

AFGHANISTAN JUSTICE SECTOR SUPPORT PROGRAM

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J S S P

**THE STATE OF REGIONAL JUSTICE SYSTEMS
IN BALKH, HERAT AND NANGARHAR**

REPORTED BY THE JSSP-REGIONAL TEAMS

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EXECUTIVE SUMMARY

Background: The main objective of the Justice Sector Support Program-Regional (JSSP-R) mission is to increase the overall capabilities of Afghan police and prosecutors to investigate crimes, prepare cases for court, and effectively prosecute violators.

This began with a three-month effort to develop a fuller understanding of the formal and informal/customary justice systems in Balkh, Herat and Nangarhar provinces. This assessment was critical in developing the necessary understanding of the formal and informal systems, developing professional relationships with Afghan counterparts, and developing plans to guide the long-term justice improvement effort. In conducting this assessment, JSSP-R drew upon the knowledge and experience of international and Afghan sources.

Scope: The JSSP-R assessment instrument was created based upon the requirements of the Department of State task order which included investigative and prosecutorial issues, and a review of informal justice mechanisms. The JSSP-R teams also gauged the knowledge and understanding of criminal justice issues, as well as the political will to effectively use the training and investigative tools that are being offered by the JSSP-R program.

Assessment Process: Each JSSP-R team consisted of three U.S. lawyers (Advisors), one Afghan Legal Consultant (ALC) and three interpreters. The Advisors used interviews, case review, training review, an inventory of equipment and facilities available, and a review of the form and role of informal/customary justice. The Advisors reviewed the practical impact of current legislation on the ability to effectively conduct investigations and prosecute offenders. They also assessed the capacity of each part of the justice sector to implement the legislation and fulfill their responsibilities in the process.

Assessment Report/Overall Findings: Each of the JSSP-R advisor teams documented its findings in its regional assessment. The following is a summary of the assessment findings, specific weaknesses in the various phases of the investigative and prosecutorial processes from the initial police response through final disposition of the criminal case, as well a set of recommendations from the regional teams. While the three regions targeted in this assessment are culturally, politically, and geographically diverse, certain themes stand out that are common to all. In all three provinces the criminal justice system is largely dysfunctional. This is due to several factors.

There is an overall lack of basic technical and practical skills. There is also a generally low level of legal education and skills training. Administrative systems for filing, case management, and case monitoring also function at an extremely low level. There are significant physical and logistical deficits as well. The courts, police and prosecutors all suffer from a lack of basic infrastructure. They typically had insufficient office space and an irregular supply of electricity. Poor working conditions include long hours for very low pay and a lack of modern equipment – whether for forensic analysis, transportation, or document management.

In spite of these deficits, most police and prosecutors are motivated and attempt to perform professionally. However, they are yoked to a system of bribery and external influence which undermines public trust. Individuals in these institutions report that the system suffers from a near-total breakdown of communication between the various entities within the system.

Public Perceptions: The public perceives the formal criminal justice system to be corrupt and dysfunctional. Because the police are the most visible representatives of that system, police-community relations are extremely poor.

Police Capacity: The formal rules and structures in the police agencies are relatively straightforward, although compliance is not uniform. The police system is currently undergoing significant organizational, pay, and rank reforms. Corruption is reported to have a significant influence. Education levels are low and most officers have not graduated high school. Many are illiterate. The investigative capacity of the police is limited, although they are beginning to receive training from international donors. But no specialized training in investigation, coordination, or cooperation with the prosecution has been provided before. Police investigation is limited by lack of equipment and training. Police lack incentive to gather evidence since the prosecution and the courts rely on written statements of witnesses to determine guilt or innocence. Police officers do not take an active role in crime detection and rely instead on citizen reports. However, citizens are reluctant to report cases due to perceived incompetence and corruption.

Procedural Compliance: Both police and prosecutors have a pervasive misunderstanding of the Interim Criminal Procedure Code (ICPC), and believe that it creates a bright line of 72 hours for transfer of a case from the police to the prosecutor. Police and prosecutors report no history of cooperation and communication. These factors combine to further isolate the two groups from one another. There is very little integration of administrative resources, whether horizontally (between police and prosecutors on the provincial level), or vertically (within the police or prosecutor's offices).

Access to Justice: The vast majority of defendants are illiterate and ignorant of their rights. Defendants are not brought to court within statutory time requirements because of logistical or other issues. Defendants are detained beyond statutorily permissible periods. They are not released from custody because judges believe these problems are institutional and unavoidable. Women and girls are convicted of adultery and jailed for complaining of rape, or if they run away from home for any reason.

Prosecution Capacity: The formal rules and structures in the prosecutor's office are relatively straightforward, but compliance is not uniform. Prosecutor education and experience varies, and there is little continuing legal education provided by the office. Lack of resources, both human and physical, limit prosecutorial ability to perform investigations at an acceptable level. While prosecutors attempt to adhere to the requirements of the Constitution, Penal Code, and ICPC, there are few checks in the system to ensure this. There are neither office-wide systems for case administration nor resources to support such a system.

Defense Resources: There is neither a functioning public defense system nor an active private bar in the provinces assessed. There are some local attorneys and non-lawyers willing to provide defense services, but their level of competence is low. Defense competence is higher in Herat and Balkh where some international and Afghan NGOs are providing indigent defense on a limited scale. Most criminal defendants have no access to competent representation. The actions of a few advocates have had little positive impact on the overall functioning of the criminal justice system.

Judicial Capacity: The judicial system suffers from a serious lack of resources. Many rural districts do not have courthouses. Judges and staff are grossly underpaid, and some court employees have not been paid for several months. Courts lack most basic supplies and have inadequate filing and record storage systems. Donors are working to remedy some of these problems – most significantly, by building new courthouses in Herat and Jalalabad – but the systemic problems will remain.

The lack of education and training of judges and staff is severe, which often results in failure to follow statutory procedures. Many judges, both at courts of first impression and the appellate level, are illiterate. Witnesses, whether for the prosecution or defense, are rarely called. Instead, judges typically rely on witness statements prepared by the prosecutor. Influential individuals, governmental and otherwise, often interfere in the judicial process. All of these factors affect the progress, integrity and outcome of cases.

Informal Justice System: Citizens prefer to have their grievances addressed through the informal system of jirgas or shuras, which are local dispute resolution tribunals composed of local elders. These have historically provided justice in a country where decentralized authority is both the norm and its primary national defense mechanism. The informal system is very active and has quasi-official status, having been organized along the same lines as the government - and in one case organized by a government ministry. There is substantial interplay between the formal and informal systems. Both systems refer cases to the other and endorse each other's authority over certain matters. Shuras appear to be largely focused upon civil matters and have no obvious mechanism beyond consensus to enforce their decisions. Courts pay significant deference to the decisions of a shura. These jirgas or shuras apply a combination of mediation, arbitration and peer pressure to provide a somewhat transparent, immediate, and responsive remedy for civil and criminal wrongs. In criminal cases it is not unusual for prison sentences to be assessed by the court and victim compensation awarded by a shura, with both being taken into account by the other. Thus, the public believes that the informal justice system is more effective, low-cost, and less corrupt than the formal system. A much more visible and problematic use of traditional justice is found in the formal courts, where religious doctrines of Sharia are routinely substituted for statutory law and enforced with the full coercive weight of the formal system.

Need for Reform: Ranking individuals in the three provinces recognize the need for reform, and have made a commitment to work with JSSP-R to seek that reform. Training and mentoring will address issues identified in the assessment. Police and prosecutors alike need training in technical and legal skills, including how to secure crime scenes, collect and preserve physical evidence, and build a case. The structure of the training will also address deficits in cooperation

and communication between police and prosecutors, as well as ethics and professionalism.

INTRODUCTION

I. Background

The main objective of the Justice Sector Support Program-Regional (JSSP-R) mission is to increase the overall capacity of the Afghan police and prosecutors to investigate crimes, prepare cases for court, and effectively prosecute violators. This expansion of the Kabul-based JSSP to include JSSP-R teams provides the mechanism for improving police and prosecutor skills through formal training and mentoring efforts.

Three regional teams in the cities of Herat, Mazar-e-Sharif and Jalalabad will encourage police-prosecutor coordination and instill professional values through classroom training, practical exercises and field mentoring. Each training class will consist of approximately ten (10) Afghan prosecutors and twenty (20) Afghan police officers.

The JSSP-R program began with a three-month effort to develop a fuller understanding of the formal and informal/customary justice systems in Balkh, Herat and Nangarhar provinces through the use of a JSSP-R specific assessment instrument. This initial 90-day assessment was critical to develop the necessary understanding of the formal and informal systems, establish professional relationships with Afghan counterparts, and the plans to guide the long-term effort. To conduct this assessment, JSSP-R tapped into the knowledge and experience of the Regional Training Centers (RTCs) currently conducting police training in these three provinces, the Corrections System Support Program (CSSP), and the Justice Sector Support Program (JSSP) personnel in Kabul who have been conducting training and capacity building activity in the justice sector.

Following this assessment, the JSSP-R team will design and implement a program of academic training, practical exercises and mentoring of prosecutors and police. While the core curriculum will be uniform, each regional team will tailor its curriculum to meet the specific needs of the three provinces. An essential ingredient of this program will be an effort to understand the current informal justice system prevalent in the provinces, its linkages with the formal justice system, and any ongoing efforts aimed at integrating the two justice systems.

II. Scope of the JSSP-Regional Assessment Instrument

The JSSP-R assessment instrument used during the 90-day assessment was based on the guidelines provided in the task order issued by the U.S. Department of State/Bureau of International Narcotics and Law Enforcement Affairs (INL). The assessment instrument is designed to determine the character of the justice sector, including the judicial, prosecutorial and police sectors, and the public perceptions thereof. To make the assessment instrument

more relevant to the specific needs of Afghanistan, provisions for review of informal, traditional and tribal justice mechanisms have been added to the standard assessment tool. In keeping with the objectives and focus of the JSSP-R program, some of the provisions for review of border patrol, traffic control and other non-investigative police functions in the standard assessment tool have been narrowed or eliminated. The assessment tool also focuses on investigative and prosecutorial issues that are appropriate to the provincial and district level where the police/prosecutor coordination issues will be largely addressed.

In implementing the assessment, the JSSP-R teams not only assessed the capacity of the Afghan police and prosecutors to conduct criminal investigations, but also gauged the technical and structural capacity of the judiciary, the public knowledge and understanding of the crime problem, and the political will at the provincial level to effectively use the training and investigative tools that are being offered by the JSSP-R program.

Based on the execution of the JSSP-R assessment instrument, the three provincial teams' separate reports of findings for Balkh, Nangarhar, and Herat provinces follow.

III. Assessment Process

Each JSSP-R Team consists of three U.S. lawyers (Advisors), one Afghan Legal Consultant (ALC) and three interpreters. After their initial in-country orientation, the JSSP-R U.S. advisors deployed to the provinces and were joined by their interpreters and ALC. The teams gathered data in the following manner:

- Interviews. The teams interviewed a wide range of Afghan and US officials. These officials included individuals that have been working in the various justice sector support and rule of law programs along with regional and local Afghan justice and police personnel. To the extent possible, customary/traditional justice actors and tribal leaders, relevant NGOs and human/victim rights advocacy groups, and victims or other parties to recent legal actions were also interviewed. This process was used both to gauge the level of local support for the programs and resources that the JSSP-R will provide, and also to build local support for the JSSP-R effort.
- Case review. Where closed or pending criminal cases were available for review, the regional advisors and the ALCs examined the cases and analyzed them for investigative competency, case development, and case management. The ALCs were screened during the hiring process for their ability to review a case file and provide an accurate summary of the contents and the issues.
- Training review. The Advisors looked at the legal and investigative training that current Afghan police investigators and prosecutors have received. This review of the existing level of training among prosecutors and police was used to develop the curricula and design of the training and mentoring work plans.

- Equipment/facility inventory. Criminal investigation and prosecution require a minimum set of materials, supplies and facilities to collect, store and present evidence. An inventory of resources was made at each site visited.

- Review of the form and role of informal/customary justice. In each jurisdiction visited, the form and role of the customary/traditional justice system in adjudicating disputes was likely to vary. The Regional Advisors attempted to determine the role of traditional/customary justice in each target region and identify areas for potential coordination and cooperation with the formal justice system.

IV. Legal Framework

JSSP-R reviewed statutes and delegations of authority including the Constitution, Criminal Code, Code of Criminal Procedure and other legislation to identify the degree to which laws and authorities are in place to conduct and prosecute criminal cases.¹ The JSSP-R assessment provided feedback on the practical impact these statutes have on the ability to effectively conduct investigations and prosecute offenders. The JSSP-R assessment will also provide feedback on areas where harmonization of recently amended and promulgated laws is necessary.

V. JSSP-R Criminal Investigation and Prosecution Assessment Overview

Merely having the statutory authority to conduct investigations and prosecute violations does not ensure effective enforcement of criminal statutes. The JSSP-R assessment analyzed the justice sector's ability to fulfill its responsibilities in the investigative and prosecutorial process. This analysis reviewed the organization and management of the courts, prosecutors and police, the effectiveness of policies and standard operating procedures, the level of training, the adequacy of human and material resources, and the degree of political will at the national, regional and local level.

The assessment instrument's modules cover a wide range of topics related to law, criminal investigation and prosecution. Individual modules include: judicial institutions (courts), prosecutors, criminal defense attorneys, public defenders, the role of Sharia and other informal/traditional mechanisms, police, investigative processes, public perceptions, and local understanding or "buy-in." Within each module is a series of questions and issues that the JSSP-R team determined likely to be relevant to criminal investigation and prosecutions.

¹ Afghan laws referred to throughout this report are: The Constitution of Afghanistan (2004); the Interim Criminal Code for Courts (widely referred to as the Interim Criminal Procedure Code (ICPC))(2004); the Law on Organization and Structure of the Attorney General's Office (Saranwali) (1991); the Law of the Jurisdiction and Organization of the Courts (1967); the Law of Administration of the Courts of Justice (1956); the Law of Statutory Limitations for Primary Appellate and Review Hearings of Civil and Criminal Cases in Afghanistan (1945); the Law for Organizing Affairs of Defense Attorneys (1972); and the Juvenile Code (2005).

The JSSP-R teams documented sources of information collected during the assessment, including the name and background of the source, the date the information was provided, and the circumstances under which the information was provided (how and where the information was obtained, who was present, etc.). Where possible, copies of documentation were collected.

VI. Assessment Report

Each of the JSSP-R advisor teams documented their findings in a regional assessment and in individual assessment reports. The reports include a summary of the assessment findings including specific weaknesses in the investigative and prosecutorial process from initial police response through final disposition of a criminal case. The report also includes recommendations for topics to be included in the JSSP-R 9-month work plan in the areas of training, mentoring, resource support and quick impact projects.

BALKH PROVINCE JUSTICE SECTOR ASSESSMENT

I. Summary of Findings

Despite the relative peace in Balkh, the criminal justice system in the province is largely dysfunctional. The team found severe problems in the judicial, police, and prosecution sectors of the system. All sectors share the problems of low salaries, insufficient infrastructure and supplies, low levels of literacy, lack of training, bribery, corruption, and lack of communication between the various parts of the system. The lack of education and training of judges and staff is profound, which results in gross ethical breaches and failure to follow statutory procedures. Lack of resources, both human and physical, limit prosecutorial ability to competently perform the investigations needed. While many prosecutors adhere to the requirements of the law, there are few checks in the system to ensure this. There is neither a functioning public defender system nor an active private bar in Balkh. The investigative capacity of the police is limited, although they are beginning to receive training from international donors. Line officers do not take an active role in crime detection, and police-community relations are extremely poor due to corruption and incompetence. However, ranking individuals in all sectors recognize the need for reform and have committed to work with JSSP-R to seek that reform.

The conclusions in this section are based upon interviews with sources between September 18 and November 25, 2006 and documents obtained during the same period. Multiple contacts were made with many of the sources. Afghan sources included interviews with members of the judiciary, the police, the prosecution, and other legal professionals and NGOs. International sources included advisors, mentors and NGOs representing all donor nations developing Afghanistan's justice system. Documentary evidence collected or examined includes the following: multiple court files, Judge's

Handbook Of Behavior, the Primary Court Case Record and Assignment Book and Records of Decision, the Public Security Tribunal Records of Decision, the Public Security Tribunal Statistical Reports, the Criminal Tribunal Records of Decision, Primary Court Statistical Reports, Criminal Tribunal Statistical Reports, and prosecutors' investigative case files, statistical reports, and case tracking book.

II. Regional/District Justice Sector

1. Judicial Institutions (Courts)

A. Organization

Balkh province has 58 judges and 64 staff in the judicial system. The primary courts of general jurisdiction in the province are the District Courts. There are 15 districts in Balkh, eight of which contain courthouses. The judges from the districts without courthouses hear their cases in the Primary Court, which is located in Mazar-e-Sharif. The Primary Court has a chief judge and seven other judges. Two of the judges are permanent and five are temporary. These judges handle criminal, civil, family and juvenile cases at the trial level. The Primary Court also has a chief clerk, four temporary clerks and one worker (receptionist). The clerk's office also handles non-litigation court business.

The Provincial Court is the appellate court for the province. It is divided into four departments: public security, commercial, criminal, and civil. The Provincial Court has a chief judge and 13 other judges.

The Provincial Court judges and staff report to the chief judge of the Provincial Court. The Primary Court judges and staff report to the Primary Court chief judge. There are no job descriptions for any of the court employees.

B. Competencies (Experience, Education, Training and Ethics)

The Provincial Court judges are assigned to one of four tribunals. Thus, judges are assigned specifically to the public security tribunal, the commercial tribunal, the criminal tribunal, or the civil tribunal. Within these tribunals, judges are assigned any case that falls within the purview of the tribunal and not according to any sub-specialty. For example, judges in the public security tribunal are assigned both drug and public security cases. In the Primary Court, judges are not organized in specialized tribunals, and may be given assignments ranging from criminal to juvenile cases. The Provincial Court and the Primary Court both rely heavily on temporary judges, whose experience varies considerably.

There are judges in both the Provincial Court and the Primary Court that have no formal legal training. Of the seven judges in the Primary Court, five of the judges

have university degrees in Islamic law and two are madrasa graduates. This means that none of them has studied the procedural codes or the statutory law of Afghanistan during their education.² The madrasa-graduate judges have received limited formal legal training which consisted of a few legal seminars. Several judges also attended the one-year training program with the Supreme Court in Kabul. This training involves nine months of theoretical legal training combined with three months of practical training.

The former chief judge of the Provincial Court and the chief of the security tribunal said they attended one legal seminar in 2005 and two in 2006. One seminar was in criminal law and two were in civil law. Although they do not remember who sponsored the seminars, they do recall that approximately fifty judges from Northern Afghanistan participated.

Court administrators have had no management training. Such training would facilitate the best use of employee talent and should be provided to those with supervisory roles, including the chief judges, heads of departments and chief clerks. Court staff require training on a wide range of topics including case management, filing systems, basic computer skills, report generation, and budget preparation. Literacy training and a continuing judicial education training program are essential to the administration of justice.

One current and one former high justice official stated that bribery and corruption are prevalent in the judiciary. One of the officials reported that attempts to interfere with criminal cases pending in the Provincial Court have come from high provincial authorities. Cases such as murder and embezzlement are not reaching the courts because high provincial authorities settle them in their own way, while petty cases are brought before the court. One judge who was replaced recently suspects the cause was his willingness to be candid about corruption.

C. Adherence to Law and Procedure

The Provincial and Primary Court judges appear to have some understanding of the Afghan Constitution and, to a lesser extent, international law concerning the protection of human rights. However, these rights give way when circumstances make adherence to them difficult or impossible. The transportation of prisoners to the courts is an example of this. The former chief judge of the provincial court and the chief judge of the provincial criminal tribunal both reported that defendants are not brought to court for proceedings because the prisons lack transportation or have conflicting demands.

The Primary Court chief judge said that trials are required to be held within 60 days from the time a criminal complaint is filed, but compliance with this requirement is

² University degrees in Sharia Law offered after the Taliban were removed from power include courses in criminal procedure.

difficult when witnesses or the defendant fail to appear. Cases may take up to four months to proceed from arrest to trial.

The Primary Court deputy clerk checks the files received from the prosecutor's office to determine when the person was arrested, whether the person is in detention, and if so, for how long the person has been confined. The chief judge of the provincial public security court is aware of cases of confinement beyond the statutory requirements where the cases were not dismissed, nor the defendant released as required by law.

Judge Sayed Soliman reported that if judges find mistakes in a case they send the file back to the prosecutor to "fix the mistake." If the case is returned and the mistake is "fixed" they try the case. If the problem is not "fixed," cases have been dismissed where the judge believes the evidence was the result of an illegal search and seizure. However, Judge Soliman believes the police inform defendants of their right to remain silent but that the defendants always confess and do not assert that right.

The trial judges report that they do inform defendants of their constitutional rights,³ and some of the records of decision support this claim. However, the security tribunal chief judge said that during the four years he has served in the public security tribunal he has not seen a single case where the defendant had a defense lawyer.

Most defendants have no access to defense counsel because only a few exist and those that do charge high fees for minimal services. Sources, including UNAMA, the Norwegian Refugee Council (NRC), and Medica Mondiale, have said that it is not uncommon for lawyers to charge \$200 US to write a simple letter to the court. The judges said they have asked Kabul to make defense counsel available but have received no help. While the judges may believe in the defendant's presumption of innocence, they are part of a system that is incapable of assuring this protection due to a lack of resources and training.

Most trials are open to the public with the exception of trials that relate to family matters or juvenile issues. The majority of appeals heard in the Provincial Court and the majority of trials conducted in the Primary Court are held in the chief justices' offices of these respective courts. Although there is a large courtroom in the Provincial Court, judges reported that it is rarely used.

The courts do not have professional translators or court materials in different languages. When translators are required, they are not compensated for this service.

In theory, a defendant is allowed to call witnesses. However, the judges interviewed reported that witnesses, whether for the defense or the prosecution, rarely appear in

³ As per Article 5 (7) of the ICPC, "...the police, the prosecutor, and the Court are duty bound to clearly inform the suspect and the accused before interrogation and at the time of arrest about his or her right to remain silent, right to representation at all times by defense counsel, and right to be present during searches, line-ups, expert examinations and trial."

court. Thus, in most cases defendants do not have the opportunity to cross-examine witnesses. Representatives of Medica Mondiale, NRC, and judges themselves stated that the majority of criminal cases are based upon the written statements of witnesses prepared by the prosecutor and are not subject to cross examination. Judges stated that they do not require witnesses to appear and typically rely on the statements submitted by the prosecutor.

Judge Soliman said that the average trial lasts 3-4 hours. This assumes that the defendant is brought to court, witnesses (if any) are present, and relevant documents are available. If not, a Primary Court judge reported he has had breaks of up to four days waiting for the necessary parties and documents to appear. The chief of the security tribunal reported that he has seen breaks of up to six months between proceedings.

The provincial head of the Ministry for Women's Rights reported that cases of domestic violence against women are filed and then languish in the court "for years." She also said that the police do not arrest men for domestic abuse.

The Provincial Court chief judge and the Primary Court chief judge are solely responsible for the assignment of cases. The one temporary woman judge in the Primary Court, Judge Pari Gul, reported on 31 October 2006 that she had been assigned one case in two months.

D. Administration and Resources

The Primary Court has four small offices. One is for the chief judge and serves as a hearing/meeting room, one is for the chief clerk and the four temporary clerks, and two offices are for the other judges. The five temporary judges are in a renovated storage room due to lack of space. There is also a storage room adjacent to the temporary judges' office. The Primary Court has a small library.

The Provincial Court storage facility is located in a separate building next to the Primary Court. The closed case files and other records from the Provincial Court and its four tribunals are stored there, as well as records from the Primary Court and the district courts in Balkh. The storage unit contains records as old as 87 years. The courts have neither file folders nor adequate file cabinets and lack an adequate filing system. The Provincial Court and Primary Court's records of decision are currently placed in stacks within broken filing cabinets in the clerk's offices. There is no filing system in place to record and retrieve files received, which angers the public.

The Primary Court rarely receives evidence other than written witness statements. Should they receive evidence, judges reported that it would be kept in their desk drawer due to the lack of storage space.

Case management is handled informally. There are no written case management procedures in place in either the Provincial or Primary Court. Each clerk's office has its own system to handle cases received by the court. For example, the Primary Court has two main record books.

The court clerk reported that bond proceedings are conducted informally. If an accused person appears in court and is not in custody, he will remain free if he can provide a letter from an important person assuring that the accused will appear at trial.

Statistics from the Provincial Court criminal tribunal reveal that 106 criminal cases were filed in the criminal tribunal in January, February and March 2005. Some 129 criminal cases were filed in the criminal tribunal in April, May and June of 2006. In July, August and September, 134 criminal cases were filed with the court. There are four judges (one temporary) in the criminal tribunal to handle these cases.

The salaries paid to judges and court employees are low. The former chief judge of the Provincial Court and the Primary Court chief judge report that they earn \$80-\$100 US per month. The majority of the Provincial Court and Primary Court judges earn \$50 US per month. The Provincial Court chief clerk is paid \$50 US. The chief clerk and other clerks in the Primary Court earn \$20 US per month. The deputy clerk and recorder of the primary Court, one of the busiest people at the court, has not been paid for October or November 2006.

The judges report that they have copies of the most recent versions of the Penal Code, Afghanistan Constitution and Interim Criminal Procedure Code. However, this cannot be confirmed, as the books were not visible in the judges' offices. Two attempts were made to visit the law library, although both times the judge in charge of the library was not present and had possession of the key.

The Provincial and Primary Courts lack basic office supplies. The Provincial Court chief justice has sole authority to allocate resources, and he reported that he personally meets with finance and with the requesting judge and instructs them what to purchase for the court. All judges and staff interviewed stated that the resources allocated to them are inadequate.

2. Prosecutors

A. Organization, Command and Control

The organizational structure of the prosecutors from the Provincial down to the local level is as follows:

The Provincial Prosecutor supervises one to two prosecutors for each of the fourteen districts⁴ (Mazar-e-Sharif is the exception), ten substantive attorney offices on the provincial level, and an investigative and administrative staff. Mazar-e-Sharif also has a city prosecutor. The substantive offices handle public punishment, public security, juvenile prosecution, general monitoring, negation of liberty (cases in which violation of individual rights has been alleged), law enforcement (general questions of interpretations of law for the prosecutor's office), monitoring and investigation attorney, a general appellate prosecutor, and appellate prosecutors for the specific areas of public security, traffic prosecution, narcotics, and juvenile matters. There is also an investigative prosecutor's department with nine investigative prosecutors with administrative staff.

The prosecutor's position is both prestigious and susceptible to bribery. While the Attorney General has nominal control over the provincial prosecutor, other individuals also have an interest in who occupies the position.⁵

Job descriptions exist for all prosecutor positions. However, these tend to be more descriptive of the types of cases that each office handles rather than a prescription of the quantity (and quality) of work expected by each prosecutor. Prosecutors do not have a defined set of standard operating policies and procedures, and their activities are driven by their own judgment.

While there are no formal qualifications, the Provincial Chief indicated that he only hires individuals with a law degree, common sense, and enough experience to ensure that they have an understanding of the social fabric of Balkh. However, not all prosecutors currently working possessed these qualifications when they were hired and several lack law degrees (see B., below).

The authority for hiring, firing, making assignment, rewarding or disciplining prosecutors rests with the provincial prosecutor. There are neither formal merit selection nor promotion procedures in place. His decisions may be influenced by external and informal factors as well – for example, knowledgeable sources reported that many prosecutors hold their positions based on ability to pay, or based on family or other informal relationships.

The police initiate most cases. Individual prosecutors typically initiate cases stemming from a direct citizen complaint. Prosecutors determine whether to initiate an investigation, although the decision to proceed must be approved by the provincial

⁴ Although these prosecutors are assigned to these districts, they are stationed in Mazar. They are supposed to go out to the districts on a regular basis; the prosecutor's office reports that they do so once per week. The police in the districts furthest from Mazar report that the actual figure is closer to once per month.

⁵ On 20 October 2006, at a press conference in Mazar-e-Sharif, the Attorney General announced that he had had the Balkh provincial prosecutor arrested. During the press conference he announced that he had recommended the arrest of the Chief of Technical Services for Balkh Governor Mohammad Atta, and that he has recommended the arrest of others, although specific charges were not mentioned during the press conference. The press conference was not shown on Balkh television. The provincial prosecutor remained at his post until mid-November, and the Governor's Provincial Chief of Technical Services remains in his position.

prosecutor. Provincial prosecutors do not follow a defined set of standard operating policies and procedures regarding evidence collection or legal analysis.

B. Competencies (Experience, Education, Training and Ethics)

All prosecutors have degrees, although not necessarily in law. Interviewees have reported that degrees can be obtained by paying a bribe, although no specific individuals were identified as having done this.

Prosecutors have neither specialized training in prosecution nor in investigation. Additional in-service legal training programs have been made available by international governmental and NGO entities (e.g. the Italian and German governments), but are on an ad hoc basis. Prosecutors are not required to attend these training programs.⁶ There is no formal system whereby prosecutors receive compensation or an increase in pay for attending training.

There have been cases of bribery or corruption involving prosecutors. Recently, the Attorney General of Afghanistan publicly accused the Balkh Provincial Prosecutor, Mr. Moslemyer, of being corrupt. Mr. Moslemyer resigned several weeks thereafter.⁷

The monitoring and investigation attorney's office reviews and makes an initial adjudication of complaints against prosecutors. However, the system is not transparent and the prosecutor's office offered no examples of complaints that had been prosecuted.

C. Investigative Procedure and Adherence to Law

Prosecutors reported that police typically notify them within 72 hours of an arrest. Because of their unique interpretation of the "72-hour" rule⁸, the police typically arrest the individual believed to be culpable after they have performed a cursory investigation and then turn the matter over to the prosecutor.

Prosecutors reported that they typically do not respond to crime and/or investigation scenes (unless they receive the complaint). Investigative prosecutors directly interview victims and witnesses and take written statements during the investigative phase. They also have access to evidence-gathering and forensic analysis tools. However, the team did not observe physical evidence being gathered. There appeared to be two reasons for this: First, prosecutors do not have access to a designated medical examiner. There are doctors capable of performing post mortem

⁶ However, the most recent such training was conducted at the Hotel Serena in Kabul, with expenses paid by international governments, which was well attended.

⁷ This accusation was not based on any formal evidence known to our sources. At the time of this writing, the disposition of this case is uncertain.

⁸ see III.3., below

examinations in Mazar-e-Sharif, but there are no doctors who have been trained to be medical examiners. Thus, cause of death is typically determined, but a closer analysis is not possible at the provincial level. Second, prosecutors do not have access to the mechanisms through which evidence is transmitted for examination (i.e. the chain of custody does not lead through their office). The head of CID for the Northern Region, which includes Balkh, reported that when a crime has been committed that involves evidence that requires analysis (e.g. a weapon or drugs), it is sent to Kabul. The evidence remains in the custody of the Ministry of the Interior and is thus unavailable to the prosecution.

Prosecutors reported that they comply with the requirement of the ICPC to prosecute all crimes unless otherwise expressly provided by law. When cases are dismissed, the legal or factual basis for dismissal or non-action must be documented and approved by the provincial prosecutor. However, there are complicating factors. External influence is often exerted that can affect the prosecutor's decision. Recordkeeping is poor, so the reason for the dismissal is often not recorded. There is also no record that the provincial prosecutor approved the dismissal.

Prosecutors do not strictly adhere to the legal requirements on provisional detention. Files reviewed by the team revealed that defendants are often detained from initial arrest through investigation and trial without judicial authorization – i.e., substantially longer than permitted by the ICPC.

Investigative prosecutors reported that they do not typically advise suspects of their rights in conformance with the ICPC and were unaware or unsure of the requirements. Due to the general lack of defense counsel, only the investigative prosecutor is present during interrogations. Investigative prosecutors stated that searches, line-ups, and expert examinations are rarely performed during the investigation.

Prosecutors do not comply with the law giving accused persons the right to materials in their native tongue or provide interpretation during the pendency of a criminal matter. Judicial matters are conducted in Dari.

There are no written policies and procedures to protect victims and witnesses during the investigative phase. Investigative prosecutors were unaware of the requirement that detainees be interviewed within 48 hours of incarceration.

Prosecutors and police interviewed stated that prosecutors do not utilize police to collect additional evidence or take statements during the course of the prosecutor's investigative phase. Prosecutors were aware of the requirement to ratify or modify judicial police activities under ICPC Art. 30-32, but were not aware of who the judicial police might be. Indeed, there is limited understanding (and even more limited consensus) of the meaning of the term "judicial police."⁹ Prosecutors do not

⁹ See, "Investigative Procedures and Conformity with the Law" in section III. 3 below.

utilize police to collect additional evidence or take statements during the course of the investigative phase, and rely instead on their own investigative staff.

D. Case Administration and Resources

Cases are organized in identifiable case files. However, the filing system in use is inadequate. There are no uniform case flow or case management procedures in place.

Case statistics are kept for each year in a ledger. Each page of the ledger tracks data from six cases. The information included the date on which the investigation was initiated, data about the individual and the crime committed, and case status and disposition from trial through final appeal. However, review of this ledger revealed that this data is not kept assiduously. While each office has a case-tracking book, no overall mechanism for case flow or tracking is employed. There is also no system for reviewing annual case statistics.

The Ministry of Justice allocates financial and other resources. Prosecutor salaries are commensurate with other professionals working within the criminal justice sector. These salaries are quite low, reported to be \$60-\$80 US for an average prosecutor.

Prosecutors do not have adequate office space. Those prosecutors assigned to Mazar-e-Sharif have desks, but those assigned to the outlying districts must use whichever desks may be available. Investigative prosecutors have a minimal and shared working space. The law library in the prosecutor's office contains no written materials.

There are no policies and procedures that address the collection, processing, or holding of evidence, and no evidence storage facilities exist.

Prosecutors lack most of the supplies and equipment necessary to perform their duties. The office has one official vehicle, four phone lines, and no tape recorders or copy machines. There are three computers in the office, two of which were broken at the time of this writing,¹⁰ two working typewriters, and minimal office supplies.

3. Private Criminal Defense Attorneys

A. Availability and Organization

Despite the fact that Mazar-e-Sharif is the largest metropolitan area in northern Afghanistan, there is no active private defense bar. There is no local registry of attorneys available to the public.

¹⁰ They were all provided by international donors, and while they would cost \$30 to fix, this is not in the budget. In any case, the records system is not computerized, and the computers were used only for word processing.

There appears to be little understanding among members of the public of the role of the defense attorney or of the right to counsel. The concept of a “defense attorney” is often difficult to convey in Dari. The word “attorney” is most often translated as *saranwal* (prosecutor) and the alternative word “*wakil*” is understood simply as an advocate or representative, not necessarily a lawyer. A *wakil* can be a defendant’s relative, a village elder, or a total stranger who holds himself out as a professional advocate without any academic or professional qualifications.

The “*wakil*” tradition is well-entrenched and a number of self-styled “*wakils*” operate in the north. Two female members of the Provincial Council of Saripol district operate as advocates for women, and all the members of the Samangan Provincial Council hold themselves out as “representatives” for dispute resolution. Citizens reported that a “women’s defense league” operates in Balkh, and that a woman by the name of Nilo Sayar holds herself out as a “women’s rights protector.”

This lay representative concept is so strong within Afghanistan as a whole that it has appeared in several prior statutes regulating attorneys, a series of presidential decrees, and a proposed 2006 redraft of the Law on Advocates written by the Ministry of Justice.

B. Competencies (Experience, Education, Training and Ethics)

No local registry exists that tracks the educational background of the attorneys in Mazar-e-Sharif. The Ministry of Justice (MOJ) in Kabul controls the licensing of attorneys. Licensing requires the completion of a lengthy application, including documentation of academic qualifications, good moral character, compliance with tax laws, etc.¹¹

Balkh University has a Faculty of Law and Politics and a Faculty of Sharia. Neither faculty currently offers any practical or clinical legal training. The courses available to students do not include topics appropriate for the training of defense attorneys. In recognition of this fact, some members of the Faculty of Law have plans to initiate a defense lawyers’ training program for fourth-year law students under the auspices of the Afghanistan Institute for Democracy. It is doubtful that this could be accomplished successfully without international support.

The standard of ethical practice for defense attorneys (or “*wakils*”) is quite low. No mechanism exists to monitor the ethical conduct of defense counsel in Balkh. Defense attorneys do not recuse themselves appropriately if there is a conflict of interest. “Conflict of interest” is not a concept that is currently taught in Afghanistan’s law schools.

¹¹ JSSP donated a computer which helped create an electronic database. Previously, the national registry had been maintained in a single ledger.

4. Public Defenders

A. Availability

Government-sponsored public defense services do not exist in Mazar-e-Sharif, although limited free legal services are available. Public funds are not expended to hire defenders for the indigent as required by law. Even if the court were so inclined, there are not enough defense attorneys to whom the court could assign all eligible cases.

There are currently two NGO's providing indigent defense services, although there remains significant need. Two international NGOs, Medica Mondiale and the Norwegian Refugee Council (NRC), have international staff that mentor local attorneys.

The mission of Medica Mondiale is to provide indigent criminal defense services for women. The office has three attorneys who are in Mazar-e-Sharif for a maximum of five days per month. The Medica Mondiale team does not provide services in the districts or operate outside the formal court system. Medica Mondiale hopes to establish a permanent office in Mazar-e-Sharif and to focus on legal training for local NGOs.

The NRC employs full-time legal staff. However, its representation is limited to civil cases, and they do not represent the individual client so much as seek a fair resolution of the case. While the majority of NRC cases involve land disputes, they also address domestic cases including forced marriage and divorce. NRC is considering expanding to provide the full range of civil and criminal representation.

The International Legal Foundation-Afghanistan (ILF-A), which is based in Kabul and has the most sophisticated and inclusive criminal defense practice of any organization currently operating in Afghanistan, intends to open an office in Mazar-e-Sharif sometime in 2007. This is dependent upon funding.

There are some organizations concerned with the administration of justice in Balkh. Afghan Women's Rights Defenders (AWRD) is focused on civil cases and receives assistance from Rights & Democracy, a Canadian International Development Agency (CIDA) project. The Youth and Children's Development Program (YCDP) is focused on education but provides advocacy in civil cases. The Legal Association for Women (LAW) recently obtained a grant to work on "violence against women" issues. They will operate in the districts surrounding Mazar-e-Sharif and will employ 3 educators and 2 lawyers. However, their mandate is to work on civil rather than criminal cases.

B. Competencies (Experience, Education, Training and Ethics)

Most private attorneys in Balkh provide advocacy generally limited to writing letters. In contrast, providers of free legal services offer comparatively competent representation. Both the NRC legal representatives and the Medica Mondiale attorneys have legal education and training, are licensed, and appear in court on behalf of their clients. Their education and training is equal to or surpasses most of the judges and prosecutors they encounter. However, international attorneys working with Medica Mondiale and the NRC stated that local lawyers employed by those organizations are severely lacking in many of the fundamentals of modern legal advocacy. These deficits are not due to lack of ability but the absence of external regulation or standards of professionalism and a lack of access to advanced training.

The advocates for AWRD, LAW and YCDP are graduates of Balkh University Law or Sharia Faculties but are not registered as attorneys with the MOJ.

5. Role of Informal, Traditional, Tribal, Sharia Mechanisms

A. Organization

Shuras are a dominant form of the informal justice system, although the terms jirga and shura are used interchangeably. Within Balkh, shuras are ubiquitous. The most visible shuras are organized in parallel with the local government on the district level. Each district has a district shura. These shuras include prominent, powerful, or respected residents of the district. Members of the Balkh University law faculty indicated that these shura members often have ties to the District Governor who in turn is tied to the Provincial Governor. Frequently shura members are Mullahs.

The National Solidarity Program (NSP), which is part of the Ministry of Rural Rehabilitation and Development (MRRD), has organized village level shuras that are currently very active throughout northern Afghanistan.¹² In addition, there is a Religious Council, a Women's Jirga, and an Elder's Council that is unofficial but has offices in the Municipal Building. There are reportedly no ethnic-specific shuras in Balkh, as all ethnic groups are represented in the existing shuras. The Elders Council, for example, consists of representatives of the Tajik, Hazara, Pashtun, and Uzbek communities working together.

B. Application of Sharia and Traditional Justice

Sharia law, which is the domain of the informal justice system, is also applied by judges to cases in the formal justice system. It is difficult to determine how often this happens.

¹² See, www.nspafghanistan.org.

There are no known cases of Sharia being applied to non-Muslims in criminal cases. The only non-Muslims in Balkh are internationals and would likely be deported before they could be prosecuted in a traditional forum.

Shuras do not make fine distinctions between different categories of offenses or wrongs – criminal vs. civil. Though the shuras appear to primarily address civil matters, they do not appear to have mechanisms for imposing their decisions on the parties. Judges reported that shuras can also lend legitimacy to criminal cases. For example, the punishment of the offender is left to the formal system and compensation to the victim takes place within the informal system.

Judges stated that they often rely on Sharia Law even when the informal justice system has no involvement in the case. Since the majority of judges have no formal legal education and are often illiterate, they render judgments without reference to Afghan law. However, Afghan judges will often refer to Article 130 of the Afghan Constitution to allow the substitution of Sharia Law whenever it conflicts with statutory law.¹³

Attorneys for the Legal Association for Women (LAW) and UNAMA staff stated that there are numerous cases of alleged Sharia offenses being prosecuted in the formal system. One particular Sharia offense routinely prosecuted within the formal justice system is the crime of “zinna” (a woman running away from home without the permission of her husband or father), in spite of the absence of a corresponding provision in the penal code. LAW attorneys and members of the law faculty reported that these Sharia offenses are prosecuted without regard for the type of evidence that is required under Sharia law. For example, criminal court judges have convicted women for zinna offenses based on the testimony of the husband or other accuser without additional corroboration.

C. Linkages with Formal Sector

Members of the police department stated that they refer matters to the religious/traditional sector only if they consider the case to be minor. The frequency with which this occurs is not documented. Police interviewees reported that they maintain closer relationships with traditional district and village leaders than with the prosecutors.

District courts will also refer matters to the religious/traditional sector. UNAMA and NRC staff reported that there exists strong working relationships and cooperation between the formal and informal systems. UNAMA staff members stated that there are provisions for referral or appeal from the decision of a religious/traditional forum to the formal legal sector. Courts occasionally instruct plaintiffs to seek relief of civil

¹³ Article 130 actually only permits reference to Sharia law when “there is no provision in the Constitution or other laws regarding ruling on an issue....”

cases through the Shura rather than the formal system. Judges reported that during criminal sentencings it is commonplace for parties to present documentation from the victim detailing compensation obtained in the informal system and begging leniency before the formal court. Formal courts accept these documents which may influence the sentence.

UNAMA and NRC staff stated that neither the informal nor the formal justice sector seeks to undermine the legitimacy of the other. The formal sector retains the exclusive ability to impose incarceration on offenders while recognizing and validating the role of the informal sector in providing compensation.

III. Regional/District Police

1. Organization, Command and Control

Generally, the Balkh police is organized along military lines. The head of the Balkh provincial police is a brigadier general, and his administrative staff are colonels. Each district has a police commander. Within Mazar-e-Sharif there are ten precincts, each with a commander who is a lieutenant colonel or a major. Each commander has a staff investigator with the rank of major, one or two deputies who are junior officers, and enlisted ranks in proportion to the population of the area under their jurisdiction. The number of enlisted personnel ranges from 3-5 per station in less populous rural areas, to 8-10 per station in the less populous urban areas, to 15-20 per station at the busiest stations.

The organizational structure of the police in the region, from the provincial down to the local level, is in significant flux. There is no document that clarifies the command relationships among regional training centers, border police, city police, and highway police in relation to the regional and provincial commanders.

American, German, and other international governmental advisors are working with Combined Security Transition Command – Afghanistan (CSTC-A) and the Ministry of Interior to reorganize the current structure of the Northern Regional Police Command, which includes Balkh. The number and type of police personnel is similarly in flux.

The provincial police force is organized in functional investigative units only for narcotics issues (not including border police and similar entities). These are almost entirely funded and supported by international entities.

As reported by reliable sources, there is significant distrust among the various units of the police. The relationship between members of the investigative police unit and prosecutors is reported to be antagonistic and ill-defined. The two do not see themselves as natural allies, which is further complicated by provisions of the law that are perceived to interfere with the work of the police and prosecutors. For example, the investigative police believe the “72-hour” rule hinders their ability to fully investigate cases.

The local unit commander has the authority to initiate or close cases and direct investigative action. The final authority for administrative and financial decisions such as hiring, firing, assignments, rewarding or disciplining police rests with their senior commander. The senior commander is typically the highest-ranking officer in their direct chain of command.¹⁴

The Northern Regional Commander of the ANP allocates resources. The police forces are widely described by various sources to be fraught with corruption, even by local standards. Several knowledgeable sources reported that the previous pay system, which is being reformed, involved transfers of funds from the Ministry of the Interior's coffers down through the ranks of the ANP. A portion of the total was misappropriated at each level of the hierarchy. By the time the funds reached the station level, the amount left was sufficient for food, clothing, housing, and heat for the police. The police management would then pay for these expenses (as Ministry funding for these purposes was insufficient), and no salary was paid to the line police, who were expected to earn their money during their work. This system is being changed to a direct deposit system and salaries will be increased significantly.

The same sources stated that police are hired based on their ability to pay for their jobs, and that no minimum qualifications are required. Recent tests of officers from the general staff level to lieutenant level showed that between twenty and forty percent are illiterate. The illiteracy rate in enlisted ranks is likely higher.

There are no written minimum qualifications to become a police officer. Officers are expected to have finished high school, but this is not always the case. Police are likely to be required to pay superiors or other officials to secure or retain their jobs.¹⁵ Police literacy issues impact the ability to collect evidence, obtain statements, and conduct investigations. Upon completion of reforms, job descriptions will exist for each position and will include minimum qualification standards.

2. Investigative Capacity and Training.

The head of CID for the Northern Region reported that any specialized training given to police investigators has either been given on an ad hoc basis by international actors since

¹⁴ There are often subtleties to this arrangement, however. For example, during the recent rounds of testing prior to the administrative and personnel reforms of the Afghan National Police, some officers either performed so poorly, or were so obviously problematic for other reasons, that they were put "on probation" by their international mentors (with the consent of the Ministry of the Interior). One such probationer was a very high level provincial police official who continued to remain in his position.

¹⁵ The recent U.S. Inspector General's Interagency Assessment of Afghanistan Police Training and Readiness Program recommends the establishment of an independent Afghan internal affairs and/or inspector general office to investigate allegations of bribery, embezzlement, fraud, and other forms of wrongdoing within the Afghan National police, and to conduct audits and inspections.

2002 or was given during the Soviet period.¹⁶ There are no police officially designated as “judicial police” to assist the prosecutors.

These investigators have no access to forensic tools and equipment, save for the most rudimentary (e.g. fingerprint kits). First responders (uniform police) have no training in crime scene preservation, and there are no formally trained “crime scene specialists.” Local doctors are called upon to certify cause of death, but are not capable of performing a full post mortem examination.

Police investigative policies and standard operating procedures are not documented. Station commanders differentiate between common crimes that fall within regional purview and national security crimes that require referral to central authorities on an ad hoc basis.

3. Investigative Procedures and Conformity with the Law

INL and German police mentors stated that crimes are rarely reported unless the victims perceive that they have no other choice. This means that most crime is not “detected,” but rather reported. Thus, investigation is rarely seen as necessary: the victims or witnesses will provide statements, and the defendant can usually be made to do likewise. If the police do not arrest the defendant immediately, the defendant is thought to be likely to either (a) flee the area or (b) meet with whatever justice the victim's family decides to administer. This means that the “72-hour” rule is immediately invoked – and the police have no reason to do further investigations. The case is then transferred to the prosecutors.

Interim Criminal Procedure Code poorly defines the activities and role of the judicial police. Thus, provincial police do not perceive the ICPC provisions as relevant to their duties and responsibilities and do not abide by it.

According to INL police mentors and local police investigators, uniform police do not typically secure crime scenes before investigators arrive. These investigators typically do not collect evidence and, though they may take witness statements, their investigation is usually cursory since they are aware that the investigative prosecutors will conduct a more comprehensive investigation.

Evidence that is collected by police investigators is sent to the Ministry of the Interior in Kabul for detailed analysis, since there are no facilities to do so at the provincial level. Evidence remains in the custody of the Ministry of the Interior and is not returned for use by the prosecution or defense.

¹⁶ The senior investigative staff in Balkh – and those who, in the judgment of police mentors, were competent criminal investigators – were trained during the time of Daoud Khan. None of the regimes since that time had a particular interest in crime detection as such. Under the Soviet regime, or under the Taliban, were one accused by the State of a crime, the facts of the offense were of less importance than the accusation itself.

The police department does not have a formal policy or the capacity to protect victims and witnesses during the pendency of a criminal matter. This is of particular concern where the case involves particularly vulnerable victims, such as women or children.

There is no written record of whether police inform suspects of their rights. Sources from the local police forces stated that this practice was routine, although sources from the international police mentors and local human rights organizations contradicted that assertion.

Police officials reported that they routinely contact a prosecutor to report that they have taken an individual into custody during the initial 72 hours. According to police and prosecutors, this 72-hour time limit is monitored very closely. UNAMA, NRC, and local NGO sources stated that this is not always the case.

All local police sources stated that prosecutors and other individuals with power interfere with police investigations. Police reported that an individual can avoid prosecution if he is able to pay or otherwise influence the judge. The sources stated that it is in the police officer's interest to extract payment as quickly as possible, lest some individual further downstream in the process do likewise. The official police position is that no cases are referred to religious or traditional institutions rather than to prosecutors. However, police sources reported that cases in the regions are often referred to informal dispute resolution, especially since transit time from the regions can be as long as six days. There are no local detention facilities or prosecutors in most outlying districts.

4. Community Relations

German police mentors, INL mentors, and local NGO representatives stated that citizens are not confident in the police and view them as being solely engaged in bribe-seeking activity. Citizens rarely report crimes to the police, as they believe that the accused will simply pay a bribe and be released. Prosecutors share this attitude as well. Victims are also uncomfortable with providing information concerning a crime or evidence to the police, lest a bribe be extracted from them.

Police have neither a formal nor informal outreach policy or program. Police do not patrol and only rarely leave their stations. This is complicated by the fact that citizens are largely unaware of their rights under law.

5. Administrative Resources

There is widespread disorganization in the administration of the police departments. Individual cases are organized in case files, although the types of files used and the methods for organizing them are inconsistent. Police officers rely on institutional memory to find cases as necessary. There is nothing resembling an adequate filing system, as files are kept wherever there is space. Files are not maintained in any order that is discernible to the casual observer or even to other members of the police force.

As cases are not kept within the police department past 72 hours, neither case flow nor case management procedures are in place. Case and crime statistics are kept, but are only accessible to senior police personnel.¹⁷ These statistics depict all crimes, from those more common, such as theft, murder, manslaughter, assault, kidnapping, and adultery, to those that occur (or are investigated) only rarely, such as disrespect of governmental offices, taking a bribe, acting of a civil servant beyond their authority, and copying of postage stamps. This record is handwritten and used for regional reporting purposes only.

Investigators do not have adequate office space, nor do they have access to legal materials (statutes, codes, etc.) or procedure manuals. They do have access to transportation and communication equipment, but not to tape recorders or copy machines.¹⁸ Basic office supplies are difficult to find, as well. Crime scene kits, including basic photo, fingerprint, and other evidence collection tools are available.¹⁹ However, when asked as to the whereabouts of these kits local police were not always able to produce them.²⁰

Police offices do not have adequate secure storage space or administrative controls for evidence. However, as discussed above, any evidence collected is transferred to Kabul for analysis and storage under the current system.

Under the pay and rank reform now underway, job descriptions exist for each position including minimum qualification standards. Internal and external oversight mechanisms exist to address misconduct and corruption. However, these mechanisms are neither transparent nor are they relied upon as a tool for addressing issues within the police department.

IV. The Investigative Process

1. Initial Police Response

The initial police response is extremely weak due to social and structural issues. There is no practical mechanism for the public to report crimes, which makes them hesitant to do so. Police authority is minimal as well – INL mentors reported that first responders are

¹⁷ As in many government offices, information flow is solely vertical (from the bottom up) and asymmetric (it does not flow back). Subordinates and other agencies do not have access to information, to say nothing of the public.

¹⁸ For example, since no reliable telecommunications networks exist in the Northern Region, the communications equipment at the Northern Regional investigative headquarters is a single shortwave radio. The headquarters receives daily coded reports from the subordinate (i.e. provincial) headquarters, which in turn receive reports from their subordinate police stations, if any. This is the extent of the communications equipment that is both (a) functional and (b) being used for its intended purpose. All records are handwritten.

¹⁹ However, there is no fingerprint database for comparison of fingerprints.

²⁰ International interlocutors said that this equipment, as well as support equipment, often could be found on sale at the bazaar – frequently as soon as the day after distribution – unless it was passed out to specific officers (e.g. commanders or logistics officers), in which case it was watched very closely – but never used.

unable to adequately secure the crime scene. While it is unclear why the police have limited capacity to secure crime scenes, a lack of training compounded by the social and cultural landscape prevents crime scene security. Police respond reactively rather than proactively to crime.

Police and prosecutors asserted that they promptly turn over investigative materials to the prosecutor at the end of the 72-hour period. District and provincial investigators reported that they respond to crime scenes in a timely manner. However, INL mentors stated that police do not adequately develop the investigation during the 72-hour window to provide provincial prosecutors with sufficient information to begin their investigation. Investigators infrequently collect evidence, interview witnesses, or conduct on-site investigation. Only rudimentary equipment is available for collection, preservation, and processing of evidence.

The prosecutor investigative phase is weakened by lack of capacity, rather than unwillingness to perform their duties. Investigative prosecutors conduct as thorough an investigation as they are able, although they reported that they very rarely collect or use physical evidence and rely on testimony that is often hearsay or worse. Indictments developed by prosecutors are typically consistent with the evidence gathered.

Prosecutors do not work with police during the initial investigation, and often do not complete investigations within the time frame set out by law. Thus, indictments are not always referred to the judicial prosecutor in a timely manner. The decision whether to indict is not perceived as being free of external influence or corruption.

V. Public Perception of Crime and Effectiveness of Formal Justice

1. Public Perceptions of Crime

Local NGO representatives reported that citizens believe that a large number of crimes are being committed. They stated that property crime (i.e. theft and its variations) is most common and relatively petty in nature. This perception relates closely to the official estimates²¹ concerning the amount and types of crimes. Police interviewed reported that they are aware that the public is dubious that a perpetrator will be caught and punished appropriately. The police believe that most cases of small crimes against property are not reported, or are handled at an informal level.

2. Informal and Formal Justice System Effectiveness

Several professionals in the justice system reported that citizens believe they can access the formal justice system without paying a bribe. The structure of the formal justice

²¹ The investigative police keep track of completed cases, cases that have been stayed, cases refused on legal grounds, cases refused, cases reviewed, and cases received and being prosecuted. This data is kept by the upper echelons of the police, though, and not shared with the station commanders.

system is sound enough that it does not exclude citizens who have neither resources nor connections. Once in the formal justice system, however, citizens recognize that their case can be impacted by bribes in at least two ways. First, a bribe can affect the speed at which their case passes through the justice system. Since the salaries of those engaged in the administration of justice are extremely low²² and since the other opportunities to make money are typically closed to them, the individuals working in the system take every opportunity to subsidize their income. Since there are no systems to monitor the pace at which cases move through the system, the gatekeepers of the system can charge a fee to insure that the parties to a case get justice in a timely manner.

Second, a bribe can also influence the outcome of a case. On the criminal side of the system, a bribe paid to the police will allow the criminal matter to end before it begins. If one does not bribe the police, one can bribe the prosecutor and is a substantially more expensive proposition.²³

Judges can be bribed in both civil and criminal matters. In criminal matters, bribes at this stage are usually paid with the goal of softening the sentence. In civil matters bribes are paid at the outset, as this is the first time the parties interact with a representative of the state.

The local population has been exposed to formal sector justice mechanisms. Local NGO representatives and NRC staff report that the formal sector is perceived as being less effective at dispute resolution than the informal sector. This is due to the lack of transparency and degree of corruption.

Citizens without resources or connections do have access to the informal justice system, which is the preferred forum for dispute resolution. However, since the Governor of Balkh appoints some of the arbiters in the informal system, sources stated that there is the perception the system is still susceptible to corruption, whether through influence or bribery. Regardless, the public perception is that the system is more transparent – so that if there is corruption, at least that fact is public knowledge.

Members of the law faculty and legal NGOs stated that some segments of the public believe certain crimes are appropriate to the formal court system, while others believe that a mix of informal and formal justice is preferable. They make the distinction that property crimes, in which the total harm done is calculable for practical purposes, can easily be settled informally. However, for crimes against persons, the punishment can spiral into a feud or vendetta that far outstrips the gravity of the crime, as the value of the damage to one's honor is often not as easily calculable.

²² Since the official cost of the process to the citizen is zero, and since the budget of most agencies charged with the administration of justice would not cover their operating costs (even were that budget to reach them in its entirety), one can say that salaries are artificially low.

²³ One of the biggest grievances expressed by the police is that when they arrest someone the prosecutors will often extract a bribe from that person, which they say results in the suspect being released within days. The prosecutors denied this and reported a different grievance: the police extract bribes in return for the suspect's release and for forwarding the file to the prosecutors.

Members of the law faculty asserted that citizens who prefer the informal justice system do so because they believe that the formal system is corrupt. Local NGO representatives report that religious and ethnic minorities perceive the formal mechanisms as being less likely to provide justice than the informal system. The informal system is usually in place for the community in which they live (e.g. Hazara receive informal justice from Hazarat informal justice structure), while the Tajik majority administers the formal system, more often than not. However, as the new provincial prosecutor is a Pashtun this is a rule with some exceptions.

VI. Local Official Understanding of Investigative Issues and Commitment to Reform

1. Recognition of Criminal Investigative Issues

Murder, robbery, and anti-government activity are significant concerns of the government. Police report that their estimates are rather low, since only reported crimes factor into these numbers and the public is reluctant to report most crimes to the police. Local NGO representatives report that public perception is that the police themselves are responsible for a fair amount of crime. In addition, the public is aware of the prevalence of bribery and corruption but they have little expectation that this will be addressed. Women are aware of gender-based crimes, but few men or women outside the educated elites consider these to be crimes or a concern of the State.

Police officials and the judiciary believe that prosecutors have been subject to political influence and bribery. Police also say that prosecutors have been unwilling to work closely with the police or to spend much time in the districts.

2. Commitment to Reform

The new chief prosecutor and the brigadier general in charge of the investigative police have promised the JSSP-R program full cooperation with no conditions attached. The prosecutor has already provided 25 candidates for the 10 spots. The general is willing to provide a list of candidates at the time of this writing, but was unable to guarantee that those individuals would be investigators due to the ongoing reorganization. JSSP-R has requested that he wait until he is able to name potential candidates who will be doing investigative work in the future.

The police and prosecution officials have agreed to retain personnel trained through the JSSP-R mentoring program for one year. The police and prosecution officials have also agreed to open their case files for review and will permit police and prosecutors participating in the program to share information with advisors as part of the mentoring process.

The police and prosecution officials have agreed to approve protocols and agreements that will formalize working relationships between police and prosecutors. However, it would be helpful to have official written endorsements from the Ministry of Interior

(MOI) and the Attorney General's Office in Kabul in hand at the time the agreements are signed. Municipal officials are likely to utilize the formal justice sector once its capacity to investigate and prosecute crimes has been strengthened.

VII. Specific Areas of Need/Weaknesses in Investigative Process

1. Legal Impediments

Prosecutors and police asserted that their understanding of the Interim Criminal Procedure Code (ICPC) 72-hour rule and the role of the judicial police were major obstacles to their investigative cooperation. Other major impediments to a functioning formal law system are rooted in corruption and lack of infrastructure.

2. Initial Police Response

Problems with initial police response are numerous and incorporate many of the problems in the province. The population mistrusts the police due to perceived corruption. Crimes are reported by persons physically appearing at the police station and noting a complaint - - this means police rarely respond quickly to crime scenes. The lack of communication equipment such as radios and mobile telephones makes coordination of police efforts virtually impossible.

3. Police Investigative Phase

Police lack the training and physical resources necessary to effectively secure and process crime scenes, and follow-up investigation is rarely undertaken. Many police officers that respond to the scene are illiterate, making report writing difficult. There are no facilities for evidence storage.

4. Prosecutor Investigative Phase

Prosecutors lack the training to effectively investigate and prepare cases. There is also a lack of will to coordinate with police, which greatly diminishes their effectiveness.

5. Trial Proceedings

Weaknesses in the trial phase include a lack of coordination between police and prosecutors and failure to adhere to basic criminal procedure. Judges are not educated and do not enforce the law as currently written.

6. Relationship with Informal/Customary Law

The formal and informal systems are intertwined to a degree that is difficult to discern. Until the community gains a level of trust in the formal law system, the informal system will continue to be the preferred venue. There is no formal mechanism linking the two

systems.

VIII. Programmatic Recommendations for the 9-Month Work Plan

1. Curriculum Development

Curriculum choices should address the deficiencies found during the assessment by taking into account both the low level of current practice and the lack of supportive infrastructure. The curriculum must adopt an approach that adds to existing technical knowledge and teaches practical skills to be applied from the crime scene to the courtroom. Purely academic training will have little if any impact. The team will integrate this approach into the curriculum.

2. Training

Since the participants are professionals and adults, the training will take an interactive and participatory approach. This will result in maximum gains in knowledge, understanding, and retention. Instruction will range from technical areas such as access to and understanding of relevant laws, through practical areas such as securing the crime scene and collection, preservation, and use of physical evidence, to policy areas such as cooperation and communication between police and prosecutors. Lectures will play a smaller role than demonstrations, practical exercises and case reviews.

3. Mentoring Activity

JSSP-R attorneys will work with their colleagues in the prosecutor's office, and similarly situated prosecutors (i.e. those who have completed this course of training, whether in Balkh or other provinces) will provide a peer monitoring, evaluation and support network. This will have an immediate, positive effect on prosecutorial professionalism. A similar system will be put into place for the police investigators who take part in this programming. In addition, an informal network will be established to allow police mentors to track cases after they are turned over to the prosecutor's office. This will significantly increase communication between the two offices and will increase cooperation and accountability.

4. Resources

Access to legal documents such as the constitution and criminal law and procedure is negligible. This project proposes to develop a "resource book" that investigative and senior officers can carry with them and provide officers quick and easy access to these documents. The project also proposes to fund a library in both the court and prosecutor's offices, which will significantly increase the level of professionalism and access to training materials.

5. Quick Impact Projects

The team identified the pressing needs as those that will build the capacity of the professionals with whom the team will be working. Thus, the team avoided simply providing professionals with materiel such as radios, telephone credits, and disposable cameras. Instead, when such materiel is to be provided, it will be in the context of projects that will increase professionalism. These projects will give prosecutors incentive to improve their case monitoring and tracking systems, and will give the police incentive to become more proactive in the way in which they address crime and those whom they serve and protect.

HERAT PROVINCE JUSTICE SECTOR ASSESSMENT

I. Summary of Findings²⁴

Despite having adequate legislation, Herat province does not have a system in place for effective administration of the rule of law. The requisite judicial structure exists; however, many of the judges simply do not follow the law. Rather, they rely heavily on their perception of events and the circumstances surrounding a case in an attempt to make a practical decision. The Herat Office of the Prosecutor holds promise, as a female chief prosecutor with a reputation for integrity and intelligence was appointed in early October 2006. However, she faces many challenges and much political pressure. The current police reform and training is a positive development as well. Nonetheless, this assessment reveals the necessity for concurrent training of police and prosecutors on the law and investigation of criminal cases.

The conclusions in this section are based upon interviews with sources between September 18 and November 25, 2006 and documents obtained during the same period. Multiple contacts were had with many of the sources. Afghan sources included interviews with members of the judiciary, the police, the prosecution, and other legal professionals and NGOs. International sources included advisors, mentors and NGOs representing all donor nations developing Afghanistan's justice system.

²⁴ Afghan laws referred to herein are: The Constitution of Afghanistan (1382)(2004); The Interim Criminal Procedure Code (ICPC) (2004); The Law of Saranwal (1345) (1966); The Law of the Jurisdiction and Organization of the Courts (1346)(1967) (adapted from Egyptian law); The Law of Administration of the Courts of Justice (1335) (1956); The Law of Statutory Limitations for Primary Appellate and Review Hearings of Civil and Criminal Cases in Afghanistan (1324) (1945); The Law for Organizing Affairs of Defense Attorneys (1351) (1972); The Juvenile Code (unofficial translation 2005).

II. Regional/District Justice Sector

1. Judicial Institutions (Courts)

A. Organization

Each district in Herat province has its own district court, which also hears first instance cases on criminal and civil matters such as family disputes, contracts, and real property cases. The city of Herat also has its own district court, called the Primary Court, which hears cases of the first instance on criminal and civil matters. The appellate court in Herat for civil, commercial, family, and most criminal matters is the Provincial Court. The Provincial Court is the court of first instance on matters involving public officials, smuggling, national security and public rights.

The Provincial Court (second instance or court of appeal) in Herat is divided into four departments: General Crimes, Civil Cases, Public/National Security, and the Commercial Court.

At the district court level, all judges are general magistrates hearing cases of crime, civil, commercial, and family matters. Each district court has one chief judge and two judges, one administrative staff, and one clerk. During the reign of the Taliban some judges were appointed to the bench who had no formal legal training. Some of these judges are still on the bench.

The only written court policies and provisions are found in The Law of the Jurisdiction and Organization of the Courts (1346)²⁵ (adapted from Egyptian law), The Law of Administration of the Courts of Justice (1335), and The Law of Statutory Limitations for Primary Appellate and Review Hearings of Civil and Criminal Cases in Afghanistan (1324). There are no other written policies and procedures for the courts of Herat.

The chief judge of the Primary Court is responsible for assigning cases and is assisted by a clerk.

The Ministry of Interior (local police) is responsible for security. There are no special security measures at the courts.

B. Competencies (Experience, Education, Training and Ethics)

Most judges stated that they have sharia legal training (religious law, Hanafi school) or have been educated at the faculty of law (state/national law). However, some judges were political appointees of the Taliban and have no formal training. The exact number of such judges is unknown. The judges who are holdovers from the

²⁵ Conversion of these dates to the Gregorian calendar can be accomplished by adding 621.

Taliban regime have not been appointed under the new Constitution and remain in their positions.²⁶

Most judges assert that they need more training. Several judges from Herat did attend training held in Kabul last year by the International Development Law Organization (IDLO). Some also attended a training event in Herat held by the Istituto Superiore Internazionale di Scienze Criminali (ISISC), an Italian human rights NGO.

C. Adherence to Law and Procedure

Judge Ghowasi reported that constitutional and procedural code provisions prohibiting discrimination and requiring equal rights for men and women are adhered to in the trial courts. However, defense counsel alleged that there is great disparity between the treatment of females and males in the courts. For example, cases filed on behalf of men will be prioritized over cases filed on behalf of women. Judges often value men's testimony over women's.

The trial courts do recognize and enforce their penal code authority and responsibility concerning "Ta'zeeri" crimes and penalties (that is, law based in legislation and not specifically found in the Koran).

Judges reported that the Constitutional requirement for presumption of innocence (Article 25) is upheld until a conviction is finalized. In contrast, defense counsel contend there is no real presumption of innocence, citing the chief judge of the Primary Court as being hostile to such presumption. In addition, Deputy Chief Prosecutor Moshtuq maintained that coerced confessions are admitted by judges to negate the presumption of innocence.

Judges asserted that they adhere to the statutory limits on provisional detention. However, cases exceed statutory provisions due to lack of resources and in situations where a witness is missing and trial cannot be conducted until such witness is found. Although statutory limits are not strictly adhered to, the situation is improving.

Defense attorneys report that trial courts are not adhering to Afghan and international law concerning the protection of human rights, including suppression of coerced confessions and illegally obtained evidence, prohibition of cruel or degrading punishment, and the right against self-incrimination.

According to the judges interviewed, the trial courts are enforcing the Constitutional rights of an accused to seek a defense advocate, to be informed of the accusation, to be supplied an advocate if destitute, and to have communications with their advocate treated as confidential (Article 31). Prosecutors and police each reported that it is the other's responsibility to advise the accused of his rights.

²⁶ Article 132 of the Constitution provides that judges are appointed with the recommendation of the Supreme Court and approval of the President.

Judges stated that requirements for abstention and disqualification from cases are adhered to as required by the Interim Criminal Procedure Code. As well, trials and hearings are open to the public except in circumstances required by law. The judges also stated that all such exceptions, such as trials involving minors, are documented. Courts also comply with the right to provide materials in the suspect's native tongue and interpretation.

According to the judges interviewed the right of an accused to present witnesses, including expert witnesses, is being observed. The judges stated that the right to cross-examine a witness is observed, provided the defendant asserts that right.

Judges stated that court decisions are typically objective and based on the merits of the case. Local parties interviewed said that built-in safe guards of appeals are available and utilized. While the court decisions are written, it is unclear whether the decisions are open to the public or legal professionals. Defense counsels claim that decisions are not available.

Judges asserted that they adhere to legally required time limits for completion of trial proceedings and that they meet routinely to discuss cases and caseload. According to defense counsel, improvement is noted due to the presence of defense counsel at trial and the efforts of the new chief prosecutor.

Prosecutors and judges stated that minors charged with crimes are being prosecuted in accordance with the law; however, there are no juvenile prosecutors in the districts. Cases involving minors should be administered separately from adults. The law proscribes resolution of a criminal proceeding depending on the age of the child.²⁷ Juvenile offenders are held at a facility called Family Hai Qolurdu, which is run by the MOJ. There are currently 53 juveniles in custody - 44 males and nine females - eight of whom are being held pending sentencing. The NGO "War Child" provides them with literacy and tailoring training.

D. Administration and Resources

The Italian Provincial Reconstruction Team (PRT) is overseeing the construction of a new judicial building in Herat province. Many problems associated with the physical plant should be resolved once construction is completed, as the building design includes more office and storage space along with a law library.

Cases are docketed and assigned by the chief judge, whose clerk maintains the docket. Judges routinely meet with the chief judge to discuss assignment of cases.

²⁷ As proscribed by Juvenile Code Articles 4 and 39, if under the age of seven, there is no crime; between seven and twelve years old there is a trial with the parents present who are then admonished to see that the child does not commit such act again; and from twelve to eighteen years of age, if guilty, the minor will be sent to a juvenile detention center. An 18-year-old may be tried as an adult; however, their sentence will be reduced accordingly.

Case statistics are kept, and graphs of criminal trends are updated every three months. These statistical graphs are preserved in a ledger. (The team was unable to observe trials due to security concerns.) Judges based in Herat have adequate office space, as each judge has his own office. However, there is only one room for the judges and staff in outlying districts.

Judicial salaries are not commensurate with their duties or responsibilities. Judges earn a maximum of \$100 US per month, while the Governor earns \$2,000-\$3,000 US per month.

Judges have access to legal materials (statutes, codes, previous rulings, etc.) and the new judicial building will include a law library.

Judges do not have the supplies and equipment needed to perform their duties, and lack transportation, communication, tape recorders, copy machines, and office supplies. The Supreme Court provides \$600 US every quarter, which is typically spent within the first ten days. The judges and staff also lack computers and books for the law library.

According to the judges interviewed, courts have adequate storage space and administrative controls for secure evidence storage. The judges also stated that there was no need for significant storage space because the police and Saranwali are responsible for securing evidence. The prosecutors and police, however, stated their belief that the court is responsible for securing evidence.

2. Prosecutors

A. Organization

The organizational structure of the prosecutors is as follows: The provincial prosecutor's office (the Saranwali) for Herat province is based in the center of the city of Herat. The Saranwali includes the Chief and Deputy Prosecutors along with specialized Saranwal sections for traffic, theft, murder, administration and drug trafficking. There are no juvenile prosecutors at the district level.

Deputy Chief Saranwal Moshtuq said that functional descriptions for prosecutorial positions exist. The Attorney General's office promulgates these descriptions for the specifically organized departments of the Prosecutor's Office, such as traffic and administration, but not for individual prosecutor positions.

The minimum qualification to serve as a prosecutor is a high school diploma. Prosecutors for the province who have a university education have degrees in two principal disciplines: Law Faculty and Sharia Law studies. There is a smaller segment of the university-educated lawyers who have degrees in a variety of subjects such as journalism and economics.

The Prosecutor's Office encompasses Herat and all 15 districts within the province. There are a total of 92 personnel in the Prosecutor's Office, which includes 58 prosecutors and 34 administrative and support personnel. In each provincial district there are three employees; two prosecutors and one clerk, totaling 45 employees located outside the city of Herat.

There are no written standard operating procedures or equivalent policy manuals for the conduct of the Herat Prosecutor's Office. The office appears to operate based on established pattern or practice.

The chief prosecutor can recommend that a certificate be awarded to office employees to reward performance. Final approval authority for this rests with the Attorney General's office. Certificates come in three levels: a Level 3 Certificate entitles the employee to one month's salary; Level 2 provides for promotion to the next higher rank in two years as opposed to the normal three year interval between promotions, and a Level 1 Certificate provides for immediate promotion to the next rank and a \$1 US bonus. Additionally, an exceptional prosecutor has the chance to be transferred to the Attorney General's office in Kabul. Otherwise, prosecutors are promoted every three years and receive a slight raise in pay.

The chief prosecutor must notify and obtain approval from the Attorney General's office to allocate resources within the Prosecutor's Office of Herat province.

B. Competencies (Experience, Education, Training and Ethics)

Of the 58 prosecutors currently in Herat province, roughly two-thirds have a law degree while the rest are high school graduates. Prosecutors attend a twelve-month training course in Kabul before assuming their duties as a prosecutor. This "stage" course constitutes the only training in prosecution and investigations received either before or during their duties as prosecutor.

No additional in-service legal training programs have been made available. However, international donors have recently sponsored seminars in Herat. Prosecutors are not required to attend training programs and are not compensated if they attend. With the exception of a few trainings given by international donors, prosecutors have no special training in criminal investigation other than the "stage" course in Kabul. It is not anticipated that these internationally-sponsored trainings will conflict with the JSSP-R training.

Complaints against prosecutors may be initiated in one of three ways, according to the deputy chief prosecutor. The procedure may begin with a complaint to the chief prosecutor, to the governor, or to the National Security Council. Thereafter, two prosecutors are assigned to investigate the complaint before the file is referred to the court.

C. Investigative Procedures and Adherence to Law

The prosecutors interviewed stated that the investigative process is as follows: Police notify prosecutors when a crime is committed. Before 1600 hours, any prosecutor at the office may respond. After 1600 there is a designated on-call prosecutor to assist. The on-call prosecutors sleep at the office and travel to the scenes of serious crimes such as murder, but not simple property crimes or assaults involving minor injuries. Prosecutors may not be notified of such crimes until the expiration of the 72-hour period when the investigation is completed (in spite of the 24 hour notification required by Article 21 of the ICPC). The prosecutor is also required to be present when a home is searched, as well as when evidence is received or a suspect is arrested. A clerk with the prosecutor's office is also on call.

Police collect evidence from the scene. The prosecution signs for the evidence when they take possession of it. Prosecutors will keep weapons such as knives and evidence not deemed contraband at their office. However, evidence is kept en masse and accurate chain of custody depends on written descriptions in reports. Firearms and narcotics remain in police custody pending case resolution. Evidence is often not physically taken to the court, but described in documents. Judges may request production of the physical evidence in court if further clarification or detail is necessary. Evidence that is submitted is returned to the prosecutor's office once the trial has concluded.

Prosecutor involvement after the 72-hour period is typically "follow-up" in nature, and includes evidence collection and witness interviews. Prosecutors stated that the police are not involved in an investigative capacity at this stage, but may accompany the prosecutor for security purposes. Prosecutors interview victims and witnesses and take written statements during the investigative phase.

Prosecutors stated that when a criminal case involves a property crime by a family member, the offended family member often decides to forego prosecution. Such cases are not prosecuted, and the decision to forego prosecution is not noted in the file. When the offender is not related to the victim the prosecution proceeds regardless of the preference of the victim. Additionally, where there is insufficient evidence to prosecute, prosecutors stated that they do not continue with prosecution.

Prosecutors reported that they identify pieces of evidence associated with a particular case. There is no "chain of custody" procedure that has been fully verified or evaluated, and there are no written SOPs or policy manuals within the Prosecutor's Office.

Prosecutors stated that they comply with the requirement of the ICPC to prosecute all crimes unless otherwise expressly provided by law. If a case is dismissed and not referred to the court, the reasons for non-action are documented in the case file. However, the final decision on whether a case is dismissed or referred to trial is made by the Attorney General's office.

The ICPC permits detention of a suspect by prosecutors for up to fifteen days after arrest, and an extension for another fifteen days is available upon application to the court. Prosecutors asserted that they adhere to the legal requirements on provisional detention. After fifteen days a suspect may be released pending trial if bond is posted, although the process by which this occurs is unclear.²⁸

Some prosecutors may advise suspects of their rights in conformance with the ICPC. However, one prosecutor stated that the duty to advise suspects of their rights lies with defense counsel. The chief prosecutor stated that many of the prosecutors are not familiar with the ICPC and do not comply with its provisions. The chief prosecutor agreed that training is needed.

Prosecutors report that they adhere to the right of accused to have defense counsel present during interrogation, searches, line-ups, and expert examinations. Anecdotally, there was a defense attorney present during prosecutor interrogation of witnesses on the date of a visit.

Prosecutors also stated that they comply with the law requiring that materials be provided to the accused in his native tongue, and that interpretation is provided.

There are no policies and procedures to protect victims and witnesses during the investigative phase. There is no formalized system of victim or witness protection, although a victim or witness may be held in protective custody if they desire.

Prosecutors are required to interview detained suspects within 48 hours of their being taken into custody. Prosecutors stated that they attempt to interview these suspects within this limit but are sometimes unable to do so due to their workload.

Prosecutors stated that they adhere to the requirement to ratify or modify judicial (investigative) police activities under ICPC Articles 30-32, and obtain the initial report from the police within 24 hours. However, defense counsels that were interviewed assert that the prosecutors simply “rubber stamp” the police report and use that information for their investigation.

D. Administration and Resources

Cases are organized by department and year and stored in cartons on the floor, as there is no adequate filing system. Case flow and management procedures consist of a register that contains the case name, file number, and crime department where the file is stored. Each section of the prosecutor's office maintains its own statistics in a ledger, which is managed by two administrative personnel.

Prosecutor salaries are not commensurate with their duties or responsibilities.

²⁸ Bond procedures are unclear with reason as the ICPC is silent on the issue.

Prosecutors complained that their low salaries encourage corruption, dissuade long-term prosecution careers, and contribute to frequent turnover of personnel. Additionally, prosecutors are not being paid regularly. The Ministry of Finance disperses pay through the Bank of Herat and it is often late.

The Prosecutor's Office has severely inadequate office space, whether for the storage of files, the interviewing of witnesses, or routine office practice. It is also apparent that prosecutors have little or no access to legal materials.

There are no written policies or procedures to collect, process or hold evidence. Prosecutors have access to forensic and criminal investigative tools necessary for photos and fingerprint collection, although they do not have access to forensic analysis tools. They have, for example, no capacity for fingerprint analysis. No evidence storage facilities are available. Physical evidence is not routinely stored in the prosecutor's office, since the prosecutors state that such evidence is transferred to the courts. An inspection of the offices in Herat province showed an inadequate workspace with no room for files, much less the secure storage of physical evidence. Prosecutors do not have access to a designated medical examiner in Herat.

There is no traditional word-processing equipment such as computers or printers, or office equipment such as copiers or scanners. An examination of case files showed substantial documentation but no typewritten or computer-generated documents.

Prosecutors do respond to crime and/or investigation scenes, depending on the urgency of the crime and resources available to respond. The prosecutor does document the crime scene according to the duties outlined in the Law on the Saranwali.

3. Private Criminal Defense Attorneys

A. Availability/Organization

Most defense attorneys work only in Kabul and the surrounding area. The Ministry of Justice does not fund defense attorneys for legal representation in Herat province. Instead, three NGOs provide the vast majority of funding for indigent legal defense. These NGO's are the International Legal Foundation (ILF), Medica Mondiale, and Qanun Ghush-tonky.

There is a local registry of attorneys available to the public per ICPC Article 18. A list of all private attorneys in Afghanistan who perform legal defense services is available through the Ministry of Justice.

The NGOs interviewed stated that the public at large has very little understanding of the role of a defense attorney. Before the new Constitution, the use of defense counsel at a criminal trial was not common practice. Although the new Constitution

mandates the provision of defense counsel, this very rarely occurs.

B. Competency (Experience, Education, Training and Ethics)

There are two methods to become licensed to practice law in the formal justice system. One is to study law for four years at a university, and the other is to attend a four-year study program of Sharia law. A license from the Ministry of Justice Department of Government and Judicial Issues must be obtained in order to practice. Defense attorneys are not required to pass any examination.

There is no local mechanism for monitoring the ethics of defense attorneys, although defense attorneys are required to report their activities to a department of the MOJ every quarter. This reporting is likely more for tax purposes than ethical monitoring per the Law for Organizing Affairs of Defense Attorneys (1351) (1972).

Defense attorneys may or may not recuse themselves appropriately if there is a conflict of interest. One NGO representative answered that some defense attorneys may not recuse themselves if they are bribed. Another NGO representative did not seem to understand the concept of “conflict of interest.”

4. Public Defenders.

A. Availability.

No government-funded public defenders or court-appointed counsel exist in Herat province. As described above, access to defense counsel is provided exclusively by NGOs. Public funds are not being expended to hire defenders for the indigent as required by law.

B. Competencies (Experience, Education, Training and Ethics)

The NGOs interviewed stated that the quality of legal defense provided by privately compensated defense attorneys is inferior to the representation provided by NGO-trained defense counsel. Privately retained defense attorneys do not conduct adequate investigations of criminal cases. They simply prepare a written position for the defendant, which is then submitted to the court. There is very little substantive investigation, advocacy or representation.

5. Role of Sharia and Traditional Mechanisms

A. Organization

In Herat province all informal law councils are called shuras; there are no maracas or

jirgas. Shuras are often assembled ad hoc and resolve local disputes.

The NGO staff interviewed stated that there is no customary tribunal law governing the operation of shuras. Nevertheless, many citizens still prefer to take their legal problems to the shura. Shuras are held in different areas of the region and do not operate by uniform regulations. Nonetheless, the shura remains the most common mechanism used to settle a dispute. The shura participants are made up of Mullahs, persons who know Sharia law, the chiefs of the villages, village elders, and the parties to the dispute.

Local NGO interviewees stated that the shura process takes place as follows. First, claimants have the opportunity to present their complaints and provide their documents. Respondents then state their position and provide documents, after which the claimants specify the remedy they seek. Both parties are asked whether they are willing to accept the decision of the Shura. Finally, the claimant and respondent are excused from the session and a decision is made in the absence of both parties. The decision is announced to the parties; if both agree, the dispute is resolved and the agreement is put in writing and signed by both. Both parties may then go to the district court to register the agreement as an official decision. However, a party that has not consented to the shura's decision has the right to apply to the formal justice system.

B. Application (Civil and Criminal)

Judges and local NGO professionals stated that the application of Sharia and/or traditional justice is not limited to offenses outside the formal system. There are instances where Sharia and/or traditional law is applied to criminal cases that, by law, should proceed in the formal trial court system pursuant to Afghan criminal law. This practice is more prevalent in the districts farther away from the city of Herat. However, in Herat city and nearby urban districts criminal cases are more often being referred to the formal system. There are several reasons for the citizens to turn to their local shura for resolution of a case, even if it involves a simple crime. A shura is cheaper, faster, and seeks restorative justice. Formal courts are relatively expensive, especially if bribes are involved. Trials are time consuming and justice is only punitive in nature. This does little to heal the community, which may be affected. There is no evidence to suggest that Sharia is being applied to non-Muslims in criminal cases.

C. Human Rights Issues

Unfortunately, local NGOs report that women are still being used to fulfill *poar* obligations (blood money consisting of, for example, offering a perpetrator's female relatives to victim's relatives in marriage); however, this practice is more common in the outlying rural districts. These villages have much less exposure to formal legal

solutions and resort to local tribal traditional dispute resolution.

Outside of the city, the application of religious/traditional law on religious and ethnic minorities has little impact since ethnic groups rarely mingle. This is especially true where traditional or religious practices govern. Villages are typically communities that have been resistant to outsiders and outside influence. This cohesion of community has been somewhat interrupted by decades of war and the infiltration of outsiders, especially by the warlords and their militias. In addition, ethnic minorities have their own traditional practices and act according to their traditions.

D. Linkages with the Formal Sector

There are no written formal provisions for referral or appeal from the decision of a religious/traditional forum to the formal legal sector, although judges report that it is accepted practice for a party to appeal a decision of a shura by taking the matter to a formal court. This is more common in urban areas than in remote districts and villages, where community pressure to accept the shura's decision is much more influential. Occasionally the shura will make the decision to refer a dispute to the formal legal sector if resolution at the shura level is not possible.

Police interviewed said that there are few instances where police refer cases to religious/traditional institutions rather than to prosecutors. Cases that are referred to religious/traditional/informal dispute resolution usually involve land disputes, property disputes, and non-criminal related cases.

Nonetheless, while police do not officially refer cases to the informal sector they may suggest that the parties go to the shura. There are several reasons for this: the police do not want to resolve low-level disputes, and the parties may find quicker and cheaper resolution of the matter with a shura. Police do not generally refer serious crimes to the informal sector.

According to the chief judge of the Primary Criminal Court in Herat, district courts do not refer matters to the religious/traditional sector. However, a judge may suggest that the parties seek equity or restorative justice by going to the shura, although a guilty party may ultimately serve a sentence (punitive justice). This practice stems from the traditional act of trying to make the parties "whole" and bringing peace and order to the community.

III. Regional/District Police

1. Police Organization, Command and Control

The police are undergoing a structural reorganization. A new Western Regional Command is now overseeing the commands of the four western provinces of Herat,

Farah, Ghor, and Badghis. This restructuring is on-going and includes an attempt to root out anti-government elements. The Ministry of Interior in Kabul now oversees four major regional commanders as opposed to individual provincial chiefs of police.

The regional command is as follows:

- General Akramuddin – Regional Commander
- General Makboob – Deputy Regional Commander
- General Ali Khan – CID Head for the Western Region
- Colonel Pikar – Provincial Head of Criminal Investigation Division
- General Salangi – Provincial Chief of Police

The provincial chief of police has deputies for the following sections: criminal investigation, uniformed police, traffic police, and management and logistics. Police are only specialized to the extent that they are part of a department of the Afghan National Police (ANP) or the MOI.

Police candidates must have a minimum of a ninth-grade education and must pass a literacy test. Candidates are recruited locally and vetted through the MOI in Kabul. Officer candidates must have at least a high school education and are recruited through MOI in Kabul rather than in Herat.

There is currently no entity that could be classified as “regional” investigative police, even under the new restructuring. Gen. Ali Khan is the regional supervisor for the criminal investigation divisions (“CID”) in each of the four provinces in the Western Region. As such, he is responsible for policy and procedures for the CIDs in each of the four provinces. In Herat province his subordinate is Col. Nisar Ahmad Pikar. Col. Pikar is in charge of a criminal investigation division comprised of 64 personnel.

The authority for the firing of police officers ultimately rests with the MOI in Kabul. Disciplinary matters short of termination rest within the respective departments.

Investigation of police misconduct is the responsibility of the provincial chief, Gen. Salangi, and the regional commander. Col. Abdullah, personnel officer in the Personnel Department, has the authority to make personnel decisions.

INL police mentors explained that it was routine that superiors skimmed off the top of police officers’ salaries. The current pay reform program requires each police officer to appear at the bank, present photo identification, and sign off on a receipt of pay while INL police advisors supervise the distribution of pay. Ultimately, this should help rid the police of “ghost employees.”

The Chief of Police, Gen. Salangi, stated that there is an accounting each month of the crimes committed during the previous month. He further noted that he attends a daily meeting with heads of the Crime and Security Departments, at which decisions are made regarding allocation of resources. The available resources and the crimes that were committed the previous day determine these decisions. This appears to be a tactical

decision based on current facts rather than a pro-active strategic deployment of personnel and resources based upon detailed analysis of crime statistics and trends.

2. Investigative Capacity and Training

There are no police officially designated as “judicial” police at the district, provincial or regional levels. There are, however, investigative police.

Formal job descriptions do not exist as might be expected in a modern corporate or military environment with enumerated and specific duties and responsibilities. For example, an investigator in the investigations section of the CID may have no formal job description but, in practical terms, his duties are specific and well-defined based on pattern and practice within the section and CID as a whole.

There are basic education and time-in-service requirements for the police system of rank. Police officers from the rank of second lieutenant and beyond require an education of twelve years along with three years of police academy training. To move to each successive rank requires three years of service. The advancement from colonel to brigadier general requires four years of service.

Within the past five months the CID Western Region Commander, Gen. Ali Khan, represented Herat province at a two-day seminar on investigative training in Kabul given by the German Police Project Office (GPPO). However, there has been no specialized training on the ground by the RTC in Herat province. Gen. Ali Khan asserted that 80% of the CID officers have attended the training sponsored by the German police in Kabul. The CID personnel consist of 28 officers, with the remainder of the CID being employees retained since the Taliban era.

The forensic equipment available to police is minimal. There are currently no designated crime scene response vehicles in use in Herat province.

Gen. Khan noted that the officers in the “criminal techniques” or forensic evidence section of the CID utilize a crime scene kit, which contains a chalk powder to dust and illuminate footprints, and “lenses” for the cameras. He did not mention evidence tags and bags being in this kit or powder for the processing of fingerprint evidence. He noted in the same interview that criminal investigators need cameras, tape and video recorders.

In terms of forensic capability, Gen. Khan stated that a “technical person” could compare fingerprints taken from a crime scene. He also noted that there was a microscope to do fiber/fabric comparisons. While this capacity may exist, it is unclear whether such comparison and analysis is being regularly practiced.

Gen. Khan stated that a crime scene blood sample could be used for forensic purposes. The blood type of a suspect could be compared with the blood type of the sample recovered at the crime scene. Gen. Khan stated that this process would be conducted at a

civil hospital. He stated that DNA would take too long but he clearly did have not an appreciation for that technology; he observed that it is not used as a forensic tool. No mention was made by Gen. Khan of the techniques for analysis of blood spatter, tool and die mark comparison, or ballistics testing and comparison.

Col. Pikar advised that there are scales for weighing controlled substances in the police section responsible for investigating narcotics offenses. There were no scientific scales for the weighing of smaller amounts of controlled substances observed within the Herat CID.

Two crime scene kits donated by the German government have been observed in the CID. The kits are for evidence collection, testing of bodily fluids and other substances. It is unclear if the kits are used on a regular basis in the field.

The fingerprint equipment is basic and consists of an ink roller, ink, and a glass surface for the hand and finger surfaces. There were no magnification instruments for the comparison of fingerprints, laboratory scales for the weighing of controlled substances, evidence bags, or tags.

Gen. Salangi has noted that evidence bags and tags, along with crime scene tape, are needed in the field. There was a large roll of red and white crime scene tape written in German and not in Dari.

One film camera is available for use in the field, as is one video camera. There are three other tripod-mounted cameras within the Identification Section of CID, but they appear to be used for photographing suspects.

There is no designated medical examiner in the region. There are two hospitals in Herat province and a physician on call has responsibility for performing the duties of a medical examiner.

First responders (uniformed police) do not have training in crime scene preservation. Gen. Khan stated that uniformed police were only trained to segregate and protect the crime scene.

Police literacy issues affect the ability to collect evidence and statements, and conduct investigations. Literacy of police and religious and cultural issues impact effective community policing. Clear evidence of this impact is the fact that the officers in the CID are specifically chosen for experience and literacy.

3. Investigative Procedures and Adherence to Law Concerning Investigations

Police investigative policies and standard operating procedures are not documented. Gen. Khan stated that there are no procedure manuals or SOPs for investigations or the collection of forensic evidence. A standard form is used to document the crime scene.

The police appear to function without reference to any Afghan criminal procedure or penal codes. Until recently, police did not inform suspects of their rights in compliance with the Interim Criminal Procedure Code (Art. 5 ICPC); however, police are now being trained to do so by the Regional Training Center (RTC).

Police say that they routinely contact a prosecutor to report that a crime has occurred during the initial 72 hours; however, this likely depends on the type of offense, the location of the crime, and the resources available. According to ICPC Article 21, police must report to the Saranwal within 24 hours and claim they are doing so. After 72 hours the police pass the case on to the Saranwali and have no further involvement with the case.

Police do not have regulations on how to differentiate between common crimes that fall under regional purview versus national security crimes.

The CID has the authority to initiate and close cases, direct investigative action, and/or refer a case to higher authorities. The CID has the mission of gathering witness statements, collecting physical evidence and assembling a criminal case file to provide to the prosecutor's office. The individual investigators within the criminal investigation section of the CID are assigned to investigate criminal offenses. The individual investigator can recommend that a case be dismissed for lack of evidence, but the final approval authority rests with Col. Phiker.

4. Community Relations

There currently is no formal outreach policy or program. The Governmental Women's Organization, a nationally chartered body that has its own office and building, does meet on a monthly basis with attendance by a senior police official, Col. Latief.

There is one human rights officer assigned to the police department in Herat at Central Police Headquarters. This officer currently has no assigned vehicle for transportation. The human rights officer has contacted religious leaders at the mosques and asked them to advise their worshippers against domestic violence. A Family Response Unit mentored by INL officers handles domestic violence intake cases. Many of these are cases of self-immolation. This unit has been threatened with closure from its inception, and the female lieutenant in charge of the unit has had her life threatened more than once.

According to defense counsel interviewed, citizens are unaware of their rights under the law. At some point after arrest a citizen will be informed of his/her rights either by the Saranwal or by defense counsel who may visit the holding cell. Police generally do not advise citizens of their rights and the general population, especially outside of the urban areas, has no idea of individual rights.

5. Administrative Support and Resources

Police cases are organized in identifiable case files. The individual case files are typically pinned together with a straight pin. The files do appear to be well-kept considering the available resources. There are no manila folders, modern internal drawer filing systems, or any photocopy capacities.

The investigator's office had space for one large file cabinet for open files. This appeared to be sufficient for "working" or current files, but it was clearly insufficient for archival and storage purposes. Investigators do not have access to legal materials (statutes, codes, etc.) or procedural manuals.

Copies of files, whether or not forwarded for prosecution, are kept in large binders. There is an internal filing and accountability system with files registered by number in a large notebook. Gen. Salangi reported that there is a statistical accounting each month of the crimes committed during the previous month.

Col. Tahir noted that a new assessment section is being added to the CID. The unit will contain seven personnel, and its mission will be to track criminal offenses. This unit will be able to provide valuable information when comparing the rate of reported criminal offenses compared to completed cases going forward to prosecution. This will replace a much smaller office currently involved in tracking criminal offenses which is attached to the office of the commander of CID.

Police salaries are not within the range of livable wage. Until recently police were paid \$35 US a month. Now, police start out at \$70 US a month while trainees are paid \$45 US a month. Low salaries make it more likely that police will supplement their income with small bribes. Since implementing the new pay reform policy last month, police officers have been paid regularly.

The investigators appear to have adequate space in a system and office in which cases are transferred to the prosecutor's office within 72 hours. There is little in the way of photocopy or word-processing equipment. Evidence storage space is not currently an issue, since little forensic evidence is collected. As police investigations and word-processing capabilities expand in duration and complexity the need will arise for more office and storage space.

Police have limited access to means of transportation and communication, tape recorders, and office equipment necessary to conduct investigations and meet their responsibilities according to law. Col. Tahir recently noted that there are no undercover or covert vehicles for use by the CID. Additionally, there is no vehicle dedicated solely for the use of crime specialists.

The ANP has received several vehicles from international donors, although there are not enough vehicles to reach outlying districts. Communication systems such as hand-held radios, cell phone, and CODAN (HF radio) are severely limited. Some office equipment

has been donated to some of the departments, but office infrastructure remains inadequate. The German government previously renovated the CID building, but the telephone system installed in the CID is not functional.

As stated above, the forensic equipment available to police is minimal. Two crime scene kits purchased by the German government were observed in the CID. The kits are for evidence collection and testing of bodily fluids and other substances, and while the kits are large they do not appear to have ever been used in a field situation.

There is a safe within CID for valuables recovered at crime scenes. Storage space appears to be adequate given the small amount of evidence collected and the brief period of time cases remain in the office before being transferred to the prosecutor. There is no document filing and storage system, nor is there word-processing equipment or basic office supplies.

Misconduct and corruption are addressed minimally. Typically, allegations of misconduct or dereliction of duty are reported to a superior officer. This can result in mandatory counseling.

IV. Investigative Process

1. Initial Police Response

Uniformed police secure crime scenes pending arrival of investigators. After first-responders arrive, Security Department officers provide containment of the crime scene. The Security Department does not appear to be trained in or understand basic concepts of crime scene procedures, including crime scene integrity and contamination, chain of custody for physical evidence, segregation of witnesses, or evidence collection and processing techniques.

Processing witnesses at a crime scene has been observed to be haphazard and chaotic. There is little in the way of policy or procedure for the physical separation and questioning of witnesses, according to one INL Police Mentor. The same INL Police Mentor also noted that the police allowed eyewitnesses to the incident to intermingle with family members of the victim and alleged perpetrator. This created a situation that was both volatile and disruptive to the collection of physical evidence and witness statements.

2. Police Investigation Period

Gen. Khan and Col. Pikar stated that district and provincial police investigators do routinely collect evidence and take witness statements. INL Police Mentors have seen police officers collect larger, “in plain view” items of physical evidence such as weapons, but no further processing to include such matters as photos, fingerprints, footprints, ballistics, or tool marks.

With limited forensic evidence collection capability and training, criminal files consist of witness statements. Mr. Mushtaq, the Deputy Prosecutor, has stated that the criminal justice system in Herat is essentially “confessional” in nature and therefore without corroborating witnesses and forensic or physical evidence.

Gen. Khan stated that there is not a formal “witness protection” program in Afghanistan. He did state that witnesses could be confined in a government facility or even jail as a means of protective custody. Neither the prosecutor’s nor the investigator’s office appear to have any semblance of a modern victim services section to buffer and liaise with the criminal justice system.

Compliance with chain of custody protocols is minimal. While INL police mentors have observed evidence tags on physical evidence, there did not appear to be uniform compliance with chain of custody protocols.

District and provincial investigators attempt to respond in a timely manner. Col. Pikar stated that investigators are assigned to specific cases and are responsible for gathering evidence and witness statements for presentation to the prosecutor’s office.

According to Col. Pikar, a serious crime would be reported to him and the Chief of Police. Col. Pikar would then make the case assignment personally to an investigator.

Gen. Salangi asserted the duty of the police to conduct criminal investigations. However, he has stated that the 72-hour period is one part of the current system that needs to be revised. The implication of this comment is that the 72-hour rule in some cases is not practical. Nevertheless, interviews with police officials revealed that the files are provided to the prosecutor’s office at the end of the 72-hour period. The police appear to be under the impression that there is a legal prohibition against further police investigation under the direction or in coordination with the prosecuting attorney once the initial 72-hour period has expired.

3. Prosecutor Investigative Phase

As discussed above, police notify prosecutors when a crime is committed. Prosecutors respond and travel to the scenes of serious crimes such as murder, although they may not respond in a timely manner to simple property crimes or assaults involving minor injuries due to limited resources. Prosecutors may not be notified of such crimes until the expiration of the 72-hour period when the investigation is completed.

Prosecutors stated that their investigative involvement after the 72-hour period is typically “follow up” in nature, including collecting evidence and interviewing witnesses. As stated, the police are not involved in an investigative capacity at this stage, but may accompany the prosecutor for security purposes.

4. Trial Proceedings (Including Appeals)

Judges stated that Primary Court trials are sometimes completed within the required two-month timeframe and things are improving. However, the team has been unable to observe any trials and cannot speak to whether they are conducted in conformity with law or whether, in cases of conviction, the case is forwarded to the provincial appellate prosecutor in a timely manner, or whether the appellate prosecutor completes review within the two-month period.

According to defense counsel, cases are appropriately referred to the Supreme Court for final review, but often languish there.

Gen. Shameer Amiri of Herat Prison has stated that budget and inter-ministry coordination problems can cause a significant delay in adjudication and an extended pre-trial detention. The prison currently has one prisoner, accused of his father's murder in Balkh province, who has been held for ten months without trial or transfer to Mazar-e-Sharif. While this is an extreme case, it illustrates an on-going problem.

5. Public Perception of Crime

Local justice system professionals stated that the public perception of crime includes, in large measure, both official corruption and an increase in violent crimes and property crimes. Police management did not identify corruption involving public officials as a problem, while prosecution management reported that corruption is a problem in the system.

The Crime Department functions as the criminal complaint intake section of the police. There is anecdotal evidence to suggest that members of the public in Herat City file a substantial number of complaints with the police. The reporting of crimes does not, however, indicate full confidence in the police.

Local justice system professionals stated that the public has a general distrust of the police stemming from the perception of incompetence, corruption and police misconduct. Thus, citizens do not have the confidence to go to police for help. In the more distant and rural areas this lack of public trust results in the referral of criminal cases to the shuras.

In summary, the major complaints against police include a lack of professional competence, misconduct and corruption. Herat justice system professionals asserted that *both* police and prosecutors take bribes and are subject to the forces of political influence and corruption.

V. Perceptions of Effectiveness of Formal Justice Sector Versus Religious Mechanism

The vast majority of cases should be resolved under the jurisdiction of the formal court system, yet people are resorting to shura mechanisms in the less urban, outlying districts

and towns. Local justice system professionals report that people resort to the Shuras because the formal system is either not understood or is seen as expensive and time consuming. Given their poverty and illiteracy, members of the public are often subject to abuse by officials in the formal system. Further, the credibility of the formal system has been badly tarnished by corruption at all levels. Therefore, the shura mechanism is preferred because there is no perception of bribery; it is transparent, and is efficient in both cost and time.

Unfortunately, the same sources reported, the citizens have to pay bribes to access the formal justice system. However, defense counsel from Herat asserted that the situation is improving due to the presence of defense counsel in criminal cases. Additionally, there is the perception by defense counsel that the new chief prosecutor will not tolerate bribery and misconduct by police and public officials.

VI. Local Official Understanding of Investigative Issues and Commitment to Reform

1. Recognition of Criminal Investigative Issues

Police officials stated that most investigations involved serious crimes (murder, robbery, assault, etc.), property crimes, and crimes involving self-immolation. There was a history of tribal violence, mostly between Pashtuns and Tajiks. Now, violence is based on clashes between political parties and warlords. Col. Pikar stated that drug traffickers transporting drugs from Helmand and Kandahar pose an additional problem in the area. He noted that the Herat police were not only confiscating the drugs but also arresting and prosecuting the traffickers.

2. Commitment/Buy-In to Reform

Both the police and the prosecution agree that reform is necessary. Every official addressed by the Herat JSSP-R team admitted that there is a desperate need for training and coordination in the formal sector and that they desire our assistance most heartily and will try to cooperate in any way possible. The chief prosecutor has already provided a list of 20 candidates for training. The Police have been somewhat less forthcoming in selecting candidates for the training, as resources are scarce and there is presently a restructuring of the police. However, it does appear that there is a spirit of cooperation among the police, prosecution, as well as defense counsel which all agree will be enhanced with additional training.

3. Extent to Which Corruption Undermines Investigation, Prosecution, and Punishment of Crimes

There is no evidence of judicial tampering that the team was able to collect or observe. However, some justice system professionals alleged that a high level provincial official of Herat often interferes with cases. There have been documented cases of judicial corruption or bribery in the region. Last year, eleven judges were suspended for

accepting bribes and being involved in corrupt activities. However, the eleven judges then went to Kabul and negotiated for one month to have the suspensions dropped, afterwards returning to Herat and the judiciary.

Regarding cases of bribery or corruption, the deputy chief prosecutor of Herat province has stated in an interview that he is unaware of any reported bribery or corruption cases filed against prosecutors. However, the previous chief prosecutor of Herat was removed by Attorney General Sabit just last summer on charges of corruption and replaced with Chief Prosecutor Maria Bashir.

According to police, no one interferes with their cases because the Saranwal conducts investigations.

VII. Specific Areas of Need/Weakness in Investigative Process

1. Legal Impediments

Both police and prosecutors reported that the present arrangement between police and prosecutors concerning the 72-hour rule was cumbersome and inefficient and that the integration of police and prosecutors is poor.

2. Initial Police Response

Lack of adequate resources hampers timely police response in many instances. Lack of effective police training can result in loss of valuable crime scene data.

3. Police Investigative Phase

Police claim that they cannot develop the investigation sufficiently during the 72-hour window in order to provide the provincial prosecutor with sufficient information to begin their investigation. This is based on a misunderstanding of the ICPC, but is nevertheless a significant obstacle.

4. Prosecutor Investigative Phase

Prosecutors do not use police to collect additional evidence and/or take statements during the course of the prosecutor's investigative phase. There is great confusion regarding cooperation between police and prosecutors during the investigative phase. Again, this is due to the lack of understanding and training regarding the ICPC.

5. Trial Proceedings

Trial proceedings in the Primary Court suffer due to the lack of a competent and fully educated judiciary. Judges conduct court proceedings without reference to elementary legal principles or current procedural and penal law.

The lack of formalized coordination between police and prosecution results in the filing of criminal cases based upon incomplete investigation and a lack of physical and corroborative evidence. Coupled with an inept judiciary, cases are not adjudicated within the prescribed time limits. This results in extended pre-trial detention for defendants and the denial of justice to criminal defendants.

6. Relationship with Informal/Customary Law

All crimes should be handled through the formal system, which provides for Sharia law as well as state law. No one interviewed admitted that any crimes could be handled more appropriately by the informal system. That does not change the fact that some people resort to the informal system due to lack of trust or access.

VIII. Programmatic Recommendations for the 9-month Work Plan

1. Training

The training course will need to train police and prosecutors concurrently in both legal (e.g. the Constitution, the ICPC, and the Penal Code) and functional areas (e.g. investigative cooperation and case-building). The training should not include Sharia and customary law only to ensure that crime is not handled by these informal justice sector mechanisms. Follow-on training after mentoring should be developed based on the areas in which the mentors, the police, and prosecutors see need.

2. Mentoring Activity

Both police and prosecutors must be mentored on new skills and knowledge for several months in order to reinforce classroom training. Ideally, this will involve working on cases from the beginning to conclusion. It is hoped that advisors will be able to travel to prosecutors' offices and to crime scenes to mentor in "real time." If security issues hinder some of these activities, prosecutors and police will be able to contact or travel to meet with the advisors.

3. Resources

The proper number and availability of mentors is essential to the success of this program. The program will also require legal materials and training tools for teaching investigative techniques. Developing significant local legal resources, both for training and day-to-day use, will be vital to the sustainability of program impact.

4. Quick Impact Projects

There are several ways to quickly impact the existing system. Merely providing basic offices supplies is a start, as well as providing vehicles, communications equipment, and data-processing tools. Decisions on these will be made so as to build on other donor

materials currently in use, and other long-term projects. Forensic capabilities will be a key area for concentration. Any material that is distributed will be monitored periodically, in order to ensure it is being used properly.

NANGARHAR PROVINCE JUSTICE SECTOR ASSESSMENT

I. Summary of Findings

Nangarhar province does have a formal law system in place, but functions at a level that renders it ineffective. There are formal courts, a staffed prosecutor's office, and a functioning police force, but the levels of corruption and proficiency of each branch gives the populace no confidence in the system. The customary law system is the preferred method of resolving disputes.

It is recommended that training of police and prosecutors should commence on a very rudimentary level. Much of the local population is unaware of their rights under the formal justice system. This lack of information or understanding is reflected within the ranks of the police and prosecutors. The initial training should focus on the Constitution, laws, and rules of criminal procedure, before progressing to specific criminal investigation techniques. Additional resources, such as copies of the Constitution and relevant treaties and laws, should be provided to all individuals working in the justice sector. Finally, a public awareness campaign should be included in the project.

The conclusions in this section are based upon interviews conducted with numerous sources from Nangarhar province, in-person observations by the JSSP-R team, and review of documents. Subjects interviewed included court personnel, government officials, police, and employees of non-governmental organizations (NGOs). These interviews were conducted between 1 October and 18 November 2006.

Afghan sources included interviews with members of the judiciary, the police, the prosecution, and other legal professionals and NGOs. International sources included advisors, mentors and NGOs representing all donor nations developing Afghanistan's justice system. Documentary evidence collected or examined consisted primarily of court files and statistical records.

II. Regional/District Justice Sector

1. Judicial Institutions (Courts)

A. Organization

Jalalabad is the seat of the Provincial Court, and there are 23 district courts. Each district court has three judges, (one senior judge and two members of the court), two civil officers and one “laborer.” The Provincial Court is organized as follows:

- Chief of court
- Civil and public rights division
- National security division
- Administrative office, accountant and cashier
- Document storage section
- City Court

Appeals from the district and city courts are heard at the Provincial Court, and appeals from the Provincial Court are heard in Kabul at the Supreme Court. The office of the provincial chief judge consists of nine members: the chief judge, four laborers and four civil officers. The criminal division has six members, consisting of the chief criminal judge, two assisting judges, two civil officers and one worker. The public security division has five members: the chief judge, two assisting judges, one civil officer and one worker, while the city court has nine members: the chief judge, two assistant judges, four civil officers and two workers. The district courts are staffed with three judges, two civil officers and one worker with no other assistants. For logistics and materiel, the district courts depend on the sub-governor for that district and the district police commander. All personnel report ultimately to the chief judge through their section chief. Judges at the provincial level are organized by specialty, while at the district level no such organizational structure exists.

B. Competencies (Experience, Education, Training and Ethics)

Approximately 60% of the judges have no formal legal training and were trained in madrasas (religious schools teaching Sharia law). They serve as judges undistinguished from those trained formally in the law. The chief judge graduated from the Faculty of Sharia, and recently replaced the former chief judge who was trained in a madrassa and had no formal legal training. There is no differentiation in the roles or organization of judges based on the nature of their legal training. The provincial court does not have a policy and procedure manual.

Docketing and assignment of cases is the responsibility of the chief judge. The stated role of the chief judge is purely administrative, although it should be noted that the chief judge did preside over a criminal trial observed by the JSSP-R team on 7 November 2007. It appears that the chief judge heard the case merely due to the

presence of the JSSP-R team.

Security of the Provincial Court is the responsibility of the police department. There is no security at the district level, according to a district judge. The JSSP-R team observed three police officers monitor the entrance to the grounds containing the courthouse in Jalalabad, although searches of persons do not include metal detection or inspection of vehicles. Women are not searched. There is no security or police presence within the courthouse, and the grounds are not monitored after working hours.

Trial court judges have a variety of training and experience. International NGO staff estimate that 60% of the judges have little to no formal training, although many have years of experience. Justice is administered by practical rather than professional standards, according to regular observers such as the Norwegian Refugee Council (NRC). The director of the local NRC office, who has worked throughout Afghanistan, reported that the justice system in Nangarhar province is considered by many international observers to be one of the worst in the country; an assessment with which she agrees.

Judges have undergone training on various topics. The Afghan Independent Human Rights Commission (AIHRC) meets regularly with judges regarding human rights, and judges and prosecutors attended a month-long training session in Jalalabad in 2005. Approximately 35 people attended the course and were provided with and studied the Interim Criminal Procedure Code (ICPC), the Law of Investigation of Children's Violations, and the Law on Prisons and Detention Centers.

No obvious evidence of executive or political interference in judicial decisions was uncovered, although information was received from a number of sources, including UN human rights officers and INL police mentors, outlining extensive executive and political interference that impacted cases prior to being investigated by the police. Nangarhar province has a "triangle of power" that includes the current governor, the former governor, and Haji Ali, a former Northern Alliance Commander. The police do not arrest, question, or detain anyone without the express approval of these "bosses." INL police mentors confirmed this. A secondary level of power is the tribal elders. No one connected to either of these levels of power is prosecuted unless those men agree to the prosecution.

When someone within this protected framework is detained a correction is quickly made. In a recent case where a large quantity of drugs and arms were seized, the accused was quickly released and his drugs and arms were returned to him, according to INL police mentors. Seizures of large quantities of narcotics by border police are often marked by a substantial discrepancy in the amount of narcotics eventually received at Jalalabad Police Headquarters. Numerous examples of similar fact patterns are readily available.

All judges appear to have been appointed in accordance with the Constitution. There

are no documented cases of judicial corruption or bribery, although anecdotal evidence was found during every interview. The prevailing perception is that judicial corruption and bribery is rampant, but no evidence of any action on corruption matters relating to the judiciary was found.

A high level provincial government official identified corruption within the justice system as the largest impediment to a functioning formal law system. Two high level police officials believe that corruption has increased over the past 25 years. They estimated that 25 years ago 10-20% of the judges took bribes, while presently virtually everyone accepts bribes. Police routinely relieve arrestees of all of their money, and the prosecutors and judges routinely solicit bribes. Police will accept Afghan currency, while judges and prosecutors demand payment in US currency. Anyone within the criminal justice system who does not accept a bribe is considered to be “stupid or crazy,” according to one police official.

The judges interviewed decried their low salaries and mentioned that they are often offered “gifts.” Most of the larger cases are resolved by bribes to the police, and cases with little or no money for bribes are referred to the courts.

C. Adherence to Law and Procedure

Constitutional and ICPC provisions prohibiting discrimination and requiring equal rights for men and women are not adhered to in the trial courts. Women have virtually no rights in the courts and crimes against women are seldom, if ever, prosecuted. The forensic doctor on staff at the Jalalabad hospital is male and has no female doctors on his staff. The cultural prohibition of male doctors examining females means he is effectively prohibited from forensic investigation on women. He cannot examine female rape victims, so rape prosecutions effectively cannot occur. The prosecutor routinely refers matters involving women to the jirga.

Justice officials do not differentiate the concepts of rape and adultery. There are two kinds of sex - legal and illegal - according to Sharia law. “Legal” sex is marital sex, while homosexuality, adultery, rape, etc. are examples of “illegal” sex. Thus, a rape victim is charged and often convicted and sentenced as a criminal because she has engaged in illegal sex, even though it may have been the result of rape.

Women are effectively precluded from reporting crime, as they are unable to leave the house without the permission of their fathers or husbands, nor are they allowed to attend court without the male’s permission. Provisions can be made for the court to take testimony at the woman’s house if necessary, although there are no examples of such a thing happening in the recent past.

Only after all of the men’s cases are dealt with is a woman seen in the prosecutor’s office, and reluctantly at that. This was reported by a staff member of the provincial prosecutor’s office and confirmed by the director of an international NGO. Domestic

violence is neither investigated nor prosecuted. There is currently a young woman in jail whose father had split her head open with an axe, apparently because she had attempted to leave home. The father was not prosecuted.

The practice of “badal,” or exchanging girls between families as a form of restitution or restoring honor, occurs frequently as a result of jirga decision. Kidnapping, which usually involves a woman, is seldom if ever investigated, let alone prosecuted. A female member of the local parliament whose five year-old daughter was kidnapped reported that the matter was not being investigated and she did not expect a prosecution.

Trial courts generally do not recognize or enforce their penal code authority and responsibility with regard to “Ta’zeeri”²⁹ crimes and penalties, as opposed to “Hudud,” “Qisas” and “Diyat” offenses. Ta’zeeri in Nangarhar province takes the form of “night letters.” Night letters are frequently distributed and warn people against certain actions, including working for foreigners, listening to music, watching television, and sending girls to school. There is no evidence of court involvement in such cases. There has been an upsurge in the distribution of night letters and many who work with Americans try to hide this fact.

Hudud was more common five years ago, but is practiced now only in regards to women in the form of honor killings. While this still occurs, the crime is never punished. Qisas, or retribution, is routinely practiced throughout the province. It is seldom, if ever, prosecuted. Diyat, or blood money, is routinely ordered by jirgas in the province. The court does not interfere with this practice.

The constitutional requirement for presumption of innocence is not adhered to in the trial courts. The prosecutor’s description of a trial was as follows: “The prosecutor makes an indictment and sends the file to court. The court makes a decision and calls the prosecutor and defense attorney and the defendant to court and announces the decision.”

A trial that was observed did involve statements by witnesses, the accused, the prosecutor and the defense attorney. There was no direct or cross-examination of witnesses, nor was there an opportunity for either the prosecutor or defense attorney to address the court at the conclusion of the testimony. Whether this was because the judge did not understand the statute or for other reasons was not clear. Several defense attorneys interviewed on this topic gave conflicting answers.

Defense lawyers appearing in court with their client is a relatively new concept in the province, as the first defense lawyers arrived only a few months ago. The prevailing public sentiment, according to defense attorneys, is that a person appearing in court is guilty and poor, as he must not have been able to pay a bribe to anyone to have the charge dismissed.

²⁹ Hudud, Qisas and Diyat refers to offenses and punishments specifically enumerated in the Koran. Ta’zeeri refers to all other crimes which are typically discretionary and enforced by secular government mechanisms.

Trial courts do not adhere to the statutory limits on provisional detention. The trial observed by the regional team took place five months after the defendants were arrested. There was no evidence that the court or saranwal (prosecutor) made any findings regarding the propriety of their pre-trial incarceration, or whether alternatives for incarceration pending trial were ever considered.

Trial courts do not adhere to Afghan and international laws concerning the protection of human rights. Specifically, suppression of coerced confessions and illegally obtained evidence, prohibition of cruel or degrading punishment, and enforcement of the right against self-incrimination does not appear to occur. Suspects are beaten, particularly if the crime involves important members of the community. These suspects often “disappear.” The team learned of a person accused of attempting to bomb the governor’s house. He was severely beaten and has not been seen again. This occurred before court or prosecutor involvement.

Trial courts generally do not enforce the Constitutional rights (Art. 31) of an accused to seek defense counsel, to be informed of the accusation, to be supplied an advocate if destitute, or to have their communications with their advocate treated as confidential. While in the one trial observed the court did notify the unrepresented defendant of his right to counsel, the JSSP-R team believes that the presence of observers altered the conduct of the trial. This belief is based upon conversations with human rights representatives and an interview of the defense attorney after the trial.

Defense attorneys that were interviewed stated that the courts object to their interference with trials and that they constantly struggle to defend their clients. Counsel is not informed when cases will be called on a particular day. Recently, the court schedule was changed without notice to the defense attorneys. One justice system professional speculated that this was an effort to allow the judges to solicit bribes from defendants outside the presence of their attorneys.

Requirements for abstention of judges and disqualification from cases pursuant to Interim Criminal Procedure Code³⁰ are neither adhered to nor acknowledged. The deputy chief judge assured the team that the law “knows no prejudice,” and that conflict of interest problems do not arise for that reason. Given the level of education and training and based upon the interviews of several of the judges, it is doubtful that the judges understand the issue of disqualification.

Trials and hearings appear to be open to the public, except in cases of “national security” and those involving juveniles. The trial observed by the team was open to the public, and attended by approximately 35 people. Exceptions to this policy may be justified and documented, although court files are only available to the defense attorneys and have not been fully examined to date.

³⁰ Articles 11 and 12 of the ICPC requires recusal if judges are victims in the case, related to the victim, have acted in another capacity such as witness or prosecutor.

No evidence exists to suggest that the courts do not comply with the right of the accused to be provided materials in their native tongue and interpretation, as required. This does not appear to be a significant problem in Nangarhar province.

The right of an accused to present witnesses, including expert witnesses, does not appear to be enforced. However, it is unclear whether that is due to intervention by the court or a lack of proficiency by the defense bar. The trial observed by the team included testimony by many witnesses, although it is difficult to determine whether that is typical. Given that defense attorneys began appearing in court only four months ago, a basis for comparison does not exist.

The right of an accused to examine witnesses against them is not enforced. During the observed trial the defense attorney was allowed to read a prepared statement, but was not allowed to examine witnesses or argue prior to the verdict being rendered.

Court decisions are not typically objective or based on the merits, according to defense attorneys and human rights observers. The trial that was observed seemed fairly decided from the evidence presented, but given the exceptional circumstances surrounding the trial it cannot be considered representative.

Judicial decisions are written and available to legal professionals, but not the public. Legally required time limits for completion of trial proceedings are not adhered to, although all of the judges and prosecutors interviewed were aware of them.

Juveniles are typically not prosecuted in accordance with the law. An example is of a 16 year-old boy who accused several men of rape, which was alleged to have occurred at a local hotel. The complainant himself was charged. The hotel owner, who was involved, and others involved in the offense were not charged until pressure was brought by international organizations. Minors are, however, kept segregated from other prisoners in the detention center. This information was confirmed by several UN human rights officers interviewed.

D. Administration and Resources

Court cases are kept in files, but it is unclear how they are organized. The filing system is wholly inadequate, although not for lack of space. There is one room dedicated to file storage, with new metal file cabinets provided by USAID. The closed cases from the various districts are kept in these cabinets and are separated by district. The remaining files for Jalalabad are also kept in metal cabinets segregated by department. The file folders are quite worn and the staff lamented a lack of new ones. It appears that there are very few files for an area as large as Nangarhar province.

The chief of court docketing, assigns, and manages the flow of cases. Statistics are kept

perfunctorily. The first three courts in the following table comprise Jalalabad district and city courts, while the remaining are outlying district courts.

Court	Remanded files from 2005	New files	Files closed	Writ of Non-prosecution	Returned files	Cases in progress	Fines paid (Afghanis)
Jbad Crim.	0	142	74	0	32	36	67,000
Jbad Pub. Security	6	40	34	6	1	5	104,500
Jbad Civ. Rights	66	120	45	47	20	74	60,880
City Ct.	0	112	82	20	0	10	879,000
Surkh Rod	36	53	18	19	9	15	253,770
Bihsud	5	137	34	21	44	38	1,538,529
Pachir Wa Agam	5	34	3	15	14	7	10,480
Kama	15	18	10	2	8	14	54,365
Chaparhar	9	20	6	6	8	9	36,610
Khogyani	15	30	10	10	3	22	330,060
Nazyan	0	0	0	0	0	0	1120
Lal Pur	3	3	3	0	1	2	11,680
Sherzad	1	1	0	0	0	2	4440
Darah Noor	3	1	0	1	1	2	6220
Shinwar	3	10	2	5	1	5	1180
Kuz Kunar	2	10	1	1	0	10	66,000
Goshta	2	5	1	0	2	7	1720
Hisarak	0	5	2	1	1	1	800
Rodat	6	21	15	3	0	9	1200
Bati Kot	2	70	15	25	5	23	8925
Achin	7	4	0	0	0	11	3680
Muhmand Dara	2	3	1	1	1	2	3080
Kot	4	6	3	2	2	3	3000

The Appeals Court and each district primary court have an “Ehtesab” office, which is a remnant of the Taliban regime. The Ehtesab is responsible for deciding issues related to Islamic law, and can counsel offenders and administer punishment. It appears that punishment can include incarceration as well as corporal methods, and the police are involved in making arrests in this area. The Ehtesab is typically a mullah, and has an office within the provincial courthouse.

The current courthouse does not have adequate office space for the judges, although a new courthouse is being constructed. This should alleviate that problem.

Judicial salaries are inadequate. The salary is \$160 US, and most judges live away from home as they are often assigned to districts outside their home areas. This creates ample opportunity for corruption.

Judges do not have access to legal materials (statutes, codes, previous rulings, etc.). The court does not have a library, and their salary does not allow them to purchase necessary books. This was a common complaint among the judges who were interviewed.

Judges do not have the supplies and equipment needed to perform their duties, such as reliable transportation, communication, tape recorders, copy machines, or office supplies. Copies of documents provided to the team were typically handwritten. The physical facilities are dismal. There are several typewriters, with carbon paper used as a method of copying. The building is decrepit and squalid, and electricity is sporadic at best. While there is a generator, there are insufficient funds for fuel. The furniture is makeshift and deteriorating. The chief judge's office was the only presentable office in the building.

Courts do have adequate secure storage space, but there are no administrative controls for secure evidence storage or chain of custody.

2. Prosecutors

A. Organization

There is one prosecutor and one clerk in each of the 23 districts. District cases are typically small theft cases, while major cases such as murder are sent to the appellate prosecutor's office. The appellate prosecutor's office is organized as follows:

- Chief prosecutor
- Administrative office including a clerk, a statistics clerk, accountant, staff attendance clerk, archive clerk, and employee property clerk
- Criminal investigation department: two clerks, 10 prosecutors, two cleaners
- General criminal department: two prosecutors, one clerk
- Detection and investigation department: two prosecutors, one clerk
- Monitoring and enforcement of decisions: one prosecutor
- Public Security: one prosecutor, one clerk
- Application of laws: two prosecutors, two clerks
- Prisoner's affairs: one prosecutor, one clerk
- Traffic appeals: one prosecutor, one clerk
- Counter Narcotics: one prosecutor
- Minors: one prosecutor, one clerk
- City prosecutor: Chief city prosecutor, one general criminal prosecutor, one counter narcotics prosecutor, and one prosecutor for minors

The appeal directorate has one prosecutor, one interviewer, and one clerk in each of the 23 districts. There are several other departments for non-criminal matters within the prosecutor's office. These departments are the Civil Right Directorate and the State Affairs Directorate. There are also military prosecutors and national security prosecutors, which are in separate offices and work distinctly from the provincial

system.

There is no job description for prosecutor positions. The stated minimum qualification for a prosecutor is to be a graduate of the law faculty, although this is not enforced. Approximately 45% of the prosecutors are high school graduates. Approximately 10% have not attended grade school. The chief appellate prosecutor has a ninth grade education. He was an elementary school teacher and a warlord, and is a member of the political party of the previous governor. In the districts many prosecutors are uneducated and illiterate, according to UN observers and the local Poppy Eradication Program (PEP) representative.

Provincial prosecutors have a general set of standard operating policies and procedures, but the extent to which they are followed is unclear. A copy of the policy and procedure manual is presently being translated.

The authority for hiring, firing, assigning, rewarding or disciplining prosecutors lies with the Attorney General and the MOJ, although the chief prosecutor can make recommendations. The authority to initiate and close cases, direct investigative action, and refer cases to higher authorities lies with the prosecutors, but in practice no case is initiated or prosecuted without the approval of the controlling authorities, such as the governor, police chief, et al. The chief prosecutor has the authority to allocate resources, but in practice the district governor and the police commander allocate resources in the outlying districts.

B. Competencies (Experience, Education, Training and Ethics)

The percentage of prosecutors with law degrees is disputed. The chief prosecutor maintains that all prosecutors have degrees, while the defense lawyers maintain that 80% of the prosecutors are untrained. According to other officials (UNAMA, NRC, etc.), 55% have no formal legal education.

There has been some specialized training in prosecution, as noted above. In addition to the month-long training in 2005, 20-25 prosecutors were trained in Kabul several years ago in investigation, discovery of crimes and court procedures. It is unclear who funded and provided the training, which was one month in duration. It does not appear that any additional in-service legal training programs have been made available, nor are prosecutors required to attend training programs.

There have been no documented cases of bribery or corruption involving prosecutors. Everyone interviewed (except the prosecutors themselves) indicated that the prosecutor's office was rife with corruption and bribery. One reliable source reported overhearing prosecutors directing others to "get rid" of cases that involved friends of theirs. Another prosecutor was delighted to see a case where the law school was the victim (law books stolen), because the prosecutor could request that the dean hire his relative to teach in exchange for solid prosecution of the case. Criminal cases are treated as a form of currency.

There does not appear to be a procedure for adjudicating complaints against prosecutors, nor are there defined merit selection or promotion procedures in place. The chief prosecutor sends a recommendation to Kabul for selection and promotion, where the decision is ultimately made.

C. Investigative Procedure and Adherence to Law

Prosecutors are not typically notified when a crime occurs. Their first notice usually comes when the case is transferred from the police. Prosecutors do not visit crime scenes, and their training is as listed above. They do not have access to evidence gathering or analysis tools.

Prosecutors do not follow “chain of custody” procedures with regard to evidence and do not document evidence transfers, according to INL police mentors. Prosecutors do say that they sometimes interview witnesses directly, interview victims, and take written statements during the investigative phase.

Prosecutors do not comply with the ICPC requirement that all crimes must be prosecuted unless otherwise expressly provided by law. When cases are dismissed, the legal basis for dismissal or non-action is not typically documented. Local NGO representatives reported that if the prosecutor wants a case dismissed he manufactures, or directs his subordinates to manufacture, a reason to dismiss.

Prosecutors do not adhere to the legal requirements on provisional detention, nor do they advise suspects of their rights in conformance with the ICPC. They do not adhere to the right of the accused to have defense counsel present during interrogation, searches, line-ups and expert examinations. Defense counsel has never been asked to attend any of these procedures, according to those members of the defense bar and international NGOs that the team interviewed.

Compliance with the right to have materials and interpretation in the native tongue of the accused does not appear to be a significant issue. There do not appear to be policies and procedures in place to protect victims and witnesses during the investigative phase. The victim and accused can be held by the police within the police compound, often in the same room. Prosecutors do not adhere to the requirement to interview detainees within 48 hours of their being taken into custody, in part because the suspects are not turned over in a timely fashion according to INL police mentors.

Prosecutors are not adhering to the requirement to ratify or modify judicial police activities under ICPC Art. 30-32, and there are no judicial police in the province (as they are defined by the ICPC). Prosecutors admitted during interviews that they do not utilize police to collect additional evidence and/or take statements during the course of the prosecutor’s investigative phase.

D. Administration and Resources

Cases are organized in identifiable case files and while the files do contain pictures and other seemingly relevant materials, there is no organizational structure. The filing system consists of stacks of much used file folders wherever space can be found.

Several files were reviewed, including active cases as well as files closed several years ago. All of the files lacked critical information, including the following:

- Victim or witness statements
- Petition or indictment
- Order of detention
- Order of release
- Notice of right to attorney/right to silence
- Search order
- Appropriate signatures and seals

No case flow or case management procedures are in place. The chief prosecutor assigns cases and is responsible for case management, although it is apparently on an ad hoc basis. Cases are registered, but no statistics are kept.

The prosecutors are paid \$40 US per month and, while inadequate, the salaries are paid regularly. Payments to supervisors and other officials are required to retain their positions. Office space, furniture and supplies are severely lacking, as is access to legal materials. There are no criminal investigative tools available, nor are there procedures in place to collect or facilities to hold evidence.

3. Private Criminal Defense Attorneys

A. Availability/Organization

There are few, if any, private defense attorneys available in the province. The only defense attorneys that are allowed to practice in court are the registered government defense attorneys, who have only been present for the past six months. There is no local registry of attorneys available to the public.

The public has little awareness of the availability and role of a defense attorney, according to virtually all parties interviewed. There is an on-going public awareness campaign geared towards victims of sexual assault, and a local NGO has produced posters explaining the right to silence and representation. These posters were displayed in the courthouse and prison. Women are directed to report sexual offenses on the cards provided by the defense attorneys, although reporting the offense results

in the victim herself being charged with adultery. A case in point is that of a 24 year-old woman in an outlying district. Nine men broke into her house, restrained her father, and raped her. She reported the crime and was charged along with all of the men. She and one man received 9-year sentences.

B. Competencies (Experience, Education, Training and Ethics)

Not applicable, due to lack of any private attorneys practicing criminal law.

4. Public Defenders

A. Availability

The local registered defense attorneys are all employed by an NGO providing indigent criminal defense, and all have a university degree in law or Sharia. They explained that they are not required to pass an examination. There does not appear to be any local mechanism for monitoring the ethics of the defense attorneys, and they receive a salary of \$400 US per month (funded by the PRT). It appears that the defense attorneys do recuse themselves in cases involving a conflict of interest.

B. Competencies (Experience, Education, Training and Ethics)

While the public defenders in the province are funded by the PRT, they consider themselves to be government employees. It does not appear that any local public money is expended on indigent defense. All of the public defenders possess a law degree, and their abilities, education, and skills appear to out-pace those of the prosecutors. They do have minimum standards for education and training, and those standards appear to be enforced.

5. Role of Sharia and Traditional Mechanisms

A. Organization

Jirgas and shuras are the prominent religious or traditional justice mechanisms in place in the region. Jirgas are created as needed, and their structure varies throughout the province.

B. Application (Civil and Criminal)

Application of Sharia and/or traditional justice is limited to “Hudud,” “Qisas” and “Diyat” offenses, although it should be noted that they are given the broadest possible definitions and thus include all offenses.

There are countless instances where Sharia or another legal template is applied to criminal cases that by law should proceed in the formal trial court system pursuant to Afghan criminal law. The traditional justice system handles all manner of cases up to and including murder, and both police and prosecutors refer cases to the jirgas. There is no indication that Sharia is being applied to non-Muslims.

C. Human Rights Issues

Women are being used to fulfill *poar* (blood money) obligations, and this is a frequent occurrence throughout the province according to UN human rights officers and local and international NGO staff. The application of religious/traditional law against minorities is limited to discrimination against Kochis, a nomadic and destitute “tribe” of shepherds, who often are incarcerated over land disputes.

D. Linkages with the Formal Sector

There are no provisions for referral or appeal from the decision of a religious/traditional forum to the formal legal sector, although if the jirga is unsuccessful in resolving a problem the parties may turn to the formal sector. If a jirga is held and both sides agree to the decision, a copy of the jirga’s decision is filed in the provincial court.

Police do refer matters to the religious/traditional sector, especially cases involving women. District courts also refer matters to the religious/traditional sector.

III. Regional/District Police

1. Police Organization, Command and Control

The organizational structure of the police in the region from the provincial down to the local level is as follows: The police chief of Nangarhar province is General Abdul Baseer Salangee. Colonel G. H. Rohimi is the head of the Criminal Investigation Division of the Central Police Department. Colonel Shireem is head of the Narcotics Division. The Border Police HQ for Nangarhar is also located in Jalalabad. General Zihire is the commander of the Border Police. Mr. Ghulam Sakhi is the executive officer of the Border Police HQ.

The Central Police HQ Criminal Investigation Division currently has 95 investigators, seven sergeants, and two colonels heading the department, Colonel Rohimi and his assistant, Colonel Pacha. The CID also has 15 “laborers.” The Narcotics Division currently has 25 officers, four “borrowed” officers (apparently assigned from other agencies) and seven officers from other districts within Nangarhar. The Border Patrol CID has eight detectives.

Officers appear to work under the command of the generals and are hired in Kabul. No apparent minimum qualifications exist except loyalty to the commander. The majority of the officers are illiterate. INL police mentors confirmed this information.

The Central Police HQ CID is divided into eight sections: (1) Youth Crimes, (2) Homicide (3) Burglary and Theft (4) Crime Scene Investigation (5) Follow up investigation (6) Economic Crimes (7) Reports, and (8) Administration. The Narcotics Division is divided into three sections: (1) Information (2) Investigation, and (3) Mobile Detection Teams.

The relationship between police and prosecutors is ill-defined. The CID investigators clearly stated their understanding that they surrender the investigation of a crime within 72 hours to the prosecutors. The Chief prosecutor was adamant that the police were to have no involvement after that time period. There is no evidence of a direct working relationship between the prosecutors and the police investigators.

The authority for hiring, firing, making assignments, rewarding or disciplining police lie with Generals Salangee and Zihire. As previously mentioned, it is widely believed that General Zihire was fired by the MOI, but this had no impact on his continued control of the Border Police. The generals operate exactly like warlords.

No police personnel admitted to being required to pay superiors or other officials to retain their jobs, although it is widely suspected that that occurs. None of the officers indicated that they were actively involved in taking or paying bribes, although the consensus from outside of the police departments is that corruption is rampant.

The generals have the authority to initiate and close cases, direct investigative action and/or refer a case to higher authorities. At the police level, anything more than a routine investigation would have to have approval from the highest level of local authority; i.e., the generals. The generals also have the authority to allocate resources. The generals do provide uniforms, weapons, and food for their troops. The colonels and majors interviewed clearly have no resources to allocate.

2. Investigative Capacity and Training

The misunderstanding of the role and identity of the judicial police is also found in Jalalabad. One prosecutor defined a judicial police officer as an officer from Kabul who would investigate police officers that commit crimes. There are no stated qualifications for someone to serve as a judicial police officer.

Police do not have access to forensic tools or equipment. No one in the province can read fingerprints, and the police are not aware of the forensic laboratory in Kabul. There is a designated medical examiner in Jalalabad. While he is a graduate of an Afghan medical school, he has no women on his staff and hence cannot examine women. He has no lab and does not perform autopsies. He and his staff do go to crime scenes, from auto accidents to shootouts, when there is a fatality. Unfortunately his response is limited to

observing the body for obvious signs, such as bullet wounds.

First-responders (uniformed police) have limited training in crime scene preservation. They have had some training regarding footprints and tire tracks. An example of the level of proficiency is the recent case of an ambush of a police vehicle in which two officers were killed. INL police mentors reported that the initial responders removed the bodies and sent them to their families, and then washed the blood from the vehicle so that it could return to service.

There are no formally trained “crime scene specialists,” nor are police investigative policies and standard operating procedures documented. There are significant police literacy issues that impact the ability to collect evidence and conduct investigations, according to INL and local PRT police mentors.

3. Investigative Procedures and Adherence to Law Concerning Investigations

Knowledgeable sources report that uniform police do not generally secure crime scenes pending arrival of investigators, although district and provincial police investigators routinely collect evidence and take witness statements. The police do not have policies or the capacity to protect victims and witnesses during the investigative phase. An example is a recent incident where MOI sent investigators to investigate an alleged criminal act by a high level police official. The MOI investigator took the accused official to confront the victims and witnesses. Later, after most of the complainants recanted their stories, three of the witnesses were held in custody on the accused official’s orders. According to knowledgeable sources, the three men were held without charges or explanation.

There are no “chain of custody procedures” employed for collected evidence, although INL police mentors have attempted to implement them with little success. This is particularly true of the Border Police. The mentors are aware of several cases where narcotics are reported as seized on the border and sent to the Jalalabad Border Police HQ. The seized narcotics typically disappear prior to arrival or shortly after. The mentors at the border HQ were unable to identify where the seized drugs were supposed to be held. Police officers always offer an excuse why seized evidence cannot be displayed, according to INL mentors.

Police officials maintain that they are diligent in informing suspects of their rights under the ICPC, although interviews with other entities contradict that. These officials also stated that prosecutors are always notified of the commission of a crime within 72 hours.³¹ However, INL mentors pointed out that each police agency begins the 72-hour period from the time they receive the accused rather than starting the clock from the point when the accused was first detained. The law specifies that the latter is the correct method of counting. If a person were to be arrested in another district within the province or in another province, the “clock” is to run from the time of his arrest.

³¹ ICPC Art. 21 requires reporting within 24 hours.

Prosecutors, and other officials or individuals with power, interfere with police investigations in virtually every case, according to international observers and INL police mentors. No crime is investigated without the approval of the chief of police, and no arrest is made without his approval. If this policy is violated suspects are released and seized evidence is returned to the person when he is released from the jail.

There are numerous instances where police refer cases to religious/traditional institutions rather than to prosecutors. There is no distinction made as to the type of case referred to the informal system.

It is unclear whether police have instructions on how to differentiate between common crimes that fall within regional purview and national security crimes that require referral to central authorities, although there is a willingness to transfer cases involving national security to central authorities. This is not likely to occur without the consent of the commander, according to police mentors.

4. Community Relations

Citizens are not generally confident enough in police to report crimes to them, according to international observers and several local citizens who were interviewed. The public does not expect the police to be able to solve a crime if the perpetrator is unknown. The major complaint that citizens have against police and prosecutors is that crime goes unpunished when a bribe is paid and that many crimes are not prosecuted, particularly kidnapping. Most people are not comfortable reporting crime to the police and are unaware of their rights under the law. There is no formal community outreach policy or program.

5. Administrative Support and Resources

Police cases are organized in identifiable case files, although the file folders have been reused many times. The filing system is inadequate, there are no case flow or management procedures in place, and crime statistics are not kept.

Police salaries are not within the range of livable wage. Most officers are paid \$40 US per month. While there are numerous complaints about low pay, there were no complaints of missed payments.

The investigators do not have adequate office space, nor do they have access to legal materials (statutes, codes, etc.) or procedural manuals. The police do not have access to reliable means of transportation or communication, tape recorders, copy machines, etc., necessary to conduct investigations and meet their responsibilities according to law. Crime scene kits and basic photo, fingerprint, and other evidence collection tools are unavailable.

The police offices do not have adequate secure storage space or administrative controls

for evidence, which was extremely evident at the Border Police HQ. The Central Police Narcotics Division does have a secure storage facility, which was credited to the fact that a British military unit had built it for them.

There are insufficient basic office supplies, such as paper and pens. Job descriptions do not exist for each position, nor are there minimum qualification standards. There are no internal or external oversight mechanisms to address misconduct or corruption. According to INL mentors, all of the officers, regardless of rank, are terrified of the generals. There appears to be no formal system to protect an officer's position or rank from arbitrary punishment or retaliation.

IV. Investigative Process

1. Initial Police Response

There is no practical mechanism for the public to report crimes, as citizens must go to the police department to report a crime. The public does not possess sufficient confidence in the abilities and integrity of the police to report crimes to them. Police will, however, send an initial response team depending on the nature of the crime and the immediate impact on civil order. That initial response team does not adequately secure the crime scene, according to INL mentors.

There is very little evidence to suggest that police respond proactively to crime. However, the majority of assessment contact with the police has been with the investigation divisions. Neither the mentors nor the JSSP-R personnel are allowed to monitor police patrol practices.

2. Police Investigation Period (72 hours)

District and provincial investigators do not respond in a timely manner, due in large part to the lack of an effective communications system and reliable transportation. Police do not adequately collect evidence, interview witnesses, or conduct on-site investigation. The police are hampered by a lack of basic equipment such as cameras, tape recorders, envelopes for holding evidence, a lack of training, and a lack of laboratory facilities to follow up on evidence that has been collected. The lack of female investigators greatly hampers the ability to search or adequately interview female victims and suspects.

There is almost no equipment available for collection, preservation and processing of evidence. The Central Police Headquarters has an office for processing fingerprints, although there are no specialized magnifying glasses (frame and grid marked) with which to view the fingerprints. They may have to ability to take a person's fingerprint, but no capacity to interpret or use the print.

Police and prosecutors believe that they develop investigations sufficiently during the 72-hour window to provide the provincial prosecutor with sufficient information to begin

their investigation, although they are in no way close to meeting western investigative standards. Physical and other evidence, such as witness statements, are rarely turned over to the prosecutor at the end of the 72-hour period.

3. Prosecutor Investigative Phase

The prosecutor does not conduct a thorough investigation, as they are hampered by a lack of trained investigators and an unwillingness to work with the police investigators. Prosecutors seldom work with police during their investigation, and frequently do not complete investigations within the timeframe required by the ICPC. These observations were confirmed by INL mentors.

Indictments obtained by investigative prosecutors are not always consistent with the evidence. Referrals to the trial prosecutor³² in cases of an indictment are not typically made in a timely manner, nor does the trial prosecutor provide the primary trial court with all the evidence collected in a timely manner.

4. Trial Proceedings (Including Appeals)

Primary court trials are not typically completed within the required 2-month timeframe, and are not conducted in conformity with the law according to international observers and the local defense attorneys interviewed. Trials are informal and often have no witnesses, and there does not appear to be any method to the conduct of a trial. When conviction does occur, cases of importance are forwarded to the provincial appellate prosecutor in a timely manner. Less important cases are handled without regard to time limits. The appellate prosecutor rarely completes review within the 2-month time frame, according to court file reviews conducted by JSSP-R.

Cases referred to the Supreme Court for final review typically involve a struggle with the Appellate court to obtain the necessary documents. The moving party must take the necessary documents to Kabul and file them with the Supreme Court.

V. Public Perception of Crime and Effectiveness of Formal Justice

1. Public Perception of Crime

International and local interviewees indicated that the general public sees inter-tribal or inter-family violence, violence stemming from national security problems, kidnapping, land disputes, sexual assaults, and robbery as the most significant crimes that occur in the province. Cases handled in the formal justice system do not reflect these issues, although lack of record keeping makes an accurate assessment difficult. Overall, there is no confidence in the police to solve crimes, or for perpetrators to be punished.

³² In the Afghan system, the “investigative” prosecutor serves a role similar to a neutral investigating judge in the civil system and determines if indictment is appropriate. If so, the indictment is filed with the court and the case is transferred to the trial prosecutor.

2. Perceptions of Effectiveness of Formal Justice Sector Versus Religious/Traditional

Citizens typically pay bribes to affect the outcome of a proceeding rather than to gain access to the formal system. Citizens without resources or connections do not have access to the formal justice system, as one impediment to the jirga is its cost. Members of the Nangarhar Provincial Council reported this.

Citizens without resources or connections have very limited access to the traditional/religious/informal justice system. There is no regard for constitutional rights, and political connections also rule the informal system according to Afghan and United Nations human rights advocates.

The local population has had limited exposure to formal sector justice mechanisms. AIHRC does air several programs on local television explaining human rights, although the level of poverty in the province limits its exposure.

Local interviewees outside the justice sector expressed a desire that issues relating to women remain in the realm of the customary system. Religious and ethnic minorities do not appear to perceive the formal and traditional mechanisms differently, and do not see one offering more protection than the other. Virtually every person interviewed confirmed these observations.

VI. Local Official Understanding of Investigative Issues and Commitment to Reform

1. Recognition of Criminal Investigative Issues

Local officials see security and violence (familial, religious, and tribal) as enormous problems. Kidnapping and robbery are also large problems in the province. The public's perception of crime is largely consistent with police estimates, although a lack of statistics makes detailed analysis impossible. Local officials share the public's perception that the prosecutor's office is a place where justice is bought and sold, and where cases are a form of currency.

2. Commitment/Buy-in to Reform

Local police officials have agreed to the standards and processes for selection of police/prosecutors for the JSSP-R project, while the chief prosecutor has been somewhat more reluctant. He initially would not provide more than ten candidates for a list of possible nominees, but has recently consented to providing the requested twenty candidates.

Police and prosecution officials have agreed to retain personnel trained through JSSP-R in the mentoring program for one year, although enforcement of such an agreement will

be difficult given the political situation in Nangarhar province. Both police and prosecution officials agreed to open their case files for review and will permit police and prosecutors participating in the JSSP-R program to share information with advisors as part of the mentoring process.

Police and prosecution officials will agree to approve protocols and agreements that would formalize working relationships between police and prosecutors, although successful implementation of the agreements may be problematic. There has been some indication that the prosecutors are willing to utilize the police, although the chief prosecutor was initially reluctant. Police officials appeared to be more enthusiastic about the concept.

Municipal officials are amenable to utilizing the formal justice sector once its capacity to investigate and prosecute crimes has been strengthened. Most people and most municipal officials would like a fair and honest judicial system in the province and would utilize such a system. Until the judicial and police system is able to operate independently, the capacity to investigate and prosecute is limited.

VII. Specific Areas of Need/Weakness in Investigative Process

1. Legal Impediments

There do not appear to be significant legal impediments to implementation of the formal law system as defined in the existing statutes, criminal procedure codes, and constitution.³³ The framework within which to investigate crimes and prosecute offenders is sufficient. The major impediments to a functioning formal law system are rooted in corruption and lack of infrastructure.

2. Initial Police Response

Problems with initial police response are numerous and incorporate many of the problems in the province. The population is largely mistrusting of the police due to rampant corruption, so the motivation to involve the police is lacking. Persons report crimes by physically appearing at the police station and noting a complaint, which means police rarely respond quickly to crime scenes. The lack of communication equipment such as radios and mobile telephones makes coordination of police efforts extremely difficult.

Specific needs in this area include effective community outreach programs, transportation, communication equipment such as radios and telephones, and intensive training in crime scene preservation and evidence-gathering techniques.

³³ While there is no real legal impediment, many police and prosecutors interpret the 72-hour rule requiring transfer of the suspect to prosecutor control, and the Constitution Article 134 designating Police to “discover” crimes and prosecutors to “investigate,” as meaning that there is no prosecutor involvement prior to 72 hours and no police involvement after 72 hours.

3. Police Investigative Phase

Police lack the training and physical resources necessary to effectively secure and process crime scenes. The majority of police officers are illiterate, making report-writing and witness interviews difficult, if not impossible. There are no facilities for evidence storage, and the concepts of chain of custody and evidence-preservation have yet to be accepted by the police. Follow-up investigation is rarely undertaken, likely due to the lack of coordination and cooperation with prosecutors.

Specific needs in this area include intensive training in evidence collection and crime scene preservation. Communications equipment and transportation is also sorely lacking, as are secure storage facilities. Simple evidence-gathering materials such as tape recorders and cameras would be of great help. Educated, literate police officers are in short supply. A uniform report outline would greatly enhance the product that is ultimately given to the prosecutor.

4. Prosecutor Investigative Phase

Prosecutors lack the education and physical facilities to effectively investigate and prepare cases. There is also a lack of will to coordinate with police, which greatly diminishes their effectiveness.

Specific areas of need include increased legal education, access to statutes and books, as well as simple office supplies.

5. Trial Proceedings

Weaknesses in the trial phase include a lack of coordination between police and prosecutors, and failure to adhere to basic criminal law principals. Judges are not educated and do not enforce the law as currently written, and rampant corruption has eroded what little confidence the population had in the formal law system.

Specific areas of need include basic office furniture and equipment such as papers, pens, files, copy machines, and computers. A comprehensive filing system should be implemented, which will alleviate many of the problems associated with filing appeals.

6. Relationship with Informal/Customary Law

The formal and informal systems are intertwined to a degree that is difficult to discern. Until the population gains a level of trust in the formal law system, the informal system will continue to decide most cases. There is no formal mechanism linking the two systems.

VIII. Programmatic Recommendations for the 9-Month Work Plan

1. Training

Training will be necessary on a very remedial level. The educational level of police and prosecutors is extremely low, and it is imperative that sufficient time be spent on basic concepts such as the content of the law and the Constitution.

2. Mentoring Activity

Mentors placed within the prosecutor's office will have an immediate, positive effect on the development of the system. In addition, allowing police mentors to track cases after they are turned over to the prosecutor's office will increase accountability. Judicial mentors, while outside the scope of this project, would similarly improve the system.

3. Resources

Access to legal documents such as the constitution and statutes is significantly restricted. A library in both the court and prosecutor's office would aid in the professionalism of both offices, as well as increased access to training materials such as legal treatises.

4. Quick Impact Projects

The team identified needs that ranged from investigative tools for both police and prosecutors (including radios, mobile telephone credits, disposable cameras, means of transportation such as bicycles and motorcycles, digital scales, and evidence storage facilities), to office furniture and equipment (including files and file cabinets, paper, pens, and all other basic office supplies). The project will supply materiel to prosecutors and police when closely tied to professional improvement. This will have the effect of improving both the physical and technical resources available to the police and prosecutors.