, *supra* note 4, Art. 18.

⁵⁴ *Ibid*, Art. 18(1).

- 3- When the quantity of hashish or its derivatives contained in annexed Table 1, 2, 3 and 4 to this law (with the exception of heroin, morphine, cocaine, and opium) is more than 50 kg,
- 4- if the amount of intoxicants is 50 litres or more-

Pursuant to the Law of the Organization and Authority of the Courts of the Islamic Republic of Afghanistan (Law on Courts), the narcotics appellate tribunal should comprise six judges and the primary tribunal comprise of one head judge and four judges.⁵⁵ Judges receive training and on-the-job mentoring from the U.S. and U.K. governments as well as salary supplements from the U.K.⁵⁶

Criminal Justice Task Force

Cases falling within the Narcotics Tribunal's jurisdiction are handled by special counternarcotics prosecutors and criminal investigators.⁵⁷ A specialized unit of prosecutors and criminal investigators along with judges from the Narcotics Tribunal form the Criminal Justice Task Force (CJTF). The prosecutors remain under the authority of the Attorney General's Office and the investigators remain under the authority of the MOI. The CJTF and the Narcotics Tribunal along with the MOI's Judicial Security Unit and a detention center comprise the Counter Narcotics Justice Center (CNJC) located in Kabul.

Cases falling outside the jurisdiction of the Narcotics Tribunal are heard by the Public Security *dewan* (chamber) of the Provincial Courts and the cases are handled by the relevant court prosecutor.⁵⁸ Accordingly, following an investigation the CNPA refers the case to the CJTF if it meets the jurisdictional requirements; otherwise, the case is referred to the relevant provincial prosecutor.

The CJTF Investigation and Laboratory Department comprises 32 investigators and is the first department to receive cases sent by the CNPA.⁵⁹ After completing their investigation, the CJTF Investigation and Laboratory Department sends a case for further investigation to the CJTF General Prosecution Department, which determines whether to indict. There are 32 Afghan prosecutors on the CJTF.⁶⁰ Like the judges for the Narcotics Tribunal, the prosecutors and

⁵⁵ Law of the Organization and Authority of the Courts of the Islamic Republic of Afghanistan, Official Gazette No. 1109, 19 June 2013 (1392/4/9)(translation provided by UNAMA)(hereinafter Law on Courts), Articles 53 and 62.

⁵⁶ See Chapter 5.3 for a discussion of U.S. support to the Narcotics Tribunal.

⁵⁷ CN Law, *supra* note 4, Art. 17. See Chapter 3.4: The Afghan Prosecutor for a discussion of a prosecutor's duties.

⁵⁸ *Ibid*, Art. 18. See Chapter 2.1: Afghanistan's Formal Justice Institutions for an overview of the court structure.

⁵⁹ See Islamic Republic of Afghanistan, Criminal Justice Task Force, Departments, CJTF Investigation and Laboratory Department: <http://cjt.gov.af/en/page/6008>.

⁶⁰ U.S. Government Accountability Office, Report to Congressional Addressees, Afghanistan Drug Control, Strategy Evolving and Progress Reported, but Interim Performance Targets and Evaluation of Justice reform Efforts Needed, March 2012 (hereinafter GAO Report, Afghanistan Drug Control), p. 27: <http://www.gao.gov/new.items/d10291.pdf>.

investigators receive training and mentoring by the U.S. and U.K. governments along with salary supplements from the U.K.

The investigation, prosecution, and trial of persons charged with drug trafficking offenses is carried out in the same manner as prescribed for all criminal cases pursuant to the Criminal Procedure Code.⁶¹ The CN Law, however, allows for the use of specialized investigative and search and seizure techniques including the use of covert and electronic surveillance, informants, and undercover operations.⁶² For cases meeting the minimum jurisdictional requirements for the Narcotics Tribunal that require transfer to Kabul the CN Law provides an additional 12 days to transfer the case.⁶³

In case the amount of drugs corresponding to the amounts stated in subparagraphs 1, 2 and 3, clause 1 of Article 18 of this law, is seized outside Kabul province and the perpetrators are arrested, local Counter Narcotics Police shall be obligated to prepare a report within (72) hours after the discovery and arresting and submit it to the local primary prosecution, and transfer the perpetrator along with evidences within (12) days of the arrest to the Central Counter Narcotics Police Administration in Kabul.

Challenges

The challenges facing law enforcement and the counternarcotics justice system are challenges seen across the justice sector. The CNPA has been criticized for not arresting high level traffickers, poor evidence gathering, inconsistent crime scene investigations, and weak case documentation.⁶⁴ These problems have been linked to deficiencies in training and a high level of illiteracy within the CNPA.⁶⁵

Corruption also remains a significant impediment to effective counternarcotics efforts. A U.S. Government report noted:⁶⁶

[N]arcotics-related corruption is particularly pervasive at the provincial and district levels of government, where officials have been known to facilitate drug activities and benefit from revenue streams produced by the drug trade. For example, an Afghan Ministry of Justice official noted that police and prosecutors are easy targets for bribery because they are reportedly not paid sufficiently. A

⁶¹ See Chapter 3.2: The Process of a Criminal Justice Case in Afghanistan for an explanation of the criminal justice process. A new Criminal Procedure Code was signed by the President on February 23, 2014. A copy of the new law was not available for review at that time of this writing.

⁶² CN Law, *supra* note 4, Articles 20-40.

⁶³ *Ibid*, Art. 14(4).

⁶⁴ GAO Report, Afghanistan Drug Control, *supra* note 60, p. 28.

⁶⁵ *Ibid*.

⁶⁶ *Ibid*.

recent Defense-led interagency evaluation also found that CNPA personnel are more susceptible to corruption than regular Afghan National Police officers due to the lucrative nature of the narcotics trade. For example, Department of Justice and Afghan officials noted that, in about one-third of cases from provinces, provincial CNPA personnel have submitted drugs as evidence to the [Counter Narcotics] Justice Center but did not arrest the criminal suspect or suspects.

Lastly, although the CN Law is intended to target mid- to high- level narcotics cases, what qualifies as a low-, mid- or high- level drug case is not standardized; “subjective judgments are made based on the amount of drugs seized, the extent of a trafficker’s political connections, or whether the trafficker is a government official.”⁶⁷ The majority of counternarcotics cases have been low level offenders.⁶⁸ The MCN has requested a clarification of the law highlighting the inability of the government to judicially pursue or provide prison facilities for all of the cases that could potentially fall under the CN Law.⁶⁹

⁶⁷ Ibid. See also Anti-Drug Trafficking Policy, *supra* note 23, p. 18.

⁶⁸ See Anti-Drug Trafficking Policy, *supra* note 23, p. 16; see also U.S. Special Inspector General for Afghanistan Reconstruction (SIGAR), Audit-09-7 Justice Reform, Documenting Detention Procedures Will Help Ensure Counter-Narcotics Justice Center Is Utilized As Intended, September 30, 2009, p. 3: <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA535316>.

⁶⁹ See Anti-Drug Trafficking Policy, *supra* note 23.

Resources

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- Anti-Drug Trafficking Policy, Targeting High Value Drug Traffickers and their Networks, May 2012: http://mcn.gov.af/Content/files/LE_En.pdf.
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- U.S. Special Inspector General for Afghanistan Reconstruction (SIGAR), Audit-09-7 Justice Reform, Documenting Detention Procedures Will Help Ensure Counter-Narcotics Justice Center Is Utilized As Intended, September 30, 2009: <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA535316>

Websites

- Ministry of Counter Narcotics: <http://mcn.gov.af/en>
- Criminal Justice Task Force: <http://cjtf.gov.af/en>
- Ministry of Interior: <http://moi.gov.af/en>