



Brief Notes on the Structure of the Military Justice System

UNAMA
Rule of Law
Unit

Introduction

This notes provides for a brief overview of the structures and functions the Military Justice system within the overall structure and functioning of the judiciary.

The new Constitution defines the structure of the Judiciary in its Chapter 7. The following articles are of particular relevance.

Article 116

The judicial branch is an independent organ of the state of the Islamic Republic of Afghanistan.

The judicial branch consists of the Supreme Court, High Courts, Appeal Courts. Law determines structure of authorities of which.

The Supreme Court as the highest judicial organ, heads the judiciary organ of the Islamic Republic of Afghanistan.

Article 122

No law, under any circumstance, can transfer a case from the jurisdiction of the judicial branch to another organ as has been determined in this Constitution.

This provision does not apply to establishing special Courts stated in Articles 69 and 78 and 127 of this Constitution and military courts.

Law regulates the structure and authority of these courts.

Article 132

Judges are appointed with the recommendation of the Supreme Court and approval of the President.

The appointment, transfer, promotion, punishment, and proposals to retire judges are within the authority of the Supreme Court in accordance with the law.

The Supreme Court shall establish the General Administration Office of the Judicial Power for the purpose of better arrangement of the administration and judicial affairs and insuring the required improvements.

Article 134

Discovery of crimes is the duty of the police and investigation and prosecution are conducted by the Attorney's Office in accordance with the provisions of the law.

The Attorney's Office is part the Executive branch, and is independent in its performances.

Law regulates the structure, authority, and activities of the Attorney's Office.

A special law regulates discovery and investigation of crimes related to the armed forces.

In particular, the administration of justice in Afghanistan includes: the Supreme Court, the Attorney General Office, and the Ministry of Justice.

A) Supreme Court:

All the courts in Afghanistan are functioning under the authority and power of Supreme Court. The courts include three categories.

1. Civilian Courts
2. Armed Force Court
3. National Security Court

Some other specialized Courts are also functioning under the authority of Supreme Court such as Juvenile court, Family Court, Land and property Dispute Court, etc

B) Attorney General Office

The attorneys General Office in Afghanistan can be studied in three categories like the courts:

1. Civilian Attorney
2. Armed Force Attorney
3. National Security Attorney

C) Ministry Of Justice

In the context of Military Justice, among the various departments of the Ministry of Justice, the Prison Department is of relevance.

Military Justice

The military justice system includes the Armed Forces justice system and the National Security justice system.

1) Armed Force Justice

- A) Armed Force Court
- B) Armed Force Attorney

2) National Security Justice

- A) National Security Court
- B) National Security Attorney

Armed Force Justice

A) Armed Force Court

According to Article 12 and 17 of Law on Jurisdiction and Structure of Courts in Afghanistan (published in Official Gazette no 739 dated 30 March, 1991) Military courts are functioning under supervision and power of the Supreme Court.

Article 12

Supreme court is the highest judiciary organ in the country; it is on the top of judiciary unitary system hierarchy and is consisting of:

- ... (omissis)
- Board of military cases

Article 17

Board of military cases in Supreme Court includes:

- Tribunal for the crime of Officers and non commissioned officers
- Tribunal for the crime of soldiers

The *Tribunal for the crime of Officers and Non-Commissioned Officers* and *Tribunal for the crime of soldiers* function as cassation or final court in Kabul. An Appeal Court in Kabul handles the appeals for both Officers and Non-Commissioned Officers and soldiers.

Primary Court of Armed Force

In first instance, the territorial competence for crimes committed by Officers and Non-Commissioned Officers and soldiers is divided between Kabul and the provinces.

Kabul

In Kabul the competence is with the the following courts:

1. Primary Court of Ministry of Defense
2. Primary Court of Central Army Corp.
3. Primary Court of Frontier Force
4. Primary Court of Air Force and Air Defense
5. Primary Court of Ministry of Interior

Each Court is competent to handle cases concerning Officers and Non-Commissioned Officers and soldiers within its own structure. For instance Ministry of Defense Primary Court has jurisdiction on MoD Officers and Non-Commissioned Officers and soldiers. The Ministry of Interior Primary Court has jurisdiction on MoI Officers and Non-Commissioned Officers and soldiers.

Province

In each province one Primary Military Court is functioning, but all cases are referred to Kabul for Appeal and Final decision-making.

The crimes committed by personnel on duty will be adjudicated by Military Courts according to the Law on military crimes.

If military personnel commit a crime, which is not related to their duties and military issues, and have the nature of common crimes, it will be adjudicated according to Criminal Code by Civilian Court.

The following laws are used and referred by Armed force Courts

- Law on structure jurisdiction of courts in Afghanistan published in Official Gazette 739 dated 11 Hamal 70(30 March 1991
- Law on Military Crimes published in Official Gazette No 604 dated 16 Hamal 1365 (4 Aril 1986)
- Interim criminal procedure code published in official Gazette No 820 dated February /25/2004
- Penal Code published in Official Gazette 347 dated 7 October 1976

B) Armed Forced Attorney

In both the *Tribunal for the crime of Officers and Non-Commissioned Officers* and *Tribunal for the crime of soldiers* - functioning as cassation or final court in Kabul – there is an Supreme Court Attorney of Armed Force. In the Appeal Court in Kabul, which handles the appeals for both Officers and Non-Commissioned Officers and soldiers, there is one *Appeal Attorney of Armed Force*.

Primary Attorney of Armed Force

Armed force Attorneys are present in Kabul as well as in the provinces.

Kabul

In first instance, the competence for crimes committed by Officers and Non-Commissioned Officers and soldiers is with the following Attorneys:

1. Primary Attorney Of Ministry of Defense at AG headquarters
2. Primary Attorney of Central Army corp.
3. Primary Attorney of Frontier Force
4. Primary Attorney of Air Force and Air Defense
5. Primary Attorney of Ministry of Interior

Provinces

In each province one primary Armed Force Attorney is functioning.

Category A Provinces, including Hirat, Balkh, Kandahar, Paktia, and Kundoz, have 8 attorneys. Category B provinces, including Khost, Ghazni, Logar, Paktia, Neemrooz, Ghor, Kunar, Helmand, Faryab, Badghis, Kapisa, Noorestan, Laghman, Maidan, Wardak, Takhar, Samangan, Urozgan, Zabul, Baghlan, Jowzjan, Bamian, Badakhshan, Pnjsheer, and Daikundi, have 6 attorneys.

All Armed Force Attorneys in the provinces are functioning as a Primary Attorney For Appeal and final investigation all cases are referred to Appeal Military Attorney in Kabul.

The crimes committed by the personnel of armed force (Military and Police) while performing their work (on duty) and in the garrison will be prosecuted by Military Attorneys.

If military personals commit a crime which is not related to military issues and is not committed during the performance of their work will be prosecuted according to Criminal Code by civilian court.

The following laws are used and referred by Armed force Attorney

- Law on structure and competence of attorney in Afghanistan published in Official Gazette 738 dated 10 Hamal 70(29 March 1991)
- Law on Military Crimes published in Official Gazette No 604 dated 16 Hamal 1365 (4 Aril 1986)
- Interim criminal procedure code published in official Gazette No 820 dated February /25/2004
- Penal Code published in Official Gazette 347 dated 7 October 1976

Detention

Detention centers of Armed Force are under supervision of Ministry of Justice.

National Security Justice

In general, the National Security justice system has jurisdiction on both individuals committing crimes as defined by the law (see below references to art 75 and 37), and on its own personnel in case of commission of any crime while on duty.

As an exception, military personnel working within the national security justice system in case of commission of a crime while on duty will have its case heard in first instance by the national security court, but the appeal by the Armed Forces Appeal Court.

The procedures for the administration of national security justice are regulated by the Law on "Detection and Investigation of Crimes" (Official Gazette # 424, dated 4 April 1979).

A) National Security Court

The competence of National Security Court is provided in Article 75 of Law on Structure, and Competence of the Courts in Afghanistan, which is published in Official Gazette 739, dated 11 Hamal 1370 (March 30, 1991).

Article 75

The decision-making of the following cases is under the competence of the Primary Court for the Crimes Against Internal and External Security:

- The cases arisen from crime against internal and external security
- The case arisen from the crimes against independence, national sovereignty and territorial integrity.

The National Security Court is functioning only in Kabul and consists of:

1. Primary National security court
2. Appeal National Security Court
3. Cassation or Final National Security Court

There is no National Security Court in the provinces, and national security cases in primary level are in principle decided by public security section of civilian courts. However, in practice, civilian courts might consider not to handle some cases due to external influences or security concern. In these cases either a delegation is sent from Kabul to the province or the case is transferred ex officio to Kabul. The decision not to handle a case at the provincial level is normally taken in consultation and with the authorization of Kabul.

In all the circumstances, the appeal and cassation are in Kabul.

The following laws are used and referred by National Security Courts

- Law on structure jurisdiction of courts in Afghanistan published in Official Gazette 739 dated 11 Hamal 70(30 March 1991
- Law on crimes against internal and external security published in official Gazette No 649 dated. October 22, 1987
- Law on Military Crimes published in Official Gazette No 604 dated 16 Hamal 1365 (4 Aril 1986)

- Interim criminal procedure code published in official Gazette No 820 dated February /25/2004
- Penal Code published in Official Gazette 347 dated 7 October 1976
- Law on “Detection and Investigation of Crimes” (Official Gazette # 424, dated 4 April 1979)

B) National Security Attorney

The competence of National Security Attorney is provided in Article 37 of Law on structure, Jurisdiction and Power of Attorney in Afghanistan, which is published in Official Gazette 738, dated March 30, 1991.

Article 37

The investigation regarding the following cases is within the competence of Primary Attorney for the crimes against internal and external security:

1. The cases arisen from crime against internal and external security
2. The case arisen from the crimes against independence, national sovereignty and territorial integrity.

Kabul

In Kabul there are the following national security attorneys:

- 1 National security Primary attorney
- 2 National Security Appeal attorney
- 3 National Security Supreme Court Attorney (final)

Provinces

In each province one National Primary Attorney is functioning. In the Category A provinces, including Nangarhar, Kunduz, Balkh, Parwan, Herat, Kandahar, and Paktia, there are 8 attorney per province. In the Category B provinces, including Baghlan, Ghazni, Jowzjan, Helmand, Fera, Faryab, Takhar, Badakhshan, Kapisa, Maidan Wardak, Logar, Laghman, Kunar and Khost, Zabul, Orozgan, Ghor, Badghis, Sari Pul, Samangan, Nooristan and Bamian, there are 6 professionals.

The following laws are used and referred by National Security Attorney

- Law on structure and competence of Attorney in Afghanistan published in Official Gazette 738 dated 11 Hamal 70(29 March 1991)
- Law on crimes against internal and external security published in official Gazette No 649 dated. October 22, 1987
- Law on Military Crimes published in Official Gazette No 604 dated 16 Hamal 1365 (4 April 1986)
- Interim criminal procedure code published in official Gazette No 820 dated February /25/2004
- Penal Code published in Official Gazette 347 dated 7 October 1976

Detention

Detention centers of National Security are under supervision of the National Security Department.