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Meetings and Sessions

Chief Justice Participates in International Conference on Environmental Protection and Climate Change Signed in Myanmar

On October 29 and 30, 2018, Chief Justice *Qanoonpoh* Sayed Yousuf Halim participated in Asia Pacific Judicial Conference on Environmental Protection and Climate Change conducted by the government of Myanmar and initiated by Asian Development Bank following an official invitation by authorities of Myanmar government.



Chief Justices and other judges of South Asian, Asia Pacific and South-East Asian countries including the United States of America, Canada and Australia participated in this conference and discussed as well as

exchanged views on problems pertaining environment protection and climate change in the world which has increased international community's concerns in this regard. While expressing damages and risks resulting from greenhouse and other destructive environmental gases, which create air pollution and have negative effects on safe environment as well as climate change in the world, the judicial and legal systems of the world were instructed to prioritize the issue of climate change with legal interventions and new laws and impose legitimate rules as well as principles on governments, politicians, companies and organizations, which damage the environment by their products and emission of various gases, with judicial and legitimate support from the environment to decrease concerns recordingly. The Chief Justice also met chief justice of Myanmar and expressed their commitments in terms of judicial as well as legal support from environment and mechanisms for fighting against factors of environmental pollution following exchange of necessary details on procedures of legal systems in both countries.

Report on the Supreme Court High Council Meetings

On November 06, 10 and 24, 2018, the SC High Council conducted periodic meetings led by Chief Justice, *Qanoonpoh* Sayed Yousuf Halim and discussed the following agenda:

The Chief Justice presented a report on his participation in 19th International Conference of Chief Justices of the World held in India.



The chief justices, presidents, prime ministers and heads of some parliaments, heads of Supreme Courts and law experts gathered in this international conference and discussed as well as exchanged views on foundations for peace, elimination of violence, status of war-affected children and women and consequences of migrations caused by war along with its factors and negative effects.

On behalf of the Islamic Republic of Afghanistan, the

chief justice delivered a speech on migration of child and youth caused by war and its negative effects on their future. Since the participants of the conference were reflecting justice and rule of law in their countries, they shared their hopes and commitments on playing effective roles in making peaceful efforts of the conference a reality and secure peace and comfortable living opportunities especially to women as well as children of the war-affected stratum of the society.

- The council heard a report of the assigned committee, led by Dr. Abdul Malek Kamawi, member of SC High Council, regarding collection and arrangement of the Supreme Court circulars of 2015-2018, which have been prepared based on recommendations by Rule of Law and Anti-Corruption High Council and approval of the Supreme Court High Council. Moreover, necessary instructions were given regarding publication of the mentioned circulars following revision, arrangement of titles, determining whether they are invalid or outdated and observing language rules and principles after a clear review by SC High Council.
- Based on reports of the General Directorate of Judicial Audit and scrutinizing opinions arising from the review of normal and contingency audits, a judge was convicted of an offense and it was instructed that the office should submit his suspension to the President's Office and necessary disciplinary punishments were given to fourteen previous and current judges of appellate courts in Farah, Paktia,

Ghazni and Kabul with regards to their offences in accordance with Regulation on Procedures for Addressing Judicial Violations.

- According to the views of the responsible committee led by *Qazawatpoh* Abdul Hasib Ahadi, member of SC High Council regarding a request for instruction about preparation of a collateral for Letter of Guarantee by the banks as well as other financial lending institutions and procedures for obtaining their taxes, it was instructed that commercial courts will act as respective courts in terms of preparing collateral for Letter of Guarantee and in provinces, where these courts are not operating, the bail is enforced by civil divisions and the tax for implementation of these collaterals is determined as (0.25%) in accordance with amendments in the Law on Taxes of Governmental Products.
- Considering a scrutinizing view regarding a hereditary civil claim in which the applicant has requested for implementation of a definitive and final decision, after revocation of the final draft by High Council in this field, it was decided that the definite and final decision will be implemented and enforced whereas the next claim, beyond the decision, is considered legally addressable by the relevant court.
- According to a scrutinizing opinion and request of the applicant pertaining revocation of a legal per stirpes, it was stipulated that adjudication of the request is the jurisdiction of relevant zonal courts and the applicant can solve the problem through the

relevant court.

- Based on a request for instruction by Kabul Appellate Court regarding online criminal trials, it was stipulated that, since the online trial system is not anticipated by the law, the General Directorate of Scrutiny and Research was assigned to pursue the online trial of previously approved civil cases and enforcement of online criminal and commercial cases through preparation of a draft plan for addition and amendment in relevant legislative documents.
- Necessary instructions were given regarding a request for instruction by Nangarhar Appellate Court pertaining organization of the jurisdiction of Special Court for Addressing Cases of Usurpation of State-owned Property, according to the presidential decree number (2709) dated December 02, 2017 and approvals of SC High Council, on the activities before and after referring such cases to the court, procedures for addressing criminal and criminal aspects and regulating them within the legal framework, considering legal jurisdictions of the Government Cases General Directorate and Attorney General's Office, in light of the provisions of governed laws including Law on Regulation of Land Affairs and Law on Government Cases, published in official gazettes No. 1354 of 2017/2018 and number 1115 of 2013/2014.
- Considering a request for instruction by Kabul Appellate Court and similar requests for instruction regarding the method for returning cash fines of

decisions already deposited into fixed deposit accounts of the government by some of the convicts of civil and commercial cases but now, the issue of return and restoration of the cash fine is mentioned due to change in position of parties to the claim and detection of relevant court. However, the source of restoration is silent in this matter. A decision was made that the General Administrative Department of the Judiciary should present the request for restoration of cash fine to the President's Office and ask for instruction.

- An appeal by Government Cases General Directorate was presented to the meeting with participation of Kabul Deputy Mayor and his legal advisor, general director of government cases and related prosecutor, representative of the Ministry of Public Health and litigants regarding a land owned by Ministry of Public Health located in the central area of the city. The decision on this matter was referred to the next meeting due to failure to practice previous guideline of High Council by Government Cases General Directorate. The Government Cases General Directorate was assigned to complete required information on the issue within one week and present it in the coming meeting. Moreover, speeches of the deputy mayor were heard on another issue included in the agenda and necessary instructions were given accordingly.
- Eleven requests for criminal and civil appeal and five requests for changes in the criminal and civil courts

were heard in accordance with provisions of article 282 of Criminal Procedures Code in the presence of *Saranpoh* Ghulam Haider Alama; Deputy Attorney General for Judicial Prosecution, his colleagues, defense lawyers and relatives of the criminal convicts. Necessary decision was made accordingly.

- Moreover, necessary decision was made on change in some criminal and civil cases and some issues pertaining promotion in judicial cadre degrees. Similarly, based on a request by Attorney General's Office, Jawzjan, Ghazni, Nuristan, Khost, Laghman, Baghlan, Kunduz, Takhar, Badakhshan, Parwan, Logar, Nangarhar, Faryab, Ghor, Herat, Paktia, Nimroz, Daikundi, Paktika, Samangan, Maidan Wardak, Badghis, Helmand and Kunar Appellate Courts were authorized to hear 147 criminal cases and instruction was given to send a judicial delegate to Kandahar to hear some accumulated criminal case.

Head and Members of the Supreme Court High Council participated in Funeral Ceremony of Martyred Judge Gul Haider

On November 24, 2018, Chief Justice *Qanoonpoh* Sayed Yosuf Halim, members of the High Council, legal counselors, directors of central departments and a group of the Judiciary personnel participated in funeral ceremony of martyred Gul Haider, Bagram Court judge who was martyred in a terrorist incident last week while going to the office.



The funeral ceremony was held in great mosque of the Supreme Court by the Supreme Court and his family. The participants expressed their condolences and sympathies to his beloved family and prayed that may Almighty Allah bless him with Jannah and patience to his family.

Report on Participation of Judges in 2018 China Seminar for the Judges of the Asian Countries

On October 17, 2018, *Qazawatyar* Noorullah Noor; professional member of Judicial Audit Directorate, *Qazawatmand* Noorulwodud Badr; director of public law division of Kabul first district court, *Qazawatyar* Hashmatullah Rahimi; judicial member of Kabul anti-bribery and corruption court, *Qazawatyar* Farid Ahmad Noori; professional member of Judicial Training Directorate and *Qazawatmand* Mohammad Elias Bakhtyari; professional member of Kabul 2nd District Collaterals Court traveled to Beijing City of China based on an official invitation dated 17/07/2018 by People's Republic of China in accordance with request number 328/113 dated July 07, 2018 of the Supreme Court of Islamic Republic of Afghanistan and decree number 881 dated July 05, 2018 of the President's Office.

On October 18th, the opening ceremony of the seminar was started at the Chinese Judicial Training Center and, Ms. Feng Wenli, (Vice Chancellor of National College of Judges) spoke first. While welcoming the judges and appreciating their participation, she added that holding such seminars would facilitate the exchange of ideas and judicial experience among Asian countries and will ultimately boost judicial jurisdiction in Asian countries. Then, Mr. Yu Xiaoyu, successor of the General

Director for International Cooperation Agency of the Supreme Court of the People's Republic of China, stated, "Good relations between countries are important, and we have had good relations with the Afghan and Oman governments since long time ago". On the other hand, Presidents of both countries (Afghanistan and China) while on a trip to China, talked on several issues including development of cooperation between the two countries, construction of Silk Road, exchange of judicial experiences and so on. On the same series of travels, *Qanoonpoh* Sayed Yousuf Halim, Chief Justice of the Islamic Republic of Afghanistan, talked in "2017 International Judicial Cooperation Conference" regarding judicial cooperation between the countries. At the end, he emphasized on the importance of holding such seminars to explain judicial doctrines and establish good judicial relations between the two countries to create a clear vision for both countries.

The seminar was conducted from October 17 to October 31, 2018 for 15 days to the judges of the Islamic Republic of Afghanistan and Oman to strengthen mutual judicial cooperation between the two countries (China and Afghanistan). Following issues were discussed in this seminar:

- 1- Debate on ring road (Silk Road)
- 2- Diversity in approaches used to solve legal cases in China.
- 3- Familiarity with internal situation of local law from the cultural perspective and legal description as well as distinction culture in China.

- 4- Description on criminal justice system in China.
- 5- Process of hearing administrative cases and methods for solving them.
- 6- Important sections of civil procedures in the courts of China.

During the seminar, judges visited historic, ancient and cultural sites of China, such as the Great Wall of China, the historical Forbidden City and Beijing Art Academy. The judges also attended a public hearing on criminal cases in one of the primary courts in the city.

On October 25, a panel of judges from Afghanistan and Oman, accompanied by a host of delegations from China, headed to Guilin. Following their stay in Guilin, the delegates first went to Guilin City Intermediate Court to review the organizational structure of the court and the participants showed more interest in Litigation Center of the mentioned court.

The closing ceremony of the seminar was held at the headquarters of the Supreme Court of People's Republic of China hosted by Mr. Hu Yaunting, Deputy Director for Supreme Court of the People's Republic of China. He discussed various judicial issues between Asian countries in terms of exchanging judicial experience and bringing the countries such as Afghanistan and China as close as possible and called for the continuation of such programs between these two countries. He also expressed interest in visiting the Supreme Court of the Islamic Republic of Afghanistan and to present lectures at the Judicial Training Center. The Supreme Court officials and Chinese Judicial

Training Center emphasized on continuation of judicial co-operation between Afghanistan and China and conducting a judicial seminar in 2019 for the judges of Afghanistan.

In connection with the Silk Road, in the lecture of the professor, who presented the seminar on Silk Road, was discovered that Silk Road would cross the road outside the territory of Afghanistan. The judges of Afghanistan criticized on the issue with specific plans and historical reasons and suggested that the Silk Road should pass through the territory of Afghanistan in line with its historical route. The judges got familiar with the system and judicial structure of China and got acquainted with civil, administrative and criminal procedures Codes of China, and obtained new experiences regarding the online trials and electronic judiciary services delivery. However, providing the ground for using electronic devices in the administrative departments of courts and electronic services delivery for the Afghan judiciary system seems to be effective. On October 30, 2018, the judges will return to Afghanistan.

Women Leadership Training Course Conducted to Administrative Staff of Central Courts

On November 06 and 07, 2018, the Capacity Building and Performance Evaluation Directorate conducted the first gender training course titled Women Leadership Training Course to 21 female administrative staff of the central courts with financial support of Afghanistan Justice Sector Support Program (JSSP) and in accordance with Five Year Capacity Building and Training Programs.

The program started with recitation of some verses from Quran. From the participants' perspective, the term "gender" and women leadership was a new and interesting topic. at the beginning of the program, the participants were evaluated, and the training program was carried forward according to agenda and the lesson plan.

The trainer carried forward question and answer method and more opportunity were given to the participants. The participants followed the training program with zeal as well as interest and had remarkable participation. They asked for conducting of further trainings in the future.

Report on Seminar on General Provisions of the Penal Code Awareness to Herat and Badghis Court Judges

The Penal Code General Provisions Awareness Workshop which was conducted by the Supreme Court with financial cooperation of JSSP for five days in conference hall of Herat Appellate Court, ended successfully with participation of 25 judges from Herat and Badghis Courts.

Qazawatyar Shams-ur-Rahman “Raeskheil”, Herat Appellate Court Director, explained that these training courses are conducted based on a plan by the Supreme Court Judicial Training Directorate and elaborated that he considers the Penal Code General Provisions Awareness Workshop different from other training program.

He emphasized that the findings of this training workshop should be practically implemented at the time of addressing cases. The Herat Appellate Court Director added that such training workshops are great opportunities for judges and appreciated the efforts of SC Judicial Training Directorate, International Development Law Organization (IDLO) and instructors of Judicial Training Directorate.

Dr. Abdullah Atahi, the Supreme Court Judicial Training Director emphasized on importance of conducting such training workshops to increase knowledge of judges and appreciated cooperation by the director and appreciated cooperation by director and judges of Herat Appellate Court.

Judge Faizullah Faiz, instructor in the Supreme Court Judicial Training Directorate, explained that the purpose of conducting this training workshop was to develop knowledge and capacity of judges. He also emphasized on the importance of additions and amendments in the Penal Code.

Mr. Raeskheil appreciated the efforts of employees in conducting this training workshop and emphasized on continuation of such programs in the future.

Capacity Building and Performance Evaluation Training Program Conducted for Heads of Correspondence Unit and Divisions and Central Directorates of the Supreme Court

On November 26, 2018, the capacity building and performance directorate conducted staff communication training program with financial and technical cooperation of Checchi, Adalat Project for trainers of Capacity Building Section, heads of SC Divisions and employees and SC central directorates.



Hamed Baha Ayyar, director of Capacity Building and Performance Evaluation delivered the training that included communication concepts, staff communication management, terms of reference, administrative activities, health, safety, welfare, ensuring communication between the administration and employees, supportive and administrative activities,

different facilities, different social communications, disciplines and other factors influencing on them, quasi-judicial activities, how to address the complaints in the internal conflict resolution committee, address complaints in courts, positive and negative impacts of conflicts and protests, different types of conflicts, creative use of conflicts and their constructive impacts, process of problem solving, complaint and its difference with other terminologies, main rules of complaints, legal base of conflict resolution, combination of responsibility terms and descriptions on members of conflict resolution committee that were the main needs of the employees. The training was welcomed by the participants. The evaluation indicates the program efficient.

Head of the Zabul Province Appellate Court Meets UNAMA Representative in South-Eastern Zone

On November 19, 2018, *Qazawatyar* Morsal Ahmad Fazli, head of Zabul Province Appellate Court met Mr. Pazhwak, head of the UNAMA in south-eastern zone in his office.

Fazli welcomed Mr. Pashwak to the appellate court and shared some of issues with him. Mr. Pazhwak appreciated the reforms in Zabul courts and expressed his satisfactions regarding legal performance of the courts and added, “Safe and timely performance of courts increase public’s trust to courts and removes the gaps between people and government.” Head of the appellate court shared some of the problems of courts in the province with Pazhwak including transfer of judges to the province. He acknowledged them and said he would share the transfer of judges and employees to UNAMA’s central office that’s the vital issue of judges. He said that he would solve the issue. The meeting ended with the best wishes for Afghanistan.

Promote Contribution Program Conducted in Kandahar Province

On November 13, 2018, a session titled planning on elimination of violence against women was held in south zone. In addition to some female civil activists, *Qazawatyar* Zabihullah Ibrahimi, head of the Appellate Court has also participated in the meeting that was held in the Appellate Court hall. Mr. Ibrahimi considered the meeting valuable. A female civil activist asked Head of the Court to give a chance to women who stand shoulder by shoulder beside men. She added, “As female doctors can diagnose a female sick, a female applicant can also tell her concerns to a female judge.” She said women should be appoint as judges and administrative employees in Kandahar courts.



Head of the Appellate Court was asked about how many cases of violence against women were addressed in courts. He responded that in 2018, 19 cases were referred primary court on elimination of violence

against women. As a result, 10 cases were addressed and in addition to issuing ruling for seven cases, referred them to prosecution office and two cases were rejected.

Regarding the recruitment of female judges, he said 25 females are introduced to Kandahar from Kabul, but are assigned on service duty and were graded there.

News and Events:

- On November 7, 2018, with cooperation of United Nation Office for Drugs and Crime (UNODC) a five-day seminar was held for 40 people including 10 judges in Nangarhar Appellate Court. At the end of the program, *Qazawatyar* Abdul Wali Qazizada, head of Nangarhar Appellate Court considered the seminar a necessity of the time. He said such programs improve procedures addressing the corruption and financial crimes. He added that laws are contemporary and to explain such laws, conducting such seminars are compulsory.
- On October 10-11, 2018, Allah Dad, professional Correspondent of Criminal Division of Appellate Court conducted a two-day workshop titled procedures of administrative system of Afghanistan courts base on approval no. 893, dated October 25, 2018 of the High Council for 14 correspondents and newly employed staff of Appellate and Primary Courts of Ghazni districts. At the end, *Qazawantmand* Sikandar Haidary, head of the Appellate Court talked about importance of the workshop for developing capacity of newly appointed employees and its efficiency. The program ended with well wishes.
- On the October 23 to November 21, 2018, Judicial Care Office personnel arrested three suspects for the

charge of mediating bribery and fraud and their cases were officially referred to justice and judicial organizations in a legal timeline. There are three cases under investigation based on a petition and instruction of the Head of the Supreme Court, and seven other individuals who commutes with different titles deeds sections and courts were identified and committed in written revisit there anymore. Based on reports received regarding the legal cases, 247 cases were referred to primary court from PD 03 of Kabul province and from March 21 to October 15, 2018, 484 cases are referred to the mentioned Court's Division. There are totally 731 cases, out of which 103 have been addressed, and 375 cases are remained.

COUNTER-CORRUPTION

A) Judicial Activities Report of Kabul Anti-Corruption Primary Court

1. Report

Kabul Anti-Corruption Primary Court addressed (12) criminal cases related to corruption crimes from October 23 to November 21, 2018, as a result, 38 individuals were trialed for committing crimes such as duty misuse, bribery, illegal possession of weapons and forgery and were sentenced to different punishments, imprisonment and cash penalties as following:



- 1 month to 1 year imprisonment (8 people)
- 1 to 5 years imprisonment (14 people)
- cash fine (14 people)

Total of cash fines make a sum of USD 8,083

Table 1: Indicates statistics of convicts by Kabul Anti-Corruption Primary Court in October-November 2018

No	Type of case	No of cases	Judicial decision								
			No. of accused	Acquittal	No. of convicts	Number of prisoners for imprisonment					
						1 month to 1 year	1-5 years	5-15 years	15-20	Convicts for cash penalty	Cash penalty
1	Duty misuse	6	30		30	7	8			16	1,973
2	Bribery	4	4		4	2	2				2,710
3	Forgery	1	3		3		3				
4	Illegal possession	1	1		1		1				400
Total		12	38		38	8	14			16	5,083

The Court has issued rulings for 6 cases and sent them for filling the investigative gaps and flaws to the related references.

Table 2: Indicates rulings by Kabul Anti-Corruption Primary Court in October-November 2,018

No	Type of case	Number of cases	Number of accused	Reason for ruling	Related references
				Gaps and flaws	
1	Duty misuse	2	3	2	Prosecution office
2	Forgery	2	8	2	Prosecution office
3	Bribery	2	3	2	Prosecution office
Total		6	14	6	

1. Summary of Verdicts Issued by Kabul Anti-Corruption Primary Court

Verdict dated November 13, 2018

Conviction of three employees of Radio Television Melli (RTA) With the Charge of Forgery in Salary Payroll

Based on a verdict of the supreme audit office, in a series of previous audits in RTA directorate by letter no. 51 dated September 9, 2018, the appointed delegation had asked the forms 41m and 16m deposits from years 2014-2016 from the relevant sections and have investigated them. As a result, in addition to regular salaries, some of the employees' accounts deposited miscellaneous salaries, 596,980 AFN in 2014, 729,897 AFN in 2015 and 1,131,667 in 2016 that is totally 2458544 AFN.

They stated that they had not received any miscellaneous salary during the above-mentioned years. On the other hand, Audit Department of ART reported embezzlement of 710,943 Afn following inspection of salaries belonging to fiscal year 2014, miscellaneous section, letter no. 344 dated September 30, 2017 saying the payroll manager approved repeated deposit of this amount. Therefore, investigation was done from the suspects .

After completion of primary investigations, the case was referred to Kabul Anti-Corruption Crimes Primary Court. In a judicial session dated November 13, 2018, the court sentenced the payroll manager of RTA, accounting manager and cashier to five years and one-

month imprisonment for the charges of forgery and embezzlement of 3,169,487 Afn in accordance with paragraph 1 article 313 of the Penal Code and Article 268 of the mentioned code observing added paragraph 6 article 148 and provisions 150 and 155 of the mentioned code. The court also sentenced the convicts to punishments in accordance with paragraph 1 article 398 of the Penal Code for the charges of embezzlement. Moreover, the persons, who had signed and written their names on the miscellaneous payroll forms and sheets for 2014-2018 and the amount has been embezzled, will be investigated by the Supreme Audit Office according to provisions of article 69 of Criminal Procedures Code.

1. Summary of Verdicts Issued by Nangarhar Anti-Corruption Primary Court

Verdict dated October 30, 2018

Conviction of Solider and Computer Operator of Recruitment Police Headquarter of Nangarhar With the Charge of Receiving Bribe

A Khogyani District resident who wanted to join the police headquarter and his documents had been send to computer operator for processing. Based on claim, the computer operator asked for 8,000 Pakistan Rupees for the registration. He informed the Intelligence Department of Nangarhar Police Headquarter through an official petition. The employees of the intelligence department marked the amount of money and submitted to the applicant. The applicant paid the money to the

computer operator and the intelligence employees arrested him red-handed while receiving the money by on October 30, 2018.

After primary investigation, the case was referred to Nangarhar Anti-Corruption Primary Court. The Court heard the case in a judicial session dated October 30, 2018 and convicted the accused with the charge of receiving 8,000 Pakistan Rupees as bribe to four months imprisonment and cash penalty equaling the amount of bribed money that is equal to 4,678 AFN based on article 385 (1) of the Penal Code.

B) Report on Judicial Activities of Kabul Anti-Corruption Appellate Court

1) Report

Kabul Anti-Corruption Appellate Court addressed (12) criminal cases related to corruption crimes from October 23 to November 21, 2018. As a result, 21 people were trialed for committing crimes such as: misuse of official authority, bribery, forgery, embezzlement and illegal possession of weapon and were convicted to different imprisonment terms, out of which 7 people were acquitted of the imposed allegations due to lack of sufficient reasons:

- 1 month to 1-year imprisonment (5 people)
- 1 year to 5 years imprisonment (8 people)
- Convicts of cash penalties (1 person)

Total of cash penalty makes a sum of USD 3,472

Table 3: Indicates statistics of verdicts by Kabul Anti-Corruption Appellate Court in October 2018

No	Type of case	Number of cases	Judicial decision							
			Number of accused	Acquittal	Number of convicts	Number of prisoners to imprisonment				
						1 month to 1 year	1-5 years	5-15 years	Cash fine	Cash penalty
1	Misuse of official authority	4	13	7	6		5		1	157\$
2	Bribery	4	4		4	3	1		1	3197\$
3	Embezzlement	1	1		1		1			
4	Forgery	2	2		2	2				
5	Illegal position of weapon	1	1		1		1			
Total		12	21	7	14	5	8		1	3472\$

The Court issued rulings for 3 cases and sent them back to related references for filling the investigative gaps and flaws.

Table 4: Indicates rulings by Kabul Anti-Corruption Appellate Court in October of 2018

No	Type of case	Number of cases	Number of accused	Reason for ruling	Related references
				Gaps and flaws	
1	Misuse of official authority	2	3	2	Prosecution Office
2	Forgery	1	2	1	Prosecution Office
Total		3	5	3	

1. Summary of Verdicts Issued by Kabul Anti-Corruption Appellate Court

Verdict dated November 5, 2017

Conviction of six people with the charge of misuse of official authority, bribery, mediating in bribery and participating in forgery

In 2015, a large number of people went to passport directorate to get passports. Due to huge gathering of people, some of applicants were referring to illegal commissioners and officials of the directorate to get their passports as soon as possible. On August 23, 2015, four applicants were introduced to an employee of the directorate for processing E-passports. The employee submitted their applicants to biometric sub-directorate to process for issuing passports. The biometric system identified the applicants' suspects and reported the issue to director of the passport. The director reviewed the forged documents, ordered the sub-directorate of biometric to arrest that four applicants and based on director's order all the available applicants in the yard had to be inspected. As a result, they found six people with forged signs and order of the director. Based on this issue, one of the employees of passport directorate and five applicants were introduced to justice and judicial organizations.

The Kabul Anti-Corruption Primary Court heard the case in a judicial session held on July 28, 2018. The court heard the case in a judicial session held on July 15, 2017, acquitted the litigants due to lack of evidences in forgery, giving bribe, mediating bribery and misuse of official authority cases according the article 235 of the penal code.

Due to dissatisfaction of the prosecutor, the case was referred to Kabul Anti-Corruption Appellate Court. The court heard the case in judicial session held on November 5, 2018, and the appellate confirmed the decision of the primary court based on the article 54 of the law on organization and jurisdiction of courts of judiciary observing instructing rulings no. 1493 dated November 06, 2018 of the SC Security Division in line with article 17 of the penal code. Letter of agreement no. 38 dated July 28, 2018 and amended the verdicts regarding the other accused as following:

1. Sentenced the first accused to one year and one-month imprisonment with the charge of mediating in bribery of 114,840 AFN according the article 372 (1,4) of the Penal Code in line with article 273 and considering articles 213 and 215 of the mentioned code.
2. Sentenced the second accused to 3 months with the charge of mediating in bribery of USD 600 according to article 372 (1,3) of the Penal Code in line with article 373 of the mentioned code effective as of the detention date and to reimburse the bribed money.
3. Sentenced the third accused to five times of bribed USD 300 according to article 372 (1,2) of the Penal Code and cash fine equivalent to amount of the bribed money.
4. And sentenced the last accused to cash fine of 10,000 AFN according to article 372 (1) of the

Penal Code and two others were acquitted with the charge of misuse of official authority due to lack of sufficient evidence according to articles 5 and 235 of the Criminal Procedures Code.

COUNTER NARCOTICS AND INTOXICANTS

A: Report on Judicial Performances of Kabul Counter Narcotics and Intoxicants Primary Court

1. Report



Kabul Counter Narcotics and Intoxicants Primary Court addressed about (54) cases related to different types of drugs from October 23, 2018 to November 21, 2018 and issued necessary decisions accordingly. 82 individuals were trialed on charges of smuggling and transporting drugs, among which, one of them proved innocence due to lack of sufficient evidences and the rest 81 people sentenced and received punishments as

the following:

- One to five years imprisonment (49 persons)
- Five to 15 years imprisonment (19 persons)
- 15 to 20 years imprisonment (13 persons)

In addition to the above-mentioned trials, a verdict was issued for elimination of **(17696.316)** kg of drugs.

Table (1): Statistics of Kabul Counter Narcotics and Intoxicants Primary Court of

No	Type of cases	No. of cases	Quantity of drugs	Judicial decision					
				No. of convict	Acquittal	No. of accused	No. of imprisoned accused		
							1 to 5 years	5- 15 years	15-20 years
1	Heroin	22	58.734	36		36	24	9	3
2	Opium	6	228.98	8	1	7	2	2	3
3	Hashish	5	400.728	9		9	7	2	
4	Morphine	3	33.375	4		4	3		1
5	Chemicals	17	16742.499	21		21	9	6	6
6	Alcoholic drinks	1	232Lt	4		4	4		
Total		54	17696.316	82	1	81	49	19	13

2. Summary Verdicts Issued by Kabul Counter

Narcotics and Intoxicants Primary Court

Verdict dated November 17, 2018

10 years of imprisonment on charge of smuggling 21 grams of Morphine, 27.979 KGs of Caffeine, Dextromethorphan and Chloroquine

As a result of an information and instruction by Information and Investigation General Administration regarding a vehicle with some drugs which was moving towards Rustaq district, Officers of the Counter Narcotics administration of Badakhshan province HQ established a checkpoint in Pul-e-Begum area and identified and stopped the targeted vehicle and took it to the Counter Narcotics Administration where they checked the vehicle in presence of in charge audit where as a result, 28 pockets of drugs under the name of Heroin were discovered and confiscated and the driver was arrested. The net weight of confiscated drugs was estimated 28 KGs and the laboratory result showed the drugs as (Caffeine, Chloroquine and Dextromethorphan) and (1 mg of Morphine) in each 1,349 mg that according to the information from Laboratory Management attached to page (68) of the file, there were totally 21 grams of Morphine in 28 KGs of the drug.

Following the primary investigations, the case was referred to Kabul Counter Narcotics and Intoxicants Primary Court, the Court in its judicial session dated November 17, 2018 convicted the accused in case of transferring (797.27) KGs of Caffeine, Dextromethorphan and Chloroquine in accordance with

guideline of clause (5) paragraph (1) article (302) of the penal code and respecting article (52) of the mentioned code to 10 years of imprisonment, and for transferring (21) KGs of Morphine was convicted to three years of imprisonment according to clause (2) paragraph (1) article (302) of the penal code that according to article (73) of the mentioned code the severest punishment which is 10 years of imprisonments will be applied on him, and for not having driving license and plate-number, according to article (560) of the penal code and respecting article (75) of the mentioned code he was fined for 20,000 Afs and according to paragraph (1) article (308) of penal code and article (32) of the Counter Narcotics and intoxicants law the vehicle model Corolla transferring the drug and a mobile set were confiscated and according to article (19) of the mentioned law a verdict was issued to eliminate the (21) KGs of Morphine and (27.979) KGs Caffeine, Chloroquine and Dextromethorphan.

Verdict dated October 28, 2018

Five years imprisonment for smuggling (70) KGs Hashish

On September 1, 2018, a Mercedes Bus vehicle that was stopped near Southern Tunnel and in front of Salang HQ checkpoint due to technical problem seemed dubious and hence it was interrogated by the checkpoint in charges. Later, the Police arrested two people, one was a passenger and the second was driver of the bus and were residents of Nangarhar province and reported

the issue to Salang HQ, later a board of audit came to the incident area and checked the vehicle in presence of the driver that as a result they discovered some Hashish placed under floor of the vehicle weighted 70 KGs. following completion of primary investigations, the case was referred to Counter Narcotics and Intoxicants Primary Court of Kabul province that the Court, in its judicial session dated October 28, 2018 addressed the case and sentenced the accused in case of transporting (70) KGs of Hashish to five years of imprisonment in accordance with clause (7) paragraph (1) article (305) of the penal code and respecting article (58, 213 and 214) of the mentioned code, and confiscated their two mobile sets with the SIMs according to article (32) of the Counter Narcotics and Intoxicants Law and their Mercedes model vehicle carrying the drug was also confiscated according to article (308) of penal code. The confiscated (70) kg Hashish was considered eliminated according to article (19) of Counter Narcotics and Intoxicants Law.

B. Report on Judicial Performances of Kabul Counter Narcotics and Intoxicants Appellate Court

1. Report

From October 23 to November 21, 2018, the Counter Narcotics and Intoxicants Primary Court of Kabul province addressed (61) cases related to drugs and issued decisions accordingly. About (61) people were arrested related to these cases on charge of smuggling and transferring drugs, among which (2) of them were

proved innocent due to lack of sufficient reasons and the rest (59) were trialed and imprisoned with different following punishments:

- One to five years imprisonment (21 persons)
- Five to 15 years of imprisonment (18 persons)
- 15 to 20 years of imprisonment (20 persons)

In addition, about (5646.582) KGs drugs have been confiscated in relation to the above-mentioned cases.

Table (1) Indicates judicial performances by Kabul Counter Narcotics and Intoxicants Primary Court in October and November 2018

No	Type of cases	No. of cases	Quantity of drugs	Judicial decision					
				No. of convict	Acquittal	No. of accused	No. of imprisoned accused		
							1 to 5 years	5-15 years	15-20 years
1	Heroin	17	222.834	17		17	4	10	3
2	Opium	22	4058.01	22	2	20	10	2	8
3	Hashish	8	866	8		8	5	1	2
4	Morphine	4	119.868	4		4		1	3
5	Chemicals	8	379.87	8		8	2	3	3
6	Drugs production tools	2		2		2		1	1
Total		61	5646.582	61	2	59	21	18	20

2. Summary of verdicts issued Kabul Counter

Narcotics and Intoxicants Primary Court

Verdict dated November 18, 2018

Sixteen years of imprisonment on charge of smuggling 195 kg of Opium and 18 kg of Hashish

On October 3, May 25 and November 26, 2017 three drug smugglers were arrested based on an information by the Information and Detection Administration along with 48 kg Opium and 18 kg Hashish by the Counter Narcotics and Intoxicants Administration of Nangarhar Province, but later, in connection with the same case two others who were involved in the case who were under operative work of the mentioned Administration and were arrested on July 16, 2018 in Darunta area of Nangarhar province and introduced to justice and judicial institutions.

After completion of primary investigations the case was referred to Kabul Counter Narcotics Primary Court and the Court in a judicial session dated June 8, 2018 sentenced one of the accused in case of transferring (35) kg Opium to 16 years of imprisonment in accordance with clause (6) paragraph (1) article 304 of the penal code and article (17) of the mentioned code and for the case of smuggling (13) kg Opium, sentenced the accused to 13 years of imprisonment according to clause (6) paragraph (1) article (304) of the penal code and article (17) of the mentioned code, and also in the case of smuggling (102) kg Opium, as he confessed, was sentenced 16 years of imprisonment according to clause (6) paragraph (1) article (304) of the penal code

and in the case of smuggling (18) kg Hashish, sentenced him to 7 years of imprisonment according to clause (6) paragraph (1) article (305) of the penal code and article (17) of the mentioned code, considering paragraph (2) article (304) of the penal code and articles (213) and (214) of the mentioned code he was sentenced to 5 years of imprisonment. Hence, confiscation of three mobile sets with their SIMs and the amounts (6,400) Afs and (5,000) Pakistani Rupees owned by one of the accused, and one mobile set with two SIMs owned by the other accused were ordered to be confiscated according to article (32) of the counter narcotics and intoxicants law. The ordered to apply total of 16 years imprisonment on him according to articles (61) and (73) of the penal code and considering article (17) of the mentioned code, for the charge of smuggling (102) kg Opium, while one Corolla model car ordered to be confiscated according to article (308) of penal code, and a verdict issued for eliminating the drug.

But the case was referred Counter Narcotics Appellate Court due to lack of contentment of the accused and the Court in a judicial session dated October 18, 2018 confirmed the verdict of the primary court according to article (54) of the Law on Organization and Jurisdiction of Courts of Judiciary, paragraph (2) article (17) of the Counter Narcotics and Intoxicants Law and paragraph (1) article (267) of the Penal Code.