

# 7.1: The Organization and Structure of Afghanistan's Correctional System

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## Summary

This chapter focuses on the organization and structure of Afghanistan's correctional system under the Ministry of Interior including the Supreme Council of Prisons and the General Directorate of Prisons and Detention Centers. In addition, this chapter provides an overview of the Juvenile Rehabilitation Centers under the Ministry of Justice as well as the freedom deprivation facilities operated by the Ministry of Defense and the National Directorate of Security.

## Introduction

A fully functioning corrections system is essential to an effective criminal justice system. Afghanistan's correctional system is still in an early stage of development and faces many challenges. The Supreme Council of Prisons and Detention Centers is charged with leading all of the affairs of Afghanistan's penitentiary system. The Supreme Council instructs the General Directorate of Prisons and Detention Centers (GDPDC), which is an independent directorate of the Ministry of Interior (MOI) responsible for the administration and supervision of the prisons and detention centers. Separate freedom deprivation facilities are run by the Ministry of Defense (MOD) and the National Directorate of Security (NDS). Moreover, the Ministry of Justice (MOJ) operates the Juvenile Rehabilitation Centers.

## The Supreme Council of Prisons and Detention Centers

“The Supreme Council of prisons and detention centers shall be responsible for leading all affairs of detention centers and prisons all over the country.”<sup>1</sup> The Supreme Council is chaired by the Minister of Interior. A Deputy Attorney General (DAG) serves as deputy chair of the council and the Director General of the GDPDC serves as the Secretary.<sup>2</sup> Additional members of the council include:<sup>3</sup>

- a legal advisor from the Ministry of Interior;

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<sup>1</sup> Islamic Republic of Afghanistan, Law on Prisons & Detention Centers, 2007; unofficial English Translation by the United Nations Office of Drugs and Crime (UNODC)(hereinafter Law on Prisons), Art. 14: [http://www.unodc.org/documents/afghanistan/Government\\_of\\_Afghanistan\\_LAW\\_ON\\_PRISONS\\_AND\\_DETENTION\\_CENTERS\\_2010.pdf](http://www.unodc.org/documents/afghanistan/Government_of_Afghanistan_LAW_ON_PRISONS_AND_DETENTION_CENTERS_2010.pdf).

<sup>2</sup> The composition of the Supreme Council was modified when the Ministry of Interior took over the General Directorate of Prisons and Detention Centers (GDPDC) from the Ministry of Justice in January 2012. See Presidential Decree No. 85 (2012) amending the Law on Prisons to reflect the move of the GDPDC from the MOJ to the MOI; see also *ibid*, Law on Prisons, Art. 13.

<sup>3</sup> *ibid*.

- an authorized representative of the Supreme Court;
- a Deputy Minister of Justice;
- a Deputy Minister of Public Health;
- a Deputy Minister of Education;
- a Deputy Minister of Labor, Social Affairs, Martyrs and Disabled;
- a Deputy Minister of Women’s Affairs;
- a Deputy Head of the National Directorate of Security;
- a Deputy Minister of Hajj and Islamic Affairs;
- an authorized representative of the Afghanistan Independent Human Rights Commission;
- Head of the Afghanistan Independent Bar Association; and
- a representative of civil society, as recognized by the Minister of Interior.

The Supreme Council is mandated to meet every three months; however, in reality it meets annually.<sup>4</sup> The council is responsible for proposing regulations and establishing policies and procedures to carry out the Law on Prisons and Detention Centers (Law on Prisons).<sup>5</sup> The council may also propose “necessary amendments” to the law.<sup>6</sup> Amendments to the Law on Prisons have been generated by the international community, but at the time of this writing the GDPDC has no plan for submitting the amendments to the National Assembly.<sup>7</sup>

## **Ministry of Interior**

### **General Directorate of Prisons and Detention Centers**

The GDPDC was originally referred to as the Central Prison Directorate (CPD) by the international community. In 2003, the CPD was transferred from the MOI to the MOJ “as a result of the perceived need to remove the Directorate from a militarized ministry facing human rights concerns to a civilian ministry.”<sup>8</sup> In January 2012, the CPD was transferred back to the MOI and is now referred to as the GDPDC. The transfer was deemed necessary due to the lack of resources by the MOJ “to operate the prison in Afghanistan in an effective, secure and safe manner.”<sup>9</sup> Concerns have been raised about the potential abuse if there is no clear separation between the prison administration and the police administration. Currently, the GDPDC is an independent directorate of the MOI and all indications are that it will remain an independent directorate. The Director of the GDPDC reports directly to the Minister of Interior. The prison directors report through the GDPDC chain of command and not through the local police chiefs.

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<sup>4</sup> Law on Prisons, *supra* note 1, Art. 15; U.S. Department of State Bureau of International Narcotics and Law Enforcement Affairs/Afghanistan Pakistan Office (INL/AP) Corrections System Support Program (CSSP), Briefing April 2013.

<sup>5</sup> *Ibid*, Law on Prisons, Art. 16.

<sup>6</sup> *Ibid*.

<sup>7</sup> Information provided by INL/AP, GDPDC Legal Advisor, February 2014.

<sup>8</sup> United Nations Department of Peacekeeping Operations (DPKO) Corrections Update, Volume 4 – December 2012, p. 11: <http://www.un.org/en/peacekeeping/publications/Corrections2012.pdf>.

<sup>9</sup> *Ibid*.

The GDPDC employs over 6,000 individuals. Historically, the GDPDC's correctional staff was referred to as 'police' and at times this reference is still used.<sup>10</sup> The staff still retains their military rank structure and, as of January 2014, consists of 5,511 employees.<sup>11</sup> An additional 954 civilians are employed as support staff (cooks, maintenance staff, etc.).<sup>12</sup> All of the GDPDC staff has completed Priority Reform and Restructuring (PRR). In 2003, President Karzai ordered the reform of the public sector's human resource management and administration through PRR and Pay & Grading (P&G) Reform.<sup>13</sup> The Independent Administration Reform Civil Service Commission (IARCS) 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 IARCS 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 qualifications, for each position/grade and establishes permanent salary scales for the different positions/grade. Moreover, the GDPDC has adopted a Code of Conduct for its correctional staff.

The GDPDC has established training centers in Balkh, Herat, Paktia, Nangarhar, and Pol-i-Charkhi Prison in Kabul. The training centers provide the correctional staff with basic training, leadership training, women in corrections training, and emergency response training. Notably, through a train-the-trainers program by the U.S. Department of State Corrections System Support Program (CSSP), Afghan trainers now teach all of the corrections courses.<sup>14</sup>

The GDPDC oversees 33 provincial prisons and 191 district detention centers.<sup>15</sup> The district detention centers are intended to be for detainees under investigation and awaiting their primary court trial. By law, detainees in the district detention centers can be held up to three months while they await trial.<sup>16</sup> The provincial prisons are intended for individuals convicted by a court of law. In reality, detainees awaiting trial and convicted prisoners are comingled in provincial prisons. The central prison facility and the largest prison in Afghanistan is Kabul's Pol-i-Charkhi Prison, which holds almost 8,000 prisoners.<sup>17</sup> The Kabul Female Prison & Detention Center is the only separate female facility. All other female prisoners are held in walled compounds within the respective provincial prison. In January 2014, there were 879 female prisoners and detainees with 345 children living with their mothers in prison.<sup>18</sup> There is also a

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<sup>10</sup> INL/AP CSSP Briefing April 2013.

<sup>11</sup> GDPDC Regional Provincial Prison (PP) and District Detention Center (DDC) Staff Inmate Count, 10 January 2014.

<sup>12</sup> Ibid.

<sup>13</sup> See Presidential Decree No. 810 (Aug. 2010).

<sup>14</sup> INL/AP Corrections Programs in Afghanistan Fact Sheet, Updated January 2014.

<sup>15</sup> GDPDC Regional PP and DDC Staff Inmate Count, 10 August 2013. The 191 active/operational detention facilities cover 53% of the total number of districts in Afghanistan (355 districts). Although there are 34 provinces, the GDPDC only oversees 33 provincial prisons because there isn't a physical prison in Nuristan.

<sup>16</sup> Includes an initial 15+15 day investigation period; plus a two month pre-trial detention period. See Chapter 3.2: The Process of a Criminal Justice Case in Afghanistan for a discussion of the timelines.

<sup>17</sup> GDPDC Inmate Count, 20 January 2014. In January 2014, Pol-i-Charkhi reported 7,948 inmates.

<sup>18</sup> Ibid.

specialized detention facility co-located with the Counter Narcotics Justice Center (CNJC) in Kabul that currently detains 49 individuals charged with narcotic offenses under the jurisdiction of the CNJC.<sup>19</sup>

### Police Detention Facilities

Separate from the 33 provincial prisons and 191 district detention centers under the GDPDC, the MOI is responsible for the Afghan National Police (ANP) detention facilities. The police detention facilities are intended to be temporary holding cells typically located in a police building. The number of police detention facilities and the detainee population is unknown. By law, the police can hold a suspect in custody for up to 72 hours (three days) in order to “comprehensively detect the crime and the criminal.”<sup>20</sup> After the 72 hour period, the police must turn the suspect over to the investigating prosecutor. The investigating prosecutor may continue the suspect’s pre-trial detention at a GDPDC district detention center during the investigation up to 30 days from the date of arrest with a court order.<sup>21</sup> At the end of the investigation period, the prosecutor must either release the suspect from custody or present an indictment to the primary court. If an indictment is filed, the suspect can continue to be held in pre-trial detention at the district detention center for an additional two months during which time the primary trial must take place. According to the law, if the two month pre-trial detention period expires the accused must be released; however, this rarely occurs and detainees remain in custody beyond the mandated time frame.<sup>22</sup> The Case Management System (CMS) is helping expose the number of cases over their statutory limits and support the timely release of detainees and inmates.<sup>23</sup> In August 2013, eight percent of all of the reported CMS case files (i.e. not limited to files from police detention facilities) from Kabul, Balkh, and Herat were found to be over the statutory time limits.<sup>24</sup>

### Ministry of Defense

The Ministry of Defense (MOD) operates two freedom deprivation facilities: the Afghan National Detention Facility (ANDF) and the ANDF-Parwan.<sup>25</sup> The ANDF is a separate facility

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<sup>19</sup> Ibid; See Chapter 5.2: Afghanistan’s Counternarcotics Institutions, Agencies and Activities within the Criminal Justice Sector.

<sup>20</sup> Police Law, Official Gazette No. 994, August 27, 2009, translated by NTM-A/CSTC-A, Wasseel Ahmad Jamal Esq., Naikan Afghan Logistic/Service Company (hereinafter Police Law), Art. 25. See Chapter 3.2: The Process of a Criminal Justice Case in Afghanistan.

<sup>21</sup> See Law on Prisons, *supra* note 1, Art. 20(1). The investigation phase is initially 15 days from the day of arrest, but can be extended an additional 15 days upon a request to the court, which is routinely granted. See Chapter 3.2: The Process of a Criminal Justice Case in Afghanistan.

<sup>22</sup> Interim Criminal Procedure Code, Official Gazette No. 820, published 2004/02/25 (1382/12/06 A.P.), Art. 6(3). Available on the Afghan Attorney General’s Office website: <http://ago.gov.af/en/documents>; or <http://www.asianlii.org/af/legis/laws/icc175/>.

<sup>23</sup> See Chapter 3.3: Case Management Systems.

<sup>24</sup> INL/AP Justice Sector Support Program (JSSP) Weekly Report 17-23 August 2013.

<sup>25</sup> The ANDF and ANDF-Parwan are not currently addressed in Afghanistan’s Law on Prisons.

co-located with Pol-i-Charkhi Prison in Kabul. ANDF-Parwan is the detention facility co-located with the Justice Center in Parwan.<sup>26</sup> ANDF-Parwan was originally a U.S. controlled detention facility for detainees held under the law of armed conflict. The facility was officially handed over to the Government of Afghanistan on March 25, 2013. Both facilities are operated by the MOD and house national security detainees and convicts. The ANDF holds an estimated 500 detainees and ANDF-Parwan houses approximately 3,000 detainees.

## National Directorate of Security

Similar to the police detention facilities, the NDS maintains temporary holding cells located within their buildings. As discussed in Chapter 6.1, the NDS Intelligence and Detection Unit handles all detections and investigations, arrests and seizures, warrant applications and executions, as well as ensuring all work is carried out lawfully. The NDS Intelligence and Detection Unit can hold a suspect for 72 hours. The exact number of NDS detainees across the provinces is unknown, but it is estimated between 300-600 are held at the main NDS facility in Kabul and an additional 300-400 are held at the NDS facility at Pol-i-Charkhi Prison.<sup>27</sup> Like all other criminal cases, at the end of the 72 hour period, the NDS Detection Unit must turn the suspect over to the investigating prosecutor. The investigating prosecutor should follow the same process for all criminal cases including pre-trial detention at a GDPDC district detention center up to 30 days from the date of arrest with a court order and either release or indict the suspect at the end of the investigation period. Again, if an indictment is filed the suspect can continue to be held in pre-trial detention at the district detention center for an additional two months during which time the primary trial must take place otherwise the accused must be released (although this is not the current practice).<sup>28</sup>

## Ministry of Justice Juvenile Rehabilitation Centers

The law requires juveniles to be held in separate detention centers.<sup>29</sup> When the GDPDC was transferred from the MOJ back to the MOI in January 2012, the MOJ retained responsibility for the Juvenile Rehabilitation Centers (JRCs). The JRCs house juvenile offenders ages 13 to 17.<sup>30</sup>

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<sup>26</sup> See Chapter 6.1: National Security Cases in Afghanistan, and 6.2: U.S. and International Support for National Security Cases in Afghanistan.

<sup>27</sup> INL/AP CSSP Briefing April 2013.

<sup>28</sup> See Treatment of Conflict Related Detainees in Afghan Custody, United Nations Assistance Mission in Afghanistan (UNAMA) and UN Office of the High Commissioner for Human Rights (UNHCHR), October 2011: [http://unama.unmissions.org/Portals/UNAMA/Documents/October10\\_%202011\\_UNAMA\\_Detention\\_Full-Report\\_ENG.pdf](http://unama.unmissions.org/Portals/UNAMA/Documents/October10_%202011_UNAMA_Detention_Full-Report_ENG.pdf); see also Treatment of Conflict Related Detainees in Afghan Custody: One Year On, UNAMA and UNHCHR, January 2013: <http://unama.unmissions.org/LinkClick.aspx?fileticket=VsBLO55b37o%3D&tabid=12323&language=en-US>.

<sup>29</sup> See Law on Prisons, *supra* note 1, Art. 9(3); see also Juvenile Code, Official Gazette No. 846, 19/12/1383, published 1384/01/03 A.P. (2005/03/23), Art. 12: <http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/>.

<sup>30</sup> See *ibid*, Juvenile Code, Articles 4 and 5.

There are currently three main JRCs located in Kabul, Herat, and Jalalabad. Juveniles in other provinces are held in small rented houses. In January 2014, there were 1103 boys and 130 girls housed in juvenile rehabilitation facilities.<sup>31</sup>

Separate from the Supreme Council of Prisons and Detention Centers and the GDPDC, the MOJ has established The High Council for Rehabilitation as well as the Central Department for Juvenile Education and Rehabilitation. “The High Council for Rehabilitation was created in order to facilitate coordination between government agencies as a way to foster the protection of children and also to supply them with necessities of life, such as food, clothing, and medicine, as well as to dispense justice.”<sup>32</sup> The Minister of Justice chairs the High Council, the Deputy Minister of Justice serves as the deputy, and the Director of the Central Department for Juvenile Education and Rehabilitation serves as Secretary. Additional members of the High Council include:<sup>33</sup>

- Deputy Chief Justice of the Supreme Court;
- Chief Judge of the Juvenile Court;
- Deputy Minister of Education;
- Deputy Minister of Interior;
- Deputy Minister of Health; and the
- Director of the MOJ’s General Department for Legislative Drafting (Taqnin).

“In order to coordinate and facilitate joint efforts between national and international organizations, it is planned that representatives of the United Nations, the National Commission on Children’s Rights, and other national organizations working to protect children be included in this Council as members.”<sup>34</sup> The High Council is supposed to meet every three months, although this is not the current practice.<sup>35</sup>

The Central Department for Juvenile Education and Rehabilitation, often referred to as the Juvenile Rehabilitation Directorate, was established within the structure of the MOJ “to facilitate the education and rehabilitation of children in conflict with the law.”<sup>36</sup> Pursuant to the Regulation on the Children’s Rehabilitation Centers the responsibility for the education, health, and social services of juveniles is divided between various ministries.<sup>37</sup> Accordingly, the MOJ has entered into cooperative protocols with the Ministry of Education, the Ministry of Public Health, the Ministry of Cultural and Youth Affairs, and the Ministry of Martyrs, Disabled and

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<sup>31</sup> Juvenile Rehabilitation Center Nationwide Juvenile Population Count & Crime Category Sheet, 20 January 2014.

<sup>32</sup> Ministry of Justice, Department of Juvenile Rehabilitation: <http://moj.gov.af/en/page/1680> (accessed February 28, 2014).

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> See Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Regulation on the Children’s Rehabilitation Centers, Articles 22-27, 33 and Chapter 5.

Social Affairs to meet these obligations.<sup>38</sup> All the ministries involved, however, currently lack the resources and capacity to properly implement the provisions of the law.

Although beyond the scope of this chapter, it should be noted that the time line for processing juvenile cases is significantly shorter than adult criminal cases. According to the Juvenile Code, no child can be detained for more than 40 days from the time of arrest to the completion of a trial. The law provides the police 24 to 48 hours to prepare their file and turn it over to the prosecutor.<sup>39</sup> The prosecutor has one week to investigate the case, but may request the court to grant a three week extension.<sup>40</sup> Following the investigation period, the prosecutor has one week to file an indictment.<sup>41</sup> The prosecutor may request another three week extension from the court to file an indictment, but under the law the child cannot remain in detention if the extension to file an indictment is granted.<sup>42</sup>

The prosecutor and the judge have the authority to release a juvenile on bail, without bail, or to a legal representative during the investigation and trial period.<sup>43</sup> Furthermore, the juvenile court can amend its judgment anytime to “safeguard the interests of the child regarding his/her education and reintegration into society.”<sup>44</sup> In reality, and discussed further in Chapter 7.3: Challenges Facing Afghanistan’s Correctional System, juveniles are often detained with adults, they are almost always held in custody during an investigation and pretrial period, and non-custodial sanctions are not utilized.

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<sup>38</sup> See MOJ, Department of Juvenile Rehabilitation for more information on the cooperative protocols: <http://moj.gov.af/en/page/1680>.

<sup>39</sup> Juvenile Code, *supra* note 29, Articles 11 and 13.

<sup>40</sup> *Ibid*, Articles 11, 13, and 14.

<sup>41</sup> *Ibid*, Art. 15.

<sup>42</sup> *Ibid*.

<sup>43</sup> *Ibid*, Articles 10(3), 11 and 13.

<sup>44</sup> *Ibid*, Art. 50.

## Resources

- Islamic Republic of Afghanistan, Law on Prisons & Detention Centers, 2007. Unofficial English Translation by the United Nations Office of Drugs and Crime (UNODC): [http://www.unodc.org/documents/afghanistan/Government\\_of\\_Afghanistan\\_LAW\\_ON\\_PRISONS\\_AND\\_DETENTION\\_CENTERS\\_2010.pdf](http://www.unodc.org/documents/afghanistan/Government_of_Afghanistan_LAW_ON_PRISONS_AND_DETENTION_CENTERS_2010.pdf);
- Presidential Decree No. 85 (2012) amending the Law on Prisons to reflect the move of the GDPDC from the MOJ to the MOI.
- Draft Law on Prisons and Detention Centers. Provided by the U.S. Department of State Bureau of International Narcotics and Law Enforcement Affairs (INL), Corrections System Support Program (CSSP).
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- Ministry of Justice, Department of Juvenile Rehabilitation: <http://moj.gov.af/en/page/1680>.
- Regulation on the Children's Rehabilitation Centers.
- *The Situation of Detention Centers and Prisons in Afghanistan*, Afghanistan Independent Human Rights Commission (hereinafter AIHRC Report), 2009: [http://www.aihrc.org.af/media/files/Reports/Thematic%20reports/rep\\_25\\_jun\\_2010.pdf](http://www.aihrc.org.af/media/files/Reports/Thematic%20reports/rep_25_jun_2010.pdf).
- *Justice For Children: The situation for children in conflict with the law in Afghanistan*, United Nations Children's Fund (UNICEF), 2007: [http://www.unicef.org/media/files/Juvenile\\_Detention\\_Study\\_engl.pdf](http://www.unicef.org/media/files/Juvenile_Detention_Study_engl.pdf).
- *Afghanistan: Implementing Alternatives to Imprisonment, in line with International Standards and National Legislation Assessment Report*, UNODC Project: Prison System Reform in Afghanistan— Extension to Provinces (AFG/R87), May 2008: [http://www.unodc.org/pdf/criminal\\_justice/Afghanistan\\_Implementing\\_Alternatives\\_to\\_Imprisonment.pdf](http://www.unodc.org/pdf/criminal_justice/Afghanistan_Implementing_Alternatives_to_Imprisonment.pdf).