

# 8.2: Legal and Policy Framework for the Afghan National Police

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## Summary

This chapter provides an overview of the legal and policy framework documents for the Afghan National Police (ANP) including:

- A. The Police Law (2009);
- B. The National Police Strategy: SY1390 – 1395 (2011-2016);
- C. The National Police Plan: SY1392-1393 (2013-2015); and
- D. Ten-Year Vision for the Afghan National Police: SY1392-1402 (2013-2023).

## Introduction

“Over the last ten years the police have been used to fight [the] insurgency, which has confused their role and functions. Now the vision of the Ministry of Interior is to return [the] police to the traditional duties they perform under the Afghan Police Law and to cease their participation in combat operations that require heavy weapons.”<sup>1</sup>

The duties and responsibilities of the Afghan police are set forth in the Police Law. The strategic vision for a civilian police force is set forth in the Ten-Year Vision for the Afghan National Police, the five-year National Police Strategy, and a series of two-year National Police Plans.

## Legal Framework

The authority for the ANP is rooted in the Constitution of Afghanistan and the Afghan Police Law. The Police Law was “enacted on the basis of the provisions of Article 56, Article 75(3) and Article 134 of the Constitution of Afghanistan to govern the duties and authorities of the police in order to ensure public order and security.”<sup>2</sup>

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<sup>1</sup> Islamic Republic of Afghanistan, Ministry of Interior Affairs, Ten-Year Vision for the Afghan National Police: 1393-1402 (2013-2023), signed 22 April 2013 (hereinafter ANP Ten-Year Vision), p. 2:

<http://ipcb.files.wordpress.com/2013/06/13-04-02-ten-year-vision-english-final-version.pdf>.

<sup>2</sup> Police Law, Official Gazette No. 994, August 27, 2009, translated by NATO Training Mission-Afghanistan (NTM-A)/Combined Security Transition Command –Afghanistan (CSTC-A), Wasseel Ahmad Jamal Esq., Naikan Afghan Logistic/Service Company (hereinafter Police Law), Art. 1.

The referenced articles of the Constitution are:<sup>3</sup>

**Constitution of Afghanistan**

**Article 56:** Observance of the provisions of the constitution, obedience of laws and respect of public order and security shall be the duty of all citizens of Afghanistan.

Ignorance of the laws shall not be considered an excuse.

**Article 75(3):**

The Government shall have the following duties:

3. Maintain public law and order and eliminate every kind of administrative corruption.

**Article 134:**

Discovery of crimes shall be the duty of police, and investigation and filing the case against the accused in the court shall be the responsibility of the Attorney General's Office, in accordance with the provisions of the law.

The Attorney General's Office shall be part of the Executive organ and shall be independent in its performance.

The organization, authority as well as method of work of the Attorney General's Office shall be regulated by law.

Special law shall regulate discovery and investigation of crimes of duty by the armed forces, police and officials of national security.

The Ministry of Interior's (MOI's) vision is to return the police to the traditional duties set forth in the Police Law. The duties and responsibilities of the ANP are described in Article 5 of the Police Law. "This article is fundamental to an understanding of what is expected of a police officer under the Afghan Police Law."<sup>4</sup>

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<sup>3</sup> 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](http://supremecourt.gov.af/Content/Media/Documents/constitution2004_english3012201016726844.pdf).

<sup>4</sup> International Security Assistance Forces Afghanistan (ISAF) Joint Command (IJC) Information Dominance Center (IDC) Information Paper: Police in Afghanistan, November 2011, p. 4: <http://info.publicintelligence.net/ISAF-AfghanPolice.pdf>.

### **Police Law, Article 5:**

The police are obliged to execute the following duties:

1. Ensure and preserve public order and security;
2. Ensure individual and social security and protect their legal rights and freedoms.
3. Taking preventive measures to prevent crimes.
4. Timely crimes' detection and arrest the suspects and perpetrators according to the provisions of the law.
5. Combat against moral deviations, immoral social behavior and actions that disturb public tranquility.
6. Protect state's and private properties and assets, as well as those of the domestic, foreign, and international institutions and organisations.
7. Combat against the cultivation of poppies and marijuana, smuggling and drug trafficking, production, illegal consumption of the drug, prevent import and consumption of intoxicants.
8. Combat against organized crimes, corruption and insurgency.
9. Combat against terrorism and economical crimes in joint efforts with other security organizations according to the provisions of the law;
10. Cooperate within the scope of authority with state's administrations to execute their jobs according to the provisions of the law.
11. Regulating road traffic's affairs according to the provisions of the law.
12. Taking necessary measures and actions to struggle against unpredictable events and circumstances in cooperation with other state organizations
13. Help and assist victims of unpredictable events and natural disasters, to rescue persons and their properties.
14. Taking necessary actions and measures in a state of emergency in order to ensure public order and security according to the provisions of the law.
15. Gain public cooperation in the preventative and *ad hoc* operations.
16. Strengthening and maintaining the borders and take appropriate and necessary measures in coordination with Ministry of national defence during the occurrence of any movements on borders which are against the national sovereignty;
17. Control persons upon entrance and exit checkpoints on borders and at international airports of Afghanistan according to the provisions of the law.
18. Police as judicial officer has the following duties according to the provisions of the law:
  - Discover the crimes and take preventative actions to prevent crimes.
  - Preserve and keeping safe criminal witnesses and evidences;

- Arrest suspects, perpetrators and prevent from escaping and hiding according to the provisions of law;
  - Perform duty as to professionally identify, discover and find the crimes;
  - Police in criminal investigation cooperate with attorney general office and other justice administrations in accordance to criminal procedure code and other Afghanistan applicable laws;
  - In order to combat against drug, corruption and identifying criminal networks, police shall perform their covered activities in understanding with attorney general office;
19. Monitor border traffic and control the corresponding documents;
  20. Establish cooperation and contact with police of the aboard countries in accordance with treaties, international law and rules of Interpol.
  21. Collection of weapon, ammunition and explosive materials from persons, entities, and irresponsible groups, issuance of firearm’s carrying license to individuals and monitor use of the firearms license according to the provisions of the law
  22. Ensuring security of legal gatherings, strikes, and demonstrations and confront against the disturbance and confusion;
  23. Prevent and extinguish of the fire;
  24. Applying of the passport and foreigners journey and residence law provisions in Afghanistan within the extent of the police duty scope;
  25. In order to protect public order and combat against crimes, state’s organizations and official authorities are obliged to cooperate with police in their duty performance.

## Policy Framework

The Afghanistan National Development Strategy (ANDS) is the “plan and management framework for achieving the objectives of the [Afghanistan] Compact,” the successor document to the Bonn Agreement.<sup>5</sup> As discussed in Chapter 1.1, the ANDS sets forth “the strategic priorities and the policies, programs and projects for achieving the [Afghan] Government’s development objectives.”<sup>6</sup> It covers 17 sectors and six cross-cutting sectors, which are organized under three pillars: (I) Security; (II) Governance, Rule of Law and Human Rights; and (III) Economic and Social Development.<sup>7</sup> “Both the [Afghanistan] Compact and the ANDS

<sup>5</sup> Police-building in Afghanistan: A Case Study of Civil Security Reform, by Tonita Murray, International Peacekeeping, Vol. 14, Issue 1, February 2007, p. 118 (hereinafter Police-building in Afghanistan): <http://saint-claire.org/resources/Police%20Building%20in%20Afghanistan.pdf>.

<sup>6</sup> Ibid.

<sup>7</sup> See Afghanistan National Development Strategy (ANDS), June 2008, Part I, Chapter 1: The ANDS: An Overview, p. 5: [http://www.embassyofafghanistan.org/documents/Afghanistan\\_National\\_Development\\_Strategy\\_eng.pdf](http://www.embassyofafghanistan.org/documents/Afghanistan_National_Development_Strategy_eng.pdf); see Chapter 1.1 for information on Pillar II of the ANDS. The sectors include: Security; Justice, Governance, Public

make it clear that the first priority of the police and other elements of the security sector is to establish national security and enforce laws against terrorist and the approximate 1,800 identified illegal armed groups tied to local power holders. The next security priority is to stem the drug problem. Only then will civil security be considered.”<sup>8</sup> The ANDS provides that the “long term strategic vision for the security sector is to ensure security of state, persons and assets through the provision of a costed, integrated and sustainable national security infrastructure and law and order policy.”<sup>9</sup> To that end, the Government of Afghanistan drafted the National Security Policy, which contains two interrelated strategies – the National Security Strategy and the Security Sector Reform Strategy. The National Security Policy is implemented through the Security Sector Reform (SSR) program.<sup>10</sup>

One of the security sector strategic benchmarks anticipated by the end of 2010 (Jaddi 1389) was that there would be “a fully constituted, professional, functional and ethnically balanced Afghan National Police and Afghan Border Police with a combined force of up to 82,180 [that would] be able to effectively meet the security needs of the country and [would] be increasingly fiscally sustainable.”<sup>11</sup> This benchmark was not met. In July 2010, the Government of Afghanistan presented the *Kabul Process*, which provides the current framework for partnership and mutual accountability for the Afghan Government to assume full responsibility for security, development, and governance.<sup>12</sup> The Afghan Government’s prioritized requirements of the ANDS are represented by new benchmarks in the Kabul Communiqué and through a series of National Priority Programs.<sup>13</sup> The Ministerial-level Security Cluster developed the Security Sector’s National Priority Program entitled “Afghanistan Peace & Reintegration Program” (APRP).<sup>14</sup> The APRP identifies three pillars:<sup>15</sup>

The first is the strengthening of our security and civilian institutions of governance to promote peace and reintegration. The second is the facilitation of the political conditions and support to the Afghan people to establish an enduring

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Administration Reform & Human Rights; Religious Affairs; Energy; Transportation; Water Resource Management; Information and Communication Technology; Urban Development; Mining; Education; Culture, Media and Youth; Health and Nutrition; Agriculture and Rural Development; Social Protection; Refugees, Returnees and Internal Displaced Persons; Private Sector Development and Trade. The cross-cutting sectors include: Capacity Building; Gender Equity; Counter Narcotics; Regional Cooperation; Anti-Corruption; and Environment.

<sup>8</sup> Police-building in Afghanistan, *supra* note 5, p. 118.

<sup>9</sup> ANDS, *supra* note 7, p. 53.

<sup>10</sup> *Ibid*, pp. 53 and 55.

<sup>11</sup> *Ibid*, p. 55.

<sup>12</sup> See The Kabul Process: <http://www.thekabulprocess.gov.af/>.

<sup>13</sup> Kabul International Conference on Afghanistan Communiqué: A Renewed Commitment to the Afghan People, 20 July 2010, Preamble para. 1: <http://www.isaf.nato.int/images/stories/File/official-texts/Communique%20-%20Kabul%20International%20Conference%20on%20Afghanistan%20-%2020%20July%202010.pdf>

<sup>14</sup> See ANDS Prioritization & Implementation Plan Mid-2010 – Mid-2013: <http://www.mfa.gov.af/ands-pip-english.pdf>; see also The Kabul Process, Clusters/NPPS: <http://www.thekabulprocess.gov.af/index.php/clusters--npps>; see also Chapter 1.1: Afghanistan’s Rule of Law Policy and Legal Framework Instruments.

<sup>15</sup> Afghanistan Peace & Reintegration Program (APRP) 2010, p. 1: <http://www.thekabulprocess.gov.af/images/npps/security/Security-APRP-Final.pdf>.

and just peace. The third is enhancement of national, regional and international support and consensus to foster peace and stability.

## National Police Strategy 2011-2016

In December 2010, the MOI issued its five-year National Police Strategy (NPS).<sup>16</sup> The NPS provides “strategic guidance for the continued development and operational capability of the [MOI] to meet the current and future challenges of stabilization and security of [Afghanistan].”<sup>17</sup> The NPS outlines “the missions, roles and responsibilities of the MOI” and sets forth the following vision and strategic priorities:<sup>18</sup>

**Minister of Interior Affairs Vision.** In five years the people of Afghanistan will consider their police to be a valued institution which is honest, accountable, brave, impartial, and striving to create a secure and lawful society.

**Our long term vision** is that the ANP will uphold the Constitution of Afghanistan and enforce the prevailing laws of the country to protect the rights of all people of Afghanistan. The police will perform their duties in a professional, non-discriminatory, accountable and trustworthy manner.

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### Priorities

In support of the national interest, the strategic priorities of the Ministry of Interior for the Solar Years 1390 to 1395 [2011-2016] are as follows:

1. Training and Education.
2. Develop police leadership.
3. Anti corruption.
4. Improve the living standards and working conditions of the police.
5. Review and modify the *tashkil*.
6. Develop a system of rewards and punishments.

In support of each strategic priority, the NPS defines a number of objectives.<sup>19</sup> These objectives are further expanded upon with detailed tasks in the National Police Plan, discussed below.

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<sup>16</sup> Islamic Republic of Afghanistan, Ministry of Interior Affairs (MOI), Deputy Minister for Strategy and Policy Department of Strategy, Afghan National Police Strategy 1389 (December 2010)(hereinafter National Police Strategy), p. 1: <http://ipcb.files.wordpress.com/2012/01/nps-final-version.pdf>. The Strategy is consistent with the Afghan Constitution, the Police Law, the ANDS, and the draft National Security Policy.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid, pp. 1 & 12-13.

<sup>19</sup> Ibid, pp. 14-21.

The NPS recognizes the unique security situation in Afghanistan. “In addition to normal criminal threats similar to most nations, such as poverty, illiteracy, and porous borders, Afghanistan faces five major security threats:

- The externally supported terrorist threat and armed opposition to the Government.
- Unlawful governance and corruption.
- The illegal drug trade.
- Organized crime.
- Illegally armed groups.”<sup>20</sup>

The NPS aims to address the current security threats “while building for the long term end-state of the [Afghan National Security Forces (ANSF)].”<sup>21</sup> To that end, the NPS defines the police mission and duties as follows:<sup>22</sup>

**Mission:** The ANP is primarily responsible for maintaining civil order and law enforcement. The police will work with the people to actively combat crime and disorder (including terrorism and illegal armed activity); prevent the cultivation, production and smuggling of narcotics; and fight corruption. The police will ensure the sovereignty of the State and protect its borders.

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Specifically, the following missions and roles will be accomplished by the Afghan National Police:

1. Maintain the rule of law.
2. Prevent and counter terrorist activities.
3. Ensure, maintain, or restore civil order and security.
4. Protect the legal rights and freedoms of individuals and society.
5. Deter, prevent, detect, report, and investigate crime.
6. Prevent and counter corruption, illegal narcotics, and illegally armed groups.
7. Protect the borders.

The NPS identifies three primary focus areas: 1) civilian policing; 2) institutional reform; and 3) peace and reintegration.<sup>23</sup> Civilian policing is described as “a crucial strategic concept that is based on intelligence led, proactive community collaboration. It is aimed at controlling crime, reducing the fear of criminal activity, improving the quality of life of all Afghans, and enhancing

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<sup>20</sup> Ibid, p. 4.

<sup>21</sup> Ibid, p. 10.

<sup>22</sup> Ibid, p. 11 and pp. 23-24.

<sup>23</sup> Ibid, pp. 11-12.

the legitimacy of police services. Civilian policing requires greater accountability of police, greater involvement of citizens, and greater concern for human rights.”<sup>24</sup>

The NPS recognizes the need for a “clear, transparent and balanced delineation [...] between the police departments dedicated to counter insurgency, and those charged with law enforcement and civilian policing.”<sup>25</sup> The police, however, are still “at the forefront of the counter-insurgency.”<sup>26</sup> The role of the police in counter-insurgency operations is discussed in Chapter 8.4.

## National Police Plan 2013-2015

In support of the National Police Strategy, the MOI developed a two-year National Police Plan (NPP). The first NPP covered the years 2011-2013.<sup>27</sup> The first NPP reiterated the six priorities set forth in the National Police Strategy and assigned major tasks for each MOI Deputy Minister and independent departments in order to meet the objectives supporting the stated priorities.<sup>28</sup> A new NPP was adopted in March 2013.<sup>29</sup> The current NPP sets forth 10 new priorities/objectives for the MOI:<sup>30</sup>

In support of the National interests that are stated in the national police strategy, the Ministry’s priorities for the period Solar Year (SY) 1392-1397 (2013-2018) are as follows:

1. Enhance and make sure of effectiveness of intelligence and detective organizations with electronic crimes (internet crime).
2. Counter administrative corruption and counter narcotics.
3. Afghan national police institutional reform with respect to human rights and gender.
4. National Police Institutional Reform with respect to human laws and gender.
5. Establishing management (command and control) of training and education and development of leadership by strategic planning.
6. Reducing casualties and personnel attritions as well as improv[ing] the living conditions of the National police.
7. Improving community policing and building trust as well as professionalizing of National Police.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid, p. 9.

<sup>26</sup> Ibid, p. 34-35.

<sup>27</sup> Afghan National Police Plan Solar Years (SY) 1390-1391 (April 2011), Translation Provided by the MICC, 5 April 2011: <http://ipcb.files.wordpress.com/2012/01/npp-12-21-dual-column-english-dari.pdf>.

<sup>28</sup> Ibid.

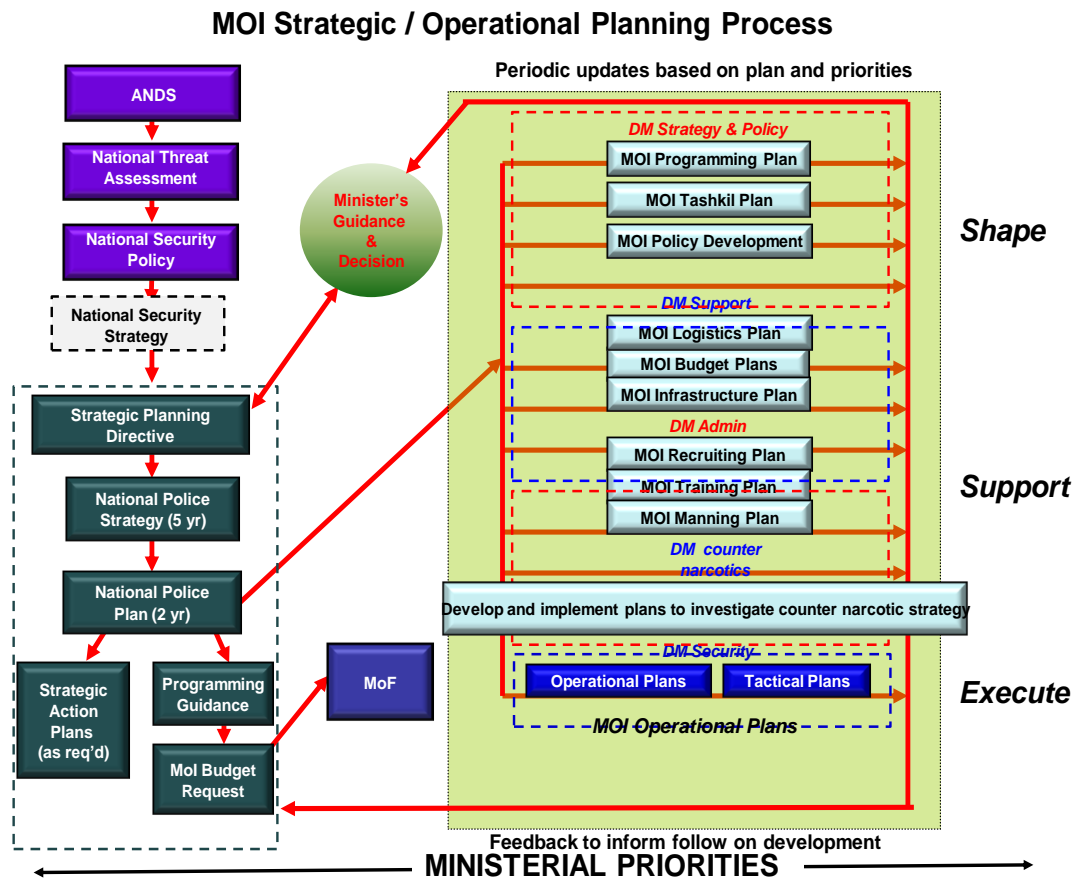
<sup>29</sup> Afghan National Police Plan Solar Years (SY) 1392-1393, March 2013, provided by CSTC-A Ministry of Interior Ministerial Advisory Group (MOI-MAG).

<sup>30</sup> Ibid, p. 7.



8. Focusing on Transition process and its continuation.
9. Modification and retrain of [prisoners], focusing on the prisons and detentions conditions, disarming of irresponsible people and similar security organizations.
10. Covering the borders and equipping of border forces.

The NPP expands upon each strategic objective assigning “major tasks for each of the [MOI] Deputy Ministers and independent departments to complete during the next two years. . . . Each of these organizations is responsible for preparing operational plans necessary to implement these major tasks.”<sup>31</sup> A chart depicting the operational planning sequence as set forth in the NPP is depicted below. In addition to the operational plans, each deputy minister and independent directorate is required to provide a quarterly report to the Minister of Interior indicating progress, problems and recommendations.<sup>32</sup>



<sup>31</sup> Ibid, p. 5. The MOI Deputy Ministers (DM) tasked include the DM for Security, DM for Strategy and Policy, DM for Administration, and the DM for Counter Narcotics.

<sup>32</sup> Ibid & Appendix B.

## Ten-Year Vision for the Afghan National Police 2013-2023

“Within ten years the Afghan National Police (ANP) will become a unified, capable, and trustworthy civilian police service. Its primary responsibility will be to enforce the rule of law; maintain public order and security; detect and fight crimes; control borders; protect the rights, assets and freedoms of both Afghans and foreigners in Afghanistan according to national laws; and operate without ethnic, gender, language or religious discrimination.”<sup>33</sup>

In April 2013, the MOI released its Ten-Year Vision for the Afghan National Police:<sup>34</sup>

The purpose of this ten-year vision is to describe the status we want the ANP to have achieved in ten years, and to specify both the strategic and long-term objectives of the Ministry of Interior (MOI) for the continuing development of the ANP, and the degree of restructuring that will be necessary for the improved performance of police duties and responsibilities. The vision will give the Afghan public a clear view of the future of policing, and officials of the various MOI departments will be able to use it to determine their relevant operational and tactical-level objectives, and to develop their operational plans.

In order to ensure implementation of this vision within the proposed time, this document will be supported by a series of two-year police plans that will contain the details of the programs and strategies required for achieving this vision. Necessary changes in structures of [the] MOI will be made in accordance, and for realizing, this vision.

The Ten-Year Vision is divided into three parts. The first part addresses: community policing; the need for transparency, accountability and responsibility; fighting corruption; the mission of the ANP and its relations with the justice and security sector; and a need to review the existing police related laws.<sup>35</sup> A key point is the focus on community policing and away from fighting the insurgency. The “vision of the Ministry of Interior is to return [the] police to the traditional duties they perform under the Afghan Police Law and to cease their participation in combat operations that require heavy weapons.”<sup>36</sup>

*We have to civilianize the ANP with concentration on community policing while we are facing a robust insurgency with safe havens beyond our borders. The*

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<sup>33</sup> ANP Ten-Year Vision, *supra* note 1, p. 1.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*, p. 2.

*ANP may need to remain kinetic, but at the same time they must return to their main civilian policing responsibilities under the Afghan Police Law.*<sup>37</sup>

The responsibilities of the ANP as established in Article 5 of the Police Law, and provided above, are reiterated and reinforced in the Ten-Year Vision.<sup>38</sup>

The second part of the Ten-Year Vision deals with the distinction between the MOI's policy and strategic responsibilities and its executive and operational responsibilities. A key objective in this section is a unified police force. "In the next ten years, the ANP will be a unified and flexible police service with different units used proportionate to the responsibilities and operational and budgetary needs of the ANP. The different police forces, including the Uniformed Police, Anti-Crime Police, [Afghan National Civil Order Police], Border Police, Counter Narcotics Police and special force units will perform their duties in accordance with the Afghan Laws and the needs of Afghan society. But the structure of these services will be flexible so that it will be possible for officers and [noncommissioned officers] to be shifted between different pillars of the ANP."<sup>39</sup> The ANP departments and their roles are discussed in the next chapter.

The third part of the Ten-Year Vision addresses MOI policies including recruitment, career paths, professional development, health and welfare. The current illiteracy rate of the ANP is unknown, but it is conservatively estimated at over 70 percent; the national literacy rate is about 28 percent.<sup>40</sup> As of November 2013, only one percent of the ANP - 1,557 - were women.<sup>41</sup> The MOI envisions, along with other objectives, that within 10 years 10 percent of the ANP and MOI personnel will be women and all of the ANP will be literate. It should be noted that since the adoption of the Ten-Year Vision a new Minister of Interior has been appointed. The Ten-Year Vision continues to be the strategic vision for the ANP, but it remains unclear if it will be re-written.<sup>42</sup>

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<sup>37</sup> Ibid, p. 15.

<sup>38</sup> Ibid, pp. 4-5; See also Police Law, *supra* note 2, Art. 5.

<sup>39</sup> ANP Ten-Year Vision, *supra* note 1, p. 10.

<sup>40</sup> The current available statistics lump the ANA and ANP together reporting on the overall ANSF total recruits who have completed literacy training. Although the number of recruits in literacy training is broken down between ANA and ANP, there is no method to determine the overall percentage of literacy within the ANP. See Department of Defense Report on Progress Toward Security and Stability in Afghanistan, November 2013 (hereinafter DOD Progress Report NOV 2013), p. 42: [http://www.defense.gov/pubs/October\\_1230\\_Report\\_Master\\_Nov7.pdf](http://www.defense.gov/pubs/October_1230_Report_Master_Nov7.pdf); see also Chapter 8.6: Challenges Facing the Afghan National Police.

<sup>41</sup> Ibid, DOD Progress Report NOV 2013, p. 84.

<sup>42</sup> Ibid, p. 40. Mohammed Omar Daudzai was appointed Minister of Interior by President Karzai on September 1, 2013, and confirmed by parliament on September 16, 2013. See MOI, Biography of Minister of Interior Afghanistan (accessed Nov. 6, 2013): <http://moi.gov.af/en/page/5718/5719>.

## Conclusion

The ANP currently performs both traditional police duties and counter-insurgency operations.<sup>43</sup> As set forth in the police strategies, the MOI seeks to transform the ANP from a militarized force into a unified civilian policing unit. The MOI recognizes the challenge it has placed on itself to develop the ANP within 10 years and the need for ongoing international support. “Achieving the vision will [require] substantial financial and technical resources that are beyond [the] capacity of the Afghan Government to generate, but we hope our international partners who have supported Afghanistan in the last ten years will continue their financial and technical support through the decade of transformation and facilitate us in achieving this vision.”<sup>44</sup> The next three chapters discuss the organization of the ANP and each department’s responsibilities, the role of the ANP in counter-insurgency operations, and the international community’s support to the ANP.

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<sup>43</sup> See Department of Defense Report on Progress Toward Security and Stability in Afghanistan, July 2013, p. 78: [http://www.defense.gov/pubs/Section\\_1230\\_Report\\_July\\_2013.pdf](http://www.defense.gov/pubs/Section_1230_Report_July_2013.pdf).

<sup>44</sup> Ibid.

## Resources

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[http://supremecourt.gov.af/Content/Media/Documents/constitution2004\\_english3012201016726844.pdf](http://supremecourt.gov.af/Content/Media/Documents/constitution2004_english3012201016726844.pdf).
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