

## Cooperation between Police and Prosecutors

The Ministry of Interior (MoI)-Attorney General's Office (AGO) Commission

### Discussion Paper

#### Background

The need for a joint Ministry of Interior (MoI)-Attorney General's Office (AGO) Commission ("the Commission") is necessitated by the general lack of coordination and collaboration between police and prosecutors, primarily during the detection and investigation phase. This shortcoming is exacerbated, and in part induced, by conflicting and overlapping laws that are an amalgam of laws including the 1965/1974 Criminal Procedure Code, some of which are still applicable in combination with laws passed since the 2003 Bonn Agreement, dominated by the Italian-drafted 2004 Interim Criminal (Procedure) Code for Courts (ICPC) and the 2005 Police Law. The criminal justice sector relies significantly on a confession from the suspect for enforcement and convictions. The laws that create a 72 hour rule with regard to the transfer of a detained suspect and case from police to prosecutor control also loom large as a barrier to extensive cooperation.

In August 2006, representatives of the Afghan National Police (ANP) and the Attorney General's Office met at a Seminar sponsored by Germany and Italy to discuss the potential for improving cooperation between the two bodies. These representatives at this Seminar recommended: 1) the establishment of a permanent joint MoI-AGO Commission to revise, draft and propose joint instructions, guidelines and protocols that would be made mandatory upon the police and prosecutors through ordering/instructing from their respective institutions; and 2) legislative amendments to provide clarity and uniformity to existing procedural laws (See "Attachment A").

The joint guidelines and protocols would clarify ambiguities, set standard operating procedures of collaboration between police and prosecutors, and by their nature be immediately implemented by the police and prosecutors. In the meantime, legislative amendments will proceed. A revised criminal procedure code is currently being drafted within the Ministry of Justice, with international technical assistance, but the finalization of this new code is not expected to be presented to the National Assembly until the beginning of 2008.

International working group members have focused on assisting with the formation of the Commission. This working group has drafted Terms of Reference ("Attachment B") which has been signed and agreed to by Minister of Interior Zazar Ahmad Moqbil and Attorney General Abdul Jabar Sabit. In addition, both the Minister and the Attorney General have each appointed three members to the Commission, one senior member and two other appropriately qualified members. The international working group has also

completed an extensive review of all procedural laws impacting police-prosecutor cooperation so will be able to properly advise the Commission when requested. The international working group will, depending on donor assistance, support the Commission with logistical resources, personnel for a secretariat, and advisors to both parties.

### The Commission

It is anticipated that after the ceremonial opening and its inaugural meeting, that the Commission will meet frequently and produce draft policies, guidelines and regulations that will be offered for approval by the Minister of Interior and the Attorney General, and once approved, the Minister and Attorney General will order and instruct their respective police and prosecutors to follow the joint procedures. This output would be permitted within the existing legislative framework. It is anticipated that after this initial work is implemented by the parties, the Commission will continue by drafting implementation recommendations and creating an ongoing agenda as this Commission will continue its work indefinitely and as permanent adjunct to the MoI and the AGO.

### The Law

Multiple codes and laws, parts of which are applicable today, that overlap and at times contradict each other, directly hinder police-prosecutor coordination and collaboration. The 1965 (amended in 1974) Criminal Procedure Code (CPC) addresses the interaction between police and prosecutors and all court procedures, as does the 1978 Law on Discovery and Investigation. The ICPC was decreed in 2004 and directly contradicts some aspects of these other laws and codes (*e.g.*, one day for police interrogation instead ten, search requirements), while ignoring some other important procedural aspects (bail provisions, as required by international human rights principles, exist in the older CPC but not in the 2004 ICPC). The 2004 Constitution is contradicted in part by the ICPC (house searches require a judicial order under Art. 37 of the Constitution). Then in 2005, the Police Law was passed which, in turn, contradicts provisions of the ICPC (*e.g.*, three days for police interrogation rather than one, and adding grounds for searches and detention stops). The 2005 Police Law does not even refer to the ICPC that it amends. For example, the judicial police are key to ICPC police-prosecutor collaboration yet not even mentioned by the Police Law.

All of these laws are in effect to the extent that they do not contradict the ones passed later in time. Last, the Anti-Narcotics Law of 2005 provides investigation procedures that do not appear in any other Afghan procedural laws, and apply to narcotics as well as corruption and violence “related to” narcotics crimes. Finally, all these laws are subject to the Constitution which provides at Article 134 that “discovery” of crimes is the duty of police and “investigation and prosecution” are conducted by the Attorney General’s Office. The lack of a definite line between discovery or detection and investigation causes confusion which, in turn, fosters non-compliance with key provisions. For

example, the police must turn over suspects to the prosecutors within three days; yet in some parts of the country it might take fifteen days to physically transport a suspect. Another example is some police believe their responsibility for a case ends at the 72 hour mark when they hand over a suspect to the prosecutor, while some prosecutors do not get involved in a case until they receive the suspect from the police. The Commission must address coordination issues under the existing laws as well as any laws that might be passed in the future.

### The Issues

While the areas needing assistance in the form of coordination and cooperation are many, the initial focus of the Commission should be on issues such as:

- Designate the point at which the police become “judicial police” subject to prosecution orders, and the appropriate procedures for such supervision.
- Determine whether the police or judicial police come under the supervision of the prosecutor before an arrest is made.
- Definitions of “discovery” or “detection” of a crime, “investigation,” and “judicial police” which are critical as the Constitution and ICCP create lines of responsibility based upon these terms.
- Notification requirements between the police and prosecutors (e.g. need for additional investigation, or disposition of a case).
- The legal significance of the transfer of suspects from police to prosecutor control.
- Define the permissible investigation activities of police and prosecutors before, during, and after the discovery of a crime.
- Determine how police and prosecutors should work together on new areas that are troublesome in general: for example, the intake of family-based violence, especially against women, is the competency of the Family Response Units (FRUs) now part of the MoI organizational structure that are now being placed in police stations to specifically handle domestic violence and other gender or family-related crimes. Specify how the detection and investigation phases should be coordinated in these specialized areas.